

**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 CANWEST PUBLISHING
INC./PUBLICATIONS CANWEST INC., CANWEST BOOKS
INC., AND CANWEST (CANADA) INC.

APPLICANTS

**FACTUM OF THE APPLICANTS
(Motion for Sanction of the Amended AHC Plan)**

June 16, 2010

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PART I – NATURE OF THIS MOTION

1. On May 21, 2010, the LP Entities¹ filed a consolidated plan of compromise (the “**AHC Plan**”), the basis of which is a transaction (the “**AHC Transaction**”) in which an entity sponsored by an *ad hoc* committee of holders of 9.25% notes issued by the LP Entities and members of a syndicate of lenders that are parties to the LP Entities’ senior subordinated credit agreement (the “**Ad Hoc Committee**”) will acquire substantially all of the financial and operating assets of the LP Entities on a going concern basis. An overwhelming majority of Affected Creditors voted in favour of a resolution to approve an Amended Consolidated Plan of Compromise dated May 20, 2010 (as further described herein, the “**Amended AHC Plan**”) at a Creditors’ Meeting held on June 14, 2010. The LP Entities are now seeking sanction of the Amended AHC Plan so that they may proceed with its implementation.

2. Sanction of the Amended AHC Plan is a very important step toward a successful going concern restructuring of the LP Entities. If the Amended AHC Plan is sanctioned, the

¹ Unless otherwise indicated, this and other defined terms in this factum will have the meanings ascribed to them in the affidavit of Douglas E.J. Lamb sworn June 14, 2010 (the “**Lamb Affidavit**”).

businesses of the LP Entities will continue to operate, current employees will keep their jobs and their pension and employee benefits and affected creditors with Proven Claims (the “**Affected Creditors**”) will receive distributions in cash or shares. In addition, the secured debt of the Senior Lenders will be repaid in full. The Monitor, the LP CRA and the Financial Advisor support the sanction of the Amended AHC Plan and are of the view that the Amended AHC Plan offers the best available outcome for the businesses and stakeholders of the LP Entities.

PART II - FACTS

Background, the SISP and the AHC Offer

3. On January 8, 2010, CPI, Canwest Books Inc. and Canwest (Canada) Inc. were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to an initial order of this Honourable Court (the “**Initial Order**”). The Initial Order also extended protection to Canwest Limited Partnership and appointed FTI Consulting Canada Inc. as monitor of the LP Entities (the “**Monitor**”).²

4. Prior to filing for CCAA protection, the LP Entities and their Senior Lenders negotiated the terms of a pre-packaged restructuring transaction (the “**Support Transaction**”) pursuant to which the Senior Lenders would acquire the businesses of the LP Entities in substantial satisfaction of their outstanding secured claims. The terms of certain agreements and arrangements between the LP Entities and the LP Administrative Agent, including with respect to the Support Transaction, are contained in a Support Agreement dated as of January 8, 2010. The Support Agreement provided, among other things, that the LP Entities would: file for protection under the CCAA; take steps to implement the Support Transaction; and conduct a sale and investor solicitation process (the “**SISP**”) for the purpose of identifying a superior offer for the acquisition or recapitalization of the businesses of the LP Entities. The LP Entities and the Senior Lenders agreed that if a Superior Offer were identified in the SISP and accepted by the Special Committee of Canwest Global, the LP Entities would pursue the transaction contemplated by the Superior Offer.³

² Lamb Affidavit, at para. 9.

³ Lamb Affidavit, at para 10.

5. The SISP commenced on January 11, 2010 and proceeded in two phases for approximately 15 weeks. On April 30, 2010, the Financial Advisor received two bids to acquire substantially all of the assets of the LP Entities and one bid to make an investment in the LP Entities. Following its review of the three bids, the Monitor determined that only the offer received from the Ad Hoc Committee (the “**AHC Bid**”) was a credible, reasonably certain and financially viable offer and a Superior Cash Offer. The Financial Advisor and the LP CRA agreed with this assessment.⁴

6. The material terms of the AHC Bid are set out in a proposed form of asset purchase agreement between 7535538 Canada Inc. (“**Holdco**”), CW Acquisition Limited Partnership (the “**Purchaser**”) and the LP Entities dated as of May 10, 2010 (the “**AHC APA**”). Pursuant to the AHC APA, a corporation sponsored by members of the Ad Hoc Committee will effect a transaction to acquire substantially all of the financial and operating assets of the LP Entities and the shares of National Post Inc. (the “**Acquired Assets**”) on an “as is, where is” basis. The AHC APA contemplates that the Purchaser will continue to operate all of the businesses of the LP Entities in substantially the same manner as they are currently operated and will offer employment to substantially all of the employees of the LP Entities.⁵

7. On May 17, 2010, the LP Entities were granted an order (the “**Order Approving the AHC Transaction**”) approving the AHC Transaction and authorizing the LP Entities to enter into the AHC APA and take whatever additional steps were necessary or desirable to implement the AHC Transaction and effect the transfer of Acquired Assets to the Purchaser.⁶

8. The LP Entities are pursuing the AHC Transaction and the Support Transaction in parallel so that the Support Transaction is available in the event that the AHC Transaction cannot be implemented. On May 17, 2010, the LP Entities also obtained an order sanctioning the Senior Lenders’ CCAA Plan but providing that the Senior Lenders’ CCAA Plan is not effective until after delivery of a certificate by the Monitor (the “**Monitor’s Credit Bid Sanction Certificate**”).

⁴ Lamb Affidavit, at para. 12.

⁵ Lamb Affidavit, at para 13.

⁶ Lamb Affidavit at para. 16.

The Monitor's Credit Bid Sanction Certificate will not be delivered if the AHC Transaction closes.⁷

9. Payment of the full amount owing to the LP Secured Lenders is a condition precedent to implementation of the AHC Plan and is a term of the proposed AHC Plan Sanction Order.⁸

The Amended AHC Plan

10. The AHC Transaction is to be implemented pursuant to a consolidated plan of compromise, as amended, between the LP Entities and certain of their unsecured creditors. By Order dated May 17, 2010 (the "**Creditors' Meeting Order**"), the Court authorized the LP Entities to file a plan of compromise or arrangement and call a meeting of creditors for the purpose of considering and, if thought advisable, a vote on the AHC Plan.⁹

11. In accordance with the terms of the Creditors' Meeting Order, the LP Entities filed the AHC Plan on May 21, 2010 after receiving a one day filing extension from this Court.

12. As discussed further below, certain amendments to the AHC Plan were proposed after May 21, 2010. The amendments were incorporated into the Amended AHC Plan that was approved at the Creditors' Meeting on June 14, 2010.

13. The purposes of the Amended AHC Plan are to:

- (a) effect a compromise, settlement and payment of all Affected Claims;
- (b) implement the AHC Transaction;
- (c) enable the Purchaser to continue to operate the businesses of the LP Entities and National Post Inc. as going concerns; and
- (d) safeguard substantial employment.¹⁰

⁷ Lamb Affidavit, at para. 17.

