

**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

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

April 12, 2012

Fasken Martineau DuMoulin LLP
Barristers and Solicitors
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, Ontario Canada M5H 2T6

Edmond F.B. Lamek
(LSUC #33338U)
Tel: 416 865 4506
Fax: 416 364 7813

Caitlin E. Fell
(LSUC #60091H)
Tel: 416 868 3471
Fax: 416 364 7813

Solicitors for the Receiver,
FTI Consulting Canada Inc.

**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

**SECOND 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**”) 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. On February 16, 2012, upon motion made by the Applicants, the Court, *inter alia*, extended the stay of proceedings contained in the Initial Order to March 30, 2012, and granted a charge in favour of Westco Multi Temp Distribution Centres Inc. (“Westco”), NFC’s Saskatoon cold storage provider, as security for pre-filing statutory lien amounts relating to NFC products released by Westco after the making of the Initial Order.

3. 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 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 the application, and made the Order in these proceedings dated February 22, 2012 (the “Receivership Order”), a copy of which is attached hereto as Appendix “A”.

PURPOSE OF THIS REPORT

4. The purpose of this Second Report of the Receiver is to provide the Court with the background information and Receiver’s recommendation relating to the Receiver’s motion for :

- (a) the approval of the Court, pursuant to subparagraph 3(l)(ii) of the Receivership Order, for the Receiver to enter into, and carry out the terms of an agreement with Counsel McIntyre Ltd. (“Counsel McIntyre”) to sell substantially all remaining manufacturing equipment owned by NFC (the “Remaining Equipment”) located

in both the NFC Saskatoon facility and the NFC St. Catharines facility (the “Premises”), to Counsel McIntyre, and for the auction by Counsel McIntyre of the office equipment, furniture and computers in the Premises, and the Saskatoon facility spare part inventory (the “Transaction”);

- (b) an order vesting the Remaining Equipment in Counsel McIntyre effective upon closing of the Transaction;
- (c) approval of payment of the amounts secured by the Westco Pre-Filing Lien Charge to Westco;
- (d) if, necessary, to set a schedule and process for determining the respective rights of NFC, BMO and the landlord of the Saskatoon Premises, to certain ammonia compressors located in the Saskatoon Premises; and
- (e) such other relief as counsel may advise and the Court permit.

TERMS OF REFERENCE

5. In preparing this report, the Receiver has relied upon unaudited financial information of NFC, NFC’s books and records, certain financial information prepared by NFC and discussions with NFC’s management. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Receiver expresses no opinion or other form of assurance on the information contained in this report or relied on in its preparation.

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 Second Report, the Monitor's Third Report and the Receivership Order.

CCAA PROCEEDINGS - TRANSACTION PROCESS

7. Pursuant to paragraph 44 of the Initial Order, NFC and the Monitor were authorized to conduct the Transaction Process outlined in the Prefiling Report of FTI in the CCAA Proceedings, a copy of which, without appendices is attached hereto as **Appendix "B"**. 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 to NFC's major customers.

8. After publishing the Sales Ad in the *Globe & Mail* National edition on January 20 and 23, 2012, a total of forty-one prospective purchasers were identified and in communication with the Monitor. Of those forty-one parties, twenty-two executed Confidentiality Agreements and received the Confidential Information Memorandum.

9. 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 "C"**. 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 and ultimately commenced these Receivership Proceedings.

SOLICITATION OF OFFERS BY THE RECEIVER

10. Following the making of the Receivership Order, 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, as intact manufacturing operations, before the Receiver embarked on soliciting liquidation bids and other offers for NFC's manufacturing assets. 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 not becoming a successor employer to the United Food and Commercial Workers Union.

11. 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 the 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**").

12. After clarifying a number of the remaining Equipment Proposals received, including certain aspects of the Counsel McIntyre proposal, 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**”). A redacted copy of the CM Agreement is attached hereto as **Appendix “D”**. An un-redacted copy of the CM Agreement will be available for the Court’s review at the return of the Receiver’s motion for the approval of the CM Agreement and Vesting Order.

13. As part of the CCAA Transaction Process, BMO commissioned an appraisal of the NFC Assets, including the Remaining Equipment, from Century Services (the “**CS Appraisal**”). A copy of the CS Appraisal, together with the Receiver’s review of the values of the Remaining Equipment in the CM Agreement will be available for the Court’s review at the return of the Receiver’s motion for the approval of the CM Agreement and Vesting Order.

