

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 4, 2021**

Date: October 6, 2021

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<b>TAB #</b>	<b>Document</b>
A.	Transcript of the cross-examination of Dennis Mark McEwan held October 4, 2021 as redacted by Applicant's counsel
	<ul style="list-style-type: none"> <li>a) Letter from Applicant to employees re within proceedings</li> <li>b) Letter from Applicant to suppliers re within proceedings</li> <li>c) Notice to creditors from Alvarez &amp; Marsal Canada Inc. re within proceedings</li> </ul>
B.	Undertakings and under advisements chart of the Applicant
C.	Correspondence dated October 3, 2021 regarding production and refusals

# TAB A

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

Mark McEwan  
on Monday, October 4, 2021



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

[neesonsreporting.com](http://neesonsreporting.com) | 416.413.7755



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Applicant

-----  
--- This is the Cross-Examination on Affidavit of  
DENNIS MARK MCEWAN, taken via Neesons, a Veritext  
Company's virtual platform, on the 4th day of  
October, 2021.

-----  
A P P E A R A N C E S:

(All via virtual platform)

Robert Chadwick, Esq.,

Caroline Descours, Esq.,

Peter Ruby, Esq., for the Applicant.

Steve Graff, Esq.,

Damien Lu, Esq.,

Jeremy Nemers, Esq., for First Capital Holdings  
(Ontario) Corporation

ALSO PRESENT: Greg Karpel, Kip Aneja, Sean Zweig

REPORTED BY: Joanne A. Lawrence, RPR, CSR

I N D E X

WITNESS: DENNIS MARK MCEWAN

PAGE

CROSS-EXAMINATION BY MR. GRAFF..... 4

\*\*The following list of undertakings, advisements  
and refusals is meant as a guide only for the  
assistance of counsel and no other purpose\*\*

INDEX OF UNDERTAKINGS

The questions/requests undertaken are noted by U/T  
and appear on the following pages: 17:11, 68:7

INDEX OF ADVISEMENTS

The questions/requests taken under advisement are  
noted by U/A and appear on the following pages:  
18:20, 19:1, 26:15, 27:6, 33:7, 34:1, 35:15, 36:4,  
39:9, 39:22, 40:15, 41:21, 42:10, 45:10, 54:20,  
54:25, 61:11, 66:16, 66:24, 67:16, 70:24

INDEX OF REFUSALS

The questions/requests refused are noted by R/F and  
appear on the following pages: 22:14, 54:4, 73:4

INDEX OF EXHIBITS

NUMBER/DESCRIPTION

PAGE/LINE NO.

1: (For identification) 38:4

Shareholders agreement of August  
12th, 2015

2: (For identification) Lease and 58:20  
amendments

A: Communication Number 1 to 75:20  
employees

B: Communication to the suppliers 76:19

C: Communication to creditors 77:14  
issued by the monitor, Alvarez &  
Marsal

3: (For identification) Consent 79:3  
and lease amendment dated December  
21st, 2018

4: (For identification) Lease 79:22

amending agreement between First  
Capital and McEwan dated April 22,  
2019

5: (For identification) Lease 80:19

amending agreement dated June 7,  
2019, between First Capital and  
McEwan Enterprises

6: (For identification) Lease 81:13

amending agreement dated April 3rd,  
2020, between First Capital and  
McEwan Enterprises

7: (For identification) Lease 82:16

amending agreement dated April 6th,  
2021, between McEwan and First  
Capital

1 -- Upon commencing at 9:00 a.m.

2 DENNIS MARK MCEWAN: AFFIRMED.

3 CROSS-EXAMINATION BY MR. GRAFF:

4 1 Q. Mr. McEwan, you've been sworn  
5 today. When you swore your affidavit -- this is a  
6 cross-examination on your affidavit which was sworn  
7 on the 27th of September. When you swore that  
8 affidavit, you were under oath, as I understand it?

9 A. Correct.

10 2 Q. And at that time, you swore to  
11 tell the truth and nothing but the truth, and the  
12 contents of your affidavit stated the truth; is  
13 that correct?

14 A. That is correct, yes.

15 3 Q. And at this point in time, you  
16 still acknowledge and recognize that the statements  
17 contained within your affidavit of September 27th  
18 constitute the truth as you know it?

19 A. That is correct.

20 4 Q. Is there anything in the affidavit  
21 of September 27th, which I'm assuming you've  
22 reviewed in advance of today, that you want to  
23 change?

24 A. No.

25 5 Q. Okay. Thank you.

1 MR. CHADWICK: Mr. Graff, just one  
2 comment. As you identified, there was a correction  
3 to one of the exhibits that (indiscernible) to  
4 further, if you have any questions on that, that  
5 you have that information on that one correction.

6 MR. GRAFF: Yeah, understood. I have  
7 that document, have reviewed it briefly, and will  
8 accept that as a replacement of the document that  
9 appeared as an exhibit to your September 27th  
10 affidavit.

11 MR. CHADWICK: Thank you.

12 BY MR. GRAFF:

13 6 Q. And just for the purpose of,  
14 again, making everything sort of flow in a more  
15 cohesive manner, Mr. McEwan, you may be aware that  
16 on Friday night I made a request for a number of  
17 documents which I delivered to your counsel at  
18 Goodmans, and some of those documents were provided  
19 last night by way of email from your counsel  
20 Mr. Ruby. Many were not. The documents that have  
21 not been produced, I'm assuming that there is a  
22 refusal to produce those documents, and so if I  
23 could get you or your counsel to confirm on the  
24 record that the documents that have not been  
25 produced are being refused.

1 MR. RUBY: So, Mr. Graff, to be fair --  
2 I think I should answer that for the witness.

3 MR. GRAFF: Sure.

4 MR. RUBY: The answer is more nuanced  
5 than that. Some of the documents are refused.  
6 Some of the documents, it's a timing issue.

7 MR. GRAFF: Okay. So maybe you can  
8 outline for me which -- if you can right now,  
9 Mr. Ruby, which documents have not been provided  
10 because of timing and those which have been  
11 refused, as best as you can.

12 MR. RUBY: Well, I think, first of all,  
13 you have our notes on the refusals that came  
14 accompanying the documents, so that --

15 MR. GRAFF: I do.

16 MR. RUBY: -- I think, is clear. If  
17 there's something that you think is missing, just  
18 let us know.

19 MR. GRAFF: Okay.

20 MR. RUBY: We can try to provide to  
21 you --

22 MR. GRAFF: So let's -- so to be clear,  
23 those documents that, in your email -- that you  
24 haven't produced and in your email you indicate  
25 will not be produced or haven't addressed will

1 not -- you are effectively refusing to produce.

2 MR. RUBY: I'll take another look at  
3 it, and maybe we'll get back to you during the  
4 course of your examination if we can --

5 MR. GRAFF: Yeah.

6 MR. RUBY: -- provide you with a  
7 more --

8 MR. GRAFF: I'm not trying --

9 MR. RUBY: -- refined answer.

10 MR. GRAFF: Yeah. I'm not trying to  
11 make a mountain of it. I just want to make sure we  
12 get that clarity on the record.

13 MR. RUBY: Yeah. But just to be clear,  
14 in addition to the documents themselves, you got a  
15 cover email that provided, you know, some  
16 indications of what we were refusing, when things  
17 were marked not relevant and so on.

18 MR. GRAFF: Sure. And you have no  
19 objection to my producing that document, I'm  
20 assuming, Mr. Ruby; is that correct?

21 MR. RUBY: You mean the --

22 MR. GRAFF: That email that is --

23 MR. RUBY: Yeah. No, no, that's fine.

24 MR. GRAFF: Okay. Great.

25 MR. CHADWICK: Subject to the cover



1 email dealing with confidentiality. So we'll  
2 address that with you at the right time.

3 MR. GRAFF: Sure. Okay.

4 BY MR. GRAFF:

5 7 Q. And, Mr. McEwan, yes, this is  
6 about you, but lawyers do their little dances  
7 around things, so we'll -- this will turn much more  
8 of its focus towards you in a minute. But in the  
9 meantime, just, again, to put away some of the  
10 formalities, you've now, as I understand it, sworn  
11 an affidavit in these proceedings on October the  
12 1st, 2021, and that affidavit is sworn in  
13 connection with a motion that is presently  
14 scheduled to be heard on the 15th of October. If  
15 that motion proceeds, I'm assuming you're prepared  
16 to make yourself available for further  
17 cross-examination on that affidavit when  
18 appropriate.

19 MR. RUBY: Oh, yes.

20 MR. GRAFF: Okay. Thank you.

21 BY MR. GRAFF:

22 8 Q. And then just for clarity purposes  
23 as we go through this process, I wanted to make it  
24 clear, Mr. McEwan, that when I refer to ME, if I do  
25 so, I'm referring to McEwan Enterprises. In most

1 instances, I will do my best to refer to it in its  
2 full name, and that obviously reflects the existing  
3 filing entity. I may also refer to the proposed  
4 purchaser by either referring to it as 785 Corp or  
5 Newco, so if you hear those terms, you'll know what  
6 I'm referring to. When I --

7 A. Yep.

8 9 Q. -- refer to the location that is  
9 leased to McEwan Enterprises by First Capital, I  
10 will refer likely to that location as either the  
11 Yonge-Bloor location or the YB location, and when I  
12 refer to the landlord of that location, I will  
13 often refer to that landlord as First Capital  
14 rather than enunciating the entirety of its  
15 corporate name. I think those will all be clear to  
16 you, and I trust you agree.

17 A. Sure. That's fine.

18 10 Q. Thank you. Let me start by saying  
19 to you that I congratulate you on the business that  
20 you have built. I appreciate that these have been  
21 challenging times for all, but particularly those  
22 in the restaurant and the hospitality business. I  
23 am understanding of the hard work and challenges  
24 you have had to endure during these times. We have  
25 all had to endure them, but your industry has been

1 particularly impacted by these events, so  
2 congratulations in that regard.

3 A. Thank you.

4 11 Q. I am a regular attendee at many of  
5 your restaurants, and I hope going forward the fact  
6 that I am conducting this examination will not  
7 cause you to poison any of my food going forward,  
8 okay?

9 A. You can rest assured.

10 12 Q. You have a history in the  
11 business, as I understand it, dating back to 1982;  
12 is that correct?

13 A. That is correct, yes.

14 13 Q. Can you walk me through your  
15 hospitality and restaurateur history to some  
16 extent so that I can understand what you did before  
17 you started to build McEwan Enterprises.

18 A. In 1982, I became the executive  
19 chef at the Sutton Place Hotel, so that was my  
20 first standalone executive job after training to be  
21 a chef. In 1985, I left that job to become a  
22 one-third partner in Pronto restaurant on Mount  
23 Pleasant that we purchased from Franco Prevedello.  
24 From that point, in 1990, I built North 44 on Yonge  
25 Street. From that -- from -- in 2002, I built

1 Bymark in the Financial District. In 2007, I  
2 opened one at the Hazelton Hotel, and then, I  
3 believe, in 2008, we did McEwan Foods at the Don  
4 Mills Centre. Somewhere around 2010, I opened  
5 Fabbrica across the street. From there, I went  
6 into Diwan at the Aga Khan Museum. We took over  
7 the catering and all food service for the Aga Khan  
8 Museum. We also built a catering business on the  
9 side, event business, corporate catering. And  
10 then, finally, I did -- I did the PATH, TD Centre.  
11 We did a McEwan Foods there, a Fabbrica, and then  
12 we subsequently opened Yonge and Bloor. So that is  
13 the -- sort of the path as to how we got to where  
14 we are today.

15 14 Q. Okay. And as I understand it, all  
16 of those operations from the time that you  
17 mentioned that -- I think Bymark was the first as  
18 part of McEwan Enterprises; is that right?

19 A. Yes, that would be correct.

20 15 Q. Or what is now McEwan Enterprises.

21 A. That's correct.

22 16 Q. And when you refer to Pronto,  
23 Pronto is not part of the current operation; is  
24 that right?

25 A. No. That's long since gone. When

1 I split with my partners, they took that  
2 restaurant, and I took North 44 and moved off on my  
3 own.

4 17 Q. I see.

5 A. So that's --

6 18 Q. Pronto itself was never the  
7 subject of an insolvency proceeding.

8 A. Never. Never. No.

9 19 Q. Okay. Thank you. And just to  
10 sort of round out the number of businesses that sit  
11 within the McEwan Enterprises structure, I believe  
12 your affidavit refers to a couple other endeavors.  
13 One of them, as I understand it, is a gift and  
14 floral business; is that correct?

15 A. That's a business within -- within  
16 McEwan Foods, yes. And then I have McEwan  
17 Restaurant Consulting, which is just that, a  
18 consulting business. Oftentimes we are asked to  
19 work with people and their food service operations  
20 to better them. It's also part and parcel of my  
21 television exposure, my cookbooks and that nature  
22 of things.

23 20 Q. Okay. So you're -- to -- just to  
24 elaborate on that, the consulting business is all  
25 contained within McEwan Enterprises; is that right?

1 A. That -- that is correct.

2 21 Q. And the TV contracts and exposure  
3 is all similarly contained within McEwan  
4 Enterprises?

5 A. Correct.

6 22 Q. And your -- I think you mentioned  
7 your involvement with Top Chef Canada and the Food  
8 Network. Are they similarly both contained within  
9 McEwan Enterprises?

10 A. Yes, they are.

11 23 Q. Okay. And your arrangement with  
12 Good Food, which I understand is your most -- one  
13 of your most recent ventures for the delivery of  
14 high-quality products to households in the -- I  
15 believe the GTA, if not broader, that, similarly,  
16 is a business within McEwan Enterprises.

