Court File No. CV-14-10518-00CL

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 THE CASH STORE FINANCIAL SERVICES INC., THE CASH STORE INC., TCS CASH STORE INC., INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., 1693926 ALBERTA LTD. DOING BUSINESS AS "THE TITLE STORE"

RESPONDING RECORD OF THE AD HOC COMMITTEE OF CASH STORE NOTEHOLDERS TO COMPUTERSHARE MOTION

(Motion returnable on June 5, 2014 at 11:30 a.m.)

May 22, 2014

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TO: SERVICE LIST

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Tab 1

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I. OVERVIEW

1. This response is filed on behalf of the Ad Hoc Committee of Cash Store Noteholders (the "**Ad Hoc Committee**") of The Cash Store Financial Services Inc. and its affiliates (the "**Applicants**" or the "**Company**"). The members of the Ad Hoc Committee hold approximately 65% of the aggregate principal amount of $132,500,000 of 11½% Senior Secured Notes due 2017 issued by the Company (the "**Notes**"). Based on the current financial information disclosed by the Company, the Ad Hoc Committee represents the Company's largest stakeholder group. Based on the provisions of the Indenture, the members of the Ad Hoc Committee may direct the actions (or inaction) of the Indenture Trustee.

2. These submissions are filed in response to the motion by Computershare Trust Company of Canada and Computershare Trust Company, N.A. (together, the "**Indenture Trustee**"), as

indenture trustee under the indenture dated as of January 31, 2012 in respect of the Notes (the "**Indenture**"), for an Order varying and/or amending paragraphs 42 and 44 of the Amended and Restated Initial Order of the Honourable Regional Senior Justice Morawetz dated April 15, 2014 (the "**Initial Order**") to:

(a) require payment by the Applicants of the reasonable fees and expenses of the Indenture Trustee, Computershare Trust Company of Canada as "Collateral Trustee", their legal counsel (in Canada and the US) and, if they deem necessary, a financial advisor to be retained by the Indenture Trustee and Collateral Trustee in connection with these proceedings (the "**Fee Request**"); and

(b) include the Indenture Trustee, the Collateral Trustee, their legal counsel (in Canada and the US) and, if they deem necessary, a financial advisor to be retained by them in connection with these proceedings, as beneficiaries of the Administration Charge (as defined in the Initial Order), ranking *pari passu* in priority with all other parties entitled to the benefit of the Administration Charge (the "**Charge Request**"), and *in priority* to all other charges granted under the Initial Order, including the DIP Priority Charge and the TPL Charge (as defined in the Initial Order).

3. The Ad Hoc Committee opposes the relief requested by the Indenture Trustee, both in respect of the Fee Request and the Charge Request, as it is not appropriate on the facts and circumstances of this case. A more appropriate solution is proposed by the Ad Hoc Committee in Part V of this Response.

II. FACTS

The Indebtedness of the Company

(i) The Credit Agreement Debt

4. On November 29, 2014, the Company entered into a credit agreement with (i) Coliseum, (ii) 8028702 Canada Inc. and (iii) 424187 Alberta Ltd. (collectively, the "**Senior Lenders**"), pursuant to which the Senior Lenders provided $12.0 million of secured loans.[1] The Company agreed to designate the loans made under the Credit Agreement as priority lien debt.[2]

5. All of the Senior Lenders are directly represented in these proceedings by counsel:

(a) *Coliseum* – Coliseum holds $5.0 million of the $12.0 million drawn under the Credit Agreement and is represented by Norton Rose Fulbright Canada LLP ("**Norton Rose**") in its capacity as a Senior Lender and a DIP lender.[3] Coliseum is separately represented by Goodmans LLP ("**Goodmans**") in its capacity as a holder of the Notes (a "**Noteholder**") and as a member of the Ad Hoc Committee.

(b) *8028702 Canada Inc.* – 8028702 Canada Inc. holds $5.0 million of the $12.0 million drawn under the Credit Agreement, and is a company controlled by the same person who controls the McCann Family Holding Corporation (one of the Company's principal third party lenders (TPLs)), which is represented by Bennett Jones LLP.[4]

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[1] Affidavit of Steven Carlstrom sworn April 13, 2014 (the "**Carlstrom Affidavit**"), Responding Record of the Ad Hoc Committee ("**AHC Responding Record**"), Tab 2, para. 59.

[2] Carlstrom Affidavit, AHC Responding Record, Tab 2, para. 64.

[3] Carlstrom Affidavit, AHC Responding Record, Tab 2, para. 60.

[4] Carlstrom Affidavit, AHC Responding Record, Tab 2, para. 60.

(c) *424187 Alberta Ltd.* – 424187 Alberta Ltd. loaned the remaining $2.0 million of the $12.0 million drawn under the Credit Agreement, and is a company controlled by the Company's CEO and director, Gordon Reykdal, who is also represented by independent counsel.[5]

6. As such, there is no need for the Indenture Trustee or the Collateral Trustee to represent the interests of any of the Senior Lenders in these proceedings as they suggest, as all three of the Senior Lenders are already represented by individual counsel in these proceedings.

(ii) The Note Indebtedness

7. On January 31, 2012, the Company issued $132.5 million of the secured Notes under the Indenture.[6] Pursuant to a collateral trust and intercreditor agreement, the Notes are secured on a second-priority basis to the Credit Agreement debt.[7]

8. The members of the Ad Hoc Committee hold approximately 65% of the principal amount of the Notes.

9. To date, Goodmans has only been contacted by one other Noteholder, who advised that he holds approximately $10,000 of Notes. All other Noteholders who have contacted Goodmans are members of the Ad Hoc Committee, and any Noteholder may contact the Ad Hoc Committee and its advisors at any time.

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[5] Carlstrom Affidavit, AHC Responding Record, Tab 2, para. 60.

[6] Carlstrom Affidavit, AHC Responding Record, Tab 2, para. 69.

[7] Carlstrom Affidavit, AHC Responding Record, Tab 2, para.71.

10. The members of the Ad Hoc Committee have exercised their business judgment to be represented in these proceedings by Goodmans, and by the financial advisor to the Ad Hoc Committee, Houlihan Lokey. The members of the Ad Hoc Committee do not want or require any representation by the Indenture Trustee in these proceedings and, pursuant to Section 6.12 of the Indenture, the Indenture Trustee has no right to represent or negotiate on behalf of any of the Noteholders in an insolvency proceeding. Section 6.12 of the Indenture states that:

> Nothing herein contained shall be deemed to authorize the Trustee and the Collateral Agent to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or rights of any Holder, or to authorize the Trustee and the Collateral Agent to vote in respect of the claim of any Holder in any such proceeding.[8]

11. In addition to the Ad Hoc Committee, all Noteholders (known and unknown) also have the benefit of access to the Court-appointed Monitor, the Court-appointed CRO, the public website for these proceedings maintained by the Monitor at http://cfcanada.fticonsulting.com/cashstorefinancial, and the Court.

12. Counsel to the Indenture Trustee has advised that no Noteholders have contacted the Indenture Trustee.[9]

13. The members of the Ad Hoc Committee have advised Goodmans that the Indenture Trustee has delivered no notices of any kind to Noteholders regarding these CCAA proceedings, not even a notice of the commencement of these CCAA proceedings.

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[8] Affidavit of Bradley Wiffen of Goodmans LLP sworn May 21, 2014 (the "**Goodmans Affidavit**"), AHC Responding Record, Tab 3, Exhibit "A", Section 6.12 of the Indenture.

[9] Affidavit of Patricia Wakelin of Computershare sworn May 16, 2014 (the "**Computershare Affidavit**"), AHC Responding Record, Tab 4, Exhibit "E", response to question #6.

Discussions with the Indenture Trustee to Date

14. The members of the Ad Hoc Committee hold approximately 65% of the aggregate principal amount of the Notes. Pursuant to the Indenture, the holders of a majority of the aggregate principal amount of the Notes may direct the Indenture Trustee in respect of the time, method or place of conducting (or not conducting) any proceeding or exercising any remedy (or not exercising any remedy) in respect of the Notes.[10]

15. After the filing for CCAA protection on April 14, 2014, Goodmans advised the Indenture Trustee and counsel to the Indenture Trustee on several occasions (in conference calls, in emails and in person) that (i) the members of the Ad Hoc Committee held more than a majority of the Notes, and (ii) the members of the Ad Hoc Committee did not require representation by the Indenture Trustee in this case, and would not support the duplicative cost of any separate and additional representation by the Indenture Trustee in this severely cost-constrained case.[11]

16. On May 8, 2014, Goodmans provided the Indenture Trustee and its counsel with the names of the Ad Hoc Committee members, and the aggregate holdings of the Ad Hoc Committee, on a strictly confidential basis.[12] (The statement made in Computershare's motion record dated May 22, 2014 (at paragraph 6) that Goodmans has not provided this information is incorrect.)[13]

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[10] Goodmans Affidavit, AHC Responding Record, Tab 3, Exhibit "A", Section 6.05 of the Indenture.

[11] See, for example, Goodmans Affidavit, AHC Responding Record, Tab 3, Exhibit "B", emails of Robert J. Chadwick dated April 25, 2014 and May 1, 2014.

[12] Goodmans Affidavit, AHC Responding Record, Tab 3, Exhibit "C", emails of Brendan O'Neill of Goodmans LLP dated May 6, 2014-May 8, 2014.

[13] Counsel to the Indenture Trustee also requested further information concerning the individual holdings of each member of the Ad Hoc Committee and the identity of their DTC participant, if any. While Goodmans does not consider this additional information to be relevant or necessary to the discussions regarding the development of a

17. On May 6, 2014, Goodmans, on behalf of the Ad Hoc Committee, provided counsel to the Indenture Trustee with a proposal for a reasonable "protection package" for the Indenture Trustee in connection with a formal "no action" direction that would be provided to the Indenture Trustee as part of a settled protection package. This proposal was supported by the CRO and the Monitor.[14]

18. As described in the email delivering the proposal, the purpose of the proposal was to provide the Indenture Trustee with a formal "no action" direction from more than a majority of the Noteholders pursuant to Section 6.05 of the Indenture, coupled with a reasonable set of related protections for the Indenture Trustee so that it could reasonably rely on that direction for this case, all with a view to minimizing unnecessary cost and duplication in this case, in accordance with the views of more than a majority of the Notes, the Monitor, the CRO and Coliseum. As counsel to the Ad Hoc Committee, Goodmans felt that it was necessary in this case to try and develop an up-front direction and protection package with the Indenture Trustee so that only reasonable costs would be incurred in accordance with the particular facts and circumstances of this case, which include, among other things, an organized and substantial Ad Hoc Committee of significant Noteholders with separate advisors, and severe cost-constraints.

19. In response, counsel to the Indenture Trustee advised that:

(a) the members of the Ad Hoc Committee would also be required to personally indemnify the Indenture Trustee in respect of any such direction;

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reasonable protection package for the Indenture Trustee, this additional information was also collected and provided to the Indenture Trustee on May 22, 2014, on a strictly confidential basis.

[14] Goodmans Affidavit, AHC Responding Record, Tab 3, Exhibit "D", email of Brendan O'Neill of Goodmans LLP dated May 6, 2014.

(b) *notwithstanding any such formal direction and personal indemnity*, the Indenture Trustee may not consider itself bound by any such formal direction, even if delivered; and

(c) the Indenture Trustee continued to insist on a cost level for the Indenture Trustee and its advisors that the Ad Hoc Committee considers excessive and inappropriate in light of the facts and circumstances of this case, including the contemplated "no action" direction to be delivered from approximately 65% of the Noteholders.[15]

20. Based on these responses, the Ad Hoc Committee has not been able to achieve a reasonable, consensual "protection package" with the Indenture Trustee – and the Indenture Trustee now seeks a Court order directing payment of uncapped fees and expenses and uncapped protection under the Administration Charge. The Ad Hoc Committee is opposed to any such relief being granted for the reasons set out in this Response. The Ad Hoc Committee has proposed an alternative form of solution under Part V of this Response.

III. POSITION OF THE AD HOC COMMITTEE

21. The members of the Ad Hoc Committee represent the largest stakeholder group in these proceedings and, as the group most likely to be affected and compromised by these proceedings, will be required to bear the cost of these proceedings from their recoveries.

22. The members of the Ad Hoc Committee do not support any Court-ordered requirement to pay the fees and expenses of the Indenture Trustee, the Collateral Trustee, their US and Canadian

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[15] See, for example, (i) Wakelin Affidavit, AHC Responding Record, Tab 4, para. 25; and (ii) Wakelin Affidavit, AHC Responding Record, Tab 4, Exhibit "C", letter of Dickinson Wright dated April 25, 2014.

counsel or their proposed financial advisor, and do not support the inclusion of any of the foregoing into the Administration Charge.

23. The Indenture Trustee has not cited or met the test for inclusion in the Administration Charge, and the same test and principles apply to their request for a Court order directing that all fees and expenses of the Indenture Trustee (and their counsel and financial advisors, etc.) be paid by the debtor.

The Applicable Legal Tests

24. Prior to the 2009 amendments to the CCAA, administration charges were granted pursuant to the inherent jurisdiction of the Court. Section 11.52 of the CCAA now expressly provides that the Court has jurisdiction to grant an administration charge:

> ***11.52(1) Court may order security or charge to cover certain costs*** – On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge – in an amount that the court considers appropriate – in respect of the fees and expenses of:
>
> (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
>
> (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
>
> (c) ***any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.***
>
> CCAA, section 11.52(1).[16]

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[16] AHC Responding Record, Tab 5.

25. This section is permissive, and does not contain any specific criteria for a court to consider in granting such a charge.

26. In *Re Canwest Global* and *Re Canwest Publishing*, administration charges were granted pursuant to s. 11.52(1). In *Re Canwest Publishing*, Pepall J. provided a non-exhaustive list of factors to be considered in approving an administration charge, including:

> (a) the size and complexity of the businesses being restructured;
>
> (b) the proposed role of the beneficiaries of the charge;
>
> (c) whether there is an unwarranted duplication of roles;
>
> (d) whether the quantum of the proposed charge appears to be fair and reasonable;
>
> (e) the position of the secured creditors likely to be affected by the charge; and
>
> (f) the position of the Monitor.[17]

27. Each of these factors is addressed below.

Factor (a) – The size and complexity of the business being restructured

28. All CCAA proceedings have their complexities, but a predominant characteristic of this proceeding, as this Court is well aware, is that it is severely cost-constrained. There is no room whatsoever for duplication of cost in these proceedings and the level of cost that the Indenture Trustee seeks will, in the circumstances of this case and the existing representations, be duplicative, unnecessary and unreasonable.

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[17] *Re Canwest Publishing Inc./Publications Canwest Inc.*, 2010 ONSC 222, 2010 CarswellOnt 212 (Ont. S.C.J. [Commercial List]) at para. 54, AHC Responding Record, Tab 6.

Factors (b) and (c) – The proposed role of the beneficiaries of the charge and whether there is unwarranted duplication of roles

29. All of the Senior Lenders are already represented by individual counsel and all significant known Noteholders have retained, and are represented by, the Ad Hoc Committee and its advisors. Any other Noteholders can have access to the Ad Hoc Committee, its advisors, the Court-appointed Monitor, the CRO, and their respective advisors, at any time. Counsel to the Indenture Trustee has advised that no Noteholder has contacted the Indenture Trustee.

30. On these facts and circumstances, there is no need for the Indenture Trustee to be established as part of the Administration Charge or for the Court to order payment of its (and its counsels and financial advisors, etc.) fees and expenses in this case. On these facts and circumstances, it would be duplicative and unwarranted to do so.

Factor (d) – Whether the quantum of the proposed charge appears to be fair and reasonable

31. The Indenture Trustee seeks uncapped access to the Administration Charge and an uncapped order of the Court directing payment of its fees and expenses. That is not reasonable under the facts and circumstances of this case, for the reasons discussed.

Factor (e) – The position of the secured creditors likely to be affected by the charge

32. The members of the Ad Hoc Committee hold approximately 65% of the secured Notes and are affected by the Administration Charge. The members of the Ad Hoc Committee do not support inclusion of the Indenture Trustee, the Collateral Agent and their various advisors in the Administration Charge on the basis and terms requested by the Indenture Trustee.

Factor (f) – The position of the Monitor

33. The Ad Hoc Committee understands that the Monitor will provide its views in a Report to be filed with the Court on or before May 30, 2014, pursuant to the motion schedule established for this matter.

Section 11.52(1)(c) – Charge must be necessary for effective participation in CCAA proceeding

34. Per the language of s. 11.52(1)(c), the Court must also be satisfied that the charge requested is necessary for the beneficiary's effective participation in the CCAA proceeding. Here, neither the inclusion of the Indenture Trustee and the Collateral Trustee and their advisors into the Administration Charge, or an Order directing payment of their fees and expenses, is necessary for their participation in this case given that (i) no Senior Lenders require representation by the Collateral Trustee and (ii) more than a majority of the Noteholders have advised that they want the Indenture Trustee to take "no action" in this case and incur no cost, as they are already represented by the Ad Hoc Committee and its advisors. In addition, any and all Noteholders can have access to the Ad Hoc Committee, the Monitor, the CRO and their respective advisors.

The Terms of the Indenture

35. The Ad Hoc Committee also submits that its position is consistent with the terms of the Indenture.

36. Under Section 6.05 of the Indenture, the holders of a majority of the aggregate principal amount of the Notes may direct the Indenture Trustee in respect of the time, method or place of conducting (or not conducting) any proceeding or exercising any remedy (or not exercising any

remedy) in respect of the Notes.[18] Section 6.05 confirms that the Indenture Trustee has no affirmative duties beyond any such direction delivered.

> **Section 6.05 Control by Majority**. Subject to the terms of the Collateral Documents, Holders of a majority in principal amount of the then total outstanding notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. The Trustee, however, may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee reasonably determines is unduly prejudicial to the rights of any other Holders of a Note (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such direction is unduly prejudicial to such Holders) or that would involve the Trustee in personal liability.

37. Likewise, Section 6.12 of the Indenture confirms that, in an insolvency proceeding, the Trustee has no right to negotiate on behalf of Noteholders. Section 6.12 of the Indenture states that:

> Nothing herein contained shall be deemed to authorize the Trustee and the Collateral Agent to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or rights of any Holder, or to authorize the Trustee and the Collateral Agent to vote in respect of the claim of any Holder in any such proceeding.[19]

38. As acknowledged in the Wakelin Affidavit, Section 6.12 limits the activities of the Indenture Trustee in an insolvency proceeding to:

(a) filing a proof of claim;

(b) participating as a member of any official committee of creditors (if there is one, and if appointed or invited to do so); and

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[18] Goodmans Affidavit, AHC Responding Record, Tab 3, Exhibit "A", Section 6.05 of the Indenture.

[19] Goodmans Affidavit, AHC Responding Record, Tab 3, Exhibit "A", Section 6.12 of the Indenture.

(c) receiving distributions.

39. Finally, while an indenture trustee may be subject the standard of care of a "prudent person" in the case of an event of default, that standard is informed, as acknowledged in the Affidavit of Evan Flaschen sworn May, 16, 2014, by the facts and circumstances of the situation at hand.[20] Here, those factors would include the expressed wishes of more than a majority of the Noteholders (whether formalized under a Section 6.05 direction or otherwise) and the severely cost-constrained nature of this case, among other factors.

40. In the Ad Hoc Committee's view, the Indenture Trustee's motion overreaches and offends all of these provisions of the Indenture in that the relief requested would effectively (i) ignore any direction delivered by more than a majority of the Noteholders to the Indenture Trustee to "stand still" and (ii) on a cost basis, effectively mandate representation of all Noteholders by the Indenture Trustee, regardless of their right and preference to negotiate for themselves or through other counsel, in accordance with Sections 6.05 and 6.12 of the Indenture.

The U.S. Affidavit and *In re Homburg*

41. The Indenture Trustee has elected to incur the cost of submitting an affidavit of a U.S. lawyer to provide "expert testimony" on indenture trustee matters under U.S. law (the "**US Affidavit**").

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[20] Affidavit of Evan D. Flaschen sworn May 16, 2014, Computershare Motion Record dated May 16, 2014, Tab 3, para. 13, Computershare motion record page number 300.

42. The US Affidavit is irrelevant because:

(a) it discusses mainly the role of indenture trustees that have been formally appointed by the office of the United States Trustee to serve on official committees of unsecured creditors formed as a matter of statutory requirement in a Chapter 11 case, when (i) this is not a Chapter 11 case, (ii) we have no official committees in Canada and (iii) the members of the Ad Hoc Committee have in any event determined in their reasonable business judgment that they do not require representation by the Indenture Trustee in any manner; and

(b) beyond that, it simply discusses what an indenture trustee "may" elect to do in an insolvency proceeding, which is not relevant to the request being made of the Court on this motion.

39. Moreover, the US Affidavit is incomplete in that it fails to inform the Court that, under applicable U.S. law, the fees and expenses of an indenture trustee in the U.S. are not payable by a chapter 11 estate unless the indenture trustee has shown that it has made a "substantial contribution" to the reorganization. Here, the Indenture Trustee has asked the Court to direct payment of its fees and expenses without even meeting that test, which does not apply in Canada in any event.

43. In the recent decision of Mr. Justice Gouin of the Quebec Superior Court in *Re Homburg Invest Inc.*,[21] the indenture trustee sought payment of its fees and expenses from the CCAA

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[21] *Re Homburg Invest Inc.*, 2014 QCCS 980, 2014 CarswellQue 2155 (Que. Sup. Ct.) ("***Homburg***"), AHC Responding Record, Tab 7.

debtor on the basis that the indenture trustee had made a "substantial contribution" to the case. In considering the matter, the Quebec Court reached the following conclusions:

(a) Under section 503(b)(5) of the US *Bankruptcy Code,* the reasonable fees and expenses of an indenture trustee are only paid as an administrative expense of a US debtor where the indenture trustee has made a "substantial contribution" to the case;[22]

(b) US case law has restrictively applied the "substantial contribution" concept in considering several factors, including:

(i) whether the actions fostered and enhanced, rather than inhibited or interrupted, the restructuring;

(ii) whether the expenses were duplicative of other parties' expenses; and

(iii) whether the services conferred a direct and demonstrable benefit on all stakeholders;[23]

(c) the Quebec Court concluded that in that case the indenture trustee had not made a substantial contribution;[24]

(d) the Quebec Court concluded that, in any event, the concept of "substantial contribution" does not apply in Canada, and should not be imported to Canada;[25]

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[22] *Homburg*, at para. 77.

[23] *Ibid.*, at para. 78.

[24] *Ibid.*, at para. 83.

[25] *Ibid.*, at para. 84.

(e) in Canada, s. 11.52(1)(c) of the CCAA, as discussed above, governs the question of payment of fees and expenses by a Canadian debtor, and the granting of any related charges;[26]

(f) that a restructuring process is very expensive, and every effort should be made to reduce and control the related fees and expenses;[27]

(g) that there must be "clear added value for the benefit of all stakeholders" if the fees and expenses of an interested person's financial, legal or other experts are to be paid by a debtor;[28] and

(h) that regardless of any contractual provisions in an indenture providing for the payment of an indenture trustee's fees and expenses, no fees and expenses of an indenture trustee should be paid or reimbursed by a debtor if there is no post-filing agreement thereon, including applicable control rules, with the monitor and the debtor, and confirmed by the Court.[29]

44. The efforts of the Ad Hoc Committee to date have been aimed at developing a consensual direction and protection package for the Indenture Trustee that is appropriate for the facts and circumstances of this case, or a set of "applicable control rules" as the Court said in *Homburg*. To date, these efforts have been unsuccessful, and what the Indenture Trustee requests for itself in its motion is not reasonable.

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[26] *Ibid.*, at paras. 85-87.

[27] *Ibid.*, at para. 101.

[28] *Ibid.*, at para. 102.

[29] *Ibid.*, at paras. 111 to 116

IV. SUMMARY

45. The Ad Hoc Committee opposes the relief sought by the Indenture Trustee in respect of both the Fee Request and the Charge Request because:

(a) The applicable legal tests have not been cited or met;

(b) No stakeholder supports the relief requested;

(c) No secured creditor supports the charge requested;

(d) All Senior Lenders and significant Noteholders are already represented in this case, and all such stakeholders (known and unknown) already have access to the Court-appointed Monitor, the CRO, the Ad Hoc Committee and their respective advisors;

(e) Computershare has provided no evidence of any Senior Lender or any Noteholder that requires representation by Computershare;

(f) The Ad Hoc Committee is concerned that any uncapped direction to pay the fees and expenses of Indenture Trustee, the Collateral Agent, their legal counsel and purported financial advisor, and any uncapped inclusion in the Administration Charge, will lead to unnecessary and inappropriate costs being incurred in this severely cost-constrained case;

(g) All enforcement action is stayed in this case and the only action that may be required of the Indenture Trustee is for (i) the filing of a proof of claim (which may not be necessary as the Note debt is admitted) or (ii) the distribution of any recoveries in respect of the

Notes. In any event, any administrative action that may be required of the Indenture Trustee can be dealt with on a case-by-case basis or through the Monitor; and

(h) Any issues of alleged conflict can be addressed if and when they arise, and do not require the involvement of the Indenture Trustee in any event given that (i) separate counsel is already present for the DIP Lenders, the Senior Lenders and the Noteholders, and (ii) beyond that, this proceeding has the benefit of a Court-appointed Monitor and CRO, who can advise and assist on any such matters, if they arise.

V. ALTERNATIVE SOLUTION

46. The Ad Hoc Committee represents the largest and most affected stakeholder group in these proceedings, does not require or support the relief requested by the Indenture Trustee, and will be required to bear the cost of these proceedings from their recoveries, which are likely to be impaired.

47. Instead of the relief sought by the Indenture Trustee, the Ad Hoc Committee suggests that an appropriate direction and protection package for the Indenture Trustee for this case would be for (i) the members of the Ad Hoc Committee to provide a formal standstill direction to the Indenture Trustee in form attached to the Ad Hoc Committee's Responding Record at Tab 9 and (ii) for the Court to order that the Indenture Trustee shall have no liability for accepting and complying with that direction, unless otherwise ordered by a majority of the Noteholders or the Court. This would provide the Indenture Trustee with comfort that it is protected in following that direction, that it is not required to take any other action in this case (unless otherwise directed or ordered by the Court), and would help to minimize costs in this case. It would also

allow any other Noteholder to appear before the Court, the Monitor or the CRO at any time if additional assistance is required or appropriate.

48. The Ad Hoc Committee submits that this would constitute an appropriate protection package or set of "control rules" for the Indenture Trustee, on the facts and circumstances of this case.

VI. COSTS

49. The Ad Hoc Committee seeks an order that:

(a) the Indenture Trustee pay the costs of the parties in responding to this motion in an amount to be fixed by the Court;

(b) the costs incurred by the Indenture Trustee in respect of this motion are not properly chargeable to the Company or the Noteholders under the Indenture, and must be borne by the Indenture Trustee in its personal capacity (together with the costs under (a) above); and

(c) all rights of the Company and the Noteholders in respect of the reasonableness of the costs incurred by the Indenture Trustee and its advisors to date are expressly reserved.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Robert J. Chadwick

Brendan D. O'Neill

Counsel for the Ad Hoc Committee of Cash Store Noteholders

Tab 2

Court File No.

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 THE CASH STORE FINANCIAL SERVICES INC., THE CASH STORE INC., TCS CASH STORE INC., INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., 1693926 ALBERTA LTD. DOING BUSINESS AS "THE TITLE STORE"

APPLICANTS

AFFIDAVIT OF STEVEN CARLSTROM

(Sworn April 14, 2014)

I, Steven Carlstrom, of the County of Strathcona, in the Province of Alberta, the Vice President, Financial Reporting of the Applicant, The Cash Store Financial Services Inc. ("Cash Store Financial"), MAKE OATH AND SAY:

Introduction

1. This Affidavit is made in support of an Application by Cash Store Financial and its affiliated companies The Cash Store Inc., TCS - Cash Store Inc., Instaloans Inc., 7252331 Canada Inc., 5515433 Manitoba Inc., and 1693926 Alberta Ltd. doing business as "The Title Store" (collectively "Cash Store" or the "Applicants") for an Initial Order and related relief under the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended (the "CCAA").

2. I joined Cash Store Financial on August 27, 2012 as Vice President, Financial Reporting. In my role I report directly to the Chief Financial Officer and I am responsible for all of Cash Store Financial's external financial reporting obligations. My duties also include oversight of payroll, corporate accounting, and accounting for Cash Store Financial's off balance sheet arrangements with third-party lenders ("TPLs"), as described below. As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources for information, I believe them to be true. In preparing this affidavit I have also consulted with other members of Cash Store Financial's senior management team (the "Senior Management"), and the Special Committee (as defined below) and reviewed certain information provided by financial advisors to the Special Committee as well as Cash Store's public disclosure documents filed on SEDAR.

3. Cash Store is a leading provider of alternative financial products and services, serving individuals for whom traditional banking may be inconvenient or unavailable. Cash Store owns and operates Canada's largest network of retail branches in the alternative financial products and services industry, with 509 branches across Canada operating under the banners "Cash Store Financial", "Instaloans" and "The Title Store." Cash Store also owns and operates 27 branches in the United Kingdom (the "UK") under the banner "Cash Store Financial". Cash Store Financial is listed on the Toronto Stock Exchange (TSX:CSF). Cash Store Financial was traded on the New York Stock Exchange until it voluntarily delisted on February 28, 2014 (NYSE: CSFS).

4. Cash Store acts as both a broker and lender of short-term advances and offers a range of other products and services to help customers meet their day to day financial service needs. Cash Store uses a combination of payday loans and lines of credit as its primary consumer

lending product offerings and earns fees and interest income on these consumer lending products. Cash Store also offers a wide range of financial products and services including bank accounts, prepaid MasterCard, private label credit and debit cards, cheque cashing, money transfers, payment insurance and prepaid phone cards. Cash Store has arrangements with a variety of companies to provide these products.

5. Cash Store employs approximately 1,840 hourly and salaried employees in Canada and the UK who rely on the continued existence of Cash Store for their livelihoods. Other stakeholder groups (discussed in greater detail below) include Cash Store Financial's senior secured lenders under its credit agreement, holders of Cash Store Financial's 11.5% senior secured notes, TPLs, other creditors, customers, shareholders, landlords, and contingent creditors such as class action plaintiffs. Cash Store's corporate headquarters and Senior Management are located in Edmonton, Alberta.

6. Cash Store is facing immediate and multiple challenges to its continued operations, including regulatory issues that affect its core business strategy, multiple class actions requiring defence across Canada and in the U.S., cash flow issues, and the resulting deterioration of its liquidity position. Significantly, on February 13, 2014, the Ontario Registrar of the Ministry of Consumer Services ("Ontario Registrar") issued a proposal to refuse to issue a lender's license to Cash Store Financial's subsidiaries, The Cash Store Inc. and Instaloans Inc., under the *Payday Loans Act, 2008*, S.O. 2008, Ch. 9 ("Payday Loans Act"). On March 27, 2014, the Ontario Registrar issued a final notice of its decision not to grant a license under the Payday Loans Act. Further, a recent decision of the Ontario Superior Court of Justice determined that Cash Store could not sell its line of credit products in Ontario. Cash Store is therefore not currently permitted to sell any payday loan products or line of credit products in Ontario.

7. Over the course of the past several months, Cash Store engaged in significant efforts to pursue a restructuring outside of a formal insolvency proceeding. These efforts include changes to the composition of Cash Store Financial's Board of Directors, the creation of a Special Committee of the Board of Directors to examine and pursue strategic alternatives, hiring of legal and financial restructuring advisors, lengthy negotiations with the Ontario Registrar with respect to the Applicants' licenses to act as a lender under the Payday Loans Act, the commencement of a mergers and acquisition process to seek a sale or significant investment in Cash Store and negotiations with the Applicants' stakeholders. Each of these efforts is described in more detail below.

8. Cash Store's liquidity position continues to significantly deteriorate and the current situation is dire. There is too much uncertainty and too many legal and business impediments to continue the strategic alternatives process outside of an insolvency proceeding. Senior Management and the Special Committee have expressed concerns regarding Cash Store's ability to sustain adequate liquidity to fulfill current business objectives and maintain going concern operations without commencing a CCAA process. Cash Store is unable to meet its liabilities as they become due and is therefore insolvent.

9. Subject to certain conditions including the granting of the proposed Initial Order, the DIP Lenders (defined below) have agreed to provide the Applicants with an interim financing facility (the "DIP Facility") of up to approximately $20.5 million. The DIP Facility is intended to provide the Applicants with adequate liquidity to satisfy their working capital requirements and to seek to complete a restructuring as part of this CCAA proceeding. Cash Store is facing the stark reality that it is unable to continue going concern operations to preserve enterprise value without the DIP Facility.

10. Based on my own knowledge of Cash Store's business and my discussions with Senior Management and the financial advisors to the Special Committee, it is my belief that Cash Store can be a viable business after undergoing a restructuring under the CCAA. In order to continue going concern operations during Cash Store's transition to a new business model or a potential sale, the Applicants require a stay of proceedings and related relief under the CCAA. The Applicants are seeking CCAA protection to enable Cash Store to continue to operate as a going concern and be provided with the breathing space to restructure its affairs. Cash Store intends to continue its stakeholder discussions with the assistance of the proposed Monitor should the Initial Order be granted. A stay will enable the Applicants to evaluate restructuring options concurrently with a potential sale of all or a portion of the Cash Store business, with the ultimate goal of developing a plan of arrangement or compromise to restructure the business in a manner designed to maximize value to the extent possible for its stakeholders.

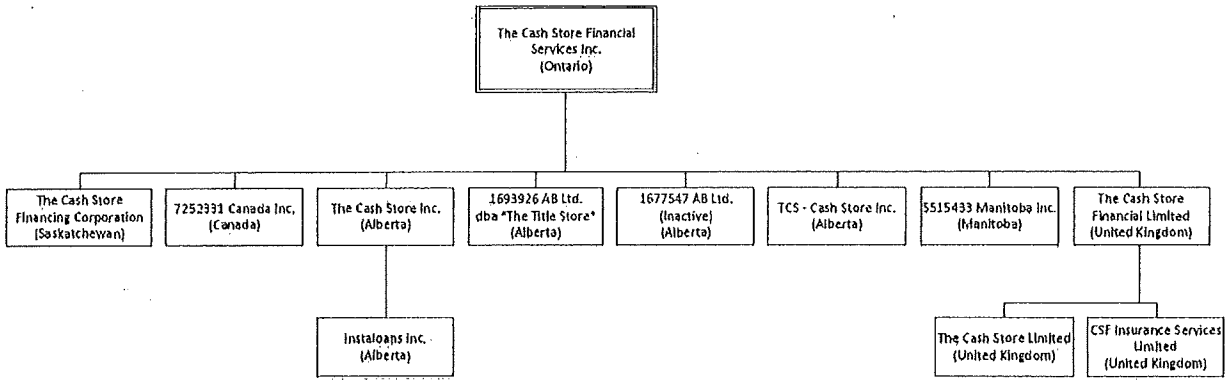
Corporate Structure of the Applicants

11. Cash Store Financial is a publicly-held Ontario corporation. The other Applicants are all privately-held corporations that are direct or indirect subsidiaries of Cash Store Financial. Cash Store Financial is the only broker of short-term advances and provider of other financial services in Canada publicly traded on the Toronto Stock Exchange (TSX:CSF). Cash Store Financial was traded on the New York Stock Exchange until it voluntarily delisted on February 28, 2014 (NYSE: CSFS).

12. As of December 31, 2013, Cash Store Financial had issued and outstanding share capital of 17,571,813 common shares. Cash Store Financial is authorized to issue unlimited common shares with no par value. As at December 11, 2013, Cash Store Financial's directors

and senior executive officers together beneficially owned 3,915,700 (22.2%) of the outstanding common shares. Of that, 3,640,300 (20.7%) of the outstanding common shares are beneficially owned by Gordon Reykdal, a Director and the Chief Executive Officer of Cash Store Financial. Coliseum Capital Management, LLC ("Coliseum") owns 19.27% of the common shares of Cash Store Financial.

13. The chart set out below shows the organizational structure of the Applicants and related companies. Cash Store Financial directly or indirectly owns 100% of the issued and outstanding shares of each of the Applicants. Included in parentheses within the corporate organization chart is the respective jurisdiction of incorporation of each entity.



(a) **Description of Entities**

14. Cash Store Financial is the holding company for Cash Store. Eugene Davis is Chairman of the Board, and the Board of Directors includes Cash Store Financial's CEO Gordon Reykdal, Edward McClelland, Timothy Bernlohr, Thomas Fairfield, and Donald Campion. Mr. Reykdal founded Cash Store in 2001 and has been on the Board of Directors since that time. Mr. McClelland joined the Board of Directors in 2005 and was appointed the Chief Executive Officer of Cash Store Australia in January 2008. Mr. Davis joined the Board of Directors on June 26, 2013, and Mr. Bernlohr, Mr. Fairfield, and Mr. Campion all joined the Board of Directors on

August 13, 2014. Mr. Davis is also the Chairman of the Special Committee and Mr. Bernlohr, Mr. Fairfield, and Mr. Campion are also members of the Special Committee (discussed below).

15. The Cash Store Inc. and Instaloans Inc. both act as lenders and/or brokers. These two companies are the main active subsidiaries of Cash Store Financial, operating in all of the provinces and territories where Cash Store has a presence.

