FIAT: Let the within Affidavit be filed
this **17th** day of June, 2009

"McDonald J."

Action No.: 0901-04199

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

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

AND IN THE MATTER OF FAIRMONT RESORT PROPERTIES LTD., LAKE OKANAGAN RESORT VACATION (2001) LTD., LAKE OKANAGAN RESORT (2001) LTD., AND LL DEVELOPMENTS LTD.

AFFIDAVIT OF MURRAY MOORE
(Response to the Motion of Resort Funding LLC)
(sworn June 17, 2009)

I, Murray Moore, of the City of Calgary, in the Province of Alberta, MAKE OATH AND SAY THAT:

I. INTRODUCTION

1. I am the Chief Restructuring Officer of Fairmont Resort Properties Ltd. ("**Fairmont Resort**"), Lake Okanagan Resort Vacation (2001) Ltd. ("**LORV**"), Lake Okanagan Resort (2001) Ltd. and LL Developments Ltd. (collectively "**Fairmont**") and, as such, have personal knowledge of the facts and matters deposed to herein except where otherwise stated to be based on information and where so stated, I verily believe the same to be true.

2. Capitalized terms not expressly defined herein are as defined in the Affidavit of Lisa Henson ("**Henson**") sworn in these proceedings on June 8, 2009 (the "**Henson Affidavit**").

II. HENSON AFFIDAVIT

3. I have reviewed the content of the Henson Affidavit and believe that some of the statements contained therein are inaccurate.

4. In paragraph 11 of her Affidavit, Henson states that, contrary to terms of the Amended Loan Agreement, Fairmont Resort and LORV have failed to deposit payments on the Notes into the Trust Account. The Amended Loan Agreement, particularly at sections 6.17 and 6.18, specifically provides that Resort Funding LLC ("**Resort Funding**") was to establish the Trust Account into which Fairmont Resort and LORV would deposit payments on the Notes. Notwithstanding the

terms of the Amended Loan Agreement, Resort Funding failed to set up the contemplated Trust Account.

5. In paragraph 18 of her Affidavit, Henson deposes that prior to April 23, 2009 neither she nor Tom Hamel were aware of any other security agreements in relation to the assets of Fairmont Resort or LORV other than the Equivest Security Agreement. As referenced in paragraph 6 of the Henson Affidavit, Equivest assigned all of its rights and interest in the Facility, the Construction Loan and the Initial Security Documents, including the Security Agreement, to Resort Funding in March, 2004.

6. I am advised by Phil Matkin ("**Matkin**") of Schinnour Matkin Baxter & Pichette, co-counsel to Fairmont in these proceedings, and do verily believe, that in December, 2005 Resort Funding, Fairmont Resort and LORV negotiated the Amended Loan Agreement a copy of which is attached as Exhibit "G" to the Henson Affidavit.

7. Exhibit "B-2" to the Amended Loan Agreement is a schedule of Permitted Exceptions for the Fairmont Vacation Resort. In paragraph (h) of the said schedule, a Mortgage and Assignment of Rents to Computershare Trust Company of Canada is specifically referenced as a permitted exception (the "**Computershare Encumbrance**"). I am further advised by Matkin, and do verily believe, that the Computershare Encumbrance was specifically discussed between the parties in advance of the Amended Loan Agreement being executed. Though counsel for Resort Funding initially expressed concern as to whether Resort Funding would permit inclusion of the Computershare Encumbrance, it was ultimately accepted after discussion and negotiation. It is clear, by virtue of the inclusion of the Computershare Encumbrance in the Amended Loan Agreement, that Resort Funding was aware of other security registered against title to Fairmont Resort's assets well in advance of April 23, 2009.

8. In paragraph 20 of the Henson Affidavit, it is deposed that, pursuant to the terms of the Amended Loan Agreement, Notes greater than 61 days past due are ineligible as collateral security for the Facility. Fairmont has no knowledge of the source or accuracy of the January to May, 2009 default calculations as prepared by Resort Funding as no background or supporting materials have been provided by way of exhibit or otherwise.

9. In the course of its monthly reporting to Resort Funding, Fairmont prepares a margin report which, among other things, lists the age of all of the Notes currently held by Fairmont Resort. A summary of the margin reports, as it relates to Notes with payments outstanding in excess of 60 days, is attached hereto as Exhibit "**A**" to this my Affidavit (the "**Summary**"). The Summary demonstrates that the total percentage of Notes outstanding over 60 days is

consistently between 4.5% and 5.5% from October, 2008 to present. In light of the consistent range over a seven month period, I do not believe that the quality of the Notes is somehow deteriorating.

10. Henson goes on to state, in paragraph 20 of her Affidavit, that there was a change in Fairmont Resort's accounting procedure starting in January, 2009. Fairmont Resort denies that it unilaterally changed its accounting procedure in 2009 but rather it merely complied with Resort Funding's request that Notes for which payments were in excess of 4 months in arrears were to be removed from the monthly margin reports. In accordance with Resort Funding's request, starting in January, 2009 and by the end of February, 2009, the monthly margin reports did not include Notes which were more than 4 months in arrears. That amendment to the monthly margin report format did not however, alter the presentation of Notes that were in arrears for a period of 2 months or less.

11. In paragraph 22 of her Affidavit, Henson states that 5% of Resort Funding's Notes have defaulted and that she has no reason to believe, though she offers no facts or evidence to support her belief, that the aggregate default rates on the Notes will be better than the 20% that Firch Ratings has identified. While Fairmont Resort acknowledges that 5% is the actual measure of default for the purposes of the Amended Loan Agreement, that assessment does not reflect the actual history of the Notes which are ultimately cancelled due to the holder's inability to pay. In the period of October, 2008 to May, 2009, Fairmont Resort wrote off a total of 2.5%, annualized for a full year, of the average of the balances of the Notes outstanding over that period. Further, though all Notes with arrears exceeding 120 days and certain other Notes have been removed from the monthly margin reports, Fairmont is continuing to pursue collection efforts and, in many cases, settlement arrangements have been made to permit the holders to effect repayment over time. Based on my review of Fairmont Resort's historical records, I do not believe that there is currently a negative trend in Notes actually defaulting.

12. As confirmed in the Henson Affidavit, the face value of the Notes is not directly related to and is greatly in excess of the Fairmont indebtedness to Resort Funding.

13. Henson further deposes in her Affidavit, particularly at paragraph 25, that sufficient time share inventory has been sold at Fairmont Resort and LORV such that the management companies will be self sufficient solely on the basis of management fee collection. I do verily believe this to be an erroneous and inaccurate statement of fact.

14. The budgets for each of Fairmont Resort and LORV's management companies have been prepared in such a manner that they rely on Fairmont Resort and LORV to fund the maintenance fees with respect to the unsold inventory. Further, I am advised by Matkin, and do verily believe, that British Columbia law stipulates that developers of timeshare interests, such as Fairmont Resort and LORV, are liable for maintenance fees relative to unsold inventory. This obligation on the part of developers represents consumer protection for the purchasers of timeshare inventory.

15. Contrary to the assertion in the Henson Affidavit that collection of management fees will render the management companies self sufficient, it is a simple fact that the non-payment of maintenance fees by Fairmont Resort and LORV creates a significant shortfall in the operating budgets of both management companies to the prejudice of the respective timeshare owners.

III. CENTURY SERVICES DIP FACILITY

16. Fairmont filed a motion for approval of a Debtor-in-Possession facility which application was originally returnable before this Honourable Court on April 29, 2009 (the "**DIP Application**"). Resort Funding sought and obtained an adjournment of the DIP application to May 1, 2009 in order cross-examine on my Affidavit sworn April 27, 2009. Attached hereto as Exhibit "**B**" to this my Affidavit is a true copy of the transcript of the April 29, 2009 proceedings.

17. Upon completing cross-examinations on my Affidavit, former counsel for Resort Funding opposed the DIP Application on the basis that Resort Funding had no notice of the DIP Application, it would be unduly prejudiced if such relief was granted and because the test for the granting of a Debtor-in-Possession facility had not been met. Attached hereto as Exhibit "**C**" to this my Affidavit is a true copy of the transcript of the May 1, 2009 proceedings.

18. Notwithstanding the submissions of former counsel for Resort Funding, the Court granted the DIP Application which secured Fairmont's right to obtain priority Debtor-in-Possession financing from Century Services Inc. ("**Century**") in an amount not to exceed $5,500,000.00 (the "**DIP Facility**").

19. To date, Fairmont has drawn the sum of $1,000,000.00 under the DIP Facility. Fairmont is, and has been since the granting of the May 1, 2009 Order, in strict compliance with the terms of the DIP Facility.

20. In my capacity as Chief Restructuring Officer of Fairmont, I, upon receipt of Resort Funding's motion materials, contacted Century to discuss its go-forward position with respect to funding under the DIP Facility. Attached hereto and marked as Exhibit "**D**" to this my Affidavit is a true copy of correspondence dated June 16, 2009 from Fraser Milner Casgrain LLP, counsel to Century, advising,

among other things, that if Resort Funding's application is successful, it will be Century's position that Fairmont is in breach of the terms of the DIP Facility. On that basis, Century takes the position that it would be under no obligation to advance further funds and would be entitled to apply to the Court to enforce its security and otherwise seek to collect all amounts due and owing. In either such event, it will be highly unlikely that Fairmont will be able to structure a plan of arrangement for the benefit of its creditors.

