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February 12, 2019

Hand Delivered

The Honourable Justice Michael J. Wood
Supreme Court of Nova Scotia
The Law Courts
1815 Upper Water Street
Halifax, Nova Scotia

My Lord:

Re: Application by Quadriga Fintech Solutions Corp., Whiteside Capital Corporation and 0984750 B.C. Ltd. dba Quadriga CX and Quadriga Coin Exchange (collectively referred to as the "Companies" or the "Applicants"), for relief under the *Companies' Creditors Arrangement Act*

Motion for Representation Order – Thursday, February 14, 2019 at 9:30 a.m.

We are counsel for the Applicants, Quadriga Fintech Solutions Corp., Whiteside Capital Corporation and 0984750 B.C. Ltd. dba Quadriga CX and Quadriga Coin Exchange (collectively referred to as the "**Companies**" or the "**Applicants**"). The Applicants appeared before Your Lordship on February 5, 2019 in relation to an Application under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**"), wherein the Applicants were granted protection under the CCAA by order dated February 5, 2019 (the "**Initial Order**") and Ernst & Young Inc. ("**EYI**") was appointed as Monitor for the Companies.

At the initial hearing, Bennett Jones LLP filed a motion, seeking a Representation Order, requesting that it, with McInnes Cooper acting as local counsel, be appointed representative counsel for the approximately 115,000 users of the Quadriga platform (the "**Affected Users**").

Your Lordship declined to hear the motion at the initial hearing, but adjourned the matter to Thursday, February 14, 2019 at 9:30 a.m. Two additional motions have been filed by other parties seeking to be appointed as representative counsel, being:

- Miller Thomson LLP, with Cox & Palmer (local counsel); and
- Osler, Hoskin & Harcourt LLP, with Patterson Law (local counsel).

All applicants on the representative counsel motion are collectively referred to as the "**Representative Counsel**" in these submissions. In addition to the motion documents filed by Representative Counsel, other law firms have reached out to counsel for the Companies and the Monitor, including Goodmans LLP, who has proposed an alternative process than that set out in the current motions before the Court (see Appendix "A").

I. POSITION OF THE COMPANIES

The Companies believe that the appointment of representative counsel for the Affected Users will be beneficial to the CCAA process, particularly from a communication and efficiency perspective, to allow the Affected Users the opportunity to take a uniform and informed position in the CCAA process.

The Companies take no position over which of the Representative Counsel applications should be accepted by this Court, but do raise the following points for consideration:

1. If Representative Counsel is appointed by this Court, it is premature to grant the broad powers being sought by some of the Representative Counsel, at Day 10 of the CCAA process. The focus of the Companies and the Monitor at this early stage is in the gathering of assets for the benefit of the Affected Users, consisting primarily of the bank drafts and funds held by third parties, cryptocurrency and securing all computers and other equipment, in order to investigate the location of the cold wallets.

   There is a suggestion by some of the Representative Counsel applicants that they should be granted broad investigatory powers. With respect, this is the role of the Monitor. The role of representative counsel is not to monitor the Monitor, as this will unnecessarily duplicate efforts and increase costs. One of the goals of appointing representative counsel (as will be set out in these submissions) is to avoid the duplication of efforts and the duplication of costs. Granting broad powers to the successful applicant to investigate, particularly at this early stage of the CCAA proceedings, will not aid the Monitor in its efforts, pursuant to the powers it has been granted by this Court through the Initial Order.

2. If Representative Counsel is appointed by this Court, the issue of the duplication of work between local counsel and the proposed lead counsel must be addressed. The motion material filed by the Representative Counsel does not address rates or how the division of labour will be handled between lead counsel and local counsel. Possible double

representation on all future CCAA motions will have a significant impact on increasing costs of the proceedings.

3. The payment for Representative Counsel will be dependent on the Monitor being able to access funds, either through the bank drafts currently being held on the Companies' behalf, or through other sources. Unless and until additional funds are accessed, there can be no payment to Representative Counsel.

The Companies use these submissions to set out the law relating to the appointment of representative counsel. In addition, a 2018 paper presented at the Insolvency Institute of Canada by Allan Nackan and Geroge Benchetrit, titled *Representation Orders in Insolvency Cases: Current and Future Practice* (Westlaw), is attached at Appendix "B". This paper provides a broad introduction to the concept of representative counsel, as well as relevant issues to be considered.

II. ISSUES

The Companies address the following issues for consideration by this Court:

1. What is the authority for the appointment of representative counsel?

2. If the test for the appointment of representative counsel is met, what is the role and responsibility of representative counsel?

3. What other factors should be considered by this Court in deciding on representative counsel in this matter?

III. SUBMISSIONS

Issue 1 – Authority for the appointment of representative counsel

Section 11 of the CCAA grants courts a wide discretion to appoint representatives on behalf of different creditor groups in CCAA proceedings, and to order that the legal expenses of such representatives to be paid by the debtor's estate. Section 11 provides (Book of Authorities, Tab 12):

> *General power of court*
>
> *11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.*

The authority to appoint representative counsel under section 11 of the CCAA was confirmed by Justice Morawetz in *Nortel Networks Corp., Re*, 2009 CarswellOnt 3028 (Book of Authorities, Tab 7) and by Justice Newbould in *Urbancorp Toronto Management Inc., Re,* 2016 ONSC 5426 (Book of Authorities, Tab 10).

A review of the case law would suggest the following key factors for the appointment of representative counsel:

- the facilitation of access to fair process;
- representation for vulnerable groups;
- the promotion of efficiency and the avoidance of duplication of legal and/or advisor fees; and
- the ability to bind a group to a settlement or plan.

<u>Elements of a Representative Counsel Order</u>

The following is a list of issues typically dealt with in an order for the appointment of representative counsel, as identified in the Nackan and Benchetrit paper at pages 4 to 7 (Appendix "B"):

- **Representatives**

  In some cases specific representatives are appointed to represent the interests of the larger group of stakeholders for which representative counsel is appointed.

- **Representative Counsel**

  Typically, a law firm is named as representative counsel. This will depend on (among other things) the nature of legal expertise being called upon, the size of the group, and the geographical location of group members.

- **Group Members**

  Specifics are included regarding the particular group to be represented and specifying, if necessary, whether any group of members will not be covered by the representation order.

- **Mandate**

  The order will often state the specific mandate of the representatives and representative counsel, specifying the matters included and excluded from the mandate. The order can limit the mandate of representative counsel to certain specified matters.

- **Power to bind group**

  Representative counsel is often explicitly empowered to rely upon instructions from the specified representatives without further communications or instructions from the group at large (providing for a mechanism to bind the group and ensuring efficiency for the proceedings).

- **Opt-outs**

  An opt-out mechanism is typically included to allow members to opt out of being represented by the appointed representatives.

- **Funding**

  Provisions are typically included to address the funding of reasonable fees and expenses of representative counsel, as well as financial and other advisors (if necessary). It is common for a motion to be made by either the affected stakeholder group or by the debtor company for payment of these fees and expenses. Section 11.52(1)(c) of the CCAA (Book of Authorities, Tab 12) provides jurisdiction for the court to create a charge against all or part of the debtor's property, and that the security or charge rank in priority over the claim of any secured creditor of the debtor. The order may also include whether there will be a permanent or time-limited monetary cap on such fees and expenses.

- **Protection Against Liability**

  Protection is typically provided to court-appointed representative counsel and representatives, shielding them from personal liability or obligations as a result of the exercise of their duties.

Courts have issued representation orders in a broad range of circumstances. While the typical group appropriate for representative counsel have been employees of the debtor company, courts have appointed representative counsel for unsecured noteholders, investors, shareholders, real estate purchasers, real estate occupants, tort claimants, customers of securities firms, class action plaintiffs, construction subcontractors, and franchisees.

In *League Assets Corp., Re*, 2013 BCSC 2043 (Book of Authorities, Tab 6), representative counsel was appointed for a group of individuals and institutional investors who advanced approximately $352 million to debtors to fund its real estate properties and business operations. The business and investments structure consisted of a complicated corporate structure of real estate investment trusts, limited partnerships and corporations involved in the development and/or management of various real estate projects. Investors had contributed funds in the form of secured notes, unsecured notes and equity.

The monitor for the debtor supported the appointment of representative counsel, noting that:

- It was unlikely that many of the individual investors would have the financial means to engage legal counsel to provide for meaningful participation in the insolvency proceedings;

- If a number of separate law firms were retained by investors, a multiplicity of representation by those having a commonality of interest would add to the cost and complexity of the proceedings;

- The investors were the stakeholders to be "most keenly affected by this restructuring" and representation of their interests would be beneficial to ensure that all stakeholders had adequate input into the course of the proceedings; and

- The monitor was not in a position to assist any further in alerting the investors to these proceedings, organizing the investor group and advising them of issues that may affect them either as a group or individually.

The Court agreed with the submissions of the monitor and noted that, with respect to vulnerability, the investors faced similar concerns as employees would in other cases, as the investors were individuals who had invested a significant portion of their net worth in the debtor companies.

Issue 2 – Role and responsibilities of representative counsel

Generally, where more than one firm has applied to represent a group of creditors, courts have considered the following in selecting representative counsel:

- If a firm has already been retained by a significant number of members of the group;
- Whether any firms intend on acting on behalf of the members regardless of being selected as representative counsel, or whether this coupled with funding from the estate of the debtor is a pre-condition to counsel continuing to act (as this goes to reducing a multiplicity of legal retainers);
- The reputation and experience of the firm in similar matters; and
- The practical ability of the firm to best represent the group members (size, office location, languages spoken, etc.).