16. The following are the remaining Canadian subsidiaries:

(a) **1693926 Alberta Ltd.** runs The Title Store, which offers loans where the customer provides a motor vehicle title as collateral. This company is unable to meet its liabilities as they come due.

(b) **The Cash Store Financing Corporation** was incorporated in Saskatchewan to act as a lender for Cash Store's "Elite" Line of Credit, however, this subsidiary was never used, is inactive, and is not an Applicant in these proceedings.

(c) **7252331 Canada Inc.** was incorporated to act as a direct lender for payday loans in British Columbia and act as the lender for Cash Store's "Elite" Line of Credit, which Cash Store recently ceased offering. While 7252331 Canada Inc. is not active, it holds some defaulted payday loans receivable that are held at a zero value as well as the Elite Line of Credit receivables.

(d) **1677547 Alberta Ltd.** was created to maintain the "Apply Pronto" internet lender banner, however Cash Store never launched the internet lending business and this entity is only used to maintain a website that aggregates customer leads and directs them to Cash Store's physical branches. It is not an Applicant in these proceedings.

(e) **TCS – Cash Store Inc.** acts as the lessee for all of the leased corporate stores.

(f) **5515433 Manitoba Inc.** holds real property in Manitoba and is the landlord for two Manitoba corporate stores.

17. Gordon Reykdal is the sole director of the three UK companies: The Cash Store Financial Limited (a holding company), The Cash Store Limited (the lender), and CSF Insurance Services Limited (a service provider). The UK companies are not currently Applicants in these proceedings, however, Cash Store may seek to include them in these proceedings should circumstances warrant.

(b) **Investments in Foreign Operations**

18. Cash Store Financial also has investments in the following foreign operations:

- 18.3% of the outstanding common shares of The Cash Store Australia Holdings Inc. ("AUC"), which operated payday loan branches in Australia under the name "The Cash Store Pty". Gordon Reykdal and Edward McClelland are directors of AUC. AUC is publicly listed on the TSX Venture exchange under the symbol "AUC". In December of 2012 the Alberta, Ontario and British Columbia Securities Commissions issued cease trade orders in respect of the shares of AUC for failure to file financial statements. On September 13, 2013, The Cash Store Pty appointed a voluntary administrator pursuant to Section 436A of the *Australian Corporations Act* 2001. The Administrator has taken control of the operations and assets of The Cash Store Pty and an application to have the cease trade orders revoked has been withdrawn by AUC.

- 15.7% of the outstanding common shares of RTF Financial Holdings Inc., a private company in the business of short-term lending by utilizing highly automated mobile

technology (SMS text message lending). RTF Financial Holdings Inc. currently operates in the UK but is not granting new loans at this time.

(c) **Banking and Cash Management System**

19. Cash Store Financial's active subsidiaries have their own bank accounts with CIBC and each branch's account has its own bank account identifiers. The bank accounts do not segregate the cash belonging to each subsidiary into Unrestricted and Restricted Cash (discussed below). Unrestricted and Restricted Cash are comingled. There is a central cash management system in place, including all bank reconciliations, all accounts payable and payroll (with the exception of the UK corporations, which processes their own accounts payable and payroll).

20. In order to maintain minimum bank balances and prevent overdrafts (which are not permitted by CIBC), cash is transferred between legal entities and bank accounts as necessary on a daily basis.

21. In addition to its accounts with CIBC, Cash Store has certain bank accounts with RBC and BMO which accept deposits from branches in certain locations where a CIBC branch is not available. As needed, cash is swept from the RBC and BMO accounts to CIBC operating accounts. As funding is required for the UK operations, Cash Store will purchase British Pounds Sterling and transfer funds from CIBC to the UK companies' bank accounts with Barclays.

22. The chart set out below summarizes the movement of funds:

Outgoing Cash Flows - Consumer Lending	
Prepaid Debit/ Credit Card	If a customer elects to receive his/her loan on a prepaid card product, the card is loaded by a third-party service provider, Direct Cash Payments Inc. The cash for the total card loads is settled to Cash Store's operating accounts by Direct Cash Payments Inc. daily, one day in arrears via a pre-authorized debit. The reconciliation process is done centrally.

EFT	If a customer elects to receive his/her loan via EFT, Cash Store's internal system aggregates the EFTs and they are processed centrally twice per day.
Cheque	If a customer elects to receive his/her loan via Cheque, each branch is equipped with blank cheque stock and prints the cheque itself.
Incoming Cash Flows - Consumer Lending	
POS Payments	Customers may elect to repay obligations through POS terminals at each branch. Funds are collected by a third-party payment processor, Direct Cash Payments Inc. on Cash Store's behalf. The funds are remitted via EFT to Cash Store on a daily basis one day in arrears.
Pre-Authorized debits	Pre-authorized debits to customer accounts are processed by a third-party, DC Bank, on behalf of Cash Store. PAD collections are settled to Cash Store 5 business days after the effective date of the PAD.
Cash/Cheques	Cash and cheques may be received by the branches or the centralized collections centre. Each branch performs its own physical daily deposits of cash and cheques.
Other Payment Methods	Customers are also able to pay via other electronic means, such as bill payment functionality with their financial institution. These payments are processed centrally.
Outgoing Cash Flows - Corporate (Accounts Payable)	
Wire transfer	All wire transfers are processed centrally by treasury through CIBC or Barclays.
EFT	All EFT's are processed centrally through CIBC or Barclays.
Cheque	All accounts payable cheques are processed centrally either via the Canadian or UK head office.

(d) **Chief Place of Business**

23. Cash Store's chief place of business is the Province of Ontario. There are 176 Cash Store branches located in Ontario, which is the largest number of Cash Store branches in any province or territory where Cash Store operates. Currently, Cash Store has approximately 470 employees in Ontario, more people than Cash Store employs in any other province or territory. Cash Store's Chief Compliance and Regulatory Affairs Officer is located in Toronto

because Cash Store is facing its most significant regulatory challenges in Ontario (discussed in more detail below).

24. The Ontario operations of Cash Store accounted for $57.6 million in revenue for FY 2013, roughly 30% of Cash Store's total revenue, more revenue than any other province or territory. Furthermore, Cash Store Financial is listed on the TSX and files all of its public disclosure documents in Ontario. Cash Store Financial is a corporation incorporated under the Ontario *Business Corporations Act*, R.S.O. 1990, c. B16 and its registered office is located in Toronto. The impact of court and regulatory decisions (discussed below) has significantly curtailed Cash Store's Ontario revenues. Addressing the Ontario regulatory issues will be one of the key aspects of Cash Store's proposed CCAA proceeding.

The Business of Cash Store Financial

(a) Canadian and UK Payday Lending Industries

25. The Canadian payday lending market is $2.5 billion in loan volume annually, and consists of 1.8 – 2.5 million consumers. It has been a stable market with regard to market size and risk profile and remained stable through recent macroeconomic fluctuations. Neither demand for Cash Store services nor loss rates were negatively affected through the 2008/2009 recession.

26. The Canadian market is not growing and is largely saturated by a number of providers. Significant new entrants to the Canadian market have been on-line rather than branch based. The payday lending market in Canada is dominated by two main providers, Cash Store and Money Mart, each of which had approximately 35.0% market share before the recent suspension of Cash Store's brokering activities in Ontario. The rest of the market is made up of

various smaller providers of loans. Two U.S. providers have or are currently withdrawing from the market. Advance America (the largest U.S. payday lender) withdrew in 2012 and currently Cash Max is converting 29 branches in Ontario from payday lending to Cash Converters.

27. The UK payday lending market is still developing. The estimated market is £2 to £2.2 billion in 2011/12, up from an estimated £900 MM in 2008/09. This corresponds to between 7.4 million and 8.2 million new loans issued.

(b) **Cash Store Customers**

28. It is estimated that forty-seven percent of Canadians live from paycheck to paycheck. Of this forty-seven percent segment, approximately twenty percent (seven to ten percent of Canadians) experience cash flow problems and use payday loans. Cash Store customers rely on the services Cash Store provides, as they often are unable to access traditional bank products from other financial institutions.

29. Cash Store's branches made or arranged over 1.3 million individual advances in FY 2013. Cash Store's customer satisfaction rating is high, at 88% in Canada and 93% in the UK.

(c) **Products and Services**

30. Cash Store acts as both a broker and lender of short-term advances and offers a range of other products and services to help customers meet their day to day financial service needs. The chart set out below summarizes the products offered by Cash Store:

Consumer Loans & Line of Credit	
Payday	- Bridge loans to help customers span temporary cash shortfalls or meet emergency or unexpected expenses

	- Short-term non-collateralized loans - Typically range from $100 to $1,500.
Signature	- Short-term loan against a government source of income (Child Tax, Disability, Pension, Employment Insurance)
Title	- Secured against vehicle, up to 12 months in duration - Can be refinanced or paid out
Lines of Credit	- Up to $5,000 unsecured - Helps customers to rebuild their credit - Customers borrow as needed and repay at any time - Minimum payments are due at regular intervals - Introduced early in FY 2012
Injury Claims	- Immediate cash for personal injury claims awaiting payout - Provided by Rhino Legal Finance Inc., a third-party provider who contracts with Cash Store Financial to provide this service
Diversified Financial Products	
Bank Accounts: Standard & Premium	- Provided by DC Bank, a schedule 1 bank that has a contract with Cash Store Financial to provide this service - Gives customers access to a variety of services - CDIC insured
Cheque Cashing	- Fast turn around - Funds transferred electronically; branches do not hold cash
Prepaid Credit Card	- Supplied by DC Bank and MasterCard - Provides the convenience of a credit card without interest - Can be used online - Preloaded with funds for daily transactional needs and access to cash at ATMs
Prepaid Debit Card	- Supplied by DC Bank - Preloaded with funds for daily transactional needs and access to cash at ATMs
Money Transfer	- Provided by RIA Financial Services, a third party provider who contracts with Cash Store Financial to provide this service - Provides an easy and reliable way to pay bills or send and receive funds worldwide
Payment Insurance	- Covers outstanding loan balances in the event of unexpected

	events such as: involuntary unemployment, accidental injury, critical illness, death, dismemberment

(i) **Payday Loans – Direct Lending: Alberta, British Columbia, Nova Scotia, Saskatchewan, UK**

31. In January 2012, Cash Store Financial completed a private placement of $132.5 million of 11.5% senior secured notes (the "Notes") and used most of the net proceeds of this offering to acquire a portfolio of consumer loans from TPLs. The Notes are discussed in more detail below. With the acquisition of the loan portfolio, Cash Store began funding payday loans directly in Alberta, British Columbia, Nova Scotia, and Saskatchewan. Cash Store also funded payday loans directly in Ontario and Manitoba until the product offering in those provinces was switched to brokered lines of credit. These six provinces all enacted payday loan legislation (discussed below).

32. Cash Store typically arranges for advances to customers that range from $100 to $1,500. In order to receive an advance, a customer is generally required to provide proof of income, copies of recent bank statements, and identification. The customer must then either write a cheque or execute a pre-authorized debit agreement for the amount of the advance plus loan fees. Where customers pay by cheque, Cash Store defers depositing the cheque until the due date of the loan, which is the customer's next payday (normally between 14 days and 31 days, but no later than 62 days as prescribed by regulations).

(ii) **Payday Loans – Brokering: New Brunswick, Newfoundland, Northwest Territories, Prince Edward Island, Yukon**

33. For loans that Cash Store brokers on behalf of customers, the application process and documentation requirements are similar to those for direct lending. After an application is

completed and other relevant information is obtained from a customer, Cash Store brokers the customer's loan request to TPLs. Based on approval criteria established by the TPLs, the customer's eligibility for an advance is assessed. If the customer is approved, Cash Store provides the TPL's loan documentation to the customer. Upon fulfillment of the loan documentation requirements, Cash Store is authorized by the lender to forward the cash advance to the customer on behalf of the lender. When an advance becomes due and payable, the customer must make repayment of the principal and interest owing to the lender through Cash Store, which, is then retained in Cash Store's operating bank account until redeployed to new borrowers. Cash Store earns fees on these transactions. If there is difficulty with the collection process, the customer's account may be turned over to an independent collection agency.

(iii) **Line of Credit Products – Brokering: Manitoba, Ontario**

34. On October 1, 2012 in Manitoba and February 1, 2013 in Ontario, Cash Store launched new line of credit products and stopped offering payday loans in those provinces. The lines of credit are unsecured, medium term revolving credit lines, with regular minimum payments tailored to customers' needs and profiles. The line of credit products are all brokered products, except a small number of Cash Store's "Elite" lines of credit, which Cash Store ceased offering in March 2014. Similar to what is described above for brokered payday loans, TPLs provide the funds for the line of credit, Cash Store arranges the line of credit, and Cash Store earns fees on these transactions. The proceeds from the brokered line of credit products are handled in the same way as the proceeds from the brokered payday loans. Cash Store ceased to offer its line of credit products in Ontario as of February 12, 2014 (discussed below).

(d) **Branch Locations**

35. Cash Store owns and operates Canada's largest network of retail branches in the alternative financial products and services industry, with 509 branches across Canada operating under the banners "Cash Store Financial", "Instaloans" and "The Title Store." Cash Store has a market share of approximately one third of all payday loan branches in Canada.

36. On April 14, 2010, Cash Store opened its first branch in the UK and has since expanded its operations to include 27 branches in the UK under the banner "Cash Store Financial".

37. The typical format for a branch is a small, strategically located storefront in a strip mall. Substantially all of Cash Store's branches are in facilities leased from third party landlords, as is Cash Store's corporate headquarters. Many of Cash Store's branch leases are with large retail landlords who lease several locations to Cash Store. The leases for branches are generally for terms of 5 years with some granting Cash Store options to renew beyond such a term.

38. Cash Store's corporate headquarters are located in Edmonton, Alberta and Cash Store Financial's registered office is located in Toronto, Ontario. Cash Store has branches in all of Canada's provinces and territories except Quebec and Nunavut. The following chart sets out Cash Store's current branch locations by geographical region:

Location	**Number of Cash Store Locations**
Ontario	176
Alberta	120
British Columbia	97
Saskatchewan	33
United Kingdom	27

Location	Number of Cash Store Locations
Manitoba	25
Nova Scotia	25
New Brunswick	14
Newfoundland & Labrador	13
P.E.I.	3
Northwest Territories	2
Yukon Territory	1
Total	**536**

(e) **Employees**

39. Cash Store employs approximately 1,700 hourly and salaried active employees in Canada and approximately 140 employees in the UK who rely on the continued existence of Cash Store for their livelihoods. 170 of Cash Store's active employees are located at the headquarters in Edmonton.

40. A typical branch is staffed by 3 to 4 employees, including both full and part-time associates and a branch manager. Branch managers are compensated through base salary and company-paid benefits, while associates are paid hourly wages. In addition, some of these individuals are eligible to receive profitability bonuses. Cash Store has also established a group RRSP for employees with over one year of service.

41. In addition to the above, Cash Store has a stock option plan for certain employees, officers and directors. In November 2013, Cash Store introduced a share unit plan for senior executives, vice presidents, and/or members of the management team to reduce its reliance on stock options and to incentivize management through payment of compensation related to

appreciation of Cash Store Financial shares and performance goals. No share units have yet been issued. Cash Store also introduced a director deferred share unit plan to link a portion of annual director compensation to the future value of Cash Store Financial shares. Cash Store has issued 219,073 units under the director deferred share unit plan.

42. There are no registered pension plans for Cash Store management or other employees.

(f) **Community Work**

43. Cash Store is committed to social responsibility and to supporting the communities in which it does business. Its fundraising efforts for various charitable organizations make a difference in the lives of Canadians. In the past, Cash Store has partnered with the Canadian Diabetes Foundation to raise money for diabetes research and to build national understanding about the disease. In FY 2013, Cash Store hosted 15 Freedom Runs and sponsored 5 runs for diabetes, helping to contribute over $1 million to this cause.

The Financial Position of Cash Store

44. As a publicly traded company listed on the TSX, Cash Store Financial's consolidated financial statements are filed on SEDAR. A copy of Cash Store Financial's audited consolidated financial statements for the fiscal year ended September 30, 2013 is attached as Exhibit "A". A copy of Cash Store Financial's interim consolidated financial statements for the three months ended December 31, 2013 is attached as Exhibit "B". Certain information contained in the December 31, 2013 consolidated financial statements is summarized below. All amounts in this affidavit are in Canadian Dollars.

(a) **Assets**

45. As at December 31, 2013, Cash Store had total assets of $176,255,000.

(i) **Current Assets**

46. Cash Store's current assets (as at December 31, 2013) represented $78,364,000 of its total assets and consisted of:

(1) Unrestricted Cash - $10,553,000;

(2) Restricted Cash - $6,408,000;

(3) Consumer advances receivable, net - $34,804,000;

(4) Other receivables, net - $8,332,000;

(5) Prepaid expenses and other assets - $2,584,000; and

(6) Income taxes receivable - $15,683,000.

47. The majority of Cash Store's current assets consisted of consumer advances receivable and income taxes receivable. With respect to consumer advances receivable, the above number incorporates appropriate aging of the receivables.

48. "Restricted Cash" (discussed below) can only be used for consumer lending. As at December 31, 2013, $6,408,000 of Restricted Cash included $706,000 of funds held by a financial institution as security related to banking arrangements and $5,702,000 transferred from TPLs in excess of consumer loans written to customers and cumulative losses. As of February 28, 2014, the total amount of Restricted Cash had climbed to $12,961,000.

49. The amounts transferred from TPLs to Cash Store Financial are reflected in the Restricted Cash amounts and certain off-balance sheet accounts receivable. A corresponding liability is recognized to the TPLs in accrued liabilities equal to Restricted Cash.

(ii) **Non-Current Assets**

50. Cash Store's non-current assets (as at December 31, 2013) represented $97,891,000 of its total assets and consisted of:

(1) Deposits and other assets - $2,792,000;

(2) Deferred financing costs - $5,836,000;

(3) Property and equipment, net of accumulated depreciation - $16,735,000;

(4) Intangible assets, net of accumulated amortization - $32,843,000; and

(5) Goodwill - $39,685,000.

51. The majority of Cash Store's non-current assets are made up of property and equipment, intangible assets, and goodwill.

(b) **Liabilities**

52. As at December 31, 2013, Cash Store's total liabilities were approximately $184,984,000. These liabilities consisted of current liabilities of approximately $35,979,000, and non-current liabilities of approximately $149,005,000.

(i) **Current Liabilities**

53. Current liabilities as at December 31, 2013 included the following:

(1) Accounts payable - $2,242,000;

(2) Accrued liabilities - $31,263,000;

(3) Current portion of deferred revenue - $1,000,000;

(4) Current portion of deferred lease inducements - $355,000; and

(5) Current portion of obligations under capital leases and other obligations - $1,119,000.

(ii) **Non-Current Liabilities**

54. Cash Store's non-current liabilities (as at December 31, 2013) included:

(1) Deferred revenue - $ 2,668,000;

(2) Deferred lease inducements - $596,000;

(3) Obligations under capital leases and other obligations - $3,386,000;

(4) Long-term debt - $139,496,000; and

(5) Deferred income taxes - $2,859,000.

55. The $139.5 million owing in respect of long-term debt is made up of the $12.0 million advanced by the Senior Lenders under the Credit Agreement (discussed below) and $127.5 million owing to the Senior Secured Noteholders (also discussed below). The Notes are recorded at a discount to the face value ($132.5 million) and accreted to the par value over the five year term using the effective interest rate method.

56. The $31.3 million of accrued liability includes an amount of $6.4 million "due to TPLs" in respect of the reported Restricted Cash amount.

(c) **Revenue**

57. Cash Store has experienced a sharp drop in financial results over the past two years, despite the fact that net revenues have remained steady. Net revenue decreased from $189.9 million in FY 2011 to $187.4 million in FY 2012 and increased to $190.8 million in FY 2013. Net revenue decreased from $49.5 million for the three months ended December 31, 2012 to $45.2 million for the three months ended December 31, 2013. Earnings before interest taxes depreciation and amortization (EBITDA) decreased from positive $27.4 million in FY 2011 to negative $31.7 million in FY 2012 and increased to negative $1.0 million in FY 2013. EBITDA for the three months ended December 31, 2013 was $1.0 million as compared to $6.5 million for the three months ended December 31, 2012.

(d) **Stakeholder Amounts**

58. The chart below sets out the relationship of certain stakeholders to Cash Store:

Stakeholder	Maturity Date	Amount	Rate of Return
Senior Secured Lenders ("Senior Lenders")	November 29, 2016	$12 million	12.5%
Senior Secured Notes ("Noteholders")	January 31, 2017	$132.5 million Subordinated to Senior Lenders	11.5%
Third Party Lenders ("TPLs")		$42.0 million Consisting of the TPL Funds originally advanced, including funds deployed in brokered loans, Restricted Cash, and cumulative losses	Effectively 17.5%

(i) **Senior Lenders**

59. On November 29, 2013, Cash Store Financial entered into a credit agreement (the "Credit Agreement") with Coliseum, 8028702 Canada Inc. and 424187 Alberta Ltd. (collectively, the "Senior Lenders"), pursuant to which the Senior Lenders have to date provided $12.0 million of secured loans. The loans are guaranteed by Cash Store Financial, The Cash Store Inc., TCS - Cash Store Inc., Instaloans Inc., 7252331 Canada Inc., 5515433 Manitoba Inc., The Cash Store Limited, The Cash Store Financial Limited, and CSF Insurance Services Limited (collectively, the "Guarantors"). A copy of the Credit Agreement (without schedules) is attached as Exhibit "C". A copy of the press release dated December 5, 2013 announcing that Cash Store Financial had entered into the Credit Agreement is attached as Exhibit "D".

60. 424187 Alberta Ltd., which loaned $2.0 million of the $12.0 million drawn, is a company controlled by Cash Store Financial's CEO and a director, Gordon Reykdal. Coliseum, which loaned $5.0 million of the $12.0 million drawn, owns 19.27% of the common shares of Cash Store Financial and is also a Noteholder. 8028702 Canada Inc., which loaned the remaining $5.0 million of the $12.0 million drawn, is a company controlled by the same person who controls McCann Family Holding Corporation, one of Cash Store Financial's principal TPLs. The loans under the Credit Agreement were used to fund operations and growth in key business areas.

61. Pursuant to the Credit Agreement, 424187 Alberta Ltd. (the "Agent") acts as agent for the Senior Lenders. The loans made under the Credit Agreement bear interest at 12.5% per annum, payable monthly in arrears, on the 29th day of each month. If a default occurs under the Credit Agreement, the interest rate is increased by 2% after the occurrence and during the continuance of such default.

62. The Credit Agreement provides that an additional $20.5 million may be advanced for a total maximum loan amount of $32.5 million. The Senior Lenders have a right of first refusal in respect of any additional advances. If the Senior Lenders do not exercise their right of first refusal, Cash Store Financial is free to obtain loan advances from other lenders who agree to become party to the Credit Agreement. The loans outstanding at any time are subject to the requirement that the maximum amount outstanding cannot exceed 75% of the Unrestricted Cash of Cash Store Financial plus 75% of the net consumer advances receivable of Cash Store Financial not more than 90 days in arrears (the "Borrowing Base"). If the total amount outstanding under the loan at any time exceeds the Borrowing Base, Cash Store Financial must repay to the Senior Lenders, on a pro rata basis, an amount which will result in the loans not being in excess of the Borrowing Base. Such payment must be made within 20 days of the month-end in which the Borrowing Base was exceeded.

63. Loans made under the Credit Facility mature on November 29, 2016 or on such earlier date as the principal amount of all loans owing from time to time plus accrued and unpaid interest and all other amounts due under the Credit Agreement may become payable under the Credit Agreement. Cash Store Financial may repay the loans at any time subject to payment of specified prepayment fees.[1]

64. Cash Store Financial agreed to designate the loans made under the Credit Agreement as priority lien debt and obtain the benefit of the security granted by Cash Store Financial pursuant to the Collateral Trust and Intercreditor Agreement ("Collateral Trust

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[1] The prepayment fees are as follows: (a) If the prepayment is on or before November 29, 2014, the greater of (A) the interest that would accrue if the prepaid amount were to remain outstanding until November 29, 2014 and (B) 4% of the prepaid amount; (b) If the prepayment is after November 29, 2014 but on or prior to November 29, 2015, 3% of the prepaid amount; and (c) If the prepayment is after November 29, 2015, no fee.

Agreement") entered into in connection with the Notes. A copy of the Collateral Trust Agreement is attached as Exhibit "E".

65. In addition to certain covenants relating to the repayment of the loans and the authority of Cash Store Financial to enter into the Credit Agreement, Cash Store Financial has covenanted in favour of the Senior Lenders:

(a) to comply with the covenants granted to the 11.5% Noteholders;

(b) not to designate any additional debt under the Collateral Trust Agreement; and

(c) to meet certain Adjusted EBITDA targets on a quarterly basis over the term of the Credit Agreement.

66. Upon the occurrence and during the continuance of a default, the Senior Lenders have a right to accelerate the obligations under the Credit Agreement, the right to instruct the Agent to begin the process to realize on the security under the Collateral Trust Agreement and the right, but not the obligation, to appoint a financial advisor to review the affairs of Cash Store Financial and to appoint a director to the Board.

67. Cash Store Financial was in compliance with the financial covenants of the Credit Agreement as at December 31, 2013 and therefore, the amounts drawn were classified as long-term debt on Cash Store Financial's balance sheet. However, Cash Store Financial breached a number of covenants in the Credit Agreement at the end of March 2014, which breaches are either defaults under the Credit Agreement or will give rise to defaults under the Credit Agreement with the passage of time. Senior Lenders may rely on the defaults to exercise their remedies under the Credit Agreement, including demanding immediate repayment of the amounts drawn and exercising their rights under the security if Cash Store cannot reach an

agreement with the Senior Lenders to amend or waive the covenant breaches. Cash Store does not have the ability to immediately repay the amounts owing to the Senior Lenders.

68. On March 31, 2014, Cash Store requested a Waiver from the Senior Lenders of the following: (i) the failure to pay interest when due on March 29, 2014; (ii) the failure to achieve the $10 million minimum Adjusted EBITDA for the first 6 months of fiscal 2014; (iii) exceeding the Borrowing Base and not being able to make the required repayment within 20 days of same; and (iv) Cash Store's inability to represent that it is duly qualified to carry on business in all jurisdictions in which it carries on business unless such failure to so qualify would not constitute a material adverse effect under the Credit Agreement. To date, no response has been received.

(ii) **Noteholders**

69. On January 31, 2012, Cash Store Financial issued, through a private placement in Canada and the U.S., $132.5 million of 11.5% Senior Secured Notes. A copy of the Note Indenture is attached as Exhibit "F".

70. The Notes mature on January 31, 2017 and bear interest on the aggregate principal amount from the date of issue at 11.5% per annum payable on a semi-annual basis in equal installments on January 31 and July 31 of each year, commencing in July of 2012. The Notes were issued at a price of 94.608% resulting in an effective interest rate of 13.4%. Cash Store Financial used the majority of the proceeds of the Notes to acquire a portfolio of consumer loans and certain intangible assets, and to settle pre-existing relationships with certain TPLs.[2]

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[2] On January 31, 2012, Cash Store Financial acquired a portfolio of short-term advances from TPLs for total consideration of $116,334,000. At the date of acquisition, the gross contractual principal and accrued interest of the acquired short-term advances was $319,906,000.

71. The Notes are guaranteed, jointly and severally, by the same entities that are Guarantors under the Credit Agreement. Pursuant to the Collateral Trust Agreement, the Notes are secured on a second-priority basis by liens on all of Cash Store Financial's and its restricted subsidiaries' existing and future property, subject to specified permitted liens and exceptions. The Credit Agreement is secured by a first-priority lien on this collateral.

72. The Notes are redeemable at the option of Cash Store Financial, in whole or in part, at any time on or after July 31, 2014 at the redemption prices (expressed as percentages of principal amount) set forth below, plus accrued and unpaid interest:

For the Period Below	**Percentage**
On or after July 31, 2014	103.084%
On or after January 31, 2015	102.091%
On or after July 31, 2015	101.127%
On or after January 31, 2016	101.194%
On or after July 31, 2016	100%

73. Prior to July 31, 2014, Cash Store Financial is entitled at its option, in certain circumstances, on one or more occasions to redeem up to 35% of the aggregate principal amount of the Notes at a redemption price of 111.5% of the principal amount of the Notes redeemed, plus accrued and unpaid interest.

74. If a change in control of Cash Store Financial occurs, the Noteholders will have the right to require Cash Store Financial to purchase all or a portion of the Notes, at a purchase price in cash equal to 101% of the principal amount of the Notes offered for repurchase plus accrued interest to the date of purchase.

75. Upon the commencement of the CCAA proceeding, Cash Store will no longer be in compliance with the covenants in the Note Indenture and the $139.5 million owing in respect of long-term debt will become immediately due and payable. Cash Store does not have the ability to repay the Notes at this time.

(iii) **Third Party Lenders**

76. Cash Store has entered into written business agreements with a number of TPLs who are prepared to lend to Cash Store's customers or to purchase advances originated by Cash Store (the "Broker Agreements"). Pursuant to the Broker Agreements, the TPLs make loans to Cash Store's customers and Cash Store provides services to the TPLs related to the collection of documents and information from Cash Store's customers, as well as loan repayment services. Cash Store collects fees for brokering these transactions. Copies of the Broker Agreements for Trimor Annuity Focus Limited Partnership #5 ("Trimor"), McCann Family Holding Corporation ("McCann"), 1396309 Alberta Ltd., Omni Ventures Ltd., and L-Gen Management Inc. are attached as Exhibits "G","H","I","J", and "K".

77. The Broker Agreements also provide that the TPLs are responsible for losses suffered due to uncollectible advances, provided Cash Store has fulfilled the duties required under the terms of the Broker Agreements. If Cash Store does not properly perform its duties and the TPLs make a claim under the Broker Agreements, Cash Store may be liable to the TPLs for losses they have incurred. However, pursuant to section 7.1 of the Broker Agreements, if any loss is as a result of any act or omission of Cash Store in reliance on any bona fide interpretation of Applicable Law or upon the advice of legal counsel, no liability shall attach to Cash Store.

(A) Restricted Cash

78. Cash Store has received approximately $42.0 million from the TPLs (the "TPL Funds"). The total TPL Funds are comprised of the Restricted Cash (defined below) plus the outstanding balance of the brokered loans and cumulative losses. The Broker Agreements stipulate that the TPL Funds are to be utilized by Cash Store for making advances to broker customers on the TPLs' behalf. The TPL Funds are deployed by Cash Store to broker customers, subsequently received by Cash Store as repayment for such broker loans (subject to loan losses), and then redeployed, repeating the process. In FY 2013, Cash Store deployed the TPL Funds multiple times for total short term advances of $241.4 million, representing 30.9% of Cash Store's total loan volume of $781.8 million.

79. Any TPL Funds received by Cash Store as repayment for any brokered loan that are not currently deployed to Cash Store customers are deposited in Cash Store's bank accounts and are referred to in Cash Store's financial statements as "Restricted Cash". While the Broker Agreements permit the TPLs to require Cash Store to hold the TPL Funds in accounts designated for that purpose, no TPL has designated any account as a Designated Financier Bank Account or a Designated Broker Bank Account. The Restricted Cash is comingled with all of Cash Store's other cash (the "Unrestricted Cash"), and the aggregate of Cash Store's Restricted and Unrestricted Cash is the total cash reported on Cash Store's balance sheet. Cash Store keeps detailed records of the amounts loaned to and repaid by the broker loan customers and the direct loan customers. The funds received from broker loan customers representing principal and interest of the broker loan are included in the Restricted Cash, and funds received from the direct loan customers are included in Unrestricted Cash (along with any broker and other ancillary fees). Since all of these funds are comingled in multiple accounts, it is not possible to know which dollar represents Restricted Cash and which dollar represents Unrestricted Cash.

Furthermore, the exact amount of Restricted and Unrestricted Cash is not calculated by Cash Store until it completes its month-end reconciliation. The month-end reconciliation is usually completed on or about the tenth day after month-end.

(B) Assigning Receivables to TPLs to Free Up Restricted Cash

80. Once the month-end reconciliation is complete, Cash Store compares the amount of total cash in its accounts and the amount of Restricted Cash that should be held on account of TPL Funds. On several occasions, Cash Stores has completed its month-end reconciliation and has found that the amount of Restricted Cash exceeds its total cash (meaning that Cash Store has used the Restricted Cash to fund its intra-month working capital needs). On these occasions, Cash Store has assigned its own direct loan receivables to the TPLs in an amount equal to the difference between Cash Store's total cash and the amount of Restricted Cash recorded on account of the TPLs plus an additional amount to permit Cash Store to meet its anticipated working capital needs for the next month with Unrestricted Cash. These assignments are permitted under the terms of the Credit Agreement and the Note Indenture provided that they are made in the ordinary course of business. These assignments are also permitted under the Broker Agreements and the assignments are disclosed to the TPLs as part of the monthly account statements and reconciliations provided to the TPLs.

81. For example, if at month-end total cash is $15 million and Restricted Cash is $18 million, then Unrestricted Cash is negative $3 million. To address this issue, Cash Store would assign $3 million of direct loan receivables to the TPLs to ensure there is sufficient Restricted Cash, plus an additional $5 million dollars of direct loan receivables to meet its anticipated minimum working capital needs for the next month, resulting in $10 million of Restricted Cash and $5 million of Unrestricted Cash. Cash Store could then make $10 million of brokered loans

using Restricted Cash and use the $5 million of Unrestricted Cash to fund operating expenses and make direct loans. Total cash never changes when implementing these assignments.

82. The assignment of receivables essentially results in a greater portion of the TPL Funds being deployed to Cash Store's customers. For every dollar of receivables assigned to the TPLs, there is a dollar for dollar increase in the amount of Unrestricted Cash. During FY 2013 and FY 2012, as part of the normal course of operations, Cash Store assigned $14.3 and $17.6 million (respectively) of net consumer advances receivable to TPLs in exchange for cash.

(C) Amount of Restricted Cash

83. As of February 28, 2014, there was $12.2 million in Restricted Cash available for consumer lending and Unrestricted Cash of $0.2 million. Since Cash Store has been receiving repayments of loans in Ontario but not re-lending, the amount of Restricted Cash has increased dramatically. Final accounting is not yet available as at March 31, 2014 however, it is estimated that the amount of Restricted Cash has increased to approximately $14.9 million and exceeded the total amount of cash in Cash Store's bank accounts. In light of the circumstances facing Cash Store, the decision of whether to make assignments to address this issue was deferred.

(D) Voluntary Retention Payments

84. Cash Store has historically made voluntary retention payments to TPLs in order to lessen the impact of loan losses. Since I have been at my role at the company the TPL Funds have been managed in the following manner:

(1) **Monthly Lender Distributions:** Cash Store pays TPLs cash payments so that, when combined with portfolio returns (interest collected, net of losses), the TPLs receive approximately 17.5% return per year on the total TPL Funds.

(2) **Capital Protection:** (a) Expensing Mechanism – Cash Store provides protection to the TPLs in respect of losses arising from brokered loans that remain unpaid after 90 days. The protection consists of crediting the TPLs with a retention payment as a book entry in the amount of the losses suffered by the TPLs. Cash Store in turn records these retention payments as an expense on its balance sheet. No cash is paid to the TPLs by the Cash Store in respect of these retention payments. The effect of these book entry retention payments is that (i) the TPL Funds are not eroded by losses; (ii) the Restricted Cash balance is increased by the amount of the retention payment; and (iii) the Unrestricted Cash balance is decreased by the amount of the retention payment.

(b) Purchasing Mechanism – In Ontario and Manitoba, Cash Store also effects retention payments by purchasing past due brokered loans (including any past due direct loans that were previously transferred to the TPLs) at face value to prevent any erosion of the TPL Funds. These purchases are an additional mechanism (and an alternative to the expensing mechanism described above) to prevent the TPLs from incurring any of the losses inherent in the past due brokered loans. Cash Store incurs losses equal to the difference between the purchase price and the fair value of the purchased brokered loans and recognizes the losses as retention payments. Cash Store's purchase of past due brokered loans also has the benefit of allowing Cash Store to collect the past due amounts without engaging a third-party agency for collection and without itself being licensed as a collections agency.

85. The Broker Agreements between Cash Store and the TPLs do not contemplate retention payments. The Broker Agreements also do not guarantee repayment or a specified rate of return on the TPL Funds. However, if the TPLs were to no longer participate in the brokering of advances to Cash Store's customers, Cash Store would lose the anticipated future revenue related to the brokering of advances. Under the broker model, Cash Store makes voluntary retention payments to the TPLs to encourage them to continue making funds available to Cash Store. The Board of Directors regularly approves a resolution authorizing Cash Store to pay up to a certain amount of retention payments per quarter to TPLs. Retention payments are recorded in the period in which a commitment is made to a lender.

86. In March 2014, given Cash Store's liquidity issues and ongoing stakeholder discussions, Cash Store did not make any voluntary retention payments to TPLs, including the monthly lender distribution of approximately 17.5% per year.

Urgent Need for Relief

87. Cash Store is facing multiple challenges to its continued operations, including regulatory issues that affect its core business strategy, multiple class actions requiring defence across Canada and in the U.S., and immediate and dire liquidity challenges.

