

TAB 8

Clerk's stamp:

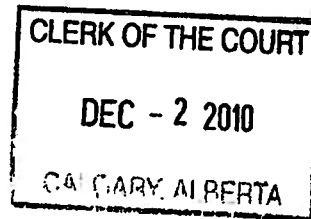
COURT FILE NUMBER

1001-07852

COURT OF QUEEN'S BENCH OF
ALBERTA

JUDICIAL CENTRE

CALGARY



IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985,
c. C-36, AS AMENDED AND THE JUDICATURE ACT, R.S.A. 2000, c. J-2, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
MEDICAN HOLDINGS LTD., MEDICAN DEVELOPMENTS INC., R7 INVESTMENTS LTD.,
MEDICAN CONSTRUCTION LTD., MEDICAN CONCRETE INC., 1090772 ALBERTA
LTD., 1144233 ALBERTA LTD., 1344241 ALBERTA LTD., 9150-3755 QUEBEC INC.,
AXXESS (GRANDE PRAIRIE) DEVELOPMENTS LTD., AXXESS (SYLVAN LAKE)
DEVELOPMENTS LTD., CANVAS (CALGARY) DEVELOPMENTS LTD., ELEMENTS
(GRANDE PRAIRIE) DEVELOPMENTS LTD., HOMES BY KINGSLAND LTD., LAKE
COUNTRY (SITARA) DEVELOPMENTS LTD., MEDICAN (EDMONTON TERWILLEGAR)
DEVELOPMENTS LTD., MEDICAN (GRANDE PRAIRIE) HOLDINGS LTD., MEDICAN
(KELOWNA MOVE) DEVELOPMENTS LTD., MEDICAN (LETHBRIDGE - FAIRMONT
PARK) DEVELOPMENTS LTD., MEDICAN (RED DEER - MICHENER HILL)
DEVELOPMENTS LTD., MEDICAN (SYLVAN LAKE) DEVELOPMENTS LTD., MEDICAN
(WESTBANK) DEVELOPMENT LTD., MEDICAN (WESTBANK) LAND LTD., MEDICAN
CONCRETE FORMING LTD., MEDICAN DEVELOPMENTS (MEDICINE HAT
SOUTHWEST) INC., MEDICAN ENTERPRISES INC. / LES ENTREPRISES MEDICAN INC.,
MEDICAN EQUIPMENT LTD., MEDICAN FRAMING LTD., MEDICAN GENERAL
CONTRACTORS LTD., MEDICAN GENERAL CONTRACTORS 2010 LTD., RIVERSTONE
(MEDICINE HAT) DEVELOPMENTS LTD., SANDERSON OF FISH CREEK (CALGARY)
DEVELOPMENTS LTD., SIERRAS OF EAUX CLAIRES (EDMONTON) DEVELOPMENTS
LTD., SONATA RIDGE (KELOWNA) DEVELOPMENTS LTD., SYLVAN LAKE MARINA
DEVELOPMENTS LTD., THE ESTATES OF VALLEYDALE DEVELOPMENTS LTD., THE
LEGEND (WINNIPEG) DEVELOPMENTS LTD., and WATERCREST (SYLVAN LAKE)
DEVELOPMENTS LTD. (THE PETITIONERS)

DOCUMENT

ORDER

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

David W. Mann/Rebecca L. Lewis
Fraser Milner Casgrain LLP
Bankers Court
15th Floor, 850 - 2nd Street S.W.
Calgary, Alberta T2P 0R8
Ph. (403) 268-7097/(403) 268-6354 Fx. (403) 268-3100
File No.: 526686-1

DATE ON WHICH ORDER WAS PRONOUNCED: December 2, 2010

NAME OF JUDGE WHO MADE THIS ORDER: Madam Justice K.M. Horner

ORDER
(Stay Extension and CRO)

I hereby certify this to be a true copy of
the original Order
Dated this 2 day of Dec., 2010
[Signature]
for Clerk of the Court

UPON the application of the Petitioners in these proceedings (collectively, the **Medican Group**"); AND UPON having read the Application by the Petitioners, dated November 29, 2010, the Affidavit of Tyrone Schneider dated November 29, 2010 (the "**Schneider Affidavit**"), the Affidavit of Ronica Cameron dated December 1, 2010 (the "**Service Affidavit**"), the Seventh Monitor's Report, dated November 29, 2010, all filed, and such other material in the pleadings and proceedings as are deemed necessary; AND UPON hearing counsel for the Medican Group, the Monitor, and other interested parties;

IT IS HEREBY ORDERED AND DECLARED THAT:

Service

1. The time for service of notice of this application is abridged to the time actually given and service of the Notice of Motion and supporting material as described in the Service Affidavit is good and sufficient, and this hearing is properly returnable before this Honourable Court today and further service thereof is hereby dispensed with.
2. All capitalized terms not otherwise defined in this Order shall have the meaning ascribed to them in the Order granted by Madam Justice K.M. Horner in this Action dated May 26, 2010 ("**Initial Order**").

Extension of Stay

3. The Stay Period is hereby extended up to and including ^{Kmt/March ✓ Kmt} ~~January~~ 31, 2011.

Appointment of the Chief Restructuring Officer

4. 1539319 Alberta Ltd., be and is hereby appointed as chief restructuring officer over the Petitioners (the "**CRO**") with authority to carry on, manage, operate, and supervise the management and operations of the business and affairs of the Petitioners in accordance with the terms of a letter of engagement dated May 27, 2010 (the "**Engagement Letter**") and the terms and conditions set forth in this Order.
5. The CRO shall have and may exercise and perform the powers, responsibilities and duties described in the Engagement Letter, together with the following powers, responsibilities and duties (collectively the "**CRO Powers**"):
 - (a) to manage the Business, affairs, and Restructuring of the Petitioners in the name of, and on behalf of, the Petitioners;
 - (b) take such steps as in the opinion of the CRO are necessary or appropriate to maintain control over all receipts and disbursements of the Medican Group including, without limiting the generality of the foregoing, take such steps as necessary or desirable to control and use all bank accounts of the Medican Group;
 - (c) ensure that Tyrone Schneider or such other persons as he designates in writing (each, a "**CRO Signing Officer**") shall become signing officers of all bank accounts of the Medican Group and the Medican Group's banks are hereby directed, when notified in writing by the CRO, to revoke any existing signing authorities and act on the instructions only of such CRO signing officers;