Mandate of Representative Counsel

It is not uncommon for an order appointing representative counsel to specify the matters included and excluded from their mandate. In *Target Canada Co., Re*, 2015 ONSC 1028 (Book of Authorities, Tab 9), the Court limited the scope of the legal services and funding available to the pharmacists operating within the Target stores and their representative counsel. The assistance of counsel was limited to (see paragraph 37):

- corresponding with the regulators concerning the wind-down process and the relocation process;
- return of inventory; and
- participating in the claims process.

The Court noted the benefits of representative counsel in reducing the overall administrative cost to the estate and avoiding a multiplicity of legal retainers. Also, there was benefit to the franchisee pharmacists in being provided assistance to effectively shut-down or relocate their business and in preparing any resulting claim in the CCAA proceedings (paragraph 39).

In *Nortel, supra*, the representation order relating to current employees specified that representative counsel's mandate did not extend to participation in negotiations with potential purchasers of assets of Nortel. In his decision in *Nortel Networks Corp., Re*, 2009 CarswellOnt 3530 (Book of Authorities, Tab 8), Justice Morawetz noted:

> *16 In my view, the overriding objective of appointing representative counsel for employees is to ensure that the employees have representation in the CCAA process.*

In the matter of the notice of intention to make a proposal of *Securecare Capital Inc.* (Ont. S.C.J. [Commerical List]), the Ontario Superior Court of Justice, in its Order dated October 6, 2017 (Book of Authorities, Tab 11), limited the mandate of representative counsel to advancing the interests of the group of unsecured bondholders in the proceeding (at paragraph 4) and not of individual bondholders. In particular, this mandate was specifically limited to: (i) reviewing sources of potential recovery, including potential claims against other parties; (ii) advocating for unsecured bondholder interests in the formulation of a proposal under the BIA and making a recommendation as to the vote on the proposal; (iii) working with the proposal trustee to formulate a streamlined claims process; (iv) representing unsecured bondholders at relevant motions in the proceedings; and (v) providing information about the proceedings to securities dealers whose clients are unsecured bondholders.

Accordingly, it is possible to specify the role of representative counsel in order to meet the objectives of CCAA proceedings without jeopardizing potential success under the process. It is respectfully submitted that, given the circumstances and the stage of the proceedings, it is appropriate for the role of Representative Counsel to be tailored in order to ensure effective representation for the Affected Users while balancing the financial burden on the Companies. The scope of the Representative Counsel's mandate can be revisited, in consultation with the Monitor, as the proceedings progress.

Funding of Representative Counsel

Representative counsel orders have typically included provisions addressing whether the estate is to bear the fees and expenses of the representatives being appointed, whether a charge on the debtors' property is being created to secure payment thereof, and whether there will be a permanent or time-limited monetary cap on fees and expenses. On balance, it is common for representative counsel to be supported by the estate and their fees to be protected by a charge against the assets of the estate.

Pursuant to section 11.52 of the CCAA, a court may make an order providing that the property of the debtor is subject to a charge to pay the expenses of professional advisers of any interested party if the court is satisfied that the order is necessary for the effective participation of the interested party. The charge may be given priority over existing security. Section 11.52 of the CCAA provides:

> *Court may order security or charge to cover certain costs*
>
> *11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of*
>
> > *(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;*
> >
> > *(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and*
> >
> > *(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.*
>
> *Priority*
>
> *(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.*

In *Canwest Publishing*, 2010 ONSC 222 (Book of Authorities, Tab 2), Justice Pepall, in considering whether a charge in favour of representative counsel was appropriate, referred to several factors that may be considered by the courts, which include (at paragraph 54):

- the size and complexity of the businesses being restructured;

- the proposed role of the beneficiaries of the charge;
- whether there is an unwarranted duplication of roles;
- whether the quantum of the proposed charge appears to be fair and reasonable;
- the position of the secured creditors likely to be affected by the charge; and
- the position of the Monitor.

In *Fraser Papers Inc., Re*, 2009 CarswellOnt 6169 (Book of Authorities, Tab 4), Justice Pepall stated the following in appointing representative counsel:

> *19 The objective of my order is to help those who are otherwise unrepresented <u>but to do so in an efficient and cost effective manner and without imposing an undue burden on insolvent entities struggling to restructure</u>. [...]*
>
> [Emphasis added]

Similarly, in *Homburg Invest Inc. (Arrangement relatif à)*, 2014 QCCS 980 (Book of Authorities, Tab 5), the Court stated there must be "*clear added value for the benefit of all stakeholders if the fees and expenses of an interested person's financial, legal or other experts are to be paid by the debtor*" (paragraph 102).

In *Urbancorp, supra*, the Court denied a request for a charge on the debtors' property to secure payment of fees of representative counsel for a group of residential property purchasers but granted an order providing that fees and disbursements could be paid by the estates from the distributions to be made to the purchasers who opted in to being represented by the court-appointed representative counsel. In reaching this decision, Justice Newbould stated that he was not satisfied that a security or charge against the Urbancorp properties was necessary for the effective participation of purchasers in the proceedings as there was no evidence of any financial inability of the purchasers to jointly engage counsel to represent them (paragraph 22). Justice Newbould also considered the contrary interests of the group of purchasers, stating:

> *23 Taken that all purchasers are likely to get back their deposits, legal representation for further action would likely be to negotiate with the known or potential purchasers of the raw lands to agree to some arrangement that would result in purchasers obtaining some part of their equity in their deals being preserved. There would be nothing wrong in their attempting to do so. However to do that with estate funds could well be contrary to the interests of the insolvent estates. Any purchaser of the raw lands would want the lands free and clear of any claims, and the best prices offered have reflected that. If such a purchaser*

were to provide to any of the pre-sale construction buyers some of the equity in their agreements, that no doubt would reduce what a purchaser would be willing to pay for the raw land and be against the interests of the estates as a whole. As well, KSV points out that there is no certainty that purchasers would have bid for the properties in the sales process if they were required to construct homes conforming to the requirements in the agreements with the home buyers.

24 Estate funds should be spent for the benefit of the estate as a whole, not for the benefit of one group whose interests are contrary to the interests of the estate as a whole.

[Emphasis added]

The amount of any charge on the assets of the debtor and its relative priority would seem to be largely a fact-driven analysis, dependent upon the particular circumstances of the proceedings. In *Bridging Finance Inc. v. Béton Brunet 2001 inc.*, 2017 QCCA 138 (Book of Authorities, Tab 1), the Court of Appeal noted the following with respect to the costs of representative counsel:

[24] It bears mentioning that the judge not only placed a cap on the amount of the security but, no doubt mindful that fees and disbursements can be substantial in contentious proceedings, he took care to limit the questions in respect for which the representatives could seek advice that would be paid by the debtors. As noted, he placed the reasonability of the fees under the watch of the monitor. If the event of disputes, the judge retained the final word. The petitioners were wrong to complain before me that the judge had incautiously approved "unlimited" fees – he consciously did not give a blank cheque to the representative, but took care, after balancing interests, to create a regime for payment of fees that he felt was fair in the circumstances. This was a highly fact-driven determination and, rightly so, judges of this court have declined to grant leave in respect of this kind of decision except in rare circumstances of palpable and overriding errors. Here again, an appeal would, in my view, be destined to fail.

The Court of Appeal also noted the following with respect to the first-ranking charge on the assets of the estate:

[27] Again, the judge weighed the relevant factors and decided, based on the evidence before him and his knowledge of the file as CCAA supervising judge, that the first-ranking charge – with the $100,000 cap – was appropriate. The petitioners' argument that he did so without evidence of it being necessary does not address the logistical reasons that the judge invoked to explain his decision in paragraphs [43] and [44]. Those were based, in particular, on the number and diversity of the claims, and the fact that they were dispersed, all of which was made out in proof.

> *[28] His choice to have the charge rank ahead even of the security of the lender was not manifestly wrong, and was predicated, in part, on his view that the effective participation of the subcontractors is essential to the restructuring. His view that the order was to the advantage of all parties, who would profit from the economy of scale of dealing with one legal counsel rather than dozens of lawyers, is reasonable. Fixing the cap on the amount of the security at $100,000 was prudent, taking into account interests of others, including those of the lender. Again, this is a matter that falls within the discretionary authority of the judge who, given his on-going supervision, is best placed to make a fair order. His decision is therefore deserving of deference.*

In *Target, supra*, the Court capped the funding available to representative counsel at $100,000. In approving this funding, the court noted that it would provide benefits to the debtor companies under CCAA protection insofar as the legal and financial advisory services provided by representative counsel and their advisors should reduce the overall administrative cost to the estate and will avoid a multiplicity of legal retainers, as well as counsel aiding the franchisee pharmacists to effectively shut-down or relocate their business and prepare any resulting claim in the CCAA proceedings (at paragraph 39).

