Court File No. CV -09-8247-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC., GRANT FOREST PRODUCTS SALES INC. and GRANT U.S. HOLDINGS GP

BRIEF OF AUTHORITIES

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BRIEF OF AUTHORITIES

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CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-033561-081

SUPERIOR COURT
(Commercial Division)

(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended)

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO:

MAAX CORPORATION

MAAX CANADA INC.

MAAX SPAS (ONTARIO) INC.

4200217 CANADA INC.

AND

MAAX CABINETS INC.

Initial Petitioners

and

MAAX KSD LLC, a legal person constituted under the Law of Delaware, having its principal place of business at 9224, 73rd Avenue North, Minneapolis, Minnesota, 55428, United States;

Aker Plastics Company Inc., a legal person constituted under the Law of Indiana, having its principal place of business at 1610 Kings Court, Mishawak, Indiana, 46544 , United States;

MAAX Spas (Arizona), Inc., a legal person constituted under the Law of Arizona, having its principal place of business at 25605 South Arizona Avenue, Chandler, Arizona, 85244, United States;

MAAX-Hydro Swirl Manufacturing Corp., a legal person constituted under the law of Washington, having its principal place of business at 2150, Division Street, Bellingham, Washington, 98226, United States;

MAAX Midwest, Inc., a legal person constituted under the Law of Indiana, having its principal place of business at 1010 West Dewey Street, Bremen, Indiana, 46506, United States;

Pearl Baths LLC, a legal person constituted under the law of Minnesota, having its principal place of business at 9224, 73rd Avenue North, Minneapolis, Minnesota, 55428, United States.

Additional Petitioners

ALVAREZ & MARSAL CANADA ULC

Monitor

MOTION FOR AN ORDER EXTENDING CCAA PROTECTION TO ADDITIONAL PETITIONERS
(Sections 4, 5 and 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36)

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTREAL, PETITIONERS RESPECTFULLY SUBMIT THE FOLLOWING:

1. MAAX Corporation, MAAX Canada Inc. ("**MAAX Canada**"), MAAX Spas (Ontario) Inc. ("**MAAX Spas**"), 4200217 Canada Inc. ("**4200217**") and MAAX Cabinets Inc. ("**MAAX Cabinets**") are collectively referred to herein as the "**Initial Petitioners**". The Initial Petitioners and the Additional Petitioners (as defined below) which together with their affiliates are collectively referred to herein as the "**MAAX Group**", hereby seek:

a) to add to these proceedings as Petitioners, the following affiliates of the Initial Petitioners incorporated in the United States of America:

   i. MAAX KSD LLC ("**MAAX KSD**");

   ii. Aker Plastics Company Inc. ("**Aker**");

   iii. MAAX Spas (Arizona), Inc. ("**MAAX Spas U.S.**");

   iv. MAAX-Hydro Swirl Manufacturing Corp. ("**MAAX-Hydro**");

   v. MAAX Midwest, Inc. ("**MAAX Midwest**"); and

   vi. Pearl Baths LLC ("**Pearl**").

   (collectively, the "**Additional Petitioners**", and together with the Initial Petitioners the "**Petitioners**"); and

b) To extend the protections and benefits of the Initial Order (as defined below) to Additional Petitioners;

c) this Honourable Court's approval of the Sale Process, as more fully described in the Monitor's First Report dated June 25, 2008 and the Affidavit of Mark Belanger sworn June 11, 2008, in the within proceedings.

2. The Petitioners will file at the hearing of this Motion the second report of the Monitor (the "**Monitor's Second Report**"), which contains additional information about the various matters discussed herein.

3. A copy of the corporate organization chart for the MAAX Group is filed in support of the present Motion as **Exhibit R-1**.

4. The MAAX Group's operations in the U.S. are conducted through the Additional Petitioners, each of which is directly or indirectly wholly-owned by the MAAX Corporation.

5. On June 12, 2008, this Court rendered an initial order (the "**Initial Order**") pursuant to Section 11(3) of the *Companies' Creditors Arrangement Act* (the "**CCAA**") in respect of the Initial Petitioners, the whole as it appears more fully from the Court record;

6. Capitalized terms not defined in this Motion are as defined in the Initial Order and/or the Monitor's Second Report.

A. BACKGROUND

7. The MAAX Group is a leading North American manufacturer and distributor of bathroom fixtures (the "**MAAX Business**"), with a leading market share in Canada and with one of the largest market shares in the United States in the bathtub and shower fixtures market. The MAAX Group also operates a spa manufacturing and distribution business (the "**Spa Business**"), which has been designated as a non-core business.

8. On June 12, 2008, the Initial Petitioners filed proceedings in Canada under the CCAA with the following principal objectives: (i) to ensure the ongoing operations of the MAAX Group; (ii) to ensure the MAAX Group had the necessary availability of working capital funds to maximize the ongoing business of the MAAX Group for the benefit of its stakeholders; and (iii) to seek the Court's authorization to complete the sale and transfer of the MAAX Business and the Spa Business (as defined herein).

9. MAAX Corporation, a Canadian corporation, is the principal obligor under the MAAX Group's senior secured credit facility (the "**Senior Secured Facility**") and the 9.75% unsecured senior subordinated notes due 2012 (the "**Notes**"), which are the most significant liabilities of the MAAX Group. Accordingly, the MAAX Group commenced proceedings under the CCAA in Canada. Substantially all of the Additional Petitioners' and Initial Petitioners' assets are charged and hypothecated in favour of Brookfield Bridge Lending Fund Inc. ("**BBLF**") to secure the Senior Secured Facility. The Notes are guaranteed by the Additional Petitioners and the Initial Petitioners.

10. Pursuant to the Initial Order, this Honourable Court *inter alia*, approved the Interim Financing, approved an incentive plan for certain of the MAAX Group's senior

management and imposed a stay of proceedings in favour of the Petitioners, which stay was extended to September 5, 2008, by further order of this Honourable Court dated June 26, 2008. The Initial Order also enables the Initial Petitioners to pay all outstanding and future trade and employee-related obligations or related expenses incurred in the ordinary course of business and other amounts related to the preservation of the MAAX Group's property or business.