17 A. Yes, it is. Yes, it is.

18 24 Q. And could you clarify: Do all of  
19 these businesses -- I'm assuming that they measure  
20 their performance on an independent basis separate  
21 and apart from the other operations contained  
22 within McEwan. So, in other words, each one has  
23 its own separate set of financials; is that  
24 correct?

25 A. Not necessarily. Good Food is

1 just kind of an offshoot of our catering business.  
2 Our catering business gets blended into -- into  
3 McEwan Foods, so they don't run separate P and Ls,  
4 but they bundle together.

5 25 Q. So how do you know, in that case,  
6 how any one of these particular divisions is  
7 performing?

8 A. Well, sort of common sense, to  
9 look at it and evaluate it and understand how it  
10 fits into the operation. We didn't feel it  
11 necessary to divide them all out on an individual  
12 basis.

13 26 Q. So when you're running through the  
14 numbers, whether on a quarterly or biannual basis  
15 or annually, you really have no ability to  
16 ascertain which of those operations is contributing  
17 what proportion to the ultimate outcome. I assume  
18 you have a sense, but you can't do that with a  
19 level of precision.

20 A. I -- I would say we have a level  
21 of precision. We do track it on our P and L and  
22 understand it and carefully look over it.

23 27 Q. Okay. How do you track it?

24 A. We do inventories; we look at  
25 labour; we look at contribution on top line

1 dollars. So it's not that difficult.

2 28 Q. So you can segregate the numbers  
3 out in respect of that operation, separate from any  
4 of the others, if needed.

5 A. Which one, in particular, are you  
6 referring to?

7 29 Q. Well, let's say, for example, the  
8 Good Food operation.

9 A. The Good Food is very simple. We  
10 have a standalone partner at the federal inspection  
11 level that does all of the production for us, so  
12 it's a very simple entry on a monthly basis. It's  
13 not a big contributor.

14 30 Q. I see. And Good Food -- maybe you  
15 can clarify for me. Good Food is a -- is it a  
16 partnership with an independent third party?

17 A. In terms of what? The production  
18 of the food?

19 31 Q. Just the --

20 A. Or the --

21 32 Q. -- overall organizational legal  
22 structure I think is what I'm looking for more than  
23 anything.

24 A. Well, there's no -- there's no  
25 real legal structure to it. It's a contract that



1 we've taken on. We have hired an independent  
2 producer to -- to -- at arm's length under a  
3 federal inspection to produce the food for Good  
4 Food under our guidance.

5 33 Q. I understand. And who is that  
6 partner?

7 A. It's a numbered company. I would  
8 have to get that for you.

9 34 Q. Who's the principal behind the  
10 organization?

11 U/T A. A young chef who operates the  
12 company with partners. I can get you that  
13 information.

14 35 Q. Okay. Thanks. Much appreciated.

15 MR. RUBY: So, Mr. McEwan, that one's  
16 not a problem. Just to remind you, when Mr. Graff  
17 asks you to get things, I'm sure what he means is  
18 for your lawyers to help you answer that. Okay?

19 THE WITNESS: You bet.

20 MR. RUBY: Thank you.

21 BY MR. GRAFF:

22 36 Q. I don't think you'll find many of  
23 the questions that I have will need much legal  
24 intervention, but I'd welcome Mr. Chadwick,  
25 Mr. Ruby, Ms. Descours, anyone on your side to

1 intervene should he or she wish.

2 You have, as you mentioned, the Good  
3 Food arrangement, the Food Network arrangement.  
4 Are there specific contracts that the Food Network  
5 work is subject to? Is there a particular legal  
6 contract that dictates that arrangement?

7 A. Yes. If they decide to proceed  
8 with a new season, they will send over a paper to  
9 be signed, and you'll do a -- an informal medical.  
10 It's a pretty straightforward relationship. You  
11 know, you -- you -- not complicated.

12 37 Q. And do you -- you enter into a  
13 written contract, I assume, for that arrangement;  
14 is that right?

15 A. Correct. Simple -- simple written  
16 contract.

17 38 Q. Okay. Do you have a copy of last  
18 year's contract for the Food Network that you can  
19 produce for us?

20 U/A MR. RUBY: I'll take it under  
21 advisement.

22 MR. GRAFF: Okay. Thanks. And  
23 similarly, if you could provide a copy of the  
24 written contract relating to the Good Food  
25 relationship, I'd appreciate it.

1 U/A MR. RUBY: Take it under advisement.

2 BY MR. GRAFF:

3 39 Q. Thank you. This may be redundant  
4 to the questions that I've already asked you, but  
5 what is the brand business that's referred to in  
6 your affidavit?

7 MR. RUBY: Can you point us to a  
8 paragraph?

9 MR. GRAFF: I was afraid you were going  
10 to make me do that, Peter. I can.

11 MR. RUBY: Thank you.

12 MR. GRAFF: You know what I'll do?  
13 Rather than take the time right now, if we take a  
14 short break, I'll identify that paragraph and come  
15 back to that.

16 MR. NEMERS: I think it's  
17 paragraph 138, Mr. Graff, if that's helpful.

18 MR. GRAFF: I'm sure it will be. Yes.  
19 Sorry. Thank you, Mr. Nemers.

20 BY MR. GRAFF:

21 40 Q. You'll see in paragraph 138 --  
22 which I'm hopeful you can turn up if you have a  
23 copy of the record handy, which it appears you do.

24 A. What page is that on?

25 41 Q. It's 45 of the -- sorry, 109 of

1 the record, sir, and page 45 of the affidavit  
2 itself.

3 A. I am not finding it here. 45?

4 42 Q. 45 of the affidavit. That's  
5 right. Of the September 27th affidavit. If you're  
6 able to find it -- maybe you've landed on the page.

7 A. I'm on the page, but I don't see  
8 anything about branding on that page.

9 43 Q. So in paragraph 138, you'll see in  
10 the last sentence, it talks about the company  
11 having a bank account in respect of its brand  
12 business. Do you see that, Mr. McEwan?

13 A. Okay. Yes.

14 44 Q. I guess what my question is is  
15 what constitutes the brand business? And it may  
16 be, again, that some of what you've said or  
17 referred to does, but I want some clarity on that,  
18 if I may.

19 A. I would say that refers to the  
20 McEwan Restaurant Consulting in terms of branding.  
21 It's the only logical place that it would fit for  
22 me. I'd have -- I would have to defer to counsel  
23 on that exactly --

24 45 Q. Okay.

25 A. -- as to the wording on that.

1 46 Q. Okay. So we can maybe get some  
2 assistance for you from counsel on that or counsel  
3 can assist now, but thanks for your answer.

4 Okay. Sir, where do you live?

5 A. I live at [REDACTED]  
6 [REDACTED]  
7 [REDACTED]

8 47 Q. Thank you. And what is 38 Karl  
9 Fraser Road?

10 A. 38 Karl Fraser Road is the McEwan  
11 Foods store in Don Mills.

12 48 Q. Okay. And, sir, are you married?

13 A. I am married.

14 49 Q. Is your wife's name Roxanne?

15 A. Roxanne, yes.

16 50 Q. Do you have any children?

17 A. I have two children: my son, Eric;  
18 my daughter, Taylor. 35 and 31.

19 51 Q. Thank you. And do either of  
20 Roxanne, Eric, or Taylor work in the business?

21 A. My son, Eric, works with me in the  
22 business, yes.

23 52 Q. Thank you. Do you have a second  
24 home, Mr. McEwan?

25 A. I do have a home in Thornbury.

1 53 Q. Where's that home?

2 A. In Thornbury, Ontario.

3 54 Q. Yeah. What's the address of that,  
4 if I may ask?

5 MR. RUBY: Mr. -- why is that --

6 MR. CHADWICK: Why is that --

7 MR. RUBY: Yeah. Mr. Graff, I  
8 understood the first time you went through this,  
9 but why the second property? What do you need the  
10 address for?

11 MR. GRAFF: If you want to refuse, feel  
12 free. I'm trying to gain an understanding of his  
13 overall picture.

14 R/F MR. RUBY: Okay. Then it's refused.

15 MR. GRAFF: Thank you.

16 BY MR. GRAFF:

17 55 Q. You have a restaurant in Thornbury  
18 as well, I believe; is that correct?

19 A. Correct.

20 56 Q. Is that -- does that also go under  
21 the name Fabbrica?

22 A. It does.

23 57 Q. Is it Fabbrica or Fabbrica?

24 A. Fabbrica is a fabric softener.

25 Fabbrica is the restaurant.

1 58 Q. Thank you. I appreciate that  
2 clarification. Never shall the two mix; right?

3 A. Yeah.

4 59 Q. The company McEwan Enterprises is,  
5 as I understand it, an Ontario corporation,  
6 obviously; as I understand it, the result of an  
7 amalgamation of a series of other companies. Can  
8 you tell me who the officers and directors of that  
9 company are.

10 A. Myself, Julian Doyle, who's my  
11 lawyer, and that's pretty much it.

12 60 Q. Are those the only two directors  
13 named?

14 A. Yes.

15 61 Q. Are there any representatives of  
16 Fairfax on your board of directors?

17 A. Jerry McGuire was there, but I  
18 don't believe he is any longer with Fairfax, so  
19 that will change.

20 MR. CHADWICK: It has changed. That  
21 director is no longer with Fairfax, and so that  
22 director resigned.

23 BY MR. GRAFF:

24 62 Q. Are there any other -- and maybe  
25 your counsel can assist. Are there any other

1 directors of McEwan Enterprises that have replaced  
2 Jerry McGuire on the Fairfax side of things?

3 MR. CHADWICK: There is not.  
4 Mr. McEwan is the sole director of McEwan  
5 Enterprises. The corporate counsel that he  
6 referenced for the company is not a director of the  
7 company, even though it's publicly registered, but  
8 our understanding is that he is no longer a  
9 director.

10 MR. GRAFF: You're referring to  
11 Mr. Doyle, Mr. --

12 MR. CHADWICK: Correct.

13 MR. GRAFF: -- Chadwick?

14 MR. CHADWICK: Correct.

15 MR. GRAFF: Thank you.

16 BY MR. GRAFF:

17 63 Q. And who is your senior executive  
18 team, Mr. McEwan?

19 A. That would be my son, Eric; George  
20 Bachoumis; Shen Ousmand, who is my senior executive  
21 chef in the company; Brooke McDougall. I -- I have  
22 management teams in each operation. My son and  
23 George tend to -- and Shen tend to oversee a large  
24 number of them.

25 64 Q. Okay. Does your wife work in the



1 business at all?

2 A. She does not.

3 65 Q. Does she receive any compensation  
4 or benefit from the business?

5 MR. RUBY: How is that relevant?

6 MR. GRAFF: Well, I think you know,  
7 Mr. Ruby. We're trying to assess the entire  
8 compensation picture in favour of the McEwan  
9 family. I think it's entirely relevant.

10 MR. CHADWICK: Sorry. When you say  
11 "the McEwan family," do you mean the corporate  
12 company, or do you mean personal --

13 MR. GRAFF: No. I mean the company and  
14 personally.

15 MR. CHADWICK: But what does personally  
16 have to do with this?

17 MR. GRAFF: Because to the extent that  
18 you're seeking to compromise creditors in the  
19 context of a CCAA proceeding, it would be relevant  
20 to know what the companies' revenues are being  
21 generated for the purpose of paying, particularly  
22 in the face of the transaction that you've put  
23 before the Court.

24 MR. CHADWICK: So your question is  
25 revenue or expenses?

1 MR. GRAFF: No. My question is what is  
2 the compensation -- and I'm asking the same  
3 question as it relates to Mr. McEwan himself. I  
4 want to see all arrangements under which Mr. McEwan  
5 or any party related to him receives compensation  
6 from any one or more of the operations of the  
7 business and the business itself. And just for  
8 greater certainty, that would include whatever  
9 contract he has with -- whether by management  
10 contract, employment, or consulting contract,  
11 whether in his name or a corporation that he  
12 controls, with the one restaurant and the joint  
13 venture partnership associated with the operation  
14 of that restaurant and that catering operation.

15 U/A MR. CHADWICK: So I think we'll take  
16 that under advisement. We've already responded to  
17 your document request which encompasses some of  
18 your questions, but that was a long statement, and  
19 we will take it under advisement and address it  
20 with you separately.

21 MR. GRAFF: Okay. Thank you. And just  
22 for greater certainty, that request would apply  
23 with respect to Eric, of course, and as you've  
24 mentioned, I don't think that Roxanne or Taylor are  
25 compensated through the business, or they certainly

1 don't work there, but to the extent that they  
2 receive compensation in any way, whether as an  
3 employee, consultant, or otherwise, I would ask  
4 that those arrangements be produced and the  
5 information be made available.

6 U/A MR. RUBY: We'll also take that under  
7 advisement.

8 MR. GRAFF: Thanks.

9 BY MR. GRAFF:

10 66 Q. Okay. And my understanding,  
11 Mr. McEwan, is that in approximately 2015 -- and  
12 please correct me if my date may be wrong -- you  
13 entered into your first arrangement with Fairfax;  
14 is that correct?

15 A. That was correct, yes.

16 67 Q. Okay. Can you tell me how that  
17 arrangement developed?

18 A. They basically knocked on my door  
19 and asked if I would be interested in -- in selling  
20 a piece of my business.

21 68 Q. Okay. So they approached you.

