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Court File No. 13-1003300-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	**TUESDAY, THE 23RD**
	)	
JUSTICE MORAWETZ	)	**DAY OF APRIL, 2013**

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 AND ARRANGEMENT OF SKYLINK AVIATION INC.

PLAN SANCTION ORDER

THIS MOTION made by SkyLink Aviation Inc. (the "**Applicant**") for an order (the "**Plan Sanction Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), sanctioning the plan of compromise and arrangement dated April 18, 2013, which is attached as **Schedule "A"** hereto (and as it may be further amended, varied or supplemented from time to time in accordance with the terms thereof, the "**Plan**"), was heard on April 23, 2013 at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Affidavit of Jan Ottens sworn April 21, 2013 (the "**Ottens Affidavit**"), filed, the second report (the "**Second Report**") of Duff & Phelps Canada Restructuring Inc. in its capacity as monitor of the Applicant (the "**Monitor**"), filed, and the third report of the Monitor (the "**Third Report**"), filed, and on hearing the submissions of counsel for each of the Applicant, the Monitor, the Initial Consenting Noteholders and DIP Lenders, and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service, filed.

DEFINED TERMS

1. **THIS COURT ORDERS** that any capitalized terms not otherwise defined in this Plan Sanction Order shall have the meanings ascribed to such terms in the Plan and the Meetings Order granted by this Court on March 8, 2013 (the "**Meetings Order**"), as applicable.

SERVICE, NOTICE AND MEETING

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record in support of this motion, the Second Report and the Third Report be and are hereby abridged and validated so that the motion is properly returnable today and service upon any interested party other than those parties served is hereby dispensed with.

3. **THIS COURT ORDERS AND DECLARES** that there has been good and sufficient notice, service and delivery of the Meetings Order and the Information Package (including, without limitation, the Plan) to all Persons upon which notice, service and delivery was required.

4. **THIS COURT ORDERS AND DECLARES** that the Meetings were duly convened and held on April 19, 2013, all in conformity with the CCAA and the Initial Order granted by this Court on March 8, 2013 (the "**Initial Order**"), the Meetings Order, and the Claims Procedure Order granted by this Court on March 8, 2013 (the "**Claims Procedure Order**", and collectively with the Initial Order and the Meetings Order, the "**Orders**").

5. **THIS COURT ORDERS AND DECLARES** that: (i) the hearing of the Plan Sanction Order was open to all of the Affected Creditors and all other Persons with an interest in the Applicant and that such Affected Creditors and all such other Persons were permitted to be heard at the hearing in respect of the Plan Sanction Order; and (ii) prior to the hearing, all of the Affected Creditors and all such other Persons on the service list in respect of the CCAA Proceedings were given notice thereof.

SANCTION OF THE PLAN

6. **THIS COURT DECLARES** that the relevant classes of Affected Creditors of the Applicant for the purpose of voting to approve the Plan are the Secured Noteholders Class and the Affected Unsecured Creditors Class.

7. **THIS COURT DECLARES** that the Plan, and all the terms and conditions thereof, and matters and transactions contemplated thereby, are fair and reasonable.

8. **THIS COURT ORDERS AND DECLARES** that the Plan has been approved by the Required Majorities of Affected Creditors in each Voting Class, as required by the Meetings Order, and in conformity with the CCAA.

9. **THIS COURT ORDERS AND DECLARES** that the activities of the Applicant have been in compliance with the provisions of the CCAA and the Orders of the Court made in the CCAA Proceedings, and the Court is satisfied that the Applicant has not done or purported to do anything that is not authorized by the CCAA.

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

PLAN IMPLEMENTATION

11. **THIS COURT ORDERS AND DECLARES** that the Plan and all associated steps, compromises, transactions, arrangements, releases and reorganizations effected thereby are hereby approved and shall be deemed to be implemented, binding and effective in accordance with the provisions of the Plan as of the Plan Implementation Date at the time or times and in the manner set forth in the Plan, and shall inure to the benefit of and be binding upon the Applicant, the Released Parties, the Affected Creditors, the Directors and Officers, any Person with a Director/Officer Claim or a Released Claim, and all other Persons and parties named or referred to in, affected by, or subject to the Plan, including, without limitation, their respective heirs, administrators, executors, legal representatives, successors, and assigns.

12. **THIS COURT ORDERS** that each of the Applicant and the Monitor are authorized and directed to take all steps and actions, and do all things, necessary or appropriate to implement the Plan in accordance with its terms and to enter into, execute, deliver, complete, implement and consummate all of the steps, transactions, distributions, deliveries, allocations, and agreements contemplated by the Plan, and such steps and actions are hereby authorized, ratified and approved. Neither the Applicant nor the Monitor shall incur any liability as a result of acting in accordance with the terms of the Plan and the Plan Sanction Order.

13. **THIS COURT ORDERS** that the Applicant, the Monitor, the First Lien Agent, the Secured Note Indenture Trustee, the New Second Lien Notes Indenture Trustee, CDS, the CDS Participants and any other Person required to make any distributions, deliveries or allocations or take any steps or actions related thereto pursuant to the Plan are hereby authorized and directed to complete such distributions, deliveries or allocations and to take any such related steps or actions, as the case may be, in accordance with the terms of the Plan, and such distributions, deliveries and allocations, and steps and actions related thereto, are hereby approved.

14. **THIS COURT ORDERS** that upon the satisfaction or waiver of the conditions precedent set out in section 9.1 of the Plan in accordance with the terms of the Plan, as confirmed by the Applicant and the Majority Initial Consenting Noteholders (or their respective counsel) in writing, the Monitor is authorized and directed to deliver to the Initial Consenting Noteholders and the Applicant (or their respective counsel) a certificate substantially in the form attached hereto as **Schedule "B"** (the "**Monitor's Certificate**") signed by the Monitor, certifying that the Plan Implementation Date has occurred and that the Plan is effective in accordance with its terms and the terms of the Plan Sanction Order. The Monitor shall file the Monitor's Certificate with this Court promptly following the Plan Implementation Date.

15. **THIS COURT ORDERS** that the Applicant, the Monitor and the Majority Initial Consenting Noteholders are hereby authorized and empowered to exercise all consent

and approval rights provided for in the Plan in the manner set forth in the Plan, whether prior to or after the Plan Implementation Date.

16. **THIS COURT ORDERS** that the steps to be taken and the compromises and releases to be effected on the Plan Implementation Date are and shall be deemed to occur and be effected in the sequential order and at the times contemplated in section 5.4 of the Plan, without any further act or formality, on the Plan Implementation Date, beginning at the Effective Time.

17. **THIS COURT ORDERS** that the New Shareholders' Agreement shall be effective and binding on all holders of the New Common Shares and any Persons entitled to receive New Common Shares pursuant to the Plan immediately upon issuance of the New Common Shares to such Persons, with the same force and effect as if such Persons were signatories to the New Shareholders' Agreement.

18. **THIS COURT ORDERS** that, subject to the payment of any amounts secured by the Charges that remain owing on the Plan Implementation Date, if any, each of the Charges shall be terminated, discharged and released on the Plan Implementation Date.

COMPROMISE OF CLAIMS AND EFFECT OF PLAN

19. **THIS COURT ORDERS** that, pursuant to and in accordance with the terms of the Plan, on the Plan Implementation Date, any and all Affected Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred, subject only to the right of the applicable Persons to receive the distributions to which they are entitled pursuant to the Plan.

20. **THIS COURT ORDERS AND DECLARES** that on the Plan Implementation Date, pursuant to and in accordance with the Plan, the Applicant shall be forever released and discharged from any and all obligations in respect of the Affected Claims and the ability of any Person to proceed against the Applicant in respect of or relating to any Affected Claims shall be permanently and forever barred, estopped, stayed and enjoined, and all proceedings with respect to, in connection with or relating to such Affected Claims shall

be permanently stayed, subject only to the right of Affected Creditors to receive distributions pursuant to the Plan in respect of their Affected Claims.

21. **THIS COURT ORDERS** that, without limiting the provisions of the Claims Procedure Order or the Meetings Order, any Person that did not file a Proof of Claim, a Notice of Dispute or a Notice of Dispute of Revision or Disallowance, as applicable, by the Claims Bar Date or such other bar date provided for in the Claims Procedure Order, as applicable, whether or not such Affected Creditor received direct notice of the claims process established by the Claims Procedure Order, shall be and is hereby forever barred from making any Claim or any Director/Officer Claim and shall not be entitled to any distribution under the Plan, and such Person's Claim or Director/Officer Claim, as applicable, shall be and is hereby forever barred and extinguished. Nothing in the Plan extends or shall be interpreted as extending or amending the Claims Bar Date or any other bar date provided for in the Claims Procedure Order, or gives or shall be interpreted as giving any rights to any Person in respect of Claims or Director/Officer Claims that have been barred or extinguished pursuant to the Claims Procedure Order, the Plan, this Plan Sanction Order, or the Meetings Order.

22. **THIS COURT ORDERS** that, notwithstanding anything to the contrary in the Plan or paragraphs 21, 23, 24 and 34 hereof, and based on the consent of the Applicant and the Monitor, any Person having a claim that is expressly designated as an "Excluded Claim" in a settlement agreement entered into between the Applicant and such Person after the Filing Date and prior to April 19, 2013 (each a "**CCAA Settlement Agreement**") shall be permitted to file a statement of claim in respect of such Excluded Claim for the purpose of preserving such Person's rights to pursue such Excluded Claim in accordance with, and subject to, the terms, conditions and limitations of such CCAA Settlement Agreement and on the basis that there shall be no recourse whatsoever, directly or indirectly, to the Applicant or any of the SkyLink Subsidiaries or their respective assets or property in respect of such Excluded Claim.

23. **THIS COURT ORDERS** that, pursuant to and in accordance with the terms of the Plan, on the Plan Implementation Date, any and all Released Director/Officer Claims shall be

fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred, subject to sections 3.7(b) and 7.1(b) of the Plan and subject to paragraph 22 of this Plan Sanction Order.

24. **THIS COURT ORDERS AND DECLARES** that, on the Plan Implementation Date, pursuant to and in accordance with the terms of the Plan, the ability of any Person to proceed against the Released Directors/Officers in respect of or relating to any Released Directors/Officers Claims shall be permanently and forever barred, estopped, stayed and enjoined, and all proceedings with respect to, in connection with or relating to such Released Director/Officer Claims shall be permanently stayed, subject to section 7.3 of the Plan and subject to paragraph 22 of this Plan Sanction Order.

25. **THIS COURT ORDERS** that, on the Plan Implementation Date, each Affected Creditor and any person having a Released Claim shall be deemed to have consented and agreed to all of the provisions of the Plan, in its entirety, and each Affected Creditor and any Person having a Released Claim shall be deemed to have executed and delivered all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety.

26. **THIS COURT ORDERS** that, pursuant to section 6(2) of the CCAA, the Articles of the Applicant shall be amended on the Plan Implementation Date in accordance with the Articles of Reorganization.

27. **THIS COURT ORDERS** that (i) in accordance with the Articles of Reorganization, any fractional Class A Shares held by any holder of Class A Shares immediately following the consolidation of the Class A Shares referred to in section 5.4(j) of the Plan shall be cancelled without any liability, payment or other compensation in respect thereof; and (ii) all Equity Interests (for greater certainty, not including any Class A Shares that remain issued and outstanding immediately following the cancellation of fractional interests pursuant to section 5.4(k) of the Plan) and the Shareholder Agreement shall be cancelled without any liability, payment or other compensation in respect thereof.

28. **THIS COURT ORDERS AND DECLARES** that, subject to performance by the Applicant of its obligations under the Plan and except as provided in the Plan, all obligations, agreements or leases to which any of the Applicant or the SkyLink Companies is a party on the Plan Implementation Date shall be and remain in full force and effect, unamended, as at the Plan Implementation Date and no party to any such obligation or agreement shall on or following the Plan Implementation Date, accelerate, terminate, refuse to renew, rescind, refuse to perform or otherwise disclaim or resiliate its obligations thereunder, or enforce or exercise (or purport to enforce or exercise) any right or remedy under or in respect of any such obligation or agreement, by reason: (i) of any event which occurred prior to the Plan Implementation Date, or which is or continues to be suspended or waived under the Plan, which would have entitled any other party thereto to enforce those rights or remedies; (ii) that the Applicant has sought or obtained relief or has taken steps in connection with the Plan or under the CCAA; (iii) of any default or event of default arising as a result of the financial condition or insolvency of the Applicant on or prior to the Plan Implementation Date; (iv) of the effect upon the Applicant of the completion of any of the transactions contemplated under the Plan; or (v) of any compromises, settlements, restructurings, recapitalizations or reorganizations effected pursuant to the Plan.

29. **THIS COURT ORDERS AND DECLARES** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any non-competition or non-solicitation agreement or obligation in respect of the Applicant that exists on the Plan Implementation Date, including for greater certainty any non-competition or non-solicitation agreement or obligation that is expressly preserved or continued pursuant to a CCAA Settlement Agreement, provided that any such agreement or obligation shall terminate or expire in accordance with the terms thereof or as otherwise agreed by the Applicant and the applicable Persons.

30. **THIS COURT ORDERS** that, on the Plan Implementation Date, following completion of the steps in the sequence set forth in section 5.4 of the Plan, all debentures, notes, certificates, agreements, invoices and other instruments evidencing Affected Claims (including, for greater certainty, the Secured Notes) shall not entitle any holder thereof to

any compensation or participation and shall be and are hereby deemed to be cancelled and shall be and are hereby deemed to be null and void.

RELEASES AND INJUNCTIONS

31. **THIS COURT ORDERS** that, subject to paragraph 32 of this Plan Sanction Order, on the Plan Implementation Date, in accordance with section 7.1 of the Plan and the sequence set forth in section 5.4 of the Plan, the Released Parties shall be released and discharged from any and all Released Claims, and all Released Claims shall be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, all to the fullest extent permitted by Applicable Law.

32. **THIS COURT ORDERS** that, notwithstanding paragraph 31 of this Plan Sanction Order, Insured Claims and Director/Officer Wages Claims shall not be compromised, released, discharged, cancelled or barred by this Plan Sanction Order or the Plan, provided that from and after the Plan Implementation Date, any Person having, or claiming any entitlement or compensation relating to, an Insured Claim or a Director/Officer Wages Claim will be irrevocably limited to recovery in respect of such Insured Claim or Director/Officer Wages Claim solely from the proceeds of the applicable Insurance Policies, and Persons with any Insured Claim or Director/Officer Wages Claims will have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from the Applicant, any SkyLink Subsidiary, any Released Director/Officer or any other Released Party, other than enforcing such Person's rights to be paid by the applicable insurer(s) from the proceeds of the applicable Insurance Policies. Nothing in this Plan Sanction Order prejudices, compromises, releases or otherwise affects any right or defence of any insurer in respect of an Insurance Policy or any insured in respect of an Insured Claim or a Director/Officer Wages Claim.

33. **THIS COURT ORDERS** that on the Plan Implementation Date, all Persons shall be permanently and forever barred, estopped, stayed and enjoined with respect to any and all Released Claims, from (i) 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; (ii) 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 their property; (iii) 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, breach of trust or breach of fiduciary duty 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; (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind against the Released Parties or their property; or (v) taking any actions to interfere with the implementation or consummation of the Plan; provided, however, that the foregoing shall not apply to the enforcement of any obligations under the Plan.

34. **THIS COURT ORDERS** that on the Plan Implementation Date, all Persons shall be permanently and forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, including without limitation, administrative hearings and orders, declarations or assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with in respect of any Insured Claim or Director/Officer Wages Claim, except as against the applicable insurer(s) to the extent that rights to enforce such Insured Claims and/or Director/Officer Wages Claims against such insurer(s) in respect of an Insurance Policy are expressly preserved pursuant to sections 3.5(b), 3.7(b) and/or 7.1(b) of the Plan, and provided that, notwithstanding the restrictions on making a claim that are set forth in sections 3.5(b), 3.7(b) and 7.1(b) of the Plan, any claimant in respect of an Insured Claim or a Director/Officer Wages Claim that was duly filed with the Monitor by the Claims Bar Date shall be permitted to file a statement of claim in respect thereof to the extent necessary solely for the purpose of preserving such claimant's ability to pursue such Insured Claim or Director/Officer Wages Claim against an insurer in respect of an Insurance Policy in the manner authorized pursuant to sections 3.5(b), 3.7(b) and/or

7.1(b) of the Plan. For greater certainty, nothing in this paragraph 34 restricts or limits the application of paragraph 22 of this Plan Sanction Order.

THE MONITOR

35. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA and the powers provided to the Monitor herein and in the Plan, shall be and is hereby authorized, directed and empowered to perform its functions and fulfill its obligations under the Plan to facilitate the implementation of the Plan.

36. **THIS COURT ORDERS** that (i) in carrying out the terms of this Plan Sanction Order and the Plan, the Monitor shall have all the protections given to it by the CCAA, the Initial Order, and as an officer of the Court, including the stay of proceedings in its favour; (ii) the Monitor shall incur no liability or obligation as a result of carrying out the provisions of this Plan Sanction Order and/or the Plan, save and except for any gross negligence or wilful misconduct on its part; (iii) the Monitor shall be entitled to rely on the books and records of the Applicant and any information provided by the Applicant without independent investigation; and (iv) the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

37. **THIS COURT ORDERS** that upon completion by the Monitor of its duties in respect of the Applicant pursuant to the CCAA, the Plan and the Orders, the Monitor may file with the Court a certificate stating that all of its duties in respect of the Applicant pursuant to the CCAA, the Plan and the Orders have been completed and thereupon, Duff & Phelps Canada Restructuring Inc. shall be deemed to be discharged from its duties as Monitor and released of all claims relating to its activities as Monitor.

BOARD OF DIRECTORS OF SKYLINK AVIATION INC.

38. **THIS COURT ORDERS AND DECLARES** that the Persons to be appointed to the board of directors on the Plan Implementation Date are Harry Green, Rael Nurick, Andrew Hamlin and Philip Hampson or such other persons listed on a certificate filed with the Court by the Applicant prior to the Plan Implementation Date, provided that such certificate and the Persons listed thereon shall be subject to the prior written consent

of the Majority Initial Consenting Noteholders. Concurrently with the appointment of such directors, all directors serving immediately prior to the Plan Implementation Date shall be deemed to resign.

SEALING ORDER

39. **THIS COURT ORDERS** that the Confidential Appendix #1 to the Third Report be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice which sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of the Court.

EXTENSION OF THE STAY OF PROCEEDINGS

40. **THIS COURT ORDERS** that the Stay Period, as such term is defined in and used throughout the Initial Order, be and is hereby extended to and including 11:59 p.m. on May 31, 2013, and that all other terms of the Initial Order shall remain in full force and effect, unamended, except as may be required to give effect to this paragraph or otherwise provided in the Plan or this Plan Sanction Order.

EFFECT, RECOGNITION AND ASSISTANCE

41. **THIS COURT ORDERS** that the Applicant and the Monitor may apply to this Court for advice and direction with respect to any matter arising from or under the Plan or this Plan Sanction Order.

42. **THIS COURT ORDERS** that this Plan Sanction Order shall have full force and effect in all provinces and territories of Canada and abroad as against all persons and parties against whom it may otherwise be enforced.

43. **THIS COURT REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or in any other foreign jurisdiction, to give effect to this Order or to assist the Applicant, the Monitor 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 Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant or the Monitor and their respective agents in carrying out the terms of this Order.

GENERAL

44. **THIS COURT ORDERS** that this Plan Sanction Order shall be posted on the Monitor's Website at http://www.duffandphelps.com/services/restructuring/Pages/RestructuringCases.aspx and is only required to be served upon the parties on the Service List and those parties who appeared at the hearing of the motion for this Plan Sanction Order.

45. **THIS COURT ORDERS AND DECLARES** that any conflict or inconsistency between the Plan and this Plan Sanction Order shall be governed by the terms, conditions and provisions of the Plan, which shall take precedence and priority, provided that any provision of this Plan Sanction Order that expressly provides that it supersedes the provisions of the Plan or that it operates notwithstanding anything to the contrary in the Plan shall take precedence and priority over any conflicting provision in the Plan.

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Schedule "A"

(Plan of Compromise and Arrangement)

Court File No. 13-1003300-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF SKYLINK AVIATION INC.

APPLICANT

PLAN OF COMPROMISE AND ARRANGEMENT

pursuant to the *Companies' Creditors Arrangement Act*
concerning, affecting and involving

SKYLINK AVIATION INC.

APRIL 18, 2013

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PLAN OF
COMPROMISE AND ARRANGEMENT

WHEREAS SkyLink Aviation Inc. (the "**Applicant**" or "**SkyLink Aviation**") is a debtor company under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**");

AND WHEREAS the Applicant has entered into a Recapitalization Support Agreement dated March 7, 2013 (as it may be amended, restated and varied from time to time in accordance with the terms thereof, the "**Support Agreement**"), between the Applicant and certain parties (the "**Consenting Noteholders**" and each a "**Consenting Noteholder**") that are holders of, and/or investment advisors or managers with investment discretion over, the $110 million aggregate principal amount of 12.25% senior secured second lien notes due 2016 issued by SkyLink Aviation (the "**Secured Notes**");

AND WHEREAS the Support Agreement contemplates the implementation of the Recapitalization (as defined below) pursuant to a plan of compromise and arrangement under the CCAA, which plan will provide for, among other things, the exchange of the Secured Notes for new equity and new notes in SkyLink Aviation, which is expected to result in, among other things, greater liquidity for, and the continued viability of, the Applicant;

AND WHEREAS the Applicant obtained an order (as may be amended, restated or varied from time to time, the "**Initial Order**") of the Ontario Superior Court of Justice (the "**Court**") under the CCAA dated March 8, 2013 (the "**Filing Date**");

AND WHEREAS the Applicant filed a plan of compromise and arrangement with the Court on March 8, 2013 under and pursuant to the CCAA, and the Applicant has made certain amendments thereto in accordance with the terms thereof and hereby proposes and presents this amended plan of compromise and arrangement to the Affected Unsecured Creditors Class (as defined below) and the Secured Noteholders Class (as defined below) under and pursuant to the CCAA.

ARTICLE 1
INTERPRETATION

1.1 Definitions

In the Plan, unless otherwise stated or unless the subject matter or context otherwise requires:

"**Affected Claim**" means any Claim that is not an Unaffected Claim, and, for greater certainty, includes any Equity Claim.

"**Affected Creditor**" means any Creditor with an Affected Claim, but only with respect to and to the extent of such Affected Claim, including Secured Noteholders who have beneficial ownership of an Affected Claim pursuant to the Secured Notes.

"**Affected Unsecured Claims**" means all Affected Claims other than (i) the Claims comprising the Secured Noteholders Allowed Secured Claim and (ii) Equity Claims, and for the avoidance of doubt includes the Claims comprising the Secured Noteholders Allowed Unsecured Claim.

"**Affected Unsecured Creditor**" means any holder of an Affected Unsecured Claim, but only with respect to and to the extent of such Affected Unsecured Claim.

"**Affected Unsecured Creditors Class**" means the class of Affected Unsecured Creditors entitled to vote on this Plan at the Unsecured Creditors Meeting in accordance with the terms of the Meetings Order.

"**Agreed Number**" means, with respect to the New Common Shares, that number of New Common Shares to be issued on the Plan Implementation Date pursuant to the Plan as agreed to by the Applicant, the Monitor and the Majority Initial Consenting Noteholders.

"**Allowed**" means, with respect to a Claim, any Claim or any portion thereof that has been finally allowed as a Distribution Claim (as defined in the Claims Procedure Order) for purposes of receiving distributions under the Plan in accordance with the Claims Procedure Order or a Final Order of the Court.

"**Applicable Law**" means any law, statute, order, decree, consent decree, judgment, rule regulation, ordinance or other pronouncement having the effect of law whether in Canada, the United States or any other country, or any domestic or foreign state, county, province, city or other political subdivision or of any Governmental Entity.

"**Articles**" means the articles of amalgamation of SkyLink Aviation.

"**Articles of Amalgamation**" means the articles of amalgamation pursuant to the OBCA, the form and substance as agreed by the Applicant and the Majority Initial Consenting Noteholders, to effectuate the amalgamation of SkyLink Aviation and SkyLink Canadian Subsidiary.

"**Articles of Reorganization**" means the articles of reorganization pursuant to the OBCA, the form and substance as agreed by the Applicant, the Monitor and the Majority Initial Consenting Noteholders, to be filed by the Applicant on the Plan Implementation Date amending the Articles in accordance with the Plan.

"**Business Day**" means a day, other than Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario and New York, New York.

"**Canadian Tax Act**" means the *Income Tax Act* (Canada), as amended.

"**CCAA**" has the meaning ascribed thereto in the recitals.

"**CCAA Proceeding**" means the proceeding commenced by the Applicant under the CCAA on the Filing Date.

"**CDS**" means CDS Clearing and Depositary Services Inc. or any successor thereof.

"**CDS Participants**" has the meaning ascribed thereto in section 4.1(c)(A).

"**Charges**" means the Administration Charge, the Directors' Charge, the KERP Charge and the DIP Lenders' Charge, each as defined in the Initial Order.

"**Claim**" means:

(a) any right or claim of any Person against the Applicant, whether or not asserted, in connection with any indebtedness, liability or obligation of any kind whatsoever of the Applicant in existence on the Filing Date, and costs payable in respect thereof to and including the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including the right or ability 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 which existed prior to the Filing Date and any other claims that would have been claims provable in bankruptcy had the Applicant become bankrupt on the Filing Date, including for greater certainty any Equity Claim and any claim for indemnification by any Director or Officer in respect of a Director/Officer Claim (but excluding any such claim for indemnification that is covered by the Directors' Charge (as defined in the Initial Order)); and

(b) any right or claim of any Person against the Applicant in connection with any indebtedness, liability or obligation of any kind whatsoever owed by the Applicant to such Person arising out of the restructuring, disclaimer, resiliation, termination or breach by the Applicant on or after the Filing Date of any contract, lease or other agreement whether written or oral,

provided that, for greater certainty, the definition of "Claim" shall not include any Director/Officer Claim.

"**Claims Bar Date**" has the meaning ascribed thereto in the Claims Procedure Order.

"**Claims Procedure Order**" means the Order under the CCAA establishing a claims procedure in respect of the Applicant, as same may be further amended, restated or varied from time to time.

"**Class A Shares**" means the common shares in the capital of SkyLink Aviation designated in the Articles as Class A Common Shares.

"**Class B Shares**" means the common shares in the capital of SkyLink Aviation designated in the Articles as Class B Common Shares.

"**Company Advisors**" means Goodmans LLP and Ernst & Young Inc.

"**Company Stock Option Plans**" means the 2008 Stock Award Plan adopted by SL Aviation Bidco Inc. (as predecessor to SkyLink Aviation) on November 6, 2008, and any other options plans or other obligations of the Applicant in respect of options or warrants for equity in SkyLink

Aviation, in each case as such plan or other obligation may be amended, restated or varied from time to time in accordance with the terms thereof.

"**Consenting Noteholder**" has the meaning ascribed thereto in the recitals.

"**Consolidation Ratio**" means, with respect to the Class A Shares, the ratio by which Class A Shares outstanding on the Plan Implementation Date at the relevant time (including, for the avoidance of doubt, any Class A Shares that are Existing Shares and New Common Shares issued pursuant to the Plan) are consolidated pursuant to the Plan, as agreed by the Applicant, the Monitor and the Majority Initial Consenting Noteholders.

"**Court**" has the meaning ascribed thereto in the recitals.

"**Creditor**" means any Person having a Claim, but only with respect to and to the extent of such Claim, including the transferee or assignee of a transferred Claim that is recognized as a Creditor in accordance with the Claims Procedure Order or a trustee, executor, liquidator, receiver, receiver and manager, or other Person acting on behalf of or through such Person.

"**DIP Agreement**" means the debtor-in-possession credit agreement between the Applicant, as borrower, the SkyLink Guarantors, as guarantors, and the DIP Lenders, as such agreement may be modified, amended or supplemented in accordance with the terms thereof, the Initial Order or any other Order of the Court, which DIP Agreement will cease to be a debtor-in-possession credit agreement and will take effect as a new first lien credit agreement on the Plan Implementation Date in accordance with the terms hereof and thereof, and, accordingly, any reference herein to the DIP Agreement also means the New First Lien Credit Agreement, as applicable.

"**DIP Backstop**" means the commitment to fund the entire DIP Loan Amount provided by the DIP Backstop Parties subject to the terms of and in accordance with the DIP Backstop Commitment Letter.

"**DIP Backstop Commitment Letter**" means the commitment letter entered into by SkyLink Aviation and the DIP Backstop Parties pursuant to which the DIP Backstop Parties have committed to funding the entire DIP Loan Amount, subject to and in accordance with the terms thereof.

"**DIP Backstop Parties**" means those Noteholders that have executed the Support Agreement and are signatories to the DIP Backstop Commitment Letter, and "**DIP Backstop Party**" means any one of them.

"**DIP Backstop Party's Pro Rata Share**" means with respect to each DIP Backstop Party, (x) the amount of the DIP Backstop committed by such DIP Backstop Party pursuant to the DIP Backstop Commitment Letter divided by (y) the DIP Loan Amount.

"**DIP Facility**" means the interim financing facility committed by the DIP Lenders pursuant to the DIP Agreement.

"**DIP Lenders**" means, collectively, the DIP Backstop Parties and the Qualifying Noteholders who become lenders of the DIP Facility under the DIP Agreement in accordance with the terms of the Initial Order, and "**DIP Lender**" means any one of them.

"**DIP Loan Amount**" means US$18 million.

"**Directors**" means all current and former directors (or their estates) of the Applicant, in such capacity, and "**Director**" means any one of them.

"**Director/Officer Claim**" means any right or claim of any Person against one or more of the Directors or Officers of the Applicant howsoever arising, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including the right or ability 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, including any right of contribution or indemnity, for which any Director or Officer of the Applicant is alleged to be by statute or otherwise by law liable to pay in his or her capacity as a Director or Officer.

"**Director/Officer Wages Claim**" means the Director/Officer Claims for unpaid employment remuneration delivered to the Monitor on or prior to 5:00 p.m. (Toronto Time) on March 28, 2013 in accordance with the Claims Procedure Order, which are described on Schedule "D" hereto.

"**Disputed Distribution Claim**" means an Affected Unsecured Claim (including a contingent Affected Unsecured Claim which may crystallize upon the occurrence of an event or events occurring after the Filing Date) or such portion thereof which has not been Allowed, which is validly disputed for distribution purposes in accordance with the Claims Procedure Order and which remains subject to adjudication for distribution purposes in accordance with the Claims Procedure Order.

"**Disputed Distribution Claims Reserve**" means the reserve, if any, to be established by the Applicant on the Unsecured Promissory Note Maturity Date, which shall be comprised of the Unsecured Promissory Note Proceeds that would have been paid in respect of Unsecured Promissory Note Entitlements, if such Disputed Distribution Claims had been Allowed Claims as of such date.

"**Distribution Date**" means the date or dates from time to time set in accordance with the provisions of the Plan to effect distributions in respect of the Allowed Claims, excluding the Initial Distribution Date, and in the case of distributions from Unsecured Promissory Note Proceeds, means the Unsecured Promissory Note Maturity Date or such later date from time to time in accordance with the provisions of the Plan if any Affected Unsecured Claim is a Disputed Distribution Claim on the Unsecured Promissory Note Maturity Date.

"**Effective Time**" means 12:01 a.m. (Toronto time) on the Plan Implementation Date or such other time on such date as the Applicant and the Majority Initial Consenting Noteholders may agree.

"**Employee Priority Claims**" means the following Claims of Employees and former employees of SkyLink Aviation:

(c) Claims equal to the amounts that such Employees and former employees would have been entitled to receive under paragraph 136(l)(d) of the *Bankruptcy and Insolvency Act* (Canada) if SkyLink Aviation had become bankrupt on the Filing Date; and

(d) Claims for wages, salaries, commissions or compensation for services rendered by them after the Filing Date and on or before the Plan Implementation Date together with, in the case of travelling salespersons, disbursements properly incurred by them in and about SkyLink Aviation's business during the same period.

"**Employees**" means any and all (a) employees of SkyLink Aviation who are actively at work (including full-time, part-time or temporary employees) and (b) employees of SkyLink Aviation who are on approved leaves of absence (including maternity leave, parental leave, short-term disability leave, workers' compensation and other statutory leaves), and who have not tendered notice of resignation as of the Filing Date, in each case.

"**Encumbrance**" means any charge, mortgage, lien, pledge, claim, restriction, hypothec, adverse interest, security interest or other encumbrance whether created or arising by agreement, statute or otherwise at law, attaching to property, interests or rights and shall be construed in the widest possible terms and principles known under the law applicable to such property, interests or rights and whether or not they constitute specific or floating charges as those terms are understood under the laws of the Province of Ontario.

"**Equity Claim**" means a Claim that meets the definition of "equity claim" in section 2(1) of the CCAA.

"**Equity Claimants**" means any Person with an Equity Claim or holding an Equity Interest, but only in such capacity, and for greater certainty includes the Existing Shareholders in their capacity as such.

"**Equity Interests**" has the meaning ascribed thereto in section 2(1) of the CCAA and, for greater certainty, includes the Existing Shares, the shares in the capital of the Applicant referred to in the Articles as the "Class B Common Shares", the Options and any other interest in or entitlement to shares in the capital of the Applicant but, for greater certainty, does not include the New Common Shares issued on the Plan Implementation Date in accordance with the Plan.

"**Existing Shareholder**" means any Person who holds or is entitled to the Existing Shares or any shares in the authorized capital of the Applicant immediately prior to the Effective Time, but only in such capacity, and for greater certainty does not include any Person that is issued New Common Shares on the Plan Implementation Date, in such capacity.

"**Existing Shares**" means all shares in the capital of SkyLink Aviation that are issued and outstanding immediately prior to the Effective Time.

"**Expense Reimbursement**" means the reasonable and documented fees and expenses of the Noteholder Advisors (to the extent not already satisfied by the Applicant).

"**Filing Date**" has the meaning ascribed thereto in the recitals.

"**Final Order**" means any order, ruling or judgment of the Court, or any other court of competent jurisdiction, which has not been reversed, modified or vacated, and is not subject to any stay.

"**First Lien Agent**" means Deans Knight Capital Management Ltd., in its capacity as agent of the First Lien Credit Facility.

"**First Lien Credit Agreement**" means the credit agreement dated as of March 15, 2011 between, among others, the Applicant, as borrower, and the SkyLink Guarantors, as guarantors, as amended and modified from time to time, which credit agreement was assigned to and assumed by the First Lien Agent and the First Lien Lenders pursuant to a Loan Purchase Agreement dated as of February 28, 2013.

"**First Lien Credit Facility**" means the credit facility provided pursuant to the First Lien Credit Agreement.

"**First Lien Lenders**" means the lenders pursuant to the First Lien Credit Facility, at the relevant time, in their capacity as such.

"**Fractional Interests**" has the meaning given in section 4.10 hereof.

"**Government Priority Claims**" means all Claims of Governmental Entities against the Applicant in respect of amounts that are outstanding and that are of a kind that could reasonably be subject to a demand under:

(a) subsections 224(1.2) of the Canadian Tax Act;

(b) any provision of the Canada Pension Plan or the *Employment Insurance Act* (Canada) that refers to subsection 224(1.2) of the Canadian Tax Act and provides for the collection of a contribution, as defined in the Canada Pension Plan, or employee's premium or employer's premium as defined in the *Employment Insurance Act* (Canada), or a premium under Part VII. I of that Act, and of any related interest, penalties or other amounts; or

(c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the Canadian Tax Act, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum:

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the Canadian Tax Act; or

(ii) is of the same nature as a contribution under the Canada Pension Plan if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the Canada Pension Plan and the

provincial legislation establishes a "provincial pension plan" as defined in that subsection.

"**Governmental Entity**" means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

"**Incentive Plan**" has the meaning ascribed thereto in section 5.4(m).

"**Information Statement**" means the information statement distributed (or to be distributed) by SkyLink Aviation concerning the Plan, the Meetings and the hearing in respect of the Sanction Order, as contemplated in the Meetings Order.

"**Initial Consenting Noteholder's Pro-Rata Share**" means with respect to each Initial Consenting Noteholder, (x) the principal amount of Secured Notes held by such Initial Consenting Noteholder as at the relevant date divided by (y) the aggregate principal amount of Secured Notes held by all of the Initial Consenting Noteholders collectively.

"**Initial Consenting Noteholders**" means those Secured Noteholders that were the original signatories to the Support Agreement (as distinct from a Support Agreement Joinder).

"**Initial Distribution Date**" means a date no more than two (2) Business Days after the Plan Implementation Date or such other date as the Applicant, the Monitor and the Majority Initial Consenting Noteholders may agree.

"**Initial Order**" has the meaning ascribed thereto in the recitals.

"**Insurance Policy**" means any insurance policy maintained by SkyLink Aviation pursuant to which SkyLink Aviation or any Director or Officer is insured.

"**Insured Claim**" means all or that portion of a Claim arising from a cause of action for which the applicable insurer has definitively and unconditionally confirmed that SkyLink Aviation is insured under an Insurance Policy, to the extent that such Claim, or portion thereof, is so insured.

"**Intercompany Claim**" means any claim by any SkyLink Company or related entity against SkyLink Aviation.

"**IPSA**" means the Interest Payment Support Agreement dated as of September 17, 2012, as amended and supplemented from time to time, among the IPSA Noteholder Participants, SkyLink Aviation and certain guarantors party to the Secured Note Indenture.

"**IPSA Noteholder Participants**" means those Secured Noteholders that executed the IPSA.

"**KERP**" means the payments to be made to certain key employees of the Applicant upon the implementation of the Plan, as described in the key employee retention plan letters attached to,

and filed with the Court together with, the confidential supplement to the Pre-Filing Report of the Monitor dated as of the Filing Date.

"**Majority Initial Consenting Noteholders**" means Initial Consenting Noteholders holding not less than a majority of the principal amount of the Notes held by all Initial Consenting Noteholders, in each case as communicated to the Applicant by counsel to the Initial Consenting Noteholders, in accordance with section 10.6 hereof.

"**Material**" means a fact, circumstance, change, effect, matter, action, condition, event, occurrence or development that, individually or in the aggregate, is, or would reasonably be expected to be, material to the business, affairs, results of operations or financial condition of the Applicant (taken as a whole).

"**Material Adverse Effect**" means a fact, event, change, occurrence or circumstance that, individually or together with any other fact, event, change, occurrence or circumstance, has, or could reasonably be expected to have, a material adverse impact on the business, assets, liabilities, capitalization, obligations (whether absolute, accrued, conditional or otherwise), condition (financial or otherwise), operations or prospects of the Applicant and its subsidiaries (taken as a whole) and shall include, without limitation, the disposition by the Applicant or any of its subsidiaries of any material asset without the prior consent of the Majority Initial Consenting Noteholders; provided, however, that a Material Adverse Effect shall not include, and shall be deemed to exclude the impact of: (A) any change in Applicable Laws of general applicability or interpretations thereof by courts or governmental or regulatory authorities, which does not disproportionately adversely affect the Applicant or its subsidiaries (taken as a whole), (B) any change in the aviation transport and logistics services industry generally, which does not disproportionately adversely affect the Applicant or its subsidiaries (taken as a whole), (C) actions and omissions of the Applicant taken with the prior written consent of the Majority Initial Consenting Noteholders or required pursuant to the Support Agreement, the Plan or any related document, (D) the public announcement of the Support Agreement, the DIP Agreement, the Plan or any related document or the transactions contemplated by thereby, (E) SkyLink Aviation entering into the DIP Agreement, (F) the CCAA Proceedings, (G) any material change in the market price or trading volume of the Secured Notes or Equity Interests (it being understood that any cause or causes of any such change may be taken into consideration when determining whether a Material Adverse Effect has occurred or could reasonably be expected to occur), (H) any act of war, armed hostilities or terrorism or any worsening thereof, which does not disproportionately adversely affect the Applicant or its subsidiaries (taken as a whole), or (I) any material failure by the Applicant to meet internal projections or forecasts or third party revenue or earnings predictions for any period (it being understood that any cause or causes of any such failure may be taken into consideration when determining whether a Material Adverse Effect has occurred or could reasonably be expected to occur).

"**Meeting Date**" means the date on which the Meetings are held in accordance with the Meetings Order.

"**Meetings**" means, collectively, the Unsecured Creditors Meeting and the Secured Noteholders Meeting.

"**Meetings Order**" means the Order under the CCAA that, among other things, sets the date for the Meetings, as same may be amended, restated or varied from time to time.

"**Monitor**" means Duff & Phelps Canada Restructuring Inc., as Court-appointed Monitor in the CCAA Proceeding of the Applicant.

"**New Common Shares**" means the new Class A Shares of SkyLink Aviation to be issued pursuant to section 5.2(1) hereof.

"**New First Lien Credit Agreement**" means the DIP Agreement, which credit agreement will cease to be a debtor-in-possession credit agreement and will take effect as a new first lien credit agreement on the Plan Implementation Date in accordance with the terms hereof and thereof and, accordingly, any reference herein to the New First Lien Credit Agreement also means the DIP Agreement, as applicable.

"**New First Lien Loan**" means the secured, first lien loans in the aggregate principal amount of the New Loan Amount that are to take effect on the Plan Implementation Date in accordance with the terms hereof and the DIP Agreement.

"**New Loan Amount**" means US$18 million.

"**New Lenders**" means the DIP Lenders, all of whom will cease to be DIP Lenders on the Plan Implementation Date and will automatically become lenders pursuant to the New First Lien Loan on the Plan Implementation Date in accordance with the terms hereof and the DIP Agreement.

"**New Lender's Pro Rata Share**" means with respect to each New Lender, (x) the amount of the New Loan Amount committed (including, for greater certainty, any amount funded) by such New Lender as at the Plan Implementation Date, divided by (y) the New Loan Amount.

"**New Second Lien Notes**" means the secured, second lien notes in the aggregate principal amount of $10 million to be issued on the Plan Implementation Date pursuant to section 5.2(2) hereof, the terms of which shall be consistent with the summary of terms set forth in Schedule "A".

"**New Second Lien Notes Indenture**" means the note indenture dated as of the Plan Implementation Date among SkyLink Aviation, the guarantors party thereto and the New Second Lien Notes Indenture Trustee pursuant to which the New Second Lien Notes will be issued.

"**New Second Lien Notes Indenture Trustee**" means Computershare Trust Company of Canada or such other trustee as may be agreed to by the Applicant and the Majority Initial Consenting Noteholders, as trustee under the New Second Lien Notes Indenture.

"**New Shareholders' Agreement**" means the shareholders' agreement among SkyLink Aviation and each of the holders of the New Common Shares, which shall be declared to be effective and binding on all such Persons pursuant to the Sanction Order.

"**Noteholder Advisors**" means Bennett Jones LLP and PwC.

"**Notice of Claim**" has the meaning ascribed thereto in the Claims Procedure Order.

"**OBCA**" means the *Business Corporations Act* (Ontario), as amended.

"Officers" means all current and former officers (or their estates) of the Applicant, in such capacity, and "**Officer**" means any one of them.

"**Options**" means any options, warrants, conversion privileges, puts, calls, subscriptions, exchangeable securities, or other rights, entitlements, agreements, arrangements or commitments (pre-emptive, contingent or otherwise) obligating SkyLink Aviation to issue, acquire or sell shares in the capital of SkyLink Aviation or to purchase any shares, securities, options or warrants, or any securities or obligations of any kind convertible into or exchangeable for shares in the capital of SkyLink Aviation, in each case that are existing or issued and outstanding immediately prior to the Effective Time, including any options to acquire common shares of SkyLink Aviation issued under the Company Stock Option Plans, any warrants exercisable for common shares or other equity securities of SkyLink Aviation, any put rights exercisable against the Applicant in respect of any shares, options, warrants or other securities, and any rights, entitlements or other claims of any kind to receive any other form of consideration in respect of any prior or future exercise of any of the foregoing.

"**Order**" means any order of the Court made in connection with the CCAA Proceeding.

"**Person**" means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, government or any agency, officer or instrumentality thereof or any other entity.

"**Plan**" means this Plan of Compromise and Arrangement filed by the Applicant under the CCAA, as it may be amended, supplemented or restated from time to time in accordance with the terms hereof.

"**Plan Implementation Date**" means the Business Day on which this Plan becomes effective, which shall be the Business Day on which, pursuant to section 9.2, the Applicant and Majority Initial Consenting Noteholders deliver written notice to the Monitor that the conditions set out in section 9.1 have been satisfied or waived in accordance with the terms hereof.

"**Post-Filing Trade Payables**" means trade payables that were incurred by the Applicant (a) after the Filing Date but before the Plan Implementation Date; and (b) in compliance with the Initial Order and other Orders issued in connection with the CCAA Proceeding.

"**Prior Ranking Secured Claims**" means Claims existing on both the Filing Date and the Plan Implementation Date, other than Government Priority Claims, Employee Priority Claims, and Claims secured by the Charges, that (a) have the benefit of a valid and enforceable security interest in, mortgage or charge over, lien against or other similar interest in, any of the assets that the Applicant owns or to which the Applicant is entitled, but only to the extent of the realizable value of the property subject to such security; and (b) would have ranked senior in priority to the Secured Noteholders Allowed Secured Claim if the Applicant had become bankrupt on the Filing Date.

"**Proof of Claim**" has the meaning ascribed thereto in the Claims Procedure Order.

"**PwC**" means PricewaterhouseCoopers LLP.

"**Qualifying Noteholder**" means a Secured Noteholder as of the Filing Date that: (a) in the case of a Secured Noteholder resident in the United States, is a "qualified institutional buyer" within the meaning of Rule 144A under the 1933 Act; (b) in the case of a Secured Noteholder resident in a province or territory of Canada, is an "accredited investor" as such term is defined in the National Instrument 45-106 Prospectus and Registration Exemptions ("**NI 45-106**"); or (c) in the case of a Secured Noteholder resident outside of Canada or the United States, would qualify as an "accredited investor" as such term is defined in NI-45-106 as if such Secured Noteholder was resident in Canada and can demonstrate to SkyLink Aviation that it is qualified to participate as a lender in the DIP Facility in accordance with the laws of its jurisdiction of residence.

"**Recapitalization**" means the transactions contemplated by this Plan.

"**Released Claim**" has the meaning ascribed thereto in section 7.1(a).

"**Released Director/Officer Claim**" means any Director/Officer Claim that is released pursuant to section 7.1.

"**Released Directors/Officers**" means the Persons listed on Schedule "B", in their capacity as Directors and/or Officers, and "**Released Director/Officer**" means any one of them.

"**Released Party**" and "**Released Parties**" have the meaning ascribed thereto in section 7.1(a).

"**Released Shareholders**" means those holders of the Existing Shares as of the Filing Date who are listed on Schedule "C", in their capacity as holders of Existing Shares.

"**Required Majorities**" means with respect to each Voting Class, a majority in number of Affected Creditors representing at least two thirds in value of the Voting Claims of Affected Creditors, in each case who are entitled to vote at the Meetings in accordance with the Meetings Order and who are present and voting in person or by proxy on the resolution approving the Plan at the applicable Meeting.

"**Sanction Date**" means the date that the Sanction Order is made by the Court.

"**Sanction Order**" means the Order of the Court sanctioning and approving this Plan.

"**Secured Noteholder's Pro-Rata Share**" means, with respect to each Secured Noteholder, (x) the principal amount of Secured Notes held by such Secured Noteholder as at the Filing Date divided by (y) $110,000,000 (being the aggregate principal amount of all of the Secured Notes).

"**Secured Noteholders**", and each a "**Secured Noteholder**", means the holders of the Secured Notes.

"**Secured Noteholders Allowed Claim**" has the meaning ascribed thereto in the Claims Procedure Order.

"**Secured Noteholders Allowed Secured Claim**" has the meaning ascribed thereto in the Claims Procedure Order.

"**Secured Noteholders Allowed Unsecured Claim**" has the meaning ascribed thereto in the Claims Procedure Order.

"**Secured Noteholders Class**" means the class of Secured Noteholders collectively holding the Secured Noteholders Allowed Secured Claim entitled to vote on this Plan at the Secured Noteholders Meeting in accordance with the terms of the Meetings Order.

"**Secured Noteholders Meeting**" means the meeting of the Secured Noteholders Class to be held on the Meeting Date for the purpose of considering and voting on the Plan pursuant to the CCAA and includes any adjournment, postponement or other rescheduling of such meeting in accordance with the Meetings Order.

"**Secured Note Indenture**" means the note indenture dated March 15, 2011 that was entered into between SkyLink Aviation, certain guarantor parties and the Secured Note Indenture Trustee in connection with the issuance of the Secured Notes, as amended by the First Supplemental Indenture dated as of October 19, 2012.

"**Secured Note Indenture Trustee**" means Computershare Trust Company of Canada, as trustee under the Secured Note Indenture.

"**Secured Note Obligations**" means all obligations, liabilities and indebtedness of SkyLink Aviation or any of the other SkyLink Companies (whether as guarantor, surety or otherwise) to the Secured Note Indenture Trustee and/or the Secured Noteholders (including, for greater certainty, in their capacity as holders of the Secured Notes and in their capacity as IPSA Noteholder Participants) under, arising out of or in connection with the Secured Notes, the IPSA, the Secured Note Indenture or the guarantees granted in connection with any of the foregoing as well as any other agreements or documents relating thereto as at the Plan Implementation Date.

"**Secured Notes**" has the meaning ascribed thereto in the recitals.

"**Shareholder Agreement**" means the shareholder agreement dated November 13, 2008 by and among SL Aviation Bidco Inc. (as predecessor to SkyLink Aviation) and the holders of the Existing Shares, as amended and as it may be further amended from time to time.

"**SkyLink Aviation**" has the meaning ascribed thereto in the recitals.

"**SkyLink Canadian Subsidiary**" means 2273853 Ontario Inc.

"**SkyLink Companies**" means the Applicant, the SkyLink Guarantors, SkyLink Aeromanagement (Kenya) Ltd., SkyLink Aviation FZE, SkyLink Air & Logistic Support (Sudan) Co. Ltd., SkyLink Air and Logistic Service Italy Srl, CAS FZE, Aerostan Holdings Company, Aerostan Limited Liability Company and Canadian Force Logistics Augmentation Group Inc.

"**SkyLink Guarantors**" means SkyLink Canadian Subsidiary, SkyLink Air and Logistic Support (USA) Inc., SkyLink USA II and SkyLink Aviation (Wyoming) Inc.

"**SkyLink Subsidiaries**" means the SkyLink Companies other than the Applicant.

"**SkyLink USA II**" means SkyLink Air and Logistic Support (USA) II Inc.

"**Structuring Equity**" means the 5% of the New Common Shares issued and outstanding on the Plan Implementation Date to be issued to the Initial Consenting Noteholders by the Applicant pursuant to this Plan in recognition of the significant time and effort spent by the Initial Consenting Noteholders in working with the Applicant to develop, structure and facilitate the Recapitalization.

"**Support Agreement**" has the meaning ascribed thereto in the recitals.

"**Support Agreement Joinder**" means a joinder agreement in the form set out as a schedule to the Support Agreement pursuant to which a Secured Noteholder agrees to become a Consenting Noteholder and to be bound by the terms of the Support Agreement.

"**Tax**" or "**Taxes**" means any and all federal, provincial, municipal, local and foreign taxes, assessments, reassessments and other governmental charges, duties, impositions and liabilities including for greater certainty taxes based upon or measured by reference to income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, all licence, franchise and registration fees and all employment insurance, health insurance and Canada, Quebec and other government pension plan premiums or contributions, together with all interest, penalties, fines and additions with respect to such amounts.

"**Taxing Authorities**" means anyone of Her Majesty the Queen, Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada and any political subdivision thereof, the United States Internal Revenue Service, any similar revenue or taxing authority of the United States and each and every state of the United States, and any Canadian, United States or other government, regulatory authority, government department, agency, commission, bureau, minister, court, tribunal or body or regulation making entity exercising taxing authority or power, and "Taxing Authority" means any one of the Taxing Authorities.

"**Unaffected Claim**" means any:

(a) Claim of the First Lien Agent and/or the First Lien Lenders in respect of the First Lien Credit Agreement or the First Lien Facility;

(b) Claim secured by any of the Charges;

(c) Insured Claim;

(d) Claim by the DIP Lenders arising under the DIP Agreement;

(e) Intercompany Claim;

(f) Post-Filing Trade Payables;

(g) Claim by an Unaffected Trade Creditor arising from an Unaffected Trade Claim;

(h) Prior Ranking Secured Claims;

(i) Claim that is not permitted to be compromised pursuant to section 19(2) of the CCAA;

(j) Employee Priority Claims; and

(k) Government Priority Claims.

"**Unaffected Creditor**" means a Creditor who has an Unaffected Claim, but only in respect of and to the extent of such Unaffected Claim.

"**Unaffected Trade Claim**" means a Claim of an Unaffected Trade Creditor that is not a Post-Filing Trade Payable and that arises out of or in connection with any contract, license, lease, agreement, obligation, arrangement or document with the Applicant related to the business of the Applicant.

"**Unaffected Trade Creditor**" means any Person that has been designated by SkyLink Aviation, with the consent of the Monitor and the Majority Initial Consenting Noteholders, as a critical supplier in accordance with the Initial Order.

"**Undeliverable Distribution**" has the meaning ascribed thereto in section 4.8 hereof.

"**Unsecured Creditor's Pro-Rata Share**" means, at the relevant time, with respect to each Affected Unsecured Creditor, (x) the Allowed Affected Unsecured Claim of such Affected Unsecured Creditor divided by (y) the total of all Allowed Affected Unsecured Claims and Disputed Distribution Claims of Affected Unsecured Creditors.

"**Unsecured Creditors Meeting**" means a meeting of Affected Unsecured Creditors to be held on the Meeting Date called for the purpose of considering and voting on the Plan pursuant to the CCAA, and includes any adjournment, postponement or other rescheduling of such meeting in accordance with the Meetings Order.

"**Unsecured Promissory Note**" means the unsecured, subordinated promissory note in the principal amount of $300,000 due and payable on the Unsecured Promissory Note Maturity Date, subject to the provisions thereof, to be issued by SkyLink Aviation on the Plan Implementation Date in favour of the Affected Unsecured Creditors with Allowed Affected Unsecured Claims and held by the Applicant, for the benefit of the beneficiaries of such promissory note, pending distribution of the Unsecured Promissory Note Proceeds, which promissory note shall accrue 2% payment-in-kind interest annually (which payment-in-kind interest shall be held by the Applicant in a segregated account for the benefit of beneficiaries of the Unsecured Promissory Note), shall be subordinated to all indebtedness and trade obligations of SkyLink Aviation and may be repaid by the Applicant at any time without penalty.

"**Unsecured Promissory Note Entitlement**" means, with respect to each Affected Unsecured Creditor with an Allowed Unsecured Claim, its entitlement to its Unsecured Creditor's Pro-Rata Share of the Unsecured Promissory Note Proceeds.

"**Unsecured Promissory Note Maturity Date**" means the earlier of the date that is 5 years following the Plan Implementation Date and the date on which the Applicant repays the Unsecured Promissory Note in accordance with its terms.

"**Unsecured Promissory Note Proceeds**" means the amount payable to the beneficiaries of the Unsecured Promissory Note on the Unsecured Promissory Note Maturity Date (including the principal amount of the Unsecured Promissory Note and the interest thereon), subject to the terms and conditions of the Unsecured Promissory Note.

"**Voting Claims**" means any Claim or portion thereof that has been finally allowed as a Voting Claim (as defined in the Claims Procedure Order) for purposes of voting at a Meeting in accordance with the Claims Procedure Order or a Final Order of the Court.

"**Voting Classes**" means the Secured Noteholders Class and the Affected Unsecured Creditors Class.

"**Website**" means:

http://www.duffandphelps.com/services/restructuring/Pages/RestructuringCases.aspx.

1.2 Certain Rules of Interpretation

For the purposes of the Plan:

(a) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions;

(b) any reference in the Plan to an Order or an existing document or exhibit filed or to be filed means such Order, document or exhibit as it may have been or may be amended, modified, or supplemented;

(c) unless otherwise specified, all references to currency are in Canadian dollars;

(d) the division of the Plan into "articles" and "sections" and the insertion of a table of contents are for convenience of reference only and do not affect the construction or interpretation of the Plan, nor are the descriptive headings of "articles" and "sections" intended as complete or accurate descriptions of the content thereof;

(e) the use of words in the singular or plural, or with a particular gender, including a definition, shall not limit the scope or exclude the application of any provision of the Plan or a schedule hereto to such Person (or Persons) or circumstances as the context otherwise permits;

(f) the words "includes" and "including" and similar terms of inclusion shall not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather shall mean "includes but is not limited to" and "including

but not limited to", so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive;

(g) unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean local time in Toronto, Ontario and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. (Toronto time) on such Business Day;

(h) unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day;

(i) unless otherwise provided, any reference to a statute or other enactment of parliament or a legislature includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation; and

(j) references to a specified "article" or "section" shall, unless something in the subject matter or context is inconsistent therewith, be construed as references to that specified article or section of the Plan, whereas the terms "the Plan", "hereof", "herein", "hereto", "hereunder" and similar expressions shall be deemed to refer generally to the Plan and not to any particular "article", "section" or other portion of the Plan and include any documents supplemental hereto.

1.3 Successors and Assigns

The Plan shall be binding upon and shall enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any Person or party named or referred to in the Plan.

1.4 Governing Law

The Plan shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. All questions as to the interpretation of or application of the Plan and all proceedings taken in connection with the Plan and its provisions shall be subject to the jurisdiction of the Court.

1.5 Schedules

The following are the Schedules to the Plan, which are incorporated by reference into the Plan and form a part of it:

Schedule "A"	Terms of New Second Lien Notes
Schedule "B"	Released Directors/Officers
Schedule "C"	Released Shareholders

Schedule "D" Director/Officer Wages Claims

ARTICLE 2
PURPOSE AND EFFECT OF THE PLAN

2.1 Purpose

The purpose of the Plan is:

(a) to implement a recapitalization of SkyLink Aviation, which will significantly reduce its indebtedness;

(b) to provide for a settlement of, and consideration for, all Allowed Affected Claims;

(c) to effect a release and discharge of all Affected Claims and Released Claims;

(d) to provide SkyLink Aviation with essential committed financing to address its current and future liquidity needs; and

(e) to ensure the continued viability and ongoing operations of SkyLink Aviation,

in the expectation that the Persons who have an economic interest in the Applicant, when considered as a whole, will derive a greater benefit from the implementation of the Plan than would result from a bankruptcy of the Applicant.

2.2 Persons Affected

The Plan provides for a full and final release and discharge of the Affected Claims and Released Claims, a settlement of, and consideration for, all Allowed Affected Claims and a recapitalization of the Applicant. The Plan will become effective at the Effective Time in accordance with its terms and in the sequence set forth in section 5.4 and shall be binding on and enure to the benefit of the Applicant, the Affected Creditors, the Released Parties and all other Persons named or referred to in, or subject to, the Plan.

2.3 Persons Not Affected

The Plan does not affect the Unaffected Creditors, subject to the express provisions hereof providing for the treatment of Insured Claims. Nothing in the Plan shall affect the Applicant's rights and defences, both legal and equitable, with respect to any Unaffected Claims including all rights with respect to legal and equitable defences or entitlements to set-offs or recoupments against such Unaffected Claims.

2.4 Equity Claimants

On the Plan Implementation Date, the Plan will be binding on SkyLink Aviation and all Equity Claimants. Equity Claimants shall not receive a distribution under the Plan or otherwise recover anything in respect of their Equity Claims or Equity Interests. On the Plan Implementation Date, in accordance with the steps and sequences set out in section 5.4, all Equity Interests shall be

cancelled and extinguished and all Equity Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred.

ARTICLE 3
CLASSIFICATION AND TREATMENT OF CREDITORS AND RELATED MATTERS

3.1 Claims Procedure

The procedure for determining the validity and quantum of the Affected Claims for voting and distribution purposes under the Plan shall be governed by the Claims Procedure Order, the Meetings Order, the CCAA, the Plan and any further Order of the Court.

3.2 Classification of Creditors

In accordance with the Meetings Order, the only classes of creditors for the purposes of considering and voting on the Plan will be the Secured Noteholders Class and the Affected Unsecured Creditors Class. For greater certainty, Equity Claimants shall not be entitled to vote on the Plan or to receive any distributions hereunder.

3.3 Creditors' Meetings

The Meetings shall be held in accordance with the Meetings Order and any further Order of the Court. The only Persons entitled to attend the Meetings are those specified in the Meetings Order.

3.4 Treatment of Affected Claims

An Affected Claim shall receive distributions as set forth below only to the extent that such Claim is an Allowed Affected Claim and has not been paid, released, or otherwise satisfied prior to the Plan Implementation Date.

(1) <u>Secured Noteholders Class</u>

In accordance with the steps and sequence set forth in section 5.4, each Secured Noteholder will, in full and final satisfaction of the Secured Noteholders Allowed Secured Claim, receive its Secured Noteholder's Pro-Rata Share of:

(a) 25% of the New Common Shares issued and outstanding on the Plan Implementation Date; and

(b) the New Second Lien Notes.

The Claims comprising the Secured Noteholders Allowed Claim and the Secured Note Obligations shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred on the Plan Implementation Date.

(2) Affected Unsecured Creditors Class

In accordance with the steps and sequence set forth in section 5.4, and in full and final satisfaction of all Affected Unsecured Claims, each Affected Unsecured Creditor with an Allowed Affected Unsecured Claim will receive its Unsecured Promissory Note Entitlement. All Affected Unsecured Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred on the Plan Implementation Date.

(3) Equity Claimants

In accordance with the steps and sequences set forth in section 5.4, all Equity Claims shall be fully, finally, irrevocably and forever compromised, released, discharged cancelled and barred on the Plan Implementation Date. Equity Claimants will not receive any consideration or distributions under the Plan and shall not be entitled to vote on the Plan at the Meetings in respect of their Equity Claims.

3.5 Unaffected Claims

(a) Unaffected Creditors 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 section 5.4), and they shall not be entitled to vote on the Plan at the Meetings in respect of their Unaffected Claims.

(b) Notwithstanding anything to the contrary herein, Insured Claims shall not be compromised, released, discharged, cancelled and barred by this Plan, provided that from and after the Plan Implementation Date, any Person having an Insured Claim shall be irrevocably limited to recovery in respect of such Insured Claim solely from the proceeds of the applicable Insurance Policies, and Persons with any Insured Claims shall have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from any Person, including SkyLink Aviation, any SkyLink Subsidiary or any Released Party, other than enforcing such Person's rights to be paid by the applicable insurer(s) from the proceeds of the applicable Insurance Policies. This section 3.5(b) may be relied upon and raised or pled by SkyLink Aviation, any SkyLink Subsidiary or any Released Party in defence or estoppel of or to enjoin any claim, action or proceeding brought in contravention of this section. Nothing in this Plan shall prejudice, compromise, release or otherwise affect any right or defence of any insurer in respect of an Insurance Policy or any insured in respect of an Insured Claim.

3.6 Disputed Distribution Claims

Any Affected Unsecured Creditor with a Disputed Distribution Claim shall not be entitled to receive any distribution hereunder with respect to such Disputed Distribution Claim unless and until such Claim becomes an Allowed Affected Unsecured Claim. A Disputed Distribution Claim shall be resolved in the manner set out in the Claims Procedure Order. Distributions pursuant to section 3.4 shall be paid in respect of any Disputed Distribution Claim that is finally

determined to be an Allowed Affected Unsecured Claim in accordance with the Claims Procedure Order.

3.7 Director/Officer Claims

(a) All Released Director/Officer Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred without consideration on the Plan Implementation Date. Any Director/Officer Claim that is not a Released Director/Officer Claim will not be compromised, released, discharged, cancelled and barred. For greater certainty, any Claim of a Director or Officer for indemnification from the Applicant in respect of any Director/Officer Claim that is not otherwise covered by the Directors' Charge shall be treated for all purposes under this Plan as an Affected Unsecured Claim.

(b) Notwithstanding anything to the contrary herein, the Director/Officer Wages Claims shall not be compromised, released, discharged, cancelled or barred by this Plan, provided that from and after the Plan Implementation Date, any Person having Director/Officer Wages Claim shall be irrevocably limited to recovery in respect of such Director/Officer Wages Claim solely from the proceeds of the applicable Insurance Policies, and Persons with any Director/Officer Wages Claims shall have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from any Person, including SkyLink Aviation, any SkyLink Subsidiary, any Released Director/Officer or any other Released Party, other than enforcing such Person's rights to be paid by the applicable insurer(s) from the proceeds of the applicable Insurance Policies. This section 3.7(b) may be relied upon and raised or pled by SkyLink Aviation, any SkyLink Subsidiary, any Released Director/Officer or any other Released Party in defence or estoppel of or to enjoin any claim, action or proceeding brought in contravention of this section. Nothing in this Plan shall prejudice, compromise, release or otherwise affect any right or defence of any insurer in respect of an Insurance Policy or any insured in respect of Director/Officer Claims or Director/Officer Wages Claims.

3.8 Extinguishment of Claims

On the Plan Implementation Date in accordance with its terms and in the sequence set forth in section 5.4 and in accordance with the provisions of the Sanction Order, the treatment of Affected Claims (including Allowed Claims and Disputed Distribution Claims) and all Released Claims, in each case as set forth herein, shall be final and binding on the Applicant, all Affected Creditors (and their respective heirs, executors, administrators, legal personal representatives, successors and assigns) and any Person holding a Released Claim, and all Affected Claims and all Released Claims shall be fully, finally, irrevocably and forever released, discharged, cancelled and barred, and the Released Parties shall thereupon have no further obligation whatsoever in respect of the Affected Claims and the Released Claims, as applicable; *provided that* nothing herein releases the Applicant or any other Person from their obligations to make distributions in the manner and to the extent provided for in the Plan and *provided further* that such discharge and release of the Applicant shall be without prejudice to the right of a Creditor in respect of a Disputed Distribution Claim to prove such Disputed Distribution Claim in

accordance with the Claims Procedure Order so that such Disputed Distribution Claim may become an Allowed Unsecured Claim entitled to receive consideration under section 3.4 hereof.

3.9 Guarantees and Similar Covenants

No Person who has a Claim under any guarantee, surety, indemnity or similar covenant in respect of any Claim which is compromised and released under this Plan or who has any right to claim over in respect of or to be subrogated to the rights of any Person in respect of a Claim which is compromised under this Plan shall be entitled to any greater rights as against the Applicant than the Person whose Claim is compromised under the Plan.

3.10 Set-Off

The law of set-off applies to all Claims.

ARTICLE 4
PROVISIONS REGARDING DISTRIBUTIONS AND PAYMENTS

4.1 Distributions to Secured Noteholders

(a) This section 4.1 sets forth the distribution mechanics with respect to the New Common Shares and the New Second Lien Notes that are to be distributed to the Secured Noteholders in accordance with section 3.4(1).

(b) Upon receipt of and in accordance with written instructions from the Monitor, the Secured Note Indenture Trustee shall instruct CDS to and CDS shall: (i) establish an escrow position representing the respective positions of the Secured Noteholders as of the Plan Implementation Date for the purpose of making distributions to the Secured Noteholders on and after the Plan Implementation Date; and (ii) block any further trading in the Secured Notes, effective as of the close of business on the Business Day immediately prior to the Plan Implementation Date, all in accordance with the customary procedures of CDS.

(c) (i) The delivery of New Second Lien Notes to the Secured Noteholders will be made through the facilities of CDS to CDS Participants, who, in turn, shall make delivery of interests in such New Second Lien Notes to the beneficial holders of such Secured Notes pursuant to standing instructions and customary practices; provided that, if the New Second Lien Notes are not CDS eligible, delivery of any such New Second Lien Notes will be made to the Secured Note Indenture Trustee who, in turn, will make delivery of the applicable New Second Lien Notes to each of the Secured Noteholders through the direct registration system of Computershare (or such other transfer agent as SkyLink Aviation may appoint); and (ii) the delivery of New Common Shares to the Secured Noteholders will be made as follows:

(A) immediately following the close of business on the Business Day prior to the Plan Implementation Date, CDS shall provide the Monitor with a list showing the names and addresses of all Persons who are CDS participant holders of the Secured Notes ("**CDS**

Participants") and the principal amount of Secured Notes held by each CDS Participant as at the close of business on the Business Day prior to the Plan Implementation Date;

(B) the Monitor shall forthwith provide all such information to the Applicant; and

(C) on the Plan Implementation Date, the Applicant shall, in accordance with the information provided by the Monitor pursuant to section 4.1(c)(ii)(B), register or deliver, as applicable, to the CDS Participants, the applicable amount of New Common Shares,

provided that, subject to the consent of the Monitor and the Majority Initial Consenting Noteholders, the Applicant shall be entitled to make such modifications to the administrative process for distributing New Common Shares and New Second Lien Notes as it deems necessary in order to achieve the proper distribution and allocation of New Common Shares and New Second Lien Notes as set forth herein.

(d) The Applicant and the Monitor shall have satisfied their responsibilities in respect of the distribution of New Common Shares and New Second Lien Notes to the Secured Noteholders in accordance with section 3.4(1) once such New Common Shares and New Second Lien Notes have been delivered to CDS, the CDS Participants or the Secured Note Indenture Trustee, as applicable. The SkyLink Companies and the Monitor will have no liability or obligation in respect of deliveries from CDS, or its nominee, to CDS Participants or from CDS Participants to beneficial holders of the Secured Notes or from the Secured Note Indenture Trustee to beneficial holders of the Secured Notes.

