Case Name:

MEI Computer Technology Group Inc. (Syndic de)

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED: MEI COMPUTER TECHNOLOGY GROUP INC., Petitioner
and
ERNST & YOUNG INC., Monitor

[2005] Q.J. No. 3693

No.: 500-11-025430-055

Quebec Superior Court
District of Montreal

The Honourable Clément Gascon, J.S.C.

Heard: April 7 and 8, 2005.
Oral judgment: April 8, 2005.
Written reasons: April 12, 2005.

(83 paras.)

Insolvency -- Companies' Creditors Arrangement Act -- Proof of indebtedness of at least $5,000,000 -- Motion for an Initial Order pursuant to Section 11 of the CCAA allowed in part -- Given the judicial admissions, the claims relating to potential lawsuits were admissible -- MEI met the requirements of the CCAA for the issuance of the Initial Order -- The Initial Order was granted, but with modifications imposed by the Court

MEI Computer Technology Group Inc (MEI) brought a motion for an Initial Order pursuant to Section 11 of the CCAA -- MEI had to prove indebtedness of more than $5,000,000 to meet the requirements set out in the CCAA -- The financial statements filed by MEI did not support the claims of $5,000,000 as they were unaudited and were issued internally before the end of the fiscal year -- MEI did manage to show clear liabilities of about $3,600,000 -- MEI included the value of three contingent claims, two of which were potential lawsuits, to arrive at the total of $5,100,000 -- The Court demanded specific claims as to the value of these contingent claims -- MEI then made two judicial admissions concerning the two potential lawsuits for a total of $1,500,000 -- HELD: Motion allowed in part -- Given the judicial admissions, the claims relating to potential lawsuits were admissible -- The third contingent claim, the put option, was not supported by sufficient evidence --

MEI met the requirements of the CCAA for the issuance of the Initial Order -- The Initial Order was granted, but with modifications imposed by the Court -- MEI was ordered to present a preliminary plan that provided more than general guidelines -- The duration of the Initial Order was shortened.

Statutes, Regulations and Rules Cited:

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36., s. 3 (1), s. 11, s. 12 (1)

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3., s. 121 (2), s. 135 (1.1)

Counsel:

Alain Tardif et Neil Peden (McCarthy, Tétrault), attorneys for Petitioner.

REASONS FOR JUDGMENT GIVEN ORALLY
ON AN INITIAL ORDER

1 [1] The Court is seized of the Amended Motion (dated April 8, 2005) of MEI Computer Technology Group Inc (MEI) for an Initial Order pursuant to Section 11 of the CCAA[1].

2 [2] Even though the Amended Motion alleges the notification to and the support of its secured creditors at paragraph 17, it nevertheless raises some issues as to the extent of the alleged indebtedness of MEI for more than $5,000,000 that it is required to establish under Section 3(1) of the CCAA.

3 [3] The financial statements[2] filed by MEI do not provide satisfactory support for a level of claims exceeding $5,000,000.

4 [4] First, they are unaudited, issued internally as of November 30, 2004 while MEI's year end is December 31, and already dated back to more than four months from today. They are apparently the most recent ones available.

5 [5] Second, they show in essence liabilities of approximately $2,500,000 at best. Mr. Ouimet, MEI's Director of Financial Operations, testified before the Court on these financial statements. He explained that the line item "Deferred liabilities" included in the Liabilities section of the Balance Sheet should in essence rather be part of the Shareholders' Equity section. He also explained that the line item "Deferred revenues" were liabilities included in the Liabilities section of the Balance Sheet merely as a result of financial statements presentation requirements, and not because they constitute in reality a claim as understood under Sections 3(1) and 12(1) of the CCAA.

6 [6] In the Court's understanding, these "Deferred revenues" appeared to relate to revenues already received by MEI but which pertained to services yet to be rendered to customers in the future. While they represent a potential liability for MEI in the event that such services are not eventually rendered as promised, MEI recognizes that no precise valuation of that potential liability has yet been done.

7 [7] Thus, when one excludes these two line items from the Liabilities section of the Balance Sheet, the aggregate amounts to about $2,500,000 of debts.