- (d) retain and terminate the employment or services contacts of employees, agents or consultants and otherwise deal with human resources and other organization issues on behalf of the Medican Group or any of them;
- (e) represent the Medican Group in any negotiations with any party;
- (f) retain such agents and advisors that the CRO considers necessary or appropriate on whatever basis, including temporary, to assist the CRO in exercising the CRO powers;
- (g) communicate with and provide information to the Monitor regarding the business and affairs of the Medican Group;
- (h) such other duties or powers that the CRO may agree to and which are approved by the Monitor or by order of this Court; and
- (i) take all such steps and actions, enter into and execute all such agreements and documents and incur such expenses and obligations necessary or incidental to the exercise of the CRO Powers, as are reasonably required to carry out the provisions of this Order, including in the name and on behalf of the Medican Group, as applicable,

provided that in each case such actions, agreements, expenses and obligations, shall be construed to be those of the Medican Group and not of the CRO or any of its shareholders, directors, officers, employees, or advisors.

6. The Petitioners and its shareholders, direct and indirect subsidiaries, officers, directors, employees, servants, agents and representatives (the "Company Persons") shall cooperate fully with the CRO in the exercise of its powers and the discharge of its obligations. Without limiting the generality of the foregoing, the Company Persons shall provide the CRO with such access to the Petitioners' and its direct and indirect subsidiaries' books, records, assets and premises as the CRO requires to exercise its powers and perform its obligations under this Order.
7. The CRO shall incur no liability or obligation as a result of its engagement or the fulfillment of its duties in the carrying out of the provisions of its engagement or as may be ordered by this Court, save and except for gross negligence or wilful misconduct on its part, and no action or other proceeding shall be commenced against the CRO as a result of or relating in any way to its engagement as CRO, the fulfillment of its duties as CRO or the carrying out of any of the orders of this Court, except with prior leave of this Court and provided further that the liability of the CRO hereunder shall not in any event exceed the quantum of the fees and disbursements paid to or incurred by it in connection with this matter.
8. The Petitioner shall pay the CRO's fees in the sum of \$30,000 per month and pay all of the CRO's disbursements in accordance with the terms of the Engagement Letter.
9. The Administration Charge shall secure the fees and disbursements of the CRO and the Directors' Charge shall secure the indemnities in favour of the CRO hereunder. The aggregate amounts of these charges are not changed by this Order.
10. The CRO may resign or may be removed by order of this Court.

11. The appointment of the CRO and the granting of powers and responsibilities to the CRO hereunder will not constitute the sale or disposition of the Business or the sale or disposition of any of the Property and such Business and Property will continue to be the Business and Property of the Petitioners unless and until sold in whole or in part to a purchaser.
12. The CRO shall be subject to the supervisory jurisdiction of the Court.
13. The CRO may apply to this Court from time to time for advice and directions concerning its powers and duties or any other relevant matter.
14. None of the CRO or Tyrone Schneider or any of the employees or consultants of the CRO shall be deemed to be a director of any of the Medican Group.

Late Claim

15. The late claim of Empire Drywall Ltd. is to be filed in these proceedings, notwithstanding that the claim was filed after the Claims Bar Date, as defined in the Claims Procedure Order granted in these proceedings on June 11, 2010.

DIP Credit Facility

16. The Medican Group be and is hereby authorized to extend the DIP credit facility on terms not to exceed: (i) a maturity date of February 28, 2011; and (ii) an extension fee of not greater than 25,000 payable on maturity, and the Medican Group be and is hereby authorized to do such things as are reasonably necessary to give full effect to such amendments.

Miscellaneous

17. The Medican Group shall serve, by courier, facsimile transmission, e-mail transmission, or ordinary post, a copy of this Order on all parties present at this application and on all parties who received notice of this application or who are presently on the service list established in these proceedings, and service on any or all other parties is hereby dispensed with. Service affected as aforesaid shall be good and sufficient service.

K.M. Horner

Justice of the Court of Queen's Bench of Alberta

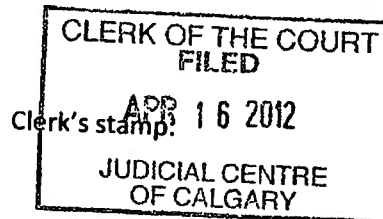
ENTERED THIS 2nd DAY OF
DECEMBER, 2010

Clerk of the Court

I hereby certify this to be a true copy of
the original Order

Dated this 16 day of April, 2012

[Signature]
for Clerk of the Court



COURT FILE NUMBER

1101-11261

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

APPLICANT

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

AND IN THE MATTER OF ROGERS OIL & GAS INC.

DOCUMENT

ORDER
(Appointment Order)

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS
DOCUMENT

David Mann / Robert J. Kennedy
Fraser Milner Casgrain LLP
15th Floor, 850 - 2nd Street S.W.
Calgary, Alberta T2P 0R8
Ph. (403) 268-7097 / (403) 268-7161
Fx. (403) 268-3100
File No.: 538224-2

DATE ON WHICH ORDER WAS PRONOUNCED: April 16, 2012

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Madam Justice Romaine

ORDER

UPON THE APPLICATION of Rogers Oil & Gas Inc. ("ROGI"); AND UPON having read the initial order granted on August 17, 2011 (the "Initial Order"), and the pleadings and materials filed herein; AND UPON having read the Fifth Report of Ernst & Young Inc. (the "Monitor") as Monitor of ROGI dated April 13, 2012, filed;

AND UPON it appearing that all interested and affected parties have been served with notice of this application;

IT IS HEREBY ORDERED AND DECLARED THAT:

Service of Application

1. Service of the notice of this application and the supporting materials is hereby validated, and no other person is required to have been served with notice of this application, and time for service of this application is hereby abridged to that actually given.