IV. MISCELLANEOUS

21. I am authorized to swear this Affidavit on behalf of Fairmont.

22. I make this Affidavit in response to the relief sought in Resort Funding's Notice of Motion filed June 9, 2009.

SWORN BEFORE ME at the City of Calgary, in the Province of Alberta, this 17th day of June, 2009.	)))))	
A Commissioner for Oaths in and for the Province of Alberta		Murray Moore

PHILIP KENT MATKIN
Barrister & Solicitor
Commissioner for Oaths in and for the Province of Alberta

THIS IS EXHIBIT "A"
referred to in the Affidavit of
[illegible]
Sworn before me this 17th
Day of June A.D. 2009

A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA

PHILIP KENT MATKIN
Barrister & Solicitor
Commissioner for Oaths in and for the Province of Alberta

Month	Total notes in security of RFI loan	Principal balance of notes with payments over 60 days in arrears	Percent of total notes in security of RFI loan
October, 2008	13,292,233	610,702	4.59%
November, 2008	13,058,514	663,355	5.08%
December, 2008	12,585,731	617,246	4.90%
January, 2009	12,112,082	644,039	5.32%
February, 2009	11,889,894	652,674	5.49%
March, 2009	11,509,225	545,239	4.74%
April, 2009	11,220,876	631,294	5.63%
May, 2009	10,901,235	562,892	5.16%

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P R O C E E D I N G S

THIS IS EXHIBIT "B"
referred to in the Affidavit of
MURRAY MOORE
Sworn before me this 17th
Day of June A.D. 2009

A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA

Calgary, Alberta
29th April, 2009

Transcript Management Services
Suite 1901-N, Calgary Courts Centre
601 - 5th Street SW
Calgary, Alberta T2P 5P7

Proceedings taken in the Court of Queen's Bench of Alberta, Courthouse, Calgary, Alberta

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*April 29, 2009 p.m. session

The Honourable Madam Justice Romaine	Court of Queen's Bench of Alberta
H. Gorman, Esq.	For the Applicant CCAA Debtors
R. Zahara, Esq.	For the Applicant Monitor Ernst & Young Inc.
S. Collins, Esq.}	For the Respondent Secured Creditor Resort Funding LLC
R. D. Sears, Esq.}	
J. L. Ircandia, Esq.	For the Interested Party Fairmont Resort Properties Ltd.
A. MacDonald, Ms.	Court Clerk

THE COURT CLERK: Order in court, all rise.

THE COURT: Thank you. Please be seated, thank you. Some variation.

MR. GORMAN: Some, My Lady, and including this is our office's first appearance on this matter, having been retained by the CCAA debtors shortly after the initiation of the CCAA proceedings, which was a creditor-driven process initiated by the secured creditor, with Mr. Ircandia and Mr. McCarthy on behalf of the secured creditors. Mr. Ircandia is here today.

At counsel table, to the far right, is Mr. Zahara, who is here on behalf of Ernst & Young, the Monitor. Mr. Narfason is here in the courtroom.

To my left is Mr. Collins, who is here on behalf of a secured creditor known as RFI, who are a creditor who had provided credit in return for which they took various assignments as collateral with respect to certain contracts. The contracts are apparently held by RFI. They did have a CC -- or pardon me, a PPSA registration which had expired, and after the expiry of that registration, we had Mr. Ircandia's client register its GSA.

I give you that background because I believe the only potentially contentious matter today is with respect to the proposed DIP loan that the proposed DIP lender, Century Services, wants a first charge over everything, and that would include the receivables and that would include the receivables subject to the now unregistered or expired registered --

UNIDENTIFIED SPEAKER: They have been re-registered.

MR. GORMAN: My friend tells me they have now been re-registered, but then would be re-registered behind the GSA.

The materials with respect to the stay extension were completed and provided to the service list on the 24th. The DIP loan was concluded last Friday, and on Monday, the short Affidavit with respect to the debtor in possession loan, which is for $5.5 million, was distributed to the service list, which service list included with respect to both matters someone different than Mr. Collins, as another firm had contacted us on behalf of RFI, whom the company has been dealing with directly over an extended period of time, even before the filing, but the counsel had contacted us first, another firm, last week, and then Mr. Collins this morning.

What issue that leads us to, My Lady, as I expect Mr. Collins will say, notwithstanding as diligent and bright and effective as he is getting the Motion this morning, returnable at 3:00 – and no doubt he's delighted it wasn't at 9:30, that he at least had till 3:00 – isn't enough and why don't we stand down the DIP portion for a period of time?

And the answer to that, My Lady, lies in the documents in front of you, which includes the cashflow at the end of the first Report of the Monitor, which includes that the DIP funds required for the week ending May 8 is approximately a million-five. Now, the week ending May 8th starts May 2nd, which is why we would have concerns with respect to the deferral of this even for a week, had My Lady been available next week, which we know you're not from various other matters, and deferring this beyond that would be impossible.

So then, no doubt, my friend will jump to his feet and say, "Okay, why don't you have a million-five DIP and come back the weeks following that?" And that is answered, My Lady, again by the Report, dealing with what the loan agreement we have is, and that is, we have the term sheet from Century for $5.5 million, and no doubt their costing and interest rates and fees are based upon the expectation that it is a $5.5 million loan and not 1.5.

But even more so, My Lady, when you read the Reports and the information, what are we going to do with the $5.5 million and it's we're going to settle a whole bunch of problems. We're going to go to Makaha and try to cut a deal with the creditors in Makaha to solve those issues. We are going to try to settle other significant issues, which is going to free up the value in this estate. And perhaps we will be lucky and persuasive enough that we will settle it next week or two weeks from now, not months from now, as provided in the Report. But the people pursuing these negotiations need the ability to look across the table and tell the guys, "You take this $2 million offer, if that's the number, and I'll wire you the money tomorrow. Just sign this, that and the other over."

If we're waiting for the DIP funding, we're sending unarmed people into battle. They can say, "Well, here's what's going to happen: we're going to settle this if we have a DIP application, and if the DIP is successful and if Century is still standing in line for the amounts, then we lose not only the time, we lose the ability to try to make advances whilst the iron is hot, while we're trying to deal with various of these issues."

And I guess the final point with respect to service, My Lady, is, whilst prior counsel got the DIP motion Monday and Mr. Collins received it either last night or this morning, I'm not exactly certain, our folks have been in conversation with RFI since before the process was coming. RFI knew a DIP loan was coming. Did they know it was coming with Century for $5 million at 3:00 today? No, they didn't know that, but they knew it was something that was urgently required by the company on a go-forward basis, that the company was pursuing, and that the company would be pursuing for court approval, so -- as soon as possible, once a DIP lender had been located. And as you will see from the Affidavit and the Reports, approximately seven companies were contacted and the Century agreement was the best one for the company going forward, so it was pursued and so we're seeking to conclude it at this point.

So, whilst not having heard my friends' submissions insofar as they're given a week or given a million-five, I will hopefully avoid splitting my argument and having to stand in reply. The company needs the funds. The best agreement of the seven out there included security over all assets and the management folks need to go forward and -- with monies to resolve various of the issues with third parties facing the company.

With respect to the Monitor's Report, again, it outlines the cost control that is being undertaken and it gives, as best we can at this early stage, a potential manner to restructure the company, which will be involved in going back to the existing timeshare holders and giving them an offer of an enhanced product, which would be enhanced by, instead of having a 40-year lease, as is -- or licence, as is currently in place, for the timeshare, giving them something that is perhaps a fee simple interest that goes out longer, beyond the 40 years, that we can have more ability to transfer to other projects or other properties, and again with the significant number of timeshare members who currently are using it and enjoying the Fairmont Project — I know in the materials at one point it showed how highly it ranked in the timeshare world — we think we can enter into arrangements with additional timeshare suppliers such that one potential — and we don't have the plan yet, of course, My Lady — one potential going forward would be to utilize our extensive happy customer list and go to them for funding with respect to the project.

Might there be something with Hawaii or Belize or the Lake Okanagan Resort that we currently don't have completed yet? Yeah, there might be, but right now, amongst all of the other efforts of the company, the going back to the timeshare holders with an enhanced product is front and centre, and of course, we will need additional time to pursue that.

One other matter that's mentioned in the Report and contained in Mr. Moore's Affidavit, is the retainer with respect to the Schinnour Matkin & Baxter firm.

The original Order includes the typical paragraph 28, which provides:

> The Monitor, counsel to the Monitor and counsel to the Applicants, and the

Fairmont Group shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges.

The relationship between the Schinnour firm and the Fairmont Group for years prior to the CCAA wasn't the typical time sheet, send a bill multiplied by the number of hours. Mr. Schinnour very cleverly, I think, got away from time sheets. What a joy to think, as a lawyer, not having time sheets chasing one around at the end of every day, and that business arrangement was that they would provide services for a set amount, there would be certain credits with respect to third-party billings, they shared business premises, they shared some staff expenses, and that had worked to the satisfaction of both the company and the firm for an historic period for time.

With the resignation of certain of the principals of the Fairmont Group, which was previously referenced in the proceedings, and with the proceedings themselves, the Schinnour Group, with their expertise and history with respect to the file, have been and will continue to be integral providers of vast amounts of legal services. As a result, the company and the Schinnour firm have renegotiated the retainer such that the amount has increased on a monthly basis, but the basic formula has not.

I can advise that, by doing the math on the gross monthly amount, dividing by the number of hours that is anticipated with -- for especially Messrs. Schinnour, Matkin and Baxter, all of whom have unique knowledge and experience with respect to these properties, they know it and the company knows it, we're getting a deal on their typical hourly rate, had they been booking it.

But for the certainty going forward and the continuity of the deal that had previously been struck, that arrangement is in place going forward, and we raise this, My Lady, not because we think we need any specific relief at this point, but the deal that has been struck, if one reads standard rates and charges, it's standard rates in a perhaps little bit unique retainer type arrangement, and that's why we wanted to be sure that the court was fully aware of that and the -- and any affected party was aware of it – and by "aware of it," we're talking about the concept. We have not provided the precise details. We don't know that it's anyone's business what Mr. Matkin, Mr. Schinnour and Mr. Baxter are making under that arrangement, and so that has been reviewed by the company and reviewed by the Monitor and seems the better way going forward.

As such, My Lady, as one would expect in a first comeback application, we're still a bit at the infancy with respect to the restructuring. We have had good cooperation with our primary secured creditor, the interim CRO, who we're still contemplating the possibility of replacing at a subsequent point in time, and have the additional milestone and achievement today of negotiating and entering into, subject to court approval, the necessary debtor in possession financing going forward, and as such, we would again be seeking the application today extending the stay and also seeking the approval of the DIP Order for the entire $5.5 million amount negotiated, which will be necessary through the restructuring process. And again, doing it in dribs or drabs, whilst perhaps attractive when first raised, really doesn't meet our needs and concerns going forward.

Unless you have any questions, My Lady, those are my submissions.

THE COURT: Okay, thank you, Mr. Gorman. I should probably turn to Mr. Collins just in case, Mr. Collins, you are in fact asking for an adjournment.

