Court File No. CV-21-00658423-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.

APPLICANTS

BOOK OF AUTHORITIES OF THE DIP LENDERS

MOTION FOR AUTHORIZATION ORDER, MEETINGS ORDER, AND OTHER RELIEF RETURNABLE MAY 26, 2022

May 20, 2022

CASSELS BROCK & BLACKWELL LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Alan Merskey LSO #: 413771
Tel: 416.860.2948
amerskey@cassels.com

John M. Picone LSO #: 58406N
Tel: 416.640.6041
jpicone@cassels.com

Christopher Selby LSO #: 65702T
Tel: 416.860.5223
cselby@cassels.com

Lawyers for the DIP Lenders

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SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-048114-157

DATE: April 25, 2018

PRESIDED BY: THE HONOURABLE STEPHEN W. HAMILTON, J.S.C.

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:

BLOOM LAKE GENERAL PARTNER LIMITED
QUINTO MINING CORPORATION
8568391 CANADA LIMITED
CLIFFS QUÉBEC IRON MINING ULC
WABUSH IRON CO. LIMITED
WABUSH RESOURCES INC.
Petitioners
and
THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP
BLOOM LAKE RAILWAY COMPANY LIMITED
WABUSH MINES
ARNAUD RAILWAY COMPANY
WABUSH LAKE RAILWAY COMPANY LIMITED
Mises-en-cause
and
FTI CONSULTING CANADA INC.
Monitor
and
MICHAEL KEEPER, TERENCE WATT,
DAMIEN LEBEL AND NEIL JOHNSON
and
SYNDICAT DES MÉTALLOS, LOCAL 6254,
SYNDICAT DES MÉTALLOS, LOCAL 6285
SYNDICAT DES MÉTALLOS, LOCAL 9996
Objecting parties

RECTIFIED JUDGMENT ON THE AMENDED MOTION FOR THE ISSUANCE OF A PLAN FILING AND MEETINGS ORDER (#642)*

OVERVIEW

[1] The CCAA Parties seek the issuance of a Plan Filing and Meetings Order (the "Meetings Order") which would, *inter alia*, authorize the CCAA Parties to (1) file the Joint Plan of Compromise and Arrangement dated April 16, 2018 (the "Plan") and (2) convene meetings of their creditors for the purpose of considering and voting on the Plan.

[2] The creditors of the CCAA Parties are, for the most part, in agreement that the proposed Meetings Order should be issued.

[3] The Representative Employees and the Union ask the Court to amend the proposed Meetings Order to give their counsel a deemed proxy to vote in counsel's discretion the claims of the salaried employees and retirees and the unionized employees and retirees respectively, unless the employee or retiree opts out by advising the Monitor that he or she will attend the meeting in person or appoints a different person to act as proxy.

CONTEXT

[4] The CCAA Parties[1] sought and received Court protection under the *Companies' Creditors Arrangement Act*[2] on January 27, 2015 (for the Bloom Lake CCAA Parties) and May 20, 2015 (for the Wabush CCAA Parties). That protection has been extended by the Court on a number of occasions. FTI Consulting Canada Inc. was appointed as Monitor.

[5] While under Court protection, the CCAA Parties have liquidated all or virtually all of their assets with the result that the Monitor holds substantial funds. The major remaining assets are (1) the potential preference claim by Cliffs Québec Iron Mining ULC ("CQIM") against various non-filed affiliates ("NFA") arising from the reorganization of CQIM in December 2014 that included a $142 million cash payment by CQIM and the transfer of the Australian subsidiaries of CQIM, and (2) potential preference claims by other CCAA Parties against NFA arising from certain payments in an aggregate amount of approximately US$30.6 million.

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* The Court rectifies its judgment dated April 20, 2018 (1) to correct in paragraph 16 that the Attorney-General of Canada on behalf of the Office of the Superintendent of Financial Institutions did not take any position on the amendment proposed by the Representative Employees and the Union and (2) to make incidental changes to paragraphs 5, 6 and 8 of the Plan Filing and Meetings Order annexed to the judgment to make the Order consistent with the judgment.

1 The Petitioners and the Mis-en-cause.

2 R.S.C. 1985, c. C-36 (the "CCAA").

[6] In March 2018, the Monitor negotiated a settlement of these potential claims. Essentially, the NFA agreed to forego the benefit of any distributions or payments they may otherwise be entitled to receive as secured and unsecured creditors of the CCAA Parties[3] and to make an additional cash contribution of $5 million, in exchange for releases. The Monitor estimates that the overall increase in the aggregate amounts that would be distributed to the third party unsecured creditors of the CCAA Parties as a result of the proposed settlement and the Plan would likely be in the range of approximately $62 million to approximately $100 million.[4]

[7] The Monitor consulted with Quebec North Shore and Labrador Railway Company Inc. ("QNS&L"), the largest single third party unsecured creditor of CQIM, which supports the settlement. The Monitor did not consult with any other creditor. The employees and retirees are not creditors of CQIM.

[8] Based on this settlement, the CCAA Parties prepared the Plan. It is a joint plan on behalf of all of the CCAA Parties.[5] Essentially, the Plan distributes the liquidation proceeds and the settlement proceeds allocated to each CCAA Party amongst its third party unsecured creditors on a *pro rata* basis. The Plan proposes the limited substantive consolidation of certain CCAA Parties for the purposes of voting and distributions under the Plan, such that there are five classes of creditors:

a) Unsecured creditors of CQIM and Quinto Mining Corporation;

b) Unsecured creditors of Bloom Lake General Partner Limited ("BLGP") and The Bloom Lake Iron Ore Mine Limited Partnership ("BLLP");

c) Unsecured creditors of Wabush Iron Co. Limited, Wabush Resources Inc. and Wabush Mines;

d) Unsecured creditors of Arnaud Railway Company;

e) Unsecured creditors of Wabush Lake Railway Company Limited.

[9] The Plan also provides for broad releases in favour of the NFA, the Monitor and the directors, officer, employees, advisors, legal counsel and agents of the CCAA Parties, the Monitor and the NFA. The Plan does not release the NFA and their directors from class actions instituted in Newfoundland and Labrador on behalf of the employees and retirees.

[10] The CCAA Parties seek the issuance of the Meetings Order, which provides, *inter alia*, for:

a) authorizing the filing of the Plan;

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[3] The NFA filed secured and unsecured claims in excess of $1 billion against the CCAA Parties.

[4] Forty-Third Report to the Court submitted by FTI Consulting Canada Inc., in its Capacity as Monitor, dated March 19, 2018.

[5] 8568391 Canada Limited and Bloom Lake Railway Company Limited ("BLRC"), have no pre-filing creditors and will be dissolved.

b) authorizing the CCAA Parties to convene meetings of the third party unsecured creditors;

c) approval of (i) the notice and documentation to be sent to the third party unsecured creditors in respect of the meetings; and (ii) and the procedure for the conduct of the meetings;

d) the scheduling of a hearing for the sanctioning of the Plan on June 29, 2018;

e) approval of the exclusion of 8568391 and BLRC, which have no pre-filing creditors, and limited substantive consolidation of (i) CQIM and Quinto, (ii) BLGP and BLLP, and (iii) Wabush Iron, Wabush Resources and Wabush Mines for the purposes of voting and distributions under the Plan;

f) approval of the classification of the third party unsecured creditors of each CCAA Party; and

g) other ancillary orders and declarations.

[11] The Monitor has recommended that the Motion should be granted and that the proposed Meetings Order should be issued.[6] The third party creditors of the CCAA Parties are, for the most part, in agreement.

[12] The issue relates to the voting rights of the 2,400 employees and retirees of the Wabush CCAA parties.[7] On June 22, 2015, Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson (the "Representative Employees") were appointed as representatives for the non-unionized employees and retirees of the Wabush CCAA Parties. The order provided from an opt-out right, but the Court is advised that no non-unionized employee or retiree opted out of representation by the Representative Employees. The Union has acted on behalf of the unionized employees and retirees since the beginning of the CCAA proceedings pursuant to its right and duty to represent its members. There is no express order of the Court appointing it as representative, but the Court did authorize the Union to file proofs of claim on behalf of its members.

[13] The employees and retirees are significant creditors of the Wabush CCAA Parties. The employees and retirees have filed 1,089 claims totalling $103.8 million against Wabush Iron, Wabush Resources and Wabush Mines, 449 claims totalling $27.9 million against Arnaud Railway and 393 claims totalling $50.5 million against Wabush Lake Railway, with respect to other post-employment benefits ("OPEBs"), including life insurance and health care.[8] In addition, four claims in the aggregate amount of approximately $3.3 million relate to employee grievances, were filed jointly and severally against Arnaud Railway and Wabush Iron, Wabush Resources and Wabush Mines. 2,376 employees and retirees are members of the Wabush pension plans. The Plan Administrator has filed claims of approximately $56 million in the aggregate against Wabush Iron, Wabush Resources and Wabush Mines, Arnaud

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6 Forty-Fourth Report to the Court submitted by FTI Consulting Canada Inc., in its Capacity as Monitor, dated March 22, 2018, par. 68.

7 Wabush Iron, Wabush Resources, Wabush Mines, Arnaud Railway and Wabush Lake Railway.

8 The claims against Arnaud Railway and Wabush Lake Railway overlap with the claims against Wabush Mines.

Railway and Wabush Lake Railway with respect to the amounts owing to the Wabush pension plans, including the deficit in the plans. The issue of whether those claims are unsecured or benefit from a deemed trust is currently before the Québec Court of Appeal, with a hearing starting June 11, 2018.

POSITION OF THE PARTIES

[14] As described above, the Representative Employees and the Union ask the Court to amend the proposed Meetings Order to give their counsel a deemed proxy to vote in counsel's discretion the claims of the salaried employees and retirees and the unionized employees and retirees respectively, unless the employee or retiree opts out by advising the Monitor that he or she will attend the meeting in person or appoints a different person to act as proxy.

[15] The Union also argues that it has the right to vote on behalf of its members and retirees pursuant to its "monopole de représentation".

[16] The Pension Plan Administrator […] and the Superintendent of Pensions of Newfoundland […] support the amendment.

[17] The CCAA Parties, the Monitor and QNS&L, the largest third party unsecured creditor, oppose the amendment.

ISSUES IN DISPUTE

[18] The issues that the Court must decide can be summarized as follows:

1. Should it issue the Meetings Order?
2. Does the Union have the right to vote on behalf of its members and retirees?
3. Should the Court give counsel for the Representative Employees and counsel for the Union a discretionary deemed proxy to vote the claims of the employees and retirees, subject only to an opt-out right?

ANALYSIS

1. Issuance of the Meetings Order

[19] The standard for issuing a meeting order is low. The Court can refuse to summon a meeting of the creditors if it determines that the plan is contrary to the creditors' interests, lacks economic reality, is unworkable and unrealistic in the circumstances, or is doomed to failure due to a lack of creditor support.[9]

[9] *Unique Broadband Systems (Re)*, 2013 ONSC 676, par. 52 and 95; *Kerr Interior Systems Ltd. (Re)*, 2011 ABQB 214, par. 29; *ScoZinc Ltd. (Re)*, 2009 NSSC 163, par. 7-9; *Re Fracmaster Ltd.*, 1999 ABQB 379, par. 24; *Canadian Red Cros Society/la Société canadienne de la Croix-Rouge, Re*, 1998 CanLII 14907 (ON SC), par. 37.

[20] The Monitor has reviewed the Plan and the Meetings Order and it recommends that the proposed Meetings Order be issued, based on the following considerations:[10]

- The filing of a joint plan significantly simplifies matters and creates no apparent material prejudice to any creditor;
- The limited substantive consolidation is reasonable and appropriate;
- The Plan provides significant incremental recoveries for the creditors and is in the best interests of all stakeholders;
- The granting of the Meetings Order would provide the forum for the creditors to consider and vote on the Plan;
- There is nothing about the Plan that would render it incapable of being approved by the creditors or sanctioned by the Court;
- The classification of creditors is reasonable and appropriate;
- The Meetings Order provides for reasonable and sufficient notice;
- The deadline for filing proxies is reasonable in the circumstances;
- The provisions of the Meetings Order governing the conduct of the meetings are reasonable and appropriate in the circumstances.

[21] Save for the issue of the voting rights of the employees and retirees, the creditors all agree that the Meetings Order should be issued.

[22] The Court concludes that there should be meetings of creditors to consider and vote on the Plan. It will grant the Meetings Order.

2. Union's right to vote

[23] The Union pleads that it has the right to vote on behalf of the unionized employees and retirees pursuant to its monopoly on representation of its members.

[24] The Union points to Section 69 of the Québec *Labour Code*:[11]

> **69.** A certified association may exercise all the recourses which the collective agreement grants to each employee whom it represents without being required to prove that the interested party has assigned his claim.

[25] The Supreme Court refers to this as the principle of exclusive representation or the monopoly of representation:

> 41 One of the fundamental principles we find in Quebec labour law, and one which it has in common with federal law and the law of the other provinces, is the monopoly that the union is granted over representation. This principle applies in respect of a defined group of employees or bargaining unit,

[10] 44th Report, *supra* note 6, par. 60-68.
[11] CQLR, chapter C-27.

> in relation to a specific employer or company, at the end of a procedure of certification by an administrative tribunal or agency. Once certification is granted, it imposes significant obligations on the employer, imposing on it a duty to recognize the certified union and bargain with it in good faith with the aim of concluding a collective agreement (s. 53 L.C.). Once the collective agreement is concluded, it is binding on both the employees and the employer (ss. 67 and 68 L.C.). For the purposes of administering the collective agreement, the certified association exercises all the recourses of the employees whom it represents without being required to prove that the interested party has assigned his or her claim (s. 69 L.C.).[12]
>
> [Emphasis added]

[26] The Union also points to the Newfoundland and Labrador *Labour Relations Act*,[13] which is very relevant given that more than half of the employees reported for work in Labrador. Section 50 provides:

> **50.** Where a trade union or a council of trade unions is certified, under this Act, as the bargaining agent of a unit,
>
> (a) the bargaining agent so certified immediately replaces another bargaining agent of the unit and has exclusive authority to conduct collective bargaining on behalf of employees in the unit and to bind them by a collective agreement until its certification in respect of employees in the unit is revoked;
>
> […]
>
> [Emphasis added]

[27] Even though the language in the Newfoundland and Labrador statute relates only to the negotiation and conclusion of the collective agreement, the Court will assume that the principle of exclusive representation exists and is just as broad under the laws of Newfoundland and Labrador as it is in Québec.

[28] It is clear that the principle of exclusive representation means that an individual employee or retiree does not have the right to file and to pursue a grievance with respect to a breach of the collective agreement.[14]

[29] The Court is not satisfied, however, that the principle of exclusive representation gives the Union the right to vote the employees' and retirees' claims in the CCAA.

[30] First, the principle of exclusive representation relates to claims under the collective agreement. It does not give the Union the right to vote for the employees and retirees in all circumstances. For example, employees retain the right to vote individually on such important issues as the acceptance of a collective agreement or the decision to strike. The vote on a plan under the CCAA is not the exercise of a claim under the collective agreement. In some cases (although not in the present matter), the vote may determine whether the employer continues its operations and whether the employees keep their jobs.

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12 *Noël* v. *Société d'énergie de la Baie James*, 2001 SCC 39, par. 41.
13 RSNL 1990, chapter L-1.
14 *Québec (Procureur général)* c. *Désir*, 2008 QCCA 1756, par. 8.

[31] Further, the Union was not able to point to any authority extending the principle of exclusive representation to voting on a proof of claim with the result that the union had the right to vote on behalf of its members without any court authorization. There are a few examples of CCAA proceedings where the court has authorized the union to vote the claims of its members,[15] but no example was given to the Court of any case where the court concluded that the union had the right to vote on behalf of its members without such authorization.

[32] Finally, the Court notes that if the right to vote on behalf of the members belongs to the Union pursuant to the principle of exclusive representation, then the proposed opt-out would be a breach of that monopoly and would be invalid.

[33] These arguments lead the Court to dismiss the Union's argument that it has the right to vote on behalf of the unionized employees and retirees pursuant to the principle of exclusive representation.

3. Discretionary deemed proxy

[34] The Court will analyze the appropriateness of a discretionary deemed proxy by asking several questions.

3.1 Is a deemed proxy appropriate?

[35] First, before giving a deemed proxy to anyone, the Court must be satisfied that there is a valid reason to do so.

[36] The Representative Employees and the Union plead that the deemed proxy is necessary to ensure that all of the employees and retirees exercise their right to vote. In his affidavit, Michael Keeper, one of the Representative Employees, states the following:

> 24. Individual voting by the 690 Salaried Members, as advocated by the Monitor and CCAA Parties, is completely inappropriate for our large, vulnerable creditor group who are not sophisticated commercial creditors. The Salaried Members are spread across Canada, many in the remote regions. This will make it impossible to reach many of them with the Proposed Plan, all the related documents, and the associated ballot in time to allow them to cast their vote. Many Salaried Members are old and infirmed, living in nursing home facilities, do not have internet access or fax machines, and many cannot understand complex legal documents, such as the Proposed Plan, the court orders, and the Monitor's Reports. For many, they will not understand the nature or consequences of the Proposed Plan and how it affects them, and it is not practical for Representative Counsel nor the Representatives to contact

[15] See the meeting orders issued with respect to U.S. Steel Canada Inc., Collins & Aikman Canada Inc., Nortel Networks Corporation, Hollinger Canadian Publishing Holdings Co., Co-op Atlantic and NewPage Port Hawkesbury Corp., and the Frequently Asked Questions with respect to Fraser Papers inc.

> every one of them to provide advice and answer their questions in time to ensure that they are able to make an informed decision as to their rights and how the Proposed Plan impacts them.

[37] Nicolas Lapierre, the Union representative responsible for this matter, makes similar comments in his sworn declaration:

> 16. En effet, j'ai lu le Plan et l'ensemble des documents qui l'accompagnent, que je trouve compliqués et difficiles à comprendre;
>
> 17. En raison de cette complexité, plusieurs Membres ne seront pas en mesure de comprendre ce qu'ils doivent faire avec ces documents ou ce qu'ils signifient, d'autant plus que certains de ces travailleurs sont partiellement ou totalement analphabètes, alors que d'autres sont âgés et maladies à un point tel où ils ne sont plus en mesure de s'occuper de leurs affaires par eux-mêmes;
>
> 18. Il y a ainsi de réelles possibilités que les Membres ne soient pas en mesure de voter ou de désigner quelqu'un pour le faire en leur nom, ce qui équivaudrait à les priver de leur droit de vote.

[38] The Court considers these concerns to be somewhat overstated. There is nothing exceptional about the Wabush employees and retirees as compared to the

employees and retirees of other companies. It should be possible to reach the great majority of them. While some of them may not have access to the internet or a fax machine, the Court doubts that the number is large. While some may not have the capacity to make a decision, there is likely someone who can make a decision on their behalf. The Plan itself is a complicated legal document that uses language which is difficult to understand, but the Monitor's reports are much easier to understand and the parties have the opportunity to include in the package that goes to the creditors a letter explaining matters in even simpler terms. The decision that the employees and retirees have to take is a fairly simple yes or no decision and the consequences of each decision can be explained.

[39] Nevertheless, it remains clear that a number of votes will be lost. Each employee and retiree has the right to vote on the Plan and every vote is important. One of the Court's objectives in this matter is to ensure that each employee and retiree is given the opportunity to vote and the Court's hope is that all will vote. The deemed proxy is a way to achieve that result.

[40] In addition to the cases where a deemed proxy was given to the union,[16] the parties point to only three examples of cases where deemed proxies were given to vote on behalf of non-unionized employees and retirees.[17] The CCAA Parties and the Monitor distinguish those cases on the basis that the deemed proxies were to vote in favour of the plan.

[41] These examples of deemed proxies confirm that the Court has jurisdiction to give deemed proxies in the present matter. That jurisdiction is not affected by whether the vote is in favour of the plan or against it.

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16 *Ibid*.

17 See the Nortel, Hollinger and U.S. Steel meeting orders.

[42] The CCAA Parties and the monitor also argue that a deemed proxy gives the proxy holder too much leverage.

[43] The Court does not agree. The deemed proxy simply ensures that the employees and retirees exercise the leverage that they should have, based on their numbers and the value of their claims.

[44] For all of these reasons, the Court concludes that it is appropriate to give a deemed proxy.

3.2 Who should exercise the deemed proxy?

[45] The Representative Employees and the Union argue that their counsel should exercise the deemed proxy.

[46] The Court agrees.

[47] The Representative Employees were appointed by the Court for the purpose of representing the non-unionized employees and retirees. The Union is given that role by statute. They are the appropriate representatives to exercise the deemed proxies.

[48] The Court adopts the following reasoning of Justice Wilton-Siegel in the U.S. Steel CCAA proceedings:

> [15] Further, I am satisfied that it is appropriate that Representative Counsel act as the deemed proxy for the administrator for the non-unionized pension plans and for the current and former non-unionized employees having OPEB claims, given the active involvement of Representative Counsel in these proceedings to date on behalf of, and the commonality of interest of, the current and former non-unionized employees. I note as well that a procedure exists for individuals who have opted to represent themselves, and for individuals who have been represented by Representative Counsel but who choose to participate directly at the creditors meetings, to appoint an alternative proxy or to attend and vote in person at the creditors meetings.[18]

[49] The CCAA Parties and the Monitor argue that there is no commonality of interest in the present matter in that not all of the employees and retirees have both a pension claim and an OPEB claim. They argue that some employees and retirees may want the pension issues pursued rather than the OPEB claims while others may want the opposite, because of their personal circumstances.

[50] Those considerations may be relevant in assessing whether it is appropriate for the Representative Employees and the Union to pursue the deemed trust for the pension claims. However, that matter is not before the Court today and that issue was not raised when the matter was before the Court.

[51] Moreover, these considerations are of no relevance on the deemed proxy issue: the pension issues are excluded from the Plan and the only issue being raised is whether the settlement with the NFA should have generated more for the unsecured creditors. No employee or retiree has a divergent interest on this issue.

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[18] *U.S. Steel Canada Inc. (Re)*, 2017 ONSC 1967, par. 15.

[52] The Court therefore concludes that counsel for the Representative Employees and for the Union are the appropriate persons to hold the deemed proxies.

3.3 Should the deemed proxy be discretionary?

[53] The Representative Employees and the Union say that they have not yet taken a position on whether they will vote for or against the Plan. They have concerns as to whether the settlement with the NFA is the best deal that could be achieved, but they have not had any discussions with the Monitor or with anyone else. They anticipate, as do the CCAA Parties and the Monitor, that there will be further discussions and negotiations right up until the vote. In that context, the Representative Employees and the Union ask that the proxy holder be allowed to vote the claims in his or her discretion. They argue that an employee or retiree who wants to vote for or against the Plan can opt out of the deemed proxy by attending the meeting, by appointing a different proxy, or by indicating his or her vote on the proxy form.

[54] The discretionary deemed proxy is fundamentally undemocratic. The deemed proxy is intended to ensure that all of the employee and retiree claims are voted. But making it discretionary has the effect of taking away the individuals' right to vote or even to know how his or her claim is being voted and giving it to someone else. This is not a good outcome.

[55] The opt-out right suggested by counsel for the Representative Employees and the Union does not solve these problems. If negotiations and discussions continue right up to the vote, as the parties seem to anticipate, the employees and retirees will have to decide whether to opt out on the basis of a Plan that may not the final version and without knowing the final recommendation of the Representative Employees and the Union or the position the proxy holder will take on their behalf if they do not opt out.

[56] The CCAA Parties and the Monitor argue that there is no precedent for such a discretionary deemed proxy. They argue that the few examples of deemed proxies all provide that the proxy holder will vote in favour of the plan. They found no examples of deemed proxies to vote against the plan or to vote in the discretion of the proxy holder. The Representative Employees and the Union did not submit any examples either.

[57] The Representative Employees and the Union plead that there is no difference between a deemed proxy to vote in favour of the plan and a deemed proxy to vote against it. The Court agrees in principle. In the three examples of deemed proxies to vote in favour of the plan, it appears from the materials that the representatives of the employees participated or were consulted in the preparation of the plan and were prepared to support it. The practical reality is that there are no deemed proxies to vote against a plan because if the employees representatives are consulted before the plan is filed and they are opposed to the plan, the plan will likely be modified before it is filed in order to gain their support.

[58] The problem in the present matter is that there were no negotiations or discussions prior to the filing of the Plan and there have been no discussions in the three weeks since the filing of the Plan. Everyone is waiting for this order before they begin serious discussions.

[59] That is unfortunate. The negotiations anticipated by the parties will have the effect of depriving the employees and retirees of any real participation in the process. There will be a meeting to explain the Plan to them, but subsequent negotiations will mean that the Plan as explained to them is not the final version of the Plan. If negotiations continue up until the meeting, there will be no time to explain the final version of the Plan to the employees and retirees.

[60] In other words, the justification for the discretionary deemed proxy is that the Representative Employees and the Union cannot take a final position on the Plan today and that the Plan may be amended up until the vote. The solution is to give them more time to take a final position and to ensure that the Plan is not amended after they take that final position, not to give them the right to vote the individuals' claims in their discretion.

[61] For these reasons, the Court will not authorize a discretionary deemed proxy. The deemed proxy must be either a deemed proxy to vote for the Plan or a deemed proxy to vote against it. The Court will delay the mailing of the Meeting Materials to allow the parties to have the discussions and negotiations that should have taken place before now so that the Representative Employees and the Union can take a final position for or against the Plan.

CONCLUSIONS

[62] As a result, the Court will order the following.

[63] The date of the meetings will remain June 18, 2018. That is two months from now. There is time for the parties to discuss the current version of the Plan and either satisfy themselves that it is reasonable or negotiate changes to it. The Court will give them one month to do so.

[64] The date for mailing the Meeting Materials to the creditors will be pushed back to May 21, 2018 to allow for this month of negotiations. The Meeting Materials will include the final version of the Plan as well as letters from counsel for the Representative Employees and the Union in which they must take a position for or against the Plan. The deemed proxy will be to vote in accordance with that recommendation. That way, the employees and retirees will have the opportunity to make a real choice, based on the final version of the Plan and in full knowledge of how their claim will be voted if they do not execute a proxy.

[65] It follows that there can be no amendments to the Plan after May 18, 2018 without the authorization of the Court. Moreover, any amendment authorized after that date will likely involve the postponement of the creditors' meetings scheduled for June 18, 2018.

FOR THESE REASONS, THE COURT:

[66] **GRANTS** the Plan Filing and Meetings Order as amended by the Court and annexed to this judgment;

[67] **ORDERS** the parties not to amend the Plan after May 18, 2018 without the authorization of the Court;

[68] **RESERVES** the right of the parties to make further representations to the Court with respect to the documents to be mailed to the creditors on May 21, 2018;

[69] **THE WHOLE, WITHOUT COSTS.**

_____
STEPHEN W. HAMILTON, J.S.C.

Mtre Bernard Boucher
Mtre Natalie Bussière
Mtre Emily Hazlett
BLAKE, CASSELS & GRAYDON LLP
For the Petitioners and the Mises-en-cause

Mtre Sylvain Rigaud
Mtre Crystal Ashby
NORTON ROSE FULLBRIGHT LLP
For the Monitor

Mtre Andrew J. Hatnay
KOSKIE MINSKY LLP
Mtre Mark Meland
FISHMAN FLANZ MELAND PAQUIN LLP
For the Objecting parties Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson

Mtre Daniel Boudreault
PHILION LEBLANC BEAUDRY AVOCATS
For the Objecting parties Syndicat des Métallos Section locale 6254, 6285 et 9996

Mtre Edward Bechard-Torres
IMK LLP
For the Superintendent of Pensions of Newfoundland

Mtre Antoine Lippé
DEPARTMENT OF JUSTICE – CANADA
For the Attorney General of Canada

Mtre Louis Robillard
RETRAITE QUÉBEC
For Retraite Québec

Mtre Gerry Apostolatos
LANGLOIS AVOCATS
For Quebec North Shore and Labrador Railway Company Inc.

Mtre Gabriel Serena
CAIN LAMARRE
For Ville de Fermont

Mtre Martin Roy
STEIN MONAST
For Ville de Sept-Ïles

Mtre Ouassim Tadlaoui
BORDEN LADNER GERVAIS
For Groupe UNNU-EBC S.E.N.C.

Hearing date: April 16, 2018

SUPERIOR COURT

C A N A D A
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
N°: **500-11-048114-157**
DATE: **April 20, 2018**

PRESIDING : THE HONOURABLE STEPHEN W. HAMILTON J.S.C.

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:

BLOOM LAKE GENERAL PARTNER LIMITED

QUINTO MINING CORPORATION

8568391 CANADA LIMITED

CLIFFS QUÉBEC IRON MINING ULC

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

Petitioners

-and-

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP

BLOOM LAKE RAILWAY COMPANY LIMITED

WABUSH MINES

ARNAUD RAILWAY COMPANY

WABUSH LAKE RAILWAY COMPANY LIMITED

Mises-en-cause

(Petitioners and Mises-en-cause hereinafter the "**CCAA Parties**")

-and-

FTI CONSULTING CANADA INC.

Monitor

PLAN FILING AND MEETINGS ORDER

HAVING READ the CCAA Parties' (the "**Petitioners**") *Amended Motion for the Issuance of a Plan Filing and Meetings Order,* and the attached exhibits thereof, and

the affidavit in support thereof (the "**Motion**"), the Monitor's Forty-Fourth Report and the submissions of counsels for the Petitioners, the Monitor and other interested parties;

GIVEN the provisions of the Initial Orders granted on January 27, 2015 and May 20, 2015, as subsequently amended, rectified or restated (together, the "**Initial Orders**");

GIVEN the provisions of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C. c-36 (the "**CCAA**").

THE COURT:

1. **GRANTS** the Motion.

Service

2. **DECLARES** that the Petitioners have given sufficient prior notice of the presentation of this Motion to interested parties and that the time for service of the Motion herein be and is hereby abridged.

Definitions

3. **DECLARES** that the capitalized terms not otherwise defined in this Order shall have the meanings ascribed in **Schedule "A"** attached hereto. The following terms shall have the meanings set out below:

   3.1 "**Chair**" shall have the meaning ascribed to such term in Paragraph 29;

   3.2 "**Creditor Letter**" means the letter (in English and French) sent to Affected Unsecured Creditors in substantially the form of **Schedule "B"** hereto;

   3.3 "**Meeting Materials**" shall have the meaning ascribed to such term in Paragraph 8;

   3.4 "**Notice of Creditors' Meetings and Sanction Hearing**" means the notice which shall be given to the Affected Unsecured Creditors of the Meetings to be held for the approval of the Plan, and of the Sanction Hearing of the Plan, being substantially in the form of **Schedule "C"** hereto;

   3.5 "**Proxy**" means a proxy and instructions to Affected Unsecured Creditors for explaining how to complete same, substantially in the form of **Schedule "D"** hereto;

   3.6 "**Resolution**" means the resolution substantially in the form attached as **Schedule "E**"; and

   3.7 "**Website**" means http://cfcanada.fticonsulting.com/bloomlake.

Joint Plan of Compromise and Arrangement

4. **ORDERS** that the Joint Plan of Compromise and Arrangement pursuant to the CCAA filed by the Participating CCAA Parties dated April 16, 2018, (as may be amended,

supplemented and restated from time to time, the "**Plan**") is hereby accepted for filing, and the Participating CCAA Parties are hereby authorized to seek approval of the Plan from the Affected Unsecured Creditors in the manner set forth herein.

5. **ORDERS** that the Participating CCAA Parties, be, and they are hereby, authorized to file, in accordance with its terms, any amendment, restatement, modification of or supplement to, the Plan (each a "**Plan Modification**") prior to May 18, 2018 pursuant to and in accordance with the terms of the Plan, in which case any such Plan Modification shall, for all purposes, be and be deemed to form part of and be incorporated into the Plan. The Participating CCAA Parties shall […] include any such Plan Modification […] in the Meeting Materials. The Participating CCAA Parties may give notice of any such Plan Modification […] by notice which shall be sufficient if […] provided to those Persons listed on the service list posted on the Website (as amended from time to time, the "**Service List**"). The Monitor shall post on the Website, as soon as practicable, any such Plan Modification, with notice of such posting forthwith provided to the Service List. Any Plan Modification after May 18, 2018 requires Court authorization, and the Court will determine what notice is required and whether the Meetings scheduled for June 18, 2018 will be postponed.

6. **ORDERS** that after the Meetings (and both prior to and subsequent to the obtaining of the Sanction Order), the Participating CCAA Parties may at any time and from time to time effect a Plan Modification pursuant to and in accordance with the terms of the Plan and with the authorization of the Court. The Monitor shall forthwith post on the Website any such Plan Modification, with notice of such posting forthwith provided to the Service List.

Form of Documents

7. **ORDERS** that the forms of: (i) the Notice of Creditors' Meetings and Sanction Hearing, (ii) the Creditor Letter, (iii) the Proxy, and (iv) the Resolution are each hereby approved, and the Monitor, in consultation with the Participating CCAA Parties, is authorized to make such minor changes to such forms of documents as it consider necessary or desirable to conform the content thereof to the terms of the Plan or this Order or any further Orders of the Court.

Notification Procedures

8. **ORDERS** that the Monitor shall cause to be sent, by regular mail, courier or email a copy of the Notice of Creditors' Meetings and Sanction Hearing, the Creditor Letter, the Proxy, the Resolution, the Plan, and this Order (collectively, with the Report of the Monitor to be filed in connection with the Meetings, the "**Meeting Materials**") as soon as reasonably practicable after the granting of this Order and, in any event, no later than **5:00 p.m.** (Eastern time) on May 21, 2018 to each Affected Unsecured Creditor known to the Monitor as of the date of this Order at the address for such Affected Unsecured Creditor set out in such Affected Unsecured Creditor's Proof of Claim or to such other address that has been provided to the Monitor by such Affected Unsecured Creditor pursuant to Paragraph 34 or 36.

9. **ORDERS** that the Monitor shall (i) forthwith publish on the Website an electronic copy of the Meeting Materials, (ii) send a copy of the Meeting Materials to the Service List, and (iii) provide a copy to any Affected Unsecured Creditor upon written request by such Affected Unsecured Creditor provided that such written request is received by

the Monitor no later than three (3) Business Days prior to the Meetings (or any adjournment thereof).

10. **ORDERS** that the Participating CCAA Parties and the Monitor be and they are hereby authorized to provide such supplemental information ("**Additional Information**") to the Meeting Materials as the Participating CCAA Parties may determine, with the consent of the Monitor, and the Additional Information shall be distributed or made available by posting on the Website and served on the Service List, and any such other method of delivery that the Participating CCAA Parties, with the consent of the Monitor, determine is appropriate.

11. **ORDERS** that the publications and/or delivery referred to in Paragraphs 8, 9 and 10 hereof, shall constitute good and sufficient service of the Meeting Materials on all Persons who may be entitled to receive notice thereof, or of these proceedings, or who may wish to be present in person or represented by proxy at the Meeting in respect of the Unsecured Creditor Class to which each such Person belongs, or who may wish to appear in these proceedings, and no other form of notice or service need be made on such Persons, and no other document or material need be served on such Persons in respect of these proceedings.

12. **ORDERS** that the non-receipt of a copy of the Meeting Materials beyond the reasonable control of the Monitor shall not constitute a breach of this Order and the non-receipt of a copy of the Meeting Materials shall not invalidate any resolution passed or proceedings taken at the Meetings.

Employee Addresses and Information

13. **ORDERS** that the Monitor is hereby authorized to deliver to Employees with Proven or Unresolved Claims a notice that such Employees must provide their Social Insurance Numbers to the Monitor as a condition to receiving any distributions under the Plan.

Limited Substantive Consolidation of certain Participating CCAA Parties

14. **ORDERS** that the following Participating CCAA Parties shall be substantively consolidated for the purposes of voting and distribution on the Plan, and all references in this Order to Participating CCAA Parties shall mean to such Participating CCAA Parties, as so consolidated:

    14.1 CQIM and Quinto (together, the "**CQIM/Quinto Parties**");

    14.2 BLGP and BLLP (together, the "**BL Parties**"); and

    14.3 Wabush Iron, Wabush Resources and the Wabush Mines (together, the "**Wabush Mines Parties**").

Classes of Unsecured Creditors

15. **ORDERS** that the Affected Unsecured Creditors with respect of each Participating CCAA Party shall be grouped into the following classes for voting (in respect of their Eligible Voting Claims) and distribution purposes (in respect of their Proven Claims) (each an "**Unsecured Creditor Class**" and together the "**Unsecured Creditor Classes**"):

15.1 **CQIM/Quinto Unsecured Creditor Class**: being Affected Unsecured Creditors of any of the CQIM/Quinto Parties;

15.2 **BL Parties Unsecured Creditor Class**: being Affected Unsecured Creditors of any of the BL Parties;

15.3 **Wabush Mines Unsecured Creditor Class**: being Affected Unsecured Creditors of any of the Wabush Mines Parties;

15.4 **Arnaud Unsecured Creditor Class**: being Affected Unsecured Creditors of Arnaud; and

15.5 **Wabush Railway Unsecured Creditor Class**: being Affected Unsecured Creditors of Wabush Railway.

Meetings

16. **DECLARES** that the Participating CCAA Parties are hereby authorized to call, hold and conduct the following Meetings, being understood that there will be a separate Meeting for each Unsecured Creditor Class listed below, in Montréal, Québec, for the purpose of voting upon, with or without variation, the Resolution to approve the Plan:

    1. **Meeting of CQIM/Quinto Unsecured Creditor Class:** June 18, 2018 at 9:30 a.m. Montréal time at Norton Rose Fulbright Canada LLP, Suite 2500, 1 Place Ville Marie Montréal, QC H3B 1R1

    2. **Meeting of BL Parties Unsecured Creditor Class**: June 18, 2018 at 9:30 a.m. Montréal time at Norton Rose Fulbright Canada LLP, Suite 2500, 1 Place Ville Marie Montréal, QC H3B 1R1

    3. **Meeting of Wabush Mines Unsecured Creditor Class**: June 18, 2018 at 11:00 a.m. Montréal time at Norton Rose Fulbright Canada LLP, Suite 2500, 1 Place Ville Marie Montréal, QC H3B 1R1

    4. **Meeting of Arnaud Unsecured Creditor Class**: June 18, 2018 at 11:00 a.m. Montréal time at Norton Rose Fulbright Canada LLP, Suite 2500, 1 Place Ville Marie Montréal, QC H3B 1R1

    5. **Meeting of Wabush Railway Unsecured Creditor Class**: June 18, 2018 at 11:00 a.m. Montréal time at Norton Rose Fulbright Canada LLP, Suite 2500, 1 Place Ville Marie Montréal, QC H3B 1R1

17. **DECLARES** that the only Persons entitled to notice of, to attend and speak at a Meeting are Eligible Voting Creditors of such Unsecured Creditor Class (or their respective duly appointed Proxy holders and their legal counsel), representatives of the Monitor, the Participating CCAA Parties, all such parties' financial and legal advisors, Salaried Members Representative Counsel, USW Counsel, the Chair (as defined below), the secretary and any scrutineers appointed in accordance with Paragraph 31 hereof. Any other Person may be admitted to the Meetings on invitation of the Participating CCAA Parties or the Monitor.

18. **ORDERS** that any Proxy which any Eligible Voting Creditor wishes to submit in respect of a Meeting (or any adjournment, postponement or other rescheduling

thereof) must be substantially in the form attached hereto as **Schedule "D"** (or in such other form acceptable to the Monitor or the Chair).

19. **ORDERS** that any Proxy in respect of a Meeting (or any adjournment, postponement or other rescheduling thereof) must be received by the Monitor in accordance with Paragraph 36 hereof by 5:00 p.m. (Eastern time) June 14, 2018 (the "**Proxy Deadline**"), being two (2) Business Days prior to the date set for the Meetings in Paragraph 16 hereof. The Monitor is hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which a Proxy is completed.

20. **ORDERS** that, in the absence of instruction to vote for or against the approval of the Resolution in a duly signed and returned Proxy that appoints a representative of the Monitor as Proxy holder, the Proxy shall be deemed to include instructions to vote for the approval of the Resolution, provided the Proxy holder does not otherwise revoke the Proxy by written notice to the Monitor delivered so that it is received by the Monitor no later than the Proxy Deadline.

21. **ORDERS** that the quorum required at each Meeting shall be one Eligible Voting Creditor present at each Meeting in person or by Proxy. If the (a) requisite quorum is not present at any Meeting, or (b) any Meeting is adjourned, postponed or rescheduled by the Chair (whether (i) by the request of the Participating CCAA Parties; (ii) by vote of the majority in value of Affected Unsecured Creditors holding Eligible Voting Claims in person or by Proxy at any Meeting; or (iii) otherwise as determined by the Chair), then any such Meetings shall be adjourned, postponed or rescheduled to such time(s) and place(s) as the Chair deems necessary or desirable.

22. **ORDERS** that the Chair, with the consent of the Participating CCAA Parties and the Plan Sponsors, not to be unreasonably withheld, be and he or she is hereby, authorized to adjourn, postpone or otherwise reschedule any Meeting on one or more occasions to such time(s), date(s) and place(s) as the Chair, with the consent of the Participating CCAA Parties and Plan Sponsors, not to be unreasonably withheld, deem necessary or desirable (without the need to first convene any such Meetings for the purpose of any adjournment, postponement or other rescheduling thereof). None of the Participating CCAA Parties, the Chair or the Monitor shall be required to deliver any notice of the adjournment, postponement or rescheduling of the Meeting(s) or adjourned Meeting(s), as applicable, provided that the Monitor shall:

    22.1 announce the adjournment, postponement or rescheduling of the applicable Meeting(s) or adjourned Meeting(s) to the participants at the applicable Meeting(s) if the commencement of the Meeting(s) has occurred prior to the adjournment, postponement or rescheduling;

    22.2 post notice of the adjournment, postponement or rescheduling at the originally designated time and location of each of the Meeting(s) or adjourned Meeting(s), as applicable;

    22.3 forthwith post notice of the adjournment, postponement or rescheduling on the Website; and

    22.4 provide notice of the adjournment, postponement or rescheduling to the Service List forthwith. Any Proxies validly delivered in connection with the Meeting(s)

shall be accepted as Proxies in respect of any adjourned, postponed or rescheduled Meeting(s).

23. **DECLARES** that the only Persons entitled to vote at a Meeting shall be Eligible Voting Creditors of such Unsecured Creditor Class or their Proxy holders. Each Eligible Voting Creditor will be entitled to a vote with a value equal to the value in dollars of its Voting Claim, and/or the value in dollars of its Unresolved Voting Claim, if any, as determined in accordance with this Paragraph 23 of this Order.

24. **ORDERS** that the dollar value of an Unresolved Voting Claim for voting purposes at the applicable Meeting shall be: (i) the amount set out in such Creditor's Proof of Claim if no Notice of Allowance or Notice of Revision or Disallowance (in each case as defined in the Amended Claims Procedure Order) has been issued; (ii) the amount set out in the Notice of Revision or Disallowance in respect of such Claim if no Notice of Dispute (as defined in the Amended Claims Procedure Order) has been filed and the time for doing so has not expired; (iii) the amount set out in the Notice of Dispute in respect of such Claim if a Notice of Dispute has been timely filed, in all respects without prejudice to the determination of the dollar value of such Affected Unsecured Claim for distribution purposes in accordance with the Amended Claims Procedure Order; or (iv) the amount as may be agreed to between the Monitor and the Affected Unsecured Creditor, or between the Monitor and the Salaried Members Representative Counsel or the Monitor and the USW Counsel, as applicable.

25. **DECLARES** that in respect of the Eligible Voting Claims of the Salaried Members and the USW Members:

    25.1 The Salaried Members Representative Counsel shall be deemed to be a Proxy holder in respect of each Eligible Voting Claim related to or arising from the employment of the Salaried Members and shall be entitled to vote them at a Meeting on their behalf, without the requirement for any Salaried Member to submit a Proxy to the Monitor, save in respect of any Salaried Member who, prior to a Meeting, notifies the Monitor by an instrument in writing that he revokes this deemed Proxy;

    25.2 The USW Counsel shall be deemed to be a Proxy holder in respect of each Eligible Voting Claim related to or arising from the employment of the USW Members and shall be entitled to vote them at a Meeting on their behalf, without the requirement for any USW Member to submit a Proxy to the Monitor, save in respect of any USW Member who, prior to a Meeting, notifies the Monitor by an instrument in writing that he revokes this deemed Proxy; and

    25.3 The Salaried Members Representative Counsel and the USW Counsel shall vote each Eligible Voting Claim in accordance with the recommendation made by the Salaried Members Representative Counsel to the Salaried Members and by USW Counsel to the USW Members in the Meeting Materials.

    For greater certainty, however, only the Pension Plan Administrator or its designated Proxy may vote the Pension claims.

26. **ORDERS** that a Voting Claim or Unresolved Voting Claim shall not include fractional numbers and shall be rounded down to the nearest whole Canadian dollar amount.

27. **ORDERS** that the Monitor shall keep a separate record of the votes cast by Affected Unsecured Creditors holding Unresolved Voting Claims and shall report to the Court with respect thereto at the Sanction Motion.

28. **ORDERS** that the results of any and all votes conducted at the Meetings shall be binding on all Affected Unsecured Creditors, whether or not any such Affected Unsecured Creditor is present or voting at the Meetings.

29. **ORDERS** that a representative of the Monitor shall preside as the chair of each Meeting (the "**Chair**") and, subject to any further order of this Court, shall decide all matters relating to the conduct of such Meeting. The Participating CCAA Party and any Eligible Voting Creditor may appeal from any decision of the Chair to the Court, within three (3) Business Days of any such decision.

30. **DECLARES** that, at each Meeting, the Chair is authorized to direct a vote on the Resolution to approve the Plan, and any amendments thereto made in accordance with Paragraph 5 of this Order.

31. **ORDERS** that the Monitor may appoint scrutineers for the supervision and tabulation of the attendance at, quorum at and votes cast at each Meeting. Person(s) designated by the Monitor shall act as secretary at each Meeting.

32. **ORDERS** that the Monitor shall be directed to calculate the votes cast at each Meeting called to consider the Plan and report the results in accordance with Paragraph 42 of this Order.

33. **ORDERS** that an Affected Unsecured Creditor that is not an individual may only attend and vote at a Meeting if it has appointed a Proxy holder to attend and act on its behalf at such Meeting.

Notice of Transfers

34. **ORDERS** that, for purposes of voting at a Meeting, if an Affected Unsecured Creditor transfers or assigns all of its Affected Unsecured Claim, then the transferee or assignee shall only be entitled to vote and attend the applicable Meeting if the transferee or assignee delivers evidence satisfactory to the Monitor of its ownership of all of such Affected Unsecured Claim and a written request to the Monitor, not later than 5:00 pm on the date that is seven (7) days prior to the date of the Meeting, or such later time that the Monitor may agree to, that such transferee's or assignee's name be included on the list of Eligible Voting Creditors entitled to vote, either in person or by proxy, the transferor's or assignor's Voting Claim or Unresolved Voting Claim, as applicable, at the applicable Meeting in lieu of the transferor or assignor.

35. **ORDERS** that if the holder of an Affected Unsecured Claim or any subsequent holder of the whole of an Affected Unsecured Claim who has been acknowledged by the Monitor as the Affected Unsecured Creditor in respect of such Affected Unsecured Claim, transfers or assigns the whole of such Claim to more than one Person or part of such Claim to another Person or Persons, such transfer or assignment shall not create a separate Affected Unsecured Claim or Affected Unsecured Claims and such Affected Unsecured Claim shall continue to constitute and be dealt with as a single Claim as if such Claim (or portion of such Claim) had not been transferred or assigned, notwithstanding such transfer or assignment, and the Monitor and the Participating CCAA Parties shall in each such case not be bound to recognize or

acknowledge any such transfer or assignment and shall be entitled to give notices to and to otherwise deal with such Affected Unsecured Claim only as a whole and then only to and with the Person last holding such Affected Unsecured Claim in whole as the Affected Unsecured Creditor in respect of such Affected Unsecured Claim, provided such Affected Unsecured Creditor may by notice in writing to the Monitor delivered so that it is received by the Monitor on or before the tenth day prior to any Meeting or distribution in respect of such Affected Unsecured Claim, direct that subsequent dealings in respect of such Affected Unsecured Claim, but only as a whole, shall be with a specified transferee or assignee and in such event, such Affected Unsecured Creditor and such transferee or assignee of the Affected Unsecured Claim shall be bound by any notices given to the transferor or assignor and prior steps taken in respect of such Claim.

Notices and Communications

36. **ORDERS** that any notice or other communication to be given under this Order by an Affected Unsecured Creditor to the Monitor or the Participating CCAA Parties shall be in writing and will be sufficiently given only if given by pre-paid mail, registered mail, e-mail, courier addressed to:

Monitor:	FTI Consulting Canada Inc. TD Waterhouse Tower 79 Wellington Street West Suite 2010, P.O. Box 104 Toronto, ON M5K 1G8
	Attention: Nigel Meakin
	E-mail: bloomlake@fticonsulting.com

With a Copy to:	Norton, Rose, Fulbright LLP Suite 2500, 1 Place Ville Marie Montréal, QC H3B 1R1
	Attention: Sylvain Rigaud
	E-mail: sylvain.rigaud@nortonrosefulbright.com

Participating CCAA Parties:	Bloom Lake General Partner Limited *et al* c/o Blake, Cassels & Graydon LLP 199 Bay Street Suite 4000, Commerce Court West Toronto Ontario M5L 1A9
	Attention: Clifford T. Smith, Officer
	E-mail: clifford.smith@CliffsNR.com

With a Copy to:	Blake, Cassels & Graydon LLP 199 Bay Street Suite 4000, Commerce Court West Toronto Ontario M5L 1A9
	Attention: Milly Chow
	E-mail: milly.chow@blakes.com

37. **ORDERS** that any document sent by the Monitor or the Participating CCAA Parties pursuant to this Order may be sent by e-mail, ordinary mail, registered mail or courier. A Creditor shall be deemed to have received any document sent pursuant to this Order two (2) Business Days after the document is sent by mail and one (1) Business Day after the document is sent by courier or e-mail. Documents shall not be sent by ordinary or registered mail during a postal strike or work stoppage of general application. For greater certainty, the Monitor shall not be deemed to have received any document unless and until such document is actually received by the Monitor at the address noted above.

38. **ORDERS** that, in the event that the day on which any notice or communication required to be delivered pursuant to this Order is not a Business Day, then such notice or communication shall be required to be delivered on the next Business Day.

39. **ORDERS** that if, during any period during which notices or other communications are being given pursuant to this Order, a postal strike or postal work stoppage of general application should occur, such notices or other communications sent by ordinary or registered mail and then not received shall not, absent further Order of this Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery or e-mail in accordance with this Order.

40. **ORDERS** that all references to time in this Order shall mean prevailing local time in Montréal, Québec and any references to an event occurring on a Business Day shall mean prior to 5:00 p.m. on the Business Day unless otherwise indicated.

41. **ORDERS** that references to the singular shall include the plural, references to the plural shall include the singular and to any gender shall include the other gender.

Sanction Hearing

42. **ORDERS** that the Monitor shall provide a report to the Court as soon as practicable after the Meetings by no later than June 21, 2018 (the "**Monitor's Report Regarding the Meetings**") with respect to:

    42.1 the results of voting at the Meetings;

    42.2 whether the Required Majority of each Unsecured Creditor Class has approved the Plan;

    42.3 the separate tabulation of the Unresolved Voting Claims as required by Paragraph 27; and

    42.4 in its discretion, any other matter relating to the Participating CCAA Parties' motion(s) seeking sanction of the Plan.

43. **ORDERS** that an electronic copy of the Monitor's Report Regarding the Meetings, the Plan, including any Plan Modification, and a copy of the materials filed in respect of the Sanction Motion shall be posted on the Website prior to the Sanction Motion.

44. **ORDERS** that in the event the Plan has been approved by the Required Majority of each Unsecured Creditor Class, the Participating CCAA Parties may seek the sanction of the Plan before this Court on June 29, 2018 (the "**Sanction Motion**"), or

such later date as the Monitor may advise the Service List in these proceedings, provided that such later date shall be acceptable to the Participating CCAA Parties, the Parent and the Monitor.

45. **ORDERS** that service of this Order by the CCAA Parties to the parties on the Service List, the delivery of the Meeting Materials in accordance with Paragraph 8 hereof and the posting of the Meeting Materials on the Website in accordance with Paragraph 9 hereof shall constitute good and sufficient service and notice of the Sanction Motion.

46. **ORDERS** that in the event that the Sanction Motion is adjourned, only those Persons appearing on the Service List as of the date of service shall be served with notice of the adjourned date.

47. **ORDERS** that, subject to any further Order of the Court, in the event of any conflict, inconsistency, ambiguity or difference between the provisions of the Plan and this Order, the terms, conditions and provisions of the Plan, as sanctioned, shall govern and be paramount, and any such provision of this Order shall be deemed to be amended to the extent necessary to eliminate any such conflict, inconsistency, ambiguity or difference.

48. **ORDERS** that any person who wishes to oppose the Sanction Motion shall serve upon the parties on the Service List, and file with the Court a copy of the materials to be used to oppose the Sanction Motion by no later than 5:00 p.m. (Eastern time) on June 26, 2018 or, if applicable, four days' prior to any adjourned or rescheduled Sanction Motion.

Monitor's Role

49. **ORDERS** that the Monitor, in addition to its prescribed rights and obligations under (i) the CCAA; (ii) the Initial Orders; and (iii) the Amended Claims Procedure Order, is hereby directed and empowered to take such other actions and fulfill such other roles as are authorized by this Order.

50. **ORDERS** that: (i) in carrying out the terms of this Order, the Monitor shall have all the protections given to it by the CCAA, the Initial Orders, the Amended Claims Procedure Order, and any other Order granted in these CCAA Proceedings and as an officer of the Court, including the stay of proceedings in its favour; (ii) the Monitor shall incur no liability or obligation as a result of carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part; (iii) the Monitor shall be entitled to rely on the books and records of the Participating CCAA Parties and any information provided by the Participating CCAA Parties, and any information acquired by the Monitor as a result of carrying out its duties under this Order without independent investigation; and (iv) the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

Aid and Assistance of Other Courts

51. **REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province or any court or any judicial, regulatory or administrative body of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

General Provisions

52. **ORDERS** that the Monitor shall use reasonable discretion as to the adequacy of completion and execution of any document completed and executed pursuant to this Order and, where the Monitor is satisfied that any matter to be proven under this Order has been adequately proven, the Monitor may waive strict compliance with the requirements of this Order as to the completion and execution of documents.

53. **DECLARES** that the Monitor may apply to this Court for advice and direction in connection with the discharge or variation of its powers and duties under this Order.

54. **ORDERS** the provisional execution of this Order notwithstanding appeal.

55. **THE WHOLE** without costs.

STEPHEN W. HAMILTON J.S.C.

Mtre Bernard Boucher
Mtre Emily Hazlett
(Blake, Cassels & Graydon LLP)
Attorneys for the CCAA Parties

Date of hearing: April 16, 2018

Schedule A: Definitions
Schedule B: Creditor Letter
Schedule C: Notice of Creditor's Meetings and Sanction Hearing
Schedule D: Proxy
Schedule E: Form of Resolution

Schedule "A" to the Plan Filing and Meetings Order
Definitions

"**8568391**" means 8568391 Canada Limited;

"**Administration Charges**" means, collectively, the BL Administration Charge and the Wabush Administration Charge in the aggregate amount of the BL Administration Charge and the Wabush Administration Charge, as such amount may be reduced from time to time by further Court Order;

"**Affected Claim**" means any Claim other than an Unaffected Claim;

"**Affected Creditor**" means any Creditor holding an Affected Claim, including a Non-Filed Affiliate holding an Affected Claim and a CCAA Party holding an Affected Claim;

"**Affected Unsecured Claim**" means an Affected Claim that is an Unsecured Claim, including without limitation, any Deficiency Claims;

"**Affected Unsecured Creditor**" means any Affected Creditor holding an Affected Unsecured Claim, including a Non-Filed Affiliate and a CCAA Party holding an Affected Unsecured Claim;

"**Affiliate**" means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct control or indirect common control with, such Person, and includes any Person in like relation to an Affiliate. A Person shall be deemed to "**control**" another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through ownership of voting securities, by contract or otherwise, and the term "**controlled**" shall have a similar meaning;

"**Allocation Methodology**" means the methodology for the allocation of proceeds of realizations of the CCAA Parties' assets and the costs of the CCAA Proceedings amongst the CCAA Parties and, to the extent necessary, amongst assets or asset categories, which was approved by an Order of the Court on July 25, 2017 as may be amended upon Final Determination of the Fermont Allocation Appeal;

"**Allocated Value**" means, in respect of any particular asset of a Participating CCAA Party, the amount of the sale proceeds realized from such asset, net of costs allocated to such asset all pursuant to the Allocation Methodology and, in respect of any Secured Claim, the amount of such sale proceeds receivable on account of such Secured Claim after taking into account the priority of such Secured Claims relative to other creditors holding a Lien in such asset;

"**Allowed Claim**" shall have the meaning given to it in the Amended Claims Procedure Order;

"**Amended Claims Procedure Order**" means the Amended Claims Procedure Order dated November 16, 2015, approving and implementing the claims procedure in respect of the

CCAA Parties and the Directors and Officers (including all schedules and appendices thereof);

"**Applicable Law**" means any law (including any principle of civil law, common law or equity), statute, order, decree, judgment, rule, regulation, ordinance, or other pronouncement having the effect of law, whether in Canada or any other country or any domestic or foreign province, state, city, county or other political subdivision;

"**Arnaud**" means Arnaud Railway Company;

"**BIA**" means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;

"**BL Administration Charge**" means the charge over the BL Property created by paragraph 45 of the Bloom Lake Initial Order and having the priority provided in paragraphs 46 and 47 of such Court Order in the amount of Cdn.$2.5 million, as such amount may be reduced from time to time by further Court Order;

"**BL Directors' Charge**" means the charge over the BL Property of the BL Parties created by paragraph 31 of the Bloom Lake Initial Order, and having the priority provided in paragraphs 46 and 47 of such Order in the amount of Cdn.$2.5 million, as such amount may be reduced from time to time by further Court Order;

"**BLGP**" means Bloom Lake General Partner Limited;
"**BLLP**" means The Bloom Lake Iron Ore Mine Limited Partnership;
"**Bloom Lake CCAA Parties**" means, collectively, BLGP, Quinto, 8568391, CQIM, BLLP, and BLRC;
"**BL Parties**" means BLGP and BLLP;
"**BL Property**" means all current and future assets, rights, undertakings and properties of the Bloom Lake CCAA Parties, of every nature and kind whatsoever, and wherever situate, including all Cash or other proceeds thereof;

"**BLRC**" means Bloom Lake Railway Company Limited;

"**Business**" means the direct and indirect operations and activities formerly carried on by the Participating CCAA Parties;

"**Business Day**" means a day, other than a Saturday, a Sunday, or a non-juridical day (as defined in article 6 of the Code of Civil Procedure, R.S.Q., c. C-25, as amended);

"**Cash**" means cash, certificates of deposit, bank deposits, commercial paper, treasury bills and other cash equivalents;

"**CCAA**" means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;

"**CCAA Charges**" means the Administration Charge and the Directors' Charge;

"**CCAA Parties**" means the Wabush CCAA Parties, together with the Bloom Lake CCAA Parties, and **"CCAA Party**" means any one of the CCAA Parties;

"**CCAA Party Pre-Filing Interco Claims**" means Claims of the Participating CCAA Parties against other Participating CCAA Parties as set out in Schedule "H" hereto;

"**CCAA Proceedings**" means the proceedings commenced pursuant to the CCAA by a Court Order issued on January 27, 2015, bearing Court File No. 500-11-048114-157;

"**Claim**" means:

(a) any right or claim of any Person that may be asserted or made in whole or in part against the Participating CCAA Parties (or any of them), whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, in existence on, or which is based on, an event, fact, act or omission which occurred in whole or in part prior to the applicable Filing Date, at law or in equity, by reason of the commission of a tort (intentional or unintentional), any breach of contract, lease or other agreement (oral or written), any breach of duty (including, without limitation, any legal, statutory, equitable or fiduciary duty), any breach of extra-contractual obligation, any right of ownership of or title to property, employment, contract or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise) or for any reason whatsoever against any of the Participating CCAA Parties or any of their property or assets, and whether or not any such indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmetered, disputed, legal, equitable, secured (by guarantee, surety or otherwise), unsecured, present, future, known or unknown, and whether or not any such right or claim is executory or anticipatory in nature, including any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, together with any other rights or claims not referred to above that are or would be claims provable under the BIA had the Participating CCAA Parties (or any one of them) become bankrupt on the applicable Filing Date, including, for greater certainty, any Tax Claim and any monetary claim in connection with any indebtedness, liability or obligation by reason of a breach of a collective bargaining agreement, including grievances in relation thereto, or by reason of a breach of a legal or statutory duty under any employment legislation or pay equity legislation;

(b) a D&O Claim; and

(c) a Restructuring Claim,

provided, however, that Excluded Claims are not Claims, but for greater certainty, a Claim includes any claim arising through subrogation or assignment against any Participating CCAA Party or Director or Officer;

"**Claims Bar Date**" means as provided for in the Amended Claims Procedure Order: (a) in respect of a Claim or D&O Claim, 5:00 p.m. on December 18, 2015, or such other date as may be ordered by the Court; and (b) in respect of a Restructuring Claim, the later of (i) 5:00 p.m. on December 18, 2015 (ii) 5:00 p.m. on the day that is 21 days after either (A) the date that the applicable Notice of Disclaimer or Resiliation becomes effective, (B) the Court Order settling a contestation against such Notice of Disclaimer or Resiliation brought pursuant to Section 32(5)(b) CCAA, or (C) the date of the event giving rise to the Restructuring Claim; or (iii) such other date as may be ordered by the Court;

"**Claims Officer**" means the individual or individuals appointed by the Monitor pursuant to the Amended Claims Procedure Order;

"**CMC Secured Claims**" has the meaning ascribed thereto in the Thirty-Ninth Report dated September 11, 2017 of the Monitor;

"**CNR Key Bank Claims**" has the meaning ascribed thereto in the Thirty-Ninth Report dated September 11, 2017 of the Monitor;

"**Conditions Certificates**" means written notice confirming, as applicable, the fulfilment or waiver, to the extent available, of the conditions precedent to implementation of the Plan as set out in Section 11.3 of the Plan;

"**Construction Lien Claim**" means a Claim asserting a Lien over real property of a Participating CCAA Party in respect of goods or services provided to such Participating CCAA Party that improved such real property;

"**Court**" means the Québec Superior Court of Justice (Commercial Division) or any appellate court seized with jurisdiction in the CCAA Proceedings, as the case may be;

"**Court Order**" means any order of the Court;

"**CQIM**" means Cliffs Québec Iron Mining ULC;

"**CQIM/Quinto Parties**" means CQIM and Quinto together;

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

"**D&O Bar Date**" means 5:00 p.m. (prevailing Eastern Time) on December 18, 2015, or such other date as may be ordered by the Court;

"**D&O Claim**" means any right or claim of any Person against one or more of the Directors and/or Officers howsoever arising on or before the D&O Bar Date, for which the Directors and/or Officers, or any of them, are by statute liable to pay in their capacity as Directors and/or Officers or which are secured by way of any one of the Directors' Charges;

"**Deficiency Claim**" means, in respect of a Secured Creditor holding a Proven Secured Claim, the amount by which such Secured Claim exceeds the Allocated Value of the Property secured by its Lien, and for greater certainty, includes, as applicable, the deficiency Claim, if any, of (a) the Pension Plan Administrator arising from any of the Pension Claims being Finally Determined to be a Priority Pension Claim, and (b) the Non-Filed Affiliate Secured Interco Claims;

"**Director**" means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or *de facto* director of any of the Participating CCAA Parties, in such capacity;

"**Directors' Charges**" means, collectively, the BL Directors' Charge and the Wabush Directors' Charge;

"**Eligible Voting Claims**" means a Voting Claim or an Unresolved Voting Claim;

"**Eligible Voting Creditors**" means, subject to Section 4.2(b) of the Plan, Affected Unsecured Creditors holding Voting Claims or Unresolved Voting Claims;

"**Employee**" means a former employee of a Participating CCAA Party other than a Director or Officer;

"**Employee Priority Claims**" means, in respect of a Participating CCAA Party, the following claims of Employees of such Participating CCAA Party:

(a) claims equal to the amounts that such Employees would have been qualified to receive under paragraph 136(1)(d) of the BIA if the Participating CCAA Party had become bankrupt on the Plan Sanction Date, which for greater certainty, excludes any OPEB, pension contribution, and termination and severance entitlements;

(b) claims for wages, salaries, commissions or compensation for services rendered by such Employees after the applicable Filing Date and on or before the Plan Implementation Date together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the Business during the same period, which for greater certainty, excludes any OPEB, pension contribution, and termination and severance entitlements; and

(c) any amounts in excess of (a) and (b), that the Employees may have been entitled to receive pursuant to the *Wage Earner Protection Program Act* (Canada) if such Participating CCAA Party had become a bankrupt on the Plan Sanction Date, which for greater certainty, excludes OPEB and pension contributions;

"**Excluded Claim**" means, subject to further Court Order, any right or claim of any Person that may be asserted or made in whole or in part against the Participating CCAA Parties (or any one of them) in connection with any indebtedness, liability or obligation of any kind which arose in respect of obligations first incurred on or after the applicable Filing Date (other than Restructuring Claims and D&O Claims), and any interest thereon, including any obligation of the Participating CCAA Parties toward creditors who have supplied or shall supply services, utilities, goods or materials, or who have or shall have advanced funds to the Participating CCAA Parties on or after the applicable Filing Date, but only to the extent of their claims in respect of the supply or advance of such services, utilities, goods, materials or funds on or after the applicable Filing Date, and:

(a) any claim secured by any CCAA Charge;

(b) any claim with respect to fees and disbursements incurred by counsel for any CCAA Party, Director, the Monitor, Claims Officer, any financial advisor retained by any of the foregoing, or Representatives' Counsel as approved by the Court to the extent required;

"**Fermont Allocation Appeal**" means the appeal by Ville de Fermont of the judgment of the Court in the CCAA Proceedings approving the Allocation Methodology dated July 25, 2017 under Court File Number 500-09-027026-178;

"**Filing Date**" means January 27, 2015 for the Bloom Lake CCAA Parties, and May 20, 2015 for the Wabush CCAA Parties;

"**Final Determination**" and "**Finally Determined**" as pertains to a Claim, matter or issue, means either:

(a) in respect of a Claim, such Claim has been finally determined as provided for in the Amended Claims Procedure Order;

(b) there has been a Final Order in respect of the matter or issue; or

(c) there has been an agreed settlement of the issue or matter by the relevant parties, which settlement has been approved by a Final Order, as may be required, or as determined by the Monitor, in consultation with the Participating CCAA Parties, to be approved by the Court;

"**Final Order**" means a Court Order, which has not been reversed, modified or vacated, and is not subject to any stay or appeal, and for which any and all applicable appeal periods have expired;

"**Governmental Authority**" means any government, including any federal, provincial, territorial or municipal government, and any government department, body, ministry, agency, tribunal, commission, board, court, bureau or other authority exercising or purporting to exercise executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government including without limitation any Taxing Authority;

"**Government Priority Claims**" means all claims of Governmental Authorities that are described in section 6(3) of the CCAA;

"**Initial Order**" means, collectively, in respect of the Bloom Lake CCAA Parties, the Bloom Lake Initial Order, and in respect of the Wabush CCAA Parties, the Wabush Initial Order;

"**Liability**" means any indebtedness, obligations and other liabilities of a Person whether absolute, accrued, contingent, fixed or otherwise, or whether due or to become due;

"**Lien**" means any lien, mortgage, charge, security interest, hypothec or deemed trust, arising pursuant to contract, statute or Applicable Law;

"**Meetings**" means the meetings of Affected Unsecured Creditors in the Unsecured Creditor Classes in respect of each Participating CCAA Party called for the purposes of considering and voting in respect of the Plan, which has been set by the Meetings Order to take place at the times, dates and locations as set out in the Meetings Order;

"**Meetings Order**" means this Plan Filing and Meetings Order, including the Schedules hereto, as may be amended or varied from time to time by subsequent Court Order;

"**Monitor**" means FTI Consulting Canada Inc., in its capacity as Monitor of the CCAA Parties and not in its personal or corporate capacity;

"**Newfoundland Reference Proceedings**" means the reference proceeding commenced in the Newfoundland Court of Appeal in respect of the Pension Claims as Docket No. 201701H0029, as appealed to the Supreme Court of Canada;

"**Non-Filed Affiliates**" means the Parent, its former and current direct and indirect subsidiaries and its current and former Affiliates who are not petitioners or mises-en-cause in the CCAA Proceedings, and for greater certainty does not include any CCAA Party but does include any subsidiary of a CCAA Party;

"**Non-Filed Affiliate Interco Claims**" means, collectively, the Non-Filed Affiliate Unsecured Interco Claims and the Non-Filed Affiliate Secured Interco Claims;
"**Non-Filed Affiliate Secured Interco Claims**" means, collectively, (a) the CNR Key Bank Claims and (b) the CMC Secured Claims, in each case only to the extent of the Allocated Value of the Property securing such Claims as set out in the Schedule "G" to this Order and to the extent not a Deficiency Claim;
"**Non-Filed Affiliate Unsecured Interco Claims**" means all Claims filed in the CCAA Proceedings by a Non-Filed Affiliate determined in accordance with the Plan (other than Non-Filed Affiliate Secured Claims) as set out in the Schedule "F" to this Order, and for greater certainty, includes any Deficiency Claims held by a Non-Filed Affiliate;
"**Notice of Disclaimer or Resiliation**" means a written notice issued, either pursuant to the provisions of an agreement, under Section 32 of the CCAA or otherwise, on or after the applicable Filing Date of the Participating CCAA Parties, and copied to the Monitor, advising a Person of the restructuring, disclaimer, resiliation, suspension or termination of any contract, employment agreement, lease or other agreement or arrangement of any nature whatsoever, whether written or oral, and whether such restructuring, disclaimer, resiliation, suspension or termination took place or takes place before or after the date of the Amended Claims Procedure Order;

"**Officer**" means any Person who is or was, or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of any of the Participating CCAA Parties;

"**Parent**" means Cleveland-Cliffs Inc.;

"**Participating CCAA Parties**" means the CCAA Parties, other than 8568391 and BLRC, and **"Participating CCAA Party**" means any of the Participating CCAA Parties;

"**Pension Plan Administrator**" means Morneau Shepell Ltd., the Plan Administrator of the Wabush Pension Plans, or any replacement thereof;

"**Pension Claims**" means Claims with respect to the administration, funding or termination of the Wabush Pension Plans, including any Claim for unpaid normal cost payments, or special/amortization payments or any wind up deficiency and "**Pension Claim**" means any one of them;

"**Pension Priority Proceedings**" means (a) the motion for advice and directions of the Monitor dated September 20, 2016 in respect of priority arguments asserted pursuant to the *Pension Benefits Act* (Newfoundland and Labrador), the *Pension Benefits Standards Act* (Canada) and the *Supplemental Pension Plans Act* (Québec) in connection with the claims arising from any failure of the Wabush CCAA Parties to make certain normal course payments or special payments under the Wabush Pension Plans and for the wind-up deficit under the Wabush Pension Plans currently subject to an appeal of Mr. Justice Hamilton's decision dated September 11, 2017, as may be further appealed, and (b) the Newfoundland Reference Proceedings with regards to the interpretation of the *Pension Benefits Act* (Newfoundland and Labrador) and the applicable pension legislation to members and beneficiaries of the Wabush Pension Plans;

"**Person**" means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust (including a real estate investment trust),

unincorporated organization, joint venture, government or any agency or instrumentality thereof or any other entity;

"**Plan**" has the meaning given to such term in Paragraph 4;

"**Plan Implementation Date**" means the Business Day on which all of the conditions precedent to the implementation of the Plan have been fulfilled, or, to the extent permitted pursuant to the terms and conditions of the Plan, waived, as evidenced by the Monitor's Plan Implementation Date Certificate to be filed with the Court;

"**Plan Implementation Date Certificate**" means the certificate substantially in the form to be attached to the Sanction Order to be filed by the Monitor with the Court, declaring that all of the conditions precedent to implementation of the Plan have been satisfied or waived;

"**Plan Modification**" shall have the meaning ascribed thereto in the Meetings Order;

"**Plan Sanction Date**" means the date that the Sanction Order issued by the Court;

"**Plan Sponsors**" means the Parent and all other Non-Filed Affiliates;

"**Post-Filing Claims Procedure Order**" means the Post-Filing Claims Procedures Order to be sought by the CCAA Parties, which, *inter alia*, seeks to establish a post-filing claims procedure with respect to post-filing claims, if any, against the CCAA Parties and their Officers and Directors, as such may be amended, restated or supplemented from time to time;

"**Priority Claims**" means, collectively, the (a) Employee Priority Claim; and (b) Government Priority Claims;

"**Priority Pension Claim**" means a Pension Claim that is Finally Determined to have priority over Secured Claims or Unsecured Claims;

"**Proof of Claim**" means the proof of claim form that was required to be completed by a Creditor setting forth its applicable Claim and filed by the Claims Bar Date, pursuant to the Amended Claims Procedure Order;

"**Property**" means, collectively, the BL Property and the Wabush Property;

"**Proven Affected Unsecured Claim**" means an Affected Unsecured Claim that is a Proven Claim;

"**Proven Claim**" means (a) a Claim of a Creditor, Finally Determined as an Allowed Claim for voting, distribution and payment purposes under the Plan, (b) in the case of the Participating CCAA Parties in respect of their CCAA Party Pre-Filing Interco Claims, and in the case of the Non-Filed Affiliates in respect of their Non-Filed Affiliate Unsecured Interco Claims and Non-Filed Affiliate Secured Interco Claims, as such Claims are declared, solely for the purposes of the Plan, to be Proven Claims pursuant to and in the amounts set out in this Order, and (c) in the case of Employee Priority Claims and Government Priority Claims, as Finally Determined to be a valid post-Filing Date claim against a Participating CCAA Party;

"**Proven Secured Claim**" means a Secured Claim that is a Proven Claim;

"**Quinto"** means Quinto Mining Corporation;

"**Representative Court Order**" means the Court Order dated June 22, 2015, as such order may be amended, supplemented, restated or rectified from time to time;

"**Required Majority**" means, with respect to each Unsecured Creditor Class, a majority in number of Affected Unsecured Creditors who represent at least two-thirds in value of the Claims of Affected Unsecured Creditors who actually vote approving the Plan (in person, by proxy or by ballot) at the Meeting;

"**Restructuring Claim**" means any right or claim of any Person against the Participating CCAA Parties (or any one of them) in connection with any indebtedness, liability or obligation of any kind whatsoever owed by the Participating CCAA Parties (or any one of them) to such Person, arising out of the restructuring, disclaimer, resiliation, termination or breach or suspension, on or after the applicable Filing Date, of any contract, employment agreement, lease or other agreement or arrangement, whether written or oral, and whether such restructuring, disclaimer, resiliation, termination or breach took place or takes place before or after the date of the Amended Claims Procedure Order, and, for greater certainty, includes any right or claim of an Employee of any of the Participating CCAA Parties arising from a termination of its employment after the applicable Filing Date, *provided, however*, that "**Restructuring Claim**" shall not include an Excluded Claim;

"**Salaried Members**" means, collectively, all salaried/non-Union Employees and retirees of the Wabush CCAA Parties or any person claiming an interest under or on behalf of such former employees or pensioners and surviving spouses, or group or class of them (excluding any individual who opted out of representation by the Salaried Members Representatives and Salaried Representative Counsel in accordance with the Representative Court Order, if any);

"**Salaried Members Representatives"** means Michael Keeper, Terrence Watt, Damien Lebel and Neil Johnson, in their capacity as Court-appointed representatives of all the Salaried Members of the Wabush CCAA Parties, the whole pursuant to and subject to the terms of the Representative Court Order;

"**Salaried Members Representative Counsel**" means Koskie Minsky LLP and Fishman Flanz Meland Paquin LLP, in their capacity as legal counsel to the Salaried Members Representatives, or any replacement thereof;

"**Salaried Pension Plan**" means the defined benefit plan known as the Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent (Canada Revenue Agency registration number 0343558);

"**Sanction Hearing**" means the hearing of the Sanction Motion;

"**Sanction Motion**" means the motion by the Participating CCAA Parties seeking the Sanction Order;

"**Sanction Order**" means the Court Order to be sought by the Participating CCAA Parties from the Court as contemplated under the Plan which, *inter alia*, approves and sanctions the Plan and the transactions contemplated thereunder, pursuant to Section 6(1) of the CCAA, substantially in the form of Schedule "E" to the Plan or otherwise in form and content acceptable to the Participating CCAA Parties, the Monitor and the Parent, in each case, acting reasonably;;

"**Secured Claims**" means Claims held by "secured creditors" as defined in the CCAA, including Construction Lien Claims, to the extent of the Allocated Value of the Property

securing such Claim, with the balance of the Claim being a Deficiency Claim, and amounts subject to section 6(6) of the CCAA;

"**Service List**" means the service list in the CCAA Proceedings;

"**Secured Creditors**" means Creditors holding Secured Claims;

"**Stay of Proceedings**" means the stay of proceedings created by the Initial Order as amended and extended by further Court Order from time to time;

"**Tax**" or "**Taxes**" means any and all taxes including all income, sales, use, goods and services, harmonized sales, value added, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property, and personal property taxes and other taxes, customs, duties, fees, levies, imposts and other assessments or similar charges in the nature of a tax, including Canada Pension Plan and provincial pension plan contributions, employment insurance and unemployment insurance payments and workers' compensation premiums, together with any instalments with respect thereto, and any interest, penalties, fines, fees, other charges and additions with respect thereto;

"**Tax Claims**" means any Claim against the Participating CCAA Parties (or any one of them) for any Taxes in respect of any taxation year or period ending on or prior to the applicable Filing Date, and in any case where a taxation year or period commences on or prior to the applicable Filing Date, for any Taxes in respect of or attributable to the portion of the taxation period commencing prior to the applicable Filing Date and up to and including the applicable Filing Date. For greater certainty, a Tax Claim shall include, without limitation, (a) any and all Claims of any Taxing Authority in respect of transfer pricing adjustments and any Canadian or non-resident Tax related thereto, and (b) any Claims against any BL/Wabush Released Party in respect of such Taxes;

"**Taxing Authorities**" means Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of any province or territory of Canada, any municipality of Canada, the Canada Revenue Agency, the Canada Border Services Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada (including Revenu Québec) and any political subdivision thereof and any Canadian or foreign government, regulatory authority, government department, agency, commission, bureau, minister, court, tribunal or body or regulation making entity exercising taxing authority or power, and "**Taxing Authority**" means any one of the Taxing Authorities;

"**Unaffected Claims**" means:

(a) Excluded Claims;

(b) Secured Claims;

(c) amounts payable under Section 6(3), 6(5) and 6(6) of the CCAA;

(d) Priority Claims; and

(e) D&O Claims that are not permitted to be compromised under section 5.1(2) of the CCAA;

"**Union Pension Plan**" means the defined benefit plan known as the Pension Plan Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent (Canada Revenue Agency registration number 0555201);

"**Unresolved Affected Unsecured Claim**" means an Affected Unsecured Claim that is an Unresolved Claim;

"**Unresolved Claim**" means a Claim, which at the relevant time, in whole or in part: (a) has not been Finally Determined to be a Proven Claim in accordance with the Amended Claims Procedure Order and this Plan; (b) is validly disputed in accordance with the Amended Claims Procedure Order; and/or (c) remains subject to review and for which a Notice of Allowance or Notice of Revision or Disallowance (each as defined in the Amended Claims Procedure Order) has not been issued to the Creditor in accordance with the Amended Claims Procedure Order as at the date of this Plan, in each of the foregoing clauses, including both as to proof and/or quantum, and for greater certainty includes a Non-Filed Affiliate Interco Claim or CCAA Party Pre-Filing Interco Claim in respect of the Wabush CCAA Parties prior to the Final Determination of the Pension Priority Proceedings;

"**Unresolved Voting Claim**" means the amount of the Unresolved Affected Unsecured Claim of an Affected Unsecured Creditor as determined in accordance with the terms of the Amended Claims Procedure Order entitling such Affected Unsecured Creditor to vote at the applicable Meeting in accordance with the provisions of the Meetings Order, the Plan and the CCAA;

"**Unsecured Claims**" means Claims that are not secured by any Lien;

"**Unsecured Creditor Class**" means each of the CQIM/Quinto Unsecured Creditor Class, BL Parties Unsecured Creditor Class, Wabush Mines Unsecured Creditor Class, Arnaud Unsecured Creditor Class and Wabush Railway Unsecured Creditor Class;

"**USW Counsel**" means Philion Leblanc Beaudry avocats, in their capacity as legal counsel to the United Steelworkers, Locals 6254, 6285 and 9996;

"**USW Members"** means any Employee or retiree who is or was a member of the United Steelworkers, locals 6254, 6285 or 9996, including any successor of such Employees or retirees;

"**Voting Claim**" means the amount of the Affected Unsecured Claim of an Affected Unsecured Creditor as Finally Determined in the manner set out in the Amended Claims Procedure Order entitling such Affected Unsecured Creditor to vote at the applicable Meeting in accordance with the provisions of the Meetings Order, the Plan and the CCAA;

"**Wabush Administration Charge**" means the charge over the Wabush Property created by paragraph 45 of the Wabush Initial Order and having the priority provided in paragraphs 46 and 47 of such Order in the amount of Cdn$1.75 million, as such amount may be reduced from time to time by further Court Order;

"**Wabush CCAA Parties**" means, collectively, Wabush Iron, Wabush Resources, Wabush Mines, Arnaud and Wabush Railway;

"**Wabush Directors' Charge**" means the charge over the Wabush Property created by paragraph 31 of the Wabush Initial Order, and having the priority provided in paragraphs 46 and 47 of such Court Order in the amount of Cdn$2 million, as such amount may be reduced from time to time by further Court Order;

"**Wabush Iron**" means Wabush Iron Co. Limited;

"**Wabush Mines Parties**" means collectively, Wabush Iron, Wabush Resources and Wabush Mines;
"**Wabush Pension Plans**" means, collectively, the Salaried Pension Plan and the Union Pension Plan;

"**Wabush Property**" means all current and future assets, rights, undertakings and properties of the Wabush CCAA Parties, of every nature and kind whatsoever, and wherever situate, including all Cash or other proceeds thereof;

"**Wabush Railway**" means Wabush Lake Railway Company Limited;
"**Wabush Resources**" means Wabush Resources Inc.;

"**Website**" means www.cfcanada.fticonsulting.com/bloomlake.

[LETTERHEAD OF MONITOR]

May __, 2018

TO: Creditors of Cliffs Québec Iron Mining ULC ("**CQIM**"), Bloom Lake General Partner Limited ("**BLGP**"), The Bloom Lake Iron Ore Mine Limited Partnership ("**BLLP**") and Quinto Mining Corporation ("**Quinto**" and, together with CQIM, BLGP and BLLP, the "**Participating BL CCAA Parties**") and Wabush Iron Co. Limited ("**WICL**"), Wabush Resources Inc. ("**WRI**"), Wabush Mines ("**Wabush Mines**"), Arnaud Railway Company ("**Arnaud**") and Wabush Lake Railway Company Limited ("**Wabush Railway**" and, together with WICL, WRI, Wabush Mines and Arnaud, the "**Wabush CCAA Parties**" and, together with the Participating BL CCAA Parties, as certain of them may be consolidated under the Plan (as defined below), the "**Participating CCAA Parties**").

Dear Sirs/Mesdames:

Proposed Joint Plan of Compromise and Arrangement of the Participating CCAA Parties

Please find attached a Joint Plan of Compromise and Arrangement (as amended, restated or supplemented from time to time in accordance with the provisions thereof, the "**Plan**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") as filed by the Participating CCAA Parties (as defined above) with the Quebec Superior Court on April 16, 2018. Capitalized terms used in this letter not otherwise defined are as defined in Schedule "A" to the Plan.

The Plan seeks to implement the principal terms of a proposed settlement (the "**Settlement**") between the Participating CCAA Parties and Cleveland-Cliffs Inc. (the "**Parent**") and its former and current direct and indirect subsidiaries and affiliates (collectively with the Parent, the "**Non-Filed Affiliates**") as negotiated by FTI Consulting Canada Inc., in its capacity as the independent court-appointed Monitor in the CCAA proceedings (the "**Monitor**") and to distribute remaining assets of the Participating CCAA Parties to their creditors.

If the Plan is approved by the required majorities of creditors and sanctioned by the Court, the Plan will:

- resolve potential claims (collectively, the "**Potential Recovery Claims**") against certain of the Non-Filed Affiliates, without the significant time and expense of litigation and of obtaining payment from defendants in multiple foreign jurisdictions, the whole with an uncertain outcome;
- resolve significant intercompany claims between the CCAA Parties and between the CCAA Parties and certain Non-Filed Affiliates without the significant time and expense that would otherwise be incurred;
- provide significant additional monetary recoveries to third-party creditors which would not be available absent successful litigation in respect of the Potential Recovery Claims; and
- accelerate the payment of interim distributions to third-party creditors.

Pursuant to the Settlement, the Non-Filed Affiliates have agreed to sponsor the Plan by contributing the following to the Participating CCAA Parties' estates for the benefit of Third Party Affected Unsecured Creditors with Proven Claims:

(a) a cash contribution of CDN$5 million, of which CDN$4 million will be allocated to the CQIM/Quinto Unsecured Creditor Class and CDN$1 million will be allocated amongst unsecured creditors of the other Participating CCAA Parties pro-rata based upon the amount of third party Proven Claims against such other CCAA Parties; and

(b) all of the secured and unsecured distributions to which certain Non-Filed Affiliates would otherwise be entitled, which will be contributed to the CQIM/Quinto Parties (such Non-Filed Affiliates, being the "**Designated Non-Filed Affiliates**").

While the value of the distributions to be contributed by the Designated Non-Filed Affiliates cannot be calculated with certainty at this time because of various outstanding issues in the CCAA Proceedings, the Monitor estimates that the total incremental amount available to third-party creditors in the event that the Plan is implemented would be in the range of approximately CDN$62 million to CDN$100 million.

The Plan is a single joint Plan that will be subject to approval by each of the Unsecured Creditor Classes, which are:

(a) CQIM/Quinto Unsecured Creditor Class: Affected Unsecured Creditors of CQIM or Quinto;
(b) BL Parties Unsecured Creditor Class: Affected Unsecured Creditors of BLGP or BLLP;
(c) Wabush Mines Parties Unsecured Creditor Class: Affected Unsecured Creditors of WICL, WRI or Wabush Mines;
(d) Arnaud Unsecured Creditor Class: Affected Unsecured Creditors of Arnaud; and
(e) Wabush Railway Unsecured Creditor Class: Affected Unsecured Creditors of Wabush Railway.

Third Party Affected Unsecured Creditors in each as class will be entitled to vote the amount of their Claim proven in accordance with the Claims Procedure Order. To the extent that a Claim or any part of a Claim remains unresolved, the Affected Unsecured Creditor will also be able to vote its Unresolved Claim and such vote shall be tabulated separately from the votes of Affected Unsecured Creditors with Proven Claims.

Distributions on account of Proven Claims of Affected Unsecured Creditors in each Unsecured Creditor Class will be based on the pro-rata share of the net amounts available in each estate from realizations as determined pursuant to the Allocation Methodology approved by the Court by an Order granted July 25, 2017, as supplemented by the amounts being contributed by the Designated Non-Filed Affiliates. The methodology for calculating the distribution entitlement of individual Affected Unsecured Creditors is the same for each Unsecured Creditor Class.

The Plan provides for customary releases for the Participating CCAA Parties and their respective Directors, Officers, Employees, advisors, legal counsel and agents, the Monitor, FTI and their respective current and former affiliates, directors, officers and employees and all of their respective advisors, legal counsel and agents, and the Non-Filed Affiliates and their respective current and former members, shareholders, directors, officers and employees, advisors, legal counsel and agents. The defendants named in class action proceedings filed in the Supreme Court of Newfoundland and Labrador on behalf of former salaried and union employees are not released from the claims asserted in those class action proceedings. Accordingly, those class action proceedings are not impacted by the Plan.

The Plan does not affect the determination of the Pension Priority Proceedings, which matters are the subject of dispute and must be resolved prior to any distributions to Affected Unsecured Creditors of the Wabush CCAA Parties.

The information provided in this letter is intended to give a high-level overview to help you understand the Plan. You should note, however, that the governing document is the Plan. Accompanying this letter are the following important documents:

- The Plan;
- The Meetings Order, granted April 20, 2018;
- A Notice of Creditors' Meetings and Sanction Hearing;
- A form of Proxy and instructions for its completion;
- The Monitor's Report on the Plan;
- A Letter from Salaried Members Representative Counsel; and
- A Letter from USW Counsel.

You should read each of these documents carefully and in their entirety. You may wish to consult financial, tax or other professional advisors regarding the Plan and should not construe the contents of this letter as investment, legal or tax advice.

The Creditors' Meetings will be held on June 18, 2018 in Montreal, Quebec. Details of the Creditors' Meetings and the Sanction Hearing are contained in the Notice of Creditors' Meetings and Sanction Hearing.

Creditors that are corporations, partnerships or trusts wishing to vote on the Plan must submit a properly completed Proxy by no later than **5:00 p.m. (Eastern time) June 14, 2018** (the "**Proxy Deadline**") appointing a proxy holder to attend and vote at the Creditors' Meeting.

Creditors that are individuals wishing to vote on the Plan may (i) appoint a proxy holder to attend and vote at the Creditor's Meeting by submitting a properly completed Proxy by no later than the Proxy Deadline; or (ii) vote in person at the Creditors' Meeting.

As stated in the Monitor's Report on the Plan, and for the reasons set out therein, the Monitor recommends that creditors vote **FOR** the Plan.

The Salaried Members Representative Counsel (the lawyers representing the salaried/non-Union Employees and retirees of the Wabush CCAA Parties in these proceedings, the

"Salaried Members") and the USW Counsel (the lawyers representing the Employees and retirees of the Wabush CCAA Parties that are or were members of United Steelworkers locals 6254, 6285 or 9996, including any successor of such Employees and retirees, the "USW Members") recommend that you vote **FOR/AGAINST** the Plan. You will find enclosed letters from the Salaried Members Representative Counsel and the USW Counsel explaining their reasons.

If you are a Salaried Member and you **AGREE** with the recommendation of the Salaried Members Representative Counsel, you do NOT have to fill out, sign or return any Proxy or any other form to the Monitor since the Salaried Members Representative Counsel have been authorized by the CCAA Court to attend at the Creditors' Meeting and to vote your employee claims on your behalf according to that recommendation (the "Salaried Members Deemed Proxy"). If however, you **DISAGREE** with the recommendation, you have the right to opt out of the Salaried Members Deemed Proxy by advising the Monitor in writing of your desire to do so and you may vote in person at the Creditors' Meeting in Montreal or you may appoint a different Proxy holder by using the Proxy form.

If you are a USW Member and you **AGREE** with the recommendation of the USW Counsel, you do NOT have to fill out, sign or return any Proxy or any other form to the Monitor since the USW Counsel have been authorized by the CCAA Court to attend at the Creditors' Meeting and to vote your employee claims on your behalf according to that recommendation (the "USW Deemed Proxy"). If however, you **DISAGREE** with the recommendation, you have the right to opt out of the USW Deemed Proxy by advising the Monitor in writing of your desire to do so and you may vote in person at the Creditors' Meeting in Montreal or you may appoint a different Proxy holder by using the Proxy form.

If you have any questions regarding the Plan, the vote, or matters with respect to the Creditors' Meetings or Sanction Hearing, please contact the Monitor by email at bloomlake@fticonsulting.com or by telephone at 1-844-669-6338 or 416-649-8126.

Yours sincerely,

FTI Consulting Canada Inc., solely in its capacity as Court-Appointed
Monitor of the CCAA Parties

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

AND IN THE MATTER OF A JOINT PLAN OF COMPROMISE OR ARRANGEMENT OF BLOOM LAKE GENERAL PARTNER LIMITED, THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP, QUINTO MINING CORPORATION, CLIFFS QUÉBEC IRON MINING ULC, WABUSH IRON CO. LIMITED, WABUSH RESOURCES INC., WABUSH MINES, ARNAUD RAILWAY COMPANY, WABUSH LAKE RAILWAY COMPANY LIMITED
(collectively, the "Participating CCAA Parties")

NOTICE OF MEETINGS AND SANCTION HEARING

TO: The Affected Unsecured Creditors of the Participating CCAA Parties

Capitalized terms used and not otherwise defined in this Notice are as defined in the Joint Plan of Compromise and Arrangement of the Participating CCAA Parties dated April 16, 2018 (as amended, restated and/or supplemented from time to time in accordance with the terms thereof, the "**Plan**").

NOTICE IS HEREBY GIVEN that Meetings of each of the following Unsecured Creditor Classes of the Participating CCAA Parties will be held at the following dates, times and locations:

Unsecured Creditor Class	Meeting Information
Cliffs Québec Iron Mining ULC and Quinto Mining Corporation, voting together as one Unsecured Creditor Class	**June 18, 2018 at 9:30 am** at: Norton Rose Fulbright Canada LLP Suite 2500, 1 Place Ville Marie Montréal, QC H3B 1R1
Bloom Lake General Partner Limited and The Bloom Lake Iron Ore Mine Limited Partnership, voting together as one Unsecured Creditor Class	**June 18, 2018 at 9:30 am** at: Norton Rose Fulbright Canada LLP Suite 2500, 1 Place Ville Marie Montréal, QC H3B 1R1
Wabush Iron Co. Limited, Wabush Resources Inc., and Wabush Mines, voting together as one Unsecured Creditor Class	**June 18, 2018 at 11:00 am** at: Norton Rose Fulbright Canada LLP Suite 2500, 1 Place Ville Marie Montréal, QC H3B 1R1
Arnaud Railway Company	**June 18, 2018 at 11:00 am** at: Norton Rose Fulbright Canada LLP Suite 2500, 1 Place Ville Marie Montréal, QC H3B 1R1
Wabush Lake Railway Company Limited	**June 18, 2018 at 11:00 am** at: Norton Rose Fulbright Canada LLP Suite 2500, 1 Place Ville Marie Montréal, QC H3B 1R1

The purpose of the Meetings is to:

a) consider, and if deemed advisable, to pass, with or without variation, a resolution (the "**Resolution**") approving the Plan; and

b) transact such other business as may properly come before the Meetings or any adjournment or postponement thereof.

The Meetings are being held pursuant to an order (the "**Plan Filing and Meetings Order**") of the Québec Superior Court ("**CCAA Court**") made on April 20, 2018, which establishes the procedures for FTI Consulting Canada Inc. (in such capacity and not in its personal or corporate capacity, the "**Monitor**") to call, hold and conduct the Meetings.

The Plan provides for the compromise of the Affected Claims. The quorum for each Meeting will be one Affected Unsecured Creditor holding a Voting Claim or an Unresolved Voting Claim (each such creditor, an "**Eligible Voting Creditor**") present in person or by proxy.

In order for the Plan to be approved and binding in accordance with the CCAA, the Resolution must be approved by a majority in number of Affected Unsecured Creditors in each Unsecured Creditor Class representing at least two-thirds in value of the Claims of Affected Unsecured Creditors who actually vote (in person or by proxy) on the Resolution at the applicable Meeting (the "**Required Majority**").

All Eligible Voting Creditors will be eligible to attend the applicable Meeting and vote on the Plan. The votes of Eligible Voting Creditors holding Unresolved Voting Claims will be separately tabulated by the Monitor, and Unresolved Claims will be resolved in accordance with the Amended Claims Procedure Order prior to any distribution on account of such Unresolved Claims. Holders of an Unaffected Claim will not be entitled to attend and vote at any Meeting.

Forms and Proxies for Affected Unsecured Creditors

Any Eligible Voting Creditor who is unable to attend the applicable Meeting may vote by proxy. Further, any Eligible Voting Creditor who is not an individual may only attend and vote at the applicable Meeting if a proxyholder has been appointed to act on its behalf at such Meeting. A form of Proxy is included as part of the Meeting Materials being distributed by the Monitor to each Affected Unsecured Creditor.

Proxies, once duly completed, dated and signed, must be sent by email to the Monitor, or if cannot be sent by email, delivered to the Monitor at the address of the Monitor as set out on the Proxy form. Proxies must be received by the Monitor by no later than **5:00 p.m. (Eastern time) June 14, 2018** (the "**Proxy Deadline**").

Notice of Sanction Hearing

NOTICE IS ALSO HEREBY GIVEN that if the Plan is approved by the Required Majority of each Unsecured Creditor Class at the Meetings, the Participating CCAA Parties intend to bring a motion before the CCAA Court on **June 29, 2018 at 9:00 am** (Eastern Time) (the "**Sanction Hearing**"). The motion will be seeking the granting of the Sanction Order sanctioning the Plan under the CCAA and for ancillary relief consequent upon such sanction. Any person wishing to oppose the motion for the Sanction Order must serve upon the parties

on the Service List as posted on the Monitor's Website and file with the CCAA Court, a copy of the materials to be used to oppose the Sanction Order by no later than 5:00 pm (Eastern Time) on June 26, 2018.

This Notice is given by the Participating CCAA Parties pursuant to the Plan Filing and Meetings Order. Additional copies of the Meeting Materials, including the Plan, may be obtained from the Monitor's Website (http://cfcanada.fticonsulting.com/bloomlake), or by requesting one from the Monitor by email at bloomlake@fticonsulting.com.

DATED this _____day of _____, 2018.

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

AND IN THE MATTER OF A JOINT PLAN OF COMPROMISE OR ARRANGEMENT OF BLOOM LAKE GENERAL PARTNER LIMITED, THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP, QUINTO MINING CORPORATION, CLIFFS QUÉBEC IRON MINING ULC, WABUSH IRON CO. LIMITED, WABUSH RESOURCES INC., WABUSH MINES, ARNAUD RAILWAY COMPANY, WABUSH LAKE RAILWAY COMPANY LIMITED (collectively, the "PARTICIPATING CCAA PARTIES")

PROXY

Before completing this Proxy, please read carefully the accompanying instructions for the proper completion and return of the form.

Capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the Joint Plan of Compromise and Arrangement of the Participating CCAA Parties dated April 16, 2018 (as may be amended, supplemented and/or restated from time to time, the "Plan") filed pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA") with the Quebec Superior Court (the "CCAA Court") on April 16, 2018.

In accordance with the Plan, Proxies may only be filed by Affected Unsecured Creditors having a Voting Claim or an Unresolved Voting Claim ("Eligible Voting Creditors").

PROXIES, ONCE DULY COMPLETED, DATED AND SIGNED, MUST BE SENT BY EMAIL TO THE MONITOR, OR IF CANNOT BE SENT BY EMAIL, DELIVERED TO THE MONITOR BY NO LATER THAN 5:00 P.M. (EASTERN TIME) ON JUNE 14, 2018 (THE "PROXY DEADLINE").

THE UNDERSIGNED ELIGIBLE VOTING CREDITOR hereby revokes all Proxies previously given, if any, and nominates, constitutes, and appoints **Mr. Nigel Meakin** of FTI Consulting Canada Inc., in its capacity as Monitor, or such Person as he, in his sole discretion, may designate or, instead of the foregoing, appoints:

_____

Print Name of Proxy holder if wishing to appoint someone other than Mr. Nigel Meakin

to attend on behalf of and act for the Eligible Voting Creditor at the applicable Meeting(s) to be held in connection with the Plan and at any and all adjournments, postponements or other rescheduling of the Meeting(s), and to vote the dollar value of the Eligible Voting Creditor's Eligible Voting Claim(s) as determined by and accepted for voting purposes in accordance with the Meetings Order and as set out in the Plan as follows:

A. (mark one only):

❑Vote FOR approval of the resolution to accept the Plan; or

❑Vote AGAINST approval of the resolution to accept the Plan.

B. If a box is not marked as a vote FOR or AGAINST approval of the Plan:

a) if Mr. Nigel Meakin or his designate is appointed as proxy holder, this Proxy shall be voted

FOR approval of the Plan; or

b) if someone other than Mr. Nigel Meakin or his designate is appointed as proxy holder, the nominee shall vote at his or her discretion and otherwise act for and on behalf of the undersigned Eligible Voting Creditor with respect to any amendments or variations to the matters identified in the notice of the Meeting and in this Plan, and with respect to other matters that may properly presented at Meeting.

Dated this _____day of _____, 2018.

Print Name of Eligible Voting Creditor	Title of the authorized signing officer of the corporation, partnership or trust, if applicable
Signature of Eligible Voting Creditor or, if the Eligible Voting Creditor is a corporation, partnership or trust, signature of an authorized signing officer of the corporation, partnership or trust	Telephone number of the Eligible Voting Creditor or authorized signing officer
Mailing Address of Eligible Voting Creditor	Email address of Eligible Voting Creditor
Print Name of Witness, if Eligible Voting Creditor is an individual	
Signature of Witness	

INSTRUCTIONS FOR COMPLETION OF PROXY

1. This Proxy should be read in conjunction with the Joint Plan of Compromise and Arrangement of the Applicant dated April 16, 2018 (as it may be amended, restated or supplemented from time to time, the "Plan") filed pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA") with the Quebec Superior Court (the "CCAA Court") on April 16, 2018 and the Meetings Order. Capitalized terms used herein not otherwise defined shall have the meanings ascribed to them in the Plan.

2. Each Eligible Voting Creditor has the right to appoint a person (who need not be a Creditor) (a "Proxy holder") to attend, act and vote for and on behalf of such Eligible Voting Creditor and such right may be exercised by inserting the name of the Proxy holder in the blank space provided on the Proxy.

3. If no name has been inserted in the space provided to designate the Proxy holder on the Proxy, the Eligible Voting Creditor will be deemed to have appointed Mr. Nigel Meakin of FTI Consulting Canada Inc., in its capacity as Monitor (or such other Person as he, in his sole discretion, may designate), as the Eligible Voting Creditor's Proxy holder.

4. An Eligible Voting Creditor who has given a Proxy may revoke it by an instrument in writing executed by such Eligible Voting Creditor or by its attorney, duly authorized in writing or, if an Eligible Voting Creditor is not an individual, by an officer or attorney thereof duly authorized, and deposited with the Monitor in each case before the Proxy Deadline.

5. If this Proxy is not dated in the space provided, it shall be deemed to be dated as of the date on which it is received by the Monitor.

6. A valid Proxy from the same Eligible Voting Creditor bearing or deemed to bear a later date than this Proxy will be deemed to revoke this Proxy. If more than one valid Proxy from the same Eligible Voting Creditor and bearing or deemed to bear the same date are received by the Monitor with conflicting instructions, such Proxies shall not be counted for the purposes of the vote.

7. This Proxy confers discretionary authority upon the Proxy holder with respect to amendments or variations to the matters identified in the notice of the Meeting and in the Plan, and with respect to other matters that may properly come before the Meeting.

8. The Proxy holder shall vote the Eligible Voting Claim of the Eligible Voting Creditor in accordance with the direction of the Eligible Voting Creditor appointing him/her on any ballot that may be called for at the applicable Meeting. **IF AN ELIGIBLE VOTING CREDITOR FAILS TO INDICATE ON THIS PROXY A VOTE FOR OR AGAINST APPROVAL OF THE RESOLUTION TO ACCEPT THE PLAN, AND MR. NIGEL MEAKIN OR HIS DESIGNATE IS APPOINTED AS PROXY HOLDER, THIS PROXY WILL BE VOTED FOR THE RESOLUTION TO APPROVE THE PLAN, INCLUDING ANY AMENDMENTS, VARIATIONS OR SUPPLEMENTS THERETO. IF AN ELIGIBLE VOTING CREDITOR FAILS TO INDICATE ON THIS PROXY A VOTE FOR OR AGAINST APPROVAL OF THE RESOLUTION TO ACCEPT THE PLAN AND APPOINTS A PROXY HOLDER OTHER THAN**

MR. NIGEL MEAKIN OR HIS DESIGNATE, THE PROXY HOLDER MAY VOTE ON THE RESOLUTION AS HE OR SHE DETERMINES AT THE APPLICABLE MEETING.

9. If the Eligible Voting Creditor is an individual, this Proxy must be signed by the Eligible Voting Creditor or by a person duly authorized (by power of attorney) to sign on the Eligible Voting Creditor's behalf. If the Eligible Voting Creditor is a corporation, partnership or trust, this proxy must be signed by a duly authorized officer or attorney of the corporation, partnership or trust. If you are voting on behalf of a corporation, partnership or trust or on behalf of another individual at a Meeting, you must have been appointed as a proxy holder by a duly completed proxy submitted to the Monitor by the Proxy Deadline. You may be required to provide documentation evidencing your power and authority to sign this Proxy.

10. PROXIES, ONCE DULY COMPLETED, DATED AND SIGNED, MUST BE SENT BY EMAIL TO THE MONITOR, OR IF CANNOT BE SENT BY EMAIL, DELIVERED TO THE MONITOR BY NO LATER THAN 5:00 P.M. (EASTERN TIME) ON JUNE 14, 2018 (THE "PROXY DEADLINE").

By email: bloomlake@fticonsulting.com

By mail or courier:
FTI Consulting Canada Inc.
Monitor of Bloom Lake General Partners Limited, et al.
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario
M5K 1G8

11. The Applicant and the Monitor are authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which any Proxy is completed and executed, and may waive strict compliance with the requirements in connection with the deadlines imposed by the Meetings Order.

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

AND IN THE MATTER OF A JOINT PLAN OF COMPROMISE OR ARRANGEMENT OF BLOOM LAKE GENERAL PARTNER LIMITED, THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP, QUINTO MINING CORPORATION, CLIFFS QUÉBEC IRON MINING ULC, WABUSH IRON CO. LIMITED, WABUSH RESOURCES INC., WABUSH MINES, ARNAUD RAILWAY COMPANY, WABUSH LAKE RAILWAY COMPANY LIMITED
(collectively, the "Participating CCAA Parties" and each a "Participating CCAA Party")

RESOLUTION OF UNSECURED CREDITOR CLASS

BE IT RESOLVED THAT:

1. the Joint Plan of Compromise and Arrangement dated April 16, 2018 filed by the Participating CCAA Parties under the *Companies' Creditors Arrangement Act*, as may be amended, restated or supplemented from time to time in accordance with its terms (the "**Plan**"), which Plan has been presented to this Meeting, be and is hereby accepted, approved, and authorized;

2. any director or officer of the applicable Participating CCAA Party be and is hereby authorized, empowered and instructed, acting for, and in the name of and on behalf of such Participating CCAA Party, to execute and deliver, or cause to be executed and delivered, all such documents, agreements and instruments and to do or cause to be done all such other acts and things as such director or officer determines to be necessary or desirable in order to carry out the Plan, such determination to be conclusively evidenced by the execution and delivery by such directors or officers of such documents, agreements or instruments or the doing of any such act or thing.