22 A. Correct.

23 69 Q. And who was it specifically at  
24 Fairfax that approached you?

25 A. Nick Perpick was the gentleman.

1 He's no longer with Fairfax, but he was the initial  
2 contact.

3 70 Q. Okay. And when Mr. -- is it  
4 Perfek?

5 A. Perpick.

6 71 Q. Perpick. Right. Okay. I saw  
7 that name. And when Mr. Perpick left the Fairfax  
8 organization, who took over for him?

9 A. I would say Jerry McGuire picked  
10 up the ball for Nick. Once I was with Fairfax, I  
11 didn't have a great deal to do with Nick. It was  
12 more Jerry McGuire.

13 72 Q. And I know I'm making this a bit  
14 of a forward-looking question, but at the time, was  
15 Fairfax involved in the active operation of the  
16 business?

17 A. Not active operation. Quarterly  
18 review.

19 73 Q. Did they give you business advice?

20 A. I would say no, not -- not in  
21 terms of how to run the business. It was more  
22 observation.

23 74 Q. Okay. And did that change at any  
24 point in time from the particular approach that  
25 Mr. McGuire brought to bear?

1 A. No.

2 75 Q. Okay. At some point in time, Bill  
3 Gregson got involved; is that correct?

4 A. That was -- that is correct, yes.

5 76 Q. Okay. What do you understand to  
6 be the nature of his arrangement?

7 MR. RUBY: Sorry, I don't follow that  
8 question.

9 BY MR. GRAFF:

10 77 Q. What do you understand to be  
11 Mr. Gregson's role with Fairfax and, separately,  
12 his role with McEwan Enterprises?

13 A. I think to be helpful and to try  
14 and digest some of the challenges and to help  
15 remedy situations.

16 78 Q. So he was really brought in as  
17 your troubleshooter, you might say?

18 A. I'd say that's accurate. That's  
19 accurate.

20 79 Q. Okay. And he took on the role of  
21 engaging in direct communications with several of  
22 your stakeholders; isn't that right?

23 A. Not entirely. We did that  
24 together. But -- but definitely he had best  
25 intentions for the business and to evaluate what

1 would be needed.

2 80 Q. Okay. And I only refer to the one  
3 example of communications that I've seen that he  
4 took part in with Mr. Robins at First Capital, so  
5 he did communicate directly with First Capital.  
6 You're aware of that; right?

7 A. Yes. Well, we did that together.

8 81 Q. Did he communicate directly with  
9 your other stakeholders?

10 A. Yes, he has.

11 82 Q. Okay. Has he been involved in  
12 direct negotiations with each of Cadillac Fairview  
13 and its related companies regarding your other  
14 locations?

15 A. Yes, he has.

16 83 Q. Thank you. As I mentioned at the  
17 outset of discussing Fairfax, you entered into an  
18 agreement with Fairfax on the 12th of August 2015.  
19 Do you recall that?

20 A. I do.

21 84 Q. Okay. I'm going to have my  
22 colleague Mr. Lu screen share that document with  
23 you, although most of my questions are probably of  
24 a more general nature. But for the purpose of your  
25 having that in front of you with easy access,

1 Mr. Lu, could you bring that up? Thank you.

2 And --

3 MR. RUBY: I think you're going to have  
4 to make that a lot bigger for Mr. McEwan.

5 MR. GRAFF: Okay. That's not a problem  
6 at all.

7 BY MR. GRAFF:

8 85 Q. So you recall this document, sir?

9 A. I do.

10 86 Q. I assume you recall that you  
11 signed this document? I believe your signature  
12 appears on the execution page of document; is that  
13 correct?

14 A. That is correct.

15 87 Q. And Northbridge Personal Insurance  
16 Corporation reflected as one of the parties to this  
17 agreement I'm assuming is a Fairfax subsidiary?

18 A. That is correct.

19 88 Q. So when it was first structured  
20 with Fairfax, Northbridge was the owner of the  
21 shares; correct? The -- sorry, and let me be more  
22 clear: the shares that were afforded to Northbridge  
23 or to the Fairfax partner as opposed to yourself,  
24 Mr. McEwan.

25 A. I'm not quite certain about the

1 structure of their -- of their company.

2 89 Q. Okay. Let me simplify it for you.  
3 In your mind, Northbridge is just a representative  
4 of or an organization that symbolizes Fairfax to  
5 you; is that correct?

6 A. I'd say that's accurate.

7 90 Q. Okay. Thanks. I think that makes  
8 more sense. Over the years, even though the  
9 ownership of the shares may have changed or the  
10 name of the holder of those shares may have changed  
11 from Northbridge to a different Fairfax entity,  
12 that reallocation of ownership was seamless to you,  
13 I'm assuming; is that right?

14 A. Yeah. It didn't affect me.

15 91 Q. Okay. Thank you. And is this the  
16 shareholders agreement that continues to govern the  
17 arrangements with respect to McEwan Enterprises?

18 MR. CHADWICK: That is our  
19 understanding. That's the one we delivered to you.

20 BY MR. GRAFF:

21 92 Q. Okay. There have been no  
22 amendments to this agreement of which you're aware,  
23 Mr. McEwan?

24 A. None that I'm aware of.

25 93 Q. Thank you. I noticed from the



1 document that was delivered, this document that was  
2 delivered by Mr. Ruby last night, that there are no  
3 attachments to the document. There are a number of  
4 schedules or exhibits referenced, none of which  
5 were provided. Could I ask you to please provide  
6 the schedules to this document?

7 U/A MR. RUBY: We'll take that under  
8 advisement. We'll take a look at them.

9 MR. GRAFF: Okay. Thank you. And it  
10 goes without saying that there's an employment  
11 agreement that is attached as a schedule to this  
12 agreement, and that employment agreement is an  
13 employment agreement of you, Mr. McEwan. I make  
14 specific reference to that agreement. We would  
15 want to see a copy of that agreement.

16 MR. RUBY: So that's included in our  
17 taking under advisement.

18 MR. GRAFF: Okay. And I don't know --  
19 I know you've indicated that the shareholders  
20 agreement did not change, or at least Mr. Chadwick  
21 does not have any reason to believe that it has  
22 changed. I would ask you similarly to provide me  
23 with any amendments to the employment agreement  
24 that you entered into with McEwan Enterprises or  
25 its predecessor, if you would, please.

1 U/A MR. RUBY: We'll take it under  
2 advisement.

3 MR. GRAFF: Thank you.

4 BY MR. GRAFF:

5 94 Q. In Section -- let me do my best to  
6 remember the section without jumping around too  
7 much. I think it's Section 2.2 of that agreement.  
8 If I could ask you -- well, you won't need to turn  
9 up because Mr. Lu is scrolling to it. You'll see  
10 Section 2.2. Section 2.2 of this agreement talks  
11 about an "Annual Business Plan and other Reports."  
12 Do you see that? Take as much time as you need.

13 A. So what is your specific question  
14 to that?

15 95 Q. Yes. Thanks, Mr. McEwan. You'll  
16 see in 2.2, specifically (a), the agreement  
17 reflects that:

18 "Until otherwise required by  
19 the Investor, the following reports  
20 will be provided by the Corporation  
21 to each Shareholder of the  
22 Corporation."

23 And (a) reflects:

24 "A draft of the Annual Business  
25 Plan at least fifteen (15) days

1 prior to the date on which the Board  
2 will be asked to approve such plan."

3 I'm assuming that in compliance with the  
4 shareholders agreement, the annual business plan  
5 has been produced since the entering into of this  
6 agreement in 2015 through to today; is that  
7 correct?

8 A. I would have to get back to you on  
9 that.

10 96 Q. Okay. I'd like you to look into  
11 that, and I'd like you to produce for me the annual  
12 business plan that was produced in every year since  
13 the 2015 year that the shareholders agreement was  
14 entered into.

15 U/A MR. RUBY: We'll take it under  
16 advisement.

17 MR. GRAFF: Thank you.

18 BY MR. GRAFF:

19 97 Q. I also want to go back to the  
20 question that I asked just moments ago about your  
21 employment agreement. To the extent that the  
22 initial employment agreement you entered into in  
23 2015 has not been physically amended, to the extent  
24 that the compensation, whether by way of direct pay  
25 or benefits or other attributes, have changed since

1 2015, even if not reflected in a formal written  
2 amendment, I would ask that you please advise me of  
3 that.

4 U/A MR. RUBY: So we'll take it under  
5 advisement, but, Mr. Graff, this might be a good  
6 moment to talk about confidentiality.

7 MR. GRAFF: Yes. Sure.

8 MR. RUBY: Obviously, there are several  
9 items we've raised with you that -- in writing  
10 where we have concerns about confidentiality. An  
11 example would be personal compensation. Are you  
12 content not to put information that we advise you  
13 is confidential on the public record or not  
14 otherwise disclose it until you've had a chat with  
15 us so that we can either arrive at a mutually  
16 acceptable confidentiality arrangement or, if it's  
17 absolutely necessary, seek a sealing order?

18 MR. GRAFF: Yes. Or attend before a  
19 judge and determine whether it is something that  
20 ought to be on the public record.

21 MR. RUBY: Okay. I just want to make  
22 sure that we all have an opportunity before  
23 anything is disclosed publicly to talk about it and  
24 then, if necessary, address it with the Court.

25 MR. GRAFF: Yeah, fully --

1 MR. RUBY: Okay.

2 MR. GRAFF: -- agreed and understood.

3 MR. RUBY: Thank you.

4 MR. NEMERS: And subject to those  
5 comments regarding confidentiality, Mr. Graff, did  
6 you want to make this document an exhibit to this  
7 examination?

8 MR. GRAFF: Yes. I'm sorry. If I have  
9 failed to do that, I would ask that we please mark  
10 the shareholders agreement of August 12th, 2015,  
11 as -- I guess we can mark it as Exhibit A to the  
12 examination.

13 MR. CHADWICK: Sorry, Mr. Graff. We  
14 talked about at the beginning that we would -- that  
15 we sent those documents over to you on a  
16 confidential basis, and we'll make those  
17 arrangements, and so we'll take it under advisement  
18 as it relates to attaching it as an exhibit. We  
19 want to make sure that we deal with those issues  
20 with you separately.

21 MR. GRAFF: That's fine. I'm prepared  
22 to work with you after to -- for the purpose of  
23 simplicity and organization to assemble these in an  
24 agreed-upon disclosed brief and those that are not  
25 to address in some other fashion separately.

1 MR. CHADWICK: Okay. Thank you.

2 MR. GRAFF: Thank you.

3 EXHIBIT 1: (For identification)  
4 Shareholders agreement dated August 12,  
5 2015

6 BY MR. GRAFF:

7 98 Q. In I believe it was August 2021,  
8 you transferred the ownership interest in the one  
9 restaurant from McEwan Enterprises into a newly  
10 incorporated subsidiary; correct?

11 A. That is correct.

12 99 Q. And I believe -- I don't have this  
13 in front of me. I don't have the formal name of  
14 that entity. I can find it, but for the purposes  
15 of these questions, I would like to see copies of  
16 the documentation under which the transfer was  
17 effected. If you could please produce those.

18 MR. CHADWICK: I'd have to  
19 double-check, but my understanding is that we sent  
20 those to you last night.

21 MR. GRAFF: I think you sent me an  
22 assignment, and I think you sent me the consent to  
23 transfer, but I guess I'd like to see, as I had  
24 expressed -- and I guess it wasn't clear in my  
25 question. I'd like to see a copy of whatever

1 agreement exists as between that newly created  
2 company and the joint venture partners.

3 MR. CHADWICK: There is no agreement  
4 other than what we provided to you last night.

5 MR. GRAFF: Well, there must have been  
6 a joint venture agreement that existed prior to the  
7 assignment down to the newly incorporated company,  
8 a joint venture agreement of some nature.

9 U/A MR. CHADWICK: Oh, I understand. I  
10 understand the question better. I will take that  
11 under advisement.

12 MR. GRAFF: Okay. And, similarly,  
13 could you please provide us with any agreements  
14 that exist in favour of either Mr. McEwan or any of  
15 his family members with that partnership or either  
16 one of the partnership parties in the way of  
17 management, consulting, or employment arrangements.  
18 And again, it goes to the issue of the overall  
19 level of compensation to which Mr. McEwan or his  
20 related parties are receiving from the organization  
21 overall.

22 U/A MR. RUBY: We'll take it under  
23 advisement.

24 BY MR. GRAFF:

25 100 Q. If I'm not mistaken, you have, in

1 your personal capacity, an indemnity from the  
2 company in your favour. Is that correct, to your  
3 knowledge, Mr. McEwan?

4 A. I would have to confer with  
5 counsel on that.

6 101 Q. Okay. I've seen a form of  
7 indemnity contained within that original  
8 shareholders agreement. Perhaps you can advise me  
9 whether you are the beneficiary or any other party  
10 related to you is the beneficiary of an indemnity  
11 from either McEwan Enterprises or from the joint  
12 venture or any of the joint venture partners in  
13 connection with the operation of the one  
14 restaurant.

15 U/A MR. RUBY: I have to admit I don't see  
16 the relevance, but we'll take it under advisement.

17 MR. GRAFF: Okay. If you want, I can  
18 highlight the relevance, but if nothing else, what  
19 effectively is, at present, an unsecured indemnity  
20 in part you are vaulting into a super-priority  
21 claim through the provisions of the CCAA.