MR. COLLINS: Indeed, indeed we are, My Lady. And so for the record, Sean Collins for

Resort Funding LLC. With me, my partner Dan Sears.

So, My Lady, Mr. Gorman, I thank him for attempting to argue Resort Funding's side of this. I think he was holding back a little bit --

THE COURT: (UNREPORTABLE)

MR. COLLINS: -- not doing his usual, more than capable job in making the case for an adjournment today.

I think an adjournment is appropriate. I think it is also in the best interest of the company today because, as I have reviewed the record, there isn't a scant or scintilla of evidence that addresses the prejudice that is going to enure to Resort Funding LLC in the balancing of that prejudice.

Indeed, as I have reviewed these materials – briefly, because as Mr. Gorman has advised the court, My Lady, I was retained this morning on this for the first time, I have only had an opportunity to go through these documents once – there is not a mention of Resort Funding LLC in the Affidavit in support of the initial application, not a mention of Resort Funding LLC in the Affidavit in support of the DIP financing, no mention of Resort Funding LLC in the Monitor's Report that's filed in support of this application, so there's clearly no evidentiary basis, there is no record before you, My Lady, for you to balance the prejudice, which this court must do in determining whether or not to approve debtor in possession financing.

Let me tell you, My Lady, a little bit about the very, very significant role – and it's astonishing to me that Your Ladyship is unaware of this role in these proceedings – that Resort Funding plays in this matter.

In 2003, Resort Funding entered into a credit agreement with Fairmont and Lake Okanagan Resort. That's a $12-million revolving credit facility, My Lady, secured by, among other things, a security agreement and an absolute assignment of the underlying promissory notes that have been granted by the timeshare unit holders. So --

THE COURT: And I'm sorry, what was the amount of the credit?

MR. COLLINS: The amount of the credit when it was granted, it was $12 million.

THE COURT: Okay, thank you.

MR. COLLINS: It was contemplated to be a revolving credit. As payments come in from the timeshare owners, those payments flow through to the lender, and there's a formula and a "margining," if you will, that permits the company to have access to the revolving portion. That revolving portion was terminated at the end of 2008. The present indebtedness is approximately $8 million.

The interest in the underlying promissory notes, based on our preliminary review – and you will appreciate, My Lady, that we were retained this morning – is -- constitutes a paramount interest in and to those contracts. There was mention of a lapsed PPSA registration. That perhaps explains our coming onto the file this morning. We were not counsel during this transaction for the lender. But the PPSA registration is merely one form of belts and suspenders as it pertains to these instruments.

Understand you have the purchase contract -- and so My Lady, I'm sorry, I don't have materials to pass up, but if -- under the circumstances, if I can just simply refer to Section 31(3) of the PPSA to start with, which provides that:

> A purchaser of an instrument [which is what the lender is in this case] has priority over a security instrument, a security interest in the instrument or security perfected under Section 25 [so these would be the alleged intervening registration] if the purchaser gave value for the instrument, acquired the instrument without knowledge that it was subject to a security interest and took possession of the instrument or

security.

We don't have the benefit of having before you, My Lady, the evidence with respect to the credit agreement, the underlying security, but what I can advise you, My Lady, is that this transaction, again, came to pass in 2003 and we're advised that the underlying instruments have been delivered to the lender at its offices in New York. So, the lender is in possession of the instruments, again, which assists us under Section 24 of the PPSA, which provides that:

> Subject to Section 19, possession of collateral by a secured party, perfects a security interest in, among other things, an instrument.

The annotation of Cumming and Wood to the PPSA, you know, speaks of a purchaser under Section 34 being "someone who takes a security interest in the property."

So, in connection with these proceedings, My Lady, it will be Resort Funding's position that they have a possessory interest, a proprietary interest, in the underlying instruments and represent the paramount claim to those instruments. And so what the company seeks today, of course, is a priming charge purporting to prime Resort Funding's interest in and to those notes, and as I say, there is absolutely no analysis as to how the company purports to deal with the prejudice that will enure to Resort Funding Inc. as a result of the priming order sought. This is more than a mere security interest. It's a proprietary interest that is trying to be primed here. The underlying note, again, is in possession of the lender. The lender is entitled to look directly to the timeshare owner to make payments. The payments that were supposed to have been made to the lender on April 1st, on account of March, were not made, presumably, in accordance with the terms of the stay of proceedings.

And so as it pertains to the application for DIP, we, of course, need time to prepare. We need time to look at the evidence that has been presented to the court, to provide evidence to the court as it pertains to the interest of Resort Funding, some $8 million of secured claims here that the company seeks to prime without any evidence of the existence of the Resort Funding debt, let alone the prejudice, the obvious prejudice, that's going to enure to Resort Funding.

And so what I would suggest, My Lady, is that the matter go over for a brief period of time to permit us to do that. And I have heard Mr. Gorman's submissions with respect to the urgency of this matter, and under the circumstances, given the gravity, the material non-disclosure of Resort Funding's interest in these matters, I think the company is going to have to find a way to get around the inability to draw on this financing today.

That goes as well, My Lady, with respect to the stay extension application. Resort Funding Inc. does not, on first blush, support the extension of the stay of proceedings in this matter, particularly if it requires expropriation of their property right to continue the funding. They are, in essence, as well a DIP lender, if you will, over the -- because the cashflows, My Lady, demonstrate receipts on account of these timeshare interests. That's Resort Funding's property. So, in addition to being primed for its interest, what the company has done over the course of April is simply taken that money and utilized it to fund their operations.

As to Your Ladyship's availability, we're obviously, you know, mindful of the realtime nature of these proceedings and we will do whatever we can reasonably do within the time that's available to prepare. We're not able to meet the case today, but as I say, I think that's a benefit to the company.

I don't think it's there on the record before you today, My Lady, for this court to grant the extraordinary priming relief of a proprietary and/or security interest.

THE COURT: Okay, when you say a "brief" adjournment, Mr. Collins, what are you thinking of?

MR. COLLINS: I'm thinking of a week. I'm thinking, realistically, to cross-examine the Affiant on the Affidavit, to tender our evidence in response, to provide briefing, you know, as attractive as it would be to say that we could be here tomorrow, or Friday, My Lady, I just don't think it's realistic.

THE COURT: Okay, so I understand you are suggesting that there has been non-disclosure of this interest and that there may be an issue of priority between your client and Mr. Ircandia's clients.

MR. COLLINS: Correct.

THE COURT: Other than that then it's pretty well a -- it's not a novel application, but -- can I put it that way? So, is there anything that makes this more special than another secured creditor?

MR. COLLINS: No, only to the extent that the consideration of the relative priority, which it shouldn't be, but the consideration of the relative priority between Mr. Ircandia's client and Resort Funding bears on the issue because we have significant issues with respect to what law governs the perfection of the interest in these rights, but you're right, My Lady, I mean it's not a particularly difficult application, but the factual basis needs to be explored a little more.

With the greatest respect, the bald assertion that, "We need these monies," without more, surely can't ground – can't ground – the relief that's being sought today. Something -- we need to explore the facts in more detail to determine if less violence can be done to Resort Funding as a result this priming position.

THE COURT: Okay, thank you.

MR. COLLINS: Thank you, My Lady.

THE COURT: Mr. Ircandia.

MR. IRCANDIA: Thank you, My Lady. The Monitor's counsel, I am sure, will have something to say --

THE COURT: Right.

MR. IRCANDIA: -- but I have just got a couple of things to say, and some of it you already got to.

We represent secured lenders. Like my friend, obviously, we're concerned too about DIP financing, and as you point out, it's not novel. I remember sitting here 15 years ago, arguing with Justice Forsyth on the *Oakwood* case, which was one of the first of these, saying, "My Lord, but I have first charge security against these assets. It's not over everything, it's just these oil and gas assets. They can what they want with their oil and gas assets. We have got just these ones." Well, for the greater good, for the sake of all of the stakeholders and the interest of the CCAA, we participated in that process. There was DIP financing in that process, that had a potential effect on all of the secured lenders, as it always does.

So, with respect to my friend, he is in the process now, his client was aware of the process, and I do not believe that the urgent need for these funds, that the Monitor has brought up and Mr. Gorman has addressed already, should be delayed. He has made a case that they need the money now, not later.

If my friend wants to come back, once he has analyzed his security, once he has determined whether he has priority or not priority, once he wants to make a case for priority, he can do that then. He can come back and you can make an order as to the allocation of that -- whatever funds have to be drawn by the Receiver in due -- or the Monitor in due course as to the DIP lending. So, he can come back and make those kinds of applications as you go along in this process.

But we are in a process. The money is urgently needed now. I read the Report. That's what it said to me. Mr. Gorman has said the same thing and I'm sure the Monitor's counsel will address this. So, again, all of the stakeholders have an interest here and our concern that there appears to be significant assets – that was all before you – there appears to be equity in the property.

Is there risk? Yes, there is always risk in any of these proceedings like this, the CCAA, that's what it's all about.

But is there a potential upside? Is there a reasonable prospect of success? Yes. Otherwise, we wouldn't be here either.

So, My Lady, those are my only comments, and we support this and we support it go ahead now because the Monitor says he needs the money now and he is an independent party. Mr. Narfason just didn't fall off the turnip truck. He has done a bunch of these and done them very well. So, if he says he is in desperate need for those funds, it's -- my friend's position is not going away. He will be here and we will hear about that as we go forward, and the capacity for him to come back to you and do that will be there.

Those are my submissions.

THE COURT: Thank you, Mr. Ircandia. Mr. Zahara.

MR. ZAHARA: Thank you. Thank you, My Lady. I can assure you Mr. Narfason hasn't seen a turnip truck for a long time --

THE COURT: (UNREPORTABLE)

MR. ZAHARA: -- because he was likely in Saskatchewan.

THE COURT: He has been a lot of places.

MR. ZAHARA: Yeah.

THE COURT: (INDISCERNIBLE)

MR. ZAHARA: You never know, that's true.

THE COURT: Go ahead.

MR. ZAHARA: As the submissions from counsel, Mr. Gorman and Mr. Ircandia, the Monitor does in fact – and I believe you got a copy of our Report --

THE COURT: Yes.

MR. ZAHARA: -- My Lady?

THE COURT: Yes, I do.