11. Under the Initial Order, this Honourable Court appointed Alvarez & Marsal Canada ULC ("**Alvarez & Marsal**") as Monitor of the Initial Petitioners and authorized Alvarez & Marsal to assist the Petitioners and to act as a foreign representative of the MAAX Group in foreign proceedings, including proceedings under Chapter 15 of the U.S. Bankruptcy Code.

12. To date, no insolvency proceedings have been commenced in the United States of America.

13. Since the granting of the Initial Order, the Petitioners and the Monitor have been in continued contact with numerous stakeholders of the Petitioners, including their employees, customers, vendors and utility providers, as well as:

i. their principal secured lender under the Senior Secured Facility and Interim Financing lender, BBLF;

ii. certain holders of the Notes (the "**Consenting Noteholders**" and together with all other holders of the Notes, the "**Noteholders**"); and

iii. U.S. Bank National Association (the "**Indenture Trustee**"), being the trustee under the trust indenture dated June 4, 2004, as amended (the "**Indenture**"), among MAAX Corporation, Beauceland Corporation, as guarantor and its subsidiaries (all of the Petitioners except MAAX Corporation) as parties thereto as guarantors thereunder, the Indenture Trustee, and BBLF relating to the Notes.

14. As discussed below, the discussions with BBLF, the Consenting Noteholders and the Indenture Trustee have culminated in an agreement to effectuate the sale and transfer of substantially all of the MAAX Group's assets to BBLF pursuant to the transaction contemplated in the Asset Purchase Agreement dated as of June 11, 2008, by and between BBLF and the Petitioners (the "**APA**") or another transaction pursuant to which substantially all of the assets of the Petitioners are assigned and transferred to BBLF (or its assignees or designees) free and clear of all encumbrances (other than specified assumed liabilities) (the "**Transaction**"). Any process or proceeding by which the Transaction is effectuated must be acceptable to BBLF.

15. The parties have agreed as to the substance of the Transaction, and the within Motion is brought in order to commence the process of implementing and giving effect to the Transaction.

B. THE APA

16. While continuing its efforts to recapitalize the business, the MAAX Group initiated the Sale Process in April 2008, with the overall objectives of finding a transaction that would benefit stakeholders and ensure the continuation of its business as a going concern.

17. The Sale Process did not produce any offers that were sufficient to repay in full the obligations of the MAAX Group to BBLF (such offers falling short by tens of millions of dollars).

18. On May 8, 2008, BBLF indicated that it would only support pursuit of a transaction that would repay the obligations to BBLF under the Senior Secured Facility in full. Accordingly, the MAAX Group did not accept or pursue any of the indications of interest generated by the Sale Process.

19. The Sale Process is discussed in detail in the Monitor's First Report dated June 25, 2008, and in the Affidavit of Mark Belanger sworn on June 11, 2008 (Exhibit R-4 of the Motion for the issuance of an Initial Order).

20. The MAAX Group and its legal advisors met with BBLF and its advisors on several occasions regarding the negotiation of a sale transaction. Discussions between the parties continued throughout May and June 2008, ultimately resulting in the APA, a copy of which was filed previously as Exhibit R-7 of the Motion for the issuance of an Initial Order.

21. The APA provides for, *inter alia*, the following (capitalized terms in the ensuing subparagraphs not otherwise defined herein having the meaning given to such terms in the APA):

    (a) the Buyer will purchase the Purchased Assets, which consist of substantially all of the assets used in connection with the MAAX Business and the Spa Business;

    (b) the Buyer will assume the Assumed Liabilities which include substantially all of the MAAX Group's trade obligations and the provision of continued employment to substantially all of the MAAX Group's employees;

    (c) the Purchase Price is the amount owing to the Lenders by the MAAX Group under the Senior Secured Facility, which, as at June 30, 2008 was approximately $275 million, plus all amounts subsequently advanced under the Interim Financing (as defined in Petitioners' Motion for an Initial Order), exclusive of further costs, interest and fees, in addition to the value of the Assumed Liabilities, and

    (d) the Purchase Price shall be satisfied by the Buyer's delivery to the MAAX Group of a release from all of the MAAX Group's obligations under the Senior Secured Facility and the Interim Financing, and by the assumption of the Assumed Liabilities.

22. The APA represents a transaction that is in the best interests of the MAAX Group and its stakeholders. The transaction provides for the assumption of substantially all of the MAAX Group's trade obligations, the provision of continued employment to

substantially all of the MAAX Group's employees and the continuation of business operations across Canada, the United States and Europe.

23. The Assumed Liabilities to be assumed by the Buyer pursuant to the APA do not include any obligations of the MAAX Group to the Noteholders. Following execution of the APA, the MAAX Group continued to have, and to facilitate, discussions with and between BBLF, the Indenture Trustee and certain significant Noteholders, with the aim of achieving a consensual arrangement that would provide for the support of the Indenture Trustee and the Noteholders for the APA and the Transaction.

C. SUPPORT FOR THE APA AND THE RESTRUCTURING BY THE INDENTURE TRUSTEE AND CONSENTING NOTEHOLDERS

24. The discussions among the MAAX Group, BBLF, the Indenture Trustee and a significant Noteholder culminated in the execution of a Support Agreement dated as of July 2, 2008 (the "**Support Agreement**"). The Petitioners file as **Exhibit R-2** in support of this Motion a copy of the Support Agreement.

25. At the time of the filing of this Motion, the Consenting Noteholders (representing approximately 25 beneficial holders) holding approximately 86% of the Notes have signed the Support Agreement, either at first instance or subsequently by executing a Consent in substantially the form attached as Schedule B to the Support Agreement.

26. The Support Agreement provides, *inter alia*, as follows:

a) the Consenting Noteholders agree, among other things, to vote or cause to be voted all of their Notes:

    i. in favour of the transactions described in the Support Agreement, which include the transactions contemplated in the APA or another transaction pursuant to which substantially all of the assets of the MAAX Group are assigned and transferred to BBLF free and clear of all encumbrances, pursuant to a legal, equitable, statutory or court-based proceeding, action or process in Canada and/or the U.S.; and

ii. against any action that would result in a breach of the MAAX Group's obligations to BBLF;

b) the Consenting Noteholders agree, and direct the Indenture Trustee (which has previously appeared before this Honourable Court), to abstain from any act that would interfere with or impede the Transaction and to waive any Events of Default under the Indenture pending implementation of the Transaction; and

c) BBLF or MAAX Corporation (if authorized by this Court) will pay or cause to be paid to the Indenture Trustee, for distribution to the Noteholders, US$5,000,000, plus payment of the Indenture Trustee's reasonable out-of pocket fees and expenses in connection with the CCAA proceedings, implementation of proceedings in the United States and the Support Agreement, up to $150,000.