(a) **Regulatory Issues**

88. With respect to the completeness and accuracy of the information in the regulatory and litigation sections of my affidavit, I have specifically relied on information provided to me by Michael Thompson, Senior Vice President & Corporate Affairs, and Jerry Roczkowsky, Vice President of Compliance, of Cash Store Financial.

89. Regulations affecting Cash Store's primary product offerings of payday loans and lines of credit significantly affect Cash Store's ability to successfully operate and execute its business strategy.

90. In May 2007, the federal government enacted a bill clarifying that the providers of certain payday loans were not governed by the criminal interest rate provisions of the *Criminal Code*, R.S.C., 1985, c. C-46 (the "Criminal Code"), granting lenders (other than most federally-regulated financial institutions) an exemption from the criminal interest rate provisions of the Criminal Code if their loans fell within certain dollar amount and time frame maximums. In order for payday loan companies to rely on the exemption, provincial governments are required to enact legislation that includes a licensing regime for payday lenders, measures to protect consumers and maximum allowable limits on the total cost of borrowing.

91. Since late 2009, the Canadian payday loan market has been in transition from an unregulated market to varying states of regulation. The provinces that have enacted specific payday loans legislation pursuant to the federal exemption are British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, and Nova Scotia. The key components of payday loans regulation are caps on the loan size, length and fees that can be charged. Typically regulations limit payday loans to a maximum of $1,500 and 62 days in duration as well as providing a rate cap.

92. While regulatory issues have affected the industry as a whole, they have had a more severe impact on Cash Store due to its particular business model. Cash Store's strategic objective was to achieve a single platform universally deployed across jurisdictions with its line of credit product suite. The operational impacts of multiple regulatory environments have been numerous, creating significant additional costs. Senior Management has been required to devote

significant resources to these matters and has retained a Chief Compliance and Regulatory Affairs Officer (the "CCRO") and legal counsel to address these issues (discussed below).

(i) **Ontario Regulatory Issues**

(A) Regulatory Litigation

93. On February 1, 2013, Cash Store launched its suite of line of credit products in Ontario and ceased offering payday loans in that province. With respect to the new line of credit offerings, on April 29, 2013, Cash Store filed an application in the Ontario Superior Court of Justice (the "Ontario Court") seeking a declaration that its basic line of credit was not subject to the Payday Loans Act.

94. On February 4, 2013, the Ontario Registrar issued a proposal to revoke the payday lending licenses of the Cash Store Inc. and Instaloans Inc. Cash Store filed an Appeal with the License Appeal Tribunal on February 19, 2013. However, as Cash Store allowed its payday licenses to expire in Ontario effective July 4, 2013 (since Cash Store was of the view that it could offer lines of credit without such a license), this appeal was withdrawn effective August 15, 2013.

95. Previous to the February 4, 2013 proposal of the Registrar for payday loans, Cash Store submitted an application for judicial review in the Ontario Court, seeking a declaration that certain provisions of the regulations made under the Ontario Payday Loans Act are void and unenforceable. This application was heard on October 2, 2013. On November 5, 2013, the Ontario Court dismissed the application. Cash Store has not appealed this decision.

96. On June 7, 2013, the Director designated under the Ontario Ministry of Consumer and Business Services Act filed an application in the Ontario Court seeking a declaration that Cash Store's basic line of credit is subject to the Payday Loans Act and that Cash Store must

obtain a broker license to offer this product. This application was heard on November 29, 2013 and the decision was rendered on February 12, 2014. The Ontario Court concluded that the basic line of credit is subject to the Payday Loans Act and ordered that Cash Store Financial's subsidiaries, The Cash Store Inc. and Instaloans Inc., are prohibited from acting as a loan broker in respect of its basic line of credit product without a broker's license under the Payday Loans Act. On March 14, 2014, Cash Store commenced an appeal of this decision.

97. On February 12, 2014, Cash Store ceased offering all line of credit products offered to its customers in Ontario branches. A copy of the press release reporting the outcome of the application and the decision to stop offering line of credit products in Ontario is attached as Exhibit "L".

(B) Additional Regulations

98. Additionally, on December 17, 2013, Ontario Regulation 351/13 was filed by the Government of Ontario. Regulation 351/13, made under the Payday Loans Act, prescribes certain categories of credit such that the Payday Loans Act applies to line of credit products offered through the Cash Store's retail banners. Regulation 351/13 required Cash Store to obtain licenses pursuant to the Payday Loans Act in order to continue providing access to certain line of credit products in the Ontario market after February 15, 2014. These regulations are now in force. To comply with the new requirements of the Payday Loans Act, Cash Store applied for the requisite licenses through its operating subsidiaries. A copy of the press release dated December 20, 2013 regarding the announcement of the regulations is attached as Exhibit "M".

(C) Ontario Regulator Refuses to Grant License to Cash Store

99. In response to Cash Store's license application, on February 13, 2014, the Ontario Registrar issued a proposal to refuse to issue a lender's license to Cash Store Financial's

subsidiaries, The Cash Store Inc. and Instaloans Inc., under the Payday Loans Act. A copy of the press release dated February 13, 2014 regarding the proposal to refuse a lender's license is attached as Exhibit "N". The Payday Loans Act provides that applicants are entitled to a hearing before the License Appeal Tribunal in respect of a proposal by the Ontario Registrar to refuse to issue a license.

100. The Cash Store Inc. and Instaloans Inc. allowed the time for appealing this decision to lapse while it was in negotiations with the Ontario Registrar. These negotiations failed to produce a favourable result and on March 27, 2014, the Ontario Registrar issued a final notice of its decision not to grant a license under the Payday Loans Act. Cash Store will not be eligible to re-apply for a license for 12 months from the date of issuance of the final order. If Cash Store chooses to re-apply for a license after such time, Cash Store will be required to provide new or additional evidence for the Ontario Registrar to consider or demonstrate that material circumstances have changed. Cash Store is not currently permitted to sell any payday loan products in Ontario. A copy of the press release dated March 28, 2014 regarding the final order refusing to grant a license is attached as Exhibit "O".

101. All of Cash Store's 172 Ontario branches that operated under the Instaloans and the Cash Store banners have remained open and Cash Store incurred significant operating expenses while it pursued discussions with the Ontario Registrar regarding obtaining a license under the Payday Loans Act. Cash Store intends to keep the majority of its branches open while considering its strategic options. Since Cash Store is unable to make new loans in Ontario, its ability to collect outstanding customer accounts receivable has also been significantly impaired. On April 8, 2014, Cash Store reduced its Ontario staffing to a skeletal staff by commencing a

temporary layoff of approximately 250 Ontario employees. Cash Store is considering closing certain branches in Ontario.

102. As discussed above, the Ontario operations of Cash Store accounted for $57.6 million in revenue for FY 2013, roughly 30% of Cash Store's total revenue. Closure of the Ontario operations will entail significant severance costs for approximately 470 employees.

(ii) **Federal-Provincial Consumer Measures Committee**

103. A federal-provincial Consumer Measures Committee is working collaboratively on a national response to high-cost credit loans. New regulations may affect the title loans and lines of credit offered by Cash Store.

(iii) **Manitoba Regulatory Issues**

104. On October 15, 2013, the Manitoba Consumer Protection Office ("CPO") concluded an investigation of Cash Store. The CPO determined that Cash Store was in violation of Manitoba's maximum legal cost of $17 per $100 on payday loans, which could result in substantial demands for refunds to customers.

105. The CPO issued a refund demand to Cash Store to reimburse 61 identified borrowers for certain fees charged, required or accepted in relation to payday loans in Manitoba during the period of time that it held a valid payday lender licence in the province. The additional fees were charged in relation to cash cards associated with payday loans. More such refund demands may be made.

106. On April 9, 2014, the Manitoba CPO informed Cash Store that it had identified various breaches of *The Consumer Protection Act*, C.C.S.M. c. C200 related to certain disclosure documents issued in respect of broker agreements and advances made to consumers in respect of

lines of credit that had been issued to consumers. The CPO has directed Cash Store to refund roughly $37,000 in brokerage fees paid by consumers in relation to advances made to them by TPLs under 32 lines of credit by April 30, 2014. The CPO also expressed its concern at the number of allegedly non-compliant agreements and the possibility that there are more line of credit agreements that may be in breach of the legislation. The CPO recommended that Cash Store conduct a review of its files to determine whether any other consumers may be owed refunds due to breaches of the legislation.

107. The Government of Manitoba has recently promulgated new legislation that expands the powers of the CPO. Additionally, the government has introduced legislation to regulate high cost credit products. If passed, Cash Store may not be able to profitably make available the line of credit product suite in the Province of Manitoba.

(iv) **British Columbia Regulatory Issues**

108. On March 23, 2012, Cash Store was issued a compliance order (the "Order") and administrative penalty from Consumer Protection BC. The Order directs Cash Store to refund to all borrowers with loan agreements negotiated with Cash Store or its subsidiaries between November 1, 2009 and the date of the Order, the amount of any issuance fee charged, required or accepted for or in relation to the issuance of a cash card.

109. The Order also directed Cash Store to pay an administrative penalty of $25,000 in addition to costs. On November 30, 2012, Consumer Protection BC issued a supplementary compliance order directing that unclaimed refund amounts, to a maximum of $1.1 million be deposited into a consumer protection fund. On December 14, 2012, Cash Store filed a Petition for Judicial Review in the British Columbia Supreme Court seeking an order quashing or setting aside the Order and Supplemental Order, and seeking declarations that it had not contravened

sections 112.04(1)(f) of the *Business Practices and Consumer Protection Act*, [SBC 2004] Ch. 2, or sections 17 and 19 of the Payday Loan Regulation, B.C. Reg. 57/2009. The Petition was heard by the Court on June 26, 27, and 28, 2013 and dismissed in a decision released on January 30, 2014. As at December 31, 2013, the total amount of the supplemental order of $1.1 million was paid by Cash Store and will soon be disbursed to consumers.

(v) **Newfoundland Investigation**

110. There is no provincial regulation of payday loans in Newfoundland. However, the Royal Newfoundland Constabulary and Royal Canadian Mounted Police recently concluded an investigation of Cash Store with regard to alleged violations of the interest provisions in the Criminal Code. While the results of the investigation are not yet known, they have been forwarded to public prosecutors.

(vi) **Nova Scotia**

111. Payday Loan legislation in Nova Scotia requires that licensees offer to deliver to borrower their loan proceeds in cash. Cash Store has attempted to satisfy this requirement by offering to distribute funds to consumers by way of Electronic Fund Transfers. The Province has not been fully satisfied with this approach. If Cash Store cannot resolve related matters, it is possible that an inability to satisfy this regulatory requirement may serve as the basis for a proposal to suspend or revoke the Companies' operating licenses. Any such suspension or revocation would have significant impact on Cash Store's revenues.

(vii) **New Brunswick**

112. In New Brunswick, Cash Store's operating subsidiaries are registered as brokers. This registration is in good standing. In early April, Cash Store received notification that TPLs for which the subsidiaries' broker loans are not properly registered in the province. If registration

is not quickly secured for these TPLs, Cash Store may not be able to broker loans for those TPLs in that province, with the resulting impact on revenue. Since it received this notification, Cash Store has received confirmation that one of the two TPLs who operate in New Brunswick is properly licensed and the other TPL is beginning to take steps to seek a license. Cash Store operates 14 branches in the Province of New Brunswick.

113. In March 2014, the Government of New Brunswick tabled legislation (Bill 55) to regulate the payday loan industry in that province. This legislation, if promulgated, will require the implementation of a licensing regime, various restrictions on business practices by licensed payday lenders and caps on the maximum allowable amount that lenders may charge. It is not known at this time whether or not the legislation will be promulgated and, if rate caps are to be implemented, what they will be and what the impact of such caps will be for licensed lenders. If the legislation is promulgated, Cash Store would have to apply for and be granted a license in order to participate in any lending.

(b) **Significant Litigation**

114. Cash Store's difficult financial position is further threatened by multiple significant litigation matters that Cash Store is defending across Canada and in the United States. As a result of additional legal activity related to the regulatory claims (discussed above) and securities and other class action claims (discussed below), as well as reserves taken for existing litigation and claims, legal expenses have increased significantly from $2.2 million in FY 2012 to $3.8 million in FY 2013. The three months ending December 31, 2013 saw legal expenses of $1.0 million.

(i) Outstanding Settlement Liability – BC Class Proceeding

115. On February 28, 2010, the Supreme Court of British Columbia approved the settlement of two related class actions filed against Cash Store. Under the terms of the court approved settlement, Cash Store is to pay to the eligible class members who were advanced funds under a loan agreement, and who repaid the payday loan plus brokerage fees and interest in full, or who met certain other eligibility criteria, a maximum estimated amount including legal expenses of $18.8 million, consisting of $9.4 million in cash and $9.4 million in credit vouchers. The credit vouchers can be used to pay existing outstanding brokerage fees and interest, to pay a portion of brokerage fees and interest which may arise in the future through new loans advanced, or can be redeemed for cash from January 1, 2014 to June 30, 2014. The credit vouchers are not transferable and have no expiry date. After approved legal expenses of $6.4 million were paid in March 2010, the balance of the settlement amount remaining to be disbursed was $12.4 million, consisting of $6.2 million of cash and $6.2 million of vouchers.

116. By September 30, 2010, Cash Store had received approximately 6,300 individual claims with total valid claims being in excess of the settlement fund. As the valid claims exceed the balance of the remaining settlement fund, under the terms of the settlement agreement, the entire settlement fund of $12.4 million was mailed to claimants in November 2012 in the form of cash and vouchers on a pro-rata basis. To date, $5.3 million of the cash portion of the settlement has been redeemed by claimants while $0.8 million is being held in trust by the administrator for future redemptions or to be handled in accordance with unclaimed property laws. To date, approximately $4.3 million of the $6.1 million of vouchers have been redeemed for services or cash. The total remaining liability related to the settlement is approximately $1.8 million.

(ii) **Ongoing Class Proceedings**

117. There are multiple proposed class proceedings filed against Cash Store. Due to the uncertainty surrounding the litigation process, Cash Store is unable to reasonably estimate the range of loss, if any, in connection with these class actions.

118. Cash Store believes that it has conducted business in accordance with applicable laws and is defending each claim. However, the resolution of any current or future legal proceeding could cause Cash Store to have to refund fees and/or interest collected, refund the principal amount of advances, pay damages or other monetary penalties and/or modify or terminate operations in particular jurisdictions. Cash Store may also be subject to adverse publicity. Defense of any legal proceedings, even if successful, requires substantial time and attention of senior officers and other management personnel that would otherwise be spent on other aspects of the business and requires the expenditure of significant amounts for legal fees and other related costs. Settlements of lawsuits may also result in significant payments and modifications to operations. Any of these events could have a material adverse effect on business prospects, results of operations and the financial condition of Cash Store.

119. Cash Store is currently defending the following class action lawsuits which allege breaches of various provincial Payday Loan Regulations, Consumer Protection Acts, and/or the criminal interest provisions of the Criminal Code:

- **British Columbia, September 11, 2012**: Roberta Stewart on behalf of class members who, on or after November 1, 2009 received a loan from the Applicants in British Columbia.

- **Alberta, January 19, 2010**: Shaynee Tschritter and Lynn Armstrong are the representative plaintiffs in this certified class action alleging that Cash Store is in breach of s. 347 of the Criminal Code.

- **Alberta, September 18, 2012**: Kostas Efthimiou on behalf of all persons who, on or after March 1, 2010, received a payday loan from the Applicants.

- **Saskatchewan, October 9, 2012**: John Ironbow on behalf of all persons who, on or after January 1, 2012, received a payday loan from the Applicants.

- **Manitoba, April 23, 2010**: Scott Meeking on behalf of all persons in Manitoba and others outside the province who obtained a payday loan from the Applicants. A previous settlement approved by the Ontario Court presumptively resolved claims with respect to loans borrowed by Mr. Meeking, and other Manitoba residents, on or before December 2, 2008. The Manitoba Court of Appeal held that the Ontario settlement was unenforceable in part as notice to the Manitoba residents was inadequate. The class action was certified. Leave to appeal to the Supreme Court of Canada has been granted to both parties and the appeal is tentatively scheduled for November 13, 2014.

- **Manitoba, November 1, 2012**: Sheri Rehill on behalf of all persons who, on or after October 18, 2010, borrowed a payday loan from the Applicants in Manitoba.

- **Ontario, August 1, 2012**: Timothy Yeoman on behalf of class members who entered into payday loan transactions with the Applicants in Ontario between September 1, 2011 and the date of judgment. This class action also makes allegations that Cash Store operated an unlawful business model as it did not provide borrowers with the option to

take their payday loan in an immediate liquid form and thereby misrepresented the total cost of borrowing.

120. The above actions generally seek any or all of the following remedies: restitution or damages for allegedly unlawful charges paid by the class members, repayment of unlawful charges paid by the plaintiff and class members, damages for conspiracy, interest on all amounts found to be owing and legal costs.

121. Additionally, Cash Store was facing investor class actions in Alberta, Ontario, and Quebec alleging that Cash Store made misrepresentations during the period from November 24, 2010 to May 24, 2013 regarding its internal controls over financial reporting and the value of the loan portfolio acquired from TPLs, losses on its internal consumer loan portfolio, and its liability associated with the settlement of the British Columbia Class Action (discussed above). The Quebec and Alberta proceedings were stayed pending the outcome of the Ontario claim. A similar securities class action alleging violations of the Securities Exchange Act of 1934, 15 U.S.C. § 78a, is also being defended by Cash Store in the United States.

122. On March 31, 2014, Cash Store Financial announced that it entered into an agreement in principle to settle all four of the proposed securities class actions. A copy of the press release regarding the settlement is attached as Exhibit "P". The agreement in principle covers all claims related to investments in Cash Store Financial's common shares and Notes acquired or disposed of during the expanded period of November 24, 2010 through February 14, 2014, other than certain rights and claims of Noteholders under the Note Indenture dated January 31, 2012.

123. The proposed settlement provides for a payment in the amount of approximately $9.45 million (all-inclusive) by Cash Store to be fully funded by Cash Store Financial's insurers.

The proposed settlement is subject to the fulfillment of customary conditions including, among other things, the parties entering into a definitive settlement agreement, court approvals, approval of parties other than Cash Store Financial, and the fulfillment of conditions relating to the number of opt-outs from the proposed settlement.

(iii) **Claim by Former Third Party Lender, Assistive Financial Corp.**

124. On September 18, 2013, an action in the Court of Queen's Bench of Alberta was commenced against Cash Store, certain of its officers and affiliates, including The Cash Store Inc., certain of its associated companies, including The Cash Store Australia Holdings Inc. and RTF Financial Holdings Inc., and other corporate defendants, seeking repayment of certain funds advanced to Cash Store, its affiliates and the associated companies by Assistive Financial Corp. ("Assistive"), a former related party TPL. An application for interim relief, including the appointment of an inspector, was brought by the Plaintiffs and was heard by the Court of Queen's Bench of Alberta on December 12, 2013 and a decision has not yet been rendered. The action by Assistive also seeks damages equivalent to $110,000,000 together with interest thereon at the rate of 17.5% per year. Assistive filed for bankruptcy on February 3, 2014 and this action has been stayed while the Trustee reviews and considers this litigation.

(c) **Audit and Special Investigation Fees**

125. Audit and special investigation expenses also jumped significantly in FY 2013 to $4.0 million from $0.9 million in FY 2012. Audit expenses included $1.6 million related to restatements of previously issued financial statements.

126. A special investigation by Cash Store Financial's audit committee resulted in a $2.0 million expense. The audit committee was made aware of written communications that contained questions about the acquisition of the consumer loan portfolio from TPLs in late

January 2012 (the "TPL Transaction") and included allegations regarding the existence of undisclosed related party transactions in connection with the TPL Transaction. In response to this allegation, legal counsel to a previous special committee of independent directors of Cash Store Financial (the "Special Investigation Committee") retained an independent accounting firm to conduct a special investigation. The investigation followed a review conducted by Cash Store Financial's internal auditor under the direction of the audit committee of the Board, and the restatement by Cash Store Financial in December 2012 of its unaudited interim quarterly financial statements and Management's Discussion and Analysis for periods ended March 31, 2012 and June 30, 2012.

127. The investigation covered the period from December 1, 2010 to January 15, 2013 and was carried out over four months. It involved interviews of current and former officers, directors, employees and advisors of Cash Store and a review of relevant documents and agreements as well as electronically stored information obtained from Cash Store computers and those of employees, former employees and directors most likely to have information relevant to the investigation.

128. The Special Investigation Committee has reported its findings on the allegations to the Board of Directors and, consistent with the recommendation made to the Board of Directors by the Special Investigation Committee, the Board of Directors has determined that no further corrections or restatements of previously reported financial statements and other public disclosures are required in relation to the TPL Transaction.

(d) **Voluntary Delisting from the NYSE**

129. On April 2, 2013, Cash Store Financial received notice from the NYSE that it was not in compliance with the US$50 million market capitalization and stockholders' equity

standard for continued listing of its common shares on the NYSE. On February 24, 2014, Cash Store Financial received an additional notice from the NYSE that it had fallen below the NYSE's continued listing criteria requiring listed companies to maintain an average closing price of its listed common shares of not less than US$1.00 over a consecutive 30 trading-day period.

130. On February 28, 2014, Cash Store Financial voluntarily delisted its stock from the NYSE due, in part, to non-compliance with the NYSE's market capitalization and shareholders' equity, as well as its share price requirements. A copy of the press release regarding the delisting dated February 28, 2014 is attached as Exhibit "Q".

(e) **TPL Requests for Return of Restricted Cash**

131. As discussed above, Unrestricted Cash and Restricted Cash are comingled in Cash Store's accounts to form its total cash, which is then used to fund operations. The amount of Restricted Cash on Cash Store's balance sheet is expected to exceed the amount of total cash in Cash Store's bank accounts. In light of the circumstances facing Cash Store, the decision of whether to make assignments to address this issue was deferred.

132. Two TPLs have requested returns of TPL Funds. McCann has made a redemption request as of February 26, 2014 to return all of McCann's TPL Funds. As of February 28, 2014, the McCann portion of Restricted Cash was $6,449,000 and by March 31, 2014 had increased to approximately $7,674,000. On January 23, 2014, Trimor initially made a redemption request of $4.0 million, and subsequently made a redemption request for the balance of its funds in the amount of $23 million on April 4, 2014. The Broker Agreements require 120 days' notice of reduced lending limits. As such, the McCann notice takes effect on or about June 26, 2014 and the initial Trimor request takes effect on or about May 23, 2014. The McCann and Trimor requests are attached as Exhibits "R", "S" and "T".

133. Cash Store does not have sufficient liquidity to fulfill these requests, as the amount of total cash as of March 31, 2014 was approximately $12.6 million. Senior Management has had discussions with McCann and Trimor concerning the redemption requests. On March 20, 2014, Trimor signed a non-disclosure agreement ("NDA") and on March 26, 2014, Trimor attended meetings with Cash Store and the advisors to the Special Committee to discuss the liquidity issues faced by Cash Store. Trimor has been provided with a significant amount of non-public, confidential information under the NDA. The advisors to the Special Committee have also been attempting to negotiate an NDA with McCann. However, McCann did not sign an NDA, and therefore could not attend the March 26, 2014 meeting and could not receive any of the confidential information given to Trimor. As of the date of this affidavit, the redemption requests remain outstanding.

134. On April 4, 2014, counsel for McCann wrote to counsel for the Special Committee, requesting that any funds held by Cash Store on behalf of McCann be returned, or else held in a segregated account. McCann's counsel asserted that the funds are held in trust for McCann and that there is a fiduciary relationship between McCann and Cash Store. McCann's counsel stated that McCann would seek personal remedies against anyone responsible for any dissipation of the alleged trust funds. A copy of the April 4, 2014 McCann letter is attached as Exhibit "U".

135. Counsel for the Special Committee replied on April 8, 2014, and clarified that there is no provision in the McCann Broker Agreement that establishes a trust relationship or imposes a trust on any funds. Furthermore, Cash Store's public disclosure does not describe its relationship with TPLs as constituting a trust relationship. Additionally, counsel for the Special Committee noted that McCann is aware that all funds collected from Cash Store's customers,

including funds collected in respect of loans brokered for McCann, are comingled. A copy of counsel for the Special Committee's April 8, 2014 letter is attached as Exhibit "V".

136. McCann's counsel's response of April 8, 2014 is attached as Exhibit "W". In it, he reiterates his request that money advanced by McCann be placed in a segregated account.

137. On April 4, 2014, Trimor made a redemption request for the balance of its funds in the amount of $23 million. Trimor also requested an immediate and complete accounting of loans brokered on Trimor's behalf, including all funds flowing in and out of Trimor's Designated Broker Bank Account and Designated Financier Bank Account. Trimor stated that it did not consent to any comingling of funds and required that any Trimor funds be held and accounted for separately. A copy Trimor's April 4, 2014 letter is attached as Exhibit "X".

138. On April 9, 2014, counsel for the Special Committee wrote to Trimor and noted that Trimor was aware that all TPL funds are comingled. Furthermore, he confirmed that while Cash Store has an account it uses to receive funds from TPLs with respect to their initial advance and will transfer funds to this account to make distributions to the TPLs from time to time, there has never been a Trimor Designated Broker Bank Account or Designated Financier Bank Account. A copy of the April 9, 2014 letter is attached as Exhibit "Y".

139. A copy of an email from counsel for Trimor dated April 12, 2014 with respect to a potential CCAA filing is attached as Exhibit "Z".

(f) **McCann Files an Injunction**

140. The attempts to negotiate an NDA with McCann continued through the first ten days of April. On the evening of April 10, 2014, the advisors to the Special Committee sent a further revised NDA to McCann which would allow PricewaterhouseCoopers ("PwC") to inspect

Cash Store's documents and records. McCann did not provide a substantive response regarding the NDA. Instead, on April 11, 2014, McCann served Cash Store with an application for an injunction seeking:

(a) An interim and final injunction directing Cash Store to permit PwC to attend at Cash Store's offices to review its books and records in accordance with the Broker Agreement;

(b) An injunction prohibiting Cash Store from (i) comingling, using, converting or otherwise appropriating the funds advanced by McCann pursuant to the Broker Agreement; (ii) directing that the funds be held in a segregated trust account; and (iii) such further and other relief which will preserve the rights of McCann pending the conclusion of the litigation;

(c) An Order directing the Cash Store to account for all funds advanced pursuant to the Broker Agreement; and

(d) A declaration that all funds advanced or subsequently recovered by collection of loans belong to McCann or are held in trust for McCann.

141. McCann also served a statement of claim seeking

(a) A direction that PwC or a suitable alternative accounting firm be granted full and immediate access to the books and records of Cash Store;

(b) The injunction described above;

(c) A declaration or judgment against any parties who have knowingly received the Restricted Cash and an Order for accounting or tracing; and

(d) An Order directing that the Plaintiff's funds be returned by June 19, 2014 or earlier.

142. The Statement of Claim, application for an injunction, and affidavit of Sharon Fawcett are attached as Exhibits "AA", "BB", and "CC".

Restructuring Efforts to Date

(a) **Special Committee**

143. In light of the difficulties faced by Cash Store, on February 19, 2014, the Board of Directors constituted a special committee of independent directors (the "Special Committee") to:

(i) Review and respond to the regulatory developments in Ontario preventing Cash Store from selling payday loan products in Ontario; and

(ii) Carefully evaluate the strategic alternatives available to Cash Store with a view to maximizing value for all of its stakeholders.

144. The Special Committee engaged Osler, Hoskin & Harcourt LLP as its independent legal advisor and Rothschild Inc. ("Rothschild") as its independent financial advisor to assist it in its strategic alternatives review process. A copy of the two press releases dated

February 19 and February 20, 2014 are attached as Exhibits "DD" and "EE". Additionally, Cash Store has engaged Conway MacKenzie Inc. ("Conway") as a financial advisor to assist the Special Committee in evaluating Cash Store's liquidity position as part of the strategic alternatives review process. The engagement letters for Rothschild and Conway are attached as Exhibits "FF" and "GG".

145. Rothschild has informed me that the Special Committee has explored the possibility of a sale, restructuring, refinancing and liquidation.

(i) **Mergers and Acquisitions Process**

146. During the week of March 3, 2014, Rothschild initiated a mergers and acquisitions process to seek a sale or significant investment in Cash Store. Rothschild contacted numerous parties, including financial buyers and strategic buyers based in both Canada and the U.S. Strategic buyers represent companies in the consumer finance and alternative financial services sectors and financial buyers were selected based on past experience in the financial services sector, investments in turnaround situations and their ability and willingness to deploy capital quickly.

147. Many of the parties contacted have been provided with public teasers and several have requested NDAs. As of March 26, 2014, a number of parties had executed NDAs and started their due diligence of Cash Store. A data room has been set up and parties who have executed NDAs have been granted access. Rothschild will be providing parties who have executed NDAs with Cash Store's business plan and a letter requesting proposals by mid-May.

(b) **Appointment of Compliance and Regulatory Affairs Officer**

148. On February 27, 2014, Cash Store Financial announced that it had engaged Michèle McCarthy to fill the newly created position of CCRO. A copy of the related press release dated February 27, 2014 is attached as Exhibit "HH".

149. Ms. McCarthy is an experienced senior executive with experience in numerous roles with global financial services companies. She has previously had mandates which included Chief Legal Officer, Chief Privacy Officer, and Chair of the Board of Directors at significant public and private corporations.

150. As CCRO, Ms. McCarthy reports directly to the Special Committee. The mandate of the CCRO includes the following responsibilities:

- Ensure that Cash Store is in compliance with all federal and provincial legislation, regulations and regulatory directives (the "Governing Legislation");
- Ensure that all documents used in the business of Cash Store are compliant with Governing Legislation;
- Develop procedures to identify, assess and communicate internally any changes or proposed changes to Governing Legislation;
- Foster a constructive relationship between Cash Store and its regulators; and
- Oversee and assist business units within Cash Store in the resolution of compliance issues.

151. In her role as CCRO, Ms. McCarthy is leading discussions with Cash Store's Ontario regulator in an effort to address the regulator's concerns regarding the issuance of a lender loan license to Cash Store Financial and its subsidiaries under the Payday Loans Act.

Relief Sought

152. In preparing this section of the affidavit, I have also consulted with and relied on discussions with Tom Fairfield, Cash Store's financial advisor, and the legal and financial advisors to the Special Committee.

153. Cash Store has made efforts to pursue a restructuring outside of a formal insolvency proceeding. Cash Store's liquidity position continues to significantly deteriorate and the current situation is dire. As noted above, there is too much uncertainty and too many legal and business impediments to continue the process outside of an insolvency proceeding. Senior Management and the Special Committee have expressed concerns regarding Cash Store's ability to sustain adequate liquidity to fulfill current business objectives and maintain going concern operations without commencing a CCAA process. Cash Store is unable to meet its liabilities as they become due and is therefore insolvent.

(a) **Stay of Proceedings**

154. Cash Store urgently requires a stay of proceedings and other protections provided by the CCAA so that it is provided with the breathing space to restructure its affairs and attempt to maximize enterprise value. In particular, the Applicants require a stay of proceedings to prevent the TPLs from attempting to withdraw the TPL Funds pursuant to the terms of the Broker Agreements, the Noteholders from making demands under the Senior Secured Notes and the Senior Lenders from making demands under the Credit Agreement. Such demands would likely result in the cessation of going concern operations for the Applicants absent a stay of proceedings. The Applicants are requesting an initial stay of proceedings until May 14.

155. If the court grants the proposed Initial Order, the Applicants intend to immediately continue the dialogue with its significant stakeholders in an effort to reach agreement on a consensual restructuring plan.

(b) **Interim Financing**

156. Cash Store's liquidity has declined from $13.1 million of reported total cash at the end of February to $12.6 million at the end of March. As of close of business on April 11, 2014 the total cash in Cash Store's bank accounts was approximately $2.9 million. These cash balances include Restricted Cash. The liquidity shortfall is driven primarily by the cessation of lending in Ontario as well as elevated corporate costs associated with ongoing litigation. Because of the nature of the Company's business as a lender of cash, the Company needs to maintain a minimum cash balance of $5 to $10 million to manage ordinary day to day fluctuations in its lending activities.

157. Because of its current liquidity challenges, and as demonstrated in the cash flow forecast (discussed below), Cash Store requires interim financing on an urgent basis to continue going concern operations and to implement the reorganization of its business as part of this CCAA proceeding. Subject to certain terms and conditions, Coliseum Capital Partners, LP, Coliseum Capital Partners II, LP and Blackwell Partners, LLC have agreed to act as DIP lenders (the "DIP Lenders") and provide an interim financing facility (the "DIP Facility") of approximately $20.5 million to Cash Store Financial. The term sheet is attached to this affidavit as Exhibit "II".

158. The funds available under the DIP Facility will be used to meet Cash Store's immediate funding requirements during the CCAA proceedings in accordance with the cash flow projections, as well as for the payment of professional fees and other costs and expenses in

connection with the CCAA proceedings. The DIP Facility is guaranteed, jointly and severally, by the same entities that are Guarantors under the Credit Agreement and the Notes and by 1693926 Alberta Ltd. doing business as "The Title Store".

159. Cash Store has agreed to pay the DIP Lenders:

(a) For the first $12.5 million borrowed, interest of 12.5% per year, all of which is to be capitalised (not paid in cash) and added to the outstanding principal balance of the loan to become due and payable on the maturity date of the DIP Facility;

(b) For amounts loaned in excess of $12.5 million, interest of 10.5% per year and payable monthly in arrears in cash on the first business day of each month and on the maturity date, plus 7% per year provided that all such accrued and unpaid interest will be capitalised (not paid in cash) and added to the outstanding principal balance of the loan to become due and payable on the maturity date; and

(c) Agency fees of $30,000 per month while the DIP Facility is in place, DIP Financing fees of 3.5% of $12.5 million plus 5% of $8 million, and certain exit fees that are payable in specific circumstances.

160. It is a condition precedent to the availability of the DIP Facility that the Initial Order be in form and substance satisfactory to the DIP Lenders, including in respect of the granting of the DIP Lenders' Charge (as defined below). The DIP Facility is also provided on the condition that there be no Events of Default or Material Adverse Changes (as defined in the term sheet). The maturity date of the DIP Facility is the earlier of (i) 180 days from the granting of the Initial Order, (ii) the date an Approved Transaction is consummated, (iii) the date a demand for payment is made following an Event of Default, or (iv) the date on which the stay of proceedings

pursuant to the Initial Order expires without being extended or on which the CCAA proceedings are terminated.

161. The DIP Facility is proposed to be secured by a Court-ordered security interest, lien and charge (the "DIP Lenders' Charge") on all of the present and future assets, property and undertaking of Cash Store, including any cash on hand at the day of the filing (the "Property") that will secure all post-filing advances. The DIP Lenders' Charge is to have priority over all other security interests, charges and liens other than the Administration Charge (as defined below) and up to an amount of $1.5 million. The DIP Lenders' Charge will not secure any obligation that exists before the Initial Order is made and will be *pari passu* with the TPL Protections.

162. The DIP Facility includes affirmative covenants providing that the DIP Lenders will engage a Chief Restructuring Officer ("CRO") within 10 days from the issuance of the Initial Order. The DIP Facility permits a certain amount in critical vendor payments, which have been incorporated into the Cash Flows.

163. An alternative interim financing proposal (the "Alternative DIP Facility") was also conditional on a CCAA filing and required a priority DIP charge. The Special Committee, in consultation with its advisors, determined that the DIP Facility had more favourable terms than the Alternative DIP Facility and was in the best interests of Cash Store and its stakeholders.

164. The DIP Facility is critical to the successful restructuring of Cash Store, as it will provide Cash Store with the necessary liquidity to operate as a going concern during these proceedings and, absent an injection of cash at this time, Cash Store will be forced to shut down its operations, with a significant loss of employment and disruption to those who rely on its services.

(c) **Monitor**

165. FTI Consulting Canada Inc. ("FTI") has consented to act as the Monitor of the Applicants under the CCAA. A copy of the Monitor's consent is attached as Exhibit "JJ".

(d) **Administration Charge**

166. In connection with its appointment, it is proposed that the Monitor, along with its counsel, counsel and the financial advisor to the Special Committee, counsel to the Applicants and counsel and the financial advisor to the DIP Lenders will be granted a Court-ordered charge on all of the present and future assets, property and undertaking of the Applicants (the "Property") as security for their respective fees and disbursements relating to services rendered in respect of the Applicants up to a maximum amount of $1.5 million (the "Administration Charge"). The Administration Charge is proposed to have first priority over all other charges.

(e) **Directors' and Officers' Protection**

167. A successful restructuring of Cash Store will only be possible with the continued participation of Cash Store Financial's board of directors (the "Directors"), management and employees. These personnel are essential to the viability of Cash Store's continuing business.

168. I am advised by Marc Wasserman of Osler, Hoskin & Harcourt LLP, counsel for the Special Committee, and believe that, in certain circumstances, directors can be held liable for certain obligations of a company owing to employees. Cash Store estimates, with the assistance of its financial advisor, that these obligations may include unpaid accrued wages which could amount to as much as approximately $3.7 million, unpaid accrued vacation pay which could amount to as much as $1.4 million for a total potential director liability of approximately $5.1 million.