MR. ZAHARA: That's good. So, we served that on Monday afternoon. I was contacted yesterday evening by Mr. Collins and provided him a copy of that Report yesterday evening, so he had a copy of that Report at that time, it was given to him.

In that Report, as you will note, the Monitor first recommends that the stay extension be approved and believes the company is acting in good faith, and is behind them in that regard.

We also believe that, in this case, the DIP funding is imminently needed for the company going forward. As you can see from the actual cash analysis, in the first little while, there is going to be a negative variance in terms of monies required to keep the company going and keep running. The Monitor needs this money to keep the company going and a week's delay is going to put us back another week.

We haven't heard from Century yet what their position would be if such an application is delayed. I note in our Report, that that funding is contingent upon your court approval at some stage, and I am not sure what effect that would have on their funding, and perhaps they may want to address that.

The failure of DIP funding at this stage – and I believe it was at paragraph 76 – we will not be able to -- where the Monitor stated that, "We will not be able to continue operations, we will likely face liquidation," and the Monitor believes that, "liquidating assets will result in low recoveries in an orderly restructuring of the assets," so we're looking at, as Mr. Ircandia noted, the benefit of all stakeholders here and maximizing value for the assets, and that's what we hope that this DIP financing is going to achieve at this time, and the full amount of it.

THE COURT: Okay.

MR. ZAHARA: As well, I note that, in the Report, the Monitor stated that he does not believe that creditors will be unduly prejudiced by the granting of a DIP charge at this time, in this amount, and that going forward, if Mr. Collins has a problem with how the DIP -- he can come back to this court and seek an application at that stage of how to allocate it or what the proper amount should be on proper evidence.

I also note that the Monitor, on April 7th, did provide an initial Order to all parties involved in this process, including Mr. Collins' client. So, they received a copy of the initial Order, which references initial DIP financing. My understanding is that Fairmont Resorts had a call with him shortly thereafter, had gotten notice that they had been retained by a different law firm – and this has all been before you, again, but this is the Monitor's understanding of this, so his client had notice of this impending application that DIP financing would be coming at some time and was necessary.

In conclusion, I would say the Monitor's submission is that we would like the full amount at this time to go forward for the company, for its benefit, and we support the stay extension.

THE COURT: Okay.

MR. ZAHARA: Do you have any questions from the court, My Lady?

THE COURT: No, I don't. Well, no, not of you, Mr. Zahara, thank you. Mr. Gorman.

MR. GORMAN: My Lady, with respect to the issue with respect to disclosure --

THE COURT: Right.

MR. GORMAN: -- refer to paragraph -- the initial Affidavit of Mr. Bentham (phonetic), paragraph 29(f) on --

THE COURT: This is for the initial application?

MR. GORMAN: This is for the initial application, My Lady, and --

THE COURT: Just give me the -- I don't have it with me, but --

MR. GORMAN: It's paragraph 29(f), and my copy doesn't have the page number on it. It references, amongst other things, collecting long-term contracts receivable of seventeen million, of which thirteen point five million have been pledged to secure approximately eight point three million of timeshare financing. Fairmont will have access to five point two million of those contracts once secured financing is repaid. That is Mr. Collins' client.

THE COURT: Okay.

MR. GORMAN: And Exhibit 'B' on page 2 of the schedule, which is the financial statements, timeshare contract financing, eight point three nine three million. That's Mr. Collins' client. Whilst the name doesn't appear at the original application in support of the application, there was reference that there were other creditors other than the existing secured creditors, and certainly the company and the Monitor were aware of them from the outset. You will see the debt totals there include other vendor takeback mortgages and mortgage bonds, etcetera, and other loans. So, the existence of these assigned contracts was there.

With respect to Mr. Collins, let's say the lack of registration doesn't matter, his best case scenario is he's a secured creditor, much like *Bank Act* security, if you read it, you have given the bank all of your assets and you no longer own anything, but, of course, that is collateral for the loan. For example, if these contracts recovered $13 million, Mr. Collins' client gets $8.3 million of it because it's collateral security for a loan, it is not a purchase where the upside is there. So, even if for today, and Mr. Ircandia is going to hear this out loud, even if for today's purposes we said Mr. Collins' client is in first priority, well, I'm going to prime him too, and if, at some future day, Mr. Collins wants to come back and -- one phrase he said that caused me great concern is, "We don't even know what law governs."

THE COURT: Yeah.

MR. GORMAN: Well, if we're talking about what law governs, a week is not going to help us --

THE COURT: (UNREPORTABLE)

MR. GORMAN: -- a week isn't going to give us the final answer. So, prime everyone, and if Mr. Ircandia and Mr. Collins want to get into a fight at a later date as to the validity of security or the priority of security or whose assets should go first to repay the Century DIP loan, then that is for another day, but right now, the lender is saying, "I need all of these issues, including what law governs, in my rearview mirror. Give us the DIP loan today, and if there is going to be determinations as to validity and priority in the unfortunate event there is a shortfall, that's for a later date, but give us the ability to move forward in these proceedings by giving us the DIP loan today and we will worry about the repayment terms at a later date."

THE COURT: Would anyone else like to speak to this?

(NO AUDIBLE ANSWER)

THE COURT: Okay. Mr. Barr (phonetic), I know that you -- are you here on behalf of Century, is that --

MR. LeGEYT: No, that's me, My Lady, but --

THE COURT: Oh, Mr. LeGeyt.

MR. LeGEYT: -- I have no submissions, thank you.

THE COURT: Okay. Mr. LeGeyt, I have a question of you.

MR. LeGEYT: Sure.

THE COURT: If I was inclined to give a day or two to Mr. Collins, to allow him some time to address this, would that be a concern to Century?

MR. LeGEYT: That would be no problem, My Lady.

THE COURT: Okay. Okay, thank you. Mr. Collins.

MR. COLLINS: Just in brief reply, My Lady, the fact of the matter is there is a legal test that the court is called upon to apply here and it is not satisfied in these circumstances by somebody saying, "We need the money." The test is one of balancing the prejudice and there has been no analysis of whether the receivables, or rather the interest in the underlying contracts needs to form part of the first charge that the DIP lender seeks here, or to what extent it can be carved out of this package, given the unique nature of the security.

With respect to my friend Mr. Ircandia, it's not open to us to come back and re-argue the paramountcy of the DIP charge once it's granted by this court. It's too late then and so it needs to be addressed up front, and if on being informed of what the respective interests are, My Lady, the court determines in its judgment to then prime the interest of RFI, then that's one thing. But in the absence of any evidence, with the greatest respect, I don't see how it can be done.

THE COURT: Okay, (INDISCERNIBLE) --

MR. GORMAN: My Lady, Mr. Collins --

THE COURT: Sorry.

MR. GORMAN: -- formulated a question that perhaps is the more apt question to go to Mr. LeGeyt and Century, which is, "Would you give the DIP loan if these contracts were carved out, today or tomorrow?" type thing. I think that is the seminal issue as much as, "Would a day or two matter?"

THE COURT: Mr. LeGeyt, do you want to address that?

MR. LeGEYT: The answer is no, they would not make the loans.

THE COURT: Okay. Okay. Mr. Collins, I am going to give you till -- I can put this over a day for maximum to Friday, at 3:30, to give you a chance, because you have been just retained and I want to be fair to you as counsel. I don't see this as a question of priority between you and Mr. Ircandia's client, and we don't need to deal with that.

You have suggested that perhaps you can show me that there is something special about this, the nature of the security, that would be persuasive in an argument for priority, and I want to give you that chance --

MR. COLLINS: Yeah.

THE COURT: -- but only a day or two.

MR. COLLINS: That will weigh in on the test. I mean we wish to cross-examine the Affiant, then to --

THE COURT: But why would you need to do that?

MR. COLLINS: Well, because we need to get to the bottom of the necessity of this DIP financing that's being proposed, the necessity of the security that's being proposed, potential alternatives that are available, the viability of the restructuring, My Lady. I mean, for example, the company is proposing to utilize DIP proceeds to make inter-company advances to non-CCAA parties, all the while appropriating that which is owned by RFI to do so, and so these are things that we need to put before the court.

THE COURT: Okay. Mr. Gorman, is Mr. Moore available for cross-examination tomorrow?

MR. GORMAN: I believe so, My Lady. But didn't you send me a Notice of Motion before Justice Romaine Friday, at 3:30, on something else today?

THE COURT: Oh --

MR. COLLINS: Yeah. No, it's in front of Justice Kent.

MR. GORMAN: Okay, sorry.

THE COURT: Oh.

MR. COLLINS: Yeah, so --

MR. GORMAN: (UNREPORTABLE)

MR. COLLINS: So we --

THE COURT: (UNREPORTABLE)

MR. COLLINS: So we're starting to lose track.

THE COURT: Right.

MR. COLLINS: I mean this is 4:04 today. It would have been 5, but I didn't get notice of the other one.

THE COURT: Okay, I --

MR. COLLINS: You know --

THE COURT: I don't want to mention this again, but SemCanada is 2:30 -- is at 3:00, so I could put it over for 2:30 on Friday, Mr. Collins.

MR. COLLINS: All right.

THE COURT: Okay? And Mr. Gorman, if you will produce Mr. Moore to be cross-examined tomorrow.

MR. GORMAN: Yes, My Lady, I will be in touch with him and -- that's not Mr. Moore, no.

THE COURT: Okay, sorry. Okay, thanks. Okay, and then -- so, 2:30 on Friday.

MR. COLLINS: Very well.

THE COURT: Okay.

MR. COLLINS: Okay, thank you.

THE COURT: Thank you. And does the stay expire today, Mr. --

MR. GORMAN: (NO AUDIBLE ANSWER)

THE COURT: Okay.

MR. GORMAN: Yes, My Lady, I would have thought the --

THE COURT: Okay, well, then it needs to extended, of course, till the end of business on Friday.

MR. GORMAN: I didn't know my friend had any particular problem with the stay. I thought it was the DIP.

THE COURT: I --

MR. COLLINS: No, we have a problem with both. We're not going to be able to address the stay extension between now and the end of Friday. We're obviously happy with the stay extension to go over to Friday --

THE COURT: Right.

MR. COLLINS: -- and then to speak to it at that time, depending what arrangements can be made in the interim, if any. But it comes down to two things: one is either RFI will not support this restructuring, but we won't be prepared to argue that on Friday, or RFI will seek to lift the stay with respect to its interest.

