

**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
EXTREME FITNESS, INC.**

**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**FACTUM OF
EXTREME FITNESS, INC.**

February 26, 2013

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9

Steven L. Graff (LSUC # 31871V)
Tel: 416.865.7726
Fax: 416.863.1515
Email: sgraff@airdberlis.com

Ian Aversa (LSUC # 55449N)
Tel: 416.865.3082
Fax: 416.863.1515
Email: iaversa@airdberlis.com

James A. Desjardins (LSUC # 62493E)
Tel: 416.865.4641
Fax: 416.863.1515
Email: jdesjardins@airdberlis.com

Lawyers for Extreme Fitness, Inc.

SERVICE LIST

TO: **AIRD & BERLIS LLP**
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff
Tel: 416-865-7726
Fax: 416-863-1515
Email: sgraff@airdberlis.com

Ian Aversa
Tel: 416-865-3082
Fax: 416-863-1515
Email: iaversa@airdberlis.com

James A. Desjardins
Tel: 416-865-4641
Fax: 416-863-1515
Email: jdesjardins@airdberlis.com

Lawyers for Extreme Fitness, Inc.

AND TO: **FTI CONSULTING CANADA INC.**
TD Waterhouse Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON M5K 1G8

Steven Bissell
Tel: 416-649-8054
Fax: 416-649-8101
Email: steven.bissell@fticonsulting.com

Brogan Taylor
Tel: 416-649-8074
Fax: 416-649-8101
Email: brogan.taylor@fticonsulting.com

Monitor

AND TO: **GOODMANS LLP**
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Melaney J. Wagner
Tel: 416-597-4258
Fax: 416-979-1234
Email: mwagner@goodmans.ca

Caroline Descours
Tel: 416-597-6275
Fax: 416-979-1234
Email: cdescours@goodmans.ca

Lawyers for the Monitor

AND TO: **THORNTON GROUT FINNIGAN LLP**
100 Wellington Street West, Suite 3200
Toronto, ON M5K 1K7

Grant B. Moffat
Tel: 416-304-0599
Fax: 416-304-1313
Email: gmoffat@tgf.ca

Alana Shepherd
Tel: 416-304-0597
Fax: 416.304.1313
Email: ashepherd@tgf.ca

Lawyers for National Bank of Canada

AND TO: **BLAKE, CASSELS & GRAYDON LLP**
Commerce Court West
199 Bay Street, Suite 4000
Toronto, ON M5L 1A9

Steven J. Weisz
Tel: 416-863-2616
Fax: 416-863-2653
Email: steven.weisz@blakes.com

Ian Binnie
Tel: 416-863-3250
Fax: 416-863-2653
Email: ian.binnie@blakes.com

Marc Flynn

Tel: 416-863-2685

Fax: 416.863.2653

Email: marc.flynn@blakes.com

Lawyers for Golub Capital Incorporated

AND TO: **MILLER THOMSON LLP**
One London Place
255 Queens Avenue, Suite 2010
London, ON N6A 5R8

Alissa Mitchell

Tel: 519-931-3510

Fax: 519-858-8511

Email: amitchell@millერთhompson.com

Lawyers for GoodLife Fitness Centres Inc.

AND TO: **SISKINDS**
680 Waterloo Street
London, ON N6A 3V8

Henry Berg

Tel: 519-660-7786

Fax: 519-660-7787

Email: henry.berg@siskinds.com

Lawyers for GoodLife Fitness Centres Inc.

AND TO: **ALVAREZ & MARSAL CANADA INC.**
Royal Bank Plaza South Tower
200 Bay Street, Suite 2900
Toronto, ON M5J 2J1

Alan J. Hutchens

Tel: 416-847-5159

Fax: 416-847-5201

Email: ahutchens@alvarezandmarsal.com

Greg A. Karpel

Tel: 416-847-5170

Fax: 416-847-5201

Email: gkarpel@alvarezandmarsal.com

AND TO: **BORDEN LADNER GERVAIS LLP**
Scotia Plaza
40 King Street West
Toronto, ON M5H 3Y4

Roger Jaipargas
Tel: 416-367-6266
Fax: 416-361-7067
Email: rjaipargas@blg.com

Lawyers for 2079843 Ontario Inc., 2044922 Ontario Ltd. and 2125879 Ontario Inc.