8 [8] Indeed, in its Amended Motion, MEI does not rely on these financial statements to justify why it is meeting the threshold of a minimum of $5,000,000 in claims that the CCAA requires for its application.

9 [9] It is in paragraphs 16 to 22 of its Amended Motion that MEI explains how it arrives at a level of debts exceeding $5,000,000.

10 [10] The amounts of the long-term debts and of the bridge financing (the secured creditors) do not cause problems; they aggregate $1,490,000 (paragraphs 16 and 17 and Exhibits P-4, P-5 and P-6).

11 [11] The same is true for the unsecured trade creditors for another $710,000 (paragraph 18 and Exhibit P-7).

12 [12] The claims listed also include the following employees' claims: $360,000 in accrued salaries, $380,000 in accrued vacation pay, $455,000 in unpaid severance and $144,000 in unpaid commissions (paragraphs 20 and 21 and Exhibits P-8 and P-9). The testimony of Mr. Ouimet supports these amounts at this stage.

13 [13] With the claim of another employee[3] referred to in paragraph 22(c) of the Amended Motion, with respect to which MEI acknowledges an indebtedness of $128,000, the aggregate of the employees' claims is $1,467,000.

14 [14] The level of these secured creditors, unsecured trade creditors and employees' claims is therefore insufficient to meet the threshold of the CCAA, as their total stands at $3,667,000.

15 [15] Therefore, to meet the requirements of Section 3(1), MEI includes in its Application the value of three contingent claims that the Court will now discuss.

16 [16] At first, the original Motion (dated April 7, 2005) only referred to two of these contingent claims, namely that of Mott for US $1,2 million (paragraph 22(a) and that of a group of minority shareholders for US $6 million (paragraph 22(b).

17 [17] The original Motion merely referred to these as being "actual or threatened lawsuits", with no valuation whatsoever thereof.

18 [18] The Court expressed to counsel its disagreement to proceed on an ex parte Application under Section 11 of the CCAA without at least specific allegations, supported by affidavit, evidencing the value to be attributed to these contingent claims.

19 [19] The Court considers that this is what Sections 3(1) and 12(1) of the CCAA, read together with the meaning of a "debt provable" under Sections 121(2) and 135(1.1) of the BIA[4], required as a minimum:

> 3. (1) This Act applies in respect of a debtor company or affiliated debtor companies where the total of claims, within the meaning of section 12, against the debtor company or affiliated debtor companies exceeds five million dollars.
>
> 12. (1) For the purposes of this Act, "claim" means any indebtedness, liability or obligation of any kind that, if unsecured, would be a debt provable in bankruptcy within the meaning of the Bankruptcy and Insolvency Act.
>
> 121. (1) [...]

(2) The determination whether a contingent or unliquidated claim is a provable claim and the valuation of such a claim shall be made in accordance with section 135.

135. (1) [...]

(1.1) The trustee shall determine whether any contingent claim or unliquidated claim is a provable claim, and, if a provable claim, the trustee shall value it, and the claim is thereafter, subject to this section, deemed a proved claim to the amount of its valuation.

(Emphasis added)

20 [20] The judgment of the Court of Queen's Bench of Manitoba in In Re Les Oblats[5] is supportive of that understanding.

21 [21] As a result, MEI filed its Amended Motion with a new affidavit acknowledging this time an indebtedness of $500,000 towards the Mott's claim at paragraph 22(a), and of $1,000,000 towards the claim of the group of minority shareholders at paragraph 22(b).

22 [22] In his testimony at hearing, Mr. Ouimet referred to a specific letter of demand received by the company inasmuch as the Mott's claim was concerned (Exhibit P-13), and to a draft lawsuit for US $6,000,000 also received by MEI for the other one (Exhibit P-11).

23 [23] He explained that MEI's Board of Directors met after the hearing of April 7, 2005 where the Court expressed its concern over the lack of valuation of these claims. After review, the Board decided to make the two above-mentioned judicial admissions as to MEI's indebtedness in this respect.

24 [24] At this stage, even though the Court expressed some scepticism as to how this recognition of value ended up being made, this is nevertheless sufficient to meet the requirements of the CCAA, as the addition of these judicial admissions for $1,500,000 brings the total level of debt of MEI to $5,167,000.