THE COURT: Okay. Okay, thank you.

MR. COLLINS: Thank you.

THE COURT: So, the stay will continue until the close of business on Friday, 2:30 on Friday. Thank you.

MR. GORMAN: Thank you, My Lady.

MR. ZAHARA: Thank you, My Lady.

THE COURT CLERK: Order in court, all rise.

PROCEEDINGS CONCLUDED

Certificate of Record

I, A. MacDonald, certify that this recording is a record of the oral evidence of proceedings in the Court of Queen's Bench, held in courtroom 1601, at Calgary, Alberta, on the 29th day of April, 2009, and I was in charge of the sound-recording machine.

*Certificate of Transcript

I, the undersigned, certify that the foregoing pages are a true and faithful transcript of the contents of the record, including the certificate of record given orally by the court official, recorded by means of a sound-recording machine.

Danica Dolenc

Danica Dolenc, Ms.
Transcriber

June 12, 2009

No. 0901-04199

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

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

AND IN THE MATTER OF
FAIRMONT RESORT PROPERTIES LTD.,
LAKE OKANAGAN RESORT VACATION (2001) LTD.,
LAKE OKANAGAN RESORT (2001) LTD., and
LL DEVELOPMENTS LTD.

P R O C E E D I N G S

THIS IS EXHIBIT "C"
referred to in the Affidavit of
[illegible]
Sworn before me this 17th
Day of June A.D. 2009

A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA

PHILIP KENT MATKIN
Barrister & Solicitor
Commissioner for Oaths in and
for the Province of Alberta

Calgary, Alberta
1st May, 2009

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Proceedings taken in the Court of Queen's Bench of Alberta, Courthouse, Calgary, Alberta

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*May 1, 2009 p.m. Session

The Honourable Justice Romaine	Court of Queen's Bench of Alberta
H. Gorman, Esq.) K. Barr, Esq.)	For Fairmont Resort Properties Ltd.
J. Ircandia, Esq.	For Monitor No. 1
S. Collins, Esq.	For Resort Funding
K. Bourassa, Ms.) R. Zahara, Esq.)	For Monitor No. 2
C. Ng-Currie	Court Clerk

THE COURT: Good afternoon.

ALL COUNSEL: Good afternoon, My Lady.

THE COURT: Please be seated.

Okay. I think we are back on the application for DIP, Mr. Gorman.

MR. GORMAN: Yes, My Lady. I can advise you that since we adjourned this on Wednesday, Mr. Moore, the affiant, was cross-examined by Mr. Collins and we have the transcript and various exhibits from that examination that may be referred to today.

Included in that, Mr. Collins and I to expedite matters sort of agreed as to what might be the exhibits. So, rather than have him get an affidavit from New York attaching various of the documents that have been discussed in their absence, we have those assembled and available today.

And I think what makes sense we understand there's other scheduling matters for this afternoon, rather than me go over I again --

THE COURT: Yes.

MR. GORMAN: -- perhaps if Mr. Collins voiced his concerns and any matters that had come up during the examination or in the exhibits or, I think we both have some law to provide you My Lady. If I dealt with that in response we'd be better use of the time than reviewing much of what you heard just two days ago.

THE COURT: Thank you, Mr. Gorman.

Mr. Collins.

MR. COLLINS: Thank you, My Lady. And perhaps I might enquire as to how much time we have.

THE COURT: Well, I will tell you I have -- I probably have more time than you do --

MR. COLLINS: Okay.

THE COURT: -- if you are going to be in front of Justice Kent at 3:30. There is an application at 3:00 on SemCanada. I do not believe that it is going to be very lengthy --

MR. COLLINS: All right.

THE COURT: -- but there may be quite a few counsel involved --

MR. COLLINS: Okay.

THE COURT: -- so, but if necessary --

MR. COLLINS: Yes.

THE COURT: -- we can continue after that.

MR. COLLINS: All right. Thank you..

THE COURT: Okay.

MR. COLLINS: Thank you, My Lady.

So, as Mr. Gorman indicated, since we last saw you we had an opportunity to conduct a brief cross-examination. I also put together a short bench brief. I don't know if you have a copy of that at your desk or not, My Lady?

THE COURT: I do not. I do not, Mr. Collins.

MR. COLLINS: I wouldn't expect. So, perhaps I can pass up to you, My Lady, a copy of the transcript, the bench brief and the exhibits.

THE COURT: Okay.

MR. COLLINS: I'm not sure we'll have to get much further than the bench brief, My Lady.

THE COURT: Okay. Thank you.

MR. COLLINS: So, My Lady, after having given further consideration to this, Resort Funding

LLC our client a secured lender, remains of the view that it's inappropriate under the circumstances and under the evidence before you that the requested DIP facility be approved.

It's respectfully submitted My Lady, that if the DIP facility is approved today on the terms that are sought today in the amount applied for that it will have to have been upon the following foundation and the following principles, and there are three that we bring to your attention, My Lady.

It would be that an applicant has no duty to consult with its stakeholders including significant and material secured creditors in order to permit such parties to review information and consider their positions in connection with an application for extraordinary relief.

That there's no requirement, My Lady, to provide cogent evidence that demonstrates the benefit of DIP financing, that the benefit of DIP financing clearly outweighs the potential prejudice to secured lenders.

And finally, My Lady, that the extraordinary remedy of a priming charge can be obtained on evidence from the applicant in the nature of a bare assertion that the terms are, I am quoting "fair and reasonable" and that DIP is required to fund ongoing business operations and to afford the opportunity to restructure without otherwise addressing, My Lady, the prejudice that enures to the secured creditors and other stakeholders.

We've put into evidence through the cross-examination My Lady, the underlying credit documents and the facility as I described it to you on Wednesday is essentially as follows and I believe I provided a brief overview of it. I don't think there's much more to say.

There is a hypothecation loan agreement between Resort Funding LLC and Fairmont Resort Properties Ltd. that's amended and restated. It's in Exhibit 2, the cross-examination transcripts. That provided two credit facilities.

There was a development facility and then the hypothecation loan agreement, the development facility which was provided to permit the development of Fairmont Resort was repaid in full.

The hypothecation loan agreement was a revolving credit facility and it functioned as follows. Timeshare owners would purchase their fractional interest. They execute and deliver a promissory note in favour of Fairmont. That promissory note is endorsed by way of the launch (phonetic) by Fairmont in favour of Resort Funding, Resort Funding becoming a holder then of the note. The promissory notes are delivered to Resort

Funding.

There's a guarantee My Lady, from Lake Okanagan Resort Vacation (2001) Ltd. and a specific security agreement.

THE COURT: Mm-hm.

MR. COLLINS: And those are all now properly in evidence in these proceedings.

There is no question, My Lady, that Resort Funding is among other things a secured creditor. There is an issue and we concede that there is an issue with respect to the continued perfection of that security interest and the potential that that security interest may have become subordinate to the FRP in these proceedings.

Resort Funding's position is that that in fact didn't occur, that it's position remains that is the paramount party with an interest and in too what we call the notes. But that that as we indicated on Wednesday, we're not going to determine today.

But I think it's important to note that because I've heard suggested otherwise, that there's no question that Resort Funding is a secured creditor and of course the distinction that may be drawn by people is the fact that a lack of perfection somehow makes you unsecured. Of course Resort Funding *qua* Fairmont, has always been always been secured from the date that the security interest was granted.

Now, there's an argument that exists My Lady, that the notes have been absolutely assigned by Fairmont to Resort Funding and/or that under the *Bills of Exchange Act* Resort Funding is a holder in due course of those notes with the effect that they cannot be property that's subject to charges in these proceedings.

To be clear Resort Funding is not advancing that argument today My Lady, but wishes to reserve its rights to make such an argument should it become necessary in future proceedings.

My Lady, what we've attempted to do in the limited time we've had available and in this bench brief is to come back a bit to first principles as it pertains to debtor-in-possession financing. For better or worse, frequently in these proceedings through collaboration and cooperation the order goes by consent or it goes unopposed. And unfortunately, that's not the circumstance that the Court has before it today.

But in our submission then makes it important to consider the principles that I know are very well understood by you My Lady, and very understood by my learned friends. And so, all I've done is, I thought that rather than trying to culminate and cobble together jurisprudence on the point is, I have found what I find to be an extremely useful argument -- extremely useful article --

THE COURT: Perhaps both.

MR. COLLINS: -- from doctor -- from Dr. Sarra and I've attached that to the brief.

And Dr. Sarra in her article My Lady, you know, sets out that you know, well beyond Norcen sort of five principles -- five principles have arisen in the -- in the jurisprudence with respect to the foundation that needs to be laid for the Court to exercise its discretion to grant this extraordinary relief. And that's set out at page 18 I believe but I'll summarize them. It's adequate notice, sufficient disclosure, timeliness of the request, balancing the prejudice, and that principle that this is in fact a very extraordinary remedy.

We would submit in the instant case of those five principles there are three that are engaged that ought to be considered with the greatest respect. Those are sufficient disclosure, balancing the prejudice and the extraordinary nature of the remedy that is sought.

So, with respect to sufficient disclosure it's useful to hear what Dr. Sarra has said:

> Another recurring principle in the judgments is the need for sufficient disclosure so that creditors can

fully assess the impact of DIP financing decisions. The Courts have been effective in directing the monitor to report to the Court on the financial and business affairs of the corporation. This has included adequate value of encumbered and unencumbered assets to ascertain the nature and type of pre-insolvency debts and to determine whether there is equity remaining. This must be done early enough in the process so that all interested parties can assess the DIP financing request in an informed manner.

My Lady, I'll stop there.

Much was made on Wednesday of the fact that the initial order was granted on March 30th in these proceedings and that Resort Funding knew or ought to have known that DIP financing was inevitable.

With the greatest respect, My Lady, we join (phonetic) issue with that argument. The nature of filing and the impact that a filing has on the stakeholders and the creditors other than the most sophisticated institutional financial institutions is such that it creates a cause of uncertainty and of chaos really with respect to the affected creditors.

And in the cross-examination that I conducted of Mr. Moore he candidly and fairly admitted that the company, the applicants, had been seeking out DIP financing since the filing, so, since March 30th, 2009, and that there has been absolutely no consultation with Resort Funding in that process.