AND TO: **BERKOW, COHEN LLP**
Barristers
141 Adelaide Street West, Suite 400
Toronto, ON M5H 3L5

Alexandra Lev-Farrell
Tel: 416-364-4900
Fax: 416-364-3865
Email: alev-farrell@berkowcohen.com

Lawyers for Bentall Kennedy (Canada) LP

AND TO: **EXTREME FITNESS, INC.**
8281 Yonge Street
Thornhill, ON L3T 2C7

AND TO: **EXTREME FITNESS HOLDING CORP.**
c/o Falconhead Capital LLC
450 Park Avenue #3
New York, NY 10022

AND TO: **EXTREME FITNESS ULC**
c/o Golub Capital Incorporated
551 Madison Avenue, Sixth Floor
New York, NY 10022

AND TO: **ROYAL BANK OF CANADA**
180 Wellington Street West, 3rd Floor
Toronto, ON M5J 1J1

AND TO: **LIFE FITNESS INTERNATIONAL SALES, INC.**
5100 North River Road
Schiller Park, IL 60176

AND TO: **HEFFNER AUTO FINANCE CORP.**
3121 King Street East
Kitchener, ON N2A 1B1

AND TO: **HEFFNER AUTO SALES AND LEASING INC.**
3121 King Street East
Kitchener, ON N2A 1B1

AND TO: **HEFFNER LEASING LIMITED**
3121 King Street East
Kitchener, ON N2A 1B1

AND TO: **COINAMATIC COMMERCIAL LAUNDRY INC.**
301 Matheson Boulevard West
Mississauga, ON L5R 3G3

AND TO: **INDCOM LEASING INC.**
5061 Ure Street
Oldcastle, ON N0R 1L0

AND TO: **ESSEX CAPITAL LEASING CORP.**
3280 Devon Drive
Windsor, ON N8X 4L4

AND TO: **CLE LEASING ENTERPRISES LTD.**
3390 South Service Road, 2nd Level
Burlington, ON L7N 3J5

AND TO: **DSM LEASING LTD.**
1300 Bay Street, Suite 400
Toronto, ON M5R 3K8

AND TO: **ENERCARE SOLUTIONS LIMITED PARTNERSHIP**
2 East Beaver Creek Road, Building 2
Richmond Hill, ON L4B 2N3

AND TO: **DELL FINANCIAL SERVICES CANADA LIMITED**
155 Gordon Baker Road, Suite 501
North York, ON M2H 3N5

AND TO: **BMW CANADA INC.**
50 Ultimate Drive
Richmond Hill, ON L4S 0C8

AND TO: **DE LAGE LANDEN FINANCIAL SERVICES CANADA INC.**
100-1235 North Service Road West
Oakville, ON L6M 2W2

AND TO: **XEROX FINANCIAL SERVICES CANADA LTD.**
c/o Xerox Canada Ltd.
33 Bloor Street East
Toronto, ON M4W 3H1

Stephanie Grace
Tel: (416) 413-2805
Fax: (416) 972-5530
Email: stephanie.grace@xerox.com

AND TO: **DEPARTMENT OF JUSTICE**
The Exchange Tower
130 King Street West, Suite 3400
Toronto, ON M5X 1K6

Diane Winters
Tel: (416) 973-3172
Fax: (416) 973-0810
Email: diane.winters@justice.gc.ca

AND TO: **HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ONTARIO AS REPRESENTED BY
THE MINISTER OF FINANCE**
(Income Tax, PST)
PO Box 620
33 King Street West, 6th Floor
Oshawa, ON L1H 8E9

Kevin J. O'Hara
Email: kevin.ohara@ontario.ca

COURTESY COPIES

Morry Offman
Email: morryoffman@msn.com

Steve DaCosta
Email: stevedacosta@rogers.blackberry.net

**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
EXTREME FITNESS, INC.**

**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

FACTUM OF EXTREME FITNESS, INC.

