

**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
NFC ACQUISITION GP INC., NFC ACQUISITION CORP. AND
NFC LAND HOLDINGS CORP.**

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

March 22, 2013

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BACKGROUND

1. On January 17, 2012 NFC Acquisition GP Inc., NFC Acquisition Corp. and NFC Land Holdings Corp. (collectively, the “**Applicants**” and together with NFC Acquisition L.P., and New Food Classics, “**NFC**”) made an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and an initial order (the “**Initial Order**”) was made by the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The Initial Order under the CCAA in respect of NFC granted, *inter alia*, a stay of proceedings against NFC until February 16, 2012, and appointed FTI Consulting Canada Inc. as monitor (“**FTI**” or the “**Monitor**”) with the powers and obligations set out in the Initial Order and as set forth in the CCAA. A copy of the Initial Order is attached hereto as **Appendix “A”**. The proceedings commenced by the Applicants under the CCAA will be referred to herein as the “**CCAA Proceedings**”.

2. Concurrently with making the Initial Order, Justice Morawetz issued an endorsement (the “**January 17 Endorsement**”, a copy of which is attached hereto as **Appendix**

“B”), which provided for the approval of the Transactions Process, as defined in paragraph 44 of the Initial Order, subject however to a further Court hearing (the “**Transactions Process Hearing**”) to allow parties with a significant interest in the matter, including the relevant Unions, to make submissions in respect of the Transactions Process. On January 20, 2012, the Transactions Process Hearing was conducted and a further endorsement (the “**January 20 Endorsement**”, a copy of which is attached hereto as **Appendix “C”**) was issued by Justice Morawetz authorizing the Monitor and NFC to proceed with the Transactions Process.

3. On February 22, 2012, as a result the failure of the Transactions Process, as described in detail in the Third Report of the Monitor filed in these proceedings and attached hereto as **Appendix “D”** the Court granted i) Bank of Montreal (“**BMO**”) leave 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 Order in Court File No. CV12-9616-00CL (the “**Receivership Proceedings**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”) and section 101 of the *Courts of Justice Act*, appointing FTI as receiver of the assets, property and undertakings of NFC (in that capacity the “**Receiver**”) (the “**Receivership Order**”, a copy of which is attached hereto as **Appendix “E”**).

PURPOSE OF THIS REPORT

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

- (a) an Order approving a procedure for the submission, evaluation and adjudication of claims against the current and former directors and officers of NFC (the “**D&O Charge Claims Procedure**”);
 - (b) an Order:
 - (i) approving the activities of the Monitor as set out in this Fourth Report as well as the First Report of the Monitor, the Second Report of the Monitor and the Third Report of the Monitor each filed in the within proceedings;
 - (ii) approving the fees and disbursements of the Monitor and of Fasken Martineau DuMoulin LLP as counsel to the Monitor in respect of the within proceedings for the period ending February 22, 2012;
 - (iii) terminating the CCAA Proceedings; and
 - (iv) discharging FTI in its capacity as Monitor in the CCAA Proceedings;
5. such other relief as counsel may advise and the Court permit.

TERMS OF REFERENCE

6. 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 Receivership Order, the Receiver’s Second Report and the Receiver’s Fourth Report.

CCAA PROCEEDING

7. Prior to its appointment as Monitor, FTI was retained in December, 2011, to provide financial advisory and consulting services to NFC. NFC was in the business of manufacturing value added meat and meatless protein consumer products in Canada. As a result

of, *inter alia*, entering into fixed priced contracts with its customers in 2011, as well as an increase in beef and energy costs, NFC was unable to meet its obligations as they became due and therefore, commenced these CCAA Proceedings.

8. Upon granting of the Initial Order, NFC and the Monitor were authorized to conduct the Transaction Process outlined in the Prefiling Report of FTI attached hereto as **Appendix “F”** in the CCAA Proceedings. Immediately following the making of the Initial Order, the Monitor contacted 11 parties which had been identified by NFC as possible qualified purchasers of the businesses on a going-concern and that were likely to be acceptable to NFC’s major customers. The Monitor also contacted NFC’s largest customers to identify additional possible qualified purchasers.