25 [25] In its Amended Motion, MEI also added a third contingent claim at paragraph 19 which states:

> 19. MEI is also subject to a put option pursuant to a unanimous shareholders agreement dated December 20, 2001; three of the shareholders have already indicated their intention to exercise the put option whereby MEI would be required to pay them over $6.6 million.

26 [26] The Court does not include this amount as part of the total of claims to be recognized at this stage under Sections 3(1) and 12(1) of the CCAA.

27 [27] On the one hand, it merely refers to a verbal indication of an intention to execute a put option under the Unanimous Shareholders' Agreement[6], while the latter, at clause 10.9, requires a written notice to trigger its potential application.

28 [28] On the other hand, according to the testimony of Mr. Ouimet, the alleged verbal indication to exercise this put option was given in the fall of 2004 and yet, no mention thereof appears anywhere in the financial statements[7].

29 [29] No doubt, if such was then regarded as serious by the Board of Directors, a note would have been included in the financial statements in view of the major potential impact of such a claim for allegedly $6.6 million.

30 [30] All in all, the Court concludes that this is a contingent claim that is not supported by sufficient evidence of any real probative value and that is too uncertain, too remote and too speculative to be considered.

31 [31] Consequently, even though in terms of total of claims, MEI barely meets at this stage the requirements of the CCAA for the issuance of an Initial Order, it is still entitled to make use of it.

32 [32] That said, the Court cannot however ignore the above-mentioned comments and context and thus prefers to be prudent on the extent of the authorizations, powers or priority charges that it will grant to MEI and its Monitor under the CCAA, pending notably a reaction from the various creditors discussed before.

33 [33] As a result, the Initial Order sought will be granted, but with the following modifications:

1. Conclusion 6 will be replaced by conclusions 6 and 6.1 that the Court added and which will emphasize the need for MEI to present a preliminary plan that provides more than the general guidelines of paragraph 37 of the Amended Motion.
2. Conclusion 7 will be modified to limit the duration of the Initial Order to April 29, 2005, at which date the parties will be reconvened before the Court to assess the situation. In view of the particularities of this Application and considering its availability, the Court is of the view that it is advisable to reconvene the parties sooner than later.
3. Conclusion 16(c) will be limited to an amount of $100,000 in the aggregate in order to be conservative on the extent of what could be done pending a review of the situation.

   Also, at this stage, the Court deletes conclusion 16(f) pending the receipt of more information on the real intentions of MEI in this respect and the reaction of the creditors to the Initial Order. In his testimony, Mr. Schroeder, the CRO, could not identify what was really aimed at by paragraph 37(a) of the Amended Motion and therefore, MEI will likely suffer no prejudice at all as a result of this.

4. Conclusion 16.1 was deleted by counsel and is not included. The Court also deleted conclusion 17.1 on further consideration. Even with its new wording, the Court does not believe it is necessary to include such conclusion. The presence of Mr. Schroeder as CRO is a reality that the Court is aware of, but which remains the company's choice. Court's blessing or acknowledgment is not required.
5. Conclusion 22 will be modified to limit the D&O Charge to $300,000. After a thorough review of the cash flow projections (Exhibit P-3) and the payable projections which include the payroll (Exhibit P-8), the Court fails to see why an amount of more that $300,000 is required to protect, as al-

leged, about two weeks of payroll obligations. Such a priority charge, like the Administration Charge, should be given sparingly at this stage, especially up until the creditors are fully heard on the issue. In the context of this Application, $300,000 appear sufficient and reasonable to protect the Directors.

6. Conclusion 23(a) will be modified to add the following at the second line: "... including in particular, for the Creditors referred in paragraphs 19 to 22 of the Amended Motion, a copy of such Motion...". In view of the importance of the contingent claims in qualifying MEI for its Application under the CCAA, the Court considers important that these creditors be made aware of the allegations of the proceeding in this respect.
7. Finally, conclusion 29 will be limited to an Administration Charge of $200,000. The Court considers that this is ample enough in the context of what appears to be a somewhat simple restructuring process of a company that barely meets the threshold of Section 3(1) of the CCAA and which involves a limited number of categories of creditors, the gist of whom appear to be of the nature of employees, shareholders, or directors related claims.

