

**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

**MOTION RECORD
(Returnable May 17, 2010)**

May 10, 2010

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TO: THE SERVICE LIST

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

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

Applicants

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APPLICANTS

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TAB 1

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

**ONTARIO
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APPLICANTS

NOTICE OF MOTION

The Applicants will make a motion to a judge presiding over the Commercial List on May 17, 2010 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR:

1. an Order, substantially in the form attached to the Motion Record (the "**Order Approving the AHC Bid**"):
 - (a) abridging, if necessary, the time for service of this Notice of Motion and the Motion Record and dispensing with service on any person other than those served;
 - (b) authorizing the Canwest Publishing Inc./Publications Canwest Inc., Canwest Books Inc. and Canwest (Canada) Inc. (collectively, the "**Applicants**") and, together with Canwest Limited Partnership/Canwest Societe en Commandite, the "**LP Entities**") to enter into an asset purchase agreement (the "**AHC APA**") with 7535538 Canada Inc. and CW Acquisition Limited Partnership and approving and

confirming the execution, delivery and performance of the AHC APA by the LP Entities;

- (c) approving an amended claims procedure and replacing the Order of this Honourable Court dated April 12, 2010 (the “**Claims Procedure Order**”) with an amended Order (the “**Amended Claims Procedure Order**”);
- (d) authorizing the LP Entities to resume the claims process (the “**LP Claims Process**”) pursuant to paragraph 34 of the Amended Claims Procedure Order; and
- (e) amending the procedures for the sale and investor solicitation process (the “**SISP Procedures**”) to the extent necessary to permit the LP Entities to concurrently take reasonable steps to implement the transaction contemplated by the AHC APA (the “**AHC Transaction**”) and the transaction contemplated by the Acquisition and Assumption Agreement attached as a Schedule to the Support Agreement (as defined in the Initial Order) (the “**Support Transaction**”);

2. an Order (the “**Meeting Order**”) authorizing the LP Entities to call and convene a meeting of unsecured creditor (the “**Meeting of Unsecured Creditors**”) on June 10, 2010 for the purposes of a vote on a plan of compromise or arrangement with certain unsecured creditors of the LP Entities (the “**AHC Plan**”) and establishing the procedures for the call and conduct of the Meeting of Unsecured Creditors;

3. an Order (the “**Credit Bid Sanction Order**”), substantially in the form attached as Tab 5 to the Motion Record of the Applicants, conditionally sanctioning the Senior Lenders’ CCAA Plan; and

4. such further and other Orders as counsel may request and this Honourable Court may permit.

THE GROUNDS FOR THIS MOTION ARE:

5. The Applicants were granted protection from their creditors 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 dated January 8, 2010;

6. FTI Consulting Canada Inc. was appointed as monitor (the “Monitor”) of the LP Entities pursuant to the Initial Order;
7. The Initial Order accepted for filing a plan of compromise or arrangement with the LP Entities’ Senior Lenders (the “**Senior Lenders’ CCAA Plan**”) the basis for which was the Support Transaction, pursuant to which the Senior Lenders would acquire the business of the LP Entities in satisfaction of all amounts outstanding to the Senior Lenders;
8. The Initial Order authorized the LP Entities to file a plan of compromise or arrangement with their Senior Lenders (as defined in the Initial Order) (the “**Senior Lenders’ CCAA Plan**”), and authorized the LP Entities to file other plans of compromise or arrangement (each an “**LP Plan**”) between the LP Entities and one or more classes of their secured or unsecured creditors upon further Order of the Court;
9. The Initial Order also authorized the LP Entities to commence a sale and investor solicitation process (the “**SISP**”) to be conducted in two phases: Phase 1, in which the LP Entities would seek non-binding indications of interest for the acquisition of, or an investment in, the LP Entities; and Phase 2, in which the LP Entities would seek bids for the acquisition of, or an investment in, the LP Entities;
10. The objective of the SISP was to obtain an offer that was superior to the terms of the Support Transaction (a “**Superior Offer**”).

The SISP and Approval of the AHC Bid

11. On January 11, 2010, RBC Capital Markets (the “**Financial Advisor**”) commenced the SISP under the supervision of the Monitor and pursuant to the SISP Procedures;
12. On April 30, 2010, the Financial Advisor and the Monitor received offers from three Qualified Bidders (as defined in the SISP Procedures);
13. The Monitor determined, in consultation with the Financial Advisor and the LP CRA, that the offer (the “**AHC Bid**”) received from the ad hoc committee of holders of 9.25% senior subordinated notes issued by Canwest Limited Partnership (the “**Ad Hoc Committee**”)

was a Superior Cash Offer (as defined in the SISP Procedures) and that neither of the other bids received was a Superior Offer;

14. The material terms of the AHC Bid are contained in an asset purchase agreement (the AHC APA) which contemplates that 7535538 Canada Inc will effect a transaction through which CW Acquisition Limited Partnership ("**Opco LP**") will acquire substantially all of the financial and operating assets of the LP Entities and the shares of National Post Inc. for an effective purchase price totalling \$1.1 billion. At closing, Opco LP will offer employment to substantially all of the employees of the LP Entities and assume all pension and benefit obligations associated with the employees that will be employed by Opco LP;

15. The AHC Bid will allow for a full pay-out of the debt owed by the LP Entities to the Senior Lenders under the LP Credit Agreement and provides an additional \$150 million in value that will be available to provide realization to the unsecured creditors of the LP Entities;

16. The Monitor, in consultation with the Financial Advisor and the LP CRA, has determined that the AHC Bid is a credible, reasonably certain and financially viable offer.

17. On May 10, 2010, the Monitor made a recommendation (the "**Superior Cash Offer Recommendation**") to the Special Committee of the Board of Directors of Canwest Global Communications Corp. (the "**Special Committee**") that the AHC Bid be selected and that a definitive agreement be negotiated and settled in respect of the AHC Bid;

18. The Special Committee has accepted the Monitor's Superior Cash Offer Recommendation;

Conditional Sanction of the Senior Lenders' CCAA Plan and Concurrent Pursuit of the Support Transaction

19. The Support Agreement entered into by the Senior Lenders and the LP Entities in connection with the Support Transaction can be terminated if the LP Entities do not obtain an Order sanctioning the Senior Lenders' CCAA Plan before May 17, 2010;

20. If for any reason AHC Transaction does not close, in circumstances where the Support Transaction was also not available, the LP Entities' restructuring could be significantly adversely affected;
21. The LP Entities have determined that it is prudent to preserve the option to proceed with the Support Transaction pending implementation of the AHC Transaction;
22. The LP Entities, the Monitor, the LP CRA and the Financial Advisor have been negotiating terms for the concurrent pursuit of the AHC Transaction and the Support Transaction with counsel to the Ad Hoc Committee and the LP Administrative Agent;
23. The material terms of the Monitor's proposal relating to this dual track approach are contained in a letter dated May 7, 2010 from counsel to the Monitor to counsel to the LP Administrative Agent and counsel to the Ad Hoc Committee (the "**Monitor's Letter**"), and contemplate that:
- (a) the sanction and approval of the Senior Lenders' CCAA Plan will be conditional and not effective until and unless the Monitor delivers to counsel to the LP Administrative Agent, the LP Entities and the Ad Hoc Committee a certificate (the "**Monitor's Credit Bid Sanction Certificate**") on the terms set out in the Monitor's Letter advising that in the Monitor's reasonable business judgement, the AHC Transaction will not close;
 - (b) The Monitor's Credit Bid Sanction Certificate cannot be delivered until July 29, 2010 or upon four business days' advance notice to the LP Administrative Agent, the LP Entities and the Ad Hoc Committee;
 - (c) In the event that the AHC Transaction closes prior to the delivery of the Monitor's Credit Bid Sanction Certificate, the Credit Bid Sanction Order will be of no force or effect; and
 - (d) In the event that the Monitor's Credit Bid Sanction certificate is delivered and filed, the LP Entities will proceed with the implementation of the Support Transaction;
24. The proposed Credit Bid Sanction Order is consistent with the proposal outlined in the Monitor's Letter;
25. The concurrent approval of the AHC Bid and conditional sanction of the Senior Lenders' CCAA Plan does not cause material prejudice to either the Ad Hoc Committee or the Senior Lenders;

Amendments to the Claims Procedure Order

26. The AHC Transaction would be implemented pursuant to a plan of compromise or arrangement with certain unsecured creditors of the LP Entities (the “AHC Plan”);

27. In order to permit certain additional unsecured creditors to vote on and participate in a distribution under the AHC Plan, the LP Entities propose to amend the Claims Procedure Order to include certain additional claims against the LP Entities;

28. The LP Entities also seek to amend the Claims Procedure Order to provide for the determination of the *pro rata* claims of the individual LP Subordinated Lenders and LP Noteholders;

29. The proposed amendments to the Claims Procedure Order are necessary for the effective implementation of the AHC Plan, and are fair and appropriate in the circumstances;

Amendment to the SISP Procedures

30. The SISP Procedures do not expressly permit the LP Entities to simultaneously pursue the AHC Transaction and the Support Transaction;

31. The SISP Procedures also contemplate that a Superior Cash Offer would close on or before June 30, 2010;

32. The LP Entities believe that it is prudent to move forward with the AHC Transaction and concurrently take steps toward implementation of the Support Transaction to protect against the possibility that the AHC Transaction will not close;

33. The LP Entities will proceed as expeditiously as possibly toward implementation of the AHC Transaction but in their best estimate the AHC Transaction will not close until well into July, 2010;

34. The LP Entities believe that the SISP Procedures should be amended to clarify that the AHC Transaction and the Support Transaction may be pursued concurrently and to extend the deadline for the closing of the AHC Transaction;

Meeting Order

35. The LP Entities intend to call a meeting of creditors (the “**Meeting of Unsecured Creditors**”) whose claims will be affected by the AHC Plan (the “**Affected Creditors**”) on June 10, 2010;