Committee Appointment

2. Approval and authorization is hereby granted to ROGI and the Monitor to appoint Gary Joyal to act as a member of the committee of unsecured debenture holders of ROGI (the "Committee"), representative of series 4, pursuant to the Committee by-laws as approved by and pursuant to the Order of this Honourable Court dated October 28, 2011.

Chief Information Officer

3. Jerri Beauchamp be and is hereby appointed Chief Information Officer of ROGI (the "CIO") with the authority to carry on, manage, operate and supervise the management and operations of the business and affairs of ROGI (the "Business"), including all real and personal property of ROGI (the "Property") and to act at once until further order of this Court, and on the terms and conditions of this Order.
4. The CIO shall have and may exercise and perform the following powers, responsibilities and duties (the "CIO Powers"):
 - (a) to take such steps as the CIO deems necessary or desirable to preserve and protect the Business and the Property;
 - (b) manage the Business in the name of and on behalf of ROGI;
 - (c) take such steps as in the opinion of the CIO are necessary or appropriate to maintain control over all receipts and disbursements of ROGI including, without limiting the generality of the foregoing, take such steps as are necessary or desirable to control and use all bank accounts of ROGI;
 - (d) to do all such things as are reasonably necessary or appropriate to negotiate, develop and implement a plan, or plans, of compromise and/or arrangement on behalf of ROGI;
 - (e) provide instruction and direction to advisors of ROGI;

- (f) represent ROGI in any negotiations with any party;
 - (g) collect all receivables of ROGI and pursue, compromise, or settle all claims by and against ROGI;
 - (h) communicate with and provide information to the Monitor regarding all matters;
 - (i) such other duties or powers that the CIO may agree to and which are approved by the Monitor or by order of this Court;
 - (j) take all such steps and actions, enter into and execute all such agreements and documents and incur such expenses and obligations necessary or incidental to the exercise of the CIO Powers, as are reasonably required to carry out the provisions of this Order, including in the name and on behalf of ROGI, as applicable; and
 - (k) all director and management powers of ROGI are hereby superceded and suspended to the extent of the CIO Powers with the exception of those matters addressed in paragraphs 4(l) and (m) below.
 - (l) The CIO shall not deal with the Alberta Securities Commission (the "ASC") or provide instruction to ROGI's counsel in respect of any and all matters between the ASC and ROGI, such instruction and responsibility on all matters relating to the ASC shall continue to be the responsibility of John Rogers, including the delivery of any documents, records or information to the ASC or the waiver or claim of privilege on behalf of ROGI. Any material costs respecting the representation of ROGI in respect of the ASC will be borne by John Rogers.
 - (m) The CIO shall not have the power to terminate John Rogers employment with ROGI or remove him as a director of ROGI.
5. ROGI and its shareholders, direct and indirect subsidiaries, officers, directors, employees, servants, agents and representatives (the "Related Persons") shall cooperate fully with the CIO in the exercise of its powers and discharge of its obligations. Without limiting the generality of the foregoing, all Related Persons shall provide the CIO with such access to the ROGI books,

records and assets the CIO requires to exercise its powers and perform its obligations under this Order.

6. The CIO shall incur no liability or obligation as a result of its engagement or the fulfillment of its duties in the carrying out of the provisions of its engagement or as may be ordered by this Court, save and except for gross negligence or wilful misconduct on its part, and no action or other proceeding shall be commenced against the CIO as a result of or relating in any way to its engagement as CIO, the fulfillment of its duties as CIO or the carrying out of any of the orders of this Court, except with prior leave of this Court and provided further that the liability of the CIO hereunder shall not in any event exceed the quantum of the fees and disbursements paid to or incurred by it in connection with this matter.
7. The appointment of the CIO and the granting of the powers and responsibilities of the CIO hereunder will not constitute the sale or disposition of the Business or the Property, and such Business and Property will continue to be the Business and Property of ROGI unless and until sold in whole or in part to a purchaser.

Miscellaneous

8. ROGI and the Monitor are at liberty to apply for such further advice, assistance and direction as may be necessary to give full force and effect to the terms of this Order.
9. ROGI shall serve, by courier, facsimile transmission, e-mail transmission, or ordinary post, a copy of this Order on all parties present at this application and on all parties who received notice of this application, and service on any or all other parties is hereby dispensed with. Service affected as aforesaid shall be good and sufficient service.


J.C.Q.B.A.

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

NO: 500-11-042345-120

DATE: MARCH 20, 2012

PRESIDING: THE HONOURABLE MARK SCHRAGER, J.S.C.

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

AVEOS FLEET PERFORMANCE INC. / AVEOS PERFORMANCE AÉRONATIQUE INC.

- and -

AERO TECHNICAL US, INC.

Petitioners

- and -

FTI CONSULTING CANADA INC.

Monitor

ORDER FOR THE APPOINTMENT OF A CHIEF RESTRUCTURING OFFICER

- [1] **ON READING** Petitioners' *Motion for the appointment of a chief restructuring officer* pursuant to the Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended the "CCAA") and the exhibits, the affidavit of Eugene I. Davis filed in support thereof, the consent of the Monitor FTI Consulting Canada Inc., relying upon the submissions of counsel and being advised that the interested parties, including secured creditors who are likely to be affected by the charges created herein, other affected parties and Air Canada were given prior notice of the presentation of the Motion;

[2] **GIVEN** the provisions of the CCAA;

WHEREFORE, THE COURT:

[3] **GRANTS** the Motion;

[4] **DECLARES** that all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Petition for an Initial Order.

