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COURT	COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
APPLICANTS	IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, as amended AND IN THE MATTER OF THE BUSINESS CORPORATIONS ACT, R.S.A. 2000, c. B-9 AND IN THE MATTER OF LEGACY COMMUNITIES INC., AIRDRIE CAPITAL CORPORATION, AIRDRIE COUNTRY ESTATES INC., RAILSIDE CAPITAL INC., RAILSIDE INDUSTRIAL PARK INC., FOUNDATION PLACE CAPITAL INC., and FOUNDATION PLACE INC.	
DOCUMENT	**BRIEF OF RONALD AITKENS** **RESPONDING TO THE APPLICATION OF THE UNSECURED CREDITORS COMMITTEE FILED APRIL 11, 2012**	
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I. INTRODUCTION

1 This Brief is filed on behalf of Ronald Aitkens ("**Mr. Aitkens**") in opposition to the Application of the Unsecured Creditors Committee ("**UCC**") requesting that Mr. Aitkens be removed from his position as director of the applicant companies subject to these proceedings pursuant to the *Companies' Creditors Arrangement*, RSC 1985, c. C-36, ("**CCAA**") and that a Chief Restructuring Officer ("**CRO**") be appointed in his place.

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2 The UCC claims to have lost confidence in Mr. Aitkens' abilities as a director and has lobbied for the appointment of a CRO. However, the UCC's proposal has not been endorsed by a majority, or anything approaching a majority, of investors. On the contrary, an even greater number of investors have expressed the opposite view.

3 Additionally, whether or not the UCC has confidence in Mr. Aitkens' abilities as a director is not directly relevant to whether or not Mr. Aitkens can be replaced by a CRO pursuant to the CCAA, which provides a clear test for the circumstances in which a director may be removed from office.

4 The UCC has not tendered any evidence indicating that Mr. Aitkens is unreasonably impairing, or is likely to unreasonably impair, the possibility of a viable compromise or arrangement. The evidence, in fact, indicates that Mr. Aitkens has been fully cooperating with Ernst & Young Inc., the monitor in these proceedings ("**Monitor**"), in working to put forward a viable arrangement or compromise to the creditors. For this reason, the UCC's Application must be dismissed.

II. FACTS

5 The applicants in these proceedings (the "**Companies**") sought and obtained protection under the CCAA:

(a) Legacy Communities Inc. ("**Legacy**"), and Airdrie Capital Corporation and Airdrie Country Estates Inc. (referred to collectively as "**Airdrie**") sought and obtained protection on December 21, 2011; and

(b) Railside Capital Inc. and Railside Industrial Park Inc. (referred to collectively as "**Railside**"), and Foundation Place Capital Inc. and Foundation Place Inc. (referred to collectively as "**Foundation**") sought and obtained protection in March 21, 2012.

6 Mr. Aitkens is the sole director of the Airdrie, Railside, and Foundation corporations. Mr. Aitkens is a director of Legacy.

Affidavit of Ronald Aitkens, sworn April 16, 2012, at para. 2

7 On December 21, 2011, Ernst & Young Inc. was appointed as Monitor in these proceedings.

8 Shortly after the appointment of the Monitor, Legacy formally engaged the services of two real estate professionals with significant experience in bare-land development projects in Alberta: Noel Winter and David Murphy (the "**Consultants**"). Legacy is working with the Consultants to prepare a plan of arrangement and compromise to present to creditors.

Affidavit of Ron Aitkens, sworn January 12, 2012, at para. 5

9 On January 19, 2012, the Court granted an order creating the UCC. The UCC was originally comprised of three members with a combined investment of approximately $165,000.00. As of April 11, 2012, the UCC was comprised of six members with a combined investment of approximately $565,000.00. The current members of the UCC represent less than 1% of the total number of investors and less than 1% total funds invested in the Companies.

Affidavit of Kyle Brown, Sworn January 17, 2012, at paras. 1, 21, and 22

Affidavit of Kyle Brown, sworn April 11, 2012, at paras. 2-4

Affidavit of Ron Aitkens, sworn January 12, 2012, at para. 16

10 On January 23, February 8, and March 28, 2012, the UCC made substantial requests for documents and information from the Companies.