36. Only Affected Creditors will be entitled to attend or vote at the Meeting of Unsecured Creditors;

37. In advance of the meeting, it is necessary to establish the procedures for the calling and conduct of the meeting including, among other things, classification of creditors, proxies, the call for a vote, the required majority and the effect of the vote;

38. It is just and convenient and in the interests of the LP Entities and their stakeholders that the requested Orders be granted;

39. This motion is supported by the Monitor and the LP CRA;

40. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;

41. Rules 1.04, 1.05, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

42. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

43. The Affidavit of Douglas E.J. Lamb, sworn May 10, 2010, and the exhibits thereto;

44. The Seventh Report of the Monitor, to be filed by the Monitor; and

45. Such further and other materials as counsel may advise and this Honourable Court may permit.

May 10, 2010

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APPLICANTS

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Proceeding commenced at Toronto

NOTICE OF MOTION

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TAB 2

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

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**AFFIDAVIT OF DOUGLAS E.J. LAMB
(Sworn May 10, 2010)**

I, Douglas E.J. Lamb, of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am a senior employee of Canwest Publishing Inc./Publications Canwest Inc. (“**CPI**”). My principal areas of responsibility include the finance and accounting functions within the LP Entities. In that capacity, I have been closely involved in the efforts to restructure the LP Entities, and have been heavily involved with the SISP, including attending management presentations given to prospective bidders and assisting in the preparation of financial information regarding the LP Entities (all as described below). As such, I have personal knowledge of the matters deposed to herein. Where I have relied upon other sources for information, I have specifically referred to such sources and verily believe them to be true. In preparing this Affidavit, where necessary I have also consulted with other members of Canwest Global Communication Corp. (“**Canwest Global**”)’s senior management team and members of the senior management teams of the Applicants and Canwest Limited Partnership/Canwest Societe en Commandite (the “**Limited Partnership**”).

2. Capitalized terms not defined in this affidavit are as defined in the affidavit of Thomas C. Strike sworn January 7, 2010 (the “**Initial Order Affidavit**”). A copy of the Initial Order Affidavit (without exhibits) is attached as Exhibit “A” to this Affidavit.

3. As described in greater detail in the Initial Order Affidavit, the LP Entities were significantly adversely affected by the economic downturn in Canada in 2008 and 2009. This led, in due course, to the LP Entities defaulting on their senior secured credit facilities and entering into protracted and difficult negotiations to bring about a consensual court-supervised restructuring under the CCAA.

4. On January 8, 2010, CPI, Canwest Books Inc. and Canwest (Canada) Inc. were granted protection under the CCAA pursuant to the Initial Order. The Initial Order also extended relief to the Limited Partnership. A copy of the Initial Order (without schedules) is attached as Exhibit "B" to this Affidavit.

5. The Initial Order contemplated a Support Transaction pursuant to which the LP Entities' senior lenders would acquire substantially all of the assets and certain of the liabilities of the LP Entities. It also required the LP Entities to carry out a robust sales and investor solicitation process (the SISP) to seek Superior Offers as defined in the SISP: that is, broadly, offers for the acquisition or recapitalization of substantially all of their assets that are superior to the Support Transaction.

6. Throughout the months leading up to the Initial Order, and in the period that has followed, the LP Entities have dedicated themselves to securing the best available going concern outcome for the business, in the interests of all of the stakeholders of the LP Entities. Thanks to the unwavering efforts of the LP Entities, the LP CRA, the Monitor and the Financial Advisor in carrying out the SISP, the LP Entities believe they have elicited an offer that represents exactly that.

7. The Financial Advisor received three bids from Qualified Bidders on the Phase 2 Bid Deadline. The Monitor, in consultation with the Financial Advisor and the LP CRA, determined that the bid by the *ad hoc* committee (the "**Ad Hoc Committee**") of holders of 9.25% senior subordinated notes (the "**LP Noteholders**") issued by the Limited Partnership (the "**AHC Bid**") is a Superior Cash Offer. Neither of the other bids was a Superior Offer. Accordingly, in accordance with the terms of the SISP Procedures, the Monitor has recommended that the AHC Bid be selected and a definitive agreement be negotiated and settled to carry out the transactions contemplated by the AHC Bid (the "**AHC Transaction**"). This recommendation is supported by the Financial Advisor and the LP CRA.

8. The AHC Transaction, the material terms of which are contained in an asset purchase agreement (the “**AHC APA**”), contemplates that 7535538 Canada Inc. (“**Holdco**”) will effect a transaction through a new limited partnership (CW Acquisition Limited Partnership or “**Opco LP**”) in which it will acquire substantially all of the financial and operating assets of the LP Entities and the shares of National Post Inc. and assume certain specified liabilities of the LP Entities for an effective purchase price totalling \$1.1 billion, as described below. At closing, Opco LP will offer employment to substantially all of the employees of the LP Entities and will assume all of the pension liabilities and other benefits for employees of the LP Entities that will be employed by Opco LP, as well as for retirees currently covered by registered pension plans or other benefit plans. The materials submitted with the AHC Bid indicate that Opco LP will continue to operate all of the businesses of the LP Entities in substantially the same manner as they are currently operated, with no immediate plans to discontinue operations, sell material assets or make significant changes to current management. The AHC Bid will also allow for a full pay-out of the debt owed by the LP Entities to the LP Secured Lenders under the LP Credit Agreement and the Hedging Creditors (as defined below) and provides an additional \$150 million in value which will be available to provide realization for the unsecured creditors of the LP Entities and may ultimately include up to 45% of the equity of Holdco.

9. The LP Entities are firmly of the view that the AHC Transaction represents the best available outcome for the business. It will provide stability for employees, retirees, suppliers and other stakeholders. It will also provide significant value for unsecured creditors, which is not available under either the Support Transaction or the other bids received during the SISP, and includes a full recovery for the smallest creditors of the LP Entities; unsecured creditors with proven claims equal to or less than \$1,000 will be paid the amount of their proven claim in cash. For the reasons set out herein, the Special Committee has accepted the Monitor’s recommendation. The LP Entities are therefore seeking authorization to enter into the AHC APA and carry out the AHC Transaction, which is (if approved) presently targeted to close on July 15, 2010.

10. At the same time, the LP Entities recognize that it would be helpful if they could continue to benefit from the stability afforded by the Support Agreement, including maintaining the ability to pursue the Support Transaction in the event that the AHC Transaction is unable to close for whatever reason. Accordingly, the LP Entities are also seeking conditional sanction of

the Senior Lenders' CCAA Plan (the basis of which is the Support Transaction) but on terms that will not undermine the ability of the LP Entities to pursue the more desirable AHC Transaction. The LP Entities intend to work diligently to implement the AHC Transaction while concurrently attempting to remain in compliance with the Support Agreement, including pursuing such steps as are required to effect the Support Transaction to the extent that they do not detract from the closing of the AHC Transaction.

11. I am swearing this affidavit in support of the motion brought by the Applicants seeking three Orders:

- (a) the first Order (the "**Order Approving the AHC Bid**") authorizing the LP Entities to enter into the AHC APA and approving and confirming the execution, delivery and performance of the AHC APA by the LP Entities, amending certain provisions the Order of this Honourable Court dated April 12, 2010 (the "**Claims Procedure Order**") relating to claims arising during the restructuring period and claims against the directors and officers of the LP Entities and amending the Procedures for the Sale and Investor Solicitation Process (as amended, the "**SISP Procedures**");
- (b) the second Order (the "**Meeting Order**") establishing procedures relating to a meeting of unsecured creditors convened for the purpose of a vote on the AHC Plan; and
- (c) the third Order (the "**Credit Bid Sanction Order**") conditionally sanctioning the Senior Lenders' CCAA Plan on the terms described below and in the Monitor's Seventh Report.

12. I am advised that the Monitor and the LP CRA support this motion.

Background and the SISP

The Support Transaction and the CCAA Filing

13. As described in greater detail in the Initial Order Affidavit, the LP Entities were significantly adversely affected by the economic downturn in Canada in 2008 and 2009. General declines in advertising revenues and increases in certain operating costs led the LP Entities on

May 29, 2009 to fail for the first time to make certain interest and principal reduction payments and related interest and cross-currency swap payments owed to their Senior Lenders (which include the LP Secured Lenders and various counterparties to certain foreign currency and interest rate swap agreements with the LP Entities (the “**Hedging Creditors**”) whose obligations rank *pari passu* to the Claims of the LP Secured Lenders). Subsequent defaults occurred under the LP Credit Agreement as well as under the LP Senior Subordinated Credit Agreement and the LP Note Indenture.

14. On or around August 31, 2009, the Limited Partnership and certain of the LP Secured Lenders entered into the Forbearance Agreement, which was intended to provide the Limited Partnership, the LP Guarantors and the LP Secured Lenders with an opportunity to negotiate a pre-packaged restructuring or reorganization of the affairs of the LP Entities. After months of intensive negotiations, the LP Entities and the Senior Lenders agreed on the terms of the Support Transaction. The terms of the Support Transaction contemplated that, subject to Court approval and a Superior Offer in the SISP, the Senior Lenders would acquire substantially all of the assets the LP Entities in full satisfaction of the outstanding debt owed by the LP Entities to the Senior Lenders. On January 7, 2010, the LP Entities and the LP Administrative Agent entered into the Support Agreement, which set forth the terms of certain agreements and arrangements relating to the Support Transaction. Under the terms of the Support Agreement, the LP Entities agreed to, among other things: (i) commence a CCAA proceeding; (ii) use commercially reasonable efforts to implement the Support Transaction; and (iii) commence the SISP with the objective of obtaining a Superior Offer than the Support Transaction.

15. Subject to Court approval and a Superior Offer in the SISP, the Support Transaction was to be implemented pursuant to the Senior Lenders’ CCAA Plan, whose terms of implementation were contained in the Acquisition and Assumption Agreement. The Support Agreement and the Senior Lenders’ CCAA Plan both contemplate the possibility that a Superior Offer would be obtained in the SISP and pursued by the LP Entities as an alternative to the Support Transaction. As such, the Support Transaction was similar to a “stalking horse” bid.

