

Court File No.: CV12-9616-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BANK OF MONTREAL

Applicant

- and -

**NFC ACQUISITION GP INC., NFC ACQUISITION CORP., NFC ACQUISITION L.P.,
NEW FOOD CLASSICS AND NFC LAND HOLDINGS CORP.**

Respondents

**FOURTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS RECEIVER**

1. On January 17, 2012, pursuant to an application (the “**CCAA Proceedings**”) brought before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) by NFC Acquisition GP Inc., NFC Acquisition Corp. and NFC Land Holdings Corp. (together with NFC Acquisition L.P., and New Food Classics, “**NFC**” or the “**Company**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), the Honourable Mr. Justice Morawetz made an initial order (as extended from time to time, the “**Initial Order**”) in respect of NFC, which, *inter alia*, appointed FTI Consulting Canada Inc. as monitor (in that capacity, the “**Monitor**”).

2. After an unsuccessful going concern transaction sale process for the NFC business in the CCAA Proceedings, on February 22, 2012, Bank of Montreal (“BMO”) brought: (i) a motion in the CCAA Proceedings to lift the stay of proceedings contained in the Initial Order to allow BMO to bring an application for the appointment of a receiver of the property, assets and undertaking of NFC (the “NFC Assets”); and (ii) an application under section 243(1) of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act* for the appointment of FTI as receiver (in that capacity the “Receiver”) of the NFC Assets. The Court granted the BMO motion and application and made the Order (the “Receivership Order”) in these proceedings dated February 22, 2012 (the “Receivership Date”), a copy of which is attached hereto as **Appendix “A”**.

PURPOSE OF THIS REPORT

3. The purpose of this fourth report of the Receiver (the “Fourth Report”) is to provide the Court with the background information and Receiver’s recommendation relating to the Receiver’s motion for:

- (a) an order authorizing and directing the Receiver to distribute to the Canadian Commercial Workers Industry Pension Plan (“CCWIPP”) the sum of \$17,407.92 in respect of pension contribution arrears outstanding on the date of the Receivership Order in accordance with section 81.6 of the *Bankruptcy and Insolvency Act* (the “BIA”).
- (b) an order authorizing and directing the Receiver to make an interim distribution to the Bank of Montreal (“BMO”) from the proceeds of the receivership in the possession of the Receiver in the following amounts (a) \$6,000,000; plus (b) the

amount, if any, by which the \$3,000,000 CCAA Directors' Charge exceeds the aggregate face amount of all Director's Charge Claims filed with the Receiver on or before the Court ordered claims bar date set out in the proposed Directors' Charge Claims Procedure Order, on account of the indebtedness of NFC to BMO and approving the Reimbursement Agreement (as defined below);

- (c) an order approving the activities of the Receiver as set out in the Fourth Report;
- (d) an order approving the fees and disbursements of the Receiver and of Fasken Martineau DuMoulin LLP as counsel to the Receiver to September 30, 2012; and
- (e) such other relief as counsel may advise and the Court permit.

TERMS OF REFERENCE

4. In preparing this report, the Receiver has relied in part upon unaudited financial information of NFC, NFC's books and records, certain financial information prepared by NFC and discussions with NFC's management ("**NFC Information**").

5. Capitalized terms not otherwise defined herein have the meanings set out in the Monitor's Pre-filing Report, the Initial Order, the Monitor's Third Report, the Application Record appointing the Receiver, the Receivership Order and the Receiver's Second Report.

CCAA PROCEEDINGS - TRANSACTION PROCESS

6. Pursuant to paragraph 44 of the Initial Order, NFC and the Monitor were authorized to conduct the Transaction Process outlined in the Pre-filing Report of FTI in the CCAA Proceedings. Immediately following the making of Initial Order, the Monitor contacted approximately 20 parties which had been identified by NFC or by NFC's major customers as

possible qualified purchasers of NFC businesses on a going-concern basis and that were likely to be acceptable suppliers to NFC's major customers.

