Court File No. CV-17-11857-00CL

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 TK HOLDINGS INC., AND THOSE OTHER COMPANIES LISTED ON SCHEDULE "A" HERETO (the "Chapter 11 Debtors")

AND IN THE MATTER OF TAKATA CORPORATION, AND THOSE OTHER COMPANIES LISTED ON SCHEDULE "B" HERETO (the "Japanese Debtors", and collectively with the Chapter 11 Debtors, the "Debtors")

APPLICATION OF TK HOLDINGS INC. AND TAKATA CORPORATION UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*

BRIEF OF AUTHORITIES OF THE FOREIGN REPRESENTATIVES
(re: Recognition of Claims Processes and Second Day Orders)
(Returnable October 13, 2017)

October 5, 2017

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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 TK HOLDINGS INC., AND THOSE OTHER COMPANIES LISTED ON SCHEDULE "A" HERETO (the "Chapter 11 Debtors")

AND IN THE MATTER OF TAKATA CORPORATION, AND THOSE OTHER COMPANIES LISTED ON SCHEDULE "B" HERETO (the "Japanese Debtors", and collectively with the Chapter 11 Debtors, the "Debtors")

APPLICATION OF TK HOLDINGS INC. AND TAKATA CORPORATION UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*

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(Returnable October 13, 2017)

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10.	*Lightsquared LP, Re,* Ontario Superior Court of Justice (Commercial List), Court File No. CV-12-9719-00CL, Order of Newbould J. issued August 21, 2012
11.	*Xinergy Ltd., Re,* Ontario Superior Court of Justice (Commercial List), Court File No. CV-15-10936-00CLL, Order of Newbould J. issued June 18, 2015
12.	*Cline Mining Corporation (Re),* 2014 ONSC 6998
13.	*Roman Catholic Episcopal Corp. of St. George's, Re,* 2007 NLTD 20, aff'd 2007 NLCA 17

Tab 1

2012 ONSC 964
Ontario Superior Court of Justice [Commercial List]

Hartford Computer Hardware Inc., Re

2012 CarswellOnt 2143, 2012 ONSC 964, 212 A.C.W.S. (3d) 315, 94 C.B.R. (5th) 20

In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C 36, as Amended

Application of Hartford Computer Hardware, Inc. Under Section 46 of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C 36, as Amended

And In the Matter of Certain Proceedings Taken in the United States Bankruptcy Court for the Northern District of Illinois Eastern Division with Respect to

Re: Hartford Computer Hardware, Inc., Nexicore Services, LLC, Hartford Computer Group, Inc. and Hartford Computer Government, Inc., (Collectively, the "Chapter 11 Debtors"), Applicants

Morawetz J.

Heard: February 1, 2012
Judgment: February 1, 2012
Written reasons: February 15, 2012
Docket: CV-11-9514-00CL

Counsel: Kyla Mahar, John Porter for Chapter 11 Debtors
Adrienne Glen for FTI Consulting Canada, Inc., Information Officer
Jane Dietrich for Avnet Inc.

Subject: Civil Practice and Procedure; Insolvency; Corporate and Commercial; International

MOTION by foreign representative for recognition and implementation in Canada of orders of U.S. Bankruptcy Court made in Chapter 11 proceedings.

***Morawetz J.*:**

1 Hartford Computer Hardware, Inc. ("Hartford"), on its own behalf and in its capacity as foreign representative of Chapter 11 Debtors (the "Foreign Representative") brought a motion under s. 49 of the *Companies' Creditors Arrangement Act* (the "*CCAA*") for recognition and implementing in Canada the following Orders of the United States Bankruptcy Court for the Northern District of Illinois Eastern Division (the "U.S. Court") made in the proceedings commenced by the Chapter 11 Debtors:

(i) the Final Utilities Order;

(ii) the Bidding Procedures Order;

(iii) the Final DIP Facility Order.

(collectively, the U.S. Orders")

2 On December 12, 2011, the Chapter 11 Debtors commenced the Chapter 11 proceeding. The following day, I made an order granting certain interim relief to the Chapter 11 Debtors, including a stay of proceedings. On December 15, 2011, the U.S. Court made an order authorizing Hartford to act as the Foreign Representative of the Chapter 11 Debtors. On December 21, 2011, I made two orders, an Initial Recognition Order and a Supplemental Order that, among other things:

(i) declared the Chapter 11 proceedings to be a "foreign main proceeding" pursuant to Part IV of the *CCAA*;

(ii) recognized Hartford as the Foreign Representative of the Chapter 11 Debtors;

(iii) appointed FTI as Information Officer in these proceedings;

(iv) granted a stay of proceedings;

(v) recognized and made effective in Canada certain "First Day Orders" of the U.S. Court including an Interim Utilities Order and Interim DIP Facility Order.

3 On January 26, 2012, the U.S. Court made the U.S. Orders.

4 The Foreign Representative is of the view that recognition of the U.S. Orders is necessary for the protection of the Chapter 11 Debtors' property and the interest of their creditors.

5 The affidavit of Mr. Mittman and First Report of the Information Officer provide details with respect to the hearings in the U.S. Court on January 26, 2012 which resulted in the U. S. Court granting the U.S. Orders. The Utilities Order and the Bidding Procedures Order are relatively routine in nature and it is, in my view, appropriate to recognize and give effect to these orders.

6 With respect to the Final DIP Facility Order, it is noted that paragraph 6 of this Order contains a partial "roll up" provision wherein all Cash Collateral in the possession or control of Chapter 11 Debtors on December 12, 2011 (the "Petition Date") or coming into their possession after the Petition Date is deemed to have been remitted to the Pre-petition Secured Lender for application to and repayment of the Pre-petition revolving debt facility with a corresponding borrowing under the DIP Facility.

7 In making the Final DIP Facility Order, the Information Officer reports that the U.S. Court found that good cause had been shown for entry of the Final DIP Facility Order, as the Chapter 11 Debtors' ability to continue to use Cash Collateral was necessary to avoid immediate and irreparable harm to the Chapter 11 Debtors and their estates.

8 The granting of the Final DIP Facility Order was supported by the Unsecured Creditors' Committee. Certain objections were filed but the Order was granted after the U.S. Court heard the objections.

9 The Information Officer reports that Canadian unsecured creditors will be treated no less favourably than U.S. unsecured creditors. Further, since a number of Canadian unsecured creditors are employees of the Chapter 11 Debtors, these creditors benefit from certain priority claims which they would not be entitled to under Canadian insolvency proceedings.

10 The Information Officer and Chapter 11 Debtors recognize that in *CCAA* proceedings, a partial "roll up" provision would not be permissible as a result of s. 11.2 of the *CCAA*, which expressly provides that a DIP charge may not secure an obligation that exists before the Initial Order is made.

11 Section 49 of the *CCAA* provides that, in recognizing an order of a foreign court, the court may make any order that it considers appropriate, provided the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of the creditor or creditors.

12 It is necessary, in my view, to emphasize that this is a motion to recognize an order made in the "foreign main proceeding". The Final DIP Facility Order was granted after a hearing in the U.S. Court. Further, it appears from the affidavit of Mr. Mittman that, as of the end of December 2011, the Chapter 11 Debtors had borrowed $1 million under the Interim DIP Facility. The Cash Collateral on hand as of the Petition Date was effectively spent in the Chapter 11 Debtors' operations and replaced with advances under the Interim DIP Facility in December 2011 such that all cash in the Chapter 11 Debtors' accounts as of the date of the Final DIP Facility Order were proceeds from the Interim DIP Facility.

13 The Information Officer has reported that, in the circumstances, there will be no material prejudice to Canadian creditors if this court recognizes the Final DIP Facility, and that nothing is being done that is contrary to the applicable provisions of the *CCAA*. The Information Officer is of the view that recognition of the Final DIP Facility Order is appropriate in the circumstances.

14 A significant factor to take into account is that the Final DIP Facility Order was granted by the U.S. Court. In these circumstances, I see no basis for this court to second guess the decision of the U.S. Court.

15 Based on the foregoing, I have concluded that recognition of the Final DIP Facility Order is necessary for the protection of the debtor company's property and for the interests of the creditors.

16 In making this determination, I have also taken into account the provisions of s. 61(2) of the *CCAA* which is the public policy exception. This section reads: "Nothing in this Part prevents the court from refusing to do something that would be contrary to public policy".

17 The public policy exception has its origins in the UNCITRAL Model Law on Cross-Border Insolvency. Article 6 of the Model Law provides: "Nothing in this Law prevents the court from refusing to take an action governed by this Law if the action would be manifestly contrary to the public policy of this State". It is also important to note that the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency (paragraphs 86-89) makes specific reference to the fact that the public policy exceptions should be interpreted restrictively.

18 I am in agreement with the commentary in the Guide to Enactment to the effect that s. 61(2) should be interpreted restrictively. The Final DIP Facility Order does not, in my view, raise any public policies issues.

19 I am satisfied that it is appropriate to grant the requested relief. The motion is granted and an order has been signed in the form requested to give effect to the foregoing.

Motion granted.

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Tab 2

2010 ONSC 3974
Ontario Superior Court of Justice [Commercial List]

Xerium Technologies Inc., Re

2010 CarswellOnt 7712, 2010 ONSC 3974, 193 A.C.W.S. (3d) 1066, 71 C.B.R. (5th) 300

IN THE MATTER OF the Companies' Creditors Arrangement ACT, R.S.C. 1985, c. C-36, AS AMENDED

XERIUM TECHNOLOGIES, INC., IN ITS CAPACITY AS THE FOREIGN REPRESENTATIVE OF XERIUM TECHNOLOGIES, INC., HUYCK LICENSCO INC., STOWE WOODWARD LICENSCO LLC, STOWE WOODWARD LLC, WANGNER ITELPA I LLC, WANGNER ITELPA II LLC, WEAVEXX, LLC, XERIUM ASIA, LLC, XERIUM III (US) LIMITED, XERIUM IV (US) LIMITED, XERIUM V (US) LIMITED, XTI LLC, XERIUM CANADA INC., HUYCK.WANGNER AUSTRIA GMBH, XERIUM GERMANY HOLDING GMBH, AND XERIUM ITALIA S.P.A. (collectively, the "Chapter 11 Debtors") (Applicants)

C. Campbell J.

Heard: May 14, 2010
Judgment: September 28, 2010
Docket: 10-8652-00CL

Counsel: Derrick Tay, Randy Sutton for Applicants

Subject: Insolvency

MOTION by applicant for orders recognizing and giving effect to certain orders of U.S. Bankruptcy Court in Canada.

***C. Campbell J.*:**

1 The Recognition Orders sought in this matter exhibit the innovative and efficient employment of the provisions of Part IV of the *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C.36, as amended (the "CCAA") to cross border insolvencies.

2 Each of the "Chapter 11 Debtors" commenced proceedings on March 30, 2010 in the United States under Chapter 11 of Title 11 of the United States Bankruptcy Code (the "U.S. Bankruptcy Code") in the U.S. Bankruptcy Court for the District of Delaware (the "Chapter 11 Proceedings.")

3 On April 1, 2010, this Court granted the Recognition Order sought by, *inter alia*, the Applicant, Xerium Technologies Inc. ("Xerium") as the "Foreign Representative" of the Chapter 11 Debtors and recognizing the Chapter 11 Proceedings as a "foreign main proceeding" in respect of the Chapter 11 Debtors, pursuant to Part IV of the CCAA.

4 On various dates in April 2010, Judge Kevin J. Carey of the U.S. Bankruptcy Court made certain orders in respect of the Chapter 11 Debtors' ongoing business operations.

5 On May 12, 2010, Judge Carey confirmed the Chapter 11 Debtors' amended Joint Prepackaged Plan of Reorganization dated March 30, 2010 as supplemented (the "Plan") [1] pursuant to the U.S. Bankruptcy Code (the "U.S. Confirmation Order.")

6 Xerium sought in this motion to have certain orders made by the U.S. Bankruptcy Court in April 2010, the U.S Confirmation Order and the Plan recognized and given effect to in Canada.

7 The Applicant together with its direct and indirect subsidiaries (collectively, the "Company") are a leading global manufacturer and supplier of products used in the production of paper products.

8 Both Xerium, a Delaware limited liability company, Xerium Canada Inc. ("Xerium Canada"), a Canadian company, together with other entities forming part of the Chapter 11 Debtors are parties to an Amended and Restated Credit and Guarantee Agreement dated as of May 30, 2008 as borrowers, with various financial institutions and other persons as lenders. The Credit Facility is governed by the laws of the State of New York.

9 Due to a drop in global demand for paper products and in light of financial difficulties encountered by the Company due to the drop in demand in its products and is difficulty raising funds, the Company anticipated that it would not be in compliance with certain financial covenants under the Credit Facility for the period ended September 30, 2009. The Chapter 11 Debtors, their lenders under the Credit Facility, the Administrative Agent and the Secured Lender Ad Hoc Working Group entered into discussions exploring possible restructuring scenarios. The negotiations progressed smoothly and the parties worked toward various consensual restructuring scenarios.

10 The Plan was developed between the Applicant, its direct and indirect subsidiaries together with the Administrative Agent and the Secured Lender Ad Hoc Working Group.

11 Pursuant to the Plan, on March 2, 2010, the Chapter 11 Debtors commenced the solicitation of votes on the Plan and delivered copies of the Plan, the Disclosure Statement and the appropriate ballots to all holders of claims as of February 23, 2010 in the classes entitled to vote on the Plan.

12 The Disclosure Statement established 4:00 p.m. (prevailing Eastern time) on March 22, 2010 as the deadline for the receipt of ballots to accept or reject the Plan, subject to the Chapter 11 Debtors' right to extend the solicitation period. The Chapter 11 Debtors exercised their right to extend the solicitation period to 6:00 p.m. (prevailing Eastern time) on March 26, 2010. The Plan was overwhelmingly accepted by the two classes of creditors entitled to vote on the Plan.

13 On March 31, 2010, the U.S. Bankruptcy Court entered the Order (I) Scheduling a Combined Hearing to Consider (a) Approval of the Disclosure Statement, (b) Approval of Solicitation Procedures and Forms of Ballots, and (c) Confirmation of the Plan; (II) Establishing a Deadline to Object to the Disclosure Statement and the Plan; and (III) Approving the Form and Manner of Notice Thereof (the "Scheduling Order.")

14 Various orders were made by the U.S. Bankruptcy Court in April 2010, which orders were recognized by this Court.

15 On May 12, 2010, at the Combined Hearing, the U.S. Bankruptcy Court confirmed the Plan, and made a number of findings, *inter alia*, regarding the content of the Plan and the procedures underlying its consideration and approval by interested parties. These included the appropriateness of notice, the content of the Disclosure Statement, the voting process, all of which were found to meet the requirements of the U.S. Bankruptcy Code and fairly considered the interests of those affected.

16 The Plan provides for a comprehensive financial restructuring of the Chapter 11 Debtors' institutional indebtedness and capital structure. According to its terms, only Secured Swap Termination Claims, claims on account of the Credit Facility, Unsecured Swap Termination Claims, and Equity Interests in Xerium are "impaired" under the Plan. Holders of all other claims are unimpaired.

17 Under the Plan, the notional value of the Chapter 11 Debtors' outstanding indebtedness will be reduced from approximately U.S.$640 million to a notional value of approximately U.S.$480 million, and the Chapter 11 Debtors will have improved liquidity as a result of the extension of maturity dates under the Credit Facility and access to an U.S. $80 million Exit Facility.

18 The Plan provides substantial recoveries in the form of cash, new debt and equity to its secured lenders and swap counterparties and provides existing equity holders with more than $41.5 million in value.

19 Xerium has been unable to restructure its secured debt in any other manner than by its secured lenders voluntarily accepting equity and the package of additional consideration proposed to be provided to the secured lenders under the Plan.

20 The Plan benefits all of the Chapter 11 Debtors' stakeholders. It reflects a global settlement of the competing claims and interests of these parties, the implementation of which will serve to maximize the value of the Debtors' estates for the benefit of all parties in interest.

21 I conclude that the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Chapter 11 Debtors.

22 On April 1, 2010, the Recognition Order granted by this Court provided, among other things:

> (a) Recognition of the Chapter 11 Proceedings as a "foreign main proceeding" pursuant to Subsection 47(2) of the CCAA;
>
> (b) Recognition of the Applicant as the "foreign representative" in respect of the Chapter 11 Proceedings;
>
> (c) Recognition of and giving effect in Canada to the automatic stay imposed under Section 362 of the U.S. Bankruptcy Code in respect of the Chapter 11 Debtors;
>
> (d) Recognition of and giving effect in Canada to the U.S. First Day Orders in respect of the Chapter 11 Debtors;
>
> (e) A stay of all proceedings taken or that might be taken against the Chapter 11 Debtors under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
>
> (f) Restraint on further proceedings in any action, suit or proceeding against the Chapter 11 Debtors;
>
> (g) Prohibition of the commencement of any action, suit or proceeding against the Chapter 11 Debtors; and
>
> (h) Prohibition of the Chapter 11 Debtors from selling or otherwise disposing of, outside the ordinary course of its business, any of the Chapter 11 Debtors' property in Canada that relates to their business and prohibiting the Chapter 11 Debtors from selling or otherwise disposing of any of their other property in Canada, unless authorized to do so by the U.S. Bankruptcy Court.

23 I am satisfied that this Court does have the authority and indeed obligation to grant the recognition sought under Part IV of the CCAA. The recognition sought is precisely the kind of comity in international insolvency contemplated by Part IV of the CCAA.

24 Section 44 identifies the purpose of Part IV of the CCAA. It states

> The purpose of this Part is to provide mechanisms for dealing with cases of cross-border insolvencies and to promote
>
> (a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;
>
> (b) greater legal certainty for trade and investment;
>
> (c) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies;
>
> (d) the protection and the maximization of the value of debtor company's property; and

(e) the rescue of financially troubled businesses to protect investment and preserve employment.

25 I am satisfied that the provisions of the Plan are consistent with the purposes set out in s. 61(1) of the CCAA, which states:

> Nothing in this Part prevents the court, on the application of a foreign representative or any other interested person, from applying any legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives that are not inconsistent with the provisions of this Act.

26 In *Babcock & Wilcox Canada Ltd., Re* (2000), 18 C.B.R. (4th) 157 (Ont. S.C.J. [Commercial List]) at para. 21, this Court held that U.S. Chapter 11 proceedings are "foreign proceedings" for the purposes of the CCAA's cross-border insolvency provisions. The Court also set out a non exclusive or exhaustive list of factors that the Court should consider in applying those provisions.

27 The applicable factors from *Babcock & Wilcox Canada Ltd., Re* that dictate in favour of recognition of the U.S. Confirmation Order are set out in paragraph 45 of the Applicant's factum:

(a) The Plan is critical to the restructuring of the Chapter 11 Debtors as a global corporate unit;

(b) The Company is a highly integrated business and is managed centrally from the United States. The Credit Facility which is being restructured is governed by the laws of the State of New York. Each of the Chapter 11 Debtors is a borrower or guarantor, or both, under the Credit Facility;

(c) Confirmation of the Plan in the U.S. Court occurred in accordance with standard and well established procedures and practices, including Court approval of the Disclosure Statement and the process for the solicitation and tabulation of votes on the Plan;

(d) By granting the Initial Order in which the Chapter 11 Proceedings were recognized as Foreign Main Proceedings, this Honourable Court already acknowledged Canada as an ancillary jurisdiction in the reorganization of the Chapter 11 Debtors;

(e) The Applicant carries on business in Canada through a Canadian subsidiary, Xerium Canada, which is one of Chapter 11 Debtors and has had the same access and participation in the Chapter 11 Proceedings as the other Chapter 11 Debtors;

(f) Recognition of the U.S. Confirmation Order is necessary for ensuring the fair and efficient administration of this cross-border insolvency, whereby all stakeholders who hold an interest in the Chapter 11 Debtors are treated equitably.

28 Additionally, the Plan is consistent with the purpose of the CCAA. By confirming the Plan, the U.S. Bankruptcy Court has concluded that the Plan complies with applicable U.S. Bankruptcy principles and that, *inter alia*:

(a) it is made in good faith;

(b) it does not breach any applicable law;

(c) it is in the interests of the Chapter 11 Debtors' creditors and equity holders; and

(d) it will not likely be followed by the need for liquidation or further financial reorganization of the Chapter 11 Debtors.

These are principles which also underlie the CCAA, and thus dictate in favour of the Plan's recognition and implementation in Canada.

29 In granting the recognition order sought, I am satisfied that the implementation of the Plan in Canada not only helps to ensure the orderly completion to the Chapter 11 Debtors' restructuring process, but avoids what otherwise might have been a time-consuming and costly process were the Canadian part of the Applicant itself to make a separate restructuring application under the CCAA in Canada.

30 The Order proposed relieved the Applicant from the publication provisions of s. 53(b) of the CCAA. Based on the positive impact for creditors in Canada of the Plan as set out in paragraph 27 above, I was satisfied that given the cost involved in publication, the cost was neither necessary nor warranted.

31 The requested Order is to issue in the form signed.

Motion granted.

Footnotes

1 Capitalized terms used herein not otherwise defined shall have the meanings ascribed to them in the Plan. Unless otherwise stated, all monetary amounts contained herein are expressed in U.S. Dollars.

End of Document

Tab 3

2000 CarswellOnt 704
Ontario Superior Court of Justice [Commercial List]

Babcock & Wilcox Canada Ltd., Re

2000 CarswellOnt 704, [2000] O.J. No. 786, 18 C.B.R. (4th) 157, 5 B.L.R. (3d) 75, 95 A.C.W.S. (3d) 608

In the Matter of Section 18.6 of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

In the Matter of Babcock & Wilcox Canada Ltd.

Farley J.

Heard: February 25, 2000
Judgment: February 25, 2000
Docket: 00-CL-3667

Counsel: *Derrick Tay*, for Babcock & Wilcox Canada Ltd.
Paul Macdonald, for Citibank North America Inc., Lenders under the Post-Petition Credit Agreement.

Subject: Corporate and Commercial; Insolvency

APPLICATION by solvent corporation for interim order under s. 18.6 of *Companies' Creditors Arrangement Act.*

***Farley J.*:**

1 I have had the opportunity to reflect on this matter which involves an aspect of the recent amendments to the insolvency legislation of Canada, which amendments have not yet been otherwise dealt with as to their substance. The applicant, Babcock & Wilcox Canada Ltd. ("BW Canada"), a solvent company, has applied for an interim order under s. 18.6 of the *Companies' Creditors Arrangement Act* ("CCAA"):

> (a) that the proceedings commenced by BW Canada's parent U.S. corporation and certain other U.S. related corporations (collectively "BWUS") for protection under Chapter 11 of the U.S. Bankruptcy Code in connection with mass asbestos claims before the U.S. Bankruptcy Court be recognized as a "foreign proceeding" for the purposes of s. 18.6;
>
> (b) that BW Canada be declared a company which is entitled to avail itself of the provisions of s. 18.6;
>
> (c) that there be a stay against suits and enforcements until May 1, 2000 (or such later date as the Court may order) as to asbestos related proceedings against BW Canada, its property and its directors;
>
> (d) that BW Canada be authorized to guarantee the obligations of its parent to the DIP Lender (debtor in possession lender) and grant security therefor in favour of the DIP Lender; and
>
> (e) and for other ancillary relief.

2 In Chapter 11 proceedings under the U.S. Bankruptcy Code, the U.S. Bankruptcy Court in New Orleans issued a temporary restraining order on February 22, 2000 wherein it was noted that BW Canada may be subject to actions in Canada similar to the U.S. asbestos claims. U.S. Bankruptcy Court Judge Brown's temporary restraining order was directed against certain named U.S. resident plaintiffs in the asbestos litigation:

> . . . and towards all plaintiffs and potential plaintiffs in Other Derivative Actions, that they are hereby restrained further prosecuting Pending Actions or further prosecuting or commencing Other Derivative Actions against Non-Debtor Affiliates, until the Court decides whether to grant the Debtors' request for a preliminary injunction.

Judge Brown further requested the aid and assistance of the Canadian courts in carrying out the U.S. Bankruptcy Court's orders. The "Non-Debtor Affiliates" would include BW Canada.

3 Under the 1994 amendments to the U.S. Bankruptcy Code, the concept of the establishment of a trust sufficient to meet the court determined liability for a mass torts situations was introduced. I am advised that after many years of successfully resolving the overwhelming majority of claims against it on an individual basis by settlement on terms BWUS considered reasonable, BWUS has determined, as a result of a spike in claims with escalating demands when it was expecting a decrease in claims, that it is appropriate to resort to the mass tort trust concept. Hence its application earlier this week to Judge Brown with a view to eventually working out a global process, including incorporating any Canadian claims. This would be done in conjunction with its joint pool of insurance which covers both BWUS and BW Canada. Chapter 11 proceedings do not require an applicant thereunder to be insolvent; thus BWUS was able to make an application with a view towards the 1994 amendments (including s. 524(g)). This subsection would permit the U.S. Bankruptcy Court on confirmation of a plan of reorganization under Chapter 11 with a view towards rehabilitation in the sense of avoiding insolvency in a mass torts situation to:

> . . . enjoin entities from taking legal action for the purpose of directly or indirectly collecting, recovering, or receiving payment or recovery with respect to any claims or demand that, under a plan of reorganization, is to be paid in whole or in part by a trust.

4 In 1997, ss. 267-275 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("BIA") and s. 18.6 of the CCAA were enacted to address the rising number of international insolvencies ("1997 Amendments"). The 1997 Amendments were introduced after a lengthy consultation process with the insolvency profession and others. Previous to the 1997 Amendments, Canadian courts essentially would rely on the evolving common law principles of comity which permitted the Canadian court to recognize and enforce in Canada the judicial acts of other jurisdictions.

5 La Forest J in *Morguard Investments Ltd. v. De Savoye* (1990), 76 D.L.R. (4th) 256 (S.C.C.), at p. 269 described the principle of comity as:

> "Comity" in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and goodwill, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protections of its laws . . .

6 In *ATL Industries Inc. v. Han Eol Ind. Co.* (1995), 36 C.P.C. (3d) 288 (Ont. Gen. Div. [Commercial List]), at pp. 302-3 I noted the following:

> Allow me to start off by stating that I agree with the analysis of MacPherson J. in *Arrowmaster Inc. v. Unique Forming Ltd.* (1993), 17 O.R. (3d) 407 (Gen. Div.) when in discussing *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077, 76 D.L.R. (4th) 256, 52 B.C.L.R. (2d) 160, 122 N.R. 81, [1991] 2 W.W.R. 217, 46 C.P.C. (2d) 1, 15 R.P.R. (2d) 1, he states at p.411:
>
> > The leading case dealing with the enforcement of "foreign" judgments is the decision of the Supreme Court of Canada in *Morguard Investments, supra*. The question in that case was whether, and the circumstances in which, the judgment of an Alberta court could be enforced in British Columbia. A unanimous court, speaking through La Forest J., held in favour of enforceability and, in so doing, discussed in some detail the doctrinal principles governing inter-jurisdictional enforcement of orders. I think it fair to say that the overarching theme of La Forest J.'s reasons is the necessity and desirability, in a mobile global society, for governments and courts to

respect the orders made by courts in foreign jurisdictions with comparable legal systems, including substantive laws and rules of procedure. He expressed this theme in these words, at p. 1095:

> Modern states, however, cannot live in splendid isolation and do give effect to judgments given in other countries in certain circumstances. Thus a judgment *in rem*, such as a decree of divorce granted by the courts of one state to persons domiciled there, will be recognized by the courts of other states. In certain circumstances, as well, our courts will enforce personal judgments given in other states. Thus, we saw, our courts will enforce an action for breach of contract given by the courts of another country if the defendant was present there at the time of the action or has agreed to the foreign court's exercise of jurisdiction. *This, it was thought, was in conformity with the requirements of comity, the informing principle of private international law, which has been stated to be the deference and respect due by other states to the actions of a state legitimately taken within its territory. Since the state where the judgment was given has power over the litigants, the judgments of its courts should be respected.* (emphasis added in original)

Morguard Investments was, as stated earlier, a case dealing with the enforcement of a court order across provincial boundaries. However, the historical analysis in La Forest J.'s judgment, of both the United Kingdom and Canadian jurisprudence, and the doctrinal principles enunciated by the court are equally applicable, in my view, in a situation where the judgment has been rendered by a court in a foreign jurisdiction. This should not be an absolute rule - there will be some foreign court orders that should not be enforced in Ontario, perhaps because the substantive law in the foreign country is so different from Ontario's or perhaps because the legal process that generates the foreign order diverges radically from Ontario's process. (my emphasis added)

Certainly the substantive and procedural aspects of the U.S. Bankruptcy Code including its 1994 amendments are not so different and do not radically diverge from our system.

7 After reviewing La Forest J.'s definition of comity, I went on to observe at p. 316:

> As was discussed by J.G. Castel, *Canadian Conflicts of Laws*, 3rd ed. (Toronto: Butterworths, 1994) at p. 270, there is a presumption of validity attaching to a foreign judgment unless and until it is established to be invalid. It would seem that the same type of evidence would be required to impeach a foreign judgment as a domestic one: fraud practiced on the court or tribunal: see *Sun Alliance Insurance Co. v. Thompson* (1981), 56 N.S.R. (2d) 619, 117 A.P.R. 619 (T.D.), Sopinka, supra, at p. 992.

La Forest J. went on to observe in *Morguard* at pp. 269-70:

> In a word, the rules of private international law are grounded in the need in modern times to facilitate the flow of wealth, skills and people across state lines in a fair and orderly manner.
>
> . . . . .
>
> Accommodating the flow of wealth, skills and people across state lines has now become imperative. Under these circumstances, our approach to the recognition and enforcement of foreign judgments would appear ripe for reappraisal.

See also *Hunt v. T & N plc* (1993), 109 D.L.R. (4th) 16 (S.C.C.), at p. 39.

8 While *Morguard* was an interprovincial case, there is no doubt that the principles in that case are equally applicable to international matters in the view of MacPherson J. and myself in *Arrowmaster* (1993), 17 O.R. (3d) 407 (Ont. Gen. Div.), and *ATL* respectively. Indeed the analysis by La Forest J. was on an international plane. As a country whose well-being is so heavily founded on international trade and investment, Canada of necessity is very conscious of the desirability of invoking comity in appropriate cases.

9 In the context of cross-border insolvencies, Canadian and U.S. Courts have made efforts to complement, coordinate and where appropriate accommodate the proceedings of the other. Examples of this would include *Olympia & York Developments Ltd.*, *Ever fresh Beverages Inc.* and *Loewen Group Inc. v. Continental Insurance Co. of Canada* (1997), 48 C.C.L.I. (2d) 119 (B.C. S.C.). Other examples involve the situation where a multi-jurisdictional proceeding is specifically connected to one jurisdiction with that jurisdiction's court being allowed to exercise principal control over the insolvency process: see *Roberts v. Picture Butte Municipal Hospital* (1998), 23 C.P.C. (4th) 300 (Alta. Q.B.), at pp. 5-7 [[1998] A.J. No. 817]; *Microbiz Corp. v. Classic Software Systems Inc.* (1996), 45 C.B.R. (3d) 40 (Ont. Gen. Div.), at p. 4; *Tradewell Inc. v. American Sensors Electronics, Inc.*, 1997 WL 423075 (S.D.N.Y. 1997).

10 In *Roberts*, Forsythe J. at pp. 5-7 noted that steps within the proceedings themselves are also subject to the dictates of comity in recognizing and enforcing a U.S. Bankruptcy Court stay in the *Dow Corning* litigation [*Taylor v. Dow Corning Australia Pty. Ltd.* (December 19, 1997), Doc. 8438/95 (Australia Vic. Sup. Ct.)] as to a debtor in Canada so as to promote greater efficiency, certainty and consistency in connection with the debtor's restructuring efforts. Foreign claimants were provided for in the U.S. corporation's plan. Forsyth J. stated:

> Comity and cooperation are increasingly important in the bankruptcy context. *As internationalization increases, more parties have assets and carry on activities in several jurisdictions. Without some coordination there would be multiple proceedings, inconsistent judgments and general uncertainty*.
>
> *. . . I find that common sense dictates that these matters would be best dealt with by one court, and in the interest of promoting international comity it seems the forum for this case is in the U.S. Bankruptcy Court*. Thus, in either case, whether there has been an attornment or not, I conclude it is appropriate for me to exercise my discretion and apply the principles of comity and grant the Defendant's stay application. I reach this conclusion based on all the circumstances, including the clear wording of the U.S. Bankruptcy Code provision, the similar philosophies and procedures in Canada and the U.S., the Plaintiff's attornment to the jurisdiction of the U.S. Bankruptcy Court, and the incredible number of claims outstanding . . . (emphasis added)

11 The CCAA as remedial legislation should be given a liberal interpretation to facilitate its objectives. See *Hongkong Bank of Canada v. Chef Ready Foods Ltd.* (1990), 4 C.B.R. (3d) 311 (B.C. C.A.), at p. 320; *Lehndorff General Partner Ltd., Re* (1993), 17 C.B.R. (3d) 24 (Ont. Gen. Div. [Commercial List]).

12 David Tobin, the Director General, Corporate Governance Branch, Department of Industry in testifying before the Standing Committee on Industry regarding Bill C-5, An Act to amend the BIA, the CCAA and the Income Tax Act, stated at 1600:

> Provisions in Bill C-5 attempt to actually codify, which has always been the practice in Canada. They include the Court recognition of foreign representatives; Court authority to make orders to facilitate and coordinate international insolvencies; provisions that would make it clear that foreign representatives are allowed to commence proceedings in Canada, as per Canadian rules - however, they clarify that foreign stays of proceedings are not applicable but a foreign representative can apply to a court for a stay in Canada; and Canadian creditors and assets are protected by the bankruptcy and insolvency rules.

The philosophy of the practice in international matters relating to the CCAA is set forth in *Olympia & York Developments Ltd. v. Royal Trust Co.* (1993), 20 C.B.R. (3d) 165 (Ont. Gen. Div.), at p. 167 where Blair J. stated:

> The Olympia & York re-organization involves proceedings in three different jurisdictions: Canada, the United States and the United Kingdom. Insolvency disputes with international overtones and involving property and assets in a multiplicity of jurisdictions are becoming increasingly frequent. Often there are differences in legal concepts - sometimes substantive, sometimes procedural - between the jurisdictions. The Courts of the various jurisdictions should seek to cooperate amongst themselves, in my view, in facilitating the trans-border resolution of such disputes as a whole, where that can be done in a fashion consistent with their own fundamental principles of jurisprudence.

> The interests of international cooperation and comity, and the interests of developing at least some degree of certitude in international business and commerce, call for nothing less.

Blair J. then proceeded to invoke inherent jurisdiction to implement the Protocol between the U.S. Bankruptcy Court and the Ontario Court. See also my endorsement of December 20, 1995, in *Everfresh Beverages Inc.* where I observed: "I would think that this Protocol demonstrates the 'essence of comity' between the Courts of Canada and the United States of America." *Everfresh* was an example of the effective and efficient use of the Cross-Border Insolvency Concordat, adopted by the Council of the International Bar Association on May 31, 1996 (after being adopted by its Section on Business Law Council on September 17, 1995), which Concordat deals with, inter alia, principal administration of a debtor's reorganization and ancillary jurisdiction. See also the UNCITRAL Model Law on Cross-Border Insolvency.

13 Thus it seems to me that this application by BW Canada should be reviewed in light of (i) the doctrine of comity as analyzed in *Morguard, Arrowmaster* and *ATL, supra*, in regard to its international aspects; (ii) inherent jurisdiction; (iii) the aspect of the liberal interpretation of the CCAA generally; and (iv) the assistance and codification of the 1997 Amendments.

"Foreign proceeding" is defined in s. 18.6(1) as:

> In this section,
>
> > "foreign proceeding" means a judicial or administrative proceeding commenced outside Canada in respect of a debtor under a law relating to bankruptcy or insolvency and dealing with the collective interests of creditors generally; . . .

Certainly a U.S. Chapter 11 proceeding would fit this definition subject to the question of "debtor". It is important to note that the definition of "foreign proceeding" in s. 18.6 of the CCAA contains no specific requirement that the debtor be insolvent. In contrast, the BIA defines a "debtor" in the context of a foreign proceeding (Part XIII of the BIA) as follows:

> s. 267 In this Part,
>
> > "debtor" means an *insolvent person* who has property in Canada, a *bankrupt* who has property in Canada or a *person who has the status of a bankrupt* under foreign law in a foreign proceeding and has property in Canada; . . . (emphasis added)

I think it a fair observation that the BIA is a rather defined code which goes into extensive detail. This should be contrasted with the CCAA which is a very short general statute which has been utilized to give flexibility to meet what might be described as the peculiar and unusual situation circumstances. A general categorization (which of course is never completely accurate) is that the BIA may be seen as being used for more run of the mill cases whereas the CCAA may be seen as facilitating the more unique or complicated cases. Certainly the CCAA provides the flexibility to deal with the thornier questions. Thus I do not think it unusual that the draftees of the 1997 Amendments would have it in their minds that the provisions of the CCAA dealing with foreign proceedings should continue to reflect this broader and more flexible approach in keeping with the general provisions of the CCAA, in contrast with the corresponding provisions under the BIA. In particular, it would appear to me to be a reasonably plain reading interpretation of s. 18.6 that recourse may be had to s. 18.6 of the CCAA in the case of a solvent debtor. Thus I would conclude that the aspect of insolvency is not a condition precedent vis-a-vis the "debtor" in the foreign proceedings (here the Chapter 11 proceedings) for the proceedings in Louisiana to be a foreign proceeding under the definition of s. 18.6. I therefore declare that those proceedings are to be recognized as a "foreign proceeding" for the purposes of s. 18.6 of the CCAA.

14 It appears to me that my conclusion above is reinforced by an analysis of s. 18.6(2) which deals with concurrent filings by a debtor under the CCAA in Canada and corresponding bankruptcy or insolvency legislation in a foreign jurisdiction. This is not the situation here, but it would be applicable in the *Loewen* case. That subsection deals with the coordination of proceedings as to a "debtor company" initiated pursuant to the CCAA and the foreign legislation.

> s. 18.6(2). The court may, in respect of a *debtor company*, make such orders and grant such relief as it considers appropriate to facilitate, approve or implement arrangements that will result in a coordination of proceedings under the Act with any foreign proceeding. (emphasis added)

15 The definition of "debtor company" is found in the general definition section of the CCAA, namely s. 2 and that definition incorporates the concept of insolvency. Section 18.6(2) refers to a "debtor company" since only a "debtor company" can file under the CCAA to propose a compromise with its unsecured or secured creditors: ss. 3, 4 and 5 CCAA. See also s. 18.6(8) which deals with currency concessions "[w]here a compromise or arrangement is proposed in respect of a debtor company . . . ". I note that "debtor company" is not otherwise referred to in s. 18.6; however "debtor" is referred to in both definitions under s. 18.6(1).

16 However, s. 18.6(4) provides a basis pursuant to which a company such as BW Canada, a solvent corporation, may seek judicial assistance and protection in connection with a foreign proceeding. Unlike s. 18.6(2), s. 18.6(4) does not contemplate a full filing under the CCAA. Rather s. 18.6(4) may be utilized to deal with situations where, notwithstanding that a full filing is not being made under the CCAA, ancillary relief is required in connection with a foreign proceeding.

> s. 18.6(4) Nothing in this section prevents the court, on the application of a foreign representative or *any other interested persons*, from applying such legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives as are not inconsistent with the provisions of this Act. (emphasis added)

BW Canada would fit within "any interested person" to bring the subject application to apply the principles of comity and cooperation. It would not appear to me that the relief requested is of a nature contrary to the provisions of the CCAA.

17 Additionally there is s. 18.6(3) whereby once it has been established that there is a foreign proceeding within the meaning of s. 18.6(1) (as I have concluded there is), then this court is given broad powers and wide latitude, all of which is consistent with the general judicial analysis of the CCAA overall, to make any order it thinks appropriate in the circumstances.

> s. 18.6(3) An order of the court under this Section may be made on such terms and conditions as the court considers appropriate in the circumstances.

This subsection reinforces the view expressed previously that the 1997 Amendments contemplated that it would be inappropriate to pigeonhole or otherwise constrain the interpretation of s. 18.6 since it would be not only impracticable but also impossible to contemplate the myriad of circumstances arising under a wide variety of foreign legislation which deal generally and essentially with bankruptcy and insolvency but not exclusively so. Thus, the Court was entrusted to exercise its discretion, but of course in a judicial manner.

18 Even aside from that, I note that the Courts of this country have utilized inherent jurisdiction to fill in any gaps in the legislation and to promote the objectives of the CCAA. Where there is a gap which requires bridging, then the question to be considered is what will be the most practical common sense approach to establishing the connection between the parts of the legislation so as to reach a just and reasonable solution. See *Westar Mining Ltd., Re* (1992), 14 C.B.R. (3d) 88 (B.C. S.C.), at pp. 93-4; *Pacific National Lease Holding Corp. v. Sun Life Trust Co.* (1995), 34 C.B.R. (3d) 4 (B.C. C.A.), at p. 2; *Lehndorff General Partner Ltd.* at p. 30.

19 The Chapter 11 proceedings are intended to resolve the mass asbestos related tort claims which seriously threaten the long term viability of BWUS and its subsidiaries including BW Canada. BW Canada is a significant participant in the overall Babcock & Wilcox international organization. From the record before me it appears reasonably clear that there is an interdependence between BWUS and BW Canada as to facilities and services. In addition there is the fundamental element of financial and business stability. This interdependence has been increased by the financial assistance given by the BW Canada guarantee of BWUS' obligations.

20 To date the overwhelming thrust of the asbestos related litigation has been focussed in the U.S. In contradistinction BW Canada has not in essence been involved in asbestos litigation to date. The 1994 amendments to the U.S. Bankruptcy Code have provided a specific regime which is designed to deal with the mass tort claims (which number in the hundreds of thousands of claims in the U.S.) which appear to be endemic in the U.S. litigation arena involving asbestos related claims as well as other types of mass torts. This Court's assistance however is being sought to stay asbestos related claims against BW Canada with a view to this stay facilitating an environment in which a global solution may be worked out within the context of the Chapter 11 proceedings trust.

21 In my view, s. 18.6(3) and (4) permit BW Canada to apply to this Court for such a stay and other appropriate relief. Relying upon the existing law on the recognition of foreign insolvency orders and proceedings, the principles and practicalities discussed and illustrated in the Cross-Border Insolvency Concordat and the UNCITRAL Model Law on Cross-Border Insolvencies and inherent jurisdiction, all as discussed above, I would think that the following may be of assistance in advancing guidelines as to how s. 18.6 should be applied. I do not intend the factors listed below to be exclusive or exhaustive but merely an initial attempt to provide guidance:

(a) The recognition of comity and cooperation between the courts of various jurisdictions are to be encouraged.

(b) Respect should be accorded to the overall thrust of foreign bankruptcy and insolvency legislation in any analysis, unless in substance generally it is so different from the bankruptcy and insolvency law of Canada or perhaps because the legal process that generates the foreign order diverges radically from the process here in Canada.

(c) All stakeholders are to be treated equitably, and to the extent reasonably possible, common or like stakeholders are to be treated equally, regardless of the jurisdiction in which they reside.

(d) The enterprise is to be permitted to implement a plan so as to reorganize as a global unit, especially where there is an established interdependence on a transnational basis of the enterprise and to the extent reasonably practicable, one jurisdiction should take charge of the principal administration of the enterprise's reorganization, where such principal type approach will facilitate a potential reorganization and which respects the claims of the stakeholders and does not inappropriately detract from the net benefits which may be available from alternative approaches.

(e) The role of the court and the extent of the jurisdiction it exercises will vary on a case by case basis and depend to a significant degree upon the court's nexus to that enterprise; in considering the appropriate level of its involvement, the court would consider:

(i) the location of the debtor's principal operations, undertaking and assets;

(ii) the location of the debtor's stakeholders;

(iii) the development of the law in each jurisdiction to address the specific problems of the debtor and the enterprise;

(iv) the substantive and procedural law which may be applied so that the aspect of undue prejudice may be analyzed;

(v) such other factors as may be appropriate in the instant circumstances.

(f) Where one jurisdiction has an ancillary role,

(i) the court in the ancillary jurisdiction should be provided with information on an ongoing basis and be kept apprised of developments in respect of that debtor's reorganizational efforts in the foreign jurisdiction;

(ii) stakeholders in the ancillary jurisdiction should be afforded appropriate access to the proceedings in the principal jurisdiction.

(g) As effective notice as is reasonably practicable in the circumstances should be given to all affected stakeholders, with an opportunity for such stakeholders to come back into the court to review the granted order with a view, if thought desirable, to rescind or vary the granted order or to obtain any other appropriate relief in the circumstances.

22 Taking these factors into consideration, and with the determination that the Chapter 11 proceedings are a "foreign proceeding" within the meaning of s. 18.6 of the CCAA and that it is appropriate to declare that BW Canada is entitled to avail itself of the provisions of s. 18.6, I would also grant the following relief. There is to be a stay against suits and enforcement as requested; the initial time period would appear reasonable in the circumstances to allow BWUS to return to the U.S. Bankruptcy Court. Assuming the injunctive relief is continued there, this will provide some additional time to more fully prepare an initial draft approach with respect to ongoing matters. It should also be recognized that if such future relief is not granted in the U.S. Bankruptcy Court, any interested person could avail themselves of the "comeback" clause in the draft order presented to me and which I find reasonable in the circumstances. It appears appropriate, in the circumstances that BW Canada guarantee BWUS' obligations as aforesaid and to grant security in respect thereof, recognizing that same is permitted pursuant to the general corporate legislation affecting BW Canada, namely the *Business Corporations Act* (Ontario). I note that there is also a provision for an "Information Officer" who will give quarterly reports to this Court. Notices are to be published in the Globe & Mail (National Edition) and the National Post. In accordance with my suggestion at the hearing, the draft order notice has been revised to note that persons are alerted to the fact that they may become a participant in these Canadian proceedings and further that, if so, they may make representations as to pursuing their remedies regarding asbestos related claims in Canada as opposed to the U.S. As discussed above the draft order also includes an appropriate "comeback" clause. This Court (and I specifically) look forward to working in a cooperative judicial way with the U.S. Bankruptcy Court (and Judge Brown specifically).

23 I am satisfied that it is appropriate in these circumstances to grant an order in the form of the revised draft (a copy of which is attached to these reasons for the easy reference of others who may be interested in this area of s. 18.6 of the CCAA).

24 Order to issue accordingly.

Application granted.

APPENDIX

Court File No. 00-CL-3667

SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR. JUSTICE FARLEY	FRIDAY, THE 25{TH} DAY OF FEBRUARY, 2000

IN THE MATTER OF S. 18.6 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF BABCOCK & WILCOX CANADA LTD.

INITIAL ORDER

THIS MOTION made by the Applicant Babcock & Wilcox Canada Ltd. for an Order substantially in the form attached to the Application Record herein was heard this day, at 393 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the Affidavit of Victor J. Manica sworn February 23, 2000 (the "Manica Affidavit"), and on notice to the counsel appearing, and upon being advised that no other person who might be interested in these proceedings was served with the Notice of Application herein.

SERVICE

1. *THIS COURT ORDERS* that the time for service of the Notice of Application and the Affidavit in support of this Application be and it is hereby abridged such that the Application is properly returnable today, and, further, that any requirement for service of the Notice of Application and of the Application Record upon any interested party, other than the parties herein mentioned, is hereby dispensed with.

RECOGNITION OF THE U.S. PROCEEDINGS

2. *THIS COURT ORDERS AND DECLARES* that the proceedings commenced by the Applicant's United States corporate parent and certain other related corporations in the United States for protection under Chapter 11 of the U.S. Bankruptcy Code in connection with asbestos claims before the U.S. Bankruptcy Court (the "U.S. Proceedings") be and hereby is recognized as a "foreign proceeding" for purposes of Section 18.6 of the Companies' Creditors Arrangement Act, R.S.C. 1985, c.C-36, as amended, (the "CCAA").

APPLICATION

3. *THIS COURT ORDERS AND DECLARES* that the Applicant is a company which is entitled to relief pursuant to s. 18.6 of the CCAA.

PROTECTION FROM ASBESTOS PROCEEDINGS

4. *THIS COURT ORDERS* that until and including May 1, 2000, or such later date as the Court may order (the "Stay Period"), no suit, action, enforcement process, extra-judicial proceeding or other proceeding relating to, arising out of or in any way connected to damages or loss suffered, directly or indirectly, from asbestos, asbestos contamination or asbestos related diseases ("Asbestos Proceedings") against or in respect of the Applicant, its directors or any property of the Applicant, wheresoever located, and whether held by the Applicant in whole or in part, directly or indirectly, as principal or nominee, beneficially or otherwise shall be commenced, and any Asbestos Proceedings against or in respect of the Applicant, its directors or the Applicant's Property already commenced be and are hereby stayed and suspended.

5. *THIS COURT ORDERS* that during the Stay Period, the right of any person, firm, corporation, governmental authority or other entity to assert, enforce or exercise any right, option or remedy arising by law, by virtue of any agreement or by any other means, as a result of the making or filing of these proceedings, the U.S. Proceedings or any allegation made in these proceedings or the U.S. Proceedings be and is hereby restrained.

DIP FINANCING

6. *THIS COURT ORDERS* that the Applicant is hereby authorized and empowered to guarantee the obligations of its parent, The Babcock & Wilcox Company, to Citibank, N.A., as Administrative Agent, the Lenders, the Swing Loan Lender, and Issuing Banks (as those terms are defined in the Post-Petition Credit Agreement (the "Credit Agreement")) dated as of February 22, 2000 (collectively, the "DIP Lender"), and to grant security (the "DIP Lender's Security") for such guarantee substantially on the terms and conditions set forth in the Credit Agreement.

7. *THIS COURT ORDERS* that the obligations of the Applicant pursuant to the Credit Agreement, the DIP Lender's Security and all the documents delivered pursuant thereto constitute legal, valid and binding obligations of the Applicant enforceable against it in accordance with the terms thereof, and the payments made and security granted by the Applicant pursuant to such documents do not constitute fraudulent preferences, or other challengeable or reviewable transactions under any applicable law.

8. *THIS COURT ORDERS* that the DIP Lender's Security shall be deemed to be valid and effective notwithstanding any negative covenants, prohibitions or other similar provisions with respect to incurring debt or the creation of liens or security contained in any existing agreement between the Applicant and any lender and that, notwithstanding any provision to the contrary in such agreements,

(a) the execution, delivery, perfection or registration of the DIP Lender's Security shall not create or be deemed to constitute a breach by the Applicant of any agreement to which it is a party, and

(b) the DIP Lender shall have no liability to any person whatsoever as a result of any breach of any agreement caused by or resulting from the Applicant entering into the Credit Agreement, the DIP Lender's Security or other document delivered pursuant thereto.

REPORT AND EXTENSION OF STAY

9. As part of any application by the Applicant for an extension of the Stay Period:

(a) the Applicant shall appoint Victor J. Manica, or such other senior officer as it deems appropriate from time to time, as an information officer (the "Information Officer");

(b) the Information Officer shall deliver to the Court a report at least once every three months outlining the status of the U.S. Proceeding, the development of any process for dealing with asbestos claims and such other information as the Information Officer believes to be material (the "Information Reports"); and

(c) the Applicant and the Information Officer shall incur no liability or obligation as a result of the appointment of the Information Officer or the fulfilment of the duties of the Information Officer in carrying out the provisions of this Order and no action or other proceedings shall be commenced against the Applicant or Information Officer as an result of or relating in any way to the appointment of the Information Officer or the fulfilment of the duties of the Information Officer, except with prior leave of this Court and upon further order securing the solicitor and his own client costs of the Information Officer and the Applicant in connection with any such action or proceeding.

SERVICE AND NOTICE

10. *THIS COURT ORDERS* that the Applicant shall, within fifteen (15) business days of the date of entry of this Order, publish a notice of this Order in substantially the form attached as Schedule "A" hereto on two separate days in the Globe & Mail (National Edition) and the National Post.

11. *THIS COURT ORDERS* that the Applicant be at liberty to serve this Order, any other orders in these proceedings, all other proceedings, notices and documents by prepaid ordinary mail, courier, personal delivery or electronic transmission to any interested party at their addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

MISCELLANEOUS

12. *THIS COURT ORDERS* that notwithstanding anything else contained herein, the Applicant may, by written consent of its counsel of record herein, agree to waive any of the protections provided to it herein.

13. *THIS COURT ORDERS* that the Applicant may, from time to time, apply to this Court for directions in the discharge of its powers and duties hereunder or in respect of the proper execution of this Order.

14. *THIS COURT ORDERS* that, notwithstanding any other provision of this Order, any interested person may apply to this Court to vary or rescind this order or seek other relief upon 10 days' notice to the Applicant and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

15. *THIS COURT ORDERS AND REQUESTS* the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada (including the assistance of any court in Canada pursuant to Section 17 of the CCAA) and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States and the states or other subdivisions of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

Schedule "A"

NOTICE

RE: IN THE MATTER OF S. 18.6 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED (the "CCAA")

AND IN THE MATTER OF BABCOCK & WILCOX CANADA LTD.

PLEASE TAKE NOTICE that this notice is being published pursuant to an Order of the Superior Court of Justice of Ontario made February 25, 2000. The corporate parent of Babcock & Wilcox Canada Ltd. and certain other affiliated corporations in the United States have filed for protection in the United States under Chapter 11 of the Bankruptcy Code to seek, as the result of recent, sharp increases in the cost of settling asbestos claims which have seriously threatened the Babcock & Wilcox Enterprise's long term health, protection from mass asbestos claims to which they are or may become subject. Babcock & Wilcox Canada Ltd. itself has not filed under Chapter 11 but has sought and obtained an interim order under Section 18.6 of the CCAA affording it a stay against asbestos claims in Canada. Further application may be made to the Court by Babcock & Wilcox Canada Ltd. to ensure fair and equal access for Canadians with asbestos claims against Babcock & Wilcox Canada Ltd. to the process established in the United States. Representations may also be made by parties who would prefer to pursue their remedies in Canada.

Persons who wish to be a party to the Canadian proceedings or to receive a copy of the order or any further information should contact counsel for Babcock & Wilcox Canada Ltd., Derrick C. Tay at Meighen Demers (Telephone (416) 340-6032 and Fax (416) 977-5239).

DATED this day of, 2000 at Toronto, Canada

Tab 4

2001 CarswellOnt 1830
Ontario Superior Court of Justice [Commercial List]

Matlack Inc., Re

2001 CarswellOnt 1830, [2001] O.J. No. 6121, [2001] O.T.C. 382, 26 C.B.R. (4th) 45

In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, Section 18.6 as Amended

In the Matter of an Application of Matlack, Inc. and the Other Parties Set Out in Schedule "A" Ancillary to Proceedings Under Chapter 11 of the United States Bankruptcy Code

Matlack, Inc. and the Other Parties Set Out in Schedule "A", Applicant

Farley J.

Heard: April 19, 2001
Judgment: April 19, 2001
Docket: 01-CL-4109

Counsel: *E. Bruce Leonard*, *Shahana Kar*, for Applicant, Matlack Inc.

Subject: Insolvency; International; Corporate and Commercial

APPLICATION by foreign bankrupt for recognition of proceedings commenced pursuant to Chapter 11 of United States *Bankruptcy Code* to be recognized as "foreign proceeding" for purpose of *Companies' Creditors Arrangement Act*, for stay of proceedings commenced by creditor and for ancillary relief.

Endorsement. *Farley J.*:

1 This was an application pursuant to section 18.6 of the *Companies' Creditors Arrangement Act* ("CCAA") for recognition of the proceedings commenced by the applicants in the U.S. Bankruptcy Court for the District of Delaware for relief under Chapter 11 of the United States Bankruptcy Code be recognized as a "foreign proceeding" for the purposes of the CCAA and to have this Court issue a stay of proceedings compatible with the Chapter 11 stay and for ancillary relief. That Order is granted with the usual comeback clause and subject to its expiry being May 11, 2001 unless otherwise extended.

2 The one applicant Matlack, Inc. ("Matlack") is a Pennsylvania corporation which is in the business of transporting chemical products throughout the United States, Mexico and Canada. It has developed a substantial Canadian business over the past 20 years and it currently operates a large leased facility in Ontario from which its Canadian licensed fleet services customers throughout Ontario and Quebec. Matlack's Canadian operations are fully integrated into Matlack's North American enterprise from both an operational and financial standpoint.

3 On March 29, 2001, Matlack and its affiliated applicants filed for relief under Chapter 11 and obtained relief precluding creditors subject to the U.S. Bankruptcy Court from commencing or continuing proceedings against the applicants. It is in the interests of all creditors and stakeholders of Matlack that its reorganization proceed in a coordinated and integrated fashion. The objective of such coordination is to ensure that creditors are treated as equitably and fairly as possible, *wherever they are located*. Harmonization of proceedings in the U.S. and in Canada will create the most stable conditions under which a successful reorganization can be achieved and will allow for judicial supervision of all of Matlack's assets and enterprise throughout the two jurisdictions. I note that a Canadian creditor of Matlack has

recently seized some of Matlack's assets and intends to sell same in satisfaction of Matlack's obligations to it. It would seem to me that in the context of the proceedings, such a seizure would be of a preferential nature and thus unfair and prejudicial to the interests of Matlack's creditors generally.

4 Canadian courts have consistently recognized and applied the principles of comity. See *Morguard Investments Ltd. v. DeSavoye* (1990), 76 D.L.R. (4th) 256; *Arrowmaster Inc. v. Unique Forming Ltd.* (1993), 17 O.R. (3d) 407 (Ont. Gen. Div.); *ATL Industries Inc. v. Han Eol Ind. Co.* (1995), 36 C.P.C. (3d) 288 (Ont. Gen. Div. [Commercial List]); *Re Babcock & Wilcox Canada Ltd.* (2000), 18 C.B.R. (4th) 157 (Ont. S.C.J. [Commercial List]), at pp. 160-2.

5 In an increasingly commercially integrated world, countries cannot live in isolation and refuse to recognize foreign judgments and orders. The Court's recognition of a foreign proceeding should depend on whether there is a real and substantial connection between the matter and the jurisdiction. The determination of whether a sufficient connection exists between a jurisdiction and a matter should be based on considerations of order, predictability and fairness rather than on a mechanical analysis of connections between the matter and the jurisdiction. See *Morguard supra*; *Hunt v. T & N plc* (1993), 109 D.L.R. (4th) 16 (S.C.C.).

6 I concur with what Forsyth J. stated in *Roberts v. Picture Butte Municipal Hospital* (1998), [1999] 4 W.W.R. 443, 64 Alta. L.R. (3d) 218, [1998] A.J. No. 817 (Alta. Q.B.), at pp. 5-7 (A.J.):

> Comity and cooperation are increasingly important in the bankruptcy context. *As internationalization increases, more parties have assets and carry on activities in several jurisdictions. Without some coordination, there would be multiple proceedings, inconsistent judgments and general uncertainty*.
>
> *...I find that common sense dictates that these matters would be best dealt with by one Court, and in the interest of promoting international comity it seems the forum for this case is the U.S. Bankruptcy Court*. Thus, in either case, whether there has been attornment or not, I conclude it is appropriate for me to exercise my discretion and apply the principles of comity and grant the Defendant's stay application. I reach this conclusion based on all the circumstances, including the clear wording of the U.S. Bankruptcy Code provision, the similar philosophies and procedures in Canada and the U.S., the Plaintiff's attornment to the jurisdiction of the U.S. Bankruptcy Court, and the incredible number of claims outstanding... (emphasis added)

7 Based on principles of comity, where appropriate this Court has the jurisdiction to stay proceedings commenced against a party that has filed for bankruptcy protection in the U.S. An Ontario Court can accept the jurisdiction of a U.S. Bankruptcy Court over moveable property in Ontario of an American company which has become subject to a Chapter 11 order. See *Roberts*, *supra*; *Borden & Elliot v. Winston Industries Inc.* (November 1, 1983), Doc. 352/83 (Ont. H.C.).

8 Where a cross-border insolvency proceeding is most closely connected to one jurisdiction, it is appropriate for the Court in that jurisdiction to exercise principal control over the insolvency process in light of the principles of comity and in order to avoid a multiplicity of proceedings. See *Microbiz Corp. v. Classic Software Systems Inc.* (1996), [1996] O.J. No. 5094 (Ont. Gen. Div.).

9 Section 18.6(1) of the CCAA provides the following definition:

> "foreign proceeding" means a judicial or administrative proceeding commenced outside Canada in respect of a debtor under a law relating to bankruptcy or insolvency and dealing with the collective interests of creditors generally;

The U.S. Bankruptcy Code's Chapter 11 proceedings would be such a foreign proceeding.

10 As I indicated in *Babcock*, *supra*, at p. 166: "Section 18.6(4) may be utilized to deal with situations where, notwithstanding that a full filing is not being made under the CCAA, ancillary relief is required in connection with a foreign proceeding". Accordingly, it is appropriate for Matlack to be granted ancillary relief in recognizing the Chapter

11 proceedings and in enforcing the stay of proceedings resulting therefrom. In addition this Court can also grant relief pursuant to section 18.6(5). A stay in Canada would promote a stable atmosphere with a view to the reorganization of Matlack and its affiliates while allowing creditors, *wherever situate*, to be treated as equitably as possible. The stay would also assist with respect to claimants in Canada attempting to seize assets so as to get a leg up on the other creditors. See *Babcock*, *supra*, at pp. 165-6. Aside from the *Babcock* case, see also *Re GST Telecommunications Inc.* (May 18, 2000), Ground J. and *Re Grace Canada Inc.* (April 4, 2001), Farley J.

11 It would also seem to me that the relief requested is appropriate and in accordance with the principles set down in the Transnational Insolvency Project of the American Law Institute ("ALI"). This Project involved jurists, practitioners and academics from the NAFTA countries — the U.S., Mexico and Canada — and was completed as to the Restatement of the Law in 2000 after six years of analysis. [1] As a disclaimer, I should note that it was my privilege to tag along on this Project with the other participants who are recognized as outstanding in their fields.

12 The Project continues with the development of implementation and practical aids. Most recently this consists of the *Guidelines Applicable to Court-to-Court Communications on Cross-Border Cases*. I understand that Judge Mary Walrath is handling the Chapter 11 case. It will be my pleasure to work in coordination with her on this cross-border proceeding. To assist further with the handling of these matters, I would approve the proposed Protocol from the Canadian side, including what I understand may be the first opportunity to incorporate the *Communication Guidelines*, such to be effective if, as and when Judge Walrath is satisfied with same from the U.S. side.

13 A copy of the ALI Guidelines and the Matlack Protocol are annexed to these reasons for the benefit of other counsel involved in anything similar.

14 Order to issue accordingly.

The American Law Institute

TRANSNATIONAL INSOLVENCY PROJECT

PRINCIPLES OF COOPERATION IN TRANSNATIONAL INSOLVENCY CASES AMONG THE MEMBERS OF THE NORTH AMERICAN FREE TRADE AGREEMENT

Submitted by the Council to the Members of The American Law Institute for Discussion at the Seventy-Seventh Annual Meeting on May 15, 16, 17, and 18, 2000

The Executive Office

THE AMERICAN LAW INSTITUTE

4025 Chestnut Street

Philadelphia, Pa. 19104-3099

Amended — February 12, 2001

Appendix 2

Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases

Introduction:

One of the most essential elements of cooperation in cross-border cases is communication among the administrating authorities of the countries involved. Because of the importance of the courts in insolvency and reorganization

proceedings, it is even more essential that the supervising courts be able to coordinate their activities to assure the maximum available benefit for the stakeholders of financially troubled enterprises.

These Guidelines are intended to enhance coordination and harmonization of insolvency proceedings that involve more than one country through communications among the jurisdictions involved. Communications by judges directly with judges or administrators in a foreign country, however, raise issues of credibility and proper procedures. The context alone is likely to create concern in litigants unless the process is transparent and clearly fair. Thus, communication among courts in cross-border cases is both more important and more sensitive than in domestic cases. These Guidelines encourage such communications while channeling them through transparent procedures. The Guidelines are meant to permit rapid cooperation in a developing insolvency case while ensuring due process to all concerned.

The Guidelines at this time contemplate application only between Canada and the United States, because of the very different rules governing communications with Principles of Cooperation courts and among courts in Mexico. Nonetheless, a Mexican Court might choose to adopt some or all of these Guidelines for communications by a sindico with foreign administrators or courts.

A Court intending to employ the Guidelines — in whole or part, with or without modifications — should adopt them formally before applying them. A Court may wish to make its adoption of the Guidelines contingent upon, or temporary until, their adoption by other courts concerned in the matter. The adopting Court may want to make adoption or continuance conditional upon adoption of the Guidelines by the other Court in a substantially similar form, to ensure that judges, counsel, and parties are not subject to different standards of conduct.

The Guidelines should be adopted following such notice to the parties and counsel as would be given under local procedures with regard to any important procedural decision under similar circumstances. If communication with other courts is urgently needed, the local procedures, including notice requirements, that are used in urgent or emergency situations should be employed, including, if appropriate, an initial period of effectiveness, followed by further consideration of the Guidelines at a later time. Questions about the parties entitled to such notice (for example, all parties or representative parties or representative counsel) and the nature of the court's consideration of any objections (for example, with or without a hearing) are governed by the Rules of Procedure in each jurisdiction and are not addressed in the Guidelines.

The Guidelines are not meant to be static, but are meant to be adapted and modified to fit the circumstances of individual cases and to change and evolve as the international insolvency community gains experience from working with them. They are to apply only in a manner that is consistent with local procedures and local ethical requirements. They do not address the details of notice and procedure that depend upon the law and practice in each jurisdiction. However, the Guidelines represent approaches that are likely to be highly useful in achieving efficient and just resolutions of cross-border insolvency issues. Their use, with such modifications and under such circumstances as may be appropriate in a particular case, is therefore recommended.

Guideline 1

Except in circumstances of urgency, prior to a communication with another Court, the Court should be satisfied that such a communication is consistent with all applicable Rules of Procedure in its country. Where a Court intends to apply these Guidelines (in whole or in part and with or without modifications), the Guidelines to be employed should, wherever possible, be formally adopted before they are applied. Coordination of Guidelines between courts is desirable and officials of both courts may communicate in accordance with Guideline 8(d) with regard to the application and implementation of the Guidelines.

Guideline 2

A Court may communicate with another Court in connection with matters relating to proceedings before it for the purposes of coordinating and harmonizing proceedings before it with those in the other jurisdiction.

Guideline 3

A Court may communicate with an Insolvency Administrator in another jurisdiction or an authorized Representative of the Court in that jurisdiction in connection with the coordination and harmonization of the proceedings before it with the proceedings in the other jurisdiction.

Guideline 4

A Court may permit a duly authorized Insolvency Administrator to communicate with a foreign Court directly, subject to the approval of the foreign Court, or through an Insolvency Administrator in the other jurisdiction or through an authorized Representative of the foreign Court on such terms as the Court considers appropriate.

Guideline 5

A Court may receive communications from a foreign Court or from an authorized Representative of the foreign Court or from a foreign Insolvency Administrator and should respond directly if the communication is from a foreign Court (subject to Guideline 7 in the case of two-way communications) and may respond directly or through an authorized Representative of the Court or through a duly authorized Insolvency Administrator if the communication is from a foreign Insolvency Administrator, subject to local rules concerning ex parte communications.

Guideline 6

Communications from a Court to another Court may take place by or through the Court:

(a) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings, or other documents directly to the other Court and providing advance notice to counsel for affected parries in such manner as the Court considers appropriate;

(b) Directing counsel or a foreign or domestic Insolvency Administrator to transmit or deliver copies of documents, pleadings, affidavits, factums, briefs, or other documents that are filed or to be filed with the Court to the other Court in such fashion as may be appropriate and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;

(c) Participating in two-way communications with the other Court by telephone or video conference call or other electronic means in which case Guideline 7 shall apply.

Guideline 7

In the event of communications between the Courts in accordance with Guidelines 2 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by either of the two Courts:

(a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;

(b) The communication between the Courts should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of both Courts, should be treated as an official transcript of the communication;

(c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of either Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Courts may consider appropriate.

(d) The time and place for communications between the Courts should be to the satisfaction of both Courts. Personnel other than Judges in each Court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by either of the Courts.

Guideline 8

In the event of communications between the Court and an authorized Representative of the foreign Court or a foreign Insolvency Administrator in accordance with Guidelines 3 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by the Court:

(a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;

(b) The communication should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of the Court, can be treated as an official transcript of the communication;

(c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of the Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to the other Court and to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Court may consider appropriate;

(d) The time and place for the communication should be to the satisfaction of the Court. Personnel of the Court other than Judges may communicate fully with the authorized Representative of the foreign Court or the foreign Insolvency Administrator to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by the Court.

Guideline 9

A Court may conduct a joint hearing with another Court. In connection with any such joint hearing, the following should apply, unless otherwise ordered or unless otherwise provided in any previously approved Protocol applicable to such joint hearing:

(a) Each Court should be able to simultaneously hear the proceedings in the other Court.

(b) Evidentiary or written materials filed or to be filed in one Court should, in accordance with the Directions of that Court, be transmitted to the other Court to made available electronically in a publicly accessible system in advance of the hearing. Transmittal of such material to the other Court or its public availability in an electronic system should not subject the party filing the material in one Court to the jurisdiction of the other Court.

(c) Submissions or applications by the representative or any party should be made only to the Court in which the representative making the submissions is appearing unless the representative is specifically given permission by the other Court to make submission to it.

(d) Subject to Guideline 7(b), the Court should be entitled to communicate with the other Court in advance of a joint hearing, with or without counsel being present, to establish Guidelines for the orderly making of submissions and rendering of decisions by the Courts, and to coordinate and resolve any procedural, administrative, or preliminary matters relating to the joint hearing.

(e) Subject to Guideline 7(b), the Court, subsequent to the joint hearing, should be entitled to communicate with the other Court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both Courts and to coordinate and resolve any procedural or nonsubstantive matters relating to the joint hearing.

Guideline 10

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, recognize and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in the other jurisdiction without the need for further proof of exemplification thereof.

Guideline 11

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, accept that Orders made in the proceedings in the other jurisdiction were duly and properly made or entered on or about their respective dates and accept that such Orders require no further proof or exemplification for purposes of the proceedings before it, subject to all such proper reservations as in the opinion of the Court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such Orders.

Guideline 12

The Court may coordinate proceedings before it with proceedings in another jurisdiction by establishing a Service List which may include parties that are entitled to receive notice of proceedings before the Court in the other jurisdiction ("Non-Resident Parties"). All notices, applications, motions, and other materials served for purposes of the proceedings before the Court may be ordered to also be provided to or served on the Non-Resident Parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the Court in accordance with the procedures applicable in the Court.

Guideline 13

The Court may issue an Order or issue Directions permitting the foreign Insolvency Administrator or a representative of creditors in the proceedings in the other jurisdiction or an authorized Representative of the Court in the other jurisdiction to appear and be heard by the Court without thereby becoming subject to the jurisdiction of the Court.

Guideline 14

The Court may direct that any stay of proceedings affecting the parties before it shall, subject to further order of the Court, not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications or motions before the other Court on such terms and conditions as it considers appropriate. Court-to-Court communications in accordance with Guidelines 6 and 7 hereof may take place if an application of motion brought before the Court affects or might affect issues or proceedings in the Court in the other jurisdiction.

