SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00720567-00CL **DATE: May 28, 2024**

NO. ON LIST: 1

TITLE OF PROCEEDING: RED LOBSTER MANAGEMENT LLC et al.

BEFORE: JUSTICE PENNY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Linc Rogers	Blake Cassels & Graydon LLP, Counsel to the Applicant	linc.rogers@blakes.com
Caitlin McIntyre	Blake Cassels & Graydon LLP, Counsel to the Applicant	caitlin.mcintyre@blakes.com
Jake Harris	Blake Cassels & Graydon LLP, Counsel to the Applicant	jake.harris@blakes.com
Austin Jowers	King & Spalding LLC US Counsel to the Applicant	ajowers@kslaw.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Stuart Brotman	Fasken Martineau DuMoulin LLP Counsel to the Proposed Information Officer	sbrotman@fasken.com
Mitch Stephenson	Fasken Martineau DuMoulin LLP Counsel to the Proposed Information Officer	mstephenson@fasken.com
Jeffrey Rosenberg	Proposed Information Officer, FTI Consulting Canada Inc.	jeffrey.rosenberg@fticonsulting.com

Adsaran Vithiyananthan	Proposed Information Officer, FTI Consulting Canada Inc.	adsaran.vithiyananthan@fticonsulting.com
Hrvoje Muhek	Proposed Information Officer, FTI Consulting Canada Inc.	hrvoje.muhek@fticonsulting.com
Nicholas Haughey	Alvarez & Marsal North America, LLC	nhaughey@alvarezandmarsal.com
Scott Bomhof	Torys LLP Lawyers for Fortress Credit Corporation	sbomhof@torys.com
Jorge Gonzalez	Proskauer Rose LLP, Counsel for Fortress Credit Corporation	jgonzalez@proskauer.com
Benjamin Kranc *[Partial attendance / self-represented]*	On behalf of Leibco Realty Limited	benkranc@rogers.com
Mark Drake *[self-represented]*	714 Yonge Street Inc.	marksdrake@gmail.com
Ginny McMinn *[self-represented]*	Triovest Realty Advisors Inc.	gmcminn@triovest.com
Carrie Ashfield *[self-represented]*	Triovest Realty Advisors Inc.	cashfield@triovest.com
Naushin Virji *[self-represented]*	Trinity Property	N/A

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE PENNY:

Overview

[1] On May 19, 2024, the Debtors commenced Chapter 11 proceedings in the Unites States by filing voluntary petitions (the "Petitions") for relief under the U.S. Bankruptcy Code. The Debtors sought to provide a protective platform for a comprehensive operational restructuring and value maximizing going-concern sale of the business as a whole, including what is referred to in the material as the Canadian Business of the Canadian Debtors.

[2] On May 21, 2024, RL Management, in its capacity as the proposed foreign representative of the Canadian Debtors, sought and obtained an order for an interim stay of proceedings from this court in respect of the Canadian Debtors, as well as their respective directors and officers, in Canada.

[3] Also on May 21, following a hearing before the United States Bankruptcy Court for the Middle District of Florida (Orlando Division), that Court entered several First Day Orders, including the Foreign Representative Order authorizing RL Management to act as Foreign Representative in respect of the Debtors and the Chapter 11 proceedings.

[4] RL Management, in its capacity as duly appointed Foreign Representative, now seeks from this court the following relief:

(a) an order (the "Initial Recognition Order"):

(i) recognizing RL Management as the Foreign Representative in respect of the Canadian Debtors;

(ii) recognizing the US proceedings as a "foreign main proceeding" in respect of the Canadian Debtors; and

(iii) granting a stay of proceedings in respect of the Canadian Debtors in Canada; and

(b) an order (the "Supplemental Order"), among other things:

(i) recognizing certain of the interim and final orders issued by the US Court in the US proceedings, including, among others, an order approving a debtor-in-possession facility (the "DIP Facility");

(ii) granting a further stay of proceedings in respect of the Canadian Debtors, and their respective directors and officers, in Canada prohibiting, among other things, the commencement or continuation of proceedings, exercise of rights and remedies, or interference with the rights of the Canadian Debtors;

(iii) appointing FTI Consulting Canada Inc. ("FTI") as information officer in respect of these proceedings;

(iv) granting a Court-ordered charge over the assets and property of the Canadian Debtors to secure payment of the fees and disbursements of Canadian counsel to the Canadian Debtors, the Information Officer and counsel to the Information Officer (the "Administration Charge");

(v) granting a court-ordered charge over the assets and property of the Canadian Debtors to secure the DIP Facility (the "DIP Charge"); and

(vi) granting a Court-ordered charge over the assets and property of the Canadian Debtors to secure the indemnity obligations of the Canadian Debtors to their directors and officers in respect of the obligations and liabilities that such directors and officers may incur during these proceedings in their capacities as directors and officers (the "D&O Charge").