⁸ Amended AHC Plan, Lamb Affidavit, Tab F ("**Amended AHC Plan**"), at s. 9.3.

⁹ Lamb Affidavit, at para. 18.

¹⁰ Lamb Affidavit, at para. 20.

14. The only creditors whose claims will be affected by the Amended AHC Plan are those creditors (the “**Affected Creditors**”) whose claims are included and being quantified and determined in the claims process (the “**LP Claims Process**”) that is being conducted pursuant to an order of this court dated April 12, 2010 (as amended, the “**Claims Procedure Order**”).¹¹

15. For the purposes of considering and voting on the Amended AHC Plan and for receiving distributions under the Amended AHC Plan, there is a single class of Affected Creditors. The procedures for determining the validity and quantum of the claims of Affected Creditors are set out in the Amended Claims Procedure Order and the Creditors’ Meeting Order. The AHC Plan does not compromise Unaffected Claims (as defined in the AHC Plan).¹²

16. The only Affected Creditors that are entitled to vote on and receive distributions under the AHC Plan are those whose claims have been proven (each a “**Proven Claim**”) pursuant to the terms of the Amended Claims Procedure Order. The Amended Claims Procedure Order also permits certain Affected Creditors whose claims are provisionally allowed by the LP Entities for voting purposes but not finally determined for distribution purposes to participate in the vote on the Amended AHC Plan.¹³

Plan Implementation

17. Subject to Court sanction, the Amended AHC Plan will be implemented on the date on which all conditions precedent to implementation contained in the AHC APA are satisfied or, if permitted, waived (the “**Plan Implementation Date**”). The Amended AHC Plan provides that on the Plan Implementation Date, among other things:

- (a) the Monitor will release from escrow to the LP Administrative Agent the entire amount owing to the Senior Lenders;
- (b) the Purchaser will pay to the administrative agent under the DIP Facility, on behalf of and for the account of CPI, any amounts owing under the DIP Facility;

¹¹ Lamb Affidavit, at para. 21.

¹² Lamb Affidavit, at para. 22.

¹³ Lamb Affidavit, at para. 23.

- (c) the Purchaser will pay to the Monitor the aggregate of all amounts owing pursuant to Cash Elections;
- (d) the Purchaser will issue Shares (as discussed below) directly to CPI;
- (e) the Purchaser will assume the Assumed Liabilities;
- (f) all right, title and interest of the LP Entities in the Acquired Assets will vest in the Purchaser; and
- (g) the charges established by the Initial Order will be terminated, discharged and released.¹⁴

18. The Amended AHC Plan also provides that on the Plan Implementation Date, the LP Entities, the Monitor, FTI Consulting Canada Inc., the LP CRA, the Special Committee, the U.S. and Canadian Trustees, the Senior Lenders, the Ad Hoc Committee and all present and former shareholders, officers and directors (including deemed and *de facto* officers and directors) of those entities will receive a global release and discharge. Upon repayment of the full amounts owing under the LP Credit Agreement, the Hedging Agreements, the Collateral Agency Agreement and the DIP Credit Agreement (all as defined in the Amended AHC Plan), the Senior Lenders will also be discharged from any claims that an LP Entity or any other person may be entitled to assert arising out of dealings between the Senior Lenders and the LP Entities or their involvement in the CCAA proceeding, including claims by the agent under the senior subordinated credit agreement for costs and expenses.¹⁵

Distributions to Affected Creditors

19. The Amended AHC Plan provides for two types of distributions to Affected Creditors:

- (a) a distribution of cash in an amount up to \$1,000 to Affected Creditors that either:
 - (i) have claims of less than \$1,000 and are deemed to elect to receive a cash

¹⁴ Lamb Affidavit, at para. 25.

¹⁵ Lamb Affidavit, at para. 27.

payment in the amount of the claim (a “**Cash Election**”) or (ii) make a Cash Election in full satisfaction of the amount of their outstanding claims; and

- (b) a distribution of equity shares of Holdco to those Affected Creditors with Proven Claims of more than \$1,000 that have not made a Cash Election.¹⁶

20. The distribution to Affected Creditors under the AHC Plan will consist of:

- (a) an unsecured creditors’ cash pool, which will be in an amount equal to the aggregate Cash Elected Amount (the “**Unsecured Creditors’ Cash Pool**”); and
- (b) an unsecured creditors’ equity pool, which will be made up of shares in Holdco to be distributed to those Affected Creditors with Proven Claims that have not made a Cash Election (the “**Unsecured Creditors’ Equity Pool**”).

21. Collectively, the Unsecured Creditors’ Cash Pool and the Unsecured Creditors’ Equity Pool are referred to as the “**Unsecured Creditors’ Pool**”.¹⁷

22. The Unsecured Creditors’ Equity Pool will be made up of voting shares (“**Voting Shares**”) and variable voting shares (“**Variable Voting Shares**”). Voting Shares will be distributed to Affected Creditors that are Canadian and that have delivered declarations as to Canadian citizenship (“**Canadian Creditor Declarations**”) in accordance with the Amended AHC Plan; Variable Voting Shares will be distributed to Affected Creditors that are non-Canadian or that have not delivered Canadian Creditor Declarations. Collectively, the Voting Shares and the Variable Voting Shares are referred to as the “**Shares**”.¹⁸

Mailing of the Meeting Notice and Meeting Materials

23. The Creditors’ Meeting Order authorized the LP Entities to conduct a meeting of Affected Creditors on June 10, 2010 at which Affected Creditors would consider and, if thought advisable, vote on a resolution to approve the AHC Plan. On May 21 and 25, 2010, pursuant to the terms of the Creditors’ Meeting Order, the Monitor published notice of the Creditors’

¹⁶ Lamb Affidavit, at para. 28.

¹⁷ Lamb Affidavit, at para. 29.

¹⁸ Lamb Affidavit, at para. 31.

Meeting (the “**Meeting Notice**”) in the *National Post*, *The Globe & Mail*, *La Presse* and *The Wall Street Journal*.¹⁹

24. On May 20, 2010, the LP Entities provided to Broadridge Financial Solutions Inc. copies of the AHC Plan, the related management information circular (the “**Information Circular**”), the Creditors’ Meeting Order, a Canadian Creditor Declaration and a ballot to be distributed to beneficial owners of the LP Notes (collectively, the “**Solicitation Package**”). On May 21, 2010 the Monitor also posted copies of the AHC Plan, the Information Circular and other materials related to the Creditors’ Meeting on the website dedicated to this CCAA proceeding.²⁰

Amendments to the AHC Plan and the AHC APA

25. On or around June 7, 2010, the Ad Hoc Committee approached the LP Entities and the Monitor to request that certain modifications be made to the capital and corporate structures of the Purchaser and Holdco.²¹

26. Pursuant to the terms of the original AHC Bid, the members of the Ad Hoc Committee sponsoring Holdco (the “**Sponsors**”) were to contribute a total of \$250 million to the purchase price that would consist of \$100 million of equity and \$150 million of mezzanine debt. The Ad Hoc Committee proposed to eliminate the mezzanine debt component of the acquisition financing so that the contribution by the Sponsors would be made up entirely of equity in Holdco.²²

27. Under the revised capital structure, the notional value of the equity in Holdco would be \$400 million (an increase of \$150 million attributable to the elimination of the mezzanine debt component of the financing). The Sponsors would receive 27 million Shares

¹⁹ Lamb Affidavit, at para. 34.