27. On July 2, 2008, the Indenture Trustee sent a letter to the Depository Trust Company for distribution to all Noteholders, which provides notice of the MAAX Group's Motion for approval of the APA and the vesting of the assets in BBLF and summarizes the terms of the Support Agreement and Noteholders' entitlement to become a party to the Support Agreement. The Petitioners file as **Exhibit R-3** in support of this Motion a copy of the letter to the Depository Trust Company.

28. The MAAX Group, together with the Indenture Trustee, is continuing in its efforts to contact any remaining Noteholders who are not presently party to the Support Agreement. The Monitor supports completion of the transactions contemplated by the APA and the Support Agreement.

29. There is therefore a clear consensus among the MAAX Group, BBLF, the Indenture Trustee and the Consenting Noteholders that, subject to the terms of the Support Agreement, BBLF is to acquire the Purchased Assets free and clear of encumbrances

(other than Assumed Liabilities), including free and clear of the Notes and all guarantees in connection with the Notes.

30. While that substantive outcome is not in contention among these parties, it is necessary for the MAAX Group to take various substantive and procedural steps to effectuate the transaction contemplated in the APA for the benefit of all stakeholders.

D. IMPLEMENTATION OF THE TRANSACTION

31. The MAAX Group is of the view that the APA and the transaction contemplated in the Support Agreement represent the best possible outcome for the MAAX Group and its stakeholders in the circumstances.

32. The APA represents the highest purchase price that could be obtained for the MAAX Business and the Spa Business, and provides for the assumption of substantially all of the MAAX Group's trade obligations and the continued employment to substantially all of its 2,100 employees. Moreover, the APA and the transaction contemplated in the Support Agreement would enable the MAAX Business and the Spa Business to continue as a going concern, and would facilitate a transition of ownership of the MAAX Business and the Spa Business that is in the best interests of all stakeholders.

33. Should the transactions contemplated in the APA and the Support Agreement not be completed in a timely and efficient manner, there would be a risk to a broad range of stakeholders affected by such transactions, including employees, customers, suppliers, Noteholders and BBLF.

34. Accordingly, the MAAX Group and its advisors have engaged in considerable discussions with the MAAX Group's key stakeholders and the advisors to such stakeholders in Canada and the United States as to the most timely, efficient and effective means of effectuating the Transaction so as to provide all parties, with the certainty and finality that they require as part of the Transaction.

35. The MAAX Group and BBLF are of the view that the Transaction should be effected through judicial proceeding and approval both in Canada and in the United States of America.

36. The Petitioners, with the support of BBLF, have elected to pursue the following steps to effectuate the Transaction:

i. Add the Additional Petitioners as Petitioners in the within CCAA Proceedings;

ii. Commence proceedings in respect of the Petitioners under Chapter 15 of the U.S. Bankruptcy Code before the U.S. Bankruptcy Court for the District of Delaware (the "**U.S. Court**"); and

iii. Seek an Order of this Honourable Court approving the APA and vesting the Purchased Assets in the Buyer free and clear of all encumbrances (excluding Assumed Liabilities) (the "**Sale Approval and Vesting Order**"), which Order, in respect of the Additional Petitioners only, shall be subject to the granting of an order under Chapter 15 of the U.S. Bankruptcy Code;

iv. Seek an Order of the U.S. Court recognizing and giving effect to the Sale Approval and Vesting Order and approving the APA with respect to the Additional Petitioners.

37. The Petitioners have decided to pursue the foregoing process due to its expedience and efficacy in effectuating the Transaction, and based on their view that Canada is the appropriate principal jurisdiction in which to pursue and implement the Transaction, as discussed further below.

E. OVERVIEW OF ADDITIONAL PETITIONERS

38. An overview of the MAAX Group and its business, and of the Initial Petitioners, was provided previously in the Motion for the Initial Order.

39. One of the Additional Petitioners – MAAX Spas U.S. – had two bank accounts in Canada prior to the commencement of the CCAA Proceedings. On July 8, 2008, each of the Additional Petitioners opened a new Canadian bank account.

40. The following provides an overview of the Additional Petitioners:

I. *MAAX KSD*

41. MAAX KSD is a Delaware limited liability corporation with two (2) leased manufacturing facilities in Southampton, Pennsylvania and Ontario, California. It has a total of approximately 140 employees.

42. The primary role of MAAX KSD is to manage the relationship with certain of the MAAX Group's key customers and to supply shower doors and kits to customers.

43. As of May 31, 2008, the total assets of MAAX KSD were approximately $78.9 million, including $67.8 million of investments in subsidiaries that are eliminated on consolidation. The balance of the non-intercompany assets were comprised primarily of the following: (i) accounts receivable of $2.0 million, (ii) inventory of $3.2 million, (iii) net fixed assets of $1.0 million, and (iv) other assets of 1.6 million.

44. As of May 31, 2008, the primary liabilities of MAAX KSD were: (i) accounts payable (trade payable, and accrued liabilities for warranties, volume rebates and payroll related obligations) of approximately $9.9 million, and (ii) obligation as a guarantor of the full amount owing under Senior Secured Facility of in excess of $100 million.

II. *AKER*

45. Aker is an Indiana corporation with three (3) manufacturing facilities in Plymouth, Indiana, Martinsburg, West Virginia, and Valdosta, Georgia. It has a total of approximately 470 employees.

46. The primary role of Aker is to manufacture gel-coat bathtubs.

47. As of May 31, 2008, Aker had total assets of approximately $77.0 million. It had current assets of $22.1 million comprised primarily of the following: (i) accounts receivable of $19.0 million, and (ii) inventory of $2.2 million. Its other assets of approximately $55.1 million were comprised primarily of the following: (i) intangible assets (trademarks) of $37.6 million and (ii) net fixed assets of $15.0 million.