Finally, there are numerous case law examples where funding was capped, or where an initial limit was set with the Court to revisit the issue as necessary (see, for example, *First Leaside Wealth Management Inc. (Re)*, 2012 ONSC 1299 (Book of Authorities, Tab 3) and the Order of this Court in *NewPage Port Hawkesbury Corp.* (Hfx No. 355063) at Appendix "D"). There are also other methods in which the funding of representative counsel can be monitored. For example, orders have included clauses that the fees of representative counsel are to be reviewed by the monitor, with any disputes over the amount of such fees to be remitted to the court for determination. In this way, the monitor can act as a check and balance to confirm representative counsel's efforts in assisting to administer the proceedings are appropriate.

Issue 3 – Factors to be considered by this Court in the current matter

In the current proceedings, the mandate of Representative Counsel could include:

- advocating for the Affected Users in the formulation of any plan of arrangement and making recommendations as to the vote on such plan;
- working with the Monitor to formulate a streamlined claims process;
- representing the Affected Users at relevant motions in the proceedings; and

- providing information about the proceedings to the Affected Users.

Further, any representative counsel order could specifically exclude certain actions, including:

- any actions or roles which are duplicative of that of the Monitor as out in the Initial Order, including any independent investigation concerning the location of missing cryptocurrency (without leave from the Court);
- engaging outside advisors and specialists (without leave from the Court and/or at an early stage of the CCAA proceedings); and
- independently pursuing other sources of potential recovery (such as against third-party payment providers or banks) (without leave from the Court).

Representative Counsel are likely to argue that their professional fees should be paid by the estate, as: (i) the Affected Users are unable to engage counsel because they do not have the financial wherewithal to do so, or because it is unreasonable for them procced on an individual basis due to the size of their claims; and (ii) the appointment of Representative Counsel will streamline the proceedings, create efficiencies, and avoid a multiplicity of proceedings, resulting in a net benefit to the debtors. These arguments in favour of funding from the estate can, however, be contrasted with the following:

- Whether it is premature to determine the effect of funding Representative Counsel, given the stage of the proceedings. For example, the funding of the Affected Users' lawyers would not be necessary to assist in maximizing the assets or negotiating a plan of compromise in a liquidation proceeding.
- The likelihood of Representative Counsel's actions duplicating or unnecessarily questioning the actions of the Monitor (being the independent officer of the Court already tasked with acting impartially for the benefit of all stakeholders), or challenging the restructuring proceedings in general. Some of the materials presented by Representative Counsel suggest that they can assist in the location and recovery of assets, or in the detection of fraud. While assistance from the Affected Users may be beneficial to the Monitor, the costs incurred for the duplication of the Monitor's efforts or for conducting independent investigations would not be warranted.

- Until there are additional funds available, either through the bank drafts or other means, there are no funds to pay Representative Counsel.

It is respectfully submitted that should this Court choose to approve the payment of reasonable fees and expenses of Representative Counsel, a cap should be set on the amount, subject to being revisited by this Court at a subsequent hearing, if necessary.

IV. CONCLUSION

The Companies recognize the benefits of the appointment of Representative Counsel, but respectfully suggest that if the appointment is to be made at this early stage of the CCAA process, an incremental approach should be implemented.

There is significant potential that granting broad powers to Representative Counsel at this stage, including investigative powers, will duplicate the efforts of the Monitor and lead to increased and unnecessary costs.

This Court has previously limited the mandate of representative counsel, including in the CCAA proceedings in *NewPage Port Hawkesbury Corp.* (Hfx No. 355063) (see Appendices "C" and "D"). Any mandate would be subject to being modified by this Court, as may be necessary as the CCAA process unfolds.

At this early stage of the proceedings, if representative counsel are to be appointed, the mandate should be limited to ensure that the Monitor can continue to perform its obligations under the Initial Order, without interference. This is in the best interests of all stakeholders.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of February, 2019

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A	Submissions of Goodmans LLP dated February 7, 2019
B	Benchetrit, George and Nackan, Allan, "*Representation Orders in Insolvency Cases: Current and Future Practice*", online: (2018) Vol. 7-4 I.I.C. Art. (Westlaw)
C	Representation Order dated October 12, 2011, *NewPage Port Hawkesbury Corp.* (Hfx No. 355063)
D	Representation Order dated December 7, 2011, *NewPage Port Hawkesbury Corp.* (Hfx No. 355063)

Tab A

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February 7, 2019

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Dear Sirs/Mesdames:

Re: Quadriga CCAA Proceedings

We write to you in your respective capacities as counsel to Quadriga, and counsel to the court-appointed Monitor for Quadriga's CCAA proceeding, to express our interest in serving as representative counsel for the affected creditors of Quadriga and, more importantly, to suggest to the Debtor and Monitor an alternative process for the formation of the creditors' committee for this case, and thereafter, the selection of representative counsel for same, in each case under a more open and inclusive process than appears to be currently contemplated.

We believe that our firm is uniquely and highly qualified to serve as representative counsel and that the role of representative counsel in this case is an important one for the creditors now involved in this highly particular and developing situation, which concerns the first significant bankruptcy or restructuring of a cryptocurrency business in Canada.[1]

We understand that a motion has been filed by a law firm seeking to be appointed as the representative counsel to a certain set of five creditors, and that a hearing has been scheduled to

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[1] Among other notable creditor representations, our firm has represented creditors' committees in the following cases: (i) representation of the Pan Canadian Investors Committee in Canada's $32 billion asset back commercial paper crisis and restructuring; (ii) representation of the creditors' committee in the $6 billion Sino-Forest restructuring (including litigation matters in respect of numerous fraud issues); and (iii) representation of the ad hoc committee of second lien lenders in the CCAA proceedings in respect of NewPage Port Hawkesbury. Our firm also represented Co-Op Atlantic as a debtor in its CCAA proceedings, which had a broad effect on many stakeholders across the Maritimes and worked to complete a successful CCAA plan and resolution of key business issues. For the past seventeen years, Chambers has listed Goodmans as the leading restructuring practice in Canada.

consider that motion on February 14th at which time those creditors would be designated as the "Official Committee of Affected Users" for this case, and their counsel would be appointed as the Representative Counsel for all creditors.

Based on the circumstances of this CCAA case, we believe that there has been not been sufficient notice of this selection process and that greater visibility and opportunity should be given both (i) to other creditors who may wish to come forward and serve on any creditors' committee to be appointed in this case and (ii) to other qualified and experienced law firms who may wish to present their credentials and rates to that committee, the Monitor and the Court. We note that, based on the information provided in the Monitor's Pre-Filing Report, the Debtor has at least 92,000 account holders with cash or cryptocurrency balances totalling in excess of $260 million. This suggests a large and diverse creditor base that may not be well represented by the five creditors listed in the current motion, who appear to collectively hold less than 1.5% of that debt.

We would like to suggest that the following alternative process be presented by the Debtor and/or the Monitor to the CCAA Court on February 14th for a more fulsome and proper process for (i) the formation and membership of a creditors' committee for this case and (ii) the selection of representative counsel for same. The process could be as follows:

1. The Debtor or Monitor would announce by way of a press release and post on the Monitor's website that a committee of affected creditors will be formed in these CCAA proceedings and that any and all creditors interested in serving on that committee can contact the Monitor to be considered for membership on that committee.

2. Following a more broad dissemination of that process and opportunity, the Monitor will have greater input and information from creditors interested to serve on the committee and, in consultation with the Debtor and its advisors, can select an appropriately representative set of creditors to serve on the committee. Conducting the process in this manner may disclose that there are indeed different kinds and types of creditors to be considered and represented in these CCAA proceedings, before any one set of counsel and creditor types is approved by the Court, on relatively short notice and in the absence of any apparent urgency to do so (especially, now that the Monitor is on the scene).

3. Once the committee members have been selected and the committee formed, any interested and qualified firms would then be invited to prepare presentations to the creditors' committee to be considered for the role of representative counsel to that committee.

4. The members of the committee, in consultation with the Monitor and its advisors, can then select the law firm best suited to serve as representative counsel, and thereafter, the selection made by the committee can be presented to the Court for approval, with the support and recommendations of the Debtor and the Monitor, as the case may be.

Proceeding in this manner could have several advantages (with appropriate timelines to be set for the above steps by the Debtor, the Monitor and the Court):

1. it will give a fair and proper opportunity for any and all interested creditors to come forward and express their interest in this case and the selection of their counsel, with greater visibility and additional time for that process to unfold (we note that there does not appear to be an urgent need for representative counsel to be put in place, especially now that the Monitor has been appointed and is on the scene). Indeed, it may be that there are several different kinds of creditors involved here, and this step would allow for that potential to be properly explored in advance of a single choice being made;

2. it will give the parties with an economic interest in this case – i.e., the creditors themselves – a better opportunity to canvass their choices for counsel and to make a more informed decision among and from the firms that submit their credentials, rates and rate structures; and

3. it does not require the CCAA court to make that decision for the creditors, on short and limited notice to other creditors, as the current approach does. To the contrary, it gives all creditors a better opportunity to make that decision for themselves.

The issues that will be involved in this case are significant and a great many creditors (at least 92,000 of them) will be affected by this proceeding. We believe that their views can be given greater consideration and greater voice through the alternative process outlined above, as compared to the "first to the post" process that appears to be contemplated by the law firm's motion for immediate appointment as counsel, and designation of certain creditors as the creditors' committee for this case. We believe that a more open and inclusive process, such as the one we have outlined above, will provide a better process and greater benefit for all parties involved here.

As you know, our firm is highly qualified and experienced in CCAA matters, and in representing creditors' committee in unique and difficult circumstances such as these, and we make these submissions to you based on our experience and in the interests of a better process for all parties involved in this important preliminary and foundational step in these CCAA proceedings.