9. On January 20 and 23, 2012 respectively, the Monitor published the Sales Ad in the *Globe & Mail* National edition. The publishing of the Sales Ad resulted in forty-one prospective purchasers being identified and making contact with the Monitor. Of those forty-one parties, twenty-two parties executed Confidentiality Agreements and received the Confidential Information Memorandum.

10. Additional details regarding the Expressions of Interest received by the Monitor, the parties participating in Phase 2 of the Transaction Process, 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.

11. On February 16, 2012, upon motion made by the Applicants, Mr. Justice Newbould, *inter alia*, extended the stay of proceedings until March 30, 2012, and granted to Westco Multi Temp Distribution Centres Inc. (“**Westco**”), NFC’s Saskatoon cold storage

provider, a Court- ordered charge on the Property of NFC to secure pre-filing statutory lien amounts that were owed to Westco (the “**Extension Order**”).

NFC PRODUCT RECALL

12. On or about February 15, 2012, the Monitor was advised that a consumer was alleged to have become ill as a result of *e.coli* H7:57 bacteria contained in NFC frozen hamburger products manufactured in NFC’s Saskatoon facility. As more particularly described in the Fourth Report of the Receiver attached hereto as **Appendix “G”** on February 18, 2012, the CFIA issued an 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 (i) cease selling, and (ii) to remove products subject to the HHA from their retail shelves. Thereafter, from February 22, 2012 through to March 15, 2012, the CFIA issued additional HHAs. The issuance of the additional HHAs broadened the health hazard alerts to include additional certain specified NFC Finished Products. On March 17, 2012, the CFIA issued a further HHA expanding its health hazard alert to include all ground beef products manufactured by NFC between July 1, 2011 and February 15, 2012.

13. On September 7, 2012, FTI, in its capacity as Receiver, and on behalf of NFC, submitted a claim for reimbursement under NFC’s contamination products insurance policy (the “**Recall Policy**”) for losses arising from Accidental Product Contamination, as that term is defined in the Recall Policy. The Receiver and its counsel continue to pursue all available rights and remedies afforded to NFC under the Recall Policy.

RECEIVERSHIP PROCEEDINGS

14. As more particularly described in the Third Report of the Monitor, on February 20, 2012, BMO delivered a Transactions Process Default Notice under the DIP Credit Agreement and ultimately commenced the Receivership Proceedings.

15. Pursuant to the Receivership Order, the court ordered charges granted in the within proceedings and provided for in the Initial Order and the Extension Order respectively, including the Administration Charge, the DIP Lender's Charge, the Directors' Charge and the court ordered Westco Pre-Filing Lien Charge were recognized and preserved in the Receivership Proceedings, including their rank as amongst themselves and vis a vis the Encumbrances provided for in the Initial Order and in the Extension Order.

16. On April 19, 2012, the Court granted an Order authorizing the Receiver to distribute the sum of \$415,558.92 to Westco on account of Westco's Pre-Filing Lien Charge. The distribution thereto constitutes payment in full of all amounts owing and secured by the Westco Pre-Filing Lien Charge. In addition to the foregoing, pursuant to paragraph 3(s) of the Receivership Order, the Receiver has paid all amounts owing and secured by the Administration Charge.

17. On Friday December 14, 2012, the Court granted an Order authorizing the Receiver to distribute to the CCWIPP the sum of \$17,407.92 in respect of pension contribution arrears owing outstanding on the date of the Receivership Order in accordance with section 81.6 of the BIA and also authorized the Receiver 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 as defined in the D&O Charge Order (the “**Interim Distribution**”).

18. The Interim Distribution to BMO was made in full satisfaction of the DIP credit facility and on account of NFC’s indebtedness to BMO pursuant to a Second Amended and Restated Credit Agreement effective as of October 31, 2011. Accordingly, in addition to the payment in full of the Administration Charge and the Westco Pre-Filing Lien Charge, the Receiver has paid all amounts owing and which would have been secured by the DIP Lender’s Charge.

19. The only court-ordered charge that remains outstanding is the Directors’ Charge. FTI in its capacity as Receiver will conduct the D&O Charge Claims Procedure as outlined below and any amounts owing on account of a proven Director’s Charge Claim in respect thereof and for which there is insufficient insurance in any applicable policy will be paid by the Receiver in the Receivership Proceedings.