3. notwithstanding that this Resolution has been passed and the Plan has been approved by the Affected Unsecured Creditors and the Court, the directors of the Participating CCAA Parties be and are hereby authorized and empowered to amend the Plan or not proceed to implement the Plan subject to and in accordance with the terms of the Plan.

Tab 2

CITATION: Re: Canwest Global Communications Corp. 2010 ONSC 4209
COURT FILE NO.: CV-09-8396-00CL
DATE: 20100728

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF SECTION 11 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 GLOBAL COMMUNICATIONS AND THE OTHER APPLICANTS

BEFORE: Pepall J.

COUNSEL: *Lyndon Barnes, Jeremy Dacks and Shawn Irving* for the CMI Entities
David Byers and Marie Konyukhova for the Monitor
Robin B. Schwill and Vince Mercier for Shaw Communications Inc.
Derek Bell for the Canwest Shareholders Group (the "Existing Shareholders")
Mario Forte for the Special Committee of the Board of Directors
Robert Chadwick and Logan Willis for the Ad Hoc Committee of Noteholders
Amanda Darrach for Canwest Retirees
Peter Osborne for Management Directors
Steven Weisz for CIBC Asset-Based Lending Inc.

ORAL REASONS FOR DECISION

[1] This is the culmination of the *Companies' Creditors Arrangement Act*[1] restructuring of the CMI Entities. The proceeding started in court on October 6, 2009, experienced numerous peaks and valleys, and now has resulted in a request for an order sanctioning a plan of compromise, arrangement and reorganization (the "Plan"). It has been a short road in relative terms but not without its challenges and idiosyncrasies. To complicate matters, this restructuring

[1] R.S.C. 1985, c. C-36 as amended.

was hot on the heels of the amendments to the CCAA that were introduced on September 18, 2009. Nonetheless, the CMI Entities have now successfully concluded a Plan for which they seek a sanction order. They also request an order approving the Plan Emergence Agreement, and other related relief. Lastly, they seek a post-filing claims procedure order.

[2] The details of this restructuring have been outlined in numerous previous decisions rendered by me and I do not propose to repeat all of them.

The Plan and its Implementation

[3] The basis for the Plan is the amended Shaw transaction. It will see a wholly owned subsidiary of Shaw Communications Inc. ("Shaw") acquire all of the interests in the free-to-air television stations and subscription-based specialty television channels currently owned by Canwest Television Limited Partnership ("CTLP") and its subsidiaries and all of the interests in the specialty television stations currently owned by CW Investments and its subsidiaries, as well as certain other assets of the CMI Entities. Shaw will pay to CMI US $440 million in cash to be used by CMI to satisfy the claims of the 8% Senior Subordinated Noteholders (the "Noteholders") against the CMI Entities. In the event that the implementation of the Plan occurs after September 30, 2010, an additional cash amount of US $2.9 million per month will be paid to CMI by Shaw and allocated by CMI to the Noteholders. An additional $38 million will be paid by Shaw to the Monitor at the direction of CMI to be used to satisfy the claims of the Affected Creditors (as that term is defined in the Plan) other than the Noteholders, subject to a pro rata increase in that cash amount for certain restructuring period claims in certain circumstances.

[4] In accordance with the Meeting Order, the Plan separates Affected Creditors into two classes for voting purposes:

(a) the Noteholders; and

(b) the Ordinary Creditors. Convenience Class Creditors are deemed to be in, and to vote as, members of the Ordinary Creditors' Class.

[5] The Plan divides the Ordinary Creditors' pool into two sub-pools, namely the Ordinary CTLP Creditors' Sub-pool and the Ordinary CMI Creditors' Sub-pool. The former comprises two-thirds of the value and is for claims against the CTLP Plan Entities and the latter reflects one-third of the value and is used to satisfy claims against Plan Entities other than the CTLP Plan Entities. In its 16th Report, the Monitor performed an analysis of the relative value of the assets of the CMI Plan Entities and the CTLP Plan Entities and the possible recoveries on a going concern liquidation and based on that analysis, concluded that it was fair and reasonable that Affected Creditors of the CTLP Plan Entities share pro rata in two-thirds of the Ordinary Creditors' pool and Affected Creditors of the Plan Entities other than the CTLP Plan Entities share pro rata in one-third of the Ordinary Creditors' pool.

[6] It is contemplated that the Plan will be implemented by no later than September 30, 2010.

[7] The Existing Shareholders will not be entitled to any distributions under the Plan or other compensation from the CMI Entities on account of their equity interests in Canwest Global. All equity compensation plans of Canwest Global will be extinguished and any outstanding options, restricted share units and other equity-based awards outstanding thereunder will be terminated and cancelled and the participants therein shall not be entitled to any distributions under the Plan.

[8] On a distribution date to be determined by the Monitor following the Plan implementation date, all Affected Creditors with proven distribution claims against the Plan Entities will receive distributions from cash received by CMI (or the Monitor at CMI's direction) from Shaw, the Plan Sponsor, in accordance with the Plan. The directors and officers of the remaining CMI Entities and other subsidiaries of Canwest Global will resign on or about the Plan implementation date.

[9] Following the implementation of the Plan, CTLP and CW Investments will be indirect, wholly-owned subsidiaries of Shaw, and the multiple voting shares, subordinate voting shares and non-voting shares of Canwest Global will be delisted from the TSX Venture Exchange. It is anticipated that the remaining CMI Entities and certain other subsidiaries of Canwest Global will be liquidated, wound-up, dissolved, placed into bankruptcy or otherwise abandoned.

[10] In furtherance of the Minutes of Settlement that were entered into with the Existing Shareholders, the articles of Canwest Global will be amended under section 191 of the CBCA to facilitate the settlement. In particular, Canwest Global will reorganize the authorized capital of Canwest Global into (a) an unlimited number of new multiple voting shares, new subordinated voting shares and new non-voting shares; and (b) an unlimited number of new non-voting preferred shares. The terms of the new non-voting preferred shares will provide for the mandatory transfer of the new preferred shares held by the Existing Shareholders to a designated entity affiliated with Shaw for an aggregate amount of $11 million to be paid upon delivery by Canwest Global of the transfer notice to the transfer agent. Following delivery of the transfer notice, the Shaw designated entity will donate and surrender the new preferred shares acquired by it to Canwest Global for cancellation.

[11] Canwest Global, CMI, CTLP, New Canwest, Shaw, 7316712 and the Monitor entered into the Plan Emergence Agreement dated June 25, 2010 detailing certain steps that will be taken before, upon and after the implementation of the plan. These steps primarily relate to the funding of various costs that are payable by the CMI Entities on emergence from the CCAA proceeding. This includes payments that will be made or may be made by the Monitor to satisfy post-filing amounts owing by the CMI Entities. The schedule of costs has not yet been finalized.

Creditor Meetings

[12] Creditor meetings were held on July 19, 2010 in Toronto, Ontario. Support for the Plan was overwhelming. 100% in number representing 100% in value of the beneficial owners of the 8% senior subordinated notes who provided instructions for voting at the Noteholder meeting approved the resolution. Beneficial Noteholders holding approximately 95% of the principal amount of the outstanding notes validly voted at the Noteholder meeting.

[13] The Ordinary Creditors with proven voting claims who submitted voting instructions in person or by proxy represented approximately 83% of their number and 92% of the value of such claims. In excess of 99% in number representing in excess of 99% in value of the Ordinary Creditors holding proven voting claims that were present in person or by proxy at the meeting voted or were deemed to vote in favour of the resolution.

Sanction Test

[14] Section 6(1) of the CCAA provides that the court has discretion to sanction a plan of compromise or arrangement if it has achieved the requisite double majority vote. The criteria that a debtor company must satisfy in seeking the court's approval are:

(a) there must be strict compliance with all statutory requirements;

(b) all material filed and procedures carried out must be examined to determine if anything has been done or purported to be done which is not authorized by the CCAA; and

(c) the Plan must be fair and reasonable.

See *Re: Canadian Airlines Corp.*[2]

(a) Statutory Requirements

[15] I am satisfied that all statutory requirements have been met. I already determined that the Applicants qualified as debtor companies under section 2 of the CCAA and that they had total claims against them exceeding $5 million. The notice of meeting was sent in accordance with the Meeting Order. Similarly, the classification of Affected Creditors for voting purposes was addressed in the Meeting Order which was unopposed and not appealed. The meetings were both properly constituted and voting in each was properly carried out. Clearly the Plan was approved by the requisite majorities.

[16] Section 6(3), 6(5) and 6(6) of the CCAA provide that the court may not sanction a plan unless the plan contains certain specified provisions concerning crown claims, employee claims and pension claims. Section 4.6 of Plan provides that the claims listed in paragraph (l) of the definition of "Unaffected Claims" shall be paid in full from a fund known as the Plan

[2] 2000 A.B.Q.B. 442 at para. 60, leave to appeal denied 2000 A.B.C.A 238, aff'd 2001 A.B.C.A 9, leave to appeal to S.C.C. refused July 12, 2001.

Implementation Fund within six months of the sanction order. The Fund consists of cash, certain other assets and further contributions from Shaw. Paragraph (l) of the definition of "Unaffected Claims" includes any Claims in respect of any payments referred to in section 6(3), 6(5) and 6(6) of the CCAA. I am satisfied that these provisions of section 6 of the CCAA have been satisfied.

(b) Unauthorized Steps

[17] In considering whether any unauthorized steps have been taken by a debtor company, it has been held that in making such a determination, the court should rely on the parties and their stakeholders and the reports of the Monitor: *Re Canadian Airlines*[3].

[18] The CMI Entities have regularly filed affidavits addressing key developments in this restructuring. In addition, the Monitor has provided regular reports (17 at last count) and has opined that the CMI Entities have acted and continue to act in good faith and with due diligence and have not breached any requirements under the CCAA or any order of this court. If it was not obvious from the hearing on June 23, 2010, it should be stressed that there is no payment of any equity claim pursuant to section 6(8) of the CCAA. As noted by the Monitor in its 16th Report, settlement with the Existing Shareholders did not and does not in any way impact the anticipated recovery to the Affected Creditors of the CMI Entities. Indeed I referenced the inapplicability of section 6(8) of the CCAA in my Reasons of June 23, 2010. The second criterion relating to unauthorized steps has been met.

(c) Fair and Reasonable

[19] The third criterion to consider is the requirement to demonstrate that a plan is fair and reasonable. As Paperny J. (as she then was) stated in *Re Canadian Airlines*:

> The court's role on a sanction hearing is to consider whether the plan fairly balances the interests of all stakeholders. Faced with an

[3] Ibid,at para. 64 citing *Olympia and York Developments Ltd. v. Royal Trust Co*. [1993] O.J. No. 545 (Gen. Div.) and *Re: Cadillac Fairview Inc*. [1995] O.J. No. 274 (Gen. Div.).

> insolvent organization, its role is to look forward and ask: does this plan represent a fair and reasonable compromise that will permit a viable commercial entity to emerge? It is also an exercise in assessing current reality by comparing available commercial alternatives to what is offered in the proposed plan.[4]

[20] My discretion should be informed by the objectives of the CCAA, namely to facilitate the reorganization of a debtor company for the benefit of the company, its creditors, shareholders, employees and in many instances, a much broader constituency of affected persons.

[21] In assessing whether a proposed plan is fair and reasonable, considerations include the following:

(a) whether the claims were properly classified and whether the requisite majority of creditors approved the plan;

(b) what creditors would have received on bankruptcy or liquidation as compared to the plan;

(c) alternatives available to the plan and bankruptcy;

(d) oppression of the rights of creditors;

(e) unfairness to shareholders; and

(f) the public interest.

[22] I have already addressed the issue of classification and the vote. Obviously there is an unequal distribution amongst the creditors of the CMI Entities. Distribution to the Noteholders is expected to result in recovery of principal, pre-filing interest and a portion of post-filing

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[4] Ibid, at para. 3.

accrued and default interest. The range of recoveries for Ordinary Creditors is much less. The recovery of the Noteholders is substantially more attractive than that of Ordinary Creditors. This is not unheard of. In *Re Armbro Enterprises Inc.*[5] Blair J. (as he then was) approved a plan which included an uneven allocation in favour of a single major creditor, the Royal Bank, over the objection of other creditors. Blair J. wrote:

> "I am not persuaded that there is a sufficient tilt in the allocation of these new common shares in favour of RBC to justify the court in interfering with the business decision made by the creditor class in approving the proposed Plan, as they have done. RBC's cooperation is a sine qua non for the Plan, or any Plan, to work and it is the only creditor continuing to advance funds to the applicants to finance the proposed re-organization."[6]

[23] Similarly, in *Re: Uniforêt Inc.*[7] a plan provided for payment in full to an unsecured creditor. This treatment was much more generous than that received by other creditors. There, the Québec Superior Court sanctioned the plan and noted that a plan can be more generous to some creditors and still fair to all creditors. The creditor in question had stepped into the breach on several occasions to keep the company afloat in the four years preceding the filing of the plan and the court was of the view that the conduct merited special treatment. See also Romaine J.'s orders dated October 26, 2009 in *SemCanada Crude Company et al.*

[24] I am prepared to accept that the recovery for the Noteholders is fair and reasonable in the circumstances. The size of the Noteholder debt was substantial. CMI's obligations under the notes were guaranteed by several of the CMI Entities. No issue has been taken with the

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[5] (1993), 22 C.B.R. (3rd) 80 (Ont. Gen. Div.).

[6] *Ibid*, at para. 6.

[7] (2003), 43 C.B.R. (4th) 254 (QEUE. S.C.).

guarantees. As stated before and as observed by the Monitor, the Noteholders held a blocking position in any restructuring. Furthermore, the liquidity and continued support provided by the Ad Hoc Committee both prior to and during these proceedings gave the CMI Entities the opportunity to pursue a going concern restructuring of their businesses. A description of the role of the Noteholders is found in Mr. Strike's affidavit sworn July 20, 2010, filed on this motion.

[25] Turning to alternatives, the CMI Entities have been exploring strategic alternatives since February, 2009. Between November, 2009 and February, 2010, RBC Capital Markets conducted the equity investment solicitation process of which I have already commented. While there is always a theoretical possibility that a more advantageous plan could be developed than the Plan proposed, the Monitor has concluded that there is no reason to believe that restarting the equity investment solicitation process or marketing 100% of the CMI Entities assets would result in a better or equally desirable outcome. Furthermore, restarting the process could lead to operational difficulties including issues relating to the CMI Entities' large studio suppliers and advertisers. The Monitor has also confirmed that it is unlikely that the recovery for a going concern liquidation sale of the assets of the CMI Entities would result in greater recovery to the creditors of the CMI Entities. I am not satisfied that there is any other alternative transaction that would provide greater recovery than the recoveries contemplated in the Plan. Additionally, I am not persuaded that there is any oppression of creditor rights or unfairness to shareholders.

[26] The last consideration I wish to address is the public interest. If the Plan is implemented, the CMI Entities will have achieved a going concern outcome for the business of the CTLP Plan Entities that fully and finally deals with the Goldman Sachs Parties, the Shareholders Agreement and the defaulted 8% senior subordinated notes. It will ensure the continuation of employment for substantially all of the employees of the Plan Entities and will provide stability for the CMI Entities, pensioners, suppliers, customers and other stakeholders. In addition, the Plan will maintain for the general public broad access to and choice of news, public and other information and entertainment programming. Broadcasting of news, public and entertainment programming is an important public service, and the bankruptcy and liquidation of the CMI Entities would have a negative impact on the Canadian public.

[27] I should also mention section 36 of the CCAA which was added by the recent amendments to the Act which came into force on September 18, 2009. This section provides that a debtor company may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. The section goes on to address factors a court is to consider. In my view, section 36 does not apply to transfers contemplated by a Plan. These transfers are merely steps that are required to implement the Plan and to facilitate the restructuring of the Plan Entities' businesses. Furthermore, as the CMI Entities are seeking approval of the Plan itself, there is no risk of any abuse. There is a further safeguard in that the Plan including the asset transfers contemplated therein has been voted on and approved by Affected Creditors.

[28] The Plan does include broad releases including some third party releases. In *Metcalfe v. Mansfield Alternative Investments II Corp.*[8], the Ontario Court of Appeal held that the CCAA court has jurisdiction to approve a plan of compromise or arrangement that includes third party releases. The *Metcalfe* case was extraordinary and exceptional in nature. It responded to dire circumstances and had a plan that included releases that were fundamental to the restructuring. The Court held that the releases in question had to be justified as part of the compromise or arrangement between the debtor and its creditors. There must be a reasonable connection between the third party claim being compromised in the plan and the restructuring achieved by the plan to warrant inclusion of the third party release in the plan.

[29] In the *Metcalfe* decision, Blair J.A. discussed in detail the issue of releases of third parties. I do not propose to revisit this issue, save and except to stress that in my view, third party releases should be the exception and should not be requested or granted as a matter of course.

[30] In this case, the releases are broad and extend to include the Noteholders, the Ad Hoc Committee and others. Fraud, wilful misconduct and gross negligence are excluded. I have

[8] (2008), 92 O.R. (3rd) 513 (C.A.).

already addressed, on numerous occasions, the role of the Noteholders and the Ad Hoc Committee. I am satisfied that the CMI Entities would not have been able to restructure without materially addressing the notes and developing a plan satisfactory to the Ad Hoc Committee and the Noteholders. The release of claims is rationally connected to the overall purpose of the Plan and full disclosure of the releases was made in the Plan, the information circular, the motion material served in connection with the Meeting Order and on this motion. No one has appeared to oppose the sanction of the Plan that contains these releases and they are considered by the Monitor to be fair and reasonable. Under the circumstances, I am prepared to sanction the Plan containing these releases.

[31] Lastly, the Monitor is of the view that the Plan is advantageous to Affected Creditors, is fair and reasonable and recommends its sanction. The board, the senior management of the CMI Entities, the Ad Hoc Committee, and the CMI CRA all support sanction of the Plan as do all those appearing today.

[32] In my view, the Plan is fair and reasonable and I am granting the sanction order requested. [9]

[33] The Applicants also seek approval of the Plan Emergence Agreement. The Plan Emergence Agreement outlines steps that will be taken prior to, upon, or following implementation of the Plan and is a necessary corollary of the Plan. It does not confiscate the rights of any creditors and is necessarily incidental to the Plan. I have the jurisdiction to approve such an agreement: *Re Air Canada*[10] and *Re Calpine Canada Energy Ltd.*[11] I am satisfied that the agreement is fair and reasonable and should be approved.

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[9] The Sanction Order is extraordinarily long and in large measure repeats the Plan provisions. In future, counsel should attempt to simplify and shorten these sorts of orders.

[10] (2004), 47 C.B.R. (4th) 169 (Ont. S.C.J.).

[11] (2007), 35 C.B.R. (5th) 1.

[34] It is proposed that on the Plan implementation date the articles of Canwest Global will be amended to facilitate the settlement reached with the Existing Shareholders. Section 191 of the CBCA permits the court to order necessary amendments to the articles of a corporation without shareholder approval or a dissent right. In particular, section 191(1)(c) provides that reorganization means a court order made under any other Act of Parliament that affects the rights among the corporation, its shareholders and creditors. The CCAA is such an Act: *Beatrice Foods v. Merrill Lynch Capital Partners Inc.*[12] and *Re Laidlaw Inc*[13]. Pursuant to section 191(2), if a corporation is subject to a subsection (1) order, its articles may be amended to effect any change that might lawfully be made by an amendment under section 173. Section 173(1)(e) and (h) of the CBCA provides that:

> (1) Subject to sections 176 and 177, the articles of a corporation may by special resolution be amended to
>
> (e) create new classes of shares;
>
> (h) change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series or into the same or a different number of shares of other classes or series.

[35] Section 6(2) of the CCAA provides that if a court sanctions a compromise or arrangement, it may order that the debtor's constating instrument be amended in accordance with the compromise or arrangement to reflect any change that may lawfully be made under federal or provincial law.

[36] In exercising its discretion to approve a reorganization under section 191 of the CBCA, the court must be satisfied that: (a) there has been compliance with all statutory requirements;

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[12] (1996), 43 CBR (4th) 10.

[13] (2003), 39 CBR (4th) 239.

(b) the debtor company is acting in good faith; and (c) the capital restructuring is fair and reasonable: *Re: A & M Cookie Co. Canada*[14] and *Mei Computer Technology Group Inc.*[15]

[37] I am satisfied that the statutory requirements have been met as the contemplated reorganization falls within the conditions provided for in sections 191 and 173 of the CBCA. I am also satisfied that Canwest Global and the other CMI Entities were acting in good faith in attempting to resolve the Existing Shareholder dispute. Furthermore, the reorganization is a necessary step in the implementation of the Plan in that it facilitates agreement reached on June 23, 2010 with the Existing Shareholders. In my view, the reorganization is fair and reasonable and was a vital step in addressing a significant impediment to a satisfactory resolution of outstanding issues.

[38] A post-filing claims procedure order is also sought. The procedure is designed to solicit, identify and quantify post-filing claims. The Monitor who participated in the negotiation of the proposed order is satisfied that its terms are fair and reasonable as am I.

[39] In closing, I would like to say that generally speaking, the quality of oral argument and the materials filed in this CCAA proceeding has been very high throughout. I would like to express my appreciation to all counsel and the Monitor in that regard. The sanction order and the post-filing claims procedure order are granted.

Pepall J.

Released: July 28, 2010

[14] [2009] O.J. No. 2427 (S.C.J.) at para. 8/

[15] [2005] Q.J. No. 2293 at para. 9.

Tab 3

CITATION: Re Just Energy Corp., 2021 ONSC 1793
COURT FILE NO.: CV-21-00658423-00CL
DATE: 20210309

SUPERIOR COURT OF JUSTICE – ONTARIO

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 JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.

Applicants

BEFORE: Koehnen J.

COUNSEL:

Marc Wasserman, Michael De Lellis, Jeremy Dacks, Shawn Irving, Waleed Malik, David Rosenblatt and Justine Erickson, for the Applicants

Robert Thornton, Rebecca Kennedy and Rachel Bengino, Puya Fesharaki, for the Proposed Monitor

Scott Bomhof, for the Term Loan Lenders

Heather Meredith and James D. Gage, for the Credit Facility Lenders

Ryan Jacobs, Jane Dietrich and Michael Wunder, for the DIP Lender

Howard Gorman, for Shell

Robert Kennedy and Kenneth Kraft, for BP

Paul Bishop and Jim Robinson, Proposed Monitor

Brian Schartz, and Mary Kogut Brawley, US counsel for the Applicants

Chad Nichols and David Botter, U.S. Counsel to DIP Lender

Kelli Norfleet, U.S. Counsel to BP

Doug McIntosh, Advisor to the Credit Facility Lenders

John Higgins

HEARD: March 9, 2021

ENDORSEMENT

Overview

[1] The applicant, Just Energy Group Inc. ("Just Energy") seeks protection under *the Companies' Creditors Arrangement Act*, (the "*CCAA*")[1] by way of an initial order. Just Energy is the ultimate parent of the Just Energy group of companies and limited partnerships.

[1] R.C.C. 1985, c. c-36, as amended

[2] Just Energy buys electricity and natural gas from power generators and re-sells it to consumer and commercial customers, usually under long term, fixed price contracts.

[3] Unusually intense winter storms in Texas led to a breakdown of equipment used to generate and transmit electricity. This led Texas regulators to impose radical and immediate price increases for the power Just Energy buys. The amounts the regulator imposes must be paid within 2 days, failing which Just Energy could lose its licence and have its customers distributed among other distributors.

[4] Those price increases have imposed a serious, temporary liquidity crisis upon Just Energy and others in its position. That liquidity crisis prompts the *CCAA* application. It appears that the price increases may have been imposed by a computer program that misunderstood the data it received as indicating a shortage of power that could be corrected by price increases. Price increase could not lead to more power being generated because the energy shortage was caused by the freezing and consequent breakdown of generating and transmission equipment. Price increases could not remedy that.

[5] Just Energy is appealing the price increases and is seeking rebates from the Texas regulator. That process has not been completed.

[6] The issue before me today is whether to grant *CCAA* protection for an initial period of 10 days. It is complicated by the fact that Just Energy also seeks a stay of regulatory action in Canada and the United States and seeks what at first blush, is an unusually large amount of debtor in possession financing (the "DIP") of $125 million for the initial 10 day period.

[7] For the reasons set out below, I grant the stay and the DIP. It strikes me that the circumstances facing Just Energy are precisely the sort for which the *CCAA* is appropriate: a sudden, unexpected liquidity crisis, brought on by the action of others, which actions may still be rescinded. Without a stay, Just Energy faces almost certain bankruptcy with a loss of approximately 1,000 jobs and the possibility that a good part of the debt it owes will not be repaid. Those catastrophic consequences may be avoidable if Just Energy succeeds in its appeals of the Texas price increases and if all players are given adequate time to find solutions in a more orderly fashion than the weather crisis allowed them to.

[8] A number of critical parties were given notice of today's hearing. Just Energy had consulted widely with them before the hearing. These parties included secured creditors, banks, unsecured term lenders and essential suppliers. Some, including banks and some of the term lenders wish to "reserve their rights" to the comeback hearing. The DIP lender, and two important suppliers (Shell and BP) expressed concern about the reservation of rights. While those who are "reserving their rights" are of course free to do so, as a practical matter, they will be hard-pressed to undo rights that I am affording today in the initial order when the recipients of those rights will be relying on them to their detriment over the next 10 days and when the parties "reserving their rights" have not opposed the relief I am granting.

I. Background to the Liquidity Crisis

[9] Just Energy Group Inc. ("Just Energy") is incorporated under the *Canada Business Corporations Act*. Its shares are publicly traded on the Toronto Stock Exchange and the New York Stock Exchange. Its registered office is in Toronto, Ontario. Just Energy is primarily a holding company that directly or indirectly owns the other companies in the Just Energy Group, including operating subsidiaries.

[10] At the risk of oversimplifying, it sells energy to customers under long-term fixed-price contracts and then purchases energy in the market to fulfil those contracts. It has over 950,000 customers, for the most part in Canada and the United States, approximately 979 full-time employees and debts estimated at $1.25 billion.

[11] In recent years Just Energy has suffered challenges that it has sought to remedy by way of a recapitalization through a plan of arrangement under section 192 of the *CBCA* which was approved by this court on September 2, 2020.

[12] Just Energy's largest market in the United States is in the state of Texas.

[13] Just Energy faces a sudden and unexpected liquidity crisis as a result of an extreme winter storm that hit Texas on February 12, 2021. The storm caused a surge in demand for electrical power. In response, natural gas prices jumped from US $3.00 to over US $150/mmBTU on February 12.

[14] The demand for power was exacerbated by the fact that much of the Texas electrical grid began to shut down because it was not equipped to deal with cold weather. As a result, critical components necessary for the generation and transmission of electricity froze thereby increasing demand even further on the limited resources that remained available. By the early morning hours of February 15, 2021, the stress on the electrical grid was so great that it came within minutes of a catastrophic failure.

[15] In response, the Electric Reliability Council of Texas ("ERCOT") which is responsible for managing the Texas electrical grid ordered transmission operators to implement deep cuts in the form of rotating outages to avoid a complete collapse of the grid.

[16] In an apparent effort to stimulate more power production, ERCOT's regulator, the Texas Public Utility Commission ("PUCT") increased the real-time settlement price of power from approximately US $1,200 per megawatt hour to US $9,000 per megawatt hour. It appears that this price was set by a computer program that was supposed to adjust prices to help match supply and demand. The increase in price to $9,000 per megawatt hour did not, however, increase supply because supply was blocked by frozen equipment. The price remained at $9,000 MWh for four days. The real time settlement price did not reach $9,000 even for a single 15 minute interval in all of 2020.

[17] In addition, Just Energy pays ERCOT a fee referred to as the Reliability Deployment Ancillary Service Imbalance Revenue Neutrality. It ranges between U.S. $0 to U.S. $23,500 per day. Between June 2015 and February 16, 2021, Just Energy paid

approximately $504,000 in respect of this charge. For February 17, 18 and 19, 2021, the aggregate charge was over U.S. $53 million.

[18] ERCOT and PUCT have issued additional invoices of US $55 billion to wholesale energy purchasers as a result of the storm. Just Energy's share of that is approximately $250 million.

[19] These additional fees pose a severe liquidity challenge for Just Energy because it is required to pay them within two days of being imposed. Although Just Energy has a means to dispute ERCOT's invoices, it must pay them before it can initiate the dispute resolution process. ERCOT has already barred two electricity sellers from the Texas power market for failing to make timely payments arising out of the storm.

[20] There is considerable controversy surrounding these fees. PUCT and ERCOT have been subject to severe criticism for their actions. The chair of PUCT and several of ERCOT's board members have resigned. The board of ERCOT terminated the employment of its CEO.

[21] Others in the Texas electrical market have also suffered. The largest power generation and transmission cooperative in Texas, Brazos Electric Power Cooperative, filed for Chapter 11 bankruptcy protection on March 1, 2021.

[22] Although Just Energy hedges for weather risks, its hedging and pricing models did not, however, take into account the extraordinary power demands caused by the storm and the unprecedented fees that ERCOT and PUCT imposed during and after the storm. By way of example, Just Energy's weather hedges contemplate a 50% increase in power usage above average consumption for the month of February. During the storm, usage was 200% above the previous week.

[23] As a result of the additional payments it has had to make to date because of the storm, Just Energy's liquidity facilities are down to approximately $2.9 million. By the end of day on March 9, 2021 it will have to pay ERCOT an additional US $96.24 million.

[24] On March 22, 2021 Just Energy expects to have to pay $250,000,000 to counterparties for purchases at inflated prices during the storm and its aftermath. Sudden and unexpected obligations of that magnitude have a cascading effect on Just Energy's financial stability.

[25] In response to the dramatically increased charges by ERCOT, companies that have issued surety bonds in Just Energy's favour have demanded $30 million in additional collateral of which $10 million remains outstanding. Just Energy was obligated to provide additional collateral because the bonding companies had threatened to cancel their surety bonds if Just Energy did not do so. The cancellation of the bonds may have resulted in the revocation of licenses necessary for the Just Energy group to carry on business in certain jurisdictions.

[26] On March 8, 2021, the Just Energy group received another invoice from ERCOT for US $30.92 million, of which U.S. $23.89 million will be due by March 10, 2021.

[27] While Just Energy had sufficient liquidity to pay the obligations that it expected, it does not have enough liquidity to pay the additional fees charged by ERCOT, PUCT and creditors who have demanded more stringent terms in response to the ERCOT and PUCT fees. If Just Energy does not pay the fees to ERCOT, the latter can simply transfer all of the Just Energy Group's customers in Texas to another service provider. That would be devastating to Just Energy's business.

[28] In addition to the foregoing financial stresses, at least three provincial regulators have expressed concern about Just Energy's viability. Two regulators made inquiries as a result of media reports arising from Just Energy's disclosure about its storm related financial challenges. The third inquiry was prompted by a formal petition by another market participant who seeks to prevent the Just Energy operating entity in Manitoba from selling to new customers.

II. General Principles

[29] At a high level, this is precisely the sort of situation that the *CCAA* is designed for.

[30] The policy underlying the *CCAA* is that the best commercial outcomes are achieved when stays of proceedings provide debtors with breathing space during which solvency is restored or a reorganization of liabilities is explored. The *CCAA* offers a flexible mechanism to make it more responsive to the commercial needs of complex reorganizations. The overriding object is to permit the debtor to continue to carry on business and, where possible, avoid the social and economic costs of liquidating the business.[2]

[31] This will be a complex restructuring. It involves balancing the interests of various types of debt including secured debt, unsecured term loans, working capital provided by service providers, trade debt to commodities providers, ongoing obligations to customers, just shy of 1000 employees all overlaid with varying regulatory requirements of several different Canadian provinces and American states.

[32] Today's application invites me to make a number of rulings on a variety of discretionary issues. The Supreme Court of Canada provided guidance about whether and how to exercise that discretionary authority in *Century Services Inc. v. Canada (Attorney General)*.[3] It described the guiding principles as follows:

> [70] The general language of the *CCAA* should not be read as being restricted by the availability of more specific orders. However, the requirements of appropriateness, good faith, and due diligence are baseline considerations that a court should always bear in mind when exercising *CCAA* authority. Appropriateness

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[2] *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at paras. 14-15.
[3] Century Services Inc. v. Canada (Attorney General), 2010 SCC 60 (CanLII), [2010] 3 SCR 379

> under the *CCAA* is assessed by inquiring whether the order sought advances the policy objectives underlying the *CCAA*. The question is whether the order will usefully further efforts to achieve the remedial purpose of the *CCAA* — avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.

[33] Three principles emerge from this passage: good faith, diligence and appropriateness. There is no suggestion that Just Energy is not proceeding in good faith or with diligence. I will return to the issue of appropriateness in my review of the individual forms of relief.

[34] Today I am being asked for a 10 day stay of proceedings, including a stay of proceedings by regulatory authorities. Such relief is appropriate in the circumstances of this case.

[35] To have Just Energy fail would cause severe hardship to 979 employees and their families and cause losses of up to $1.25 billion for creditors all because

(i) Just Energy is being forced to pay unprecedented fees that ERCOT and PUCT imposed,

(ii) which fees Just Energy is challenging,

(iii) which fees are highly controversial,

(iv) and which fees were imposed in circumstances where ERCOT's and PUCT's overall management of the crisis has led to the departure of their CEOs and the resignation of several of their board members.

[36] In granting the relief I ask myself, as the Supreme Court of Canada did in *Century Services* whether granting a stay will usefully further efforts to achieve the remedial purpose of the *CCAA*. If I apply that principle to the circumstances before me today, the question becomes whether a 10 day stay will avoid the social and economic losses resulting from the liquidation of Just Energy and give participants a chance to achieve common ground while treating all stakeholders as advantageously and fairly as the circumstances permit.

[37] I am satisfied that it does. This is precisely the sort of situation that demands breathing space for all actors involved, including regulators, to begin to sort things out in a calmer, more rational, orderly fashion than has been possible to date.

[38] I underscore that in making these comments I am not intending to criticize the Texas regulators. Whether there is anything to be criticized in their conduct or whether their imposition of dramatically higher fees is appropriate will be for another day and another forum. I frame the issue in this way only to demonstrate that there is a genuine issue about the circumstances giving rise to Just Energy's liquidity crisis and a genuine issue about how best to sort out that crisis. Working out those issues in a manner that is as advantageous and fair to all stakeholders as the circumstances permit requires the calm deliberation and reflection that a *CCAA* stay will afford.

III. Specific Issues

[39] This application requires me to address the following specific issues:

A. Is Ontario the Centre of Main Interest?

B. Does Just Energy meet the insolvency requirements of the *CCAA*?

C. Should the DIP be approved?

D. Should the regulatory actions be stayed?

E. Should suppliers' charges and pre-filing payments be authorized?

F. Should set off rights be stayed?

G. Should administrative and directors and officers charges be granted?

H. Should noncorporate entities be captured by the stay?

I. Should third-quarter bonuses be paid?

J. Should a sealing order be granted?

A. Is Ontario the Centre of Main Interest?

[40] Just Energy has operations primarily in Canada and the United States. It has advised that it intends to commence a recognition proceeding under chapter 15 of the *US Bankruptcy Code* in Texas. This will ensure that actions taken in relation to US entities and US property or by US regulators are overseen by the US courts.

[41] The presence of significant business activities in the United States and the intention to commence a chapter 15 proceeding, engages the principle of the Centre of Main Interest or COMI.

[42] Section 45 (2) of the *CCAA* provides that, in the absence of proof to the contrary, a debtor company's registered office is deemed to be its centre of main interest.

[43] The registered office of Just Energy is located in Toronto.

[44] Other evidentiary factors can displace the presumption of the registered office being the COMI. These include the location of the debtor's headquarters or head office functions, location of the debtor's management and the location that significant creditors recognize as being the centre of the company's operations.[4]

[45] Here, the parent company, Just Energy Group Inc. is a CBCA corporation. Although it has offices in Mississauga and Houston, its registered office is in Toronto. Its common shares are listed on the Toronto Stock Exchange and the New York Stock Exchange. Just Energy is primarily a holding company although it is also the primary debtor or guarantor on substantially all of the obligations of its subsidiaries, including licenses granted by regulators to members of the Just Energy group. Just Energy has a number of subsidiaries throughout Canada, the United States and India. It has 333 Employees in Canada, 381 in the United States and 265 in India.

[46] The following additional factors point to Canada as the COMI:

a. During the recent *CCAA* plan of arrangement which was recognized under Chapter 15 of the US Bankruptcy Code, Canada was recognized as the COMI for the Just Energy group.

b. The operations of the Just Energy group are directed in part from its head office in Toronto. In particular, decisions relating to the Just Energy's primary business (buying, selling and hedging energy) are primarily made in Canada.

c. All other members of the Just Energy group report to Just Energy.

d. Just Energy Corp. (a Canadian subsidiary) acts as a centralized entity providing operational and administrative functions for the Just Energy group as a whole. These functions are performed by Canadian Just Energy employees and include, among other things:

    i. most enterprise-wide IT services;

    ii. enterprise-wide support for finance functions, including working capital management, credit management (including credit checks for customers),

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[4] *Re Massachusetts Elephant & Castle Group* 2011 ONSC 4201

payment processing, financial reconciliations, managing business expenses, insurance, and taxation;

iii. oversight for the legal, regulatory, and compliance functions across the entire Just Energy Group;

iv. certain enterprise-wide HR functions, such as designing in-house learning and development programs;

v. financial planning and analysis services, including customer enrollment, billing, customer service, and load forecasting;

vi. supply planning services, including creating demand models which predict the amount of energy that each entity needs to purchase from suppliers and determining the proper distributor and pipeline necessary to get the gas to the end-consumer; and

vii. internal audit services.

[47] In the foregoing circumstances I am satisfied Canada is the appropriate COMI.

B. Does Just Energy Meet the Insolvency Requirements?

[48] There is no doubt that Just Energy meets the threshold required by s. 3(1) of the *CCAA* that it be a company with liabilities in excess of $5,000,000.

[49] A company must be "insolvent" to obtain protection under the *CCAA*.[5] Although the *CCAA* does not define "insolvent," the definition of insolvent under the *Bankruptcy and Insolvency Act* ("*BIA*")[6] is usually referred to meet this criteria.[7] Section 2 of the BIA defines "insolvent person" as meaning (i) one who is unable to meet his obligations as they generally become due, (ii) who has ceased paying current obligations in the ordinary course or

> (iii) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.

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[5] *CCAA* s. 2(1)(a) definition of a debtor company.
[6] R. S. C. 1985,c. B- 3
[7] *Laurentian University of Sudbury* 2021 ONSC 659

[50] In addition, Ontario courts have also held that a financially troubled Corporation that is "reasonably expected to run out of liquidity within a reasonable proximity of time as compared with the time reasonably required to implement a restructuring" should also be considered to be insolvent for purposes of seeking *CCAA* protection.[8]

[51] I am satisfied from the affidavit of Michael Carter sworn March 9, 2021 that the liabilities of Just Energy exceed the value of its assets, that it will imminently cease to be able to meet its obligations as they become due, and will run out of liquidity in very short order.

C. Should a Priming DIP be Approved?

[52] Section 11.2(1) of the *CCAA* authorizes the court to approve debtor-in-possession financing (the "DIP") that primes existing debt.

[53] However, section 11.2 (5) provides that, on an initial application:

> (5) …. no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

[54] In other words, I have no jurisdiction to authorize a priming DIP except for that amount of debt and on those terms as are required to see the debtor through the next 10 days.

[55] The object is to put those measures in place that are necessary to avoid an immediate liquidation and thereby improve the ability of all players to participate in a more orderly resolution of the company's affairs. [9] The objective is to preserve the status quo the company for those 10 days but to go no further.[10]

[56] As Morawetz J. (as he then was) pointed out in para. 27 of *Lydian International Limited*,[11] a 10 day stay allows a number of other steps to occur including notification of parties who could not be consulted before the initial application as well as further consultations with key stakeholders.

[57] This is a material limitation on the court's jurisdiction on an initial application. It is a recent amendment introduced by Parliament which restricts the powers the court had

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[8] *Laurentian University* 2021 ONSC 659 at para. 32; *Stelco Inc., Re*, 2004 CanLII 24933 at para. 26.
[9] *Re Lydian International Limited*, 2019 ONSC 7473 at para. 25.
[10] *Lydian* at para. 26
[11] 2019 ONSC 7473.

previously. Before the amendment, initial applications were granted for a period of 30 days. That length of time often required more substantial DIPS which had the potential to prejudice other creditors without giving those creditors a meaningful opportunity to make submissions to the court. The 10 day rule is designed to correct that issue. I take that as a direct message from Parliament that is meant to be enforced seriously.

[58] Even before the amendment limiting initial orders to 10 days, the policy of courts was to limit DIP financing in initial orders to what was required to meet the company's "urgent needs over the sorting out period."[12] As Farley J. Noted in Re Royal Oak Mines Inc.

> …the object should be to "keep the lights [of the company] on" and enable it to keep up with appropriate preventative maintenance measures, but the Initial Order itself should approach that objective in a judicious and cautious matter.[13]

[59] Several *CCAA* courts have approved interim financing as part of the initial order since the 10 day rule came into effect.[14]

[60] The distinguishing factor in this case is that even the 10 day DIP that Just Energy requests is large. It seeks a DIP of $125,000,000 almost all of which will be drawn in the initial 10 day period. Interest accrues at 13% annually. There is a 1% commitment fee and 1% origination fee.

[61] Section 11.2(4) of the *CCAA* lists some of the factors the Court should consider when deciding whether to approve DIP financing. These include:

(a) The period during which the Applicants are expected to be subject to the *CCAA* proceeding;

(b) How the company's business and financial affairs are to be managed during the proceedings;

(c) Whether the company's management has the confidence of its major creditors;

(d) Whether the loan would enhance the prospects of a viable compromise or arrangement;

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[12] *Re Royal Oak Mines Inc*. (1999), 1999 CanLII 14840 (ON SC), 6 C.B.R. (4th) 314 ((Ct. J. (Gen. Div.)) at para 24.

[13] *Re Royal Oak Mines Inc.* (1999), 1999 CanLII 14840 (ON SC), 6 C.B.R. (4th) 314 ((Ct. J. (Gen. Div.)) at para 24.

[14] *Re Clover Leaf Holdings Company*, 2019 ONSC 6966 at para. 21; *Miniso International Hong Kong Limited v. Migu Investments Inc.,* 2019 BCSC 1234, at para. 90; *Re Mountain Equipment Co-Operative*, 2020 BCSC 1586, at para. 2.

(e) The nature and value of the company's property;

(f) Whether any creditor would be materially prejudiced as a result of the DIP charge; and

(g) The Monitor's pre-filing report (if any).

[62] In *Re AbitibiBowater Inc*,[15] Gascon J.S.C., as he then was, described the analysis as having the court satisfy itself that the benefits of DIP financing to all creditors, shareholders and employees outweigh the potential prejudice to some creditors.

[63] Although the amount of the DIP for the initial 10 day stay is high, it is nevertheless necessary to "keep the lights on." Just Energy is required to pay ERCOT US $96.24 million by the end of today (March 9, 2021) or risk losing its licences. It will have to pay a further $54 million by March 14, 2021. Texas represents approximately 47% of Just Energy's margin. Without its Texas licenses, Just Energy would likely collapse.

[64] Just Energy's secured creditors do not oppose the DIP. Although they wish to "reserve their rights" on the comeback hearing, I take that to mean that they may wish to make arguments about the existence or the terms of the DIP from the comeback hearing onward. As noted earlier, they would be hard-pressed to challenge any priority given to the DIP for advances during the 10 day period the absence of any opposition today.

[65] The DIP lender is a consortium of Just Energy's largest unsecured lenders. For unsecured lenders to offer a DIP of that size to cover a 10 day stay suggests that they believe their prospects for recovery on their unsecured loan are better with a significant 10 day DIP than without.

[66] The loan clearly enhances the prospects of a viable compromise or arrangement. Without the loan, Just Energy cannot continue. Regulators will quickly take steps to suspended licenses. Even with the stay of regulatory proceedings, it would be difficult to allow Just Energy to continue to operate if it has no working capital and no means of purchasing power to sell to customers.

[67] Just Energy's business is capital-intensive. It requires the expenditure of large amounts of money to buy power and the subsequent receipt of large amounts from the sale of power. That requires substantial liquidity.

[68] In addition, the regulated nature of Just Energy's business can lead to unforeseen liquidity demands that may need to be satisfied to ensure the Applicants' ability to operate as a going concern. The added charges by PUCT and ERCOT are prime examples of that. Those charges must be paid within as short a period as 2 business days. While those charges may ultimately be reversed through the dispute resolution process and while additional

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[15] *Re AbitibiBowater Inc,* 2009 QCCS 6453 at para 16.

collateral that has been required may ultimately be released, those steps will take time to work out. Even if the charges are not reversed, it may well be possible to absorb those price shocks if given the time. Financing Just Energy at least through an interim period allows for greater insight into those possibilities.

[69] I am also mindful of the need to keep essential suppliers and regulators comfortable. Even though I am staying provincial regulatory proceedings, I do that knowing that I am treading on public policy territory that Parliament and provincial legislatures have chosen to ascribe to specialized bodies with specialized knowledge. A larger 10 day DIP decreases the risk that I am harming the public policy objectives they have been mandated to pursue than would a smaller DIP.

[70] The Monitor points out that, after netting out cash receipts and expenditures, approximately $33,000,000 of the DIP will remain at the end of day 10. One could see that as grounds to pare back the DIP by an equivalent amount I do not think it would be appropriate to do. As noted, the Just Energy business is unpredictable. It requires large amount of liquidity and liquidity buffers to take into account unexpected charges from regulators. The regulators who impose those charges do so to protect other interests. As a result, they cannot simply be dismissed. It strikes me that providing a business of this sort with a buffer is appropriate. The Monitor recommends allowing the buffer to continue. None of the other stakeholders object.

[71] In the foregoing circumstances, I am satisfied that the DIP should be approved as requested.

D. Should Regulatory Actions be Stayed?

[72] Just Energy is subject to a wide variety of provincial and state regulators in Canada and the United States. By way of example, in Canada five different provincial regulators have issued licenses to 16 different Just Energy entities allowing them to sell gas and electricity. Power cannot be sold to new customers or delivered to existing customers without these licenses.

[73] Concerns about a licensee's solvency can lead provincial regulators to suspend or cancel licenses or impose more onerous terms on license holders. Such steps can include prohibitions on sales to new customers, termination of the ability to sell to existing customers and the forced transfer of customers to other suppliers. This would cause a licensee to instantly lose revenue streams and threaten their long-term viability. Regulators have the power to impose such terms in extremely short order.

[74] The filing of this *CCAA* application could lead to such adverse steps by regulators.

[75] As part of the proposed Initial Order, the Applicants seek to stay provincial and foreign regulators from, among other things, terminating the licenses granted to any Just Energy entity.

[76] With the benefit of the DIP Facility, the Applicants intend to continue paying amounts owing to their contractual counterparties (primarily utilities) in the ordinary course. Just Energy is concerned that even if it continues making such payments, regulators may still try to terminate its licenses or impose other conditions.

[77] In my view it is appropriate to stay the conduct of provincial regulators in Canada.

[78] Section 11.1 of the *CCAA* provides:

> 11.1 (1) In this section, regulatory body means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province and includes a person or body that is prescribed to be a regulatory body for the purpose of this Act.
>
> (2) Subject to subsection (3), no order made under section 11.02 affects a regulatory body's investigation in respect of the debtor company or an action, suit or proceeding that is taken in respect of the company by or before the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court.
>
> (3) On application by the company and on notice to the regulatory body and to the persons who are likely to be affected by the order, the court may order that subsection (2) not apply in respect of one or more of the actions, suits or proceedings taken by or before the regulatory body if in the court's opinion
>
> (a) a viable compromise or arrangement could not be made in respect of the company if that subsection were to apply; and
>
> (b) it is not contrary to the public interest that the regulatory body be affected by the order made under section 11.02.

[79] More plainly put, the *CCAA* automatically stays enforcement of any payments of money ordered by the regulator. It does not, however, automatically stay other steps that a

regulator may take against a regulated entity. The court may nevertheless stay such other steps if it is of the view that the failure to stay those other steps means that a viable compromise or arrangement could not be made, provided that the additional stay is not contrary to the public interest.

[80] In the circumstances of this case, it is, in my view, appropriate to stay the exercise of other regulatory powers against Just Energy at least for the interim 10 day period.

[81] As noted earlier, Just Energy's liquidity crisis arises because of controversial steps taken by PUCT and ERCOT which steps Just Energy is in the process of challenging.

[82] It would appear to me to be unjust to take regulatory steps that might shut down entire business when the financial concerns that prompt those steps may turn out to be unjustified if PUCT and ERCOT adjust some or all of the price increases they imposed during the storm. Even if PUCT and ERCOT are unable or unwilling to adjust their price increases, it may be appropriate for regulators to consider whether Just Energy should be shut down because of a temporary liquidity crisis and whether Just Energy should be given a window of opportunity to work out its liquidity crunch. That will obviously need to be measured against the objectives the regulator was created to further. It strikes me, however, that the circumstances of this case warrant at least a 10 day period to allow all parties to assess the issue with the benefit of more reflection than the instant application of a regulatory policy may afford.

[83] One of the primary goals of regulators is to ensure that providers of electrical power are paid and that customers receive electrical power on competitive business terms. A stay does not offend these policy objectives. The goal of the stay and the financing associated with it is to be able to continue to pay providers of power to Just Energy and to continue to service Just Energy customers according to their existing contracts. The DIP financing and the charge in favour of essential suppliers will ensure that this remains the case.

[84] Section 11.1 (3) of the *CCAA* allows the court to stay action by regulators on notice to the regulator. Regulators have not been given notice of today's hearing. I am nevertheless inclined to grant the relief sought.

[85] Providing notice would have potentially allowed regulators to cancel or suspend Just Energy's licenses before the hearing occurred. If such suspensions or cancellations were ultimately set aside, they would still have caused substantial disruption to the marketplace as a whole and to Just Energy in particular. Just one of the many regulators to whom Just Energy is subject could cause material disruption.

[86] Cancellation or suspension of licenses would, for example, mean that upstream suppliers of gas and electricity to Just Energy would have their contracts terminated. Any new power supplier to whom Just Energy's customers would be transferred would have their own source of power supply. That would create more market disruption than would a stay.

[87] In this light, the granting a 10 day stay against regulatory conduct is consistent with the remedial purpose of the *CCAA* which is to avoid social and economic losses resulting from the liquidation of an insolvent company. To permit the immediate termination of Just

Energy's licenses would not avoid social and economic losses but amplify them by extending them beyond Just Energy to its upstream suppliers.

[88] I am also mindful of the admonition of the Supreme Court of Canada in *Century Services* to the effect that general language in the *CCAA* should not be read as being restricted by the availability of more specific orders. Although the *CCAA* contains specific provisions relating to regulatory stays which require notice to the regulator, the general power to make such orders as are appropriate should not, in my view, be restricted by the notice requirement when the relief sought relates only to a 10 day temporary stay, when providing notice could undermine the entire scheme of the *CCAA* and when there are adequate financing mechanisms in place to ensure that the regulators' policy objectives are not undermined during the 10 day period.

[89] A foreign regulator is not a "regulatory body" within the plain meaning of section 11.1(1) of the *CCAA*. As such, foreign regulators do not benefit from the same exemption from the stay as a Canadian regulator. A foreign regulator is therefore presumptively subject to the Stay, with respect to matters that fall within the jurisdiction of the Canadian *CCAA* Court. Canadian courts have held that a foreign regulator is precluded by the stay from taking steps in Canada in relation to matters that are within the *CCAA* court's jurisdiction.[16]

[90] This result is consistent with the language of the model CCAA order which stays, among other things, all rights and remedies of any "governmental body or agency"

[91] Whether and to what extent the stay should apply to American regulators will be for an American court to determine. To give effect to that stay in the United States, Just Energy intends to commence chapter 15 proceedings immediately for such a determination.

E. Should Supplier Charges and Prefiling Payments be Authorized?

[92] Just Energy seeks a charge in favour of what it has referred to as commodity suppliers and ISO Service Providers. Commodity suppliers are those who provide gas and electricity to Just Energy. ISO Service Providers are often commodity suppliers as well but also provide additional services to Just Energy such as working capital and credit support. By way of example, as noted earlier, ERCOT sends invoices to service providers like Just Energy. Those invoices must be paid within two days. In certain cases, Just Energy uses and ISO Service Provider to act as the front facing entity to the regulator. In those cases, ERCOT sends its invoice to the ISO Service Provider who is obliged to pay within two days. The ISO Service Provider then looks to Just Energy for payment but gives Just Energy extended

[16] *Nortel Networks Corp., Re*, 2010 ONSC 1304 at para. 41 and 42.

time to pay, say for example 30 days. In effect, the ISO Service Provider is providing Just Energy with working capital and liquidity.

[93] Just Energy has received advice to the effect that these arrangements amount to Eligible Financial Contracts under the *CCAA*. This poses a challenge because Eligible Financial Contracts are not subject to the prohibition on the exercise of termination rights under the *CCAA*.[17] Since the parties to Eligible Financial Contracts cannot be prevented from terminating, Just Energy is of the view that counterparties to those contracts must be given incentives to continue to provide power supply and financial services. The proposed incentive takes the form of a charge in favour of those counterparties that continue to provide commodities or services to Just Energy.

[94] Shell and BP, the two largest commodity and ISO Service Providers, have already entered into such arrangements. The proposed order would allow any other commodity provider or ISO Service Provider to enter into a similar arrangement with Just Energy and benefit from a similar charge.

[95] No one has challenged that analysis for today's purposes and no one opposes the proposed charges. Given the possibility of mischief in the absence of such charges and given that the relief today is sought for only 10 days, in my view it would be preferable to offer the protection of the charges as requested.

[96] I note that in certain circumstances, the court can compel commodity and service providers to continue supplying a *CCAA* debtor. I am, however, somewhat reluctant to use those provisions given that the suppliers and service providers in question are part of a highly regulated, interwoven industry. Compelling a supplier in such an industry to continue to provide supply or services may well infringe on the regulators' objective of maintaining a financially sound electrical market. Given the urgency with which the application arose, it is preferable to provide financial incentives to such parties and not risk imperiling the financial stability of other regulated actors by forcing them to supply.

[97] This court has already observed in the past that the availability of critical supplier provisions under the *CCAA* does not oust the court's jurisdiction under section 11 to make any other order it considers appropriate.[18]

[98] The proposed charges would rank either *pari passu* with the DIP or immediately below it, depending on the nature of the transaction. Although Just Energy's secured creditors were present at today's hearing, they did not object to the proposed charges.

[99] Certain prefiling obligations such as tax arrears could result in directors of Just Energy being held personally liable. The company seeks authorization to make prefiling payments with that sort of critical character that are integral to its ability to operate. In the absence of any objection, that relief is granted.

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[17] *CCAA* s. 34 (1), (7), (8) and (9).
[18] Re CanWest Publishing Inc., 2010 ONSC 222 at para. 50.

F. Should Set off Rights to Be Stayed?

[100] As part of the stay, Just Energy seeks an order precluding financial institutions from exercising any "sweep" remedies under their arrangements with Just Energy.

[101] The concern is that the financial institutions would empty Just Energy's accounts by reason of a claim to a right of set off. Exercise of such rights would effectively undermine any reorganization by depriving Just Energy of working capital and thereby impairing its business.

[102] Although s. 21 of the *CCAA* preserves rights of set-off, the Court may defer the exercise of those rights. Section 21 does not exempt set-off rights from the stay. This differs from other provisions of the *CCAA*, which provide that certain rights are immune from the stay.[19] As Savage J.A. of the British Columbia Court of Appeal observed, the broad discretion accorded to the *CCAA* Court to make orders in furtherance of the objectives of the statute must, as a matter of logic, extend to set-off.[20]

[103] Allowing banks to exercise a self-help remedy of sweeping the accounts by claiming set-off would in effect give them a preferred position over other creditors and deprive Just Energy of working capital. That would be contrary to the remedial purpose of the *CCAA* because it would ultimately shut down Just Energy and allow the banks to advantage themselves to the detriment of others in the process.

[104] Just Energy had consulted widely with various stakeholder groups had before today's hearing. Those included the banks with sweep rights, at least some of home were represented at today's hearing and did not object.

[105] In the foregoing circumstances it is appropriate to at least temporarily stay the exercise of any rights of set-off by the banks.

G. Should Administrative and D & O Charges be Granted?

[106] The Applicants propose that an Administration Charge for the first ten days be set at $2.2 million.

[107] The largest expenditures in the administration charge involve the retainer of counsel in Canada and the United States for Just Energy and the retainer of the Monitor and its counsel.

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[19] *North American Tungsten Corp. (Re)*, 2015 BCSC 1382 at para. 28; leave to appeal to BCCA refused, 2015 BCCA 390 [*Tungsten* (Leave)], leave to appeal decision affirmed by Review Panel of the BCCA.
[20] *Tungsten* (Leave), above at para. 12-16**;** see also *Air Canada (Re)*, 2003 CarswellOnt 4016 at para. 25.

[108] In addition, the company seeks a financial advisor charge of $1.8 million to retain BMO Nesbitt Burns as a financial advisor to assist in exploring potential alternative transactions.

[109] The directors and officers charge sought is in the amount of $30 million.

[110] The Monitor estimates that director liabilities in the United States for sales taxes, wages, source deductions and accrued vacation come to approximately $13.1 million. Director and officer exposure in Canada may be as high as $5.8 million.

[111] While insurance with an aggregate limit of $38.5 million is in place, the complexity of the overall enterprise creates the risk that it might not provide sufficient coverage against the potential liability that the directors and officers could incur in relation to this *CCAA* proceeding.

[112] In determining whether to approve administration charges, the Court will consider: (a) the size and complexity of the businesses under *CCAA* protection; (b) the proposed role of the beneficiaries of the charge; (c) whether there is an unwarranted duplication of roles; (d) whether the quantum of the proposed charge is fair and reasonable; (e) the position of secured creditors likely to be affected by the charge; and (f) the position of the Monitor.[21]

[113] The Just Energy business is large and complex. The proposed beneficiaries are essential to the success of the *CCAA*. No *CCAA* proceeding can advance without a Monitor or counsel. The addition of a financial advisor would appear to be a prudent step given the complexity of the business. Monetizing or restructuring all or portions of the Just Energy business is substantially more complicated than a sale of hard assets. It would appear to make good sense to have a financial advisor involved. The Monitor agrees to the appointment of a financial advisor. I infer from the Monitor's agreement that Nesbitt Burns will bring to the table a skill set or attributes that the Monitor either does not have or cannot exercise given its role as Monitor.

H. Should Noncorporate Entities Be Captured by The Stay?

[114] Many of the gas and electricity licences pursuant to which the Just Energy group conducts business in Canada are granted to limited partnerships.

[115] On its face, the *CCAA* applies to corporations, not partnerships.[22]

[116] Where, however, the operations of partnerships are integral and closely related to the operations of the *CCAA* debtor, it is well-established that the Court has jurisdiction to

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[21] *Canwest* 2010, , at para 54. *Target,* , at paras 74 and 75; *Lydian, ,* paras 43 to 54; *Laurentian,* at paras. 48 to 59.

[22] *CCAA*, s. 2, definition of "Debtor company."

extend the protection of the stay to partnerships in order to ensure that the purposes of the *CCAA* can be achieved. Relief of that sort has been granted on several occasions.[23]

[117] Here, it would be illusory to grant a stay in favour of the Just Energy corporate entities but not extend its benefit to the partnership entities. That would defeat the entire purpose of the exercise. As a result, is appropriate to extend *CCAA* protection to the Just Energy partnership entities.

I. Should Third Quarter Bonuses be Paid?

[118] The applicant seeks approval from the initial order for payment of third Quarter bonuses for fiscal 2021 on April 2, 2021. The bonuses were approved by the Compensation Committee on February 9, 2021 after it was reported that the third quarter base EBITDA result was $55.785 million compared to a target of $42 million.

[119] The Compensation Committee approved and asked the Board to approve a third-quarter bonus pool in the amount of $3.23 million. The Board approved the bonus on February 10, 2021.

[120] I am disinclined to approve the bonus payment on an initial order. The relief on the initial order is limited to the amount to keep the company afloat for 10 days. The bonus does not fit into that category. Even on the applicant's view of events, the bonuses are not payable until April 2, 2021. That is well after the comeback date.

[121] In addition, the Monitor has not yet had an opportunity to review and comment on the employee bonus and intends to do so in a further report to the court.

[122] Whether bonuses should or should not be paid will depend on a variety of factors that are not in the evidence before me. By way of example, I would want a better understanding of whether the beneficiaries of the bonuses are also intended beneficiaries of the key employee retention plan that Just Energy will be asking for on the comeback date. In addition, I will want a better sense of who the recipients of the bonuses are. If they are relatively modest income earners for whom the bonus is a key source of income, such as, for example, retail sales people, I would probably be inclined to pay the bonuses without question. If, however, they are high income earners, the intended beneficiaries of the KERP, or if they are executives who make decisions about risk allocation, what Just Energy should insure against, to what extent it should hedge against weather risks and so on, I would want a more granular understanding about why the bonuses should be paid.

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[23] See, for example, *Re Lehndorff General Partner Ltd.* (1993), 17 C.B.R. (3d) 24 (Ont. Gen. Div. [Commercial List]), at para. 21; *Re Target Canada Co.,* 2015 ONSC 303 at paras 42 and 43; *4519922 Canada Inc., Re,* 2015 ONSC 124 at para. 37.

J. Should a Sealing order be Granted?

[123] Just Energy requests a sealing order in relation to the BMO Engagement Letter and the summary of the KERP**,** both of which are attached as confidential exhibits to the affidavit of Michael Carter sworn March 9, 2021.

[124] I am satisfied that the applicants have met the test established by the Supreme Court of Canada in *Sierra Club of Canada v Canada (Minister of Finance)*.[24] The materials contain commercially sensitive information and/or personal information (in the case of the KERP). The order is necessary to prevent a serious risk to an important personal or commercial interest and the benefits of a sealing order outweigh the rights of others to a fair determination of the issues. No one advanced any need to see the information that is proposed to be sealed nor can I see any need for anyone to access such information in order to assert their rights fully within this proceeding.

Disposition

[125] In view of the foregoing, I granted an initial order in the form requested with the exception of authorization for bonus payments which will be addressed at the comeback hearing.

[126] The order will in effect provide that:

(a) Ontario is the Centre of Main Interest for the *CCAA* proceeding.

(b) Just Energy meets the insolvency requirements of the *CCAA*.

(c) The proposed DIP financing is approved.

(d) Any regulatory actions should be stayed.

(e) Commodity suppliers and ISO Service Providers who sign qualified service agreements will benefit from a charge.

(f) Set off rights of banks which may allow them to sweep accounts will be stayed.

(g) The administrative, financial advisor and directors and officers charges are granted.

(h) Noncorporate entities will be captured by the stay.

(i) A sealing order will be granted.

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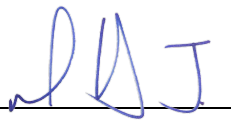
[24] Sierra Club of Canada v Canada (Minister of Finance), 2002 SCC 41 at para 53; see also Target above at paras 28-30; Laurentian University, above at paras. 60 to 64.

[127] The comeback date for the continuation of any CCAA relief is set for 10 AM on Friday, March 19, 2021.



Koehnen J.

Date: March 9, 2021

Tab 4

1991 S.H. No. 78982

IN THE SUPREME COURT OF NOVA SCOTIA

TRIAL DIVISION

IN THE MATTER OF:
The Companies' Creditors Arrangement Act R.S.C. 1985, c.C-36

- and -

IN THE MATTER OF:
The application of Fairview Industries Limited, ELL. Holdings Limited, Shelburne Marine Limited, VGM Capital Corporation, 683297 Ontario Inc., and CanEast Capital Limited, body corporates with head offices in the City of Halifax, County of Halifax, Nova Scotia.

HEARD: Before the Honourable Chief Justice Constance R. Glube, Trial Division, in Chambers at Halifax, Nova Scotia on November 14th, 1991

DATE November 18, 1991

COUNSEL: Dara Gordon and Rodney F. Burgar - for the applicants Fairview Industries Limited et al

John D. Stringer and B. Miller - for the Royal Bank of Canada and the Bank of Nova Scotia

Peter MacKeigan - for Royal Trust

Gerald R. P. Moir - for RoyNat Inc.

David Farrar - for the Nova Scotia Business Capital Corporation and Small Business Development Corporation

J. Gale appearing for R.G.MacKeigan Q.C. solicitor on record - for Central Capital Corporation

D. MacAdam Q.C. and K. MacDonald Art Clerk - for Nesbitt Thompson Deacon Inc.

Carl Holm Q.C. - for the monitor Coopers & Lybrand Limited

Bruce Clarke - for Seacoast Diesel and Gas Limited Steven Zatzman - for Sketchley Air Conditioning

Johanne Tournier - for the Municipality of the District of Shelburne

G. Giles - for Sonco Property Development L. Doll - for Gary Foley and TTL Supply Ltd.

1991 S.H. No. 78982

IN THE SUPREME COURT OF NOVA SCOTIA

TRIAL DIVISION

IN THE MATTER OF:

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

- and -

IN THE MATTER OF:

The application of Fairview Industries Limited, F.I.L. Holdings Limited, Shelburne Marine Limited, VGM Capital Corporation, 683297 Ontario Inc., and CanEast Capital Limited, body corporates with head offices in the City of Halifax, County of Halifax, Nova Scotia.

GLUBE, C.J.T.D.:

The Interlocutory Notice for this application which was heard on November 14th, 1991, seeks an Order dealing with the following matters:

> "1. Determining the appropriate classes of creditors and the members of such classes for purposes of voting on the plan of arrangement or compromise proposed by each of the applicants pursuant to Sections 4, 5 and 6 of the Companies' Creditors Arrangement Act (CCAA);
>
> 2. Fixing the amount of the creditors' claims for the purposes of voting on the plan of arrangement or compromise pursuant to the CCAA;
>
> 3. Approving the form of proxy to be issued' to the creditors;
>
> 4. Approving the issuance of an Information Circular;
>
> 5. Amending the method of service stipulated for in the Order of this Honourable Court dated September 16, 1991; and
>
> 6. Concerning such other procedural aspects as the Court consider advisable in order to carry out the plan of arrangement or compromise pursuant to the CCAA;"

The general facts were set out in the unreported decision of Glube CJ.T.D. dated November 6, 1991. That decision was filed after the application was made for this hearing. As a result, those parts of this application referring to "a plan", now relate to "plans".

For the purposes of this application, the six corporations are referred to as "the applicants" unless specific reference is made to a particular company.

The affidavit of Rodney F. Burgar dated October 31st, 1991 sets out that the applicants gave notice of this application to all the creditors. Although the applicants asked the court to deal with a number of issues and others were raised by various creditors, a number of matters were resolved by the parties before the Chambers hearing commenced.

The following were dealt with during the Chambers application.

1. Removal of the Monitor.

At the commencement of the application, and in light of the Noveinber 6th decision, counsel for the monitor, Coopers & Lybrand Limited, applied to be relieved as monitor. This request was granted.

2. Applicants Changes to Proposed Classes.

The court was advised of a number of changes in both categories and dollar amounts in the classes proposed by the applicants as shown on the exhibits attached to the affidavit of Ross Drake sworn October 31st 1991.

3. Request for a change in category by Seacoast Diesel & Gas Limited (Seacoast) and Sketchley Air Conditioning & Refrigeration (Sketchley).

Seacoast and Sketchley claim that they should be placed in a separate sub-class of the secured creditors of Fairview Industries Limited (Fairview). Both Seacoast and Sketchley claim as subcontractors against a specific contract performed by Fairview. It was argued that these two companies had a claim similar to a mechanics lien or a form of secured or "trust" claim. Sketchley did not present any affidavit evidence.

William LeBlanc, President of Seacoast, filed an affidavit dated November 12th, 1991, which outlines that Seacoast had a subcontract with Fairview to do certain refit work on a vessel. The affidavit puts forward that before Fairview could be paid for that refit job, all the subcontractors on the job had to be paid. Mr. LeBlanc swore that he relied upon an undertaking by a representative of the Department of Supply and Services Canada that Seacoast would be paid before Fairview. He also obtained a letter from the President of Fairview in which Fairview undertook to pay Seacoast pursuant to Fairview's contract with Supply and Services

Canada.

Fairview submitted a number of arguments including the fact that there were more companies than Seacoast and Sketchley similarly situated and that the other companies had not objected to their classification as unsecured creditors.

Based upon the information presented, I held that I was not prepared to change the classification of the two companies, however, this did not preclude them from making another application to the court on this issue.

4. The Small Business Development Corporation (SBDC) applied to be moved from the unsecured class of Shelburne Marine Limited (Shelburne) to the preferred creditors class.

Counsel was asked to make written submissions, however, on November 15th, 1991, the court received a letter from counsel for SBDC advising that this application was not being pursued.

5. Central Capital Corporation (Central Capital) requested certain changes to its position in the classes of VGM Capital Corporation (VGM) and 683297 Ontario Inc. (683297).

Counsel for the applicants submitted that if the original figures and categorization were allowed to remain that this would result in double counting. The proposal put forward is for the purposes of voting which means that Central Capital's overall dollar entitlement has not been altered.

The request for change by Central Capital was refused and the new figures and locations within the classes as presented at the beginning of this hearing as they related to Central Capital were approved.

6. Changes to the draft order sought by RoyNat Inc. (RoyNat).

Most of the changes requested by RoyNat were agreed to in advance and a new proposed order was submitted incorporating the agreed changes. There is one remaining requested change in paragraph 9 which the parties will discuss. If no agreement is reached, then the parties may place their respective positions before the court.

7. Should the secured creditors of Fairview and Shelburne be subdivided and vote in sub-classes ?

A number of the secured creditors of Fairview requested changes to their class which would result in three sub-classes, each voting as a class. These changes are opposed by the applicants. If the changes were granted, the three sub-classes would consist of the following:

(1) Bank of Nova Scotia (ENS)
(2) RoyNat
Royal Trust
(3) Nesbitt Thomson Deacon Inc. (Nesbitt Thomson)
CAFCO Leasing Inc.
Chrysler Credit.

A number of the secured creditors of Shelburne requested changes to theft class which would result in three sub-classes, each voting as a class. These changes are opposed by the applicants. If the changes were granted, the three sub-classes would consist of the following:

(1) Royal Bank of Canada (RBC)
(2) Nova Scotia Business Capital Corporation
Bank of Nova Scotia
(3) Central Capital

It must be stated clearly at the outset that each case must be decided upon its own facts. Initially, I decided I would not write a decision to avoid having future cases rely upon it in any way. I concluded, however, that the parties were entitled to have my opinions on the various proposals.

I suggest that all counsel are reading too much into the two decisions Norcen Energy Resources Limited et al v. Oakwood Petroleums Limited (1988), 72 C.B.R.(N.S.) 20 and Elan Corporation v. Comiskey (1990) 1 O.R. (3d) 289. In my opinion the two cases do not set up two "lines" of cases reaching different conclusions. I suggest that each was decided on their particular facts. The court should be wary about setting up rigid guidelines which "must" be followed. The CCAA is intended to be a fairly summary procedure and should not be stretched out over months and years with protracted litigation. Quite definitely, each case must be decided on its own unique set of circumstances.

Both Norcen and Elan quote from Sovereign Life Assurance Co. v. Dodd [1892] 2 Q.B. 573, [1891-4] All E.R. Rep. 246, 41 W.R. 4 (C.A.) as a starting point. In Elan, at p. 300, Finlayson J.A. states:

> " The classic statement on classes of creditors is that of Lord Esher M.R. in Sovereign Life ....at pp. 579-80 Q.B.
>
> > 'The Act (Joint Stock Companies Arrangement Act, 1870) says that the persons to be summoned to the meeting (all of whom, be it said in passing, are creditors) are persons who can be divided into different classes - classes which the Act of Parliament recognises, though it does not define them. This, therefore, must be done: they must be divided into

> different classes. What is the reason for such a course? It is because the creditors composing the different classes have different interests; and, therefore, if we find a different state of facts existing among different creditors which may differently affect their minds and their judgment, they must be divided into different classes.' "

Forsythe J. at p. 24 in Norcen, refers to part of the same quote and he refers to the "commonality of interests test" described in Sovereign Life.

Again, both cases also refer to another English authority, namely, Re Alabama, New Orleans, Texas & Pacific Junction Railway Co., [1891] 1 Ch. 213, [1886-90] All E.R. Rep. Ext. 1143, 60 L.J.Ch. 221(C.A.).

In Elan at p.301, Finlayson J.A. quotes Lord Justice Bowen at p.243:

> "...Now, I have no doubt at all that it would be improper for the Court to allow an arrangement to be forced on any class of creditors, if the arrangement cannot reasonably be supposed by sensible business people to be for the benefit of that class as such, otherwise the sanction of the Court would be a sanction to what would be a scheme of confiscation. The object of this section is not confiscation. Its object is to enable compromises to be made which are for the common benefit of the creditors as creditors, or for the common benefit of some class of creditors as such.'"

At p. 25 of Norcen, Forsythe J. in discussing the "bona fide lack of oppression test" refers to the Alabama case at p. 239 where Lindley L.J. stated:

> "The Court must look at the scheme, and see whether the Act has been complied with, whether the majority are acting bona fide, and whether they are coercing the minority in order to promote interests adverse to those of the class whom they purport to represent..' "

Forsythe J. goes on to remind the reader of the purpose of the CCAA, that is, that it is designed to continue rather than liquidate companies. I believe this is something which judges should always keep in mind.

In the article by Stanley E. Edwards, Reorganizations Under The Companies' Creditors Arrangement Act (1947), 25 Can. Bar Rev. 587 Mr. Edwards states at p. 602:

> "Creditors should be classified according to their contract rights, - that is according to their respective interests in the company. Sections 3 and 4 of the C.C.A.A. provide for a compromise or arrangement with

> the creditors 'or any class of them', and for the direction of a meeting of 'such creditors or class of creditors'. Hon. C.H. Cahan's remarks made in the House of Commons while he was sponsoring the passage of the bill, (House of Commons Debates, Canada, 1932-33, Vol, V,4723) make clear how each class of creditors is to be constituted. In discussing section 4 he said: 'Each class of creditors who have the same interest may decide by a three-fourths majority with respect to any proposed compromise and, if approved by the court, such compromise becomes effective'. In suggesting a change of wording in section 5 he made the following statement: 'The suggestion is that it should be made clear that each class of creditors having the same interest shall decide among themselves as to the terms of the compromise and I think this proposed amendment makes the matter very much clearer'. This history indicates that the intention of the statute was to require classification of the creditors according to their interest in the company."

I do not take that to mean that each creditor can allege a certain interest and thereby require that it be placed in a certain or separate classification, but rather that those with like interests, for example, mechanics lien holders, will be placed in the same class and be obliged to vote in that class (See: Re NsC Diesel Power Inc. (1990), 79 C.B.R. (N.S.) 1 (N.S.T.D.)).

At p. 28 of Norcen, Forsyth J. after referring to written submissions made to him states:

> " These comments may be reduced to two cogent points. First, it is clear that the C.C.A.A. grants a court the authority to alter the legal rights of parties other than the debtor company without their consent. Second, the primary purpose of the Act is to facilitate reorganizations and this factor must be given due consideration at every stage of the process, including the classification of creditors made under a proposed plan. To accept the "identity of interest" proposition as a starting point in the classification of creditors necessarily results in a "multiplicity of discrete classes" which would make any reorganization difficult, if not impossible, to achieve.
>
> In the result, given that this planned reorganization arises under the C.C.A.A., I must reject the arguments put forth by the HongKong Bank and the Bank of America, that since they hold separate security over different assets, they must therefore be classified as a separate class of creditors."

In Norcen, although the class was composed of a group of institutional lenders each with a first charge as security, the argument against one class of secured creditors was that the two Banks had separate security on different assets.

The court rejected that argument and found a commonality of interest.

In Elan, the Bank of Nova Scotia had a first registered charge on the accounts receivable and inventory of Elan and Nova and a second registered charge on the land, buildings and equipment. It had been placed in the same class as RoyNat who held a second registered charge on the accounts receivable and a first registered charge on the land, buildings and equipment. The Bank and RoyNat had entered into a priority agreement to define with certainty the priority each held over the assets of Elan and Nova. Along with others, the Bank and RoyNat were ordered by the Chambers Judge to be in the same class.

The Appeal Court held that if the Chambers Judge had decided that a meeting should be held and at that same time determined the classes of creditors, he would have known that any meeting would have failed. The Court found no "community of interest". They also found that RoyNat would dominate any class it was in and would always have a veto. Thus, it was found that there were different legal interests as well as different commercial interests.

I have no difficulty in rationalizing the decisions in Norcen and Elan. In my opinion, whether the security is on "quick" assets or "fixed" assets the companies listed under Fairview secured creditors and Shelburne secured creditors except for Central Capital all have a first charge. There does not have to be a commonality of interest of the debts involved provided the legal interests are the same. In addition, it does not automatically follow that those who have different commercial interests, that is, those who hold security on "quick" assets, are necessarily in conflict with those who hold security on hard or fixed assets. Just saying there is a conflict is insufficient to warrant putting them into separate classes.

In the present case, all the secured creditors of Fairview and all the secured creditors of Shelburne except Central Capital have a first charge of some sort even though the security of each differs. They have a common legal interest. Excluding Central Capital, I find that there is a commonality or community of interest of the secured creditors of Fairview and the secured creditors of Shelburne. Based on this position, I find that the Fairview secured creditors shall continue as one group.

As stated in Elan at p. 301 where Finlayson J.A. quotes from the case Re Wellington Building Corp. Ltd. [1934] O.R/ 653, 16 C.B.R. 48, [1934] 4 D.L.R. 626 (H.C.J. at p. 660 O.R.:

> " 'It is clear that Parliament intended to give the three-fourths majority of any class power to bind that class, but I do not think the Statute should be construed so as to permit holders of subsequent mortgages power to vote and thereby destroy the priority rights and security of a first mortgagee.' "

This position makes eminent common sense. I find that the Shelburne

secured creditors shall have two sub-classes as follows:

(1) Nova Scotia Business Capital Corporation
Royal Bank
Bank of Nova Scotia
(2) Central Capital Corporation

8. The Municipality of the District of Shelburne (the Municipality) applied to move into a separate sub-class as a preferred creditor of Shelburne.

The Municipality seeks to have its own sub-class of preferred creditor for its outstanding claim for property taxes and sewer rates from Shelburne. The Municipality is included with other statutory lien claimants in the Shelburne preferred creditor class.

As submitted by counsel for the applicants, to be set up in one class, the interests need only be similar. The court must wherever possible avoid a multiplicity of classes or sub-classes that could end up defeating the object of the Act.

I conclude that the Municipality should remain in the class of Shelburne preferred creditors. There is sufficient commonality for them to vote as a group. It was pointed out that the same proposal will not necessarily be made to all creditors in a class. No doubt this may be appropriate in a class of preferred creditors where their rights are established by legislation, however, I find that it is not necessary at this time to place each of them in a separate sub-class.

In its written submission, the Municipality raised the issue of whether or not it was bound by the initial September 16th order. This was not argued in court but if counsel for the Municipality wishes to pursue this point, further submissions are required, preferably, if possible, in writing. I will wait to hear from counsel from the Municipality on this issue before setting any time frames for submissions.

9. General Remarks.

In my opinion it is extremely important that individuals or companies within each class be treated fairly and equally. With the possible exception of particular legislation requiring particular treatment for some if not all of the preferred creditors, I have concerns when it is suggested that the plans may address different individuals within a class differently. If this does occur, two things come to mind.

First, everyone within a class must know of the different treatment so that each vote occurs with full knowledge of the plan overall and for the particular class. It is extremely important to ensure that when companies or individuals vote, they do so with full awareness of what their vote will mean.

Second, even if the plan is accepted by the various classes of creditors, it

must still come to the court for approval. The court is clearly entitled to reject the plan and if necessary the court can and will deal with any alleged unfairness or inequity at that time. At the application to approve the plan, the court will determine whether the appropriate majority approved the plan at a meeting held in accordance with the Act and the court's orders and whether the plan is fair and reasonable.

On reviewing the revised draft Order presented on November 14, it appears that there may be a word or words missing from paragraph 4. Since not all of the creditors are companies perhaps "... separately by individual company..." should read "...separately by individuals or by individual companies...". If this is not the intended meaning then counsel for the applicants should circulate a revised draft of the paragraph.

In paragraph 8 there was a change by adding a second type of proxy which I suggest results in a change to the wording from "...be and it is hereby approved..." to "...be and are hereby approved...".

Counsel for the applicants will submit an amended order with all of the changes included. All other matters not dealt with but which are contained in the revised draft order presented to the court on November 14 are approved.

Constance R. Glube

Halifax, Nova Scotia
November 18, 1991.

1991 S.H. 78982

IN THE SUPREME COURT OF NOVA SCOTIA
TRIAL DIVISION

IN THE MATTER OF:

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

- and -

IN THE MATTER OF:

The Application of Fairview Industries Limited, F.I.L. Holdings Limited, Shelburne Marine Limited, VGM Capital Corporation, 683297 Ontario Inc. and CanEast Capital Limited, body corporates with head offices in the city of Halifax, County of Halifax, Nova Scotia

DECISION OF
GLUBE, C.J.T.D.

Tab 5

Citation: Nalcor Energy v. Grant Thornton 2015 NBQB 020
Date: 20150121

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF FREDERICTON

F/M/47/2014

BETWEEN:

NALCOR ENERGY,

Plaintiff

- and –

GRANT THORNTON POIRIER LIMITED

Defendant

Date of Hearing:	December 3, 2014
Date of Decision:	January 21, 2015
Before:	Justice Terrence J. Morrison
At:	Fredericton, New Brunswick
Appearances:	Stephen Kingston, Benjamin Durnford and Shivani Chopra, for Nalcor Energy;
	John E. Bujold, for Grant Thornton Poirier Limited;
	Robert M. Creamer, Q.C. and Frank McBrearty, for Great Western Forestry Ltd.;
	Craig J. Hill, for Western Surety Company;
	Hugh J. Cameron, for TCE Capital Corporation

D E C I S I O N

Morrison, J.

I. INTRODUCTION

[1] Great Western Forestry Ltd. ("GWF") filed a notice of intention to make a proposal to creditors (the "Proposal") pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, Chapter B-3 (the "*BIA*"). Matthew Munro of Grant Thornton Poirier Limited ("Grant Thornton") was named the proposal administrator/trustee (the "Proposal Trustee"). Nalcor Energy ("Nalcor") submitted a proof of claim to the Proposal Trustee. At a meeting of creditors held on July 11, 2014, Mr. Munro, acting in the capacity as chair of the meeting, rejected Nalcor's proof of claim for purposes of voting on the Proposal pursuant to section 108(1) of the *BIA*. The chair rejected Nalcor's Proof of Claim on the basis that it was contingent and unliquidated.

[2] This is an application by Nalcor for an order reversing the chair's ruling rejecting Nalcor's Proof of Claim for purposes of voting on the Proposal. This is an appeal pursuant to section 108 of the *BIA*.

II. FACTS

[3] The following summary of the facts is a compilation of the facts outlined in the various briefs submitted by the parties. I have borrowed extensively from the briefs and I have largely reproduced them verbatim. The essential facts are not in dispute. Where there are factual controversies I have specifically identified them.

[4] Nalcor is the proponent of an undertaking known as the Muskrat Falls Project, a project being developed to exploit the hydroelectric potential of Muskrat Falls on the Churchill River in the Labrador portion of the Province of Newfoundland and Labrador at a reported capital cost of $7.4 billion. On March 11, 2013, Nalcor and GWF, which engages in the business of harvesting and clearing timber, entered into a contract which provides that GWF will supply the personnel, equipment and services necessary to clear a right-of-way from the site of the Muskrat Falls Project to the site of existing hydroelectric generation facilities located at Churchill Falls, Labrador (the "Contract"). The projected value of the Contract is $33,283,323.00.

[5] On November 15, 2013, Nalcor issued a Notice of Termination to GWF under the Contract. Among other things, the Notice of Termination cited GWF's failure to meet the Contract schedule as the basis for termination. That same day, Nalcor entered into a letter agreement with a different company to complete GWF's work under the Contract.

[6] On February 10, 2014 GWF filed a Notice of Intention to Make a Proposal pursuant to subsection 50.4(1) of the *BIA*. The respondent was retained to act as the Proposal Trustee.

[7] On February 11, 2014 GWF filed a Statement of Claim in the Supreme Court of Newfoundland and Labrador Trial Division (General) claiming against Nalcor, amongst other damages to be later valued, special damages in excess of eleven million dollars ($11,000,000.00) and a mechanics lien in excess of nine million dollars ($9,000,000.00) (the "Litigation"). On March 2, 2014 a copy of the Statement of Claim was served on Nalcor.

[8] On May 27, 2014 Nalcor presented a Proof of Claim to the Proposal Trustee listing an unsecured claim in the amount of $20,100,000.00. which was superseded by a Re-stated Proof of Claim filed on July 8, 2014 (the "Proof of Claim") setting out a claim in the amount of $18,672,151.64.

[9] On June 3, 2014, Nalcor filed a Defence in the Litigation.

[10] On June 6, 2014 GWF submitted its Proposal indicating that unsecured creditors were to be paid out of the "Net proceeds of Settlement or Final Judgment" in the Litigation.

[11] On June 13, 2014 the Proposal Trustee recommended acceptance of the Proposal.

[12] On June 30, 2014 the Proposal Trustee also advised Nalcor that in order to assess its claim further it would be required to provide more substantive evidence to support the claim.

[13] On July 7, 2014 Nalcor submitted to the Proposal Trustee various documents including Change Orders, Payment Certificates, the Contract, an Executive Summary and a copy of its Defence filed in the Litigation in support of its claim of $18,672,151.64.

[14] On July 8, 2014 the Proposal Trustee received Nalcor's Re-stated Proof of Claim and the applicant's Proxy/Voting Letter indicating it would be voting against the acceptance of the Proposal.

[15] On July 10, 2014 there was a telephone conversation between Nalcor's legal counsel and the Chair. Nalcor's legal counsel asserts that in that conversation he was advised by the Chair that he intended to proceed under section 108(3) of the *BIA*. The substance of the conversation was confirmed in an email from Nalcor's counsel to the Chair on the same date (Record, pages 32 and 483). There was no response to the email. In his affidavit, the Chair denies there was any understanding or assurances made that he would proceed

under section 108(3) only that he was considering certain sections of the *BIA* (Record, page 511).

[16] On July 11, 2014, the first meeting of GWF's creditors (the "Creditors' Meeting") was held in Fredericton. Matthew Munro of Grant Thornton served as the Chair of the meeting. At the meeting, the Chair rejected Nalcor's Proof of Claim for the purpose of voting at the meeting pursuant to section 108(1) of the *BIA*.

[17] The Chair provided oral reasons for his decision to disallow Nalcor's Proof of Claim, as evidenced in the minutes of the meeting. Later that day, the Chair also provided Nalcor with written reasons for his decision. In his reasons, the Chair explained that the Proof of Claim was disallowed because:

> i. The claim is contingent upon the outcome of an action as to whether the Termination of the Contract between Nalcor Energy and Great Western Forestry Ltd. was proper and legal for which no final decision has been rendered by a Court of Law, and
>
> ii. The amount of the claim has not been adjudicated in a Court of Law and is therefore unliquidated.

[18] It is common ground that had Nalcor been permitted to vote at the Creditors' Meeting the Proposal would have been defeated and GWF automatically placed into bankruptcy.

III. PRELIMINARY ISSUE

[19] At the outset of the hearing counsel sought a determination whether this application would proceed by way of trial *de novo* or on the existing record. Nalcor argued that the matter should proceed as a rehearing (trial *de novo*). Grant Thornton argued that appeals under section 108 of the *BIA* should be based on the record.

[20] There are conflicting lines of authority on this issue. In *Alberta Permit Pro Inc. (Re)* 2011 ABQB 141 the Court concluded that appeals pursuant to section 108 of the *BIA* should proceed by way of "appeal de novo" rather than an "appeal on the record". In *Trans Global Communications Group Inc. (Re)* [2009] A.J. No. 352 the Court acknowledged and reviewed the two lines of authority on the issue and concluded that, except in circumstances where restricting the hearing to the record would result in injustice, appeals of this nature should not be heard *de novo*.

[21] In this case, I could see no compelling reason to open the matter up to issues which were not before the Chair at the time of his rejection of Nalcor's Proof of Claim and which did not form part of his reasons for rejection. Accordingly, I ruled that the hearing would proceed as an appeal on the record.

IV. STANDARD OF REVIEW

[22] All of the parties, except Grant Thornton, agree that the applicable standard of review is that of correctness. In *Re Galaxy Sports Inc.* 2004 BCCA 284 the Court concluded that a Chair's decision rejecting a proof of claim under section 108 attracts a correctness standard on appeal:

> On a consideration of all the "contextual" factors mandated by the "pragmatic and functional" approach, I see no reason to disagree with the long-standing principle enunciated in Re McCoubrey, supra, which requires the application of a "correctness" standard where compliance with a "mandatory" provision (which I would equate to a question of law or statutory compliance) is involved, and the application of a "reasonableness" standard where the determination of a factual matter or an exercise of true discretion is called for. In the former category, I would place the chair's decision under s. 108 rejecting a proof of claim for voting purposes and the trustee's decision disallowing a proof of claim under ss. 124 and 135(2). In the latter category, I would place the trustee's role in valuing contingent and unliquidated claims under s. 135(1.1). This general approach conforms with the objective, which I see as implicit in the BIA, of enabling debtors to have their proposals voted upon expeditiously and permitting creditors to have their rights and claims determined in a business-like manner, while at the same time providing a meaningful appeal to a court of law on questions that clearly affect legal rights, engage the relative expertise of judges, and set precedents for other cases.

[23] The standard of review in this matter is that of correctness.

V. ANALYSIS AND DECISION

[24] At the outset I will deal with the factual controversy identified in paragraph 15 above. It is difficult to make findings with respect to controverted facts based solely on affidavits.

However, the Chair's affidavit evidence seems to me to be more plausible. In my view, it is likely that Nalcor's counsel misunderstood his conversation with the Chair. In any event, nothing turns on it. Nalcor did not alter its conduct in reliance on the conversation and therefore suffered no prejudice. Furthermore, the conversation had no bearing or influence on the outcome of the Creditors' Meeting.

[25] It is common ground that the Proposal Trustee did not determine whether Nalcor's claim is a provable claim pursuant to section 135(1.1) of the *BIA*. Nalcor argues that if the Proposal Trustee believed that its claim was of a contingent and/or unliquidated nature he should have valued the claim pursuant to section 135(1.1). Failing that, the Chair was obligated to proceed under section 108(3) and mark the Nalcor Proof of Claim as "objected to" and allow Nalcor to vote on the Proposal. Nalcor further argues that, even if the Chair had the discretion to proceed under section 108(1), his ruling that Nalcor's claim is contingent and/or unliquidated is wrong and must be overturned for failing to meet the correctness standard.

A. Was the Chair obligated to proceed under section 108(3)?

[26] Section 108 of the *BIA* provides as follows:

> 108.(1) **Chair may admit or reject proof** – The chair of any meeting of creditors has power to admit or reject a proof of claim for the purpose of voting but his decision is subject to appeal to the court.

> (2) **Accept as proof** – Notwithstanding anything in this Act, the chair may, for the purpose of voting, accept any letter or printed matter transmitted by any form or mode of telecommunication as proof of the claim of a creditor.
>
> (3) **In case of doubt** – Where the chair is in doubt as to whether a proof of claim should be admitted or rejected, he shall mark the proof as objected to and allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained.

[27] Nalcor urges me to follow the approach advocated by Veit, J. in *Alberta Permit Pro*, supra. In that case the chair of a meeting of creditors denied a claimant, Wood Buffalo, the right to vote on a proposal because its proxy and claim were deficient and also because the Chair ruled the claim to be contingent and unliquidated. Wood Buffalo argued that its vote be marked as "objected" but be allowed under section 108(3) of the *BIA*. The Chair refused to proceed under section 108(3). The Court concluded that the Chair should have marked the claim "objected" and allowed Wood Buffalo to vote. Veit, J. stated at paragraph 64:

> However, where claims are relatively complicated, it stands to reason that the Trustee would come to the conclusion that it does not have the time, or the means, to assess the claim and that it should resort to the provisions of s. 108(3). It appears to me that a potentially useful guide to a Trustee is the case law which has developed around the issue of summary judgments: a Trustee is, in effect, called upon to make a summary judgment in respect of the claims advanced. In circumstances where it is not possible to make a summary judgment, the Trustee should take advantage of the statutory mechanism offered, mark a claim "objected", but allow the putative creditor to vote. In the circumstances here, it is difficult to credit that the Trustee would have had sufficient information to categorically state that Wood Buffalo's claim was denied; Wood Buffalo should have been allowed to vote, and the vote should have been marked "objected".

[28] In my view, the plain reading of section 108 provides the Chair with several options as to how to proceed with proofs of claim at a meeting of creditors. One of those options is section 108(1). As counsel for TCE Capital Corporation succinctly stated in argument:

> I did not have time to make this complicated. I submit that the Chair was able to use section 108(1) and therefore the only issue is whether he was correct.

I agree.

[29] In any event, there is persuasive authority that the Chair's use of section 108(1) over the "mark and park" provisions of section 108(3) is the appropriate course of action in the circumstances of this case. Counsel for the respondent referred me to two decisions, the circumstances and issues of which are similar to the present case: *Re Port Chevrolet Oldsmobile Ltd.,* 2002 BCSC 1874 (affirmed 2004 BCCA 37) and *Re 2713250 Canada Inc.*, 2011 QCCS 6119.

[30] In *Port Chevrolet* the Canada Customs and Revenue Agency ("CCRA") submitted a claim for $15,864,279.83 based on an assessment against the debtor which was under appeal. The debtor had negotiated a proposal with its other creditors which was approved by the Trustee. At the creditors' meeting the Trustee disallowed CCRA's claim on the ground that it was contingent being based on an unresolved assessment currently under appeal and disallowed CCRA's vote on the proposal. CCRA appealed. In upholding the Trustee's decision Neilson, J. stated at paragraph 41:

> 41 I find the circumstances here quite different. The debtor is not yet bankrupt. It was a profitable business with over 50 employees before the assessment and is now diligently pursuing a proposal under the *Bankruptcy and Insolvency Act*, which is the only course left open to it to avoid a bankruptcy and continue to operate, in the face of an assessment that it claims is invalid. Neither the debtor nor the trustee are seeking to avoid the appeal procedures outlined in the *Excise Tax Act*. Instead, the debtor is vigorously pursuing them. The problem is that those procedures could not be completed before the first creditors' meeting. Port has evidently convinced the trustee that there is merit to its objection. Even CCRA's representative, Mr. O'Connell, has conceded to the trustee that one possible outcome of Port's challenge may be a nil value to CCRA's claim.

[31] And at paragraphs 45 and 46:

> 45 In the circumstances I have described, I am satisfied that the trustee had the power to classify CCRA's claim as contingent. As Port's counsel points out, to hold otherwise could permit CCRA to issue a substantial but erroneous assessment against an innocent and profitable debtor and put it into bankruptcy and out of business before the validity of the assessment can be determined under the appropriate process provided by the *Excise Tax Act*. That cannot be the intent of either the *Excise Tax Act* or the *Bankruptcy and Insolvency Act*.
>
> 46 There is no evidence of prejudice to CCRA in permitting Port to continue to operate pending resolution of the appeal process under the *Excise Tax Act*, which I am told may take up to a year. CCRA, during that period, is entitled to receive the lion's share of the profits set aside for unsecured creditors under the proposal. On the other hand, there is substantial prejudice to Port, its employees and its other creditors if it is prematurely forced into bankruptcy on the strength of an assessment that may be successfully challenged.

[32] The case of *2713250 Canada* is another involving an unresolved tax dispute. In that case Revenue Quebec issued two Notices of Assessment against the debtor totaling $30,652,071.00 which the debtor contested. Under the applicable law the tax assessments were presumed valid and the amounts claimed were immediately payable. As a result, the debtor became insolvent and filed a notice of intention to file a proposal under the *BIA*. The trustee concluded that Revenue Quebec's claim was contingent. At the first meeting of creditors the Chair declared the Revenue Quebec claim as being inadmissible

for the purposes of voting pursuant to section 108(1) of the *BIA*. The evidence was clear that Revenue Quebec would have voted against the proposal if permitted resulting in the automatic bankruptcy of the debtor. On the issue of the applicability of section 108(1) of the *BIA* Gascon, J. (now of the Supreme Court of Canada) stated at paragraphs 50 and 51:

> 50 Similarly, this is not a case where the chair doubted that the proof of claim should be admitted or rejected under section 108(3) BIA. As the Trustee expressed at the hearing, in its opinion, **it is clear that RQ's proof of claim is inadmissible for the purposes of voting due to its contingent and unliquidated character and the impossibility of assessing it in the circumstances which prevailed at the time of the meeting.**
>
> 51 In other words, the Trustee has neither accepted, nor rejected RQ's proof of claim. It has simply not recognized it for the purposes of voting at the meeting. The relevant meeting minutes and the Trustee's testimony at hearing are unequivocal. (emphasis added)

[33] And at paragraph 75:

> 75 In making the decision contested by RQ, **the Trustee exercised a power conferred by section 108(1) *BIA*,** in its role as chair of the meeting of creditors. This being said, **the Court should only intervene in the presence of an error of law or a palpable and overriding error of fact.** (emphasis added)

[34] And at paragraphs 79 and 80:

> 79 These parameters set out, we note that **section 108(1) *BIA* allows the chair to declare a claim as being inadmissible for the purposes of voting. The wording of the section explicitly states this.**
>
> 80 In this case, the Trustee, in its capacity as chair of the meeting of creditors, **has correctly exercised this power.** It gave reasons for its decision. Its report on the proposal and the minutes of the meetings held October 4, 2010 and February 17, 2011 makes proof of this. (emphasis added)

[35] A compelling argument for applying the approach used in *2713250 Canada* and *Port Chevrolet* is found at paragraphs 41 and 42 of the Pre-Hearing Brief filed on behalf of Western Surety Company:

> 41. There are several similarities between the case at bar and the two cases summarized above. In all three scenarios:
>
> i. the debtor is not yet bankrupt;
>
> ii. the proposal has the overwhelming support of almost all creditors;
>
> iii. the claim in question has been challenged (in good faith) in a court of law;
>
> iv. the debtor is actively pursuing the court challenge and the proposal;
>
> v. the contested claim is larger than the claim of any other creditor;
>
> vi. the contested claim is impossible to evaluate at the time of the first meeting of creditors;
>
> vii. the creditor in question was the only creditor (or one of the only creditors) who intended to vote against the proposal;
>
> viii. allowing the creditor in question to vote would have triggered an automatic bankruptcy; and
>
> ix. the creditor in question was the only creditor who stood to benefit from the failure of the proposal.
>
> 42. Because the similarities are so stark, the Chair's decision to disallow Nalcor's claim for the purpose of voting pursuant to s. 108(1) should be upheld, as it was in *Port Chevrolet* and *Re 2713250 Canada Inc*.

[36] The cases of *2713250 Canada* and *Port Chevrolet* on the one hand, and *Alberta Permit Pro* on the other, reveal a stark contrast in approaches. I am not bound by any of these decisions. However, and with the greatest respect, I find the reasoning in *2713250 Canada* more compelling than that in *Alberta Permit Pro*. Furthermore, the

persuasiveness of the *2713250 Canada* decision is enhanced due to the striking factual similarities to the present case. Adopting the reasoning in that case, I conclude that it was appropriate for the Chair to proceed under section 108(1) of the *BIA*.

B. Did the Chair err in rejecting Nalcor's Proof of Claim on the basis of it being contingent and/or unliquidated?

[37] At the meeting of creditors the Chair rejected Nalcor's Proof of Claim for the purposes of voting at the meeting for the following reasons:

> i. The claim is contingent upon the outcome of an action as to whether the Termination of the Contract between Nalcor Energy and Great Western Forestry Ltd. was proper and legal for which no final decision has been rendered by a Court of Law, and
>
> ii. The amount of the claim has not been adjudicated in a Court of Law and is therefore unliquidated.

[38] The question becomes whether the Chair was correct in his characterization of Nalcor's claim as contingent and/or unliquidated.

(i) <u>Contingent</u>

[39] In Houlden, Morawetz & Sarra, 2014 *Annotated Bankruptcy and Insolvency Act* (Toronto: Carswell, 2014) at G-37(2) a contingent claim is described as follows:

> A contingent claim is a claim that may or may not ever ripen into a debt, according as some future event does or does not happen: *Gardner v. Newton* (1916), 29 D.L.R. 276, 10 W.W.R. 51, 26 Man. R. 251 (K.B.).

[40] In *Vanderpol v. The Queen* (2002), 31 C.B.R. (4th) 118 at paragraph 10 it states:

> …In *Wawang Forest Products Ltd. v. The Queen*, the Court observed:
>
> The generally accepted test for determining whether a liability is contingent comes from *Winter and Others (Executors of Sir Arthur Munro Sutherland (deceased)) v. Inland Revenue Commissioners*, [1963] A.C. 235 (H.L.), in which Lord Guest said this (at page 262):
>
> I should define a contingency as an event which may or may not occur and a contingent liability as a liability which depends for its existence upon an event which may or may not happen.
>
> …
>
> Returning to the *Winter* test, the correct question to ask, in determining whether a legal obligation is contingent at a particular point in time, is whether the legal obligation has come into existence at that time, or whether no obligation will come into existence until the occurrence of an event that may not occur.
>
> The fact is that the assessment created a legal obligation which was in existence at the point of time the proof of claim was filed.

[41] Earlier cases indicate that there must be an element of probability of liability otherwise the claim will be considered contingent. However, Nalcor's counsel referred to several authorities that suggest the claimant need not establish that success is probable (*Re Air Canada* (2004) 2 C.B.R. (5th) 23; *Oil Lift Technology Inc. v. Deloitte & Touche Inc.* [2012] A.J. No. 548). The mere fact that the claim is founded on pending litigation is not, in itself, determinative of the issue (*Re Wiebe* 1995, 30 C.B.R. (3rd) 109; *Oil Lift Technology Inc. v. Deloitte & Touche Inc.*, supra). However, the authorities are

consistent and clear that the claimant must establish that the claim is not "too speculative or remote".

[42] Nalcor's counsel relies on *Newfoundland and Labrador v. AbitibiBowater Inc.* 2012 S.C.C. 67 where the Court stated at paragraph 26:

> These provisions highlight three requirements that are relevant to the case at bar. First, there must be a debt, a liability or an obligation to a *creditor*. Second, the debt, liability or obligation must be incurred *before the debtor becomes bankrupt.* Third, it must be possible to attach a *monetary value* to the debt, liability or obligation. I will examine each of these requirements in turn.

[43] In *AbitibiBowater* the issue before the Court was whether an environmental protection order issued by the Province would ripen into a monetary claim. Under the applicable legislation, if the Province undertook remediation it was entitled to recover the costs of the same from the person against whom the protection order was issued. The Court concluded that the first two elements referenced above were satisfied thus the issue became whether the possibility of a monetary claim arising from the protection order was "too remote or speculative". If there was sufficient certainty of a monetary claim then it could be included in the insolvency process. The motions judge adjudicating the claim pursuant to the *Companies' Creditors Arrangement Act* ("*CCAA*") concluded that it was "most likely" that the Province would perform the remediation work and thus have a monetary claim to recover the remediation costs. In affirming the judge's decision the Supreme Court of Canada stated that the analysis must be grounded on the specific facts

of each case. The Court then went on to take exception to the threshold of "likelihood" applied by the motions judge. At paragraph 61 Deschamps, J. (for the majority) stated:

> Thus, I prefer to take the approach generally taken for all contingent claims. In my view, the *CCAA* court is entitled to take all relevant facts into consideration in making the relevant determination. Under the approach, **the contingency to be assessed in a case such as this is whether it is sufficiently certain** that the regulatory body will perform remediation work and be in a position to assert a monetary claim. (emphasis added)

[44] In my view, the "sufficiently certain" threshold applied in *AbitibiBowater* is really a restatement of the test applied in the preponderance of authorities: Is the claim too speculative or remote?

[45] Returning to the three elements set out in *AbitibiBowater*, Nalcor argues that it meets all three elements insofar as:

1. There is a debt, liability or obligation;

2. That the obligation predated the proposal; and

3. It is possible to assign a monetary value to the obligation.

Nalcor argues that all three elements are satisfied. I disagree.

[46] Insofar as Nalcor's Proof of Claim depends on its success in the Litigation and the Litigation is based on the Contract, I am prepared to accept, for the purposes of argument,

that Nalcor's claim predates the Proposal. The remaining two elements (whether there is an existing debt, liability or obligation and whether that obligation is capable of being assigned a value) go to the heart of whether Nalcor's claim is contingent and/or unliquidated. The very issue in the Litigation is whether GWF defaulted under the Contract. Can it be said that Nalcor's success on this issue at trial is not "too speculative or remote" or, put another way, is its success in the Litigation "sufficiently certain"? In my view, the answer to this question is no.

[47] Nalcor maintains that the obligation or debt owing by GWF to Nalcor crystalized upon GWF's default. Nalcor refers to Article 24.6 of the Contract which provides that all costs incurred by Nalcor arising out of "lawful exercise" of its remedies shall constitute a "debt" by GWF to Nalcor. However, whether Nalcor is entitled to the "lawful exercise" of any of its remedies is dependent upon whether GWF breached the terms of the Contract. GWF's debt is not crystalized by the issuance of the notice of default by Nalcor but by a final determination of whether GWF defaulted under the Contract. That is the very issue at the heart of the Litigation. The pleadings reveal a substantial dispute involving a complex commercial contract with hotly contested facts. GWF's obligation to Nalcor will only "crystalize" if GWF fails in the Litigation. If, on the other hand, GWF is successful then it will recover a substantial claim against Nalcor which will be used to fund the Proposal. Put simply, Nalcor's claim is completely contingent upon the outcome of the Litigation. Given the complexity of the legal proceedings, assessing Nalcor's chances of success in the Litigation would be a highly speculative exercise.

[48] In *Port Chevrolet* the court concluded that the speculative nature of a claim of a tax assessor under appeal rendered the claim contingent. There was a similar result in *2713250 Canada* even where the tax assessment was presumed valid and payable immediately. In my view, Nalcor's claim is not sufficiently certain and is too remote and speculative to be considered as anything but contingent. The Chair was correct in rejecting it on the basis that it was contingent.

(ii) Unliquidated

[49] In 2014 *Annotated Bankruptcy and Insolvency Act*, supra, at G-37(4) at page 630 it states:

> A liquidated claim is in the nature of a debt, *i.e.*, a specific sum of money due and payable under or by virtue of a contract. Its amount must either be already ascertained or capable of being ascertained as a mere matter of arithmetic. If the ascertainment of a sum of money, even though it be specified or named as a definite figure, requires investigation beyond mere arithmetical calculation, then the claim is an unliquidated claim: *Re A Debtor* (No. 64 of 1992), [1994] 1 W.L.R. 264 (H.C.).