PART I – OVERVIEW

1. Extreme Fitness, Inc. (the “**Applicant**”) seeks an order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) for, among other things:

- (a) approving the First Report (the “**First Report**”) of FTI Consulting Canada Inc. (“**FTI**”), in its capacity as the Court-appointed monitor of the Applicant (in such capacity, the “**Monitor**”) and approving the actions of the Monitor described therein;
- (b) extending the Stay Period (as defined in the Initial Order of the Honourable Mr. Justice Campbell granted on February 7, 2013 in these proceedings (the “**Initial Order**”)) to and including April 5, 2013;

- (c) approving the key employee retention plan (the “**KERP**”) offered by the Applicant to certain employees deemed critical to complete the proposed transaction with GoodLife Fitness Centres Inc. (“**GoodLife**”); and
- (d) sealing the Confidential Appendix to the First Report until further order of this Court.

PART II – FACTS

Background to the Applicant and its Business

2. On February 7, 2013, the Applicant made an application under the CCAA seeking court protection from its creditors, which protection was granted pursuant to the Initial Order.

Affidavit of Alan Hutchens sworn February 26, 2013 (the “Hutchens Affidavit”), Motion Record of the Applicant (the “Motion Record”), Tab 3, pg. 2, para. 4

3. Alan Hutchens, the Applicant’s Interim Chief Financial Officer, swore an affidavit on February 7, 2013 (the “**February 7 Affidavit**”) in support of the Initial Order. The February 7 Affidavit sets out the background of these CCAA proceedings, including the business of the Applicant and its financial difficulties, an overview of the Applicant’s major stakeholders and the proposed sale of substantially all of the Applicant’s assets, properties and undertakings to GoodLife.

Hutchens Affidavit, Motion Record, Tab 3, pg. 2, para. 5

4. Prior to the Initial Order, the Applicant entered into a Letter of Intent with GoodLife dated January 18, 2013 (the “**LOI**”) under which the Applicant agreed to sell, and GoodLife agreed to purchase, substantially all of the Applicant’s assets, properties and undertakings

subject to, among other things, the execution of a binding asset purchase agreement (the “APA”) by no later than March 18, 2013.

Hutchens Affidavit, Motion Record, Tab 3, pg. 2, para. 6

5. The Applicant and GoodLife are working diligently towards satisfying the conditions set out in the LOI and negotiating the form of the APA.

Hutchens Affidavit, Motion Record, Tab 3, pg. 2, para. 7

6. The sale transaction contemplated in the LOI must, according to its terms, close on or before March 31, 2013 or such other date as the parties thereto agree.

Hutchens Affidavit, Motion Record, Tab 3, pg. 3, para. 8

7. Once the conditions set out in the APA are satisfied and the form of the APA is settled, it is the Applicant’s intention to return to Court to seek approval of the APA and, ultimately, distribute the realizations from the transaction to the Applicant’s creditors entitled thereto in accordance with their priority.

Hutchens Affidavit, Motion Record, Tab 3, pg. 3, para. 9

The Stay Period

8. Pursuant to paragraph 14 of the Initial Order, the Stay Period expires on March 8, 2013.

Hutchens Affidavit, Motion Record, Tab 3, pg. 3, para. 10

9. The extension of the Stay Period to and including April 5, 2013 is necessary in order to provide stability to the Applicant’s business while the Applicant, with the assistance of the

Monitor, works diligently on completing the proposed transaction with GoodLife, which would maximize value for the benefit of the Applicant's stakeholders.

Hutchens Affidavit, Motion Record, Tab 3, pg. 3, para. 11

10. The nine-week cash flow projection, reviewed with the Monitor and attached as Exhibit "R" to the February 7 Affidavit, projects that the Applicant will have sufficient funding to continue operating to and including April 5, 2013.

Hutchens Affidavit, Motion Record, Tab 3, pg. 3, para. 12

11. Since the issuance of the Initial Order, the Applicant has acted, and continues to act, in good faith and with due diligence, and circumstances exist that make granting an extension of the Stay Period to and including April 5, 2013 appropriate.

Hutchens Affidavit, Motion Record, Tab 3, pg. 3, para. 13

12. The Monitor supports the motion to extend the Stay Period and the Applicant is unaware of any creditor who opposes this relief being granted. No creditor of the Applicant will suffer any material prejudice if the Stay Period is extended to and including April 5, 2013.