4.2 Distribution Mechanics with Respect to the Unsecured Promissory Note

(a) The Unsecured Promissory Note shall be issued by SkyLink Aviation and shall be held by the Applicant on behalf of all Affected Unsecured Creditors with an Allowed Affected Unsecured Claim and, subject to the terms and conditions thereof, each such Affected Unsecured Creditor shall become entitled to its Unsecured Promissory Note Entitlement on the Plan Implementation Date without any further steps or actions by the Applicant, such Affected Unsecured Creditor or any other Person.

(b) From and after the Plan Implementation Date, and until all Unsecured Promissory Note Proceeds have been distributed in accordance with this Plan, the Applicant shall maintain a register of the Unsecured Promissory Note Entitlement of each applicable Affected Unsecured Creditor as well as the address and notice information set forth on such Affected Unsecured Creditor's Notice of Claim or Proof of Claim or, with respect to any Affected Unsecured Creditor that is a Secured Noteholder, the delivery details of the Secured Note Indenture Trustee. Any applicable Affected Unsecured Creditor whose address or notice information

changes shall be solely responsible for notifying the Applicant of such change. The Applicant shall also record on the register the aggregate amount of any Disputed Distribution Claims.

(c) On the Unsecured Promissory Note Maturity Date, the Applicant shall calculate the amount to be paid to each Affected Unsecured Creditor with an Allowed Unsecured Claim or the Secured Note Indenture Trustee. The Applicant shall also calculate the amount of the Unsecured Promissory Note Proceeds that are not to be distributed as a result of Disputed Distribution Claims that remain outstanding, if any. The Applicant shall then distribute to each Affected Unsecured Creditor with an Allowed Affected Unsecured Claim the applicable amount:

(i) in the case of distributions to Secured Noteholders, in the manner described in section 4.1; and

(ii) in the case of distributions to all other Affected Unsecured Creditors, by way of cheque sent by prepaid ordinary mail.

With respect to any portion of the Unsecured Promissory Note Proceeds that are reserved in respect of Disputed Distribution Claims, the Applicant shall forthwith segregate such amounts to establish the Disputed Distribution Claims Reserve.

4.3 Other Distributions

(a) The distributions to be made to: the DIP Backstop Parties pursuant to section 5.3(1), the New Lenders pursuant to section 5.3(2) and the Initial Consenting Noteholders pursuant to section 5.3(3) shall be made in accordance with this section 4.3.

(b) At least ten (10) Business Days prior to the Plan Implementation Date, the Applicant shall provide the Monitor with copies of the DIP Backstop Commitment Letter, the DIP Participation Documents (as defined in the Initial Order), if any, and the Support Agreement. Based on the foregoing, the Monitor shall forthwith (A) contact each DIP Backstop Party, New Lender and Initial Consenting Noteholder to ascertain its registration and delivery details for purposes of registering or delivering distributions to such Person, and (b) calculate the following:

(i) with respect to each DIP Backstop Party, such DIP Backstop Party's Pro-Rata Share;

(ii) with respect to each of the New Lenders, such New Lender's Pro-Rata Share; and

(iii) with respect to each of the Initial Consenting Noteholders, such Initial Consenting Noteholder's Pro-Rata Share,

and the Monitor shall provide all such information to the Applicant at least two (2) Business Days prior to the Plan Implementation Date.

(c) On the Plan Implementation Date, the Applicant shall, upon receipt of and in accordance with a written direction of the Monitor prepared based on the information received by the Monitor pursuant to section 4.3(b), register or deliver, as applicable, to the DIP Backstop Parties, the New Lenders and the Initial Consenting Noteholders, the applicable amount of New Common Shares as so directed by the Monitor.

4.4 Cancellation of Certificates and Notes

Following completion of the steps in the sequence set forth in section 5.4, all debentures, notes (including the Secured Notes and the Secured Note Obligations), certificates, agreements, invoices and other instruments evidencing Affected Claims or Equity Interests will not entitle any holder thereof to any compensation or participation other than as expressly provided for in the Plan and will be cancelled and will be null and void. Notwithstanding the foregoing, the Secured Note Indenture shall remain in effect for the purpose of and to the extent necessary to: (i) allow the Secured Note Indenture Trustee to make distributions to the Secured Noteholders on the Initial Distribution Date and each subsequent Distribution Date thereafter; and (ii) maintain all of the protections the Secured Note Indenture Trustee enjoys as against the Secured Noteholders, including its lien rights with respect to any distributions under this Plan, until all distributions are made to Secured Noteholders hereunder. For greater certainty, any and all obligations, including the Secured Note Obligations, of the Applicant and the SkyLink Companies (as guarantor, surety or otherwise) under and with respect to the Secured Notes and the Secured Note Indenture shall not continue beyond the Plan Implementation Date.

4.5 Currency

Unless specifically provided for in the Plan or the Sanction Order, for the purposes of distributions under the Plan, a Claim shall be denominated in Canadian dollars and all payments and distributions to the Affected Creditors on account of their Claims shall be made in Canadian dollars. Any Claims denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada noon exchange rate in effect at the Filing Date.

4.6 Interest

Interest shall not accrue or be paid on Affected Claims on or after the Filing Date, and no holder of an Affected Claim shall be entitled to interest accruing on or after the Filing Date.

4.7 Allocation of Distributions

All distributions made pursuant to the Plan shall be allocated first towards the repayment of the principal amount in respect of such Affected Creditor's Affected Claim and second, if any, towards the repayment of all accrued but unpaid interest in respect of such Affected Creditor's Affected Claim.

4.8 Treatment of Undeliverable Distributions

If any Affected Creditor's distribution under this Article 4 is returned as undeliverable (an "**Undeliverable Distribution**"), no further distributions to such Affected Creditor shall be made unless and until the Applicant is notified by such Affected Creditor of such Affected Creditor's current address, at which time all such distributions shall be made to such Affected Creditor. All claims for Undeliverable Distributions in respect of Allowed Claims must be made on or before the date that is six months following the final Distribution Date, after which date any entitlement with respect to such Undeliverable Distribution shall be forever discharged and forever barred, without any compensation therefor, notwithstanding any federal, state or provincial laws to the contrary, at which time any such Undeliverable Distributions in relation to the Allowed Claim shall be returned to SkyLink Aviation. Nothing contained in the Plan shall require the Applicant to attempt to locate any holder of an Allowed Claim. No interest is payable in respect of an Undeliverable Distribution. Any distribution under this Plan on account of the Secured Notes shall be deemed made when delivered to CDS, the CDS Participants or the Secured Note Indenture Trustee, as applicable, for subsequent distribution to Secured Noteholders in accordance with this Article 4.

4.9 Withholding Rights

SkyLink Aviation, CDS, the Secured Note Indenture Trustee and/or the Monitor shall be entitled to deduct and withhold from any consideration payable to any Person such amounts as SkyLink Aviation, CDS, the Secured Note Indenture Trustee and/or the Monitor is required to deduct and withhold with respect to such payment under the Canadian Tax Act, or other Applicable Laws, or entitled to withhold under section 116 of the Canadian Tax Act or corresponding provision of provincial or territorial law. To the extent that amounts are so withheld or deducted, such withheld or deducted amounts shall be treated for all purposes hereof as having been paid to the Person in respect of which such withholding was made, provided that such amounts are actually remitted to the appropriate Taxing Authority. SkyLink Aviation, CDS, the Secured Note Indenture Trustee and/or the Monitor are hereby authorized to sell or otherwise dispose of such portion of the consideration as is necessary to provide sufficient funds to SkyLink Aviation, CDS, the Secured Note Indenture Trustee and/or the Monitor, as the case may be, to enable it to comply with such deduction or withholding requirement or entitlement, and SkyLink Aviation, CDS, the Secured Note Indenture Trustee and/or the Monitor, shall notify the Person thereof and remit to such Person any unapplied balance of the net proceeds of such sale.

4.10 Fractional Interests

No fractional interests of New Common Shares or New Second Lien Notes ("**Fractional Interests**") will be issued under this Plan. Recipients of New Common Shares and New Second Lien Notes will have their entitlements adjusted downwards to the nearest whole number of New Common Shares or New Second Lien Notes, as applicable, to eliminate any such Fractional Interests and no compensation will be given for the Fractional Interest.

4.11 Calculations

All amounts of consideration to be received hereunder will be calculated to the nearest cent ($0.01). All calculations and determination made by the Monitor and/or SkyLink Aviation and

agreed to by the Monitor for the purposes of and in accordance with the Plan, including, without limitation, the allocation of consideration, shall be conclusive, final and binding upon the Affected Creditors and the Applicant.

ARTICLE 5
RECAPITALIZATION

5.1 Corporate Actions

The adoption, execution, delivery, implementation and consummation of all matters contemplated under the Plan involving corporate action of the Applicant will occur and be effective as of the Plan Implementation Date, and will be authorized and approved under the Plan and by the Court, where appropriate, as part of the Sanction Order, in all respects and for all purposes without any requirement of further action by shareholders, directors or officers of the Applicant. All necessary approvals to take actions shall be deemed to have been obtained from the directors or the shareholders of the Applicant, as applicable, including the deemed passing by any class of shareholders of any resolution or special resolution and no shareholders' agreement or agreement between a shareholder and another Person limiting in any way the right to vote shares held by such shareholder or shareholders with respect to any of the steps contemplated by the Plan shall be deemed to be effective and shall have no force and effect.

5.2 Issuance of New Common Shares, New Second Lien Notes and the Unsecured Promissory Note

(1) New Common Shares

On the Plan Implementation Date, SkyLink Aviation shall issue the Agreed Number of New Common Shares, and such New Common Shares shall be allocated and distributed in the manner set forth in this Plan.

(2) Issuance of New Second Lien Notes

On the Plan Implementation Date, SkyLink Aviation shall issue the New Second Lien Notes pursuant to the New Second Lien Indenture, and such New Second Lien Notes shall be allocated and distributed in the manner set forth in this Plan.

(3) Unsecured Promissory Note

On the Plan Implementation Date, SkyLink Aviation shall issue the Unsecured Promissory Note and the Unsecured Promissory Note Entitlement shall be allocated in the manner set forth in this Plan.

5.3 DIP Backstop and New First Credit Facility

(1) DIP Backstop

On the Plan Implementation Date, in accordance with the steps and sequence set out in Section 5.4, each DIP Backstop Party shall receive its DIP Backstop Party's Pro Rata Share of 10% of the New Common Shares issued and outstanding on the Plan Implementation Date.

(2) New First Lien Credit Facility

On the Plan Implementation Date, in accordance with the steps and sequence set out in Section 5.4, the DIP Facility shall be converted into the New First Lien Loan in accordance with the DIP Agreement and each New Lender shall receive its New Lender's Pro-Rata Share of 60% of the New Common Shares issued and outstanding on the Plan Implementation Date.

(3) Structuring Equity

On the Plan Implementation Date, in accordance with the steps and sequence set out in Section 5.4, each Initial Consenting Noteholder shall receive its Initial Consenting Noteholder's Pro-Rata Share of 5% of the New Common Shares issued and outstanding on the Plan Implementation Date in respect of the Structuring Equity.

5.4 Plan Implementation Date Transactions

The following steps and compromises and releases to be effected in the implementation of the Plan shall occur, and be deemed to have occurred in the following order in five minute increments (unless otherwise noted), without any further act or formality on the Plan Implementation Date beginning at the Effective Time:

(a) all Options shall be cancelled and terminated without any liability, payment or other compensation in respect thereof;

(b) the Company Stock Option Plans shall be terminated;

(c) the Applicant shall borrow such amounts from the DIP Facility as are necessary to repay in full all amounts owing in respect of the First Lien Credit Facility, and the Applicant shall thereupon pay all such amounts to the First Lien Agent in full and final satisfaction of the First Lien Credit Facility;

(d) the First Lien Credit Agreement and the First Lien Credit Facility shall be deemed to be terminated and the Applicant and the SkyLink Companies shall be fully, finally, irrevocably and forever released from any and all claims, liabilities or obligations of any kind to the First Lien Agent or the First Lien Lenders in respect of the First Lien Credit Agreement and the First Lien Credit Facility;

(e) SkyLink Aviation shall issue to each Secured Noteholder its Secured Noteholder's Pro-Rata Share of the New Common Shares and New Second Lien Secured Notes to be issued to it in accordance with section 3.4(1) in full consideration for the irrevocable, final and full compromise and satisfaction of the Secured Noteholders Allowed Secured Claim;

(f) simultaneously with step 5.4(e), the DIP Facility shall be deemed to be converted into the New First Lien Loans in accordance with the DIP Agreement and SkyLink Aviation shall issue to each New Lender its New Lender's Pro Rata Share of the New Common Shares to be issued to it in accordance with section 5.3(2);

(g) simultaneously with step 5.4(e), SkyLink Aviation shall issue to each DIP Backstop Party its DIP Backstop Party's Pro-Rata Share of New Common Shares to be issued to it in accordance with section 5.3(1);

(h) simultaneously with step 5.4(e), each Affected Unsecured Creditor with an Allowed Affected Unsecured Claim shall become entitled to its Unsecured Promissory Note Entitlement in accordance with section 3.4(2) (as such Unsecured Promissory Note Entitlement may be adjusted based on the final determination of Disputed Distribution Claims in the manner set forth herein) in full consideration for the irrevocable, final and full compromise and satisfaction of such Affected Unsecured Creditor's Affected Unsecured Claim;

(i) simultaneously with step 5.4(e), SkyLink Aviation shall issue to each of the Initial Consenting Noteholders its Initial Consenting Noteholder's Pro-Rata Share of the New Common Shares to be issued to it on account of the Structuring Equity in accordance with section 5.3(3);

(j) the Articles shall be amended, pursuant to the Articles of Reorganization, to, among other things, (i) consolidate the issued and outstanding Class A Shares (including, for the avoidance of doubt, Class A Shares that are Existing Shares and New Common Shares issued pursuant to the preceding paragraphs of this Section 5.4) on the basis of the Consolidation Ratio; (ii) eliminate the Class B Shares; and (iii) provide for such additional changes to the rights and conditions attached to the Class A Shares as may be agreed to by the Applicant, the Monitor and the Majority Initial Consenting Noteholders;

(k) pursuant to the Articles of Reorganization, any fractional Class A Shares held by any holder of Class A Shares immediately following the consolidation of the Class A Shares referred to in section 5.4(j) shall be cancelled without any liability, payment or other compensation in respect thereof;

(l) all Equity Interests (for greater certainty, not including any Class A Shares that remain issued and outstanding immediately following the cancellation of fractional interests in section 5.4(k)) and the Shareholder Agreement shall be cancelled without any liability, payment or other compensation in respect thereof;

(m) a number of New Common Shares representing up to 10% of the number of New Common Shares issued and outstanding immediately following step 5.4(k) shall be reserved for issuance by the Applicant after the Plan Implementation Date to directors, officers and employees of the Applicant pursuant to equity-based compensation arrangements to be determined at the discretion of the new board of directors of SkyLink Aviation appointed pursuant to the Sanction Order (the "**Incentive Plan**"), provided that, for greater certainty, the New Common Shares reserved in respect of such Incentive Plan will, if granted, dilute the New Common Shares to be issued to the Secured Noteholders, the New Lenders, the DIP Backstop Parties and the Initial Consenting Noteholders on the Plan Implementation Date in accordance with this Plan;

(n) SkyLink Aviation shall pay in cash all fees and expenses incurred by the Secured Note Indenture Trustee, including its reasonable legal fees, in connection with the performance of its duties under the Secured Note Indenture or this Plan;

(o) all of the Secured Notes and the Secured Note Indenture and all Secured Note Obligations shall be deemed to be fully, finally, irrevocably and forever compromised, released, discharged cancelled and barred;

(p) SkyLink Aviation shall make all distributions to KERP participants in accordance with the terms of the KERP;

(q) SkyLink Aviation shall pay to each of the Noteholder Advisors such Noteholder Advisor's pro rata share of the Expense Reimbursement;

(r) each of the Charges shall be terminated, discharged and released;

(s) the releases set forth in Article 7 shall become effective; and

(t) the stated capital account in respect of the issued and outstanding shares in the capital of SkyLink Canadian Subsidiary shall be reduced to $1.00 with no payment thereon.

The steps described in sub-sections (j), (k) and (t) of this section 5.4 will be implemented pursuant to section 6(2) of the CCAA as if such steps were implemented pursuant to a plan of reorganization under section 186 of the OBCA.

5.5 Issuances Free and Clear

Any issuance of any securities or other consideration pursuant to the Plan will be free and clear of any Encumbrances.

5.6 Stated Capital

The aggregate stated capital for purposes of the OBCA for the New Common Shares issued pursuant to this Plan will be as determined by the new board of directors of SkyLink Aviation appointed pursuant to the Sanction Order.

5.7 Post-Plan Implementation Date Amalgamation

On the Business Day following the Plan Implementation Date or a later date to be agreed between the Applicant and the Majority Initial Consenting Noteholders, the Articles of Amalgamation will be filed such that SkyLink Aviation will be amalgamated with SkyLink Canadian Subsidiary pursuant to the OBCA.

ARTICLE 6
PROCEDURE FOR DISTRIBUTIONS REGARDING DISPUTED DISTRIBUTION CLAIMS

6.1 No Distribution Pending Allowance

An Affected Unsecured Creditor holding a Disputed Distribution Claim will not be entitled to receive a distribution under the Plan in respect of such Disputed Distribution Claim or any portion thereof unless and until, and then only to the extent that, such Disputed Distribution Claim becomes an Allowed Unsecured Claim.

6.2 Distributions After Disputed Distribution Claims Resolved

(a) Distributions from Unsecured Promissory Note Proceeds in relation to a Disputed Distribution Claim of an Affected Unsecured Creditor in existence at the Unsecured Promissory Note Maturity Date will be held by the Applicant, in a segregated account constituting the Disputed Distribution Claims Reserve, for the benefit of the Affected Unsecured Creditors with Allowed Affected Unsecured Creditor Claims until the final determination of the Disputed Distribution Claim in accordance with the Claims Procedure Order and this Plan.

(b) To the extent that any Disputed Distribution Claim becomes an Allowed Affected Unsecured Claim in accordance with this Plan, the Applicant shall distribute (on the next Distribution Date) to the holder of such Allowed Affected Unsecured Claim, an amount from the Disputed Distribution Claims Reserve equal to the Unsecured Promissory Note Entitlement that such Affected Unsecured Creditor would have been entitled to receive in respect of its Allowed Affected Unsecured Claim on the Unsecured Promissory Note Distribution Date had such Disputed Distribution Claim been an Allowed Affected Unsecured Claim on such date.

(c) On the date that all Disputed Distribution Claims have been finally resolved in accordance with the Claims Procedure Order and any required distributions contemplated in paragraph 6.2(b) have been made, if (i) the aggregate value of Unsecured Promissory Note Proceeds remaining in the Disputed Distribution Claims Reserve is less than $10,000, the Applicant shall release to SkyLink Aviation any proceeds held in the Disputed Distribution Claims Reserve and such proceeds shall be returned to SkyLink Aviation; or (ii) the aggregate value of Unsecured Promissory Note Proceeds remaining in the Disputed Distribution Claims Reserve is greater than or equal to $10,000, the Applicant shall distribute such proceeds to the Affected Unsecured Creditors with Allowed Affected Unsecured Claims such that after giving effect to such distributions each such Affected Unsecured Creditor has received its applicable Unsecured Creditor's Pro-Rata Share of such proceeds.

ARTICLE 7
RELEASES

7.1 Plan Releases

(a) On the Plan Implementation Date, in accordance with the sequence set forth in section 5.4,(i) the Applicant, the Applicant's employees, auditors, financial advisors, legal counsel and agents, the Released Shareholders, the Released Directors/Officers, the SkyLink Subsidiaries and the directors and officers of any SkyLink Subsidiary, and each and every auditor, financial advisor and legal counsel of the foregoing Persons (in each case, in that capacity only) and (ii) the Monitor, the Monitor's counsel the Secured Note Indenture Trustee, the Consenting Noteholders, the DIP Lenders, the Company Advisors, the Noteholder Advisors and each and every present and former shareholder, affiliate, subsidiary, director, officer, member (including members of any committee or governance council), partner, employee, auditor, financial advisor, legal counsel and agent of any of the foregoing Persons (in each case, in that capacity only) (each of the Persons named in (i) or (ii) of this section 7.1(a), in their capacity as such, being herein referred to individually as a "**Released Party**" and all referred to collectively as "**Released Parties**") shall be released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, Encumbrances and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature, including claims for contribution or indemnity which any Creditor or other Person may be entitled to assert (including any and all of the foregoing in respect of the payment and receipt of proceeds and statutory or common law liabilities of Directors or Officers, current or former directors or officers of the SkyLink Subsidiaries, members or employees of the Applicant and any alleged fiduciary or other duty (in any capacity whatsoever)), whether known or unknown, matured or unmatured, direct, indirect or derivative, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the later of the Plan Implementation Date and the date on which actions are taken to implement the Plan, that are in any way relating to, arising out of or in connection with the Secured Notes and related guarantees, the Secured Note Indenture, the Secured Note Obligations, the IPSA, the Support Agreement, any Support Agreement Joinder, the DIP Backstop Commitment Letter, the DIP Agreement, the DIP Facility, the First Lien Facility, the Equity Interests, the Company Stock Option Plans, the New First Lien Loans, the New Common Shares, the New Second Lien Notes, the Unsecured Promissory Note, any Claims, any Director/Officer Claims, the business and affairs of the Applicant whenever or however conducted, the administration and/or management of the Applicant, the Recapitalization, the Plan, the CCAA Proceeding or any matter or transaction involving any of the SkyLink Companies taking place in connection with the Recapitalization or the Plan (referred to collectively as the "**Released**

Claims"), and all Released Claims shall be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, all to the fullest extent permitted by Applicable Law; provided that nothing herein will release or discharge (w) the right to enforce the Applicant's obligations under the Plan, (x) any Released Party if the Released Party is determined by a Final Order of a court of competent jurisdiction to have committed fraud or wilful misconduct, (y) the Applicant from or in respect of any Unaffected Claim or any Claim that is not permitted to be released pursuant to section 19(2) of the CCAA, or (z) any Director or Officer from any Director/Officer Claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

(b) Notwithstanding anything to the contrary in section 7.1(a), Insured Claims and Director/Officer Wages Claims shall not be compromised, released, discharged, cancelled and barred by this Plan, provided that from and after the Plan Implementation Date, any Person having an Insured Claim or a Director/Officer Wages Claim shall be irrevocably limited to recovery in respect of such Insured Claim or Director/Officer Wages Claim solely from the proceeds of the applicable Insurance Policies, and Persons with any Insured Claim or Director/Officer Wages Claims shall have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from SkyLink Aviation, any SkyLink Subsidiary, any Released Director/Officer or any other Released Party, other than enforcing such Person's rights to be paid by the applicable insurer(s) from the proceeds of the applicable Insurance Policies.

7.2 [Intentionally Deleted]

7.3 Injunctions

All Persons are permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, with respect to any and all Released Claims, from (i) 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; (ii) 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 their property; (iii) 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, breach of trust or breach of fiduciary duty 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; (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind against the Released Parties or their property; or (v) taking any actions to interfere with the implementation or consummation of this Plan; provided, however, that the foregoing shall not apply to the enforcement of any obligations under the Plan. For greater certainty, the provisions of this section 7.3 shall apply to Insured Claims and Director/Officer Wages Claims in the same manner as Released Claims, except to the extent that the rights of

such Persons to enforce such Insured Claims and/or Director/Officer Wages Claims against an insurer in respect of an Insurance Policy are expressly preserved pursuant to section 3.5(b), section 3.7(b) and/or section 7.1(b), and provided further that, notwithstanding the restrictions on making a claim that are set forth in sections 3.5(b), 3.7(b) and 7.1(b), any claimant in respect of an Insured Claim or a Director/Officer Wages Claim that was duly filed with the Monitor by the Claims Bar Date shall be permitted to file a statement of claim in respect thereof to the extent necessary solely for the purpose of preserving such claimant's ability to pursue such Insured Claim or Director/Officer Wages Claim against an insurer in respect of an Insurance Policy in the manner authorized pursuant to section 3.5(b), section 3.7(b) and/or section 7.1(b).

ARTICLE 8
COURT SANCTION

8.1 Application for Sanction Order

If the Required Majorities of the Affected Creditors in each Voting Class approves the Plan, the Applicant shall apply for the Sanction Order on or before the date set for the hearing of the Sanction Order or such later date as the Court may set. The Sanction Order shall not become effective until the Plan Implementation Date.

8.2 Sanction Order

The Sanction Order shall, among other things:

(a) declare that (i) the Plan has been approved by the Required Majorities of Affected Creditors in each Voting Class in conformity with the CCAA; (ii) the activities of the Applicant have been in reasonable compliance with the provisions of the CCAA and the Orders of the Court made in this CCAA Proceeding in all respects; (iii) the Court is satisfied that the Applicant has not done or purported to do anything that is not authorized by the CCAA; and (iv) the Plan and the transactions contemplated thereby are fair and reasonable;

(b) declare that as of the Effective Time, the Plan and all associated steps, compromises, transactions, arrangements, releases and reorganizations effected thereby are approved, binding and effective as herein set out upon and with respect to the Applicant, all Affected Creditors, the Directors and Officers, any Person with a Director/Officer Claim, the Released Parties and all other Persons named or referred to in, or subject to, the Plan;

(c) declare that the steps to be taken and the compromises and releases to be effective on the Plan Implementation Date are deemed to occur and be effected in the sequential order contemplated by section 5.4 on the Plan Implementation Date, beginning at the Effective Time;

(d) declare that the New Shareholders' Agreement shall be effective and binding on all holders of the New Common Shares and any Person entitled to receive New Common Shares pursuant to the Plan immediately upon issuance of the New

Common Shares to such Person, with the same force and effect as if such Persons were signatories to the New Sharesholders' Agreement;

(e) compromise, discharge and release the Applicant from any and all Affected Claims of any nature in accordance with the Plan, and declare that the ability of any Person to proceed against the Applicant in respect of or relating to any Affected Claims shall be forever discharged and restrained, and all proceedings with respect to, in connection with or relating to such Affected Claims be permanently stayed, subject only to the right of Affected Creditors to receive distributions pursuant to the Plan in respect of their Affected Claims;

(f) subject to section 3.7(b) and section 7.1(b), compromise, discharge and release the Released Directors/Officers from any and all Released Director/Officer Claims of any nature in accordance with the Plan, and declare that the ability of any Person to proceed against the Released Directors/Officers in respect of or relating to any Released Directors/Officers Claims shall be forever discharged and restrained, and all proceedings with respect to, in connection with or relating to such Released Director/Officer Claims be permanently stayed;

(g) declare that, subject to performance by the Applicant of its obligations under the Plan and except as provided in the Plan, all obligations, agreements or leases to which any of the Applicant or SkyLink Companies is a party on the Plan Implementation Date shall be and remain in full force and effect, unamended, as at the Plan Implementation Date and no party to any such obligation or agreement shall on or following the Plan Implementation Date, accelerate, terminate, refuse to renew, rescind, refuse to perform or otherwise disclaim or resiliate its obligations thereunder, or enforce or exercise (or purport to enforce or exercise) any right or remedy under or in respect of any such obligation or agreement, by reason:

(i) of any event which occurred prior to, and not continuing after, the Plan Implementation Date, or which is or continues to be suspended or waived under the Plan, which would have entitled any other party thereto to enforce those rights or remedies;

(ii) that the Applicant has sought or obtained relief or has taken steps as part of the Plan or under the CCAA;

(iii) of any default or event of default arising as a result of the financial condition or insolvency of the Applicant;

(iv) of the effect upon the Applicant of the completion of any of the transactions contemplated under the Plan; or

(v) of any compromises, settlements, restructurings, recapitalizations or reorganizations effected pursuant to the Plan,

and declare that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any non-competition agreement or obligation, provided that such agreement shall terminate or expire in accordance with the terms thereof or as otherwise agreed by the Applicant and the applicable Persons;

(h) bar, stop, stay and enjoin the commencing, taking, applying for or issuing or continuing any and all steps or proceedings, including without limitation, administrative hearings and orders, declarations or assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against any Released Party in respect of all Claims and any matter which is released pursuant to Article 7 hereof;

(i) bar, stop, stay and enjoin the commencing, taking, applying for or issuing or continuing any and all steps or proceedings, including without limitation, administrative hearings and orders, declarations or assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with in respect of any Insured Claim or Director/Officer Wages Claim, except as against the applicable insurer(s) to the extent that rights to enforce such Insured Claims and/or Director/Officer Wages Claims against such insurer(s) in respect of an Insurance Policy are expressly preserved pursuant to section 3.5(b), section 3.7(b) and/or section 7.1(b), and provided that, notwithstanding the restrictions on making a claim that are set forth in sections 3.5(b), 3.7(b) and 7.1(b), any claimant in respect of an Insured Claim or a Director/Officer Wages Claim that was duly filed with the Monitor by the Claims Bar Date shall be permitted to file a statement of claim in respect thereof to the extent necessary solely for the purpose of preserving such claimant's ability to pursue such Insured Claim or Director/Officer Wages Claim against an insurer in respect of an Insurance Policy in the manner authorized pursuant to section 3.5(b), section 3.7(b) and/or section 7.1(b);

(j) authorize the Monitor to perform its functions and fulfil its obligations under the Plan to facilitate the implementation of the Plan;

(k) declare that upon completion by the Monitor of its duties in respect of the Applicant pursuant to the CCAA and the Orders, the Monitor may file with the Court a certificate stating that all of its duties in respect of the Applicant pursuant to the CCAA and the Orders have been completed and thereupon, Duff & Phelps Canada Restructuring Inc. shall be deemed to be discharged from its duties as Monitor of the Applicant and released of all claims relating to its activities as Monitor;

(l) subject to payment of any amounts secured thereby, declare that each of the Charges shall be terminated, discharged and released;

(m) declare that the Applicant and the Monitor may apply to the Court for advice and direction in respect of any matters arising from or under the Plan; and

(n) declare the Persons to be appointed to the board of directors of SkyLink Aviation on the Plan Implementation Date shall be the Persons on a certificate to be filed with the Court by SkyLink Aviation prior to the Plan Implementation Date, provided that such certificate and the Persons listed thereon shall be subject to the prior consent of the Majority Initial Consenting Noteholders.

ARTICLE 9
CONDITIONS PRECEDENT AND IMPLEMENTATION

9.1 Conditions Precedent to Implementation of the Plan

The implementation of the Plan shall be conditional upon satisfaction of the following conditions prior to or at the Effective Time, each of which is for the benefit of the Consenting Noteholders and may be waived by the Majority Initial Consenting Noteholders; provided, however, that the conditions in sub-paragraphs (a), (c), (d), (e), (g), (h), (i), (j) (as applicable), (l), (m) (as applicable), (n), (q), (r) and (r) shall also be for the benefit of the Applicant and, if not satisfied on or prior to the Effective Time, can only be waived by both the Applicant and Majority Initial Consenting Noteholders (provided that such conditions shall not be enforceable by the Applicant or the Majority Initial Consenting Noteholders if any failure to satisfy such conditions results from an action, error, omission by or within the control of the party seeking enforcement):

(a) all definitive agreements in respect of the Recapitalization and the new (or amended) articles, by-laws and other constating documents, and all definitive legal documentation in connection with all of the foregoing shall be in a form agreed to in advance by the Applicant and the Majority Initial Consenting Noteholders;

(b) the steps required to complete the Recapitalization shall be in form and in substance satisfactory to the Majority Initial Consenting Noteholders and shall not result in material adverse tax consequences for the Consenting Noteholders, which Consenting Noteholders shall, in each case, act reasonably;

(c) New Second Lien Notes Indenture governing the New Second Lien Notes, together with all guarantees and security agreements contemplated thereunder, shall have been entered into and become effective, subject only to the implementation of the Plan, and all required filings related to the security as contemplated in the security agreements shall have been made;

(d) the New First Lien Credit Agreement, together with all guarantees, intercreditor agreements and security agreements contemplated thereunder, shall have become effective;

(e) the terms of the New Common Shares shall be satisfactory to the Applicant and the Majority Initial Consenting Noteholders;

(f) all of the following shall be in form and in substance reasonably satisfactory to the Majority Initial Consenting Noteholders: (i) all materials filed by the Applicant with the Court that relate to the Recapitalization; (ii) the Initial Order,

as such Order may be amended or restated; (iii) the Meetings Order; (iv) the Claims Procedure Order; (v) the Sanction Order; and (vi) any other order granted in connection with the Recapitalization by the Court;

(g) any and all court-imposed charges on any assets, property or undertaking of the Applicant shall have been discharged as at the Effective Time on terms acceptable to the Majority Initial Consenting Noteholders and the Applicant, acting reasonably;

(h) all Material filings under Applicable Laws shall have been made and any Material regulatory consents or approvals that are required in connection with the Recapitalization shall have been obtained and, in the case of waiting or suspensory periods, such waiting or suspensory periods shall have expired or been terminated;

(i) there shall not be in effect any preliminary or final decision, order or decree by a Governmental Entity, no application shall have been made to any Governmental Entity, and no action or investigation shall have been announced, threatened or commenced by any Governmental Entity, in consequence of or in connection with the Recapitalization that restrains, impedes or prohibits (or if granted could reasonably be expected to restrain, impede or inhibit), the Recapitalization or any part thereof or requires or purports to require a variation of the Recapitalization;

(j) the representations and warranties of the Applicant and the Consenting Noteholders set forth in the Support Agreement shall be true and correct in all material respects in accordance with the terms of the Support Agreement;

(k) there shall not exist or have occurred any Material Adverse Effect;

(l) all securities of the Applicant, when issued and delivered, shall be duly authorized, validly issued and fully paid and non-assessable and the issuance thereof shall be exempt from all prospectus and registration requirements of Applicable Laws;

(m) all conditions set out in the Support Agreement shall have been satisfied or waived by the applicable parties pursuant to the terms of the Support Agreement;

(n) the Support Agreement shall not have been terminated;

(o) the Applicant's counsel shall have rendered customary opinions concerning the issuance of the new securities to be issued under the Plan;

(p) the Articles of Reorganization shall have been filed on terms providing that they will become effective in accordance with and at the times of section 5.4(j), 5.4(k), 5.4(l);

(q) all fees and expenses owing to the Company Advisors and the Noteholder Advisors shall have been paid as of the Plan Implementation Date, and SkyLink Aviation and the Majority Initial Consenting Noteholders shall be satisfied that

adequate provision has been made for any fees and expenses due or accruing due to the Company Advisors and the Majority Initial Consenting Noteholders from and after the Plan Implementation Date; and

(r) the Sanction Order shall have been made and shall have become a Final Order.

9.2 Monitor's Certificate

Upon delivery of written notice from the Applicant and Majority Initial Consenting Noteholders of the satisfaction or waiver of the conditions set out in section 9.1, the Monitor shall forthwith deliver to Bennett Jones LLP and the Applicant a certificate stating that the Plan Implementation Date has occurred and that the Plan is effective in accordance with its terms and the terms of the Sanction Order. As soon as practicable following the Plan Implementation Date, the Monitor shall file such certificate with the Court.

ARTICLE 10
GENERAL

10.1 Binding Effect

The Plan will become effective on the Plan Implementation Date. On the Plan Implementation Date:

(a) the treatment of Affected Claims and Released Claims under the Plan shall be final and binding for all purposes and shall be binding upon and enure to the benefit of the Applicant, all Affected Creditors, any Person having a Released Claim and all other Persons named or referred to in, or subject to, the Plan and their respective heirs, executors, administrators and other legal representatives, successors and assigns;

(b) all Affected Claims shall be forever discharged and released, excepting only the obligations in the manner and to the extent provided for in the Plan;

(c) all Released Claims shall be forever discharged and released;

(d) each Affected Creditor and each Person holding a Released Claim shall be deemed to have consented and agreed to all of the provisions of the Plan, in its entirety; and

(e) each Affected Creditor and each Person holding a Released Claim shall be deemed to have executed and delivered to the Applicant and to the Directors and Officers, as applicable, all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety.

10.2 Waiver of Defaults

From and after the Plan Implementation Date, all Persons shall be deemed to have waived any and all defaults of the Applicant then existing or previously committed by the Applicant, or caused by the Applicant, by any of the provisions in the Plan or steps contemplated in the Plan,

or non-compliance with any covenant, warranty, representation, term, provision, condition or obligation, expressed or implied, in any contract, instrument, credit document, indenture, note, lease, guarantee, agreement for sale or other agreement, written or oral, and any and all amendments or supplements thereto, existing between such Person and the Applicant and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under any such agreement shall be deemed to have been rescinded and of no further force or effect, provided that nothing shall be deemed to excuse the Applicant from performing its obligations under the Plan or be a waiver of defaults by the Applicant under the Plan and the related documents.

10.3 Deeming Provisions

In the Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

10.4 Non-Consummation

Subject to the terms of the Support Agreement, the Applicant reserves the right to revoke or withdraw the Plan at any time prior to the Sanction Date. If the Applicant revokes or withdraws the Plan, or if the Sanction Order is not issued or if the Plan Implementation Date does not occur, (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan, including the fixing or limiting to an amount certain any Claim, any document or agreement executed pursuant to the Plan shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against the Applicant or any other Person; (ii) prejudice in any manner the rights of the Applicant or any other Person in any further proceedings involving the Applicant; or (iii) constitute an admission of any sort by the Applicant or any other Person.

10.5 Modification of the Plan

(a) The Applicant reserves the right, at any time and from time to time, to amend, restate, modify and/or supplement the Plan, but only with the consent of the Majority Initial Consenting Noteholders, provided that any such amendment, restatement, modification or supplement must be contained in a written document which is filed with the Court and (i) if made prior to or at the Meetings, communicated to the Affected Creditors; and (ii) if made following the Meetings, approved by the Court following notice to the Affected Creditors.

(b) Notwithstanding section 10.5(a), any amendment, restatement, modification or supplement may be made by the Applicant with the consent of the Monitor and the Majority Initial Consenting Noteholders, without further Court Order or approval, provided that it concerns a matter which, in the opinion of the Applicant, acting reasonably, is of an administrative nature required to better give effect to the implementation of the Plan and the Sanction Order or to cure any errors, omissions or ambiguities and is not materially adverse to the financial or economic interests of the Affected Creditors.

(c) Any amended, restated, modified or supplementary plan or plans of compromise filed with the Court and, if required by this section, approved by the Court, shall, for all purposes, be and be deemed to be a part of and incorporated in the Plan.

10.6 Majority Initial Consenting Noteholders

For the purposes of this Plan, the Applicant shall be entitled to rely on written confirmation from Bennett Jones LLP that the Majority Initial Consenting Noteholders have agreed to, waived, consented to or approved a particular matter. Bennett Jones LLP shall be entitled to rely on a communication in any form acceptable to Bennett Jones LLP, in its sole discretion, from any Initial Consenting Noteholder for the purpose of determining whether such Initial Consenting Noteholder has agreed to, waived, consented to or approved a particular matter, and the principal amount of Notes held by such Initial Consenting Noteholder.

10.7 Paramountcy

From and after the Effective Time on the Plan Implementation Date, any conflict between:

(a) the Plan or the Sanction Order; and

(b) the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed or implied, of any contract, mortgage, security agreement, indenture, trust indenture, note, loan agreement, commitment letter, agreement for sale, lease or other agreement, written or oral and any and all amendments or supplements thereto existing between one or more of the Affected Creditors and the Applicant as at the Plan Implementation Date and the notice of articles, articles or bylaws of the Applicant at the Plan Implementation Date;

will be deemed to be governed by the terms, conditions and provisions of the Plan and the Sanction Order, which shall take precedence and priority, provided that any settlement agreement executed by the Applicant and any Person asserting a Claim or a Director/Officer Claim that was entered into from and after the Filing Date shall be read and interpreted in a manner that assumes that such settlement agreement is intended to operate congruously with, and not in conflict with, the Plan.

10.8 Severability of Plan Provisions

If, prior to the Sanction Date, any term or provision of the Plan is held by the Court to be invalid, void or unenforceable, the Court, at the request of the Applicant and with the consent of the Monitor and the Majority Initial Consenting Noteholders, shall have the power to either (a) sever such term or provision from the balance of the Plan and provide the Applicant with the option to proceed with the implementation of the balance of the Plan as of and with effect from the Plan Implementation Date, or (b) alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, and provided that the Applicant proceeds with the implementation of the Plan, the

remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation.

10.9 Responsibilities of the Monitor

The Monitor is acting in its capacity as Monitor in the CCAA Proceeding and the Plan with respect to the Applicant and will not be responsible or liable for any obligations of the Applicant.

10.10 Different Capacities

Persons who are affected by this Plan may be affected in more than one capacity. Unless expressly provided herein to the contrary, a Person will be entitled to participate hereunder in each such capacity. Any action taken by a Person in one capacity will not affect such Person in any other capacity, unless expressly agreed by the Applicant and the Person in writing or unless its Claims overlap or are otherwise duplicative.

10.11 Notices

Any notice or other communication to be delivered hereunder must be in writing and reference the Plan and may, subject as hereinafter provided, be made or given by personal delivery, ordinary mail or by facsimile or email addressed to the respective parties as follows:

If to the Applicant:

c/o SkyLink Aviation Inc.
1027 Yonge Street,
Toronto, ON, Canada
M4W 2K9

Attention:	David Miller, General Counsel
Fax:	(416) 924-9006
Email:	dmiller@skylinkaviation.com

with a copy to:

Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

Attention:	Robert Chadwick/ Logan Willis
Fax:	(416) 979-1234
Email:	rchadwick@goodmans.ca/lwillis@goodmans.ca

If to the Consenting Noteholders represented by Bennett Jones LLP:

c/o Bennett Jones LLP
3400 One First Canadian Place
P.O. Box 130
Toronto, Ontario M5X 1A4

Attention: S. Richard Orzy /Sean Zweig
Fax: (416) 863-1716
Email: orzyr@bennettjones.com/zweigs@bennettjones.com

If to an Affected Creditor (other than a Consenting Noteholder represented by Bennett Jones LLP), to the mailing address, facsimile address or email address provided on such Affected Creditor's Notice of Claim or Proof of Claim;

If to the Monitor:

Duff & Phelps Canada Restructuring Inc.

333 Bay Street
14th Floor
Toronto, Ontario M5H 2R2
Attention: Robert Kofman/David Sieradzki
Fax: (647) 497-9490/(647) 497-9470
Email bobby.kofman@duffandphelps.com /
david.sieradzki@duffandphelps.com

with a copy to:

Lax O'Sullivan Scott Lisus LLP

Attention: Matthew Gottlieb
Fax: (416) 598-3730
Email: mgottlieb@counsel-toronto.com

or to such other address as any party may from time to time notify the others in accordance with this section. Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or sending by other means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered, faxed or sent before 5:00 p.m. (Toronto time) on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

10.12 Further Assurances

Each of the Persons named or referred to in, or subject to, the Plan will execute and deliver all such documents and instruments and do all such acts and things as may be necessary or desirable to carry out the full intent and meaning of the Plan and to give effect to the transactions contemplated herein.

DATED as of the 18th day of April, 2013.

\6150187

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 AND ARRANGEMENT OF SKYLINK AVIATION INC.

Court File No.: 13-1003300-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

PLAN SANCTION ORDER
(returnable April 23, 2013)

Goodmans LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

Robert J. Chadwick (LSUC# 35165K)
Logan Willis (LSUC# 53894K)

Tel: 416.979.2211
Fax: 416.979.1234

Lawyers for the Applicant

\6191533

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Court File No. CV-13-10383-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE REGIONAL SENIOR JUSTICE MORAWETZ	)	THURSDAY, THE 6TH DAY OF FEBRUARY, 2014

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 JAGUAR MINING INC.*

Applicant

ORDER
(Plan Sanction)

THIS MOTION made by Jaguar Mining Inc. (the "**Applicant**") for an Order (the "**Sanction Order**") approving and sanctioning the amended and restated plan of compromise and arrangement dated January 31, 2014 (and as it may be further amended, restated, modified or supplemented from time to time in accordance with its terms) (the "**Plan**"), as approved by the Affected Unsecured Creditors of the Applicant on January 31, 2014, and which Plan is attached as Schedule "A" to this Sanction Order, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the within Notice of Motion, the Affidavit of T. Douglas Willock sworn February 2, 2014 and the Affidavit of T. Douglas Willock sworn February 5, 2014, including the Exhibits thereto, the Third Report of FTI Consulting Canada Inc., in its capacity as Monitor (in such capacity, the "**Monitor**"), dated February 3, 2014, (the "**Third Report**"), the Second

Report of the Monitor dated January 24, 2014 (the "**Second Report**") and upon hearing the submissions of counsel for the Applicant, the Monitor, the Ad Hoc Committee (as defined in the Plan), Global Resource Fund, Daniel Titcomb et al. and such other interested parties as were present, no one else appearing although duly served as appears from the affidavit of service of Evan Cobb sworn Februrary 4, 2014 and February 5, 2014, and upon being advised by counsel to the Applicant prior to this motion that the Sanction Order will be relied upon by the Applicant as an approval of the Plan for the purpose of relying on the exemption from the registration requirements of the *United States Securities Act of 1933*, as amended, pursuant to section 3(a)(10) thereof for the issuance of the Unsecured Creditor Common Shares and the Early Consent Shares to the extent they may be deemed to be securities,

DEFINITIONS

1. **THIS COURT ORDERS** that all capitalized terms not otherwise defined herein shall be as defined in the Plan and in the Meeting Order granted in this proceeding on December 23, 2013 (the "**Meeting Order**"), as applicable.

SERVICE

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record in support of this Motion and the Third Report be and is hereby abridged and validated, such that this Motion is properly returnable today and that any further service of the Notice of Motion, the Motion Record or the Third Report is hereby dispensed with.

3. **THIS COURT ORDERS AND DECLARES** that there has been good and sufficient service, delivery and notice of the Plan, the Meeting Order and the Information Package to all Persons upon which notice, service and delivery were required, and that the Meeting was duly conducted in conformity with the *Companies' Creditors Arrangement Act* (the "**CCAA**") and all

other Orders of this Court in this proceeding (the "**CCAA Proceeding**").

SANCTION OF THE PLAN

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

a) the relevant class of creditors of the Applicant for the purposes of voting to approve the Plan is the Affected Creditor Class;

b) the Plan has been approved by the Required Majority of Affected Unsecured Creditors, all in conformity with the CCAA and the terms of the Meeting Order;

c) the Court is satisfied that the Applicant has acted, and is acting, in good faith and with due diligence, and has complied with the provisions of the CCAA and the Orders of this Court made in the CCAA Proceedings in all respects;

d) the Court is satisfied that the Applicant has not done nor has it purported to do anything that is not authorized by the CCAA; and

e) the Plan, all terms and conditions thereof, and the matters and the transactions contemplated thereby, are fair and reasonable to the parties affected.

5. **THIS COURT ORDERS AND DECLARES** that the Plan (including, without limitation, the transactions, arrangements, reorganizations, assignments, cancellations, compromises, settlements, extinguishments, discharges, injunctions and releases set out therein) is hereby sanctioned and approved pursuant to Section 6 of the CCAA.

PLAN IMPLEMENTATION

6. **THIS COURT ORDERS** that on the Implementation Date, the Plan (including, without limitation, the transactions, arrangements, reorganizations, assignments, cancellations, compromises, settlements, extinguishments, discharges, injunctions and releases set out therein) shall be, and shall be deemed to be, implemented, binding and effective in accordance with the provisions of the Plan as of the Implementation Date at the Implementation Time, or at such other time or times and in the manner set forth in the Plan, and shall enure to the benefit of and shall be binding on the Applicant, the Affected Unsecured Creditors, all Existing Equity Holders, all holders of Equity Claims, the Released Parties, the Noteholder Released Parties, the Directors and Officers, all holders of Director/Officer Indemnity Claims, all holders of Director/Officer Claims, all holders of Released Claims and all holders of Noteholder Released Claims and all other Persons named or referred to in, affected by, or subject to the Plan, including, without limitation, their respective heirs, administrators, executors, legal personal representatives, successors and assigns, as provided for in the Plan and this Sanction Order.

7. **THIS COURT ORDERS** that the Applicant and the Monitor, as the case may be, are hereby authorized and directed to take all steps and actions necessary or appropriate to implement the Plan in accordance with and subject to its terms and conditions, and enter into, execute, deliver, complete, implement and consummate all of the steps, transactions, distributions, deliveries, allocations, instruments and agreements contemplated by, and subject to the terms and conditions of, the Plan, and all such steps and actions are hereby approved. Neither the Applicant nor the Monitor shall incur any liability as a result of acting in accordance with the terms of the Plan and this Sanction Order.

8. **THIS COURT ORDERS** that upon the satisfaction or waiver, as applicable, of the conditions set out in Section 12.3 of the Plan in accordance with the terms of the Plan, as confirmed by the Applicant (or counsel on its behalf) and Goodmans LLP on behalf of the Majority Consenting Noteholders and the Majority Backstop Parties, to the Monitor in writing, the Monitor is authorized and directed to deliver to the Applicant (or counsel on its behalf) and Goodmans LLP a certificate, substantially in the form attached as Schedule "B" hereto (the "**Monitor's Certificate**"), signed by the Monitor, certifying that all conditions precedent set out in Section 12.3 have been satisfied or waived and that the Implementation Date has occurred. The Monitor shall file the Monitor's Certificate with this Court as soon as reasonably practicable.

9. **THIS COURT ORDERS** that the steps to be taken and the transactions, arrangements, reorganizations, assignments, cancellations, compromises, settlements, extinguishments, discharges, injunctions and releases to be effected on the Implementation Date are and shall be deemed to occur and be effected in the sequential order and at the times contemplated by Section 7.4 of the Plan, without any further act or formality, on the Implementation Date beginning at the Implementation Time.

10. **THIS COURT ORDERS AND DECLARES** that the Applicant, the Monitor, the Majority Consenting Noteholders and the Majority Backstop Parties are hereby authorized and empowered to exercise all consent and approval rights provided for in the Plan in the manner set forth in the Plan, whether prior to or after the Implementation Date.

11. **THIS COURT ORDERS** that the Applicant, the Monitor, the Trustees, DTC, the Transfer Agent, the Escrow Agent and any other Person required to make any distributions, deliveries or allocations or take any steps or actions related thereto pursuant to the Plan are hereby authorized and directed to complete such distributions, deliveries or allocations and to

take any such related steps or actions, as the case may be, in accordance with the terms of the Plan, and such distributions, deliveries and allocations, and steps and actions related thereto, are hereby approved.

12. **THIS COURT ORDERS** that, subject to the payment of any amounts secured by the Charges (as such term is defined in the Initial Order) that remain owing on the Implementation Date, if any, each of the Charges shall be terminated, discharged and released on the Implementation Date.

EFFECT OF PLAN IMPLEMENTATION

13. **THIS COURT ORDERS** that subject to the performance by the Applicant of its obligations under the Plan, and except to the extent expressly contemplated by the Plan or this Sanction Order, all obligations or agreements to which the Applicant is party immediately prior to the Implementation Date will be and remain in full force and effect as at the Implementation Date, unamended except as they may have been amended by agreement of the parties subsequent to the Filing Date in accordance with the Plan, and no Person who is a party to any such obligations or agreements shall, following the Implementation Date, accelerate, terminate, rescind, refuse to renew, refuse to perform or otherwise disclaim or repudiate its obligations thereunder, or enforce or exercise (or purport to enforce or exercise) any right or remedy (including any right of set-off, option, dilution or other remedy) or make any demand under or in respect of any such obligation or agreement, by reason of:

(a) any defaults or events of default arising as a result of the financial condition or insolvency of the Applicant on or prior to the Implementation Date;

(b) the fact that the Applicant has sought or obtained relief under the CCAA or that the Plan has been implemented by the Applicant;

(c) any changes in share ownership of the Applicant arising from implementation of the Plan (except in respect of existing, written senior officer and employee employment agreements of Persons who remain senior officers and employees of Jaguar as of the Implementation Date and any payments due under such agreements, which may only be waived by the senior officers and employees who are parties to such agreements);

(d) the effect on the Applicant of the completion of any of the transactions contemplated by the Plan;

(e) any compromises, settlements, restructurings, recapitalizations, reorganizations or arrangements effected pursuant to the Plan; or

(f) any other event(s) which occurred on or prior to the Implementation Date which would have entitled any Person to enforce rights and remedies, subject to any express provisions to the contrary in any agreements entered into with the Applicant after the Filing Date.

For greater certainty, nothing in this paragraph shall waive, compromise or discharge any obligations of the Applicant in respect of any Excluded Claim.

14. **THIS COURT ORDERS** that from and after the Implementation Date, all Persons shall be deemed to have waived any and all defaults of the Applicant then existing or previously committed by the Applicant or caused by the Applicant or any of the provisions of the Plan or this Sanction Order or non-compliance with any covenant, warranty, representation, term, provision, condition or obligation, express or implied, in any contract, agreement, mortgage, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, real property lease, personal property lease or other agreement, written or oral, and any amendments or supplements thereto, existing between such Person and the Applicant. Any and all notices of default, acceleration of payments and demands for payments under any instrument, or other notices, including without limitation, any notices of intention to proceed to

enforce security, arising from any of such aforesaid defaults shall be deemed to have been rescinded and withdrawn.

15. **THIS COURT ORDERS** that, as of the Implementation Date, each Affected Unsecured Creditor, each holder of a Director/Officer Indemnity Claim, each holder of a Director/Officer Claim, each holder of an Equity Claim and any person having any other Released Claim shall be deemed to have consented and agreed to all of the provisions of the Plan in their entirety and, in particular, each Affected Unsecured Creditor, each holder of a Director/Officer Indemnity Claim, each holder of a Director/Officer Claim, each holder of an Equity Claim and any person having any other Released Claim shall be deemed:

(a) to have granted, executed and delivered to the Monitor and the Applicant all consents, releases, assignments, waivers or agreements, statutory or otherwise, 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 Affected Unsecured Creditor, holder of a Director/Officer Indemnity Claim, holder of a Director/Officer Claim, holder of an Equity Claim and any person having any other Released Claim and the Applicant as of the Implementation Date and the provisions of the Plan, the provisions of the Plan take precedence and priority, and the provisions of such agreement or other arrangements shall be deemed to be amended accordingly.

16. **THIS COURT ORDERS** that pursuant to Section 6(2) of the CCAA, the articles of the Applicant shall be amended on the Implementation Date in accordance with the Articles of Reorganization.

17. **THIS COURT ORDERS** that (i) in accordance with the Articles of Reorganization, substantially in the form of Schedule "C" hereto, any fractional Common Shares immediately following the consolidation of Common Shares pursuant to section Section 7.4(a) of the Plan shall be cancelled without any liability, payment or other compensation in respect thereof; and (ii) the Rights, Shareholder Rights Plan, Existing Share Options, Stock Option Plan (and for greater certainty, not including any Existing Common Shares that remain issued and outstanding immediately following the cancellation of fractional interests pursuant to Section 7.4(a) of the Plan) shall be cancelled without any liability, payment or other compensation in respect thereof.

18. **THIS COURT ORDERS** that the New Common Shares shall be deemed to be issued and outstanding as fully-paid and non-assessable shares in the capital of the Applicant, on the Implementation Date and at the time specified in Section 7.4 of the Plan.

19. **THIS COURT ORDERS** that, on the Implementation Date, following completion of the steps in the sequence set forth in Section 7.4 of the Plan, all debentures, notes, certificates, agreements, invoices and other instruments evidencing Affected Unsecured Claims (including for greater certainty the Notes and the Indentures) shall not entitle the holder thereof to any compensation or participation and shall be and are hereby deemed to be cancelled and shall be and are hereby deemed to be null and void, and the obligations of the Applicant thereunder or in any way related thereto shall be satisfied and discharged except to the extent expressly set forth in section 6.07 of the Indentures with respect to the Trustees' claims, which section 6.07 of the Indentures shall remain in effect until two months following the Implementation Date or such later date agreed to by the Applicant, the Monitor, the Trustees and the Majority Consenting Noteholders.

RELEASES AND INJUNCTIONS

20. **THIS COURT ORDERS** that, subject to paragraph 21 of this Sanction Order, on the Implementation Date, in accordance with section 11.1 of the Plan and the sequence set forth in section 7.4 of the Plan, the Released Parties, the Named Directors and Officers and the Noteholder Released Parties shall be released and discharged from any and all Released Claims and any and all Noteholder Released Claims, as applicable, and any and all Released Claims and Noteholder Released Claims shall be fully, finally and irrevocably waived, discharged, released, cancelled and barred as against the Released Parties, the Named Directors and Officers and the Noteholder Released Parties, as applicable, all to the fullest extent permitted by Applicable Law.

21. **THIS COURT ORDERS** that, notwithstanding any other provision of this Sanction Order, Continuing Other Director/Officer Claims and Non-Released Director/Officer Claims and, for greater certainty, Section 5.1(2) Director/Officer Claims, Agreed Excluded Director/Officer Litigation Claims and Agreed Excluded Jaguar Litigation Claims shall not be compromised, released, discharged, cancelled or barred by this Sanction Order or the Plan, provided that from and after the Implementation Date: (i) any Person having, or claiming any entitlement or compensation relating to, a Section 5.1(2) Director/Officer Claim or an Agreed Excluded Director/Officer Litigation Claim will be irrevocably limited to recovery in respect of such Section 5.1(2) Director/Officer Claim or Agreed Excluded Director/Officer Litigation Claim solely from the proceeds of applicable Director/Officer Insurance Policies and Persons with Section 5.1(2) Director/Officer Claims and Agreed Excluded Director/Officer Litigation Claims will have no right to, and shall not, directly or indirectly, make any claims or seek any recoveries from the Applicant, any of the Subsidiaries, any of the Directors or Officers, or any other Released Party or Noteholder Released Party, other than enforcing such Person's rights

to be paid by the applicable insurer(s) the proceeds of the applicable Director/Officer Insurance Policies; and (ii) any Person having, or claiming any entitlement or compensation relating to, an Agreed Excluded Jaguar Litigation Claim will be irrevocably limited to recovery in respect of such Agreed Excluded Jaguar Litigation Claim solely from the proceeds of applicable Jaguar Insurance Policies and Persons with Agreed Excluded Jaguar Litigation Claims will have no right to, and shall not, directly or indirectly, make any claims or seek any recoveries from the Applicant, any of the Subsidiaries, any of the Directors or Officers, or any other Released Party or Noteholder Released Party, other than enforcing such Person's rights to be paid by the applicable insurer(s) the proceeds of the applicable Jaguar Insurance Policies.

22. **THIS COURT ORDERS** that all Persons shall be permanently and forever barred, estopped, stayed and enjoined, from and after the Implementation Time, with respect to any and all Released Claims and Noteholder Released Claims, from: (i) 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, the Named Directors and Officers and the Noteholder Released Parties; (ii) 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, the Named Directors and Officers and the Noteholder Released Parties or their respective property; (iii) 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 for breach of trust or breach of fiduciary duty 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, the Named Directors and Officers and Noteholder Released Parties; (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind against the Released Parties, the Named Directors and Officers and the Noteholder Released Parties or their respective property; or (iv) taking any actions to interfere with the implementation or consummation of the Plan; provided, however, that the foregoing shall not apply to the enforcement of any obligations under the Plan.

23. **THIS COURT ORDERS** that paragraph 22 shall apply to Section 5.1(2) Director/Officer Claims, Agreed Excluded Director/Officer Litigation Claims and Agreed Excluded Jaguar Litigation Claims in the same manner as Released Claims, except to the extent that the rights of a holder of such Section 5.1(2) Director/Officer Claims, Agreed Excluded Director/Officer Litigation Claims and/or Agreed Excluded Jaguar Litigation Claims to enforce such rights against an insurer in respect of a Directors/Officer Insurance Policy and/or a Jaguar Insurance Policy, as applicable, are expressly preserved pursuant Section 11.1(a)(iii) and/or Section 11.1(b)(i) of the Plan.

24. **THIS COURT ORDERS** that nothing in this Sanction Order prejudices, compromises, releases or otherwise affects any right or defence of (i) any insurer in respect of a Director/Officer Insurance Policy or a Jaguar Insurance Policy, or (ii) any insured in respect of a Section 5.1(2) Director/Officer Claim, an Agreed Excluded Director/Officer Litigation Claim or an Agreed Excluded Jaguar Litigation Claim.

INITIAL CCAA ORDER AND OTHER ORDERS

25. **THIS COURT ORDERS** that:

(a) other than as expressly set out herein, the provisions of the Initial Order shall terminate, including the Stay Period (as defined in the Initial Order), on the Implementation Date except to the extent of the protections granted therein in favour of the Monitor; and

(b) all other Orders made in the CCAA Proceeding 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 Sanction Order or any further Order of this Court.

THE MONITOR

26. **THIS COURT ORDERS** that the activities and conduct of the Monitor in relation to the Applicant, the CCAA Proceedings, and in conducting and administering the Meeting on January 31, 2014 (as more particularly described in the Third Report) be and are hereby ratified and approved.

27. **THIS COURT ORDERS** that the Pre-Filing Report of the Monitor dated December 23, 2013 (the "**Pre-Filing Report**"), the First Report of the Monitor dated January 13, 2014 (the "**First Report**"), and the Second Report and the conduct and activities of the Monitor as described therein are hereby approved.

28. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and Osler, Hoskin & Harcourt LLP, as counsel to the Monitor, as described in the Third Report be and are hereby approved.

29. **THIS COURT ORDERS AND DECLARES** that the Monitor has satisfied all of its obligations up to and including the date of this Sanction Order, and that: (i) in carrying out the terms of this Sanction Order and the Plan and in performing its duties as Monitor in the CCAA Proceedings, the Monitor shall have all the protections given to it by the CCAA, the Initial Order, the Meeting Order and the Claims Procedure Order, and as an officer of the Court, including the stay of proceedings in its favour; (ii) the Monitor shall incur no liability or obligation for any act or omission as a result of carrying out the provisions of this Sanction Order and the Plan and in performing its duties as Monitor in the CCAA Proceedings, save and except for any gross negligence or wilful misconduct on its part; (iii) the Monitor shall be entitled to rely on the books and records of the Applicant and any information provided by the Applicant without independent investigation; and (iv) the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information, or with respect to any such information disclosed to or provided by the Monitor, including with respect to reliance thereon by any Person.

30. **THIS COURT ORDERS** that 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.

31. **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 pursuant to an order of this Court made on prior written notice to the Monitor and provided any such order granting leave includes a term granting the Monitor security for its costs and the costs of its counsel in connection with any proposed action or proceeding, such security to be on terms this Court deems just and appropriate.

32. **THIS COURT ORDERS** that as of the Implementation Time, the Monitor shall be

discharged and released from its duties other than those obligations, duties and responsibilities (i) necessary or required to give effect to the terms of the Plan and this Sanction Order, (ii) in relation to the claims procedure and all matters relating thereto as set out in the Claims Procedure Order, and (iii) in connection with the completion by the Monitor of all other matters for which it is responsible in connection with the Plan or pursuant to the Orders of this Court made in the CCAA Proceeding.

GENERAL PROVISIONS

33. **THIS COURT ORDERS** that the Applicant, the Monitor and any other interested parties are hereby granted leave to apply to this Court for such further advice, directions or assistance as may be necessary to give effect to the terms of the Plan.

EFFECT, RECOGNITION AND ASSISTANCE

34. **THIS COURT ORDERS** that this Sanction Order shall have full force and effect in all provinces and territories in Canada and abroad and as against all Persons against whom it may apply.

35. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, Brazil or elsewhere to give effect to this Sanction Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Sanction Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Sanction Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Sanction Order.

36. **THIS COURT ORDERS** that each of the Applicant and the Monitor 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 Sanction Order and for assistance in carrying out the terms of this Sanction Order, and that the Monitor is authorized and empowered to act as a representative in respect of the CCAA Proceedings for the purpose of having the CCAA Proceedings recognized in a jurisdiction outside Canada.

37. THIS COURT ORDERS that Exhibit A to the Affidavit of T. Doyle sworn February 5, 2014 be sealed pending further order.

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

FEB 6 - 2014

Schedule "A"

Court File No. CV-13-10383-00CL

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 A PLAN OF COMPROMISE AND ARRANGEMENT OF JAGUAR MINING INC.

AMENDED AND RESTATED PLAN OF COMPROMISE AND ARRANGEMENT

PURSUANT TO THE *COMPANIES' CREDITORS ARRANGEMENT ACT*

OF JAGUAR MINING INC.

FEBRUARY 5, 2014

RECITALS

(A) Jaguar Mining Inc. (the "**Applicant**" or "**Jaguar**") is a debtor company (as such term is defined in the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").

(B) On December 23, 2013, the Honourable Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") granted the following Orders pursuant to the CCAA:

(i) an Initial Order in respect of the Applicant (as such Order may be amended, restated or varied from time to time, the "**Initial Order**");

(ii) a Plan Filing and Meeting Order (as such Order may be amended, restated or varied from time to time, the "**Meeting Order**") pursuant to which, among other things, the Applicant was authorized to file a plan of compromise and arrangement and to convene a meeting of affected creditors to consider and vote on the plan of compromise and arrangement, as may be amended, restated, modified or supplemented from time to time; and

(iii) a Claims Procedure Order (as such Order may be amended, restated or varied from time to time, the "**Claims Procedure Order**"), which, among other things, established the procedures by which claims of affected creditors shall be filed in these proceedings.

(C) This Amended and Restated Plan of Compromise and Arrangement will be filed on February 6, 2014 with the consent of the Majority Consenting Noteholders (as hereinafter defined).

(D) Mineração Serras Do Oeste Ltda. ("**MSOL**"), Mineração Turmalina Ltda. ("**MTL**"), and MCT Mineração Ltda. ("**MCT**"), each incorporated under the laws of Brazil, are wholly-owned subsidiaries of Jaguar and are not applicants in the CCAA Proceedings.

(E) The purpose of this Plan is to facilitate the continuation of the business of the Jaguar Group (as hereinafter defined) as a going concern, address certain liabilities of the Applicant, and effect a recapitalization and financing transaction on an expedited basis to provide a stronger financial foundation for the Jaguar Group going forward and additional liquidity to allow the Jaguar Group to continue to work towards its operational and financial goals from and after the Implementation Date in the expectation that all Persons (as hereinafter defined) with an economic interest in the Jaguar Group will derive a greater benefit from the implementation of this Plan than would otherwise result.

NOW THEREFORE the Applicant hereby proposes and presents this Plan under the CCAA.