²⁰ Lamb Affidavit, at para. 35.

²¹ Lamb Affidavit, at para. 36.

²² Lamb Affidavit, at para. 37.

with a total subscription price of \$250 million (approximately \$9.25926 per share), or approximately 67.5% of the notional value of the equity of Holdco.²³

28. The original version of the AHC Plan filed on May 21, 2010 provided that the cash portion of the purchase price would be delivered in the form of the Purchaser Note. Under the Amended AHC Plan, the Ad Hoc Committee has proposed that on the Plan Implementation Date, Holdco would issue Shares directly to CPI. The actual number of Shares delivered to CPI for distribution to Affected Creditors would be 13 million minus that number of Shares obtained by dividing the Cash Elected Amount by \$11.54 (the “**Share Consideration**”). This represents up to \$130 million (or 32.5%) of the notional value of the equity available in Holdco at the time of emergence.²⁴

29. In connection with the changes to the capital structure of Holdco, the Ad Hoc Committee also requested that the corporate structure of the acquiring entities be changed so that the transaction would be effected through 7536321 Canada Inc. (the “**New Purchaser**”), which is the general partner of CW Acquisition Limited Partnership. The Purchaser assigned all of its rights and obligations under the AHC APA to New Purchaser in the Assignment and Amending Agreement.²⁵

Changes to the Mechanics of Share Distribution under the Amended AHC Plan

30. The LP Entities also proposed to make certain changes to the AHC Transaction in respect of the mechanics of Share distribution. Under the original AHC Plan, the Affected Creditors were to receive share certificates evidencing their ownership of the Shares. The LP Entities proposed under the Amended AHC Plan that Computershare Investor Services Inc. (“**Computershare**”) be enlisted as Holdco’s transfer agent and that Affected Creditors receive their Shares through individual accounts (each a “**DRS Account**”) in Computershare’s Direct Registration System (“**DRS**”). Affected Creditors will not have the option to receive share certificates. It is anticipated that on the Initial Distribution Date and each subsequent distribution

²³ Lamb Affidavit, at para. 38.

²⁴ Lamb Affidavit, at para. 39.

²⁵ Lamb Affidavit, at para. 41.

date thereafter, as applicable, Affected Creditors will receive a record from DRS evidencing the number of Shares held in each Affected Creditor's DRS Account. There is no fee to participate in DRS, and Affected Creditors holding their Shares in DRS accounts would have all of the same privileges and rights as holders of securities in certificated form.²⁶

The Amended AHC Plan and the Amended AHC APA

31. The changes to the terms of the AHC Transaction proposed by the Ad Hoc Committee and the LP Entities require that corresponding changes be made to the AHC Plan and the AHC APA. In addition, the LP Entities have made a number of other clarifying changes and corrections to the AHC Plan since May 20, 2010. As noted above, the version of the AHC Plan containing the proposed amendments is referred to in this factum as the Amended AHC Plan.²⁷

32. The amendments to the AHC APA are contained in a assignment and amending agreement made as of June 10, 2010 between the LP Entities, Holdco, the Purchaser (as assignor) and the New Purchaser (as assignee) (the "**Assignment and Amending Agreement**"). The Assignment and Amending Agreement, together with the AHC APA, are referred to as the "**Amended AHC APA**".²⁸

The Supplement to the Eighth Report and the Adjournment of the Creditors' Meeting

33. The Creditors' Meeting was originally scheduled to occur on Thursday, June 10, 2010. In order to provide Affected Creditors with an opportunity to consider the terms of the Amended AHC Plan in advance of the Creditors' Meeting, by email dated June 9, 2010 the Monitor notified the Service List that the Creditors' Meeting had been adjourned to Monday, June 14, 2010. On June 9, 2010, the Monitor also sent a notice of the adjournment (the "**Notice of Adjournment**") to Affected Creditors.²⁹

²⁶ Lamb Affidavit, at para. 42.

²⁷ Lamb Affidavit, at para. 44.

²⁸ Lamb Affidavit, at para. 45.

²⁹ Lamb Affidavit, at para. 46.

34. On June 10, 2010, the Monitor delivered a supplement to its Eighth Report (the “**Supplement to the Eighth Report**”) providing its recommendations and conclusions in respect of the Amended AHC Plan and the Amended AHC APA. As stated in the Supplement to the Eighth Report, the changes to the capital structure of Holdco are expected to have a beneficial impact on the Affected Creditors because of the \$150 million decrease in Holdco’s leverage on the Plan Implementation Date caused by the removal of the mezzanine notes.³⁰ Although the Shares distributed to the Affected Creditors will make up only 32.5% of the equity of Holdco (as opposed to the 45% originally contemplated), the implied value of Holdco equity will be increased. As a result, Affected Creditors will now hold a larger percentage of the enterprise value of Holdco than under the original AHC Plan.³¹

The Creditors’ Meeting

35. The Creditors’ Meeting was held at the Sutton Place Hotel in Toronto, Ontario at 10:00 a.m. on June 14, 2010. In accordance with the terms of the Creditors’ Meeting Order, Paul Bishop, an officer of FTI Consulting Canada Inc. (“**FTI**”), acted as the chair (the “**Chair**”) of the Creditors’ Meeting. Jodi Porepa of FTI acted as scrutineer.³²

36. Pursuant to the terms of the Creditors’ Meeting Order, Affected Creditors other than LP Noteholders participated in the Creditors’ Meeting in person or by proxy. The LP Noteholders participated in the Creditors’ Meeting by voting via master ballots submitted by their nominees or their nominees’ agents.³³

37. The Chair held 86 proxies from Affected Creditors with Proven Claims or claims that were allowed by the LP Entities for voting purposes pursuant to the terms of the Amended Claims Procedure Order, thereby satisfying the requirement that a quorum of the Affected Creditors be present either in person or by proxy. The Chair declared that the Creditors’ Meeting was properly constituted.³⁴

³⁰ Supplement to the Eighth Report of the Monitor, at paras 34-36.

³¹ Lamb Affidavit, at para. 47.

³² Tenth Report of the Monitor dated June 14, 2010 (the “**Tenth Report of the Monitor**”), at paras. 30-31.

³³ Lamb Affidavit, at para. 51.

³⁴ Tenth Report of the Monitor, at paras. 33-45.