D&O CHARGE CLAIMS PROCESS

20. The Monitor seeks approval of the D&O Charge Claims Procedure in the form of the draft Order attached hereto as **Appendix “H”** (the “**D&O Charge Order**”). Defined terms in this section of the report, not otherwise defined herein, have meanings ascribed to them in the D&O Charge Order.

21. The D&O Charge Claims Procedure is summarized as follows:

- (a) The D&O Charge Claims Procedure will be administered in the Receivership Proceedings by FTI in its capacity as Receiver;

- (b) The Notice to Creditors will be published once in each of the Globe and Mail, the Saskatoon Star and the St. Catharines Standard and will be posted on the Receiver's website as soon as practicable after the date of the D&O Charge Order;
- (c) The Receiver will send a Notice to Creditors to each Known Creditor and to any Person who requests same;
- (d) Any Person wishing to assert a Directors' Charge Claim must file a Proof of Claim by the Claims Bar Date, or any later date ordered by the Court, failing which after the Claims Bar Date, all Unasserted Directors' Charge Claims shall be forever barred and extinguished;
- (e) Proofs of Claims shall be reviewed by the Receiver in consultation with Directors' Counsel and the Receiver shall accept, revise, or disallow all or any part of the Directors' Charge Claim. If the Receiver determines to revise or disallow any Directors' Charge Claim then the Receiver shall send a Notice of Revision or Disallowance to the Claimant;
- (f) If a Claimant disputes the revision or disallowance of the Directors' Charge Claim, it must deliver a Notice of Dispute by no later than the day which is fourteen days after the date of the Notice of Revision or Disallowance, or such later date as the Receiver may agree or the Court may order, failing which the Claimant shall be deemed to accept the amount or classification of the Directors' Charge Claim as set out in such Notice of Revision or Disallowance. Any Directors Charge Claim that is disallowed and in respect of which no Notice of

Dispute is received shall be forever barred and extinguished as against the Directors and Officers;

- (g) Upon receipt of the Notice of Dispute, if the Receiver is unable to resolve the classification or amount of the Notice of Dispute with the Claimant within fourteen days of receipt of the Notice of Dispute, then the Receiver shall schedule a motion to resolve such Director' Charge Claim;
- (h) The Bank and the Directors and Officers shall have standing in respect of any such matter relating to the D&O Charge Claims Procedure that is brought before the Court, and the Directors and Officers shall be permitted to bring a motion to the Court, on notice to the Receiver and any Claimant affected thereby, with respect to the classification, revision, allowance, disallowance, quantification or determination of any Directors' Charge Claim;
- (i) The Directors and Officers shall, unless the Receiver agrees otherwise, promptly file a claim in respect of a Proven Claim under the D&O Insurance Policy;
- (j) The Receiver shall establish a Proven Claims Insured Reserve in respect of each Proven Claim and the Proven Claims Insured Reserve shall be secured by the Directors' Charge and shall be administered by the Receiver as follows:
 - (i) Upon payment by the Insurer of the Insurer Paid Amount and provided that either (I) the aggregate amount of all Proven Claims and all unresolved Directors' Charge Claims is less than the D&O Charge Amount, or (II) the aggregate amount of all Un-Insured Proven Claims, all Proven Claims for which insurance coverage has not yet been determined

and all unresolved Directors' Charge Claims is less than the D&O Charge Amount, the Receiver shall release an amount equal to the Insurer Paid Amount from the Proven Claims Insured Reserve for distribution to NFC creditors in accordance with their priorities;

- (ii) The Receiver shall pay from the Proven Claims Insured Reserve any Un-Insured Proven Claims provided that either (I) the aggregate amount of all Proven Claims and all unresolved Directors' Charge Claims is less than the D&O Charge Amount, or (II) the aggregate amount of all Un-Insured Proven Claims, all Proven Claims for which insurance coverage has not been determined and all unresolved Directors' Charge Claims is less than the D&O Charge Amount. If the aggregate amount of all Un-Insured Proven Claims, are at any time, greater than the D&O Charge Amount, the Receiver shall pay on a pro rata basis to Creditors with Un-Insured Proven Claims the maximum amount of \$3,000,000 less any amounts paid to Directors' Counsel on account of their fees and disbursements; and
- (k) The Directors' Counsel will be entitled to be paid by the Receiver for their professional fees and disbursements in respect of activities relating to the D&O Claims Procedure to a maximum amount of \$50,000, the payment of which will be secured by and paid out of, the funds in the Post Receivership Account charged by the Directors' Charge. The fees and disbursements of Directors' Counsel in respect of any alternative process approved by the Court shall not be paid by the Receiver or be secured by the Directors' Charge.