Affidavit of Kyle Brown, sworn April 11, 2012, at paras. 6-7

11 On several occasions, commencing on February 8, 2012, the UCC was invited to attend at the Companies' "data room" to review pertinent information relating to the Companies.

Affidavit of Ronald Aitkens, sworn April 16, 2012, at para. 3

12 The UCC held investor meetings on March 22, March 23, and March 27 of 2012. The UCC did not permit the Companies to attend these meetings. At each meeting, a proxy form was made available to investors to record support for the removal of Mr. Aitkens as a director and the appointment a CRO.

Affidavit of Kyle Brown, sworn April 11, 2012, at paras. 23-32

13 Commencing on March 28, 2012, the Companies held weekly meetings with the Monitor. At least three such meetings were attended by the UCC.

Affidavit of Ronald Aitkens, sworn April 16, 2012, at para. 3

14 On March 28 and March 29 of 2012, in response to investors' concerns with respect to certain information supplied by the UCC, the Companies conducted meetings targeting the largest investors. Members of the UCC and a representative of the Monitor attended the March 29 meeting.

Affidavit of Ronald Aitkens, sworn April 16, 2012, at paras. 9-12

15 In the week of April 9, 2012, the Companies conducted two meetings targeting all investors. The meetings were conducted with the participation of the Monitor and the attendance of the UCC.

Affidavit of Ronald Aitkens, sworn April 16, 2012, at para. 17

16 The UCC has concluded that Mr. Aitkens should be removed as a director of the Companies and replaced with a CRO on the basis of a number of allegations:

(a) The Companies have been slow to respond to the UCC's requests for information;

(b) There has been an overpayment of fees to related third parties and there have been various loans made to related third parties;

(c) "Lifts" or price increases have been realized by related third parties on certain purchases of land by the Companies;

(d) There is a lack of working capital to advance certain projects as well as a lack of development;

(e) There was non-disclosure of certain risks involved in developing certain projects;

(f) Mr. Aitkens was previously investigated by, and reached a settlement with, the Alberta Securities Commission ("**ASC**"); and

(g) Mr. Aitkens is currently involved in civil litigation with third parties.

Affidavit of Kyle Brown, sworn April 11, 2012, at para. 47

17 The UCC has received proxies in favour of appointing "a qualified Chief Restructuring Officer with experience in real estate development and dealing with large numbers of investors" from 282 of a total of approximately 4077 investors. This represents approximately 7% of the total number of investors and approximately 8% of the total investment dollars in the Companies.

Affidavit of Ronald Aitkens, sworn April 16, 2012, at para. 16 and Exhibit X

18 The UCC has selected Keith Prosser ("**Mr. Prosser**") as its CRO nominee out of 6 candidates. Mr. Prosser "has spent his professional and academic career in the financial services industry, with experience in risk management, sales & marketing, investor relations, and public markets". Mr. Prosser also has experience in "direct lending to the commercial real estate sector" and has "recent experience in restructuring".

Affidavit of Kyle Brown, sworn April 11, 2012, at paras. 50-54 and Exhibit FF

19 Mr. Prosser has no or limited knowledge of the history of the Companies or the current state of business dealings leading up to the plans of arrangement and compromise being prepared by the Companies and the Monitor.

Affidavit of Ronald Aitkens, sworn April 16, 2012, at para. 36

20 The identities of the other 5 CRO candidates have not been disclosed by the UCC. The process by which Mr. Prosser was selected, and who was specifically involved in that process, has not been disclosed by the UCC. The UCC did not consult with the Monitor or the Companies in selecting Mr. Prosser as the CRO nominee.

Affidavit of Kyle Brown, sworn April 11, 2012, at paras. 50-54

21 Mr. Aitkens resists his removal as a director of the Companies and the appointment of the CRO for the following reasons:

(a) A number of the UCC's substantial and persistent requests for information have been resolved by providing documents, access to documents, meetings, and regular updates as to the Companies' and Monitor's activities. Any delays in providing responses to the UCC's requests for information have been related to the Companies' attempts to put together a viable arrangement and compromise to be presented to creditors;

Affidavit of Ronald Aitkens, sworn April 16, 2012, at para. 20

(b) The repayment terms of any inter-company loans are currently being assessed and will form part of the arrangement and compromise to be presented to the creditors;

Affidavit of Ronald Aitkens, sworn April 16, 2012, at para. 26

(c) All transactions characterized by the UCC as "lifts" were expressly disclosed in the offering memoranda accompanying each investment; and

Affidavit of Ronald Aitkens, sworn April 16, 2012, at para. 27

(d) Mr. Aitkens' civil litigation with third parties, and the ASC settlement, are with respect to unrelated matters and involve entities that are unrelated to the current CCAA proceedings.