38. The tabling and voting on resolutions at the Creditors' Meeting occurred in the following order:

- (a) the Chair introduced a resolution (the "**Original Plan Resolution**") to approve the AHC Plan as originally filed;
- (b) the proxy for certain of the LP Noteholders (the "**Noteholder Proxy**") proposed an amendment to the Original Plan Resolution to reference the Amended AHC Plan rather than the AHC Plan;
- (c) the Chair seconded the motion of the Noteholder Proxy;
- (d) The Chair called for a vote on the amendment to the Original Plan Resolution;
- (e) the Affected Creditors attending in person or by proxy voted to approve the amendment to the Original Plan Resolution (as amended by the amendment, the "**Amended Plan Resolution**");
- (f) the Noteholder Proxy introduced a motion to approve the Amended Plan Resolution;
- (g) the Chair seconded the motion to approve the Amended Plan Resolution; and
- (h) the Chair called for a vote on the Amended Plan Resolution.³⁵

39. The form of proxy approved by this Honourable Court as part of the Creditors' Meeting Order provides that the nominee pursuant to the proxy may vote at the nominee's discretion and otherwise act for and on behalf of the undersigned Affected Creditor with respect to any amendments or variations to the AHC Plan (as it then was) and to any other matters that may come before the meeting of Affected Creditors of the LP Entities or any adjournment thereof. The Beneficial Owner Ballot contains a similar proxy direction in respect of amendments or variations to the AHC Plan (as it then was), although the proxy for those LP Noteholders that issue a proxy direction is Jay Swartz of Davies, Ward, Phillips & Vineberg LLP, counsel to the Ad Hoc Committee. The Chair and Mr. Swartz were therefore empowered to

³⁵ Lamb Affidavit, at para. 53.

act in respect of the amendments to the AHC APA and the AHC Plan on behalf of the respective Affected Creditors that appointed them as proxies.³⁶

40. According to the results of the Chair's tabulation, in total, 97% in number and 99% in value of the Affected Creditors holding Proven Claims that were present and voted at the Creditors' Meeting voted to approve the Amended AHC Plan. Pursuant to the Creditors' Meeting Order, the resolution had to be approved by a majority in number and two thirds in value of the Affected Creditors holding Proven Claims that were present and voting at the Creditors' Meeting (the "**Required Majorities**"). The Required Majorities voted to approve the Amended AHC Plan.³⁷

41. By written resolution dated June 14, 2010, the board of directors of Canwest Global Communications Corp. ratified the adoption and execution, respectively, of the Amended AHC Plan and the Amended AHC APA.³⁸

Extension of the Stay Period

42. The stay of proceedings granted in the Initial Order (the "**Stay Period**"), as extended by subsequent Orders, expires on June 30, 2010. The LP Entities request an extension of the Stay Period to July 30, 2010, provided that if the AHC Transaction closes before that date, the Stay Period will be extended to the Final Distribution Date or December 31, 2010, whichever is earlier.³⁹

43. The stability provided by the stay of proceedings is essential to the final implementation of the Amended AHC Plan.⁴⁰

44. Since the granting of the Initial Order the LP Entities have continued to operate their businesses as going concerns. The LP Entities have acted and continue to act in good faith and with due diligence in carrying out the terms of the Initial Order and in seeking to secure a

³⁶ Lamb Affidavit, at para. 54.

³⁷ Tenth Report of the Monitor, para. 43.

³⁸ Lamb Affidavit, at para. 57.

³⁹ Lamb Affidavit, at para. 58.

⁴⁰ Lamb Affidavit, at para. 59.

going concern outcome for the businesses of the LP Entities through the conduct of the SISP, the pursuit of the AHC Transaction and the proposed sanction of the Amended AHC Plan.⁴¹

45. The Monitor has filed its Tenth Report dated June 14, 2010 in connection with this motion. The Tenth Report provides updated cash flow forecasts demonstrating that the LP Entities have sufficient cash flow to fund the CCAA proceeding through August 15, 2010.

46. The LP Entities have consulted with the Ad Hoc Committee and the Purchaser, and neither of them opposes the request to extend the Stay Period. The Monitor and the LP CRA support the request to extend the Stay Period.⁴²

Plan Sanction and Vesting of Acquired Assets

47. The Required Majorities voted in favour of the Amended AHC Plan, so the LP Entities are now seeking sanction of the Amended AHC Plan and approval of the Amended AHC APA. The LP Entities are also seeking the Vesting Order, which provides for the vesting of the Acquired Assets in New Purchaser or its nominee upon delivery of a Monitor's certificate stating that all of the conditions to closing have been satisfied or waived. The LP Entities have provided notice of this motion to all known creditors whose rights will be affected by the Vesting Order.

48. The AHC Transaction, as implemented by the Amended AHC Plan, represents the best available outcome for the LP Entities and their stakeholders. The SISP was a comprehensive and robust test of the value of the Acquired Assets in the market. The AHC Transaction provides a going concern outcome and preserves the jobs and the job benefits of substantially all of the employees of the LP Entities. It also provides realization to many unsecured creditors of the LP Entities and a full cash pay out to the smallest creditors of the LP Entities. No alternative scenario is currently contemplated or available that would provide any recovery to the unsecured creditors of the LP Entities.

49. The Monitor and the LP CRA have both expressed their support for the AHC Transaction and the Amended AHC Plan, and the Monitor has indicated that it agrees that the

⁴¹ Lamb Affidavit, at para. 60.

⁴² Lamb Affidavit, at para. 62.

Amended AHC Plan is fair and reasonable.⁴³ No significant stakeholders oppose the sanction of the Amended AHC Plan.⁴⁴

PART III – ISSUES AND THE LAW

50. The issues on this motion are as follows:
- (a) Should the Court sanction the Amended AHC Plan?
 - (b) Should the Court permit the amendment of the AHC Plan? and
 - (c) Should the Court grant the third party release in favour of the Senior Lenders?

Sanction of the Amended AHC Plan

51. The LP Entities submit that this Honourable Court should sanction the Amended AHC Plan because:

- (a) the Amended AHC Plan was approved by the Required Majorities of Affected Creditors at the Creditors' Meeting held June 14, 2010; and
- (b) the Amended AHC Plan is fair and reasonable.

Plan Sanction

52. Section 6(1) of the CCAA provides that the Court has discretion to sanction a plan if it has achieved the requisite vote. The effect of the Court's approval is to bind the company and its creditors:

If a majority in number representing two thirds in value of the creditors, or the class of creditors, as the case may be — other than, unless the court orders otherwise, a class of creditors having equity claims, — present and voting either in person or by proxy at the meeting or meetings of creditors respectively held under sections 4 and 5, or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court and, if so sanctioned, is binding

⁴³ Tenth Report of the Monitor, at para. 51.

⁴⁴ Lamb Affidavit, at para. 66.

(a) on all the creditors or the class of creditors, as the case may be, and on any trustee for that class of creditors, whether secured or unsecured, as the case may be, and on the company; and

(b) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act* or is in the course of being wound up under the *Winding-up and Restructuring Act*, on the trustee in bankruptcy or liquidator and contributories of the company.