[50] The essential elements of a liquidated claim are:

(a) a specific sum ascertained or ascertainable by mere arithmetic;

(b) payable under a contract.

[51] Nalcor relies upon Article 24 of the Contract. That Article sets out a methodology for calculating the damages for completion of the work in the event that Nalcor elects to do so upon breach by GWF. After issuing its notice of default, Nalcor advised GWF that it was proceeding under Article 24.4(b) and completing the work (Record, page 401). Nalcor's Re-stated Proof of Claim incorporates various schedules, one of which summarizes Nalcor's damages resulting from GWF's alleged default (Table 3, Record, page 406). Nalcor says that the aforesaid damages claimed are computed using the agreed formula set out in Article 24.6 and, as such, were ascertained as a mere matter of arithmetic and thus constitute a liquidated claim. I disagree.

[52] While the lion's share of Nalcor's claim is for completion costs, the validity of the claim as well as the assessment of damages is completely dependent on the outcome of the Litigation. For the same reason, I conclude that it cannot be said that Nalcor's claim is for a sum due and payable under a contract. That too will depend upon the outcome of the Litigation. In my view, Nalcor's claim is unliquidated.

[53] While it is not essential to my decision, I believe it is important that this matter be viewed in context. Nalcor's primary concern is that it be entitled to vote at the meeting of creditors. In the circumstances of this case, Nalcor can never share in the distribution. The Proposal depends on GWF succeeding in the Litigation for that is the only source for funding the Proposal. If GWF loses there are no funds for distribution. If GWF succeeds then Nalcor has no claim. In either case, Nalcor will not participate in the distribution.

Further, Nalcor has made it clear that if it is permitted to vote it will defeat the Proposal resulting in the automatic bankruptcy of GWF. The practical effect of this will be the discontinuance of the Litigation against Nalcor. While theoretically any creditor can continue the litigation, I believe it is improbable that any other creditor will assume the significant cost and risk of pursuing the litigation against Nalcor. In these circumstances the comments of Neilson, J. at para. 45 of *Port Chevrolet* resonate (see para. 31 above).

[54] Counsel for GWF argues that Nalcor is using the *BIA* for an improper purpose. Both Grant Thornton and TCE Capital Corporation argue that Nalcor's Proof of Claim does not satisfy the statutory requirements of subsection 124(4) of the *BIA*. Given my conclusion with respect to the Chair's determination that Nalcor's claim is contingent and unliquidated, it is not necessary for me to address these arguments.

VI. CONCLUSION

[55] Nalcor's application is dismissed and the Chair's decision to disallow Nalcor's claim for purposes of voting pursuant to section 108(1) of the *BIA* is affirmed.

[56] The respondent has been successful and is entitled to costs. Lengthy affidavits with extensive supporting documentation were filed in this matter and the parties submitted

comprehensive legal briefs. A full day was required for argument. In all the circumstances Nalcor shall pay costs to the respondent in the sum of $5,000.00.

_____

Terrence J. Morrison,
J.C.Q.B.

Tab 6

Ontario Supreme Court
Canadian Triton International Ltd., Re
Date: 1997-10-22

In The Matter of the Bankruptcy of Canadian Triton International Ltd.

Ontario Court of Justice, General Division (In Bankruptcy) Farley J.

Heard: October 15 and 17, 1997

Judgment: October 22, 1997

Docket: 31-205425T

Steven G. Golick, for Price Waterhouse Limited, Interim Receiver and Trustee in Bankruptcy.

Keith M. Landy, for the Bankrupt, Canadian Triton International Limited.

J. Carfagnini, for Babak Movahedi.

Justin R. Fogarty, for Tradean Ltd., Alan Tyson and Mastin's Manitoulin Limited and GAC International Consultants Inc. and member of the Creditors Committee.

Steven Graff, for Duferco International Trading, Ltd.

Patrick Shea, for Doyle Salewski Lemieux Inc., the Trustee named in the Proposal of Canadian Triton International Ltd.

Chris Reid, for Nantong, S.A.

Stephen Turk, for Crown Resources Corporation, S.A. and Dr. Ati Olfati.

J.A. Fabello and R. Matheson, for Services Dowell Schlumberger, S.A.

***Farley J.*:**

Endorsement

[1] Price Waterhouse Limited ("PWL") in its capacity as interim receiver ("Interim Receiver") of Canadian Triton International Ltd. ("Triton") and in its capacity as Trustee in Bankruptcy of Triton ("Trustee") moved i. for advice and directions with respect to the outcome of four resolutions tabled and voted on at a meeting of creditors held on October 8, 1997 and in particular, as to the entitlement of creditors to vote at such meeting, and ii. for an order approving of the activities of the Interim Receiver as disclosed in the fourth and fifth reports of

the Interim Receiver. The hearing proceeded as scheduled on October 15, 1997 but was held over to October 17, 1997 to allow Doyle Salewski Lemieux Inc. (“Doyle”) the trustee named in the proposal of Triton (which proposal was defeated on October 8, 1997 resulting in the bankruptcy) to provide possibly missing documentation and for others to provide any further material in regular fashion. Unfortunately there seems to have developed a practice in this case of interested persons forwarding and advancing material irregularly and at the last minute. Regular material would be by way of affidavits with exhibits or reports of court officers, not correspondence. An example of inappropriate timing would be that at the start of the hearing on the morning of October 15th I received a number of affidavits; before breaking for lunch I observed that I was wondering if I would receive additional material - which I did that afternoon (it having been prepared over the lunch hour). This affidavit of Robert Stein representing Duferco International Trading Ltd. (“Duferco”) was said to have two exhibits attached - they were not. As well, the material handed up to me included a cross motion of Alan Tyson (“Tyson”), Tradean Limited (“Tradean”), GAC International Consultants Inc. (“GAC”) and Mastin’s Manitoulin Limited (“Mastin’s”), (collectively “Fogarty Clients”) to adjourn the motion of PWL above “to allow sufficient time for [the Fogarty Clients] to file responding material, iii. directing that cross examinations be conducted on the affidavit of Bernard Frankel filed in support of the proof of claim of Crown Resources Corporation, S.A., (iv) pursuant to section 116(5) of the *Bankruptcy and Insolvency Act,* removing Ata Olfati and Bernard Frankel as inspectors and substituting two inspectors in their place pending resolution of all claims; (v) directing a date for the validity of the proofs of claim before this Court…”. Notwithstanding that this hearing was adjourned to October 17, 1997 with an invitation to any one to file any other relevant material, the Fogarty Clients did not submit any further material nor were they represented at the resumption. In today’s world of communication capability it is not sufficient to baldly assert that more time is required without giving any justification. In his letter to Mr. Golick of October 17, 1997, Mr. Fogarty indicated that he did not have any submissions to make with respect to the form of proof of claim of Tradean, GAC and Tyson. In support of the cross motion by the Fogarty Clients an affidavit of A.J. Reynolds Mastin, barrister & solicitor and manager of Mastin’s sworn October 14, 1997 was advanced. Paragraph 4 of that affidavit related to a telephone hearing before me (I being in Quebec City and essentially all representatives of the interested parties being in the boardroom of counsel for PWL in Toronto and other by conference phone). At the start of that hearing some counsel interrupted others on a repeated basis as well as referring to irregular material. I therefore advised that I

would allow them 10 minutes to sort out their order of speaking and that I only wished deal with regular material. Mr. Mastin indicates within paragraph 4 that: “the Court did not allow my Counsel or any other Counsel to make reference to the Resolution which was very important to the Creditors, namely that the Penguin Offer should be delayed until a Proposal was voted on.” That resolution was not mentioned in any material regular or irregular; it was not mentioned in any way nor the fact that it had not been commented upon by the Interim Receiver. Under the circumstances I do not see that any one was inappropriately prevented from raising anything material to my attention.

[2] Some counsel advised on October 15, 1997 that they had not had enough time to obtain instructions as to the aspect of the approval of the Interim Receiver’s activities as reflected in the fourth and fifth report. I advised that they should obtain these instructions by October 17, 1997. No one appeared then to object but Mr. Golick advised of Mr. Fogarty’s letter: an order will go approving of these activities. Mr. Fogarty’s letter of October 17, 1997 to Mr. Golick indicates that his clients “do not take issue with respect to the activities described therein with the exception to their position not being taken as an approval of the action and fees incurred by the Trustee with respect to Ata Olfati”.

[3] I think it helpful to observe that the balance of the PWL motion deals with the question of who is entitled to vote at the October 8, 1997 meeting and that because of the size of the asserted claims it was only necessary to deal with the voting capacity of Crown Resources Corporation SA (“Crown”), Duferco, Nantong, S.A. (“Nantong”) and Tradean. As Mr. Fogarty observed in his October 17th letter to Mr. Golick: “Ultimately I agree that the matter will rise and fall on how the claim of Nantong, S.A. and Crown Resources Corporation are characterized and those submissions have already been well canvassed before the court.” I would also observe that the question here is only with respect to entitlement to vote (on October 8, 1997) and not to entitlement to any distribution of the estate of Triton.

[4] I was directed to certain sections of the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3, as amended (“BIA”), namely ss. 105(1), 108(1), (3), 109(1), 121(2), 124(1), (2), (3), (4), 125 and Form 61 They are set out for ease of reference as well as s. 51(1), Form 38, s. 109(2) and s. 121(1):

> s. 51(1) The trustee shall call a meeting of the creditors, to be held within twenty-one after the filing of the proposal with the official receiver under subsection 62(1), by

sending in the prescribed manner to every known creditor and to the official receiver, at least ten days before the meeting.

(a) notice of the date, time and place of the meeting;

(b) a condensed statement of the assets and liabilities;

(c) a list of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor's books:

(d) a copy of the proposal;

(e) the prescribed forms, in blank, of

(i) proof of claim,

(ii) in the case of a secured creditor to whom the proposal was made, proof of secured claim, and

(iii) proxy,

if not already sent; and

(f) a voting letter as prescribed.

s. 105(1) The official receiver or his nominee shall be the chairman at the first meeting of creditors and shall decide any questions or disputes arising at the meeting and from any such decision any creditor may appeal to the court.

s. 108(1) The chairman of any meeting of creditors has power to admit or reject a proof of claim for the purpose of voting but his decision is subject to appeal to the court.

(3) Where the chairman is in doubt as to whether a proof of claim should be admitted or rejected, he shall mark the proof as objected to and allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained.

s. 109(1) A person is not entitled to vote as a creditor at any meeting of creditors unless he has duly proved a claim provable in bankruptcy and the proof of claim has been duly lodged with the trustee before the time appointed for the meeting.

(2) A creditor may vote either in person or by proxy.

s. 121(1) All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.

(2) The court shall, on the application of the trustee, determine whether any contingent claim or any unliquidated claim is a provable claim, and, if a provable claim, it shall value the claim, and the claim shall after that valuation be deemed a proved claim to the amount of its valuation.

s. 124(1) Every creditor shall prove his claim, and a creditor who does not prove his claim is not entitled to share in any distribution that may be made.

(2) A claim shall be proved by delivering to the trustee a proof of claim in the prescribed form.

(3) The proof of claim may be made by the creditor himself or by a person authorized by him on behalf of the creditor, and, if made by a person so authorized, it shall state his authority and means of knowledge.

(4) The proof of claim shall contain or refer to a statement of account showing the particulars of the claim and any counterclaim that the bankrupt may have to the knowledge of the creditor and shall specify the vouchers of other evidence, if any, by which it can be substantiated.

s. 125 Where a creditor or other person in any proceedings under this Act files with the trustee a proof of claim containing any wilfully false statement or wilful misrepresentation, the court may, in addition to any other penalty provided in this Act, disallow the claim in whole or in part as the court in its discretion may see fit.

Form 38 dealing with voting letters (ss. 51(1)(f) and 66.15(3)(c)) contains the following provision and instruction.

…to record my (*or* our) vote_____(for *or* against) the acceptance of the proposal (*or* consumer proposal) made on the___day of___…

NOTE a person is not entitled to vote unless the proof of claim has been lodged with the Trustee before the time appointed for the meeting. In the case of the corporation the voting letter should be accompanied by an appropriate resolution.

Form 61 dealing with proof of claim (ss. 50.1(1), 51(1)(e), 66.14(b), 81.2(1), 102(2), 124(2) and 128(1)) contains the following:

3. That the said debtor was at the date of the bankruptcy (*or* the proposal *or* the receivership), namely the___day of_____and still is indebted to the above named creditor (referred to in this form as “the creditor”) in the sum of $_____as shown by the statement of account (*or* affidavit) attached hereto and marked “Schedule A”, after deducting any counter claims to which the

debtor is entitled. (The attached Statement of Account or affidavit must specify the vouchers or other evidence in support of the claim.).

The original proposal of Triton was that dated September 10, 1997; it was further amended, most recently by amendment dated October 3, 1997. Doyle at the October 8, 1997 meeting indicated that there would be further amendments. At that time there was a motion put to the meeting that it be adjourned three weeks to enable Triton to file a further amended proposal and provide the letter of credit contemplated by the proposal.

[5] It would seem to me to be reasonably obvious that the determination as to who is allowed to vote at a particular meeting has to be decided on the basis of what information (i.e., the appropriate material) was available to the Chair of the meeting (in this case the Official Receiver) at the time the vote was conducted. See *Andrew Motherwell of Canada Ltd., Re* (1923), 4 C.B.R. 265 (Ont. S.C.) at p. 268: “Again I do not see how I can allow any new

material to go in at this stage. We must deal with the proxies as of the date the votes were cast under them." In other words, it would be inappropriate to go back after the meeting and attempt to cooper up any observed deficiency with the material filed for the purpose of voting. That is not to be confused with material *then available* to the Chair. If it were otherwise, then there could be a (never ending) string of attempts at bolstering the material so that it was objectively satisfactory and that the estate would continue to be in a state of uncertainty as to any vote taken. Any appeal from the Chair's decision should be in accord with the appeal provision and be on a single appeal basis. That is not to imply that the material could not be coopered up for any *future* vote or for the purpose of entitlement to any future distribution. The time for lodging the proxy according to Holden and Morawetz, "The 1997 Annotated *Bankruptcy and Insolvency Act"* (1996; Toronto, Carswell Co.) ("H & M") at p. 335 "must, however, be filed with the Chair before the taking of the vote, not afterwards: *Britannia Canning Co., Re* (1938), 19 C.B.R. 250 (Ont. S.C.)."

[6] As well, it would appear that a creditor can vote on a proposal by way of voting in person or by proxy (s. 109(2)) but also by way of voting letter (s. 50(1)(f) and Form 38). However, it is obvious from the voting letter form that it is an instruction for the trustee of the proposal to vote for or against the (specific) proposal of the debtor which is dated a specific day. It is not an instruction to vote on some other proposal. The Duferco voting letter instructed the trustee of the proposal, Doyle, to vote in favour of the Triton proposal dated September 10, 1997 and not on any amended proposal which was before the creditors on October 8, 1997. Query in any event whether Duferco provided a corporate resolution as required by Form 38. I would observe in passing that it may well be that the trustee instructed by a voting letter could use that authority to vote in favour of an adjournment of the meeting called for the purpose of considering that specific proposal so that that specific proposal could be voted on at a later date (but not that another or materially amended proposal be voted on at a later date). I note that Duferco also executed a proxy in favour of Robert P. Stein ("Stein") (which proxy is also dated September 18, 1997 as was the voting letter). In my view it would appear that Stein could vote on any matter at the meeting (or any adjournment) provided that he not vote against the proposal dated September 10, 1997 contrary to the express wishes of his principal as set out in the voting letter. However, it is also clearly obvious to me that a proxy must be present at the meeting in order to vote. Stein was not present at the October 8, 1997

meeting. No one else held the proxy from Duferco at that meeting. I am of the view that Duferco could not vote at the October 8, 1997 meeting.

[7] Nantong filed a proof of claim dated September 19, 1997 for $19,777,650 US "as shown by the statement of account (or affidavit) attached hereto and marked "Schedule A"." There was no Schedule A attached, at least anything which was marked Schedule A. However the fax transmittal page carried the following message reproduced in its entirety: "Also attached is the Judgment and Statement of Claim." The judgment was that of Paisley J. dated July 26, 1996 giving summary judgment to Nantong against Triton and its principal Vladimir Katic for the Canadian equivalent of the $19,777,650 US together with cost of $15,000. The Statement of Claim was the one in relation to this judgment. Curiously enough there was no indication in the material transmitted to the trustee of the proposal, Doyle, that the Court of Appeal had set aside Paisley J.'s judgment. The Court of Appeal's decision is reported as *Nantong S.A. v. Katic* (February 26, 1997), Doc. CA C25404 (Ont. C.A.). The total endorsement was as follows:

> We are of the view that there are genuine issues for trial especially with respect to misrepresentation. The appeal is allowed, the order of Paisley J. set aside and the case remitted for trial. Costs of the motion for summary judgment and the appeal will be in the cause.

Ms Conway's October 14, 1997 affidavit handed up to me on October 15th indicates:

> 2. In response to the request of Doyle Salewski Lemieux Inc. as the Trustee in the Proposal of Canadian Triton International Ltd., I filed on behalf of Nantong S.A. a Proof of Claim. I attached thereto the Judgment which Nantong S.A. had obtained on a summary judgment motion before Justice Paisley and the Statement of Claim. The purpose of filing the Statement of Claim was to set out that our claim is based on Promissory Notes and the purpose of filing the Judgment was to quantify our claim which is succinctly done in the Judgment.

It may be puzzling why this seemingly roundabout method of dealing with the proof of claim was chosen, but I give that the benefit of the doubt. Ms Conway goes on to indicate at paragraph 4 of her affidavit that she attended the first meeting of creditors in the proposal on September 24, 1997 at which time she asked if there were any problems with Nantong's proof of claim on entering "an adjoining room where the Official Receiver, Mr. Doyle on behalf of the Trustee and Mr. Golick and Mr. Shea as solicitors for respectively the Interim Receiver and the Trustee were going over the Proofs of Claim. I asked if there was any problem with Nantong S.A.'s Proof of Claim. I advised that I had in my possession and indeed in my hands

the Promissory Notes which formed the basis of the claim. Mr. Shea indicated that there was no problem with the claim. I asked about the quantification of the claim, since Canadian Triton International Ltd. in its Proposal had indicated that Nantong S.A.'s claim was $6.5 million, which is (roughly) the amount owing under only one of the Promissory Notes. I was advised that there was no problem with the amount Nantong S.A. was claiming." No one has disputed this portion, although Doyle, the trustee under the proposal in its report of October 14, 1997 states:

> 12. At a meeting of creditors held on September 24, 1997 Crown requested that it be permitted to review and copy all of the proofs of claim submitted to the Trustee [Doyle]. The Trustee complied with this request. No other creditors asked to review the proofs of claim. *The Interim Receiver did not ask to review the proofs of claim.* (emphasis added)

Ms Conway went on at paragraph 7 to state:

> 7. It did not occur to me to file the Court of Appeal's Order because I was not relying on the Judgment except to quantify the claim. The fact that the Court of Appeal ordered the matter to be tried, was, I believe, well known to all the parties to the Bankruptcy proceeding. I frankly did not advert to the fact that Mr. Shea, being newly appointed, would not know the history.

Nor of course would the Official Receiver who was chair of the meeting. I am however satisfied that there was no intent to deceive but only inadvertence.

[8] Nantong was represented by proxy at the September 24, 1997 meeting by Pascal Mahvi. He was not available for the October 8, 1997 meeting. Ms Conway indicates that she filed a proxy appointing her for that meeting. Doyle has now provided Mr. Golick with a proxy naming Ms Conway which proxy is dated October 6, 1997. Doyle does not indicate when it received this proxy (i.e. before, during or after the October 8 meeting). However even assuming that it was received in time (and that should be verified by Doyle and Ms Conway) we still have to deal with the question of whether Nantong was entitled to vote at the meeting.

[9] Sections 121(2) and s. 109(1) of the BIA come into play with respect to the voting contingent claims or the claims for unliquidated damages. As set out in H & M at p. 333:

> …By section 109(1) a person is only entitled to vote at a meeting of creditors if he or she has a provable claim. By s. 121(2), a contingent claim or a claim for unliquidated damages is only a provable claim for the amount at which it has been valued by the court.
>
> A creditor with a claim for unliquidated damages has no right to vote until his or her claim has been valued pursuant to s. 121(2): *Re Andrew Motherwell of Canada Ltd.*

(1923), 4 C.B.R. 483, [1924] 4 D.L.R. 1308, 54 O.L.R. 614 (Ont. C.A.); *Re Arthur Fuel Co.* (1926), 8 C.B.R. 46, [1927] 1 D.L.R. 646, [1927] 1 W.W.R. 158 (Man. K.B.).

Given the uncertain nature of the Nantong claim at this stage and the Court of Appeal's concerns about whether or not there has been misrepresentation, it would not seem to me that Nantong can substantiate that on the basis of the material it has presented, it has other than a claim for unliquidated damages which must be valued - either by compromise by the trustee or by the summary valuation procedure by a judge so valuing the claim pursuant to section 121(2). In a sense as well it has a contingent claim - i.e. its claim has been disputed by Triton and this must be ruled on. I would note as well the views of Noble J. in *Claude Resources Inc. (Trustee of) v. Dutton* (1993), 22 C.B.R. (3d) 56 (Sask. Q.B.) at p. 65. As Fisher J. in *Motherwell supra* stated at p. 267:

> In dealing with Taylor and Bornique's claim of $21,417.28 for damages (objected to at the meeting) arising by a failure of the debtor company to take delivery of a large quantity of goods which they had agreed to purchase, the trustee admits in his affidavit that it is a claim for unliquidated damages - that it has not been contested by him nor has it been valued by the Court. Section 44, subsection (3) of the Bankruptcy Act [1 C.B.R. 51] provides that the court shall value at the time and in the summary manner prescribed by the general rules all contingent claims and all claims for unliquidated damages, and *after* but not *before* such valuation every such claim shall for all the purposes of this Act be deemed a proved debt to the amount of its valuation. It is not a proved debt until valued by the Court. Rule 119 [1 C.B.R. 212] sets out the procedure to be followed in such cases. Section 20 - a trustee has power to make a compromise [1 C.B.R. 29] and the trustee did nothing under this section. Sub-section (9) of section 42 reads as follows:-
>
> > A person shall not be entitled to vote as a creditor at the first or any other meeting of creditors unless he has duly proved a debt provable in bankruptcy or under an authorized assignment to be due to him from the debtor, and the proof of claim has been duly lodged
> >
> > with the trustee before the time appointed for the meeting. [1 C.B.R. 48.]
>
> I must therefore hold that, as this claim has not been valued pursuant to the statute, it is not a proved claim until it is valued; it is only upon a proved claim that a vote can be taken; and that the 24 votes be disallowed.

H & M at pp. 346-7 state:

> When a contingent or unliquidated claim is filed with the trustee he shall, unless he compromises the claim, apply to the court to determine whether the claim is a provable claim, and, if so, to value the claim: R. 94(1). The court will then determine whether the claim is provable or not, and if the claim is provable will value it. Thereupon the claim is deemed a proved claim to the amount if its valuation: s. 121(2).
>
> The trustee must, prior to the hearing of the application under R. 94(1), file in a court a copy of the claim and an affidavit sworn by himself, the bankrupt or some other person

having knowledge of the claim setting out in detail the available information relating thereto: R. 94(2). In determining the matter the court may receive evidence upon affidavit: R. 94(3).

A trustee is not entitled to disallow a claim under s. 135 because it is a contingent or unliquidated claim. The trustee must apply to the court under s. 121(2) to have it determined whether the claim is a provable one following the procedure set out in R. 94: *Re Light's Travel Service ltd.* (1985), 56 C.B.R. (N.S.) 175 (B.C.S.C.).

Both claims for unliquidated damages arising by reason of contract and claims for unliquidated damages sounding in tort are claims provable in bankruptcy under s. 121. Such claims should be filed in the usual way under s. 124 whereupon the trustee should proceed in the manner provided in s. 121: *Re Letovsky and Mutual Motor Freight Ltd.* (1958), 37 C.B.R. 83 (Man. S.C.). See *Re Angelstad* (1991), 4 C.B.R. (3d) 235 (Sask. Q.B.).

The contingent liability of a guarantor who has not been called upon to pay or who has not in fact paid, is a debt provable in bankruptcy of the debtor: *Re Film House Ltd.* (1971), 15 C.B.R. (N.S.) 232 (Ont. S.C.).

To be a provable claim under s. 121(2), a claim must not be too remote and speculative. To establish that a contingent claim or unliquidated claim is a provable claim, a creditor must prove more than he has been sued, and that he has an indemnity agreement from the bankrupt: there has to be an element of probability of liability arising from the court proceedings. If there are too many "ifs" about the action and the applicability of the indemnity agreement before a provable claim comes into being, the claim is not a provable claim under s. 121(2): *Claude Resources Inc. (Trustee of) v. Dutton* (1993), 22 C.B.R. (3d) 56, (*sub nom. Claude Resources Inc. (Bankruptcy), Re)* 115 Sask. R. 35 (Q.B.).

Nantong not having proved its claim, it should not be allowed to vote until it does and such votes and entitlement to distribution are as to prospective matters and not retroactive to October 8, 1997.

[10] What of the aspect of not having marked the attachments as "Schedule A" (i.e. the attachments to the proof of claim). There are various judicial

views on this but nothing recent. See *London Bridge Works Ltd., Re* (1926), 8 C.B.R. 73 (Ont. S.C.) where Fisher J. at pp. 78-9 stated:

(3) Cowan Hardware Company is not entitled to a vote for the reason that the declaration of proof is defective. The declaration states that the insolvent company is indebted to the creditor "in the sum of $68.70 as shown by the account hereto annexed and marked A." I find there is no account annexed and marked A to this declaration, but only an invoice pinned to it, and the only particulars given are "account rendered $68.70." The account is not signed by the commissioner, and it should have been. It is necessary that particulars of an account should appear either in the declaration or in the account attached, so that a chairman may be in a position to exercise some scrutiny on

a claim filed. See *In Re McCoubrey; In Re Stratton and Greenshields Ltd.* (1924), 5 C.B.R. 248, [1924] 3 W.W.R. 587.

The rule that a creditor must file a claim within a certain time is only directory, but when a creditor prepares a declaration of proof The Bankruptcy Act is mandatory and must be strictly complied with, and if the Act is not complied with the proof of claim cannot be admitted by the chairman. A chairman is entitled to exercise his own discretion as to what proofs of claim he should admit or reject for the purpose of voting, and it is only when he entertains an honest doubt whether the proof of a creditor should be admitted or rejected that he is called upon to mark the proof objected to and allow the creditor to vote. It is only in cases where the Act has not been strictly complied with that the Court will interfere on an appeal from the chairman's decision.

See also *D.W. McIntosh Ltd., Re* (1939), 20 C.B.R. 267 (Ont. Bktcy.) at pp. 272-3 and pp. 280-1 where Urquhart J. observed:

Lastly the account must be marked "A". This requirement caused a considerable amount of argument in this case and I was referred to the case of *In Re London Bridge Works Ltd.* (1926), 8 C.B.R. 73, at p. 78, 3 Can. Abr. 652 or Abr. Bkcy. Cas. 504, where Fisher J. says:

> Cowan Hardware Company is not entitled to a vote for the reason that the declaration of proof is defective. The declaration states that the insolvent company is indebted to the creditor 'in the sum of $68.70 as shown by the account hereto annexed and marked A'. I find there is no account annexed and marked A to this declaration, but only an invoice pinned to it, and the only particulars given are 'account rendered $68.70'. The account is not signed by the commissioner, and it should have been.

It was argued before me that I am bound to find, following this decision, that unless the account marked "A" is signed or initialled by the commissioner the creditor cannot vote. I cannot agree with that argument. The form provides that the account must be marked "A"; that is all, and I think that the words of Fisher J. at page 78, "The account is not signed by the commissioner and it should have been" are mere obiter. He found in that case that there was no account marked "A" but only an invoice pinned to the declaration and with insufficient particulars. That is the gist of his decision and his subsequent words above last quoted

must be regarded as mere obiter. I have taken the matter up with him and he agrees that this is so.

If the account is a proper one and is annexed to the declaration in the sense I have above described and with particulars itemized, as I have detailed, and is marked "A", that is a full compliance, in my opinion, with the requirements of the section and rule. I have always considered it to be the best practice to have the commissioner either sign or initial the account for identification but I do not think the wording of the statute requires same.

Fisher J. in the above case goes on to say:

> It is necessary that particulars of an account should appear either in the declaration or in the account attached, so that a chairman may be in a position to exercise some scrutiny on a claim filed.

> The provisions of sec. 105(4) [14 C.B.R. 14] in regard to proof are not merely directory but are mandatory. It is enacted that the proof "shall contain or refer to a statement of account": *In Re McCoubrey,* supra, at p. 255. There must be reasonable compliance with this section otherwise the proofs must be disregarded for voting purposes. I think however in determining what is a reasonable compliance with the section and form, what are obviously clerical errors must be ignored.
>
> (pp. 272-3)
>
> (15) The last claim is that of the solicitor for the company, Mr. Rosenberg himself. It carries two votes and was admitted by the chairman. The only objection taken to the proof was that the statutory declaration did not disclose the name of the creditor.
>
> In regard to the objection taken, the declaration is made by Anne Schwarts who declares that she is the bookkeeper of the undermentioned creditor and has knowledge of the circumstances. There is no creditor undermentioned in the declaration itself. The declaration then goes on in the security clause to say the said creditor has no security. However, the account marked "A" is headed as follows: "D.W. McIntosh, Limited, in account with Henry S. Rosenberg". As the account marked "A" is by the form and the section made part of clause two, I think it can be read as if the account marked "A" follows in the space left for particulars after clause 2 and before the security clause 3, and therefore reading the two documents together in this manner the undermentioned creditor is Henry S. Rosenberg.
>
> No objection was taken at the meeting as to the form of the account marked "A" annexed to Mr. Rosenberg's declaration. I am of opinion that if it is necessary to have recourse to the account for the purpose of making good the declaration, any defects in the account should be open to the inspection of the Court although objection to such defects was not made at the meeting. In other words a defective declaration should not be allowed to be made good by a defective account.
>
> This account was itemized to a certain extent but there are no dates given for the various services set out, but there is a general date, December 2, 1938, at the head of the account. This is approximately the date of the commencement of the bankruptcy proceedings above referred to. No one can tell over what period the
>
> services in question were rendered and the account and therefore the whole proof of claim is defective.
>
> I would expect a greater degree of precision from members of the legal profession than I would from an ordinary commercial creditor. (pp. 280-1)

But for a more relaxed or lenient view see the observation of Tweedie J. *McCoubrey, Re,* [1924] 4 D.L.R. 1227 (Alta. S.C.) at pp. 1234-5:

> The fourth objection is that the statement submitted along with the declaration is not sufficiently identified to comply with the provisions of Form 47 so as to constitute a proper reference within the meaning of sec. 45(4) of the Act. This objection applies to proofs of fourteen creditors.
>
> The declarations all referred to accounts as being "annexed and marked 'A.'" Statements were in fact annexed to all the declarations, some of which had marked on them the letter "A" without any words to indicate that the letter referred to the declaration while the remainder were not marked at all.

> As already pointed out Form 47 indicates the method by which reference may be made, which must be deemed to be the manner in which the identification of statements is authorized by the Rules, and the statement of account is *prima facie* properly referred to in a declaration only when it is "annexed and marked 'A.'" Neither Form 47 nor the words in the form, however, are exclusive. Some of them or others may be used subject to certain penalties, as to costs, for their use (R. 3). What is meant by "refer" as used in s. 45(4)? The purpose of this section is to compel a claimant to furnish a statement as part of the evidence by which the person authorized to make a decision must be guided in arriving at his decision, and the reference to it is sufficient if it is referred to with such particularity that it may be identified and become incorporated with and form part of the proof. If the statement is a proper one and it is annexed to the declaration though not marked and from an examination of the statement in conjunction with the declaration to which it is attached or from other circumstances, the person who has to decide in regard to the admissibility of the proof may reasonably conclude that the statement is the one referred to, he is justified, in the exercise of his discretion, in receiving it and his decision should not be interfered with. I am satisfied from an examination of the documents that the statements in question were annexed and were the ones referred to and the objection cannot be sustained.

H & M at p. 329 observed:

> **(2) Formalities**
>
> If there is not a reasonable compliance with the statutory requirements of the Act for proofs of claim, a creditor will not be permitted to vote. In determining what is reasonable compliance, clerical errors should be ignored and reasonable allowance ought to be made for the fact that the Bankruptcy and Insolvency Act is a businessman's statute and contemplates that businessmen will file their own proofs of claim: *Re D.W. McIntosh Ltd.* (1939), 20 C.B.R. 267 (Ont. S.C.).
>
> When the proof of claim is from a workman or a layman, the chair should be more lenient in determining if the proof of claim complies with the Act, but if the claim emanates from a trader, the proof of claim should be held to a more
>
> rigid compliance with the requirements of the Act: *Re Corduory's Unlimited Inc.; Grobstein and Lawrence v. Canadian Corduroys Ltd.* (1962), 4 C.B.R. (N.S.) 250 (Que. S.C.); but see *Re G. Totton Publishers Ltd.* (1975), 20 C.B.R. (N.S.) 140 (Ont. Reg.).

I would be of the view that under these circumstances (given the annexure, the limited number of claims with the result that the trustee would not be over burdened with "defective" proofs) it is reasonable to conclude that the failure to mark the attachment as Schedule A is not fatal to a proof of claim if otherwise valid. It would seem to me that this formalism is designed to assist a trustee who may otherwise be inundated with either a vast number of proofs from various claimants and/or a jumble of attachments. I do not see that the trustee in these circumstances could not have readily reached the conclusion that the attachments here were what were otherwise intended to be Schedule A, there was nothing to conflict with that conclusion and it does not appear that the trustee has complained that it could not complete

its task notwithstanding the absence of the marking as Schedule A on the attachments. I am however of the view that Tweedie J. at pp. 1235-6 of *McCoubrey, Re, supra,* has some helpful observations as to what should go into the statement of account:

> There is nothing in any of these five statements to indicate who is the debtor or who is the creditor or as to why the payments were made. A person examining them without the assistance of extrinsic evidence could only conclude that the payments were being made by the claimants on account of their indebtedness to the authorized assignor while in fact the reverse was the case. The claimants were each buying suits of clothes on the instalment plan and when an amount agreed upon was paid in, the person making such payments would be entitled to a suit. The statement of account should clearly indicate who is debtor and who is creditor and give such particulars, with dates, as are necessary to disclose the origin or nature of the liability, such as, "goods sold and delivered," "money lent," "services rendered," or, if there be particular circumstances which do not come within what are generally known as the common counts, the particular circumstances giving rise to the claim as well as all payments in cash or otherwise for which the debtor is entitled to credit. It is not necessary that the statement should contain in detail an itemized account of the goods sold and delivered, but it is sufficient if it shows goods sold on a certain date as is the practice in statements of commercial houses in connection with their monthly statements. If the claim is for money lent, the particulars of the loan should be given; if for services rendered, the extent thereof and the period within which they were rendered; if on a bill of exchange, sufficient particulars to identify the instrument, or in special cases sufficient particulars to acquaint the person whose duty it is to pass upon the proof with the nature of the particular transaction.

With respect to GAC, Tradean and Tyson, Doyle has confirmed that Mr. Mastin provided a proof of proxy minutes before the meeting to the Doyle offices and this was relayed to the meeting immediately thereafter. It would

appear that these proxies were in regular form. With respect to Tradean and Tyson it was indicated that the documentation may have been split in the sense that PWL received separately from Doyle a proof of claim and proxy and then apart from that a schedule. However it appears from Tyson's transmittal cover sheet of September 18, 1997 that he sent Doyle the material together. The Tradean proxy in favour of Mr. Mastin is subsequently dated (October 7, 1997) from that it gave in favour of Mr. Fogarty (September 22, 1997) and I would be of the view that the subsequent proxy is the operative one. Thus it would appear that Tradean, GAC and Tyson could vote on October 8, 1997.

[11] Let us now turn to the question of Crown's ability to vote. Crown's proof of claim was objected to by Doyle, as trustee under the proposal. Crown's claim is based upon a contract between it and Triton which provides that Crown is to be paid a fee equal to 10% of the total contract value of Triton's participation in certain Iranian projects. This matter is the subject of

arbitration in Switzerland which is apparently somewhat in practical suspension as it does not appear that either side has been pushing to have it finally determined. Doyle's objection to Crown's position would appear to me to be somewhat round about - e.g. asking for documentation that Crown is a valid and subsisting corporation under the laws of Liberia which is authorized to do business in Iran. However, for the same reasons as I reviewed in rejecting Nantong's right to vote because its claim had not been valued, it would seem to me that Crown's claim is similarly affected. That is, it cannot vote until its claim has been established as a valued claim pursuant to s. 109(1) and s. 121(2). Triton in the arbitration proceedings has stated (paragraph 8): "[Crown] did not fulfill its obligations towards [Triton] and performed no services either directly or indirectly which resulted in the award of the NIOC [National Iranian Oil Company] contract to [Triton]." Given the requirements of the BIA concerning establishment and valuation of a provable claim before a claimant is allowed to vote as a creditor, I do not see that the handing up of a November 26, 1993 letter from the Head of Drilling Operations of the National Iranian Oil Company (NIOC) is helpful for the purposes of the October 8, 1997 vote even though it does indicate that it "is to acknowledge successful completion of the NIOC - CTI [Triton] 53 wells turnkey drilling contract… completing the project with about 20M USD [$20 million US] less than project budget (258M USD) which was financed by Canadian Triton International."

[12] It also seemed somewhat curious that Doyle (now appreciating that Nantong did not have a final judgment since Paisley's judgment was set aside by the Court of Appeal) did not directly address whether Nantong fell into the same difficulty as did Crown although I do note that Doyle in paragraph 23 of its October 14, 1997 report did ask for "the advice and direction of the Court respecting the hearing of Crown's appeal from the disallowance of its claim and the timing for the adjudication of any other disputed claims."

[13] It would seem to me that these claimants with contingent or unliquidated claims should proceed according to the provisions of section 121(2) to establish and value their claims if they wish to participate in any future voting or distribution.

[14] Based on the foregoing it would appear to me that the motion to adjourn was defeated, that the amended proposal was appropriately voted on and defeated and that there resulted therefore a bankruptcy of Triton. As well there was the substitution of PWL as trustee in bankruptcy vote and vote electing inspectors which should be counted in accordance with my

observations above. The Schlumberger claim together with the other undisputed claims against the adjournment are sufficient to defeat that motion even allowing for the positive vote of Tradean etc. This follows through the other votes.

[15] I would also note that it appears that the Official Receiver allowed a vote by Duferco in favour of the adjournment - but based on a misunderstanding that Duferco was properly represented at the meeting. Since in my view it was not so properly represented, its vote on the adjournment is not valid. As Chair, the Official Receiver was quite correct in agreeing with Gordon Marantz, counsel for the Interim Receiver at pp. 50-1 of the transcript of the October 8, 1997 meeting when it was noted that Duferco had no vote on the proposal question that this would change the adjournment vote as well.

> The Chairperson: Ladies and gentlemen, the vote hasn't changed, except for the abstaining vote.
>
> Right, could you do some calculations for me, please.
>
> Mr. Olfati: Is there a proxy for Duferco?
>
> Mr. Doyle: We are trying to locate it right now.
>
> Mr. Graff: I am the representative, but I understood that Robert Stein was the proxy.
>
> Mr. Marantz: Well, that changes the vote on the motion to adjourn as well.
>
> The Chairperson: Yes, it will, yes, it will.
>
> Mr. Marantz: It doesn't change the result, but it changes the numbers.
>
> Mr. Carfagnini: The percentage goes a lot higher.
>
> Mr. Williams: I apologize—
>
> Mr. Carfagnini: So, general proxy in favour of the Trustee?
>
> Mr. Brent Williams: No, still with Mr. Stein, who was present last week.
>
> The Chairperson: What was the total, Brian?
>
> Mr. Doyle: Seven million for Duferco.
>
> Mr. Marantz: Nothing appears to turn on it.
>
> Mr. Turk: No, but could we have the revised percentage anyway?
>
> The Chairperson: This is the percentage, taking out Duferco and also with Nantong abstaining, okay—there you go.
>
> Mr. Brent Williams: The "no" votes, 74.51% and the "yes" votes, 25.45%.
>
> The Chairperson: Has everybody got those numbers?
>
> The resolution fails.
>
> We now have a deemed bankruptcy of the company.

It is clear that the Official Receiver was relying on what she appropriately thought was correct information being given to her which information was in fact incorrect. She was quite right in noting that there should therefore be a revision to the vote calculations on the adjournment, based upon the correct information. To say that such an error when caught (and no one having acted to their detriment) cannot be corrected is abhorrent to the principles and philosophy of the bankruptcy and insolvency legislation.

[16] Voting at meetings of creditors must be in accordance with the provisions of BIA. I think it salutary to remember the concluding words of Gomery J in *Toia v. Cie de Cautionnement Alta* (1989), 77 C.B.R. (N.S.) 264 (Que. S.C.) at p. 270:

> Distinguishing between the rules governing procedure at meetings of creditors which must be strictly enforced and those which are merely directory is not always easy. In *Re McCoubrey; Re Stratton,* 5 C.B.R. 248, [1924] 3 W.W.R. 587, [1924] 4 D.L.R. 1227 (Alta.), it was decided that in the latter case, if the chairman of the meeting has exercised his discretion reasonably, his decision should not be interfered with. However, mandatory rules must be complied with.
>
> In the court's opinion, the rule breached by the Official Receiver in this case was mandatory. *The only way in which a creditor is able to participate in the administration of the estate of a bankrupt is by voting at meetings of creditors. If the votes of other creditors are improperly allowed or calculated, the will of the majority may not prevail.*
>
> (emphasis added)

It should be obvious that creditors who wish to vote should ensure that they successfully pass over the hurdles imposed by BIA - specifically here that they have any contingent or unliquidated claims established and valued as per section 121(2) or that they are properly represented at any vote. Minor imperfections which do not go to the heart of the claim or authority to vote when viewed objectively should not go to preventing the true will of the (validated) majority from prevailing.

[17] The Fogarty Clients also moved for an order giving the relief of "(iv) Pursuant to section 116(5) of the *Bankruptcy and Insolvency Act,* removing Ata Olfati and Bernard Frankel as inspectors and substituting two inspectors in their place pending resolutions of all claims." In the grounds for such removal it was stated that "(v) Two of the three inspectors appointed have a conflict of interest in so far as their claims are being challenged. No person is eligible to be appointed or to act as an inspector who is a party to any contested action or proceeding by or against the estate of the bankrupt."

[18] Bernard Frankel is a representative of Crown. While he personally is not a party to Crown's contested proceeding, I note that *Maheu v. Rodrigue* (1984), 51 C.B.R. (N.S.) 132 (Que. S.C.) indicated that the prohibition in s. 116(2) applies to a representative of the corporation as much as to an individual. It would therefore appear to me at this stage that Mr. Frankel's position is questionable. The Fogarty Clients, through Mr. Mastin's affidavit also suggest that Dr. Olfati was involved with Crown (and by implication continues to be so involved) as a result of his having signed a document on behalf of Crown some years previously. It would appear to me that this question should be explored further to determine if there is any presently existing conflict. I would generally note that if a matter came up before the inspectors and one of them was directly affected by being a creditor or the representative of a creditor whose claim was being contested or affected in some way different from the general body of creditors, then it would be appropriate for that inspector to remove himself from debate and vote on that item. I note as well that BIA does not lay down any particular qualifications for inspectors and does not require that an inspector be a representative of a creditor: see *F & W Stereo Pacific Ltd., Re* (1975), 22 C.B.R. (N.S.) 84 (B.C. S.C.). I note that Mr. Frankel does not appear to have been served with the motion to have him removed. Thus, it would be inappropriate at this time to make any binding decisions concerning Mr. Frankel or Dr. Olfati. Rather it would be appropriate to have this heard on a regular basis.

[19] While on that topic, it would be helpful to the Court, the system of justice and the administration of and principles of BIA, if all interested parties adhered to the maximum extent possible in the circumstances to the established procedures for serving motions preparing motion material and attempting to have matters dealt with in Court. The Court will always try to deal in a timely fashion with true emergencies, however these emergencies should not be self created ones or situations where the parties have refrained from taking timely action at an earlier time. One is struck by the frequency and amount of last minute or after the fact filings and irregular material.

[20] Further along those lines, Triton (or its principal Vladimir Katic) continues to submit material concerning what appears to be additional information concerning a desired reorganization of Triton. The latest in this is an affidavit of Samuel Marr, a partner in the legal firm retained by Triton who attaches a letter dated October 13, 1997 from PT Tertimas Comexindo to "Doyle Salewski Lemiuex Inc. [in trust] 5617 Yonge Street, Toronto, Ontario, Canada M2M 3S9" (it may be that Doyle which is located in Ottawa has this as a Toronto

address). Mr. Marr describes PT Tertimas Comexindo as “an Indonesian investor” without further explanation. The letter indicates that:

> Further to a meeting of 13 October 1997, between Mr. Vladimir Katic and a responsible party representing the Republic of Kalmykia Oil Company, this is to inform you that a Letter of Credit, in the amount of USD $3,000,000 (three million United States dollars) for the mobilization of six (6) drilling rigs, currently based in the Islamic Republic of Iran, shall be opened by 1 November 1997.
>
> The drawdown conditions on the Letter of Credit are as follows:
>
> 1. Approval of the proposal by the creditors and by Judge Farley.
>
> 2. Execution of the formal drilling contract between above Oil Company and the contractor, being Canadian Triton International Ltd. (C.T.I.).
>
> …

Attached was a draft of a letter of credit with an issue date of October 13, 1997 with the following indications:

> …
>
> issuing bank:
>
> [to be determined]
>
> …
>
> Dated at Jakarta this 1st day of November 1997.

I would merely note that section 50(1) of BIA provides:

> 50(1) Subject to subsection 1.1, a proposal may be made by
>
> (a) an insolvent person;
>
> (b) a receiver, within the meaning of subsection 243(2), but only in relation to an insolvent person;
>
> (c) a liquidator of an insolvent person’s property;
>
> (d) a bankrupt; and
>
> (e) a trustee of the estate of a bankrupt.

It seems to me that the “and” in this section should be read disjunctively. Thus, if Triton as a bankrupt wishes to submit a proposal in the future it should do so in the regular way. I would assume that any such proposal would have included in it sufficient information to allow the creditors to make a reasoned decision.

[21] Finally, I would note that *National Bowling Centres Ltd. v. Brunswick of Canada Ltd. (No. 2)* (1967), 11 C.B.R. (N.S.) 219 (Que. Q.B.) is based upon the question of there being an

appeal brought by a claimant to determine whether it is a creditor authorized to vote at the meeting called to consider the proposal. As Rinfret J. stated for the Court at p. 223:

> En effet, il s'agit sur le présent appel de déterminer si Brunswick of Canada Ltd. est un créancier autorisé à voter sur la proposition et, dans l'affirmative, pour quel montant.
>
> Tant qu'on n'aura pas définitivement répondu à ces deux questions, la proposition ne saurait être considérée comme rejetée. Dans l'intervalle, l'appel a l'effet de suspendre la marche des procédures postérieures prévues par l'article 32B.

I would therefore suggest that all interested persons carefully note the provisions of BIA which may affect them and others as to whom they are in opposition. Then they may decide to take what they consider to be appropriate action in the circumstances. I would think it helpful for all concerned if they were to meet in the near future to discuss their various legal and business alternatives; in that regard I think it would be appropriate for PWL as trustee in bankruptcy to call such a meeting to be held by November 8, 1997. This meeting may assist by eliminating unnecessary turmoil and allow matters to be appropriately focused.

Order accordingly.

Tab 7

Court File No. CV-20-00642928-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF THE CLOVER ON YONGE INC. AND THE CLOVER ON YONGE LIMITED PARTNERSHIP

Applicants

TRANSCRIBED ENDORSEMENT

(UNOFFICIAL)

[1] This is a motion for an order sanctioning The Plan of Compromise and Arrangement dated November 6, 2020 ("**Plan**").

[2] The Plan was approved on December 15, 2020 by the requisite statutory majorities of affected creditors with voting claims in each of the Plan's two classes of creditors. 96.6% of the Depositor Creditor Class voted in favour of the Plan and 98.8% of the General Unsecured Creditor Class voted in favour of the Plan.

[3] There is one unresolved voting claim advanced by Maria Athanasoulis, which she values at $49 million ("**Maria's Claim**"). If this claim is accepted in the value asserted, the Plan would be defeated in the General Unsecured Creditor Class. All but $1 million of Maria's Claim is a claim for a share of profits in a number of projects, including the Clover on Yonge Project.

[4] I accept the Monitor's position that with respect to the component of Maria's Claim related to an alleged profit sharing agreement with respect to the Clover on Yonge Project. There was no prospect of any profit from that project because as of March 31, 2020, shortly after the receivership commenced, the Clover on Yonge project was forecast to generate a loss of $61 million. As a result, because I accept that the proper date to value Maria's Claim is when the Receiver was

appointed on March 27, 2020, there was no profit from the Clover od Yonge Project that could be shared with Maria.

[5] Mr. Dunn, on behalf of Maria, concedes there can be no profit from this project unless the pre-sale unit purchase contracts are disclaimed. I have already ordered that those contractors can only be disclaimed if the Plan is approved.

[6] As the Monitor points out in the Supplementary Report to its 14th Report, any forecast profit is entirely dependent on the restructuring of the revenues of the Clover on Yonge Project. I accept and adopt the Monitor's following Statement:

> "It does not assist Ms. Athanasoulis to argue she is entitled to share in profit derived from successful Plan that she would vote against and cause to fail if she had a claim."

[7] In my view to argue that the relevant date to calculate her profit-sharing claim is later than the receivership appointment date and that profit will be derived from the Clover on Yonge Project is far too remote and speculative and lacks an air of reality. I agree with the applicants' submission that, "There is no profit absent disclaimer, and no disclaimer absent the approval, sanction and implementation of the Plan. Accordingly, if the profit component of the alleged Athanasoulis claim is allowed for negative voting purposes, it must follow that the value attributed to it is a profit expectation of $ nil, and not a profit expectation of $48 million"

[8] The criterion I must use to determine if Maria's Claim, which is a contingent claim, is to be included in the insolvency process is whether the event that has not yet occurred is too remote and speculative. In my view, Maria's Claim cannot be shown to be neither too remote nor speculative unless the Plan is approved, sanctioned and implemented. This is the very event that Maria would defeat if her contingent profit-sharing claim for $48 million is allowed for voting purposes.

[9] I rely on Justice Morrison's decision in *Nalcor Energy v Grant Thornton*, 2015 NBQB 20 at para 35 where he affirmed the Proposal Trustee's decision to disallow a contingent creditor's claim for purpose of voting on a summary basis on facts that are strikingly similar to the facts in this case.

[10] Accordingly, I have concluded for the reasons outlined above, that Maria's Claim is too speculative and remote in the amount of $48 million to be allowed for voting purposes. I will therefore not have to consider whether Maria's Claim is an equity claim that should not be counted for voting purposes.

[11] With respect to the issue of whether the Plan should be sanctioned, I am satisfied that,

a. It has been approved by the requisite statutory majority of the applicant's non-equity creditors;

b. There has been strict compliance with all statutory requirements and adherence to previous orders of the Court;

c. Nothing has been done, or purported to be done that is not authorized by the CCAA; and

d. The Plan is fair and reasonable.

[12] In conclusion, for the reasons set out above, the Plan is sanctioned by the Court in its entirety and I declare that Maria's Claim cannot be valued at more than $1 million (the wrongful dismissal portion of the claim) for voting purposes with respect to the Plan.

[13] An Order shall go to this effect.

[14] I thank all counsel for their helpful submissions.

Hainey J.

January 8, 2021

Schedule “A”

Original Handwritten Endorsement

See attached.

CV-20-00642928

Re Clover on Yonge Inc

---

(1) This is a motion for an Order sanctioning the Plan of Compromise and Arrangement dated November 6, 2020. ("Plan")

(2) The Plan was approved on December 15, 2020 by the requisite Statutory Majorities of affected creditors with voting claims in each of the Plan's two classes of creditors. 96.6% of the Depositor Creditor class voted in favour of the

Plan and 98.8% of the General Unsecured Creditor Class voted in favour of the plan.

(3) There is one unresolved Voting claim advanced by Maria Athanasoulis, which she values at $49 Million ("Maria's claim"). If this claim is accepted in the value asserted, the Plan would be defeated in the General Unsecured Creditor class. All but $1 million of Maria's claim is a claim for a share of

projects in a number of projects, including the Clover on Yonge project.

(4) I accept the Monitor's position that with respect to the component of Maria's claim related to an alleged profit sharing agreement with respect to the Clover on Yonge project there was no prospect of any profit from that project because as of March 31, 2020, shortly after the receivership commenced, the Clover on Yonge project was forecast to generate a loss of $61 Million. As a

result because I accept that the proper date to value Maria's claim is when the receiver was appointed on March 27, 2020 There was no profit from the closed on Gorge Project that could be shared with Maria.

(5) Mr Dunn, on behalf of Maria, concedes there can be no profit from this project unless the pre-sale unit purchase contracts are disclaimed. I have already ordered that those contracts can only

be disclaimed if the Plan is approved.

(6) As the Monitor points out in the Supplementary Report & its 1972 Report any forecast profit is entirely dependent on the restructuring of the revenues of the Clover Gorge Project. I accept and adopt the Monitor's following Statement:

"It does not permit Ms. Athanasoulis to argue she is entitled to share in profit derived from a successful Plan That she would vote against and cause to fail

if she had a claim.))

(7) In my view I agree that the relevant date to calculate her profit-sharing claim is later than the secretaryship appointment date and that profit could be deemed from the Claude on Yonge Project is just too remote and speculative and lacks an air of reality. I agree with the Applicants' submission that "there is no profit absent disclaimer, and no disclaimer absent the approval, sanction and

implementation of the Plan. Accordingly, if the profit component of the alleged Athanasoulis claim is allowed for negative voting purposes, it must follow that the value attributed to it is a profit expectation of $ nil, and not a profit expectation of $48 Million."

(8) The criterion I must use to determine if Nadia's claim, which is a contingent claim, is to be included in the insolvency proceeding is whether the event that has

not yet accrued is too remote or speculative. In my view Maria's claim cannot be shown to be neither too remote nor speculative unless the plan is approved, sanctioned and implemented. This is the very event that Maria would defeat if her contingent profit-sharing claim of $48 Million is allowed for voting purposes.

(9) I rely on Justice Morrison's decision in Nelco Energy v. Grant Thornton, 2015 NBQB 20 at para 35 where he

Approved the proposal trustee's decision & disallow a contingent creditor's claim for purpose of voting on a summary basis on facts that are strikingly similar & the facts in this case.

(10) Accordingly, I have concluded, for the reasons outlined above, that Maria's claim is so speculative and remote in the amount of $48 Million & be allowed for voting purposes. I will therefore not have to consider whether Maria's claim is an equity claim that should not be counted for voting purposes.

(11) With respect to the issue of whether the Plan should be sanctioned, I am satisfied that,

(a) It has been approved by the requisite statutory majority of the Applicants' non-equity creditors;

(b) There has been strict compliance with all statutory requirements and adherence to previous orders of the Court;

(c) Nothing has been done, or purported to be done

(11) that is not authorized by the CCAA; and

(d) The Plan is fair and reasonable.

(12) In conclusion, for the reasons set out above, the Plan is sanctioned by the Court in its entirety and I declare that Nortel's claim cannot be valued at more than $1 Million (the wrongful dismissal portion of the claim) for voting purposes with respect to the Plan.

(12)

(13) An order shall go to this effect.

(14) I thank all counsel for their helpful submissions.

Harvey J.

January 8, 2021

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 THE CLOVER ON YONGE INC. AND THE CLOVER ON YONGE LIMITED PARTNERSHIP

Court File No. CV-20-00642928-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceedings commenced at Toronto

MOTION RECORD OF THE CLOVER CCAA APPLICANTS (Returnable November 12, 2020)

AIRD & BERLIS LLP
Barristers and Solicitors
1800 - 181 Bay St.
Toronto, ON M5J 2T9

Steven L. Graff (LSO # 31871V)
Tel: (416) 865-7726
Email: sgraff@airdberlis.com

Ian Aversa (LSO # 55449N)
Tel: (416) 865-3082
Email: iaversa@airdberlis.com

Jeremy Nemers (LSO # 66410Q)
Tel: (416) 865-7724
Email: jnemers@airdberlis.com

Jonathan Yantzi (LSO# 77533A)
Tel: (416) 865-4733
Email: jyantzi@airdberlis.com

Lawyers for the Clover CCAA Applicants

BENNETT JONES LLP
2500 Park Place, 666 Burrard St.
Vancouver, BC V6C 2X8

David Gruber (LSO# 43758V)
Tel: (604) 891-5150
Email: gruberd@bennettjones.com

Co-counsel for the Clover CCAA Applicants

Tab 8

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: ***Port Chevrolet Oldsmobile Ltd. (Re),*** 2004 BCCA 37

Date: 20040126
Docket: CA030337; CA030338

In the Matter of the *Bankruptcy and Insolvency Act*

and

In the Matter of the Proposal of Port Chevrolet Oldsmobile Ltd.

Before: The Honourable Madam Justice Ryan
The Honourable Madam Justice Newbury
The Honourable Madam Justice Levine

D.G. Nygard	Counsel for the Appellant Minister of National Revenue
J.F. Grieve	Counsel for the Respondent Port Chevrolet Oldsmobile Ltd.
B.J. Ingram	Counsel for the Respondent PricewaterhouseCoopers as Trustee
Place and Date of Hearing:	Vancouver, British Columbia November 24, 2003
Place and Date of Judgment:	Vancouver, British Columbia January 26, 2004

Written Reasons by:
The Honourable Madam Justice Newbury

Concurring Reasons by:
The Honourable Madam Justice Levine

Concurred in by:
The Honourable Madam Justice Ryan

Reasons for Judgment of the Honourable Madam Justice Newbury:

[1] The respondent Port Chevrolet Oldsmobile Ltd. ("Port") has carried on business as an automobile dealership in the lower mainland of British Columbia for some years. On July 9, 2002, the appellant Canada Customs and Revenue Agency ("CCRA") issued a Notice of Assessment to Port under the ***Excise Tax Act***, R.S.C. 1985, c. E-15, for the sum of $16,436,009.96 in respect of a 43-month period ending in October 1998. According to the Notice, the assessment represented "adjustments to input tax credits" of $8,651,572.86, a penalty of $3,201,994.73, interest of $2,419,549.16 and "other penalty" of $2,162,893.21.

[2] Port denied liability for the amount assessed and began preparing a Notice of Objection to Assessment in the form required by the ***Excise Tax Act***. The Objection stated in part:

> 2. The Taxpayer was fraudulently induced by Sameer Mapara to purchase vehicles that it believed existed (the "Vehicles") from one or more companies associated with Sameer Mapara ("Mapara's Companies").
>
> 3. The Vehicles were purchased during the reporting periods from April 1, 1995 to October 31, 1998 (the "Reporting Periods").
>
> 4. The Taxpayer paid goods and services tax ("GST") to Mapara's Companies on the purchase of the Vehicles and claimed input tax credits ("ITCs") in respect of that tax.

> 5. The Taxpayer was then fraudulently induced by Mapara to resell the Vehicles to Mapara's Companies for export.
>
> 6. The Taxpayer did not collect GST on the subsequent resale of Vehicles to Mapara's Companies as it understood that the Vehicles were being purchased for export.
>
> . . .
>
> 11. The Taxpayer was defrauded by Mapara and Mapara's Companies into believing that the Vehicles existed and were owned [by] Mapara's Companies and were being acquired by Mapara's Companies for export.

Port also took the position that many of the amounts assessed were statute-barred, that it was entitled to certain rebates against the tax assessed, and that CCRA had incorrectly calculated various tax credits to which it was entitled. Further, Port contended that it had exercised due diligence in determining its net taxes and had not knowingly or under circumstances amounting to gross negligence, consented to or acquiesced in the making of a false statement or omission in a return, and was therefore not liable to pay penalties under s. 285 of the ***Excise Tax Act***. The Notice of Objection was delivered to CCRA on or about September 12, 2002.

[3] There was no evidence that CCRA invoked the procedure available under s. 316 of the ***Excise Tax Act*** and certified an amount payable by Port. (Where a certificate is registered in

the Federal Court, it is said to have the same effect as if it were a judgment for a debt in the amount certified.) However, execution proceedings of some kind were evidently instituted by CCRA against Port, leading General Motors of Canada, Port's inventory supplier and financier, to express concern about the company's viability. Sensing that it could be out of business unless it took action, Port decided to make a proposal to its creditors under the ***Bankruptcy and Insolvency Act***, R.S.C. 1985, c. B-3 as amended (the "***BIA***"). Port issued notice of its intention to do so on July 10, 2002, which had the effect of staying all proceedings against it pursuant to s. 69 of the ***BIA***. Port's solicitors also began correspondence with its banker, with General Motors, and with CCRA in hopes of arriving at some arrangement whereby Port could remain in business and pursue its objection to the assessment.

[4] The final form of Port's proposal to creditors (filed on October 4, 2002) was unusual, but reflected the fact that but for the CCRA assessment, Port was not experiencing any particular financial difficulty. The proposal contemplated that the company would create a "pool" of not less than $250,000 by depositing with the Trustee 50 percent of profits earned during the ensuing five years. From this pool the Trustee would pay the claims of CCRA for any outstanding

source deductions under the ***Income Tax Act***, R.S.C. 1985, c. 1 (5th Supp.), unsecured creditors with claims of $400 or less in full, and other unsecured creditors pro rata according to the amounts of their claims. Preferred creditors were to be paid in full in accordance with s. 136(1) of the ***BIA*** in priority to unsecured creditors, and secured creditors were to be paid in accordance with already existing arrangements, or as might be "arranged between the Company and each of those parties outside of the terms of this Proposal." The proposal also contemplated that if CCRA's assessment under the ***Excise Tax Act*** was eliminated or reduced "in accordance with the applicable process of appeal", CCRA would repay to the Trustee "any amount to which CCRA would not be entitled if its Proof of Claim either did not reflect the Assessment or reflected it in the reduced amount, as applicable, and the Trustee may adjust any subsequent dividends to CCRA accordingly." The proposal was silent about what would happen if Port's objection to the assessment was not ultimately successful.

[5] The meeting of creditors to vote on the proposal was scheduled for October 25, 2002. With the notice of meeting, creditors received the Trustee's preliminary report on Port's affairs. It was prepared on the assumptions that (i) Port could either meet its obligations to the business creditors or

negotiate compromises with them, (ii) it could "successfully deal with the impact" of the CCRA assessment, and (iii) it would be able to continue operating under the General Motors dealer's agreement. Based on these assumptions, and on its review of Port's assets, the Trustee reported that a forced liquidation in bankruptcy would not provide sufficient funds to make any payment on account of the claims of preferred or unsecured creditors. The Trustee therefore recommended that the creditors accept the proposal which, if the underlying assumptions were correct, would result in the payment in full of all preferred creditors, the continued employment of Port's 55 employees and, depending on its success in appealing the CCRA assessment, full or partial recovery to unsecured creditors.

[6] Also accompanying the notice of meeting and the Trustee's report was a letter to creditors dated October 3, 2002 from Port's president, Mr. Michael Wolfe. He stated in part:

> Most of you know how we ended up in this situation. Canada Custom[s] and Revenue Agency ("CCRA") has assessed Port for an amount of some $16,000,000 in connection with GST related to [sic] transactions which took place several years ago. Port obviously does not have the money to make that kind of payment and we do not think that we are liable to pay it in the first place. We are appealing that CCRA assessment, but until that appeal is resolved, CCRA's claim is there.

> When CCRA issued its $16,000,000 assessment, they also took steps against some of Port's assets, namely accounts receivable. Had we done nothing, Port's cash flow would have been eliminated and we would have had to shut down.

[7] In the weeks leading up to the creditors' meeting, solicitors for Port and CCRA discussed the proposal in correspondence, but CCRA declined to indicate ahead of time how it would vote at the meeting. The day before the meeting, CCRA forwarded to the Trustee a proof of claim in "Form 31" (prescribed by the Superintendent under the ***BIA***) in the amount of $15,864,279.83. The material portions of the Form 31 stated:

> 3. That the debtor was, at the date of the proposal namely July 10, 2002, and still is, indebted to the creditor in the sum of $15,864,279.83 as specified in the statement of account attached and marked Schedule "A", after deducting any counterclaims to which the debtor is entitled.
>
> 4. (X) UNSECURED CLAIM of $15,864,279.83.
>
> That in respect of this debt, I do not hold any assets of the debtor as security and
>
> (X) Regarding the amount of $15,864,279.83, I do not claim a right to priority.
>
> 5. That, to the best of my knowledge, the above-named creditor is not related to the debtor within the meaning of section 4 of the Bankruptcy and Insolvency Act.
>
> 6. That the following are the payments that I have received from, and the credits that I have allowed to the debtor within the three months immediately

> before the date of the initial bankruptcy event within the meaning of Section 2 of the Bankruptcy and Insolvency Act.
>
> NIL

Attached as Schedule "A" to the Form 31 was a statement of account consisting of columns of dates and a net tax amount, interest, penalty and a "period total" for each date. The total of "period totals" shown on Schedule "A" was $15,874,279.83.

[8] The creditors' meeting was duly held on October 25. According to the minutes of the meeting, the Trustee advised those present that CCRA's claim was "not proven due to an unresolved appeal and Notice of Objection filed by the Company. Therefore, its claim had been disallowed and valued at nil for purposes of the meeting and . . . CCRA had been informed of this just prior to the meeting." After some discussion of the proposal and an adjournment, the chair of the meeting stated that for purposes of voting on the proposal, CCRA's claim would be valued at nil. The chair declined a request by CCRA for a further adjournment to seek the opinion of legal counsel. The proposal was approved by creditors representing 99 percent of the total claims in value and 98 percent of the creditors by number, excluding CCRA in both cases.

[9] The Trustee's formal Notice of Disallowance was forwarded in due course to CCRA. It stated the following reasons for the disallowance:

> 1. Your Proof of Claim is unsupported by any evidence for an alleged debt of $15,864,279.83 owed by Port on account of Goods and Services Tax. Subsection 124(4) of the BIA requires a proof of claim to include not only a statement of account but also the evidence by which the statement of account can be substantiated.
>
> 2. Based on a review by the Trustee of the Notice of Objection filed with CCRA on behalf of Port and dated September 12, 2002, the Trustee is not persuaded that Port is in fact indebted to CCRA and the Trustee would require but is not aware of any adjudication in favour of CCRA resolving the claim it is asserting against Port.
>
> 3. In particular, based on the contents of the Notice of Objection, it appears that Port paid a significant amount of money to a third party in connection with what Port believed to be the purchase of vehicles owned by the third party and claimed an equivalent figure as an Input Tax Credit, thereby reducing the amount payable by Port to CCRA on account of collected Goods and Services Tax. Port alleges that it was fraudulently induced by a Sameer Mapara to purchase vehicles from him and his associated companies.
>
> 4. In its Notice of Objection Port raises several grounds of objection. First, Port claims that all assessment of reporting periods beginning April 30, 1996 and ending May 31, 1998 are statute-barred under subsection 298(1) of the Excise Tax Act. The total period covered by the CCRA assessment extends from April 30, 1996 to October 31, 1998. Second, Port claims that Input Tax Credits were claimed by it in respect of amounts paid as or on account of tax in circumstances where none was actually payable,

> and that Port is therefore entitled to have CCRA apply rebates for such payments against the net tax assessed against Port. Third, Port objects to the substantial penalties claimed by CCRA. Finally, Port takes issue with the calculations of the amount of Input Tax Credits claimed by Port. The CCRA Proof of Claim does not address any of these issues raised by Port.
>
> 5. Such other reasons as the Trustee may subsequently determine are applicable.

[10] By the time CCRA received this notice, it had already applied to the Supreme Court of British Columbia to appeal the disallowance pursuant to s. 135(4) of the ***BIA***. The Court's order dismissing that appeal is the first of the two orders now being appealed to this court.

The First Chambers Judgment

[11] Madam Justice Neilson dealt in Chambers below with the first appeal. She noted in her Reasons (see [2002] B.C.J. No. 3206) that the appeal raised two basic questions, the first of which I regard as one of statutory compliance and the second as more substantive:

> 1. Were the trustee and the Chair in error in disallowing the claim for non-compliance with s. 124 of the ***Bankruptcy and Insolvency Act***?
>
> 2. Did the trustee and Chair err in categorizing CCRA's claim as contingent and of no value for the purpose of voting? [para. 18]

On the first question, she started with the proposition that the provisions of the ***BIA*** dictating the form of proofs of claim are "mandatory and to be strictly construed", and that a proof of claim must be sufficient to enable a trustee to make an informed decision on its merits. In this regard, she cited ***Re G. Totton Publishers Ltd.*** (1975) 20 C.B.R. (N.S.) 140 (Ont. S.C.) and ***Re Riddler*** (1991) 3 C.B.R. (3d) 273 (B.C.S.C.). She then described the proof of claim filed by CCRA as follows:

> CCRA's proof of claim follows the format of Form 31, and attaches a statement of account that shows a debt occurring between 1995 and 1998 of $15,864,279.83. It includes no reference to the assessment, or to any other basis for this account. There is nothing in the proof of claim that could be construed as evidence in support of the claim. It makes no mention of the Notice of Objection. Nor does it set out any explanation for the discrepancy of almost $600,000 between the debt described in the proof of claim and the assessment that was delivered on July 9, 2002. In paragraph 6, where it is required to state payments from, or credits to, the debtor in the three months preceding the date of bankruptcy event, the response is "nil".
>
> In my view, these defects provided a lawful basis for the trustee to exercise his discretion in favour of disallowing the claim pursuant to s. 135(2). There was nothing in the proof of claim on which he could make an informed decision as to its merits. [paras. 24-5]

[12] Further, Neilson J. noted, CCRA had provided no explanation for the discrepancy between the amount claimed in the Notice of Assessment and that in the proof of claim. She

found nothing in the proof of claim itself or in the evidence on the appeal to permit her to infer that it arose from credits made to Port since July 10, 2002. CCRA's other arguments — that the Trustee should have required further evidence under s. 135(1), that CCRA had been led to expect that formalities would not be strictly observed, and that the Trustee should generally have extended greater "latitude" to the CCRA — were also rejected. The Chambers judge reasoned:

> I find it difficult to believe they would have led CCRA to expect any leniency with respect to the formalities required to permit it to vote against the proposal. Port had consistently and strenuously denied the basis for CCRA's debt. Its proposal was necessitated by CCRA's action in executing against its assets. Port was fighting for its economic survival. CCRA, as the largest potential unsecured creditor, carried effective veto power over the proposal, and would not advise Port if it was in favour of it prior to the meeting. In my view, CCRA would be naive to think it could deliver an inadequate proof of claim in these circumstances, the day before the meeting without it being challenged.
>
> I recognize that ***Re Totton***, *supra*, suggests there should be some latitude given to creditors in filling out proofs of claim, as many are completed by creditors without the benefit of legal assistance. I find those comments have limited application, however, to sophisticated and experienced creditors such as CCRA. [paras. 30-1]

Considering also that trustees are experienced professionals who have a discretion to exercise, the Chambers judge concluded that the Trustee in this case was within its

discretion in disallowing CCRA's Proof of Claim under s. 135(2). She stated she would dismiss the appeal on that ground alone.

[13] Neilson J. went on, however, to examine CCRA's submission that the Trustee and the chair of the meeting had erred in categorizing CCRA's debt as contingent and of no value. On this issue, CCRA relied heavily on ss. 299(3), 299(4), 313(1) and 315(2) of the ***Excise Tax Act***, which provide:

> 299(3) **Assessment valid and binding** - An assessment, subject to being vacated on an objection or appeal under this Part and subject to a reassessment, shall be deemed to be valid and binding.
>
> . . .
>
> 299(4) **Assessment deemed valid** - An assessment shall, subject to being reassessed or vacated as a result of an objection or appeal under this Part, be deemed to be valid and binding, notwithstanding any error, defect or omission therein or in any proceeding under this Part relating thereto.
>
> * * *
>
> 313(1) **Debts to Her Majesty** – All taxes, net taxes, interest, penalties, costs and other amounts payable under this Part are debts due to Her Majesty in right of Canada and are recoverable as such in the Federal Court or any other court of competent jurisdiction or in any other manner provided under this Part.
>
> * * *
>
> 315(2) **Payment of Remainder** – Where the Minister mails a notice of assessment to a person, any amount assessed then remaining unpaid is payable forthwith

> by the person to the Receiver General. [Emphasis added.]

[14] As well, CCRA cited the decision of the Ontario Court of Appeal in ***Re Norris*** (1989) 75 C.B.R. (N.S.) 97, in which a trustee in bankruptcy had disallowed a proof of claim filed by the Crown against an individual, Mr. Norris, on the basis of a notice of assessment issued against a corporation pursuant to s. 227(10) of the ***Income Tax Act***. Mr. Norris was a director of the corporation and if the Crown's claim against the corporation was valid, would be jointly and severally liable for the assessed amount. He made an assignment in bankruptcy. The Crown issued a notice of assessment in the same amount against him personally. The trustee was not satisfied with the claim filed by the Crown and asked for more information. The Crown supplied the notice of assessment directed to Mr. Norris, but the trustee was still not satisfied and asked for Revenue Canada's working papers. Neither these papers nor any further details were supplied, leading the trustee to disallow Revenue Canada's entire claim.

[15] The Ontario Court of Appeal ruled that although it had been "within the power" of the trustee to "call for evidence to support the proof of claim", the trustee's request had been "fully answered by the notice of assessment". After citing

s. 152(8) of the ***Income Tax Act*** (the terms of which are similar to those of s. 299(4) of the ***Excise Tax Act*** quoted above), the Court stated:

> A taxpayer who objects to an assessment may file a notice of objection pursuant to s. 165(1) of the Income Tax Act and if necessary proceed to exercise rights of appeal to the Tax Court and to the Federal Court. When the trustee in bankruptcy wishes to question the validity of an assessment against a bankrupt he, like anyone else, must seek his remedy within the Income Tax Act: see *Re Carnat Const. Co.* and *Re Selkirk* (1972), 17 C.B.R. (N.S.) 302 (Ont. S.C.).
>
> To hold that the trustee in bankruptcy can disallow an assessment made pursuant to the Income Tax Act would be tantamount to clothing the trustee with the powers of the Tax Court. No interpretation of the Bankruptcy Act can support such a conclusion.
>
> In the result, the appeal is allowed and the disallowance is set aside and the trustee in bankruptcy is directed to allow the claim filed by the Crown. Such allowance of the claim is, however, without prejudice to the right of the trustee in bankruptcy to proceed with any right he may have under the Income Tax Act. [at 99]

[16] However, the Chambers judge in the case at bar found ***Re Norris*** (and ***Re Bateman*** (1998) 10 C.B.R. (4th) 197 (N.S.S.C.)) to be distinguishable from this case. In her analysis:

> Those authorities deal with a trustee managing a bankrupt estate, in which the assets were vested in the trustee. There had evidently been no challenge to the assessment by the debtor prior to bankruptcy. Nor had the trustee filed a notice of objection.
>
> I find the circumstances here quite different. The debtor is not yet bankrupt. It was a profitable

> business with over 50 employees before the assessment and is now diligently pursuing a proposal under the *Bankruptcy and Insolvency Act,* which is the only course left open to it to avoid a bankruptcy and continue to operate, in the face of an assessment that it claims is invalid. Neither the debtor nor the trustee are seeking to avoid the appeal procedures outlined in the *Excise Tax Act*. Instead, the debtor is vigorously pursuing them. The problem is that those procedures could not be completed before the first creditors' meeting. Port has evidently convinced the trustee that there is merit to its objection. Even CCRA's representative, Mr. O'Connell, has conceded to the trustee that one possible outcome of Port's challenge may be a nil value to CCRA's claim. [paras. 40-1]

She also noted that the Court in ***Re Norris*** had relied on ***Re Carnat Construction Co. Ltd.*** (1958) 37 C.B.R. 47 (Ont. S.C.), where Smily J. had stated that although any challenge to an income tax assessment made by a trustee in bankruptcy must be pursued through the appeal process in the ***Income Tax Act***, there was also

> . . . no question that *The Bankruptcy Act* provisions must be complied with, by the filing of proof of claim by the Crown with respect to income tax, and that this assessment may be disallowed by the Trustee, and that in such event the Crown is called upon to proceed under the provisions of *The Bankruptcy Act* and appeal from that disallowance. [at 48; emphasis added.]

[17] Relying on this passage, Neilson J. accepted that the debtor or trustee is bound to follow the appeal process in the applicable taxing statute to ascertain the final amount of any

debt owed to CCRA. On the other hand, if CCRA wished to "participate in concurrent proceedings under the ***Bankruptcy and Insolvency Act***", it was bound to comply with that statute with respect to the proof of its claim and, she added, "that compliance includes recognition of the trustee's powers to determine a claim is contingent and value it accordingly." (para. 43.) She found additional support for this conclusion in s. 4.1 of the ***BIA*** – a provision not referred to in ***Re Norris*** – which states that the ***BIA*** binds Her Majesty in Right of Canada, and in the fact that whereas the ***Income Tax Act*** expressly subordinates the ***BIA*** to its terms, the ***Excise Tax Act*** does not do so.

[18] The Chambers judge also saw substantial practical reasons for permitting Port to continue operating pending resolution of the excise tax appeal. That appeal might take a year – during which the CCRA was to be entitled to receive "the lion's share" of profits set aside for the unsecured creditors under the proposal. On the other hand, substantial prejudice would accrue to Port, its employees and its other creditors if it were prematurely forced into bankruptcy on the strength of an assessment that might be successfully challenged. In the result, she found that the Trustee had not erred in

categorizing CCRA's claim as contingent and of no value. She dismissed the appeal on this ground as well.

The Second Chambers Judgment

[19] The second order under appeal in this court was made five days later, on November 18, 2002, by Mr. Justice Groberman. After hearing counsel for Port, the Trustee and the Minister of National Revenue, he approved Port's proposal pursuant to s. 59 of the ***BIA,*** but postponed the coming into effect of his order until noon on November 21 in order to allow CCRA to seek leave to appeal the rejection of its claim, to appeal his order, and to seek a further stay. However, CCRA did not seek a further stay prior to November 21, so that Groberman J.'s order became effective as of that date.

[20] On November 22, CCRA filed notices of appeal in this court in respect of the two orders.

On Appeal

[21] In this court, much of CCRA's argument was taken up with the second branch of Neilson J.'s Reasons for Judgment — the conclusion that it lay within the discretion of the Trustee to rule that CCRA's claim was a contingent one and to assign it a nil value. The basis of CCRA's submission was again that because s. 299(4) of the ***Excise Tax Act*** provides that subject

to being vacated on an objection or appeal, a notice of assessment shall be deemed to be "valid and binding", it was not open to the Trustee to rule that CCRA's claim was anything other than valid and provable in the amount stated. In response, the Trustee and Port contend that, to quote from Port's factum, the fact that the Crown has "conferred upon its collectors the right to assess an amount outstanding subject to objection or appeal cannot turn something which is clearly contingent into something which is not contingent." Counsel notes that even CCRA's representative at the creditors' meeting acknowledged that ultimately, CCRA's claim might amount to nothing.

[22] The issue thus framed is a difficult one of principle. With all due respect to the Court in ***Re Norris***, it is not answered by a general statement to the effect that the process for challenging an assessment under the ***Excise Tax Act*** is the process prescribed by that statute. That principle is not in question here: unlike the corporate taxpayer or its director in ***Norris***, Port is proceeding under the ***Excise Tax Act*** with its objection to the assessment. The whole purpose of the proposal was apparently to secure time in which to carry out that process. In the meantime, the statutory validity of the assessment unless and until Port succeeds in having it set

aside, does not necessarily mean that in fact, CCRA's claim may not be highly questionable or of doubtful "value". (I express no opinion on whether that is so in this case.) The real question is the nature of the determination made by a trustee in examining and assessing proofs of claim under the ***BIA***. Does the trustee make a determination of fact concerning the validity of (all) the claims filed against the debtor, or is it bound to rule as a matter of law that an assessment under the ***Excise Tax Act***, no matter how questionable it might be in fact, is valid and fully binding on the debtor for purposes of the ***BIA***? CCRA contends that the answer is simple: s. 299 of the ***Excise Tax Act*** prevails notwithstanding the particular facts or equities surrounding the claim, and the trustee is obliged to accord it 'full faith and credit', even though the assessment may later be set aside. The other view, however, is that the ***BIA*** and ***Excise Tax Act*** may be reconciled by distinguishing the commercial judgements made in the "real" world by a trustee under the ***BIA***, from the artificial "deeming" provisions of the ***Excise Tax Act*** which may be invoked by CCRA without regard for the objection and appeal process provided in the same statute.

[23] Unfortunately, no appellate authority was brought to our attention considering this question, or considering how the

two statutes relate to each other in this regard. In the absence of direct authority, I prefer to decide this case on a more technical basis — the Chambers judge's conclusion on the first branch of her reasons that CCRA's proof of claim did not comply with s. 124 of the ***BIA***. For convenience, I set out s-ss. (1) and (4) thereof below:

> 124. (1) **Creditors shall prove claims** — Every creditor shall prove his claim, and a creditor who does not prove his claim is not entitled to share in any distribution that may be made.
>
> . . .
>
> (4) **Shall refer to account** — The proof of claim shall contain or refer to a statement of account showing the particulars of the claim and any counter-claim that the bankrupt may have to the knowledge of the creditor and shall specify the vouchers or other evidence, if any, by which it can be substantiated. [Emphasis added.]

[24] I did not understand CCRA to argue, and I do not read ***Re Norris*** to suggest, that when advancing a claim (whether for taxes due or otherwise) under the ***BIA***, CCRA need not comply with the applicable provisions regarding proofs of claim. (Indeed, I note that s. 124 was not mentioned by the Court in ***Re*** Norris.) The ground of appeal stated by CCRA in its factum was whether CCRA's proof of claim had in fact been defective "such as to justify total disallowance of the claim." (With respect to the latter phrase, I am not aware of any authority for the proposition that a defective claim could result in

only a partial disallowance of the claim.) This ground is inextricably tied to CCRA's argument that the Chambers judge failed to consider all the evidence before her — including evidence not before the Trustee — in deciding whether CCRA's proof of claim had met the requirements of s. 124.

[25] All counsel seemed to be in agreement with CCRA's contention that its appeal of the Trustee's decision was a "trial *de novo*" such that CCRA could file further evidence in order to establish a provable claim in the court below. The only authority cited on this point was ***Re Eskasoni Fisheries Ltd.*** (2000) 16 C.B.R. (4th) 173, a decision of a registrar of the Nova Scotia Supreme Court. The Registrar stated:

> Where a creditor appeals to the court from the decision of a trustee to disallow a claim that appeal will proceed by way of trial *de novo*. While I have found no specific case or commentary that makes this point clear, it is clear from a review of the cases generally that a Judge or Registrar hearing an appeal from a trustee's decision is not required simply to proceed upon the information before the trustee. In other words, on such appeals the court is entitled to accept and consider all evidence relevant to the claim. [para. 17]

I note that the ability of the court to accept "new" evidence can operate in favour of either party: in ***Eskasoni***, a trustee was permitted to advance a separate and distinct basis for

disallowing a claim on the appeal in addition to the basis previously advanced at the meeting.

[26] Since counsel did not challenge ***Eskasoni***, I frame the question before us to be whether, on the basis of the material before the Trustee, "as amplified" by the further evidence filed in the court below, the proof of claim filed by CCRA complied with s. 124. Specifically, did the document "contain or refer to a statement of account showing the particulars" thereof, and did it specify the "vouchers or other evidence, if any, by which it could be substantiated"?

[27] I agree with Neilson J. that the answer to these questions is "no". As I have already described, CCRA's proof of claim consisted of a covering letter, a Form 31 and a Schedule "A" listing a series of assessments, penalties and interest charges. I note that consistent with s. 124(4), the form prescribed for proofs of claim (presumably also prescribed by the Superintendent) is accompanied by an instruction that "The attached statement of account or affidavit must specify the vouchers or other evidence in support of the claim." CCRA's proof of claim simply stated at paragraph 3 that Port was indebted to CCRA as of July 10, 2002 in the amount of $15,864,279.83 "as specified in the statement of account attached and marked Schedule 'A', after deducting

any counterclaims to which the debtor is entitled." No reference was made to allegations regarding Port's sale of non-existent vehicles to a fraudulent party or parties, nor to any evidence by which the claim could be substantiated.

[28] As noted earlier, CCRA's Form 31 also stated that CCRA had not received any amount from the debtor within the three months preceding the proposal. If this was correct, then even if the Notice of Assessment had been attached to the proof of claim, a discrepancy between the amount claimed ($15,864,279.83) and the amount stated in the Notice of Assessment ($16,436,009.96) would have been apparent. On the other hand, there was affidavit evidence before the Chambers judge to the effect that Port had made payments in the usual course to CCRA within three months of making the proposal. If this was correct, the Form 31 may have been inaccurate. In either event, the Notice of Assessment would not have "fully answered" the question which no doubt arose in the Trustee's mind as to which amount was correct – unlike the situation in ***Re Norris***, *supra*.

[29] In its factum, CCRA suggests that these defects would have been cured had Neilson J. not "failed to consider the Assessment, the Statement of Audit Adjustments, the Notice of Objection, the Proof of Claim with Schedule 'A' and the

affidavit material in evidence before her." With respect, there is little doubt that the Chambers judge considered the Proof of Claim and Schedule "A" before her. There was also in evidence before her (but not before the Trustee) an affidavit of Mr. O'Connell, an employee of CCRA, who attached as exhibit "A" a copy of the Assessment dated July 9, 2002 and Port's Notice of Objection in turn dated September 12, 2002. The Notice of Objection had attached to it a "Statement of Facts and Reasons for Objection of Port Chevrolet Oldsmobile Ltd.", which had obviously been prepared by or on behalf of Port. This document set out in general terms the allegation that Port had been defrauded by Mr. Mapara and his companies into believing that various vehicles existed and were being acquired by his companies for export. It also advanced the other defences noted earlier in these Reasons. Clearly, the Chambers judge considered this document, since she referred at several places in her Reasons to Port's objection to the assessment. In any event, the Notice of Objection and the Statement of Facts and Reasons serve to cast doubt on CCRA's assessment — they do not support it.

[30] The Statement of Audit Adjustments referred to in CCRA's factum was filed as an exhibit to the affidavit of Mr. Peerson, a member of the law firm acting for Port. This

document, prepared by CCRA, is a list of "tax changes" for each month covered by the assessment, stating in each case an amount and that "ITCs on export vehicles disallowed as they pertained to the purchases of non-existent vehicles or vehicles that were not owned by the alleged vendors. Bills of lading (all fraudulent) were used to substantiate about 50% of these alleged exports." Again, CCRA did not provide copies of the bills of lading "or other evidence, if any" by which the claim could be substantiated. The Statement of Audit Adjustments is a series of conclusory accounts which could provide the Trustee with no assistance in carrying out his duty of determining the validity of the claim.

[31] In these circumstances, I see no error in the Chambers judge's conclusions that the documents filed by CCRA in proof of its claim, as augmented by the documents described above, did not comply with s. 124(4) of the ***BIA***. I would therefore dismiss the appeal from Neilson J.'s order on that basis. I would also dismiss the appeal from the order of Groberman J., which essentially followed upon Neilson J.'s order.

[32] In view of my conclusion, it is unnecessary for me to deal with a fourth issue raised by the Trustee in its factum, namely whether, if CCRA had been successful on this appeal, the creditors' vote would be vacated or whether CCRA would

simply have become entitled to share in any distribution under the existing proposal. I leave that interesting question, as well as that raised on the second branch of Neilson J.'s Reasons, for another day.

"The Honourable Madam Justice Newbury"

Reasons for Judgment of the Honourable Madam Justice Levine:

[33] I have had the privilege of reading in draft form the reasons for judgment of my colleague, Madam Justice Newbury. I agree that the appeals should be dismissed on the ground that CCRA's proof of claim failed to comply with the requirements of s. 124 of the ***BIA***. I also agree that the questions of whether a Trustee in Bankruptcy may determine that an assessment under the ***Excise Tax Act*** is "contingent" and how a successful appeal by CCRA would impact on the voting process for the proposal should be left for another day.

[34] In my opinion, CCRA's failures to reconcile the amount claimed in its proof of claim with the amount claimed in its Notice of Assessment and to accurately record payments made by Port in the three months before the proposal were fatal to its claim. The additional evidence provided to Neilson J. did not remedy these defaults. For this reason, the Trustee was justified in rejecting CCRA's proof of claim.

[35] While the factual circumstances in ***Re Norris*** differed in that the Trustee there was administering a bankrupt estate and no notice of objection had been filed, I agree with the decision of the Ontario Court of Appeal insofar as it determined that Revenue Canada was not required to produce its working papers to the Trustee to substantiate its proof of

claim. In this case, in my view, CCRA was not required to refer in its proof of claim to the allegations of fraud that formed the basis for the Assessment or to provide copies of the bills of lading referred to in the Assessment. Nor, in my opinion, was CCRA required to refer or append to its proof of claim the Notice of Objection that had been filed by Port.

[36] The question of whether the Trustee may determine, as a factual matter, that a claim by CCRA that complies in form with s. 124 of the ***BIA*** is of doubtful validity or value, remains open.

[37] I would dismiss the appeals.

"The Honourable Madam Justice Levine"

I Agree:

"The Honourable Madam Justice Ryan"

Tab 9

CITATION: U.S. Steel Canada Inc. (Re), 2016 ONSC 7899
COURT FILE NO.: CV-14-10695-00CL
DATE: 20161222

SUPERIOR COURT OF JUSTICE - ONTARIO

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

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO U.S. STEEL CANADA INC.

BEFORE: Mr. Justice H. Wilton-Siegel

COUNSEL: *Paul Steep, Steve Fulton* and *Jamey Gage,* for the Applicant, U.S. Steel Canada Inc.

Robert Staley and *Kevin J. Zych*, for the Monitor, Ernst & Young Inc.

Alan Mark, Gale Rubenstein and *Logan Willis* for the Province of Ontario

Ken Rosenberg, for the United Steelworkers International Union and the United Steelworkers International Union, Local 8782

Andrew Hatnay, Representative Counsel for the non-unionized active employees and retirees

Robert Thornton, Michael Barrack and *Mitch Grossell,* for United States Steel Corporation

Sharon White, for the United Steelworkers International Union, Local 1005

Michael Kovacevic and *Justyna Hidalgo,* for the City of Hamilton

Lou Brzezinski, for Robert and Sharon Milbourne

Waleed Malik, for Brookfield Capital Partners Ltd.

Mario Forte, for Bedrock Industries Canada LLC and Bedrock Industries L.P.

Bryan Finlay and *Marie-Andrée Vermette,* for the Board of Directors of U.S. Steel Canada Inc.

HEARD: December 15, 2016

ENDORSEMENT

[1] The applicant, U.S. Steel Canada Inc. (the "applicant" or "USSC"), seeks an order declaring that Bedrock Industries Canada LLC (the "Purchaser" or "Bedrock") is the Successful Bidder as that term is defined in paragraph 27 of the sales and investment solicitation process order of the Court dated January 21, 2016 (the "SISP Order"). In addition, it seeks authorization to enter into an agreement with Bedrock and Bedrock Industries L.P. dated as of December 9, 2016 referred to as the "CCAA Acquisition and Plan Sponsor Agreement" (the "PSA"). The applicant also seeks related ancillary relief as described below. At the conclusion of the hearing, the Court advised the parties that it was prepared to grant the requested relief for written reasons to follow. This Endorsement sets out the written reasons of the Court for its determination.

Background

[2] On September 16, 2014, the applicant obtained an initial order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA") (as amended and restated from time to time, the "Initial Order").

[3] Over the course of more than 18 months, the applicant conducted extensive sales and marketing efforts within these CCAA proceedings. The initial marketing exercise was conducted pursuant to an order of the Court dated April 2, 2015, which authorized the applicant to commence a sale and restructuring/recapitalizing process (the "SARP"). The applicant did not receive any viable offers for a transaction or series of transactions under the SARP. By order of the Court dated October 9, 2015, the applicant was authorized to discontinue the SARP.

[4] Pursuant to the SISP Order, the applicant was authorized to commence a new sales and investment solicitation process (the "SISP"). The course of the SISP is set out in the various reports of the Monitor, Ernst & Young Inc. (the "Monitor"), including its most recent report, the thirty-third report dated December 13, 2016 (the "Monitor's Report"), and the affidavit sworn by the chief restructuring officer of the applicant, William Aziz (the "CRO") on December 13, 2016.

[5] In summary, as with the SARP, more than 100 strategic and financial parties were contacted to solicit potential interest. The first phase of the SISP ended on February 29, 2016. After that date, the applicant, the financial advisor to the applicant, and the CRO assessed the bids received and selected a number of bidders as "Phase 2 Qualified Bidders" after obtaining input from key stakeholders and with the concurrence of the Monitor. The deadline for Phase 2 Qualified Bidders to submit a binding offer was May 13, 2016. After that date, the applicant, together with its financial advisor, the CRO and the Monitor, evaluated the offers received, discussed the offers with the key stakeholders, and facilitated numerous meetings and negotiations between the bidders and various key stakeholders.

[6] At the end of July 2016, as a result of this review and the various meetings and negotiations, the applicant, with the assistance of the financial advisor and the support of the Monitor, concluded that the proposal of Bedrock was the most promising bid and designated the proposal as a "Qualified Bid" for the purposes of the SISP Order.

[7] Since that time, Bedrock has held discussions and negotiations with the principal stakeholders of the applicant, being the United Steelworkers International Union ("USW"), the USW Locals 8782 and 1005, the Province of Ontario (the "Province"), United States Steel Corporation ("USS") and Representative Counsel on behalf of the non-unionized salaried employees and retirees ("Representative Counsel").

[8] On September 21, 2016, the Province announced that it had entered into a memorandum of understanding with Bedrock (the "Province/Bedrock MOU"). On November 1, 2016, USS announced that it had agreed to proposed terms regarding the sale and transition of ownership of USSC to Bedrock, which are reflected in a term sheet (the "USS/Bedrock Term Sheet"). On November 22, 2016, USW Locals 8782 and 8782(b) (collectively, "Local 8782") delivered a letter to Bedrock confirming that the executive of these locals had approved a form of collective bargaining agreement to be entered into upon completion of Bedrock's purchase of USSC (the "Local 8782 Letter of Support"). The letter indicated that the executive was prepared to recommend the agreement to their respective memberships, conditional on satisfaction of certain arrangements relating to the funding of other post-employment benefits ("OPEBs") and the legacy and future pension plans of USSC.

[9] In addition, as a result of direct discussions between Bedrock and USSC during this period, the parties reached agreement on the principal terms of a proposed transaction by which Bedrock would acquire the business and operations of USSC (the "Proposed Transaction"). These terms of the Proposed Transaction are set out in the PSA. The PSA is largely consistent with the terms of the Province/Bedrock MOU, the USS/Bedrock Term Sheet and the understanding between Bedrock and USW Local 8782. The PSA provides that it is not binding on USSC until USSC obtains an order of this Court authorizing it to enter into the PSA and to pursue the Proposed Transaction in accordance with the PSA (the "Authorization Order").

[10] In connection with the PSA, USSC and Bedrock also requested the Province to enter into an agreement with USSC in respect of the Proposed Transaction. To this end, the Province and USSC have entered into an agreement dated December 9, 2016 (the "Province Support Agreement"). The Province Support Agreement also provides that it does not become effective unless and until the Authorization Order is granted.

The Proposed Transaction

[11] The basic structure of the Proposed Transaction is summarized in the Monitor's Report as follows:

> (a) the Purchaser will acquire substantially all of USSC's operating assets and business on a going concern basis and the outstanding shares of USSC through a CCAA plan of arrangement. Substantially all of the existing operations at both the Hamilton Works and the Lake Erie Works will continue;

(b) the Purchaser will not acquire USSC's real property in Hamilton (the "HW Lands") and at Lake Erie (the "Lake Erie Lands") but will cause USSC to lease the part of the real property needed to continue steel operations. USSC's real property will be contributed to a Land Vehicle (as defined below) to be sold, leased or developed for the benefit of USSC's five main registered pension plans (the "Stelco Plans") and OPEBs. There is an expectation that these lands will have value when redeveloped. The Land Vehicle will initially be funded by a $10 million secured revolving loan from the Province, and an amount to be agreed upon from USSC. Any proceeds generated from these lands would be available to:

(i) fund the operations of the Land Vehicle in an agreed amount;

(ii) provide reimbursement to the Ontario Ministry of the Environment and Climate Change ("MOECC") for costs, if actually incurred, to test, monitor and investigate environmental conditions on the land; and

(iii) provide additional funding to be distributed equally towards the benefit of the Stelco Plans and OPEBs;

(c) the Purchaser will provide an equity contribution to implement the Transaction and will arrange new debt financing in an amount with borrowing availability not less than $125,000,000 after satisfying all exit costs and the payment of other amounts associated with USSC's emergence from protection under the CCAA;

(d) a new administrator will be appointed for the Stelco Plans and USSC's ongoing obligations with respect to the legacy liabilities under the Stelco Plans will be fixed as described below. The Stelco Plans will continue to be covered by the Pension Benefits Guarantee Fund. In addition to any funding received by the Stelco Plans from the Land Vehicle, USSC will make various lump sum and ongoing contributions into these pension plans including:

(i) a $30 million upfront payment upon the closing of the Proposed Transaction;

(ii) a $20 million payment prior to any dividend distribution by USSC to Bedrock; and

(iii) 10% of USSC's Free Cash Flow (as defined in the PSA), subject to a minimum of $10 million per year for the first five years, and a minimum of $15 million for the next 15 years. Bedrock will guarantee $160 million of these total annual contributions required from USSC;

(e) one or more entities (the "OPEB Entity") satisfactory to USSC, the USW and the Province will be established for the purpose of receiving, holding and distributing funds on account of OPEBs. In addition to any funding received by the OPEB Entity from the Land Vehicle as referred to above, USSC will make various lump sum and ongoing contributions to the OPEB Entity, including:

(i) $15 million annual fixed payments (the "OPEB Fixed Contribution");

(ii) 6.5% of USSC's Free Cash Flow, subject to a maximum of $11 million per year; and

(iii) $30 million (the "Advance OPEB Payment") on the earlier of the date on which USSC first pays a dividend, redeems any capital stock, or makes any distribution to Bedrock or its affiliates, investors or funds, or the date that is three years after the closing of the Proposed Transaction. The Advance OPEB Payment is to be amortized in the fourth through ninth years following the closing date and applied against the OPEB Fixed Contribution described above for those years in accordance with a formula as set out in the OPEB Term Sheet (as defined below);

(f) USS will receive full payment for its secured claims and will assign its unsecured claims to the Purchaser;

(g) the Province will receive US$61 million and the MOECC will provide releases of certain legacy environmental liabilities associated with USSC's real property. The US$61 million would be used:

(i) to reimburse the professional fees of the Province related to USSC's restructuring;

(ii) as financial assurance, held by the MOECC, to cover any costs that may be incurred by the MOECC in connection with environmental conditions on USSC's real property; and

(iii) for any portion of the amount held as financial assurance that is not required by the MOECC, to be equally distributed towards the benefit of USSC's OPEBs and the Stelco Plans;

(h) USSC will be required to continue to comply with all environmental laws and regulations going forward and to enter into an environmental management plan with the MOECC going forward. USSC will fund the costs of any environmental baseline testing and monitoring;

(i) all other secured claims, as determined in accordance with the claims process order of the Court made November 13, 2014 (the "Claims Process Order"), will be paid in full or as otherwise agreed by the Purchaser and USSC; and

(j) the remaining unsecured claims will receive a distribution pursuant to the CCAA plan from a distribution pool in an amount to be determined.

[12] The Monitor believes that, if the Proposed Transaction is completed, USSC will emerge as a stand-alone steel manufacturer with a restructured balance sheet and sufficient liquidity such that it will have stability and be able to compete in challenging steel market conditions. A successful completion of the Proposed Transaction is expected to result in the preservation of jobs, ongoing business for suppliers, and ancillary economic benefits for the communities in which USSC operates its business.

The Plan Sponsor Agreement

[13] The following summarizes the significant terms of the PSA and is based on the description thereof in the Monitor's Report.

[14] The principal commitments of USSC and Bedrock are set out in sections 2.01(1) and (2) of the PSA which read as follows:

2.01 Transaction

(1) The Corporation and the Purchaser will each use commercially reasonable efforts to give effect to a restructuring of the Corporation by way of a plan of arrangement under the CCAA (the "CCAA Plan") and the Stakeholder Agreements prior to the Outside Date, on the terms set out in and consistent in all material respects with the Term Sheets and this Agreement (the "Transaction").

(2) The Corporation and the Purchaser agree to cooperate with each other in good faith and use commercially reasonable efforts to complete the following steps in accordance with the following timeline in support of the Transaction:

(a) obtain the Authorization Order by December 31, 2016;

(b) obtain the Meeting Order [being an order of the court for the convening of a meeting or meetings of the creditors to consider and vote on the CCAA Plan] by January 31, 2017 ;

(c) obtain the Sanction Order [being an order of the court for the approval of the CCAA Plan] by March 10, 2017; and

(d) implement the CCAA Plan and close the Proposed Transaction by the Outside Date [being March 31, 2017 or such later date as USSC and the Purchaser may designate by mutual agreement].

[15] The PSA attaches term sheets setting out the principal terms of the Proposed Transaction agreed to between USSC and Bedrock regarding the following matters (collectively, the "Term Sheets"):

1. the CCAA Plan contemplated to implement the Proposed Transaction;

2. the arrangements pertaining to the environmental conditions at the Hamilton Works and the Lake Erie Works;

3. the arrangements pertaining to the ownership of the HW Lands and the Lake Erie Lands after completion of the Proposed Transaction by a newly established entity (the "Land Vehicle");

4. the lease arrangements pertaining to the lands to be owned by the Land Vehicle that USSC will require for its operations at the Hamilton Works and the Lake Erie Works;

5. proposed terms for OPEBs, including the funding thereof (the "OPEB Term Sheet");

6. proposed terms regarding the Stelco Plans including the funding thereof (the "Pension Term Sheet"); and

7. arrangements concerning the tax aspects of the Proposed Transaction.

[16] The Proposed Transaction is subject to a number of important conditions, which are for the benefit of the Purchaser and USSC and must be complied with at or prior to the closing of the Proposed Transaction. Such conditions include, among others:

(a) *Competition Act* compliance and *Investment Canada Act* approval will have been obtained;

(b) the Sanction Order of the court will have been obtained;

(c) amendments to the collective agreements with USW Local 1005, USW Local 8782 and USW Local 8782(b) shall have been executed and ratified;

(d) the closing conditions to implement the arrangements described in the Term Sheets will have been satisfied on terms and conditions acceptable to the Purchaser and USSC;

(e) implementation of arrangements satisfactory to the Purchaser and USSC regarding the following:

(i) the payment in full to USS of its secured claim;

(ii) the assignment to the Purchaser of the USS unsecured claims and the issued and outstanding shares in the capital of USSC;

(iii) the execution of a transitional services agreement between USS and USSC;

(iv) the execution of an agreement with respect to intellectual property and trade secrets between USS and USSC; and

(v) the execution of an ore supply agreement between USS and USSC;

(f) the execution and delivery of a new loan agreement, security and related documentation with not less than $125,000,000 of credit available, after satisfying all exit costs and other amounts associated with USSC's emergence from protection under the CCAA, to the Purchaser and USSC by the lenders and to be available at or prior to closing of the Proposed Transaction;

(g) the execution and delivery of all other agreements contemplated by the Term Sheets, or required to satisfy the closing conditions described above, that are required to be executed prior to the time of closing between Bedrock or USSC or both, as applicable, with one or more stakeholders as applicable;

(h) the execution and delivery of all releases among each of the key stakeholders and USSC; and

(i) the satisfaction or waiver of the conditions to the implementation of the CCAA Plan giving effect to the Proposed Transaction as described in the PSA.

Preliminary Matter

[17] The relief sought in this proceeding is opposed by three parties: USW Local 1005 ("Local 1005"), the City of Hamilton ("Hamilton"), and Robert J. Milbourne and Sharon P. Milbourne (collectively, the "Milbournes"). These parties (collectively, the "Objecting Parties") each raise a common issue, the short service of the motion materials, which I will address first.

[18] The notice of motion and motion record in this matter were served on the service list on Friday, December 9, 2010 after the close of business. The Objecting Parties say that this effectively gave them three business days' notice of the motion. In paragraph 55, the Initial Order contemplates eight business days' notice of a motion, subject to further order of the Court in respect of urgent motions. To the extent necessary, the applicant seeks leave of the Court to bring this motion on short service on the grounds that it is an urgent motion.

[19] The Objecting Parties seek dismissal of the motion or, in the alternative, an adjournment of this motion for five business days. Counsel for Local 1005 and for Hamilton say that a delay would permit their clients to better understand the terms of the Proposed Transaction. In

addition, Hamilton and the Milbournes suggest that such an adjournment might permit resolution of their respective issues.

[20] It would have been preferable for the applicant to have provided the full notice contemplated by the Initial Order for motions in the ordinary course. However, I am prepared to grant leave to shorten the service to that actually provided in this case for the following reasons.

[21] First, there is real urgency to this motion in several respects. After almost two years of marketing USSC, the Proposed Transaction is not only the only viable proposal but also the best offer for USSC's stakeholders generally. However, Bedrock is not currently legally obligated to proceed with any transaction. Moreover, the economic circumstances generally, and the economics of the steel industry in particular, are subject to great uncertainty. In addition, there are no currently operating timelines for the resolution of the outstanding issues necessary to finalize the Proposed Transaction. Time does not normally improve the prospects for a successful restructuring. It is therefore imperative that Bedrock be committed to using commercially reasonable efforts to complete the Proposed Transaction at the present time.

[22] Second, there is no evidence whatsoever of any prejudice to the Objecting Parties that would result from granting the requested relief. As discussed below, none of their rights are affected by the Authorization Order. Further, there is no indication that any of them has been unable to understand the PSA in the time available or to represent their clients properly in this hearing. Indeed, they have very ably presented the principal issues of their clients. I would observe as well that Local 1005 has had knowledge of the principal terms of the Proposed Transaction in respect of pensions and OPEBs since early September through its participation in discussions regarding the Proposed Transaction.

[23] Lastly, there is no reasonable likelihood that a delay of five business days will result in the resolution of any of the claims of the Objecting Parties that require negotiation. As all of the parties acknowledge, this is a highly complex restructuring with a number of inter-related issues. I would also note that, to the extent that the position of the Milbournes under the Proposed Transaction is a matter of clarification rather than negotiation, there is no need for any delay in hearing this motion.