Affidavit of Ronald Aitkens, sworn April 16, 2012, at paras. 28 and 29

22 The Companies have received confirmation of opposition to the appointment of a CRO from 462 out of a total of approximately 4077 investors. This represents approximately 13% of the total number of investors and approximately 18% of the total investment dollars in the Companies.

Affidavit of Ronald Aitkens, sworn April 16, 2012, at para. 19

23 Legacy and Airdrie anticipate presenting formal plans of arrangement and compromise to creditors in late May of 2012.

Affidavit of Ronald Aitkens, sworn April 16, 2012, at para. 3

24 Mr. Aitkens does not intend to take a management role in the Companies subsequent to restructuring.

Affidavit of Ronald Aitkens, sworn April 16, 2012, at para. 32

III. ISSUE

25 Can Mr. Aitkens be removed from his position as director of the Companies, and can a CRO be appointed in his place, at the request of the UCC pursuant to s. 11.5 of the CCAA?

IV. ARGUMENT

A. The Purpose of the CCAA and the Role of the Court

26 The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, provides a mechanism for assigning or petitioning a troubled debtor corporation into bankruptcy and liquidating its assets. In contrast, the CCAA allows a debtor corporation to avoid bankruptcy, to continue operating, and to find a business strategy enabling it to meet the demands of its creditors.

Janis Sara, *Rescue! The Companies' Creditors Arrangement Act* (Toronto: Thomson Canada Limited, 2007) at pp. 5, 9 [Tab 1]

27 Accordingly, the role of the Court in CCAA proceedings is not to assume control of the debtor corporation, but rather to facilitate a plan or compromise between the debtor corporation and its creditors. CCAA proceedings are, fundamentally, debtor-in-possession proceedings. As put by Fruman J.A:

> 6 The *CCAA*, which has become increasingly popular in recent years, provides a structured environment in which large insolvent companies continue to carry on business and retain control over their assets while their creditors, shareholders and the court consider a plan or compromise. See *Quintette Coal Ltd. v. Nippon Steel Corp.* (1990), 2 C.B.R. (3d) 303 (B.C. C.A.); *Re Lehndorff General Partner Ltd.* (1993), 17 C.B.R. (3d) 24 (Ont. Gen. Div. [Commercial List]); and *Re Smoky River Coal Ltd.* (1999), 175 D.L.R. (4th) 703 (Alta. C.A.); leave to reargue refused(1999), 175 D.L.R. (4th) 703 at 727 (Alta. C.A.). The process of compromise is overseen by a judge who has discretion to do what is necessary, within the confines of the legislation, to maintain the status quo while the negotiations, creditor approvals and reorganization take place. This "will

enable the company to remain in operation for what is, hopefully, the future benefit of both the company and its creditors": *Re Northland Properties Ltd.* (1988), 73 C.B.R. (N.S.) 146 (B.C. S.C.) at 154 citing *Meridian Development Inc. v. Toronto Dominion Bank* (1984), 32 Alta. L.R. (2d) 150 (Alta. Q.B.) at 155

***Blue Range Resource Corp.*, Re, 2000 ABCA 239 [Tab 2]**

B. Court Ordered Removal of Directors in the Context of CCAA Proceedings

i. *Stelco*

28 Prior to the enactment of section 11.5 of the CCAA, the leading case on the removal of directors in the context of CCAA proceedings was *Stelco Inc., Re.*

***Stelco Inc., Re*, (2005) 196 O.A.C. 142 (ONCA) ["*Stelco*"] [Tab 3]**

29 In *Stelco*, Blair J.A., for a unanimous panel of the Ontario Court of Appeal, overturned an order by Farley J. of the Ontario Court of Justice for the removal of two of Stelco's directors. Blair J.A. concluded that:

(a) At common law, directors could not be removed from office during the period in which they were appointed, and the Court's authority to remove directors must be founded on statute law;

(b) The authority of the Court to remove directors was not present in section 11 of the CCAA; and

(c) The Court may have the authority to remove directors in exceptional circumstances in the course of CCAA proceedings where actual misconduct gives rise to the Court's jurisdiction to grant relief from oppression.