ARTICLE 1 – INTERPRETATION

1.1 Definitions

In this Plan and the Recitals, unless otherwise stated or unless the subject matter or context otherwise requires:

"**4.5% Convertible Note Indenture**" means the Indenture dated as of September 15, 2009 among Jaguar, as issuer, The Bank of New York Mellon as trustee and BNY Trust Company of Canada as co-trustee pursuant to which Jaguar issued the 4.5% convertible notes;

"**5.5% Convertible Note Indenture**" means the Indenture dated as of February 9, 2011 among Jaguar as issuer, The Bank of New York Mellon as trustee and BNY Trust Company of Canada as co-trustee pursuant to which Jaguar issued the 5.5% convertible notes;

"**Accrued Interest Claim**" means, with respect to a particular Participating Eligible Investor or Funding Backstop Party, all unpaid interest accrued under the Notes at the applicable rate under the Indentures owing as at the Record Date to such Participating Eligible Investor or Funding Backstop Party;

"**Accrued Interest Claims**" means the aggregate of all unpaid interest accrued under the Notes at the applicable rate under the Indentures owing as at the Record Date to the Participating Eligible Investors and Funding Backstop Parties;

"**Accrued Interest Offering Shares**" means 9,044,203 New Common Shares;

"**Ad Hoc Committee**" means the ad hoc committee of Noteholders represented by the Advisors;

"**Administration Charge**" has the meaning given to that term in the Initial Order;

"**Advisors**" means Goodmans LLP, Houlihan Lokey Capital, Inc., Dias Carneiro Advogados, Behre

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Dolbear & Company (USA), Inc. and Stroock & Stroock & Lavan LLP;

"**Affected Creditor Class**" has the meaning given to that term in Section 3.1;

"**Affected Unsecured Claims**" means all Claims against the Applicant that are not Equity Claims;

"**Affected Unsecured Creditor**" means the holder of an Affected Unsecured Claim in respect of and to the extent of such Affected Unsecured Claim;

"**Agreed Excluded Director/Officer Litigation Claims**" means any claims against a Director and/or Officer that the Majority Consenting Noteholders and the Applicant have agreed, prior to the Implementation Date, and as set out on Schedule "A" hereto, will constitute Excluded Claims for the purposes of this Plan;

"**Agreed Excluded Jaguar Litigation Claims**" means any claims against Jaguar that the Majority Consenting Noteholders and the Applicant have agreed, prior to the Implementation Date, and as set out on Schedule "B" hereto, will constitute Excluded Claims for the purposes of this Plan;

"**Agreed Excluded Litigation**" means any proceeding commenced by any Agreed Excluded Litigation Claimant in respect of any Agreed Excluded Litigation Claims, subject to the terms of this Plan;

"**Agreed Excluded Litigation Claimants**" means any Persons and, if applicable, each of their respective parents, subsidiaries, associated, affiliated and related companies, corporations and Persons, and each of their directors, officers, employees, agents, affiliates, and trustees, that have asserted an Agreed Excluded Director/Officer Litigation Claim and/or an Agreed Excluded Jaguar Litigation Claim, as agreed to by the Majority Consenting Noteholders and the Applicant prior to the Implementation Date and as set out on Schedule "C" hereto;

"**Agreed Excluded Litigation Claims**" means, collectively, the Agreed Excluded Jaguar Litigation Claims and the Agreed Excluded Director/Officer Litigation Claims;

"**Allowed**" means, with respect to a Claim, any Claim or any portion thereof that has been finally allowed as a Distribution Claim (as defined in the Claims Procedure Order) for purposes of receiving distributions under this Plan in accordance with the Claims Procedure Order and the CCAA;

"**Applicable Law**" means, with respect to any Person, property, transaction, event or other matter, any Law relating or applicable to such Person, property, transaction, event or other matter, including, where appropriate, any interpretation of the Law (or any part) by any Person, court or tribunal having jurisdiction over it, or charged with its administration or interpretation;

"**Applicant**" has the meaning given to that term in Recital A;

"**Articles of Reorganization**" means the Articles of Reorganization of Jaguar to be filed pursuant to Section 186 of the OBCA and in accordance with Section 7.4(a) hereof, in form and substance satisfactory to Jaguar and the Majority Consenting Noteholders;

"**Assumed Backstop Commitment**" means, in the event of a Backstop Default/Termination, if any, a Backstop Commitment, or a portion thereof, assumed by an Assuming Backstop Party from a Defaulting Backstop Party, Objecting Backstop Party, Breaching Backstop Party or Non-Delivering Backstop Party, as applicable, in accordance with the terms and conditions of this Plan and the Backstop Agreement;

"**Assuming Backstop Party**" means, in the event of a Backstop Default/Termination, if any, a Non-Defaulting Backstop Party, Non-Objecting Backstop Party, Non-Breaching/Non-Delivering Backstop Party, or such other party acceptable to the Backstop Parties and Jaguar in each case in accordance with the Backstop Agreement, that executes a Backstop Consent Agreement and that has assumed the

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obligations (and rights), or a portion thereof, of a Defaulting Backstop Party, Objecting Backstop Party, Breaching Backstop Party or Non-Delivering Backstop Party, as applicable, under the Backstop Agreement, in accordance with the terms and conditions of this Plan and the Backstop Agreement. For greater certainty, any Assuming Backstop Party that has complied with its obligations under this Plan and the Backstop Agreement shall constitute and be treated as a Funding Backstop Party for purposes of this Plan;

"**Backstop Agreement**" means the backstop agreement dated November 13, 2013 (as amended from time to time) between certain Noteholders, Jaguar, MCT, MSOL and MTL, together with any Backstop Consent Agreements executed by other parties from time to time;

"**Backstop Commitment**" means, in respect of each Backstop Party, the commitment set forth on such Backstop Party's signature page to the Backstop Agreement or a Backstop Consent Agreement, as applicable, which commitment may be reduced in accordance with and subject to the terms and conditions of the Backstop Agreement and this Plan;

"**Backstop Commitment Reduction Election**" has the meaning given to such term in Section 4.1(c);

"**Backstop Commitment Shares**" means 11,111,111 New Common Shares;

"**Backstop Consent Agreement**" means an agreement substantially in the form of Schedule B to the Backstop Agreement;

"**Backstop Consideration Commitment**" means, in respect of each Backstop Party, the commitment set forth on such Backstop Party's signature page to the Backstop Agreement or a Backstop Consent Agreement, as applicable, which commitment, for greater certainty, shall not be reduced as a result of a Backstop Commitment Reduction Election;

"**Backstop Default/Termination**" means any of the following: (a) a breach by a Breaching Backstop Party under section 10(b)(i) or (ii) of the Backstop Agreement in respect of which the Backstop Agreement has been terminated with respect to such Breaching Backstop Party in accordance with its terms; (b) a failure by a Defaulting Backstop Party to meet its obligations in respect of its Backstop Commitment on or before the Backstop Funding Deadline; (c) a failure by a Non-Delivering Backstop Party to deliver an executed Rep Letter to Jaguar by the Election Deadline or if a representation or warranty made in such Rep Letter becomes untrue; and (d) the termination by an Objecting Backstop Party of its obligations under the Backstop Agreement in accordance with section 8(c) thereof;

"**Backstop Funding Deadline**" has the meaning given to such term in Section 4.1(g);

"**Backstop Parties**" means those Noteholders that have entered into the Backstop Agreement (including a Backstop Consent Agreement), and a "**Backstop Party**" means any one of the Backstop Parties, and their permitted assignees;

"**Backstop Payment Amount**" has the meaning given to such term in Section 4.1(f);

"**Backstop Purchase Obligation**" means the obligation of a Backstop Party to purchase Backstopped Shares in accordance with the terms and conditions of the Backstop Agreement and this Plan;

"**Backstopped Shares**" has the meaning given to such term in Section 4.1(f);

"**Beneficial Noteholder**" means a beneficial or entitlement holder of Notes holding such Notes in a securities account with a depository, a depository participant or other securities intermediary including, for greater certainty, such depository participant or other securities intermediary only if and to the extent such depository participant or other securities intermediary holds the Notes as a principal for its own account;

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"**Bradesco**" means Banco Bradesco S.A.;

"**Breaching Backstop Party**" means a Backstop Party that has breached the Backstop Agreement under section 10(b)(i) or (ii) thereof and in respect of whom the Backstop Agreement has been terminated in accordance with its terms;

"**Business Day**" means any day, other than a Saturday, or a Sunday or a statutory or civic holiday, on which banks are generally open for business in Toronto, Ontario and New York, New York;

"**CCAA Proceedings**" means the proceedings commenced by the Applicant under the CCAA as contemplated by the Initial Order;

"**CRA Claim**" means the claim as described in the proof of claim, dated January 21, 2014, filed by Canada Revenue Agency in the CCAA Proceedings in the amount of $5,969.13;

"**Charges**" has the meaning ascribed thereto in the Initial Order;

"**Claim**" means:

i. any right or claim, including any Tax Claim, of any Person that may be asserted or made in whole or in part against the Applicant, in any capacity, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever of the Applicant, and any interest accrued thereon or costs payable in respect thereof, in existence on the Filing Date, or which is based on an event, fact, act or omission which occurred in whole or in part prior to the Filing Date, whether at law or in equity, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including, any legal, statutory, equitable or fiduciary duty) or by reason of any equity interest, right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and together with any security enforcement costs or legal costs associated with any such claim, and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present or future, known or unknown, by guarantee, warranty, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature, including any claim arising from or caused by the termination, disclaimer, resiliation, assignment or repudiation by the Applicant of any contract, lease or other agreement, whether written or oral, any claim made or asserted against the Applicant through any affiliate, subsidiary, associated or related person, or any right or ability of any Person to advance a claim for an accounting, reconciliation, contribution, indemnity, restitution or otherwise with respect to any matter, grievance, action (including any class action or proceeding before an administrative tribunal), cause or chose in action, whether existing at present or commenced in the future, and including any other claims that would have been claims provable in bankruptcy had the Applicant become bankrupt on the Filing Date, including for greater certainty any Equity Claim and any claim against the Applicant for indemnification by Director or Officer in respect of a Director/Officer Claim but excluding any such indemnification claims covered by the Directors' Charge (each, a "**Pre-filing Claim**", and collectively, the "**Pre-filing Claims**");

ii. any right or claim of any Person against the Applicant in connection with any indebtedness, liability or obligation of any kind whatsoever owed by the Applicant to such Person arising out of the restructuring, disclaimer, resiliation, termination or breach by the Applicant on or after the Filing Date of any contract, lease or other agreement whether written or oral (each, a "**Restructuring Period Claim**", and collectively, the

"**Restructuring Period Claims**"); and

iii. any right or claim of any Person against one or more of the Directors or Officers howsoever arising, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including the right or ability 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, including any right of contribution or indemnity, for which any Director or Officer is alleged to be by statute or otherwise by law liable to pay in his or her capacity as a Director or Officer (each a "**Director/Officer Claim**", and collectively, the "**Director/Officer Claims**"),

in each case other than any Excluded Claim;

"**Commitment Reduction Electing Backstopper**" has the meaning given to such term in Section 4.1(c);

"**Common Share Consolidation**" has the meaning given to such term in Section 7.4(a);

"**Common Shares**" means the common shares in the capital of Jaguar that are duly issued and outstanding at any time;

"**Consenting Noteholder**" means any Noteholder that has executed the Support Agreement (including a consent agreement substantially in the form of Schedule C thereto), in respect of whom the Support Agreement has not been terminated;

"**Consolidation Number**" means the quotient (to five decimal places) determined by dividing the number of Existing Shares by 1,000,000, which as of the date of this Plan is 86.39636.

"**Continuing Other Director/Officer Claims**" means Director/Officer Claims against the Other Directors and/or Officers;

"**Court**" has the meaning given to that term in Recital B;

"**Credit Agreement**" means the credit agreement made as of December 17, 2012 between Jaguar, as borrower, the Subsidiaries, as guarantors, and Global Resource Fund, as lender.

"**Creditor**" means any Person having a Claim and includes without limitation the transferee or assignee of a Claim transferred and recognized as a Creditor in accordance with the Claims Procedure Order or a trustee, executor, liquidator, receiver, receiver and manager, or other Person acting on behalf of or through such Person;

"**Crown**" means Her Majesty in right of Canada or a province of Canada;

"**Crown Claim**" means any Claim of the Crown, for all amounts that were outstanding at the Filing Date and are of a kind that could be subject to a demand under:

i. subsection 224(1.2) of the ITA;

ii. any provision of the Canada Pension Plan or of the Employment Insurance Act that refers to subsection 224(1.2) of the ITA and provides for the collection of a contribution, as defined in the Canada Pension Plan, or an employee's premium, or employer's premium, as defined in the Employment Insurance Act, and of any related interest, penalties or

other amounts;

iii. any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the ITA, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum:

a. has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the ITA; or

b. is of the same nature as a contribution under the Canada Pension Plan if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the Canada Pension Plan and the provincial legislation establishes a "provincial pension plan" as defined in that subsection.

"**Defaulting Backstop Party**" means a Backstop Party that has failed to meet its obligations in respect of its Backstop Commitment on or before the Backstop Funding Deadline;

"Designated Offshore Securities Market" has the meaning given to that term in Rule 902 of Regulation S.

"**Direct Registration System Advice**" means, if applicable, a statement delivered by the Transfer Agent or any such Person's agent to any Person entitled to receive New Common Shares pursuant to the Plan indicating the number of New Common Shares registered in the name of or as directed by the applicable Person in a direct registration account administered by the Transfer Agent in which those Persons entitled to receive New Common Shares pursuant to the Plan will hold such New Common Shares in registered form and including, if applicable, a securities law legend;

"**Director**" means anyone who is or was, or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or *de facto* director of Jaguar;

"**Director Defence Costs Indemnity Claim**" means any existing or future right of any current director (as at the date of this Plan) of Jaguar who is a defendant to any Agreed Excluded Director/Officer Litigation Claims against Jaguar for indemnification of reasonable defence costs incurred by such current director of Jaguar (whether or not a director of Jaguar at the time such claim for indemnification is made) in connection with defending against such Agreed Excluded Director/Officer Litigation Claims solely to the extent that such defence costs are not covered by insurance and for which such Director or Officer of Jaguar is entitled to be indemnified by Jaguar;

"**Director/Officer Claim**" has the meaning given to that term in the definition of Claim;

"**Director/Officer Indemnity Claim**" means any existing or future right of any Director or Officer of Jaguar against Jaguar that arose or arises as a result of (i) any Person filing a Proof of Claim (as defined in the Claims Procedure Order) in respect of a Director/Officer Claim in respect of such Director or Officer of Jaguar or (ii) any Agreed Excluded Litigation Claims and/or any Agreed Excluded Litigation, in each case for which such Director or Officer of Jaguar is entitled to be indemnified by Jaguar, other than a Director Defence Costs Indemnity Claim;

"**Director/Officer Insurance Policy**" means any insurance policy pursuant to which any Director or Officer is insured, in his or her capacity as a Director or Officer;

"**Directors' Charge**" has the meaning given to that term in the Initial Order;

"**Disputed Distribution Claim**" means an Affected Unsecured Claim (including a contingent Affected Unsecured Claim which may crystallize upon the occurrence of an event or events occurring after the

Filing Date) or such portion thereof which has not been allowed as a Distribution Claim (as defined in the Claims Procedure Order), which is validly disputed for distribution purposes in accordance with the Claims Procedure Order and which remains subject to adjudication for distribution purposes in accordance with the Claims Procedure Order;

"**Disputed Distribution Claims Reserve**" means the reserve, if any, to be established by the Applicant on the Implementation Date, which shall be comprised of the Unsecured Creditor Common Shares that would have been delivered in respect of Disputed Distribution Claims if such Disputed Distribution Claims had been Allowed Claims as of such date;

"**Disputed Voting Claim**" means an Affected Unsecured Claim (including a contingent Affected Unsecured Claim which may crystallize upon the occurrence of an event or events occurring after the Filing Date) or such portion thereof which has not been allowed as a Voting Claim, which is validly disputed for voting purposes in accordance with the Claims Procedure Order and which remains subject to adjudication for voting purposes in accordance with the Claims Procedure Order;

"**Distribution Claim**" means the amount of the Affected Unsecured Claim of an Affected Unsecured Creditor against the Applicant as finally accepted and determined for distribution purposes in accordance with this Claims Procedure Order and the CCAA;

"**Distribution Record Date**" means the Business Day immediately before the Implementation Date;

"DSU Plan" means the Deferred Share Unit Plan for non-executive directors adopted in November of 2008 by Jaguar, as amended from time to time;

"**DSU/RSU/SAR Notice**" means a notice delivered by Goodmans to Jaguar prior to the date scheduled for the hearing of the motion for the Sanction Order, if, in satisfaction of Section 12.3(g) hereof, Jaguar and the Majority Consenting Noteholders have agreed to terminate the DSU Plan, the RSU Plan, and/or the SAR Plan;

"DTC" means The Depository Trust Company, or any successor thereof;

"**Early Consent Deadline**" means November 26, 2013 (or such other date as the Applicant, the Monitor and the Majority Consenting Noteholders may agree);

"**Early Consent Shares**" means 5,000,000 New Common Shares;

"**Early Consenting Noteholder**" means any Noteholder that has executed the Support Agreement (including a consent agreement substantially in the form of Schedule C thereto) on or before the Early Consent Deadline and in respect of whom the Support Agreement has not been terminated;

"**Election Deadline**" means 5:00 p.m. on the second Business Day before the Meeting (or such other time or date as the Applicant and the Majority Consenting Noteholders may agree);

"**Election Form**" has the meaning given to that term in Section 4.1(b);

"**Electing Eligible Investor**" means an Eligible Investor who has completed and submitted an Election Form on or prior to the Election Deadline to participate in the Share Offering in accordance with the Meeting Order, provided that an Electing Eligible Investor that irrevocably elects under Section 4.1(b) to participate in the Share Offering and subscribes for such number of Offering Shares that is less than such Eligible Investor's Pro Rata Share of all Offering Shares offered pursuant to the Share Offering shall be deemed to be an Electing Eligible Investor only in respect of such lesser amount, and shall not be treated as an Electing Eligible Investor in respect of the balance;

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"**Electing Eligible Investor Funding Amount**" has the meaning given to that term in Section 4.1(d);

"**Electing Eligible Investor Funding Deadline**" has the meaning given to that term in Section 4.1(e);

"**Eligible Investor**" means a person that: (i) is a Noteholder as at the Subscription Record Date; and (ii) has delivered an executed Rep Letter to Jaguar on or before the Election Deadline and the information set forth in such Rep Letter is true and correct as of the Implementation Date, and such person's permitted assignees;

"**Eligible Voting Creditors**" means Affected Unsecured Creditors holding Voting Claims or Disputed Voting Claims;

"**Employee Priority Claims**" means the following claims of Jaguar's employees and former employees:

i. claims equal to the amounts that such employees and former employees would have been qualified to receive under paragraph 136(l)(d) of the *Bankruptcy and Insolvency Act* (Canada) if Jaguar had become bankrupt on the Filing Date; and

ii. claims for wages, salaries, commissions or compensation for services rendered by them after the Filing Date and on or before the date of the Sanction Order, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about Jaguar's business during the same period.

"**Equity Claim**" has the meaning set forth in section 2(1) of the CCAA;

"**Escrow Agent**" means an independent third party escrow agent agreed to by Jaguar and the Majority Backstop Parties, in each case acting reasonably;

"**Escrow Agreement**" means the escrow agreement entered into by the Escrow Agent, Jaguar and the applicable Participating Eligible Investors and Funding Backstop Parties in connection with the Share Offering;

"**Excluded Claim**" means

i. any claims secured by any of the Charges;

ii. any Section 5.1(2) Director/Officer Claims;

iii. any claims that cannot be compromised pursuant to subsection 19(2) of the CCAA, provided that no claims that have been or may be asserted by any Agreed Excluded Litigation Claimant shall constitute claims that cannot be compromised pursuant to subsection 19(2) of the CCAA for purposes of this Plan;

iv. any claims of the Subsidiaries against the Applicant;

v. any Secured Claims;

vi. any Employee Priority Claims against the Applicant;

vii. any Crown Claims against the Applicant;

viii. the Trustees' claims under Section 6.07 of the 4.5% Convertible Note Indenture and the 5.5% Convertible Note Indenture, if any;

ix. any Post-Filing Claims;

x. any claims of Persons who, at the Filing Date, are senior officers or employees of the Applicant, in respect of their employment arrangements or any termination of such arrangements;

xi. the Renvest Claim;

xii. the Agreed Excluded Director/Officer Litigation Claims;

xiii. the Agreed Excluded Jaguar Litigation Claims; and

xiv. the CRA Claim.

"**Excluded Creditor**" means a Person who has an Excluded Claim, but only in respect of and to the extent of such Excluded Claim;

"**Existing Equity Holders**" means, collectively, the Existing Shareholders and, as context requires, the Registered Holders or beneficial holders of Existing Share Options and the Registered Holders or beneficial holders of Rights, in their capacities as such;

"**Existing Shareholders**" means, as context requires, Registered Holders or beneficial holders of the Existing Shares, in their capacities as such;

"**Existing Share Options**" means all rights, options, warrants and other securities (other than the Notes) convertible or exchangeable into equity securities of Jaguar;

"**Existing Shares**" means all common shares of Jaguar that are issued and outstanding at the applicable time prior to the Implementation Time;

"**Filing Date**" means December 23, 2013;

"**Funding Backstop Party**" means a Backstop Party (i) in respect of whom the Backstop Agreement has not been terminated and (ii) unless such Backstop Party's Backstop Commitment has been reduced to zero in accordance with the Backstop Agreement and this Plan, who has deposited in escrow with the Escrow Agent either (a) its Backstop Payment Amount in full in cash; or (b) a qualified letter of credit in the full amount of its Backstop Payment Amount, in each case by the Backstop Funding Deadline and in accordance with the Backstop Agreement and Section 4.1(g) of this Plan;

"**Governmental Entity**" means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

"**Implementation Date**" means the Business Day on which this Plan becomes effective, which shall be the Business Day on which the Monitor has filed with the Court the certificate contemplated in Section 12.6 hereof, or such other date as the Applicant, the Monitor and the Majority Consenting Noteholders may agree;

"**Implementation Time**" means 12:01 a.m. on the Implementation Date (or such other time as the Applicant, the Monitor and the Majority Consenting Noteholders may agree);

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"**Indentures**" means the 4.5% Convertible Note Indenture and the 5.5% Convertible Note Indenture;

"**Initial Order**" has the meaning given to that term in Recital B;

"**ITA**" means the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp.);

"**Itaú BBA**" means Banco Itaú BBA S.A.;

"**Jaguar Group**" means, collectively, Jaguar, MSOL, MCT, MTL.;

"**Jaguar Insurance Policy**" means any insurance policy pursuant to which Jaguar is insured and any Director or Officer is insured, in his or her capacity as a Director or Officer;

"**Law**" means any law, statute, order, decree, consent decree, judgment, rule regulation, ordinance or other pronouncement having the effect of law whether in Canada, the United States, Brazil or any other country, or any domestic or foreign state, county, province, city or other political subdivision or of any Governmental Entity;

"**Letter of Transmittal**" means a letter of transmittal to be used by Registered Holders of Existing Shares to obtain replacement share certificates reflecting the Common Share Consolidation;

"**Majority Backstop Parties**" means the Backstop Parties (other than Defaulting Backstop Parties) having at least 66 2/3 % of the aggregate Backstop Commitment of the Backstop Parties (other than Defaulting Backstop Parties) at the time that a consent, approval, waiver or agreement is sought pursuant to the terms of this Plan;

"**Majority Consenting Noteholders**" means Consenting Noteholders holding at least a majority of the aggregate principal amount of all Notes held by all Consenting Noteholders at the time that a consent, approval, waiver or agreement is sought pursuant to the terms of this Plan;

"**MCT**" has the meaning given to that term in Recital C;

"**MSOL**" has the meaning given to that term in Recital C;

"**MTL**" has the meaning given to that term in Recital C;

"**Meeting**" means a meeting of the Affected Unsecured Creditors called for the purpose of considering and voting in respect of this Plan;

"**Monitor**" means FTI Consulting Canada Inc., in its capacity as Court-appointed Monitor of Jaguar in the CCAA Proceedings;

"**Named Directors and Officers**" means the current directors and officers of Jaguar and such other directors and officers as agreed to by the Majority Consenting Noteholders prior to the Meeting;

"**New Board**" means the board of directors in place from and after the Implementation Date, the composition and size of which shall be satisfactory to the Majority Backstop Parties, subject to applicable Law;

"**New Common Shares**" means the 110,111,111 Common Shares to be issued by Jaguar on the Implementation Date in accordance with the steps set out in Section 7.4;

"**Non-Breaching/Non-Delivering Backstop Parties**" means those Backstop Parties that are neither

Breaching Backstop Parties nor Non-Delivering Backstop Parties;

"**Non-Defaulting Backstop Parties**" means those Backstop Parties that are not Defaulting Backstop Parties;

"**Non-Delivering Backstop Party**" means a Backstop Party (who is not otherwise an Objecting Backstop Party) that has not delivered an executed Rep Letter to Jaguar by the Election Deadline or for whom a representation or warranty made in such Rep Letter becomes untrue;

"**Non-Objecting Backstop Parties**" means those Backstop Parties that are not Objecting Backstop Parties;

"**Non-Released Director/Officer Claims**" means Director/Officer Claims against the Directors and Officers of Jaguar in respect of which such Director or Officer has been adjudged by the express terms of a judgment rendered on a final determination on the merits to have committed fraud or wilful misconduct, but excluding any claims that have been or may be asserted by any Agreed Excluded Litigation Claimants;

"**Noteholder Released Claim**" means the matters that are subject to release and discharge pursuant to Section 11.1(c);

"**Noteholder Released Party**" has the meaning given to that term in Section 11.1(c);

"**Noteholder Voting Record Date**" means December 19, 2013;

"**Noteholders**" means, as the context requires, the Registered Holders or beneficial holders of the Notes, in their capacities as such;

"**Noteholders Allowed Claim**" means all principal amounts outstanding and all accrued interest under the Notes as at the applicable record date under this Plan as determined in accordance with the Claims Procedure Order for purposes of voting on, and receiving distributions under, this Plan;

"**Noteholder's Allowed Claim**" means, in respect of a particular Noteholder, all principal amounts outstanding and accrued interest under the Notes owing to such Noteholder as at the applicable record date under this Plan as determined in accordance with the Claims Procedure Order for purposes of voting on, and receiving distributions under, this Plan;

"**Notes**" means, collectively, the notes issued by Jaguar under and pursuant to the Indentures;

"**Objecting Backstop Party**" means a Backstop Party that has terminated its obligations under the Backstop Agreement in accordance with section 8(c) thereof;

"**Offering Shares**" means the 70,955,797 New Common Shares to be issued by Jaguar pursuant to the Share Offering;

"**Offered Shares**" means, collectively, the Offering Shares (including the Backstopped Shares), the Accrued Interest Offering Shares, and the Backstop Commitment Shares;

"**Officer**" means anyone who is or was, or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of Jaguar;

"**Order**" means any order of the Court in the CCAA Proceedings;

"**Other Directors and/or Officers**" means any Directors and/or Officers other than the Named Directors

and Officers;

"**Outside Date**" means February 28, 2014 (or such other date as the Applicant and the Majority Consenting Noteholders may agree);

"**Participant Holder**" has the meaning ascribed thereto in the Meeting Order;

"**Participating Eligible Investor**" has the meaning given to that term in Section 4.1(h);

"**Participating Eligible Investor Shares**" has the meaning given to that term in Section 4.1(h);

"**Party**" means a party to the Support Agreement and/or to the Backstop Agreement, and any reference to a Party includes its successors and permitted assigns; and "**Parties**" means every Party;

"**Person**" is to be broadly interpreted and includes any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, Government Entity or any agency, officer or instrumentality thereof or any other entity, wherever situate or domiciled, and whether or not having legal status;

"**Plan**" means this Amended and Restated Plan of Compromise and Arrangement and any amendments, modifications or supplements hereto made in accordance with the terms hereof or made at the direction of the Court in the Sanction Order or otherwise with the consent of Jaguar and the Majority Consenting Noteholders, each acting reasonably;

"**Plan Resolution**" means the resolution of the Affected Unsecured Creditors relating to this Plan considered at the Meeting;

"**Post-Filing Claim**" means any claims against the Applicant that arose from the provision of authorized goods and services provided or otherwise incurred on or after the Filing Date in the ordinary course of business, but specifically excluding any Restructuring Period Claim;

"**Pre-filing Claim**" has the meaning given to that term in the definition of Claim;

"**Pro Rata Share**" means:

(a) in respect of Unsecured Creditor Common Shares, the percentage that an Affected Unsecured Creditor's Allowed Affected Unsecured Claim calculated as at the Record Date bears to the aggregate of all Allowed Affected Unsecured Claims calculated as at the Record Date and all Disputed Distribution Claims calculated as at the Record Date;

(b) in respect of the Early Consent Shares, the percentage that an Early Consenting Noteholder's Noteholder's Allowed Claim calculated as at the Record Date bears to the aggregate of all Early Consenting Noteholders' Noteholder's Allowed Claims calculated as at the Record Date;

(c) in respect of the Subscription Privilege, the percentage that an Eligible Investor's Noteholder's Allowed Claim calculated as at the Record Date bears to the Noteholders Allowed Claim calculated as at the Record Date, subject to adjustment pursuant to Section 5.2(c) hereof;

(d) in respect of the Accrued Interest Offering Shares, the percentage that a Participating Eligible Investor's Accrued Interest Claim or a Funding Backstop Party's Accrued Interest Claim (without duplication), as applicable, bears to the aggregate of all Accrued Interest

Claims;

(e) in respect of the Backstop Commitment Shares, the percentage that a Funding Backstop Party's Backstop Consideration Commitment bears to the aggregate of all Funding Backstop Parties' Backstop Consideration Commitments; and

(f) in respect of the Backstopped Shares, the percentage that a Backstop Party's Backstop Commitment bears to the aggregate of all Backstop Commitments.

"**Record Date**" means December 31, 2013;

"**Registered Holder**" means (i) in respect of the Notes, the holder of such Notes as recorded on the books and records of the Trustees, (ii) in respect of the Existing Shares, the holder of such Existing Shares as recorded on the share register maintained by the Transfer Agent, and (iii) in respect of the Existing Share Options, the holder of such Existing Share Options as recorded on the books and records of Jaguar;

"**Regulation S**" means Regulation S as promulgated by the US Securities Commission under the US Securities Act;

"**Released Claims**" means the matters that are subject to release and discharge pursuant to Section 11.1(a) and (b) hereof;

"**Released Party**" has the meaning given to that term in Section 11.1(b);

"**Renvest Claim**" means any claim for amounts owing by the Applicant to Global Resource Fund, pursuant to the Credit Agreement or pursuant to any Credit Document (as such term is defined in the Credit Agreement).

"**Rep Letter**" means a letter from a Noteholder, or an Assuming Backstop Party who is not a Noteholder, or an Affected Unsecured Creditor with an Allowed Affected Unsecured Claim who is not a Noteholder, if applicable in accordance with Section 5.2(c) hereof, to Jaguar containing representations and warranties relating to such Person's eligibility to acquire the Offering Shares (including the Backstopped Shares), Accrued Interest Offering Shares, or Backstop Commitment Shares under US Securities Laws, in a form acceptable to such Person and Jaguar, each acting reasonably;

"**Required Majority**" means a majority in number of Affected Unsecured Creditors representing at least two thirds in value of the Voting Claims of Affected Unsecured Creditors who are entitled to vote at the Meeting in accordance with the Meeting Order and who are present and voting in person or by proxy on the Plan Resolution at the Meeting;

"**Restructuring Period Claim**" has the meaning given to that term in the definition of Claim;

"**Rights**" means the rights issued pursuant to the Shareholder Rights Plan;

"**RSU Plan**" means the restricted share unit plan for senior officers, employees and consultants adopted in November of 2008 by Jaguar, as amended from time to time;

"**SAR Plan**" means the Third Amended and Restated Share Appreciation Rights Plan of Jaguar, effective as of December 8, 2010;

"**Sanction Order**" means the Order of the Court sanctioning and approving this Plan pursuant to section 6(1) of the CCAA, which shall include such terms as may be necessary or appropriate to (i) give effect to this Plan, in form and substance satisfactory to the Applicant and the Majority Consenting Noteholders,

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each acting reasonably, and (ii) allow Jaguar to rely on the exemption from registration set forth in section 3(a)(10) of the US Securities Act;

"**Section 5.1(2) Director/Officer Claim**" means any claim against any Director and/or Officer that is not permitted to be compromised pursuant to section 5.1(2) of the CCAA, but only to the extent not so permitted, provided that any Director/Officer Claim that qualifies as a Non-Released Director/Officer Claim shall not constitute a Section 5.1(2) Director/Officer Claim for the purposes of Section 11.1(a) hereof; and provided further that no claims that have been or may be asserted by any Agreed Excluded Litigation Claimant shall constitute Section 5.1(2) Director/Officer Claims for the purposes of this Plan;

"**Secured Claims**" means that portion of a Claim that is (i) secured by security validly charging or encumbering property or assets of the Applicant (including statutory and possessory liens that create security interests) but only up to the value of such collateral, and (ii) duly and properly perfected in accordance with the relevant legislation in the appropriate jurisdiction as of the Filing Date;

"**Share Offering**" means the offering by Jaguar of Offering Shares at the Subscription Price in accordance with this Plan;

"**Shareholder Rights Plan**" means the Shareholder Rights Plan Agreement dated May 2, 2013 between Jaguar Mining Inc. and Computershare Investor Services Inc. as Rights Agent;

"**Solicitation/Election Agent**" means Globic Advisors Inc,, or any successor solicitation or election agent;

"**Stock Option Plan**" means the stock option plan of Jaguar in effect as of the Filing Date;

"**Subscription Price**" means $0.7047 per Offering Share;

"**Subscription Privilege**" means the right of an Eligible Investor to participate in the Share Offering by electing, in accordance with the provisions of this Plan, to subscribe for and purchase from Jaguar up to its Pro Rata Share of Offering Shares under the Share Offering;

"**Subscription Record Date**" means December 19, 2013;

"**Subsidiaries**" means, collectively, MTL, MSOL and MCT, and "**Subsidiary**" means any one of the Subsidiaries;

"**Support Agreement**" means the Support Agreement made November 13, 2013 (as amended from time to time) between Jaguar, the Subsidiaries and the Noteholders party thereto, together with any consent agreements executed by other Noteholders from time to time, substantially in the form of Schedule C thereto;

"**Tax**" or "**Taxes**" means any and all taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever, including all interest, penalties, fines, additions to tax or other additional amounts in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all licence, franchise and registration fees and all employment insurance, health insurance and Canada, Quebec and other government pension plan premiums or contributions;

"**Tax Claim**" means any Claim against the Applicant for any Taxes in respect of any taxation year or period;

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"**Transfer Agent**" means Computershare Investor Services Inc.;

"**Trustees**" means The Bank of New York Mellon, as trustee, and BNY Trust Company of Canada, as co-trustee, under each of the Indentures;

"**TSX**" means Toronto Stock Exchange;

"**TSXV**" means TSX Venture Exchange;

"**Undeliverable Distribution**" has the meaning given to that term in Section 8.3;

"**Unsecured Creditor Common Shares**" means 14,000,000 New Common Shares;

"**US Dollars**" or "**US$**" means the lawful currency of the United States of America;

"**US Securities Act**" means the *United States Securities Act of 1933*, as amended from time to time, and the rules and regulations promulgated thereunder, or any successor statute;

"**US Securities Commission**" means the United States Securities and Exchange Commission;

"**US Securities Laws**" means, collectively, the *Sarbanes-Oxley Act of 2002* ("Sarbanes-Oxley"), the US Securities Act, as amended, the *United States Securities Exchange Act of 1934*, as amended, the rules and regulations of the US Securities Commission, the auditing principles, rules, standards and practices applicable to auditors of "issuers" (as defined in Sarbanes-Oxley) promulgated or approved by the Public Company Accounting Oversight Board and, as applicable, the rules of the New York Stock Exchange;

"**Voting Claim**" means the amount of the Affected Unsecured Claim of an Affected Unsecured Creditor against the Applicant as finally accepted and determined for purposes of voting at the Meeting, in accordance with the provisions of the Claims Procedure Order and the CCAA; and

"**Voting Deadline**" means 10 a.m. on the Business Day prior to the Meeting.

1.2 Certain Rules of Interpretation

For the purposes of this Plan:

(a) Unless otherwise expressly provided herein, any reference in this Plan to an instrument, agreement or an Order or an existing document or exhibit filed or to be filed means such instrument, agreement, Order, document or exhibit as it may have been or may be amended, modified, or supplemented in accordance with its terms;

(b) The division of this Plan into articles and sections are for convenience of reference only and do not affect the construction or interpretation of this Plan, nor are the descriptive headings of articles and sections intended as complete or accurate descriptions of the content thereof;

(c) The use of words in the singular or plural, or with a particular gender, including a definition, shall not limit the scope or exclude the application of any provision of this Plan to such Person (or Persons) or circumstances as the context otherwise permits;

(d) The words "includes" and "including" and similar terms of inclusion shall not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather shall mean "includes but is not limited to" and "including but not limited to", so that references to included matters shall be regarded as illustrative without being either

characterizing or exhaustive;

(e) Unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean local time in Toronto, Ontario and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day;

(f) Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends;

(g) Unless otherwise provided, any reference to a statute or other enactment of parliament, a legislature or other Governmental Entity includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation;

(h) References to a specific Recital, Article or Section shall, unless something in the subject matter or context is inconsistent therewith, be construed as references to that specific Recital, Article or Section of this Plan, whereas the terms "this Plan", "hereof', "herein", "hereto", "hereunder" and similar expressions shall be deemed to refer generally to this Plan and not to any particular Recital, Article, Section or other portion of this Plan and include any documents supplemental hereto; and

(i) The word "or" is not exclusive.

1.3 Governing Law

This Plan shall be governed by and construed in accordance with the laws of Ontario and the federal laws of Canada applicable therein. All questions as to the interpretation or application of this Plan and all proceedings taken in connection with this Plan and its provisions shall be subject to the jurisdiction of the Court.

1.4 Currency

Unless otherwise stated, all references in this Plan to sums of money are expressed in, and all payments provided for herein shall be made in, US Dollars.

1.5 Date for Any Action

If the date on which any action is required to be taken hereunder by a Person is not a Business Day, such action shall be required to be taken on the next succeeding day which is a Business Day.

1.6 Time

Time shall be of the essence in this Plan.

ARTICLE 2– PURPOSE AND EFFECT OF THIS PLAN

2.1 Purpose

The purpose of this Plan is to facilitate the continuation of the business of the Jaguar Group as a going concern, address certain liabilities of the Applicant, and effect a recapitalization and financing transaction on an expedited basis to provide a stronger financial foundation for the Jaguar Group going forward and additional liquidity to allow the Jaguar Group to continue to work towards its operational and financial

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goals from and after the Implementation Date in the expectation that all Persons with an economic interest in the Jaguar Group will derive a greater benefit from the implementation of this Plan than would otherwise result.

2.2 Effectiveness

Subject to the satisfaction, completion or waiver (to the extent permitted pursuant to Section 12.4) of the conditions precedent set out herein, this Plan will become effective in the sequence described in Section 7.4 from and after the Implementation Time and shall be binding on and enure to the benefit of the Jaguar Group, the Affected Unsecured Creditors, all Existing Equity Holders, all holders of Equity Claims, the Released Parties, the Noteholder Released Parties and all other Persons as provided for herein, or subject to, this Plan and their respective successors and assigns and their respective heirs, executors, administrators and other legal representatives, successors and assigns.

2.3 Persons Not Affected

For greater certainty, except as provided in Sections 11.1(a)(iii), 11.1(b)(i), 11.2, 12.2(c) and 13.1, this Plan does not affect the holders of Excluded Claims to the extent of those Excluded Claims. Nothing in this Plan shall affect the Jaguar Group's rights and defences, both legal and equitable, with respect to any Excluded Claims, including, but not limited to, all rights with respect to legal and equitable defences or entitlements to set-offs or recoupments against such Excluded Claims. Nothing herein shall constitute a waiver of any right of either the Monitor or the Applicant to dispute the quantum of an Excluded Claim.

ARTICLE 3– CLASSIFICATION, VOTING CLAIMS AND RELATED MATTERS

3.1 Classes

For the purposes of considering and voting on the Plan Resolution, there shall be one class of stakeholders, consisting of Affected Unsecured Creditors (the "**Affected Creditor Class**").

3.2 Meeting

(a) The Meeting shall be held in accordance with this Plan, the Meeting Order and any further Order in the CCAA Proceedings. Subject to the terms of any further Order in the CCAA Proceedings, the only Persons entitled to notice of, to attend or to speak at the Meeting are the Eligible Voting Creditors (or their respective duly appointed proxyholders), representatives of the Monitor, the Applicant, the Consenting Noteholders, all such parties' financial and legal advisors, the Chair (as defined in the Meeting Order), the Secretary (as defined in the Meeting Order) and the Scrutineers (as defined in the Meeting Order). Any other person may be admitted to the Meeting only by invitation of the Applicant or the Chair.

(b) For the purposes of voting at the Meeting, each Affected Unsecured Creditor (including a Beneficial Noteholder with respect to its Noteholder's Allowed Claim) shall be entitled to one vote as a member of the Affected Creditor Class.

(c) For the purposes of voting at the Meeting, the Voting Claim of any Beneficial Noteholder shall be deemed to be equal to its Noteholder's Allowed Claim as at the Noteholder Voting Record Date. Registered Holders of Notes, in their capacities as such, will not be entitled to vote at the Meeting.

3.3 Required Majority

In order to be approved, this Plan must receive the affirmative vote of the Required Majority of the

Affected Creditor Class.

3.4 Excluded Claims

Excluded Creditors shall not be entitled to vote or (except as otherwise expressly stated in the Meeting Order) attend in respect of their Excluded Claims at any meeting to consider and approve this Plan.

3.5 Existing Equity Holders and Holders of Equity Claims

Existing Equity Holders and holders of Equity Claims shall not be entitled to attend or vote in respect of their Equity Claims at any meeting to consider and approve this Plan.

3.6 Crown Claims

All Crown Claims in respect of all amounts that were outstanding at the Filing Date shall be paid in full to the Crown within six months of the Sanction Order, as required by subsection 6(3) of the CCAA.

3.7 Payments to Employees

Immediately after the date of the Sanction Order, the Applicant will pay in full all Employee Priority Claims, if any, to its employees and former employees.

ARTICLE 4 – ELECTIONS AND SHARE OFFERING

4.1 Participation In Share Offering

(a) Each Noteholder that is an Eligible Investor shall be entitled to participate in the Share Offering.

(b) Pursuant to and in accordance with the Meeting Order, there shall be delivered an election form (an "**Election Form**") to each Participant Holder of the Notes, as of the Subscription Record Date, together with instructions to deliver such Election Form (or copies thereof) to the applicable Beneficial Noteholders to the extent such Participant Holder is not also the Beneficial Noteholder of such Notes. Each Eligible Investor shall have the right, but not the obligation, to irrevocably elect to exercise its Subscription Privilege, with such subscription to be conditioned upon the implementation of this Plan and effective on the Implementation Date in accordance with Section 7.4. In order to exercise its Subscription Privilege, such Eligible Investor shall return, or cause to be returned, the duly executed Election Form (including a Rep Letter) in accordance with the Meeting Order, so that it is received by the Solicitation/Election Agent on or before the Election Deadline.

(c) An Electing Eligible Investor that is also a Backstop Party may elect, in accordance with the Election Form, to have its Backstop Commitment reduced by the total funds that such Electing Eligible Investor deposits into escrow on or before the Electing Eligible Investor Funding Deadline in respect of Offering Shares that such Electing Eligible Investor subscribes for pursuant to the exercise of all or part of its Subscription Privilege, provided that such Backstop Commitment shall not be reduced below zero (the "**Backstop Commitment Reduction Election**", with a Backstop Party so electing being a "**Commitment Reduction Electing Backstopper**").

(d) Following the issuance of the Sanction Order, but in any event by 5:00 p.m. on the tenth Business Day prior to the expected Implementation Date, Jaguar shall inform each Electing Eligible Investor of (i) the expected Implementation Date, (ii) the number of

Offering Shares that, subject to compliance with the procedures described in this Plan, will be acquired by such Electing Eligible Investor on the Implementation Date pursuant to the Subscription Privilege; and (iii) the amount of funds (in cash) required to be deposited in escrow with the Escrow Agent by such Electing Eligible Investor to purchase such Offering Shares pursuant to the Share Offering (the "**Electing Eligible Investor Funding Amount**") by the Electing Eligible Investor Funding Deadline.

(e) Each Electing Eligible Investor must deposit its Electing Eligible Investor Funding Amount in escrow with the Escrow Agent so that it is received by the Escrow Agent by no later than 11:00 a.m. on the seventh Business Day prior to the expected Implementation Date (the "**Electing Eligible Investor Funding Deadline**"). If an Electing Eligible Investor deposits less than the full amount of its Electing Eligible Investor Funding Amount by the Electing Eligible Investor Funding Deadline, then (i) the funds so deposited by such Electing Eligible Investor shall be returned to such Electing Eligible Investor within five Business Days following the Electing Eligible Investor Funding Deadline; and (ii) such Eligible Investor shall be deemed to have ceased, as of the Electing Eligible Investor Funding Deadline, to be an Electing Eligible Investor and its subscription for Offering Shares pursuant to the Subscription Privilege and right to receive Accrued Interest Offering Shares shall be null and void.

(f) As soon as practicable but in any event no later than 11:00 a.m. one Business Day after the Electing Eligible Investor Funding Deadline, Jaguar shall inform each Backstop Party (other than a Backstop Party in respect of whom the Backstop Agreement has been terminated) of (i) the total number of Offering Shares not validly subscribed for pursuant to the Subscription Privilege (the "**Backstopped Shares**"), (ii) the number of Backstopped Shares to be acquired by such Backstop Party pursuant to its Backstop Commitment, based upon its Pro Rata Share of the Backstopped Shares, and (iii) the amount of funds (by way of cash or a letter of credit) required to be deposited in escrow with the Escrow Agent by such party to purchase such Backstopped Shares (the "**Backstop Payment Amount**") by the Backstop Funding Deadline.

(g) Each Backstop Party (other than a Backstop Party in respect of whom the Backstop Agreement has been terminated) shall deliver to the Escrow Agent and the Escrow Agent shall have received, not later than 2:00 p.m. (Toronto time) on the day that is five Business Days prior to the expected Implementation Date (the "**Backstop Funding Deadline**"), either:

(i) cash in an amount equal to the full amount of such Backstop Party's Backstop Payment Amount; or

(ii) a letter of credit, in form and substance reasonably satisfactory to Jaguar, having a face amount equal to such Backstop Party's Backstop Payment Amount, and issued by a financial institution having an equity market capitalization of at least $10,000,000,000 and a credit rating of at least A+ from Standard & Poor's or A1 from Moody's,

in each case: (1) to be held in escrow in accordance with the Escrow Agreement until all conditions to the Share Offering have been satisfied or waived in accordance with the Backstop Agreement and with irrevocable instructions to use such cash or letter of credit, as applicable, to the extent required to enable such Backstop Party to comply with its Backstop Purchase Obligation; and (2) provided for greater certainty that, if a Backstop Party (A) has exercised all or part of its Subscription Privilege and has paid its Electing Eligible Investor Funding Amount on or before the Electing Eligible Investor Funding Deadline, and (B) is a Commitment Reduction Electing Backstopper whose Backstop Commitment has been reduced to zero, such Backstop Party shall not be required to

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deliver cash or a letter of credit to the Escrow Agent.

(h) An Electing Eligible Investor who complies with Section 4.1(e) (the "**Participating Eligible Investor**") shall participate in the Share Offering and shall be deemed to have subscribed for Offering Shares in an amount equal to the Electing Eligible Investor Funding Amount deposited in escrow with the Escrow Agent by that Participating Eligible Investor in accordance with Section 4.1(e) divided by the Subscription Price (the "**Participating Eligible Investor Shares**").

(i) Each Funding Backstop Party shall be deemed to have subscribed for its Pro Rata Share of the Backstopped Shares.

(j) On or prior to the Implementation Date, Jaguar shall inform: (i) each Participating Eligible Investor of the number of Accrued Interest Offering Shares to be allocated to such Participating Eligible Investor in accordance with section 5.1(b); and (ii) each Funding Backstop Party of the number of Accrued Interest Offering Shares and the number of Backstop Commitment Shares to be allocated to such Funding Backstop Party in accordance with section 5.1(b).

(k) In the event of a Backstop Default/Termination, provided that the Backstop Agreement remains in full force and effect with respect to other Backstop Parties thereafter, Jaguar shall, in accordance with the Backstop Agreement, provide the applicable Backstop Parties, or such other parties acceptable to the Backstop Parties and Jaguar in accordance with the Backstop Agreement that will execute a Backstop Consent Agreement, with an opportunity to assume the obligations (and rights) of a Defaulting Backstop Party, Objecting Backstop Party, Breaching Backstop Party or Non-Delivering Backstop Party, as applicable, in each case in accordance with and subject to the terms and conditions of this Plan and the Backstop Agreement. Any Assuming Backstop Party shall comply with its obligations in connection with its Assumed Backstop Commitment and shall be entitled to receive the applicable Offered Shares under this Plan in connection with such Assumed Backstop Commitment, subject to such Assuming Backstop Party having complied with its obligations under this Plan and the Backstop Agreement and such other terms and conditions under this Plan and the Backstop Agreement. For greater certainty, any Assuming Backstop Party that has complied with its obligations under this Plan and the Backstop Agreement shall constitute and be treated as a Funding Backstop Party for purposes of this Plan.

ARTICLE 5 – TREATMENT OF CLAIMS

5.1 Treatment of Noteholders

(a) For the purposes of distributions under this Plan, the Distribution Claim of any Beneficial Noteholder shall be deemed to be equal to its Noteholder's Allowed Claim.

(b) On the Implementation Date and in accordance with the steps and sequence as set forth in this Plan, each Noteholder shall and shall be deemed to irrevocably and finally exchange its Notes for the following consideration which shall and shall be deemed to be received in full and final settlement of its Notes and its Noteholder's Allowed Claim:

(i) its Pro Rata Share of the Unsecured Creditor Common Shares;

(ii) its Pro Rata Share of the Early Consent Shares, if such Noteholder is an Early Consenting Noteholder;

(iii) its Pro Rata Share of Accrued Interest Offering Shares if such Noteholder is a

Participating Eligible Investor and/or a Funding Backstop Party, provided that in no event shall a Participating Eligible Investor or a Funding Backstop Party receive a greater number of Accrued Interest Offering Shares than Offering Shares (including Backstopped Shares, as applicable) received by such person. Any Accrued Interest Offering Shares remaining after the allocation of the Accrued Interest Offering Shares to Participating Eligible Investors and Funding Backstop Parties pursuant to the immediately preceding sentence shall be reallocated among those Participating Eligible Investors and/or Funding Backstop Parties who have received less Accrued Interest Offering Shares than Offering Shares (including Backstopped Shares, as applicable) on a *pro rata* basis based on Accrued Interest Claims of such Participating Eligible Investors and/or Funding Backstop Parties (calculated as at the Record Date); and

(iv) its Pro Rata Share of the Backstop Commitment Shares, if such Noteholder is a Funding Backstop Party.

(c) On the Implementation Date and in accordance with the steps and sequence as set forth in this Plan, each Participating Eligible Investor shall receive its Participating Eligible Investor Shares and each Funding Backstop Party shall receive its Pro Rata Share of the Backstopped Shares.

(d) After giving effect to the terms of this Section 5.1, the obligations of Jaguar with respect to the Notes of each Noteholder shall, and shall be deemed to, have been irrevocably and finally extinguished and each Noteholder shall have no further right, title or interest in or to the Notes or its Noteholder's Allowed Claim.

5.2 Treatment of Affected Unsecured Creditors Other Than Noteholders

(a) On the Implementation Date and in accordance with the steps and sequence as set forth in this Plan, each Affected Unsecured Creditor (except for a Noteholder in respect of its Noteholder's Allowed Claim, which shall be dealt with in accordance with Section 5.1) shall receive its Pro Rata Share of the Unsecured Creditor Common Shares and shall be deemed to irrevocably and finally exchange its Affected Unsecured Claim for its Pro Rata Share of the Unsecured Creditor Common Shares, which shall and shall be deemed to be received in full and final settlement of its Affected Unsecured Claim.

(b) After giving effect to the terms of this Section 5.2, the obligations of Jaguar with respect to such Affected Unsecured Creditor's Affected Unsecured Claim shall, and shall be deemed to, have been irrevocably and finally extinguished and such Affected Unsecured Creditor shall have no further right, title or interest in or to the Affected Unsecured Claim.

(c) With the consent of the Monitor and the Majority Backstop Parties, an Affected Unsecured Creditor with an Allowed Affected Unsecured Claim who is not a Noteholder may be entitled to participate in the Share Offering for its Pro Rata Share of the Offering Shares (calculated as if the Affected Unsecured Creditor's Allowed Affected Unsecured Claim was a Noteholder's Allowed Claim); provided that any such Affected Unsecured Creditor completes and submits an Election Form and Rep Letter on or prior to the Election Deadline and complies with all of the obligations of a Participating Eligible Investor in accordance with the terms and conditions of the Plan, including without limitation Section 4.1(e) hereof, in which case, such Affected Unsecured Creditor shall be treated as an Eligible Investor for the purpose of the Offering Shares and each Eligible Investor's Subscription Privilege will be adjusted accordingly.

5.3 Treatment of Existing Equity Holders

(a) Each Existing Shareholder shall retain its Existing Shares subject to the Common Share Consolidation pursuant to Section 7.4(a) and in accordance with the steps and sequences set forth herein.

(b) Pursuant to this Plan and in accordance with the steps and sequences set forth herein, all Existing Share Options, Rights and the Shareholder Rights Plan shall be cancelled and shall be deemed to be cancelled without the need for any repayment of capital thereof or any other liability, payment or compensation therefor and for greater certainty, no holders of Existing Share Options or Rights shall be entitled to receive any interest, dividends, premium or other payment in connection therewith.

5.4 Equity Claims

All Equity Claims shall be fully, finally and irrevocably and forever compromised, released, discharged, cancelled and barred on the Implementation Date. Holders of Equity Claims shall not receive any consideration or distributions under this Plan and shall not be entitled to vote on this Plan at the Meeting. Notwithstanding the foregoing, Existing Shareholders shall be entitled to continue to hold their Existing Shares in accordance with the terms of this Plan, subject to the Common Share Consolidation.

5.5 Claims of the Trustees

The Trustees' claims under Section 6.07 of the 4.5% Convertible Note Indenture and the 5.5% Convertible Note Indenture shall be unaffected by this Plan.

5.6 Application of Plan Distributions

(a) All amounts paid or payable hereunder on account of the Noteholders Allowed Claim (including, for greater certainty, any securities received hereunder) shall be applied as follows: (i) first, in respect of the principal amount of the obligations to which such Noteholders Allowed Claim relate, and (ii) second, if such principal amounts have been fully repaid, in respect of any accrued but unpaid interest on such obligations.

(b) In the event that a Funding Backstop Party is not a Noteholder, such Funding Backstop Party shall receive its Backstop Commitment Shares as a fee.

ARTICLE 6 – MEETING

6.1 Meeting

The Meeting to consider and vote on this Plan shall be conducted in accordance with the terms of the Claims Procedure Order and the Meeting Order.

6.2 Acceptance of Plan

If this Plan is approved by the Required Majority entitled to vote at the Meeting, then this Plan shall be deemed to have been agreed to, accepted and approved by the Affected Unsecured Creditors and shall be binding upon all Affected Unsecured Creditors, if the Sanction Order is granted and the conditions described in Section 12.3 hereof have been satisfied or waived, as applicable.

ARTICLE 7 – IMPLEMENTATION

7.1 Administration Charge

On the Implementation Date, all outstanding, invoiced obligations, liabilities, fees and disbursements secured by the Administration Charge shall be fully paid by the Applicant. Upon receipt by the Monitor of confirmation from each of the beneficiaries of the Administration Charge that payments of the amounts secured by the Administration Charge have been made, the Monitor shall file a certificate with the Court confirming same and thereafter, the Administration Charge shall be and be deemed to be discharged from the assets of the Applicant, without the need for any other formality.

7.2 Corporate Authorizations

The adoption, execution, delivery, implementation and consummation of all matters contemplated under this Plan involving corporate action of any members of the Jaguar Group will occur and be effective as of the Implementation Date (or such other date as Jaguar and the Majority Consenting Noteholders may agree), and will be authorized and approved under this Plan and by the Court, where appropriate, as part of the Sanction Order, in all respects and for all purposes without any requirement of further action by shareholders, directors or officers of the Jaguar Group. All necessary approvals to take actions shall be deemed to have been obtained from the directors or the shareholders of the Jaguar Group, as applicable, including the deemed passing by any class of shareholders of any resolution or special resolution and no shareholders' agreement or agreement between a shareholder and another Person limiting in any way the right to vote shares held by such shareholder or shareholders with respect to any of the steps contemplated by this Plan shall be deemed to be effective and no such agreement shall have any force or effect.

7.3 Fractional Interests

No certificates representing fractional Common Shares shall be allocated under this Plan, and fractional share interests shall not entitle the owner thereof to vote or to any rights of a shareholder of Jaguar. Any legal, equitable, contractual and any other rights or claims (whether actual or contingent, and whether or not previously asserted) of any Person with respect to fractional Common Shares pursuant to this Plan shall be rounded down to the nearest whole number without compensation therefor.

7.4 Implementation Date Transactions

Commencing at the Implementation Time, the following events or transactions will occur, or be deemed to have occurred and be taken and effected, in the following order in five minute increments and at the times set out in this Section 7.4 (or in such other manner or order or at such other time or times as Jaguar and the Majority Consenting Noteholders may agree, acting reasonably), without any further act or formality required on the part of any Person, except as may be expressly provided herein:

(a) Articles of Reorganization shall be filed under the OBCA to amend the articles of Jaguar to effect a consolidation (the "**Common Share Consolidation**") of the issued and outstanding Common Shares on the basis of one post-consolidation Common Share for each Consolidation Number of Common Shares outstanding immediately prior to the Common Share Consolidation. Any fractional interests in the consolidated Common Shares will, without any further act or formality, be cancelled without payment of any consideration therefor. Following the completion of such consolidation, the stated capital of the Common Shares shall be equal to the stated capital of the Common Shares immediately prior to consolidation.

(b) The following shall occur concurrently:

(i) the Rights and the Shareholder Rights Plan shall be cancelled and shall be

deemed to be cancelled without the need for any repayment of capital thereof or any other compensation therefor and shall cease to be of any further force or effect;

(ii) any and all Existing Share Options and the Stock Option Plan shall be cancelled and shall be deemed to be cancelled without the need for any repayment of capital thereof or any other compensation therefor and shall cease to be of any further force or effect;

(iii) if the DSU/RSU/SAR Notice is delivered, the DSU Plan, the RSU Plan and/or the SAR Plan, as set out in the DSU/RSU/SAR Notice shall be cancelled and shall be deemed to be cancelled without the need for any repayment of capital thereof or any other compensation therefor and shall cease to be of any further force or effect; and

(iv) all Equity Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred without any consideration or distributions therefor.

(c) In exchange for, and in full and final settlement of, the Noteholders Allowed Claim as at the Implementation Date, Jaguar shall issue:

(i) to each Noteholder its Pro Rata Share of Unsecured Creditor Common Shares;

(ii) to each Early Consenting Noteholder its Pro Rata Share of the Early Consent Shares;

(iii) to each Participating Eligible Investor and Funding Backstop Party the number of Accrued Interest Offering Shares such Participating Eligible Investor or Funding Backstop Party is entitled to receive in accordance with Section 5.1(b); and

(iv) to each Funding Backstop Party, its Pro Rata Share of the Backstop Commitment Shares,

which New Common Shares shall be distributed in the manner described in Section 8.2 hereof. Upon issuance of these New Common Shares, the Noteholders Allowed Claim shall and shall be deemed to be irrevocably and finally extinguished and such Noteholder shall have no further right, title or interest in and to the Notes or its Noteholder's Allowed Claim.

(d) The Notes and the Indentures will not entitle any Noteholder to any compensation or participation other than as expressly provided for in this Plan and shall be cancelled and will thereupon be null and void, and the obligations of the Applicant thereunder or in any way related thereto shall be satisfied and discharged, except to the extent expressly set forth in section 6.07 of the Indentures, which section shall remain in effect until two months following the Implementation Date or such later date agreed to by the Applicant, the Monitor, the Trustees and the Majority Consenting Noteholders.

(e) In exchange for, and in full and final settlement of, its Affected Unsecured Claim, Jaguar shall issue to each Affected Unsecured Creditor, other than the Noteholders, its Pro Rata Share of the Unsecured Creditor Common Shares;

(f) The following shall occur concurrently:

(i) Jaguar shall issue to each Participating Eligible Investor its Participating Eligible

Investor Shares in accordance with Section 5.1(c) hereof in consideration for its Electing Eligible Investor Funding Amount, which Participating Eligible Investor Shares shall be distributed in the manner described in Section 8.2 hereof; and

(ii) Jaguar shall issue to each Funding Backstop Party the number of Backstopped Shares such Funding Backstop Party is entitled to receive in accordance with Section 5.1(c) hereof in consideration for such Funding Backstop Party's Backstop Payment Amount, which Backstopped Shares shall be distributed in the manner described in Section 8.2 hereof.

(g) The releases and injunctions referred to in Section 11 shall become effective.

(h) The directors of Jaguar immediately prior to the Implementation Time shall be deemed to have resigned and the New Board shall be deemed to have been appointed.

(i) The Escrow Agent shall be deemed to be holding the Electing Eligible Investor Funding Amounts and the Backstop Payment Amounts for Jaguar and shall release from escrow such amounts to Jaguar in accordance with the Escrow Agreement.

(j) Jaguar shall pay: (i) all of the reasonable fees and expenses of the Advisors for services rendered to the Ad Hoc Committee up to and including the Implementation Date, (ii) the reasonable accrued and unpaid third party expenses of any of the Consenting Noteholders up to an amount agreed to by the Majority Backstop Parties; (iii) the fees and expenses of Jaguar's financial advisors in connection with the transactions contemplated under this Plan pursuant to their engagement letter, as amended, with Jaguar, subject to a maximum amount agreed to by the Majority Backstop Parties, (iv) the reasonable fees and expenses of Jaguar's Canadian and U.S. legal advisors and legal advisor to the special committee of the board of directors of Jaguar, and (v) amounts owing to the Trustees under Section 6.07 of the 4.5% Convertible Note Indenture and the 5.5% Convertible Note Indenture

ARTICLE 8 – ISSUANCE AND DISTRIBUTION OF NEW COMMON SHARES

8.1 Issuance of New Common Shares

All New Common Shares issued and outstanding as part of the implementation of this Plan shall be deemed to be issued and outstanding as fully-paid and non-assessable. The amount added to the stated capital of the Common Shares as a result of the issuance of New Common Shares in accordance with this Plan shall be equal to the fair market value of the consideration received by Jaguar for the issuance of such New Common Shares.

8.2 Delivery of New Common Shares

(a) Jaguar shall use its commercially reasonable best efforts to cause the delivery of the New Common Shares to be distributed under this Plan no later than the second Business Day following the Implementation Date (or such other date as Jaguar and the Majority Consenting Noteholders may agree).

(b) The Notes are held by DTC (as sole Registered Holder) through its nominee company CEDE & Co. DTC will surrender, or will cause the surrender of, the certificates, if any, representing the Notes to the Trustees in exchange for New Common Shares as contemplated in this Plan.

(c) The delivery of Unsecured Creditor Common Shares to Noteholders in exchange for the Notes will be made through the facilities of DTC to Participant Holders who, in turn will

make delivery of the Unsecured Creditor Common Shares to the Beneficial Noteholders pursuant to standing instructions and customary practices of DTC. If for any reason the New Common Shares are not DTC eligible, then the delivery of the Unsecured Creditor Common Shares shall be made (at the election of Jaguar with the consent of the Monitor and the Majority Consenting Noteholders) either (i) by delivery of a Direct Registration System Advice to each Noteholder or (ii) by delivery of a share certificate to each Noteholder, in either case based on registration instructions received by, or on behalf of, the Monitor from Participant Holders in such manner as the Monitor determines reasonable in the circumstances.

(d) The delivery of Early Consent Shares to Early Consenting Noteholders will be made (at the election of Jaguar with the consent of the Monitor and the Majority Consenting Noteholders) either: (i) by delivery of a Direct Registration System Advice to each Early Consenting Noteholder; or (ii) by delivery of a share certificate to each Early Consenting Noteholder, in any case based on registration and delivery instructions contained in the Rep Letter.

(e) The delivery of Offering Shares, Backstopped Shares, Backstop Commitment Shares and Accrued Interest Offering Shares to the Participating Eligible Investors and the Funding Backstop Parties will be made (at the election of Jaguar with the consent of the Monitor and the Majority Consenting Noteholders) either (i) by delivery of a Direct Registration System Advice to each Participating Eligible Investor and Funding Backstop Party or (ii) by delivery of a share certificate to each Participating Eligible Investor and Funding Backstop Party, in either case based on registration and delivery instructions contained in the Election Forms in the case of Participating Eligible Investors and in the Rep Letter in the case of Funding Backstop Parties.

(f) The delivery of New Common Shares to Affected Unsecured Creditors (other than Noteholders) in consideration for their Affected Unsecured Claims will be made (at the election of Jaguar with the consent of the Monitor and the Majority Consenting Noteholders) either (i) by delivery of a Direct Registration System Advice to each of the Affected Unsecured Creditors (other than Noteholders) or (ii) by delivery of a share certificate to each of the Affected Unsecured Creditors (other than Noteholders), in either case based on registration and delivery instructions received by the Monitor pursuant to the Claims Procedure Order and the Meeting Order.

(g) Jaguar, the Monitor and the Trustees will have no liability or obligation in respect of all deliveries from DTC, or its nominee, to Participant Holders or from Participant Holders to Beneficial Noteholders.

(h) Upon receipt of and in accordance with written instructions from the Monitor, the Trustees shall instruct DTC to, and DTC shall: (i) establish an escrow position representing the respective positions of the Noteholders as of the Implementation Date for the purpose of making distributions to the Noteholders on and after the Implementation Date; and (ii) block any further trading in the Notes, effective as of the close of business on the Distribution Record Date, all in accordance with the customary practices and procedures of DTC.

(i) Unless a securities law legend is not required by US Securities Laws, the Direct Registration System Advices and share certificates delivered pursuant to this Section 8.2 shall have legends affixed thereon in substantially the form provided for in the Rep Letter.

8.3 Undeliverable Distributions

If any distribution of New Common Shares is undeliverable (that is for greater certainty that cannot be

properly registered or delivered to the intended recipient because of inadequate or incorrect registration or delivery information or otherwise) (an "**Undeliverable Distribution**") it shall be delivered to the Escrow Agent, which shall hold such Undeliverable Distribution in escrow, and administered in accordance with this Section 8.3. No further distributions in respect of an Undeliverable Distribution shall be made unless and until the Escrow Agent is notified by the applicable Person of its current address and/or registration information, as applicable, at which time the Escrow Agent shall make such distributions to such Person. All claims for Undeliverable Distributions must be made on or before the date that is the 365th day following the Implementation Date, after which the right to receive distributions under this Plan in respect of such an Undeliverable Distribution shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred without any compensation therefor, notwithstanding any federal, provincial, or state laws to the contrary, and any New Common Shares that are the subject of such Undeliverable Distribution shall be cancelled.

ARTICLE 9 – RELEASE OF FUNDS FROM ESCROW

9.1 Release of Funds from Escrow

The Escrow Agent shall release any Electing Eligible Investor Funding Amounts and Backstop Payment Amounts, or portions thereof, as follows and in accordance with the terms of the Escrow Agreement:

(a) If an Electing Eligible Investor deposits less than the full amount of its Electing Eligible Investor Funding Amount by the Electing Eligible Investor Funding Deadline, such party shall cease to be an Electing Eligible Investor and the Escrow Agent shall return such funds so deposited by such Electing Eligible Investor to such Electing Eligible Investor in accordance with Section 4.1(e) hereof.

(b) On the Implementation Date, the Escrow Agent shall release from escrow to Jaguar, at the applicable time, the applicable Electing Eligible Investor Funding Amounts and Backstop Payment Amounts pursuant to and in accordance with Section 7.4 hereof.

(c) If this Plan is terminated for any reason or not implemented in accordance with the terms hereof by the Outside Date, the Escrow Agent shall as soon as practicable return all Electing Eligible Investor Funding Amounts and Backstop Payment Amounts to the applicable Participating Eligible Investors and Funding Backstop Parties.

(d) If any Electing Eligible Investor or Funding Backstop Party provides to the Escrow Agent more than its applicable Electing Eligible Investor Funding Amount or Backstop Payment Amount under this Plan, the Escrow Agent shall as soon as practicable return any excess funds to such Electing Eligible Investor or Funding Backstop Party.

ARTICLE 10 – PROCEDURE FOR DISTRIBUTIONS REGARDING DISPUTED DISTRIBUTION CLAIMS

10.1 No Distribution Pending Allowance

An Affected Unsecured Creditor holding a Disputed Distribution Claim will not be entitled to receive a distribution under the Plan in respect of such Disputed Distribution Claim or any portion thereof unless and until, and then only to the extent that, such Disputed Distribution Claim becomes an Allowed Affected Unsecured Claim.

10.2 Distributions After Disputed Distribution Claims Resolved

(a) Distributions of Unsecured Creditor Common Shares in relation to a Disputed Distribution Claim of an Affected Unsecured Creditor will be held by the Applicant, in a segregated

account constituting the Disputed Distribution Claims Reserve, for the benefit of the Affected Unsecured Creditors with Allowed Affected Unsecured Claims until the final determination of the Disputed Distribution Claim in accordance with the Claims Procedure Order and this Plan.

(b) To the extent that any Disputed Distribution Claim becomes an Allowed Affected Unsecured Claim in accordance with this Plan, the Applicant shall distribute to the holder of such Allowed Affected Unsecured Claim, that number of Unsecured Creditor Common Shares from the Disputed Distribution Claims Reserve equal to such Affected Unsecured Creditor's Pro Rata Share of Unsecured Creditor Common Shares.

(c) On the date that all Disputed Distribution Claims have been finally resolved in accordance with the Claims Procedure Order and any required distributions contemplated in section (b) have been made, if (i) the aggregate number of Unsecured Creditor Common Shares remaining in the Disputed Distribution Claims Reserve is less than 14,000, the Applicant shall cancel those Unsecured Creditor Common Shares; or (ii) the aggregate number of Unsecured Creditor Common Shares remaining in the Disputed Distribution Claims Reserve is equal to or greater than 14,000, the Applicant shall distribute such Unsecured Creditor Common Shares to the Affected Unsecured Creditors with Allowed Affected Unsecured Claims such that after giving effect to such distributions each such Affected Unsecured Creditor has received its applicable Pro Rata Share of such Unsecured Creditor Common Shares.

ARTICLE 11– RELEASES

11.1 Release

(a) On the Implementation Date, the following shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred:

(i) all Affected Unsecured Claims;

(ii) all Equity Claims;

(iii) all Director/Officer Claims other than Continuing Other Director/Officer Claims and Non-Released Director/Officer Claims and also (for greater certainty) excluding Section 5.1(2) Director/Officer Claims and any Agreed Excluded Director/Officer Litigation Claims; provided that any Section 5.1(2) Director/Officer Claims and any Agreed Excluded Director/Officer Litigation Claims shall be limited to recovery from any insurance proceeds payable in respect of such Section 5.1(2) Director/Officer Claims or Agreed Excluded Director/Officer Litigation Claims, as applicable, pursuant to the Director/Officer Insurance Policies, and any Persons with any such Section 5.1(2) Director/Officer Claims or Agreed Excluded Director/Officer Litigation Claims shall have no right to, and shall not, make any claim or seek any recoveries from any Person (including Jaguar, any of its Subsidiaries or any Director or Officer), other than enforcing such Person's rights to be paid from the proceeds of a Director/Officer Insurance Policy by the applicable insurer(s); provided that nothing in this Plan shall prejudice, compromise, release or otherwise affect any right or defence of any insurer in respect of a Director/Officer Insurance Policy or any insured in respect of a Section 5.1(2) Director/Officer Claim or Agreed Excluded Director/Officer Litigation Claim; and

(iv) all Director/Officer Indemnity Claims.