22. The Monitor believes that the Director's Charge Claims Procedure is appropriate, fair and reasonable in the circumstances and respectfully recommends that the request for its approval be granted by the Court.

REQUESTED DISCHARGE OF THE MONITOR

23. The purposes of continuing the CCAA Proceedings have concluded. The Receivership proceedings have facilitated an orderly liquidation of most of the realizable assets and property of NFC. In total to date, three separate sale transactions were entered into and completed between FTI in its capacity as Receiver and various third parties.

24. While there are certain residual assets remaining, the realization of these assets consisting primarily of:

- (a) the sale of NFC's Brandon St. property; and
- (b) potential recoveries related to the insurance claim for losses sustained from the issuance of the HHAs by the CFIA warning of possible *e. coli* contamination in certain NFC beef products

will be undertaken in the Receivership Proceedings along with the implementation of the D&O Charge Claims Procedure requested above.

25. Based on the foregoing, the Monitor is of the view that the CCAA Proceedings should be concluded. Accordingly, the Monitor seeks the approval of the accounts of the Monitor and upon termination of the CCAA Proceedings, the discharge of FTI Consulting Canada Inc. in its capacity as Monitor.

ACTIVITIES OF THE MONITOR

26. The Monitor has previously reported on its conduct and activities to the Court in its three reports since the granting of the Initial Order. In addition to the activities of the Monitor reported therein, a summary of the principal activities of the Monitor are as follows:

- (a) reviewing all pleadings, affidavits, and appraisal information in preparation for the initial application in the CCAA Proceedings;
- (b) assisting NFC with respect to the preparation of cash flow statements;
- (c) monitoring NFC's cash flows and business affairs;
- (d) discussions with various stakeholders of NFC with respect to the CCAA Proceedings;
- (e) establishing a website and posting updates and court materials with respect to the CCAA Proceedings;
- (f) facilitating a Sales Transaction Process by contacting interested parties, setting up a data room to allow Selected Parties access to confidential information relating to NFC, responding to calls and conducting presentations, site tours and evaluating submitted bids and offers to purchase;
- (g) engaging in discussions and negotiations with customers and suppliers of NFC;
- (h) assisting NFC with a consumer advisory program as a result of various health hazard alerts issued by the CFIA; and

- (i) consulting with Secured Lenders and their counsel on matters where their direction was required and providing information on the CCAA Proceedings.

FEES OF THE MONITOR AND ITS COUNSEL

27. Pursuant to paragraphs 29 of the Initial Order, any expenditure or liability properly made or incurred by the Monitor, including the fees of the Monitor and the fees and disbursements of counsel to the Monitor (the “**Monitor’s Counsel**”) were authorized to be paid on a periodic basis subject to any final passing of the accounts. In addition, the Administrative Charge was granted as security for, *inter alia*, the fees and disbursements of the Monitor and Monitor’s Counsel.

28. The Monitor and Monitor’s Counsel have continued to maintain detailed records of their professional time and costs. The Monitor is seeking the approval of its fees for services rendered and disbursements incurred in respect of the within proceedings for the period ending February 22, 2012 and those of its counsel, Fasken Martineau DuMoulin LLP (“**Fasken**”) (the “**Billing Period**”).

29. The fees and disbursements of the Monitor during the Billing Period total \$606,601.43 including \$526,362.00 for services, \$10,453,42 for disbursements and taxes of \$69,786.01. The time spent by FTI personnel in the Billing Period is more particularly described in the Affidavit of Paul Bishop of the Monitor, sworn in support hereof and attached hereto as **Appendix “I ”**.

30. The fees and disbursements incurred by Fasken during the Billing Period total \$265,203.46, including fees of 232,589.50 disbursements of \$2,125.75 and taxes of \$30,488.21.

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 “J”**.

All of which is respectfully submitted this 22nd day of March , 2013.

FTI Consulting Canada Inc.
Receiver of the property, assets and
undertaking of New FC

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