Guideline 15

A Court may communicate with a Court in another jurisdiction or with an authorized Representative of such Court in the manner prescribed by these Guidelines for purposes of coordinating and harmonizing proceedings before it with proceedings in the other jurisdiction regardless of the form of the proceedings before it or before the other Court wherever there is commonality among the issues and/or the parties in the proceedings. The Court should, absent compelling reasons to the contrary, so communicate with the Court in the other jurisdiction where the interests of justice so require.

Guideline 16

Directions issued by the Court under these Guidelines are subject to such amendments, modifications, and extensions as may be considered appropriate by the Court for the purposes described above and to reflect the changes and developments from time to time in the proceedings before it and before the other Court. Any Directions may be supplemented, modified, and restated from time to time and such modifications, amendments, and restatements should become effective upon being accepted by both Courts. If either Court intends to supplement, change, or abrogate Directions issued under these Guidelines in the absence of joint approval by both Courts, the Court should give the other Courts involved reasonable notice of its intention to do so.

Guideline 17

Arrangements contemplated under these Guidelines do not constitute a compromise or waiver by the Court of any powers, responsibilities, or authority and do not constitute a substantive determination of any matter in controversy before the Court or before the other Court nor a waiver by any of the parties of any of their substantive rights and claims or a diminution of the effect of any of the Orders made by the Court or the other Court.

— UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re: MATLACK SYSTEMS, INC., *et al.*, Debtors

ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 1985, c. C-36, SECTION 18.6 AS AMENDED

IN THE MATTER OF AN APPLICATION OF MATLACK, INC. AND THE OTHER PARTIES SET OUT IN SCHEDULE "A" ANCILLARY TO PROCEEDINGS UNDER CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE

MATLACK, INC. AND THE OTHER PARTIES SET OUT IN SCHEDULE "A" Applicant

Chapter 11

Case No. 01-01114 (MFW)

Jointly Administered

CROSS-BORDER INSOLVENCY PROTOCOL

RE MATLACK, INC. AND AFFILIATES

This Cross-Border Insolvency Protocol (the "Protocol") shall govern the conduct of all parties in interest in a proceeding brought by Matlack, Inc. and certain other parties in the Ontario Superior Court of Justice and a proceeding brought by Matlack Systems, Inc. and certain other parties in the United States Bankruptcy Court for the District of Delaware as Case No. 01-01114.

A. Background

1 Matlack Systems, Inc., a Delaware corporation ("MSI"), is the parent company of a multinational transportation business that operates, through its various affiliates, in the United States, Canada and Mexico.

2 MSI and certain of its affiliates (collectively, the "Matlack Companies") have commenced reorganization cases (collectively, the "U.S. Cases") under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "U.S. Bankruptcy Court"). The Matlack Companies are continuing in possession of their respective properties and are operating and managing their businesses, as debtors in possession, pursuant to sections 1107 and 1108 of the U.S. Bankruptcy Code. An Official Committee of Unsecured Creditors has been appointed in the U.S. Cases (the "Creditor's Committee").

3 One of the Matlack Companies, Matlack, Inc. (for ease of reference, "Matlack Canada"), a United States affiliate of MSI, has assets and carries on business in Canada. The Matlack Companies have commenced proceedings (collectively, the "Canadian Case") under section 18.6 of the *Companies' Creditors Arrangement Act* (the "CCAA") in the Ontario Superior Court of Justice (the "Canadian Court"). The Matlack Companies have sought an Order of the Canadian Court (as initially made under the CCAA and as subsequently amended or modified, the "CCAA Order") under which (a) the U.S. Cases have been determined to be "foreign proceedings" for the purposes of section 18.6 of the CCAA; and (b) a stay was granted against actions, enforcements, extra-judicial proceedings or other proceeding until and including August 15, 2001 against the Matlack Companies and their property.

4 The Matlack Companies are parties to both the Canadian Case and the U.S. Cases. For convenience, the U.S. Cases and the Canadian Case are referred to herein collectively as the "Insolvency Proceedings" and the U.S. Bankruptcy Court and the Canadian Court are referred to herein collectively as the "Courts".

B. Purpose and Goals

5 While the Insolvency Proceedings are pending in the United States and Canada for the Matlack Companies, the implementation of basic administrative procedures is necessary to coordinate certain activities in the Insolvency Proceedings, to protect the rights of parties thereto, the creditors of the Matlack Companies and to ensure the maintenance of the Courts' independent jurisdiction and comity. Accordingly, this Protocol has been developed to promote the following mutually desirable goals and objectives in both the U.S. Cases and the Canadian Case:

- harmonize and coordinate activities in the Insolvency Proceedings before the U.S. Court and the Canadian Court;

- promote the orderly and efficient administration of the Insolvency Proceedings to, among other things, maximize the efficiency of the Insolvency Proceedings, reduce the costs associated therewith and avoid duplication of effort;

- honor the independence and integrity of the Courts and other courts and tribunals of the United States and Canada;

- promote international cooperation and respect for comity among the Courts, the parties to the Insolvency Proceedings and the creditors of the Matlack Companies and other parties interested in or affected by the Insolvency Proceedings;

- facilitate the fair, open and efficient administration of the Insolvency Proceedings for the benefit of all of the Debtors, creditors and other interested parties, wherever located; and

- implement a framework of general principles to address basic administrative issues arising out of the cross-border nature of the Insolvency Proceedings.

C. Comity and Independence of the Courts

6 The approval and implementation of this Protocol shall not divest or diminish the U.S. Court's and the Canadian Court's independent jurisdiction over the subject matter of the U.S. Cases and the Canadian Case, respectively. By approving and implementing this Protocol, neither the U.S. Court, the Canadian Court, the Matlack Companies nor any creditors or interested parties shall be deemed to have approved or engaged in any infringement on the sovereignty of the United States or Canada.

7 The U.S. Court shall have sole and exclusive jurisdiction and power over the conduct and hearing of the U.S. Cases. The Canadian Court shall have sole and exclusive jurisdiction and power over the conduct and hearing of the Canadian Cases.

8 In accordance with the principles of comity and independence established in Paragraph 6 and 7 above, nothing contained herein shall be construed to:

- increase, decrease or otherwise modify the independence, sovereignty or jurisdiction of the U.S. Court, the Canadian Court or any other court or tribunal in the United States or Canada, including the ability of any such court or tribunal to provide appropriate relief under applicable law on an *ex parte* or "limited notice" basis;

- require the Matlack Companies or any Creditor's Committee or Estate Representatives to take any action or refrain from taking, any action that would result in a breach of any duty imposed on them by any applicable law;

- authorize any action that requires the specific approval of one or both of the Courts under the U.S. Bankruptcy Code or the CCAA after appropriate notice and a hearing (except to the extent that such action is specifically described in this Protocol); or

- preclude any creditor or other interested party from asserting such party's substantive rights under the applicable laws of the United States, Canada or any other jurisdiction including, without limitation, the rights of interested parties or affected persons to appeal from the decisions taken by one or both of the Courts.

9 The Matlack Companies, the Creditor's Committee, the Estate Representatives and their respective employees, members, agents and professionals shall respect and comply with the duties imposed upon them by the U.S. Bankruptcy Code, the CCAA, the CCAA Order and any other applicable laws.

D. Cooperation

10 To assist in the efficient administration of the Insolvency Proceedings, the Matlack Companies, the Creditor's Committee and the Estate Representatives shall (a) cooperate with each other in connection with actions taken in both the U.S. Bankruptcy Court and the Canadian Court, and (b) take any other appropriate steps to coordinate the administration of the U.S. Cases and the Canadian Case for the benefit of the Matlack Companies' respective estates and stakeholders.

11 To harmonize and coordinate the administration of the Insolvency Proceedings, the U.S. Bankruptcy Court and the Canadian Court each shall use its best efforts to coordinate activities with and defer to the judgment of the other Court, where appropriate and feasible. The U.S. Bankruptcy Court and the Canadian Court may communicate with one another in accordance with the Guidelines for Court-to-Court Communication in Cross-Border Cases developed by the American Law Institute and attached as Schedule "1" to this Protocol with respect to any matter relating to the Insolvency Proceedings and may conduct joint hearings with respect to any matter relating to the conduct, administration, determination or disposition of any aspect of the U.S. Cases and the Canadian Case, in circumstances where both Courts consider such joint hearings to be necessary or advisable and, in particular, to facilitate or coordinate with the proper and efficient conduct of the U.S. Cases and the Canadian Case.

12 Notwithstanding the terms of paragraph 11 above, this Protocol recognizes that the U.S. Bankruptcy Court and the Canadian Court are independent Courts and, accordingly, although the Courts will seek to cooperate and coordinate with each other in good faith, each of the Courts shall at all times exercise its independent jurisdiction and authority with respect to (a) matters presented to such Court and (b) the conduct of the parties appearing in such matters.

E. Retention and Compensation of Professionals

13 Except as provided in paragraph 16 below, any estate representatives appointed in the U.S. Cases, including any examiners or trustees appointed in accordance with section 1104 of the U.S. Bankruptcy Code and any Canadian professionals retained by the Estate Representatives (collectively, the "Estate Representatives"), shall be subject to the exclusive jurisdiction of the U.S. Court with respect to (a) the Estate Representatives' tenure in office; (b) the retention and compensation of the Estate Representatives; (c) the Estate Representatives' liability, if any, to any person or entity, including the Matlack Companies and any third parties, in connection with the U.S. Case; and (d) the hearing and determination of any other matters relating to the Estate Representatives arising in the U.S. Cases under the U.S. Bankruptcy Code or other applicable laws of the United States. The Estate Representatives and their U.S. counsel and other U.S. professionals shall not be required to seek approval of their retention in the Canadian Court. Additionally, the Estate Representatives and their U.S. counsel and other U.S. professionals (a) shall be compensated for their services in accordance with the U.S. Bankruptcy Code and other applicable laws of the United States or orders of the U.S. Bankruptcy Court, and (b) shall not be required to seek approval of their compensation in the Canadian Court.

14 Any Canadian professionals retained by or with the approval of the Matlack Companies for purposes of the Canadian Case, including Canadian professionals retained by the Creditor's Committee (collectively, the "Canadian Professionals"), shall be subject to the exclusive jurisdiction of the Canadian Court. Accordingly, the Canadian Professionals (a) shall be subject to the procedures and standards for retention and compensation applicable in Canada, and (b) shall not be required to seek approval of their retention or compensation in the U.S. Court.

15 Any United States professionals retained by the Matlack Companies and any United States professionals retained by the Creditor's Committee (collectively, the "U.S. Professionals") shall be subject to the exclusive jurisdiction of the U.S. Bankruptcy Court. Accordingly, the U.S. Professionals (a) shall be subject to the procedures and standards for retention and compensation applicable in the U.S. Bankruptcy Court under the U.S. Bankruptcy Code and any other applicable laws of the United States or orders of the U.S. Bankruptcy Court, and (b) shall not be required to seek approval of their retention or compensation in the Canadian Court.

F. Rights to Appear and Be Heard

16 The Matlack Companies, their creditors and other interested parties in the Insolvency Proceedings, including the Creditor's Committee and the U.S. Trustee, shall have the right and standing to (a) appear and be heard in either the U.S. Court or the Canadian Court in the Insolvency Proceedings to the same extent as creditors and other interested parties domiciled in the forum country, subject to any local rules or regulations generally applicable to all parties appearing in the forum, and (b) file notices of appearance or other processes with the Clerk of the U.S. Bankruptcy Court or the Canadian Court in the Insolvency Proceedings; *provided*, *however*, that any appearance or filing may subject a creditor or an interested party to the jurisdiction of the Court in which the appearance or filing occurs; provided further, that appearance by the Creditor's Committee in the Canadian Case shall not form a basis for personal jurisdiction in Canada over the members of the Creditor's Committee. Notwithstanding the foregoing, and in accordance with paragraph 13 above, the Canadian Court shall have jurisdiction over the Estate Representatives and the U.S. Trustee with respect to the particular matters as to which the Estate Representatives or the U.S. Trustee appear before the Canadian Court.

G. Notice

17 Notice of any motion, application or other pleading or paper filed in one or both of the Insolvency Proceedings and notice of any related hearings or other proceedings mandated by applicable law in connection with the Insolvency Proceedings, or this Protocol shall be given by appropriate means (including, where circumstances warrant, by courier, telecopier or other electronic forms of communication) to the following: (a) all creditors, including the Creditor's Committee, and other interested parties in accordance with the practice of the jurisdiction where the papers are filed or the proceedings are to occur; and (b) to the extent not otherwise entitled to receive notice under clause (a) above, the U.S. Trustee, the Office of the United States Trustee, and such other parties as may be designated by either of the Courts from time to time.

H. Joint Recognition of Stays of Proceedings Under the U.S. Bankruptcy Code and the CCAA

18 In recognition of the importance of the stay of proceedings and actions against the Matlack Companies and their assets under section 18.6 of the CCAA and the CCAA Order (the "Canadian Stay") on the successful completion of the Insolvency Proceedings for the benefit of the Matlack Companies and their respective estates and stakeholders, to the extent necessary and appropriate, the U.S. Bankruptcy Court shall extend and enforce the Canadian Stay in the United States (to the same extent such stay of proceedings and actions is applicable in Canada) to prevent adverse actions against the assets, rights and holdings of the Matlack Companies. In implementing the terms of this paragraph, the U.S. Bankruptcy Court may consult with the Canadian Court regarding (a) the interpretation and application of the Canadian Stay and any orders of the Canadian Court modifying or granting relief from the Canadian Stay, and (b) the enforcement in the United States of the Canadian Stay.

19 In recognition of the importance of the stay of proceedings and actions against the Matlack Companies and their assets under section 362 of the U.S. Bankruptcy Code (the "U.S. Stay") to the successful completion of the Insolvency Proceedings for the benefit of the Matlack Companies and their respective estates and stakeholders, to the extent necessary and appropriate, the Canadian Court shall extend and enforce the U.S. Stay in Canada (to the same extent such stay of proceedings and action is applicable in the United States) to prevent adverse actions against the assets, rights and holdings, of the Matlack Companies in Canada. In implementing the terms of this paragraph, the Canadian Court may consult with the U.S. Court regarding (a) the interpretation and application of the U.S. Stay and any order of the U.S. Court modifying or granting relief from the U.S. Stay, and (b) the enforcement in Canada of the U.S. Stay.

20 Nothing contained herein shall affect or limit the Matlack Companies' or other parties' rights to assert the applicability or non-applicability of the U.S. Stay or the Canadian Stay to any particular proceeding, property, asset, activity or other matter, wherever pending or located.

I. Effectiveness and Modification of Protocol

21 This Protocol shall become effective only upon its approval by both the U.S. Court and the Canadian Court.

22 This Protocol may not be supplemented, modified, terminated or replaced in any manner except by the U.S. Court and the Canadian Court. Notice of any legal proceeding to supplement, modify, terminate or replace this Protocol shall be given in accordance with paragraph 17 above.

J. Procedure for Resolving Disputes Under the Protocol

23 Disputes relating to the terms, intent or application of this Protocol may be addressed by interested parties to either the U.S. Court, the Canadian Court or both Courts upon notice, in accordance with paragraph 17 above. Where an issue is addressed to only one Court, in rendering a determination in any such dispute, such Court: (a) shall consult with the other Court; and (b) may, in its sole and exclusive discretion, either (i) render a binding decision after such consultation, (ii) defer to the determination of the other Court by transferring the matter, in whole or in part, to the other Court or (iii) seek a joint hearing of both Courts. Notwithstanding the foregoing, each Court in making a determination shall have regard to the independence, comity or inherent jurisdiction of the other Court established under existing law.

K. Preservation of Rights

24 Neither the terms of this Protocol nor any actions taken under the terms of this Protocol shall prejudice or affect the powers, rights, claims and defences of the Matlack Companies and their estates, the Creditor's Committee, the U.S. Trustee or any of the creditors of the Matlack Companies under applicable law, including the U.S. Bankruptcy Code and the CCAA.

L. Guidelines

25 The Protocol shall adopt by reference the Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases (the "Guidelines") developed by The American Law Institute for the Transnational Insolvency Project, a copy of which are attached hereto as Schedule "1". In the case of any conflict between the terms of this Protocol and the terms of the Guidelines, the terms of this Protocol shall govern.

Application granted.

Footnotes

1 A copy of this material may be obtained from the Executive Office, The American Law Institute, 4025 Chestnut Street, Philadelphia, PA, USA 19104-3099.

Tab 5

2007 CarswellOnt 1029
Ontario Superior Court of Justice [Commercial List]

Muscletech Research & Development Inc., Re

2007 CarswellOnt 1029, [2007] O.J. No. 695, 156 A.C.W.S. (3d) 22, 30 C.B.R. (5th) 59

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF MUSCLETECH RESEARCH AND DEVELOPMENT INC. AND THOSE ENTITIES LISTED ON SCHEDULE "A" HERETO (Applicants)

Ground J.

Heard: February 15, 2007
Judgment: February 22, 2007
Docket: 06-CL-6241

Counsel: Fred Myers, David Bish for Applicants, CCAA
Derrick Tay, Randy Sutton for Iovate Companies
Natasha MacParland, Jay Schwartz for RSM Richter Inc.
Steven Gollick for Zurich Insurance Company
A. Kauffman for GNC Oldco
Sheryl Seigel for General Nutrition Companies Inc. and other GNC Newcos
Pamela Huff, Beth Posno for Representative Plaintiffs
Jeff Carhart for Ad Hoc Tort Claimants Committee
David Molton, Steven Smith for Brown Rudnick
Brent McPherson for XL Insurance America Inc.
Alex Ilchenko for Walgreen Co.
Lisa La Horey for E&L Associates, Inc.

Subject: Insolvency

MOTION by insolvent company for sanction of liquidation plan.

***Ground J.*:**

1 The motion before this court is brought by the Applicants pursuant to s. 6 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for the sanction of a plan (the "Plan") put forward by the Applicants for distributions to each creditor in the General Claimants Class ("GCC") and each creditor in the Personal Injury Claimants Class ("PICC"), such distributions to be funded from the contributed funds paid to the Monitor by the subject parties ("SP") as defined in the Plan.

2 The Plan is not a restructuring plan but is a unique liquidation plan funded entirely by parties other than the Applicants.

3 The purpose and goal of the Applicants in seeking relief under the CCAA is to achieve a global resolution of a large number of product liability and other lawsuits commenced principally in the United States of America by numerous claimants and which relate to products formerly advertised, marketed and sold by MuscleTech Research and Development Inc. ("MDI") and to resolve such actions as against the Applicants and Third Parties.

4 In addition to the Applicants, many of these actions named as a party defendant one or more of: (a) the directors and officers, and affiliates of the Applicants (i.e. one or more of the Iovate Companies); and/or (b) arm's length third parties such as manufacturers, researchers and retailers of MDI's products (collectively, the "Third Parties"). Many, if not all, of the Third Parties have claims for contribution or indemnity against the Applicants and/or other Third Parties relating to these actions.

The Claims Process

5 On March 3, 2006, this court granted an unopposed order (the "Call For Claims Order") that established a process for the calling of: (a) all Claims (as defined in the Call For Claims Order) in respect of the Applicants and its officers and directors; and (b) all Product Liability Claims (as defined in the Call For Claims Order) in respect of the Applicants and Third Parties.

6 The Call For Claims Order required people who wished to advance claims to file proofs of claim with the Monitor by no later than 5:00 p.m. (EST) on May 8, 2006 (the "Claims Bar Date"), failing which any and all such claims would be forever barred. The Call For Claims Order was approved by unopposed Order of the United States District Court for the Southern District of New York (the "U.S. Court") dated March 22, 2006. The Call For Claims Order set out in a comprehensive manner the types of claims being called for and established an elaborate method of giving broad notice to anyone who might have such claims.

7 Pursuant to an order dated June 8, 2006 (the "Claims Resolution Order"), this court approved a process for the resolution of the Claims and Product Liability Claims. The claims resolution process set out in the Claims Resolution Order provided for, *inter alia*: (a) a process for the review of proofs of claim filed with the Monitor; (b) a process for the acceptance, revision or dispute, by the Applicants, with the assistance of the Monitor, of Claims and/or Product Liability Claims for the purposes of voting and/or distribution under the Plan; (c) the appointment of a claims officer to resolve disputed claims; and (d) an appeal process from the determination of the claims officer. The Claims Resolution Order was recognized and given effect in the U.S. by Order of the U.S. Court dated August 1, 2006.

8 From the outset, the Applicants' successful restructuring has been openly premised on a global resolution of the Product Liability Claims and the recognition that this would be achievable primarily on a consensual basis within the structure of a plan of compromise or arrangement only if the universe of Product Liability Claims was brought forward. It was known to the Applicants that certain of the Third Parties implicated in the Product Liability Actions were agreeable in principle to contributing to the funding of a plan, provided that as a result of the restructuring process they would achieve certainty as to the resolution of all claims and prospective claims against them related to MDI products. It is fundamental to this restructuring that the Applicants have no material assets with which to fund a plan other than the contributions of such Third Parties.

9 Additionally, at the time of their filing under the CCAA, the Applicants were involved in litigation with their insurer, Zurich Insurance Company ("Zurich Canada") and Zurich America Insurance Company, regarding the scope of the Applicants' insurance coverage and liability for defence expenses incurred by the Applicants in connection with the Product Liability Actions.

10 The Applicants recognized that in order to achieve a global resolution of the Product Liability Claims, multi-party mediation was more likely to be successful in providing such resolution in a timely manner than a claims dispute process. By unopposed Order dated April 13, 2006 (the "Mediation Order"), this court approved a mediation process (the "Mediation") to advance a global resolution of the Product Liability Claims. Mediations were conducted by a Court-appointed mediator between and among groups of claimants and stakeholders, including the Applicants, the Ad Hoc Committee of MuscleTech Tort Claimants (which had previously received formal recognition by the Court and the U.S. Court), Zurich Canada and certain other Third Parties.

11 The Mediation facilitated meaningful discussions and proved to be a highly successful mechanism for the resolution of the Product Liability Claims. The vast majority of Product Liability Claims were settled by the end of July, 2006. Settlements of three other Product Liability Claims were achieved at the beginning of November, 2006. A settlement was also achieved with Zurich Canada outside the mediation. The foregoing settlements are conditional upon a successfully implemented Plan that contains the releases and injunctions set forth in the Plan.

12 As part of the Mediation, agreements in respect of the funding of the foregoing settlements were achieved by and among the Applicants, the Iovate Companies and certain Third Parties, which funding (together with other funding being contributed by Third Parties) (collectively, the "Contributed Funds") comprises the funds to be distributed to affected creditors under the Plan. The Third Party funding arrangements are likewise conditional upon a successfully implemented Plan that contains the releases and injunctions set forth in the Plan.

13 It is well settled law that, for the court to exercise its discretion pursuant to s. 6 of the CCAA and sanction a plan, the Applicants must establish that: (a) there has been strict compliance with all statutory requirements and adherence to previous orders of the court; (b) nothing has been done or purported to be done that is not authorized by the CCAA; and (c) the Plan is fair and reasonable.

14 On the evidence before this court I am fully satisfied that the first two requirements have been met. At the outset of these proceedings, Farley J. found that the Applicants met the criteria for access to the protection of the CCAA. The Applicants are insolvent within the meaning of Section 2 of the CCAA and the Applicants have total claims within the meaning of Section 12 of the CCAA in excess of $5,000,000.

15 By unopposed Order dated December 15, 2006 (the "Meeting Order"), this Court approved a process for the calling and holding of meetings of each class of creditors on January 26, 2007 (collectively, the "Meetings"), for the purpose of voting on the Plan. The Meeting Order was approved by unopposed Order of the U.S. Court dated January 9, 2007. On December 29, 2006, and in accordance with the Meeting Order, the Monitor served all creditors of the Applicants, with a copy of the Meeting Materials (as defined in the Meeting Order).

16 The Plan was filed in accordance with the Meeting Order. The Meetings were held, quorums were present and the voting was carried out in accordance with the Meeting Order. The Plan was unanimously approved by both classes of creditors satisfying the statutory requirements of the CCAA.

17 This court has made approximately 25 orders since the Initial Order in carrying out its general supervision of all steps taken by the Applicants pursuant to the Initial CCAA order and in development of the Plan. The U.S. Court has recognized each such order and the Applicants have fully complied with each such order.

The Plan is Fair and Reasonable

18 It has been held that in determining whether to sanction a plan, the court must exercise its equitable jurisdiction and consider the prejudice to the various parties that would flow from granting or refusing to grant approval of the plan and must consider alternatives available to the Applicants if the plan is not approved. An important factor to be considered by the court in determining whether the plan is fair and reasonable is the degree of approval given to the plan by the creditors. It has also been held that, in determining whether to approve the plan, a court should not second-guess the business aspects of the plan or substitute its views for that of the stakeholders who have approved the plan.

19 In the case at bar, all of such considerations, in my view must lead to the conclusion that the Plan is fair and reasonable. On the evidence before this court, the Applicants have no assets and no funds with which to fund a distribution to creditors. Without the Contributed Funds there would be no distribution made and no Plan to be sanctioned by this court. Without the Contributed Funds, the only alternative for the Applicants is bankruptcy and it is clear from the evidence before this court that the unsecured creditors would receive nothing in the event of bankruptcy.

20 A unique feature of this Plan is the Releases provided under the Plan to Third Parties in respect of claims against them in any way related to "the research, development, manufacture, marketing, sale, distribution, application, advertising, supply, production, use or ingestion of products sold, developed or distributed by or on behalf of" the Applicants (see Article 9.1 of the Plan). It is self-evident, and the Subject Parties have confirmed before this court, that the Contributed Funds would not be established unless such Third Party Releases are provided and accordingly, in my view it is fair and reasonable to provide such Third Party releases in order to establish a fund to provide for distributions to creditors of the Applicants. With respect to support of the Plan, in addition to unanimous approval of the Plan by the creditors represented at meetings of creditors, several other stakeholder groups support the sanctioning of the Plan, including Iovate Health Sciences Inc. and its subsidiaries (excluding the Applicants) (collectively, the "Iovate Companies"), the Ad Hoc Committee of MuscleTech Tort Claimants, GN Oldco, Inc. f/k/a General Nutrition Corporation, Zurich American Insurance Company, Zurich Insurance Company, HVL, Inc. and XL Insurance America Inc. It is particularly significant that the Monitor supports the sanctioning of the Plan.

21 With respect to balancing prejudices, if the Plan is not sanctioned, in addition to the obvious prejudice to the creditors who would receive nothing by way of distribution in respect of their claims, other stakeholders and Third Parties would continue to be mired in extensive, expensive and in some cases conflicting litigation in the United States with no predictable outcome.

22 The sanction of the Plan was opposed only by prospective representative plaintiffs in five class actions in the United States. This court has on two occasions denied class action claims in this proceeding by orders dated August 16, 2006 with respect to products containing prohormone and dated December 11, 2006 with respect to Hydroxycut products. The first of such orders was appealed to the Ontario Court of Appeal and the appeal was dismissed. The second of such orders was not appealed. In my reasons with respect to the second order, I stated as follows:

> ...This CCAA proceeding was commenced for the purpose of achieving a global resolution of all product liability and other lawsuits commenced in the United States against Muscletech. As a result of strenuous negotiation and successful court-supervised mediation through the District Court, the Applicants have succeeded in resolving virtually all of the outstanding claims with the exception of the Osborne claim and, to permit the filing of a class proof of claim at this time, would seriously disrupt and extend the CCAA proceedings and the approval of a Plan and would increase the costs and decrease the benefits to all stakeholders. There appears to have been adequate notice to potential claimants and no member of the putative class other than Osborne herself has filed a proof of claim. It would be reasonable to infer that none of the other members of the putative class is interested in filing a claim in view of the minimal amounts of their claims and of the difficulty of coming up with documentation to support their claim. In this context the comments of Rakoff, J. in *Re Ephedra Products Liability Litigation* (2005) U.S. Dist. LEXIS 16060 at page 6 are particularly apt.
>
> > Further still, allowing the consumer class actions would unreasonably waste an estate that was already grossly insufficient to pay the allowed claims of creditors who had filed timely individual proofs of claim. The Debtors and Creditors Committee estimate that the average claim of class [*10] members would be $ 30, entitling each claimant to a distribution of about $ 4.50 (figures which Barr and Lackowski do not dispute; although Cirak argues that some consumers made repeated purchases of Twinlabs steroid hormones totaling a few hundred dollars each). Presumably, each claimant would have to show some proof of purchase, such as the product bottle. Because the Debtor ceased marketing these products in 2003, many purchasers would no longer have such proof. Those who did might well find the prospect of someday recovering $ 4.50 not worth the trouble of searching for the old bottle or store receipt and filing a proof of claim. Claims of class members would likely be few and small. The only real beneficiaries of applying Rule 23 would be the lawyers representing the class. *Cf Woodward*, 205 B.R. at 376-77. The Court has discretion under Rule 9014 to find that the likely total benefit to class members would not justify the cost to the estate of defending a class action under Rule 23.

> [35] In addition, in the case at bar, there would appear to be substantial doubt as to whether the basis for the class action, that is the alleged false and misleading advertising, would be found to be established and substantial doubt as to whether the class is certifiable in view of being overly broad, amorphous or vague and administratively difficult to determine. (See *Perez et al. v. Metabolife International Inc.* (2003) U.S. Dist. LEXIS 21206 at pages 3-5). The timing of the bringing of this motion in this proceeding is also problematic. The claims bar date has passed. The mediation process is virtually completed and the Osborne claim is one of the few claims not settled in mediation although counsel for the putative class were permitted to participate in the mediation process. The filing of the class action in California occurred prior to the initial CCAA Order and at no prior time has this court been asked to approve the filing of a class action proof of claim in these proceedings. The claims of the putative class members as reflected in the comments of Rakoff, J. quoted above would be limited to a refund of the purchase price for the products in question and, in the context of insolvency and restructuring proceedings, *de minimus* claims should be discouraged in that the costs and time in adjudicating such claims outweigh the potential recoveries for the claimants. The claimants have had ample opportunity to file evidence that the call for claims order or the claims process as implemented has been prejudicial or unfair to the putative class members.

23 The representative Plaintiffs opposing the sanction of the Plan do not appear to be rearguing the basis on which the class claims were disallowed. Their position on this motion appears to be that the Plan is not fair and reasonable in that, as a result of the sanction of the Plan, the members of their classes of creditors will be precluded as a result of the Third Party Releases from taking any action not only against MuscleTech but against the Third Parties who are defendants in a number of the class actions. I have some difficulty with this submission. As stated above, in my view, it must be found to be fair and reasonable to provide Third Party Releases to persons who are contributing to the Contributed Funds to provide funding for the distributions to creditors pursuant to the Plan. Not only is it fair and reasonable; it is absolutely essential. There will be no funding and no Plan if the Third Party Releases are not provided. The representative Plaintiffs and all the members of their classes had ample opportunity to submit individual proofs of claim and have chosen not to do so, except for two or three of the representative Plaintiffs who did file individual proofs of claim but withdrew them when asked to submit proof of purchase of the subject products. Not only are the claims of the representative Plaintiffs and the members of their classes now barred as a result of the Claims Bar Order, they cannot in my view take the position that the Plan is not fair and reasonable because they are not participating in the benefits of the Plan but are precluded from continuing their actions against MuscleTech and the Third Parties under the terms of the Plan. They had ample opportunity to participate in the Plan and in the benefits of the Plan, which in many cases would presumably have resulted in full reimbursement for the cost of the product and, for whatever reason, chose not to do so.

The representative Plaintiffs also appear to challenge the jurisdiction of this court to authorize the Third Party Releases as one of the terms of the Plan to be sanctioned. I remain of the view expressed in paragraphs 7-9 of my endorsement dated October 13, 2006 in this proceeding on a motion brought by certain personal injury claimants, as follows:

> With respect to the relief sought relating to Claims against Third Parties, the position of the Objecting Claimants appears to be that this court lacks jurisdiction to make any order affecting claims against third parties who are not applicants in a CCAA proceeding. I do not agree. In the case at bar, the whole plan of compromise which is being funded by Third Parties will not proceed unless the plan provides for a resolution of all claims against the Applicants and Third Parties arising out of "the development, advertising and marketing, and sale of health supplements, weight loss and sports nutrition or other products by the Applicants or any of them" as part of a global resolution of the litigation commenced in the United States. In his Endorsement of January 18, 2006, Farley J. stated:
>
> > the Product Liability system vis-à-vis the Non-Applicants appears to be in essence derivative of claims against the Applicants and it would neither be logical nor practical/functional to have that Product Liability litigation not be dealt with on an all encompassing basis.
>
> Moreover, it is not uncommon in CCAA proceedings, in the context of a plan of compromise and arrangement, to compromise claims against the Applicants and other parties against whom such claims or related claims are made. In

addition, the Claims Resolution Order, which was not appealed, clearly defines Product Liability Claims to include claims against Third Parties and all of the Objecting Claimants did file Proofs of Claim settling [sic] out in detail their claims against numerous Third Parties.

It is also, in my view, significant that the claims of certain of the Third Parties who are funding the proposed settlement have against the Applicants under various indemnity provisions will be compromised by the ultimate Plan to be put forward to this court. That alone, in my view, would be a sufficient basis to include in the Plan, the settlement of claims against such Third Parties. The CCAA does not prohibit the inclusion in a Plan of the settlement of claims against Third Parties. In *Re Canadian Airlines Corp.* (2000), 20 C.B.R. (4th) Paperny J. stated at p. 92:

> While it is true that section 5.2 of the CCAA does not authorize a release of claims against third parties other than directors, it does not prohibit such releases either. The amended terms of the release will not prevent claims from which the CCAA expressly prohibits release.

24 The representative Plaintiffs have referred to certain decisions in the United States that appear to question the jurisdiction of the courts to grant Third Party Releases. I note, however, that Judge Rakoff, who is the U.S. District Court Judge is seized of the *MuscleTech* proceeding, and Judge Drain stated in a hearing in *Re TL Administration Corporation* on July 21, 2005:

It appears to us to be clear that this release was, indeed, essential to the settlement which underlies this plan as set forth at length on the record, including by counsel for the official claimants committee as well as by the other parties involved, and, as importantly, by our review of the settlement agreement itself, which from the start, before this particular plan in fact was filed, included a release that was not limited to class 4 claims but would extend to claims in class 5 that would include the type of claim asserted by the consumer class claims.

Therefore, in contrast to the Blechman release, this release is essential to confirmation of this plan and the distributions that will be made to creditors in both classes, class 4 and class 5.

Secondly, the parties who are being released here have asserted indemnification claims against the estate, and because of the active nature of the litigation against them, it appears that those claims would have a good chance, if not resolved through this plan, of actually being allowed and reducing the claims of creditors.

At least there is a clear element of circularity between the third-party claims and the indemnification rights of the settling third parties, which is another very important factor recognized in the Second Circuit cases, including Manville, Drexel, Finely, Kumble and the like.

The settling third parties it is undisputed are contributing by far the most assets to the settlement, and those assets are substantial in respect of this reorganization by this Chapter 11 case. They're the main assets being contributed.

Again, both classes have voted overwhelmingly for confirmation of the plan, particularly in terms of the numbers of those voting. Each of those factors, although they may be weighed differently in different cases, appear in all the cases where there have been injunctions protecting third parties.

The one factor that is sometimes cited in other cases, i.e., that the settlement will pay substantially all of the claims against the estate, we do not view to be dispositive. Obviously, substantially all of the claims against the estate are not being paid here. On the other hand, even, again, in the Second Circuit cases, that is not a dispositive factor. There have been numerous cases where plans have been confirmed over opposition with respect to third-party releases and third-party injunctions where the percentage recovery of creditors was in the range provided for under this plan.

The key point is that the settlement was arrived at after arduous arm's length negotiations and that it is a substantial amount and that the key parties in interest and the court are satisfied that the settlement is fair and it is unlikely that substantially more would be obtained in negotiation.

25 The reasoning of Judge Rakoff and Judge Drain is, in my view, equally applicable to the case at bar where the facts are substantially similar.

26 It would accordingly appear that the jurisdiction of the courts to grant Third Party Releases has been recognized both in Canada and in the United States.

27 An order will issue sanctioning the Plan in the form of the order submitted to this court and appended as Schedule B to this endorsement.

Schedule "A"

HC Formulations Ltd.

CELL Formulations Ltd.

NITRO Formulations Ltd.

MESO Formulations Ltd.

ACE Formulations Ltd.

MISC Formulations Ltd.

GENERAL Formulations Ltd.

ACE US Trademark Ltd.

MT Canadian Supplement Trademark Ltd.

MT Foreign Supplement Trademark Ltd.

HC Trademark Holdings Ltd.

HC US Trademark Ltd.

1619005 Ontario Ltd. (f/k/a New HC US Trademark Ltd.)

HC Canadian Trademark Ltd.

HC Foreign Trademark Ltd.

Schedule "B"

Court File No. 06-CL-6241

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	) THURSDAY, THE 15TH
	)
MR. JUSTICE GROUND	) DAY OF FEBRUARY, 2007

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF MUSCLETECH RESEARCH AND DEVELOPMENT INC. AND THOSE ENTITIES LISTED ON SCHEDULE "A" HERETO

Applicants

Sanction Order

THIS MOTION, made by MuscleTech Research and Development Inc. ("MDI") and those entities listed on Schedule "A" hereto (collectively with MDI, the "Applicants") for an order approving and sanctioning the plan of compromise or arrangement (inclusive of the schedules thereto) of the Applicants dated December 22, 2006 (the "Plan"), as approved by each class of Creditors on January 26, 2007, at the Meeting, and which Plan (without schedules) is attached as Schedule "C" to this Order, and for certain other relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING: (a) the within Notice of Motion, filed; (b) the Affidavit of Terry Begley sworn January 31, 2007, filed; and (c) the Seventeenth Report of the Monitor dated February 7, 2007 (the "Seventeenth Report"), filed, and upon hearing submissions of counsel to: (a) the Applicants; (b) the Monitor; (c) Iovate Health Sciences Group Inc. and those entities listed on Schedule "B" hereto; (d) the Ad Hoc Committee of MuscleTech Tort Claimants (the "Committee"); (e) GN Oldco, Inc. f/k/a General Nutrition Companies; (f) Zurich Insurance Company; (g) GNC Corporation and other GNC newcos; and (h) certain representative plaintiffs in purported class actions involving products containing the ingredient prohormone, no one appearing for the other persons served with notice of this Motion, as duly served and listed on the Affidavit of Service of Elana Polan, sworn February 2, 2007, filed,

Definitions

1. **THIS COURT ORDERS** that any capitalized terms not otherwise defined in this Order shall have the meanings ascribed to such terms in the Plan.

Service and Meeting of Creditors

2. **THIS COURT ORDERS AND DECLARES** that there has been good and sufficient notice, service and delivery of the Plan and the Monitor's Seventeenth Report to all Creditors.

3. **THIS COURT ORDERS AND DECLARES** that there has been good and sufficient notice, service and delivery of the Meeting Materials (as defined in the Meeting Order) to all Creditors, and that the Meeting was duly convened, held and conducted, in conformity with the CCAA, the Meeting Order and all other Orders of this Court in the CCAA Proceedings. For greater certainty, and without limiting the foregoing, the vote cast at the Meeting on behalf of Rhodrick Harden by David Molton of Brown Rudnick Berlack Israelis LLP, in its capacity as representative counsel for the Ad Hoc Committee of MuscleTech Tort Claimants, is hereby confirmed.

4. **THIS COURT ORDERS AND DECLARES** that there has been good and sufficient notice, service and delivery of the within Notice of Motion and Motion Record, and of the date and time of the hearing held by this Court to consider the within Motion, such that: (i) all Persons have had an opportunity to be present and be heard at such hearing; (ii) the within Motion is properly returnable today; and (iii) further service on any interested party is hereby dispensed with.

Sanction of Plan

5. **THIS COURT ORDERS AND DECLARES** that:

(a) the Plan has been approved by the requisite majorities of the Creditors in each class present and voting, either in person or by proxy, at the Meeting, all in conformity with the CCAA and the terms of the Meeting Order;

(b) the Applicants have acted in good faith and with due diligence, have complied with the provisions of the CCAA, and have not done or purported to do (nor does the Plan do or purport to do) anything that is not authorized by the CCAA;

(c) the Applicants have adhered to, and acted in accordance with, all Orders of this Court in the CCAA Proceedings; and

(d) the Plan, together with all of the compromises, arrangements, transactions, releases, discharges, injunctions and results provided for therein and effected thereby, including but not limited to the Settlement Agreements, is both substantively and procedurally fair, reasonable and in the best interests of the Creditors and the other stakeholders of the Applicants, and does not unfairly disregard the interests of any Person (whether a Creditor or otherwise).

6. **THIS COURT ORDERS** that the Plan be and is hereby sanctioned and approved pursuant to Section 6 of the CCAA.

Plan Implementation

7. **THIS COURT ORDERS** that the Applicants and the Monitor, as the case may be, are authorized and directed to take all steps and actions, and to do all things, necessary or appropriate to enter into or implement the Plan in accordance with its terms, and enter into, implement and consummate all of the steps, transactions and agreements contemplated pursuant to the Plan.

8. **THIS COURT ORDERS** that upon the satisfaction or waiver, as applicable, of the conditions precedent set out in Section 7.1 of the Plan, the Monitor shall file with this Court and with the U.S. District Court a certificate that states that all conditions precedent set out in Section 7.1 of the Plan have been satisfied or waived, as applicable, and that, with the filing of such certificate by the Monitor, the Plan Implementation Date shall have occurred in accordance with the Plan.

9. **THIS COURT ORDERS AND DECLARES** that as of the Plan Implementation Date, the Plan, including all compromises, arrangements, transactions, releases, discharges and injunctions provided for therein, shall inure to the benefit of and be binding and effective upon the Creditors, the Subject Parties and all other Persons affected thereby, and on their respective heirs, administrators, executors, legal personal representatives, successors and assigns.

10. **THIS COURT ORDERS AND DECLARES** that, as of the Plan Implementation Date, the validity or invalidity of Claims and Product Liability Claims, as the case may be, and the quantum of all Proven Claims and Proven Product Liability Claims, accepted, determined or otherwise established in accordance with the Claims Resolution Order, and the factual and legal determinations made by the Claims Officer, this Court and the U.S. District Court in connection with all Claims and Product Liability Claims (whether Proven Claims and Proven Product Liability Claims or otherwise), in the course of the CCAA Proceedings are final and binding on the Subject Parties, the Creditors and all other Persons.

11. **THIS COURT ORDERS** that, subject to the provisions of the Plan and the performance by the Applicants and the Monitor of their respective obligations under the Plan, and effective on the Plan Implementation Date, all agreements to which the Applicants are a party shall be and remain in full force and effect, unamended, as at the Plan Implementation Date, and no Person shall, following the Plan Implementation Date, accelerate,

terminate, rescind, refuse to perform or otherwise repudiate its obligations under, or enforce or exercise any right (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such agreement, by reason of:

(a) any event that occurred on or prior to the Plan Implementation Date that would have entitled any Person thereto to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of the Applicants);

(b) the fact that the Applicants have: (i) sought or obtained plenary relief under the CCAA or ancillary relief in the United States of America, including pursuant to Chapter 15 of the *United States Bankruptcy Code*, or (ii) commenced or completed the CCAA Proceedings or the U.S. Proceedings;

(c) the implementation of the Plan, or the completion of any of the steps, transactions or things contemplated by the Plan; or

(d) any compromises, arrangements, transactions, releases, discharges or injunctions effected pursuant to the Plan or this Order.

12. **THIS COURT ORDERS** that, from and after the Plan Implementation Date, all Persons (other than Unaffected Creditors, and with respect to Unaffected Claims only) shall be deemed to have waived any and all defaults then existing or previously committed by the Applicants, or caused by the Applicants, or non-compliance with any covenant, warranty, representation, term, provision, condition or obligation, express or implied, in any contract, instrument, credit document, guarantee, agreement for sale, lease or other agreement, written or oral, and any and all amendments or supplements thereto (each, an "Agreement"), existing between such Person and the Applicants or any other Person and any and all notices of default and demands for payment under any Agreement shall be deemed to be of no further force or effect; provided that nothing in this paragraph shall excuse or be deemed to excuse the Applicants from performing any of their obligations subsequent to the date of the CCAA Proceedings, including, without limitation, obligations under the Plan.

13. THIS COURT ORDERS that, as of the Plan Implementation Date, each Creditor shall be deemed to have consented and agreed to all of the provisions of the Plan in their entirety and, in particular, each Creditor shall be deemed:

(a) to have executed and delivered to the Monitor and to the Applicants all consents, releases or agreements required to implement and carry out the Plan in its entirety; and

(b) to have agreed that if there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Creditor and the Applicants as of the Plan Implementation Date (other than those entered into by the Applicants on or after the Filing Date) and the provisions of the Plan, the provisions of the Plan take precedence and priority and the provisions of such agreement or other arrangement shall be deemed to be amended accordingly.

14. **THIS COURT ORDERS AND DECLARES** that any distributions under the Plan and this Order shall not constitute a "distribution" for the purposes of section 159 of the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act* (Canada) and section 107 of the *Corporations Tax Act* (Ontario) and the Monitor in making any such payments is not "distributing", nor shall be considered to have "distributed", such funds, and the Monitor shall not incur any liability under the above-mentioned statutes for making any payments ordered and is hereby forever released, remised and discharged from any claims against it under section 159 of the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act* (Canada) and section 107 of the *Corporations Tax Act* (Ontario) or otherwise at law, arising as a result of distributions under the Plan and this Order and any claims of this nature are hereby forever barred.

Approval of Settlement and Funding Agreements

15. **THIS COURT ORDERS** that each of the Settlement Agreements be and is hereby approved.

16. **THIS COURT ORDERS** that each of the Confidential Insurance Settlement Agreement and the Mutual Release be and is hereby approved.

17. **THIS COURT ORDERS** that copies of the Settlement Agreements, the Confidential Insurance Settlement Agreement and the Mutual Release shall be sealed and shall not form part of the public record, subject to further Order of this Honourable Court; provided that any party to any of the foregoing shall have received, and is entitled to receive, a copy thereof.

18. **THIS COURT ORDERS AND DIRECTS** the Monitor to do such things and take such steps as are contemplated to be done and taken by the Monitor under the Plan and the Settlement Agreements. Without limitation: (i) the Monitor shall hold and distribute the Contributed Funds in accordance with the terms of the Plan, the Settlement Agreements and the escrow agreements referenced in Section 5.1 of the Plan; and (ii) on the Plan Implementation Date, the Monitor shall complete the distributions to or on behalf of Creditors (including, without limitation, to Creditors' legal representatives, to be held by such legal representatives in trust for such Creditors) as contemplated by, and in accordance with, the terms of the Plan, the Settlement Agreements and the escrow agreements referenced in Section 5.1 of the Plan.

Releases, Discharges and Injunctions

19. **THIS COURT ORDERS AND DECLARES** that the compromises, arrangements, releases, discharges and injunctions contemplated in the Plan, including those granted by and for the benefit of the Subject Parties, are integral components thereof and are necessary for, and vital to, the success of the Plan (and without which it would not be possible to complete the global resolution of the Product Liability Claims upon which the Plan and the Settlement Agreements are premised), and that, effective on the Plan Implementation Date, all such releases, discharges and injunctions are hereby sanctioned, approved and given full force and effect, subject to: (a) the rights of Creditors to receive distributions in respect of their Claims and Product Liability Claims in accordance with the Plan and the Settlement Agreements, as applicable; and (b) the rights and obligations of Creditors and/or the Subject Parties under the Plan, the Settlement Agreements, the Funding Agreements and the Mutual Release. For greater certainty, nothing herein or in the Plan shall release or affect any rights or obligations under the Plan, the Settlement Agreements, the Funding Agreements and the Mutual Release.

20. **THIS COURT ORDERS** that, without limiting anything in this Order, including without limitation, paragraph 19 hereof, or anything in the Plan or in the Call For Claims Order, the Subject Parties and their respective representatives, predecessors, heirs, spouses, dependents, administrators, executors, subsidiaries, affiliates, related companies, franchisees, member companies, vendors, partners, distributors, brokers, retailers, officers, directors, shareholders, employees, attorneys, sureties, insurers, successors, indemnitees, servants, agents and assigns (collectively, the "Released Parties"), as applicable, be and are hereby fully, finally, irrevocably and unconditionally released and forever discharged from any and all Claims and Product Liability Claims, and any and all past, present and future claims, rights, interests, actions, liabilities, demands, duties, injuries, damages, expenses, fees (including medical and attorneys' fees and liens), costs, compensation, or causes of action of whatsoever kind or nature whether foreseen or unforeseen, known or unknown, asserted or unasserted, contingent or actual, liquidated or unliquidated, whether in tort or contract, whether statutory, at common law or in equity, based on, in connection with, arising out of, or in any way related to, in whole or in part, directly or indirectly: (A) any proof of claim filed by any Person in accordance with the Call For Claims Order (whether or not withdrawn); (B) any actual or alleged past, present or future act, omission, defect, incident, event or circumstance from the beginning of the world to the Plan Implementation Date, based on,

in connection with, arising out of, or in any way related to, in whole or in part, directly or indirectly, any alleged personal, economic or other injury allegedly based on, in connection with, arising out of, or in any way related to, in whole or in part, directly or indirectly, the research, development, manufacture, marketing, sale, distribution, fabrication, advertising, supply, production, use, or ingestion of products sold, developed or distributed by or on behalf of the Applicants; or (C) the CCAA Proceedings; and no Person shall make or continue any claims or proceedings whatsoever based on, in connection with, arising out of, or in any way related to, in whole or in part, directly or indirectly, the substance of the facts giving rise to any matter herein released (including, without limitation, any action, cross-claim, counter-claim, third party action or application) against any Person who claims or might reasonably be expected to claim in any manner or forum against one or more of the Released Parties, including, without limitation, by way of contribution or indemnity, in common law, or in equity, or under the provisions of any statute or regulation, and that in the event that any of the Released Parties are added to such claim or proceeding, it will immediately discontinue any such claim or proceeding.

21. **THIS COURT ORDERS** that, without limiting anything in this Order, including without limitation, paragraph 19 hereof, or anything in the Plan or in the Call For Claims Order, all Persons (regardless of whether or not such Persons are Creditors), on their own behalf and on behalf of their respective present or former employees, agents, officers, directors, principals, spouses, dependents, heirs, attorneys, successors, assigns and legal representatives, are permanently and forever barred, estopped, stayed and enjoined, on and after the Plan Implementation Date, with respect to Claims, Product Liability Claims, Related Claims and all claims otherwise released pursuant to the Plan and this Sanction Order, from:

(a) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits, demands or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against the Released Parties or any of them;

(b) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against the Released Parties or any of them or the property of any of the Released Parties;

(c) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits or demands, including without limitation, by way of contribution or indemnity or other relief, in common law, or in equity, or under the provisions of any statute or regulation, or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any Person who makes such a claim or might reasonably be expected to make such a claim, in any manner or forum, against one or more of the Released Parties;

(d) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind; and

(e) taking any actions to interfere with the implementation or consummation of the Plan.

Discharge of Monitor

22. **THIS COURT ORDERS** that RSM Richter Inc. shall be discharged from its duties as Monitor of the Applicants effective as of the Plan Implementation Date; provided that the foregoing shall not apply in respect of: (i) any obligations of, or matters to be completed by, the Monitor pursuant to the Plan or the Settlement Agreements from and after the Plan Implementation Date; or (ii) matters otherwise requested by the Applicants and agreed to by the Monitor.

23. **THIS COURT ORDERS** that, subject to paragraph 22 herein, the completion of the Monitor's duties shall be evidenced, and its final discharge shall be effected by the filing by the Monitor with this Court of a certificate of discharge at, or as soon as practicable after, the Plan Implementation Date.

24. **THIS COURT ORDERS AND DECLARES** that the actions and conduct of the Monitor in the CCAA Proceedings and as foreign representative in the U.S. Proceedings, as disclosed in its reports to the Court from time to time, including, without limitation, the Monitor's Fifteenth Report dated December 12, 2006, the Monitor's Sixteenth Report dated December 22, 2006, and the Seventeenth Report, are hereby approved and that the Monitor has satisfied all of its obligations up to and including the date of this Order, and that in addition to the protections in favour of the Monitor as set out in the Orders of this Court in the CCAA Proceedings to date, the Monitor shall not be liable for any act or omission on the part of the Monitor, including with respect to any reliance thereof, including without limitation, with respect to any information disclosed, any act or omission pertaining to the discharge of duties under the Plan or as requested by the Applicants or with respect to any other duties or obligations in respect of the implementation of the Plan, save and except for any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Monitor. Subject to the foregoing, and in addition to the protections in favour of the Monitor as set out in the Orders of this Court, any claims against the Monitor in connection with the performance of its duties as Monitor are hereby released, stayed, extinguished and forever barred and the Monitor shall have no liability in respect thereof.

25. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor except with prior leave of this Court and on prior written notice to the Monitor and upon further order securing, as security for costs, the solicitor and his own client costs of the Monitor in connection with any proposed action or proceeding.

26. **THIS COURT ORDERS** that the Monitor, its affiliates, and their respective officers, directors, employees and agents, and counsel for the Monitor, are hereby released and discharged from any and all claims that any of the Subject Parties or their respective officers, directors, employees and agents or any other Persons may have or be entitled to assert against the Monitor, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the date of issue of this Order in any way relating to, arising out of or in respect of the CCAA proceedings.

Claims Officer

27. **THIS COURT ORDERS** that the appointment of The Honourable Mr. Justice Edward Saunders as Claims Officer (as defined in the Claims Resolution Order) shall automatically cease, and his roles and duties in the CCAA Proceedings and in the U.S. Proceedings shall terminate, on the Plan Implementation Date.

28. **THIS COURT ORDERS AND DECLARES** that the actions and conduct of the Claims Officer pursuant to the Claims Resolution Order, and as disclosed in the Monitor's Reports to this Court, are hereby approved and that the Claims Officer has satisfied all of his obligations up to and including the date of this Order, and that any claims against the Claims Officer in connection with the performance of his duties as Claims Officer are hereby stayed, extinguished and forever barred.

Mediator

29. **THIS COURT ORDERS** that the appointment of Mr. David Geronemus (the "Mediator") as a mediator in respect of non-binding mediation of the Product Liability Claims pursuant to the Order of this Court dated April 13, 2006 (the "Mediation Order"), in the within proceedings, shall automatically cease, and his roles and duties in the CCAA Proceedings and in the U.S. Proceedings shall terminate, on the Plan Implementation Date.

30. **THIS COURT ORDERS AND DECLARES** that the actions and conduct of the Mediator pursuant to the Mediation Order, and as disclosed in the Monitor's reports to this Court, are hereby approved, and that the Mediator has satisfied all of his obligations up to and including the date of this Order, and that any claims against the Mediator in connection with the performance of his duties as Mediator are hereby stayed, extinguished and forever barred.

Escrow Agent

31. **THIS COURT ORDERS** that Duane Morris LLP shall not be liable for any act or omission on its part as a result of its appointment or the fulfillment of its duties as escrow agent pursuant to the escrow agreements executed by Duane Morris LLP and the respective Settling Plaintiffs that are parties to the Settlement Agreements, excluding the Group Settlement Agreement (and which escrow agreements are attached as schedules to such Settlement Agreements), and that no action, application or other proceedings shall be taken, made or continued against Duane Morris LLP without the leave of this Court first being obtained; save and except that the foregoing shall not apply to any claim or liability arising out of any gross negligence or wilful misconduct on its part.

Representative Counsel

32. **THIS COURT ORDERS** that Representative Counsel (as defined in the Order of this Court dated February 8, 2006 (the "Appointment Order")) shall not be liable, either prior to or subsequent to the Plan Implementation Date, for any act or omission on its part as a result of its appointment or the fulfillment of its duties in carrying out the provisions of the Appointment Order, save and except for any claim or liability arising out of any gross negligence or wilful misconduct on its part, and that no action, application or other proceedings shall be taken, made or continued against Representative Counsel without the leave of this Court first being obtained.

Charges

33. **THIS COURT ORDERS** that, subject to paragraph 33 hereof, the Charges on the assets of the Applicants provided for in the Initial CCAA Order and any subsequent Orders in the CCAA Proceedings shall automatically be fully and finally terminated, discharged and released on the Plan Implementation Date.

34. **THIS COURT ORDERS that:** (i) the Monitor shall continue to hold a charge, as provided in the Administrative Charge (as defined in the Initial CCAA Order), until the fees and disbursements of the Monitor and its counsel have been paid in full; and (ii) the DIP Charge (as defined in the Initial CCAA Order) shall remain in full force and effect until all obligations and liabilities secured thereby have been repaid in full, or unless otherwise agreed by the Applicants and the DIP Lender (as defined in the Initial CCAA Order).

35. **THIS COURT ORDERS AND DECLARES** that, notwithstanding any of the terms of the Plan or this Order, the Applicants shall not be released or discharged from their obligations in respect of Unaffected Claims, including, without limitation, to pay the fees and expenses of the Monitor and its respective counsel.

Stay of Proceedings

36. **THIS COURT ORDERS** that, subject to further order of this Court, the Stay Period established in the Initial CCAA Order, as extended, shall be and is hereby further extended until the earlier of the Plan Implementation Date and the date that is 60 Business Days after the date of this Order, or such later date as may be fixed by this Court.

37. **THIS COURT AUTHORIZES AND DIRECTS** the Monitor to apply to the U.S. District Court for a comparable extension of the Stay Period as set out in paragraph 36 hereof.

Initial CCAA Order and Other Orders

38. **THIS COURT ORDERS** that:

(a) except to the extent that the Initial CCAA Order has been varied by or is inconsistent with this Order or any further Order of this Court, the provisions of the Initial CCAA Order shall remain in full force and effect until the Plan Implementation Date; provided that the protections granted in favour of the Monitor shall continue in full force and effect after the Plan Implementation Date; and

(b) all other Orders made in the CCAA Proceedings shall continue in full force and effect in accordance with their respective terms, except to the extent that such Orders are varied by, or are inconsistent with, this Order or any further Order of this Court in the CCAA Proceedings; provided that the protections granted in favour of the Monitor shall continue in full force and effect after the Plan Implementation Date.

39. **THIS COURT ORDERS AND DECLARES** that, without limiting paragraph 0 above, the Call For Claims Order, including, without limitation, the Claims Bar Date, releases, injunctions and prohibitions provided for thereunder, be and is hereby confirmed, and shall operate in addition to the provisions of this Order and the Plan, including, without limitation, the releases, injunctions and prohibitions provided for hereunder and thereunder, respectively.

Approval of the Seventeenth Report

40. **THIS COURT ORDERS** that the Seventeenth Report of the Monitor and the activities of the Monitor referred to therein be and are hereby approved.

Fees

41. **THIS COURT ORDERS** that the fees, disbursements and expenses of the Monitor from November 1, 2006 to January 31, 2007, in the amount of $123,819.56, plus a reserve for fees in the amount of $100,000 to complete the administration of the Monitor's mandate, be and are hereby approved and fixed.

42. **THIS COURT ORDERS** that the fees, disbursements and expenses of Monitor's legal counsel in Canada, Davies Ward Phillips & Vineberg LLP, from October 1, 2006 to January 31, 2007, in the amount of $134,109.56, plus a reserve for fees in the amount of $75,000 to complete the administration of its mandate, be and are hereby approved and fixed.

43. **THIS COURT ORDERS** that the fees, disbursements and expenses of Monitor's legal counsel in the United States, Allen & Overy LLP, from September 1, 2006 to January 31, 2007, in the amount of USD$98,219.87, plus a reserve for fees in the amount of USD$50,000 to complete the administration of its mandate, be and are hereby approved and fixed.

General

44. **THIS COURT ORDERS** that the Applicants, the Monitor or any other interested parties may apply to this Court for any directions or determination required to resolve any matter or dispute relating to, or the subject matter of or rights and benefits under, the Plan or this Order.

Effect, Recognition, Assistance

45. **THIS COURT AUTHORIZES AND DIRECTS** the Monitor to apply to the U.S. District Court for the Sanction Recognition Order.

46. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada, outside Canada and against all Persons against whom it may otherwise be enforceable.

47. **THIS COURT REQUESTS** the aid, recognition and assistance of other courts in Canada in accordance with Section 17 of the CCAA and the Initial CCAA Order, and requests that the Federal Court of Canada and the courts and judicial, regulatory and administrative bodies of or by the provinces and territories of Canada, the Parliament of Canada, the United States of America, the states and other subdivisions of the United States of America including, without limitation, the U.S. District Court, and other nations and states act in aid, recognition and assistance of, and be complementary to, this Court in carrying out the terms of this Order and any other Order in this proceeding. Each of Applicants and the Monitor shall be at liberty, and is hereby authorized and empowered, to make such further applications, motions or proceedings to or before such other court and judicial, regulatory and administrative bodies, and take such other steps, in Canada or the United States of America, as may be necessary or advisable to give effect to this Order.

Motion granted.

End of Document

Tab 6

2014 ONSC 3393
Ontario Superior Court of Justice

Timminco Ltd., Re

2014 CarswellOnt 9328, 2014 ONSC 3393, 14 C.B.R. (6th) 113, 242 A.C.W.S. (3d) 764

In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as Amended

In the Matter of a Plan of Compromise or Arrangement of Timminco Limited and Bécancour Silicon Inc.

Morawetz R.S.J.

Heard: July 22, 2013
Judgment: July 7, 2014
Docket: CV-12-9539-00CL

Counsel: Jane Dietrich, Kate Stigler for Board of Directors, except John Walsh
Kenneth D. Kraft for Chubb Insurance Company of Canada
James C. Orr for Plaintiff, St. Clair Pennyfeather in the Class Action
Maria Konyukhova for Timminco Entities
Robert Staley for John Walsh
Linc Rogers for Monitor

Subject: Civil Practice and Procedure; Insolvency

MOTION by representative plaintiff to lift stay of class action, obtained by defendant corporation.

***Morawetz R.S.J.*:**

Introduction

1 On May 14, 2009, Kim Orr Barristers PC, counsel to the representative plaintiff Mr. St. Clair Pennyfeather ("Plaintiff's Counsel"), initiated the proposed class action (the "Class Action"), which names as defendants Timminco Limited ("Timminco"), a third party, Photon Consulting LLC, and certain of the directors and officers of Timminco, (the "Directors").

2 The Class Action focusses on alleged public misrepresentations that Timminco possessed a proprietary metallurgical process that provided a significant cost advantage in manufacturing solar grade silicon for use in manufacturing solar cells.

3 Mr. Pennyfeather alleges that the representations were first made in March 2008, after which the shares of Timminco gained rapidly in value to more than $18 per share by June 5, 2008. Subsequently, Mr. Pennyfeather alleges that as Timminco began to acknowledge problems with the alleged proprietary process, the share price fell to the point where the equity was described as "penny stock" prior to its delisting in January 2012.

4 In the initial order, granted January 3, 2012 in the *Companies' Creditors Arrangement Act*., R.S.C. 1985, c. C-36, as amended (the "CCAA") proceedings, Timminco sought and obtained stays of all proceedings including the Class Action as against Timminco and the Directors (the "Initial Order").

5 Timminco also obtained a Claims Procedure Order on June 15, 2012 (the "CPO"). Among other things, the CPO established a claims-bar date of July 23, 2012 for claims against the Directors. Mr. Pennyfeather did not file a proof of claim by this date.

6 No CCAA plan has been put forward by Timminco and there is no intention to advance a CCAA plan.

7 Mr. Pennyfeather moves to lift the stay to allow the Class Action to be dealt with on the merits against all named defendants and, if necessary, for an order amending the CPO to exclude the Class Action from the CPO or to allow the filing of a proof of claim relating to those claims.

8 The Class Action seeks to access insurance moneys and potentially the assets of Directors.

9 The respondents on this motion, (the Directors named in the Class Action), contend that the failure to file a claim under the CPO bars any claim against officers and directors or insurance proceeds.

10 Neither Timminco nor the Monitor take any position on this motion.

11 For the reasons that follow, the motion of Mr. Pennyfeather is granted and the stay is lifted so as to permit Mr. Pennyfeather to proceed with the Class Action.

The Stay and CPO

12 The Initial Order contains the relevant stay provision (as extended in subsequent orders):

> 24. This Court Orders that during the Stay Period... no Proceeding may be commenced or continued against any former, current or future directors or officers of the Timminco Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Timminco Entities whereby the directors or officers are alleged under any law to be liable in their capacities as directors or officers for the payment or performance of such obligations, **until a compromise or arrangement in respect of the Timminco Entities, if one is filed, is sanctioned by this court or is refused by the creditors of the Timminco Entities or this Court.**
>
> [emphasis added]

13 In May and June 2012, The Court approved sales transactions comprising substantially all of the Timminco Entities' assets. In their June 7, 2012 Motion, the Timminco Entities sought an extension of the Stay Period to "give the Timminco Entities sufficient time to, among other things, close the transactions relating to the Successful Bid and carry out the Claims Procedure". The Timminco Entities sought court approval of a proposed claims procedure to "identify claims which may be entitled to distributions of potential proceeds of the ... transactions..." The Timminco entities took the position that the Claims Procedure was "a fair and reasonable method of determining the potential distribution rights of creditors of the Timminco Entities".

14 The mechanics of the CPO are as follows. Paragraph 2(h) of the CPO defines the Claims Bar Date as 5:00 p.m. on July 23, 2012. "D&O Claims" are defined in para. 2(f)(iii):

> Any existing or future right or claim of any person against one or more of the directors and/or officers of the Timminco Entity which arose or arises as a result of such directors or officers position, supervision, management or involvement as a director or officer of a Timminco Entity, whether such right, or the circumstances giving rise to it arose before or after the Initial Order up to and including this Claims Procedure whether enforceable in any civil, administrative, or criminal proceeding (each a "D&O Claim") (and collectively the "D&O Claims"), including any right:

a. relating to any of the categories of obligations described in paragraph 9 of the Initial Order, whether accrued or falling due before or after the Initial Order, in respect of which a director or officer may be liable in his or her capacity as such;

b. in respect of which a director or officer may be liable in his or her capacity as such concerning employee entitlements to wages or other debts for services rendered to the Timminco Entities or any one of them or for vacation pay, pension contributions, benefits or other amounts related to employment or pension plan rights or benefits or for taxes owing by the Timminco Entities or amounts which were required by law to be withheld by the Timminco Entities;

c. in respect of which a director or officer may be liable in his or her capacity as such as a result of any act, omission or breach of duty; or

d. that is or is related to a penalty, fine or claim for damages or costs.

Provided however that in any case "Claim" shall not include an Excluded Claim.

15 The CPO appears to bar a person who fails to file a D&O Claim by the Claims Bar Date from asserting or enforcing the claim:

19. This Court orders that any Person who does not file a proof of a D&O Claim in accordance with this order by the claims-bar date **or such other later date as may be ordered by the Court**, shall be forever barred from asserting or enforcing such D&O Claim against the directors and officers and the directors and officers shall not have any liability whatsoever in respect of such D&O Claim and such D&O Claim shall be extinguished without any further act or notification.

[emphasis added]

Mr. Pennyfeather's Position

16 Mr. Pennyfeather advances a number of arguments. Most significantly, he argues that it is not fair and reasonable to allow the defendants to bar and extinguish the Class Actions claims through the use of an interim and procedural court order. He submits that the respondents attempt to use the CCAA in a tactical and technical fashion to achieve a result unrelated to any legitimate aspect of either a restructuring or orderly liquidation. The operation of the fair and reasonable standard under the CCAA calls for the exercise of the Court's discretion to lift the stay and, if necessary, amend the CPO to either exclude the Class Action claims or permit submissions of a class proof of claim.

17 In support of this argument, Mr. Pennyfeather adds that there is no evidence that any of the Directors who are defendants in the class action contributed anything to the CCAA process, and that the targeted insurance proceeds are not available to other creditors. Thus, he submits, a bar against pursuing these funds benefits only the insurance companies who are not stakeholders in the restructuring or liquidation.

18 Mr. Pennyfeather advances a number of additional arguments. Because I am persuaded by this first submission, it is not necessary to discuss the additional arguments in great detail. However, I will give a brief summary of these additional arguments below.

19 First, Mr. Pennyfeather submits, since the stay was ordered, he has attempted to have the stay lifted as it relates to the Class Action.

20 Second, Mr. Pennyfeather submits that the CPO did not permit the filing of representative claims, unlike, for example, claims processed in *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp.*, 2013 ONSC 1078, 100 C.B.R. (5th) 30 (Ont. S.C.J. [Commercial List]). Representative claims are generally not permitted under

the CCAA and the solicitors for the representative plaintiff do not act for class members prior to certification (see: *Muscletech Research & Development Inc., Re* (2006), 25 C.B.R. (5th) 218 (Ont. S.C.J. [Commercial List])). Therefore, Mr. Pennyfeather submits that the omission in the order obtained by the Timminco entities, of the type of provision contained in the *Sino-Forest* Claims Order, precluded the action that they now assert should have been taken.

21 Third, Mr. Pennyfeather responds to the significant argument made by the responding parties that the CPO bars the claim. He submits that the Class Action, which alleges, *inter alia*, misrepresentations and breaches of the *Securities Act*, R.S.O. 1990, c. S.5, is unaffected by the CPO. There are several reasons for this. First, the CPO excludes claims that cannot be compromised as a result of the provisions of s. 5.1(2) of the CCAA. Alternatively, even if Mr. Pennyfeather and other class members are not creditors pursuant to section 5.1(2), he submits that Parliament has clearly intended to exclude claims for misrepresentation by directors regardless of who brought them. In addition, insofar as the Class Action seeks to recover insurance proceeds, the CPO did not, according to Mr. Pennyfeather, affect that claim.

22 In summary, Mr. Pennyfeather's most significant argument is that the CCAA process should not be used in a tactical manner to achieve a result collateral to the proper purposes of the legislation. The rights of putative class members should be determined on the merits of the Class Action, which are considerable given the evidence. Further, the lifting of the stay is fair and reasonable in all of the circumstances.

Directors' Position

23 Counsel to directors and officers named in the proposed class action, other than Mr. Walsh (the "Defendant Directors") submit there are three issues to be considered on the motion: (a) should the CPO be amended to grant Mr. Pennyfeather the authority to file a claim on behalf of the class members in the D&O Claims Procedure? (b) if Mr. Pennyfeather is granted the authority to file a claim on behalf of the class members, should the claims-bar date be extended to allow him the opportunity to file a late claim against the Defendant Directors? and (c) if Mr. Pennyfeather is permitted to file a late claim against the Defendant Directors, should the D&O stay be lifted to allow the proposed class action to proceed against the Defendant Directors?

24 The Defendant Directors take the position that: (a) Mr. Pennyfeather does not have the requisite authority and/or right to file a claim on behalf of the class action members and the CPO and should not be amended to permit such; (b) if Mr. Pennyfeather is granted the authority to file a claim on behalf of the class members, the claims-bar date should not be extended to allow Mr. Pennyfeather to file a late claim; and (c) if Mr. Pennyfeather is permitted to file a late claim, the D&O stay should not be lifted to allow the proposed class action to proceed against the Defendant Directors.

25 The Defendant Directors counter Mr. Pennyfeather's arguments with a number of points. They take the position that while they were holding office, they assisted with every aspect of the CCAA process, including (i) the sales process through which the Timminco Entities sold substantially all of their assets and obtained recoveries for the benefit of their creditors; and (ii) the establishment of the claims procedure, resigning only after the claims-bar date passed.

26 The Defendant Directors also submit that Mr. Pennyfeather has been aware of, and participated in, the CCAA proceedings since the weeks following the granting of the Initial Order. They submit that at no time prior to this motion did Mr. Pennyfeather take any position on the claims procedures established to seek the authority to file a claim on behalf of the class members. They submit that, at this point, Mr. Pennyfeather is asking the court to exercise its discretion to (i) amend the CPO to grant him the authority to file a claim on behalf of the class members; (ii) extend the claims-bar date to allow him to file such claim; and (iii) lift the stay of proceedings. They submit that Mr. Pennyfeather asks this discretion be exercised to allow him to pursue a claim against the Defendant Directors which remains uncertified, is in part statute barred, and lacks merit.