(b) On the Implementation Date, the Applicant, the Subsidiaries, and each of their respective financial advisors, legal counsel and agents, the Monitor, legal counsel to the Monitor, and legal counsel to the special committee of the board of directors of Jaguar (collectively, the "**Released Parties**") shall be released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, expenses, executions, liens and other recoveries on account of any indebtedness, liability, obligation, demand or cause of action of whatever nature that any Person (including any Person who may claim contribution or indemnification against or from them) may be entitled to assert, whether known or unknown, matured or unmatured, direct, indirect or derivative, 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 Implementation Date that are in any way relating to, arising out of or in connection with (i) the restructuring, disclaimer, resiliation, breach or termination of any contract, lease, agreement or other arrangement, whether written or oral; (ii) the business and affairs of the Applicant or the Subsidiaries; (iii) the Notes; (iv) the Indentures; (v) the Existing Shares; (vi) the Existing Share Options; (vii) the Shareholder Rights Plan; (viii) Equity Claims; (ix) the Support Agreement; (x) the Backstop Agreement; (xi) this Plan; or (xii) the CCAA Proceedings; provided, however, that nothing in this Section 11.1 will release or discharge:

(i) the Applicant or any of the Subsidiaries from or in respect of (x) any Excluded Claim, (y) its obligation to Affected Unsecured Creditors under this Plan or under any Order, or (z) its obligations under the Backstop Agreement or the Support Agreement; provided that any Agreed Excluded Jaguar Litigation Claims shall be limited to recovery from any insurance proceeds payable in respect of such Agreed Excluded Jaguar Litigation Claims pursuant to the Jaguar Insurance Policies, and any Persons with any such Agreed Excluded Jaguar Litigation Claims against the Applicant shall have no right to, and shall not, make any claim or seek any recoveries from any Person (including Jaguar, any of its Subsidiaries or any Director or Officer), other than enforcing such Person's rights to be paid from the proceeds of a Jaguar Insurance Policy by the applicable insurer(s); provided further that nothing in this Plan shall prejudice, compromise, release or otherwise affect any right or defence of any insurer in respect of a Jaguar Insurance Policy or any insured in respect of an Agreed Excluded Jaguar Litigation Claim; or

(ii) a Released Party if the Released Party is adjudged by the express terms of a judgment rendered on a final determination on the merits to have committed fraud or wilful misconduct.

(c) At the Implementation Time, each of the Noteholders, the Ad Hoc Committee, the Trustees, and each of their respective present and former shareholders, officers, directors, and the Advisors and the Trustees' counsel (collectively, the "**Noteholder Released Parties**") will be released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, expenses, executions, liens and other recoveries on account of any indebtedness, liability, obligation, demand or cause of action of whatever nature that any Person (including any Person who may claim contribution or indemnification against or from them) may be entitled to assert whether known or unknown, matured or unmatured, direct, indirect or derivative, 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 Implementation Date that are in any way relating to, arising out of or in connection with: (i) the Notes; (ii)

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the Indentures; (iii) the Existing Shares; (iv) the Existing Share Options; (v) the Shareholder Rights Plan; (vi) Equity Claims; (vii) the Support Agreement; (viii) the Backstop Agreement; (ix) this Plan; or (x) the CCAA Proceedings, and any other matters or actions related directly or indirectly to the foregoing; provided that nothing in this Section 11.1(c) will release or discharge a Noteholder Released Party in respect of their obligations under this Plan, the Backstop Agreement, the Support Agreement, any Election Form and provided further that nothing in this Section 11.1(c) will release or discharge a Noteholder Released Party if the Noteholder Released Party is adjudged by the express terms of a judgment rendered on a final determination on the merits to have committed fraud or wilful misconduct.

11.2 Injunctions

All Persons (regardless of whether or not such Persons are Affected Unsecured Creditors) are permanently and forever barred, estopped, stayed and enjoined, on and after the Implementation Time, with respect to any and all Released Claims or Noteholder Released Claims, from (i) 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, the Named Directors and Officers and the Noteholder Released Parties; (ii) 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, the Named Directors and Officers and Noteholder Released Parties or their property; (iii) 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 for breach of trust or breach of fiduciary duty 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, the Named Directors and Officers and Noteholder Released Parties; (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind against the Released Parties, the Named Directors and Officers and Noteholder Released Parties or their property; or (v) taking any actions to interfere with the implementation or consummation of this Plan; provided, however, that the foregoing shall not apply to the enforcement of any obligations under this Plan. For greater certainty, the provisions of this Section 11.2 shall apply to Section 5.1(2) Director/Officer Claims, Agreed Excluded Director/Officer Litigation Claims and Agreed Excluded Jaguar Litigation Claims in the same manner as Released Claims, except to the extent that the rights of a holder of such Section 5.1(2) Director/Officer Claims, Agreed Excluded Director/Officer Litigation Claims and/or Agreed Excluded Jaguar Litigation Claims to enforce such claims against an insurer in respect of a Directors/Officer Insurance Policy and/or a Jaguar Insurance Policy, as applicable, are expressly preserved pursuant to Section 11.1(a)(iii) and/or Section 11.1(b)(i) hereof.

11.3 Timing of Releases and Injunctions

All releases and injunctions set forth in this Article 11 shall become effective on the Implementation Date at the time or times and in the manner set forth in Section 7.4 hereof.

11.4 Knowledge of Claims

Each Person to which Section 11.1 hereof applies shall be deemed to have granted the releases set forth in Section 11.1 notwithstanding that it may hereafter discover facts in addition to, or different from, those which it now knows or believes to be true, and without regard to the subsequent discovery or existence of such different or additional facts, and such party expressly waives any and all rights that it may have under any applicable law which would limit the effect of such releases to those Claims or causes of action known or suspected to exist at the time of the granting of the release.

ARTICLE 12 – COURT SANCTION, CONDITIONS PRECEDENT AND IMPLEMENTATION

12.1 Application for Sanction Order

If this Plan is approved by the Required Majority, the Applicant shall apply for the Sanction Order on the date set for the hearing for the Sanction Order or such later date as the Court may set.

12.2 Sanction Order

The Sanction Order shall, among other things, declare that:

(a) (i) this Plan has been approved by the Required Majority entitled to vote at the Meeting in conformity with the CCAA; (ii) the Applicant acted in good faith and has complied with the provisions of the CCAA and the Orders made in the CCAA Proceedings in all respects; (iii) the Court is satisfied that the Applicant has not done nor purported to do anything that is not authorized by the CCAA; and (iv) this Plan and the transactions contemplated by it are fair and reasonable;

(b) this Plan (including the arrangements and releases set out herein) has been sanctioned and approved pursuant to section 6 of the CCAA and will be binding and effective as herein set out on the Applicant, all Affected Unsecured Creditors, all holders of Equity Claims and all other Persons as provided for in this Plan or in the Sanction Order;

(c) subject to the performance by the Applicant of its obligations under this Plan, and except to the extent expressly contemplated by this Plan or the Sanction Order, all obligations or agreements to which the Applicant is a party immediately prior to the Implementation Time, will be and shall remain in full force and effect as at the Implementation Date, unamended except as they may have been amended by agreement of the parties subsequent to the Filing Date, and no Person who is a party to any such obligations or agreements shall, following the Implementation Date, accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, option, dilution or other remedy) or make any demand under or in respect of any such obligation or agreement, by reason of:

(i) any defaults or events of default arising as a result of the insolvency of the Applicant prior to the Implementation Date;

(ii) any change of control of the Applicant arising from implementation of this Plan (except in respect of existing, written senior officer and employee employment agreements of Persons who remain senior officers and employees of Jaguar as of the Implementation Date and any payments due under such agreements, which may only be waived by the senior officers and employees who are parties to such agreements);

(iii) the fact that the Applicant has sought or obtained relief under the CCAA or that this Plan has been implemented by the Applicant;

(iv) the effect on the Applicant of the completion of any of the transactions contemplated by this Plan;

(v) any compromises or arrangements effected pursuant to this Plan; or

(vi) any other event(s) which occurred on or prior to the Implementation Date which

would have entitled any Person to enforce rights and remedies, subject to any express provisions to the contrary in any agreements entered into with the Applicant after the Filing Date.

For greater certainty, nothing in this paragraph 12.2(c) shall waive, compromise or discharge any obligations of the Applicant in respect of any Excluded Claim;

(d) the commencement or prosecution, whether directly, indirectly, derivatively or otherwise, of any demands, claims, actions, counterclaims, suits, judgment, or other remedy or recovery as described in Section 11.2 hereof shall be permanently enjoined;

(e) the releases effected by this Plan shall be approved, and declared to be binding and effective as of the Implementation Date upon all Affected Unsecured Creditors, holders of Equity Claims and all other Persons affected by this Plan and shall enure to the benefit of all such Persons;

(f) from and after the Implementation Date, all Persons with an Affected Unsecured Claim shall be deemed to (i) have consented and agreed to all of the provisions of this Plan as an entirety; and (ii) each Affected Unsecured Creditor shall be deemed to have granted, and executed and delivered to the Applicant all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out this Plan in its entirety.

12.3 Conditions to Plan Implementation

The implementation of this Plan shall be conditional upon the fulfillment, satisfaction or waiver (to the extent permitted by Section 12.4 hereof) of the following conditions:

(a) The Court shall have granted the Sanction Order, the operation and effect of which shall not have been stayed, reversed or amended, and in the event of an appeal or application for leave to appeal, final determination shall have been made by the applicable appellate court;

(b) No Applicable Law shall have been passed and become effective, the effect of which makes the consummation of this Plan illegal or otherwise prohibited;

(c) All necessary judicial consents and any other necessary or desirable third party consents, if any, to deliver and implement all matters related to this Plan shall have been obtained;

(d) All documents necessary to give effect to all material provisions of this Plan (including the Sanction Order, this Plan, the Share Offering and the Common Share Consolidation and all documents related thereto) shall have been executed and/or delivered by all relevant Persons in form and substance satisfactory to the Applicant and the Majority Consenting Noteholders;

(e) All required stakeholder, regulatory and Court approvals, consents, waivers and filings shall have been obtained or made, as applicable, on terms satisfactory to the Majority Consenting Noteholders and the Company, each acting reasonably and in good faith;

(f) All senior officer and employee employment agreements shall have been modified to reflect the revised capital structure of Jaguar following implementation of the Plan, including, without limitation, to provide that the implementation of the Plan does not constitute a change of control under such employment agreements, and no change of control payments shall be owing or payable to Jaguar's officers or employees in

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connection with the implementation of the Plan;

(g) The DSU Plan, the RSU Plan and the SAR Plan shall have been addressed in a manner acceptable to Jaguar and the Majority Consenting Noteholders;

(h) The Articles of Reorganization shall have been filed under the OBCA;

(i) All material filings under applicable Laws shall have been made and any material regulatory consents or approvals that are required in connection with this Plan shall have been obtained and, in the case of waiting or suspensory periods, such waiting or suspensory periods shall have expired or been terminated;

(j) The New Common Shares shall have been conditionally approved for listing on the TSX, the TSXV or such other Designated Offshore Securities Market acceptable to the Majority Consenting Noteholders without any vote or approval of the Existing Shareholders, subject only to receipt of customary final documentation;

(k) All conditions to implementation of this Plan set out in the Support Agreement (which for greater certainty include the conditions set out in sections 9(a), (b) and (c) of the Support Agreement) shall have been satisfied or waived in accordance with their terms and the Support Agreement shall not have been terminated;

(l) All conditions to implementation of this Plan set out in the Backstop Agreement (which for greater certainty include the conditions set out in sections 7(a), (b) and (c) of the Backstop Agreement) shall have been satisfied or waived in accordance with their terms, and the Backstop Agreement shall not have been terminated;

(m) The issuance of the Unsecured Creditor Common Shares and Early Consent Shares shall be exempt from registration under the US Securities Act pursuant to the provisions of section 3(a)(10) of the US Securities Act; and

(n) No insurer under a Director/Officer Insurance Policy or a Jaguar Insurance Policy shall have an unresolved objection, filed in the CCAA Proceedings, to the implementation of this Plan.

12.4 Waiver of Conditions

The Applicant and the Majority Consenting Noteholders may at any time and from time to time waive the fulfillment or satisfaction, in whole or in part, of the conditions set out herein, to the extent and on such terms as such parties may agree to provided however that the conditions set out in Section 12.3(a) cannot be waived and that the conditions set out in Section 12.3(l) can only be waived by the Applicant and the Majority Backstop Parties.

12.5 Implementation Provisions

If the conditions contained in Section 12.3 are not satisfied or waived (to the extent permitted under Section 12.4) by the Outside Date, unless the Applicant and the Majority Consenting Noteholders agree in writing to extend such period, this Plan and the Sanction Order shall cease to have any further force or effect and will not be binding on any Person.

12.6 Monitor's Certificate of Plan Implementation

Upon written notice from the Applicant (or counsel on its behalf) and Goodmans LLP on behalf of the Majority Consenting Noteholders and the Majority Backstop Parties to the Monitor that the conditions to Plan implementation set out in Section 12.3, have been satisfied or waived, the Monitor shall, as soon as

possible following receipt of such written notice, deliver to the Applicant and Goodmans LLP on behalf of the Majority Consenting Noteholders and the Majority Backstop Parties, and file with the Court, a certificate which states that all conditions precedent set out in Section 12.3 have been satisfied or waived and that the Implementation Date has occurred.

ARTICLE 13 – GENERAL

13.1 Waiver of Defaults

Subject to the performance by the Applicant of its obligations under this Plan, and except to the extent expressly contemplated by this Plan or the Sanction Order, no Person who is a party to any obligations or agreements with the Applicant or any Subsidiary shall, following the Implementation Date, accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, option, dilution or other remedy) or make any demand under or in respect of any such obligation or agreement, by reason of:

(a) any defaults or events of default arising as a result of the insolvency of the Applicant prior to the Implementation Date;

(b) any change of control of the Applicant or any Subsidiary arising from implementation of this Plan (except in respect of existing, written senior officer and employee employment agreements of Persons who remain senior officers and employees of Jaguar as of the Implementation Date and any payments due under such agreements, which may only be waived by the senior officers and employees who are parties to such agreements);

(c) the fact that the Applicant has sought or obtained relief under the CCAA or that this Plan has been implemented by the Applicant;

(d) the effect on the Applicant or any Subsidiary of the completion of any of the transactions contemplated by this Plan;

(e) any compromises or arrangements effected pursuant to this Plan; or

(f) any other event(s) which occurred on or prior to the Implementation Date which would have entitled any Person to enforce rights and remedies, subject to any express provisions to the contrary in any agreements entered into with the Applicant after the Filing Date.

For greater certainty, nothing in this paragraph 13.1 shall waive, compromise or discharge any obligations of the Applicant in respect of any Excluded Claim.

13.2 Deeming Provisions

In this Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

13.3 Non-Consummation

The Applicant reserves the right to revoke or withdraw this Plan at any time prior to the Implementation Date, with the consent of the Monitor and the Majority Consenting Noteholders.

If the Implementation Date does not occur on or before the Outside Date (as the same may be extended in accordance with the terms hereof and of the Support Agreement), or if this Plan is otherwise withdrawn in accordance with its terms: (a) this Plan shall be null and void in all respects, and (b) nothing contained in this Plan, and no acts taken in preparation for consummation of this Plan, shall (i) constitute or be

deemed to constitute a waiver or release of any Claims by or against the Jaguar Group, their respective successors or any other Person; (ii) prejudice in any manner the rights of the Jaguar Group, their respective successors or any other Person in any further proceedings involving the Jaguar Group or their respective successors; or (iii) constitute an admission of any sort by the Jaguar Group, their respective successors or any other Person.

13.4 Modification of Plan

(a) The Applicant may, at any time and from time to time, amend, restate, modify and/or supplement this Plan with the consent of the Monitor and the Majority Consenting Noteholders, provided that: any such amendment, restatement, modification or supplement must be contained in a written document that is filed with the Court and:

(i) if made prior to or at the Meeting: (A) the Monitor, the Applicant or the Chair (as defined in the Meeting Order) shall communicate the details of any such amendment, restatement, modification and/or supplement to Affected Unsecured Creditors and other Persons present at the Meeting prior to any vote being taken at the Meeting; (B) the Applicant shall provide notice to the service list of any such amendment, restatement, modification and/or supplement and shall file a copy thereof with the Court forthwith and in any event prior to the Court hearing in respect of the Sanction Order; and (C) the Monitor shall post an electronic copy of such amendment, restatement, modification and/or supplement on the Monitor's Website forthwith and in any event prior to the Court hearing in respect of the Sanction Order; and

(ii) if made following the Meeting: (A) the Applicant shall provide notice to the service list of any such amendment, restatement, modification and/or supplement and shall file a copy thereof with the Court; (B) the Monitor shall post an electronic copy of such amendment, restatement, modification and/or supplement on the Monitor's Website; and (C) such amendment, restatement, modification and/or supplement shall require the approval of the Court following notice to the Affected Unsecured Creditors.

(b) Notwithstanding Section 13.4(a) hereof, any amendment, restatement, modification or supplement may be made by the Applicant: (i) if prior to the date of the Sanction Order, with the consent of the Monitor and the Majority Consenting Noteholders; and (ii) if after the date of the Sanction Order, with the consent of the Monitor and the Majority Consenting Noteholders and upon approval by the Court, provided in each case that it concerns a matter that, in the opinion of the Applicant, acting reasonably, is of an administrative nature required to better give effect to the implementation of this Plan and the Sanction Order or to cure any errors, omissions or ambiguities and is not materially adverse to the financial or economic interests of the Affected Unsecured Creditors.

(c) Any amended, restated, modified or supplementary plan or plans of compromise filed with the Court and, if required by this section, approved by the Court, shall, for all purposes, be and be deemed to be a part of and incorporated in this Plan.

13.5 Severability of Plan Provisions

If, prior to the Implementation Time, any term or provision of this Plan is held by the Court to be invalid, void or unenforceable, at the request of the Applicant, made with the consent of the Majority Consenting Noteholders (acting reasonably), the Court shall have the power to either (a) sever such term or provision from the balance of this Plan and provide the Applicant and the Majority Consenting Noteholders with the option to proceed with the implementation of the balance of this Plan as of and with effect from the Implementation Time, or (b) alter and interpret such term or provision to make it valid or enforceable to

the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted, provided that the Majority Consenting Noteholders have approved such alteration or interpretation, acting reasonably. Notwithstanding any such holding, alteration or interpretation, and provided that this Plan is implemented, the remainder of the terms and provisions of this Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation.

13.6 Preservation of Rights of Action

Except as otherwise provided in this Plan or in the Sanction Order, or in any contract, instrument, release, indenture or other agreement entered into in connection with this Plan, following the Implementation Date, the Applicant will retain and may enforce, sue on, settle, or compromise (or decline to do any of the foregoing) all claims, rights or causes of action, suits and proceedings, whether in law or in equity, whether known or unknown, that the Applicant may hold against any Person or entity without further approval of the Court.

13.7 Responsibilities of Monitor

FTI Consulting Canada Inc. is acting in its capacity as Monitor in the CCAA Proceedings with respect to the Applicant and this Plan and not in its personal or corporate capacity, and will not be responsible or liable for any obligations of the Applicant under the Plan or otherwise.

13.8 Notices

Any notice or other communication to be delivered hereunder must be in writing and refer to this Plan and may, as hereinafter provided, be made or given by personal delivery, ordinary mail, email or by facsimile addressed to the respective Parties as follows:

If to Jaguar or the Subsidiaries, at:

(a) c/o Jaguar Mining Inc.
67 Yonge Street, Suite 1203
Toronto, Ontario M5E 1J8

Attention: David Petroff
Email: david.petroff@jaguarmining.com

with a required copy (which shall not be deemed notice) to:

Norton Rose Fulbright Canada LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street P.O. Box 84
Toronto, Ontario M5J 2Z4

Attention: Walied Soliman and Evan Cobb
Fax: (416) 216-3930
Email: walied.soliman@nortonrosefulbright.com
evan.cobb@nortonrosefulbright.com

(b) If to the Ad Hoc Committee of Noteholders:

Goodmans LLP
Suite 3400
333 Bay Street
Bay Adelaide Centre
Toronto, Ontario M5H 2S7

Attention:	Rob Chadwick and Melaney Wagner
Fax:	(416) 979-1234
Email	rchadwick@goodmans.ca
	mwagner@goodmans.ca

(c) If to the Monitor, at:

FTI Consulting Canada Inc.
TD Waterhouse Tower
Suite 2010
79 Wellington Street
Toronto, Ontario M5K 1G8

Attention:	Greg Watson and Jodi Porepa
Fax:	(416) 649-8101
Email:	Greg.Watson@fticonsulting.com
	Jodi.Porepa@fticonsulting.com

With a required copy (which shall not be deemed notice) to:

Osler, Hoskin & Harcourt LLP
Box 50
1 First Canadian Place
Toronto, Ontario M5X 1B8

Attention:	Marc Wasserman
Fax:	(416) 862-6666
Email:	mwasserman@osler.com

or to such other address as any Party may from time to time notify the others in accordance with this Section 13.8. Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or emailing, provided that such day in either event is a Business Day and the communication is so delivered, faxed or emailed before 5:00 p.m. on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

13.9 Consent of Majority Consenting Noteholders or Majority Backstop Parties

For the purposes of this Plan, any matter requiring the agreement, waiver, consent or approval of the Majority Consenting Noteholders or the Majority Backstop Parties shall be deemed to have been agreed to, waived, consented to or approved by such Majority Consenting Noteholders or Majority Backstop Parties if such matter is agreed to, waived, consented to or approved in writing by Goodmans LLP, provided that Goodmans LLP expressly confirms in writing (which can be by way of e-mail) that it is providing such agreement, consent, waiver or approval on behalf of the Majority Consenting Noteholders or the Majority Backstop Parties, as applicable.

13.10 Paramountcy

From and after the Implementation Time on the Implementation Date, any conflict between:

(a) this Plan; and

(b) the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed or implied, of any contract, mortgage, security agreement, indenture, trust indenture, note, loan agreement, commitment letter, agreement for sale, lease or other agreement, written or oral and any and all amendments or supplements thereto existing between any Person and the Applicant and/or the Subsidiaries as at the Implementation Date,

will be deemed to be governed by the terms, conditions and provisions of this Plan and the Sanction Order, which shall take precedence and priority.

13.11 Further Assurances

Notwithstanding that the transactions and events set out herein will occur and be deemed to occur in the order set out in this Plan without any further act or formality, each of the Persons named or referred to in, or subject to, this Plan will make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required by any of them to carry out the full intent and meaning of this Plan and to give effect to the transactions contemplated herein.

DOCSTOR: 2926319\2A

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Court File No. CV14-10781-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE REGIONAL	)	**TUESDAY, THE 27TH**
	)	
SENIOR JUSTICE MORAWETZ	)	**DAY OF JANUARY, 2015**

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 AND ARRANGEMENT OF CLINE MINING CORPORATION, NEW ELK COAL COMPANY LLC AND NORTH CENTRAL ENERGY COMPANY

PLAN SANCTION ORDER

THIS MOTION made by Cline Mining Corporation ("**Cline**"), New Elk Coal Company LLC ("**New Elk**") and North Central Energy Company ("**North Central**" and, together with Cline and New Elk, the "**Applicants**") for an Order (the "**Plan Sanction Order**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), sanctioning the Amended and Restated Plan of Compromise and Arrangement dated January 20, 2015, which is attached as Schedule "A" hereto (and as it may be further amended, varied or supplemented from time to time in accordance with the terms thereof, the "**Plan**"), was heard on January 27, 2015 at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Affidavit of Matthew Goldfarb sworn January 21, 2015 (the "**Goldfarb Affidavit**"), filed, the second report (the "**Second Report**") and third report (the "**Third Report**") of FTI Consulting Canada Inc., in its capacity as monitor of the Applicants (the "**Monitor**"), filed, and on hearing the submissions of counsel for each of the Applicants, the Monitor, Marret Asset Management Inc. (on behalf of the Applicants' secured noteholders), and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service, filed.

DEFINED TERMS

1. **THIS COURT ORDERS** that any capitalized terms not otherwise defined in this Plan Sanction Order shall have the meanings ascribed to such terms in the Plan and the Meetings Order granted by this Court on December 3, 2014 (the "**Meetings Order**"), as applicable.

SERVICE, NOTICE AND MEETING

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record in support of this motion, the Second Report and the Third Report be and are hereby abridged and validated so that the motion is properly returnable today and service upon any interested party other than those parties served is hereby dispensed with.

3. **THIS COURT ORDERS AND DECLARES** that there has been good and sufficient notice, service and delivery of the Meetings Order, the Information Package and the Plan to all Persons upon which notice, service and delivery was required, and that the Meetings were duly convened and held on January 21, 2015, in conformity with the CCAA and the Meetings Order.

SANCTION OF THE PLAN

4. **THIS COURT DECLARES** that the relevant Voting Classes of Affected Creditors of the Applicants are the Secured Noteholders Class, the Affected Unsecured Creditors Class and the WARN Act Plaintiffs Class and that the Plan has been approved by the Required Majorities of Affected Creditors in each Voting Class, as required by the Meetings Order, and in conformity with the CCAA.

5. **THIS COURT DECLARES** that the activities of the Applicants have been in compliance with the provisions of the CCAA, the Initial Order granted by this Court on December 3, 2014 (the "**Initial Order**"), the Claims Procedure Order granted by this Court on December 3, 2014 (the "**Claims Procedure Order**") and the Meetings Order (together with the Initial Order and the Claims Procedure Order, the "**Orders**"), the Court is satisfied that the Applicants have not done or purported to do anything that is not

authorized by the CCAA and the Plan and the transactions contemplated thereby are fair and reasonable.

6. **THIS COURT ORDERS AND DECLARES** that the Plan is hereby sanctioned and approved pursuant to section 6 of the CCAA.

PLAN IMPLEMENTATION

7. **THIS COURT ORDERS** that each of the Applicants and the Monitor are authorized and directed to take all steps and actions, and do all things, necessary or appropriate to implement the Plan in accordance with its terms and to enter into, execute, deliver, complete, implement and consummate all of the steps, transactions, distributions, deliveries, allocations and agreements contemplated by the Plan. All payments and distributions to be made by the Applicants to the WARN Act Plaintiffs pursuant to the Plan shall be made to Class Action Counsel, and Class Action Counsel shall allocate and distribute such payments in accordance with the Plan. Neither the Applicants nor the Monitor shall incur any liability as a result of acting in accordance with the terms of the Plan and the Plan Sanction Order.

8. **THIS COURT ORDERS AND DECLARES** that the Plan and all associated steps, compromises, transactions, arrangements, releases and reorganizations effected thereby shall be deemed to be implemented, binding and effective in accordance with the provisions of the Plan as of the Plan Implementation Date, and the steps required to implement the Plan, including without limitation the release of all Affected Claims, Released Director/Officer Claims and Released Claims in accordance with the terms of the Plan, shall be deemed to occur and to take effect in the sequential order and at the times contemplated in section 5.3 of the Plan, without any further act or formality, on the Plan Implementation Date, beginning at the Effective Time.

9. **THIS COURT ORDERS** that, pursuant to section 6(2) of the CCAA, the Articles of Cline shall be amended on the Plan Implementation Date in accordance with the provisions of, and as required to implement, the Plan. Any fractional Cline Common Shares held by any holder of Cline Common Shares immediately following the

consolidation of the Cline Common Shares referred to in section 5.3(h) of the Plan shall be cancelled without any liability, payment or other compensation in respect thereof and all Equity Interests (for greater certainty, not including any Cline Common Shares that remain issued and outstanding immediately following the cancellation of fractional interests pursuant to section 5.3(i) of the Plan) shall be cancelled without any liability, payment or other compensation in respect thereof.

10. **THIS COURT ORDERS** that upon the satisfaction or waiver of the conditions precedent set out in section 9.1 of the Plan in accordance with the terms of the Plan, as confirmed by the Applicants and Marret or their counsel in writing, the Monitor is authorized and directed to deliver to counsel to the Applicants a certificate substantially in the form attached hereto as Schedule "B" (the "**Monitor's Certificate**") signed by the Monitor, certifying that the Plan Implementation Date has occurred and that the Plan is effective in accordance with its terms and the terms of the Plan Sanction Order. The Monitor shall file the Monitor's Certificate with this Court and the U.S. Court promptly following the Plan Implementation Date.

11. **THIS COURT ORDERS** that, subject to the payment of any amounts secured by the Charges that remain owing on the Plan Implementation Date, if any, each of the Charges shall be terminated, discharged and released on the Plan Implementation Date.

EFFECT OF PLAN AND CCAA ORDERS

12. **THIS COURT ORDERS** that, from and after the Plan Implementation Date, the Plan shall inure to the benefit of and be binding upon the Applicants, the Released Parties, the Affected Creditors, the Directors and Officers, any Person with a Director/Officer Claim or a Released Claim, and all other Persons and parties named or referred to in or affected by the Plan, including, without limitation, their respective heirs, administrators, executors, legal representatives, successors, and assigns.

13. **THIS COURT ORDERS** that, without limiting the provisions of the Claims Procedure Order, any Person that did not file a Proof of Claim, a Notice of Dispute or a Notice of Dispute of Revision or Disallowance, as applicable, by the Claims Bar Date, the

Restructuring Period Claims Bar Date or such other bar date provided for in the Claims Procedure Order, as applicable, whether or not such Person received direct notice of the claims process established by the Claims Procedure Order, shall be and is hereby forever barred from making any Claim or any Director/Officer Claim and shall not be entitled to any consideration under the Plan, and such Person's Claim or Director/Officer Claim, as applicable, shall be and is hereby forever barred and extinguished.

14. **THIS COURT ORDERS AND DECLARES** that, subject to performance by the Applicants of their obligations under the Plan and except as provided in the Plan, all obligations, agreements or leases to which any of the Applicants is a party on the Plan Implementation Date shall be and remain in full force and effect, unamended, as at the Plan Implementation Date and no party to any such obligation or agreement shall on or following the Plan Implementation Date, accelerate, terminate, refuse to renew, rescind, refuse to perform or otherwise disclaim or resiliate its obligations thereunder, or enforce or exercise (or purport to enforce or exercise) any right or remedy under or in respect of any such obligation or agreement, by reason: (i) that the Applicants sought or obtained relief or have taken steps in connection with the Plan or under the CCAA; (ii) of any default or event of default arising as a result of the financial condition or insolvency of the Applicants on or prior to the Plan Implementation Date; (iii) of the effect upon the Applicants of the completion of any of the transactions contemplated under the Plan; or (iv) of any compromises, settlements, restructurings, recapitalizations or reorganizations effected pursuant to the Plan.

THE MONITOR

15. **THIS COURT ORDERS** that the activities and conduct of the Monitor prior to the date hereof in relation to the Applicants, the CCAA Proceedings, and in conducting and administering the Meetings on January 21, 2015 be and are hereby ratified and approved.

16. **THIS COURT ORDERS** that the pre-filing report of the Monitor dated December 2, 2015, the first report of the Monitor dated December 16, 2015 and the Second Report, and the conduct and activities of the Monitor as described therein are hereby approved.

17. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA and the powers provided to the Monitor herein and in the Orders and the Plan, shall be and is hereby authorized, directed and empowered to perform its functions and fulfill its obligations under the Plan to facilitate the implementation of the Plan.

18. **THIS COURT ORDERS** that the Monitor has satisfied all of its obligations up to and including the date of this Plan Sanction Order, and that: (i) in carrying out the terms of this Plan Sanction Order and the Plan, the Monitor shall have all the protections given to it by the CCAA, the Initial Order, the Meetings Order, the Claims Procedure Order, and as an officer of the Court, including the stay of proceedings in its favour; (ii) the Monitor shall incur no liability or obligation as a result of carrying out the provisions of this Plan Sanction Order and/or the Plan and in performing its duties as Monitor in the CCAA Proceedings, save and except for any gross negligence or wilful misconduct on its part; (iii) the Monitor shall be entitled to rely on the books and records of the Applicants and any information provided by the Applicants without independent investigation; and (iv) the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information, or with respect to any such information disclosed to or provided by the Monitor, including with respect to reliance thereon by any Person.

19. **THIS COURT ORDERS** that as of the Effective Time on the Plan Implementation Date, the Monitor shall be discharged and released from its duties other than those obligations, duties and responsibilities: (i) necessary or required to give effect to the terms of the Plan and this Plan Sanction Order, (ii) in relation to the claims procedure and all matters relating thereto as set out in the Claims Procedure Order, and (iii) in connection with the completion by the Monitor of all other matters for which it is responsible in connection with the Plan or pursuant to the Orders of this Court made in the CCAA Proceedings.

20. **THIS COURT ORDERS** that upon completion by the Monitor of its duties in respect of the Applicants pursuant to the CCAA, the Plan and the Orders, the Monitor may file with

the Court a certificate stating that all of its duties in respect of the Applicants pursuant to the CCAA, the Plan and the Orders have been completed and thereupon, FTI Consulting Canada Inc. shall be deemed to be discharged from its duties as Monitor and released of all claims relating to its activities as Monitor.

BOARD OF DIRECTORS OF CLINE

21. **THIS COURT ORDERS AND DECLARES** that those persons listed on a certificate to be filed with the Court by the Applicants prior to the Plan Implementation Date shall be deemed to be appointed as the board of directors of Cline on the Plan Implementation Date, provided that such certificate and the persons listed thereon shall be subject to the prior written consent of Marret, on behalf of the Secured Noteholders. Concurrently with the appointment of such directors, all directors serving immediately prior to the Plan Implementation Date shall be deemed to resign (unless they are re-appointed in accordance with this paragraph).

EXTENSION OF THE STAY OF PROCEEDINGS

22. **THIS COURT ORDERS** that the Stay Period, as such term is defined in and used throughout the Initial Order, be and is hereby extended to and including 11:59 p.m. on April 1, 2015, and that all other terms of the Initial Order shall remain in full force and effect, unamended, except as may be required to give effect to this paragraph or otherwise provided in the Plan or this Plan Sanction Order.

EFFECT, RECOGNITION AND ASSISTANCE

23. **THIS COURT ORDERS** that the Applicants and the Monitor may apply to this Court for advice and direction with respect to any matter arising from or under the Plan or this Plan Sanction Order.

24. **THIS COURT ORDERS** that this Plan Sanction Order shall have full force and effect in all provinces and territories of Canada and abroad as against all persons and parties against whom it may otherwise be enforced.

25. **THIS COURT REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or in any other foreign jurisdiction, to give effect to this Order or to assist the Applicants, the Monitor 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 Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants or the Monitor and their respective agents in carrying out the terms of this Order. Without limiting the generality of the foregoing, the Monitor is hereby authorized, as foreign representative of the Applicants to, if deemed advisable by the Monitor and the Applicants, apply for recognition of this Plan Sanction Order in any proceedings in the United States pursuant to Chapter 15, Title 11 of the United States Code.

GENERAL

26. **THIS COURT ORDERS** that this Plan Sanction Order shall be posted on the Monitor's Website at http://cfcanada.fticonsulting.com/cline and is only required to be served upon the parties on the Service List and those parties who appeared at the hearing of the motion for this Plan Sanction Order.

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

JAN 27 2015

MB

Schedule "A"

(Plan of Compromise and Arrangement)

Court File No. CV-14-10781-00CL

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 A PLAN OF COMPROMISE OR ARRANGEMENT OF CLINE MINING CORPORATION, NEW ELK COAL COMPANY LLC AND NORTH CENTRAL ENERGY COMPANY

APPLICANTS

AMENDED AND RESTATED PLAN OF COMPROMISE AND ARRANGEMENT

pursuant to the *Companies' Creditors Arrangement Act*
concerning, affecting and involving

CLINE MINING CORPORATION,
NEW ELK COAL COMPANY LLC and
NORTH CENTRAL ENERGY COMPANY

January 20, 2015

TABLE OF CONTENTS

AMENDED AND RESTATED
PLAN OF COMPROMISE AND ARRANGEMENT

WHEREAS Cline Mining Corporation ("**Cline**"), New Elk Coal Company LLC ("**New Elk**") and North Central Energy Company ("**North Central**" and together with Cline and New Elk, the "**Applicants**") are debtor companies under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**");

AND WHEREAS the Applicants have obtained an order (as may be amended, restated or varied from time to time, the "**Initial Order**") of the Ontario Superior Court of Justice (the "**Court**") under the CCAA (the date of such Initial Order being the "**Filing Date**");

AND WHEREAS Marret Asset Management Inc. ("**Marret**") exercises sole investment discretion and control over all of the beneficial holders of (i) the $71,381,900 million aggregate principal amount of 10% senior secured notes due June 15, 2014 issued by Cline pursuant to the indenture dated December 13, 2011, as amended (the "**2011 Notes**") and (ii) the $12,340,998 aggregate principal amount of 10% senior secured notes due June 15, 2014 issued by Cline pursuant to the indenture dated July 8, 2013, as amended (the "**2013 Notes**", and collectively with the 2011 Notes, the "**Secured Notes**");

AND WHEREAS the Applicants have developed a recapitalization transaction (the "**Recapitalization**") as set forth herein, and Marret (on behalf of all of the beneficial holders of the Secured Notes) has agreed to support the terms of the Recapitalization;

AND WHEREAS the Applicants filed a Plan of Compromise and Arrangement dated December 3, 2014 pursuant to the Meetings Order (as defined below) (the "**Original Plan**");

AND WHEREAS, following discussions with counsel for the WARN Act Plaintiffs, Marret and the Monitor, the Applicants have agreed to make certain amendments to the Original Plan to address the settlement of the WARN Act Claims;

AND WHEREAS the Applicants file this amended and restated consolidated plan of compromise and arrangement with the Court pursuant to the CCAA and hereby propose and present the plan of compromise and arrangement to the Secured Noteholders Class, the Affected Unsecured Creditors Class and the WARN Act Plaintiffs Class (each as defined below) under and pursuant to the CCAA.

ARTICLE 1
INTERPRETATION

1.1 Definitions

In the Plan, unless otherwise stated or unless the subject matter or context otherwise requires:

"**2011 Indenture**" means the note indenture dated December 13, 2011 that was entered into between Cline, Marret and the 2011 Trustee in connection with the issuance of the 2011 Notes, as amended from time to time.

"**2011 Noteholders**" means the holders of the 2011 Notes, and "**2011 Noteholder**" means any one of them.

"**2011 Trustee**" means the Indenture Trustee, Computershare Trust Company of Canada, specifically in its capacity as trustee in respect of the 2011 Secured Notes under the 2011 Indenture.

"**2013 Indenture**" means the note indenture dated July 8, 2013 that was entered into between Cline, Marret and the 2013 Trustee in connection with the issuance of the 2013 Notes, as amended from time to time.

"**2013 Noteholders**" means the holders of the 2013 Notes, and "**2013 Noteholder**" means any one of them.

"**2013 Trustee**" means the Indenture Trustee, Computershare Trust Company of Canada, specifically in its capacity as trustee in respect of the 2013 Secured Notes under the 2013 Indenture.

"**Affected Claim**" means any Claim that is not an Unaffected Claim, and, for greater certainty, includes any Secured Noteholder Claim, Affected Unsecured Claim, WARN Act Claim and Equity Claim.

"**Affected Creditor**" means any Creditor with an Affected Claim, but only with respect to and to the extent of such Affected Claim.

"**Affected Unsecured Claims**" means all Claims against one or more of the Applicants that are not secured by a valid security interest over assets or property of the Applicants and that are not (i) Unaffected Claims, (ii) the Claims comprising the Secured Noteholders Allowed Secured Claim, (iii) WARN Act Claims or (iv) Equity Claims; and, for greater certainty, the Affected Unsecured Claims shall include the Secured Noteholders Allowed Unsecured Claim, the Marret Unsecured Claim and any portion of any other Affected Claim that is secured but in respect of which there is a deficiency in the realizable value of the security held in respect of such Claim relative to the amount of such Claim.

"**Affected Unsecured Creditor**" means any holder of an Affected Unsecured Claim, but only with respect to and to the extent of such Affected Unsecured Claim.

"**Affected Unsecured Creditors Class**" means the class of Affected Unsecured Creditors entitled to vote on the Plan at the Unsecured Creditors Meeting in accordance with the terms of the Meetings Order.

"**Agreed Number**" means, with respect to the New Cline Common Shares, that number of New Cline Common Shares to be issued on the Plan Implementation Date pursuant to the Plan as agreed to by the Applicants, the Monitor and Marret (on behalf of the Secured Noteholders).

"**Allowed**" means, with respect to a Claim, any Claim or any portion thereof that has been finally allowed as a Distribution Claim (as defined in the Claims Procedure Order) for purposes of receiving distributions under the Plan in accordance with the Claims Procedure Order or a Final Order of the Court.

"**Applicable Law**" means any law, statute, order, decree, judgment, rule, regulation, ordinance or other pronouncement having the effect of law whether in Canada, the United States or any other country, or any domestic or foreign state, county, province, city or other political subdivision of any Governmental Entity.

"**Articles**" means the articles and/or the notice of articles of Cline, as applicable.

"**Assessments**" has the meaning ascribed thereto in the Claims Procedure Order.

"**BCBCA**" means the *Business Corporations Act* (British Columbia), as amended.

"**Business Day**" means a day, other than Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario and New York, New York.

"**Canadian Tax Act**" means the *Income Tax Act* (Canada), as amended.

"**CCAA**" has the meaning ascribed thereto in the recitals.

"**CCAA Proceeding**" means the proceeding commenced by the Applicants pursuant to the CCAA.

"**CDS**" means CDS Clearing and Depositary Services Inc. or any successor thereof.

"**CDS Participants**" means CDS participant holders of the 2011 Notes and the 2013 Notes.

"**Chapter 15**" means Chapter 15, Title 11 of the United States Code.

"**Chapter 15 Proceeding**" means the proceeding to be commenced by the foreign representative of the Applicants pursuant to Chapter 15.

"**Charges**" means the Administration Charge and the Directors' Charge, each as defined in the Initial Order.

"**Claim**" means:

(a) any right or claim of any Person against any of the Applicants, whether or not asserted, in connection with any indebtedness, liability or obligation of any kind whatsoever of any such Applicant in existence on the Filing Date, and costs payable in respect thereof to and including the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any Assessment and any right or ability 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 which existed prior to the Filing Date and any other claims that would have been claims provable in bankruptcy had such Applicant become bankrupt on the

Filing Date, including for greater certainty any Equity Claim and any claim against any of the Applicants for indemnification by any Director or Officer in respect of a Director/Officer Claim (but excluding any such claim for indemnification that is covered by the Directors' Charge (as defined in the Initial Order)); and

(b) any right or claim of any Person against any of the Applicants in connection with any indebtedness, liability or obligation of any kind whatsoever owed by any such Applicant to such Person arising out of the restructuring, disclaimer, resiliation, termination or breach by such Applicant on or after the Filing Date of any contract, lease or other agreement whether written or oral and includes any other right or claim that is to be treated as a Restructuring Period Claim under the Plan,

provided that, for greater certainty, the definition of "Claim" herein shall not include any Director/Officer Claim.

"**Claims Bar Date**" has the meaning ascribed thereto in the Claims Procedure Order.

"**Claims Procedure Order**" means the Order under the CCAA establishing a claims procedure in respect of the Applicants, as same may be further amended, restated or varied from time to time.

"**Class Action Counsel**" means The Gardner Firm, P.C., in its capacity as counsel to James Gerard Jr. and Michael Cox, on behalf of themselves and all others who are alleged to be similarly situated, in the WARN Act Class Action.

"**Class Action Initial Expense Reimbursement**" means an amount to be agreed by Class Action Counsel and James Gerard Jr. and Michael Cox, as representative plaintiffs in the WARN Act Class Action, in respect of: the reasonable attorneys fees, expenses and costs of the WARN Act Plaintiffs' counsel; the reasonable local attorneys fees, expenses and costs incurred by the WARN Act Plaintiffs' counsel; and class representative fees, expenses and costs in connection with the WARN Act Class Action. The Class Action Initial Expense Reimbursement is to be paid on the Plan Implementation Date and shall not exceed $90,000 (being the maximum amount of the WARN Act Cash Payment).

"**Class Action Second Expense Reimbursement**" means an amount to be agreed by Class Action Counsel and James Gerard Jr. and Michael Cox, as representative plaintiffs in the WARN Act Class Action, in respect of the reasonable attorneys fees and expenses of the WARN Act Plaintiffs' counsel. The Class Action Second Expense Reimbursement is to be paid on the WARN Act Plan Entitlement Date and shall not exceed $120,000 (being the maximum amount of the WARN Act Plan Entitlement).

"**Cline Common Shares**" means the common shares in the capital of Cline designated as Common Shares in the Notice of Articles of Cline.

"**Cline Companies**" means Cline, New Elk, North Central Energy Company, Raton Basin Analytical, LLC.

"**Company Advisors**" means Goodmans LLP, Moelis & Company and Aab & Botts, LLC.

"**Consolidation Ratio**" means, with respect to the Cline Common Shares, the ratio by which Cline Common Shares outstanding on the Plan Implementation Date at the relevant time (including, for the avoidance of doubt, any Cline Common Shares that are Existing Cline Shares and any Cline Common Shares that are New Cline Common Shares issued pursuant to the Plan) are consolidated pursuant to the Plan, as agreed by the Applicants, the Monitor and Marret (on behalf of the Secured Noteholders).

"**Convenience Claim**" means any Affected Unsecured Claim that is not more than $10,000, provided that (i) no Claims of the Secured Noteholders shall constitute Convenience Claims; (ii) Creditors shall not be entitled to divide a Claim for the purpose of qualifying such Claim as a Convenience Claim; (iii) no Restructuring Period Claim referred to in section 3.5(d)(i) shall constitute a Convenience Claim, and (iv) for greater certainty, none of the WARN Act Claims shall constitute Convenience Claims.

"**Convenience Creditor**" means an Affected Unsecured Creditor having a Convenience Claim.

"**Court**" has the meaning ascribed thereto in the recitals.

"**Creditor**" means any Person having a Claim, but only with respect to and to the extent of such Claim, including the transferee or assignee of a transferred Claim that is recognized as a Creditor in accordance with the Claims Procedure Order or a trustee, executor, liquidator, receiver, receiver and manager, or other Person acting on behalf of or through such Person.

"**Directors**" means all current and former directors (or their estates) of the Applicants, in such capacity, and "**Director**" means any one of them.

"**Director/Officer Claim**" means any right or claim of any Person against one or more of the Directors and/or Officers howsoever arising, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including the right or ability 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, including any right of contribution or indemnity, for which any Director or Officer is alleged to be, by statute or otherwise by law or equity, liable to pay in his or her capacity as a Director or Officer.

"**Disputed Distribution Claim**" means an Affected Unsecured Claim or a WARN Act Claim (including a contingent Affected Unsecured Claim or WARN Act Claim that crystallizes upon the occurrence of an event or events occurring after the Filing Date) or such portion thereof that has not been Allowed, which is validly disputed for distribution purposes in accordance with the Claims Procedure Order and that remains subject to adjudication for distribution purposes in accordance with the Claims Procedure Order.

"**Disputed Distribution Claims Reserve**" means the reserve, if any, to be established by Cline, which shall be comprised of the following:

(a) in respect of Affected Unsecured Claims that are Disputed Distribution Claims and are not Convenience Claims, an amount reserved on the Unsecured Plan Entitlement Date equal to the Unsecured Plan Entitlement Proceeds that would have been paid in respect of such Disputed Distribution Claims on the Unsecured Plan Entitlement Date if such Disputed Distribution Claims had been Allowed Claims as of the Promissory Note Maturity Date

(b) in respect of Affected Unsecured Claims that are Disputed Distribution Claims and that are Convenience Claims, an amount reserved on the Plan Implementation Date equal to the amount that would have been paid in respect of such Disputed Distribution Claims on the Plan Implementation Date if such Disputed Distribution Claims had been Allowed Claims as of the Plan Implementation Date, and

(c) in respect of WARN Act Claims that are Disputed Distribution Claims, an amount reserved on the WARN Act Plan Entitlement Date equal to the WARN Act Plan Entitlement Proceeds that would have been paid in respect of such Disputed Distribution Claims on the WARN Act Plan Entitlement Date if such Disputed Distribution Claims had been Allowed Claims as of the WARN Act Plan Entitlement Date.

"**Distribution Date**" means the date or dates from time to time set in accordance with the provisions of the Plan to effect distributions in respect of the Allowed Claims, excluding the Initial Distribution Date, and (i) in the case of distributions of Unsecured Plan Entitlement Proceeds, means the Unsecured Plan Entitlement Date or such later date from time to time established in accordance with the provisions of the Plan if any Affected Unsecured Claim is a Disputed Distribution Claim on the Unsecured Plan Entitlement Date; and (ii) in the case of distributions of WARN Act Plan Entitlement Proceeds, means the WARN Act Plan Entitlement Date or such later date from time to time established in accordance with the provisions of the Plan if any WARN Act Claim is a Disputed Distribution Claim on the WARN Act Plan Entitlement Date.

"**Effective Time**" means 12:01 a.m. (Toronto time) on the Plan Implementation Date or such other time on such date as the Applicants may determine.

"**Employee Priority Claims**" means the following Claims of Employees and former employees of the Applicants:

(a) Claims equal to the amounts that such Employees and former employees would have been entitled to receive under paragraph 136(l)(d) of the *Bankruptcy and Insolvency Act* (Canada) if the applicable Applicant had become bankrupt on the Filing Date; and

(b) Claims for wages, salaries, commissions or compensation for services rendered by such Employees and former employees after the Filing Date and on or before the Plan Implementation Date together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the Applicants' business during the same period.

"**Employees**" means any and all (a) employees of the Applicants who are actively at work (including full-time, part-time or temporary employees) and (b) employees of the Applicants who are on approved leaves of absence (including maternity leave, parental leave, short-term disability leave, workers' compensation and other statutory leaves), and who have not tendered notice of resignation as of the Filing Date, in each case.

"**Encumbrance**" means any charge, mortgage, lien, pledge, claim, restriction, hypothec, adverse interest, security interest or other encumbrance whether created or arising by agreement, statute or otherwise at law, attaching to property, interests or rights and shall be construed in the widest possible terms and principles known under the law applicable to such property, interests or rights and whether or not they constitute specific or floating charges as those terms are understood under the laws of the Province of Ontario.

"**Equity Claim**" means a Claim that meets the definition of "equity claim" in section 2(1) of the CCAA.

"**Equity Claimants**" means any Person with an Equity Claim or holding an Equity Interest, but only in such capacity, and for greater certainty includes the Existing Cline Shareholders in their capacity as such.

"**Equity Interests**" has the meaning ascribed thereto in section 2(1) of the CCAA and, for greater certainty, includes the Existing Cline Shares, the Existing New Elk Units, the Existing North Central Shares, the Existing Options and any other interest in or entitlement to shares or units in the capital of the Applicants but, for greater certainty, does not include the New Cline Common Shares issued on the Plan Implementation Date in accordance with the Plan.

"**Existing Cline Shareholder**" means any Person who holds, is entitled to or has any rights in or to the Existing Cline Shares or any shares in the authorized capital of Cline immediately prior to the Effective Time, but only in such capacity, and for greater certainty does not include any Person that is issued New Cline Common Shares on the Plan Implementation Date.

"**Existing Cline Shares**" means all shares in the capital of Cline that are issued and outstanding immediately prior to the Effective Time.

"**Existing New Elk Units**" means all units in the capital of New Elk that are issued and outstanding immediately prior to the Effective Time.

"**Existing North Central Shares**" means all shares in the capital of North Central that are issued and outstanding immediately prior to the Effective Time.

"**Existing Options**" means any options, warrants (including the Warrants), conversion privileges, puts, calls, subscriptions, exchangeable securities, or other rights, entitlements, agreements, arrangements or commitments (pre-emptive, contingent or otherwise) obligating any of the Applicants to issue, acquire or sell shares or units in the capital of the Applicants or to purchase any shares, units, securities, options or warrants, or any securities or obligations of any kind convertible into or exchangeable for shares or units in the capital of the Applicants, in each case that are existing or issued and outstanding immediately prior to the Effective Time, including any options to acquire shares, units or other equity securities of the Applicants issued

under the Stock Option Plans, any warrants exercisable for common shares, units or other equity securities of the Applicants (including the Warrants), any put rights exercisable against the Applicants in respect of any shares, units, options, warrants or other securities, and any rights, entitlements or other claims of any kind to receive any other form of consideration in respect of any prior or future exercise of any of the foregoing.

"**Filing Date**" has the meaning ascribed thereto in the recitals.

"**Final Order**" means any order, ruling or judgment of the Court, or any other court of competent jurisdiction, (i) that is in full force and effect; (ii) that has not been reversed, modified or vacated and is not subject to any stay and (iii) in respect of which all applicable appeal periods have expired and any appeals therefrom have been finally disposed of, leaving such order, ruling or judgment wholly operable.

"**Fractional Interests**" has the meaning given in section 4.12 hereof.

"**Government Priority Claims**" means all Claims of Governmental Entities against any of the Applicants in respect of amounts that are outstanding and that are of a kind that could be subject to a demand under:

(a) subsections 224(1.2) of the Canadian Tax Act;

(b) any provision of the Canada Pension Plan or the *Employment Insurance Act* (Canada) that refers to subsection 224(1.2) of the Canadian Tax Act and provides for the collection of a contribution, as defined in the Canada Pension Plan, or employee's premium or employer's premium as defined in the *Employment Insurance Act* (Canada), or a premium under Part VII. I of that Act, and of any related interest, penalties or other amounts; or

(c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the Canadian Tax Act, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum:

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the Canadian Tax Act; or

(ii) is of the same nature as a contribution under the Canada Pension Plan if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the Canada Pension Plan and the provincial legislation establishes a "provincial pension plan" as defined in that subsection.

"**Governmental Entity**" means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to

exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

"**Indentures**" means, collectively, the 2011 Indenture and the 2013 Indenture.

"**Indenture Trustee**" means Computershare Trust Company of Canada, as trustee in respect of the Secured Notes under the Indentures.

"**Individual Unsecured Plan Entitlement**" means, with respect to each Affected Unsecured Creditor with an Allowed Affected Unsecured Claim that is not a Convenience Creditor and that is not a Secured Noteholder, its entitlement to receive its respective individual portion of the Unsecured Plan Entitlement Proceeds payable on the Unsecured Plan Entitlement Date, the quantum of which entitlement shall be calculated as follows at the relevant time:

(A) the Allowed Affected Unsecured Claim of such Affected Unsecured Creditor

divided by

(B) the total amount of all Allowed Affected Unsecured Claims and Disputed Distribution Claims of Affected Unsecured Creditors less the Secured Noteholders Allowed Unsecured Claim less the Marret Unsecured Claim less the amount of all Convenience Claims

multiplied by

(C) $225,000.

"**Individual WARN Act Plan Entitlement**" means with respect to each WARN Act Plaintiff with an Allowed WARN Act Claim, its entitlement to receive its individual WARN Act Plaintiff's Share of the WARN Act Plan Entitlement Proceeds payable on the WARN Act Plan Entitlement Date.

"**Information Statement**" means the information statement to be distributed by the Applicants concerning the Plan, the Meetings and the hearing in respect of the Sanction Order, as contemplated in the Meetings Order.

"**Initial Distribution Date**" means a date no more than two (2) Business Days after the Plan Implementation Date or such other date as the Applicants and the Monitor may agree.

"**Initial Order**" has the meaning ascribed thereto in the recitals.

"**Insurance Policy**" means any insurance policy maintained by any of the Applicants pursuant to which any of the Applicants or any Director or Officer is insured.

"**Insured Claim**" means all or that portion of a Claim arising from a cause of action for which the applicable insurer or a court of competent jurisdiction has definitively and unconditionally confirmed that the applicable Applicant is insured under an Insurance Policy, to the extent that such Claim, or portion thereof, is so insured.

"**Intercompany Claim**" means any Claim by any Applicant against another Applicant.

"**Marret**" has the meaning ascribed to it in the recitals.

"**Marret Unsecured Claim**" means all Claims of Marret, in its individual corporate capacity and not on behalf of the Secured Noteholders, against one or more of the Applicants, if any, including any secured Claims of Marret, in such capacity, in respect of which there is a deficiency in the realizable value of the security held by Marret relative to the amount of such secured Claim.

"**Material**" means a fact, circumstance, change, effect, matter, action, condition, event, occurrence or development that, individually or in the aggregate, is, or would reasonably be expected to be, material to the business, affairs, results of operations or financial condition of the Applicants (taken as a whole).

"**Meeting Date**" means the date on which the Meetings are held in accordance with the Meetings Order.

"**Meetings**" means, collectively, the Secured Noteholders Meeting, the Unsecured Creditors Meeting and the WARN Act Plaintiffs Meeting.

"**Meetings Order**" means the Order under the CCAA that, among other things, sets the date for the Meetings, as same may be amended, restated or varied from time to time.

"**Monitor**" means FTI Consulting Canada Inc., as Court-appointed Monitor of the Applicants in the CCAA Proceeding.

"**Monitor's Website**" means http://cfcanada.fticonsulting.com/cline

"**New Cline Common Shares**" means the new Cline Common Shares to be issued pursuant to section 5.2(1) hereof.

"**New Credit Agreement**" means the credit agreement in respect of the New Secured Debt dated as of the Plan Implementation Date among Cline, as borrower, New Elk and North Central, as guarantors, and the New Secured Debt Agent.

"**New Secured Debt**" means the new secured indebtedness of Cline, which is to be guaranteed by New Elk and North Central, to be established on the Plan Implementation Date pursuant to section 5.2(2) hereof, the terms of which shall be consistent with the summary of terms set forth in Schedule "A" and which shall be governed by the New Credit Agreement.

"**New Secured Debt Agent**" means Marret Asset Management Inc., in its capacity as administrative and collateral agent under the New Credit Agreement.

"**Noteholder Advisors**" means Davies Ward Phillips & Vineberg LLP.

"**Notice of Claim**" has the meaning ascribed thereto in the Claims Procedure Order.

"**Officers**" means all current and former officers (or their estates) of the Applicants, in such capacity, and "**Officer**" means any one of them.

"**Order**" means any order of the Court made in connection with the CCAA Proceeding and any order of the U.S. Court made in connection with the Chapter 15 Proceeding.

"**Original Plan**" has the meaning ascribed thereto in the recitals.

"**Person**" means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, government or any agency, officer or instrumentality thereof or any other entity.

"**Plan**" means this Amended and Restated Plan of Compromise and Arrangement filed by the Applicants pursuant to the CCAA, as it may be amended, supplemented or restated from time to time in accordance with the terms hereof.

"**Plan Implementation Date**" means the Business Day on which the Plan becomes effective, which shall be the Business Day on which, pursuant to section 9.2, the Applicants and Marret (on behalf of the Secured Noteholders) or their respective counsel deliver written notice to the Monitor (or its counsel) that the conditions set out in section 9.1 have been satisfied or waived in accordance with the terms hereof.

"**Post-Filing Trade Payables**" means trade payables that were incurred by any of the Applicants (a) after the Filing Date but before the Plan Implementation Date; and (b) in compliance with the Initial Order and other Orders issued in connection with the CCAA Proceeding and the Chapter 15 Proceeding.

"**Prior Ranking Secured Claims**" means Allowed Claims existing on both the Filing Date and the Plan Implementation Date, other than Government Priority Claims, Employee Priority Claims, and Claims secured by the Charges, that (a) are secured by a valid, perfected and enforceable security interest in, mortgage, encumbrance or charge over, lien against or other similar interest in, any of the assets that any of the Applicants owns or to which any of the Applicants is entitled, but only to the extent of the realizable value of the property subject to such security; and (b) would have ranked senior in priority to the Secured Noteholders Allowed Secured Claim if the Applicants had become bankrupt on the Filing Date, but only to the extent that it would have ranked senior in priority, including any Allowed Claims relating to the security registrations listed on Schedule "A" to the Initial Order, which, for greater certainty, includes the registration in favour of Bank of Montreal/Banque de Montreal listed thereon, to the extent that such Claims satisfy the terms of this definition.

"**Proof of Claim**" has the meaning ascribed thereto in the Claims Procedure Order.

"**Recapitalization**" means the transactions contemplated by the Plan.

"**Released Claims**" has the meaning ascribed thereto in section 7.1.

"**Released Director/Officer Claim**" means any Director/Officer Claim that is released pursuant to section 7.1.

"**Released Party**" and "**Released Parties**" have the meaning ascribed thereto in section 7.1.

"**Restructuring Period Claim**" has the meaning ascribed thereto in the Claims Procedure Order.

"**Required Majorities**" means with respect to each Voting Class, a majority in number of Affected Creditors representing at least two thirds in value of the Voting Claims of Affected Creditors, in each case who are entitled to vote at the Meetings in accordance with the Meetings Order and who are present and voting in person or by proxy on the resolution approving the Plan at the applicable Meeting.

"**Sanction Order**" means the Order of the Court sanctioning and approving the Plan.

"**Secured Noteholders**" means the holders of the Secured Notes, and "**Secured Noteholder**" means any one of them.

"**Secured Noteholders Allowed Claim**" has the meaning ascribed thereto in the Claims Procedure Order, and the aggregate amount of such Claim is $110,173,897.

"**Secured Noteholders Allowed Secured Claim**" has the meaning ascribed thereto in the Claims Procedure Order, and, for the purpose of voting at the Secured Noteholders Meeting and receiving distributions under the Plan, the aggregate amount of such Claims is $92,673,897.

"**Secured Noteholders Allowed Unsecured Claim**" has the meaning ascribed thereto in the Claims Procedure Order, and, for the purpose of voting at the Unsecured Creditors Meeting, the aggregate amount of such Claims is $17,500,000.

"**Secured Noteholders Class**" means the class of Secured Noteholders collectively holding the Secured Noteholders Allowed Secured Claim entitled to vote on this Plan at the Secured Noteholders Meeting in accordance with the terms of the Meetings Order.

"**Secured Noteholders Meeting**" means the meeting of the Secured Noteholders Class to be held on the Meeting Date for the purpose of considering and voting on the Plan pursuant to the CCAA and includes any adjournment, postponement or other rescheduling of such meeting in accordance with the Meetings Order.

"**Secured Noteholder's Share**" means, with respect to each Secured Noteholder, either: (i) the principal amount of Secured Notes held by such Secured Noteholder as at the Filing Date divided by the total aggregate principal amount of all Secured Notes as at the Filing Date; or (ii) such other proportionate share as may be agreed by the Applicants, Marret (on behalf of the Secured Noteholders) and the Monitor and as confirmed by Marret (on behalf of the Secured Noteholders) to the Indenture Trustee in writing.

"**Secured Note Obligations**" means all obligations, liabilities and indebtedness of the Applicants or any of the Cline Companies (whether as guarantor, surety or otherwise) to the Indenture Trustee, the Secured Noteholders and/or Marret (whether on behalf of the Secured Noteholders or in its individual corporate capacity) under, arising out of or in connection with the Secured Notes, the Indentures or the guarantees granted in connection with any of the foregoing as well as any other agreements or documents relating thereto as at the Plan Implementation Date.

"**Secured Notes**" has the meaning ascribed thereto in the recitals.

"**Stock Option Plans**" means any options plans, stock-based compensation plans or other obligations of any of the Applicants in respect of shares, options or warrants for equity in any of the Cline Companies, in each case as such plans or other obligations may be amended, restated or varied from time to time in accordance with the terms thereof.

"**Tax**" or "**Taxes**" means any and all federal, provincial, state, municipal, local, Canadian, U.S. and foreign taxes, assessments, reassessments and other governmental charges, duties, impositions and liabilities including for greater certainty taxes based upon or measured by reference to income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, all licence, franchise and registration fees and all employment insurance, health insurance and federal, provincial, state, municipal, local, Canadian, U.S., foreign and other government pension plan premiums or contributions, together with all interest, penalties, fines and additions with respect to such amounts.

"**Taxing Authorities**" means any one of Her Majesty the Queen, Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada and any political subdivision thereof, the United States Internal Revenue Service, any similar revenue or taxing authority of the United States and each and every state of the United States, and any Canadian, American or other government, regulatory authority, government department, agency, commission, bureau, minister, court, tribunal or body or regulation making entity exercising taxing authority or power, and "**Taxing Authority**" means any one of the Taxing Authorities.

"**Unaffected Claim**" means any:

(a) Claim secured by any of the Charges;

(b) Insured Claim;

(c) Intercompany Claim;

(d) Post-Filing Trade Payable;

(e) Unaffected Secured Claim;

(f) Claim by an Unaffected Trade Creditor arising from an Unaffected Trade Claim;

(g) Claim that is not permitted to be compromised pursuant to section 19(2) of the CCAA;

(h) Employee Priority Claims; and

(i) Government Priority Claims.

"**Unaffected Creditor**" means a Creditor who has an Unaffected Claim, but only in respect of and to the extent of such Unaffected Claim.

"**Unaffected Secured Claims**" means: (i) the Prior Ranking Secured Claims; and (ii) all other Claims against one or more of the Applicants that (a) are secured by a valid security interest over assets or property of the Applicants and (b) the Applicants have identified to the Monitor in writing prior to the Plan Implementation Date as Unaffected Claims under the Plan.

"**Unaffected Trade Claim**" means an Allowed Claim of an Unaffected Trade Creditor that (i) is not a Post-Filing Trade Payable, (ii) arises out of or in connection with any contract, license, lease, agreement, obligation, arrangement or document with any of the Applicants related to the business of the Applicants and (iii) the Applicants have identified to the Monitor in writing prior to the Plan Implementation Date as an Unaffected Claim.

"**Unaffected Trade Creditor**" means any Person that has been designated by the Applicants, with the consent of the Monitor, as a critical supplier in accordance with the Initial Order.

"**Undeliverable Distribution**" has the meaning ascribed thereto in section 4.10 hereof.

"**Unsecured Creditors Meeting**" means a meeting of Affected Unsecured Creditors to be held on the Meeting Date called for the purpose of considering and voting on the Plan pursuant to the CCAA, and includes any adjournment, postponement or other rescheduling of such meeting in accordance with the Meetings Order.

"**Unsecured Plan Entitlement**" means an unsecured, non-interest-bearing entitlement of the Affected Unsecured Creditors, other than Convenience Creditors, with Allowed Affected Unsecured Claims to receive $225,000 in cash (collectively, and not individually) from Cline on the date that is eight years from the Plan Implementation Date, which entitlement shall be subordinated to all present and future secured indebtedness and obligations of Cline and may be paid by Cline at any time without penalty.

"**Unsecured Plan Entitlement Date**" means the earlier of the date that is eight years following the Plan Implementation Date and the date on which the Unsecured Plan Entitlement is paid by Cline.

"**Unsecured Plan Entitlement Proceeds**" means the amounts payable to the beneficiaries of the Unsecured Plan Entitlement on the Unsecured Plan Entitlement Date.

"**U.S. Court**" means the United States Bankruptcy Court for the District of Colorado.

"**Voting Claims**" means any Claim or portion thereof that has been finally allowed as a Voting Claim (as defined in the Claims Procedure Order) for purposes of voting at a Meeting in accordance with the Claims Procedure Order or a Final Order of the Court.

"**Voting Classes**" means the Secured Noteholders Class, the Affected Unsecured Creditors Class and the WARN Act Plaintiffs Class.

"**WARN Act**" means the U.S. federal Worker Adjustment and Retraining Notification Act of 1988 (29 U.S.C. §§ 2101 – 2109).

"**WARN Act Cash Payment**" means the cash payment in the amount of $90,000 less the Class Action Initial Expense Reimbursement, which cash payment is to be made to the Class Action Counsel on the Plan Implementation Date for the benefit of WARN Act Plaintiffs with Allowed WARN Act Claims.

"**WARN Act Claim**" means any Claim against any of the Applicants advanced by the WARN Act Plaintiffs in the WARN Act Class Action and any other Claims of individuals similarly situated to the WARN Act Plaintiffs that may be asserted against any of the Applicants pursuant to the WARN Act.

"**WARN Act Class Action**" means the class action lawsuit filed against Cline and New Elk by the WARN Act Plaintiffs in the United States District Court for the District of Colorado, Case Number 1:13-CV-00277, as amended.

"**WARN Act Plaintiffs**" means the plaintiffs in the WARN Act Class Action and all others who are alleged in the WARN Act Class Action to be similarly situated, and any other individual who is simliarly situated to the plaintiffs in the WARN Act Class Action who asserts Claims against any of the Applicants pursuant to the WARN Act.

"**WARN Act Plaintiffs Class**" means the class of WARN Act Plaintiffs entitled to vote on the Plan at the WARN Act Plaintiffs Meeting in accordance with the terms of the Meetings Order.

"**WARN Act Plaintiffs Meeting**" means a meeting of WARN Act Plaintiffs Class to be held on the Meeting Date called for the purpose of considering and voting on the Plan pursuant to the CCAA, and includes any adjournment, postponement or other rescheduling of such meeting in accordance with the Meetings Order.

"**WARN Act Plaintiff's Share**" means, at the relevant time, with respect to each WARN Act Plaintiff with an Allowed WARN Act Claim, the applicable share of such WARN Act Plaintiff in the distributions to be made to the WARN Act Plaintiffs with Allowed WARN Act Claims hereunder, as determined by Class Action Counsel in accordance with the parameters of the WARN Act Class Action.

"**WARN Act Plan Entitlement**" means the unsecured, non-interest-bearing entitlement of the WARN Act Plaintiffs with Allowed WARN Act Claims to receive $120,000 less the amount of the Class Action Second Expense Reimbursement in cash (collectively, and not individually) from New Elk on the date that is eight years from the Plan Implementation Date, which entitlement shall be subordinated to all present and future secured indebtedness and obligations of Cline and may be paid by Cline at any time without penalty.