48. As of May 31, 2008, Aker's primary liabilities were: (i) accounts payable (trade payables, and accrued liabilities for warranties, volume rebates and payroll-related obligations) of approximately $15.2 million, (ii) deferred income taxes of approximately $13.3 million, and (iii) obligation as a guarantor of the full amount owing under the Senior Secured Facility.

III. *MAAX SPAS U.S.*

49. MAAX Spas U.S. is an Arizona corporation with one (1) manufacturing facility in Chandler, Arizona. It has a total of approximately 120 employees.

50. The primary role of MAAX Spas U.S. is to manufacture high end spas and spa equipment.

51. As of May 31, 2008 the total assets of MAAX Spas U.S. were approximately $15.2 million, comprised primarily of the following: (i) accounts receivable of $6.8 million, (ii) inventory of $3.3 million, and (iii) net fixed assets of $2.9 million.

52. As of May 31, 2008, MAAX Spas U.S.' primary liabilities were: (i) accounts payable (trade payables, and accrued liabilities for warranties, volume rebates and payroll-related obligations) of approximately $4.9 million, (ii) intercompany payables of approximately $3.4 million and (iii) its obligation as a guarantor of the full amount owing under the Senior Secured Facility of in excess of $100 million.

IV. *MAAX-HYDRO*

53. MAAX-Hydro is a Washington corporation with one (1) manufacturing facility in Bellingham,Washington and two (2) distribution centers in Sacramento and Ontario, California. It has a total of 57 employees.

54. The primary role of MAAX-Hydro is to manufacture acrylic bathtubs.

55. As of May 31, 2008, MAAX-Hydro's total assets were approximately $12.9 million, comprised primarily of the following: (i) accounts receivable of $8.2 million, (ii) inventory of $0.6 million, (iii) net fixed assets of $2.4 million and (iv) net intangible assets (distribution network) of $1.6 million.

56. As of May 31, 2008, the primary liabilities were: (i) accounts payable (trade payables, and accrued liabilities for warranties, volume rebates and payroll other-related obligations) and accrued liabilities of approximately $6.0 million, (ii) intercompany payables of approximately $1.6 million and (iii) obligation as a guarantor of the full amount owing under the Senior Secured Facility.

V. *MAAX MIDWEST*

57. MAAX Midwest is an Indiana corporation with one (1) owned manufacturing facility in Bremen, Indiana. It has a total of approximately 70 employees.

58. The primary role of MAAX Midwest is to manage the relationship that the MAAX Group has with Menard, Inc., a major retailer in the Midwest.

59. As of May 31, 2008, the total assets of MAAX Midwest were approximately $11.0 million, comprised primarily of the following: (i) accounts receivable of $6.9 million, (ii) inventory of $0.9 million, (iii) net fixed assets of $2.4 million, and (iv) other assets (displays) of $1.0 million.

60. As of May 31, 2008, MAAX Midwest's primary liabilities were: (i) accounts payable and accrued liabilities of approximately $4.4 million, (ii) intercompany payables of $3.0

million and (iii) obligation as a guarantor of the full amount owing under the Senior Secured Facility.

VI. ***PEARL***

61. Pearl is a Minnesota limited liability corporation with one (1) manufacturing facility in Minneapolis, Minnesota. It has a total of approximately 80 employees.

62. The primary role of Pearl is to perform certain administrative functions and manufacture high-end acrylic whirlpool bathtubs under the "Pearl" brand name.

63. As of May 31, 2008, Pearl had total assets of approximately $14.7 million. It had current assets of $8.2 million comprised primarily of the following: (i) accounts receivable of $5.8 million; (ii) inventory of $1.3 million, and (iii) deferred income taxes of $0.9 million. Its other assets of $6.5 million were comprised primarily of the following: (i) net fixed assets of $3.0 million, (ii) intangible assets (distribution network) of $2.5 million, and (iii) other assets (displays) of $1.0 million.

64. Pearl's primary liabilities were: (i) accounts payable and accrued liabilities of $6.2 million, (ii) intercompany payables of $3.0 million and (iii) obligation as a guarantor of the full amount owing under the Senior Secured Facility.

F. CANADA IS THE APPROPRIATE FORUM IN WHICH TO ADDRESS AT FIRST INSTANCE THE CHALLENGES FACING THE MAAX GROUP AND TO EFFECT THE APA TRANSACTION

65. As is made clear above, the Additional Petitioners are all U.S. corporations and several of them are operating entities with employees and assets located in the United States.

66. For the following reasons, the Petitioners believe that the Additional Petitioners satisfy the requirements of the CCAA to be Petitioners thereunder, that it is appropriate for this Honourable Court to exercise its discretion to grant the within Motion, and that it is appropriate to pursue the Transaction in Canada at first instance.

a) Each of the Additional Petitioners is a company that is insolvent and that has claims against it in excess of CDN$5 million.

b) The centre of main interest or focal point for the MAAX Group (which includes the Additional Petitioners) is in Quebec, Canada, as is evidenced by the following:

i. As set out in considerable detail in the Motion for the Initial Order, the MAAX Group's administrative functions and corporate-level decision-making (including those of the Additional Petitioners) are centralized in Canada;

ii. MAAX Corporation, the parent of the MAAX Group and the principal borrower/obligor under the MAAX Group's outstanding debt, is a Canadian entity;

iii. Approximately CDN$9.3 million in corporate overhead costs incurred in Canada are allocated to the Additional Petitioners, representing approximately 45% of total overhead costs of CDN$20.6 million;

iv. Also as set out in detail in the Motion for the Initial Order, the funding of the MAAX Group, its principal banking agreements, and the cash management arrangements in place are centralized in Canada;

v. The MAAX Group's principal secured creditor, BBLF, is located in Canada;

vi. The Indenture Trustee is represented by counsel located in Quebec, and it has attorned to the jurisdiction of this Honourable Court and is participating in these Proceedings;

vii. Approximately 96% of aggregate EBITDA for the MAAX Group is presently generated in Canada;

viii. All of the information technology backbone on which the MAAX Group functions, such as key servers, networks and personnel, is centralized at Beauce, Quebec, for the bathroom business;