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FOR THE REASONS GIVEN ORALLY AND REGISTERED, THE COURT:

34 [1] GRANTS the Petition as amended in part only;

35 [2] ISSUES an order pursuant to Sections 4, 5 and 11 of the CCAA (the "Order"), divided under the following headings:

. . . . Service Application of the CCAA Effective Time Plan of Arrangement
. Stay of Proceedings against the Petitioner, the Property, the Directors or others
. . . . Possession of Property and Carrying on Business Restructuring Directors
. Indemnification and Charge Powers of the Monitor Priorities and General Provisions Relating to CCAA Charges
. General

SERVICE

36 [3] EXEMPTS MEI Computer Technology Group Inc. (the "Petitioner") from having to serve the Petition and from any notice of presentation.

APPLICATION OF THE CCAA

37 [4] DECLARES that Petitioner is a debtor company to which the CCAA applies.

EFFECTIVE TIME

38 [5] DECLARES that from immediately after midnight (Montreal time) on the day prior to the Order (the "Effective Time") to the time of the granting of the Order, any act or action taken or notice given by any Person in respect of Petitioner, the Directors or the Property (as those terms are defined hereinafter), are deemed not to have been taken or given, as the case may be, to the extent such act, action or notice would otherwise be stayed after the granting of the Order.

PLAN OF ARRANGEMENT

39 [6] ORDERS the Petitioner to file with this Court, on or before April 29, 2005, a compromise or an arrangement under the CCAA, or at the very least a preliminary plan or a precise description thereof containing its key elements notably inasmuch as its secured and unsecured creditors are concerned and affected (the "Plan"), between the Petitioner and any one or more classes of its creditors, as the Petitioner may deem appropriate;

40 [6.1] RECONVENES the Petitioner in front of this Court on April 29, 2005, at 2:15 p.m. in Room 15.07, to assess the situation and determine if this Order is to be renewed or extended and if so, on what conditions.

STAY OF PROCEEDINGS AGAINST THE PETITIONER, THE PROPERTY, THE DIRECTORS OR OTHERS

41 [7] ORDERS that, until and including Friday, April 29, 2005, or such later date as the Court may order (the "Stay Termination Date", the period from the date of the Order to the Stay Termination Date being referred to as the "Stay Period"), no right, legal or conventional, may be exercised and no proceeding, at law or under a contract, by reason of this Order or otherwise, however and wherever taken (collectively the "Proceedings") may be commenced or proceeded with by anyone, whether a person, firm, partnership, corporation, stock exchange, government, administration or entity exercising executive, legislative, judicial, regulatory or administrative functions (collectively, "Persons" and, individually, a "Person") against or in respect of Petitioner, or any of the present or future property, assets, rights and undertakings of Petitioner, of any nature and in any location, whether held directly or indirectly by Petitioner, in any capacity whatsoever, or held by others for Petitioner (collectively, the "Property"), and all Proceedings already commenced against Petitioner or any of the Property, are stayed and suspended until the Court authorizes the continuation thereof, the whole subject to the provisions of the CCAA.

42 [8] ORDERS that, without limiting the generality of the foregoing, during the Stay Period, all Persons having agreements, contracts or arrangements with Petitioner or in connection with any of the Property, whether written or oral, for any subject or purpose:

(a) are restrained from accelerating, terminating, cancelling, suspending, refusing to modify or extend on reasonable terms such agreements, contracts or arrangements or the rights of Petitioner or any other Person thereunder;

(b) are restrained from modifying, suspending or otherwise interfering with the supply of any goods, services, or other benefits by or to such Person thereunder (including, without limitation, any directors' and officers' insurance, any telephone numbers, any form of telecommunications service, any oil, gas, electricity or other utility supply); and

(c) shall continue to perform and observe the terms and conditions contained in such agreements, contracts or arrangements, so long as Petitioner pays the prices or charges for such goods and services received after the date of the Order as such prices or charges become due in accordance with the law or as may be hereafter negotiated (other than deposits whether by way of cash, letter of credit or guarantee, stand-by fees or similar items which Petitioner shall not be required to pay or grant), unless the prior written consent of Petitioner and the Monitor is obtained or the leave of this Court is granted;

43 [9] ORDERS that, without limiting the generality of the foregoing and subject to Section 18.1 of the CCAA, if applicable, cash or cash equivalents placed on deposit by Petitioner with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person as of the date of the Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by Petitioner and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into Petitioner's account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

44 [10] ORDERS that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, bond or guarantee (the "Issuing Party") at the request of Petitioner shall be required to continue honouring any and all such letters, bonds and guarantees, issued on or before the date of the Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid therefore.

