QUEEN'S BENCH
Jud. Centre of SASKATOON
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CANADA
PROVINCE OF SASKATCHEWAN

IN THE QUEEN'S BENCH
JUDICIAL CENTRE OF SASKATOON

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

AND IN THE MATTER OF A PROPOSED PLAN OF ARRANGEMENT FOR THE CREDITORS OF BIG SKY FARMS INC., DRYCAST SYSTEMS INC. and BIG SKY MANAGEMENT CONSULTING CORP.

# MEMORANDUM TO THE PRESIDING JUDGE

**THIS IS AN *EX PARTE* APPLICATION** on behalf of the Applicants, Big Sky Farms Inc., Drycast Systems Inc. and Big Sky Management Consulting Corp. (collectively, the "Applicants" or "Big Sky"), for the following items of relief, pursuant to sections 3, 4, 5, 9, 10 and 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA"), Rules 441(3), 441A, 451 and 454 of *The Queen's Bench Rules* (the "Rules") and the inherent jurisdiction of this Honourable Court:

A. A declaration that each of the Applicants is a "debtor company" to which the CCAA applies.

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B. An Order providing that all proceedings and remedies taken or which might be taken against or in respect of Big Sky, any of its property or any default by Big Sky be stayed, except upon special leave to take such proceedings and remedies being granted by further Order of this Honourable Court.

C. An Order authorizing Big Sky to carry on its business in the ordinary course and to make certain payments in connection with its business and these proceedings under the CCAA.

D. An Order appointing Ernst & Young Inc. as monitor of Big Sky pursuant to the CCAA (the "Monitor").

E. An Order providing that the directors and officers of Big Sky shall have the benefit of a court-ordered priority secured charge upon all of the assets of Big Sky, in an amount not to exceed $2,000,000.00, in order to secure and indemnify such directors and officers from and against various forms of liability associated with their continuing efforts as directors of Big Sky (the "Directors' Charge").

F. An Order providing that the reasonable professional fees and disbursements of the Monitor, legal counsel to the Monitor and legal counsel to Big Sky in regard to these proceedings under the CCAA shall be secured by a court-ordered priority secured charge upon all of the assets of Big Sky, in an amount not to exceed $500,000.00 (the "Administration Charge").

G. An Order granting to Big Sky authorization to enter into negotiations for a debtor-in-possession credit facility to be provided to Big Sky (the "DIP Facility") by a proposed debtor-in-possession lender (the "DIP Lender") and granting to Big Sky leave to make application to the Court for an Order authorizing the granting of arrangements for the DIP Financing, including a court-ordered priority secured charge upon the assets of Big Sky in order to secure repayment of the DIP Financing (the "DIP Charge").

H. An Order permitting Big Sky Group to file with this Honourable Court one or more plans of compromise or arrangement between Big Sky and one or more classes of its creditors.

I. Such further and other relief as this Honourable Court may deem just and appropriate.

**THE GROUNDS IN SUPPORT OF THIS APPLICATION** are as follows:

1. Each of the Applicants is a "debtor company" within the meaning of the CCAA.

2. The circumstances which exist, as more particularly described in the Affidavit of Canute Tagseth sworn on October 29, 2009 and the Affidavit of Kevin Brennan to be sworn on October 29, 2009, make the proposed form of Order sought by Big Sky necessary and appropriate. Further, and in particular:

   (a) the principal business of Big Sky is the commercial production and marketing of pigs;

(b) Big Sky carries on business in 24 communities in rural Saskatchewan and Manitoba and is the largest employer in many of these communities, employing approximately 430 employees and paying an annual payroll of approximately $13,000,000.00;

(c) Big Sky purchases over $30,000,000.00 worth of wheat, barley and peas annually from local area grain farmers located in or near the rural Saskatchewan and Manitoba communities in which it operates;

(d) Big Sky is indebted to the Lending Syndicate which comprises its senior secured creditors in the total aggregate amount of approximately $72,100,000.00, to its subordinate secured creditors in the total aggregate amount of approximately $9,700,000.00 and to its unsecured creditors in the total aggregate amount of approximately $16,000,000.00;