Declaration of Bedrock as the Successful Bidder

[24] As mentioned, the applicant seeks a declaration that Bedrock is the Successful Bidder as defined in paragraph 27 of the SISP Order with the result, among other things, that all other bids and proposals made by any other person are deemed to be rejected.

[25] Paragraph 27 of the SISP Order reads as follows:

> USSC and the Financial Advisor, in consultation with and with the approval of the Monitor, (a) will review and evaluate each Qualified Bid, provided that each Qualified Bid may be negotiated among USSC, in consultation with the Financial Advisor and the Monitor, and the applicable Phase 2 Qualified Bidder, and may be amended, modified or varied to improve such Phase 2 Qualified Bid as a result of such negotiations, and (b) identify the highest or otherwise best bid (the

> "Successful Bid", and the Phase 2 Qualified Bidder making such Successful Bid, the "Successful Bidder") for any particular Property or the Business in whole or part. The determination of any Successful Bid by USSC, with the assistance of the Financial Advisor, and the Monitor shall be subject to approval by the Court.

[26] The applicant, with the assistance of its financial advisor and the Monitor, has determined that Bedrock is the Successful Bidder and that the Proposed Transaction is the Successful Bid. Such determination is therefore now subject to the approval of the Court.

[27] The applicant says that such determination is, in effect, governed by the business judgment rule. On this basis, the determination of the applicant's board of directors should be respected absent evidence of negligence, fraud or patent unreasonableness. There is no such evidence filed in opposition to the motion, notwithstanding the objections discussed below.

[28] I am inclined to agree with the standard proposed by the applicant. In any event, however, there are the following additional considerations which weigh in favour of the granting of the Court's approval if, instead, the Court is required to address the reasonableness of the applicant's determination.

[29] First, the Proposed Transaction is the outcome of an extended search for a buyer or investor pursuant to which USSC has been very extensively marketed. There is no other viable bid or proposal before the Court which would provide as much value to the stakeholders generally. The Monitor is of the view that the Proposed Transaction is the best option for USSC and its stakeholders in the present circumstances.

[30] Second, on the evidence before the Court in the earlier reports of the Monitor, and in the opinion of the Monitor as expressed in the Monitor's Report, the SISP process which resulted in the Proposed Transaction was transparent, robust, fair and reasonable and considered all available alternatives.

[31] Third, despite the fact that the Proposed Transaction does not meet the objectives of all parties, it creates a number of benefits for stakeholders. These include the maintenance of USSC as a going concern with the attendant preservation of employment and related social benefits. In addition, the Proposed Transaction would provide significant funding for USSC's pensions and OPEBs, including through the Land Vehicle created to hold the lands not required for the operations of the Hamilton Works. It also provides for a distribution to the applicant's unsecured creditors as well as repayment of its secured creditors.

[32] Fourth, as a related matter, there is considerable support for the PSA from principal stakeholders of USSC. While Local 1005 argues that support for the Proposed Transaction has not reached "the tipping point", because of the opposition to the PSA of the Objecting Parties addressed below, the reality is the opposite. The Authorization Order is supported by the applicant's board of directors, the Province and USW Local 8782. While USS, the USW and Representative Counsel take no position on the motion, they are not raising any objections. In particular, USS is not opposed to the terms of the Proposed Transaction as set out in the PSA but is withholding its consent until the remaining issues are resolved to its satisfaction. In addition, Representative Counsel stated on behalf of his clients that his clients take reassurance from the

fact that the Authorization Order does not purport to affect the legal rights of the parties and that negotiations will continue regarding the matters of significance to his clients. Further, the board of directors of USSC is supportive of the PSA, notwithstanding the fact that an important issue to them personally remains an unresolved issue, being the operation of existing indemnities in their favour from USS. Lastly, the CRO of the applicant also recommends that Bedrock be approved as the Successful Bidder.

[33] Fifth, the Objecting Parties submit that particular provisions are intrinsically unfair and, on this basis, urge the Court to reject the Proposed Transaction, or to withhold its approval of Bedrock as the Successful Bidder. In so doing, they are implicitly urging the Court to apply its own view of fairness. I do not think that the Court's view of the fairness of the Proposed Transaction is the appropriate standard at this stage of the proceedings for the following reasons.

[34] First, the Proposed Transaction is not yet finalized. It would therefore be premature to reach any conclusion regarding the terms of the Proposed Transaction. In addition, while the Objecting Parties raise legitimate concerns regarding particular issues of importance to them or their members and retirees, such issues cannot be examined in a vacuum. They must be measured for present purposes against the alternative. In this case, as mentioned, there is no alternative transaction against which to assess these provisions of the Proposed Transaction. The only alternative would appear to be a liquidation scenario.

[35] Further, to the extent that the Court must address the fairness of a transaction, it must do so having regard to the entirety of the transaction, including the pre-existing rights of the stakeholders and the manner in which the interests of the parties are resolved given the need for concessions on the part of the stakeholders to achieve a successful restructuring. In this context, a significant consideration in assessing the fairness of any transaction is whether or not it has received the approval of the affected stakeholders. In other words, the fairness of the issues raised by Local 1005, which are important issues, are more properly addressed by the members and retirees of Local 1005 themselves in the creditors' meeting or otherwise after the Proposed Transaction and CCAA Plan are finalized.

[36] Sixth, as discussed below, the Monitor has provided a strong recommendation in favour of the Court granting approval of the Authorization Order. The Monitor is of the view that the Proposed Transaction represents the best available option for USSC and its stakeholders in the present circumstances.

[37] Accordingly, I am satisfied that the Court should approve the Proposed Transaction as the Successful Bid for the purposes of the SISP Order.

Authorization to Enter into the PSA and the Province Support Agreement

[38] The applicant also seeks the authorization of the Court to enter into the PSA and the Province Support Agreement. I will address this matter by dealing first with the authority of the Court to grant such authorization, then with the reasons for the Court's determination to authorize the applicant to sign these agreements, next with two particular terms of the PSA for which the applicant has sought specific authorization, and finally with the objections of the Objecting Parties.

Authority of the Court to Authorize the Execution of the PSA and the Province Support Agreement by the Applicant

[39] Section 11 of the CCAA provides the Court with broad powers to "make any order that it considers appropriate in the circumstances" and section 11.02(2) provides specific authority to vary a stay of proceedings. The Court therefore has the authority to authorize a debtor company in CCAA proceedings to enter into an agreement to facilitate a prospective restructuring.

[40] The issue of the authority of a court was addressed in *Re Stelco* (2005), 78 O.R. (3d) 254 (C.A.). In that case, the Court of Appeal upheld an order of the motion judge authorizing the debtor company to enter into three agreements with the provincial government, the USW and a proposed financing party. The three agreements were said to be "intrinsic to the success" of the proposed plan of arrangement. The debtor company had negotiated those agreements "in an attempt to successfully emerge from CCAA protection." They established the framework for the proposed transaction which would in turn form the basis of the proposed plan of arrangement. It appears that these agreements served a similar purpose in that case as the Province/Bedrock MOU, the USS/Bedrock Term Sheet and the Local 8782 Letter of Support in the present proceeding.

[41] In reaching its decision, the Court of Appeal expressed the following test at paras. 18 and 19, which I think is equally applicable in the present context:

> In my view, the motions judge had jurisdiction to make the orders he did authorizing Stelco to enter into the agreements. Section 11 of the CCAA provides a broad jurisdiction to impose terms and conditions on the granting of the stay. In my view, s.11(4) [the predecessor of section 11.02] includes the power to vary the stay and allow the company to enter into agreements to facilitate the restructuring, provided that the creditors have the final decision under s. 6 whether or not to approve the Plan. The court's jurisdiction is not limited to preserving the status quo. The point of the CCAA process is not simply to preserve the status quo but to facilitate restructuring so that the company can successfully emerge from the process. This point was made by Gibbs J.A. in *Chef Ready Foods Ltd. v. Hongkong Bank of Canada*, [1990] B.C.J. No. 2384, 4 C.B.R. (3d) 311 (C.A.), at para. 10:
>
> [Excerpt omitted.]
>
> In my view, provided the orders do not usurp the right of the creditors to decide whether to approve the Plan the motions judge had the necessary jurisdiction to make them. The orders made in this case do not usurp the s. 6 rights of the creditors and do not unduly interfere with the business judgment of the creditors. The orders move the process along to the point where the creditors are free to exercise their rights at the creditors' meeting.

Authorization of the PSA and the Province Support Agreement

[42] I will address the authorization of the applicant's execution of the PSA first and will then briefly address authorization of the Province Support Agreement.

Authorization of the Plan Sponsor Agreement

[43] The following sets out the four principal reasons of the Court for its determination to authorize the applicant to enter into the PSA.

[44] First, the Authorization Order does not alter or otherwise affect any legal rights of any of the creditors. As it is not a plan sanction order, it does not alter the right of creditors to approve or reject a plan of arrangement, based on a finalized Proposed Transaction, when it is presented to the creditors. Nor does it constitute approval of a plan of arrangement. For that, the applicant requires a finalized Proposed Transaction upon which to base such a plan. It does not even constitute approval of a final Proposed Transaction. It constitutes no more than authorization to USSC to enter into the PSA and thereby commit to use commercially reasonable efforts to pursue finalization of a transaction based on the framework of the Proposed Transaction described therein, as well as an authorization to enter into the Province Support Agreement.

[45] In order to finalize a binding agreement for the Proposed Transaction that is capable of being completed, the applicant will have to negotiate the final terms of the agreement and take the necessary actions to be in a position to satisfy the conditions of closing contemplated in the PSA. The former requires resolution of a number of outstanding issues among the stakeholders who have already been involved as well as consultation and negotiation with other stakeholders who have not been involved to date, including Hamilton and the Milbournes, among others, regarding the treatment of their claims and interests. The latter requires negotiation of a number of agreements giving effect to the arrangements contemplated by the Term Sheets as well as new collective agreements with each of Local 1005 and Local 8782. There is nothing in the Authorization Order that prohibits USSC from continuing negotiations with its creditors on these matters. Rather, the PSA expressly contemplates that such discussions and negotiations are necessary to finalize all of the terms of the Proposed Transaction and of the proposed plan of arrangement.

[46] Second, while the Objecting Parties' concern that granting the Authorization Order will limit or constrain their bargaining power in such negotiations is understandable, the fact is that the Order itself does not affect the bargaining power or "leverage" of any of the creditors. Nor is it correct to say that future negotiations will take place in a "take it or leave it" atmosphere.

[47] On the one hand, there is scope for negotiations between the stakeholders and USSC and Bedrock. As mentioned, the PSA itself expressly contemplates serious negotiations on a large number of issues that are important to various stakeholders and that ultimately require their approval or consent. It does not predetermine or foreclose the outcome of these negotiations, which are integral to the proposed restructuring of USSC. Further, as mentioned above, the extent to which particular creditors are able to achieve their priorities or objectives in such negotiations will continue to depend, among other factors, on the overall economics of the

Proposed Transaction and the willingness of other parties to make concessions or tradeoffs to complete a transaction, rather than on the existence of the Authorization Order.

[48] On the other hand, and more significantly, while the terms of the Authorization Order grant exclusivity to Bedrock while the necessary consultations and negotiations are proceeding, this merely reflects the reality of the current situation even without the Order. To the extent that any of the creditors believe themselves to be constrained in some manner in future negotiations, that is a reflection of the circumstances in which the parties find themselves quite apart from the Order. The Court's authorization of the applicant's request to enter into the PSA does not alter the environment in which future negotiations will take place if there is to be a successful restructuring of USSC. While that could be the case if the effect of the Authorization Order were to prevent stakeholders from negotiating simultaneously with two or more potential purchasers, this is no longer a realistic possibility. The SISP has run its course and the stakeholders must now address its outcome. The Proposed Transaction is not only the option that provides the most value to the stakeholders of USSC, it is the only viable option. There is no competing offer for the business and operations of USSC on a going concern basis. The only alternative to proceeding to finalize the Proposed Transaction is a liquidation of USSC on a controlled or an uncontrolled basis.

[49] Third, there are real benefits that will flow from execution of the PSA. In general terms, the commitments of the applicant and Bedrock in the PSA will increase the likelihood of a successful restructuring to the benefit of all of the stakeholders. In this regard, the present circumstances are very similar to those in *Re Stelco*. The PSA is a necessary step in the progression toward finalization of a plan of arrangement for submission to the creditors. The PSA establishes the framework for the Proposed Transaction which would, in turn, form the basis of a proposed plan of arrangement. As in *Re Stelco*, the PSA is therefore intrinsic to the success of the prospective plan of arrangement and it is doubtful that the proposed plan could proceed if the Authorization Order were not granted.

[50] More particularly, the execution of the PSA provides a binding commitment of Bedrock to use commercially reasonable efforts to finalize a restructuring of USSC based on the terms of the Proposed Transaction. As Bedrock is not otherwise obligated in respect of the Proposed Transaction, this commitment, even with the qualifications in the PSA, is important to maintain the confidence of the applicant's employees, suppliers and customers in the continued progress of the restructuring. As mentioned, it provides a framework for future negotiations among stakeholders as well as transparency regarding the interests of the other stakeholders, which will facilitate such negotiations. In addition, it provides some momentum to the process of finalizing the Proposed Transaction by bringing the creditors who have not been involved to date into the consultations and negotiations on an informed basis. Lastly, the PSA sets timelines for completion of a finalized Proposed Transaction and a plan of arrangement based on such Proposed Transaction, which are critical if there is to be successful restructuring.

[51] Fourth, an important consideration for the Court is the strong recommendation of the Monitor that the Court grant the Authorization Order. The Monitor's recommendation is based on the following:

- the integrity of the SISP process used to arrive at the Proposed Transaction;
- the Monitor's judgment that the Proposed Transaction set out in the PSA is the best available option for USSC and its stakeholders in the circumstances and has only been possible to achieve after two marketing processes that took more than 18 months;
- the Monitor's view that the Proposed Transaction provides a foundation upon which a successful restructuring of USSC can be built; and
- the Monitor's belief that approval of the PSA should assist in focusing the efforts of the key stakeholders towards completing the negotiations of the definitive agreements and arrangements contemplated by the PSA.

Authorization of the Province Support Agreement

[52] At the hearing of this motion, the focus of the arguments of all parties was on approval of the PSA, with little attention paid to the related issue of the request for the Court's authorization for the applicant to enter into the Province Support Agreement. I have proceeded on the basis that the opposition of the Objecting Parties also extended to opposition to authorization of the Province Support Agreement, given that it was also necessary in order to progress the Proposed Transaction.

[53] In any event, to the extent that there is any opposition to this relief, the Court is satisfied that the applicant should be authorized to enter into the Province Support Agreement for the same reasons as it authorized the applicant to enter into the PSA.

Non-Solicitation and Expense Reimbursement Provisions of the PSA

[54] The applicant also seeks approval of the Court of the non-solicitation provision in section 5.06 of the PSA and the expense reimbursement provision in section 7.02(2) of the PSA.

[55] The non-solicitation provision runs in favour of Bedrock until such time as the PSA is terminated. Given the Court's approval of the applicant's determination of Bedrock as the Successful Bidder and the Court's authorization of the PSA, this is a commercially reasonable provision. It would be unreasonable to expect that Bedrock would commit the time and resources necessary to finalize and implement the Proposed Transaction, and a plan of arrangement giving effect to the Proposed Transaction, without the assurance that it could not be displaced by a subsequent offer. In addition, the significant level of stakeholder support in favour of the Authorization Order described above also weighs in favour of authorization of this covenant.

[56] The expense reimbursement provision contemplates reimbursement of Bedrock's transaction-related expenses up to a maximum of $4 million in the event Bedrock terminates the PSA under section 7.01(a) thereof. However, this provision relates only to termination in the event of a material breach of any representation, warranty, covenant, obligation or other provisions of the PSA by the other party — i.e. by the applicant. Accordingly, Bedrock is only entitled to reimbursement of its expenses in the event of a material breach of the PSA by the applicant.

[57] In my view, given the complexity and attendant cost of the Proposed Transaction, including the remaining actions required to complete a successful transaction, this is an eminently reasonable provision from a commercial perspective.

[58] Based on the foregoing, the Court is satisfied that both provisions should be approved as commercially reasonable, given the context in which the PSA has been negotiated and executed. In addition, each of these provisions enhances the prospects for a successful restructuring of USSC and, as such, are consistent with the purposes of the CCAA.

The Objections

[59] In reaching the Court's determination to authorize the applicant to enter into the PSA, the Court considered the following substantive objections to the Authorization Order and rejected them for the reasons expressed below.

The City of Hamilton

[60] Hamilton objects to the declaration of Bedrock as the Successful Bidder and to the authorization of USSC to enter into the PSA. Hamilton says it has been excluded from meaningful consultation and negotiation regarding the Proposed Transaction. It says such consultation was due given its status as a creditor of the applicant and its role as the approval authority for land use and development on the HW Lands.

[61] In its Notice of Objection dated December 13, 2016, Hamilton says it has three main areas of concern: (1) pension and benefits for retirees of USSC; (2) payment of past (accrued and unpaid) and future property taxes; and (3) the future of the HW Lands.

[62] Of these matters, its principal objection pertains to the uncertainty regarding the treatment of the accrued and unpaid past property taxes on the HW Lands as well as the payment of future property taxes. It asks the Court to order, as a condition of the authorization of the PSA, that the PSA confirm that USSC will pay its accrued past taxes and all future property taxes on the HW Lands.

[63] It is not entirely clear that the City has been excluded from negotiations with Bedrock, as counsel for the City suggests. However, the more important point is that on each of the two issues that are of direct concern to the City — payment of its accrued and future taxes and the regime pertaining to the HW Lands — the effect of the relief granted is to permit consultations and negotiations to take place among Bedrock, Hamilton and the other parties involved in these issues. It is inappropriate for the Court to order that Hamilton's rights be enshrined in the

provisions of the PSA pending the outcome of such discussions and negotiations. Moreover, the Authorization Order does not impair or otherwise affect its rights in any manner whatsoever. Among other things, Hamilton retains the right to oppose the prospective CCAA Plan, both at the creditors' meeting and in the sanction hearing, if it believes that the Proposed Transaction is not fair to it given its legal rights.

The Milbournes

[64] The Milbournes have filed an objection dated December 14, 2016. The Milbournes say that they object to the Authorization Order because the PSA "fails to provide for treatment of the pension benefits and OPEBs for individuals in uniquely situated positions", including, in particular, themselves. They say the resulting uncertainty is prejudicial to their interests, given that these benefits stand to be compromised under the proposed plan of arrangement.

[65] In addition to registered pension benefits, the Milbournes receive non-registered pension benefits under a retirement compensation agreement. They submit that, if the Authorization Order is granted, the Court should require that the PSA confirm their continued entitlement to these benefits.

[66] The circumstances of the Milbournes, and any other parties who currently receive similar benefits, are not before the Court, although the Court understands that there may be a trust established to fund some or all of these benefits. In any event, it would be premature to address the treatment of these benefits at the present time.

[67] As with the issues raised by Hamilton, the intended treatment of these benefits under the Proposed Transaction will be the subject of discussion and negotiation, depending, among other things, upon the extent to which such benefits are currently entitled to the benefit of a trust. Further, the Milbournes' rights are not affected in any way by the Authorization Order. They retain the right to oppose the fairness of any plan of arrangement in the sanction hearing to the extent they consider that their rights have been unfairly affected by such plan.

Local 1005

[68] I have addressed above the principal objections of Local 1005 to approval of Bedrock as the Successful Bidder for purposes of the SISP Order. Local 1005 also opposes authorizing the applicant to enter into the PSA. It says that, if the PSA is authorized, significant issues outstanding among the parties will essentially be presented to stakeholders on a "take it or leave it basis". I do not agree with this characterization of the situation for the reasons set out above.

[69] The Proposed Transaction is a multiparty transaction. The principal stakeholders have reached agreement on governing principles regarding a number of critical issues. However, Local 1005 is not bound by those arrangements as a legal matter. They are free to negotiate based on their own priorities. As mentioned, the extent to which they are able to achieve those priorities or objectives will depend, among other factors, on the overall economics of the Proposed Transaction and the willingness of other parties to make concessions or tradeoffs in order to complete a transaction. However, in the present circumstances, it will not be affected by the execution of the PSA and the exclusivity that the SISP Order and the PSA grant Bedrock.

[70] Local 1005 also refers to the fact that the PSA and the CCAA Term Sheet stipulate that changes to Local 1005's collective agreement must be agreed to, as well as changes to the pension and OPEB arrangements. It says that, if the PSA is authorized, these conditions will have a significant impact on collective bargaining and contractual rights. The CCAA Term Sheet does contemplate amendments to existing arrangements affecting employees and retirees of USSC. I do not agree, however, that the authorization of the PSA has a significant impact by itself on the negotiation process.

[71] After a lengthy search process, this is the transaction that is on the table. It reflects what Bedrock is prepared to offer and, in a larger sense, what the market assesses as the value of USSC. There remains considerable scope for negotiations between the parties. However, the scope of such negotiation is defined by the financial limitations imposed by the broad terms of the Bedrock offer and, in a larger sense, by the market. Any sense of constraint in this negotiating process is a reflection of these economic realities, not the authorization of the PSA. Moreover, the consequences of not approving the PSA would establish constraints of a more immediate and draconian nature.

[72] Lastly, Local 1005 objects that certain provisions are, in its opinion, unfair to its members and retirees. This includes their treatment in respect of OPEBs relative to the treatment of members and retirees of Local 8782. Local 1005 also says the arrangements regarding the pension plans and OPEBs are unfair in that they do not provide retirees and beneficiaries, as well as future retirees and future beneficiaries, with any security regarding their pensions and benefits.

[73] It is premature to address these issues at this time. They remain the subject of further negotiations among the stakeholders. They will also be addressed in the context of negotiations regarding satisfaction of the conditions to implementation of the Proposed Transaction. Concerns of this nature are also more properly addressed, as mentioned, by the creditors in the creditors' meeting or in the sanction hearing before the Court if a plan of arrangement is approved.

Sealing Order

[74] The applicant also requests a sealing order regarding the un-redacted versions of the PSA and the Province Support Agreement. These versions differ from the redacted versions in only one respect: disclosure of the minimum equity contribution of Bedrock.

[75] It is my understanding that none of the parties oppose this relief. In any event, I am satisfied that the requirements for sealing the un-redacted versions of the PSA and the Province Support Agreement contemplated by the test in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, 211 D.L.R. (4th) 193, at para. 53, have been met at this stage of the CCAA proceedings. The minimum equity figure is commercially sensitive information, disclosure of which could be prejudicial to Bedrock and/or USSC and, ultimately, to the prospects for a successful restructuring. The benefits of protecting this information in furthering the restructuring far outweigh any negative impact from its redaction. More generally, there is no obvious reason why the other stakeholders should know the position taken by their counterparty, Bedrock, in its negotiations with the applicant. Accordingly, the ability of stakeholders to

negotiate the remaining outstanding issues is not reasonably affected in any manner by the non-disclosure of this information.

Wilton-Siegel, J.

Date: December 22, 2016

Tab 10

1993 CarswellBC 555
British Columbia Supreme Court

Woodward's Ltd., Re

1993 CarswellBC 555, 20 C.B.R. (3d) 74, 39 A.C.W.S. (3d) 981, 84 B.C.L.R. (2d) 206

Re COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36; Re COMPANY ACT, R.S.B.C. 1979, c. 59; Re WOODWARD'S LIMITED, WOODWARD STORES LIMITED and ABERCROMBIE & FITCH CO. (CANADA) LTD.

Tysoe J. [in Chambers]

Heard: April 13, 14 and 15, 1993
Judgment: April 20, 1993
Docket: Doc. Vancouver A924791

Counsel: *Michael A. Fitch, Susan M. Eyre* and *D. Geoffrey Cowper*, for Woodward's Ltd., Woodward Stores Ltd. and Abercrombie & Fitch Co. (Canada) Ltd.
Paul J. Pearlman, for Hans Andriessen and certain other terminated employees.
James E. Howell, for R. Longine and certain other terminated employees.
Vincent Morgan, for Royal Trust Corp. of Canada.
Digby R. Leigh, for National Bank Leasing.
Douglas B. Hyndman, for North American Trust Co.
B.A.R. Smith, Q.C., for Triple Five Corp. Ltd.
William E.J. Skelly, for Bucci Investment Corp. and Prospero International Realty Inc.
Douglas I. Knowles and *Clayton W. Caverly*, for Cambridge Shopping Centres Ltd.
Sean Donovan, for Neptune Foods.
Robert G. Kuhn and *Nicolas A. Blom*, for Park Royal Shopping Centre Ltd. and others.
Robert P. Sloman, for Laing Properties.
Gordon K. Mitchell and *L.M. Candido*, for Oakbridge Centre Holdings Inc. and others.
Alan H. Brown, for General Electric Capital Canada Inc.
James P. Taylor, Q.C., Scott A. Turner and *Michael Harquail*, for Zellers Inc.

Related Abridgment Classifications
Bankruptcy and insolvency
XIX Companies' Creditors Arrangement Act
XIX.3 Arrangements
XIX.3.b Approval by court
XIX.3.b.iv Miscellaneous
Headnote
Corporations --- Arrangements and compromises — Under Companies' Creditors Arrangements Act — Arrangements — Approval by Court
Corporations — Arrangements and compromises — Companies' Creditors Arrangement Act — Plan of arrangement — Approval of classes of creditors in plan — Creditors with commonality of interest being appropriate members of one class

— Creditors forming minority within class requiring protection of own class — Proposed classes of creditors approved with addition of one class — Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36.

The petitioning company applied for an order approving the classes of creditors designated in its plan of arrangement under the *Companies' Creditors Arrangement Act*. The proposed classes of creditors were: secured creditors, noteholders, landlords and general creditors. There was no issue as to the appropriateness of the designated classes; the only issue was whether or not there should be additional classes. The terminated employees, a bank with a fixed charge on certain equipment, other equipment financiers, creditors holding the guarantee or joint covenant of the company's holding company, and landlords whose leases were being repudiated each proposed that they should constitute a separate class.

Held:

The plan of arrangement was approved with the addition of one class.

The "identity of interest" approach to creditor classification was rejected in favour of the "non-fragmentation" approach. In the former, all the members of a class have identical interests. In the latter, the interests of those in a given class may not be identical, but the legal interests are sufficiently similar to allow the members of the class to vote with a common interest. The "non-fragmentation" approach avoids creating a multiplicity of classes.

In determining whether classes of creditors are appropriate, the legal rights of those creditors must be considered. These rights should not be considered in isolation; they must be considered in light of the provisions of the proposed plan of reorganization. Creditors with similar legal rights might be appropriately separated into two classes if the plan treats them differently. Conversely, creditors with different legal rights might be properly included in the same class if the plan treats them in such a way as to give them a commonality of interest, despite their different legal rights.

The creditors holding the guarantee or joint covenant of the petitioning company's holding company were found to require the protection of a separate class. As a minority in the class of general creditors, these creditors could have their guarantees confiscated by a vote of the majority of the class who did not hold the same rights. In this way, they could be forced to accept the same proportionate amount as the other members of the class and to receive no value for their unique legal rights.

***Tysoe J.* [In Chambers]:**

Introduction

1 The Petitioners ("Woodward's") apply for an order approving the classes of creditors designated in their plan of arrangement under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA") filed on April 7, 1993 (the "Reorganization Plan"). Woodward's proposes to hold meetings of these classes of creditors during the first part of May 1993 for the purpose of voting on the Reorganization Plan.

2 The classes of creditors designated by the Reorganization Plan are Secured Creditors, Noteholders, Landlords and General Creditors. Each of these terms is defined in the Reorganization Plan. There is no issue as to the appropriateness of classes of secured creditors, noteholders, landlords and general creditors. The question is whether or not there should be additional classes.

3 The definitions in the Reorganization Plan of the classes of creditors are as follows:

> "*Secured Creditors*" means the Secured Trustee as holder of the Secured Notes;
>
> "*Noteholders*" means the A & F Debentureholders, the Stores Debentureholders, the 9% Noteholders and the 10% Noteholders;
>
> "*Landlord*" means any landlord, head lessor, sublessor or owner of premises which has entered into any Lease with any member of the Woodward's Group and includes any mortgagee or successor in title of such premises who has taken possession of such premises or is collecting rent in respect of such premises as well as any party who has taken an assignment of rents or assignment of lease in respect of such premises, whether as security or otherwise; provided, however, that if more than one person would otherwise come within this definition of Landlord in respect of any particular Lease, the rights and claims of all such persons in respect of such Lease will be dealt with collectively under this Plan and each reference herein to such Landlord shall be construed as a collective reference to all such persons;

"*General Creditors*" means all persons with unsecured claims for any Indebtedness against Woodward's Group as at the General Creditor Meeting Date, including the Pre-Filing Trade Creditors, Employee Creditors, the Landlords and the Equipment Financiers but, for the Landlords and the Equipment Financiers, only to the extent of their claims to be dealt with in the General Creditor class as provided herein, and specifically excluding Post-Filing Trade Creditors, the Noteholders and the holders of the Unaffected Obligations.

4 The additional classes that have been proposed are as follows:

(a) employees of Woodward's that have been terminated since the commencement of these proceedings on December 11, 1992 (these employees made a formal application for separate classification);

(b) Royal Trust Corporation of Canada which holds a debenture creating a fixed charge against certain equipment purchased by Woodward's with the financing provided by Royal Trust;

(c) equipment financiers (which could include Royal Trust);

(d) creditors of Woodward Stores Limited (the "Operating Company") that hold the guarantee or joint covenant of its holding company, Woodward's Limited (the "Holding Company");

(e) one of more classes of landlords whose leases are being repudiated.

5 There is the potential that two parties having agreements to lease with Woodward's will want to make submissions that they should be in a separate or different class. These parties were only served with the Petition in this proceeding recently and it was agreed that my ruling would not affect their ability to make submissions at a subsequent time. It was also agreed that General Electric Capital Canada Inc. would not be bound by my ruling and could make submissions that it should be in a separate or different class or that it should be considered to be a holder of an Unaffected Obligation.

6 I will return to the positions of the various parties but I think it will be useful to first review the authorities setting forth the general principles applicable to the issue of creditor classification.

General Principles

7 The starting point of the case authorities is the decision of the English Court of Appeal in *Sovereign Life Assurance Co. v. Dodd*, [1892] 2 Q.B. 573 (C.A.) where Lord Esher said the following at pp. 579-80 in relation to the meeting of creditors to consider a plan of arrangement under the *Joint Stock Companies Arrangement Act*:

> The Act says that the persons to be summoned to the meeting (all of whom, be it said in passing, are creditors) are persons who can be divided into different classes — classes which the Act of Parliament recognises, though it does not define them. This, therefore, must be done: they must be divided into different classes. What is the reason for such a course? It is because the creditors composing the different classes have different interests; and, therefore, if we find a different state of facts existing among different creditors which may differently affect their minds and their judgment, they must be divided into different classes.

Bowen L.J. made the following comments at p. 583:

> The word "class" is vague, and to find out what is meant by it we must look at the scope of the section, which is a section enabling the Court to order a meeting of a class or classes to be called. It seems plain that we must give such a meaning to the term "class" as will prevent the section being so worked as to result in confiscation and injustice, and that it must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest.

8 There has been some jurisprudence over the years regarding creditor classification but, like the jurisprudence on other issues under the CCAA, it has intensified over the past five to ten years. One of the earlier cases of the present wave of jurisprudence dealing with creditor classification is *Norcen Energy Resources Ltd. v. Oakwood Petroleums Ltd.* (1988), 72 C.B.R. 20 (Alta. Q.B.). In that case Forsyth J. rejected the argument that different secured creditors should be placed in separate classes because they held separate security over different assets or because the relative values of their security were different. The Court rejected the "identity of interest" approach, which involves each class only containing creditors with identical interests. Instead, the Court followed the approach which I will call the "non-fragmentation" approach. This approach avoids the creation of a multiplicity of classes by including creditors with different legal rights in the same class as long as their legal rights are not so dissimilar that it is not possible for them to vote with a common interest. This is essentially the approach that was suggested by Bowen L.J. in the passage from the *Sovereign Life* quoted above (although his words have been incorrectly attributed to Lord Esher in at least one case authority and one article).

9 The approach taken in the *Oakwood Petroleums* case has been specifically adopted by the B.C. Court of Appeal in *Northland Properties Ltd., Re* (sub nom. *Northland Properties Ltd. v. Excelsior Life Insurance Co. of Canada*) (1989), 73 C.B.R. (N.S.) 195 (B.C. C.A.). In the lower court decision in that case the Court considered the similarities and dissimilarities of various mortgagees holding mortgages against different properties and concluded that they should be in the same class. Dealing with the points of dissimilarity, Trainor J. said as follows at p. 192 of (1988), 73 C.B.R. (N.S.) 175 (B.C. S.C.):

> The points of dissimilarity are that they are separate properties and that there are deficiencies in value of security for the loan, which vary accordingly for particular priority mortgagees. Specifically with respect to Guardian and Excelsior, they are both in a deficiency position.
>
> Now, either of the reasons for points of dissimilarity, if effect was given to them, could result in fragmentation to the extent that a plan would be a realistic impossibility. The distinction which is sought is based on property values, not on contractual rights or legal interests.

10 After the Court of Appeal in *Northland Properties* quoted the above passage, it said the following (at p. 203):

> I agree with that, but I wish to add that in any complicated plan under this Act, there will often be some secured creditors who appear to be oversecured, some who do not know if they are fully secured or not, and some who appear not to be fully secured. This is a variable cause arising not by any difference in legal interests, but rather as a consequence of bad lending, or market values, or both.

11 As the B.C. Court of Appeal has specifically adopted the reasoning in *Oakwood Petroleums*, the approach which I have called the "non-fragmentation" approach is the one to be followed in British Columbia. As will be seen shortly, the "non-fragmentation" approach has also been preferred over the "identity of interest" approach by the Ontario courts.

12 There have been two recent cases that are particularly relevant because they deal with employees, landlords and equipment lessors in circumstances that are similar to the situation at hand. The first of these cases is *Sklar-Peppler Furniture Corp. v. Bank of Nova Scotia* (1991), 8 C.B.R. (3d) 312 (Ont. Gen. Div.) where one of the proposed classes consisted of all creditors other than two secured creditors, including holders of unsecured debentures, terminated employees, landlords whose leases had been repudiated and equipment lessors whose leases were to be repudiated (although the report does not specifically say it, I assume that the proposed class also included the general trade creditors). The Court rejected the argument of one of the landlords that there should be a separate class of creditors consisting of the landlords and the equipment lessors. Borins J. utilized the "non-fragmentation" approach as illustrated by the following passage on pp. 317-318:

> In my view, an important principle to consider in approaching ss. 4 and 5 of the C.C.A.A. is that followed in *Re Wellington Building Corp.*, 16 C.B.R. 48, [1934] O.R. 653, [1934] 4 D.L.R. 626 (S.C.), in which it was emphasized that the object of ss.4 and 5 is not confiscation but is to enable compromises to be made for the common benefit of the creditors as creditors, or for the common benefit of some class of creditors as such. To this I would add that recognition must be given to the legislative intent to facilitate corporate reorganization and that in the modern world of large and complicated

business enterprises the excessive fragmentation of classes could be counter-productive to the fulfilment of this intent. In this regard, to approach the classification of creditors on the basis of identity of interest, as suggested by counsel for H & R Properties, would in some instances result in the multiplicity of classes, which would make any re-organization difficult, if not impossible, to achieve. In my view, in placing a broad and purposive interpretation upon the provisions of the C.C.A.A. the court should take care to resist approaches which would potentially fragment creditors and thereby jeopardize potentially viable plans of arrangement, such as the plan advanced in this application.

13 The other recent decision is *Grafton-Fraser Inc. v. Canadian Imperial Bank of Commerce* (1992), 90 D.L.R. (4th) 285 (Ont. Gen. Div.). In that case Houlden J.A. approved the classification of creditors into secured creditors, landlords and unsecured creditors. It appears from the report that the plan contemplated that some leases would be repudiated and there would be rent reductions in respect of certain of the continuing premises. I am told that the final plan of Grafton-Fraser Inc. did not include the landlords with continuing leases at reduced rental rates in the same class as the landlords whose leases were repudiated, but the decision of Houlden J.A. appears to be predicated on the fact that the two types of landlords would be in the same class. It had been argued that the landlords should be in the same class as the unsecured creditors. Houlden J.A. felt that it was appropriate to have the landlords in a separate class for two reasons; namely, there would be great difficulty in ascertaining the amounts of the claims of the landlords and the plan enjoined the landlords from exercising their contractual and statutory remedies.

14 Before I apply the general principles outlined above to the circumstances of this case, I wish to add some comments regarding the classification of creditors. The case authorities focus on the dif ferences in the legal rights of the creditors in determining whether their interests are sufficiently similar or dissimilar to warrant creditors being placed in the same class or separate classes. I agree that it is the legal rights of the creditors that must be considered and that other external matters that could influence the interests of a creditor are not to be taken in account. However, it is my view that the legal rights should not be considered in isolation and that they must be considered within the context of the provisions of the reorganization plan. It would be appropriate to segregate two sets of creditors with similar legal interests into separate classes if the plan treats them differently. Conversely, it may be appropriate to include two sets of creditors with different legal rights in the same class if the plan treats them in a fashion that gives them a commonality of interest despite their different legal rights. In addition, when the Court is assessing whether there is a sufficient commonality of interest to include two sets of creditors in the same class, it is necessary in my view to examine their legal rights within the context of the potential failure of the reorganization plan. The treatment of the two sets of creditors under the plan should be compared to the rights they would have in the event of the failure of the plan (i.e., bankruptcy or other liquidation).

Terminated Employees

15 The first set of creditors that submitted that it should be in a separate class is the group of former employees of Woodward's who were terminated after December 11, 1992, the date of commencement of these CCAA proceedings. These former employees all have claims against Woodward's for damages as a result of Woodward's failure to give them reasonable notice of termination. The Reorganization Plan includes the terminated employees in the class of General Creditors which also includes the trade suppliers and other unsecured claims of the Operating Company. The Reorganization Plan proposes that the General Creditors receive 37% of the principal amounts of their proven claims.

16 The two counsel acting for former employees on this application submitted that their clients should comprise a separate class of creditors for several reasons. They say that the terminated employees are largely middle-aged, long service employees with limited education who have little prospect of finding alternate employment. They point to the fact that the courts recognize the difference between a contract of employment and an ordinary commercial contract. They further make reference to the fact that the trade suppliers will be selling merchandise to the reorganized company and that they will have a potentially continuing relationship which may influence the manner in which they vote on the plan. Finally, they say that the trade suppliers have the ability to "write off" their losses and that they will receive different income tax treatment in respect of their losses than the terminated employees.

17 In arguing that the terminated employees should form their own class, counsel relied on the article *Reorganizations under the Companies' Creditors Arrangement Act* (1947) 25 Can. Bar Rev. 587 by Stanley E. Edwards. This article has been

relied upon extensively by the courts in interpreting the CCAA. However, the article has not been followed with respect to the classification of creditors. Mr. Edwards proposes the "identity of interest" approach which was not been adopted by the Alberta, British Columbia and Ontario courts. The preferred approach is the "non-fragmentation" approach.

18 The legal rights of the terminated employees are the same as the legal rights of the trade suppliers. They are both creditors with unsecured claims against the Operating Company (the secured and preferred amounts payable to employees under provincial legislation and the *Bankruptcy and Insolvency Act* have already been paid to the terminated employees). In a bankruptcy or other liquidation they would both receive the same pro rata amount of their claims. They are to receive the same pro rata amount of their claims under the Reorganization Plan.

19 The fact that there is a recognized difference between contracts of employment and ordinary commercial contracts is not relevant because the contracts of employment of the terminated employees have come to an end. The terminated employees have claims for damages against Woodward's for wrongful dismissal. Once the amount of damages for an employee has been agreed upon or determined by the Court, the difference between the two types of contracts becomes historical and the employee has the same rights as any other unsecured creditor. The differences between the two types of contracts may result in the employees receiving higher amounts of damages but the differences do not warrant the terminated employees being entitled to a higher distribution than the other unsecured creditors.

20 I am satisfied that there is a sufficient commonality of interest between the terminated employees and the other members of the General Creditors class that they should be included in the same class.

Equipment Financiers and Royal Trust Corporation of Canada

21 It is convenient to deal with the submissions of the equipment lessors and Royal Trust at the same time because if Royal Trust is not put in a class of its own, its alternate position was that it should be included in a class with the equipment lessors.

22 The term "Equipment Financiers" is defined in the Reorganization Plan. In brief, the term means any person who has provided financing for the acquisition or installation of office equipment or trade fixtures and who has retained a security interest by way of a lease or a security instrument. Woodward's has notified or will be notifying certain equipment financiers that it no longer requires their equipment. These equipment financiers will then have a claim against Woodward's for damages resulting from the repudiation of their contractual arrangements. It is these equipment financiers who wish to be in a separate class. The Reorganization Plan proposes that the terminated equipment financiers be treated as General Creditors and that they receive 37% of the amounts of their claims. The amount of each claim would presumably be the discounted value of future payments owing by Woodward's to the equipment financier less the present value of the equipment.

23 Most of the equipment financiers are parties that bought the equipment and are leasing it to Woodward's on a normal type of term lease. The equipment financiers who are lessors include National Bank Leasing, North American Trust Company and Royal Bank Leasing. Royal Trust also falls within the definition of "Equipment Financier" but it is not a lessor. It financed the acquisition by Woodward's of certain equipment by way of a traditional financing arrangement. It loaned money to Woodward's on a term basis and it took security in the form of a debenture creating a fixed charge against the equipment that it financed.

24 In other contexts under the CCAA the treatment of equipment leases in relation to the treatment of security documents causes me considerable doubts. Should equipment leases be treated the same as security instruments in all or some cases? Does it make a difference whether the lease is classified as an operating lease or a capital lease? Should the extent of depreciation of the subject asset be taken into account? Fortunately these questions can be left for another time because they do not need to be resolved in order to deal with the classification issue.

25 Lessors and debentureholders do have different legal rights but the question to be answered is whether the different rights result in a lack of commonality of interest. In a bankruptcy a lessor is entitled to retake possession of the leased goods upon default and, if the lease is worded properly, the lessor is entitled to prove as an unsecured creditor for its damages. In the case of a debentureholder in a bankruptcy situation, the debentureholder has the right to cause the charged assets to be sold and it is entitled to prove as an unsecured creditor for the deficiency on its loan. In most cases the damages of the lessor and the

deficiency on the debentureholder's loan will be equivalent; namely, the difference between the present value of the monies that are owed and the value of the leased goods or the charged assets. Hence, the rights of an equipment lessor and the rights of a debentureholder with a fixed charge on financed equipment in a bankruptcy situation are roughly the same. The equipment lessors and Royal Trust are being treated the same under the Reorganization Plan. Therefore, there is a sufficient commonality of interest for Royal Trust to be included in the same class as the equipment lessors.

26 Some submissions were made with respect to the priority between Royal Trust and The R-M Trust Company which is the sole Secured Creditor under the Reorganization Plan. I do not accept the contention that Royal Trust has priority over The R-M Trust Company on any of Woodward's assets other than the ones that are covered by the fixed charge in favour of Royal Trust.

27 The question then becomes whether the equipment financiers (including Royal Trust) belong in a separate class or in the class of General Creditors. This is an example of why the legal rights of the parties must be examined within the context of the Reorganization Plan. In isolation the rights of the equipment financiers and the rights of unsecured creditors are very different. But the treatment of the two groups in the Reorganization Plan could affect their interests.

28 If the Reorganization Plan provided that Woodward's was to retain the financed equipment and the equipment financiers were to be paid the same proportion of their indebtedness as the unsecured creditors, the equipment financiers would be entitled to be included in a different class from the unsecured creditors. They would be losing their proprietary or security rights in the equipment and they would be receiving the same pro rata distribution as unsecured creditors who do not have same rights. However, that is not what the Reorganization Plan is proposing.

29 The Reorganization Plan does not affect any of the proprietary or security rights of the equipment financiers. Woodward's is allowing the equipment financiers to fully exercise those rights outside of the Reorganization Plan. All the Reorganization Plan is purporting to affect are the claims of the equipment financiers for damages or the deficiencies on loans. These claims are unsecured claims and there is no reason why they should be treated any differently than the claims of unsecured creditors. There is a sufficient commonality of interest between the unsecured creditors and the equipment financiers with respect to their unsecured claims for damages or the deficiencies on loans. It is appropriate to include the equipment financiers in the class of General Creditors with respect to these claims.

30 This classification of the equipment financiers is consistent with the decision in *Sklar-Peppler, supra*, where the Ontario Court of Justice approved the grouping of equipment lessors in the same class as the unsecured creditors.

Holders of Guarantees or Joint Covenants

31 The class of General Creditors is comprised of creditors of the Operating Company. However, at least two of these creditors hold a guarantee or joint covenant of the Holding Company. National Bank Leasing holds a guarantee from the Holding Company and the debenture held by Royal Trust is a joint debenture from the Operating Company and the Holding Company. For ease of reference I will refer to a creditor holding a guarantee or joint covenant of the Holding Company as the holder of a guarantee and such reference shall also include the holder of a joint covenant.

32 The Holding Company does not own any tangible assets. Other than the shares in the Operating Company, the only asset owned by the Holding Company is an inter-company account owed to it by the Operating Company. This inter-company account means that upon the bankruptcy or other liquidation of the Operating Company, the Holding Company would be an unsecured creditor entitled to share on a pro rata basis in distributions to the unsecured creditors of the Operating Company. If the Holding Company was also to be liquidated, the money received on account of the inter-company receivable would be distributed to the creditors of the Holding Company, including creditors of the Operating Company with guarantees from the Holding Company and other unsecured creditors if sufficient monies were available to fully satisfy the secured and preferred creditors of the Holding Company. The result is that unsecured creditors of the Operating Company with guarantees from the Holding Company may receive more money than the other unsecured creditors of the Operating Company in the event of bankruptcies or other liquidations of the two companies.

33 On April 16, 1993 the Monitor appointed in these proceedings issued a report confirming that upon a liquidation of the two companies, the unsecured creditors of the Holding Company would receive a distribution. The Monitor estimates a liquidation distribution for the unsecured creditors of the Holding Company to be in the range from 2% to 12%.

34 The distinction between the interests of the unsecured creditors of the Operating Company and the interests of the unsecured creditors of the Holding Company is recognized in the classification of the creditors in the Reorganization Plan. The unsecured creditors of the Holding Company are included in the class of Noteholders which is a different class from the General Creditors, the class that includes the unsecured creditors of the Operating Company. It is proposed in the Reorganization Plan that the Noteholders receive 32% of their indebtedness.

35 The Reorganization Plan ignores the fact that the holders of guarantees are unsecured creditors of both companies. It proposes that they receive the same 37% proportion of their indebtedness as the other General Creditors and their status as creditors of the Holding Company is not reflected.

36 In view of the fact that the holders of guarantees do have different legal rights from the other members of the class of General Creditors, it is necessary to decide whether the rights are so dissimilar that they cannot vote on the Reorganization Plan with a common interest. It was submitted by counsel for Woodward's that there is a common interest because the holders of guarantees will still receive more under the Reorganization Plan that they will be paid upon a liquidation of the two companies. I do not think that this is sufficient to create a commonality of interest with the other members in the class of General Creditors who have lesser legal rights. To the contrary, I believe that this is an example of what Bowen L.J. had in mind in the *Sovereign Life* case, *supra*, when he used the term "confiscation". By being a minority in the class of General Creditors, the holders of guarantees can have their guarantees confiscated by a vote of the requisite majority of the class who do not have the same rights. The holders of guarantees could be forced to accept the same proportionate amount as the other members of the class and to receive no value in respect of legal rights that they uniquely enjoy and that would have value in a liquidation of the two companies.

37 The passage from *Sklar-Peppler* quoted above made reference to the decision in *Re Wellington Building Corp., supra* [(1934), 16 C.B.R. 48 (Ont. S.C.)]. In that case the Court was asked to approve a scheme of arrangement under the CCAA that had one class of secured creditors which included boldholders, lienholders, third mortgagee and fourth mortgagees. The Court refused to approve the scheme on the basis that there should have been more than one class of secured creditors. Kingstone J. said the following at p. 54 of 16 C.B.R.:

> ... it was necessary under the Act that they should vote in classes and that three-fourths of the value of each class should be obtained in support of the scheme before the Court could or should approve of it. Particularly is this the case where the holders of the senior securities' (in this case the bondholders') rights are seriously affected by the proposal as they are deprived of the arrears of interest on their bonds if the proposal is carried through. It was never the intention under the Act, I am convinced, to deprive creditors in the position of the bondholders of their right to approve as a class by the necessary majority of a scheme propounded by the company which would permit the holders of junior securities to put through a scheme inimicable to this class and amounting to confiscation of the vested interest of the bondholders.

38 In *Re 229531 B.C. Ltd.* (1989), 72 C.B.R. (N.S.) 310 (B.C. S.C.) the Court refused to approve a plan of arrangement under the CCAA for numerous reasons. One of the reasons was that a guarantee held by one creditor was to be released as a result of the reorganization plan and the creditor was to receive the same proportionate distribution as all of the other unsecured creditors. In other words, the guarantee was being confiscated by the vote of other creditors who did not enjoy the same rights as the creditor which held the guarantee.

39 If it was clear that no monies would be available to unsecured creditors upon a liquidation of the Holding Company, the legal rights of the holders of the guarantees would have no practical value and there would then be no objection to their inclusion in the class of General Creditors. There is also a point where the prospects of the unsecured creditors of the Holding Company receiving any monies upon its liquidation would be so uncertain that the commonality of interest between the holders

of the guarantees and the other members of the class of General Creditors would not be affected. However, I am not satisfied in this case that such prospects are so uncertain that the holders of guarantees should be forced to be in the same class as the other unsecured creditors of the Operating Company. In making this statement, I note that the unsecured creditors of the Holding Company are to receive 32% of their indebtedness under the Reorganization Plan.

40 I should stress that it is important in my view that there is only one difference between the rights of the holders of the guarantees and the rights of the other members of the class of General Creditors. It is clear that the one additional right enjoyed by the holders of the guarantees is not being given any value under the Reorganization Plan. The result could be different if the other members of the class of General Creditors had additional rights that were not enjoyed by the holders of the guarantees. There could be a trade-off between the rights that were not commonly shared and the groups could have a sufficient commonality of interest to be included in the same class. Here, there is no potential trade-off between the two groups and the one additional right of the holders of the guarantees is being confiscated without compensation.

41 Counsel for Woodward's suggested that the issue of the guarantees be left to the fairness hearing (i.e., the hearing to consider the sanctioning of the Reorganization Plan). As I believe that the holders of guarantees have a sufficiently different legal right to warrant a separate classification, it follows that I would consider the Reorganization Plan to be unfair to them if they are included in the class of General Creditors. I should not order meetings for the creditors to vote on the Reorganization Plan when I know that those meetings would be fruitless because I would refuse to approve the outcome of the meetings.

Landlords

42 Counsel for Triple Five Corporation Limited submitted that there should be two classes of landlords, one class consisting of landlords with anchor tenants whose leases are being repudiated and the other class consisting of the remaining landlords. Counsel for Bucci Investment Corporation and Prospero International Realty Inc. submitted that there should be three classes of landlords, one class consisting of landlords with anchor tenants whose leases are being repudiated, a second class consisting of landlords without anchor tenants whose leases are being repudiated and the third class consisting of the remaining landlords.

43 Counsel for Triple Five Corporation Limited put forward three reasons in support of his position. A fourth reason was also put forward initially but it was withdrawn and reserved for the fairness hearing. The three reasons are as follows:

(a) a repudiation of a lease by an anchor tenant will cause the landlord to be in breach of other contractual obligations and the consequences of such a repudiation go beyond the liquidated damages that result from the repudiation of a lease by a tenant other than an anchor tenant;

(b) there is no precedent for the selective repudiation of leases under the CCAA and Woodward's has chosen not utilize the proposal provisions of the *Bankruptcy and Insolvency Act* that now has a procedure for the repudiation of leases;

(c) Zellers Inc. (and its parent, The Hudson's Bay Company) is a stranger to the relationship between Woodward's and its creditors and its involvement in Woodward's reorganization (by way of a merger with the reorganized company) requires a higher degree of fairness.

44 In my view, none of these reasons is a valid justification for the creation of a separate class of landlords:

(a) the additional consequences of a repudiation by an anchor tenant flow from external considerations and the different consequences to different landlords does not result from different legal rights existing between the landlords and Woodward's. As was held in *Northland Properties, supra*, separate creditor classification must be based on a difference in legal interests or rights;

(b) *Sklar-Peppler, supra*, and *Grafton-Fraser, supra*, are both examples of reorganizations involving repudiations of leases. The fact that the *Bankruptcy and Insolvency Act* now specifically provides for the repudiation of leases does not mean that a reorganization involving lease repudiation cannot be attempted under the CCAA and it certainly does not mean that there should be separate classes of landlords;

(c) the aspect of fairness is a matter to be considered on the application for the Court to sanction the Reorganization Plan. The application is commonly called the fairness hearing. There is nothing in the involvement of Zellers Inc. that requires the creation of separate classes for landlords.

45 Counsel for Bucci and Prospero did not put forward any independent grounds for the creation of separate landlord classes. His point was that if there was justification for the creation of a separate class for landlords with anchor tenants whose leases were being repudiated, there was equal justification for the creation of a separate class for the other landlords whose leases were being repudiated.

46 There was one point that bothered me about the grouping of all the landlords into a single class. In addition to including landlords whose leases were being repudiated, the class includes landlords who are having their leases partially repudiated by the unilateral reduction in the amount of leased space and landlords who are having the rent under their leases unilaterally reduced. Both of these two groups of landlords would be having a continuing relationship with Woodward's. Unlike the trade suppliers, the continuing relationship between these landlords and Woodward's is based on legal rights. I was concerned that the continuing legal relationship between these landlords and Woodward's may give them a different interest from interests of the landlords whose leases are being wholly repudiated. For example, the continuing landlords may be more willing to vote in favour of the Reorganization Plan because they will be able to recoup some of their losses from the profits generated out of the continuing relationship with Woodward's. The answer to my concern is that the rent under all of the continuing leases is to be adjusted to market rent. The landlords whose leases are being repudiated will also be leasing their premises to new tenants at market rent. Accordingly, the landlords with continuing leases will not have any advantage over the other landlords and there will be sufficient commonality of interest to include all of the landlords in one class.

47 During submissions I queried whether the landlords should be included in the class of General Creditors. At first blush a landlord whose lease is being repudiated is in the same position as the other unsecured creditors of the Operating Company. The reason why it is appropriate for the Landlords to be in a different class is that they receive different treatment under the Reorganization Plan. The General Creditors are to be paid 37% of their claims while the Landlords are to be paid an amount equal to six months' rent. One reason for the different treatment is the fact that it is very difficult to properly quantify the claims of the Landlords and the efforts of the Landlords to mitigate their damages will not be known prior to the implementation of the Reorganization Plan. This rationale was accepted in *Grafton-Fraser, supra*, where the Court approved a separate classification for the landlords. Another justification for the different treatment is the fact that the *Bankruptcy and Insolvency Act* provides that landlords whose leases are repudiated are entitled to compensation equal to six months' rent.

48 In the *Grafton-Fraser* case, *supra*, the Court approved a landlord class which, at least at the time of the decision, appeared to include both landlords with repudiated leases and landlords with continuing leases at reduced rental rates.

49 It is my view that there is sufficient commonality of interest among the landlords for all of them to be included in a single class. I am reinforced in my decision by the positions of the other landlords represented by counsel at the hearing. Mr. Kuhn, Mr. Knowles and Mr. Mitchell, who each represent landlords in each of the three proposed landlord classes, all supported the single class for the landlords and that position in itself demonstrates that the landlords do have a commonality of interest.

Conclusion

50 I approve the classes of creditors designated in the Reorganization Plan with the exception that the class of General Creditors should not include creditors of the Operating Company who hold guarantees or joint covenants from the Holding Company. I dismiss the application of the terminated employees for separate classification and I reject the other submissions for separate classifications.

Order accordingly.

Tab 11

Ontario Supreme Court
Sammi Atlas Inc., Re
Date: 1998-02-27

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

In The Matter of the Courts of Justice Act, R.S.O. 1990, c.C.43

In The Matter of a Plan of Compromise or Arrangement of Sammi Atlas Inc.

Ontario Court of Justice, General Division [Commercial List] Farley J.

Heard: February 27, 1998

Judgment: February 27, 1998

Docket: 97-BK-000219, B230/97

Norman J. Emblem, for the applicant, Sammi Atlas Inc.

James Grout, for Agro Partners, Inc.

Thomas Mate, for the Bank of Nova Scotia.

Jay Carfagnini and Ben Zarnett, for Investors' Committee.

Geoffrey Morawetz, for the Trade Creditors' committee.

Clifton Prophet, for Duk Lee.

***Farley J.*:**

[1] This endorsement deals with two of the motions before me today:

1) Applicant's motion for an order approving and sanctioning the Applicant's Plan of Compromise and Arrangement, as amended and approved by the Applicant's unsecured creditors on February 25, 1998; and

2) A motion by Argo Partners, Inc. ("Argo"), a creditor by way of assignment, for an order directing that the Plan be amended to provide that a person who, on the record date, held unsecured claims shall be entitled to elect treatment with respect to each unsecured claim

held by it on a claim by claim basis (and not on an aggregate basis as provided for in the Plan).

[2] As to the Applicant's sanction motion, the general principles to be applied in the exercise of the court's discretion are:

1) there must be strict compliance with all statutory requirements and adherence to the previous orders of the court;

2) all materials filed and procedures carried out must be examined to determine if anything has been done or purported to be done which is not authorized by the *Companies' Creditors Arrangement Act* ("CCAA"); and

3) the Plan must be fair and reasonable.

See *Northland Properties Ltd., Re* (1988), 73 C.B.R. (N S) 175 (B.C.S.C.); affirmed (1989), 73 C.B.R. (N.S.) 195 (B.C. C.A.) at p.201; *Olympia & York Developments Ltd. v. Royal Trust Co.* (1993), 12 O.R. (3d) 500 (Ont. Gen. Div.) at p.506.

[3] I am satisfied on the material before me that the Applicant was held to be a corporation as to which the CCAA applies, that the Plan was filed with the court in accordance with the previous orders, that notices were appropriately given and published as to claims and meetings, that the meetings were held in accordance with the directions of the court and that the Plan was approved by the requisite majority (in fact it was approved 98.74% in number of the proven claims of creditors voting and by 96.79% dollar value, with Argo abstaining). Thus it would appear that items one and two are met.

[4] What of item 3 - is the Plan fair and reasonable? A Plan under the CCAA is a compromise; it cannot be expected to be perfect. It should be approved if it is fair, reasonable and equitable. Equitable treatment is not necessarily equal treatment. Equal treatment may be contrary to equitable treatment. One must look at the creditors as a whole (i.e. generally) and to the objecting creditors (specifically) and see if rights are compromised in an attempt to balance interests (and have the pain of the compromise equitably shared) as opposed to a confiscation of rights: see *Campeau Corp., Re* (1992), 10 C.B.R. (3d) 104 (Ont. Gen. Div.) at p.109. It is recognized that the CCAA contemplates that a minority of creditors is bound by the Plan which a majority have approved - subject only to the court determining that the Plan is

fair and reasonable: see *Northland Properties Ltd.* at p.201; *Olympia & York Developments Ltd.* at p.509. In the present case no one appeared today to oppose the Plan being sanctioned: Argo merely wished that the Plan be amended to accommodate its particular concerns. Of course, to the extent that Argo would be benefited by such an amendment, the other creditors would in effect be disadvantaged since the pot in this case is based on a zero sum game.

[5] Those voting on the Plan (and I note there was a very significant "quorum" present at the meeting) do so on a business basis. As Blair J. said at p.510 of *Olympia & York Developments Ltd.*:

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

The court should be appropriately reluctant to interfere with the business decisions of creditors reached as a body. There was no suggestion that these creditors were unsophisticated or unable to look out for their own best interests. The vote in the present case is even higher than in *Central Guaranty Trustco Ltd., Re* (1993), 21 C.B.R. (3d) 139 (Ont. Gen. Div. [Commercial List]) where I observed at p.141:

> …This on either basis is well beyond the specific majority requirement of CCAA. Clearly there is a very heavy burden on parties seeking to upset a plan that the required majority have found that they could vote for; given the overwhelming majority this burden is no lighter. This vote by sophisticated lenders speaks volumes as to fairness and reasonableness.
>
> The Courts should not second guess business people who have gone along with the Plan…

[6] Argo's motion is to amend the Plan - after it has been voted on. However I do not see any exceptional circumstances which would support such a motion being brought now. In *Algoma Steel Corp. v. Royal Bank* (1992), 11 C.B.R. (3d) 11 (Ont. C.A.) the Court of Appeal observed at p.15 that the court's jurisdiction to amend a plan should "be exercised sparingly and in exceptional circumstances only" even if the amendment were merely technical and did not prejudice the interests of the corporation or its creditors and then only where there is jurisdiction under the CCAA to make the amendment requested, I was advised that Argo had considered bringing the motion on earlier but had not done so in the face of "veto" opposition

from the major creditors. I am puzzled by this since the creditor or any other appropriate party can always move in court before the Plan is voted on to amend the Plan; voting does not have anything to do with the court granting or dismissing the motion. The court can always determine a matter which may impinge directly and materially upon the fairness and reasonableness of a plan. I note in passing that it would be inappropriate to attempt to obtain a preview of the court's views as to sanctioning by brining on such a motion. See my views in *Central Guaranty Trustco Ltd., Re* at p.143:

> …In *Algoma Steel Corp. v. Royal Bank* (1992), 8 O.R. (3d) 449, the Court of Appeal determined that there were exceptional circumstances (unrelated to the Plan) which allowed it to adjust *where no interest was adversely affected.* The same cannot be said here. FSTQ aside from s.11(c) of the CCAA also raised s.7. I am of the view that s.7 allows an amendment after an adjournment - *but not after a vote has been taken.* (emphasis in original)

What Argo wants is a substantive change; I do not see the jurisdiction to grant same under the CCAA.

[7] In the subject Plan creditors are to be dealt with on a sliding scale for distribution purposes only: with this scale being on an aggregate basis of all claims held by one claimant:

i) $7,500 or less to receive cash of 95% of the proven claim;

ii) $7,501 - $100,000 to receive cash of 90% of the first $7,500 and 55% of balance; and;

iii) in excess of $100,000 to receive shares on a formula basis (subject to creditor agreeing to limit claims to $100,000 so as to obtain cash as per the previous formula).

Such a sliding scale arrangement has been present in many proposals over the years. Argo has not been singled out for special treatment; others who acquired claims by assignment have also been affected. Argo has acquired 40 claims; all under $100,000 but in the aggregate well over $100,000. Argo submitted that it could have achieved the result that it wished if it had kept the individual claims it acquired separate by having them held by a different "person"; this is true under the Plan as worded. Conceivably if this type of separation in the face of an aggregation provision were perceived to be inappropriate by a CCAA applicant, then I suppose the language of such a plan could be "tightened" to eliminate what the applicant perceived as a loophole. I appreciate Argo's position that by buying up the small claims it was providing the original creditors with liquidity but this should not be a

determinative factor. I would note that the sliding scale provided here does recognize (albeit imperfectly) that small claims may be equated with small creditors who would more likely wish cash as opposed to non-board lots of shares which would not be as liquidate as cash; the high percentage cash for those proven claims of $7,500 or under illustrates the desire not to have the “little person” hurt - at least any more than is necessary. The question will come down to balance - the plan must be efficient and attractive enough for it to be brought forward by an applicant with the realistic chance of its succeeding (and perhaps in that regard be “sponsored” by significant creditors) and while not being too generous so that the future of the applicant on an ongoing basis would be in jeopardy: at the same time it must gain enough support amongst the creditor body for it to gain the requisite majority. New creditors by assignment may provide not only liquidity but also a benefit in providing a block of support for a plan which may not have been forthcoming as a small creditor may not think it important to do so. Argo of course has not claimed it is a “little person” in the context of this CCAA proceeding.

[8] In my view Argo is being treated fairly and reasonably as a creditor as are all the unsecured creditors. An aggregation clause is not inherently unfair and the sliding scale provisions would appear to me to be aimed at “protecting (or helping out) the little guy” which would appear to be a reasonable policy.

[9] The Plan is sanctioned and approved; Argo’s aggregation motion is dismissed.

Addendum:

[10] I reviewed with the insolvency practitioners (legal counsel and accountants) the aspect that industrial and commercial concerns in a CCAA setting should be distinguished from “bricks and mortgage” corporations. In their reorganization it is important to maintain the goodwill attributable to employee experience and customer (and supplier) loyalty; this may very quickly erode with uncertainty. Therefore it would, to my mind be desirable to get down to brass tacks as quickly as possible and perhaps a reasonable target (subject to adjustment up or down according to the circumstances including complexity) would be for a six month period from application to Plan sanction.

Motion for approval granted; motion for amendment dismissed.

Tab 12

Court of Queen's Bench of Alberta

Citation: SemCanada Crude Company (Re), 2009 ABQB 490

Date:20090824
Docket: 0801 08510
Registry: Calgary

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 SemCanada Crude Company, SemCAMS ULC, SemCanada Energy Company, A.E. Sharp Ltd., CEG Energy Options, Inc., 319278 Nova Scotia Company and 1380331 Alberta ULC

Reasons for Decision of the Honourable Madam Justice B.E. Romaine

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Introduction

[1] The SemCanada Group applied for various relief related to the holding of meetings of creditors to consider three plans to restructure and distribute assets of the CCAA applicants, including applications for orders authorizing the establishment of a single class of creditors for each plan for the purpose of considering and voting on the plans. I granted the applications, and these are my reasons.

Relevant Facts

[2] On July 22, 2008, SemCanada Crude Company ("SemCanada Crude") and SemCAMS ULC ("SemCAMS") were granted initial Orders pursuant to s. 11(1) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended (the "CCAA").

[3] On July 30, 2008, the CCAA proceedings of SemCAMS and SemCanada Crude and the bankruptcy proceedings of SemCanada Energy Company (“SemCanada Energy”) A.E. Sharp Ltd. (“AES”) and CEG Energy Options, Inc. (“CEG”) which had been commenced on July 24, 2008 were procedurally consolidated for the purpose of administrative convenience.

[4] In addition, CCAA protection was granted to two affiliated companies, 3191278 Nova Scotia Company (“319") and 1380331 Alberta ULC (“138"). SemCanada Energy, AES, CEG, 319 and 138 are collectively referred to as the “SemCanada Energy Companies”. The CCAA applicants are collectively referred to as the “SemCanada Group”.

[5] On July 22, 2008, SemGroup L.P. and its direct and indirect subsidiaries in the United States (the “U.S. Debtors”) filed voluntary petitions to restructure under Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware.

[6] According to the second report of the Monitor, the financial problems of the SemGroup arose from a failed trading strategy and the volatility of petroleum products prices, leading to material margin calls related to large futures and options positions on the NYMEX and OTC markets, resulting in a severe liquidity crisis. SemGroup’s credit facilities were insufficient to accommodate its capital needs, and the corporate group sought protection under Chapter 11 and the CCAA.

[7] The SemCanada Group are indirect, wholly-owned subsidiaries of SemGroup LP. The SemCanada Group is comprised of three separate businesses:

(a) SemCanada Crude, a crude oil marketing and blending operation;
(b) the SemCanada Energy Companies, whose business was gas marketing, including the purchase and sale of gas to certain of its four subsidiaries as well as to SemCAMS; and
(c) SemCAMS, whose business consists of ownership interests in large gas processing facilities located in Alberta, as well as agreements to operate these facilities.

[8] SemCrude, L.P. as U.S. borrower and a predecessor company of SemCAMS as Canadian borrower, certain U.S. SemGroup corporations and Bank of America as administrative agent for a syndicate of lenders (the “Secured Lenders”) entered into a credit agreement in 2005 (the “Credit Agreement”). The Credit Agreement provides four different credit facilities. There are no advances outstanding with respect to the Canadian term loan facility, but in excess of U.S. $2.9 billion is owing under the U.S. term loan facility, the working capital loan facility and the revolver loan.

[9] Five of the SemCanada Group, including SemCanada Crude, SemCanada Energy and SemCAMS, have provided a guarantee of all obligations under the Credit Agreement to the Secured Lenders, who rank as senior secured lenders, and under a US $600 million bond

indenture issued by SemGroup. The guarantee is secured by a security and pledge agreement (the "Security Agreement") signed by the five members of the SemCanada Group.

[10] The SemCanada Energy Companies were liquidated or have ceased operations and no longer have significant ongoing operations. As a result of liquidation proceedings and the collection of outstanding accounts receivable, the SemCanada Energy Companies hold approximately $113 million in cash. An application to distribute that cash to the Secured Lenders was adjourned *sine die* on January 19, 2009: Re SemCanada Crude Company (*Companies' Creditors Arrangement Act*), 2009 ABQB 90.

[11] Originally, SemCAMS and SemCanada Crude proposed to restructure their businesses as stand-alone operations without further affiliation with the U.S. Debtors and accordingly sought bids in a solicitation process undertaken in early 2009. Unfortunately, no acceptable bids were received. It also became apparent that, as SemCanada Crude's business was closely integrated with certain North Dakota transportation rights and assets owned by the U.S. Debtors, restructuring SemCanada Crude's operations on a stand alone basis would be problematic. The SemCanada Group turned to the alternative of joining in the restructuring of the entire SemGroup through concurrent and integrated plans of arrangement in both Canada and the United States.

Summary of the U.S. and Canadian Plans

[12] The U.S. and Canadian plans are complex and need not be described in their entirety in these reasons. For the purpose of these reasons, the relevant aspects of the plans are as follows:

1. The disclosure statement relating to a joint plan of affiliated U.S. Debtors was approved for distribution to creditors by the U.S. Bankruptcy Court on July 21, 2009. Under the Chapter 11 process, meetings of creditors are not necessary. Voting takes place through a notice and balloting mechanism that has been approved by the U.S. Court and September 3, 2009 has been set as the voting deadline for acceptance or rejection of the U.S. plan.

2. The total distributable value of the SemGroup for the purpose of the plans is expected to be US $2.3 billion, consisting of US $965 million in cash, US $300 million in second lien term loan interests and US $1.035 billion in new common stock and warrants of the U.S. Debtors.

3. The SemCanada Group will contribute approximately US $161 million in available cash to the U.S. plan and US $54 million is expected to be received from SemCanada Crude relating to crude oil settlements that will occur after the effective date of the plans, being cash received from prepayments that are outstanding on the implementation date which will be replaced with letters of credit or other post-plan financing.

4. Approximately US $50 million will be retained by the corporate group for working capital and general corporate purposes, including for the post plan cash needs of SemCAMS and SemCanada Crude.

5. Certain U.S. causes of action will be contributed to a "litigation trust" and will be distributed through the U.S. Plan, including to the Secured Lenders on their deficiency claims. No value has been placed on the litigation trust by the U.S. Debtors. The Monitor reports that it is unable to make an informed assessment of the value of the litigation trust assets as the trust is a complicated legal mechanism that will likely require the expenditure of significant time and professional fees before there will be any recovery.

6. The U.S. plan contains a condition precedent that, on the effective date of the plan, the restructured corporate group will enter into a US $500 million exit financing facility, which will apply to all post-restructuring affiliates, including SemCAMS and SemCanada Crude, and which will allow the corporate group to re-enter the crude marketing business in the United States and to continue operations in Canada.

7. It is expected that the Secured Lenders will receive cash, second lien term loan interests and equity in priority to unsecured creditors on their secured guarantee claims of US $2.9 billion, which will leave them with a deficiency of approximately US $1.07 billion on the secured loans. The Secured Lenders are entitled under the U.S. Plan to a share in the litigation trust on their deficiency claim. If certain other classes of creditors do not vote to approve the U.S. plan, the Secured Lenders may also receive equity of a value up to 4.53% of their deficiency, subject to other contingencies. The Monitor reports that the Secured Lenders are thus estimated to recover approximately 57.1% of their estimated claims of US $2.1 billion on secured working capital claims and 73.3% of their estimated claims of US $811 million on secured revolver/term claims. The Monitor estimates that the Secured Lenders will recover no value on their deficiency claims, assuming no reallocation of equity from other categories of debtors and no value for the litigation trust.

8. The holders of the US $600 million bonds (the "Noteholders") are entitled to receive common shares and warrants in the restructured corporate group, plus an interest in the litigation trust and certain trustee fees, for an estimated recovery of 8.34% on their claims of US $610 million under the U.S. plan, assuming all classes of Noteholders approve the plan and no value is given to the litigation trust. Depending on certain contingencies, the range of recovery is 0.44$ to 11.02% of their claim. Noteholders are treated more advantageously under the plans than general unsecured creditors in recognition that the Senior Notes are jointly and severally

guaranteed by 23 U.S. debtors and the Canadian debtors, while in most instances only one SemGroup debtor is liable with respect to each ordinary unsecured creditor. In addition, the Noteholders have waived their right to receive distributions under the Canadian plans.

9. Under the U.S. Plan, general unsecured creditors will receive common shares, warrants and an interest in the litigation trust. Depending on the level of approval, recovery levels will range from 0.08% to 8.03% on claims of US $811 million. The Monitor reports that it expects recovery to general unsecured creditors under the U.S. Plan to be 2.09% of their claim.

10. Pursuant to section 503(b)(9) of the U.S. Bankruptcy Code, entities that provided goods to the U.S. Debtors in the ordinary course of business that were received within 20 days of the filing of Chapter 11 proceedings are entitled to a priority claim that ranks above the claims of the Secured Lenders.

11. There are 3 Canadian plans. As the Secured Lenders will be entitled to some recovery in respect of their deficiency claim and the Noteholders will be entitled to some recovery on their unsecured claim under the U.S. Plan, the Secured Lenders and the Noteholders are deemed to have waived their rights to any additional recovery under the Canadian plans for the most part. However, the votes of the Secured Lenders and the Noteholders entitled to vote on the U.S. Plan are deemed to be votes for the purpose of the Canadian plans, both with respect to numbers of parties and value of claims, and are to be included in the single class of “Affected Creditors” entitled to vote on the Canadian plans. Originally, the Canadian plans provided that the value attributable to the Secured Lenders’ votes would be based on the full amount of their guarantee claim, approximately US $2.9 billion, and not only on their deficiency claim of approximately US $1.07 billion. Thus, the aggregate value of the Secured Lenders’ voting claims would be:

    a) US $2.939 billion for the SemCAMS plan;

    b) US $2.939 billion less C $145 million for the SemCanada Crude plan, recognizing that the Secured Lenders would be entitled to receive C $145 million in respect of a negotiated Lenders’ Secured Claim under the SemCanada Crude plan; and

    c) US $2.939 billion less C $108 million for the SemCanada Energy plan, recognizing that the Secured Lenders will

receive that amount in respect of a negotiated Lenders' Secured Claim under the SemCanada Energy plan.

At the conclusion of the classification hearing, the CCAA applicants proposed a revision to the proposed orders which stipulates that, if the approval of a plan by the creditors would be determined by the portion of the votes cast by the Secured Lenders that represents an amount of indebtedness that is greater than their estimated aggregate deficiency after taking into consideration the payments they are to receive under the U.S. plan and the Canadian plans, the Court shall determine whether the voting claim of the Secured Lenders should be limited to their estimated deficiency claim.

12. Only "Ordinary Creditors" receive any distribution under the Canadian Plans. Ordinary Creditors are defined as creditors holding "Affected Claims" other than the Secured Lenders, Noteholders, CCAA applicants and U.S. Debtors. Each plan provides that the Affected Creditors of the CCAA applicant will vote at the Creditors' Meeting as a single class.

13. The SemCAMS plan will be funded by a cash advance from SemCanada Crude and establishes two pools of cash. One pool will fund the full amount of secured claims which have not been paid prior to the implementation date of the plan up to the realizable value of the property secured, and the other pool will fund distributions to ordinary unsecured creditors. Ordinary unsecured creditors will receive cash subject to a maximum total payment of 4% of their proven claims. The Monitor estimates that the distribution will equal 4% of claims unless claims in excess of the current highest estimate are established.

14. The SemCanada Crude plan also establishes two pools of cash, one for secured claims and one for ordinary unsecured creditors. Again, the distribution to ordinary unsecured creditors is estimated to be 4% of claims unless claims in excess of the current highest estimate against SemCanada Crude are established.

15. Any cash remaining in SemCanada Crude after deducting amounts necessary to fund the above-noted payments to secured and unsecured ordinary creditors of SemCAMS and SemCanada Crude, unaffected claims and administrative costs, less a reserve for disputed claims, will be paid to the Secured Lenders through the U.S. plan as part of the payment on secured debt.

16. The SemCanada Energy distribution plan is funded from the cash received from the liquidation of the assets of the companies. It also establishes two pools of cash, one of which will be used to pay secured ordinary creditors and a one of which will be used to pay cash distributions to ordinary unsecured creditors. The Monitor estimates that the distribution to ordinary unsecured creditors will be in

the range of 2.16% to 2.27% of their claims, unless claims in excess of the current maximum estimate are established. Any amounts outstanding after payment of these claims, unaffected claims and administration costs will be paid to the Secured Lenders. The proposed lower amount of recovery is stated to be in recognition of the fact that the SemCanada Energy Companies have been liquidated and have no going concern value.

17. As this summary indicates, the U.S. Plan and the Canadian plans are closely integrated and economically interdependent. Each of the plans requires that the other plans be approved by the requisite number of creditors and implemented on the same date in order to become effective. The receipt of at least $160 million from the SemCanada Group is a condition precedent to the implementation of the U.S. Plan.

18. The Monitor reports that the SemCanada Group has indicated that there is no viable option to the proposed plans and that a formal liquidation under bankruptcy legislation would provide a lower recovery to creditors. The Monitor notes that the rationale for the treatment of the Secured Lenders and the ordinary unsecured creditors under the plans is that the Secured Lenders have valid and enforceable secured claims, and that, in the event of the liquidation of the Canadian companies, the Secured Lenders would be entitled to all proceeds, resulting in no recovery to ordinary creditors. Therefore, reports the Monitor, the CCAA plans are considered to be better than the alternative of a liquidation. The Secured Lenders derive some benefit from the plans through the preservation of the going concern value of SemCAMS and SemCanada Crude and by having a prompt distribution of funds held by the SemCanada Energy Companies.

19. The Monitor notes that the distribution to the SemGroup unsecured creditors under the U.S. plan is viewed as better than a liquidation, and that, therefore, given the effect of the U.S. Bankruptcy Code's "cram-down" provisions, it is likely that the U.S. plan will be confirmed. The Monitor comments that the proposed distribution to ordinary unsecured creditors under the CCAA plans is considered to be fair as it is comparable to and potentially slightly more favourable than the distributions being made to the U.S. ordinary unsecured creditors.

Positions of Various Parties

[13] The SemCanada Group applied for orders

a) accepting the filing of, in the case of SemCAMS and SemCanada Crude, proposed plans of arrangement and compromise, and in the case of SemCanada Energy, a proposed plan of distribution;

b) authorizing the calling and holding of meetings of the Canadian creditors of these three CCAA applicants;

c) authorizing the establishment of a single class of creditors for each plan for the purpose of considering and voting on the plans;

d) approving procedures with respect to the calling and conduct of such meetings; and

e) other non-contentious enabling relief.

[14] Certain unsecured creditors of the applicants objected to the proposed classification of creditors, submitting that the Secured Lenders should not be allowed a vote in the same class as the unsecured creditors either with respect to the secured portion of their overall claim or any deficiency in their claims that would remain unpaid, and that the Noteholders should not be allowed a vote in the same class as the rest of the unsecured creditors.

[15] As noted previously, the CCAA applicants proposed a revision to the proposed orders at the conclusion of the classification hearing which would allow the Court to consider whether the voting claim of the Secured Lenders should be limited to their estimated deficiency claim. The objecting creditors continued to object to the proposed classification, even if eligible votes were limited to the deficiency claim of the Secured Lenders.

Analysis

[16] Section 6 of the CCAA provides that, where a majority in number representing two-thirds in value of "the creditors or class of creditors, as the case may be" vote in favour of a plan of arrangement or compromise at a meeting or meetings, the plan of arrangement may be sanctioned by the Court. There is little by way of specific statutory guidance on the issue of classification of claims, leaving the development of this issue in the CCAA process to case law. Prior decisions have recognized that the starting point in determining classification is the statute itself and the primary purpose of the statute is to facilitate the reorganization of insolvent companies: Paperny, J. in *Re Canadian Airlines Corp.*, (2000) 20 C.B.R. (4th) 46 (Alta. Q.B.), leave to appeal refused (2000), 20 C.B.R. (4th) 46, (Alta. C.A.), affirmed [2001] 4. W.W.R. (Alta. C.A.), leave to appeal to SCC refused [2001] S.C.C.A. No. 60 at para. 14. As first noted by Forsyth, J. in *Norcen Energy Resources Ltd. v. Oakwood Petroleums Ltd.* (1988), 72 C.B.R. (N.S.) 20, 64 Alta. L. R. (2d) 139, [1989] 2 W.W.R. 566 (Q.B.) at page 28, and often repeated in classification decisions since, "this factor must be given due consideration at every stage of the process, including the classification of creditors..."

[17] Classification is a key issue in CCAA proceedings, as a proposed plan must achieve the requisite level of creditor support in order to proceed to the stage of a sanction hearing. The CCAA debtor seeks to frame a class or classes in order to ensure that the plan receives the maximum level of support. Creditors have an interest in classifications that would allow them

enhanced bargaining power in the negotiation of the plan, and creditors aggrieved by the process may seek to ensure that classification will give them an effective veto (see *Rescue: The Companies' Creditors Arrangement Act*, Janis P. Sarra, 2007 ed. Thomson Carswell at page 234). Case law has developed from the comments of the British Columbia Court in *Re Woodwards* (1993), 84 B.C.L.R. (5d) 206 (B.C.S.C.) warning against the danger of fragmenting the voting process unnecessarily, through the identification of principles applicable to the concept of "commonality of interest" articulated in *Re Canadian Airlines* and elaborated further in Alberta in *Re San Francisco Gifts Ltd.* (2004), 2004 CarswellAlta 1241, [2004] A.J. No. 1062 (Alta. Q.B.), leave to appeal refused (2004), 5 C.B.R. (5th) 300 (Alta. C.A.).

[18] The parties in this case agree that "commonality of interest" is the key consideration in determining whether the proposed classification is appropriate, but disagree on whether the plans as proposed with their single class of voters meet that requirement. It is clear that classification is a fact-driven inquiry, and that the principles set out in the case law, while useful in considering whether commonality of interest has been achieved by the proposed classification, should not be applied rigidly: *Re Canadian Airlines* at para. 18; *Re San Francisco Gifts* at para. 12; *Re Stelco Inc*., (2005), 15 C.B.R. (5th) 307 (Ont. C.A.) at para. 22.

[19] Although there are no fixed rules, the principles set out by Paperny, J. in para. 31 of *Re Canadian Airlines* provide a useful structure for discussion of whether to the proposed classification is appropriate:

1. *Commonality of interest should be viewed based on the non-fragmentation test, not on the identity of interest test.*

[20] Under the now-rejected "identity of interest" test, all members of the class had to have identical interests. Under the non-fragmentation test, interests need not be identical. The interests of the creditors in the class need only be sufficiently similar to allow them to vote with a common interest: *Re Woodwards* at para. 8.

[21] The objecting creditors submit that the creation of two classes rather than one cannot be considered to be fragmentation. The issue, however, is not the number of classes, but the effect that fragmentation of classes may have on the ability to achieve a viable reorganization. As noted by Farley, J. in para. 13 of his reasons relating to the classification of creditors in *Stelco*, as endorsed by the Ontario Court of Appeal:

> ...absent valid reason to have separate classes it would be reasonable, logical, rational and practical to have all this unsecured debt in the same class. Certainly that would avoid fragmentation - and in this respect multiplicity of classes does not mean that fragmentation starts only when there are many classes. Unless more than one class is necessary, fragmentation would start at two classes. Fragmentation if necessary, but not necessarily fragmentation.

2. *The interests to be considered are the legal interests that a creditor holds qua creditor in relationship to the debtor company prior to and under the plan as well as on liquidation.*

[22] The classification of creditors is viewed with respect to the legal rights they hold in relation to the debtor company in the context of the proposed plan, as opposed to their rights as creditors in relation to each other: *Re Woodwards* at para. 27, 29; *Re Stelco* at para. 30. In the proposed single classification, the rights of the creditors in the class against the debtor companies are unsecured (other than the proposed votes attributable to the secured portion of the debt of the Secured Lenders, which will be discussed separately).

[23] With respect to the Secured Lenders' deficiency claim, there is a clear precedent for permitting a secured creditor to vote a substantial deficiency claim as part of the unsecured class: *Re Campeau Corp*. (1991) 10 C.B.R. (3d) 100 (Ont. Gen. Div.; *Re Canadian Airlines*, supra.

[24] The classification issues in the *Campeau* restructuring were similar to the present issues. In *Re Campeau*, a secured creditor, Olympia & York, was included in the class of unsecured creditors for the deficiency in its secured claim, which represented approximately 88% of the value of the unsecured class. The Court rejected the submission that the legal interests of Olympia & York were different from other unsecured creditors in the class. Montgomery, J. noted at para. 16 that Olympic & York's involvement in the negotiation of the plan was necessary and appropriate given that the size of its claims would allow it a veto no matter how the classes were constituted and that its co-operation was necessary for the success of both the U.S. and Canadian plans.

[25] In the same way, the size and scope of the Secured Lenders claim makes their participation in the negotiation and endorsement of the proposed plans essential. That participation does not disqualify them from a vote in the process, nor necessitate their isolation in a special class. While under the integrated plans, the Secured Lenders will receive a different kind of distribution on their unsecured deficiency claim (a share of the litigation trust), that is an issue of fairness for the sanction hearing and does not warrant the establishment of a separate class.

[26] The interests of the Noteholders are unsecured. While it is true that under the integrated plans, the Noteholders would be entitled to a higher share of the distribution of assets than ordinary unsecured creditors, the rationale for such difference in treatment relates to the multiplicity of debtor companies that are indebted to the Noteholders, as compared to the position of the ordinary unsecured creditors. That difference, while it may be subject to submissions at the sanction hearing, is an issue of fairness, and not a difference material enough to warrant a separate class for the Noteholders in this case. A separate class for the Noteholders would only be necessary if, after considering all the relevant factors, it appeared that this difference would preclude reasonable consultation among the creditors of the class: *Re San Francisco Gifts* at para. 24.

[27] The question arises whether the fact that the Secured Lenders and the Noteholders have waived their rights to recover under the Canadian plans should result in either the requirement of separate classes or the forfeiture of their right to vote on the Canadian plans at all.

[28] This is a unique case: a cross-border restructuring with separate but integrated and interdependent plans that are designed to comply with the restructuring legislation of two jurisdictions. As the applicants point out, the co-ordinated structure of the plans is designed to ensure that the Secured Lenders and the Noteholders receive sufficient recoveries under the U.S. plan to justify the sacrifices in recovery that result from their waiver of distributions under the Canadian plans. In considering the context of the proposed classification, it would be unrealistic and artificial to consider the Canadian plans in isolation, without regard to the commercial outcome to the creditors resulting from the implementation of the plans in both jurisdictions. Thus, the fact that the distributions to Secured Lenders and Noteholders will take place through the operation of the U.S. plan, and that the effective working of the plans require them to waive their rights to receive distributions under the Canadian plans does not deprive them of the right to an effective voice in the consideration of the Canadian plans through a meaningful vote.

[29] It is not sufficient to say that the Secured Lenders and the Noteholders have a vote in the U.S. plans. The “cram down” power which exists under Chapter 11 of the U.S. Bankruptcy Code includes a “best interests test” that requires that if a class of holders of impaired claims rejects the plan, they can be “crammed down” and their claims will be satisfied if they receive property of a value that is not less than the value that the class would receive or retain if the debtor were liquidated under Chapter 7 of the U.S. Bankruptcy Code. Thus, the votes available to the Secured Lenders and the Noteholders with respect to their claims under the U.S. Plan do not give them the right available to creditors under Canadian restructuring law to vote on whether a proposed plan should proceed to the next step of a sanction hearing There is no reason to deprive the Secured Lenders and the Noteholders of that right as creditors of the Canadian debtors, even if the distributions they would be entitled to flow through the U.S. plan. The question becomes, then, whether that right should be exercised in a class with other unsecured creditors as proposed or in a separate class.

[30] It is noteworthy that the proposed single classification does not have the effect of confiscating the legal rights of any of the unsecured creditors, or adversely affecting any existing security position. It is in fact arguable that seeking to exclude the Secured Lenders and the Noteholders from the class prejudices these similarly-placed creditors by denying them a meaningful voice in the approval or rejection of the plans in Canada.

[31] A number of cases suggest that the Court should also consider the rights of the parties in liquidation in determining whether a proposed classification is appropriate: *Re Woodwards* at para. 14; *Re San Francisco Gifts* at para. 12.

[32] Under a liquidation scenario, the Secured Lenders would be entitled to nearly all of the proceeds of the liquidated corporate group, other than the relatively few secured claims that have

priority. This suggests that the Secured Lenders are entitled to a meaningful vote with respect to both the U.S. plan and the Canadian plans.

> 3. *The commonality of interests is to be viewed purposively, bearing in mind the object of the CCAA, namely to facilitate organizations if possible.*
>
> 4. *In placing a broad and purposive interpretation on the CCAA, the Court should be careful to resist classification approaches that would potentially jeopardize viable plans.*

[33] The Ontario Court of Appeal in *Re Stelco* cautioned that, in addition to considering commonality of interest issues, the court in a classification application should be alert to concerns about the confiscation of legal rights and should avoid "a tyranny of the minority", citing the comments of Borins, J. in *Sklar-Peppler Furniture Corp. v. Bank of Nova Scotia* (1991), 86 (4th) 621 (Ont. Gen. Div.), where he warned against creating "a special class simply for the benefit of the opposing creditor, which would give that creditor the potential to exercise an unwarranted degree of power": *Stelco* at para 28.

[34] Excluding of the Secured Lenders and the Noteholders from the proposed single class would allow the objecting creditors to influence the voting process to a degree not warranted by their status. It is true that if the Secured Lenders and the Noteholders are not excluded from the class, even if only the votes related to the Secured Lenders' deficiency claim are tabulated, the positive vote will likely be enough to allow the proposed plans to proceed to a sanction hearing. It is also true that the Secured Lenders and the Noteholders may have been part of the negotiations that led to the proposed plans. Neither of those factors standing alone is sufficient to warrant a separate class unless rights are being confiscated or the classification creates an injustice.

[35] The structure of the classification as proposed creates in effect what was imposed by the Court in *Re Canadian Airlines*, a method of allowing the "voice" of ordinary unsecured creditors to be heard without the necessity of a separate classification, thus permitting rather than ruling out the possibility that the plans might proceed to a sanction hearing. Given that the votes of the Secured Lenders and the Noteholders on the U.S. plan will be deemed to be votes of those creditors on the Canadian plans, there will be perforce a separate tabulation of those votes from the votes of the remaining unsecured creditors. In accordance with the revision to the plans made at the end of the classification hearing, there will be a separate tabulation of the votes of the Secured Lenders relating to the secured portion of their claims and the votes relating to the unsecured deficiency.

[36] The situation in this classification dispute is essentially the same as that which faced Paperny, J. in *Re Canadian Airlines*. Fragmenting the classification prior to the vote raises the possibility that the plans may not reach the stage of a sanction hearing where fairness issues can be fully canvassed. This would be contrary to the purpose of the CCAA. This is particularly an issue recognizing that the U.S. plan and the Canadian plans must all be approved in order for any

one of them to be implemented. Conrad, J.A. in denying leave to appeal in Re *San Francisco Gifts* 2004 ABCA 386 at para. 9 noted that the right to vote in a separate class and thereby defeat a proposed plan of arrangement is the statutory protection provided to the different classes of creditors, and thus must be determined reasonably at the classification stage. However, she also noted that "it is important to carefully examine classes with a view of protecting against injustice": para. 10. In this case, the goals of preventing confiscation of rights and protecting against injustice favour the proposed single classification.

[37] This is the "pragmatic"factor referred to in Re *Campea* at para. 21.The CCAA judge must keep in mind the interests of all stakeholders in reviewing the proposed classification, as in any step in the process. If a classification prevents the danger of a veto of a plan that promises some better return to creditors than the alternative of a liquidating insolvency, it should not be interfered with absent good reason. The classification hearing is not the only avenue of relief for aggrieved creditors. If a plan received the minimum required level of approval by vote of creditors, it must still be approved at a hearing where issues of fairness must be addressed.

5. *Absent bad faith, the motivations of the creditors to approve or disapprove [of the Plan] are irrelevant.*

[38] As noted in *Re Canadian Airlines* at para. 35, fragmenting a class because of an alleged conflict of interest not based on legal rights is an error. The issue of the motivation of a party to vote for or against a plan is an issue for the fairness hearing. There is no doubt that the various affected creditors in the proposed single class may have differing financial or strategic interests. To recognize such differences at the classification stage, unless the proposed classification confiscates rights, results in an injustice or creates a situation where meaningful consultation is impossible, would lead to the type of fragmentation that may jeopardize the CCAA process and be counter-productive to the legislative intent to facilitate viable reorganizations.

6. *The requirement of creditors being able to consult together means being able to assess their legal entitlement as creditors before or after the plan in a similar manner*.

[39] The issue of meaningful consultation was addressed by both the supervising justice and the Court of Appeal in *Re San Francisco Gifts*. In that case, Topolniski, J. noted that two corporate insiders that the proposed plan had included in the classification of affected creditors held claims that were uncompromised by the plan, that they gave up nothing, and that it "stretches the imagination to think other creditors in the class could have meaningful consultation [with them] about the Plan": para. 49. Her decision to place these parties in a separate class was confirmed by the Court of Appeal, which commented that Topolniski, J. was "absolutely correct" to find no ability to consult "between shareholders whose debts would not be cancelled and other unsecured creditors whose debts would be": para. 14.

[40] That is not the situation here. The deficiency claims of the Secured Lenders and the unsecured claims of the Noteholders are being compromised in the U.S. plan, and there is nothing to block consultations among affected creditors on the basis of dissimilarity of legal

interests. While there are differences in the proposed distributions on the unsecured claims, they are not so major that they would preclude consultation.

[41] The objecting creditors point to statements made by counsel for the Secured Lenders during the classification application about the alternatives to approval of the plans, which they submit indicates the impossibility of consultation. These comments were made in the context of advocacy on behalf of the proposed classification, and I do not take them as a clear statement by the Secured Lenders that they would refuse to consult with the other creditors.

Secured Portion of Secured Lenders' Claim

[42] The CCAA applicants and the Secured Lenders submit that it would be unfair and inappropriate to limit the votes of the Secured Lenders in the Canadian plans to the amount of the deficiency in their secured claim, rather than the entire amount owing under the guarantee. They argue that, by endorsing the plans, the Secured Lenders have in effect elected to treat their entire claim under the guarantee as unsecured with respect to the Canadian plans, except for relatively small negotiated secured claims under the SemCanada Crude plan and the SemCanada Energy plan. They also submit that the fact that under bankruptcy law, a creditor of a bankrupt debtor is entitled to prove for the full amount of its debt in the estates of both the debtor and a bankrupt guarantor of the debt justifies granting the Secured Lenders the right to vote the full amount of the guarantee claim, even if part of the claim is to be recovered through the U.S. plan, as long as they do not actually recover more than 100 cents on the dollar.

[43] It became apparent during the course of the classification hearing that it may not matter whether the plans are approved by the requisite number of creditors and value of their claims if the Secured Lenders are only entitled to vote the deficiency portion of their claims or the full amount of their claims. It was this that led to the revision in the language of the voting provisions of the plans. I defer a decision on the question of whether or not the Secured Lenders are entitled to vote the entire amount of their guarantee claims until after the vote has been conducted and the votes separately tabulated as directed. As noted by the Court of Appeal in *Re Canadian Airlines,* (2000), 19 C.B.R. (4th) 33 at para. 39, such a deferral of a voting issue is not an error of law and is in fact consistent with the purpose of the CCAA.

Recent Amendments

[44] The following amendment to the CCAA that has been proclaimed in effect from September 18, 2009 sets out certain factors that may be considered in approving a classification for voting purposes:

> 22.2 (2)**Factors -** For the purpose of subsection (1), creditors may be included in the same class if their interests or rights are sufficiently similar to give them a commonality of interest, taking into account:

> (a) the nature of the debts, liabilities or obligations giving rise to their claims;
>
> (b) the nature and rank of any security in respect of their claims;
>
> (c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and
>
> (d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed. (R.S.C. 2005, c. 47, s. 131, amended R.S.C. 2007, Bill C -12, c.36, s.71)

[45] These factors do not change in any material way the factors that have been identified in the case law and discussed in these reasons nor would they have a material effect on the consideration of the proposed classification in this case.

Creditors with Claims in Process

[46] Two creditors advised that, because their claims of secured status had not yet been resolved with the applicants and the Monitor, they were not in a position to evaluate whether or not to object to the proposed classification. The plans were revised to ensure that the votes of creditors whose status as secured creditors remains unresolved until after the meetings of creditors be recorded with votes of creditors with disputed claims and reported to the Court by the Monitor if these votes affect the approval or non-approval of the plan in question.

Conclusion

[47] In summary, I have concluded that there is no good reason to exclude the Secured Lenders and the Noteholders from the single classification of voters in the proposed plans, nor to create a separate class for their votes. There are no material distinctions between the claims of these two creditors and the claims of the remaining unsecured creditors that are not more properly the subject of the sanction hearing, apart from the deferred issue of whether the Secured Lenders are entitled to vote their entire guarantee claim. No rights of the remaining unsecured creditors are being confiscated by the proposed classification, and no injustice arises, particularly given the separate tabulation of votes which enables the voice of the remaining unsecured creditors to be heard and measured at the sanction hearing. There are no conflicts of interest so over-riding as to make consultation impossible. While there are differences of interests and treatment among the affected creditors in the class, these are issues that will be addressed at the sanction hearing. Approval of the proposed classification in the context of the integrated plans is in accordance with the spirit and purpose of the CCAA.

Heard on the 5th day of August, 2009.
Dated at the City of Calgary, Alberta this 24th day of August, 2009.

B.E. Romaine
J.C.Q.B.A.

Appearances:

A. Robert Anderson, Q.C., Rupert Chartrand, Michael De Lellis, Cynthia L. Spry and Douglas Schweitzer
Osler, Hoskin & Harcourt LLP
for the Applicants

David R. Byers
Stikeman Elliott LLP
for The Bank of America

Patrick T. McCarthy and Josef A. Krüger
Borden Ladner Gervais LLP
for the Monitor

Douglas S. Nishimura
Burnet Duckworth & Palmer LLP
for ARC Resources Ltd., City of Medicine Hat, Black Rider Resources Inc. Wolf Coulee Resources Inc., Orleans Energy Ltd., Crew Energy Inc., Trilogy Energy LP

Brendan O'Neill and Jason Wadden
Goodmans LLP
for Fortis Capital Corp.

Sean Fitzgerald
Miles Davison LLP
for Tri-Ocean Engineering Ltd.

Dean Hutchison
McCarthy Tetrault LLP
for Crescent Point Energy Trust, Enbridge Pipelines Inc.

Caireen Hanert

Hennan Blaikie LLP
for Bellamount Exploration Ltd., Enersul Limited Partnership

Bryce McLean
Field Law LLP
for DPH Focus Corporation

Aubrey Kauffman
Fasken Martineau Dumoulin LLP
for BNP Paribas

Tab 13

CITATION: Sino-Forest Corporation (Re), 2012 ONSC 7050
COURT FILE NO.: CV-12-9667-00CL
DATE: 20121212

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

RE: **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 SINO-FOREST CORPORATION, Applicant

BEFORE: **MORAWETZ J.**

COUNSEL: **Robert W. Staley, Kevin Zych, Derek J. Bell and Jonathan Bell, for Sino-Forest Corporation**

Derrick Tay, Jennifer Stam, and Cliff Prophet for the Monitor, FTI Consulting Canada Inc.

Robert Chadwick and Brendan O'Neill, for the Ad Hoc Committee of Noteholders

Kenneth Rosenberg, Kirk Baert, Max Starnino, and A. Dimitri Lascaris, for the Class Action Plaintiffs

Won J. Kim, James C. Orr, Michael C. Spencer, and Megan B. McPhee, for Invesco Canada Ltd., Northwest & Ethical Investments LP and Comité Syndicale Nationale de Retraite Bâtirente Inc.

Peter Griffin, Peter Osborne and Shara Roy, for Ernst & Young Inc.

Peter Greene and Ken Dekkar, for BDO Limited

Edward A. Sellers and Larry Lowenstein, for the Board of Directors of Sino-Forest Corporation

John Pirie and David Gadsden, for Poyry (Beijing)

James Doris, for the Plaintiff in the New York Class Action

David Bish, for the Underwriters

Simon Bieber and Erin Pleet, for David Horsley

James Grout, for the Ontario Securities Commission

Emily Cole and Joseph Marin, for Allen Chan

Susan E. Freedman and Brandon Barnes, for Kai Kit Poon

Paul Emerson, for ACE/Chubb

Sam Sasso, for Travelers

HEARD: DECEMBER 7, 2012

ENDORSED: DECEMBER 10, 2012

REASONS: DECEMBER 12, 2012

ENDORSEMENT

[1] On December 10, 2012, I released an endorsement granting this motion with reasons to follow. These are those reasons.

Overview

[2] The Applicant, Sino-Forest Corporation ("SFC"), seeks an order sanctioning (the "Sanction Order") a plan of compromise and reorganization dated December 3, 2012 as modified, amended, varied or supplemented in accordance with its terms (the "Plan") pursuant to section 6 of the *Companies' Creditors Arrangement Act* ("CCAA").

[3] With the exception of one party, SFC's position is either supported or is not opposed.

[4] Invesco Canada Ltd., Northwest & Ethical Investments LP and Comité Syndicale Nationale de Retraite Bâtirente Inc. (collectively, the "Funds") object to the proposed Sanction Order. The Funds requested an adjournment for a period of one month. I denied the Funds' adjournment request in a separate endorsement released on December 10, 2012 (*Re Sino-Forest Corporation*, 2012 ONSC 7041). Alternatively, the Funds requested that the Plan be altered so as to remove Article 11 "Settlement of Claims Against Third Party Defendants".

[5] The defined terms have been taken from the motion record.

[6] SFC's counsel submits that the Plan represents a fair and reasonable compromise reached with SFC's creditors following months of negotiation. SFC's counsel submits that the Plan, including its treatment of holders of equity claims, complies with CCAA requirements and is consistent with this court's decision on the equity claims motions (the "Equity Claims Decision")

(2012 ONSC 4377, 92 C.B.R. (5th) 99), which was subsequently upheld by the Court of Appeal for Ontario (2012 ONCA 816).

[7] Counsel submits that the classification of creditors for the purpose of voting on the Plan was proper and consistent with the CCAA, existing law and prior orders of this court, including the Equity Claims Decision and the Plan Filing and Meeting Order.

[8] The Plan has the support of the following parties:

(a) the Monitor;

(b) SFC's largest creditors, the Ad Hoc Committee of Noteholders (the "Ad Hoc Noteholders");

(c) Ernst & Young LLP ("E&Y");

(d) BDO Limited ("BDO"); and

(e) the Underwriters.

[9] The Ad Hoc Committee of Purchasers of the Applicant's Securities (the "Ad Hoc Securities Purchasers Committee", also referred to as the "Class Action Plaintiffs") has agreed not to oppose the Plan. The Monitor has considered possible alternatives to the Plan, including liquidation and bankruptcy, and has concluded that the Plan is the preferable option.

[10] The Plan was approved by an overwhelming majority of Affected Creditors voting in person or by proxy. In total, 99% in number, and greater than 99% in value, of those Affected Creditors voting favoured the Plan.

[11] Options and alternatives to the Plan have been explored throughout these proceedings. SFC carried out a court-supervised sales process (the "Sales Process"), pursuant to the sales process order (the "Sales Process Order"), to seek out potential qualified strategic and financial purchasers of SFC's global assets. After a canvassing of the market, SFC determined that there were no qualified purchasers offering to acquire its assets for qualified consideration ("Qualified Consideration"), which was set at 85% of the value of the outstanding amount owing under the notes (the "Notes").

[12] SFC's counsel submits that the Plan achieves the objective stated at the commencement of the CCAA proceedings (namely, to provide a "clean break" between the business operations of the global SFC enterprise as a whole ("Sino-Forest") and the problems facing SFC, with the aspiration of saving and preserving the value of SFC's underlying business for the benefit of SFC's creditors).

Facts

[13] SFC is an integrated forest plantation operator and forest products company, with most of its assets and the majority of its business operations located in the southern and eastern regions of the People's Republic of China ("PRC"). SFC's registered office is located in Toronto and its principal business office is located in Hong Kong.

[14] SFC is a holding company with six direct subsidiaries (the "Subsidiaries") and an indirect majority interest in Greenheart Group Limited (Bermuda), a publicly-traded company. Including SFC and the Subsidiaries, there are 137 entities that make up Sino-Forest: 67 companies incorporated in PRC, 58 companies incorporated in British Virgin Islands, 7 companies incorporated in Hong Kong, 2 companies incorporated in Canada and 3 companies incorporated elsewhere.

[15] On June 2, 2011, Muddy Waters LLC ("Muddy Waters"), a short-seller of SFC's securities, released a report alleging that SFC was a "near total fraud" and a "Ponzi scheme". SFC subsequently became embroiled in multiple class actions across Canada and the United States and was subjected to investigations and regulatory proceedings by the Ontario Securities Commission ("OSC"), Hong Kong Securities and Futures Commission and the Royal Canadian Mounted Police.

[16] SFC was unable to file its 2011 third quarter financial statements, resulting in a default under its note indentures.

[17] Following extensive arm's length negotiations between SFC and the Ad Hoc Noteholders, the parties agreed on a framework for a consensual resolution of SFC's defaults under its note indentures and the restructuring of its business. The parties ultimately entered into a restructuring support agreement (the "Support Agreement") on March 30, 2012, which was initially executed by holders of 40% of the aggregate principal amount of SFC's Notes. Additional consenting noteholders subsequently executed joinder agreements, resulting in noteholders representing a total of more than 72% of aggregate principal amount of the Notes agreeing to support the restructuring.

[18] The restructuring contemplated by the Support Agreement was commercially designed to separate Sino-Forest's business operations from the problems facing the parent holding company outside of PRC, with the intention of saving and preserving the value of SFC's underlying business. Two possible transactions were contemplated:

(a) First, a court-supervised Sales Process to determine if any person or group of persons would purchase SFC's business operations for an amount in excess of the 85% Qualified Consideration;

(b) Second, if the Sales Process was not successful, a transfer of six immediate holding companies (that own SFC's operating business) to an acquisition vehicle to be owned by Affected Creditors in compromise of their claims against SFC. Further, the creation of a litigation trust (including funding) (the "Litigation Trust") to enable SFC's litigation claims against any person not otherwise released within the CCAA proceedings,

preserved and pursued for the benefit of SFC's stakeholders in accordance with the Support Agreement (concurrently, the "Restructuring Transaction").