[5] On May 28, 2024, I granted the orders sought with written reasons to follow. These are the reasons.

Background

[6] In brief, Red Lobster is in the sea food restaurant business. It operates approximately 550 restaurants in locations across 44 states and 4 provinces in Canada; 27 of those restaurants are in Canada (20 in Ontario, 4 in Alberta, 2 in Saskatchewan and 1 in Manitoba).

[7] The Canadian restaurants are all operated through the Canadian Debtor, RL Canada. RL Canada is a Delaware corporation which, like the other Debtors, is a wholly owned subsidiary of RL Management. RL Hospitality is a limited liability company organized under the laws of Delaware. RL Hospitality is also a wholly owned subsidiary of RL Management. RL Hospitality is the registered owner of certain intellectual property in Canada.

[8] RL Canada has approximately 2,000 employees. Approximately 155 of these employees are unionized through collective bargaining units in place at two of RL Canada's restaurants (one located in Ontario and one in Alberta). RL Management and RL Hospitality do not have any Canadian-based employees.

[9] RL Canada owns two real property interests in Canada. The first is in Brantford, Ontario. The Brantford Property is used by RL Canada as the premises for a Red Lobster restaurant. RL Canada also owns a building improvement located on a property in Etobicoke, which RL Canada leases under a ground lease. The building on the Etobicoke Property is also used as a Red Lobster restaurant. The remaining Red Lobster restaurants in Canada also operate from leased premises. RL Canada is the lessee.

[10] The evidence is that, as of the filing date, RL Canada is current in its employee compensation payments and in respect of all leasehold payments.

[11] The Debtors' outstanding third-party funded debt obligations total approximately $294 million. For today's purposes, the most relevant creditor is Fortress Credit Corp. which is owed about $265 million. The outstanding obligations to Fortress are secured by a senior lien on substantially all of the Debtors' assets, including the assets of the Canadian Debtors.

[12] Despite efforts to improve operations over the last twelve months, RL Group has continued to face significant liquidity and operational challenges. This has led to the closure of 93 restaurants in the United States prior to the Petition Date. As of the Petition Date, by book value, RL Canada had approximately USD $62.5 million worth of assets, and total liabilities of approximately USD $69.1 million, of which approximately USD $8.2 million are current liabilities. The Debtors determined that a comprehensive operational restructuring and value maximizing sale inside of a Chapter 11 process would likely be the best possible alternative under the circumstances. Fortress has supported, and continues to support, this process.

Analysis

[13] The following issues need to be addressed:

a. should the Chapter 11 Cases be recognized as "foreign main proceedings"?

b. should the Foreign Representative be granted the relief requested in the Orders, including:

i. granting the stay of proceedings in respect of the Canadian Debtors;

ii. recognition of certain First Day Orders, including the Interim DIP Order and related DIP Charge;

iii. appointment of FTI as Information Officer; and

iv. granting the Administration Charge and the D&O Charge.

Foreign Main Proceeding

[14] Section 46(1) of the CCAA provides that a foreign representative may apply to the court for recognition of a foreign proceeding in respect of which that person is a foreign representative. Section 46(2) of the CCAA provides that, where a foreign representative applies to the court for recognition of a foreign proceeding, such application must be accompanied by: (a) a certified copy of the instrument that commenced the foreign proceeding, (b) a certified copy of the instrument authorizing the foreign representative to act in that capacity, and (c) a statement identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative.

[15] Certified copies of the Foreign Representative Order and the Petitions filed by each of the Canadian Debtors have been filed in evidence. Further, the evidence also contains a statement identifying all foreign proceedings of the Debtors known to the Foreign Representative. Accordingly, all the technical requirements under s. 46(2) have been met.

[16] Section 47 of the CCAA further provides that the Court shall make an order recognizing a foreign insolvency proceeding if the following two requirements are met:

a. the application for recognition of a foreign proceeding relates to a "foreign proceeding" within the meaning of the CCAA; and

b. the applicant is a "foreign representative" within the meaning of the CCAA in respect of that foreign proceeding.