***Stelco Inc., Re*, (2005) 196 O.A.C. 142 (ONCA) at paras. 46-51 [Tab 3]**

30 Blair J.A. did not identify a single case in which the Court ordered the removal of a director in the course of CCAA proceedings. The dearth of case law on this particular point, both before and after *Stelco*, indicates that such an remedy is indeed granted in exceptional cases.

Marie Bruchet, "Director Removal Under the CCAA" (2008) Insolvency Institute of Canada (Article 2008-13) at s. 5(a) [Tab 4]

31 Importantly, Blair J.A. strongly affirmed the business judgment rule in the context of CCAA proceedings, noting that "[i]t is well-established that judges supervising restructuring proceedings -- and Courts in general -- will be very hesitant to second-guess the business decisions of directors and

management" and that the composition of the board of directors was "no more within the purview of the Court's knowledge and expertise than other business decisions".

> ***Stelco Inc., Re*, (2005) 196 O.A.C. 142 (ONCA) at paras. 65, 70. [Tab 3]**
>
> **Janis Sara, *Rescue! The Companies' Creditors Arrangement Act* (Toronto: Thomson Canada Limited, 2007) at p. 130 [Tab 1]**

32 The removal of an officer or director who is the "the individual with the expertise" or the "driving force" behind the business can be particularly risky.

> ***Johnson v. Cava Secreta Wines & Spirits Ltd.*, 2011 SKQB 405, at paras. 42 and 45 [Tab 5]**

ii. *Section 11.5 of the CCAA*

33 Current section 11.5 of the CCAA provides for the removal of directors who unreasonably impair, or who are likely to unreasonably impair, the possibility of a viable compromise or arrangement:

> **Removal of directors**
>
> **11.5** (1) The court may, on the application of any person interested in the matter, make an order removing from office any director of a debtor company in respect of which an order has been made under this Act if the court is satisfied that the director is unreasonably impairing or is likely to unreasonably impair the possibility of a viable compromise or arrangement being made in respect of the company or is acting or is likely to act inappropriately as a director in the circumstances.
>
> **Filling vacancy**
>
> (2) The Court may, by order, fill any vacancy created under subsection (1).
>
> 1997, c. 12, s. 124; 2005, c. 47, s. 128

34 Section 11.5 of the CCAA received royal assent on November 25, 2005, and was proclaimed in force as of September 18, 2009. Section 11.5 has yet to be judicially considered.

> **L.W. Houlden, G.B. Morawetz, Janis Sara, *Bankruptcy and Insolvency Law of Canada*, 4th ed., looseleaf, (Toronto: Thomson Reuters, 2009) at N§1 and N§107 [Tab 6]**

35 Section 11.5 does not give the Court *carte blanche* to order the removal of a director. A director can only be removed if he impairs, or is likely to impair, the restructuring process. As such, section 11.5 sets out a limited exception to the common law rule, outlined in *Stelco,* that a director cannot be removed from office during the term for which he was appointed.

36 In particular, section 11.5 does not itself provide a mechanism for removing a director for prior actions or conduct that are not strictly relevant to the debtor corporation's restructuring efforts. This is consistent with the general view that the central focus of CCAA proceedings to put forth a viable workout or compromise rather than attempt to assign blame for the debtor corporation's difficulties.

Janis Sara, *Rescue! The Companies' Creditors Arrangement Act* (Toronto: Thomson Canada Limited, 2007) at p. 2 [Tab 1]

***Pacific Shores Resort & Spa Ltd., Re*, 2011 BCSC 1775 at paras. 31 and 32 [Tab 7]**

***Muscletech Research & Development Inc., Re*, 19 C.B.R. (5th) 57 at para. 4 [Tab 8]**

37 Despite its limited applicability, section 11.5 has been criticized by academic commentators for the following reasons:

(a) It invites the Courts to interfere excessively with the business judgment of directors;

(b) In posing the question of whether a director is "likely" to unreasonably impair an arrangement, it invites overly speculative and potentially unfair assessments of directors capabilities in the context of a CCAA restructuring; and

(c) It contributes to longer, more complicated, and more expensive proceedings with questionable benefit to the parties involved.