"**WARN Act Plan Entitlement Date**" means the earlier of the date that is eight years following the Plan Implementation Date and the date on which the WARN Act Plan Entitlement is paid by Cline.

"**WARN Act Plan Entitlement Proceeds**" means the amounts payable to the beneficiaries of the WARN Act Plan Entitlement on the WARN Act Plan Entitlement Date.

"**Warrants**" means all warrants, options, rights or entitlements for the purchase of Cline Common Shares that are issued and outstanding immediately prior to the Effective Time.

1.2 Certain Rules of Interpretation

For the purposes of the Plan:

(a) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions;

(b) any reference in the Plan to an Order or an existing document or exhibit filed or to be filed means such Order, document or exhibit as it may have been or may be amended, modified, or supplemented;

(c) unless otherwise specified, all references to currency are in Canadian dollars;

(d) the division of the Plan into "articles" and "sections" and the insertion of a table of contents are for convenience of reference only and do not affect the construction or interpretation of the Plan, nor are the descriptive headings of "articles" and "sections" intended as complete or accurate descriptions of the content thereof;

(e) the use of words in the singular or plural, or with a particular gender, including a definition, shall not limit the scope or exclude the application of any provision of the Plan or a schedule hereto to such Person (or Persons) or circumstances as the context otherwise permits;

(f) the words "includes" and "including" and similar terms of inclusion shall not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather shall mean "includes but is not limited to" and "including but not limited to", so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive;

(g) unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean local time in Toronto, Ontario and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. (Toronto time) on such Business Day;

(h) unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day;

(i) unless otherwise provided, any reference to a statute or other enactment of parliament or a legislature includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time

to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation; and

(j) references to a specified "article" or "section" shall, unless something in the subject matter or context is inconsistent therewith, be construed as references to that specified article or section of the Plan, whereas the terms "the Plan", "hereof", "herein", "hereto", "hereunder" and similar expressions shall be deemed to refer generally to the Plan and not to any particular "article", "section" or other portion of the Plan and include any documents supplemental hereto.

1.3 Successors and Assigns

The Plan shall be binding upon and shall enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any Person or party directly or directly named or referred to in or subject to Plan.

1.4 Governing Law

The Plan shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. All questions as to the interpretation of or application of the Plan and all proceedings taken in connection with the Plan and its provisions shall be subject to the jurisdiction of the Court, provided that the Chapter 15 Proceeding shall be subject to the jurisdiction of the U.S. Court.

1.5 Schedules

The following are the Schedules to the Plan, which are incorporated by reference into the Plan and form a part of it:

Schedule "A"	New Secured Debt – Summary of Terms
Schedule "B"	Alternate Plan – Summary of Terms

ARTICLE 2
PURPOSE AND EFFECT OF THE PLAN

2.1 Purpose

The purpose of the Plan is:

(a) to implement a recapitalization of the Applicants;

(b) to provide for a settlement of, and consideration for, all Allowed Affected Claims;

(c) to effect a release and discharge of all Affected Claims and Released Claims; and

(d) to ensure the continuation of the Applicants,

in the expectation that the Persons who have a valid economic interest in the Applicants will derive a greater benefit from the implementation of the Plan than they would derive from a bankruptcy of the Applicants.

2.2 Persons Affected

The Plan provides for a full and final release and discharge of the Affected Claims and Released Claims, a settlement of, and consideration for, all Allowed Affected Claims and a recapitalization of the Applicants. The Plan will become effective at the Effective Time in accordance with its terms and in the sequence set forth in section 5.3 and shall be binding on and enure to the benefit of the Applicants, the Affected Creditors, the Released Parties and all other Persons directly or indirectly named or referred to in or subject to Plan.

2.3 Persons Not Affected

The Plan does not affect the Unaffected Creditors, subject to the express provisions hereof providing for the treatment of Insured Claims and the unsecured deficiency portion of Unaffected Secured Claims. Nothing in the Plan shall affect the Applicants' rights and defences, both legal and equitable, with respect to any Unaffected Claims including all rights with respect to legal and equitable defences or entitlements to set-offs or recoupments against such Unaffected Claims.

ARTICLE 3
CLASSIFICATION AND TREATMENT OF CREDITORS AND RELATED MATTERS

3.1 Claims Procedure

The procedure for determining the validity and quantum of the Affected Claims for voting and distribution purposes under the Plan shall be governed by the Claims Procedure Order, the Meetings Order, the CCAA, the Plan and any further Order of the Court.

3.2 Classification of Creditors

In accordance with the Meetings Order and subject to section 10.5(d) hereof, the 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. For greater certainty, Equity Claimants shall constitute a separate class but shall not be entitled to attend the Meetings, vote on the Plan or receive any distributions under or in respect of the Plan.

3.3 Creditors' Meetings

The Meetings shall be held in accordance with the Meetings Order and any further Order of the Court. The only Persons entitled to attend and vote at the Meetings are those specified in the Meetings Order.

3.4 Treatment of Affected Claims

An Affected Claim shall receive distributions as set forth below only to the extent that such Claim is an Allowed Affected Claim and has not been paid, released, or otherwise satisfied prior to the Plan Implementation Date.

(1) Secured Noteholders Class

In accordance with the steps and sequence set forth in section 5.3, under the supervision of the Monitor, and in full and final satisfaction of the Secured Noteholders Allowed Secured Claim, each Secured Noteholder will receive its Secured Noteholder's Share of the following consideration on the Plan Implementation Date:

(a) the New Cline Common Shares issued on the Plan Implementation Date; and

(b) the New Secured Debt.

The Claims comprising the Secured Noteholders Allowed Claim and the Secured Note Obligations shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred on the Plan Implementation Date. For greater certainty, the Secured Noteholders Allowed Unsecured Claim, the Marret Unsecured Claim and any portion of any other Affected Claim that is validly secured but in respect of which there is a deficiency in the realizable value of the security held in respect of such Claim, shall be deemed to be and shall be treated as Allowed Affected Unsecured Claims notwithstanding that they are secured by a valid security interest over the assets or property of the Applicants.

(2) Affected Unsecured Creditors Class

In accordance with the steps and sequence set forth in section 5.3, under the supervision of the Monitor, and in full and final satisfaction of all Affected Unsecured Claims, each Affected Unsecured Creditor with an Allowed Affected Unsecured Claim will receive the following consideration:

(a) with respect to Affected Unsecured Creditors with Allowed Affected Unsecured Claims that are not Convenience Creditors, each such Affected Unsecured Creditor shall become entitled on the Plan Implementation Date to its Individual Unsecured Plan Entitlement (which, for greater certainty, shall not be payable until the Unsecured Plan Entitlement Date); and

(b) with respect to Convenience Creditors with Allowed Affected Unsecured Claims, each such Convenience Creditor shall receive a cash payment on the Plan Implementation Date equal to the lesser of (i) $10,000; and (ii) the amount of its Allowed Affected Unsecured Claim.

The Secured Noteholders and Marret (on behalf of the Secured Noteholders and in its individual corporate capacity) hereby waive, and shall not receive, any distributions in respect of the Secured Noteholders Allowed Unsecured Claim and the Marret Unsecured Claim, respectively. All Affected Unsecured Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred on the Plan Implementation Date.

(3) WARN Act Plaintiffs Class

If the Required Majorities of the WARN Act Plaintiffs Class vote to approve the Plan at the WARN Act Plaintiffs Meeting and the Plan is implemented in accordance with its terms, then:

(a) the Proof of Claim dated January 13, 2015 filed by Class Action Counsel in respect of the WARN Act Claims shall be deemed to be Allowed as an aggregate Distribution Claim in the amount set forth on such Proof of Claim, provided that the WARN Act Claims (including the associated attorneys' fees included therein) shall be deemed to be unsecured and to have no security or priority status, and the 307 individuals identified in such Proof of Claim shall be deemed to be WARN Act Plaintiffs with Allowed WARN Act Claims in amounts to be determined by Class Action Counsel in accordance with the parameters of the WARN Act Class Action, with all such amounts totalling the aggregate amount set forth on such Proof of Claim;

(b) in accordance with the steps and sequence set forth in section 5.3, under the supervision of the Monitor, and in full and final satisfaction of all WARN Act Claims:

(i) each WARN Act Plaintiff with an Allowed WARN Act Claim shall become entitled on the Plan Implementation Date to the following:

(A) its Individual WARN Act Plan Entitlement (which, for greater certainty, shall not be payable until the WARN Act Plan Entitlement Date); and

(B) its WARN Act Plaintiff's Share of the WARN Act Cash Payment (which for greater certainty shall be payable to Class Action Counsel, for the benefit of the WARN Act Plaintiffs, on the Plan Implementation Date); and

(ii) New Elk shall pay the Class Action Initial Expense Reimbursement to Class Action Counsel on the Plan Implementation Date.

All WARN Act Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred on the Plan Implementation Date, provided that neither the foregoing nor the provisions of Article 7 hereof releases any defendants presently named in the WARN Act Class Action other that the Applicants. Forthwith following the Plan Implementation Date, Class Action Counsel shall irrevocably terminate and discontinue the WARN Act Class Action against the Applicants and no Person shall take any steps or actions against the Applicants in furtherance of a WARN Act Claim. Forthwith following the Plan Implementation Date, the Applicants shall provide Class Action Counsel with addresses and social security numbers of the individual WARN Act Plaintiffs to the extent that such information is available based on the Applicants' books and records for the purpose of enabling Class Action Counsel to make distributions to such individuals.

(4) Equity Claimants

Equity Claimants shall not receive any distributions or other consideration under the Plan or otherwise recover anything in respect of their Equity Claims or Equity Interests and shall not be entitled to attend or vote on the Plan at the Meetings. On the Plan Implementation Date, in accordance with the steps and sequences set out in section 5.3, all Equity Interests shall be cancelled and extinguished and all Equity Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred, provided that, notwithstanding anything to the contrary herein: (i) the Existing New Elk Units shall not be cancelled or extinguished and shall remain outstanding and shall remain solely owned by Cline following completion of the steps and sequences set out in section 5.3; and (ii) the Existing North Central Units shall not be cancelled or extinguished and shall remain outstanding and shall remain solely owned by New Elk following completion of the steps and sequences set out in section 5.3.

3.5 Unaffected Claims

(a) Unaffected Claims shall not be compromised, released, discharged, cancelled or barred by the Plan.

(b) Unaffected Creditors will not receive any consideration or distributions under the Plan in respect of their Unaffected Claims, and they shall not be entitled to vote on the Plan at the Meetings in respect of their Unaffected Claims.

(c) Notwithstanding anything to the contrary herein, Insured Claims shall not be compromised, released, discharged, cancelled or barred by the Plan, provided that from and after the Plan Implementation Date, any Person having an Insured Claim shall be irrevocably limited to recovery in respect of such Insured Claim solely from the proceeds of the applicable Insurance Policies, and Persons with any Insured Claims shall have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from any Person, including any of the Applicants, any of the Cline Companies or any Released Party, other than enforcing such Person's rights to be paid by the applicable insurer(s) from the proceeds of the applicable Insurance Policies. This section 3.5(c) may be relied upon and raised or pled by any of the Applicants, any of the Cline Companies or any Released Party in defence or estoppel of or to enjoin any claim, action or proceeding brought in contravention of this section. Nothing in the Plan shall prejudice, compromise, release or otherwise affect any right or defence of any insurer in respect of an Insurance Policy or any insured in respect of an Insured Claim.

(d) Notwithstanding anything to the contrary herein, in the case of Unaffected Secured Claims, at the election of the Applicants:

(i) the Applicants may satisfy any Unaffected Secured Claims by returning the applicable property of the Applicants that is secured as collateral for such Claims, in which case the Unaffected Secured Claim shall be deemed to be fully satisfied, provided that if the applicable Unaffected Secured Creditor asserts that there is a deficiency in the value of the applicable

collateral relative the value of the Unaffected Secured Claim, such Creditor shall be permitted to file such unsecured deficiency Claim as a Restructuring Period Claim prior to the Restructuring Period Claims Bar Date (as defined in the Claims Procedure Order) in accordance with the Claims Procedure Order, and such unsecured deficiency Claim shall be treated as an Affected Unsecured Claim for the purpose of this Plan, the Meetings Order and all related matters; and

(ii) if the Applicants do not elect to satisfy an Unaffected Secured Claim in the manner described in section 3.5(d)(i), then such Unaffected Secured Claim shall continue unaffected as against the applicable Applicants following the Plan Implementation Date.

3.6 Disputed Distribution Claims

Any Affected Creditor with a Disputed Distribution Claim shall not be entitled to receive any distribution hereunder with respect to such Disputed Distribution Claim unless and until such Claim becomes an Allowed Affected Claim. A Disputed Distribution Claim shall be resolved in the manner set out in the Claims Procedure Order. Distributions pursuant to section 3.4 shall be made in respect of any Disputed Distribution Claim that is finally determined to be an Allowed Affected Claim in accordance with the Claims Procedure Order.

3.7 Director/Officer Claims

All Released Director/Officer Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred without consideration on the Plan Implementation Date. Any Director/Officer Claim that is not a Released Director/Officer Claim will not be compromised, released, discharged, cancelled and barred. For greater certainty, any Claim of a Director or Officer against the Applicants for indemnification or contribution in respect of any Director/Officer Claim that is not otherwise covered by the Directors' Charge shall be treated for all purposes under the Plan as an Affected Unsecured Claim.

3.8 Extinguishment of Claims

On the Plan Implementation Date, in accordance with the terms and in the sequence set forth in section 5.3 and in accordance with the provisions of the Sanction Order, the treatment of Affected Claims and all Released Claims, in each case as set forth herein, shall be final and binding on the Applicants, all Affected Creditors and any Person having a Released Claim (and their respective heirs, executors, administrators, legal personal representatives, successors and assigns), and all Affected Claims and all Released Claims shall be fully, finally, irrevocably and forever released, discharged, cancelled and barred, and the Applicants and the Released Parties shall thereupon have no further obligation whatsoever in respect of the Affected Claims or the Released Claims; *provided that* nothing herein releases the Applicants or any other Person from their obligations to make distributions in the manner and to the extent provided for in the Plan and *provided further* that such discharge and release of the Applicants shall be without prejudice to the right of a Creditor in respect of a Disputed Distribution Claim to prove such Disputed Distribution Claim in accordance with the Claims Procedure Order so that such Disputed

Distribution Claim may become an Allowed Claim entitled to receive consideration under section 3.4 hereof.

3.9 Guarantees and Similar Covenants

No Person who has a Claim under any guarantee, surety, indemnity or similar covenant in respect of any Claim that is compromised and released under the Plan or who has any right to claim over in respect of or to be subrogated to the rights of any Person in respect of a Claim that is compromised under the Plan shall be entitled to any greater rights than the Person whose Claim is compromised under the Plan.

3.10 Set-Off

The law of set-off applies to all Claims.

ARTICLE 4
PROVISIONS REGARDING DISTRIBUTIONS AND PAYMENTS

4.1 Distributions of New Cline Common Shares and New Secured Debt

(a) Upon receipt of and in accordance with written instructions from the Monitor, the Indenture Trustee shall instruct CDS to, and CDS shall, block any further trading in the Secured Notes effective as of the close of business on the Business Day immediately prior to the Plan Implementation Date, all in accordance with the customary procedures of CDS.

(b) The distribution mechanics with respect to the New Cline Common Shares and the Secured Noteholders' respective entitlements to the New Secured Debt in accordance with section 3.4(1) shall be agreed by the Applicants, Marret (on behalf of the Secured Noteholders) and the Monitor in writing, in consultation with the Indenture Trustee, if applicable, prior to the Plan Implementation Date. If it is deemed necessary by any of the Applicants, the Monitor or Marret (on behalf of the Secured Noteholders), any such party shall be entitled to seek an Order of the Court, in the Sanction Order or otherwise, providing advice and directions with respect to such distribution mechanics.

(c) Except as may be otherwise agreed in writing by the Applicants and the Monitor, the Applicants and the Monitor shall have no liability or obligation in respect of deliveries of consideration issued under this Plan: (i) from Marret to any Secured Noteholder; (ii) from CDS, or its nominee, to CDS Participants, if applicable; (iii) from CDS Participants to beneficial holders of the Secured Notes, if applicable; or (iv) from the Indenture Trustee to beneficial holders of the Secured Notes, if applicable.

4.2 Distribution Mechanics with respect to the Unsecured Plan Entitlement

(a) Each Affected Unsecured Creditor with an Allowed Affected Unsecured Claim, other than the Secured Noteholders and the Convenience Creditors, shall become

entitled to its Individual Unsecured Plan Entitlement on the Plan Implementation Date without any further steps or actions by the Applicants, such Affected Unsecured Creditor or any other Person.

(b) From and after the Plan Implementation Date, and until all Unsecured Plan Entitlement Proceeds have been distributed in accordance with the Plan, Cline shall maintain a register of the Individual Unsecured Plan Entitlements as well as the address and notice information set forth on each applicable Affected Unsecured Creditor's Notice of Claim or Proof of Claim. Any applicable Affected Unsecured Creditor whose address or notice information changes shall be solely responsible for notifying Cline of such change. Cline shall also record on the register the aggregate amount of any applicable Disputed Distribution Claims. Within ten (10) Business Days following the Plan Implementation Date, the Applicants shall notify each Affected Unsecured Creditor with an Allowed Affected Unsecured Claim of such Affected Unsecured Creditor's Individual Unsecured Plan Entitlement as at the Plan Implementation Date.

(c) On the Unsecured Plan Entitlement Date, Cline shall calculate the amount of the Unsecured Plan Entitlement Proceeds to be paid to each applicable Affected Unsecured Creditor with an Allowed Unsecured Claim. Cline shall also calculate the amount of the Unsecured Plan Entitlement Proceeds that are not to be distributed as a result of Disputed Distribution Claims that remain outstanding, if any. Cline shall then distribute the applicable amount by way of cheque sent by prepaid ordinary mail to each Affected Unsecured Creditor with an Allowed Affected Unsecured Claim (other than the Secured Noteholders and the Convenience Creditors who, for greater certainty, shall have no Individual Unsecured Plan Entitlement). With respect to any portion of the Unsecured Plan Entitlement Proceeds that are reserved in respect of Disputed Distribution Claims, Cline shall segregate such amounts to and hold such amounts in the Disputed Distribution Claims Reserve.

4.3 Distribution Mechanics with respect to Convenience Claims

On the Plan Implementation Date, under the supervision of the Monitor, Cline shall pay each Convenience Creditor with an Allowed Convenience Claim the amount that is required to be paid to each such Creditor under this Plan by way of cheque sent by prepaid ordinary mail to the address set forth on such Convenience Creditor's Notice of Claim or Proof of Claim. Under the supervision of the Monitor, Cline shall also calculate the aggregate amount of Convenience Claims that are Disputed Distribution Claims on the Plain Implementation Date and shall segregate such amounts and hold such amounts in the Disputed Distribution Claims Reserve.

4.4 Distribution Mechanics with respect to the WARN Act Plan Entitlement and the WARN Act Cash Payment

(a) Each WARN Act Plaintiff with an Allowed WARN Act Claim shall become entitled to its Individual WARN Act Plan Entitlement on the Plan Implementation Date without any further steps or actions by the Applicants, such WARN Act Plaintiffs, Class Action Counsel or any other Person.

(b) On the WARN Act Plan Entitlement Date, New Elk shall pay an amount equal to the WARN Act Plan Entitlement to Class Action Counsel for the benefit of the WARN Act Plaintiffs with Allowed WARN Act Claims. Class Action Counsel shall distribute such amounts among the applicable WARN Act Plaintiffs. New Elk shall also pay the Class Action Second Expense Reimbursement to Class Action Counsel on the WARN Act Plan Entitlement Date. The WARN Act Plan Entitlement payment and the Class Action Second Expense Reimbursement shall be paid to Class Action Counsel in a single check or wire transfer of $120,000.

(c) On the Plan Implementation Date, New Elk shall pay an amount equal to the WARN Act Cash Payment to Class Action Counsel for the benefit of WARN Act Plaintiffs with Allowed WARN Act Claims. Class Action Counsel shall distribute all such amounts among the applicable WARN Act Plaintiffs with Allowed WARN Act Claims. New Elk shall also pay the Class Action Initial Expense Reimbursement to Class Action Counsel on the Plan Implementation Date. The WARN Act Cash Payment and the Class Action Initial Expense Reimbursement shall be paid to Class Action Counsel in a single check or wire transfer of $90,000.

(d) The Applicants and the Monitor shall have no responsibility or liability whatsoever for determining the allocation of the WARN Act Plan Entitlement or the WARN Act Cash Payment among the WARN Act Plaintiffs or for ensuring payments from Class Action Counsel to the WARN Act Plaintiffs.

4.5 Modifications to Distribution Mechanics

Subject to the consent of the Monitor, the Applicants shall be entitled to make such additions and modifications to the process for making distributions pursuant to the Plan (including the process for delivering and/or registering the New Cline Common Shares and/or the Secured Noteholders' respective entitlements to the New Secured Debt) as the Applicants deem necessary or desirable in order to achieve the proper distribution and allocation of consideration to be distributed pursuant to the Plan, and such additions or modifications shall not require an amendment to the Plan or any further Order of the Court.

4.6 Cancellation of Certificates and Notes

Following completion of the steps in the sequence set forth in section 5.3, all debentures, notes (including the Secured Notes), certificates, agreements, invoices and other instruments evidencing Affected Claims, Secured Note Obligations or Equity Interests (other than the Existing New Elk Units owned by Cline and the North Central Shares owned by New Elk, which are unaffected by the Plan and which shall remain outstanding) will not entitle any holder thereof to any compensation or participation other than as expressly provided for in the Plan and will be cancelled and will be null and void. Notwithstanding the foregoing, if and to the extent the Indenture Trustee is required to transfer consideration issued pursuant to this Plan to the Secured Noteholders, then the Indentures shall remain in effect solely for the purpose of and to the extent necessary to: (i) allow the Indenture Trustee to make such distributions to the Secured Noteholders on the Initial Distribution Date and each subsequent Distribution Date (if applicable); and (ii) maintain all of the protections the Indenture Trustee enjoys pursuant to the

Indentures, including its lien rights with respect to any distributions under the Plan, until all distributions are made to the Secured Noteholders hereunder. For greater certainty, any and all obligations of the Applicants and the Cline Companies (as guarantor, surety or otherwise) under and with respect to the Secured Notes and the Indentures, including the Secured Note Obligations, shall be extinguished on the Plan Implementation Date and shall not continue beyond the Plan Implementation Date.

4.7 Currency

Unless specifically provided for in the Plan or the Sanction Order, all monetary amounts referred to in the Plan shall be denominated in Canadian dollars and, for the purposes of distributions under the Plan, Claims shall be denominated in Canadian dollars and all payments and distributions provided for in the Plan shall be made in Canadian dollars. Any Claims denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada noon exchange rate in effect at the Filing Date.

4.8 Interest

Interest shall not accrue or be paid on Affected Claims on or after the Filing Date, and no holder of an Affected Claim shall be entitled to interest accruing on or after the Filing Date.

4.9 Allocation of Distributions

All distributions made to Creditors pursuant to the Plan shall be allocated first towards the repayment of the principal amount in respect of such Creditor's Claim and second, if any, towards the repayment of all accrued but unpaid interest in respect of such Creditor's Claim.

4.10 Treatment of Undeliverable Distributions

If any Creditor's distribution under this Article 4 is returned as undeliverable (an "**Undeliverable Distribution**"), no further distributions to such Creditor shall be made unless and until the Applicant is notified by such Creditor of such Creditor's current address, at which time all such distributions shall be made to such Creditor. All claims for Undeliverable Distributions must be made on or before the date that is six months following the final Distribution Date, after which date any entitlement with respect to such Undeliverable Distribution shall be forever discharged and forever barred, without any compensation therefor, notwithstanding any federal, state or provincial laws to the contrary, at which time any such Undeliverable Distributions shall be returned to Cline. Nothing contained in the Plan shall require the Applicant to attempt to locate any Person to whom a distribution is payable. No interest is payable in respect of an Undeliverable Distribution. Unless otherwise expressly agreed by the Monitor and the Applicants in writing, any distribution under the Plan on account of the Secured Notes shall be deemed made when delivered to Marret, CDS, the CDS Participants or the Indenture Trustee, as applicable, and any distribution under the Plan to the WARN Act Plaintiffs shall be deemed made when delivered to Class Action Counsel. With respect to distributions to be made by Class Action Counsel to WARN Act Plaintiffs with Allowed WARN Act Claims: (i) Class Action Counsel shall not be responsible or liable for any undeliverable distributions to WARN Act Plaintiffs who cannot be located based on deficiencies in the address information to be provided by the Applicants pursuant to section 3.4(3) hereof; and (ii) if any

distributions to the WARN Act Plaintiffs are returned as undeliverable or the applicable WARN Act Plaintiff cannot reasonably be located, and no claim has been made for such distribution by such WARN Act Plaintiff within six months following the WARN Act Plan Entitlement Date, then Class Action Counsel shall be permitted to donate such amounts to a cy-près recipient in accordance with customary class action practice in the United States.

4.11 Withholding Rights

The Applicants, the Monitor and, to the extent CDS or the Indenture Trustee are required to transfer consideration to Secured Noteholders pursuant to this Plan, then CDS and the Indenture Trustee, shall be entitled to deduct and withhold from any consideration payable to any Person such amounts as the Applicants, the Monitor, CDS or the Indenture Trustee, as applicable, are required to deduct and withhold with respect to such payment under the Canadian Tax Act, or other Applicable Laws, or entitled to withhold under section 116 of the Canadian Tax Act or corresponding provision of provincial or territorial law. To the extent that amounts are so withheld or deducted, such withheld or deducted amounts shall be treated for all purposes hereof as having been paid to the Person in respect of which such withholding was made, provided that such amounts are actually remitted to the appropriate Taxing Authority. The Applicants, the Monitor CDS and/or the Indenture Trustee, as applicable, are hereby authorized to sell or otherwise dispose of such portion of any such consideration in their posssession as is necessary to provide sufficient funds to the Applicants, the Monitor, CDS and/or the Indenture Trustee, as applicable, to enable them to comply with such deduction or withholding requirement or entitlement, and the Applicants, the Monitor, CDS and/or the Indenture Trustee, as applicable, shall notify the Person thereof and remit to such Person any unapplied balance of the net proceeds of such sale.

4.12 Fractional Interests

No fractional interests of New Cline Common Shares ("**Fractional Interests**") will be issued under the Plan. Recipients of New Cline Common Shares will have their entitlements adjusted downwards to the nearest whole number of New Cline Common Shares to eliminate any such Fractional Interests and no compensation will be given for any Fractional Interests.

4.13 Calculations

All amounts of consideration to be received hereunder will be calculated to the nearest cent ($0.01). All calculations and determination made by the Monitor and/or the Applicants and agreed to by the Monitor for the purposes of and in accordance with the Plan, including, without limitation, the allocation of consideration, shall be conclusive, final and binding upon the Affected Creditors and the Applicants.

ARTICLE 5
RECAPITALIZATION

5.1 Corporate Actions

The adoption, execution, delivery, implementation and consummation of all matters contemplated under the Plan involving corporate actions of the Applicants will occur and be

effective as of the Plan Implementation Date, and shall be deemed to be authorized and approved under the Plan and by the Court, where applicable, as part of the Sanction Order, in all respects and for all purposes without any requirement of further action by shareholders, directors or officers of the Applicants. All necessary approvals to take actions shall be deemed to have been obtained from the directors, officers or the shareholders of the Applicants, as applicable, including the deemed passing by any class of shareholders of any resolution or special resolution and any shareholders' agreement or agreement between a shareholder and another Person limiting in any way the right to vote shares held by such shareholder or shareholders with respect to any of the steps contemplated by the Plan shall be deemed to have no force or effect.

5.2 Issuance of Plan Consideration

(1) New Cline Common Shares

On the Plan Implementation Date, in the sequence set forth in section 5.3 and under the supervision of the Monitor, Cline shall issue the Agreed Number of New Cline Common Shares, and such New Cline Common Shares shall be allocated and distributed in the manner set forth in the Plan.

(2) New Secured Debt

On the Plan Implementation Date, in the sequence set forth in section 5.3 and under the supervision of the Monitor, (i) the New Credit Agreement shall become effective in accordance with its terms and the Applicants shall become bound to satisfy their obligations thereunder and (ii) the entitlements to the New Secured Debt shall be allocated among the Secured Noteholders in the manner and in the amounts set forth in the Plan.

(3) Unsecured Plan Entitlement

On the Plan Implementation Date, in the sequence set forth in section 5.3 and under the supervision of the Monitor, the Unsecured Plan Entitlements shall become effective and the Individual Unsecured Plan Entitlements shall be allocated in the manner and in the amounts set forth in the Plan.

(4) Convenience Claim Payments

On the Plan Implementation Date, in the sequence set forth in section 5.3 and under the supervision of the Monitor, Cline shall pay the applicable amounts to the Convenience Creditors with Allowed Convenience Claims and reserve the applicable amounts into the Disputed Claims Reserve in respect of Convenience Creditors with Disputed Distribution Claims, in each case in the manner and in the amounts set forth in the Plan.

(5) WARN Act Plan Entitlement and WARN Act Cash Payment

On the Plan Implementation Date, in the sequence set forth in section 5.3 and under the supervision of the Monitor: (i) the WARN Act Plan Entitlement shall become effective and the Individual WARN Act Plan Entitlements shall be allocated in the manner and in the amounts set forth in the Plan; and (ii) New Elk shall make the WARN Act Cash Payment to Class Action Counsel for the benefit of WARN Act Plaintiffs with Allowed WARN Act Claims.

5.3 Sequence of Plan Implementation Date Transactions

The following steps and compromises and releases to be effected in the implementation of the Plan shall occur, and be deemed to have occurred in the following order in five minute increments (unless otherwise noted), without any further act or formality on the Plan Implementation Date beginning at the Effective Time:

(a) all Existing Options shall be cancelled and terminated without any liability, payment or other compensation in respect thereof;

(b) the Stock Option Plans shall be terminated;

(c) Cline shall issue to each Secured Noteholder its Secured Noteholder's Share of the New Cline Common Shares and the Applicants shall become bound to satisfy their obligations in respect of the New Secured Debt, all in accordance with section 3.4(1), in full consideration for the irrevocable, final and full compromise and satisfaction of the Secured Noteholders Allowed Claim and all Secured Noteholder Obligations;

(d) simultaneously with step 5.3(c), and in accordance with sections 3.4(2) and 5.2(4), Cline shall pay to each Convenience Creditor with an Allowed Affected Unsecured Claim the amount in cash that it is entitled to receive pursuant to section 3.4(2)(b) in full consideration for the irrevocable, final and full compromise and satisfaction of such Convenience Creditor's Affected Unsecured Claim;

(e) simultaneously with step 5.3(c), Cline shall reserve the applicable amount of cash in respect of Convenience Claims that are Disputed Distribution Claims and shall hold such cash in the Disputed Distribution Claims Reserve;

(f) simultaneously with step 5.3(c), and in accordance with sections 3.4(2) and 5.2(3), each Affected Unsecured Creditor with an Allowed Affected Unsecured Claim that is not a Convenience Creditor or a Secured Noteholder shall become entitled to its Individual Unsecured Plan Entitlement (as it may be adjusted based on the final determination of Disputed Distribution Claims in the manner set forth herein) in full consideration for the irrevocable, final and full compromise and satisfaction of such Affected Unsecured Creditor's Affected Unsecured Claim;

(g) simultaneously with step 5.3(c), in accordance with sections 3.4(3) and 5.2(5), and in full consideration for the irrevocable, final and full compromise and satisfaction of such WARN Act Claim: (i) each WARN Act Plaintiff with an Allowed WARN Act Claim shall become entitled to its Individual WARN Act Plan Entitlement and (ii) New Elk shall pay the WARN Act Cash Payment to Class Action Counsel for the benefit of the WARN Act Plaintiffs with Allowed WARN Act Claims, and simultaneously therewith, New Elk shall pay the Class Action Initial Expense Reimbursement;

(h) the Articles shall be altered to, among other things, (i) consolidate the issued and outstanding Cline Common Shares (including, for the avoidance of doubt, Cline Common Shares that are Existing Cline Shares and New Cline Common Shares issued pursuant to Section 5.3(c)) on the basis of the Consolidation Ratio; and (ii) provide for such additional changes to the rights and conditions attached to the Cline Common Shares as may be agreed to by the Applicants, the Monitor and Marret (on behalf of the Secured Noteholders);

(i) any fractional Cline Common Shares held by any holder of Cline Common Shares immediately following the consolidation of the Cline Common Shares referred to in section 5.3(h) shall be cancelled without any liability, payment or other compensation in respect thereof, and the Articles shall be altered as necessary to achieve such cancellation;

(j) all Equity Interests (for greater certainty, not including any Cline Common Shares that remain issued and outstanding immediately following the cancellation of fractional interests in section 5.3(i)) shall be cancelled and extinguished without any liability, payment or other compensation in respect thereof and all Equity Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred without any liability, payment or other compensation in respect thereof, provided that, notwithstanding anything to the contrary herein, the Existing New Elk Units shall not be cancelled or extinguished and shall remain outstanding and solely owned by Cline and the Existing North Central Shares shall not be cancelled or extinguished and shall remain outstanding and solely owned by New Elk;

(k) Cline shall pay in cash all fees and expenses incurred by the Indenture Trustee, including its reasonable legal fees, in connection with the performance of its duties under the Indentures and the Plan;

(l) subject only to section 4.6 hereof, all of the Secured Notes, the Indentures and all Secured Note Obligations shall be deemed to be fully, finally, irrevocably and forever compromised, released, discharged cancelled and barred;

(m) all Affected Claims remaining after the step referred to in section 5.3(l) shall be fully, finally, irrevocably and forever compromised, released, discharged cancelled and barred without any liability, payment or other compensation in respect thereof; and

(n) the releases set forth in Article 7 shall become effective.

The steps described in sub-sections (h) and (i) of this section 5.3 will be implemented pursuant to section 6(2) of the CCAA and shall constitute a valid alteration of the Articles pursuant to a court order under the BCBCA.

5.4 Issuances Free and Clear

Any issuance of any securities or other consideration pursuant to the Plan will be free and clear of any Encumbrances.

5.5 Stated Capital

The aggregate stated capital for purposes of the BCBCA for the New Cline Common Shares issued pursuant to the Plan will be as determined by the new board of directors of Cline appointed pursuant to the Sanction Order.

ARTICLE 6
PROCEDURE FOR DISTRIBUTIONS REGARDING DISPUTED DISTRIBUTION CLAIMS

6.1 No Distribution Pending Allowance

An Affected Creditor holding a Disputed Distribution Claim will not be entitled to receive a distribution under the Plan in respect of such Disputed Distribution Claim or any portion thereof unless and until, and then only to the extent that, such Disputed Distribution Claim becomes an Allowed Claim.

6.2 Disputed Distribution Claims

(a) On the Plan Implementation Date, under the supervision of the Monitor, an amount equal to each Disputed Distribution Claim of the Convenience Creditors shall be reserved and held by Cline, in the Disputed Distribution Claims Reserve, for the benefit of the Convenience Creditors with Allowed Convenience Claims, pending the final determination of the Disputed Distribution Claim in accordance with the Claims Procedure Order and the Plan.

(b) On the Unsecured Plan Entitlement Date, distributions of Unsecured Plan Entitlement Proceeds in relation to a Disputed Distribution Claim of any Affected Unsecured Creditor (other than Convenience Creditors and Secured Noteholders) in existence at the Unsecured Plan Entitlement Date will be reserved and held by Cline, in the Disputed Distribution Claims Reserve, for the benefit of the Affected Unsecured Creditors (other than Convenience Creditors and Secured Noteholders) with Allowed Affected Unsecured Claims until the final determination of the Disputed Distribution Claim in accordance with the Claims Procedure Order and the Plan.

(c) To the extent that any Disputed Distribution Claim becomes an Allowed Affected Unsecured Claim in accordance with the Claims Procedure and it is a Convenience Claim, Cline shall distribute (on the next Distribution Date), under the supervision of the Monitor, the applicable amount of such Allowed Claim to the holder of such Allowed Claim in accordance with section 3.4(2)(b) hereof from the Disputed Distribution Claims Reserve.

(d) To the extent that any Disputed Distribution Claim becomes an Allowed Affected Unsecured Claim in accordance with the Claims Procedure Order and it is not a Convenience Claim or the Claim of a Secured Noteholder, the applicable Affected Unsecured Creditor shall become entitled to its applicable Individual Unsecured Plan Entitlement, and if this occurs after the Unsecured Plan Entitlement Date, Cline shall distribute (on the next Distribution Date) to the holder of such Allowed Claim an amount from the Disputed Distribution Claims Reserve equal to the applicable Affected Unsecured Creditor's Individual Unsecured Plan Entitlement.

(e) At any applicable time, Cline shall be permitted, with the consent of the Monitor, to release and retain for itself any amounts in the Disputed Distribution Claims Reserve that were reserved to pay Convenience Claims that have been definitively not been Allowed in accordance with the Claims Procedure Order.

(f) Prior to any Distribution Date and under the supervision of the Monitor, Cline shall re-calculate the Individual Unsecured Plan Entitlements of the Affected Unsecured Creditors (other than Convenience Creditors and Secured Noteholders), in each case to reflect any applicable Disputed Distribution Claims that were definitively not Allowed, and such Creditors shall become entitled to their re-calculated Individual Unsecured Plan Entitlements. If this occurs after the Unsecured Plan Entitlement Date, as applicable, Cline shall (on the next Distribution Date) distribute to such Creditors the applicable amounts from the Disputed Distribution Claims Reserve as are necessary to give effect to their re-calculated Individual Unsecured Plan Entitlements.

(g) On the date that all Disputed Distribution Claims have been finally resolved in accordance with the Claims Procedure Order, Cline shall, with the consent of the Monitor, release all remaining cash, if any, from the Disputed Distribution Claims Reserve and shall be entitled to retain such cash.

ARTICLE 7
RELEASES

7.1 Plan Releases

On the Plan Implementation Date, in accordance with the sequence set forth in section 5.3, (i) the Applicants, the Applicants' employees and contractors, the Directors and Officers and (ii) the Monitor, the Monitor's counsel, the Indenture Trustee, Marret (on behalf of the Secured Noteholders and in its individual corporate capacity), the Secured Noteholders, the Company Advisors, the Noteholder Advisors and each and every present and former shareholder, affiliate, subsidiary, director, officer, member, partner, employee, auditor, financial advisor, legal counsel and agent of any of the foregoing Persons (each of the Persons named in (i) or (ii) of this section 7.1, in their capacity as such, being herein referred to individually as a "**Released Party**" and all referred to collectively as "**Released Parties**") shall be released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, Encumbrances and other recoveries on account of

any liability, obligation, demand or cause of action of whatever nature, including claims for contribution or indemnity which any Creditor or other Person may be entitled to assert, whether known or unknown, matured or unmatured, direct, indirect or derivative, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the later of the Plan Implementation Date and the date on which actions are taken to implement the Plan, that constitute or are in any way relating to, arising out of or in connection with any Claims, any Director/Officer Claims and any indemnification obligations with respect thereto, the Secured Notes and related guarantees, the Indentures, the Secured Note Obligations, the Equity Interests, the Stock Option Plans, the New Cline Common Shares, the New Secured Debt, the New Credit Agreement, the Unsecured Plan Entitlement, the WARN Act Plan Entitlement, any payments to Convenience Creditors, the business and affairs of the Applicants whenever or however conducted, the administration and/or management of the Applicants, the Recapitalization, the Plan, the CCAA Proceeding, the Chapter 15 Proceeding or any document, instrument, matter or transaction involving any of the Applicants or the Cline Companies taking place in connection with the Recapitalization or the Plan (referred to collectively as the "**Released Claims**"), and all Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, all to the fullest extent permitted by Applicable Law; provided that nothing herein will waive, discharge, release, cancel or bar (x) the right to enforce the Applicants' obligations under the Plan, (y) the Applicants from or in respect of any Unaffected Claim or any Claim that is not permitted to be released pursuant to section 19(2) of the CCAA, or (z) any Director or Officer from any Director/Officer Claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

7.2 Limitation on Insured Claims

Notwithstanding anything to the contrary in section 7.1, Insured Claims shall not be compromised, released, discharged, cancelled or barred by the Plan, provided that from and after the Plan Implementation Date, any Person having an Insured Claim shall be irrevocably limited to recovery in respect of such Insured Claim solely from the proceeds of the applicable Insurance Policies, and Persons with an Insured Claim shall have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries in respect thereof from the Applicants, any of the Cline Companies, any Director or Officer or any other Released Party, other than enforcing such Person's rights to be paid by the applicable insurer(s) from the proceeds of the applicable Insurance Policies.

7.3 Injunctions

All Persons are permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, with respect to any and all Released Claims, from (i) 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 any of the Released Parties; (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties or their property; (iii) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind against the Released Parties or their

property; or (iv) taking any actions to interfere with the implementation or consummation of the Plan; provided, however, that the foregoing shall not apply to the enforcement of any obligations under the Plan. For greater certainty, the provisions of this section 7.3 shall apply to Insured Claims in the same manner as Released Claims, except to the extent that the rights of such Persons to enforce such Insured Claims against an insurer in respect of an Insurance Policy are expressly preserved pursuant to section 3.5(c) and/or section 7.2, and provided further that, notwithstanding the restrictions on making a claim that are set forth in sections 3.5(c) and 7.2, any claimant in respect of an Insured Claim that was duly filed with the Monitor by the Claims Bar Date shall be permitted to file a statement of claim in respect thereof to the extent necessary solely for the purpose of preserving such claimant's ability to pursue such Insured Claim against an insurer in respect of an Insurance Policy in the manner authorized pursuant to section 3.5(c) and/or section 7.2.

7.4 Applicants' Release of Class Action Counsel

On the Plan Implementation Date, any and all claims of the Applicants against Class Action Counsel, Lankenau & Miller LLP and/or Himelfarb Proszanski and any other counsel of record for the WARN Act Plaintiffs in the WARN Act Class Action, in their capacity as counsel to the WARN Act Plaintiffs, shall be released, discharged, cancelled and barred automatically and without any further act or formality, provided that nothing herein shall waive, discharge, release, cancel or bar the obligations of Class Action Counsel to make any distributions to WARN Act Plaintiffs with Allowed WARN Act Claims that they are required to make pursuant to the Plan.

ARTICLE 8
COURT SANCTION

8.1 Application for Sanction Order

If the Required Majorities of the Affected Creditors in each Voting Class approve the Plan, the Applicants shall apply for the Sanction Order on or before the date set for the hearing of the Sanction Order or such later date as the Court may set.

8.2 Sanction Order

The Applicants shall seek a Sanction Order that, among other things:

(a) declares that (i) the Plan has been approved by the Required Majorities of Affected Creditors in each Voting Class in conformity with the CCAA; (ii) the activities of the Applicants have been in reasonable compliance with the provisions of the CCAA and the Orders of the Court made in this CCAA Proceeding in all respects; (iii) the Court is satisfied that the Applicants have not done or purported to do anything that is not authorized by the CCAA; and (iv) the Plan and the transactions contemplated thereby are fair and reasonable;

(b) declares that as of the Effective Time, the Plan and all associated steps, compromises, transactions, arrangements, releases and reorganizations effected thereby are approved pursuant to section 6 of the CCAA, binding and effective as

herein set out upon and with respect to the Applicants, all Affected Creditors, the Directors and Officers, any Person with a Director/Officer Claim, the Released Parties and all other Persons named or referred to in or subject to Plan;

(c) declares that the steps to be taken and the compromises and releases to be effective on the Plan Implementation Date are deemed to occur and be effected in the sequential order contemplated by section 5.3 on the Plan Implementation Date, beginning at the Effective Time;

(d) declare that the releases effected by this Plan shall be approved and declared to be binding and effective as of the Plan Implementation Date upon all Affected Creditors and all other Persons affected by this Plan and shall enure to the benefit of such Persons;

(e) declares that, subject to performance by the Applicants of their obligations under the Plan and except as provided in the Plan, all obligations, agreements or leases to which any of the Applicants or Cline Companies is a party on the Plan Implementation Date shall be and remain in full force and effect, unamended, as at the Plan Implementation Date and no party to any such obligation or agreement shall on or following the Plan Implementation Date, accelerate, terminate, refuse to renew, rescind, refuse to perform or otherwise disclaim or resiliate its obligations thereunder, or enforce or exercise (or purport to enforce or exercise) any right or remedy under or in respect of any such obligation or agreement, by reason:

(i) of any event which occurred prior to, and not continuing after, the Plan Implementation Date, or which is or continues to be suspended or waived under the Plan, which would have entitled such party to enforce those rights or remedies;

(ii) that the Applicants have sought or obtained relief or have taken steps as part of the Plan or under the CCAA or Chapter 15;

(iii) of any default or event of default arising as a result of the financial condition or insolvency of the Applicants;

(iv) of the effect upon the Applicants of the completion of any of the transactions contemplated by the Plan; or

(v) of any compromises, settlements, restructurings, recapitalizations or reorganizations effected pursuant to the Plan,

and declares that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any non-competition agreement or obligation, provided that such agreement shall terminate or expire in accordance with the terms thereof or as otherwise agreed by the Applicants and the applicable Persons;

(f) authorizes the Monitor to perform its functions and fulfil its obligations under the Plan to facilitate the implementation of the Plan;

(g) subject to payment of any amounts secured thereby, declares that each of the Charges shall be terminated, discharged and released upon a filing of the Monitor of a certificate confirming the termination of the CCAA Proceedings;

(h) provides advice and directions with respect to the distribution mechanics in respect of the New Cline Common Shares and the Secured Noteholders' respective entitlements to the New Secured Debt, as both are referred to in section 4.1(b);

(i) declares that the Applicants and the Monitor may apply to the Court for advice and direction in respect of any matters arising from or under the Plan; and

(j) declares the Persons to be appointed to the boards of directors of the Applicants on the Plan Implementation Date shall be the Persons named on a certificate to be filed with the Court by the Applicants prior to the Plan Implementation Date, provided that such certificate and the Persons listed thereon shall be subject to the prior consent of Marret (on behalf of the Secured Noteholders).

ARTICLE 9
CONDITIONS PRECEDENT AND IMPLEMENTATION

9.1 Conditions Precedent to Implementation of the Plan

The implementation of the Plan shall be conditional upon satisfaction of the following conditions prior to or at the Effective Time, each of which is for the benefit of the Applicants and may be waived only by the Applicants, provided that the conditions in paragraphs (a), (b) and (c) of this section 9.1 shall also be for the benefit of Marret (on behalf of the Secured Noteholders) and may be waived only by the mutual agreement of both the Applicants and Marret:

(a) all definitive agreements in respect of the Recapitalization and the new (or amended) Articles, by-laws and other constating documents, and all definitive legal documentation in connection with all of the foregoing shall be in a form satisfactory to the Applicants and Marret (on behalf of the Secured Noteholders);

(b) the New Credit Agreement governing the New Secured Debt, together with all guarantees and security agreements contemplated thereunder, shall have been entered into and become effective, subject only to the implementation of the Plan, and all required filings related to the security as contemplated in the security agreements shall have been made;

(c) the terms of the New Cline Common Shares and the New Credit Agreement shall be satisfactory to the Applicants and Marret (on behalf of the Secured Noteholders);

(d) there shall not be in effect any preliminary or final decision, order or decree by a Governmental Entity, no application shall have been made to any Governmental

Entity, and no action or investigation shall have been announced, threatened or commenced by any Governmental Entity, in consequence of or in connection with the Recapitalization or the Plan that restrains, impedes or prohibits (or if granted could reasonably be expected to restrain, impede or inhibit), the Recapitalization or the Plan or any part thereof or requires or purports to require a variation of the Recapitalization or the Plan;

(e) the Plan shall have been approved by the Required Majorities of each Voting Class;

(f) all orders made and judgments rendered by any competent court of law, and all rulings and decrees of any competent regulatory body, agent or official in relation to the CCAA Proceeding, the Chapter 15 Proceeding, the Recapitalization or the Plan shall be satisfactory to the Applicants, including all court orders made in relation to the Recapitalization, and without limiting the generality of the foregoing:

(i) the Sanction Order shall have been made on terms acceptable to the Applicants, and it shall have become a Final Order;

(ii) the Sanction Order shall have been recognized and deemed binding and enforceable in the United States pursuant to an Order of the US Court in the Chapter 15 Proceeding on terms acceptable to the Applicants, and such Order shall have become a Final Order; and

(iii) any other Order deemed necessary by the Applicants for the purpose of implementing the Recapitalization shall have been made on terms acceptable to the Applicants, and any such Order shall have become a Final Order;

(g) all material agreements, consents and other documents relating to the Recapitalization and the Plan shall be in form and in content satisfactory to the Applicants;

(h) any and all court-imposed charges on any assets, property or undertaking of the Applicants shall have been discharged as at the Effective Time on terms acceptable to the Applicants, acting reasonably;

(i) all Material filings under Applicable Laws shall have been made and any Material regulatory consents or approvals that are required in connection with the Recapitalization shall have been obtained and, in the case of waiting or suspensory periods, such waiting or suspensory periods shall have expired or been terminated;

(j) all securities of the Applicants, when issued and delivered, shall be duly authorized, validly issued and fully paid and non-assessable and the issuance thereof shall be exempt from all prospectus and registration requirements of Applicable Laws;

(k) all necessary filings in respect of the alteration of the Articles shall have been made on terms providing that they will become effective in accordance with and at the times of section 5.3(h) and 5.3(i); and

(l) all fees and expenses owing to the Company Advisors and the Noteholder Advisors as of the Plan Implementation Date shall have been paid, and the Applicants shall be satisfied that adequate provision has been made for any fees and expenses due or accruing due to the Company Advisors and the Noteholder Advisors from and after the Plan Implementation Date.

9.2 Monitor's Certificate

Upon delivery of written notice from the Company Advisors (on behalf of the Applicants) of the satisfaction or waiver of the conditions set out in section 9.1, the Monitor shall forthwith deliver to the Company Advisors a certificate stating that the Plan Implementation Date has occurred and that the Plan is effective in accordance with its terms and the terms of the Sanction Order. As soon as practicable following the Plan Implementation Date, the Monitor shall file such certificate with the Court and with the US Court.

ARTICLE 10
GENERAL

10.1 Binding Effect

The Plan will become effective on the Plan Implementation Date. On the Plan Implementation Date:

(a) the treatment of Affected Claims and Released Claims under the Plan shall be final and binding for all purposes and shall be binding upon and enure to the benefit of the Applicants, all Affected Creditors, any Person having a Released Claim and all other Persons directly or indirectly named or referred to in or subject to Plan and their respective heirs, executors, administrators and other legal representatives, successors and assigns;

(b) all Affected Claims shall be forever discharged and released;

(c) all Released Claims shall be forever discharged and released;

(d) each Affected Creditor, each Person holding a Released Claim and each of the Existing Shareholders shall be deemed to have consented and agreed to all of the provisions of the Plan, in its entirety; and

(e) each Affected Creditor and each Person holding a Released Claim shall be deemed to have executed and delivered to the Applicants and to the Released Parties, as applicable, all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety.

10.2 Waiver of Defaults

From and after the Plan Implementation Date, all Persons shall be deemed to have waived any and all defaults of the Applicants then existing or previously committed by any of the Applicants, or caused by any of the Applicants, by any of the provisions in the Plan or steps or transactions contemplated in the Plan or the Recapitalization, or any non-compliance with any covenant, warranty, representation, term, provision, condition or obligation, expressed or implied, in any contract, instrument, credit document, indenture, note, lease, guarantee, agreement for sale or other agreement, written or oral, and any and all amendments or supplements thereto, existing between such Person and any of the Applicants, and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith shall be deemed to have been rescinded and of no further force or effect, provided that nothing shall be deemed to excuse the Applicants from performing their obligations under the Plan or be a waiver of defaults by any of the Applicants under the Plan and the related documents.

10.3 Deeming Provisions

In the Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

10.4 Non-Consummation

The Applicants reserve the right to revoke or withdraw the Plan at any time prior to the Plan Implementation Date. If the Applicants revoke or withdraw the Plan, or if the Sanction Order is not issued or if the Plan Implementation Date does not occur, (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan and any document or agreement executed pursuant to the Plan shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against any of the Applicants or any other Person; (ii) prejudice in any manner the rights of the Applicants or any other Person in any further proceedings involving any of the Applicants; or (iii) constitute an admission of any sort by any of the Applicants or any other Person.

10.5 Modification of the Plan

(a) The Applicants reserve the right, at any time and from time to time, to amend, restate, modify and/or supplement the Plan, provided that any such amendment, restatement, modification or supplement must be contained in a written document and (i) if made prior to or at the Meetings, communicated to the Affected Creditors prior to or at the Meetings; and (ii) if made following the Meetings, approved by the Court following notice to the Affected Creditors.

(b) Notwithstanding section 10.5(a), any amendment, restatement, modification or supplement may be made by the Applicants with the consent of the Monitor and Marret (on behalf of the Secured Noteholders), without further Court Order or approval, provided that it concerns a matter which, in the opinion of the Applicants, acting reasonably, is of an administrative nature required to better give effect to the implementation of the Plan and the Sanction Order or to cure

any errors, omissions or ambiguities and is not materially adverse to the financial or economic interests of the Affected Creditors.

(c) Any amended, restated, modified or supplementary plan or plans of compromise or arrangement filed with the Court and, if required by this section, approved by the Court, shall, for all purposes, be and be deemed to constitute the Plan.

(d) Notwithstanding anything to the contrary herein or in the Plan, if the requisite quorum is not present at the WARN Act Plaintiffs Meeting or if it is determined in accordance with the Claims Procedure Order that there are no Voting Claims in the WARN Act Plaintiffs Class, the Applicants shall be entitled, but not required, to amend the Plan without further Order of the Court to combine the WARN Act Plaintiffs Class with the Affected Unsecured Creditors Class on such terms as may be set forth in such amended Plan (including on the basis that the WARN Act Plan Entitlement shall not be payable under the Plan), in which case the Applicants shall have no further obligation to hold the WARN Act Plaintiffs Meeting or otherwise seek a vote of the WARN Act Plaintiffs Class with respect to the resolution to approve the Plan or any other matter.

(e) Without limiting the generality of anything in this section 10.5, if (i) the Plan is not approved by the Required Majorities of the Affected Unsecured Creditors Class, or (ii) the Applicants determine, in their discretion, that the Plan may not be approved by the Required Majorities of the Affected Unsecured Creditors Class, then the Applicants are permitted, without any further Order, to file an amended and restated Plan (the "**Alternate Plan**") with the attributes described on Schedule B to the Plan and to proceed with a meeting of the Secured Noteholders Class for the purpose of considering and voting on the resolution to approve the Alternate Plan, in which case the Applicants and the Monitor will have no obligation whatsoever to proceed with the Unsecured Creditors Meeting or the WARN Act Plaintiff's Meeting.

(f) Notwithstanding the references herein to the New Credit Agreement and the New Secured Debt Agent, the Applicants and Marret, with the consent of the Monitor, shall be entitled to modify the form and structure of the New Secured Debt and the manner in which the New Secured Debt is held by the Secured Noteholders to allow such debt to be issued as secured notes or in such other form as may be agreed by the Applicants and Marret with the consent of the Monitor, provided that such modifications do not affect the material economic attributes of the New Secured Debt. In the event of the foregoing, no formal amendment to the Plan (or the Alternate Plan, as applicable) shall be required and the steps and provisions of this Plan (and any Alternate Plan) pertaining to the New Secured Debt shall be read so as to give effect to such modified form and structure of the New Secured Debt.

10.6 Marret and the Secured Noteholders

For the purposes of the Plan, so long as Marret exercises sole investment discretion and control over the all of the Secured Noteholders, then the Applicants, the Company Advisors, the

Monitor, the Indenture Trustee, CDS and all other interested parties with respect to the Plan shall be entitled to rely on confirmation from Marret or the Noteholder Advisors that the Secured Noteholders have agreed to, waived, consented to or approved a particular matter, even if such confirmation would otherwise require the action or agreement of the Indenture Trustee.

10.7 Paramountcy

From and after the Effective Time on the Plan Implementation Date, any conflict between:

(a) the Plan or any Order in the CCAA Proceeding or the Chapter 15 Proceeding; and

(b) the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed or implied, of any contract, mortgage, security agreement, indenture, trust indenture, note, loan agreement, commitment letter, agreement for sale, lease or other agreement, written or oral and any and all amendments or supplements thereto existing between one or more of the Affected Creditors and the Applicants as at the Plan Implementation Date or the notice of articles, articles or bylaws of the Applicants at the Plan Implementation Date;

will be deemed to be governed by the terms, conditions and provisions of the Plan and the applicable Order, which shall take precedence and priority , provided that any settlement agreement executed by the Applicants and any Person asserting a Claim or a Director/Officer Claim that was entered into from and after the Filing Date shall be read and interpreted in a manner that assumes such settlement agreement is intended to operate congruously with, and not in conflict with, the Plan.

10.8 Severability of Plan Provisions

If, prior to the Sanction Date, any term or provision of the Plan is held by the Court to be invalid, void or unenforceable, the Court, at the request of the Applicants and with the consent of the Monitor, shall have the power to either (a) sever such term or provision from the balance of the Plan and provide the Applicants with the option to proceed with the implementation of the balance of the Plan, (b) alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted; or (c) withdraw the Plan. Provided that the Applicants proceed with the implementation of the Plan, then notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation.

10.9 Responsibilities of the Monitor

FTI Consulting Canada Inc. is acting in its capacity as Monitor in the CCAA Proceeding and as foreign representative in the Chapter 15 Proceeding with respect to the Applicants, the CCAA Proceedings and this Plan and not in its personal or corporate capacity, and will not be responsible or liable for any obligations of the Applicants under the Plan or otherwise.

10.10 Different Capacities

Persons who are affected by the Plan may be affected in more than one capacity. Unless expressly provided to the contrary herein, a Person will be entitled to participate hereunder in each such capacity. Any action taken by a Person in one capacity will not affect such Person in any other capacity, unless expressly agreed by the Applicants and the Person in writing or unless its Claims overlap or are otherwise duplicative.

10.11 Notices

Any notice or other communication to be delivered hereunder must be in writing and reference the Plan and may, subject as hereinafter provided, be made or given by personal delivery, ordinary mail or by facsimile or email addressed to the respective parties as follows:

If to the Applicants:

c/o Cline Mining Corporation
161 Bay Street
26th Floor
Toronto, Ontario, Canada
M5J 2S1

Attention: Matthew Goldfarb
Fax: (416) 572-2094
Email: mgoldfarb@clinemining.com

with a copy to:

Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

Attention: Robert Chadwick / Logan Willis
Fax: (416) 979-1234
Email: rchadwick@goodmans.ca / lwillis@goodmans.ca

If to Marret or the Secured Noteholders:

Marret Asset Management Inc.
200 King Street West, Suite 1902
Toronto, Ontario M5H 3T4

Attention: Dorothea Mell
Fax: (647) 439-6471
Email: dmell@marret.com

with a copy to:

Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, Ontario M5V 3J7

Attention: Jay A. Swartz
Fax: (416) 863-5520
Email: jswartz@dwpv.com

If to an Affected Creditor (other than Marret or the Secured Noteholders), to the mailing address, facsimile address or email address provided on such Affected Creditor's Notice of Claim or Proof of Claim;

If to the Monitor:

FTI Consulting Canada Inc.

TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Pamela Luthra
Fax: (416) 649-8101
Email cline@fticonsulting.com

with a copy to:

Osler, Hoskin & Harcourt LLP
100 King Street West,
Toronto, Ontario M5X 1B8

Attention: Marc Wasserman / Michael De Lellis
Fax: 416.862.6666
Email: mwasserman@osler.com / mdelellis@osler.com,

or to such other address as any party may from time to time notify the others in accordance with this section. Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or sending by other means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered, faxed or sent before 5:00 p.m. (Toronto time) on such day; otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

10.12 Further Assurances

Each of the Persons directly or indirectly named or referred to in or subject to Plan will execute and deliver all such documents and instruments and do all such acts and things as may be

necessary or desirable to carry out the full intent and meaning of the Plan and to give effect to the transactions contemplated herein.

DATED as of the 20th day of January, 2015.

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 AND ARRANGEMENT OF CLINE MINING CORPORATION, NEW ELK COAL COMPANY LLC AND NORTH CENTRAL ENERGY COMPANY

Court File No.: CV14-10781-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

PLAN SANCTION ORDER
(Returnable January 27, 2015)

Goodmans LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

Robert J. Chadwick (LSUC# 35165K)
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Lawyers for the Applicants

6404640

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Most Negative Treatment: Distinguished
Most Recent Distinguished: Lintner (Litigation Guardian of) v. Saunders | 2010 ONSC 4862, 2010 CarswellOnt 6952, 192 A.C.W.S. (3d) 1155, [2010] O.J. No. 3901 | (Ont. S.C.J., Sep 9, 2010)

2004 CarswellOnt 2243
Ontario Court of Appeal

M. (J.) v. Bradley

2004 CarswellOnt 2243, [2004] O.J. No. 2312, 131 A.C.W.S. (3d) 557, 187 O.A.C. 201, 240 D.L.R. (4th) 435, 47 C.P.C. (5th) 234, 71 O.R. (3d) 171

J.M., K.P., J.P., C.S., B.H., a minor under the age of majority by his litigation guardian C.S., P.C., J.D.P., P.S., C.W., W.M., P.M., L.L., B.F., D.F., a minor under the age of majority by his litigation guardian B.F., D.M., C.P., J.S., a minor under the age of majority by his litigation guardian C.S., A.P., H.W., a minor under the age of majority by her litigation guardian L.L., S.L., a minor under the age of majority by her litigation guardian L.L. (Plaintiffs / Respondents / Appellants) and William Bradley, Earl McDonald, The Governing Council of the Salvation Army, The Grand Orange Lodge of British America, Dr. Archibald Kerr, Victor Greenwood, Lillian Greenwood, Cyril Fisher, Bill Topping, John Whitmen, Doug Dixon, William Young, William Brown, Bill Parkes, Doug Hiltz, Vera Burrows, Harold Peckford (Defendants / Appellants / Respondents)

Rosenberg, Goudge, Cronk JJ.A.

Heard: January 9, 2004
Judgment: June 3, 2004
Docket: CA C39867, C39881, C39899

Proceedings: reversing *M. (J.) v. Bradley* (2003), 2003 CarswellOnt 6052 (Ont. S.C.J.)

Counsel: Peter J. Cronyn for J.M. et al
M. Philip Tunley for Governing Council of Salvation Army, Victor Greenwood, Lillian Greenwood, Estate of Cyril Fisher, Doug Hiltz, Harold Peckford
M. Philip Tunley (Agent) for Respondent, Vera Burrows
P. David McCutcheon, Kate Broer for Grand Orange Lodge of British America
Paul A. Millican for Dr. Archibald Kerr

Subject: Torts; Civil Practice and Procedure

Headnote

Negligence --- Contributory negligence — Apportionment of liability — Miscellaneous issues

Plaintiffs began action for damages for alleged historical sexual abuses and assaults between 1961 and 1990 — Plaintiffs reached partial agreements with defendants save B, M, and K — Order was granted approving agreements to extent that they affected interests of minors and dismissing plaintiffs' action against settling defendants — K became only remaining non-settling defendant active in action — Prior to dismissal order, K and settling defendants reserved rights to cross-claim against each other at any time during action — K moved to set aside dismissal order and for leave to amend pleading to cross-claim against settling defendants — Special case for opinion of court held that Superior Court of Justice lacked

jurisdiction to apportion fault or neglect at trial against settling defendants who would not be parties to action at trial — Plaintiffs and some settling defendants appealed — Appeal allowed — In respect to non-settling defendants, agreements were contractual opting out from joint liability provision of s. 1 of Negligence Act — As terms of agreements had been disclosed to K and court, consideration of fairness of settlement was possible — Section 1 of Act was not undermined by agreements and no question of possible unfairness or prejudice to any party would arise from implementation of part of agreement contemplating apportionment to settling defendants — Settling defendants had proper notice of allegations made against them and chose to terminate involvement in proceedings on terms contemplating that non-settling defendants continued to have right to seek apportionment at trial — Overriding public interest existed in encouragement of pre-trial settlement of civil cases.

Negligence --- Practice and procedure — Parties — General

Plaintiffs began action for damages for alleged historical sexual abuses and assaults between 1961 and 1990 — Plaintiffs reached partial agreements with defendants save B, M, and K — Order was granted approving agreements to extent that they affected interests of minors and dismissing plaintiffs' action against settling defendants — K became only remaining non-settling defendant active in action — Prior to dismissal order, K and settling defendants reserved rights to cross-claim against each other at any time during action — K moved to set aside dismissal order and for leave to amend pleading to cross-claim against settling defendants — Special case for opinion of court held that Superior Court of Justice lacked jurisdiction to apportion fault or neglect at trial against settling defendants who would not be parties to action at trial — Plaintiffs and some settling defendants appealed — Appeal allowed — In respect to non-settling defendants, agreements were contractual opting out from joint liability provision of s. 1 of Negligence Act — As terms of agreements had been disclosed to K and court, consideration of fairness of settlement was possible — Section 1 of Act was not undermined by agreements and no question of possible unfairness or prejudice to any party would arise from implementation of part of agreement contemplating apportionment to settling defendants — Settling defendants had proper notice of allegations made against them and chose to terminate involvement in proceedings on terms contemplating that non-settling defendants continued to have right to seek apportionment at trial — Overriding public interest existed in encouragement of pre-trial settlement of civil cases.

Civil practice and procedure --- Disposition without trial — Settlement — Effect — General principles

Plaintiffs began action for damages for alleged historical sexual abuses and assaults between 1961 and 1990 — Plaintiffs reached partial agreements with defendants save B, M, and K — Order was granted approving agreements to extent that they affected interests of minors and dismissing plaintiffs' action against settling defendants — K became only remaining non-settling defendant active in action — Prior to dismissal order, K and settling defendants reserved rights to cross-claim against each other at any time during action — K moved to set aside dismissal order and for leave to amend pleading to cross-claim against settling defendants — Special case for opinion of court held that Superior Court of Justice lacked jurisdiction to apportion fault or neglect at trial against settling defendants who would not be parties to action at trial — Plaintiffs and some settling defendants appealed — Appeal allowed — In respect to non-settling defendants, agreements were contractual opting out from joint liability provision of s. 1 of Negligence Act — As terms of agreements had been disclosed to K and court, consideration of fairness of settlement was possible — Section 1 of Act was not undermined by agreements and no question of possible unfairness or prejudice to any party would arise from implementation of part of agreement contemplating apportionment to settling defendants — Settling defendants had proper notice of allegations made against them and chose to terminate involvement in proceedings on terms contemplating that non-settling defendants continued to have right to seek apportionment at trial — Overriding public interest existed in encouragement of pre-trial settlement of civil cases.

Table of Authorities

Cases considered by *Cronk J.A.*:

Amoco Canada Petroleum Co. v. Propak Systems Ltd. (2001), [2001] 6 W.W.R. 628, 2001 ABCA 110, 2001 CarswellAlta 575, 4 C.P.C. (5th) 20, 281 A.R. 186, 248 W.A.C. 186, 200 D.L.R. (4th) 667, 91 Alta. L.R. (3d) 13 (Alta. C.A.) — considered

British Columbia Ferry Corp. v. T & N plc (1995), 16 B.C.L.R. (3d) 115, 65 B.C.A.C. 118, 106 W.A.C. 118, [1996] 4 W.W.R. 161, 27 C.C.L.T. (2d) 287, 1995 CarswellBC 1060 (B.C. C.A.) — considered

Cook v. Ip (1985), 52 O.R. (2d) 289, 5 C.P.C. (2d) 81, 22 D.L.R. (4th) 1, *(*sub nom. *Cook v. Washuta)* 11 O.A.C. 171, 1985 CarswellOnt 586 (Ont. C.A.) — considered

Cook v. Ip (1986), 55 O.R. (2d) 288 (note), *(*sub nom. *Ontario Health Insurance Plan v. Cook)* 68 N.R. 400 (note), *(*sub nom. *Cook v. Washuta)* 18 O.A.C. 80 (note) (S.C.C.) — referred to

Loewen, Ondaatje, McCutcheon & Co. c. Sparling (1992), *(*sub nom. *Kelvin Energy Ltd. v. Lee)* 97 D.L.R. (4th) 616, *(*sub nom. *Kelvin Energy Ltd. v. Lee)* [1992] 3 S.C.R. 235, *(*sub nom. *Kelvin Energy Ltd. v. Lee)* 51 Q.A.C. 49, 143 N.R. 191, 1992 CarswellQue 126, 1992 CarswellQue 126F (S.C.C.) — referred to

Martin v. Listowel Memorial Hospital (2000), 2000 CarswellOnt 3839, 192 D.L.R. (4th) 250, 48 C.P.C. (4th) 195, 51 O.R. (3d) 384, 138 O.A.C. 77 (Ont. C.A.) — distinguished

Maxfield v. Llewellyn (1961), [1961] 1 W.L.R. 1119, [1961] 3 All E.R. 95 (Eng. C.A.) — referred to

Ontario New Home Warranty Program v. Chevron Chemical Co. (1999), 1999 CarswellOnt 1851, 46 O.R. (3d) 130, 37 C.P.C. (4th) 175 (Ont. S.C.J.) — referred to

Pierringer v. Hoger (1963), 124 N.W.2d 106 (U.S. Wis. S.C.) — considered

Sparling v. Southam Inc. (1988), 41 B.L.R. 22, 66 O.R. (2d) 225, 1988 CarswellOnt 121 (Ont. H.C.) — referred to

Wells v. McBrine (1988), 54 D.L.R. (4th) 708, [1989] 2 W.W.R. 695, 47 C.C.L.T. 94, 33 B.C.L.R. (2d) 86, 1988 CarswellBC 431 (B.C. C.A.) — considered

80 Wellesley St. East Ltd. v. Fundy Bay Builders Ltd. (1972), [1972] 2 O.R. 280, 25 D.L.R. (3d) 386 (Ont. C.A.) — considered

Statutes considered:

Courts of Justice Act, R.S.O. 1990, c. C.43
s. 11 — considered

Negligence Act, R.S.O. 1990, c. N.1
Generally — referred to

s. 1 — considered

s. 4 — considered

Rules considered:

Rules of Civil Procedure, R.R.O. 1990, Reg. 194
Generally — referred to

R. 22 — referred to

APPEAL by plaintiffs and some settling defendants from judgment reported at *M. (J.) v. Bradley* (2003), 2003 CarswellOnt 6052 (Ont. S.C.J.), holding that Superior Court of Justice lacked jursidiction to apportion fault or neglect at trial against settling defendants who would not be parties to action at time of trial.