169. The amount of insurance remaining under the Director and Officer primary and excess insurance policies is approximately $28 million. As discussed above, Cash Store and its Directors and Officers are subject to significant litigation and it is not certain that there will be sufficient Director and Officer insurance to cover the defence costs and any potential findings of liability on the part of the Cash Store Directors or Officers. Furthermore, Cash Store has not yet been able to finalize a renewal of the Director and Officer insurance, which is due to expire in July 2014. Cash Store has recently purchased one year run-off insurance under the terms of its primary and excess policies, which will commence on the expiry of those policies.

170. The Directors and Officers have indicated that, in light of the uncertainty surrounding available Directors' and Officers' insurance, their continued service and involvement in this restructuring is conditional upon the granting of an Order under the CCAA which grants a charge in favour of the Directors and Officers of Cash Store in the amount of $2.5 million on the Property of Cash Store (the "Directors' Charge"), the priority of which is still under discussion. The Directors' Charge would act as security for indemnification obligations for the Directors' potential liabilities as set out above.

171. The Directors' Charge is necessary so that Cash Store may benefit from its Directors' and Officers' experience with the business and the alternative financial products industry, and guide Cash Store's restructuring efforts.

172. The members of the Special Committee have indicated that, in light of the uncertainty surrounding available Directors' and Officers' insurance, it is their intention to resign after a Chief Restructuring Officer ("CRO") is appointed by the court and a proper transition can be implemented. To that end, the DIP term sheet provides that a CRO be engaged within 10 days. The members of the Special Committee have indicated that they are only willing to assist

in transferring the Special Committee's restructuring duties to the proposed CRO on the condition that they receive protections akin to that of a CRO from and after the date of the Initial Order. Thus, the Special Committee members' continued service and involvement in this restructuring is conditional upon the granting of an Order under the CCAA which provides that no member of the Special Committee will have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, from and after the date of the Initial Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of such member of the Special Committee.

(f) **TPL Protections**

(i) **Existing Cash-on-hand**

173. Given the position of certain TPLs with respect to the Cash Store's cash-on-hand, it is proposed in the draft Initial Order that the TPLs be granted a Court-ordered charge on Cash Store's Property in the maximum amount of cash-on-hand at the time of filing (the "TPL Charge"). As stated in the DIP term sheet, the sole purpose of the TPL Charge is to ensure that any claims by the TPLs to Cash Store's cash-on-hand are preserved pending a determination by this court. Further, as stated in the DIP term sheet, the TPL Charge is intended to preserve the claims of the TPLs as they existed immediately prior to the effective time of the Initial Order. However, the term sheet states that the TPL Charge shall not grant the TPLs any new, additional, or greater rights than they would have had absent these protections.

174. The draft Initial Order proposes that the TPL Charge will rank *pari passu* with the DIP Lenders' Charge and will only be enforceable by the TPLs as directed by the Court. Given these protections, it is proposed in the draft Initial Order that Cash Store will be permitted to use all of the cash-on-hand for general operating purposes.

(ii) **Post-Filing Brokered Loan Repayments and Post-Filing Brokered Loans**

175. On the date of filing there will be approximately $18.7 million of brokered loans (less than 90 days past due), roughly $11.5 million, or 62%, of which are Ontario loans. The TPLs will likely encounter difficulty collecting outstanding Ontario loans, as the Ontario Cash Store branches are currently unable to broker new loans for customers. Cash Store is not able to predict with any certainty the amount of Ontario loans that will be repaid.

176. As customers repay the TPL brokered loans, Cash Store intends to use this liquidity for the sole purpose of brokering new loans (and not for funding operations or other costs). Cash Store will keep sufficiently detailed records of all post-filing repayments of TPL loans, including principal and interest ("TPL Repayments") and any and all re-advances made by Cash Store such that, as at any time post-filing, the company can determine (i) the amount of all TPL Repayments, (ii) any and all re-advances, and (iii) any still outstanding TPL brokered loans. Cash Store will work with the Monitor to accelerate the existing reconciliation process in order to allow Cash Store to identify on a daily basis the TPL brokered loans and any amounts received in respect of same following the Initial Order (as opposed to the month-end reconciliation process now followed).

177. On a go-forward basis, Cash Store will continue its practice of depositing repayments of TPL brokered loans into Cash Store's general bank account. Cash Store is not in a position to physically segregate the TPL Repayments given the manner in which such repayments are made and limitations with Cash Store's cash management process, including Cash Store's cash management software and that belonging to third parties, DC Bank and Direct Cash Payments Inc.

178. Cash Store has had discussions with the proposed Monitor and has agreed to maintain a minimum cash balance in an amount equal to the TPL Repayment received after the Initial Order and not yet redeployed as new brokered loans.

179. Cash Store will continue to ensure that TPLs receive a return of approximately 17.5% per year (or such lesser amount as may be agreed to) with respect to TPL brokered loans that are repaid and available for redeployment from and after the Initial Order date. Based on this approach, the return will be made on any TPL brokered loan existing as of the date of the Initial

Order that is subsequently repaid and available for redeployment. The return will be calculated so that the 17.5% payment is paid from the Initial Order date on such amounts. These arrangements are also intended to ensure that Cash Store will not make payments on loans in existence on the date of filing that are subsequently defaulted upon.

(g) **Cash Flow Forecast**

180. Cash Store, with the assistance of its financial advisor Conway, has prepared 13-week cash flow projections as required by the CCAA. FTI has reviewed these cash flow projections. A copy of the cash flow projections is attached as Exhibit "KK". The cash flow projections demonstrate that Cash Store can continue going concern operations during the proposed stay period should the proposed DIP Facility be approved.

181. Cash Store anticipates that the Monitor will provide oversight and assistance and will report to the Court in respect of Cash Store's actual results relative to cash flow forecast during this proceeding. Existing accounting procedures will provide the Monitor with the ability to track the flow of funds among the various Applicants.

182. I am confident that granting the Initial CCAA Order sought by the Applicants is in the best interests of the Applicants and all interested parties. Without the DIP Facility, Cash Store faces a cessation of going concern operations, the liquidation of its assets and the loss of its employees' jobs. Cash Store requires an immediate and realistic dialogue with its stakeholders under the protection of the CCAA with the goal of maximizing the ongoing value of the business and continuing employment for its employees. The granting of the requested stay of proceedings will maintain the "status quo" and permit an orderly restructuring and analysis of the Applicants' affairs, with minimal short-term disruptions to Cash Store's business.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, on April 14, 2014.

Commissioner for Taking Affidavits
Karin Sachar

Steven Carlstrom

Tab 3

Court File No. CV-14-10518-00CL

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 THE CASH STORE FINANCIAL SERVICES INC., THE CASH STORE INC., TCS CASH STORE INC., INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., 1693926 ALBERTA LTD DOING BUSINESS AS "THE TITLE STORE"

RESPONDING MOTION RECORD OF THE AD HOC COMMITTEE OF CASH STORE NOTEHOLDERS TO COMPUTERSHARE MOTION

(Computershare motion returnable on June 5, 2014 at 11:30 a.m.)

AFFIDAVIT OF BRADLEY WIFFEN
(sworn May 21, 2014)

I, Bradley Wiffen, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am an associate at Goodmans LLP ("**Goodmans**"), which is legal counsel to the Ad Hoc Committee of Cash Store Noteholders formed in response to the financial circumstances of The Cash Store Financial Services Inc. and its affiliates (the "**Company**"). As such, I have personal knowledge of the matters to which I depose in this affidavit.

2. Attached hereto as Exhibit "A" are excerpts from the indenture dated as of January 31, 2012 (the "**Indenture**") in respect of the 11½% Senior Secured Notes due 2017 (the "**Notes**") issued by the Company, and in respect of which Computershare Trust Company of Canada and

Computershare Trust Company, N.A. serve as indenture trustee (the "**Indenture Trustee**"). Sections 6 and 7 of the Indenture govern certain aspects of the relationship between the Trustee and holders of the Notes.

3. Attached hereto as Exhibit "B" are copies of emails sent by Robert J. Chadwick of Goodmans LLP to Michael A. Weinczok of Dickinson Wright LLP, Canadian counsel to the Indenture Trustee, dated April 25, 2014 and May 1, 2014.

4. Attached hereto as Exhibit "C" are copies of emails sent by Brendan O'Neill of Goodmans LLP to Tina N. Moss of Perkins Coie LLP, U.S. counsel to the Indenture Trustee, dated May 6, 2014 and May 8, 2014.

5. Attached hereto as Exhibit "D" is a copy of an email sent by Brendan O'Neill of Goodmans LLP to Tina N. Moss of Perkins Coie LLP, U.S. counsel to the Indenture Trustee, dated May 6, 2014.

SWORN before me at the City of Toronto, in the Province of Ontario, on May 21, 2014.

A Commissioner for taking affidavits
Name:

ROBERT MICHAEL RICHARDS, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires May 1, 2017.

BRADLEY WIFFEN

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF BRADLEY WIFFEN
SWORN BEFORE ME
ON THIS 21ST DAY OF MAY, 2014

A COMMISSIONER FOR TAKING AFFIDAVITS

ROBERT MICHAEL RICHARDS, a
Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires May 1, 2017.

EXECUTION VERSION

INDENTURE

Dated as of January 31, 2012

Among

THE CASH STORE FINANCIAL SERVICES INC.

THE GUARANTORS NAMED ON THE SIGNATURE PAGES HERETO

COMPUTERSHARE TRUST COMPANY, N.A.,
as U.S. Trustee

and

COMPUTERSHARE TRUST COMPANY OF CANADA,
as Canadian Trustee and Collateral Agent

11 ½% SENIOR SECURED NOTES DUE 2017

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In connection with any amalgamation, arrangement, consolidation, merger, sale, assignment, conveyance, transfer, lease or other disposition contemplated by Section 5.01(c)(1), such Guarantor shall deliver, or cause to be delivered, to the Trustee an Officer's Certificate stating that such amalgamation, arrangement, consolidation, merger, sale, assignment, conveyance, transfer, lease or other disposition and the supplemental indenture in respect thereof comply with the requirements of this Indenture and an Opinion of Counsel.

The successor entity shall succeed to, and be substituted for, and may exercise every right and power of the predecessor company under this Indenture and the Notes Guarantee, and the predecessor company shall be released from all its obligations under this Indenture and the Notes Guarantee.

Section 5.02 Successor Corporation Substituted.

Upon any consolidation, amalgamation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of the Company in accordance with Section 5.01, the successor corporation formed by such consolidation or into or with which the Company is merged or amalgamated or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, amalgamation, merger, sale, lease, conveyance or other disposition, the provisions of this Indenture referring to the Company shall refer instead to the successor corporation and not to the Company), and may exercise every right and power of the Company under this Indenture, the Collateral Documents and the Notes with the same effect as if such successor Person had been named as the Company herein; provided that the predecessor Company shall not be relieved from the obligation to pay the principal of and interest, if any, on the Notes except in the case of a sale, assignment, transfer, conveyance or other disposition of all of the Company's assets that meets the requirements of Section 5.01

ARTICLE 6

DEFAULTS AND REMEDIES

Section 6.01 Events of Default.

(a) An "Event of Default" wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(1) default for 30 days in the payment when due of interest on the Notes;

(2) default in payment when due of the principal, or premium, if any, of any Note when due at maturity, upon optional redemption, upon required purchase, upon acceleration or otherwise;

(3) failure by the Company or any of its Restricted Subsidiaries to comply with its obligations under Section 4.10, Section 4.14 or Section 5.01;

(4) failure to perform any other covenant or agreement of the Company or any of its Restricted Subsidiaries under the Indenture Documents for 30 days (or, in the case of Section 4.03, 90 days) after written notice to the Company by the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding voting as a single class;

(5) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Company or any of its Restricted Subsidiaries (or the payment of which is Guaranteed by the Company or any of its Restricted Subsidiaries) whether such Indebtedness or Guarantee now exists, or is created after the Issue Date, which default (A) is caused by a failure to pay principal at final stated maturity (after giving effect to all applicable grace periods provided in such Indebtedness) (a "Payment Default") or (B) results in the acceleration of such Indebtedness prior to its final stated maturity and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates in excess of $12.5 million (or its foreign currency equivalent);

(6) failure by the Company or any of its Restricted Subsidiaries to pay final and non-appealable judgments aggregating in excess of $12.5 million (or its foreign currency equivalent), which judgments are not paid, discharged or stayed for a period of 60 days following such judgment becoming final, and in the event such judgment is covered by insurance, any enforcement proceeding has been commenced by any creditor upon such judgment or decree which is not promptly stayed;

(7) (i) any security interest created by any Collateral Document ceases to be in full force and effect (except as permitted by the terms of this Indenture or the Collateral Documents) or (ii) the breach or repudiation by the Company or any of its Restricted Subsidiaries of any of their obligations under any Collateral Document; provided that, in the case of clauses (i) and (ii), such cessation, breach or repudiation, individually or in the aggregate, results in Collateral having a Fair Market Value in excess of $5.0 million not being subject to a valid, perfected security interest;

(8) except as permitted by this Indenture, any Notes Guarantee of a Significant Subsidiary of the Company or any group of Guarantors that, when taken together (determined as of the most recent consolidated financial statements of the Company for a fiscal quarter end provided as required pursuant to Section 4.03), would constitute a Significant Subsidiary of the Company shall be held in any judicial proceeding to be unenforceable or invalid or shall cease for any reason to be in full force and effect or any Guarantor that is a Significant Subsidiary of the Company or any group of Guarantors that, when taken together, would constitute a Significant Subsidiary of the Company, or any Person acting on behalf of any such Guarantor or Guarantors, shall deny or disaffirm its obligations under its Notes Guarantee; and

(9) the Company or any Significant Subsidiary (or group of Restricted Subsidiaries that together (determined as of the most recent consolidated financial

statements of the Company for a fiscal quarter end provided as required pursuant to Section 4.03) would constitute a Significant Subsidiary), pursuant to or within the meaning of any Bankruptcy Law:

(i) commences proceedings to be adjudicated bankrupt or insolvent;

(ii) consents to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under applicable Bankruptcy Law;

(iii) consents to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or other similar official of it or for all or substantially all of its property;

(iv) makes a general assignment for the benefit of its creditors; or

(v) generally is not paying its debts as they become due;

(10) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(i) is for relief against the Company or any Significant Subsidiary (or group of Restricted Subsidiaries that together (determined as of the most recent consolidated financial statements of the Company for a fiscal quarter end provided as required pursuant to Section 4.03) would constitute a Significant Subsidiary) in a proceeding in which the Company or any such Restricted Subsidiary that is a Significant Subsidiary or any such group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, is to be adjudicated bankrupt or insolvent;

(ii) appoints a receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Significant Subsidiary (or group of Restricted Subsidiaries that together (determined as of the most recent consolidated financial statements of the Company for a fiscal quarter end provided as required pursuant to Section 4.03) would constitute a Significant Subsidiary), or for all or substantially all of the property of the Company or any Significant Subsidiary (or group of Restricted Subsidiaries that together (determined as of the most recent consolidated financial statements of the Company for a fiscal quarter end provided as required pursuant to Section 4.03) would constitute a Significant Subsidiary); or

(iii) orders the liquidation of the Company or any Significant Subsidiary (or group of Restricted Subsidiaries that together (determined as of the most recent consolidated financial statements of the Company for a fiscal quarter end provided as required pursuant to Section 4.03) would constitute a Significant Subsidiary);

and the order or decree remains unstayed and in effect for 60 consecutive days.

(b) In the event of any Event of Default specified in clause (5) of Section 6.01(a), such Event of Default and all consequences thereof (excluding any resulting payment default, other than as a result of acceleration of the Notes) shall be annulled, waived and rescinded,

automatically and without any action by the Trustee or the Holders of Notes, if within 20 days after such Event of Default arose the Company delivers an Officer's Certificate to the Trustee stating that:

(1) the Indebtedness or Guarantee that is the basis for such Event of Default has been rescinded, cured or discharged, or holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default;

(2) the annulment of the acceleration of the Notes would not conflict with any judgment or decree of a court of competent jurisdiction; and

(3) all existing Events of Default, except nonpayment of principal, premium or interest on the Notes that became due solely because of the acceleration of the Notes, have been cured or waived.

(c) If a Default is deemed to occur solely because a Default (the "Initial Default") already existed, and such Initial Default is subsequently cured and is not continuing, the Default or Event of Default resulting solely because the Initial Default existed shall be deemed cured, and will be deemed annulled, waived and rescinded without any further action required.

Section 6.02 Acceleration.

If any Event of Default (other than an Event of Default specified in clause (9) or (10) of Section 6.01(a)) occurs and is continuing under this Indenture, the Trustee or the Holders of at least 25% in principal amount of the then total outstanding Notes may declare the principal, premium, if any, interest and any other monetary obligations on all the then outstanding Notes to be due and payable immediately. Upon the effectiveness of such declaration, such principal and interest shall be due and payable immediately.

Notwithstanding the foregoing, in the case of an Event of Default arising under clause (9) or (10) of Section 6.01(a), all outstanding Notes shall be due and payable immediately without further action or notice.

Section 6.03 Other Remedies.

If an Event of Default occurs and is continuing, the Trustee may pursue, or may direct the Collateral Agent to pursue, subject to the Collateral Trust Agreement, any available remedy to collect the payment of principal, premium, if any, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

Section 6.04 Waiver of Past Defaults.

The Holders of at least a majority in aggregate principal amount of the Notes then outstanding by notice to the Trustee may on behalf of the Holders of all of the Notes waive any existing Default or Event of Default and its consequences under this Indenture except a continuing Default or Event of Default in the payment of principal, premium, if any, or interest on the Notes (except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the then outstanding Notes and a waiver of the payment default that resulted from such acceleration). Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 6.05 Control by Majority.

Subject to the terms of the Collateral Documents, Holders of a majority in principal amount of the then total outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. The Trustee, however, may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines is unduly prejudicial to the rights of any other Holder of a Note (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such direction is unduly prejudicial to such Holders) or that would involve the Trustee in personal liability.

Section 6.06 Limitation on Suits.

Subject to Section 6.07, no Holder of a Note may pursue any remedy with respect to this Indenture or the Notes unless:

(1) such Holder has previously given the Trustee notice that an Event of Default is continuing;

(2) Holders of at least 25% in principal amount of the total outstanding Notes have requested the Trustee to pursue the remedy;

(3) Holders of the Notes have offered and, if requested, provided to the Trustee indemnity or security satisfactory to the Trustee against any loss, liability or expense in relation to such Holder's pursuit of such remedy;

(4) the Trustee has not complied with such request within 60 days after the receipt thereof and the offer of security or indemnity; and

(5) Holders of a majority in principal amount of the total outstanding Notes have not given the Trustee a direction inconsistent with such request within such 60-day period.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder of a Note or to obtain a preference or priority over another Holder of a Note (it being

understood that the Trustee has no affirmative duty to ascertain whether or not any such use by any Holder is prejudicial to another Holder).

Section 6.07 Rights of Holders of Notes to Receive Payment.

Notwithstanding any other provision of this Indenture, the right of any Holder of a Note to receive payment of principal, premium, if any, and interest on the Note, on or after the respective due dates expressed in the Note (including in connection with an Asset Sale Offer or a Change of Control Offer), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 6.08 Collection Suit by Trustee.

If an Event of Default specified in Section 6.01(a)(1) or (2) occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Company for the whole amount of principal of, premium, if any, and interest remaining unpaid on the Notes and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

Section 6.09 Restoration of Rights and Remedies.

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceedings, the Company, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding has been instituted.

Section 6.10 Rights and Remedies Cumulative.

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes in Section 2.07, no right or remedy herein conferred upon or reserved to the Trustee, the Collateral Agent or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.11 Delay or Omission Not Waiver.

No delay or omission of the Trustee, the Collateral Agent or of any Holder of any Note to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee, the Collateral Agent or to

the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee, the Collateral Agent or by the Holders, as the case may be.

Section 6.12 Trustee May File Proofs of Claim.

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, the Collateral Agent and their respective agents and counsel) and the Holders of the Notes allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes including the Guarantors), its creditors or its property and shall be entitled and empowered to participate as a member in any official committee of creditors appointed in such matter and to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee and the Collateral Agent shall consent to the making of such payments directly to the Holders, to pay to the Trustee and the Collateral Agent any amount due to them for the reasonable compensation, expenses, disbursements and advances of the Trustee, the Collateral Agent and their respective agents and counsel, and any other amounts due the Trustee and the Collateral Agent under Section 7.06. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, the Collateral Agent, their agents and counsel, and any other amounts due the Trustee and the Collateral Agent under Section 7.06 out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee and the Collateral Agent to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee and the Collateral Agent to vote in respect of the claim of any Holder in any such proceeding.

Section 6.13 Priorities.

Subject to the terms of the Collateral Documents, with respect to any proceeds of Collateral, any money or property collected by the Trustee or the Collateral Agent pursuant to this Article 6 and any money or other property distributable in respect of any Grantor's Obligations under this Indenture after an Event of Default shall be applied in the following order:

FIRST: to pay Obligations in respect of any reasonable expenses, reimbursements or indemnities then due to the Trustee or the Collateral Agent;

SECOND: to pay interest then due and payable in respect of the Notes;

THIRD: to pay or prepay principal payments in respect of the Notes; and

FOURTH: to pay all other Obligations with respect to the Notes, the Notes Guarantees and this Indenture;

provided, however, that if sufficient funds are not available to fund all payments required to be made in any of clauses FIRST through FOURTH above, the available funds being applied to the Obligations specified in any such clause (unless otherwise specified in such clause) shall be allocated to the payment of such Obligations ratably, based on the proportion of the relevant party's interest in the aggregate outstanding Obligations described in such clause.

The Trustee may fix a record date and payment date for any payment to Holders of Notes pursuant to this Section 6.13.

Section 6.14 Undertaking for Costs.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.14 does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 6.07, or a suit by Holders of more than 10% in principal amount of the then outstanding Notes.

ARTICLE 7

TRUSTEE

Section 7.01 Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default:

(i) the duties of the Trustee shall be determined solely by the express provisions of this Indenture and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of paragraph (b) of this Section 7.01;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved in a court of competent jurisdiction that the Trustee was negligent in ascertaining the pertinent facts;

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b) and (c) of this Section 7.01.

(e) The Trustee shall be under no obligation to exercise any of its rights or powers under this Indenture at the request or direction of any of the Holders of the Notes unless the Holders have offered to the Trustee indemnity or security satisfactory to the Trustee in its sole discretion against any loss, liability, cost or expense in relation to such exercise.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

Section 7.02 Rights of Trustee.

(a) The Trustee may conclusively rely, as to the truth of statements and the correctness of the opinions expressed therein, upon any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(b) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel. The Trustee may consult with counsel of its selection and the advice of such counsel or

any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent or attorney appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company shall be sufficient if signed by an Officer of the Company.

(f) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a Default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture. Delivery of reports to the Trustee pursuant to Section 4.03 shall not constitute actual knowledge of, or notice to, the Trustee of the information contained therein.

(g) In no event shall the Trustee be responsible or liable for any special, indirect, punitive, incidental or consequential loss or damage of any kind whatsoever (including, but not limited to, lost profits) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(h) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(i) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

(j) The Trustee may request that the Company and any Subsidiary Guarantor deliver an Officer's Certificate setting forth the names of the individuals and/or titles of Officers (with specimen signatures) authorized at such times to take specific actions pursuant to this Indenture, which Officer's Certificate may be signed by any persons specified as so authorized in any certificate previously delivered and not superseded.

(k) The Trustee shall receive and retain the financial reports and statements of the Company as provided herein, but shall have no duties whatsoever with respect to the contents thereof, including no duty to review or analyze such reports or statements to determine compliance with covenants or other obligations of the Company.

Section 7.03 Individual Rights of Trustee.

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Section 7.09.

Section 7.04 Trustee's Disclaimer.

The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture, the Notes, the Collateral Documents or the Final Offering Circular, and it shall not be accountable for the Company's use of the proceeds from the Notes or any money paid to the Company or upon the Company's direction under any provision of this Indenture, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Notes, in the Offering Circular or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of authentication.

Section 7.05 Notice of Defaults.

If a Default occurs and is continuing and if it is known to the Trustee, the Trustee shall mail or otherwise deliver in accordance with the procedures of CDS to Holders of Notes a notice of the Default within 90 days after it occurs, unless such default shall have been cured or waived. Except in the case of a Default relating to the payment of principal, premium, if any, or interest on any Note, the Trustee may withhold from the Holders notice of any continuing Default if and so long as the Board of Directors, the executive committee or a trust committee of directors or Responsible Officers of the Trustee in good faith determines that withholding the notice is in the interests of the Holders of the Notes.

Section 7.06 Compensation and Indemnity.

The Company shall pay to the Trustee from time to time such compensation for its acceptance of this Indenture and services provided hereunder as Trustee and Paying Agent, and as Collateral Agent hereunder and under the Collateral Documents, as the parties shall agree in writing from time to time. The Trustee's and the Collateral Agent's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee and the Collateral Agent promptly upon request for all reasonable disbursements, advances and expenses incurred or made by them in addition to the compensation for their services. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's and the Collateral Agent's agents and counsel. Any amount due under this Section 7.06 and unpaid 30 days after request for such payment shall bear interest from the expiration of such 30 days at a rate per annum equal to the then current rate charged by the Trustee from time to time, payable on demand. After default, all amounts so payable and the interest thereon payable out of any funds coming into the possession of the Trustee or its

successors in the trusts hereunder in priority to any payment of the principal of, or interest or Premium, if any, on, the Notes.

The Company and the Guarantors, jointly and severally, shall indemnify the Trustee and the Collateral Agent for, and hold the Trustee and the Collateral Agent, their officers, directors, employees, representatives and agents, harmless against, any and all loss, damage, claim, liability or expense (including attorneys' fees) incurred by it in connection with the acceptance or administration of this trust and the performance of its duties hereunder and under the Collateral Documents (including the costs and expenses of enforcing this Indenture against the Company or any of the Guarantors (including this Section 7.06) or defending itself against any claim whether asserted by any Holder, the Company or any Subsidiary Guarantor, or liability in connection with the acceptance, exercise or performance of any of its powers or duties hereunder). The Trustee or the Collateral Agent shall notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee or the Collateral Agent to so notify the Company shall not relieve the Company of its obligations hereunder. The Company and the Guarantors shall defend the claim and the Trustee and the Collateral Agent may have separate counsel and the Company shall pay the fees and expenses of such counsel. The Company need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee or the Collateral Agent through the Trustee's or the Collateral Agent's own willful misconduct or gross negligence.

The obligations of the Company and the Guarantors under this Section 7.06 shall survive the satisfaction and discharge of this Indenture or the earlier resignation or removal of the Trustee or the Collateral Agent, as applicable.

To secure the payment obligations of the Company and the Guarantors in this Section 7.06, the Trustee and the Collateral Agent shall have a Lien prior to the Notes and rights of the Holders on all money or property held or collected by the Trustee or the Collateral Agent, except that held in trust to pay principal and interest on particular Notes. Such Lien shall survive the satisfaction and discharge of this Indenture.

When the Trustee or the Collateral Agent incurs expenses or renders services after an Event of Default specified in Section 6.01(a)(9) or (10) occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

Section 7.07 Replacement of Trustee.

A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.07. The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Company. The Holders of a majority in principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Company in writing. The Company may remove the Trustee if:

(a) the Trustee fails to comply with Section 7.09;

(b) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(c) a custodian or public officer takes charge of the Trustee or its property; or

(d) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the then outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Company.

If a successor Trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee (at the Company's expense), the Company or the Holders of at least 10% in principal amount of the then outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee, after written request by any Holder who has been a Holder for at least six months, fails to comply with Section 7.09, such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee; *provided* all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 7.06. Notwithstanding replacement of the Trustee pursuant to this Section 7.07, the Company's obligations under Section 7.06 shall continue for the benefit of the retiring Trustee.

Section 7.08 Successor Trustee by Merger, Etc.

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee.

Section 7.09 Eligibility; Disqualification.

There shall at all times be a Trustee hereunder (acting singly or together with a co-Trustee) that (a) is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that satisfies the requirements of TIA § 310(a)(1), (2) and (5), that is subject to supervision or examination by federal or state authorities and (b) is authorized to carry on the business of a trust company in all provinces of Canada.

Section 7.10 Collateral Documents.

By their acceptance of the Notes, the Holders hereby authorize and direct the Trustee and Collateral Agent, as the case may be, to execute and deliver the Collateral Documents in which the Trustee or the Collateral Agent, as applicable, is named as a party, including the Collateral Documents executed after the Issue Date. It is hereby expressly acknowledged and agreed that, in doing so, the Trustee and the Collateral Agent are not responsible for the terms or contents of such agreements, or for the validity or enforceability thereof, or the sufficiency thereof for any purpose. Whether or not so expressly stated therein, in entering into, or taking (or forbearing from) any action under or pursuant to, the Collateral Documents, the Trustee and the Collateral Agent each shall have all of the rights, immunities, indemnities and other protections granted to it under this Indenture (in addition to those that may be granted to it under the terms of such other agreement or agreements).

Section 7.11 Preferential Collection of Claims Against Company.

The Trustee shall be subject to TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee that has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated.

Section 7.12 Calculations in Respect of the Notes.

The Company shall be responsible for making calculations called for under the Notes, including, but not limited to, determination of premiums, Additional Notes, original issue discount, conversion rates and adjustments, if any. The Company shall make the calculations in good faith and, absent manifest error, its calculations shall be final and binding on the Holders of the Notes. The Company shall provide a schedule of its calculations to the Trustee when applicable, and the Trustee shall be entitled to rely conclusively on the accuracy of the Company's calculations without independent verification.

Section 7.13 Brokerage Confirmations.

The Company acknowledges that regulations of the Comptroller of the Currency grant the Company the right to receive brokerage confirmations of the Note transactions as they occur. To the extent contemplated by law, the Company specifically waives any such notification relating to the Notes transactions contemplated herein; *provided, however,* that the Trustee shall send to the Company periodic cash transaction statements that describe all investment transactions.

Section 7.14 Third Party Interests.

Each party to this Indenture hereby represents to the Trustee that any account to be opened by, or interest to be held by, the Trustee in connection with this Indenture, for or to the credit of such party, either (i) is not intended to be used by or on behalf of any third party; or (ii) is intended to be used by or on behalf of a third party, in which case such party hereto agrees to complete and execute forthwith a declaration in the Trustee's prescribed form as to the particulars of such third party.

Section 7.15 Trustee Not Bound to Act.

The Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Trustee, in its sole judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Trustee, in its sole judgment, determine at any time that its acting under this Indenture has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on 10 days' written notice to the other parties to this Indenture, provided (i) that the Trustee's written notice shall describe the circumstances of such non-compliance; and (ii) that if such circumstances are rectified to the Trustee's satisfaction within such 10-day period, then such resignation shall not be effective.

Section 7.16 Privacy Laws.

The parties acknowledge that Canadian federal and/or provincial legislation that addresses the protection of individuals' personal information (collectively, "Privacy Laws") applies to obligations and activities under this Indenture. Despite any other provision of this Indenture, no party to this Indenture shall take or direct any action that would contravene, or cause the other to contravene, applicable Privacy Laws. The Company shall, prior to transferring or causing to be transferred personal information to the Trustee, obtain and retain required consents of the relevant individuals to the collection, use and disclosure of their personal information, or shall have determined that such consents either have previously been given upon which the parties can rely or are not required under the Privacy Laws. The Trustee shall use commercially reasonable efforts to ensure that its services hereunder comply with Privacy Laws.

Section 7.17 SEC Reporting.

The Company confirms that it has either (i) a class of securities registered pursuant to Section 12 of the Exchange Act; or (ii) a reporting obligation pursuant to Section 15(d) of the Exchange Act, and has provided the Trustee with an Officers' Certificate (in a form provided by the Trustee) certifying such reporting obligation and other information as requested by the Trustee. The Company covenants that in the event that any such registration or reporting obligation shall be terminated by the Company in accordance with the Exchange Act, the Company shall promptly notify the Trustee of such termination and such other information as the Trustee may require at the time. The Company acknowledges that the Trustee is relying upon the foregoing representation and covenants in order to meet certain SEC obligations with respect to those clients who are filing with the SEC.

Section 7.18 Trustee Not Liable in Respect of Depository

The Trustee shall not have any liability whatsoever for:

(1) any aspect of the records relating to or payments made on account of beneficial ownership interests in the Notes held by and registered in the name of a Depository or any Book-Entry-Only ("BEO") participant;

(2) maintaining, supervising or reviewing any records relating to such beneficial ownership interests; or

(3) any advice or representation made or given by or with respect to a Depository and made or given herein with respect to rules of such Depository or any action to be taken by a Depository or at the direction of a BEO participant.

Section 7.19 Interests in Global Note

Notes issued to a Depository in the form of a Global Note shall be subject to the following:

(1) the Trustee may deal with the Depository as the authorized representative of the beneficial owners of such Notes;

(2) the rights of the beneficial owners of such Notes shall be exercised only through such Depository;

(3) such Depository will make book-entry transfers among the BEO participants and will receive and transmit distributions of principal and interest on the Notes to the BEO participants; and

(4) the BEO participants shall have no rights under this Indenture or under or with respect to any of the Notes held on their behalf by such Depository, and the Depository may be treated by the Trustee and its agents, employees, officers and directors as the absolute owner of the Notes represented by such Global Notes for all purposes whatsoever.

Section 7.20 Joint Trustees

The rights, powers, duties and obligations conferred and imposed upon each Trustee are conferred and imposed upon and shall be exercised and performed by the U.S. Trustee and the Canadian Trustee either jointly or severally, except to the extent otherwise provided herein and except to the extent that either Trustee shall be incompetent or unqualified to perform such act, in which event such rights, powers, duties and obligations shall be exercised and performed by a Trustee which is not so incompetent or unqualified to the extent it can do so under applicable law, and except that neither Trustee shall be liable or responsible for the acts or omissions of the other Trustee. If the Trustees are unable to agree jointly to act or refrain from acting with respect to any right, power, duty or obligation conferred jointly upon the Trustees hereunder, the U.S. Trustee shall be entitled to act without the Canadian Trustee, and any action by the U.S. Trustee, or decision of the U.S. Trustee to act or refrain from acting, shall be binding upon the Canadian Trustee and each other Person as if the Canadian Trustee so acted or refrained from acting but, in such case, the Canadian Trustee shall have no liability for any acts or omissions by the U.S. Trustee. The performance or discharge by the Canadian Trustee of any rights, powers, duties or responsibilities under this Indenture shall be made in compliance with the laws of Ontario and the federal laws of Canada applicable therein.

THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF BRADLEY WIFFEN
SWORN BEFORE ME
ON THIS 21ST DAY OF MAY, 2014

A COMMISSIONER FOR TAKING AFFIDAVITS

ROBERT MICHAEL RICHARDS, a
Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires May 1, 2017.

O'Neill,Brendan

From: Chadwick, Robert
Sent: Thursday, May 01, 2014 10:00 AM
To: 'MWeinczok@dickinson-wright.com'
Cc: 'orestes.pasparakis@nortonrosefulbright.com'; O'Neill,Brendan
Subject: Re: In the Matter of The Cash Store Financial Services Inc.; Court File No.: CV-14-10518-00CL

Mike, we should discuss next steps for Trustee. I am tied up today. I spoke to Lisa yesterday and I am concerned Trustee may be incurring costs which will not be paid. We can ensure we update Trustee and ensure they have all the information they need. We can also consider adding some no liability language to order to ensure additional protection for Trustee. We want to avoid a lot of costs being incurred which won't be supported by noteholders. It may be better for noteholder committee or HL to speak directly to Trustee to avoid additional professional costs. Rob

Robert J. Chadwick
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Goodmans LLP
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7
General:416-979-2211

From: Chadwick, Robert
Sent: Friday, April 25, 2014 06:14 PM
To: 'Michael A. Weinczok' <MWeinczok@dickinson-wright.com>
Cc: Pasparakis, Orestes (Orestes.Pasparakis@nortonrosefulbright.com) <Orestes.Pasparakis@nortonrosefulbright.com>; O'Neill,Brendan
Subject: RE: In the Matter of The Cash Store Financial Services Inc.; Court File No.: CV-14-10518-00CL

Mike, we should discuss as clients will not fund Trustee for court attendance and other matters being picked up by ad hoc committee. There are a lot of professionals around and case is a difficult case at first instance to see road to recovery. I can call you next week to discuss if you need more information. Rob

---

From: Michael A. Weinczok [mailto:MWeinczok@dickinson-wright.com]
Sent: Friday, April 25, 2014 5:59 PM
To: 'Dacks, Jeremy'; Chadwick, Robert; 'Rob Staley'; Yeoh, Swee-Teen; Wasserman, Marc; Riesterer, Patrick; Sachar, Karin; nycprojectoilers@rothschild.com; nycprojectoilers@rothschild.com; wberman@casselsbrock.com; rjacobs@casselsbrock.com; O'Neill,Brendan; orestes.pasparakis@nortonrosefulbright.com; Alan.Merskey@nortonrosefulbright.com; virginie.gauthier@nortonrosefulbright.com; alexander.schmitt@nortonrosefulbright.com; Grant Stapon; Ken Lenz; adam.maerov@mcmillan.ca; brett.harrison@mcmillan.ca; patricia.wakelin@computershare.com; Shelley.Bloomberg@computershare.com; mohanie.shivprasad@computershare.com; tina.vitale@computershare.com; john.wahl@computershare.com; TMoss@perkinscoie.com; RSarubbi@perkinscoie.com; jkruger@blg.com; PMcCarthy@blg.com; jforeman@harrisonpensa.com; ahatnay@kmlaw.ca; dbieganek@dcllp.com; Ehoaken@counsel-toronto.com; hawkesr@jssbarristers.ca; David P. Preger; charles.wright@siskinds.com; serge.kalloghlian@siskinds.com; alex.dimson@siskinds.com; 'gmeisenheimer@harrisonpensa.com; jharnum@kmlaw.ca; ascotchmer@kmlaw.ca; Raj Sahni; Jonathan Bell

Cc: 'greg.watson@fticonsulting.com'; jeffrey.rosenberg@fticonsulting.com; Gage, James D.; Meredith, Heather L.
Subject: RE: In the Matter of The Cash Store Financial Services Inc.; Court File No.: CV-14-10518-00CL

We act for Computershare Trust Company N.A., in its capacity as Indenture Trustee, and Computershare Trust Company of Canada, in its capacity as Collateral Trustee and Indenture Trustee (collectively "Computershare"). Computershare will be supporting the Monitor, the Chief Restructuring Officer and the Ad Hoc Committee of Secured Noteholders to have the matter heard on May 5, 2014 (or at another date with a proper agreed schedule).