16. As part of their initial application for protection under the CCAA, the LP Entities sought Court authorization to file the Senior Lenders’ CCAA Plan, the basis for which was the Support Transaction. Pursuant to the Initial Order, the Senior Lenders’ CCAA Plan was accepted

for filing. The Initial Order also authorized the LP Entities to commence the SISP. As noted in the Initial Order Affidavit, implementation of the Support Transaction was subject to the identification of a Superior Offer in the SISP.

The Conduct of the SISP

17. On January 11, 2010, the Financial Advisor and the LP Entities commenced the SISP under the supervision of the Monitor on the terms set out in the SISP Procedures. A copy of the SISP Procedures, as amended by the Order of this Honourable Court dated February 2, 2010, is attached as Exhibit "C" to this Affidavit.

18. The SISP was conducted in two phases. In Phase 1, the Financial Advisor contacted strategic and financial parties about investing in and/or acquiring all or substantially all of the assets of the LP Entities. Prior to the Phase 1 Bid Deadline, a total of 38 strategic and financial parties executed confidentiality agreements and were provided with copies of a confidential information memorandum containing detailed, non-public information about the businesses and financial affairs of the LP Entities and National Post Inc. Confidentiality agreements were also executed by five lenders in connection with a potential single bid. Potential bidders were required to submit Non-Binding Indications of Interest prior to the Phase 1 bid deadline on March 5, 2010 (the "**Phase 1 Bid Deadline**").

19. By March 5, 2010, the Financial Advisor received ten Non-Binding Indications of Interest (as defined in the SISP Procedures). Of the ten, six Non-Binding Indications of Interest contemplated an acquisition of or investment in all of the businesses of the LP Entities, and four Non-Binding Indications of Interest were for individual assets of the LP Entities.

20. Following the Phase 1 Bid Deadline, the Monitor, in consultation with the Financial Advisor, the LP CRA and the LP Administrative Agent, reviewed the Non-Binding Indications of Interest pursuant to the terms of the SISP Procedures. As reported in the Fourth Report of the Monitor dated March 12, 2010, the Monitor then determined that there was a reasonable prospect of obtaining a credible, reasonably certain and financially viable offer that would result in a cash distribution to the LP Secured Lenders on closing of the amount owed to them less a discount of \$25 million (a "**Superior Cash Offer**"). Accordingly, the Monitor recommended to the Special Committee that the SISP continue to Phase 2 for a further seven

weeks. The Special Committee accepted the Monitor's recommendation, and Phase 2 of the SISP commenced on March 12, 2010.

21. During Phase 2 of the SISP, Qualified Bidders (or their authorized representatives) that had not been eliminated from the SISP at the recommendation of the Monitor were granted access to an electronic data room. The LP Entities also prepared and conducted numerous management presentations in which senior management provided Qualified Bidders or their authorized representatives with more extensive insight into the businesses of the LP Entities. During this period, the LP Entities fielded and responded to hundreds of specific due diligence questions and requests from the Qualified Bidders and conducted numerous site visits. In order to facilitate an "apples to apples" comparison with the Support Transaction, those interested in making Qualified Purchase Bids were provided with a form of Purchase Agreement which was based on the Acquisition and Assumption Agreement contemplated by the Support Transaction, and asked to provide a blacklined version along with their bid. Qualified Bidders were required to deliver final, binding proposals to the Financial Advisor on or before April 30, 2010 (the "**Phase 2 Bid Deadline**").

22. Pursuant to the SISP Procedures, subject to the ability of the Monitor to waive strict compliance, a bid received prior to the Phase 2 Bid Deadline had to fulfill certain requirements in order to be considered a Qualified Bid. Specifically, a Qualified Purchase Bid had to, among other things:

- (a) be irrevocable for thirty days following the Phase 2 Bid Deadline;
- (b) include a duly authorized and executed purchase agreement (including exhibits and schedules);
- (c) include evidence of a firm, irrevocable financing commitment;
- (d) not be conditional on financing or further due diligence;
- (e) fully disclose the identity of all participating entities;
- (f) contain an acknowledgment that the bidder has relied solely on its independent review and investigation and did not rely on any oral statements or

representations regarding the assets except as expressly stated in purchase agreements submitted by bidders;

- (g) include evidence of approval from the bidder's board of directors or governing body;
- (h) be accompanied by a refundable deposit in the amount of \$10 million; and
- (i) contain full detail of the proposed number of employees that will be offered employment by the bidder and identify any pension liabilities or assets that the bidder intends to assume.

23. Similarly, in order to be considered a Qualified Investment Bid, a bid was required to, among other things:

- (a) include a duly authorized and executed term sheet;
- (b) be irrevocable for 30 days following the Phase 2 Bid Deadline;
- (c) include evidence of a firm, irrevocable financing commitment;
- (d) not be conditional on financing or further due diligence;
- (e) fully disclose the identity of all participating entities;
- (f) contain and acknowledgment that the bidder has relied solely on its independent review and investigation and not on any oral statements or representations regarding the assets;
- (g) include evidence of approval from the bidder's board of directors or governing body; and
- (h) be accompanied by a refundable deposit in the amount of \$10 million.

The Evaluation of the Qualified Bids

24. The SISP attracted considerable interest at Phase 1, and the selected Qualified Bidders had approximately three and a half months in which to evaluate the opportunity

presented by the SISP. Bidders were advised that their offers should represent their final and best offer with respect to a Qualified Purchase Bid or a Qualified Investment Bid.

25. The Financial Advisor received three bids before the Phase 2 Bid Deadline as well as a letter from a Qualified Bidder indicating an inability to submit a bid in compliance with the terms of the SISP Procedures. Two of the bids contemplated purchase of the businesses of the LP Entities and one of the bids contemplated an investment in the LP Entities. Two of the bids, including the AHC Bid, were Qualified Bids.

26. In the days immediately following the Phase 2 Bid Deadline, the Monitor, in consultation with the Financial Advisor and the LP CRA, conducted an in-depth analysis of the material aspects of each of the Qualified Bids to determine which if any of them were Superior Offers. Particular attention was paid to terms relating to purchase price, financing and structure, excluded assets and excluded liabilities, treatment of employees and pension obligations, tax issues, material representations and warranties, regulatory issues, covenants, conditions, material closing risks and time to closing. Based on this analysis, the Monitor, in consultation with the Financial Advisor, determined that the AHC Bid was a Superior Cash Offer and the only Superior Offer received.

27. On May 10, 2010, the Monitor made a recommendation to the Special Committee that the LP Entities pursue the AHC Transaction (the “**Superior Cash Offer Recommendation**”). The Superior Cash Offer Recommendation was supported by the Financial Advisor and the LP CRA. The Special Committee accepted the Superior Cash Offer Recommendation.

28. Over the course of the past week, the LP Entities and the Ad Hoc Committee have negotiated amendments to the version of the AHC APA that was submitted by the Ad Hoc Committee as part of the AHC Bid. A copy of the AHC APA is attached as Exhibit “D” to this Affidavit.

29. Pursuant to the AHC APA, Opco LP will acquire substantially all of the financial and operating assets of the LP Entities and the shares of National Post Inc. on an as-is-where is basis for a total effective purchase price of approximately \$1.1 billion (the “**Purchase Price**”). The APA also provides that Holdco will issue shares as additional consideration that will be

available for distribution to the unsecured creditors of the LP Entities. The materials submitted with the AHC Bid indicate that Opco LP will continue to operate the businesses of the LP Entities in substantially the same manner as they are currently operated: at present, there are no plans to divest or discontinue operations or to sell assets or change management.

Acquiring Entity

30. Pursuant to the AHC APA, Holdco will effect the acquisition of the financial and operating assets of the LP Entities through Opco LP. Holdco will own all of the limited partnership interests in Opco LP, and a wholly-owned subsidiary of Holdco will be the general partner of Opco LP.

Purchase Price and Financing

31. The Purchase Price will consist of:

- (a) A cash amount equal to the sum of the Senior Secured Claims Amount (as defined in the AHC APA) as at the Acquisition Date (as defined below) and the DIP Claims Amount (as defined in the AHC APA) as at the Acquisition Date;
- (b) A promissory note in the principal amount of \$150 million (less the amount of cash paid out to the unsecured creditors who elect to receive a cash payment as described below), which will be exchanged immediately after closing for up to 45% of the common shares of Holdco (the “**Holdco Common Shares**”) (as described in greater detail below); and
- (c) The assumption by Opco LP of certain liabilities of the LP Entities.

32. The Ad Hoc Committee has indicated in its bid materials that Holdco has received commitments for \$950 million of funded debt and equity financing to finance the AHC Bid. This amount will include: (i) \$700 million of new senior funded debt to be raised by Opco LP and secured by the acquired assets and shares and assets of subsidiaries; and (ii) \$250 million of mezzanine debt and equity to be raised, including from the current members of the Ad Hoc Committee. The AHC Bid includes letters from reputable financial institutions indicating firm commitments to raise the \$700 million of senior debt financing within the timeframe contemplated by the AHC Bid.

Acquired Assets and Assumed Liabilities

33. The AHC APA provides that Opco LP will purchase substantially all of the financial and operating assets of the LP Entities as well as the shares of National Post Inc. and the outstanding indebtedness owed by National Post Inc. to the LP Entities. Opco LP will also assume substantially all of the operating liabilities of the LP Entities, including liabilities to substantially all active employees and obligations under pension plans, as well as obligations of the LP Entities under those contracts and leases that are identified in schedules to the AHC APA.

Excluded Assets and Liabilities

34. The AHC APA provides that certain assets and liabilities will not be acquired or assumed by Opco LP and will remain the property of the LP Entities. Although the vast majority of the assets of the LP Entities will be acquired, Opco LP will not be acquiring, among other things, the following assets (the “**Excluded Assets**”): (i) avoidance claims; (ii) corporate records; (iii) certain lease agreements; (iv) the LP Indenture, the LP Credit Agreement, the LP Senior Subordinated Credit Agreement, the LP DIP Facility and the Support Agreement; and (v) agreements that have been disclaimed or resiliated by the LP Entities.