[5] **DECLARES** that the time for service of the Motion is abridged to the time actually given and service of the Motion and supporting material is good and sufficient, and this hearing is properly returnable before this Honourable Court today and further service thereof is hereby dispensed with;

[6] **DECLARES** that all capitalized terms not otherwise defined in this Order shall have the meaning ascribed to them in the Initial Order granted by the undersigned in the present matter and dated March 19, 2012 ("**Initial Order**");

[7] **ORDERS** that Jonathan Solursh, be and is hereby appointed as chief restructuring officer over the Petitioners (the "**CRO**") with authority to carry on, manage, operate, and supervise the management and operations of the business and affairs of the Petitioners, subject to the execution of an engagement letter (the "**Engagement Letter**") with the CRO on terms satisfactory to the Monitor and the Administration Agent for the Third Party Secured Lenders;

[8] **DECLARES** that the said CRO shall have full power to use the services of R.e.I. Group Inc. at his discretion to carry his duties as CRO and that the said R.e.I. Group Inc. shall benefit from any protection afforded to the CRO by this Order;

[9] **ORDERS** that the CRO shall have and may exercise and perform the powers, responsibilities and duties described in the Engagement Letter, not inconsistent with the following powers, responsibilities and duties and with the prior consultation of the Monitor (collectively the "**CRO Powers**");

- a) to manage the Business, affairs, and Restructuring of the Petitioners in the name of, and on behalf of, the Petitioners;
- b) take such steps as in the opinion of the CRO are necessary or appropriate to maintain control over all receipts and disbursements of the Petitioners including, without limiting the generality of the foregoing, take such steps as necessary or desirable to control and use all bank accounts of the Petitioners;
- c) ensure that Jonathan Solursh or such other persons as he designates in writing (each, a "**CRO Signing Officer**") shall become signing officers of all bank accounts of the Petitioners and the Petitioners' banks are hereby directed, when notified in writing by the CRO, to revoke any existing signing authorities and act on the instructions only of such CRO signing officers;

- d) retain and terminate the employment or remaining services contracts of employees, agents or consultants and otherwise deal with human resources and other organization issues behalf of the Petitioners or any of them;
- e) represent the Petitioners in any negotiations with any party;
- f) retain such agents and advisors, including legal counsel, that the CRO considers necessary or appropriate on whatever basis, including temporary, to assist the CRO in exercising the CRO powers;
- g) communicate with and provide information to the Monitor regarding the business and affairs of the Petitioners;
- h) such other duties or powers that the CRO may agree to in consultation with the Monitor or by order of this Court; and
- i) take all such steps and actions, enter into and execute all such agreements and documents and incur such expenses and obligations necessary or incidental to the exercise of the CRO Powers, including to obtain such insurance as the CRO may deem necessary with the prior consultation of the Monitor and the prior approval of the Third Party Secured Lenders, as are reasonably required to carry out the provisions of this Order, including in the name and on behalf of the Petitioners, as applicable;

provided that in each case such actions, agreements, expenses and obligations, shall be construed to be those of the Petitioners and not of the CRO or any of its employees, or advisors.

- [10] **ORDERS** that the Petitioners and their shareholders, direct and indirect subsidiaries, former and current officers, directors, employees, servants, agents and representatives (the "**Company Persons**") shall cooperate fully with the CRO in the exercise of his powers and the discharge of his obligations. Without limiting the generality of the foregoing, the Company Persons shall provide the CRO with such access to the Petitioners' and their direct and indirect subsidiaries' books, records, assets and premises as the CRO requires to exercise his powers and perform his obligations under this Order.
- [11] **ORDERS** that the CRO shall incur no liability or obligation as a result of his engagement or the fulfillment of his duties in the carrying out of the provisions of his engagement or as may be ordered by this Court, save and except for gross negligence or wilful misconduct on his part, and no action or other proceeding shall be commenced against the CRO as a result of or relating in any way to his engagement as CRO, the fulfillment of his duties as CRO or the carrying out of any of the orders of this Court, except with prior leave of this Court.
- [12] **ORDERS** that the Petitioners shall pay the CRO's reasonable fees and pay all of the CRO's disbursements from time to time on an interim basis subject to approval by the Monitor and to subsequent approval by the Court.
- [13] **ORDERS** that the Administration Charge shall secure the indemnities and obligations, fees and disbursements of the CRO as contained in the Engagement

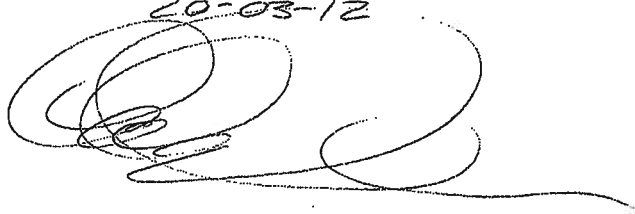
Letter and in this Order. The amount of this charge is not changed by this Order.

- [14] **ORDERS** that the Petitioners shall indemnify the CRO from all claims relating to any obligations or liabilities that he may incur and which have accrued by reason of or in relation to his appointment as CRO of the Petitioners, except where such obligations or liabilities were incurred as a result of the CRO's gross negligence, willful misconduct or gross or intentional fault as further detailed in Section 11.51 of the CCAA.
- [15] **ORDERS** that the CRO of the Petitioners shall be entitled to the benefit of and is hereby granted a charge and security in the Property to the extent of the aggregate amount of Two Million Five Hundred Thousand Dollars (\$2,500,000) (the "**CRO Charge**"), as security for the indemnity provided in the preceding paragraph, in the Engagement Letter or in this Order as it relates to obligations and liabilities that the CRO may incur in such capacity. The CRO Charge shall have the priority set out in paragraphs [44] and [45] of the Initial Order. *pari passu* with the Directors' Charge.
- [16] **ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the CRO Charge, and (b) the CRO shall only be entitled to the benefit of the CRO Charge to the extent that he does not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the CRO is entitled to be indemnified in accordance with this Order.
- [17] **ORDERS** that the CRO may be removed by order of this Court or may resign.
- [18] **ORDERS** that the appointment of the CRO and the granting of powers and responsibilities of the CRO hereunder will not constitute the sale or disposition of the Business or the sale or disposition of any of the Property and such Business and Property will continue to be the Business and Property of the Petitioners unless and until sold in whole or in part to a purchaser.
- [19] **ORDERS** that the CRO shall be subject to the supervisory jurisdiction of the Court.
- [20] **ORDERS** that the CRO may apply to this Court from time to time for advice and directions concerning his powers and duties or any other relevant matter.
- [21] **ORDERS** that none of the CRO or any of the employees or consultants of the CRO shall be deemed to be a director of any of the Petitioners.
- [22] **ORDERS** that the Petitioners shall serve, by courier, facsimile transmission, e-mail transmission, or ordinary post, a copy of this Order on all parties present at the hearing of the Motion and on all parties who received notice of this Motion or who are presently on the service list established in these proceedings, and service on any or all other parties is hereby dispensed with. Service affected as aforesaid shall be good and sufficient service.