53. The criteria that a debtor company must satisfy in seeking the Court's approval for a plan under the CCAA are well established:

- (a) there must be strict compliance with all statutory requirements;
- (b) all material filed and procedures carried out must be examined to determine if anything has been done or purported to be done which is not authorized by the CCAA; and
- (c) the plan must be fair and reasonable.⁴⁵

54. The LP Entities have strictly complied with all statutory requirements and have acted in compliance with all orders and the CCAA. It is submitted that the Amended AHC Plan is fair and reasonable.

Compliance with Statutory Requirements

55. Under this first branch of the test for sanctioning a CCAA plan, the Court typically considers factors such as whether (a) the applicant comes within the definition of "debtor company" under section 2 of the CCAA; (b) the applicant or affiliated debtor companies have total claims in excess of \$5 million; (c) the notice of meeting was sent in accordance with the order of the court; (d) the creditors were properly classified; (e) the meetings of creditors were properly constituted; (f) the voting was properly carried out; and (g) the plan was approved by the requisite double majority or majorities.⁴⁶

⁴⁵ *Re Canadian Airlines Corp.*, 2000 ABQB 442 [*Canadian Airlines*] at para. 60, leave to appeal refused 2000 ABCA 238, affirmed 2001 ABCA 9, leave to appeal to SCC refused July 12, 2001; *Re Sammi Atlas Inc.*, (1998), 3 C.B.R. (4th) 171 (Ont. S.C.J. – Commercial List) [*Sammi Atlas*], at para.2.

⁴⁶ *Canadian Airlines, supra*, at paragraph 62.

56. In this case, the LP Entities satisfy all of the requirements set out in the preceding paragraph. In particular:

- (a) as set out in the Initial Order reasons, the Applicants are companies to which the CCAA applies;
- (b) the Notice to Affected Creditors was delivered and published in accordance with the terms of the Creditors' Meeting Order;⁴⁷
- (c) at the Creditors' Meeting, a quorum (being one Affected Creditor attending in person or by proxy) was present and the Chair confirmed that the Creditors' Meeting was properly constituted;⁴⁸
- (d) classification of Affected Creditors was not opposed at the hearing to approve the Creditors' Meeting Order or thereafter;
- (e) the voting was properly carried out; and
- (f) 97% in number representing 99% in value of the Affected Creditors voted in favour of the resolution to approve the Amended AHC Plan.⁴⁹

57. Therefore, the prerequisites to the sanction of the AHC Plan as established in section 6 of the CCAA are satisfied.

58. Sections 6(3), 6(5) and 6(6) contain additional statutory restrictions on the terms of a plan. These sections provide that the Court may not sanction a plan unless the plan contains certain specified provisions concerning crown claims, employee claims and pension claims. Pursuant to sections 3.5 and 7.3(j) of the Amended AHC Plan, these claims (referred to in the

⁴⁷ Lamb Affidavit, at para. 34.

⁴⁸ Tenth Report of the Monitor, at para. 32.

⁴⁹ Tenth Report of the Monitor, at para. 43.

Amended AHC Plan as “Government Priority Claims”) are to be assumed by New Purchaser on the Plan Implementation Date. The LP Entities submit that the requirements of section 6(3), 6(5) and 6(6) have also been satisfied.⁵⁰

No Unauthorized Steps

59. As Paperny J. noted in the *Canadian Airlines* decision, this criterion has not received much discussion in the authorities. It has been held that in making a determination as to whether anything has been done – or is purported to have been done – that is not authorized by the CCAA, the Court should rely on the parties and stakeholders and the reports of the Monitor.⁵¹

60. It is submitted that no unauthorized steps have been taken and that this Honourable Court has been kept apprised of key issues throughout the restructuring. In particular, all materials filed and all steps taken by the LP Entities were authorized by the CCAA and the Orders of this Court. The Monitor has made regular reports to the Court and has made no reference to any conduct or action by the LP Entities that is not authorized by the CCAA. On the contrary, the Monitor opines in its Tenth Report that the LP Entities have complied with all statutory requirements and prior orders and have not done or purported to do anything not authorized by the CCAA.⁵² In connection with the request to extend the Stay Period, the Monitor reports in the Tenth Report that the LP Entities are acting and have acted in good faith and with due diligence throughout the course of this CCAA proceeding.⁵³

Fair and Reasonable

61. Canadian courts have repeatedly emphasized that when considering whether a plan is fair and reasonable, perfection is not required.⁵⁴ Rather, courts consider the relative

⁵⁰ Amended AHC Plan, at ss. 3.5 and 7.3(j).

⁵¹ *Canadian Airlines, supra*, at paragraph 64, citing *Olympia & York Developments Ltd. v. Royal Trust Co.* [1993] O.J. No. 545 (Ont. Gen. Div.) [*Olympia & York*] and *Re Cadillac Fairview Inc.*, [1995] O.J. No. 274 (Gen. Div.).

⁵² Tenth Report of the Monitor, at para. 50.

⁵³ Tenth Report of the Monitor, at para. 69.

⁵⁴ *Sammi Atlas, supra*, at paragraph 4; *Canadian Airlines, supra*, at paragraph 178.

degrees of prejudice that would flow from granting or refusing to grant relief sought under the CCAA. As stated by Paperny J. in *Canadian Airlines*:

The court's role on a sanction hearing is to consider whether the plan fairly balances the interests of all stakeholders. Faced with an insolvent organization, its role is to look forward and ask: does this plan represent a fair and reasonable compromise that will permit a viable commercial entity to emerge? It is also an exercise in assessing current reality by comparing available commercial alternatives to what is offered in the proposed plan.⁵⁵

62. Paperny J. further notes in the same decision in *Canadian Airlines* that that the meanings of “fairness” and “reasonableness” are “necessarily shaped by the unique circumstances of each case, within the context of the Act and accordingly can be difficult to distill and challenging to apply.” The court’s discretion is to be guided by the purpose of the CCAA – namely, to facilitate the reorganization of the debtor company for the benefit of the company, its creditors, shareholders, employees and in many instances, a much broader constituency of affected persons.

63. Parliament has recognized that reorganization, if commercially feasible, is in most cases preferable, economically and socially, to liquidation.⁵⁶ In assessing whether a proposed plan is fair and reasonable, relevant considerations include:

- (a) whether the claims were properly classified and whether the requisite majority of creditors approved the plan;
- (b) what creditors would receive on bankruptcy or liquidation as compared to the plan;
- (c) alternatives available to the plan and bankruptcy;
- (d) oppression of the rights of creditors;

⁵⁵ *Canadian Airlines, supra*, at paragraph 3.