Yours truly,

Goodmans LLP

Brendan O'Neill
BO/lds
cc: Robert J. Chadwick

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Tab B

IIC-ART Vol. 7-4
Insolvency Institute of Canada (Articles)

— Representation Orders in Insolvency Cases: Current and Future Practice

——*Allan Nackan and George Benchetrit* [*]

1. INTRODUCTION

The successful administration of a restructuring or liquidation under the *Companies' Creditors Arrangement Act* [1] ("CCAA") or *Bankruptcy and Insolvency Act* [2] ("BIA") requires fair and suitable representation of the interests of all key stakeholders. In recent years, practice and jurisprudence in insolvency have evolved by way of court-approved representation orders, which are often accompanied by appropriate funding mechanisms. These representation orders offer effective representation to large groups of employees, creditors, investors, and other interest groups. A representation order can be an important and effective mechanism in appropriate cases, allowing a stakeholder group to have a cohesive and coordinated voice throughout the process, as well as access to legal and financial expertise. A representation order can also have practical advantages for advancing a successful restructuring, such as service, notice and execution of settlement agreements, and unified advocacy and other necessary protections for otherwise unrepresented or under-represented groups.

Much has already been written about representation orders for employees and retirees, which are now a common feature in large Canadian insolvency cases. However, a review of the case law reveals that courts have recognized a far broader range of interest groups, beyond former or current employees, who have had legal and financial advisors appointed to represent them. This article will focus on the use of representation orders for these broader, non-employment related, interests in recent Canadian insolvency cases.

2. WHY GROUP REPRESENTATION IS GOOD?

Most of the relevant Canadian insolvency cases have identified the following considerations as key reasons why representative counsel should be appointed for a particular group: facilitates access to fair process; allows representation for vulnerable groups; promotes efficiency and avoids duplication of legal/advisor fees; and creates ability to bind group to a settlement or plan. Not surprisingly, many of these advantages seem obvious. [3] There are clear benefits from the group's perspective in being represented by expert legal counsel and assisted by financial and other advisors. Effectively engaging in a CCAA or BIA process often requires the ability to expertly navigate legal and financial issues related to bankruptcy and insolvency, litigation, employment and pension law, complex financial analysis, etc. Representation by skilled legal counsel and other advisors allows a group of stakeholders to competently navigate these complexities and ensure that they have an effective voice in the proceeding.

Not to be overlooked is the power that comes from organizing a group of otherwise disparate creditors/stakeholders. There is power in numbers or dollar value, particularly if the group carries sufficient votes to have a blocking position in a restructuring plan. Affordability and sharing of professional costs is also an added benefit of organizing.

Representation orders can also enhance the ability of the debtor company to negotiate or work with the represented stakeholders. There are practical benefits to being able to deal with a sophisticated counter-party in a representative counsel who can bind the group that they represent and ultimately help to facilitate a plan of restructuring.

From an overall process perspective, courts also see value in this role and, subject to factors more fully described below, are willing to make representation orders that include a provision for payment of professional fees of counsel as well as financial and other advisors out of the estate secured by an administrative charge.

Representative counsel can in some cases also play an invaluable role in supporting the monitor, trustee, or receiver with numerous administrative tasks, including communicating with the group, and assisting the court officer. Representative counsel may be responsible for handling mass communications with the group, interacting with the constituents, and/or dealing with issues and questions that arise. This is often done through a committee which may seek input from and disseminate information to individual group members by way of a website and/or newsletter set up to streamline communications and keep large groups well-informed of the latest developments. The courts can also empower and/or direct representative counsel to send specialized mailings and attend to additional tasks as the process unfolds.

Beyond communication responsibilities, the representative counsel can also assist the monitor/company with the claims process. It is often not practical or cost effective for the court officer to accept and process individual proofs of claim for each group member. Thus, it has become commonplace for representative counsel to file an omnibus claim on behalf of the members of the group or class that they represent. The complex nature of certain claims makes it difficult for individuals to submit individual proofs of claim without appropriate legal, financial, and actuarial input. For example, in the CCAA proceeding of Sears Canada Inc., similar to other proceedings of retail companies involving a large workforce, the filing and administration of a myriad of complex claims was facilitated by representative counsel.[4] This included termination claims, retiree benefits, lifetime discount claims and pension claims. Typically, representative counsel will work closely with the court officer to design a methodology and process to fairly value and administer these claims. Representative counsel will also assist generally with the implementation and communication of the claims process. This avoids the problem of individual claims being filed with inconsistent calculations, ensures fair and equal treatment of stakeholders within a class, and simplifies the process for adjudicating claims.

Certain commercial parties may at times take exception to the enhanced leverage that these groups are able to gain through court-ordered representation mechanisms and to the funding of their professional costs from the estate secured by a super-priority charge on the debtors' property. The courts are often asked to weigh arguments by such creditors opposing representation orders against the advantages and efficiencies inherent in dealing with a cohesive and well-represented stakeholder group. An excellent paper, titled "Ad Hoc Creditors' Committees in CCAA Proceedings: The Result of a Changing and Expanding Restructuring World",[5] aptly makes the point that:

> [r]estructuring structures and alternatives are not unilateral decisions by any company. Ad hoc creditors' committees provide significant input to the restructured capital structure, the business plan and the restructuring direction of a company. The Canadian restructuring regime, similar to many other countries, requires a balancing approach to reach the end result of a restructuring.[6]

3. THE COURT'S AUTHORITY TO APPOINT REPRESENTATIVES

The jurisdiction of Canadian courts to make representation orders is rooted in the inherent judicial discretion of judges under insolvency legislation, provincial legislation, and regulations governing civil procedure. The jurisprudence in this area is well-developed and jurisdictional considerations and other factors to be considered are well laid out in the cases discussed below.

(a) Nortel Networks Corp.

In *Nortel Networks Corp., Re,*[7] Justice Morawetz confirmed that the court has authority to make representation orders under Rules 10.01 and 12.07 of the Ontario *Rules of Civil Procedure*, as well as under s. 11 of the CCAA.

(b) Canwest Publishing Inc.

Justice Pepall set out the following non-exhaustive list of factors for courts to consider in relation to the appointment of representatives:

- the vulnerability and resources of the group sought to be represented;
- any benefit to the debtor companies;
- any social benefit to be derived from representation of the group;
- the facilitation of the administration of the proceedings and efficiency;
- the avoidance of a multiplicity of legal retainers;
- the balance of convenience and whether it is fair and just including to the creditors of the estate;
- whether representative counsel has already been appointed for those who have similar interests to the group seeking representation and who is also prepared to act for the group seeking the order; and
- the position of other stakeholders and the monitor. [8]

These factors are referenced extensively in most of the subsequent cases dealing with representation orders.

Armed with the necessary jurisdiction and precedent, Canadian courts have appointed representative counsel on behalf of a diverse number of interest groups in numerous cases. This is a testament to the flexibility and practicality of restructuring under Canadian insolvency regimes and is discussed in more depth in the following sections of this article.

4. STAKEHOLDER GROUPS FOR WHOM REPRESENTATIVES HAVE BEEN APPOINTED

As will be evident from the summary contained in Table 1, which is not intended to be exhaustive, Canadian courts have issued representation orders in a broad range of circumstances. Groups, in addition to employees and retirees, for which representatives, representative counsel and advisors have been appointed include: unsecured noteholders, investors, shareholders, real estate purchasers, real estate occupants, tort claimants, customers of securities firms, class action plaintiffs, construction subcontractors, and franchisees. Certain recurring themes supporting these orders are summarized in the following subsections.

(a) Vulnerability

Vulnerability is a factor that weighs heavily in recognizing the need for representation. Judges are sympathetic to the public policy objective of facilitating effective representation for unsophisticated or impecunious parties. In the recent *Hexagone* case, the Quebec Court of Appeal refused leave to appeal from an order appointing representative counsel for a group of subcontractors to a construction company under CCAA protection. The court in its reasoning explained that the evidentiary standard for this factor should not be strict:

> It is true that the specifics of each subcontractor's patrimonial circumstances were not alleged. But it seems reasonable to consider that, in some cases, the vulnerability of a stakeholder, as this factor is relevant to a representation and payment order, cannot be reduced to impecuniosity. Section 11 representation orders are not limited to widows and orphans; indeed stakeholders in a variety of circumstances, with different kinds of claims and resources — employees, retirees, investors, subcontractors and others — are possible beneficiaries of such an order. It was not unreasonable for the judge to consider that the subcontractors' claims were vulnerable, given the cost of individual participation, as opposed to a focus on the wherewithal of each of the 140 subcontractors. Moreover, the fact that the judge chose not to insist that the subcontractors band together to engage counsel to represent them,

appropriate in some cases, does not impugn his decision here. As he explained, requiring them to agree on such an arrangement would have been impractical.[9]

(b) Affordability / Cost-effectiveness

Representation orders for stakeholder groups are a cost-effective alternative to representation on individual basis. Courts appreciate that certain individuals do not have the financial capacity to engage the level of legal and financial advice that is required to participate effectively in these complex proceedings. Consequently, it would not be economical or cost-effective to arrange appropriate representation on an individual basis.