Marie Bruchet, "Director Removal Under the CCAA" (2008) Insolvency Institute of Canada (Article 2008-13) at s. 5 [Tab 4]

38 The Insolvency Institute of Canada has implored that that 11.5 be exercised sparingly:

> While the LRTF hopes that the courts would exercise [the power to remove directors] cautiously and only in the clearest of cases, we had reservations about whether it is appropriate as a matter of public policy to give a court the power and responsibility for making predictions about possible future behaviour of directors.

Legislative Review Task Force (Commercial) of the Insolvency Institute of Canada and the Canadian Association of Insolvency and Restructuring Professionals, *Report on the Commercial Provisions of Bill C-55* at p. 52 [Tab 9]

iii. *Proper Interpretation of Section 11.5 of the CCAA*

39 The fundamental purpose of the CCAA is to provide a structured environment in which large insolvent companies can maintain the status quo, continue to carry on business, and retain control over their assets while creditors, shareholders, and the Court consider a plan of compromise or arrangement. For this reason, the Courts have denied the removal of directors in the absence of express statutory authority.

40 Given the purpose of CCAA proceedings, when the CCAA was amended to include the authority to remove directors, it was narrowly proscribed. Section 11.5 does not redefine the role of the Court in CCAA proceedings, the applicability of the business judgment rule CCAA proceedings, or the purpose of the CCAA.

41 On its face, section 11.5 applies in cases where a director has unreasonably impaired, or is likely to unreasonably impair, the possibility of a viable compromise or arrangement. In essence, a director can only be removed if he interferes with the fundamental purpose of the CCAA proceedings. The Court does not have broad discretion to remove directors for actions or conduct unrelated to interference with the CCAA proceedings.

C. Appointment of a CRO

42 CROs are typically "turnaround experts" that replace most of the functions of the existing CEO and directors of the debtor corporation. CROs are often appointed in the initial CCAA stay order. As such, CROs are also often appointed in close consultation with the debtor corporation and the monitor. As an alternative to appointing a CRO, the monitor may agree to take a more active role in the oversight of the debtor corporation's decisions. As further alternative, industry experts may be retained with a more limited mandate.

Janis Sara, *Rescue! The Companies' Creditors Arrangement Act* (Toronto: Thomson Canada Limited, 2007) at p. 158, 160 [Tab 1]

43 There is a dearth of case law with respect to the test that must be satisfied in order for a CRO to be appointed at the behest of a creditor and in opposition to both the debtor corporation and the monitor. In the event that a CRO is intended to replace existing management, it is submitted that the test for appointing a CRO is similar to that for the removal of directors. In short, the creditor must show that existing management is unreasonably impairing or is likely to unreasonably impair the restructuring of the debtor corporation.

D. The Request to Remove Mr. Aitkens as Director and Appoint a CRO

i. *Unreasonable Impairment*

44 The UCC has made a number of allegations against Mr. Aitkens. With the exception of the suggestion that Mr. Aitkens has contributed to delays in complying with the UCC's requests for information and documents, none of the UCC's allegations relate to Mr. Aitkens' actions or conduct during the course of the CCAA proceedings.

45 With respect to the allegations of non-disclosure, Mr. Aitkens, the Monitor, and the Companies have made reasonable efforts ensure that the UCC is kept fully appraised of any new developments, and have made reasonable efforts to respond to the UCC's substantial and persistent requests for information. To put it plainly, far from attempts to impair or interfere, any perceived deficiencies related to the provision of information to the UCC have been a direct result of Mr. Aitkens', the Monitor's, and the Companies' efforts to advance a viable compromise or arrangement.

46 The UCC has had an open invitation to view the documents contained in the Companies' "data room". The Companies and the Monitor have also directly provided the UCC with numerous documents and other information. The UCC been invited to attend weekly meetings held between the Monitor and the Companies and has in fact attended several such meetings. The UCC has also attended at least three investor meetings put on by the Companies in March and April of 2012.