ix. The MAAX Group's major contracts are negotiated at the corporate level in Lachine, Quebec; although purchase orders are issued and certain smaller invoices are paid at the plant level, invoices from corporate suppliers are sent to Beauce, Quebec, and processing of payments is centralized at Beauce, Quebec, for orders to corporate suppliers originating in both Canada and the United States;

x. Treasury management for the MAAX Group is conducted mainly at Beauce, Quebec; accounts receivable and accounts payable for the MAAX Group are managed principally at Beauce, with only a small sub-set at Minneapolis to pursue delinquent U.S. accounts receivable and manage certain small trade payables;

xi. Although warranty-specific decisions – that is, the decision to grant or deny a claim – are made at the divisional level, personnel at Beauce, Quebec, administer all admitted warranty claims for the MAAX Group;

xii. The MAAX Group's rebate programs for the entire bathroom business are administered out of their facilities in Beauce, Quebec;

xiii. Although the Additional Petitioners employ human resources staff in Minneapolis, Minnesota for certain local U.S. matters, all corporate level human resource and finance functions for the MAAX Group are situated at Lachine and Beauce, Quebec;

xiv. Corporate programs for the MAAX Group, including incentive plans, training programs and internal communications are managed from Lachine, Quebec;

xv. At the Corporate level, marketing personnel based in Lachine are responsible for managing sales channels, brands and new business; at the divisional level, the sales forces interact with customers, and there are common sales and marketing personnel at the divisional level that are responsible for products in both Canada and the U.S.;

xvi. Research and development functions for the MAAX Group is a corporate-level activity centralized at Lachine, Quebec for shower doors and kits, and at Beauce, Quebec for tubs, with only a small sub-set at Southampton for tubs;

xvii. Other administrative functions associated with the MAAX Group and the majority of employees that perform such functions, including general accounting, financial reporting, budgeting and cash management, are conducted and situated in Canada; and

xviii. There are significant common suppliers, creditors and other stakeholders of the Initial Petitioners and the Additional Petitioners alike in both Canada and the United States, and a high degree of integration among the Petitioners. The business of the MAAX Group is not conducted based on geographic boundaries and instead seamlessly spans such boundaries.

67. In addition, cash management and other banking arrangements for the MAAX Group are centralized in Canada, with MAAX Corp. acting as intermediary between its bank and BBLF, on the one hand, and the rest of the MAAX Group on the other hand. The majority of the bank accounts of the MAAX Group are with HSBC Bank Canada.

68. The MAAX Group's cash management system relies on a centralized concentration account managed by MAAX Corp. and located in Canada (the "**Concentration Account**"). MAAX Corp. manages and operates the Concentration Account, which is fundamental to the working of the cash management system for the entire MAAX Group. Due to the integrated nature of these arrangements, the banking and cash management functions of MAAX Corp.'s subsidiaries, including the Additional Petitioners, are dependent upon and cannot be separated from the MAAX Group's bank accounts and banking systems centralized in Canada. The centralization of these banking functions further demonstrates that Canada is the centre of main interest of the MAAX Group.

69. The Transaction consists of an overarching set of transactions involving the MAAX Group as a whole, and it is not bifurcated along geographic boundaries.

70. The MAAX Group believe strongly that the centre or focal point of the MAAX Group and its business as a whole is in Canada, and that it is appropriate that the Additional Petitioners be added as Petitioners in these proceedings and proceed toward the Transaction at first instance in Canada.

71. The Initial Petitioners commenced the within proceedings many weeks ago, and neither the Initial Petitioners nor the Additional Petitioners have sought court protection in the United States to date.

72. The fact that the MAAX Group has been able to function effectively and to continue to carry on business without issue with only court protection in Canada, without the need for any court protection in the United States to date, underscores that the centre or focal point of the MAAX Group is in Canada.

GENERAL

73. The Petitioners respectfully submit that the notices given of the presentation of the present Motion are proper and sufficient.

74. The present Motion is supported by BBLF, by the Indenture Trustee, Consenting Noteholders and the Monitor.

75. The Petitioners respectfully request that the Initial Order rendered on June 12, 2008, as extended by Order of this Court dated June 26, 2008, be amended to include the Additional Petitioners and that all provisions of the Initial Order, as amended or extended from time to time as of the date hereof, apply to the Additional Petitioners, *mutatis mutandi*;

76. The present Motion is well founded in fact and in law.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

A. **GRANT** the present Motion.

B. **EXEMPT** the Petitioners and the Additional Petitioners from having to serve the Motion and from any notice of presentation.

C. **ORDER** that the Additional Petitioners are companies to which the CCAA applies; and

D. **ORDER** that from the date hereof, all provisions of the Initial CCAA Order rendered by this Honourable Court on June 12, 2008, as may be amended or extended from time to time including by order of this Honourable Court dated June 26, 2008, shall apply to the Additional Petitioners, *mutatis mutandi*.

E. **ORDER** the provisional execution of the Order notwithstanding any appeal and without the necessity of furnishing any security.

THE WHOLE, without costs save in case of contestation.

Montreal, July 8, 2008

Borden Ladner Gervais

BORDEN LADNER GERVAIS LLP
Attorneys for Initial Petitioners
MAAX CORPORATION, MAAX CANADA INC., MAAX SPAS (ONTARIO) INC., 4200217 CANADA INC. AND MAAX CABINETS INC.
and for Additional Petitioners

MAAX KSD LLC, AKER PLASTICS COMPANY INC., MAAX SPAS (ARIZONA), INC., MAAX-HYDRO SWIRL MANUFACTURING CORP., MAAX MIDWEST, INC. AND PEARL BATHS LLC

Goodmans

GOODMANS LLP
Counsel for Initial Petitioners
MAAX CORPORATION, MAAX CANADA INC., MAAX SPAS (ONTARIO) INC., 4200217 CANADA INC. AND MAAX CABINETS INC.
and for Additional Petitioners
MAAX KSD LLC, AKER PLASTICS COMPANY INC., MAAX SPAS (ARIZONA), INC., MAAX-HYDRO SWIRL MANUFACTURING CORP., MAAX MIDWEST, INC. AND PEARL BATHS LLC

AFFIDAVIT

I, the undersigned, PAUL GOLDEN, business person, practising my profession with MAAX Corporation situated at 160 St-Joseph Boulevard, in the city of Lachine, district of Montreal, Province of Quebec, solemnly declare the following:

1. I am the Chief Executive Officer of MAAX Corporation and I am duly authorized for purposes hereof on behalf of all Petitioners;

2. I have taken cognizance of the present *Motion For An Order Extending CCAA Protection To Additional Petitioners.*

3. All the facts alleged in the said Motion are true.

AND I HAVE SIGNED:

____

PAUL GOLDEN

SOLEMNLY DECLARED BEFORE ME
on the 8th day of July 2008

____

NOTARY PUBLIC

NOTICE OF PRESENTATION

TO: Mtre Denis Ferland
Davies Ward Phillips & Vineberg
1501 McGill College, 26th Floor
Montreal (Quebec) H3A 3N9
Attorneys for ALVAREZ & MARSAL CANADA ULC.