[17] Both these requirements are also met.

[18] Section 45(1) of the CCAA defines a "foreign proceeding" as any judicial proceeding in a jurisdiction outside of Canada dealing with creditors' collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company's business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization.

[19] It is well accepted that proceedings under the Bankruptcy Code, under the supervision of a US bankruptcy court, satisfy the criteria of s. 45. Canadian courts have consistently recognized such proceedings to be "foreign proceedings" for the purposes of the CCAA. The Chapter 11 proceedings in this case are proceedings under the Bankruptcy Code, a law relating to bankruptcy or insolvency, and are subject to the supervision of the US Court, a US bankruptcy court, for the purposes of reorganization. The Chapter 11 proceedings are, therefore, "foreign proceedings" for the purposes of the CCAA.

[20] The Canadian Debtors are also debtor companies within the meaning of the CCAA. The definition of "debtor company" in the CCAA includes any company "that is insolvent." Under the CCAA, a company includes any company having assets or doing business in Canada. The Canadian Debtors have assets and/or conduct business in Canada. At the Petition Date, the Debtors were facing a looming liquidity crisis and/or had material amounts of indebtedness in arrears or had liabilities in excess of their assets and were thus insolvent for the purposes of the CCAA.

[21] The second requirement is that RL Management be a "foreign representative". The CCAA defines a "foreign representative" as:

> a person or body, including one appointed on an interim basis, who is authorized in a foreign proceeding in respect of a debtor company, to (a) monitor the debtor's business and financial affairs for the purpose of a reorganization, or (b) act as a representative in respect of the foreign proceeding.

[22] RL Management was appointed by the US Court to act as a representative of the Debtors in respect of the Chapter 11 proceedings and with respect to this recognition proceeding by way of the Foreign Representative Order. Therefore, RL Management meets the CCAA definition of a "foreign representative" in respect of the foreign proceeding.

[23] If the Court grants an order under s. 47(1) of the CCAA, s. 47(2) requires that the Court specify whether the foreign proceeding is a "foreign main proceeding" or a "foreign non-main proceeding."

[24] Section 45(1) of the CCAA provides that a "foreign main proceeding" is a foreign proceeding in a jurisdiction where the debtor company has the "centre of its main interests" ("COMI"). While the CCAA does not define what constitutes a debtor's COMI, under s. 45(2) of the CCAA, in the absence of proof to the contrary, a debtor company's COMI is presumed to be the location of its registered office. The registered offices of RL Management, RL Canada and RL Hospitality are all in Orlando, Florida. As a result, the Canadian Debtors' presumed COMI is the US, and the Chapter 11 proceedings should be recognized as "foreign main proceedings".

[25] Further, it is clear that the operational realities of the Canadian Debtors are such that the COMI for each of them is, in fact, in the US:

> a. the Debtors are all Delaware incorporated companies or Delaware limited liability companies;
>
> b. the RL Group's senior leadership, including the sole director, chief executive officer and chief restructuring officer are located in the US and such senior leadership exercises primary strategic management and control of the corporate group, including each of the Canadian Debtors;
>
> c. all of the Debtors' outstanding secured indebtedness has been advanced by US-based lenders and the related loan documentation is governed by US law; and
>
> d. Red Lobster's overall financial position is managed on a consolidated basis, principally from its US head office.

[26] In the US Foreign Representative Order, the US Court specifically requested the aid and assistance of the Canadian court to recognize the Chapter 11 proceedings as a "foreign main proceeding" and RL Management as a "foreign representative pursuant to the CCAA."

[27] The granting of these orders is supported by the proposed Information Officer.

[28] I find that the RL Group is a highly integrated corporate group managed out of the US. RL Canada and the other Canadian Debtors are incorporated and headquartered in the United States and rely on centralized management from RL Group's US offices. For these principal reasons, this court recognizes the Chapter 11 proceedings as "foreign main proceedings".

The Stay of Proceedings

[29] Section 48(1) of the CCAA requires the court to grant mandatory relief once a proceeding is found to be a foreign main proceeding, including:

> a. staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken against the debtor company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
>
> b. restraining until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the debtor company;
>
> c. prohibiting, unless otherwise ordered by the court, the commencement of any action, suit or proceeding against the debtor company; and
>
> d. prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.