⁵⁶ *Canadian Airlines, supra*, at paragraph 95, citing *Norcen Energy Resources Ltd. v. Oakwood Petroleums Ltd.* [1987] 2 W.W.R. 566 at 574 (Alta. Q.B.); *Northland Properties Ltd. v. Excelsior Life Insurance Co. of Canada*, [1989] 3 W.W.R. 363 at 368 (BCCA).

- (e) unfairness to shareholders; and
- (f) the public interest.

A Significant Majority of Affected Creditors Voted to Approve the Amended AHC Plan

64. One of the most important considerations militating in favour of sanction of a plan is its approval by affected creditors. Although the sanction of a plan is discretionary, courts are generally reluctant to interfere with business decisions reached by affected creditors as a body. Courts have consistently held that the level of approval of a plan of compromise or arrangement by creditors is a significant factor in determining whether a plan is fair and reasonable. As stated by Blair J. (as he then was) in *Olympia & York*:

One important measure of whether a plan is fair and reasonable is the parties' approval of the Plan, and the degree to which approval has been given.

As other courts have done, I observe that it is not my function to second guess the business people with respect to the "business" aspects of the Plan, descending into the negotiating arena and substituting my own view of what is a fair and reasonable compromise or arrangement for that of the business judgment of the participants. The parties themselves know best what is in their interests in those areas.⁵⁷

65. It is also well-established law that a plan of compromise or arrangement is a contract between debtor and its creditors. Although a plan is subject to court sanction, the parties should be permitted to incorporate any terms into a plan that could be lawfully incorporated into any contract.⁵⁸

66. In this case, there was one class of Affected Creditors. The issue of classification of Affected Creditors was not raised at the Creditors' Meeting, nor has it been raised since. At the Creditors' Meeting, 97% in number representing 99% in value of Affected Creditors attending in person or by proxy voted in favour of the Amended Plan Resolution. As such, the Required Majorities, and an overwhelming percentage, of Affected Creditors have approved the Amended AHC Plan.⁵⁹

⁵⁷ *Olympia & York*, *supra* at paras. 36 and 37.

⁵⁸ *Olympia & York*, *supra*, at para. 74.

⁵⁹ Tenth Report of the Monitor, at para. 43.

There will be No Recovery to Unsecured Creditors in a Bankruptcy or a Liquidation

67. There will be no recovery for unsecured creditors of the LP Entities in a bankruptcy or liquidation. The LP Entities currently owe approximately \$950 million of senior secured debt to their Senior Lenders. Although a formal liquidation analysis has not been prepared, the Monitor and RBC Capital Markets as Financial Advisor have advised that there will be no recovery at all for unsecured creditors in a bankruptcy or a liquidation of the assets of the LP Entities and that the return to Affected Creditors under the Amended AHC Plan is superior to what they would receive in a bankruptcy or a liquidation.⁶⁰

The Only Alternatives to the Amended AHC Plan are the Senior Lenders' CCAA Plan and Liquidation

68. There is no currently available alternative transaction that will provide any recovery to unsecured creditors of the LP Entities. Between January 11, 2010 and April 30, 2010, the LP Entities, with the assistance of the Financial Advisor under the supervision of the Monitor, conducted a robust and comprehensive sale and investor solicitation process seeking offers for the acquisition or recapitalization of the businesses of the LP Entities. The baseline offer in the SISP was the Support Transaction with the Senior Lenders pursuant to which there would be no realization for unsecured creditors. The only Superior Offer that emerged in the SISP was the AHC Bid. The LP Entities, the Monitor and the LP CRA are of the view that the AHC Transaction and the Amended AHC Plan are the best available alternative for the LP Entities. If the Support Transaction is implemented, there will be no recovery for unsecured creditors.⁶¹

69. The terms of the Amended AHC Plan were heavily negotiated with the Ad Hoc Committee. As reported in the Tenth Report of the Monitor, the recent amendments to the AHC Plan and the capital structure of Holdco are expected to provide additional benefits to unsecured

⁶⁰ Tenth Report of the Monitor, at para. 47.

⁶¹ Lamb Affidavit, at para. 12; Tenth Report of the Monitor at para. 66.

creditors.⁶² If the Amended AHC Plan is not sanctioned, the AHC Transaction cannot be pursued.

There is No Oppression of the Rights of Creditors

70. The LP Entities are of the view that the Amended AHC Plan treats all Affected Creditors fairly and that there is no oppression of creditor rights associated with the consolidation of the assets and liabilities of the LP Entities in the Amended AHC Plan. There is no known material opposition to the Amended AHC Plan, and the sanction of the Amended AHC Plan is also unopposed.

No Unfairness to Stakeholders and in the Public Interest

71. There is also no unfairness to stakeholders associated with the Amended AHC Plan. On the contrary, the Amended AHC Plan provides for a going concern outcome for the businesses of the LP Entities and secures the employment and employment and pension benefits of substantially all of the employees of the LP Entities. The Amended AHC Plan also offers a distribution of cash or Shares to Affected Creditors, depending upon the size of their respective claims. In short: the interests of a significant number of the stakeholders of the LP Entities are served by sanction of the Amended AHC Plan.

72. The sanction of the Amended AHC Plan and the implementation of the AHC Transaction also serve the broader public interest. Millions of Canadians rely on the newspapers of the LP Entities to receive their daily news. The production and dissemination of news through both print and electronic means by the LP Entities is an important public service, and the bankruptcy and liquidation of the LP Entities would have a devastating and immediate impact on the Canadian news community.

73. In sum, the sanction of the Amended AHC Plan secures a going concern outcome for the businesses of the LP Entities, preserves the jobs and benefits of thousands of employees and produces a realization for a significant number of unsecured creditors. The LP Entities are unaware of any significant stakeholder opposition to the sanction of the Amended AHC Plan,

⁶² Tenth Report of the Monitor, at para. 68; Supplement to the Eighth Report of the Monitor dated June 10, 2010 (the “**Supplement to the Eighth Report of the Monitor**”).

and there have been no allegations of oppression or unfairness by stakeholders. Throughout the course of the CCAA proceeding, the LP Entities have complied with the terms of all Orders and the general requirements of law and the CCAA. The Monitor and the LP CRA support sanction of the Amended AHC Plan. It is submitted that this Honourable Court should accept the reasonably made decision of the Required Majorities of Affected Creditors and sanction the Amended AHC Plan.

Approval of Amendments to the Amended AHC Plan

74. The LP Entities are requesting that this Court authorize certain amendments to the AHC Plan that were incorporated into the Amended AHC Plan between the original filing date on May 21, 2010 and the date of the Creditors' Meeting on June 14, 2010.

75. Section 7 of the CCAA provides this Court with the jurisdiction to approve amendments to a plan:

Where an alteration or a modification of any compromise or arrangement is proposed at any time after the court has directed a meeting or meetings to be summoned, the meeting or meetings may be adjourned on such term as to notice and otherwise as the court may direct, and those directions may be given after as well as before adjournment of any meeting or meetings, and the court may in its discretion direct that it is not necessary to adjourn any meeting or to convene any further meeting of any class of creditors or shareholders that in the opinion of the court is not adversely affected by the alteration or modification proposed, and any compromise or arrangement so altered or modified may be sanctioned by the court and have effect under section 6.