Hutchens Affidavit, Motion Record, Tab 3, pg. 3, para. 14

The KERP

13. In order to ensure the continued participation of certain key employees of the Applicant, the Applicant has offered or may offer a limited number of key employees rights under the KERP (collectively, the "KERP Participants").

Hutchens Affidavit, Motion Record, Tab 3, pgs. 3-4, para. 15

14. As a result of the Applicant's financial situation and commencement of the CCAA proceedings, the KERP Participants may be incentivized to seek alternative employment. The KERP provides appropriate incentives for the KERP Participants to remain in their current positions and also ensures that they are properly compensated for their critical assistance in these CCAA proceedings.

Hutchens Affidavit, Motion Record, Tab 3, pg. 4, para. 16

15. Each of the KERP Participants will receive a single payment as incentive to continue their respective employment with the Applicant for the duration of the CCAA proceedings. Pursuant to the KERP, the KERP Participants will receive their respective cash payment due under the KERP immediately following closing of the transaction with GoodLife or such later date agreed to amongst the parties.

Hutchens Affidavit, Motion Record, Tab 3, pg. 4, para. 17

16. In order to receive payments under the KERP, the transaction with GoodLife must have closed and each of the KERP Participants cannot have resigned, been terminated with cause or have failed to perform his or her duties and responsibilities diligently, faithfully and honestly.

Hutchens Affidavit, Motion Record, Tab 3, pg. 4, para. 18

17. The list of the KERP Participants was formulated by the Applicant in consultation with its Board of Directors and the Monitor and was approved by the Board of Directors of the Applicant. It is the opinion of the Applicant's Board of Directors that all of the KERP Participants are critical to the Applicant and to these CCAA proceedings as they are experienced employees who have played critical roles in the initiatives taken to date, which have provided

them with knowledge and information that is critical to the success of the sales process and these CCAA proceedings.

Hutchens Affidavit, Motion Record, Tab 3, pg. 4, para. 19

18. The Monitor and the Applicant's senior secured creditors, Golub Capital Incorporated, Falconhead Capital, LLC and National Bank of Canada, do not oppose the motion to approve the KERP.

Hutchens Affidavit, Motion Record, Tab 3, pg. 4, para. 20

19. The aggregate cash amount payable under the KERP is \$230,000. The Applicant, with the support of the Monitor, believes the amount of the proposed payments under the KERP is reasonable in the circumstances.

Hutchens Affidavit, Motion Record, Tab 3, pg. 5, para. 21

Sealing the Confidential Appendix to the First Report

20. Confidential Appendix "A" to the First Report contains individually identifiable personal and financial information of the KERP Participants. In order to protect the KERP participants and to minimize disruption during these CCAA proceedings, the Applicant is seeking an order sealing Confidential Appendix "A" to the First Report until further order of this Court.

Hutchens Affidavit, Motion Record, Tab 3, pg. 5, para. 22

PART III – ISSUES

21. The primary issues to be determined on this motion are whether this Court should:

- (a) extend the Stay Period;

- (b) approve the KERP; and
- (c) seal Confidential Appendix “A” to the First Report until further order of this Court.

PART IV – LAW AND ARGUMENT

A. THE STAY PERIOD SHOULD BE EXTENDED

22. The Applicant is seeking the extension of the Stay Period to and including April 5, 2013.

23. Pursuant to section 11.02 of the CCAA, the Court may extend the stay of proceedings with respect to a debtor company where: (a) circumstances exist that make the order appropriate; and (b) the applicant has acted and is acting in good faith and with due diligence.

CCAA, s. 11.02

24. Pursuant to paragraph 14 of the Initial Order, the Stay Period expires on March 8, 2013. An extension of the Stay Period is necessary in order to provide stability to the Applicant’s business while the Applicant, with the assistance of the Monitor, works diligently on completing the proposed transaction with GoodLife.