45 [11] DECLARES that, to the extent any rights, obligations, or time or limitation periods, including, without limitation, to file grievances, relating to Petitioner or any of the Property may expire, other than the term of any lease of real property, the term of such rights or obligations, or time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that Petitioner becomes bankrupt or a receiver within the meaning of paragraph 243(2) of the Bankruptcy and Insolvency Act (Canada) (the "BIA") is appointed in respect of Petitioner, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of Petitioner in determining the 30-day periods referred to in Sections 81.1 and 81.2 of the BIA.

46 [12] ORDERS that no Person may commence, proceed with or enforce any Proceedings against any former, present or future director or officer of Petitioner or any person that, by applicable legislation, is treated as a director of Petitioner or that will manage in the future the business and affairs of Petitioner (each, a "Director", and collectively the "Directors") in respect of any claim against such Director that arose before this Order was issued and that relates to obligations of Petitioner for which such Director is or is alleged to be liable (as provided under Section 5.1 of the CCAA) until further order of this Court or until the Plan, if one is filed, is refused by the creditors or is not sanctioned by the Court.

47 [13] ORDERS that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, officers, employees, legal counsel or financial advisers of Petitioner, or the Monitor, for or in respect of the Restructuring (as defined hereinafter) or the formulation and implementation of the Plan without first obtaining leave of this Court, upon seven days written notice to Petitioner's ad litem counsel and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.

POSSESSION OF PROPERTY AND CARRYING ON BUSINESS

48 [14] ORDERS that, subject to the terms of the Order, Petitioner shall remain in possession of the Property until further order in these proceedings.

49 [15] ORDERS that Petitioner shall continue to carry on its business and financial affairs in a manner consistent with the commercially reasonable preservation thereof.

RESTRUCTURING

50 [16] DECLARES that, to facilitate the orderly restructuring of its business and financial affairs (the "Restructuring"), Petitioner shall have the right, subject to approval of the Monitor or further order of the Court, to:

(a) permanently or temporarily cease, downsize or shut down any of its operations or locations as it deems appropriate and make provision for the consequences thereof in the Plan;
(b) pursue all avenues to market and sell, subject to subparagraph (c), the Property, in whole or part;
(c) convey, transfer, assign, lease, or in any other manner dispose of the Property, in whole or in part, provided that the price in each case does not exceed $50,000 or $100,000 in the aggregate;
(d) terminate the employment of such of its employees or temporarily or permanently lay off such of its employees as it deems appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision for any consequences thereof in the Plan, as Petitioner may determine;
(e) subject to paragraphs [18] and 19 hereof, vacate or abandon any leased real property or repudiate any lease and ancillary agreements related to any leased premises as it deems appropriate, provided that Petitioner gives the relevant landlord at least seven days prior written notice, on such terms as may be agreed between Petitioner and such landlord, or failing such agreement, to make provision for any consequences thereof in the Plan;

51 [17] DECLARES that, in order to facilitate the Restructuring, Petitioner may, subject to approval of the Monitor:

(a) settle claims of customers and suppliers that are in dispute; and
(b) establish a plan for the retention of key employees and the making of retention payments or bonuses in connection therewith.

52 [18] DECLARES that, if leased premises are vacated or abandoned by Petitioner pursuant to subparagraph (e), the landlord may take possession of any such leased premises without waiver of, or prejudice to, any claims or rights of the landlord against Petitioner, provided the landlord mitigates its damages, if any, and re-leases any such leased premises to third parties on such terms as any such landlord may determine.