[23] THE WHOLE WITHOUT COSTS.


HON. MARK SCHRAGER, J.S.C.

Hearing date: March 20, 2012

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20-03-12


TAB 9

THE 2012 ANNOTATED BANKRUPTCY AND INSOLVENCY ACT

Including
General Rules under the Act
Orderly Payment of Debts Regulations
Companies' Creditors Arrangement Act
CCAA Regulations and Forms
Farm Debt Mediation Act
Wage Earner Protection Program Act
Directives and Circulars

The Honourable L. W. Houlden, B.A., LL.B.
Formerly a Judge of the Court of Appeal for Ontario

The Honourable Geoffrey B. Morawetz, B.A., LL.B.
of the Superior Court of Justice

Dr. Janis P. Sarra, B.A., M.A., LL.B., LL.M., S.J.D.
of University of British Columbia
Faculty of Law and the Ontario Bar

STATUTES OF CANADA ANNOTATED

CARSWELL®

Part XI — Secured Creditors and Receivers (ss. 243–252) S. 243(2)(b)

If a consolidation order is made under s. 229, an attaching order obtained after that date under provincial legislation is stayed by the consolidation order: *Inglis v. Nebone* (1972), 17 C.B.R. (N.S.) 96 (B.C. Co. Ct.).

Section 218(2)(a)(i) of the *BIA* specifically provides that Part X does not apply to a debt owing to Her Majesty in the right of Canada or a province.

If the claim of a secured creditor comes within s. 132, it is not stayed by the making of a consolidation order: *Island Savings Credit Union v. Whiteford* (1991), 5 C.B.R. (3d) 201, 2 P.P.S.A.C. (2d) 185 (B.C. Master).

See *Orderly Payments of Debts Regulations*, C.R.C. C.H. 369, as amended by P.C. 1989-419, dated March 16, 1989 (SOR/89-158).

In *Bank of Montreal v. Fennell* (1991), 7 C.B.R. (3d) 140, it was held that a guarantor could validly contract out of the benefit of s. 30 of the *Law and Equity Act*, R.S.B.C. 1979, c. 224, and consequently he was liable on his guarantee.

If a creditor with a claim in excess of \$1,000 consents under s. 218(1)(d) to a consolidation order, a surety for the debt is released. Section 179 has no application to a surety under Part X of the *BIA*: *Westcoast Savings Credit Union v. Andrews* (1987), 69 C.B.R. (N.S.) 222, 19 B.C.L.R. (2d) 45, 45 D.L.R. (4th) 610 (C.A.).

PART XI — SECURED CREDITORS AND RECEIVERS (SS. 243–252)

243. (1) Court may appoint receiver — Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

(1.1) Restriction on appointment of receiver — In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

(2) Definition of "receiver" — Subject to subsections (3) and (4), in this Part, "receiver" means a person who

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or

bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under

(i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or

(ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

(3) **Definition of “receiver” — subsection 248(2)** — For the purposes of subsection 248(2), the definition “receiver” in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

(4) **Trustee to be appointed** — Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

(5) **Place of filing** — The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

(6) **Orders respecting fees and disbursements** — If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver’s claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

(7) **Meaning of “disbursements”** — In subsection (6), “disbursements” does not include payments made in the operation of a business of the insolvent person or bankrupt.

1992, c. 27, s. 89(1); 2005, c. 47, s. 115; 2007, c. 36, s. 58

244. (1) **Advance notice** — A secured creditor who intends to enforce a security on all or substantially all of

- (a) the inventory,
- (b) the accounts receivable, or
- (c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

(2) **Period of notice** — Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

(2.1) **No advance consent** — For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

TAB 10

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF *

BETWEEN:

Plaintiff
(Applicant)

- and -

Defendant
(Respondent)

AND:

Bankruptcy Action No. *

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY OF
[THE DEBTOR]

BEFORE THE HONOURABLE	)	ON THE ____ DAY OF
MADAM/MR. JUSTICE *	)	_____, 2005.
	)	
IN CHAMBERS, LAW COURTS	)	
*, ALBERTA	)	

ALBERTA TEMPLATE RECEIVERSHIP ORDER
VERSION NO. 1, FEBRUARY 2006

**[*NOTE: DO NOT USE THIS ORDER AS A PRECEDENT WITHOUT REVIEWING
THE ACCOMPANYING EXPLANATORY NOTES.]**

UPON the application of * in respect of [THE DEBTOR]; AND UPON having read the Notice of Motion, the Affidavit of *, and the Affidavit of Service of _____ (if applicable) filed; AND UPON reading the consent of * to act as interim receiver and receiver and manager ("Receiver") of the Debtor, filed; AND UPON noting the consent endorsed hereon of * [if applicable]; AND UPON hearing counsel for *; IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the notice of application for this order is hereby abridged and service thereof is deemed good and sufficient.