And so, there was, you know, not having picked up the phone and said, Look, we're looking to put 5.5 million of a prime charge in front of you, in addition to you being stayed from collecting under these notes that are in your possession, they now add further insult to injury if you will and say, Listen, you've had plenty of time to get your position together.

And with the greatest of respect, it's the applicants who have had plenty of time and who didn't utilize that time to come to Resort Funding, and I suspect the other stakeholders in an attempt to forge the consensus. An attempt. And that leaves us in the position that we're into today.

Now, not being consulted then you would expect to be able to divine from the materials My Lady, the value of the collateral that's sought to be pledged, the impact of the DIP facility on secured creditors like Resort Funding, and unsecured creditors, a liquidation analysis perhaps. Whether it's possibility to have obtained a facility without taking all of the security of these -- without taking the security of all of these applicants, that is to say something less than that is what is being offered up.

So, with respect My Lady, on the first ground being sufficient disclosure, the applicants have for whatever reason, simply failed to discharge the duties that are upon them in our respectful submission.

The next point we would like to address then is the balance of prejudice to stakeholders. And as we indicate in the brief it's trite law that an equitable remedy of this nature is sought. The Court has to balance the specific relief being sought against the burden of that form of relief to other parties.

Courts generally set a higher threshold My Lady, for DIP financing that's solely aimed at financing working capital requirements of ongoing operations.

THE COURT: I am sorry, I missed that Mr. Collins.

MR. COLLINS: Dr. Sarra makes the point, and I think it's -- I think it's law if its reflected in the jurisprudence that DIP financing that's designed for the purpose of financing working capital requirements of ongoing operations is generally subject to a higher threshold than say the administrative charge --

THE COURT: Okay.

MR. COLLINS: -- than say the DNO charge. And the simple point is, is that the Court requires cogent evidence that the benefit of DIP financing clearly outweighs the prejudice.

And we wish to consider some of the facts then as it pertains to the prejudice in this case beyond that which is obvious.

We know My Lady, from the Monitor's report and from the cross-examination that the applicants made two intercorporate advances to a related foreign subsidiary since these proceedings were commenced on an unsecured basis. So, there was I believe a $185,000 unsecured loan made and $125,000 unsecured loan made to an entity called Makaha, and apparently that's a hotel development in Hawaii.

The cashflows disclose My Lady, and it's the evidence from the transcript as well, that the applicants propose to make further unsecured advances to this foreign subsidiary in the amount of $1.2 million over the course of the reporting period which is between now and July 31st, 2009.

Again, in cross-examination Mr. Moore admitted that the advances will be unsecured, will bear interest at the rate of 7 percent per annum. Mr. Moore admitted that Makaha has both secured and unsecured debt.

So, in terms of the prejudice here, you've got a company that wants to send $1.2 million to a foreign subsidiary at the rate of 7 percent per annum on an unsecured basis when in the same breath it's paying 20 percent per annum for advances on a secured basis.

THE COURT: I have not obviously read the cross-examinations, Mr. Collins, but I had understood from the Monitor's report that any further advances would be subject to the Monitor assessing whether the Fairmont group is adequately secured and certain other elements that the Monitor would assess. Are you telling me that --

MR. COLLINS: At page 13, My Lady, if I may of the transcript.

THE COURT: Okay.

MR. COLLINS: And we'll have to go back actually to page 12.

THE COURT: Okay.

MR. COLLINS: So, I asked Mr. Moore at line 4:

Q: And so, since the date of filing

then there was $185,000 advance made to Makaha, is that correct?
A: Canadian dollars, yes.
Q: And that amount was advanced on an unsecured basis?
A: That amount is advanced presently under an inter-company loan basis unsecured with a rate of interest.

And at line 18 I speak of the $185,000:

Q: And that's an unsecured inter-company advance?
A: That is advanced on the same basis.

At page 13 then my question was, at line 4, My Lady:

Q: It is proposed that Fairmont Resort will make further inter-company advances to Makaha in the amount of approximately a million, twenty-eight thousand, is that correct?
A: That is correct.
Q: And those advances will be made on the same advances, sir?

A: They anticipate to be made on the same basis subject to an agreement with the DIP financing that would require that those monies come back and be bought into the system ultimately to be repaid to the DIP financier.

And so, I don't think My Lady, that that goes quite as far as saying, The monies are going by way of secured advance. But that's a bit of a red herring in our respectful submission.

We're structurally subordinating the creditors of the applicants to advances that are being made to an entity that has secured and unsecured debt. And there's been no, no transparency or disclosure into the nature of that debt or the ability of Makaha to service that debt, or the ability of Makaha to repay any advances that are made.

But more to the point as well, during the stay the evidence is, is that the funds that would otherwise have been paid to Resort Funding My Lady, would amount to some $1.2 million. And that's, you know, similar in amount to the funds that the debtors -- that the applicants here wish to advance to a non debtor party. And in the absence of cogent evidence we would submit beyond the other difficulties that is going to ultimately benefit the restructuring.

Again, this is viewed in connection with the principle that the threshold ought to be higher with respect to working capital. I don't -- I think it's debatable whether this is working capital.

THE COURT: Okay.

MR. COLLINS: In respect of the balance of prejudice, we would typically expect to see, My Lady, evidence of what the secured debt is as against the applicants. Usually, there's a personal property registry search attached for example, so that we can determine who the other secured debtor -- secured creditors are. Typically there's, where land is to be charged there's evidence before the Court with respect to who the mortgagees are the other encumbrancers are with respect to that land. There's none of that here today.

And so, I don't know whether -- I've looked at the PPR searches in Alberta and BC, whether those stakeholders have been consulted or provided notification with respect to this priming request. But it's DIP financing 101 beyond the initial application we would submit, My Lady, that the notification, and if we take Dr. Sarra's word as being the law, consultation with those creditors.

And so this brings us back then to the fact that this is lest we forget, an extraordinary remedy.

THE COURT: Okay. Before you move on --

MR. COLLINS: Yes.

THE COURT: -- to extraordinary remedy Mr. Collins, is there anything else that specifically prejudices your client?

MR. COLLINS: I don't want to repeat that which has been said but --

THE COURT: No, I am not asking you to.

MR. COLLINS: Yeah.

THE COURT: Okay.

MR. COLLINS: So, I'm trying.

MR. IRCANDIA: That's a bad sign when someone says that, They made me do it.

MR. COLLINS: And thank you Mr. Ircandia. It's kind of creating the argument and trying to argue against it, because there simply hasn't been the disclosure to permit Resort Funding to assess whether there are viable alternatives in terms of the security being offered.

We know from the evidence that apparently Mr. Bentham swears to the fact that in a liquidation there will be a deficiency to secured creditors.

And Mr. Moore while not expressly agreeing with that contention testified to it being a reasonable assumption, yet Resort Funding appears to be adequately secured and accordingly overlaying this DIP financing in particular to finance a subsidiary seems particularly perverse, with the greatest respect.

So, with respect to the equitable remedies generally My Lady, Dr. Sarra says, The exercise of your discretion is generally aimed at ensuring fairness in the process and aimed at ensuring the substantive objectives of the CCAA are met, firm judicial control over the amounts of the financing, over the precise purposes and use of such funding and over the accountability of the debtor to the Monitor, the Court, they say ensures that this -- that the process is not undermined.

The cashflow statements demonstrate My Lady, inclusive of the proposed inter-company advances, a need for $3 million between now and the end of July, yet the facility sought to be approved today is in the amount of $5.5 million.

Moreover, there is very little by way of concrete strategies that these applicants have advanced and put on the record with respect to what their plan is, and the record is we would say speculative, vague and it's conditional upon a myriad of factors. And we reference, for example, paragraph 29 as the affidavit of Mr. Bentham filed in support of the application approximately a month ago.

THE COURT: Okay. Go ahead, please.

MR. COLLINS: And you know, Mr. Bentham speaks of certain of the overall business and restructuring plan and uses words like, if Fairmont has land and zoning for additional construction and if constructed it could produce up to $75 million -- of up to $75 million of additional timeshare revenue. Again, he says "assuming market acceptance".

He says things like:

> ... assuming there is market acceptance of the redevelopment of the Makaha property ...

Then that may be a restructuring alternative.

And so, there isn't -- there isn't a great deal of certainty or anything more than, it's hard to say it's even a kernel of a plan, My Lady.

THE COURT: We are in pretty early stages of this.

MR. COLLINS: Well, we are -- we are but it's -- there's been a month and there's been no consultation with the stakeholders with respect to that which is proposed to be done. But what we have is a cashflow that says -- well, you know, the evidence and the argument on the point, My Lady.

THE COURT: Yes.

MR. COLLINS: And so, for those reasons, you know, Resort Funding simply even when faced with the argument that will be made if the DIP funding isn't approved this will result in a liquidation. Given that which it knows today, given that which has been disclosed to it, given the prejudice that it is going to inure to it, cannot support and must oppose the application as it's framed.

And those are all of my submissions, My Lady.

THE COURT: Thank you.

Before I turn to others ...

(OTHER MATTERS SPOKEN TO)

THE COURT: Okay. Mr. Gorman.

MR. GORMAN: Thank you, My Lady.

And I understand from my friend he's concerned that our status of progress on the 30 days into -- into our structure, and unfortunately President Obama is busy on other restructurings and he hasn't given us the U.S. treasury nor directed the creditors to deal with us such that we don't know how we're going to get out of this scenario.

What we do know is the plan that was set out in Mr. Bentham's affidavit as being one alternative being pursued. Mr. Moore in his affidavit confirms it's still being pursued, but it is not being pursued with blinders on to the exclusion of other opportunities, and that is why we are not able today to say what our ultimate plan is because we're not foreclosing any possibilities to enhance recovery.

I'm glad my friend had been able to quote from Mr. Bentham's affidavit because a page or two behind where he was quoting from the original affidavit from a month ago at paragraph 34 it talks about the DIP financing that was being sought with respect to the initial order. That was the $500,000 DIP financing.

It's referenced that it was going to expire by June 30th, and that this was the step that was taken in accordance with the principles of Dr. Sarra, and Dr. Sarra's read the various case laws and the principles set out by various courts. That was the -- that was the interim bite we had taken.