(c) Complexity

In complex insolvency cases, representation for disparate creditors can prevent their interests from being overwhelmed by the interests of other deep-pocketed parties. Many insolvency cases deal with complex legal and financial issues that frequently involve multiple constituencies with competing interests and often on expedited timelines. Debtors and large financial stakeholders are typically represented by legal and financial experts, some of whom are paid by the estate. Without court intervention, the debtor or large financial stakeholders could overwhelm the interests of disparate creditor groups who do not have deep pockets and access to counsel. While the monitor or other court officers play an important role in balancing the interests of all stakeholders, court officers by design are not advocates for any party and the interests of relatively less powerful groups may be overwhelmed or overlooked.

(d) Commonality of Interest

The ability of a group to demonstrate sufficient commonality of interest is a consideration for ordering representation. The court would have to find that the interests of the group for which representation is sought can be best served by one representative or group of representatives.

(e) Benefit to Applicants

Potential benefit to the debtor company is an important factor to be considered in determining whether to appoint representatives for a group of stakeholders. For example, the appointment of representative counsel was recognized as benefitting the debtor companies in *Cash Store*[10] insofar as they would be able to deal with the adjudication of the pending class action in a consistent and streamlined manner, as well as enhancing administration of the CCAA proceeding and its efficiency.

(f) Social Benefits

In particular cases, having an appointed representative counsel can result in cooperation between the different parties to achieve greater social benefit. This factor will be more prevalent in cases that involve a breadth of social issues affecting a large number of actual or potential claimants. For example, in the *Lac-Mégantic*[11] case, the CCAA was used to achieve a global resolution of the litigation involving numerous parties and insurers in multiple jurisdictions. Representative counsel appointed for victims of the train derailment worked in conjunction with the debtors and the CCAA monitor, among others, towards implementation of a plan that provided for compensation to the victims and other claimants. The plan operated by obtaining funding from all known potentially liable third parties in exchange for court-approved releases.

5. TYPICAL ELEMENTS OF REPRESENTATION ORDERS

Representation orders typically address a variety of elements. In the following subsections, eight items have been selected and presented for brief discussion.

(a) Representatives

In cases where representatives are appointed for a group of stakeholders ("Representatives"), the Representatives will be specifically identified. These Representatives can be appointed individually or as a committee to represent the interests of the larger group. The evidence submitted to the court in support of the order should provide details of the proposed Representatives' qualifications and include a full and fair disclosure of any issues giving rise to potential conflicts.

(b) Representative Counsel & Advisors

The representative counsel representing the interests of the group and/or advisors will be specifically identified. Typically, one or more law firms are named as representative counsel. This will depend on (among other things) the nature of legal expertise being called upon, the size of the group, and geographical location of group members. The evidence submitted to the court in support of the order should provide details of the proposed counsels' involvement to date on behalf of the group members, their qualifications, and the full and fair disclosure of any issues giving rise to potential conflicts. Similar information regarding proposed financial advisors should also be disclosed.

(c) Group Members

Specifics should be included regarding the particular group to be represented and specifying, if necessary, whether any group of members will not be covered by the representation order.

(d) Mandate

The order will often state the specific mandate of the Representatives and representative counsel, specifying the matters included and excluded from their mandate. For example, in *SecureCare Capital Inc.* [12] the mandate of the Representatives and representative counsel included *inter alia*: reviewing sources of potential recovery, including potential claims against other parties; advocating for unsecured bondholder interests in formulation of a proposal under the BIA and making a recommendation as to the vote on the proposal; working with the proposal trustee to formulate a streamlined claims process; representing unsecured bondholders at relevant motions in the proceedings; and providing information about the proceedings to securities dealers whose clients are unsecured bondholders.

The order may also limit the mandate of representative counsel to certain specified matters. In *Target* [13] the judge narrowly defined the scope of the mandate of representative counsel to the pharmacist franchisee group after refusing a motion to set aside the disclaimer of the franchise agreement. The court recognized that:

> [T]here are many transitional issues that remain to be addressed. First and foremost is dealing with the patient records and ensuring uninterrupted delivery of prescription drugs to all such patients. There is also interaction required between Target Pharmacy, the Franchisees, and the regulators, concerning the relocation or shut down of pharmacies and the return of certain products to suppliers. This is not a simple case where the Franchisee receiving the disclaimer notice can simply walk away from the scene. From a professional and regulatory standpoint, they still have to participate in the process. [14]
>
> Thus, assistance and funding were specifically limited to:
>
> a. corresponding with the regulators concerning the wind-down process and the relocation process;
>
> b. return of inventory; and
>
> c. participating in the claims process. [15]

In *Harmony Village*, [16] representative counsel's mandate was limited to responding to a motion for approval of a sale of the property. In *Talon International Inc.*, [17] the mandate was to represent all condominium unit owners regarding their common issues concerning the receivership proceeding. Counsel was specifically not charged with the responsibility of dealing with any individual unit owner's purchase of, or agreement to purchase, a unit or units in the project, or any individual disputes.[18]

(e) Power to Bind Group

Representative counsel is often explicitly empowered to rely upon instructions from the Representatives without further communications or instructions from the group at large. This is essential to ensure the efficiency of the process and to provide a mechanism to bind the group.

(f) Opt-outs

An opt-out mechanism is typically included to allow members to opt out of being represented by the appointed representatives.

(g) Funding

Provisions are typically included to address the funding of reasonable fees and expenses of representative counsel, as well as financial and other advisors. It is common for a motion to be made by either the affected stakeholder group or by the debtor company for payment of these fees and expenses. Section 11.52(1)(c) of the CCAA and section 64.2(1) of the BIA provide jurisdiction for the court to create a charge against all or part of the debtors' property on notice to the secured creditors who are likely to be affected by the charge.[19] This will be in an amount that the court considers appropriate, taking into consideration the fees and expenses of any financial, legal, or other experts engaged by any interested person.

The order of the court will therefore address whether the estate is to bear the fees and expenses of the representatives being appointed, whether a charge on the debtors' property is being created to secure payment thereof, and whether there will be a permanent or time-limited monetary cap on such fees and expenses (and on such charge). The order can also prescribe a process for the fees and disbursements to be approved by the court officer. Several examples of cases where the payment of representative counsel's fees and expenses from the estate was denied, capped, or limited are provided below.

(i) Lone Pine Resources Canada Ltd.

The court denied a motion for a charge on the debtor's property to secure payment of fees of representative counsel for a shareholder group as it was not satisfied that the charge was necessary for the effective participation of the shareholders in the CCAA proceeding.[20]

(ii) Urbancorp

The court denied a request for a charge on the debtors' property to secure payment of fees of representative counsel for a group of residential property purchasers but granted an order providing that fees and disbursements could be paid by the estates from the distributions to be made to the purchasers who opted in to being represented by the court-appointed representative counsel.[21]

(iii) Target

The funding for representative counsel and a financial advisor for an association of pharmacy franchisees was limited to a maximum of $100,000, inclusive of disbursements and HST. The funding could only be used for services provided to date in the CCAA proceeding, as well as to assist for costs going forward pertaining to corresponding with the regulators concerning the wind-down process and the relocation process; return of inventory; and participating in the claims process.[22]

Funding for representative counsel and other professional advisors is likely to continue to be the most contentious aspects of motions for representation orders. Pushback to these fees being paid out of the estate, and potentially in priority to other creditors, needs to be balanced with the benefits of representation orders as described above. To date, the courts appear to have come up with mechanisms and parameters to allow for effective representation of stakeholder groups while not materially prejudicing the rights of other participants. This is achieved by carefully crafting the mandate of representatives and representative counsel, reasonable limitations on fees, and affording security for fees on a basis that is perceived as fair depending on the circumstances and exigencies presented to the courts on a case-by-case basis.

(h) Protection Against Liability

Protection is typically provided to court-appointed representative counsel and representatives, shielding them from personal liability or obligations as a result of the exercise of their duties, except for gross negligence or willful misconduct. The protection also extends the benefit of the court-ordered stays of proceedings to them.

6. GOVERNANCE FOR REPRESENTATIVES AND COMMITTEES

It is not typical for court orders to address issues of how a committee of Representatives should effectively govern itself and how it should communicate with representative counsel. These are the "behind the scenes" workings that are typically formulated on a case-by-case basis in consideration of the group and its participants.

We are unaware of Canadian-only cases where a formal set of bylaws has been ordered by the court, although such procedures should be formalized to the extent possible in appropriate cases and can be presented to the court as evidence to support the appointment of the Representatives. This contrasts with the practice in U.S. Chapter 11 cases whereby the Unsecured Creditor Committee is formally constituted by the U.S. Trustee and will adopt formal bylaws governing its inner workings. These bylaws are substantially similar or identical from case to case and typically incorporate provisions relating to Membership, Committee Chairs, Quorum, Meetings, Agenda; Action by Committee, Conflicts of Interest, Confidentiality of Information, Professionals; Subcommittees, Expenses, Rules of Procedure, Ex Officio Members, and Effectiveness/Amendment to Bylaws. By way of example, reference can be made to the bylaws adopted by the official committee of unsecured creditors of Tribune Company. [23]

In our view, formalized bylaws and/or similar governance procedures are to be encouraged and endorsed as best practices for committees seeking court-ordered representative status. These types of procedures are important to ensure that group interests are effectively promoted and communicated to representative counsel free of conflicts of interest. This is in addition to the protection of confidentiality and privilege associated with the communications and advice flowing between representative counsel and the group members.