[30] The Initial Recognition Order sought by the Foreign Representative is based on the court's Model CCAA Initial Recognition Order (Foreign Main Proceeding) and provides for all the relief required by s. 48 of the CCAA. Similarly, the proposed Supplemental Order is based on the court's Model CCAA Supplemental Order (Foreign Main Proceeding) and provides for a broad stay of proceedings, similar to that provided to CCAA debtors in plenary proceedings, in respect of the Canadian Debtors and their directors and officers in Canada.

[31] The request for the stay is supported by the proposed Information Officer.

[32] I find that the requested stay of proceedings is necessary and appropriate to give effect in Canada to the stay of proceedings granted by the US Court and to preserve and protect the value of the Canadian Business while the Debtors pursue a sale of the business as a going concern in the Chapter 11 proceedings.

Recognition of the First Day Orders

[33] Section 49 of the CCAA grants this court broad discretion to make any order necessary for the protection of the debtor company's property or the interests of a creditor or creditors. If an order recognizing a foreign proceeding is made, the Canadian court is required to cooperate, to the maximum extent possible, with the foreign representative and the foreign court in the foreign proceeding. The principles of comity, cooperation and accommodation with foreign courts guide the CCAA courts in the exercise of their discretion in cross-border insolvency cases. In this case, the Foreign Representative is seeking, within the Supplemental Order, recognition of First Day Orders which are administrative and procedural in nature, as well as the Interim DIP Order (which I will deal with separately below).

[34] In *Hollander Sleep Products, LLC (Re)*, 2019 ONSC 3238, Justice Hainey observed that the central principle governing Part IV of the CCAA is comity, which mandates that Canadian courts should recognize and enforce the judicial acts of other jurisdictions, provided that those other jurisdictions have assumed jurisdiction on a basis consistent with principles of order, predictability and fairness. He went on to state that Canadian courts have emphasized the importance of comity and cooperation in cross-border insolvency proceedings to avoid multiple proceedings, inconsistent judgments and general uncertainty. "Coordination of international insolvency proceedings is particularly critical in ensuring the equal and fair treatment of creditors regardless of their location", at para. 42.

[35] The First Day Orders include:(i) the Foreign Representative Order, (ii) the Wages and Benefits Order, (iii) the Insurance Order, (iv) the Customer Program Order, (v) the Cash Management Order, (vi) the Tax Order, (vii) the Utilities Order, and (viii) the OCB Payment Order.

[36] These Administrative Orders are generally in line with the type of relief granted at the outset of Canadian CCAA proceedings. They are supported by the proposed Information Officer.

[37] I am satisfied that the First Day Orders should be recognized in these Canadian Part IV proceedings. I come to this conclusion for the following reasons:

> a. the US Court has appropriately taken jurisdiction over the Chapter 11 proceedings. Comity will be furthered by this court's recognition of and support for the Chapter 11 proceedings already underway in the US;
>
> b. coordination of proceedings in Canada and the US will ensure equal and fair treatment of all stakeholders, whether they are in the US or Canada;
>
> c. given the close connection between the Canadian Business and the business of the RL Group in the US, it is "reasonable and "sensible" for the US Court to have principal control over the insolvency process. This will produce the most efficient restructuring for the benefit of all stakeholders;
>
> d. the Debtors must act quickly because of the expeditious timetable established in the DIP Credit Agreement (discussed below) for their restructuring. It is imperative that there be a centralized and co-ordinated process for these insolvency proceedings to maximize the prospect of a successful restructuring and preserve value for stakeholders; and
>
> e. the Canadian Business and US operations of Red Lobster are highly intertwined.

Interim DIP Financing

[38] The Debtors are facing a liquidity crisis and require DIP financing to fund their operations while pursuing a restructuring. Immediately prior to commencing the Chapter 11 proceedings, the Debtors (i) finalized a DIP financing facility (the "DIP Facility") governed by a Secured Superpriority DIP Financing Agreement (the "DIP Credit Agreement") by and among RL Management and each of its subsidiaries listed as a borrower or guarantor, including RL Canada and RL Hospitality, and the lenders (the "DIP Lenders") as represented by Fortress.

[39] The DIP Credit Agreement provides for an extension of credit not to exceed the principal amount of $275,000,000, which is comprised of: (i) $100,000,000 of new money that the Debtors require for the continued operation of their business during the Chapter 11 proceedings (the "New Money Advances"), plus (ii) a $175,000,000 "roll-up" of Prepetition Term Loan Obligations.