35. The liabilities to be excluded under the AHC APA (the “**Excluded Liabilities**”) include (but are not limited to):

- (a) liabilities relating to the Excluded Assets;
- (b) Restructuring Period Claims as defined in the Claims Procedure Order made in this proceeding dated April 12, 2010 (“**Restructuring Period Claims**”);
- (c) all liabilities incurred by the LP Entities or arising out of events or circumstances that occurred or existed prior to January 8, 2010 except those expressly assumed (the “**Prefiling Liabilities**”);
- (d) existing indebtedness, including under the LP Credit Agreement, the LP Senior Subordinated Credit Agreement and the LP Note Indenture;
- (e) prior ranking secured claims;
- (f) administrative reserve costs;

- (g) liabilities under any of the charges in the Initial Order;
- (h) all liabilities for taxes payable or remittable by the LP Entities, other than transfer taxes payable in relation to the contemplated transaction;
- (i) certain employee-related liabilities, including all liabilities relating to employees other than those that are transferred to Opco LP pursuant to the AHC APA, and liabilities under the Southam Executive Retirement Arrangements (the “SERAs”);
- (j) liabilities under material contracts that are not being assumed;
- (k) litigation liabilities;
- (l) encumbrances other than permitted encumbrances; and
- (m) generally, inter-company liabilities between and among the LP Entities and the CMI Entities.

Employee and Pension Issues

36. The AHC APA provides that effective as of the closing date of the transaction (the “**Acquisition Date**”), Opco LP will offer employment to all substantially all employees of the LP Entities on the following terms:

- (a) in respect of all unionized employees whose collective agreement is in force (or is expired but is in effect by operation of law), on the terms and conditions provided for in the collective agreement or expired collective agreement, as applicable; and
- (b) in respect of all other employees, on substantially similar terms and conditions as their then-existing employment immediately prior to the Acquisition Date, subject to the option, exercisable on or before May 30, 2010, to not offer employment to up to ten percent of the non-unionized part-time or temporary employees employed by the LP Entities.

37. The AHC APA also provides that Opco LP will assume all pension liabilities and other benefits for employees of the LP Entities that will be employed by Opco LP after the Acquisition Date and retirees currently covered by registered pension plans or other benefit plans.

38. Of particular importance to the LP Entities, the AHC APA does not include a provision that would allow Opco LP to elect not to assume pension plans, benefit plans or other employee obligations.

Other Material Provisions and Conditions

39. Pursuant to the AHC APA, the AHC APA may be terminated if the Acquisition Date is not on or before August 15, 2010. The third party debt financing commitments expire on July 15, 2010.

40. The AHC Bid is not conditional on financing or the performance of additional due diligence and is irrevocable until the earlier of: (i) the selection of the Successful Bid; and (ii) 30 days after the Phase 2 Bid Deadline.

41. The AHC Bid contains certain assumptions and conditions, including assumptions relating to the LP Entities' cash on hand at closing and the DIP Claims Amount. I am advised that the LP Entities, the Monitor and the Financial Advisor have reviewed the conditions and assumptions and believe that they are not likely to present any serious impediment to consummation of the AHC APA.

Acceptance of the Superior Cash Offer Recommendation

42. I understand that the Monitor, in its reasonable business judgement and in consultation with the Financial Advisor and the LP CRA, has determined that the AHC Bid is a Superior Cash Offer, which is defined as a credible, reasonably certain and financially viable bid that would result in a cash distribution to the Senior Lenders on closing of the "Reference Amount" (as defined in the SISP). In fact, the proposed cash distribution to the Senior Lenders under the AHC Bid is greater than the Reference Amount. The Monitor, the Financial Advisor and the LP CRA also determined that neither of the other bids presented by the Phase 2 Bid Deadline was a Superior Cash Offer. On that basis, the Monitor made the Superior Cash Offer Recommendation that the Special Committee pursue the AHC Transaction. The Superior Cash Offer Recommendation was supported by the Financial Advisor and the LP CRA.

43. The AHC Transaction has many of the same key features as the Support Transaction. It will preserve substantially all of the business of the LP Entities to the benefit of the LP Entities' suppliers and the millions of people who rely on LP Entity publications every

day. The AHC Transaction also preserves the employment of substantially all of the LP Entities' current employees, as well as largely protecting the interests of former employees and retirees.

44. The most significant difference between the AHC Transaction and the Support Transaction is that the AHC Transaction will provide for significant recoveries for unsecured creditors of the LP Entities. The AHC Bid contemplates that the AHC Transaction will be implemented through a plan of compromise or arrangement with LP Entities' unsecured creditors (as further described below, the "**AHC Plan**"). Pursuant to the proposed AHC Plan, if it is approved and sanctioned, unsecured creditors with claims of less than \$1,000 that have been proven ("**Proven Claims**") in the LP Claims Process (as defined below) will receive the value of their Proven Claims (up to \$1,000) in cash. Unsecured creditors with Proven Claims greater than \$1,000 will have the option of receiving either \$1,000 in cash or an amount of Holdco Common Shares calculated by reference to the value of the Proven Claim. The total amount available for distribution, in cash or shares, is \$150 million.

45. Also, the Support Transaction gives Acquireco, acting commercially reasonably, the option not to assume certain pension or employee benefit obligations. The AHC APA does not contain the same "optionality". Although the LP Administrative Agent has indicated, including in Court on numerous occasions, that it is not likely to exercise this option, the Monitor and the Financial Advisor considered the absence of optionality to be a factor in favour of the AHC Bid.

46. The LP Entities believe that the SISP was successful. It encouraged as many credible potential bidders as possible to come forward, and it gave potential bidders a long period to conduct meaningful due diligence with the full cooperation and assistance of the LP Entities, the Monitor and the Financial Advisor. Bidders were advised to put their best offer forward, and the LP Entities have every reason to believe that they did so.

47. For all of these reasons the LP Entities believe that the AHC Bid represents the best available outcome for the LP Entities. Accordingly, the Special Committee, after consulting with the LP CRA, the Financial Advisor and the Monitor, accepted the Monitor's recommendation. The LP Entities are committed to working to complete the AHC Transaction in an expeditious manner.

Concurrent Sanction of the Senior Lenders' CCAA Plan

48. The business carried on by the LP Entities is complicated: as set out in the Initial Order Affidavit, the LP Entities have a complex structure and operations across Canada. Many weeks' worth of very hard work will be required between the approval of the AHC APA (if granted) and closing of the AHC Transaction. The Monitor, the LP CRA and the Financial Advisor considered closing risks associated with the AHC Bid and concluded that the AHC Bid is credible, reasonably certain and financially viable. The LP Entities agree with that assessment.

49. However, the LP Entities also feel that they would continue to benefit from the stability provided by the Support Agreement during the period prior to closing and will benefit in particular from having the Support Transaction available if for some reason the AHC Transaction is unable to close. Although the closing risks associated with the AHC Transaction are not out of the ordinary, the consequences to the LP Entities of a non-closing of the AHC Transaction without a Support Transaction backstop should be avoided if reasonably possible.

50. The Support Agreement provides that it may be terminated if the LP Entities do not obtain an Order sanctioning the Senior Lenders' CCAA Plan before May 15, 2010. Pursuant to the terms of the Support Agreement, this deadline is effectively May 17, 2010 because May 15 is a Saturday. In order to preserve the option to pursue the Support Transaction if the AHC Transaction cannot be implemented, as part of this motion the LP Entities are also seeking conditional sanction of the Senior Lenders' CCAA Plan on the terms set out in the Monitor's letter described below.

51. The LP Entities believe that simultaneously advancing the AHC Transaction and the Support Transaction, on certain conditions, does not cause material prejudice to any of the affected parties, and is the best way to secure a going concern outcome for the businesses of the LP Entities. The Support Agreement and the Senior Lenders' CCAA Plan, as well as the SISP Procedures, contemplate that the LP Entities will pursue a Superior Cash Offer to the extent that one is received. This has always been the agreement and understanding of the LP Entities and the Senior Lenders, and the Senior Lenders will receive a full cash pay-out of all amounts outstanding under the LP Credit Agreement if the AHC Transaction is implemented. It should also be noted that the interest obligations to the Senior Lenders are being paid on a current basis,

as are the professional fees for counsel and a financial advisor to counsel for the LP Administrative Agent. Furthermore, the successful outcome of the SISP and the identification of a Superior Cash Offer with a Purchase Price that materially exceeds the value of the Support Transaction can be credited to a number of factors including the hard work and efforts of management, the Monitor and the Financial Advisor and the performance of the company in the months since filing for CCAA protection. Since January 8, 2010, the financial performance of the LP Entities has improved. On January 8, 2010 the LP Entities' had cash on hand of approximately \$40 million. They currently have cash on hand of approximately \$103.8 million. The improvement in cash is the result of several factors including seasonality, the fact that the filing had less of an impact on sales and supplier credit terms than expected and better than forecast financial results. The recent financial performance of the LP Entities makes it even less likely that the dual track will cause prejudice to the Senior Lenders: if the AHC Transaction closes, the Senior Lenders will be paid in full; if the AHC Transaction is not implemented, the LP Entities will proceed with the Support Transaction immediately. In my view, it is highly unlikely that such a delay would have a material impact on the value of the assets and businesses of the LP Entities.

52. In respect of the Ad Hoc Committee, the LP Entities intend to use good faith commercially reasonable efforts to consummate the AHC Transaction. It is only in the event that the AHC Transaction is not implemented that the LP Entities will proceed with the Support Transaction. The LP Entities are highly motivated to close the AHC Transaction because of its superior terms. However, in the view of the LP Entities, the prudent course is to leave open the prospect of closing the Support Transaction if the AHC Transaction fails to close for any reason. The LP Entities are therefore moving, consistent with the Monitor's recommendation, to obtain an Order conditionally sanctioning the Senior Lenders' CCAA Plan on the terms set out in the Monitor's letter dated May 7, 2010.