[19] SFC applied and obtained an initial order under the CCAA on March 30, 2012 (the "Initial Order"), pursuant to which a limited stay of proceedings ("Stay of Proceedings") was also granted in respect of the Subsidiaries. The Stay of Proceedings was subsequently extended by orders dated May 31, September 28, October 10, and November 23, 2012, and unless further extended, will expire on February 1, 2013.

[20] On March 30, 2012, the Sales Process Order was granted. While a number of Letters of Intent were received in respect of this process, none were qualified Letters of Intent, because none of them offered to acquire SFC's assets for the Qualified Consideration. As such, on July 10, 2012, SFC announced the termination of the Sales Process and its intention to proceed with the Restructuring Transaction.

[21] On May 14, 2012, this court granted an order (the "Claims Procedure Order") which approved the Claims Process that was developed by SFC in consultation with the Monitor.

[22] As of the date of filing, SFC had approximately $1.8 billion of principal amount of debt owing under the Notes, plus accrued and unpaid interest. As of May 15, 2012, Noteholders holding in aggregate approximately 72% of the principal amount of the Notes, and representing more than 66.67% of the principal amount of each of the four series of Notes, agreed to support the Plan.

[23] After the Muddy Waters report was released, SFC and certain of its officers, directors and employees, along with SFC's former auditors, technical consultants and Underwriters involved in prior equity and debt offerings, were named as defendants in a number of proposed class action lawsuits. Presently, there are active proposed class actions in four jurisdictions: Ontario, Quebec, Saskatchewan and New York (the "Class Action Claims").

[24] *The Labourers v. Sino-Forest Corporation Class Action* (the "Ontario Class Action") was commenced in Ontario by Koskie Minsky LLP and Siskinds LLP. It has the following two components: first, there is a shareholder claim (the "Shareholder Class Action Claims") brought on behalf of current and former shareholders of SFC seeking damages in the amount of $6.5 billion for general damages, $174.8 million in connection with a prospectus issued in June 2007, $330 million in relation to a prospectus issued in June 2009, and $319.2 million in relation to a prospectus issued in December 2009; second, there is a $1.8 billion noteholder claim (the "Noteholder Class Action Claims") brought on behalf of former holders of SFC's Notes. The noteholder component seeks damages for loss of value in the Notes.

[25] The Quebec Class Action is similar in nature to the Ontario Class Action, and both plaintiffs filed proof of claim in this proceeding. The plaintiffs in the Saskatchewan Class Action did not file a proof of claim in this proceeding, whereas the plaintiffs in the New York Class Action did file a proof of claim in this proceeding. A few shareholders filed proofs of claim separately, but no proof of claim was filed by the Funds.

[26] In this proceeding, the Ad Hoc Securities Purchasers Committee - represented by Siskinds LLP, Koskie Minsky, and Paliare Roland Rosenberg Rothstein LLP - has appeared to represent the interests of the shareholders and noteholders who have asserted Class Action Claims against SFC and others.

[27] Since 2000, SFC has had the following two auditors ("Auditors"): E&Y from 2000 to 2004 and 2007 to 2012 and BDO from 2005 to 2006.

[28] The Auditors have asserted claims against SFC for contribution and indemnity for any amounts paid or payable in respect of the Shareholder Class Action Claims, with each of the Auditors having asserted claims in excess of $6.5 billion. The Auditors have also asserted indemnification claims in respect the Noteholder Class Action Claims.

[29] The Underwriters have similarly filed claims against SFC seeking contribution and indemnity for the Shareholder Class Action Claims and Noteholder Class Action Claims.

[30] The Ontario Securities Commission ("OSC") has also investigated matters relating to SFC. The OSC has advised that they are not seeking any monetary sanctions against SFC and are not seeking monetary sanctions in excess of $100 million against SFC's directors and officers (this amount was later reduced to $84 million).

[31] SFC has very few trade creditors by virtue of its status as a holding company whose business is substantially carried out through its Subsidiaries in PRC and Hong Kong.

[32] On June 26, 2012, SFC brought a motion for an order declaring that all claims made against SFC arising in connection with the ownership, purchase or sale of an equity interest in SFC and related indemnity claims to be "equity claims" (as defined in section 2 of the CCAA). These claims encapsulate the commenced Shareholder Class Action Claims asserted against SFC. The Equity Claims Decision did not purport to deal with the Noteholder Class Action Claims.

[33] In reasons released on July 27, 2012, I granted the relief sought by SFC in the Equity Claims Decision, finding that the "the claims advanced in the shareholder claims are clearly equity claims." The Auditors and Underwriters appealed the decision and on November 23, 2012, the Court of Appeal for Ontario dismissed the appeal.

[34] On August 31, 2012, an order was issued approving the filing of the Plan (the "Plan Filing and Meeting Order").

[35] According to SFC's counsel, the Plan endeavours to achieve the following purposes:

(a) to effect a full, final and irrevocable compromise, release, discharge, cancellation and bar of all affected claims;

(b) to effect the distribution of the consideration provided in the Plan in respect of proven claims;

(c) to transfer ownership of the Sino-Forest business to Newco and then to Newco II, in each case free and clear of all claims against SFC and certain related claims against the Subsidiaries so as to enable the Sino-Forest business to continue on a viable, going concern basis for the benefit of the Affected Creditors; and

(d) to allow Affected Creditors and Noteholder Class Action Claimants to benefit from contingent value that may be derived from litigation claims to be advanced by the litigation trustee.

[36] Pursuant to the Plan, the shares of Newco ("Newco Shares") will be distributed to the Affected Creditors. Newco will immediately transfer the acquired assets to Newco II.

[37] SFC's counsel submits that the Plan represents the best available outcome in the circumstances and those with an economic interest in SFC, when considered as a whole, will derive greater benefit from the implementation of the Plan and the continuation of the business as a going concern than would result from bankruptcy or liquidation of SFC. Counsel further submits that the Plan fairly and equitably considers the interests of the Third Party Defendants, who seek indemnity and contribution from SFC and its Subsidiaries on a contingent basis, in the event that they are found to be liable to SFC's stakeholders. Counsel further notes that the three most significant Third Party Defendants (E&Y, BDO and the Underwriters) support the Plan.

[38] SFC filed a version of the Plan in August 2012. Subsequent amendments were made over the following months, leading to further revised versions in October and November 2012, and a final version dated December 3, 2012 which was voted on and approved at the meeting. Further amendments were made to obtain the support of E&Y and the Underwriters. BDO availed itself of those terms on December 5, 2012.

[39] The current form of the Plan does not settle the Class Action Claims. However, the Plan does contain terms that would be engaged if certain conditions are met, including if the class action settlement with E&Y receives court approval.

[40] Affected Creditors with proven claims are entitled to receive distributions under the Plan of (i) Newco Shares, (ii) Newco notes in the aggregate principal amount of U.S. $300 million that are secured and guaranteed by the subsidiary guarantors (the "Newco Notes"), and (iii) Litigation Trust Interests.

[41] Affected Creditors with proven claims will be entitled under the Plan to: (a) their *pro rata* share of 92.5% of the Newco Shares with early consenting noteholders also being entitled to their *pro rata* share of the remaining 7.5% of the Newco Shares; and (b) their *pro rata* share of the Newco Notes. Affected Creditors with proven claims will be concurrently entitled to their *pro rata* share of 75% of the Litigation Trust Interests; the Noteholder Class Action Claimants will be entitled to their *pro rata* share of the remaining 25% of the Litigation Trust Interests.

[42] With respect to the indemnified Noteholder Class Action Claims, these relate to claims by former noteholders against third parties who, in turn, have alleged corresponding indemnification claims against SFC. The Class Action Plaintiffs have agreed that the aggregate

amount of those former noteholder claims will not exceed the Indemnified Noteholder Class Action Limit of $150 million. In turn, indemnification claims of Third Party Defendants against SFC with respect to indemnified Noteholder Class Action Claims are also limited to the $150 million Indemnified Noteholder Class Action Limit.

[43] The Plan includes releases for, among others, (a) the subsidiary; (b) the Underwriters' liability for Noteholder Class Action Claims in excess of the Indemnified Noteholder Class Action Limit; (c) E&Y in the event that all of the preconditions to the E&Y settlement with the Ontario Class Action plaintiffs are met; and (d) certain current and former directors and officers of SFC (collectively, the "Named Directors and Officers"). It was emphasized that non-released D&O Claims (being claims for fraud or criminal conduct), conspiracy claims and section 5.1 (2) D&O Claims are not being released pursuant to the Plan.

[44] The Plan also contemplates that recovery in respect of claims of the Named Directors and Officers of SFC in respect of any section 5.1 (2) D&O Claims and any conspiracy claims shall be directed and limited to insurance proceeds available from SFC's maintained insurance policies.

[45] The meeting was carried out in accordance with the provisions of the Plan Filing and Meeting Order and that the meeting materials were sent to stakeholders in the manner required by the Plan Filing and Meeting Order. The Plan supplement was authorized and distributed in accordance with the Plan Filing and Meeting Order.

[46] The meeting was ultimately held on December 3, 2012 and the results of the meeting were as follows:

(a) the number of voting claims that voted on the Plan and their value for and against the Plan;

(b) The results of the Meeting were as follows:

a. the number of Voting Claims that voted on the Plan and their value for and against the Plan:

	Number of Votes	%	Value of Votes	%
Total Claims Voting For	250	98.81%	$ 1,465,766,204	99.97%
Total Claims Voting Against	3	1.19%	$ 414,087	0.03%
Total Claims Voting	253	100.00%	$ 1,466,180,291	100.00%

b. the number of votes for and against the Plan in connection with Class Action Indemnity Claims in respect of Indemnified Noteholder Class Action Claims up to the Indemnified Noteholder Limit:

	Vote For	Vote Against	Total Votes
Class Action Indemnity Claims	4	1	5

c. the number of Defence Costs Claims votes for and against the Plan and their value:

	Number of Votes	%		Value of Votes	%
Total Claims Voting For	12	92.31%	$	8,375,016	96.10%
Total Claims Voting Against	1	7.69%	$	340,000	3.90%
Total Claims Voting	13	100.00%	$	8,715,016	100.00%

d. the overall impact on the approval of the Plan if the count were to include Total Unresolved Claims (including Defence Costs Claims) and, in order to demonstrate the "worst case scenario" if the entire $150 million of the Indemnified Noteholder Class Action Limit had been voted a “no” vote (even though 4 of 5 votes were "yes" votes and the remaining "no" vote was from BDO, who has now agreed to support the Plan):

	Number of Votes	%		Value of Votes	%
Total Claims Voting For	263	98.50%	$	1,474,149,082	90.72%
Total Claims Voting Against	4	1.50%	$	150,754,087	9.28%
Total Claims Voting	267	100.00%	$	1,624,903,169	100.00%

[47] E&Y has now entered into a settlement (“E&Y Settlement”) with the Ontario plaintiffs and the Quebec plaintiffs, subject to several conditions and approval of the E&Y Settlement itself.

[48] As noted in the endorsement dated December 10, 2012, which denied the Funds’ adjournment request, the E&Y Settlement does not form part of the Sanction Order and no relief is being sought on this motion with respect to the E&Y Settlement. Rather, section 11.1 of the Plan contains provisions that provide a framework pursuant to which a release of the E&Y claims under the Plan will be effective if several conditions are met. That release will only be granted if all conditions are met, including further court approval.

[49] Further, SFC’s counsel acknowledges that any issues relating to the E&Y Settlement, including fairness, continuing discovery rights in the Ontario Class Action or Quebec Class Action, or opt out rights, are to dealt with at a further court-approval hearing.

Law and Argument

[50] Section 6(1) of the CCAA provides that courts may sanction a plan of compromise if the plan has achieved the support of a majority in number representing two-thirds in value of the creditors.

[51] To establish the court’s approval of a plan of compromise, the debtor company must establish the following:

(a) there has been strict compliance with all statutory requirements and adherence to previous orders of the court;

(b) nothing has been done or purported to be done that is not authorized by the CCAA; and

(c) the plan is fair and reasonable.

(See *Re Canadian Airlines Corporation*, 2000 ABQB 442, leave to appeal denied, 2000 ABCA 238, aff'd 2001 ABCA 9, leave to appeal to SCC refused July 21, 2001, [2001] S.C.C.A. No. 60 and Re Nelson Financial Group Limited, 2011 ONSC 2750, 79 C.B.R. (5th) 307).

[52] SFC submits that there has been strict compliance with all statutory requirements.

[53] On the initial application, I found that SFC was a "debtor company" to which the CCAA applies. SFC is a corporation continued under the *Canada Business Corporations Act* ("CBCA") and is a "company" as defined in the CCAA. SFC was "reasonably expected to run out of liquidity within a reasonable proximity of time" prior to the Initial Order and, as such, was and continues to be insolvent. SFC has total claims and liabilities against it substantially in excess of the $5 million statutory threshold.

[54] The Notice of Creditors' Meeting was sent in accordance with the Meeting Order and the revised Noteholder Mailing Process Order and, further, the Plan supplement and the voting procedures were posted on the Monitor's website and emailed to each of the ordinary Affected Creditors. It was also delivered by email to the Trustees and DTC, as well as to Globic who disseminated the information to the Registered Noteholders. The final version of the Plan was emailed to the Affected Creditors, posted on the Monitor's website, and made available for review at the meeting.

[55] SFC also submits that the creditors were properly classified at the meeting as Affected Creditors constituted a single class for the purposes of considering the voting on the Plan. Further, and consistent with the Equity Claims Decision, equity claimants constituted a single class but were not entitled to vote on the Plan. Unaffected Creditors were not entitled to vote on the Plan.

[56] Counsel submits that the classification of creditors as a single class in the present case complies with the commonality of interests test. See *Re Canadian Airlines Corporation*.

[57] Courts have consistently held that relevant interests to consider are the legal interests of the creditors hold *qua* creditor in relationship to the debtor prior to and under the plan. Further, the commonality of interests should be considered purposively, bearing in mind the object of the CCAA, namely, to facilitate reorganizations if possible. See *Stelco Inc*. (2005), 78 O.R. (3d) 241 (Ont. C.A.), *Re Canadian Airlines Corporation*, and *Re Nortel Networks Corporation* (2009) O.J. No. 2166 (Ont. S.C.). Further, courts should resist classification approaches that potentially jeopardize viable plans.

[58] In this case, the Affected Creditors voted in one class, consistent with the commonality of interests among Affected Creditors, considering their legal interests as creditors. The classification was consistent with the Equity Claims Decision.

[59] I am satisfied that the meeting was properly constituted and the voting was properly carried out. As described above, 99% in number, and more than 99% in value, voting at the meeting favoured the Plan.

[60] SFC's counsel also submits that SFC has not taken any steps unauthorized by the CCAA or by court orders. SFC has regularly filed affidavits and the Monitor has provided regular reports and has consistently opined that SFC is acting in good faith and with due diligence. The court has so ruled on this issue on every stay extension order that has been granted.

[61] In *Nelson Financial*, I articulated relevant factors on the sanction hearing. The following list of factors is similar to those set out in *Re Canwest Global Communications Corporation*, 2010 ONSC 4209, 70 C.B.R. (5th) 1:

1. The claims must have been properly classified, there must be no secret arrangements to give an advantage to a creditor or creditor; the approval of the plan by the requisite majority of creditors is most important;

2. It is helpful if the Monitor or some other disinterested person has prepared an analysis of anticipated receipts and liquidation or bankruptcy;

3. If other options or alternatives have been explored and rejected as workable, this will be significant;

4. Consideration of the oppression rights of certain creditors; and

5. Unfairness to shareholders.

6. The court will consider the public interest.

[62] The Monitor has considered the liquidation and bankruptcy alternatives and has determined that it does not believe that liquidation or bankruptcy would be a preferable alternative to the Plan. There have been no other viable alternatives presented that would be acceptable to SFC and to the Affected Creditors. The treatment of shareholder claims and related indemnity claims are, in my view, fair and consistent with CCAA and the Equity Claims Decision.

[63] In addition, 99% of Affected Creditors voted in favour of the Plan and the Ad Hoc Securities Purchasers Committee have agreed not to oppose the Plan. I agree with SFC's submission to the effect that these are exercises of those parties' business judgment and ought not to be displaced.

[64] I am satisfied that the Plan provides a fair and reasonable balance among SFC's stakeholders while simultaneously providing the ability for the Sino-Forest business to continue as a going concern for the benefit of all stakeholders.

[65] The Plan adequately considers the public interest. I accept the submission of counsel that the Plan will remove uncertainty for Sino-Forest's employees, suppliers, customers and other stakeholders and provide a path for recovery of the debt owed to SFC's non-subordinated creditors. In addition, the Plan preserves the rights of aggrieved parties, including SFC through the Litigation Trust, to pursue (in litigation or settlement) those parties that are alleged to share some or all of the responsibility for the problems that led SFC to file for CCAA protection. In addition, releases are not being granted to individuals who have been charged by OSC staff, or to other individuals against whom the Ad Hoc Securities Purchasers Committee wishes to preserve litigation claims.

[66] In addition to the consideration that is payable to Affected Creditors, Early Consent Noteholders will receive their *pro rata* share of an additional 7.5% of the Newco Shares ("Early Consent Consideration"). Plans do not need to provide the same recovery to all creditors to be considered fair and reasonable and there are several plans which have been sanctioned by the courts featuring differential treatment for one creditor or one class of creditors. See, for example, *Canwest Global* and *Re Armbro Enterprises Inc.* (1993), 22 C.B.R. (3d) 80 (Ont. Gen. Div.). A common theme permeating such cases has been that differential treatment does not necessarily result in a finding that the Plan is unfair, as long as there is a sufficient rational explanation.

[67] In this case, SFC's counsel points out that the Early Consent Consideration has been a feature of the restructuring since its inception. It was made available to any and all noteholders and noteholders who wished to become Early Consent Noteholders were invited and permitted to do so until the early consent deadline of May 15, 2012. I previously determined that SFC made available to the noteholders all information needed to decide whether they should sign a joinder agreement and receive the Early Consent Consideration, and that there was no prejudice to the noteholders in being put to that election early in this proceeding.

[68] As noted by SFC's counsel, there was a rational purpose for the Early Consent Consideration. The Early Consent Noteholders supported the restructuring through the CCAA proceedings which, in turn, provided increased confidence in the Plan and facilitated the negotiations and approval of the Plan. I am satisfied that this feature of the Plan is fair and reasonable.

[69] With respect to the Indemnified Noteholder Class Action Limit, I have considered SFC's written submissions and accept that the $150 million agreed-upon amount reflects risks faced by both sides. The selection of a $150 million cap reflects the business judgment of the parties making assessments of the risk associated with the noteholder component of the Ontario Class Action and, in my view, is within the "general range of acceptability on a commercially reasonable basis". See *Re Ravelston Corporation*, (2005) 14 C.B.R. (5^{th}) 207 (Ont. S.C). Further, as noted by SFC's counsel, while the New York Class Action Plaintiffs filed a proof of claim, they have not appeared in this proceeding and have not stated any opposition to the Plan, which has included this concept since its inception.

[70] Turning now to the issue of releases of the Subsidiaries, counsel to SFC submits that the unchallenged record demonstrates that there can be no effective restructuring of SFC's business and separation from its Canadian parent if the claims asserted against the Subsidiaries arising out of or connected to claims against SFC remain outstanding. The Monitor has examined all of the releases in the Plan and has stated that it believes that they are fair and reasonable in the circumstances.

[71] The Court of Appeal in *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corporation*, 2008 ONCA 587, 45 C.B.R. (5th) 163 stated that the "court has authority to sanction plans incorporating third party releases that are reasonably related to the proposed restructuring".

[72] In this case, counsel submits that the release of Subsidiaries is necessary and essential to the restructuring of SFC. The primary purpose of the CCAA proceedings was to extricate the business of Sino-Forest, through the operation of SFC's Subsidiaries (which were protected by the Stay of Proceedings), from the cloud of uncertainty surrounding SFC. Accordingly, counsel submits that there is a clear and rational connection between the release of the Subsidiaries in the Plan. Further, it is difficult to see how any viable plan could be made that does not cleanse the Subsidiaries of the claims made against SFC.

[73] Counsel points out that the Subsidiaries who are to have claims against them released are contributing in a tangible and realistic way to the Plan. The Subsidiaries are effectively contributing their assets to SFC to satisfy SFC's obligations under their guarantees of SFC's note indebtedness, for the benefit of the Affected Creditors. As such, counsel submits the releases benefit SFC and the creditors generally.

[74] In my view, the basis for the release falls within the guidelines previously set out by this court in *ATB Financial*, *Re Nortel Networks*, 2010 ONSC 1708, and *Re Kitchener Frame Limited*, 2012 ONSC 234, 86 C.B.R. (5th) 274. Further, it seems to me that the Plan cannot succeed without the releases of the Subsidiaries. I am satisfied that the releases are fair and reasonable and are rationally connected to the overall purpose of the Plan.

[75] With respect to the Named Directors and Officers release, counsel submits that this release is necessary to effect a greater recovery for SFC's creditors, rather than having those directors and officers assert indemnity claims against SFC. Without these releases, the quantum of the unresolved claims reserve would have to be materially increased and, to the extent that any such indemnity claim was found to be a proven claim, there would have been a corresponding dilution of consideration paid to Affected Creditors.

[76] It was also pointed out that the release of the Named Directors and Officers is not unlimited; among other things, claims for fraud or criminal conduct, conspiracy claims, and section 5.1 (2) D&O Claims are excluded.

[77] I am satisfied that there is a reasonable connection between the claims being compromised and the Plan to warrant inclusion of this release.

[78] Finally, in my view, it is necessary to provide brief comment on the alternative argument of the Funds, namely, the Plan be altered so as to remove Article 11 "Settlement of Claims Against Third Party Defendants". The Plan was presented to the meeting with Article 11 in place. This was the Plan that was subject to the vote and this is the Plan that is the subject of this motion. The alternative proposed by the Funds was not considered at the meeting and, in my view, it is not appropriate to consider such an alternative on this motion.

Disposition

[79] Having considered the foregoing, I am satisfied that SFC has established that:

(i) there has been strict compliance with all statutory requirements and adherence to the previous orders of the court;

(ii) nothing has been done or purported to be done that is not authorized by the CCAA; and

(iii) the Plan is fair and reasonable.

[80] Accordingly, the motion is granted and the Plan is sanctioned. An order has been signed substantially in the form of the draft Sanction Order.

MORAWETZ J.

Date: December 12, 2012

Tab 14

In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended and in the Matter of a Proposed Plan of Compromise or Arrangement with Respect to Stelco Inc., and the Other Applicants Listed Under Schedule "A"

Application Under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

[Indexed as: Stelco Inc. (Re)]

78 O.R. (3d) 241
[2005] O.J. No. 4883
Dockets: C44436 and M33171

Court of Appeal for Ontario,
Goudge, Sharpe and Blair JJ.A.
November 17, 2005

Debtor and creditor -- Companies' Creditors Arrangement Act -- Creditors -- Classification -- Classification of creditors should be determined by their legal rights in relation to debtor company as opposed to their rights as creditors in relation to each other.

The appellant represented unsecured creditors who held convertible unsecured subordinated debentures issued by the debtor company pursuant to a Supplemental Trust Indenture. Their claims were subordinated to Senior Debt Holders. The Supplemental Trust Indenture provided that if the Subordinated Debenture Holders received any payment from the company, or any distribution from the assets of the company, before the Senior Debt was fully paid, they were obliged to remit any such payment or distribution to the Senior Debt Holders until the latter had been paid in full, but that no such payment or distribution by the company shall be deemed to constitute

payment on the Subordinated Debenture Holders' debt. The parties referred to these provisions as the "Turnover Payment" provisions. In the company's Proposed Plan, the Subordinated Debenture Holders and the Senior Debt Holders were included in the same class (along with Trade Creditors) for the purposes of voting on the Proposed Plan. The appellant sought an order from the supervising judge classifying the Subordinated Debenture Holders as a separate class for voting purposes, arguing that their interests were different than those of the Senior Debt Holders and that creditors who do not have common interests should not be classified in the same group for voting purposes. The motion was dismissed. The appellant appealed.

Held, the appeal should be dismissed.

The classification of creditors is a fact-driven exercise, dependent upon the circumstances of each particular case. It is determined by the creditors' legal rights in relation to the debtor company, as opposed to their rights as creditors in relation to each other. The supervising judge did not err in finding that there was no material distinction between the legal rights of the Subordinated Debenture Holders and those of the Senior Debt Holders vis--vis the company. Each was entitled to be paid the moneys owing under their respective debt contracts. The only difference was that the former creditors were subordinated in interest to the latter and had agreed to pay over to the latter any portion of their recovery received until the Senior Debt had been paid in full. As between the two groups of creditors, this merely reflected the very deal the Subordinated Debenture Holders bought into when they purchased their subordinated debentures. The supervising judge was also entitled to determine that th is was not a case involving any confiscation of legal rights. Finally, the supervising judge's finding that there was no realistic conflict of interest between the creditors was supported on the record. [page242] Each had the same general interest in relation to the company, namely to be paid under their contracts, and to maximize the amount recoverable from the company through the Plan negotiation process. The Senior Debt Holders' efforts would not be moderated in some respect because they would be content to make their recovery on the

backs of the Subordinated Debenture Holders through the Turnover Payment process. In order to carry the class, the Senior Debt Holders would require the support of the Trade Creditors, whose interest was not affected by the subordination agreement. Thus, the Senior Debt Holders would be required to support the maximization approach.

Canadian Airlines Corp. (Re), [2000] A.J. No. 1693, 19 C.B.R. (4th) 12 (Q.B.), apld

NsC Diesel Power Inc. (Re), [1990] N.S.J. No. 484, 97 N.S.R. (2d) 295, 258 A.P.R. 295, 79 C.B.R. (N.S.) 1 (T.D.), not folld

Other cases referred to

Campeau Corp. (Re), [1991] O.J. No. 2338, 86 D.L.R. (4th) 570, 10 C.B.R. (3d) 100 (Gen. Div.); Country Style Food Services Inc. (Re), [2002] O.J. No. 1377, 158 O.A.C. 30, 112 A.C.W.S. (3d) 1009 (C.A.); Elan Corp. v. Comiskey (1990), 1 O.R. (3d) 289, [1990] O.J. No. 2180, 41 O.A.C. 282, 1 C.B.R. (3d) 101 (C.A.) (sub nom. Nova Metal Products v. Comiskey); Fairview Industries Ltd. (Re), [1991] N.S.J. No. 456, 109 N.S.R. (2d) 32, 11 C.B.R. (3d) 71, 30 A.C.W.S. (3d) 376 (T.D.); Norcen Energy Resources Ltd. v. Oakwood Petroleums Ltd., [1988] A.J. No. 1226, [1989] 2 W.W.R. 566, 64 Alta. L.R. (2d) 139, 72 C.B.R. (N.S.) 20 (Q.B.); Northland Properties Ltd. v. Excelsior Life Insurance Co. of Canada, [1989] B.C.J. No. 63, 34 B.C.L.R. (2d) 122, [1989] 3 W.W.R. 363, 73 C.B.R. (N.S.) 195 (C.A.); Northland Properties Ltd. (Re), [1988] B.C.J. No. 1937, 32 B.C.L.R. (2d) 309 (C.A.), affg [1988] B.C.J. No. 1530, 31 B.C.L.R. (2d) 35, 73 C.B.R. (N.S 166 (S.C.); Pacific Coastal Airlines Ltd. v. Air Canada, [2001] B.C.J. No. 2580, 2001 BCSC 1721, 19 B.L.R. (3d) 286, 110 A.C.W.S. (3d) 259 (S.C.); Resurgence Asset Management LLC v. Canadian Airlines Corp., [2000] A.J. No. 610, 2000 ABCA 149, 80 Alta. L.R. (3d) 213, 261 A.R. 12, 19 C.B.R. (4th) 33, 97 A.C.W.S. (3d) 844 (C.A.); Savage v. Amoco Acquisition Co., [1988] A.J. No. 330, 59 Alta. L.R. (2d) 260, 40 B.L.R. 188, 68 C.B.R. (N.S.) 154 (C.A.) (sub. nom. Amoco Acquisition Co. v. Savage); Sklar-

Peppler Furniture Corp. v. Bank of Nova Scotia, [1991] O.J. No. 2288, 86 D.L.R. (4th) 621, 8 C.B.R. (3d) 312 (Gen. Div.); Sovereign Life Assurance Co. v. Dodd (1892), [1891-4] All E.R. Rep. 246, [1892] 2 Q.B. 573, 8 T.L.R. 684, 36 Sol. Jo. 644, 41 W.R. 4, 62 L.J.Q.B. 19, 67 L.T. 396 (C.A.); Stelco Inc. (Re) (2005), 75 O.R. (3d) 5, [2005] O.J. No. 117, 1196 O.A.C. 142, 253 D.L.R. (4th) 109, 9 C.B.R. (5th) 135, 2 B.L.R.(4th) 238 (C.A.); Wellin gton Building Corp. Ltd. (Re), [1934] O.R. 653, [1934] 4 D.L.R. 626, 16 C.B.R. 48 (H.C.J.); Woodward's Ltd. (Re), [1993] B.C.J. No. 852, 84 B.C.L.R. (2d) 206, 20 C.B.R. (3d) 74 (S.C.)

Statutes referred to

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

Joint Stock Companies Arrangement Act 1870 (U.K.), 33 and 34 Vict., c. 104

Authorities referred to

Edwards, S.E., "Reorganizations Under the Companies' Creditors Arrangement Act" (1947) 25 Can. Bar Rev. 587

Robertson, Q.C., R.N., "Legal Problems on Reorganization of Major Financial and Commercial Debtors" (Canadian Bar Association -- Ontario Continuing Legal Education, April 5, 1983) [page243]

APPEAL from an order of Farley J., [2005] O.J. No. 4814, 143 A.C.W.S. (3d) 623 (S.C.J.) dismissing a motion for an order classifying the appellants as a separate class of creditors for voting purposes.

Paul Macdonald, Andrew Kent and Brett Harrison, for Informal Independent Converts' Committee.

Michael E. Barrack and Geoff R. Hall, for Stelco Inc.

Robert Staley and Alan Gardner, for Senior Debenture Holders.

Fred Myers, for Her Majesty the Queen in Right of Ontario, and the Superintendent of Financial Services.

Ken Rosenberg, for United Steelworkers of America.

A. Kauffman, for Tricap Management Ltd.

Kyla Mahar, for Monitor.

Murray Gold, for Salaried Retirees.

Heath Whitley, for CIBC.

Steven Bosnick, for U.S.W.A. Loc. 5328 and 8782.

The judgment of the court was delivered by

BLAIR J.A.:--

Background

[1] This appeal arises out of the reorganization of Stelco Inc., and related companies, pursuant to the Companies' Creditors Arrangement Act ("CCAA") [See Note 1 at the end of the document]. Stelco has been in the midst of this fractious process for approximately 21 months. Justice Farley has been the supervising judge throughout.

[2] Stelco has presented a Proposed Plan of Compromise or Arrangement to its creditors for their approval. The vote was scheduled for Tuesday, November 15, 2005. On Thursday, November 10, a group of creditors known as the Informal Independent Converts' Committee (the "Converts' Committee) sought an order from the supervising judge, amongst other things, classifying the Subordinated Debenture Holders whom they represent as a separate class for voting purposes. Justice Farley dismissed the motion. In the face of the pending vote, the Converts' Committee sought leave to appeal on Thursday

afternoon (the courts were closed on Friday, November 11, for Remembrance Day). Rosenberg J.A. dealt with the matter and directed that the application for leave, and if leave be granted, the appeal, be heard by a panel of this court on Monday, November 14, 2005. [page244]

[3] This panel heard the application for leave and the appeal on Monday. We concluded that leave should be granted, but that the appeal must be dismissed, and at the conclusion of argument -- and in order to clarify matters so that the vote could proceed the following day -- we issued a brief endorsement with our decision, but indicating that more detailed reasons would follow.

[4] The endorsement read as follows:

> In our view, the appellants have not demonstrated a different legal interest from the other unsecured creditors vis vis the debtor, nor any basis for setting aside the finding of Farley J. that there are no different practical interests such that the appellants deserve a separate class. We see no legal error or error in principle in his exercise of discretion.
>
> Leave to appeal is granted, but the appeal must therefore be dismissed. Because of the importance of the issue for Ontario practice in this area, we propose to expand somewhat on these reasons in due course.

[5] These are those expanded reasons.

Facts

[6] Stelco's Proposed Plan is made to unsecured creditors only. It is not intended to affect the claims of secured creditors.

[7] The Converts' Committee represents unsecured creditors who hold $90 million of convertible unsecured subordinated debentures issued by Stelco pursuant to a Supplemental Trust Indenture dated January 21, 2002, and due in 2007. With

interest, the claims of the Subordinated Debenture Holders now amount to approximately $110 million. Those claims are subordinated to approximately $328 million in favour of Senior Debt Holders. In addition, Stelco has unsecured trade debts totalling approximately $228 million. In the Proposed Plan, these three groups of unsecured creditors -- the Subordinated Debenture Holders (represented by the Converts' Committee), the Senior Debt Holders and the Trade Creditors -- have all been included in the same class for the purposes of voting on the Proposed Plan or any amended version of it.

[8] The Converts' Committee takes issue with this, and seeks to have the Subordinated Debenture Holders classified as a separate class of creditors for voting purposes. They argue that their interests are different than those of the Bondholders and that creditors who do not have common interests should not be classified in the same group for voting purposes. They submit, therefore, that the supervising judge erred in law in not granting them a separate classification. In that regard, they rely upon this court's decision in Elan Corp. v. Comiskey (1990), 1 O.R. (3d) 289, [1990] O.J. No. 2180 (C.A.). They also argue that the supervising [page245] judge was wrong, on the facts contained in the record, in finding that the Subordinated Debenture Holders and the Bondholders did not have conflicting interests.

[9] In making their argument about a different interest, the appellants rely upon their status as subordinated debt holders as shaped particularly by Articles 6.2 and 6.3 of the Supplemental Trust Indenture. In essence those provisions reinforce the subordinated nature of their debt. They stipulate (a) that if the Subordinated Debenture Holders receive any payment from Stelco, or any distribution from the assets of Stelco, before the Senior Debt is fully paid, they are obliged to remit any such payment or distribution to the Senior Debt Holders until the latter have been paid in full (Art. 6.2(3)), but (b) that no such payment or distribution by Stelco shall be deemed to constitute a payment on the Subordinated Debenture Holders' debt (Art. 6.3). The parties refer to these provisions as the "Turnover Payment" provisions.

[10] In short, although Stelco is obliged to pay both groups of creditors in full, as between the Subordinated Debenture Holders and the Senior Debt Holders, the latter are entitled to be paid in full before the former receive anything. The Supplemental Trust Indenture makes it clear that the provisions of Article 6 "are intended solely for the purpose of defining the relative rights of [the Subordinated Debenture Holders] and the holders of the Senior Debt" (Art. 6.3).

[11] The appellants contend that the Turnover Payment provisions distinguish their interests from those of the Subordinated Debenture Holders when it comes to voting on Stelco's Proposed Plan. They say that the Subordinated Debenture Holders' interest in maximizing the amounts to be made available to unsecured creditors ends once they have received full recovery, in part as a result of the Turnover Payments that the Subordinated Debenture Holders will be required to make from their portion of the funds. On the other hand, the Subordinated Debenture Holders will have an interest in seeking more because their recovery, for practical purposes, will have only begun once that point is reached.

[12] The respondents submit, for their part, that the appellants are seeking a separate classification for a collateral purpose, i.e., so that they will be able to veto the Proposed Plan, or at least threaten to veto it, unless they are granted a benefit to which they are not entitled -- the elimination of their subordinated position by virtue of the Turnover Payment provisions.

[13] Farley J. rejected the appellants' arguments. The thrust of his decision in this regard is found in paras. 13 and 14 of his reasons: [page246]

> I would note as well that the primary and most significant attribute of the ConCom debt and that of the BondCom debt/ Senior Debt [See Note 2 at the end of the document] plus the trade debt vis--vis Stelco is that it is all unsecured debt. Thus absent valid reason to have separate classes it would be reasonable, logical, rational and practical to have all this unsecured debt in the same class. Certainly that would avoid

any unnecessary fragmentation -- and in this respect multiplicity of classes does not mean that that fragmentation starts only when there are many classes. Unless more than one class is necessary, fragmentation would start at two classes. Fragmentation if necessary, but not necessarily fragmentation.

Is it necessary to have more than one class? Firstly, it would not appear to me that as between Stelco and the unsecured creditors overall there is any material distinction. Secondly, there would not appear to me to be any confiscation of any rights (or the other side of the coin any new imposition of obligations) upon the holders of the ConCom debt. The subrogation issue was something which these holders assumed on the issue of that debt. Thirdly, I do not see that there is a realistic conflict of interest. Each group of unsecured creditors including the ConCom debt holders and the BondCom debt holders has the same general interest vis--vis Stelco, namely to extract from Stelco through the Plan the maximum value in the sense of consideration possible . . . . That situation is not impacted for our purposes here in this motion by the possibility that in a subsequent dispute between the ConCom holders and the BondCom holders there may be a difference of opinion as to the variation of the considerat ion obtained.

[14] We agree with his conclusion and see no basis to interfere with his findings in that regard.

The Leave Application

[15] The principles to be applied by this court in determining whether leave to appeal should be granted to someone dissatisfied with an order made in a CCAA proceeding are not in dispute. Leave is only sparingly granted in such matters because of their "real time" dynamic and because of the generally discretionary character underlying many of the orders made by supervising judges in such proceedings. There must be serious and arguable grounds that are of real and significant interest to the parties. The court has assessed this criterion on the basis of a four-part test, namely,

(a) whether the point on appeal is of significance to the practice;

(b) whether the point is of significance to the action;

(c) whether the appeal is prima facie meritorious or frivolous; and [page247]

(d) whether the appeal will unduly hinder the progress of the action.

See Stelco Inc. (Re) (2005), 75 O.R. (3d) 5, [2005] O.J. No. 1171 (C.A.), at para. 24; Country Style Food Services Inc. (Re), [2002] O.J. No. 1377, 158 O.A.C. 30 (C.A.), at para. 15; Resurgence Asset Management LLC v. Canadian Airlines Corp., [2000] A.J. No. 610, 19 C.B.R. (4th) 33 (C.A.), at para. 7.

[16] Here, we granted leave to appeal because the proposed appeal raised an issue of significance to the practice, namely the nature of the "common interest" test to be applied by the courts for purposes of the classification of creditors in CCAA proceedings. Although the law seems to have progressed in the lower courts along the lines developed in Alberta, beginning with the decision of Paperny J. in Canadian Airlines Corp. (Re), [2000] A.J. No. 1693, 19 C.B.R. (4th) 12 (Q.B), this court has not dealt with the issue since its decision in Elan Corp. v. Comiskey, supra, and the Converts' Committee argues that the Alberta line of authorities is contrary to Elan.

[17] A brief further comment respecting the leave process may be in order.

[18] The court recognizes the importance of its ability to react in a responsible and timely fashion to the appellate needs arising in the "real time" dynamics of CCAA restructurings. Often, as in the case of this restructuring, they involve a significant public dimension. For good policy reasons, however, appellate courts in Canada -- including this one -- have developed relatively stringent parameters for the granting of leave to appeal in CCAA cases. As noted, leave is only sparingly granted. The parameters as set out in the

authorities cited above remain good law.

[19] Merely because a corporate restructuring is a big one and money is no object to the participants in the process, does not mean that the court will necessarily depart from the normal leave to appeal process that applies to other cases. In granting leave to appeal in these circumstances, we do not wish to be taken as supporting a notion that the fusion of leave applications with the hearing of the appeal in CCAA restructurings -- particularly in major ones such as this one involving Stelco -- has become the practice. Where there is an urgency that a leave application be expedited in the public interest, the court will do so in this area of the law as it does in other areas. However, where what is involved is essentially an attempt to review a discretionary order made on the facts of the case, in a tightly supervised process with which the judge is intimately familiar, the collapsed process that was made available in this particular situation will not generally be afforded. [page248]

[20] As these reasons demonstrate, however, the issues raised on this particular appeal, and the timing factor involved, warranted the expedited procedure that was ordered by Justice Rosenberg.

The Appeal

No error in law or principle

[21] Everyone agrees that the classification of creditors for CCAA voting purposes is to be determined generally on the basis of a "commonality of interest" (or a "common interest") between creditors of the same class. Most analyses of this approach start with a reference to Sovereign Life Assurance Co. v. Dodd (1892), [1891-4] All E.R. Rep. 246, [1892] 2 Q.B. 573 (C.A.) which dealt with the classification of creditors for voting purposes in a winding-up proceeding. Two passages from the judgments in that decision are frequently cited. At pp. 249-50 All E.R., Lord Esher said:

The Act provides that the persons to be summoned to the

> meeting, all of whom, it is to be observed, are creditors, are persons who can be divided into different classes, classes which the Act [See Note 3 at the end of the document] recognizes, though it does not define. The creditors, therefore, must be divided into different classes. What is the reason for prescribing such a course? It is because the creditors composing the different classes have different interests, and, therefore, if a different state of facts exists with respect to different creditors, which may affect their minds and judgments differently, they must be separated into different classes.

At p. 251 All E.R., Bowen L.J. stated:

> The word "class" used in the statute is vague, and to find out what it means we must look at the general scope of the section, which enables the court to order a meeting of a "class of creditors" to be summoned. It seems to me that we must give such a meaning to the term "class" as will prevent the section being so worked as to produce confiscation and injustice, and that we must confine its meaning to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest.

[22] These views have been applied in the CCAA context. But what comprises those "not so dissimilar" rights and what are the components of that "common interest" have been the subject of debate and evolution over time. It is clear that classification is a fact-driven exercise, dependent upon the circumstances of each particular case. Moreover, given the nature of the CCAA process and the underlying flexibility of that process -- a flexibility which is its genius -- there can be no fixed rules that must apply in all cases.

[23] In Canadian Airlines Corp. (Re), supra, Paperny J. nonetheless extracted a number of principles to be considered by the courts in dealing with the commonality of interest test. At para. 31 she said: [page249]

> In summary, the cases establish the following principles

applicable to assessing commonality of interest:

1. Commonality of interest should be viewed based on the non-fragmentation test, not on an identity of interest test;

2. The interests to be considered are the legal interests that a creditor holds qua creditor in relationship to the debtor company prior to and under the plan as well as on liquidation;

3. The commonality of interests are to be viewed purposively, bearing in mind the object of the C.C.C.A., namely to facilitate reorganizations if at all possible;

4. In placing a broad and purposive interpretation on the C.C.C.A., the court should be careful to resist classification approaches which would potentially jeopardize viable plans.

5. Absent bad faith, the motivations of creditors to approve or disapprove [of the Plan] are irrelevant.

6. The requirement of creditors being able to consult together means being able to assess their legal entitlement as creditors before or after the plan in a similar manner.

[24] In developing this summary of principles, Paperny J. considered a number of authorities from across Canada, including the following: Sklar-Peppler Furniture Corp. v. Bank of Nova Scotia, [1991] O.J. No. 2288, 86 D.L.R. (4th) 621 (Gen. Div.); Norcen Energy Resources Ltd. v. Oakwood Petroleums Ltd., [1988] A.J. No. 1226, 72 C.B.R. (N.S.) 20 (Q.B.); Fairview Industries Ltd. (Re), [1991] N.S.J. No. 456, 11 C.B.R. (3d) 71 (T.D.); Woodward's Ltd. (Re), [1993] B.C.J. No. 852, 84 B.C.L.R. (2d) 206 (S.C.); Northland Properties Ltd. (Re), [1988] B.C.J. No. 1530, 73 C.B.R. (N.S.) 166 (S.C.); Northland Properties Ltd. v. Excelsior Life Insurance Co. of Canada, [1989] B.C.J. No. 63, 73 C.B.R. (N.S.) 195 (C.A.); NsC Diesel Power Inc. (Re), [1990] N.S.J. No. 484, 79 C.B.R. (N.S.) 1 (T.D.); Savage v. Amoco Acquisition Co., [1988] A.J. No. 330, 68 C.B.R. (N.S.) 154 (C.A.) (sub nom. Amoco Acquisition Co. v.

Savage); Wellingt on Building Corp. (Re), [1934] O.R. 653, 16 C.B.R. 48 (H.C.J.). Her summarized principles were cited by the Alberta Court of Appeal, apparently with approval, in a subsequent Canadian Airlines decision: Canadian Airlines Corp. (Re), supra, at para. 27.

[25] In the passage from his reasons cited above (paras. 13 and 14) the supervising judge in this case applied those principles. In our view, he was correct in law in doing so.

[26] We do not read the foregoing principles as being inconsistent with the earlier decision of this court in Elan Corp. v. Comiskey. There the court applied a common interest test in determining that the two creditors in question ought not to be grouped in the same class of creditors for voting purposes. But the differing interests in question were not different legal interests as between the [page250] two creditors; they were different legal interests as between each of the creditors and the debtor company. One creditor (the Bank) held first security over the debtor company's receivables and the other creditor (RoyNat) held second security on those assets; RoyNat, however, held first security over the debtor's building and realty, whereas the Bank was second in priority in relation to those assets. The two creditors had differing commercial interests in how the assets should be dealt with (it was in the interests of the bank, with a smaller claim, to collect and retain the more realizable receivable assets, but in the interests of RoyNat to preserve the cash flow and have the business sold as a going concern). Those differing commercial interests were rooted in differing legal interests as between the individual creditors and the debtor company, arising from the different security held. Because of the size of its claim, RoyNat would dominate any group that it was in, and Finlayson J.A. was of the view that RoyNat, as the holder of second security, should not be able to override the Bank's legal interest as the first secured creditor with respect to the receivables by virtue of its voting rights. On the basis that there was "no true community of interest" between the secured creditors (p. 299 O.R.), given their different legal interests, he ordered that the Bank be placed in a separate class for voting purposes.

[27] Elan Corp. v. Comiskey did not deal with the issue of whether creditors with divergent interests as amongst themselves -- as opposed to divergent legal interests vis--vis the debtor company -- could be forced to vote as members of a common class. Nor did it apply an "identity of interest" test -- a test that has been rejected as too narrow and too likely to lead to excessive fragmentation: see Sklar-Peppler Furniture Corp. v. Bank of Nova Scotia, supra); Norcen Energy Resources Ltd. v. Oakwood Petroleums Ltd., supra; Fairview Industries Ltd. (Re), supra; Woodward's Ltd. (Re), supra. In our view, there is nothing in the decision in Elan Corp. that is inconsistent with the evolutionary set of principles developed in the Alberta jurisprudence and applied by the supervising judge here.

[28] In addition to commonality of interest concerns, a court dealing with a classification of creditors issue needs to be alert to concerns about the confiscation of legal rights and about avoiding what the parties have referred to as "a tyranny of the minority". Examples of the former include Elan Corp. v. Comiskey [See Note 4 at the end of the document] and [page251] Wellington Building Corp. Ltd. (Re), supra [See Note 5 at the end of the document]. Examples of the latter include Sklar-Peppler, supra [See Note 6 at the end of the document] and Campeau Corp. (Re), [1991] O.J. No. 2338, 10 C.B.R. (3d) 100 (Gen. Div.) [See Note 7 at the end of the document].

[29] Here, as noted earlier in these reasons, the respondents argue that the appellants are seeking a separate classification in order to extract a benefit to which they are not entitled, namely a concession that the Turnover Payment requirements of their subordinated position be extinguished by the Proposed Plan, thus avoiding their obligation to transfer payments to the Senior Debt Holders until they have been paid in full, and freeing up all of the distribution the appellants will receive from Stelco for payment on account of their own claims. On the other hand, the appellants point to this conflict between the Subordinated Debenture Holders and the Senior Debt Holders as evidence that they do not have a commonality of interest or the ability to consult together with a view to whatever commonality

of interest they may have vis--vis Stelco.

[30] We agree with the line of authorities summarized in Canadian Airlines (Re) and applied by the supervising judge in this case which stipulate that the classification of creditors is determined by their legal rights in relation to the debtor company, as opposed to their rights as creditors in relation to each other. To the extent that other authorities at the trial level in other jurisdictions may suggest to the contrary -- see, for example NsC Diesel Power Inc. (Re), supra -- we prefer the Alberta approach.

[31] There are good reasons for such an approach.

[32] First, as the supervising judge noted [at para. 7], the CCAA itself is more compendiously styled "An Act to facilitate compromises and arrangements between companies and their creditors." There is no mention of dealing with issues that would change the nature of the relationships as between the creditors themselves. As Tysoe J. noted in Pacific Coastal Airlines Ltd. v. Air Canada, [2001] B.C.J. No. 2580, 19 B.L.R. (3d) 286 (S.C.), at para. 24 [page252] (after referring to the full style of the legislation):

> [The purpose of the CCAA proceeding] is not to deal with disputes between a creditor of a company and a third party, even if the company was also involved in the subject matter of the dispute. While issues between the debtor company and non-creditors are sometimes dealt with in CCAA proceedings, it is not a proper use of a CCAA proceeding to determine disputes between parties other than the debtor company.

[33] In this particular case, the supervising judge was very careful to say that nothing in his reasons should be taken to determine or affect the relationship between the Subordinate Debenture Holders and the Senior Debt Holders.

[34] Secondly, it has long been recognized that creditors should be classified in accordance with their contract rights, that is, according to their respective interests in the debtor company: see Stanley E. Edwards, "Reorganizations Under the

Companies' Creditors Arrangement Act" (1947) 25 Can. Bar Rev. 587, at p. 602.

[35] Finally, to hold the classification and voting process hostage to the vagaries of a potentially infinite variety of disputes as between already disgruntled creditors who have been caught in the maelstrom of a CCAA restructuring runs the risk of hobbling that process unduly. It could lead to the very type of fragmentation and multiplicity of discrete classes or sub-classes of classes that judges and legal writers have warned might well defeat the purpose of the Act: see Stanley Edwards, "Reorganizations under the Companies' Creditors Arrangement Act", supra; Ronald N. Robertson Q.C., "Legal Problems on Reorganization of Major Financial and Commercial Debtors", Canadian Bar Association -- Ontario Continuing Legal Education, April 5, 1983 at 19-21; Norcen Energy Resources Ltd. v. Oakwood Petroleums Ltd., supra, at para. 27; Northland Properties Ltd. v. Excelsior Life Insurance Co. of Canada, supra; Sklar-Peppler, supra; Woodwards Ltd. (Re), supra.

[36] In the end, it is important to remember that classification of creditors, like most other things pertaining to the CCAA, must be crafted with the underlying purpose of the CCAA in mind, namely facilitation of the reorganization of an insolvent company through the negotiation and approval of a plan of compromise or arrangement between the debtor company and its creditors, so that the debtor company can continue to carry on its business to the benefit of all concerned. As Paperny J. noted [at para. 31] in Canadian Airlines (Re), "the Court should be careful to resist classification approaches that would potentially jeopardize viable plans". [page253]

Discretion and fact finding

[37] Having concluded that the supervising judge made no error in law or principle in his approach to the classification issue, we can find no error in his factual findings or in his exercise of discretion in determining that the Subordinate Debenture Holders should remain in the same class as the Senior Debt Holders and Trade Creditors in the circumstances of this case.

[38] We agree that there is no material distinction between the legal rights of the Subordinated Debenture Holders and those of the Senior Debt Holders vis--vis Stelco. Each is entitled to be paid the moneys owing under their respective debt contracts. The only difference is that the former creditors are subordinated in interest to the latter and have agreed to pay over to the latter any portion of their recovery received until the Senior Debt has been paid in full. As between the two groups of creditors, this merely reflects the very deal the Subordinated Debenture Holders bought into when they purchased their subordinated debentures. For that reason, the supervising judge was also entitled to determine that this was not a case involving any confiscation of legal rights.

[39] Finally, the supervising judge's finding that there is no "realistic conflict of interest" between the creditors is supported on the record. Each has the same general interest in relation to Stelco, namely to be paid under their contracts, and to maximize the amount recoverable from the debtor company through the Plan negotiation process. We do not accept the argument that the Senior Debt Holder's efforts will be moderated in some respect because they will be content to make their recovery on the backs of the Subordinated Debenture Holders through the Turnover Payment process. In order to carry the class, the Senior Debt Holders will require the support of the Trade Creditors, whose interest is not affected by the subordination agreement. Thus the Senior Debt Holders will be required to support the maximization approach.

[40] We need not deal with whether a realistic and genuine conflict of interest, produced by different legal positions of creditors vis--vis each other, could ever warrant separate classes, as we are satisfied that even if it could, this is not such a case.

Disposition

[41] Accordingly, we would not interfere with the supervising judge's decision that the appellants had not made out a case for a separate class. The appeal is therefore dismissed.

Appeal dismissed. [page254]

Notes

Note 1: R.S.C. 1985, c. C-36, as amended.

Note 2: Farley J. uses the term "ConCom debt" to refer to the debt represented by the Converts' Committee (i.e., that of the Subordinated Debenture Holders), and the term "BondCom debt" to refer to that of the Senior Debt Holders.

Note 3: The Joint Stock Companies Arrangement Act 1870 (U.K.), 33 & 34 Vict., c. 104.

Note 4: A second secured creditor with superior voting power was separated from a first secured creditor for the voting purposes, in order [to] prevent the former from utilizing its superior voting strength to adversely affect the latter's prior security position.

Note 5: The court refused to allow subsequent mortgagees to vote in the same class as a first mortgagee because in the circumstances the subsequent mortgagees would be able to use their voting power to destroy the priority rights and security of the first mortgagee.

Note 6: Borins J., as he then was, warned against the dangers of "excessive fragmentation" and of creating "a special class simply for the benefit of the opposing creditor, which would give that creditor the potential to exercise an unwarranted degree of power" [at p. 627 D.L.R.].

Note 7: Montgomery J. declined to grant a separate classification to a minority group of creditors who would use that classification to extract benefits to which it was not otherwise entitled.

Tab 15

I.I.C. Ct. Filing 44993447021

The T. Eaton Company Ltd. — Court File Nos. 31-OR-364921, 99-CL-3516, 99-CL-3514
21 — **Amended and Restated Plan of Compromise and Arrangement as approved by creditors pursuant to ss. 4 & 5 of Companies' Creditors Arrangement Act**

Re. The T. Eaton Company Limited, Court File No. 99-CL-3516:Toronto

Amended and Restated Plan of Compromise and Arrangement

Pursuant to the *Companies' Creditors Arrangement Act* (Canada) and the *Business Corporations Act* (Ontario) concerning, affecting and involving

The T. Eaton Company Limited

Article 1 — Interpretation

1.1 — Definitions

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

"Abandoned Premises" means any premises under a Lease in whole or in part with Eaton's, abandoned by Eaton's, or for which Eaton's has delivered or delivers an abandonment notice or a repudiation notice after the Valuation Date.

"Affiliate" means affiliate as defined in the OBCA.

"Agency Agreement" means the agreement among the Agent, Eaton's and the Interim Receiver dated as of July 29, 1999, as amended from time to time.

"Agent" means, collectively, Gordon Brothers Retail Partners, LLC, Schottenstein/Bernstein Capital Group, LLC, Hilco Trading Co., Inc. and Garcel, Inc. and their successors and permitted assigns.

"Articles of Arrangement" means the Articles of Arrangement for each of Distributionco and Eaton's contemplated by the Plan.

"BIA" means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

"BIA Orders" means those Orders made in the BIA Proceedings on August 23, 27, 29 and September 2 and 20, 1999, and *"BIA Order"* means any one of them.

"BIA Proceedings" means the proceedings commenced under Part III of the BIA by Eaton's by the filing of a notice of intention to make a proposal on August 20, 1999.

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

"Calendar Day" means a day, including Saturday, Sunday and any statutory holiday.

"Canadian Dollars" or *"$"* means dollars denominated in lawful currency of Canada.

"CCAA" means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36.

"CCAA Proceedings" means the proceedings in respect of Eaton's under the CCAA commenced pursuant to the Initial CCAA Order.

"CCAA Sanction Order" means the Order to be made in the CCAA Proceedings to sanction this Plan, as such Order may be amended, varied or modified by the Court from time to time.

"Chair" means Mr. John Swidler, F.C.A., President of the Monitor, or another official of the Monitor designated by the Monitor, appointed to preside as the chair of the Meetings.

"Charge" means a valid mortgage, charge, pledge, assignment by way of security, lien, privilege, hypothec or security interest.

"Claim" means any right of any Person against Eaton's in connection with any indebtedness, liability or obligation of any kind of Eaton's, whether in contract, tort, or otherwise, which indebtedness, liability or obligation is in existence prior to the Valuation Date and any interest that may accrue thereon, whether liquidated, reduced to judgment, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, statutory, penal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including without limitation, any claim relating to the administration or winding up of the Pension Plans including, without limitation, any unfunded liability, or the administration, distribution or investment of the funds relating to the Pension Plans or any employee benefit plans including, without limitation, any long term disability plan, fund or arrangement, and any claim made or asserted against Eaton's through any affiliate, associate or related person (as such terms are defined in the OBCA), or any right or ability of any Person to advance a claim for subrogation, contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future with respect to any matter, action, cause or chose in action whether existing at present or commenced in the future (including, without limitation, any claims which may exist or arise against Eaton's as assignor of any contract, right, licence or property) based in whole or in part on facts, contracts or arrangements which exist prior to the Valuation Date, together with any other claims that would have been claims provable in bankruptcy had Eaton's become bankrupt on the Valuation Date.

"Claims Administrator" means the Person identified in the schedules to the Claims Procedure for purposes of receiving the notices described in those schedules.

"Claims Officer" means each of The Honourable W. David Griffiths, Q.C., The Honourable Robert F. Reid, Q.C., The Honourable Robert S. Montgomery, Q.C., The Honourable Joseph W. O'Brien, Q.C., The Honourable John B. Webber, Q.C., The Honourable Hilda M. McKinlay and The Honourable Alvin B. Rosenberg, Q.C. or such other Person or Persons as may be appointed by the Court for the purposes of determining a Claim or an Interim Period Claim for voting and distribution purposes.

"Claims Procedure" means the claims procedure and the schedules thereto, attached to this Plan as Schedule "A", for determining Claims and Interim Period Claims for voting and distribution purposes approved in the Initial CCAA Order, as may be amended from time to time.

"Classes" means the two classes of Creditors grouped in accordance with their Claims and Interim Period Claims for the purposes of considering and voting upon this Plan in accordance with the provisions of this Plan, and receiving distributions hereunder, such classes being comprised of Unsecured Creditors and Landlord Creditors, and the single class of Shareholders, respectively, and *"Class"* means any one of such classes.

"Common Shares" means the authorized, issued and outstanding common shares of Eaton's.

"Court" means the Superior Court of Justice for the Province of Ontario, Canada.

"Creditor" means any Person having a Claim or an Interim Period Claim and may, where the context requires, include the assignee of a Claim or an Interim Period Claim, or a trustee, liquidator, interim receiver, receiver, receiver and manager or other Person acting on behalf of such Person.

"Creditor Approval" means the approval of this Plan by all of the Classes of Creditors voting on this Plan under the CCAA.

"Distribution Claim" of a Creditor means the compromised amount of the Claim or Interim Period Claim of such Creditor as finally determined for distribution purposes, in accordance with the provisions of the Claims Procedure, the Plan, the Initial CCAA Order and the CCAA.

"Distributionco" means a business corporation incorporated under the OBCA that will assume the Distributionco Assumed Liabilities and the Unsatisfied Unaffected Liabilities in exchange for the Distributionco Transferred Assets and the Eaton's Note (which will be satisfied by Eaton's upon the receipt of the Sears Equity Contribution), that will distribute the net cash proceeds from the Distributionco Transferred Assets and the satisfaction of the Eaton's Note to Creditors pursuant to this Plan and the OBCA Sanction Order, that will receive the Sears Variable Note for distribution to Shareholders pursuant to this Plan and the OBCA Sanction Order and that will act as agent and nominee for the holders of the Participation Units to hold the Sears Variable Note for their benefit.

"Distributionco Assumed Liabilities" means all of the obligations, indebtedness and liabilities of Eaton's which are compromised on the Plan Implementation Date.

"Distributionco Common Share" means the single common share of Distributionco issued to Eaton's for the subscription price of $1 (which common share is only entitled to receive $1 on dissolution of Distributionco), and which common share will be transferred to the Liquidator on the Plan Implementation Date for $1.

"Distributionco Transferred Assets" means all of the assets of Eaton's on the Plan Implementation Date (including the benefit of all insurance policies of Eaton's in effect as of the Plan Implementation Date) other than the Eaton's Remaining Assets, excluding the Sears Equity Contribution.

"Eaton's" means The T. Eaton Company Limited and, from and after the Plan Implementation Date, any successor thereof.

"Eaton's Elected Stores" means Eaton's leasehold interests in such of the stores listed on Schedule B to the Sears Agreement as Sears elects should be retained by Eaton's under the Sears Agreement.

"Eaton's Note" means the promissory note in the principal amount of $60 million (subject to any adjustment of the Sears Equity Contribution which may be required on closing of the Sears Transaction pursuant to the Sears Agreement) to be issued by Eaton's to Distributionco on the Plan Implementation Date in part consideration for the assumption by Distributionco of the Distributionco Assumed Liabilities and the Unsatisfied Unaffected Liabilities.

"Eaton's Operating Stores" means those stores under the Sears Agreement which Eaton's will continue to operate under the Sears Operating Agreement.

"Eaton's Remaining Assets" means those assets of Eaton's which under the Sears Agreement will remain with Eaton's from and after the Plan Implementation Date, and includes:

(i) Eaton's leasehold interests in the Eaton's Remaining Stores and the Eaton's Elected Stores;

(ii) Eaton's freehold and leasehold interests in and pertaining to its Calgary Eaton Centre downtown store location;

(iii) any inventory of saleable merchandise owned by Eaton's and located at the Eaton's Operating Stores;

(iv) subject to any valid Charge or other ownership rights of third parties, the furniture, fixtures and equipment in the Eaton's Remaining Stores and the Eaton's Elected Stores, other than those specifically excluded under the Sears Agreement;

(v) the goodwill, names (including private label brand names), trade-marks, trade names, copyrights, other intellectual property, contractual rights and accrued benefits relating to the assets described above (including the benefit of prepaid expenses) and licenses, sub-leases and contracts relating to the assets described above (except for those which Sears

elects not be retained by Eaton's) owned or used by Eaton's, books and records owned or used by Eaton's in connection with Eaton's business, the assets of Eaton's used in connection with the credit card operations owned and operated by NRCS, software and websites, rights to the licensed departments, concession arrangements or subleases designated by Sears in the Eaton's Remaining Stores and the Eaton's Elected Stores and any contracts retained by Eaton's upon election by Sears, customer lists, exclusive rights and all assets of Eaton's relating to the carrying on of Eaton's credit card operations or any other credit services for or in respect of Eaton's (including cardholders' lists, account property, the right to use and operate the Eaton's credit card operations and the right to use Eaton's intellectual property in connection with credit services);

(vi) the Eaton's Tax Losses;

(vii) Eaton's interest under the trademark license agreements in respect of:

(a) Victoria Eaton Centre dated July 27, 1995;

(b) Toronto Eaton Centre dated July 14, 1997; and

(c) Montreal Eaton Centre dated September 19, 1997 (unless repudiated by Eaton's prior to November 19, 1999); and

as each has been modified or amended from time to time.

(viii) the interests of any subsidiaries or affiliates of Eaton's in any of the assets described above.

"Eaton's Remaining Liabilities" means:

(i) those liabilities (except in respect of Pension Plans) to those employees of Eaton's selected by Sears currently working at the Eaton's Operating Stores (as indicated in a written notice to be provided by Sears to Eaton's in accordance with the Sears Agreement) and other current employees of Eaton's selected by Sears (as indicated in a written notice to be provided by Sears to Eaton's in accordance with the Sears Agreement) who agree to continue to work for Eaton's upon the completion of the Sears Transaction on terms which are substantially comparable to the terms of employment of employees of Sears in comparable positions and (except in respect of Pension Plans) comparable seniority;

(ii) all Lease liabilities and obligations to Landlords commencing the day after the Plan Implementation Date in respect of stores included in the Eaton's Remaining Assets:

(iii) Eaton's obligations to Sears pursuant to the Sears Agreement, the Sears Operating Agreement and any other agreements entered into by Eaton's and Sears pursuant thereto; and

(iv) Eaton's obligations commencing the day after the Plan Implementation Date under the trademark license agreements in respect of:

(a) Victoria Eaton Centre dated July 27, 1995;

(b) Toronto Eaton Centre dated July 14, 1997; and

(c) Montreal Eaton Centre dated September 19, 1997 (unless repudiated by Eaton's prior to November 19, 1999);

as each has been modified or amended from time to time.

"Eaton's Remaining Stores" means the stores listed in Schedule "A" to the Sears Agreement, being (i) Brentwood Mall, Burnaby; (ii) St. Vitale Centre, Winnipeg; (iii) Les Galleries de la Capitale, Quebec; (iv) Westmount Shopping Centre, London; (v) Sherway Gardens, Etobicoke; (vi) Yorkdale Shopping Centre, North York; (vii) Halifax Shopping Centre,

Halifax; (viii) Scarborough Town Centre, Scarborough; (ix) Eaton Centre, Victoria; (x) Pacific Centre, Vancouver; (xi) Polo Park, Winnipeg; (xii) Eaton Centre, Toronto; and (xiii) such other stores as may be added to Schedule "A" from time to time under the Sears Agreement.

"Eaton's Tax Losses" means all the non-capital loss carryforwards of Eaton's for income tax purposes, including such tax losses of Eaton's amounting to approximately $294.3 million as of January 30, 1999, additional non-capital loss carryforwards generated since January 30, 1999 estimated at $100 million, subject to the increase or decrease in such tax losses which may be created by the Sears Transaction, including the Plan, and the transfer of the Distributionco Transferred Assets to Distributionco at fair market value.

"Eaton's Tax Savings" means an amount equal to 45% of the Eaton's Tax Losses utilized by Sears from time to time, provided that aggregate Eaton's Tax Savings shall not exceed $20 million.

"Employee Representative" means Carmen Siciliano, as appointed by the BIA Order made August 27, 1999 as such BIA Order was continued by the Initial CCAA Order, or such other Person as the Court may appoint to represent former and present employees of Eaton's or a group or class of them.

"Initial CCAA Order" means the Order made in respect of Eaton's on September 28, 1999 under the CCAA, as such Order may be amended or varied from time to time.

"Initial Director" means the first director of Distributionco under Subsection 119(1) of the OBCA.

"Initial OBCA Order" means the Order made in respect of Eaton's on September 28, 1999 under the OBCA, as such Order may be amended or varied from time to time.

"Interim Period Claim" means any right of any Person against Eaton's in connection with any indebtedness, liability or obligation of any kind of Eaton's, whether in contract, tort or otherwise, and any interest that may accrue thereon, whether liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, statutory, penal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, arising from and after the Valuation Date up to and including the Plan Implementation Date, including any claim made or asserted against Eaton's through any affiliate, associate or related person (as such terms are defined in the OBCA), or any right or ability of any Person to advance a claim for subrogation, contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, whether or not arising from or caused by, directly or indirectly, the implementation of, or any action taken pursuant to, the Plan, including claims arising from the abandonment of any premises or the repudiation of any Lease, lease, licence, or contract, agreement or arrangement, the assignment of any contract, Lease or lease of personal, real, moveable or immoveable property (including any future liability as assignor thereof) or the repudiation of any Lease, lease, licence, contract, agreement or arrangement to take effect up to and including the Plan Implementation Date (including any anticipatory breach thereof), by express notice or by virtue of this Plan, the repudiation of any contract of employment, the termination, administration, distribution or winding up of any of the Pension Plans including, without limitation, any unfunded liability, or the administration or investment of the funds relating to the Pension Plans or employee benefit plans, including, without limitation, any long term disability plan, fund or arrangement, and any other claim whatsoever arising at law or equity against Eaton's.

"Interim Period Suppliers" means those Persons who supply goods and services in the ordinary course of business to Eaton's from and after the Valuation Date up to the Plan Implementation Date including concessionaires, suppliers under consignment arrangements and Landlord Creditors in respect of amounts constituting rent or payable as rent as provided for in the applicable Leases (excluding for greater certainty any amounts payable in connection with Abandoned Premises) for premises occupied by Eaton's for the period from the Valuation Date to the effective date of abandonment or repudiation of the premises in accordance with the provisions of the Initial CCAA Order.

"Interim Receiver" means Richter & Partners Inc., in its capacity as interim receiver as defined in the BIA Order made on August 23, 1999 and continued under the Initial CCAA Order, and any successor thereof.

"Known Creditors" means those Creditors whose Claims are identified in Eaton's books and records, and *"Known Creditor"* means any one of them.

"Known Interim Period Creditors" means those Persons Eaton's believes may have Interim Period Claims, and *"Known Interim Period Creditor"* means any one of them.

"Landlord Creditor" means:

> (i) a landlord, head landlord or owner of real property, whether or not in direct privity with Eaton's, who has a Claim or Interim Period Claim in respect of any premises leased by Eaton's pursuant to a Lease to which such landlord, head landlord or owner is a party or by which such landlord, head landlord or owner is bound, and includes (i) any mortgagee of such premises who has taken possession of such premises or is collecting rent in respect of such premises; (ii) any Person who has taken an assignment of rents or assignment of Lease in respect of such premises, whether as security or otherwise; and (iii) any Person whose Claim or Interim Period Claim would be duplicative of or derivative from the Claim or Interim Period of Claim of such landlord, head landlord or owner; and
>
> (ii) any Person who has a Claim or Interim Period Claim in such Person's capacity as a co-owner, partner, shareholder or trust beneficiary of a Person which is the landlord, head landlord or owner of any premises leased by Eaton's and includes (i) any holder of a Charge against such ownership, partnership, shareholder or beneficial interest who is entitled to receive any dividends or distributions thereon; (ii) any Person who has taken an assignment of such ownership, partnership, shareholder or beneficial interest; and (iii) any Person whose Claim or Interim Period Claim would be duplicative of or derivative from the Claim or Interim Period Claim of such first mentioned Person,

and *"Landlord Creditors"* means all of them.

"Landlord Interim Period Claim" means an Interim Period Claim of a Landlord Creditor under Class 2 in connection with Abandoned Premises, which shall be determined for voting and distribution purposes as the amount equal to the lesser of:

> (i) the aggregate of
>
> > (A) the rent provided for in the Lease in respect of the Abandoned Premises for the first year of such Lease following the date on which the repudiation and/or abandonment becomes effective; and
> >
> > (B) fifteen percent of the rent for the remainder of the Term of such Lease after that year; and
>
> (ii) three years' rent.

"Landlord Pool" means an amount of $12 million (plus the amounts remittable by the Landlord Creditors in respect of federal goods and services tax, harmonized sales tax and Quebec sales tax exigible on the distribution of the $12 million) held by the Liquidator on behalf of Distributionco on and after the Plan Implementation Date, representing a portion of the net cash proceeds from the realization of the Distributionco Transferred Assets and the Sears Equity Contribution.

"Lease" means any lease, sublease, licence, sublicence, agreement to lease, offer to lease, or similar agreement, whether written or oral, pursuant to which Eaton's has or had the right to occupy premises and includes all amendments and supplements thereto and all documents ancillary thereto.

"Liquidator" means Richter & Partners Inc. in its capacity as the liquidator of Distributionco, to be appointed by the Court under the OBCA Sanction Order, or any successor thereof.

"Meetings" means the special meetings of the Creditors and Shareholders called for the purpose of considering and voting in respect of this Plan pursuant to the CCAA and the OBCA, and *"Meeting"* means any one of them.

"Merchandising Funds and Discounts" means merchandise funds including but not limited to volume rebates, co-op advertising, marketing allowances, fixturing allowances, research and development expenses, demonstrator wages and commissions pursuant to agreements with Eaton's entered into on, prior to or following the Valuation Date and any discounts taken with respect to payments on account of supplier invoices in accordance with Eaton's standard business practices.

"Monitor" means Richter & Partners Inc., in its capacity as the monitor appointed pursuant to the Initial CCAA Order, and any successor thereof.

"NRCS" means National Retail Credit Services Company.

"OBCA" means the *Business Corporations Act*, R.S.O. 1990, c. B.16.

"OBCA Proceedings" means the proceedings instituted by Eaton's under Section 182 of the OBCA on September 24, 1999.

"OBCA Sanction Order" means the Order to be made in the OBCA Proceedings to approve the Plan, as such Order may be amended, varied or modified by the Court from time to time.

"Omnibus Proof of Claim (Employees)" means the Proof of Claim to be sent by the Employee Representative to Eaton's as described in paragraph 6 of the Claims Procedure.

"Optionholders" means holders of Options.

"Options" means the options issued by Eaton's for the issue of common shares of Eaton's and all agreements relating thereto.

"Order" means any order of the Court in the CCAA Proceedings, the OBCA Proceedings, or the BIA Proceedings.

"Participation Unit" means a unit of participation allocated to a Shareholder on the basis of one unit per each Common Share held by such Shareholder and representing a *pari passu* beneficial ownership interest in the proceeds of the Sears Variable Note and any payment thereof after deducting the costs and expenses of Distributionco as agent and nominee for the holders of Participation Units and the costs, expenses and fees of the Liquidator incurred in administering the Sears Variable Note, including the costs of enforcing the Sears Variable Note.

"Pension Plans" means:

(i) Eaton Retirement Annuity Plan — Registration No. 337238;

(ii) Eaton Retirement Annuity Plan II — Registration No. 1036102;

(iii) Eaton Retirement Annuity Plan III — Registration No. 1037035;

(iv) Eaton Superannuation Plan for Designated Employees — Registration No. 593673;

(v) Pension Plan of The T. Eaton Company Limited for C. Reginald Hunter — Registration No. 1031780;

(vi) Pension Plan of The T. Eaton Company Limited for R. A. Hubert — Registration No. 1029321;

(vii) Pension Plan of The T. Eaton Company Limited for Roy Evans — Registration No. 1031798; and

(viii) Pension Plan of The T. Eaton Company Limited for Rex P. Prangley — Registration No. 1031806.

"Person" means any individual, partnership, joint venture, trust, corporation, unincorporated organization, government or any agency or instrumentality thereof, or any other juridical entity howsoever designated or constituted.

"Plan" means this plan of compromise and arrangement filed by Eaton's pursuant to the Initial CCAA Order, as such Plan may be amended, varied or supplemented by Eaton's from time to time in accordance with Article 9 hereof.

"Plan Filing Date" means October 8, 1999, being the date upon which this Plan is to be filed with the Court in the CCAA Proceedings, or such later date as the Court may set for the filing of the Plan.

"Plan Implementation Date" means a Business Day selected by Eaton's which is on or before December 31, 1999.

"Proof of Claim" means a proof of claim referred to in paragraphs 4 and 16 of the Claims Procedure.

"RFI" means Retail Funding, Inc.

"Sears" means Sears Canada Inc., and on or following the Plan Implementation Date, any corporation formed by the amalgamation of Sears and Eaton's as restructured under the Plan, and any successor of either of them.

"Sears Agreement" means the agreement between Sears and Eaton's dated September 19, 1999, as amended by Addendum No. 1 dated as of September 29, 1999 and Addendum No. 2 dated October 3, 1999, as further amended or supplemented from time to time, pursuant to which Sears will acquire all the issued and outstanding shares of Eaton's.

"Sears Equity Contribution" means the sum of $60 million (subject to any adjustment which may be required on closing of the Sears Transaction pursuant to the Sears Agreement) paid to Eaton's on the Plan Implementation Date pursuant to the Sears Agreement for the issue to Sears of common shares of Eaton's, which amount is to be transferred to Distributionco in satisfaction of the Eaton's Note.

"Sears Operating Agreement" means the agreement dated as of October 1, 1999 among Sears, Eaton's and the Interim Receiver for the continued operation of the Eaton's Operating Stores, as may be amended or supplemented from time to time.

"Sears Transaction" means the transaction or transactions which are required to be completed pursuant to the Sears Agreement.

"Sears Variable Note" means the promissory note made payable to Distributionco to be issued by Sears on the Plan Implementation Date in the principal amount of up to $20 million to be paid by Sears only from the use of the Eaton's Tax Losses in accordance with the Sears Agreement, and which will bear interest at the same rate of interest as earned by the Liquidator on the funds received by Distributionco from Sears under the terms of the Sears Variable Note.

"Secured Creditors" means Persons with Claims or Interim Period Claims secured by a Charge against the property, assets or undertaking of Eaton's, including, without limitation, any co-owner of Eaton's who has a Charge against Eaton's interest in the co-owned property.

"Shareholder Approval" means the approval of this Plan by the Shareholders voting on this Plan under the OBCA.

"Shareholders" means all of the holders of Common Shares, and *"Shareholder"* means any one of them.

"Stay Period" means the period from and after the Valuation Date up to and including the Stay Termination Date.

"Stay Termination Date" means October 28, 1999, or such later date as may be ordered by the Court.

"Term" means the balance of the then existing term of a Lease assuming that renewal rights are not exercised, and any right of early termination is exercised.

"Trustee" means Richter & Partners Inc., in its capacity as trustee in the BIA Proceedings.

"Unaffected Creditors" means Persons having Claims or Interim Period Claims which are described in Section 3.2 hereof, and *"Unaffected Creditor"* means any one of such Creditors.

"Unsatisfied Unaffected Liabilities" means all of the Claims and Interim Period Claims of the Unaffected Creditors which are not satisfied by Eaton's on or before the Plan Implementation Date.

"Unsecured Creditors" means all Persons with Claims and/or Interim Period Claims, other than Landlord Interim Period Claims and Unaffected Creditors (other than as provided in Section 3.3 hereof) and *"Unsecured Creditor"* means any one of such Creditors.

"Unsecured Creditors Pool" means all amounts held by the Liquidator on and after the Plan Implementation Date representing proceeds from the realization of the Distributionco Transferred Assets and the satisfaction of the Eaton's Note with the Sears Equity Contribution, less amounts paid by Distributionco in payment of Unsatisfied Unaffected Liabilities, the Landlord Pool, the costs and expenses of Distributionco (except those in connection with the Sears Variable Note) including any taxes payable by Distributionco and the costs, expenses and remuneration of the Liquidator (except those in connection with the Sears Variable Note).

"Valuation Date" means August 20, 1999.

"Voting Claim" of a Creditor means the amount of the Claim and/or Interim Period Claim of such Creditor determined for voting purposes in accordance with the provisions of the Claims Procedure, the Plan, the Initial CCAA Order and the CCAA.

1.2 — Certain Rules of Interpretation

In this Plan and any Schedules hereto:

(a) all accounting terms not otherwise defined herein shall have the meanings ascribed to them, from time to time, in accordance with Canadian generally accepted accounting principles, including those prescribed by the Canadian Institute of Chartered Accountants;

(b) all references to currency are to Canadian Dollars;

(c) if, for the purposes of voting or distribution, an amount denominated in a currency other than Canadian Dollars must be converted to Canadian Dollars, such amount shall be regarded as having been converted at the noon spot rate of exchange quoted by the Bank of Canada for exchanging such currency to Canadian Dollars as at the Valuation Date;

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

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

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

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

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

(i) whenever any payment to be made or action to be taken under this Plan is required to be made or to be taken on a day other than a Business Day, such payment shall be made or action taken on the next succeeding Business Day;

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

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

1.3 — Schedules

The following Schedules annexed hereto are an integral part of this Plan:

Schedule "A" — Claims Procedure for Voting and Distribution Purposes

Schedule "B" — Entities Eligible for Investments by Liquidator

To the extent that any definition in Schedule "A" differs from a definition in the Plan, the Plan definition governs for the purposes of the Plan.

1.4 — Successors and Assigns

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

1.5 — Governing Law

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

Article 2 — Purpose and Effect of the Plan

2.1 — Purpose

The purpose of this Plan is to effect a reorganization of the Common Shares and certain of the assets of Eaton's and a compromise of Eaton's liabilities to permit the disposition of Eaton's as a going concern to Sears and the orderly disposition of certain of the assets of Eaton's for the benefit of Creditors. The Plan is an intrinsic part of the Sears Transaction pursuant to which Sears has agreed to acquire Eaton's on a going concern basis. Pursuant to the Plan, the Distributionco Transferred Assets will be transferred from Eaton's to Distributionco, Distributionco will assume the Distributionco Assumed Liabilities and the Unsatisfied Unaffected Liabilities, Sears will acquire the Common Shares and make the Sears Equity Contribution and

Distributionco will ultimately receive the benefit of the Sears Equity Contribution as a repayment of the Eaton's Note. The Sears Equity Contribution will then be distributed to Creditors and as soon as practicable in the circumstances the Distributionco Transferred Assets will be realized and the net cash proceeds thereof will be distributed to Creditors. Sears will acquire the Common Shares from Distributionco after Distributionco acquires the Common Shares from the Shareholders in consideration for the issuance to the Shareholders of rights to receive undivided interests in the Sears Variable Note. Eaton's believes that Creditors will derive greater benefit from the continued operation of Eaton's and the orderly disposition of the Distributionco Transferred Assets than they would recover in a bankruptcy. In addition, this Plan provides for a recovery for Shareholders that would not otherwise be available. Accordingly, this Plan is designed to provide a fair recovery to all Creditors and Shareholders and to provide Eaton's with the financial stability necessary to implement a disposition plan for the benefit of all Creditors and to continue its business operations from and after the Plan Implementation Date.

2.2 — Overview of Plan

The restructuring contemplated by this Plan is to be implemented under the CCAA and OBCA. This Plan involves the following essential elements:

(a) the compromise of the Claims and Interim Period Claims of the Unsecured Creditors and Landlord Creditors;

(b) the transfer of the Distributionco Transferred Assets to Distributionco for the orderly disposition of the Distributionco Transferred Assets, and the delivery by Eaton's of the Sears Equity Contribution to Distributionco by means of the repayment of the Eaton's Note by Eaton's to Distributionco;

(c) the assumption by Distributionco of the Distributionco Assumed Liabilities as compromised under this Plan and of the Unsatisfied Unaffected Liabilities and the release of Eaton's from any liability for or arising from the Distributionco Assumed Liabilities and the Unsatisfied Unaffected Liabilities;

(d) the winding up of Distributionco for the purposes of the distribution of proceeds from the realization of the Distributionco Transferred Assets, and the Sears Equity Contribution, to the Creditors;

(e) the exchange of all of the Common Shares for the Participation Units;

(f) the cancellation of the Options; and

(g) the acquisition by Sears of the Common Shares.

Article 3 — Creditors and Shareholders

3.1 — Classification of Creditors

Subject to Sections 3.2 and 3.3 of this Plan, the classification of Creditors for the purposes of considering and voting on this Plan and receiving distributions hereunder is based upon the commonality of interest of such Creditors, such that Creditors with essentially similar rights against Eaton's and which Creditors are to receive essentially similar treatment have been grouped together in the following Classes for voting and distribution purposes:

(a) *Class 1*

Claims and Interim Period Claims of the Unsecured Creditors and Landlord Creditors (excluding in respect of Landlord Interim Period Claims) shall be designated as Class 1, and shall include the Claims relating to the notes in the aggregate principal amount of $5 million issued by Eaton's pursuant to the amended and restated plan of compromise or arrangement sanctioned by the Court on September 12, 1997, and all amounts pertaining to arrears of rent or other amounts payable as rent under the Leases, Claims in respect of tenant inducements or any other Claims or Interim Period Claims in respect of premises not constituting Abandoned Premises, but for greater certainty shall exclude Landlord Interim Period Claims, which amounts shall be included in Class 2.

(b) *Class 2*

Landlord Interim Period Claims shall be designated as Class 2.

3.2 — Unaffected Creditors

This Plan does not affect or compromise the Claims or Interim Period Claims of the following Creditors and others, except to the extent provided for in Section 3.3 hereof:

(a) RFI, which shall be paid by Eaton's on or before the Plan Implementation Date in accordance with Eaton's credit facility arrangements with RFI;

(b) the Agent, which shall be paid by Eaton's in accordance with the Agency Agreement on or before the Plan Implementation Date;

(c) the Trustee, the Monitor and the Interim Receiver, including legal and other advisors retained by any of them in accordance with the BIA Orders and the Initial CCAA Order, which shall be paid by Eaton's on or before the Plan Implementation Date:

(d) Sears;

(e) those Creditors having Claims or Interim Period Claims which constitute Eaton's Remaining Liabilities, which Claims or Interim Period Claims shall be satisfied by Eaton's in the ordinary course of business prior to, on or after the Plan Implementation Date and those Landlord Creditors having arrears of amounts constituting rent or payable as rent as provided for in the applicable Leases (excluding for greater certainty any amounts payable in connection with Abandoned Premises) in respect of Leases constituting Eaton's Remaining Assets, which shall be paid such rent prior to or on the Plan Implementation Date;

(f) those Landlord Creditors having Claims in respect of Leases, where such Leases are assigned by Eaton's on or prior to the Plan Implementation Date to Persons other than Distributionco, to the extent such Landlord Creditors deliver a full release to Eaton's;

(g) Interim Period Suppliers, which shall be paid by Eaton's in the ordinary course prior to, on or after the Plan Implementation Date;

(h) the legal, accounting and financial advisors and sales agents engaged by Eaton's for the purposes of assisting Eaton's in reorganizing its assets, debt and equity pursuant to this Plan, which shall be paid by Eaton's on or before the Plan Implementation Date;

(i) Secured Creditors, unless the Claims or Interim Period Claims of such Secured Creditors are otherwise provided for in this Plan, or their Claims or Interim Period Claims are settled by agreement with Eaton's;

(j) Creditors having claims arising in the ordinary course of business against Eaton's to the extent that such claims are covered by Eaton's insurance policies or are required by law or otherwise to be paid by Eaton's insurers;

(k) Her Majesty in right of Canada or any province, in respect of any environmental matters, but only to the extent of the Charge granted under Subsection 11.8(8) of the CCAA and, in respect of other matters, only to the extent that such matters or obligations (i) give rise to deemed trusts which are not paid pursuant to Subsection 18.2(1) of the CCAA or are the subject of other deemed trusts protected by Subsection 18.3(2) of the CCAA; or (ii) are secured by a Charge which complies with Subsection 18.5(1) of the CCAA; and

(l) the members of the Board of Directors of Eaton's in respect of their fees and disbursements up to and including the Plan Implementation Date.

3.3 — Affected Claims of Unaffected Creditors

(a) — Secured Creditors

Secured Creditors shall have no Voting Claim or Distribution Claim, except to the extent of any deficiency Claim or deficiency Interim Period Claim to which they may be entitled in respect of the Charge held by them. The Claims and Interim Period Claims of the Secured Creditors (other than the Monitor and Interim Receiver in respect of the Charge granted to them in the BIA Order made on August 23, 1999 and continued under the Initial CCAA Order, Sears, RFI, and the Agent) to the extent compromised by this Plan, and the Unsatisfied Unassumed Liabilities shall be assumed by Distributionco and thereupon all of the obligations of Eaton's to such Secured Creditors, including obligations arising under guarantees, sureties, indemnities and similar covenants and all Charges in favour of the Secured Creditors against the Eaton's Remaining Assets, shall be and shall be deemed to be released and discharged. Distributionco shall satisfy its obligations to the Secured Creditors from the realization of the Distributionco Transferred Assets to the extent of any Charges attaching to any of the Distributionco Transferred Assets, and any deficiency Claims to the extent such Secured Creditors may be entitled thereto from such realization shall constitute such Secured Creditors' Claims or Interim Period Claims to be compromised as Distribution Claims.

(b) — Insurance Claims

To the extent that any Claim or Interim Period Claim of a Creditor is not fully insured under Eaton's insurance policies or at law, the Creditor will be entitled to pursue a Claim or Interim Period Claim in respect of such uninsured portion, in accordance with this Plan and the Claims Procedure.

(c) — Claims Against Distributionco

The Unaffected Creditors shall have no Claims or Interim Period Claims against Distributionco except to the extent of the Unsatisfied Unaffected Liabilities, which shall be assumed and satisfied by Distributionco.

(d) — Owned Properties

All obligations of Eaton's continuing after the Plan Implementation Date under shareholder agreements, co-ownership agreements, rights of first refusal, co-tenancy agreements and other project documents (excluding for greater certainty operating agreements with adjacent land owners which shall be deemed to be repudiated on the Plan Implementation Date unless expressly affirmed by Eaton's before the Plan Implementation Date) in respect of Eaton's interest in owned or co-owned real or immoveable properties which constitute Distributionco Transferred Assets shall be assumed by Distributionco and the rights and obligations thereunder shall continue with Distributionco, and thereupon all obligations of Eaton's to such Persons who are parties to such agreements, including obligations arising under guarantees, securities, indemnities and similar covenants in favour of such Persons shall be and shall be deemed to be released and discharged, provided however, that any amounts or obligations owing by Eaton's to such Persons which constitute Claims or Interim Period Claims shall be compromised only to the extent provided by this Plan, including subsection 3.3(a), and any right to demand against Eaton's any reconveyance of Eaton's interest in such owned or co-owned real or immoveable properties shall be forever barred and stayed. Co-owner and other Charges affecting owned and co-owned properties which constitute Distributionco Transferred Assets shall be dealt with pursuant to subsections 3.2(i) and 3.3(a) of this Plan.

3.4 — Classification of Shareholders

The Shareholders shall constitute a single class which shall be designated as Class 3. The Optionholders shall not have the right to vote or receive any distributions under the Plan.

Article 4 — Treatment of Creditors and Shareholders

For purposes of this Plan, the Creditors shall receive the treatment provided in this Article 4 on account of their Claims and Interim Period Claims and on the Plan Implementation Date, the Claims and Interim Period Claims affected by this Plan will be compromised in accordance with the terms of this Plan.

4.1 — Unsecured Creditors

(a) — Voting Claims

(i) — Voting Claims of Greater than $500

Subject to Subsection 4.1(a)(ii) hereof, each Unsecured Creditor having a Voting Claim as an Unsecured Creditor shall be entitled to vote in Class 1 to the extent of the amount which is equal to its Voting Claim as an Unsecured Creditor.

(ii) — Voting Claims of $500 or Less

An Unsecured Creditor with a Voting Claim as an Unsecured Creditor of $500 or less, or an Unsecured Creditor with a Voting Claim greater than $500 which elects to value its Voting Claim at $500 in accordance with the procedure set out below, shall not be entitled to vote at the Meeting of Creditors for the Class of Unsecured Creditors.

(b) — Distribution Claims

(i) — Unsecured Creditors Pool

The distribution to the Unsecured Creditors shall not exceed in the aggregate the Unsecured Creditors Pool. For purposes of distribution of the Unsecured Creditors Pool, the Distribution Claims of the Unsecured Creditors shall rank *pari passu*, except to the extent that they receive payments of $500 or less in full satisfaction of their Distribution Claims.

(ii) — Distribution Claims of Greater than $500

After the Plan Implementation Date, each Unsecured Creditor with a Distribution Claim as an Unsecured Creditor which is greater than $500 and who did not elect to value such Distribution Claim at $500 shall receive from the Liquidator from time to time, in full satisfaction of such Distribution Claim as an Unsecured Creditor, a *pari passu* cash distribution from the Unsecured Creditors Pool.

(iii) — Distribution Claims of $500 or Less

As soon as practicable after the Plan Implementation Date, each Unsecured Creditor with a Distribution Claim as an Unsecured Creditor not exceeding in the aggregate $500, and each Unsecured Creditor with a Distribution Claim as an Unsecured Creditor which is greater than $500 which elects to value such Distribution Claim at $500 shall receive, from the Liquidator in priority to any distributions under Section 4(b)(ii) hereof, in full satisfaction of such Distribution Claim as an Unsecured Creditor, cash in an amount equal to the lesser of $500 and the amount of such Distribution Claim. Such election must be made in writing and delivered to Eaton's prior to December 1, 1999 and, in the case of an employee or former employee of Eaton's, prior to January 14, 2000. For greater certainty, such election must be made in respect of the whole amount of such Distribution Claim.

4.2 — Landlord Creditors

(a) — Voting Claims

Each Landlord Creditor shall be entitled to vote in Class 2 to the extent of the amount which is equal to its Voting Claim in respect only of its Landlord Interim Period Claim. Each Landlord Creditor shall be entitled to vote in Class 1 in respect of Claims or Interim Period Claims not constituting Landlord Interim Period Claims.

(b) — Distribution Claims

(i) — Landlord Pool

The distributions to the Landlord Creditors of their Distribution Claims in respect of or relating to their Landlord Interim Period Claims shall not exceed in the aggregate the Landlord Pool. For purposes of distribution of the Landlord Pool, the Distribution Claims of the Landlord Creditors in respect of or relating to their Landlord Interim Period Claims shall rank *pari passu*.

(ii) — Distribution to Landlord Creditors

After the Plan Implementation Date, each Landlord Creditor with a Distribution Claim in respect of or relating to its Landlord Interim Period Claim shall receive from the Liquidator from time to time, in full satisfaction of such Distribution Claim, a *pari passu* cash distribution from the Landlord Pool.

(c) — Abandonment or Repudiation

If Eaton's has delivered an abandonment notice or a repudiation notice with respect to Abandoned Premises, the relevant Lease pursuant to which Eaton's occupied or was obligated to occupy such Abandoned Premises and any obligation of Eaton's thereunder shall terminate in accordance with the Initial CCAA Order and the Plan without affecting the relevant Landlord's Distribution Claim.

4.3 — Unaffected Creditors

For greater certainty, each Unaffected Creditor shall not be entitled to vote or to receive any distributions under this Plan.

4.4 — Guarantees and Similar Covenants

No Person who has a Claim or Interim Period Claim under any guarantee, surety, indemnity or similar covenant (other than the holder of a guarantee, surety, indemnity or similar covenant from Eaton's) in respect of any Claim or Interim Period Claim which is compromised under this Plan or who has any right to claim over in respect of or to be subrogated to the rights of any Person in respect of a Claim or Interim Period Claim which is compromised under this Plan shall be entitled to any greater rights than the Creditor whose Claim or Interim Period Claim was compromised under this Plan.

4.5 — Claims Generally

(a) — Assignment of Claims and Interim Period Claims

If a Creditor who has a Voting Claim transferred or transfers all or part of its Voting Claim and the transferee delivers evidence of its ownership of all or part of such Voting Claim and a written request to Eaton's, no later than five (5) Calendar Days prior to the date of the Meeting of the Creditors of the Class to which such Voting Claim is subject, that such transferee's name be included on the list of Creditors entitled to vote at such Meeting, such transferee shall be entitled to attend and vote the transferred portion of such Voting Claim at such Meeting if and to the extent such Voting Claim may otherwise be voted at such Meeting; provided, however, that for the purposes of determining whether this Plan has been approved by a majority in number of the Creditors of such Class, only the vote of the transferor or the transferee, whichever holds the highest dollar value of such Voting Claim, will be counted, and, if such value shall be equal, only the vote of the transferee will be counted. If a Voting Claim has been transferred to more than one transferee, for purposes of determining whether this Plan has been approved by a majority in number of the Creditors of the Class, to which such Voting Claim is subject, only the vote of the transferee with the highest value of such Voting Claim will be counted unless all of the transferees of such Voting Claim deliver a notice to Eaton's at least five (5) Calendar Days prior to the date of the Meeting of the Creditors of the Class to which such Voting Claim is subject and designate therein the name of the transferee whose vote is to be counted, in which case the vote of such designated transferee will be counted.

(b) — Voting by Landlord Creditors

For the purpose of determining whether this Plan has been approved by a majority in number of the Landlord Creditors under Class 2, the vote of the Person which is the landlord of premises leased to Eaton's shall be counted as one vote notwithstanding that such Person may be under common ownership with or may be an Affiliate or a Person who is a landlord of other Premises leased to Eaton's. Each co-ownership, joint venture or partnership in respect only of a particular leased premises shall be regarded as a separate Person and counted as one vote. For greater certainty, if the same Person is a Landlord Creditor voting under this Plan in respect of more than one leased premises, the vote of such Person shall be counted as only one vote.

(c) — Merchandising Funds and Discounting

A Distribution Claim of a Creditor shall be net of any amount owing by the Creditor to Eaton's prior to the Valuation Date. For greater certainty, Eaton's shall be entitled to exercise rights of set-off prior to the Valuation Date in respect of Merchandising Funds and Discounts relating to purchases and transactions occurring prior to the Valuation Date on a per diem basis notwithstanding that the relevant contract, agreement or arrangement relating to such Merchandising Funds and Discounts may provide for a calculation of or entitlement to Merchandising Funds and Discounts on a different basis. No amount shall be provable as a Claim by a Creditor in respect of Merchandising Funds and Discounts which have been taken or claimed by Eaton's prior to the Valuation Date.

(d) — Allocation of Distributions

All distributions made by the Liquidator to Creditors pursuant to this Plan and the OBCA Sanction Order shall be applied first in payment of accrued and unpaid interest, if any, which form part of the Claim or Interim Period Claim, and the balance shall then be applied in payment of the outstanding principal amount of such Claim or Interim Period Claim. Each Creditor shall be responsible for providing for any non-resident withholding tax imposed under Part XIII of the *Income Tax Act* (Canada) as a condition of receiving any amounts under this Plan.

(e) — Interest

No interest shall accrue from and after the Valuation Date for the purpose of valuing Voting Claims and Distribution Claims.

(f) — Set-Off

Without limiting the provisions of Subsection 4.5(c) in respect of Merchandising Funds and Discounts, the law of set-off shall apply as of the Plan Implementation Date to all Distribution Claims filed against Eaton's in the same manner and to the same extent as if Eaton's or Distributionco were plaintiff or defendant, as the case may be provided, however, that there shall be no set-off (i) between a Claim and any indebtedness, liability or obligation owed by a Creditor to Eaton's which arose or occurred from and after the Valuation Date and (ii) between an Interim Period Claim and any indebtedness, liability or obligation owed by a Creditor to Eaton's which arose or occurred before the Valuation Date.

4.6 — Shareholders

(a) — Exchange of Common Shares

On the Plan Implementation Date. the Shareholders shall exchange and shall be deemed to have exchanged the Common Shares for the right of each of them to receive Participation Units. Each Shareholder shall have the right to receive a Participation Unit on the basis of one Participation Unit for each Common Share held.

(b) — Exercise of Right to Receive Participation Units

On the Plan Implementation Date, on the receipt by Distributionco of the Sears Variable Note, the Shareholders shall exercise and shall be deemed to have exercised their right to receive Participation Units, and Distributionco, through the Liquidator, shall issue Participation Units to each Shareholder in accordance with its entitlement, on the basis of one Participation Unit for each Common Share.

(c) — Participation Units

The Liquidator will hold the Sears Variable Note on behalf of Distributionco. The Liquidator will hold the proceeds received on the repayment or maturity of the Sears Variable Note and income earned thereon on behalf of Distributionco, and Distributionco will hold such proceeds and income for the benefit of Persons holding from time to time Participation Units in accordance with their respective entitlements. The Sears Variable Note shall be paid by Sears only from the use of the Eaton's Tax Losses. There shall be no other recourse against Sears or Eaton's in respect of the Sears Variable Note. Upon the filing of a tax return by Sears in which any of the Eaton's Tax Losses are utilized, a payment will be made by Sears to the Liquidator equal to the Eaton's Tax Savings with the aggregate of all the Eaton's Tax Savings being a maximum of $20 million. The Liquidator shall invest such funds, plus any interest thereon earned by the Liquidator, until the later of (i) the expiry of the relevant assessment period, and (ii) the resolution of any appeal from an assessment in respect of the use by Sears of such Eaton's Tax Losses. Thereupon, the Eaton's Tax Savings, plus interest earned thereon by the Liquidator, shall reduce the amount payable under the Sears Variable Note and the Liquidator shall distribute such amounts to the holders of Participation Units. To the extent that Sears is not ultimately able to utilize the Eaton's Tax Losses to a maximum amount of $44.44 million, the difference between the Eaton's Tax Savings paid to the Liquidator and 45% of the Eaton's Tax Losses actually utilized, plus any interest earned thereon, shall be repaid by the Liquidator to Sears upon the expiry of all appeal rights of Sears in respect of any disallowance of such Eaton's Tax Losses and, in that event, Sears shall have no obligation to pay such amounts under the Sears Variable Note. Sears shall claim sufficient of the Eaton's Tax Losses to generate no less than $20 million in Eaton's Tax Savings prior to claiming any tax losses of Sears.

(d) — No Dissent Rights

The Shareholders shall not have any rights of dissent under Section 185 of the OBCA in respect of this Plan.

4.7 — Optionholders

On the Plan Implementation Date, the Options shall be cancelled and shall be deemed to be cancelled, and the Optionholders shall have no further rights against Eaton's, Distributionco or the Liquidator nor shall they be entitled to receive any Participation Units.

4.8 — Effect of Plan Generally

On the Plan Implementation Date, the treatment of Claims and Interim Period Claims under this Plan shall be final and binding on Eaton's and all Creditors affected thereby (and their respective heirs, executors, administrators, legal personal representatives, successors and assigns) and this Plan shall constitute (i) a full, final and absolute settlement of all rights of the holders of all Claims and Interim Period Claims affected hereby; (ii) an absolute release and discharge of all indebtedness, liabilities and obligations of Eaton's of or in respect of the Claims and Interim Period Claims, including, without limitation, the Unsatisfied Unaffected Liabilities, and any Charges against the Eaton's Remaining Assets in respect thereof (whether created by contract, statute or otherwise); and (iii) a termination of all Leases pertaining to Abandoned Premises and all contracts, rights and licenses granted by Eaton's not constituting Eaton's Remaining Assets, Distributionco Transferred Assets or Eaton's existing insurance policies of any kind whatsoever in accordance with the terms and conditions of this Plan.

4.9 — Waiver of Defaults by Persons

From and after the Plan Implementation Date, all Persons shall be deemed to have waived any and all defaults of Eaton's then existing or previously committed by Eaton's or caused by Eaton's, or non-compliance with any covenant, warranty, representation, term, provision, condition or obligation, express or implied, in any contract, credit document, agreement for sale, Lease, lease or other agreement, written or oral, and any and all amendments or supplements thereto, existing between such Person and Eaton's, and any and all notices of default and demands for payment under any instrument, including any guarantee, shall be deemed to have been rescinded and Distributionco and the Liquidator shall be entitled to the benefit of such waiver.

4.10 — Waiver of Defaults by Eaton's

From and after the Plan Implementation Date, Eaton's shall be deemed to have waived any and all defaults of a Person then existing or previously committed by such Person or caused by such Person, or non-compliance with any covenant, warranty, representation, term, provision, condition or obligation, express or implied, in any contract, credit document, agreement for sale, lease, Lease or other agreement, written or oral, constituting Eaton's Remaining Assets and any and all amendments or supplements thereto, existing between Eaton's and such Person, and any and all notices of default and demands for payment under any instrument, including any guarantee, shall be deemed to have been rescinded provided, however, that such waiver shall not apply to any defaults which are continuing after the Plan Implementation Date.

Article 5 — Steps of the Plan and Closing Procedures

5.1 — Implementation of Plan

Prior to the Plan Implementation Date, Eaton's shall incorporate Distributionco as a wholly owned subsidiary, Eaton's shall hold the Distributionco Common Share and shall cause Distributionco to become subject to the OBCA Proceedings. Subject to the satisfaction or waiver (in accordance with Section 9.1 hereof), of the conditions set forth in Article 6 hereof, the following shall occur, and be deemed to occur, sequentially in the following order on the Plan Implementation Date:

(a) all of the subsidiaries of Eaton's shall release and be deemed to have released Eaton's from all obligations, indebtedness and liabilities, including, without limitation, all Unsatisfied Unaffected Liabilities, and all Claims and Interim Period Claims which they may have against Eaton's;

(b) the Initial Director shall resign and be deemed to have resigned without any ongoing liability as a director of Distributionco;

(c) the appointment of the Liquidator will take effect in accordance with the provisions of the OBCA Sanction Order;

(d) the compromise of the Claims and Interim Period Claims between the Creditors and Eaton's shall be effected and be deemed to be effected at the amounts which the Creditors are to be entitled to receive from Distributionco;

(e) Eaton's shall transfer and be deemed to have transferred to Distributionco the Distributionco Transferred Assets and issued the Eaton's Note to Distributionco in exchange for which Distributionco shall assume and be deemed to have assumed the Distributionco Assumed Liabilities, as compromised under paragraph (d) hereof and, the Unsatisfied Unaffected Liabilities;

(f) Eaton's shall be released and be deemed to be released by all Creditors from all Claims and Interim Period Claims including, without limitation, from the Unsatisfied Unaffected Liabilities, excluding Eaton's Remaining Liabilities;

(g) the Shareholders shall exchange and be deemed to exchange their Common Shares for the right to receive Participation Units;

(h) the Options shall be cancelled and shall be deemed to be cancelled and Eaton's shall be released and be deemed to be released from all obligations and liabilities to the Optionholders;

(i) the Articles of Arrangement shall be filed;

(j) Sears will acquire the Common Shares held by Distributionco in exchange for the Sears Variable Note to be issued to Distributionco;

(k) the Liquidator shall hold the Sears Variable Note on behalf of Distributionco, and Distributionco shall in turn hold the Sears Variable Note for the benefit of the holders of Participation Units from time to time in accordance with their respective interests;

(l) Distributionco shall deliver and be deemed to have delivered Participation Units to the Shareholders in full satisfaction of the Shareholders' right to receive such Participation Units;

(m) Sears will subscribe for new common shares of Eaton's and will pay to Eaton's the Sears Equity Contribution;

(n) the Sears Equity Contribution shall be paid by Eaton's to Distributionco in full satisfaction of the Eaton's Note; and

(o) Eaton's shall transfer the Distributionco Common Share to the Liquidator.