Hutchens Affidavit, Motion Record, Tab 3, pg. 3, para. 11

25. In *Canwest Global Communications Corp. (Re)*, Justice Pepall granted an extension of the stay of proceedings for a group of debtors that were continuing to work with their stakeholders. Her Honour found that the extension would provide the necessary stability to allow the debtors to continue working towards a resolution that would result in the continuation of their businesses as a going concern. The factors which supported Her Honour’s decision were: (a) the cashflow forecast indicated that the debtors had sufficient cash resources to operate

throughout the extension of the stay period; (b) the monitor supported the extension; (c) there was a lack of opposition to the motion; and (d) the debtors had acted and were continuing to act in good faith and with due diligence.

Canwest Global Communications Corp. (Re), [2009] O.J. No. 4788 at para. 43 (Ont. S.C.J. [Comm. List]), Applicant's Book of Authorities, Tab 1

26. The cash flow projection attached as Exhibit "R" to the February 7 Affidavit projects that the Applicant will have sufficient funding to continue operating to and including April 5, 2013.

Hutchens Affidavit, Motion Record, Tab 3, pg. 3, para. 12

27. The Monitor supports the motion to extend the Stay Period and the Applicant is unaware of any creditor who opposes this relief being granted. It is not believed that any creditor will suffer any material prejudice if the Stay Period is extended to and including April 5, 2013.

Hutchens Affidavit, Motion Record, Tab 3, pg. 3, para. 14

28. Since the issuance of the Initial Order, the Applicant has acted, and continues to act, in good faith and has been working with due diligence.

Hutchens Affidavit, Motion Record, Tab 3, pg. 3, para. 13

29. Accordingly, the Applicants respectfully request that this Court grant an extension to the Stay Period to and including April 5, 2013.

B. THE KERP SHOULD BE APPROVED

30. The Applicant is seeking an order approving the KERP offered or that may be offered by the Applicant to certain employees considered critical to complete the proposed transaction with GoodLife.

31. There is no express statutory jurisdiction in the CCAA for the Court to approve a KERP. However, courts have recognized that approval of a KERP is within their statutory discretion under the CCAA. A KERP is designed to retain employees that are important to the management and operations of the debtor company in order to keep their skills within the company at a time when they are likely to look for other employment because of the company's financial distress.

Grant Forest Products Inc. (Re) (2009), 57 C.B.R. (5th) 128 at para. 8 (Ont. S.C.J. [Comm. List]) [*"Grant Forest"*], Applicant's Book of Authorities, Tab 2

Canwest Global Communications Corp. (Re) (2009), 59 C.B.R. (5th) 72 at paras. 49 - 52 (Ont. S.C.J. [Comm. List]), Applicant's Book of Authorities, Tab 3

32. KERPs have been approved in numerous CCAA proceedings where the retention of key employees is critical to a successful restructuring. Recently, in approving certain payment plans designed to retain key employees during the Nortel restructuring, Justice Morawetz held that the commitment and retention of key employees was "essential to the execution of a restructuring of Nortel and the completion of a plan of arrangement".

Nortel Networks Corp. (Re), [2009] O.J. No. 1044 at para. 4 (S.C.J. [Comm. List]) [*"Nortel"*], Applicants' Book of Authorities, Tab 4

33. In this case, the KERP has been approved in form and substance by the Board of Directors of the Applicant. In the opinion of the Boards of Directors of the Applicant, all of the KERP Participants are critical to the Applicant's CCAA proceeding as they are experienced employees who have played significant roles in the initiatives taken to date, which have provided them with knowledge and information that is critical to the success of the sales process and these CCAA proceedings.

34. As a result of the Applicant's financial situation and commencement of the CCAA proceedings, the KERP Participants may be incentivized to seek alternative employment. The KERP provides appropriate incentives for the KERP Participants to remain in their current positions and also ensures that they are properly compensated for their assistance in these CCAA proceedings.

Hutchens Affidavit, Motion Record, Tab 3, pg. 4, para. 16

35. The Monitor also supports the approval of the KERP and, following review of several court-approved retention plans in CCAA proceedings, is satisfied that the KERP is consistent with the current practice for retention plans in the context of a CCAA proceeding and that the quantum of the proposed payments under the KERP is reasonable in the circumstances. The Applicant submits that this militates strongly in favour of approving the proposed KERP.

Hutchens Affidavit, Motion Record, Tab 3, pg. 4, para. 20

36. Accordingly, the Applicants respectfully request that the Court grant an Order approving the KERP offered by the Applicant.