[40] The first $40,000,000 of the new money being advanced to the Debtors under the DIP Credit Agreement was made available upon entry of the Interim DIP Order. The second $60,000,000 of new money shall be made available upon entry of a final order providing the authorizations included in the Interim DIP Order on a final basis (the "Final DIP Order"). $70,000,000 of Prepetition Term Loan Obligations (as defined in the Interim DIP Order) were deemed funded under the DIP Facility upon entry of the Interim DIP Order and upon each draw on the DIP Facility prior to entry of the Final DIP Order. A further $105,000,000 of Prepetition Term Loan Obligations shall be deemed funded upon entry of the Final DIP Order and upon funding of the remaining amounts under the DIP Facility. Importantly, it is a requirement of the DIP Credit Agreement that the Interim DIP Order be recognized by the Court within seven business days of its granting.

[41] Canadian courts have observed that in a plenary CCAA proceeding, a roll-up or partial rollup of the nature described above would not be permitted by operation of s. 11.2, which provides that a financing charge may not secure an obligation that exists before the order is made.

[42] Canadian courts have, however, recognized orders approving DIP facilities by US courts in a foreign proceeding that include a roll-up provision. In doing so, our courts have emphasized the importance of comity in foreign recognition proceedings. In the leading case, *Hartford Computer Hardware Inc., Re*, Justice Morawetz (as he was then) observed:

> The Information Officer and Chapter 11 Debtors recognize that in CCAA proceedings, a partial "roll-up" provision would not be permissible as a result of section 11.2 of the CCAA, which expressly provides that a DIP charge may not secure an obligation that exists before the Initial Order is made. [...] A significant factor to take into account is that the DIP Facility was granted by the US Court. In these circumstances, I see no basis for this court to second guess the decision of the US Court.

[43] This reasoning has been adopted, and similar orders made, in several subsequent cases, including, *Hollander*, *Xinergy Ltd.,* and *Instant Brands Acquisition Holdings Inc. et al.* As the cases make clear, the test for recognition of such DIP orders is not whether an identical order could made in a plenary CCAA proceeding but, rather, would recognition of such an order be contrary to the public policy of Canada. Contrary to public policy, in this context, is to be construed narrowly, and requires more than the mere fact that such an order would be prohibited in a Canadian CCAA proceeding.

[44] In *Re Payless Holdings LLC*, also a proceeding under Part IV of the CCAA, this Court declined to recognize a US order which approved a DIP facility containing roll-up features and declined to order a related DIP charge. Recognition of the US order had been opposed by Canadian landlords on the basis that they were uniquely prejudiced by its terms. The court agreed with the landlords and declined the order because:

(a) the Canadian debtor companies were not insolvent, were not borrowers or guarantors under the prepetition facility and had never previously granted security, and

(b) there was evidence of material prejudice to Canadian creditors. The landlords opposed the recognition of the DIP order because they were being uniquely disadvantaged.

[45] This is not the case here. In my view, the recognition of the Interim DIP Order furthers the objectives of the CCAA, does not materially prejudice Canadian creditors and is not contrary to Canadian public policy. I come to these conclusions for the following reasons:

a. The Debtors require critical funding in order to avoid liquidation and pursue a going concern solution for their business, including the Canadian Business.

b. Although not a borrower under the DIP Facility, RL Canada is deeply integrated into the larger corporate group relying on back office and other forms of critical support from RL Management and other Debtors. Thus, the funding directly benefits RL Canada and its stakeholders in Canada including suppliers, customers, landlords, taxing authorities and the broader economic community.

c. The DIP Facility is the only basis upon which the Prepetition Term Loan Lenders were willing to make further loans to the Debtors and recognition of the Interim DIP Order by this Court is a requirement under the DIP Credit Agreement. Specific findings of the US Court support the necessity and good faith nature of this requirement in the circumstances.

d. The Interim DIP Order approves funding on an interim basis only, with restrictions on initial funding and amounts that are permitted to be rolled up.

e. The Interim DIP Order provides for a "challenge period" which expires on the earlier of (i) 60 calendar days after the Petition Date, and (ii) the date established by the US Court for submission of qualified bids to purchase the Debtors' assets; thus there is an existing mechanism that allows parties in interest to raise concerns regarding the DIP Facility, including with respect to the roll-up provisions.

f. As confirmed by the opinion of independent counsel to the proposed Information Officer regarding the security registered pursuant to the Prepetition Term Loan Credit Agreement, the DIP Facility, to the extent that it constitutes a roll-up, is supported by the same asset base as was the Prepetition Term Loan Obligations and, accordingly, creditors of RL Canada are not materially prejudiced or put in a relatively worse off position than they already are by granting the roll up relief.