53. Going forward, the LP Entities intend to advance the AHC Transaction and the Support Transaction on parallel tracks until either (i) the Acquisition Date (under the AHC APA); (ii) it becomes apparent that the AHC Transaction cannot be implemented. This strategy has the advantage of allowing the LP Entities to pursue the highest value bid while maintaining the option to fall back on the Support Transaction. In either event, the LP Entities will have secured a going concern outcome for their businesses and stakeholders.

54. The implementation of the AHC Transaction and the Support Transaction will be time-consuming and will require significant dedication by the management and employees of the LP Entities and their advisors. Even under the most favourable circumstances, it is the best estimate of the LP Entities that the AHC Transaction will not close before well into July because of all of the steps required to consummate the sale of such a large and complex business. It is the intention of the LP Entities to give priority, in terms of management time and attention, to the closing of the AHC Transaction because it holds more value for the LP Entities and their stakeholders. The LP Entities will, of course, concurrently use reasonable efforts to advance the Support Transaction so that they will be in a position to close the Support Transaction if the AHC Transaction does not close for any reason.

The Senior Lenders' CCAA Plan

55. As part of the initial application for protection under the CCAA the LP Entities obtained authorization to file the Senior Lenders' CCAA Plan, the basis of which is the Support Transaction. A copy of the Senior Lenders' CCAA Plan, in the form attached as a schedule to the Initial Order, is attached as Exhibit "E" to this Affidavit.

56. Under the Senior Lenders' CCAA Plan, among other things:

- (a) only the claims of the Senior Lenders will be compromised, and the Senior Lenders' CCAA Plan will not affect or compromise any other claims against any of the LP Entities (the "**Unaffected Claims**");
- (b) no holders of Unaffected Claims will be entitled to vote on or receive any distributions in respect of their claims;
- (c) certain Unaffected Claims (including, without limitation, claims relating to the DIP Facility, claims relating to the provision of cash management services to the LP Entities, certain employee and pension related claims and secured claims ranking in priority to the claims of the Senior Lenders) will be paid by the LP Entities, assumed by AcquireCo or paid in full by the Monitor from a cash reserve

established for the purpose of paying specified administrative claims and costs after the closing of the Support Transaction (the “**Cash Reserve**”);¹

- (d) for the purposes of considering and voting on the Senior Lenders’ CCAA Plan there will be one class of Senior Lenders; and
- (e) subject to approval of the Senior Lenders’ CCAA Plan at the Senior Lenders’ Meeting, the Applicants will apply for the Credit Acquisition Sanction, Approval and Vesting Order.

57. Schedule 1.1(8) to the Senior Lenders’ CCAA Plan is the Acquisition and Assumption Agreement, which contains more of the specific terms of the Support Transaction. The Acquisition and Assumption Agreement addresses, among other things, acquisitions and assumptions, excluded assets, employee matters, tax matters, representations and warranties, covenants and conditions. As discussed in greater detail below, in this motion the LP Entities are also seeking conditional authorization to enter into the Acquisition and Assumption Agreement.

The Senior Lenders’ Claims Process

58. For the purposes of voting on and distribution under the Senior Lenders’ CCAA Plan, the claims of the individual Senior Lenders were established in the Senior Lenders’ Claims Process. The Initial Order contains provisions relating to the Senior Lenders’ Claims Process and also establishes the procedures for a meeting of the Senior Lenders (the “**Senior Lenders’ Meeting**”).

59. The Senior Lenders’ Claims Process commenced immediately after the granting of the Initial Order. On January 12, 2010, the LP Administrative Agent delivered to the LP Entities a notice (the Notice of Claim – Syndicate Claims and Pro Rata Notice) setting out: (i) the aggregate amount owing by each of the LP Entities under the LP Credit Agreement as at January 8, 2010 (the “**Syndicate Claims**”); and (ii) each LP Secured Lenders’ *pro rata* share of that amount. On the same day, the LP Entities delivered to each Hedging Creditor a notice (the Notice of Claim – Hedging Agreements) setting out the termination amounts owed by each of

¹ In the event that the AHC Transaction does not move forward, the LP Entities will be bringing a motion in advance of the Credit Bid Plan Implementation Date seeking to obtain an Order from this Honourable Court substantially in the form as attached as schedule [1.1(29)] to the Senior Lenders’ CCAA Plan that will set out the amount of the Cash Reserve and the process for administering the Cash Reserve.

the LP Entities to each of the Hedging Creditors and the interest amount payable on such amounts.

60. Pursuant to the Initial Order, the LP Entities and the LP Secured Lenders were required to file with the Monitor a Notice of Dispute – Syndicate Claims and Pro Rata Notice within five days after the posting or receipt of the Notice of Claim – Syndicate Claims and Pro Rata Notice if they intended to dispute the information contained in the notice. In both cases, failure to file a Notice of Dispute – Syndicate Claims and Pro Rata Notice within the prescribed time period was deemed confirmation of the amounts set out in the Notice of Claim – Syndicate Claims and Pro Rata Notice. I am advised that the Monitor did not receive any Notices of Dispute – Syndicate Claims and Pro Rata Notice from the LP Entities or any LP Secured Lender, so each LP Secured Lender's *pro rata* share of the Syndicate Claim was deemed to be finally determined and accepted as the proven principal claim (the "**Proven Principal Claim**") of such LP Secured Lender for the purposes of voting and distribution under the Senior Lenders' CCAA Plan ("**Finally Determined**").

61. Similarly, the Initial Order required any Hedging Creditor seeking to dispute an amount set out in the Notice of Claim – Hedging Agreements to file a Notice of Dispute – Hedging Agreements within five business days of receipt of the Notice of Claim – Hedging Agreements. I am advised that the Monitor did not receive any Notices of Dispute – Hedging Agreements, so the principal amounts set out in the Notice of Claim – Hedging Agreements were deemed to be Finally Determined.

62. The Initial Order also established a procedure for the assertion of claims by the Senior Lenders for amounts in addition to claims for principal (each an "**Additional Claim**") within ten business days of January 8, 2010 (the "**Filing Date**"). The Monitor did not receive any Additional Claims within ten business days of the Filing Date. Pursuant to the Initial Order, all Additional Claims by Senior Lenders were deemed to be forever extinguished and barred.

The Senior Lenders' Meeting

63. The Initial Order authorized the LP Entities to conduct a meeting of the Senior Lenders on January 27, 2010 for the purpose of voting on a resolution to approve the Senior Lenders' CCAA Plan. I am advised that on January 12, 2010, pursuant to the terms of the Initial Order, the Monitor delivered to the LP Administrative Agent notice of the Senior Lenders'

Meeting and other Meeting Materials. I am advised by counsel to the LP Administrative Agent that, on the same day, the LP Administrative Agent posted a copy of the Meeting Materials on two of the IntraLinks websites maintained by the LP Administrative Agent for the benefit of the Senior Lenders.

64. The Senior Lenders' Meeting was held at the offices of Stikeman Elliott LLP, counsel to the Monitor, at 12:30 p.m. on January 27, 2010. In accordance with the terms of the Initial Order, Paul Bishop, an officer of FTI Consulting Canada Inc. ("**FTI**"), acted as the chair (the "**Chair**") of the Senior Lenders' Meeting. Jodi Porepa of FTI acted as scrutineer (the "**Scrutineer**"). More extensive information on the conduct and outcome of the Senior Lenders' Meeting is contained in the Second Report of the Monitor dated January 29, 2010.

65. I am advised by Paul Bishop that the Chair held 156 proxies from the Senior Lenders holding Accepted Voting Claims, thereby satisfying the requirement that a quorum of the Senior Lenders be present either in person or by proxy. I am advised that the Chair declared that the Senior Lenders' Meeting was properly constituted.

66. I am also advised that a motion to consider a resolution to approve the Senior Lenders' CCAA Plan (the "**Resolution**") was proposed at the Senior Lenders' Meeting and a vote on the Resolution was called for by the Chair. Pursuant to the terms of the Initial Order and the Senior Lenders' CCAA Plan, the Senior Lenders voted as a single class.

67. In total, 97.5% in number and 88.7% of in value of the Senior Lenders holding Proven Principal Claims that were present and voting at the Senior Lenders' Meeting voted in favour to approve the Senior Lenders' CCAA Plan. Pursuant to the Initial Order, the Resolution had to be approved by a majority in number and two thirds in value of the Senior Lenders holding Accepted Senior Voting Claims (which included both Proven Principal Claims and Accepted Voting Claims, of which there were none) that were present and voting at the Senior Lenders' Meeting (the "**Required Majorities**"). The Required Majorities voted to approve the Senior Lenders' CCAA Plan.

68. As of the date of the Senior Lenders' Meeting there were no unresolved claims by any of the Senior Lenders.

Conditional Sanction of the Senior Lenders' CCAA Plan

69. As noted above, I strongly believe that it is prudent to concurrently obtain conditional sanction of the Senior Lenders' CCAA Plan if possible so that the Support Transaction may be implemented if the AHC Transaction does not close for whatever reason. The Support Agreement does not expressly preclude this dual track, although certain of its provisions may require amendment to accommodate the proposed approach. The advisors to the LP Entities, as well as the Monitor, the LP CRA and the Financial Advisor, have endeavoured to negotiate with both the Ad Hoc Committee and the LP Administrative Agent on the terms set out in the Monitor's letter described below. As of the date of the swearing of this affidavit, efforts are still underway to work out a path forward that includes Ad Hoc Committee and LP Administrative Agent consent to the concurrent approval of the AHC APA and conditional sanction of the Senior Lenders' CCAA Plan.

70. I am advised that on May 7, 2010, after "without prejudice" discussions with the Ad Hoc Committee and the LP Administrative Agent failed, the Monitor's counsel delivered a "with prejudice" proposal (the "**Monitor's Letter**") to counsel to the Ad Hoc Committee and counsel to the LP Administrative Agent with a proposal whereby the LP Entities would advance the AHC Transaction and the Support Transaction on parallel tracks. A copy of the Monitor's Letter is attached as Exhibit "F" to this Affidavit. I am advised that the Monitor supports the conditional sanction of the Senior Lenders' CCAA Plan on the terms set out in the Monitor's Letter but does not support and would oppose conditional sanction of the Senior Lenders' CCAA Plan on a basis that might impair or prejudice the ability of the LP Entities to close the AHC Transaction if it is possible to do so. As noted herein, the procedure proposed in the Monitor's Letter is supported by the Financial Advisor, the LP CRA and counsel to the LP Entities.