27 Counsel to the Defendant Directors submits that the D&O Claims Procedure was initiated for the purpose of determining, with finality, the claims against the directors and officers. They submit that the D&O Claims Procedure has at no time been contingent on, tied to, or dependent on the filing of a Plan of Arrangement by the Timminco Entities.

28 Simply put, the Defendant Directors submit that the CPO sets a claims-bar date of July 23, 2012 for claims against Directors and Mr. Pennyfeather did not file any Proof of Claim against the Defendant Directors by the claims-bar date. Accordingly, they submit that the claims against the Defendant Directors contemplated by the Class Action are currently barred and extinguished by the CPO.

29 The arguments put forward by Mr. Walsh are similar.

30 Counsel to Mr. Walsh attempts to draw similarities between this case and *Sino-Forest*. Counsel submits this is a case where Mr. Pennyfeather intentionally refused to file a Proof of Claim in support of a securities misrepresentation claim against Timminco and its directors and officers.

31 They further submit that Mr. Pennyfeather is asking for the Court to exercise its discretion in his favour to lift the stay of proceedings, in order to allow him to pursue a proceeding which has been largely, if not entirely neutered by the Court of Appeal (leave to appeal to the Supreme Court of Canada dismissed). They point out that just like in *Sino-Forest*, to lift the stay would be an exercise in futility where the Court commented that "there is no right to opt out of any CCAA process...by virtue of deciding, on their own volition, not to participate in the CCAA process", the objectors relinquished their right to file a claim and take steps, in a timely way, to assert their rights to vote in the CCAA proceeding.

32 Counsel to Mr. Walsh also takes the position that Mr. Pennyfeather's only argument is a strained effort to avoid the plain language of the CPO in an effort to say that his claim is an "excluded claim" and therefore a Proof of Claim was never required. Even if Mr. Pennyfeather was right, counsel to Mr. Walsh submits that Mr. Pennyfeather still would have been required to file a Proof of Claim, failing which his claim would have been barred. Under the CPO, proofs of such claims were still called for, even if they were not to be adjudicated.

33 They note that Mr. Pennyfeather was aware of the CCAA proceeding and the Initial Order. As early as January 17, 2012, counsel to Mr. Pennyfeather contacted counsel for Timminco, asking for consent to lift the Stay.

34 Counsel contends that the "excluded claim" language that Mr. Pennyfeather relies on is not found in the definition of D&O Claim. Under the terms of the CPO, the language is a carve-out from the larger definition of "claim", not the subset definition of D&O Claim. As a result, counsel submits that proofs of claim are still required for D&O Claims, regardless of whether they are excluded claims. In that way, the universe of D&O Claims would be known, even if excluded claims would ultimately not be part of a plan.

35 Mr. Walsh also takes the position that Mr. Pennyfeather made an intentional decision not to file a claim. Mr. Walsh emphasizes that Mr. Pennyfeather had full notice of the motion for the CPO and chose not to oppose or appear on the motion. Further, at no time did Mr. Pennyfeather request the Monitor apply to court for directions with respect to the terms of the CPO.

36 Mr. Walsh submits he is prejudiced by the continuation of the Class Action and he wants to get on with his life but is unable to do so while the claim is extant.

Law and Analysis

37 For the purposes of this motion, I must decide whether the CPO bars Mr. Pennyfeather from proceeding with the Class Action and whether I should lift the stay of proceedings as it applies to the Class Action. For the reasons that follow, I conclude that the CPO should not serve as a bar to proceeding with the Class Action and that the stay should be lifted.

38 As I explain below, the application of the claims bar order and lifting the stay are discretionary. This discretion should be exercised in light of the purposes of both claims-bar orders and stays under the CCAA. A claim bar order and a stay under the CCAA are intended to assist the debtor in the restructuring process, which may encompass asset realizations. At this point, Timminco's assets have been sold, distributions made to secured creditors, no CCAA plan has been put forward by Timminco, and there is no intention to advance a CCAA plan. It seems to me that neither the

stay, nor the claims bar order continue to serve their functional purposes in these CCAA proceedings by barring the Class Action. In these circumstances, I fail to see why the stay and the claim bar order should be utilized to obstruct the plaintiff from proceeding with its Class Action.

The Purpose of Stay Orders and Claims-Bar Orders

39 For the purposes of this motion, it is necessary to consider the objective of the CCAA stay order. The stay of proceedings restrains judicial and extra-judicial conduct that could impair the ability of the debtor company to continue in business and the debtor's ability to focus and concentrate its efforts on negotiating of a compromise or arrangement: *Campeau v. Olympia & York Developments Ltd.* (1992), 14 C.B.R. (3d) 303 (Ont. Gen. Div.).

40 Sections 2, 12 and 19 of the CCAA provide the definition of a "Claim" for the purposes of the CCAA and also provide guidance as to how claims are to be determined. Section 12 of the CCAA states

> 12. The court may fix deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement.

The use of the word "may" in s. 12 indicates that fixing deadlines, which includes granting a claims bar order, is discretionary. Additionally, as noted above the CPO provided at para. 19 that a D&O Claim could be filed on "such other later date as may be ordered by the Court".

41 It is also necessary to return to first principles with respect to claims-bar orders. The CCAA is intended to facilitate a compromise or arrangement between a debtor company and its creditors and shareholders. For a debtor company engaged in restructuring under the CCAA, which may include a liquidation of its assets, it is of fundamental importance to determine the quantum of liabilities to which the debtor and, in certain circumstances, third parties are subject. It is this desire for certainty that led to the development of the practice by which debtors apply to court for orders which establish a deadline for filing claims.

42 Adherence to the claims-bar date becomes even more important when distributions are being made (in this case, to secured creditors), or when a plan is being presented to creditors and a creditors' meeting is called to consider the plan of compromise. These objectives are recognized by s. 12 of the CCAA, in particular the references to "voting" and "distribution".

43 In such circumstances, stakeholders are entitled to know the implications of their actions. The claims-bar order can assist in this process. By establishing a claims-bar date, the debtor can determine the universe of claims and the potential distribution to creditors, and creditors are in a position to make an informed choice as to the alternatives presented to them. If distributions are being made or a plan is presented to creditors and voted upon, stakeholders should be able to place a degree of reliance in the claims bar process.

44 Stakeholders in this context can also include directors and officers, as it is not uncommon for debtor applicants to propose a plan under the CCAA that compromises certain claims against directors and officers. In this context, the provisions of s. 5.1 of the CCAA must be respected.

45 In the case of Timminco, there have been distributions to secured creditors which are not the subject of challenge. The Class Action claim is subordinate in ranking to the claims of the secured creditors and has no impact on the distributions made to secured creditors. Further, there is no CCAA plan. There will be no compromise of claims against directors and officers. I accept that at the outset of the CCAA proceedings there may very well have been an intention on the part of the debtor to formulate a CCAA plan and further, that plan may have contemplated the compromise of certain claims against directors and officers. However, these plans did not come to fruition. What we are left with is to determine the consequence of failing to file a timely claim in these circumstances.

46 In the circumstances of this case, i.e., in the absence of a plan, the purpose of the claims bar procedure is questionable. Specifically, in this case, should the claims bar procedure be used to determine the Class Action?

47 In my view, it is not the function of the court on this motion to determine the merits of Mr. Pennyfeather's claim. Rather, it is to determine whether or not the claims-bar order operates as a bar to Mr. Pennyfeather being able to put forth a claim. It does not act as such a bar.

48 It seems to me that CCAA proceedings should not be used, in these circumstances, as a tool to bar Mr. Pennyfeather from proceeding with the Class Action claim. In the absence of a CCAA proceeding, Mr. Pennyfeather would be in position to move forward with the Class Action in the usual course. On a principled basis, a claims bar order in a CCAA proceeding, where there will be no CCAA plan, should not be used in such a way as to defeat the claim of Mr. Pennyfeather. The determination of the claim should be made on the merits in the proper forum. In these circumstances, where there is no CCAA plan, the CCAA proceeding is, in my view, not the proper forum.

49 Similar considerations apply to the Stay Order. With no prospect of a compromise or arrangement, and with the sales process completed, there is no need to maintain the status quo to allow the debtor to focus and concentrate its efforts on negotiating a compromise or arrangement. In this regard, the fact that neither Timminco nor the Monitor take a position on this motion or argue prejudice is instructive.

Applicability of Established Tests

50 The lifting of a stay is discretionary. In determining whether to lift the stay, the court should consider whether there are sound reasons for doing so consistent with the objectives of the CCAA, including a consideration of (a) the balance of convenience; (b) the relative prejudice to the parties; and (c) where relevant, the merits of the proposed action: *Canwest Global Communications Corp., Re*, 2011 ONSC 2215, 75 C.B.R. (5th) 156 (Ont. S.C.J. [Commercial List]), at para. 27.

51 Counsel to Mr. Walsh submit that courts have historically considered the following factors in determining whether to exercise their discretion to consider claims after the claims-bar date: (a) was the delay caused by inadvertence and, if so, did the claimant act in good faith? (b) what is the effect of permitting the claim in terms of the existence and impact of any relevant prejudice caused by the delay; (c) if relevant prejudice is found, can it be alleviated by attaching appropriate conditions to an order permitting late filing? and (d) if relevant prejudice is found which cannot be alleviated, are there any other considerations which may nonetheless warrant an order permitting late filing?

52 These are factors that have been considered by the courts on numerous occasions (see, for example, *Sino-Forest*; *Sammi Atlas Inc., Re* (1998), 3 C.B.R. (4th) 171 (Ont. Gen. Div. [Commercial List]), *Blue Range Resource Corp., Re*, 2000 ABCA 285, 193 D.L.R. (4th) 314 (Alta. C.A.) , leave to appeal to S.C.C. refused, (S.C.C.); *Canadian Red Cross Society / Société Canadienne de la Croix-Rouge, Re* (2008), 48 C.B.R. (5th) 41 (Ont. S.C.J.); and *Ivorylane Corp. v. Country Style Realty Ltd.*, [2004] O.J. No. 2662 (Ont. S.C.J. [Commercial List])).

53 However, it should be noted that all of these cases involved a CCAA Plan that was considered by creditors.

54 In the present circumstances, it seems to me there is an additional factor to take into account: there is no CCAA Plan.

55 I have noted above that certain delay can be attributed to the CCAA proceedings and the impact of *Green v. Canadian Imperial Bank of Commerce*, 2014 ONCA 90 (Ont. C.A.), at the Court of Appeal. That is not a full answer for the delay but a partial explanation.

56 The prejudice experienced by a director not having a final resolution to the proposed Class Action has to be weighed as against the rights of the class action plaintiff to have this matter heard in court. To the extent that time constitutes a degree of prejudice to the defendants, it can be alleviated by requiring the parties to agree upon a timetable to have this matter addressed on a timely basis with case management.

57 I have not addressed in great detail whether the CPO requires excluded claims to be filed. In my view, it is not necessary to embark on an analysis of this issue, nor have I embarked on a review of the merits. Rather, the principles of equity and fairness dictate that the class action plaintiff can move forward with the claim. The claim may face many hurdles. Some of these have been outlined in the factum submitted by counsel to Mr. Walsh. However, that does not necessarily mean that the class action plaintiff should be disentitled from proceeding.

58 In the result, the motion of Mr. Pennyfeather is granted and the stay is lifted so as to permit Mr. Pennyfeather to proceed with the Class Action. The CPO is modified so as to allow Mr. Pennyfeather to file his claim.

Motion granted.

End of Document

Tab 7

2009 NSSC 136
Nova Scotia Supreme Court

ScoZinc Ltd., Re

2009 CarswellNS 229, 2009 NSSC 136, 177 A.C.W.S. (3d) 293, 277 N.S.R. (2d) 251, 53 C.B.R. (5th) 96, 882 A.P.R. 251

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 ScoZinc Ltd. (Applicant)

D.R. Beveridge J.

Heard: April 3, 2009
Judgment: April 3, 2009
Written reasons: April 28, 2009
Docket: Hfx. 305549

Counsel: John G. Stringer, Q.C., Mr. Ben R. Durnford for Applicant
Robert MacKeigan, Q.C. for Grant Thornton

Subject: Insolvency

MOTION by monitor appointed under *Companies' Creditors Arrangement Act* for directions on whether it had authority to allow revision of claim after claim's bar date but before date set for monitor to complete its assessment of claims.

D.R. Beveridge J. **(orally):**

1 On December 22, 2008 ScoZinc Ltd. was granted protection by way of a stay of proceedings of all claims against it pursuant to s.11 of the *Companies' Creditors Arrangement Act* R.S.C. 1985, c. C-36. The stay has been extended from time to time. Grant Thornton was appointed as the Monitor of the business and financial affairs of ScoZinc pursuant to s.11.7 of the *CCAA.*

2 The determination of creditors' claims was set by a Claims Procedure Order. This order set dates for the submission of claims to the Monitor, and for the Monitor to assess the claims. The Monitor brought a motion seeking directions from the court on whether it has the necessary authority to allow a revision of a claim after the claim's bar date but before the date set for the Monitor to complete its assessment of claims.

3 The motion was heard on April 3, 2009. At the conclusion of the hearing of the motion I concluded that the Monitor did have the necessary authority. I granted the requested order with reasons to follow. These are my reasons.

Background

4 The procedure for the identification and quantification of claims was established pursuant to my order of February 18, 2009. Any persons asserting a claim was to deliver to the Monitor a Proof of Claim by 5:00 p.m. on March 16, 2009, including a statement of account setting out the full details of the claim. Any claimant that did not deliver a Proof of Claim by the claims bar date, subject to the Monitor's agreement or as the court may otherwise order, would have its claim forever extinguished and barred from making any claim against ScoZinc.

5 The Monitor was directed to review all Proofs of Claim filed on or before March 16, 2009 and to accept, revise or disallow the claims. Any revision or disallowance was to be communicated by Notice of Revision or Disallowance, no later than March 27, 2009. If a creditor disagreed with the assessment of the Monitor, it could dispute the assessment before a Claims Officer and ultimately to a judge of the Supreme Court.

6 The three claims that have triggered the Monitor's motion for directions were submitted by Acadian Mining Corporation, Royal Roads Corp., and Komatsu International (Canada) Inc.

7 ScoZinc is 100% owned by Acadian Mining Corp. Theso two corporations share office space, managerial staff, and have common officers and directors. Acadian Mining is a substantial shareholder in Royal Roads and also have some common officers and directors.

8 Originally Royal Roads asserted a claim as a secured creditor on the basis of a first charge security held by it on ScoZinc's assets for a loan in the amount of approximately $2.3 million. Acadian Mining also claimed to be a secured creditor due to a second charge on ScoZinc's assets securing approximately $23.5 million of debt. Both Royal Roads and Acadian Mining have released their security. Each company submitted Proofs of Claim dated March 4, 2009 as unsecured creditors.

9 Royal Roads claim was for $579, 964.62. The claim by Acadian Mining was for $23,761.270.20. John Rawding, Financial Officer for Acadian Mining and ScoZinc, prepared the Proofs of Claim for both Royal Roads and Acadian Mining. It appears from the affidavit and materials submitted, and the Monitor's fifth report dated March 31, 2009 that there were errors in each of the Proofs of Claim.

10 Mr. Rawding incorrectly attributed $1,720,035.38 as debt by Acadian Mining to Royal Roads when it should have been debt owed by ScoZinc to Royal Roads. In addition, during year end audit procedures for Royal Roads, Acadian Mining and ScoZinc, other erroneous entries were discovered. The total claim that should have been advanced by Royal Roads was $2,772,734.19.

11 The appropriate claim that should have been submitted by Acadian Mining was $22,041,234.82, a reduction of $1,720,035.38. Both Royal Roads and Acadian Mining submitted revised Proofs of Claim on March 25, 2009 with supporting documentation.

12 The third claim is by Komatsu. Its initial Proof of Claim was dated March 16, 2009 for both secured and unsecured claims of $4,245,663.78. The initial claim did not include a secured claim for the equipment that had been returned to Komatsu, nor include a claim for equipment that was still being used by ScoZinc. A revised Proof of Claim was filed by Komatsu on March 26, 2009.

13 The Monitor, sets out in its fifth report dated March 31, 2009, that after reviewing the relevant books and records, the errors in the Proofs of Claim by Royal Roads, Acadian Mining and Komatsu were due to inadvertence. For all of these claims it issued a Notice of Revision or Disallowance on March 27, 2009, allowing the claims as revised "if it is determined by the court that the Monitor has the power to do so".

14 The request for directions and the circumstances pose the following issue:

Issue

15 Does the Monitor have the authority to allow the revision of a claim by increasing it based on evidence submitted by a claimant within the time period set for the monitor to carry out its assessment of claims?

Analysis

16 The jurisdiction of the Monitor stems from the jurisdiction of the court granted to it by the *CCAA*. Whenever an order is made under s.11 of the *CCAA* the court is required to appoint a monitor. Section 11.7 of the *CCAA* provides:

> 11.7(1) When an order is made in respect of a company by the court under section 11, the court shall at the same time appoint a person, in this section and in section 11.8 referred to as "the monitor", to monitor the business and financial affairs of the company while the order remains in effect.
>
> (2) Except as may be otherwise directed by the court, the auditor of the company may be appointed as the monitor.
>
> (3) The monitor shall
>
> (a) for the purposes of monitoring the company's business and financial affairs, have access to and examine the company's property, including the premises, books, records, data, including data in electronic form, and other financial documents of the company to the extent necessary to adequately assess the company's business and financial affairs;
>
> (b) file a report with the court on the state of the company's business and financial affairs, containing prescribed information,
>
> (i) forthwith after ascertaining any material adverse change in the company's projected cash-flow or financial circumstances,
>
> (ii) at least seven days before any meeting of creditors under section 4 or 5, or
>
> (iii) at such other times as the court may order;
>
> (c) advise the creditors of the filing of the report referred to in paragraph (b) in any notice of a meeting of creditors referred to in section 4 or 5; and
>
> (d) carry out such other functions in relation to the company as the court may direct.
>
> ...

17 It appears that the purpose of the *CCAA* is to grant to an insolvent company protection from its creditors in order to permit it a reasonable opportunity to restructure its affairs in order to reach a compromise or arrangement between the company and its creditors. The court has the power to order a meeting of the creditors or class of creditors for them to consider a compromise or arrangement proposed by the debtor company (s. 4, 5). Where a majority of the creditors representing two thirds value of the creditors or class of creditors agree to a compromise or arrangement, the court may sanction it and thereafter such compromise or arrangement is binding on all creditors, or class of creditors (s. 6).

18 Section 12 of the *Act* defines a claim to mean "any indebtedness, liability or obligation of any kind that, if unsecured, would be a debt provable in bankruptcy within the meaning of the *Bankruptcy and Insolvency Act*." However, as noted by McElcheran in *Commercial Insolvency in Canada* (LexisNexis Canada Inc., Markham, Ontario, 2005 at p. 279-80) the *CCAA* does not set out a process for identification or determination of claims; instead, the Court creates a claims process by court order.

19 The only guidance provided by the *CCAA* is that in the event of a disagreement the amount of a claim shall be determined by the court on summary application by the company or by the creditor. Section 12(2) of the *Act* provides:

> Determination of amount of claim

> (2) For the purposes of this Act, the amount represented by a claim of any secured or unsecured creditor shall be determined as follows:
>
> (a) the amount of an unsecured claim shall be the amount
>
> (i) in the case of a company in the course of being wound up under the Winding-up and Restructuring Act, proof of which has been made in accordance with that Act,
>
> (ii) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, proof of which has been made in accordance with that Act, or
>
> (iii) in the case of any other company, proof of which might be made under the Bankruptcy and Insolvency Act, but if the amount so provable is not admitted by the company, the amount shall be determined by the court on summary application by the company or by the creditor; and
>
> (b) the amount of a secured claim shall be the amount, proof of which might be made in respect thereof under the Bankruptcy and Insolvency Act if the claim were unsecured, but the amount if not admitted by the company shall, in the case of a company subject to pending proceedings under the Winding-up and Restructuring Act or the Bankruptcy and Insolvency Act, be established by proof in the same manner as an unsecured claim under the Winding-up and Restructuring Act or the Bankruptcy and Insolvency Act, as the case may be, and in the case of any other company the amount shall be determined by the court on summary application by the company or the creditor.

20 The only parties who appeared on this motion were the Monitor, ScoZinc and Komatsu. No specific submissions were requested nor made by the parties with respect to the nature of the court's jurisdiction to determine the mechanism and time lines to classify and quantify claims against the debtor company.

21 Under the *Bankruptcy and Insolvency Act* the Trustee is the designated gatekeeper who first determines whether a Proof of Claim submitted by a creditor is valid. The trustee may admit the claim or disallow it in whole or in part (s.135(2) *BIA)*. A creditor who is dissatisfied with a decision by the trustee may appeal to a judge of the Bankruptcy Court.

22 In contrast, the *CCAA* does not set out the procedure beyond the language in s.12. The language only accomplishes two things. The first is that the debtor company can agree on the amount of a secured or unsecured claim; and secondly, if there is a disagreement, then on application of either the company or the creditor, the amount shall be determined by the court on "summary application".

23 The practice has arisen for the court to create by order a claims process that is both flexible and expeditious. The Monitor identifies, by review of the debtor's records, all potential claimants and sends to them a claim package. To ensure that all creditors come forward and participate on a timely basis, there is a provision in the claims process order requiring creditors to file their claims by a fixed date. If they do not, subject to further relief provided by the claims process order, or by the court, the creditor's claim is barred.

24 If the Monitor disagrees with the claim, and the disagreement cannot be resolved, then a claimant can present its case to a claims officer who is usually given the power to adjudicate disputed claims, with the right of appeal to a judge of the court overseeing the *CCAA* proceedings.

25 The establishment of a claims process utilizing the monitor and or a claims officer by court order appears to be a well accepted practice (See for example *Federal Gypsum Co., Re*, 2007 NSSC 384 (N.S. S.C.); *Olympia & York Developments Ltd. v. Royal Trust Co.* (1993), 17 C.B.R. (3d) 1 (Ont. Gen. Div.); *Air Canada, Re* (2004), 2 C.B.R. (5th) 23 (Ont. S.C.J. [Commercial List]); *Triton Tubular Components Corp., Re*, [2005] O.J. No. 3926 (Ont. S.C.J.); *Muscletech Research & Development Inc., Re*, [2006] O.J. No. 4087 (Ont. S.C.J.); *Pine Valley Mining Corp., Re*, 2008 BCSC 356

(B.C. S.C.); *Blue Range Resource Corp., Re*, 2000 ABCA 285 (Alta. C.A.); *Carlen Transport Inc. v. Juniper Lumber Co. (Monitor of)* (2001), 21 C.B.R. (4th) 222 (N.B. Q.B.).)

26 I could find no reported case that doubt the authority of the court to create a claims process. Kenneth Kraft in his article "The CCAA and the Claims Bar Process", (2000), 13 *Commercial Insolvency Reporter* 6, endorsed the utilization of a claims process on the basis of reliance on the court's inherent jurisdiction, provided the process adhered to the specific mandates of the *CCAA*. In unrelated contexts, caution has been expressed with respect to reliance on the inherent jurisdiction of the superior court as the basis for dealing with the myriad issues that can arise under the *CCAA* (See: *Skeena Cellulose Inc., Re* (2003), 43 C.B.R. (4th) 187 (B.C. C.A.)) and *Stelco Inc., Re*, [2005] O.J. No. 1171 (Ont. C.A.)).

27 Sir J.H. Jacob, Q.C. in his seminal article "The Inherent Jurisdiction of the Court", (1970) *Current Legal Problems* 23, concluded that it has been clear law from the earliest times that superior courts of justice, as part of their inherent jurisdiction, have the power to control their own proceedings and process. He wrote:

> Under its inherent jurisdiction, the court has power to control and regulate its process and proceedings, and it exercises this power in a great variety of circumstances and by many different methods. Some of the instances of the exercise of this power have been of far-reaching importance, others have dealt with matters of detail or have been of transient value. Some have involved the exercise of administrative powers, others of judicial powers. Some have been turned into rules of law, others by long usage or custom may have acquired the force of law, and still others remain mere rules of practice. The exercise of this power has been pervasive throughout the whole legal machinery and has been extended to all stages of proceedings, pre-trial, trial and post-trial. Indeed, it is difficult to set the limits upon the powers of the court in the exercise of its inherent jurisdiction to control and regulate its process, for these limits are coincident with the needs of the court to fulfil its judicial functions in the administration of justice.
>
> p. 32-33

28 The *CCAA* gives no specific guidance to the court on how to determine the existence, nature, validity or extent of a claim against a debtor company. As noted earlier, the only reference is in s. 12 of the *Act* that if there is a dispute as to the amount of a claim, then the amount shall be determined by the court "on summary application". In *Freeman, Re*, [1922] N.S.J. No. 15, [1923] 1 D.L.R. 378 (N.S. C.A.) (en banc) the court considered the words "on summary application" as they appeared in the *Probate Act* R.S.N.S. 1900 c.158. Harris C.J. wrote:

> [17] The words "summary application" do not mean without notice, but simply imply that the proceedings before the Court are not to be conducted in the ordinary way, but in a concise way.
>
> [18] The Oxford Dictionary p. 140 gives as one of the meanings of "summary" dispensing with needless details or formalities — done with despatch.
>
> [19] In the case of the Western &c R. *Co. v. Atlanta* (1901), 113 Ga. 537, the meaning of the words "summary proceeding" is discussed at some length and the Court held at pp. 543-544: —
>
> > "In a summary manner does not at all mean that they may be abated without notice or hearing, but simply that it may be done without a trial in the ordinary forms prescribed by law for a regular judicial procedure."
>
> [20] I cite this not because it is a binding authority, but because its reasoning commends itself to my judgment and I adopt it.

29 In my opinion, whatever process may be appropriate and necessary to adjudicate disputed claims that ultimately end up before a judge of the superior court, the determination by the court that claims must initially be identified and assessed by the Monitor, and heard first by a Claims Officer, is a valid exercise of the court's inherent jurisdiction.

30 The *CCAA* gives to the court the express and implied jurisdiction to do a variety of things. They need not all be enumerated. The court is required to appoint a monitor (s.11.7). Once appointed, the monitor is required to monitor the

company's business and financial affairs. The *Act* mandates that the monitor have access to and examine the company's property including all records. The monitor must file a report with the court on the state of the company's business and financial affairs and contain prescribed information. In addition, the monitor shall carry out such other functions in relation to the company as the court may direct (s.11.7(3)(d)).

31 In these circumstances, it is not only logical, but eminently practical that the monitor, as an officer of the court, be directed by court order to fulfil the analogous role to that of the trustee under the *BIA*. The Claims Procedure Order of February 18, 2009 accomplishes this.

Power of the Monitor

32 The Monitor was required by the Order to publish a notice to claimants in the newspaper regarding the claims procedure. It was also required to send a claims package to known potential claimants identified by the Monitor through its review of the books and records of ScoZinc. The claims bar date was set as March 16, 2009, or such later date as may be ordered by the court.

33 The duties of the Monitor, once a claim was received by it, were set out in paragraphs 9 and 10 of the Claims Procedure Order. They provide as follows:

> 9. Upon receipt of a Proof of Claim:
>
> a. The Monitor is hereby authorized and directed to use reasonable discretion as to the adequacy of compliance as to the manner in which Proofs of Claim are completed and executed and may, where it is satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this Order as to the completion and the execution of a Proof of Claim. A Claim which is accepted by the Monitor shall constitute a Proven Claim;
>
> b. the Monitor and ScoZinc may attempt to consensually resolve the classification and amount of any Claim with the claimant prior to accepting, revising or disallowing such Claim; and
>
> ...
>
> 10. The Monitor shall review all Proofs of Claim filed on or before the Claims Bar Date. The Monitor shall accept, revise or disallow such Proofs of Claim as contemplated herein. The Monitor shall send a Notice of Revision or Disallowance and the form of Notice of Dispute to the Claimant as soon as the Claim has been revised or disallowed but in any event no later than 11:59 p.m. (Halifax time) on March 27, 2009 or such later date as the Court may order. Where the Monitor does not send a Notice of Revision or Disallowance by the aforementioned date to a Claimant who has submitted a Proof of Claim, the Monitor shall be deemed to have accepted such Claim.

34 Any person who wished to dispute a Notice of Revision or Disallowance was required to file a notice to the monitor and to the Claims Officer no later than April 6, 2009. The Claims Officer was designated to be Richard Cregan, Q.C., serving in his personal capacity and not as Registrar in Bankruptcy. Subject to the direction of the court, the Claims Officer was given the power to determine how evidence would be brought before him and any other procedural matters that may arise with respect to the claim. A claimant or the Monitor may appeal the Claims Officer's decision to the court.

35 The Monitor suggests that the power given to it under paragraph 9(a) and 10 is sufficient to permit it to accept the revised Proofs of Claim filed after the claim's bar date of March 16, 2009, but before its assessment date of March 27, 2009.

36 Reliance is also placed on the decision of the Alberta Court of Appeal in *Blue Range Resource Corp., Re*, 2000 ABCA 285 (Alta. C.A.). As noted by the Monitor, the decision in *Blue Range* did not directly deal with the issue on which the Monitor here seeks directions. In *Blue Range*, the claims procedure established by the court set the claims bar date

of June 15, 1999. Claims of creditors not proven in accordance with the procedures set out were deemed to be forever barred. Some creditors filed their Notice of Claim after the claims bar date. The monitor disallowed their claims. There were a second group of creditors who filed their Notice of Claim prior to the applicable claims bar date, but then sought to amend their claims after the claims bar date had passed. The monitor also disallowed these claims as late. What is not clear from the reported decisions is whether this second group of creditors requested amendments of their claims during the time period granted to the Monitor to carry out its assessment.

37 The chambers judge allowed the late and amended claims to be filed. Enron Capital Corp. and the creditor's committee sought leave to appeal that decision. Leave to appeal was granted on January 14, 2000 with respect to the following question:

> What criteria in the circumstances of these cases should the Court use to exercise its discretion in deciding whether to allow late claimants to file claims which, if proven, may be recognized, notwithstanding a previous claims bar order containing a claims bar date which would otherwise bar the claim of the late claimants, and applying the criteria to each case, what is the result?
>
> *Blue Range Resource Corp., Re*, 2000 ABCA 16 (Alta. C.A. [In Chambers])

38 Wittmann J.A. delivered the judgment of the court. He noted that all counsel conceded that the court had the authority to allow the late filing of claims and that the appeal was really a matter of what criteria the court should use in exercising that power. Accordingly, a Claims Procedure Order that contains a claims bar date should not purport to forever bar a claim without a saving provision. Wittmann J.A. set out the test for determining when a late claim may be included to be as follows:

> [26] Therefore, the appropriate criteria to apply to the late claimants is as follows:
>
> 1. Was the delay caused by inadvertence and if so, did the claimant act in good faith?
>
> 2. What is the effect of permitting the claim in terms of the existence and impact of any relevant prejudice caused by the delay?
>
> 3. If relevant prejudice is found can it be alleviated by attaching appropriate conditions to an order permitting late filing?
>
> 4. If relevant prejudice is found which cannot be alleviated, are there any other considerations which may nonetheless warrant an order permitting late filing?
>
> [27] In the context of the criteria, "inadvertent" includes carelessness, negligence, accident, and is unintentional. I will deal with the conduct of each of the respondents in turn below and then turn to a discussion of potential prejudice suffered by the appellants.
>
> 2000 ABCA 285 (Alta. C.A.)

39 The appellants claimed that they would be prejudiced if the late claims were allowed because if they had known the late claims would be allowed they would have voted differently. This assertion was rejected by the chambers judge. With respect to what is meant by prejudiced, Wittmann J.A. wrote:

> 40 In a CCAA context, as in a BIA context, the fact that Enron and the other Creditors will receive less money if late and late amended claims are allowed is not prejudice relevant to this criterion. Re-organization under the CCAA involves compromise. Allowing all legitimate creditors to share in the available proceeds is an integral part of the process. A reduction in that share can not be characterized as prejudice: Re Cohen (1956), 36 C.B.R. 21 (Alta. C.A.) at 30-31. Further, I am in agreement with the test for prejudice used by the British Columbia Court of Appeal in 312630 British Columbia Ltd. It is: did the creditor(s) by reason of the late filings lose a

> realistic opportunity to do anything that they otherwise might have done? Enron and the other creditors were fully informed about the potential for late claims being permitted, and were specifically aware of the existence of the late claimants as creditors. I find, therefore, that Enron and the Creditors will not suffer any relevant prejudice should the late claims be permitted.

40 In considering how the Monitor should carry out its duties and responsibilities under the Claims Procedure Order it is important to note that the Monitor is an officer of the court and is obliged to ensure that the interests of the stakeholders are considered including all creditors, the company and its shareholders (See *Laidlaw Inc., Re* (2002), 34 C.B.R. (4th) 72 (Ont. S.C.J. [Commercial List]).

41 In a different context Turnball J.A. in *Siscoe & Savoie v. Royal Bank* (1994), 29 C.B.R. (3d) 1 (N.B. C.A.) commented that the monitor is an agent of the court and as a result is responsible and accountable to the court, owing a fiduciary duty to all of the parties (para. 28).

42 In my opinion, para. 9(a) is not of assistance in determining the authority of the Monitor to revise upward a claim filed after the claim's bar date but before the assessment date. Paragraph 9(a) authorizes the Monitor to use reasonable discretion as to the adequacy of compliance as to *the manner* to which Proofs of Claim are completed and executed. If it satisfied that the claim has been adequately proven it may waive strict compliance with the requirements of the order as to *completion* and the *execution* of a Proof of Claim.

43 Paragraph 10 of the Claims Procedure Order mandates the Monitor shall review all Proofs of Claim filed on or before the claims bar date. It shall "accept, revise or disallow such Proofs of Claim as contemplated herein". While normally a monitor's revision would be to reduce a Proof of Claim, there is in fact nothing in the Claims Procedure Order that so restricts the Monitor's authority. It is obviously contemplated by para. 10 that the monitor is to carry out some assessment of the claims that are submitted.

44 In my view, the Proofs of Claim that are filed act both as a form of pleading and an opportunity for the claimant to provide supporting documents to evidence its claim. In the case before me, the creditors discovered that the claims they had submitted were inaccurate and further evidence was tendered to the Monitor to demonstrate. The Monitor, after reviewing the evidence, accepted the validity of the claims.

45 Courts in a general way are engaged in dispensing justice. They do so by setting up and applying procedural rules to ensure that litigants are afforded a fair hearing. The resolution of disputes through the litigation process, including the ultimate hearing, is fundamentally a truth-seeking process to determine the facts and to apply the law to those facts. Can it be any different where the process is not in the court but under its supervision pursuant to a claims process under the *CCAA.?*

46 To suggest that the monitor does not have the authority to receive evidence and submissions and to consider them is to say that it does not have any real authority to carry out its court appointed role to assess the claims that have been submitted. The notion that the monitor cannot look at documentary evidence on its own initiative or at the instance of a claimant, and even consider submissions, is to deny it any real power to consider and make a preliminary determination of the merits of a claim.

47 The Claims Procedure Order contains a number of provisions that anticipate the exchange of information between the Monitor, the company and a creditor. Paragraph 9(b) authorizes the Monitor and ScoZinc to attempt to consensually resolve the classification and the amount of any claim with a claimant prior to accepting, revising or disallowing such claim. Paragraph 17 of the Claims Procedure Order directs that the Monitor shall at all times be authorized to enter into negotiations with claimants and settle any claim on such terms as the Monitor may consider appropriate.

48 In my opinion, it does not matter that revised claims were submitted after the claims bar date. In essence, the Monitor simply acted to revise the Proofs of Claim already submitted to conform with the evidence elicited by the Monitor, or submitted to it. The Monitor had the necessary authority to revise the claims, either as to classification or amount.

49 If a claimant seeks to revise or amend its claim after the assessment date set out in the Claims Procedure Order, different considerations may come into play. The appropriate procedure will depend on the provisions of the Claims Procedure Order. In addition, the court, as the ultimate arbiter of disputed claims under s. 12 of the *CCAA*, should always be viewed as having the jurisdiction to permit appropriate revision of claims.

Order accordingly.

Tab 8

Court File No. 06-CL-6241

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	FRIDAY, THE 3rd DAY
	)	
MR. JUSTICE FARLEY	)	OF MARCH, 2006

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF MUSCLETECH RESEARCH AND DEVELOPMENT INC. AND THOSE ENTITIES LISTED ON SCHEDULE "A" HERETO

ORDER RE: CALL FOR (I) CLAIMS AGAINST THE APPLICANTS AND (II) PRODUCT LIABILITY CLAIMS AGAINST THE SUBJECT PARTIES

THIS MOTION made by MuscleTech Research and Development Inc. and those entities listed on Schedule "A" hereto (collectively, the "**Applicants**") for an Order substantially in the form attached at Tab 3 of the Motion Record herein was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Affidavit of Barry Kadoch sworn February 23, 2006 and the exhibits thereto (the "**Affidavit**"), and the Fourth Report of RSM Richter Inc. (the "**Monitor**") dated February 28, 2006, all filed, and on hearing submissions of respective counsel for the Applicants, the Monitor, the Iovate Companies (as defined below), Zurich Insurance Company, the Ad Hoc Committee of MuscleTech Tort Claimants (the "**Ad Hoc Committee**") and such other counsel, if any, as were present and wished to make submissions.

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and Motion Record herein be and it is hereby abridged so that the motion may be heard today and that further service on any interested party is hereby dispensed with.

MONITOR'S ROLE

2. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA and under the Initial Order, is hereby directed and empowered to take such other actions and fulfill such other roles as are contemplated by this Order.

CALL FOR CLAIMS

3. **THIS COURT ORDERS** that, for the purposes of this Order, the following terms shall have the following meanings ascribed thereto:

(a) "**Affiliates**" means all Persons that, directly or indirectly, control or are controlled by any one or more of the Applicants, or that are affiliated, associated or related with any one or more of the Applicants for the purpose of the *Business Corporations Act*, R.S.O. 1990, c.B.16, as amended to the date of this Order, including, without limitation, the Iovate Companies;

(b) "**Applicants' Directors**" means all individuals who were, on or at any time before the Filing Date, directors or officers of any one or more of the Applicants;

(c) "**Business Day**" means a day, other than a Saturday or Sunday, on which banks are generally open for business in Toronto, Ontario;

(d) "**CCAA**" means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended to the date of this Order;

(e) "**Claim**" means any right or claim, other than a Product Liability Claim, Related Claim or an Excluded Claim, of any Person whatsoever, whether or not asserted and however acquired, against any of the Applicants and/or the Applicants'

Directors in connection with any indebtedness, liability or obligation of any kind of any of the Applicants and/or the Applicants' Directors, whether liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, and whether by guarantee, surety, subrogation, cross-claim, counterclaim, set off or otherwise, and whether or not such right is executory in nature, including the right of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation is based in whole or in part on facts existing or discoverable prior to the Filing Date or that would have been claims provable in bankruptcy under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, had the affected Applicant and/or the Applicant Director become bankrupt on the Filing Date, including, for greater certainty, any interest, fees, penalties, costs and expenses accrued, incurred or otherwise arising in connection with any such claim;

(f) "**Claims Bar Date**" means 5:00 p.m. (Eastern Standard Time) on the forty-fifth (45th) day (or the next Business Day if that day is not a Business Day) after the date on which the U.S. District Court (or the U.S. Bankruptcy Court, if applicable) enters its supplemental order in support of this Order;

(g) "**Court**" means the Ontario Superior Court of Justice (Commercial List);

(h) "**Creditor**" means any Person having a Claim or a Product Liability Claim;

(i) "**Directors**" means all individuals who were, on or at any time before the Filing Date, directors or officers of any one or more of the Affiliates or the Third Parties;

(j) "**Excluded Claim**" means: (a) any claim that falls within Section 18.3(2) of the CCAA; and (b) claims secured by the Charges (as defined in the Initial Order) or any similar charge provided for in the Initial Order;

(k) "**Filing Date**" means January 18, 2006;

(l) "**Initial Order**" means the Initial Order of this Court dated January 18, 2006 in the within proceedings, as same may be amended from time to time;

(m) "**Instruction Letter**" means the instruction letter to Creditors, in substantially the form attached hereto as Schedule "D", regarding completion by Creditors of the Proof of Claim (and the applicable Schedules thereto);

(n) "**Iovate Companies**" means those entities listed on Schedule "B" hereto;

(o) "**Known Creditor**" means:

(i) any Person that the books and records of any of the Applicants disclose held a Claim as of the Filing Date, where monies in respect of such Claim remain unpaid in full or in part as of the date hereof;

(ii) any Person who has commenced a legal proceeding in respect of a Claim or given any of the Applicants written notice of an intention to commence a legal proceeding in respect of a Claim; provided that where a solicitor or attorney of record has been listed in connection with any such proceeding, the "Known Creditor" for purposes of any notice required herein or to be given hereunder shall be, in addition to that Person, their solicitor or attorney of record;

(iii) any other Person who any of the Applicants know (that is, have actual and not constructive knowledge) to hold a Claim as of the Filing Date and for whom the Applicant has a mailing address or other suitable contact information;

(iv) any Person that the books and records of any of the Subject Parties disclose held a Product Liability Claim as of the Filing Date, where monies in respect of such Product Liability Claim remain unpaid in full or in part as of the date hereof;

(v) any Person who has commenced a legal proceeding in respect of a Product Liability Claim or given any of the Subject Parties written notice of an intention to commence a legal proceeding in respect of a Product Liability Claim; provided that where a solicitor or attorney of record has been listed in connection with any such proceeding, the "Known Creditor" for purposes of any notice required herein or to be given hereunder shall be, in addition to that Person, their solicitor or attorney of record; and

(vi) any other Person who any of the Subject Parties know (that is, have actual and not constructive knowledge) to hold a Product Liability Claim as of the Filing Date and for whom the Subject Party has a mailing address or other suitable contact information;

(p) "**Notice to Creditors**" means the notice to Creditors for publication in substantially the form attached hereto as Schedule "E";

(q) "**Other Insolvency Proceedings**" means any plenary or ancillary receivership, reorganization, restructuring, debtor/creditor, bankruptcy or other insolvency proceedings authorized by this Court or permitted by law in any jurisdiction in Canada or the United States affecting the Subject Parties, or any of them;

(r) "**Person**" means any individual, partnership, limited partnership, joint venture, trust, corporation, unincorporated organization, government, agency, regulatory body or instrumentality thereof, legal personal representative or litigation guardian, or any other judicial entity howsoever designated or constituted;

(s) "**Plan**" means a Plan of Compromise or Arrangement filed by the Applicants, or any of them, in the within proceedings;

(t) "**Product Liability Claim**" means any right or claim, including any action, proceeding or class action in respect of any such right or claim, other than a Claim or an Excluded Claim, of any Person which alleges, arises out of or is in any way related to wrongful death or personal injury (whether physical, economic, emotional or otherwise), whether or not asserted and however acquired, against

any of the Subject Parties arising from, based on or in connection with the development, advertising and marketing, and sale of health supplements, weight-loss and sports nutrition or other products by the Applicants or any of them, whether liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, present, future, known or unknown, including the right of any Person to advance a claim for contribution or indemnity or otherwise as against the Applicants or any of them with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, where such liability is based in whole or in part on facts existing or discoverable prior to the Filing Date or that would have been claims provable in bankruptcy under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, had the affected Subject Party become bankrupt on the Filing Date, including, for greater certainty, any damages or punitive damages claimed, and any interest, fees, penalties, costs, and expenses accrued, incurred or otherwise arising in connection with any such claim;

(u) "**Proof of Claim**" means the form of Proof of Claim (for Claims and Product Liability Claims, including the applicable Schedules thereto) in substantially the form attached hereto as Schedule "F";

(v) "**Proof of Claim Document Package**" means a document package that includes a copy of the Instruction Letter, the Proof of Claim (including the applicable Schedules thereto), this Order and such other materials as the Monitor may consider appropriate or desirable;

(w) "**Related Claim**" means any right or claim of a Subject Party against one or more of the other Subject Parties, whether liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, and whether by guarantee, surety, subrogation, cross-claim, counterclaim, set off or otherwise, and whether or not such right is executory in nature, including the right of any Subject Party to advance a claim for contribution or indemnity or otherwise with respect to any

matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation is based on, arises out of or is in any way related to, in whole or in part, and whether directly or indirectly, on one or more Product Liability Claims, including, for greater certainty, any interest, fees, penalties, costs and expenses accrued, incurred or otherwise arising in connection with any such claim;

(x) "**Subject Parties**" means, collectively, the Applicants, Applicants' Directors, Affiliates, Third Parties and Directors (each, a "**Subject Party**");

(y) "**Supplemental Order Date**" means the date on which the U.S. District Court (or the U.S. Bankruptcy Court, if applicable) enters a supplemental order in support of this Order;

(z) "**Third Parties**" means, collectively, the entities listed on Schedule "C" hereto;

(aa) "**U.S. Bankruptcy Court**" means the United States Bankruptcy Court for the Southern District of New York;

(bb) "**U.S. Chapter 15 Adversary Proceedings**" means the adversary proceedings pending before the U.S. District Court, Case No. 06 Civ. 539(JSR), in connection with the U.S. Chapter 15 Proceedings and these CCAA proceedings;

(cc) "**U.S. Chapter 15 Proceedings**" means the proceedings under Chapter 15 of the United States Bankruptcy Code pending before the U.S. District Court, Case No. 06 Civ. 538(JSR), in connection with these CCAA proceedings;

(dd) "**U.S. District Court**" means the United States District Court for the Southern District of New York; and

(ee) "**U.S. MDL Proceedings**" means the proceedings entitled "In re Ephedra Products Liability Litigation" pending before the U.S. District Court, Case No. 04 MD 1598 (JSR).

NOTICE TO CREDITORS

4. **THIS COURT ORDERS** that the form and substance of each of the Notice to Creditors and the Proof of Claim Document Package is hereby approved.

5. **THIS COURT ORDERS** that the publication of the Notice to Creditors and the mailing of the Proof of Claim Document Packages as set out in paragraph 6 of this Order shall constitute good and sufficient notice to Creditors of the Claims Bar Date and the related deadlines and procedures set forth herein and that no other form of notice or service need be given or made on any Person, and no other document or material need be served on any Person in respect of the call for Claims and Product Liability Claims and the claims process detailed herein.

6. **THIS COURT ORDERS** that:

(a) within five (5) Business Days of the Supplemental Order Date, the Monitor shall dispatch by ordinary mail, postage prepaid, on behalf of each of the Subject Parties, a copy of the Proof of Claim Document Package to all Known Creditors;

(b) within five (5) Business Days of the Supplemental Order Date, the Monitor shall file electronically a copy of the Notice to Creditors and the Proof of Claim Document Package on the court dockets of the U.S. Chapter 15 Proceedings, the U.S. Chapter 15 Adversary Proceedings and the U.S. MDL Proceedings;

(c) within five (5) Business Days of the Supplemental Order Date, the Monitor shall cause to be published on one Business Day the Notice to Creditors in each of the newspapers set out in Schedule "G" hereto;

(d) within five (5) Business Days of the Supplemental Order Date, the Monitor shall post a copy of the Notice to Creditors and Proof of Claim Document Package on the following website:
www.rsmrichter.com/current_insolvency_files.aspx; and

(e) the Monitor shall, provided such request is received prior to the Claims Bar Date, dispatch by ordinary mail or such other manner as may be reasonably requested

including telecopy or email, as soon as reasonably possible following receipt of a request therefor, a copy of the Proof of Claim Document Package to any Person claiming to be a Creditor and requesting in writing such material.

7. **THIS COURT ORDERS** that the Subject Parties shall inform the Monitor of all Known Creditors and that the Monitor shall be entitled to rely on the accuracy and completeness of the information provided by the Subject Parties regarding the Known Creditors. For greater certainty, the Monitor shall have no liability in respect of the information provided to it regarding the Known Creditors and shall not be required to conduct any independent inquiry and/or investigation with respect to that information.

CREDITORS' CLAIMS

8. **THIS COURT ORDERS** that Proofs of Claim for all Claims and Product Liability Claims must be properly completed and shall be filed, together with the applicable Schedules thereto and supporting documentation, with the Monitor, so as to actually be received by the Monitor on or before the Claims Bar Date; with the sole exception of the "Fact Sheet" to be submitted in connection with Product Liability Claims which shall be submitted so as to be actually received by the date that is thirty days (30) days after the Claims Bar Date. For the avoidance of doubt, a Proof of Claim (including the applicable Schedules thereto) must be filed for every Claim and Product Liability Claim, regardless of whether or not a legal proceeding in respect of a Claim or Product Liability Claim was commenced prior to the Filing Date.

9. **THIS COURT ORDERS** that, with respect to all Product Liability Claims, in addition to filing a Proof of Claim (including the applicable Schedules thereto) in accordance with the requirements of paragraph 8 herein, all Creditors asserting a Product Liability Claim who had not commenced a legal proceeding prior to the Filing Date in respect of such Product Liability Claim, must on or before the Claims Bar Date, file a complaint in the U.S. Chapter 15 Proceedings in respect of each and any such Product Liability Claim (a "**Complaint**"). The Complaint must name as defendants the specific Subject Parties with respect to which relief is sought and all other parties allegedly liable to the Creditor with respect to the Product Liability Claim. No service of summons is required in connection with the Complaint; but the Complaint must be timely filed in the U.S. Chapter 15 Proceedings and served by mail, hand, or overnight

courier on all parties named as defendants in the Complaint. For greater certainty, the stay of proceedings provided for in the Initial Order is hereby lifted, solely to permit the foregoing and for no other purpose.

10. **THIS COURT ORDERS** that any Creditor that does not file a Proof of Claim (including the applicable Schedules thereto) and a Complaint (if required to do so hereunder) as provided for herein:

(a) shall be and is hereby forever barred from making or enforcing any Claim as against the Applicants and the Applicants' Directors or any Product Liability Claim as against any Subject Parties released under the Plan, as approved by the requisite majorities of Creditors and this Court, and as approved by the U.S. District Court (or the U.S. Bankruptcy Court, if applicable) pursuant to supplemental order of that Court entered in aid of these proceedings;

(b) shall be deemed to have fully and finally released such Claim as against the Applicants and the Applicants' Directors or Product Liability Claim as against any Subject Parties released under the Plan, as approved by the requisite majorities of Creditors and this Court, and as approved by the U.S. District Court (or the U.S. Bankruptcy Court, if applicable) pursuant to supplemental order of that Court entered in aid of these proceedings, and such Claim or Product Liability Claim is forever barred and extinguished;

(c) shall not be entitled to any further notice in the within proceedings;

(d) shall not be entitled to participate as a Creditor in the within proceedings or any Other Insolvency Proceedings; and

(e) shall not be entitled to vote at any meetings of Creditors or to receive any distribution in respect of a Plan;

provided that, with respect to, and as an exception to, the effect of the foregoing, any and all issues and disputes regarding: (i) the sufficiency or adequacy of information provided in a "Fact Sheet" submitted in connection with a Product Liability Claim; and/or (ii) the sufficiency or

adequacy of medical records or medical authorizations submitted in accordance with the procedures established by this Order, shall not constitute a forfeiture of the right to assert a Product Liability Claim.

11. **THIS COURT ORDERS** that the Monitor shall dispatch by ordinary mail an acknowledgement of receipt (but not acceptance, disallowance or revision) in respect of each Proof of Claim filed with the Monitor in accordance with the terms of this Order, which acknowledgement of receipt shall be dispatched as soon as possible following receipt by the Monitor of the Proof of Claim to which it corresponds.

12. **THIS COURT ORDERS** that the Monitor shall not accept, disallow or revise any Claim or Product Liability Claim or take any future steps or actions with respect to any Proof of Claim (including, without limitation, accepting or disallowing any Proof of Claim) without a further Order of this Court on prior notice to those parties listed in the service list in the within proceedings as amended from time to time (which service list shall, for greater certainty, include all Persons having filed a Proof of Claim or their solicitors or attorneys of record, as the case may be).

13. **THIS COURT ORDERS** that Claims or Product Liability Claims denominated in any currency other than Canadian dollars, shall, for the purposes of this Order, be converted to and constitute obligations in Canadian dollars, such calculation to be effected by the Monitor using the Bank of Canada noon spot rate on the Filing Date.

TRANSFER OF CLAIMS

14. **THIS COURT ORDERS** that if, after the Filing Date, the holder of a Claim or Product Liability Claim on the Filing Date, or any subsequent holder of the whole of a Claim or Product Liability Claim who has been or subsequently is acknowledged by the Monitor as the Creditor in respect of such Claim or Product Liability Claim, transfers or assigns the whole of such Claim or Product Liability Claim to another Person, neither the Subject Parties nor the Monitor shall be obligated to give notice to or to otherwise deal with the transferee or assignee of any such Claim or Product Liability Claim as the Creditor in respect thereof unless and until written notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall

have been received from the transferor or assignor and acknowledged by the Monitor and thereafter such transferee or assignee shall for the purposes hereof constitute the "Creditor" in respect of such Claim or Product Liability Claim, as the case may be. Any such transferee or assignee of a Claim or Product Liability Claim, and such Claim or Product Liability Claim, shall be bound by any notices given or steps taken in respect of such Claim or Product Liability Claim in accordance with this Order prior to receipt and acknowledgement by the Monitor of satisfactory evidence of such transfer or assignment. The Monitor shall thereafter be required only to deal with the transferee and not the original holder of the Claim or Product Liability Claim, as the case may be.

BINDING EFFECT OF CALL FOR CLAIMS

15. **THIS COURT ORDERS** that, subject to further order of this Court, nothing in this Order shall be interpreted as consolidating any Claims or Product Liability Claims against any one or more of the Subject Parties or against any of their respective assets, property and undertaking; provided, that nothing herein shall preclude the Applicants or the Monitor from hereafter seeking consolidation of Claims or Product Liability Claims against any one or more of the Subject Parties or against any of their respective assets, property and undertaking.

16. **THIS COURT ORDERS** that if the Applicants' Plan is not approved and the Applicants enter into an Other Insolvency Proceeding, this call for claims process, and the Claims and Product Liability Claims submitted pursuant to this call for claims process, may constitute and be deemed to be the complete and final claims process for any such Other Insolvency Proceedings; subject to approval of this Order and the claims process established herein and conducted hereunder by further Order of this Court and supplemental Order of the U.S. District Court (or the U.S. Bankruptcy Court, if applicable) entered in connection with those Other Insolvency Proceedings.

SERVICE AND NOTICE

17. **THIS COURT ORDERS** that the Monitor be at liberty to deliver this Order, the Notice to Creditors, the Proof of Claim Document Package and any other letters, notices or other documents to Creditors and other interested Persons by forwarding true copies thereof by prepaid

ordinary mail, courier, personal delivery, telecopier or email or other electronic transmission: (i) to such Persons at the address as last shown on the records of the Subject Parties; and (ii) if applicable, to such Persons' respective solicitors or attorneys of record at the respective business addresses of such solicitors or attorneys (as more particularly set out in the service list in the within proceedings, as same may be updated from time to time), and that any such service or notice by courier, personal delivery or email or other electronic transmission shall be deemed to be received on the next Business Day following the date of forwarding thereof or, if sent by ordinary mail, on the third Business Day after mailing.

18. **THIS COURT ORDERS** that, any notice or other communication (including, without limitation, a Proof of Claim and the applicable Schedules thereto) to be given under this Order by a Creditor to the Monitor shall be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if given by courier, by personal delivery, email or facsimile transmission addressed to:

The Monitor
c/o RSM Richter Inc., Court-appointed Monitor of MuscleTech Research and Development Inc. et al.
RSM Richter Inc.
200 King Street West
Suite 1100, P.O. Box 48
Toronto, Ontario M5H 3T4

Attention:	Mitch Vininsky
Email:	mvininsky@rsmrichter.com
Telephone:	416.932.8000
Fax:	416.932.6200

Any such notice or other communication by a Creditor shall be deemed received only upon actual receipt thereof during normal business hours on a Business Day.

GENERAL

19. **THIS COURT ORDERS** that pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act,* S.C. 2000, c.5 and notwithstanding the provisions of any similar provincial legislation or provincial or federal legislation dealing with health and medical records and information, the Applicants and the Monitor are permitted in the course of

the claims bar process contemplated by this Order and the formulation and negotiation of a Plan to disclose personal information of identifiable individuals in their possession or control to Persons (including, for greater certainty, the Ad Hoc Committee) and to their advisers (individually, a "Third Party"), to the extent desirable or necessary, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Applicants or the Monitor binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Applicant or the Monitor, as the case may be, or destroyed. In the event that a Third Party acquires personal information, such Third Party shall be entitled to continue to use the personal information in a manner which is in all material respects identical to the prior use of such personal information by the Applicants or the Monitor, as the case may be.

20. **THIS COURT ORDERS** that the solicitation by the Monitor of Proofs of Claim and the filing by any Creditor of a Proof of Claim (including the applicable Schedules thereto) or a Complaint (if required to do so) shall not grant or be deemed to grant any Person any standing or rights under a Plan.

21. **THIS COURT ORDERS** that the DIP Lender (as defined in the Initial Order) shall not be affected by the terms of this Order and the DIP Lender shall not be required to file a Proof of Claim in respect of any amounts outstanding under the DIP Term Sheet (as defined in the Initial Order).

22. **THIS COURT ORDERS** that none of the Subject Parties shall be required to file a Proof of Claim or a Complaint in respect of any Related Claims; provided, for greater certainty, that nothing herein shall limit or preclude the Subject Parties from asserting and exercising all rights in respect of Related Claims, whether in these proceedings or otherwise, including voting any Related Claims in respect of a Plan and receiving a distribution in respect of any Related Claims pursuant to a Plan, and the Claims Bar Date shall not apply in respect of Related Claims; provided that, for greater certainty, the Subject Parties remain subject to the Initial Order, including the stay of proceedings ordered therein.

23. **THIS COURT ORDERS** that nothing in this Order shall constitute or be deemed to constitute an allocation or assignment of Claims or Product Liability Claims into particular classes and the determination of classes of Creditors for voting and distribution purposes shall be subject to further order of this Court or pursuant to the terms of a Plan.

24. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties under this Order.

25. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada, outside Canada and against all Persons against whom it may be enforceable.

26. **THIS COURT REQUESTS** the aid, recognition and assistance of other courts in Canada in accordance with Section 17 of the CCAA, and requests that the Federal Court of Canada and the courts and judicial, regulatory and administrative bodies of or constituted by the provinces and territories of Canada, the Parliament of Canada, the United States, the states and other subdivisions of the United States, including, without limitation, the U.S. District Court, and other nations and states, to give effect to this Order and to assist the Applicants and the Monitor in carrying out the terms of this Order. Each of the Applicants and the Monitor shall be at liberty, and is hereby authorized and empowered, to make such further applications, motions or proceedings to or before such other courts and judicial, regulatory and administrative bodies, and take such other steps, in Canada or the United States of America, as may be necessary or advisable to give effect to this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAR 0 6 2006

PER/PAR:

JOSEPH P VAN TASSEL
REGISTRAR

SCHEDULE "A"

APPLICANTS

HC Formulations Ltd.

CELL Formulations Ltd.

NITRO Formulations Ltd.

MESO Formulations Ltd.

ACE Formulations Ltd.

MISC Formulations Ltd.

GENERAL Formulations Ltd.

ACE US Trademark Ltd.

MT Canadian Supplement Trademark Ltd.

MT Foreign Supplement Trademark Ltd.

HC Trademark Holdings Ltd.

HC US Trademark Ltd.

1619005 Ontario Limited (f/k/a New HC US Trademark Ltd.)

HC Canadian Trademark Ltd.

HC Foreign Trademark Ltd.

SCHEDULE "B"

IOVATE COMPANIES

Iovate Health Sciences Group Inc.
Iovate Copyright Ltd.
Iovate Health Sciences Inc.
Iovate Health Sciences Research Inc.
Iovate Health Sciences International Inc.
Iovate Health Sciences U.S.A. Inc.
Iovate Health Sciences Capital Inc.
Supplement Trademark Holdings Ltd.
MT US Trademark Ltd.
CELL US Trademark Ltd.
NITRO US Trademark Ltd.
MESO US Trademark Ltd.
MASS US Trademark Ltd.
ENER US Trademark Ltd.
DIET US Trademark Ltd.
MISC US Trademark Ltd.
PUMP US Trademark Ltd.
RIPPED US Trademark Ltd.
New CELL US Trademark Ltd.
New NITRO US Trademark Ltd.
Iovate HC 2005 Trademark Ltd.
New Ace US Trademark Ltd.
Canadian Supplement Trademark Ltd.
Foreign Supplement Trademark Ltd.
Iovate Trademark Ltd.
MASS Formulations Ltd.
PUMP Formulations Ltd.
RIPPED Formulations Ltd.
THERMO Formulations Ltd.
LEAN BALANCE Formulations Ltd.
MULTI Formulations Ltd.
HHC Formulations Ltd.
Iovate T. & P. Inc.
THERMO US Trademark Ltd.
NITROXY US Trademark Ltd.
LEAN BALANCE US Trademark Ltd.
CTC US Trademark Ltd.
GAKIC US Trademark Ltd.
SIX STAR US Trademark Ltd.
VIVABODY US Trademark Ltd.
MTOR US Trademark Ltd.
LEUKIC US Trademark Ltd.

ACCELIS US Trademark Ltd.
EVERSLIM US Trademark Ltd.
SMARTBURN US Trademark Ltd.
OSMODROL US Trademark Ltd.
HHC US Trademark Ltd.
Iovate HC 2005 Formulations Ltd.
New CELL Formulations Ltd.
New NITRO Formulations Ltd.
NITROXY Formulations Ltd.
GAKIC Formulations Ltd.
SIX STAR Formulations Ltd.
VIVABODY Formulations Ltd.
MTOR Formulations Ltd.
LEUKIC Formulations Ltd.
ACCELIS Formulations Ltd.
EVERSLIM Formulations Ltd.
SMARTBURN Formulations Ltd.
OSMODROL Formulations Ltd.

SCHEDULE "C"

THIRD PARTIES

Paul Gardiner Family Trust

Paul Gardiner

Terry Begley

HVL, Inc.

Douglas Laboratories Inc.

Peak Wellness, Inc.

Miami Research Associates Inc.

Carlon Colker M.D.

Douglas Kalman

Stuart Lowther

Walgreen Co.

Wal-Mart Stores, Inc.

General Nutrition Corporation, General Nutrition Corporation, n/k/a GN Oldco Corporation, General Nutrition Companies Inc., n/k/a GNCI Oldco, Inc., General Nutrition, Inc. n/k/a GNI Oldco, Inc., GN Oldco Corporation, f/k/a General Nutrition Corporation, General Nutrition, Inc., GNC Franchising, LLC, General Nutrition Distribution, L.P., General Nutrition Distribution Corporation, General Nutrition Sales Corporation, General Nutrition Centers, Inc., General Nutrition Centers, Inc., n/k/a Oldco Corporation, General Nutrition Companies, Inc., General Nutrition Center, Store 100122, General Nutrition Center, Store 101603, GNC Corporation, General Nutrition Center International, Inc., Raaj Singh, individually and t/a GNC/General Nutrition Center #0948, GNC Franchising, Inc., Mandeville GNC (a/k/a Mackie Shilstone's GNC), E&L Associates, Inc.

Vitamin World, Inc.

CVS Corporation

James R. Wilson

Jackie Kneifel

Rite Aid Corporation

Zurich Insurance Company, Zurich Canadian Holdings Limited, Zurich International (Bermuda) Ltd., Zurich American Insurance Company

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended
AND IN THE MATTER OF Muscletech Research and Development Inc. and those entities listed on Schedule "A" hereto

Court File No: 06-CL-6241

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

ORDER RE: CALL FOR CLAIMS

GOODMANS LLP
Barristers & Solicitors
250 Yonge Street, Suite 2400
Toronto, Canada M5B 2M6

Jay A. Carfagnini LSUC#: 222936
David Bish LSUC#: 41629A
Caterina Costa LSUC#: 46582L
Tel: 416.979.2211
Fax: 416.979.1234

Solicitors for the Applicants

File No.: 04-1534

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Tab 9

Court File No. CV-16-11271-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE Madam	)	WEDNESDAY, THE 13TH
	)	
JUSTICE SWINTON	)	DAY OF APRIL, 2016

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO HORSEHEAD HOLDING CORP., HORSEHEAD CORPORATION, HORSEHEAD METAL PRODUCTS, LLC, THE INTERNATIONAL METALS RECLAMATION COMPANY, LLC AND ZOCHEM INC. (collectively, the "Debtors")

APPLICATION OF ZOCHEM INC.
UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT

RECOGNITION ORDER
(FOREIGN MAIN PROCEEDING)

THIS MOTION, made by Zochem Inc. ("**Zochem**") in its capacity as the foreign representative (the "**Foreign Representative**") of the Debtors, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form enclosed in the Application Record, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the affidavit of James M. Hensler sworn April 8, 2016 and the Second Report of Richter Advisory Group Inc. in its capacity as information officer (the "**Information Officer**") dated April 11, 2016 (the "**Second Report**") and on hearing the submissions of counsel for the Foreign Representative, counsel to the Information Officer, counsel to the Ad Hoc Group of Senior Secured Noteholders and post-petition lenders (the "**DIP Lenders**") and Cantor Fitzgerald Securities, as administrative agent,

~~counsel for Zochem independent director, Harvey Tepner~~, counsel for Bank of America, National Association and no one else appearing although duly served as appears from the affidavit of service of Daphne Porter sworn April 8, 2016, filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the following orders (collectively, the "**Foreign Orders**") of United States Bankruptcy Court for the District of Delaware made in the Foreign Proceeding are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA:

   (a) Order (A) Setting a Bar Date for Filing Proofs of Claim, Including Claims Arising Under Section 503(B)(9) of the Bankruptcy Code, (B) Setting a Bar Date for the Filing of Proofs of Claim by Governmental Units, (C) Setting a Bar Date for the Filing of Requests for Allowance of Administrative Expense Claims, (D) Setting an Amended Schedules Bar Date, (E) Setting a Rejection Damages Bar Date, (F) Approving the Form of and Manner for Filing Proofs of Claim, (G) Approving Notice of the Bar Dates, and (H) Granting Related Relief, attached as **Schedule "A"** to this Order; and

   (b) Agreed Order on Motion of Traxys North America, LLC for Order Compelling Debtors to Immediately Assume or Reject Executory Contracts, attached as **Schedule "B"** to this Order;

provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to the Debtors' current and future assets, undertakings and properties of every nature and kind whatsoever, where situate in Canada, including all proceeds thereof.

3. **THIS COURT ORDERS** that the Second Report and the activities of the Information Officer described therein be and are hereby approved.

4. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Debtors, the Foreign Representative, the Information Officer, 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 Debtors, the Foreign Representative, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Debtors, the Foreign Representative, and the Information Officer and their respective agents in carrying out the terms of this Order.

5. **THIS COURT ORDERS** that each of the Debtors, the Foreign Representative and the Information Officer 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.

6. **THIS COURT ORDERS** that this Order shall be effective as of 12:01 a.m. on the date of this Order.

K. Iacobucci J.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

APR 13 2016

PER / PAR: RW

SCHEDULE "A"

[attached]

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
HORSEHEAD HOLDING CORP., et al.,[1]	Case No. 16-10287 (CSS)
Debtors.	Jointly Administered
	Re: Docket No. 133

ORDER (A) SETTING A BAR DATE FOR FILING PROOFS OF CLAIM, INCLUDING CLAIMS ARISING UNDER SECTION 503(B)(9) OF THE BANKRUPTCY CODE, (B) SETTING A BAR DATE FOR THE FILING OF PROOFS OF CLAIM BY GOVERNMENTAL UNITS, (C) SETTING A BAR DATE FOR THE FILING OF REQUESTS FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIMS, (D) SETTING AN AMENDED SCHEDULES BAR DATE, (E) SETTING A REJECTION DAMAGES BAR DATE, (F) APPROVING THE FORM OF AND MANNER FOR FILING PROOFS OF CLAIM, (G) APPROVING NOTICE OF THE BAR DATES, AND (H) GRANTING RELATED RELIEF

Upon the motion (the "Motion") of the above-captioned debtors (collectively, the "Debtors") for entry of this Bar Date Order:[2] (I) establishing the Claims Bar Date, including with respect to claims arising under section 503(b)(9) of the Bankruptcy Code; (II) establishing the Governmental Bar Date; (III) establishing the Administrative Claims Bar Date; (IV) establishing the Amended Schedules Bar Date; (V) establishing the Rejection Damages Bar Date; (VI) approving the form of and manner for filing Proofs of Claim; (VII) approving the Bar Date Notice and the Publication Notice; and (VIII) granting related relief; all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Horsehead Holding Corp. (7377); Horsehead Corporation (7346); Horsehead Metal Products, LLC (6504); The International Metals Reclamation Company, LLC (8892); and Zochem Inc. (4475). The Debtors' principal offices are located at 4955 Steubenville Pike, Suite 405, Pittsburgh, Pennsylvania 15205.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that notice of and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

I. The Bar Dates and Procedures for Filing Proofs of Claim and Administrative Claims

2. Each entity that asserts a claim against the Debtors that arose before the Petition Date shall be required to file an original, written Proof of Claim, substantially in the form attached hereto as **Exhibit 1** or Official Form 410.[3] Except in the cases of governmental units and certain other exceptions explicitly set forth herein, **all Proofs of Claim must be filed so that they are actually received on or before April 25, 2016, at 5:00 p.m., prevailing**

[3] Copies of Official Form 410 may be obtained: (a) from the Clams and Noticing Agent at no charge by accessing the website for the Clams and Noticing Agent at http://dm.epiq11.com/Horsehead; (b) writing to the Clams and Noticing Agent at Horsehead Holding Corp., c/o Epiq Bankruptcy Solutions, LLC, P.O. Box 4421, Beaverton, Oregon 97076-4421; (c) calling the Clams and Noticing Agent at (800) 572-0455; or (d) for a fee via PACER at http://www.deb.uscourts.gov.

Eastern Time (the "Claims Bar Date"), at the addresses and in the form set forth herein. The Claims Bar Date applies to all types of claims against the Debtors that arose or are deemed to have arisen before the Petition Date, including claims arising under section 503(b)(9) of the Bankruptcy Code, except for claims specifically exempt from complying with the Claims Bar Date as set forth in this Bar Date Order.

3. All governmental units holding claims (whether secured, unsecured priority, or unsecured non-priority) that arose (or are deemed to have arisen) prior to the Petition Date, must file Proofs of Claims, including claims for unpaid taxes, whether such claims arise from prepetition tax years or periods or prepetition transactions to which the Debtors were a party, **so that such Proofs of Claim are actually received on or before August 1, 2016, at 5:00 p.m., prevailing Eastern Time (the "Governmental Bar Date"), at the addresses and in the form set forth herein.**

4. All parties asserting a request for payment of Administrative Claims arising between the Petition Date and April 1, 2016 (the "Administrative Claims Deadline"), but excluding claims for fees and expenses of professionals retained in these proceedings and claims asserting priority pursuant to section 503(b)(9) of the Bankruptcy Code, are required file a request for payment of such Administrative Claim with the Court and, if desired, a notice of hearing on such Administrative Claim[4] **so that the Administrative Claim is actually filed with the Court on or before April 25, 2016 (the "Administrative Claims Bar Date")**; provided that the Administrative Claims Bar Date shall not apply to claims entitled to administrative priority that arise on or after the Petition Date in the ordinary course of the Debtors' business; and provided, further, that to the extent that the Administrative Claims of a governmental unit do

[4] Administrative Claims filed without a notice of hearing shall not be scheduled for hearing.

not arise on or after the Petition Date in the ordinary course of the Debtors' business, requests for payments of Administrative Claims by governmental units for Administrative Claims arising between the Petition Date and April 1, 2016, shall be filed on or before August 1, 2016, at 5:00 p.m. prevailing Eastern Time.