Regards,

Mike

Michael A. Weinczok Partner
199 Bay Street
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Commerce Court West
Toronto ON M5L 1G4
Phone 416-777-4026
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Profile | V-Card

DICKINSON WRIGHT LLP
MICHIGAN ARIZONA NEVADA OHIO TENNESSEE WASHINGTON D.C. TORONTO

From: Dacks, Jeremy [mailto:JDacks@osler.com]
Sent: April-25-14 5:15 PM
To: Chadwick, Robert; 'Rob Staley'; Yeoh, Swee-Teen; Wasserman, Marc; Riesterer, Patrick; Sachar, Karin; nycprojectoilers@rothschild.com; nycprojectoilers@rothschild.com; wberman@casselsbrock.com; rjacobs@casselsbrock.com; O'Neill,Brendan; orestes.pasparakis@nortonrosefulbright.com; Alan.Merskey@nortonrosefulbright.com; virginie.gauthier@nortonrosefulbright.com; alexander.schmitt@nortonrosefulbright.com; Grant Stapon; Ken Lenz; adam.maerov@mcmillan.ca; brett.harrison@mcmillan.ca; patricia.wakelin@computershare.com; Shelley.Bloomberg@computershare.com; mohanie.shivprasad@computershare.com; tina.vitale@computershare.com; john.wahl@computershare.com; TMoss@perkinscoie.com; RSarubbi@perkinscoie.com; jkruger@blg.com; PMcCarthy@blg.com; jforeman@harrisonpensa.com; ahatnay@kmlaw.ca; dbieganek@dcllp.com; Ehoaken@counsel-toronto.com; hawkesr@jssbarristers.ca; Michael A. Weinczok; David P. Preger; charles.wright@siskinds.com; serge.kalloghlian@siskinds.com; alex.dimson@siskinds.com; 'gmeisenheimer@harrisonpensa.com; jharnum@kmlaw.ca; ascotchmer@kmlaw.ca; Raj Sahni; Jonathan Bell
Cc: 'greg.watson@fticonsulting.com'; jeffrey.rosenberg@fticonsulting.com; Gage, James D.; Meredith, Heather L.
Subject: RE: In the Matter of The Cash Store Financial Services Inc.; Court File No.: CV-14-10518-00CL

We act for the Chief Restructuring Officer of the Applicants. The Chief Restructuring Officer was appointed by the Amended and Restated Initial Order dated April 15, 2014. The Chief Restructuring Officer has been granted the authority to direct the restructuring of the Applicants under the CCAA. As the Monitor advised earlier today, the Applicants will not be seeking additional interim financing and a priming charge in respect of such financing on April 28, 2014, but will be seeking such relief on May 5, 2014. The Applicants also agree with the Monitor's view that any other relief sought in relation to the Initial Order come-back hearing should be dealt with on May 5, 2014 (or another date with a proper court-ordered schedule), given the need to provide sufficient notice to the Court, and in order to allow the company and its stakeholders the opportunity to consider and properly respond to matters.

The Chief Restructuring Officer has taken immediate steps to inform himself with respect to the business and liquidity needs of the Applicants. This afternoon we received a copy of a factum delivered by 0678786 B.C. Ltd. (formerly the McCann Family Holding Corporation) ("067") and a report delivered by counsel for another Third Party Lender which was purportedly provided to be used as evidence at a hearing. The factum provided for the first time the nature of the relief sought by 067. The relief being sought is wide-ranging and the factum contains serious allegations against the company. The Chief Restructuring Officer is an Officer of the Court and requires an opportunity to properly consider the

matters set out in the factum and to provide a proper response on an agreed-upon timetable. We are also aware that the Monitor is attempting to arrange for a meeting with the Chief Restructuring Officer and certain Third Party Lenders for early next week to discuss issues relating to the Third Party Lenders.

The Chief Restructuring Officer agrees with the Monitor's views on scheduling and looks forward to engaging in a dialogue with the Third Party Lenders next week.

Regards,
Jeremy

OSLER

Jeremy Dacks

416.862.4923 DIRECT
416.862.6666 FACSIMILE
jdacks@osler.com

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From: Chadwick, Robert [mailto:rchadwick@goodmans.ca]
Sent: Friday, April 25, 2014 4:10 PM
To: 'Rob Staley'; Yeoh, Swee-Teen; Wasserman, Marc; Dacks, Jeremy; Riesterer, Patrick; Sachar, Karin; nycprojectoilers@rothschild.com; nycprojectoilers@rothschild.com; wberman@casselsbrock.com; rjacobs@casselsbrock.com; O'Neill,Brendan; orestes.pasparakis@nortonrosefulbright.com; Alan.Merskey@nortonrosefulbright.com; virginie.gauthier@nortonrosefulbright.com; alexander.schmitt@nortonrosefulbright.com; Grant Stapon; Ken Lenz; adam.maerov@mcmillan.ca; brett.harrison@mcmillan.ca; patricia.wakelin@computershare.com; Shelley.Bloomberg@computershare.com; mohanie.shivprasad@computershare.com; tina.vitale@computershare.com; john.wahl@computershare.com; TMoss@perkinscoie.com; RSarubbi@perkinscoie.com; jkruger@blg.com; PMcCarthy@blg.com; jforeman@harrisonpensa.com; ahatnay@kmlaw.ca; dbieganek@dcllp.com; Ehoaken@counsel-toronto.com; hawkesr@jssbarristers.ca; mweinczok@dickinsonwright.com; Dpreger@dickinsonwright.com; charles.wright@siskinds.com; serge.kalloghlian@siskinds.com; alex.dimson@siskinds.com; 'gmeisenheimer@harrisonpensa.com; jharnum@kmlaw.ca; ascotchmer@kmlaw.ca; Raj Sahni; Jonathan Bell
Cc: 'greg.watson@fticonsulting.com'; jeffrey.rosenberg@fticonsulting.com; Gage, James D.; Meredith, Heather L.
Subject: RE: In the Matter of The Cash Store Financial Services Inc.; Court File No.: CV-14-10518-00CL

We act for the Ad Hoc Committee of Secured Noteholders. We will be supporting the Company and the Monitor to have the matter heard on May 5, 2014 (or at another date with a proper agreed schedule). We are now just receiving Court materials being delivered late Friday afternoon for a hearing Monday at 830 am (with no proper motion record or relief). We will need to review the materials and take instructions on the matters being raised by the parties. The Monitor has been authorized with scheduling matters before the Court. Based on the circumstances and timing, we believe all counsel should support the Monior's views on scheduling so we can deal with any disputes in a proper manner. Rob Chadwick

---

From: Rob Staley [mailto:StaleyR@bennettjones.com]
Sent: Friday, April 25, 2014 1:47 PM
To: Yeoh, Swee-Teen; mwasserman@osler.com; jdacks@osler.com; priesterer@osler.com; ksachar@osler.com; nycprojectoilers@rothschild.com; nycprojectoilers@rothschild.com; wberman@casselsbrock.com; rjacobs@casselsbrock.com; Chadwick, Robert; O'Neill,Brendan; orestes.pasparakis@nortonrosefulbright.com; Alan.Merskey@nortonrosefulbright.com; virginie.gauthier@nortonrosefulbright.com;

alexander.schmitt@nortonrosefulbright.com; Grant Stapon; Ken Lenz; adam.maerov@mcmillan.ca; brett.harrison@mcmillan.ca; patricia.wakelin@computershare.com; Shelley.Bloomberg@computershare.com; mohanie.shivprasad@computershare.com; tina.vitale@computershare.com; john.wahl@computershare.com; TMoss@perkinscoie.com; RSarubbi@perkinscoie.com; jkruger@blg.com; PMcCarthy@blg.com; jforeman@harrisonpensa.com; ahatnay@kmlaw.ca; dbieganek@dcllp.com; Ehoaken@counsel-toronto.com; hawkesr@jssbarristers.ca; mweinczok@dickinsonwright.com; Dpreger@dickinsonwright.com; charles.wright@siskinds.com; serge.kalloghlian@siskinds.com; alex.dimson@siskinds.com; 'gmeisenheimer@harrisonpensa.com; jharnum@kmlaw.ca; ascotchmer@kmlaw.ca; Raj Sahni; Jonathan Bell
Cc: 'greg.watson@fticonsulting.com'; jeffrey.rosenberg@fticonsulting.com; Gage, James D.; Meredith, Heather L.
Subject: RE: In the Matter of The Cash Store Financial Services Inc.; Court File No.: CV-14-10518-00CL

Our client intends to proceed at the come-back hearing on Monday to seek the relief set out in our factum served earlier today. We do not consent to an adjournment to May 5th.

Robert W. Staley
Bennett Jones LLP

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4
P. 416 777 4857 | F. 416 863 1716 | C. 416 357 4857
E. staleyr@bennettjones.com

From: Yeoh, Swee-Teen [mailto:STEEN@MCCARTHY.CA]
Sent: 25 April 2014 12:37 PM
To: mwasserman@osler.com; jdacks@osler.com; priesterer@osler.com; ksachar@osler.com; nycprojectoilers@rothschild.com; nycprojectoilers@rothschild.com; wberman@casselsbrock.com; rjacobs@casselsbrock.com; rchadwick@goodmans.ca; boneill@goodmans.ca; orestes.pasparakis@nortonrosefulbright.com; Alan.Merskey@nortonrosefulbright.com; virginie.gauthier@nortonrosefulbright.com; alexander.schmitt@nortonrosefulbright.com; Grant Stapon; Ken Lenz; Rob Staley; adam.maerov@mcmillan.ca; brett.harrison@mcmillan.ca; patricia.wakelin@computershare.com; Shelley.Bloomberg@computershare.com; mohanie.shivprasad@computershare.com; tina.vitale@computershare.com; john.wahl@computershare.com; TMoss@perkinscoie.com; RSarubbi@perkinscoie.com; jkruger@blg.com; PMcCarthy@blg.com; jforeman@harrisonpensa.com; ahatnay@kmlaw.ca; dbieganek@dcllp.com; Ehoaken@counsel-toronto.com; hawkesr@jssbarristers.ca; mweinczok@dickinsonwright.com; Dpreger@dickinsonwright.com; charles.wright@siskinds.com; serge.kalloghlian@siskinds.com; alex.dimson@siskinds.com; 'gmeisenheimer@harrisonpensa.com; jharnum@kmlaw.ca; ascotchmer@kmlaw.ca; Raj Sahni; Jonathan Bell
Cc: 'greg.watson@fticonsulting.com'; jeffrey.rosenberg@fticonsulting.com; Gage, James D.; Meredith, Heather L.
Subject: In the Matter of The Cash Store Financial Services Inc.; Court File No.: CV-14-10518-00CL
Importance: High

Good afternoon, please find attached a letter from counsel to the Monitor of today's date.

mccarthy tétrault

Swee-Teen Yeoh
Legal Assistant | Adjointe juridique
Bankruptcy & Restructuring | Faillite et restructuration
Jamey Gage, Kevin McElcheran, Heather Meredith, Barbara Boake, James Farley and Kelly Peters
T: 416-601-8200 (542199)
F: 416-868-0673
E: steen@mccarthy.ca

MT Services Limited Partnership
Administrative services provider for McCarthy Tétrault LLP
Suite 5300
TD Bank Tower
Toronto ON M5K 1E6

THIS IS EXHIBIT "C" REFERRED TO IN THE
AFFIDAVIT OF BRADLEY WIFFEN
SWORN BEFORE ME
ON THIS 21ST DAY OF MAY, 2014

A COMMISSIONER FOR TAKING AFFIDAVITS

ROBERT MICHAEL RICHARDS, a
Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires May 1, 2017.

O'Neill,Brendan

From: O'Neill,Brendan
Sent: Thursday, May 08, 2014 12:37 PM
To: 'Moss, Tina N. (Perkins Coie)'
Cc: 'mweinczok@dickinsonwright.com'; 'tina.vitale@Computershare.com'; Chadwick, Robert; O'Neill,Brendan
Subject: RE: CSF -- Indenture Trustee matters -- without prejudice
Attachments: GOODMANS-#6328912-v1-Cash_Store_-_Ad_Hoc_Committee_--_STRICTLY_CONFIDENTIAL.pdf

STRICTLY CONFIDENTIAL

Tina,

Enclosed are the names of the members of the Ad Hoc Committee of Cash Store Noteholders, represented by Goodmans LLP and Houlihan Lokey and the Initial Order, and the aggregate principal holdings of Notes held by the Committee members. Per the terms discussed and below, this information is distributed to you on a strictly confidential basis and none of the information may be disclosed beyond you three persons without our express, prior written consent. If those terms are not acceptable to you, you may not open the enclosed document. We look forward to receipt of your response on our consensual resolution proposal at your earliest convenience, and the counter-part information concerning other holders that we have requested of you.

Brendan

Brendan O'Neill

☎ Tel: 416.849.6017
🖷 Fax: 416.979.1234
✉ E-mail: boneill@goodmans.ca
🖳 Web: http://www.goodmans.ca/Brendan_O_Neill

Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario
M5H 2S7 Canada

From: O'Neill,Brendan
Sent: Thursday, May 08, 2014 11:41 AM
To: 'Moss, Tina N. (Perkins Coie)'
Cc: 'mweinczok@dickinsonwright.com'; 'tina.vitale@Computershare.com'; Chadwick, Robert; Marc Wasserman (mwasserman@osler.com); JGAGE@MCCARTHY.CA; Heather Meredith (hmeredith@mccarthy.ca); Gauthier, Virginie; 'Merskey, Alan' (Alan.Merskey@nortonrosefulbright.com); Bill E. Aziz (baziz@bluetreeadvisors.com); Greg Watson (greg.watson@fticonsulting.com)
Subject: RE: CSF -- Indenture Trustee matters -- without prejudice

Tina,

The material has been ready since yesterday, and available pending your confirmation. Our terms of disclosure below are not the same as your May 2nd terms, hence the need for the additional confirmation now received. We will now provide the information under separate cover on the terms confirmed below (which, for clarity, do not permit Computershare to seek an order of the court disclosing the information without our consent). In a similar vein, we

would like to be advised of any other holders that have contacted the Indenture Trustee, and will likewise maintain that information is confidence. Please provide that information at your earliest convenience.

Brendan

Brendan O'Neill

☎ Tel: 416.849.6017
Fax: 416.979.1234
✉ E-mail: boneill@goodmans.ca
Web: http://www.goodmans.ca/Brendan_O_Neill

Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario
M5H 2S7 Canada

From: Moss, Tina N. (Perkins Coie) [mailto:TMoss@perkinscoie.com]
Sent: Thursday, May 08, 2014 11:22 AM
To: O'Neill,Brendan
Cc: 'mweinczok@dickinsonwright.com'; 'tina.vitale@Computershare.com'; Chadwick, Robert; Marc Wasserman (mwasserman@osler.com); JGAGE@MCCARTHY.CA; Heather Meredith (hmeredith@mccarthy.ca); Gauthier, Virginie; 'Merskey, Alan' (Alan.Merskey@nortonrosefulbright.com); Bill E. Aziz (baziz@bluetreeadvisors.com); Greg Watson (greg.watson@fticonsulting.com)
Subject: RE: CSF -- Indenture Trustee matters -- without prejudice

Brendan,

Based on your email of late yesterday afternoon, it was our understanding that you were still in the process of collecting and confirming the current holdings of the ad hoc committee members at that time. As you know, we have requested this information on several occasions since the inception of this matter. We confirm Computershare and its counsel's undertaking to treat the list as strictly confidential, as stated in Lisa Corne's letter to Rob Chadwick of Friday, May 2. Access to this information will be limited to the US and Canadian representatives of Computershare who are handling this matter and their respective counsel, Michael Weinczok of Dickinson Wright and myself.

Computershare has taken the ad hoc committee's proposal under advisement and is preparing a counterproposal that it will be in a position to provide to you once they have received the holder information and have had an opportunity to review it.

Tina

Tina N. Moss | **Perkins Coie** LLP
30 Rockefeller Plaza, 22nd Floor
New York, NY 10112
☎: 212.262.6910
: 212.977.1648
✉: TMoss@perkinscoie.com
www.perkinscoie.com

From: O'Neill,Brendan [mailto:boneill@goodmans.ca]
Sent: Thursday, May 08, 2014 9:20 AM
To: Moss, Tina N. (Perkins Coie)
Cc: 'mweinczok@dickinsonwright.com'; 'tina.vitale@Computershare.com'; Chadwick, Robert; Marc Wasserman (mwasserman@osler.com); JGAGE@MCCARTHY.CA; Heather Meredith (hmeredith@mccarthy.ca); Gauthier, Virginie; 'Merskey, Alan' (Alan.Merskey@nortonrosefulbright.com); Bill E. Aziz (baziz@bluetreeadvisors.com); Greg Watson (greg.watson@fticonsulting.com)
Subject: RE: CSF -- Indenture Trustee matters -- without prejudice

Tina,

Please provide us with your response to this proposal. Per my separate emails, we have the names and holdings of the Ad Hoc Committee members available to share with you, pending receipt of the requested confirmation that the Indenture Trustee will maintain that information in confidence.

Brendan

Brendan O'Neill

☎ Tel: 416.849.6017
🖷 Fax: 416.979.1234
✉ E-mail: boneill@goodmans.ca
🖳 Web: http://www.goodmans.ca/Brendan_O_Neill[goodmans.ca]

Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario
M5H 2S7 Canada

From: O'Neill,Brendan
Sent: Tuesday, May 06, 2014 5:38 PM
To: Tina N. Moss (TMoss@perkinscoie.com)
Cc: 'mweinczok@dickinsonwright.com'; Chadwick, Robert; Marc Wasserman (mwasserman@osler.com); JGAGE@MCCARTHY.CA; Heather Meredith (hmeredith@mccarthy.ca); Gauthier, Virginie
Subject: CSF -- Indenture Trustee matters -- without prejudice

Tina,

Further to our discussion yesterday, I've discussed the following with counsel to the Company/CRO, counsel to the Monitor and counsel to Coliseum (the other large noteholder) and propose the following in respect of the indenture trustee:

1. Add Computershare's reasonable fees and expenses to the Administration Charge;
2. Add counsel to Computershare's reasonable fees and expenses to the Administration Charge subject to a cap of $50,000;
3. Provide Computershare with a formal direction from approximately 70% of the Notes directing the Indenture Trustee to take no action in this case, unless otherwise directed by those instructing noteholders (the "Formal Direction");
4. Add language to the Initial Order that Computershare shall have no liability for following the Formal Direction;
5. Allow Computershare to have reasonable access to Houlihan or Goodmans for information it may require; and
6. Appoint Computershare as the Agent for the new DIP that is being negotiated.

We believe that the above is appropriate for this case:

1. as it represents the wishes of all of the known bondholders in this case (we believe all other bondholders are insiders of the company);
2. because fees are extremely sensitive in this case and all bondholders already have the protection of our committee, Houlihan, the CRO and a Monitor; and
3. because it provides Computershare with substantial protection.

Please let us know your response. If acceptable, we would work with you to have these protections put in place before, and approved at, the May 13th hearing.

Best regards,

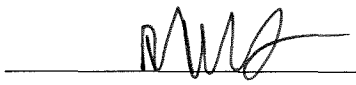
Brendan

Brendan O'Neill

☎ Tel: 416.849.6017
Fax: 416.979.1234
✉ E-mail: boneill@goodmans.ca
Web: http://www.goodmans.ca/Brendan_O_Neill[goodmans.ca]

Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario
M5H 2S7 Canada

THIS IS EXHIBIT "D" REFERRED TO IN THE
AFFIDAVIT OF BRADLEY WIFFEN
SWORN BEFORE ME
ON THIS 21ST DAY OF MAY, 2014



A COMMISSIONER FOR TAKING AFFIDAVITS

ROBERT MICHAEL RICHARDS, a
Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires May 1, 2017.

O'Neill,Brendan

From: O'Neill,Brendan
Sent: Tuesday, May 06, 2014 5:38 PM
To: Tina N. Moss (TMoss@perkinscoie.com)
Cc: 'mweinczok@dickinsonwright.com'; Chadwick, Robert; Marc Wasserman (mwasserman@osler.com); JGAGE@MCCARTHY.CA; Heather Meredith (hmeredith@mccarthy.ca); Gauthier, Virginie
Subject: CSF -- Indenture Trustee matters -- without prejudice

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Further to our discussion yesterday, I've discussed the following with counsel to the Company/CRO, counsel to the Monitor and counsel to Coliseum (the other large noteholder) and propose the following in respect of the indenture trustee:

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3. because it provides Computershare with substantial protection.

Please let us know your response. If acceptable, we would work with you to have these protections put in place before, and approved at, the May 13th hearing.

Best regards,

Brendan

Brendan O'Neill

☎ Tel: 416.849.6017
🖷 Fax: 416.979.1234
✉ E-mail: boneill@goodmans.ca
🖳 Web: http://www.goodmans.ca/Brendan_O_Neill

Goodmans LLP
Bay Adelaide Centre

333 Bay Street, Suite 3400
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M5H 2S7 Canada

Tab 4

Court File No. CV-14-10518-00CL

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 THE CASH STORE FINANCIAL SERVICES INC., THE CASH STORE INC., TCS CASH STORE INC., INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., 1693926 ALBERTA LTD. DOING BUSINESS AS "THE TITLE STORE"

APPLICANTS

AFFIDAVIT OF PATRICIA WAKELIN

I, Patricia Wakelin, of the City of Brampton, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a Corporate Trust Officer at Computershare Trust Company of Canada ("**CS Canada**") and have held this position since January 2005. As such, I have personal knowledge of the matters to which I hereinafter depose unless such knowledge is stated to be on information I have received from other sources, in which case, I believe such information to be true.

2. The Amended and Restated Initial Order of the Honourable Justice Morawetz dated April 15, 2014 (the "**Initial Order**") was issued without prior notice to CS Canada and Computershare Trust Company, N.A. (collectively, "**Computershare**").

3. This affidavit is sworn in support of a come-back motion by Computershare for an Order varying and/or amending paragraphs 42 and 44 of the Initial Order to: (a) require payment by the Applicants of the reasonable fees and disbursements of Computershare, their Canadian and U.S. legal counsel (together, "**Counsel**") and, if necessary, the financial advisor retained by Computershare in connection with these proceedings; and (b) include Computershare, its Counsel and, if necessary, the financial advisor retained by Computershare as beneficiaries under the Administration Charge (as such term is defined in the Initial Order), ranking *pari passu* in priority with all other parties entitled to the benefit of the Administration Charge.

THE INDENTURE

4. On January 31, 2012, The Cash Store Financial Services Inc. ("**Cash Store**") issued $132.5 million in 11 1/2 % senior secured notes due 2017(the "**Notes**") through private placement in Canada and the United States.

5. The Notes are subject to the terms of an indenture (the "**Indenture**") dated January 31, 2012 as between Cash Store as issuer, 7252331 Canada Inc., 5515433 Manitoba Inc., The Cash Store Inc., Instaloans Inc., TCS Cash Store Inc., The Cash Store Financial Limited, The Cash Store Limited and CSF Insurance Services Limited (the "**TCS Affiliates**") as guarantors and Computershare as Trustee. Attached hereto and marked as **Exhibit "A"** is a true copy of the Indenture.

6. Under the Indenture, Computershare has various rights, duties and obligations to the holders of the Notes (the "**Holders**").

7. The Indenture contemplates Computershare's participation in an insolvency proceeding, and expressly provides in section 6.12 that the Trustee is:

(a) authorized to file such proofs of claim and other papers or documents as may be necessary or advisable to have the claims of the Trustee and Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of their counsel and agents) and the Holders allowed in any judicial proceeding relating to Cash Store, its creditors or its property;

(b) entitled and empowered to participate as a member of any official committee of creditors; and

(c) collect, receive and distribute any money or other property payable or deliverable on any claims filed in these proceedings.

THE COLLATERAL TRUST AND INTERCREDITOR AGREEMENT

8. On November 29, 2013 Cash Store entered into a credit agreement (the "**Credit Agreement**") with Coliseum Capital Management, LLC, 8028702 Canada Inc. and 424187 Alberta Ltd. as secured lenders (collectively, the "**Senior Lenders**") and the TCS Affiliates as guarantors, wherein the Senior Lenders agreed to provide a loan of a minimum of $12 million and up to a maximum of $32.5 million to Cash Store.

9. The security granted to the Senior Lenders under the Credit Agreement is held by CS Canada, as Collateral Trustee, pursuant to the terms of a Collateral Trust and Intercreditor Agreement dated January 31, 2012 (the "CTIA"). Under the CTIA and the Indenture, CS

Canada is also the registered holder of the security granted to the Holders. Attached hereto and marked as **Exhibit "B"** is a true copy of the CTIA.

10. As Collateral Trustee, CS Canada has ongoing responsibilities to both the Senior Lenders and the Holders in respect of the collateral.

EFFECTIVE PARTICIPATION

11. Promptly after receiving notice of these proceedings, Computershare, through its Canadian legal counsel, Dickinson Wright LLP, communicated to the Monitor, the Applicants, as well as other key stakeholders, its intention to seek payment of its professional fees by the Applicants, and inclusion of said fees in the court-ordered Administration Charge.

12. To the best of my knowledge and belief, Computershare, as Trustee and Collateral Trustee, represents certain interests of nearly the entire pool of pre-filing secured debt in the within proceedings. Accordingly, Computershare is a critical player in these proceedings.

13. Computershare intends to ensure there is adequate, cost-effective and non-duplicative representation for all of the stakeholders by and for whom Computershare has been appointed trustee, including those Holders who do not currently have separate legal representation of their interests in these proceedings. Computershare proposes to work cooperatively with the Applicants, Monitor and the *ad hoc* committee of Holders recognized in the Initial Order (the "Ad Hoc Committee"), to share information and analyses obtained from professional advisors wherever feasible.

14. By letter dated April 25, 2014, Michael Weinczok wrote to the Monitor to explain the role Computershare expects to play in these proceedings. Attached hereto and marked as **Exhibit "C"** is a true copy of the letter from Michael Weinczok to the Monitor dated April 25, 2014. As noted in that letter, Article 13.06 of the Indenture provides that it is governed by New York law. The Indenture is also subject to the U.S. Trust Indenture Act of 1939, as amended (the "TIA"). Accordingly, Computershare requires U.S. legal advice in connection with its obligations thereunder. Article 7.01 of the Indenture reflects the incorporation of the TIA by expressly providing that following default by the Cash Store, the Trustee has an obligation to use the same degree of care and skill as a prudent person would exercise in the conduct of such person's own affairs.

COMPUTERSHARE'S RIGHTS TO INDEMNITY AND CHARGE

15. The amendment of the Initial Order to direct payment by the Applicants of Computershare's reasonable fees and expenses, and those of its Counsel and advisors, provides a mechanism for implementing the rights granted to Computershare and agreed upon by the parties under the Indenture and the CTIA.

16. Pursuant to Article 7.06 of the Indenture, the Applicants are required to reimburse Computershare promptly for all reasonable disbursements, advances, and expenses incurred as Trustee and Collateral Agent, including reasonable compensation, disbursements, and expenses of agents and counsel. Article 7.06 of the Indenture also provides that when the Trustee and Collateral Agent incur expenses in connection with a court supervised insolvency proceeding by the Cash Store, the expenses of the Trustee

and Collateral Agent are intended to constitute expenses of administration under bankruptcy law.

17. Moreover, pursuant to Articles 6.12 and 7.06 of the Indenture, the Trustee and Collateral Agent are granted a lien on all money or property held or collected by the Trustee or the Collateral Agent to secure recovery of their compensation, expenses, disbursements and advances, which lien ranks in priority to the rights of the Holders, and attaches to and is to be paid out of any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in any judicial proceeding relating to Cash Store.

18. Similarly, Article 10.11 of the CTIA provides that:

(a) Cash Store has agreed to pay, promptly, all reasonable costs and expenses incurred by the Collateral Trustee, including all reasonable fees, expenses and disbursements of its counsel, agents or other professional advisors incurred in connection with the CTIA or in any insolvency proceeding; and

(b) each Senior Lender and Holder is severally liable to indemnify the Collateral Trustee in respect of all reasonable costs and expenses incurred by it in connection with the CTIA.

19. Finally, Article 3.4 of the CTIA directs the Collateral Trustee to apply the proceeds of any realization upon the collateral:

> "(i) FIRST, to the payment of all amounts payable under this Agreement on account of the Collateral Trustee's direct or indirect fees

> and any reasonable legal fees, costs and expenses or other liabilities or debts of any kind incurred by the Collateral Trustee or any co-trustee or agent in connection with this Agreement or any other Security Document".

20. By permitting payment of the professional fees of the Ad Hoc Committee, and securing payment thereof under the Administrative Charge, without making the same protections available to Computershare, paragraphs 42 and 44 of the Initial Order reverse the priorities agreed upon by the Holders, the Applicants, and Computershare in the Indenture and the CTIA, are unfairly prejudicial to Computershare, and impede Computershare's ability to carry out its obligations under the Indenture and the CTIA.

DISCUSSIONS WITH THE AD HOC COMMITTEE

21. The Ad Hoc Committee intends to provide a Debtor in Possession ("DIP") loan to the Applicants to fund the continuation of these *CCAA* proceedings. In that event, certain interests of the Ad Hoc Committee will differ from and potentially conflict with the interests of the Holders who are not participating in the DIP loan.

22. Computershare, and its legal counsel, have had discussions with legal counsel to the Ad Hoc Committee in an effort to reach an agreement relating to Computershare's role and participation in these proceedings. By email dated May 9, 2014 from Dickinson Wright to Goodman's LLP, counsel to Computershare outlined the terms upon which Computershare was prepared to proceed. A true copy of that email is attached as **"Exhibit D"**.

23. By e-mail dated May 13, 2014 from Goodman's LLP to Dickinson Wright LLP, counsel for the Ad Hoc Committee sought clarification of Computershare's proposal, which

Dickinson Wright LLP provided by email dated May 15, 2014. True copies of those emails are attached collectively as **"Exhibit E"**.

24. Despite a provision in the Indenture which states that, when an Event of Default (as defined therein) is continuing, Holders of a majority in principal amount of the then outstanding Notes may direct the Trustee in the exercise of its powers, the Trustee has not received any such direction;

25. Even if a direction were provided to the Trustee, under Article 6.05 of the Indenture, the Trustee reserves the right to refuse to follow any such direction in instances where:

(a) the direction conflicts with law or the terms of the Indenture;

(b) the Trustee believes the direction is "unduly prejudicial" to the rights of any other Holder; or

(c) the direction would involve the Trustee in personal liability.

26. Although counsel to the Ad Hoc Committee has stated that it represents Holders who collectively hold Notes representing approximately 65% of Holders, Computershare has not received any information to confirm the principal amount held by each Holder represented by the Ad Hoc Committee, the beneficial holder of the Notes, or, where the Notes are held through a participant, the name of that participant.

27. I swear this affidavit in support of the within motion for the relief set out in paragraph 3 hereof and for no other or improper purpose.

SWORN BEFORE ME at the City of Brampton, in the Province of Ontario on May 16, 2014

A Commissioner for Taking Oaths.

PATRICIA WAKELIN

This is Exhibit "C" referred to in the Affidavit of PATRICIA WAKELIN sworn May 16, 2014

Commissioner for Taking Affidavits (or as may be)

DICKINSON WRIGHT LLP

199 BAY STREET, SUITE 2200
P.O. BOX 447, COMMERCE COURT POSTAL STATION
TORONTO, ON CANADA M5L 1G4
TELEPHONE: (416) 777-0101
FACSIMILE: (416) 865-1398
http://www.dickinsonwright.com

MICHAEL A. WEINCZOK
MWeinczok@dickinsonwright.com
(416) 777-4026

April 25, 2014

FTI CONSULTING CANADA INC.
in its capacity as CCAA Monitor of
The Cash Store Financial Services Inc.
and each of the CCAA Applicants
79 Wellington Street West
Suite 2012, P.O. Box 104
Toronto, ON M4K 1G8
Attention: Greg Watson

Re: In the Matter of The Cash Store Financial Services Inc., et al.; Court File No. CV-14-10518-00CL

Dear Sir:

As you are aware, we represent Computershare Trust Company of Canada ("**CS Canada**") and Computershare Trust Company, N.A. ("**CS US**", and collectively the "**Indenture Trustee**") in their capacities as Indenture Trustee under the January 31, 2012 $132.5 million Senior Secured Note Indenture (the "**Note Indenture**"), and CS Canada in its capacity as Collateral Trustee under the January 31, 2012 Collateral Trust and Intercreditor Agreement (the "**CTIA**") in the above-referenced CCAA proceedings.

Given our clients' status as trustee with respect to of virtually all of the pre-filing secured debt in these proceedings under a rather complex credit structure, including the Note Indenture which contains a "no action clause" (in section 6.06), our clients are critical players in this process. As such, we confirm our clients' request to be included in the protective provisions for professional fees in paragraphs 42 and 44 of the Amended and Restated Initial Order of April 15, 2014 (the "**Initial Order**"). We further confirm that over the past several days we have discussed our clients' interest in obtaining such fee protection with you and your counsel, as well as counsel for the Debtors, for Coliseum and for the Ad Hoc Committee of Noteholders.

For the purpose of considering our clients' request, your counsel has asked us to describe the role which our clients intend to play. The short answer is that our clients are intent on providing effective participation in a non-duplicative and cost-effective manner on behalf of all stakeholders by and for whom they are appointed as trustee, including, *inter alia*, those Noteholders who are unrepresented.

With respect to the Note Indenture, we would note that while the holders of a majority of Notes may direct the Indenture Trustee's exercise of powers (section 6.05), no such direction has been received. Even if a direction were received, it would be subject to the terms of the Collateral Documents, including the CTIA, and the Indenture Trustee would retain the right to refuse to follow such direction should it conflict with law or the Note Indenture or be unduly prejudicial to the rights of any other Noteholder or where it could involve personal liability on the part of the Indenture Trustee.

The Note Indenture is governed by New York law (section 13.06). The US Federal *Trust Indenture Act of 1939*, as amended, and New York common law further govern the Indenture Trustee's obligations under the Note Indenture by imposing a "prudent man" standard of care in assessing post-insolvency Indenture Trustee conduct. Although an Indenture Trustee is not charged with guaranteeing any particular result in a post-default scenario, these obligations include representation of the interests of the entire noteholder class. This obligation is also reflected in section 7.01 of the Note Indenture which provides that where an Event of Default is continuing "the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs".

On the issue of reimbursement of the Indenture Trustee's fees and expenses, the Note Indenture provides, *inter alia*, for a joint and several indemnity by the Debtors, a Lien senior to the Notes on all money or property held or collected by the Indenture Trustee or Collateral Trustee (other than money or property held in trust), and provides that post-Event of Default compensation and expenses are "intended to constitute expenses of administration under any Bankruptcy Law" (section 7.06). Given these provisions, paragraphs 42 and 44 of the Initial Order, to the extent they do not afford professional fee protection to our clients, but afford professional fee protection to certain participants in the CCAA proceedings who rank below our clients in the waterfall, are discriminatory and deprive the Indenture Trustee of its contractual right to adequate compensation and indemnity.

With respect to CTIA, the Collateral Trustee is the registered holder of all Security held by the Secured Parties, both senior and junior, and has ongoing responsibilities in regard to the Collateral which it owes to all such parties (section 3.1). Under the intercreditor provisions, certain rights are preserved for the junior Noteholders including certain participation, adequate protection, plan confirmation and voting rights (sections 2.4 and 10.2) and purchase rights regarding the Senior Liens (section 2.6).

In regard to the Collateral Trustee's Indemnified Liabilities (which include "costs...expenses or disbursements of any kind..."), the CTIA provides for a joint and several indemnity by the Debtors (section 10.12(a)). To the extent that the Collateral Trustee is not fully indemnified by section 10.12(a), section 10.12(f) provides that "each Secured Debtholder [senior and junior]

shall, severally but not jointly based on its percentage share of the aggregate Secured Obligations at the applicable time, indemnify the Collateral Trustee...". Protection for the Collateral Trustee in paragraphs 42 and 44 of the Initial Order would provide a mechanism for implementation of such right.