14. The Receiver has reviewed the principal business terms of the CM Agreement and all of the Remaining Equipment Proposals received by it with BMO and with TD Capital Mezzanine Partners Management Ltd. (“**TD**”), the second ranking secured creditor of NFC behind BMO, and has been advised of their support for the approval of the CM Agreement sought herein. The net proceeds of realization of the CM Agreement are expected by the Receiver to exceed the recoveries under all other Remaining Equipment Proposals received by it, and to exceed the values of the Remaining Equipment set out in the CS Appraisal.

15. Based on the Receiver’s analysis and the factors, solicitation processes and considerations described above in this Report and in the Monitor’s Third Report, the Receiver

respectfully recommends that the Court approve the CM Agreement, authorize the Receiver to carry out the Transaction, and grant the Vesting Order.

PAYMENT OF THE WESTCO PRE-FILING LIEN CHARGE AMOUNT

16. A copy of the Order of the Court dated February 16, 2012 made in the CCAA Proceedings, granting the Westco Pre-Filing Lien Charge on the Property of NFC in the aggregate amount not to exceed \$450,000 to secure Westco's statutory pre-filing lien amount is attached hereto as **Appendix "E"**. Pursuant to paragraph 24 of the Receivership Order the charges granted in the CCAA Proceedings, including the Westco Pre-Filing Lien Charge were recognized and preserved in these proceedings. Following the making of the Receivership Order the Court ordered charges over the Property rank as among themselves as follows:

- (a) Administration Charge (CCAA);
- (b) Westco Pre-filing Lien Charge (CCAA);
- (c) Receiver's Charge;
- (d) Directors' Charge (CCAA);
- (e) Receiver's Borrowing Charge; and
- (f) DIP Lender's Charge (CCAA).

17. The Receiver, and prior to that time FTI as CCAA Monitor, has been working with Westco to reconcile NFC and Westco records of the hundreds of transactions between NFC and Westco that gave rise to the amounts owed to Westco as at the CCAA filing date which were secured by Westco's statutory possessory lien under the Saskatchewan *Commercial Liens Act*. As a result, Westco has provided the Receiver with a final detailed spreadsheet setting out each

of the transactions involving NFC products that were in Westco's possession on the CCAA filing date, and the amounts owing in respect of each transaction.

18. The Receiver has reviewed the final Westco spreadsheet calculations and has, with its counsel, reviewed the terms of the agreements between NFC and Westco for the shipping of NFC products to Westco's warehouse, and for handling and storage of NFC products by Westco. Based on those reviews, the Receiver is of the view that the amount properly owing to Westco which is secured by the Westco Pre-Filing Lien Charge is \$412,558.92, inclusive of GST (the "**Westco Amount**").

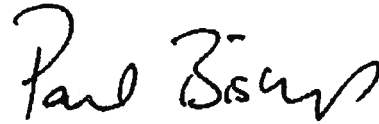
19. The Receiver has reviewed the Westco Amount and the Receiver's analysis of the Westco Prefiling Lien Charge with BMO and TD Bank, and they have consented to the payment of the Westco Amount by the Receiver.

20. Pursuant to paragraph 3(s) of the Receivership Order, the Receiver has paid all amounts which would have been secured by the Administration Charge, and as such no amounts are or will be owing under it. Other than current stub period amounts, there are no amounts outstanding under the Receiver's Charge owing to the Receiver or its counsel. The Receiver is also of the belief that payment of the Westco Amount at this time will not prejudice the remaining subordinate Court ordered charges. As of the date of this Second Report, the Receiver holds approximately \$6.5 million post Receivership accounts (the "**Post Receivership Accounts**") from the proceeds of sale of NFC's assets and collection of accounts receivable. As such, the existing Court ordered charges will remain fully secured by the funds remaining in the Post Receivership Accounts after payment of the Westco Amount.

21. Based on the foregoing, and with the consent of BMO and TD, the Receiver respectfully recommends that this Court approve the payment of the Westco Amount to Westco.

All of which is respectfully submitted this 12th day of April, 2012.

**FTI Consulting Canada Inc.
Receiver of the property, assets and
undertaking of NFC**

A handwritten signature in black ink that reads "Paul Bishop". The signature is written in a cursive, flowing style.

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