71. I am further advised that, after discussions with the Monitor concerning the terms set out the Monitor Letter, the Ad Hoc Committee has accepted the procedure proposed by the Monitor.

72. The LP Entities also accept and support the procedure set out in the Monitor's Letter.

73. To date, the LP Administrative Agent has not consented to the procedure set out in the Monitor's Letter. The LP Administrative Agent delivered a response to the Monitor's

Letter which I understand will be attached to a report filed by the Monitor in connection with this motion.

74. A form of sanction order (the Credit Acquisition Sanction, Approval and Vesting Order) was scheduled to the Support Agreement that was attached as Exhibit "X" to the Initial Order Affidavit and was also part of the Meeting Materials delivered in advance of the Senior Lenders' Meeting. The approval of the Senior Lenders' CCAA Plan included an approval of the form of Order.

75. The LP Entities now seek approval of a conditional sanction order (the "**Credit Bid Sanction Order**") that is identical to the form of Order approved at the Senior Lenders' Meeting but for the addition of certain provisions relating to the conditionality of the sanction and the approval of the Acquisition and Assumption Agreement. Pursuant to the terms of the draft Credit Bid Sanction Order, which incorporates the concepts set out in the Monitor's Letter, the sanction of the Senior Lenders' CCAA Plan will not be effective until after the Monitor delivers to the LP Entities and the LP Administrative Agent and files with the Court a certificate (the "**Monitor's Credit Bid Sanction Certificate**"). The Monitor will not deliver its certificate making the conditional Sanction of the Credit Acquisition operative if the AHC Bid closes and would not deliver it prior to July 29, 2010 unless the Monitor determines in its reasonable business judgment that there is no reasonable chance that the AHC Bid can close, in which case it may apply to Court on 4 business days' notice for authority to deliver the Monitor's certificate in advance of July 29, 2010. In the event that the Monitor's Credit Bid Sanction Certificate has not been delivered by July 30, 2010, the Credit Bid Sanction Order provides that the LP Administrative Agent may apply to the Court to compel delivery of such certificate by the Monitor. In the view of the LP Entities, the amendments to the Order approved at the Senior Lenders' Meeting are procedural and not material because they do not change any of the terms of implementation but rather merely establish the conditions upon which the sanction becomes effective. I understand that a copy of the proposed Credit Bid Sanction Order will be included in the material filed by the LP Entities in support of this motion.

76. Certain schedules to the draft Credit Bid Sanction Order and the Acquisition and Assumption Agreement, including the schedule of permitted encumbrances, have not been completed to date. It is anticipated that such schedules will be completed in the near term in

respect of both the Support Transaction and the AHC Transaction. Upon the completion of such schedules, to the extent that parties' rights may be affected by the vesting language in the Credit Bid Sanction Order, the LP Entities will provide notice and serve such creditors whose rights may be affected and give them an opportunity to appear in Court well in advance of any closing of the Support Transaction.

77. As noted earlier, I understand that the Monitor will not support conditional sanction of the Senior Lenders' CCAA Plan if the Credit Bid Sanction Order contains any terms that would prejudice the ability of the LP Entities to close the AHC Transaction if it is possible to do so. In the Monitor's view, the AHC Bid is a Superior Cash Offer and should be pursued unless intervening events demonstrate that it cannot be implemented. In particular, the Monitor has expressed objection to any hard stop deadline that would compel the LP Entities to proceed with the Support Transaction even if the closing of the Ad Hoc Transaction were imminent. The draft Credit Bid Sanction Order therefore provides that the Monitor may delay the delivery of the Monitor's Credit Bid Sanction Certificate past July 29, 2010 if, in its reasonable business judgement and in consultation with the LP CRA and the Financial Advisor, it believes that the AHC Transaction will close within a reasonably short period of time after July 29, 2010.

78. The Senior Lenders' CCAA Plan contains the general terms for the plan of compromise or arrangement with the Senior Lenders; the Acquisition and Assumption Agreement that was attached as part of Exhibit "X" to the Initial Order Affidavit contains the specific terms for implementation and is attached as Exhibit "G" to this Affidavit. The draft Credit Bid Sanction Order provides that upon delivery of the Monitor's Credit Bid Sanction Certificate: (i) the LP Entities will be authorized to execute the Acquisition and Assumption Agreement; and (ii) the Acquisition and Assumption Agreement and the transactions contemplated thereby will be deemed approved.

Revisions to Claims Procedure Order and the Continuation of the LP Claims Process

79. Pursuant to terms of the Claims Procedure Order, the LP Entities have commenced a claims process (the "**LP Claims Process**") in which they are calling for the claims of certain of their creditors. A copy of the Claims Procedure Order (without schedules) is attached as Exhibit "H" to this Affidavit.

80. The AHC Transaction must close on or before August 15, 2010. In order to implement all of the steps required to close the AHC Transaction by that date, the LP Entities have determined that the Meeting of Unsecured Creditors must be convened for the purpose of a vote on the AHC Plan (as defined below) no later than June 10, 2010. In order to permit certain additional creditors to participate in a vote on and eventual distribution under the AHC Plan, and in anticipation of the imminent Meeting of Unsecured Creditors, the LP Entities propose to make a number of amendments to the Claims Procedure Order relating to: (i) restructuring period claims (the “**Restructuring Period Claims**”); (ii) claims against the directors and officers of the LP Entities (the “**Director/Officer Claims**”); and (iii) claims by non-union employees arising after January 8, 2010 (the “**Restructuring Period Employee Claims**”). The LP Entities also propose to add provisions to the Claims Procedure Order relating to the determination of the *pro rata* claims of the individual LP Subordinated Lenders and LP Noteholders. The LP Entities, the Monitor, the Ad Hoc Committee and the LP Administrative Agent are still in the process of finalizing the specific terms of the Amended Claims Procedure Order. An Amended Claims Procedure Order, together with a blackline to the Claims Procedure Order, will be delivered to the Service List as soon as possible after the service of the LP Entities’ motion record.

A. Restructuring Period Claims

81. The Claims Procedure Order currently requires the LP Entities to deliver claims packages (the “**LP Claims Packages**”) to creditors with included claims arising after January 8, 2010 (the “**Restructuring Period Claims**”) as soon as practicable after the LP Entities have knowledge of such Restructuring Period Claims but in any event no later than 31 calendar days before any meeting of creditors. As a result, under the Claims Procedure Order as it is currently drafted, creditors with Restructuring Period Claims that arise after May 10, 2010 (which is 31 days in advance of the proposed Meeting of Unsecured Creditors) will not be included in or affected by the AHC Plan.

82. In order to enable a greater number of LP Creditors with Restructuring Period Claims to participate in the Meeting of Unsecured Creditors and the AHC Plan, the LP Entities propose to amend paragraph 21 of the Claims Procedure Order so that LP Claims Packages need be to be delivered before on or before May 20, 2010. The LP Entities also propose to amend the LP Restructuring Period Claims Bar Date to June 3, 2010. In the event that a Restructuring

Period Claim is not finally determined before the Meeting of Unsecured Creditors, the Claims Procedure Order permits the LP Entities to accept such LP Creditor's claim as a voting claim and then revisit the determination of the claim for distribution purposes.

B. Director/Officer Claims

83. The Claims Procedure Order currently excludes all claims against the directors and officers of the LP Entities (the "Director/Officer Claims"). The LP Entities now wish to call for certain Director/Officer Claims (which will include any and all claims against deemed or *de facto* directors and officers), whether part of the LP Claims Process or a separate process. As of the date of the swearing of this affidavit, the LP Entities, the LP CRA and the Monitor are still in discussions as to whether the Director/Officer Claims will either be: (i) Affected Claims and included in the Amended Claims Procedure Order; or (ii) the subject of a separate Order.

C. Non-Union Employee Claims Arising During the Restructuring Period

84. The LP Entities also propose to amend the Claims Procedure Order so that the LP Claims Process includes the Restructuring Period Claims of non-union employees that were terminated after January 8, 2010. At present, paragraph 2(k) of the Claims Procedure Order states that "Excluded Claims" include, among others:

...(iv) with the exception of SERA Claims and Termination and Severance Claims (as defined herein), all claims by current or former employees of the LP Entities, including both unionized and non-unionized employees, arising out of the employment of such employees or former employees by the LP Entities including, without limitation, Grievance Claims and Pension Claims (as defined herein)...

85. The LP Entities propose to amend paragraph 2(k) so that it provides that:

...(iv) with the exception of SERA Claims, Termination and Severance Claims and Restructuring Period Employee Claims (as defined herein)...

86. "Restructuring Period Employee Claim" will be defined as any claim by a non-unionized employee of the LP Entities arising out of the termination of the employment of such employee by the LP Entities after January 8, 2010.

87. The Monitor will post the Amended Claims Procedure Order on its website immediately after the granting of the Order Approving the AHC Bid.

D. LP Subordinated Lender Claims Process and LP Noteholder Claims Process

88. Pursuant to the Claims Procedure Order, the LP Subordinated Agent is authorized to file one or more LP Proofs of Claim on behalf of all of the LP Subordinated Lenders indicating the amount owing under the LP Senior Subordinated Credit Agreement on an aggregate basis. Similarly, the Bank of New York, as U.S. Trustee, and BNY Trust Company of Canada as Canadian Trustee under the LP Note Indenture (collectively, the “**Trustees**”) were authorized to file one or more LP Proofs of Claim on behalf of all of the LP Noteholders indicating the amount owing on an aggregate basis for all of the LP Notes. In advance of the Meeting of Unsecured Creditors, it is necessary to establish claims processes enabling the individual LP Subordinated Lenders and the individual LP Noteholders to establish their claims on a *pro rata* basis.