If we had asked at that time for $5 million in a DIP loan as a first charge against all of the assets I could see someone who had not been provided notice of the proceedings showing up and saying, Gee, that's one of those ex parte type applications that Dr. Sarra thinks might not appropriate that we're moving away from, but it's not what was obtained then.

But in the initial application, in the initial affidavit of Mr. Bentham from over a month ago, paragraph 35 says what's coming. And what's coming is Fairmont has commenced discussions with a Canadian chartered bank for a longer term. DIP financing is of up to $5 million which shall be secured by a first charge on the assets of Fairmont, Lake Okanagan Resorts, Lake Okanagan Resort Vacation and LL Developments Ltd.

Fairmont will provide in its business and restructuring plan to be presented at a further application to the Court, details of a longer term facility and the use and repayment of those funds.

So at the initial application we're saying not today. We will be coming -- we're not seeking, but we will be coming back for a $5 million charge as against all of the assets. A first charge against all of the assets of the applicants.

With respect to the timing concerning Century it was signed last Friday afternoon. Materials were put back. Put out the very next business day. We couldn't give earlier notice than when we knew what the plan was. We got it. We turned it around as quickly as possible and provided notice to the counsel list.

The terms with respect to it from Mr. Morrison we spoke to seven people. This was the best we got. We didn't have people with 7 percent interest rate, we didn't have people with taking less security.

This was the best that was available after the discussions that occurred. And in a situation where one facility was on the eve of expiring, the next facility as indicated as warned in the initial affidavit for the first application was pursued and these were the best terms available.

With respect to -- my friends wish to say, I'm glad to hear him say that, yes, we are a secured lender because I thought I heard Wednesday the argument which is now being reserved that this was property that was something other than a secured loan and it had been assigned.

And of course, My Lady, you may recall an application, and I'll pass up some cases I haven't -- didn't get to. I'll briefly have some authorities. Might call Revenue Canada in front of you and the Temple City matter saying we are not a subject to a DIP facility because under the legislation is a deemed trust. It has been -- it is our property, we're not subject to a DIP financing, and you found otherwise, My Lady. And the Court of Appeal seemed to follow that understanding in the -- one of several reasons for refusing the leave application.

So now we hear from my friend today, yes, we are a lender. Maybe we have priority over FRPL, maybe we don't because of the lapse and then re-

registration last week of the security. That'll be worked out in the end.

And when it is worked out we will have a claim of approximately $7 million that is -- that if the order is granted will be subject to a -- to a DIP charge and a claim of $60 million with respect to Mr. Ircandia's debt which is subject to a DIP charge, and then the two of them may have a -- an issue with respect to where they are as against each other.

So we have heard, and I hope today to hear repeated the support of approximately 80 or 90 percent, whatever 60 out of 67 is, supporting this process whilst they are being primed by this charge.

With respect to the inter company loan we are not lending money at 7 percent so as to return a 7 percent investment. We're lending money with the monitor's review, if appropriate, to protect an asset. We are lending money to protect the investment that these entities have through their subsidiary in the Makaha project which is reviewed at length in the initial Bentham affidavit so we're not borrowing it at 20 to get a 7 percent return. We're borrowing at 20 to get a 7 percent return and to get our investment in our subsidiary preserve and back.

And if at some point in time the business people decide that it is not worth that investment or the monitor is of a concern that that investment no longer makes sense, then we're not going to DIP fully out -- the DIP facility drawn down and that money will remain there.

And no doubt some creditor, perhaps Mr. Collins, perhaps someone else will say, What were you guys doing; were you asleep at the switch? What happened to the Makaha investment? How is it gone, how did you let someone foreclose on it in the States when you could have resolved that with a -- with a payment?

And we'll say, Well, our hands were tied. We couldn't do anything because we had no funding. The monitor wanted to do it, the company wanted to do it but the cupboard was bare. That is the -- the concern that the company has, and that is why it needs access to funds to preserve that investment, which investment is many many multiples of the million dollars that is -- that is projected to -- to be advanced. We're spending a bit of money to perhaps preserve a much greater amount.

The cases that I've handed up, My Lady, I'm sure you'll be familiar with them in addition to your decision in Temple City.

We have the decision of Justice LoVecchio in Sulphur Corp where it was a decision that a DIP fund was given over the objection of builders' lien holders who were saying, If I can just enforce my builders' lien I'll get my money back. Why? Why would we put money in? He reviewed the various authorities and I've highlighted various quotes from Justice Wachowich in Hunters Marine where he says, talks about the aim of the CCAA to maintain the status quo to bring creditors on side in terms of payment.

Later on in -- again in the quote on page 6 at tab 1:

> If super-priority cannot be granted without the consent of secured creditors the protection of the CCAA effectively would be denied a debtor company in many cases.

And in that case as in various other cases the Court looked at the evidence available in front of it, noticing the real time litigation that we're at. Noticing in numerous cases, and Dr. Sarra references this as well, the importance of the monitor in the process watching over the funds.

And in that case Justice LoVecchio in the decision it -- of you in Temple City the factors were, yes, the advantage was to make that DIP loan even though no doubt some people were moving down the pecking order.

The last authority I refer to at tab 4 is a decision of the Ontario Superior Court. And one of the thoughts of the Court at paragraph 8 at tab 4 at the last pages, well, what if we don't do this. What's going to happen? What if we don't make this DIP loan today? Mr. Halkett (phonetic) can put on his receiver hat, and Monday he'll be back applying for receiver borrowing powers, for receiver certificates, and he's going to be looking to prime everyone as receiver.

And that's what the Court looked at there where it said that the additional DIP financing wouldn't affect their security position any more than assignment into bankruptcy and may have positive effects. An assignment into receivership you're going to have the receiver come back for borrowing.

The other item to remember is now that we -- for today and perhaps for the company but not the FRPL secured lender we seem to be hearing that, yes, this is a collateral assignment, a lending assignment. We don't own these outright. The assignment is currently with respect to amounts slightly in excess of $11 million, and the amount that is outstanding is talked about low aids; maybe a bit lower based on payment, so there is -- there is some difference there.

As my friend asked in examinations and is set out in the -- in the cash flows, that amount, that 11th aid is going to deteriorate a bit from people who pay the 11 down. They're not re-advancing, so until payments are made the aid's not going down, but there is that current $3 million gap. And the $5 million debt isn't only as against these assets, against all of the assets, including the assets that aren't subject to a dispute whether the assignment registration needed to maintain for registration, but are subject to FRPL's additional security, the general security agreements, the lands, et cetera. And as such it isn't a burden being borne only by my friend on their $3 million excess piece of security. It's being borne by all creditors including the creditor almost ten times in size.

So we do not have all of -- all of the answers. We do not have a typical asset with respect to timeshare sales where I can run and get a reserve report in the standard format that might be more familiar to my friend in other files. It's a unique asset.

The evidence of Mr. Bentham is extensive describing the unique asset and the unique options and opportunities available for restructuring.

And finally with respect to the Doctor Sarra article I note that the basic tone of the article is that -- and the conclusions include the abstract at the beginning.

Mid way through the abstract paragraph:

> The Courts have interpreted their equitable or inherent jurisdiction as including the ability to order DIP financing to allow corporations to continue operating during the stay period.

Under the highlights, second line. Again start at the first page of Dr. Sarra's article.

> Key to successful restructuring is financing called DIP financing in the interim period during which the corporation is attempting to develop.

She's -- uses the word 'develop'.

> Not implement the term and develop a viable business plan that is accepted to stakeholders.
>
> Canadian courts have exercised their inherent jurisdiction to grant

> such financing. This article suggests that the degree of uncertainty created by the court's granting of DIP financing has been exaggerated, and the courts have engaged in a reasoned effort to further the aims of the CCAA in protecting the interests of all creditors and the public in the continued operation of corporations where the prospect of successful reorganization exist.

And under the current circumstances the applicants including as early as the initial CCAA order where we said, 500 now, we're coming back for 5 million in the future, we've probably provided more than typical notice of the -- of the amount and the necessity for the funding.

And with respect to once the best deal -- we didn't rush into the first deal. We negotiated the best deal out of the seven that were contacted. Was signed, we were back in front of court immediately with a consultation with the monitor, with the monitor's support, and that brings us well within the circumstances where this Court and other Courts through Canada have ordered the DIP financing with the priority over existing secured creditors.

THE COURT: Okay.

MR. GORMAN: I know we're having time issues, My Lady, so unless you have any questions, those --

THE COURT: Okay.

MR. GORMAN: -- are my submissions.

THE COURT: Thank you. Thank you, Mr. Gorman.

Mr. Ircandia, you spoke to this the other day. I do not know if you would like --

MR. IRCANDIA: My Lady --

THE COURT: -- to add anything.

MR. IRCANDIA: -- it sounds like you don't need to hear from me today.

THE COURT: Ah.

MR. IRCANDIA: But I would like to say there are a couple of things if it's all right.

THE COURT: Okay. Certainly.

MR. IRCANDIA: Just --

THE COURT: Go ahead.

MR. IRCANDIA: -- two points and it ...

I want to go back to my friends talking about the balance. And this -- I just want to reiterate this. Mr. Gorman dealt with that disclosure issue. I don't think that's an issue here. The extraordinary remedy, we all know this is a extraordinary remedy. This is an extraordinary situation.

So it's -- it's about this balance. And I think -- I think it's clear to you that we have a -- on the one hand if you're -- if you're trying to balance things. On the one hand we have someone who's got 7 or $8 million in security. That may or may not have a priority. They concede themselves over this other party who's got $60 million worth of secured debt.

So -- and you've got a company in the middle of that that's supported by what the monitor is saying and supported by this principle grow and the ruin that holds that $60 million worth of security saying it's in the early stages, this is worth exploring.

We hold a consent receivership. If my friends wants us to force it into insolvency it can be insolvent. But we've -- we've determined it doesn't make sense in the context of this company. It's -- the only way out is a restructuring. At least at this stage.

So if you've got a balance there's a lot more on this side than on this side. That's the --

THE COURT: Okay.

MR. IRCANDIA: -- submission I make.

THE COURT: Thank you, Mr. Ircandia.

Mr. Barr, did you ...

MR. BARR: Nothing to add, My Lady.

THE COURT: Okay.