We are prepared to review with you, at your earliest convenience, the rules that would be applicable to our clients' effective participation, the whole, of course, being subject to Court approval.

Yours very truly,

Dickinson Wright LLP

Mike A. Weinczok

MAW/cfw
Enclosure .
cc: James Gage, McCarthy Tétrault
cc: Heather Meredith, McCarthy Tétrault
cc: David Preger
cc: Tina N. Moss

TORONTO 33542-4 938717

This is Exhibit "D" referred to in the Affidavit of **PATRICIA WAKELIN** sworn May 16, 2014

Commissioner for Taking Affidavits (or as may be)

Luisa A. Salerno

From:	Luisa A. Salerno on behalf of Lisa S. Corne
Sent:	Friday, May 09, 2014 3:10 PM
To:	bonelll@goodmans.ca
Cc:	Lisa S. Corne; Moss, Tina N. (Perkins Cole); Michael A. Weinczok; David P. Preger; rchadwick@goodmans.ca; mwasserman@osler.com; JGAGE@MCCARTHY.CA; hmeredith@mccarthy.ca; Virginie.Gauthier@nortonrosefulbright.com
Subject:	TCS

Dear Mr. O'Neill,

WITH PREJUDICE

Thank you for the information provided regarding the members of the ad hoc committee. As we previously explained, Computershare also requires the percentage holdings of each Holder, and with respect to any Holder whose position is held through a participant, the name of that participant. It will be necessary for Computershare to reconcile this information and satisfy itself that any Direction is properly executed by the requisite percentage of Holders prior to accepting a Direction from the majority Holders.

Thank you as well for offering Computershare a role as Agent of the new DIP Lender. In view of the potential for conflicts, and other circumstances surrounding this case, Computershare declines to act as Agent for the DIP Lender.

In terms of Computershare's participation in the CCAA proceedings, Computershare is prepared to proceed on the following terms:

1. The reasonable fees of Computershare, its Canadian and US legal counsel (together, "Counsel"), and, if necessary, financial advisor, will be paid by the Applicants, on a monthly basis, and secured by the Administrative Charge.
2. The fees of Computershare's Counsel and financial advisor to be paid by the Applicants and secured by the Administrative Charge will not exceed $300,000.00, without the consent of the ad hoc committee, CRO, and Monitor, or further order of the Court. Computershare's hope is that it will not need to retain a financial advisor and instead will be able to rely upon information and analyses provided by Houlihan.
3. Computershare reserves the unilateral right to take any and all steps it deems necessary under the Trust Indenture and the Collateral Trust Agreement ("CTA").

4. In addition to including language in the Initial Order providing that Computershare will have no liability for following a Direction provided by the majority Holders, Computershare requires an indemnity from the majority Holders, in accordance with section 7.01 (e) of the Trust Indenture, indemnifying it against any and all liability it may incur as a result of taking or not taking any action in compliance with any Direction provided by the majority Holders. Any Direction provided by the majority Holders is subject to review and acceptance by Computershare.

5. Computershare and its Counsel will have reasonable access to Houlihan and Goodmans for information they may require.

6. Computershare reserves all of its rights and remedies under the Indenture and CTA to recover its reasonable compensation, fees and disbursements, including those of its Counsel, advisors and agents.

Lisa S. Corne Partner
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Commerce Court West
Toronto ON M5L 1G4
Phone 416-646-4608
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DICKINSON WRIGHT LLP
MICHIGAN ARIZONA NEVADA OHIO TENNESSEE WASHINGTON D.C. TORONTO

This is Exhibit "B" referred to in the Affidavit of PATRICIA WAKELIN sworn May 16, 2014

Commissioner for Taking Affidavits (or as may be)

Luisa A. Salerno

From:	Lisa S. Corne
Sent:	Thursday, May 15, 2014 6:14 PM
To:	Lisa S. Corne; boneill@goodmans.ca
Cc:	Chadwick, Robert (rchadwick@goodmans.ca)
Subject:	RE: TCS
Attachments:	TORONTO-#943423-v1-Form_of_Direction_to_Trustee_-_May_15__2014_doc.DOC

Brendan,

We have set out below, in bold, the information requested in your email of May 13, 2014:

1. Please provide the rationale for the $300K number below? This seems well in excess of what is needed to protect an Indenture Trustee that will have received a direction advising it not to take any action and protections in the form of court and/or note holder indemnity. **The amount is based on work already undertaken by the trustee and its Canadian and US counsel (which is well in excess of the $50,000 cap you suggested), plus an estimate of work going forward. In this regard, it should be noted that the CCAA case has been ongoing for close to 1 month and has involved numerous motions with extensive material, multiple court appearances, the trustee has not received any form of direction or sufficient details regarding the specific holdings represented by the ad hoc committee, and the trustee has no substantive information regarding the unrepresented note holders.**

2. Please explain the need for a financial advisor? This seems unnecessary for a trustee who will have received a direction advising it not to take any action and protections in the form of court and/or bondholder indemnity. As mentioned, contact between Computershare and Houlihan would be acceptable (as neither bill on an hourly basis). **As noted previously, appropriate access to Houlihan by Computershare and its advisors will obviate the need for an independent financial advisor.**

3. How does the reservation in #3 relate to the direction to be received to take no action? Per the provisions of the Indenture, our clients expect that the Trustee will follow the no action direction to be provided. **The trustee must abide by the terms of the trust indenture, including reviewing and assessing the appropriateness of a note holder direction, and satisfactory indemnity, once received. In this regard, please see s. 6.05 of the trust indenture.**

4. Please provide Computershare's preferred form of Direction. We would like to deliver ASAP and assume that you have a preferred form. **As you are aware, the substantive form of a direction is determined by the specific facts at hand and the note holders' specific instructions. To assist, attached please find the general format of a direction.**

5. How does #6 relate to the cap? **The cap relates solely to fees paid by Cash Store and secured by the Administrative Charge under the CCAA Order. It does not impact in any way Computershare's rights under the indenture and CTA to recover its reasonable compensation, fees and disbursements, including those of its counsel, advisors and agents.**

6. As requested in our email dated May 7th, please also provide the names of any other bondholders that have contacted the Indenture Trustee as requested, and if none have, please advise. **The indenture trustee has not been contacted by any other note holders.**

Computershare repeats its request that you identify the principal amount of the notes held by each holder for whom you act, and with respect to any holder whose position is held by a participant, the name of that

participant. Computershare is entitled to and requires such information. As well, with respect to your assertion that the Notes not represented by ad hoc committee are held by Cash Store "insiders", please provide us with evidence to support that claim.

INSTRUCTION TO TRUSTEE FROM HOLDERS OF NOTES

TO: **COMPUTESHARE TRUST COMPANY, N.A. AND COMPUTERSHARE TRUST COMPANY OF CANADA (THE "TRUSTEE")**

RE:

DATE:

Reference is made to

The undersigned beneficial holders of Notes hereby instruct the Trustee to consent to the:

and to take any and all such further actions, and execute and deliver all agreements, instruments and documents relating to, contemplated by, necessary and/or desirable in connection with the foregoing as requested by Goodmans in writing (the "**Instruction**").

The undersigned hereby indemnify the Trustee against any loss, liability, cost or expense in relation to the exercise or failure to exercise any of its rights or powers under the Indenture..... [NOTE TO DRAFT: track language in the Indenture]

This Instruction may be signed in one or more counterparts, each of which so signed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument. This Instruction may be delivered by facsimile or scanned electronic copy and such facsimiles or scanned electronic copies shall be treated as originals for all purposes. Notwithstanding the date of execution or transmission of any counterpart, each counterpart and this Instruction shall be deemed to be effective as of the date first written above.

Rest of page left intentionally blank

SIGNED this _____ day of May, 2014.

Principal Amount of 11 1/2% Notes held as of May 12, 2014: $_____(1)

Beneficial Noteholder's Name: _____(2)

_____ _____(3)

(Authorized Signature(s) for Beneficial Noteholder) (Authorized Signature(s) for Beneficial Noteholder)

Authorized Signatory's Name(s) & Phone No.: _____(4)

Beneficial Noteholder's Address: _____(5)

[NOTE TO DRAFT: Each beneficial holder signs this Instruction as well as a form of Statutory Declaration as set out below – see Section 1.04 of the Indenture]

STATUTORY DECLARATION

11 ½% Senior Secured Notes Due 2017

I, •, of • (the "**Noteholder**") do solemnly declare as follows:

(1) that, as of May 12, 2014 (and as at the date hereof), the Noteholder has beneficial ownership in respect of $• principal amount of 11 ½% Senior Secured Notes Due 2017 (the "**Notes**");

(2) that this Statutory Declaration may be relied upon by Computershare Trust Company, N.A. and Computershare Trust Company of Canada in its capacity as trustee (the "**Trustee**") under that certain trust indenture dated as of January 31, 2012 (the "**Indenture**"), in respect of the Notes for purposes of taking instructions from the Noteholders; and

(3) that the Trustee may rely on this Statutory Declaration for the purposes specified in the foregoing (2) until such time as the Noteholder shall advise the Trustee in writing that they may no longer rely on this Statutory Declaration.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true, and knowing that it is of the same force and effect as if it was made under oath.

DECLARED BEFORE ME at)
_____, this)
(City, Province/State))
_____ day of _____, 2014)
)
)
_____)
Commissioner of Oaths/Notary Public)

_____
Signature

_____
Address of Noteholder

_____
Telephone Number

_____
Fax Number:

Tab 5

CANADA

CONSOLIDATION

CODIFICATION

Companies' Creditors Arrangement Act

Loi sur les arrangements avec les créanciers des compagnies

R.S.C., 1985, c. C-36

L.R.C. (1985), ch. C-36

Current to May 1, 2014

Last amended on April 1, 2013

À jour au 1 mai 2014

Dernière modification le 1 avril 2013

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http://lois-laws.justice.gc.ca

rance permettant d'indemniser adéquatement les administrateurs ou dirigeants.

Negligence, misconduct or fault

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

2005, c. 47, s. 128; 2007, c. 36, s. 66.

Négligence, inconduite ou faute

(4) Il déclare, dans l'ordonnance, que la charge ou sûreté ne vise pas les obligations que l'administrateur ou le dirigeant assume, selon lui, par suite de sa négligence grave ou de son inconduite délibérée ou, au Québec, par sa faute lourde ou intentionnelle.

2005, ch. 47, art. 128; 2007, ch. 36, art. 66.

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

(*a*) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(*b*) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(*c*) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Biens grevés d'une charge ou sûreté pour couvrir certains frais

11.52 (1) Le tribunal peut par ordonnance, sur préavis aux créanciers garantis qui seront vraisemblablement touchés par la charge ou sûreté, déclarer que tout ou partie des biens de la compagnie débitrice sont grevés d'une charge ou sûreté, d'un montant qu'il estime indiqué, pour couvrir :

a) les débours et honoraires du contrôleur, ainsi que ceux des experts — notamment en finance et en droit — dont il retient les services dans le cadre de ses fonctions;

b) ceux des experts dont la compagnie retient les services dans le cadre de procédures intentées sous le régime de la présente loi;

c) ceux des experts dont tout autre intéressé retient les services, si, à son avis, la charge ou sûreté était nécessaire pour assurer sa participation efficace aux procédures intentées sous le régime de la présente loi.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

2005, c. 47, s. 128; 2007, c. 36, s. 66.

Priorité

(2) Il peut préciser, dans l'ordonnance, que la charge ou sûreté a priorité sur toute réclamation des créanciers garantis de la compagnie.

2005, ch. 47, art. 128; 2007, ch. 36, art. 66.

Bankruptcy and Insolvency Act matters

11.6 Notwithstanding the *Bankruptcy and Insolvency Act*,

(*a*) proceedings commenced under Part III of the *Bankruptcy and Insolvency Act* may be taken up and continued under this Act only if a proposal within the meaning of the *Bankruptcy and Insolvency Act* has not been filed under that Part; and

(*b*) an application under this Act by a bankrupt may only be made with the consent of inspectors referred to in section 116 of the *Bankruptcy and Insolvency Act* but no application may be made under this Act by a bankrupt whose bankruptcy has resulted from

Lien avec la *Loi sur la faillite et l'insolvabilité*

11.6 Par dérogation à la *Loi sur la faillite et l'insolvabilité* :

a) les procédures intentées sous le régime de la partie III de cette loi ne peuvent être traitées et continuées sous le régime de la présente loi que si une proposition au sens de la *Loi sur la faillite et l'insolvabilité* n'a pas été déposée au titre de cette même partie;

b) le failli ne peut faire une demande au titre de la présente loi qu'avec l'aval des inspecteurs visés à l'article 116 de la *Loi sur la faillite et l'insolvabilité*, aucune demande ne pouvant toutefois être faite si la faillite découle, selon le cas :

Tab 6

2010 ONSC 222
Ontario Superior Court of Justice [Commercial List]

Canwest Publishing Inc./Publications Canwest Inc., Re

2010 CarswellOnt 212, 2010 ONSC 222, [2010] O.J. No. 188, 184 A.C.W.S. (3d) 684, 63 C.B.R. (5th) 115

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C-36, AS AMENDED AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT OF CANWEST PUBLISHING INC./PUBLICATIONS CANWEST INC., CANWEST BOOKS INC. AND CANWEST (CANADA) INC.

Pepall J.

Judgment: January 18, 2010
Docket: CV-10-8533-00CL

Counsel: Lyndon Barnes, Alex Cobb, Duncan Ault for Applicant, LP Entities
Mario Forte for Special Committee of the Board of Directors
Andrew Kent, Hilary Clarke for Administrative Agent of the Senior Secured Lenders' Syndicate
Peter Griffin for Management Directors
Robin B. Schwill, Natalie Renner for Ad Hoc Committee of 9.25% Senior Subordinated Noteholders
David Byers, Maria Konyukhova for Proposed Monitor, FTI Consulting Canada Inc.

Subject: Insolvency; Corporate and Commercial

Table of Authorities

Cases considered by *Pepall J.*:

Anvil Range Mining Corp., Re (2002), 2002 CarswellOnt 2254, 34 C.B.R. (4th) 157 (Ont. C.A.) — considered

Anvil Range Mining Corp., Re (2003), 310 N.R. 200 (note), 2003 CarswellOnt 730, 2003 CarswellOnt 731, 180 O.A.C. 399 (note) (S.C.C.) — referred to

Canwest Global Communications Corp., Re (2009), 2009 CarswellOnt 6184, 59 C.B.R. (5th) 72 (Ont. S.C.J. [Commercial List]) — followed

Grant Forest Products Inc., Re (2009), 2009 CarswellOnt 4699, 57 C.B.R. (5th) 128 (Ont. S.C.J. [Commercial List]) — considered

Lehndorff General Partner Ltd., Re (1993), 17 C.B.R. (3d) 24, 9 B.L.R. (2d) 275, 1993 CarswellOnt 183 (Ont. Gen. Div. [Commercial List]) — referred to

Muscletech Research & Development Inc., Re (2006), 19 C.B.R. (5th) 54, 2006 CarswellOnt 264 (Ont. S.C.J. [Commercial List]) — followed

Philip Services Corp., Re (1999), 13 C.B.R. (4th) 159, 1999 CarswellOnt 4673 (Ont. S.C.J. [Commercial List]) — considered

Sierra Club of Canada v. Canada (Minister of Finance) (2002), 287 N.R. 203, (sub nom. *Atomic Energy of Canada Ltd. v. Sierra Club of Canada)* 18 C.P.R. (4th) 1, 44 C.E.L.R. (N.S.) 161, (sub nom. *Atomic Energy of Canada Ltd. v. Sierra Club of Canada)* 211 D.L.R. (4th) 193, 223 F.T.R. 137 (note), 20 C.P.C. (5th) 1, 40 Admin. L.R. (3d) 1, 2002 SCC 41, 2002 CarswellNat 822, 2002 CarswellNat 823, (sub nom. *Atomic Energy of Canada Ltd. v. Sierra Club of Canada)* 93 C.R.R. (2d) 219, [2002] 2 S.C.R. 522 (S.C.C.) — followed

Statutes considered:

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36
Generally — referred to

s. 4 — considered

s. 5 — considered

s. 11.2 [en. 1997, c. 12, s. 124] — considered

s. 11.2(1) [en. 1997, c. 12, s. 124] — considered

s. 11.2(4) [en. 1997, c. 12, s. 124] — considered

s. 11.4 [en. 1997, c. 12, s. 124] — considered

s. 11.4(1) [en. 1997, c. 12, s. 124] — considered

s. 11.4(2) [en. 1997, c. 12, s. 124] — considered

s. 11.7(2) [en. 1997, c. 12, s. 124] — referred to

s. 11.51 [en. 2005, c. 47, s. 128] — considered

s. 11.52 [en. 2005, c. 47, s. 128] — considered

Courts of Justice Act, R.S.O. 1990, c. C.43
s. 137(2) — considered

APPLICATION by entity of company already protected under Companies' Creditors Arrangement Act for similar protection.

***Pepall J.*:**

Reasons for Decision

Introduction

1 Canwest Global Communications Corp. ("Canwest Global") is a leading Canadian media company with interests in (i) newspaper publishing and digital media; and (ii) free-to-air television stations and subscription based specialty television channels. Canwest Global, the entities in its Canadian television business (excluding CW Investments Co. and its subsidiaries) and the National Post Company (which prior to October 30, 2009 owned and published the National Post) (collectively, the "CMI Entities"), obtained protection from their creditors in a *Companies' Creditors Arrangement Act* [1] ("CCAA") proceeding on October 6, 2009. [2] Now, the Canwest Global Canadian newspaper entities with the exception of National Post Inc. seek similar protection. Specifically, Canwest Publishing Inc./Publications Canwest Inc. ("CPI"), Canwest Books Inc. ("CBI"), and

Canwest (Canada) Inc. ("CCI") apply for an order pursuant to the CCAA. They also seek to have the stay of proceedings and the other benefits of the order extend to Canwest Limited Partnership/Canwest Société en Commandite (the "Limited Partnership"). The Applicants and the Limited Partnership are referred to as the "LP Entities" throughout these reasons. The term "Canwest" will be used to refer to the Canwest enterprise as a whole. It includes the LP Entities and Canwest Global's other subsidiaries which are not applicants in this proceeding.

2 All appearing on this application supported the relief requested with the exception of the Ad Hoc Committee of 9.25% Senior Subordinated Noteholders. That Committee represents certain unsecured creditors whom I will discuss more fully later.

3 I granted the order requested with reasons to follow. These are my reasons.

4 I start with three observations. Firstly, Canwest Global, through its ownership interests in the LP Entities, is the largest publisher of daily English language newspapers in Canada. The LP Entities own and operate 12 daily newspapers across Canada. These newspapers are part of the Canadian heritage and landscape. The oldest, The Gazette, was established in Montreal in 1778. The others are the Vancouver Sun, The Province, the Ottawa Citizen, the Edmonton Journal, the Calgary Herald, The Windsor Star, the Times Colonist, The Star Phoenix, the Leader-Post, the Nanaimo Daily News and the Alberni Valley Times. These newspapers have an estimated average weekly readership that exceeds 4 million. The LP Entities also publish 23 non-daily newspapers and own and operate a number of digital media and online operations. The community served by the LP Entities is huge. In addition, based on August 31, 2009 figures, the LP Entities employ approximately 5,300 employees in Canada with approximately 1,300 of those employees working in Ontario. The granting of the order requested is premised on an anticipated going concern sale of the newspaper business of the LP Entities. This serves not just the interests of the LP Entities and their stakeholders but the Canadian community at large.

5 Secondly, the order requested may contain some shortcomings; it may not be perfect. That said, insolvency proceedings typically involve what is feasible, not what is flawless.

6 Lastly, although the builders of this insolvent business are no doubt unhappy with its fate, gratitude is not misplaced by acknowledging their role in its construction.

Background Facts

(i) Financial Difficulties

7 The LP Entities generate the majority of their revenues through the sale of advertising. In the fiscal year ended August 31, 2009, approximately 72% of the LP Entities' consolidated revenue derived from advertising. The LP Entities have been seriously affected by the economic downturn in Canada and their consolidated advertising revenues declined substantially in the latter half of 2008 and in 2009. In addition, they experienced increases in certain of their operating costs.

8 On May 29, 2009 the Limited Partnership failed, for the first time, to make certain interest and principal reduction payments and related interest and cross currency swap payments totaling approximately $10 million in respect of its senior secured credit facilities. On the same day, the Limited Partnership announced that, as of May 31, 2009, it would be in breach of certain financial covenants set out in the credit agreement dated as of July 10, 2007 between its predecessor, Canwest Media Works Limited Partnership, The Bank of Nova Scotia as administrative agent, a syndicate of secured lenders ("the LP Secured Lenders"), and the predecessors of CCI, CPI and CBI as guarantors. The Limited Partnership also failed to make principal, interest and fee payments due pursuant to this credit agreement on June 21, June 22, July 21, July 22 and August 21, 2009.

9 The May 29, 2009, defaults under the senior secured credit facilities triggered defaults in respect of related foreign currency and interest rate swaps. The swap counterparties (the "Hedging Secured Creditors") demanded payment of $68.9 million. These unpaid amounts rank pari passu with amounts owing under the LP Secured Lenders' credit facilities.

10 On or around August 31, 2009, the Limited Partnership and certain of the LP Secured Lenders entered into a forbearance agreement in order to allow the LP Entities and the LP Secured Lenders the opportunity to negotiate a pre-packaged restructuring

or reorganization of the affairs of the LP Entities. On November 9, 2009, the forbearance agreement expired and since then, the LP Secured Lenders have been in a position to demand payment of approximately $953.4 million, the amount outstanding as at August 31, 2009. Nonetheless, they continued negotiations with the LP Entities. The culmination of this process is that the LP Entities are now seeking a stay of proceedings under the CCAA in order to provide them with the necessary "breathing space" to restructure and reorganize their businesses and to preserve their enterprise value for the ultimate benefit of their broader stakeholder community.

11 The Limited Partnership released its annual consolidated financial statements for the twelve months ended August 31, 2009 and 2008 on November 26, 2009. As at August 31, 2009, the Limited Partnership had total consolidated assets with a net book value of approximately $644.9 million. This included consolidated current assets of $182.7 million and consolidated non-current assets of approximately $462.2 million. As at that date, the Limited Partnership had total consolidated liabilities of approximately $1.719 billion (increased from $1.656 billion as at August 31, 2008). These liabilities consisted of consolidated current liabilities of $1.612 billion and consolidated non-current liabilities of $107 million.

12 The Limited Partnership had been experiencing deteriorating financial results over the past year. For the year ended August 31, 2009, the Limited Partnership's consolidated revenues decreased by $181.7 million or 15% to $1.021 billion as compared to $1.203 billion for the year ended August 31, 2008. For the year ended August 31, 2009, the Limited Partnership reported a consolidated net loss of $66 million compared to consolidated net earnings of $143.5 million for fiscal 2008.

(ii) Indebtedness under the Credit Facilities

13 The indebtedness under the credit facilities of the LP Entities consists of the following.

> (a) The LP senior secured credit facilities are the subject matter of the July 10, 2007 credit agreement already mentioned. They are guaranteed by CCI, CPI and CBI. The security held by the LP Secured Lenders has been reviewed by the solicitors for the proposed Monitor, FTI Consulting Canada Inc. and considered to be valid and enforceable. [3] As at August 31, 2009, the amounts owing by the LP Entities totaled $953.4 million exclusive of interest. [4]
>
> (b) The Limited Partnership is a party to the aforementioned foreign currency and interest rate swaps with the Hedging Secured Creditors. Defaults under the LP senior secured credit facilities have triggered defaults in respect of these swap arrangements. Demand for repayment of amounts totaling $68.9 million (exclusive of unpaid interest) has been made. These obligations are secured.
>
> (c) Pursuant to a senior subordinated credit agreement dated as of July 10, 2007, between the Limited Partnership, The Bank of Nova Scotia as administrative agent for a syndicate of lenders, and others, certain subordinated lenders agreed to provide the Limited Partnership with access to a term credit facility of up to $75 million. CCI, CPI, and CBI are guarantors. This facility is unsecured, guaranteed on an unsecured basis and currently fully drawn. On June 20, 2009, the Limited Partnership failed to make an interest payment resulting in an event of default under the credit agreement. In addition, the defaults under the senior secured credit facilities resulted in a default under this facility. The senior subordinated lenders are in a position to take steps to demand payment.
>
> (d) Pursuant to a note indenture between the Limited Partnership, The Bank of New York Trust Company of Canada as trustee, and others, the Limited Partnership issued 9.5% per annum senior subordinated unsecured notes due 2015 in the aggregate principal amount of US $400 million. CPI and CBI are guarantors. The notes are unsecured and guaranteed on an unsecured basis. The noteholders are in a position to take steps to demand immediate payment of all amounts outstanding under the notes as a result of events of default.

14 The LP Entities use a centralized cash management system at the Bank of Nova Scotia which they propose to continue. Obligations owed pursuant to the existing cash management arrangements are secured (the "Cash Management Creditor").

(iii) LP Entities' Response to Financial Difficulties

15 The LP Entities took a number of steps to address their circumstances with a view to improving cash flow and strengthening their balance sheet. Nonetheless, they began to experience significant tightening of credit from critical suppliers and other trade creditors. The LP Entities' debt totals approximately $1.45 billion and they do not have the liquidity required to make payment in respect of this indebtedness. They are clearly insolvent.

16 The board of directors of Canwest Global struck a special committee of directors (the "Special Committee") with a mandate to explore and consider strategic alternatives. The Special Committee has appointed Thomas Strike, the President, Corporate Development & Strategy Implementation, as Recapitalization Officer and has retained Gary Colter of CRS Inc. as Restructuring Advisor for the LP Entities (the "CRA"). The President of CPI, Dennis Skulsky, will report directly to the Special Committee.

17 Given their problems, throughout the summer and fall of 2009, the LP Entities have participated in difficult and complex negotiations with their lenders and other stakeholders to obtain forbearance and to work towards a consensual restructuring or recapitalization.

18 An ad hoc committee of the holders of the senior subordinated unsecured notes (the "Ad Hoc Committee") was formed in July, 2009 and retained Davies Ward Phillips & Vineberg as counsel. Among other things, the Limited Partnership agreed to pay the Committee's legal fees up to a maximum of $250,000. Representatives of the Limited Partnership and their advisors have had ongoing discussions with representatives of the Ad Hoc Committee and their counsel was granted access to certain confidential information following execution of a confidentiality agreement. The Ad Hoc Committee has also engaged a financial advisor who has been granted access to the LP Entities' virtual data room which contains confidential information regarding the business and affairs of the LP Entities. There is no evidence of any satisfactory proposal having been made by the noteholders. They have been in a position to demand payment since August, 2009, but they have not done so.

19 In the meantime and in order to permit the businesses of the LP Entities to continue to operate as going concerns and in an effort to preserve the greatest number of jobs and maximize value for the stakeholders of the LP Entities, the LP Entities have been engaged in negotiations with the LP Senior Lenders, the result of which is this CCAA application.

(iv) The Support Agreement, the Secured Creditors' Plan and the Solicitation Process

20 Since August 31, 2009, the LP Entities and the LP administrative agent for the LP Secured Lenders have worked together to negotiate terms for a consensual, prearranged restructuring, recapitalization or reorganization of the business and affairs of the LP Entities as a going concern. This is referred to by the parties as the Support Transaction.

21 As part of this Support Transaction, the LP Entities are seeking approval of a Support Agreement entered into by them and the administrative agent for the LP Secured Lenders. 48% of the LP Secured Lenders, the Hedging Secured Creditors, and the Cash Management Creditor (the "Secured Creditors") are party to the Support Agreement.

22 Three interrelated elements are contemplated by the Support Agreement and the Support Transaction: the credit acquisition, the Secured Creditors' plan (the "Plan"), and the sale and investor solicitation process which the parties refer to as SISP.

23 The Support Agreement contains various milestones with which the LP Entities are to comply and, subject to a successful bid arising from the solicitation process (an important caveat in my view), commits them to support a credit acquisition. The credit acquisition involves an acquisition by an entity capitalized by the Secured Creditors and described as AcquireCo. AcquireCo. would acquire substantially all of the assets of the LP Entities (including the shares in National Post Inc.) and assume certain of the liabilities of the LP Entities. It is contemplated that AcquireCo. would offer employment to all or substantially all of the employees of the LP Entities and would assume all of the LP Entities' existing pension plans and existing post-retirement and post-employment benefit plans subject to a right by AcquireCo., acting commercially reasonably and after consultation with the operational management of the LP Entities, to exclude certain specified liabilities. The credit acquisition would be the subject matter of a Plan to be voted on by the Secured Creditors on or before January 31, 2010. There would only be one class. The Plan would only compromise the LP Entities' secured claims and would not affect or compromise any other claims against any of the LP Entities ("unaffected claims"). No holders of the unaffected claims would be entitled to vote on or receive any

distributions of their claims. The Secured Creditors would exchange their outstanding secured claims against the LP Entities under the LP credit agreement and the swap obligations respectively for their *pro rata* shares of the debt and equity to be issued by AcquireCo. All of the LP Entities' obligations under the LP secured claims calculated as of the date of closing less $25 million would be deemed to be satisfied following the closing of the Acquisition Agreement. LP secured claims in the amount of $25 million would continue to be held by AcquireCo. and constitute an outstanding unsecured claim against the LP Entities.

24 The Support Agreement contemplates that the Financial Advisor, namely RBC Dominion Securities Inc., under the supervision of the Monitor, will conduct the solicitation process. Completion of the credit acquisition process is subject to a successful bid arising from the solicitation process. In general terms, the objective of the solicitation process is to obtain a better offer (with some limitations described below) than that reflected in the credit acquisition. If none is obtained in that process, the LP Entities intend for the credit acquisition to proceed assuming approval of the Plan. Court sanction would also be required.

25 In more detailed terms, Phase I of the solicitation process is expected to last approximately 7 weeks and qualified interested parties may submit non-binding proposals to the Financial Advisor on or before February 26, 2010. Thereafter, the Monitor will assess the proposals to determine whether there is a reasonable prospect of obtaining a Superior Offer. This is in essence a cash offer that is equal to or higher than that represented by the credit acquisition. If there is such a prospect, the Monitor will recommend that the process continue into Phase II. If there is no such prospect, the Monitor will then determine whether there is a Superior Alternative Offer, that is, an offer that is not a Superior Offer but which might nonetheless receive approval from the Secured Creditors. If so, to proceed into Phase II, the Superior Alternative Offer must be supported by Secured Creditors holding more than at least 33.3% of the secured claims. If it is not so supported, the process would be terminated and the LP Entities would then apply for court sanction of the Plan.

26 Phase II is expected to last approximately 7 weeks as well. This period allows for due diligence and the submission of final binding proposals. The Monitor will then conduct an assessment akin to the Phase 1 process with somewhat similar attendant outcomes if there are no Superior Offers and no acceptable Alternative Superior Offers. If there were a Superior Offer or an acceptable Alternative Superior Offer, an agreement would be negotiated and the requisite approvals sought.

27 The solicitation process is designed to allow the LP Entities to test the market. One concern is that a Superior Offer that benefits the secured lenders might operate to preclude a Superior Alternative Offer that could provide a better result for the unsecured creditors. That said, the LP Entities are of the view that the solicitation process and the support transaction present the best opportunity for the businesses of the LP Entities to continue as going concerns, thereby preserving jobs as well as the economic and social benefits of their continued operation. At this stage, the alternative is a bankruptcy or liquidation which would result in significant detriment not only to the creditors and employees of the LP Entities but to the broader community that benefits from the continued operation of the LP Entities' business. I also take some comfort from the position of the Monitor which is best captured in an excerpt from its preliminary Report:

> The terms of the Support Agreement and SISP were the subject of lengthy and intense arm's length negotiations between the LP Entities and the LP Administrative Agent. The Proposed Monitor supports approval of the process contemplated therein and of the approval of those documents, but without in any way fettering the various powers and discretions of the Monitor.

28 It goes without saying that the Monitor, being a court appointed officer, may apply to the court for advice and directions and also owes reporting obligations to the court.

29 As to the objection of the Ad Hoc Committee, I make the following observations. Firstly, they represent unsecured subordinated debt. They have been in a position to take action since August, 2009. Furthermore, the LP Entities have provided up to $250,000 for them to retain legal counsel. Meanwhile, the LP Secured Lenders have been in a position to enforce their rights through a non-consensual court proceeding and have advised the LP Entities of their abilities in that regard in the event that the LP Entities did not move forward as contemplated by the Support Agreement. With the Support Agreement and the solicitation process, there is an enhanced likelihood of the continuation of going concern operations, the preservation of jobs and the maximization of value for stakeholders of the LP Entities. It seemed to me that in the face of these facts and given

that the Support Agreement expired on January 8, 2010, adjourning the proceeding was not merited in the circumstances. The Committee did receive very short notice. Without being taken as encouraging or discouraging the use of the comeback clause in the order, I disagree with the submission of counsel to the Ad Hoc Committee to the effect that it is very difficult if not impossible to stop a process relying on that provision. That provision in the order is a meaningful one as is clear from the decision in *Muscletech Research & Development Inc., Re*[5]. On a come back motion, although the positions of parties who have relied bona fide on an Initial Order should not be prejudiced, the onus is on the applicants for an Initial Order to satisfy the court that the existing terms should be upheld.

Proposed Monitor

30 The Applicants propose that FTI Consulting Canada Inc. serve as the Monitor. It currently serves as the Monitor in the CMI Entities' CCAA proceeding. It is desirable for FTI to act; it is qualified to act; and it has consented to act. It has not served in any of the incompatible capacities described in section 11.7(2) of the CCAA. The proposed Monitor has an enhanced role that is reflected in the order and which is acceptable.

Proposed Order

31 As mentioned, I granted the order requested. It is clear that the LP Entities need protection under the CCAA. The order requested will provide stability and enable the LP Entities to pursue their restructuring and preserve enterprise value for their stakeholders. Without the benefit of a stay, the LP Entities would be required to pay approximately $1.45 billion and would be unable to continue operating their businesses.

(a) Threshold Issues

32 The chief place of business of the Applicants is Ontario. They qualify as debtor companies under the CCAA. They are affiliated companies with total claims against them that far exceed $5 million. Demand for payment of the swap indebtedness has been made and the Applicants are in default under all of the other facilities outlined in these reasons. They do not have sufficient liquidity to satisfy their obligations. They are clearly insolvent.

(b) Limited Partnership

33 The Applicants seek to extend the stay of proceedings and the other relief requested to the Limited Partnership. The CCAA definition of a company does not include a partnership or a limited partnership but courts have exercised their inherent jurisdiction to extend the protections of an Initial CCAA Order to partnerships when it was just and convenient to do so. The relief has been held to be appropriate where the operations of the partnership are so intertwined with those of the debtor companies that irreparable harm would ensue if the requested stay were not granted: *Canwest Global Communications Corp., Re*[6] and *Lehndorff General Partner Ltd., Re*[7].

34 In this case, the Limited Partnership is the administrative backbone of the LP Entities and is integral to and intertwined with the Applicants' ongoing operations. It owns all shared information technology assets; it provides hosting services for all Canwest properties; it holds all software licences used by the LP Entities; it is party to many of the shared services agreements involving other Canwest entities; and employs approximately 390 full-time equivalent employees who work in Canwest's shared services area. The Applicants state that failure to extend the stay to the Limited Partnership would have a profoundly negative impact on the value of the Applicants, the Limited Partnership and the Canwest Global enterprise as a whole. In addition, exposing the assets of the Limited Partnership to the demands of creditors would make it impossible for the LP Entities to successfully restructure. I am persuaded that under these circumstances it is just and convenient to grant the request.

(c) Filing of the Secured Creditors' Plan

35 The LP Entities propose to present the Plan only to the Secured Creditors. Claims of unsecured creditors will not be addressed.

36 The CCAA seems to contemplate a single creditor-class plan. Sections 4 and 5 state:

> s.4 Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company or of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors and, it the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.
>
> s.5 Where a compromise or an arrangement is proposed between a debtor company and its secured creditors or any class of them, the court may, on the application in a summary way of the company or of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

37 Case law has interpreted these provisions as authorizing a single creditor-class plan. For instance, Blair J. (as he then was) stated in *Philip Services Corp., Re*[8] : " There is no doubt that a debtor is at liberty, under the terms of sections 4 and 5 of the CCAA, to make a proposal to secured creditors or to unsecured creditors or to both groups."[9] Similarly, in *Anvil Range Mining Corp., Re*[10], the Court of Appeal stated: "It may also be noted that s. 5 of the CCAA contemplates a plan which is a compromise between a debtor company and its secured creditors and that by the terms of s. 6 of the Act, applied to the facts of this case, the plan is binding only on the secured creditors and the company and not on the unsecured creditors."[11]

38 Based on the foregoing, it is clear that a debtor has the statutory authority to present a plan to a single class of creditors. In *Anvil Range Mining Corp., Re*, the issue was raised in the context of the plan's sanction by the court and a consideration of whether the plan was fair and reasonable as it eliminated the opportunity for unsecured creditors to realize anything. The basis of the argument was that the motions judge had erred in not requiring a more complete and in depth valuation of the company's assets relative to the claims of the secured creditors.