C. THE CONFIDENTIAL APPENDIX TO THE FIRST REPORT SHOULD BE SEALED

37. The Applicant is seeking an order sealing Confidential Appendix "A" to the First Report, which contains a copy of the unredacted KERP.

38. Subsection 137(2) of the *Courts of Justice Act* provides this Court with the statutory jurisdiction to order that any document filed in a civil proceeding, be treated as confidential, sealed and not form part of the public record.

Courts of Justice Act, R.S.O. 1990, c. C-34, as amended, s. 137(2)

39. In *Sierra Club of Canada v. Canada (Minister of Finance)*, a decision of the Supreme Court of Canada interpreting the sealing provisions of the Federal Court Rules, Iacobucci J. adopted the following test to determine when a sealing order should be made:

A confidentiality order under Rule 151 should only be granted when:

- (a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
- (b) 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.

Sierra Club of Canada v. Canada (Minister of Finance), [2002] 2 S.C.R. 522 at para. 53, Applicant's Book of Authorities, Tab 5

40. Confidential Appendix "A" to the First Report contains individually identifiable personal and financial information of each of the KERP Participants, the disclosure of which will cause harm to the KERP participants and the Applicant, all of which is an important commercial interest that should be protected. Further, the Applicant submits that keeping this information confidential will not have any deleterious effects. In any event, the salutary effects of sealing Confidential Appendix "A" outweigh any conceivable deleterious effects given that, in the ordinary course, confidential personal and salary information would be kept strictly confidential by an employer and the aggregate amount payable under the KERP has been disclosed.

41. Accordingly, the Applicant respectfully requests that this Court grant an Order sealing Confidential Appendix "A" to the First Report.

PART V – RELIEF REQUESTED

42. The Applicant respectfully requests that this Court grant an Order substantially in the form of the draft Order attached as Tab 2 to the Applicant's Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of February, 2013.

Aird & Berlis LLP

Aird & Berlis LLP

AIRD & BERLIS LLP

Barristers and Solicitors

Brookfield Place

181 Bay Street, Suite 1800

Toronto, Ontario M5J 2T9

Steven L. Graff (LSUC # 31871V)

Tel: 416.865.7726

Fax: 416.863.1515

Email: sgraff@airdberlis.com

Ian Aversa (LSUC # 55449N)

Tel: 416.865.3082

Fax: 416.863.1515

Email: iaversa@airdberlis.com

James A. Desjardins (LSUC # 62493E)

Tel: 416.865.4641

Fax: 416.863.1515

Email: jdesjardins@airdberlis.com

Lawyers for Extreme Fitness, Inc.

TAB "A"

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Canwest Global Communications Corp. (Re)*, [2009] O.J. No. 4788 (Ont. S.C.J. [Comm. List])
2. *Grant Forest Products Inc. (Re)* (2009), 57 C.B.R. (5th) 128 (Ont. S.C.J. [Comm. List])
3. *Canwest Global Communications Corp. (Re)* (2009), 59 C.B.R. (5th) 72 (Ont. S.C.J. [Comm. List])
4. *Nortel Networks Corp. (Re)*, [2009] O.J. No. 1044 (S.C.J. [Comm. List])
5. *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 S.C.R. 522

TAB "B"

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY-LAWS

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Courts of Justice Act, R.S.O. 1990, c. C-34

137 (1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

(3) On payment of the prescribed fee, a person is entitled to see any list maintained by a court of civil proceedings commenced or judgments entered.

(4) On payment of the prescribed fee, a person is entitled to a copy of any document the person is entitled to see.

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 EXTREME FITNESS, INC.

Court File No. CV-13-10000-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

FACTUM OF THE APPLICANT

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9

Steven L. Graff (LSUC # 31871V)

Tel: 416.865.7726

Fax: 416.863.1515

Email: sgraff@airdberlis.com

Ian Aversa (LSUC # 55449N)

Tel: 416.865.3082

Fax: 416.863.1515

Email: iaversa@airdberlis.com

James A. Desjardins (LSUC # 62493E)

Tel: 416.865.4641

Fax: 416.863.1515

Email: jdesjardins@airdberlis.com

Lawyers for Extreme Fitness, Inc.