22 MR. CHADWICK: Mr. Graff, I think we  
23 should limit this to the cross-examination versus  
24 some speeches on the motion, on legal issues. I  
25 think --



1 MR. GRAFF: I wasn't doing that,  
2 Mr. Chadwick. What I was doing, I was trying to  
3 elaborate for Mr. Ruby on why I thought it was  
4 relevant and why the document ought to be produced.  
5 So it's not a legal recitation or a recitation of  
6 our position. It was just an explanation for the  
7 request for the document. Thanks.

8 MR. CHADWICK: It was a legal  
9 discussion, but let's move on.

10 MR. GRAFF: Well, that's the only way  
11 that I could explain to him the basis upon my  
12 request.

13 MR. RUBY: It's fine. Let's keep  
14 going.

15 MR. GRAFF: Thank you. As I understand  
16 it, there's a directors and officers policy that  
17 the company has taken out for the benefit of what  
18 is -- what appears to be now yourself as the sole  
19 officer and director. Could I please be provided  
20 with a copy of that policy.

21 U/A MR. RUBY: We'll take it under  
22 advisement.

23 MR. GRAFF: Thanks. I understand the  
24 involvement of Royal Bank in your business, and I  
25 understand the involvement and the facilities that

1 exist in favour of Royal Bank, and you have  
2 elaborated upon those facilities within the  
3 affidavit supporting the CCAA affidavit. Could you  
4 provide me with the documents that support the  
5 Fairfax indebtedness and, more specifically,  
6 whatever notes or other documentation exists to  
7 substantiate the so-called loans from Fairfax into  
8 McEwan Enterprises or into the separate joint  
9 venture entity.

10 U/A MR. RUBY: We'll take it under  
11 advisement.

12 BY MR. GRAFF:

13 102 Q. Does Fairfax -- I understand  
14 Fairfax, on its loans as they're described,  
15 obviously receives a rate of interest as  
16 compensation for the advancement of those funds.  
17 Is Fairfax compensated from the business in any  
18 other fashion other than by way of an interest rate  
19 on the monies advanced?

20 A. No, they're not.

21 103 Q. There is no consulting agreement  
22 with Fairfax under which it's paid for things?

23 A. None whatsoever.

24 104 Q. I'm sorry, Mr. McEwan?

25 A. No, there's no compensation.

1 105 Q. Okay. Are there any other  
2 services specifically that Fairfax provides to  
3 McEwan?

4 A. No. Other than being a good  
5 partner, a thoughtful partner, nothing else.

6 106 Q. Okay. And when you say "a good  
7 partner," I mean, they provided you with funding.  
8 I'm assuming that's what you mean when you say "a  
9 good partner"; right?

10 A. Well, that with advice, you know,  
11 if required.

12 107 Q. Right. Understood. So the two  
13 things that you've indicated that Fairfax provides  
14 is funding and advice. Any other services they  
15 provide?

16 A. No.

17 108 Q. Okay. And I trust that the  
18 \$2.25 million loan that purports to be made  
19 available by way of a transaction deposit in  
20 connection with the so-called sale transaction,  
21 that \$2.5 million is similarly going to be made  
22 available by Fairfax; correct?

23 A. That is correct.

24 109 Q. Okay. Are the terms of that  
25 arrangement specified somewhere?

1 MR. CHADWICK: They are. They're in  
2 the purchase agreement.

3 MR. GRAFF: I saw the purchase  
4 agreement, but I believe the purchase agreement  
5 refers to a separate deposit structure agreement,  
6 the contents of which I don't think have yet been  
7 provided, have they?

8 MR. CHADWICK: We don't believe at this  
9 time there's any additional documents. Not to say  
10 that there won't be as we move towards completion  
11 of the transaction.

12 BY MR. GRAFF:

13 110 Q. Okay. Let me just add -- I  
14 touched upon this quickly, but in terms of business  
15 structure, do you prepare nonconsolidated financial  
16 statements on a quarterly, annual, or semiannual  
17 basis?

18 A. We produce quarterly statements,  
19 and we produce year-end audited statements.

20 111 Q. Yes. And do you do that on a  
21 nonconsolidated basis - in other words, on a  
22 location or venture-by-venture basis?

23 A. Yes, we do.

24 112 Q. Okay. So I know you've produced a  
25 copy of the 2019 audited annual financial

1 statements for the operation as a whole. I know  
2 you have produced 2020 audited financial statements  
3 as well and unaudited statements for the 6 months  
4 into June 30, 2021, all on a consolidated basis.  
5 What I would ask you to make available is the  
6 nonconsolidated financial results for each  
7 individual separate operation that was part of the  
8 McEwan Enterprises for the years 2019, 2020, and  
9 2021.

10 U/A MR. RUBY: We'll take it under  
11 advisement.

12 MR. GRAFF: Okay. Thank you, Mr. Ruby.

13 BY MR. GRAFF:

14 113 Q. As part of the order that was made  
15 in these proceedings -- which I'm assuming that  
16 you've had a chance to review; is that right?

17 A. Yes.

18 114 Q. Okay. I'm sure it was very  
19 exciting reading for you.

20 And, Mr. Lu, I think we can remove this  
21 document right now from screen sharing.

22 I don't know how easy it will be for us  
23 to pull this up, but I'd ask Mr. Lu to do it, if we  
24 can pull up a copy of that order, because what that  
25 order contemplates is your ability to make payments

1           that are construed as critical payments to certain  
2           of your suppliers or providers.

3                   MR. CHADWICK: Mr. Graff, to be fair to  
4           the witness -- I mean, we're happy to answer any  
5           questions about the order per se. If they're  
6           business questions, feel free to ask those  
7           questions, but Mr. McEwan is not an expert on a  
8           CCAA initial order, and we're happy to take those  
9           offline and have those discussions with you if you  
10          have any comments.

11                   MR. GRAFF: Yeah. I respect that, and  
12          I wouldn't ask him the specific legal ones. So I'm  
13          trying to focus my questions specifically on the  
14          paragraph in the order and what has happened  
15          pursuant to that paragraph specifically where it  
16          talks about the payment to suppliers. So you'll  
17          see --

18                   MR. CHADWICK: I --

19                   MR. GRAFF: I'm sorry?

20                   MR. CHADWICK: Right. I understand  
21          that. I think it just may be easier for you to ask  
22          the question. The order is not really relevant for  
23          the purpose of the question. Difficult for a  
24          witness to --

25                   MR. GRAFF: No, I understand.

1 BY MR. GRAFF:

2 115 Q. But you'll see in paragraph 7(e),  
3 Mr. McEwan, that with the consent --

4 MR. RUBY: Can you make it larger?  
5 Thank you.

6 BY MR. GRAFF:

7 116 Q. You'll see in 7(e): (As read)  
8 "With the consent of the  
9 Monitor, amounts owing for goods or  
10 services supplied prior to the  
11 Initial Order if, in the opinion of  
12 the Applicant, such payment is  
13 necessary or desirable to avoid  
14 disruption to the operations of the  
15 Business or the Applicant during the  
16 CCAA proceedings."

17 Now, the monitor may very well be reporting on  
18 this, and if the answer is that you're not going to  
19 give me a response because the monitor will address  
20 it, then fine, but I would like to know what  
21 involvement you have had in determining what  
22 obligations that predate the filing of the CCAA you  
23 have authorized the payment of since the CCAA was  
24 filed.

25 MR. RUBY: So that was a long question.

1 Mr. McEwan, do you --

2 MR. GRAFF: I can shorten it if that  
3 was in any way confusing, though I think Mr. McEwan  
4 gets it.

5 THE WITNESS: I'm not quite certain  
6 what you're asking.

7 BY MR. GRAFF:

8 117 Q. Okay. What obligations or what  
9 payments for obligations that arose prior to the  
10 filing have you authorized since the filing took  
11 place?

12 A. I would -- I would have to talk to  
13 counsel about exactly what that encompasses.

14 118 Q. Well, haven't they come to you and  
15 said, Can we pay this amount? Do we need to pay  
16 this amount?

17 MR. RUBY: Sorry. Who's "they" in that  
18 question?

19 BY MR. GRAFF:

20 119 Q. Well, hasn't the monitor come to  
21 you or your staff come to you and said, These  
22 obligations, these invoices predate the filing of  
23 the CCAA; are they critical payments, and should we  
24 pay them? Have you not had those approaches made  
25 to you?



1 A. It just seems so open-ended. I  
2 don't know how to answer the question.

3 120 Q. Well, let me ask you this: At any  
4 point in time since the 27th of September of this  
5 year, has anybody on your team approached you and  
6 asked you about paying an invoice that predated  
7 September 27th?

8 A. We fully intend to pay invoices.

9 121 Q. Okay. That's not what I'm asking  
10 you. Has anybody approached you and asked you  
11 whether it is necessary to make the payment of the  
12 invoice they're presenting to you?

13 A. Not to my knowledge.

14 122 Q. Okay. And is it not the case that  
15 there is an understanding within the organization  
16 that simply every obligation in favour of a  
17 supplier or an employee or otherwise, whether it  
18 predates the 27th or not, that you're going to pay;  
19 correct?

20 A. That is my understanding.

21 123 Q. Okay. And you have given that  
22 direction to your staff, I'm assuming.

23 A. Yes, I have.

24 124 Q. And have you consulted with the  
25 monitor about making those payments?

1 MR. CHADWICK: Mr. Graff --

2 MR. GRAFF: Will you let him answer the  
3 question?

4 BY MR. GRAFF:

5 125 Q. Has the monitor consulted with  
6 you, or have you consulted with the monitor, about  
7 making those payments?

8 A. To my knowledge, we have done that  
9 through counsel.

10 126 Q. Okay. But you're the one that's  
11 authorizing the payments. Your counsel doesn't  
12 authorize the payments. You authorize the  
13 payments.

14 A. I was part of the conversation  
15 and -- and participated in the conversation.

16 127 Q. What conversation?

17 A. That we were going to take care of  
18 suppliers.

19 128 Q. Okay. But since the appointment  
20 happened -- excuse me, since the application was  
21 made, have you spoken to the monitor about specific  
22 payments that need be made?

23 A. I don't recall.

24 129 Q. Thank you.

25 MR. CHADWICK: It may be fair,

1 Mr. Graff, to ask if anyone in the organization has  
2 spoken to the monitor, communicated with the  
3 monitor --

4 MR. GRAFF: Well, he's the officer and  
5 director of the company.

6 MR. RUBY: Well, he's not the only one  
7 that works there.

8 MR. CHADWICK: It's your examination.  
9 I'm just --

10 MR. GRAFF: I think if he's -- he's the  
11 one to make the decision as to what constitutes a  
12 critical payment or not.

13 MR. RUBY: You can make that argument.  
14 I think Mr. Chadwick has given you a signal, so you  
15 can take him up on it or not.

16 BY MR. GRAFF:

17 130 Q. I understand that you are  
18 trying -- let me step back. With the exception of  
19 the YB location and the location in Thornbury under  
20 Fabbrica, you -- every one of your other locations  
21 is governed by a lease with Cadillac Fairview or a  
22 related party to Cadillac Fairview; is that  
23 correct?

24 A. That is correct.

25 131 Q. Cadillac Fairview is absolutely

1 critical to your ability to arrange a go-forward  
2 business; is that correct?

3 A. Yes, and we are engaged in  
4 discussion with them.

5 132 Q. So it is essential that you reach  
6 a compromise that is satisfactory to Cadillac  
7 Fairview to be able to ensure that your business  
8 has go-forward value; correct?

9 A. Yes. We need to come to a mutual  
10 agreement.

11 133 Q. Okay. And how long have those  
12 negotiations been going on for?

13 A. I don't know exactly, but I've  
14 been in conversation with Cadillac Fairview  
15 throughout the pandemic in terms of leases and  
16 obligations, but everything is ongoing, so  
17 nothing -- nothing has been concluded yet.

18 134 Q. Okay. Have you concluded anything  
19 with respect to any of the locations?

20 A. Not -- not 100 percent. We're  
21 still -- still in negotiation.

22 135 Q. I'm assuming that the package that  
23 you're trying to reach is essentially an  
24 all-inclusive package; is that right?

25 A. Being that we have a large number

1 of units with Cadillac Fairview, they do view it as  
2 a -- as a partnership, so it has been a good  
3 conversation, but it's still not concluded.

4 136 Q. Okay. But I guess, to address my  
5 question more specifically, you're not going to  
6 reach an arrangement with them on any one location  
7 without reaching an arrangement with them on all  
8 locations; correct?

9 A. That's yet to be determined.

10 137 Q. Okay. Is that the most likely  
11 outcome, do you believe?

12 A. We have a number of conversations  
13 going on with Cadillac Fairview.

14 138 Q. Okay. From a confidentiality  
15 perspective, at some point in time, I'm going to  
16 want to understand the nature of those negotiations  
17 and the communications leading up to any deal that  
18 may be consummated. So I appreciate that you're  
19 saying you're involved in discussions right now,  
20 and I imagine Mr. Ruby isn't going to agree to  
21 allow the production of the written communications  
22 that have taken place between McEwan Enterprises  
23 and Cadillac, but I will ask for those documents at  
24 some point.

25 Can I confirm, Mr. Ruby, that you're

1 refusing that request?

2 R/F MR. RUBY: Yes.

3 BY MR. GRAFF:

4 139 Q. Is there an agreement that's being  
5 exchanged right now or a multiplicity of agreements  
6 that are being exchanged in writing right now with  
7 Cadillac Fairview?

8 MR. CHADWICK: I can answer that  
9 because it's more on the legal side. Yes, that's  
10 correct. We are working on trying to get an  
11 arrangement with Cadillac. That does include  
12 exchanging documentation with them and having  
13 discussions with them both on a legal side and on  
14 the business side.