5.2 — Effect of CCAA Sanction Order

In addition to sanctioning this Plan, the CCAA Sanction Order shall, among other things:

(a) declare that the compromises effected hereby are approved, binding and effective as herein set out upon all Creditors affected by this Plan;

(b) declare that agreements (including without limitation, Leases) to which Eaton's is a party and which are not repudiated or not deemed to be repudiated by Eaton's shall be and shall remain in full force and effect, unamended, as at the Plan Implementation Date and no Person party to any such agreements shall, following the Plan Implementation Date, accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, dilution, buy-out, divestiture, forced sale, option or other remedy) or make any demand under or in respect of any such obligations or agreements, by reason:

(i) of any event(s) which occurred on or prior to the Valuation Date which would have entitled any other Person party thereto to enforce those rights or remedies (including defaults or events of default arising as a result of the financial condition or insolvency of Eaton's);

(ii) of the fact that Eaton's has sought or obtained relief under the CCAA Proceedings, BIA Proceedings or the OBCA Proceedings or that the Plan has been implemented;

(iii) of the effect on Eaton's of the completion of any of the transactions contemplated by this Plan; or

(iv) of any compromises or arrangements effected pursuant to this Plan;

(c) with respect to those leases, contracts, licences, agreements or arrangements, or other rights, which do not constitute Eaton's Remaining Assets or Eaton's insurance policies Col any kind whatsoever), all such leases, contracts, licences, agreements or arrangements, or other rights, shall be deemed to be repudiated and abandoned, as applicable, as of the Plan Implementation Date and the other Persons who are party thereto shall be deemed to be Creditors having Interim Period Claims unless Distributionco expressly agrees to assume any such lease (other than a Lease), contract, licence, agreement, or arrangements, or other rights, by written notice within ten (10) Calendar Days after the Plan Implementation Date;

(d) with respect to those Leases in respect of Abandoned Premises, declare that all such Leases shall be deemed to be repudiated and abandoned on the effective date specified in the notice delivered by Eaton's;

(e) provide that paragraph 11 of the Initial CCAA Order be extended and remain in full force and effect until August 31, 2000;

(f) discharge the Monitor and the Interim Receiver;

(g) stay any and all steps or proceedings, including, without limitation, administrative orders, declarations or assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against any or all past, present and future directors and officers of Eaton's and the Initial Director in respect of any Claim or Interim Period Claim;

(h) discharge all past, present and future directors and officers of Eaton's and the Initial Director from any liability with respect to all Claims and Interim Period Claims;

(i) release and discharge Eaton's from any and all indebtedness, obligations and liabilities (other than in respect of Eaton's Remaining Liabilities) including without limitation, any liability with respect to Claims or Interim Period Claims, including, without limitation, the Unsatisfied Unaffected Liabilities, or any liability as an assignor of any rights, or as employer under, or administrator of, the Pension Plans;

(j) to make provision for the creation of adequate reserves to be held by Distributionco, or the Liquidator appointed under the OBCA Sanction Order, to pay Unsatisfied Unaffected Liabilities; and

(k) provide that the Distributionco Transferred Assets, wherever situate, shall vest in Distributionco free and clear of all Charges, estate, right, title, or interest except as otherwise provided under this Plan.

5.3 — Effect of OBCA Sanction Order

In addition to sanctioning this Plan, the OBCA Sanction Order shall provide, among other things, that:

(a) Distributionco shall be wound up commencing on the Plan Implementation Date;

(b) the Liquidator shall be appointed effective on the Plan Implementation Date to receive and liquidate all of the Distributionco Transferred Assets and the Sears Equity Contribution for distribution to the Creditors in accordance with the Plan and the Claims Procedure;

(c) the Liquidator shall have all necessary powers to carry out its duties and obligations as described in this Plan and the OBCA Sanction Order, including the authority to pay any taxes exigible as a result of the transfer of the Distributionco Transferred Assets to Distributionco, and all of the rights, powers, duties and obligations of a court-appointed liquidator under Part XVI of the OBCA, except as may be varied by the OBCA Sanction Order, and Distributionco and the Liquidator shall have all of the rights, privileges, protections and immunities typically afforded to an indenture trustee in connection with the enforcement and administration of the Sears Variable Note;

(d) from and after the Plan Implementation Date, the Liquidator shall assume the functions of Eaton's (as defined in the Claims Procedure) under the Claims Procedure for the determination of Distribution Claims and shall distribute (including on an interim basis) to the Creditors amounts realized from the Distributionco Transferred Assets and the Sears Equity Contribution, in accordance with the Plan, including the Claims Procedure;

(e) the Liquidator shall hold the Sears Variable Note and the proceeds thereof received on the maturity of the Sears Variable Note on behalf of Distributionco and distribute on behalf of Distributionco such proceeds and all interest thereon in accordance with the provisions of this Plan and the Sears Variable Note to the holders of Participation Units;

(f) the Liquidator shall keep any funds received under the Sears Variable Note prior to any repayment thereunder or the maturity thereof segregated from any other funds held by the Liquidator, and shall return such funds (and any interest thereon) to Sears to the extent provided in the Sears Variable Note, and upon such return of funds to Sears, no Person shall have any claim including, without limitation, the holders of Participation Units or Distributionco, in respect of such funds;

(g) the Liquidator shall invest all funds held or received by Distributionco under the Sears Variable Note, pending distribution as contemplated under the Sears Variable Note, in deposits, bankers acceptances and Treasury Bills with or of the financial institutions and the Canadian or provincial governments and their respective agencies or agents listed or referred to in Schedule "B" attached to this Plan;

(h) the Liquidator shall invest all funds held or received from the Distributionco Transferred Assets, the Sears Equity Contribution and any reserves held pending distributions to Creditors in deposits, bankers acceptances and Treasury Bills

with or of the financial institutions and the Canadian or provincial governments and their respective agencies or agents listed or referred to in Schedule "B" attached to this Plan;

(i) the Liquidator shall keep and maintain a register of holders of Participation Units and of transfers thereof;

(j) neither Distributionco nor the Liquidator shall have any obligation to take any proceedings or any other steps to enforce the Sears Variable Note or the rights of the Participation Unit holders to receive monies thereunder, unless the Liquidator is provided with funds and the appropriate indemnities from Participation Unit holders;

(k) the form and terms of the Sears Variable Note shall be approved;

(l) a committee of Creditors of up to 5 members may be appointed by the Liquidator to assist the Liquidator in reviewing and settling Distribution Claims and establishing reserves to allow the Liquidator to make interim distributions to the Creditors;

(m) the Initial Director shall be discharged from any liability with respect to the Claims and Interim Period Claims effective on the Plan Implementation Date;

(n) no further directors shall be appointed for Distributionco;

(o) no action or other proceeding shall be proceeded with or commenced against Distributionco or the Liquidator and no attachment, sequestration, distress or execution shall be put in force against the estate or effects of Distributionco except by leave of the Court;

(p) Distributionco shall not assume any liability in respect of any Claims or Interim Period Claims, except those liabilities compromised under this Plan and the Unsatisfied Unaffected Liabilities;

(q) no Person who is a party to any agreement assigned to Distributionco as part of the Distributionco Transferred Assets shall, from and after the Plan Implementation Date, have any right to accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including without limitation any charge, right of set-off, dilution, buy-out, reconveyance, divestiture, forced sale, option or other remedy) or make any demand under or in respect of such agreement by reasons of:

(i) the fact that Distributionco is the transferee of the Distributionco Transferred Assets;

(ii) the fact that Distributionco has sought or obtained relief under the OBCA Proceedings;

(iii) the fact that the Plan has been implemented: or

(iv) the fact that Distributionco is being wound up and the Liquidator has been appointed; and

(r) the Liquidator shall only apply for an Order dissolving Distributionco when all funds received under the Sears Variable Note and any income earned thereon have been fully distributed to the holders of the Participation Units and when all proceeds of realization from the Distributionco Transferred Assets have been distributed to the Creditors, in each case in accordance with this Plan and the OBCA Sanction Order.

Article 6 — Conditions Precedent

6.1 — Application for Sanction Orders

If the Creditor Approval and Shareholder Approval are obtained, Eaton's shall apply for the CCAA Sanction Order and the OBCA Sanction Order on November 23, 1999. The CCAA Sanction Order and the OBCA Sanction Order shall not become effective until the Plan Implementation Date. On the Plan Implementation Date, subject to the satisfaction or waiver of the conditions contained in Section 6.2, the Plan will be implemented by Eaton's, Distributionco and the Liquidator and shall be binding upon all Persons having Claims, Interim Period Claims, and Unsatisfied Unaffected Liabilities against Eaton's or

Distributionco or the Liquidator to the extent of their Claims, Interim Period Claims or Unsatisfied Unaffected Liabilities. If the conditions contained in Section 6.2 are not satisfied or waived on or before the Plan Implementation Date, this Plan, the CCAA Sanction Order and the OBCA Sanction Order shall cease to have any further force or effect (other than the provisions therein protecting the Interim Receiver, the Monitor and the Liquidator, including with respect to their fees and disbursements).

Eaton's may apply for an Order extending the Stay Period so that the application for the CCAA Sanction Order may be made before the Stay Period expires and the Stay Period shall not expire until the Plan Implementation Date.

6.2 — Conditions Precedent to Implementation of Plan

The implementation of this Plan shall be conditional upon the fulfilment or waiver (in accordance with Section 9.1) of the following conditions:

(a) — Expiry of Appeal Period

The appeal period with respect to the CCAA Sanction Order and OBCA Sanction Order shall have expired without an appeal of such Orders having been commenced or, in the event of an appeal or application for leave to appeal, a final determination shall have been made by the applicable appellate tribunal.

(b) — Sears Agreement

The satisfaction of all conditions in the Sears Agreement unless waived by Sears.

(c) — Deliveries of Documents

All relevant Persons shall have executed, delivered and filed all documentation which in the opinion of Eaton's, acting reasonably, are necessary to give effect to all material terms and provisions of this Plan including, without limitation, the Articles of Arrangement.

(d) — Governmental Approvals

All applicable governmental, regulatory and Judicial consents, orders and similar consents and approvals and all filings with all governmental authorities, securities commissions, stock exchanges and other regulatory authorities having jurisdiction, in each case to the extent deemed necessary or desirable by counsel to Eaton's and in form and substance satisfactory to Eaton's for the completion of the transactions contemplated by this Plan or any aspect hereof, shall have been obtained or received.

Article 7 — Meetings and Procedural Matters

7.1 — Meetings of Creditors

(a) Meetings of Creditors shall be held in accordance with this Plan, the Initial CCAA Order and any further Order.

(b) Subject to the Initial CCAA Order, the Chair shall decide all matters relating to the conduct of each Meeting of Creditors and the validity of proxies and the voting of Voting Claims.

(c) The quorum required at each Meeting of Creditors shall be the lesser of two or the number of Creditors in the Class of Creditors present in person or by proxy.

(d) The Monitor shall appoint scrutineers for the supervision and tabulation of the attendance at, quorum at and votes cast at each Meeting of Creditors. A Person designated by the Monitor shall act as secretary at the Meeting of Creditors.

(e) The only Persons entitled to notice of or to attend, speak and vote at each Meeting of Creditors are the Creditors of the Class of Creditors to which the Meeting relates (including, for purposes of attendance and speaking, their proxy holders),

representatives of Eaton's, the Monitor, the Employee Representative, and their respective legal and financial advisors. Any other Person may be admitted to a Meeting of Creditors on the invitation of Eaton's representatives or the Chair.

(f) If the requisite quorum is not present at a Meeting of Creditors, or if a Meeting of Creditors is postponed by the vote of the majority in number of the Creditors present in person or by proxy, then the Meeting of Creditors shall be adjourned by the Chair to a date thereafter and to such time and place as may be appointed by the Chair.

(g) Any proxy which any Creditor wishes to submit in respect of a Meeting of Creditors (or any adjournment thereof) must be received by Eaton's one Business Day prior to the day on which the Meeting of Creditors (or any adjournment thereof) is to be held, provided that proxies may also be deposited with the Chair at the Meeting of Creditors (or any adjournment thereof) prior to the commencement of such Meeting.

(h) The Employee Representative shall file an Omnibus Proof of Claim (Employees) (as defined in the Claims Procedure) on behalf of all former and present employees of Eaton's and shall be deemed to hold an omnibus proxy for voting purposes for all former and present employees of Eaton's. The omnibus proxy for voting purposes shall be without prejudice to the ability of any former or present employee to file his or her own Proof of Claim and to appear in person or by proxy held by a Person other than the Employee Representative. In the event that the employee files his or her own Proof of Claim, the Omnibus Proof of Claim (Employees) and omnibus proxy for voting purposes shall be reduced or revised accordingly. The omnibus proxy shall be counted for the total number of individual employees voting and the total value of their Claims and Interim Period Claims.

(i) In respect of any Meeting of Creditors, the Chair shall direct a vote, by written ballot, with respect to a resolution to approve this Plan and any amendments thereto as Eaton's may consider appropriate.

(j) For voting purposes, Eaton's shall keep a separate record and tabulation of any votes cast in respect of Claims and Interim Period Claims which have not been allowed in whole or in part by Eaton's by the time of the Meeting.

7.2 — Creditor Approval

In order that this Plan be binding on the Creditors in accordance with the CCAA, it must first be accepted by each Class of Creditors as prescribed by this Plan by a majority in number of the Creditors in such Class who actually vote on this Plan (in person or by proxy) at the relevant Meeting. representing two-thirds (66 $2/_3$%) in value of the Voting Claims of the Creditors in such Class who actually vote on this Plan (whether in person or by proxy) at the relevant Meeting.

7.3 — Meeting of Shareholders

(a) The Meeting of Shareholders shall be called, held and conducted in accordance with the OBCA, other applicable laws and the articles and by-laws of Eaton's, subject to the terms of the Initial OBCA Order and subject to any further Order.

(b) Subject to the Initial OBCA Order, the Chair shall decide all matters relating to the conduct of the Meeting of Shareholders and the annual meeting of Shareholders postponed to November 19, 1999 by Order made September 24, 1999 and the validity of proxies and the voting of Common Shares relating to each.

(c) The only Persons entitled to notice of or to attend the Meeting of Shareholders shall be the Shareholders as at the record date for the Meeting of Shareholders, holders of valid proxies from Shareholders, Eaton's representatives, Eaton's directors, Eaton's auditors, and the Monitor. The only Persons entitled to be represented and to vote at the Meeting of Shareholders shall be the Shareholders as at the record date for the Meeting of Shareholders, subject to the provisions of the OBCA with respect to Persons who become registered Shareholders after that date. Other Persons may attend at the Meeting of Shareholders only on the invitation of Eaton's representatives or the Chair.

(d) Eaton's, if it deems it advisable, is specifically authorized to adjourn or postpone the Meeting of Shareholders on one or more occasions, without the necessity of first convening the Meeting of Shareholders or first obtaining any vote of any Shareholders respecting the adjournment or postponement.

(e) The accidental omission to give notice of the Meeting of Shareholders, or the non-receipt of such notice, shall not invalidate any resolution passed or proceedings taken at the Meeting of Shareholders.

(f) Eaton's is authorized, at its expense, to solicit proxies, directly and through its officers, directors and employees, and through such agents or representatives as it may retain for the purpose, and by mail or such other forms of personal or electronic communication as it may determine.

(g) Votes shall be taken at the Meeting of Shareholders on the basis of one (1) vote per Common Share.

(h) Optionholders shall not be entitled to vote at the Meeting of Shareholders.

7.4 — Shareholder Approval

In order that this Plan be binding on the Shareholders in accordance with the OBCA, it must first be accepted by an affirmative vote by not less than two-thirds (66 2/3%) of the votes cast (for this purpose any spoiled votes, illegible votes, defective votes and abstentions shall be deemed not to be votes cast) by the Shareholders present in person or represented by proxy at the Meeting of Shareholders.

Article 8 — Claims Procedure

8.1 — Claims Procedure

(a) The Claims and Interim Period Claims for voting and distribution purposes are to be determined in accordance with the Claims Procedure.

(b) All steps to be taken by Eaton's under the Claims Procedure from and after the Plan Implementation Date shall be performed by the Liquidator.

Article 9 — Amendment of Plan

9.1 — Plan Amendment

(a) Subject to the provisions of the Sears Agreement, Eaton's reserves the right, at any time and from time to time, to amend, modify and/or supplement this Plan, or to waive in whole or in part any condition from time to time set forth in Article 6, provided that any such amendment, modification, supplement or waiver must be contained in a written document which is filed with the Court and (i) if made prior to the Meetings, communicated to the Creditors and/or Shareholders in the manner required by the Court (if so required); and (ii) if made following the Meetings, approved by the Court following notice to the Creditors and/or Shareholders affected thereby.

(b) Subject to the provisions of the Sears Agreement, any amendment, modification, supplement or waiver may be made unilaterally by the Liquidator following the OBCA Sanction Order and CCAA Sanction Order, provided that it concerns a matter which, in the opinion of the Liquidator, acting reasonably, is of an administrative nature required to better give effect to the implementation of this Plan and to the OBCA Sanction Order and/or CCAA Sanction Order and is not adverse to the financial or economic interests of any Class of Creditors or Shareholders.

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

Article 10 — General Provisions

10.1 — Termination

Subject to the provisions of the Sears Agreement, at any time prior to the Plan Implementation Date, Eaton's may determine not to proceed with this Plan, notwithstanding any prior approvals given at any of the Meetings.

10.2 — Paramountcy

From and after the Plan implementation Date, any conflict between this Plan and the covenants, warranties, representations, terms, conditions, provisions or obligations, express or implied, of any contract, credit document, agreement for sale, by-laws of Eaton's, lease or other agreement, written or oral and any and all amendments or supplements thereto existing between one or more of the Creditors and Eaton's as at the Plan Implementation Date will be deemed to be governed by the terms, conditions and provisions of this Plan and the OBCA Sanction Order and CCAA Sanction Order, which shall take precedence and priority.

10.3 — Compromise Effective For All Purposes

The compromise or other satisfaction of any Claim or Interim Period Claim under this Plan, if sanctioned and approved by the Court under the CCAA Sanction Order shall, in the case of any Creditor whose Claim or Interim Period Claim is in a Class voting in favour of this Plan, be binding on the Plan Implementation Date on such Creditor and such Creditor's heirs, executors, administrators, legal personal representatives, successors and assigns, for all purposes.

10.4 — Consents, Waivers And Agreements

On the Plan Implementation Date, each Creditor and Shareholder shall be deemed to have consented and agreed to all of the provisions of this Plan in their entirety. In particular, each Creditor and Shareholder shall be deemed:

(a) to have executed and delivered to Eaton's all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out this Plan in its entirety;

(b) to have waived any non-compliance by Eaton's with any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Creditor and Eaton's that has occurred on or prior to the Plan Implementation Date and, where provided for in the CCAA Sanction Order, after the Plan Implementation Date; and

(c) to have agreed that, if there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Creditor and Eaton's at the Plan Implementation Date (other than those entered into by Eaton's on, or with effect from, the Plan Implementation Date) and the provisions of this Plan, the provisions of this Plan take precedence and priority and the provisions of such agreement or other arrangement shall be deemed to be amended accordingly.

10.5 — Releases

On the Plan Implementation Date, Eaton's and each and every present and former Shareholder, officer, director, employee, auditor, financial advisor, legal counsel (other than in respect of legal opinions) and agent of Eaton's, the Initial Director, the Interim Receiver and the Monitor (individually, a "Released Party") shall be released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, expenses, executions, Charges and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Person may be entitled to assert, including, without limitation, any and all claims in respect of potential statutory liabilities of the former, present and future directors and officers of Eaton's and the Initial Director, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Plan Implementation Date relating to, arising out of or in connection with Claims or Interim Period Claims, the business and affairs of Eaton's, the administration and winding up of the Pension Plans including, without limitation, any unfunded liability, and the administration, distribution, and investment of the funds relating to the Pension Plans, any employee benefit plan, including without limitation, any long

tern disability plan, fund or arrangement, this Plan, the BIA Proceedings, the CCAA Proceedings and the OBCA Proceedings, provided that nothing herein shall release or discharge a Released Party (other than Eaton's) if the Released Party (other than Eaton's) is adjudged by the express terms of a judgment rendered on a final determination on the merits to have committed fraud or wilful misconduct.

10.6 — Deeming Provisions

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

10.7 — Information Circular

Copies of this Plan will be included with an information circular mailed to Shareholders, Optionholders, Known Creditors, Known Interim Period Creditors, and Creditors who submit Proofs of Claim.

10.8 — Notices

Any notice or communication to be delivered hereunder shall be in writing and shall reference this Plan and may, subject as hereinafter provided, be made or given by personal delivery or by telecopier addressed to the respective parties as follows:

(a) if to Eaton's:

The T. Eaton Company Limited

c/o Richter & Partners Inc.

Court-Appointed Monitor of Eaton's

90 Eglinton Avenue East, Suite 700

Toronto, Ontario M4P 2Y3

Attention: Messrs. John J. Swidler, F.C.A. and Robert Harlang, C.A.

Telephone: (416) 932-6261

Telecopier: (416) 932-6262

(b) if to a Creditor:

to the known address (including telecopier number) for such Creditor or the address for such Creditor specified in the Proofs of Claim filed by such Creditor in the CCAA Proceedings;

(c) if to the Monitor:

Richter & Partners Inc.

Court-Appointed Monitor of Eaton's

90 Eglinton Avenue East, Suite 700

Toronto, ON M4P 2Y3

Attention: Messrs. John J. Swidler, F.C.A. and Robert Harlang, C.A.

Telecopier: (416) 932-6200

Telephone: (416) 932-8000

or to such other address as any party may from time to time notify the others in accordance with this Section. All such notices and communications which are delivered shall be deemed to have been received on the date of delivery. All such notices and communications which are telecopied shall be deemed to be received on the date telecopied if sent before 5:00 p.m. on a Business Day and otherwise shall be deemed to be received on the Business Day next following the day upon which such telecopy was sent. Any notice or other communication sent by mail shall be deemed to have been received on the fifth Business Day after the date of mailing. The unintentional failure by Eaton's to give a notice contemplated hereunder shall not invalidate any action taken by any Person pursuant to this Plan.

10.9 — Different Capacities

Creditors whose Claims and Interim Period Claims are affected by this Plan may be affected in more than one capacity. Unless expressly provided herein to the contrary, each such Creditor shall be entitled to participate hereunder in each such capacity. Any action taken by a Creditor in any one capacity shall not affect the Creditor in any other capacity, unless expressly agreed by the Creditor in writing or unless the Claims or Interim Period Claims overlap or are otherwise duplicative.

10.10 — Further Assurances

Notwithstanding that the transactions and events set out in this Plan shall be deemed to occur without any additional act or formality other than as set out herein, each of the Persons affected hereby shall make, do and execute or cause to be made, done or executed all such further acts, deeds, agreements, transfers, assurances, instruments, documents or discharges as may be reasonably required by Eaton's (and after the Plan Implementation Date, by Distributionco or the Liquidator) in order to better implement this Plan.

Dated at Toronto, Ontario this 19th day of November, 1999.

Schedule "A" — Claims Procedure for Voting and Distribution Purposes

Claims Procedure for Voting Purposes

Definitions

1. The following terms shall have the following meanings ascribed thereto:

(a) "Eaton's" means The T. Eaton Company Limited and after the Plan Implementation Date, the Person under the Plan which will be making the distribution under the Plan;

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

(c) "Calendar Day" means a day, including, Saturday, Sunday and any statutory holidays;

(d) "CCAA" means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36;

(e) "Claim" means any right of any Person against Eaton's in connection with any indebtedness, liability or obligation of any kind of Eaton's, which indebtedness, liability or obligation is in existence prior to the Valuation Date, and any interest that may accrue thereon, whether liquidated, reduced to judgment, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including without limitation, any claim made or asserted against Eaton's through any affiliate, associate or related Person as such terms are defined in the Ontario *Business Corporations Act*, or any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the

future with respect to any matter, action, cause or chose in action whether existing at present or commenced in the future based in whole or in part on facts which exist prior to the Valuation Date, together with any other claims that would have been claims provable in bankruptcy had Eaton's become bankrupt on the Valuation Date;

(f) "Claims Administrator" means the person identified in the Schedules for purposes of receiving the notices described in those Schedules;

(g) "Claims Officer" means the Person or Persons to be designated by this Court;

(h) "Claims\Procedure" means the claims procedure and schedules set out herein and as approved in the Initial Order, as may be amended from time to time;

(i) "Court" means the Superior Court of Justice (Commercial List) in the Province of Ontario;

(j) "Creditor" means any Person having a Claim or an Interim Period Claim and may, where the context requires, include the assignee of a Claim or Interim Period Claim or a trustee, interim receiver, receiver, receiver and manager, or other Person acting on behalf of such Person;

(k) "Dispute Notice" means the notices referred to in paragraphs 9 and 17 hereof, being Schedule "7" hereto;

(l) "Distribution Claim" of a Creditor means the compromised amount of the Claim of such Creditor as finally determined for distribution purposes, in accordance with the provisions of the Claims Procedure described herein, in the Plan and in the CCAA;

(m) "Distribution Claims Bar Date" means 11:59 p.m. (Toronto time) on January 25, 2000 or such later date as may be ordered by the Court;

(n) "Employee Representative" means Carmen Siciliano, as appointed by the Order of the Court made August 27th, 1999 as continued in the Initial Order, or such other Person as the Court may appoint to represent former and present employees of Eaton's or a group or class of them;

(o) "Initial Order" means the Order of this Court made in respect of Eaton's on September 28, 1999 under the CCAA, as amended from time to time;

(p) "Instruction Letter for Distribution Purposes" means the instruction letter to Creditors regarding completion by Creditors of the Dispute Notice described in paragraph 17 hereof;

(q) "Instruction Letter for Voting Purposes" means the instruction letter to Creditors regarding completion by Creditors of the Proof of Claim and Dispute Notice described in paragraphs 4 and 9 hereof;

(r) "Interim Period" means the period from and after the Valuation Date to and including the Plan Implementation Date;

(s) "Interim Period Claim" means any right of any Person against Eaton's in connection with any indebtedness, liability or obligation of any kind of Eaton's, and any interest that may accrue thereon, whether liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including without limitation, any claim made or asserted against Eaton's through any affiliate, associate or related Person as such terms are defined in the Ontario *Business Corporations Act*, or any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, arising from or caused by, directly or indirectly, the implementation of, or any action taken pursuant to, the Plan, including claims arising from the abandonment of any premises or the repudiation or variation of any lease, the assignment of any contract or lease of personal, real, moveable or immoveable property (including any future liability as assignor thereof) or the repudiation or variation of any contract to take effect up to and including Plan

Implementation Date (including any anticipatory breach thereof), repudiation or variation of any contract of employment, the termination or winding up of any pension or employee benefit plans and any other claim arising at law or equity;

(t) "Interim Period Creditors" means those Creditors having an Interim Period Claim;

(u) "Known Creditors" means those Creditors whose Claims are identified in Eaton's books and records;

(v) "Known Interim Period Creditors" means those Persons Eaton's believes may have Interim Period Claims;

(w) "Monitor" means the monitor appointed under the Initial Order;

(x) "Notice to Creditors" means the notice for publication as described in paragraph 4 hereof;

(y) "Notice of Dispute of Valuation for Voting Purposes" means the Notice of Dispute of Valuation for Voting Purposes referred to in paragraph 3 hereof, delivered by a Known Creditor disputing a Notice of Voting Claim with reasons for its dispute;

(z) "Notice of Distribution Claim" means the notice referred to in paragraph 16 hereof, advising a Creditor of the value ascribed by Eaton's for such Creditor's Distribution Claim;

(aa) "Notice of Revision or Disallowance for Voting Purposes" means the notice referred to in paragraph 8 hereof, advising a Creditor that Eaton's has revised or rejected all or part of such Creditor's Claim or Interim Period Claim set out in its Proof of Claim or advising a Known Creditor that Eaton's has revised or rejected all or part of such Creditor's Claim or Interim Period Claim as set out in the Notice of Dispute of Valuation for Voting Purposes;

(bb) "Notice of Voting Claim" means the notice referred to in paragraph 3 hereof, advising a Creditor of the value ascribed by Eaton's for such Creditor's Voting Claim;

(cc) "Omnibus Proof of Claim (Employees)" means the Proof of Claim to be sent by the Employee Representative to Eaton's as described in paragraph 6 hereof;

(dd) "Person" means any and all of Eaton's shareholders and former shareholders, creditors, customers, employees, retirees, pension plans, clients, suppliers, contractors, lenders, factors, customs brokers, purchasing agents, landlords (including, without limitation, equipment lessors and lessors of real property and immoveables), sub-landlords, tenants, sub-tenants, licensors, licensees, concessionaires, co-owners, co-tenants, joint venture partners, co-venturers, partners, the Crown (except as provided under subsections 11.4(2) and (3) of the CCAA), municipalities or any other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government in Canada or elsewhere and any corporation or other entity owned or controlled by or which is the agent of any of the foregoing, and any other person, firm, corporation or entity wherever situate or domiciled (collectively, "Persons" and, individually, "Person");

(ee) "Plan" means the plan of compromise or arrangement to be filed by Eaton's pursuant to the Initial Order, which Plan may be amended or supplemented from time to time;

(ff) "Plan Implementation Date" means the date on which the Plan is to be effective, as provided for in the Plan;

(gg) "Proof of Claim" means the form of Proof of Claim referred to in paragraph 4 hereof;

(hh) "Unknown Creditor" means a Creditor whose claim is not recorded or shown in Eaton's books and records;

(ii) "Unknown Interim Period Creditors" means those Interim Period Creditors of which Eaton's has no knowledge;

(jj) "Valuation Date" means August 20, 1999;

(kk) "Voting Claim" of a Creditor means the amount of the Claim and/or Interim Period Claim of such Creditor determined for voting purposes in accordance with the provisions of the Claims Procedure described herein and the CCAA; and

(ll) "Voting Claims Bar Date" means 11:59 p.m. (Toronto time) on October 25, 1999.

Schedules

2. The following Schedules form part of this Claims Procedure:

(a) Schedule "1" — Notice of Voting Claim

(b) Schedule "2" — Notice of Dispute of Valuation for Voting Purposes

(c) Schedule "3" — Notice To Creditors

(d) Schedule "4" — Proof of Claim

(e) Schedule "5" — Instruction Letter for Voting Purposes

(f) Schedule "6" — Notice of Revision or Disallowance for Voting Purposes

(g) Schedule "7" — Dispute Notice

(h) Schedule "8" — Notice of Distribution Claim

(i) Schedule "9" — Instruction Letter for Distribution Purposes

3. Eaton's shall send, on or before 11:59 p.m. (Toronto time) on October 4, 1999, by ordinary mail, courier or telecopier to each of the Known Creditors (other than employees represented by the Employee Representative), to each of the Known Interim Period Creditors (other than employees represented by the Employee Representative) and by facsimile transmission to each Person on the service list in Eaton's CCAA proceeding a Notice of Voting Claim substantially in the form attached as Schedule "1". In so doing, Eaton's is not admitting liability to such Persons. The Notice of Voting Claim shall set out, to the extent possible, Eaton's best estimate of the Creditor's Voting Claim, as may be shown in Eaton's books and records. Where not practicable to estimate the Creditor's Interim Period Claim, Eaton's intends to ascribe a value of $1 to such Creditor's Interim Period Claim. With respect to the Notice of Voting Claim for the landlords of Eaton's, Eaton's shall value each landlord's Interim Period Claim in accordance with the formula set out in subsection 65.2(4) of the *Bankruptcy and Insolvency Act*, irrespective of actual damages suffered, if any. A Creditor shall be deemed to have received the Notice of Voting Claim three Calendar Days after the mailing of the Notice of Voting Claim. If the Creditor disputes the amount of the Voting Claim set out therein, the Creditor shall deliver to Eaton's Claims Administrator a Notice of Dispute of Valuation for Voting Purposes in the form attached as Schedule "2" no later than the Voting Claims Bar Date. Where the Creditor does not deliver to Eaton's by such date a completed Notice of Dispute of Valuation for Voting Purposes, then the Creditor shall be deemed to have accepted the Creditor's Claim or Interim Period Claim as set out in the Notice of Voting Claim, which Creditor's Claim or Interim Period Claim shall be treated as a Voting Claim for voting purposes under the Plan.

4. Commencing on October 7, 1999, Eaton's shall publish the Notice to Creditors substantially in the form attached as Schedule "3" hereto, for a period of two consecutive Business Days in the Globe & Mail (National Edition), National Post, La Presse, and the Wall Street Journal (National Edition). The Notice to Creditors shall provide that any Creditor of Eaton's who has not received a Notice of Voting Claim, must provide notice of that Creditor's Claim or Interim Period Claim to Eaton's by no later than 11:59 p.m. (Toronto time) on October 13, 1999 which notice shall include particulars as to the Creditor's name, address and facsimile number, in order to be able to vote on the Plan. Eaton's shall send by facsimile or courier to each such Creditor, a Proof of Claim in substantially the form attached as Schedule "4" and the Instruction Letter for Voting Purposes in substantially

the form attached as Schedule "5" as soon as practicable. Such Creditor's Proof of Claim must be returned to Eaton's by no later than the Voting Claims Bar Date unless Eaton's otherwise agrees or this Court otherwise orders.

5. A Creditor that does not receive a Notice of Voting Claim and that does not file a Proof of Claim by the Voting Claims Bar Date shall not be entitled to vote at any Creditors' meeting in respect of the Plan unless Eaton's otherwise agrees or this Court otherwise orders.

6. Notwithstanding any other provision in this Claims Procedure, Koskie Minsky as Court-appointed counsel to the Employee Representative, shall, on behalf of the Employee Representative, deliver to Eaton's by the Voting Claims Bar Date an Omnibus Proof of Claim (Employees) for all present and former employees of Eaton's. In addition, the Employee Representative shall be given an omnibus proxy for voting purposes for all former and present employees of Eaton's. The Omnibus Proof of Claim (Employees) and the omnibus proxy for voting purposes shall be without prejudice to the ability of any former or present employee to file his or her own Proof of Claim by the Voting Claims Bar Date and to appear in person or by proxy at a Creditors' meeting to approve the Plan. In the event that an employee files his or her own Proof of Claim, the Omnibus Proof of Claim (Employees) and the omnibus proxy for voting purposes shall be reduced or revised accordingly. The omnibus proxy for voting purposes shall be counted for the total number of individual employees voting and the total value of their Claims and Interim Period Claims.

7. On or about October 12, 1999, Eaton's shall mail its Management Information Circular, in connection with the Plan, to Known Creditors and to Known Interim Period Creditors. Eaton's shall also provide a copy of the Management Information Circular (once mailing of same has commenced) to those Creditors to whom Eaton's provides a Proof of Claim in accordance with paragraph 4 hereof.

8. Eaton's, with the assistance of the Monitor, shall review all Notices of Dispute of Valuation for Voting Purposes and all Proofs of Claim, including the Omnibus Proof of Claim (Employees), received by the Voting Claims Bar Date and shall accept, revise or reject the amount of each Claim and Interim Period Claim set out therein for voting purposes under the Plan. Eaton's shall by no later than 11:59 p.m. (Toronto time) on October 29, 1999, notify each Creditor who has filed a Notice of Dispute of Valuation for Voting Purposes or a Proof of Claim if such Creditor's Claim or Interim Period Claim as set out therein has been revised or rejected, and the reasons therefor, by sending on or before October 29, 1999 by facsimile or courier a Notice of Revision or Disallowance for Voting Purposes substantially in the form attached as Schedule "6" hereto. Where Eaton's does not send by such date a Notice of Revision or Disallowance for Voting Purposes to a Creditor who has submitted a Notice of Dispute of Valuation for Voting Purposes or a Proof of Claim, Eaton's shall be deemed to have accepted such Creditor's Claim or Interim Period Claim for voting purposes only, which shall be deemed to be that Creditor's Voting Claim.

9. Any Creditor who intends to dispute a Notice of Revision or Disallowance for Voting Purposes shall by no later than 11:59 p.m. (Toronto time) on November 5, 1999, deliver by facsimile or courier to the Claims Administrator, a Dispute Notice substantially in the form attached as Schedule "7" hereto in order to have the value of such Creditor's Voting Claim determined by the Claims Officer. Eaton's, with the assistance of the Monitor, shall attempt to resolve any dispute as to the value of the Creditor's Voting Claim as set out in the Dispute Notice by no later than November 9, 1999. In the event that Eaton's is unable to resolve the dispute with the Creditor by November 9, 1999, Eaton's shall so notify the Claims Officer, the Monitor and the Creditor.

10. Where a Creditor that receives a Notice of Revision or Disallowance for Voting Purposes does not file a Dispute Notice, the value of such Creditor's Voting Claim under the Plan shall be deemed for voting purposes to be as set out in the Notice of Revision or Disallowance for Voting Purposes.

11. Upon receiving notice that Eaton's is unable to resolve a dispute with a Creditor in respect of a Voting Claim, the Claims Officer shall resolve the dispute between Eaton's and such Creditor, and the Claims Officer shall, by no later than 11:59 p.m. (Toronto time) on November 17, 1999, notify Eaton's, such Creditor and the Monitor of the Claims Officer's determination of the value of the Creditor's Voting Claim for voting purposes under the Plan. Such determination of the value of the Voting Claim by the Claims Officer shall be deemed to be the Creditor's Voting Claim for voting purposes under the Plan.

12. Subject to the direction of the Court, the Claims Officer shall determine the manner, if any, in which evidence may be brought before him or her by the parties as well as any other procedural matters which may arise in respect of his or her determination of a Creditor's Voting Claim. The resolution shall be on an expedited basis and the determination of the value by the Claims Officer for voting purposes shall not prohibit a Creditor from a further hearing under paragraph 17 hereof with respect to the value of such Creditor's Distribution Claim.

13. The decision of the Claims Officer in determining the value of the Creditor's Voting Claim shall be final and binding on the Creditor and Eaton's for voting purposes only and not for distribution purposes under the Plan and there shall be no rights of appeal or recourse to the Court from the Claims Officer's final determination for voting purposes only and not for distribution purposes.

14. Where any Creditor applies to have the value of its Voting Claim determined by the Claims Officer, but the Voting Claim has not been finally determined by the Claims Officer prior to the date of the meeting at which the Creditor is to vote, as provided in the Initial Order, Eaton's shall either:

(a) accept the Creditor's determination and the value of the Claim only for the purposes of voting on the Plan, and conduct the vote of the particular class(es) of creditors into which such Creditor falls, subject to a final determination of its Distribution Claim;

(b) delay the vote of the class(es) into which that Creditor falls until a final determination of the Claim is made;or

(c) deal with the matter as the Court may otherwise direct.

Claims Procedure for Distribution Purposes

15. Eaton's shall publish commencing on January 4, 2000 a notice of the Distribution Claims Bar Date for a period of two consecutive Business Days in The Globe and Mail (National Edition), National Post, La Presse, and The Wall Street Journal (National Edition). This notice shall advise Creditors of the Distribution Claims Bar Date.

16. Eaton's shall review and consider all Voting Claims (including the Voting Claim of the Employee Representative) for the purpose of valuing such Voting Claims to determine Distribution Claims. Eaton's shall accept, revise or reject the amount of all Voting Claims for distribution purposes under the Plan. Eaton's shall by no later than the Distribution Claims Bar Date, notify each Creditor as to whether such Creditor's Voting Claim as set out therein has been confirmed, revised or rejected for distribution purposes and the reasons therefor by delivery of a Notice of Distribution Claim together with an Instruction Letter for Distribution Purposes by facsimile or courier in the forms attached as Schedules "8" and "9" respectively. Creditors who did not receive a Notice of Voting Claim and who were not part of the voting process must file a Proof of Claim with the Claims Administrator, which Proof of Claim shall set out such Creditor's Claim and Interim Period Claim, by the Distribution Claims Bar Date. Any such Creditor who fails to file a Proof of Claim by the Distribution Claims Bar Date shall be forever barred from advancing any Claims or Interim Period Claims against Eaton's or from receiving a distribution under the Plan and such Creditor's Claims and Interim Period Claims shall be forever extinguished and barred. Eaton's shall review and consider all Proofs of Claim which it receives in respect of Distribution Claims for distribution purposes under the Plan to determine if it accepts, revises or rejects the amount set out therein. If Eaton's does not contact a Creditor who has filed a Proof of Claim to advise that it disputes the amount set out in such Creditor's Proof of Claim by February 29, 2000, Eaton's shall be deemed to have accepted the amount set out in such Creditor's Proof of Claim as such Creditor's Distribution Claim for distribution purposes under the Plan. If Eaton's disputes the amount of a Claim or Interim Period Claim set out in a Proof of Claim filed in accordance with this paragraph it shall with the assistance of the Monitor attempt to resolve the dispute with the Creditor by February 29, 2000. In the event that Eaton's is unable to resolve the dispute by such date, it shall so notify the Claims Officer, the Monitor and the Creditor.

17. A Creditor who intends to dispute a Notice of Distribution Claim shall by 11:59 p.m. (Toronto time), on February 15, 2000, notify the Claims Administrator in writing of such intent, by delivery of a Dispute Notice in the form attached as Schedule "7"

hereto by facsimile or courier. Eaton's, with the assistance of the Monitor, shall attempt to resolve the dispute with the Creditor by February 29, 2000. In the event that Eaton's is unable to resolve the dispute with the Creditor by February 29, 2000, Eaton's shall so notify the Claims Officer, the Monitor and the Creditor. If a Creditor does not deliver a Dispute Notice by 11:59 p.m. (Toronto time) on February 15, 2000, such Creditor will be deemed to have accepted the value of its Distribution Claim as set out in the Notice of Distribution Claim and will be thereafter barred from otherwise disputing or appealing same.

18. Upon receiving notice that Eaton's is unable to resolve a dispute with a Creditor regarding any Distribution Claim, the Claims Officer shall resolve the dispute between Eaton's and such Creditor, and shall, by no later than 11:59 p.m. (Toronto time) on March 31, 2000, notify Eaton's, such Creditor and the Monitor of the Claims Officer's determination of the value of the Creditor's Distribution Claim.

19. Subject to the direction of the Court, the Claims Officer shall determine the manner, if any, in which evidence may be brought before him or her by the parties, as well as any other procedural matters which may arise in respect of his or her determination of a Creditor's Distribution Claim.

20. If neither party appeals the determination of value of Distribution Claim by the Claims Officer in accordance with paragraph 21 below, the decision of the Claims Officer in determining the value of the Creditor's Distribution Claim shall be final and binding upon Eaton's and the Creditor for distribution purposes under the Plan and there shall be no further right of appeal, review or recourse to the Court from the Claims Officer's final determination.

21. Either a Creditor or Eaton's may, within five (5) Calendar Days of notification of the Claims Officer's determination of the value of a Creditor's Distribution Claim, appeal such determination to the Court, which appeal shall be made returnable within five (5) Calendar Days of the filing of the notice of appeal. The determination of such appeal shall be final and binding upon Eaton's and the Creditor for all purposes under the Plan. There shall be no further rights of appeal, review or recourse to the courts.

General Provisions

22. In the event that Eaton's makes interim distribution payments under the Plan, to the extent that it is thereafter determined that the Creditor's Distribution Claim is greater than that for which Eaton's made interim payments, then Eaton's shall forthwith make such further payments contemplated by the Plan to such Creditor so that such Creditor shall receive the aggregate amount of payments which such Creditor would have received if its Distribution Claim had been finally determined prior to the interim distribution under the Plan.

23. In the event that no Plan is approved by the Court, the Voting Claims Bar Date shall be of no effect with respect to any and all claims made by Creditors in any subsequent proceeding or distribution.

Schedule "1" — In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, C. C-36, as amended — and — In the Matter of a Plan of Compromise or Arrangement of the T. Eaton Company Limited

Court File No. 99-CL-3516

Superior Court of Justice Commercial List

..... Applicant

Notice of Voting Claim

Please read carefully the Instruction Letter for Voting Purposes accompanying this Notice.

The T. Eaton Company Limited ("Eaton's") proposes to present a plan of arrangement to its Creditors (the "Plan") under the Companies' Creditors Arrangement Act (the "CCAA"). The Order of Mr. Justice Farley made September 28, 1999 in the CCAA proceedings provides for a Claims Procedure for Creditors for voting and distribution under the Plan.

TAKE NOTICE that Eaton's has valued your Voting Claim (comprised of your Claim and Interim Period Claim) against Eaton's for voting purposes (and NOT for distribution purposes) as set out in the attached Schedule. Claims in a foreign currency were converted to Canadian Dollars at the Bank of Canada noon spot rate as at August 20, 1999. U.S. exchange rate conversion on such date was $1.4941.

If you DISAGREE with the value of your VOTING CLAIM as set out in the Schedule attached to this Notice, please be advised of the following:

1. If you intend to dispute this Notice of Voting Claim, you must, by no later than 11:59 p.m. (Toronto time) on *October 25, 1999,* deliver to Eaton's (to the attention of the Claims Administrator) a Notice of Dispute of Valuation for Voting Purposes by facsimile, courier or registered mail to the address/fax number indicated thereon. The form of Notice of Dispute of Valuation for Voting Purposes is enclosed.

2. If you do not deliver a Notice of Dispute of Valuation for Voting Purposes to Eaton's (to the attention of the Claims Administrator), *the value of your Voting Claim for voting purposes under the Plan shall be deemed to be as set out in this Notice of Voting Claim.*

IF YOU FAIL TO TAKE ACTION WITHIN THE PRESCRIBED TIME PERIOD, THE AMOUNT SET OUT IN THIS NOTICE SHALL BE DEEMED TO BE YOUR VOTING CLAIM FOR VOTING PURPOSES UNDER THE PLAN.

DATED at Toronto, the ..... day of ..... 1999.

THE T. EATON COMPANY LIMITED

Schedule "2" — 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 the T. Eaton Company Limited

Court File No. 99-CL-3516

Superior Court of Justice Commercial List

..... Applicant

Notice of Dispute of Valuation for Voting Purposes

Please read carefully the Instruction Letter for Voting Purposes accompanying this Notice.

A. PARTICULARS OF CREDITOR:

(1) Full Legal Name of Creditor: ..... *(Full legal name should be the name of the original Creditor of Eaton's, notwithstanding whether an assignment of a claim, or a portion thereof, has occurred. Do not file separate Notices of Dispute of Valuation For Voting Purposes by division or Dun and Bradstreet Number.)*

(2) Full Mailing Address of Creditor (not the Assignee): .....

(3) Telephone Number of Creditor: .....

(4) Facsimile Number of Creditor: .....

(5) Attention (Contact Person): .....

(6) Has the Claim been sold or assigned by Creditor to another party?..... [_] Yes [_] No

B. PARTICULARS OF ASSIGNEE(S) (IF ANY):

(1) Full Legal Name of Assignee(s): ..... *(If Claim has been assigned, insert full legal name of assignee(s) of Claim (if all or a portion of the Claim has been sold). If there is more than one assignee, please attach separate sheet with the required information).*

(2) Full Mailing Address of Assignee(s): .....

(3) Telephone Number of Assignee(s): .....

(4) Facsimile Number of Assignee(s): .....

(5) Attention (Contact Person): .....

C. NOTICE OF DISPUTE OF VALUATION:

(Claims in foreign currency are to be converted to Canadian dollars at the Bank of Canada noon spot rate as at August 20, 1999. U.S. exchange rate conversion on such date was $1.4941.)

We hereby disagree with the value of our Voting Claim as set out in Eaton's Notice of Voting Claim dated .....

(1) Creditor's valuation of Claim prior to August 20, 1999: ..... *$[insert value of claim] CAD*

(2) Creditor's valuation of Interim Period Claim from and after August 20, 1999: ..... *$[insert value of claim] CAD*

(3) Creditor's total valuation of Voting Claim (Total 1 and 2): ..... *$[total (1) plus (2)] CAD*

D. REASONS FOR DISPUTE:

(Provide full particulars of the Claim and supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim, name of any guarantor which has guaranteed the Claim, any relevant Dun and Bradstreet Numbers and amount of Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed; description of the security, if any, granted by Eaton's to Creditor and estimated value of such security, particulars of loss attributable to implementation of the Plan including loss from the repudiation or variation of any lease and the abandonment of premises, and any contingent liability of Eaton's as assignor, or the repudiation or variation of any contract, including any contingent liability of Eaton's as assignor).

This Notice of Dispute of Valuation For Voting Purposes must be returned to and received by Eaton's by no later than 11:59 p.m. (Toronto Time) on October 25, 1999, at the following address or facsimile:

Courier Address

Claims Administrator

The T. Eaton Company Limited

c/o Richter & Partners Inc.

Court-appointed Monitor of Eaton's

90 Eglinton Avenue East, Suite 700

Toronto, ON M4P 2Y3

Telephone: ..... (416) 932-6261

Fax: ..... (416) 932-6262

Schedule "3" — Notice to Creditors of the T. Eaton Company Limited

RE: NOTICE OF VOTING CLAIMS BAR DATE IN COMPANIES' CREDITORS ARRANGEMENT ACT ("CCAA") PROCEEDINGS

PLEASE TAKE NOTICE that pursuant to an Order of the Superior Court of Justice made September 28, 1999 (the "Order"), any person with any claim whatsoever against The T. Eaton Company Limited ("Eaton's") prior to August 20, 1999, contingent or otherwise, including without limitation any claim made against Eaton's through any affiliate or associate of Eaton's, who has not received a Notice of Voting Claim from Eaton's, must contact Eaton's with notice of its claim by no later than 11:59 p.m. (Toronto time) on *October 13, 1999* in order to obtain a Proof of Claim from Eaton's. Proofs of Claim must be filed with Eaton's on or before 11:59 p.m. (Toronto time) on *October 25, 1999* (the "Voting Claims Bar Date") for the purpose of voting on the Plan of Arrangement under the CCAA to be presented by Eaton's to its Creditors (the "Plan").

PLEASE TAKE NOTICE THAT the Claims Procedure approved by the Order also addresses all Creditor claims which have arisen or may arise from and after August 20, 1999 as a result of the implementation of the Plan. Such claims may include losses arising from the repudiation or variation of any lease and the abandonment of premises and any contingent liability of Eaton's as assignor, or the repudiation or variation of any contract or agreement with Eaton's, including any contingent liability of Eaton's as assignor, and, further, including any employment contracts and any contracts in relation to Eaton's pension plans. If you have a contract with Eaton's, and have not been advised that Eaton's or any Purchaser wishes to continue that contract, you should treat the contract as terminated for the purpose of determining your claims against Eaton's.

HOLDERS OF CLAIMS WHICH ARE NOT FILED BY THE VOTING CLAIMS BAR DATE WILL BE BARRED FROM VOTING ON THE PLAN.

PLEASE TAKE NOTICE that any former or present employees with claims against Eaton's should contact Carmen Siciliano, Employee Representative, c/o Susan Rowland, Koskie Minsky, Box 52, 900-20 Queen Street West, Toronto, Ontario, M5H 3R3, (Telephone: (416) 977-8353; fax (416) 977-3316).

Creditors who have not received a Notice of Voting Claim should contact the Eaton's Claims Administrator, c/o Richter & Partners Inc., Court-Appointed Monitor of Eaton's (*Telephone 416-932-6261 and fax 416-932-6262*) by no later than 11:59 p.m. (Toronto time) on October 13, 1999 to obtain a Proof of Claim package.

DATED this 7th day of October, 1999 at Toronto, Canada.

RICHTER & PARTNERS INC.

in its capacity as Court-appointed Monitor of Eaton's

Schedule "4" — 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 the T. Eaton Company Limited

Court File No. 99-CL-3516

Superior Court of Justice Commercial List

..... Applicant

Proof of Claim

Please read carefully the enclosed Instruction Letter for completing this Proof of Claim.

A. PARTICULARS OF CREDITOR:

(1) Full Legal Name of Creditor: ..... *(Full legal name should be the name of the original Creditor of Eaton's, notwithstanding whether an assignment of a claim, or a portion thereof, has occurred)*.

(2) Full Mailing Address of Creditor (original Creditor not the Assignee): .....

(3) Telephone Number: .....

(4) Facsimile Number: .....

(5) Attention (Contact Person): .....

(6) Has the Claim been sold or assigned by Creditor to another party?..... Yes [_] No [_]

B. PARTICULARS OF ASSIGNEE(S) (IF ANY):

(1) Full Legal Name of Assignee(s): ..... *(If Claim has been assigned, insert full legal name of assignee(s) of Claim (if all or a portion of the claim has been sold). If there is more than one assignee, please attach separate sheet with the required information.)*

(2) Full Mailing Address of Assignee(s): .....

(3) Telephone Number of Assignee(s): .....

(4) Facsimile Number of Assignee(s): .....

(5) Attention (Contact Person): .....

C. PROOF OF CLAIM:

I, ... *[name of Creditor or Representative of the Creditor]*, do hereby certify:

(a) that I am a *[Creditor of Eaton's or hold the position of ..... of the Creditor of Eaton's]*, and have knowledge of all the circumstances connected with the Claim described herein; and

(b) Eaton's is indebted to *[Creditor]* as follows:

(i) CLAIM PRIOR TO AUGUST 20, 1999: ..... *$[insert $ value of claim] CAD*

(Claims in a foreign currency are to be converted to Canadian Dollars at the Bank of Canada noon spot rate as at August 20, 1999. U.S. exchange rate conversion on such date was 1.4941.)

(ii) INTERIM PERIOD CLAIM: ..... *$[insert $ value of claim] CAD*

(Interim Period Claim against Eaton's which has or may have arisen during the period from and after August 20, 1999 to the Plan Implementation Date as a result of the proposed implementation of the Plan. Include loss from the repudiation or variation of any lease and the abandonment of premises and any contingent liability of Eaton's as assignor, or the repudiation or variation of any contract, including any contingent liability of Eaton's as assignor. If Eaton's has not notified you that it wishes to continue your contract, then you should treat the contract as if it has been terminated for the purposes of calculating your Proof of Claim.)

(iii) TOTAL VOTING CLAIM: ..... *$[total (i) plus (ii)] CAD*

D. PARTICULARS OF VOTING CLAIM:

The Particulars of the undersigned's total Voting Claim are attached.

(Provide full particulars of the Voting Claim and supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Voting Claim, name of any guarantor which has guaranteed the Voting Claim, any relevant Dun and Bradstreet Numbers and amount of Voting Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed, description of the security, if any, granted by Eaton's to Creditor and estimated value of such security, particulars of loss attributable to implementation of Plan including loss from the repudiation or variation of any lease and the abandonment of premises and any contingent liability of Eaton's as assignor or repudiation or variation of any contract, including any contingent liability of Eaton's as assignor.)

This Proof of Claim must be returned to Eaton's at the following address or facsimile:

Mailing Address

Claims Administrator

The T. Eaton Company Limited

c/o Richters & Partners Inc. Court-appointed Monitor of Eaton's

90 Eglinton Avenue East

Toronto, ON M4P 2Y3

Telephone: ..... (416) 932-6261

Fax: ..... (416) 932-6262

Dated at ..... this ..... day of .....,1999.

•, Creditor

Per: .....

Schedule "5" — 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 the T. Eaton Company Limited

Court File No. 99-CL-3516

Superior Court of Justice Commercial List

..... Applicant

Instruction Letter Claims Procedure for Voting Purposes

A. — Claims Procedure

The T. Eaton Company Limited ("Eaton's") proposes to present a Plan of Arrangement to its creditors (the "Plan") under the Companies' Creditors Arrangement Act (the "CCAA"). The Order of Mr. Justice Farley made September 28, 1999 in Eaton's CCAA proceedings provides for a Claims Procedure with respect to voting and distribution under the Plan.

This letter provides instructions for responding to or completing the following forms:

- Notice of Voting Claim

- Proof of Claim
- Notice of Dispute of Valuation for Voting Purposes
- Notice of Revision or Disallowance for Voting Purposes
- Dispute Notice

The Claims Procedure is intended for any Person with any claims whatsoever against Eaton's prior to August 20, 1999 contingent or otherwise, including without limitation any claims made against Eaton's through any affiliate or associate of Eaton's ("Claims").

The Claims Procedure also addresses all claims which have arisen or may arise from and after August 20, 1999, up to and including the Plan Implementation Date as a result of the implementation of the Plan ("Interim Period Claims"). Such Interim Period Claims may include losses arising from the repudiation or variation of any lease or the abandonment of any premises and any contingent liability of Eaton's as assignor, the repudiation or variation of any contract or agreement with Eaton's, including any contingent liability of Eaton's as assignor, and further, including employment contracts and any contracts in relation to Eaton's pension plans.

The value of your claims against Eaton's for the purposes of voting at a meeting of Creditors to approve the Plan is the total of your Claim and Interim Period Claim which is described as your *Voting Claim*.

If you have a contract with Eaton's and have not been advised that Eaton's or any purchaser wishes to continue your contract, you should treat your contract as terminated for the purposes of assessing your Interim Period Claim under the Claims Procedure.

If you have any questions regarding the Claims Procedure for ensuring that your claim is valued and that you are entitled to vote on the Plan, please contact the Eaton's Claims Administrator at the address provided below.

All notices and enquiries with respect to Eaton's Claims Procedure should be addressed to:

Claims Administrator

The T. Eaton Company Limited

c/o Richter & Partners Inc.

Court-appointed Monitor of Eaton's

90 Eglinton Avenue East, Suite 700

Toronto, ON M4P 2Y3

Telephone: ..... (416) 932-6261

Fax: ..... (416) 932-6262

B. — For Creditors Receiving Notice of Voting Claim

Eaton's has already mailed to all Known Creditors (apart from former and present employees of Eaton's) a Notice of Voting Claim.

Any former or present employees with claims against Eaton's should contact Carmen Siciliano, Employee Representative, c/o. Susan Rowland, Koskie Minsky, Box 52, 900 - 20 Queen Street West, Toronto, Ontario, M5H 3R3 Telephone: (416) 977-8353; fax: (416) 977-3316. The Claims Procedure provides that the Employee Representative shall file an Omnibus Proof of Claim

(Employees) by the Voting Claims Bar Date *(October 25, 1999)* on behalf of all former and present employees of Eaton's and has been given an omnibus proxy for voting purposes for all such former and present employees of Eaton's. Employees retain their right to file their own Proofs of Claim by the Voting Claims Bar Date *(October 25, 1999)* and to appear at the meeting of creditors to consider the Plan in person or by proxy. If you are a former or present employee and wish to file your own Proof of Claim, you must follow the procedure set out in this letter (see section C below for instructions on filing a Proof of Claim).

If you are a Landlord, your Interim Period Claim has been valued according to the formula set out in subsection 65.2(4) of the *Bankruptcy and Insolvency Act*, irrespective of any actual damages you may have suffered.

If you have received a Notice of Voting Claim there is no need to submit a Proof of Claim in order to be entitled to vote on the Plan. Please note, however, that Eaton's does not admit liability to any Creditor by sending a Notice of Voting Claim to such Creditor.

If you have received a Notice of Voting Claim and you wish to dispute the value of your Claim or Interim Period Claim as set out in the Notice of Voting Claim, you should fill out a Notice of Dispute of Valuation for Voting Purposes (enclosed with your Notice of Voting Claim) (see Section D below for instructions).

C. — For Creditors Submitting a Proof of Claim

If you have not received a Notice of Voting Claim from Eaton's and do not have any claims against Eaton's, there is no need to file a Proof of Claim with the Eaton's Claims Administrator.

If you have not received a Notice of Voting Claim from Eaton's and believe that you have a claim against Eaton's, you should file a Proof of Claim with the Eaton's Claims Administrator. *The Proof of Claim must be filed by OCTOBER 25, 1999, the Voting Claims Bar Date, if you intend to vote in respect of the Plan.* Failure to send the Proof of Claim by this date will disentitle you from voting on the Plan, unless Eaton's agrees or the Court orders that the Proof of Claim be accepted after that date.

Proof of Claim forms can be obtained by contacting the Eaton's Claims Administrator at the phone and fax numbers indicated above by *no later than October 13, 1991* and providing particulars as to your name, address and facsimile number. Once Eaton's has this information, you will receive, as soon as practicable, a Proof of Claim form.

If Eaton's disagrees with the value that you have ascribed to your Claim or Interim Period Claim as set out in your Proof of Claim, you will receive from Eaton's a Notice of Revision or Disallowance for Voting Purposes (see section E below for details).

D. — For Creditors Submitting Notice of Dispute of Valuation for Voting Purposes

If you have received a Notice of Voting Claim, you are entitled to dispute the value of your Claim or Interim Period Claim as set out in such notice by sending a Notice of Dispute of Valuation for Voting Purposes to the Eaton's Claims Administrator at the address and fax number indicated above (the form for this Notice is enclosed with your Notice of Voting Claim). *The Notice of Dispute of Valuation for Voting Purposes must be delivered to Eaton's no later than the Voting Claims Bar Date, 11:59 p.m. on October 25,1999. Failure to deliver a Notice of Dispute of Valuation for Voting Purposes to Eaton's by this date will mean that the value of your Claim or Interim Period Claim for the purposes of voting on the Plan will be as set out in the Notice of Voting Claim and you will have no further right to dispute the value of your Voting Claim for the purposes of voting on the Plan.*

If you have sent a Notice of Dispute of Valuation for Voting Purposes to the Eaton's Claims Administrator and Eaton's has rejected or revised your Claim or Interim Period Claim, Eaton's will notify you of such rejection or disallowance by sending to you a Notice of Revision or Disallowance for Voting Purposes (see section E below for details). The last day for Eaton's to have sent out this notice is *no later than 11:59 p.m. on October 19, 1999.*

If you do NOT receive a Notice of Revision or Disallowance for Voting Purposes, the value of your Claim or Interim Period Claim has been *accepted* by Eaton's for voting purposes as set out in your Notice of Dispute of Valuation for Voting Purposes.

E. — For Creditors Receiving Notice of Revision or Disallowance for Voting Purposes

If you have sent a Proof of Claim or a Notice of Dispute of Valuation for Voting Purposes to Eaton's, Eaton's is entitled to challenge the valuation of your claim by sending to you a Notice of Revision or Disallowance for Voting Purposes no later than *11:59 p.m. on October 29, 1999*. If you do not receive such a Notice, Eaton's has accepted the value of your Claim or Interim Period Claim for voting purposes as set out in your Proof of Claim or Notice of Dispute of Valuation for Voting Purposes.

If you have received a Notice of Revision or Disallowance for Voting Purposes, you are entitled to dispute the revision or disallowance of your Claim as set out in the Notice of Revision or Disallowance for Voting Purposes by sending a Dispute Notice to Eaton's (see Section F below for instructions).

F. — For Creditors Submitting Dispute Notice

If you have received a Notice of Revision or Disallowance for Voting Purposes, you are entitled to dispute the revision or disallowance of your Claim or Interim Period Claim by delivering by facsimile or courier a Dispute Notice (enclosed with your Notice of Revision or Disallowance for Voting Purposes) to the Eaton's Claims Administrator *no later than 11:59 p.m. on November 5, 1999*. If you do not deliver a Dispute Notice to Eaton's by November 5, 1999, the value of your Claim or Interim Period Claim for the purposes of voting on the Plan will be as set out in your Notice of Revision or Disallowance for Voting Purposes.

Once Eaton's has received your Dispute Notice, you will be contacted by Eaton's, and/or by Richter & Partners Inc., the Monitor assisting Eaton's with its Plan, to see if the dispute can be resolved.

If the dispute has not been resolved by November 9, 1999, you will be notified that your Claim will be determined by the Claims Officer. You may be required to attend a hearing and to present evidence documenting your Claim or Interim Period Claim and its value. The Claims Officer must resolve the dispute by November 17, 1999. You will be notified by that date of the Claims Officer's determination of the value of your Voting Claim. The decision of the Claims Officer will be final and binding on you and Eaton's for the purposes of voting on the Plan at a meeting of Creditors. You will have no right to appeal.

In the event that the Claims Officer cannot resolve the dispute regarding the value of your Voting Claim by November 17, 1999, there are three alternatives:

- you may be permitted to vote on the Plan and the dispute regarding your Voting Claim will be resolved later for the purposes of any distribution under the Plan;

- Eaton's may determine that it is necessary to delay the vote of the class of Creditors to which you belong until your Voting Claim has been finally determined; or

- Eaton's may request that the Court determine how your Voting Claim will be addressed for voting purposes.

Schedule "6" — 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 the T. Eaton Company Limited

Superior Court of Justice Commercial List

Court File No. 99-CL-3516

..... Applicant

Notice of Revision or Disallowance for Voting Purposes

Please read carefully the Instruction Letter for Voting Purposes accompanying this Notice.

TO:

[insert name of creditor]

The T. Eaton Company Limited ("Eaton's) hereby gives you notice that it has reviewed your Voting Claim and has revised or rejected your Voting Claim for voting purposes only (and NOT for distribution purposes) as follows:

A. CLAIM PRIOR TO AUGUST 20, 1999: ..... *$[insert $value of claim] CAD*

B. INTERIM PERIOD CLAIM FROM AND AFTER AUGUST 20, 1999: ..... *$[insert $value of claim] CAD*

C. TOTAL VOTING CLAIM: ..... *$[total A plus B] CAD*

D. REASONS FOR DISALLOWANCE OR REVISION:

[insert explanation]

If you do not agree with this Notice of Revision or Disallowance for Voting Purposes, please take notice of the following:

1. If you intend to dispute this Notice of Revision or Disallowance for Voting Purposes, you must, no later than 11:59 p.m. (Toronto time) on *November 5, 1999*, notify Eaton's, the Monitor and the Claims Officer of such intent by delivery of a Dispute Notice in accordance with the accompanying Instruction Letter for Voting Purposes. The form of Dispute Notice is enclosed.

2. If you do not deliver a Dispute Notice, *the value of your Claim for voting purposes under the Plan shall be deemed to be as set out in this Notice of Revision or Disallowance for Voting Purposes*.

IF YOU FAIL TO TAKE ACTION WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE FOR VOTING PURPOSES WILL BE BINDING UPON YOU FOR VOTING PURPOSES UNDER THE PLAN.

DATED at Toronto, this ..... day of, ... 1999.

THE T. EATON COMPANY LIMITED

Schedule "7" — 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 the T. Eaton Company Limited

Court File No. 99-CL-3516

Superior Court of Justice Commercial List

..... Applicant

Dispute Notice

TO: The T. Eaton Company Limited ("Eaton's")

We hereby give you notice of our intention to dispute the *(Check one)*:

[_] Notice of Revision or Disallowance for Voting Purposes dated .....

[_] Notice of Distribution Claim dated .....

issued by Eaton's in respect of our claim as detailed below.

A. Name of Creditor: .....

(For completion of claim amounts in sections B, C, or D, claims in foreign currency are to be converted to Canadian dollars at the Bank of Canada noon spot rate as at August 20, 1999. U.S. exchange rate conversion on such date was $1.4941.)

B. If a Secured Creditor:

Description of Security held: ..... Claim Amount $..... CAD

C. If an Unsecured Creditor:

Dun and Bradstreet Number: ..... Claim Amount $..... CAD

(If more than one Dun and Bradstreet Number, attach schedule showing numbers and corresponding claims.)

D. If a Landlord:

Location of Premises: ..... Claim Amount $..... CAD

(If more than one location, attach schedule.)

E. Reasons for Dispute (attach additional sheet and copies of all supporting documentation if necessary):

..... (Signature of Individual competing this Dispute)

..... Date

..... (Please print name)

.....

Telephone Number: ..... ( ) .....

Facsimile Number: ..... ( ) .....

Full Mailing Address:

THIS FORM IS TO BE RETURNED BY COURIER OR FACSIMILE TO ALL OF THE FOLLOWING:

CLAIMS ADMINISTRATOR

The T. Eaton Company Limited

c/o Richter & Partners Inc.

Court-appointed Monitor of Eaton's

90 Eglinton Avenue East, Suite 700

Toronto, ON M4P 2Y3

Telephone: ..... (416) 932-6261

Fax: ..... (416) 932-6262

— AND —

Mr. Robert Harlang

RICHTER & PARTNERS INC.

in its capacity as Monitor of

The T. Eaton Company Limited

90 Eglinton Avenue East, Suite 700

Toronto, ON M4P 2Y3

Telephone: ..... (416) 932-8000

Fax: ..... (416) 932-6200

— AND —

CLAIMS OFFICER FOR

THE T. EATON COMPANY LIMITED

ADR CHAMBERS

48 Yonge Street, Suite 1100

Toronto, ON M5W 1G6

Telephone: ..... (416) 362-8555/1-800-856-5154

Fax: ..... (416) 362-8825

Schedule "8" — 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 the T. Eaton Company Limited

Court File No. 99-CL-3516

Superior Court of Justice Commercial List

..... Applicant

Notice of Distribution Claim

Please read carefully the Instruction Letter for Distribution Purposes accompanying this Notice.

The T. Eaton Company Limited ("Eaton's") proposes to present a plan of arrangement to its Creditors (the "Plan") under the Companies' Creditors Arrangement Act (the "CCAA"). The Order of Mr. Justice Farley made September 28, 1999 in the CCAA proceedings provides for a Claims Procedure for Creditors for voting and distribution under the Plan.

TAKE NOTICE that Eaton's has valued your Distribution Claim (comprised of your Claim and Interim Period Claim) against Eaton's for distribution purposes as set out in the attached Schedule. Claims in a foreign currency were converted to Canadian Dollars at the Bank of Canada noon spot rate as at August 20, 1999. U.S. exchange rate conversion on such date was $1.4941.

If you DISAGREE with the value of your DISTRIBUTION CLAIM as set out in the Schedule attached to this Notice, please be advised of the following:

1. If you intend to dispute this Notice of Distribution Claim, you must, by no later than 11:59 p.m. (Toronto time) on *February 15, 2000*, deliver to Eaton's (to the attention of the Claims Administrator) a Dispute Notice by facsimile, courier or registered mail to the address/fax number indicated thereon. The form of Dispute Notice is enclosed.

2. If you do not deliver a Dispute Notice to Eaton's (to the attention of the Claims Administrator), the value of your claim for distribution purposes under the Plan shall be deemed to be as set out in this Notice of Distribution Claim.

IF YOU FAIL TO TAKE ACTION WITHIN THE PRESCRIBED TIME PERIOD, THE AMOUNT SET OUT IN THIS NOTICE SHALL BE DEEMED TO BE YOUR DISTRIBUTION CLAIM FOR DISTRIBUTION PURPOSES UNDER THE PLAN.

DATED at Toronto, the day, of ....., ... 1999.

THE T. EATON COMPANY LIMITED

Schedule "9" — 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 the T. Eaton Company Limited

Court File No. 99-CL-3516

Superior Court of Justice Commercial List

..... Applicant

Instruction Letter Claims Procedure for Distribution Purposes

A. — Claims Procedure

The T. Eaton Company Limited ("Eaton's") has presented a Plan of Arrangement to its creditors (the "Plan") under the Companies' Creditors Arrangement Act (the "CCAA") which Plan has been approved by Eaton's creditors and by Order of Mr. Justice Farley made *[insert date]* in Eaton's CCAA proceedings.

The Order of Mr. Justice Farley made September 28, 1999 in Eaton's CCAA proceedings provided for a Claims Procedure dealing in part with distribution under the Plan.

This letter provides instructions for responding to or completing the following forms:

- Notice of Distribution Claim
- Proof of Claim
- Dispute Notice

The Claims Procedure is intended for any Person with any claims whatsoever against Eaton's prior to August 20, 1999, contingent or otherwise, including without limitation any claims made against Eaton's through any affiliate or associate of Eaton's ("Claims").

The Claims Procedure also addresses all claims which have arisen or may arise from and after August 20, 1999, up to and including the Plan Implementation Date of *[insert date]* as a result of the implementation of the Plan ("Interim Period Claims"). Such Interim Period Claims may include losses arising from the repudiation or variation of any lease, and the abandonment of premises and any contingent liability of Eaton's as assignor, or the repudiation or variation of any contract or agreement with Eaton's including any contingent liability of Eaton's as assignor, and further, including employment contracts and any contracts in relation to Eaton's pension plans.

The value of your claims against Eaton's for the purposes of receiving a distribution under the Plan is the total of your Claim and Interim Period Claim, which amount is described as your Distribution Claim.

If you have any questions regarding the Claims Procedure for ensuring that your claim is valued and that you are entitled to receive a distribution under the Plan, please contact the Eaton's Claims Administrator at the address provided below.

All notices and enquiries with respect to Eaton's Claims Procedure should be addressed to:

Claims Administrator

The T. Eaton Company Limited

c/o Richter & Partners Inc.

Court-appointed Monitor of Eaton's

90 Eglinton Avenue East, Suite 700

Toronto, ON M4P 2Y3

Telephone: ..... (416) 932-6261

Fax: ..... (416) 932-6262

B. — For Creditors Receiving Notice of Distribution Claim

Eaton's has already mailed to all Known Creditors (apart from former and present employees of Eaton's) a Notice of Voting Claim for the purposes of facilitating the voting on the Plan. Pursuant to the Claims Procedure, Eaton's has reviewed all Voting Claims for the purposes of valuing Distribution Claims of its Creditors, to enable a distribution under the Plan. Accordingly, all Creditors whose Voting Claims were determined for voting purposes have received a Notice of Distribution Claim from Eaton's wherein Eaton's has accepted, revised or rejected such Creditors' Voting Claims for distribution purposes and setting out the reasons therefor.

Any former or present employees with claims against Eaton's should contact Carmen Siciliano, Employee Representative, c/o. Susan Rowland, Koskie Minsky, Box 52, 900 — 20 Queen Street West, Toronto, Ontario, M5H 3R3 phone: (416) 977-8353; fax: (416) 977-3316. The Claims Procedure provides that the Employee Representative was to file an Omnibus Proof of Claim (Employees) by the Voting Claims Bar Date (October 25, 1999) on behalf of all former and present employees of Eaton's and was given an omnibus proxy for voting purposes for all such former and present employees of Eaton's. Employees retained their right to file their own Proofs of Claim by the Voting Claims Bar Date (October 25, 1999) and to appear at the meeting of creditors to consider the Plan in person or by proxy. If you are a former or present employee for the purposes of receiving a distribution under the Plan, there is no need to file a Proof of Claim if your claim is included in the Omnibus Proof of Claim (Employees) filed by thc Employee Representative in this regard. In the alternative, if you wish to file your own Proof of Claim, you must follow the procedure set out in this letter (see section D below for instructions on filing a Proof of Claim).

C. — For Creditors Receiving Notice of Distribution Claim

If you have received a Notice of Distribution Claim and do not agree with the value ascribed by Eaton's to your Distribution Claim, you are entitled to dispute same. To do so, you must deliver a Dispute Notice in the form enclosed by facsimile or courier to the Eaton's Claims Administrator by no later than 11:59 p.m. (Toronto time) on February 15, 2000. If you fail to deliver a Dispute Notice by such date, you will be deemed to have accepted the value of your Distribution Claim as set out in the Notice of Distribution Claim and will be thereafter barred from otherwise disputing or appealing same.

Once Eaton's has received your Dispute Notice, you will be contacted by Eaton's and/or by Richter & Partners Inc., the Monitor assisting Eaton's with its Plan, to see if the dispute can be resolved. A resolution must be achieved on or before February 29, 2000. If the dispute is not resolved by such date, Eaton's shall refer the dispute to the Claims Officer (see Section E for instructions in this regard).

D. — For Creditors Submitting a Proof of Claim

If you did not receive a Notice of Voting Claim or Notice of Distribution Claim from Eaton's and were not part of the Voting Process and do not have any claims against Eaton's, there is no need to file a Proof of Claim with the Eaton's Claims Administrator.

If you did not receive a Notice of Voting Claim from Eaton's and were not part of the voting process and believe that you have a claim against Eaton's, you should file a Proof of Claim with the Eaton's Claims Administrator.

The Proof of Claim must be filed by January 25, 2000, the Distribution Claims Bar Date. Failure to file the Proof of Claim by the Distribution Claims Bar Date will disentitle you from receiving a distribution under the Plan.

Proof of Claim forms can be obtained by contacting the Eaton's Claims Administrator at the phone and fax numbers indicated above and providing particulars as to your name, address and facsimile number. Once Eaton's has this information, you will receive, as soon as practicable, a Proof of Claim form *which must be filed with Eaton's by no later than January 25, 2000, the Distribution Claims Bar Date.*

If Eaton's disagrees with the value that you have ascribed to your Distribution Claim as set out in your Proof of Claim, you will be contacted by Eaton's and/or by Richter & Panners Inc., the Monitor assisting Eaton's with its Plan, to see if the dispute can be resolved. A resolution must be achieved on or before February 29, 2000. If the dispute is not resolved by such date, Eaton's will refer the dispute to the Claims Officer (see Section E below for instructions on resolution of disputes by Claims Officers).

E. — Resolution of Disputes by Claims Officers

If the dispute has not been resolved by February 29, 2000, Eaton's will notify you on or before such date that the value of your Distribution Claim will be determined by the Claims Officer appointed by the Court. The Claims Officer must resolve the dispute by March 31, 2000. You will be notified by that date of the Claims Officer's determination of the value of your Distribution Claim.

Either party will have the right to appeal the Claims Officer's determination of value of the Distribution Claim to the Court, within five (5) Calendar Days of notification by Claims Officer's determination of value. The appeal must be made returnable within five (5) Calendar Days of filing the notice of appeal. The determination of such appeal shall be final and binding on Eaton's and the Creditor for all purposes under the Plan. There shall be no further rights of appeal, review or recourse to the Court.

Schedule "B" — Entities Eligible for Investments by Liquidator

ENTITIES	*STANDARD & POOR'S "ISSUER CREDIT RATING"*
Financial Institutions	
SCHEDULE I BANKS	
Bank of Montreal	AA-
The Bank of Nova Scotia	A+
Royal Bank of Canada	AA-
Canadian Imperial Bank of Commerce	AA-
The Toronto-Dominion Bank	AA-
National Bank Canada	A
	DOMINION BOND RATING SERVICES RATING — Short Term Debt
SCHEDULE II BANKS	

ABN AMRO Bank Canada	R1H
Banque Nationale de Paris (Canada)	R1M
Credit Suisse First Boston (Canada)	R1M
Deutsche Bank Canada	R1M
Dresdner Bank of Canada	R1M
HSBC Bank Canada	R1M
Société Générale (Canada)	R1M

No authorized investment with a Schedule II Bank shall exceed at any time $5,000,000 in the aggregate.

	STANDARD & POOR'S "ISSUER CREDIT RATING"
Public Sector	
Government of Canada	AAA
Province of Alberta	AA+
Province of British Columbia	AA-
Province of New Brunswick	AA-
Province of Ontario	AA-

Any agency or agent of the Government of Canada or the Provinces of Alberta, British Columbia, New Brunswick or Ontario having a credit rating similar to those specifically noted above.

Other Entities

All other investments in other entities must be fully guaranteed by one of the public sector entities, agencies or agents described above.

End of Document

I.I.C. Ct. Filing 44993495001

The T. Eaton Company Ltd. — Court File Nos. 31-OR-364921, 99-CL-3516, 99-CL-3514
26 — **Order under s. 6 of Companies' Creditors Arrangement Act sanctioning the plan of compromise and arrangement, made November 23, 1999 by Farley, J.**

Re. The T. Eaton Company Limited, Court File No. 99-CL-3516:Toronto

Appendix — 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 the T. Eaton Company Limited

Court File No. 99-CL-3516

Superior Court of Justice (Commercial List)

THE HONOURABLE	)	TUESDAY, THE 23RD DAY
	)	
MR. JUSTICE FARLEY	)	OF NOVEMBER, 1999

..... Applicant

Order

THIS MOTION made by The T. Eaton Company Limited for an Order sanctioning the Amended and Restated Plan of Compromise and Arrangement of Eaton's dated November 19, 1999 as approved by the Creditors on November 19, 1999 and attached as Exhibit "A" to the Affidavit of Harold S. Stephen sworn November 21, 1999 (the "Amended and Restated Plan") was heard this day at the Court House, 393 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Harold S. Stephen sworn November 21, 1999 and the Exhibits thereto, the Report of the Monitor dated November 22, 1999 and the Affidavits of Mailing and Publication, filed, and on hearing the submissions of counsel for The T. Eaton Company Limited and other counsel.

Definitions

1. THIS COURT ORDERS that capitalized terms not otherwise defined in this Order shall have the meanings ascribed thereto in the Amended and Restated Plan.

Service

2. THIS COURT ORDERS AND DECLARES that there has been good and sufficient service and delivery of the Amended and Restated Plan and that the Meetings were duly convened and held.

3. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record in respect of this Motion be and it is hereby abridged, such that this Motion is properly returnable today and that any further service of the Notice of Motion and the Motion Record is hereby dispensed with.

Sanction of Amended and Restated Plan

4. THIS COURT ORDERS AND DECLARES that Eaton's has complied with the provisions of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") and the Orders of this Honourable Court made thereunder and in the BIA Proceedings, and that the Amended and Restated Plan is fair, reasonable and in the best interests of the Creditors.

5. THIS COURT ORDERS AND DECLARES that the Amended and Restated Plan is hereby sanctioned and approved pursuant to section 6 of the CCAA.

Plan Implementation

6. THIS COURT ORDERS that, upon the filing with this Court by Eaton's of a certificate signed by a senior officer of Eaton's on or prior to the implementation of the Amended and Restated Plan on the Plan Implementation Date ("Plan Implementation"), certifying that all of the conditions precedent to Plan Implementation set out in Section 6.2 of the Amended and Restated Plan (the "Conditions Precedent") have been fulfilled or waived, the Conditions Precedent shall be and be deemed to be fulfilled or waived.

7. THIS COURT ORDERS AND DECLARES that, upon Plan Implementation, the Amended and Restated Plan and all of the compromises and transactions effected thereby shall be effective in accordance with the provisions of the Amended and Restated Plan and shall enure to the benefit of and be binding upon Eaton's, the Creditors, the Shareholders and Distributionco and their respective successors and assigns.

8. THIS COURT ORDERS that, effective on Plan Implementation, Eaton's shall be and it is hereby discharged and released from any and all indebtedness, obligations and liabilities (other than in respect of the remaining liabilities or obligations as set out on Schedules A and A.1 hereto) including, without limitation, any and all indebtedness, obligations and liabilities with respect to Claims or Interim Period Claims or Unsatisfied Unaffected Liabilities, or any liability as an assignor of any rights, or as employer under, or administrator of, the Pension Plans and that all Charges, trusts, deemed trusts or other limitations or restrictions of any nature whatsoever in connection therewith against the Eaton's Remaining Assets, including without limitation the Charges listed in Schedules "B" and "C" hereto (but not including the Charges listed in Schedule "B1" hereto) shall be and they are hereby discharged and released as against Eaton's and the Eaton's Remaining Assets. Eaton's or any of its agents are hereby authorized to take all steps necessary to register or record the discharge of all Charges discharged pursuant to this Paragraph 8.

9. THIS COURT ORDERS AND DECLARES that the Petition for a Receiving Order filed against Eaton's by The Cadillac Fairview Corporation Limited on November 18, 1999 (the "Petition") be and the same shall continue to be stayed pending either further Order of this Court or Plan Implementation, and such Petition be and shall be deemed to be dismissed on the Plan Implementation Date.

Repudiation of Contracts and Leases

10. THIS COURT ORDERS AND DECLARES that, with respect to those leases, contracts, licences, agreements or arrangements, or other rights which do not constitute (i) Eaton's Remaining Assets and the remaining liabilities and contracts set out in Schedule A and Schedule A.1 hereto, (ii) shareholder agreements, co-ownership agreements, rights of first refusal, co-tenancy agreements and other project documents (excluding operating agreements with adjacent land owners which are repudiated under the Amended and Restated Plan) referred to in Subsection 3.3(d) of the Amended and Restated Plan and the Charges related thereto, or (iii) Eaton's insurance policies (of any kind whatsoever), all such leases, contracts, licences, agreements or arrangements, or other rights be and shall be deemed to be repudiated and abandoned, as applicable, as of the earlier of the effective date of repudiation specified in any notice of repudiation and Plan Implementation, and the other Persons who are parties thereto shall be deemed to be Creditors having Interim Period Claims; provided, however, that in the case where Eaton's has not delivered a written notice of repudiation, Distributionco shall be entitled to expressly assume any such lease (other than a Lease), contract, licence, agreement or arrangement, or other rights, by written notice sent to the other party or parties thereto within ten (10) Calendar Days after the Plan Implementation Date, provided however that between the Plan Implementation Date and the date of written notice from Distributionco, any licensor or contractor shall have no obligation to continue to supply goods and services. For greater certainty, those leases, contracts, licences, agreements or arrangements or other rights set out in subparagraphs (i), (ii) and (iii) of this Paragraph 10 shall not be deemed to be repudiated or abandoned.

11. THIS COURT ORDERS AND CONFIRMS that all Leases, subleases (where Eaton's is the landlord), operating agreements, and similar agreements or arrangements, in respect of Abandoned Premises are and shall be deemed to be repudiated and abandoned on the effective date specified in the notice delivered by Eaton's in respect of such Abandoned Premises.

12. THIS COURT ORDERS that, the amounts owing to Eaton's pursuant to the Card License and Services Agreement dated February 13, 1998 between Eaton's and National Retail Credit Services Company (as successor to The T. Eaton Acceptance Co. Limited) ("NRCS") by way of Net Settlement (as defined therein) for the period prior to the date of termination shall be paid to Distributionco by the next Business Day following the Plan Implementation Date. Notwithstanding paragraphs 10, 15 and 16 of this Order, the endorsement of this Court made on November 10, 1999 in respect of the withdrawal of the Motion of NRCS shall remain in full force and effect.

Stay of Proceedings

13. THIS COURT ORDERS that, subject to further Order of this Court, the Stay Termination Date under the Initial CCAA Order be and it is hereby extended to and including the Plan Implementation Date.

14. THIS COURT ORDERS that, notwithstanding Paragraph 13 of this Order, paragraph 11 of the Initial CCAA Order shall remain in full force and effect until and including August 31, 2000.

15. THIS COURT ORDERS AND DECLARES that, subject to the provisions of the Amended and Restated Plan, upon Plan Implementation, all agreements (including without limitation, Leases) to which Eaton's is a party and which are not repudiated or deemed to be repudiated by Eaton's (including the remaining liabilities and contracts set out in Schedule A and A.1 hereto), shall be and shall remain in full force and effect, unamended, and no Person party to any such agreements shall, following the Plan Implementation Date, accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, dilution, buy-out, divestiture, forced sale, option or other remedy) or make any demand under or in respect of any such obligations or agreements, by reason:

(a) of any event(s) which occurred on or prior to the Valuation Date which would have entitled any other Person party thereto to enforce those rights or remedies (including defaults or events of default arising as a result of the financial condition or insolvency of Eaton's);

(b) of the fact that Eaton's has sought or obtained relief in the CCAA Proceedings, the BIA Proceedings or the OBCA Proceedings or that the Amended and Restated Plan has been implemented;

(c) of the effect on Eaton's of the completion of any of the transactions contemplated by the Amended and Restated Plan; or

(d) of any compromises or arrangements effected pursuant to the Amended and Restated Plan.

16. THIS COURT ORDERS that, from and after Plan Implementation, all Persons shall be deemed to have waived any and all defaults of Eaton's then existing or previously committed by Eaton's, or caused by Eaton's, or non-compliance with any covenant, warranty, representation, term, provision, condition or obligation, expressed or implied, in any contract, instrument, credit document, guarantee, agreement for sale, Lease, lease or other agreement, written or oral, and any and all amendments or supplements thereto (each, an "Agreement"), existing between such Person and Eaton's or any other Person and any and all notices of default, demands for payment or any step or proceeding taken or commenced in connection therewith under any Agreement shall be deemed to be rescinded and of no further force or effect, provided that nothing herein shall excuse or be deemed to excuse Eaton's from performing its obligations under the Amended and Restated Plan, and Distributionco and the Liquidator shall be entitled to the benefit of such waiver. Nothing herein shall be deemed to be a waiver of defaults by Eaton's which occur after the Plan Implementation Date.

16A. THIS COURT ORDERS that, from and after the Plan Implementation Date, Eaton's shall be deemed to have waived any and all defaults of a Person then existing or previously committed by such Person or caused by such Person, or non-compliance with any covenant, warranty, representation, term, provision, condition or obligation, express or implied, in any contract, credit

document, agreement for sale, lease, Lease or other agreement, written or oral, constituting Eaton's Remaining Assets and any and all amendments or supplements thereto, existing between Eaton's and such Person, and any and all notices of default and demands for payment under any instrument, including any guarantee, shall be deemed to have been rescinded provided, however, that such waiver shall not apply to any defaults which are continuing after the Plan Implementation Date.

17. THIS COURT ORDERS that, effective on Plan Implementation, all past, present and future directors and officers of Eaton's and the Initial Director shall be and they are hereby discharged and released from any liability with respect to all Claims and Interim Period Claims in accordance with Section 10.5 of the Amended and Restated Plan. For greater certainty, in the event that there should be any deficiency in any of the Pension Plans, section 10.5 of the Amended and Restated Plan should not in any way prevent the Superintendent of Financial Services (Ontario) or the future administrators of the Pension Plans, from seeking redress from professional advisors to Eaton's who may have provided reports or opinions either directly or indirectly to the Superintendent in connection with the Pension Plans, or to prevent those advisors from seeking contribution or indemnity from other advisors to Eaton's in relation to such reports or opinions.

18. THIS COURT ORDERS that, until further order of this Court, any and all Persons shall be and are hereby stayed from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, including, without limitation, administrative hearings or orders, declarations or assessments, against any or all past, present and future directors and officers of Eaton's and the Initial Director in respect of any Claim or Interim Period Claim.

Vesting

19. THIS COURT ORDERS that, upon Plan Implementation, the Distributionco Transferred Assets, wherever situate, shall vest in Distributionco free and clear of all estate, right, title, or interest of Eaton's and those claiming by or through Eaton's and free of all Charges, trusts, deemed trusts or other limitations or restrictions of any nature whatsoever which attach prior to Plan Implementation to any assets, property or undertakings of Eaton's (including without limitation the property described in subsection 3.3(d) of the Amended and Restated Plan), except as otherwise provided under the Amended and Restated Plan and, for greater certainty, subject to the Charges listed in Schedule "C" hereto, which Charges shall be deemed to be registered against Distributionco in the same order of priority as they were registered against Eaton's. Distributionco, the Liquidator or their respective agents are hereby authorized but not obligated to take all steps necessary to register or record the transfer of the Charges listed in Schedule "C" hereto in accordance with this Paragraph 19 without any liability on its or their part.

20. THIS COURT ORDERS AND DECLARES that the *Bulk Sales Act*, R.S.O. 1990, c. B-14 and similar legislation in other Provinces do not apply to the transfer of the Distributionco Transferred Assets to Distributionco, and such transfer shall constitute a judicial sale.

21. THIS COURT ORDERS AND DECLARES that, upon Plan Implementation, all notices of lease, caveats, and other title registrations in respect of Leases at Abandoned Premises, including without limitation those set out on Schedule "D" hereto, shall be and they are hereby discharged and released, and the applicable Land Registrar or other appropriate official is hereby authorized and directed to remove such registrations from title to the affected lands.

The Monitor

22. THIS COURT ORDERS AND DECLARES that the Monitor and the Interim Receiver have satisfied all of their obligations to prepare, compile, assemble and distribute the financial and other information required in the BIA Proceedings and the CCAA Proceedings and shall have no further obligations to report or disclose any further information or otherwise in such proceedings, and the Monitor has no liability in respect of any information disclosed.

23. THIS COURT ORDERS AND DECLARES that Richter & Partners Inc. shall be and be deemed to be discharged from its duties as the Monitor and the Interim Receiver, effective on Plan Implementation and that the Monitor and the Interim Receiver shall pass their accounts as soon as practicable thereafter.

24. THIS COURT ORDERS that, effective on Plan Implementation, the Charge in favour of the Interim Receiver and the Monitor and their professional advisors, as provided in the BIA Orders and the Initial CCAA Order, shall be and is hereby discharged and released as against Eaton's and the Eaton's Remaining Assets (but, for greater certainty, shall continue as against the Distributionco Transferred Assets).

25. THIS COURT ORDERS that, effective on Plan Implementation, any and all claims against the Monitor and Interim Receiver in connection with the performance of its duties as Monitor and Interim Receiver, shall be and they are hereby stayed, extinguished and forever barred and the Monitor and Interim Receiver shall have no liability in respect thereof except in respect of any remaining obligations under commitments made by the Interim Receiver to Interim Period Suppliers and except for any liability arising out of the gross negligence or wilful misconduct on the part of the Monitor or the Interim Receiver.

Creditors' Committee

26. THIS COURT ORDERS that the Committee of Creditors shall be disbanded and the appointments of the members thereof shall be terminated, effective on Plan Implementation.

27. THIS COURT ORDERS that, effective on Plan Implementation, any and all claims against the Committee of Creditors or any of its members in connection with the proper performance of their duties as such shall be and are hereby stayed, extinguished and forever barred and the Committee of Creditors and its members shall have no liability in respect thereof.

Additional Provisions

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

29. THIS COURT ORDERS that Eaton's, the Monitor, the Interim Receiver, Sears or any Creditor may apply to this Court for directions or to seek relief in respect of any matter arising out of or incidental to the Amended and Restated Plan or this Order, including without limitation the interpretation of this Order and the Amended and Restated Plan or the implementation thereof, and for any further Order that may be required, on notice to any party likely to be affected by the Order sought or on such notice as this Court orders.

30. THIS COURT SEEKS AND REQUESTS the aid and recognition of any Court or administrative body in any province or territory of Canada and the Federal Court of Canada and any administrative tribunal or other court constituted pursuant to the authority of the Parliament of Canada, including the assistance of any Court in Canada pursuant to section 17 of the CCAA, and any federal or state court or administrative body in the United States of America and all other jurisdictions to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

as per Mr. Justice Farley .....

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Tab 16

2016 CarswellOnt 8815
Ontario Superior Court of Justice [Commercial List]

Target Canada Co., Re

2016 CarswellOnt 8815

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

In the Matter of a Plan of Compromise or Arrangement of Target Canada Co., Target Canada Health Co., Target Canada Mobile GP Co., Target Canada Pharmacy (BC) Corp., Target Canada Pharmacy (Ontario) Corp., Target Canada Pharmacy Corp., Target Canada Pharmacy (SK) Corp., and Target Canada Property LLC (collectively the "Applicants")

Morawetz R.S.J.

Judgment: June 2, 2016
Docket: Toronto CV-15-10832-00CL

Counsel: Tracy Sandler, Jeremy Dacks, Shawn Irving, Robert Carson, for Applicants

Subject: Insolvency

Headnote

Bankruptcy and insolvency

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

Sanction and Vesting Order

1 *THIS MOTION*, made by the Applicants and the partnerships listed on Schedule "A" hereto (together with the Applicants, the *"Target Canada Entities"*) for an order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the *"CCAA"*), *inter alia:* (a) sanctioning the Second Amended and Restated Joint Plan of Compromise and Arrangement dated May 19, 2016 (as amended, varied or supplemented from time to time in accordance with the terms thereof, and together with all schedules thereto, the *"Plan"*), which Plan is attached as Schedule "B" hereto; and (b) vesting all of the Target Canada Entities' right, title and interest in and to the IP Assets (as defined in the Plan) was heard this day at 393 University Avenue, Toronto, Ontario.

2 *ON READING* the Notice of Motion, the Affidavit of Mark J. Wong sworn May 26, 2016 (the *"Wong Affidavit"*), the Twenty-Seventh Report of Alvarez & Marsal Canada Inc. in its capacity as monitor of the Target Canada Entities (the *"Monitor"*) dated May 11, 2016, the Twenty-Eighth Report of the Monitor dated May 27, 2016, and on hearing the submissions of respective counsel for the Target Canada Entities, the Monitor, and such other counsel as were present, and on being advised that the Service List was served with the Motion Record herein:

Defined Terms

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

Service, Notice and Meetings

4 2. *THIS COURT ORDERS* that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and that service thereof upon any interested party other than the persons served with the Motion Record is hereby dispensed with.

5 3. *THIS COURT ORDERS AND DECLARES* that there has been good and sufficient notice, service and delivery of the Meeting Materials (as defined in the Meeting Order granted by this Court on April 13, 2016 (the *"Meeting Order"*)) and that the Creditors' Meeting was duly called, convened, held and conducted, all in conformity with the CCAA and the Orders of this Court made in the CCAA Proceedings, including, without limitation, the Meeting Order.

Sanction of the Plan

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

(a) the Plan has been approved by the Required Majority of Affected Creditors with Proven Claims as required by the Meeting Order, and in conformity with the CCAA;

(b) the Target Canada Entities have complied with the provisions of the CCAA and the Orders of the Court made in the CCAA Proceedings in all respects;

(c) the Court is satisfied that the Target Canada Entities have not done or purported to do anything that is not authorized by the CCAA; and

(d) the Target Canada Entities have acted in good faith and with due diligence, and the Plan and the Plan Transaction Steps contemplated therein are fair and reasonable.

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

Plan Implementation

8 6. *THIS COURT ORDERS* that each of the Target Canada Entities, their respective directors and officers, and the Monitor is authorized and directed to take all steps and actions (including, without limitation, the Plan Transaction Steps), and to do all things, necessary or appropriate to implement the Plan in accordance with its terms and to enter into, execute, deliver, complete, implement and consummate all of the steps, transactions, distributions, disbursements, payments, deliveries, allocations, instruments and agreements contemplated pursuant to the Plan, and such steps and actions are hereby authorized, ratified and approved. None of the Target Canada Entities, their respective directors and officers or the Monitor shall incur any liability as a result of acting in accordance with the terms of the Plan and this Order, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of such parties.

9 7. *THIS COURT ORDERS AND DECLARES* that the Plan and all associated steps, compromises, transactions, arrangements, releases and reorganizations effected thereby (including, without limitation, the Plan Transaction Steps) are hereby approved, shall be deemed to be implemented and shall be binding and effective as of the Effective Time in accordance with the terms of the Plan or at such other time, times or manner as may be set forth in the Plan in the sequence provided therein, and shall enure to the benefit of and be binding and effective upon the Target Canada Entities, the Plan Sponsor, all Affected Creditors, the Released Parties and all other Persons and parties named or referred to in, affected by, or subject to the Plan.

10 8. *THIS COURT ORDERS* that upon delivery to the Monitor of written notice from the Target Canada Entities and the Plan Sponsor of the fulfilment or waiver of the conditions precedent to implementation of the Plan as set out in section 8.3 of the Plan, the Monitor shall deliver to the Target Canada Entities a certificate signed by the Monitor substantially in the form attached as Schedule "C" hereto confirming that all of the conditions precedent set out in section 8.3 of the Plan have been

satisfied or waived, as applicable, in accordance with the terms of the Plan and that the Plan Implementation Date has occurred and the Plan is effective in accordance with its terms and the terms of this Order (the *"Monitor's Plan Implementation Date Certificate"*). The Monitor is hereby directed to file the Monitor's Plan Implementation Date Certificate with the Court as soon as reasonably practicable on or forthwith following the Plan Implementation Date after delivery thereof and shall post a copy of same, once filed, on the Website and provide a copy to the Service List.

Compromise of Claims and Effect of Plan

11 9. *THIS COURT ORDERS* that, pursuant to and in accordance with the terms of the Plan, on the Plan Implementation Date, all Affected Claims shall be fully, finally, irrevocably and forever compromised, discharged and released with prejudice, and the ability of any Person to proceed against the Released Parties in respect of or relating to any such Affected Claims shall be and shall be deemed forever discharged, extinguished, released and restrained, and all proceedings with respect to, in connection with or relating to such Affected Claims shall permanently be stayed against the Released Parties, subject only to the right of Affected Creditors to receive the distributions pursuant to the Plan and this Order in respect of their Affected Claims, in the manner and to the extent provided for in the Plan.

12 10. *THIS COURT ORDERS* that the determination of Proven Claims in accordance with the Claims Procedure Order and Plan shall be final and binding on the Target Canada Entities and all Affected Creditors.

13 11. *THIS COURT ORDERS* that an Affected Creditor holding a Disputed Claim shall not be entitled to receive a distribution under the Plan in respect of any portion thereof unless and until such Disputed Claim becomes a Proven Claim in accordance with the Claims Procedure Order and Plan.

14 12. *THIS COURT ORDERS* that nothing in the Plan extends to or shall be interpreted as extending or amending the Claims Bar Date or gives or shall be interpreted as giving any rights to any Person in respect of Claims that have been barred or extinguished pursuant to the Claims Procedure Order. Any Affected Claim, any Propco Unaffected Claim and any Property LP Unaffected Claim for which a Proof of Claim has not been filed by the Claims Bar Date in accordance with the Claims Procedure Order, whether or not the holder of such Affected Claim, Propco Unaffected Claim or Property LP Unaffected Claim has received personal notification of the claims process established by the Claims Procedure Order, shall be and are hereby forever barred, extinguished and released with prejudice.

15 13. *THIS COURT ORDERS* that each Person named or referred to in, or subject to, the Plan shall be and is hereby deemed to have consented and agreed to all of the provisions in the Plan, in its entirety, and each Person named or referred to in, or subject to, the Plan shall be and is hereby deemed to have executed and delivered to the Target Group Entities all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety.

16 14. *THIS COURT ORDERS AND DECLARES* that all distributions or payments by TCC, in each case on behalf of the Target Canada Entities, to Affected Creditors with Proven Claims, to Propco Unaffected Creditors and to Property LP Unaffected Creditors under the Plan are for the account of the Target Canada Entities and the fulfillment of their respective obligations under the Plan.

17 15. *THIS COURT ORDERS* that sections 95 to 101 of the BIA and any other federal or provincial law relating to preferences, fraudulent conveyances or transfers at undervalue, shall not apply to the Plan or to any transactions, distributions or settlement payments implemented pursuant to the Plan.

18 16. *THIS COURT ORDERS AND DECLARES* that TCC shall be authorized, in connection with the making of any payment or distribution, and in connection with the taking of any step or transaction or performance of any function under or in connection with the Plan, to apply to any Governmental Authority for any consent, authorization, certificate or approval in connection therewith.

19 17. *THIS COURT ORDERS* that the Target Canada Entities are authorized to take any and all such actions as may be necessary or appropriate to comply with applicable Tax withholding and reporting requirements. All amounts withheld on account of Taxes shall be treated for all purposes as having been paid to the Affected Creditors, Propco Unaffected Creditors

or Property LP Unaffected Creditors in respect of which such withholding was made, provided such withheld amounts be remitted to the appropriate Governmental Authority.

20 18. *THIS COURT ORDERS AND DECLARES* that any distributions, disbursements or payments made under the Plan or this Order (including without limitation distributions made to or for the benefit of the Affected Creditors, Propco Unaffected Creditors or Property LP Unaffected Creditors) shall not constitute a "distribution" by any person for the purposes of section 107 of the *Corporations Tax Act* (Ontario), section 22 of the *Retail Sales Tax Act* (Ontario), section 117 of the *Taxation Act*, 2007 (Ontario), section 34 of the *Income Tax Act* (British Columbia), section 104 of the *Social Service Tax Act* (British Columbia), section 49 of the *Alberta Corporate Tax Act*, section 22 of the *Income Tax Act* (Manitoba), section 73 of *The Tax Administration and Miscellaneous Taxes Act* (Manitoba), section 14 of *An Act respecting the Ministere du Revenu* (Quebec), section 85 of *The Income Tax Act*, 2000 (Saskatchewan), section 48 *of The Revenue and Financial Services Act* (Saskatchewan), section 56 of the *Income Tax Act* (Nova Scotia), section 159 of the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act* (Canada), section 46 of the *Employment Insurance Act* (Canada), or any other similar federal, provincial or territorial tax legislation (collectively, the *"Tax Statutes"*), and TCC, in making any such distributions, disbursements or payments, as applicable, is merely a disbursing agent under the Plan and is not exercising any discretion in making payments under the Plan and no person is "distributing" such funds for the purpose of the Tax Statutes, and TCC and any other person shall not incur any liability under the Tax Statutes in respect of distributions, disbursements or payments made by it and TCC and any other person is hereby forever released, remised and discharged from any claims against it under or pursuant to the Tax Statutes or otherwise at law, arising in respect of or as a result of distributions, disbursements or payments made by it in accordance with the Plan and this Order and any claims of this nature are hereby forever barred.

Establishment of Cash Reserves

21 19. *THIS COURT ORDERS* that on the Plan Implementation Date, TCC shall be and is hereby authorized and directed to fund the Administrative Reserve out of the TCC Cash Pool in an aggregate amount to be agreed upon by TCC, the Monitor and the Plan Sponsor three (3) Business Days prior to the Plan Implementation Date.

22 20. *THIS COURT ORDERS* that, pursuant to and in accordance with the Plan, TCC is hereby authorized to establish the Propco Disputed Claims Reserve on the Plan Implementation Date from the Propco Cash Pool for the benefit of Propco in an amount equal to the face value of disputed Claims of the Propco Creditors and the Property LP Creditors (excluding Landlord Restructuring Period Claims but not excluding any disputed Property LP Unaffected Claims held by Landlords).

23 21. *THIS COURT ORDERS* that, pursuant to and in accordance with the Plan, TCC is hereby authorized to establish the TCC Disputed Claims Reserve on the Plan Implementation Date from the TCC Cash Pool in an amount equal to the expected distributions to be made to all Creditors with Disputed Claims (based on the face value of each Disputed Claim) as such amount is agreed to between TCC, the Monitor and the Plan Sponsor three (3) Business Days prior to the Plan Implementation Date.

Vesting

24 22. *THIS COURT ORDERS* that on the Plan Implementation Date, all of the Target Canada Entities' right, title and interest in and to the IP Assets listed on Schedule "D" shall vest absolutely in 3293849 Nova Scotia Company and all of the Target Canada Entities' right, title and interest in and to the IP Assets listed on Schedule "E" shall vest absolutely in Target Brands Inc., in each case free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, Claims (as defined in the Plan), or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the *"IP Asset Claims"*), including, without limiting the generality of the foregoing:

> (a) the Administration Charge, the KERP Charge, the Directors' Charge, the Financial Advisor Subordinated Charge, the DIP Lender's Charge, and the Agent's Charge and Security Interest (as defined in the Approval Order - Agency Agreement dated February 4, 2015); and

(b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal properly registry system;

(all of which are collectively referred to as the *"Encumbrances"*)

and, for greater certainty, this Court orders that all of the IP Asset Claims and Encumbrances affecting or relating to the IP Assets are hereby expunged and discharged as against the IP

25 Assets.

26 23. *THIS COURT ORDERS* that, notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Target Canada Entities and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of any of the Target Canada Entities;

the vesting of the IP Assets in 3293849 Nova Scotia Company and Target Brands Inc. pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Target Canada Entities and shall not be void or voidable by creditors of the Target Canada Entities, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

27 24. *THIS COURT ORDERS* that the transfer of the IP Assets is exempt from the application of the *Bulk Sales Act* (Ontario).

Employee Trust

28 25. *THIS COURT ORDERS* that the form of Employee Trust Termination Certificate attached as Schedule "F" to the Plan and Employee Trust Property Joint Direction attached as Schedule "G" to the Plan are each hereby approved.

29 26. *THIS COURT ORDERS* that the Employee Trust Trustee and the Employee Trust Administrator shall be and are hereby authorized and directed to perform their functions and fulfill their obligations under the Plan without liability to facilitate the implementation and administration of the Plan, as necessary, pursuant to and in accordance with the terms of the Plan, including without limitation to remit the balance of the Employee Trust Property, net of the payments set out in Sections 6.3(v)(ii) and 6.3(v)(iii) and any applicable Withholding Obligations, to the Plan Sponsor or its designee upon delivery by the Employee Trust Trustee and the Employee Trust Administrator of an Employee Trust Property Joint Direction to The Royal Bank of Canada, and such performance of their functions and fulfillment of their obligations are hereby authorized, ratified and approved.