89. The LP Entities propose that, for the purposes of voting on and distribution under the AHC Plan, the individual claims of the LP Subordinated Lenders will be determined in the following manner (the “**LP Subordinated Lenders’ Claims Process**”):

- (a) Within two business days of the granting of the Order Approving the AHC Bid, the LP Subordinated Agent will send to the LP Entities a notice substantially in the form attached as a schedule to the draft Amended Claims Procedure Order (the “**Notice of Subordinated Syndicate Pro Rata Claims**”) setting out each LP Subordinated Lenders’ *pro rata* share of the aggregate amount owed by the LP Entities to the LP Subordinated Lenders (the “**Subordinated Syndicate Claims**”);
- (b) Concurrent with the delivery of the Notice of Subordinated Syndicate Pro Rata Claims, the LP Subordinated Agent will post a copy of the Notice of Subordinated Syndicate Pro Rata Claims to one of the IntraLinks websites (the “**Subordinated Lenders’ Website**”) maintained by the LP Subordinated Agent for the benefit of the LP Subordinated Lenders;
- (c) Within five business days of the receipt of the Notice of Subordinated Syndicate Pro Rata Claims the LP Entities will advise the Monitor whether the amounts set out therein are consistent with the books and records of the LP Entities. Failure to

deliver a Notice of Dispute – Subordinated Syndicate Pro Rata Claims substantially in the form attached as a schedule to the draft Amended Claims Procedure Order will be deemed confirmation of the amounts set out in the Notice of Subordinated Syndicate Pro Rata Claims;

- (d) Within five business days of the posting of the Notice of Subordinated Syndicate Pro Rata Claims on the Subordinated Lenders' Website, each of the LP Subordinated Lenders holding claims must advise the Monitor whether such LP Subordinated Lender's *pro rata* share of the Subordinated Syndicate Claims is accurate. Failure to deliver a Notice of Dispute – Subordinated Syndicate Pro Rata Claims will be deemed confirmation of the amount set out in the Notice of Subordinated Syndicate Pro Rata Claims in respect of such LP Subordinated Lender;
- (e) If the amount of the LP Subordinated Lender's Claim is either (i) confirmed by the LP Entities; and (ii) confirmed by the individual LP Subordinated Lender, the amount set out in the Notice of Subordinated Syndicate Pro Rata Claims will be deemed to be finally determined (“**Finally Determined**”) and accepted as the Proven Claim for such LP Subordinated Lender for purposes of voting and calculating entitlement to distribution under the AHC Plan;
- (f) In the event that a Notice of Dispute – Subordinated Syndicate Pro Rata Claims is delivered, the LP Entities, the LP Subordinated Agent and the applicable LP Subordinated Lender have three business days to reach an agreement as to the *pro rata* claim of such LP Subordinated Lender. If the LP Entities, the LP Subordinated Agent and the LP Subordinated Lender are unable to resolve their dispute, the claim of such LP Subordinated Lender will be determined by the Court on a motion for advice and directions brought by the Monitor; and
- (g) The LP Entities have discretion to accept an LP Subordinated Lender's *pro rata* claim for voting purposes without prejudice to the LP Entities' right to revisit the determination for distribution purposes.

90. The LP Entities are currently working with counsel to the LP Noteholders to determine an appropriate process for the determination of the *pro rata* claims of the individual LP Noteholders (the “**LP Noteholders’ Claims Process**”). The terms of this procedure will be reflected in the draft Amended Claims Procedure Order that will be served and filed as soon as possible after the date of the swearing of this affidavit.

Continuation of LP Claims Process

91. Pursuant to the Claims Procedure Order, after the initial call for claims, no steps were to be taken to adjudicate or resolve claims until the posting of notice by the Monitor that a determination had been made that such steps were required to close a Successful Bid or, after the closing of a Successful Bid, to facilitate a distribution of proceeds to unsecured creditors.

92. Subject to Court approval, the AHC Bid will be implemented through the AHC Plan. Before conducting a meeting of Unsecured Creditors, it is necessary that additional steps be taken in the LP Claims Process to adjudicate and determine claims. The AHC Transaction cannot close until the AHC Plan is approved at a meeting and sanctioned by the Court. In short, the adjudication and resolution of claims is necessary to close the AHC Bid.

93. The Monitor, the LP CRA, the LP Entities and the LP Administrative Agent have made a determination pursuant to the Claims Procedure Order that additional steps in the LP Claims Process are required for the closing of a Successful Bid. On May 7, 2010 counsel for the LP Entities wrote to counsel for the LP Administrative Agent seeking their consent to the continuation of the LP Claims Process. A copy of the letter is attached hereto as Exhibit “I”. The LP Administrative Agent agreed to the resumption of the LP Claims Process on terms set out in an e-mail from counsel for the LP Administrative Agent, a copy of which is attached hereto as Exhibit “J”.

The AHC Plan and the Meeting of Unsecured Creditors

94. The AHC Bid contemplates that the AHC Transaction will be implemented pursuant to the AHC Plan between the LP Entities and certain unsecured creditors (the “**Affected Creditors**”) including those currently participating in a claims process (the “**LP Claims Process**”) pursuant to the Claims Procedure Order. The Affected Creditors are the only creditors of the LP Entities whose claims will be affected under the AHC Plan. They are also the only creditors that will be eligible to receive distributions under the AHC Plan. The specific terms of

the AHC Plan are currently under negotiation, and the LP Entities intend to file the AHC Plan no later than May 20, 2010. An outline of the terms of the AHC Plan is contained in Schedule "1.1(29)" to the AHC APA.

95. In general terms, the AHC Plan will provide that, subject to Affected Creditor approval and sanction by this Honourable Court, the following will be approved and implemented:

- (a) Pursuant to the terms of the AHC APA, Opco LP will acquire substantially all of the assets of the LP Entities, including the shares and intercompany indebtedness of National Post Inc.;
- (b) The Senior Lenders will be unaffected creditors and will, on closing, receive a cash distribution equal to the full amount owing to them, including accrued interest and reimbursement of costs and expenses to the extent not previously paid by the LP Entities;
- (c) Opco LP will pay to any unsecured creditors with Proven Claims at the time of closing who have elected to receive a cash payment in an amount equal to the lesser of the amount of their Proven Claim and \$1,000 (the "**Cash Election**"), provided that any creditor making such Cash Election shall be deemed to vote in favour of the AHC Plan;
- (d) The balance of the consideration will be satisfied by an unsecured demand note or notes of Opco LP in the amount of \$150 million minus the aggregate cash amount paid pursuant to the previous sub-paragraph (the "**Opco Note**") to be issued in favour of the LP Entities;
- (e) Immediately after receipt of the Opco Note, the LP Entities will purchase from Holdco common shares of Holdco (the "**Holdco Common Shares**") in exchange for the Opco Note. The price per share will be \$13.33;
- (f) The Monitor will satisfy specified categories of administrative costs and claims outstanding on the Acquisition Date from an account established by the Monitor in trust pursuant to a further Order of this Court;

- (g) Affected Creditors with Proven Claims will be required to certify whether they are Canadian for purposes of the *Income Tax Act*;
- (h) There will be two classes of Holdco Common Shares: Voting Common Shares (for Affected Creditors that are Canadian and hold Proven Claims) and Limited Voting Shares (for Affected Creditors that are non-Canadian and hold Proven Claims);
- (i) The Monitor will advise Holdco as to the number of shares distributable to Affected Creditors that are Canadian, and Holdco will proportionately issue Voting Common Shares and Limited Common Shares. The Monitor will then immediately distribute the Holdco Common Shares on a *pro rata* basis, holding back shares in an amount reflecting the value of outstanding disputed claims in the LP Claims Process at the time of distribution;
- (j) Holdco will purchase additional units of Opco LP using the Opco Note and the Opco Note will be cancelled;
- (k) A full release will be provided in favour of the former directors and officers of the LP Entities, the advisors of the LP Entities, the Monitor and its advisors, the LP CRA and its advisors and the members of the Special Committee and its advisors; and
- (l) Following the plan implementation date and completion of the acquisition of the assets, Holdco will take steps to apply for the listing of its common shares on the Toronto Stock Exchange.

96. The AHC Plan also contemplates that, subject to Court approval in a subsequent Order, on or before the plan implementation date, an administrative reserve (the “**Administrative Reserve**”) will be established in an amount to be agreed by the Monitor, the LP Entities and Holdco, and not to exceed \$25,000,000, using cash and cash equivalents from the accounts of the LP Entities in a segregated account to be held in trust by the Monitor for the benefit of persons entitled to be paid certain specified costs and Holdco. These costs will include, among others, (i) amounts owing that are secured by the Administration Charge, the LP MIP Charge and the Financial Advisor Charge and the reasonable fees and costs of the Monitor and

its counsel; (ii) amounts secured by the Directors' Charge; (iii) government priority claims; (iv) "Pension Priority Claims" as defined in the AHC APA; (v) fees and costs of any trustee in bankruptcy that may be appointed in respect of any of the LP Entities after the Acquisition Date; and (vi) trade payables incurred by the LP Entities after the filing date and before the Acquisition Date, in the ordinary course of business and in compliance with the Initial Order.

Meeting and Voting Procedures

97. As part of this motion, the LP Entities also seek certain relief in respect of the Meeting of Unsecured Creditors and associated voting procedures. The LP Entities and the Ad Hoc Committee have agreed that, subject to Court approval, the LP Entities intend to call and conduct a meeting of the Affected Creditors on June 10, 2010 for the purpose of voting on a resolution to approve the AHC Plan. Because the LP Entities must close the AHC Transaction no later than August 15, 2010, it is critical that the Meeting of Unsecured Creditors take place as soon as possible so that the LP Entities can seek a sanction Order and take such other steps required prior to the Acquisition Date. A draft Meeting Order is under negotiation and will be served and filed as soon as possible after the swearing of this Affidavit.