5. If the Debtors file a previously unfiled Schedule or amend or supplement the Schedules after having given notice of the Bar Dates, the Debtors shall give notice by first-class mail of any filing, amendment or supplement to holders of claims affected thereby, and the deadline for those holders to file Proofs of Claim, if necessary, be set as the later of (a) the Claims Bar Date or the Governmental Bar Date, as applicable, or (b) 5:00 p.m. prevailing Eastern Time on the date that is 21 days from the date the notice of the filing, amendment or supplement is given (or another time period as may be fixed by the Court) (the "Amended Schedules Bar Date").

6. Unless otherwise ordered, all entities asserting claims arising from the rejection of executory contracts and unexpired leases of the Debtors shall file a Proof of Claim on account of such rejection by the later of: (a) the Claims Bar Date or the Governmental Bar Date, as applicable; or (b) 5:00 p.m. prevailing Eastern Time on the date that is 21 days following entry of an order approving the rejection of any such executory contract or unexpired lease (the "Rejection Damages Bar Date").

7. All Proofs of Claim must be filed so as to be actually received by the Claims and Noticing Agent on or before the applicable Bar Date. In addition, all Administrative Claims must be filed with the Court so as to be actually received by the Court by the Administrative Claims Bar Date. If Proofs of Claim and Administrative Claims are not received by the Claims and Noticing Agent or the Court, as applicable, on or before the applicable Bar Date, except in

the case of certain exceptions explicitly set forth herein, the holders of the underlying claims shall be barred from asserting such claims against the Debtors and precluded from voting on any chapter 11 plans filed in these chapter 11 cases and/or receiving distributions from the Debtors on account of such claims in these chapter 11 cases.

II. Parties Required to File Proofs of Claim and Administrative Claims

8. The following categories of claimants shall be required to file a Proof of Claim or Administrative Claim arising prior to the Administrative Claim Deadline by the applicable Bar Date:

a. any entity whose claim against a Debtor is not listed in the applicable Debtor's Schedules or is listed as contingent, unliquidated, or disputed if such entity desires to participate in any of these chapter 11 cases or share in any distribution in any of these chapter 11 cases;

b. any entity who believes that its claim is improperly classified in the Schedules or is listed in an incorrect amount and who desires to have its claim allowed in a different classification or amount other than that identified in the Schedules;

c. any entity that believes that its prepetition claims as listed in the Schedules is not an obligation of the specific Debtor against which the claim is listed and that desires to have its claim allowed against a Debtor other than that identified in the schedules;

d. any entity who believes that its claim against a Debtor is or may be an administrative expense that arises between the Petition Date and the Administrative Claims Deadline (excluding claims for fees and expenses of professionals retained in these proceedings and claims asserting priority pursuant to section 503(b)(9) of the Bankruptcy Code); provided that the Administrative Claims Bar Date shall not apply to claims entitled to administrative priority that arise on or after the Petition Date in the ordinary course of the Debtors' business; and provided, further, that to the extent that the Administrative Claims of a governmental unit do not arise on or after the Petition Date in the ordinary course of the Debtors' business, requests for payments of Administrative Claims by governmental units for Administrative Claims arising between the Petition Date and April 1, 2016, shall be filed on or before August 1, 2016, at 5:00 p.m. prevailing Eastern Time; and

e. any entity who believes that its claim against a Debtor is or may be entitled to priority under section 503(b)(9) of the Bankruptcy Code.

III. Parties Exempted from the Bar Dates

9. The following categories of claimants shall not be required to file a Proof of Claim or Administrative Claim arising prior to the Administrative Claim Deadline by the applicable Bar Date:

a. any entity that already has filed a signed Proof of Claim against the respective Debtor(s) with the clerk of the Court or with the Claims and Noticing Agent in a form substantially similar to Official Form 410;

b. any entity whose claim is listed on the Schedules if: (i) the claim is **not** scheduled as any of "disputed," "contingent," or "unliquidated;" (ii) such entity agrees with the amount, nature, and priority of the claim as set forth in the Schedules; and (iii) such entity does not dispute that its claim is an obligation only of the specific Debtor against which the claim is listed in the Schedules;

c. any entity whose claim has previously been allowed by order of the Court;

d. any entity whose claim has been paid in full by the Debtors pursuant to the Bankruptcy Code or in accordance with an order of the Court;

e. any Debtor having a claim (or any transferee for security of any such Debtor that has a claim) against another Debtor;

f. any of the Debtors' non-Debtor affiliates having a claim (or any transferee for security of any such non-Debtor affiliate that has a claim) against any Debtor;

g. any entity whose claim is solely against any of the Debtors' non-Debtor affiliates;

h. any holder of an equity interest in the Debtors need not file a proof of interest with respect to the ownership of such equity interest at this time; provided, however, that any holder of an equity interest who wishes to assert a claim against the Debtors, including a claim relating to such equity interest or the purchase or sale of such interest, must file a proof of claim asserting such claim on or prior to the Claims Bar Date pursuant to procedures set forth herein;

i. a current employee of the Debtors, if an order of this Court authorized the Debtors to honor such claim in the ordinary course of business for wages, commissions, or benefits; provided, however, that a current employee

must submit a Proof of Claim by the Claims Bar Date for all other claims arising before the Petition Date, including claims for wrongful termination, discrimination, harassment, hostile work environment, and/or retaliation;

j. any current or former officer, director, or employee for claims based on indemnification, contribution, or reimbursement;

k. the Prepetition Senior Secured Notes Indenture Trustee, the Prepetition Senior Secured Notes Collateral Agent, any Prepetition Senior Secured Noteholder, the Zochem Agents, the Zochem Lender, PNC, the Prepetition Unsecured Notes Indenture Trustee, any Prepetition Unsecured Noteholder (each as defined in the DIP Orders) in each case (x) to the extent provided by either or both of the DIP Orders, (y) to preserve any claims for contingent or unliquidated amounts, or (z) to preserve the right to claim postpetition interest, fees, costs or charges (to the extent any of them ultimately is determined to be entitled thereto);[5]

l. consistent with Paragraph 5 (d) of the Final DIP Order which provides that the Prepetition Macquarie Facility Parties are not required to file a proof of claim with regard to the Macquarie Credit Facility Obligations or the Prepetition Macquarie Liens, none of the Prepetition Macquarie Facility Parties shall be required to file a proof of claim with respect to the claim for payment of the Macquarie Restructuring Fee, whether or not the Debtors have stipulated to the fixing or allowance of the Macquarie Restructuring Fee or the Macquarie Restructuring Fee has otherwise been determined by the Court to be a part of the Macquarie Credit Facility Obligations as of the Claims Bar Date and such claim shall be deemed to have been filed prior to the Claim Bar Date; provided, however, in accordance with paragraph 5(g) of the Final DIP Order, the rights of any party to dispute the Macquarie Restructuring Fee, other than on account of a proof of claim not having been filed with respect to the Macquarie Restructuring Fee, are fully preserved;[6]

m. any individual holder of a claim for principal, interest, or applicable fees or charges (a "Debt Claim") on account of any note, bond, or debenture

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5 The "DIP Orders" mean that certain *Interim Order (A) Authorizing the Debtors to Obtain Postpetition Secured Financing Pursuant to Section 364 of the Bankruptcy Code, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Adequate Protection to the Prepetition Secured Parties, (D) Scheduling a Final Hearing, and (E) Granting Related Relief* entered by the Court on February 4, 2016 [Dkt. No. 81] and that certain *Final Order (A) Authorizing the Debtors to Obtain Postpetition Secured Financing Pursuant to Section 364 of the Bankruptcy Code, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Adequate Protection to the Prepetition Secured Parties, (D) Scheduling a Final Hearing, and (E) Granting Related Relief* entered by the Court on March 3, 2016 [Dkt. No. 252] (the "DIP Final Order").

6 Capitalized terms used but not otherwise defined in this subparagraph have the meanings ascribed to them in the DIP Final Order.

issued by the Debtors pursuant to an indenture (an "Indenture") or a credit agreement (a "Credit Agreement") with respect to such claim;

n. any entity holding a claim for which a separate deadline is fixed by the Court;

o. pursuant to Local Rule 3002-1(a) and section 503(b)(1)(D) of the Bankruptcy Code, governmental entities holding claims covered by section 503(b)(1)(B) or (C) of the Bankruptcy Code; and

p. claims for fees and expenses of professionals retained in these proceedings.

IV. Substantive Requirements of Proofs of Claim

10. The following requirements shall apply with respect to filing and preparing each Proof of Claim:

a. Contents. Each Proof of Claim must: (i) be written in English; (ii) include a claim amount denominated in United States dollars; (iii) conform substantially with the Proof of Claim Form provided by the Debtors or Official Form 410; and (iv) be signed by the claimant or by an authorized agent or legal representative of the claimant.

b. Section 503(b)(9) Claim. Any Proof of Claim asserting a claim entitled to priority under section 503(b)(9) must also: (i) include the value of the goods delivered to and received by the Debtors in the 20 days prior to the Petition Date; (ii) attach any documentation identifying the particular invoices for which the 503(b)(9) claim is being asserted; and (iii) attach documentation of any reclamation demand made to the Debtors under section 546(c) of the Bankruptcy Code (if applicable).

c. Original Signatures Required. Only original Proofs of Claim may be deemed acceptable for purposes of claims administration. Copies of Proofs of Claim or Proofs of Claim sent by facsimile or electronic mail will not be accepted.

d. Identification of the Debtor Entity. Each Proof of Claim must clearly identify the Debtor against which a claim is asserted, including the individual Debtor's case number. A Proof of Claim filed under the joint administration case number (No. 16-10287) or otherwise without identifying a specific Debtor, will be deemed as filed only against Horsehead Holding Corp.

e. Claim Against Multiple Debtor Entities. Each Proof of Claim must state a claim against only one Debtor and clearly indicate the Debtor against which the claim is asserted. To the extent more than one Debtor is listed

on the Proof of Claim, such claim may be treated as if filed only against the first-listed Debtor.

f. Supporting Documentation. Each Proof of Claim must include supporting documentation in accordance with Bankruptcy Rules 3001(c) and 3001(d). If, however, such documentation is voluminous, upon prior written consent of Debtors' counsel, such Proof of Claim may include a summary of such documentation or an explanation as to why such documentation is not available; provided, however, that any creditor that received such written consent shall be required to transmit such writings to Debtors' counsel upon request no later than ten days from the date of such request.[7]

g. Timely Service. Each Proof of Claim must be filed, including supporting documentation, by U.S. Mail or other hand delivery system, so as to be **actually received** by the Claims and Noticing Agent on or before the applicable Bar Date (or, where applicable, on or before any other bar date as set forth herein or by order of the Court) at the following address:

If by first-class mail, send to:

Horsehead Holding Corp., Claims Processing Center
c/o Epiq Bankruptcy Solutions, LLC
P.O. Box 4421
Beaverton, Oregon 97076-4421

If by hand delivery or overnight mail, send to:

Horsehead Holding Corp., Claims Processing Center
c/o Epiq Bankruptcy Solutions, LLC
10300 SW Allen Blvd.
Beaverton, Oregon 97005

PROOFS OF CLAIM SUBMITTED BY FACSIMILE OR ELECTRONIC MAIL WILL NOT BE ACCEPTED.

h. Receipt of Service. Claimants wishing to receive acknowledgment that their Proofs of Claim were received by the Claims and Noticing Agent must submit (i) a copy of the Proof of Claim Form (in addition to the original Proof of Claim Form sent to the Claims and Noticing Agent) and (ii) a self-addressed, stamped envelope.

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[7] Similarly, to the extent that any supporting documentation may be required to be submitted with any Administrative Claim, upon prior written consent of Debtors' counsel, such Administrative Claim may include a summary of such documentation or an explanation as to why such documentation is not available; provided, however, that any creditor that received such written consent shall be required to transmit such writings to Debtors' counsel upon request no later than ten (10) days from the date of such request.

V. Identification of Known Creditors

11. The Debtors shall mail notice of the Bar Dates only to their known creditors, and such mailing shall be made to the last known mailing address for each such creditor.

VI. Procedures for Providing Notice of the Bar Date

A. Mailing of Bar Date Notices

12. No later than three business days after the Court enters this Bar Date Order, the Debtors shall cause a written notice of the Bar Dates, substantially in the form attached hereto as Exhibit 2 (the "Bar Date Notice") and a Proof of Claim Form (together, the "Bar Date Package") to be mailed via first class mail to the following entities:

a. the Office of the United States Trustee for the District of Delaware;

b. the Office of the United States Attorney for the District of Delaware;

c. any official committee appointed in these chapter 11 cases;

d. the entities listed on the Consolidated List of Creditors Holding the 50 Largest Unsecured Claims;

e. counsel to PNC Bank, N.A.;

f. counsel to Macquarie Bank Limited;

g. the indenture trustee under the Debtors' 10.50% senior secured notes;

h. the indenture trustee under the Debtors' 9.00% senior secured notes;

i. the indenture trustee under the Debtors' 3.80% convertible senior secured notes;

j. Banco Bilbao Vizcaya Argentina, S.A.;

k. all creditors and other known holders of claims against the Debtors as of the date of entry of the Bar Date Order, including all entities listed in the Schedules as holding claims against the Debtors;

l. all entities that have requested notice of the proceedings in these chapter 11 cases pursuant to Bankruptcy Rule 2002 as of the date the Bar Date Order is entered;

m. all entities that have filed proofs of claim in these chapter 11 cases as of the date of the Bar Date Order;

n. all known non-Debtor equity and interest holders of the Debtors as of the date the Bar Date Order is entered;

o. all entities who are party to executory contracts and unexpired leases with the Debtors;

p. all entities who are party to litigation with the Debtors;

q. all current and former employees (to the extent that contact information for former employees is available in the Debtors' records);

r. all regulatory authorities that regulate the Debtors' businesses, including consumer protection, environmental, and permitting authorities;

s. all taxing authorities for the jurisdictions in which the Debtors maintain or conduct business;

t. the state attorneys general for states in which the Debtors conduct business;

u. the Financial Services Commission of Ontario (FSCO);

v. Unifor Local 591G;

w. the United States Internal Revenue Service;

x. the United States Environmental Protection Agency; and

y. the United States Securities and Exchange Commission.

13. The Debtors shall provide all known creditors listed in the Debtors' Schedules with a "personalized" Proof of Claim Form, which will identify how the Debtors have scheduled the creditors' claim in the Schedules, including, without limitation: (a) the identity of the Debtor against which the creditor's claim is scheduled; (b) the amount of the scheduled claim, if any; (c) whether the claim is listed as contingent, unliquidated, or disputed; and (d) whether the claim is listed as secured, unsecured priority, or unsecured non-priority. Each creditor shall have an opportunity to inspect the Proof of Claim Form provided by the Debtors and correct any information that is missing, incorrect, or incomplete. Additionally, any creditor may choose to

submit a Proof of Claim on a different form as long as it is substantially similar to Official Form 410.

14. After the initial mailing of the Bar Date Packages, the Debtors may, in their discretion, make supplemental mailings of notices or packages, including in the event that: (a) notices are returned by the post office with forwarding addresses; (b) certain parties acting on behalf of parties in interest decline to pass along notices to these parties and instead return their names and addresses to the Debtors for direct mailing, and (c) additional potential claimants become known as the result of the Bar Date mailing process. In this regard, the Debtors may make supplemental mailings of the Bar Date Package in these and similar circumstances at any time up to 21 days in advance of the Bar Date, with any such mailings being deemed timely and the appropriate Bar Date being applicable to the recipient creditors.

B. Publication of Bar Date Notice

15. The Debtors shall cause notice of the Bar Dates to be given by publication to creditors to whom notice by mail is impracticable, including creditors who are unknown or not reasonably ascertainable by the Debtors and creditors whose identities are known but whose addresses are unknown by the Debtors. Specifically, the Debtors shall cause the Publication Notice, in substantially the form annexed hereto as **Exhibit 3**, to be published on one occasion in *USA Today* (National Edition) and *The Globe and Mail* on or before March 31, 2016, thus satisfying the requirements of Bankruptcy Rule 2002(a)(7) that such notice be published at least 21 days before the Claims Bar Date.

VII. Consequences of Failure to File a Proof of Claim

16. Subject to section 506(d)(2) of the Bankruptcy Code, any entity who is required, but fails, to file a Proof of Claim or an Administrative Claim arising prior to the Administrative Claim Deadline in accordance with the Bar Date Order on or before the applicable Bar Date may

be forever barred, estopped, and enjoined from asserting such claim against the Debtors (or filing a Proof of Claim or Administrative Claim with respect thereto) and the Debtors and their property may be forever discharged from any and all indebtedness or liability with respect to or arising from such claim. Without limiting the foregoing sentence, any creditor asserting a claim entitled to priority pursuant to section 503(b)(9) of the Bankruptcy Code that fails to file a proof of claim in accordance with this Bar Date Order may not be entitled to any priority treatment on account of such claim pursuant to section 503(b)(9) of the Bankruptcy Code, regardless of whether such claim is identified on Schedule F of the Schedules as not contingent, not disputed, and not unliquidated.

VIII. Miscellaneous

17. The Debtors are authorized to take all actions necessary or appropriate to effectuate the relief granted pursuant to this Bar Date Order in accordance with the Motion.

18. The terms and conditions of this Bar Date Order shall be immediately effective and enforceable upon entry of the Bar Date Order.

19. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Bar Date Order.

Dated: March 22, 2016
Wilmington, Delaware

The Honorable Christopher S. Sontchi
United States Bankruptcy Judge

EXHIBIT 1

Proof of Claim Form

United States Bankruptcy Court for the District of Delaware Horsehead Holding Corp. Claims Processing Center c/o Epiq Bankruptcy Solutions, LLC P.O. Box 4421 Beaverton, OR 97076-4421	For Court Use Only
Name of Debtor: Case Number:	
	For Court Use Only

Proof of Claim (Official Form 410)

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. With the exception of 503(b)(9), do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.
Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.
A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.
Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1 Identify the Claim

1. *Who is the current creditor?*
Name of the current creditor (the person or entity to be paid for this claim): _____

Other names the creditor used with the debtor: _____

2. *Has this claim been acquired from someone else?* ☐ No ☐ Yes. *From whom?* _____

3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditors be sent? (if different)**
_____ Name	_____ Name
_____ Number Street	_____ Number Street
_____ City State Zip Code	_____ City State Zip Code
Country (if international): _____	Country (if international): _____
Contact phone: _____	Contact phone: _____
Contact email: _____	Contact email: _____

4. Does this claim amend one already filed?
☐ No
☐ Yes. Claim number on court claims register (if known) _____
Filed on _____ MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?
☐ No
☐ Yes. Who made the earlier filing?
_____

Part 2 Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?
☐ No
☐ Yes.
Last 4 digits of the debtor's account or any number you use to identify the debtor:
____ ____ ____ ____

7. How much is the claim?
$_____.
Does this amount include interest or other charges?
☐ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim?
Examples: Good sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information
_____

9. Is all or part of the claim secured?

☐ No

☐ Yes. The claim is secured by a lien on property.

Nature of property:

☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☐ Other. Describe: _____

_____

Basis for perfection: _____

_____

Attach redacted copies of documents, if any, that show evidence of perfection of security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____

Amount of the claim that is secured: $_____

Amount of the claim that is unsecured: $_____
(The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition $_____

Annual Interest Rate (when case was filed) _____%

☐ Fixed ☐ Variable

10. Is this claim based on a lease?

☐ No

☐ Yes. **Amount necessary to cure any default as of the date of petition.**

$_____

11. Is this claim subject to a right of setoff?

☐ No

☐ Yes. Identify the property:

_____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and party nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☐ No

☐ Yes. *Check all that apply:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $12,475*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507 (a)(__) that applies.	$_____

* Amounts are subject to adjustment on 04/01/16 and every 3 years after that for cases begun on or after the date of adjustment.

13. Does this claim qualify as an Administrative Expense under 11 U.S.C. § 503(b)(9)?

☐ No

☐ Yes. **Amount that qualifies as an Administrative Expense under 11 U.S.C. § 503(b)(9):** $_____

Part 3 Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other co-debtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date _____ _____
MM / DD / YYYY Signature

Print the name of the person who is completing and signing this claim:

Name _____
First name Middle name Last name

Title _____

Company _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____
Number Street

_____
City State Zip Code

Contact Phone _____ Email _____

EXHIBIT 2

Bar Date Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
HORSEHEAD HOLDING CORP., et al.,[1]	)	Case No. 16-10287 (CSS)
Debtors.	)	Jointly Administered

NOTICE OF DEADLINES FOR THE FILING OF (I) PROOFS OF CLAIM, INCLUDING CLAIMS ARISING UNDER SECTION 503(B)(9) OF THE BANKRUPTCY CODE, (II) ADMINISTRATIVE CLAIMS, AND (III) REJECTION DAMAGES CLAIMS

TO: ALL PERSONS AND ENTITIES WHO MAY HAVE CLAIMS AGAINST ANY OF THE FOLLOWING DEBTOR ENTITIES:

DEBTOR	CASE NO.
Horsehead Holding Corp	16-10287 (CSS)
Horsehead Corporation	16-10288 (CSS)
Horsehead Metal Products, LLC	16-10289 (CSS)
The International Metals Reclamation Company, LLC	16-10290 (CSS)
Zochem Inc.	16-10291 (CSS)

PLEASE TAKE NOTICE THAT:

On February 2, 2016 (the "Petition Date"), Horsehead Holding Corp and four of its affiliates, as debtors (collectively, the "Debtors"), filed voluntary petitions for relief under chapter 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Court").

On _____, ____ the Court entered an order [Dkt. No. __] the ("Bar Date Order")[2] establishing certain dates by which parties holding prepetition claims against the Debtors must file (a) proofs of claim ("Proofs of Claim"), including claims by governmental units, claims arising under section 503(b)(9) of the Bankruptcy Code, and Rejection Damages Claims, and (b) requests for payment of Administrative Claims.

1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Horsehead Holding Corp. (7377); Horsehead Corporation (7346); Horsehead Metal Products, LLC (6504); The International Metals Reclamation Company, LLC (8892); and Zochem Inc. (4475). The Debtors' principal offices are located at 4955 Steubenville Pike, Suite 405, Pittsburgh, Pennsylvania 15205.

2 Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Bar Date Order.

For your convenience, enclosed with this notice (this "Notice") is a Proof of Claim form, which identifies on its face the amount, nature, and classification of your claim(s), if any, listed in the Debtors' schedules of assets and liabilities filed in these cases (the "Schedules"). If the Debtors believe that you hold claims against more than one Debtor, you will receive multiple Proof of Claim forms, each of which will reflect the nature and amount of your claim as listed in the Schedules.

As used in this Notice, the term "entity" has the meaning given to it in section 101(15) of the Bankruptcy Code, and includes all persons, estates, trusts, governmental units, and the Office of the United States Trustee for the District of Delaware. In addition, the terms "persons" and "governmental units" are defined in sections 101(41) and 101(27) of the Bankruptcy Code, respectively.

As used in this Notice, the term "claim" means, as to or against the Debtors and in accordance with section 101(5) of the Bankruptcy Code: (a) any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (b) any right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

I. THE BAR DATES

The Bar Date Order establishes the following bar dates for filing Proofs of Claim and Administrative Claims in these chapter 11 cases (the "Bar Dates").

a. The Claims Bar Date. Pursuant to the Bar Date Order, except as described below, all entities holding claims against the Debtors that arose or are deemed to have arisen prior to the commencement of these cases on the Petition Date, including claims arising under section 503(b)(9) of the Bankruptcy Code, **are required to file Proofs of Claim so that such Proofs of Claim are actually received by the Claims and Noticing Agent by the Claims Bar Date (i.e., on or before April 25, 2016, at 5:00 p.m., prevailing Eastern Time)**. The Claims Bar Date applies to all types of claims against the Debtors that arose prior to the Petition Date, including, without limitation, secured claims, unsecured priority claims, unsecured non-priority claims, and claims arising under section 503(b)(9) of the Bankruptcy Code.

b. The Governmental Bar Date. Pursuant to the Bar Date Order, all governmental units holding claims against the Debtors that arose or are deemed to have arisen prior to the commencement of these cases on the Petition Date **are required to file proofs of claim so that such Proofs of Claim are actually received by the Claims and Noticing Agent by the Governmental Bar Date (i.e., by August 1, 2016, at 5:00 p.m., prevailing Eastern Time)**. The Governmental Bar Date applies to all governmental units holding claims against the Debtors (whether secured,

unsecured priority, or unsecured non-priority) that arose prior to the Petition Date, including, without limitation, governmental units with claims against the Debtors for unpaid taxes, whether such claims arise from prepetition tax years or periods or prepetition transactions to which the Debtors were a party.

c. The Administrative Claims Bar Date. Pursuant to the Bar Date Order, all claimants holding Administrative Claims against the Debtors' estates arising between the Petition Date and April 1, 2016 (the "Administrative Claims Deadline"), excluding claims for fees and expenses of professionals retained in these proceedings and claims asserting priority pursuant to section 503(b)(9) of the Bankruptcy Code and claims held by governmental entities covered by section 503(b)(1)(B) or (C) of the Bankruptcy Code, **are required to file a request for payment of such Administrative Claim with the Court and, if desired, a notice of hearing on such Administrative Claim by the Administrative Claims Bar Date (i.e., on or before April 25, 2016 at 5:00 p.m. prevailing Eastern Time)**; provided that the Administrative Claims Bar Date shall not apply to claims entitled to administrative priority that arise on or after the Petition Date in the ordinary course of the Debtors' business; and provided, further, that to the extent that the Administrative Claims of a governmental unit do not arise on or after the Petition Date in the ordinary course of the Debtors' business, requests for payments of Administrative Claims by governmental units for Administrative Claims arising between the Petition Date and April 1, 2016, shall be filed on or before August 1, 2016, at 5:00 p.m. prevailing Eastern Time.

d. The Amended Schedules Bar Date. Pursuant to the Bar Date Order, all parties asserting claims against the Debtors' estates that are affected by a previously unfiled Schedule or amendment or supplement to the Schedules **are required to file Proofs of Claim so that such Proofs of Claim are actually received by the Claims and Noticing Agent by the Amended Schedules Bar Date (i.e., by the later of (a) the Claims Bar Date or the Governmental Bar Date, as applicable, or (b) 5:00 p.m., prevailing Eastern Time, on the date that is 21 days from the date on which the Debtors provide notice of such filing, amendment or supplement)**.

e. The Rejection Damages Bar Date. Pursuant to the Bar Date Order, all parties asserting claims against the Debtors' estates arising from the Debtors' rejection of an executory contract or unexpired lease **are required to file Proofs of Claim with respect to such rejection so that such Proofs of Claim are actually received by the Claims and Noticing Agent by the Rejection Damages Bar Date (i.e., by the later of (a) the Claims Bar Date or the Governmental Bar Date, as applicable, or (b) 5:00 p.m., prevailing Eastern Time, on the date that is 21 days following entry of an order approving such rejection)**.

II. WHO MUST FILE A PROOF OF CLAIM OR ADMINISTRATIVE CLAIM

Except as otherwise set forth herein, the following entities holding claims against the Debtors that arose (or that are deemed to have arisen) prior to the Petition Date must file Proofs of Claim or Administrative Claims on or before the applicable Bar Date:

a. any entity whose claim against a Debtor is not listed in the applicable Debtor's Schedules or is listed as contingent, unliquidated, or disputed if such entity desires to participate in any of these chapter 11 cases or share in any distribution in any of these chapter 11 cases;

b. any entity who believes that its claim is improperly classified in the Schedules or is listed in an incorrect amount and who desires to have its claim allowed in a different classification or amount other than that identified in the Schedules;

c. any entity that believes that its prepetition claims as listed in the Schedules is not an obligation of the specific Debtor against which the claim is listed and that desires to have its claim allowed against a Debtor other than that identified in the schedules;

d. any entity who believes that its claim against a Debtor is or may be an administrative expense that arises between the Petition Date and April 1, 2016 (excluding claims for fees and expenses of professionals retained in these proceedings and claims asserting priority pursuant to section 503(b)(9) of the Bankruptcy Code); provided that the Administrative Claims Bar Date shall not apply to claims entitled to administrative

priority that arise on or after the Petition Date in the ordinary course of the Debtors' business; and provided, further, that to the extent that the Administrative Claims of a governmental unit do not arise on or after the Petition Date in the ordinary course of the Debtors' business, requests for payments of Administrative Claims by governmental units for Administrative Claims arising between the Petition Date and April 1, 2016, shall be filed on or before August 1, 2016, at 5:00 p.m. prevailing Eastern Time; and

e. any entity who believes that its claim against a Debtor is or may be entitled to priority under section 503(b)(9) of the Bankruptcy Code.

III. PARTIES WHO DO NOT NEED TO FILE PROOFS OF CLAIM OR ADMINISTRATIVE CLAIM

Certain parties are not required to file Proofs of Claim or Administrative Claims arising prior to the Administrative Claim Deadline. The Court may, however, enter one or more separate orders at a later time requiring creditors to file Proofs of Claim or Administrative Claims for some kinds of the following claims and setting related deadlines. If the Court does enter such an order, you will receive notice of it. The following entities holding claims that would otherwise be subject to the Bar Dates need **not** file Proofs of Claims or Administrative Claims:

a. any entity that already has filed a signed Proof of Claim against the respective Debtor(s) with the clerk of the Court or with the Claims and Noticing Agent in a form substantially similar to Official Form 410;

b. any entity whose claim is listed on the Schedules if: (i) the claim is **not** scheduled as any of "disputed," "contingent," or "unliquidated;" (ii) such entity agrees with the amount, nature, and priority of the claim as set forth in the Schedules; and (iii) such entity does not dispute that its claim is an obligation only of the specific Debtor against which the claim is listed in the Schedules;

c. any entity whose claim has previously been allowed by order of the Court;

d. any entity whose claim has been paid in full by the Debtors pursuant to the Bankruptcy Code or in accordance with an order of the Court;

e. any Debtor having a claim (or any transferee for security of any such Debtor that has a claim) against another Debtor;

f. any of the Debtors' non-Debtor affiliates having a claim (or any transferee for security of any such non-Debtor affiliate that has a claim) against any Debtor;

g. any entity whose claim is solely against any of the Debtors' non-Debtor affiliates;

h. any holder of an equity interest in the Debtors need not file a proof of interest with respect to the ownership of such equity interest at this time; provided, however, that any holder of an equity interest who wishes to assert a claim against the Debtors, including a claim relating to such equity interest or the purchase or sale of such interest, must file a proof of claim asserting such claim on or prior to the Claims Bar Date pursuant to procedures set forth herein;

i. a current employee of the Debtors, if an order of this Court authorized the Debtors to honor such claim in the ordinary course of business for wages, commissions, or benefits; provided, however, that a current employee must submit a Proof of Claim by the Claims Bar Date for all other claims arising before the Petition Date, including claims for wrongful termination, discrimination, harassment, hostile work environment, and/or retaliation;

j. any current or former officer, director, or employee for claims based on indemnification, contribution, or reimbursement;

k. the Prepetition Senior Secured Notes Indenture Trustee, the Prepetition Senior Secured Notes Collateral Agent, any Prepetition Senior Secured Noteholder, the Zochem Agents, the Zochem Lender, PNC, the Prepetition Unsecured Notes Indenture Trustee, any Prepetition Unsecured Noteholder (each as defined in the DIP Orders) in each case (x) to the extent provided by either or both of the DIP Orders, (y) to preserve any claims for contingent or unliquidated amounts, or (z) to preserve the right to claim postpetition interest, fees, costs or charges (to the extent any of them ultimately is determined to be entitled thereto);[3]

l. consistent with Paragraph 5 (d) of the Final DIP Order which provides that the Prepetition Macquarie Facility Parties are not required to file a proof of claim with regard to the Macquarie Credit Facility Obligations or the Prepetition Macquarie Liens, none of the Prepetition Macquarie Facility Parties shall be required to file a proof of claim with respect to the claim for payment of the Macquarie Restructuring Fee, whether or not the Debtors have stipulated to the fixing or allowance of the Macquarie Restructuring Fee or the Macquarie Restructuring Fee has otherwise been determined by the Court to be a part of the Macquarie Credit Facility Obligations as of the Claims Bar Date and such claim shall be deemed to

3 The "DIP Orders" mean that certain *Interim Order (A) Authorizing the Debtors to Obtain Postpetition Secured Financing Pursuant to Section 364 of the Bankruptcy Code, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Adequate Protection to the Prepetition Secured Parties, (D) Scheduling a Final Hearing, and (E) Granting Related Relief* entered by the Court on February 4, 2016 [Dkt. No. 81] and that certain *Final Order (A) Authorizing the Debtors to Obtain Postpetition Secured Financing Pursuant to Section 364 of the Bankruptcy Code, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Adequate Protection to the Prepetition Secured Parties, (D) Scheduling a Final Hearing, and (E) Granting Related Relief* entered by the Court on March 3, 2016 [Dkt. No. 252] (the "DIP Final Order").

have been filed prior to the Claim Bar Date; provided, however, that without limiting the Final DIP Order (including paragraph 5(g) thereof), the rights of any party to dispute the Macquarie Restructuring Fee, other than on account of a proof of claim not having been filed with respect to the Macquarie Restructuring Fee, are fully preserved;[4]

m. any individual holder of a claim for principal, interest, or applicable fees or charges (a "Debt Claim") on account of any note, bond, or debenture issued by the Debtors pursuant to an indenture (an "Indenture") or a credit agreement (a "Credit Agreement") with respect to such claim;

n. any entity holding a claim for which a separate deadline is fixed by the Court;

o. pursuant to Local Rule 3002-1(a) and section 503(b)(1)(D) of the Bankruptcy Code, governmental entities holding claims covered by section 503(b)(1)(B) or (C) of the Bankruptcy Code; and

p. claims for fees and expenses of professionals retained in these proceedings.

IV. INSTRUCTIONS FOR FILING PROOFS OF CLAIM

The following requirements shall apply with respect to filing and preparing each Proof of Claim:

a. Contents. Each Proof of Claim must: (i) be written in English; (ii) include a claim amount denominated in United States dollars; (iii) conform substantially with the Proof of Claim Form provided by the Debtors or Official Form 410; and (iv) be signed by the claimant or by an authorized agent or legal representative of the claimant.

b. Section 503(b)(9) Claim. Any Proof of Claim asserting a claim entitled to priority under section 503(b)(9) must also: (i) include the value of the goods delivered to and received by the Debtors in the 20 days prior to the Petition Date; (ii) attach any documentation identifying the particular invoices for which the 503(b)(9) claim is being asserted; and (iii) attach documentation of any reclamation demand made to the Debtors under section 546(c) of the Bankruptcy Code (if applicable).

c. Original Signatures Required. Only original Proofs of Claim may be deemed acceptable for purposes of claims administration. Copies of Proofs of Claim or Proofs of Claim sent by facsimile or electronic mail will not be accepted.

[4] Capitalized terms used but not otherwise defined in this subparagraph have the meanings ascribed to them in the Final DIP Order.

d. Identification of the Debtor Entity. Each Proof of Claim must clearly identify the Debtor against which a claim is asserted, including the individual Debtor's case number. A Proof of Claim filed under the joint administration case number (No. 16-10287) or otherwise without identifying a specific Debtor, will be deemed as filed only against Horsehead Holding Corp.

e. Claim Against Multiple Debtor Entities. Each Proof of Claim must state a claim against only one Debtor and clearly indicate the Debtor against which the claim is asserted. To the extent more than one Debtor is listed on the Proof of Claim, such claim may be treated as if filed only against the first-listed Debtor.

f. Supporting Documentation. Each Proof of Claim must include supporting documentation in accordance with Bankruptcy Rules 3001(c) and 3001(d). If, however, such documentation is voluminous, upon prior written consent of Debtors' counsel, such Proof of Claim may include a summary of such documentation or an explanation as to why such documentation is not available; provided, however, that any creditor that received such written consent shall be required to transmit such writings to Debtors' counsel upon request no later than ten days from the date of such request.[5]

g. Timely Service. Each Proof of Claim must be filed, including supporting documentation, by U.S. Mail or other hand delivery system, so as to be **actually received** by the Claims and Noticing Agent on or before the applicable Bar Date (or, where applicable, on or before any other bar date as set forth herein or by order of the Court) at the following address:

[5] Similarly, to the extent that any supporting documentation may be required to be submitted with any Administrative Claim, upon prior written consent of Debtors' counsel, such Administrative Claim may include a summary of such documentation or an explanation as to why such documentation is not available; provided, however, that any creditor that received such written consent shall be required to transmit such writings to Debtors' counsel upon request no later than ten (10) days from the date of such request.

If by first-class mail, send to:

Horsehead Holding Corp., Claims Processing Center
c/o Epiq Bankruptcy Solutions, LLC
P.O. Box 4421
Beaverton, Oregon 97076-4421

If by hand delivery or overnight mail, send to:

Horsehead Holding Corp., Claims Processing Center
c/o Epiq Bankruptcy Solutions, LLC
10300 SW Allen Blvd.
Beaverton, Oregon 97005

PROOFS OF CLAIM SUBMITTED BY FACSIMILE OR ELECTRONIC MAIL WILL NOT BE ACCEPTED.

h. Receipt of Service. Claimants wishing to receive acknowledgment that their Proofs of Claim were received by the Claims and Noticing Agent must submit (i) a copy of the Proof of Claim Form (in addition to the original Proof of Claim Form sent to the Claims and Noticing Agent) and (ii) a self-addressed, stamped envelope.

V. CONSEQUENCES OF FAILING TO TIMELY FILE YOUR PROOF OF CLAIM OR ADMINISTRATIVE CLAIM

Pursuant to the Bar Date Order and in accordance with Bankruptcy Rule 3003(c)(2), if you or any party or entity who is required, but fails, to file a Proof of Claim or Administrative Claim in accordance with the Bar Date Order on or before the applicable Bar Date, please be advised that:

a. YOU MAY BE FOREVER BARRED, ESTOPPED, AND ENJOINED FROM ASSERTING SUCH CLAIM AGAINST THE DEBTORS (OR FILING A PROOF OF CLAIM WITH RESPECT THERETO);

b. THE DEBTORS AND THEIR PROPERTY MAY BE FOREVER DISCHARGED FROM ANY AND ALL INDEBTEDNESS OR LIABILITY WITH RESPECT TO OR ARISING FROM SUCH CLAIM;

c. YOU WILL NOT RECEIVE ANY DISTRIBUTION IN THESE CHAPTER 11 CASES ON ACCOUNT OF THAT CLAIM; AND

d. YOU MAY NOT BE PERMITTED TO VOTE ON ANY CHAPTER 11 PLAN FOR THE DEBTORS ON ACCOUNT OF THESE BARRED CLAIMS OR RECEIVE FURTHER NOTICES REGARDING SUCH CLAIM.

VI. AMENDMENTS TO THE DEBTORS' SCHEDULES

If, subsequent to the date of this Notice, the Debtors file a previously unfiled Schedule or amend or supplement their Schedules to reduce the undisputed, noncontingent, and liquidated amount of a claim listed in the Schedules, to change the nature or classification of a claim against the Debtors reflected in the Schedules, or to add a new claim to the Schedules, the affected creditor is required to file a Proof of Claim or amend any previously filed Proof of Claim in respect of the amended scheduled claim on or before the later of (a) the Claims Bar Date or the Governmental Bar Date, as applicable to such claim, or (b) 5:00 p.m. prevailing Eastern Time on the date that is 21 days after the date that on which the Debtors provide notice of the filing, amendment or supplement to the Schedules (or another time period as may be fixed by the Court) (the "Amended Schedules Bar Date").

VII. RESERVATION OF RIGHTS

Nothing contained in this Notice is intended to or should be construed as a waiver of the Debtors' right to: (a) dispute, or assert offsets or defenses against, any filed claim or any claim listed or reflected in the Schedules as to the nature, amount, liability, or classification thereof; (b) subsequently designate any scheduled claim as disputed, contingent, or unliquidated; and (c) otherwise amend or supplement the Schedules.

VIII. THE DEBTORS' SCHEDULES AND ACCESS THERETO

You may be listed as the holder of a claim against one or more of the Debtor entities in the Debtors' Schedules. To determine if and how you are listed on the Schedules, please refer to the descriptions set forth on the enclosed proof of claim forms regarding the nature, amount, and status of your claim(s). If the Debtors believe that you may hold claims against more than one Debtor entity, you will receive multiple proof of claim forms, each of which will reflect the nature and amount of your claim against one Debtor entity, as listed in the Schedules.

If you rely on the Debtors' Schedules, it is your responsibility to determine that the claim is accurately listed in the Schedules. However, you may rely on the enclosed form, which sets forth the amount of your claim (if any) as scheduled; identifies the Debtor entity against which it is scheduled; specifies whether your claim is listed in the Schedules as disputed, contingent, or unliquidated; and identifies whether your claim is scheduled as a secured, unsecured priority, or unsecured non-priority claim.

As described above, if you agree with the nature, amount, and status of your claim as listed in the Debtors' Schedules, and if you do not dispute that your claim is only against the Debtor entity specified by the Debtors, and if your claim is not described as "disputed," "contingent," or "unliquidated," you need **not** file a Proof of Claim. Otherwise, or if you decide to file a Proof of Claim, you must do so before the applicable Bar Date in accordance with the procedures set forth in this Notice.

IX. ADDITIONAL INFORMATION

Copies of the Debtors' Schedules, the Bar Date Order, and other information regarding these chapter 11 cases are available for inspection free of charge on the Claims and Noticing Agent's website at http://dm.epiq11.com/Horsehead. The Schedules and other filings in these chapter 11 cases also are available for a fee at the Court's website at http://www.deb.uscourts.gov. A login identification and password to the Court's Public Access to Court Electronic Records ("PACER") are required to access this information and can be obtained through the PACER Service Center at http://www.pacer.psc.uscourts.gov. Copies of the Schedules and other documents filed in these cases also may be examined between the hours of 9:00 a.m. and 4:30 p.m., prevailing Eastern Time, Monday through Friday, at the office of the Clerk of the Bankruptcy Court, United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

If you require additional information regarding the filing of a proof of claim, you may contact the Claims and Noticing Agent directly by writing to: Horsehead Holding Corp., c/o Epiq Bankruptcy Solutions, LLC, P.O. Box 4421, Beaverton, Oregon 97076-4421, or contact the Debtors' restructuring hotline at: (800) 572-0455.

A HOLDER OF A POSSIBLE CLAIM AGAINST THE DEBTORS SHOULD CONSULT AN ATTORNEY REGARDING ANY MATTERS NOT COVERED BY THIS NOTICE, SUCH AS WHETHER THE HOLDER SHOULD FILE A PROOF OF CLAIM.

Wilmington, Delaware
Dated: _____, 2016

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James E. O'Neill (DE Bar No. 4042)
Joseph M. Mulvihill (DE Bar No. 6061)
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Proposed Co-Counsel for the
Debtors and Debtors in Possession

EXHIBIT 3

Publication Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
HORSEHEAD HOLDING CORP., et al.,[1]	)	Case No. 16-10287 (CSS)
Debtors.	)	Jointly Administered

NOTICE OF DEADLINES FOR THE FILING OF (A) PROOFS OF CLAIM, INCLUDING CLAIMS ARISING UNDER SECTION 503(B)(9) OF THE BANKRUPTCY CODE, (B) ADMINISTRATIVE CLAIMS, AND (C) REJECTION DAMAGES CLAIMS

THE CLAIMS BAR DATE IS APRIL 25, 2016

THE GOVERNMENTAL CLAIMS BAR DATE IS AUGUST 1, 2016

THE ADMINISTRATIVE CLAIMS BAR DATE IS APRIL 25, 2016

THE REJECTION DAMAGES BAR DATE IS THE LATER OF (A) THE CLAIMS BAR DATE OR THE GOVERNMENTAL BAR DATE, AS APPLICABLE; OR (B) THE DATE THAT IS 21 DAYS FOLLOWING ENTRY OF AN ORDER APPROVING THE REJECTION OF ANY EXECUTORY CONTRACT OR UNEXPIRED LEASE

PLEASE TAKE NOTICE OF THE FOLLOWING:

Deadlines for Filing Proofs of Claim and Administrative Claims Arising Prior to the Administrative Claim Deadline. On _____, ____ the Court entered an order [Dkt. No. __] the ("Bar Date Order")[2] establishing certain dates by which parties holding prepetition claims against the Debtors must file (a) proofs of claim ("Proofs of Claim"), including claims by governmental units, claims arising under section 503(b)(9) of the Bankruptcy Code, and Rejection Damages Claims, and (b) requests for payment of Administrative Claims (as defined herein) arising prior to the Administrative Claim Deadline (as defined herein).

DEBTOR	CASE NO.

1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Horsehead Holding Corp. (7377); Horsehead Corporation (7346); Horsehead Metal Products, LLC (6504); The International Metals Reclamation Company, LLC (8892); and Zochem Inc. (4475). The Debtors' principal offices are located at 4955 Steubenville Pike, Suite 405, Pittsburgh, Pennsylvania 15205.

2 Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Bar Date Order.

DEBTOR	CASE NO.
Horsehead Holding Corp	16-10287 (CSS)
Horsehead Corporation	16-10288 (CSS)
Horsehead Metal Products, LLC	16-10289 (CSS)
The International Metals Reclamation Company, LLC	16-10290 (CSS)
Zochem Inc.	16-10291 (CSS)

The Bar Dates.

The Claims Bar Date. Pursuant to the Bar Date Order, all entities, including individuals, partnerships, estates, and trusts who have a claim or potential claim against the Debtors, including claims arising under section 503(b)(9) of the Bankruptcy Code, that arose prior to the Petition Date, no matter how remote or contingent such right to payment or equitable remedy may be, MUST FILE A PROOF OF CLAIM on or before **April 25, 2016, at 5:00 p.m., prevailing Eastern Time** (the "Claims Bar Date").

Governmental Bar Date. Governmental entities who have a claim or potential claim against the Debtors that arose prior to the Petition Date, no matter how remote or contingent such right to payment or equitable remedy may be, MUST FILE A PROOF OF CLAIM on or before **August 1, 2016, at 5:00 p.m., prevailing Eastern Time** (the "Governmental Bar Date").

Administrative Claims Bar Date. Parties asserting Administrative Claims against the Debtors' estates arising between the Petition Date and April 1, 2016 (the "Administrative Claims Deadline") (but excluding claims for fees and expenses of professionals retained in these proceedings and claims asserting priority pursuant to section 503(b)(9) of the Bankruptcy Code and governmental entities holding claims covered by section 503(b)(1)(B) or (C) of the Bankruptcy Code), are required to file a request for payment of such Administrative Claim arising prior to the Administrative Claim Deadline with the Court on or before **April 25, 2016 at 5:00 p.m., prevailing Eastern Time** (the "Administrative Claims Bar Date"); provided that the Administrative Claims Bar Date shall not apply to claims entitled to administrative priority that arise on or after the Petition Date in the ordinary course of the Debtors' business; and provided, further, that to the extent that the Administrative Claims of a governmental unit do not arise on or after the Petition Date in the ordinary course of the Debtors' business, requests for payments of Administrative Claims by governmental units for Administrative Claims arising between the Petition Date and April 1, 2016, shall be filed on or before August 1, 2016, at 5:00 p.m. prevailing Eastern Time.

Amended Schedules Bar Date. All parties asserting claims against the Debtors' estates that are affected by a previously unfiled Schedule or an amendment or supplement to the Schedules are required to file Proofs of Claim by **the later of (a) the Claims Bar Date or the Governmental Bar Date, as applicable, or (b) 5:00 p.m., prevailing Eastern Time, on the date that is 21 days from the date on which the Debtors provide notice of a previously unfiled Schedule or amendment or supplement to the Schedules** (the "Amended Schedules Bar Date").

Rejection Damages Bar Date. All parties asserting claims against the Debtors' estates arising from the Debtors' rejection of an executory contract or unexpired lease must file a Proof of Claim by the **later of (a) the Claims Bar Date or the Governmental Bar Date, as**

applicable, or (b) 5:00 p.m. prevailing Eastern Time on the date that is 21 days following entry of an order approving such rejection (the "Rejection Damages Bar Date").

ANY PERSON OR ENTITY WHO FAILS TO FILE A PROOF OF CLAIM, INCLUDING ANY CLAIMS ARISING UNDER SECTION 503(B)(9) OF THE BANKRUPTCY CODE, OR WHO FAILS TO FILE AN ADMINISTRATIVE CLAIM WITH THE COURT, IN EACH CASE ON OR BEFORE THE APPLICABLE BAR DATE, MAY NOT BE TREATED AS A CREDITOR WITH RESPECT TO SUCH CLAIM FOR THE PURPOSES OF VOTING AND DISTRIBUTION ON ANY CHAPTER 11 PLAN.

Filing a Proof of Claim. Each Proof of Claim must be filed, including supporting documentation, by U.S. Mail or other hand delivery system, so as to be **actually received** by Epiq Bankruptcy Solutions, LLC (the "Claims and Noticing Agent") on or before the Claims Bar Date or the Governmental Bar Date (or, where applicable, on or before any other Bar Date as set forth herein) at one of the following addresses:

If by first-class mail, send to:

Horsehead Holding Corp., Claims Processing Center
c/o Epiq Bankruptcy Solutions, LLC
P.O. Box 4421
Beaverton, Oregon 97076-4421

If by hand delivery or overnight mail, send to:

Horsehead Holding Corp., Claims Processing Center
c/o Epiq Bankruptcy Solutions, LLC
10300 SW Allen Blvd.
Beaverton, Oregon 97005

Contents of Proofs of Claim. Each proof of claim must (i) be written in English; (ii) include a claim amount denominated in United States dollars; (iii) clearly identify the Debtor against which the claim is asserted (iv) conform substantially with the Proof of Claim Form provided by the Debtors or Official Form 410; (v) be signed by the claimant or by an authorized agent or legal representative of the claimant; and (vi) include as attachments any and all supporting documentation on which the claim is based. **Please note** that each proof of claim must state a claim against only one Debtor and clearly indicate the specific Debtor against which the claim is asserted. To the extent more than one Debtor is listed on the proof of claim, a proof of claim is treated as if filed only against the first-listed Debtor, or if a proof of claim is otherwise filed without identifying a specific Debtor, the proof of claim may be deemed as filed only against Horsehead Holding Corp.

Section 503(b)(9) Requests for Payment. Any proof of claim asserting a claim arising under section 503(b)(9) of the Bankruptcy Code must also (i) include the value of the goods delivered to and received by the Debtors in the 20 days prior to the Petition Date; (ii) attach any documentation identifying the particular invoices for which such 503(b)(9) claim is being asserted; and (iii) attach documentation of any reclamation demand made to the Debtors under section 546(c) of the Bankruptcy Code (if applicable).

Additional Information. If you have any questions regarding the claims process and/or you wish to obtain a copy of the Bar Date Notice, a proof of claim form or related documents you may do so by: (i) calling the Debtors' restructuring hotline at (800) 572-0455; (ii) visiting the Debtors' restructuring website at: http://dm.epiq11.com/Horsehead; and/or (iii) writing to Horsehead Holding Corp., c/o Epiq Bankruptcy Solutions, LLC, P.O. Box 4421, Beaverton, Oregon 97076-4421. **Please note** that the Claims and Noticing Agent **cannot** offer legal advice or advise whether you should file a proof of claim.

Wilmington, Delaware
Dated: _____, 2016

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- and -

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Proposed Co-Counsel for the Debtors and Debtors in Possession

Exhibit B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
HORSEHEAD HOLDING CORP., et al.,[1]	Case No. 16-10287 (CSS)
Debtors.	Jointly Administered
	Re: Docket No. —133

ORDER (A) SETTING A BAR DATE FOR FILING PROOFS OF CLAIM, INCLUDING CLAIMS ARISING UNDER SECTION 503(B)(9) OF THE BANKRUPTCY CODE, (B) SETTING A BAR DATE FOR THE FILING OF PROOFS OF CLAIM BY GOVERNMENTAL UNITS, (C) SETTING A BAR DATE FOR THE FILING OF REQUESTS FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIMS, (D) SETTING AN AMENDED SCHEDULES BAR DATE, (E) SETTING A REJECTION DAMAGES BAR DATE, (F) APPROVING THE FORM OF AND MANNER FOR FILING PROOFS OF CLAIM, (G) APPROVING NOTICE OF THE BAR DATES, AND (H) GRANTING RELATED RELIEF

Upon the motion (the "Motion") of the above-captioned debtors (collectively, the "Debtors") for entry of this Bar Date Order:[2] (I) establishing the Claims Bar Date, including with respect to claims arising under section 503(b)(9) of the Bankruptcy Code; (II) establishing the Governmental Bar Date; (III) establishing the Administrative Claims Bar Date; (IV) establishing the Amended Schedules Bar Date; (V) establishing the Rejection Damages Bar Date; (VI) approving the form of and manner for filing Proofs of Claim; (VII) approving the Bar Date Notice and the Publication Notice; and (VIII) granting related relief; all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District

1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Horsehead Holding Corp. (7377); Horsehead Corporation (7346); Horsehead Metal Products, LLC (6504); The International Metals Reclamation Company, LLC (8892); and Zochem Inc. (4475). The Debtors' principal offices are located at 4955 Steubenville Pike, Suite 405, Pittsburgh, Pennsylvania 15205.

2 Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that notice of and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

I. The Bar Dates and Procedures for Filing Proofs of Claim and Administrative Claims

2. Each entity that asserts a claim against the Debtors that arose before the Petition Date shall be required to file an original, written Proof of Claim, substantially in the form attached hereto as **Exhibit 1** or Official Form 410.[3] Except in the cases of governmental units and certain other exceptions explicitly set forth herein, **all Proofs of Claim must be filed so that they are actually received on or before April ~~17~~25, 2016, at 5:00 p.m., prevailing**

[3] Copies of Official Form 410 may be obtained: (a) from the Claims and Noticing Agent at no charge by ~~(i)~~ accessing the website for the Claims and Noticing Agent at http://dm.epiq11.com/Horsehead; (b) writing to the Claims and Noticing Agent at Horsehead Holding Corp., c/o Epiq Bankruptcy Solutions, LLC, P.O. Box 4421, Beaverton, Oregon 97076-4421; (c) calling the Claims and Noticing Agent at (800) 572-0455; or (d) for a fee via PACER at http://www.deb.uscourts.gov.

Eastern Time (the "Claims Bar Date"), at the addresses and in the form set forth herein. The Claims Bar Date applies to all types of claims against the Debtors that arose or are deemed to have arisen before the Petition Date, including claims arising under section 503(b)(9) of the Bankruptcy Code, except for claims specifically exempt from complying with the Claims Bar Date as set forth in ~~the Motion or~~ this Bar Date Order.

3. All governmental units holding claims (whether secured, unsecured priority, or unsecured non-priority) that arose (or are deemed to have arisen) prior to the Petition Date, must file Proofs of Claims, including claims for unpaid taxes, whether such claims arise from prepetition tax years or periods or prepetition transactions to which the Debtors were a party, **so that such Proofs of Claim are actually received on or before August 1, 2016, at 5:00 p.m., prevailing Eastern Time (the "Governmental Bar Date"), at the addresses and in the form set forth herein.**

4. All parties asserting a request for payment of Administrative Claims arising between the Petition Date and April 1, 2016 (the "Administrative Claims Deadline"), but excluding claims for fees and expenses of professionals retained in these proceedings and claims asserting priority pursuant to section 503(b)(9) of the Bankruptcy Code, are required file a request for payment of such Administrative Claim with the Court and, if desired, a notice of hearing on such Administrative Claim[4] **so that the Administrative Claim is actually filed with the Court on or before April ~~17, 2016 (the "Administrative Claims Bar Date")~~ 25, 2016 (the "Administrative Claims Bar Date"); provided that the Administrative Claims Bar Date shall not apply to claims entitled to administrative priority that arise on or after the Petition Date in the ordinary course of the Debtors' business; and provided, further, that to the extent that the**

[4] Administrative Claims filed without a notice of hearing shall not be scheduled for hearing.

Administrative Claims of a governmental unit do not arise on or after the Petition Date in the ordinary course of the Debtors' business, requests for payments of Administrative Claims by governmental units for Administrative Claims arising between the Petition Date and April 1, 2016, shall be filed on or before August 1, 2016, at 5:00 p.m. prevailing Eastern Time.

5. If the Debtors file a previously unfiled Schedule or amend or supplement the Schedules after having given notice of the Bar Dates, the Debtors shall give notice by first-class mail of any filing, amendment or supplement to holders of claims affected thereby, and the deadline for those holders to file Proofs of Claim, if necessary, be set as the later of (a) the Claims Bar Date or the Governmental Bar Date, as applicable, or (b) 5:00 p.m. prevailing Eastern Time on the date that is 21 days from the date the notice of the filing, amendment or supplement is given (or another time period as may be fixed by the Court) (the "Amended Schedules Bar Date").

6. Unless otherwise ordered, all entities asserting claims arising from the rejection of executory contracts and unexpired leases of the Debtors shall file a Proof of Claim on account of such rejection by the later of: (a) the Claims Bar Date or the Governmental Bar Date, as applicable; or (b) 5:00 p.m. prevailing Eastern Time on the date that is 21 days following entry of an order approving the rejection of any such executory contract or unexpired lease (the "Rejection Damages Bar Date").

7. All Proofs of Claim must be filed so as to be actually received by the Claims and Noticing Agent on or before the applicable Bar Date. In addition, all Administrative Claims must be filed with the Court so as to be actually received by the Court by the Administrative Claims Bar Date. If Proofs of Claim and Administrative Claims are not received by the Claims and Noticing Agent or the Court, as applicable, on or before the applicable Bar Date, except in

the case of certain exceptions explicitly set forth herein, the holders of the underlying claims shall be barred from asserting such claims against the Debtors and precluded from voting on any chapter 11 plans filed in these chapter 11 cases and/or receiving distributions from the Debtors on account of such claims in these chapter 11 cases.

II. Parties Required to File Proofs of Claim and Administrative Claims

8. The following categories of claimants shall be required to file a Proof of Claim or Administrative Claim arising prior to the Administrative Claim Deadline by the applicable Bar Date:

a. any entity whose claim against a Debtor is not listed in the applicable Debtor's Schedules or is listed as contingent, unliquidated, or disputed if such entity desires to participate in any of these chapter 11 cases or share in any distribution in any of these chapter 11 cases;

b. any entity who believes that its claim is improperly classified in the Schedules or is listed in an incorrect amount and who desires to have its claim allowed in a different classification or amount other than that identified in the Schedules;

c. any entity that believes that its prepetition claims as listed in the Schedules is not an obligation of the specific Debtor against which the claim is listed and that desires to have its claim allowed against a Debtor other than that identified in the schedules;

d. any entity who believes that its claim against a Debtor is or may be an administrative expense that arises between the Petition Date and the Administrative Claims ~~Bar Date~~Deadline (excluding claims for fees and expenses of professionals retained in these proceedings and claims asserting priority pursuant to section 503(b)(9) of the Bankruptcy Code); ~~and~~provided that the Administrative Claims Bar Date shall not apply to claims entitled to administrative priority that arise on or after the Petition Date in the ordinary course of the Debtors' business; and provided, further, that to the extent that the Administrative Claims of a governmental unit do not arise on or after the Petition Date in the ordinary course of the Debtors' business, requests for payments of Administrative Claims by governmental units for Administrative Claims arising between the Petition Date and April 1, 2016, shall be filed on or before August 1, 2016, at 5:00 p.m. prevailing Eastern Time; and

e. any entity who believes that its claim against a Debtor is or may be entitled to priority under section 503(b)(9) of the Bankruptcy Code.

III. Parties Exempted from the Bar Dates

9. The following categories of claimants shall not be required to file a Proof of Claim or Administrative Claim arising prior to the Administrative Claim Deadline by the applicable Bar Date:

a. any entity that already has filed a signed Proof of Claim against the respective Debtor(s) with the clerk of the Court or with the Claims and Noticing Agent in a form substantially similar to Official Form 410;

b. any entity whose claim is listed on the Schedules if: (i) the claim is **not** scheduled as any of "disputed," "contingent," or "unliquidated;" (ii) such entity agrees with the amount, nature, and priority of the claim as set forth in the Schedules; and (iii) such entity does not dispute that its claim is an obligation only of the specific Debtor against which the claim is listed in the Schedules;

c. any entity whose claim has previously been allowed by order of the Court;

d. any entity whose claim has been paid in full by the Debtors pursuant to the Bankruptcy Code or in accordance with an order of the Court;

e. any Debtor having a claim (or any transferee for security of any such Debtor that has a claim) against another Debtor;

f. any of the Debtors' non-Debtor affiliates having a claim (or any transferee for security of any such non-Debtor affiliate that has a claim) against any Debtor;

~~f.~~g. any entity whose claim is solely against any of the Debtors' non-Debtor affiliates;

~~g.~~h. any holder of an equity interest in the Debtors need not file a proof of interest with respect to the ownership of such equity interest at this time; provided, however, that any holder of an equity interest who wishes to assert a claim against the Debtors, including a claim relating to such equity interest or the purchase or sale of such interest, must file a proof of claim asserting such claim on or prior to the Claims Bar Date pursuant to procedures set forth herein;

~~h.~~i. a current employee of the Debtors, if an order of this Court authorized the Debtors to honor such claim in the ordinary course of business for wages, commissions, or benefits; provided, however, that a current employee

must submit a Proof of Claim by the Claims Bar Date for all other claims arising before the Petition Date, including claims for wrongful termination, discrimination, harassment, hostile work environment, and/or retaliation;

~~i.~~j. any current or former officer, director, or employee for claims based on indemnification, contribution, or reimbursement;

~~j.~~k. the Prepetition Senior Secured Notes Indenture Trustee, the Prepetition Senior Secured Notes Collateral Agent, any Prepetition Senior Secured Noteholder, the Zochem Agents, the Zochem Lender, PNC, the Prepetition Unsecured Notes Indenture Trustee, any Prepetition Unsecured Noteholder (each as defined in the ~~Interim~~ DIP Orders) in each case (x) to the extent provided by either or both of the ~~Interim~~ DIP ~~Order~~;Orders, (y) to preserve any claims for contingent or unliquidated amounts, or (z) to preserve the right to claim postpetition interest, fees, costs or charges (to the extent any of them ultimately is determined to be entitled thereto);[5]

~~k. any individual holder of a claim for principal, interest, or applicable fees or charges (a "Debt Claim") on account of any note, bond, or debenture issued by the Debtors pursuant to an indenture (an "Indenture") or a credit agreement (a "Credit Agreement") with respect to such claim;~~

~~l. any entity holding a claim for which a separate deadline is fixed by the Court; and~~

l. consistent with Paragraph 5 (d) of the Final DIP Order which provides that the Prepetition Macquarie Facility Parties are not required to file a proof of claim with regard to the Macquarie Credit Facility Obligations or the Prepetition Macquarie Liens, none of the Prepetition Macquarie Facility Parties shall be required to file a proof of claim with respect to the claim for payment of the Macquarie Restructuring Fee, whether or not the Debtors have stipulated to the fixing or allowance of the Macquarie Restructuring Fee or the Macquarie Restructuring Fee has otherwise been determined by the Court to be a part of the Macquarie Credit Facility Obligations as of the Claims Bar Date and such claim shall be deemed to have been filed prior to the Claim Bar Date; provided, however, in accordance with paragraph 5(g) of the Final DIP Order, the rights of any party to dispute the Macquarie Restructuring Fee, other than on account of

[5] The "~~Interim DIP Order~~" ~~means~~Orders" mean that certain *Interim Order (A) Authorizing the Debtors to Obtain Postpetition Secured Financing Pursuant to Section 364 of the Bankruptcy Code, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Adequate Protection to the Prepetition Secured Parties, (D) Scheduling a Final Hearing, and (E) Granting Related Relief* entered by the Court on February 4, 2016 [Dkt. No. ~~81~~]81] and that certain *Final Order (A) Authorizing the Debtors to Obtain Postpetition Secured Financing Pursuant to Section 364 of the Bankruptcy Code, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Adequate Protection to the Prepetition Secured Parties, (D) Scheduling a Final Hearing, and (E) Granting Related Relief* entered by the Court on March 3, 2016 [Dkt. No. 252] (the "DIP Final Order").

a proof of claim not having been filed with respect to the Macquarie Restructuring Fee, are fully preserved;[6]

m. any individual holder of a claim for principal, interest, or applicable fees or charges (a "Debt Claim") on account of any note, bond, or debenture issued by the Debtors pursuant to an indenture (an "Indenture") or a credit agreement (a "Credit Agreement") with respect to such claim;

n. any entity holding a claim for which a separate deadline is fixed by the Court;

o. pursuant to Local Rule 3002-1(a) and section 503(b)(1)(D) of the Bankruptcy Code, governmental entities holding claims covered by section 503(b)(1)(B) or (C) of the Bankruptcy Code; and

~~m.~~p. claims for fees and expenses of professionals retained in these proceedings.

IV. Substantive Requirements of Proofs of Claim

10. The following requirements shall apply with respect to filing and preparing each Proof of Claim:

a. Contents. Each Proof of Claim must: (i) be written in English; (ii) include a claim amount denominated in United States dollars; (iii) conform substantially with the Proof of Claim Form provided by the Debtors or Official Form 410; and (iv) be signed by the claimant or by an authorized agent or legal representative of the claimant.

b. Section 503(b)(9) Claim. Any Proof of Claim asserting a claim entitled to priority under section 503(b)(9) must also: (i) include the value of the goods delivered to and received by the Debtors in the 20 days prior to the Petition Date; (ii) attach any documentation identifying the particular invoices for which the 503(b)(9) claim is being asserted; and (iii) attach documentation of any reclamation demand made to the Debtors under section 546(c) of the Bankruptcy Code (if applicable).

c. Original Signatures Required. Only original Proofs of Claim may be deemed acceptable for purposes of claims administration. Copies of Proofs of Claim or Proofs of Claim sent by facsimile or electronic mail will not be accepted.

[6] Capitalized terms used but not otherwise defined in this subparagraph have the meanings ascribed to them in the DIP Final Order.

d. Identification of the Debtor Entity. Each Proof of Claim must clearly identify the Debtor against which a claim is asserted, including the individual Debtor's case number. A Proof of Claim filed under the joint administration case number (No. 16-10287) or otherwise without identifying a specific Debtor, will be deemed as filed only against Horsehead Holding Corp.

e. Claim Against Multiple Debtor Entities. Each Proof of Claim must state a claim against only one Debtor and clearly indicate the Debtor against which the claim is asserted. To the extent more than one Debtor is listed on the Proof of Claim, such claim may be treated as if filed only against the first-listed Debtor.

f. Supporting Documentation. Each Proof of Claim must include supporting documentation in accordance with Bankruptcy Rules 3001(c) and 3001(d). If, however, such documentation is voluminous, upon prior written consent of Debtors' counsel, such Proof of Claim may include a summary of such documentation or an explanation as to why such documentation is not available; provided, however, that any creditor that received such written consent shall be required to transmit such writings to Debtors' counsel upon request no later than ten days from the date of such request.[7]

g. Timely Service. Each Proof of Claim must be filed, including supporting documentation, by U.S. Mail or other hand delivery system, so as to be **actually received** by the Claims and Noticing Agent on or before the applicable Bar Date (or, where applicable, on or before any other bar date as set forth herein or by order of the Court) at the following address:

[7] Similarly, to the extent that any supporting documentation may be required to be submitted with any Administrative Claim, upon prior written consent of Debtors' counsel, such Administrative Claim may include a summary of such documentation or an explanation as to why such documentation is not available; provided, however, that any creditor that received such written consent shall be required to transmit such writings to Debtors' counsel upon request no later than ten (10) days from the date of such request.

If by first-class mail, send to:

Horsehead Holding Corp., Claims Processing Center
c/o Epiq Bankruptcy Solutions, LLC
P.O. Box 4421
Beaverton, Oregon 97076-4421

If by hand delivery or overnight mail, send to:

Horsehead Holding Corp., Claims Processing Center
c/o Epiq Bankruptcy Solutions, LLC
10300 SW Allen Blvd.
Beaverton, Oregon 97005

PROOFS OF CLAIM SUBMITTED BY FACSIMILE OR ELECTRONIC MAIL WILL NOT BE ACCEPTED.

h. Receipt of Service. Claimants wishing to receive acknowledgment that their Proofs of Claim were received by the Claims and Noticing Agent must submit (i) a copy of the Proof of Claim Form (in addition to the original Proof of Claim Form sent to the Claims and Noticing Agent) and (ii) a self-addressed, stamped envelope.

V. Identification of Known Creditors

11. The Debtors shall mail notice of the Bar Dates only to their known creditors, and such mailing shall be made to the last known mailing address for each such creditor.

VI. Procedures for Providing Notice of the Bar Date

A. Mailing of Bar Date Notices

12. No later than three business days after the Court enters this Bar Date Order, the Debtors shall cause a written notice of the Bar Dates, substantially in the form attached hereto as Exhibit 2 (the "Bar Date Notice") and a Proof of Claim Form (together, the "Bar Date Package") to be mailed via first class mail to the following entities:

a. the Office of the United States Trustee for the District of Delaware;

b. the Office of the United States Attorney for the District of Delaware;

c. any official committee appointed in these chapter 11 cases;

d. the entities listed on the Consolidated List of Creditors Holding the 50 Largest Unsecured Claims;

e. counsel to PNC Bank, N.A.;

f. counsel to Macquarie Bank Limited;

g. the indenture trustee under the Debtors' 10.50% senior secured notes;

h. the indenture trustee under the Debtors' 9.00% senior secured notes;

i. the indenture trustee under the Debtors' 3.80% convertible senior secured notes;

j. Banco Bilbao Vizcaya Argentina, S.A.;

k. all creditors and other known holders of claims against the Debtors as of the date of entry of the Bar Date Order, including all entities listed in the Schedules as holding claims against the Debtors;

l. all entities that have requested notice of the proceedings in these chapter 11 cases pursuant to Bankruptcy Rule 2002 as of the date the Bar Date Order is entered;

m. all entities that have filed proofs of claim in these chapter 11 cases as of the date of the Bar Date Order;

n. all known non-Debtor equity and interest holders of the Debtors as of the date the Bar Date Order is entered;

o. all entities who are party to executory contracts and unexpired leases with the Debtors;

p. all entities who are party to litigation with the Debtors;

q. all current and former employees (to the extent that contact information for former employees is available in the Debtors' records);

r. all regulatory authorities that regulate the Debtors' businesses, including consumer protection, environmental, and permitting authorities;

s. all taxing authorities for the jurisdictions in which the Debtors maintain or conduct business;

t. the state attorneys general for states in which the Debtors conduct business;

u. the Financial Services Commission of Ontario (FSCO);

v. Unifor Local 591G;

w. the United States Internal Revenue Service;

x. the United States Environmental Protection Agency; and

y. the United States Securities and Exchange Commission.