15 MR. GRAFF: Okay. And all of the  
16 agreements that exist right now with respect to --  
17 whether it's Fabbbrica Don Mills, McEwan Don Mills,  
18 Bymark, Fabbbrica TD, McEwan TD, can you please  
19 produce copies of those leases.

20 U/A MR. CHADWICK: We'll take it under  
21 advisement, Peter.

22 MR. GRAFF: And similarly, I would  
23 appreciate production of the lease with respect to  
24 the Thornbury location.

25 U/A MR. RUBY: Also taken under advisement.

1 BY MR. GRAFF:

2 140 Q. Okay. You have a lease with First  
3 Capital with respect to the Yonge-Bloor location,  
4 of which you're aware, obviously. Sorry, I didn't  
5 hear your answer there.

6 A. Yes, that is correct.

7 141 Q. Okay. I'm going to put to you  
8 that original lease, if I may. We'll expand it so  
9 that you can see it a bit better. You will see  
10 that it is between First Capital Holdings (Ontario)  
11 Corporation and McEwan Enterprises Inc. I believe  
12 the lease, if we scroll down a bit, is dated the  
13 27th of April 2018. Your signature appears on the  
14 signature page of this document. I assume you can  
15 confirm that this constitutes the lease that was  
16 entered into between the parties in April of 2018  
17 with respect to the 1 Bloor Street East, Toronto,  
18 Ontario location.

19 MR. RUBY: So why don't you, offline,  
20 sent that over to us and we'll give you a  
21 confirmation or not.

22 MR. GRAFF: Okay. And we can do the  
23 same with respect to each of the -- what I believe  
24 to be five or six amendments that were exchanged  
25 and signed up in advance -- or subsequent to this

1 lease over the course of the last several years,  
2 and specifically over the course of the pandemic.

3 MR. RUBY: Yes, we'll work with you to  
4 make sure we're all looking at the right documents.  
5 As you know, it's difficult to do by Zoom.

6 MR. GRAFF: Thank you.

7 MR. NEMERS: And just to close the loop  
8 on that, the resulting document -- collection of  
9 documents, Mr. Graff, do we want to make that an  
10 exhibit?

11 MR. GRAFF: Yeah, I think -- I don't --  
12 I assume, Peter and Robert, you don't have any  
13 objection to simply making those exhibits as soon  
14 as you've had those documents in front of you in  
15 full and confirmed that they are what we suggest  
16 they are.

17 MR. RUBY: Yeah. Subject -- well, we'd  
18 want to go through the same confidentiality  
19 arrangement. I don't know whether there's a  
20 confidentiality clause in this lease.

21 MR. GRAFF: Okay. We can address that  
22 separately.

23 MR. RUBY: We can make arrangements  
24 with you to make sure the correct document is  
25 identified and then we'll sort out how or if it



1 ends up on the public record.

2 MR. GRAFF: Okay.

3 MR. NEMERS: So just to be clear, then,  
4 in the same way that the shareholders agreement is  
5 marked as Exhibit 1 subject to the confidentiality  
6 discussions that are going to take place,  
7 similarly, the lease and the amendments thereto,  
8 once the particular document is confirmed, that too  
9 will be collectively marked as Exhibit 2, subject  
10 to the same confidentiality discussions.

11 MR. RUBY: Well, I think what we've  
12 said is that we'll sort it out with you offline so  
13 that we don't have to do it here.

14 MR. CHADWICK: Yeah. And I don't think  
15 the shareholders agreement has been marked as an  
16 exhibit, so as Mr. Ruby said, we will sort that  
17 out.

18 MR. GRAFF: Sorry. We can mark the --  
19 did we not mark the shareholders agreement as an  
20 exhibit?

21 MR. NEMERS: It was marked as an  
22 exhibit, subject to confidentiality concerns.

23 MR. GRAFF: Yes.

24 MR. NEMERS: I believe there was a  
25 discussion and an agreement that, Mr. Graff, you

1 had said there would be one brief marked with  
2 exhibits that are, right away, at this examination,  
3 agreed to be exhibits and that are not subject to  
4 confidentiality concerns and that, if necessary,  
5 there would then be a separate brief of exhibits to  
6 the extent there was any disagreement with -- that  
7 would be included in that second brief. So if  
8 necessary, these leases could fall into that second  
9 category but nonetheless I do believe should be  
10 marked for the purpose of dealing with them one way  
11 or another, and in court if necessary.

12 MR. CHADWICK: Yeah, that's not correct  
13 of the record, but let's not debate this over the  
14 cross-examination. We will work with you to try to  
15 satisfy these issues, and if we can't satisfy them,  
16 we will deal with them appropriately.

17 MR. GRAFF: Okay. I don't see these as  
18 issues that we can't easily overcome.

19 MR. CHADWICK: I agree.

20 EXHIBIT 2: (For identification) Lease  
21 dated April 27, 2018

22 BY MR. GRAFF:

23 142 Q. Sir, you, at one point in time --  
24 yourself and Mr. Gregson - who I understand, again,  
25 to be a representative of Fairfax - were engaged in

1 discussions with Mr. Robins at FCR, First Capital,  
2 to try to reach a resolution with respect to the  
3 ongoing lease obligations concerning the Bloor  
4 location; is that correct?

5 A. That is correct.

6 143 Q. Okay. And am I correct to say  
7 that at one point in time, [REDACTED]

8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]

12 A. [REDACTED]

13 144 Q. [REDACTED] [REDACTED]

14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]

18 A. [REDACTED]

19 [REDACTED]  
20 [REDACTED]

21 145 Q. [REDACTED]

22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]

25 A. [REDACTED]

1 146 Q. Thank you.

2 MR. CHADWICK: And, Mr. Graff, you have  
3 checked that those discussions were not on a  
4 without-prejudice basis between the parties?

5 MR. GRAFF: I'm not aware of any  
6 without-prejudice nature of them.

7 MR. CHADWICK: Okay. I just wanted to  
8 make sure because, obviously, those business  
9 discussions were ongoing between both parties, and  
10 so I just wanted to make sure we understood your  
11 position in respect of them.

12 BY MR. GRAFF:

13 147 Q. Okay. And do you have copies of  
14 those communications that were exchanged back and  
15 forth?

16 A. I would have to ask counsel if we  
17 have copies of that.

18 148 Q. Okay. Why don't you dig those up,  
19 and we can determine whether it's appropriate to  
20 mark those as exhibits.

21 MR. RUBY: Sorry. These are the  
22 communications with your client you're asking  
23 about?

24 MR. GRAFF: Yes.

25 MR. RUBY: So you want us to go look

1 for --

2 MR. GRAFF: Well, I want to make sure  
3 that Mr. McEwan received them and then we can  
4 determine the need to mark them. I want him to  
5 acknowledge their receipt before I start marking  
6 them as exhibits.

7 MR. RUBY: Yeah. So why don't you put  
8 them to him, and he can tell you?

9 MR. GRAFF: I can do that, but not --  
10 I'm not going to do that right now.

11 U/A MR. RUBY: All right. So we'll --  
12 we'll take your question under advisement, then.

13 BY MR. GRAFF:

14 149 Q. Okay. And when it comes to the  
15 arrangements that you wish to reach with FCR, which  
16 you reference in paragraph 156, to "right-size the  
17 business," what are those arrangements? What is  
18 the right-sizing of the business opposite FCR?

19 A. I think what we have to do is give  
20 the business the best chance forward, and if we're  
21 going to inject more capital into the business,  
22 we -- we have to give it its best opportunity to  
23 survive the situation and be able to prosper in the  
24 future, hopefully. So the right-sizing --

25 150 Q. So despite the fact --

1 A. -- is part of a bigger  
2 conversation.

3 151

Q. [REDACTED]

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]

10 A. [REDACTED]

11 [REDACTED]  
12 [REDACTED] l  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED] [REDACTED]  
16 [REDACTED] a  
17 [REDACTED]

18 152

Q. Okay.

19 A. So --

20 153

Q. And so you're suggesting that  
21 things have not improved in the business since  
22 April of 2021, when those negotiations were  
23 ongoing?

24 A. We have still continued to lose  
25 money, and it's become very apparent that the

1 first --

2 154 Q. That's not my question. Have you  
3 not seen --

4 MR. RUBY: No, no. Mr. Graff, he  
5 actually was answering your question. Let him  
6 answer.

7 MR. GRAFF: Okay. I don't think he was  
8 answering it, but that's fine.

9 BY MR. GRAFF:

10 155 Q. Have you not seen things improved  
11 since April of 2021?

12 A. We have seen some upside in the  
13 restaurant business due to our -- our patio  
14 situation, but there's no guarantee of that going  
15 forward. It's become very apparent to us that our  
16 property at Yonge and Bloor with First Capital is  
17 the elephant in the room. It's the biggest hole we  
18 have, and after looking at it and turning it every  
19 which way, we don't see a path forward with that  
20 property. We've been unsuccessful in negotiating  
21 with the landlord, with FC. We have made -- we  
22 have made acknowledgements, and we have tried, but  
23 that property is -- is an obvious loser for us and  
24 was not the property we thought we signed up for,  
25 and I don't believe it's the property that First

1 Capital signed up for either.

2 156 Q. It wasn't what you thought it was  
3 going to be; correct?

4 A. 100 percent correct.

5 157 Q. And I think in your affidavit you  
6 made a -- you acknowledge you made a mistake;  
7 correct?

8 A. I think -- I think First Capital  
9 made a mistake as well anticipating that this  
10 property would perform to the degree that they  
11 thought it would, and I made a mistake -- the  
12 biggest mistake of my career was signing that lease  
13 with First Capital, and there's -- there's no --  
14 there's no rectifying that business situation.

15 158 Q. Okay. And so I'm assuming you're  
16 going to give instructions to your advisors to  
17 disclaim that lease; right? To terminate --

18 MR. CHADWICK: I can -- that's a legal  
19 question, so we don't need to get into that.

20 BY MR. GRAFF:

21 159 Q. Well, I guess I can ask you in  
22 more layperson terms, Mr. McEwan, though you're a  
23 pretty sophisticated guy. It's your intention to  
24 terminate that lease; correct?

25 A. It seems the only obvious action



1 that makes any sense.

2 160 Q. Okay. Any reason why you haven't  
3 done it yet?

4 A. Well, we were -- we were looking  
5 to have a conversation once we filed for CCAA.

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 161 Q. Thank you. Okay. Let had me ask  
13 you a couple really quick questions about the Royal  
14 Bank, though I think I can be very quick on these.  
15 You are a personal guarantor of the obligations to  
16 Royal Bank; is that correct?

17 A. We have an obligation. They're a  
18 secured creditor.

19 162 Q. Okay. And you personally have a  
20 guarantee on those obligations; is that right?

21 A. I don't believe I do.

22 163 Q. Okay. Well, I know that in  
23 respect of certain of the monies that you borrowed  
24 from RBC, you gave them a mortgage on your  
25 residence, which I'm assuming is your residence on

1 [REDACTED]; is that right?

2 A. That is not correct. It's -- it's  
3 my cottage in Thornbury.

4 164 Q. Ah. Thank you. Sorry. I  
5 apologize. Thank you for clarifying that. And the  
6 business, as you indicated, continues to pay for  
7 that mortgage obligation; is that right?

8 A. That is correct.

9 165 Q. Has RBC, to your knowledge, ever  
10 obtained a valuation of the assets that are subject  
11 to its security?

12 A. I believe they had, when they --  
13 when they extended the mortgage, yes.

14 MR. GRAFF: Could you ask them to  
15 provide us with a copy of that valuation.

16 U/A MR. RUBY: We'll take it under  
17 advisement.

18 BY MR. GRAFF:

19 166 Q. Okay. Has Fairfax guaranteed any  
20 of the obligations to Royal Bank?

21 A. I don't know the answer to that.

22 MR. GRAFF: Could you please undertake  
23 to get me that answer.

24 U/A MR. RUBY: We'll take it under  
25 advisement.

1 MR. CHADWICK: Just to assist you,  
2 Mr. Graff, my understanding is that there is no  
3 guarantees by Fairfax on the RBC facility.

4 MR. GRAFF: Great. Thank you,  
5 Mr. Chadwick.

6 I've asked this in my communications to  
7 Mr. Ruby and Mr. Chadwick, but I would like to see  
8 copies of the business plan for McEwan Enterprises,  
9 including any pro forma financial statements in  
10 respect of the second half of the year 2021, which  
11 I appreciate some of which are contained within the  
12 cash flow that was filed in connection with the  
13 CCAA application, but I'd also like to see what has  
14 been prepared by way of pro forma business plan and  
15 cash flow for the years 2022 and beyond, if I may.

16 U/A MR. RUBY: We'll take it under  
17 advisement. But you may want to ask Mr. McEwan  
18 whether there are any --

19 MR. GRAFF: Well --

20 MR. RUBY: -- cash flows for '22 and  
21 later.

22 BY MR. GRAFF:

23 167 Q. Cash flows or business plans for  
24 the latter half of 2021, Mr. McEwan, or for the  
25 year 2022, have those been prepared?