Mtre Sandra Abitan
Osler, Hoskin & Harcourt
1000 De La Gauchetière West, Suite 2100
Montreal (Quebec) H3B 4W5
Attorneys for Brookfield Bridge Lending Fund Inc.

Mtre James D. Gage
McCarthy Tétrault
Suite 4700
Toronto Dominion Bank Tower
Toronto Dominion Center
Toronto (Ontario) M5K 1E6
Attorneys for HSBC Bank Canada

Mtre Éric Vallière
McMillan Binch Mendelsohn S.E.N.C.R.L., s.r.l.
1000 Sherbrooke street, West
Suite 2700
Montreal (Quebec) H3A 3G4
Attorneys for U.S. Bank Trust National Association

Mtre David J. Hatter
Ministry of Attorney General – British Columbia
Revenue & Taxation
601-1175 Douglas Street
Victoria (British Columbia) V8W 9J7

TAKE NOTICE that the Petitioners have filed this *Motion For An Order Extending CCAA Protection To Additional Petitioners* in the office of the Superior Court, judicial district of Montreal.

The application will be presented on **July 10, 2008** at **9:30 a.m.**, to the Superior Court of the judicial district of Montreal, in **room 16.12** of the Courthouse of Montreal, 1 East, Notre-Dame Street, Montreal, Quebec. If you wish to contest the application, you will be required to indicate verbally, at the time of presentation of the application, the means of contestation and the requests you intend to present.

TAKE FURTHER NOTICE that, if you do not appear at the date fixed for the presentation of the *Motion for extending the stay period*, filed today with the Superior Court of Quebec and presentable at the date set by the Court, the Petitioners will be granted a judgement by default without further notice or extension.

It is important that you take action within the time limit indicated, either by retaining the services of an attorney who will represent you and act in your name, or by doing so yourself in accordance with the formalities of law.

PLEASE ACT ACCORDINGLY.

Montreal, July 8, 2008

Borden Ladner Gervais

BORDEN LADNER GERVAIS LLP
Attorneys for Initial Petitioners
MAAX CORPORATION, MAAX CANADA INC., MAAX SPAS (ONTARIO) INC., 4200217 CANADA INC. AND MAAX CABINETS INC.
and for Additional Petitioners
MAAX KSD LLC, AKER PLASTICS COMPANY INC., MAAX SPAS (ARIZONA), INC., MAAX-HYDRO SWIRL MANUFACTURING CORP., MAAX MIDWEST, INC. AND PEARL BATHS LLC

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and for Additional Petitioners

MAAX KSD LLC, AKER PLASTICS COMPANY INC., MAAX SPAS (ARIZONA), INC., MAAX-HYDRO SWIRL MANUFACTURING CORP., MAAX MIDWEST, INC. AND PEARL BATHS LLC

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No.: 500-11-033561-081

SUPERIOR COURT
Commercial Division

(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended)

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO MAAX CORPORATION, BEAUCELAND CORPORATION, MAAX CANADA INC., MAAX SPAS (ONTARIO INC.), 4200217 CANADA INC. AND MAAX CABINETS INC.

Initial Petitioners

and

MAAX KSD LLC, a legal person constituted under the Law of Delaware, having its principal place of business at 9224, 73rd Avenue North, Minneapolis, Minnesota, 55428, United States;

Aker Plastics Company Inc., a legal person constituted under the Law of Indiana, having its principal place of business at 1610 Kings Court, Mishawak, Indiana, 46544 , United States;

MAAX Spas (Arizona), Inc., a legal person constituted under the Law of Arizona, having its principal place of business at 25605 South Arizona Avenue, Chandler, Arizona, 85244, United States;

MAAX-Hydro Swirl Manufacturing Corp., a legal person constituted under the law of Washington, having its principal place of business at 2150, Division Street, Bellingham, Washington, 98226, United States;

MAAX Midwest, Inc., a legal person constituted under the Law of Indiana, having its principal place of business at 1010 West Dewey Street, Bremen, Indiana, 46506, United States;

Pearl Baths LLC, a legal person constituted under the law of Minnesota, having its principal place of business at 9224, 73rd Avenue North, Minneapolis, Minnesota, 55428, United States.

Additional Petitioners

ALVAREZ & MARSAL CANADA ULC,

Monitor

LIST OF EXHIBITS

EXHIBIT R-1:	Corporate Organisation chart for the MAAX Group.
EXHIBIT R-2:	Support Agreement dated as of July 2, 2008.
EXHIBIT R-3:	Letter from the Indenture Trustee to the Depository Trust Company dated July 2, 2008.

Montreal, July 8, 2008

Borden Ladner Gervais

BORDEN LADNER GERVAIS LLP
Attorneys for Initial Petitioners
MAAX CORPORATION, MAAX CANADA INC., MAAX SPAS (ONTARIO) INC., 4200217 CANADA INC. AND MAAX CABINETS INC.
and for Additional Petitioners
MAAX KSD LLC, AKER PLASTICS COMPANY INC., MAAX SPAS (ARIZONA), INC., MAAX-HYDRO SWIRL MANUFACTURING CORP., MAAX MIDWEST, INC. AND PEARL BATHS LLC

Goodmans

GOODMANS LLP
Counsel for Initial Petitioners
MAAX CORPORATION, MAAX CANADA INC., MAAX SPAS (ONTARIO) INC., 4200217 CANADA INC. AND MAAX CABINETS INC.
and for Additional Petitioners
MAAX KSD LLC, AKER PLASTICS COMPANY INC., MAAX SPAS (ARIZONA), INC., MAAX-HYDRO SWIRL MANUFACTURING CORP., MAAX MIDWEST, INC. AND PEARL BATHS LLC

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

File: No: 500-11-033561-081

SUPERIOR COURT
(Commercial Division)

Montreal, July 10, 2008

Present: The Honourable Jean-François Buffoni, J.C.S.