53 [19] ORDERS that Petitioner shall provide to any relevant landlord notice of Petitioner's intention to remove any fixtures or leasehold improvements at least seven days in advance. If Petitioner has already vacated the leased premises, it shall not be considered to be in occupation of such location pending the resolution of any dispute.

54 [20] DECLARES that, pursuant to sub-paragraph 7(3)(c) of the Personal Information Protection and Electronic Documents Act, S.C. 2000, c.5, Petitioner is permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in its possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to its advisers (individually, a "Third Party"), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of the Plan or a transaction for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with Petitioner binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to Petitioner or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation and implementation of the Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by Petitioner.

DIRECTORS INDEMNIFICATION AND CHARGE

55 [21] ORDERS that, in addition to any existing indemnities, Petitioner shall indemnify each of the Directors from and against the following (collectively, "D&O Claims"):

(a) all costs (including, without limitation, full defence costs), charges, expenses, claims, liabilities and obligations, of any nature whatsoever, which may arise on or after the date of the Order (including, without limitation, an amount paid to settle an action or a judgment in a civil, criminal, administrative or investigative action or proceeding to which a Director may be made a party), provided that any such liability relates to such Director in that capacity, and, provided that such Director (i) acted honestly and in good faith in the best interests of Petitioner and (ii) in the case of a criminal or administrative action or proceeding in which such Director would be liable to a monetary penalty, such Director had reasonable grounds for believing his or her conduct was lawful, except if such Director has actively breached any fiduciary duties or has been grossly negligent or guilty of wilful misconduct; and

(b) All costs, charges, expenses, claims, liabilities and obligations relating to the failure of Petitioner to make any payments or to pay amounts in respect of employee or former employee entitlements to wages, vacation pay, termination pay, severance pay, pension or other benefits, or any other amount for services performed on or after the date of the Order and that such Directors sustain, by reason of their association with Petitioner as a Director, except to the extent that they have actively breached any fiduciary duties or have been grossly negligent or guilty of wilful misconduct.

The foregoing shall not constitute a contract of insurance or other valid and collectible insurance, as such term may be used in any existing policy of insurance issued in favour of Petitioner or any of the Directors.

56 [22] DECLARES that, as security for the obligation of Petitioner to indemnify the Directors pursuant to paragraph [21] hereof, the Directors are hereby granted a hypothec on, mortgage of, lien on and security interest in the Property to the extent of the aggregate amount of $300,000 (the

"D&O Charge"), having the priority established by paragraphs [30] and [31] hereof. Such D&O Charge shall not constitute or form a trust. Such D&O Charge, notwithstanding any language in any applicable policy of insurance to the contrary, shall only apply to the extent that the Directors do not have coverage under any directors' and officers' insurance, which shall not be excess insurance to the D&O Charge. In respect of any D&O Claim against any of the Directors (collectively, the "Respondent Directors"), if such Respondent Directors do not receive confirmation from the applicable insurer within 21 days of delivery of notice of the D&O Claim to the applicable insurer, confirming that the applicable insurer will provide coverage for and indemnify the Respondent Directors, then, without prejudice to the subrogation rights hereinafter referred to, Petitioner shall pay the amount of the D&O Claim upon expiry. Failing such payment, the Respondent Directors may enforce the D&O Charge provided that the Respondent Directors shall reimburse Petitioner to the extent that they subsequently receive insurance benefits for the D&O Claim paid by Petitioner, and provided further that Petitioner shall, upon payment, be subrogated to the rights of the Respondent Directors to recover payment from the applicable insurer as if no such payment had been made.

POWERS OF THE MONITOR

57 [23] ORDERS that Ernst & Young Inc. is hereby appointed to monitor the business and financial affairs of Petitioner as an officer of this Court (the "Monitor") and that the Monitor shall, in addition to the duties and functions referred to in Section 11.7 of the CCAA:

(a) send notice of the Order, within 10 days, to every known creditor of Petitioner having a claim of more than $250 against it (including in particular, for the Creditors referred in paragraphs 19 to 22 of the Amended Motion, a copy of such Motion), advising that such creditor may obtain a copy of the Order on the internet at the website of the Monitor (the "Website") or, failing that, from the Monitor and the Monitor shall so provide it. Such notice shall be sufficient in accordance with Subsection 11(5) of the CCAA;