1 MR. RUBY: Would just be do they exist.  
2 BY MR. GRAFF:  
3 168 Q. Yeah. Do those exist?  
4 A. I don't believe they do.  
5 MR. GRAFF: Okay. Can you undertake to  
6 look into that and please let me know.  
7 U/T MR. RUBY: Well, we'll let you know if  
8 that answer's incorrect.  
9 MR. GRAFF: Okay. Well, the answer was  
10 "I don't believe they do," so I don't want you to  
11 tell me whether his belief is correct or not. I  
12 just want you to tell me whether or not they exist.  
13 MR. RUBY: I understand.  
14 MR. GRAFF: Thank you.  
15 BY MR. GRAFF:  
16 169 Q. I'm not going to ask you much  
17 about the proposed transaction, Mr. McEwan, because  
18 that's really the subject of another day, but in  
19 the simplest terms, I think you can confirm for me  
20 that all the employees of the entirety of the  
21 McEwan operation are all being assumed as part of  
22 the go-forward arrangement; is that right?  
23 A. Based on negotiations that are  
24 still in play, we hope that to be the case, but we  
25 have not concluded that to be the situation yet.

1 170 Q. Okay. And that would include, to  
2 the extent negotiations materialize favourably, the  
3 employees that might be dislocated from Yonge-Bloor  
4 should that location close; correct?

5 A. That would be our hope. We don't  
6 have nearly as many employees there. We brought  
7 the ranks down substantially, so it's not a big  
8 number to absorb.

9 171 Q. Okay. And similarly -- I believe  
10 the affidavit you've sworn is replete with  
11 confirmation of this, but the entirety of the  
12 pre-filing debt as well as the -- well, the  
13 pre-filing debt that's owed to any of your  
14 suppliers as well as any obligations that are  
15 accruing since September 27th are being paid in  
16 their entirety at 100 cent dollars; is that  
17 correct?

18 A. Yes, we are hoping that to be the  
19 case, but again --

20 172 Q. Well, I assume --

21 A. -- depending --

22 173 Q. -- it is the case.

23 A. -- on the outcome of the  
24 negotiations.

25 174 Q. I assume it is the case right now,

1           though.

2                           A.     We hope that to be the case.

3       175                   Q.     But are you right now paying  
4           everybody, all your suppliers?

5                           A.     As of right now, yes, we are.

6       176                   Q.     Okay.

7                           MR. CHADWICK:   And just to assist you,  
8           Mr. Graff, the transaction contemplates either  
9           being paid in full or the obligation being assumed.  
10          So just wanted to make sure we just clarify that  
11          for your --

12                          MR. GRAFF:   Yeah, I understand.

13                          BY MR. GRAFF:

14       177                   Q.     Rather than my trying to dissect  
15           all of your financial statements, can you clarify  
16           for me what the shares that were issued to Fairfax  
17           or any predecessor, what those shares were issued  
18           for by way of dollar value when they were issued?

19                          A.     I would have to ask counsel to  
20           advise on that.

21                          MR. GRAFF:   Okay.   Maybe you can  
22           clarify that -- we can do that as a  
23           post-examination undertaking, if you would.

24       U/A                  MR. RUBY:   We'll take it under  
25           advisement.   But just -- can you give me a time

1 period so we know what we're doing?

2 MR. GRAFF: Well, I don't know what  
3 shares were issued entirely because I haven't --  
4 obviously haven't followed the entirety of the  
5 sequence of their capitalization efforts, but I --  
6 you know, if they're -- and so I'm thinking from  
7 2015 onward -- I don't think there had been many  
8 share issuances over that period, so I -- I don't  
9 expect, Mr. Ruby, that that task is a particularly  
10 onerous one. If there is a -- if that ends up  
11 being more complicated somehow than I believe it to  
12 be, we can discuss it.

13 MR. RUBY: Okay. That's helpful.  
14 Thank you.

15 BY MR. GRAFF:

16 178 Q. Okay. And I think I did mention  
17 this, but -- and so I apologize if I'm repeating  
18 myself. First of all, I guess the proposed  
19 shareholder ownership of the Newco, what I'll call  
20 the Newco, is the same share ownership as that  
21 which exists in McEwan Enterprises; is that  
22 correct?

23 A. As I understand it, yes.

24 179 Q. Okay. And is there a shareholders  
25 agreement in place in respect of the Newco?

1 A. I would have to ask counsel on  
2 that.

3 180 Q. Okay. I would --

4 MR. CHADWICK: There is not a  
5 shareholders agreement in place in connection with  
6 Newco.

7 MR. GRAFF: I would ask that that  
8 shareholders agreement be provided, and again, any  
9 employment, compensation, management agreements be  
10 provided as part of that transaction, again, should  
11 it proceed, which I appreciate is premature at this  
12 point in time, but if we get to the motion in  
13 support of that, I will reiterate those requests.

14 MR. RUBY: So I have to admit I'm not  
15 entirely following. Mr. Chadwick has told you  
16 there is no shareholders agreement.

17 MR. GRAFF: Well, that's only because  
18 I'm assuming it's the stage at which we're at. At  
19 some point in time, for that organization to engage  
20 in business post closing of some transaction, it  
21 will undoubtedly have in place arrangements of that  
22 nature, and I assume it would want to have  
23 arrangements of that nature, particularly as part  
24 of a transaction purported to be approved by the  
25 Ontario Superior Court in a CCAA proceeding, so we



1 will want to see those documents.

2 R/F MR. RUBY: Okay. So we're going to  
3 refuse questions to provide documents that don't  
4 exist yet. You've already pointed out to us that  
5 you're going to take a second kick at the can when  
6 we come down to talking about the proposed  
7 transaction for a later motion, but --

8 MR. GRAFF: Well, we may not need to do  
9 that, but again, if we're there, I'm going to ask  
10 for those.

11 MR. RUBY: Okay. So --

12 MR. GRAFF: If they don't exist right  
13 now.

14 MR. RUBY: Yeah. So you have our  
15 refusal for documents that don't exist.

16 MR. GRAFF: Oh, thanks. Thanks,  
17 Mr. Ruby.

18 MR. RUBY: And you can ask later on  
19 again if you'd like.

20 MR. GRAFF: Okay. Thank you.

21 BY MR. GRAFF:

22 181 Q. Okay. And to wrap it up, I'm  
23 going to have reflected on the record the  
24 communications that I understand have been issued  
25 to -- by your organization and one by the monitor

1 to the employees, suppliers, and creditors of your  
2 business respectively.

3 So if -- Mr. Lu, if you could put up  
4 each of those communications in sequence, perhaps I  
5 can get Mr. McEwan to acknowledge them and what  
6 they are, and we can have them marked as exhibits  
7 for the record. Great.

8 Mr. McEwan, you can see the document on  
9 your screen, I assume?

10 A. Yes, I can.

11 182 Q. And are you familiar with this  
12 document?

13 A. I am.

14 183 Q. I assume you read the document  
15 before it was issued?

16 A. That is correct.

17 184 Q. Okay. And this was sent out, to  
18 the best of your knowledge, to all of your  
19 employees; correct?

20 A. That is correct.

21 MR. GRAFF: Okay. If we could mark  
22 that as an exhibit. I'm not sure that I know  
23 exactly what number we're at, but that would be  
24 appreciated.

25 MR. RUBY: Well, from my point of view,

1           this is the first one, and yes, let's mark it as an  
2           exhibit.

3                       MR. GRAFF: Okay. But for the  
4           shareholders agreement, I think; right?

5                       MR. RUBY: Well --

6                       MR. GRAFF: Subject to confidentiality  
7           concerns.

8                       MR. RUBY: And the leasing agreements.  
9           Well, why don't we do this? Why don't we mark  
10          these as an 'A' because we're agreeing to these  
11          being marked as an exhibit, and we'll sort out the  
12          rest later as we've talked about before.

13                      MR. GRAFF: Okay. In that case, I'll  
14          come back to the lease agreements and the  
15          amendments to the lease as well in a minute.

16                      MR. NEMERS: Mr. Lu -- I'm sorry to  
17          interrupt -- I think you have the bookmarks also  
18          showing on your screen. Maybe if you could close  
19          those. Thank you.

20                      EXHIBIT A: Letter from McEwan  
21                      Enterprises Inc. to employees re:  
22                      Companies' Creditors Arrangement Act  
23                      proceedings

24                      BY MR. GRAFF:

25          185           Q. Okay. So that's Communication

1 Number 1 to the employees marked as Exhibit 1 -- or  
2 Exhibit A. If I may ask Mr. Lu to turn to the  
3 communication to the suppliers.

4 And, sir, you see this letter?

5 A. Yes, I do.

6 186 Q. This is a letter that you prepared  
7 and issued on McEwan letterhead; correct?

8 A. That is correct.

9 187 Q. I believe you're the signatory on  
10 the bottom of that document, if I'm not mistaken?

11 A. That would be me.

12 MR. GRAFF: Okay. And if we could mark  
13 that as Exhibit Number 2.

14 MR. RUBY: I think we're using --

15 MR. GRAFF: Or 'B.'

16 MR. RUBY: -- 'B,' but --

17 MR. GRAFF: 'B.' Sorry. Super. Thank  
18 you.

19 EXHIBIT B: Letter from McEwan  
20 Enterprises Inc. to suppliers re:  
21 Companies' Creditors Arrangement Act  
22 proceedings

23 BY MR. GRAFF:

24 188 Q. And then, finally, the  
25 communication that went to creditors, which was

1 issued by the monitor, Alvarez & Marsal. I think  
2 it was signed, if I'm not mistaken, by Mr. Karpel.  
3 This -- oh, not signed by Mr. Karpel, just by  
4 Alvarez generally. Are you familiar with this  
5 communication?

6 A. Yes, I am.

7 189 Q. Okay. You saw this before it went  
8 out?

9 A. That is correct.

10 MR. GRAFF: Okay. And, therefore, if I  
11 can mark that as Exhibit C to your examination.

12 MR. RUBY: Yes.

13 MR. GRAFF: Thank you.

14 EXHIBIT C: Notice to creditors from  
15 Alvarez & Marsal Canada Inc. re:  
16 Companies' Creditors Arrangement Act  
17 proceedings

18 MR. GRAFF: And just to be clear, to go  
19 back to confidentiality documents, I think -- we  
20 can discuss the issue of confidentiality, but why  
21 don't -- for the purpose of the examination, why  
22 don't we pull up -- I think we talked about -- I  
23 think we pulled up the lease, but let's just  
24 mark -- again, we can address its confidentiality  
25 if needed, but let's mark each of the amendments to

1 that lease as exhibits to the examination and  
2 determine their confidentiality status later on.

3 So, Mr. Lu, if I could ask you to pull  
4 up the first amendment to the initial FCR lease.

5 BY MR. GRAFF:

6 190 Q. Mr. McEwan, you see this consent  
7 and lease amendment dated December 21st, 2018;  
8 correct?

9 A. Correct.

10 191 Q. If I could scroll to the bottom of  
11 that or ask Mr. Lu to do so. That is your  
12 signature on behalf of McEwan Enterprises; correct?

13 A. That is correct.

14 192 Q. Okay. You agree -- you recall  
15 entering into this amendment?

16 A. Yes, I do.

17 MR. GRAFF: Thank you. Why don't we  
18 mark that again as -- how are we dealing with  
19 potentially confidential exhibits? We can mark it  
20 as, I guess, Exhibit 2 on a confidential basis --  
21 or Exhibit 3, I guess it is.

22 MR. RUBY: Yeah. So my proposal is  
23 that we, for identification, mark these documents  
24 with 1, 2, 3 - that is, numbers - and we'll sort  
25 out later whether they're exhibits and their

1 confidentiality status.

2 MR. GRAFF: Yes. Okay. Thank you.

3 EXHIBIT 3: (For identification)

4 Consent and lease amending agreement

5 dated December 21, 2018

6 MR. GRAFF: Mr. Lu, if I could ask you  
7 to turn up the next amendment to the lease.

8 BY MR. GRAFF:

9 193 Q. Mr. McEwan, this is a lease dated  
10 April 22nd of 2019. It's a lease amending  
11 agreement between First Capital and McEwan. You  
12 recall signing this document?

13 A. Yes, I do.

14 194 Q. We'll scroll to the bottom just so  
15 that you can see your signature on that document to  
16 confirm. Does that look like your signature?

17 A. Yes, it is.

18 MR. GRAFF: Okay. So we can mark this  
19 again as Exhibit Number 4.

20 MR. RUBY: Same arrangement.

21 MR. GRAFF: Yes.

22 EXHIBIT 4: (For identification) Lease  
23 amending agreement dated April 22, 2019

24 MR. GRAFF: Mr. Lu, can you pull up the  
25 next amendment?

1 BY MR. GRAFF:

2 195 Q. Lease amending agreement dated  
3 June 7, 2019, between First Capital and McEwan  
4 Enterprises. Is this a document with which you  
5 have familiarity?

6 A. You'd have to scroll down.

7 196 Q. Why don't we just scroll down to  
8 the signature page, and you can confirm that you  
9 did sign this agreement. Is that your signature at  
10 the bottom?

11 A. Yes, it is.

12 MR. GRAFF: Thank you. And we can turn  
13 now to -- and, I'm sorry, to mark that, I think we  
14 said, as Exhibit 5. Or did I say 4? I'm sorry.

15 MR. NEMERS: That would be -- it would  
16 be 5, and it would be subject to the same  
17 conditions as the other numerical exhibits.

18 MR. GRAFF: Okay. Thank you.

19 EXHIBIT 5: (For identification) Lease  
20 amending agreement dated June 7, 2019

21 BY MR. GRAFF:

22 197 Q. So we can move now to the next  
23 document, which is a lease amending agreement dated  
24 April 3rd, 2020, between First Capital and McEwan  
25 Enterprises. And why don't we just scroll to the



1 signature page, and you can confirm that you signed  
2 this amendment as well. Is that your signature at  
3 the bottom?