30 27. *THIS COURT ORDERS* that upon the delivery of the Employee Trust Termination Certificate from the Employee Trust Trustee to the Monitor:

(a) any remaining Trustee Fees, Trustee Expenses, Administrator Fees and Administrator Expenses (each as defined in the Employee Trust Agreement) shall be paid from any remaining Employee Trust Property to the Employee Trust Trustee and the Employee Trust Administrator, as applicable;

(b) the Employee Trust Trustee shall satisfy any commitments to pay Eligible Employee Claims (as defined in the Employee Trust Agreement) made under Article 2 of the Employee Trust Agreement with the assistance of the

Employee Trust Administrator;

(c) the Employee Trust Trustee and the Employee Trust Administrator shall deliver the Employee Trust Property Joint Direction to The Royal Bank of Canada in accordance with Section 6.3(v)(iv) of the Plan;

(d) the Employee Trust Trustee and the Employee Trust Administrator shall be and shall be deemed to be fully and finally released and discharged from all of their respective obligations under the Employee Trust Agreement and from all claims relating to their activities as Employee Trust Trustee and Employee Trust Administrator, respectively; and

(e) the Employee Trust shall be and shall be deemed to be wound-up and terminated.

31 28. *THIS COURT ORDERS* that the Monitor is hereby directed to file the Employee Trust Termination Certificate with the Court as soon as reasonably practicable after delivery thereof and shall post a copy of same, once filed, on the Website and provide a copy to the Service List.

Releases

32 29. *THIS COURT ORDERS AND DECLARES* that the compromises and releases set out in Article 7 of the Plan are approved and shall be binding and effective as at the Plan Implementation Date, provided that the releases in favour of an Employee Trust Released Party shall be effective immediately upon delivery of the Employee Trust Termination Certificate to the Monitor in accordance with the Plan.

33 30. *THIS COURT ORDERS* that from and after the Plan Implementation Date (and in respect of an Employee Trust Released Party, from and after the delivery of the Employee Trust Termination Certificate to the Monitor) any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations or assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against any Released Party in respect of all Claims, Propco Unaffected Claims, Property LP Unaffected Claims and matters which are released pursuant to paragraph 29 of this Order and Article 7 of the Plan or discharged, compromised or terminated pursuant to the Plan.

Directors and Officers

34 31. *THIS COURT ORDERS* that the remaining Directors and Officers of the Target Canada Entities (other than the current Directors of TCC or Target Canada Pharmacy (Ontario) Corp.) shall be deemed to have resigned without replacement at the Effective Time on the Plan Implementation Date, unless such Persons affirmatively elect to remain as a Director or Officer in order to facilitate any Plan Transaction Steps in connection with the wind-down of any of the Target Canada Entities.

35 32. *THIS COURT ORDERS* that the Directors of Target Canada Pharmacy (Ontario) Corp. shall be deemed to have resigned in accordance with Section 6.3(r) of the Plan.

Plan Charges

36 33. *THIS COURT ORDERS* that each of the Financial Advisor Subordinated Charge, the DIP Lender's Charge, the Liquidation Agent's Charge and Security Interest and the KERP Charge is hereby terminated, released and discharged on the Plan Implementation Date and each of the Administration Charge and the Directors' Charge shall continue and shall attach solely against the Propco Cash Pool and the TCC Cash Pool and the Cash Reserves from and after the Plan Implementation Date.

The Monitor

37 34. *THIS COURT ORDERS* that in addition to its prescribed rights and obligations under the CCAA and the Orders of the Court made in these CCAA Proceedings, the Monitor is granted the powers, duties and protections contemplated by and required under the Plan and that the Monitor be and is hereby authorized, entitled and empowered to perform its duties and fulfil its obligations under the Plan to facilitate the implementation thereof, including without limitation:

(a) to take all such actions to market and sell any remaining assets and pursue any outstanding accounts receivable owing to any of the Target Canada Entities, or to assist the Target Canada Entities with respect thereto;

(b) to act, if required, as trustee in bankruptcy, liquidator, receiver or a similar official of the Target Canada Entities; and

(c) apply to this Court for any orders necessary or advisable to carry out its powers and obligations under any other Order granted by this Court including for advice and directions with respect to any matter arising from or under the Plan.

38 35. *THIS COURT ORDERS* that, without limiting the provisions of the Initial Order or the provisions of any other Order granted in the CCAA Proceeding, including this Order, the Target Canada Entities shall remain in possession and control of the Property (each as defined in the Initial Order) and that the Monitor shall not take possession or be deemed to be in possession and/or control of the Property.

39 36. *THIS COURT ORDERS AND DECLARES* that the Monitor shall be authorized, in connection with the taking of any step or transaction or performance of any function under or in connection with the Plan, to apply to any Governmental Authority for any consent, authorization, certificate or approval in connection therewith.

40 37. *THIS COURT ORDERS* that the Plan Sponsor shall be and is hereby directed to maintain the books and records of the Target Canada Entities for purposes of assisting the Monitor in the completion of the resolution of the Disputed Claims and Claims of the Propco Creditors and the Property LP Creditors and the orderly wind-down of the Target Canada Entities.

41 38. *THIS COURT ORDERS AND DECLARES* that: (i) in carrying out the terms of this Order and the Plan, the Monitor shall have all the protections given to it by the CCAA, the Initial Order, and as an officer of the Court, including the Stay of Proceedings in its favour; (ii) the Monitor shall incur no liability or obligation as a result of carrying out the provisions of this Order and/or the Plan, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of the Monitor; (iii) the Monitor shall be entitled to rely on the books and records of the Target Canada Entities and any information provided by the Target Canada Entities without independent investigation; and (iv) the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

42 39. *THIS COURT ORDERS AND DECLARES* that in no circumstance will the Monitor have any liability for any of the Target Canada Entities' tax liabilities regardless of how or when such liability may have arisen.

43 40. *THIS COURT ORDERS* that the Monitor shall publish a notice to Affected Creditors, substantially in the form attached as Schedule "F" hereto (the "*Notice of Final Distribution*"), at least thirty (30) days in advance of the Final Distribution Date in *The Globe and Mail* (National Edition), *La Presse* and *The Wall Street Journal* notifying Affected Creditors of the Final Distribution Date.

44 41. *THIS COURT ORDERS* that the form of Monitor's Plan Completion Certificate attached as Schedule "G" hereto is hereby approved and declares that the Monitor, in its capacity as Monitor, following receipt of a written notice from TCC pursuant to section 5.12(d) of the Plan that TCC has completed its duties to effect distributions, disbursements and payments in accordance with the Plan, shall file the Monitor's Plan Completion Certificate with this Court stating that all of its duties and the Target Canada Entities' duties under the Plan and the Orders have been completed, and thereafter the Monitor shall seek an Order, *inter alia*, (a) approving its final fees and disbursements and those of its counsel; (b) discharging the Monitor from its duties as Monitor in the CCAA Proceedings, (c) terminating, releasing and discharging the Administration Charge (subject to payment of final fees and disbursements) and the Directors' Charge, and (d) releasing the Target Canada Entities, the Monitor and any Directors and Officers holding such office following the Plan Implementation Date and their advisors,

from all claims relating to the implementation of the Plan.

45 42. *THIS COURT ORDERS* that the Monitor is hereby directed to post a copy of the Monitor's Plan Completion Certificate, once filed, on the Website and provide a copy to the Service List.

Stay Extension

46 43. *THIS COURT ORDERS* that the Stay Period in the Initial Order be and is hereby extended until and including September 26, 2016, or such later date as this Court may order.

Extension of Notice of Objection Bar Date

47 44. *THIS COURT ORDERS* that the definition of "Notice of Objection Bar Date" set out in paragraph 3(aa) of the Claims Procedure Order (issued by Regional Senior Justice Morawetz on June 11, 2015, as amended) is hereby amended to extend the Notice of Objection Bar Date to the Plan Implementation Date and that the Notice of Objection Bar Date will expire on the Plan Implementation Date.

Discharge of the Consultative Committee

48 45. *THIS COURT ORDERS* that, effective immediately upon delivery of the Monitor's Plan Implementation Date Certificate, the Consultative Committee and each Member thereof shall be and is hereby discharged and the Members shall no longer be entitled to payments of $5,000 plus HST per month, and such payments shall cease, subject to payment by the Target Canada Entities of any such monthly amounts then outstanding to Members.

General

49 46. *THIS COURT ORDERS* that the Target Canada Entities and the Monitor may apply to this Court from time to time for advice and direction with respect to any matter arising from or under the Plan or this Order.

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

51 48. *THIS COURT ORDERS* that the Target Canada Entities (at their sole election) are hereby authorized to seek an order of any court of competent jurisdiction to recognize the Plan and this Order, to confirm the Plan and this Order as binding and effective in any appropriate foreign jurisdiction, and to assist the Target Canada Entities, the Monitor and their respective agents in carrying out the terms of the Plan and this Order.

52 49. *THIS COURT HEREBY REQUESTS* the aid and recognition of any court or any judicial, regulatory or administrative body having jurisdiction in Canada, the United States, or in any other foreign jurisdiction, to recognize and give effect to the Plan and this Order, to confirm the Plan and this Order as binding and effective in any appropriate foreign jurisdiction, and to assist the Target Canada Entities, the Monitor and their respective agents in carrying out the terms of the Plan and this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Target Canada Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Target Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.

Schedule "A"

Partnerships

Target Canada Pharmacy Franchising LP
Target Canada Mobile LP

2016 CarswellOnt 8815

Target Canada Property LP

Schedule "B"

Second Amended and Restated Plan

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 TARGET CANADA CO., TARGET CANADA HEALTH CO., TARGET CANADA MOBILE GP CO., TARGET CANADA PHARMACY (BC) CORP., TARGET CANADA PHARMACY (ONTARIO) CORP., TARGET CANADA PHARMACY CORP., TARGET CANADA PHARMACY (SK) CORP., and TARGET CANADA PROPERTY LLC (collectively the *"Applicants"*)

SECOND AMENDED AND RESTATED JOINT PLAN OF COMPROMISE AND ARRANGEMENT

pursuant to the Companies' Creditors Arrangement Act

May 19, 2016

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Second Amended and Restated Joint Plan of Compromise and Arrangement
WHEREAS:

A. Target Canada Co., Target Canada Health Co., Target Canada Mobile GP Co., Target Canada Pharmacy (BC) Corp., Target Canada Pharmacy (Ontario) Corp., Target Canada Pharmacy Corp., Target Canada Pharmacy (SK) Corp. and Target Canada Property LLC (collectively, the *"Applicants"*) are insolvent;

B. The Applicants filed for and obtained protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.

C-36, as amended (the *"CCAA"*) pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) on January 15, 2015, as amended and restated on February 11, 2015 (and as further amended, restated or varied from time to time, the *"Initial Order"*);

C. The Initial Order declared that, although not Applicants, each of Target Canada Pharmacy Franchising LP, Target Canada Mobile LP and Target Canada Property LP shall enjoy the protections and authorizations provided by the Initial Order (together with the Applicants, the *"Target Canada Entities"*);

D. Pursuant to the Initial Order, the Applicants have the authority to file with the Court, individually or collectively, a plan of compromise or arrangement, which plan will provide, among other things, a method of distribution to Creditors with Proven Claims and the framework for the completion of the orderly wind-down of the Target Canada Entities' Business;

E. The Target Canada Entities brought a motion before the Court heard on December 21 and 22, 2015 for an Order, *inter alia*, accepting the filing of a Joint Plan of Compromise and Arrangement dated November 27, 2015 (the *"Original Plan"*) and authorizing the Target Canada Entities to hold a meeting of Affected Creditors to consider and vote on a resolution to approve the Original Plan;

F. The Court declined to grant the relief for the reasons set out in the Endorsement of Regional Senior Justice Morawetz dated January 15, 2016 (the *"January 15 Endorsement"*); and

G. The Target Canada Entities amended and restated the Original Plan in the form of an Amended and Restated Joint Plan of Compromise and Arrangement under and pursuant to the CCAA dated April 6, 2016 to, among other things, comply with the January 15 Endorsement (the *"Amended Plan"*).

H. On April 13, 2016, the Court issued an Order (the *"April 13 Order"*), *inter alia*, accepting the filing of the Amended Plan and authorizing the Target Canada Entities to hold a meeting of Affected Creditors to consider and vote on a resolution to approve the Amended Plan.

I. Pursuant to and in accordance with the April 13 Order, the Target Canada Entities hereby propose and present this Second Amended and Restated Joint Plan of Compromise and Arrangement under and pursuant to the CCAA, which includes certain administrative amendments to the Amended Plan, that have been consented to by the Plan Sponsor and the Monitor, to better give effect to the implementation of the Amended Plan.

Article 1 Interpretation

1.1 Definitions

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

"A&M" means Alvarez & Marsal Canada Inc. and its affiliates;

"Administration Charge" means the charge over the Property created by paragraph 54 of the Initial Order, and having the priority provided in paragraphs 63 and 65 of such Order;

"Administrative Reserve" means a Cash reserve from the TCC Cash Pool approved by the Court pursuant to the Sanction and Vesting Order, in an amount to be agreed by the Monitor, the Target Canada Entities and the Plan Sponsor three (3) Business Days prior to the Plan Implementation Date, to be deposited by TCC into the Administrative Reserve Account for the purpose of paying the Administrative Reserve Costs, which Administrative Reserve shall be subject to the Administrative Reserve Adjustment;

"Administrative Reserve Account" means a segregated interest-bearing trust account established by TCC to hold the Administrative Reserve;

"Administrative Reserve Adjustment" means, on or after the Plan Implementation Date, an increase in the

Administrative Reserve in such amount as the Monitor may determine to be necessary or desirable, in consultation with the Target Canada Entities and the Plan Sponsor, which increase shall be funded from the TCC Cash Pool Account;

"Administrative Reserve Costs" means costs incurred and payments to be made on or after the Plan Implementation Date (including costs incurred prior to the Plan Implementation Date which remain outstanding as of the Plan Implementation Date) in respect of (a) the Monitor's fees and disbursements (including of its legal counsel and other consultants and advisors) in connection with the performance of its duties under the Plan and in the CCAA Proceedings, including without limitation all costs associated with resolving Disputed Claims; (b) the Plan Sponsor's fees and disbursements (including of its legal counsel and other consultants and advisors) in connection with maintaining the books and records of the Target Canada Entities for purposes of assisting the Monitor in the completion of the resolution of the Disputed Claims and Claims of the Propco Creditors and the Property LP Creditors and the wind-down of the Target Canada Entities; (c) costs of any shared services (including in connection with the performance of TCC's duties under the Plan, including without limitation administering distributions, disbursements and payments under the Plan) and employee-related expenses of the Target Canada Entities, including retention payments due to its employees; (d) any third-party fees incurred in connection with the administration of distributions, disbursements and payments under the Plan (including, without limitation, Bank of America); (e) any fees incurred in connection with the dissolution under corporate law or otherwise of a Target Canada Entity; (f) Post-Filing Trade Payables; (g) the lawyer, consultant and advisor fees and disbursements of the Target Canada Entities (including the fees and disbursements of Northwest); (h) the fees and disbursements of Employee Representative Counsel; (i) the fees and disbursements of any claims officer appointed under the Claims Procedure Order or the Employee Trust Claims Resolution Order; (j) Excluded Claims, Government Priority Claims, Employee Priority Claims, to the extent such amounts have not been satisfied from the Employee Trust, and TCC Secured Construction Lien Claims; and (k) any other reasonable amounts in respect of any other determinable contingency as the Monitor may determine in its sole discretion;

"Affected Claim" means all Claims other than Unaffected Claims;

"Affected Creditor" means a Creditor who has an Affected Claim;

"Applicable Law" means any law (including any principle of civil law, common law or equity), statute, Order, decree, judgment, rule, regulation, ordinance, or other pronouncement having the effect of law, whether in Canada or any other country or any domestic or foreign province, state, city, county or other political subdivision;

"Applicants" has the meaning ascribed thereto in the Recitals;

"Assessments" means Claims of Her Majesty the Queen in Right of Canada or of Her Majesty the Queen in Right of any province or territory or of any municipality or of any other Taxing Authority in any Canadian or other jurisdictions, including without limitation amounts which may arise or have arisen under any notice of assessment, notice of objection, notice of reassessment, notice of appeal, audit, investigation, demand or similar request from any Taxing Authority;

"BIA" means the **Bankruptcy and Insolvency Act,** R.S.C. 1985, c. B-3, as amended;

"Business" means the direct and indirect operations and activities formerly carried on by the Target Canada Entities;

"Business Day" means a day on which banks are open for business in the City of Toronto, Ontario, Canada, but does not include a Saturday, Sunday or a statutory holiday in the Province of Ontario;

"Cash" means cash, certificates of deposit, bank deposits, commercial paper, treasury bills and other cash equivalents;

"Cash Elected Amount" means **$25,000;**

"Cash Management Lender Claim" means any claim of Royal Bank of Canada, The Toronto-Dominion Bank, Bank of America and JPMorgan Chase Bank, National Association in connection with the provision of cash management services to any of the Target Canada Entities and for greater certainty shall include any such claims which have been assigned to the Plan Sponsor or in respect of which the Plan Sponsor has a subrogated claim;

"Cash Reserves" means the Administrative Reserve, the TCC Disputed Claims Reserve and the Propco Disputed Claims Reserve;

"CCAA" has the meaning ascribed thereto in the Recitals;

"CCAA Charges" means the Administration Charge, the KERP Charge, the Directors' Charge, the Financial Advisor Subordinated Charge, the DIP Lender's Charge and the Liquidation Agent's Charge and Security Interest;

"CCAA Proceedings" means the CCAA proceedings in respect of the Target Canada Entities commenced pursuant to the Initial Order;

"Claim" means a Pre-filing Claim, a Restructuring Period Claim, a Landlord Restructuring Period Claim and a D&O Claim, provided however that **"Claim"** shall not include a Landlord Guarantee Claim or an Excluded Claim, but for greater certainty, shall include any Claim arising through subrogation or assignment against any Target Canada Entity or Director or Officer;

"Claims Bar Date" means: (a) in respect of a Pre-filing Claim or a D&O Claim, 5:00 p.m. on August 31, 2015; and (b) in respect of a Restructuring Period Claim (which for purposes of the **"Claims Bar Date"** includes a Landlord Restructuring Period Claim), the later of (i) 45 days after the date on which the Monitor sends a Claims Package (as defined in the Claims Procedure Order) with respect to such Claim, and (ii) 5:00 p.m. on August 31, 2015;

"Claims Procedure Order" means the Order of the Court made June 11, 2015 (including all schedules and appendices thereto) approving and implementing the claims procedure in respect of the Target Canada Entities and the Directors and Officers, as amended on September 21, 2015, October 30, 2015, December 8, 2015, February 1, 2016 and March 14, 2016 and as may be further amended, restated or varied from time to time;

"Conditions Precedent" means the conditions precedent to Plan implementation set out in Section 8.3;

"Consultative Committee Members" means the "Members" as defined in the Revised Consultative Committee Protocol approved by Order of the Court made November 18, 2015;

"Contributed Claim Amount" means that amount of the Property LP (Propco) Intercompany Claim equal to the amount of the Property LP Unaffected Claims;

"Convenience Class Claim" excludes a Disputed Claim and means: (a) an Affected Creditor with one or more Proven Claims that are less than or equal to **$25,000** in the aggregate; and (b) an Affected Creditor with one or more Proven Claims in an amount in excess of **$25,000** in the aggregate that such Affected Creditor has validly elected to value at **$25,000** for purposes of the Plan by filing a Convenience Class Claim Election by the Election/Proxy Deadline;

"Convenience Class Claim Election" means an election pursuant to which an Affected Creditor with one or more Proven Claims that are in an amount in excess of **$25,000** in the aggregate has elected by the Election/Proxy Deadline to receive only the Cash Elected Amount and is thereby deemed to vote in favour of the Plan in respect of such Proven Claims and to receive no other entitlements under the Plan;

"Convenience Class Creditor" means a Person having a Convenience Class Claim;

"Court" means the Ontario Superior Court of Justice (Commercial List) or any appellate court seized with jurisdiction in the CCAA Proceedings, as the case may be;

"Creditor" means any Person asserting an Affected Claim or an Unaffected Claim and may, where the context requires, include the assignee of such Claim or a personal representative, agent, litigation guardian, mandatary, trustee, interim receiver, receiver, receiver and manager, liquidator or other Person acting on behalf of such Person;

"Creditors' Meeting" means the meeting of Affected Creditors to be called and held pursuant to the Meeting Order for the purpose of considering and voting upon the Plan, and includes any adjournment, postponement or rescheduling of such meeting;

"D&O Claim" means any right or claim of any Person against one or more of the Directors and/or Officers howsoever arising, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any Assessments and any right or ability of any Person to advance a claim for contribution, indemnity or otherwise against any of the Directors and/or Officers with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, for which any Director or Officer is alleged to be, by statute or otherwise by law or equity, liable to pay in his or her capacity as a Director or Officer;

"DIP Lender's Charge" means the charge over the DIP Property created by paragraph 60 of the Initial Order, and having the priority provided in paragraphs 63 and 65 of such Order;

"DIP Property" means the Property of the Target Canada Entities (other than Propco and Property LP) described in paragraph 7 of the Initial Order;

"Director" means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or **de facto** director of any of the Target Canada Entities, in such capacity;

"Directors' Charge" means the charge over the Property created by paragraph 40 of the Initial Order, and having the priority provided in paragraphs 63 and 65 of such Order;

"Disputed Claim" means that portion of an Affected Claim of an Affected Creditor in respect of which a Proof of Claim has been filed in accordance with the Claims Procedure Order that has not been finally determined to be a Proven Claim in whole or in part in accordance with the Claims Procedure Order, the Meeting Order, or any other Order made in the CCAA Proceedings;

"Distribution Date" means the day on which a distribution to Creditors of the Target Canada Entities is made, other than the Initial Distribution Date or the Final Distribution Date;

"Effective Time" means 12:01 a.m. on the Plan Implementation Date or such other time on such date as the Target Canada Entities, the Plan Sponsor and the Monitor shall determine or as otherwise ordered by the Court;

"Election/Proxy Deadline" means the deadline for making a Convenience Class Claim Election and for submitting Proxies in accordance with the Meeting Order;

"Employee Priority Claims" means the following claims of Employees:

(a) claims equal to the amounts that such Employees would have been qualified to receive under paragraph 136(1)(d) of the BIA if the Target Canada Entities had become bankrupt on the Filing Date; and

(b) claims for wages, salaries, commissions or compensation for services rendered by them after the Filing Date and on or before the Plan Implementation Date together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the Business during the same period;

"Employee Representative Counsel" means Koskie Minsky LLP, appointed pursuant to paragraph 31 of the Initial Order as counsel for all Employees in the CCAA Proceedings, any proceeding under the BIA or in any other proceeding respecting the insolvency of the Applicants which may be brought before the Court;

"Employee Representatives" means the Employees appointed by the Court pursuant to an Order of the Court dated February 11, 2015 to represent all Employees in the CCAA Proceedings;

"Employee Trust" means the Employee Trust approved pursuant to paragraph 26 of the Initial Order and governed by the Employee Trust Agreement;

"Employee Trust Administrator" means the Monitor, in its capacity as administrator of the Employee Trust;

"Employee Trust Agreement" means the Trust Agreement between the Plan Sponsor, the Monitor and the Employee Trust Trustee dated January 14, 2015, as amended, restated, supplemented or varied from time to time;

"Employee Trust Claims Resolution Order" means the Order of the Court dated October 21, 2015, as amended, restated or varied from time to time, establishing the procedure for resolving disputes by claimants in respect of their entitlement under the Employee Trust;

"Employee Trust Property" means the aggregate amount contributed by the Plan Sponsor (in its capacity as Settlor) to the Employee Trust to be held under the terms of the Employee Trust Agreement together with interest and other revenues generated thereby and any property into which all of the foregoing may be converted less amounts which have been paid or distributed pursuant to the terms of the Employee Trust Agreement (including Trustee Fees (as defined in the Employee Trust Agreement));

"Employee Trust Property Joint Direction" has the meaning ascribed thereto in Section 6.3(v);

"Employee Trust Released Party" has the meaning ascribed thereto in Section 7.1(d);

"Employee Trust Termination Certificate" has the meaning ascribed thereto in Section 6.3(v);

"Employee Trust Trustee" means the Hon. John D. Ground, in his capacity as trustee of the Employee Trust;

"Employees" means all current and former employees of the Target Canada Entities other than Directors and Officers;

"Encumbrance" means any charge, mortgage, lien, pledge, claim, restriction, security interest, security agreement, hypothecation, assignment, deposit arrangement, hypothec, lease, rights of others including without limitation Transfer Restrictions, deed of trust, trust or deemed trust, lien, financing statement, preferential arrangement of any kind or nature whatsoever, including any title retention agreement, or any other arrangement or condition which in substance secures payment or performance of any obligations, action, claim, demand or equity of any nature whatsoever, execution, levy, charge or other financial or monetary claim, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, or other encumbrance, whether created or arising by agreement, statute or otherwise at law, attaching to property, interests or rights and shall be construed in the widest possible terms and principles known under law applicable to such property, interests or rights and whether or not they constitute specific or floating charges as those terms are understood under Applicable Law, including without limiting the generality of the foregoing, the CCAA Charges;

"Equity Claim" has the meaning ascribed thereto in section 2 of the CCAA;

"Excluded Claim" means any:

(a) Claim secured by any of the CCAA Charges;

(b) Claim enumerated in sections 5.1(2) and 19(2) of the CCAA; and

(c) Cash Management Lender Claim;

"Filing Date" means January 15, 2015;

"Final Distribution Date" means such date, after all of the Disputed Claims and disputed Claims against Propco and Property LP have been finally resolved, that the Monitor, in consultation with TCC, shall determine or the Court shall otherwise order;

"Final Order" means a final Order of the Court, the implementation, operation or effect of which shall not have been stayed, varied, vacated or subject to pending appeal and as to which Order any appeal periods relating thereto shall have expired;

"Financial Advisor Subordinated Charge" means the charge over the Property created by paragraph 55 of the Initial

Order, and having the priority provided in paragraphs 63 and 65 of such Order;

"Government **Priority Claims"** means all Claims of Governmental Authorities that are enumerated in section 38(3) of the CCAA in respect of amounts that are outstanding and that are of a kind that could be subject to a demand on or before the Final Distribution Date;

"Governmental Authority" means any government, including any federal, provincial, territorial or municipal government, and any government department, body, ministry, agency, tribunal, commission, board, court, bureau or other authority exercising or purporting to exercise executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government including without limitation any Taxing Authority;

"GST/HST" means the goods and services tax and harmonized sales tax imposed under the **Excise Tax Act** (Canada), and any equivalent or corresponding tax imposed under any applicable provincial or territorial legislation imposing a similar value added or multi-staged tax;

"Guarantee" means any guarantee, indemnity, surety or similar agreement by a Person to guarantee, indemnify or otherwise hold harmless any Person from or against any Indebtedness, losses, Liabilities or damages of that Person, and excludes all Plan Sponsor Guarantees;

"HBC Entities" means Zellers Inc. and Hudson's Bay Company and their respective successors and assigns and any predecessors in interest to such Persons;

"Indebtedness" means, without duplication:

(a) all debts and liabilities of a Person for borrowed money;

(b) all debts and liabilities of a Person representing the deferred acquisition cost of property and services; and

(c) all Guarantees given by a Person;

"Initial Distribution Date" means a date no more than five (5) Business Days after the Plan Implementation Date or such other date as the Target Canada Entities, the Plan Sponsor and the Monitor may agree;

"Initial Order" has the meaning ascribed thereto in the Recitals;

"Input Tax Credit" means an input tax credit receivable under the *Excise Tax Act* (Canada) or any equivalent or corresponding amount receivable under any applicable provincial or territorial legislation imposing a similar value-added or multi-staged tax, on account of GST/HST paid or payable;

"Intercompany Claim" means any Claim filed by any of the Target Canada Entities, or any of their affiliated companies, partnerships, or other corporate entities, including the Plan Sponsor or any of the Plan Sponsor Subsidiaries in accordance with the terms of the Claims Procedure Order, including the Claims set out on Schedule "A" but excluding any Claim arising through subrogation or assignment;

"Intercompany Claims Report" means the Twentieth Report of the Monitor dated August 31, 2015 providing the Monitor's review of the Intercompany Claims pursuant to and in accordance with paragraph 35 of the Claims Procedure Order;

"IP Assets" means all rights, title and interest of the Target Canada Entities in intellectual property of any type, including the domain names set out in Schedule "B";

"ITA" means the *Income Tax Act* (Canada), R.S.C. 1985, c. 1 (5th Supp.), as amended, and any regulations thereunder;

"KERP" means the Key Employees Retention Plan approved by paragraph 24 of the Initial Order;

"KERP Charge" means the charge over the Property created by paragraph 25 of the Initial Order, and having the

priority provided in paragraphs 63 and 65 of such Order;

"KERP Claim" means a claim of any Person under the KERP;

"Landlord" means any Person (excluding Propco and Property LP) who in its capacity as lessor was a party to a real property lease with TCC;

"Landlord Guarantee Claim" means the rights, remedies and claims of a Landlord against the Plan Sponsor or the HBC Entities arising under a lease, guarantee or indemnity, solely in respect of leases listed on Schedule "D", but excluding however, amounts owing by the Target Canada Entities to the Landlord in respect of its Pre-filing Claim, if any, which amount forms part of a Landlord Guarantee Creditor's Landlord Guarantee Creditor Base Claim Amount;

"Landlord Guarantee Creditor" means a Person holding a Landlord Guarantee Claim solely in respect of leases listed on Schedule "D";

"Landlord Guarantee Creditor Base Claim Amount" means the amount payable to an individual Landlord Guarantee Creditor on account of its Landlord Restructuring Period Claim and its Pre-filing Claim, if any, as consensually agreed to between such Landlord Guarantee Creditor and TCC in accordance with the Claims Procedure Order, payment of which is dealt with in the Landlord Guarantee Creditor Settlement Agreement;

"Landlord Guarantee Creditor Base Claim Cash Pool" means the Cash pool in the aggregate amount equal to the total of the Landlord Guarantee Creditor Base Claim Amounts, being approximately **$140.7 million;**

"Landlord Guarantee Creditor Base Claim Cash Pool Account" means a segregated, interest-bearing trust account established by TCC to hold the Landlord Guarantee Creditor Base Claim Cash Pool on behalf of the Target Canada Entities;

"Landlord Guarantee Creditor Settlement Agreement" means an agreement between the Plan Sponsor and all Landlord Guarantee Creditors to settle and release the Landlord Guarantee Claims on a consensual basis and to support the Plan;

"Landlord Guarantee Enhancement Amount" means the amount payable to an individual Landlord Guarantee Creditor as consensually agreed between the Plan Sponsor and such Landlord Guarantee Creditor pursuant to the Landlord Guarantee Creditor Settlement Agreement;

"Landlord Guarantee Enhancement Cash Pool" means the Cash pool mandated by the Landlord Guarantee Creditor Settlement Agreement in the aggregate amount of **$59,532 million;**

"Landlord Guarantee Enhancement Cash Pool Account" means a segregated, interest-bearing trust account established to hold the Landlord Guarantee Enhancement Cash Pool on behalf of the Plan Sponsor as mandated by the Landlord Guarantee Creditor Settlement Agreement;

"Landlord Non-Guarantee Creditor" means a Person holding a Landlord Restructuring Period Claim other than a Landlord Guarantee Creditor solely in respect of leases listed on Schedule "E";

"Landlord Non-Guarantee Creditor Consent and Support Agreement" means an agreement between TCC and a Landlord Non-Guarantee Creditor to settle the amount of such Landlord's Landlord Restructuring Period Claim and Pre-filing Claim, if any, on a consensual basis in accordance with the Claims Procedure Order and to support the Plan;

"Landlord Non-Guarantee Creditor Equalization Amount" means the amount payable to an individual Landlord Non-Guarantee Creditor as consensually agreed to between such Landlord Non-Guarantee Creditor and TCC in a Landlord Non-Guarantee Creditor Consent and Support Agreement, which in the aggregate shall equal the Landlord Non-Guarantee Creditor Equalization Cash Pool;

"Landlord Non-Guarantee Creditor Equalization Cash Pool" means the Cash pool in the aggregate amount of all of the Landlord Non-Guarantee Creditor Equalization Amounts;

"Landlord Non-Guarantee Creditor Equalization Cash Pool Account" means a segregated, interest-bearing trust account established by TCC to hold the Landlord Non-Guarantee Creditor Equalization Cash Pool;

"Landlord Restructuring Period Claim" means any right or claim of any Landlord against TCC in connection with any Indebtedness, Liability or obligation of any kind whatsoever owed by TCC to such Landlord arising out of the disclaimer, resiliation, termination or breach by TCC, on or after the Filing Date, of any real property lease or other contract or agreement in respect of any real property lease, including a shopping centre lease, whether written or oral, provided that any Landlord whose real property lease was assigned to a Person or returned (subject to any prior settlement agreement to the contrary) to such Landlord in the CCAA Proceedings shall not have a Landlord Restructuring Period Claim;

"Lazard" means Lazard Frères and Co. LLC, Court-appointed financial advisor to TCC in connection with the Real Property Portfolio Sales Process;

"Liabilities" means all Indebtedness, obligations and other liabilities of a Person whether absolute, accrued, contingent, fixed or otherwise, or whether due or to become due;

"Liquidation Agent" means the contractual joint venture composed of Merchant Retail Solutions ULC, Gordon Brothers Canada ULC and GA Retail Canada, ULC, in its capacity as agent pursuant to the Agency Agreement between the agent and TCC, Target Canada Pharmacy Corp. and Target Canada Pharmacy (Ontario) Corp. dated January 29, 2015, as amended, restated or varied from time to time, in connection with the Liquidation Sale;

"Liquidation Agent's Charge and Security Interest" means the charge over a portion of the Property created by, and as more particularly described in, paragraph 19 of the Approval Order - Agency Agreement dated February 4, 2015, and having the priority provided in paragraphs 20 and 22 of such Order;

"Liquidation Sale" means the sale of the Target Canada Entities' inventory, furniture, fixtures and equipment that was approved by the Court pursuant to an Order dated February 4,2015;

"LPA" means the Ontario *Limited Partnerships Act*, R.S.O. 1990, c. L. 16, as amended;

"Meeting Materials" has the meaning ascribed thereto in the Meeting Order;

"Meeting Order" means the Order, substantially in the form set out in Schedule "C" (including all schedules and appendices thereto), to be made by the Court under the CCAA that, among other things, sets the date for the Creditors' Meeting and approves the Meeting Materials, as same may be amended, restated or varied from time to time;

"Monitor" means A&M, in its capacity as Court-appointed monitor of the Target Canada Entities and not in its personal capacity;

"Monitor's Plan Completion Certificate" means the certificate substantially in the form to be attached to the Sanction and Vesting Order to be filed by the Monitor with the Court upon completion of its duties under the Plan;

"Monitor's Plan Implementation Date Certificate" means the certificate substantially in the form to be attached to the Sanction and Vesting Order to be filed by the Monitor with the Court, declaring that all of the Conditions Precedent to implementation of the Plan have been satisfied or waived;

"NE1" means Nicollet Enterprise 1 S.à.r.l., a company formed under Luxembourg law and the sole shareholder of TCC;

"NE1 Intercompany Claim" means the Intercompany Claim 1 filed by NE1 pursuant to the Claims Procedure Order against TCC in an amount of $3,068,729,438 and not adjusted by the Monitor in the Intercompany Claims Report as set out in Schedule "A" and which Intercompany Claim was subordinated pursuant to a subordination and postponement agreement as of January 12, 2015, which subordination and postponement was confirmed in the terms of the Initial Order;

"Northwest" means Northwest Atlantic (Canada) Inc., real estate advisor to TCC in connection with the Real Property

Portfolio Sales Process;

"Notice of Final Distribution" means a notice to Affected Creditors to be published by the Monitor at least 30 days in advance of the Final Distribution Date in The Globe and Mail (National Edition), La Presse and The Wall Street Journal notifying Affected Creditors of the Final Distribution Date, substantially in the form to be attached to the Sanction and Vesting Order;

"NSCA" means the Nova Scotia *Companies Act*, R.S.N. 1989, c. 81, as amended;

"Officer" means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of any of the Target Canada Entities, in such capacity;

"Order" means any order of the Court, or any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority;

"Person" means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust (including a real estate investment trust), unincorporated organization, joint venture, government or any agency or instrumentality thereof or any other entity;

"Pharmacists' Representative Counsel" means Sutts, Strosberg LLP, appointed pursuant to an Endorsement of the Court dated February 18, 2015, as clarified by Order of the Court dated February 12, 2016, as representative counsel in the CCAA Proceedings for the pharmacist franchisees who operated Target-branded retail pharmacies in TCC stores across Canada;

"Pharmacy Purchaser" means the Person who shall have been selected by the Target Canada Entities, in consultation with the Monitor, as the successful bidder for the Pharmacy Shares;

"Pharmacy Shares" means all of the issued and outstanding shares of Target Canada Pharmacy (Ontario) Corp.;

"Pharmacy Share Sale Agreement" means the binding share sale agreement between the Pharmacy Purchaser and TCC providing for the sale of the Pharmacy Shares to the Pharmacy Purchaser free and clear of all Encumbrances conditional on, *inter alia*, the issuance of the Pharmacy Share Sale Approval and Vesting Order, the Sanction and Vesting Order and the implementation of this Plan;

"Pharmacy Share Sale Approval and Vesting Order" means the Order to be sought by the Applicants approving the Pharmacy Share Sale Agreement and vesting all of TCC's right, title and interest in and to the Pharmacy Shares absolutely in the Pharmacy Purchaser free and clear of all Encumbrances;

"Plan" means this amended and restated joint plan of compromise and arrangement under the CCAA, including the Schedules hereto, as amended, supplemented or replaced from time to time;

"Plan Implementation Date" means the Business Day or Business Days on which all of the Conditions Precedent to the implementation of the Plan have been fulfilled or, to the extent permitted pursuant to the terms and conditions of the Plan, waived, as evidenced by the Monitor's Plan Implementation Date Certificate to be filed with the Court;

"Plan Sanction Date" means the date that the Sanction and Vesting Order issued by the Court becomes a Final Order;

"Plan Sponsor" means Target Corporation, a corporation incorporated under Minnesota law;

"Plan Sponsor GST/HST Contribution Amounts" has the meaning ascribed thereto in Section 5.17;

"Plan Sponsor Guarantee" means any guarantee, indemnity, covenant or surety granted by the Plan Sponsor or the HBC Entities in favour of a Landlord Guarantee Creditor as set out on Schedule "D", and for greater certainty including the Plan Sponsor's or the HBC Entities' guarantee in respect of the real property leases identified in Schedule "D";

"Plan Sponsor (Propco) Intercompany Claim" means the Intercompany Claim 4A filed by the Plan Sponsor pursuant to the Claims Procedure Order against Propco in an amount of **US$89,079,107** and not adjusted by the Monitor in the

Intercompany Claims Report as set out in Schedule "A";

"Plan Sponsor Propco Recovery Limit" means an amount equal to **$23,427,369;**

"Plan Sponsor Propco Recovery Limit Reserve" means a Cash reserve in an amount equal to the Plan Sponsor Propco Recovery Limit to be established by TCC for the benefit of Plan Sponsor from the Propco Cash Pool for distribution to the Plan Sponsor in accordance with the Plan;

"Plan Sponsor Propco Recovery Limit Reserve Account" means a segregated interest-bearing trust account established by TCC to hold the Plan Sponsor Propco Recovery Limit Reserve on behalf of Plan Sponsor;

"Plan Sponsor Released Party" has the meaning ascribed thereto in Section 7.1(c);

"Plan Sponsor Subrogated Claim" means any direct or indirect Claim of the Plan Sponsor against any of the Target Canada Entities arising from subrogation or assignment, but for greater certainty excluding any Plan Sponsor subrogated Claims arising as a result of payments to Landlord Guarantee Creditors of their respective Landlord Guarantee Enhancement Amounts, payments to Landlord Non-Guarantee Creditors of their respective Landlord Non-Guarantee Creditor Equalization Amounts and any Cash Management Lender Claim assigned to the Plan Sponsor or in respect of which the Plan Sponsor has a subrogated claim;

"Plan Sponsor Subsidiaries" means all Plan Sponsor subsidiary entities, including corporations and partnerships, other than the Target Canada Entities;

"Plan Transactions" has the meaning ascribed thereto in Section 6.3;

"Plan Transaction Steps" means the steps or transactions considered necessary or desirable to give effect to the transactions contemplated in the Plan, including those set out in Sections 6.2 and 6.3, and **"Plan Transaction Step"** means any individual transaction step;

"Post-Filing Trade Payables" means post-Filing Date trade payables (excluding for greater certainty any Tax Claims) that were incurred by the Target Canada Entities (a) after the Filing Date and before the Plan Implementation Date; (b) in the ordinary course of business; and (c) in compliance with the Initial Order and other Orders issued in connection with the CCAA Proceedings;

"Pre-filing Claim" means any right or claim of any Person against any of the Target Canada Entities, whether or not asserted, in connection with any Indebtedness, Liability or obligation of any kind whatsoever of any such Target Canada Entity in existence on the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any Assessments and any right or ability of any Person to advance a claim for contribution or indemnity or otherwise against any of the Target Canada Entities with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which Indebtedness, Liability or obligation is based in whole or in part on facts that existed prior to the Filing Date, including for greater certainty any claim against any of the Target Canada Entities for indemnification by any Director or Officer in respect of a D&O Claim (but excluding any such claim for indemnification that is covered by the Directors' Charge);

"Principal Claim" has the meaning ascribed thereto in Section 3.9;

"Pro Rata Share" means the fraction that is equal to (a) the amount of the Proven Claim of an Affected Creditor who is not a Convenience Class Creditor or a Landlord Guarantee Creditor, divided by (b) the aggregate amount of all Proven Claims held by Affected Creditors who are not Convenience Class Creditors or Landlord Guarantee Creditors;

"Proof of Claim" means the form that was to be completed by a Creditor setting forth its applicable Claim and filed by the Claims Bar Date or such later date as the Monitor may have agreed to in its sole discretion, pursuant to the Claims Procedure Order;

"Propco" means Target Canada Property LLC, a limited liability company incorporated under Minnesota law;

"Propco Cash" means all Cash of Propco as at the Plan Implementation Date;

"Propco Cash Pool" means the Cash pool comprised of the Propco Cash;

"Propco Cash Pool Account" means a segregated interest-bearing trust account established by TCC to hold the Propco Cash Pool on behalf of Propco;

"Propco Creditor" means a Creditor asserting a Claim against Propco;

"Propco Disputed Claims Reserve" means the Cash Reserve to be established on the Plan Implementation Date by TCC for the benefit of Propco in an amount equal to the face value of disputed Claims of the Propco Creditors and the Property LP Creditors (excluding Landlord Restructuring Period Claims but not excluding any disputed Property LP Unaffected Claims held by Landlords) and as approved by the Court under the Sanction and Vesting Order, which Cash Reserve shall be held by TCC in the Propco Disputed Claims Reserve Account on behalf of Propco for distribution in accordance with the Plan;

"Propco Disputed Claims Reserve Account" means a segregated interest-bearing trust account established by TCC to hold the Propco Disputed Claims Reserve;

"Propco Intercompany Claim" means the Intercompany Claim 6B filed by Propco pursuant to the Claims Procedure Order against TCC in an amount of **$1,911,494,242** and adjusted downwards by the Monitor in the Intercompany Claims Report to an amount of **$1,356,756,051** as set out in Schedule "A";

"Propco (Post-filing TCC) Intercompany Claim" means the Intercompany Claim 6C filed by Propco pursuant to the Claims Procedure Order against TCC in a gross amount of **$43,651,173** and adjusted downwards by the Monitor in the Intercompany Claims Report to a gross amount of **$43,526,186** as set out in Schedule "A";

"Propco (Pre-filing TCC) Intercompany Claim" means the Intercompany Claim 6A filed by Propco pursuant to the Claims Procedure Order against TCC in a gross amount of **$46,873,620** and adjusted downwards by the Monitor in the Intercompany Claims Report to a gross amount of $45,852,897 as set out in Schedule "A";

"Propco Unaffected Claim" means a proven Claim of a Propco Creditor but excluding the balance of the Property LP (Propco) Intercompany Claim in excess of the Contributed Claim Amount, the TCC (Pre-filing Propco) Intercompany Claim, the TCC (Post-filing Propco) Intercompany Claim and the Plan Sponsor (Propco) Intercompany Claim;

"Propco Unaffected Creditor" means a Creditor who has a Propco Unaffected Claim;

"Property" means all current and future assets, undertakings and properties of the Target Canada Entities, of every nature and kind whatsoever, and wherever situate, including all Cash or other proceeds thereof;

"Property LP" means Target Canada Property LP, a limited partnership formed under the LPA;

"Property LP (Propco) Intercompany Claim" means the Intercompany Claim 5A filed by Property LP pursuant to the Claims Procedure Order against Propco in an amount of $1,449,577,927 and not adjusted by the Monitor in the Intercompany Claims Report as set out in Schedule "A";

"Property LP Creditor" means a Creditor asserting a Claim against Property LP;

"Property LP Unaffected Claim" means a proven Claim of a Property LP Creditor;

"Property LP Unaffected Creditor" means a Creditor who has a Property LP Unaffected Claim;

"Proven Claim" means a Claim of an Affected Creditor finally determined for distribution purposes in accordance with the Claims Procedure Order and the Plan;

"Proxy" means the proxy form enclosed with the Meeting Materials to be delivered to or otherwise made available to the Affected Creditors in accordance with the Meeting Order;

"Real Property Portfolio Sales Process" means the sales process conducted in respect of the Target Canada Entities' leased and owned real property assets, which sales process was approved by the Court pursuant to an Order dated February 11, 2015;

"Released Parties" means those Persons who are released pursuant to Section 7.1, including the Target Canada Released Parties, the Plan Sponsor Released Parties, the Third Party Released Parties and the Employee Trust Released Parties;

"Required Majority" means a majority in number of Affected Creditors who represent at least two-thirds in value of the Voting Claims of such Affected Creditors who actually vote on the Resolution (in person or by Proxy) at the Creditors' Meeting or who were deemed to vote on the Resolution in accordance with the Plan and the Meeting Order;

"Resolution" means the resolution approving the Plan presented to the Affected Creditors for consideration at the Creditors' Meeting;

"Restructuring Period Claim" means any right or claim of any Person against any of the Target Canada Entities in connection with any Indebtedness, Liability or obligation of any kind whatsoever owed by any such Target Canada Entity to such Person arising out of the restructuring, assignment, disclaimer, resiliation, termination or breach by such Target Canada Entity, on or after the Filing Date, of any contract, lease or other agreement, whether written or oral, excluding a Landlord Restructuring Period Claim;

"Sanction and Vesting Order" means the Order to be sought by the Applicants from the Court as contemplated under the Plan which, *inter alia*, approves and sanctions the Plan and the transactions contemplated thereunder;

"Stay of Proceedings" means the stay of proceedings created by the Initial Order as amended and extended by further Orders of the Court from time to time;

"Subordinated Intercompany Claims" means only the NE1 Intercompany Claim, the Propco Intercompany Claim, the Propco (Pre-filing TCC) Intercompany Claim and the Propco (Post-filing TCC) Intercompany Claim;

"Target Canada Entities" has the meaning ascribed thereto in the Recitals;

"Target Canada Released Party" has the meaning ascribed thereto in Section 7.1(a);

"Tax" means any and all taxes including all income, sales, use, goods and services, harmonized sales, value added, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property, and personal property taxes and other taxes, customs, duties, fees, levies, imposts and other assessments or similar charges in the nature of a tax, including Canada Pension Plan and provincial pension plan contributions, employment insurance and unemployment insurance payments and workers' compensation premiums, together with any instalments with respect thereto, and any interest, penalties, fines, fees, other charges and additions with respect thereto;

"Tax Claims" means any claims of any Taxing Authorities against the Target Canada Entities arising on and after the Plan Implementation Date;

"Tax Obligation" means any amount of Tax owing by a Person to a Taxing Authority;

"Taxing Authorities" means Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of any province or territory of Canada, any municipality of Canada, the Canada Revenue Agency, the Canada Border Services Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada and any political subdivision thereof and any Canadian or foreign government, regulatory authority, government department, agency, commission, bureau, minister, court, tribunal or body or regulation making entity exercising taxing authority or power, and **"Taxing Authority"** means any one of the Taxing Authorities;

"TCC" means Target Canada Co., an unlimited liability company incorporated under the NSCA;

"TCC Cash Pool" means the Cash pool comprised of all Cash of the Target Canada Entities (excluding Propco) and including the net proceeds of the liquidation of TCC's Property;

"TCC Cash Pool Account" means a segregated interest-bearing trust account established by TCC to hold the TCC Cash Pool on behalf of the Target Canada Entities;

"TCC Disputed Claims Reserve" means the Cash Reserve to be established on the Plan Implementation Date by TCC from the TCC Cash Pool in an amount equal to the expected distributions to be made to all Creditors with Disputed Claims (based on the face value of each Disputed Claim), and as approved by the Court under the Sanction and Vesting Order, which Cash Reserve shall be held by TCC in the TCC Disputed Claims Reserve Account for distribution in accordance with the Plan;

"TCC Disputed Claims Reserve Account" means a segregated interest-bearing trust account established by TCC to hold the TCC Disputed Claims Reserve;

"TCC (Post-filing Propco) Intercompany Claim" means the Intercompany Claim 7B filed by TCC pursuant to the Claims Procedure Order against Propco in an amount of $6,303,621 and adjusted upwards by the Monitor in the Intercompany Claims Report to an amount of $6,966,363 as set out in Schedule "A";

"TCC (Pre-filing Propco) Intercompany Claim" means the Intercompany Claim 7A filed by TCC pursuant to the Claims Procedure Order against Propco in an amount of **$19,619,511** and adjusted downwards by the Monitor in the Intercompany Claims Report to an amount of **$11,620,369** as set out in Schedule "A";

"TCC Secured Construction Lien Claim" means a proven Claim against TCC in respect of amounts secured by a perfected construction lien pursuant to Applicable Law against a leasehold interest of TCC that was assigned pursuant to the Real Property Portfolio Sales Process;

"Third Party Released Party" has the meaning ascribed thereto in Section 7.1(b);

"Transfer Restrictions" means any and all restrictions on the transfer of shares, limited partnership or other units or interests in real property including rights of first refusal, rights of first offer, shotgun rights, purchase options, change of control consent rights, puts or forced sales provisions or similar rights of shareholders or lenders in respect of such interests;

"Unaffected Claim" means: (a) an Excluded Claim; (b) a claim in respect of the Administrative Reserve Costs; (c) a Propco Unaffected Claim; (d) a Property LP Unaffected Claim; (e) a claim in respect of a Plan Sponsor Guarantee, including a Landlord Guarantee Claim; and (f) a TCC Secured Construction Lien Claim;

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

"Unsecured Creditors' Class" has the meaning ascribed thereto in Section 3.1;

"Voting Claim" means the amount of the Affected Claim of an Affected Creditor as finally determined for voting purposes in accordance with the Claims Procedure Order and the Meeting Order entitling such Affected Creditor to vote at the Creditors' Meeting in accordance with the provisions of the Meeting Order, the Plan and the CCAA, and includes, for greater certainty, a Proven Claim;

"Website" means www.alvarezandmarsal.com/targetcanada; and

"Withholding Obligation" has the meaning ascribed thereto in Section 5.16(c).

1.2 Certain Rules of Interpretation

For the purposes of the Plan:

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

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

(c) unless otherwise specified, all references to currency and to "$" or "Cdn$" are to Canadian dollars;

(d) the division of the Plan into "Articles" and "Sections" and the insertion of a Table of Contents are for convenience of reference only and do not affect the construction or interpretation of the Plan, nor are the descriptive headings of "Articles" and "Sections" otherwise intended as complete or accurate descriptions of the content thereof;

(e) references in the Plan to "Articles", "Sections", "Subsections" and "Schedules" are references to Articles, Sections, Subsections and Schedules of or to the Plan;

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

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

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

(i) the terms "the Plan", "hereof, "herein", "hereto", "hereunder" and similar expressions shall be deemed to refer generally to the Plan and not to any particular "Article", "Section" or other portion of the Plan and include any documents supplemental hereto; and

(j) the word "or" is not exclusive.

1.3 Time

For purposes of the Plan, unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean prevailing local time in Toronto, Ontario, Canada, unless otherwise stipulated.

1.4 Date and Time for any Action

For purposes of the Plan:

(a) In the event that any date on which any action is required to be taken under the Plan by any Person is not a Business Day, that action shall be required to be taken on the next succeeding day which is a Business Day, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day; and

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

1.5 Successors and Assigns

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

1.6 Governing Law

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

1.7 Currency

Unless specifically provided for in the Plan or the Sanction and Vesting Order, for the purposes of voting or distribution under the Plan, a Claim shall be denominated in Canadian dollars and all payments and distributions to Affected Creditors on account of their Proven Claims, to Propco Unaffected Creditors on account of their Propco Unaffected Claims, to Property LP Unaffected Creditors on account of their Property LP Unaffected Claims and to Landlord Guarantee Creditors on account of their Landlord Guarantee Enhancement Amounts shall be made in Canadian dollars. In accordance with paragraph 6 of the Claims Procedure Order, any Claim in a currency other than Canadian dollars must be converted to Canadian dollars, and any such amount shall be regarded as having been converted at the noon spot rate of exchange quoted by the Bank of Canada for exchanging such currency to Canadian dollars as at the Filing Date, which rate is US*$1:Cdn$1.1932*.

1.8 Schedules

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

Schedule “A”	Intercompany Claims
Schedule “B”	Domain Names
Schedule “C”	Meeting Order
Schedule “D”	Landlord Guarantee Creditors
Schedule “E”	Landlord Non-Guarantee Creditors
Schedule “F”	Employee Trust Termination Certificate
Schedule “G”	Employee Trust Property Joint Direction
Schedule “H”	Co-Tenancy Stay Schedule

Article 2 Purpose and Effect of the Plan

2.1 Purpose of Plan

The purpose of the Plan is to:

(a) complete the controlled, orderly and timely wind down of certain of the Target Canada Entities;

(b) effect a compromise, settlement and payment of all Proven Claims as finally determined for voting and distribution purposes pursuant to the Claims Procedure Order and the Meeting Order;

(c) obtain third party releases of the Plan Sponsor and Plan Sponsor Subsidiaries, among others, other than in respect of the Landlord Guarantee Claims; and

(d) comply with the January 15 Endorsement, avoid protracted litigation and effect a global resolution of the CCAA Proceedings,

in the expectation that all Persons with an economic interest in the Business will derive a greater benefit from the implementation of the Plan than would result from a bankruptcy of the Target Canada Entities.

2.2 Persons Affected

The Plan provides for a wind down of certain of the Target Canada Entities and a compromise of the Affected Claims. The

Plan will become effective at the Effective Time on the Plan Implementation Date. On the Plan Implementation Date, the Affected Claims will be fully and finally compromised, released, settled and discharged to the extent provided for under the Plan. The Plan shall be binding on and shall enure to the benefit of the Target Canada Entities, the Affected Creditors, the Released Parties and all other Persons named or referred to in, receiving the benefit of or subject to, the Plan.

2.3 Persons Not Affected

For greater certainty, the Plan does not affect the Unaffected Creditors with respect to and to the extent of their Unaffected Claims, including for greater certainty the Landlord Guarantee Creditors with respect to and to the extent of their Landlord Guarantee Claims. Nothing in the Plan shall affect any Target Canada Entity's rights and defences, both legal and equitable, with respect to any Unaffected Claims including, but not limited to, all rights with respect to legal and equitable defences or entitlements to set-offs or recoupments against such Unaffected Claims.

2.4 Subordinated Intercompany Claims

Notwithstanding anything to the contrary in the Plan, no Person shall be entitled to any distributions under the Plan in respect of its Subordinated Intercompany Claim unless and until all of the Affected Creditors (including Affected Creditors that are holders of non-subordinated Intercompany Claims and holders of Plan Sponsor Subrogated Claims) have received aggregate distributions under the Plan totalling the full amount of their respective Proven Claims.

2.5 Plan Sponsor Agreement

Plan Sponsor shall enter into an agreement with the Target Canada Entities to be bound by the Plan and the Landlord Guarantee Creditor Settlement Agreement and to perform all of its obligations hereunder and thereunder, conditional on the occurrence of the Plan Implementation Date, including without limitation delivering *$25,451 million* to TCC to be deposited to the Landlord Guarantee Enhancement Cash Pool pursuant to Section 4.3 and contributing *$7,521* million to TCC for purposes of TCC establishing the Landlord Non-Guarantee Creditor Equalization Cash Pool pursuant to Section 4.8. For greater certainty, these payments do not give rise to a subrogated claim by the Plan Sponsor.

2.6 Equity Claims

All Persons holding Equity Claims shall not be entitled to vote at or attend the Creditors' Meeting, and shall not receive any distributions under the Plan or otherwise receive any other compensation in respect of their Equity Claims.

Article 3 Classification of Creditors, Voting Claims and Related Matters

3.1 Classification of Creditors

For the purposes of considering, voting on and receiving distributions under the Plan, the Affected Creditors shall constitute a single class, the *"Unsecured Creditors' Class"*.

3.2 Claims of Affected Creditors/Convenience Class Creditors

(a) Affected Creditors with Proven Claims that are less than or equal to *$25,000* in the aggregate shall be deemed to vote in favour of the Plan and shall be entitled to receive cash distributions equivalent to the amount of their Proven Claims and no further distributions under the Plan.

(b) Affected Creditors with Proven Claims in excess of *$25,000* who deliver a duly completed and executed Convenience Class Claim Election to the Monitor by the Election/Proxy Deadline, shall be treated for all purposes as Convenience Class Creditors and shall be deemed to vote in favour of the Plan and shall be entitled to receive only the Cash Elected Amount and no further distributions under the Plan.

(c) Affected Creditors who are not Convenience Class Creditors (including Affected Creditors with Disputed Claims which have become Proven Claims) shall be entitled to vote their Voting Claims at the Creditors' Meeting in respect of the Plan and shall be entitled to receive distributions on their Proven Claims pursuant to the Plan.

3.3 Unaffected Claims

Unaffected Claims shall not be compromised under the Plan. No holder of an Unaffected Claim shall:

(a) be treated as a Convenience Class Creditor;

(b) be entitled to vote on the Plan or attend at any Creditors' Meeting in respect of such Unaffected Claim; or

(c) be entitled to or receive any distributions pursuant to the Plan in respect of such Unaffected Claim, unless specifically provided for under and pursuant to the Plan.

3.4 Priority Claims

The Employee Priority Claims and the Government Priority Claims, if any, shall be paid on or after the Plan Implementation Date from the Administrative Reserve Account pursuant to and in accordance with Section 6.3 of the Plan, the Sanction and Vesting Order and the CCAA.

3.5 Creditors' Meeting

The Creditors' Meeting shall be held in accordance with the Plan, the Claims Procedure Order, the Meeting Order and any further Order of the Court. The only Persons entitled to attend the Creditors' Meeting shall be representatives of the Target Canada Entities and the Plan Sponsor and their respective legal counsel and advisors, the Monitor and its legal counsel and advisors, the Pharmacists' Representative Counsel, the Employee Representative Counsel, the Employee Trust Trustee and his legal counsel and all other Persons, including the holders of Proxies, entitled to vote at the Creditors' Meeting and their respective legal counsel and advisors.

3.6 Voting

(a) Each Affected Creditor in the Unsecured Creditors' Class who is entitled to vote at the Creditors' Meeting, pursuant to and in accordance with the Claims Procedure Order, the Meeting Order, the Plan and the CCAA, shall be entitled to one vote equal to the dollar value of its Affected Claim determined as a Voting Claim.

(b) Convenience Class Creditors shall be deemed to vote in favour of the Plan.

(c) Holders of Intercompany Claims shall not be entitled to vote on the Plan.

(d) The Plan Sponsor shall not be entitled to vote on the Plan in respect of its Plan Sponsor Subrogated Claims.

(e) The Plan Sponsor shall not be entitled to vote on the Plan in respect of any amounts contributed to the Landlord Guarantee Enhancement Cash Pool and to the Landlord Non-Guarantee Creditor Equalization Cash Pool.

(f) The Plan Sponsor shall not be entitled to vote on the Plan in respect of any Cash Management Lender Claims (which constitute Unaffected Claims).

3.7 Procedure for Valuing Voting Claims

The procedure for valuing Voting Claims and resolving disputes and entitlements to voting shall be as set forth in the Claims Procedure Order, the Meeting Order, the Plan and the CCAA. The Monitor, in consultation with the Target Canada Entities, shall have the right to seek the assistance of the Court in valuing any Voting Claim in accordance with the Meeting Order and the Plan, if required, and to ascertain the result of any vote on the Plan.

3.8 Approval by Creditors

In order to be approved, the Plan must receive the affirmative vote of the Required Majority of the Unsecured Creditors' Class.

3.9 Guarantees and Similar Covenants

No Person who has a Claim under a Guarantee in respect of any Claim which is compromised under the Plan (such compromised Claim being the *"Principal Claim"*), or who has any right to or claim over in respect of or to be subrogated to the rights of any Person in respect of the Principal Claim, shall:

(a) be entitled to any greater rights as against the Target Canada Entities than the Person holding the Principal Claim;

(b) be entitled to vote on the Plan to the extent that the Person holding the Principal Claim is voting on the Plan; or

(c) be entitled to receive any distribution under the Plan to the extent that the Person holding the Principal Claim is receiving a distribution.

Article 4 Propco Cash Pool, TCC Cash Pool, Cash Reserves, and Landlord Cash Pools

4.1 Creation of the Propco Cash Pool

On the Plan Implementation Date, Propco shall deliver to TCC by way of wire transfer to the Propco Cash Pool Account (in accordance with the wire transfer instructions provided by TCC at least three (3) Business Days prior to the Plan Implementation Date) the aggregate of all of its Cash, which Cash shall be held by TCC on behalf of Propco as the Propco Cash Pool.
TCC shall hold the Propco Cash Pool in the Propco Cash Pool Account and shall distribute such Cash in the Propco Cash Pool Account, net of the Propco Disputed Claims Reserve, in accordance with Sections 5.2, 5.3, 5.4 and 5.5 of the Plan.

4.2 The Propco Disputed Claims Reserve

On the Plan Implementation Date, TCC shall transfer from the Propco Cash Pool Account the Cash necessary to establish the Propco Disputed Claims Reserve for the benefit of Propco. TCC shall hold the Propco Disputed Claims Reserve in the Propco Disputed Claims Reserve Account on behalf of Propco for the purpose of paying amounts to Propco Creditors and Property LP Creditors in respect of their disputed Claims against Propco or Property LP which have become Propco Unaffected Claims or Property LP Unaffected Claims, in whole or in part, in accordance with the Plan.
TCC shall distribute such Cash in the Propco Disputed Claims Reserve Account in accordance with Sections 5.4 and 5.5 of the Plan.

4.3 Creation of the Landlord Guarantee Enhancement Cash Pool

Two (2) Business Day prior to the Plan Implementation Date, the Plan Sponsor shall deliver *$25.451 million* to TCC by way of wire transfer (in accordance with the wire transfer instructions provided by TCC at least five (5) Business Days prior to the Plan Implementation Date), which amount TCC shall hold in trust for the Plan Sponsor and shall deposit into the Landlord Guarantee Enhancement Cash Pool Account for the benefit of the Plan Sponsor on the Plan Implementation Date. On the Initial Distribution Date, the Plan Sponsor shall direct and shall be deemed to direct TCC to deposit for the benefit of the Plan Sponsor *$34.081 million* from the distributions payable under Section 5.3 of the Plan into the Landlord Guarantee Enhancement Cash Pool Account in accordance with Section 5.3 of the Plan.
TCC shall hold the Landlord Guarantee Enhancement Cash Pool in the Landlord Guarantee Enhancement Cash Pool Account on behalf of the Plan Sponsor in accordance with Section 5.10 of the Plan for the purpose of satisfying the Plan Sponsor's obligations to pay the Landlord Guarantee Enhancement Amounts in accordance with Section 2.5 of the Plan.

4.4 The Plan Sponsor Propco Recovery Limit Reserve

The Plan Sponsor Propco Recovery Limit Reserve shall be funded in accordance with Section 5.3 up to a maximum amount equal to the Plan Sponsor Propco Recovery Limit.
TCC shall distribute such Cash in the Plan Sponsor Propco Recovery Limit Reserve Account for the account of Propco in

accordance with Section 5.6 of the Plan.

4.5 Creation of the TCC Cash Pool

On the Plan Implementation Date, the Target Canada Entities (other than TCC and Propco) shall deliver to TCC by way of wire transfer (in accordance with the wire transfer instructions provided by TCC at least three (3) Business Days prior to the Plan Implementation Date) the aggregate of all of their Cash, if any, which Cash, together with TCC's Cash, shall be held by TCC on behalf of the Target Canada Entities as the TCC Cash Pool.
TCC shall hold the TCC Cash Pool in the TCC Cash Pool Account and shall distribute such Cash in the TCC Cash Pool Account, net of the Administrative Reserve, the TCC Disputed Claims Reserve, the Landlord Guarantee Creditor Base Claim Cash Pool and the Landlord Non-Guarantee Creditor Equalization Cash Pool, in accordance with Sections 5.7, 5.11 and 5.12 of the Plan.

4.6 The Administrative Reserve

On the Plan Implementation Date, TCC shall transfer from the TCC Cash Pool Account the Cash necessary to establish the Administrative Reserve.
TCC shall hold the Administrative Reserve in the Administrative Reserve Account for the purpose of paying the Administrative Reserve Costs in accordance with the Plan and shall distribute any remaining balance in the Administrative Reserve Account in accordance with Section 5.12 of the Plan.

4.7 The TCC Disputed Claims Reserve

On the Plan Implementation Date, TCC shall transfer from the TCC Cash Pool Account the Cash necessary to establish the TCC Disputed Claims Reserve. TCC shall hold the TCC Disputed Claims Reserve in the TCC Disputed Claims Reserve Account for the purpose of paying amounts to Affected Creditors in respect of their Disputed Claims which have become Proven Claims, in whole or in part, in accordance with the Claims Procedure Order and the Plan.
As Disputed Claims are resolved by the Monitor, TCC shall at the direction of the Monitor transfer amounts from the TCC Disputed Claims Reserve Account to the TCC Cash Pool Account, with any final balance remaining in the TCC Disputed Claims Reserve Account (once all Disputed Claims have been finally determined), including any interest thereon, to be contributed by TCC to the TCC Cash Pool Account for distribution to Affected Creditors with Proven Claims pursuant to and in accordance with Section 5.12 the Plan.

4.8 Landlord Non-Guarantee Creditor Equalization Cash Pool

Two (2) Business Days prior to the Plan Implementation Date, the Plan Sponsor shall deliver *$7.521 million* to TCC by way of wire transfer (in accordance with the wire transfer instructions provided by TCC at least five (5) Business Days prior to the Plan Implementation Date), which amount TCC shall hold in trust for the benefit of the Plan Sponsor, and which shall on the Plan Implementation Date be deemed to be contributed by the Plan Sponsor to TCC, and which shall then be deposited by TCC into the Landlord Non-Guarantee Creditor Equalization Cash Pool.
TCC shall hold the Landlord Non-Guarantee Creditor Equalization Cash Pool in the Landlord Non-Guarantee Creditor Equalization Cash Pool Account in accordance with Section 5.8 of the Plan for the purpose of paying the Landlord Non-Guarantee Creditor Equalization Amounts in accordance with Section 5.8 of the Plan.

4.9 Landlord Guarantee Creditor Base Claim Cash Pool

On the Plan Implementation Date, TCC shall transfer from the TCC Cash Pool Account the Cash necessary to establish the Landlord Guarantee Creditor Base Claim Cash Pool. TCC shall hold the Landlord Guarantee Creditor Base Claim Cash Pool in the Landlord Guarantee Creditor Base Claim Cash Pool Account for the purpose of paying the Landlord Guarantee Creditor Base Claim Amounts in accordance with Section 5.9 of the Plan.

Article 5 Provisions Regarding Distributions and Disbursements

All distributions and disbursements to be effected pursuant to the Plan shall be made pursuant to this Article 5 and shall occur in the manner set out below under the supervision of the Monitor.

Notwithstanding any other provisions of the Plan, no distributions or transfers of Cash shall be made by TCC with respect to all or any portion of a Disputed Claim, all or any portion of a disputed Claim against Propco or Property LP or all or any portion of a disputed TCC Secured Construction Lien Claim unless and only to the extent that such Disputed Claim has become a Proven Claim, or such disputed Claim against Propco or Property LP has become a Propco Unaffected Claim or Property LP Unaffected Claim, as applicable, or such disputed TCC Secured Construction Lien Claim has become a proven Unaffected Claim, in whole or in part.

5.1 Subordination in respect of Propco and Property LP

On the Plan Implementation Date in order to provide for the payment in full of the Propco Unaffected Claims and the Property LP Unaffected Claims:

(a) Property LP shall subordinate that amount of the Property LP (Propco) Intercompany Claim that is in excess of the Contributed Claim Amount, in favour of the proven Claims of all Propco Creditors;

(b) the Plan Sponsor shall subordinate the Plan Sponsor (Propco) Intercompany Claim in favour of (i) the proven Claims of the Propco Unaffected Creditors and (ii) the Contributed Claim Amount; and

(c) TCC shall subordinate the TCC (Pre-filing Propco) Intercompany Claim and the TCC (Post-filing Propco) Intercompany Claim in favour of (i) the proven Claims of the Propco Unaffected Creditors and (ii) the Contributed Claim Amount.

5.2 Distributions to Propco Unaffected Creditors

Forthwith after giving effect to the subordinations set out in Section 5.1, TCC shall create the Propco Disputed Claims Reserve, and thereafter TCC shall on behalf of and for the account of Propco, pay Propco Unaffected Creditors (other than Property LP) with Propco Unaffected Claims in full solely from the Propco Cash Pool Account, by cheque sent by pre-paid ordinary mail to the address for such Propco Unaffected Creditor as set out in its Proof of Claim. For greater certainty, Claims of Creditors who are Landlords (excluding a Landlord holding a Property LP Unaffected Claim) shall not receive a distribution from the Propco Cash Pool Account.
If a Propco Unaffected Creditor has submitted a Proof of Claim against the Target Canada Entities (in addition to its Proof of Claim against Propco) in respect of its Propco Unaffected Claim, such Propco Unaffected Creditor shall not be entitled to and shall not receive any distributions from the TCC Cash Pool Account in respect of such Claim.

5.3 Re-contribution by Plan Sponsor in respect of Property LP (Propco) Intercompany Claim

(a) On the Initial Distribution Date, following the payments to Propco Unaffected Creditors set out in Section 5.2:

(i) TCC, on behalf of and for the account of Property LP, shall first pay the Property LP Unaffected Claims at the direction of Property LP in accordance with Section 5.4; and

(ii) TCC, on behalf of and for the account of Propco, shall then distribute the remaining Cash in the Propco Cash Pool Account to the following Persons on a pro rata basis:

(A) TCC, on account of the TCC (Pre-filing Propco) Intercompany Claim and the TCC (Post-filing Propco) Intercompany Claim in partial satisfaction of such Intercompany Claims;

(B) the Plan Sponsor, on account of the Plan Sponsor (Propco) Intercompany Claim in partial satisfaction of such Intercompany Claim; and

(C) Property LP, on account of that amount of the Property LP (Propco) Intercompany Claim that is in excess of the Contributed Claim Amount in partial satisfaction of such Intercompany Claim.

(b) On the Initial Distribution Date:

(i) First, Property LP shall direct and shall be deemed to direct TCC to pay to the Plan Sponsor any amounts payable to Property LP on account of the distributions set out in Section 5.3(a)(ii)(C);

(ii) Second, Plan Sponsor shall direct and shall be deemed to direct TCC to deposit an amount of *$34,081 million* into the Landlord Guarantee Enhancement Cash Pool Account on account of the distributions set out in Sections 5.3(a)(ii)(B) and amounts payable to the Plan Sponsor as set out in Section 5.3(b)(i);

(iii) Third, Plan Sponsor shall and shall be deemed to direct TCC to deposit any remaining balance of the distributions set out in Sections 5.3(a)(ii)(B) and amounts payable to the Plan Sponsor as set out in Section 5.3(b)(i) into the Plan Sponsor Propco Recovery Limit Reserve Account up to a maximum amount equal to the Plan Sponsor Propco Recovery Limit; and

(iv) Fourth, TCC shall deposit its distribution set out in Section 5.3(a)(ii)(A) into the TCC Cash Pool Account, and the Plan Sponsor shall and shall be deemed to direct TCC to deposit any ultimate balance of the distributions set out in Sections 5.3(a)(ii)(B) and amounts payable to the Plan Sponsor as set out in Section 5.3(b)(i) into the TCC Cash Pool Account as a contribution by Plan Sponsor to TCC.

(c) After disputed Claims of Propco Creditors and Property LP Creditors are resolved by the Monitor, TCC shall, at the direction of the Monitor distribute the balance of the Cash in the Propco Disputed Claims Reserve to TCC, the Plan Sponsor and Property LP on a pro rata basis on account of the remaining balance, if any, of those Intercompany Claims set out in Section 5.3(a)(ii) in full and final satisfaction of such Intercompany Claims and such amounts shall and shall be deemed to have been treated by the applicable parties in the same manner as provided for in Section 5.3(b).

5.4 Distributions on Account of Property LP Unaffected Claims

Property LP shall be obligated to satisfy all Property LP Unaffected Claims.
For purposes of facilitating the payment of all such Property LP Unaffected Claims, Property LP directs and shall be deemed to direct that Propco shall pay such Property LP Unaffected Claims on behalf of and for the account of Property LP in payment and satisfaction by Propco of that portion of the Property LP (Propco) Intercompany Claim that is equal to the Contributed Claim Amount.
For ease and convenience, a disputed Claim against Property LP shall be resolved pursuant to Section 5.5 as if it were a disputed Claim against Propco, and the payment of any such Claim shall be deemed to be treated by the applicable parties in the same manner as provided for in Section 5.2 and Section 5.3.

5.5 Resolution of Disputed Propco Creditor Claims and Disputed Property LP Creditor Claims

From and after the Plan Implementation Date, as frequently as the Monitor may determine in its sole and unfettered discretion, TCC on behalf of Propco shall pay to each Propco Creditor or Property LP Creditor with a disputed Claim that has become a Propco Unaffected Claim or a Property LP Unaffected Claim, respectively, in whole or in part, on or before the third Business Day prior to a Distribution Date (other than the Final Distribution Date), an amount of Cash from the Propco Disputed Claims Reserve Account equal to such Propco Unaffected Claim or Property LP Unaffected Claim, and any balance remaining in the Propco Disputed Claims Reserve Account relating to such Propco Creditor's or Property LP Creditor's disputed Claim shall be deposited into the Plan Sponsor Propco Recovery Limit Reserve Account or the TCC Cash Pool Account, as the case may be, in accordance with Section 5.3(c).

5.6 Distributions from Plan Sponsor Propco Recovery Limit Reserve Account

(a) On the Initial Distribution Date, TCC, on behalf of Propco, shall pay to the Plan Sponsor in respect of the Plan Sponsor (Propco) Intercompany Claim an amount of Cash from the Plan Sponsor Propco Recovery Limit Reserve Account equal to the product of (a) the Plan Sponsor Propco Recovery Limit multiplied by (b) the percentage recovery to Affected Creditors (other than a Convenience Class Creditor or a Landlord Guarantee Creditor in respect of its

Landlord Guarantee Creditor Base Claim Amount) from the TCC Cash Pool on the Initial Distribution Date in accordance with Section 5.7(b) below.

(b) On each subsequent date on which TCC makes distributions to Affected Creditors pursuant to Section 5.11, TCC:

(i) with the assistance of the Monitor, shall determine the aggregate percentage recovery to Affected Creditors (other than a Convenience Class Creditor or a Landlord Guarantee Creditor in respect of its Landlord Guarantee Creditor Base Claim Amount) from the TCC Cash Pool up to and including such distribution (and taking into account prior distributions) on such date (the *"Aggregate Recovery Percentage"*); and

(ii) shall pay to the Plan Sponsor an amount of Cash from the Plan Sponsor Propco Recovery Limit Reserve Account equal to (i) the product of (1) the Plan Sponsor Propco Recovery Limit multiplied by (2) the Aggregate Recovery Percentage, less (ii) the amount of distributions already made to the Plan Sponsor from the Plan Sponsor Propco Recovery Limit Reserve Account.

(c) On the Final Distribution Date, TCC:

(i) with the assistance of the Monitor, shall determine the final aggregate percentage recovery to Affected Creditors (other than a Convenience Class Creditor or a Landlord Guarantee Creditor in respect of its Landlord Guarantee Creditor Base Claim Amount) from the TCC Cash Pool up to and including the final distribution (and taking into account prior distributions) (the *"Final Aggregate Recovery Percentage"*);

(ii) shall pay to the Plan Sponsor an amount of Cash from the Plan Sponsor Propco Recovery Limit Reserve Account equal to (i) the product of (1) the Plan Sponsor Propco Recovery Limit multiplied by (2) the Final Aggregate Recovery Percentage, less (ii) the amount of distributions already made to the Plan Sponsor from the Plan Sponsor Propco Recovery Limit Reserve Account; and

(iii) thereafter, shall deposit into the TCC Cash Pool Account on behalf of Plan Sponsor as a contribution to TCC any remaining balance in the Plan Sponsor Propco Recovery Limit Reserve Account.

5.7 Initial Distributions from TCC Cash Pool Account to Affected Creditors with Proven Claims

On the Initial Distribution Date, the Cash in the TCC Cash Pool Account shall be distributed by TCC, on behalf and for the account of the Target Canada Entities, as follows:

(a) each Convenience Class Creditor shall receive a distribution in the amount of its Convenience Class Claim, by cheque sent by prepaid ordinary mail to the address for such Convenience Class Creditor as set out in its Proof of Claim; and

(b) each Affected Creditor (other than a Convenience Class Creditor or a Landlord Guarantee Creditor in respect of its Landlord Guarantee Creditor Base Claim Amount) with a Proven Claim shall receive a distribution in an amount equal to its Pro Rata Share of the Cash in the TCC Cash Pool Account (after effecting the payments in Section 5.7(a)) by cheque sent by prepaid ordinary mail to the address for such Affected Creditor as set out in its Proof of Claim (or, at the election of TCC, by wire transfer in accordance with the wire transfer instructions provided by the applicable Affected Creditor).

5.8 Disbursements of Landlord Non-Guarantee Creditor Equalization Amounts

On the Initial Distribution Date, TCC, on behalf and for the account of the Target Canada Entities, shall disburse to each Landlord Non-Guarantee Creditor with a Proven Claim that is a Landlord Restructuring Period Claim, each Landlord Non-Guarantee Creditor's Landlord Non-Guarantee Creditor Equalization Amount from the Landlord Non-Guarantee Creditor Equalization Cash Pool Account by cheque sent by prepaid ordinary mail to the address for such Landlord in

accordance with such Landlord's Proof of Claim (or, at the election of TCC, by wire transfer in accordance with the wire transfer instructions provided by the applicable Landlord Non-Guarantee Creditor).

5.9 Disbursements of Landlord Guarantee Creditor Base Claim Amounts

On the Initial Distribution Date, TCC, on behalf and for the account of the Target Canada Entities, shall disburse to each Landlord Guarantee Creditor with a Proven Claim that is a Landlord Restructuring Period Claim, each Landlord Guarantee Creditor's Landlord Guarantee Creditor Base Claim Amount from the Landlord Guarantee Creditor Base Claim Cash Pool Account by cheque sent by prepaid ordinary mail to the address for such Landlord in accordance with such Landlord's Proof of Claim (or, at the election of TCC, by wire transfer in accordance with the wire transfer instructions provided by the applicable Landlord Guarantee Creditor).

5.10 Disbursements of Landlord Guarantee Enhancement Amount

On the Initial Distribution Date, TCC, on behalf and for the account of the Plan Sponsor in satisfaction of the Plan Sponsor's obligations under the Landlord Guarantee Creditor Settlement Agreement, shall disburse, in accordance with the Landlord Guarantee Creditor Settlement Agreement, to each Landlord Guarantee Creditor each Landlord Guarantee Creditor's Landlord Guarantee Enhancement Amount from the Landlord Guarantee Enhancement Cash Pool Account by cheque sent by prepaid ordinary mail to the address for such Landlord in accordance with such Landlord's Proof of Claim (or, at the election of TCC, by wire transfer in accordance with the wire transfer instructions provided by the applicable Landlord Guarantee Creditor).

5.11 Resolution of Disputed TCC Creditor Claims and Subsequent Distributions

Subject to Section 5.7, from and after the Initial Distribution Date, as frequently as the Monitor may determine in its sole and unfettered discretion, TCC, on behalf of the Target Canada Entities, shall distribute to:

(a) each Affected Creditor (other than a Convenience Class Creditor or a Landlord Guarantee Creditor in respect of its Landlord Guarantee Creditor Base Claim Amount) with a Disputed Claim that has become a Proven Claim in whole or in part, on or before the third (3rd) Business Day prior to a Distribution Date (other than the Final Distribution Date), an amount of Cash from the TCC Disputed Claims Reserve Account equal to the aggregate amount of all distributions such Affected Creditor would have otherwise already received pursuant to the Plan had its Disputed Claim been a Proven Claim on and as of the Initial Distribution Date, and any remaining balance in the TCC Disputed Claims Reserve Account relating to such Affected Creditor's Disputed Claim shall be deposited into the TCC Cash Pool Account; and

(b) each Affected Creditor (other than a Convenience Class Creditor or a Landlord Guarantee Creditor in respect of its Landlord Guarantee Creditor Base Claim Amount) with a Proven Claim an amount equal to such Affected Creditor's respective Pro Rata Share of the Cash in the TCC Cash Pool Account (subsequent to effecting the payments in Section 5.11(a)) by cheque sent by prepaid ordinary mail to the address for such Affected Creditor as set out in its Proof of Claim (or, at the election of TCC, by wire transfer in accordance with the wire transfer instructions provided by the applicable Affected Creditor).

5.12 Final Distribution

On the Final Distribution Date, once TCC has effected all distributions pursuant to Section 5.11 and there are no remaining Disputed Claims, and following the deposits into the TCC Cash Pool Account set out in Sections 5.3(b)(iv), 5.3(c), and 5.6(c)(iii):

(a) TCC, on behalf of the Target Canada Entities, shall pay any final Administrative Reserve Costs;

(b) thereafter, TCC shall contribute any balance remaining in the Administrative Reserve Account and the TCC Disputed Claims Reserve Account to the TCC Cash Pool Account;

(c) thereafter, TCC shall distribute to the Affected Creditors (other than Convenience Class Creditors and Landlord Guarantee Creditors in respect of their Landlord Guarantee Creditor Base Claim Amounts) with Proven Claims an

amount equal to such Affected Creditor's respective Pro Rata Share of any Cash in the TCC Cash Pool Account; and

(d) thereafter, TCC shall provide written notice to the Monitor that it has completed its duties to effect all distributions, disbursements and payments in accordance with the Plan.

5.13 Treatment of Undeliverable Distributions

If any Affected Creditor's, Propco Unaffected Creditor's or Property LP Unaffected Creditor's distribution is returned as undeliverable or is not cashed, no further distributions to such Creditor shall be made unless and until the Monitor is notified by such Creditor of its current address or wire particulars, at which time all such distributions shall be made to such Creditor without interest. All claims for undeliverable or un-cashed distributions in respect of Proven Claims, Propco Unaffected Claims or Property LP Unaffected Claims must be made on or before the deadline specified in the Notice of Final Distribution, after which date the Claims of such Creditor or successor or assign of such Creditor with respect to such unclaimed or un-cashed distributions shall be forever discharged and forever barred, without any compensation therefor, notwithstanding any Applicable Law to the contrary, at which time the Cash amount held by TCC in relation to such Claim shall be returned to the TCC Cash Pool Account or the Propco Cash Pool Account. Nothing in the Plan or Sanction and Vesting Order shall require the Monitor or TCC to attempt to locate the holder of any Proven Claim, Propco Unaffected Claim or Property LP Unaffected Claim.

If any Landlord Guarantee Creditor's distribution from the Landlord Guarantee Enhancement Cash Pool or any Landlord Non-Guarantee Creditor's distribution from the Landlord Non-Guarantee Creditor Equalization Cash Pool is returned as undeliverable or is not cashed, no further distributions to such Landlord shall be made unless and until the Monitor is notified by such Landlord of its current address or wire particulars, at which time all such distributions shall be made to such Landlord without interest. All claims for undeliverable or un-cashed distributions in respect of Landlord Guarantee Enhancement Amounts and Landlord Non-Guarantee Creditor Equalization Amounts must be made on or before the deadline specified in the Notice of Final Distribution, after which date the claims of such Landlord or successor or assign of such Landlord with respect to such unclaimed or un-cashed distributions shall be forever discharged and forever barred, without any compensation therefor, notwithstanding any Applicable Law to the contrary, at which time: (a) in the case of a Landlord Guarantee Enhancement Amount, (i) the percentage of the Cash amount held by TCC in relation to such Landlord Guarantee Enhancement Amount equal to *$25,451* million divided by the total amount of the Landlord Guarantee Enhancement Cash Pool as at the Plan Implementation Date shall be returned to the Plan Sponsor in accordance with the wire transfer instructions to be provided by the Plan Sponsor to TCC, and (ii) the balance of the Cash amount held by TCC in relation to such Landlord Guarantee Enhancement Amount shall be returned to the TCC Cash Pool Account, and (b) in the case of a Landlord Non-Guarantee Equalization Amount, the Cash amount held by TCC in relation to such Landlord Non-Guarantee Creditor Equalization Amount shall be returned to the Plan Sponsor in accordance with the wire transfer instructions to be provided by the Plan Sponsor to TCC.

5.14 Assignment of Claims for Voting and Distribution Purposes Prior to the Creditors' Meeting

An Affected Creditor, a Propco Unaffected Creditor or a Property LP Unaffected Creditor may transfer or assign the whole of its Claim prior to the Creditors' Meeting, provided that neither the Target Canada Entities nor the Monitor shall be obligated to give notice to or otherwise deal with the transferee or assignee of such Claim as an Affected Creditor, a Propco Unaffected Creditor or a Property LP Unaffected Creditor in respect thereof, including allowing such transferee or assignee of an Affected Claim to vote at the Creditors' Meeting, unless and until actual notice of the transfer or assignment, together with satisfactory evidence of such transfer or assignment, has been received and acknowledged by the Monitor in writing no later than 5:00 p.m. on the date that is seven (7) days prior to the Creditors' Meeting. Thereafter such transferee or assignee shall, for all purposes in accordance with the Claims Procedure Order and the Meeting Order, constitute an Affected Creditor, a Propco Unaffected Creditor or a Property LP Unaffected Creditor, as applicable, and shall be bound by any and all notices previously given to the transferor or assignor and any and all steps taken in respect of such Claim.

Where a Claim has been transferred or assigned in part, the transferor or assignor shall retain the right to vote at the Creditors' Meeting in respect of the full amount of the Claim, and the transferee or assignee shall have no voting rights at the Creditors Meeting in respect of such Claim.

For greater certainty, after the execution of the Landlord Guarantee Creditor Settlement Agreement or a Landlord Non-Guarantee Creditor Consent and Support Agreement, as applicable, a Landlord Guarantee Creditor or a Landlord Non-Guarantee Creditor may only assign any Claim in accordance with the terms of the Landlord Guarantee Creditor

Settlement Agreement or a Landlord Non-Guarantee Creditor Consent and Support Agreement, as applicable.

5.15 Assignment of Claims for Distribution Purposes After the Creditors' Meeting

An Affected Creditor (other than a Convenience Class Creditor), a Propco Unaffected Creditor or a Property LP Unaffected Creditor may transfer or assign the whole of its Claim for distribution purposes after the Creditors' Meeting provided that TCC shall not be obliged to make distributions to any such transferee or assignee or otherwise deal with such transferee or assignee as an Affected Creditor, a Propco Unaffected Creditor or a Property LP Unaffected Creditor in respect thereof unless and until actual notice of the transfer or assignment, together with satisfactory evidence of such transfer or assignment, has been received and acknowledged by the Monitor in writing; thereafter, such transferee or assignee shall, for all purposes in accordance with the Claims Procedure Order, the Meeting Order and the Plan, constitute an Affected Creditor, a Propco Unaffected Creditor or a Property LP Unaffected Creditor, as applicable, and shall be bound by any and all notices previously given to the transferor or assignor and any and all steps taken in respect of such Claim.
For greater certainty, after the execution of the Landlord Guarantee Creditor Settlement Agreement or a Landlord Non-Guarantee Creditor Consent and Support Agreement, as applicable, a Landlord Guarantee Creditor or a Landlord Non-Guarantee Creditor may only assign any Claim for distribution purposes in accordance with the terms of the Landlord Guarantee Creditor Settlement Agreement or a Landlord Non-Guarantee Creditor Consent and Support Agreement, as applicable.

5.16 Tax Matters

(a) Any terms and conditions of any Affected Claims, any Propco Unaffected Claims or any Property LP Unaffected Claims which purport to deal with the ordering of or grant of priority of payment of principal, interest, penalties or other amounts shall be deemed to be void and ineffective.

(b) Notwithstanding any provisions of the Plan, each Person that receives a distribution, disbursement or other payment pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any Tax Obligations imposed on such Person by any Taxing Authority on account of such distribution, disbursement or payment.

(c) Any payor shall be entitled to deduct and withhold and remit from any distribution, payment or consideration otherwise payable to any Person pursuant to the Plan such amounts as are required (a *"Withholding Obligation"*) to be deducted and withheld with respect to such payment under the IT A, or any provision of federal, provincial, territorial, state, local or foreign tax law, in each case, as amended or succeeded. For greater certainty, no distribution, payment or other consideration shall be made to or on behalf of a Person until such Person has delivered to the Monitor and TCC such documentation prescribed by Applicable Law or otherwise reasonably required by TCC as will enable TCC to determine whether or not, and to what extent, such distribution, payment or consideration to such Person is subject to any Withholding Obligation imposed by any Taxing Authority.

(d) All distributions made by TCC on behalf of the Target Canada Entities pursuant to the Plan shall be first in satisfaction of the portion of Affected Claims, Propco Unaffected Claims or Property LP Unaffected Claims, as the case may be, that are not subject to any Withholding Obligation.

(e) To the extent that amounts are withheld or deducted and paid over to the applicable Taxing Authority, such withheld or deducted amounts shall be treated for all purposes of the Plan as having been paid to such Person as the remainder of the payment in respect of which such withholding and deduction were made.

(f) For the avoidance of doubt, it is expressly acknowledged and agreed that the Monitor and any Director or Officer will not hold any assets hereunder, including Cash, or make distributions, payments or disbursements, and no provision hereof shall be construed to have such effect.

5.17 Input Tax Credits

If the Plan Sponsor (or a subsidiary thereof other than the Target Canada Entities) has paid or pays GST/HST on amounts in respect of a Landlord Guarantee Claim for which only the Target Canada Entities will receive Input Tax Credits (*"Plan*

Sponsor GST/HST Contribution Amounts"), then in order to reimburse the Plan Sponsor (or a subsidiary thereof other than the Target Canada Entities) for the Plan Sponsor GST/HST Contribution Amounts:

(a) The Plan Sponsor shall provide TCC and the Monitor with satisfactory evidence of the Plan Sponsor GST/HST Contribution Amounts;

(b) All Input Tax Credits (whether or not in respect of payments made by the Plan Sponsor or a subsidiary thereof other than the Target Canada Entities) actually paid to TCC shall be held by TCC in trust in a segregated interest-bearing account for the benefit of Plan Sponsor, and shall be paid to the Plan Sponsor from time to time, until such time as the Plan Sponsor has been fully reimbursed for all Plan Sponsor GST/HST Contribution Amounts; and

(c) Once the Plan Sponsor GST/HST Contribution Amounts have been paid in full, subsequent Input Tax Credits actually paid to TCC shall be contributed by TCC to the TCC Cash Pool Account.

Article 6 Plan Implementation

6.1 Corporate Authorizations

The adoption, execution, delivery, implementation and consummation of all matters contemplated under the Plan involving any corporate action of any of the Target Canada Entities will occur and be effective as of the Plan Implementation Date as set out in Section 6.3, and will be authorized and approved under the Plan and by the Court, where appropriate, as part of the Sanction and Vesting Order, in all respects and for all purposes without any requirement of further action by shareholders, partners, Directors or Officers of such Target Canada Entity. All necessary approvals to take actions shall be deemed to have been obtained from the Directors or shareholders or partners of the Target Canada Entity, as applicable.

6.2 Pre-Plan Implementation Date Transactions

The following transactions shall be effected prior to the implementation of the Plan:

(a) *Landlord Guarantee Creditor Enhancement Amounts*: The Plan Sponsor shall deliver *$25,451 million* to TCC in accordance with Section 4.3; and

(b) *Landlord Non-Guarantee Creditor Equalization Amounts*: The Plan Sponsor shall deliver *$7,521 million* to TCC in accordance with Section 4.8.

6.3 Plan Implementation Date Transactions

The following transactions, steps, offsets, distributions, payments, disbursements, compromises, releases, discharges to be effected in the implementation of the Plan (the *"Plan Transactions*") shall occur on or after the Plan Implementation Date:

(a) *Delivery of Cash to TCC*: The Target Canada Entities (other than TCC) shall deliver to TCC the aggregate of all of their Cash in accordance with Article 4;

(b) *Establishment of Accounts and Reserves*: TCC, with the supervision of the Monitor, shall establish the accounts and reserves in accordance with Article 4;

(c) *Subordinations of Intercompany Claims*:

(i) In addition to the prior subordination of the NE1 Intercompany Claim, the Subordinated Intercompany Claims shall be and shall be deemed to be subordinated as against all Creditors, in accordance with Section 2.4;

(ii) The amount of the Property LP (Propco) Intercompany Claim equal to the Contributed Claim Amount shall be and shall be deemed to be subordinated as against and in favour of the proven Claims of all Propco Creditors, in accordance with Section 5.1;

(iii) The Plan Sponsor (Propco) Intercompany Claim shall be and shall be deemed to be subordinated as against and in favour of all Propco Unaffected Creditors and the Contributed Claim Amount, in accordance with Section 5.1;

(iv) The TCC (Pre-filing Propco) Intercompany Claim and the TCC (Post-filing Propco) Intercompany Claim shall be and shall be deemed to be subordinated as against and in favour of the Claims of all Propco Unaffected Creditors and the Contributed Claim Amount, in accordance with Section 5.1;

(v) For greater certainty, no other Intercompany Claims (other than those identified in clauses (i) to (iv) above) shall be deemed to be subordinated;

(d) *Landlord Guarantee Creditor Enhancement Amount*: TCC shall deposit the Landlord Guarantee Enhancement Amount received from the Plan Sponsor into the Landlord Guarantee Enhancement Cash Pool Account in accordance with Section 4.3;

(e) *Landlord Non-Guarantee Creditor Equalization Amounts*: TCC shall deposit the Landlord Non-Guarantee Creditor Equalization Amounts received from the Plan Sponsor into the Landlord Non-Guarantee Creditor Equalization Cash Pool Account in accordance with Section 4.8;

(f) *Payments by TCC*: TCC, on behalf of the Target Canada Entities, shall pay the following Administrative Reserve Costs from the Administrative Reserve Account on or after the Plan Implementation Date pursuant to the Sanction and Vesting Order and the CCAA:

(i) all fees and disbursements owing as at the Plan Implementation Date to counsel to the Target Canada Entities, the Monitor, counsel to the Monitor, counsel to the Directors and the Employee Representative Counsel;

(ii) all fees and disbursements owing as at the Plan Implementation Date to Northwest;

(iii) all amounts on account of Government Priority Claims;

(iv) all amounts on account of Employee Priority Claims, to the extent such amounts have not been satisfied from the Employee Trust;

(v) all amounts on account of proven TCC Secured Construction Lien Claims;

(vi) all amounts on account of Cash Management Lender Claims;

(vii) all amounts on account of the Post-Filing Trade Payables;

(viii) all amounts owing to Persons on account of their KERP Claims;

(ix) all fees owing to third-parties on account of the administration of distributions, disbursements and payments under the Plan, including without limitation Bank of America; and

(x) such amounts as may be necessary to fund any final minor adjustments to the Cash pools after establishment thereof in accordance with Section 6.3(b);

(g) *Release of CCAA Charges; Continuation of Administration Charge*: The Financial Advisor Subordinated Charge, the DIP Lender's Charge, the Liquidation Agent's Charge and Security Interest and the KERP Charge shall be discharged and the Administration Charge and the Directors' Charge shall continue and shall attach solely against the Propco Cash Pool, the TCC Cash Pool, and the Cash Reserves from and after the Plan Implementation Date pursuant to and in accordance with the Sanction and Vesting Order;

(h) *Directors and Officers*: On the Plan Implementation Date, the Directors and Officers of the Target Canada Entities (other than the current Directors of TCC and Target Canada Pharmacy (Ontario) Corp.) shall and shall be deemed to resign without the requirement of further action on the part of such Directors and Officers, unless any one of them

affirmatively elects to remain as a Director or Officer, as applicable, in order to facilitate any Plan Transaction Steps in connection with the wind-down of the Target Canada Entities; for the avoidance of doubt, any deemed resignation pursuant to this Section 6.3(h) or the Sanction and Vesting Order will not disentitle, or otherwise negatively affect, the entitlements of any Directors and Officers pursuant to the terms of any existing employment or retention agreements, which agreements shall continue subject to the terms and conditions thereof;

(i) *Distributions from the Propco Cash Pool and the Propco Disputed Claims Reserve*: Once TCC, in consultation with the Monitor, has determined that all requisite consents, declarations, certificates or approvals of or by any Governmental Authority as may be considered necessary by TCC or the Monitor in respect of any such distribution have been obtained, TCC shall make distributions from the Propco Cash Pool Account and the Propco Disputed Claims Reserve Account in accordance with Sections 5.2, 5.3, 5.4 and 5.5;

(j) *Intercompany Distributions from the Propco Cash Pool*: TCC shall deposit, and each of Property LP and the Plan Sponsor shall and shall be deemed to direct that TCC shall deposit, any distributions to be received from TCC out of the Propco Cash Pool Account to the Landlord Guarantee Enhancement Cash Pool Account, the Plan Sponsor Propco Recovery Limit Reserve Account and the TCC Cash Pool Account in the order and in the amounts set out in Section 5.3;

(k) *Distributions from the Plan Sponsor Propco Recovery Limit Reserve:* TCC shall make distributions from the Plan Sponsor Propco Recovery Limit Reserve Account to the Plan Sponsor in accordance with Section 5.6;

(l) *Distributions from the TCC Cash Pool and the TCC Disputed Claims Reserve*: Once TCC, in consultation with the Monitor, has determined that all requisite consents, declarations, certificates or approvals of or by any Governmental Authority as may be considered necessary by TCC or the Monitor in respect of any such distribution have been obtained, TCC shall make distributions from the TCC Cash Pool Account and the TCC Disputed Claims Reserve Account in accordance with Sections 5.7, 5.11 and 5.12;

(m) *Disbursement of Landlord Non-Guarantee Creditor Equalization Amounts*: On the Initial Distribution Date, TCC, on behalf of the Plan Sponsor, shall fully and finally disburse the Landlord Non-Guarantee Creditor Equalization Amounts in accordance with Section 5.8;

(n) *Disbursement of Landlord Guarantee Creditor Base Claim Amounts:* On the Initial Distribution Date, TCC, on behalf of the Target Canada Entities, shall fully and finally disburse the Landlord Guarantee Creditor Base Claim Amounts in accordance with Section 5.9;

(o) *Disbursement of Landlord Guarantee Enhancement Amounts*: On the Initial Distribution Date, TCC, on behalf of the Plan Sponsor, shall fully and finally disburse the Landlord Guarantee Enhancement Amounts in accordance with Section 5.10;

(p) *Compromise. Satisfaction and Release*: The compromises with the Affected Creditors, the full and final satisfaction of the Propco Unaffected Claims and the Property LP Unaffected Claims and the release of the Released Parties referred to herein shall become effective in accordance with Article 7 of the Plan, and Propco and Property LP shall be deemed to have no claims against the Landlords, including without limitation arising out of the Plan Sponsor Guarantees;

(q) *IP Assets*: On the Plan Implementation Date, in partial consideration for the Plan Sponsor contributing to the Landlord Guarantee Enhancement Cash Pool and the Plan Sponsor's subordination of the Subordinated Intercompany Claims and the re-contribution of the Property LP (Propco) Intercompany Claim in excess of the Contributed Claim Amount, the IP Assets shall be transferred and shall vest absolutely in the Plan Sponsor (or its designee) free and clear of all Encumbrances pursuant to and in accordance with the Sanction and Vesting Order;

(r) *Pharmacy Shares:* On the Plan Implementation Date, upon the delivery of the Monitor's certificate as set out in the Pharmacy Share Sale Approval and Vesting Order, the Pharmacy Shares shall be transferred and shall vest absolutely in the Pharmacy Purchaser free and clear of all Encumbrances pursuant to and in accordance with the Pharmacy Share Sale Approval and Vesting Order and the Directors of Target Canada Pharmacy (Ontario) Corp. shall and shall be deemed to resign immediately prior to the closing of such transaction without the requirement of further action;

(s) *Disposition of Remaining Assets and Collection of Receivables*: The Monitor shall be authorized to collect any

outstanding receivables and to market and sell any remaining assets of the Target Canada Entities, and if the sale price for such assets is greater than *$250,000*, such sale shall be approved pursuant to Court Order. Subject to Section 5.17, the proceeds of any such sales or receivables shall be deposited to the TCC Cash Pool Account;

(t) *Maintenance of Target Canada Entities:* If necessary to effect the sale of the shares of one or more of the Target Canada Entities, the Monitor shall file all necessary annual information forms or returns under Applicable Law in order to maintain such Target Canada Entities in good standing;

(u) *Dissolutions*: Immediately prior to the delivery by the Monitor of the Monitor's Plan Completion Certificate, and with the Target Canada Entities' and the Plan Sponsor's consent, steps shall be taken to dissolve any remaining Target Canada Entities in a tax efficient and orderly manner;

(v) *Termination of the Employee Trust*: Upon delivery of a certificate from the Employee Trust Trustee to the Monitor in the form attached as Schedule "F" (the *"Employee Trust Termination Certificate"*) certifying that all outstanding disputes by employee claimants in respect of their entitlements, if any, under the Employee Trust have been fully and finally resolved pursuant to and in accordance with the Employee Trust Claims Resolution Order:

(i) the Employee Trust shall be and shall be deemed to be terminated;

(ii) any remaining Trustee Fees, Trustee Expenses, Administrator Fees and Administrator Expenses (each as defined in the Employee Trust Agreement) shall be paid from any remaining Employee Trust Property to the Employee Trust Trustee and the Employee Trust Administrator, as applicable;

(iii) the Employee Trust Trustee shall satisfy any commitments to pay Eligible Employee Claims (as defined in the Employee Trust Agreement) made under Article 2 of the Employee Trust Agreement with the assistance of the Employee Trust Administrator;

(iv) the Employee Trust Trustee and the Employee Trust Administrator shall deliver an irrevocable joint direction to The Royal Bank of Canada in the form attached as Schedule "G" (the *"Employee Trust Property Joint Direction"*) to remit the balance of the Employee Trust Property, net of the payments set out in Sections 6.3(v)(ii) and 6.3(v)(iii), in each case net of any applicable Withholding Obligations, to the Plan Sponsor or its designee in accordance with the written directions to be delivered by the Plan Sponsor to the Employee Trust Trustee and the Employee Trust Administrator one (1) Business Day prior to the date of delivery of the Employee Trust Property Joint Direction, provided however that the Employee Trust Trustee and the Employee Trust Administrator shall not be required to deliver such direction until all requisite consents, declarations, certificates or approvals of or by any Governmental Authority as may be considered necessary by the Employee Trust Trustee and the Employee Trust Administrator have been obtained; and

(v) the Employee Trust Trustee and the Employee Trust Administrator shall be and shall be deemed to be fully and finally released and discharged from all of their respective obligations under the Employee Trust Agreement.

Article 7 Releases

7.1 Plan Releases

(a) On the Plan Implementation Date, each of the Target Canada Entities, NE1 and their respective Directors, Officers, current and former employees, advisors, legal counsel and agents, including the Liquidation Agent, Lazard and Northwest (being referred to individually as a *"Target Canada Released Party"*) shall be released and discharged from any and all demands, claims, actions, applications, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, Encumbrances and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Creditor, Affected Creditor, Propco Unaffected Creditor, Property LP Unaffected Creditor or other Person may be entitled to assert, including any and all Claims in respect of the payment

and receipt of proceeds, statutory liabilities of the Directors, Officers and employees of the Target Canada Released Parties and any alleged fiduciary or other duty (whether such employees are acting as a Director, Officer or employee), whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the later of the Plan Implementation Date and the date on which actions are taken to implement the Plan that are in any way relating to, arising out of or in connection with the Claims, the Business whenever or however conducted, the Plan, the CCAA Proceedings, or any Claim that has been barred or extinguished by the Claims Procedure Order and all claims arising out of such actions or omissions shall be forever waived and released (other than the right to enforce the Target Canada Entities' obligations under the Plan or any related document), all to the full extent permitted by Applicable Law, provided that nothing herein shall release or discharge (i) any Target Canada Released Party if such Target Canada Released Party is judged by the expressed terms of a judgment rendered on a final determination on the merits to have committed criminal, fraudulent or other wilful misconduct or (ii) the Directors with respect to matters set out in section 5.1(2) of the CCAA.

(b) On the Plan Implementation Date, the Monitor, A&M, and their respective current and former directors, officers and employees, counsel to the Directors, Pharmacists' Representative Counsel, the Consultative Committee Members and all of their respective advisors, legal counsel and agents (being referred to individually as a *"Third Party Released Party"*) shall be released and discharged from any and all demands, claims, actions, applications, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, Encumbrances and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Creditor, Affected Creditor, Propco Unaffected Creditor, Property LP Unaffected Creditor or other Person may be entitled to assert, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the later of the Plan Implementation Date and the date on which actions are taken to implement the Plan that are in any way relating to, arising out of or in connection with the Claims, the Business whenever or however conducted, the Plan, the CCAA Proceedings, or any Claim that has been barred or extinguished by the Claims Procedure Order and all claims arising out of such actions or omissions shall be forever waived and released (other than the right to enforce the Monitor's obligations under the Plan or any related document), all to the full extent permitted by Applicable Law, provided that nothing herein shall release or discharge any Third Party Released Party if such Third Party Released Party is judged by the expressed terms of a judgment rendered on a final determination on the merits to have committed criminal, fraudulent or other wilful misconduct.