APPOINTMENT

2. Pursuant to section 47 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("BIA"), and sections 13(2) of the *Judicature Act*, R.S.A. 2000, c.J-2, 99(a) of the *Business Corporations Act*, R.S.A. 2000, c.B-9, and 65(7) of the *Personal Property Security Act*, R.S.A. 2000, c.P-7 (choose applicable statute(s)) [RECEIVER'S NAME] is hereby appointed Receiver, without security, of all of the Debtor's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
 - (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
 - (c) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part other business, or cease to perform any contracts of the Debtor;
 - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;
 - (e) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
 - (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;

- (g) to settle, extend or compromise any indebtedness owing to or by the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court.
- (k) to market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$_____, provided that the aggregate consideration for all such transactions does not exceed \$_____; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,and in each such case notice under subsection 60(8) of the *Personal Property Security Act*, R.S.A. 2000, c. P-7 shall not be required.
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

- 4. (i) The Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependant on maintaining possession) to the Receiver upon the Receiver's request.
- 5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.
- 6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the

Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. No proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph 8.

NO EXERCISE OF RIGHTS OF REMEDIES

9. All rights and remedies (including, without limitation, set-off rights) against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court. Nothing in this Order shall prohibit any party to an "eligible financial contract" (as

defined in section 11.1(1) of the *Companies' Creditors Arrangement Act*) with the Debtor from terminating such contract or exercising any rights of set-off, in accordance with its terms.

CONTINUATION OF SERVICES

11. All Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and this Court directs that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

EMPLOYEES

13. Subject to employees' rights to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction.
14. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete

one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. (a) – Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
- (i) before the Receiver's appointment; or
 - (ii) after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
- (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:
 - A. complies with the order, or
 - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
 - (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within

10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by,

- A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
 - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
- (iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

Nothing in this Order shall derogate from the protection afforded to the Receiver by Section 14.06 of the BIA or any other applicable legislation.

RECEIVER'S ACCOUNTS

- 16. Any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Receiver and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "Receiver's Charge").
- 17. The Receiver and its legal counsel shall pass their accounts from time to time.
- 18. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

- 19. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$ _____ (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and

encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge.

20. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
21. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.
22. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

ALLOCATION

23. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

GENERAL

24. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
25. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
26. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
27. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.
28. The Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

29. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver 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.

FILING

30. This Order is issued and shall be filed in Court of Queen's Bench Action No. *, and Court of Queen's Bench in Bankruptcy Action No. *, which actions are not consolidated. All further proceedings shall be taken in both actions unless otherwise ordered.

J.C.C.Q.B.A.

APPROVED AS ORDER GRANTED

[*]

ENTERED this ____ day of _____,
_____.

CLERK OF THE COURT

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the interim receiver and receiver and manager (the "Receiver") of all of the assets, undertakings and properties of [DEBTOR'S NAME] appointed by Order of the Court of Queen's Bench of Alberta and Court of Queen's Bench of Alberta in Bankruptcy and Insolvency (collectively, the "Court") dated the _____ day of _____, 2005 (the "Order") made in action numbers _____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at *.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property (as defined in the Order) as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, _____.

[RECEIVER'S NAME], solely in its capacity
as Receiver of the Property (as defined in the
Order), and not in its personal capacity

Per: _____
Name:
Title:

Action No: *

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF *

BETWEEN:

•
Plaintiff
(Applicant)

- and -

•
Defendant
(Respondent)

AND:

Bankruptcy Action No. *

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY AND
INSOLVENCY OF
[THE DEBTOR]

ALBERTA TEMPLATE RECEIVERSHIP ORDER
VERSION NO. 1, FEBRUARY 2006

TAB 11

DRAFT

SCHEDULE "A"

Form 27
[Rules 6.3 and 10.52(1)]

Clerk's stamp:

COURT FILE NUMBER 1101-17318

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 **ORDER (CHIEF RESTRUCTURING OFFICER)**

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS
DOCUMENT

David W. Mann / David LeGeyt
FRASER MILNER CASGRAIN LLP
BANKERS COURT
15TH FLOOR, 850 - 2ND STREET S.W.
CALGARY, ALBERTA T2P 0R8
PH. (403) 268-7097/3075 FX. (403) 268-3100
FILE NO.: 548427-1

DATE ON WHICH ORDER WAS PRONOUNCED: Tuesday, the 17th day of April, 2012

NAME OF JUDGE WHO MADE THIS ORDER: Madam Justice B.E.C. Romaine

ORDER

UPON the application of the Unsecured Creditors' Committee (the "**UCC**"); **AND UPON** reading the Affidavit of Mr. Kyle Brown sworn April 11, 2012, (the "**Affidavit**"); **AND UPON** hearing from counsel for Legacy Communities Inc., Airdrie Capital Corporation, and Airdrie Country Estates Inc., Railside Capital Inc., Railside Industrial Park Inc., Foundation Place Capital Inc., and Foundation Place Inc. (the

"Debtors"), counsel for the UCC, counsel for Ron Aitkens, and counsel for Ernst & Young Inc. (the "Monitor");

IT IS HEREBY ORDERED THAT:

SERVICE

1. The time for service and filing of this Application and supporting materials is hereby abridged and this Motion is properly returnable today and, further, that service thereof upon any interested party other than the persons served is hereby dispensed with.

CHIEF RESTRUCTURING OFFICER

2. NAVIS Solutions Inc. and its President, Keith Prosser, be and is hereby appointed as chief restructuring officer of the Debtors (the "**CRO**") with authority to carry on, manage, operate and supervise the management and operation of the business and affairs of the Debtors (the "**Business**"), including all the real and personal property of the Debtors (the "**Property**"), and to retain or appoint persons to manage and operate the Business or any part thereof and to act at once until further order of this Court, on the terms and conditions of this Order.
3. The CRO shall have and may exercise and perform the following powers, responsibilities and duties (collectively the "**CRO Powers**"):
 - (a) to take such steps as the CRO deems necessary or desirable to preserve and protect the Business and the Property;
 - (b) manage the Business in the name of and on behalf of the Debtors;
 - (c) take such steps as in the opinion of the CRO are necessary or appropriate to maintain control over all receipts and disbursements of the Debtors including, without limiting the generality of the foregoing, take such steps as are necessary or desirable to control and use all bank accounts of the Debtors;
 - (d) ensure that Keith Prosser or such other persons as he designates in writing (each, a "**CRO Signing Officer**") shall become signing officers of all bank accounts of the Debtors and the Debtors' banks are hereby directed, when notified in writing by the CRO, to revoke any existing signing authorities and act on the instructions only of such CRO Signing Officers;
 - (e) to lead the process to determine the viability of dealing with the Properties and, if appropriate, seeking alternatives in respect of the refinancing (whether interim or otherwise), development or sale of the Property or any part thereof, and issuing recommendations in respect thereof, and to otherwise assess opportunities for the preservation, development, or other monetization of the Property, cost reductions, cash conservation and revenue enhancement and to implement initiatives in respect thereto on behalf of the Debtors;