4 A. That is correct.

5 198 Q. You can confirm that you signed  
6 this amendment as well; correct?

7 A. Yes.

8 199 Q. Thank you. And was there a  
9 further amendment?

10 MR. NEMERS: That would be 6, just to  
11 be clear. That would be --

12 MR. GRAFF: That would be Number 6.

13 EXHIBIT 6: (For identification) Lease  
14 amending agreement dated April 3, 2020

15 BY MR. GRAFF:

16 200 Q. And this final one, I believe,  
17 will be Number 7. This is a lease amending  
18 agreement dated April 6th, 2021, between McEwan and  
19 First Capital, and if we can scroll down to the  
20 bottom, you can confirm that's your signature on  
21 this document. Oh, I recognize this -- is this --  
22 this is -- maybe Mr. Nemers can confirm.

23 This document was never signed by  
24 McEwan Enterprises; correct?

25 MR. NEMERS: So our understanding - and

perhaps Mr. McEwan can confirm this - that neither party has signed but that this is nonetheless the amendment that both parties have been respecting in terms of the current status of affairs.

BY MR. GRAFF:

201 Q. Can you confirm that, Mr. McEwan?

A. Yes. Is that in relation to percentage rent at 11.5 percent?

202 Q. Yes, it is.

A. Yes, I would confirm that. That was the understanding.

203 Q. Great. Thank you.

MR. NEMERS: So that is now Exhibit 7, I believe.

MR. GRAFF: 7. Yes.

EXHIBIT 7: (For identification)

Unsigned lease amending agreement dated April 6, 2021

MR. GRAFF: Okay. Well, thank you, sir. Those are the questions that I have for you today, subject to any further questions that arise from the many documents that I've asked to you produce. Otherwise, it may be that we will see each other again, but I appreciate you taking the time and putting in the effort, and I will look

1 forward to dealing with your counsel and yourself  
2 as this matter progresses.

3 THE WITNESS: Pleasure. Thank you very  
4 much.

5 MR. GRAFF: Thank you.

6 -- OFF THE RECORD DISCUSSION --

7 MR. RUBY: So no re-exam. Thank you,  
8 Mr. McEwan.

9 THE WITNESS: Thank you very much.

10 -- Whereupon the cross-examination concluded at  
11 10:43 a.m.

REPORTER'S CERTIFICATE

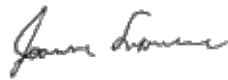
I, JOANNE A. LAWRENCE, Registered  
Professional Reporter, certify;

That the foregoing proceedings were  
taken before me at the time and place therein set  
forth, at which time the witness was put under oath  
by me;

That the testimony of the witness  
and all objections made at the time of the  
examination were recorded stenographically by me  
and were thereafter transcribed;

That the foregoing is a true and  
correct transcript of my shorthand notes so taken.

Dated this 4th day of October, 2021



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NEESONS, A VERITEXT COMPANY

PER: JOANNE LAWRENCE, RPR, CSR

COURT REPORTER

# EXHIBIT a)

## **McEwan Enterprises Inc. Employee Communication**

McEwan Enterprises Inc. (the “**Company**”) implemented extensive cost-saving and cash conservation measures to reduce the negative impacts of the COVID-19 pandemic challenges. However, given the continuous challenges faced by the industry and the Company, with the assistance of legal counsel, the Company reviewed various potential options and alternatives that may be available to it, and determined that it is in the best interests of the McEwan Group and its stakeholders to proceed with a transaction through a Court-supervised process under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) to provide for a right-sized and stronger business (the “**Transaction**”). The Transaction remains subject to approval of the Court. The Company’s goal is to preserve the value of the business for the benefit of the McEwan Group’s many stakeholders, including its employees, suppliers and customers. The proposed Transaction will result in a right sizing of the business on a sustainable basis going forward.

### **Q1: What happens in a CCAA filing?**

The Company is typically given time to restructure its financial affairs. During that time, a “stay of proceedings” is in place to prevent creditors from taking actions that could destabilize the Company.

The Court appoints a Monitor to assist the Company and oversee its activities and provide information to the Court and the Company’s creditors. Alvarez and Marsal Canada Inc. has been appointed by the Court as Monitor of the Company.

With the assistance of the Monitor, the Company will remain in control of its business and operations and can take steps to complete its financial restructuring and strategic initiatives.

ONE Restaurant is not part of the CCAA Proceedings.

### **Q2 How long will you be in CCAA?**

We expect to complete the proposed Transaction in November, subject to Court approval and satisfaction of customary conditions, following which the McEwan business will be conducted completely outside of the CCAA Proceedings.

### **Q3 Does this mean that the Company is bankrupt or going out of business?**

No. It is business as usual for the McEwan Group. The proposed Transaction and the CCAA Proceedings **are not** an indication of a wind-down, bankruptcy or receivership. The CCAA process is a mechanism that will allow the McEwan Group to protect and continue to operate its business while it works to implement the Transaction.

### **Q4 Who is running the McEwan Group’s operations during the CCAA Proceedings?**

The Company continues to be operated by Mark McEwan, our President, and the other members of the management team.

### **Q5 Will the McEwan Group’s employees be adversely affected by the CCAA Proceedings?**

**No.** All salary and wage payments to employees will continue to be made and employee benefits will continue to be provided by the Company in the normal course during the CCAA Proceedings.

The McEwan Group's existing employees will be offered continued employment as part of the proposed Transaction, to continue with the business going forward. Your vacation entitlements are not affected by the CCAA Proceedings. You must continue to comply with normal policies and procedures regarding approval of time off. Any existing benefits you currently have remain unchanged.

**Q6: How will the financial restructuring affect my day-to-day responsibilities?**

You should expect no changes to operations or your day-to-day responsibilities as a result of the CCAA Proceedings, except for certain employees, who could be relocated to one of the other locations of the McEwan Group.

**Q7 Will the Company's suppliers and trade creditors be adversely affected by the CCAA Proceedings?**

No. Suppliers and service providers will be paid for goods and services provided to the Company following the commencement of the CCAA Proceedings. Going forward, our relationships with our suppliers and service providers remain critical to the success of the McEwan Group. Pursuant to the proposed Transaction, all supply arrangements and any outstanding obligations owing to suppliers and service providers will be assumed and honoured in the normal course. The McEwan Group will continue to satisfy its obligations to suppliers and service providers in the ordinary course and will continue to honour customer gift cards pursuant to their terms. Pursuant to the proposed Transaction, any outstanding trade obligations will be assumed and honoured in the normal course. **It remains business as usual for the McEwan Group.**

**Q8: What actions can others take against the Company during this period?**

Parties are prevented from taking certain legal actions, terminating agreements or enforcing their rights against the Company outside of the CCAA Proceedings.

**Q9: Who will control the McEwan Group after the implementation of the Transaction?**

Mark McEwan and Fairfax, the current shareholders of the McEwan Group, will continue to control the McEwan Group. The goal of the Transaction is to right-size the business so that it can continue to operate successfully moving forward for the benefit of the Company's many stakeholders.

The Company believes that the proposed Transaction and the CCAA Proceedings are in the best interests of the Company and its stakeholders. The CCAA Proceedings will allow the Company to complete the Transaction, subject to Court approval, and a right sizing of the McEwan Group, while continuing to operate the business in the normal course and maintaining the high quality of foods and services our customers have come to expect.

# EXHIBIT b)





**McEwan Enterprises Inc.**  
38 Karl Fraser Road, Toronto, On M3C 0H7  
Telephone: 416-444-6262 ext. 221 Facsimile: 416-444-6212  
[www.mcewangroup.ca](http://www.mcewangroup.ca)

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## LETTER TO SUPPLIERS

September 29, 2021

Dear Valued Supplier,

The McEwan Group is one of Canada's premier hospitality companies consisting of a portfolio of innovative restaurants, grocery stores and gourmet food hall and catering services. I am writing to inform you of an important development and what it means to our Company.

Having been impacted for an extended period of time by the COVID-19 pandemic, with the assistance of our advisors, we have reviewed and explored various potential options and alternatives to preserve and protect the McEwan Group and our business on a sustainable go forward basis. In this regard, the McEwan Group has determined to proceed with a transaction through a Court-supervised process under the *Companies' Creditors Arrangement Act* (the "CCAA") to provide for a right-sized and stronger business (the "**Transaction**"). The Transaction remains subject to approval of the Court.

It will continue to be business as usual at the McEwan Group, without interruption, during this process. We will continue to pay for goods and services that are contracted for and supplied to the Company in the ordinary course. As part of the Transaction, all of our supply arrangements and any outstanding trade obligations will be assumed and honoured in the normal course.

As part of the CCAA process, which was commenced on September 28, 2021, Alvarez and Marsal Canada Inc. will act as the Court-appointed Monitor of the Company. Further information in this regard and related court materials will be made available on the Monitor's website, which can be accessed at <http://www.alvarezandmarsal.com/McEwanEnterprises>.

We greatly value our relationship with you and appreciate your continued support.

Sincerely,

Mark McEwan  
President  
McEwan Enterprises Inc.

# EXHIBIT c)



September 29, 2021

To: Whom it may concern

**Re: McEwan Enterprises Inc. (the “Applicant”)**

On September 28, 2021, the Applicant commenced court-supervised restructuring proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) pursuant to an order (the “**Initial Order**”) granted by the Ontario Superior Court of Justice (the “**Court**”). Among other things, the Initial Order grants a stay of proceedings until October 7, 2021 in respect of the Applicant and its business and property (which may be extended by the Court from time to time) and appoints Alvarez & Marsal Canada Inc. as monitor (the “**Monitor**”) of the business and financial affairs of the Applicant.

A copy of the Initial Order and all materials filed in these proceedings may be obtained at the Monitor’s website at <http://www.alvarezandmarsal.com/McEwanEnterprises> or on request from the Monitor by calling 1-416-847-5187 or by emailing [McEwanEnterprises@alvarezandmarsal.com](mailto:McEwanEnterprises@alvarezandmarsal.com).

Under the Initial Order, the Applicant, with the oversight of the Monitor, is entitled to pay expenses whether incurred prior to or after the Initial Order. It is the Monitor’s understanding that the Applicant intends to pay its suppliers and employees in the ordinary course on a continuing basis, subject to the terms of the Initial Order.

If you have any questions regarding the foregoing or require further information, please consult the Monitor’s website at <http://www.alvarezandmarsal.com/McEwanEnterprises> or should you wish to speak to a representative of the Monitor, please contact the Monitor at 1-416-847-5187 or by emailing [McEwanEnterprises@alvarezandmarsal.com](mailto:McEwanEnterprises@alvarezandmarsal.com).

Yours very truly,

**Alvarez & Marsal Canada Inc.,**  
Solely in its capacity as Court-appointed Monitor of  
the Applicant and not in its personal or corporate capacity

# TAB B

**ANSWERS TO QUESTIONS TAKEN UNDER ADVISEMENT ON THE CROSS-EXAMINATION  
OF DENNIS MARK MCEWAN HELD ON OCTOBER 4, 2021  
IN RESPECT OF THE RELIEF BEING ADJUDICATED ON OCTOBER 7, 2021**

<b>No.</b>	<b>UT/UA</b>	<b>Page No</b>	<b>Ques. No.</b>	<b>Question</b>	<b>Answer</b>
1.	UT	17	34	Who's the principal behind the Goodfood organization?	The contract counter-party is Goodfood Market Corp. The principal is Patrick Braley.
2.	UT	67-68	167-168	Do cash flows or business plans for the latter half of 2021 or for the year 2022 exist?	No – the Company is not aware of the existence of such materials.
3.	U/A	18	38	Request last year's contract for the Food Network	Considered and now refused. Not relevant and confidential information of the Company.
4.	U/A	18	38	Request written contract relating to the Good Food relationship.	Considered and now refused. Not relevant and confidential information of the Company.
5.	U/A	26	65	Request all arrangements under which Mr. McEwan or any party related to him (including Eric, Roxanne or Taylor) receives compensation from any one or more of the operations of the business and the business itself. For greater certainty, that would include whatever contract he has with -- whether by management contract, employment, or consulting contract, whether in his name or a corporation that he controls, with the one restaurant and the joint venture partnership associated with the operation of that restaurant and that catering operation	Considered and now refused. Not relevant and confidential information of the Company.

- 2 -

No.	UT/UA	Page No	Ques. No.	Question	Answer
6.	U/A	32-33	93	Request the schedules to the McEwan Enterprises Shareholders' Agreement.	Considered and now refused. Not relevant and confidential information of the Company.
7.	U/A	33-34		Request any amendments to the employment agreement that Mr. McEwan entered into with McEwan Enterprises or its predecessor.	Considered and now refused. Not relevant and confidential information of the Company.
8.	U/A	35	96	Request annual business plan that was produced in every year since the 2015 year that the shareholders agreement was entered into.	The Company is not aware of any such annual business plans being prepared or provided under the shareholders agreement.
9.	U/A	35-36	97	To the extent that the initial employment agreement Mr. McEwan entered into in 2015 has not been physically amended, and to the extent that the compensation, whether by way of direct pay or benefits or other attributes, have changed since 2015, even if not reflected in a formal written amendment, request to be advised of that.	Considered and now refused. Not relevant and confidential information of the Company.
10.	U/A	38-39	99	Request whatever agreement exists as between that newly created company and the joint venture partners.	Considered and now refused. Not relevant and confidential information of the Company.
11.	U/A	39	99	Request any agreements that exist in favour of either Mr. McEwan or any of his family members with the partnership or either one of the partnership parties in the way of management, consulting, or employment arrangements.	Considered and now refused. Not relevant and confidential information of the Company.
12.	U/A	40	101	Request confirmation of whether Mr. McEwan is the beneficiary or any other party related to Mr. McEwan is the	Copies of indemnity agreements provided by Goodmans on October 4, 2021.