(b) assist Petitioner, to the extent required by Petitioner, in dealing with its creditors and other interested Persons during the Stay Period;

(c) assist Petitioner, to the extent required by Petitioner, with the preparation of its cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;

(d) advise and assist Petitioner, to the extent required by Petitioner, to review Petitioner's business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;

(e) assist Petitioner, to the extent required by Petitioner, with the Restructuring and in its negotiations with its creditors and other interested Persons and with the holding and administering of any meetings held to consider the Plan;

(f) report to the Court on the state of the business and financial affairs of Petitioner or developments in these proceedings or any related proceedings within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order;

(g) report to this Court and interested parties, including but not limited to creditors affected by the Plan, with respect to the Monitor's assessment of, and recommendations with respect to, the Plan;

(h) retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of the Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
(i) engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under the Order or under the CCAA;
(j) may act as a "foreign representative" of Petitioner in any proceedings outside of Canada;
(k) may give any consent or approval as are contemplated by the Order; and
(l) perform such other duties as are required by the Order, the CCAA or this Court from time to time.

The Monitor shall not otherwise interfere with the business and financial affairs carried on by Petitioner, and the Monitor is not empowered to take possession of the Property nor to manage any of the business and financial affairs of Petitioner.

58 [24] ORDERS that Petitioner and its directors, officers, employees and agents, accountants, auditors and all other Persons having notice of the Order shall forthwith provide the Monitor with unrestricted access to all of the Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of Petitioner in connection with the Monitor's duties and responsibilities hereunder.

59 [25] DECLARES that the Monitor may provide creditors and other relevant stakeholders of Petitioner with information in response to requests made by them in writing addressed to the Monitor and copied to Petitioner's counsel. The Monitor shall not have any duties or liabilities in respect of such information disseminated by it pursuant to the provisions of the Order or the CCAA, other than as provided in paragraph [27] hereof. In the case of information that the Monitor has been advised by Petitioner is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of Petitioner unless otherwise directed by this Court.

60 [26] DECLARES that the Monitor shall not be, nor be deemed to be, an employer or a successor employer of the employees of Petitioner or a related employer in respect of Petitioner within the meaning of any federal, provincial or municipal legislation governing employment, labour relations, pay equity, employment equity, human rights, health and safety or pensions or any other statute, regulation or rule of law or equity for any similar purpose and, further, that the Monitor shall not be, nor be deemed to be, in occupation, possession, charge, management or control of the Property or business and financial affairs of Petitioner pursuant to any federal, provincial or municipal legislation, statute, regulation or rule of law or equity which imposes liability on the basis of such status, including, without limitation, the Environment Quality Act (Quebec), the Canadian Environmental Protection Act, 1999 or the Act Respecting Occupational Health and Safety (Quebec) or similar other federal or provincial legislation.

61 [27] DECLARES that, in addition to the rights and protections afforded to the Monitor by the CCAA, the Order or its status as an officer of the Court, the Monitor shall not incur any liability or obligation as a result of its appointment and the fulfilment of its duties or the provisions of the Order, save and except any liability or obligation arising from the gross negligence or wilful misconduct, and no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as Monitor or the carrying out the provisions of any order of this Court, except with prior leave of this Court, on at least seven days notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor referred to in subparagraph (g) hereof shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.

62 [28] ORDERS that Petitioner shall pay the fees and disbursements of the Monitor, the Monitor's legal counsel, Petitioner's legal counsel and other advisers, incurred in connection with or with respect to the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.

63 [29] DECLARES that the Monitor, the Monitor's legal counsel, the Petitioner's legal counsel and other advisers, as security for the professional fees and disbursements incurred both before and after the making of the Order in respect of these proceedings, the Plan and the Restructuring, in addition to the retainers referred to paragraph [28] hereof, be entitled to the benefit of and are hereby granted a hypothec on, mortgage of, lien on, and security interest in the Property to the extent of the aggregate amount of $200,000 (the "Administration Charge"), having the priority established by paragraphs [30] and [31] hereof.