***Cronk J.A.*:**

1 The sole issue in these proceedings is whether the Superior Court of Justice has jurisdiction under s. 1 of the *Negligence Act*, R.S.O. 1990, c. N.1 (the "Act") to apportion fault or neglect in a multi-party tort action against persons who were originally named as party defendants but who, as a result of pre-trial settlements, will not be parties to the action at the time of trial.

2 Twenty individual plaintiffs commenced this action in January 1997, claiming damages for historical sexual abuses and assaults that they allege were perpetrated upon fourteen of them, when they were children, by the defendants William Bradley and Earl McDonald. They also allege that there may be other victims of similar tortious conduct by these defendants, apart from any of the plaintiffs. As well, they claim that the remaining defendants breached duties owed to the plaintiffs by failing to take steps that would have prevented the alleged abusive and assaultive activities of Bradley and McDonald, or by permitting such activities to occur.

3 The incidents in question are alleged to have occurred between 1960 and 1991, thus spanning a period of about thirty-one years. As a result, several of the defendants are now elderly or in poor health.

4 After the commencement of the action, the following events transpired:

(i) Bradley, McDonald, and one other defendant died;

(ii) the claims of several plaintiffs were discontinued or dismissed on consent;

(iii) some of the defendants defaulted in defending the action;

(iv) the defendant, Dr. Archibald Kerr, defended the action and cross-claimed against some of his co-defendants, seeking contribution and indemnity from them and reserving his right to cross-claim against other co-defendants following discoveries; and

(v) third party claims were initiated by the defendant, The Governing Council of the Salvation Army, and Kerr against two individuals: the mother of some of the plaintiffs, who was married first to Bradley and subsequently to McDonald, and a second individual who the plaintiffs assert was a witness to some of the abuse involving children other than the plaintiffs.

5 By September 2002, those plaintiffs who remained involved in the litigation had each entered into partial settlement agreements (the "Agreements") with all the defendants (the "Settling Defendants") save for Bradley, McDonald and Kerr (the "Non-Settling Defendants"). Under the Agreements, the plaintiffs settled their claims against the Settling Defendants and agreed to limit their claims against the Non-Settling Defendants.

6 On September 26, 2002, Métivier, R.S.J. of the Superior Court of Justice granted an order approving the Agreements, to the extent that they affected the interests of minors, and dismissing the plaintiffs' action as against the Settling Defendants, without costs.

7 As a result of all these events, Kerr became the only remaining Non-Settling Defendant active in the action.

8 Prior to the dismissal order, Kerr and the Settling Defendants reserved their respective rights to bring cross-claims against each other at any time during the action. Although Kerr was aware that the plaintiffs were negotiating the Agreements, and was provided with copies of two of the Agreements after they were executed, he did not receive notice of the plaintiffs' dismissal motion before Métivier, R.S.J..

9 Given the terms of the Agreements and the granting of the dismissal order, Kerr was concerned that the judge who presided over the trial might lack jurisdiction to determine the degree, if any, in which the fault or neglect of the Settling Defendants caused or contributed to the plaintiffs' alleged injuries and damages. Kerr feared that, by virtue of the dismissal order, he could be deprived of his right to obtain such an apportionment of liability, if any, against the Settling Defendants.

10 Accordingly, Kerr moved to set aside the dismissal order and for leave to amend his pleading to assert cross-claims against the Settling Defendants.

11 In response to Kerr's motion, the Settling Defendants amended their statement of claim, on consent, to refer to the Agreements and some of their essential terms. They also agreed that, if requested by Kerr or the plaintiffs, they would consent to being examined for discovery.

12 To address the jurisdictional issue raised by Kerr and the ability of the court to give full effect to the terms of the Agreements at trial, the parties also agreed to adjourn parts of Kerr's motion and to submit a special case for the opinion of the court under rule 22 of the *Rules of Civil Procedure*, R.R.O. 1990 Reg. 194. With the concurrence of all parties, the following question was posed for the opinion of the court:

> Does the Court have the jurisdiction to determine whether any fault or neglect of the Settling Defendants or any of them caused or contributed to the damages alleged by the plaintiffs, and the degree of any such contribution, if the Settling Defendants are not parties to the action at the time of trial, in circumstances where the Settling Defendants have entered into Partial Settlement Agreements with the plaintiffs, and consent to the Court so determining the fault or neglect of the Settling Defendants?

13 The special case was heard by Forget J. of the Superior Court of Justice on February 18, 2003. By order dated March 17, 2003, he held that the Superior Court of Justice did not have jurisdiction to apportion fault or neglect at trial against the Settling Defendants who, by then, would not be parties to the action.

14 The plaintiffs and some of the Settling Defendants now jointly appeal from that decision. Although three separate appeals were initiated, the appeals were consolidated and heard together by this court. For ease of reference, I refer throughout the balance of these reasons to the plaintiffs as the appellants.

15 For the reasons that follow, I conclude that the Superior Court of Justice has jurisdiction, in the circumstances of this case, to determine whether and to what extent any fault or neglect of the Settling Defendants caused or contributed to the damages alleged by the appellants, although the Settling Defendants will not be parties to the action at trial. Accordingly, I would allow the appeals.

II. ADDITIONAL FACTS

16 The appellants allege in their statement of claim, among other matters, that Bradley was a senior soldier, employee and agent of the Salvation Army and a member of The Grand Orange Lodge of British America at the time of his alleged tortious conduct. Similarly, they assert that McDonald was a member, employee and officer of the Orange Lodge at the time of the alleged sexual abuses and assaults. The appellants claim that, while active as supervisors or participants in a variety of Salvation Army or Orange Lodge youth activities, Bradley and McDonald sexually, emotionally and physically abused numerous children, including fourteen of the appellants, at several locations, some of which were controlled or owned by the Salvation Army or the Orange Lodge.

17 The appellants seek damages against Bradley and McDonald for assault and battery and intentional infliction of nervous shock rising from their alleged paedophiliac activities. As against the Settling Defendants and Kerr, the latter of whom was allegedly the physician to several of the appellants and Bradley, the appellants claim damages for negligence and breach of fiduciary duty. They also assert that either or both of the Salvation Army and the Orange Lodge are vicariously liable for the damages claimed in respect of the individual conduct of Bradley, McDonald and various of the Settling Defendants.

18 By September 2002, all the appellants who continued as participants in the action had entered into Agreements with the Settling Defendants. The terms of the Agreements are identical and modelled on a type of settlement agreement known as a 'Pierringer' agreement, as described in the Wisconsin case of *Pierringer v. Hoger*, 124 N.W.2d 106 (U.S. Wis. S.C. 1963).

19 The parties indicated in the special case that the Agreements are intended, in part, "to permit the Settling Defendants to exit the action by settling their claims with the plaintiffs, and by attempting to eliminate any joint liability the Settling Defendants might be found to have with the remaining defendants".

20 The Agreements each provide:

> (i) that the settlement and payment contemplated thereunder are not to be taken as an admission of liability on the part of the Settling Defendants;
>
> (ii) that the action will be dismissed as against the Settling Defendants, on consent and without costs;
>
> (iii) that the appellants will use their best efforts to cause any cross-claims against the Settling Defendants to be similarly dismissed, without costs, "in order to fully and finally conclude all litigation arising from the matters pleaded" in the action against the Settling Defendants;
>
> (iv) a full and final release by the appellants in favor of the Settling Defendants;
>
> (v) that the appellants will indemnify and hold harmless the Settling Defendants from any cross-claim or third party claim, and any other proceeding or claim arising from the issues and allegations in the action; and
>
> (vi) for the disclosure of the Agreement, including the settlement amount provided thereunder, to the trial court, on certain conditions.

21 The indemnity provision contained in each of the Agreements states:

> The [appellants] restrict their claim to whatever the non-settling defendants may be directly liable for and as such non-settling defendants cannot be jointly liable with the settling defendants. This clause means non-settling defendants have no basis to seek contribution, indemnity, relief over by way of equitable subrogation, declaratory relief or otherwise against the [Settling Defendants].

22 In February 2003, after the dismissal of the appellants' claims against the Settling Defendants, the appellants amended their statement of claim, on consent, to reflect the compromises of their claims detailed in the Agreements. The amended version of their pleading states:

> 89. The Plaintiffs have agreed with the Settling Defendants that they shall limit their claims against the Non-settling Defendants to claims for damages, costs and interest attributable only to the Non-settling Defendants' several share of liability to the Plaintiffs and joint liability to one another, if any, such that *the Plaintiffs' recovery shall be limited to recovering the damages, costs and interest attributable to the Non-settling Defendants' several share of liability, or joint share of liability among them, proven against them at trial.*

> 90. For greater certainty, the Plaintiffs shall have no claim directly or indirectly against the Settling Defendants and *the Plaintiffs shall limit their claims against the Non-settling Defendants so as to exclude any cross-claim or third party claim made against or which could be made against the Settling Defendants arising from the issues in this action*.
>
> 91. The Plaintiffs admit that the Court at any trial of this matter has and shall have full authority to adjudicate upon the apportionment of liability, if any, between all Defendants named in this Statement of Claim, including the Settling Defendants, whether or not the Settling Defendants remain as parties by cross-claim or third party claim in this action.
>
> [emphasis added]

The Non-Settling Defendants are defined in the appellants' amended pleading to mean Bradley, McDonald and Kerr.

23 All parties agree that the terms of the Agreements require that Kerr should have the opportunity and right, if so advised, to obtain an adjudication at trial as to whether the neglect or fault of one or more of the Settling Defendants caused or contributed to the damages alleged by the appellants. Indeed, it is common ground that the trial judge who presides over the trial of the action will be required to determine the degree to which the Settling Defendants are at fault or negligent in order to give effect to the Agreements.

24 The parties, including Kerr, also agree that if the appeals are allowed, the factual and legal issues in dispute will be reduced, costs savings for all parties will be realized, and no prejudice will be caused to any party.

25 Kerr, therefore, does not oppose the dismissal of the appellants' claims against the Settling Defendants so long as he is not deprived of his right to seek to limit his potential liability, if any, by having the Settling Defendants' share of liability adjudicated at trial. Kerr's proposed cross-claims against the Settling Defendants are intended to preserve his access to such an apportionment. However, if the Settling Defendants are required to remain in the action as defendants to cross-claims brought by Kerr, the substance of their settlement bargain with the appellants will be threatened and, potentially, lost entirely.

III. MOTIONS JUDGE'S DECISION

26 In his reasons dated March 17, 2003, the motions judge implicitly acknowledged that the active parties to this action either agreed to, or did not oppose, the terms of settlement contained in the Agreements. He also recognized that the parties consented to the jurisdiction of the Superior Court of Justice to apportion liability at trial as against the Settling Defendants.

27 The motions judge held that the proposed apportionment of liability to the Settling Defendants, "[did] not pose a risk of prejudice to any of the persons involved in the present proceedings . . . ".

28 However, the motions judge also reviewed the decision in *Martin v. Listowel Memorial Hospital* (2000), 51 O.R. (3d) 384 (Ont. C.A.), in which this court stated in *obiter* that a court could only apportion degrees of fault under s. 1 of the Act to a defendant who was a party to the applicable proceedings. Primarily on the basis of that case, the motions judge concluded that the Superior Court of Justice lacked the asserted jurisdiction to apportion fault or neglect to the Settling Defendants at trial.

IV. ANALYSIS

(1) 'Pierringer' Settlement Agreements

29 In recent years, 'Pierringer' settlement agreements have been increasingly utilized in Canada in a variety of litigation settings. In *Amoco Canada Petroleum Co. v. Propak Systems Ltd.* (2001), 200 D.L.R. (4th) 667 (Alta. C.A.), at 673-74, the Alberta Court of Appeal outlined the factors leading to their emergent use:

> Now past is the day when "settlement agreement" can be understood to refer solely to the final resolution of all outstanding issues between all parties to a lawsuit, effectively bringing the suit to an end. In the last several years, in response to

> increasingly complex and commensurately dilatory and costly litigation, a new generation of settlement agreements has been cautiously adopted by the litigation bar.
>
> The new settlement agreements, which include such exotically named species as the Mary Carter agreement and the Pierringer agreement, endeavour to attain a more limited objective: rather than trying to resolve all outstanding issues among all parties, a difficult task in complicated suits, they aim to manage proactively the risk associated with litigation. In short, contracting litigants prefer the certainty of settlement to the uncertainty and expense of a trial and the possibility of an undesirable outcome. This "risk-management" objective is accomplished by settling issues of liability between some but not all of the parties, thereby reducing the number of issues in dispute, simplifying the action, and expediting the suit. Ancillary benefits include a reduction in the financial and opportunity costs associated with complex, protracted litigation, as well as savings of court time and resources.

30 The court in *Amoco* described a 'Pierringer" settlement agreement in this way (at p. 671):

> Such agreements permit some parties to withdraw from the litigation, leaving the remaining defendants responsible only for the loss they actually caused, with no joint liability. As the non-settling defendants are responsible only for their proportionate share of the loss, a Pierringer agreement can properly be characterized as a 'proportionate share settlement agreement'.

31 'Pierringer' agreements, however, are not free from settlement complications. As observed by the court in *Amoco* (at pp. 674-75):

> As a result of third party proceedings, settling defendants are almost always subject to claims for contribution and indemnity from non-settling defendants for the amount of the plaintiff's loss alleged to be attributable to the fault of the settling defendants. Before the settling defendants can be released from the suit, some provision must be made to satisfy these claims.
>
> This obstacle is overcome by including an indemnity clause in which the plaintiff covenants to indemnify the settling defendants for any portion of the damages that a court may determine to be attributable to their fault and for which the non-settling defendants would otherwise be liable due to the principle of joint and several liability. Alternatively, the plaintiff may covenant not to pursue the non-settling defendants for that portion of the liability that a court may determine to be attributable to the fault of the settling defendants. . . . [I]n either case the goal of the proportionate share settlement agreement is to limit the liability of the non-settling party to its several liability.

32 The Agreements in this case, as I have said, contain both an indemnity clause in favour of the Settling Defendants and an agreement by the appellants to restrict their claims against the Non-Settling Defendants to only those defendants' *several*, rather than *joint and several*, shares of liability. In respect of the Non-Settling Defendants, therefore, the Agreements effectively represent a contractual 'opting-out' by the appellants of the joint liability provision set out in s. 1 of the Act, save for joint liability, if any, among the Non-Settling Defendants.

(2) Implementation of the Agreements in this Case

33 The parties who appeal from the motions judge's decision challenge it on three main grounds. First, they argue that there is nothing in the reasoning of this court in *Martin*, *supra*, or under the Act, that operates in the circumstances of this case to preclude the requested liability apportionment at trial against the Settling Defendants. Second, they maintain that the motions judge's decision is contrary to the decisions of other courts in Canada, which have endorsed the implementation of 'Pierringer' settlement agreements. Finally, they assert that the motions judge's decision is also contrary to the settled policy of Canadian courts to encourage settlement. I will address each of these submissions in turn.

(i) Lack of Legal Impediment to the Asserted Jurisdiction of the Superior Court

34 In Ontario, the implications of a 'Pierringer' settlement agreement for the apportionment of liability at trial must be assessed in light of s. 1 of the Act. That section reads:

> 1. Where damages have been caused or contributed to by the fault or neglect of two or more persons, the court shall determine the degree in which each of such persons is at fault or negligent, and, where two or more persons are found at fault or negligent, they are jointly and severally liable to the person suffering loss or damage for such fault or negligence, but as between themselves, in the absence of any contract express or implied, each is liable to make contribution and indemnify each other in the degree in which they are respectively found to be at fault or negligent.

35 The terms of s. 1 of the Act are mandatory. They require the court, in a negligence action involving two or more tortfeasors, to "determine the degree in which *each of such persons* is at fault or negligent" [emphasis added]. In contrast to other sections of the Act, in which express reference is made to the "parties" to an action, s. 1 refers to the apportionment of fault or neglect among "persons" found to have caused or contributed to the damages established at a trial. Thus, Ontario courts have been required to determine whether the word "persons", as used in s. 1, includes persons who are not parties to the negligence action in which damages are proven.

36 In *Martin*, this court considered the scope of s. 1 of the Act. In that case, the infant plaintiff suffered serious brain damage at birth due to the negligence of two doctors and a nurse and the lack of adequate training of ambulance attendants by the hospital where the infant plaintiff was born. The infant plaintiff and his family members sued the doctors, the ambulance attendants and the hospital in negligence. They did not sue the nurse, who was added as a third party by the doctors. A pre-trial settlement was reached between the plaintiffs and the doctors, with the result that the doctors did not participate at trial. The terms of the settlement agreement were not disclosed to the other defendants, or to the court.

37 The trial judge in *Martin* held that the doctors, the nurse and the hospital were negligent and that the hospital was also vicariously liable for the nurse's negligence. He made no finding of negligence against the ambulance attendants. In addition, although he made express findings of negligence against the nurse, he did not determine the degree of her fault. He ultimately concluded that he was unable to determine the respective degrees of fault of those defendants whom he found to be negligent. In his view, the nurse, who was not a named defendant in the main action, was not a "party" to the litigation and the nurse and the hospital could not be held separately negligent.

38 Section 4 of the Act provides: "If it is not practicable to determine the respective degrees of fault or negligence as between any parties to an action, such parties shall be deemed to be equally at fault or negligent." In reliance on s. 4 of the Act, the trial judge in *Martin* apportioned negligence in equal shares among the hospital and the two doctors, thereby essentially treating the doctors as if they were still parties to the action. He then granted judgment in favour of the plaintiffs against the hospital for one-third of the plaintiffs' total damages but, in recognition of the pre-trial settlement with the doctors, directed that no judgment should issue in favour of the hospital against the doctors.

39 On appeal to this court, it was argued that the trial judge's apportionment of liability based on s. 4 of the Act was in error. In the alternative, the plaintiffs submitted that s. 1 of the Act required the trial judge to determine the degree of fault of the nurse.

40 The plaintiffs' appeal was successful on the grounds that the trial judge erred by applying s. 4 of the Act in circumstances where the degrees of fault of the hospital and the two doctors could be determined, and by failing to correctly apportion liability between the hospital and the nurse. In the latter respect, this court held that the degree of fault of vicariously responsible defendants should be apportioned in order to reflect the contributions of each of the persons for whom the responsible defendants are vicariously liable. Accordingly, contrary to the holding of the trial judge, the apportionment of fault to the hospital should have reflected both its direct negligence and its vicarious liability for the nurse's negligence. To arrive at that apportionment, it was necessary that the nurse's degree of fault be determined to establish the degree of fault for which the hospital was vicariously liable.

41 In commenting on the plaintiffs' alternative argument regarding s. 1 of the Act, the court considered the import of the word "persons" as used in that section (at para. 31):

> The trial judge fully considered [the nurse's] involvement in the birth of the plaintiff Steven Martin, and made several findings of negligence against her, concluding that her negligence materially contributed to the damage he suffered. However, he did not go on to determine her degree of fault because he did not consider her to be a party to the action. The plaintiffs submit that because s. 1 refers to persons and not parties, he should have done so, even if she was not a party.
>
> We would not give effect to that submission. *There is no basis in s. 1 or anywhere in the Act for a judge to attribute a portion of fault to a non-party. Furthermore, although s. 1 refers to "persons", in any particular action its effect is to impose joint and several liability to the plaintiff only on defendants found at fault or negligent, and not on any other person.*
>
> The use of the word "persons" in the section, where "parties" is used elsewhere in the Act, has led to the suggestion that the section is intended to apply to anyone at fault. However, the authorities which have considered the issue have consistently held that the section does not allow the court to apportion any degree of fault to a non-party. Furthermore, this interpretation is consistent with the proper operation of the Act [emphasis added].

42 The motions judge appears to have regarded *Martin* as dispositive of the jurisdictional question posed by the parties on the special case. I disagree. With respect, I am of the view that neither the reasoning in *Martin* nor the language of s. 1 of the Act precludes the apportionment of fault or neglect at trial to one or more of the Settling Defendants. I reach that conclusion for the following reasons.

43 First, the Superior Court of Justice enjoys a wide jurisdiction under s. 11 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43 that encompasses, "all the jurisdiction, power and authority historically exercised by courts of common law and equity in England and Ontario". This jurisdiction cannot be displaced absent clear and unequivocal statutory language: see *80 Wellesley St. East Ltd. v. Fundy Bay Builders Ltd.*, [1972] 2 O.R. 280 at 282 (Ont. C.A.) and *Cook v. Ip* (1985), 52 O.R. (2d) 289 (Ont. C.A.), at 296, leave to appeal to S.C.C. refused (1986), 55 O.R. (2d) 288 (note) (S.C.C.).

44 There is no express indication in s. 1 of the Act of a legislative intention to limit the jurisdiction of the Superior Court of Justice in the apportionment of liability in negligence cases. To the contrary, s. 1 of the Act is a substantive law provision that confirms the jurisdiction of the Superior Court to apportion liability among concurrent tortfeasors: see *Martin* at para. 48.

45 Second, the facts in *Martin* are markedly different from the facts in this case. In *Martin*, the nurse was never sued by the plaintiffs and, thus, had never been a party to the main action. Accordingly, she had no opportunity to respond directly to the plaintiffs' allegations of negligence against her, or to their claims for relief. As between the plaintiffs and the nurse, the nurse was a stranger to the action.

46 In contrast, in this case, the Settling Defendants were sued by the appellants and defended the action. They are aware of the allegations made by the appellants and had an opportunity to resist any potential findings of fault or negligence against them. Similarly, from the outset of the litigation, the appellants were aware of the involvement of the Settling Defendants and, knowing this, chose to voluntarily compromise their claims against them under the Agreements. In those important respects, the Settling Defendants are in a position analogous to that of the doctors, rather than to that of the nurse, in *Martin*.

47 It is significant that findings of negligence and an apportionment of fault were made against the doctors in *Martin*, although they took no part in the trial. It is unclear from the reported decision in *Martin* whether the doctors consented to such an apportionment, notwithstanding the settlement entered into by them with the plaintiffs. The trial judge indicated in *Martin* that, had the nurse been a named defendant, he would have assigned equal fault to each of the two doctors, the nurse and the hospital. That apportionment of degrees of fault was ultimately accepted by this court, without any suggestion that the trial judge erred by apportioning liability to the doctors.

48 Third, *Martin* is also distinguishable from this case on another fundamental factual basis. In *Martin*, the settlement agreements entered into by the defendant doctors were secret, and were not disclosed to the other defendants or to the courts. In contrast, the parties to the Agreements here have agreed to the disclosure of the Agreements to the trial court and copies of two of the Agreements have been provided to Kerr, the single remaining active defendant. Thus, consideration of the fairness

of the settlement with the Settling Defendants, insofar as it relates to minors, was possible by the court prior to the approval of the settlement by Métivier R.S.J. and it is open to the judge at trial to assess the impact of the settlement on the Non-Settling Defendants and Settling Defendants alike.

49 Fourth, the court emphasized in *Martin* at para. 34 that the purpose of the joint and several liability provision contained in s. 1 of the Act is, "to facilitate full recovery of the loss for the plaintiff, while at the same time providing a mechanism for each of those who contributed to the loss to share the financial responsibility in the proportions of their respective degrees of fault". In the same paragraph of its reasons, the court also said that, to accomplish this primary objective: "The effect of s. 1 of the *Negligence Act* is to make *all persons sued* who caused or contributed to the damage suffered by the plaintiff jointly and severally liable to the plaintiff for the damage [emphasis added]." See also the court's comments in *Martin* at para. 41 concerning *Maxfield v. Llewellyn*, [1961] 3 All E.R. 95 (Eng. C.A.).

50 Thus, the reasoning in *Martin* concerning the apportionment of liability against the nurse and the doctors was premised on the view that the word "persons" in s. 1 of the Act is intended to refer to persons *sued* in the litigation. For that reason, the determination of the degree of fault or neglect of the doctors, who had been sued by the plaintiffs, was permissible, whereas such a determination regarding the nurse, who had not been sued by the plaintiffs, was not.

51 It is noteworthy, in this regard, that the court in *Martin* expressly agreed at para. 47 with the recommendation of the Ontario Law Reform Commission in its 1988 *Report on Contribution Among Wrongdoers and Contributory Negligence* (Toronto: Ministry of the Attorney General, 1988) at 187, that no degree of fault should be apportioned under s. 1 of the Act to an "absent concurrent wrongdoer". As well, the court in *Martin* stated at para. 48 with reference to s. 1 of the Act:

> It is the only section of the Act which imposes liability, as opposed to apportioning fault. The section is substantive, not procedural. Therefore, when applying the section to any specific action, it is understood that joint and several liability to the plaintiff can and will attach only to a party defendant, *although others who may also have been at fault could potentially have been found jointly and severally liable had they been sued by the plaintiff*. Because procedurally the section only affects defendants, under this section the court is to apportion degrees of fault only to defendants [emphasis added].

52 There is no "absent" tortfeasor in this case. Rather, the Settling Defendants are 'sued persons' in the appellants' action. Accordingly, although the Settling Defendants will not be participants at trial, a trial apportionment of liability against them is consistent with the reasoning in *Martin*.

53 Fifth, the decision in *Martin* is distinguishable on another, critical ground. The interpretive result in *Martin* was driven by important policy considerations that do not apply here. The court was concerned in *Martin* that a finding of a degree of fault in respect of a non-party could have significant consequences for other defendants under s. 1 of the Act. The court stated (at para. 36):

> If the fault is apportioned only among the parties, then if there is a non-party who may also have been at fault and contributed to the damage, a larger percentage of the whole loss may be attributed to each party, so that the entire loss is divided for indemnity purposes, and no gap is left. *But if a portion of the fault were attributed to a non-party, or to a party at fault but with a legal defence such as a limitation defence, the defendants who are liable to the plaintiff would be left with no one from whom they could recover that portion of the claim* [emphasis added].

54 This concern is met by the type of 'Pierringer' settlement agreement employed by the appellants and Settling Defendants. By the terms of the Agreements and their amended pleading, the appellants have acknowledged and agreed that they will hold the Non-Settling Defendants accountable for their *several* liability only. As well, the Settling Defendants have agreed that the trial judge may apportion fault or negligence against them, although they will not take part in the trial.

55 By reason of these concessions, no risk of a 'gap' in liability arises, in the sense described in *Martin*, from the potential apportionment of liability at trial to the Settling Defendants. As I have said, there is no absent or unknown tortfeasor in the case at bar, and the appellants have contractually limited their claims as against *both* the Settling Defendants and the Non-Settling Defendants. As a result, if the Agreements are given effect at trial, any Non-Settling Defendant against whom fault or neglect

is found will not be exposed to the risk of an apportionment to them of a larger percentage of the appellants' total loss, based on joint liability with the Settling Defendants, than would otherwise occur, based on their own direct fault.

56 Finally, Kerr advances an additional compelling reason to support a liability apportionment at trial against the Settling Defendants. He asserts that there is a real risk that none of the Non-Settling Defendants, except himself, will have the financial means to satisfy any judgment granted against them. He therefore submits that he may be exposed under the operation of s. 1 of the Act to the risk of paying damages in excess of any several shares of damages that might be apportioned against him, because he will be jointly liable under s. 1 for the several liability of any impecunious Non-Settling Defen-dant. As a result, Kerr wishes to be free to take the position at trial that his exposure to any shortfall in the appellants' recovery of damages occasioned by the insolvency of another Non-Settling Defendant should be reduced by a proportion related to the fault of the Settling Defendants.

57 Assuming, without deciding, that this argument is available under Ontario law, Kerr will be unable to advance this submission at trial if the trial judge lacks the authority to determine the degree in which the Settling Defendants are at fault or negligent, if at all.

58 On the basis of all these factors, it is my view that the purpose of s. 1 of the Act is not undermined by the Agreements and no question of potential unfairness or prejudice to any of the parties will arise from the implementation of the part of the settlements that contemplates the apportionment of fault or neglect at trial to the Settling Defendants.

59 In my view, the reasoning in *Martin* does not mean that persons who have been sued by a plaintiff and who, therefore, are not strangers to the action, invariably cannot be subject to an apportionment of liability at trial under s. 1 of the Act if they become non-parties to the plaintiff's action by reason of a pre-trial settlement. To the contrary, in my opinion, when a named party defendant invokes the jurisdiction of the court by defending claims of negligence brought against it, and thereafter relinquishes its right to pursue its defence of those claims by voluntarily entering into a pre-trial settlement, that party is a "person" against whom an apportionment of liability may properly be made where, as here, no question of unfairness or prejudice will arise. Such an apportionment, in my opinion, comports with the interpretation of the substance of s. 1 of the Act that was articulated by this court in *Martin*. In this case, the absence of unfairness or prejudice is indicated by the fact that the parties active in the litigation consent to, or do not oppose, an apportionment at trial of fault or neglect, if any, to the Settling Defendants.

(ii) Experience in Other Provinces with 'Pierringer' Agreements

60 The parties also argue that the motions judge's decision is contrary to the developed experience in other provinces concerning the implementation of 'Pierringer' settlement agreements. They point out that the implementation of settlement agreements of the 'Pierringer' type has been approved by the appellate courts of Alberta and British Columbia, even in the absence of the consent, or the non-opposition, of all parties: see *Amoco, supra*, and *British Columbia Ferry Corp. v. T & N plc* (1995), 27 C.C.L.T. (2d) 287 (B.C. C.A.). See also, concerning the assessment of fault against non-parties, *Wells v. McBrine* (1988), 33 B.C.L.R. (2d) 86 (B.C. C.A.) and the discussion regarding that case by this court in *Martin* at para. 43.

61 The motions judge correctly concluded that such decisions should be approached with caution by Ontario courts because the statutory regimes governing the appor-tionment of negligence vary from province to province. Simply stated, the impact in another province of a 'Pierringer' settlement agreement on the rights of non-settling parties to a lawsuit may have no relevance in Ontario because the applicable statutory regime and the procedural rules of court that govern the forum in which the lawsuit was commenced may be fundamentally different from those that apply in Ontario.

62 In my view, however, the *Amoco* decision and similar cases are instructive in this respect: they essentially emphasize that the interests of the administration of justice are not facilitated by requiring the involvement at trial of a litigant for purely procedural purposes where this can be avoided without unfairness or prejudice to the parties. I endorse this proposition.

63 As observed by this court in *Martin* at para. 27:

> With litigation becoming more and more expensive and numerous initiatives being taken to reduce the cost of litigation, it would be counterproductive to interpret the *Negligence Act* as requiring the addition of unnecessary parties, purely for form, in order to obtain a fair and proper apportionment of fault.

This statement in *Martin* was concerned with the suggestion by the trial judge in that case, a suggestion rejected by this court, that persons for whom a defendant may be found to be vicariously liable must be added as third parties in order to support a finding of vicarious liability against the named defendant. Nonetheless, it underscores the desirability of avoiding the joinder or involvement in litigation, for purely procedural or technical purposes, of persons who are not otherwise necessary parties.

64 The conclusion that I have reached regarding the proper interpretation of s. 1 of the Act and the decision in *Martin* avoids this result. I again underscore, as argued by some of the Settling Defendants in these proceedings, that the "persons" against whom a finding of contributory fault or neglect is sought in this case (the Settling Defendants), are persons who had proper notice of the appellants' allegations and a full opportunity to respond to them. They voluntarily elected to terminate their involvement in the litigation on terms that contemplate that the Non-Settling Defendants will continue to have the right to seek a trial apportionment of the Settling Defendants' degree of contributory responsibility, if any, despite the absence of the Settling Defendants at trial. Moreover, they have agreed to be discovered, should discovery of them be sought by the appellants or Kerr. Thus, there is no suggestion in this case of potential procedural unfairness to the Non-Settling Defendants. Finally, all active parties to this litigation either consent, or do not object, to the apportionment of liability at trial as against the Settling Defendants. These factors obviate any need for the Settling Defendants to remain involved in the litigation as passive or active litigants.

(iii) Public Interest in Promoting Settlement

65 Finally, there is an additional, and powerful, reason to support the implementation of the Agreements in this case: the overriding public interest in encouraging the pre-trial settlement of civil cases. This laudatory objective has long been recognized by Canadian courts as fundamental to the proper administration of civil justice: see for example, *Sparling v. Southam Inc.* (1988), 66 O.R. (2d) 225 (Ont. H.C.), at 230, referred to with approval by the Supreme Court of Canada in *Loewen, Ondaatje, McCutcheon & Co. c. Sparling*, [1992] 3 S.C.R. 235 (S.C.C.) at para. 48; and *Ontario New Home Warranty Program v. Chevron Chemical Co.* (1999), 46 O.R. (3d) 130 (Ont. S.C.J.), at 147. Furthermore, the promotion of settlement is especially salutary in complex, costly, multi-party litigation. As observed in *Amoco* at p. 677:

> In these days of spiralling litigation costs, increasingly complex cases and scarce judicial resources, settlement is critical to the administration of justice.

66 The negotiated settlement between the appellants and the Settling Defendants, as recorded in the Agreements and reflected in the appellants' amended pleading, is in the public interest and the interests of all active parties to the litigation. The implementation of the Agreements, which necessitates an apportionment of liability at trial against the Settling Defendants, will result in the participation of fewer parties at trial and will shorten the duration of the trial. This, in turn, will reduce the legal costs of the parties and permit the efficient use of judicial and court resources. As well, and importantly, the implementation of the Agreements is in the interests of all the defendants to the action. The interests of the Settling Defendants are furthered by the release contained in the Agreements and the potential liability of the Non-Settling Defendants is significantly limited under the bargain made by the appellants.

67 I conclude that 'Pierringer' settlement agreements, of the type employed in this case, should be supported in circumstances where, as here, the fairness of the settlement is unchallenged and prejudice arising from the full implementation of the settlement has not been alleged or shown. Cases of this kind cannot be rendered 'unsettleable', for all practical purposes, without just and substantive cause. Such cause does not arise in the case at bar.

(iv) Other Relevant Factors

68 I wish to comment upon two additional and related considerations arising in these proceedings. Kerr argued before this court that the trial judge in this action would be faced with a most difficult, if not impossible, task if required to determine the

Non-Settling Defendants' several share of liability without being in a position to make the same determination concerning the responsibility, if any, of the Settling Defendants for the appellants' losses. Correspondingly, he asserted that the determination of his share of liability without regard to the Settling Defendants' contributory responsibility would be manifestly unfair.

69 I agree with both of these submissions. The appellants' allegations, if proven, will make Kerr, the other Non-Settling Defendants and the Settling Defendants concurrent tortfeasors. The liability of the Non-Settling Defendants, however, will be limited to their several liability, and their joint liability with each other, in accordance with the contractual concessions made by the appellants in the Agreements. In these circumstances, it is difficult to conceive how the several liability of the Non-Settling Defendants could properly and justly be determined by the trial judge without regard to the proportionate fault or neglect of the Settling Defendants.

70 In some ways, this is analogous to the apportionment of vicarious liability addressed in *Martin*. In that case, as I have said, this court held that the hospital's total liability, including its vicarious liability, could not be justly determined without a determination of the degree of fault of the negligent nurse. Similarly, fairness requires that Kerr's several share of fault or neglect not be determined in a vacuum, without consideration of the several liability of all other proven tortfeasors. Were it otherwise, Kerr could be exposed at trial to the potential risk of being required to pay damages to the appellants for part of the Settling Defendants' several shares of liability, claims to which, as Kerr properly points out, have been compromised and released by the appellants under the Agreements.

V. DISPOSITION

71 For the reasons given, I would allow the appeals, set aside the order of the motions judge, and answer the question posed on the special case as follows: the Superior Court has jurisdiction, in the circumstances of this case, to determine whether and to what extent any fault or neglect of the Settling Defendants caused or contributed to the damages alleged by the appellants, although the Settling Defendants will not be parties to the action at trial. As acknowledged by the parties, this is not an appropriate case for an award of costs.

***Rosenberg J.A.*:**

I agree.

***Goudge J.A.*:**

I agree.

Appeal allowed.

14

2010 ONSC 2720
Ontario Master

Noonan v. Alpha-Vico

2010 CarswellOnt 4813, 2010 ONSC 2720, [2010] O.J. No. 2807, 190 A.C.W.S. (3d) 720, 99 C.P.C. (6th) 287

Sandra Noonan et. al. v. Alpha-Vico et. al.

Master Calum MacLeod

Heard: January 28, March 30, 2010
Judgment: June 28, 2010
Docket: 08-CV-43478

Counsel: C. Jill Alexander, for "Sico Defendants"
Dawn M. Searle, for "Alpha-Vico Defendants"
Thomas P. Connolly, for Plaintiffs
Thomas P. Connolly (Agent), for Mr. O'Brien
Allan R. O'Brien (written), for Upper Canada District School Board

Subject: Civil Practice and Procedure; Torts; Family

Headnote

Civil practice and procedure --- Discovery — Examination for discovery — Who may be examined — Non-party — Miscellaneous

Boy was killed when folding cafeteria table fell on him while he was moving it at his school — Plaintiffs brought action for damages against school board and two of its employees ("school board action"), and later brought separate action for damages against designer, manufacturer and distributors of table ("products liability action") — No third party claim or other claim was launched by school board against product liability defendants — In products liability action, plaintiff claimed damages in manner designed to prevent product liability defendants claiming contribution or indemnity from school board under Negligence Act — Plaintiffs reached settlement in school board action, and discontinued that action — There was no discovery as yet in products liability action — Products liability defendants brought motion for production and discovery against settling defendants — Motion dismissed — Case law dealing with proportional share agreements such as Pierrenger and Mary Carter agreements was of assistance — Request was premature — Before seeking remedies against non parties, litigant must generally discover opposing parties and seek access to information in that manner — School board had agreed to make documents available to plaintiffs, so presumably they would form part of plaintiff's productions — Preconditions for discovery of non party were not yet met — Even had products liability defendants appeared before judge approving settlement, it was highly unlikely court would have made it term of approval that settling defendants automatically produce documents or submit to discoveries — As ordinary rules addressed availability of relief, no reason to grant it prematurely.

Civil practice and procedure --- Discovery — Discovery of documents — Scope of documentary discovery — Miscellaneous

Boy was killed when folding cafeteria table fell on him while he was moving it at his school — Plaintiffs brought action for damages against school board and two of its employees ("school board action"), and later brought separate action for damages against designer, manufacturer and distributors of table ("products liability action") — No third party claim or other claim was launched by school board against defendants in products liability action — In products liability action, plaintiff claimed damages in manner designed to prevent product liability defendants claiming contribution or indemnity from school board under Negligence Act — Plaintiffs reached settlement in school board action, and discontinued that action — Products liability defendants brought motion for full disclosure of settlement agreement including amounts received by plaintiffs and all other terms of settlement — Motion granted — Case law dealing with proportional share agreements such as Pierrenger and Mary Carter agreements was of assistance — Amounts received in partial settlement were relevant to issues in dispute — Amounts received in mitigation were discoverable and ought to be disclosed as soon as they could be ascertained — Other aspects of partial settlements may also be relevant — There was no question that parties to school board settlement intended their agreement to be confidential — Settlement privilege did not extend to executed settlement agreement — Minutes of settlement and approval order were relevant and were not privileged in this action, and so had to be disclosed to defendants.

Civil practice and procedure --- Disposition without trial — Settlement — Miscellaneous

Boy was killed when folding cafeteria table fell on him while he was moving it at his school — Plaintiffs brought action for damages against school board and two of its employees ("school board action"), and later brought separate action for damages against designer, manufacturer and distributors of table ("products liability action") — No third party claim or other claim was launched by school board against defendants in products liability action — In products liability action, plaintiff claimed damages in manner designed to prevent product liability defendants claiming contribution or indemnity from school board under Negligence Act — Plaintiffs reached settlement in school board action, and discontinued that action — Products liability defendants brought motion for full disclosure of settlement agreement including amounts received by plaintiffs and all other terms of settlement — Motion granted — Case law dealing with proportional share agreements such as Pierrenger and Mary Carter agreements was of assistance — Amounts received in partial settlement were relevant to issues in dispute — Amounts received in mitigation were discoverable and ought to be disclosed as soon as they could be ascertained — Other aspects of partial settlements may also be relevant — There was no question that parties to school board settlement intended their agreement to be confidential — Settlement privilege did not extend to executed settlement agreement — Minutes of settlement and approval order were relevant and were not privileged in this action, and so had to be disclosed to defendants.

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Pastway v. Pastway (2000), 2 C.P.C. (5th) 18, 2000 CarswellOnt 2849 (Ont. S.C.J.) — referred to

Pettey v. Avis Car Inc. (1993), 1993 CarswellOnt 425, 13 O.R. (3d) 725, 103 D.L.R. (4th) 298, 18 C.P.C. (3d) 50 (Ont. Gen. Div.) — considered

Pierringer v. Hoger (1963), 124 N.W.2d 106, 21 Wis. 2d 182 (U.S. Wis. S.C.) — referred to

Taylor v. Canada (Attorney General) (2009), 2009 CarswellOnt 3443, 2009 ONCA 487, 95 O.R. (3d) 561, (sub nom. *Taylor v. Canada (Minister of Health))* 309 D.L.R. (4th) 400 (Ont. C.A.) — referred to

Statutes considered:

Family Law Act, R.S.O. 1990, c. F.3
s. 61 — referred to

Negligence Act, R.S.O. 1990, c. N.1
Generally — referred to

Rules considered:

Rules of Civil Procedure, R.R.O. 1990, Reg. 194
Generally — referred to

R. 1.04(1.1) [en. O. Reg. 438/08] — referred to

R. 29.1.03(3)(e) [en. O. Reg. 438/08] — referred to

R. 29.2.03(1)(b) [en. O. Reg. 438/08] — referred to

R. 30.04(6) — referred to

R. 30.09 — referred to

R. 30.10 — referred to

R. 31.10 — referred to

R. 39.03 — referred to

MOTION by defendant moving parties for order for production and discovery against defendants who had settled claims, and for full disclosure of settlement agreement.

***Master Calum MacLeod*:**

1 This motion deals with an important practice point. The plaintiffs sued nine alleged tortfeasors as a consequence of a fatal accident in a school. They have settled their claims against three of the defendants and discontinued the action against them. What obligation the settling parties have towards the non settling defendants is the question giving rise to the motion.

2 The defendant moving parties ask for an order for production and discovery against the settling defendants. They also seek full disclosure of the settlement agreement including the amounts received by the plaintiffs and all other terms of settlement. The procedural matrix against which this motion takes place is a bit unusual because, unlike many of the reported decisions, the non-settling defendants in the case at bar were sued in a separate action from the settling defendants. A subsidiary question then is whether this makes any difference or whether the principles that apply to proportionate liability settlement agreements such as Pierringer and Mary Carter agreements apply? In short, do such agreements have to be disclosed, at what time, and should suing in separate actions make any difference?

3 These reasons discuss the general principles that apply to disclosure of such agreements, to discovery of the settling defendants, and the application of those principles to the case at bar. I have concluded that the terms of settlement must be disclosed but the request for discovery of non-party former defendants is premature. I am prepared to make a preservation order as a term of the dismissal of that part of the motion. My reasons are as follows.

Background and structure of the two actions

4 This action results from the tragic death of an eight year old school boy. In December of 2006, J.N. was killed when a folding cafeteria table fell on him while he was moving it across the gymnasium at his school. This action is brought by his family against the designer, manufacturer and distributors of the table. It was commenced in December of 2008 but is only at a preliminary stage. There has as yet been no discovery and no mediation. For simplicity, I will refer to the current action as the "products liability action".

5 The family had commenced an earlier action against the Upper Canada District School Board and two of its employees. That action was commenced on November 29th, 2007. (Court file no. 07-CV-40073) I will refer to this as "the school board action".

6 In each action, the plaintiffs seek damages for the fatal accident. The only difference in the prayer for relief is that the products liability action claims damages that appear to be substantially higher than the damages claimed in the school board action and in the products liability action, there is a claim for "mental anguish" which is absent from the earlier action. Otherwise both actions seek damages under s. 61 of the *Family Law Act* for loss of guidance, care and companionship and special damages for income loss or other pecuniary losses. The plaintiffs have served a jury notice in the products liability action but did not do so in the school board action.

7 In fact the school board action did not progress beyond the pleading stage. The school board delivered a notice of intent to defend but no defence. Importantly for the purposes of this motion, there was no third party claim or other claim launched by the school board against the defendants in the products liability action. Those defendants of course are the manufacturer, distributor and vendor of the tables acquired by the school board for use in its school. The board did not advance a claim for contribution or indemnity from these defendants. Counsel for the school board has confirmed that the school board consciously elected not to make such a claim and he also confirms that due to the passing of the limitation period, it is not open to the board to do so now.

8 In the products liability action, the plaintiff has claimed damages in a manner designed to prevent the product liability defendants claiming contribution or indemnity from the school board under the *Negligence Act*. The plaintiffs' demands include *"damages, costs and interest attributable only to each Defendant's several share of liability to the Plaintiffs and joint liability to one another, if any, such that the Plaintiff's recovery shall be limited to recovering the damages, costs and interest attributable to each Defendant's several share of liability, or joint share of liability among them, proven against them at trial"* [1] For "*greater certainty*" according to the statement of claim, the plaintiffs "*limit their claim against the Defendants so as to exclude any additional claims for contribution and indemnity against any other unnamed party*".

9 By thus limiting the claim in the products liability action, the plaintiffs exclude any claim against the defendants for the share of liability which is the responsibility of the defendants in the school board action. As recently affirmed by the Court of Appeal, the effect of such a pleading is also to prevent the defendants in the products liability action from claiming contribution or indemnity against the defendants in the school board action. [2]

10 As a consequence neither the school board defendants nor the products liability defendants can cross claim or issue third party claims against each other. Despite this fact, if the products liability action continues to trial, the proportionate fault of the board and its employees will be a central issue. This is because quite apart from substantive defences, the products liability defendants will be interested in minimizing their proportionate share of fault and proving that the causal acts or omissions giving rise to the accident were those of the board and its employees. Consequently the documents in the possession of the board and the evidence of its employees will be material and critical. Though the board will have no standing at the trial and no further exposure, it will in a very real sense be a participant.

The consolidation motion, the settlement, and the secret approval process

11 On November 12th, 2009 the defendants in the products liability action launched a motion to consolidate the school board action with the products liability action. Before that motion was heard, however, the plaintiffs discontinued the school board action. The discontinuance was filed on December 2nd, 2009 pursuant to a settlement that was apparently reached on October 5th, 2009. Though the settlement was apparently reached before the motion was launched, it required judicial approval because there are under age plaintiffs. The discontinuance was filed once that approval was obtained.

12 Because of the discontinuance, there was no longer a live school board action when the motion to consolidate came before me on January 28th, 2010. As a result the motion proceeded for the alternative relief. In particular the defendants argued for production of the settlement agreement and leave to discover the former defendants.

13 For reasons that are now apparent, there was a bit of confusion about the exact sequence of events. There was no material pinpointing the date and terms of the settlement or the terms of judicial approval. Of course the defendants were at somewhat of a disadvantage because they did not have an opportunity to participate in the hearing for judicial approval. In fact they were not even provided with proof of such approval. The plaintiffs were vague about the particulars.

14 What the court was told at the original hearing of the motion, was the settlement predated the commencement of the motion, the settlement had subsequently been approved by a judge and the record of the settlement and approval had been sealed. Counsel for the plaintiffs advised that he was not prepared to produce a copy of that order to the defendants or even to

disclose the name of the judge to them. He indicated he would produce the order to the court. But he objected to anyone — even the court — inspecting the settlement agreement itself. [3]

15 Needless to say the defendants viewed this invisible approval process as both extraordinary and unjust. There was no notice to the defendants in the products liability action of the date and time for a hearing to approve the settlement in the school board action. Oddly, there was no record in the school board court file of judicial approval of the notice of discontinuance.

16 The mystery was dispelled for me at least when I subsequently reviewed the approval and sealing order. In a remarkable effort to keep the terms of settlement secret, the parties in the school board action did not bring a motion in that action. Instead they brought a separate free standing application for approval of the settlement in Brockville. [4] On December 2nd, 2009 the court in Brockville issued a consent order approving the minutes of settlement and also sealing the Brockville court file. The approval application and the order itself are therefore not matters of public record. [5] Because the defendants in the products liability action were not parties to the school board action and were not served with the notice of application, they could make no submissions to the judge hearing the matter about the propriety of sealing the file. Nor, obviously, could they request terms.

17 The issue before me is whether or not the settlement with the school board must now be disclosed to the defendants in the products liability action. The propriety of bringing an approval application in Brockville and the question of whether the defendants in this action should have been given an opportunity to participate in that hearing are not before me. Some of the cases I was referred to contain strong suggestions that any defendant that might be affected by approval of a partial settlement should be on notice and have a right to be heard [6] but none of those cases deal with defendants sued in separate actions. There may be counter arguments and it would be unfair for me to express a view on a point that could not be argued.

18 For that reason and because I expect the defendants will view the Brockville procedure as surprising and even surreptitious, I wish to be crystal clear that I am not ruling on that point. I have serious misgivings about the propriety of a secret approval process but those misgivings play no part in my decision. The point could not have been addressed in argument because the defendants did not know about it. I have no idea what was disclosed to the judge in Brockville in what was probably a "basket motion" and I do not know whether the judge in making the sealing order was aware there were other defendants or that the action being settled was an Ottawa action. In fairness to the plaintiffs, the actions taken by counsel are entirely consistent with the position taken on the motion that the plaintiffs ought not to be required to reveal the terms of the agreement. I am told by both Mr. Connolly and Mr. O'Brien that the plaintiffs and the school board had agreed the settlement should be confidential. No doubt approval in Brockville appeared to be a process that might prevent inadvertent disclosure. The important point is I am making no findings one way or the other about the transparency or propriety of the Brockville application.

The hearing of the motion & position of the parties

19 Following the original hearing of the motion when I began to review my notes preparatory to writing a decision, I sent a memo to all counsel asking they confirm certain positions and statements made in argument or in response to questions from the bench. This was because representations were made in court that did not appear to me to be in the affidavit evidence or the factums. My memo also posed certain questions that had not been addressed in court but on reflection appeared to me to have potential importance to my decision.

20 I received detailed responses and I then permitted counsel an opportunity for further oral submissions. Counsel for the plaintiffs asked to make such submissions and also tendered another affidavit. At the follow up hearing on March 30th, I declined to take the new affidavit in substitution for the original but I did allow it to be filed as a supplementary affidavit. As a consequence, I have now had the benefit of the original argument, a follow up written response to queries set out in my memo, a supplementary affidavit, reattendance of counsel, further argument and inspection of the order made in the Brockville application. Though counsel for the board did not appear except through Mr. Connolly, he did make some written submissions. The positions of all parties are now clear.

The position of the parties

21 The moving party defendants seek disclosure of the amounts paid in settlement by the board and also the terms of settlement. They wish to know whether the settlement amounts were allocated amongst different heads of damage and whether there are terms of the settlement that might affect the position or the evidence of the board or its employees. The plaintiffs also wish an order directing the board to produce documents and to submit to discovery even though it is not a party to this action and is no longer a defendant in the discontinued school board action.

22 The plaintiffs acknowledge that the amounts received in settlement of the claims against the board must ultimately be disclosed. It is the plaintiffs' position however that this should take place only after trial when the damages have been assessed. Then and only then they say may the defendants be entitled to a deduction for amounts already paid in compensation by the school board. The plaintiffs argue that these defendants should not be allowed the benefit of knowing at this time what the settlement with the school board is when according to the plaintiffs the products liability defendants have refused to discuss settlement.

23 I am advised it is a term of the school board settlement that the terms of settlement remain confidential. In addition to objecting to disclosure of amounts paid until after the trial, the plaintiffs vigorously oppose any disclosure of the actual terms of agreement or of the negotiations leading up to settlement over which litigation privilege is claimed.

24 The board agrees with the plaintiffs. The board asserts settlement privilege and its interest in keeping the terms of settlement confidential. The board advises that the settlement was without prejudice and without admission of liability and represents a decision to make a payment for reasons that are internal to the board and have not been disclosed to the plaintiffs or of course to these defendants.

25 The board acknowledges its role as a custodian of relevant documents and the role of its employees as key witnesses. Counsel for the board is prepared to provide relevant documents to the plaintiffs upon request. He also agrees that the defendants in this action have the right to seek discovery against the non party board in certain circumstances but he argues that such an order is premature prior to discovery of the plaintiffs in the products liability action.

26 Both the board and the plaintiffs object to court inspection of the minutes of settlement for the purposes of this motion and while they both acknowledge that the court may review the order approving settlement, they object to that order being revealed to the defendants because it contains information that would reveal aspects of the settlement they wish to hold in confidence.

27 Finally, in answer to my question on the point, both the board and the plaintiffs assert that the arrangement in question is not a *Pierringer* agreement because it "lacks certain of the hallmarks" of such an agreement. In particular the defendants are not co-defendants with the school board in the same action. The board does confirm that it has no right to claim against the defendants in this action because the right to claim over "expired on December 6, 2008" and because the board "chose for confidential reasons not to sue". The board in other words consciously chose not to make such a claim and the plaintiffs and the board both understand that any right to do so is foreclosed by the limitation period.

Analysis

28 I begin my analysis with a discussion of proportionate share settlements such as "Pierringer Agreements". [7] Whether the current situation may technically be described by this name is hardly the point. In my view the issue is not to create artificial technical classifications drawn from American case law. Reference to Pierringer agreements in Canadian case law has generally been used to describe proportionate share settlement agreements in which the settling defendant is removed from the action in contrast to "Mary Carter" type agreements in which the settling defendant remains in the action and participates at the trial. [8] There are various kinds of agreements parties can enter into that may not mirror exactly the terms of the agreements in the original *Pierringer* or *Mary Carter* cases.

29 The outcome of the settlement with the board, notwithstanding the fact the defendants were sued in two separate actions, is very similar to the result in a Pierringer agreement. In such agreements, the plaintiff typically settles with one of the defendants

in an action and releases it while continuing to pursue the remaining defendants. The plaintiff then limits its recovery against the non settling defendants to their several liability and typically indemnifies the settling defendant against any claims over by the co-defendants. It is also typical in such agreements for the settling defendant to agree not to claim indemnity from the non settling defendants and to agree to co-operate with the plaintiff by making documents and witnesses available for trial. In the case at bar, the pleading in the second action constrains the ability of the products liability defendants to claim over from the school board defendants and the school board has limited its own ability to claim against the products liability defendants. The result is very similar.

30 Although the consolidation motion was never argued it is probable it would have been granted since the actions arise from the same incident and the same set of facts. Had consolidation not been granted because the plaintiffs had been able to show prejudice, it is at least likely the actions would have been tried together or one after the other. In reality the products liability defendants are now in almost exactly the same position they would have been in had all defendants been joined in one action and a Pierringer agreement made with the school board. The court must now assess the degree of fault of a defendant that is no longer in the action without the active participation of that former defendant. The remaining defendants will require evidence from the settling defendant but will have no automatic discovery rights due to the fact that discovery and production did not take place before the settlement was reached. The products liability defendants have no right to claim indemnity from the school board and no automatic right to seek costs against the board even if the board is shown to have been 100% at fault.

31 In my view the case law dealing with proportional share settlement agreements such as Pierrenger and Mary Carter agreements is of assistance. Artificial division of causes of action into separate proceedings should not affect the outcome. The plaintiffs have settled with the board and pleaded the products liability action to avoid the application of the *Negligence Act*. Had the board not precluded itself from suing the product liability defendants and had the plaintiffs not limited the scope of their claim against the products liability defendants, there would have been cross claims or third party claims between the 9 defendants.

32 The point of this discussion is simply to stress that the case law in relation to Pierringer type of agreements is instructive whether or not the facts of this case should be classified as such an agreement. With that in mind, I will first discuss the question of discovery of the school board defendants.

Should the products liability defendants have discovery of the school board?

33 The defendants now seek discovery and production from the school board and its employees who were defendants in the school board action. There is a limited right to discovery of non parties to litigation provided in the Rules of Civil Procedure. This right to seek discovery of a non party exists whether or not the person or entity with relevant information has ever been sued. In the circumstances of this case, given the issues in dispute, it is abundantly clear that the board is a potential target for non party discovery. Counsel for the board acknowledges this possibility. The board is therefore on notice and it has a duty to continue to preserve relevant documents and evidence. The question at hand is whether the right to discovery should be granted now and whether the board should also be ordered to prepare an affidavit of documents?

34 Ontario's discovery and production regime is broader than some jurisdictions but more limited than others. I need not summarize our rules at length since they are well known to the parties and have recently been thoroughly examined by the Discovery Task Force and also by the Honourable Coulter Osborne. The principles underlying the Ontario regime were discussed at some length by the Court of Appeal in the case of *Ontario (Attorney General) v. Ballard Estate* [9] and reviewed by Riley J. in *Pastway v. Pastway* [10] The rules impose a regime of full disclosure prior to trial. Part of the trade-off is that non-parties are "reasonably immune from the potentially intrusive costly and time-consuming process of discovery and production."

35 As a consequence of this trade off in our rules, parties have the right to production and either oral or written discovery from all other parties as of right. With respect to non-parties, discovery is available and orders for production of documents are also available with leave of the court. See rules 30.10 & 31.10. [11] These kinds of orders will be granted if justice requires it.

36 The caselaw has established that before seeking remedies against non parties, a litigant must generally discover the opposing parties and seek access to the information in that manner. In the case at bar, the school board has agreed to make documents available to the plaintiffs so presumably they will form part of the plaintiff's productions. It is possible those documents will include witness statements. While discovery of the board or its employees therefore remains a distinct possibility the preconditions for discovery of a non party have not yet been met. The question on a partial settlement is whether the settling defendants should be treated as non parties — which they are now by virtue of the notice of discontinuance — or be subjected to special terms as a consequence of the fact that they were parties to litigation until recently?

37 Various cases were cited to me in argument on this point. There have been regular attempts to impose conditions on settling defendants in the context of court approval of partial settlements particularly settlements in the nature of Pierringer agreements. This has usually arisen in Ontario in the context either of class proceedings or infant settlements which are both regimes specifically requiring court approval of any settlement.

38 In the context of class proceedings the court is frequently asked to make a "bar order" prohibiting future claims for contribution and indemnity. In the majority of cases, the imposition of a discovery obligation has been denied on the basis that the ordinary test for discovery of non parties is sufficient. It has not been thought necessary to create a special rule for settling former defendants.

39 In *Ontario New Home Warranty Program v. Chevron Chemical Co.* [12] *("ONHWP")* Winkler J. (as he then was) referred to the rights of the plaintiff to seek discovery and production under the Ontario rules as ameliorating the prejudice the non settling defendants might suffer if the settlement was approved. He did not order the settling co-defendants to submit to discovery but simply provided for these possibilities "on motion" by the non settling defendants and retained case management control over the proceeding. The record is silent as to whether or not any such order was subsequently sought or granted.

40 In *Gariepy v. Shell Oil Co.* [13] Nordheimer J. reviewed the decision and he emphasized the fact that Winkler J. had not imposed a positive duty on the settling defendants beyond that which might be imposed by the ordinary discovery rules. In *Gariepy* the court declined to make a discovery order "at this time" while approving a partial settlement in that class proceeding. "The non-settling defendants", wrote the judge, "retain their rights to seek discovery from DuPont if they can satisfy the court that such discovery is necessary".

41 Even in Alberta where discovery of a non party is not as readily available as in Ontario, the courts have been reluctant to impose discovery obligations on the settling parties. In *Amoco Canada Petroleum Co. v. Propak Systems Ltd.* [14] the Alberta Court of Appeal expressed the view that the rules in Alberta should be amended to provide a right of discovery against non parties similar to that in Ontario. The Alberta court approved the settlement even in the absence of such a rule even though the effect of doing so might deprive the defendants of discovery rights. In doing so, the Alberta court disagreed with the Court of Appeal of British Columbia which had declined to approve a similar agreement in *British Columbia Ferry Corp. v. T & N plc* [15] . The Alberta court felt the B.C. court had been overly concerned with prejudice to a non-settling defendant and undervalued the importance of settlement. *Amoco v. Propak* has been cited with approval by our Court of Appeal.

42 Ontario courts have generally not imposed a term requiring the settling party to produce documents or submit for discovery but have left it open for the non settling defendants to obtain that relief under the ordinary rules of civil procedure. I conclude from the above that even had the products liability defendants appeared before the judge approving the school board settlement, it is highly unlikely that the court would have made it a term of approval that the settling defendants automatically produce documents or submit to discoveries in this action. Since the ordinary rules address the availability of the relief, I see no reason to grant it prematurely.

43 The request for direct production and discovery may be renewed when discovery of the plaintiffs has been completed if proper grounds exist at that time. I certainly think it is appropriate that the board continue to preserve all evidence in its

possession, power or control relating to the accident and its investigation. That information, including any witness statements is highly relevant in this action. A preservation order would be justifiable under the circumstances.

44 I turn now to the more complicated question of disclosure of the settlement.

Disclosure of the terms of settlement

45 The question of disclosure may be dealt with on the basis of first principles. Disclosure and withholding of information in civil proceedings is based on two competing principles of relevance and privilege. Under the first principle, all relevant evidence and information must be disclosed. Under the second principle, relevant information that is subject to a recognized claim of privilege may be withheld. This is subject to the important caveat that you cannot claim privilege and then use the information as evidence. [16] In addition, the court must now consider proportionality as an important interpretive element of the rules. [17]

46 Amounts received in partial settlement are relevant to the issues in dispute for several reasons. Firstly, defendants are entitled to know what losses and damages the plaintiffs are claiming and they are entitled to know what amounts have been recovered in mitigation of those losses. The relevance of all amounts received in mitigation was recently starkly illustrated by the decision of the Court of Appeal in *Laudon v. Roberts* [18] In *Laudon* the plaintiff had entered into a Mary Carter agreement with one of the defendants in which regardless of the outcome at trial, that defendant would pay a fixed sum.. At trial, the jury found the plaintiff's damages to be less than the settlement amount. The consequence of this according to the Court of Appeal was that the plaintiff had already more than recovered his damages so he was unable to recover any damages from the other defendants.

47 This outcome has been criticized because it seems to eliminate any advantage of entering into a Mary Carter agreement. That is a debate for another day and another forum. The point is that amounts received from any other defendant that have the effect of providing compensation will be considered in determining if the plaintiff has suffered losses that remain legally compensable. The extent to which plaintiffs have mitigated is relevant. This principle of avoiding double recovery of course is not confined to Mary Carter agreements. What was surprising to some in the decision of the Court of Appeal in *Laudon* was that it was applied even in the face of a Mary Carter agreement.

48 The plaintiffs concede that the amounts received must be revealed eventually but they take the view this should only occur after the trial. *Laudon* is cited as authority for this proposition because the procedure adopted at trial as discussed in paragraph 11 indicates that "the amount of the settlement ... was to remain undisclosed until the jury rendered its verdict". There are sound reasons why the trier of fact should not be made privy to the amount of a partial settlement until after the assessment of damages. Similarly the trier of fact will not be told about insurance policies. This is not the same question as whether or not the amounts must be disclosed to the opposing parties? The questions of discoverability and of what documents must be produced in the disclosure phase of litigation are not the same question as admissibility at trial. In my view amounts received in mitigation are discoverable and should be disclosed as soon as they can be ascertained.

49 Calculation is a central issue at trial but knowing the amount actually in dispute is also critical to litigation planning and strategy. In general a defendant is entitled to know what the actual amounts in dispute are so that informed decisions may be made about whether to defend or offer to settle and what procedures may or may not be justified.

50 The principle of proportionality makes the actual damages as opposed to the pleaded damages additionally relevant because if the parties do not know what amounts are really at stake it is difficult to make informed decisions including proportionality as a principle. Proportionality is supposed to inform not only the decisions of the court concerning the application of the rules but also to inform the discovery planning that is now a mandatory step. [19] I do not suggest that the amount of damages is the only question in applying proportionality. For example, the family of the deceased child may think it is very important to hold these defendants to account in a public forum regardless of the amount of damages they can recover. Nevertheless the defendants are entitled to the information necessary to make informed cost benefit decisions about litigation and settlement strategy.

51 Other aspects of a partial settlement may also be relevant. For example it would be relevant if the former defendant has obligated itself to give access to all of its documents, to make witnesses available for interviewing or conversely if the plaintiff

has restricted its ability to access such documents or information. It would be relevant if the former defendant has contractually bound itself not to co-operate with the other defendants or has agreed that it will extend such co-operation. One reason these kinds of agreements are relevant is because they may bring the documents or witnesses into the possession, power or control of the plaintiffs. This will be important for production and discovery planning. Similarly the former defendant may or may not have obliged itself to preserve documents and other evidence. All of this will be important for the non settling defendants to know so that they may bring appropriate motions or factor this into the discovery plan.

52 Finally, it is fundamental to the operation of the adversary system that all parties know who is adverse in interest. This problem is particularly acute in *Mary Carter* type agreements because the settling defendant remains in the action but its position may be significantly different than that set out in the pleadings. [20] It will also be relevant however when the settling defendant is no longer in the action but will nevertheless be providing key evidence at trial. It will be relevant to know whether or not the settling defendants retain a financial or other interest in the outcome of the litigation. [21] It will also be important to know how the settlement might influence the position taken by the plaintiffs and the plaintiffs' witnesses at trial. The terms of settlement are thus broadly relevant to the conduct of the litigation.

Does privilege protect the settlement agreement?

53 There is no question that the parties to the school board settlement intended their agreement to be confidential. Privilege protects relevant confidential information under appropriate circumstances. Generally privilege trumps relevance if the importance of protecting the confidentiality interest outweighs the importance of compelling its production in order to ascertain the truth. In many instances this analysis results in the conclusion that confidentiality must give way to the imperatives of justice. The most notable exceptions are those privileges that are themselves integral to the operation of the justice system; solicitor client privilege and litigation privilege being the most obvious.

54 More recently settlement privilege has emerged as a separate protected area so that information exchanged, proposals made and discussions taking place for the purpose of attempting settlement will be immune from production even if they are otherwise relevant. [22] Obviously settlement privilege will in many cases overlap with either litigation privilege or solicitor client privilege. Nor is it necessary for the purpose of this motion to explore the outer limits of the privilege, in what cases it may yield to the imperatives of justice and the extent which, like litigation privilege, it may be temporary.

55 Suffice to say that for the purpose of the products liability action, the negotiations between the school board and the plaintiffs would be protected by settlement privilege. Even if it is relevant and not otherwise privileged, I would not order production of notes of meetings, settlement proposals, settlement conference briefs or analysis or discussion leading up to the settlement itself. This is squarely covered by privilege.

56 In my view settlement privilege does not extend to the executed settlement agreement. The agreement itself is a contract entered into between the settling parties which is relevant to the remaining action with the non settling parties. Since I am speaking only hypothetically at this point, I would not rule out the possibility that in certain circumstances there may be aspects of a settlement agreement that must be disclosed and aspects of it that remain privileged. An agreement might contain terms that are irrelevant to the litigation or might disclose otherwise privileged information but it is impossible to determine whether or not there are any such provisions without inspecting the agreement itself.

57 Having reached this conclusion, despite the objections of counsel, I decided to inspect the minutes of settlement. My authority to do so is clearly set out in Rule 30.04 (6).

Actual Contents of the Agreement

58 After reading the minutes of settlement and the order of Pedlar J. approving the infant settlement, I am satisfied that few of the hypothetical issues addressed above apply. The minutes contain the amount to be paid to the plaintiffs and certain terms of release and indemnification of the defendants. The order allocates certain of the settlement funds for the benefit of the minor plaintiffs and of course also contains the confidentiality and sealing order. There is nothing in the minutes about production

of documents, co-operation with the parties in the products liability action or conversely any restriction on such co-operation. The minutes recite that the agreement will be kept confidential and not disclosed except as required by law. As confirmed by counsel for the board, this contemplates court ordered disclosure in certain circumstances.