7. Additional details regarding the of Expressions of Interest received by the Monitor, the parties participating in Phase 2 of the Transaction Process, and the Monitor's dealings with the Selected Parties that submitted Final Offers, and the events subsequent thereto are set out in the Monitor's Third Report, a copy of which, without appendices, is attached hereto as **Appendix "B"**. As set out in the Monitor's Third Report, on February 20, 2012, BMO delivered a Sales Process Default Notice under the DIP Credit Agreement which ultimately led to these Receivership Proceedings.

SOLICITATION OF OFFERS BY THE RECEIVER

8. Following the making of the Receivership Order, and prior to embarking on soliciting liquidation bids and other offers for NFC's manufacturing assets, the Receiver re-contacted the parties that had submitted EOIs that reflected a going concern transaction in order to determine whether any of them had an interest in acquiring the manufacturing assets of NFC in either Saskatoon or St. Catharines *en bloc*, or as intact manufacturing operations. Based on the responses to those inquiries, the Receiver concluded that there were no commercially reasonable or reasonably foreseeable opportunities to sell the Saskatoon or St. Catharines manufacturing assets on a turn-key basis, as the parties contacted either had no interest operating from either facility or would only take over the assets on terms that that were financially or legally untenable, such as offers contingent on not becoming a successor employer to the United Food and Commercial Workers Union.

9. Pursuant to a sale transaction approved by the Court on March 12, 2012, a certain line of NFC's manufacturing equipment located in the Saskatoon facility, specifically used to manufacture frozen hamburger products for Loblaws and other former NFC customers, was sold by the Receiver to Grand River Foods Ltd. (the "**Grand River Sale**"). Concurrently with finalizing the Grand River Sale, the Receiver solicited complimentary proposals for NFC's Remaining Equipment. The Receiver received multiple proposals from both Canadian and U.S. auctioneers and liquidators, both in the form of net minimum guarantee auction proposals and outright offers to purchase the Remaining Equipment ("**Remaining Equipment Proposals**").

10. After clarifying a number of the Remaining Equipment Proposals received, including certain aspects of the proposal received from Counsel McIntyre Ltd., the Receiver agreed, subject to Court approval in accordance with the Receivership Order, to the terms of an agreement with Counsel McIntyre for the outright purchase of the Remaining Equipment, and a proceeds sharing arrangement for the auction by Counsel McIntyre of the office equipment furniture and computers located at the Premises, and the spare parts inventory located in the NFC Saskatoon facility (the "**CM Agreement**"). The CM Agreement was approved by the Court on April 19, 2012 and closing of the sale of the Remaining Equipment took place on April 25, 2012.

11. Pursuant to an order of the Court made on July 10, 2012, the Receiver was authorized to sell NFC's former premises located at 4211 13A Street SE, Calgary Alberta to Recon Metal Ltd. That transaction closed on August 12, 2012.

FINISHED PRODUCT INVENTORY SALES BY THE RECEIVER

12. As set out in the Monitor's Third Report, in expectation of receiving a DIP Credit Facility Default Notice from BMO (which was served on February 20, 2012), NFC did not re-

commence manufacturing operations after the close of business on Friday, February 17, 2012. Upon the appointment of the Receiver, NFC maintained approximately 698,177 kilograms of frozen Finished Product inventory at its third party warehouses, namely Westco in Saskatoon, and Millard in St. Catharines.

13. The vast majority of NFC's products manufactured for the retail market were branded and packaged in the names of NFC's customers. Pursuant to the Receivership Order, the Receiver was authorized to cause NFC to sell the Finished Product inventory to NFC's customers (the "**NFC Receivership Customers**") without further Court approval. Paragraph 3(k) of the Receivership Order provides that,

"The Receiver is empowered and authorized to cause the Company to sell, convey, transfer its finished goods inventory, including by way of bulk transactions, to existing customers of the Debtors, in or out of the ordinary course of business without the approval of this Court. (underlining added)"

14. In many cases, NFC was the sole and exclusive supplier of frozen hamburger (and similar) products to its retail and institutional customers. Given NFC's manufacturing shut down on February 17, 2012, the upcoming Spring barbeque season, and the lead time necessary for NFC's customers to identify replacement suppliers of frozen hamburger products, the remainder of NFC's Finished Product on hand at NFC was in significant demand, and customers immediately started contacting the Receiver asking to purchase all or substantially of their remaining branded products in the Receiver's possession. The Receiver engaged two former NFC Sales employees on a commission basis to implement the sales of NFC Products to customers, one dealing with retail customers and one dealing with institutional customers (the "**Retained Salesmen**").