(c) On the Plan Implementation Date, the Plan Sponsor, the Plan Sponsor Subsidiaries, the HBC Entities and their current and former directors, officers and employees and their respective advisors, legal counsel and agents (being referred to individually as a *"Plan Sponsor Released Party"*):

(i) shall not be released hereunder from Landlord Guarantee Claims; and

(ii) shall be released and discharged from any and all demands, claims, actions, applications, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, Encumbrances and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Creditor, Affected Creditor, Propco Unaffected Creditor, Property LP Unaffected Creditor or other Person (excluding a Landlord Guarantee Creditor in respect of its Landlord Guarantee Claim) may be entitled to assert, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the later of the Plan Implementation Date and the date on which actions are taken to implement the Plan that are in any way relating to, arising out of or in connection with the Claims, the Business whenever or however conducted, the Plan, the CCAA Proceedings, or any Claim that has been barred or extinguished by the Claims Procedure Order and all claims arising out of such actions or omissions shall be forever waived and released (other than the right to enforce the Plan Sponsor's obligations under the Plan or any related document), all to the full extent permitted by Applicable Law, provided that nothing herein shall release or discharge any Plan Sponsor Released Party if such Plan Sponsor Released Party is judged by the expressed terms of a judgment rendered on a final determination on the merits to have committed criminal, fraudulent or other wilful

misconduct.

For greater certainty, the Plan Sponsor shall not be released from any indemnity or guarantee provided by the Plan Sponsor in favour of any Director, Officer or employee.

(d) Immediately upon the delivery of the Employee Trust Termination Certificate, the Employee Trust Administrator and its current and former directors, officers and employees, the Employee Trust Trustee, Employee Representative Counsel, the Employee Representatives and all of their respective advisors, legal counsel and agents (being referred to individually as an *"Employee Trust Released Party"*, and collectively together with each of the Target Canada Released Parties, the Third Party Released Parties and the Plan Sponsor Released Parties, the "Released Parties") shall be released and discharged from any and all demands, claims, actions, applications, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, Encumbrances and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Creditor, Affected Creditor, Propco Unaffected Creditor, Property LP Unaffected Creditor or other Person may be entitled to assert, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the later of the Plan Implementation Date and the date on which actions are taken to implement the Plan that are in any way relating to, arising out of or in connection with the Claims, the Business whenever or however conducted, the Plan, the CCAA Proceedings, or any Claim that has been barred or extinguished by the Claims Procedure Order or the Employee Trust Claims Resolution Order and all Claims arising out of such actions or omissions shall be forever waived and released (other than the right to enforce the Employee Trust Trustee's and the Employee Trust Administrator's obligations under the Plan or any related document), all to the full extent permitted by Applicable Law, provided that nothing herein shall release or discharge any Employee Trust Released Party if such Employee Trust Released Party is judged by the expressed terms of a judgment rendered on a final determination on the merits to have committed criminal, fraudulent or other wilful misconduct.

(e) The Sanction and Vesting Order will enjoin the prosecution, whether directly, derivatively or otherwise, of any Claim, Propco Unaffected Claim, Property LP Unaffected Claim, obligation, suit, judgment, damage, demand, debt, right, cause of action, liability or interest released, discharged, compromised or terminated pursuant to the Plan.

(f) Nothing in the Plan shall be interpreted as restricting the application of Section 21 of the CCAA.

Article 8 Court Sanction, Conditions Precedent and Implementation

8.1 Application for Sanction and Vesting Order

If the Required Majority of the Affected Creditors approves the Plan, the Target Canada Entities shall apply for the Sanction and Vesting Order on or before the date set in the Meeting Order for the hearing of the Sanction and Vesting Order or such later date as the Court may set.

8.2 Sanction and Vesting Order

The Sanction and Vesting Order will have effect from and after the Effective Time on the Plan Implementation Date, and shall, among other things:

(a) declare that (i) the Plan has been approved by the Required Majority of Affected Creditors with Proven Claims in conformity with the CCAA; (ii) the Target Canada Entities have complied with the provisions of the CCAA and the Orders of the Court made in these CCAA Proceedings in all respects; (iii) the Court is satisfied that the Target Canada Entities have not done or purported to do anything that is not authorized by the CCAA; and (iv) the Plan and the Plan Transaction Steps contemplated thereby are fair and reasonable;

(b) declare that the Plan and all associated steps, compromises, transactions, arrangements, releases and reorganizations effected thereby are approved, binding and effective on the Target Canada Entities, the Plan Sponsor, all Affected

Creditors, the Released Parties and all other Persons and parties affected by the Plan as of the Effective Time;

(c) authorize and direct the Employee Trust Trustee and the Employee Trust Administrator to remit the balance of the Employee Trust Property, net of the payments set out in Sections 6.3(v)(ii) and 6.3(v)(iii) and any applicable Withholding Obligations, to the Plan Sponsor or its designee upon delivery by the Employee Trust Trustee and the Employee Trust Administrator of the Employee Trust Property Joint Direction to The Royal Bank of Canada pursuant to and in accordance with the Plan;

(d) grant to the Monitor, in addition to its rights and obligations under the CCAA, the powers, duties and protections contemplated by and required under the Plan and authorize and direct the Monitor to perform its duties and fulfil its obligations under the Plan to facilitate the implementation thereof;

(e) authorize the Monitor to take all such actions to market and sell any remaining assets and pursue any outstanding accounts receivable owing to any of the Target Canada Entities, or to assist the Target Canada Entities with respect thereto;

(f) declare that all right, title and interest in and to the IP Assets have vested absolutely in the Plan Sponsor (or its designee), free and clear of all Encumbrances;

(g) direct the Plan Sponsor to maintain the books and records of the Target Canada Entities for purposes of assisting the Monitor in the completion of the resolution of Disputed Claims and Claims of the Propco Creditors and the Property LP Creditors and the orderly wind-down of the Target Canada Entities;

(h) confirm the releases of the Released Parties as set out in Section 7.1;

(i) declare that any Affected Claim, any Propco Unaffected Claim and any Property LP Unaffected Claim for which a Proof of Claim has not been filed by the Claims Bar Date in accordance with the Claims Procedure Order shall be forever barred and extinguished;

(j) declare that the stays of proceedings in favour of the Landlords pursuant to the Orders of the Court set out in Schedule "H" (the *"Co-Tenancy Stay Schedule"*) shall have terminated on the dates set out in the Co-Tenancy Stay Schedule;

(k) deem the remaining Directors and Officers of the Target Canada Entities (other than the current Directors of TCC or Target Canada Pharmacy (Ontario) Corp.) to have resigned without replacement on the Effective Time on the Plan Implementation Date, unless such Persons affirmatively elect to remain as a Director or Officer in order to facilitate any Plan Transaction Steps in connection with the wind-down of any of the Target Canada Entities;

(l) deem the Directors of Target Canada Pharmacy (Ontario) Corp. to have resigned in accordance with Section 6.3(r);

(m) declare that all distributions or payments by TCC, in each case on behalf of the Target Canada Entities, to the Affected Creditors with Proven Claims, to Propco Unaffected Creditors and to the Property LP Unaffected Creditors under the Plan are for the account of the Target Canada Entities and the fulfillment of their respective obligations under the Plan;

(n) declare that in no circumstance will the Monitor have any liability for any of the Target Canada Entities' tax liabilities regardless of how or when such liability may have arisen;

(o) declare that TCC shall be authorized, in connection with the making of any payment or distribution, and TCC and the Monitor shall be authorized, in connection with the taking of any step or transaction or performance of any function under or in connection with the Plan, to apply to any Governmental Authority for any consent, authorization, certificate or approval in connection therewith;

(p) declare that, in carrying out the terms of the Sanction and Vesting Order and the Plan, (i) the Monitor shall benefit from all the protections given to it by the CCAA, the Initial Order and any other Order in the CCAA Proceedings, and as an officer of the Court, including the Stay of Proceedings in its favour; (ii) the Monitor shall incur no liability or

obligation as a result of carrying out the provisions of the Sanction and Vesting Order and/or the Plan; and (iii) the Monitor shall be entitled to rely on the books and records of the Target Canada Entities and any information provided by any of the Target Canada Entities without independent investigation and shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information;

(q) provide for discharge of the CCAA Charges (other than the Administration Charge and the Directors' Charge) and the continuation of the Administration Charge and the Directors' Charge which shall survive the Plan Implementation Date;

(r) approve the Monitor's form of Notice of Final Distribution;

(s) authorize the Target Canada Entities (at their sole election) to seek an order of any court of competent jurisdiction to recognize the Plan and the Sanction and Vesting Order and to confirm the Plan and the Sanction and Vesting Order as binding and effective in any appropriate foreign jurisdiction;

(t) declare that the Target Canada Entities and the Monitor may apply to the Court from time to time for advice and direction in respect of any matters arising from or under the Plan;

(u) approve the form of the Employee Trust Termination Certificate, and declare that upon the delivery thereof, the Monitor shall file the Employee Trust Termination Certificate with the Court and, immediately upon such filing:

(i) the Employee Trust Trustee shall be deemed to be discharged from its duties as Employee Trust Trustee and released of all claims relating to its activities as Employee Trust Trustee; and

(ii) the Employee Trust Administrator shall be deemed to be discharged from its duties as Employee Trust Administrator and released of all claims relating to its activities as Employee Trust Trustee; and

(v) approve the form of the Monitor's Plan Completion Certificate, and declare that the Monitor, in its capacity as Monitor, following written notice from TCC pursuant to Section 5.12(d) that TCC has completed its duties to effect distributions, disbursements and payments in accordance with the Plan, shall file with the Court the Monitor's Plan Completion Certificate stating that all of its duties and the Target Canada Entities' duties under the Plan and the Orders have been completed, and thereafter the Monitor shall seek an Order, *inter alia*, discharging and releasing the Monitor from its duties as Monitor in the CCAA Proceedings, releasing the Target Canada Entities and any Directors and Officers holding such office following the Plan Implementation Date and their advisors, from all claims relating to the implementation of the Plan and releasing the Administration Charge and the Directors' Charge.

8.3 Conditions Precedent to Implementation of the Plan

The implementation of the Plan shall be conditional upon the fulfilment or waiver, where applicable, of the following conditions precedent by the date specified therefor, provided however that any waiver of any such conditions precedent shall require the consent of the Plan Sponsor and the Monitor acting reasonably:

(a) each of the Landlord Guarantee Creditors and the Plan Sponsor shall have executed and delivered the Landlord Guarantee Creditor Settlement Agreement and each of the Landlord Non-Guarantee Creditors and TCC shall have executed and delivered a Landlord Non-Guarantee Creditor Consent and Support Agreement(s), which agreements shall be in full force and effect;

(b) the Meeting Order shall have been granted by the Court on or before April 21, 2016, or such later date as shall be acceptable to TCC in consultation with the Monitor, and shall have become a Final Order;

(c) the Creditors' Meeting to consider and vote on the Plan shall have been convened by the date set by the Meeting Order or such later date and shall be acceptable to TCC in consultation with the Monitor;

(d) the Target Canada Entities shall have satisfied their respective Post-Filing Trade Payables in the ordinary course or

provision shall have been made in respect thereof in the Administrative Reserve to the satisfaction of the Monitor;

(e) all material consents, declarations, rulings, certificates or approvals of or by any Governmental Authority as may be considered necessary by the Target Canada Entities, the Plan Sponsor and the Monitor in respect of the Plan Transaction Steps shall have been obtained;

(f) the Plan shall have been approved by the Required Majority of the Affected Creditors forming the Unsecured Creditors' Class at the Creditors' Meeting;

(g) the Sanction and Vesting Order shall have been granted by the Court by June 6, 2016, or such later date as shall be acceptable to TCC, in consultation with the Monitor, in form satisfactory to the Target Canada Entities, the Plan Sponsor and the Monitor, and shall have become a Final Order; and

(h) the Plan Implementation Date shall have occurred by the date that is seven (7) days from the date on which the Sanction and Vesting Order becomes a Final Order, which in no event shall be later than July 29, 2016.

8.4 Monitor's Certificate

Upon delivery of written notice from the Target Canada Entities and the Plan Sponsor of the fulfilment or waiver of the conditions precedent to implementation of the Plan as set out in Section 8.3 of the Plan, the Monitor shall deliver the Monitor's Plan Implementation Certificate to the Target Canada Entities. Following the Plan Implementation Date, the Monitor shall file such certificate with the Court and shall post a copy of same on the Website.

Article 9 General

9.1 Binding Effect

On the Plan Implementation Date, or as otherwise provided in the Plan:

(a) the Plan will become effective at the Effective Time and the Plan Transaction Steps will be implemented;

(b) the treatment of Affected Claims, Propco Unaffected Claims, Property LP Unaffected Claims and the TCC Secured Construction Lien Claims under the Plan shall be final and binding for all purposes and enure to the benefit of the Target Canada Entities, the Plan Sponsor, all Affected Creditors, the Propco Unaffected Creditors, the Property LP Unaffected Creditors, the holders of TCC Secured Construction Lien Claims, the Released Parties and all other Persons and parties named or referred to in, or subject to, the Plan and their respective heirs, executors, administrators and other legal representatives, successors and assigns;

(c) all Affected Claims shall be and shall be deemed to be forever discharged and released, and all Propco Unaffected Claims, Property LP Unaffected Claims and TCC Secured Construction Lien Claims shall be and shall be deemed to be fully satisfied, discharged and released, excepting only the obligations to make distributions in respect of such Affected Claims, Propco Unaffected Claims, Property LP Unaffected Claims and TCC Secured Construction Lien Claims in the manner and to the extent provided for in the Plan; provided, however, that the Subordinated Intercompany Claims shall be discharged and released in a manner determined by the Plan Sponsor and the Target Canada Entities on or prior to the Plan Implementation Date;

(d) each Person named or referred to in, or subject to, the Plan shall be deemed to have consented and agreed to all of the provisions of the Plan, in its entirety;

(e) each Person named or referred to in, or subject to, the Plan shall be deemed to have executed and delivered to the Target Canada Entities and the Plan Sponsor all consents, releases, directions, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety; and

(f) each Person named or referred to in, or subject to, the Plan shall be deemed to have received from the Target Canada Entities and the Plan Sponsor all statements, notices, declarations and notifications, statutory or otherwise, required to

implement and carry out the Plan in its entirety.

9.2 Claims Bar Date

Nothing in this Plan extends or shall be interpreted as extending or amending the Claims Bar Date, or gives or shall be interpreted as giving any rights to any Person in respect of Claims that have been barred or extinguished pursuant to the Claims Procedure Order.

9.3 Deeming Provisions

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

9.4 Interest and Fees

Interest shall not accrue or be paid on Affected Claims after the Filing Date, and no holder of an Affected Claim shall be entitled to interest accruing nor to fees and expenses incurred in respect of an Affected Claim on or after the Filing Date and any Claims in respect of interest accruing or fees and expenses incurred on or after the Filing Date shall be deemed to be forever extinguished and released. For greater certainty, interest (if any) shall continue to accrue on Propco Unaffected Claims and Property LP Unaffected Claims in accordance with the terms of the applicable contract.

9.5 Non-Consummation

The Target Canada Entities reserve the right to revoke or withdraw the Plan at any time prior to the Plan Sanction Date with the consent of the Plan Sponsor. If the Target Canada Entities revoke or withdraw the Plan, or if the Sanction and Vesting Order is not issued or if the Plan Implementation Date does not occur, (a) the Plan (including all Plan Transaction Steps) shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the subordinations and/or re-contributions of any Intercompany Claims set out herein), or any document or agreement executed pursuant to or in connection with the Plan shall be deemed to be null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims, Propco Unaffected Claims or Property LP Unaffected Claims by or against any of the Target Canada Entities or any other Person, (ii) prejudice in any manner the rights of the Target Canada Entities, the Plan Sponsor or any other Person in any further proceedings involving any of the Target Canada Entities or Intercompany Claims or (iii) constitute an admission of any sort by any of the Target Canada Entities, the Plan Sponsor or any other Person.

9.6 Modification of the Plan

(a) The Target Canada Entities reserve the right, at any time and from time to time, with the consent of the Monitor and the Plan Sponsor, both prior to and during the Creditors' Meeting or after the Creditors' Meeting, to amend, restate, modify and/or supplement the Plan; provided (i) if made prior to or at the Creditors' Meeting, such amendment, restatement, modification or supplement shall be communicated to Affected Creditors in the manner required by the Meeting Order and (ii) if made following the Creditors' Meeting, such amendment, restatement, modification or supplement shall be approved by the Court following notice to the Affected Creditors.

(b) Notwithstanding Section 9.6(a), any amendment, restatement, modification or supplement to the Plan may be made by the Target Canada Entities, with the consent of the Monitor and the Plan Sponsor or pursuant to an Order of the Court, at any time and from time to time, provided that it concerns a matter which (i) is of an administrative nature required to better give effect to the implementation of the Plan and the Sanction and Vesting Order or (ii) to cure any errors, omissions or ambiguities, and in either case is not materially adverse to the financial or economic interests of the Affected Creditors.

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

9.7 Paramountcy

Except with respect to the Unaffected Claims, from and after the Effective Time on the Plan Implementation Date, any conflict between:

(a) the Plan; and

(b) the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed or implied, of any contract, mortgage, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, bylaws of the Target Canada Entities, lease or other agreement, written or oral and any and all amendments or supplements thereto existing between any Person and the Target Canada Entities as at the Plan Implementation Date;

will be deemed to be governed by the terms, conditions and provisions of the Plan and the Sanction and Vesting Order, which shall take precedence and priority.

9.8 Severability of Plan Provisions

If, prior to the Plan Sanction Date, any term or provision of the Plan is held by the Court to be invalid, void or unenforceable, the Court, at the request of the Target Canada Entities and with the consent of the Monitor and the Plan Sponsor, shall have the power to either (a) sever such term or provision from the balance of the Plan and provide the Target Canada Entities with the option to proceed with the implementation of the balance of the Plan as of and with effect from the Plan Implementation Date, or (b) alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applied as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, and provided that the Target Canada Entities proceed with the implementation of the Plan, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation.

9.9 Responsibilities of the Monitor

The Monitor is acting and will continue to act in all respects in its capacity as Monitor in the CCAA Proceedings with respect to the Target Canada Entities and not in its personal or corporate capacity, including without limitation supervising the establishment and administration of the TCC Cash Pool, the Propco Cash Pool, the Landlord Guarantee Creditor Base Claim Cash Pool, the Landlord Guarantee Enhancement Cash Pool, the Landlord Non-Guarantee Creditor Equalization Cash Pool, the Plan Sponsor Propco Recovery Limit Reserve and the Cash Reserves (including any adjustments with respect to same) and establishing any of the Distribution Dates, Effective Time or the timing or sequence of the Plan Transaction Steps. The Monitor will not be responsible or liable whatsoever for any obligations of the Target Canada Entities or the Plan Sponsor. The Monitor will have the powers and protections granted to it by the Plan, the CCAA, the Initial Order, the Meeting Order, the Sanction and Vesting Order and any other Order made in the CCAA Proceedings.

9.10 Different Capacities

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

9.11 Notices

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

(a) If to the Target Canada Entities:

Target Canada Co.

c/o Osier, Hoskin & Harcourt LLP

Box 50, 1 First Canadian Place

100 King Street West

Toronto, ON M5X 1B8

Attention: Aaron Alt

Email: aaron.alt@target.com

with a copy to:

Osier, Hoskin & Harcourt LLP

Box 50, 1 First Canadian Place

100 King Street West

Toronto, ON M5X 1B8

Attention: Tracy C. Sandler

Email: tsandler@osler.com

(b) If to the Plan Sponsor:

Target Corporation

1000 Nicollet Mall

TPS-3155

Minneapolis, MN 55403

Attention: Corey Haaland

Email: corey.haaland@target.com

with a copy to:

Faegre Baker Daniels LLP

2200 Wells Fargo Center

90 S. Seventh Street

Minneapolis, MN 55402

Attention: Dennis M. Ryan

Email: dennis.ryan@faegrebd.com

with a copy to:

Davies Ward Phillips & Vineberg LLP

155 Wellington Street West

Toronto, ON M5V 3J7

Attention: Jay A. Swartz

Email: jswartz@dwpv.com

(c) If to the Monitor or the Employee Trust Administrator:

Alvarez & Marsal Canada Inc.

Royal Bank Plaza, South Tower

200 Bay Street, Suite 2900

PO Box 22

Toronto, ON M5J 2J1

Attention: Douglas R. Mcintosh / Alan J. Hutchens

Email: dmcintosh@alvarezandmarsal.com / ahutchens@alvarezandmarsal.com

with a copy to:

Goodmans LLP

Bay Adelaide Centre

333 Bay Street, Suite 3400

Toronto, ON M5H 2S7

Attention: Jay A. Carfagnini / Melaney Wagner

Email: jcarfagnini@goodmans.ca / mwagner@goodmans.ca

(d) If to the Employee Trust Trustee:

Hon. John D. Ground

Amicus Chambers

141 Adelaide Street West

11th Floor

Toronto, ON M5H 3L5

Email: jground@NeesonChambers.com

with a copy to:

Lax O'Sullivan Lisus Gottlieb LLP

145 King Street West, Suite 2750

Toronto, ON M5H 1J8

Attention: Terrence O'Sullivan

Email: tosullivan@counsel-toronto.cora

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

9.12 Further Assurances

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

DATED as of the 19th day of May, 2016.

Schedule "A"

Intercompany Claims[1]

Claim #	*Original Claimant*	*Debtor Company*	*Currency*	*Claim ($)*	*Proposed Adjustment*	*Recalculated Claim*	*Comingent Claim*	*Defined Plan Term*	*Plan treatment*
Intercompany Claim									
Claim #1	NE1	TCC	CAD	3,068,729,438	-	3,068,729,438		NE1 Intercompany Claim	Fully subordinated
Claim #2									
2A	TBI	TCC	USD	23,573,542	(4,786,473)	18,787,069		N/A	Distribution from TCC Cash Pool as Affected Creditor
2B	TBI	TCC	USD	37,502,539	(37,502,539)	-		N/A	N/A
Claim #3	TCSI	TCC	USD	2,778,278	(613,869)	2,164,409		N/A	Distribution from TCC Cash Pool as Affected Creditor
Claim #4									
4A	TC	Prop LLC	USD	89,079,107	-	89,079,107		Plan Sponsor (Propco) Intercompany Claim	Recovery limited (distribution up to Plan Sponsor Propco Recovery Limit in accordance with Section 5.6)
4B	TC	TCC	USD	541,404	(36,585)	504,818		N/A	Distribution from TCC Cash Pool as Affected Creditor
4C	TC	TCC	USD	559,373	(559,373)	-		N/A	N/A

Leasehold Arrangements Claims									
Claim #5									
5A	Prop LP	Prop LLC	CAD	1,449,577,927		1,449,577,927		Property LP (Propco) Intercompany Claim	Partially subordinated (see Section 5.3 of the Plan)
5B	Prop LP	TCC	CAD	87,748,817	(4,886,996)	82,861,821		Property LP (TCC) Intercompany Claim	Distribution from TCC Cash Pool as Affected Creditor
5C	Prop LP	Prop LLC					Contingent	N/A	N/A
5D	Prop LP	TCC					Contingent	N/A	N/A
Claim #6									
6A	Prop LLC	TCC	CAD	27,254,109 (after netting claim 7A, being 46,873,620 on a gross basis)	6,978,418	34,232,528 (after netting claim 7A, being 45,852,897 on a gross basis)		Propco (Pre-filing TCC) Intercompany Claim	Fully subordinated
6B	Prop LLC	TCC	CAD	1,911,494,242	(554,738,191)	1,356,756,051		Propco Intercompany Claim	Fully subordinated
6C	Prop LLC	TCC	CAD	37,347,552 (after netting claim 7B, being 43,651,173 on a gross basis)	(787,729)	36,559,823 (after netting claim 7B, being 43,526,186 on a gross basis)		Propco (Post-filing TCC) Intercompany Claim	Fully subordinated
Claim #7									
7A	TCC	Prop LLC	CAD	19,619,511	(7,999,142)	11,620,369	Contingent	TCC (Pre-filing Propco) Intercompany Claim	Partially subordinated (see Section 5.3 of the Plan)
7B	TCC	Prop LLC	CAD	6,303,621	662,742	6,966,363	Contingent	TCC (Post-filing Propco) Intercompany Claim	Partially subordinated (see Section 5.3 of the Plan)
7C	TCC	Prop LP	CAD	528,730	-	528,730	Contingent	N/A	Netted against Intercompany Claim 5B

Schedule ”B”

Domain Names

alliesforconsumerdigitalsafety.ca
avaandviv.ca
avaviv.ca
brightspotmobile.ca
brightspotphone.ca
bullseyemobilesolutions.ca
bullseyepharmacy.ca
bullseyeshoprequests.ca
bullseyespecialrequests.ca
bullseyesubscription.ca
bullseyesubscriptions.ca
bullseyeticket.ca
bullseyetickets.ca
canadapartnersonline.ca
consumerdigitalsafetyallies.ca
consumerdigitalsafetyconsortium.ca
digitalsafetyallies.ca
dites-le-nous-target.ca
domaniedelarcher.ca
expectmorepayless.ca
garde-marche.ca
hopethop.ca
larchermaraicher.ca
marchefute.ca
moretaylor.ca
mybrightspot.ca
partenairescanadiensenligne.ca
partnersonlinecanada.ca
pharmacyevents.ca
redperk.ca
redperks.ca
reellementessentiel.ca
savoreveryday.ca
savoureveryday.ca
smith-hawken.ca
smithhawken.ca
smithnhawken.ca
suttonanddodge.ca
takechargeofeducation.ca
target-ceo.ca
targetcartwheel.ca
targetceo.ca
targetexpress.ca
targetget.ca
targetlocation.ca
targetspoton.ca
targetsubscription.ca
targetsubscriptions.ca
tellbullseye.ca
telltarget.ca
telltgt.ca
tevolio.ca

trouvezmieuxpayezmoins.ca
upandup.ca
upandupbrand.ca
upup.ca
upupbrand.ca
wellbeingdreams.ca
winecube.ca
yourtarget.ca

Schedule "C"

Meeting Order

ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

THE HONOURABLE	)	WEDNESDAY, THE 13{ TH}
	)	
REGIONAL SENIOR JUSTICE MORAWETZ	)	DAY OF APRIL, 2016
	)	

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TARGET CANADA CO., TARGET CANADA HEALTH CO., TARGET CANADA MOBILE GP CO., TARGET CANADA PHARMACY (BC) CORP., TARGET CANADA PHARMACY (ONTARIO) CORP., TARGET CANADA PHARMACY CORP., TARGET CANADA PHARMACY (SK) CORP., and TARGET CANADA PROPERTY LLC (collectively the *"Applicants"*)

Meeting Order

THIS MOTION, made by the Applicants and the partnerships listed on Schedule "A" hereto (together with the Applicants, the *"Target Canada Entities"*) pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the *"CCAA"*) for an order, *inter alia*, (a) accepting the filing of an Amended and Restated Joint Plan of Compromise and Arrangement pursuant to the CCAA filed by the Target Canada Entities dated April 6, 2016 (the *"Plan"*), (b) authorizing the Target Canada Entities to establish one class of Affected Creditors for the purpose of considering and voting on the Plan, (c) authorizing the Target Canada Entities to call, hold and conduct a meeting of the Affected Creditors (the *"Creditors' Meeting"*) to consider and vote on a resolution to approve the Plan; (d) approving the procedures to be followed with respect to the calling and conduct of the Creditors' Meeting; and (e) setting the date for the hearing of the Target Canada Entities' motion seeking sanction of the Plan, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Mark J. Wong sworn April 6, 2016 (the *"Wong Affidavit"*), and the exhibits thereto and the Twenty-Sixth Report of the Monitor, and on hearing the submissions of respective counsel for the Target Canada Entities, the Monitor, and such other counsel as were present, and on being advised that the Service List was served with the Motion Record herein:

Service

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and that service thereof upon any interested party other than the persons served with the Motion Record is hereby dispensed with.

2. THIS COURT ORDERS that any capitalized terms not otherwise defined in this Meeting Order shall have the meanings ascribed to them in the Plan.

Amended and Restated Joint Plan of Compromise and Arrangement

3. THIS COURT ORDERS that the Plan is hereby accepted for filing, and the Target Canada Entities are hereby authorized to seek approval of the Plan from the Affected Creditors in the manner set forth herein.

4. THIS COURT ORDERS that the Target Canada Entities, with the consent of the Plan Sponsor and the Monitor, be and they are hereby authorized to make and to file a modification or restatement of, or amendment or supplement to, the Plan (each a *"Plan Modification"*) prior to or at the Creditors' Meeting, in which case any such Plan Modification shall, for all purposes, be and be deemed to form part of and be incorporated into the Plan. The Target Canada Entities shall give notice of

any such Plan Modification at the Creditors' Meeting prior to the vote being taken to approve the Plan. The Target Canada Entities may give notice of any such Plan Modification at or before the Creditors' Meeting by notice which shall be sufficient if, in the case of notice at the Creditors' Meeting, given to those Affected Creditors present at such meeting in person or by Proxy and, in the case of notice before the Creditors' Meeting, provided to those Persons listed on the service list posted on the Website (as amended from time to time, the *"Service List"*). The Monitor shall forthwith post on the Website any such Plan Modification, with notice of such posting forthwith provided to the Service List.

5. THIS COURT ORDERS that after the Creditors' Meeting (and both prior to and subsequent to the obtaining of any Sanction and Vesting Order), the Target Canada Entities may at any time and from time to time, with the consent of the Plan Sponsor and the Monitor effect a Plan Modification (a) pursuant to an Order of the Court or (b) where such Plan Modification concerns a matter which, in the opinion of the Target Canada Entities and the Monitor, is of an administrative nature required to better give effect to the implementation of the Plan and the Sanction and Vesting Order or to cure any errors, omissions or ambiguities, and in either circumstance is not materially adverse to the financial or economic interests of the Affected Creditors. The Monitor shall forthwith post on the Website any such Plan Modification, with notice of such posting forthwith provided to the Service List.

Forms of Documents

6. THIS COURT ORDERS that the Notice of Creditors' Meeting substantially in the form attached hereto as Schedule "B" (the *"Notice of Creditors' Meeting"*), the Proxy substantially in the form attached hereto as Schedule "C" (the *"Proxy"*), the Convenience Class Claim Election substantially in the form attached hereto as Schedule "D" (the *"Convenience Class Claim Election"*) and the form of Resolution substantially in the form attached as Schedule "E" (the *"Resolution"*) are each hereby approved and the Target Canada Entities with the consent of the Monitor are authorized and directed to make such changes to such forms of documents as they consider necessary or desirable to conform the content thereof to the terms of the Plan or this Meeting Order.

Classification of Creditors

7. THIS COURT ORDERS that for the purposes of considering and voting on the Plan, the Affected Creditors shall constitute a single class, the "Unsecured Creditors' Class".

Notice of Creditors' Meeting

8. THIS COURT ORDERS that the Monitor shall cause to be sent by regular pre-paid mail, courier, fax or e-mail copies of the Notice of Creditors' Meeting, the Proxy, the Convenience Class Claim Election, the Resolution, the Plan, the Letter to Creditors attached as Exhibit "B" to the Wong Affidavit and a copy of this Meeting Order (collectively, the *"Meeting Materials"*) as soon as practicable after the granting of this Meeting Order and, in any event, no later than April 21, 2016 to each Affected Creditor at the address for such Affected Creditor set out in such Affected Creditor's Proof of Claim or to such other address subsequently provided to the Monitor by such Affected Creditor.

9. THIS COURT ORDERS that the Monitor shall forthwith post an electronic copy of the Meeting Materials on the Website, send a copy of the Meeting Materials to the Service List and shall provide a written copy to any Affected Creditor upon request by such Affected Creditor.

10. THIS COURT ORDERS that on or before April 27, 2016 the Monitor shall cause the Notice of Creditors' Meeting to be published for a period of two (2) Business Days in *The Globe and Mail* (National Edition), *La Presse* and *The Wall Street Journal*.

11. THIS COURT ORDERS that the delivery of the Meeting Materials in the manner set out in paragraph 8 hereof, posting of the Meeting Materials on the Website in accordance with paragraph 8 hereof, and the publication of the Notice of Creditors' Meeting in accordance with paragraph 9 hereof shall constitute good and sufficient service of this Meeting Order and of the Plan, and good and sufficient notice of the Creditors' Meeting on all Persons who may be entitled to receive notice thereof of these proceedings or who may wish to be present in person or by Proxy at the Creditors' Meeting or who may wish to appear in these proceedings, and no other form of notice or service need be made on such Persons.

12. THIS COURT ORDERS that on or before May 11, 2016, the Monitor shall serve a report regarding the Plan on the Service List and promptly thereafter post such report on the Website.

Conduct at the Creditors' Meeting

13. THIS COURT ORDERS that the Target Canada Entities are hereby authorized to call, hold and conduct the Creditors' Meeting on May 25, 2016 at 10:00 a.m. at the Toronto Region Board of Trade, 77 Adelaide Street West in Toronto, Ontario for the purpose of considering, and if deemed advisable by the Unsecured Creditors' Class, voting in favour of, with or without variation, the Resolution to approve the Plan.
14. THIS COURT ORDERS that a representative of the Monitor, designated by the Monitor, shall preside as the chair of the Creditors' Meeting (the *"Chair"*) and, subject to any further Order of this Court, shall decide all matters relating to the conduct of the Creditors' Meeting.
15. THIS COURT ORDERS that the Chair is authorized to accept and rely upon Proxies or such other forms as may be acceptable to the Chair.
16. THIS COURT ORDERS that the quorum required at the Creditors' Meeting shall be one (1) Affected Creditor with a Voting Claim present at such meeting in person or by Proxy.
17. THIS COURT ORDERS that the Monitor may appoint scrutineers for the supervision and tabulation of the attendance at, quorum at and votes cast at the Creditors' Meeting. A Person designated by the Monitor shall act as secretary at the Creditors' Meeting.
18. THIS COURT ORDERS that if (a) the requisite quorum is not present at the Creditors' Meeting, or (b) the Creditors' Meeting is postponed by the vote of the majority in value of Affected Creditors holding Voting Claims in person or by Proxy at the Creditors' Meeting, then the Creditors' Meeting shall be adjourned by the Chair to such time and place as the Chair deems necessary or desirable.
19. THIS COURT ORDERS that the Chair be, and he or she is hereby, authorized to adjourn, postpone or otherwise reschedule the Creditors' Meeting on one or more occasions to such time(s), date(s) and place(s) as the Chair deems necessary or desirable (without the need to first convene such Creditors' Meeting for the purpose of any adjournment, postponement or other rescheduling thereof). None of the Target Canada Entities, the Chair or the Monitor shall be required to deliver any notice of the adjournment of the Creditors' Meeting or adjourned Creditors' Meeting, provided that the Monitor shall: (a) announce the adjournment of the Creditors' Meeting or adjourned Creditors' Meeting, as applicable; (b) post notice of the adjournment at the originally designated time and location of the Creditors' Meeting or adjourned Creditors' Meeting, as applicable; (c) forthwith post notice of the adjournment on the Website; and (d) provide notice of the adjournment to the Service List forthwith. Any Proxies validly delivered in connection with the Creditors' Meeting shall be accepted as Proxies in respect of any adjourned Creditors' Meeting.
20. THIS COURT ORDERS that the only Persons entitled to attend and speak at the Creditors' Meeting are representatives of the Target Canada Entities and the Plan Sponsor and their respective legal counsel and advisors, the Monitor and its legal counsel and advisors, Pharmacists' Representative Counsel, Employee Representative Counsel, the Employee Trust Trustee and his legal counsel and all other Persons, including the holders of Proxies, entitled to vote at the Creditors' Meeting and their respective legal counsel and advisors. Any other Person may be admitted to the Creditors' Meeting on invitation of the Chair.

Voting Procedure at the Creditors' Meeting

21. THIS COURT ORDERS that the Chair shall direct a vote on the Resolution to approve the Plan and any amendments or variations thereto made in accordance with the Plan and this Meeting Order.
22. THIS COURT ORDERS that any Proxy in respect of the Creditors' Meeting (or any adjournment, postponement or other rescheduling thereof) must be (a) received by the Monitor by 10:00 a.m. on May 24, 2016, or 24 hours (excluding Saturdays, Sundays and statutory holidays) prior to any adjourned, postponed or rescheduled Creditors' Meeting, or (b) deposited with the Chair at the Creditors' Meeting (or any adjournment, postponement or other rescheduling thereof) immediately prior to the vote at the time specified by the Chair (the *"Election/Proxy Deadline"*).
23. THIS COURT ORDERS that, in the absence of instruction to vote for or against the approval of the Resolution in a duly signed and returned Proxy, the Proxy shall be deemed to include instructions to vote for the approval of the Resolution, provided the Proxy holder does not otherwise exercise its right to vote at the Creditors' Meeting.
24. THIS COURT ORDERS that each Affected Creditor with a Voting Claim shall be entitled to one vote equal to the dollar value of its Affected Claim determined as a Voting Claim in accordance with the Claims Procedure Order and paragraph(s) 30 and 30 of this Meeting Order.
25. THIS COURT ORDERS that each Convenience Class Creditor shall be deemed to have voted in favour of the Plan.
26. THIS COURT ORDERS that (a) holders of Intercompany Claims shall not be entitled to vote on the Plan and (b) the Plan Sponsor shall not be entitled to vote on the Plan in respect of (i) its Plan Sponsor Subrogated Claims, (ii) any amounts to be contributed to the Landlord Guarantee Enhancement Cash Pool and to the Landlord Non-Guarantee Creditor Equalization Cash Pool under the Plan, or (iii) any Cash Management Lender Claims.

27. THIS COURT ORDERS that an Affected Creditor's Voting Claim shall not include fractional numbers and Voting Claims shall be rounded down to the nearest whole Canadian Dollar amount.
28. THIS COURT ORDERS that an Affected Creditor, a Propco Unaffected Creditor or a Property LP Unaffected Creditor may transfer or assign the whole of its Claim prior to the Creditors' Meeting, provided that neither the Target Canada Entities nor the Monitor shall be obligated to give notice to or otherwise deal with the transferee or assignee of such Claim as an Affected Creditor, a Propco Unaffected Creditor or a Property LP Unaffected Creditor in respect thereof, including allowing such transferee or assignee of an Affected Claim to vote at the Creditors' Meeting, unless and until actual notice of the transfer or assignment, together with satisfactory evidence of such transfer or assignment, has been received and acknowledged by the Monitor in writing no later than 5:00 p.m. on the date that is seven (7) days prior to the Creditors' Meeting. Thereafter such transferee or assignee shall, for all purposes in accordance with the Claims Procedure Order and this Meeting Order, constitute an Affected Creditor, a Propco Unaffected Creditor or a Property LP Unaffected Creditor, as applicable, and shall be bound by any and all notices previously given to the transferor or assignor and steps taken in respect of such Claim. Such transferee or assignee shall not be entitled to set-off, apply, merge, consolidate or combine any Claims assigned or transferred to it against or on account or in reduction of any amounts owing by such transferee or assignee to any of the Target Canada Entities. Where a Claim has been transferred or assigned in part, the transferor or assignor shall retain the right to vote at the Creditors' Meeting in respect of the full amount of the Claim as determined for voting purposes in accordance with this Meeting Order, and the transferee or assignee shall have no voting rights at the Creditors' Meeting in respect of such Claim.
29. THIS COURT ORDERS that an Affected Creditor (other than a Convenience Class Creditor), a Propco Unaffected Creditor or a Property LP Unaffected Creditor may transfer or assign the whole of its Claim after the Creditors' Meeting provided that the Target Canada Entities shall not be obligated to make any distributions to any such transferee or assignee or otherwise deal with such transferee or assignee as an Affected Creditor, a Propco Unaffected Creditor or a Property LP Unaffected Creditor in respect thereof unless and until actual notice of the transfer or assignment, together with satisfactory evidence of such transfer or assignment, has been received and acknowledged by the Monitor in writing. Thereafter, such transferee or assignee shall, for all purposes in accordance with the Claims Procedure Order, this Meeting Order and the Plan, constitute an Affected Creditor, a Propco Unaffected Creditor or a Property LP Unaffected Creditor, as applicable, and shall be bound by any and all notices previously given to the transferor or assignor and steps taken in respect of such Claim.

Disputed Claims

30. THIS COURT ORDERS that the Canada Revenue Agency shall have one vote in respect of its Disputed Claims, the dollar value of which shall be equal to $1, without prejudice to the determination of the dollar value of such Disputed Claims for distribution purposes in accordance with the Claims Procedure Order.
31. THIS COURT ORDERS that the dollar value of a Disputed Claim of an Affected Creditor (other than the Disputed Claims of the Canada Revenue Agency) for voting purposes at the Creditors' Meeting shall be the dollar value of such Disputed Claim as set out in such Affected Creditor's Notice of Revision or Disallowance previously delivered by the Monitor pursuant to the Claims Procedure Order, without prejudice to the determination of the dollar value of such Affected Creditor's Disputed Claim for distribution purposes in accordance with the Claims Procedure Order.
32. THIS COURT ORDERS that the Monitor shall keep a separate record of votes cast by Affected Creditors holding Disputed Claims and shall report to the Court with respect thereto at the Sanction Motion.

Convenience Class Claim Election

33. THIS COURT ORDERS that any Affected Creditor with one or more Proven Claims in an amount in excess of Cdn$25,000 shall be entitled to elect to receive only the Cash Elected Amount and be deemed to vote in favour of the Plan in accordance with paragraph 24 hereof by returning an executed Convenience Class Claim Election to the Monitor prior to the Election/Proxy Deadline.

Approval of the Plan

34. THIS COURT ORDERS that in order to be approved, the Plan must receive an affirmative vote by the Required Majority.
35. THIS COURT ORDERS that following the vote at the Creditors' Meeting, the Monitor shall tally the votes and determine whether the Plan has been approved by the Required Majority.
36. THIS COURT ORDERS that the results of and all votes provided at the Creditors' Meeting shall be binding on all

Affected Creditors, whether or not any such Affected Creditor is present or voting at the Creditors' Meeting.

Sanction Hearing

37. THIS COURT ORDERS that the Monitor shall provide a report to the Court as soon as practicable after the Creditors' Meeting (the *"Monitor's Report Regarding the Creditors' Meeting"*) with respect to:

(a) the results of voting at the Creditors' Meeting on the Resolution;

(b) whether the Required Majority has approved the Plan;

(c) the separate tabulation for Disputed Claims required by paragraph 32 herein; and

(d) in its discretion, any other matter relating to the Target Canada Entities' motion seeking sanction of the Plan.

38. THIS COURT ORDERS that an electronic copy of the Monitor's Report Regarding the Creditors' Meeting, the Plan, including any Plan Modifications, and a copy of the motion seeking the Sanction and Vesting Order in respect of the Plan (the *"Sanction Motion"*) shall be posted on the Website prior to the Sanction Motion.
39. THIS COURT ORDERS that in the event the Plan has been approved by the Required Majority, the Target Canada Entities may bring the Sanction Motion before this Court on June 2, 2016, or such later date as shall be acceptable to the Target Canada Entities, the Plan Sponsor and the Monitor as set by this Court upon motion by the Target Canada Entities, seeking the Sanction and Vesting Order.
40. THIS COURT ORDERS that service of this Meeting Order by the Target Canada Entities to the parties on the Service List, the delivery of the Meeting Materials in accordance with paragraph 8 hereof, posting of the Meeting Materials on the Website in accordance with paragraph 8 hereof, and the publication of the Notice of Creditors' Meeting in accordance with paragraph 9 hereof shall constitute good and sufficient service and notice of the Sanction Motion.
41. THIS COURT ORDERS that any Person intending to oppose the Sanction Motion shall (i) file or have filed with the Court a Notice of Appearance and serve such Notice of Appearance on the Service List at least seven (7) days before the date set for the Sanction Motion; and (ii) serve on the Service List a notice setting out the basis for such opposition and a copy of the materials to be used to oppose the Sanction Motion that are available by at least seven (7) days before the date set for the Sanction Motion, or such shorter time as the Court, by Order, may allow.
42. THIS COURT ORDERS that in the event that the Sanction Motion is adjourned, only those Persons appearing on the Service List as of the date of service shall be served with notice of the adjourned date.
43. THIS COURT ORDERS that, subject to any further Order of the Court, in the event of any conflict, inconsistency, ambiguity or difference between the provisions of the Plan and this Meeting Order, the terms, conditions and provisions of the Plan shall govern and be paramount, and any such provision of this Meeting Order shall be deemed to be amended to the extent necessary to eliminate any such conflict, inconsistency, ambiguity or difference.

Extension of Stay Period

44. THIS COURT ORDERS that the Stay Period (as defined in paragraph 17 of the Initial Order) is hereby extended until and including June 6, 2016.

Extension of Notice of Objection Bar Date

45. THIS COURT ORDERS that the definition of "Notice of Objection Bar Date" set out at paragraph 3(aa) of the Claims Procedure Order (issued by Regional Senior Justice Morawetz on June 11, 2015, as amended) is hereby amended to extend the Notice of Objection Bar Date to 28 days following June 6, 2016 or such later date as this Court may Order.

General Provisions
46. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA and the Initial Order, shall assist the Target Canada Entities in connection with the matters described herein, and is hereby authorized and directed to take such other actions and fulfill such other roles as are contemplated by this Meeting Order.
47. THIS COURT ORDERS that the Target Canada Entities and the Monitor shall use reasonable discretion as to the adequacy of compliance with respect to the manner in which any forms hereunder are completed and executed and the time in which they are submitted and may waive strict compliance with the requirements of this Meeting Order including with

respect to the completion, execution and time of delivery of required forms.
48. THIS COURT ORDERS that the Monitor may, if necessary, apply to this Court for directions regarding its obligations under this Meeting Order.
49. THIS COURT ORDERS that any notice or other communication to be given under this Meeting Order by a Creditor to the Monitor or the Target Canada Entities shall be in writing in the substantially the form, if any, provided for in this Meeting Order and will be sufficiently given only if given by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or e-mail addressed to:

Target Canada Entities' Counsel:	Osier, Hoskin & Harcourt LLP P.O. Box 50, 1 First Canadian Place 100 King Street West Toronto, ON M5X 1B8 Attention: Tracy C. Sandler / Jeremy E. Dacks E-mail: tsandler@osler.com / jdacks@osler.com Fax: (416) 862-6666
The Monitor:	Alvarez & Marsal Canada Inc., Target Canada Monitor 200 Bay Street, Suite 2900 P.O. Box 22 Toronto, ON M5J 2J1 Attention: Alan J. Hutchens E-mail: ahutchens@alvarezandmarsal.com Fax: (416) 847-5201
With a copy to Monitor's Counsel:	Goodmans LLP Bay Adelaide Centre 333 Bay Street, Suite 3400 Toronto, ON M5H 2S7 Attention: Jay A. Carfagnini / Melaney J. Wagner E-mail: jcarfagnini@goodmans.ca / mwagner@goodmans.ca Fax: (416) 979-1234

50. THIS COURT ORDERS that any such notice or other communication shall be deemed to have been received: (a) if sent by prepaid ordinary mail or registered mail, on the third Business Day after mailing in Ontario, the fifth Business Day after mailing within Canada (other than within Ontario), and the tenth Business Day after mailing internationally; (b) if sent by courier or personal delivery, on the next Business Day following dispatch; and (c) if delivered by facsimile transmission or e-mail by 5:00 p.m. on a Business Day, on such Business Day and if delivered after 5:00 p.m. or other than on a Business Day, on the following Business Day.
51. THIS COURT ORDERS that, in the event that the day on which any notice or communication required to be delivered pursuant to this Meeting Order is not a Business Day, then such notice or communication shall be required to be delivered on the next Business Day.
52. THIS COURT ORDERS that if, during any period during which notices or other communications are being given pursuant to this Meeting Order, a postal strike or postal work stoppage of general application should occur, such notices or other communications sent by ordinary or registered mail and then not received shall not, absent further Order of this Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery, facsimile transmission or e-mail in accordance with this Order.
53. THIS COURT ORDERS that all references to time in this Meeting Order shall mean prevailing local time in Toronto, Ontario and any references to an event occurring on a Business Day shall mean prior to 5:00 p.m. on the Business Day unless otherwise indicated.
54. THIS COURT ORDERS that references to the singular shall include the plural, references to the plural shall include the singular and to any gender shall include the other gender.
55. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Meeting Order and to assist the Target Canada Entities, the Monitor and their respective agents in carrying out the terms of this Meeting Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Target Canada Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to

this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Target Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.

Schedule "A"

Partnerships

Target Canada Pharmacy Franchising LP
Target Canada Mobile LP
Target Canada Property LP

Schedule "B"

Notice of Creditors' Meeting

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 THE TARGET CANADA ENTITIES AMENDED AND RESTATED JOINT PLAN OF COMPROMISE AND ARRANGEMENT

Notice of Creditors' Meeting

TO: The Affected Creditors of Target Canada Co., Target Canada Health Co., Target Canada Mobile GP Co., Target Canada Pharmacy (BC) Corp., Target Canada Pharmacy (Ontario) Corp., Target Canada Pharmacy Corp., Target Canada Pharmacy (SK) Corp., Target Canada Property LLC, Target Canada Pharmacy Franchising LP, Target Canada Mobile LP and Target Canada Property LP (collectively, the *"Target Canada Entities"*)
NOTICE IS HEREBY GIVEN that a meeting of the Affected Creditors of the Target Canada Entities will be held on May 25, 2016 at 10:00 a.m. at the Toronto Region Board of Trade, 77 Adelaide Street West, Toronto, ON M5X 1C1 (the *"Creditors' Meeting"*) for the following purposes:

1. to consider and, if deemed advisable, to pass, with or without variation, a resolution (the *"Resolution"*) approving the Amended and Restated Joint Plan of Compromise and Arrangement of the Target Canada Entities pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") dated April •, 2016 (as amended, restated, modified and/or supplemented from time to time in accordance with the terms thereof, the *"Plan"*); and

2. to transact such other business as may properly come before the Creditors' Meeting or any adjournment or postponement thereof.

The Creditors' Meeting is being held pursuant to an order (the *"Meeting Order"*) of the Ontario Superior Court of Justice (Commercial List) (the *"Court"*) made on April *[13]*, 2016.
Capitalized terms used and not otherwise defined in this Notice have the respective meanings given to them in the Plan.
The Plan contemplates the compromise of Claims of the Affected Creditors. Quorum for the Creditors' Meeting has been set by the Meeting Order as the presence, in person or by Proxy, at the Creditors' Meeting of one Affected Creditor with a Voting Claim.
In order for the Plan to be approved and binding in accordance with the CCAA, the Resolution must be approved by that number of Affected Creditors representing at least a majority in number of Voting Claims, whose Affected Claims represent at least two-thirds in value of the Voting Claims of Affected Creditors who validly vote (in person or by Proxy) on the Resolution at the Creditors' Meeting or were deemed to vote on the Resolution as provided for in the Meeting Order (the *"Required Majority"*). Each Affected Creditor will be entitled to one vote at the Creditors' Meeting, which vote will have the value of such person's Voting Claim as determined in accordance with the Claims Procedure Order and the Meeting Order. If approved by the Required Majority, the Plan must also be sanctioned by the Court under the CCAA. Subject to the satisfaction of the other conditions precedent to implementation of the Plan, all Affected Creditors will then receive the treatment set forth in the Plan.

Deemed Voting in Favour of the Plan

Convenience Class Creditors will be deemed to vote in favour of the Plan.

Forms and Proxies

Convenience Class Claim Election

Affected Creditors with one or more Proven Claims in an amount in excess of Cdn$25,000 may file with the Monitor a Convenience Class Claim Election, pursuant to which such Affected Creditor may elect to be treated as a Convenience Class Creditor and receive only the Cash Elected Amount of Cdn$25,000 and shall be deemed thereby to vote in favour of the Plan, prior to 10:00 a.m. (Toronto Time) on May 24, 2016, or 24 hours (excluding Saturdays, Sundays and statutory holidays) prior to any adjourned, postponed or rescheduled Creditors' Meeting, or deposit such Convenience Class Claim Election with the Chair at the Creditors' Meeting (or any adjournment, postponement or other rescheduling thereof) immediately prior to the vote at the time specified by the Chair (the *"Election/Proxy Deadline"*).

Proxy Form

An Affected Creditor may attend at the Creditors' Meeting in person or may appoint another person as its proxyholder by inserting the name of such person in the space provided in the form of Proxy provided to Affected Creditors by the Monitor, or by completing another valid form of Proxy. Persons appointed as proxyholders need not be Affected Creditors.
In order to be effective, proxies must be received by the Monitor at Alvarez & Marsal Canada Inc., 200 Bay Street, Suite 2900, P.O. Box 22, Toronto, ON M5J 2J1 (Attention: Steven Glustein), facsimile: (416) 847-5201, e-mail: targetcanadamonitor@alvarezandmarsal.com, prior to the Election/Proxy Deadline.
If an Affected Creditor (other than those who are deemed to vote in favour of the Plan as set out above) specifies a choice with respect to voting on the Resolution on a Proxy, the Proxy will be voted in accordance with the specification so made. *In absence of such specification, a Proxy will be voted FOR the Resolution provided that the proxyholder does not otherwise exercise its right to vote at the Creditors'. Meeting.*
NOTICE IS ALSO HEREBY GIVEN that if the Plan is approved by the Required Majority at the Creditors' Meeting, the Target Canada Entities intend to bring a motion before the Court on June 2, 2016 at 9:30 a.m. (Toronto time) at the Court located at 330 University Avenue, Toronto, Ontario M5G 1R8. The motion will be seeking the granting of the Sanction and Vesting Order sanctioning the Plan under the CCAA and for ancillary relief consequent upon such sanction. Any Affected Creditor that wishes to appear or be represented, and to present evidence or arguments, at such Court hearing must file with the Court a Notice of Appearance and serve such Notice of Appearance on the Service List at least seven (7) days before such Court hearing. Any Affected Creditor that wishes to oppose the relief sought at such Court hearing shall serve on the Service List a notice setting out the basis for such opposition and a copy of the materials to be used at such hearing at least seven (7) days before the date set for such hearing, or such shorter time as the Court, by Order, may allow. A copy of the Service List may be obtained by contacting the Monitor at the particulars set out above or from the Monitor's website set out below.
This Notice is given by the Target Canada Entities pursuant to the Meeting Order.
You may view copies of the documents relating to this process on the Monitor's website at www.alvarezandmarsal.com/targetcanada.
DATED this • day of •, •.

Schedule "C"

Form of Proxy

PROXY AND INSTRUCTIONS FOR AFFECTED CREDITORS IN THE MATTER OF THE PROPOSED AMENDED AND RESTATED JOINT PLAN OF COMPROMISE AND ARRANGEMENT OF THE TARGET CANADA ENTITIES

Meeting of Affected Creditors

to be held pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the *"Court"*) made on April *[13]*, 2016 (the *"Meeting Order"*) in connection with the Amended and Restated Joint Plan of Compromise and Arrangement of the Target Canada Entities dated April •, 2016 (as amended, restated, modified and/or supplemented from time to time, the *"Plan"*)

on May 25, 2016 at 10:00 a.m. (Toronto time) at

Toronto Region Board of Trade

77 Adelaide Street West

Toronto, ON M5X 1C1

and at any adjournment, postponement or other rescheduling thereof (the *"Creditors' Meeting"*)

PLEASE COMPLETE, SIGN AND DATE THIS PROXY AND (I) RETURN IT TO ALVAREZ & MARSAL CANADA INC. BY 10:00 A.M. (TORONTO TIME) ON MAY 24, 2016, OR 24 HOURS (EXCLUDING SATURDAYS, SUNDAYS AND STATUTORY HOLIDAYS) PRIOR TO ANY ADJOURNED, POSTPONED OR RESCHEDULED CREDITORS' MEETING, OR (II) DEPOSIT THIS PROXY WITH THE CHAIR AT THE CREDITORS' MEETING (OR ANY ADJOURNMENT, POSTPONEMENT OR OTHER RESCHEDULING THEREOF) IMMEDIATELY PRIOR TO THE VOTE AT THE TIME SPECIFIED BY THE CHAIR (THE *"ELECTION/PROXY DEADLINE"*). PLEASE RETURN OR DEPOSIT YOUR ORIGINAL PROXY SO THAT IT IS ACTUALLY RECEIVED BY THE MONITOR OR THE CHAIR ON OR BEFORE THE ELECTION/PROXY DEADLINE.

Please use this Proxy form if you do not wish to attend the Creditors' Meeting to vote in person but wish to appoint a proxyholder to attend the Creditors' Meeting, vote your Voting Claim to accept or reject the Plan and otherwise act for and on your behalf at the Creditors' Meeting and any adjournment(s), postponement(s) or rescheduling(s) thereof.

The Plan is included in the Meeting Materials delivered by the Monitor to all Affected Creditors, copies of which you have received. All capitalized terms used but not defined in this Proxy shall have the meanings ascribed to such terms in the Plan.

You should review the Plan before you vote. In addition, on April *[13]*, 2016, the Court issued the Meeting Order establishing certain procedures for the conduct of the Creditors' Meeting, a copy of which is included in the Meeting Materials. The Meeting Order contains important information regarding the voting process. Please read the Meeting Order and the instructions sent with this Proxy prior to submitting this Proxy.

If the Plan is approved by the Required Majority and is sanctioned by the Court, it will be binding on you whether or not you vote.

Convenience Class Creditors do not need to complete or return a Proxy as they are deemed to vote in favour of the Plan pursuant to the Meeting Order and the Plan.

Appointment of Proxyholder and Vote

By checking one of the two boxes below, the undersigned Affected Creditor hereby revokes all proxies previously given and nominates, constitutes and appoints either *{ if no box is checked, the Monitor will act as your proxyholder):*

- _____, or

- a representative of *Alvarez & Marsal Canada Inc.* in its capacity as Monitor of the Target Canada Entities

as proxyholder, with full power of substitution, to attend, vote and otherwise act for and on behalf of the undersigned at the Creditors' Meeting and at adjournment(s), postponement(s) and rescheduling(s) thereof, and to vote the amount of the Affected Creditors' Voting Claim. Without limiting the generality of the power hereby conferred, the person named as proxyholder is specifically directed to vote as shown below. The person named as proxyholder is also directed to vote at the proxyholder's discretion and otherwise act for and on behalf of the undersigned with respect to any amendments or variations to the Plan and to any matters that may come before the Creditors' Meeting or at any adjournment, postponement or rescheduling thereof and to vote the amount of the Affected Creditor's Voting Claim as follows *{ mark only one):*

- Vote *FOR* the approval of the Plan, or

- Vote *AGAINST* the approval of the Plan

Please note that if no specification is made above, the Affected Creditor will be deemed to have voted FOR approval of the Plan at the Creditors' Meeting provided the Affected Creditor does not otherwise exercise its right to vote at the Creditors' Meeting.

DATED at _____ this _____ day of _____, 20 _____.

AFFECTED CREDITOR'S SIGNATURE:

_____

(Print Legal Name of Affected Creditor)

_____
(Print Legal Name of Assignee, if applicable)

_____
(Signature of the Affected Creditor/Assignee or an Authorized Signing Officer of the Affected Creditor/Assignee)

_____
(Print Name and Title of Authorized Signing Officer of the Affected Creditor/Assignee, if applicable)

_____
(Mailing Address of the Affected Creditor/Assignee)

_____
(Telephone Number and E-mail of the Affected Creditor/Assignee or Authorized Signing Officer of the Affected Creditor/Assignee)

YOUR PROXY MUST BE RECEIVED (I) BY THE MONITOR AT THE ADDRESS LISTED BELOW OR (II) BY THE CHAIR AT THE CREDITORS' MEETING BEFORE THE ELECTION/PROXY DEADLINE.
ALVAREZ & MARSAL CANADA INC. MONITOR OF THE TARGET CANADA ENTITIES
200 Bay Street
Suite 2900
P.O. Box 22
Toronto, ON
M5J 2J1
Attention: Steven Glustein
Facsimile: (416) 847-5201
E-mail: targetcanadamonitor@alvarezandmarsal.com
IF YOU HAVE ANY QUESTIONS REGARDING THIS PROXY OR THE VOTING PROCEDURES, OR IF YOU NEED AN ADDITIONAL COPY OR ADDITIONAL COPIES OF THE ENCLOSED MATERIALS, PLEASE CONTACT THE MONITOR AT targetcanadamonitor@alvarezandmarsal.com OR VISIT THE MONITOR'S WEBSITE AT www.alvarezandmarsal.com/targetcanada

Instructions for Completion of Proxy

1. All capitalized terms used but not defined in this Proxy shall have the meanings ascribed to such terms in the Amended and Restated Joint Plan of Compromise and Arrangement of the Target Canada Entities dated April •, 2016 (the *"Plan"*), a copy of which you have received.
2. Please read and follow these instructions carefully. Your Proxy must actually be received (i) by the Monitor at Alvarez & Marsal Canada Inc., Monitor of the Target Canada Entities, 200 Bay Street, Suite 2900, P.O. Box 22, Toronto, ON M5J 2J1 (Attention: Steven Glustein), facsimile: (416) 847-5201, e-mail: targetcanadamonitor@alvarezandmarsal.com prior to 10:00 a.m. (Toronto time) on May 24, 2016 or 24 hours (excluding Saturdays, Sundays and statutory holidays) prior to the time of any adjournment, postponement or rescheduling of the Creditors' Meeting or (ii) by the Chair at the Creditors' Meeting (or any adjournment, postponement or rescheduling thereof) immediately prior to the vote at the time specified by the Chair (the *"Election/Proxy Deadline"*). If your Proxy is not received by the Election/Proxy Deadline, unless such time is extended, your Proxy will not be counted.
3. The aggregate amount of your Claim in respect of which you are entitled to vote (your *"Voting Claim"*) shall be your Proven Claim, or with respect to a Disputed Claim, the amount as determined by the Monitor to be your Voting Claim in accordance the Claims Procedure Order and the Meeting Order.
4. Each Affected Creditor who has a right to vote at the Creditors' Meeting has the right to appoint a person (who need not be an Affected Creditor) to attend, act and vote for and on behalf of the Affected Creditor and such right may be exercised by inserting in the space provided the name of the person to be appointed, or to select a representative of the Monitor as its proxyholder. If no proxyholder is selected, the Affected Creditor will be deemed to have appointed any officer of Alvarez & Marsal Canada Inc., in its capacity as Monitor, or such other person as Alvarez & Marsal Canada Inc. may designate, as proxyholder of the Affected Creditor, with power of substitution, to attend on behalf of and act for the Affected Creditor at the Creditors' Meeting to be held in connection with the Plan and at any and all adjournments, postponements or other rescheduling thereof.
5. Check the appropriate box to vote for or against the Plan. If you do not check either box, you will be deemed to have voted FOR approval of the Plan provided you do not otherwise exercise your right to vote at the Creditors' Meeting.
6. Sign the Proxy - your original signature is required on the Proxy to appoint a proxyholder and vote at the Creditors' Meeting. If you are completing the proxy as a duly authorized representative of a corporation or other entity, indicate your

relationship with such corporation or other entity and the capacity in which you are signing, and if subsequently requested, provide proof of your authorization to so sign. In addition, please provide your name, mailing address, telephone number and e-mail address.
7. Return the completed Proxy to the Monitor at Alvarez & Marsal Canada Inc., Monitor of the Target Canada Entities, 200 Bay Street, Suite 2900, P.O. Box 22, Toronto, ON M5J 2J1 (Attention: Steven Glustein), facsimile: (416) 847-5201, e-mail: *targetcanadamonitor@alvarezandmarsal.com*. so that it is actually received by no later than the Election/Proxy Deadline.
8. If you need additional Proxies, please immediately contact the Monitor.
9. If multiple Proxies are received from the same person with respect to the same Claims prior to the Election/Proxy Deadline, the latest dated, validly executed Proxy timely received will supersede and revoke any earlier received Proxy. However, if a holder of Claims casts Proxies received by the Monitor dated with the same date, but which are voted inconsistently, such Proxies will not be counted. If a Proxy is not dated in the space provided, it shall be deemed dated as of the date it is received by the Monitor.
10. If an Affected Creditor (other than a Convenience Class Creditor) validly submits a Proxy to the Monitor and subsequently attends the Creditors' Meeting and votes in person inconsistently, such Affected Creditor's vote at the Creditors' Meeting will supersede and revoke the earlier received Proxy.
11. Proxies may be accepted for purposes of an adjourned, postponed or other rescheduled Creditors' Meeting if received by the Monitor by the Election/Proxy Deadline.
12. Any Proxy that is illegible or contains insufficient information to permit the identification of the claimant will not be counted.
13. After the Election/Proxy Deadline, no Proxy may be withdrawn or modified, except by an Affected Creditor voting in person at the Creditors' Meeting, without the prior consent of the Monitor and the Target Canada Entities.
14. If you are an Affected Creditor with one or more Proven Claims in an amount in excess of Cdn$25,000, you may elect to receive the Cash Elected Amount in full and final satisfaction of your Affected Claims by completing the Convenience Class Claim Election contained in the Meeting Materials you received from the Monitor. If you elect to receive the Cash Elected Amount, you will be deemed to have voted in favour of the Plan and do not need to complete this Proxy.
IF YOU HAVE ANY QUESTIONS REGARDING THIS PROXY OR THE VOTING PROCEDURES, OR IF YOU NEED AN ADDITIONAL COPY OR ADDITIONAL COPIES OF THE ENCLOSED MATERIALS, PLEASE CONTACT THE MONITOR AT targetcanadamonitor@alvarezandmarsal.com OR VISIT THE MONITOR'S WEBSITE AT www.alvarezandmarsal.com/targetcanada

Schedule "D"

Form of Convenience Class Claim Election

TO: ALVAREZ & MARSAL CANADA INC., in its capacity as Monitor of the Target Canada Entities
In connection with the Amended and Restated Joint Plan of Compromise and Arrangement of the Target Canada Entities pursuant to the *Companies' Creditors Arrangement Act* (Canada) dated April •, 2016 (as amended, restated, modified and/or supplemented from time to time, the *"Plan"*), the undersigned hereby elects to be treated as a Convenience Class Creditor and thereby to receive the Cash Elected Amount, of Cdn$25,000 in full and final satisfaction of the Proven Claim(s) of the undersigned, and hereby acknowledges that the undersigned shall be deemed to vote its Voting Claim(s) in favour of the Plan at the Creditors' Meeting.
For the purposes of this election, terms not defined herein shall have the meanings ascribed thereto in the Plan.
DATED at _____ this _____ day of _____, 20 _____.
AFFECTED CREDITOR'S SIGNATURE:

_____
(Print Legal Name of Affected Creditor)

_____
(Print Legal Name of Assignee, if applicable)

_____
(Signature of the Affected Creditor/Assignee or an Authorized Signing Officer of the Affected Creditor/Assignee)

_____
(Print Name and Title of Authorized Signing Officer of the Affected Creditor/Assignee, if applicable)

_____
(Mailing Address of the Affected Creditor/Assignee)

_____

(Telephone Number and E-mail of the Affected Creditor/Assignee or Authorized Signing Officer of the Affected Creditor/Assignee)

Schedule "E"

Form of Resolution
BE IT RESOLVED THAT:

1. The Amended and Restated Joint Plan of Compromise and Arrangement of Target Canada Co., Target Canada Health Co., Target Canada Mobile GP Co., Target Canada Pharmacy (BC) Corp., Target Canada Pharmacy (Ontario) Corp., Target Canada Pharmacy Corp., Target Canada Pharmacy (SK) Corp., Target Canada Property LLC, Target Canada Pharmacy Franchising LP, Target Canada Mobile LP, and Target Canada Property LP (collectively, the *"Target Canada Entities"*) pursuant to the *Companies' Creditors Arrangement Act* (Canada) dated April •, 2016 (the *"Plan*"), which Plan has been presented to this meeting and which is substantially in the form attached as Exhibit "•" to the Affidavit of Mark J. Wong sworn •, 2016 (as such Plan may be amended, restated, supplemented and/or modified as provided for in the Plan) be and it is hereby accepted, approved, agreed to and authorized; and

2. any director or officer of each of the Target Canada Entities be and is hereby authorized and directed, for and on behalf of each of the Target Canada Entities, respectively (whether under its respective corporate seal or otherwise), to execute and deliver, or cause to be executed and delivered, any and all documents and instruments and to take or cause to be taken such other actions as he or she may deem necessary or desirable to implement this resolution and the matters authorized hereby, including the transactions required by the Plan, such determination to be conclusively evidenced by the execution and delivery of such documents or other instruments or the taking of any such actions.

Schedule "D"

Landlord Guarantee Creditors

NO.	*LANDLORD GROUP*	*LANDLORD/CLAIMANT*	*STORE #*	*LOCATION*
1.	20 Vic Management Inc. (manager)	HOOPP Realty Inc.	3708	Devonshire Mall
2.	ADMNS Meadowlands Investment Corporation	ADMNS Meadowlands Investment Corporation	3628	Meadowlands Shopping Center
3.	Bentall Kennedy	Penretail Management Ltd.	3510	Westmount Shopping Centre
4.	Bentall Kennedy	Hazeldean Mall LP	3511	Hazeldean Mall
5.	Bentall Kennedy (manager)	bcIMC Realty Corporation	3624	Bower Place
6.	Bentall Kennedy	2725312 Canada Inc. and 2973758 Canada Inc.	3690	Willowbrook Shopping Centre
7.	Bentall Kennedy (manager)	bcIMC Realty Corporation	3715	Cloverdale Mall
8.	Bentall Kennedy	PCM Sheridan Inc.	3669	Sheridan Mall
9.	Calloway REIT	Calloway REIT (Laurentian) Inc.	3642	Laurentian Power Centre
10.	Calloway REIT	Calloway Reit (Hopedale) Inc.	3670	Hopedale Mall
11.	Centrecorp Management Services Ltd.	Faubourg Boisbriand Shopping Centre Holdings Inc.	3765	Faubourg Boisbriand
12.	Cominar Real Estate Investment Trust	9130-1093 Quebec Inc. as nominee for Cominar Real Estate Investment Trust	3576	Carrefour St Georges
13.	Cominar Real Estate Investment Trust	Cominar Real Estate Investment Trust	3592	Les Rivieres Shopping Centre
14.	Crombie Real Estate Investment Trust	Crombie Property Holdings Limited	3630	1899 Algonquin Avenue
15.	Davpart Inc.	Lindsay Square Mall Inc.	3560	Lindsay Square Mall
16.	Doral Holdings Limited	Doral Holdings Limited and 430635 Ontario Inc.	3645	Seaway Mall
17.	Kingsett	Place Vertu Holdings Inc.	3769	Place Vertu

18.	Mcintosh Properties Ltd.	Mcintosh Properties Ltd.	3698	Orchard Park Plaza
19.	Montez Corporation	Montez (Corner Brook) Inc.	3650	Corner Brook
20.	Morguard Investments Limited	Revenue Properties Company Limited and Morguard Real Estate Investment Trust	3574	Prairie Mall
21.	Morguard Investments Limited	2046459 Ontario Inc.	3575	Cottonwood Mall
22.	Morguard Investments Limited	3934390 Canada Inc.	3577	The Mall at Lawson Heights
23.	Morguard Investments Limited	Morguard Real Estate Investment Trust	3608	Cambridge Centre
24.	Morguard Investments Limited	Morguard Corporation and Bramalea City Centre Equities Inc.	3623	Bramalea City Centre
25.	Morguard Investments Limited	Bonnie Doon Shopping Centre (Holdings) Ltd.	3710	Bonnie Doon
26.	Morguard Investments Limited	Revenue Properties Company Limited	3742	East York Town Centre
27.	Morguard Investments Limited	Morguard Real Estate Investment Trust	3763	Shoppers Mall
28.	Primaris	Kildonan Place Ltd.	3644	Kildonan Place Shopping Centre
29.	Primaris	McAllister Place Holdings Inc.	3655	McAllister Place
30.	Primaris	St. Albert Centre Holdings Inc.	3694	St. Albert Centre
31.	SunLife Assurance Company of Canada	Sun Life Assurance Company of Canada	3538	Forest Lawn Shopping Centre
32.	Triovest Realty Advisors Inc. (manager)	Barton Centre LP	3753	Centre Mall
33.	Triovest Realty Advisors Inc. (manager)	7902484 Canada Inc.	3767	Taunton Road Power Centre
34.	Valiant Rental Properties Ltd	Valiant Rental Inc.	3757	Clarington Town Centre
35.	Westcliff Management Ltd. (manager)	Carrefour Richelieu Realties Ltd.	3657	Carrefour Du Nord
36.	Westcliff Management Ltd. (manager)	Carrefour Richelieu Realties Ltd.	3516	Carrefour Richelieu
37.	Westcliff Management Ltd. (manager)	Carrefour Richelieu Realties Ltd.	3595	Carrefour Angrignon

Schedule ”E”

Landlord Non-Guarantee Creditors

NO.	*LANDLORD GROUP*	*LANDLORD/CLAIMANT*	*STORE #*	*LOCATION*
1.	20 Vic Management, Inc.	OPB Realty Inc.	3663	Pickering Town Centre
2.	Beauward Shopping Centre, Ltd.	Beauwood Shopping Centre, Ltd.	3693	Carrefour St-Eustache
3.	Beauward Shopping Centre, Ltd.	Beauwood Shopping Centre, Ltd.	3718	Les Galeries Joliette
4.	Bridlewood Mall Management	Bridlewood Mall Management Inc.	3667	Bridlewood Mall
5.	Cogir Management Corporation	Halifax 1658 Bedford Highway Inc.	3731	Bedford Place
6.	Cominar Real Estate Investment Trust	9090-7155 Quebec Inc.	3702	Place Longueuil
7.	Cominar Real Estate Investment Trust	Cominar NF Real Estate Holdings Inc.	3732	Cabot Square
8.	Cominar Real Estate Investment Trust	2226009 Ontario Inc.	7000	Centre Laval

9.	Crombie Developments Limited	Crombie Developments Ltd	3530	Sydney Shopping Centre
10.	Crombie Developments Limited	Crombie Developments Ltd	3550	Uptown Centre
11.	Effort Trust Company	60 Martindale Crescent (Hamilton) Limited	3671	Meadowland Power centre
12.	First Capital Corporation	First Capital (Stoney Creek) Corporation	3524	Zellers Plaza-Stoney Creek
13.	First Capital Corporation	Corporation FCHT Holdings (Quebec) Inc.	3634	Place Portobello
14.	Fishman Holdings North America, Inc.	2058790 Ontario Ltd.	3707	Woodbine Centre
15.	Northwest Realty, Inc.	Discovery Harbour Shopping Centre Ltd.	3508	Discovery Harbour Shopping Centre
16.	Primaris	Sherwood Park Portfolio Inc.	3564	Sherwood Park Mall
17.	Primaris	Medicine Hat Mall Inc.	3614	Medicine Hat Mall
18.	Primaris	Sunridge Mall Holdings Inc.	3713	Sunridge Mall
19.	Primaris	Place D'Orleans Holdings Inc.	3764	Place D'Orleans
20.	RioCan	RioCan Holdings Inc.	3519	South Hamilton Square
21.	RioCan	RioCan Holdings Inc.	3522	County Fair Mall
22.	RioCan	RioCan Holdings Inc.	3526	Lawrence Square
23.	RioCan	RioCan Holdings (Five Points) Inc.	3559	Five Points Mall
24.	RioCan	RioKim Holdings (PEI) Inc.	3637	Charlottetown Mall
25.	RioCan	151516 Canada Inc.	3639	Durham Centre
26.	RioCan	RioCan Holdings Inc.	3665	Orillia Square
27.	RioCan	1388688 Ontario Limited	3668	Shoppers World Brampton
28.	RioCan	RioKim Holdings (Quebec II) Inc.	3695	Mega Centre Autoroute 13
29.	RioCan	RioCan Holdings Inc.	3699	Stratford Mall
30.	RioCan	RK (Burlington Mall) Inc.	3738	Burlington Mall
31.	RioCan	RioKim Holdings (Ontario II) Inc.	3751	Gates of Fergus
32.	RioCan	RioCan Holdings Inc. & Canada Mortgage and Housing Corp.	3761	Millcroft Centre
33.	RioCan	RioCan PS Inc.	3762	Flamborough Power Centre
34.	RioCan	2076031 Ontario Limited	3768	Eglinton and Warden
35.	RioCan	MillWoods Centre Inc.	3770	Mill Woods Town Centre
36.	RioCan	RioTrin Properties (Brampton) Inc.	3773	Trinity Common
37.	RioCan	RioTrin Properties (Weston) Inc. & 2176905 Ontario Ltd.	7002	Stockyards
38.	RioCan	RioCan Holdings Inc.	7001	RioCan Niagara Falls
39.	46{ th} Avenue Investments	46{ th} Avenue Investments Limited	7327	Warehouse Space
40.	Bentall Kennedy	bcIMC Realty Corporation	7417	Ottawa Office
41.	Triovest	Big Bend Equities Inc.	7328	Warehouse Space
42.	Complexe Lebourgneuf 2	Complexe Lebourgneuf Phase II Inc.	7416	Quebec City Office
43.	CREIT Management LP	Canadian Property Holdings (Alberta) Inc.	7326	Warehouse Space
44.	Cominar Real Estate Investment Trust	Cominar REIT	7413	Montreal Office

45.	HOOPP Realty Inc.	Menkes Property Management Services Ltd. as agent for HOOPP Realty Inc.	7400	Mississauga Office
46.	HOOPP Realty Inc.	Menkes Property Management Services Ltd. as agent for HOOPP Realty Inc.	9730	Headquarters
47.	HOOPP Realty Inc.	Menkes Property Management Services Ltd. as agent for HOOPP Realty Inc.	9731	Headquarters
48.	Ivanhoe Cambridge	Oshawa Centre Holdings Inc.	7403	Oshawa Office
49.	Redstone Equities	Park Place IV Limited	7418	Dartmouth Office
50.	Morguard Investments Limited	Pensionfund Realty Limited	7412	Winnipeg Office
51.	Strategic Group	Macleod Place Ltd.	7411	Calgary Office
52.	Bentall Kennedy	391102 B.C. Ltd.	7407	Burnaby Office

Schedule ”F”

Employee Trust Termination Certificate

TO: ALVAREZ & MARSAL CANADA INC., in its capacity as the Court-appointed Monitor of the Target Canada Entities and not in its personal capacity
RE: Termination of the Trust Agreement between Target Corporation, Alvarez & Marsal Canada Inc., in its capacity as the Court-appointed Monitor of Target Canada Co. and certain of its subsidiaries and not in its personal capacity, and the Hon. John D. Ground dated January 15, 2015 (as amended, restated, supplemented and/or modified from time to time, the *”Employee Trust Agreement”*)
The undersigned, in his capacity as the Trustee under the Employee Trust Agreement, does hereby certify that all outstanding disputes by employee claimants in respect of their entitlements, if any, under the Employee Trust Agreement have been fully and finally resolved pursuant to and in accordance with the Employee Trust Claims Procedure Order issued by the Ontario Superior Court of Justice (Commercial List) dated October 21, 2015 (Court File No. CV-15-10832-00CL).
[Remainder of Page Intentionally Left Blank]
DATED _____, *[2016].*
HON. JOHN D. GROUND, in his capacity as Trustee under the Employee Trust Agreement and not in his personal capacity
_____

Schedule ”G”

Employee Trust Property Joint Direction

TO: THE ROYAL BANK OF CANADA (”RBC”)
RE: Trust Agreement between Target Corporation (the “Plan Sponsor”), Alvarez &
Marsal Canada Inc., in its capacity as the Court-appointed Monitor of Target Canada Co. and certain of its subsidiaries and not in its personal capacity, and the Hon. John D. Ground dated January 15, 2015 (as amended, restated, supplemented and/or modified from time to time, the *”Employee Trust Agreement”*)
AND RE: Account Number [•] (the *”Account”*)
The undersigned hereby direct RBC to remit all funds on deposit in the Account, which amount totals $•, to the *[Plan Sponsor/or [Insert designee]]* in accordance with the payment instructions contained on Schedule “A” hereto.
And for so doing this shall be your good, sufficient and irrevocable authority.
[Remainder of Page Intentionally Left Blank]
DATED _____, *[2016].*
HON. JOHN D. GROUND, in his capacity as Trustee under the Employee Trust Agreement and not in his personal capacity
_____
ALVAREZ & MARSAL CANADA INC., in its capacity as the Administrator under the Employee Trust Agreement and not in its personal capacity
By: _____
Name:
Title:

Schedule "H"

Co-Tenancy Stays

This schedule sets out the outside dates for the expiry of the co-tenancy stays that have been ordered in this proceeding:

Order	***Para.***	***Date Granted***	***Length***	***Date Stay Expires***
Initial Order	18	January 15, 2015	During the Stay Period	With the Stay Period
Canadian Tire	11	May 19, 2015	6 months	November 19, 2015
Cadillac Fairview	9	May 19, 2015	6 months	November 19, 2015
Lowe's	11	May 20, 2015	6 months	November 20, 2015
Wal-Mart	12	May 21, 2015	8 months	January 21, 2016
Erin Mills	11	July 17, 2015	8 months	March 17, 2016

Schedule "C"

Form of Monitor's Plan Implementation Date Certificate

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 TARGET CANADA CO., TARGET CANADA HEALTH CO., TARGET CANADA MOBILE GP CO., TARGET CANADA PHARMACY (BC) CORP., TARGET CANADA PHARMACY (ONTARIO) CORP., TARGET CANADA PHARMACY CORP., TARGET CANADA PHARMACY (SK) CORP., and TARGET CANADA PROPERTY LLC (collectively the *"Applicants"*)

Monitor's Certificate (Plan Implementation)

All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Order of the Honourable Regional Senior Justice Morawetz made in these proceedings on June 2, 2016 (the *"Sanction and Vesting Order"*).
Pursuant to paragraph 8 of the Sanction and Vesting Order, Alvarez & Marsal Canada Inc. in its capacity as Court-appointed Monitor of the Target Canada Entities (the *"Monitor"*) delivers to the Target Canada Entities this certificate and hereby certifies that it has been informed in writing by the Target Canada Entities and the Plan Sponsor that all of the conditions precedent set out in section 8.3 of the Plan have been satisfied or waived, as applicable, in accordance with the terms of the Plan and that the Plan Implementation Date has occurred and the Plan is effective in accordance with its terms and the terms of the Sanction and Vesting Order. This Certificate will be filed with the Court and posted on the Website.
DATED at the City of Toronto, in the Province of Ontario, this • day of •, 2016 at • *[a.m. / p.m]*.
ALVAREZ & MARSAL CANADA INC., in its
capacity as Court-appointed Monitor of Target Canada Co., *et al.* and not in its personal or corporate capacity
By: _____
Name:
Title:

Schedule "D"

IP Assets Vested in 3293849 Nova Scotia Company

alliesforconsumerdigitalsafety.ca
avaandviv.ca
avaviv.ca
brightspotmobile.ca
brightspotphone.ca
bullseyemobilesolutions.ca
bullseyepharmacy.ca
bullseyeshoprequests.ca
bullseyespecialrequests.ca
bullseyesubscription.ca
bullseyesubscriptions.ca
bullseyeticket.ca

bullseyetickets.ca
canadapartnersonline.ca
consumerdigitalsafetyallies.ca
consumerdigitalsafetyconsortium.ca
digitalsafetyallies.ca
dites-le-nous-target.ca
domaniedelarcher.ca
garde-marche.ca
hopethop.ca
larchermaraicher.ca
marchefute.ca
moretaylor.ca
mybrightspot.ca
partenairescanadiensenligne.ca
partnersonlinecanada.ca
pharmacyevents.ca
redperk.ca
redperks.ca
reellementessentiel.ca
savoreveryday.ca
savoureveryday.ca
tellbullseye.ca
telltgt.ca
tevolio.ca
wellbeingdreams.ca

Schedule ”E”

IP Assets Vested in Target Brands Inc.

expectmorepayless.ca
smith-hawken.ca
smithhawken.ca
smithnhawken.ca
suttonanddodge.ca
takechargeofeducation.ca
target-ceo.ca
targetcartwheel.ca
targetceo.ca
targetexpress.ca
targetget.ca
targetlocation.ca
targetspoton.ca
targetsubscription.ca
targetsubscriptions.ca
telltarget.ca
trouvezmieuxpayezmoins.ca
upandup.ca
upandupbrand.ca
upup.ca
upupbrand.ca
winecube.ca
yourtarget.ca

Schedule ”F”

Form of Monitor’s Notice of Final Distribution

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 TARGET CANADA CO., TARGET CANADA HEALTH CO., TARGET CANADA MOBILE GP CO., TARGET CANADA PHARMACY (BC) CORP., TARGET CANADA PHARMACY (ONTARIO) CORP., TARGET CANADA PHARMACY CORP., TARGET CANADA PHARMACY (SK) CORP., and TARGET CANADA PROPERTY LLC (collectively the *"Applicants"*)

Notice of Final Distribution

All capitalized terms not otherwise defined in this Notice shall have the meanings ascribed thereto in the Second Amended and Restated Joint Plan of Compromise and Arrangement of the Applicants pursuant to the *Companies' Creditors Arrangement Act* dated May 19, 2016 (as further amended, restated, supplemented and/or modified in accordance with its terms, the *"Plan*"), a copy of which is available at www.alvarezandmarsal.com/targetcanada.
TAKE NOTICE THAT Target Canada Co. shall effect a final distribution under the Plan on [•] (the *"Final Distribution Date"*) pursuant to and in accordance with the terms of the Plan and the Sanction and Vesting Order issued by the Ontario Superior Court of Justice (Commercial List) on June 2, 2016.
AND TAKE NOTICE THAT the Plan provides that if any Affected Creditor's, Propco Unaffected Creditor's, Property LP Unaffected Creditor's, Landlord Guarantee Creditor's or Landlord Non-Guarantee Creditor's distribution is returned as undeliverable or is not cashed, no further distributions to such Creditor or Landlord shall be made unless and until the Monitor is notified by such creditor of its current address or wire particulars, at which time all distributions shall be made to such Creditor or Landlord without interest.
AND TAKE NOTICE THAT all Affected Creditors, Propco Unaffected Creditors, Property LP Unaffected Creditors, Landlord Guarantee Creditors and Landlord Non-Guarantee Creditors who have not received a distribution in respect of their Proven Claims, Propco Unaffected Claims, Property LP Unaffected Claims, Landlord Guarantee Enhancement Amounts or Landlord Guarantee Non-Creditor Equalization Amounts, as applicable, must contact the Monitor, Alvarez & Marsal Canada Inc., at 200 Bay Street, Suite 2900, P.O. Box 22, Toronto, ON M5J 2J1 (Attention: Steven Glustein), facsimile number: (416) 847-5201 or email: targetcanadamonitor@alvarezandmarsal.com on or before 5:00 p.m. (Toronto time) on • (the *"Distribution Deadline"*).
AND TAKE NOTICE THAT, after the Distribution Deadline:

(a) all claims for undeliverable or un-cashed distributions in respect of Proven Claims, Propco Unaffected Claims and Property LP Unaffected Claims of any Affected Creditor, Propco Unaffected Creditor or Property LP Unaffected Creditor, as applicable, or the successor or assign of such Affected Creditor, Propco Unaffected Creditor or Property LP Unaffected Creditor, as applicable, shall be forever discharged and forever barred, without any compensation therefor, notwithstanding any Applicable Laws to the contrary, at which time the Cash amount held by TCC in relation to such Proven Claim, Propco Unaffected Claim or Property LP Unaffected Claim shall be returned to the TCC Cash Pool Account or the Propco Cash Pool Account, as applicable, pursuant to and in accordance with the Plan; and

(b) all claims for undeliverable or un-cashed distributions in respect of Landlord Guarantee Enhancement Amounts and Landlord Non-Guarantee Creditor Equalization Amounts of any Landlord, or the successor or assign of such Landlord, shall be forever discharged and forever barred, without any compensation therefor and shall be dealt with in accordance with the Plan.

DATED at the City of Toronto in the Province of Ontario this • day of •, •.

Schedule "G"

Form of Monitor's Plan Completion Certificate

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 TARGET CANADA CO., TARGET CANADA HEALTH CO., TARGET CANADA MOBILE GP CO., TARGET CANADA PHARMACY (BC) CORP., TARGET CANADA PHARMACY (ONTARIO) CORP., TARGET CANADA PHARMACY CORP., TARGET CANADA PHARMACY (SK) CORP., and TARGET CANADA PROPERTY LLC (collectively the *"Applicants"*)

Monitor's Certificate (Plan Completion)

All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Order of the Honourable Regional Senior Justice Morawetz made in these proceedings on June 2, 2016 (the *"Sanction and Vesting Order"*).
Pursuant to paragraph 41 of the Sanction and Vesting Order, Alvarez & Marsal Canada Inc. in its capacity as Court-appointed Monitor of the Target Canada Entities (the *"Monitor"*) delivers to the Target Canada Entities this certificate and hereby certifies that it has been informed in writing by TCC that TCC has completed its duties to effect distributions, disbursements and payments in accordance with the Plan and that all of the Monitor's duties and the Target Canada Entities' duties under the Plan and the Orders have been completed.
DATED at the City of Toronto, in the Province of Ontario, this • day of •, 2016 at • *[a.m. / p.m.]*.
ALVAREZ & MARSAL CANADA INC., in its capacity as Court-appointed Monitor of Target Canada Co., *et al.* and not in its personal or corporate capacity
By: _____
Name:
Title:

Footnotes

1 Intercompany Claims information is derived from the Intercompany Claims Report. Amounts set out herein are exclusive of applicable GST/HST or provincial sales tax.

Tab 17

Court File No. CV-21-00658423-00CL

Just Energy Group Inc. et al.

TENTH REPORT OF FTI CONSULTING CANADA INC., IN ITS CAPACITY AS COURT-APPOINTED MONITOR

May 18, 2022

FTI CONSULTING

served on the Service List, and posted on the Monitor's Website and the Noticing Agent's Website prior to the Plan Sanction Hearing.

Monitor's Recommendations in Respect of the Meetings Order

43. As set forth in the proposed Meetings Order, the Monitor will provide a report on the Plan by no later than seven business days before the date of the Creditors' Meetings in accordance with the CCAA.

44. As described in greater detail in the Affidavit of Michael Carter sworn May 12, 2022, the business of the Just Energy Entities has been marketed broadly and extensively over the past approximately two and half years, including prior to these CCAA Proceedings. These efforts were unsuccessful with no binding or executable offers being put forth. Due to the capital-intensive and highly specialized nature of the Just Energy Entities' business, the Monitor understands the potential pool of purchasers is limited.

45. During the CCAA Proceedings, the Just Energy Entities and/or the Financial Advisor have been approached on a confidential basis by interested parties with respect to potential acquisition opportunities for all or some of the Just Energy Entities' business. The Just Energy Entities entered into non-disclosure agreements with three of the interested parties and engaged in extensive discussions with two of the interested parties. The Monitor understands the discussions were unsuccessful as they did not identify any potential proposals that are superior to the Plan.

46. Consequently, the transaction contemplated by the Plan is the only viable option at this time that would allow the Just Energy Entities to emerge from these CCAA Proceedings in a timely fashion and as a going concern. The terms of the Plan have been extensively negotiated, with the involvement of the Monitor, and represent the best alternative available at this time for the Just Energy Entities' various stakeholders.

47. Importantly, and as further described herein under the heading "Alternate Restructuring Proposal and Fiduciary Out", the Support Agreement also expressly permits any interested parties to put forth alternate restructuring proposals during the more than two-month period between now and the Creditors' Meetings, and for Just Energy's board of

directors to consider and accept any such alternate restructuring proposal if it is superior to the transaction contemplated by the Plan.

48. The Monitor has been consulted with respect to the development of the alternate restructuring proposal structure and believes it permits adequate time and opportunity for an interested party to put forth a viable alternative offer that may be found to be a superior offer. Accordingly, the Monitor is of the view that the alternate restructuring proposal and "fiduciary out" structure can produce a viable superior offer if one exists, and given the extensive marketing of the Just Energy Entities' business over the past few years, a formal sales process is not necessary in the circumstances.

49. For the purposes of voting on the Plan, section 22 of the CCAA provides that a debtor company may divide creditors into classes, and that creditors may be included in the same class if their interests are sufficiently similar to give them a commonality of interest.

50. Subsection 22(2) of the CCAA provides that creditors may be included in the same class taking into account:

(a) the nature of the debts, liabilities or obligations giving rise to their claims;

(b) the nature and rank of any security in respect of their claims;

(c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and

(d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.

51. The Monitor has considered the above factors and the jurisprudence that predates the enactment of section 22 of the CCAA. The Monitor is of the view that the Applicants' classification of Affected Creditors based on the rights and remedies of the class of creditors (i.e. whether those creditors hold security for their claims) is appropriate in the circumstances. The Monitor further believes that any fragmentation of the contemplated classes could jeopardize a viable restructuring.

Tab 18

Court File No. CV-21-00658423-00CL

Just Energy Group Inc. et al.

THIRD REPORT OF FTI CONSULTING CANADA INC., IN ITS CAPACITY AS COURT-APPOINTED MONITOR

September 8, 2021

FTI CONSULTING

materials in this process. The Monitor is being kept apprised of the developments in the dispute process and will provide a further update to the Court at a later date.

INTERCREDITOR DISPUTE

32. As described in the Monitor's earlier reports, certain of the Just Energy Entities are party to an intercreditor agreement (the "**Intercreditor Agreement**") between certain secured commodity and ISO service suppliers (each, a "**Secured Supplier**"), including BP and Shell, and the CA Agent on behalf of certain secured lenders. The Intercreditor Agreement, among other things, sets out the relative priority of the parties' security interests.

33. Prior to the commencement of these proceedings, Just Energy was advised by BP, a Secured Supplier and a party to the Intercreditor Agreement, that it disagreed with the characterization of certain amounts due to BP as Tier 2 and Tier 3 obligations and considered such amounts to be Tier 1 obligations. The Just Energy Entities have advised BP that they consider any dispute regarding the ranking of amounts due to BP under the Intercreditor Agreement to be an intercreditor dispute (the "**Intercreditor Dispute**") and that the Just Energy Entities do not intend to take a position on the Intercreditor Dispute.

34. The Monitor understands that the potential quantum of the amount under dispute is approximately US$200 million.

35. In order to avoid lengthy and costly litigation, the Monitor facilitated extensive discussions with, among others, BP, Shell, the CA Agent, the DIP Lenders, the Just Energy Entities and their respective financial and legal advisors (collectively, the "**Interested Parties**"), all of whom expressed an interest in the Intercreditor Dispute in order to understand the positions of such parties in respect of the Intercreditor Dispute and establish a process to resolve same.

36. The Monitor has not taken, and will not take, a position on the substance of the Intercreditor Dispute, and has assisted the Interested Parties in its capacity as an independent officer of the Court to develop the Resolution Process.

37. During the negotiation of the Resolution Process, the Monitor was advised that an entity or entities related to the DIP Lender had acquired the claim of BP against the Just Energy

Entities, which claim included the amount that was the subject of the Resolution Process. Following consultation with the Just Energy Entities, the DIP Lenders and the Monitor, the Interested Parties agreed to put the Resolution Process in abeyance while a potential restructuring solution is pursued.

38. Prior to putting the Resolution Process in abeyance, one point of dispute remained between the Interested Parties dealing with an issue regarding a potential post-award judicial review. In light of the abeyance, the Monitor is of the view that it is neither necessary to seek approval of the Resolution Process nor deal with the remaining point in dispute at this time. In the event that the discussions on the potential restructuring solution are no longer proving fruitful, or the resolution of the Intercreditor Dispute becomes otherwise required, the Monitor, in consultation with the Interested Parties now excluding BP, may bring the Resolution Process or a revised version of it before this Court for consideration.

UPDATE ON RESTRUCTURING EFFORTS OF THE JUST ENERGY ENTITIES

39. Pursuant to the DIP Term Sheet, the Just Energy Entities delivered their business plan on May 18, 2021 to the DIP Lenders and other stakeholders as required.

40. Since that time, the Just Energy Entities with the assistance of legal counsel and the Financial Advisor, and in consultation with the Monitor and the DIP Lenders, have continued their restructuring efforts with a focus on developing a restructuring plan that facilitates emergence from the CCAA Proceedings, preserves the going concern value of the business, maintains customer service and relationships, and preserves employment and critical vendor relationships – all for the benefit of the Just Energy Entities' stakeholders.

41. To provide sufficient time to further restructuring efforts, the Just Energy Entities have negotiated extensions to certain milestone deadlines provided for in the DIP Term Sheet including the following:

    (a) October 7, 2021 – deadline for delivery of a term sheet for a recapitalization transaction reasonably acceptable to the DIP Lenders (the "**Recapitalization Plan**");

Tab 19

CITATION: U.S. Steel Canada Inc. (Re), 2017 ONSC 1967
COURT FILE NO.: CV-14-10695-00CL
DATE: 20170419

SUPERIOR COURT OF JUSTICE - ONTARIO

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

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO U.S. STEEL CANADA INC.

BEFORE: Mr. Justice H. Wilton-Siegel

COUNSEL: *Heather Meredith* and *Sharon Kour*, for the Applicant, U.S. Steel Canada Inc.

Robert Staley and *Kevin J. Zych*, for the Monitor, Ernst & Young Inc.

Gale Rubenstein and *Melaney Wagner*, for the Superintendent of Financial Institutions and the Province of Ontario

Lily Harmer, for the United Steelworkers International Union and the United Steelworkers International Union, Local 8782

Sharon L.C. White, for the United Steelworkers International Union, Local 1005

James Harnum, Representative Counsel for the non-unionized active employees and retirees

Michael Barrack, *Mitch Grossell* and *Leanne Williams*, for United States Steel Corporation

Michael Kovacevic, for the City of Hamilton

Lou Brzezinski, for Robert and Sharon Milbourne

Patrick Riesterer, for Brookfield Capital Partners Ltd.

Mario Forte, for Bedrock Industries Canada LLC and Bedrock Industries L.P.

Vlad Calina, for USSCF, the Plan Advisor

HEARD: March 15, 2017

ENDORSEMENT

[1] The applicant, U.S. Steel Canada Inc. ("USSC"), sought a number of orders in respect of a proposed plan of arrangement and compromise (the "Plan") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA"). The Plan contemplates the acquisition of substantially all of USSC's operating business and assets on a going-concern basis by Bedrock Industries Canada LLC ("Bedrock") through the acquisition of all of USSC's outstanding shares. At the conclusion of the hearing of the motions, I advised the parties that the motions were granted for written reasons to follow. This Endorsement sets out the reasons for such relief.

[2] As a preliminary matter, it should be noted that the motions were supported by Her Majesty the Queen in Right of the Province of Ontario ("Ontario") and the United States Steel Corporation ("USS") and were not opposed by Representative Counsel for the current and former non-unionized employees of USSC or by the United Steelworkers International Union (the "USW"), USW Local 8782 or USW Local 1005. In addition, in its thirty-seventh report, dated March 13, 2017 (the "Monitor's Report"), the Monitor recommended approval of each of the motions for the reasons set out therein. Such level of support constituted an important consideration in the Court's approval of each of the motions, in addition to the specific considerations set out below.

The Supplementary Claims Process Order

[3] USSC seeks approval of an order providing for a process to identify and determine claims not previously determined pursuant to the order dated November 13, 2014 (the "General Claims Process Order"). The General Claims Process Order excluded claims of current and former employees respecting outstanding wages, salaries and benefits, claims relating to USSC's retirement plans, claims relating to non-pension post-employment benefits ("OPEB"s), and claims against the directors and officers of USSC.

[4] The purpose of the order sought is to crystallize the pool of claims that will be affected under the Plan. The proposed supplementary claims process would pertain to a subset of the creditors whose claims were excluded from the General Claims Process Order, being: (1) current and former non-unionized employees with pension claims, OPEB claims and supplemental pension claims; (2) former non-unionized employees with claims pertaining to the termination of their employment; (3) persons with claims against the directors and officers of USSC; and (4) persons who filed a claim after December 22, 2014 but before March 1, 2017.

[5] The Court has the authority under s. 11 of the CCAA to make orders it considers appropriate in the circumstances, subject to restrictions set out in the CCAA. It is not disputed that such authority includes the authority to approve a process to solicit and determine claims against a debtor company and its directors and officers.

[6] In this case, the claims process sought is necessary for the approval and implementation of the Plan, both for voting purposes and in order to determine the universe of claims subject to the releases contemplated by the Plan. There is no suggestion from the stakeholders appearing on this motion that the proposed claims process is not fair to the potential claimants in terms of notice or process. The timeline provided for the determination of the relevant claims is also expedient in as much as it is consistent with the timing of the proposed meetings of creditors dealt with below. In this regard, the Monitor has advised in the Monitor's Report that it believes

the proposed claims process provides sufficient and timely notification to allow creditors to submit proofs of claim or dispute notices, as applicable, prior to the claims bar date under the proposed order, being April 20, 2017, particularly in view of the fact that non-unionized employees and retirees will not need to file individual proofs of claim in most circumstances. Further, the Monitor will have a supervisory role to ensure that claimants are dealt with reasonably and fairly. In respect of the late-filed claims in item (4) above, the Monitor does not believe their inclusion in the claims process will materially prejudice the other creditors in view of the *de minimus* amount of these claims and the current status of the Plan.

[7] Based on the foregoing, including the support for the motion and the absence of any objections thereto as set out above, I am satisfied that the proposed supplementary claims process order should be approved.

The Meetings Order

[8] USSC seeks an order accepting the filing of the Plan; authorizing USSC to convene creditors meetings to vote on the Plan; approving the classification of creditors as set out in the Plan for the purposes of the meetings and voting on the Plan; approving the distribution of the notice of meeting and materials pertaining to the Plan; approving the procedures to be followed at the meetings; and setting May 9, 2017 as the date for the hearing of USSC's motion for an order of the Court sanctioning the Plan.

[9] The Plan is the outcome of an initial sales and restructuring/recapitalization process and a subsequent sale and investment solicitation process. These activities have been addressed fully in other endorsements of the Court, and are summarized in the affidavit of the chief restructuring officer of USSC, William Aziz, sworn March 10, 2017, and therefore need not be repeated here.

[10] There are two classes of "affected creditors" pursuant to the Plan:

(1) General unsecured creditors, which for this purpose do not include Ontario and USS, who would receive a cash distribution in respect of their claims which would be released, discharged and barred; and

(2) Creditors having claims for non-unionized pension benefits and OPEBs, which would be replaced by new non-unionized pension benefits and OPEBs, with these creditors' existing claims to be released, discharged and barred.

[11] USSC proposes that the meetings of these two classes of creditors be held on April 27, 2017.

[12] In determining whether the Court should approve the filing of the Plan under paragraph 3 of the initial order in these proceedings under the CCAA (the "Initial Order") and order the convening of a meeting of creditors to vote upon the Plan, the Court must be satisfied that the Plan is not doomed to failure. This standard is amply satisfied in the present circumstances, given the level of support for the motion and the absence of any objections as described above. The Court is not to determine the fairness and reasonableness of the Plan at this stage, such issues being reserved for the sanction hearing after the creditors meetings.

[13] Section 22 of the CCAA requires approval by the Court of the division of creditors into the classes contemplated by the Plan. The two classes of creditors contemplated by the Plan have been described above. For clarity, the Plan leaves the treatment of the claims of other creditors to be addressed pursuant to contractual arrangements to be negotiated between those creditors and USSC.

[14] I am satisfied that the creditors in each of the classes contemplated have the necessary commonality of interest required by s. 22(2) of the CCAA. The creditors in class (1) will receive a cash distribution in respect of their claims. The creditors in class (2) will not receive a cash distribution but will instead receive replacement benefits. Accordingly, the two classes of creditors receive different treatment under the Plan while each of the creditors within each class is an unsecured creditor who receives similar treatment under the Plan and would have similar remedies if the Plan is not accepted. I note as well that the Monitor supports the proposed classification of creditors as being appropriate based on the fact that the two classes have different interests and are treated differently under the Plan.

[15] Further, I am satisfied that it is appropriate that Representative Counsel act as the deemed proxy for the administrator for the non-unionized pension plans and for the current and former non-unionized employees having OPEB claims, given the active involvement of Representative Counsel in these proceedings to date on behalf of, and the commonality of interest of, the current and former non-unionized employees. I note as well that a procedure exists for individuals who have opted to represent themselves, and for individuals who have been represented by Representative Counsel but who choose to participate directly at the creditors meetings, to appoint an alternative proxy or to attend and vote in person at the creditors meetings.

[16] The other terms of the proposed meetings order regarding the notice of the meetings, the conduct of the meetings, and voting at the meetings do not otherwise raise any substantive issues of fairness and reasonableness.

[17] Based on the foregoing, the proposed meetings order is approved.

Amendment of the Plan Support Agreement

[18] USSC also seeks an order authorizing USSC to enter into:

(1) An agreement (the "PSA Amending Agreement") amending the "CCAA Acquisition and Plan Sponsor Agreement" dated December 9, 2016 between USSC, Bedrock and Bedrock Industries L.P. (the "PSA"); and

(2) An agreement (the "Support Amending Agreement") amending the "Support Agreement" made December 9, 2016 between USSC and Ontario.

[19] The Court has the authority under ss. 11 and 11.02(2) to approve a debtor company entering into an agreement to facilitate a restructuring. The Court has previously authorized the PSA and the Support Agreement pursuant to such powers.

[20] The PSA Amending Agreement and the Support Amending Agreement, among other things, amend the timetable for various milestones to reflect the timetable contemplated by the meetings order. They also amend the existing agreements to reflect the term sheets as finalized to date respecting various aspects of the Plan arrangements.

[21] I am satisfied that the PSA Amending Agreement and the Support Amending Agreement should be approved as necessary for, and as furthering the purposes of, the proposed restructuring of USSC pursuant to the Plan.

Extension of the Stay Period

[22] Lastly, USSC seeks an order extending the stay of proceedings under the Initial Order in these proceedings to May 31, 2017.

[23] Section 11.02(2) of the CCAA gives the Court the discretion to extend the stay of proceedings if the requirements of s. 11.02(3) are satisfied.

[24] In this case, USSC has established that it has acted, and is acting, in good faith and with due diligence to implement a plan of restructuring and compromise. The proposed stay extension provides USSC with the time required to allow the creditors to vote on the Plan at the creditors meetings and, if approved, to seek the Court's approval at the sanction hearing. It also grants USSC sufficient time to negotiate the necessary agreements and to finalize the necessary arrangements that are conditions to implementation of the Plan. The Monitor advises in the Monitor's Report that the revised cash flow forecast of USSC contemplates that USSC will have sufficient liquidity to continue to operate throughout the proposed stay extension period.

[25] Accordingly, I am satisfied that it is appropriate to approve the extension of the stay of proceedings under the Initial Order to May 31, 2017.

Wilton-Siegel, J.

Date: April 19, 2017

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 JUST ENERGY GROUP INC. *et al.*

Court File No. CV-21-00658423-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

BOOK OF AUTHORITIES OF THE DIP LENDERS

MOTION FOR AUTHORIZATION ORDER, MEETINGS ORDER, AND OTHER RELIEF RETURNABLE MAY 26, 2022

CASSELS BROCK & BLACKWELL LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Alan Merskey LSO #: 413771
Tel: 416.860.2948
amerskey@cassels.com

John M. Picone LSO #: 58406N
Tel: 416.640.6041
jpicone@cassels.com

Christopher Selby LSO #: 65702T
Tel: 416.860.5223
cselby@cassels.com

Lawyers for the DIP Lenders