- 3 -

No.	UT/UA	Page No	Ques. No.	Question	Answer
				beneficiary of an indemnity from either McEwan Enterprises or from the joint venture or any of the joint venture partners in connection with the operation of the ONE restaurant.	
13.	U/A	41	101	Request the directors and officers policy that the company has taken out.	Considered and now refused. Not relevant and confidential information of the Company.
14.	U/A	41-42	101	Request the documents that support the Fairfax indebtedness and, more specifically, whatever notes or other documentation exists to substantiate the loans from Fairfax into McEwan Enterprises or into the separate joint venture entity.	Copies of debentures and, where applicable, amendments provided by Goodmans on October 4, 2021.
15.	U/A	44-45	112	Request the nonconsolidated financial results for each individual separate operation that was part of the McEwan Enterprises for the years 2019, 2020, and 2021.	Nonconsolidated financial results for the Yonge & Bloor location are being provided by Goodmans with this response.  Request for nonconsolidated financial results for the remaining operations was considered and now refused. Not relevant and confidential information of the Company.
16.	U/A	54	139	Request all of the lease agreements that exist right now with respect to -- whether it's Fabbria Don Mills, McEwan Don Mills, Bymark, Fabbria TD, McEwan TD.	Considered and now refused. Not relevant and confidential information of the Company.
17.	U/A	54	139	Request the lease with respect to the Thornbury location.	Considered and now refused. Not relevant and confidential information of the Company.

- 4 -

No.	UT/UA	Page No	Ques. No.	Question	Answer
18.	U/A	60-61	147-148	Request copies of communications that were exchanged back and forth between First Capital and McEwan Enterprises.	Considered and now refused. Not relevant and confidential information of the Company. First Capital would also have these exchanges and none were put before Mr. McEwan as Exhibits to the cross-examination. In addition, these exchanges involved settlement discussions conducted on a without prejudice basis based on an email between the parties dated March 23, 2021. All related discussions and e-mail exchanges continued on this without prejudice basis.
19.	U/A	66	165	Request the valuation RBC would have obtained with respect to the mortgage over Mr. McEwan's cottage in Thornbury.	Considered and now refused. Not relevant and confidential information of the Company.
20.	U/A	66	166	Has Fairfax guaranteed any of the obligations to Royal Bank?	No it has not.
21.	U/A	67	166	Request the business plan for McEwan Enterprises, including any pro forma financial statements in respect of the second half of the year 2021, and pro forma business plan and cash flow for the years 2022 and beyond.	The Company is not aware of any such additional documents.
22.	U/A	70	177	Clarify what the shares that were issued to Fairfax or any predecessor, were issued for by way of dollar value when they were issued?	Considered and now refused. Not relevant and confidential information of the Company.



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No.	UT/UA	Page No	Ques. No.	Question	Answer
<p><i>Having reviewed the transcript and checked with the Company's advisors about certain factual matters, Mr. McEwan provides the following supplemental responses, so that the record is as accurate as possible. The answer on the record is indicated first (in italics), followed by the supplemental response.</i></p>					
No.	n/a	Page No	Ques. No.	Question	Answer
23.		20	44	I guess what my question is is what constitutes the brand business? And it may be, again, that some of what you've said or referred to does, but I want some clarity on that, if I may.	<p><i>I would say that refers to the McEwan Restaurant Consulting in terms of branding. It's the only logical place that it would fit for me. I'd have -- I would have to defer to counsel on that exactly --</i></p> <p><i>-- as to the wording on that.</i></p>
			45	Okay. So we can maybe get some assistance for you from counsel on that or counsel can assist now, but thanks for your answer.	<p><b><u>Supplemental Response</u></b></p> <p>The "McEwan" brand business includes my involvement with the Food Network (Top Chef Canada), media appearances, sponsorships and brand ambassador work.</p>
24.		24	63	And who is your senior executive team, Mr. McEwan?	<p><i>That would be my son, Eric; George Bachoumis; Shen Ousmand, who is my senior executive chef in the company; Brooke McDougall. I -- I have management teams in each operation. My son and George tend to -- and Shen tend to oversee a large number of them.</i></p> <p><b><u>Supplemental Response</u></b></p> <p>Kip Aneja is the Chief Financial Officer of MEI. His is also a member of the senior management team.</p>

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No.	UT/UA	Page No	Ques. No.	Question	Answer
25.		49	120	Well, let me ask you this: At any point in time since the 27th of September of this year, has anybody on your team approached you and asked you about paying an invoice that predated September 27th?	<i>We fully intend to pay invoices.</i>
		49	121	Okay. That's not what I'm asking you. Has anybody approached you and asked you whether it is necessary to make the payment of the invoice they're presenting to you?	<i>Not to my knowledge.</i>
		49	122	Okay. And is it not the case that there is an understanding within the organization that simply every obligation in favour of a supplier or an employee or otherwise, whether it predates the 27th or not, that you're going to pay; correct?	<i>That is my understanding.</i>
		49	123	Okay. And you have given that direction to your staff, I'm assuming.	<i>Yes, I have.</i>
		49	124	And have you consulted with the monitor about making those payments?	
		50	125	Has the monitor consulted with you, or have you consulted with the monitor, about making those payments?	<i>To my knowledge, we have done that through counsel.</i>
		50	126	Okay. But you're the one that's authorizing the payments. Your counsel doesn't authorize the payments. You authorize the payments.	<i>I was part of the conversation and -- and participated in the conversation.</i>
		50	127	What conversation?	<i>That we were going to take care of suppliers.</i>
		50	128	Okay. But since the appointment happened -- excuse me, since the application was	<i>I don't recall.</i>

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No.	UT/UA	Page No	Ques. No.	Question	Answer
				<p>made, have you spoken to the monitor about specific payments that need be made?</p> <p>MR. CHADWICK: It may be fair, Mr. Graff, to ask if anyone in the organization has spoken to the monitor, communicated with the monitor –</p> <p>MR. GRAFF: Well, he's the officer and director of the company.</p> <p>MR. RUBY: Well, he's not the only one that works there.</p> <p>MR. CHADWICK: It's your examination. I'm just –</p> <p>MR. GRAFF: I think if he's -- he's the one to make the decision as to what constitutes a critical payment or not.</p> <p>MR. RUBY: You can make that argument. I think Mr. Chadwick has given you a signal, so you can take him up on it or not.</p>	<p><b><u>Supplemental Answer</u></b></p> <p>The Company's CFO and finance team have been working with the Monitor with respect to reviewing and obtaining Monitor approvals for the payment of pre-filing amounts for suppliers. Mr. McEwan is not personally involved in the review and approval of each individual supplier invoice to be paid by the Company. As discussed in the Company's materials filed in these proceedings, the intention is to pay all suppliers in the ordinary course, as permitted by the Initial Order, and otherwise for any outstanding supplier obligations to be assumed as part of the proposed transaction.</p>

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No.	UT/UA	Page No	Ques. No.	Question	Answer
26.		68	169	I'm not going to ask you much about the proposed transaction, Mr. McEwan, because that's really the subject of another day, but in the simplest terms, I think you can confirm for me that all the employees of the entirety of the McEwan operation are all being assumed as part of the go-forward arrangement; is that right?	<p><i>Based on negotiations that are still in play, we hope that to be the case, but we have not concluded that to be the situation yet.</i></p> <p><b><u>Supplemental Answer</u></b></p> <p>The proposed transaction and purchase agreement provide for offers of employment to all existing employees of the Company. The transaction remains subject to Court approval at this time, so this matter has not yet been concluded at this time.</p>
27.		69	170	Okay. And that would include, to the extent negotiations materialize favourably, the employees that might be dislocated from Yonge-Bloor should that location close; correct?	<p><i>That would be our hope. We don't have nearly as many employees there. We brought the ranks down substantially, so it's not a big number to absorb.</i></p> <p><b><u>Supplemental Answer</u></b></p> <p>The proposed transaction and purchase agreement provide for offers of employment to all existing employees of the Company. The transaction remains subject to Court approval at this time, so this matter has not yet been concluded at this time.</p>

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No.	UT/UA	Page No	Ques. No.	Question	Answer
28.		69	171	Okay. And similarly -- I believe the affidavit you've sworn is replete with confirmation of this, but the entirety of the pre-filing debt as well as the -- well, the pre-filing debt that's owed to any of your suppliers as well as any obligations that are accruing since September 27th are being paid in their entirety at 100 cent dollars; is that correct?	<i>Yes, we are hoping that to be the case, but again --</i>
			172	Well, I assume --	<i>-- depending --</i>
			173	-- it is the case.	<i>-- on the outcome of the negotiations.</i>
			174	I assume it is the case right now, though.	<i>We hope that to be the case.</i>
					<b><u>Supplemental Answer</u></b>  The proposed transaction and purchase agreement provide for the assumption of all outstanding supplier obligations by the purchaser. The transaction remains subject to Court approval at this time, so this matter has not yet been concluded at this time.

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No.	UT/UA	Page No	Ques. No.	Question	Answer
29.			175	But are you right now paying everybody, all your suppliers?	<p><i>As of right now, yes, we are.</i></p> <p><b><u>Supplemental Answer</u></b></p> <p>The Company's CFO and finance team continue to work with the Monitor with respect to reviewing and obtaining Monitor approvals for the payment of pre-filing amounts for suppliers, and the Company is also paying for all post-filing supplier obligations in the normal course. As discussed in the Company's materials filed in these proceedings, the intention is to pay all suppliers in the ordinary course, as permitted by the Initial Order, and otherwise for any outstanding supplier obligations to be assumed as part of the proposed transaction.</p>

# TAB C

**From:** Ruby, Peter <[pruby@goodmans.ca](mailto:pruby@goodmans.ca)>

**Sent:** October 3, 2021 7:05 PM

**To:** Steve Graff <[sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)>

**Cc:** Jeremy Nemers <[jnemers@airdberlis.com](mailto:jnemers@airdberlis.com)>; Damian Lu <[dlu@airdberlis.com](mailto:dlu@airdberlis.com)>; Chadwick, Robert <[rchadwick@goodmans.ca](mailto:rchadwick@goodmans.ca)>; Descours, Caroline <[cdescours@goodmans.ca](mailto:cdescours@goodmans.ca)>

**Subject:** RE: M

**CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.**

[REDACTED]

[REDACTED]

With respect to your Friday document requests, please see below and attached our responses, interwoven into a copy of your list of requests. Our client reserves its rights to supplement its responses.

Some of enclosed documents may be confidential. The enclosed documents should not be placed on the public record or otherwise disclosed without first discussing with us a confidentiality arrangement, including if we cannot reach a mutually satisfactory arrangement, an appropriate court Order.

## Requests & Responses

1. Any and all documentation relating to the ownership of McEwan Enterprises Inc. ("**McEwan**"), including any shareholder agreements and bylaws or other governance documents, as well as any employment or consulting agreements with McEwan personally or any related party,
  - Please see attached:
    - o Shareholders' Agreement without schedules
    - o Articles of Amalgamation – October 2017
  - We will be checking with corporate counsel to the Company for additional potential relevant documentation.
2. any and all documents or correspondence evidencing arrangements as amongst any of Mark, McEwan, 2860117 Ontario Limited (the "**McEwan Subsidiary**") and The Hazelton Food Services Partnership, including, without limitation, employment agreements (whether pre-existing or newly created) and all correspondence with the joint venture partner leading up to the transfer of the interest from, McEwan to the McEwan subsidiary;
  - Partnership arrangements are not relevant and confidential.
  - Please see attached:
    - o Notice to Transfer dated August 16, 2021
    - o Assignment Agreement dated August 24, 2021



3. any and all documents or correspondence relating to the formation of the McEwan Subsidiary, including without limitation any employment or consulting agreement with Mark, and any shareholders agreement. We would also like to received a copy of the prior partnership agreement or related documents;
  - Please see attached articles of incorporation for the McEwan Subsidiary
  - No shareholders agreement or employment/consulting agreement for this entity
4. any and all documents or correspondence evidencing arrangements that have been put into place with the other landlords of McEwan;
  - Request not relevant.
  - Leases with third parties and ongoing discussions are confidential. Confidentiality is important to ongoing restructuring efforts.
5. corrected financial statements (see errors in the first few lines of pages 154-156 of the Application Record). In addition, We will require the financial statements relating the joint venture. We will also require all cash flow and financial projections or pro forma financial statements that have been prepared, whether by the JV, McEwan or the McEwan subsidiary, or any advisor that has been involved in advising, or that have been prepared by Fairfax or any related entity or person;
  - Incorrect Exhibit for the June 30, 2021 financials was inadvertently included in the filed Application Record. Please see attached correct version of Exhibit.
  - Request for JV financials are not relevant and confidential.
  - See cash flow forecast included in the Application Record. Do not believe balance of request is relevant. We will review with the Company.
6. any and all valuations or appraisals obtained in respect of the business, any part of the business or any one or more of the assets of the business; and
  - Company is not aware of any.
7. any and all licence agreements with respect to any IP used in the business.
  - Company is not aware of any.

Please also see enclosed audited financials for 2019 (which include 2018 information).

**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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*Lawyers for First Capital Holdings (Ontario) Corporation*