7. CONCLUSION

Representation orders can be an important and effective mechanism that, in appropriate cases, allow a stakeholder group to have a cohesive and coordinated voice in the process, as well as access to legal and financial expertise. They have been used successfully to represent a broad range of stakeholder groups and we expect this trend to continue. We are not prescribing a need for Representatives and/or representative counsel as a standard feature in every case. Rather, we posit that Canadian courts have demonstrated that the existing statutory and jurisprudential framework fairly considers whether, and to what extent, such orders are needed on a case-by-case basis. Furthermore, we believe Canadian court officers and the artful use of representation orders will ensure that important stakeholder groups are effectively and efficiently represented.

TABLE 1 REPRESENTATION ORDERS IN CANADIAN INSOLVENCY CASES (NON-EMPLOYEE-RELATED)

UNSECURED NOTEHOLDERS

• ***Asset-Backed Commercial Paper (CCAA)*** **- April 15, 2008**

Representative counsel and financial advisor appointed to represent the Ad Hoc Committee of holders of Non-Bank Sponsored ABCP.

ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp. (March 17, 2008), 08-CL-7440 (Ont. S.C.J. [Commercial List]).

• ***Nelson Financial Group Ltd., Re (CCAA)*** **- June 15, 2010**

Representative counsel appointed for persons holding unsecured promissory notes to address the interests of the noteholders in connection with an anticipated plan of compromise and arrangement.

Re Nelson Financial Group Ltd. (June 15, 2010), Doc. 10-8630-00CL (Ont. S.C.J. [Commercial List]).

• ***Redstone Investment Corporation & Redstone Capital Corporation (CCAA)*** **- April 4, 2014**

Representative counsel appointed to represent the interests of all parties who held promissory notes and bonds issued by debtor companies on the basis that it would enable the companies to put in place an efficient and effective communication plan and would assist in the implementation of the sale/wind-up plan for the companies' loan portfolio.

Re Redstone Investment Corp. (April 4, 2014), Doc. CV-14-10495-00CL (Ont. S.C.J. [Commercial List]).

• ***SecureCare Capital Inc. (BIA Proposal)*** **- October 6, 2017**

Representative counsel appointed to advocate for the interests of unsecured bondholders in connection with a proposal under the BIA.

SecureCare Capital Inc. (October 6, 2017), Doc. 31-2278725 (Ont. S.C.J. [Commercial List]).

INVESTORS

• ***Shire International Real Estate Investments Ltd., Re (CCAA)*** **- September 8, 2011**

Motion for appointment of representative counsel for investors in a debtor company and for a charge on a real estate asset to secure professional fees dismissed on the basis that, *inter alia*, granting the requested charge would have given the investors priority over the DIP lender, which would interfere with the integrity of the CCAA process.

Shire International Real Estate Investments Ltd., Re, 2011 ABQB 552, 2011 CarswellAlta 1544 (Alta. Q.B.).

• ***Edgeworth Properties Inc., Re (CCAA/Receivership)*** **- November 10, 2011**

Representative counsel appointed on behalf of various stakeholder groups, including investors in certain mortgage investment corporations and parties that invested in the debtor companies by purchasing undivided interests in certain of the companies' properties.

Order of Justice Campbell: *Re Edgeworth Properties Inc.* (November 10, 2011), Doc. CV-11-9409-00CL (Ont. S.C.J.).

• ***League Assets Corp., Re (CCAA)*** **- November 8, 2013**

Representative counsel appointed for group of individual and institutional investors who advanced approximately $352 million to debtors to fund its real estate properties and business operations.

League Assets Corp., Re, 2013 BCSC 2043, 2013 CarswellBC 3408 (B.C. S.C.).

• ***Textbook Student Suites, et al*** **- January 24, 2017**

Representative counsel appointed for investors in syndicated mortgage investments for in excess of $100 million with respect to 16 properties located in Ontario.

Order of Justice Hainey: *Superintendent of Financial Services v. Textbook Student Suites* (January 24, 2017), Doc. CV-16-11567-00CL (Ont. S.C.J.).

• ***Building & Development Mortgages Canada Inc.*** **- June 26, 2018**

Representative counsel appointed for investors in syndicated mortgage investments for in excess of $500 million with respect to approximately 40 properties across Canada.

Order of Justice Hainey: *Superintendent of Financial Services v. Building & Development Mortgages Canada Inc.* (June 28, 2018), Doc. No. CV-18-596204-00CL (Ont. S.C.J.).

SHAREHOLDERS

• ***Poseidon Concept Corps., Re (CCAA)*** **- May 30, 2013**

Class action plaintiffs appointed as representatives of current or former shareholders to ensure that: their interests were fully represented on any motions in the proceeding, in any claims process and in any vote at a meeting of creditors; they were in a position to respond to any restructuring proposals presented by the debtor; and they were in a position to propose alternative restructuring options.

Order of Justice Yamauchi: *Re Poseidon Concept Corps.* (May 31, 2013), Doc. 1301-04364 (Alta Q.B.).

• ***Lone Pine Resources Canada Ltd. (CCAA)*** **- November 8, 2013**

A group of minority shareholders, comprising less than 10% of the shareholder body, sought the appointment of representative counsel and a charge in favour of the shareholder group to secure the fees and disbursements of representative counsel. Motion dismissed on the basis, *inter alia,* that the court was not satisfied that the charge was necessary for the effective participation of the shareholders in the CCAA proceeding.

Lone Pine Resources Canada Ltd., et al. (November 8, 2013), Doc. 1301-11352 (Alta. Q.B.).

REAL ESTATE PURCHASERS

• ***Rosseau Resort Developments Inc. (CCAA)*** **- August 20, 2009**

Representative counsel appointed for purchasers of units who had not closed under their agreements of purchase and sale.

WESTLB AG v. Rosseau Resort Development Inc. (August 20, 2009), Doc. CV-09-8201-00CL (Ont. S.C.J. [Commercial List]).

• ***Edgeworth Properties Inc., Re (CCAA/Receivership)*** **- November 10, 2011**

Representative counsel appointed in a CCAA proceeding on behalf of various stakeholder groups including parties that purchased land lots from the debtor companies.

Order of Justice Campbell: *Re Edgeworth Properties Inc.* (November 10, 2011), Doc. CV-11-9409-00CL (Ont. S.C.J. [Commercial List]).

• ***Urbancorp Toronto Management Inc., Re (CCAA and BIA Proposal)*** **- August 29, 2016**

Motion for appointment of representative counsel for purchasers of residential units allowed but request for legal fees and disbursements to be paid by estate and secured by an administrative charge dismissed.

Urbancorp Toronto Management Inc., Re, 2016 ONSC 5426, 2016 CarswellOnt 13839 (Ont. S.C.J. [Commercial List]).

• ***Downing Street Financial Inc., In Trust v. Harmony Village Sheppard Inc. (Receivership)* - May 18, 2017**

Representative counsel appointed for all purchasers of residential condominium units of property under receivership with a mandate limited to responding to a motion for approval of a sale of the property.

Order of Justice Newbould: *Downing Street Financial Inc., In Trust v. Harmony Village Sheppard Inc.* (May 18, 2017), Doc. CV-17-11669-00CL (Ont. S.C.J [Commercial List]).

REAL ESTATE OCCUPANTS

• ***Rosseau Resort Developments Inc. (CCAA)* - August 20, 2009**

Representative counsel appointed for individuals who entered into a rental pool management agreement with the debtor company and owned a condominium unit at the hotel under receivership.

WESTLB AG v. Rosseau Resort Development Inc. (August 20, 2009), Doc. CV-09-8201-00CL (Ont. S.C.J. [Commercial List]).

• ***Rose of Sharon (Ontario) Retirement Community (Receivership)* - April 11, 2013**

Representative counsel appointed for arm's length buyers of life-lease units in a retirement community residence.

Peoples Trust Company v. Rose of Sharon (Ontario) Retirement Community (April 11, 2013), Doc. CV-11-9399-00CL (Ont. S.C.J. [Commercial List]).

• ***Emmanuel Village Residence Inc. (Receivership)* - August 19, 2016**

Representative counsel appointed for individuals who had entered into a Right to Occupy Agreement for the limited scope and purpose of advising those individuals in connection with a pending sale of the assets of a retirement community.

Emmanuel Village Residence Inc. v. 1250 Weber Street East (August 19, 2016), Doc. CV-16-11424-CL (Ont. S.C.J. [Commercial List]).

• ***Talon International Inc. (Receivership)* - November 9, 2016**

Representative counsel appointed for owners of condominium units.

JCF Capital ULC v. Talon International Inc. (November 9, 2016), Doc. CV-16-11573-00CL (Ont. S.C.J. [Commercial List]).

TORT CLAIMANTS

• ***Canadian Red Cross Society, Re (CCAA)* - August 19, 1998**

Multiple representative counsel appointed to represent different groups of transfusion complainants.

Canadian Red Cross Society / Société Canadienne de la Croix-Rouge, Re, 1998 CarswellOnt 3346 (Ont. Gen. Div. [Commercial List]); additional reasons 1998 CarswellOnt 3345 (Ont. Gen. Div. [Commercial List]); additional reasons 1998 CarswellOnt 3347 (Ont. Gen. Div. [Commercial List]); leave to appeal refused 1998 CarswellOnt 5967 (Ont. C.A.).

