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COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

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JUDICIAL CENTRE OF EDMONTON
FILED
SEP 19 2018
Clerk of the Court

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

AND IN THE MATTER OF A PLAN OF ARRANGEMENT OF 667402 ALBERTA LTD., 18512398 ALBERTA LTD., 816956 ALBERTA LTD., 1371047 ALBERTA LTD., 1919209 ALBERTA LTD. and CANADA NORTH GROUP LP HOLDINGS LTD.

DOCUMENT **BENCH BRIEF OF CANADIAN WESTERN BANK**

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*id:- 4160-2067-0731 v.1

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PART 1 BACKGROUND

1. This Bench Brief is filed by Canadian Western Bank ("**CWB**") in connection with the applications by First Island Financial Services Ltd. ("**First Island**") and Staheli Construction Co. Ltd. ("**Staheli**") for interim distributions of funds generated from the sale of certain lands the subject of these proceedings (the "**Farm**" in the case of First Island and "**Winterburn**" in the case of Staheli).

2. The Winterburn sale closed several months ago, and the net proceeds thereof have been held by Ernst & Young Inc. (the "**Monitor**") or its counsel in trust since then.

3. The sale of the Farm is not yet complete, and approval thereof will be sought from this Honourable Court on September 21, 2018.

4. There are two applications scheduled this fall in these proceedings, a half day on October 23, 2018 (the "**October Application**") and two full days on December 4-5, 2018 (the "**December Applications**").

5. In anticipation of the October Application, this Honourable Court has directed that parties who are claiming to be secured creditors of any of the Applicants, or claim ownership to assets which were previously owned or operated by the Applicants, file particulars of their claims by October 5, 2018 (the "**Claims Particulars Affidavits**"). CWB submits that the Claims Particulars Affidavits are essential to understanding the myriad of issues which appear to be facing the Monitor in dealing with assets that are now, or have at some point during these proceedings, been considered to be part of the collateral available for realization for the benefit of creditors.

6. This issue will have a significant impact on the cost allocation in these proceedings, as the fewer assets that are available for the Applicants' creditors, and the lower the realizations therefrom, the greater will be the burden for costs borne by all secured creditors in these proceedings.

7. In conjunction with consideration of the proposed sale of the Simonette and Berland camps in March 2018, the Monitor filed an Eleventh Report describing a proposed allocation of costs methodology, and a Confidential Supplement to the Monitor's Eleventh Report (collectively, the "**Eleventh Report**") which, for confidentiality reasons, will only be referred to in general terms in this Brief.

8. In connection with the applications by Staheli and First Island, the Monitor has filed a Seventeenth Report and a Confidential Supplement thereto (collectively, the "**Seventeenth Report**") which updates the numbers disclosed in the Eleventh Report.

9. While the Monitor continued to collect accounts receivable, wind down business operations, recover assets and canvass methods of sale between April 21, 2018 when the sale of Simonette and Berland closed, and today, the only substantive asset sale that has occurred has been the auction of certain surplus equipment, for which the Monitor had secured a guaranteed minimum price from the auctioneer. That auction has now concluded.

10. While the projections of realizations shown in the Seventeenth Report show significant value yet to be recovered in the estate, CWB remains concerned that the values which appear to remain in these assets, may be largely unrecoverable for the estate, as a result of which the costs which have been incurred to date ($3.5 million for interim financing and in excess of $4 million for professional fees) plus ongoing costs, will be borne by the Applicants' secured creditors (largely CWB) from an ever-shrinking pool of assets.

11. CWB notes that the majority of the value derived from the sale of Simonette and Berland, came from assets over which CWB asserts a first security interest, CWB has received no distribution because those proceeds were utilized to pay the interim financing, the then existing and thereafter incurred professional fees and the Canada Revenue Agency deemed trust. In substance, CWB has to date directly borne the costs of this administration (with smaller contributions from the portion of the proceeds of the sale of Simonette and Berland that were charged in favour of Weslease, ECN and GE) and will

continue to bear the cost of administration if realization on further assets for the estate prove to be less than first anticipated.

12. For example:

(a) The Farm is proposed to be sold at a purchase price which appears to be some 70% of the net realizable value attributed thereto in the Eleventh Report;

(b) 726 Modular Finance Canada, Ltd. and affiliates are claiming entitlement to assets transferred to them by Canada North Camps Inc. or affiliates prior to the CCAA proceedings, for a consideration of $21 million, where it appears that a significant portion of those assets have been included in the list of assets of the Applicants provided by Shayne and Paul McCracken. If proven, this would remove several million dollars of assets from the assets thought to be recoverable as set out in the Eleventh Report;

(c) The Monitor reports in the Seventeenth Report on very significant assets which are missing from the Monias camp which the Monitor has to date been unable to trace, and which assets had been included in the estimate of realizations in the Eleventh Report;

(d) Several hundred thousand dollars of property taxes are now at issue, which may reduce recoveries of secured creditors;

(e) Other parties have asserted ownership claims to other assets at some of the camps;

(f) The Eleventh Report contemplated several million dollars of assets becoming available from various camp lands which would benefit the estate after payment of priority charges, but those camp lands, although many have been listed for sale during the CCAA proceedings and prior thereto, have elicited no offers. The camp lands themselves are largely in isolated areas where there is no demand for raw land that has been "improved" to house camps, but where there is no activity which would create demand for camps in the area;

(g) Although the Monitor continues to attempt to collect accounts receivable, the ultimate realization therefrom is uncertain at best;

(h) The estimated realization from surplus machinery and equipment as set out in the Eleventh Report, which comprised some 20% of the total estimated asset values for cost allocation purposes at that time, have been proven to be overly optimistic based on the guaranteed price on the auction sale.

These are but a few of the issues which remain uncertain at this time.

13. CWB recognizes that Staheli and First Island have real property charges. The proposed cost allocation in each of the Eleventh Report and the Seventeenth Report, contemplate real property mortgagees bearing a lesser percentage of costs to realization in light of the nature of their assets.

14. The Monitor's recommendation for the holdback on any First Island distribution is that it be at a number which is now more than twice that which had been anticipated at the time of the filing of the Eleventh Report, because of lower expected realizations and higher costs. This fact alone demonstrates the degree to which the landscape in this realization has deteriorated since April 21, 2018. It could easily deteriorate much more.

PART 2 CONCLUSION

15. CWB submits that consideration of an interim distribution for Staheli and First Island, be addressed at the December Application, once there is greater clarity with regard to realization from the auction sale, any other anticipated sales and third party property claims.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at the City of Edmonton, in the Province of Alberta, this 19 day of September, 2018.

MCLENNAN ROSS LLP

Per: ______________________________
Charles P. Russell, Q.C.
Solicitor for Canadian Western Bank