13. The Debtors shall provide all known creditors listed in the Debtors' Schedules with a "personalized" Proof of Claim Form, which will identify how the Debtors have scheduled the creditors' claim in the Schedules, including, without limitation: (a) the identity of the Debtor against which the creditor's claim is scheduled; (b) the amount of the scheduled claim, if any; (c) whether the claim is listed as contingent, unliquidated, or disputed; and (d) whether the claim is listed as secured, unsecured priority, or unsecured non-priority. Each creditor shall have an opportunity to inspect the Proof of Claim Form provided by the Debtors and correct any information that is missing, incorrect, or incomplete. Additionally, any creditor may choose to submit a Proof of Claim on a different form as long as it is substantially similar to Official Form 410.

14. After the initial mailing of the Bar Date Packages, the Debtors may, in their discretion, make supplemental mailings of notices or packages, including in the event that: (a) notices are returned by the post office with forwarding addresses; (b) certain parties acting on behalf of parties in interest decline to pass along notices to these parties and instead return their names and addresses to the Debtors for direct mailing, and (c) additional potential claimants become known as the result of the Bar Date mailing process. In this regard, the Debtors may make supplemental mailings of the Bar Date Package in these and similar circumstances at any

time up to 21 days in advance of the Bar Date, with any such mailings being deemed timely and the appropriate Bar Date being applicable to the recipient creditors.

B. Publication of Bar Date Notice

15. The Debtors shall cause notice of the Bar Dates to be given by publication to creditors to whom notice by mail is impracticable, including creditors who are unknown or not reasonably ascertainable by the Debtors and creditors whose identities are known but whose addresses are unknown by the Debtors. Specifically, the Debtors shall cause the Publication Notice, in substantially the form annexed hereto as **Exhibit 3**, to be published on one occasion in *USA Today* (National Edition) and *The Globe and Mail* on or before March ~~25~~31, 2016, thus satisfying the requirements of Bankruptcy Rule 2002(a)(7) that such notice be published at least 21 days before the Claims Bar Date.

VII. Consequences of Failure to File a Proof of Claim

16. ~~Any~~Subject to section 506(d)(2) of the Bankruptcy Code, any entity who is required, but fails, to file a Proof of Claim or an Administrative Claim arising prior to the Administrative Claim Deadline in accordance with the Bar Date Order on or before the applicable Bar Date ~~shall~~may be forever barred, estopped, and enjoined from asserting such claim against the Debtors (or filing a Proof of Claim or Administrative Claim with respect thereto) and the Debtors and their property ~~shall~~may be forever discharged from any and all indebtedness or liability with respect to or arising from such claim. Without limiting the foregoing sentence, any creditor asserting a claim entitled to priority pursuant to section 503(b)(9) of the Bankruptcy Code that fails to file a proof of claim in accordance with this Bar Date Order ~~shall~~may not be entitled to any priority treatment on account of such claim pursuant to section 503(b)(9) of the Bankruptcy Code, regardless of whether such claim is identified on Schedule F of the Schedules as not contingent, not disputed, and not unliquidated.

VIII. Miscellaneous

17. The Debtors are authorized to take all actions necessary or appropriate to effectuate the relief granted pursuant to this Bar Date Order in accordance with the Motion.

18. The terms and conditions of this Bar Date Order shall be immediately effective and enforceable upon entry of the Bar Date Order.

19. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Bar Date Order.

Dated: _____, 2016
Wilmington, Delaware

The Honorable Christopher S. Sontchi
United States Bankruptcy Judge

EXHIBIT 1

Proof of Claim Form

EXHIBIT 2

Bar Date Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
HORSEHEAD HOLDING CORP., et al.,[1]	)	Case No. 16-10287 (CSS)
Debtors.	)	Jointly Administered

NOTICE OF DEADLINES FOR THE FILING OF (I) PROOFS OF CLAIM, INCLUDING CLAIMS ARISING UNDER SECTION 503(B)(9) OF THE BANKRUPTCY CODE, (II) ADMINISTRATIVE CLAIMS, AND (III) REJECTION DAMAGES CLAIMS

TO: ALL PERSONS AND ENTITIES WHO MAY HAVE CLAIMS AGAINST ANY OF THE FOLLOWING DEBTOR ENTITIES:

DEBTOR	CASE NO.
Horsehead Holding Corp	16-10287 (CSS)
Horsehead Corporation	16-10288 (CSS)
Horsehead Metal Products, LLC	16-10289 (CSS)
The International Metals Reclamation Company, LLC	16-10290 (CSS)
Zochem Inc.	16-10291 (CSS)

PLEASE TAKE NOTICE THAT:

On February 2, 2016 (the "Petition Date"), Horsehead Holding Corp and four of its affiliates, as debtors (collectively, the "Debtors"), filed voluntary petitions for relief under chapter 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Court").

On _____, ____ the Court entered an order [Dkt. No. __] the ("Bar Date Order")[2] establishing certain dates by which parties holding prepetition claims against the Debtors must file (a) proofs of claim ("Proofs of Claim"), including claims by governmental units, claims arising under section 503(b)(9) of the Bankruptcy Code, and Rejection Damages Claims, and (b) requests for payment of Administrative Claims.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Horsehead Holding Corp. (7377); Horsehead Corporation (7346); Horsehead Metal Products, LLC (6504); The International Metals Reclamation Company, LLC (8892); and Zochem Inc. (4475). The Debtors' principal offices are located at 4955 Steubenville Pike, Suite 405, Pittsburgh, Pennsylvania 15205.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Bar Date Order.

For your convenience, enclosed with this notice (this "Notice") is a Proof of Claim form, which identifies on its face the amount, nature, and classification of your claim(s), if any, listed in the Debtors' schedules of assets and liabilities filed in these cases (the "Schedules"). If the Debtors believe that you hold claims against more than one Debtor, you will receive multiple Proof of Claim forms, each of which will reflect the nature and amount of your claim as listed in the Schedules.

As used in this Notice, the term "entity" has the meaning given to it in section 101(15) of the Bankruptcy Code, and includes all persons, estates, trusts, governmental units, and the Office of the United States Trustee for the District of Delaware. In addition, the terms "persons" and "governmental units" are defined in sections 101(41) and 101(27) of the Bankruptcy Code, respectively.

As used in this Notice, the term "claim" means, as to or against the Debtors and in accordance with section 101(5) of the Bankruptcy Code: (a) any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (b) any right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

I. THE BAR DATES

The Bar Date Order establishes the following bar dates for filing Proofs of Claim and Administrative Claims in these chapter 11 cases (the "Bar Dates").

a. The Claims Bar Date. Pursuant to the Bar Date Order, except as described below, all entities holding claims against the Debtors that arose or are deemed to have arisen prior to the commencement of these cases on the Petition Date, including claims arising under section 503(b)(9) of the Bankruptcy Code, **are required to file Proofs of Claim so that such Proofs of Claim are actually received by the Claims and Noticing Agent by the Claims Bar Date (i.e., on or before April ~~17~~25, 2016, at 5:00 p.m., prevailing Eastern Time)**. The Claims Bar Date applies to all types of claims against the Debtors that arose prior to the Petition Date, including, without limitation, secured claims, unsecured priority claims, unsecured non-priority claims, and claims arising under section 503(b)(9) of the Bankruptcy Code.

b. The Governmental Bar Date. Pursuant to the Bar Date Order, all governmental units holding claims against the Debtors that arose or are deemed to have arisen prior to the commencement of these cases on the Petition Date **are required to file proofs of claim so that such Proofs of Claim are actually received by the Claims and Noticing Agent by the Governmental Bar Date (i.e., by August 1, 2016, at 5:00 p.m., prevailing Eastern Time)**. The Governmental Bar Date applies to all governmental units holding claims against the Debtors (whether secured,

unsecured priority, or unsecured non-priority) that arose prior to the Petition Date, including, without limitation, governmental units with claims against the Debtors for unpaid taxes, whether such claims arise from prepetition tax years or periods or prepetition transactions to which the Debtors were a party.

c. The Administrative Claims Bar Date. Pursuant to the Bar Date Order, all claimants holding Administrative Claims against the Debtors' estates arising between the Petition Date and April 1, 2016 (the "Administrative Claims Deadline"), excluding claims for fees and expenses of professionals retained in these proceedings and claims asserting priority pursuant to section 503(b)(9) of the Bankruptcy Code and claims held by governmental entities covered by section 503(b)(1)(B) or (C) of the Bankruptcy Code, **are required to file a request for payment of such Administrative Claim with the Court and, if desired, a notice of hearing on such Administrative Claim by the Administrative Claims Bar Date (i.e., on or before April ~~17~~25, 2016 at 5:00 p.m. prevailing Eastern Time~~)~~.**); provided that the Administrative Claims Bar Date shall not apply to claims entitled to administrative priority that arise on or after the Petition Date in the ordinary course of the Debtors' business; and provided, further, that to the extent that the Administrative Claims of a governmental unit do not arise on or after the Petition Date in the ordinary course of the Debtors' business, requests for payments of Administrative Claims by governmental units for Administrative Claims arising between the Petition Date and April 1, 2016, shall be filed on or before August 1, 2016, at 5:00 p.m. prevailing Eastern Time.

d. The Amended Schedules Bar Date. Pursuant to the Bar Date Order, all parties asserting claims against the Debtors' estates that are affected by a previously unfiled Schedule or amendment or supplement to the Schedules **are required to file Proofs of Claim so that such Proofs of Claim are actually received by the Claims and Noticing Agent by the Amended Schedules Bar Date (i.e., by the later of (a) the Claims Bar Date or the Governmental Bar Date, as applicable, or (b) 5:00 p.m., prevailing Eastern Time, on the date that is 21 days from the date on which the Debtors provide notice of such filing, amendment or supplement)**.

e. The Rejection Damages Bar Date. Pursuant to the Bar Date Order, all parties asserting claims against the Debtors' estates arising from the Debtors' rejection of an executory contract or unexpired lease **are required to file Proofs of Claim with respect to such rejection so that such Proofs of Claim are actually received by the Claims and Noticing Agent by the Rejection Damages Bar Date (i.e., by the later of (a) the Claims Bar Date or the Governmental Bar Date, as applicable, or (b) 5:00 p.m., prevailing Eastern Time, on the date that is 21 days following entry of an order approving such rejection)**.

II. WHO MUST FILE A PROOF OF CLAIM OR ADMINISTRATIVE CLAIM

Except as otherwise set forth herein, the following entities holding claims against the Debtors that arose (or that are deemed to have arisen) prior to the Petition Date must file Proofs of Claim or Administrative Claims on or before the applicable Bar Date:

a. any entity whose claim against a Debtor is not listed in the applicable Debtor's Schedules or is listed as contingent, unliquidated, or disputed if such entity desires to participate in any of these chapter 11 cases or share in any distribution in any of these chapter 11 cases;

b. any entity who believes that its claim is improperly classified in the Schedules or is listed in an incorrect amount and who desires to have its claim allowed in a different classification or amount other than that identified in the Schedules;

c. any entity that believes that its prepetition claims as listed in the Schedules is not an obligation of the specific Debtor against which the claim is listed and that desires to have its claim allowed against a Debtor other than that identified in the schedules;

d. any entity who believes that its claim against a Debtor is or may be an administrative expense that arises between the Petition Date and ~~January 3, 2014~~April 1, 2016 (excluding claims for fees and expenses of professionals retained in these proceedings and claims asserting priority pursuant to section 503(b)(9) of the Bankruptcy Code); ~~and~~provided that the Administrative Claims Bar Date shall not apply to claims entitled to

administrative priority that arise on or after the Petition Date in the ordinary course of the Debtors' business; and provided, further, that to the extent that the Administrative Claims of a governmental unit do not arise on or after the Petition Date in the ordinary course of the Debtors' business, requests for payments of Administrative Claims by governmental units for Administrative Claims arising between the Petition Date and April 1, 2016, shall be filed on or before August 1, 2016, at 5:00 p.m. prevailing Eastern Time; and

e. any entity who believes that its claim against a Debtor is or may be entitled to priority under section 503(b)(9) of the Bankruptcy Code.

III. PARTIES WHO DO NOT NEED TO FILE PROOFS OF CLAIM OR ADMINISTRATIVE CLAIM

Certain parties are not required to file Proofs of Claim or Administrative Claims arising prior to the Administrative Claim Deadline. The Court may, however, enter one or more separate orders at a later time requiring creditors to file Proofs of Claim or Administrative Claims for some kinds of the following claims and setting related deadlines. If the Court does enter such an order, you will receive notice of it. The following entities holding claims that would otherwise be subject to the Bar Dates need **not** file Proofs of Claims or Administrative Claims:

a. any entity that already has filed a signed Proof of Claim against the respective Debtor(s) with the clerk of the Court or with the Claims and Noticing Agent in a form substantially similar to Official Form 410;

b. any entity whose claim is listed on the Schedules if: (i) the claim is **not** scheduled as any of "disputed," "contingent," or "unliquidated;" (ii) such entity agrees with the amount, nature, and priority of the claim as set forth in the Schedules; and (iii) such entity does not dispute that its claim is an obligation only of the specific Debtor against which the claim is listed in the Schedules;

c. any entity whose claim has previously been allowed by order of the Court;

d. any entity whose claim has been paid in full by the Debtors pursuant to the Bankruptcy Code or in accordance with an order of the Court;

e. any Debtor having a claim (or any transferee for security of any such Debtor that has a claim) against another Debtor;

f. any of the Debtors' non-Debtor affiliates having a claim (or any transferee for security of any such non-Debtor affiliate that has a claim) against any Debtor;

~~f.~~g. any entity whose claim is solely against any of the Debtors' non-Debtor affiliates;

~~g.~~h. any holder of an equity interest in the Debtors need not file a proof of interest with respect to the ownership of such equity interest at this time; provided, however, that any holder of an equity interest who wishes to assert a claim against the Debtors, including a claim relating to such equity interest or the purchase or sale of such interest, must file a proof of claim asserting such claim on or prior to the Claims Bar Date pursuant to procedures set forth herein;

~~h.~~i. a current employee of the Debtors, if an order of this Court authorized the Debtors to honor such claim in the ordinary course of business for wages, commissions, or benefits; provided, however, that a current employee must submit a Proof of Claim by the Claims Bar Date for all other claims arising before the Petition Date, including claims for wrongful termination, discrimination, harassment, hostile work environment, and/or retaliation;

~~i.~~j. any current or former officer, director, or employee for claims based on indemnification, contribution, or reimbursement;

~~j.~~k. the Prepetition Senior Secured Notes Indenture Trustee, the Prepetition Senior Secured Notes Collateral Agent, any Prepetition Senior Secured Noteholder, the Zochem Agents, the Zochem Lender, PNC, the Prepetition Unsecured Notes Indenture Trustee, any Prepetition Unsecured Noteholder (each as defined in the ~~Interim~~ DIP Orders) in each case (x) to the extent provided by either or both of the ~~Interim~~ DIP ~~Order~~;Orders, (y) to preserve any claims for contingent or unliquidated amounts, or (z) to preserve the right to claim postpetition interest, fees, costs or charges (to the extent any of them ultimately is determined to be entitled thereto);[3]

l. consistent with Paragraph 5 (d) of the Final DIP Order which provides that the Prepetition Macquarie Facility Parties are not required to file a proof of claim with regard to the Macquarie Credit Facility Obligations or the Prepetition Macquarie Liens, none of the Prepetition Macquarie Facility Parties shall be required to file a proof of claim with respect to the claim for payment of the Macquarie Restructuring Fee, whether or not the Debtors have stipulated to the fixing or allowance of the Macquarie Restructuring Fee or the Macquarie Restructuring Fee has otherwise been determined by the Court to be a part of the Macquarie Credit Facility Obligations as of the Claims Bar Date and such claim shall be deemed to

[3] The "~~Interim DIP Order~~" ~~means~~Orders" mean that certain *Interim Order (A) Authorizing the Debtors to Obtain Postpetition Secured Financing Pursuant to Section 364 of the Bankruptcy Code, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Adequate Protection to the Prepetition Secured Parties, (D) Scheduling a Final Hearing, and (E) Granting Related Relief* entered by the Court on February 4, 2016 [~~Docket No. 81~~]Dkt. No. 81] and that certain *Final Order (A) Authorizing the Debtors to Obtain Postpetition Secured Financing Pursuant to Section 364 of the Bankruptcy Code, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Adequate Protection to the Prepetition Secured Parties, (D) Scheduling a Final Hearing, and (E) Granting Related Relief* entered by the Court on March 3, 2016 [Dkt. No. 252] (the "DIP Final Order").

have been filed prior to the Claim Bar Date; provided, however, that without limiting the Final DIP Order (including paragraph 5(g) thereof), the rights of any party to dispute the Macquarie Restructuring Fee, other than on account of a proof of claim not having been filed with respect to the Macquarie Restructuring Fee, are fully preserved;[4]

m. any individual holder of a claim for principal, interest, or applicable fees or charges (a "Debt Claim") on account of any note, bond, or debenture issued by the Debtors pursuant to an indenture (an "Indenture") or a credit agreement (a "Credit Agreement") with respect to such claim;

n. any entity holding a claim for which a separate deadline is fixed by the Court;

o. pursuant to Local Rule 3002-1(a) and section 503(b)(1)(D) of the Bankruptcy Code, governmental entities holding claims covered by section 503(b)(1)(B) or (C) of the Bankruptcy Code; and

~~k.~~a. ~~any individual holder of a claim for principal, interest, or applicable fees or charges (a "Debt Claim") on account of any note, bond, or debenture issued by the Debtors pursuant to an indenture (an "Indenture") or a credit agreement (a "Credit Agreement") with respect to such claim;~~

~~l.~~ ~~any entity holding a claim for which a separate deadline is fixed by the Court; and~~

~~m.~~p. claims for fees and expenses of professionals retained in these proceedings.

IV. INSTRUCTIONS FOR FILING PROOFS OF CLAIM

The following requirements shall apply with respect to filing and preparing each Proof of Claim:

a. Contents. Each Proof of Claim must: (i) be written in English; (ii) include a claim amount denominated in United States dollars; (iii) conform substantially with the Proof of Claim Form provided by the Debtors or Official Form 410; and (iv) be signed by the claimant or by an authorized agent or legal representative of the claimant.

b. Section 503(b)(9) Claim. Any Proof of Claim asserting a claim entitled to priority under section 503(b)(9) must also: (i) include the value of the goods delivered to and received by the Debtors in the 20 days prior to the Petition Date; (ii) attach any documentation identifying the particular

[4] Capitalized terms used but not otherwise defined in this subparagraph have the meanings ascribed to them in the Final DIP Order.

invoices for which the 503(b)(9) claim is being asserted; and (iii) attach documentation of any reclamation demand made to the Debtors under section 546(c) of the Bankruptcy Code (if applicable).

c. Original Signatures Required. Only original Proofs of Claim may be deemed acceptable for purposes of claims administration. Copies of Proofs of Claim or Proofs of Claim sent by facsimile or electronic mail will not be accepted.

d. Identification of the Debtor Entity. Each Proof of Claim must clearly identify the Debtor against which a claim is asserted, including the individual Debtor's case number. A Proof of Claim filed under the joint administration case number (No. 16-10287) or otherwise without identifying a specific Debtor, will be deemed as filed only against Horsehead Holding Corp.

e. Claim Against Multiple Debtor Entities. Each Proof of Claim must state a claim against only one Debtor and clearly indicate the Debtor against which the claim is asserted. To the extent more than one Debtor is listed on the Proof of Claim, such claim may be treated as if filed only against the first-listed Debtor.

f. Supporting Documentation. Each Proof of Claim must include supporting documentation in accordance with Bankruptcy Rules 3001(c) and 3001(d). If, however, such documentation is voluminous, upon prior written consent of Debtors' counsel, such Proof of Claim may include a summary of such documentation or an explanation as to why such documentation is not available; provided, however, that any creditor that received such written consent shall be required to transmit such writings to Debtors' counsel upon request no later than ten days from the date of such request.[5]

g. Timely Service. Each Proof of Claim must be filed, including supporting documentation, by U.S. Mail or other hand delivery system, so as to be **actually received** by the Claims and Noticing Agent on or before the applicable Bar Date (or, where applicable, on or before any other bar date as set forth herein or by order of the Court) at the following address:

[5] Similarly, to the extent that any supporting documentation may be required to be submitted with any Administrative Claim, upon prior written consent of Debtors' counsel, such Administrative Claim may include a summary of such documentation or an explanation as to why such documentation is not available; provided, however, that any creditor that received such written consent shall be required to transmit such writings to Debtors' counsel upon request no later than ten (10) days from the date of such request.

If by first-class mail, send to:

Horsehead Holding Corp., Claims Processing Center
c/o Epiq Bankruptcy Solutions, LLC
P.O. Box 4421
Beaverton, Oregon 97076-4421

If by hand delivery or overnight mail, send to:

Horsehead Holding Corp., Claims Processing Center
c/o Epiq Bankruptcy Solutions, LLC
10300 SW Allen Blvd.
Beaverton, Oregon 97005

PROOFS OF CLAIM SUBMITTED BY FACSIMILE OR ELECTRONIC MAIL WILL NOT BE ACCEPTED.

h. Receipt of Service. Claimants wishing to receive acknowledgment that their Proofs of Claim were received by the Claims and Noticing Agent must submit (i) a copy of the Proof of Claim Form (in addition to the original Proof of Claim Form sent to the Claims and Noticing Agent) and (ii) a self-addressed, stamped envelope.

V. CONSEQUENCES OF FAILING TO TIMELY FILE YOUR PROOF OF CLAIM OR ADMINISTRATIVE CLAIM

Pursuant to the Bar Date Order and in accordance with Bankruptcy Rule 3003(c)(2), if you or any party or entity who is required, but fails, to file a Proof of Claim or Administrative Claim in accordance with the Bar Date Order on or before the applicable Bar Date, please be advised that:

a. YOU ~~WILL~~MAY BE FOREVER BARRED, ESTOPPED, AND ENJOINED FROM ASSERTING SUCH CLAIM AGAINST THE DEBTORS (OR FILING A PROOF OF CLAIM WITH RESPECT THERETO);

b. THE DEBTORS AND THEIR PROPERTY ~~SHALL~~MAY BE FOREVER DISCHARGED FROM ANY AND ALL INDEBTEDNESS OR LIABILITY WITH RESPECT TO OR ARISING FROM SUCH CLAIM;

c. YOU WILL NOT RECEIVE ANY DISTRIBUTION IN THESE CHAPTER 11 CASES ON ACCOUNT OF THAT CLAIM; AND

d. YOU ~~WILL~~MAY NOT BE PERMITTED TO VOTE ON ANY CHAPTER 11 PLAN FOR THE DEBTORS ON ACCOUNT OF THESE BARRED CLAIMS OR RECEIVE FURTHER NOTICES REGARDING SUCH CLAIM.

VI. AMENDMENTS TO THE DEBTORS' SCHEDULES

If, subsequent to the date of this Notice, the Debtors file a previously unfiled Schedule or amend or supplement their Schedules to reduce the undisputed, noncontingent, and liquidated amount of a claim listed in the Schedules, to change the nature or classification of a claim against the Debtors reflected in the Schedules, or to add a new claim to the Schedules, the affected creditor is required to file a Proof of Claim or amend any previously filed Proof of Claim in respect of the amended scheduled claim on or before the later of (a) the Claims Bar Date or the Governmental Bar Date, as applicable to such claim, or (b) 5:00 p.m. prevailing Eastern Time on the date that is 21 days after the date that on which the Debtors provide notice of the filing, amendment or supplement to the Schedules (or another time period as may be fixed by the Court) (the "Amended Schedules Bar Date").

VII. RESERVATION OF RIGHTS

Nothing contained in this Notice is intended to or should be construed as a waiver of the Debtors' right to: (a) dispute, or assert offsets or defenses against, any filed claim or any claim listed or reflected in the Schedules as to the nature, amount, liability, or classification thereof; (b) subsequently designate any scheduled claim as disputed, contingent, or unliquidated; and (c) otherwise amend or supplement the Schedules.

VIII. THE DEBTORS' SCHEDULES AND ACCESS THERETO

You may be listed as the holder of a claim against one or more of the Debtor entities in the Debtors' Schedules. To determine if and how you are listed on the Schedules, please refer to the descriptions set forth on the enclosed proof of claim forms regarding the nature, amount, and status of your claim(s). If the Debtors believe that you may hold claims against more than one Debtor entity, you will receive multiple proof of claim forms, each of which will reflect the nature and amount of your claim against one Debtor entity, as listed in the Schedules.

If you rely on the Debtors' Schedules, it is your responsibility to determine that the claim is accurately listed in the Schedules. However, you may rely on the enclosed form, which sets forth the amount of your claim (if any) as scheduled; identifies the Debtor entity against which it is scheduled; specifies whether your claim is listed in the Schedules as disputed, contingent, or unliquidated; and identifies whether your claim is scheduled as a secured, unsecured priority, or unsecured non-priority claim.

As described above, if you agree with the nature, amount, and status of your claim as listed in the Debtors' Schedules, and if you do not dispute that your claim is only against the Debtor entity specified by the Debtors, and if your claim is not described as "disputed," "contingent," or "unliquidated," you need not file a Proof of Claim. Otherwise, or if you decide to file a Proof of Claim, you must do so before the applicable Bar Date in accordance with the procedures set forth in this Notice.

IX. ADDITIONAL INFORMATION

Copies of the Debtors' Schedules, the Bar Date Order, and other information regarding these chapter 11 cases are available for inspection free of charge on the Claims and Noticing Agent's website at http://dm.epiq11.com/Horsehead. The Schedules and other filings in these chapter 11 cases also are available for a fee at the Court's website at http://www.deb.uscourts.gov. A login identification and password to the Court's Public Access to Court Electronic Records ("PACER") are required to access this information and can be obtained through the PACER Service Center at http://www.pacer.psc.uscourts.gov. Copies of the Schedules and other documents filed in these cases also may be examined between the hours of 9:00 a.m. and 4:30 p.m., prevailing Eastern Time, Monday through Friday, at the office of the Clerk of the Bankruptcy Court, United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

If you require additional information regarding the filing of a proof of claim, you may contact the Claims and Noticing Agent directly by writing to: Horsehead Holding Corp., c/o Epiq Bankruptcy Solutions, LLC, P.O. Box 4421, Beaverton, Oregon 97076-4421, or contact the Debtors' restructuring hotline at: (800) 572-0455.

A HOLDER OF A POSSIBLE CLAIM AGAINST THE DEBTORS SHOULD CONSULT AN ATTORNEY REGARDING ANY MATTERS NOT COVERED BY THIS NOTICE, SUCH AS WHETHER THE HOLDER SHOULD FILE A PROOF OF CLAIM.

Wilmington, Delaware
Dated: _____, 2016

Laura Davis Jones (DE Bar No. 2436)
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Joseph M. Mulvihill (DE Bar No. 6061)
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- and -

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Proposed Co-Counsel for the Debtors and Debtors in Possession

EXHIBIT 3

Publication Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
HORSEHEAD HOLDING CORP., et al.,[1]	)	Case No. 16-10287 (CSS)
Debtors.	)	Jointly Administered

NOTICE OF DEADLINES FOR THE FILING OF (A) PROOFS OF CLAIM, INCLUDING CLAIMS ARISING UNDER SECTION 503(B)(9) OF THE BANKRUPTCY CODE, (B) ADMINISTRATIVE CLAIMS, AND (C) REJECTION DAMAGES CLAIMS

THE CLAIMS BAR DATE IS APRIL ~~17~~25, 2016

THE GOVERNMENTAL CLAIMS BAR DATE IS AUGUST 1, 2016

THE ADMINISTRATIVE CLAIMS BAR DATE IS APRIL ~~17~~25, 2016

THE REJECTION DAMAGES BAR DATE IS THE LATER OF (A) THE CLAIMS BAR DATE OR THE GOVERNMENTAL BAR DATE, AS APPLICABLE; OR (B) THE DATE THAT IS 21 DAYS FOLLOWING ENTRY OF AN ORDER APPROVING THE REJECTION OF ANY EXECUTORY CONTRACT OR UNEXPIRED LEASE

PLEASE TAKE NOTICE OF THE FOLLOWING:

Deadlines for Filing Proofs of Claim and Administrative Claims Arising Prior to the Administrative Claim Deadline. On _____, ____ the Court entered an order [Dkt. No. __] the ("Bar Date Order")[2] establishing certain dates by which parties holding prepetition claims against the Debtors must file (a) proofs of claim ("Proofs of Claim"), including claims by governmental units, claims arising under section 503(b)(9) of the Bankruptcy Code, and Rejection Damages Claims, and (b) requests for payment of Administrative Claims (as defined herein) arising prior to the Administrative Claim Deadline (as defined herein).

DEBTOR	CASE NO.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Horsehead Holding Corp. (7377); Horsehead Corporation (7346); Horsehead Metal Products, LLC (6504); The International Metals Reclamation Company, LLC (8892); and Zochem Inc. (4475). The Debtors' principal offices are located at 4955 Steubenville Pike, Suite 405, Pittsburgh, Pennsylvania 15205.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Bar Date Order.

DEBTOR	CASE NO.
Horsehead Holding Corp	16-10287 (CSS)
Horsehead Corporation	16-10288 (CSS)
Horsehead Metal Products, LLC	16-10289 (CSS)
The International Metals Reclamation Company, LLC	16-10290 (CSS)
Zochem Inc.	16-10291 (CSS)

The Bar Dates.

The Claims Bar Date. Pursuant to the Bar Date Order, all entities, including individuals, partnerships, estates, and trusts who have a claim or potential claim against the Debtors, including claims arising under section 503(b)(9) of the Bankruptcy Code, that arose prior to the Petition Date, no matter how remote or contingent such right to payment or equitable remedy may be, MUST FILE A PROOF OF CLAIM on or before **April ~~17~~25, 2016, at 5:00 p.m., prevailing Eastern Time** (the "Claims Bar Date").

Governmental Bar Date. Governmental entities who have a claim or potential claim against the Debtors that arose prior to the Petition Date, no matter how remote or contingent such right to payment or equitable remedy may be, MUST FILE A PROOF OF CLAIM on or before **August 1, 2016, at 5:00 p.m., prevailing Eastern Time** (the "Governmental Bar Date").

Administrative Claims Bar Date. Parties asserting Administrative Claims against the Debtors' estates arising between the Petition Date and April 1, 2016 (the "Administrative Claims Deadline") (but excluding claims for fees and expenses of professionals retained in these proceedings and claims asserting priority pursuant to section 503(b)(9) of the Bankruptcy Code and governmental entities holding claims covered by section 503(b)(1)(B) or (C) of the Bankruptcy Code), are required to file a request for payment of such Administrative Claim arising prior to the Administrative Claim Deadline with the Court on or before **April ~~17~~25, 2016 at 5:00 p.m., prevailing Eastern Time** (the "Administrative Claims Bar Date~~")~~;"); provided that the Administrative Claims Bar Date shall not apply to claims entitled to administrative priority that arise on or after the Petition Date in the ordinary course of the Debtors' business; and provided, further, that to the extent that the Administrative Claims of a governmental unit do not arise on or after the Petition Date in the ordinary course of the Debtors' business, requests for payments of Administrative Claims by governmental units for Administrative Claims arising between the Petition Date and April 1, 2016, shall be filed on or before August 1, 2016, at 5:00 p.m. prevailing Eastern Time.

Amended Schedules Bar Date. All parties asserting claims against the Debtors' estates that are affected by a previously unfiled Schedule or an amendment or supplement to the Schedules are required to file Proofs of Claim by **the later of (a) the Claims Bar Date or the Governmental Bar Date, as applicable, or (b) 5:00 p.m., prevailing Eastern Time, on the date that is 21 days from the date on which the Debtors provide notice of a previously unfiled Schedule or amendment or supplement to the Schedules** (the "Amended Schedules Bar Date").

Rejection Damages Bar Date. All parties asserting claims against the Debtors' estates arising from the Debtors' rejection of an executory contract or unexpired lease must file a Proof of Claim by the **later of (a) the Claims Bar Date or the Governmental Bar Date, as**

applicable, or (b) 5:00 p.m. prevailing Eastern Time on the date that is 21 days following entry of an order approving such rejection (the "Rejection Damages Bar Date").

ANY PERSON OR ENTITY WHO FAILS TO FILE A PROOF OF CLAIM, INCLUDING ANY CLAIMS ARISING UNDER SECTION 503(B)(9) OF THE BANKRUPTCY CODE, OR WHO FAILS TO FILE AN ADMINISTRATIVE CLAIM WITH THE COURT, IN EACH CASE ON OR BEFORE THE APPLICABLE BAR DATE, ~~SHALL~~MAY NOT BE TREATED AS A CREDITOR WITH RESPECT TO SUCH CLAIM FOR THE PURPOSES OF VOTING AND DISTRIBUTION ON ANY CHAPTER 11 PLAN.

Filing a Proof of Claim. Each Proof of Claim must be filed, including supporting documentation, by U.S. Mail or other hand delivery system, so as to be **actually received** by Epiq Bankruptcy Solutions, LLC (the "Claims and Noticing Agent") on or before the Claims Bar Date or the Governmental Bar Date (or, where applicable, on or before any other Bar Date as set forth herein) at one of the following addresses:

If by first-class mail, send to:

Horsehead Holding Corp., Claims Processing Center
c/o Epiq Bankruptcy Solutions, LLC
P.O. Box 4421
Beaverton, Oregon 97076-4421

If by hand delivery or overnight mail, send to:

Horsehead Holding Corp., Claims Processing Center
c/o Epiq Bankruptcy Solutions, LLC
10300 SW Allen Blvd.
Beaverton, Oregon 97005

Contents of Proofs of Claim. Each proof of claim must (i) be written in English; (ii) include a claim amount denominated in United States dollars; (iii) clearly identify the Debtor against which the claim is asserted (iv) conform substantially with the Proof of Claim Form provided by the Debtors or Official Form 410; (v) be signed by the claimant or by an authorized agent or legal representative of the claimant; and (vi) include as attachments any and all supporting documentation on which the claim is based. **Please note** that each proof of claim must state a claim against only one Debtor and clearly indicate the specific Debtor against which the claim is asserted. To the extent more than one Debtor is listed on the proof of claim, a proof of claim is treated as if filed only against the first-listed Debtor, or if a proof of claim is otherwise filed without identifying a specific Debtor, the proof of claim may be deemed as filed only against Horsehead Holding Corp.

Section 503(b)(9) Requests for Payment. Any proof of claim asserting a claim arising under section 503(b)(9) of the Bankruptcy Code must also (i) include the value of the goods delivered to and received by the Debtors in the 20 days prior to the Petition Date; (ii) attach any documentation identifying the particular invoices for which such 503(b)(9) claim is being asserted; and (iii) attach documentation of any reclamation demand made to the Debtors under section 546(c) of the Bankruptcy Code (if applicable).

Additional Information. If you have any questions regarding the claims process and/or you wish to obtain a copy of the Bar Date Notice, a proof of claim form or related documents you may do so by: (i) calling the Debtors' restructuring hotline at (800) 572-0455; (ii) visiting the Debtors' restructuring website at: http://dm.epiq11.com/Horsehead; and/or (iii) writing to Horsehead Holding Corp., c/o Epiq Bankruptcy Solutions, LLC, P.O. Box 4421, Beaverton, Oregon 97076-4421. **Please note** that the Claims and Noticing Agent **cannot** offer legal advice or advise whether you should file a proof of claim.

Wilmington, Delaware
Dated: _____, 2016

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James E. O'Neill (DE Bar No. 4042)
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Proposed Co-Counsel for the
Debtors and Debtors in Possession

SCHEDULE "B"

[attached]

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
HORSEHEAD HOLDING CORP., et al.,[1]	)	Case No. 16-10287 (CSS)
Debtors.	)	Jointly Administered
	)	**Re: Docket No. 169**

AGREED ORDER ON MOTION OF TRAXYS NORTH AMERICA, LLC FOR ORDER COMPELLING DEBTORS TO IMMEDIATELY ASSUME OR REJECT EXECUTORY CONTRACTS [DOCKET NO. 169]

Upon the *Motion of Traxys North America, LLC for Order Compelling Debtors to Immediately Assume or Reject Executory Contracts* [Docket No. 169] (the "Motion")[2], and upon the agreement of Traxys North America, LLC ("Traxys") and the above-captioned debtors in possession (the "Debtors"), this agreed order (this "Agreed Order") is made and entered into by the Debtors, on the one hand, and Traxys, and the other hand, through their respective counsel, and is made in reference to the following facts:

A. On February 2, 2016 (the "Petition Date"), each of the Debtors filed a petition with this Court under chapter 11 of the Bankruptcy Code. The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b) [Docket No. 49]. No party has requested the appointment of a trustee or examiner in these chapter 11 cases. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Horsehead Holding Corp. (7377); Horsehead Corporation (7346); Horsehead Metal Products, LLC (6504); The International Metals Reclamation Company, LLC (8892); and Zochem Inc. (4475). The Debtors' principal offices are located at 4955 Steubenville Pike, Suite 405, Pittsburgh, Pennsylvania 15205.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Bankruptcy Code. On February 16, 2016, the United States Trustee for the District of Delaware appointed an official committee of unsecured creditors in these chapter 11 cases [Docket No. 129].

B. Before the Petition Date, Traxys and Debtor Zochem Inc. ("Zochem") entered into contracts (collectively, the "Contracts") whereby Traxys sold London Metal Exchange ("LME") Registered Special High Grade Zinc to Zochem, and in turn agreed to repurchase such Zinc at designated intervals and at defined amounts based upon future average prices established by the LME. Zochem's performance under the agreements was guaranteed by Debtor Horsehead Holding Corp. pursuant to that certain *Guaranty* dated as of December 8, 2011.

C. On February 19, 2016, Traxys filed the Motion, seeking an order compelling the Debtors to assume or reject the Contracts as of the date of the hearing on the Motion.

D. The Debtors have determined in their business judgment that assumption of the Contracts is in the best interests of their estates.

NOW, THEREFORE, it is hereby stipulated and agreed, and upon approval by the Court is shall be so **ORDERED**:

1. Pursuant to section 365 of the Bankruptcy Code, the Debtors are authorized to assume and perform the Contracts listed on **Exhibit 1** attached hereto in accordance with their terms and subject to the Debtors' paying the cure amount set forth in paragraph 2 below.

2. Pursuant to section 365(b)(1)(A) of the Bankruptcy Code, Zochem shall cause to be paid as a cure of defaults under the Contracts the sum of $13,817.80 (the "Cure Payment"), which payment shall be payable through set-off. Payment of the Cure Payment shall be deemed adequate assurance of the Debtors' future performance with respect to the Contracts in satisfaction of section 365(b)(1)(C) of the Bankruptcy Code and the Debtors shall be deemed to

have fully cured and satisfied any and all defaults incurred by the Debtors with respect to the Contracts that are required to be cured under section 365(b)(1)(A) of the Bankruptcy Code.

3. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

4. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

5. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

SO ORDERED.

Dated: 3/30, 2016
Wilmington, Delaware

The Honorable Christopher S. Sontchi
United States Bankruptcy Judge

Exhibit 1

TRAXYS North America LLC

Futures Valuation By Broker
Position as of 18-Feb-16

Value Date	Contract	Counter Party	Trade Date	Qty Long	Qty Short	Contract Price	Curr U/M	Market Price	Gross NC P/L	Expense Amt NC	Net NC P/L	Comments
Zochem Inc												
ZN												
02-Mar-16	Z49529	ZOCHEM	29-May-15		15	2,215.00	USD MT					
02-Mar-16	Z50804	ZOCHEM	29-Sep-15		17	1,645.00	USD MT					
02-Mar-16	Z51211	ZOCHEM	12-Nov-15		17	1,645.00	USD MT					
02-Mar-16	Z51318	ZOCHEM	19-Nov-15		48	1,516.00	USD MT					
02-Mar-16	Z51414	ZOCHEM	30-Nov-15		18	1,583.00	USD MT					
02-Mar-16	Z51493	ZOCHEM	04-Dec-15		32	1,558.00	USD MT					
02-Mar-16	Z51532	ZOCHEM	11-Dec-15		17	1,584.00	USD MT					
02-Mar-16	Z51716	ZOCHEM	07-Jan-16		32	1,490.00	USD MT					
02-Mar-16	Z51719	ZOCHEM	07-Jan-16		55	1,490.00	USD MT					
02-Mar-16	Z51906	ZOCHEM	27-Jan-16	167		1,688.46	USD MT					Price:2/1/2016 SET ZN +0.00 USD/MT UnprcQty: 83.67MT
	02-Mar-16	Total		167	251							
04-Apr-16	Z50805	ZOCHEM	29-Sep-15		17	1,645.00	USD MT					
04-Apr-16	Z50955	ZOCHEM	06-Oct-15		16	1,685.00	USD MT					
04-Apr-16	Z51212	ZOCHEM	12-Nov-15		17	1,645.00	USD MT					
04-Apr-16	Z51415	ZOCHEM	30-Nov-15		36	1,587.00	USD MT					
04-Apr-16	Z51494	ZOCHEM	04-Dec-15		16	1,558.00	USD MT					
04-Apr-16	Z51533	ZOCHEM	11-Dec-15		17	1,584.00	USD MT					
04-Apr-16	Z51717	ZOCHEM	07-Jan-16		63	1,496.00	USD MT					
04-Apr-16	Z51720	ZOCHEM	07-Jan-16		18	1,496.00	USD MT					
04-Apr-16	Z51723	ZOCHEM	07-Jan-16		36	1,517.00	USD MT					
	04-Apr-16	Total		0	236							

This report contains only records where CounterParty="ZOCHEM"

Value Date	Contract	Counter Party	Trade Date	Qty Long	Qty Short	Contract Price	Curr	U/M	Market Price	Gross NC P/L	Expense Amt NC	Net NC P/L	Comments
04-May-16	Z49530	ZOCHEM	29-May-15		15	2,218.00	USD	MT					
04-May-16	Z50806	ZOCHEM	29-Sep-15		17	1,645.00	USD	MT					
04-May-16	Z51213	ZOCHEM	12-Nov-15		17	1,645.00	USD	MT					
04-May-16	Z51416	ZOCHEM	30-Nov-15		36	1,591.00	USD	MT					
04-May-16	Z51534	ZOCHEM	11-Dec-15		17	1,584.00	USD	MT					
	04-May-16	Total		0	102								
02-Jun-16	Z50807	ZOCHEM	29-Sep-15		17	1,645.00	USD	MT					
02-Jun-16	Z50956	ZOCHEM	06-Oct-15		16	1,688.00	USD	MT					
02-Jun-16	Z51214	ZOCHEM	12-Nov-15		17	1,645.00	USD	MT					
02-Jun-16	Z51417	ZOCHEM	30-Nov-15		36	1,594.00	USD	MT					
02-Jun-16	Z51535	ZOCHEM	11-Dec-15		17	1,584.00	USD	MT					
	02-Jun-16	Total		0	103								
05-Jul-16	Z51215	ZOCHEM	12-Nov-15		17	1,645.00	USD	MT					
05-Jul-16	Z51418	ZOCHEM	30-Nov-15		54	1,598.00	USD	MT					
05-Jul-16	Z51536	ZOCHEM	11-Dec-15		17	1,584.00	USD	MT					
	05-Jul-16	Total		0	88								
02-Aug-16	Z50458	ZOCHEM	10-Aug-15		8	1,940.00	USD	MT					
02-Aug-16	Z51216	ZOCHEM	12-Nov-15		17	1,645.00	USD	MT					
02-Aug-16	Z51537	ZOCHEM	11-Dec-15		17	1,584.00	USD	MT					
	02-Aug-16	Total		0	42								
02-Sep-16	Z50957	ZOCHEM	06-Oct-15		16	1,696.00	USD	MT					
02-Sep-16	Z51538	ZOCHEM	11-Dec-15		17	1,584.00	USD	MT					
	02-Sep-16	Total		0	33								
04-Oct-16	Z50694	ZOCHEM	16-Sep-15		8	1,778.00	USD	MT					
04-Oct-16	Z51539	ZOCHEM	11-Dec-15		17	1,584.00	USD	MT					

This report contains only records where CounterParty="ZOCHEM"

Value Date	Contract	Counter Party	Trade Date	Qty Long	Qty Short	Contract Price	Curr U/M	Market Price	Gross NC P/L	Expense Amt NC	Net NC P/L	Comments
	04-Oct-16	Total		0	25							
02-Nov-16	Z50461	ZOCHEM	10-Aug-15		8	1,940.00	USD MT					
	02-Nov-16	Total		0	8							
02-Dec-16	Z50695	ZOCHEM	16-Sep-15		8	1,786.00	USD MT					
	02-Dec-16	Total		0	8							
	LME	Total		167	896							
		Net		0	-729							
	ZOCHEM	Total		167	896							
	TNA	Total										

Report complete - 41 Records processed

This report contains only records where CounterParty="ZOCHEM"

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED, IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO THE DEBTORS, AND APPLICATION OF ZOCHEM INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*

Court File No. CV-16-11271-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

RECOGNITION ORDER
(FOREIGN MAIN PROCEEDING)

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, ON M5J 2T9

Sam Babe (LSUC # 49498B)

Tel: 416.863.1500
Fax: 416.863.1515
Email sbabe@airdberlis.com

Lawyers for Zochem Inc.

April 13, 2016

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED, IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO THE DEBTORS, AND APPLICATION OF ZOCHEM INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*

Applicant

Court File No. CV-16-11271-00CL

April 13/16
Order to go in form of draft order signed.
K. Smith J.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced at Toronto

MOTION RECORD

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, ON M5J 2T9

Sam Babe (LSUC # 49498B)
Tel: 416.865.7718
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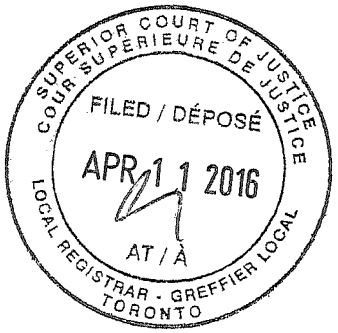
Email: sbabe@airdberlis.com

Lawyers for Zochem Inc.



Tab 10

Court File No. CV-12-9719-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR. JUSTICE NEWBOULD	)))	TUESDAY, THE 21st DAY OF AUGUST, 2012

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

APPLICATION OF LIGHTSQUARED LP UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO LIGHTSQUARED INC., LIGHTSQUARED INVESTORS HOLDINGS INC., ONE DOT FOUR CORP., ONE DOT SIX CORP., SKYTERRA ROLLUP LLC, SKYTERRA ROLLUP SUB LLC, SKYTERRA INVESTORS LLC, TMI COMMUNICATIONS DELAWARE, LIMITED PARTNERSHIP, LIGHTSQUARED GP INC., LIGHTSQUARED LP, ATC TECHNOLOGIES, LLC, LIGHTSQUARED CORP., LIGHTSQUARED FINANCE CO., LIGHTSQUARED NETWORK LLC, LIGHTSQUARED INC. OF VIRGINIA, LIGHTSQUARED SUBSIDIARY LLC, LIGHTSQUARED BERMUDA LTD., SKYTERRA HOLDINGS (CANADA) INC., SKYTERRA (CANADA) INC. AND ONE DOT SIX TVCC CORP. (COLLECTIVELY, THE "CHAPTER 11 DEBTORS")

RECOGNITION ORDER

THIS MOTION, made by LightSquared LP in its capacity as the foreign representative (the "**Foreign Representative**") of the Chapter 11 Debtors, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order substantially in the form attached as Schedule "A" to the notice of motion of the Foreign Representative dated August 10, 2012 (the "**Notice of Motion**"), recognizing certain orders granted by the United States Bankruptcy Court for the

Southern District of New York (the "**U.S. Bankruptcy Court**") in the cases commenced by the Chapter 11 Debtors under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "**Chapter 11 Cases**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the affidavit of Elizabeth Creary sworn August 9, 2012, the affidavit of Kate Stigler sworn August 15, 2012, the supplemental report to the first report of Alvarez & Marsal Canada Inc., in its capacity as court-appointed information officer (the "**Information Officer**") of the Chapter 11 Debtors, dated June 22, 2012 (the "**Supplemental Report**") and the second report of the Information Officer dated August 15, 2012 (the "**Second Report**"), and on hearing the submissions of counsel for the Foreign Representative and counsel for the Information Officer, no one else appearing although duly served as appears from the affidavits of service of Stephanie Waugh sworn August 10, 2012 and August 15, 2012, respectively,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

RECOGNITION OF FOREIGN ORDERS

2. **THIS COURT ORDERS** that the following orders (collectively, the "**Foreign Orders**") of the U.S. Bankruptcy Court made in the Chapter 11 Cases are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA:

(a) Order Granting LightSquared's Motion for Order Approving Expedited Procedures for Sale, Transfer, and/or Abandonment of De Minimis Assets; and

(b) Order Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 2002 and 3003(c)(3) Establishing Deadlines for Filing Proofs of Claim and Procedures Relating Thereto and Approving Form and Manner of Notice Thereof;

each attached hereto as Schedules "A" and "B" respectively, provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to the Chapter 11 Debtors' current and future assets, undertakings and properties of every nature and kind whatsoever in Canada.

INFORMATION OFFICER'S REPORTS

3. **THIS COURT ORDERS** that the Supplemental Report and the Second Report and the activities of the Information Officer as described therein be and are hereby approved.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

AUG 2 1 2012

PER / PAR:

SCHEDULE "A"

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
LIGHTSQUARED INC., *et al.*,	)	Case No. 12-12080 (SCC)
Debtors.[1]	)	Jointly Administered

ORDER GRANTING LIGHTSQUARED'S MOTION FOR ORDER APPROVING EXPEDITED PROCEDURES FOR SALE, TRANSFER, AND/OR ABANDONMENT OF DE MINIMIS ASSETS

Upon the motion (the "Motion")[2] of LightSquared Inc. and certain of its affiliates, as debtors and debtors in possession (collectively, "LightSquared") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), for entry of an order (the "Order") pursuant to sections 363 and 554 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code"), rules 2002 and 6004(h) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rules 2002-2 and 9013-1 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules"); and the Court having found that the Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in this

---

1 The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal or foreign tax or registration identification number, are: LightSquared Inc. (8845), LightSquared Investors Holdings Inc. (0984), One Dot Four Corp. (8806), One Dot Six Corp. (8763), SkyTerra Rollup LLC (N/A), SkyTerra Rollup Sub LLC (N/A), SkyTerra Investors LLC (N/A), TMI Communications Delaware, Limited Partnership (4456), LightSquared GP Inc. (6190), LightSquared LP (3801), ATC Technologies, LLC (3432), LightSquared Corp. (1361), LightSquared Finance Co. (6962), LightSquared Network LLC (1750), LightSquared Inc. of Virginia (9725), LightSquared Subsidiary LLC (9821), Lightsquared Bermuda Ltd. (7247), SkyTerra Holdings (Canada) Inc. (0631), SkyTerra (Canada) Inc. (0629) and One Dot Six TVCC Corp. (0040). The location of the debtors' corporate headquarters is 450 Park Avenue, Suite 2201, New York, NY 10022.

2 Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion or the First Day Declaration, as applicable.

district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion appearing adequate and appropriate under the circumstances; and the Court having found that no other or further notice is needed or necessary; and the Court having reviewed the Motion and having heard statements in support of the Motion at the hearing held on August 14, 2012 (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and it appearing, and the Court having found, that the relief requested in the Motion is in the best interests of LightSquared's estates, its creditors, and other parties in interest; and any objections to the relief requested in the Motion having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** that:

1. The Motion is granted to the extent set forth herein.

2. Pursuant to section 363(b) of the Bankruptcy Code, LightSquared is authorized to sell or transfer De Minimis Assets in accordance with the following De Minimis Asset Sale Procedures.

(a) **Sale Price Less Than or Equal to $500,000.** With regard to a sale or transfer of De Minimis Assets in any individual transaction or series of related transactions to a single buyer or group of related buyers with a selling price[3] less than or equal to $500,000, LightSquared may consummate such a sale or transfer without further notice or order of the Court if LightSquared determines, in the reasonable exercise of its business judgment and after consultation with the Prepetition Agents and the Ad Hoc LP Secured Group, that it is in the best interests of the estates.

(b) **Sale Price Greater Than $500,000 but Less Than or Equal to $1,000,000.** With regard to a sale or transfer of De Minimis Assets in any individual transaction or series of related transactions to a single buyer or group of related buyers with a selling price greater than $500,000 and less than or equal to $1,000,000 (the "Sale Cap"), the following procedures

[3] For purposes of these procedures, selling price shall refer to the proposed net proceeds of any sale transaction.

(the "Sale Notice Procedures") are approved and will be implemented for each such sale or transfer (each, a "Proposed Sale"):

(i) LightSquared will serve a notice of each Proposed Sale (the "Sale Notice") on: (a) the U.S. Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn: Susan D. Golden, Esq., (b) counsel to U.S. Bank National Association, as administrative agent under the Prepetition Inc. Credit Agreement and the DIP Agreement, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Philip C. Dublin, Esq. and Kenneth A. Davis, Esq., (c) counsel to UBS AG, Stamford Branch, as administrative agent under the Prepetition LP Credit Agreement, Latham & Watkins LLP, 885 Third Avenue, New York, NY 10022, Attn: Mark A. Broude, Esq., (d) counsel to the ad hoc secured group of Prepetition LP Lenders (the "Ad Hoc LP Secured Group,") White & Case LLP, 1155 Avenue of the Americas, New York, NY 10036, Attn: Thomas E Lauria, Esq. and Scott Greissman, Esq., (e) counsel to Harbinger Capital Partners LLC, Attn: Debra A. Dandeneau, Esq. and Ronit Berkovich, Esq., (f) any known holder of other Liens (as defined below) asserted against the relevant De Minimis Assets, and (g) the proposed purchaser or transferee (the "Proposed Purchaser") (collectively, the "Sale Notice Parties"). The Sale Notice will be served on the Sale Notice Parties by facsimile or e-mail, if possible, and by overnight mail. LightSquared may, but is not required to, file a copy of the Sale Notice with the Bankruptcy Court.

(ii) The Sale Notice will specify:

1. the De Minimis Asset(s) to be sold or transferred;

2. the identity of the Proposed Purchaser and any relationship the Proposed Purchaser has to LightSquared;

3. the proposed cash consideration and other consideration to be paid by the Proposed Purchaser;

4. the material economic terms and conditions of the Proposed Sale; provided, that LightSquared shall not be obligated to disclose any confidential pricing terms included in any supply, manufacturing, licensing, or other similar contracts executed or proposed to be executed as part of the Proposed Sale to any interested party unless such party has entered into an acceptable confidentiality agreement with LightSquared;

5. any contracts to be assumed and assigned in connection with the Proposed Sale;

6. the identities of any known parties holding or asserting Liens or other interests or potential interests in the relevant De Minimis Assets; and

7. instructions regarding the procedures to assert objections to the Proposed Sale.

(iii) The Sale Notice Parties will have until 5:00 p.m., prevailing Eastern time, on the fifth (5th) Business Day following service of the Sale Notice (the "Sale Objection Deadline") to object to the Proposed Sale. Any such objection (a "Sale Objection") must be: (a) made in writing, stating the Sale Objection with specificity; and (b) filed with the Bankruptcy Court and served on counsel to LightSquared and the Sale Notice Parties so as to be received by or on the Sale Objection Deadline. "Business Day" shall mean any day other than a Saturday, a Sunday, or a day on which banks in New York City, NY are authorized or obligated by law or executive order to close.

1. If the terms of a Proposed Sale are materially amended after transmittal of the Sale Notice but prior to the Sale Objection Deadline, LightSquared will send a revised Sale Notice to the Sale Notice Parties. The Sale Notice Parties will have an additional three (3) Business Days to object in accordance with the Sale Objection procedures described above.

2. If no Sale Objection is properly filed and served by the Sale Objection Deadline, LightSquared will be authorized, without further notice and without further Bankruptcy Court approval, to consummate the Proposed Sale in accordance with the terms and conditions of the underlying contract or contracts and take such other actions as are necessary to close the transaction and collect the proceeds of such sale, including, without limitation, payment of any commission.

3. If a Sale Notice Party properly files and serves a Sale Objection to a Proposed Sale prior to the Sale Objection Deadline, LightSquared and such objecting party will use good faith efforts to resolve the Sale Objection consensually; provided, however, that if terms of the Proposed Sale were materially amended to resolve the

Sale Objection, LightSquared will send a revised Sale Notice to the Sale Notice Parties and the Sale Notice Parties will have an additional five (5) Business Days to object in accordance with the Sale Objection procedures described above. If LightSquared and the objecting Sale Notice Party are unable to resolve the Sale Objection, LightSquared will not consummate the proposed transaction without first obtaining Bankruptcy Court approval of such Proposed Sale upon notice and a hearing, unless such Sale Objection shall have been withdrawn; provided further that LightSquared may consummate any portion of the Proposed Sale that is not a subject of the Sale Objection without Bankruptcy Court approval.

4. Any valid and enforceable Liens on the De Minimis Assets to be sold will attach to the net proceeds of the Proposed Sale in the same priority as existed prior to such sale and subject to any claims and defenses that LightSquared may possess with respect thereto.

5. To the extent that a competing bid is received for the purchase of De Minimis Assets in a particular Proposed Sale after service of the Sale Notice that, in LightSquared's sole discretion in the exercise of its business judgment, and after consultation with the Prepetition Agents and the Ad Hoc LP Secured Group, materially exceeds the value of the purchase price contained in the Sale Notice and/or represents a superior sale arrangement for LightSquared, then LightSquared may file and serve an amended Sale Notice for the Proposed Sale to the subsequent bidder pursuant to the Sale Notice Procedures, even if the proposed purchase price exceeds the Sale Cap, and may consummate the Proposed Sale to the subsequent bidder without Bankruptcy Court approval on terms otherwise consistent with the Sale Notice Procedures.

6. LightSquared may consummate a Proposed Sale prior to the expiration of the applicable Sale Objection Deadline if LightSquared obtains each Sale Notice party's prior consent to the Proposed Sale. The applicable Proposed Sale, including the assumption and assignment or rejection of executory contracts and unexpired leases proposed in connection with the Proposed Sale, will be deemed final and fully

authorized by the Bankruptcy Court upon either the (a) expiration of the Sale Objection Deadline without the assertion of any Sale Objections or (b) consent of all Sale Notice Parties.

(c) Nothing in the foregoing De Minimis Asset Sale Procedures shall prevent LightSquared, in its sole discretion, from seeking Bankruptcy Court approval of any Proposed Sale upon notice and a hearing.

3. Sales to "insiders," as that term is defined in section 101 of the Bankruptcy Code, are not covered by this Order.

4. Sales of De Minimis Assets shall be deemed arm's-length transactions entitled to the protections of section 363(m) of the Bankruptcy Code.

5. Failure to timely file a Sale Objection in accordance with the terms of this Order shall not be determined to be "consent" to such sale or transfer within the meaning of 11 U.S.C. § 363(f)(2).

6. Sales and transfers of De Minimis Assets are free and clear of all Liens, with such Liens attaching to the proceeds of such sale or transfer with the same validity, extent, and priority as had attached to such De Minimis Assets immediately prior to such sale or transfer.

7. LightSquared is authorized, pursuant to section 554(a) of the Bankruptcy Code, to abandon De Minimis Assets in accordance with the following De Minimis Asset Abandonment Procedures:

(a) **De Minimis Assets with Book Value of $500,000 or Less:** With regard to De Minimis Assets with a book value of $500,000 or less, no notice or hearing shall be required for LightSquared to abandon such De Minimis Assets where maintaining the De Minimis Assets is more expensive than not doing so and it appears after reasonable investigation and consultation with the Prepetition Agents and the Ad Hoc LP Secured Group that it is not possible to sell the De Minimis Assets for more than the likely expenses of such sale. LightSquared will maintain records for all such abandonments.

(b) **De Minimis Assets with Book Value of $500,000 but Less Than or Equal to $1,000,000 ("Abandonment Cap," and Together with Sale Cap, "Cap"):** LightSquared proposes that the following procedures (the "Abandonment Notice Procedures") be approved and implemented for the abandonment of the De Minimis Assets where maintaining the De Minimis Assets is more expensive than not doing so and it appears after reasonable investigation that it is not possible to sell the De Minimis Assets for more than the likely expenses of such sale:

(i) LightSquared will serve a notice of each proposed abandonment (the "Abandonment Notice") on: (a) the U.S. Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn: Susan D. Golden, Esq., (b) counsel to U.S. Bank National Association, as administrative agent under the Prepetition Inc. Credit Agreement and the DIP Agreement, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Philip C. Dublin, Esq. and Kenneth A. Davis, Esq., (c) counsel to UBS AG, Stamford Branch, as administrative agent under the Prepetition LP Credit Agreement, Latham & Watkins LLP, 885 Third Avenue, New York, NY 10022, Attn: Mark A. Broude, Esq., (d) counsel to the Ad Hoc LP Secured Grouop, White & Case LLP, 1155 Avenue of the Americas, New York, NY 10036, Attn: Thomas E Lauria, Esq. and Scott Griessman, Esq., (e) counsel to Harbinger Capital Partners LLC, Attn: Debra A. Dandeneau, Esq. and Ronit Berkovich, Esq., and (f) any holder of other Liens asserted against the relevant De Minimis Assets or any other known interested party in the relevant De Minimis Assets (the "Abandonment Notice Parties"). The Abandonment Notice will be served on the Abandonment Notice Parties by facsimile or e-mail, if possible, and by overnight mail. LightSquared may, but is not required to, file a copy of the Abandonment Notice with the Bankruptcy Court.

(ii) The Abandonment Notice will specify:

1. the De Minimis Assets being abandoned;

2. a summary of the reasons for abandoning such De Minimis Assets; and

3. the identities of any known parties holding or asserting Liens or other interests or potential interests in the relevant De Minimis Assets.

(iii) The Abandonment Notice Parties will have until 5:00 p.m., prevailing Eastern time, on the fifth (5th) Business Day following

service of the Abandonment Notice (the "Abandonment Objection Deadline") to object to the proposed abandonment. Any such objection (an "Abandonment Objection") must be (a) made in writing, stating the Abandonment Objection with specificity; and (b) filed with the Bankruptcy Court and served on counsel to LightSquared and the Abandonment Notice Parties so as to be received by the Abandonment Objection Deadline. The Abandonment Objection Deadline and required service addresses will be identified in the Abandonment Notice.

(iv) If an Abandonment Notice Party properly files and serves an Abandonment Objection to a proposed abandonment prior to the Abandonment Objection Deadline, LightSquared and such objecting party will use good faith efforts to resolve the Abandonment Objection consensually. If LightSquared and the objecting Abandonment Notice Party are unable to resolve the Abandonment Objection, LightSquared will not consummate the proposed abandonment without first obtaining Bankruptcy Court approval of such proposed abandonment upon notice and a hearing, unless such Abandonment Objection shall have been withdrawn; provided, however, that LightSquared may consummate any portion of the proposed abandonment that is not a subject of the Abandonment Objection without Bankruptcy Court approval.

8. LightSquared shall provide, to the extent practicable, a written report or reports, within fifteen (15) days after each calendar month (to the extent De Minimis Asset Sales or Abandonments were consummated for the relevant month), concerning any such sales, transfers, or abandonments made pursuant to the relief requested herein (including the names of the purchasing parties and the types and amounts of the sales) to the U.S. Trustee, counsel to the Prepetition LP Agent, counsel to the Prepetition Inc. Agent and the DIP Agent, counsel to the Ad Hoc LP Secured Group, counsel to Harbinger Capital Partners LLC, and those parties requesting notice pursuant to Bankruptcy Rule 2002; provided, that LightSquared shall have no additional further reporting obligations with respect to sales of De Minimis Assets following LightSquared's filing a report pursuant to the Order thirty (30) days after confirmation of a chapter 11 plan.

9. Service of the Sale Notice in accordance with the Asset Sale Procedures and/or the Abandonment Notice in accordance with the Abandonment Notice Procedures is sufficient notice of the sale, transfer, and/or abandonment of such De Minimis Assets.

10. LightSquared is authorized to pay those reasonable and necessary fees and expenses incurred in the sale, transfer, or abandonment of De Minimis Assets, including commission fees to agents, brokers, auctioneers, and liquidators, if any.

11. The requirements set forth in Local Bankruptcy Rule 9013-1(b) are satisfied by the contents of the Motion. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

12. LightSquared is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

13. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: August 14, 2012
New York, New York

/s/ Shelley C. Chapman
HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

SCHEDULE "B"

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
LIGHTSQUARED INC., *et al.*,	)	Case No. 12-12080 (SCC)
Debtors.[1]	)	Jointly Administered

ORDER PURSUANT TO 11 U.S.C. § 502(b)(9) AND FED. R. BANKR. P. 2002 AND 3003(c)(3) ESTABLISHING DEADLINES FOR FILING PROOFS OF CLAIM AND PROCEDURES RELATING THERETO AND APPROVING FORM AND MANNER OF NOTICE THEREOF

Upon the motion (the "Motion")[2] of LightSquared Inc. and certain of its affiliates as debtors and debtors in possession (collectively, "LightSquared") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), for entry of an order (the "Order"), pursuant to section 502(b)(9) of the Bankruptcy Code, Bankruptcy Rules 2002 and 3003(c)(3), and the Second Amended Procedural Guidelines for Filing Requests for Bar Orders in the United States Bankruptcy Court for the Southern District of New York, dated November 24, 2009, established by the Board of Judges for the Southern District of New York (General Order M-386) (the "Guidelines"), establishing deadlines for filing proofs of claim (each, a "Proof of Claim") and procedures relating thereto (the "Procedures"), and approving the form and manner of notice

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1 The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal or foreign tax or registration identification number, are: LightSquared Inc. (8845), LightSquared Investors Holdings Inc. (0984), One Dot Four Corp. (8806), One Dot Six Corp. (8763), SkyTerra Rollup LLC (N/A), SkyTerra Rollup Sub LLC (N/A), SkyTerra Investors LLC (N/A), TMI Communications Delaware, Limited Partnership (4456), LightSquared GP Inc. (6190), LightSquared LP (3801), ATC Technologies, LLC (3432), LightSquared Corp. (1361), LightSquared Finance Co. (6962), LightSquared Network LLC (1750), LightSquared Inc. of Virginia (9725), LightSquared Subsidiary LLC (9821), Lightsquared Bermuda Ltd. (7247), SkyTerra Holdings (Canada) Inc. (0631), SkyTerra (Canada) Inc. (0629), and One Dot Six TVCC Corp. (0040). The location of the debtors' corporate headquarters is 450 Park Avenue, Suite 2201, New York, NY 10022.

2 Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion or the First Day Declaration, as applicable.

thereof, all as more fully described in the Motion; and upon the Declaration of Marc R. Montagner, Chief Financial Officer and Interim Co-Chief Operating Officer of LightSquared Inc., (A) in Support of First Day Pleadings and (B) Pursuant to Rule 1007-2 of Local Bankruptcy Rules for United States Bankruptcy Court for Southern District of New York (the "First Day Declaration"); and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion appearing adequate and appropriate under the circumstances; and the Court having found that no other or further notice is needed or necessary; and the Court having reviewed the Motion and having heard statements in support of the Motion at a hearing held before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and it appearing, and the Court having found, that the relief requested in the Motion is in the best interests of LightSquared, its estates, its creditors, and other parties in interest; and any objections to the relief requested in the Motion having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** that:

1. The Motion is granted to the extent set forth herein.

2. The following Procedures for the filing of Proofs of Claim are hereby approved and shall apply:

(a) unless otherwise provided, the deadline for each person or entity (including, without limitation, individuals, partnerships, corporations, joint ventures, and trusts, but not including governmental units (as defined in section 101(27) of the Bankruptcy Code, "Governmental Units")) to file a Proof of Claim in respect of a prepetition claim (as defined in section 101(5) of the

Bankruptcy Code, including, for the avoidance of doubt, secured claims and priority claims against any of the LightSquared debtors, a "Claim"), shall be **September 25, 2012** at **5:00 p.m. (prevailing Eastern time)** (the "General Bar Date");

(b) unless otherwise provided, the deadline for Governmental Units to file a Proof of Claim in respect of a Claim against LightSquared (the "Governmental Bar Date" and, together with the General Bar Date, the "Bar Dates") shall be **November 12, 2012** at **5:00 p.m. (prevailing Eastern time)**;

(c) Proofs of Claim must: (i) be written in the English language; (ii) be denominated in the lawful currency of the United States as of the Petition Date (using the exchange rate, if applicable, as of the Petition Date); (iii) conform substantially to the Proof of Claim form distributed by LightSquared to potential creditors, a copy of which is attached to the Order as Schedule 3 (the "Proof of Claim Form") or the Official Bankruptcy Form No. 10 ("Official Form 10");[3] (iv) specify the name and case number of the particular LightSquared debtor against which the Proof of Claim is filed; (v) set forth with specificity the legal and factual basis of the alleged Claim; (vi) include supporting documentation for the Claim or an explanation as to why such documentation is not available; and (vii) be signed by the claimant or, if the claimant is not an individual, by an authorized agent of the claimant;

(d) all holders of Claims must check the appropriate box on the Proof of Claim Form identifying the specific LightSquared debtor and case number against which the Claim is filed;

(e) any Proof of Claim asserting a Claim under section 503(b)(9) of the Bankruptcy Code (each, a "503(b)(9) Claim") must also: (i) include the value of the goods delivered to and received by LightSquared in the twenty (20) days prior to the Petition Date, (ii) attach any documentation identifying the particular invoices for which the 503(b)(9) Claim is being asserted, and (iii) attach documentation of any reclamation demand made to any LightSquared debtor under section 546(c) of the Bankruptcy Code (if applicable);

(f) if a claimant asserts a Claim against more than one LightSquared debtor or has Claims against different LightSquared debtors, the

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[3] Official Form 10 can be found at www.uscourts.gov/bkforms, the official website for the United States Bankruptcy Courts. A customized Proof of Claim Form can also be obtained on the website established in the Chapter 11 Cases: www.kccllc.net/LightSquared.

claimant must file a separate Proof of Claim against each applicable LightSquared debtor;

(g) a Proof of Claim shall be deemed timely filed only if it is **actually received** by LightSquared's Court-approved claims and noticing agent, Kurtzman Carson Consultants LLC ("KCC" or "Claims and Noticing Agent") on or before the applicable Bar Date as follows:

By hand delivery, overnight courier, or first-class mail to:

LightSquared Claims Processing Center
c/o Kurtzman Carson Consultants LLC
2335 Alaska Avenue
El Segundo, CA 90254

(h) Proofs of Claim sent by facsimile, telecopy, or electronic transmission **will not** be accepted;

(i) any person or entity (including, without limitation, individuals, partnerships, corporations, joint ventures, trusts, and Governmental Units) that asserts a Claim arising from the rejection of an executory contract or unexpired lease must file a Proof of Claim based on such rejection by the later of (i) the applicable Bar Date and (ii) the date that is thirty (30) days following entry of the order by the Court approving such rejection, or be forever barred from doing so;

(j) notwithstanding the foregoing, a party to an executory contract or unexpired lease that asserts a Claim on account of unpaid amounts accrued and outstanding as of the Petition Date pursuant to such executory contract or unexpired lease (other than a rejection damages claim) must file a Proof of Claim for such amounts on or before the applicable Bar Date unless an exception identified in paragraph 3 below applies;

(k) in the event that LightSquared amends or supplements its schedules of assets and liabilities and/or schedules of executory contracts and unexpired leases (collectively, the "Schedules")[4] subsequent to entry of the Order, LightSquared shall give notice of any amendment or supplement to the holders of Claims affected thereby, and such holders (i) shall have until the later of (A) the applicable Bar Date and (B) thirty (30) days from the date of such notice to file a Proof of Claim or forever be barred from doing so and (ii) shall be given notice of such deadline; and

[4] LightSquared filed its Schedules on June 27, 2012 (see Docket Nos. 154-173).