(e) Big Sky is suffering through a period of a severe downturn in the North American hog industry, caused by factors such as:

i. the very negative impact upon prices obtained by Canadian hog producers from U.S. pork packers for Canadian pigs as a result of United States legislation requiring "Mandatory Country of Origin Labelling";

ii. the very negative impact upon prices for pigs obtained by North American hog producers resulting from the international H1N1 flu virus which has been unfortunately characterized as "swine flu", the impact of which characterization has been an abatement in the consumer demand for pork, thereby further depressing the price of pigs;

iii. unusually high feed prices (in large part due to U.S. Government policy mandating minimum ethanol production amounts and the impact of that policy on corn prices) ; and

iv. the strengthening of the Canadian dollar against the U.S. dollar.

(f) Big Sky has experienced an unprecedented 22 months of negative hog margins and severe cash flow pressures and has become insolvent and unable to meet its liabilities as they become due;

(g) by reason of the facts and matters described above, Big Sky requires relief under the CCAA and a stay of proceedings against it by its creditors, in order to permit Big Sky to continue to carry on business operations, to manage the cash flow crisis faced by it, to obtain a stay of proceedings against it by its creditors and to pursue meaningful opportunities for Big Sky to restructure its business and financial affairs through a plan of compromise or arrangement with its creditors; and

(h) the best opportunity which exists for the stakeholders of Big Sky (including its senior secured creditors, subordinated secured creditors, unsecured creditors, employees, shareholders and suppliers) to protect their respective positions and to preserve the value of their respective investments and claims in or to the assets of Big Sky is for Big Sky to be permitted the opportunity to seek additional equity investment and a compromise of its existing indebtedness and the opportunity to present one or more plans of arrangement and compromise to its creditors under the CCAA.

3. Big Sky intends to restructure its business and financial affairs and to propose one or more plans of compromise or arrangement to one or more classes of its creditors, in order to permit Big Sky to continue to carry on its business operations, to continue to pay its employees and to continue to contribute to the local economy in the 24 rural communities in Saskatchewan and Manitoba in which it operates.

4. The CCAA and the inherent jurisdiction of this Honourable Court provide this Honourable Court with the authority to grant the proposed form of Order requested by Big Sky.

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

**THE GROUNDS ON WHICH THIS APPLICATION** is brought *ex parte* are as follows:

1. Section 11(1) of the CCAA and Rule 441(3) of the Rules expressly contemplate that applications of this nature may, in appropriate circumstances, be brought on an *ex parte* basis.

2. Big Sky has numerous unsecured creditors. The delay which would result if Big Sky were required to proceed with this application on timely notice to each of these unsecured creditors would entail serious mischief and would very likely jeopardize any realistic opportunity that Big Sky has to submit a successful plan of arrangement or compromise to its creditors. In the result, proceeding with this application on an *ex parte* basis is appropriate.

3. Big Sky has concerns that providing advance notice of these proceedings to its unsecured creditors will significantly disrupt its business operations and will potentially result in enforcement action, discontinuance of supply and the termination of contracts to which Big Sky is a party.

**THE MATERIALS RELIED UPON** in support of this application are as follows:

1. This Memorandum to the Presiding Judge.

2. The Affidavit of Canute Tagseth sworn on October 29, 2009.

3. The Affidavit of Kevin Brennan to be sworn on October 29, 2009.

4. Consent to Appointment signed by Ernst & Young Inc.

5. A proposed form of Draft Order.

6. Brief of Law on behalf of Big Sky.

7. Such further and other material as counsel may advise and this Honourable Court may allow.

**DATED** at Saskatoon, Saskatchewan, this 29th day of October, 2009.

**MacPHERSON LESLIE & TYERMAN LLP**

Per:____________________________
Counsel for the Applicants, Big Sky Farms Inc., Drycast Systems Inc. and Big Sky Management Consulting Corp.

This Memorandum to the Presiding Judge was delivered by:

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