59 In my view the minutes of settlement and the approval order are relevant and are not privileged in this action. They must therefore be disclosed to counsel for the defendants. Because these documents remain subject to the sealing order in the Brockville application, the copies furnished to me for inspection will not form part of the motion record. The copies provided to counsel for the defendants will be marked confidential by the plaintiffs and they are not to be disclosed to any non party to the litigation. The agreement and the order may be provided to the trial judge in a sealed envelope for the use of the court but unless the judge otherwise orders, the amounts paid in partial settlement will not be disclosed to the trier(s) of fact until after the court has assessed the plaintiffs' damages. This is consistent with the procedure adopted in *Pettey v. Avis Car Inc.*, *supra.*

Conclusion and order

60 In conclusion, for the reasons given above, an order will issue as follows:

a. The plaintiffs are to produce the minutes of settlement and the approval order resolving the school board action to counsel for the defendants in this action.

b. The said agreement and order remain subject to the confidentiality order of Pedlar J. made in Brockville application no. 09-12110.

c. The defendants may not disclose the minutes or the order to any other person without the consent of the plaintiffs or further order. The said documents may be provided to the trial judge in a sealed envelope for the use of the court but unless otherwise ordered by the trial judge, the amounts received in settlement of the school board action will not be disclosed to the trier(s) of fact until after the plaintiffs' damages have been assessed.

d. The motion for a production and discovery order against the Upper Canada District School Board is dismissed but without prejudice to such a motion being renewed after discovery of the plaintiffs on proper grounds.

e. As a term of this order, the Board is directed to preserve all relevant documents or other evidence in its possession, power or control which relate to the issues in this action and without limiting the generality of the foregoing is to preserve any witness statements or investigation reports.

61 The defendants have been partially successful on the motion. Although they did not succeed on the motion to compel the board to submit to discovery, they have been successful on the disclosure motion. Counsel for the plaintiff argued the motion on behalf of the board. Counsel for the Sico defendants argued the motion on behalf of both defendants. As a consequence, taking into account the nature of the relief sought and granted and on reviewing the costs outlines submitted by all parties, the moving party defendants shall have modest costs of the motion on single counsel basis and on a partial indemnity scale. Those costs are fixed at $4,500.00.

62 The action remains case managed and I may be spoken to for further direction if required.

Motion for discovery of settling defendants dismissed; motion for disclosure regarding settlement agreement granted.

Footnotes

1 Para 37, statement of claim

2 See *Taylor v. Canada (Attorney General)*, 2009 ONCA 487, 95 O.R. (3d) 561 (Ont. C.A.) and *Ontario New Home Warranty Program v. Chevron Chemical Co.* (1999), 46 O.R. (3d) 130 (Ont. S.C.J.).

3 Counsel did not suggest that the sealing order constrained my jurisdiction to inspect the agreement if I felt it necessary to do so but he urged me to take notice of the fact that a judge had been satisfied that sealing was an appropriate order.

4 I should note that though both the school board action and the products liability action are Ottawa proceedings, the events in question happened in Prescott and Brockville is named as the place of trial.

5 Brockville court file no. 09-1210

6 See in particular *Martin v. Listowel Memorial Hospital* (2000), 51 O.R. (3d) 384 (Ont. C.A.) @ paras. 53 & 54. and *Laudon v. Roberts*, 2009 ONCA 383 (Ont. C.A.) @ para. 39. This also appears to be the law in Alberta. See *Amoco v. Propak*, discussed later in these reasons.

7 Named after the Wisconsin case of *Pierringer v. Hoger*, 124 N.W.2d 106 (U.S. Wis. S.C. 1963)

8 See *Booth v. Mary Carter Paint Co.*, 202 So. 2d 8 (U.S. Fla. Ct. App. 2 Dist. 1967). The principal difference in a Mary Carter agreement is that the settling defendant remains in the lawsuit but caps its contribution to the damages regardless of liability. The settling defendant generally participates in the trial and actively seeks to establish the liability of the non settling co-defendants.

9 (1995), 129 D.L.R. (4th) 52 (Ont. C.A.)

10 (2000), 2 C.P.C. (5th) 18 (Ont. S.C.J.)

11 Non parties may also be examined in aid of motions in appropriate circumstances. See rule 39.03.

12 (1999), 46 O.R. (3d) 130 (Ont. S.C.J.)

13 (2002), 26 C.P.C. (5th) 358 (Ont. S.C.J.)

14 (2001), 200 D.L.R. (4th) 667 (Alta. C.A.); leave to appeal refused, (2002) (S.C.C.)

15 (1995), 27 C.C.L.T. (2d) 287 (B.C. C.A.)

16 See rule 30.09 for example

17 See rule 1.04 (1.1)

18 (2009), 308 D.L.R. (4th) 422, 2009 ONCA 383 (Ont. C.A.); leave to appeal denied (S.C.C.)

19 See Rules 1.04 (1.1), Rule 29.2.03(b) and Rule 29.1.03(3)(e)

20 *Pettey v. Avis Car Inc.* (1993), 13 O.R. (3d) 725 (Ont. Gen. Div.)

21 See *Laudon*, *supra* @ para 39

22 See for example *Ontario (Liquor Control Board) v. Magnotta Winery Corp.* (2009), 97 O.R. (3d) 665 (Ont. Div. Ct.). Of course it is also true that settlement discussions are largely irrelevant to the merits because unless they contain actual admissions they are probative of nothing while conversely actual evidence may not be concealed simply by using it as part of a privileged discussion.

End of Document

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2010 BCSC 816
British Columbia Supreme Court

Main v. Cadbury Schweppes plc

2010 CarswellBC 1412, 2010 BCSC 816, [2010] B.C.W.L.D. 6954, [2010] B.C.W.L.D. 7088, 190 A.C.W.S. (3d) 691, 8 B.C.L.R. (5th) 305, 92 C.P.C. (6th) 95

Jacob Stuart Main (Plaintiff) and Cadbury Schweppes plc, Adams Canada Inc., Mars, Incorporated, Mars Canada Inc. formerly known as Effem Inc., The Hershey Company, Hershey Canada Inc., Nestle S.A., Nestle Canada Inc. and ITWAL Limited (Defendants)

Butler J.

Heard: May 25, 2010
Judgment: June 10, 2010
Docket: Vancouver S078807

Counsel: James J. Camp, Q.C., Ward Branch, Luciana Brasil for Plaintiff
Christopher Naudie for Defendants, Cadbury Schweppes plc, Adams Canada Inc.
Sandra Forbes for Defendants, Mars Incorporated, Mars Canada Inc. formerly known as Effem inc.
Scott Maidment, Ian S. Nossal for Defendants, Hershey Company, Hershey Canada Inc.
David Neave for Defendants, Nestle S.A., Nestle Canada Inc.
Miranda Lam, Donald Houston, Randal Hughes for Defendant, ITWAL Limited

Subject: Civil Practice and Procedure; Torts

Headnote

Civil practice and procedure --- Disposition without trial — Settlement — General principles

Plaintiff brought class action against defendants for price-fixing and price maintenance in chocolate confectionery industry — Defendants were all chocolate manufacturers except for I Ltd., which was retailer and distributor for chocolate — Plaintiff sought settlements and bar orders that would permit plaintiff, in some circumstances, to recover from non-settling defendants ("NSDs") all damages not recovered from settling defendants ("SDs"), even if those damages were caused by SDs — Plaintiff brought application to obtain court approval of settlement agreements in class action proceeding — Application allowed — Given considerations to be taken into account, such as favourability of settlement to class, settlements were fair and in best interests of class — Class members would receive direct monetary benefits, potential benefits from assignment of I Ltd.'s claims, and invaluable benefit of cooperation of SDs — Settlements would not prejudice NSDs' substantive rights as settlements and bar orders themselves would not prevent NSDs from having ability to claim contribution and indemnity from SDs — Argument that settlements do not promote behaviour modification was rejected — Settlement would result in substantial financial penalty, that coupled with promise of cooperation and publicity would accomplish behaviour modification goals of class proceedings.

Torts --- Conspiracy — Practice and procedure — Pleadings

Plaintiff brought class action against defendants for price-fixing and price maintenance in chocolate confectionery industry — Defendants were all chocolate manufacturers except for I Ltd., which was retailer and distributor for chocolate — Plaintiff sought settlements and bar orders that would permit plaintiff, in some circumstances, to recover from non-settling defendants ("NSDs") all damages not recovered from settling defendants ("SDs"), even if those damages were caused by SDs — Plaintiff brought application to obtain court approval of settlement agreements in class action proceeding

— Application allowed — Given considerations to be taken into account, such as favourability of settlement to class, settlements were fair and in best interests of class — Class members would receive direct monetary benefits, potential benefits from assignment of I Ltd.'s claims, and invaluable benefit of cooperation of SDs — Settlements would not prejudice NSDs' substantive rights as settlements and bar orders themselves would not prevent NSDs from having ability to claim contribution and indemnity from SDs — Argument that settlements do not promote behaviour modification was rejected — Settlement would result in substantial financial penalty, that coupled with promise of cooperation and publicity would accomplish behaviour modification goals of class proceedings.

Table of Authorities

Cases considered by *Butler J.*:

Ali Holdco Inc. v. Archer Daniels Midland Co. (2010), 2010 CarswellOnt 3929, 2010 ONSC 3075 (Ont. S.C.J.) — referred to

Anderson v. Stevens (1981), 1981 CarswellBC 172, 29 B.C.L.R. 355, 125 D.L.R. (3d) 736, [1981] 5 W.W.R. 550 (B.C. S.C.) — referred to

Aylsworth v. Richardson Greenshields of Canada Ltd. (1987), 21 B.C.L.R. (2d) 49, 1987 CarswellBC 409 (B.C. C.A.) — referred to

Blackwater v. Plint (2005), 216 B.C.A.C. 24, 356 W.A.C. 24, 48 B.C.L.R. (4th) 1, [2005] 3 S.C.R. 3, 258 D.L.R. (4th) 275, [2005] R.R.A. 1021, [2006] 3 W.W.R. 401, 2005 SCC 58, 2005 CarswellBC 2358, 2005 CarswellBC 2359, 35 C.C.L.T. (3d) 161, 46 C.C.E.L. (3d) 165, 339 N.R. 355 (S.C.C.) — considered

Bodnar v. Cash Store Inc. (2010), 2010 BCSC 145, 2010 CarswellBC 252, 84 C.P.C. (6th) 49 (B.C. S.C.) — referred to

British Columbia Ferry Corp. v. T & N plc (1995), 16 B.C.L.R. (3d) 115, 65 B.C.A.C. 118, 106 W.A.C. 118, [1996] 4 W.W.R. 161, 27 C.C.L.T. (2d) 287, 1995 CarswellBC 1060 (B.C. C.A.) — considered

Brown v. Cole (1995), 1995 CarswellBC 968, 14 B.C.L.R. (3d) 53, 43 C.P.C. (3d) 111, 26 C.C.L.T. (2d) 223, [1996] 2 W.W.R. 567, 65 B.C.A.C. 300, 106 W.A.C. 300 (B.C. C.A.) — referred to

Haney Iron Works Ltd. v. Manufacturers Life Insurance Co. (1998), 169 D.L.R. (4th) 565, 1998 CarswellBC 2784, 9 C.C.L.I. (3d) 253 (B.C. S.C.) — considered

Nunes v. Air Transat A.T. Inc. (2005), 20 C.P.C. (6th) 93, 2005 CarswellOnt 2503 (Ont. S.C.J.) — followed

Ontario New Home Warranty Program v. Chevron Chemical Co. (1999), 37 C.P.C. (4th) 175, 46 O.R. (3d) 130, 1999 CarswellOnt 1851 (Ont. S.C.J.) — considered

Osmun v. Cadbury Adams Canada Inc. (2010), 2010 CarswellOnt 2813, 2010 ONSC 2643 (Ont. S.C.J.) — followed

Roy c. Cadbury Adams Canada inc. (2010), 2010 CarswellQue 579, 2010 QCCS 323 (C.S. Que.) — referred to

Sawatzky v. Société Chirurgicale Instrumentarium Inc. (1999), 71 B.C.L.R. (3d) 51, 37 C.P.C. (4th) 163, 1999 CarswellBC 1759 (B.C. S.C.) — considered

Statutes considered:

Class Proceedings Act, R.S.B.C. 1996, c. 50
Generally — referred to

s. 12 — considered

s. 13 — considered

Competition Act, R.S.C. 1985, c. C-34
Generally — referred to

s. 36 — referred to

Negligence Act, R.S.B.C. 1996, c. 333
Generally — referred to

s. 1 — referred to

APPLICATION by plaintiff to obtain court approval of settlement agreements in class action proceeding.

***Butler J.*:**

1 The plaintiff brings this application to obtain court approval of two Settlement Agreements in this class-action proceeding. The action has been conditionally certified against the settling defendants, ITWAL Limited ("ITWAL"), Cadbury Holdings Ltd. (successor of Cadbury Schweppes plc.), and Cadbury Adams Canada Inc. (collectively "Cadbury"). The claims in the action arise from allegations of price-fixing and price maintenance in the Canadian chocolate confectionery industry. All of the defendants, with the exception of ITWAL, are manufacturers of chocolate products. ITWAL operates a retail and wholesale foodservice distribution network in Canada and was a major purchaser of chocolate products during the relevant period. The plaintiff alleges that the defendants, other than ITWAL, conspired to fix prices of chocolate products. He further alleges that ITWAL and the other defendants engaged in vertical retail price maintenance of chocolate products.

2 A number of similar proceedings against the defendants have been commenced across Canada. Along with this action there are active proceedings in Québec: *Roy c. Cadbury Adams Canada inc.* [2010 CarswellQue 579 (C.S. Que.)] (File No. 200-06-000094-071); and an action in Ontario: *Osmun v. Cadbury Adams Canada Inc.* (File No. 08-CV-347263PD2). In the *Osmun* action, these three actions have been referred to as the "Main Proceedings", the settling defendants have been referred to as the "SDs", and the non-settling defendants have been referred to as the "NSDs". I will adopt those abbreviations.

3 The plaintiffs in the Main Proceedings have entered into two settlement agreements with Cadbury (dated October 14, 2009) and ITWAL (dated October 6, 2009). These agreements have been amended and it is the amended form of the agreements that are before this court for approval. In reasons for decision dated May 5, 2010, Strathy J. approved both settlements in the *Osmun* action: *Osmun v. Cadbury Adams Canada Inc.*, 2010 ONSC 2643 (Ont. S.C.J.) ("*Osmun* settlement reasons"). An application to approve the settlements in the *Roy* action proceeded on June 8, 2010. On June 7, 2010, I notified the parties that I had approved the settlements in the British Columbia action and that my written reasons would follow. These are my reasons.

4 In the interests of brevity, I will simply adopt Strathy J.'s succinct summary of the settlement agreements at paragraphs 8 to 10 of the *Osmun* settlement reasons:

> [8] Among other things, under the Cadbury settlement agreement:

a. Cadbury agreed to pay CDN $5,700,000 to the class. On November 5, 2009, Cadbury paid $5,795,695.60, being the settlement amount, plus pre-deposit interest at a rate of 2.5% per annum from February 5, 2009. Class counsel deposited these monies in an interest-bearing trust account. As of April 12, 2010, after payment of the costs of distributing the notice, the balance in the trust account was $5,655,431.33.

b. Cadbury is required to cooperate with the plaintiffs to aid them in pursuing their claims against the non-settling defendants. Cadbury is required to:

i. provide an evidentiary proffer;

ii. produce relevant documents, including transactional data and price announcements; and

iii. make available current and (if reasonably necessary) former directors, officers or employees of Cadbury for interviews with counsel in the Main Proceedings and/or experts retained by them, to provide testimony at trial, and/or affidavit evidence.

c. Cadbury will pay for the cost of the notice program in excess of $250,000. Counsel estimate that Cadbury will be required to pay at least $16,000 towards the cost of notice.

d. Cadbury has the right to terminate the Cadbury Settlement Agreement should opt outs exceed a certain threshold. As noted, there have been no opt outs.

[9] The ITWAL settlement agreement provides:

a. ITWAL will assign to or for the benefit of the settlement class any claim it has against the NSDs in relation to the purchase, sale, pricing, discounting, marketing, or distribution of chocolate products (as defined). On the basis of this assignment, the plaintiffs will claim damages against the NSDs based on the sale of all chocolate products in Canada including those sold to and through ITWAL.

b. ITWAL will cooperate with the plaintiffs in pursuing the claims against the NSDs; and,

i. ITWAL will produce copies of relevant "Take Action Now" notices, transactional data, and other relevant documents that are reasonably necessary for the prosecution of the Main Proceedings;

ii. Glenn Stevens, the President and Chief Executive Officer of ITWAL will make himself available for an interview with counsel in the Main Proceedings and/or experts retained by them; and

iii. If reasonably necessary, ITWAL will make current directors, officers or employees of ITWAL available for testimony at trial and/or to provide affidavit evidence.

c. ITWAL will pay the costs of notice up to $25,000.

[10] Upon the Settlement Agreements becoming effective, the Main Proceedings will be dismissed against Cadbury and ITWAL, without costs and with prejudice. Cadbury and ITWAL will receive full and final releases from the settlement class. If approved, these releases will form part of the final settlement approval orders.

5 In addition to these terms, the settlement agreements contain a "bar order" which, if granted, would prevent the NSDs from claiming contribution or indemnity from the SDs. Usually, a bar order is, as the NSDs have described it, "symmetrical". In British Columbia, the agreements that provide for such orders are often described as "B.C. Ferry agreements" as they are modeled after the ruling in *British Columbia Ferry Corp. v. T & N plc* (1995), 16 B.C.L.R. (3d) 115 (B.C. C.A.). A symmetrical bar order is one that prevents a settling plaintiff from pursuing its joint and several claims against a non-settling defendant by restricting the plaintiff's claims to its several claims only against each of the non-settling defendants. Where there is a

symmetrical bar order, a settling plaintiff can recover from the non-settling defendants only those damages proven to have been caused by each of the non-settling defendants. In this case, however, the proposed bar order is different.

6 Here, the plaintiff seeks a bar order that would, in some circumstances, permit the plaintiff to recover from the NSDs all of the damages not recovered pursuant to the settlement agreements with the SDs, even if those damages were caused in whole or in part by the SDs. Further, the bar order is conditional in the sense that it would restrict recovery by the plaintiff against each of the NSDs to several damages only if the court first determines that there is a right of contribution and indemnity between the defendants as co-conspirators. The rationale for such a bar order is this: the law in Canada is uncertain as to whether there is a right to contribution and indemnity between intentional tortfeasors, particularly where their conduct is alleged to be price-fixing and breaches of the *Competition Act*, R.S.C. 1985, c. C-34. For this reason, the plaintiffs want to preserve their right to pursue the NSDs based on their joint liability, should it be determined that there is no right to contribution and indemnity between co-conspirators in a price-fixing case.

7 The NSDs say that such an agreement adversely affects their substantive rights. If this court determines that there is no right of contribution and indemnity between defendants who are co-conspirators, then the plaintiff class would be able to claim all of their damages from the NSDs, no matter which of the parties caused those damages.

8 In deciding that the settlements should be approved, I have considered two issues. First, I have considered whether the settlement agreements, leaving aside the issue of the fairness of the bar order, should be approved. Second, I have considered whether the terms of the proposed bar order remove substantive rights from the NSDs and thus create unfairness, such that the settlements should not be approved.

Issue 1. Should the Cadbury and ITWAL Settlement Agreements Be Approved?

9 The NSDs' arguments against approval of the settlements are focused on the alleged unfairness created by the proposed bar order. There is no serious opposition to the settlements on any other basis. The standard for approval of a settlement is whether, in all of the circumstances, the settlement is fair, reasonable and in the best interests of the class as a whole: *Bodnar v. Cash Store Inc.*, 2010 BCSC 145 (B.C. S.C.), at para. 17. Even though the Ontario court has already approved the settlements, this court has an independent obligation to review the settlements, to consider any objections, and to make a determination as to whether the settlements are fair and reasonable and in the best interests of the class: *Ali Holdco Inc. v. Archer Daniels Midland Co.*, 2010 ONSC 3075 (Ont. S.C.J.) at para. 27. However, as noted by Brenner J. at para. 6 in *Haney Iron Works Ltd. v. Manufacturers Life Insurance Co.* (1998), 169 D.L.R. (4th) 565 (B.C. S.C.), "judicial comity and the goal of certainty in litigation outcomes makes it essential that the courts in the class action jurisdictions in Canada afford considerable weight to the decisions in other Canadian jurisdictions in identical class action claims."

10 In the *Osmun* settlement reasons, Strathy J. set out the principles to be applied on a motion for settlement approval as summarized in *Nunes v. Air Transat A.T. Inc.*, [2005] O.J. No. 2527, 20 C.P.C. (6th) 93 (Ont. S.C.J.). I have applied the principles set out in *Nunes* and have considered the following factors identified by class counsel as relevant to consideration of the settlements in this case. I have also taken into account Strathy J.'s consideration of these factors in his approval of the settlements as set out in the *Osmun* settlement reasons:

> a) The settlement terms and conditions are favourable to the class. There is a direct financial benefit to the class as a result of the Cadbury settlement. The amount paid represents 50% of the profits flowing to Cadbury over a two year period. While that does not cover the full period of the claim, it represents a significant monetary recovery. The direct monetary benefit to the class from the ITWAL settlement is not significant. However, the assignment of ITWAL's claims could be of great value to the settlement class. ITWAL was the largest purchaser of chocolate from the defendants in Canada. In addition, the cooperation of two of the alleged conspirators is an important non-pecuniary benefit of the settlements. As Strathy J. noted at para. 36 of the *Osmun* settlement reasons, "... in a conspiracy action, where the allegation is that the defendants share a dark secret, obtaining the cooperation of two of the alleged conspirators to assist the plaintiff in pursuing the alleged co-conspirators is of inestimable value."

b) The settlement is the result of a real and extensive negotiating process between parties represented by experienced counsel.

c) The partial settlement reduces the risk of loss which is associated with complex price-fixing litigation, and significantly increases the prospects of success.

d) There has been no objection to the settlement.

e) The settlement comes with the recommendations of experienced class counsel. This is important because class counsel has a duty to the class as a whole, as well as a duty to the court. In addition, class counsel is uniquely situated to assess the risks of the litigation and the benefits of the settlement. Class counsel in this case have extensive experience in class proceedings generally and price-fixing cases in particular.

11 I am satisfied that the two settlements are fair and reasonable and are in the best interests of the class. The class members receive the direct monetary benefits, the potential benefits from the assignment of ITWAL's claims, and the invaluable benefit of the cooperation of the SDs. Leaving aside the question of the fairness of the bar orders, I have no hesitation in approving the Cadbury and ITWAL settlements.

Issue 2. Do the Terms of the Proposed Bar Order Remove Substantive Rights from the NSDs and Thus Create Unfairness, Such That the Settlements Should Not Be Approved?

12 The NSDs oppose the application to approve the settlements primarily on the basis that the bar order is unfair to them. Hershey led the opposition to this motion in the hearing before me. The arguments put forward by Mr. Maidment on behalf of Hershey were adopted by the other NSDs. Having reviewed the extensive written arguments and heard Mr. Maidment, I am satisfied that the arguments advanced in British Columbia are the same as those advanced by the NSDs in Ontario. This is evident from my review of the *Osmun* settlement reasons.

13 In brief, the arguments advanced by the NSDs are:

1. The bar order is unfair because of the lack of symmetry as to what each party has to give up. The NSDs lose the right to claim contribution and indemnity from the SDs, but the plaintiffs do not have to give up the right to claim from the NSDs the profits earned by the SDs. They argue that the effect of the bar order is to transfer the liability of the SDs to the NSDs which alters their substantive rights. The provisions of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 (the "*CPA*"), do not permit the court, while approving a settlement, to alter substantive rights. Further, they argue that in British Columbia, the courts have only approved settlement agreements that are symmetrical. In this regard they rely on the jurisprudence based on the decision in *British Columbia Ferry Corp. v. T & N plc*.

2. The settlements do not promote behaviour modification. Indeed, the SDs may be able to keep some of the fruits of their unlawful activity by being the first defendants to enter into settlements, while passing the burden of their conduct onto the shoulders of their competitors, the NSDs. Not only will this not promote behaviour modification of the SDs, it will, unfairly, put enormous pressure to settle on the NSDs. If this kind of settlement is approved it could, in the future, have a significant effect on the smaller players in the field who become defendants in price-fixing litigation. Those smaller players may have benefited only marginally by their alleged unlawful activity but will face the potential of having to pay a large portion of the total damages.

3. The NSDs argue that there is an additional reason why the settlements should not be approved in British Columbia. This is because in the *Osmun* settlement reasons, Strathy J. accepts that there is uncertainty as to whether co-conspirators have the right to claim contribution and indemnity from fellow co-conspirators. However, the NSDs say that the law is settled in British Columbia and that a defendant in the position of the NSDs has a right of contribution and indemnity from a settling defendant. They rely on a number of British Columbia decisions where courts have found that the rights of apportionment, contribution and indemnity set out in the *Negligence Act*, R.S.B.C. 1996, c. 333, are not limited to claims

> in negligence. Section 1 of the *Negligence Act* provides that there is a right of contribution and indemnity between the defendants "in the degree to which they are respectively found to have been at fault". Fault has been found to include a broad variety of intentional wrongs.

14 In the *Osmun* settlement reasons, Strathy J. considered and rejected the arguments of the NSDs. I find his reasoning persuasive, and the conclusion unassailable. Little purpose would be served by repeating the whole of the reasons. I will, however, summarize the steps that lead me to the conclusion that the settlements with the proposed bar order should be approved.

15 First, I adopt the conclusion that the British Columbia *CPA*, like the Ontario *CPA*, empowers this court to permit partial settlements of multi-defendant proceedings. The language in ss. 12 and 13 of the *CPA* is similar to the Ontario statute and so the reasoning in *Osmun* applies equally in British Columbia. In *Sawatzky v. Société Chirurgicale Instrumentarium Inc.* (1999), 71 B.C.L.R. (3d) 51 (B.C. S.C.), Brenner J. approved a partial settlement. In doing so, he relied upon the oft-cited decision of Winkler J. in *Ontario New Home Warranty Program v. Chevron Chemical Co.* (1999), 46 O.R. (3d) 130 (Ont. S.C.J.). He specifically concurred with Winkler J.'s view that the statutory language provides the court with the "necessary power to adapt procedures to ensure that the interests of all parties can be adequately protected in situations where those interests conflict." (para. 40). The settlement in *Sawatzky* was, in fact, asymmetrical, although in a different respect than the settlements in this case.

16 Second, the settlements do not prejudice the NSDs' substantive rights. The settlements and the proposed bar orders themselves do not prevent the NSDs from having the ability to claim contribution and indemnity from the SDs. I concur with the conclusion of Strathy J. at para. 58:

> In this case, if it is ultimately found that there is a right of contribution from the SDs, the plaintiffs' damages will be confined to the NSDs' proportionate share. If it is found that, because of the nature of their conduct, there is no right of contribution, the NSDs may be exposed to the plaintiffs' entire damages. In the latter instance, there is no prejudice to their substantive rights because it will have been determined that the NSDs have no right to contribution and indemnity and the plaintiffs have the right to sue whomsoever they choose.

17 Third, the bar order does not presumptively transfer the SDs' liability to the NSDs. As stated by Strathy J. at para. 65:

> The order does not transfer liability, presumptively or otherwise. It simply leaves that determination for another day. While it may leave the NSDs in some uncertainty concerning their rights of indemnity, that uncertainty existed from the commencement of this litigation in view of the unsettled state of the law.

18 Fourth, I reject the argument that the settlements do not promote behaviour modification. Once again, I can do no better than to adopt the reasoning of Strathy J. at para. 67:

> Whatever the force that Mr. Maidment's submissions might have in another case, on the facts of this case they are not persuasive. First, I am satisfied that the settlement with Cadbury results in a substantial financial penalty that is rationally related to the benefits Cadbury received from the price increases at issue. That, coupled with the promise of cooperation and the publicity attached to the settlement, accomplishes the behaviour modification goals of class proceedings. This is not a case in which the defendant has paid a pittance for the release it has obtained. Second, the NSDs are very substantial manufacturers of chocolate products, nationally and internationally, with large shares in a market they obviously dominate. They are not "bit players" who are likely to be intimidated into an oppressive settlement.

19 Finally, I reject the suggestion that the law in British Columbia is different such that any bar order must contain the symmetrical provisions that are usually seen in a *British Columbia Ferry* release. Courts in other provinces have decided that fault does not include torts other than negligence. The British Columbia courts have accepted that fault applies to a broad variety of intentional wrongs: *Anderson v. Stevens* (1981), 29 B.C.L.R. 355 (B.C. S.C.); *Aylsworth v. Richardson Greenshields of Canada Ltd.* (1987), 21 B.C.L.R. (2d) 49 (B.C. C.A.); and *Brown v. Cole* (1995), 14 B.C.L.R. (3d) 53 (B.C. C.A.). However, the issue has not been considered by the Supreme Court of Canada. In *Blackwater v. Plint*, 2005 SCC 58 (S.C.C.), a case from British Columbia, the Court had the opportunity to consider the issue but decided that it was not necessary to do so in order to render a decision (para. 67). More importantly, the specific issue that needs to be considered in this case - whether there

is a right of contribution and indemnity between co-conspirators in a case involving price-fixing claims and breaches of the *Competition Act* - has not been considered by any court in Canada. The NSDs' suggestion that the law is settled in British Columbia is, quite simply, without merit.

20 In summary, there is nothing unfair about the terms of the bar order. The NSDs continue to have the ability to claim the right of contribution and indemnity from the SDs. If they are successful with that argument, the settlement will be "symmetrical". If they are not successful, it will not. They have not lost any substantive right as a result of the bar order.

21 When the two settlements were approved in the *Osmun* settlement reasons, the terms of the bar order had not been finalized. Those terms have been renegotiated between the parties as a result of the comments of Strathy J. The new terms take away the uncertainty or lack of clarity that existed in the original language. The bar order terms contained in the draft order of the Cadbury settlement, which I have approved, are as follows:

> 1. (I) Proportionate Liability means that proportion of any judgment that, had they not settled, this Court would have apportioned to the Cadbury Releasees; and
>
> . . . . .
>
> 20. THIS COURT ORDERS that all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims (including, without limitation, the ITWAL Claims, whether held by ITWAL or an assignee) which were or could have been brought in the Main Proceedings or the Additional Proceedings (whether or not brought in the Main Proceedings or in the Additional Proceedings), by any Non-Settling Defendant or any other Person or party, against a Cadbury Releasee, or by a Cadbury Releasee against any Non-Settling Defendant or any other Person or party (excepting (i) a claim by a Cadbury Releasee against any individual excluded in writing from the definition of Cadbury Releasees and (ii) a claim by a Cadbury Releasee pursuant to a policy of insurance, provided any such claims involve no right of subrogation against any Non-Settling Defendant), are barred, prohibited and enjoined in accordance with the terms of this order.
>
> 21. THIS COURT ORDERS that if the Court determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:
>
> > (a) the members of the BC Settlement Class shall not be entitled to claim or recover from the Non-Settling Defendants that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Cadbury Releasees proven at trial or otherwise; and
> >
> > (b) this Court shall have full authority to determine the Proportionate Liability of the Cadbury Releasees at the trial or other disposition of this action, whether or not the Cadbury Releasees appear at the trial or other disposition and the Proportionate Liability of the Cadbury Releasees shall be determined as if the Cadbury Releasees are parties to this action and any determination by this Court in respect of the Proportionate Liability of the Cadbury Releasees shall only apply in this action and shall not be binding on the Cadbury Releasees in any other proceedings.

Conclusion

22 The Cadbury settlement and the ITWAL settlement are approved.

Application allowed.

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2012 ONSC 5107
Ontario Superior Court of Justice

Hollinger Inc., Re

2012 CarswellOnt 11499, 2012 ONSC 5107, [2012] O.J. No. 4346, 220 A.C.W.S. (3d) 261, 96 C.B.R. (5th) 1

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

And In the Matter of a Proposed Plan of Compromise or Arrangement with Respect to Hollinger Inc., 4322525 Canada Inc., and Sugra Limited (Applicants)

C. Campbell J.

Heard: July 24, 2012
Judgment: September 12, 2012 *
Docket: 07-CL-7120

Proceedings: additional reasons at *Hollinger Inc., Re* (2012), 2012 CarswellOnt 16526, 2012 ONSC 7040 (Ont. S.C.J. [Commercial List])

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Ronald Foerster, Christiaan Jordaan for Torys LLP
Peter Griffin, Matthew Lerner, Monique Jilesen for Monitor, Ernst & Young Inc.
Paul D. Guy, Scott McGrath for Daniel Colson
Sandra A. Forbes, Sarah Weingarten for Outside Directors
Irwin G. Nathanson, Q.C., Geoffery B. Gomery, Q.C. for Respondents, Radler
Harry R. Burkman for Argus Corporation Limited
G. Benchetrit for Indenture Trustees
David Moore for Catalyst Partners Inc.

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

Headnote

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — General principles — Jurisdiction — Court

Company applied for and was granted protection from creditors under Companies' Creditors Arrangement Act (CCAA), to enable company to pursue litigation claims to maximize assets for creditors — Company's litigation assets included claims against former counsel, former auditor, six former independent directors, inside directors, and members of former banking syndicate — Company reached settlement agreements with former counsel, former auditor, and outside directors (collectively settling defendants) which included third party releases and proposed bar orders — Non-settling defendants objected to settlements in respect of former lawyer and former auditor — Company's litigation trustee brought motion for court approval of settlements — Motion granted — Court had jurisdiction to maximize assets available to creditors as long as process was not used to further collateral objective that was inconsistent with ultimate goal of CCAA — Process of maximizing assets for creditors could best be accomplished by court which had jurisdiction over company under CCAA

— Court needed to be satisfied on ongoing basis that progress of litigation was timely and cost-effective and will result in benefit to creditors — Consideration of settlements was appropriate exercise of jurisdiction.

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Miscellaneous

Settlement of company's litigation claims — Company applied for and was granted protection from creditors under Companies' Creditors Arrangement Act (CCAA), to enable company to pursue litigation claims to maximize assets for creditors — Company's litigation assets included claims against former counsel, former auditor, former independent directors, inside directors, and members of former banking syndicate — Company reached settlement agreements with former counsel, former auditor, and outside directors (collectively settling defendants) which included third party releases and proposed bar orders — Non-settling defendants objected to settlements in respect of former lawyer and former auditor — Company's litigation trustee brought motion for court approval of settlements — Motion granted; settlements approved — Interference with procedural entitlements of non-settling defendants was not sufficient to reject settlement or to impose term that parties conduct themselves as if former lawyer and former auditor remained defendants — There was no prejudice to non-settling defendants — Third party releases were rationally related to resolution of debtors' claims and were not overly broad — Bar orders would not prevent others from pursuing claims for contribution and indemnity against former counsel and former auditor — Non-settling defendants should have access to documents they required for their defence.

Civil practice and procedure --- Disposition without trial — Settlement — Miscellaneous

Court approval — Company applied for and was granted protection from creditors under Companies' Creditors Arrangement Act (CCAA), to enable company to pursue litigation claims to maximize assets for creditors — Company's litigation assets included claims against former counsel, former auditor, former independent directors, inside directors, and members of former banking syndicate — Company reached settlement agreements with former counsel, former auditor, and outside directors (collectively settling defendants) which included third party releases and proposed bar orders — Non-settling defendants objected to settlements in respect of former lawyer and former auditor — Company's litigation trustee brought motion for court approval of settlements — Motion granted; settlements approved — Interference with procedural entitlements of non-settling defendants was not sufficient to reject settlement or to impose term that parties conduct themselves as if former lawyer and former auditor remained defendants — There was no prejudice to non-settling defendants — Third party releases were rationally related to resolution of debtors' claims and were not overly broad — Bar orders would not prevent others from pursuing claims for contribution and indemnity against former counsel and former auditor — Non-settling defendants should have access to documents they required for their defence.

Business associations --- Legal proceedings involving business associations — Practice and procedure in proceedings involving corporations — Settlement

Court approval — Company applied for and was granted protection from creditors under Companies' Creditors Arrangement Act (CCAA), to enable company to pursue litigation claims to maximize assets for creditors — Company's litigation assets included claims against former counsel, former auditor, former independent directors, inside directors, and members of former banking syndicate — Company reached settlement agreements with former counsel, former auditor, and outside directors (collectively settling defendants) which included third party releases and proposed bar orders — Non-settling defendants objected to settlements in respect of former lawyer and former auditor — Company's litigation trustee brought motion for court approval of settlements — Motion granted; settlements approved — Interference with procedural entitlements of non-settling defendants was not sufficient to reject settlement or to impose term that parties conduct themselves as if former lawyer and former auditor remained defendants — There was no prejudice to non-settling defendants — Third party releases were rationally related to resolution of debtors' claims and were not overly broad — Bar orders would not prevent others from pursuing claims for contribution and indemnity against former counsel and former auditor — Non-settling defendants should have access to documents they required for their defence.

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R. 1.04(1.1) [en. O. Reg. 438/08] — considered

R. 1.04(2) — considered

R. 29 — considered

R. 29.1 — considered

R. 29.1.01 [en. O. Reg. 438/08] — considered

R. 30 — considered

R. 30.10 — referred to

R. 31 — considered

R. 31.10 — referred to

R. 53 — considered

R. 53.04 — referred to

Words and phrases considered:

Perringer Agreement

Pierringer agreements (so-called after *Pierringer v. Hoger* 124 N.W.2d 106, 21 Wis. 2d 182 (U.S. Wis. S.C. 1963)) permit some parties to withdraw from litigation, leaving the remaining defendants responsible only for the loss that they may be found to have actually caused, with no joint liability. As the remaining, Non-Settling Defendants are responsible only for their proportionate share of any loss, a *Pierringer*agreement can properly be characterized as a "proportionate share settlement agreement".

MOTION by company's litigation trustee for approval of settlement entered into between company and its former auditor and counsel.

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

1 Two motions are before the court in respect of this CCAA proceeding.

2 The first motion seeks approval of a settlement entered into between the Applicants, hereinafter collectively, referred to as Hollinger and its former auditors and lawyers.

3 The second motion, which among other things, is dependent on the Court having jurisdiction to grant the relief sought in the first motion seeks to compel Hollinger to file a CCAA Plan and put that plan to a vote of Hollinger's creditors. The second motion has yet to be scheduled for argument.

4 The first motion raises serious issues regarding the conduct of litigation within the context of a CCAA regime and the court's ability, assuming jurisdiction, to manage the litigation having regard to the interests of creditors, the parties to the litigation and to the principles of proportionality which are now a much more significant and the important part of the Rules of Civil Procedure.

Background

5 The issues that form the foundation of the claims involved in the litigation now sought to be partially settled go back at least a decade and involve a company and subsidiaries and affiliates now familiar to many Canadians, collectively for this purpose, referred to as Hollinger Inc. which was up until 2007 the parent company of Hollinger International Inc. headquartered in Chicago, Illinois and with various other subsidiaries in Canada and the United States.

6 The plaintiff in various actions, against various defendants principally its former Chairman and Chief Executive Officer Conrad Black and several former close associates. In these reasons I have used the surname Black as a collective reference to the various corporations owned or controlled by Mr. Black and his family. The reference to Black associates in this context is to the Non-Settling Defendants. Those appearing to oppose are David Radler and Daniel Colson but not all formally appeared to oppose the Hollinger settlement with Torys LLP and KPMG LLP.

7 In 2004 a significant creditor of Hollinger, Catalyst Partners Inc., initiated an Application alleging oppression in respect of its rights as a creditor as a result of various alleged acts of misconduct by, among others, Black and his associates in respect to the operation of Hollinger. An Inspector was appointed under the *Ontario Business Corporations Act.*

8 In August 2007 Hollinger applied for, and was granted, protection from creditors under the CCAA by order of this court and Ernst & Young Inc. was appointed Monitor in these proceedings.

9 The stated purpose of this CCAA proceeding is to enable Hollinger to pursue claims in litigation to maximize estate assets with a view to eventual windup and distribution to creditors. Pursuant to the provisions of the Initial Order, the process requires court approval. This includes the settlements being the subject of this motion.

10 By Order dated May 21, 2008 and amended July 3, 2008 this Court approved what has been referred to as the Multi-Party Settlement Order. Among other matters the Order appointed a chief restructuring officer of Hollinger, (CRO), a

Litigation Trustee and a litigation advisory committee consisting of a representative of Hollinger, the Litigation Trustee and the representative of Hollinger's largest note holders collectively referred to as the Indenture Trustee and a process for dealing with claims represented in the motion before the court and other claims.

11 Five groups of claims which collectively comprise the Litigation Assets of Hollinger's include claims against:

(a) Hollinger's former counsel Torys LLP

(b) Hollinger's former auditor, KPMG LLP

(c) six of Hollinger's former independent (Outside) Directors

(d) Hollinger's former inside directors and officers including Conrad Black and various associates as well as companies owned and controlled by them

(e) members of Hollinger's former banking syndicate.

12 The position of the Applicants is that the value of the Litigation Assets lies in their monetization either in the form of settlement proceeds or damage awards for the purpose of a liquidating CCAA proceeding.

13 The Multi-Party Settlement Agreement which remains in force has created a court-approved mechanism for enhancing and monetizing the Litigation Assets by appointing the Litigation Trustee to administer them with a few to maximizing the net return to the Hollinger stakeholders which includes the company's various subsidiaries and its creditors and shareholders.

14 The Indenture Trustee of Notes issued by Hollinger in 2003 and 2004 represents the largest creditors as they hold legal title to the notes issued by Hollinger pursuant to a financing of which Davidson Kempner Capital Management LLC (D. K.) is the beneficial owner of the majority of the notes. Both the Indenture Trustees and D.K. support the settlements in respect of which court approval is sought.

15 It is to be noted that Conrad Black has filed a one paragraph proof of claim in the CCAA proceeding claiming damages for breach of contract and other relief and he asserts a claim to be the largest creditor of Hollinger. No further steps have been taken since 2008 to advance such claim.

16 This motion concerns approval of settlements reached between Hollinger and Torys, KPMG, and the Outside Directors of Hollinger Inc. (collectively the Settling Defendants.)

17 Starting in 2005 Hollinger advised each of the potential defendants of the intention to commence legal proceedings against them, and entered into tolling agreements with, or commenced claims against, each of them.

18 All of the defendants and potential defendants were advised of the possibility of Hollinger seeking third-party releases in favor of the Settling Defendants in exchange for financial contributions and/or cooperation agreements.

19 Torys, KPMG, and the Outside Directors entered into a mediation process with Hollinger before George Adams Q. C. a former Justice of the Ontario Superior Court of Justice.

20 As a result of the various mediations, Settlement Agreements have been concluded with all of the Settling Defendants. Some of the agreements have been approved; others are now before the court for approval.

21 In each instance the Settlement Agreements provide for a monetary contribution by the respective Settling Defendants to Hollinger, the amounts of which will form part of the public record if all settlements are approved.

22 In an earlier motion, various of the Black defendants took issue with the nondisclosure on the public record of the proposed settlement amounts prior to any approval. All parties who may be directly interested in the amounts of the various

settlements were provided access to the details on signing a confidentiality agreement. Further objection even on this basis was not preceded with and all Non-Settling Defendants have had access to settlement details.

Objection to Settlements

23 There are three basic grounds for the opposition put forward by the Non-Settling Defendants against the settlements.

> 1. that the Court lacks jurisdiction to approve the proposed settlements without a detailed analysis of the nature of the claims, their possible success and whether the settlement amounts are reasonable given the claims remaining against the Non-Settling Defendants.
>
> 2. that the third party releases and Bar Orders that form an integral part of the settlements, if approved, would deprive the remaining defendants of substantial rights they would have for documentary production and oral discovery that the remaining defendants would have as entitled rights if the Settling Parties were to remain as defendants or be third parties in any action.
>
> 3. that the settlements, if approved, may deprive Conrad Black of rights he claims as a significant and perhaps the largest creditor of Hollinger by virtue of his claim for damages.

24 In addition, the Non-Settling Defendants urge that in the event the settlements are approved that any order contain a protocol for production and examination of documents and the examination of witnesses that would provide the Non-Settling Defendants with the same opportunity for production discovery and pre-trial and trial examination as if Torys and KPMG were to continue as defendants.

25 It is to be noted that objections of the Non-Settling Defendants are only in respect of the settlements in respect of Torys and KPMG. No objection is taken with the terms of settlements reached with the Outside Directors and with CIBC and Mr. Fullerton, a former director of Hollinger.

26 When this matter first came before the court on April 19, 2012 I expressed concern about the context of the proposed settlements.

27 Each of the Settlement Agreements contain third-party releases in favor of the Settling Parties and are conditional upon the issuance of satisfactory Bar Orders giving effect to the third-party releases which in each case release the Settling Parties from claims advanced against them for contribution by any party in respect of Hollinger's settled claims.

28 Hollinger has confirmed that the scope of the Third Party Releases and Bar Orders is limited to claims by Non- Settling Defendants for contribution and indemnity against Settling Parties in connection with claims brought by Hollinger in respect of damages claimed by Hollinger. Only the Hollinger initiated claims with the respective Settling Parties will be affected.

29 The court has been advised that in one form or another various of the Non-Settling Defendants have asserted they intend to assert claims for contribution and indemnity against Torys and the KPMG in respect of Hollinger's claims against those Non-Settling Defendants in which they allege Torys and KPMG may be jointly liable.

30 The court has been further advised that none of the Non-Settling Defendants and no other person has asserted an independent cause of action against any of the Settling Defendants and that any claims now advanced would be statute barred.

31 The Court was apprised of a number of proceedings in which claims are made against Black and various associates and in which claims for contribution and indemnity have been made or asserted by Black and others against Torys and KPMG. These proceedings include an action commenced in Illinois by Hollinger International Inc. (now CNLC) and a claim by the Securities and Exchange Commission (SEC) of the United States. There has been some production of some documentation in those proceedings.

32 The Litigation Trustee has confirmed that the Third Party Releases contained in the settlements in respect of Torys and KPMG now before the court and the proposed Bar Orders giving effect to thereto will not prevent the Non-Settling Defendants from asserting or pursuing claims for contribution and indemnity against Torys and KPMG in any of the proceedings in the United States.

33 In order to lessen the objection of the Non-Settling Defendants to the Third Party releases contained in the Settlement Agreements, Hollinger agreed to limit their recovery from a Non-Settling Defendant to his/her or its several liability only, provided that such Non-Settling Defendant's liability is demonstrably shared with a Settling Party against whom the Non-Settling Defendant successfully proves a claim for contribution and indemnity.

34 The position of Hollinger adopts the Report to the Court of the Litigation Trustee, the Honorable John Ground Q. C. in the following extract:

> It is Hollinger's intention to make the settlements by Torys and KPMG an economically neutral event for the Non-Settling Defendants...
>
> Hollinger is prepared to waive its right to joint and several liability in respect of the liability between either Torys, KPMG or other Settling Defendant on the one hand and a Non-Settling Defendant on the other. Hollinger proposes that settlement approval orders provide that if any Non-Settling Defendant would otherwise be able to establish a right of contribution and indemnity from Torys, KPMG or other Settling Defendant, then the damage owing to Hollinger jointly and separately by any such Non-Defendant will be reduced by the degree in which Torys and/or KPMG or other Settling Defendants are found to be at fault or negligent.
>
> Therefore, while each Non-Settling Defendant will not have a claim for contribution and indemnity against KPMG, Torys or other Settling Defendant for the amount which any of them might be found to be at fault or negligent, there will be no economic detriment because any such amount will not be sought from the Non-Settling Defendant if that defendant could have otherwise asserted such a claim.
>
> Nothing in the settlement approval orders will prevent any Non-Settling Defendant from requiring the Court to determine the degree in which any of KPMG, Torys or other Settling Defendant is at fault or negligent with respect to any damages suffered by Hollinger. To the extent the Court finds KPMG, Torys or other Settling Defendant responsible for a proportionate share of those damages and the Non-Settling Defendant had a right of contribution and indemnity against either of them, then Hollinger will have no claim against any person in respect of the proportionate share. In such circumstances the settlements will be the total report recovery available to Hollinger in respect of the Settling Defendants are portion and share of any damages suffered by Hollinger.

35 Hollinger asserts that the Non-Settling Defendants' procedural rights will not be prejudiced since Settling Defendants will not be exempt from giving evidence or serving as witnesses and if need be procedural orders may be issued by the court at any appropriate time.

36 The position of the Non-Settling Defendants is that notwithstanding the limitation of liability against them, the Third Party Releases not only impede their procedural entitlements but affect substantive rights they enjoy as litigation defendants.

37 In order to deal with the claims against the Non-Settling Defendants in context, the Court asked for and received a Fresh as a Amended Statement of Claim against the Non-Settling Defendants. This pleading provides the context for the approvals sought. No Statements of Defence have been delivered. That said, there have been a number of actions and regulatory proceedings both in Canada and the United States as well as in this court that have raised issued regarding the management of Hollinger in the period covered in the Amended Statement of Claim.

Issue 1

Does the Court have Jurisdiction under the CCAA to grant the approval sought?

38 The position of Hollinger is that the claims it advances are litigation assets and therefore material assets of the estate which requires court approval for any compromise not unlike standard asset disposition in any other CCAA context. The position of Hollinger is supported by all of the Settling Defendants.

39 The position of Black and associates on the issue of the court's jurisdiction is that within the CCAA regime and the Order sought here an Order should only be made if it can demonstrably facilitate corporate restructuring with a view to "enabling the Corporation to continue its business or to serving a similar broad public purpose such as the preservation of employee benefits".

40 Paragraph 11 of the Black Factum asserts:

> These proposed settlements fail to benefit all of Hollinger Inc.'s creditors generally. They are not part of a plan of compromise or arrangement and they do not pave the way for such a plan. The proceeds of these settlements are to be applied in whole or in part to the ligitation against Mr. Black and other Non-Settling Defendants. Indeed, Hollinger Inc. has not made clear whether any part of the settlement proceeds will be distributed or whether they will be completely devoted to pursing its claims against Mr. Black and the other Non-Settling Defendants. It may be inferred that the entirety of the settlement will be applied to a so-called "litigation reserve" and that nothing will be distributed to its creditors, of whom Mr. Black may be at the largest. Any assertion that he is not assumes that his claims are invalid and that his positions in the various proceedings arising from the affairs of Hollinger Inc. litigation are unmeritorious.

41 The position of Hollinger is that the settlement funds will be used in part to fund the litigation and that the supervision by the Court with the assistance of the Litigation Trustee, the CRO, and the Monitor will enable the court to be satisfied that the litigation will be conducted for the benefit of all creditors and will enable a distribution to entitled creditors. This position is supported by creditors other than Black.

42 Recent jurisprudence has confirmed the application of judicial discretion and flexibility of the CCAA to achieve a variety of corporate purposes including but not limited to the restructuring of the company. These have been reaffirmed in the decision of the Supreme Court of Canada in *Ted Leroy Trucking Ltd., Re* [1] and include, in appropriate cases, the ability to effect a sale of assets and winding up or liquidation of a debtor company and its assets. Also see *Anvil Range Mining Corp., Re* [2]

43 What has been a feature of restructuring since the financial crisis of 2008 has been a variety of processes under the CCAA.

44 The conclusion that I reach is that the court does have jurisdiction consistent with the principles of the CCAA to maximize the assets available to creditors as long as the process is not being used to further a collateral objective that, in the end, is not inconsistent with the ultimate goal of these CCAA see *Houlden, Morawetz Sara.* [3]

45 What is unusual in this instance is that the assets are the product of litigation. The court does need to be satisfied on an ongoing basis that the progress of the litigation is both timely and cost-effective in terms of its progress and will result in benefit to creditors.

46 I am satisfied at this time that consideration of the settlements is an appropriate exercise of jurisdiction with the assistance of the aforementioned court officers. In particular, as noted, the litigation has the support of the major creditor group which advanced more than $200 million to Hollinger and has not been repaid.

47 I am cognizant of the position of Black who wishes to pursue a claim for damages against Hollinger and who claims, as a result, to be the largest creditor of Hollinger. Black is, in my view, at best a claimant creditor since his claim appears to be entirely in damages. He has not advanced that claim which presumably, would in any event, form a counterclaim in the action in which he is the defendant. In addition, it is asserted by Black that he has a direct claim against Torys for damages. Again, since, presumably, the facts, document production and discovery in any such action arise out of the Hollinger Litigation to the extent not covered in a counterclaim against Hollinger, it can be dealt with by a management judge.

48 As in any CCAA proceeding, any affected party may apply to the Court for directions in respect of the ongoing process that the court will continue to supervise.

49 In the submission on behalf of Radler it was assumed that the litigation would not be managed and supervised on the Commercial List. Given the importance of the litigation in the CCAA process it would be appropriate that the litigation be managed by a judge of the Commercial List assisted and where appropriate, a Master assigned to the Commercial List.

50 The Court has the obligation to ensure the integrity of the process which in the first instance is to protect the interests of creditors. A second important consideration is to ensure that the process is consistent with commercial efficacy and integrity and fairness. See *Royal Bank v. Soundair Corp.*,[4]

51 In *Nortel Networks Corp., Re*[5] Morawetz J. reviewed the duties of the Court in a proposed sale of assets in a CC AA context as follows:

> 1) it should consider whether sufficient effort has been made to obtain the best price and that the death or has not acted improvidently;
>
> 2) it should consider the interests of all parties;
>
> 3) it should consider the efficacy and integrity of the process by which offers have been obtained;
>
> 4) and it should consider whether there has been on fairness in the working out of the process.

I am of the view that these same principles should guide a CCAA court which supervises litigation as a major asset of the corporation with the modifications suggested by Hollinger to the process.

52 I am satisfied that the process of maximizing assets for creditors can best be accomplished by the court which has jurisdiction over Hollinger under the CCAA. Management of the litigation will require regular reporting to the court by the Monitor and will enable any party affected by the process to seek direction.

Issue 2

Should the Court approve the requested settlement orders in respect of the Settling Defendants?

A Third Party Releases — Perringer Agreement

53 Counsel for Hollinger submitted that the approval process before the Court is no different then other "Perringer Agreements" which have been approved by the courts in this province and elsewhere.

54 *Pierringer* agreements (so-called after *Pierringer v. Hoger*[6]) permit some parties to withdraw from litigation, leaving the remaining defendants responsible only for the loss that they may be found to have actually caused, with no joint liability. As the remaining, Non-Settling Defendants are responsible only for their proportionate share of any loss, a *Pierringer*agreement can properly be characterized as a "proportionate share settlement agreement".

55 The Applicants in this case seek what they urge are very limited Third party Releases and Bar Orders of the kind commonly ordered in connection with the *Pierringer* agreements in standard, multi-party litigation.

56 The only third parties whose claims are being released and barred are the Non-Settling Defendants. No other parties are affected by them. There have been no independent claims launched by any person arising out of the dealings with Hollinger Inc. Hollinger submits that the facts in issue have been the subject of much publication and any limitation periods have expired. In addition, it is urged the only claims that are being released and barred are those that form part of the "Settled Claims" between the Settling Parties and the Applicants. Non-Hollinger claims are not being released or barred. Specifically, the Bar Orders sought

would not prevent Black or others from pursuing claims for contribution and indemnity against Torys or KPMG in respect of the Illinois Action or the SEC Action or any other litigation outside Ontario. Those claims are classed as non-Hollinger claims.

57 Section 11 of the *Courts of Justice Act* grants the Superior Court of Justice a wide jurisdiction, including "all the jurisdiction, power and authority historically exercised by the courts of common law and equity in England and Ontario". The jurisprudence states that this jurisdiction is not to be displaced absent clear and unequivocal statutory language.

58 Hollinger asserts there is added safety for Non-Settling Defendants. Non-Settling Defendants who are found to be at fault will not be exposed to a greater apportionment of liability for the plaintiff's loss based on their joint liability with Settling Defendants, than would otherwise occur based on their own direct fault.

59 Additional benefits are said to include reduced financial and opportunity costs related to complicated, protracted litigation, and conservation of court resources. This limitation of time and cost exposure is an essential term of the Settling Defendants' agreements.

60 *Pierringer*-type settlement agreements have not been restricted to personal injury cases or cases of negligence. A fulsome description of the Nature and implications of Perringer Agreement is set out in an article by Peter B. Mapp, "Keeping the *Perringer* Promise Fair Settlements and Fair Trials" [7] . The article was written in the context of the jury system in the United States but is instructive in the context here in that it notes the importance of foreseeing trial issue difficulties before any agreement is approved.

61 I accept the submission on behalf of Black and the other Non-Settling Defendants that the effect of these Orders sought may to some extent complicate the Non-Settling Defendants' position to deal with the issue of fault of the Settling Defendants.

62 Where I differ with counsel for the Non-Settling Defendants is the attempt to raise a potential problem to the level of a substantive right which would have the effect in this case of rendering inoperative a settlement which has been negotiated at arm's length which has an essential term that the Settling Defendants no longer remain as parties to the action.

63 Each case does have its own distinct features and the settlements here set out to minimize the effect on the Non-Settling Defendants. Given the background and history of events which give rise to the claims in the Statement of Claim including the documentary production made by various of the Settling and Non-Settling Defendants in investigation by a court appointed Inspector, regulatory, disciplinary and criminal proceedings as well as the CCAA all serve to limit the detriment to the Non-Settling Defendants.

64 Canadian courts have acknowledged that *Perringer* types of agreements have been increasingly utilized in Canada in a variety of litigation settings, including class actions as one example. See *Ontario New Home Warranty Program v. Chevron Chemical Co.* [8] per Winkler J.

65 As in the CCAA context, settlements in class actions must be approved by the courts. See *Osmun v. Cadbury Adams Canada Inc.* [9]

> TThe authority to make an order giving effect to a *Pierringer* agreement arises from s. 12 of the *Class Proceedings Act* (CPA), which provides that: "[T]he court, on the motion of a party or class member, may make any order it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination and, for the purpose, may impose such terms on the parties as it considers appropriate." As well, s. 13 provides that "[T]he court, on its own initiative or on the motion of a party or class member, may stay any proceeding related to the class proceeding before it, on such terms as it considers appropriate". It is well-settled that the bar order cannot interfere with the substantive rights of the Non-Settling Defendants: *Amoco Canada Petroleum Co. v. Propak Systems Ltd.* [10]

66 In this case, the Third Party Releases are rationally related to the resolution of the debtors' claims which will benefit creditors generally, and are not overly broad, the effect of which is that the Settling Defendants have agreed to pay amounts to

Hollinger in respect of their proportionate share of the plaintiff's claims. No party in any way affected including the Non-Settling Defendants has opposed those settlements on the basis of the amounts involved. Black asserts that the Perringer Agreements in issue may only bar claims for contribution and indemnity and cannot operate to bar independent claims that Black may have based on an independent duty owed by Torys to Black. To date no actions involving claims of independent duty to Black have been brought to the court's attention.

67 By their very nature, *Pierringer* Agreements have the potential to prejudice the procedural rights of Non-Settling Defendants. As I explained in *Lau v. Bayview Landmark Inc.*:

> As long as the Settling Defendants were in the action, the Non-Settling Defendants could rely on the focus the former would attract at trial in distinguishing their conduct from that of the Settling Defendants.
>
> With the Settling Defendants absent from the trial in a meaningful way, the Non-Settling Defendants would be deprived of the benefits that would come from full discovery and evidence of those parties, which would be supportive of all Defendants vis-à-vis the Plaintiffs and of that evidence that would provide a clear distinction between the Defendants. It would be a different case from the one in which all the Defendants were full participating. [11]

68 The release of Torys by Hollinger is in the following language:

> (i) Full and Final Release of Torys by the Hollinger Releasors: Upon payment in full of the Settlement Amount, Hollinger, its past, present and future subsidiaries and divisions (including, without limit the foregoing, 432525 Canada Inc., Sugra Limited, DomGroup Ltd. and 10 Toronto Street Ltd., but not including the Sun Times Media Group, Inc. and its subsidiaries (collectively referred to as "STMG"), all partnerships in which Hollinger or a wholly-owned subsidiary of Hollinger is the general partner and any corporation owned by such partnership, for themselves, their employees, servants, agents, heirs, administrators, successors, assigns and on behalf of any party or parties who claim a right or interest through them (collectively, the "Hollinger Releasors") do hereby fully, finally and forever, release, remise, acquit and forever discharge, without qualification or limitation, Torys and it past, present and future partners, employees, directors, officers, affiliates, agents, advisors, insurers and reinsurers, and their predecessors, successors and assigns (collectively the "Torys Releasees"), separately and jointly, of and from any and all rights, interests, obligations, debts, dues, sums of money, accounts, reckonings, damages, claims, actions, allegations, causes of action, counterclaims or demands whatsoever, whether known or unknown, in law or in equity, of whatever kind or character, suspected, fixed or contingent (collectively "Claims") that have been, that could be, or that could have been asserted by the Hollinger Releasors from the beginning of time through the date hereof (including without limitation any claim for contribution, indemnification, reimbursement or any other forms of claims over related to the subject matter of the Settled Claims that could be asserted on or after the date hereof by the Hollinger Releasors based on events occurring prior to and through the date hereof) against the Torys Releasees concerning (i) Torys' representation of the Hollinger Releasors or (ii) any allegations of injury to the Hollinger Releasors caused by Torys including, without limiting the generality of the foregoing all claims raised or which could have been raised in the Intended Action (collectively the "Settled Claims").
>
> (ii) Unknown Claims: Without limiting the generality of paragraph 2 above, the Hollinger Releasors declare that the intent of the full and final release set out therein is to conclude all issues arising from the Settled Claims and it is understood and agreed that the release is intended to cover, and does cover, not only all known injuries, losses and damages, but all injuries, losses and damages not now known or anticipated but which may later develop or be discovered, including all the effects and consequences thereof. In addition, Torys agrees that it has not filed, and will not file, any claims against the estates of any of the Hollinger Releasors.
>
> (iii) Full and Final Releases of Torys by Third Parties: It is the intent of the Parties that this Agreement and the terms of the Release Order will eliminate any basis for (i) any other party against whom any of the Hollinger Releasors has brought or in the future brings any Claims relating in any way to the subject matter of the Settled Claims; and (ii) any past or present shareholder, officer, director, creditor or subsidiary (other than STMG) of the Hollinger Releasors (together the "Third Party Releasors"), from being able to claim contribution, indemnification, reimbursement or other forms of claims over

> from the Torys Releasees for such party's liability to the Hollinger Releasors or from bringing claims against the Torys Releasees relating in any way to the subject matter of the Settled Claims (the "Third Party Releases").

69 I do not see from the above that any claim of Black with respect to a duty of Torys to him apart from duties to Hollinger are covered by the release language.

Bar Orders — Perringer Agreements

70 I agree that the general intention of a bar order is to preclude claims arising from the subject matter of the action in order to achieve finality for a partial settlement. Without the security provided by a bar order, partial settlement of litigation may be impossible. As has been said:

> Any single defendant who refuses to settle, for whatever reason, forces all other defendants to trial. Anyone foolish enough to settle without barring contribution is courting disaster. They are allowing the total damages from which their ultimate share will be derived to be determined in a trial where they are not even represented.

71 A properly crafted bar order therefore promotes an overriding public interest in resolving disputes and conserving judicial resources. The significance of these goals was recognized by the Ontario Court of Appeal in *M. (J.) v. Bradley* [12] as a powerful reason to support the implementation of *Pierringer* agreements:

> This laudatory objective [of promoting settlement] has long been recognized by Canadian courts as fundamental to the proper administration of civil justice: see for example, *Sparling v. Southam Inc.* ... (Ont. H.C.), at 230, referred to with approval by the Supreme Court of Canada in *Loewen, Ondaatje, McCutcheon & Co. c. Sparling*, ... (S.C.C.) at para. 48; and *Ontario New Home Warranty Program v. Chevron Chemical Co.* ... (Ont. S.C.J.), at 147. Furthermore, the promotion of settlement is especially salutary in complex, costly, multi-party litigation. As observed in *Amoco* at p. 677:
>
> > In these days of spiraling litigation costs, increasingly complex cases and scarce judicial resources, settlement is critical to the administration of justice.

72 The basic position of the Non-Settling Defendants is that the settlements if approved would deprive them of procedural rights in respect of the ongoing litigation to production and discovery that would otherwise be available assuming Torys and KPMG remained as defendants.

73 It should be noted that only the litigation involving the Non-Settling Defendants in Ontario would be subject to the Orders sought. Litigation in the United States in which Torys and KPMG are defendants is unaffected. Undoubtedly, there will be production and discovery in those actions that overlaps in the actions to be covered by these settlements.

74 The position of the Non-Settling Defendants was simply put by counsel on behalf of Radler. The complaint is that the procedural rights to full production and discovery from Torys and KPMG are in effect substantial when the effect of the settlements is to prevent the advancement of a full defense to the claims of Hollinger that the Non-Settling Defendants would have had with Torys and KPMG continuing as defendants or third parties.

75 The Non-Settling Defendants object to the Bar Order on the basis that only when they can assert liability attribution to the other defendants can they advance their own defence.

76 It was with this position before the court that a request was made that the parties with the assistance of the Monitor consult to determine whether a protocol for production and discovery with respect to Torys and KPMG could be agreed to.

77 It would appear that the position of the Non-Settling Defendants, at least at present, is that they do not see any issues with production or discovery from Outside Directors or other Non-Settling Defendants apart from Torys, KPMG and Hollinger.

78 As originally put before the court the Settling Defendants conceded and agreed that any approval the court might grant would recognize the rights of Non-Settling Defendants to seek production and discovery pursuant to Rules 30.10 and 31.10 of

the *Rules of Civil Procedure*. Both Torys and KPMG have confirmed that they have taken steps to preserve documents that may be relevant and they recognize that witnesses may be required to give evidence pursuant to Rule 53.04.

79 There is no question that settlement with some defendants as opposed to all defendants does interfere with what might otherwise be the procedural rights of remaining defendants and that more may be required by way of management than the simple application of rules 30, 31 and 53. I do recognize the potential detriment to defendants from *Perringer* Agreements. Any detriment should be balanced against the benefit to Settling Defendants and to plaintiffs as well as the administration of justice as a whole on a case by case basis.

80 Counsel for Radler sought to distinguish another decision which involved settlement in respect of some defendants in a class action in *Gariepy v. Shell Oil Co.*. [13]

81 It is urged that the decision in that case of Nordheimer J. and his reasoning on the discovery point, that the claims against the Settling Defendants were not shown to be relevant to an assessment of the claims against the Non-Settling Defendants, was a particular feature of the particular case before him. In a case such as the case at bar, counsel submits, where the question is one of the apportionment of responsibility for a single pool of losses between the Settling and Non-Settling Defendants, the one cannot be determined without the other. They are two sides of the same coin. In such circumstances, Mr. Nathanson for Radler asserts the fault of the Non-Settling Defendants has to be considered at trial; reliance is placed on *M. (J.) v. Bradley* [14], where Cronk JA stated:

> [68] ... Kerr argued before this court that the trial judge in this action would be faced with a most difficult, if not impossible, task if required to determine the Non-Settling Defendants' several share of liability without being in a position to make the same determination concerning the responsibility, if any, of the Settling Defendants for the appellants' losses. Correspondingly, he asserted that the determination of his share of liability without regard to the Settling Defendants' contributory responsibility would be manifestly unfair.
>
> [69] I agree with both of these submissions. ...
>
> [70] ... [F]airness requires that Kerr's several share of fault or neglect not be determined in a vacuum, without consideration of the several liability of all other proven tortfeasors. Were it otherwise, Kerr could be exposed at trial to the potential risk of being required to pay damages to the appellants for part of the Settling Defendants' several shares of liability, claims to which, as Kerr properly points out, have been compromised and released by the appellants under the Agreements.

82 The issue in *Bradley* was whether the court had jurisdiction under the *Negligence Act* to apportion fault against a former party who had settled. The court held that it had, and that a Settling Defendant under a *Pierringer* settlement need not continue as a party in the litigation. In *Bradley*, it is put forward by Black, that since the Settling Defendants in that case had consented to being examined for discovery there was no potential procedural unfairness to the Non-Settling Defendants.

83 In the case at bar I accept that assessing the fault or neglect of Torys, KPMG and the Outside Directors will be fundamental to the court's assessment of the claim against the Radler respondents and the other Non-Settling Defendants. By reason of this interrelationship of the claims, even at this stage it is clear that Torys, KPMG and the Outside Directors are in possession of relevant evidence pertaining to their own responsibility for the losses suffered that can only be obtained by the Non-Settling Defendants through discovery which will primarily involve Hollinger.

84 The question then is does the court simply say party discovery rights trump so that Settling Parties are subject to all of the obligations and costs they would have as if they were to remain defendants OR does the court say the process can be controlled through effective management particularly on the Commercial List. To say the former is to reject approval of an essential term of the settlements.

85 In *Ontario New Home Warranty*, Winkler J. [15] as he then was, said the following at paragraph 77:

> These terms, generally described, are that the non-settling defendants may, on motion obtain:

1. documentary discovery and an affidavit of documents in accordance with the Rules of Civil Procedure from each of the settling defendants;

2. oral discovery of a representative of each of the settling defendants, the transcript of which may be read in at trial;

3. leave to serve a request to admit on each settling defendant in respect of factual matters;

4. an undertaking to produce a representative to testify at trial, with such witness to be subject to cross-examination by counsel for the non-settling defendants.

"78. In addition, the fact of the settlement, but not the terms thereof, shall be disclosed to the trial judge at the commencement of trial.

79. Furthermore, pursuant to its case management powers under the Act, this court shall have ongoing supervisory role in this action. In the event that any settling defendant fails to comply with an order of this court made pursuant to the above terms, the court may, in addressing any such failure, lift the stay of proceedings in respect of that defendant.

86 Part of the opposition by Black and others to the elimination of the Settling Defendants from the action is the prospect that Affidavit of Documents would not have to be produced. That is why the Non-Settling Defendants urge that even if the settlements are approved that at least Torys & KPMC be required to produce an Affidavit of Documents as if they remained as defendants.