(l) any person or entity that relies on the Schedules has the responsibility to determine that the Claim is accurately listed in the Schedules.

3. The following persons or entities **need not** file a Proof of Claim on or before the applicable Bar Dates, solely with respect to the Claims described below:

(a) any person or entity whose Claim is listed in the Schedules; provided that (i) the claim **is not** listed in the Schedules as "disputed," "contingent," or "unliquidated," (ii) the person or entity **does not** dispute the amount, nature, and priority of the Claim as set forth in the Schedules, and (iii) the person or entity **does not** dispute that the Claim is an obligation of the specific LightSquared debtor against which the Claim is listed in the Schedules;

(b) any person or entity whose Claim has been paid in full;

(c) any person or entity that holds an equity security interest in any of the LightSquared debtors, which interest is based exclusively upon the ownership of common or preferred stock, membership interests, partnership interests, or warrants, options, or rights to purchase, sell, or subscribe to such a security or interest, need not file a proof of interest with respect to the ownership of such equity interests; provided, however, that if any such holder asserts a Claim (as opposed to an ownership interest) against any of the LightSquared debtors (including a Claim relating to an equity interest or the purchase or sale of such equity interest), a Proof of Claim must be filed before the applicable Bar Date pursuant to the Procedures;

(d) any holder of a Claim allowable under sections 503(b) and 507(a)(2) of the Bankruptcy Code as an administrative expense (other than holders of 503(b)(9) Claims who, as set forth above, must file Proofs of Claim on account of such 503(b)(9) Claims);

(e) any person or entity that holds a Claim that has been previously allowed by order of this Court entered on or before the applicable Bar Date;

(f) any holder of a Claim for which a separate deadline has been fixed by this Court;

(g) any LightSquared debtor having a Claim against another LightSquared debtor in the Chapter 11 Cases;

(h) any entity that, as of the applicable Bar Date, is a subsidiary of any LightSquared debtor;

(i) any person or entity who has already filed a Proof of Claim with the Clerk of the Court or KCC against any of the LightSquared debtors, utilizing a claim form that substantially conforms to the Proof of Claim Form or Official Form 10; or

(j) any person or entity whose claim is limited exclusively to the repayment of principal, interest and other fees and expenses on or under any credit agreement (a "Debt Claim") if the prepetition agent or similar fiduciary under the applicable credit agreement files a Master Proof of Claim (as defined below) against the applicable debtor, on or before the General Bar Date, on account of all Debt Claims against such debtor under the applicable credit agreement, provided, however, that any holder of a Debt Claim wishing to assert a claim arising out of or relating to a credit agreement, other than a Debt Claim, shall be required to file a Proof of Claim with respect to such claim on or before the General Bar Date, unless another exception identified herein applies.

4. The Prepetition Inc. Agent is authorized (but not required) to file a single master Proof of Claim (a "Master Proof of Claim") on behalf of itself and the Prepetition Inc. Lenders, on account of their Claims arising under the Prepetition Inc. Credit Agreement against LightSquared Inc. only.

5. Upon the filing of a Master Proof of Claim by the Prepetition Inc. Agent, the Prepetition Inc. Agent (and its successors and assigns) shall be deemed to have filed a Proof of Claim in the amount set forth opposite its name therein in respect of its Claims against each of the Inc. Obligors[5] arising under the Prepetition Inc. Credit Agreement. The Claims of the Prepetition Inc. Agent and/or the Prepetition Inc. Lenders, as applicable, and each of their respective successors and assigns named in the Master Proof of Claim, shall be treated as if each

[5] The Inc. Obligors include: LightSquared Inc.; One Dot Four Corp.; One Dot Six Corp; and One Dot Six TVCC Corp.

such entity had filed a separate Proof of Claim in each of the Chapter 11 Cases of the Inc. Obligors in the amount set forth in the Master Proof of Claim. The Prepetition Inc. Agent may, but shall not be required to, amend the Master Proof of Claim from time to time to, among other things, reflect a change in the holders of the Claims set forth therein or a reallocation among such holders of the Claims asserted therein resulting from any transfer of such Claims.

6. The Prepetition LP Agent is authorized (but not required) to file a Master Proof of Claim on behalf of itself and the Prepetition LP Lenders, on account of their Claims arising under the Prepetition LP Credit Agreement against LightSquared LP only.

7. Upon the filing of a Master Proof of Claim by the Prepetition LP Agent, the Prepetition LP Agent (and its successors and assigns) shall be deemed to have filed a Proof of Claim in the amount set forth opposite its name therein in respect of its Claims against each of the LP Obligors[6] arising under the Prepetition LP Credit Agreement. The Claims of the Prepetition LP Agent and/or the Prepetition LP Lenders, as applicable, and each of their respective successors and assigns named in the Master Proof of Claim, shall be treated as if each such entity had filed a separate Proof of Claim in each of the Chapter 11 Cases of the LP Obligors in the amount set forth in the Master Proof of Claim. The Prepetition LP Agent may, but shall not be required to, amend the Master Proof of Claim from time to time to, among other things, reflect a change in the holders of the Claims set forth therein or a reallocation among such holders of the Claims asserted therein resulting from any transfer of such Claims.

8. Neither the provisions of paragraphs 4, 5, 6, and 7 of this Order nor the Master Proof of Claim shall affect the substantive rights of LightSquared, any statutory

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[6] The LP Obligors include: LightSquared Inc.; LightSquared LP; LightSquared Investors Holdings Inc.; LightSquared GP Inc.; TMI Communications Delaware, Limited Partnership; ATC Technologies, LLC; LightSquared Corp.; LightSquared Inc. of Virginia; LightSquared Subsidiary LLC; SkyTerra Holdings (Canada) Inc.; and SkyTerra (Canada) Inc.

committee appointed in the Chapter 11 Cases, the Prepetition Agents, the other Prepetition Secured Parties, or any other party in interest or their respective successors in interest, including, without limitation, the right of each Prepetition Secured Party (or its successor in interest) to vote separately on any plan of reorganization proposed in the Chapter 11 Cases.

9. Pursuant to Bankruptcy Rule 3003(c)(2), any holder of a Claim that fails to comply with this Order by timely filing a Proof of Claim in the appropriate form shall not be treated as a creditor with respect to such Claim for the purposes of voting and distribution with respect to any chapter 11 plan or plans of reorganization that may be filed in these Chapter 11 Cases. In addition, any holder of a Claim that fails to timely file a Proof of Claim shall be forever barred, estopped, and enjoined from asserting any such Claim against LightSquared, LightSquared's estates, a reorganized LightSquared, or any of LightSquared's successors or assigns, and such entities shall be deemed forever discharged from any and all indebtedness or liability with respect to such Claim.

10. The Bar Date Notice, substantially in the form attached hereto as Schedule 1, the Publication Notice, substantially in the form attached hereto as Schedule 2, and the Proof of Claim Form, substantially in the form attached hereto as Schedule 3, are hereby approved.

11. The following Bar Date Notice procedures are hereby approved:

(a) Within five (5) business days of entry of an order granting the relief requested herein, and at least thirty-five (35) days prior to the Bar Dates, LightSquared shall cause to be mailed (i) a Proof of Claim Form and (ii) a Bar Date Notice to the following parties:

(i) the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee");

(ii) counsel to any statutory committee appointed in the Chapter 11 Cases;

(iii) counsel to the Prepetition Inc. Agent, U.S. Bank National Association as successor administrative agent to UBS AG, Stamford Branch;

(iv) counsel to the Prepetition LP Agent, UBS AG, Stamford Branch and Wilmington Trust FSB;[7]

(v) all known holders of Claims listed in the Schedules at the addresses stated therein or as updated pursuant to a request by the creditor or by returned mail from the post office with a forwarding address;

(vi) all parties actually known to LightSquared as having potential Claims against any of the LightSquared debtors, excluding any person or entity that only holds an equity security interest in one or more of the LightSquared debtors, which interest is based exclusively upon the ownership of common or preferred stock, membership interests, partnership interests, or warrants, options, or rights to purchase, sell, or subscribe to such a security or interest;

(vii) all counterparties to LightSquared's executory contracts and unexpired leases listed in the Schedules at the addresses provided therein or as updated pursuant to a request by the counterparty or by returned mail from the post office with a forwarding address;

(viii) the attorneys of record to all parties to pending litigation against any of the LightSquared debtors (as of the date of the entry of the Order);

(ix) the Internal Revenue Service, the Securities and Exchange Commission, the United States Attorney's Office for the Southern District of New York, the Federal Communications Commission, Industry Canada, Canada Revenue Agency, the Ministry of Finance (Ontario), and Saskatchewan Finance;

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[7] Wilmington Trust FSB serves as collateral trustee pursuant to that certain Collateral Trust Agreement, dates as of October 1, 2010 between LightSquared LP, UBS AG, Stamford Branch and Wilmington Trust FSB.

(x) all persons or entities that have filed Claims (as of the date of the entry of the Order);

(xi) all parties who have requested notice pursuant to Bankruptcy Rule 2002 (as of the date of the entry of the Order); and

(xii) such additional persons and entities as deemed appropriate by LightSquared.

(b) LightSquared shall post the Proof of Claim Form and the Bar Date Notice on the website established by KCC for LightSquared's Chapter 11 Cases: www.kccllc.net/LightSquared. The Bar Date Notice will provide that LightSquared's Schedules may be accessed through the same website or by contacting KCC at (877) 499-4509 (toll free), (424) 236-7239 (international toll free), or by email at lightsquaredinfo@kccllc.com.

12. LightSquared shall publish the Publication Notice, substantially in the form attached hereto as Schedule 2, once, in *The Wall Street Journal* (National Edition), *The Washington Post*, and *The Globe and Mail* (National Edition), subject to applicable publication deadlines, at least twenty-eight (28) days prior to the General Bar Date, which publication is approved and shall be deemed good, adequate, and sufficient publication notice of the Bar Dates and the Procedures for filing Proofs of Claim in the Chapter 11 Cases.

13. With regard to those holders of Claims listed in the Schedules, LightSquared shall mail one or more Proof of Claim Forms (as appropriate), substantially similar to the Proof of Claim Form attached hereto as Schedule 3, indicating, to the extent possible, how LightSquared has scheduled such creditor's Claim in the Schedules (including the identity of the LightSquared debtor, the amount of the Claim and whether the Claim has been scheduled as contingent, unliquidated, or disputed).

14. Nothing in this Order shall prejudice the right of LightSquared or any other party in interest to dispute or assert offsets or defenses to any Claim reflected in the Schedules or in any submitted Proof of Claim.

15. LightSquared and KCC are authorized and empowered to take all actions necessary to implement or effectuate the terms of this Order.

16. Notification of the relief granted by this Order as provided herein is fair and reasonable, and will provide good, sufficient, and proper notice to all creditors of their rights and obligations in connection with Claims they may have against LightSquared in the Chapter 11 Cases.

17. Nothing in this Order shall prejudice LightSquared's (a) rights and defenses with respect to any Proof of Claim, including, among other things, the right to object to any Proof of Claim on any grounds, or (b) rights and defenses to any Claim listed in the Schedules, including, among other things, the right to dispute any such Claim listed in the Schedules and/or assert any offsets or defenses thereto.

18. To the extent that LightSquared disputes any Claim listed in the Schedules and such Claim is not already listed as disputed, contingent, or unliquidated, LightSquared shall have the right to amend its Schedules as appropriate.

19. Entry of this Order is without prejudice to LightSquared's right to seek a further order of this Court fixing a date by which holders of claims or interests not subject to the Bar Dates established herein must file such Proofs of Claim or interest or be forever barred from doing so.

20. The requirements set forth in rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York are satisfied.

21. The Court retains jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: August 14, 2012
New York, New York

/s/ Shelley C. Chapman
HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

Schedule 1

Bar Date Notice

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
LIGHTSQUARED INC., *et al.*,	)	Case No. 12-12080 (SCC)
Debtors.[1]	)	Jointly Administered

NOTICE OF DEADLINES FOR FILING PROOFS OF CLAIM

TO ALL PERSONS AND ENTITIES WITH CLAIMS AGAINST ANY OF THE DEBTOR ENTITIES LISTED ON PAGE 2 OF THIS NOTICE IN THE ABOVE-CAPTIONED CHAPTER 11 CASES:

The United States Bankruptcy Court for the Southern District of New York (the "Court") has entered an order (the "Bar Date Order") establishing (a) **September 25, 2012 at 5:00 p.m. (prevailing Eastern time)** (the "General Bar Date") as the last date and time for each person or entity (including, without limitation, individuals, partnerships, corporations, joint ventures, and trusts, but not including governmental units (as defined in section 101(27) of the Bankruptcy Code, "Governmental Units")) to file a proof of claim ("Proof of Claim") with respect to prepetition claims against any of the LightSquared debtors listed below and (b) **November 12, 2012 at 5:00 p.m. (prevailing Eastern time)** (the "Governmental Bar Date" and, together with the General Bar Date, the "Bar Dates") as the last date and time for each Governmental Unit to file a Proof of Claim with respect to prepetition claims against LightSquared debtors listed below that arose prior to the Petition Date.

The Bar Date Order, the Bar Dates, and the procedures set forth below for filing Proofs of Claim apply to all claims that arose prior to May 14, 2012 (the "Petition Date"), the date on which LightSquared Inc. and its affiliated debtors and debtors in possession (collectively, "LightSquared") commenced cases under chapter 11 of the United States Bankruptcy Code, including claims pursuant to section 503(b)(9) of the Bankruptcy Code (each, a "503(b)(9) Claim") and claims held by Governmental Units, except for those holders of claims listed in Section 2 below that are specifically excluded from the Bar Date filing requirements.

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[1] The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal or foreign tax or registration identification number, are: LightSquared Inc. (8845), LightSquared Investors Holdings Inc. (0984), One Dot Four Corp. (8806), One Dot Six Corp. (8763), SkyTerra Rollup LLC (N/A), SkyTerra Rollup Sub LLC (N/A), SkyTerra Investors LLC (N/A), TMI Communications Delaware, Limited Partnership (4456), LightSquared GP Inc. (6190), LightSquared LP (3801), ATC Technologies, LLC (3432), LightSquared Corp. (1361), LightSquared Finance Co. (6962), LightSquared Network LLC (1750), LightSquared Inc. of Virginia (9725), LightSquared Subsidiary LLC (9821), Lightsquared Bermuda Ltd. (7247), SkyTerra Holdings (Canada) Inc. (0631), SkyTerra (Canada) Inc. (0629), and One Dot Six TVCC Corp. (0040). The location of the debtors' corporate headquarters is 450 Park Avenue, Suite 2201, New York, NY 10022.

If you have any questions relating to this Bar Date Notice, please feel free to contact Kurtzman Carson Consultants LLC at (877) 499-4509 (toll free) or (424) 236-7239 (international toll free), or by email at lightsquaredinfo@kccllc.com.

Debtors in These Chapter 11 Cases

Name of Debtor	Case Number	Tax Identification Number	Other Names Used by Debtor in the Past 8 Years
LightSquared Inc.	12-12080	23-2368845	SkyTerra Communications, Inc.
LightSquared LP	12-12081	54-1993801	SkyTerra LP; Mobile Satellite Ventures LP
LightSquared Corp.	12-12082	3051361 (Registry No.)	SkyTerra Corp.; Mobile Satellite Ventures Corp.; 3051361 Nova Scotia ULC
LightSquared Network LLC	12-12083	27-3361750	N/A
One Dot Six Corp.	12-12084	27-0818763	N/A
TMI Communications Delaware, Limited Partnership	12-12085	26-0014456	N/A
ATC Technologies, LLC	12-12086	20-2813432	N/A
Lightsquared Bermuda Ltd.	12-12088	37247 (Registration No.)	Skyterra Bermuda Ltd; Mobile Satellite Ventures Bermuda Ltd.
LightSquared Finance Co.	12-12089	20-4536962	SkyTerra Finance Co.; Mobile Satellite Ventures Finance Co.
LightSquared GP Inc.	12-12091	54-2056190	SkyTerra GP Inc.; Mobile Satellite Ventures GP Inc.
LightSquared Inc. of Virginia	12-12092	54-1939725	SkyTerra Inc. of Virginia; Mobile Satellite Ventures Inc. of Virginia; Motient Services Inc. of Virginia
LightSquared Investors Holdings Inc.	12-12093	13-4200984	SkyTerra Investors Holdings Inc.; MSV Investors Holdings, Inc.
LightSquared Subsidiary LLC	12-12094	54-2059821	SkyTerra Subsidiary LLC; Mobile Satellite Ventures Subsidiary LLC
One Dot Four Corp.	12-12095	27-0818806	N/A
One Dot Six TVCC Corp.	12-12096	27-5270040	N/A
SkyTerra (Canada) Inc.	12-12097	002000629 (Ontario Corporation No.)	Mobile Satellite Ventures (Canada) Inc.
SkyTerra Holdings (Canada) Inc.	12-12098	002000631 (Ontario Corporation No.)	Mobile Satellite Ventures Holdings (Canada) Inc.
SkyTerra Investors LLC	12-12099	N/A	MSV Investors, LLC
SkyTerra Rollup LLC	12-12101	N/A	MSV Rollup LLC
SkyTerra Rollup Sub LLC	12-12102	N/A	MSV Rollup Sub, LLC

1. WHO MUST FILE A PROOF OF CLAIM

You **MUST** file a Proof of Claim to vote on a chapter 11 plan or plans filed in these chapter 11 cases or to share in any distributions from LightSquared's estates if you have a claim that arose prior to **May 14, 2012**, and it is not one of the types of claims described in Section 2 below. Claims based on acts or omissions of LightSquared that occurred before **May**

14, 2012 must be filed on or prior to the applicable Bar Date, even if such claims are not now fixed, liquidated, or certain or did not mature or become fixed, liquidated, or certain before **May 14, 2012**.

Pursuant to section 101(5) of the Bankruptcy Code and as used in this Notice, the word "claim" means: (a) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (b) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured. For the avoidance of doubt, claims include unsecured claims, secured claims, and priority claims.

2. WHO NEED NOT FILE A PROOF OF CLAIM

You need not file a Proof of Claim if:

(a) Your claim is listed on LightSquared's schedules of assets and liabilities and/or schedules of executory contracts and unexpired leases (collectively, the "Schedules")[2] and (i) is **not** listed in the Schedules as "disputed," "contingent," or "unliquidated," (ii) you **do not** dispute the amount, nature, or priority of the claim as set forth in the Schedules, and (iii) you **do not** dispute that the claim is an obligation of the specific LightSquared debtor against which the claim is listed in the Schedules;

(b) Your claim has been paid in full by LightSquared;

(c) You only hold an equity security interest in one or more of the LightSquared debtors, which interest is based exclusively upon the ownership of common or preferred stock, membership interests, partnership interests, or warrants, options, or rights to purchase, sell, or subscribe to such a security or interest; provided, however, that if you assert a claim (as opposed to ownership interests) against any of the LightSquared debtors (including a claim relating to an equity interest or the purchase or sale of such equity interest), a Proof of Claim must be filed on or before the applicable Bar Date as set forth in this Notice;

(d) You hold a claim allowable under sections 503(b) and 507(a)(2) of the Bankruptcy Code as an expense of administration of LightSquared's estates (other than a 503(b)(9) Claim, for which, as set forth above, you must file a Proof of Claim);

(e) You hold a claim that has been previously allowed by order of this Court entered on or before the applicable Bar Date;

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[2] LightSquared filed its Schedules on June 27, 2012 (see Docket Nos. 154-173).

(f) You hold a claim against any of the LightSquared debtors for which a separate deadline has been fixed by the Court (whereupon you will be required to file a Proof of Claim by that separate deadline);

(g) You are a LightSquared debtor and you have a claim against another LightSquared debtor in these chapter 11 cases;

(h) You are a subsidiary of any LightSquared debtor as of the applicable Bar Date;

(i) You have already filed a Proof of Claim against LightSquared with the Clerk of the Bankruptcy Court for the Southern District of New York in a form substantially similar to the form provided with this Bar Date Notice (the "Proof of Claim Form") or Official Bankruptcy Form No. 10 ("Official Form 10")[3]; or

(j) Your claim is limited exclusively to the repayment of principal, interest and other fees and expenses on or under any credit agreement (a "Debt Claim") and the prepetition agent or similar fiduciary under the applicable credit agreement files a master Proof of Claim against the applicable debtor, on or before the General Bar Date, on account of all Debt Claims against such debtor under the applicable credit agreement, provided, however, that if you hold a Debt Claim and you wish to assert a claim arising out of or relating to a credit agreement, other than a Debt Claim, you are required to file a Proof of Claim with respect to such claim on or before the General Bar Date, unless another exception identified herein applies.

This Bar Date Notice is being sent to many persons and entities that have had some relationship with or have done business with LightSquared but may not have an unpaid claim against any of the LightSquared debtors. The fact that you have received this Bar Date Notice does not mean that you have a claim or that LightSquared or the Court believes that you have a claim.

You should not file a Proof of Claim if you do not have a claim against a LightSquared debtor.

3. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

If you hold a claim arising from the rejection of an executory contract or unexpired lease as to which the order authorizing such rejection is dated on or before the applicable Bar Date, you must file a Proof of Claim based on such rejection by the later of (a) the applicable Bar Date, and (b) the date which is thirty (30) days following the entry of the order

[3] Official Form 10 can be found at www.uscourts.gov/bkforms, the Official Website for the United States Bankruptcy Courts. A customized Proof of Claim Form can also be obtained on the website established in these chapter 11 cases: www.kccllc.net/LightSquared.

approving such rejection, or you will be forever barred from doing so. Notwithstanding the foregoing, if you are a party to an executory contract or unexpired lease and you wish to assert a claim with respect to unpaid amounts accrued and outstanding as of May 14, 2012, pursuant to that executory contract or unexpired lease (other than a rejection damages claim), you must file a Proof of Claim for such amounts on or before the applicable Bar Date unless an exception identified above applies.

4. WHEN AND WHERE TO FILE

Except as provided herein, to be deemed timely, a Proof of Claim must be filed so as to be **actually received** on or before the applicable Bar Date at the following address (by hand delivery, overnight courier, or first-class mail):

LightSquared Claims Processing Center
c/o Kurtzman Carson Consultants LLC
2335 Alaska Avenue
El Segundo, CA 90254

Proofs of Claim may not be delivered by facsimile, telecopy, or electronic mail transmission.

5. WHAT TO FILE

LightSquared is enclosing the Proof of Claim Form for use in these cases; if your claim is scheduled by LightSquared, the Proof of Claim Form sets forth, to the extent possible, the amount of your claim as scheduled by LightSquared, the specific LightSquared debtor against which the claim is scheduled, and whether the claim is scheduled as disputed, contingent, or unliquidated. You will receive a different Proof of Claim Form for each claim scheduled in your name by LightSquared. You may utilize the Proof of Claim Form(s) provided by LightSquared to file your claim.

Additional Proof of Claim Forms may be obtained by contacting LightSquared's claims and noticing agent, Kurtzman Carson Consultants LLC (the "Claims and Noticing Agent"), by calling (877) 499-4509 (toll free) or (424) 236-7239 (international toll free), emailing lightsquaredinfo@kccllc.com, or visiting LightSquared's restructuring website at: http://www.kccllc.net/LightSquared.

The following procedures for the submission of Proofs of Claim asserting claims against any of the LightSquared in these chapter 11 cases shall apply:

(a) Each Proof of Claim must: (i) be written in the English language; (ii) be denominated in lawful currency of the United States as of the Petition Date (using the exchange rate, if applicable, as of the Petition Date); (iii) conform substantially to the Proof of Claim Form or Official Form 10; (iv) specify the name and case number of the particular LightSquared debtor against which the Proof of Claim is filed; (v) set forth with

specificity the legal and factual basis for the alleged claim; (vi) include supporting documentation for the claim or an explanation as to why such documentation is not available; and (vii) **be signed** by the claimant or, if the claimant is not an individual, by an authorized agent of the claimant.

(b) All holders of claims against a LightSquared debtor must check the appropriate box on the Proof of Claim Form identifying the specific LightSquared debtor and case number against which the Claim is filed.

(c) Any Proof of Claim asserting a 503(b)(9) Claim must also: (i) include the value of the goods delivered to and received by LightSquared in the twenty (20) days prior to the Petition Date, (ii) attach any documentation identifying the particular invoices for which the 503(b)(9) claim is being asserted, and (iii) attach documentation of any reclamation demand made to any LightSquared debtor under section 546(c) of the Bankruptcy Code (if applicable).

(d) Any holder of a claim against more than one LightSquared debtor **must file a separate Proof of Claim with respect to each such LightSquared debtor**. A list of the names of the LightSquared debtors and their case numbers is set forth above.

(e) Parties who wish to receive proof of receipt of their Proofs of Claim from the Claims and Noticing Agent must also include with their Proof of Claim Form a copy of their Proof of Claim and a self-addressed, stamped envelope.

You should attach to your completed Proof of Claim Form copies of any writings upon which your claim is based. If these documents are voluminous, you should attach a summary.

6. CONSEQUENCES OF FAILURE TO FILE A PROOF OF CLAIM BY THE APPLICABLE BAR DATE

ANY HOLDER OF A CLAIM THAT IS NOT EXCEPTED FROM THE REQUIREMENTS OF THE BAR DATE ORDER, AS SET FORTH IN SECTION 2 ABOVE, AND THAT FAILS TO TIMELY FILE A PROOF OF CLAIM IN THE APPROPRIATE FORM, WILL BE FOREVER BARRED, ESTOPPED, AND ENJOINED FROM ASSERTING SUCH CLAIM AGAINST LIGHTSQUARED AND ITS CHAPTER 11 ESTATES (OR FILING A PROOF OF CLAIM WITH RESPECT THERETO), LIGHTSQUARED AND ITS PROPERTY SHALL BE FOREVER DISCHARGED FROM ANY AND ALL INDEBTEDNESS OR LIABILITY WITH RESPECT TO SUCH CLAIM, AND SUCH HOLDER SHALL NOT BE PERMITTED TO VOTE TO ACCEPT OR REJECT ANY PLAN OF REORGANIZATION FILED IN THESE CHAPTER 11 CASES OR PARTICIPATE IN ANY DISTRIBUTION IN LIGHTSQUARED'S CHAPTER 11 CASES ON ACCOUNT OF SUCH CLAIM.

7. DEBTORS' SCHEDULES, ACCESS THERETO, AND CONSEQUENCES OF AMENDMENT THEREOF

You may be listed as the holder of a claim against one or more of the LightSquared debtors on the LightSquared's Schedules. To determine if and how you are listed in the Schedules, please refer to the descriptions set forth on the enclosed Proof of Claim Form regarding the nature, amount, and status of your claim(s). If you received postpetition payments from LightSquared (as authorized by the Court) on account of your claim, the enclosed Proof of Claim Form will reflect the net amount of your claims. If LightSquared believes that you hold claims against more than one LightSquared debtor, you will receive multiple Proof of Claim Forms, each of which will reflect the nature and amount of your claim against each LightSquared debtor, as listed in the Schedules.

If you rely on LightSquared's Schedules, it is your responsibility to determine that the claim is accurately listed in the Schedules. In addition, you may rely on the enclosed Proof of Claim Form, which lists, to the extent possible, your claim as scheduled, identifies the LightSquared debtor against which it is scheduled, and specifies whether the claim is disputed, contingent, or unliquidated; however, it is your responsibility to determine that the foregoing information with respect to the claim is accurate.

As set forth above, if you agree with the nature, amount, and status of your claim as listed in LightSquared's Schedules, you do not dispute that your claim is only against the specified LightSquared debtor, and your claim is not listed in the Schedules as "disputed," "contingent," or "unliquidated," you need not file a Proof of Claim. Otherwise, or if you decide to file a Proof of Claim, you must do so before the Bar Date in accordance with the procedures set forth in this Bar Date Notice.

Copies of LightSquared's Schedules are available for inspection on the Court's electronic docket for the LightSquared's chapter 11 cases, which is posted on (a) the website established by KCC for LightSquared's cases at www.kccllc.net/LightSquared and (b) the Court's website at www.nysb.uscourts.gov (a login and password to the Court's Public Access to Electronic Court Records ("PACER") are required to access the information on the Court's website and can be obtained through the PACER Service Center at www.pacer.psc.uscourts.gov). Copies of the Schedules may also be examined between the hours of 9:00 a.m. and 4:30 p.m. (prevailing Eastern time) Monday through Friday at the Office of the Clerk of the Bankruptcy Court, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, Room 511, New York, New York 10004-1408. Copies of LightSquared's Schedules may also be obtained by written request to LightSquared's Claims and Noticing Agent at the address and telephone number set forth below:

LightSquared Inc., *et al.*
c/o Kurtzman Carson Consultants LLC
2335 Alaska Avenue
El Segundo, CA 90254
Toll Free: (877) 499-4509
International Toll Free: (424) 236-7239
Email: lightsquaredinfo@kccllc.com

In the event that LightSquared amends or supplements its Schedules subsequent to August 14, 2012, LightSquared shall give notice of any amendment or supplement to the holders of claims affected by such amendment or supplement, and such holders shall have until the later of (a) the applicable Bar Date and (b) thirty (30) days from the date of such notice to file a Proof of Claim or be barred from doing so.

If you are a holder of a possible claim against any of the LightSquared debtors, you should consult an attorney regarding any matters not covered by this Bar Date Notice, such as whether you should file a Proof of Claim.

Dated: New York, New York
_____, 2012

BY ORDER OF THE COURT

MILBANK, TWEED, HADLEY & McCLOY LLP
One Chase Manhattan Plaza
New York, NY 10005-1413
(212) 530-5000
COUNSEL TO DEBTORS AND
DEBTORS IN POSSESSION

Schedule 2

Publication Notice

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
LIGHTSQUARED INC., *et al.*,	)	Case No. 12-12080 (SCC)
Debtors.[1]	)	Jointly Administered

NOTICE OF DEADLINES FOR FILING PROOFS OF CLAIM

TO ALL PERSONS AND ENTITIES WITH CLAIMS AGAINST LIGHTSQUARED INC. AND ITS AFFILIATED DEBTORS ("LIGHTSQUARED") PLEASE TAKE NOTICE OF THE FOLLOWING:

On May 14, 2012, each of the LightSquared debtors filed a voluntary petition for relief under title 11 of the United States Code, §§ 101-1532 (the "Bankruptcy Code").

The United States Bankruptcy Court for the Southern District of New York has entered an order (the "Bar Date Order") establishing (a) **September 25, 2012 at 5:00 p.m. (prevailing Eastern time)** (the "General Bar Date") as the last date and time for each person or entity (including, without limitation, individuals, partnerships, corporations, joint ventures, and trusts, but not including governmental units (as defined in section 101(27) of the Bankruptcy Code, "Governmental Units")) to file a proof of claim ("Proof of Claim") with respect to any claim against any of the LightSquared debtors that arose prior to the Petition Date and (b) **November 12, 2012 at 5:00 p.m. (prevailing Eastern time)** (the "Governmental Bar Date" and, together with the General Bar Date, the "Bar Dates") as the last date and time for each Governmental Unit to file a Proof of Claim with respect to any claim against any of the LightSquared debtors that arose prior to the Petition Date.

If you are a holder of a possible claim against any of the LightSquared debtors, you should consult an attorney regarding all matters contained in, or not covered by, this Publication Notice, such as whether you should file a Proof of Claim.

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[1] The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal or foreign tax or registration identification number, are: LightSquared Inc. (8845), LightSquared Investors Holdings Inc. (0984), One Dot Four Corp. (8806), One Dot Six Corp. (8763), SkyTerra Rollup LLC (N/A), SkyTerra Rollup Sub LLC (N/A), SkyTerra Investors LLC (N/A), TMI Communications Delaware, Limited Partnership (4456), LightSquared GP Inc. (6190), LightSquared LP (3801), ATC Technologies, LLC (3432), LightSquared Corp. (1361), LightSquared Finance Co. (6962), LightSquared Network LLC (1750), LightSquared Inc. of Virginia (9725), LightSquared Subsidiary LLC (9821), Lightsquared Bermuda Ltd. (7247), SkyTerra Holdings (Canada) Inc. (0631), SkyTerra (Canada) Inc. (0629), and One Dot Six TVCC Corp. (0040). The location of the debtors' corporate headquarters is 450 Park Avenue, Suite 2201, New York, NY 10022.

You may need to file a Proof of Claim to vote on a chapter 11 plan or plans filed in these chapter 11 cases or to share in any distributions from LightSquared's estates if you have a claim that arose prior to May 14, 2012. Claims based on acts or omissions of LightSquared that occurred before May 14, 2012 must be filed on or prior to the applicable Bar Date, even if such claims are not now fixed, liquidated, or certain or did not mature or become fixed, liquidated, or certain before May 14, 2012.

For further information about the Bar Dates, whether you need to file a Proof of Claim, how and where to file a Proof of Claim, and other related information, you may access LightSquared's chapter 11 website at www.kccllc.net/LightSquared, or contact LightSquared's claims and noticing agent, Kurtzman Carson Consultants LLC, at (877) 499-4509 (toll free) or (424) 236-7239 (international toll free), or by email at lightsquaredinfo@kccllc.com. The website also includes a list of all of the names under which the LightSquared debtors have operated in the past eight years and copies of the Bar Date Order, form Proofs of Claim, and other related materials.

You should <u>not</u> file a Proof of Claim if you do not have a claim against a LightSquared debtor.

ANY CREDITOR WHO IS REQUIRED, BUT FAILS, TO TIMELY FILE A PROOF OF CLAIM IN THE APPROPRIATE FORM WILL BE FOREVER BARRED, ESTOPPED, AND ENJOINED FROM ASSERTING SUCH CLAIM AGAINST LIGHTSQUARED AND ITS CHAPTER 11 ESTATES (OR FILING A PROOF OF CLAIM WITH RESPECT THERETO), LIGHTSQUARED AND ITS PROPERTY SHALL BE FOREVER DISCHARGED FROM ANY AND ALL INDEBTEDNESS OR LIABILITY WITH RESPECT TO SUCH CLAIM, AND SUCH HOLDER SHALL NOT BE PERMITTED TO VOTE TO ACCEPT OR REJECT ANY PLAN OF REORGANIZATION FILED IN THESE CHAPTER 11 CASES OR PARTICIPATE IN ANY DISTRIBUTION IN LIGHTSQUARED'S CHAPTER 11 CASES ON ACCOUNT OF SUCH CLAIM.

Dated: New York, New York
_____, 2012

BY ORDER OF THE COURT

MILBANK, TWEED, HADLEY & McCLOY LLP
One Chase Manhattan Plaza
New York, NY 10005-1413
(212) 530-5000
COUNSEL TO DEBTORS AND
DEBTORS IN POSSESSION

Schedule 3

Proof of Claim Form

UNITED STATES BANKRUPTCY COURT, SOUTHERN DISTRICT OF NEW YORK | **PROOF OF CLAIM**

Indicate Debtor against which you assert a claim by checking the appropriate box below. **(Check only one Debtor per claim form.)**

- ☐ LightSquared Inc (Case No. 12-12080)
- ☐ LightSquared LP (Case No. 12-12081)
- ☐ LightSquared Corp. (Case No. 12-12082)
- ☐ LightSquared Network LLC (Case No. 12-12083)
- ☐ One Dot Six Corp. (Case No. 12-12084)
- ☐ TMI Communications Delaware Limited Partnership (Case No. 12-12085)
- ☐ ATC Technologies, LLC (Case No. 12-12086)
- ☐ Lightsquared Bermuda Ltd. (Case No. 12-12088)
- ☐ LightSquared Finance Co (Case No. 12-12089)
- ☐ LightSquared GP Inc. (Case No. 12-12091)
- ☐ LightSquared Inc. of Virginia (Case No. 12-12092)
- ☐ LightSquared Investors Holdings Inc (Case No. 12-12093)
- ☐ LightSquared Subsidiary LLC (Case No. 12-12094)
- ☐ One Dot Four Corp. (Case No. 12-12095)
- ☐ One Dot Six TVCC Corp. (Case No. 12-12096)
- ☐ SkyTerra (Canada) Inc. (Case No. 12-12097)
- ☐ SkyTerra Holdings (Canada) Inc. (Case No. 12-12098)
- ☐ SkyTerra Investors LLC (Case No. 12-12099)
- ☐ SkyTerra Rollup LLP (Case No. 12-12101)
- ☐ SkyTerra Rollup Sub LLC (Case No. 12-12102)

NOTE: *Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property):

☐ Check this box if this claim amends a previously filed claim.

Court Claim Number: _____ *(If known)*

Filed on: _____

Name and address where notices should be sent:

Telephone number: email:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.

Name and address where payment should be sent (if different from above):

Telephone number: email:

1. Amount of Claim as of Date Case Filed: $_____

If all or part of the claim is secured, complete item 4.
If all or part of the claim is entitled to priority, complete item 5.
If all or part of the claim qualifies as an Administrative Expense under 11 U.S.C. § 503(b)(9), complete item 6.

☐ Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.

2. Basis for Claim: _____
(See instruction #2)

3. Last four digits of any number by which creditor identifies debtor:	**3a. Debtor may have scheduled account as:**	**3b. Uniform Claim Identifier (optional):**
___ ___ ___ ___	_____ (See instruction #3a)	_____ (See instruction #3b)

4. Secured Claim (See instruction #4)
Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:
Value of Property: $_____ **Annual Interest Rate** _____% ☐ Fixed ☐ Variable
(when case was filed)
Amount of arrearage and other charges, as of the time case was filed, included in secured claim,
if any: $_____ **Basis for perfection:** _____
Amount of Secured Claim: $_____ **Amount Unsecured: $**_____

6. Amount of Claim that qualifies as an Administrative Expense under 11 U.S.C. § 503(b)(9): $_____ (See instruction #6)

7. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #7)

8. Documents: Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. *(See instruction #8, and the definition of "redacted".)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.

- ☐ Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- ☐ Wages, salaries, or commissions (up to $11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).
- ☐ Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).
- ☐ Up to $2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).
- ☐ Taxes or penalties owed to governmental units – 11U.S.C. § 507 (a)(8).
- ☐ Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(__).

Amount entitled to priority:

$_____

* *Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with*

9. Signature: (See instruction #9) Check the appropriate box.

☐ I am the creditor. ☐ I am the creditor's authorized agent. (Attach copy of power of attorney, if any.) ☐ I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.) ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name:_____

Title: _____

Company: _____ (Signature) (Date)

Address and telephone number (if different from notice address above):

_____

_____

Telephone number: Email:

respect to cases commenced on or after the date of adjustment.

COURT USE ONLY

B 10 Modified (Official Form 10) (12/11)

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

B 10 Modified (Official Form 10) (12/11) cont.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:
Fill in the federal judicial district in which the bankruptcy case was filed (for example, Southern District of New York), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:
Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:
State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:
State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:
Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:
If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:
Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507(a).
If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Amount of Claim that qualifies as an Administrative Expense under 11 U.S.C. § 503(b)(9):
State the value of any goods received by the debtor within 20 days before the date of commencement in which the goods have been sold to the debtor in the ordinary course of the debtor's business.

7. Credits:
An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

8. Documents:
Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

9. Date and Signature:
The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

Debtor
A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor
A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. § 101(10).

Claim
A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. § 101(5). A claim may be secured or unsecured.

Proof of Claim
A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. § 506(a)
A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.

A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim
An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. § 507(a)
Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted
A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

Evidence of Perfection
Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

INFORMATION

Acknowledgment of Filing of Claim
To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may view a list of filed claims in this case by visiting the Claims and Noticing Agent's website at http://www.kccllc.net/LightSquared.

Offers to Purchase a Claim
Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. §§ 101-1532), and any applicable orders of the bankruptcy court.

PLEASE SEND COMPLETED PROOF(S) OF CLAIM TO:

LightSquared Claims Processing Center
c/o Kurtzman Carson Consultants LLC
2335 Alaska Avenue
El Segundo, CA 90245

Court File No: CV-12-9719-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED, APPLICATION OF LIGHTSQUARED LP UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED, AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO THE CHAPTER 11 DEBTORS

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

RECOGNITION ORDER
(AUGUST 21, 2012)

FRASER MILNER CASGRAIN LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, Ontario
M5K 0A1

R. Shayne Kukulowicz / Jane O. Dietrich
LSUC No.: 30729S / 49302U
Tel: 416 863-4740 / (416) 863-4467
Fax: (416) 863-4592
Email: shayne.kukulowicz@fmc-law.com
jane.dietrich@fmc-law.com

Lawyers for the Chapter 11 Debtors.

Tab 11

Court File No. CV-15-10936-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	THURSDAY, THE 18TH
	)	
JUSTICE NEWBOULD	)	DAY OF JUNE, 2015

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.

APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

RECOGNITION ORDER

THIS MOTION, made by Xinergy Ltd. (the "**Debtor**") in its capacity as the foreign representative for itself, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form attached as Schedule A to the Notice of Motion of the Debtor dated June 11, 2015 (the "**Notice of Motion**"), among other things, recognizing certain orders granted by the United States Bankruptcy Court for the Western District of Virginia (the "**US Bankruptcy Court**") in respect of the case commenced by the Debtor under chapter 11 of title 11 of the United States Code (the "**US Bankruptcy Code**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the affidavit of Michael R. Castle sworn June 11, 2015 (the "**Castle Affidavit**"), and the second report of the Deloitte Restructuring Inc. (the "**Information Officer**"), dated June 15, 2015 (the "**Second Report**"), each filed,

AND UPON HEARING the submissions of counsel for the Debtor, counsel for the Information Officer, counsel for Jon Nix ("**Nix**") and no one else appearing although duly served as appears from the affidavit of service of Margaret Wong sworn on June 11, 2015:

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

RECOGNITION OF FOREIGN ORDERS

2. THIS COURT ORDERS that the following orders (collectively, the "**Foreign Orders**") of the US Bankruptcy Court made in respect of the chapter 11 case of the Debtor are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA:

(a) *Modified Final Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364;*

(b) *Stipulated Order Staying Adversary Proceeding* (the "**Nix Stipulated Order**"); and

(c) *Order (I) Establishing Bar Dates for Filing Proofs of Claim, Including Section 503(b)(9) Claims, and Proofs of Interest (II) Approving the Form and Manner of Notice Thereof, and (III) Providing Certain Supplemental Relief;*

each attached hereto as Schedules "A"-"C", respectively, provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the

within proceedings, the Orders of this Court shall govern with respect to the Debtor's current and future assets, undertakings and properties of every nature and kind whatsoever in Canada.

3. THIS COURT ORDERS that relief remaining unheard as set out in the Motion of Jon Nix dated May 14, 2015, as amended May 27, 2015 (the "**Amended Nix Motion**"), is adjourned until (a) a determination by the US Bankruptcy Court on the Preliminary Injunction Motion (as defined in the Nix Stipulated Order) or (b) twenty-one (21) days after the date the earliest Statement (as defined in the Nix Stipulated Order) is filed. Upon occurrence of the earlier of (a) and (b), either the Debtor or Nix may schedule a 9:30 appointment with this Court to establish a schedule for the issues remaining to be heard set out in the Amended Nix Motion.

INFORMATION OFFICER'S REPORT

4. THIS COURT ORDERS that the Second Report of the Information Officer and the activities of the Information Officer as described therein be and hereby are approved.

GENERAL

5. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, to give effect to this Order and to assist the Debtor and its counsel and agents in carrying out the terms of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:
JUN 1 8 2015

(Signature of Judge)
A. Anissimova
Registrar

SCHEDULE "A"

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

In re:	:	Chapter 11
XINERGY LTD., et al.,	:	Case No. 15-70444 (PMB)
Debtors.[1]	:	(Jointly Administered)

MODIFIED FINAL ORDER (I) AUTHORIZING DEBTORS (A) TO OBTAIN POSTPETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) AND 364(e) AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363 AND (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364

Upon the motion (the "Motion"), dated April 6, 2015 (the "Petition Date"), of the above-captioned debtors and debtors in possession (each, a "Debtor" and collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Cases" or "Chapter 11 Cases"), pursuant to sections 105, 361, 362, 363 and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (as amended, the "Bankruptcy Code"), Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules"), seeking, among other things:

(I) authorization for Debtor Xinergy Corp. (the "Borrower") to obtain postpetition financing consisting of a senior secured non-amortizing new money term loan credit facility up to an aggregate principal amount of $40,000,000 (the "DIP Facility" and together with all agreements, documents, guarantees, certificates and instruments delivered or executed from time to time in connection therewith, as hereafter

[1] The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule 1 attached to the Motion.

amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and hereof, collectively, the "DIP Documents") by and among the Borrower, guarantors party thereto and other credit parties signatories thereto, WBOX 2014-4 Ltd., as administrative agent (in such capacity, the "DIP Agent"), for and on behalf of itself and the other lenders thereto from time to time (initially, the "Initial DIP Lenders" and, following the post-closing assignments described herein, the "DIP Lenders");

(II) authorization for Xinergy Ltd., an Ontario corporation that is the parent of the Borrower (the "Parent"), and any and all of the Borrower's and Parent's current, direct or indirect subsidiaries (other than the Borrower) (collectively with the Parent, the "Guarantors") to unconditionally guarantee on a joint and several basis all obligations arising under the DIP Facility;

(III) authorization for the Debtors to execute and deliver the DIP Documents and to perform such other and further acts as may be necessary or appropriate in connection therewith;

(IV) authorization for the Debtors to immediately use proceeds of the DIP Facility upon entry of the interim order entered on April 7, 2015 [Docket No. 43] (the "Interim Order") to (a) pay in full the Prepetition Term Loan Debt (as defined below), including any interest, fees, expenses and other charges accrued through the date of payment, and, upon such payment, receive the simultaneous release and termination of the liens, claims and encumbrances of the Prepetition Lenders (as defined below) in accordance with the Interim Order (the "Refinancing"), and (b) provide working capital to the Debtors and pay fees and expenses in connection with the Cases;

(V) authorization for the Debtors to (i) use the Cash Collateral (as defined below) pursuant to sections 361, 362 and 363 of the Bankruptcy Code, in each case in accordance with the relative priorities set forth more fully below, but subject in all respects to the Carve-Out (as defined below), and (ii) provide adequate protection on the terms set forth in the Interim Order and this Final Order to the Prepetition Lenders (as defined below) until the consummation of the Refinancing and expiration of the Challenge Period (as defined below) with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders, and Prepetition Secured Noteholders (as defined below) whose liens and security interests are being primed by the DIP Facility;

(VI) authorization for the DIP Agent, as applicable, to terminate the applicable DIP Documents upon the occurrence and continuance of an Event of Default (as defined therein);

(VII) authorization to grant first priority superpriority claims to the DIP Lenders and first priority liens in favor of the DIP Agent (for the benefit of the DIP Lenders) on all prepetition and postpetition property of the Debtors' estates and all proceeds thereof (but excluding a lien on Avoidance Actions (as defined below), but including, upon entry of this order granting the relief requested in the Motion on a final basis (the "Final Order" or the "Order"), any Avoidance Proceeds (as defined below)), subject to the Carve-Out (as defined below) and the terms of this Order;

(VIII) subject to and only effective upon the entry of this Final Order granting such relief, the waiver by the Debtors of any right to surcharge against the DIP Collateral

or Prepetition Collateral (as each are defined below) pursuant to section 506(c) of the Bankruptcy Code or otherwise;

(IX) modification of the automatic stay set forth in section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms of the DIP Documents and this Final Order; and

(X) a waiver of any applicable stay with respect to the effectiveness and enforceability of this Final Order (including under Bankruptcy Rule 6004); and

The interim hearing on the Motion having been held by this Court on April 7, 2015 (the "Interim Hearing"), pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), and this Court having entered the Interim Order that, among other things: (a) authorized the Borrower, on an interim basis, to borrow from the DIP Lenders under the DIP Documents up to an aggregate principal or face amount not to exceed $7.5 million plus the amount necessary to consummate the Refinancing to (w) fund the operational and working capital needs of the Debtors, (x) pay the fees, costs and expenses incurred by the Debtors in connection with these Cases, (y) consummate the Refinancing and execute any documents related thereto and (z) pay the fees, costs and expenses incurred in connection with the foregoing, (b) authorized the Debtors' use of Cash Collateral pursuant to the terms of the Interim Order, and (c) granted the liens, superpriority claims and adequate protection described therein. This Court scheduled, pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the final hearing (the "Final Hearing") to consider entry of this Final Order on May 5, 2015 at 10:00 a.m. (EST).

The Final Hearing having been held by this Court on May 5, 2015, pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), and upon the record made by the Debtors at the

Interim Hearing and at the Final Hearing and after due deliberation and consideration and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. Jurisdiction. This Court has core jurisdiction over these Cases, this Motion, and the parties and property affected hereby under 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. Notice. The notice given by the Debtors of the Motion, the Interim Hearing and the Final Hearing was, in the Debtors' belief, the best available under the circumstances and included service upon (a) the United States Trustee for the Western District of Virginia; (b) counsel to the agent for the Debtors' Prepetition Lenders; (c) counsel to the Debtors' postpetition lenders; (d) counsel to the Prepetition Indenture Trustee (as defined below); (e) counsel to the ad hoc group of the Debtors' Prepetition Secured Noteholders (as defined below); (f) counsel to Wells Fargo Bank, National Association as collateral trustee; (g) the United States Securities and Exchange Commission; (h) the Canadian Revenue Agency; (i) the Ontario Securities Commission; (j) the Internal Revenue Service; (k) the Office of the United States Attorney for the Western District of Virginia; (l) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; and (m) all other known parties asserting a lien against the Debtors' assets. Such notice constitutes due and sufficient notice under the circumstances and complies with Bankruptcy Rules 4001(b) and (c) and applicable local rules. No further notice of the relief sought at the Final Hearing is necessary or required.

3. Creditors' Committee Formation. No statutory committee of unsecured creditors has yet been appointed in the Chapter 11 Cases (the "Creditors Committee").

4. Debtors' Stipulations. Without prejudice to the rights of any other party-in-interest (but subject to the limitations thereon contained in paragraph 25 below) the Debtors admit, stipulate and agree that:

(a) The Prepetition Credit Agreement.

(i) Xinergy, as borrower, Xinergy Ltd., as parent, other guarantors party thereto and the lenders party thereto (the "Prepetition Lenders") are parties to that certain Credit Agreement dated as of December 21, 2012 (as amended, supplemented or otherwise modified from time to time, the "Prepetition Credit Agreement", and together with all agreements, documents, certificates and instruments, including, without limitation the Prepetition Collateral Trust Agreement (as defined below) delivered or executed from time to time in connection therewith, as amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof, collectively, the "Prepetition Term Loan Documents"), pursuant to which the Prepetition Lenders made term loans available to the Prepetition Borrower (the "Prepetition Loans").

(ii) As of the Petition Date, the outstanding aggregate principal amount due under the Prepetition Credit Agreement was $20,000,000 (together with all other outstanding Obligations, as defined in the Prepetition Credit Agreement, including prepetition and postpetition interest, fees, expenses and other charges, the "Prepetition Term Loan Debt").

(iii) To secure the Prepetition Term Loan Debt, the Debtors entered into various security agreements and other collateral documents, pursuant to which they granted to the Prepetition Lenders, valid, binding, perfected, first-priority liens and security interests (the "Prepetition Term Loan Liens") in substantially all of their assets, including, among other things, as the following terms are defined in the Prepetition Term Loan Documents: (a) Accounts;

(b) Chattel Paper; (c) Documents; (d) Fixtures; (e) General Intangibles (or "intangible" under any applicable Canadian PPSL); (f) Goods (including, without limitation, Inventory, Equipment and As-Extracted Collateral); (g) Instruments; (h) Insurance; (i) Intellectual Property; (j) Investment Related Property (including, without limitation, Deposit Accounts); (k) Letter-of-Credit Rights; (l) Money; (m) Receivables and Receivables Records; (n) Commercial Tort Claims; (o) to the extent not otherwise included in the foregoing, all coal and other minerals severed or extracted from the ground (including all severed or extracted coal purchased, acquired or obtained from other Persons), and all Accounts, General Intangibles and Products and Proceeds thereof or related thereto, regardless of whether any such coal or other minerals are in raw form or processed for sale and regardless of whether or not the Company or any Grantor had an interest in the coal or other minerals before extraction or severance; (p) to the extent not otherwise included above, all other personal property of any kind and all Collateral Records, Collateral Support and Supporting Obligations relating to any of the foregoing; and (q) to the extent not otherwise included above, all Proceeds, products, accessions, rents and profits of or in respect of any of the foregoing (collectively, the "Prepetition Term Loan Collateral").

(b) The Prepetition Secured Notes.

(i) Pursuant to that certain indenture, dated as of May 6, 2011 (as heretofore supplemented from time to time, the "Prepetition Indenture") by and among Xinergy Corp., as issuer, the guarantors listed therein and Wells Fargo Bank, National Association, as trustee and collateral trustee (in such capacities, the "Prepetition Indenture Trustee"), Xinergy Corp. issued 9.25% senior secured notes due 2019 (the "Prepetition Secured Notes", and holders thereof, the "Prepetition Secured Noteholders", and together with the Prepetition Lenders and the Prepetition Indenture Trustee, collectively, the "Prepetition Secured Parties").

(ii) As of the Petition Date, the outstanding aggregate principal amount of Prepetition Secured Notes issued under the Prepetition Indenture was $195,000,000 (together with all other outstanding Obligations, as defined in the Indenture, including interest, fees, expenses and other charges, the "Prepetition Secured Notes Debt", and together with the Prepetition Term Loan Debt, collectively, the "Prepetition Debt").

(iii) To secure the Prepetition Secured Notes Debt, the Debtors and Prepetition Indenture Trustee entered into that collateral trust agreement, dated as of May 6, 2011 (the "Prepetition Collateral Trust Agreement," and together with the Indenture and all agreements, documents, certificates and instruments delivered or executed from time to time in connection therewith, as hereafter amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and hereof, collectively, the "Prepetition Secured Notes Documents," and together with the Prepetition Term Loan Documents, the "Prepetition Documents"), pursuant to which the Debtors granted to the Prepetition Indenture Trustee, for the benefit of itself and the Prepetition Secured Noteholders, valid, binding, perfected, second-priority liens and security interests (the "Prepetition Notes Liens," and together with the Prepetition Term Loan Liens, the "Prepetition Liens") in all property and assets of the issuer and guarantors under the Indenture, except for Excluded Assets (as defined in the Prepetition Secured Notes Documents), subject and subordinate to the Prepetition Term Loan Collateral (the "Prepetition Notes Collateral," and together with Prepetition Term Loan Collateral, the "Prepetition Collateral").

(c) The Prepetition Liens are valid, binding, enforceable, non-avoidable and perfected liens and the Prepetition Debt constitutes the legal, valid, binding, enforceable and non-avoidable obligations of the applicable borrowers and guarantors, enforceable against

them in accordance with their respective terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and no portion of the Prepetition Liens or Prepetition Debt is subject to any challenge or defense, including avoidance, reduction, offset, attachment, disallowance, disgorgement, recharacterization, surcharge, recovery or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law.

(d) the Prepetition Debt and the Prepetition Collateral are not and shall not be subject to any attachment, contest, attack, rejection, recoupment, reduction, defense, counterclaim, setoff, offset, recharacterization, avoidance or other claim (as "claim" is defined by section 101(5) of the Bankruptcy Code), impairment, disallowance, counterclaim, subordination (whether equitable, contractual, or otherwise, except for any lien subordination under the Prepetition Collateral Trust Agreement contemplated herein), cause of action or any other challenge of any nature under the Bankruptcy Code (including, without limitation, under chapter 5 of the Bankruptcy Code), under applicable nonbankruptcy law or otherwise (including, without limitation, any applicable state Uniform Fraudulent Transfer Act or Uniform Fraudulent Conveyance Act);

(e) subject to the reservation of rights set forth in paragraph 25 below, including without limitation the preservation of the Creditors' Committee's right to seek derivative standing to assert Claims and Defenses (defined in paragraph 25 below) on behalf of the Debtors' estates before the expiration of the Challenge Period in accordance with the provisions of paragraph 25(b) below, the Debtors and their estates hereby absolutely and unconditionally forever waive, discharge and release each of the Prepetition Lenders, the Prepetition Indenture Trustee and the Prepetition Secured Noteholders and each of their respective present and former predecessors, successors, assigns, affiliates, members, partners,

managers, current and former equity holders, agents, attorneys, financial advisors, consultants, officers, directors, employees and other representatives thereof (all of the foregoing, solely in their respective capacities as such, collectively, the "Prepetition Secured Party Releasees") of any and all "claims" (as defined in the Bankruptcy Code), counterclaims, actions, causes of action (including, without limitation, causes of action in the nature of "lender liability"), defenses, demands, debts, accounts, contracts, liabilities, setoff, recoupment or other offset rights against any and all of the Prepetition Secured Party Releasees, whether arising at law or in equity, relating to and/or otherwise in connection with the applicable Prepetition Debt, the Prepetition Liens, Prepetition Collateral or the debtor-creditor relationship among any of the applicable Prepetition Lenders, Prepetition Indenture Trustee or the Prepetition Secured Noteholders, on the one hand, and the Debtors, on the other hand, from the beginning of time until immediately preceding the entry of this Final Order, including, without limitation, (i) any recharacterization, subordination, avoidance or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state law, federal law or municipal law and (ii) any right or basis to challenge or object to the amount, validity or enforceability of the applicable Prepetition Debt or any payments made on account of the applicable Prepetition Debt, or the validity, enforceability, priority or non-avoidability of the applicable Prepetition Liens or the Prepetition Collateral securing the applicable Prepetition Debt.

(f) effective upon entry of this Order, the Debtors and their estates hereby absolutely and unconditionally forever waived, discharged and released each of the DIP Agent and the DIP Lenders and each of their respective present and former predecessors, successors, assigns, affiliates, members, partners, managers, current and former equity holders, agents,

attorneys, financial advisors, consultants, officers, directors, employees and other representatives thereof (all of the foregoing, solely in their respective capacities as such, collectively, the "DIP Party Releasees") of any and all "claims" (as defined in the Bankruptcy Code), counterclaims, actions, causes of action (including, without limitation, causes of action in the nature of "lender liability"), defenses, demands, debts, accounts, contracts, liabilities, setoff, recoupment or other offset rights against any and all of the DIP Party Releasees, whether arising at law or in equity, relating to and/or otherwise in connection with the applicable DIP Obligations, DIP Liens, DIP Collateral or the debtor-creditor relationship among any of the DIP Agent or DIP Lenders, on the one hand, and any of the Debtors, on the other hand, from the beginning of time until immediately preceding the entry of this Order, including, without limitation, (i) any recharacterization, subordination, avoidance or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state law, federal law or municipal law and (ii) any right or basis to challenge or object to the amount, validity or enforceability of the applicable DIP Obligations or any payments made on account of the applicable DIP Obligations, or the validity, enforceability, priority or non-avoidability of the applicable DIP Liens securing the applicable DIP Obligations; provided that, nothing in the Interim Order or herein shall relieve the DIP Party Releasees from fulfilling their obligations or commitments under the DIP Facility or operate as a release related thereto.

5. Cash Collateral. For purposes of this Final Order, the term "Cash Collateral," including, without limitation, all cash proceeds of Prepetition Collateral, shall have the meaning ascribed to it in section 363(a) of the Bankruptcy Code.

6. Use of Cash Collateral. The Debtors are hereby authorized, subject to the terms and conditions of the DIP Documents, this Final Order, the Prepetition Collateral Trust Agreement and in accordance with the Budget (as defined below), to use the Cash Collateral, during the period from the Petition Date through termination of the DIP Obligations pursuant to the DIP Documents, solely for working capital and general corporate purposes. The Debtors' right to use the Cash Collateral shall terminate automatically on the earlier of: (i) the Maturity Date, as defined in the DIP Documents; and (ii) the occurrence of an Event of Default under any DIP Documents, pursuant to which the DIP Agent provides the Debtors, with a copy to the Debtors' counsel, five (5) days' prior written notice (which shall run concurrently with any notice provided under the applicable DIP Documents).

7. Findings Regarding the Financing and Use of Cash Collateral.

(a) Good cause has been shown for the entry of this Final Order.

(b) The Debtors have a need to obtain the full amount of the financing provided under the DIP Facility and to use the Cash Collateral to, among other things, permit the orderly continuation of their businesses, preserve their going concern value, maintain business relationships with vendors, suppliers and customers, satisfy payroll obligations, make capital expenditures, pay for certain costs and expenses related to the Debtors' Chapter 11 Cases, and satisfy the Debtors' other working capital and operational needs. The access of the Debtors to sufficient working capital and liquidity made available through the DIP Facility and the use of Cash Collateral and other financial accommodations under the DIP Facility and hereunder is vital to the preservation and maintenance of the Debtors' going concern value and to the Debtors' successful reorganization.

(c) The Debtors are unable to obtain sufficient financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable solely under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code.

(d) The DIP Agent and the DIP Lenders are willing to provide the DIP Facility, subject to the terms and conditions set forth in the DIP Documents and the provisions of this Order, as applicable, and provided that the DIP Liens, the Superpriority Claims and other protections granted by this Order and the DIP Documents will not be affected by any subsequent reversal or modification of this Order or any other order, as provided in section 364(e) of the Bankruptcy Code, which is applicable to the DIP Facility approved by this Order. The DIP Agent and the DIP Lenders have acted in good faith in agreeing to provide the DIP Facility approved by this Order and to be further evidenced by the DIP Documents and their reliance on the assurances referred to above is in good faith.

(e) Among other things, entry of this Order will minimize disruption of the Debtors' businesses and operations by enabling them to meet payroll and other critical expenses, including vendor and professional fees. The DIP Facility as set forth herein is vital to avoid immediate and irreparable loss or harm to the Debtors' estates, which will otherwise occur if immediate access to the DIP Facility is not obtained. Consummation of the DIP Facility pursuant to the terms of this Order therefore is in the best interests of the Debtors' estates.

(f) The DIP Documents and the DIP Facility contemplated thereunder, each as authorized hereunder, have been negotiated in good faith and at arm's length among the

Debtors, the DIP Agent and the DIP Lenders, and the terms of the DIP Facility are fair and reasonable under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and are supported by reasonably equivalent value and fair consideration. All of the Debtors' obligations and indebtedness arising under, in respect of or in connection with the DIP Facility and the DIP Documents, including the Obligations (as defined in the DIP Documents, collectively, the "DIP Obligations"), shall be deemed to have been extended by the DIP Agent and the DIP Lenders and their affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Order or any provision hereof is vacated, reversed or modified on appeal or otherwise.

(g) The majority of the Prepetition Secured Noteholders have consented to the Debtors' entry into the DIP Facility on the terms described herein and therein, including the priming of their Prepetition Notes Liens by the DIP Liens in exchange for adequate protection of their interest in the Prepetition Collateral as set forth in this Order and to the Refinancing.

(h) This Court concludes that entry of this Order is in the best interests of the Debtors and their estates and creditors as its implementation will, among other things, allow the Debtors to facilitate their chapter 11 goals and maximize the value of their assets.

(i) Based upon the record before the Bankruptcy Court, the terms of the use of Cash Collateral and the adequate protection granted in this Final Order have been negotiated at arms' length and in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and are in the best interests of the Debtors, their estates and creditors and are consistent with the Debtors' fiduciary duties.

8. Authorization of the Financing and the DIP Documents.

(a) The Borrower is hereby authorized to borrow the full amount of money pursuant to the DIP Facility, and the guarantors under the DIP Facility are hereby authorized to guarantee such borrowings and the Borrower's obligations with respect to such borrowings, up to an aggregate principal amount of $40,000,000 (plus interest, fees, amounts paid-in-kind, prepayment premiums, original issue discount, expenses (including professional fees and expenses whether incurred pre- or post-petition) and other amounts, in each case, as provided for in the DIP Documents) under the DIP Facility, in accordance with the terms of this Order and the DIP Documents, which borrowings shall be used for all purposes permitted under the DIP Documents, including, without limitation, to consummate the Refinancing, to provide working capital for the Debtors and to pay interest, fees and expenses (including, the DIP Agent's and DIP Lenders' professional fees and expenses whether incurred pre- or post-petition) in accordance with this Order and the DIP Documents. Of the $40,000,000 specified above (a) $27,500,000 was made available to the Borrower upon entry of the Interim Order and (b) the remaining $12,500,000 will be made available to the Borrower as a delayed draw term loan after the entry of this Final Order, with the actual principal amount available to be borrowed at any time being subject to conditions set forth in the DIP Documents and this Final Order.

(b) The Debtors were, pursuant to the Interim Order, and are hereby authorized and directed to execute, issue, deliver, enter into and adopt, as the case may be, the DIP Documents to be delivered pursuant hereto or thereto or in connection herewith or therewith, including, without limitation, the Budget (as defined herein).

(c) In furtherance of the foregoing and without further approval of this Court, each Debtor was, pursuant to the Interim Order, and is hereby authorized and directed to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages and financing statements), and, without further application to the Court, to pay all fees referred to in this Final Order and in the DIP Documents including, without limitation, the reasonable fees and out-of-pocket expenses of the professionals of the DIP Agent and the DIP Lenders (whether incurred pre-or post-petition).

(d) The Debtors are further hereby authorized to execute, deliver and perform one or more amendments, waivers, consents or other modifications to and under the DIP Documents, in such form as the Debtors and the DIP Agent may agree, and no further approval of the Bankruptcy Court shall be required for amendments, waivers, consents or other modifications to and under the DIP Documents (and any reasonable fees paid in connection therewith) that do not (A) shorten the maturity or the scheduled termination date thereunder, or (B) increase the commitments or the rate of interest (other than invoking the default rate upon an Event of Default) payable thereunder.

(e) The Debtors are further hereby authorized and directed to (i) make the non-refundable payment to the DIP Agent or the DIP Lenders, as the case may be, of any fees and other amounts due, including any reimbursement of indemnified obligations referred to in the DIP Documents (and in any separate letter agreements between such applicable parties and the Debtors in connection with the DIP Facility) and reasonable costs and expenses as may be due from time to time, including, without limitation, the reasonable fees and expenses of the professionals retained as provided for in the DIP Documents (whether incurred pre-or post-

petition), without the need to file retention motions or fee applications; (ii) perform all other acts required under or in connection with the DIP Documents, including the granting and perfection of the DIP Liens and the Superpriority Claims as permitted herein and therein; and (iii) cause the execution and delivery of and performance under the DIP Facility's guarantees.

(f) Upon execution and delivery of the DIP Documents, pursuant to the provisions of the Interim Order, the DIP Documents constituted, and by the provisions of this Final Order, shall constitute valid and binding obligations of the Debtors, enforceable against each Debtor party thereto in accordance with their terms, the Interim Order (as applicable) and this Final Order. No obligation, payment, transfer or grant of a security or other interest under the DIP Documents, the Interim Order or this Final Order shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or any applicable law (including, without limitation, under section 502(d) of the Bankruptcy Code), or subject to any defense, reduction, set-off, recoupment or counterclaim.

(g) The Debtors' borrowings from the DIP Lenders under the DIP Facility and this Order will be used in a manner consistent with the terms and conditions of the applicable DIP Documents and only in express accordance with and to the extent set forth in the Budget (as defined below), solely (a) to consummate the Refinancing which occurred immediately following entry of the Interim Order, whereupon the Prepetition Term Loan Liens were released and terminated except that (i) unless otherwise ordered by the Court, if any Prepetition Term Loan Debt is subsequently reinstated after the payment thereof because such payment (or any portion thereof) is required to be returned or repaid to the Debtors or the DIP Lenders then such Prepetition Term Loan Liens shall be reinstated (unless such Prepetition Term Loan Liens shall have been avoided) and (ii) such reinstated Prepetition Term Loan Liens shall be junior

and subordinate in all respects to the DIP Lenders' liens on and security interests in the DIP Collateral (as defined below) (including, without limitation, the DIP Liens (as defined below)) granted under this Final Order and/or the DIP Documents (such junior liens and security interests of the Prepetition Lenders are hereinafter referred to as the "Contingent Liens", and any such reinstated Prepetition Term Loan Debt described in clause (i) of this sentence is hereinafter referred to as the "Contingent Prepetition Debt"); and (b) for working capital and other general corporate purposes and payment of fees and expenses in connection with the Cases. The Prepetition Lenders shall deliver or cause to be delivered, at the Debtors' cost and expense, any termination statements, releases and/or assignments in favor of the DIP Agent and the DIP Lenders or other documents, in each case as reasonably requested by the Debtors or the DIP Agent in order to effectuate and/or evidence the release and termination of the Prepetition Term Loan Liens.

(h) In the event that the Prepetition Lenders (in their capacities as such) are ordered by the Bankruptcy Court to disgorge, refund or in any manner repay to the Debtors or their estates any amounts (the "Disgorged Amounts") leading to Contingent Prepetition Debt, the Disgorged Amounts, unless otherwise ordered by the Bankruptcy Court, shall be placed in a segregated interest bearing account in which the Prepetition Lenders shall have the first lien upon, pending a further final, non-appealable order of a court of competent jurisdiction regarding the distribution of such Disgorged Amounts (either returning the Disgorged Amounts to the Prepetition Lenders, distributing such amounts to the Debtors or otherwise); provided that, to the extent the Disgorged Amounts are returned to the Prepetition Lenders, they shall receive such amounts plus any interest accrued at the non-default rate set forth in the Prepetition Term Loan Documents.

(i) (i) The proceeds from the DIP Loans shall not be loaned or advanced to, or invested in (in each case, directly or indirectly), any entity that is not a Debtor, (ii) the proceeds from the DIP Facility loaned or advanced to, or invested in, any non-Borrower Debtor shall be evidenced by an intercompany note, in form and substance reasonably satisfactory to the DIP Agent, for the full amount of the proceeds so loaned, advanced or invested, (iii) such intercompany note shall be pledged to the DIP Agent for the benefit of the DIP Lenders, to secure the applicable DIP Obligations (as defined herein), and (iv) all intercompany liens of the Debtors, if any, will be contractually subordinated to the liens securing the DIP Facility on terms satisfactory to the DIP Agent.

(j) In no event shall the DIP Lenders or the Prepetition Secured Parties be subject to the equitable doctrine of "marshalling" or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral, as applicable.

(k) Following the date of the Interim Order and prior to the entry of this Final Order, the Initial DIP Lenders, through secondary market assignments, provided certain qualified holders of the Prepetition Secured Notes (including the Initial DIP Lenders and each member of the ad hoc group of Prepetition Secured Noteholders) with an opportunity to participate in the DIP Facility on a pro rata basis based on any such holder's holdings of Prepetition Secured Notes as of the Petition Date. For the avoidance of doubt, (i) any portion of the DIP Facility that was not assigned pursuant to the foregoing was allocated on a pro rata basis among the DIP Lenders, and (ii) any assignee pursuant to the assignment process described herein was provided its pro rata share of commitment fees.