• ***Muscletech Research and Development Inc. (CCAA)*** **- February 8, 2006**

Representative counsel appointed on behalf of an ad hoc committee of tort claimants.

Muscletech Research & Development Inc., Re, 2006 CarswellOnt 720, [2006] O.J. No. 462 (Ont. S.C.J. [Commercial List]).

• ***Montreal, Maine & Atlantic Canada Co., Re (CCAA)*** **- April 4, 2014**

Representative counsel appointed for "all persons and entities residing in, owning or leasing property in, operating a business in, or being employed by a person resident in or a business located in Lac-Megantic, and/or were physically present in Lac-Megantic . . . who suffered a loss of any nature or kind relating to or arising directly or indirectly from the train derailment . . . ."

Order of Justice Dumas: *Re Montreal, Maine & Atlantic Canada Co.* (April 4, 2014), Doc. 450-11-000167-134 (Q.C.S.C.).

CUSTOMERS OF SECURITIES FIRMS

• ***Asset-Backed Commercial Paper (CCAA)*** **- April 15, 2008**

Representative counsel appointed to represent the interests of all parties that purchased ABCP from a retail brokerage.

Order of Justice Campbell: *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (April 15, 2008), Doc. 08-CL-7440 (Ont. S.C.J. [Commercial List]).

• ***MF Global Canada Co., Re (BIA)*** **- November 14, 2011**

Order issued appointing representative and representative counsel on behalf of customers of MF Global Canada Co.

Order of Justice Campbell: *Re MF Global Canada Co.* (November 14, 2011), Doc. 207854-T (Ont. S.C.J.).

• ***First Leaside Wealth Management Inc., Re (CCAA)*** **- February 26, 2012**

Representative counsel appointed for approximately 1,200 clients of one of the debtor companies.

First Leaside Wealth Management Inc., Re, 2012 ONSC 1299, 2012 CarswellOnt 2559 (Ont. S.C.J. [Commercial List]).

CLASS ACTION PLAINTIFFS

• ***Sino-Forest Corp. (CCAA)*** **- May 11, 2015**

Class action plaintiffs appointed as representatives of claimants and representative counsel appointed for the purpose of the debtor company's plan of compromise and arrangement.

Order of Justice Morawetz: *Labourers' Pension Fund of Central and Eastern Canada (Trustees of) v. Sino-Forest Corp.*, 2015 CarswellOnt 6975 (Ont. S.C.J. [Commercial List]).

• ***The Cash Store Financial Services, Re (CCAA)*** **- August 26, 2014 and September 30, 2015**

Class action plaintiff appointed as representative of class and representative counsel appointed.

Re Cash Store Financial Services, 2014 ONSC 4567 (Ont. S.C.J.).

Class action representatives and representative counsel appointed for various groups to facilitate implementation of settlements and a plan of compromise and arrangement.

Re Cash Store Financial Services, 2015 ONSC 6087 (Ont. S.C.J.).

Order of Justice Morawetz: *Re Cash Store Financial Services* (September 30, 2015), Doc. CV-14-10518-00CL (Ont. S.C.J.).

CONSTRUCTION SUBCONTRACTORS

• ***Arrangement Relatif à Les Investissements Hexagone Inc. (CCAA)*** **- October 28, 2016 / January 27, 2017**

Representatives and representative counsel appointed for subcontractors of a construction company to deal with specific issues identified by the court.

QCCS: *Arrangement relatif à Les Investissements Hexagone inc.*, 2016 QCCS 6792, 2016 CarswellQue 10016 (C.S. Que.); leave to appeal refused *Bridging Finance Inc. v. Béton Brunet 2001 inc.*, 2017 CarswellQue 328 (C.A. Que.).

QCCA: *Bridging Finance Inc. v. Béton Brunet 2001 inc.*, 2017 QCCA 138, 2017 CarswellQue 328 (C.A. Que.) at para. 21 [*Hexagone*].

FRANCHISEES

• ***Target Canada Co., Re (CCAA)*** **- February 18, 2015**

Pharmacy franchisee association appointed as franchisees' representative. Representative counsel and financial advisors also appointed for franchisees with funding from estate limited to providing assistance on certain listed matters.

Target Canada Co., Re, 2015 ONSC 1028, 2015 CarswellOnt 3274 (Ont. S.C.J.)

Footnotes

* Allan Nackan is a partner in the Corporate Restructuring & Advisory group of Farber in Toronto. George Benchetrit is a partner at Chaitons LLP in Toronto.

1 *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 [CCAA].

2 *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 [BIA].

3 See, for example, *Canwest Publishing Inc. / Publications Canwest Inc., Re*, 2010 ONSC 1328, 2010 CarswellOnt 1344 (Ont. S.C.J. [Commercial List]) [*Canwest Publishing Inc.*].

4 *Sears Canada Inc.* (February 22, 2018), Doc. CV-17-11846-00CL (Ont. S.C.J.).

5 Robert J. Chadwick & Derek R. Bulas, "Ad Hoc Creditors' Committees in *CCAA* Proceedings: The Result of a Changing and Expanding Restructuring World", in J. Sarra, ed., *Annual Review of Insolvency Law, 2011* (Toronto: Carswell, 2012).

6 *Ibid.*

7 *Nortel Networks Corp., Re*, 2009 CarswellOnt 3028, [2009] O.J. No. 2166 (Ont. S.C.J. [Commercial List]); additional reasons 2009 CarswellOnt 3530 (Ont. S.C.J. [Commercial List]) [*Nortel Networks Corp.*].

8 *Canwest Publishing Inc.*, *supra* note 3.

9 *Bridging Finance Inc. v. Béton Brunet 2001 inc.*, 2017 QCCA 138, 2017 CarswellQue 328 (C.A. Que.) at para. 21 [*Hexagone*].

10 *Cash Store Financial Services, Re*, 2014 ONSC 2372, 2014 CarswellOnt 5127 (Ont. S.C.J.) [*The Cash Store*].

11 *Montreal, Maine & Atlantic Canada Co., Re* (April 4, 2014), Doc. 450-11-000167-134 (Q.C.S.C.).

12 (October 6, 2017), Doc. 31-2278725 (Ont. S.C.J. [Commercial List]).

13 *Target Canada Co., Re*, 2015 ONSC 1028, 2015 CarswellOnt 3274 (Ont. S.C.J.) [*Target*].

14 *Ibid.*, at para. 33.

15 *Ibid.*, at para. 37.

16 *Downing Street Financial Inc. v. Harmony-Village Sheppard Inc.*, 2017 ONCA 611, 2017 CarswellOnt 11087 (Ont. C.A.) [*Harmony Village*].

17 *JCF Capital ULC v. Talon International Inc.* (November 9, 2016), Doc. CV-16-1157300CL (Ont. S.C.J. [Commercial List]) [*Talon International Inc.*].

18 *Ibid.*

19 CCAA, *supra* note 1, s. 11.52(1)(c); BIA, *supra* note 2, s. 64.2(1).

20 *Lone Pine Resources Canada Ltd.* (November 8, 2013), Doc. 1301-11352 (Alta. Q.B.).

21 *Urbancorp Toronto Management Inc., Re*, 2016 ONSC 5426, 2016 CarswellOnt 13839 (Ont. S.C.J. [Commercial List]) [*Urbancorp*].

22 *Target*, *supra* note 13.

23 Official Committee of Unsecured Creditors of Tribune Company et al., by-law, online: <admin.epiq11.com/onlinedocuments/trb/exhibits/dcl%20exhibits/D0002.pdf>.

End of Document

Tab C

2011 Hfx No. 355063

SUPREME COURT OF NOVA SCOTIA

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 Compromise and Arrangement of NewPage Port Hawkesbury Corp.

Applicant

COURT ADMINISTRATION OFFICE
OCT 12 2011
HALIFAX, N.S.

Order
(Representation Order)

Before the Honourable Justice A. David MacAdam in Chambers

On the motion of the Communications, Energy and Paperworkers Union of Canada ("CEP") and the Communications, Energy and Paperworkers Union, Local 972 ("CEP, Local 972");

And on reading the Affidavit of Charles Shewfelt sworn on September 23, 2011 and the Exhibits thereto, and the Affidavit of Bettina Quistgaard sworn on September 28, 2011 and the Exhibits thereto;

And on hearing Raymond F. Larkin, Q.C., counsel for the CEP and the CEP, Local 972, and such other individuals who appeared and were heard on the Motion;

The following is ordered:

1. If necessary, the time for service of the Notice of Motion and supporting documents is hereby abridged and service of the motion record by the CEP and CEP, Local 972 is validated, such that this motion is properly returnable on October 5, 2011.

2. The CEP is hereby authorized to represent the current and former members of the bargaining units represented by the CEP, Local 972, including pensioners, retirees, deferred vested participants, and their surviving spouses and dependents, employed or formerly

employed by the Applicant ("Current and Former CEP Members") in this proceeding and in connection with any concurrent or subsequent proceeding that may be commenced under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("BIA") or similar legislation (collectively, the "Proceedings").

3. The CEP is authorized to determine, file, advance or compromise any and all claims of its Current and Former CEP Members that exist or may arise at law or equity or pursuant to any applicable collective agreement which may be made against the Applicant in the Proceedings in connection with any issue or matter related to any recovery, compromise of rights or entitlements of the Current or Former CEP Members (the "Claims"), subject to the CEP returning to the Court for directions and/or approval in respect of any compromise of the Former CEP Members' claims.