15. Between the Receivership Date and the March 17 HHA (as defined below), NFC, facilitated by the Receiver and the Retained Salesmen, sold approximately \$4.4 million of NFC Products to NFC Receivership Customers. As a result of the March 17 HHA, NFC has been unable to sell the remaining 594,445 thousand kilograms of NFC Finished Product. The Receiver is working with NFC's recall insurers in respect of the unsellable Finished Product, uncollectible accounts receivable and lost sales income resulting from the HHAs and corresponding voluntary recalls.

THE NFC FINISHED PRODUCT HEALTH HAZARD ADVISORIES

16. On the afternoon of February 15, 2012, FTI, in its capacity as CCAA Monitor learned that a consumer was alleged to have consumed and made ill by E. coli bacteria contained in a frozen hamburger manufactured by NFC's Saskatoon Facility in October of 2011.

17. On February 18, 2012, the CFIA issued a HHA, warning the public not to consume "Country Morning Beef Hamburgers" and "No Name Beef Steakette" products which were manufactured by NFC. NFC immediately halted distribution of these products and the Monitor and NFC representatives notified all of NFC's customers shown on NFC's records as having purchased the NFC Finished Products that were subject to the HHA of the HHA and the requirements of the CFIA for such customers to cease selling and to remove products subject to the HHA from their retail shelves. The Monitor also worked with the Federal health authorities and NFC's insurers to implement a consumer advisory programme. The Monitor was able to determine from NFC's manufacturing records that the batch of raw material used in October 2011 to produce the allegedly contaminated brand of frozen hamburgers made up a relatively small (3,800 out of approximately two million cases of frozen "Country Morning Beef

Hamburgers” and “No Name Beef Steakette” products manufactured by NFC annually) quantity of product, which was readily identifiable by NFC and consumers alike.

18. From February 22, 2012 through to March 15, 2012, the CFIA issued six further HHAs which expanded CFIA’s alerts to include a limited number of additional specified NFC Finished Products.

19. On March 17, 2012, the CFIA issued a further HHA expanding the health hazard alert to include all ground beef products made by NFC between July 1, 2011, and February 15, 2012 in Establishment 761, being NFC’s Saskatoon manufacturing location, because the products may be contaminated with *e.coli 0157:H7* (the “**March 17 HHA**”). A copy of the March 17 HHA is attached hereto as **Appendix “C”**.

20. Concurrently with the issuance of the March 17 HHA by the CFIA, the Receiver immediately halted distribution of all ground beef products made between July 1, 2011 and February 15, 2012. The Receiver also notified NFC customers and NFC Receivership Customers that had purchased Finished Products subject to the March 17 HHA of the March 17 HHA and the warning of the CFIA for NFC Customers and NFC Receivership Customers to cease selling, serving or using products which were subject to the March 17 HHA.

21. On March 21, 2012, the CFIA also requested the Receiver to suspend the sale of all NFC products which were manufactured at the NFC St. Catharines facility (the “**St. Catharines Hold Request**”). On March 24, 2012, the St. Catharines Hold Request was withdrawn by CFIA except for certain NFC country fried steak products.

NFC RECEIVERSHIP CUSTOMERS

22. Between February 22, 2012, and March 15, 2012, the Receiver caused the Company to sell to NFC Receivership Customers approximately \$4,400,000 of NFC Finished Products. None of the Finished Products sold to NFC Receivership Customers were, at the time of their sale, subject to any of the various HHAs.