- (f) to do all such things as are reasonably necessary or appropriate to negotiate, develop and implement a plan, or plans, of compromise and/or arrangement on behalf of the Debtors;
 - (g) to employ or retain and to discharge or terminate such advisors, agents, assistants and employees of the Debtors, and to otherwise deal with human resources and other organization issues of behalf of the Debtors, as the CRO may consider necessary or desirable, provided that such employment shall not constitute the CRO a "successor employer" to the Debtors or any of its subsidiaries within the meaning of any provincial or federal statute or otherwise;
 - (h) provide instruction and direction to advisors of the Debtors;
 - (i) represent the Debtors in any negotiations with any party;
 - (j) collect all receivables of the Debtors and pursue, compromise, or settle all claims by and against the Debtors;
 - (k) communicate with and provide information to the Monitor and/or the UCC regarding all matters;
 - (l) such other duties or powers that the CRO may agree to and which are approved by the Monitor or by order of this Court; and
 - (m) take all such steps and actions, enter into and execute all such agreements and documents and incur such expenses and obligations necessary or incidental to the exercise of the CRO Powers, as are reasonably required to carry out the provisions of this Order, including in the name and on behalf of the Debtors, as applicable.
4. The Debtors and their shareholders, direct and indirect subsidiaries, officers, directors, employees, servants, agents and representatives (the "**Related Persons**") shall cooperate fully with the CRO in the exercise of its powers and discharge of its obligations. Without limiting the generality of the foregoing, all Related Persons shall provide the CRO with such access to the Debtors and their direct and indirect subsidiaries' books, records, assets and premises as the CRO requires to exercise its powers and perform its obligations under this Order.
5. The CRO shall incur no liability or obligation as a result of its engagement or the fulfillment of its duties in the carrying out of the provisions of its engagement or as may be ordered by this Court, save and except for gross negligence or wilful misconduct on its part, and no action or other proceeding shall be commenced against the CRO as a result of or relating in any way to its engagement as CRO, the fulfillment of its duties as CRO or the carrying out of any of the orders of this Court, except with prior leave of this Court and provided further that the liability of the CRO hereunder shall not in any event exceed the quantum of the fees and disbursements paid to or incurred by it in connection with this matter.
6. The Debtors shall pay the CRO's fees and disbursements as follows:
- (a) fees in the amount of \$20,000/month (excluding GST); and

- (b) disbursements as may authorized by either the UCC or the Monitor.
7. The Administration Charge (as defined in the Initial Orders) shall secure the fees and disbursements of the CRO and the Directors' Charge shall secure the indemnities in favour of the CRO hereunder. The aggregate amounts of these Charges are not changed by this Order.
 8. The CRO may resign or may be removed by order of this Court. In the event that the CRO resigns or is removed, the UCC, in consultation with the Debtors and the Monitor, shall nominate a replacement and such replacement shall be appointed subject to the approval of this Court.
 9. The appointment of the CRO and the granting of powers and responsibilities to the CRO hereunder will not constitute the sale or disposition of the Business or the Property, and such Business and Property will continue to be the Business and Property of the Debtors unless and until sold in whole or in part to a purchaser.
 10. The CRO shall be:
 - (a) free to provide consulting services to other non-competitive businesses provided that it discharges its duties, powers and responsibility as CRO in a diligent and timely fashion;
 - (b) along with its officers, directors, agents, and advisors indemnified against all claims and liabilities, howsoever arising ((including without limitation (i) all costs, charges and expenses (including legal expenses on a solicitor and its own client, full indemnity basis), and (ii) any amount paid to settle an action or satisfy a judgment, reasonably incurred by the CRO in respect of any civil, criminal or administrative action or proceeding to which the CRO is made a party)) by reason of performing or having performed services under this Agreement unless the CRO is found to have been either grossly negligent or guilty of wilful misconduct by a court of competent jurisdiction;
 - (c) responsible for deducting, remitting, and paying all insurance, federal and provincial income tax, Canada Pension Plan deductions, Employment Insurance Premiums and Workers' Compensation coverage ("Taxes") for itself and any persons it employs;
 - (d) subject to the supervisory jurisdiction of the Court.
 11. The CRO, the Debtors, the UCC, or the Monitor may apply to this Court from time to time for advice and directions concerning its powers and duties or any other relevant matter.
 12. None of the CRO or Keith Prosser or any of the employees or consultants of the CRO shall be deemed to be a director of any of the Debtors.

VARIATION OF INITIAL ORDER

13. The phrase "Applicants or the Monitor" appearing in paragraphs 13 of the Order granted in this matter by Madam Justice B.E.C. Romaine on December 21, 2011 (the "Legacy Initial Order") and paragraph 13 of the Order granted in this matter by Madam Justice B.E.C. Romaine on March 21, 2012 (the "Foundation Initial Order") is hereby amended to the following:

"Applicants, the Chief Restructuring Officer ("CRO"), or the Monitor".