76. In addition, it is worth noting that the AHC Plan itself contemplated the possibility of amendments or variations to the AHC Plan in advance of the Creditors' Meeting.⁶³

77. The amendments to the AHC Plan include changes to the capital and corporate structures of Holdco and changes to the mechanics of Share distribution. It is submitted that these amendments are justified based on the application of the following principles: there are compelling reasons to make the requested amendments, to do so will not prejudice the LP Entities or the Affected Creditors, and the proposed amendments are intended to ensure a mechanically correct implementation of the AHC Plan and will result in improved recovery to Affected Creditors because of the reduction of the debt of Holdco at emergence and the increase

⁶³ Amended AHC Plan, at s. 10.6.

in the implied value of the equity in Holdco. As noted in the Supplement to the Eighth Report of the Monitor and the Tenth Report of the Monitor, the amendments to the AHC Plan are expected to have a beneficial impact on Affected Creditors.

78. Accordingly, the LP Entities submit that the proposed changes to the AHC Plan are warranted in the circumstances of this case, and that there are compelling reasons to make them.

Release of the LP Secured Lenders

79. The Amended AHC Plan contains a provision granting a release to the Senior Lenders and other third parties. The form of sanction order attached to the Motion Record of the LP Entities dated June 14, 2010 also provides that upon repayment of the full amount owing to the Senior Lenders, the Senior Lenders will be discharged from any claims that an LP Entity or any other person may be entitled to assert arising out of dealings between the Senior Lenders and the LP Entities or their involvement in the CCAA proceeding, including claims for costs and expenses by the agent under the senior subordinated credit agreement.

80. Canadian courts have held that they have jurisdiction to sanction plans containing releases in favour of third parties notwithstanding the fact that the CCAA does not expressly contemplate or authorize third party releases. As noted by Ground J. in *Re Muscletech Research and Development Inc.*: "...it is not uncommon in CCAA proceedings, in the context of a plan of compromise and arrangement, to compromise claims against the Applicants and other parties against whom such claims or related claims are made."⁶⁴

81. Courts take into account the particular circumstances of a case when considering the appropriateness of the terms and scope of a third party release. As stated by Campbell J. in *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*:

The concept that has been accepted is that the Court does have jurisdiction, taking into account the nature and purpose of the CCAA, to sanction release of third parties where the factual circumstances are deemed appropriate for the success of a Plan.⁶⁵

⁶⁴ *Re Muscletech Research and Development Inc.*, [2006] O.J. No. 4087 (S.C.J. – Commercial List) at para.8.

⁶⁵ [2008] O.J. No. 2265 ("*Re Metcalfe*"), at para 66.

82. CCAA courts have approved third party releases in both plan of arrangement and settlement agreement contexts where the releases are rationally related to a resolution of the debtors' claims; the releases will benefit creditors generally; and the releases are not overly broad. Courts considering whether to approve releases in favour of third parties have noted that some of the factors to be considered by the court in such circumstances include:

- (a) Whether the parties to be released from claims were necessary and essential to the restructuring of the debtor;
- (b) Whether the claims to be released were rationally connected to the purpose of the plan and necessary for it;
- (c) Whether the plan could succeed without the releases;
- (d) Whether the third parties being released were contributing to the plan;
- (e) Whether the release benefitted the debtors as well as the creditors generally;
- (f) Whether the creditors voting on the plan had knowledge of the nature and effect of the releases; and
- (g) Whether the releases were fair and reasonable and not overly broad.⁶⁶

83. In this case, the implementation of the Amended AHC Plan is conditional upon, among other things, full and indefeasible repayment of the amount owing to the Senior Lenders (the "**Senior Lender Distribution Amount**") and the DIP Lenders. In other words: the Amended AHC Plan cannot be implemented until the Senior Lenders have been paid in full.

84. The LP Secured Lenders are and have been essential to the success of the LP Entities' restructuring. The onerous debt of the LP Entities, including an amount of

⁶⁶ *Re Metcalfe*, *supra* at para. 143. See also *Re Nortel Networks Corporation*, [2010] O.J. No. 1232 (ON S.C.J. - Commercial List), at paras 79-82, leave to appeal refused [2010] O.J. no 2631 (ON C.A.).

approximately \$950 million owing to the LP Secured Lenders, and an inability to satisfy debt servicing obligations drove the LP Entities to seek CCAA protection on January 8, 2010. The Senior Lenders played a significant role in the pre-filing negotiations over the terms for restructuring and have been actively involved in the CCAA proceeding. The LP Entities cannot restructure without materially addressing and making provision for the satisfaction of the substantial obligation owing to the Senior Lenders. The Senior Lenders have also provided an important backstop to the LP Entities in the form of the Support Transaction.

85. To the extent that there are third parties that assert that they have claims ranking in priority to the Senior Lender Distribution Amount, there is a possibility that portions of the Senior Lender Distribution Amount could be clawed back. Because the Amended AHC Plan cannot be implemented, and distributions to Affected Creditors cannot be made, until the claims of the Senior Lenders are satisfied in full, the assertion of claims against the Senior Lenders would have the potential to delay implementation of the Amended AHC Plan. It is therefore in the interest of all of the Affected Creditors that the Senior Lenders be granted a release as part of the Amended AHC Plan.

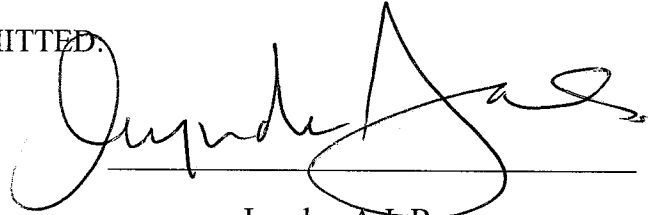
86. The release of the Senior Lenders from potential claims facilitates the implementation of the Amended AHC Plan by providing certainty in respect of the Senior Lender Distribution Amount. The release of the Senior Lenders benefits creditors generally because it facilitates the distribution by contributing to the satisfaction of one of the material conditions to implementation.

87. The LP Entities also submit that the release is adequately broad to accomplish its purpose of promoting the satisfaction of a condition precedent to implementation of the Amended AHC Plan but not so broad as to offend public policy. The release of claims against the Senior Lenders is rationally connected to the overall purpose of the Amended AHC Plan, and the parties affected by the release will benefit by the maintenance of their rights in respect of the distribution under the Amended AHC Plan.

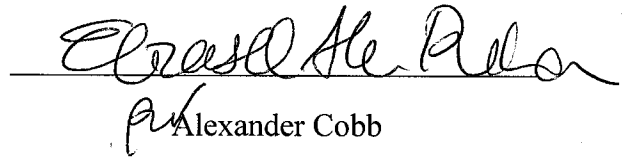
PART IV – NATURE OF THE ORDER SOUGHT

88. The LP Entities therefore request Orders substantially in the forms of the draft Orders submitted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

A handwritten signature in cursive script, appearing to read "Lyndon A.J. Barnes", written over a horizontal line.