87 I do accept that Affidavits of Documents remain appropriate requirements in many civil cases. What is not apparent in most cases until after the fact is just how costly the production process can be including the full cost of preparation of an Affidavit of Documents in traditional form.

88 A recent study published by the Rand Institute in the United States [16] reveals that more than 70 cents of every dollar spent on producing documents goes to review largely issues of relevance and privilege.

89 This study has brought even more focus on the importance of proportionality as can operative concept in civil litigation. The Non-Settling Defendants should have access to the documents they require for their defence, not necessarily every conceivably relevant document.

90 This does not necessarily mean that they should be entitled as a right to production of all the documents that Torys & KPMG might be required to otherwise produce. Proportionately must have same rational meaning in civil litigation.

91 In England a new Practice Direction Part 31 of the Rules will assist both parties and non-parties with disclosure obligations [17] while adhering to the principle of proportionality.

92 The focus of the above references is on the need for a different approach to discovery in many civil cases. Throughout the common law world there is a recognition of the need for an approach that goes beyond Rules of Civil Procedure even though rules remain a default position. If co-operation between parties cannot resolve discovery disputes the trend is toward assistive judicial management. It is with this background that I reach a conclusion that production and discovery issues in this case given the degree of expected co-operation from Torys & KPMC are not sufficient to reject the settlements reached.

93 The 23rd report of the Monitor received August 17, 2012 reported on the consultation process the court directed to determine whether an agreement for a protocol for production and discovery could be reached between the parties. Despite the efforts of counsel for the Monitor, for which the Court is grateful, no agreement was reached.

94 Hollinger, Torys, KPMG and the other Settling Defendants were largely agreed. Attached as Appendix "A" is the KPMG proposed protocol. The Torys protocol is similar. The response by Black is as set out in Appendix "B" attached. The Black position gives no meaningful recognition to proportionality.

95 The management of the discovery process in civil litigation, particularly complex civil litigation has been of increasing concern to all who are involved in the administration of justice.

96 If one were to go back 40 years, the parties to litigation and their counsel were largely responsible for managing production and discovery. In that bygone age there were often only 5 to 10 documents for production and less than a half a day for oral discovery.

97 Parenthetically, most judges and many counsel report that at trial today there are rarely more than 5 to 10 documents that are truly determinative. However, in the last decade the world of documentary discovery has changed significantly.

98 Typically there are thousands if not hundreds of thousands and sometimes millions of documents that have become part of the discovery process.

99 This has given rise to the need for the court to participate in the process. In Ontario, it commenced with case management which has achieved significant success in Ottawa and Windsor but less so in Toronto.

100 In 2003 the Task Force on Discovery in Ontario made various recommendations which took until 2010 Rule amendments to come into force. These are found in Rule 1.04.1 mandating proportionately and in Rule 29.1 requiring a Discovery Plan. Rules 30 and 31 with amendments form the basis for regulating documentary and oral discovery for non-parties.

101 In the United States the Joint Task Force of the Institute for the Advancement of the American Legal System and the American College of Trial Lawyers in 2009 recommended pilot projects to among other things place limits on discovery. Several pilot projects have been implemented including in the Southern District of New York. Pilot Project Rules place limits on discoverable documents. [18]

102 Also the Sedona Conference of the United States teamed with members of the Ontario Discovery Task Force and other lawyers and judges from across Canada to create the Sedona Canada Principles. The Sedona Canada Principles which include early consultation employing proportionately are now incorporated by reference in the Rule 29.1 amendments in 2010. In addition, Sedona Canada has published a commentary to add further guidance to the Principles. [19]

103 In Ontario the process has gone further with the creation of the E. Discovery Implementation Committee sponsored by the Advocates Society and the Ontario Bar Association to provide precedents and guidelines to deal with discovery issues. [20]

104 The purpose of the above review has led me to conclude that the discovery process in the litigation that will be left as a result of the settlements in this case can be managed by judges of the Commercial List with the tools that are available to supplement the flexibility now provided for in the Rules.

105 Two rules in particular are intended to be applied with the flexibility necessary to balance the interests of parties who might otherwise be inclined to resort to what used to be known as a "war of attrition". Rule 29 and in particular rule 29.1.01 require the parties to agree on a discovery plan that is consistent with the Sedona Canada Principles. If the parties do not agree the Court may intervene.

106 Rule 1.04 (1), 1.1, and (2) while seemingly adding little by way of substance now operate as a strong signal for a change in culture. Parties cannot expect that the discovery process can with the passage of time and crippling cost destroy the prospect of determination of legal issues on the merits. In recent years this has too often been the case.

107 TThe Supreme Court of Canada has confirmed the application of the principle of proportionately in civil litigation in commenting on Quebec Civil Procedure Rule 4.2 (similar in wording to Ontario Rule 1.04) Madame Justice Deschamps speaking for the court in *Marcotte c. Longueuil (Ville)*, 2009 SCC 43 (S.C.C.) at para. 76 said:

> What is clear from these different sources is that the purpose of art. 4.2 C.C.P. is to reinforce the authority of the judge as case manager. The judge is asked to abandon the role of passive arbiter. At first glance, this case management function does not mean that it would be open to a judge to prevent a party from exercising a right. However, the judge must uphold the principle of proportionality when considering the conditions for exercising a right.

108 As noted above I am mindful that settlements assuming approval will interfere to some extent with what otherwise would have been the procedural entitlements of Black and other Non-Settling Defendants.

109 I have concluded that this interference is not sufficient either to reject the settlement as a whole or to impose as a term that the parties conduct themselves as if Torys and KPMG remain as defendants. I do not accept the argument on behalf of Black and his associates that approval of settlement should be rejected on the basis of failure of Hollinger to immediately bring the settlement before the Court for approval. Not only are the facts in the case relied on, *Aecon Buildings v. Brampton (City)* [21] readily distinguishable, there is no prejudice to the Non-Settling Defendants here. Indeed the pace of this litigation has in no small part awaited the final disposition of appeals from criminal convictions of Black and others in the United States on related matters. I am satisfied that disclosure of the settlements and the approval process has been reasonable.

110 Consistent with the management that is envisaged with the application of the principle of proportionality and is available with the assistance of the procedures and judges of the Commercial List each of the production and discovery issues that form the objections of the Non-Settling Defendants can be addressed.

111 I am satisfied that the court through management can balance the interests of the defendants with the entitlement of those parties who wish by settlement to be extricated from the process. I doubt that balance could be achieved if Hollinger had not agreed to limit its claims against the Non-Settling Defendants to each of their several liabilities.

112 It would have been preferable to have the Settling Defendants and Non-Settling Defendants agree on a protocol, however, I am satisfied one can be fashioned following delivery of the Non-Settling Defendants' pleadings.

Conclusion

113 On the material before me I am satisfied that the proposed settlements between Hollinger one side and each of Torys and KPMG be approved. The procedural entitlements of the Non-Settling Defendants can be achieved with active management on the Commercial List.

114 To the proposed settlement orders for Torys and KPMG I would add the following:

> 1) that at a minimum each of Torys and KPMG agree to be bound by their respective proposed protocols which should form the appendices to the orders.
>
> 2) that a term in each order provided that each of Torys and KPMG recognize and accept they will have ongoing obligations in the litigation as Non-Parties subject to management by the court.

115 I note that no party objected to the form of Orders approving settlements with the other Settling Parties.

116 The court may be spoken to if the parties cannot agree on the form of order and the issue of costs if that is necessary.

Motion granted.

Appendix A — Non-Party Protocol

This document production protocol is intended to describe the process for obtaining production of documents from KPMG LLP ("KPMG") and Torys LLP ("Torys") (collectively "the Non-Parties") in the context of the proceeding commenced by Hollinger Inc. et al. against Conrad M. Black, F. David Radler et al. (collectively the "Parties to the Action") in Ontario Superior Court of Justice, Court File No. 06-CL-6261 ("the Action").

The protocol assumes that the settlements between Torys and Hollinger Inc. et al. and KPMG and Hollinger Inc. et al. will be approved by the Court, including the bar orders sought.

The Non-Parties have confirmed that to the best of their knowledge documents related to Hollinger Inc. in their power, possession and control as of October 2004, and in the case of the Non-Party Torys those documents that were not transferred in response to directions from Hollinger Inc., have been preserved and will continue to be preserved until the Action has been finally resolved.

Following the close of pleadings in the Action, the Parties to the Action will exchange documentary production in the ordinary course as required by the *Rules of Civil Procedure*. In the case of the plaintiffs, such documentary production shall include all relevant, non-privileged documents in the possession, control or power of the Chief Restructuring Officer or the Litigation Trustee appointed pursuant to the Order of the Court dated May 21, 2008 (the "Multi-Party Settlement Order"). For greater certainty, the documents in the control of the Chief Restructuring Officer or the Litigation Trustee include all documents that are currently in the possession of the plaintiffs' former counsel who acted for the plaintiffs or any of them in connection with the Litigation Assets as defined in the Multi-Party Settlement Order.

In the event the plaintiffs or any of them did not retain a copy of any of their aforementioned relevant documents ("Documents"), the plaintiffs shall write to Ernst & Young Inc. ("E&Y"), in its capacity as court-appointed Inspector, to determine and ask whether it has a copy of the sought after Documents. If so, the plaintiffs shall thereafter seek an order, in the Inspectorship proceedings to obtain copies of the Documents in the possession of the Inspector.

After the close of pleadings and the production of documents by the Parties to the Action, and in accordance with the timetable set out in the Discovery Plan (as set out in paragraph 6 below):

1. The Parties to the Action will identify the categories of relevant documents that they require from the Non-Parties with sufficient particularity regarding time period, document type and the transaction or issue(s) to which the requested documents are relevant all with the objective of making production proportionate and reasonable in the circumstances (for example, "all documents reflecting work done or advice given, as the case may be, by [the Non-Party] in relation to [name of transaction]");

2. To the extent that any list responsive to a request from the Parties to the Action exists, the Non-Parties shall produce such list (subject to editing for relevance and privilege) to assist the Parties to the Action to identify the available documents which may be relevant.

3. Relevance of the documents requested will be defined by the pleadings;

4. Subject to the principles of proportionality and reasonableness set out in paragraph 1, requested non-privileged documents relevant to any matter in issue in the action, shall be made available for inspection and, if requested, copies shall be produced, all in accordance with paragraphs 5 through [8] hereof.

5. The Non-Party KPMG has advised E&Y in its capacity as Monitor that the documents KPMG has in its possession that may be related to the issues in the Action are not organized in an electronic document management database but are contained in paper files. The Non-Party Torys has advised E&Y in its capacity as Monitor that many of the documents it has in its possession that may be related to the issues in the Action are not organized in an electronic document management database but are instead contained in paper files, some of which are available on CD-ROM. Accordingly, the Non-Parties will separately make the categories of documents requested by the parties available for inspection, subject to any applicable solicitor-client privilege, at a mutually acceptable location at mutually accepted times. To the extent that documents are available electronically they shall be made available for inspection in that format, upon request;

6. KPMG and Torys shall be consulted about the proposed schedule for production and discovery with respect to productions pursuant to this protocol before the finalization of the Discovery Plan pursuant to Rule 29.1.03(1) of the Rules

of Civil Procedure. KPMG and Torys shall thereafter make documents available for inspection in accordance with the established schedule. Any dispute with respect to the schedule as it affects the Non-Parties may be referred to the Court pursuant to paragraph 11 hereof;

7. The Parties to the Action will be permitted to access the aforementioned categories of documents for an agreed duration during which any such Party may request copies of them.

8. The Non-Parties will arrange for copies of the requested documents to be made and thereafter provided to, not only the Party to the Action requesting copies of the documents, but also

every other Party to the Action. In the case of documents that are now in electronic form, production of such documents will be by electronic copies;

9. Any Party to the Action that requests copies of documents pursuant to paragraph 6 agrees to pay all reasonable expenses relating to the copying or scanning of the requested documents incurred by the Non-Parties (including the costs incurred as a result of a Non-Party retaining a third party vendor for such copying or scanning) for both the Party requesting the documents and all other Parties to the Action who are entitled to receive a duplicate copy, subject to the rights of the Parties to the Action to recover the same from the other Parties to the Action as costs in the Action. Nothing in this paragraph is intended to prevent the Parties to the Action from allocating the costs referred to among themselves in any way they agree is appropriate;

10. All other costs of the Non-Parties relating to the preparation for inspection and the production of documents shall be in the discretion of the Court pursuant to rule 30.10 of the Rules of Civil Procedure and s. 131 of the *Courts of Justice Act* and any Non- Party or Party to the Action may refer the issue of the responsibility for payment of such costs to the Court pursuant to paragraph 11 hereof;

11. The Parties to the Action and the Non-Parties may enlist the assistance of the Court, in case managing or resolving any issues that may arise during implementation of the abovementioned document production protocol, including issues of the relevance of the documents requested, the proportionality and reasonableness of the request in the circumstances, the application and/or waiver of privilege and the responsibility for costs incurred by the Non- Parties referred to in paragraph 10 hereof. The plaintiffs acknowledge that they have waived privilege over documents arising from Torys' representation of the Plaintiffs, which documents are in the possession of the Non-Parties. For greater certainty, the waiver of privilege does not extend to materials exchanged in the mediations that took place between Hollinger Inc. and the Non-Parties, respectively, which mediation materials remain privileged and confidential;

12. The deemed undertaking, as described in Rule 30.1 of the Rules of Civil Procedure shall apply to all documents made available for inspection by the Non-Parties;

13. Nothing in this document protocol waives or prejudices the rights that the Parties to the Action and the Non-Parties might have pursuant to rules 30.10, 31.10 and 53.07 of the Rules of Civil Procedure and section 131 of the *Courts of Justice Act*.

Lisa C. Munro

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August 9, 2012

FILE NUMBER 51366-00006

VIA EMAIL

Monique Jilesen Matthew Lerner *LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP* 130 Adelaide Street West Suite 2600 Toronto, Ontario M5H 3P5

Dear Counsel:

Re: Conrad M. Black et al. ats Hollinger Inc. et al.

We set out here the Black parties' position on production and discovery issues in the current litigation, including the contribution and indemnity claims and the motions to approve the Torys LLP, KPMG LLP, and Hollinger Inc. settlements.

Our primary position on the settlement approval motions remains that they should not be approved on the terms put forward but, even if approved, Torys LLP and KPMG LLP should remain parties to the litigation so that Black's ability to defend the claims against him by Hollinger Inc. are not prejudiced by a bar order. This position is set out in detail in Black's factum and oral argument in response to the settlement approval motions.

However, if the court rules that Torys LLP and KPMG LLP are no longer to be parties to the litigation and a bar order is to issue, there are certain minimal requirements to reduce the prejudice to Black, while imposing reasonable requirements on Torys LLP and KPMG LLP. In essence, if a bar order issues dismissing Black's extant contribution and indemnity claims against Torys LLP and KPMG LLP, Black needs certainty now that he will have no lesser rights (nor is he asking for greater rights) than those to which he would be entitled if Torys LLP and KPMG LLP remained parties. He cannot agree that he, Torys LLP, KPMG LLP, and Hollinger Inc. may simply reserve their rights on these critical issues, since to do so will be certain to create uncertainty, increased costs, and delay.

Unfortunately, the parties have been unable to reach agreement on a protocol that will ensure that Black's rights will be protected, while also addressing the concerns of Torys LLP and KPMG LLP.

Our proposal is as follows:

- Issues relating to production and discovery in the main action will be pursuant to the Rules of Civil Procedure and determined by the case management judge, when one is appointed. These issues need not be further addressed at this time;

- Torys LLP and KPMG LLP each to provide a sworn affidavit of documents, including a detailed schedule B, listing all documents which are relevant to the issues raised in the pleadings;

- The settling parties to agree upon a reasonable cap for the costs to be incurred by Torys LLP and KPMG LLP associated with producing documents which are relevant to the issues raised in the pleadings and producing witnesses (both for examination for discovery and at trial) and funds to make those payments will be set aside, in trust, out of the settlement funds. The final arbiter of whether the costs incurred paid out of the fund were reasonable will be the CCCA case management judge; and

- Torys LLP and KPMG LLP to agree to cooperate in making available current members of their respective firms as witnesses, both for examination for discovery and at trial. Recognizing that Torys LLP and KPMG LLP cannot control former members of their firms, they must agree to cooperate in the efforts of counsel for the parties to the litigation to obtain the evidence of former members of their firms as witnesses at discovery and/or trial.

We think that this proposal addresses not only Black's concerns, but also the desire of Torys LLP and KPMG LLP to put an end to costs they must incur in respect of the action. It leaves the allocation of those costs between the parties to the litigation to be determined at the end of the litigation in the ordinary course.

This proposal and position is not without prejudice. It will be referred to, if necessary, when the matter comes on again before Justice Campbell. We ask that this letter be included in any report you prepare to Justice Campbell.

Yours truly,

Lisa C. Munro

LCM/emc/ra

cc: Service List

Footnotes

* Additional reasons at *Hollinger Inc., Re* (2012), 2012 CarswellOnt 16526, 2012 ONSC 7040 (Ont. S.C.J. [Commercial List]).

1 [2010] 3 S.C.R. 379 (S.C.C.) at para 56

2 (2002), 34 C.B.R. (4th) 157 (Ont. C.A.).

3 Annotated *Bankruptcy Act* 2012 (Carswell) and reference to *AbitibiBowater inc., Re* (2009), 64 C.B.R. (5th) 189 (C.S. Que.), at 1152.

4 (1991), 4 O.R. (3d) 1 (Ont. C.A.) at para 43.

5 (2009), 56 C.B.R. (5th) 224 (Ont. S.C.J. [Commercial List]) at paragraph 35

6 124 N.W.2d 106, 21 Wis. 2d 182 (U.S. Wis. S.C. 1963).

7 (1994) 20 Wm. Mitchell L. Review 1.

8 CanLII 15098, (1999), 46 O.R. (3d) 130, [1999] O.J. No. 2245 (Ont. S.C.J.) at paras 40, 41, 75, 76.

9 2010 ONSC 2643 (Ont. S.C.J.) aff'd 2010 ONCA 841 (Ont. C.A.).

10 2001 ABCA 110 (Alta. C.A.) (CANLII)

11 *Lau v. Bayview Landmark Inc.*, [2006] O.J. No. 600 (Ont. S.C.J.)

12 (2004), 71 O.R. (3d) 171 (Ont. C.A.) at para 66-67.

13 (2002), 26 C.P.C. (5th) 358 (Ont. S.C.J.)

14 (2004), 71 O.R. (3d) 171 (Ont. C.A.).

15 See footnote # 7 (supra).

16 The Rand Institute for Civil Justice "Where the Money Goes — Understanding Litigant Expenditures for Producing Electronic Discovery", April 2012.

17 Part 31 Disclosure & Inspection of Documents — U.K. Rules of Civil Procedure.

18 "U.S. District Court Southern District of New York — In Re Pilot Project Regarding Case Management Techniques for Complex Civil Cases — Oct.31,2011" and "Institute for the Advancement of the American Legal System: Nov. 1, 2009, A Roadmap for Reform: Pilot Project Rules".

19 See Ontario Bar Association website under Discovery or the website of the Sedona Conference "W6-7 — Sedona Canada".

20 20 See website www.lexum.com/ediscovery.

21 2010 ONCA 898 (Ont. C.A.) at para 13.

17

Court File No. CV-09-00008502-00CL

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 A PLAN OF ARRANGEMENT AND REORGANIZATION OF ALLEN-VANGUARD CORPORATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND SECTION 186 OF THE ONTARIO *BUSINESS CORPORATIONS ACT*, R.S.O. 1990, c. B.16, AS AMENDED

APPLICANT

PLAN OF ARRANGEMENT AND REORGANIZATION
concerning, affecting and involving

ALLEN-VANGUARD CORPORATION

December 9, 2009

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ALLEN-VANGUARD CORPORATION

PLAN OF ARRANGEMENT AND REORGANIZATION

This is the plan of arrangement and reorganization of Allen-Vanguard Corporation pursuant to the *Companies' Creditors Arrangement Act* (Canada) and the *Business Corporations Act* (Ontario).

ARTICLE 1
INTERPRETATION

1.1 Definitions

In this Plan, unless otherwise stated or unless the subject matter or context otherwise requires:

"**Affected Claims**" means, collectively, the Claims of the Secured Lenders against the Allen-Vanguard Parties (or any of them) under the Existing Credit Agreement.

"**Affected Creditor**" means a Person with an Affected Claim.

"**Agent**" means Royal Bank of Canada in its capacity as agent for the Secured Lenders under the Existing Credit Agreement and the Credit Agreement, as applicable.

"**Allen-Vanguard Parties**" means the Company, each of the guarantors under the Existing Credit Agreement and each of the Company's other direct or indirect subsidiaries.

"**Articles of Reorganization**" means the articles of reorganization of the Company, and the schedules and exhibits thereto, substantially in the form attached hereto as Schedule A, to be filed pursuant to Section 186 of the OBCA and in accordance with Section 5.1 and Section 8.2(2).

"**Assignment Agreement**" means the assignment agreement to be entered into among the Affected Creditors and the Sponsor Subsidiary, substantially in the form attached hereto as Schedule E, which shall become effective on the Plan Implementation Date and pursuant to which, among other things, the second lien debt to be issued under the Second Lien Credit Agreement will be assigned by the Affected Creditors to the Sponsor Subsidiary.

"**BIA**" means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

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

"**CCAA**" means the *Companies' Creditors Arrangement Act* (Canada), R.S.C. 1985, c. C-36, as amended.

"**CCAA Charges**" means the charges created by the Initial Order and defined as the "CCAA Charges" therein.

"**CCAA Proceedings**" means the within proceedings under the CCAA commenced by the Company pursuant to the Initial Order.

"**CDN$**" means Canadian dollars.

"**Certificate of Amendment**" means the certificate of amendment to be issued under Section 186 of the OBCA in respect of the Articles of Reorganization.

"**Claim**" includes any right of a Person against the Company in connection with any indebtedness, liability or obligation of any kind whatsoever of the Company, whether or not asserted, and any interest accrued thereon or costs payable in respect thereof, any right of ownership of or title to property or assets or to a trust, constructive trust or deemed trust (statutory or otherwise) against any property or assets whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise and whether or not such right is executory or anticipatory in nature, including without limitation, any claim arising from or caused by the termination, disclaimer or repudiation by the Company of any contract, lease or other agreement, whether written or oral, any claim made or asserted against the Company through any affiliate, associated or related person as such terms are defined in the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44, as amended, or any "equity claim" as such term is defined in the CCAA, or any right or ability of any Person to advance a claim for an accounting, reconciliation, contribution, indemnity, restitution or otherwise with respect to any matter, grievance, action (including any class action or proceeding before an administrative tribunal), cause or chose in action, whether existing at present or commenced in the future, together with any other claims of any kind that, if unsecured, would be a debt provable in bankruptcy within the meaning of the BIA.

"**Common Shares**" means all of the common shares in the capital of the Company transferred to the Sponsor Subsidiary pursuant to the implementation steps set out in Section 8.2(2) and the Articles of Reorganization.

"**Common Share Claims**" has the meaning ascribed thereto in Section 7.2(i).

"**Company**" means Allen-Vanguard Corporation, a company amalgamated under the OBCA.

"**Contracts**" means any contract, license, lease, agreement, undertaking, understanding, commitment or engagement to which any of the Allen-Vanguard Parties are a party or bound or under which any of the Allen-Vanguard Parties have or will have any rights.

"**Court**" means the Ontario Superior Court of Justice, Commercial List.

"**Credit Agreement**" means the credit agreement to be entered into among the Company, the guarantors thereunder, the Agent, the Secured Lenders and EDC, substantially in the

form attached hereto as Schedule B, which shall become effective on the Plan Implementation Date and pursuant to which, among other things: (i) the indebtedness of the Company to the Secured Lenders pursuant to the Existing Credit Agreement will be partially reduced and restructured as contemplated by the Transaction Agreement, and (ii) the New Revolving Lenders, together with EDC as set forth therein, will make available to the Company, the Revolving Credit Facility, the Term Loan Facility and the Documentary Credit Facility.

"**Documentary Credit Facility**" means the documentary credit facility which shall become effective under the Credit Agreement and pursuant to which the New Revolving Lenders will make available to the Company a documentary credit facility in an aggregate principal amount of up to US$10 million.

"**EDC**" means Export Development Canada.

"**Effective Time**" means the first moment in time on the Plan Implementation Date.

"**Equity Claims**" means any and all Securities Claims and Common Share Claims.

"**Existing Credit Agreement**" means the amended and restated credit agreement dated as of December 29, 2008 among the Allen-Vanguard Parties and the Secured Lenders, as amended from time to time.

"**Governmental Authority**" means the government of Canada or any other nation, or of any political subdivision thereof, whether state, provincial, territorial or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, or other comparable authority or agency.

"**Initial Order**" means the initial Order of the Court made December 9, 2009 pursuant to which, among other things, the Company was granted protection under the CCAA, as such Order may be amended or extended by the Court from time to time.

"**Intercreditor Agreement**" means the intercreditor agreement to be entered into among the Company, EDC, the First Lien Agent and the Second Lien Agent (as such terms are defined therein), substantially in the form attached hereto as Schedule C, which shall become effective on the Plan Implementation Date.

"**Interim Funding Agreement**" means the agreement entered into among the Company and the Secured Lenders whereby the Secured Lenders granted an interim funding credit facility to the Company limited to the US$ equivalent of CDN$16 million on the terms outlined therein.

"**Meeting**" means the meeting of the Affected Creditors to consider and vote on this Plan pursuant to the CCAA and the terms of the Meeting Order, and any adjournments of such meeting.

"**Meeting Order**" means the Order to be made directing the calling and holding of the Meeting, as such Order may be amended by the Court from time to time.

"**Monitor**" means Deloitte & Touche Inc., in its capacity as Court-appointed monitor of the Company pursuant to the Initial Order, and any successor thereto appointed in accordance with any further Order.

"**New Revolving Lenders**" has the meaning ascribed thereto in the Transaction Agreement.

"**New Shares**" means the additional common shares in the capital of the Company to be issued to the Sponsor Subsidiary pursuant to the implementation steps set out in Section 8.2(2).

"**OBCA**" means the *Business Corporations Act* (Ontario), R.S.O. 1990, c. B.16, as amended.

"**Order**" means any order of the Court in the CCAA Proceedings.

"**Person**" means any individual, sole proprietorship, partnership, limited partnership, limited liability company, joint venture, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, corporation, trust, trustee, body corporate, Governmental Authority, legal personal representative or litigation guardian, or any other entity howsoever designated or constituted, and where the context requires includes any assignee, trustee, executor, administrator, receiver, interim receiver, receiver and manager or other legal representative acting on behalf of such Person, collectively **"Persons"**.

"**Plan**" means this plan of compromise and arrangement under the CCAA and reorganization under the OBCA, including the Schedules hereto, as may be amended hereinafter from time to time in accordance with Section 9.1.

"**Plan Implementation Date**" means the date that the Transfer Notice is delivered by the Company in accordance with the Articles of Reorganization which, unless the Plan Participants otherwise agree, shall occur not later than two (2) Business Days after the date upon which the Certificate of Amendment is received by the Company.

"**Plan Participants**" means the Company, the Sponsor and the Secured Lenders.

"**Released Claims**" has the meaning ascribed thereto in Section 8.6.

"**Released Parties**" means, collectively, the Allen-Vanguard Parties, the Secured Lenders, the Agent, the Sponsor, the Sponsor Subsidiary, Versa Capital Management, Inc., Deloitte & Touche Inc. in its capacity as the Monitor, the Transfer Agent, and each of their respective subsidiaries and affiliates, and each of their respective present and former partners, officers, directors, equity holders, employees, financial advisors, auditors, legal counsel, other professional advisors and agents, as applicable.

"**Reorganization**" means the reorganization of the share capital of the Company described in Article 5 as ordered by the Court under the Sanction Order and Section 186 of the OBCA and as reflected in the Articles of Reorganization, with effect as of the Effective Time.

"**Restructuring Documents**" means, collectively, the Credit Agreement, the Second Lien Credit Agreement, the Intercreditor Agreement, the Assignment Agreement and all related agreements, security and other documents.

"**Revolving Credit Facility**" means the revolving credit facility which shall become effective under the Credit Agreement and pursuant to which the New Revolving Lenders together with EDC, on the terms set forth in the Credit Agreement, will make available to the Company a revolving credit facility in the maximum principal amount of up to US$30 million.

"**Sanction Order**" means an Order to be made to, among other things, sanction, authorize and approve this Plan and the Reorganization and the transactions contemplated herein and thereby, as such Order may be amended by the Court from time to time.

"**Second Lien Credit Agreement**" means that certain credit agreement by and among the Company, the Sponsor as agent for the lender parties thereunder, the Affected Creditors and the guarantors thereunder, substantially in the form attached hereto as Schedule D, which shall become effective on the Plan Implementation Date.

"**Secured Lenders**" means, collectively, Royal Bank of Canada, Canadian Imperial Bank of Commerce, The Bank of Nova Scotia, Bank of Montreal, Bank of America, N.A., Canada Branch, Sumitomo Mitsui Banking Corporation of Canada and State Bank of India (Canada).

"**Securities**" means all securities of the Company issued prior to the Effective Time, including preferred shares, options, restricted share units, warrants, convertible securities, exchangeable securities and any other entitlements to or rights to acquire any of the foregoing or any common shares of the Company, but excluding the New Shares and the Common Shares.

"**Securities Claims**" has the meaning ascribed thereto in Section 7.2(g).

"**Sponsor**" means Contego AV Investments, LLC.

"**Sponsor Subsidiary**" means Contego AV Luxembourg S.à r.l.

"**Term Loan Facility**" means that term loan facility deemed to have been made and fully advanced by the Secured Lenders to the Company under the Credit Agreement.

"**Term Sheet**" means the Term Sheet attached as Schedule A to the Transaction Agreement.

"**Transaction Agreement**" means the binding agreement dated September 12, 2009, as may be amended or supplemented from time to time, among the Allen-Vanguard Parties, the Sponsor and the Secured Lenders, including the Schedules thereto, establishing the principal aspects of the recapitalization of the Company to be effected pursuant to this Plan, the Sanction Order, the Articles of Reorganization and the Restructuring Documents.

"**Transfer Agent**" means CIBC Mellon Trust Company.

"**Transfer Notice**" means the Transfer Notice to be delivered pursuant to the Articles of Reorganization.

"**Transfer Price**" means CDN$1.00 for all of the Common Shares.

"**Unaffected Claims**" means any Claim other than an Affected Claim, but excludes, for greater certainty, any Equity Claims.

"**Unaffected Creditor**" means a Person with an Unaffected Claim, but only in respect of such Unaffected Claim, but excludes, for greater certainty, any Person holding an Equity Claim.

"**US$**" means United States dollars.

"**Website**" means www.deloitte.com/ca/allen-vanguard.

1.2 Certain Rules of Interpretation

In this Plan, unless otherwise stated or the context otherwise requires:

(a) the division of this Plan into articles, sections, subsections and clauses and the use of headings and a table of contents are for convenience of reference only and do not affect the construction or interpretation of this Plan;

(b) the terms "this Plan", "hereof", "hereunder", "herein" and similar expressions refer to this Plan and not to any particular article, section, subsection, clause or schedule of or to this Plan and references in this Plan to an article, section, subsection or clause or schedule refer to the specified article, section, subsection, clause or schedule of or to this Plan;

(c) words importing the singular include the plural and *vice versa* and words importing any gender include all genders;

(d) the words "includes" and "including" and similar terms of inclusion shall not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation but rather shall mean "includes without limitation", "including without limitation", "includes but is not limited to" and "including but not limited to", as applicable, so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive;

(e) a reference to a statute or other enactment of parliament or a legislature includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation; and

(f) all references to time herein and in any document issued pursuant hereto mean local time in Toronto, Ontario and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day. Unless otherwise specified, the time period within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the

period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day. Whenever any payment to be made or action to be taken under this Plan is required to be made or to be taken on a day other than a Business Day, such payment shall be made or action taken on the next succeeding Business Day.

1.3 Governing Law

This Plan shall be governed by and construed in accordance with the laws of the province of Ontario and the federal laws of Canada applicable therein, without regard to any conflict of law provision that would require the application of the law of any other jurisdiction. In the event of any dispute or issue in connection with, or related to, the interpretation, application or effect of this Plan, such dispute or issue shall be subject to the exclusive jurisdiction of the Court.

1.4 Schedules

The following are the Schedules to this Plan:

Schedule A	Articles of Reorganization
Schedule B	Credit Agreement
Schedule C	Intercreditor Agreement
Schedule D	Second Lien Credit Agreement
Schedule E	Assignment Agreement

ARTICLE 2
PURPOSE OF THE PLAN

2.1 Purpose

The purpose of this Plan is:

(a) to effect a restructuring and recapitalization of the Company to enable it to continue as a going concern, as contemplated by and in accordance with the terms of the Transaction Agreement;

(b) to give effect to the restructuring of the Affected Claims on the terms set forth in this Plan and the Restructuring Documents, as contemplated by and in accordance with the terms of the Transaction Agreement; and

(c) to give effect to the recapitalization of the Company's capital structure on the terms set forth in this Plan and the Articles of Reorganization, as contemplated by and in accordance with the terms of the Transaction Agreement.

This Plan is put forward in the expectation that the Company's economic stakeholders will derive a greater benefit from the continued operation of the Company and its business, pursuant to and following the implementation of this Plan, than would result from a bankruptcy or liquidation of the Company and its business.

Subject to the terms and conditions of this Plan, when all of the conditions precedent to this Plan have been satisfied or waived, in each case in accordance with the terms thereof, the Sponsor will fund the restructuring of the Affected Claims and the recapitalization of the Company's capital structure in accordance with the terms of this Plan and the Transaction Agreement. The funding of this Plan by the Sponsor is contingent on, among other things, approval of this Plan by the Affected Creditors and the Court. Upon the implementation of this Plan, the Sponsor, through the Sponsor Subsidiary, will become the owner of all of the outstanding shares of the Company through the Reorganization of the share capital of the Company pursuant to this Plan, the Sanction Order and the Articles of Reorganization.

2.2 Affected Persons

The Plan will be implemented under the CCAA and the OBCA and be binding on all Affected Creditors and other Persons in accordance with its terms as of the Effective Time on the Plan Implementation Date, but shall not affect Unaffected Creditors.

ARTICLE 3
CLASSIFICATION OF CREDITORS AND PROCEDURAL MATTERS

3.1 Class of Creditors

The sole class for the purpose of considering and voting on this Plan shall be the class consisting of the Secured Lenders voting in respect of their Affected Claims.

3.2 Voting Procedure

The Affected Creditors will identify and confirm their respective Affected Claims for voting purposes, vote in respect of the Plan, and receive the distributions provided for under this Plan in accordance with the Meeting Order, the Sanction Order and this Plan.

3.3 Finality of Claims

All Affected Claims determined in accordance with the Meeting Order will be final and binding on the Company and the Affected Creditors.

3.4 Unaffected Claims

This Plan does not affect Unaffected Claims. Creditors with Unaffected Claims will not be entitled to vote or to receive any distributions under this Plan in respect of such Unaffected Claims. For the avoidance of doubt, any Persons with Claims against the Company in respect of the Securities or the Common Shares will not be entitled to vote or to receive any distributions under this Plan in respect of any such Claims, and all such Claims will be discharged and extinguished pursuant to the terms of the Sanction Order. For the avoidance of doubt, all Claims of EDC pursuant to or in connection with (a) performance security guarantees and/or financial security guarantees issued in respect of Documentary Credits issued under the Existing Credit Agreement or the Credit Agreement, and (b) all indemnity agreements entered into with the Allen-Vanguard Parties (collectively, the "**EDC Claims**") shall be Unaffected Claims.

ARTICLE 4
COMPROMISE AND ARRANGEMENT

4.1 Transaction Agreement

Pursuant to the Transaction Agreement, the Company, the Sponsor and the Secured Lenders have agreed to the terms and conditions of this Plan and have agreed to carry out the transactions contemplated herein and hereby, in each case in accordance with the terms and conditions of the Transaction Agreement and this Plan.

4.2 Funding of this Plan

On the Plan Implementation Date, and in the manner set forth in Section 8.2(2), the Sponsor shall pay or cause to be paid to the Agent the sum of US$52.15 million required to fund the transactions set forth in Section 4.3(a).

4.3 Treatment of Affected Claims

On the Plan Implementation Date, and in the manner set forth in Section 8.2(2), the Affected Claims will be compromised, and the Affected Creditors will receive distributions in respect of their respective Affected Claims, as follows:

(a) (i) US$5 million will be distributed by the Agent among the Secured Lenders as a permanent *pro rata* reduction of the indebtedness owed to each Secured Lender under the existing "New Facility" pursuant to the Existing Credit Agreement; and (ii) US$47.15 million will be distributed by the Agent among the Secured Lenders in respect of US$54.3 million of the indebtedness owed to the Secured Lenders under the Existing Credit Agreement as follows: (A) the remainder of the indebtedness owed to each Secured Lender under the existing "New Facility" pursuant to the Existing Credit Agreement as calculated for each Secured Lender pursuant to the schedule of loan compromises and reductions set forth for each Secured Lender in Schedule TS to the Term Sheet; and (B) a portion of the indebtedness owed to each Secured Lender under the existing "Term Loan Facility" pursuant to the Existing Credit Agreement as calculated for each Secured Lender pursuant to the schedule of loan compromises and reductions set forth for each Secured Lender in Schedule TS to the Term Sheet;

(b) the Company will permanently and completely repay all indebtedness owed to the Secured Lenders under the "Interim Funding Facility" pursuant to the Interim Funding Agreement, such repayment to be funded by cash on hand at the Company and, to the extent required, drawings on the Revolving Credit Facility;

(c) the remaining Affected Claims of each Secured Lender under the existing "Term Loan Facility" and the existing "Revolving Credit Facility" pursuant to the Existing Credit Agreement will be compromised and restructured pursuant to the terms of the Credit Agreement; and

(d) each Secured Lender will permanently waive its right to receive the fees set forth in Sections 2.07(3) to (7) of the Existing Credit Agreement,

in each case consistent with the terms of the Transaction Agreement and the Restructuring Documents, and in the manner and order set forth under Section 8.2(2). For greater certainty, on the Plan Implementation Date, the Company will also pay: (i) all reasonable out-of-pocket expenses incurred by the Secured Lenders, EDC and the Agent in connection with the preparation, negotiation, execution, delivery and administration of the Plan, the Transaction Agreement and the Restructuring Documents and the completion of the recapitalization and reorganization and all other matters contemplated therein, including the reasonable fees, charges and disbursements of counsel for the Secured Lenders; (ii) all amounts owed to PricewaterhouseCoopers LLP under its agreement with the Company dated September 25, 2008; (iii) all amounts owed or payable to BMO Capital Markets under its agreement with the Company dated June 19, 2009; (iv) all amounts owed or payable to Genuity Capital Markets under its agreement with the Company dated September 18, 2008 and (v) all amounts owed or payable to the parties to the Transaction Agreement pursuant to the terms thereof (other than the transaction fee referred to in section 33(ii) of the Transaction Agreement which shall be earned by the Sponsor not sooner than thirty days following the Effective Time and paid by the Company to the Sponsor within thirty to forty-five days following the Effective Time, in accordance with section 33(ii) of the Transaction Agreement, in each case to the extent not previously paid by the Company pursuant to its obligations under the Existing Credit Agreement, the Transaction Agreement or any other applicable agreement.

4.4 Payment of Crown Priority Claims and Employee Claims

Within six months after the date of the Sanction Order, the Company will pay to Her Majesty in right of Canada or any province any amounts owed in respect of claims referred to in Section 6.(3) of the CCAA. The Company will pay, after the date of the Sanction Order, and in accordance with the provisions of the Initial Order, any amounts that employees and former employees of the Company would have been qualified to receive in respect of the claims referred to in Section 6.(5) of the CCAA, in accordance with the terms of, and in the ordinary course of, their employment.

ARTICLE 5
REORGANIZATION AND OTHER RESTRUCTURING ACTIVITIES

5.1 Articles of Reorganization

The articles of the Company will be amended as ordered by the Court by filing the Articles of Reorganization on the first Business Day following the day on which the Sanction Order is received which will provide for, without limitation to any other terms the Articles of Reorganization may contain, the following:

(a) changing the rights, privileges and conditions attaching to the Common Shares by adding certain provisions to permit a transfer of all of the Common Shares to the Sponsor Subsidiary for the Transfer Price, in the manner set forth in the Articles of Reorganization.

5.2 Directors

On the Plan Implementation Date, the term of office of those individuals who are directors of the Company will terminate and the Sponsor Subsidiary will appoint the new board of directors of the Company.

ARTICLE 6
CERTIFICATES AND DISTRIBUTIONS

6.1 Cancellation of Certificates

As of the Effective Time, all debentures, certificates, agreements, invoices, securities and other instruments evidencing Affected Claims, the Securities or the Common Shares will not entitle the holder thereof to any compensation or participation other than as expressly provided for in this Plan or the Articles of Reorganization and the Affected Claims, the Securities and the Common Shares will, except as otherwise provided for in the Restructuring Documents with respect to the Affected Claims, or in the Articles of Reorganization with respect to the Common Shares, be cancelled, extinguished, rendered null and void and the registers of the Company shall be updated to reflect any such cancellation and extinguishment.

6.2 Delivery of Distributions

Distributions to be made to Affected Creditors pursuant to Section 4.3 will be made on, or as soon as practicable after, the Plan Implementation Date.

6.3 Taxes in respect of Distributions

Notwithstanding any other provision of this Plan, each Affected Creditor that is to receive a distribution pursuant to this Plan will have sole and exclusive responsibility for the satisfaction and payment of any tax obligation imposed by any Governmental Authority (including income and other tax obligations) on account of such distribution.

ARTICLE 7
SANCTION ORDER

7.1 Application for Sanction Order

The application for the Sanction Order shall be brought by the Company as soon as reasonably practicable following the approval of this Plan by the requisite majorities of the Affected Creditors voting at the Meeting.

7.2 Effect of Sanction Order

Pursuant to Section 7.1, the Company will seek a Sanction Order that, in addition to sanctioning this Plan will, without limitation to any other terms that it may contain:

(a) declare that (i) the Plan has been approved by the requisite majorities of Affected Creditors in conformity with the CCAA; (ii) the Company has complied with the provisions of the CCAA and the Orders made in the CCAA Proceedings in all respects; (iii) the Court is satisfied that the Company has not done nor purported

to do anything that is not authorized by the CCAA; and (iv) the Plan and the transactions contemplated thereby are fair and reasonable, and in the best interests of the Company, the Affected Creditors and the other stakeholders of the Company;

(b) order that the Plan (including the compromises, arrangements, reorganization, recapitalization, corporate transactions and releases set out in or contemplated by the Plan, the Sanction Order, the Articles of Reorganization and the Restructuring Documents) is sanctioned and approved pursuant to Section 6 of the CCAA and, as of the Effective Time, will be effective and will enure to the benefit of, become effective and be binding upon the Company, the Affected Creditors, the Sponsor and all other Persons in the order stipulated in the Plan;

(c) authorize and direct the distributions and other transactions contemplated under and by this Plan;

(d) declare that the articles of the Company will be amended as set out in the Articles of Reorganization;

(e) authorize and direct the Company to file the Articles of Reorganization with the Director appointed under the OBCA pursuant to section 186(4) of the OBCA in order to implement the Reorganization;

(f) declare that all Securities are of no further force and effect as of the Effective Time and that all Securities are cancelled and extinguished without return of capital or other consideration, compensation or relief of any kind;

(g) declare that all Claims against the Company (and any successor thereto or the Sponsor Subsidiary) in respect of the Securities (including, without limitation, any Claims against the Company resulting from the ownership, purchase or sale of the Securities by any current or former holder thereof, and any Claims for contribution or indemnity against the Company in respect of any such Claims) (collectively, "**Securities Claims**") are deemed as of the Effective Time to have been discharged and extinguished without return of capital or other consideration, compensation or relief of any kind;

(h) authorize and direct the transfer of the Common Shares to the Sponsor Subsidiary and the issuance of the New Shares to the Sponsor Subsidiary, and declare that the New Shares to be issued to the Sponsor Subsidiary in connection with this Plan and the Articles of Reorganization will be validly issued and outstanding as fully-paid and non-assessable;

(i) declare that all Claims against the Company (and any successor thereto or the Sponsor Subsidiary)) in respect of the Common Shares (including, without limitation, any Claims against the Company resulting from the ownership, purchase or sale of the Common Shares by any current or former holder thereof, and any Claims for contribution or indemnity against the Company in respect of any such Claims) (collectively, "**Common Share Claims**") are deemed as of the Effective Time to have been discharged and extinguished without return of capital

or other consideration, compensation or relief of any kind, and that, for the avoidance of doubt, the Transfer Agent shall not be required to transfer the Transfer Price to the holders of the Common Shares;

(j) declare that, in accordance with the terms of the Plan and the Articles of Reorganization, the legal and beneficial right, title and interest of the Sponsor Subsidiary in and to the Common Shares shall vest and are thereby vested as of the Effective Time in the Sponsor Subsidiary absolutely and forever, free and clear of and from any and all Claims;

(k) declare that no meetings or votes of any holders of Securities or of the Common Shares are required in connection with this Plan or the Articles of Reorganization;

(l) declare that, as of and following the Plan Implementation Date, no Person who is a party to a Contract may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, dilution or other remedy) or make any demand or declare any default, violation or breach under or in respect of any such Contract and no automatic termination under or in respect of any such Contract will have any validity or effect, by reason of:

(i) the insolvency of the Company (or any of its subsidiaries on account of the insolvency of the Company) or the fact that the Company sought or obtained relief under the CCAA, that the CCAA Proceedings have been commenced or completed, or that the within restructuring or recapitalization has been implemented in respect of the Company; or

(ii) any compromise, arrangements, reorganizations or recapitalizations effected pursuant to this Plan and the Articles of Reorganization or any action taken or transaction effected pursuant to or contemplated by this Plan, the Articles of Reorganization, the Sanction Order, the Restructuring Documents or any other document or action contemplated thereby, including the change in control of the Company or any of its subsidiaries; provided, however, that the foregoing shall not affect or otherwise limit any contractual right that an employee of the Company may have with respect to a change in control of the Company;

(m) confirm the effect of the Meeting Order;

(n) authorize and direct the execution and delivery of the Restructuring Documents in accordance with the terms thereof and the terms of this Plan and the Sanction Order;

(o) permanently stay all Claims affected by the Plan and declare that the compromises effected hereby are approved, binding and effective as herein set out upon all Affected Creditors and all other Persons affected by this Plan or the Articles of Reorganization;

(p) confirm the releases provided for in Section 8.6 and the injunctions provided for in Section 8.7;

(q) declare that the stay of proceedings under the Initial Order continues until the Effective Time; and

(r) order that all CCAA Charges will be released and discharged at the time provided in the Sanction Order.

ARTICLE 8
PLAN IMPLEMENTATION AND EFFECT OF THE PLAN

8.1 Condition Precedent to Plan Implementation

The implementation of this Plan is conditional on the satisfaction or waiver of the conditions precedent of the Transaction Agreement, including as set forth in sections 12, 13, 14 and 15 thereof, in each case in accordance with the terms thereof.

8.2 Plan Implementation

(1) All the agreements and other instruments that have to be entered into or executed and all other actions that have to be taken in order for the transactions and agreements contemplated by this Plan to be completed and occur or be effective as of the Effective Time will be entered into, executed, taken and completed in escrow with counsel to the Company on or prior to the Plan Implementation Date.

(2) As soon as practicable after satisfaction or waiver in accordance with Section 8.1, of each of the conditions precedent to the implementation of this Plan referred to in Section 8.1, the Company will file the Articles of Reorganization and seek to obtain the Certificate of Amendment. The Plan will become effective at, and as of, the Effective Time. The Plan will be implemented in the manner, and the distributions and transactions set out below will be completed and deemed to occur and be effective in the order, set out below:

Part 1 – Prior to the Plan Implementation Date

The following steps will have occurred prior to the Plan Implementation Date and prior to the filing of the Articles of Reorganization (or may occur at such other time or times as the Plan Participants may agree):

(i) Versa Capital Fund II, L.P. and Versa Capital Fund II-A, L.P. (together, the "**Versa Funds**"), being the sole owners of Sponsor, shall contribute the Sponsor to Contego AV Holdings, LLC, a newly formed wholly-owned Delaware LLC.

(ii) Sponsor shall form a new wholly-owned subsidiary, the Sponsor Subsidiary.

(iii) Sponsor shall form two new wholly-owned subsidiaries: (i) Contego HMSI, LLC, a Delaware LLC ("**Holdco 1**") and (ii) Contego AVI, LLC, a Delaware LLC ("**Holdco 2**").

The following steps will occur prior to the Plan Implementation Date and at least one (1) day prior to the filing of the Articles of Reorganization (or may occur at such other time or times as the Plan Participants may agree), but only after all Plan Participants have confirmed in writing to each other that all conditions precedent set forth in the Transaction Agreement have been satisfied or waived (other than any conditions precedent the satisfaction of which are to occur simultaneously with the implementation of the Plan on the Plan Implementation Date):

(iv) The Company shall effect a pre-closing reorganization of its corporate structure and capital structure as contemplated in the Transaction Agreement, including the transfer or elimination of certain intercompany accounts and transfer of certain affiliates to another affiliate.

The following step will occur after the completion of the steps referred to above and three (3) Business Days prior to the anticipated Plan Implementation Date (or at such other time as the Plan Participants may agree):

(v) The Company shall file the Articles of Reorganization with the Director under the OBCA.

Part 2 – On The Plan Implementation Date

The following steps will occur on the Plan Implementation Date in the following order (or at such other times or order as the Plan Participants may agree):

Capitalization

(vi) The Versa Funds shall capitalize, or cause Sponsor to capitalize, through capital contributions, each of the Sponsor Subsidiary, Holdco 1 and Holdco 2, and Sponsor shall confirm in writing to the other Plan Participants that such capitalization has been completed.

Acquisition of HMSI and AVI

(vii) Upon receiving written confirmation of the capitalization of the Sponsor Subsidiary, Holdco 1 and Holdco 2 as referred to above, Hazard Management Solutions Limited (United Kingdom) shall distribute the shares of Hazard Management Solutions, Inc. (Delaware) ("**HMSI**") to VRS.

(viii) Holdco 1 shall purchase HMSI from VRS for cash and the issuance of a note to VRS.

(ix) Holdco 2 shall purchase (i) 90% of AVI from PW Allen Holdings Limited ("**PW AHL**") for cash and the issuance of a note to PW AHL, and (ii) 10% of AVI from Allen-Vanguard Technologies Inc. ("**AVTI**") for cash.

(x) VRS shall use the cash proceeds received by it in step (viii) to repay debt or pay fees due under the terms of this Plan, either directly or by first transferring the cash to the Company.

(xi) PW AHL and AVTI shall use the cash proceeds received by them in step (ix) to repay debt or pay fees due under the terms of this Plan, either directly or by first transferring the cash to the Company.

(xii) HMSI may convert into a limited liability company and Holdco 1 may merge into HMSI.

(xiii) AVI shall convert into a limited liability company and Holdco 2 shall merge into AVI.

Exchange and Acquisition of Certain Debt of the Company

(xiv) The Second Lien Credit Agreement shall be executed and become effective such that the Affected Creditors are issued second lien debt having a face amount of US$54.3 million (the "**Second Lien Debt**") in exchange for a portion of the debt outstanding under the Existing Credit Agreement having a face amount of US$54.3 million.

(xv) The Assignment Agreement shall be executed and become effective such that the Sponsor Subsidiary shall purchase from the Affected Creditors the Second Lien Debt for US$47.15 million, and the Sponsor Subsidiary shall pay US$47.15 million to the Agent on behalf of the Secured Lenders as the consideration under the Assignment Agreement.

(xvi) The Intercreditor Agreement shall be executed and become effective.

Transfer of Common Shares

(xvii) The Company shall deliver the Transfer Notice to the Transfer Agent in accordance with the Articles of Reorganization, whereupon the Sponsor Subsidiary shall have acquired, and shall be deemed to have acquired, from each holder of the Common Shares, all of the Common Shares.

(xviii) The Sponsor Subsidiary shall deliver the Transfer Price to the Transfer Agent.

Subscription for Additional Common Shares of the Company

(xix) The Sponsor Subsidiary shall subscribe for the New Shares for cash and shall pay an aggregate of up to US$25 million in accordance with the Transaction Agreement less the cash proceeds received in steps (viii) and (ix) above to the Company as the consideration for such subscription.

(xx) The Company shall elect to cease to be a "public corporation" for purposes of the *Income Tax Act* (Canada).

Payments and other Transactions under the Plan

(xxi) The Company shall pay US$5 million to the Agent on behalf of the Secured Lenders as a permanent pro rata reduction of the indebtedness

owed to each Secured Lender under the existing "New Facility" pursuant to the Existing Credit Agreement (using a portion of the up to US$25 million in the aggregate paid to the Company by the Sponsor Subsidiary pursuant to step (xix) above less the cash proceeds received in step (viii) and (ix) above).

(xxii) The Credit Agreement shall be executed and become effective.

(xxiii) The Company shall permanently and completely repay all indebtedness owed to the Secured Lenders under the "Interim Funding Facility" pursuant to the Interim Funding Agreement (such repayment to be funded by cash on hand at the Company and, to the extent required, drawings on the Revolving Credit Facility).

(xxiv) The Company shall pay, or shall cause to be paid, all other fees and expenses due under Section 4.3 of the Plan.

(3) Upon implementation of the Plan in accordance with Section 8.2(2), the Company will deliver to the Monitor, and file with the Court, a copy of a certificate stating that each of the conditions referred to in Section 8.1 has been satisfied or waived, that the Articles of Reorganization have been filed and have become effective as of the date set out in the Certificate of Amendment, that the transactions set out in Section 8.2(2) have occurred and become effective in the manner set forth therein and that the implementation of the Plan has occurred in accordance with the Plan as of the Effective Time.

(4) Sections 95 to 101 of the BIA shall not apply to any of the transactions implemented pursuant to this Plan.

8.3 Effect of Plan Generally

The Plan, upon being sanctioned and approved by the Court pursuant to the Sanction Order, will be final and binding as of the Effective Time on the Company and all Affected Creditors and all other Persons affected by the Plan and the Reorganization contemplated thereby (and their respective heirs, executors, administrators, legal personal representatives, successors and assigns) irrespective of the jurisdiction in which such Affected Creditors or other Persons reside and shall constitute, without limiting the generality of the terms of the Plan or the Reorganization:

(a) a full, final and absolute settlement of all rights of the Affected Creditors in respect of their Affected Claims;

(b) as of the Effective Time, a partial discharge of certain indebtedness, liabilities and obligations of the Company and the other Allen-Vanguard Parties under the Existing Credit Agreement and a restructuring of the remaining indebtedness, liabilities and obligations of the Company and the other Allen-Vanguard Parties under the terms of the Credit Agreement;

(c) as of the Effective Time, a cancellation and extinguishment of all Securities without return of capital or other consideration, compensation or relief of any kind to the holders thereof;

(d) as of the Effective Time, a discharge and extinguishment of all Equity Claims against the Company (and any successor thereto or the Sponsor Subsidiary) without return of capital or other consideration, compensation or relief of any kind to the current or former holders thereof; and

(e) as of the Effective Time, a transfer of the Common Shares to the Sponsor Subsidiary for the Transfer Price.

8.4 Guarantees and Similar Covenants

No Person who has a Claim under any guarantee, surety, indemnity or similar covenant in respect of any Affected Claim that is compromised under this Plan or who has any right to claim over in respect of or to be subrogated to the rights of any Person in respect of any Affected Claim that is compromised under this Plan will be entitled to any additional rights beyond the rights of the Creditor whose Affected Claim was compromised under this Plan.

8.5 Consents, Waivers And Agreements

At the Effective Time, each Affected Creditor and any other Person affected by this Plan will be deemed to have consented and agreed to all of the provisions of the Plan in its entirety. Without limitation to the foregoing, each Affected Creditor and any other Person affected by this Plan (including the Sponsor and the Sponsor Subsidiary) will be deemed:

(a) to have executed and delivered to the Company all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out this Plan in its entirety;

(b) to have waived any non-compliance or default by the Company or any other Allen-Vanguard Party with or of any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Affected Creditor or other Person and the Company or any other Allen-Vanguard Party with respect to an Affected Claim or Security that has occurred on or prior to the Effective Time; and

(c) to have agreed that, if there is any conflict between the provisions of any such agreement (other than the Transaction Agreement and those entered into by the Company on, or with effect from, the Effective Time) and the provisions of this Plan, then the provisions of this Plan take precedence and priority and the provisions of such agreement or other arrangement are deemed to be amended accordingly.

8.6 Releases

(i) At the Effective Time, the Released Parties will be released and discharged or deemed to be released and discharged by each of the other Released Parties and all Affected

Creditors and all other Persons from any and all demands, claims, actions (including any class actions or proceedings before an administrative tribunal), causes of action, grievances, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, expenses, executions, liens and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature that any such Person may be entitled to assert, including, without limitation, any and all claims for accounting, reconciliation, contribution or indemnity, restitution or otherwise, whether known or unknown, matured or unmatured, direct, indirect or derivative, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing, termination, disclaimer or repudiation of any contract, lease or other agreement, whether written or oral or other occurrence existing or taking place on or prior to the Effective Time relating to, arising out of or in connection with any Affected Claims, this Plan, the Articles of Reorganization, the cancellation of the Securities and the transfer of the Common Shares without consideration, compensation or relief of any kind, the Restructuring Documents, the CCAA Proceedings, the Reorganization or any of the transactions implemented in connection with any of the foregoing (collectively, the "**Released Claims**"); provided, however, that nothing herein shall release or discharge a Released Party: (i) from any of its obligations under the Plan, the Restructuring Documents, the Articles of Reorganization, the Transaction Agreement or any other agreement which the Plan Participants or some of them may have entered into in connection with any of the foregoing; (ii) if such Released Party is adjudged by the express terms of a judgment rendered on a final determination on the merits to have committed gross negligence, fraud or willful misconduct; or (iii) in the case of directors in respect of any claim of the kind referred to in subsection 5.1(2) of the CCAA or (iv) the EDC Claims.

(ii) At the Effective Time, the Company and the current and former officers and directors thereof will be released and discharged or deemed to be released and discharged by each other and all Affected Creditors and all other Persons from any and all demands, claims, actions (including any class actions or proceedings before an administrative tribunal), causes of action, grievances, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, expenses, executions, liens and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature that any such Person may be entitled to assert, including, without limitation, any and all claims for accounting, reconciliation, contribution or indemnity, restitution or otherwise, whether known or unknown, matured or unmatured, direct, indirect or derivative, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing, termination, disclaimer or repudiation of any contract, lease or other agreement, whether written or oral or other occurrence existing or taking place on or prior to the Effective Time relating to, arising out of or in connection with any Equity Claims; provided, however, that nothing herein shall release a director or current or former officer in respect of any claim of the kind referred to in subsection 5.1(2) of the CCAA.

8.7 Injunction

(i) All Persons (regardless of whether or not such Persons are Affected Creditors) are permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, with respect to any and all Released Claims, from (i) 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; (ii) 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 their property; (iii) 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, breach of trust or breach of fiduciary duty 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; (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind against the Released Parties or their property; or (v) taking any actions to interfere with the implementation or consummation of this Plan; provided, however, that the foregoing shall not apply to the enforcement of any obligations under the Plan, the Restructuring Documents, the Transaction Agreement or any other agreement which the Plan Participants or some of them may have entered into in connection with any of the foregoing or in respect of any claim against a director of the kind referred to in subsection 5.1(2) of the CCAA.

(ii) All Persons (regardless of whether or not such Persons are Affected Creditors) are permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, with respect to any and all Equity Claims, from (i) 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 Company (or any successor thereto or the Sponsor Subsidiary) or any current or former officer or director thereof; (ii) 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 Company (or any successor thereto or the Sponsor Subsidiary), any current or former officer or director thereof, or their property; (iii) 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, breach of trust or breach of fiduciary duty 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 the Company (or any successor thereto or the Sponsor Subsidiary) or any current or former officer or director thereof; (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind against the Company (or any successor thereto or the Sponsor Subsidiary), any current or former officer or director thereof, or their property; or (v) taking any actions to interfere with the implementation or consummation of this Plan; provided, however, that the foregoing shall not apply in respect of any claim against a director, or current or former officer of the kind referred to in subsection 5.1(2) of the CCAA.

(iii) All Persons (regardless of whether or not such Persons are Affected Creditors) are permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, with respect to any claim of the kind referred to in subsection 5.1(2) of the CCAA, from (i) 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 Company (or any successor thereto or the Sponsor Subsidiary) or its property; (ii) 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 Company (or any successor thereto or the Sponsor Subsidiary) or its property; (iii) 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, breach of trust or breach of fiduciary duty 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 the Company (or any successor thereto or the Sponsor Subsidiary) or its property; (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind against the Company (or any successor thereto or the Sponsor Subsidiary) or its property; or (v) taking any actions to interfere with the implementation or consummation of this Plan; and the sole recourse for any such claims against a current or former director or officer of the Company as of the date hereof shall be, and is hereby, limited to any recoveries available from the Company's insurance policies in respect of its current or former directors and officers, and that the holder of any such valid and proven claim shall be subrogated to the rights of any such director or officer to any insurance coverage available in respect of such a claim.

8.8 Monitor

Subject to the Sanction Order and any other Orders, the Monitor shall be discharged and released on the Plan Implementation Date and shall have no further obligations or responsibilities.

ARTICLE 9
AMENDMENTS OF PLAN

9.1 Plan Amendments

The Company may not amend this Plan, prior to or after the Meeting, except by written instrument with the prior written consent of the Sponsor and the Affected Creditors. The Company will provide a copy of any amendment to, or amended form of, this Plan to the Affected Creditors, the Sponsor and the Monitor, file a copy with the Court, and post a copy on the Website.

ARTICLE 10
GENERAL PROVISIONS

10.1 Termination of the Plan

Notwithstanding a prior approval given at the Meeting or the obtaining of the Sanction Order, at any time prior to the Effective Time, if the Transaction Agreement is terminated in accordance with its terms at a time when the conditions precedent to this Plan referred to in Section 8.1 have not been satisfied or waived in accordance with the terms of the Transaction Agreement, then: (a) this Plan shall become null and void in all respects; (b) any document or agreement executed pursuant to this Plan (other than, for the avoidance of doubt, the Transaction

Agreement and all other agreements executed contemporaneously therewith) shall be null and void in all respects; and (c) nothing in this Plan, and no act taken in preparation of the consummation of this Plan (other than, for the avoidance of doubt, the execution of the Transaction Agreement and all other agreements executed contemporaneously therewith) shall: (i) constitute or be deemed to constitute a waiver or release of any Affected Claim; (ii) prejudice in any manner the rights of the Sponsor or any of the Affected Creditors in any proceeding involving any of them or one or more of the Allen-Vanguard Parties; or (iii) constitute an admission of any sort by any of the Affected Creditors, the Allen-Vanguard Parties or any other Person.

10.2 Paramountcy

From and after the Plan Implementation Date, any conflict between this Plan and the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed or implied, of any contract, mortgage, security agreement, indenture, loan agreement, commitment letter, credit document, agreement for sale, by-laws of the Company, lease or other document or agreement, written or oral, and any and all amendments or supplements thereto existing between one or more of the Affected Creditors and the Allen-Vanguard Parties (or any of them) as at the Plan Implementation Date, excluding in each case the Restructuring Documents, will be deemed to be governed by the terms, conditions and provisions of this Plan and the Sanction Order, which shall take precedence and priority.

10.3 Severability

If prior to the Plan Implementation Date, any provision of this Plan is held by the Court to be invalid, void or unenforceable, the Court, at the request of Company and subject to the consent of the Plan Participants, acting reasonably, may alter and/or interpret such provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of such provision, and such provision will then be applicable as altered or interpreted and the remainder of the provisions of this Plan will remain in full force and effect and will in no way be invalidated by such alteration or interpretation.

10.4 Deeming Provisions

In this Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

10.5 Binding Effect

At the Effective Time, the Plan, the Articles of Reorganization and all Restructuring Documents and other agreements, documents and transactions contemplated thereby will become effective (to the extent not already effective) and be binding on and enure to the benefit of the Allen-Vanguard Parties, the Sponsor, the Sponsor Subsidiary, the Affected Creditors and all other Persons named or referred to in, or subject to or affected by, this Plan, the Articles of Reorganization or the Restructuring Documents and their respective heirs, administrators, executors, representatives, successors and assigns.

10.6 Notices

Any notice or communication to be delivered hereunder shall be in writing and shall reference this Plan and may, subject as hereinafter provided, be made or given by personal delivery, mail or facsimile addressed to the respective parties as follows:

(a) if to the Company:

c/o Lang Michener LLP
Brookfield Place, Suite 2500
181 Bay Street
Toronto, Ontario
M5J 2T7

Attention: Carl De Vuono

Facsimile: (416) 304-3755
Email: CDeVuono@langmichener.ca

(b) if to the Secured Lenders:

c/o ThorntonGroutFinnigan LLP
Suite 3200, Canadian Pacific Tower
100 Wellington Street West
Toronto, Ontario
M5K 1K7

Attention: Leanne Williams

Facsimile: (416) 304-1616
Email: lwilliams@tgf.ca

(c) if to the Sponsor:

if before December 22, 2009:

c/o Goodmans LLP
250 Yonge Street
Suite 2400, Box 24
Toronto, Ontario
M5B 2M6

if after December 22, 2009:

c/o Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario
M5H 2S7

Attention: Robert Chadwick and Brendan O'Neill

Facsimile: (416) 979-1234
Email: rchadwick@goodmans.ca; boneill@goodmans.ca

(d) if to the Monitor:

Deloitte & Touche Inc.
Brookfield Place, Suite 1400
181 Bay Street
Toronto, Ontario
M5J 2V1

Attention: Pierre Laporte, President and David Boddy, Senior Vice-President

Facsimile: (416) 601-6690
Email: pilaporte@deloitte.ca; dboddy@deloitte.ca

with a copy to:

Ogilvy Renault
Royal Bank Plaza, South Tower
200 Bay Street, Suite 380O
P.O. Box 84
Toronto, Ontario
M5J 2Z4

Attention: Mario Forte

Facsimile: (416) 216-3930
Email: mforte@ogilvyrenault.com;

or to such other address as any party may from time to time notify the others in accordance with this Section. All such notices and communications which are delivered shall be deemed to have been received on the date of delivery. All such notices and communications which are delivered by facsimile shall be deemed to be received on the date transmitted if sent before 5:00 p.m. on a Business Day and otherwise shall be deemed to be received on the Business Day following the day upon which such facsimile was sent. Any notice or other communication sent by mail shall be deemed to have been received on the fifth Business Day after the date of mailing. The unintentional failure to give a notice contemplated hereunder shall not invalidate any action taken by any Person pursuant to this Plan.

10.7 Different Capacities

Persons who are affected by this Plan may be affected in more than one capacity. Unless expressly provided herein to the contrary, a Person shall be entitled to participate hereunder in each such capacity. Any action taken by or any effect of the Plan on a Person in one capacity

will only affect such Person in that capacity and shall not affect such Person in any other capacity.

10.8 Responsibilities of the Monitor

The Monitor is acting in its capacity as Monitor in the CCAA Proceedings, and the Monitor will not be responsible or liable for any obligations of the Company hereunder. The Monitor will have only those powers granted to it by this Plan, by the CCAA and by any Order of the Court in the CCAA Proceedings, including the Initial Order.

10.9 Covenant of the Plan Participants

Each Plan Participant hereby covenants and agrees, and is deemed to covenant and agree to execute and deliver, on or after the Effective Time, all such agreements, instruments and documents and to take all such further actions as any of the other Plan Participants may reasonably deem necessary or desirable from time to time to carry out the full intent and purposes of this Plan, the Articles of Reorganization and the Restructuring Documents, and any related agreements or documents, and to consummate the transactions contemplated thereby.

10.10 Further Assurances

At the request of the Plan Participants, each of the Persons named or referred to herein, or subject to, this Plan will execute and deliver all such documents and instruments and do all such acts and things as may be reasonably necessary or desirable to carry out the full intent and purposes of this Plan, the Articles of Reorganization and the Restructuring Documents, and any related agreements or documents, and to consummate the transactions contemplated thereby, notwithstanding any provision of this Plan that deems any transaction or event to occur without further formality.

Dated at Toronto, Ontario as of the 9th day of December, 2009.

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 ARRANGEMENT AND REORGANIZATION OF ALLEN-VANGUARD CORPORATION

APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED AND SECTION 186 OF THE ONTARIO *BUSINESS CORPORATIONS ACT*, R.S.O. 1990, C. B.16

Court File No. CV-09-00008502-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

PLAN OF ARRANGEMENT AND REORGANIZATION

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M5J 2T7

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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 1511419 ONTARIO INC., FORMERLY KNOWN AS THE CASH STORE FINANCIAL SERVICES INC., 1545688 ALBERTA INC., FORMERLY KNOWN AS THE CASH STORE INC., 986301 ALBERTA INC., FORMERLY KNOWN AS TCS CASH STORE INC., 1152919 ALBERTA INC., FORMERLY KNOWN AS INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., 1693926 ALBERTA LTD. DOING BUSINESS AS "THE TITLE STORE"

Court File No. CV-14-10518-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

REPLY FACTUM OF THE AD HOC COMMITTEE OF SECURED NOTEHOLDERS (Meetings Order)

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