39 In this case, I am not being asked to sanction the Plan at this stage. Furthermore, the Monitor will supervise a vigorous and lengthy solicitation process to thoroughly canvass the market for alternative transactions. The solicitation should provide a good indication of market value. In addition, as counsel for the LP Entities observed, the noteholders and the LP Entities never had any forbearance agreement. The noteholders have been in a position to take action since last summer but chose not to do so. One would expect some action on their part if they themselves believed that they "were in the money". While the process is not perfect, it is subject to the supervision of the court and the Monitor is obliged to report on its results to the court.

40 In my view it is appropriate in the circumstances to authorize the LP Entities to file and present a Plan only to the Secured Creditors.

(D) DIP Financing

41 The Applicants seek approval of a DIP facility in the amount of $25 million which would be secured by a charge over all of the assets of the LP Entities and rank ahead of all other charges except the Administration Charge, and ahead of all other existing security interests except validly perfected purchase money security interests and certain specific statutory encumbrances.

42 Section 11.2 of the CCAA provides the statutory jurisdiction to grant a DIP charge. In *Canwest Global Communications Corp., Re*[12], I addressed this provision. Firstly, an applicant should address the requirements contained in section 11.2 (1) and then address the enumerated factors found in section 11.2(4) of the CCAA. As that list is not exhaustive, it may be appropriate to consider other factors as well.

43 Applying these principles to this case and dealing firstly with section 11.2(1) of the CCAA, notice either has been given to secured creditors likely to be affected by the security or charge or alternatively they are not affected by the DIP charge. While funds are not anticipated to be immediately necessary, the cash flow statements project a good likelihood that the LP Entities will require the additional liquidity afforded by the $25 million. The ability to borrow funds that are secured by a charge will

help retain the confidence of the LP Entities' trade creditors, employees and suppliers. It is expected that the DIP facility will permit the LP Entities to conduct the solicitation process and consummate a recapitalization transaction of a sale of all or some of its assets. The charge does not secure any amounts that were owing prior to the filing. As such, there has been compliance with the provisions of section 11.2 (1).

44 Turning then to a consideration of the factors found in section 11.2(4) of the Act, the LP Entities are expected to be subject to these CCAA proceedings until July 31, 2010. Their business and financial affairs will be amply managed during the proceedings. This is a consensual filing which is reflective of the confidence of the major creditors in the current management configuration. All of these factors favour the granting of the charge. The DIP loan would enhance the prospects of a viable compromise or arrangement and would ensure the necessary stability during the CCAA process. I have already touched upon the issue of value. That said, in relative terms, the quantum of the DIP financing is not large and there is no readily apparent material prejudice to any creditor arising from the granting of the charge and approval of the financing. I also note that it is endorsed by the proposed Monitor in its report.

45 Other factors to consider in assessing whether to approve a DIP charge include the reasonableness of the financing terms and more particularly the associated fees. Ideally there should be some evidence on this issue. Prior to entering into the forbearance agreement, the LP Entities sought proposals from other third party lenders for a DIP facility. In this case, some but not all of the Secured Creditors are participating in the financing of the DIP loan. Therefore, only some would benefit from the DIP while others could bear the burden of it. While they may have opted not to participate in the DIP financing for various reasons, the concurrence of the non participating Secured Creditors is some market indicator of the appropriateness of the terms of the DIP financing.

46 Lastly, I note that the DIP lenders have indicated that they would not provide a DIP facility if the charge was not approved. In all of these circumstances, I was prepared to approve the DIP facility and grant the DIP charge.

(e) Critical Suppliers

47 The LP Entities ask that they be authorized but not required to pay pre-filing amounts owing in arrears to certain suppliers if the supplier is critical to the business and ongoing operations of the LP Entities or the potential future benefit of the payments is considerable and of value to the LP Entities as a whole. Such payments could only be made with the consent of the proposed Monitor. At present, it is contemplated that such suppliers would consist of certain newspaper suppliers, newspaper distributors, logistic suppliers and the Amex Bank of Canada. The LP Entities do not seek a charge to secure payments to any of its critical suppliers.

48 Section 11.4 of the CCAA addresses critical suppliers. It states:

> 11.4(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring a person to be a critical supplier to the company if the court is satisfied that the person is a supplier of goods and services to the company and that the goods or services that are supplied are critical to the company's continued operation.
>
> (2) If the court declares the person to be a critical supplier, the court may make an order requiring the person to supply any goods or services specified by the court to the company on any terms and conditions that are consistent with the supply relationship or that the court considers appropriate.
>
> (3) If the court makes an order under subsection (2), the court shall, in the order, declare that all or part of the property of the company is subject to a security or charge in favour of the person declared to be a critical supplier, in an amount equal to the value of the goods or services supplied upon the terms of the order.
>
> (4) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

49 Mr. Byers, who is counsel for the Monitor, submits that the court has always had discretion to authorize the payment of critical suppliers and that section 11.4 is not intended to address that issue. Rather, it is intended to respond to a post-filing situation where a debtor company wishes to compel a supplier to supply. In those circumstances, the court may declare a person to be a critical supplier and require the person to supply. If the court chooses to compel a person to supply, it must authorize a charge as security for the supplier. Mr. Barnes, who is counsel for the LP Entities, submits that section 11.4 is not so limited. Section 11.4 (1) gives the court general jurisdiction to declare a supplier to be a "critical supplier" where the supplier provides goods or services that are essential to the ongoing business of the debtor company. The permissive as opposed to mandatory language of section 11.4 (2) supports this interpretation.

50 Section 11.4 is not very clear. As a matter of principle, one would expect the purpose of section 11.4 to be twofold: (i) to codify the authority to permit suppliers who are critical to the continued operation of the company to be paid and (ii) to require the granting of a charge in circumstances where the court is compelling a person to supply. If no charge is proposed to be granted, there is no need to give notice to the secured creditors. I am not certain that the distinction between Mr. Byers and Mr. Barnes' interpretation is of any real significance for the purposes of this case. Either section 11.4(1) does not oust the court's inherent jurisdiction to make provision for the payment of critical suppliers where no charge is requested or it provides authority to the court to declare persons to be critical suppliers. Section 11.4(1) requires the person to be a supplier of goods and services that are critical to the companies' operation but does not impose any additional conditions or limitations.

51 The LP Entities do not seek a charge but ask that they be authorized but not required to make payments for the pre-filing provision of goods and services to certain third parties who are critical and integral to their businesses. This includes newsprint and ink suppliers. The LP Entities are dependent upon a continuous and uninterrupted supply of newsprint and ink and they have insufficient inventory on hand to meet their needs. It also includes newspaper distributors who are required to distribute the newspapers of the LP Entities; American Express whose corporate card programme and accounts are used by LP Entities employees for business related expenses; and royalty fees accrued and owing to content providers for the subscription-based online service provided by FPinfomart.ca, one of the businesses of the LP Entities. The LP Entities believe that it would be damaging to both their ongoing operations and their ability to restructure if they are unable to pay their critical suppliers. I am satisfied that the LP Entities may treat these parties and those described in Mr. Strike's affidavit as critical suppliers but none will be paid without the consent of the Monitor.

(f) Administration Charge and Financial Advisor Charge

52 The Applicants also seek a charge in the amount of $3 million to secure the fees of the Monitor, its counsel, the LP Entities' counsel, the Special Committee's financial advisor and counsel to the Special Committee, the CRA and counsel to the CRA. These are professionals whose services are critical to the successful restructuring of the LP Entities' business. This charge is to rank in priority to all other security interests in the LP Entities' assets, with the exception of purchase money security interests and specific statutory encumbrances as provided for in the proposed order. [13] The LP Entities also request a $10 million charge in favour of the Financial Advisor, RBC Dominion Securities Inc. The Financial Advisor is providing investment banking services to the LP Entities and is essential to the solicitation process. This charge would rank in third place, subsequent to the administration charge and the DIP charge.

53 In the past, an administration charge was granted pursuant to the inherent jurisdiction of the court. Section 11.52 of the amended CCAA now provides statutory jurisdiction to grant an administration charge. Section 11.52 states:

> On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the debtor company is subject to a security or charge - in an amount that the court considers appropriate - in respect of the fees and expenses of
>
> (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

54 I am satisfied that the issue of notice has been appropriately addressed by the LP Entities. As to whether the amounts are appropriate and whether the charges should extend to the proposed beneficiaries, the section does not contain any specific criteria for a court to consider in its assessment. It seems to me that factors that might be considered would include:

(a) the size and complexity of the businesses being restructured;

(b) the proposed role of the beneficiaries of the charge;

(c) whether there is an unwarranted duplication of roles;

(d) whether the quantum of the proposed charge appears to be fair and reasonable;

(e) the position of the secured creditors likely to be affected by the charge; and

(f) the position of the Monitor.

This is not an exhaustive list and no doubt other relevant factors will be developed in the jurisprudence.

55 There is no question that the restructuring of the LP Entities is large and highly complex and it is reasonable to expect extensive involvement by professional advisors. Each of the professionals whose fees are to be secured has played a critical role in the LP Entities restructuring activities to date and each will continue to be integral to the solicitation and restructuring process. Furthermore, there is no unwarranted duplication of roles. As to quantum of both proposed charges, I accept the Applicants' submissions that the business of the LP Entities and the tasks associated with their restructuring are of a magnitude and complexity that justify the amounts. I also take some comfort from the fact that the administrative agent for the LP Secured Lenders has agreed to them. In addition, the Monitor supports the charges requested. The quantum of the administration charge appears to be fair and reasonable. As to the quantum of the charge in favour of the Financial Advisor, it is more unusual as it involves an incentive payment but I note that the Monitor conducted its own due diligence and, as mentioned, is supportive of the request. The quantum reflects an appropriate incentive to secure a desirable alternative offer. Based on all of these factors, I concluded that the two charges should be approved.

(g) Directors and Officers

56 The Applicants also seek a directors and officers charge ("D & O charge") in the amount of $35 million as security for their indemnification obligations for liabilities imposed upon the Applicants' directors and officers. The D & O charge will rank after the Financial Advisor charge and will rank pari passu with the MIP charge discussed subsequently. Section 11.51 of the CCAA addresses a D & O charge. I have already discussed section 11.51 in *Canwest Global Communications Corp., Re*[14] as it related to the request by the CMI Entities for a D & O charge. Firstly, the charge is essential to the successful restructuring of the LP Entities. The continued participation of the experienced Boards of Directors, management and employees of the LP Entities is critical to the restructuring. Retaining the current officers and directors will also avoid destabilization. Furthermore, a CCAA restructuring creates new risks and potential liabilities for the directors and officers. The amount of the charge appears to be appropriate in light of the obligations and liabilities that may be incurred by the directors and officers. The charge will not cover all of the directors' and officers' liabilities in a worse case scenario. While Canwest Global maintains D & O liability insurance, it has only been extended to February 28, 2009 and further extensions are unavailable. As of the date of the Initial Order, Canwest Global had been unable to obtain additional or replacement insurance coverage.

57 Understandably in my view, the directors have indicated that due to the potential for significant personal liability, they cannot continue their service and involvement in the restructuring absent a D & O charge. The charge also provides assurances to the employees of the LP Entities that obligations for accrued wages and termination and severance pay will be satisfied. All secured creditors have either been given notice or are unaffected by the D & O charge. Lastly, the Monitor supports the charge and I was satisfied that the charge should be granted as requested.

(h) Management Incentive Plan and Special Arrangements

58 The LP Entities have made amendments to employment agreements with 2 key employees and have developed certain Management Incentive Plans for 24 participants (collectively the "MIPs"). They seek a charge in the amount of $3 million to secure these obligations. It would be subsequent to the D & O charge.

59 The CCAA is silent on charges in support of Key Employee Retention Plans ("KERPs") but they have been approved in numerous CCAA proceedings. Most recently, in *Canwest Global Communications Corp., Re* [15], I approved the KERP requested on the basis of the factors enumerated in *Grant Forest Products Inc., Re* [16] and given that the Monitor had carefully reviewed the charge and was supportive of the request as were the Board of Directors, the Special Committee of the Board of Directors, the Human Resources Committee of Canwest Global and the Adhoc Committee of Noteholders.

60 The MIPs in this case are designed to facilitate and encourage the continued participation of certain senior executives and other key employees who are required to guide the LP Entities through a successful restructuring. The participants are critical to the successful restructuring of the LP Entities. They are experienced executives and have played critical roles in the restructuring initiatives to date. They are integral to the continued operation of the business during the restructuring and the successful completion of a plan of restructuring, reorganization, compromise or arrangement.

61 In addition, it is probable that they would consider other employment opportunities in the absence of a charge securing their payments. The departure of senior management would distract from and undermine the restructuring process that is underway and it would be extremely difficult to find replacements for these employees. The MIPs provide appropriate incentives for the participants to remain in their current positions and ensures that they are properly compensated for their assistance in the reorganization process.

62 In this case, the MIPs and the MIP charge have been approved in form and substance by the Board of Directors and the Special Committee of Canwest Global. The proposed Monitor has also expressed its support for the MIPs and the MIP charge in its pre-filing report. In my view, the charge should be granted as requested.

(i) Confidential Information

63 The LP Entities request that the court seal the confidential supplement which contains individually identifiable information and compensation information including sensitive salary information about the individuals who are covered by the MIPs. It also contains an unredacted copy of the Financial Advisor's agreement. I have discretion pursuant to Section 137(2) of the *Courts of Justice Act* [17] to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record. That said, public access in an important tenet of our system of justice.

64 The threshold test for sealing orders is found in the Supreme Court of Canada decision of *Sierra Club of Canada v. Canada (Minister of Finance)* [18]. In that case, Iacobucci J. stated that an order should only be granted when: (i) it is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and (ii) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

65 In *Canwest Global Communications Corp., Re* [19] I applied the *Sierra Club* test and approved a similar request by the Applicants for the sealing of a confidential supplement containing unredacted copies of KERPs for the employees of the CMI Entities. Here, with respect to the first branch of the *Sierra Club* test, the confidential supplement contains unredacted copies of the MIPs. Protecting the disclosure of sensitive personal and compensation information of this nature, the disclosure of which would cause harm to both the LP Entities and the MIP participants, is an important commercial interest that should be protected. The information would be of obvious strategic advantage to competitors. Moreover, there are legitimate personal privacy concerns in issue. The MIP participants have a reasonable expectation that their names and their salary information will be kept confidential. With respect to the second branch of the *Sierra Club* test, keeping the information confidential will not have any deleterious effects. As in the *Canwest Global Communications Corp., Re* case, the aggregate amount of the MIP charge has been disclosed and the individual personal information adds nothing. The salutary effects of sealing the confidential supplement outweigh any conceivable deleterious effects. In the normal course, outside of the context of a CCAA proceeding, confidential personal and salary information would be kept confidential by an employer and would not find its way into the public domain. With respect to the unredacted Financial Advisor agreement, it contains commercially sensitive information the disclosure of which could be harmful to the solicitation process and the salutary effects of sealing it outweigh any deleterious effects. The confidential supplements should be sealed and not form part of the public record at least at this stage of the proceedings.

Conclusion

66 For all of these reasons, I was prepared to grant the order requested.

Application granted.

Footnotes

1 R.S.C. 1985, c. C. 36, as amended.

2 On October 30, 2009, substantially all of the assets and business of the National Post Company were transferred to the company now known as National Post Inc.

3 Subject to certain assumptions and qualifications.

4 Although not formally in evidence before the court, counsel for the LP Secured Lenders advised the court that currently $382,889,000 in principal in Canadian dollars is outstanding along with $458,042,000 in principal in American dollars.

5 2006 CarswellOnt 264 (Ont. S.C.J. [Commercial List]).

6 2009 CarswellOnt 6184 (Ont. S.C.J. [Commercial List]) at para. 29.

7 (1993), 9 B.L.R. (2d) 275 (Ont. Gen. Div. [Commercial List]).

8 1999 CarswellOnt 4673 (Ont. S.C.J. [Commercial List]).

9 Ibid at para. 16.

10 (2002), 34 C.B.R. (4th) 157 (Ont. C.A.), leave to appeal to S.C.C. refused (March 6,2003) [2003 CarswellOnt 730 (S.C.C.)].

11 Ibid at para. 34.

12 Supra, note 7 at paras. 31-35.

13 This exception also applies to the other charges granted.

14 Supra note 7 at paras. 44-48.

15 Supra note 7.

16 [2009] O.J. No. 3344 (Ont. S.C.J. [Commercial List]).

17 R.S.O. 1990, c. C.43, as amended.

18 [2002] 2 S.C.R. 522 (S.C.C.).

19 Supra, note 7 at para. 52.

End of Document

Tab 7

2014 QCCS 980
Cour supérieure du Québec

Homburg Invest Inc., Re

2014 CarswellQue 2155, 2014 QCCS 980, J.E. 2014-641, EYB 2014-234678

In the matter of the plan of compromise or arrangement of : Homburg Invest Inc. et als, Debtors, v. Homco Realty Fund (52) Limited Partnership et als, Mises en cause, and Samson Bélair/Deloitte & Touche inc., Monitor, and Stichting Homburg Bonds and 1028167 Alberta Ltd., Petitioners, and Homburg Canada inc., Mise en cause

Gouin J.C.S.

Heard: 5 february 2014 - 7 february 2014
Judgment: 17 march 2014
Docket: C.S. Qué. Montréal 500-11-041305-117

Counsel: *Me Guy Martel, Me Nathalie Nouvet*, for Petitioners
Me Mason Poplaw, Me Jocelyn T. Perreault, for Monitor
Me Sandra Abitan, Me Martin Desrosiers, for Debtors and Mises en cause

Subject: Insolvency

***Gouin J.C.S.*:**

1. CONTEXT AND STICHTING MOTIONS

1. CONTEXT AND STICHTING MOTIONS

1 On September 9, 2011, an initial order (the "*Initial Order*") was issued by the Court pursuant to the *Companies' Creditors Arrangement Act* [1] (the "*CCAA*") granting court protection to the Debtors (the "*HII Group*") and the Mises-en-cause.

2 Samson Bélair/Deloitte & Touche Inc. was appointed as monitor (the « *Monitor* ») under the *CCAA* and the Initial Order.

3 The undersigned was then charged with the court supervision of the HII Group's restructuring under the *CCAA* (the "*Restructuring*").

4 As of the date hereof, 52 court orders have been issued, and the HII Group is presently working on implementing the plans approved by its creditors, and sanctioned by the Court on June 5, 2013 (the "*Plans*").

5 The Court is now seized with three motions presented by the Petitioners Stichting Homburg Bonds ("*SHB*") and 1028167 Alberta Ltd. ("*Alberta*"), namely:

> a. *Motion in Appeal of a Disallowance of a Proof of Claim, pursuant to the "Claims Process Order" issued on April 30, 2012*" (Cote #154), dated February 14, 2013 and filed by SHB (the "**First Appeal Motion**");
>
> b. *Motion in Appeal of the Disallowance of Proofs of Claim filed pursuant to the "Claims Process Order" issued on April 30, 2012*" (Cote #212), dated May 17, 2013 and filed by SHB and Alberta (the "**Second Appeal Motion**"); and

c. *Amended Motion for the Payment of the Fees and Expenses of Stichting Homburg Bonds and Other Relief*" (Cote #228), dated February 4, 2014 (initially dated October 9, 2013) and filed by SHB (the "**Expenses Payment Motion**");

(the First Appeal Motion, the Second Appeal Motion and the Expenses Payment Motion collectively called the "**Stichting Motions**").

6 Essentially, by the Expenses Payment Motion, SHB requests payment of 100% of its fees and expenses incurred since the issuance of the Initial Order, on the basis of its "substantial contribution" to the successful Restructuring, without being compromised under the Plans.

7 Subsidiarily, by the First Appeal Motion and the Second Appeal Motion, SHB and Alberta request that such fees and expenses be included in their respective claims filed pursuant to the *Claims Process Order* issued by this Court on April 30, 2012 (the "*CPO*"), the "*Order for the convening, holding and conduct of the HII/Shareco creditors' meeting and granting other relief*" issued on April 29, 2013 (the "*HII/Shareco Meeting Order*"), and the "*Order for the convening, holding and conduct of a creditors' meeting in respect of Homco Realty Fund (61) Limited Partnership* ("*Homco 61*") *and granting other relief*" issued on April 29, 2013 (the "*Homco 61 Meeting Order*") (the HII/Shareco Meeting Order and Homco 61 Meeting Order collectively called the "*Meeting Orders*") and the Plans, and that such claims be accepted as "*Proven Claims*" as defined in the Meeting Orders (the "*Stichting Proven Claims*") and compromised under the Plans.

8 The First Appeal Motion covers such Stichting's and Alberta's fees and expenses for the period between the Initial Order and December 3, 2011, namely $2.1 million (the "*Pre-December 3 Expenses*").

9 The Second Appeal Motion covers such Stichting's and Alberta's fees and expenses for the period after December 3, 2011, namely an amount of approximately $7.6 million (the "*Post-December 3 Expenses*").

10 Somehow, the Expenses Payment Motion encompasses all SHB's and Alberta's requests under the Stichting Motions, and they claim thereunder both the Pre-December 3 Expenses and the Post-December 3 Expenses (collectively called the "*Stichting Expenses*").

11 To facilitate the reading of this judgment, SHB and/or Alberta, as petitioners under one or the other of the Stichting Motions, and/or SHCS (defined hereinafter), are referred to herein as "*Stichting*".

12 During the hearing, Stichting renounced to its subsidiary conclusions appearing at pages 20 and 21 of the Expenses Payment Motion and dealing with the setting aside of a "reserve" for the Pre-December 3 Expenses, including related requests thereto.

2. RELEVANT FACTS

2.1 Trust Indentures

13 Stichting is the indenture trustee under, *inter alia*, the following trust indentures:

a. a trust indenture made as of December 15, 2002 between the debtor Homburg Shareco Inc. ("**Shareco**") and Stichting Homburg Mortgage Bond (now SHB), as supplemented by several supplemental indentures (the "**Mortgage Bonds Indenture**")[2];

b. a trust indenture made as of May 31, 2006, between the debtor Homburg Invest Inc. ("**HII**") and SHB, as supplemented by several supplemental indentures (the "**Corporate Bonds Indenture**")[3];

(the Mortgage Bonds Indenture and the Corporate Bonds Indenture collectively called the "**Indentures**")

c. a trust indenture made as of February 28, 2009, between HII and Stichting Homburg Capital Securities ("**SHCS**").

14 HII has unconditionally and irrevocably guaranteed all amounts payable by Shareco under the Mortgage Bonds Indenture pursuant to a guarantee agreement dated December 15, 2002 and supplemental guarantee agreements under each supplemental indenture to the Mortgage Bonds Indenture (collectively the "*Guarantee*") [4].

15 Under the Indentures, Stichting is the representative of approximately 9,500 holders of bonds (the "*Bonds*") issued thereunder (the "*Bondholders*").

16 While questions with respect to the status of Sitchting as "representative" of the Bondholders have been raised in the past, this was not an issue at the time the Stichting Motions were heard before the Court.

17 The Bondholders under the Indentures hold in excess of $593 million in claims, representing approximately 75% of the unsecured unconsolidated proven claims against HII under the Plans.

2.2 Pre-Initial Order agreements involving HII, HCI and Stichting

18 On July 6, 2011, a *Voting power of attorney agreement* ("*VA*") was entered into between Richard Homburg ("*RH*"), Homburg Finance A.G. ("*Finance*") and HII, pursuant to which RH and Finance, as shareholders of HII, appointed the Attorney (as defined therein) to vote their shares in respect of the electing and removing of directors of HII [5].

19 RH controls, directly or indirectly, Finance.

20 On September 8, 2011, a *Heads of Agreement* ("*HOA*") [6] was entered into between, *inter alia*, RH, Finance, Homburg Canada Inc. ("*HCI*"), Homburg L.P. Management inc. ("*Management*"), SHB and SHCS (HII was not a party thereto) in order, *inter alia*, to address control issues (the "*Control Issues*") raised by the Dutch Authority for the Financial Markets (the "*AFM*") with respect to RH's, Finance's, HCI's and related entities' holdings in HII and related entities [7], and to provide for the transfer of their shares in HII to Stichting, subject to the terms and conditions therein.

21 RH controls, directly or indirectly, HCI and Management.

22 Concurrently, on September 8, 2011, a *Voting Power of Attorney and Standstill Agreement* ("*POA*") [8] was entered into between RH, Finance and Stichting, and it replaced the VA [9].

23 The POA provided that Stichting was to vote on behalf of RH and Finance their voting shares held in HII, and it included the following indemnification clause agreed to by RH and Finance:

> [...] [RH and Finance] shall jointly and severally indemnify and hold the Attorneys [Stichting] harmless from and against any and all actions and suits whether groundless or otherwise and from and against any and all losses, damages, costs, charges, counsel fees, payments, expenses and liabilities arising directly or indirectly out of the duties of the Attorneys [...]". [10]
>
> (the " **POA Indemnity**")

24 The HOA and the POA gave rise to a "proxy battle" in the early days of the Restructuring, starting with HII's annual general meeting held in Montréal on the morning of September 9, 2011.

2.3 Proceedings filed by Stichting

25 In addition to contesting the issuance of the Initial Order in the afternoon and evening of September 9, 2011, Stichting filed immediately thereafter the following proceedings:

a. a "*De Bene Esse Motion for an Order Lifting the Stay of Proceedings for the Purposes of Seeking Relief in respect of Homburg Invest Inc.'s Annual General Meeting*" dated September 16, 2011;

b. a "*Motion for Amendments to the Initial Order*" dated September 16, 2011, and amended on October 4, 2011; and

c. a "*Motion for the Payment of Fees, Disbursements and Expenses of the Indenture Trustees and the Indenture Trustees' Advisors and Related Relief*" dated October 4, 2011 (the "**Original Motion for Funding**"),

(collectively the "**Stichting Proceedings**").

26 Concurrently, the Monitor filed a "*Motion to Obtain Lists of Registered Bondholders*" further to Stichting's refusal to provide same, the whole resulting in the Court issuing, on October 7, 2011, the "*Bondholders Listing Order*".

27 Also, the Court issued a number of "*Case Management Orders*" specifically requesting that the parties make all reasonable efforts to settle their outstanding issues.

28 Amongst those issues were Stichting's involvement in the Restructuring and Stichting's fees and expenses:

a. In the "Case Management Order #1" issued on September 26, 2011, the Court declared and ordered, inter alia, the following:

[7] **DECLARES** that the Monitor shall act as the « conductor of orchestra » (« chef d'orchestre ») in coordinating efforts with the AFM and the DNB [De Nederlandsche Bank] to protect any licence issued by the AFM to HII and in determining the Steps, including when it will be advisable to involve a duly authorized representative of the Trustees [Stichting];

[8] **ORDERS** the Monitor, when necessary, to keep informed the duly authorized representative of the Trustees as to the Steps and their enforcement, and as to the involvement of such representative in the enforcement of the Steps;

b. In the "Case Management Order #3" issued on October 7, 2011, the Court declared:

C. MOTION FOR FEES [Original Motion for Funding]

[12] **DECLARES** that the Court may be prepared to consider a request by an interested person under Section 11.52(1) of the CCAA [request for indemnification of certain fees and expenses], subject to a favourable recommendation from the Monitor, the « conductor of orchestra » as referred to in the CMO #1 [Case Management Order #1], and subject to such interested person playing in the same orchestra, i.e. being an effective participant in the orchestra;

29 The Monitor has always maintained that the HII Group was not obliged to pay or reimburse any such fees and expenses, which in effect would have been tantamount to granting security ranking in priority over all other stakeholders, nor to permit that such fees and expenses be included in Stichting's claims under the Plans. The negotiations referred to hereinafter were conducted on that basis.

2.4 Negotiations and related agreements

2.4.1 Purchase agreement involving HCI and HII Group

30 On November 17, 2011, a *Purchase Agreement* (the "*Purchase*")[11] was entered into, between, *inter alia*, HCI, Management, RH and HII (Stichting was not a party thereto), providing, *inter alia*, for the purchase by HII Group of HCI's property management of HII's business and assets, with certain exceptions.

31 One of the conditions precedent to the Purchase was the settlement of all proceedings involving HII and Stichting:

10.9 Withdrawal of proceedings by Trustees [Stichting]

The trustees [Stichting] acting in that capacity for the bondholders of Homburg Shareco Inc. or HII (the "**Trustees**") shall have entered into a settlement agreement with certain members of the HII Group and shall have respected their obligations thereunder, including without limitation, the withdrawal of certain motions or proceedings before the CCAA Court.

32 The Purchase was approved by this Court on January 12, 2012, thereby authorizing HCI and RH to transfer their controlling interests in HII and related entities to HII, the whole for a consideration of approximately $21 million.

2.4.2 Amending agreements involving HCI and Stichting

33 On December 3, 2011, an *Amended Heads of Agreement and Voting Agreement* ("*AHOA*") [12] was entered into between, *inter alia*, HCI, Management, Finance, RH and Stichting (HII was not a party thereto), which amended the HOA and the restructuring transactions provided therein and the POA, and which provided, *inter alia*, for the payment of Stichting's Pre-December 3 Expenses by HCI [13] further to, and in accordance with, the POA Indemnity.

34 However, the AHOA also provided for Stichting's undertaking to use its "commercial best efforts" (the "*Stichting Undertaking*") to recover the Pre-December 3 Expenses from HII in order to reimburse HCI:

3.2 The Trustees [Stichting] agree that:

(a) they shall use commercial best efforts to obtain the approval of the CCAA Court to their motion for funding (**Funding Motion** [Original Motion for Funding]) as soon as practicable after the date hereof;

(a) whether or not the Funding Motion is granted, the Trustees shall use commercial best efforts to recover their fees and expenses, including the Termination Amount [the Pre-December 3 Expenses], in the context of the proceedings initiated by HII and certain of its subsidiaries through the *Companies' Creditors Arrangement Act* (the **CCAA Proceedings**) and to reimburse to HC [HCI], to the maximum extent practicable from any such recovery, the Termination Amount; and

(b) any reimbursement due to HC shall be remitted to HC by the Trustees within ten (10) days of receipt of recovery through the CCAA Proceedings.

(quoted as is)

35 Concurrently, on December 3, 2011, an *Amended and Restated Voting Power of Attorney and Standstill Agreement* ("*APOA*") [14] was entered into between RH, Finance and Stichting (HII was not a party thereto), which amended and restated the POA, including the removal of the POA Indemnity for the period post-December 3, 201.

2.4.3 Settlement Agreement involving HII Group and Stichting

36 On December 3, 2011, a Settlement Agreement (the "*Settlement Agreement*") [15] was entered into between the HII Group and Stichting (RH and HCI were not parties thereto), which provided, *inter alia*, for the settlement of the Stichting Proceedings, including the following undertaking from all parties:

to (ii) immediately cease and desist from making any allegations negatively affecting the credibility and appropriateness of the CCAA Proceedings or any allegations of conflict of interest in respect of the Parties, the Monitor or their respective legal counsel or, subject to the relevant provisions of the Indentures in respect of the rights and powers of the Trustees, the standing of the Trustees;" [16]

37 This is very telling of the acrimonious ambiance that then prevailed; it was far from being a situation involving an "effective participation" for the proper advancement of the Restructuring.

38 Thus, by the Settlement Agreement, the HII Group and Stichting wanted to resolve their differences and to work towards a successful restructuring in establishing the *modus vivendi* rules to govern their relations, including bridge-fundings of Stichting's fees and expenses to be incurred thereafter, namely the Post-December 3 Expenses, particularly because it was impossible from a practical point of view to request funding from more than 9,500 Bondholders, each having an average holding of approximately €31,999.

39 To that end, the Settlement Agreement provided for the necessary amendments to the Original Motion for Funding (the "*Amended Motion for Funding*"), which resulted in the issuance of an order by this Court, on February 15, 2012, along with the accompanying reasons on February 17, 2012 (collectively the "*Funding Order*") to specifically deal with the Post-December 3 Expenses:

> **ORDERS** that the Petitioners shall advance from the available cash of the Debtors, on the same payment terms as the fees and disbursements payable by the Petitioners pursuant to paragraph [41] of the Initial Order dated September 9, 2011 as amended and/or restated, amounts equivalent to the reasonable fees and expenses incurred as and from December 3rd, 2011 in connection with the CCAA proceedings and the Restructuring by the Trustees' Advisors, the aggregate of which advances (the "**Stichting Advances**") up to the maximum amount to be distributed or paid (i) shall become due and payable to the Debtors immediately prior to any distribution or payment, including pursuant to a sale of assets, liquidation or realization of security or otherwise (each a "**Distribution Event**"), to be made to or for the benefit of the holders of the Securities, as the case may be, (ii) shall be set-off/compensated against the aggregate of any distribution to be made to or for the benefit of the holders of Securities pursuant to any such Distribution Event and (iii) shall be allocated, as between the holders of Securities, on a pro-rata basis, based on the amount, if any, to be distributed or paid in respect of each of the Corporate Bonds, Mortgage Bonds and Capital Securities as a percentage of the total amount to be distributed in respect of all Securities.
>
> (the "**Stichting Advances**")

40 The Amended Motion for Funding and the draft Funding Order were intensively negotiated among the parties, with the result that only the funding of the Post-December 3 Expenses was included therein.

41 It was unacceptable for the Monitor to include any funding for the Pre-December 3 Expenses, or to provide for the payment by the HII Group of any of the Expenses.

42 In fact, Stichting acknowledged the gist of the Settlement Agreement in the AHOA [17]:

> 3.1 The Trustees acknowledge and agree that, as of the date hereof, the Trustees have reached an agreement to effect a settlement of the issues in dispute between them and HII, including but not limited to the issue of HII's responsibility to pay or contribute to the fees and expenses of the Trustees and its advisors in connection with the Trustee's participation in the CCAA Proceedings from and after the date hereof.
>
> (the Court underlines)

2.5 Proofs of claims and Notices of disallowance

2.5.1 Stichting's Proofs of claim

43 On July 6, 2012, further to the CPO issued by this Court on April 30, 2012, Stichting filed a *Proof of Claim of Stichting Homburg Bonds and Stichting Homburg Capital Securities Against Homburg Invest Inc.* claiming the Pre-December 3 Expenses, on the basis of claims resulting from pre-filing contractual obligations (the "*Pre-December 3 POC*") [18].

44 Also, on July 6, 2012, Stichting filed a series of proofs of claim for Stichting, claiming, *inter alia*, the Post-December 3, 2011 Expenses, on the basis of claims resulting from pre-filing contractual obligations (the "*Post-December 3 POC*") [19].

2.5.2 Monitor's Notices of disallowance

45 On February 4, 2013, the Monitor disallowed [20] the Pre-December 3 POC on the basis that the Pre-December 3 Expenses did not qualify as obligations under the Indentures, nor under the Guarantee.

46 On May 10, 2013, the Monitor issued several notices [21] disallowing in part the Post-December 3 POC on the basis, *inter alia*, that the Post-December 3 Expenses represented the Stichting Advances pursuant to the Funding Order, reimbursable to HII and thus did not form part of a claim pursuant to the CPO, the Meeting Orders and the Plans.

47 As mentioned above, Stichting appealed these disallowances by filing, on February 14, 2013, the First Appeal Motion and, on May 17, 2013, the Second Appeal Motion.

2.6 Dutch Proceedings by HCI

48 In October 2013, HCI instituted proceedings in the Netherlands against Stichting and certain existing and former directors (the "*Dutch Proceedings*") [22] seeking a condemnation for an amount of $2.1 million on the basis that they failed to use their "commercial best efforts" to recover the Pre-December 3 Expenses from HII in accordance with the Stichting Undertaking under the AHOA [23].

3. POSITION OF PARTIES

3.1 Stichting

3.1.1 Full recovery on the basis of "substantial contribution"

49 Stichting argues that it is entitled to full payment of the Stichting Expenses before any distribution to any stakeholder under the Plans, based on the US concept of "substantial contribution" to a successful restructuring, which concept stems from Section 503(b)(5) of the *US Bankruptcy Code* [24].

50 Stichting contends that its actions and involvement in the Restructuring have contributed in a meaningful way to the successful approval of the Plans, and have ultimately benefited, not only the Bondholders, but all HII Group's creditors.

51 Furthermore, according to Stichting, the Stichting Expenses are reasonable in the circumstances, particularly considering the composition of the group of Bondholders and the complexity of the multiple issues that were addressed over the last two years in order to effect a successful Restructuring of the HII Group.

52 Therefore, Stichting requests that the Stichting Expenses be paid entirely before any distribution under the Plans and not be compromised thereunder; this reimbursement right being entirely independent of the contractual entitlement to the reimbursement thereof pursuant to the Indentures and argued on a subsidiary basis.

53 If the Court confirms such right, then Stichting requests the authorization to remit the full amount of the Pre-December 3 Expenses to HCI, as the latter paid same to Stichting at the time the AHOA was signed, the whole in satisfaction of the Stichting Undertaking under the AHOA.

3.1.2 Subsidiarily: recovery on the basis of pre-filing contractual obligation

54 Subsidiarily, Stichting submits that the Indentures provide for the payment of all its fees and expenses, including the Stichting Expenses, the whole in accordance with standard financing practices.

55 Therefore, according to Stichting, the Stichting Expenses were incurred as a result of pre-filing contractual obligations of HII and Shareco, and thereby constitute claims under the CPO, the Meeting Orders and the Plans.

56 Furthermore, Stichting argues that the Funding Order provides for the reimbursement of the Stichting Advances relating to the Post-December 3 Expenses by way of set-off/compensation against any distribution to be made to, or for the benefit of, the Bondholders. Thus Stichting is not precluded from claiming same from HII and Shareco on the basis of such pre-filing contractual obligations under the Indentures. There is no waiver or release of any such claim.