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

MAAX CORPORATION,

MAAX CANADA INC.,

MAAX SPAS (Ontario Inc.),

4200217 CANADA INC.

MAAX CABINETS INC.

Initial Petitioners

And

MAAX KSD LLC,

Aker Plastics Company Inc.,

MAAX Spas (Arizona), Inc.

MAAX-Hydro Swirl Manufacturing Corp.

MAAX Midwest, Inc.

Pearl Baths LLC

Additional Petitioners

And

ALVAREZ & MARSAL CANADA ULC

Monitor

ORDER

(Extending CCAA protection to Additional Petitioners)

SEEING the Initial Petitioners and Additional Petitioners' *Motion for an order extending CCAA protection to Additional Petitioners* (the "**Motion**"), reading the affidavit of Paul Golden sworn July 8, 2008 and the Alvarez & Marsal Canada ULC (the "**Monitor**") Second Report dated July 9, 2008, and hearing the submissions of counsel for the Initial Petitioners and Additional Petitioners and for the Monitor; and

GIVEN the provisions of the CCAA;

WHEREFORE THE COURT:

A. **GRANTS** the present Motion.

B. **EXEMPTS** the Initial Petitioners and the Additional Petitioners from having to serve the Motion and from any notice of presentation.

C. **ORDERS** that the Second Report of the Monitor be and is hereby accepted and approved and the actions and activities of the Monitor described therein be and are hereby approved;

D. **ORDERS** that the Additional Petitioners are companies to which the CCAA applies; and

E. **ORDERS** that, from the date hereof, all provisions of the Initial CCAA Order rendered by this Honourable Court on June 12, 2008, as may be amended or extended from time to time including by the Order of this Honourable Court dated June 26, 2008, shall apply to the Additional Petitioners, *mutatis mutandi*.

F. **ORDERS** the provisional execution of the Order notwithstanding any appeal and without the necessity of furnishing any security.

Honourable Jean-François Buffoni, J.C.S.

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COPIE CONFORME
TRUE COPY

OFFICIER AUTORISÉ
AUTHORIZED OFFICER

Court File No. CV-09-8194-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE Madam	)	TUESDAY, THE 19th
	)	
JUSTICE Pepall	)	DAY OF MAY, 2009

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

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT OF W.C. WOOD CORPORATION, LTD. AND W.C. WOOD CORPORATION INC. (together the "Applicants" or "W.C. Wood")

INITIAL ORDER

THIS APPLICATION, made by each Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Michael Hadjinian sworn May 18, 2009 and the Exhibits thereto (the "Hadjinian Affidavit") and on hearing the submissions of counsel for each Applicant, the Applicants' Lenders, CIT Business Credit Canada Inc., The CIT Group/Business Credit, Inc., Bank of Montreal and Bank of Montreal Chicago Branch (the "Lenders"), and the proposed Monitor, BDO Dunwoody Limited ("BDO") no one else appearing on this Application, and on reading the consent of BDO to act as the Monitor,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that each Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that each Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan") between, *inter alia,* each Applicant and one or more classes of its secured and/or unsecured creditors as it deems appropriate.

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that each Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, each Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. Each Applicant shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that each Applicant shall be entitled to continue to utilize the cash management system currently in place as described in the Hadjinian Affidavit (the "Cash Management System") and shall continue to use the Lockbox Accounts described in the Hadjinian Affidavit unless and until the DIP Financing becomes effective with the DIP Lender as set forth in paragraph 35, below, and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by each Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as

hereinafter defined) other than each Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that each Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay, bonuses and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) payments to vendors deemed by the Applicants to be critical vendors, with consent of the Monitor and consent of the Lenders, including the payment of Cdn $100,000 to the Wood family described in the Hadjinian Affidavit; and

(c) the fees and disbursements of any Assistants retained or employed by each Applicant in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, each Applicant shall be entitled but not required to pay all reasonable expenses incurred by each Applicant in carrying on the Business in the ordinary course after the date and time of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to each Applicant following the date of this Order.

8. THIS COURT ORDERS that each Applicant shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by each Applicant in connection with the sale of goods and services by each Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by each Applicant.

9. THIS COURT ORDERS that until such time as an Applicant delivers a notice in writing to repudiate a real property lease in accordance with paragraph 11(c) of this Order (a "Notice of Repudiation"), that Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between each Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid. Upon delivery of a Notice of Repudiation, the Applicant shall pay all

Rent due for the notice period stipulated in paragraph 11(c) of this Order, to the extent that Rent for such period has not already been paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, each Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. THIS COURT ORDERS that each Applicant shall, subject to such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

(a) permanently or temporarily cease, downsize or shut down any of its business or operations and to dispose of redundant or non-material assets not exceeding $100,000 in any one transaction or $250.000 in the aggregate, subject to paragraph 11(c), if applicable;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate on such terms as may be agreed upon between the Applicant and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;

(c) in accordance with paragraphs 12 and 13, vacate, abandon or quit the whole but not part of any leased premises and/or repudiate any real property lease and any ancillary agreements relating to any leased premises, on not less than seven (7) days notice in writing to the relevant landlord on such terms as may be agreed upon between the Applicant and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan;

(d) repudiate such of its arrangements or agreements of any nature whatsoever, whether oral or written, as the Applicant deems appropriate on such terms as may be agreed upon between the Applicant and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan; and

(e) pursue all avenues of refinancing and offers for material parts of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing or any sale (except as permitted by subparagraph (a), above),

all of the foregoing to permit each Applicant to proceed with an orderly restructuring of the Business (the "Restructuring").