9. Superpriority Claims.

(a) Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority senior administrative expense claims against the Debtors with priority over any and all administrative expense claims, adequate protection claims and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code (the "Superpriority Claims"), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall be payable from and have recourse to all pre-petition and post-petition property of the Debtors and their estates and all proceeds thereof, subject only to the payment of the Carve-Out (as defined below) to the extent specifically provided for herein. Any payments, distributions or other proceeds received on account of such Superpriority Claims shall be promptly delivered to the DIP Agent to be applied or further distributed by the DIP Agent on account of the applicable DIP Obligations in such order as is specified in this Order and the applicable DIP Documents. The Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(b) For purposes hereof, the "Carve-Out" means (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the U.S. Trustee under 28 U.S.C. § 1930(a) and 31 U.S.C. § 3717 (as to the U.S. Trustee, in such amount as agreed to by the U.S. Trustee or Order of the Court); (ii) all reasonable fees and expenses incurred by a trustee appointed under section

701 of the Bankruptcy Code in an amount not to exceed $50,000; (iii) to the extent allowed at any time, but subject in all respects to the Budget (as defined in below) and the terms of this Order, all accrued and unpaid fees, disbursements, costs and expenses ("Professional Fees") (other than any monthly fee, restructuring fee, sale fee or other success fee of any investment bankers or financial advisors of the Debtors), incurred by professionals or professional firms retained by the Debtors and the Creditors' Committee, if any, whose retention has been approved by the Court during these Cases pursuant to sections 327 and 1103 of the Bankruptcy Code (collectively, "Professional Persons"), at any time before or on the first business day following delivery by any DIP Agent of a Carve Out Trigger Notice (as defined below), to the extent such Professional Fees are allowed by the Bankruptcy Court whether prior to or after delivery of a Carve Out Trigger Notice; and (iv) after the first business day following delivery by any DIP Agent of the Carve Out Trigger Notice, to the extent allowed by the Bankruptcy Court, all unpaid fees, disbursements, costs and expenses incurred by Professional Persons, in an aggregate amount not to exceed $500,000 (the amount set forth in this clause (iv) being the "Carve-Out Cap"). For purposes of the foregoing, the term "Carve-Out Trigger Notice" shall mean a written notice delivered by the DIP Agent to the Debtors and their lead counsel, the U.S. Trustee, counsel to the Prepetition Lenders, counsel to the Prepetition Indenture Trustee, counsel to the Prepetition Secured Noteholders and lead counsel to the Creditors' Committee, if any, which notice may be delivered following the occurrence and during the continuation of an Event of Default under the applicable DIP Documents, expressly stating that the Carve-Out Cap is invoked and the Event of Default that is alleged to have occurred and be continuing. For the avoidance of doubt and notwithstanding anything to the contrary herein or elsewhere, the Carve-Out shall be senior to all DIP Obligations and liens securing the DIP Obligations. Nothing

herein shall be construed to impair the ability of any party to object to the allowance by the Court of any of the fees, expenses, reimbursement or compensation described in clauses (i), (ii), (iii) and (iv) above.

(c) The DIP Agent and DIP Lenders shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any Professional Persons incurred in connection with these Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Order or otherwise shall be construed (i) to obligate the DIP Agent or the DIP Lenders in any way to pay compensation to or to reimburse expenses of any Professional Persons, or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement; (ii) to increase the Carve-Out if actual allowed Professional Fees are higher in fact than reflected in the Budget (as defined below); or (iii) as consent to the allowance of any professional fees or expenses of any Professional Persons. Any funding of the Carve-Out shall be added to and made a part of the DIP Obligations and secured by the Collateral and otherwise entitled to the protections granted under this Final Order, the DIP Documents, the Bankruptcy Code and applicable law. The DIP Agent's and DIP Lenders' liens and claims shall, however, be subject to the Carve-Out as set forth in this Final Order.

10. DIP Liens.

As security for the DIP Obligations, effective and perfected upon the date of the Interim Order and without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the DIP Agent or any DIP Lender of, or over, any DIP Collateral, the security interests and liens identified below are hereby granted to the DIP Agent for its own benefit and the respective benefit of the DIP Lenders (all property

identified in clauses (a), (b), (c), (d) and (e) below, together with all other property to which the DIP Agent is granted a lien under the applicable DIP Documents (other than as expressly excluded pursuant to this Order), being collectively referred to as the "DIP Collateral"), subject to (a) the terms of the DIP Facility and (b) payment of the Carve-Out as provided herein (all such liens and security interests granted to the DIP Agent, for its benefit and for the benefit of the DIP Lenders, pursuant to this Order and the DIP Documents, the "DIP Liens"). Notwithstanding the foregoing, any DIP Agent may take any action (and is, to the extent necessary in connection therewith, hereby granted relief from the automatic stay), to evidence, confirm, validate or perfect, or to ensure the contemplated priority of, such liens, and the Debtors shall execute and deliver to the DIP Agent and the DIP Lenders all such financing statements, notices and other documents as the DIP Agent or any DIP Lender may reasonably request in connection therewith and shall deliver account control agreements or other documentation in respect of and evidencing perfection of all collection and deposit accounts to the extent required by the DIP Documents.

(a) First Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior (but subject to the priorities set forth in the DIP Documents) security interest in and lien upon all pre- and postpetition tangible and intangible property of the Debtors and the Debtors' estates, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date is not subject to valid, perfected and non-avoidable liens (or to valid liens in existence as of the Petition Date that are subsequently perfected as permitted by section 546(b) of the Bankruptcy Code) (collectively, "Unencumbered Property"), including without limitation, all inventory, accounts, accounts receivable, general intangibles (or "intangibles" under any applicable Canadian PPSL), chattel paper, contracts, owned real estate, real and

personal property leaseholds, property, plants, fixtures, machinery, equipment, as-extracted collateral, all coal and other minerals as extracted from the ground, vehicles, vessels, deposit accounts, commercial tort claims, documents, equity interests, books and records, cash and cash collateral of the Debtors (whether maintained with the DIP Agent or otherwise) and any investment of such cash and cash collateral, letter of credit rights, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property and stock of subsidiaries of the Debtors.

(b) Priming Liens on Prepetition Collateral. Pursuant to section 364(d)(1) of the Bankruptcy Code, the DIP Agent, for the benefit of the DIP Lenders, shall have a valid, binding, continuing, enforceable, fully-perfected first-priority senior priming lien on, and security interest upon all pre- and post-petition property of the Debtors and any other obligors or credit parties under the DIP Facility, including, without limitation, cash and cash collateral of the Debtors (whether maintained with the DIP Agent or otherwise), including Cash Collateral, and any investment of such cash and cash collateral, inventory, accounts receivable, letter of credit rights and other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, equipment, vehicles, general intangibles, documents, instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, capital stock of subsidiaries and the proceeds, product, offspring of profits of all the foregoing), whether now existing or hereafter acquired, that is subject to the existing liens (i) presently securing the Prepetition Debt and (ii) that will secure the Contingent Prepetition Debt in accordance with this Final Order. Such security interests and liens shall be senior in all respects to the interests in such property of the Prepetition Secured Parties arising from current and future liens of the Prepetition Secured Parties

(including, without limitation, the Contingent Liens and the Adequate Protection Liens granted hereunder), but shall not be senior to any valid, perfected and unavoidable interest of other parties arising out of liens, if any, on such property existing immediately prior to the Petition Date. The DIP Collateral shall be deemed to include, among the other assets purported to be collateral as described herein, all collateral securing All-Asset Priority Obligations; the DIP Facility, DIP Obligations and DIP Liens shall be deemed to have all the rights and benefits of All-Asset Priority Debt, All-Asset Priority Obligations and All-Asset Priority Liens (as such terms are defined in the Prepetition Collateral Trust Agreement), in each case, to the extent the proceeds of the DIP Facility refinanced the Prepetition Term Loans.

(c) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected security interest (subject to the priorities set forth in the DIP Documents) in and lien upon all pre- and postpetition tangible and intangible property of the Debtors and the Debtors' estates (other than property described in clauses (a), (b), or (d) of this paragraph 10, as to which the liens and security interests in favor of the DIP Agent will be as described in such clauses), whether now existing or hereafter acquired, that is subject to valid, perfected and unavoidable liens in existence immediately prior to the Petition Date, or to any valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (in each case, other than the Prepetition Liens, the Contingent Liens and the Adequate Protection Liens), which security interests and liens in favor of the DIP Agent are junior to such valid, perfected and unavoidable liens.

(d) Liens Senior to Certain Other Liens. The DIP Liens shall not be subject or subordinate to (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (ii) unless otherwise provided for in the DIP Documents, any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the Debtors.

(e) Notwithstanding the foregoing clauses (a), (b), (c) and (d), the DIP Collateral under this Final Order shall exclude the Debtors' claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code (collectively, "Avoidance Actions"), but shall include any proceeds or property recovered, unencumbered or otherwise the subject of successful Avoidance Actions, whether by judgment, settlement or otherwise ("Avoidance Proceeds").

ADEQUATE PROTECTION OF PREPETITON LENDERS

11. Adequate Protection of Prepetition Lenders. Until the expiration of the Challenge Period with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders, the Prepetition Secured Lenders are entitled, pursuant to sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, to adequate protection of their interest in the Prepetition Collateral, including the Cash Collateral, for and equal in amount to the aggregate diminution in the value of the Prepetition Lenders' interest in the Prepetition Term Loan Collateral, the Prepetition Term Loan Debt and the Contingent Debt, including, without limitation, any such diminution resulting from

the sale, lease or use by the Debtors (or other decline in value) of Cash Collateral and any other Prepetition Term Loan Collateral, the priming of the Prepetition Lenders' security interests and liens in the Prepetition Term Loan Collateral by the DIP Agent and the DIP Lenders pursuant to the DIP Documents and the Interim Order and this Final Order, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. As adequate protection, the Prepetition Lenders are hereby granted the following (collectively, the "Prepetition Lenders Adequate Protection Obligations"):

(a) Adequate Protection Liens. The Prepetition Lenders have been granted under the Interim Order and are hereby granted under this Final Order (effective and perfected upon the date of the Interim Order and without the necessity of the execution by the Debtors of mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of such diminution and the amount of any Contingent Debt, (a) a replacement security interest in and lien upon all the DIP Collateral (excluding Avoidance Actions, but including any Avoidance Proceeds), subject and subordinate only to (i) the DIP Liens and any liens on the DIP Collateral to which such DIP Liens are junior and (ii) the Carve-Out (such liens, the "Prepetition Lenders Adequate Protection Liens") and (b) the Contingent Liens to secure any Contingent Prepetition Debt. Without limiting the generality of the foregoing, (A) the Contingent Liens and the Prepetition Adequate Protection Liens granted to the Prepetition Lenders hereunder shall be junior and subordinate in all respects to the DIP Liens and the Carve-Out; (B) the Contingent Prepetition Debt shall be junior and subordinate in right of payment to all DIP Obligations and the Carve-Out; (C) until such time as all of the DIP Obligations are indefeasibly paid in full in cash in accordance with the DIP Documents and this Final Order, the Prepetition Lenders shall have no right to seek or exercise any

enforcement rights or remedies in connection with the Contingent Prepetition Debt, the Contingent Liens or the Prepetition Adequate Protection Liens, including, without limitation, in respect of the occurrence or continuance of any Event of Default (as defined in the Prepetition Credit Agreement); (D) the Prepetition Lenders shall be deemed to have consented to any sale or disposition of DIP Collateral permitted under the DIP Facility or approved, arranged for or by the DIP Agent or the requisite DIP Lenders, and shall terminate and release upon any such sale or disposition all of its liens on and security interests in such DIP Collateral (where the DIP Agent also releases any DIP Liens as necessary); (E) the Prepetition Lenders shall deliver or cause to be delivered, at the Debtors' cost and expense (for which the Prepetition Lenders shall be reimbursed upon submission to the Debtors of invoices or billing statements), any termination statements, releases or other documents necessary to effectuate and/or evidence the release and termination of any Prepetition Lenders' liens on or security interests in any portion of the DIP Collateral subject to any sale or disposition permitted under the DIP Facility or approved or arranged for by the DIP Agent or any of the DIP Lenders (where the DIP Agent also releases any DIP Liens as necessary); and (F) upon this Final Order becoming a final and nonappealable order and the expiration of the Challenge Period (as defined below) with no challenge having been brought, or if such a challenge is brought, upon the entry of a final judgment and the payment to the Prepetition Lenders of all amounts owed by the Debtors under the Prepetition Term Loan Documents, the Interim Order and this Final Order, the Contingent Liens and the Prepetition Adequate Protection Liens shall terminate and be released (automatically and without further action of the parties), and the Prepetition Lenders shall execute and deliver such agreements to evidence and effectuate such termination and release as the Debtors or the DIP Agent may request, and the Debtors and the DIP Agent

shall be authorized to file on behalf of the Prepetition Lenders such UCC termination statements or such other filings as may be applicable to the extent such authorization is required under the Uniform Commercial Code of the applicable jurisdiction.

(b) Section 507(b) Claim. The Prepetition Lenders have been granted under the Interim Order and are hereby granted under this Final Order, subject only to the Superpriority Claims and the Carve-Out, a superpriority claim (the "Prepetition Lenders Adequate Protection Claim"), as provided for in sections 503(b) and 507(b) of the Bankruptcy Code, immediately junior to the Superpriority Claims and any other claims under section 364(c)(1) of the Bankruptcy Code held by the DIP Agent and the DIP Lenders, and payable from and having recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof (excluding Avoidance Actions, but including Avoidance Proceeds); provided, however, that the Prepetition Lenders shall not receive or retain any payments, property or other amounts in respect of the superpriority claims under sections 503(b) and 507(b) of the Bankruptcy Code granted hereunder or under the Prepetition Term Loan Documents unless and until the DIP Obligations have indefeasibly been paid in full in cash in accordance with the DIP Documents; and provided further, that the Prepetition Lenders hereby irrevocably waive the section 503(b) claim granted to them by the Interim Order and this Final Order upon the expiration of the Challenge Period with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders.

(c) Fees and Expenses. The Debtors are authorized and directed under sections 361, 363 and 364 of the Bankruptcy Code to make adequate protection payments as follows: (i) payment of interest on a monthly basis at the default rate as set forth in the

Prepetition Credit Agreement (only to the extent of any amounts outstanding), (ii) immediate, non-refundable cash payment of all accrued and unpaid fees and disbursements owing to the Prepetition Lenders under the Prepetition Documents and incurred prior to the Petition Date, (iii) until the expiration of the Challenge Period with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders, current cash payments of all reasonable out-of-pocket costs, fees and expenses payable to the Prepetition Lenders under the Prepetition Documents as may hereafter be incurred in accordance with the Prepetition Documents, (iv) all reasonable fees, costs, expenses and disbursements (whether incurred pre-or post-petition) of one primary counsel, Paul, Weiss, Rifkind, Wharton & Garrison LLP, local counsel, including, without limitation, in Virginia, Kutak Rock LLP, and Canada, Fasken Martineau Dumoulin LLP, and, commencing March 6, 2015, all reasonable fees, costs, expenses, disbursements and indemnification obligations of one financial advisor, Houlihan Lokey Capital, Inc., to the Prepetition Lenders, in accordance with the terms set forth in Houlihan Lokey Capital, Inc.'s engagement letter as agreed to by the Prepetition Lenders, promptly upon receipt of invoices therefor without the need to file retention motions or fee applications, and (v) continued maintenance and insurance of the Prepetition Term Loan Collateral and the DIP Collateral as required under the Prepetition Term Loan Documents and the DIP Documents (collectively, the "Prepetition Lenders Adequate Protection Payments").

ADEQUATE PROTECTION OF PREPETITON SECURED NOTEHOLDERS

12. Adequate Protection of Prepetition Secured Noteholders. The Prepetition Secured Noteholders are entitled, pursuant to sections 361, 363(e), 364(d)(1) and 507 of the Bankruptcy Code, to adequate protection of their interest in the Prepetition Notes Collateral,

including any Cash Collateral, for and equal in amount to any aggregate diminution in the value of the Prepetition Secured Noteholders' interests in the Prepetition Notes Collateral, including, without limitation, any such diminution resulting from the sale, lease or use by the Debtors (or other decline in value) of Cash Collateral and the Prepetition Notes Collateral, the priming of the Prepetition Secured Noteholders' security interests and liens in the Prepetition Notes Collateral by the DIP Agent and the DIP Lenders pursuant to the DIP Documents and this Final Order and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. As adequate protection, the Prepetition Indenture Trustee and the Prepetition Secured Noteholders are hereby granted the following (collectively, the "Prepetition Noteholders Adequate Protection Obligations", and together with the Prepetition Lenders Adequate Protection Obligations, the "Adequate Protection Obligations"):

(a) Prepetition Secured Noteholder Adequate Protection Liens. The Prepetition Indenture Trustee, on behalf of itself and for the benefit of the Prepetition Secured Noteholders, has been granted under the Interim Order and is hereby granted under this Final Order (effective and perfected upon the date of the Interim Order and without the necessity of the execution by the Debtors of mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of such diminution, a replacement security interest in and lien upon all the DIP Collateral (excluding Avoidance Actions, but including Avoidance Proceeds), subject and subordinate only to (i) the DIP Liens, (ii) the Carve-Out, (iii) the Prepetition Liens, and (iv) the Prepetition Lenders Adequate Protection Liens (the "Prepetition Noteholders Adequate Protection Liens", and together with the Prepetition Lenders Adequate Protection Liens, the "Adequate Protection Liens"). The Prepetition Indenture Trustee and the Prepetition Secured Noteholders were, pursuant to the Interim Order,

and are hereby authorized, but not required, to file or record financing statements, intellectual property filings, mortgages, notices of lien or similar instruments in any jurisdiction or take any other action in order to validate and perfect the Prepetition Secured Noteholders Adequate Protection Liens. Whether or not the Prepetition Indenture Trustee and the Prepetition Secured Noteholders shall, in their respective sole discretion, choose to file such financing statements, intellectual property filings, mortgages, notices of lien or similar instruments or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination as of the date of entry of the Interim Order.

(b) Fees and Expenses. The Debtors are authorized and directed under sections 361, 363 and 364 of the Bankruptcy Code to make non-refundable adequate protection payments which shall include (a) ongoing payments, when due or as soon as practicable thereafter, of all reasonable and documented fees, costs, expenses and disbursements, including (i) after entry of this Final Order, $450,000 in fees and expenses payable to the ad hoc group of Prepetition Secured Noteholders' primary prepetition counsel, (ii) the ad hoc group's postpetition primary counsel, Paul, Weiss, Rifkind, Wharton & Garrison LLP, local counsel, including, without limitation, in Virginia, Kutak Rock LLP, and Canada, Fasken Martineau Dumoulin LLP (whether incurred pre- or post-petition), and, commencing March 6, 2015, all reasonable and documented fees, costs, expenses, disbursements and indemnification obligations of one financial advisor, Houlihan Lokey Capital, Inc., in accordance with the terms set forth in Houlihan Lokey Capital, Inc.'s engagement letter as agreed to by the Prepetition Secured Noteholders, each in its capacity as advisor, to the Prepetition Secured Noteholders, and in each case, incurred in connection with the Debtors, the Chapter 11 Cases

or the transactions contemplated hereby and (iii) fees and expenses (including attorneys' fees) of the Prepetition Indenture Trustee incurred (whether pre- or post-petition) in connection with the Debtors, the Chapter 11 Cases or the transactions contemplated hereby to the extent payable under the Prepetition Indenture; and (b) continued maintenance and insurance of the Prepetition Notes Collateral and the DIP Collateral as required under the Prepetition Documents and the DIP Documents (collectively, the "Prepetition Noteholders Adequate Protection Payments", and together with the Prepetition Lenders Adequate Protection Payments, the "Adequate Protection Payments").

(c) Prepetition Secured Noteholders' Section 507(b) Claim. The Prepetition Indenture Trustee, on behalf of itself and the Prepetition Secured Noteholders, has been granted under the Interim Order and is hereby granted under this Final Order, subject to the Carve-Out, a superpriority claim as provided for in section 507(b) of the Bankruptcy Code, immediately junior to the Superpriority Claims held by the DIP Agent and the DIP Lenders and the Prepetition Lenders Adequate Protection Claim, and payable from and having recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof (excluding Avoidance Actions, but including Avoidance Proceeds); provided that, unless otherwise expressly agreed to in writing by the DIP Agent, the Prepetition Lenders (until expiration of the Challenge Period with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders), the Prepetition Indenture Trustee and the Prepetition Secured Noteholders shall not receive or retain any payments, property or other amounts in respect of the superpriority claims granted under the Interim Order or hereunder or under the Prepetition Documents unless and until the DIP Obligations and Prepetition Term Loan Debt have indefeasibly been paid in cash

in full in accordance with the DIP Documents and this Final Order (the "Prepetition Noteholders Adequate Protection Claim", and together with the Prepetition Lenders Adequate Protection Claim, the "Adequate Protection Claims").

13. Sufficiency of Adequate Protection.

(a) Under the circumstances and given that the Adequate Protection Liens, the Adequate Protection Claims and the Adequate Protection Payments (collectively, the "Adequate Protection Obligations") are consistent with the Bankruptcy Code, the Bankruptcy Court finds that such adequate protection is reasonable and sufficient to protect the interests of the Prepetition Secured Parties. Except as expressly provided herein, nothing contained in this Final Order (including, without limitation, the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims or defenses available in law or equity to any Prepetition Secured Party, the DIP Agent or any DIP Lenders.

(b) Notwithstanding anything in paragraphs 11 and 12 to the contrary, following delivery of a Carve-Out Trigger Notice and prior to the payment to the Prepetition Secured Parties on account of any adequate protection or otherwise, the DIP Obligations shall have been paid in full.

(c) The Adequate Protection Obligations (A) shall not be subject to sections 510, 549, 550 or 551 of the Bankruptcy Code or section 506(c) of the Bankruptcy Code or the "equities of the case" exception of section 552 of the Bankruptcy Code, (B) shall not be subordinate to, or pari passu with, (x) any lien that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or otherwise or (y) any intercompany or affiliate liens or claims of the Debtors, and (C) shall be valid and enforceable

against any trustee, any other estate representative or litigation trust appointed in these Cases or any successor cases, and/or upon the dismissal of any of these Cases.

14. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with enlarged powers, any responsible officer or any other estate representative subsequently appointed in these Cases or any successor cases, shall obtain credit or incur debt pursuant to Bankruptcy Code sections 364(b), 364(c) or 364(d) in violation of the DIP Documents at any time prior to the indefeasible repayment in full in cash of all DIP Obligations and the termination of the DIP Agent's and the DIP Lenders' obligation to extend credit under the DIP Facility, including subsequent to the confirmation of any plan with respect to the Debtors and the Debtors' estates, and such financing is secured by any DIP Collateral, then all the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Agent to be applied as set forth the DIP Documents.

15. Refinancing of the Prepetition Term Loan Debt. Following the entry of the Interim Order and as part of the initial borrowing under the DIP Facility, the Debtors used a portion of the proceeds from the DIP Facility, which portion was designated as "All-Asset Priority Lien Debt" (as such term is defined in the Prepetition Collateral Trust Agreement), in accordance with the DIP Documents and the Interim Order to consummate the Refinancing, upon which, the existing liens on the Prepetition Term Loan Collateral were released and terminated (which shall be deemed to have occurred upon the expiration of the Challenge Period (as defined below) with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders). After the Refinancing, the Debtors and the DIP Agent were, pursuant to the Interim Order, and are hereby authorized to execute and file any termination statements, releases or other documents

necessary to effectuate and/or evidence the release and termination of the Prepetition Lenders' liens on or security interests in any portion of the Prepetition Term Loan Collateral, and the Prepetition Lenders shall deliver or cause to be delivered, at the Debtors' cost and expense, any termination statements, releases and/or assignments in favor of the DIP Agent, the DIP Lenders or other documents, in each case as reasonably requested by the Debtors or the DIP Agent in order to effectuate and/or evidence the release and termination of the Prepetition Liens. Notwithstanding anything to the contrary in the Interim Order, this Final Order or in any other order of this Court, the Prepetition Term Loan Debt, including, without limitation, All-Asset Priority Lien Debt, All-Asset Priority Obligations and All-Asset Priority Liens (as such terms are defined in the Prepetition Collateral Trust Agreement) shall not be deemed discharged or the Refinancing deemed consummated until the expiration of the Challenge Period with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders.

16. Disposition of DIP Collateral; Rights of DIP Agent and DIP Lenders. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral without the prior written consent of the DIP Agent (and no such consent shall be implied, from any other action, inaction or acquiescence), except as expressly permitted in the DIP Documents.

17. Protection of DIP Lenders' Rights.

(a) The automatic stay provisions of section 362 of the Bankruptcy Code shall be vacated and modified (and any stay of such vacation or modification under Bankruptcy Rule 4001(a)(3) is waived) without further order of the Bankruptcy Court to the extent necessary to permit the DIP Agent and the DIP Lenders to exercise all rights and remedies provided for in

the DIP Documents and this Final Order without further order of or application or motion to the Bankruptcy Court, provided that, such rights and remedies that are exercisable only upon the occurrence of an Event of Default (as defined in the DIP Documents and as set forth in this Final Order), but subject in all respects to the Carve-Out Cap, shall require the DIP Agent to give five (5) days' prior written notice (which five days' notice period (the "Default Notice Period") shall run concurrently with any notice provided under the DIP Documents) to the U.S. Trustee, the Debtors, the Prepetition Lenders, the Prepetition Indenture Trustee, the Prepetition Secured Noteholders, and the Creditors' Committee, if any, of such DIP Agent's intent to exercise such rights and remedies; provided that, the Debtors shall not have the right to contest the enforcement of the remedies set forth in this Final Order and the DIP Documents on any basis other than an assertion that an Event of Default has not occurred or has been cured within the cure periods expressly set forth herein or in the applicable DIP Documents; and provided further that during the Default Notice Period, the Debtors shall have no authority to borrow under the DIP Facility unless the DIP Agent otherwise consents, and the DIP Agent may terminate the DIP Facility and declare the DIP Obligations to be immediately due and payable, and the Debtors' authority to use Cash Collateral shall be as set forth in the Budget and limited solely to payment of expenses critical to preservation of the Debtors' estates and the payment of the fees, costs and expenses to administer these Chapter 11 Cases, as agreed by the DIP Agent in its sole discretion. The Debtors and the Prepetition Secured Parties shall waive any right to seek relief under the Bankruptcy Code, including under section 105 thereof, to the extent such relief would restrict or impair the rights and remedies of the DIP Agent and the DIP Lenders set forth in this Final Order and in the DIP Documents.

(b) The DIP Agent's or any DIP Lender's delay or failure to exercise rights and remedies under the applicable DIP Documents or this Final Order shall not constitute a waiver of such DIP Agent's or such DIP Lender's rights hereunder, thereunder or otherwise, unless any such waiver is pursuant to a written instrument executed in accordance with the terms of the applicable DIP Documents.

(c) Except as otherwise expressly set forth in this Final Order, the Debtors irrevocably waive any right, without the prior written consent of the DIP Agent, (a) to grant or impose, under section 364 of the Bankruptcy Code or otherwise, liens or security interests in any DIP Collateral, whether senior, equal or subordinate to the DIP Agent's liens and security interests; (b) to use, or seek to use, Cash Collateral or (c) to modify or affect any of the rights of the DIP Agent or the DIP Lenders under this Final Order or the DIP Documents by any plan of reorganization proposed or confirmed in these Chapter 11 Cases or subsequent order entered in these Chapter 11 Cases.

18. Approved Budget.

(a) For purposes of this Order, the term "Budget" means the following: (a) the budget, attached to the Interim Order as Exhibit A, the "Initial Budget," which is an initial 13-week budget delivered by the Debtors to the DIP Agent prior to the Petition Date and commencing with the week during which the Petition Date occurs, containing line items of sufficient detail to reflect the Debtors' consolidated projected receipts and disbursements for such 13-week period, including, without limitation, the anticipated weekly uses of the DIP Facility and cash collateral for such period, and which shall provide, among other things, for the payment of the fees and expenses, including professional fees relating to the DIP Facility (whether incurred pre-or post-petition), ordinary course expenses, fees and expenses related to

the Cases, and working capital and other general corporate needs, which Initial Budget was in form and substance acceptable and approved by the DIP Agent and Majority Lenders (as defined in the DIP Facility), in their sole discretion (as such Initial Budget shall be amended, supplemented and/or extended in the manner set forth in this Final Order, the "Budget"); and (b) on or before 5:00 p.m. prevailing Eastern Time on the first Business Day (as defined in the DIP Facility) of each month following the Petition Date, commencing with May 1, 2015, the Debtors shall furnish to the DIP Agent and counsel to the Creditors' Committee a monthly supplement to the Initial Budget (or the previously supplemented Budget, as the case may be), covering a 13-week period that commences with the week such supplement is delivered, together with a variance analysis from the Budget (or the previously supplemented Budget, as the case may be). Such monthly supplements to the Budget shall become the Budget upon the earlier of (a) written acknowledgement from the DIP Agent that the proposed supplement is substantially in the form of the Initial Budget (or the previously supplemented Budget, as the case may be) and is otherwise in form and substance acceptable to and is approved by the DIP Agent and Majority Lenders (provided that any proposed changes in the proposed supplement to any of the Budget figures already covered by the Initial Budget (or the previously supplemented Budget, as the case may be) must be satisfactory to the DIP Agent in its sole discretion) or (b) within 10 Business Days after receipt of such proposed supplement by the DIP Agent, provided that the DIP Agent has not provided a written objection to the proposed supplement; the Initial Budget (or the previously supplemented Budget, as the case may be) shall remain the Budget if the DIP Agent objects to the proposed supplement and until such time as the DIP Agent provides written acknowledgement that a revised version of the proposed supplement is otherwise in form and substance acceptable to and is approved by the

DIP Agent. Notwithstanding anything herein or in the DIP Documents to the contrary, unless specifically authorized hereunder or in writing by the DIP Agent or as may be provided in the Budget, no cash collateral may be paid or transferred to any non-Debtor subsidiary or affiliate of the Debtors.

(b) Notwithstanding anything in the DIP Documents to the contrary, the Debtors shall also deliver to the DIP Agent (i) no later than 5:00 p.m. (ET) on Wednesday of each calendar week following the immediately preceding week, commencing on April 15, 2015, an updated variance report (the "Variance Report") on a weekly basis setting forth (1) actual cash receipts and disbursements for the prior week and (2) all variances, on an individual line item basis and an aggregate basis, as compared to the previously delivered Budget on a weekly and cumulative basis, and an explanation, in reasonable detail, for any material variance, certified by a Senior Officer (as defined in the DIP Facility) of Parent, (ii) no later than 5:00 p.m. (ET) on the first Business Day (as defined in the DIP Facility) of each calendar month, an updated Budget and (iii) no later than the date that the Variance Report for the last week of each month is required to be delivered to the DIP Agent, (x) a variance report on a monthly basis setting forth (1) actual cash receipts and disbursements for the applicable month, (2) all variances, on an individual line item basis and an aggregate basis, as compared to the previously delivered Budget on a monthly basis, and (3) an explanation, in reasonable detail, for any material variance, certified by a Senior Officer (as defined in the DIP Facility) of Parent (the "Budget Variance Report") and (y) a report detailing fees and expenses for professional services incurred by the Debtors during the preceding calendar month. As of the last day of each calendar month commencing with the calendar month ending April 30, 2015, (a) aggregate disbursements of the Debtors (other than professional fees) made as set forth in

the Budget Variance Report for such month shall not be greater than 120% of the aggregate amount specified in the corresponding applicable Budget; and (b) aggregate revenues of the Debtors received as set forth in the Budget Variance Report for such month shall be not less than 80% of the aggregate amount specified in the corresponding applicable Budget.

19. Limitation on Charging Expenses Against Collateral. Except to the extent of the Carve-Out, no expenses of administration of the Cases or any future proceeding that may result therefrom, including a case under chapter 7 of the Bankruptcy Code, shall be charged against or recovered from the Collateral pursuant to section 506(c) of the Bankruptcy Code, the enhancement of collateral provisions of section 552 of the Bankruptcy Code, or any other legal or equitable doctrine (including, without limitation, unjust enrichment) or any similar principle of law, without the prior written consent of the DIP Agent and the DIP Lenders, as the case may be with respect to their respective interests, and no consent shall be implied from any action, inaction or acquiescence by the DIP Agent or the DIP Lenders. In no event shall the DIP Agent or the DIP Lenders be subject to (i) the "equities of the case" exception contained in section 552(b) of the Bankruptcy Code or (ii) the equitable doctrine of "marshaling" or any other similar doctrine with respect to the Collateral.

20. Payment of Fees and Expenses.

(a) No payments (including professional fees and expenses) with respect to the DIP Obligations or the Adequate Protection Obligations shall be subject to Bankruptcy Court approval or required to be maintained in accordance with the U.S. Trustee Guidelines, and no recipient of any such payments shall be required to file any interim or final fee applications with the Bankruptcy Court or otherwise seek the Bankruptcy Court's approval of any such payments; provided, however, such invoices shall be submitted to the Debtors, the

U.S. Trustee, and the Creditors' Committee (if any) at least 10 days prior to the payment thereof.

(b) Seaport Global Securities LLC ("SGS"), the Debtors' financial advisors and investment bankers, stipulates that no DIP Financing Fee (as defined in that certain engagement letter, dated as of December 7, 2014, with the Debtors (the "Engagement Letter")) shall be payable to SGS, under Section 4(c) of the Engagement Letter or otherwise, as a result of the Debtors' entry into the DIP Documents and the funding provided thereunder (including any incremental funding contemplated thereunder) in accordance with the Interim Order and this Final Order.

21. Credit Bid. The DIP Agent and the DIP Lenders, shall have the right to credit bid a portion of or all of their respective claims in connection with a sale of the Debtors' assets under section 363 of the Bankruptcy Code or under a plan of reorganization. The Prepetition Lenders and the Prepetition Secured Noteholders (subject to the terms of the Prepetition Documents) shall have the right to credit bid a portion of or all of their respective claims in connection with a sale of the Debtors' assets under section 363 of the Bankruptcy Code or under a plan of reorganization, unless the Bankruptcy Court, for cause, orders otherwise.

22. Perfection of DIP Liens.

(a) The DIP Agent and the DIP Lenders were, pursuant to the Interim Order, and are hereby authorized, but not required, to file or record (and to execute in the name of the Debtors, as its true and lawful attorney, with full power of substitution, to the maximum extent permitted by law) financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession of or control over deposit accounts and securities accounts or any other asset, in each case, to validate and perfect the

liens and security interests granted to them in the DIP Documents, the Interim Order and this Final Order. Whether or not the DIP Agent on behalf of the DIP Lenders, each in its discretion, chooses to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over deposit accounts and securities accounts or any other assets, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge dispute or subordination, at the time and on the date of entry of the Interim Order. Upon the reasonable request of the DIP Agent, without any further consent of any party, the DIP Agent, the Debtors, each DIP Lender and the Prepetition Secured Parties are authorized and directed to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the DIP Agent to further perfect the DIP Liens.

(b) A certified copy of this Final Order may, in the discretion of the DIP Agent, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Final Order for filing and recording. For the avoidance of doubt, the automatic stay provisions of section 362(a) of the Bankruptcy Code shall be modified (and any stay of such modification under Bankruptcy Rule 4001(a)(3) is waived) to the extent necessary to permit the DIP Agent to take all actions, as applicable, referenced in this subparagraph (b) and in the immediately preceding subparagraph (a).

(c) Any provision of any lease or other license, contract or other agreement that requires (i) the consent or approval of one or more landlords or other parties or (ii) the payment of any fees or obligations to any governmental entity, in order for any Debtor to pledge, grant, sell, assign, or otherwise transfer any such leasehold interest, or the proceeds

thereof, or other Collateral related thereto, was, under the Interim Order, and is hereby deemed to be inconsistent with the applicable provisions of the Bankruptcy Code. Any such provision shall have no force and effect with respect to the granting of post-petition liens on such leasehold interest or the proceeds of any assignment and/or sale thereof by any Debtor in favor of the DIP Lenders in accordance with the terms of the DIP Documents or this Final Order.

23. Preservation of Rights Granted Under the Order.

(a) Except as expressly provided herein or in the DIP Documents, no claim or lien having a priority senior to or pari passu with those granted by the Interim Order, this Final Order and the DIP Documents to the DIP Agent, the DIP Lenders and the Prepetition Secured Parties shall be granted or allowed while any portion of the DIP Obligations or the Adequate Protection Obligations (with respect to the Prepetition Term Loan Debt, until the expiration of the Challenge Period with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders) remain outstanding, and the DIP Liens and the Adequate Protection Liens (with respect to the Prepetition Term Loan Liens, until the expiration of the Challenge Period with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders) shall not (i) be subject to or junior to (A) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (B) any liens arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the Debtors, or (ii)

subordinate to or made pari passu with any other lien or security interest, whether under sections 363 or 364 of the Bankruptcy Code or otherwise.

(b) In addition to the Events of Default set forth in the DIP Documents, unless all DIP Obligations and all Adequate Protection Obligations shall have been indefeasibly paid in full in cash, the Debtors shall not seek, and it shall constitute an Event of Default under the DIP Documents and terminate the right of the Debtors to use Cash Collateral hereunder if any of the Debtors seek, or if there is entered, unless the DIP Agent has otherwise consented: (i) any modification or extension of this Final Order without the prior written consent of the DIP Agent, the Prepetition Lenders, the Prepetition Indenture Trustee, and the Prepetition Secured Noteholders, and no such consent shall be implied by any other action, inaction or acquiescence by the DIP Agent, the Prepetition Lenders, the Prepetition Indenture Trustee, and the Prepetition Secured Noteholders, (ii) an order converting or dismissing these Chapter 11 Cases; (iii) an order appointing a Chapter 11 trustee in these Chapter 11 Cases or any other representative or other similar appointment, (iv) an order appointing an examiner with enlarged powers in these Chapter 11 Cases, (v) an order providing for a change of venue with respect to these Chapter 11 Cases and such order shall not have been reversed or vacated within ten (10) days; (vi) an order approving a plan of reorganization or the sale of all or substantially all of the DIP Collateral (except to the extent permitted under the DIP Documents) or the Prepetition Collateral (except to the extent permitted under the Prepetition Documents) shall have been entered which does not provide for the repayment in full in cash of all DIP Obligations (other than any contingent obligations not yet due and payable) and all Contingent Obligations and Adequate Protection Obligations (with respect to the Prepetition Lenders Contingent Obligations and Adequate Protection Obligations, until the expiration of the Challenge Period

with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders) upon the consummation thereof. If an order dismissing these Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (x) the Superpriority Claims, 507(b) claims, priming liens, security interests and replacement security interests granted to the DIP Agent, the DIP Lenders and the Prepetition Secured Parties, including, without limitation, the DIP Liens, the Adequate Protection Liens, the Adequate Protection Claims and Adequate Protection Payments, the 507(b) claims, and the other administrative expense claims granted pursuant to this Final Order shall continue in full force and effect and shall maintain their priorities as provided in this Final Order (and that such Superpriority Claims, priming liens, security interests and replacement security interests granted to the DIP Agent, the DIP Lenders and the Prepetition Secured Parties, including, without limitation, the DIP Liens, the Adequate Protection Liens, the Adequate Protection Claims and Adequate Protection Payments, the 507(b) claims, and the other administrative expense claims, liens and security interests, shall, notwithstanding such dismissal, remain binding on all parties in interest, including the priorities set forth herein and in the DIP Documents) until all DIP Obligations and all Adequate Protection Obligations (with respect to the Prepetition Lenders Adequate Protection Obligations, until the expiration of the Challenge Period with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders) shall have been paid and satisfied in full and (y) the Bankruptcy Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in

clause (x) above; provided that the Prepetition Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Prepetition Debt or under the Prepetition Documents unless and until the DIP Obligations have indefeasibly been paid in cash in full in accordance with the DIP Documents.

(c) If any or all of the provisions of this Final Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not affect (i) the validity, priority or enforceability of any DIP Obligations or the Adequate Protection Obligations incurred prior to the actual receipt of written notice by the DIP Agent, the Prepetition Lenders or the Prepetition Indenture Trustee, as applicable, of the effective date of such reversal, modification, vacation or stay or (ii) the validity, priority or enforceability of any lien or priority authorized or created hereby or pursuant to the DIP Documents with respect to any DIP Obligations or the Adequate Protection Obligations. Notwithstanding any such reversal, modification, vacation or stay, any use of Cash Collateral, the DIP Obligations or the Adequate Protection Obligations incurred by the Debtors to the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties, as the case may be, prior to the actual receipt of written notice by the DIP Agent, the Prepetition Lenders or the Prepetition Indenture Trustee of the effective date of such reversal, modification, vacation or stay shall be governed in all respects by the original provisions of this Final Order, and the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties shall be entitled to all the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code (including, without limitation, with respect to any payments received in connection with the Refinancing), this Final Order and pursuant to the DIP Documents.

(d) Except as expressly provided in this Final Order or in the DIP Documents, the DIP Obligations and the Adequate Protection Obligations, including the DIP Liens, the Superpriority Claims, the 507(b) claims, the Adequate Protection Liens, the Adequate Protection Claims, the Adequate Protection Payments and all other rights and remedies of the DIP Agent, the DIP Lenders and the Prepetition Secured Parties granted by the provisions of this Final Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of these Chapter 11 Cases to a case under Chapter 7, dismissing these Chapter 11 Cases, approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Documents, or except to the extent that a release of such liens is authorized under the Prepetition Collateral Trust Agreement) or by any other act or omission or (ii) the entry of an order confirming a plan of reorganization in these Chapter 11 Cases (except an Acceptable Reorganization Plan (as defined in the DIP Facility)) and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of this Final Order and the DIP Documents shall continue in the Chapter 11 Cases, in any successor cases, or in any superseding Chapter 7 cases under the Bankruptcy Code, and the DIP Obligations and the Adequate Protection Obligations, including the DIP Liens, the Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Claims, the Adequate Protection Payments, the other administrative expense claims granted pursuant to this Final Order and all other rights and remedies of the DIP Agent, the DIP Lenders and the Prepetition Secured Parties granted under the DIP Documents and this Final Order shall continue in full force and effect and shall be binding on any Chapter 7 trustee, Chapter 11 trustee, any litigation trust

representative, other or similar party hereinafter appointed or elected for the Debtors' estates until all DIP Obligations and all Adequate Protection Obligations are indefeasibly paid in full in cash as set forth herein and in the DIP Documents.

24. Exculpation. Nothing in this Final Order, the Interim Order, the DIP Documents, or any other documents related to the transactions contemplated hereby shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent or any DIP Lender of any liability for any claims arising from the prepetition or postpetition activities of the Debtors in the operation of their businesses, or in connection with their restructuring efforts. In addition, (a) the DIP Agent and the DIP Lenders shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency, or other person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by the Debtors; *provided that*, (i) the foregoing shall not apply to any act or omission by the DIP Agent or the DIP Lenders that constitutes gross negligence or willful misconduct by the DIP Agent or the DIP Lenders as finally determined by a court of competent jurisdiction.

25. Effect of Stipulations On Third Parties.

(a) The stipulations and admissions contained in this Final Order, including, without limitation, in paragraph 4 of this Final Order, shall be binding upon each Debtor and their subsidiaries and any of their respective successors and assigns (including, without limitation, any Chapter 7 or Chapter 11 trustee appointed or elected for a Debtor), and each person or entity party to the DIP Documents in accordance with their respective terms and the terms of this Final Order, in all circumstances.

(b) The stipulations and admissions contained in this Final Order, including without limitation, in paragraph 4 of this Final Order, shall be binding on a permanent basis upon all other parties in interest, including any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases (including the Creditors' Committee, if any) and any other person or entity acting on behalf of the Debtors' estates, unless (a) such committee or any other party-in-interest, in each case, with requisite standing granted by the Bankruptcy Court, has timely and properly filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, inter alia, in paragraph 26) by no later than the date that is the later of (i) in the case of any such adversary proceeding or contested matter filed by a party-in-interest with requisite standing other than the Creditors' Committee, 60 days after the Petition Date, (ii) in the case of any such adversary proceeding or contested matter filed by the Creditors' Committee, July 10, 2015 (the date that is 60 days after the appointment of the Creditors' Committee), (iii) in the case of the Creditors' Committee having filed a motion on or before July 10, 2015 (the date that is 60 days after the appointment of the Creditors' Committee) seeking derivative standing to pursue Claims and Defenses (defined herein), the latter of (a) 3 days after the entry of a final order granting such standing or (b) ten (10) days from entry of an order by the Bankruptcy Court denying standing, unless (X) the Creditors' Committee seeks to extend the such period with the Bankruptcy Court during the 10-day period from entry of an order by the Bankruptcy Court denying standing, (Y) the Bankruptcy Court grants such relief extending the expiration date for such period and (Z) the Creditors' Committee files its Notice of Appeal as contemplated by Rule 8002 of the Federal Rules of Bankruptcy Procedure, (iv) any such later date agreed to in writing by the Prepetition Lenders or the Prepetition Indenture Trustee, as applicable, and (v) such longer period as the Bankruptcy Court orders for cause shown prior to

the expiration of such period (the "Challenge Period"), (1) challenging the validity, enforceability, priority, extent, or amount of the obligations under the Prepetition Documents (the "Prepetition Obligations") or the liens, subject to valuation under section 506 of the Bankruptcy Code, on the Prepetition Collateral securing the Prepetition Obligations or (2) otherwise asserting or prosecuting any avoidance actions or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "Claims and Defenses") against the Prepetition Secured Parties or their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors in connection with any matter related to the Prepetition Obligations or the Prepetition Collateral, and (b) an order is entered by a court of competent jurisdiction and becomes final and non-appealable in favor of the plaintiff sustaining any such challenge or claim in any such duly filed adversary proceeding or contested matter; provided that, (i) as to the Debtors, all such Claims and Defenses are hereby irrevocably waived and relinquished as of the Petition Date and (ii) any challenge or claim shall set forth with specificity the basis for such challenge or claim and any challenges or claims not so specified prior to the expiration of the Challenge Period shall be forever deemed waived, released and barred. If no such adversary proceeding or contested matter is timely and properly filed in respect of the Prepetition Obligations, (x) the Prepetition Term Loan Debt to the extent not heretofore repaid and the other Prepetition Obligations shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, subordination, defense or avoidance, for all purposes in the Chapter 11 Cases and any subsequent Chapter 7 cases, (y) the liens on the Prepetition Collateral securing the Prepetition Obligations, as the case may be, shall be deemed to have been, as of the Petition Date, and to be, legal, valid, binding, perfected and of the priority specified in paragraph 4, not subject to defense, counterclaim, recharacterization,

subordination or avoidance and (z) the Prepetition Obligations, the Prepetition Secured Parties, and the liens on the Prepetition Collateral granted to secure the Prepetition Obligations, as the case may be, shall not be subject to any other or further challenge by any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases or any other party-in-interest, and such committees and parties-in-interest shall be enjoined from seeking to exercise the rights of the Debtors' estates, including without limitation, any successor thereto (including, without limitation, any estate representative or a Chapter 7 or 11 trustee appointed or elected for any of the Debtors) with respect thereto. If any such adversary proceeding or contested matter is timely and properly filed, the stipulations and admissions contained in paragraph 4 of this Final Order shall nonetheless remain binding and preclusive (as provided in the second sentence of this subparagraph) on any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases and any other party-in-interest, except as to any such findings and admissions that were expressly and successfully challenged in such adversary proceeding as set forth in a final, non-appealable order of a court of competent jurisdiction. In the event that there is a timely successful challenge, pursuant and subject to the limitations contained in this paragraph 25, to the validity, enforceability, extent, perfection or priority of the Prepetition Term Loan Debt, the Bankruptcy Court shall have the power to unwind or otherwise modify, after notice and hearing, the Refinancing or a portion thereof (which might include payment of the Disgorged Amount or re-allocation of interest, fees, principal or other incremental consideration paid in respect of the Prepetition Term Loan Debt or the avoidance of liens and/or guarantees with respect to the Debtors), as the Bankruptcy Court shall determine. Nothing in this Final Order vests or confers on any Person (as defined in the Bankruptcy Code), including any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases, standing or authority to pursue any

cause of action belonging to the Debtors or their estates, including, without limitation, Claims and Defenses with respect to the Prepetition Documents or the Prepetition Obligations or any liens granted by any Debtor to secure any of the foregoing.

26. Limitation on Use of Financing Proceeds and Collateral. Notwithstanding anything herein or in any other order by this Court to the contrary, no party may use borrowings under the DIP Facility, Prepetition Collateral, cash collateral, DIP Collateral, the Carve-Out, the Carve-Out Cap or any portion or proceeds of the foregoing in connection with (a) objecting to, contesting or raising any defense to, the validity, perfection, priority, extent or enforceability of any amount due under the DIP Documents or the Prepetition Documents, or the liens or claims granted under the Interim Order, this Final Order, the DIP Documents or the Prepetition Documents, (b) asserting any Claims and Defenses or causes of action against the DIP Agent, the DIP Lenders, the Prepetition Lenders or the Prepetition Secured Parties or their respective agents, affiliates, representatives, attorneys or advisors, (c) preventing, hindering or otherwise delaying the DIP Agent's or the DIP Lenders' assertion, enforcement or realization on the Collateral once an Event of Default has occurred and is continuing in accordance with the DIP Documents, the Interim Order and this Final Order, provided that the Debtors may contest or dispute whether an Event of Default has occurred as provided for in paragraph 17(a) of this Final Order, (d) seeking to modify any of the rights granted to the DIP Agent, the DIP Lenders, the Prepetition Agents or the Prepetition Secured Parties hereunder or under the DIP Documents or the Prepetition Documents, in each of the foregoing cases, without such parties' prior written consent, (e) paying any amount on account of any claims arising prior to the Petition Date unless such payments are (i) approved by an order of this Court and (ii) in accordance with the DIP Documents and the Budget, (f) using or seeking to use cash collateral except to the extent

permitted under the DIP Documents and not otherwise prohibited hereunder, (g) selling or otherwise disposing of the Collateral except as permitted by the DIP Documents or otherwise with the consent of the DIP Agent or the DIP Lenders, or (h) using or seeking to use any insurance proceeds related to the Collateral, except as permitted by the DIP Documents or otherwise with the consent of the DIP Agent or the DIP Lenders. Notwithstanding the foregoing, advisors to the Creditors' Committee, if any, may investigate claims and issues with respect to the liens granted pursuant to the Prepetition Documents during the Challenge Period at an aggregate expense for such investigation, but not litigation, prosecution, objection or challenge thereto, not to exceed $50,000.

27. Priorities Among Prepetition Secured Parties. Notwithstanding anything to the contrary herein or in any other order of this Court, in determining the relative priorities and rights of the Prepetition Secured Parties (including, without limitation, the relative priorities and rights of the Prepetition Secured Parties with respect to the Adequate Protection Obligations granted hereunder), such priorities and rights shall continue to be governed by the Prepetition Documents, including, without limitation, the Prepetition Collateral Trust Agreement.

28. Payments Held in Trust. Except as expressly permitted in this Final Order or the DIP Documents, in the event that any person or entity receives any payment on account of a security interest in DIP Collateral, receives any proceeds of DIP Collateral or receives any other payment with respect thereto from any other source prior to indefeasible satisfaction of all DIP Obligations under the DIP Documents, and termination of the Commitment Amount (as defined in the DIP Documents) in accordance with the DIP Documents, such person or entity shall be deemed to have received, and shall hold, any such payment or proceeds of Collateral in trust for the benefit of the DIP Agent and DIP Lenders and shall immediately turn over such

proceeds to the DIP Agent, or as otherwise instructed by this Court; for application in accordance with the DIP Documents, the Interim Order and this Final Order.

29. Proofs of Claim. None of the DIP Agent, DIP Lenders, or the Prepetition Secured Parties will be required to file proofs of claim in any of Chapter 11 Cases or any successor case. Any order entered by the Bankruptcy Court in connection with the establishment of a bar date for any claim (including without limitation administrative claims) in the Chapter 11 Cases or any successor case shall not apply to the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties.

30. Right of Access and Information. Without limiting the rights of access and information afforded the DIP Agent and DIP Lenders under the DIP Documents or the Prepetition Secured Parties under the Prepetition Documents, the Debtors shall be, and hereby are, required to afford representatives, agents and/or employees of the DIP Agent and the Prepetition Lenders reasonable access to the Debtors' premises and their books and records in accordance with the DIP Documents and the Prepetition Documents, as the case may be, and shall reasonably cooperate, consult with, and provide to such persons all such information as may be reasonably requested. In addition, the Debtors authorize their independent certified public accountants, financial advisors, restructuring advisers, investment bankers and consultants to cooperate, consult with, and provide to the DIP Agent, the Prepetition Lenders and the Prepetition Indenture Trustee (and so long as an Event of Default has occurred and is continuing, each Prepetition Secured Party and DIP Lender) all such information as may be reasonably requested with respect to the business, results of operations and financial condition of the Debtors.

31. Retention of Jurisdiction. This Court has and will retain exclusive jurisdiction with respect to any and all disputes or matters under, or arising out of or in connection with, either the DIP Documents or this Final Order.

32. Order Governs. In the event of any inconsistency between the provisions of this Final Order and the DIP Documents, the provisions of this Final Order shall govern. Additionally, to the extent that there may be an inconsistency between the terms of this Final Order and the Order Establishing Certain Notice, Case Management and Administrative Procedures, the terms of this Final Order shall govern. Except as specifically amended, supplemented or otherwise modified hereby, all of the provisions of the Interim Order shall remain in effect and are hereby ratified by this Final Order.

33. Binding Effect; Successors and Assigns. The DIP Documents and the provisions of this Final Order, including all findings herein, shall be binding upon all parties-in-interest in the Chapter 11 Cases on a permanent basis, including without limitation, the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors, or similar responsible person or similar designee or litigation trust hereinafter appointed or elected for the estates of the Debtors) and shall inure to the benefit of the DIP Agent, the DIP Lenders and the Prepetition Secured Parties and their respective successors and assigns, including after conversion or dismissal of any of the Chapter 11 Cases; provided that, except to the extent expressly set forth in this Final Order, the DIP Agent, the DIP Lenders, and the

Prepetition Secured Parties shall have no obligation to permit the use of Cash Collateral or extend any financing to any chapter 7 trustee, chapter 11 trustee or similar responsible person or similar designee or litigation trust hereunder appointed for the estates of the Debtors.

34. Limitation on Liability. In determining to make any loan under the DIP Documents, permitting the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Final Order or the DIP Documents, the DIP Agent, the DIP Lenders and the Prepetition Secured Parties shall not be deemed to be in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 et seq. as amended, or any similar federal or state statute). Furthermore, nothing in this Final Order or in the DIP Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors and their affiliates (as defined in section 101(2) of the Bankruptcy Code).

35. Effectiveness. This Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon execution hereof, and there shall be no stay of execution of effectiveness of this Order.

Dated: June 5, 2015
Roanoke, Virginia

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

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United States Trustee

SCHEDULE "B"

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

In re:	Chapter 11
XINERGY LTD., *et al.*,	Case No. 15-70444 (PMB)
Debtors.[1]	(Jointly Administered)
XINERGY LTD., *et al.*,	
Plaintiffs,	Adv. Pro. No. 15-07008 (PMB)
v.	
JON NIX,	
Defendant.	

STIPULATED ORDER STAYING ADVERSARY PROCEEDING

Based upon the stipulation and agreement by and between the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") and defendant Jon Nix (the "Defendant";

[1] The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule 1 attached hereto. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Case Management Order (defined below).

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Counsel to the Debtors
and Debtors in Possession

together with the Debtors, the "Parties" and each a "Party"), through their respective counsel, to the terms hereof, including without limitation, that the above-captioned adversary proceeding (the "Adversary Proceeding") should be stayed in order to avoid the litigation costs to both Parties and to allow the Parties the opportunity to attempt to reach agreement on the terms of the Debtors' chapter 11 plan of reorganization (the "Plan"), and it appearing to the Court that entry of this Order is in the best interests of the Debtors' estates, their creditors, and other parties-in-interest:

IT IS HEREBY ORDERED THAT:

1 The Adversary Proceeding is hereby stayed until the earlier to occur of (a) the date an Order confirming the Plan becomes a final, non-appealable order, at which time this Adversary Proceeding shall be dismissed and (b) the date that either of the Parties files a statement with the Court (a "Statement") in the Adversary Proceeding declaring that, notwithstanding good-faith efforts to engage in discussions concerning the terms of the Plan, the Parties have reached a material impasse and the Party filing the Statement desires for the stay of the Adversary Proceeding to be lifted, at which time the Adversary Proceeding shall no longer be stayed, subject to the terms of this Order.

2. In mutual consideration of the Parties' agreement to a stay of this Adversary Proceeding and to engage in good faith discussions concerning the terms of a Plan, during the pendency of the stay of this Adversary Proceeding each of the Parties agrees not to take, or to cause or encourage anyone else to take, any further action in the Debtors' recognition proceeding under the Companies' Creditors Arrangement Act before the Ontario Superior Court of Justice (the "CCAA Proceeding") with respect to enforcing or seeking relief from the stay in the CCAA Proceeding in connection with the Defendant's attempt to call or hold a special shareholder

meeting of Xinergy Ltd. The Defendant further agrees, during the pendency of the stay of this Adversary Proceeding, not to take, or to cause or encourage anyone else to take, any further action in the United States or in Canada to call or hold a special shareholder meeting of Xinergy Ltd. or to otherwise take any action to alter the composition of Xinergy Ltd.'s board of directors. If any other shareholder of Xinergy Ltd. takes any additional or further steps to call or hold a special shareholder meeting, or renews any prior steps taken by the Defendant, the Debtors may, in addition to seeking any other remedies available to them in this Court, take any steps necessary to enforce the stay granted in the CCAA Proceeding.

3. The time for the Defendant to serve an answer or other responsive pleading to the Complaint shall be extended to and including the tenth (10th) day following the expiration or lifting of the stay of the Adversary Proceeding.

4. The hearing on the *Motion of the Debtors and Debtors-in-Possession for a Preliminary Injunction and Memorandum in Support* (the "Motion for a Preliminary Injunction") [Adv. Proc. No. 4] currently scheduled for June 9, 2015, shall be continued and rescheduled for a date that is at least fourteen (14) days after the filing of a Statement in accordance with this Order. As soon as practicable following the filing of a Statement in accordance with this Order, the Debtors shall request a time and date from the Court and re-notice the hearing on the Motion for a Preliminary Injunction, and the date by which any objections to the Motion for a Preliminary Injunction must be filed (which date shall be no earlier than seven (7) days prior to the hearing date).

5. The pre-trial conference currently scheduled for July 7, 2015, shall be continued and rescheduled as a status conference on September 1, 2015 at 10:00 a.m. at the U.S. Bankruptcy Court, 2nd Floor, 210 Church Ave., Roanoke, Virginia 24011.

6. The right of parties-in-interest, including the *ad hoc* group of holders of the 9.25% senior secured notes issued by Xinergy Corp. and the lenders under the Debtors' postpetition secured term loan credit facility and the Official Committee of Unsecured Creditors, to seek to intervene as parties to this Adversary Proceeding shall be preserved and not abridged by the stay of this Adversary Proceeding. No party will assert as a defense or objection to any such motion to intervene that such motion is untimely due to the imposition of the stay imposed hereby.

7. In the event one or both of the Parties files a Statement in accordance with this Order, the Parties agree that neither Party shall take any further action to enforce or seek relief from the stay granted in the CCAA Proceeding in connection with the Defendant's subsequent attempt to call or hold a special shareholder meeting of Xinergy Ltd., except as provided in paragraph 2 hereof, until the earlier of (a) a determination by this Court on the Motion for a Preliminary Injunction and (b) twenty-one (21) days after the date the earliest Statement is filed.

8. This Order shall be effective immediately upon entry and the Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

9. The Parties agree that it is appropriate to seek, and consent to, the recognition of this Order in the CCAA Proceeding and to seek an adjournment in the CCAA Proceeding of the Defendant's pending motion with respect to the shareholder meeting on terms consistent with this Order.

Dated: June 5, 2015
Roanoke, Virginia

United States Bankruptcy Judge

WE ASK FOR THIS:

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Counsel for Ad Hoc Group of Secured Noteholders

SCHEDULE 1

(Debtor Entities)

1. Xinergy Ltd. (3697)
2. Xinergy Corp. (3865)
3. Xinergy Finance (US), Inc. (5692)
4. Pinnacle Insurance Group LLC (6851)
5. Xinergy of West Virginia, Inc. (2401)
6. Xinergy Straight Creek, Inc. (0071)
7. Xinergy Sales, Inc. (8180)
8. Xinergy Land, Inc. (8121)
9. Middle Fork Mining, Inc. (1593)
10. Big Run Mining, Inc. (1585)
11. Xinergy of Virginia, Inc. (8046)
12. South Fork Coal Company, LLC (3113)
13. Sewell Mountain Coal Co., LLC (9737)
14. Whitewater Contracting, LLC (7740)
15. Whitewater Resources, LLC (9929)
16. Shenandoah Energy, LLC (6770)
17. High MAF, LLC (5418)
18. Wise Loading Services, LLC (7154)
19. Strata Fuels, LLC (1559)
20. True Energy, LLC (2894)
21. Raven Crest Mining, LLC (0122)
22. Brier Creek Coal Company, LLC (9999)
23. Bull Creek Processing Company, LLC (0894)
24. Raven Crest Minerals, LLC (7746)
25. Raven Crest Leasing, LLC (7844)
26. Raven Crest Contracting, LLC (7796)

SCHEDULE "C"

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

In re:	Chapter 11
XINERGY LTD., *et al.*,	Case No. 15-70444 (PMB)
Debtors.[1]	(Jointly Administered)

ORDER (I) ESTABLISHING BAR DATES FOR FILING PROOFS OF CLAIM, INCLUDING SECTION 503(b)(9) CLAIMS, AND PROOFS OF INTEREST, (II) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (III) PROVIDING CERTAIN SUPPLEMENTAL RELIEF

Upon the motion (the "Motion")[2] of the above-captioned cases debtors and debtors in possession (collectively, the "Debtors"), for the entry of an Order, pursuant to section 501 the Bankruptcy Code and Bankruptcy Rules 2002, 3003(c) and 9007, (i) establishing the general bar date by which all creditors and equity holders must file proofs of claim or proofs of equity interests in these chapter 11 cases, including without limitation claims under Bankruptcy Code section 503(b)(9) related to goods delivered during the twenty (20) days prior to the Petition Date (the "General Bar Date");[3] (ii) establishing the date by which Governmental Units must file

[1] The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule I attached to the Motion.

[2] Capitalized terms used, but not otherwise defined, herein shall have the meanings set forth in the Motion.

[3] For purposes of this Motion, the Bar Dates (as defined herein) requested herein shall not extend to requests

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Proposed Counsel to the Debtors and Debtors in Possession

proofs of claim in these chapter 11 cases (the "Governmental Unit Bar Date"); (iii) establishing the date by which proofs of claim relating to the Debtors' rejection of executory contracts or unexpired leases must be filed in these chapter 11 cases (the "Rejection Bar Date"); (iv) establishing a bar date by which creditors holding claims that have been amended by the Debtors in their Schedules (as defined below) must be filed in these chapter 11 cases (the "Amended Schedule Bar Date"; together with the General Bar Date, the Governmental Unit Bar Date and the Rejection Bar Date, the "Bar Dates"); (v) approving a tailored proof of claim form to be distributed to potential creditors; (vi) approving a tailored proof of interest form to be distributed to potential equity holders; (vii) approving the manner of notice of the Bar Dates; and (viii) providing certain supplemental relief; and it appearing that the relief requested in the Motion is in the best interest of the Debtors and their estates and that the establishment of the Bar Dates and the procedures set forth in the Motion are fair and reasonable and will provide good, sufficient and proper notice to all creditors and equity holders of their rights and obligations in connection with claims or interests they may have against the Debtors or their property in these chapter 11 cases; and the Court finding that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and notice of this Motion having been due and sufficient under the circumstances; and upon the record therein; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED**.

2. Bar Dates. The Bar Dates set forth in the Motion hereby are **APPROVED**,

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for payment of fees and expenses of professionals retained or sought to be retained by order of the Court in these cases.

3. Notices and Forms. The forms of the Bar Date Notice, the Proof of Claim Form, and the Proof of Interest Form, substantially in the form attached to the Motion, and the manner of providing notice of the Bar Dates proposed in the Motion and set forth herein, are **APPROVED**. The form and manner of notice of the Bar Dates approved hereby are deemed to fulfill the notice requirements of the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules.

4. The General Bar Date. The General Bar Date by which proofs of claim against the Debtors and proofs of interest in Xinergy Ltd. must be filed is **July 31, 2015, at 4:00 p.m. (prevailing Eastern Time).**

5. Any Entity that asserts a claim against one or more of Debtors, including without limitation any claim under Bankruptcy Code section 503(b)(9) for goods delivered to a Debtor within twenty (20) days before the Petition Date, or holds an equity interest in Xinergy Ltd. that arose prior to the Petition Date (any such claim, a "Prepetition Claim"; and any such interest, "Prepetition Interest") is required to file an original, written proof of such Prepetition Claim or Prepetition Interest, substantially in the form of the Proof of Claim Form or the Proof of Interest Form, as applicable, so as to be received on or before the General Bar Date by either mail or delivery by hand, courier, or overnight service to: (i) if via mail, c/o American Legal Claim Services, LLC, P.O. Box 23650, Jacksonville, FL 32241-3650 or (ii) if via delivery by hand, courier or overnight service, c/o American Legal Claim Services, LLC, 5985 Richard St., STE 3, Jacksonville, FL 32216 (either, the "Claims Docketing Center").

6. The Claims Docketing Center will not accept Proof of Claim Forms or Proof of Interest Forms sent by facsimile, telecopy, or other electronic means. A proof of claim or proof of interest shall be timely filed only if the original Proof of Claim Form or Proof of Interest Form

is *actually received* by the Claims Docketing Center on or before the General Bar Date.

7. The following Entities do not need to file proofs of claim or proofs of interest:

(a) any Entity that has already properly filed with the Claims Docketing Center a proof of claim against one or more of the Debtors or proof of interest in Xinergy Ltd. for which no other or additional amounts or claims are sought;

(b) any Entity (i) whose Prepetition Claim is not listed as "disputed," "contingent," or "unliquidated" in the Schedules, (ii) that agrees with the nature, classification, and amount of such Prepetition Claim set forth in the Schedules, and (iii) such entity does not dispute that its Prepetition Claim is an obligation only of the specific Debtor against which the Prepetition Claim is listed in the Schedules;

(c) any Entity (i) whose Prepetition Interest is listed in the Schedules and (ii) that agrees with the nature, classification, and amount of such Prepetition Interest set forth in the Schedules;

(d) any Entity whose Prepetition Claim (including any Prepetition Claim listed in the Debtors' Schedules) previously has been allowed by, or paid pursuant to, an order of this Court;

(e) any Entity that asserts an administrative expense claim against the Debtors pursuant to section 503(b) of the Bankruptcy Code, unless such claim is pursuant to Bankruptcy Code section 503(b)(9) on account of goods delivered to the Debtors during the twenty (20) days prior to the Petition Date;

(f) any of the Debtors that hold Prepetition Claims against one or more of the other Debtors; and

(g) any person or entity that holds a claim under that certain Credit Agreement dated as of December 21, 2012 (as amended, supplemented or otherwise modified from time to time) among Xinergy Corp., as borrower, Xinergy Ltd., as parent, other guarantors party thereto and the lenders party thereto; and

(h) any person or entity whose claim is limited exclusively to the repayment of principal, interest and other fees and expenses under or in connection with that certain Indenture, dated as of May 6, 2011, by and among Xinergy Corp., as issuer, the guarantors listed therein and Wells Fargo Bank, National Association, as trustee and collateral trustee, for the 9.25% senior secured notes due 2019, as

thereafter amended, supplemented or modified from time to time.

8. Except as provided below, the following Entities must file a proof of claim on or before the General Bar Date:

(a) Entities whose Prepetition Claims arise out of the rejection of executory contracts or unexpired leases by the Debtors prior to the entry of the Bar Date Order;

(b) Entities whose Prepetition Claims arise out of the obligations of such Entities under a contract for the provision of liability insurance to a Debtor;

(c) any Entity whose Prepetition Claim against the Debtors is not listed in the Schedules or whose Prepetition Claim is listed as disputed, contingent or unliquidated and that desires to participate in these chapter 11 cases or share in any distribution in these chapter 11 cases;

(d) any Entity whose Prepetition Interest is not listed in the Schedules;

(e) any Entity that believes that its Prepetition Claim or Prepetition Interest is improperly classified in the Schedules or is listed in an incorrect amount and that desires to have its claim allowed in a classification or amount other than that identified in the Schedules; and

(f) any Entity that asserts a claim against the Debtors under Bankruptcy Code section 503(b)(9) on account of goods delivered to the Debtors during the twenty (20) days prior to the Petition Date.

9. Notwithstanding anything herein to the contrary, in accordance with the Court's order approving the Debtors' debtor-in-possession financing (Doc. No. 156) (the "DIP Financing Order"), none of the DIP Agent, DIP Lenders, or the Prepetition Secured Parties (each as defined in the DIP Financing Order) shall be required to file proofs of claim in any of the Debtors' chapter 11 cases or any successor case, and the Debtors' stipulations in the DIP Financing Order shall be deemed to constitute a timely filed proof of claim."

10. The Governmental Unit Bar Date. The Governmental Unit Bar Date by which Governmental Units must file proofs of claim against the Debtors is **September 23, 2015, at 4:00 p.m. (prevailing Eastern Time).**

11. Governmental Units wishing to assert claims against the Debtors must file an original, written proof of such claim, substantially in the form of the Proof of Claim Form, so as to be received on or before the Governmental Unit Bar Date by either mail or delivery by hand, courier, or overnight service at the appropriate address identified above for the Claims Docketing Center.

12. The Claims Docketing Center will not accept Proof of Claim Forms sent by facsimile, telecopy, or other electronic means. A proof of claim filed by a Governmental Unit shall be deemed timely filed only if the original Proof of Claim Form actually is received by the Claims Docketing Center on or before the Governmental Unit Bar Date.

13. The Rejection Bar Date. The Rejection Bar Date by which a proof of claim relating to the Debtors' rejection of any executory contract or unexpired lease must be filed is the later of (a) the General Bar Date or (b) thirty (30) days after the effective date of rejection of such executory contract or unexpired lease as provided by an order of this Court or pursuant to a notice under procedures approved by this Court.

14. Entities wishing to assert a Rejection Damages Claim are required to file an original, written proof of such Rejection Damages Claim, substantially in the form of the Proof of Claim Form, so as to be received on or before the Rejection Bar Date by either mail or delivery by hand, courier, or overnight service at the appropriate address identified above for the Claims Docketing Center.

15. The Claims Docketing Center will not accept Proof of Claim Forms sent by facsimile, telecopy, or other electronic means. A proof of claim with respect to a Rejection Damages Claim shall be timely filed only if the original Proof of Claim Form is *actually received* by the Claims Docketing Center on or before the Rejection Bar Date.

16. The Amended Schedule Bar Date. The Amended Schedule Bar Date for creditors holding claims or interest holders holding an equity interest in Xinergy Ltd. which have been amended by the Debtors in their Schedules or added by the Debtors to the Schedules is the later of (a) the General Bar Date or (b) thirty (30) days after the date that notice of the amendment or addition is served on the affected claimant.

17. Entities wishing to file proofs of claim or proofs of interest with respect to claims or equity interests which have been amended by the Debtors in their Schedules or added thereto are required to file an original, written proof of such claim or proof of such equity interest, substantially in the form of the Proof of Claim Form or Proof of Interest Form, as applicable, so as to be received on or before the Amended Schedule Bar Date by either mail or delivery by hand, courier, or overnight service at the appropriate address identified above for the Claims Docketing Center.

18. The Claims Docketing Center will not accept Proof of Claim Forms or Proof of Interest Forms sent by facsimile, telecopy, or other electronic means. A proof of claim or proof of interest with respect to a claim or equity interest which has been amended by the Debtors in their Schedules or added thereto shall be timely filed only if the original Proof of Claim Form or Proof of Interest Form is *actually received* by the Claims Docketing Center on or before the Amended Schedule Bar Date.