14. The phrase "Applicants or the Monitor" appearing in paragraphs 14 and 45 of the Legacy Initial Order and paragraph 14 and 46 of the Foundation Initial Order (collectively the "Initial Orders") is hereby amended to the following:

"Applicants, the CRO, or the Monitor".
15. The phrase "to the Monitor" appearing in paragraph 15 Initial Orders is hereby amended to the following:

"to the Monitor and the CRO".
16. The phrase "Applicants and the Monitor" appearing in paragraphs 16, 17, 35(b), 44, 49, and 50 of the Legacy Initial Order and paragraphs 16, 17, 35(b), 44, 50, and 51 of the Foundation Initial Order is hereby amended to the following:

"Applicants, the CRO, and the Monitor".
17. The phrases "assist the Applicants" and "in its dissemination" appearing in paragraph 24(c) of the Initial Orders are hereby respectively amended to the following:

"assist the Applicants and the CRO" and "in the dissemination".
18. The phrase "advise the Applicants in its" appearing in paragraphs 24(d) and (e) of the Initial Orders is hereby amended to the following:

"advise the Applicants and the CRO in the".
19. The phrase "advise the Applicants, to the extent required by the Applicants" appearing in paragraph 24(f) of the Initial Orders is hereby amended to the following:

"advise the Applicants and the CRO, to the extent required by the Applicants and the CRO".
20. The phrase "the Monitor, counsel to the Monitor and counsel to the Applicants" appearing in paragraph 28 of the Initial Orders is hereby amended to the following:

"the Monitor, the CRO, counsel to the Monitor, and counsel to the Applicants".
21. Paragraph 29 of the Initial Orders is hereby replaced by the following:

"The CRO, the Monitor, and the Monitor's legal counsel shall pass their accounts from time to time".
22. The phrases "the Monitor, counsel to the Monitor", "the Monitor and such counsel", and "the Monitor and counsel" appearing in paragraph 30 of the Initial Orders are hereby respectively amended to the following:

"the CRO, the Monitor, counsel to the Monitor", "the CRO, the Monitor, and such counsel", and "the CRO, the Monitor, and counsel".

23. The phrase "consent of the Monitor" appearing in paragraph 40 of the Initial Orders is hereby amended to the following:
- "consent of the CRO and the Monitor".
24. The phrase "assistance to the Applicants and to the Monitor, as an officer of this Court" appearing in paragraph 48 of the Legacy Initial Order and paragraph 49 of the Foundation Initial Order is hereby amended to the following:
- "assistance to the Applicants and to the Monitor and CRO, as officers of this Court".
25. The phrase "grant representative status to the Monitor" appearing in paragraph 48 of the Legacy Initial Order and paragraph 49 of the Foundation Initial Order is hereby amended to the following:
- "grant representative status to the Monitor and the CRO".

B.E.C. ROMAINE
Justice of the Court of Queen's Bench of Alberta

TAB 12

Alberta Template Receivership Order		Proposed CRO Order	
Section Reference	Description of Powers & Duties	Section Reference	Description of Powers & Duties
2	Appointment under various statutes	Absent	
3(a)	Take possession and control of property	Absent	
3(b)	Receive, protect and preserve property	3(a) and (c)	Preserve and protect business and maintain control over receipts and disbursements
3(c)	Manage, operate and carry on business	2	Manage and carry on business
3(d)	Engage consultants, appraisers, agents, etc.	3(g)	Engage advisors, agents, etc.
3(e)	Purchase or lease machinery, equipment, inventory, etc.	Absent	
3(f)	Receive and collect monies and accounts	3(j)	Collect all receivables
3(g)	Settle or compromise any indebtedness	3(j)	Compromise or settle claims
3(h)	Execute, issue, assign and endorse documents in respect of the property	Absent	
3(i)	Undertake environmental or workers' health and safety assessments	Absent	
3(j)	Initiate and continue to prosecute and defend all claims	Absent	
3(k)	Market the property	Absent	
3(l)	Sell the Property	Absent	
3(m)	Apply for vesting orders	Absent	
3(n)	Report, meet and discuss with affected persons	Absent	
3(o)	Register a copy of order against title	Absent	
3(p)	Apply for permits, licenses, approvals or registrations	Absent	
3(q)	Enter into agreements with a trustee in bankruptcy	Absent	
3(r)	Exercise shareholder, partnership or joint venture rights	Absent	
4	Debtor and agents to advise Receiver of all Debtor's property and grant access to Receiver	Absent	

5 and 6	All persons to advise Receiver of all books and electronic records and grant access to Receiver	4	All "related persons" to allow CRO access to books and records, as required to exercise his powers under Order
2	Stay of Proceedings against Receiver, except with leave of the Court	5	Stay of proceedings against CRO, except with leave of the Court
2-11	Stay of Proceedings against Debtors and property	Absent	
12-13	Receiver to hold funds. Receiver not liable for employee-related liabilities	3(g)	Power to maintain and terminate employees, not a successor employer
14	Receiver shall disclose personal information to bidders	Absent	
15	Limitation on environmental liabilities	Absent	
16-18	Payment of Receivers fees and disbursements, passing of accounts, receiver's charge	6,13	Payment of CRO fees, disbursements approved by Monitor or UCC, Administration charge
19-22	Funding receivership via Receivers' Certificates	Absent	
23	Allocation	Absent	
24	Advice and direction	11	Advice and direction
25	Receiver can act as trustee in bankruptcy	Absent	
26 -27	Aid and recognition	Absent	
28	Costs	Absent	
29	Leave to apply to amend	Absent	
Absent		3(b)	Manage business in name of Debtors
Absent		3(d)	Ensure CRO becomes signing officer
Absent			Determine viability of dealing with, refinancing, development or sale of property, and issuing recommendations in respect thereof
Absent		3(f)	Develop and negotiate Plan of Arrangement
Absent		3(h)	Instruct Debtor's advisors
Absent		3(i)	Negotiate on behalf of Debtor
Absent		3(k)	Communicate with Monitor and UCC
Absent		8	Resignation or removal of CRO
Absent		9	Not a sale of business or property
Absent		10	Independence, indemnification and taxation duties of CRO
Absent		12	CRO not a director
Absent		13-25	Amendment of Initial Order