57 Stichting submits that the Stichting Advances constituted only bridge-fundings of the Post-December 3 Expenses, duly authorized by the Funding Order, with no effect on Stichting's right to claim the Post-December 3 Expenses under the CPO, the Meeting Orders and the Plans, on the basis of HII's and Shareco's pre-filing contractual obligations.

58 Therefore, the First Appeal Motion and the Second Appeal Motion should be granted, and the Stichting Expenses should be included in the Stichting Proven Claims, with entitlement to distributions under the Plans.

59 Furthermore, whether or not the First Appeal Motion and the Second Appeal Motion are granted by the Court, Stichting requests that any portion of the Pre-December 3 Expenses, remaining unpaid following the implementation of the Plans, be deducted from the Bondholders' distributions thereunder, such that 100% of the Pre-December 3 Expenses be paid to Stichting. The same set-off/compensation mechanism provided under the Funding Order with respect to the Post-December 3 Expenses should apply.

60 In such event, Stichting requests the authorization to remit to HCI any amounts to be received on account of the Pre-December 3 Expenses, up to the sum of $2.1 million, the whole in satisfaction of the Stichtching Undertaking under the AHOA.

61 On the other hand, it is understood that any distribution to be received by Stichting under the Plans on account of the Post-December 3 Expenses would be for the benefit of, and returned to, the Bondholders, reducing their related liability thereunder as provided in the Funding Order.

3.1.3 Protection against the Dutch Proceedings

62 Finally, and as a reply to the Dutch Proceedings, Stichting submits that the First Appeal Motion and the Expenses Payment Motion are an eloquent demonstration that it is using its "commercial best efforts" to recover from HII the Pre-December 3 Expenses, thereby meeting its obligations under the Stichting Undertaking provided in the AHOA.

63 Notwithstanding such defence, Stichting requests, in the event the Dutch Proceedings are successful, an order from this Court authorizing its indemnification for all its current and future fees and expenses relating to the Dutch Proceedings (the "*Dutch Proceedings Expenses*").

64 Such indemnification would be enforced prior to the final distribution to the Bondholders under the Plans, by applying the same set-off/compensation mechanism provided under the Funding Order for the Stichting Advances relating to the Post-December 3 Expenses.

3.2 Monitor

65 According to the Monitor, the parties settled all matters relating to the Stichting Expenses in virtue of the Settlement Agreement and the Funding Order. Stichting cannot revisit this issue.

66 As a matter of fact, the Settlement Agreement includes the withdrawal of the Original Motion for Funding.

67 Moreover, the Pre-December 3 Expenses were not incurred for the purpose of advancing or protecting the interests of the Bondholders; they were far from an "effective participation" by Stichting and its experts in a successful Restructuring, or a "substantial contribution" thereto.

68 On the contrary, during the pre-December 3 period, Stichting's acts impaired seriously HII Group's efforts to achieve a successful Restructuring.

69 Finally, the Monitor adds that this concept of "substantial contribution" does not exist under Canadian law, and should not be "imported" from the United States.

70 As to the post-December 3 period, the Monitor submits that Stichting's involvement did not extend beyond the standard functions which indenture trustees customarily engage in, and it has always been understood that any such expenses were for the Bondholders' account, and not for HII Group's account.

71 In any event, the Monitor points out that the Stichting Expenses are not included in the determination of Stichting Proven Claims pursuant to the Meeting Orders, which are limited to the capital owed under the Indentures and Bonds issued pursuant thereto, plus interest as of September 9, 2011 (the date of the Initial Order) for HII and Shareco, or February 6, 2013 for Homco 61 (Homco 61 filing date under the *CCAA*) [25].

72 As such, the Stichting Expenses are "post-filing claims", namely obligations incurred after the Initial Order, and therefore they fall outside the scope of an allowable claim pursuant to the *CCAA* and the Meeting Orders.

73 In addition, the Monitor stresses that Stichting failed to prove that the Pre-December 3 Expenses are reasonable and incurred in relation to the administration or execution of the Indentures.

74 Finally, the Monitor concludes that it will be totally unacceptable that any recovery in relation to the Pre-December 3 Expenses be for the benefit of HCI, including that the Bondholders be ordered to pay any of the Dutch Proceedings Expenses.

75 RH and HCI have constantly created hurdles in the Restructuring, including instituting the Dutch Proceedings, and the Court should not endorse such behaviour by granting Stichting's requests for reimbursement of fees.

4. ISSUES TO BE CONSIDERED

76 The Court identifies the following issues:

a. <u>Substantial contribution</u>:

i. Should the US concept of "substantial contribution" be imported into the rules governing restructurings under the *CCAA*?

ii. In the affirmative, did Stichting have a "substantial contribution" to the Restructuring?

iii. In the affirmative, is Stichting entitled to a full or partial reimbursement of the Stichting Expenses?

iv. In the affirmative, should the Court authorize Stichting to remit to HCI the reimbursement to be received with respect to the Pre-December 3 Expenses, up to the maximum amount of $2.1 million?

b. <u>Subsidiarily - Pre-filing contractual obligations</u>:

i. Can the Stichting Expenses be included in the Stichting Proven Claims on the basis that they relate to pre-filing contractual obligations under the Indentures?

ii. In the affirmative, what portion of the Stichting Expenses should be included in the Stichting Proven Claims?

c. <u>In any event</u>:

i. Should the Court authorize Stichting to deduct the Pre-December 3 Expenses and the Dutch Proceedings Expenses from the Bondholders' distribution under the Plans, less any portion of the Pre-December 3 Expenses that Stichting may receive on account thereon under the Plans?

ii. Should the Court authorize Stichting to remit to HCI any distribution to be received under the Plans, if any, including through set-off compensation from the Bondholders, on account of the Pre-December 3 Expenses, up to the maximum amount of $2.1 million?

5. DISCUSSION

5.1 Should the US concept of "substantial contribution" be imported into the rules governing restructurings under the CCAA?

5.1.1 US concept of "substantial contribution"

77 The concept of "substantial contribution" by an indenture trustee has a statutory basis under the *US Bankruptcy Code*[26]:

§ 503. Allowance of administrative expenses

[...]

(b) After notice and a hearing, there shall be allowed administrative expenses, other that claims allowed under section 502(f) of this title, including -

[...]

(5) reasonable compensation for services rendered by an indenture trustee in making a substantial contribution in a case under chapter 9 or 11 of this title, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title;

[...]

(the Court underlines)

78 The US case law[27] has restrictively applied this "substantive contribution" concept in considering several factors, including:

a. whether the actions fostered and enhanced, rather than inhibited or interrupted, the restructuring;

b. whether the expenses were duplicative of other parties' expenses; and

c. whether the services conferred a direct and demonstrable benefit on all stakeholders.

79 The Court concludes from the proof and the various proceedings in this matter that, following the execution of the HOA and POA on September 8, 2011, Stichting's actions between the Initial Order (September 9, 2011) and December 3, 2011, were tantamount to aggressive positioning, more for the benefit of RH, Finance and HCI, than for the benefit of the Bondholders.

80 The Court also concludes from the proof and the various proceedings in this matter that, further to the execution of the AHOA, the APOA and the Settlement Agreement on December 3, 2011, Stichting's actions were strictly in the nature of a trustee's standard functions acting for bondholders under a trust indenture.

81 Indeed, most of the work related to informing and advising the Bondholders through consultations and newsletters posted on Stichting's web site, reviewing documents submitted by the Monitor, attending planning meetings with the Monitor, the AFM and/or potential investors, all in order to be in a position to adequately inform and advise the Bondholders.

82 When Stichting was incurring fees and expenses for the general benefit of the HII Group, such as arranging and attending meetings with the Bondholders, the HII Group paid the related fees and expenses of Stichting.

83 Therefore, the Court is of the opinion that Stichting did not make a "substantial contribution" to the Restructuring.

84 In any event, the Court does not agree that the concept of "substantial contribution" provided under the US *Bankruptcy Code* should be imported into the rules governing restructurings under the *CCAA*.

85 There is no legal basis, nor any reason to endorse and import such a concept into the *CCAA*, which has its own mechanisms to deal with fees and expenses relating to a restructuring.

86 Indeed, Section 11.52(1)(c) of the *CCAA* already provides the possibility for an interested person to request a security or charge, affecting all or part of a debtor's property, to cover the fees and expenses of its financial, legal or other experts having an "effective participation" [une "participation efficace"] in the debtor's ongoing restructuring.

87 The Court is of the opinion that authorizing the payment of fees and expenses prior to any distribution to HII Group's stakeholders is equivalent to granting prior ranking security. Therefore, the analysis of Section 11.52(1)(c) of the *CCAA* is relevant for the purpose of these presents.

5.1.2 Section 11.52 of the CCAA

88 Section 11.52 of the *CCAA* provides for the following:

> **11.52** (1) **[Court may order security or charge to cover certain costs]** On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of
>
> (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
>
> (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
>
> (c) *any financial, legal or other experts engaged by any other interested person* if the court is satisfied that the security or charge is *necessary for their effective participation [participation efficace] in proceedings* under this Act.
>
> (2) **[Priority]** The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.
>
> (the Court underlines)

89 On October 4, 2011, Stichting filed its Original Motion for Funding pursuant to Section 11.52 of the *CCAA*.

90 Concurrently, and as mentioned above, on October 7, 2011, the Court issued the *Case Management Order* #3 declaring that it was prepared to consider an interested person's request under Section 11.52 of the *CCAA*, subject to the Monitor's ("conductor of orchestra") favourable recommendation and the interested person being an "effective participant" in the Monitor's orchestra.

91 Thus, the Court already gave some indication as to what it would take into consideration if it were to proceed on the merits with the Original Motion for Funding.

92 Thereafter, HII Group and Stichting settled their disagreements in that regard, and Stichting proceeded with the Amended Motion for Funding, in accordance with the terms of the Settlement Agreement agreed to by them, and both parties consented to the issuance of the February 15, 2012 Funding Order.

93 Therefore, Stichting's initial indemnification request pursuant to Section 11.52(1)(c) of the *CCAA* was resolved by the issuance of the Funding Order.

94 Now, Stichting brings the Expenses Payment Motion before the Court, not on the basis of Section 11.52(1)(c) of the *CCAA*, but on the basis of the US concept of "substantial contribution" which, as mentioned above, the Court rejects and refuses to import into the rules governing restructurings under the *CCAA*.

95 Nevertheless, the Court is of the opinion that a request similar to the Expenses Payment Motion must be analyzed pursuant to Section 11.52(1)(c) of the *CCAA*, even if no security or charge is requested. As mentioned above, authorizing the payment of fees and expenses prior to any distribution to HII Group's stakeholders would be equivalent to granting prior ranking security.

96 During the hearing, the Court stressed the importance of the timing issue for a request under Section 11.52(1)(c) of the *CCAA*, as an "effective participation" to be secured in a restructuring must be agreed on as soon as it can be established that the interested person requires such security to cover the fees and expenses of its financial, legal or other experts for their "effective participation" in the restructuring.

97 "After the fact" requests for security protecting any such fees and expenses, or for the payment or reimbursement thereof as in the present instance, namely after the creditors' and the Court's approval of the Plans, must be discouraged and avoided, as it would directly affect the distribution to the creditors.

98 The Court cannot, once a plan of arrangement has been approved by the creditors and the Court, change the distribution provided thereunder.

99 The Court is also of the opinion that before incurring, or continuing to incur, any such fees and expenses to be claimed from a debtor in a *CCAA* restructuring, either through direct payment or by way of security on the debtor's assets, the interested person must first take the appropriate steps to set up with the monitor and the debtor the rules applicable to the "effective participation" of its financial, legal or other experts, the whole subject to the Court's approval.

100 Such rules would take into consideration many factors, including the following:

> a. a court officer is already involved, namely the court appointed monitor and, as such, he is the "eyes and ears" of the Court, and he must, at all times, remain independent and act impartially for the benefit of all stakeholders;
>
> b. therefore, services already rendered or to be rendered by the monitor must not be duplicated by the interested person's financial, legal or other experts, at least, not for the debtor's account;
>
> c. an "effective participation" has to be pro-active and constructive, never losing sight of the global picture of the restructuring and the interests of all stakeholders;
>
> d. an "effective participation" shall not include challenging the merits *per se* of the restructuring proceedings; the debtor need not fund the opponent of its restructuring;
>
> e. time is of the essence": the monitor must be in a position to assess appropriately, and budget for, the fees and expenses to be incurred in a restructuring; therefore, interested persons claiming the right to be indemnified or secured for their financial, legal or other experts' "effective participation" must act quickly to obtain confirmation of said right and set up the applicable rules;

f. once the rules are established by the claimant, the monitor and the debtor, they must be authorized by the Court, including whether or not fees and expenses already incurred ought to be included;

g. finally, and as authorizing the payment of fees and expenses before any distribution to a debtor's stakeholders is tantamount to granting prior ranking security, the Court endorses Judge Clément Gascon's, j.s.c (now j.c.a.) comments on the principles governing the granting of a *CCAA* administration charge in the matter of *Mecachrome International Inc.* [28] :

LA CHARGE D'ADMINISTRATION

[...]

> [77] Les critères déjà énumérés confirment qu'une charge prioritaire établie en vertu de la *LACC* se veut exceptionnelle. Le Tribunal se doit de l'accorder avec parcimonie, en la limitant seulement à ce qui est essentiel au succès d'une restructuration.
>
> [78] Dans cette perspective, le Tribunal est d'avis qu'à moins de circonstances particulières bien appuyées par une preuve convaincante, une charge d'administration ne devrait pas inclure des conseillers juridiques ou financiers autres que ceux du contrôleur et des débitrices.

[...]

> [80] Rien n'explique en quoi leur demande est essentielle au succès de la restructuration envisagée. Rien n'établit que leurs interventions placent les intérêts des Débitrices Canadiennes ou le succès de la restructuration avant la protection de leurs clients respectifs.

[...]

> [89] L'objectif de la Charge d'Administration n'est pas de protéger le maximum de professionnels possible. C'est plutôt de mettre en place une charge qui facilite le but d'en arriver à un arrangement au meilleur coût possible pour les créanciers qui en feront, en dernière analyse, les frais.
>
> [90] Que chacun des acteurs retienne ses conseillers juridiques ou financiers est légitime. Que tous le fassent aux frais des Débitrices Canadiennes, et partant des créanciers les moins protégés, est, de l'avis du Tribunal, exagéré.

100 (the Court underlines)

101 A restructuring process is very expensive, and every effort should be made to reduce and control the related fees and expenses.

102 There must be "clear added value for the benefit of all stakeholders" if the fees and expenses of an interested person's financial, legal or other experts are to be paid by the debtor.

5.1.3 Conclusion

103 The Court is of the opinion that the US concept of "substantial contribution" must not be imported into the rules governing restructurings under the *CCAA*.

104 Furthermore, the Court is also of the opinion that a request pursuant to Section 11.52(1)(c) of the *CCAA* cannot be presented by an interested person "after the fact".

105 The applicable rules must be set up with the monitor and the debtor as soon as possible and, ideally, before incurring the related fees and expenses, the whole subject to the Court's final approval, and before the creditors vote on the plan of arrangement.

106 Considering this negative answer to the first question under the heading "substantial contribution", there is no need to answer the three other questions listed thereunder.

5.2 Can the Stichting Expenses be included in the Stichting Proven Claims on the basis that they relate to pre-filing contractual obligations under the Indentures?

5.2.1 The Indentures

107 The Indentures provide for the payment by HII and Shareco of Stichting's reasonable fees and expenses, both before and after default thereunder:

> **12.1** ***General Covenants***
>
> The Corporation [HII or Shareco] hereby covenants and agrees with the Trustee [Stichting] for the benefit of the Trustee and the Bondholders as follows:
>
> [. . .]
>
> (e) *To Pay Trustee*. That the Corporation will pay to the Trustee reasonable remuneration for its services hereunder and will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration or execution of the trusts hereby created (including the reasonable compensation and the disbursements of its counsel and all other advisers and assistants not regularly in its employ), both before any default hereunder and thereafter until all duties of the Trustee under the trust hereof shall be finally and fully performed, except any such expense, disbursement or advance as may arise from its negligence or bad faith.
>
> [. . .]"[29]
>
> (the Court underlines)

108 Stichting's right to retain the services of financial, legal or other experts is also clearly provided in the Indentures:

> **16.4** ***Delegation; Experts and Advisers***
>
> [. . .]
>
> (b) The Trustee [Stichting] may employ or retain such counsel, auditors or accountants (who may be the Corporation [HII or Shareco]'s auditors), appraisers, architects, engineers or such other experts or advisers as it may reasonably require for the purpose of discharging its duties hereunder.
>
> (c) The Trustee may pay reasonable remuneration for all services performed for it in the discharge of the trusts hereof by any such agent or attorney, or expert or adviser, without taxation for costs or fees of any counsel, solicitor or attorney."[30]
>
> (the Court underlines)

109 Similarly, the Guarantee provides for the payment by HII of any such fees and expenses:

> **SECTION 15. Expenses.** The Guarantor [HII] shall pay, or reimburse, the Trustee [Stichting] and the Holders for all costs and expenses including, without limitation, reasonable attorneys' fees and disbursements reasonably incurred by it

in connection with the enforcement of this Guarantee Agreement; provided, however, that the Guarantor shall only be required to pay, or reimburse, for the reasonable attorneys' fees and disbursements for one counsel for the Trustee and the Holders." [31]

(the Court underlines)

110 Therefore, HII and Shareco have covenanted to pay Stiching's fees and expenses (the "*Payment Covenant*") under, and as provided in, the Indentures and Guarantee, entered into before the Initial Order.

5.2.2 Analysis

111 As is the situation with respect to most of the contractual obligations, the Court is of the opinion that, failing specific provision to the contrary in the Initial Order, the Payment Covenant was stayed by the Initial Order.

112 A line must be drawn between fees and expenses incurred before the Initial Order and those to be incurred thereafter, which are conditional upon services being effectively rendered. This is controllable, and must be controlled.

113 The Court is of the opinion that any enforcement of the Payment Covenant with respect to the Stichting Expenses, incurred after the Initial Order, was subject to establishing the rules applicable thereto, with the Monitor and the HII Group, and the Court's final approval. The factors mentioned above with respect to a request pursuant to Section 11.52(1)(c) of the *CCAA* would apply.

114 The Court cannot help but imagine what would happen if all HII Group's stakeholders had undertakings similar to the Payment Covenant and that such covenant was not stayed by the Initial Order.

115 The Restructuring would then be burdened by unlimited and uncontrollable fees and expenses, the only limit being that they be "reasonable", but the aggregate thereof would not be reasonable.

116 No fees and expenses of the nature of the Stichting Expenses should be paid or reimbursed by a debtor if there is no post-filing agreement thereon, including applicable control rules, with the monitor and the debtor, and confirmed by the Court.

117 In any event, the Court is of the opinion that the Stichting Proven Claims under the Meeting Orders are limited to the aggregate principal amount owed under the terms of the Indentures and the Bonds, together with accrued and unpaid interest, to September 9, 2011 (the date of the Initial Order) for HII and Shareco, and February 6, 2013 for Homco 61 (Homco 61 filing date under the *CCAA*) [32].

118 Interest accruing after September 9, 2011 and February 6, 2013 is not included in the definition of Stichting Proven Claims in the Meeting Orders, nor any fees and expenses in the nature of the Stichting Expenses.

119 It is rather surprising that Stichting does not contest the Monitor's disallowance of its claims as they relate to the post-filing interest, but does contest the exclusion of the Stichting Expenses.

5.2.3 Conclusion

120 The Stichting Expenses are not, and cannot be, included in the Stichting Proven Claims, and therefore Stichting cannot claim reimbursement thereof from the HII Group.

121 Considering this negative answer to the first question under the heading "subsidiarily - pre-filing contractual obligations", there is no need to answer the second question listed thereunder.

5.3 Should the Court authorize Stichting to deduct the Pre-December 3 Expenses and the Dutch Proceedings Expenses from the Bondholders' distribution under the Plans, less any portion of the Pre-December 3 Expenses that Stichting may receive on account thereon under the Plans?

122 As already mentioned, Stichting's actions between the Initial Order (September 9, 2011) and December 3, 2011, were tantamount to aggressive positioning, more for the benefit of RH, Finance and HCI, than for the benefit of the Bondholders.

123 In such circumstances, it would be unacceptable that the Bondholders, in addition to their losses in this matter, assume the payment of the Pre-December 3 Expenses. This matter was settled at the time the Funding Order was issued.

124 If Stichting's efforts had focused, from day one, on working positively towards a successful Restructuring, the Pre-December 3 Expenses would have been much lower.

125 In any event, the Court cannot consider such a request from Stichting, including with respect to the Dutch Proceedings Expenses, without having heard the Bondholders' position thereon; the Bondholders are not parties to the present proceedings. It is an issue to be debated between Stichting and the Bondholders and, no doubt, the basic rule of "*audi alteram partem*" applies.

126 In requesting such a conclusion against the Bondholders, Stichting is certainly not acting for the Bondholders' interests.

127 Therefore, the Court will not authorize Stichting to deduct the Pre-December 3 Expenses and the Dutch Proceedings Expenses from the Bondholders' distribution under the Plans.

5.4 Should the Court authorize Stichting to remit to HCI any distribution to be received under the Plans, if any, including through set-off compensation from the Bondholders, on account of the Pre-December 3 Expenses, up to the maximum amount of $2.1 million?

128 Considering the answers to the above questions, there is no need to answer this last question.

129 On the other hand, the Court finds awkward that Stichting requests court authorization to remit to HCI any distribution that it may receive on account of the Pre-December 3 Expenses.

130 The Control Issues involving RH and HCI, and raised by the AFM, have caused major hurdles and serious delays in the Restructuring and, in those circumstances, such a request is rather bold and quite questionable, if not unacceptable, for both the HII Group and the Bondholders.

6. CONCLUSION

131 The Court will dismiss the Stichting Motions.

131

132 *DISMISSES* the "*Amended Motion for the Payment of the Fees and Expenses of Stichting Homburg Bonds and Other Relief*" (Cote #228) (the Expenses Payment Motion);

133 *DISMISSES* the "*Motion in Appeal of a Disallowance of a Proof of Claim, pursuant to the "Claims Process Order" issued on April 30, 2012*" (Cote #154) (the First Appeal Motion);

134 *DISMISSES* the "*Motion in Appeal of the Disallowance of Proofs of Claim filed pursuant to the "Claims Process Order" issued on April 30, 2012*" (Cote #212) (the Second Appeal Motion);

135 *THE WHOLE* with costs in each of the three Motions.

Footnotes

1 R.S.C. 1985 c. C-36.

2 Exhibit R-2.

3 Exhibit R-1.

4 Exhibit R-2, Appendix D and Appendixes C to the supplemental Mortgage Bonds Indenture.
5 HOA (Exhibit R-4), art. 3.1.1.
6 Exhibit R-4, filed under confidential seal.
7 HOA (Exhibit R-4), paragr. (A) and art. 4.
8 Exhibit R-3, filed under confidential seal.
9 POA (Exhibit R-3), art. 3.1.1.
10 POA (Exhibit R-3), art. 4.
11 Exhibit M-4.
12 Exhibit R-5, filed under confidential seal.
13 AHOA (Exhibit R-5), art. 2.1.
14 Exhibit R-6, filed under confidential seal.
15 Exhibit R-7, filed under confidential seal.
16 Settlement Agreement (Exhibit R-7), art. 5(ii).
17 Exhibit R-5.
18 Exhibit R-8.
19 Exhibit R-9.
20 Exhibit R-10.
21 Exhibit R-11.
22 Exhibit R-12.
23 AHOA (Exhibit R-5), art. 3.2(a).
24 *Bankruptcy Code*, 11 USC § 503.
25 HII/Shareco Meeting Order, art. 22, and Homco 61 Meeting Order, art. 17.
26 *Bankruptcy Code*, 11 USC § 503.
27 Robert J. ROSENBERG et al., *Ad Hoc Committees and Other (Unofficial) Creditor Groups : Management, Disclosure and Ethical Issues*, American Bankruptcy Institute Business Reorganization Committee Newsletter, June 2008, p. 270-271.
28 2009 QCCS 1575.
29 Corporate Bonds Indenture (Exhibit R-1) and Mortgage Bonds Indenture (Exhibit R-2).
30 *Id.*
31 Guarantee (Exhibit R-2, Appendix D).
32 HII/Shareco Meeting Order, art. 22, and Homco 61 Meeting Order, art. 17.

End of Document

Tab 8

U.S. Code
TITLE 11 — BANKRUPTCY
CHAPTER 5 — CREDITORS, THE DEBTOR, AND THE ESTATE (§§ 501 to 562)
SUBCHAPTER I — CREDITORS AND CLAIMS (§§ 501 to 511)

◂ Prev 11 U.S.C. § 503 Next ▸

11 U.S.C. § 503. Allowance of administrative expenses

(a) An entity may timely file a request for payment of an administrative expense, or may tardily file such request if permitted by the court for cause.

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—

(1) (A) the actual, necessary costs and expenses of preserving the estate including—

(i) wages, salaries, and commissions for services rendered after the commencement of the case; and

(ii) wages and benefits awarded pursuant to a judicial proceeding or a proceeding of the National Labor Relations Board as back pay attributable to any period of time occurring after commencement of the case under this title, as a result of a violation of Federal or State law by the debtor, without regard to the time of the occurrence of unlawful conduct on which such award is based or to whether any services were rendered, if the court determines that payment of wages and benefits by reason of the operation of this clause will not substantially increase the probability of layoff or termination of current employees, or of nonpayment of domestic support obligations, during the case under this title;

(B) any tax—

(i) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title; or

(ii) attributable to an excessive allowance of a tentative carryback adjustment that the estate received, whether the taxable year to which such adjustment relates ended before or after the commencement of the case;

(C) any fine, penalty, or reduction in credit relating to a tax of a kind specified in subparagraph (B) of this paragraph; and

(D) notwithstanding the requirements of subsection (a), a governmental unit shall not be required to file a request for the payment of an expense described in subparagraph (B) or (C), as a condition of its being an allowed administrative expense;

(2) compensation and reimbursement awarded under section 330(a) of this title;

(3) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection, incurred by—

(A) a creditor that files a petition under section 303 of this title;

(B) a creditor that recovers, after the court's approval, for the benefit of the estate any property transferred or concealed by the debtor;

(C) a creditor in connection with the prosecution of a criminal offense relating to the case or to the business or property of the debtor;

(D) a creditor, an indenture trustee, an equity security holder, or a committee representing creditors or equity security holders other than a committee appointed under section 1102 of this title, in making a substantial contribution in a case under chapter 9 or 11 of this title;

(E) a custodian superseded under section 543 of this title, and compensation for the services of such custodian; or

(F) a member of a committee appointed under section 1102 of this title, if such expenses are incurred in the performance of the duties of such committee;

(4) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under subparagraph (A), (B), (C), (D), or (E) of paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant;

(5) reasonable compensation for services rendered by an indenture trustee in making a substantial contribution in a case under chapter 9 or 11 of this title, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title;

(6) the fees and mileage payable under chapter 119 of title 28;

(7) with respect to a nonresidential real property lease previously assumed under section 365, and subsequently rejected, a sum equal to all monetary obligations due, excluding those arising from or relating to a failure to operate or a penalty provision, for the period of 2 years following the later of the rejection date or the date of actual turnover of the premises, without reduction or setoff for any reason whatsoever except for sums actually received or to be received from an entity other than the debtor, and the claim for remaining sums due for the balance of the term of the lease shall be a claim under section 502(b)(6);

(8) the actual, necessary costs and expenses of closing a health care business incurred by a trustee or by a Federal agency (as defined in section 551(1) of title 5) or a department or agency of a State or political subdivision thereof, including any cost or expense incurred—

(A) in disposing of patient records in accordance with section 351; or

(B) in connection with transferring patients from the health care business that is in the process of being closed to another health care business; and

(9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business.

Tab 9

Court File No. CV-14-10518-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE REGIONAL	)	THURSDAY, THE 5TH
	)	
SENIOR JUSTICE MORAWETZ	)	DAY OF JUNE, 2014

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF THE CASH STORE FINANCIAL SERVICES INC., THE CASH STORE INC., TCS CASH STORE INC., INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., 1693926 ALBERTA LTD. DOING BUSINESS AS "THE TITLE STORE"

APPLICANTS

COMPUTERSHARE ORDER

THE MOTION made by Computershare Trust Company of Canada and Computershare Trust Company, N.A. (together the "**Trustee**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario (the "**Computershare Motion**").

ON READING the Computershare Motion and the Response of the Ad Hoc Committee of Cash Store Noteholders (the "**Ad Hoc Committee**") of The Cash Store Financial Services Inc. and its affiliates (the "**Company**"), and the accompanying affidavits thereto, and on hearing the

submissions of counsel for the CRO, the Monitor, the DIP Lenders, the Trustee, the Ad Hoc Committee, and such other counsel present, no other person appearing although duly served.

DEFINITIONS

1. THIS COURT ORDERS that all capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Amended and Restated Initial Order dated April 15, 2014, as amended.

TERMS

2. THIS COURT ORDERS that the form of direction (the "**Majority Noteholder Direction**") attached hereto as Exhibit "A" is approved.

3. THIS COURT ORDERS that upon receipt by the Trustee of a duly executed Majority Noteholder Direction, signed by beneficial holders of a majority of the aggregate outstanding principal amount of the 11½% Senior Secured Notes Due 2017 issued by the Company (the "**Notes**"), the Trustee shall have no liability to any person or party for accepting and complying with the Majority Noteholder Direction.

GENERAL

4. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United Kingdom, or in the United States, to give effect to this Order and to assist the Company, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Company and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign

proceeding, or to assist the Company and the Monitor and their respective agents in carrying out the terms of this Order.

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

_____

EXHIBIT A

FORM OF MAJORITY NOTEHOLDER DIRECTION

MAJORITY NOTEHOLDER DIRECTION

Dated as of __, 2014

Reference is hereby made to the indenture (the "**Indenture**") dated as of January 31, 2012 by and among The Cash Store Financial Services Inc. (the "**Company**"), as Issuer, Computershare Trust Company, N.A., as U.S. Trustee, and Computershare Trust Company of Canada, as Canadian Trustee and Collateral Agent (together, the "**Trustee**"), and the Guarantors as defined therein, pursuant to which the Company issued $132,500,000 of its 11½% Senior Secured Notes Due 2017 (the "**Notes**"), and the collateral trust and intercreditor agreement (the "**Collateral Trust Agreement**") dated as of January 31, 2012, pursuant to which Computershare Trust Company of Canada acts as Collateral Trustee. Capitalized terms used but not otherwise defined in this Direction (the "**Direction**") shall have the meanings ascribed to them in the Indenture.

On April 14, 2014, the Company and certain of its affiliates commenced proceedings under the Companies' Creditors Arrangement Act, R.S.C. 1985, c.C-36, as amended (the "**CCAA Proceedings**") before the Ontario Superior Court of Justice (the "**Court**"), which proceedings remain pending before the Court.

An Event of Default has occurred and is continuing under Section 6.01 of the Indenture as a result of the commencement of the CCAA Proceedings.

The undersigned beneficial holders of more than a majority of the aggregate principal amount of the Notes outstanding (the "**Directing Holders**"), have retained the law firm of Goodmans LLP to represent them in the CCAA Proceedings and, in accordance with Section 6.05 of the Indenture, hereby instruct the Trustee as follows (the "**Instruction**"):

> **Unless otherwise duly instructed in writing on five (5) days' prior notice to the Trustee by the Directing Holders or by other Holders of a majority of principal amount of the Notes, or as directed by a court of competent jurisdiction, the Trustee shall take no further action in the CCAA Proceedings on behalf of the Holders of the Notes, provided, however, that, this Instruction shall not apply to the Trustee's actions in fulfilling its obligations, if any, under the Indenture to (i) file a proof of claim in the CCAA proceedings for amounts due and owing under the Indenture in accordance with an order of the Court setting forth a general bar date with respect to the filing of proofs of claim, and (ii) make distributions to the Holders of any money or property paid on account of the Notes in the CCAA proceedings, or any other insolvency proceedings.**

This Direction is subject to the Order of the Court dated **[June 5, 2014]** (the "**Direction Order**") authorizing the Trustee to comply with this Direction, and protecting the Trustee from liability in doing so, on the terms and conditions set forth in the Direction Order.

Each Directing Holder hereby represents, warrants and certifies that, as of the date hereof, such Directing Holder is the beneficial owner of the unpaid principal amount of the Notes set forth below such Directing Holder's signature hereto and as evidenced with signature medallion stamp, and that the within instructions constitute a legal, binding and enforceable obligation on each Directing Holder.

This Direction and the representations and warranties contained herein shall be binding on the Directing Holders and the Trustee and their respective successors and assigns.

The Directing Holders and the Trustee shall keep the content of this Direction, including the identity of all parties to this Direction, and the holdings of Notes of any Holder party to this Direction, strictly confidential, except that parties to this Direction may disclose such matters to: (i) other parties to this Direction and their respective legal and accounting professional and other internal personnel; (ii) the Directing Holders' and the Trustee's regulators, (iv) potential transferees of Notes from the Directing Holders, provided that such potential transferee agrees to maintain the confidentiality of this Direction in accordance with the terms hereof; and (v) where required by law or rule or demanded by any regulatory agency, or if any party is served with a subpoena, discovery request, or an official request from a government agency for information regarding this Agreement or the identity of the parties to this Direction, the party receiving such subpoena or request shall notify the Trustee within ten (10) days of receipt. To the extent allowed by law, regulation or order, the Trustee shall notify all other parties to this Direction as soon as practicable and, if any party wishes to oppose the production of such information, it may do so at its own expense. It is understood and agreed by the parties that money damages may be an insufficient remedy for any breach of this Direction by any party, and the non-breaching party shall be entitled to specific performance and injunctive or other equitable relief as a remedy of any such breach, including, without limitation, an order or judgment of a court of competent jurisdiction requiring any party to comply promptly with any of its obligations hereunder.

Each of the Directing Holders acknowledges and agrees that, other than with respect to the acceptance of the Instruction by under this Direction, and compliance therewith, nothing contained in this Agreement shall alter the rights and obligations of the Trustee under the Indenture or the Collateral Trustee under the Collateral Trust Agreement, including, without limitation, the right of the Trustee under Section 6.05 of the Indenture to refuse to follow certain other directions that may be provided (other than the Instruction, which shall be complied with).

This Direction may be signed in one or more counterparts, each of which so signed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument. This Direction may be delivered by facsimile or scanned electronic copy and such facsimiles or scanned electronic copies shall be treated as originals for all purposes. Notwithstanding the date of execution or transmission of any counterpart, each counterpart and this Instruction shall be deemed to be effective as of the date first written above.

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SIGNED this _____ day of _____, 2014.

Principal Amount of 11 1/2% Notes held as of _____, 2014: $_____

Beneficial Holder's Name: _____

_____ _____ (Authorized Signature(s) for Beneficial Holder)

Authorized Signatory's Name(s) & Phone No.: _____

Beneficial Holder's Address: _____

STATUTORY DECLARATION

11 ½% Senior Secured Notes Due 2017

I, ●, of ● (the "**Directing Holder**") do solemnly declare as follows:

(1) that, as of _____, 2014 (and as at the date hereof), the Directing Holder has beneficial ownership in respect of $● principal amount of 11 ½% Senior Secured Notes Due 2017 (the "**Notes**");

(2) that this Statutory Declaration may be relied upon by Computershare Trust Company, N.A. and Computershare Trust Company of Canada (the "**Canadian Trustee**") in their capacity as trustee (the "**Trustee**") under that certain trust indenture dated as of January 31, 2012 (the "**Indenture**"), and relied upon by the Canadian Trustee, in its capacity as Collateral Trustee under that certain collateral trust and intercreditor agreement dated January 31, 2012 in respect of the Notes for purposes of taking instructions from the Directing Holders; and

(3) that the Trustee and the Collateral Trustee may rely on this Statutory Declaration for the purposes specified in the foregoing (2) until such time as the Directing Holder shall advise the Trustee in writing that they may no longer rely on this Statutory Declaration.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true, and knowing that it is of the same force and effect as if it was made under oath.

DECLARED BEFORE ME at)
_____, this)
(City, Province/State))
_____ day of _____, 2014)
)
)
)
_____)
Commissioner of Oaths/Notary Public

_____
Signature

_____
Address of Directing Holder

_____
Telephone Number

_____
Fax Number:

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF THE CASH STORE FINANCIAL SERVICES INC., THE CASH STORE INC., TCS CASH STORE INC., INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., 1693926 ALBERTA LTD. DOING BUSINESS AS "THE TITLE STORE"

Court File No. CV-14-10518-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

RESPONDING RECORD OF THE AD HOC COMMITTEE OF CASH STORE NOTEHOLDERS TO COMPUTERSHARE MOTION

(Motion returnable on June 5, 2014 at 11:30 a.m.)

Goodmans LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Robert J. Chadwick (LSUC#: 35165K)
Brendan D. O'Neill (LSUC#: 43331J)

Tel: 416.979.2211
Fax: 416.979.1234

Counsel for The Ad Hoc Committee of Cash Store Noteholders