PRIORITIES AND GENERAL PROVISIONS RELATING TO CCAA CHARGES

64 [30] DECLARES that the priorities of the Administration Charge and D&O Charge (collectively, the "CCAA Charges"), as between them with respect to any Property to which they apply, shall be as follows. All security on the assets of the Petitioner shall retain its rank as of the date of this order except that:

(a) the Administration Charge shall rank prior to all security on the Petitioner's assets; and

(b) the D&O Charge shall rank prior to all security on the Petitioner's assets with the exception of the Administration Charge and any security held by National Bank of Canada.

65 [31] DECLARES that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, conditional sale agreements, financial leases, charges, encumbrances or security of whatever nature or kind (collectively, "Encumbrances") affecting any of the Property.

66 [32] ORDERS that, except as otherwise expressly provided for herein, Petitioner shall not grant any Encumbrances in or against any Property that rank in priority to, or pari passu with, any of the CCAA Charges unless Petitioner obtain the prior written consent of the Monitor and the prior approval of the Court.

67 [33] DECLARES that each of the CCAA Charges shall attach, as of the Effective Time of the Order, to all present and future Property of Petitioner, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.

68 [34] DECLARES that the CCAA Charges and the rights and remedies of the beneficiaries of such Charges, as applicable, shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and the declaration of insolvency made herein; (ii) any petition for a receiving order filed pursuant to the BIA in respect of Petitioner or any receiving order made pursuant to any such petition or any assignment in bankruptcy made or deemed to be made in respect of Petitioner; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds Petitioner (a "Third Party Agreement"), and notwithstanding any provision to the contrary in any Third Party Agreement:

(a) the creation of any of the CCAA Charges shall not create or be deemed to constitute a breach by Petitioner of any Third Party Agreement to which it is a party; and

(b) any of the beneficiaries of the CCAA Charges shall not have liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges.

69 [35] DECLARES that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiving order filed pursuant to the BIA in respect of Petitioner and any receiving order allowing such petition or any assignment in bankruptcy made or deemed to be made in respect of Petitioner, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by Petitioner pursuant to the Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

70 [36] DECLARES that the CCAA Charges shall be valid and enforceable as against all Property of Petitioner and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of Petitioner, for all purposes.

GENERAL

71 [37] DECLARES that the Order and any proceeding or affidavit leading to the Order, shall not, in and of themselves, constitute a default or failure to comply by Petitioner under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.

72 [38] DECLARES that, except as otherwise specified herein, Petitioner is at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of Petitioner and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail.

73 [39] DECLARES that Petitioner may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that Petitioner shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.

74 [40] DECLARES that any party in these proceedings, other than Petitioner, may serve any court materials electronically, by emailing a PDF or other electronic copy of all materials to counsels' email addresses, provided that such party shall deliver both PDF or other electronic copies and "hard copies" of all materials to counsel to Petitioner and the Monitor and to any other party requesting same.

75 [41] DECLARES that, unless otherwise provided herein or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served a Notice of Appearance on the solicitors for Petitioner and the Monitor and has filed such notice with this Court.

76 [42] DECLARES that Petitioner or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of the Order on notice only to each other.

77 [43] DECLARES that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon seven days notice to Petitioner, the Monitor and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

78 [44] DECLARES that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.

79 [45] DECLARES that the Monitor, with the prior consent of Petitioner, shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and any subsequent orders of this Court and, without limitation to the foregoing, an order under section 304 of the U.S. Bankruptcy Code, for which the Monitor shall be the foreign representative of Petitioner. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.

80 [46] REQUESTS the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order.

81 [47] ORDERS the provisional execution of the Order notwithstanding any appeal and without the necessity of furnishing any security.

82 [48] ORDERS that Exhibits P-1 and P-3, and the information contained therein, be kept confidentially under seal in the Court record to be opened only with the prior authorization of a judge of this Court.

83 [49] THE WHOLE WITHOUT COSTS.

CLÉMENT GASCON, J.S.C.

cp/i/qlnep/qlcas

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

2 Exhibit P-1.

3 Exhibit P-10.

4 Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3.

5 In Re Les Oblats de Marie Immaculée du Manitoba, [2004] M.J. No. 112, 2004 MBQB 71, (2004-03-17), para41 to 47.

6 Exhibit P-12.

7 Exhibit P-1.