23. Substantially all of the sales of NFC Finished Product to NFC Receivership Customers were on a C.O.D. basis. For many purchases by NFC Receivership Customers, freight charges were negotiated between NFC Receivership Customers and the Retained Salesmen and such charges were included in the final purchase price of each sale.

24. Prior to entering into sales discussions, NFC Receivership Customers were also required by the Receiver to pay all amounts outstanding and owed to NFC prior to the Receivership Date.

25. On March 26, 2012, the Receiver wrote to all NFC Receivership Customers (the "**March 26 Letter**"), a copy of which is attached hereto as **Appendix "D"**, explaining that the Receiver was not in a position to arrange for, or accept any return of purchased Finished Product subject to the various HHAs. The March 26 Letter stated that the purchased Finished Product became the property of NFC Receivership Customers at the time of sale and as such, the NFC Receivership Customers were the owners of the products that were subject to the March 17 HHA and were therefore obligated to comply with all requirements of the CFIA with respect to the products subject to the various HHAs.

CCWIPP PENSION ARREARS – SECTION 81(6) PRIORITY

26. On August 23, 2012, the Receiver received correspondence and a proof of claim from Koskie Minsky LLP, on behalf of their client, the CCWIPP, for unpaid pension plan contributions from NFC's St. Catharines location between January 1, 2012 and February 22, 2012, in the amount of \$19,343.95. In NFC's St. Catharines facility, full-time unionized employees were eligible under the UFCW Local 175 Collective Agreement to participate in the (defined contribution) CCWIPP plan.

27. The Receiver has reviewed and discussed the claim with the CCWIPP which has advised the Receiver that it will accept payment in the amount of \$17,407.92 (the "**Outstanding CCWIPP Amount**"), representing the accrued January and February unpaid pension contributions less the administration or late interest fee charges.

28. The Receiver seeks the approval of the Court for a distribution of the Outstanding CCWIPP Amount. In accordance with section 81.6(s) of the BIA, the Outstanding CCWIPP amount appears to rank in priority to the claims of the Secured Lenders.

INTERIM DISTRIBUTION TO BMO

29. As a result of realizations by the Receiver of NFC's assets to date, including collection of accounts receivable, sales of NFC Finished Products and unused input materials, sales of equipment to Grand River and Counsel McIntyre and the sale of the 13A Street Lands, as at the date of this Fourth Report, the Receiver holds funds in the Receivership Account of approximately¹ \$10,900,000. The principal remaining NFC assets yet to be realized upon, in addition to the claims being pursued by the Receiver under NFC's Recall Insurance Policy

¹ Cheques issued by the Receiver may be in the process of clearing.

(which contains a \$10,000,000 limit), are the former NFC manufacturing facilities located on Brandon Street in Calgary, and Seapark Drive in St. Catharines.

30. Pursuant to the Receivership Order, the Administration Charge, the DIP Charge, the Westco Pre-filing Lien Charge and the Directors' Charge established in the CCAA Proceedings were recognized and continued in these Receivership proceedings. As at the date of this Fourth Report, all amounts which were secured by the Administration Charge and the Westco Pre-filing Lien Charge have been paid in full, such that there are and will be no amounts owing under or secured by those Charges.

31. The Directors Charge was set in the maximum amount of \$3,000,000. The Receiver has established a Director's Charge Holdback in the amount of \$3,000,000 pending the outcome of the Directors Charge Claims Process which is the subject matter of a motion to be heard on at or about the same time as the within motion, in conjunction with the termination of the NFC CCAA Proceedings.

32. In addition to the Directors' Charge holdback, the Receiver will establish a holdback in the amount of \$400,000 to account for certain unresolved matters, including, *inter alia*, certain pre-filing statutory lien amounts owing to Millard from the proceeds derived from the sale of Finished Product that was in the possession of Millard as of the date of the Initial Order. On January 31, 2012. In order to obtain the release of such Finished Product, NFC, Millard, the Monitor and the Secured Lenders reached an agreement whereby the perfection (including without limitation, perfection by possession) and the priority of Millard's pre-filing lien under the *Repair Storage Lien Act*, in respect of the Finished Product that was in Millard's

possession and the proceeds arising from the sale thereof, would be preserved as it existed on the date of the Initial Order.