4. Pink Larkin is hereby authorized to act as counsel for the CEP in the Proceedings.

5. The Applicant is hereby authorized and directed to provide to counsel for the CEP, as soon as possible after the granting of this Order, without charge, the names, last known addresses, last known phone numbers and email addresses (if any) of all Current and Former CEP Members.

6. Subject to any claims of privilege by the Applicant and in accordance with the terms of any collective bargaining agreement to which the Applicant and the CEP, Local 972 are a party, the Applicant shall respond to reasonable disclosure requests from counsel for the CEP Union with respect to any claim properly brought in the Proceedings, without charge. For that purpose, the Applicant is hereby authorized to provide information which includes personal information related to individual Current and Former CEP Members. For greater certainty, the Applicant is not required to create documents in response to such requests by the CEP. In the event of any dispute regarding such disclosure requests, the Monitor will assist in attempting to resolve such disputes.

7. Any Current or Former CEP Member whose personal information is provided to counsel for the CEP by the Applicant pursuant to this Order is deemed to have consented for the

purposes of any applicable privacy legislation to the Applicant providing such information, and to the collection, use and disclosure by the CEP of such information, provided that such information will be used or disclosed by the CEP solely for the purpose of representing the Current and Former CEP Members' interests in these proceedings.

8. Any individual Former Member who does not wish to continue to be represented in the Proceedings by the CEP shall, within 30 days of receiving notice of this Order, notify the Monitor, the Applicant or the CEP in writing, and shall thereafter not be represented by the CEP in these Proceedings.

9. The CEP shall provide notice of the granting of this Order to the Current and Former CEP Members in a manner deemed appropriate by the CEP and its counsel. The notice of this Order to individual Former Members shall make clear and highlight the right of individual Former Members to opt out of being represented by the CEP in these Proceedings, and shall provide mailing addresses for the Monitor, the Applicant and the CEP.

Issued at Halifax, Province of Nova Scotia this 12 day of October, 2011.

____
P~~rothonotary~~

IN THE SUPREME COURT OF NOVA SCOTIA
I hereby certify that the foregoing document, identified by the Seal of the Court, is a true copy of the original document on file herein.
Dated the 12 day of October A.D. 2011

____
Deputy Prothonotary

Tab D

2011 Hfx No. 355063

SUPREME COURT OF NOVA SCOTIA

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 Compromise and Arrangement of NewPage Port Hawkesbury Corp.

Applicant

SUPREME COURT NOVA SCOTIA · ARMA DOMI CONSILIUM

COURT ADMINISTRATION OFFICE
DEC 07 2011
HALIFAX, N.S.

Order
(Representation Order)

Before the Honourable Justice A. David MacAdam in Chambers

On the motion of NPPHSNUPS New Page Port Hawkesbury Salary Non-Union Pensioners Society ("NPPHSNUPS");

And on reading the Affidavit of Lorna MacRury sworn on November 15, 2011 and the Exhibits thereto, the Affidavit of Pamela Clarke sworn on November 15, 2011, and the Affidavit of Gerard French, sworn on November 24, 2011 and the Exhibits thereto;

And on hearing Pamela Clarke, counsel for NPPHSNUPS, and such other individuals who appeared and were heard on the Motion;

The following is ordered:

1. If necessary, the time for service of the Notice of Motion and supporting documents is hereby abridged and service of the motion is validated, such that this motion is properly returnable on November 29, 2011.

2. NPPHSNUPS is hereby authorized to represent the salaried non-union employees (including any non-unionized employees receiving long-term disability benefits), salaried non-union pensioners, retirees, deferred vested participants, and their surviving spouses and dependents,

currently or formerly employed by the Applicant ("NPPHSNUPS Members") in this CCAA proceeding (the "Proceedings").

3. NPPHSNUPS is authorized to determine, file, advance or compromise any and all claims of its NPPHSNUPS Members that exist or may arise at law or equity which may be made against the Applicant in the Proceedings in connection with any issue or matter related to any recovery, compromise of rights or entitlements of the NPPHSNUPS Members (the "Claims"), subject to NPPHSNUPS returning to Court for directions and / or approval in respect of any compromise of the NPPHSNUPS Members' claim.

4. Wickwire Holm is hereby authorized to act as counsel for NPPHSNUPS in the Proceedings.

5. Upon execution of a Confidentiality Agreement acceptable to the Applicant, the Applicant is hereby authorized and directed to provide to counsel for NPPHSNUPS, as soon as possible after the granting of this Order, without charge, the names, last known addresses, last known phone numbers and email addresses (if any) of all NPPHSNUPS Members, including the contact information for the active non-unionized employees, and the inactive and deferred pensioners. For greater certainty, the Applicant is not required to create documents in response to such requests by NPPHSNUPS or its counsel. In the event of any dispute regarding such disclosure requests, the Monitor will assist in attempting to resolve such dispute.

6. Upon execution of a Confidentiality Agreement acceptable to the Applicant, and subject to any claims of privilege by the Applicant, the Applicant shall respond to reasonable disclosure requests from counsel for NPPHSNUPS with respect to any claim properly brought in the Proceedings, without charge. For that purpose, the Applicant is hereby authorized to provide information which includes personal information related to individual NPPHSNUPS Members. For greater certainty, the Applicant is not required to create documents in response to such requests by NPPHSNUPS or its counsel. In the event of any dispute regarding such disclosure requests, the Monitor will assist in attempting to resolve such disputes.

7. Any NPPHSNUPS Member whose personal information is provided to counsel for NPPHSNUPS by the Applicant pursuant to this Order is deemed to have consented for the purposes of any applicable privacy legislation to the Applicant providing such information, and to the collection, use and disclosure by NPPHSNUPS of such information, provided that such information will be used or disclosed by NPPHSNUPS solely for the purpose of representing the NPPHSNUPS Members' interests in the Proceedings.

8. Any individual NPPHSNUPS Member who does not wish to continue to be represented in the Proceedings by NPPHSNUPS shall, within 30 days of receiving notice of this Order, notify the Monitor, the Applicant, or NPPHSNUPS and Wickwire Holm in writing, and shall thereafter not be represented by NPPHSNUPS in these Proceedings. In the event that a conflict or potential conflict arises between the interests of individual NPPHSNUPS Members, or groups of NPPHSNUPS Members, any NPPHSNUPS Member may opt out of the representation by NPPHSNUPS and Wickwire Holm, either within or beyond the 30-day opt-out period.

9. NPPHSNUPS shall provide notice of the granting of this Order to the NPPHSNUPS Members in a manner deemed appropriate by NPPHSNUPS and its counsel. The notice of this Order shall make clear and highlight the right of individual NPPHSNUPS Members to opt out of being represented by NPPHSNUPS in the Proceedings, and shall provide mailing addresses for the Monitor, the Applicant, NPPHSNUPS and Wickwire Holm.

10. All reasonable legal fees as may have been or shall be incurred by NPPHSNUPS and its counsel in carrying out the terms of this Order, to a maximum of $15,000.00, shall be paid by the Applicant forthwith upon the rendering of detailed accounts to the Applicant. In the event of any disagreement regarding such fees, the matter may be remitted to this Court for determination. Depending on circumstances and the outcome of the sale process as the Proceedings continue, NPPHSNUPS is at liberty to bring another motion before this Court at any time for further funding assistance.

11. For greater certainty, the granting of funding pursuant to this Order is limited to these CCAA Proceedings, and nothing in this Order is intended to provide for the funding of the legal fees of NPPHSNUPS in any related proceeding under the BIA or any related proceedings.

Neither shall this Order, nor anything contained herein, affect in any fashion any right that NPPHSNUPS may have to seek funding in such other proceedings.

12. Notwithstanding paragraphs 10 and 11 of this Order, the Applicant shall not be required to pay for, and neither NPPHSNUPS nor its counsel shall include in their accounts submitted for payment, any amounts incurred in investigating, preparing or pursuing any claims contemplated or asserted by NPPHSNUPS, or any one or more of its members, against the current or former directors, deemed directors or officers of the Applicant (or its predecessors, as applicable).

13. Nothing in this Order or in the Order of this Court made in these proceedings on October 12, 2011, affects the standing, rights or responsibilities of the administrator of the Applicant's four registered pension plans listed below (the "Pension Plans") including, without limitation, any right of the administrator of the Pension Plans to make a claim for any deficiency in the Pension Plans (a "Deficiency Claim"), to vote on any plan of compromise or arrangement, and to receive a distribution in respect of any Deficiency Claim.

    (a) Pension Plan for the Salaried Non-Union Employees, Registration No. 0522714;
    (b) Pension Plan for the Office and Clerical Hourly Employees, Registration No. 0401059;
    (c) Pension Plan for the Woodland Hourly Employees, Registration No. 0379008;
    (d) Pension Plan for the Mill Employees, Registration No. 0522722.

Issued at Halifax, Province of Nova Scotia, this 7 day of December, 2011.

IN THE SUPREME COURT OF NOVA SCOTIA
I hereby certify that the foregoing document, identified by the Seal of the Court, is a true copy of the original document on file herein.
Dated the 7 day of Dec. A.D., 2011
Bonnie Dalton
Deputy Prothonotary

Bonnie Dalton
~~Prothonotary~~
Bonnie Dalton
Deputy Prothonotary

(883212v.6)