19. Proof of Claim Form and Proof of Interest Form. Each proof of claim and proof of interest filed must: (a) be written in the English language, (b) be denominated in lawful currency of the United States, (c) conform substantially with the Proof of Claim Form or the Proof of Interest Form provided, as applicable, and (d) attach copies of any writings upon which the claim or interest is based.

20. Writings. Upon the advance express written consent of the Debtors, a proof of claim or proof of interest may be filed without the writings upon which the Prepetition Claim or Prepetition Interest, as applicable, is based, as required by Bankruptcy Rules 3001(c) and (d) and this Order; *provided, however*, that, upon request of the Debtors or any other party in interest in these cases, any creditor or equity holder that receives such written consent shall be required to transmit promptly such writings to the Debtors and the party in interest making such request as soon as reasonably practicable, but in no event later than ten (10) business days from the date of such request.

21. Filing Proofs of Claim Against Multiple Debtors. All Entities asserting claims against more than one Debtor are required to: (a) file a separate proof of claim with respect to each such Debtor, and (b) identify on each proof of claim the particular Debtor against which such Entity's claim is asserted.

22. Effect of Failure to File by Applicable Bar Date. Any Entity that is required to file a proof of claim or proof of interest in these chapter 11 cases pursuant to the Bankruptcy Code, the Bankruptcy Rules or the Bar Date Order, but that fails to do so in a timely manner, shall be forever barred, estopped, and enjoined from asserting any Prepetition Claim or Prepetition Interest against any of the Debtors (or filing a proof of claim or proof of interest with respect thereto), and the Debtors and their property shall be forever discharged from any and all

indebtedness or liability with respect to such Prepetition Claim or Prepetition Interest. Additionally, any holder of any Prepetition Claim or Prepetition Interest who is required, but fails, to file a proof of such claim or interest in accordance with the Bar Date Order on or before the applicable Bar Date shall not be permitted to vote to accept or reject any plan or plans or participate in any distribution in the Debtors' chapter 11 cases on account of such Prepetition Claim or Prepetition Interest or to receive further notices regarding such Prepetition Claim.

23. Mailing of Bar Date Notice Packages. The Debtors shall provide actual notice of the Bar Dates by mailing the Bar Date Notice, the Proof of Claim Form, and the Proof of Interest Form (together, the "Bar Date Notice Package") within five (5) business days of entry of this Order, but in no event later than June 15, 2015, to: (a) the U.S. Trustee; (b) each member of the Committee and counsel for the Committee; (c) all holders of Prepetition Claims or Prepetition Interests, including all such persons or entities listed on the Schedules; (d) all counterparties to executory contracts and unexpired leases; (e) all current and former employees of the Debtors to the extent that contact information for former employees is available in the Debtors' records; (f) all taxing authorities for locations in which the Debtors do business, including Canada Revenue Agency; (g) all parties to litigation in which the Debtors are involved; (h) all providers of utility services to the Debtors; (i) all insurance providers; (j) all of the Debtors' ordinary course professionals; (k) the Debtors' banks; (l) the Debtors' prepetition note holders; (m) all Entities requesting notice pursuant to Bankruptcy Rule 2002 as of the entry of this Order; and (n) all parties that have filed proofs of claim or proofs of interest in these cases as of the date of entry of this Order (collectively, the "Bar Date Notice Parties").

24. The Debtors may, in their discretion, but shall not be required to, serve the Bar Date Notice to certain Entities that are not Bar Date Notice Parties with which, prior to the

Petition Date, the Debtors had done business or that may have asserted a claim or an interest against the Debtors in the recent past.

25. Publication Notice. The Debtors shall publish notice of the Bar Dates in substantially the form of the Bar Date Notice once in the *Globe and Mail, National Edition*, *Charleston Daily Mail*, and *The Charleston Gazette* as soon as practicable after entry of this Order, but in no event later than forty (40) days before the General Bar Date. Additionally, the Debtors shall post a copy of the Bar Date Notice and the Proof of Claim Form on the Debtors' case information website (located at *https://www.americanlegal.com/xinergy*).

26. Supplemental Mailings of Bar Date Notice Packages. In the event that: (a) Bar Date Notice Packages are returned by the post office with forwarding addresses, necessitating a remailing to the new addresses, (b) certain parties acting on behalf of parties in interest decline to pass along Bar Date Notice Packages to such parties and instead return their names and addresses to the Debtors for direct mailing, or (c) additional potential claimants or equity security holders become known to the Debtors (collectively, the "Special Bar Date Parties"), the Debtors may, in their discretion, but shall not be required to make supplemental mailings of the Bar Date Notice Package up to twenty-three (23) days in advance of the applicable Bar Dates, with any such supplemental mailings being deemed timely.

27. Establishment of Special Bar Dates. The Debtors are authorized to establish special bar dates with respect to the Special Bar Date Parties as to which a mailing or remailing of the Bar Date Notice Package is necessary and cannot be accomplished prior to twenty-three (23) days in advance of an applicable Bar Date. With respect to the Special Bar Date Parties, the Debtors are authorized to establish special bar dates at least twenty-one (21) days after the date on which the Debtors mail the notice of each such special bar date. Such notice will

substantially take the form of the Bar Date Notice (with necessary modifications to reflect the special bar date provisions). The Debtors shall advise the Court of the establishment of each special bar date by filing a notice, together with a list that specifically identifies the Special Bar Date Parties that are subject thereto and a copy of the bar date notice applicable to the special bar date. In addition to being filed with the Court, the Debtors shall serve such notice upon the U.S. Trustee, the attorneys for the informal group of holders of the Debtors' prepetition secured notes and lenders under the Debtors' postpetition financing, and counsel for any statutory committees appointed in these cases. The Debtors shall file a certificate of service to evidence the mailing of each special bar date notice to the parties subject thereto.

28. Each of the special bar dates will apply only to the Special Bar Date Parties who are specifically identified as being subject thereto in the lists to be filed with the Court. As to any of such specifically identified parties, however, who may be found to have received effective notice of the Bar Dates, the Debtors do not waive the right to assert that the Bar Dates, rather than the special bar date, governs. The Bar Dates will remain effective and fully enforceable both with respect to known parties who have received actual notice thereof pursuant to the Bar Date Notice and with respect to unknown parties who are deemed to have received constructive notice thereof.

29. Actual Notice of Amended Schedule Bar Date. If and when the Debtors amend their Schedules to reduce the undisputed, noncontingent and liquidated amount, to change the nature or classification of a Prepetition Claim or Prepetition Interest or add a claim or equity interest in Xinergy Ltd. to the Schedules, the Debtors shall provide notice to the affected claimant of any such amended or added claim or equity interest, which shall include information

regarding the Amended Schedule Bar Date and how to file a proof of claim or proof of interest or amend an existing proof of claim or proof of interest.

30. Assistance of Claims Agent. American Legal Claim Services, LLC ("ALCS"), the claims agent appointed in these cases, is authorized to facilitate and coordinate the claims reconciliation and bar date notice functions, including the mailing of the Bar Date Notice Packages. To the extent that ALCS requires any assistance with the preparation and mailing of the Bar Date Notice Package, ALCS is authorized to employ and pay necessary service providers, subject to prior approval from the Debtors, and to obtain reimbursement from the Debtors for any such payments on the same terms applicable to its direct services. ALCS is further authorized to take such other actions as may be necessary to ensure timely preparation and mailing of the Bar Date Notice Package.

31. Reservation of Rights. The Debtors shall retain the right to: (a) dispute, or assert offsets or defenses, against any Prepetition Claim or Prepetition Interest; (b) subsequently designate any Prepetition Claim as disputed, contingent or unliquidated; and (c) object to any Prepetition Claim or Prepetition Interest, whether scheduled or filed, on any grounds.

32. The Debtors are authorized and empowered to take such steps and perform such actions as may be necessary to implement and effectuate the terms of this Order, including payment of costs incurred in connection with the process of noticing the Bar Dates.

33. This Court shall retain jurisdiction over all matters arising out of or related to the Motion and this Order.

Dated: June 8, 2015

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

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Proposed Counsel for the Official Committee
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Court File No. CV-15-10936-00CL

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED
AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.
APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

RECOGNITION ORDER

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Lawyers for Xinergy Ltd.

Tab 12

2014 ONSC 6998
Ontario Superior Court of Justice

Cline Mining Corp., Re

2014 CarswellOnt 18943, 2014 ONSC 6998, 22 C.B.R. (6th) 278, 251 A.C.W.S. (3d) 381

In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as Amended

In the Matter of a Plan of Compromoise and Arrangement of Cline Mining Corporation, New Elk Coal Company LLC and North Central Energy Company

G.B. Morawetz R.S.J.

Heard: December 3, 2014
Judgment: December 3, 2014
Docket: CV-14-10781-00CL

Counsel: Robert J. Chadwick, Logan Willis for Applicants
J. Swartz for Secured Noteholders
Marc Wasserman, Michael De Lellis for Proposed Monitor, FTI Consulting Canada Inc.

Subject: Insolvency

APPLICATION by debtor companies for initial order and other relief under *Companies' Creditors Arrangement Act*.

***G.B. Morawetz R.S.J.*:**

1 Cline Mining Corporation ("Cline"), New Elk Coal Company LLC ("New Elk"), North Central Energy Company ("North Central") and, together with Cline and New Elk (the "Applicants") are in the business of locating, exploring and developing mineral resource properties, with a focus on gold and metallurgical coal (the "Cline Business"). The Applicants, along with their wholly-owned subsidiary, Raton Basin Analytical LLC ("Raton Basin") and, together with the Applicants (the "Cline Group") have interests in resource properties in Canada, the United States and Madagascar.

2 The Applicants apply for an initial order pursuant to the provisions of the *Companies' Creditors Arrangement Act* ("CCAA") and, if granted, the Applicants also seek an order (the "Claims Procedure Order") approving a claims process (the "Claims Procedure") for the identification and determination of claims against the Applicants and their present and former directors and officers. The Applicants also seek an order (the "Meetings Order") *inter alia*: (i) accepting the filing of a plan of compromise and arrangement in respect of the Applicants (the "Plan"); (ii) authorizing the Applicants to call, hold and conduct meetings (the "Meetings") of creditors whose claims are to be affected by the Plan for the purpose of enabling such creditors to consider and vote on a resolution to approve the Plan; and (iii) approving the procedures to be followed with respect to the calling and conduct of the Meetings.

3 The Cline Group has experienced financial challenges that necessitate a recapitalization of the Applicants under the CCAA. As set out in the affidavit of Mr. Matthew Goldfarb, Chief Restructuring Officer and Acting Chief Executive Officer of Cline, the performance of the Cline Business has been adversely affected by the broader industry wide challenges, particularly the protracted downturn in prevailing prices for metallurgical coal. Operations at the New Elk metallurgical coal mine in Colorado (the "New Elk Mine") were suspended in July 2012 because the mine could not operate profitably as a result of a decline in the market price of metallurgical coal. The suspension of mining activities

was intended to be temporary. However, Mr. Goldfarb contends that market conditions in the coal industry have not sufficiently recovered and the suspension of full scale mining activities is still in effect.

4 Mr. Goldfarb contends that the Cline Group's other resource investments remain at the feasibility, exploration and/or development stages and the Cline Group's current inability to derive profit from the New Elk Mine has rendered the Applicants unable to meet their financial obligations as they become due.

5 Cline is in default of its 2011 series 10% Senior Secured Notes (the "2011 Notes") as well as its 2013 series 10% Senior Secured Notes (the "2013 Notes", and collectively with the 2011 Notes, the "Secured Notes"). As at December 1, 2014, total obligations in excess of $110 million are owed in respect of the Secured Notes, which matured on June 15, 2014. The Secured Notes were subject to Forbearance Agreements that expired on November 28, 2014 and Mr. Goldfarb contends that the Applicants do not have the ability to repay the Secured Notes.

6 The Secured Notes are issued by Cline and guaranteed by New Elk and North Central. The indenture trustee in respect of the Secured Notes (the "Trustee") holds a first ranking security interest over substantially all the assets of Cline, New Elk and North Central. Mr. Goldfarb states that the amounts owing under the Secured Notes exceed the value of the Cline Business and that there would be no recovery for unsecured creditors if the Trustee were to enforce its security against the Applicants in respect of the Secured Notes.

7 The Secured Notes are held by beneficial owners whose investments are managed by Marret Asset Management Inc. ("Marret"). Marret exercises all discretion and authority in respect of the holders of the Secured Notes (the "Secured Noteholders"). Cline has engaged in discussions with representatives of Marret regarding a consensual recapitalization of the Applicants and these discussions have resulted in a proposed recapitalization transaction that is supported by Marret, on behalf of the Secured Noteholders (the "Recapitalization").

8 Mr. Goldfarb states that if implemented, the Recapitalization would:

a. maintain the Cline Group as a unified corporate enterprise;

b. reduce the Applicants' secured indebtedness by more than $55 million;

c. reduce the Applicants' annual interest expense in the near term;

d. preserve certain tax attributes within the restructured company; and

e. effectuate a reduced debt structure to enable the Cline Group to better withstand prolonged weakness in the price of metallurgical coal.

9 Mr. Goldfarb also states that the Recapitalization would also provide a limited recovery for the Applicants' unsecured creditors, who would otherwise receive no recovery in a security enforcement or asset sale scenario. It is contemplated that the Recapitalization would be implemented pursuant to a plan of compromise and arrangement under the CCAA (the "CCAA Plan) that is recognized in the United States under Chapter 15, Title 11 of the United States Bankruptcy Code ("Chapter 15").

10 Cline and Marret have entered into a Support Agreement dated December 2, 2014 that sets forth the principal terms of the proposed Recapitalization. Based on Marret's agreement to the Recapitalization (on behalf of the Secured Noteholders), the Applicants have achieved support from their senior ranking creditors, which represent in excess of 95% of the Applicants' total indebtedness.

11 The Applicants seek the Initial Order to stabilize their financial situation and to proceed with the Recapitalization as efficiently as possible, and to this end, the Applicants request that the Court also grant the Claims Procedure Order and the Meetings Order.

12 Cline is a public company incorporated under the laws of British Columbia, with its registered head office located in Vancouver. Cline commenced business under the laws of Ontario in 2003 and Mr. Goldfarb states that its principal office, which serves as the head office and nerve centre of the Cline Group is located in Toronto.

13 Cline is the direct or indirect parent company of New Elk, North Central and Raton Basin. Cline also holds minority interests in Iron Ore Corporation in Madagascar SARL, Strike Minerals Inc. and UMC Energy plc, all of which are exploration companies.

14 Cline is the sole shareholder of New Elk, a limited liability company incorporated pursuant to the laws of Colorado. New Elk holds mining rights in the New Elk Mine and maintains a Canadian bank account with the Bank of Montreal in Toronto.

15 New Elk is the sole shareholder of North Central and Raton Basin, both of which are incorporated pursuant to the laws of Colorado. North Central holds a fee-simple interest in certain coal parcels on which the New Elk Mine is situated and maintains a Canadian bank account with the Bank of Montreal in Toronto. Raton Basis in inactive and is not an applicant in the proceedings.

16 Cline Group prepares its financial statements on a consolidated basis. The required financial statements are in the record. As at August 31, 2014, the Cline Group's liabilities were approximately $99 million. The primary secured liabilities were the 2011 Notes in the principal amount in excess of $71 million, plus accrued and unpaid interest, and the 2013 Notes in the principal amount of approximately $12 million, plus accrued and unpaid interest. Both the 2011 Notes and the 2013 Notes matured on June 15, 2014.

17 Pursuant to an Inter-Creditor Agreement, the 2011 Notes and the 2013 Notes have a first ranking security interest on the property and undertakings of the Applicants and rank *pari passu* as between each other.

18 Cline and New Elk are defendants in an uncertified class action lawsuit alleging that they violated the *WARN Act* by failing to provide personnel who provided services to New Elk with at least 60 days advance written notice of the suspension of both scale production at the New Elk Mine. These allegations are disputed.

19 The Applicants are aware of approximately $3.5 million in other unsecured claims.

20 On December 16, 2013, Cline was unable to make semi-annual interest payments in respect of both the 2011 and 2013 Notes. A Forbearance Agreement was entered into. During the forbearance period, the Applicants engaged Moelis & Company to conduct a comprehensive sale process in an effort to maximize value for the Applicant and its stakeholders (the "Sales Process"). No offers or expressions of interest were received in the Sale Process.

21 The forbearance period expired on November 28, 2014 and Mr. Goldfarb has stated that Marret has confirmed that the Secured Noteholders have given instructions to the Trustee to accelerate the Secured Notes.

22 Accordingly, Cline is immediately required to pay in excess of $110 million in respect of the Secured Notes. Mr. Goldfarb states that the Cline Group does not have the ability to pay these amounts and consequently the Trustee is in a position to enforce its security over the assets and property of the Applicants.

23 In light of these financial conditions, Mr. Goldfarb states that the Applicants are insolvent.

24 Mr. Goldfarb also contends that without the benefit of CCAA protection, there could be an erosion of the value of the Cline Group and that the stay of proceedings under the CCAA is required to preserve the value of the Cline Group.

25 The Applicants are seeking the appointment of FTI Consulting Canada Inc. ("FTI") as the proposed monitor in these proceedings (the "Monitor").

26 The proposed Initial Order also provides for a court ordered charge (the "Administration Charge") to be granted in favour of the Monitor, its counsel, counsel to the Applicants, the Chief Restructuring Officer (the "CRO") and counsel to Marret in respect of their fees and disbursements incurred at the standard rates and charges. The proposed Administration Charge is an aggregate amount of $350,000.

27 The directors and officers have expressed their desire for certainty with respect to potential personal liability if they continue in their current capacities. Mr. Goldfarb states that in order to continue to carry on business during the CCAA proceedings and in order to conduct the Recapitalization most effectively, the Applicants require the active and committed involvement of the board and, accordingly, the proposed Initial Order provides for a court ordered charge (the "Directors' Charge") in the amount of $500,000 to secure the Applicants' indemnification of its directors and officers in respect of liabilities they may incur during the CCAA proceedings. The amount of the Directors' Charge has been calculated based on the estimated exposure of the directors and officers and has been reviewed with the prospective Monitor. The proposed Directors Charge would only apply to the extent that the directors and officers do not have coverage under the D&O insurance policy with AIG Insurance Company of Canada.

28 The Applicants seek to complete the Recapitalization as quickly as reasonably possible and they anticipate that their existing cash resources will provide the Cline Group with sufficient liquidity during the CCAA proceedings.

29 It is also contemplated that foreign recognition proceedings will be sought in Colorado pursuant to Chapter 15. The Applicants seek the authorization for the Monitor to act as the foreign representative of the Applicants in the CCAA proceedings and to seek recognition of these proceedings in the United States pursuant to Chapter 15.

30 Having reviewed the record, including the affidavit of Mr. Goldfarb and the pre-filing report submitted by FTI, I am satisfied that each of the Applicants is "a debtor company" within the meaning of the defined term in s. 2 of the CCAA.

31 Cline is a "company" within the meaning of the CCAA. It is incorporated under the laws of British Columbia with gold development assets in Ontario and does business from its head office in Toronto.

32 New Elk and North Central are incorporated in Colorado, have assets in Canada, namely bank accounts in Toronto and are directed from Cline's head office in Toronto. In my view, each of New Elk and North Central is a "company" within the meaning of the CCAA because it is an incorporated company having assets in Canada.

33 I am also satisfied that the Applicants meet both the traditional test for insolvency under the *Bankruptcy and Insolvency Act* and the expanded test for insolvency based on a looming liquidity condition given that Cline has been unable to make interest payments under the Secured Notes, the Secured Notes have matured, the Forbearance Agreement has expired and the Trustee is in a position to enforce its security over the property of the Applicants. Further, I am satisfied that the Applicants are unable to obtain traditional or alternative financing to support the day-to-day operations and there is no reasonable expectation that the Applicants will be able to generate sufficient cash flow from operations to support their existing debt obligations (see: *Stelco Inc., Re* (2004), 48 C.B.R. (4th) 299 (Ont. S.C.J. [Commercial List]); leave to appeal to CA refused [2004] O.J. No. 1903 (Ont. C.A.); leave to appeal to SCC refused [2004] S.C.C.A. No. 336 (S.C.C.)).

34 It is also clear that the Applicants' liabilities far exceed the $5 million threshold amount under the CCAA.

35 In my view, the CCAA applies to the Applicants' as "debtor companies" in accordance with s. 3(1) of the CCAA.

36 The Applicants have filed the required financial information, including audited financial statements and the cash-flow forecast.

37 The Applicants in the Initial Order seek authorization (but not a requirement) to make certain pre-filing payments, including, *inter alia*:

a. payments to employees of effective wages, benefits and related amounts;

b. the amounts owing to respective individuals working as independent contractors;

c. the fees and disbursements of any consultants, agents, experts, accountants, counsel or other persons currently retained by the Applicants in respect of the CCAA; and

d. certain expenses incurred by the Applicants in carrying on the business in the ordinary course, that pertains to the period prior to the date of the Initial Order, if, in the opinion of the Applicants and with the consent of the Monitor, the applicable supplier or service provider is critical to the Cline Business and the ongoing operations of the Cline Group.

38 The court has jurisdiction to permit payment of pre-filing obligations to persons whose services are critical to the ongoing operations of the debtor's companies (see: *Canwest Global Communications Corp., Re* (2009), 59 C.B.R. (5th) 72 (Ont. S.C.J. [Commercial List]); *Cinram International Inc., Re*, 2012 ONSC 3767 (Ont. S.C.J. [Commercial List]) and *SkyLink Aviation Inc., Re*, 2013 ONSC 1500 (Ont. S.C.J. [Commercial List])). In granting such authorization, the courts consider a number of factors, including:

a. whether the goods and services were integral to the business of the applicants;

b. the applicants' need for the uninterrupted supply of the goods or services;

c. the fact that no payments would be made without the consent of the monitor;

d. the monitor's support and willingness to work with the applicants to ensure that payments to suppliers in respect of pre-filing liabilities were appropriate;

e. whether the applicants had sufficient inventory of goods on hand to meet their needs; and

f. the effect on the debtor's ongoing operations and ability to restructure if they were unable to make pre-filing payments to their critical suppliers.

39 In this case, the Applicants are of the view that their employees and certain of their independent contractors, certain suppliers of goods and services and certain providers of permits and licences are critical to the operation of the Cline Business. Mr. Goldfarb believes that such persons should be paid in the ordinary course, including in respect of pre-filing amounts, in order to avoid disruption to the Applicants' operations during the CCAA proceedings.

40 I am satisfied that it is appropriate in the present circumstances to grant the Applicants the authority to pay certain pre and post-filing obligations, subject to the terms and conditions in the proposed Initial Order.

41 Turning now to the request for the Administration Charge, s. 11.52 of the CCAA expressly provides the court with the jurisdiction to grant the Administration Charge. In *Canwest Publishing Inc./Publications Canwest Inc., Re*, 2010 ONSC 222 (Ont. S.C.J. [Commercial List]), the court noted that s. 11.52 does not contain any specific criteria for a court to consider in granting an administration charge and provide a list of non-exhaustive factors to consider in making such an assessment. The list of factors to consider include:

a. the size and complexity of the business being restructured;

b. the proposed role of the beneficiaries of the charge;

c. whether there is 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.

42 The Applicants submit that the Administration Charge is warranted and necessary for the reasons set forth in Mr. Goldfarb's affidavit at paragraphs 133 - 140.

43 I am satisfied that in these circumstances, the granting of the Administration Charge is warranted and necessary and that it is appropriate for the court to exercise its jurisdiction to grant the Administration Charge in the amount of $350,000.

44 The Applicants also seek a Directors' Charge in the amount of $500,000.

45 Section 11.51 of the CCAA affords the court the jurisdiction to grant a charge relating to directors' and officers' indemnification on a priority basis. The court has granted director and officer charges in a number of cases including *Canwest Global*, *supra*, *Canwest Publishing*, *supra*, *Cinram*, *supra* and *SkyLink*, *supra.*

46 The Applicants submit that the Directors' Charge is warranted and necessary and that it is appropriate in the present circumstances for the court to exercise its jurisdiction and grant the charge in the amount of $500,000.

47 For the reasons set out in Mr. Goldfarb's affidavit at paragraphs 134 - 138, I accept these submissions.

48 The Applicants have also indicated that, with the assistance of the Monitor as foreign representative, they intend to commence Chapter 15 proceedings in the United States Bankruptcy Court for the District of Colorado. Pursuant to s. 56 of the CCAA, the court has the authority to appoint a foreign representative of the Applicants for the purpose of having these proceedings recognized in a jurisdiction outside of Canada.

49 The Applicants seek authorization for each of the Applicants and the Monitor to apply to any court for recognition of the Initial Order and authorization for the Monitor to act as representative in respect of these CCAA proceedings for the purpose of having the CCAA proceedings recognized outside of Canada.

50 I am satisfied that it is appropriate to appoint the Monitor as foreign representative of the Applicants with respect to these proceedings.

51 The Applicants, in their factum, also address the issue of the Applicants' "center of main interest" as being in Ontario. These submissions are set out at paragraphs 77 - 84 of the Applicants' Factum.

52 Although the submissions are of interest, the determination of the Applicants' "center of main interest" ("COMI") is an issue to be considered by the United States Bankruptcy Court for the District of Colorado, rather than this court.

53 The Applicants also seek a postponement of the Annual Shareholders Meeting. The previous Annual Meeting of Cline was held on August 15, 2013 and therefore Cline was required by statute to hold an annual general meeting by November 15, 2014.

54 Mr. Goldfarb states that it would serve no purpose for Cline to call and hold its annual meeting of Shareholders given that the Shareholders of Cline no longer have an economic interest in Cline as a result of the insolvency. The Applicants submit that it is appropriate for the court to exercise its jurisdiction to relieve Cline from its obligation to call and hold its annual meeting of Shareholders until after the termination of the CCAA proceedings or further order of the court. In support of this request, the Applicants reference *Canwest Global*, *supra* and *SkyLink*, *supra.*

55 In my view, the request to postpone the annual Shareholders meeting is appropriate in the circumstances and is granted.

56 In the result, I am satisfied that the Applicants meet all of the qualifications required to obtain the requested relief under the CCAA and the Initial Order is granted in the form presented.

57 The Applicants also request two additional orders that they believe are necessary to advance the Recapitalization:

a. an order establishing a process for the identification and determination of claims against the Applicants and their present and former directors and officers (the Claims Procedure Order); and

b. an order authorizing the Applicants to file the Plan and to convene meetings of their affected creditors to consider and vote on the Plan (the Meetings Order).

58 The Applicants seek the Claims Procedure Order and the Meetings Order at this stage because they wish to effectuate the recapitalization as efficiently as possible. Further, the Applicants submit that the "comeback clauses" included in the draft Claims Procedure Order and Meetings Order ensure that no party is prejudiced by the granting of such order at this time.

59 The Applicants have submitted a factum in support of the Claims Procedure Order and Meetings Order. In the factual background to the Recapitalization and proposed Plan, the Claims Procedure and the meeting of creditors is set out at paragraphs 8 - 29 of the factum. For informational purposes, these paragraphs are set out in Appendix "A" to this Endorsement.

60 The issues to be considered on this motion are whether:

(a) it is appropriate to proceed with the Claims Procedure;

(b) it is appropriate to permit the Applicants to file the Plan and call the meetings;

(c) the proposed classification of creditors is appropriate; and

(d) a consolidated plan is appropriate in the circumstances.

61 In *SkyLink*, *supra* at paragraph 35, I noted that while it is not the usual practice for applicants to request claims procedure and meetings order concurrently with an initial CCAA application, the court has granted such relief in appropriate circumstances. The support for a restructuring proposal from the only creditors with an economic interest, and the existence of a comeback hearing at which any issues in respect of the orders can be addressed, are two factors that militate in favour of granting the Claims Procedure and Meetings Order concurrently with the initial application.

62 In my view, the foregoing comment is applicable in these proceedings.

63 I also note that both the Claims Procedure Order and the Meetings Order provide that any interested party that wishes to amend the Claims Procedure Order or the Meetings Order, as applicable, can bring a motion on a comeback date to be set by the court.

64 I also accept that most of the Applicants' known creditors are familiar with the Applicants and the Cline Business and the determination of most of the claims against the Applicants would be carried out by the Applicants using the Notice of Claim Procedure. As such, the Applicants submit that a claims bar date of January 13, 2015 will provide sufficient time for creditors to assert their claims and will not result in any prejudice to said creditors.

65 Based on the submissions of the Applicants, I accept this submission.

66 Accordingly, I am satisfied that the court should exercise its discretion and grant the requested Claims Procedure Order at this time.

67 Turning now to the issue as to whether it is appropriate to permit the Applicants to file the Plan and call the meetings, the court is not required to address the fairness and reasonableness of the Plan at this stage.

68 In these circumstances, I am satisfied that it is appropriate to grant the Meetings Order at this time in order to allow the Meetings Procedure to proceed concurrently with the Claims Procedure, with a view to completing the Recapitalization as efficiently as possible.

69 Commencing at paragraph 42 of the factum, the Applicants make submissions with respect to the proposed classification of creditors for voting purposes.

70 The Applicants submit that the holders of the 2011 Notes and the 2013 Notes have a commonality of interest in respect of their *pro rata* share of the Secured Noteholders Allowed Secured Claim and should be placed in the same class for voting purposes.

71 For the purposes of the motion today, I am prepared to accept that it is appropriate for the Secured Noteholders to vote in the same class in respect of their Secured Noteholders Allowed Secured Claim.

72 The Affected Unsecured Creditors' Class includes creditors with unsecured claims against the Applicants, including the Secured Noteholders in respect of their Secured Noteholders Allowed Unsecured Claim and, if applicable, Marret in respect of the Marret Unsecured Claim. The Applicants submit that the affected Unsecured Creditors have a commonality of interest and should be placed in the same class for voting purposes.

73 It is noted that the determination of the Secured Noteholders Allowed Unsecured Claim has been determined by the Applicants and Marret and, for purposes of voting at the Secured Noteholders Meeting, is set at $17.5 million.

74 For the purposes of the motion today, I am prepared to accept the submissions of the Applicants including their determination of the affected Unsecured Creditors class.

75 The *WARN Act* plaintiffs class consists of potential members of an uncertified class action proceeding. The Applicants submit that the *WARN Act* claims have been asserted by only two *WARN Act* plaintiffs on behalf of other potential members of the class and these claims have not been proven and are contested by the Applicants.

76 Due to the unique nature and status of these claims, the Applicants have offered the *WARN Act* plaintiffs consideration that is different than the consideration offered to the Affected Unsecured Creditors.

77 I accept, for the purposes of this motion, that the *WARN Act* plaintiffs should be placed in a separate class for voting purposes.

78 With respect to holders of "Equity Claims", the Meetings Order provides that any person with a claim that meets the definition of "equity claim" under s. 2(1) of the CCAA will have no right to, and will not, vote at meetings; and the Plan provides that equity claimants will not receive a distribution under the Plan or otherwise recover anything in respect of their equity claims or equity interest.

79 For the purposes of this motion, I accept the submission of the Applicants that it is appropriate for equity claimants to be prohibited from voting on the Plan.

80 The Plan as proposed by the Applicants is a consolidated plan of arrangement that is intended to address the combined claims against all the Applicants. Courts will authorize a consolidated plan of arrangement to be filed for two or more related companies in appropriate circumstances (see, for example: *Northland Properties Ltd., Re* (1988), 69 C.B.R. (N.S.) 266 (B.C. S.C.); *Lehndorff General Partner Ltd., Re* (1993), 17 C.B.R. (3d) 24 (Ont. Gen. Div. [Commercial List])).

81 In this case, the Applicants submit that a consolidated plan is appropriate because:

a. New Elk is a wholly-owned subsidiary of Cline and North Central is a wholly-owned subsidiary of New Elk;

b. the Applicants are integrated members of the Cline Group, and there is significant sharing of business functions within the Cline Group;

c. the Applicants have prepared consolidated financial statements;

d. all three of the Applicants are obligors in respect of the Secured Notes;

e. the Secured Noteholders are the only creditors with an economic interest in any of the three Applicants and have a first ranking security interest over all or substantially all of the assets, property and undertakings of each of the Applicants;

f. the *WARN Act* claims are asserted against both Cline and New Elk under a "single employer" theory of liability;

g. North Central has no known liabilities other than its obligations in respect of the Secured Notes;

h. Unsecured Creditors of the Applicants would receive no recovery outside of the Plan; and

i. the filing of a consolidated plan does not prejudice any affected Unsecured Creditor or *WARN Act* plaintiff, since a consolidated plan will not eliminate any veto position with respect to approval of the plan that such creditors would have if separate plans of arrangement were filed in respect of each of the Applicants.

82 For the purposes of the motion today, I accept these submissions and consider it appropriate to authorize the filing of a consolidated plan.

83 In the result, I am satisfied that it is appropriate to grant both the Claims Procedure Order and the Meetings Order at this time.

84 It is specifically noted that the "comeback clause" that is included in both the Claims Procedure and the Meetings Orders will allow parties to come back before this court to amend or vary the Claims Procedure Order or the Meetings Order. The comeback hearing has been scheduled for Monday, December 22, 2014.

Application granted.

Appendix "A"

A. Recapitalization and Proposed Plan

(1) Overview of the Recapitalization

8. The Applicants have been actively engaged in discussions with Marret, on behalf of the Secured Noteholders, regarding a possible recapitalization of the Applicants. The Applicants believe that that the Recapitalization, in the circumstances, is in the best interests of the Applicants and their stakeholders. The Recapitalization provides for, *inter alia*, the following:

(a) the Secured Noteholders Allowed Secured Claim will be compromised, released and discharged as against the Applicants upon implementation of the Plan (the "*Plan Implementation Date*") for new Cline common shares representing 100% of the equity in Cline (the "*New Cline Common Shares*"), and new indebtedness in favour of the Secured Noteholders in the principal amount of $55 million (the "*New Secured Debt*");

(b) Cline will be the borrower and New Elk and North Central will be the guarantors of the New Secured Debt, which will be evidenced by a credit agreement with a term of seven (7) years, bearing interest at a rate of 0.01% per annum plus an additional variable interest payable only once the Applicants have achieved certain operating revenue targets;

(c) the claims of Affected Unsecured Creditors, which exclude the WARN Act Plaintiffs but include the Secured Noteholders in respect of the Secured Noteholders Allowed Unsecured Claim, will be compromised, released and discharged as against the Applicants on the Plan Implementation Date in exchange for an unsecured, subordinated, non-interest bearing entitlement to receive $225,000 from Cline on the date that is eight (8) years from the Plan Implementation Date (the "*Unsecured Plan Entitlement*");

(d) notwithstanding the Secured Noteholders Allowed Unsecured Claim, the Secured Noteholders will waive their entitlement to the proceeds of the Unsecured Plan Entitlement, and all such proceeds will be available for distribution to the other Affected Unsecured Creditors with valid claims who are entitled to the Unsecured Plan Entitlement, allocated on a *pro rata* basis;

(e) all Affected Unsecured Creditors with Affected Unsecured Claims of up to $10,000 will, instead of receiving their *pro rata* share of the Unsecured Plan Entitlement, be paid in cash for the full value of their claim and will be deemed to vote in favour of the Plan unless they indicate otherwise, provided that this cash payment will not apply to any Secured Noteholder with respect to its Secured Noteholders Allowed Unsecured Claim;

(f) all WARN Act Claims will be compromised, released and discharged as against the Applicants on the Plan Implementation Date in exchange for an unsecured, subordinated, non-interest bearing entitlement to receive $100,000 from Cline on the date this is eight (8) years from the Plan Implementation Date (the "*WARN Act Plan Entitlement*");

(g) certain claims against the Applicants, including claims covered by insurance, certain prior-ranking secured claims of equipment providers and the secured claim of Bank of Montreal in respect of corporate credit card payables, will remain unaffected by the Plan;

(h) existing equity interests in Cline will be cancelled for no consideration; and

(i) the shares of New Elk and North Central will not be affected by the Recapitalization and will remain owned by Cline and New Elk, respectively.

Goldfarb Affidavit at para. 124; Application Record, Tab 4.

9. Any Affected Creditor with a Disputed Distribution Claim will not be entitled to receive any distribution under the Plan with respect to such Disputed Distribution Claim unless and until such Claim becomes an Allowed Affected Claim. A Disputed Distribution Claim will be resolved in the manner set out in the Claims Procedure Order.

Plan, Section 3.6.

10. Unaffected Creditors will not be affected by the Plan and will not receive any consideration or distributions under the Plan in respect of their Unaffected Claims (except to the extent their Unaffected Claims are paid in full on the Plan Implementation Date in accordance with the express terms of the Plan).

Plan, Sections 1.1, 2.3 and 3.5.

11. If implemented, the Recapitalization would result in a reduction of over $55 million in interest-bearing debt.

Goldfarb Affidavit at para. 126; Application Record, Tab 4.

12. The proposed Recapitalization is supported by Marret, which has the ability to exercise all discretion and authority of the Secured Noteholders. Consequently, the proposed Recapitalization is supported by 100% of the Secured Noteholders, both as secured creditors of the Applicants and as unsecured creditors of the Applicants in respect of the portion of their claims that is unsecured.

Goldfarb Affidavit at paras. 63, 67 and 145; Application Record, Tab 4.

(2) Classification for Purposes of Voting on the Plan

13. The only classes of creditors for the purposes of considering and voting on the Plan will be (i) the Secured Noteholders Class, (ii) the Affected Unsecured Creditors Class, and (iii) the WARN Act Plaintiffs Class.

Plan, Section 3.2.

Goldfarb Affidavit at para. 153; Application Record, Tab 4.

14. The Secured Noteholders Class consists of the Secured Noteholders in respect of the Secured Noteholders Allowed Secured Claim, being the portion of the Secured Noteholders Allowed Claim against the Applicants that is designated as secured. Each Secured Noteholder will be entitled to vote its *pro rata* portion of that amount in the Secured Noteholders Class.

Goldfarb Affidavit at para. 154; Application Record, Tab 4.

15. The Affected Unsecured Creditors Class consists of the unsecured creditors of the Applicants who are to be affected by the Plan, excluding the WARN Act Plaintiffs (who are addressed in a separate class). The Affected Unsecured Creditors Class includes the Secured Noteholders in respect of the Secured Noteholders Allowed Unsecured Claim, being the portion of the Secured Noteholders Allowed Claim that is designated as unsecured. Each Secured Noteholder will be entitled to vote its *pro rata* portion of the Secured Noteholders Allowed Unsecured Claim in the Affected Unsecured Creditors Class.

Goldfarb Affidavit at para. 155; Application Record, Tab 4.

16. Within the Affected Unsecured Creditors Class, unsecured creditors with Affected Unsecured Claims of up to $10,000 will be paid in full and will be deemed to vote in favour of the Plan, unless they indicate otherwise.

Goldfarb Affidavit at para. 156; Application Record, Tab 4.

17. The WARN Act Plaintiffs Class consists of all WARN Act Plaintiffs in the WARN Act Class Action who may assert WARN Act Claims against the Applicants. Each WARN Act Plaintiff will be entitled to vote its *pro rata* portion of all WARN Act Claims.

Goldfarb Affidavit at para. 157; Application Record, Tab 4.

18. Unaffected Creditors and Equity Claimants are not entitled to vote on the Plan at the Meetings in respect of their Unaffected Claims and Equity Claims, respectively.

Plan, Sections 3.4(3) and 3.5.

19. The Plan provides that, if the Plan is not approved by the required majorities of both the Unsecured Creditors Class and the WARN Act Plaintiffs Class, or the Applicants determine that such approvals are not forthcoming, the Applicants are permitted to withdraw the Plan and file an amended and restated plan with the features described on Schedule "B" to the Plan (the "Alternate Plan"). The Alternate Plan would provide, *inter alia*, that all unsecured claims and all WARN Act Claims against the Applicants would be treated as unaffected claims, the only voting class under the Alternate Plan

would be the Secured Noteholders Class, and all assets of the Applicants would be transferred to an entity designated by the Secured Noteholders in exchange for a release of the Secured Noteholders Allowed Secured Claim.

Goldfarb Affidavit at para. 125; Application Record, Tab 4.

B. Claims Procedure

20. The Applicants wish to commence the Claims Procedure as soon as possible to ascertain all of the Claims against the Applicants for the purpose of voting and receiving distributions under the Plan.

21. Liabilities and claims against the Applicants that the Applicants are aware of, include, *inter alia*, secured obligations in respect of the Secured Notes, secured obligations in respect of leased equipment used at the New Elk Mine, contingent claims for damages and other amounts in connection with certain pending litigation claims against the Applicants, and unsecured liabilities in respect of accounts payable relating to ordinary course trade and employee obligations.

Goldfarb Affidavit at paras. 52-57; Application Record, Tab 4.

22. The draft Claims Procedure Order provides a process for identifying and determining claims against the Applicants and their directors and officers, including, *inter alia*, the following:

(a) Cline, with the consent of Marret, will determine the aggregate of all amounts owing by the Applicants under the 2011 Indenture and the 2013 Indenture up to the Filing Date, such aggregate amounts being the "*Secured Noteholders Allowed Claim*";

(b) the Secured Noteholders Allowed Claim will be apportioned between the Secured Noteholders Allowed Secured Claim and the Secured Noteholders Allowed Unsecured Claim (being the amount of the Secured Noteholders Allowed Claim that is designated as unsecured in the Plan);

(c) the Monitor will send a Claims Package to all Known Creditors, which Claims Package will include a Notice of Claim specifying the Known Creditor's Claim against the Applicants for voting and distribution purposes, as valued by the Applicants based on their books and records, and specifying whether the Known Creditor's Claim is secured or unsecured;

(d) the Claims Procedure Order contains provisions allowing a Known Creditor to dispute its Claim as set out in the applicable Notice of Claim for either voting or distribution purposes or with respect to whether such Claim is secured or unsecured, and sets out a procedure for resolving such disputes;

(e) the Monitor will publish a notice to creditors in The Globe and Mail (National Edition), the Denver Post and the Pueblo Chieftain to solicit Claims against the Applicants by Unknown Creditors who are as yet unknown to the Applicants;

(f) the Monitor will deliver a Claims Package to any Unknown Creditor who makes a request therefor prior to the Claims Bar Date, containing a Proof of Claim to be completed by such Unknown Creditor and filed with the Monitor prior to the Claims Bar Date;

(g) the proposed Claims Bar Date for Proofs of Claim for Unknown Creditors and for Notices of Dispute in the case of Known Creditors is January 13, 2015;

(h) the Claims Procedure Order contains provisions allowing the Applicants to dispute a Proof of Claim as against an Unknown Creditor and provides a procedure for resolving such disputes for either voting or distribution purposes and with respect to whether such claim is secured or unsecured;

(i) the Claims Procedure Order allows the Applicants to allow a Claim for purposes of voting on the Plan without prejudice to whether that Claim has been accepted for purposes of receiving distributions under the Plan;

(j) where the Applicants or the Monitor send a notice of disclaimer or resiliation to any Creditor after the Filing Date, such notice will be accompanied by a Claims Package allowing such Creditor to make a claim against the Applicants in respect of a Restructuring Period Claim;

(k) the Restructuring Period Claims Bar Date, in respect of claims arising on or after the date of the Applicants' CCAA filing, will be seven (7) days after the day such Restructuring Period Claim arises;

(l) for purposes of the matters set out in the Claims Procedure Order in respect of any WARN Act Claims: (i) the WARN Act Plaintiffs will be treated as Unknown Creditors since the Applicants are not aware of (and have not quantified) any bona fide claims of the WARN Act Plaintiffs; and (ii) Class Action Counsel shall be entitled to file Proofs of Claim, Notices of Dispute of Revision and Disallowance, receive service and notice of materials and to otherwise deal with the Applicants and the Monitor on behalf of the WARN Act Plaintiffs, provided that Class Action Counsel shall require an executed proxy in order to cast votes on behalf of any WARN Act Plaintiffs at the WARN Act Plaintiffs' Meeting; and

(m) Creditors may file a Proof of Claim with respect to a Director/Officer Claim.

Goldfarb Affidavit at para. 151; Application Record, Tab 4.

23. As further discussed below, the Applicants may elect to proceed with the Meetings notwithstanding that the resolution of Claims in accordance with the Claims Procedure may not be complete. The Meetings Order provides for the separate tabulation of votes cast in respect of Disputed Voting Claims and provides that the Monitor will report to the Court on whether the outcome of any vote would be affected by votes cast in respect of Disputed Voting Claims.

Goldfarb Affidavit at paras. 161(f)-(h) and 162; Application Record, Tab 4.

24. The Claims Procedure Order includes a comeback provision providing interested parties who wish to amend or vary the Claims Procedure Order with the ability to appear before the Court or bring a motion on a date to be set by this Court.

Goldfarb Affidavit at para 149; Application Record, Tab 4.

C. Meetings of Creditors

25. It is proposed that the Meetings to vote on the Plan will be held at Goodmans LLP, 333 Bay Street, Suite 3400, Toronto, Ontario on January 21, 2015 at 10:00 a.m. for the WARN Act Plaintiffs Class, 11:00 a.m. for the Affected Unsecured Creditors Class, and 12:00 p.m. for the Secured Noteholders Class.

Goldfarb Affidavit at para. 160; Application Record, Tab 4. Meetings Order, Section 20.

26. The draft Meetings Order provides for, *inter alia*, the following in respect of the governance of the Meetings:

(a) an officer of the Monitor will preside as the chair of the Meetings;

(b) the only parties entitled to attend the Meetings are the Eligible Voting Creditors (or their proxyholders), representatives of the Monitor, the Applicants, Marret, all such parties' financial and legal advisors, the Chair, the Secretary, the Scrutineers, and such other parties as may be admitted to a Meeting by invitation of the Applicants or the Chair;

(c) only Creditors with Voting Claims (or their proxyholders) are entitled to vote at the Meetings; provided that, in the event a Creditor holds a Disputed Voting Claim as at the date of a Meeting, such Disputed Voting Claim may

be voted at the Meeting but will be tabulated separately and will not be counted for any purpose unless such Claim is ultimately determined to be a Voting Claim;

(d) each WARN Act Plaintiff (or its proxyholder) shall be entitled to cast an individual vote on the Plan as part of the WARN Act Plaintiffs Class, and Class Action Counsel shall be permitted to cast votes on behalf of those WARN Act Plaintiffs who have appointed Class Action Counsel as their proxy;

(e) the quorum for each Meeting is one Creditor with a Voting Claim, provided that if there are no WARN Act Plaintiffs voting in the WARN Act Plaintiffs Class, the Applicants will have the right to combine the WARN Act Plaintiffs Class with the Affected Unsecured Creditors Class and proceed without a vote of the WARN Act Plaintiffs Class, in which case there shall be no WARN Act Plan Entitlement under the Plan;

(f) the Monitor will keep separate tabulations of votes in respect of:

i. Voting Claims; and

ii. Disputed Voting Claims, if any;

(g) the Scrutineers will tabulate the vote(s) taken at each Meeting and will determine whether the Plan has been accepted by the required majorities of each class; and

(h) the results of the vote conducted at the Meetings will be binding on each creditor of the Applicants whether or not such creditor is present in person or by proxy or voting at a Meeting.

Goldfarb Affidavit at para. 161; Application Record, Tab 4.

27. The Applicants may elect to proceed with the Meetings notwithstanding that the resolution of Claims in accordance with the Claims Procedure may not be complete. The Meetings Order, if approved, authorizes and directs the Scrutineers to tabulate votes in respect of Voting Claims separately from votes in respect of Disputed Voting Claims, if any. If the approval or non-approval of the Plan may be affected by the votes cast in respect of Disputed Voting Claims, then the Monitor will report such matters to the Court and the Applicants and the Monitor may seek advice and directions at that time. This way, the Meetings can proceed concurrently with the Claims Procedure without prejudice to the Applicants' Creditors.

Goldfarb Affidavit at paras. 161(f)-(h) and 162; Application Record, Tab 4.

28. Like the Claims Procedure Order, the Meetings Order includes a comeback provision providing interested parties who wish to amend or vary the Meetings Order with the ability to appear before the Court or bring a motion on a date to be set by the Court.

Meetings Order, Section 68.

29. By seeking the Claims Procedure Order and the Meetings Order concurrently, the Applicants hope to move efficiently and expeditiously towards the implementation of the Recapitalization.

Goldfarb Affidavit at para. 148; Application Record, Tab 4.

Tab 13

2007 NLTD 20
Newfoundland and Labrador Supreme Court (Trial Division)

Roman Catholic Episcopal Corp. of St. George's, Re

2007 CarswellNfld 198, 2007 NLTD 20, [2007] N.J. No. 32, 161 A.C.W.S. (3d) 21, 264 Nfld. & P.E.I.R. 309, 32 C.B.R. (5th) 302, 801 A.P.R. 309

In the Matter of The Amended Proposal of the Roman Catholic Episcopal Corporation of St. George's

In the Matter of Applications by W.B., M.C., J.S and R.K., Class 4 Creditors, Pursuant to the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

In the Matter of the Notice of Disallowance of Claims of W.B., M.C., J.S. and R.K., Class 4 Creditors

A.E. Faour J.

Heard: January 18, 2007
Judgment: January 18, 2007
Docket: 2005 01T 11521

Counsel: Harry Mugford for Applicants
John Stringer, Stacey O'Dea for Respondent Trustee
John Lavers for Class 1 Creditor

Subject: Insolvency; Churches and Religious Institutions

APPLICATION by claimants for order entitling them to file claim against corporation after claims deadline in proposal under *Bankruptcy and Insolvency Act*.

***A.E. Faour J.* (orally):**

1 This is an application by four individuals that they be entitled to file a claim against the Roman Catholic Episcopal Corporation, contrary to the decision of the trustee. I gave my decision orally at the end of the hearing. What follows is a written version of those reasons, edited for syntax and completeness.

2 I note for the record that Mr. Mugford is present on behalf of the four applicants. Mr. Stringer and Ms. O'Dea are here on behalf of the trustee in bankruptcy. Mr. Lavers and Mr. Budden appeared, each on behalf of one Class One creditor. Only Mr. Mugford and Mr. Stringer have filed submissions on behalf of their clients. Mr. Lavers did not file a written submission, but he did make a helpful submission to the Court. Mr. Budden indicated he had not received instructions, and asked leave of the court to withdraw from the proceeding. Leave was granted and he did not participate further.

3 The claims of the four applicants, W.B., M.C., J.S. and R.K arise under an amended proposal under the *Bankruptcy and Insolvency Act (Canada)* approved by this Court in July 2005. That proposal was presented as a mechanism to satisfy the claims of a number of claimants who were sexually abused by a member of the clergy attached to the Corporation, the legal entity which oversees the activities of the Roman Catholic Church in the western region of the Province. That proposal created four classes of creditors. For the purposes of this proceeding the relevant groupings are first, the sexual abuse creditors who were known to the trustee at the date of approval. They are designated as Class One creditors. Second, the sexual abuse creditors unknown to the trustee at the date of approval. They are categorized as Class Four

creditors. The proposal put in place a process to assess subsequent claims, that would have gone into the Class Four category, and determine whether they had merit or validity.

4 The trustee in respect of the claims of the four applicants has denied the claims because they were received after the March 15, 2006 deadline set out in the proposal. I want to just provide a brief overview of the circumstances of each of the applications.

5 The first one was on behalf of W.B. who contacted his solicitors for the first time on March 22, 2006. They provided notice of his claim to the trustee on March 23, 2006. This was about a week after the deadline. The affidavit of W.B., and all of the applicants, notes that the trustee sent correspondence dated March 16, 2006 that any further claims must be brought to the attention of the Corporation immediately. His evidence included a statement of the allegations of sexual abuse which would ground his claim if accepted for consideration by the trustee.

6 M.C. contacted his solicitors at the end of May, 2005 which was almost a year before the deadline. By a letter dated June 2, 2005 Mr. Stringer was notified of M.C.'s claim and he confirmed receipt by e-mail the same date. The statement of M.C. outlining the allegations of abuse was forwarded on June 14, 2005. He also cites the March 16, 2006 correspondence which acknowledges receipt of the notice of claims from M.C. among others, and sought additional proof. The trustee says that the proof of claim, the formal form, was not received until March 29, 2006 and therefore was out of time. M.C.'s evidence also included a statement of the allegations of sexual abuse which would ground his claim if accepted for consideration by the trustee.

7 J., or J.S., as he indicated he would like to be called, first contacted his solicitors on April 26, 2006, some six weeks after the deadline. On the same date the solicitors for the trustee were notified of the claim and a proof of claim form was submitted. The trustee disallowed this claim on the basis that it was out of time by notice dated April 27, 2006.

8 The claim of J.S. contained allegations which are quite different from the others. The other three related incidents of sexual abuse, including fondling and ejaculation, which occurred generally in private. J.S. cited incidents of serious sexual and non-sexual abuse in public places, and involving significant violence, including gunshots and police involvement. These allegations, it would seem to me, are of quite a different character than the other three and would require some significant investigation by the trustee if accepted for consideration. I only comment to note that the allegations, even though they are different, *prima facie*, form the basis for a claim.

9 Finally, R.K. first contacted solicitors April 27, 2006. They advised the trustee of his claim on May 5, 2006. He made a written statement which was submitted to the solicitors for the Trustee on May 11, 2006. The claim was disallowed by notice from the Trustee on May 8, 2006 on the basis that it was out of time. His evidence also included a statement of the allegations of sexual abuse which would ground his claim if accepted for consideration by the trustee.

10 I note that the proceedings today deal only with the question of whether the claims can be considered given the submission of claims after the claims barred date. We're not concerned today with the merits or the validity of each of the claims. If accepted, the claims would have to be assessed in accordance with the process established under the amended proposal approved in July of 2005.

11 There are two issues that I have to consider. First the nature of this proceeding and my jurisdiction to deal with the applications; second, assuming I have the authority then the substantial issue of whether it's appropriate to submit the claims to be considered effectively extending the time for submitting a claim.

12 On the first issue, the authority of the Court arises both from the proposal and from the *Bankruptcy and Insolvency Act*. The proposal sets out the four classes of creditors. It defines Class Four creditors in Article 2.1 as including "all unknown creditors who the Corporation becomes aware of after the Court approval date whose claims arose prior to the filing date as a result of the sexual abuse of such creditor by priests, employees or agents of the Corporation, ..."

13 Article 12.8 provides for the effect of the proposal on creditors, that being to provide finality and to satisfy and distinguish all claims. It goes on to provide,

> Any creditor who has not submitted a proof of claim pursuant to the terms hereof, within the time limit set herein, or whose proof of claim has been disallowed and such creditor has not appealed such disallowance, shall not be entitled to any distribution",

14 I take this last provision to provide the Court implicitly, if not explicitly, with authority to hear an appeal in respect of a decision of the trustee. The proposal and its implementation is, of course, subject to supervision of the Court.

15 The Act provides the Court with authority to deal with actions of the trustee. Subsection 135(4) of the *Bankruptcy and Insolvency Act* provides for discretion to hear appeals from trustees' decisions:

> A determination under subsection (1.1) or a disallowance referred to in subsection (2) is final and conclusive unless, within a thirty day period after the service of the notice referred to in subsection (3) or such further time as the court may on application made with that period allow, the person to whom the notice was provided appeals from the trustee's decision to the court in accordance with the General Rules.

16 Section 37 of the Act, provides for an application to the Court to confirm, reverse or modify the act or decision complained of:

> Where the bankrupt or any of the creditors or any other person is aggrieved by any act or decision of the trustee, he may apply to the court and the court may confirm, reverse or modify the act or decision complained of and make such order in the premises as it thinks just.

17 In addition there are specific provisions in the Act cited by Mr. Mugford which provide specifically that the Court has remedial authority and may extend the time for doing something: sections 149(2), 189(9) and (11).

18 Based on the foregoing, I am satisfied that the Court has jurisdiction to deal with the matter.

19 There is an additional procedural matter raised by Mr. Stringer in his submission. He suggests that an alternate procedure open to the claimants was to seek approval of the Court for a late filing of a claim before such a claim was filed. If they had taken that approach, it would seem that the Court would have to consider only the merits of accepting a late claim. He suggested having taken the route of an appeal, the burden the applicants have to meet is to demonstrate an error of law on the part of the trustee before the disallowance may be set aside. That is a high burden and one which would be more difficult to meet than the approach of seeking approval of the Court before making the claim.

20 Whether I should view this as an appeal where my task would be to determine whether the trustee made an error of law in disallowing the claims, or approve a late claim *nunc pro tunc*, or with retroactive effect, the effect is the same. Either the claims may be made, or they were out of time. I prefer the approach which would permit me to deal with the substantive issue of whether the claims ought to be considered rather than rule on whether the trustee has made an error at law. My preference is to take the approach that I should not let the procedures chosen by the applicants dictate the outcome of the proceeding, but deal with the substantive effect of filing the claims after the claims bar date. In taking this approach it may be necessary to consider that the application to set aside the trustee's decision is in reality an application to give leave *nunc pro tunc* to the applicants to file their claims after the deadline. I'm satisfied that whether or not I find an error of law I can deal with the substance of whether it's appropriate to permit these claims to be made rather than focus this proceeding on whether there was an error of law in the decision to disallow.

21 On the substantive point of whether I ought to permit a late claim, I have to consider two approaches taken in Canada on the question of delay in these circumstances. Counsel for the trustee has helpfully pointed out there are two lines of authority. The first follows the decision or is exemplified in the decision of the Alberta Court of Appeal in *Blue*

Range Resource Corp., Re, [2000] A.J. No. 1232 (Alta. C.A.) which that sets out the factors which ought to be considered in determining whether to grant permission for late filing of claims. At para. 26 the court reviews the criteria applicable:

> 26 Therefore, the appropriate criteria to apply to the late claimants is as follows:
>
> 1. Was the delay caused by inadvertence and if so, did the claimant act in good faith?
>
> 2. What is the effect of permitting the claim in terms of the existence and impact of any relevant prejudice caused by the delay?
>
> 3. If relevant prejudice is found can it be alleviated by attaching appropriate conditions to an order permitting late filing?
>
> 4. If relevant prejudice is found which cannot be alleviated, are there any other considerations which may nonetheless warrant an order permitting late filing?
>
> 27 In the context of the criteria, "inadvertent" includes carelessness, negligence, accident, and is unintentional.

22 In respect of the issue of prejudice, the court went on to elaborate, at para. 40:

> 40 In a CCAA context, as in a BIA context, the fact that Enron and the other creditors will receive less money if late and late amended claims are allowed is not prejudice relevant to this criterion. Re-organization under the CCAA involves compromise. Allowing all legitimate creditors to share in the available proceeds is an integral part of the process. A reduction in that share cannot be characterized as prejudice: *Cohen, Re* (1956), 36 C.B.R. 21 (Alta. C.A.) at 30-31. Further, I am in agreement with the test for prejudice used by the British Columbia Court of Appeal in *312630 British Columbia Ltd.* It is: did the creditor(s) by reason of the late filings lose a realistic opportunity to do anything that they otherwise might have done? Enron and the other creditors were fully informed about the potential for late claims being permitted, and were specifically aware of the existence of the late claimants as creditors. I find, therefore, that Enron and the Creditors will not suffer any relevant prejudice should the late claims be permitted.

23 Based on this case in which the Alberta Court of Appeal permitted out of time claims to proceed it seems to me that the key factors are good faith on the part of the claimants and prejudice to either the trustee's administration of the proposal, the other creditors, or both.

24 An alternate view was argued by counsel for the trustee as exemplified by the case of *Noma Co., Re*, 2004 CarswellOnt 5033, [2004] O.J. No. 4914 (Ont. S.C.J. [Commercial List]) in the Ontario Superior Court. By denying a claim made after the claims bar date, this case is used by the Trustee to suggest that I should place emphasis on the contractual nature of the proposal and the inherent unfairness which would result if a late creditor could prejudice the delicate balance achieved between the corporation and the creditors who were part of the arrangement. This is the only sure way to ensure the integrity of the process and to bring finality. However, in this case, the court specifically acknowledged the approach in *Blue Range Resource Corp., Re*. In refusing the extension of time, the court found that the late claimant had not exercised good faith, and in fact there was inordinate delay in making the claim.

25 In my view, the two cases do not reflect different approaches. Rather, they reflect different results arising from the Court applying similar criteria. An examination of both cases confirms that the appropriate approach in a decision to permit late claims is to ensure a balancing of the relative impact on the claimants and the larger group of creditors. This involves, as set out in *Blue Range Resource Corp., Re*, balancing good faith on the part of the claimants with prejudice to the ability of the trustee to carry out its duties under the proposal. Acceptance of the contractual nature of the proposal as a paramount consideration is not inconsistency with such a balancing. Whether or not late claims are accepted, the Trustee is required to adhere to the terms of the proposal to permit a level of predictability and finality for both the corporation and the other creditors. Acceptance of a claim after the claims bar date requires evidence of prejudice to the Trustee in carrying out such a duty.

26 The Trustee argues that I should emphasize the contractual nature of the proposal and reject any claims which do not strictly comply with its terms. Counsel raised several points in defence of the Trustee's decision to disallow these claims. First, the trustee has an obligation to enforce the terms of the proposal as it was approved by the Court, and he cites the case of *Society of Composers, Authors & Music Publishers of Canada v. Armitage*, 2000 CarswellOnt 4120 (Ont. C.A.). Second, that the Court should afford a significant degree of deference to the amended proposal and the decision of the trustee taken in implementation of its provisions. Third, that the claimants have given no good reason for the delay. They ought to have read the various newspapers in which the notice was placed and ought to have been aware of the need to make contact for the purpose of making a claim. Fourth, that the claimants took the wrong procedural approach. They ought to have made application to the Court requesting that the claims barr date be lifted prior to filing their claims rather than appealing the notices of disallowance. As a consequence, they have the burden of demonstrating that the trustee was wrong in law.

27 The applicants for their part make several arguments. First, they argue that a broad interpretation of the proposal would require the trustee to act equitably in implementing the proposal since the proposal contemplated a process to determine unknown creditors, the fact that the applicants were out of time by a few weeks should not deny them access to the process.

28 Second, they argue the claims bar date is a matter of form. It is submitted that both the case law and the provisions of the Act would not permit matters of form to trump matters of substance. Since it's a formality with which they were unable to comply, and as long as they made out a *prima facie* claim they should be permitted access to the process.

29 Third, they referred to the March 16, 2006 letter as a waiver by the trustee of any deadline date. I just want to say that in my view, while the wording of the letter is perhaps unfortunate, I do not believe that this letter can, by itself, cause a waiver of a clear provision of the proposal. I will not consider this argument of the applicants further.

30 Fourth, the applicants say that the prejudice to them if the claim is disallowed at this point is significant as it will make it almost impossible or perhaps impossible for them to obtain a remedy for the harm inflicted upon them.

31 Fifth, they argue that the practical considerations of disallowance would require them to go outside a conciliating mechanism which was established for the express purpose of dealing with such claims as theirs. It was meant to avoid time consuming litigation.

32 The submission of counsel for one of the class one creditors was essentially to support the trustee. He echoed the arguments that the other creditors are entitled to rely on the terms of the proposal. He suggested it was put in place to provide certainty and closure. He felt there was a possibility of inordinate delays should these claims be accepted. The claimants ought to be held to the terms of the proposal as were all the other creditors.

33 In considering all the arguments I reviewed the cases submitted. It is hard to find cases directly on point as the circumstances reflect different situations. First, virtually all of the cases reflect commercial creditors, and not the kind of creditors we have in this case. Second, none of the cases cited dealt with a proposal that contemplated unknown creditors and established a process for dealing with them as this one did.

34 I note the following cases. *Lindsay v. Transtec Canada Ltd.* (1994), 28 C.B.R. (3d) 110, 5 C.C.P.B. 219, [1995] 2 W.W.R. 404, 99 B.C.L.R. (2d) 73, 1994 CarswellBC 620 (B.C. S.C.) involved a claim by a former executive of the company regarding his retirement benefits. He was fully aware of the process but declined to take any steps at the appropriate time to gain a tactical advantage. His application to make a late claim was denied.

35 The case of *Carlen Transport Inc. v. Juniper Lumber Co. (Monitor of)*, 2001 CarswellNB 21, 21 C.B.R. (4th) 222, 233 N.B.R. (2d) 111, 601 A.P.R. 111 (N.B. Q.B.) allowed a late claim. However, it did so in circumstances where the only problem was a delay in the mail. I do not believe it is helpful in this case except to indicate that a short delay where

good faith is not in question, is not a bar to filing a late claim. It also cited with approval the test in *Blue Range Resource Corp., Re*, to which I referred earlier.

36 In *Christian Brothers of Ireland in Canada, Re*, 2004 CarswellOnt 574, 49 C.B.R. (4th) 12, 69 O.R. (3d) 507 (Ont. S.C.J. [Commercial List]), the Ontario Court approved the distribution of assets to creditors who were sexual abuse victims over the objection of several of them. The court confirmed that the liquidator had acted fairly and reasonably in placing limitations on creditor entitlements, given the obligations to distribute the limited assets fairly. The trustee is obligated to do the same in this case. However, that case centred on the substantive issues related to the overall distribution of the estate and not on a procedural question as here. As a consequence, I found that this case was not helpful in assisting in determining the proper balance to be reached between the needs of late creditors, and the integrity of the proposal.

37 In reaching a conclusion on this case I have considered the following factors. First, while the Trustee has spoken of the integrity of the proposal and the need to preserve the rights of the creditors who were part of the decision-making process, he has not set out any real prejudice which would arise if these claims were allowed. The submissions and the affidavit of Mr. Harris referred to the possibility of delay and the issue of dilution of the pool for satisfying the claims. However, during the hearing it was confirmed that the process of assessment is ongoing and nothing was presented to me which would cause me to think there would be any substantial prejudice, including delay, to the process by the addition of these claimants. I also accepted the view, set out in the *Blue Range Resource Corp., Re* case, that the possibility of additional creditors diluting the assets to be distributed does not constitute prejudice.

38 Second, the trustee has not indicated there was any lost opportunity by virtue of the late filing which might give rise to prejudice, and I note the decision of the British Columbia Court of Appeal to which I referred earlier, which was cited in the *Blue Range Resource Corp., Re* case.

39 Third, the question of the proper procedure was raised by the trustee. In my view I am obliged to look at the substance of the matter and try to reach a decision based on substantive concerns and not to be hamstrung by the procedure that the applicants chose to follow in this particular case.

40 Fourth, the proposal itself contemplated there would be additional claimants. Other than the question of timing the trustee was directed by the proposal to consider additional claims for which notice had not been provided as of the date of the proposal. The inclusion of four additional claims was within the range of possibilities anticipated by the Proposal.

41 Fifth, while the letter from the trustee dated March 16th, one day after the claims bar date, purported to invite the submission of any final claims, I do not accept that this is somehow a waiver or estoppel which would make the deadline a nullity. I do however accept the letter as evidence of an overall intent in the proposal to determine and assess the claims of unknown victims of abuse.

42 Sixth, in my view there was no inordinate delay by each of the Applicants which in and of itself could prejudice the process. All of these claims were submitted within weeks of the deadline and nothing has been presented which would indicate the process of implementation of the proposal was delayed or prejudiced by what I consider minor delays in making the claim.

43 Seventh, the trustee has not pointed to anything greater than the inadvertence claimed by the claimants which would minimize the existence of good faith on their behalf. In fact, the affidavits of the claimants note the psychological consequences of the abuse by virtue of which they have required significant time to come to terms with their experiences. In the absence of evidence to the contrary, I accept that one of the consequences of sexual abuse of adolescents is the difficulty and reluctance to disclose these acts of abuse in adulthood. Each of these applicants has indicated this difficulty. In my view, they have made out a valid justification for their delay. In addition, once each of them came to the point of contacting counsel, there was no further delay.

44 For one of the claims, that of M.C., the trustee had knowledge for almost a year before the claims bar date. His claim was rejected because the specific claim form was not submitted in time. In my view, there can be no prejudice in this case for that reason. The fact that there was not strict compliance with the formal requirements of the process did not, of itself, present a problem for the trustee.

45 For the other three, W.B., J.S. and R.K, the reasons for delay were similar and related to their awareness of the process.

46 Based on these factors and the evidence before me I am satisfied if the Applicants had sought from the court an extension of time before filing claims, I would have approved it. Whether I treat this as an application to extend the deadline or an appeal from the decision of the trustee, I am satisfied that the circumstances of each of these cases are such that they ought to be considered on their merits. In the circumstances I do not believe that it is necessary to find an error of law. It is necessary for me to consider whether there exists sufficient grounds to approve, *nunc pro tunc*, an extension of the deadline for the purpose of these claims.

47 I accept the approach set out in the *Blue Range Resource Corp., Re* case. I am satisfied that there was behaviour amounting to inadvertence which caused the delay. I am also satisfied that nothing before me indicates anything but good faith. I note the circumstances of the *Lindsay v. Transtec Canada Ltd.* case where the delay was deliberate to gain a strategic advantage. That is certainly not the case here. These claimants have acted in good faith, albeit with significant ignorance of the process.

48 I have also examined the question of prejudice and attempted to balance the impact on the proposal and the other creditors, with the impact on the claimants before me. In my view the evidence is clear that for the claimants, the applicants in this proceeding, the impact of disallowance would be to deny them access to the process. For the trustee and the remainder of the creditors there was no evidence before me that the implementation of the proposal would be affected or delayed by accepting these claims. There was some speculation of delay and certainly concern about diluting the pool of funds available. However, I cannot accept speculation about delay as prejudice, particularly when the assessment process established under the proposal is ongoing to the present day. In respect of prejudice by dilution of the estate of the Corporation, the *Blue Range Resource Corp., Re* case provides authority that this is not the kind of prejudice which would underlie a disallowance of the claim.

49 In general, the key question for me was whether the delay in filing made any difference for the trustee in implementing the terms of the proposal. It was clear that the late claims were not in compliance with the strict terms of the proposal. Based on the evidence before me, I reach the conclusion that there was nothing presented to indicate that the delay would cause anything other than minor inconvenience to either the process of assessment of claims, or the Trustee's task of implementing the proposal.

50 I do want to say that I do not believe the trustee could have acted differently. The trustee was obligated to follow the terms of the proposal. The proposal created a deadline and gave him no discretion to vary it. The Court in its role of supervision of the process can authorize a variation of these terms.

51 I also reiterate that my decision today relates only to the question of acceptance of the claims for consideration notwithstanding timeliness. The substance and validity of these claims still has to be assessed and proper proof provided, and I make no comment about the adequacy of the evidence presented or the narratives submitted by each of the claimants.

52 In summary, there is nothing before me to indicate there would be prejudice to the overall administration of the process under the proposal by accepting four additional claims which in my view were only slightly late in being submitted. Whether I treat this as an appeal of the decision of the trustee to disallow, or an application for leave to make a claim *nunc pro tunc* the applicants shall have the right to have their claims considered in the assessment process established under the amended proposal.

53 One further comment: the fact that these claims were made within weeks of the deadline was significant. Their claims were submitted, in my view, a short time following the claims bar date. This should not be seen as an invitation to others to make late claims at this stage. Almost a year has passed since the deadline. In my view it would be very unlikely that it would be possible to make the same argument for inclusion at this time.

54 I conclude that the application of the four applicants, W.B., M.C., J.S. and R.K. are approved. As successful parties they have leave to apply to address the issue of costs.

Application granted.

IN THE MATTER OF APPLICATION OF AN APPLICATION BY TK HOLDINGS INC. AND TAKATA CORPORATION UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*

Court File No. CV-17-11857-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

FACTUM OF THE FOREIGN REPRESENTATIVES (re: Recognition of Claims Processes and Second Day Orders) (Returnable October 13, 2017)

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