And Ms. Bourassa, do you --

MS. BOURASSA: I'll --

THE COURT: -- wish ...

MS. BOURASSA: -- be brief, My Lady.

THE COURT: Okay. Thank you.

MS. BOURASSA: I just wanted to address one point.

I wanted to draw your attention -- well, to start with, you heard the monitor's positions on Wednesday that the monitor supports the stay, supports the DIP. And I just want to draw your attention to paragraph 76 of the monitor's report where the monitor states that it believes that without the DIP financing and without the approval of the Century DIP loan the Fairmont group will not be able to continue operations and will likely face liquidation.

The monitor believes that liquidating the assets would result in lower recoveries than an orderly restructuring of the assets. Furthermore, in a liquid scenario a receiver or a trustee would be required to borrow a similar amount of funds in order to maintain and sell the Fairmont group's assets.

That's just further to Mr. Gorman's submission, but I wanted to draw your attention to it.

Additionally, paragraph 40 of the monitor's report which provides the assessment that the monitor will make prior to approving any further advances to Makaha, Mr. Moore's cross-examination transcript says what it says, but we all know in this process that advances to a non CCAA debtor are going to require approval of the monitor, and the monitor is very alive to these issues.

The main concern that the monitor had with respect to any particular prejudice to Mr. Collins' client was this fact that Mr. Gorman has raised in terms of there being a finite pool of security which is depleting.

However, based on the evidence in front of you and based on the numbers that have been part of all of these submissions there appears to be adequate security such that even with the advances that will be made over the next three months, the duration of the stay period, there will still be more than adequate security to cover off Mr. Collins's client's claim.

As such, if there is a concern on the comeback application at the end of July perhaps that would be the time that Mr. Collins would properly have some dispute with what was going on based on the cash flows at that point in time.

THE COURT: Okay. Thank you, Ms. Bourassa.

I am satisfied by the evidence before me that the possibility of an orderly restructuring that would create an upside value for all the stakeholders of the Fairmont group outweighs the potential prejudice to resort funding and I will see here, recognizing that we are in the early stages of this CCAA proceeding.

I note particularly the support of the monitor and the support of the other major secured creditor, FRPL. Hope I have got that right.

I am also satisfied that there has been adequate notice of this application, not only to new counsel for resort funding, but to resort funding itself starting with the disclosure at the initial application. And that there has been sufficient disclosure of the proposed DIP loan and of the interests with which it may interfere, given the stage that we are at in these proceedings.

I am persuaded that the funding is urgent and that the proposed use is timely and appropriate. I am satisfied that there are sufficient safeguards in the oversight of the monitor, and the other safeguards that are set out in section 40 of the monitor's report to any further intercorporate advances.

And that it appears in the view of the monitor that sufficient equity in the CCAA group exists such that risk -- the risk to resort funding LLC is minimal.

I also note the monitor's comments with respect to the previous advances to Makaha set out in paragraph 41 of the report.

I am satisfied that the companies thoroughly canvassed the available market for DIP financing, and has with the assistance of an experienced monitor come up with the best that could be achieved. So I am going to grant the DIP, the DIP financing.

And there has been no further representations made on the stay, Mr. Collins?

MR. COLLINS: We think it's too long under the circumstances. I think is --

THE COURT: Okay.

MR. COLLINS: Thought to (INDISCERNIBLE). You know, how, you know, to --

THE COURT: I understand.

MR. COLLINS: -- borrow a recent submission by Mr. Gorman, when the tables were turned was, you know, given the preliminary stage of this, given we don't know where it's going, you know, we would like the opportunity to come back and look at this not in 90 days, and we would suggest somewhere between, you know, 45 and 60 days is far more appropriate under the circumstances.

THE COURT: Okay. Mr. Collins, I am not going to ask for further submissions. Given the complexity of this CCAA proceeding, parties, the geographical limitations and the unique nature of the asset I am convinced that the extent of the stay is appropriate.

You can of course come back at any --

MR. COLLINS: Of course.

THE COURT: -- time in the --

MR. GORMAN: Right.

THE COURT: -- in the period.

MR. GORMAN: My Lady, there is paragraph 49, which is any interested party can apply to amend. And certainly I've always understood that provision included shortening of the stay if circumstance --

THE COURT: That is right.

MR. GORMAN: -- were appropriate.

THE COURT: Right.

MR. GORMAN: I believe the outcome of the last two days, My Lady, results in properly having three orders entered. The first would be dated Wednesday, simply extending the stent -- the stay through today so we don't have that --

THE COURT: Right.

MR. GORMAN: -- gap period. The second would be amending the order which includes a comeback provision that the stay's extended through July 31. And the third would be approving the Century Services DIP facility by amending the order to reflect the facility that had been put forward in the motion.

THE COURT: Okay. Thank you. Okay. Thank you. Thanks.

MR. COLLINS: Thank you, My Lady.

THE COURT: Here is the stay.

Here, and I know you have to dash, so thanks, madam clerk.

THE COURT CLERK: Mm-hm.

THE COURT: Thank you.

MR. COLLINS: Thank you, My Lady.

PROCEEDINGS CONCLUDED

Certificate of Record

I, Christina Ng-Currie, certify that this recording is a record of the oral evidence of proceedings in the Court of Queen's Bench, held in courtroom 1203, at Calgary, Alberta, on the afternoon of 1st of May, 2009, and I was in charge of the sound-recording machine.

*Certificate of Transcript

I, the undersigned, certify that the foregoing pages are a true and faithful transcript of the contents of the record, including the certificate of record given orally by the court official, recorded by means of a sound-recording machine.

Paige Young

Paige Young, Ms.

Page by Paige Transcribers

/Date: May 20, 2009

FMC

FRASER MILNER CASGRAIN LLP

David LeGeyt
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June 16, 2009

THIS IS EXHIBIT "D"
referred to in the Affidavit of
[illegible]
Sworn before me this [illegible]
Day of [illegible] A.D. [illegible]
A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA

PHILIP KENT MATKIN
Barrister & Solicitor
Commissioner for Oaths in and
for the Province of Alberta

VIA E-MAIL

MacLeod Dixon LLP
3700, 400 – 3rd Avenue S.W.
Calgary, AB T2P 4H2

Attention: Mr. Howard G. Gorman
Attention: Mr. Kevin Barr

Dear Sir:

Subject: Century Services Inc. re: Fairmont Resort Properties (DIP Financing) - Action No. 0901-04199
File No. 534615-7

As you are aware, we act on behalf of Century Services Inc. ("Century"), the debtor-in-possession lender to Fairmont Resort Properties Ltd. and the other debtors in Action No. 09101-04199 (collectively the "Debtors").

We are in receipt of the application materials filed by Resort Funding LLC ("Resort Funding") on or about June 9, 2009, seeking an Order declaring that promissory notes issued by purchasers of timeshare units and made in favour of either Fairmont Properties Ltd. or Lake Okanagan Resort Vacation (2001) Ltd., as applicable, and allegedly endorsed to Resort Funding (the "Notes") do not form part of the Debtors' estate and are not Property as defined in the Initial Order, and related relief (the "Application").

As you are aware the Notes are an integral part of the Debtors' business and are arguably one of its significant and valuable assets. The Notes generate a regular stream of revenue which is used to fund the Debtors' daily operations.

As the Debtors' are aware, when Century was completing its due diligence prior to agreeing to provide the debtor-in-possession financing, Century reviewed and relied upon the cash flow statements and forecasts which are attached to the Affidavit of Gary Bentham sworn in Action No. 0901-04199 on March 30, 2009 and the First Report of the Monitor dated April 27, 2009, which are referenced in the Affidavit of Murray Moore sworn April 24, 2009. That cash flow information specifically refers to the revenues from the Notes, and represents those revenues as being the Property of the Debtors.

The reliance by Century on the cash flow statements and projections is clearly evidenced by, and forms part of, the following provisions of the Loan Agreement entered into between Century and the Debtors dated May 27, 2009:

- The representations and warranties set out in Sections 4.1(f) (information accurate and complete), (g) (disclosure), (h) (no assignment of any property), (k) (financial statements) and (m) (ownership of property);

- The positive covenants of the Debtors set out in: Section 5.1(f)(iii) which require the Debtors' to deliver monthly cash flow statements and provide an explanation of any variation over 10% from the cash flow statements delivered to the Monitor, Section 5.1(f)(vi) pursuant to which the Debtors' must provide weekly sales reports, and Section 5.1(t) which provides that the Debtors' are only permitted to utilize the sale proceeds in accordance with the cash flow statements provided to the Monitor;

- The negative covenant set out in Section 5.2(f) which requires the Debtors' to not make any payments except in accordance with the cash flow statements, unless with the prior consent of Century; and

- The Events of Default set out in Section 6.1(c) (representation and warranties are incomplete or untrue) and, more importantly, Section 6.1(h) (failure to operate within the cash flow projections).

Please take notice that if Resort Funding is successful in the Application, a material deviation from the cash flow information upon which Century relied in entering into the Loan Agreement and agreeing to advance funds under the debtor-in-possession financing will result. If that is the case, a breach of the terms of the Loan Agreement will occur and the Debtors will be in default of the Loan Agreement. In those circumstances, Century will be under no obligation to advance further funds under the Loan Agreement, and Century will not do so. Further, in such circumstances, Century will be entitled to declare that an Event of Default has occurred under the Loan Agreement, and seek leave of the Court to enforce its security and otherwise collect all outstanding amounts from the Debtors, including interest and costs.

I trust the foregoing is satisfactory.

Yours truly,

FRASER MILNER CASGRAIN LLP

David LeGeyt

DLG:gw

c.c. Steve Dizep, Century Services Inc. (via e-mail)
Tammy Kemp, Century Services Inc. (via e-mail)

Action No. 0901-04199

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

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

AND IN THE MATTER OF FAIRMONT RESORT PROPERTIES LTD., LAKE OKANAGAN RESORT VACATION (2001) LTD., LAKE OKANAGAN RESORT (2001) LTD. AND LL DEVELOPMENTS LTD.

CLERK OF THE COURT
JUN 17 2009
CALGARY, ALBERTA

AFFIDAVIT OF MURRAY MOORE (Response to the Motion of Resort Funding LLC)

(Sworn June 17, 2009)

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File No. 264244 HAG

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