47 With respect to the balance of the UCC's allegations, none of them amount, or could amount, to evidence that Mr. Aitkens is impairing or is likely to impair the CCAA restructuring. The UCC has simply attempted to cast general and vague aspersions on Mr. Aitkens' character and business judgment. The UCC is not even asking the Court to *speculate* that Mr. Aitkens is likely to interfere with the restructuring, as this would conceivably require some logical reason for him to do so. Mr. Aitkens has nothing to gain, and very much to lose, should the plan of arrangement or compromise ultimately fail.

48 Of all the parties involved, the Monitor is best situated to advise whether or Mr. Aitkens is interfering with the CCAA proceedings. At no time has the Monitor suggested that Mr. Atkens should be replaced with a CRO.

ii. *Support for the UCC's Proposal*

49 The UCC has the express support of less than 10% of investors, representing less than 10% of the total investment dollars in the Companies, to appoint "a qualified Chief Restructuring Officer with experience in real estate development and dealing with a large numbers of investors". It is not apparent that Mr. Prosser has any experience in "real estate development".

50 As such, while the UCC may have the support of a minority of investors with respect to appointment a "qualified" CRO, the UCC apparently has only the support of the members UCC itself to request the appointment of Mr. Prosser specifically. The members of the UCC represent less than 1% of investors holding less than 1% of investments.

51 In contrast, the Companies have the express support of more than 10% of investors, representing close to 20% of the total investment dollars, in opposition the UCC's proposal.

52 It is very difficult to see how section 11.5 of the CCAA might be used as a mechanism to allow less than 1% of investors holding less than 1% of investments to force a change in management in opposition to the Monitor, the Companies, as well as a much larger block of investors.

iii. *Qualifications of the CRO Nominee*

53 Mr. Prosser is not a "turnaround expert". Mr. Prosser has never acted as a CRO in a CCAA restructuring. While Mr. Prosser does have some recent restructuring experience, it is not apparent that he has ever been involved in a restructuring arising out of insolvency proceedings.

54 The Companies' strategy at this stage has been to hire Consultants specializing in bare-land real estate development. This appears to be precisely the sort of expertise that Mr. Prosser lacks.

55 Mr. Prosser's suitability for the position of CRO is based entirely on the judgment of the UCC. Neither the Companies nor the Monitor have assessed Mr. Prosser's suitability for the position, or any other candidate's suitability for the position.

56 At this stage in the proceedings, is wholly inappropriate to "parachute" in a CRO, without consultation with the Monitor and Companies, who does not appear to have restructuring experience in the insolvency context, who does not appear to have experience in real estate development, and who does not have knowledge of the Companies or of the Companies' restructuring efforts so far.

57 The request to remove Mr. Aitkens and appoint a CRO has already diverted significant resources away from the preparation of a viable arrangement or compromise. The actual removal of Mr. Aitkens, who is intimately familiar with all aspects of the Companies and their efforts to restructure, will add significant delays and significant costs to these proceedings. Indeed, to the extent that "impairment" can be quantified in additional time and expense, there is little doubt that appointing a CRO at this stage will impair these proceedings to a greater extent than retaining Mr. Aitkens.

V. CONCLUSION AND RELIEF SOUGHT

58 CCAA proceedings are, fundamentally, debtor-in-possession proceedings. As such, the Courts have denied the ability to remove directors absent express statutory authority to do so. When the CCAA was amended to provide such authority, it was narrow proscribed. The removal of directors pursuant to s. 11.5 is contrary to the principles of the CCAA, and as such it is only permitted in exceptional circumstances when necessary to the restructuring process.

59 Once CCAA proceedings have been commenced, investor dissatisfaction with management is inevitable. However, this dissatisfaction does not give rise to an automatic right to replace management. Court oversight is not a substitute for business judgment, even in the course CCAA

proceedings, and minority stakeholders cannot be permitted to wrest control of the proceedings from the monitor and the debtor corporation on the basis of general personal attacks.

60 The bright line that must be crossed, as expressed in section 11.5, is when a director's actions or conduct impair, or may impair, the possibility of a viable compromise or arrangement. The UCC has not established that Mr. Aitkens' actions or conduct have crossed this bright line. He cannot be removed as director.

61 For the reasons set forth above, it is respectfully submitted that the UCC's application be dismissed with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 7TH DAY OF MAY, 2012.

NORTON ROSE CANADA LLP

Per: ______________________

Randal Van de Mosselaer
Solicitors for the Respondent
Ronald Aitkens