g. Importantly, the proposed Supplemental Order provides that, unlike the balance of the Canadian Debtors' property in Canada already subject to the Fortress pre-petition security, what is defined as the "Unencumbered Property" (that is, the property interests owned by RL Canada in Brantford and Etobicoke, which was not subject to the pre-petition security) will not secure all obligations under the DIP Facility. Rather, the Unencumbered Property will only secure the New Money Advances under the DIP Facility. This is further support for the proposition that the collateral position of unsecured creditors remains unchanged with respect to the roll-up aspects of the DIP Facility in this case.

h. There is a significant new money component to the DIP Facility, in the amount of $100,000,000. This component is not marginal or incremental. Rather, it is substantial and meaningful and is critical to facilitating a going concern solution for the Canadian Business.

[46] The granting of the Interim DIP Order is supported by the proposed Information Officer.

[47] The Interim DIP Order is granted.

Administration Charge

[48] The proposed Supplemental Order provides that Canadian counsel to the Canadian Debtors, the Information Officer, and counsel to the Information Officer will be granted a charge in the maximum amount of CDN $1 million over the assets and property of the Canadian Debtors to secure the fees and disbursements of these professionals which are incurred in these recognition proceedings. The proposed Administration Charge does not extend to the assets or property of any of the Debtors that are not Canadian Debtors and covers only the Canadian Debtors' property in Canada. The Administration Charge is proposed to rank in priority to all other encumbrances in respect of the Canadian Debtors. The proposed Information Officer and Fortress support granting this charge.

[49] This Court commonly grants administration charges to secure obligations owing to the debtor's counsel and the information officer and its counsel in the context of Part IV proceedings. It is appropriate to do so here. The proposed Information Officer assisted in determining the quantum of the Administration Charge. The amount of the Administration Charge is reasonable in the circumstances, having regard to the size and complexity of these proceedings and the roles that will be required of Canadian counsel to the Debtors and the Information Officer and its counsel.

D&O Charge

[50] The proposed Supplemental Order also provides for a charge on the Canadian Debtors' Collateral in favour of the Canadian Debtors' directors and officers in the maximum amount of CDN $3.4 million. The D&O Charge would be subordinate to the proposed Administration Charge and DIP Charge but rank in priority to all other encumbrances.

[51] In light of the potential liabilities, the potential insufficiency of available insurance, and the need for the continued service of the director and officers of the Canadian Debtors in these proceedings, I find that the D&O Charge is reasonable and appropriate. The proposed Information Officer assisted in determining the quantum of the D&O Charge and it is supported by evidence of the likely nature and size of the potential liabilities.

[52] The D&O Charge is granted.

The Information Officer

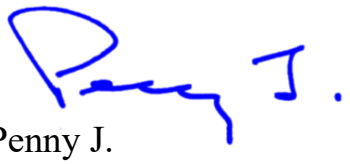
[53] Last but by no means least, there is the question of the appointment of an information officer. Although the CCAA does not require that an information officer be appointed, a practice has developed whereby the court appoints an information officer (typically a financial advisory firm that is a licensed insolvency trustee) under its discretionary powers, to assist the court and keep the court apprised of the status of the foreign proceedings. FTI Consulting Canada Inc. has consented to act in this capacity and has the obvious capacity, skill and experience to do so. It has no conflicts that would interfere with this mandate.

[54] I accept that there is good reason to appoint FTI as the Information Officer in this case, to ensure that the court is kept apprised of the status of the Chapter 11 proceedings by an independent third-party licensed insolvency professional and to assist in providing information to and responding to inquiries from interested parties in Canada.

[55] The request to appoint FTI as Information Officer in these proceedings is granted.

[56] I will add that Mr. Kranc was asked to attend on behalf of a group of investors who lease property to Red Lobster in Peterborough, Ontario. He simply advised that this group had only been served on the weekend

and had not yet had the ability to seek advise from legal counsel. Mr. Kranc enquired about the possibility of an adjournment. Mr. Rogers was able to direct me to para. 39 of the Supplemental Order which provides that "any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Canadian Debtors, the Foreign Representative, the Information Officer and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order." On the strength of this provision, I ruled that the application would proceed and that the Peterborough landlord was, if so advised, at liberty to come back to court under the provisions of para. 39.



Penny J.