98. The Monitor will preside as the chair of the Meeting of Unsecured Creditors (the "**Chair**"), and the only persons authorized to attend the Meeting of Unsecured Creditors will be the LP Entities, the Financial Advisor, the Monitor, the LP CRA and the Affected Creditors that are entitled to vote at the meeting, as well as their respective legal counsel. The Monitor or the LP Entities will have discretion to allow any other person to be admitted to the Meeting of Unsecured Creditors.

99. The only persons entitled to vote at the Meeting of Unsecured Creditors are those unsecured creditors of the LP Entities whose claims are included and have been proven in the LP Claims Process (the Affected Creditors). Pursuant to the Claims Procedure Order, the LP Entities have discretion in respect of disputed claims to make a determination as to the voting claim of an Affected Creditor without prejudice to review that creditor's claim for distribution purposes.

100. For purposes of classification of creditors and voting on the AHC Plan:

- (a) There will be one class of creditors consisting of Affected Creditors whose claims are included in the LP Claims Process;

- (b) The quorum required at the Meeting of Unsecured Creditors will be one Affected Creditor present at such meeting in person or by proxy;
- (c) The Chair will direct a vote with respect to a resolution to approve the AHC Plan;
- (d) The Chair will be authorized to accept and rely on a proxy submitted in the form attached as Schedule "C" to the draft Meeting Order;
- (e) Any Affected Creditor that accepts the Cash Election in satisfaction of its claim will be deemed to have voted in favour of the AHC Plan;
- (f) After the vote, the Monitor will tally the votes, and the AHC Plan will be deemed to be accepted if it is approved by creditors present in person or represented at the Meeting of Unsecured Creditors holding claims totalling 66 2/3 % in value and a majority in number; and
- (g) Any vote will be binding on all Affected Creditors whether or not such Affected Creditor is present at the Meeting of Unsecured Creditors.

101. The LP Entities propose that, within two business dates of the granting of the Meeting Order, the Monitor will publish notice of the Meeting of Unsecured Creditors (the "**Meeting Notice**") substantially in the form attached as Schedule "A" to the draft Meeting Order for two business days in the *National Post*, *The Globe and Mail* (National Edition), *La Presse* and *The Wall Street Journal*.

102. Within three business days of the granting of the Meeting Order, the Monitor will send a copy of the Meeting Notice to each Affected Creditor together with the following documents and any other materials required by the Court to be delivered in connection with the calling and the conduct of the Meeting of Unsecured Creditors (collectively, the "**Meeting Materials**"):

- (a) a circular prepared by the LP Entities substantially in the form attached as Schedule "A" to the draft Meeting Order (the "**Notice to Affected Creditors**");
- (b) instructions to Affected Creditors substantially in the form attached as Schedule "B" to the draft Meeting Order (the "**Instructions to Affected Creditors**")

- (c) a copy of the Meeting Order;
- (d) a copy of the AHC Plan;
- (e) a form of proxy for use at the Meeting of Unsecured Creditors, substantially in the form attached as Schedule "C" to the draft Meeting Order (the "**Proxy**"); and
- (f) and any other documents required by this Court to be delivered in connection with the calling and holding of the Meeting of Unsecured Creditors (collectively, the "**Meeting Materials**").

103. Affected Creditors that have opted for the Cash Election will not receive a Proxy as part of their Meeting Materials.

104. Pursuant to the draft Order Approving the AHC Bid, within two business days of the granting of the requested Order the Monitor will post the Meeting Materials on the Monitor's website at: <http://cfcanada.fticonsulting.com/clp>.

105. The only persons to whom notice is required to be provided in respect of the Meeting of Unsecured Creditors are the Affected Creditors.

106. The LP Entities propose that, in respect of the LP Subordinated Lenders, copies of the Meeting Notice and the Meeting Materials will be provided solely to the LP Subordinated Agent and, in respect of the LP Noteholders, copies of the Meeting Notice and the Meeting Materials will be provided solely to the Trustees.

Amendment to the SISP Procedures

107. Pursuant to the SISP Procedures, if the Special Committee accepts the Superior Cash Offer Recommendation, the Monitor is directed to take steps toward implementation of the Superior Cash Offer. Specifically, the SISP Procedures provide that:

If the Special Committee accepts the Superior Cash Offer Recommendation, the Monitor, in consultation with the Financial Advisor and the LP CRA, shall negotiate and settle a definitive agreement in accordance with the recommendation but subject to the terms and conditions of the Senior Lenders' CCAA Plan.

108. The LP Entities, in consultation with the Monitor, the Financial Advisor and the LP CRA, have determined that it is prudent and reasonable to seek conditional sanction of the Senior Lenders' CCAA Plan on the terms set out in the Monitor's Letter. The LP Entities wish to clarify and eliminate any concerns that the foregoing provision in the SISP Procedures precludes the concurrent pursuit of the AHC Transaction and the Support Transaction.

109. The SISP Procedures also provide that the Monitor's Superior Cash Offer Recommendation is conditional upon Court Approval and "the Superior Cash Offer closing within 60 days after the Phase 2 Bid Deadline, or such longer period as shall be agreed to by the Monitor, in consultation with the Financial Advisor and the LP CRA, and consented to by the Agent, acting in consultation with the Steering Committee." The LP Entities will endeavour to close the AHC Transaction as expeditiously as possible. However, the businesses of the LP Entities are extremely large and complex and the AHC Transaction – as well as the Support Transaction – contains numerous time-consuming conditions to closing. As a result, in the LP Entities best estimate, it is unlikely that the AHC Transaction will close by June 30, 2010, which is 60 days after the Phase 2 Bid Deadline. Furthermore, the Monitor has indicated that it does not support, and the Ad Hoc Committee will not support, conditional sanction of the Senior Lenders' CCAA Plan where the Order contains a hard stop deadline beyond which the LP Entities would be compelled to implement the Support Transaction. In order to accommodate the real possibility that such closing timeline will not be possible and to build flexibility into the process to accommodate reasonable delays caused by uncontrollable variables, the LP Entities wish to revise the SISP Procedures so that they provide that the 60-day provision may also be extended by further Order of the Court.

110. In order to clarify that the SISP Procedures permit concurrent pursuit of the AHC Transaction and the conditional sanction of the Senior Lenders' CCAA Plan and to introduce the possibility of a further revision of the closing deadline by the Court, the LP Entities therefore propose to revise the section of the SISP Procedures entitled "**Superior Cash Offer is Received**" as follows (with new additions in italics and underlined):

If the Monitor determines in its reasonable business judgment following consultation with the Financial Advisor and the LP CRA, that one or more of the Qualified Bids is a Superior Cash Offer, the Monitor, in consultation with the Financial Advisor and the LP CRA, shall recommend (the "**Superior Cash Offer Recommendation**") to the Special Committee that the most favourable Superior Cash Offer be selected and that a definitive agreement be negotiated

and settled in respect of that Superior Cash Offer, conditional upon Court approval and conditional on the Superior Cash Offer closing within 91 days after the Phase 2 Bid Deadline, or such longer period as shall be agreed to by the Monitor, in consultation with the Financial Advisor and the LP CRA, and consented to by the Agent, acting in consultation with the Steering Committee, or by further Order of the Court.

If the Special Committee accepts the Superior Cash Offer Recommendation, the Monitor, in consultation with the Financial Advisor and the LP CRA, shall negotiate and settle a definitive agreement in accordance with the recommendation but subject to the terms and conditions of the Senior Lenders' CCAA Plan, provided that nothing herein shall prevent the LP Entities or the Monitor from seeking sanction of the Senior Lenders' CCAA Plan which sanction will remain conditional upon delivery of a Monitor's Certificate on such terms as may be agreed to by the LP Entities, the Monitor and the Agent or ordered by the Court and, if such conditional sanction is granted, taking such commercially reasonable steps as are required for the LP Entities to remain in compliance with the terms of the Support Agreement and the Senior Lenders' CCAA Plan pending the closing of the Successful Bid (as defined herein).

111. I am advised that the Monitor and the LP CRA support this amendment to the SISP Procedures.

Conclusion

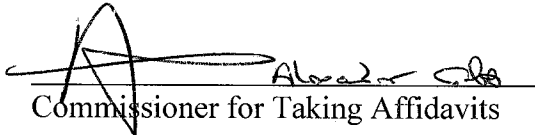
112. In the view of the LP Entities, the AHC Transaction represents the best value available for their businesses and stakeholders. The AHC Bid offers the highest available purchase price for the assets of the LP Entities and will provide significant recovery to those unsecured creditors participating in the LP Claims Process. In addition, Opco LP intends to offer employment to substantially all full-time employees and the vast majority of part-time employees of the LP Entities effective as of the Acquisition Date, thereby preserving approximately 5,000 jobs. Opco LP will also assume pension and retirement related obligations in respect of those employees who accept employment with Opco LP. The AHC Transaction promises to be a significant success for the CCAA process.

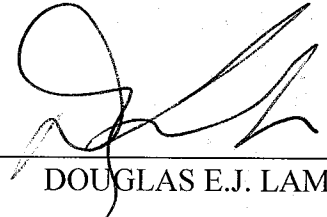
113. At the same time, the course of prudence is for the LP Entities to simultaneously pursue the Support Transaction if possible and, as a first step in that direction, seek the conditional sanction of the Senior Lenders' CCAA Plan. This strategy going forward mitigates the risk, however slight, that the AHC Transaction will not close and the LP Entities will have no available going concern path forward.

114. For the past four months, employees of the LP Entities have worked diligently to carry on business in the ordinary course while working to ensure that the SISP elicited a

transaction that would secure the best possible outcome for the LP Entities. The LP Entities are delighted that they have identified such a transaction in the AHC Bid and intend, with the benefit of the continuing stability afforded by the Support Agreement, to spare no effort to close it. The relief sought in this motion will set the stage for securing, over the next several weeks, an outcome that is in the best interests of the LP Entities' businesses, employees, retirees, suppliers and the many millions of Canadians that depend on them for their daily news.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario, on
May 10, 2010.


Commissioner for Taking Affidavits


DOUGLAS E.J. LAMB