Lyndon A.J. Barnes

A handwritten signature in cursive script, appearing to read "Alexander Cobb", written over a horizontal line.

Alexander Cobb

A handwritten signature in cursive script, appearing to read "Elizabeth Allen Putnam", written over a horizontal line.

Elizabeth Allen Putnam

Schedule "A" - Statutory References
COMPANIES' CREDITORS ARRANGEMENT ACT
R.S.C. 1985, c. C-36, as amended

Definitions

2. (1) In this Act,

“debtor company” means any company that

(a) is bankrupt or insolvent,

(b) has committed an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act or is deemed insolvent within the meaning of the Winding-up and Restructuring Act, whether or not proceedings in respect of the company have been taken under either of those Acts,

(c) has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, or

(d) is in the course of being wound up under the Winding-up and Restructuring Act because the company is insolvent;

Compromises to be sanctioned by court

6. (1) If a majority in number representing two thirds in value of the creditors, or the class of creditors, as the case may be — other than, unless the court orders otherwise, a class of creditors having equity claims, — present and voting either in person or by proxy at the meeting or meetings of creditors respectively held under sections 4 and 5, or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court and, if so sanctioned, is binding

(a) on all the creditors or the class of creditors, as the case may be, and on any trustee for that class of creditors, whether secured or unsecured, as the case may be, and on the company; and

(b) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act or is in the course of being wound up under the Winding-up and Restructuring Act, on the trustee in bankruptcy or liquidator and contributories of the company.

Court may order amendment

(2) If a court sanctions a compromise or arrangement, it may order that the debtor's constating instrument be amended in accordance with the compromise or arrangement to reflect any change that may lawfully be made under federal or provincial law.

Restriction — certain Crown claims

(3) Unless Her Majesty agrees otherwise, the court may sanction a compromise or arrangement only if the compromise or arrangement provides for the payment in full to Her Majesty in right of Canada or a province, within six months after court sanction of the compromise or arrangement, of all amounts that were outstanding at the time of the application for an order under section 11 or 11.02 and that are of a kind that could be subject to a demand under

(a) subsection 224(1.2) of the Income Tax Act;

(b) any provision of the Canada Pension Plan or of the Employment Insurance Act that refers to subsection 224(1.2) of the Income Tax Act and provides for the collection of a contribution, as defined in the Canada Pension Plan, an employee's premium, or employer's premium, as defined in the Employment Insurance Act, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or

(c) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the Income 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, and 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 Income 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.

Restriction — default of remittance to Crown

(4) If an order contains a provision authorized by section 11.09, no compromise or arrangement is to be sanctioned by the court if, at the time the court hears the application for sanction, Her Majesty in right of Canada or a province satisfies the court that the company is in default on any remittance of an amount referred to in subsection (3) that became due after the time of the application for an order under section 11.02.

Restriction — employees, etc.

(5) The court may sanction a compromise or an arrangement only if

(a) the compromise or arrangement provides for payment to the employees and former employees of the company, immediately after the court's sanction, of

(i) amounts at least equal to the amounts that they would have been qualified to receive under paragraph 136(1)(d) of the Bankruptcy and Insolvency Act if the company had become bankrupt on the day on which proceedings commenced under this Act, and

(ii) wages, salaries, commissions or compensation for services rendered after proceedings commence under this Act and before the court sanctions the compromise or arrangement, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the company's business during the same period; and

(b) the court is satisfied that the company can and will make the payments as required under paragraph (a).

Restriction — pension plan

(6) If the company participates in a prescribed pension plan for the benefit of its employees, the court may sanction a compromise or an arrangement in respect of the company only if

(a) the compromise or arrangement provides for payment of the following amounts that are unpaid to the fund established for the purpose of the pension plan:

(i) an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund,

(ii) if the prescribed pension plan is regulated by an Act of Parliament,

(A) an amount equal to the normal cost, within the meaning of subsection 2(1) of the Pension Benefits Standards Regulations, 1985, that was required to be paid by the employer to the fund, and

(B) an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the Pension Benefits Standards Act, 1985, and

(iii) in the case of any other prescribed pension plan,

(A) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the Pension Benefits Standards Regulations, 1985, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

(B) an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the

Pension Benefits Standards Act, 1985, if the prescribed plan were regulated by an Act of Parliament; and

(b) the court is satisfied that the company can and will make the payments as required under paragraph (a).

Non-application of subsection (6)

(7) Despite subsection (6), the court may sanction a compromise or arrangement that does not allow for the payment of the amounts referred to in that subsection if it is satisfied that the relevant parties have entered into an agreement, approved by the relevant pension regulator, respecting the payment of those amounts.

Payment — equity claims

(8) No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

Court may give directions

7. Where an alteration or a modification of any compromise or arrangement is proposed at any time after the court has directed a meeting or meetings to be summoned, the meeting or meetings may be adjourned on such term as to notice and otherwise as the court may direct, and those directions may be given after as well as before adjournment of any meeting or meetings, and the court may in its discretion direct that it is not necessary to adjourn any meeting or to convene any further meeting of any class of creditors or shareholders that in the opinion of the court is not adversely affected by the alteration or modification proposed, and any compromise or arrangement so altered or modified may be sanctioned by the court and have effect under section 6.

Schedule “B” – List of Authorities

1. *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp* [2008] O.J. No. 2265 (S.C.J. – Commercial List)
2. *Northland Properties Ltd. v. Excelsior Life Insurance Co. of Canada*, [1989] 3 W.W.R. 363 at 368 (BCCA)
3. *Olympia & York Developments Ltd. v. Royal Trust Co.* [1993] O.J. No. 545 (Ont. Gen. Div.)
4. *Re Cadillac Fairview Inc.*, [1995] O.J. No. 274 (Ont. Gen. Div.)
5. *Re Canadian Airlines Corp.*, 2000 ABQB 442 (Alta Q.B.), leave to appeal refused 2000 ABCA 238, affirmed 2001 ABCA 9, leave to appeal to SCC refused July 12, 2001
6. *Re Muscletech Research and Development Inc.*, [2006] O.J. No. 4087 (S.C.J. – Commercial List)
7. *Re Nortel Networks Corporation*, [2010] O.J. No. 1232 (ON S.C.J. - Commercial List)
8. *Re Sammi Atlas Inc.*, [1998] O.J. No. 1089 (Ont. Gen. Div.)

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 CANWEST
PUBLISHING INC./PUBLICATIONS CANWEST INC., CANWEST BOOKS INC. AND
CANWEST (CANADA) INC.

Court File No: CV-10-8533-00CL

APPLICANTS

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

FACTUM OF THE APPLICANTS
(Re Sanction of the Amended AHC Plan)

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