NFC INDEBTEDNESS TO BMO

33. As at February 20, 2012, the NFC Entities are indebted to BMO in the approximate amount of \$24,500,000 pursuant to, *inter alia*, a Second Amended and Restated Credit Agreement effective as of October 31, 2011 and pursuant to the DIP Credit Facility approved by the Court in the NFC CCAA Proceedings.

34. As described in the Second Report to the Court of FTI Consulting Canada Inc. in its capacity as Monitor dated February 13, 2012, Fasken, counsel to the Monitor was asked to conduct a review of security held by BMO in respect of NFC's property located in Ontario and Alberta. A similar opinion was also obtained by the Monitor with respect to the validity and perfection of BMO's security in respect of NFC property located in the Province of Saskatchewan by McDougall Gauley LLP. The opinions of Fasken and McDougall state that, subject to the customary opinion assumptions and qualifications, the personal and real property security held by BMO is valid and enforceable as against a trustee in bankruptcy of the NFC Entities over the assets of NFC located in the Provinces of Ontario, Saskatchewan and Alberta.

35. Based on the foregoing, the Receiver recommends that, subject to BMO entering into a reimbursement agreement with the Receiver, it be authorized and directed to make an interim distribution to BMO in the following amounts: (a) \$6,000,000; plus (b) the amount, if any, by which the \$3,000,000 CCAA Directors' Charge exceeds the aggregate face amount of all Director's Charge Claims filed with the Receiver on or before the Court ordered claims bar date

set out in the proposed Directors' Charge Claims Procedure Order, in full satisfaction of the DIP credit facility and on account of the BMO Pre-filing Indebtedness.

36. The form of the proposed reimbursement agreement (the "**Reimbursement Agreement**") has been settled by the Receiver and BMO, subject to Court approval, and is attached as **Appendix "E"** hereto.

FEES AND DISBURSEMENTS OF THE RECEIVER AND FASKEN MARTINEAU

37. Pursuant to paragraphs 17, 18 and 19 of the Receivership Order, any expenditure or liability properly made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursements of counsel to the Receiver (the "**Receiver's Counsel**") were authorized to be paid on a periodic basis subject to any final passing of the accounts. In addition, the Receiver's Charge was granted as security for, *inter alia*, the fees and disbursements of the Receiver and Receiver's counsel.

38. The Receiver and Receiver's counsel have continued to maintain detailed records of their professional time and costs. The Receiver is seeking the approval of its fees for services rendered and disbursements incurred during the period from February 22, 2012 to October 31, 2012 and those of its counsel, Fasken Martineau DuMoulin LLP ("**Fasken**"), for the period from February 17, 2012 to September 30, 2012 (respectively, the "**Billing Periods**").

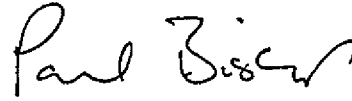
39. The fees and disbursements of the Receiver during the Billing Period total \$574,737.64 , including \$501,559.00 for services, \$7,058.38 for disbursements and taxes of \$66,120.26. The time spent by FTI personnel in the Billing Period is more particularly described

in the Affidavit of Paul Bishop of the Receiver, sworn in support hereof and attached hereto as **Appendix "F"**.

40. The fees and disbursements incurred by Fasken during the Billing Period total \$474,812.40, including fees of \$411,785.50, disbursements of \$8,534.27 and taxes of \$54,492.63. The time spent by Fasken personnel in the Billing Period is more particularly described in the Affidavit of Edmond F. B Lamek, a former partner of Fasken, attached hereto as **Appendix "G"**.

All of which is respectfully submitted this 4th day of December, 2012.

**FTI Consulting Canada Inc. in its capacity as
Receiver of the property, assets and
undertaking of NFC**



Name: Paul Bishop
Title: Senior Managing Director,
FTI Consulting Canada Inc.