12. THIS COURT ORDERS that each Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant repudiates the lease governing such leased premises in accordance with paragraph 11(c) of this Order, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in paragraph 11(c) of this Order), and the repudiation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a Notice of Repudiation is delivered, then (a) during the notice period prior to the effective time of the repudiation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the repudiation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises

to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

SALE OF MEXICAN BUSINESS

14. THIS COURT ORDERS that the sale process described in the Hadjinian Affidavit in relation to sale of the Mexican Business is hereby approved and the Applicants are hereby permitted to take any and all steps that are necessary and appropriate to negotiate an Agreement of Purchase and Sale in relation to the Mexican Business in a manner that is generally in accordance with the terms described in the Hadjinian Affidavit, subject to approval by this Court of any Agreement of Purchase and Sale. SUP

NO PROCEEDINGS AGAINST APPLICANTS OR THE PROPERTY

15. THIS COURT ORDERS that until and including June 18, 2009 or such later date as this Court may order (the "Stay Period"), no proceeding suit, complaint, action, arbitration, application, ~~proceeding~~, enforcement process, right or remedy (judicial or extra-judicial, statutory or non-statutory) (each, a "Proceeding") shall be commenced or continued against or in respect of any of the Applicants or the Monitor or in any way affecting the Business or the Property, except with the written consent of each Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

16. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person"), whether judicial or extra-judicial, statutory or non-statutory, against or in respect of either or both Applicants or the Monitor or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Applicants to carry on any business which each Applicant is not lawfully entitled to carry on; (ii) exempt the Applicants from compliance with

statutory or regulatory provisions relating to health, safety or the environment; (iii) prevent the filing of any registration to preserve or perfect a security interest; or, (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

17. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, suspend, withdraw, accelerate, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants or in connection with any of the Property or the Business, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

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

NON-DEROGATION OF RIGHTS

19. THIS COURT ORDERS that, notwithstanding anything else contained herein, no creditor of the Applicants shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

21. THIS COURT ORDERS that each Applicant shall indemnify its directors and officers from all claims, costs, charges and expenses relating to the failure of the Applicants, after the date hereof, to make payments of the nature referred to in subparagraphs 6(a) and 8(a), 8(b) and 8(c) of this Order which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants except to the extent that, with respect to any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.

22. THIS COURT ORDERS that the directors and officers of each Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of $75,000 and an additional charge to the extent claims exceed the amount covered by the Directors' Charge, above, in relation to vacation pay arrears (not termination or severance) that would otherwise be entitled to a WEPPA priority (the "Additional Directors' Charge") which shall not exceed an aggregate amount of $325,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge and Additional Directors' Charge shall have the priority set out in paragraphs 40 and42 herein.

23. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) each Applicant's directors and officers shall only be entitled to the

benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order.

APPOINTMENT OF MONITOR

24. THIS COURT ORDERS that BDO is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property and the Applicants' conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that each Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by each Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

25. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor each Applicant's receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Lender and its counsel on an agreed basis to be detailed in the DIP Term Sheet, of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

(d) advise the Applicants in the preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel as required by the DIP Lender in the DIP Term Sheet;

(e) advise the Applicants in the development of the Plan and any amendments to the Plan;

(f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(g) have full and complete access to the books, records and management, employees and advisors of each Applicant and to the Business and the Property to the extent required to perform its duties arising under this Order;

(h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(i) consider, and if deemed advisable by the Monitor, prepare a report and assessment on the Plan; and

(j) perform such other duties as are required by this Order or by this Court from time to time.

26. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

27. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in

pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

28. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential or commercially sensitive, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and each Applicant may agree.

29. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

30. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to each Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants promptly when due.

31. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

32. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of $175,000, as security for their professional fees and disbursements incurred at the standard rates

and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 40 and 42 hereof.

33. THIS COURT AUTHORIZES AND DIRECTS the Monitor to apply to the United States Bankruptcy Court for the District of Delaware (the "US Bankruptcy Court") for an Order recognizing these CCAA proceedings as foreign main proceedings and, in the alternative, foreign non-main proceedings with respect to each Applicant and giving full force and effect to this Order in the United States of America.

DIP FINANCING

34A. THIS COURT ORDERS that paragraphs 34 to 39 of this Order shall not be effective until further Order of this Court.

34. THIS COURT ORDERS that each Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from the Lenders, with CIT Business Credit Canada Inc., as Agent (the "DIP Lender") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed the amount specified in the Commitment Letter, defined below, unless permitted by further Order of this Court.

35. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter to be entered into between the Applicant and the DIP Lender (the "Commitment Letter"). ~~which shall be effective upon filing of a certification of the Monitor approving the terms of the Commitment Letter.~~

36. THIS COURT ORDERS that the Applicants are authorized and empowered, following the effective date of the Commitment Letter described in paragraph 35, to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "Definitive Documents"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform, following the effective date of the Commitment Letter described in paragraph 35, all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to

the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

37. THIS COURT ORDERS that upon the effective date of the Commitment Letter described in paragraph 35, the Agent on behalf of the DIP Lender and the DIP Lender shall be entitled to the benefit of and is granted a charge (the "DIP Lender's Charge") on the Property, which charge shall not exceed the aggregate amount owed to the DIP Lender under the Definitive Documents. The DIP Lender's Charge shall have the priority set out in paragraphs 40 and 42 hereof.

38. THIS COURT ORDERS that, notwithstanding any other provision of this Order, following the effective date of the Commitment Letter described in paragraph 35:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon two (2) days notice to each Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants, and upon the occurrence of an event of default under the terms of the Definitive Documents, the DIP Lender shall be entitled to seize and retain proceeds from the sale of the Property and the cash flow of the Applicants to repay amounts owing to the DIP Lender in accordance with the Definitive Documents and the DIP Lender's Charge, but subject to the priorities as set out in paragraphs 40 and 42 of this Order; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

39. THIS COURT ORDERS AND DECLARES that the DIP Lender, following the effective date of the Commitment Letter described in paragraph 35, shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents, and the DIP Lender shall not be stayed pursuant to paragraphs 15-18 and 20 herein; however, it shall seek leave of the Court prior to any enforcement steps.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

40. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of $175,000);

Second – Directors' Charge (to the maximum amount of $75,000);

Third – DIP Lender's Charge, if any; and

Fourth – Additional Directors' Charge, if any (to the maximum amount of $325,000).

41. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge, if any (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

42. THIS COURT ORDERS that each of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, if any (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

43. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge or the DIP Lender's Charge, if any, unless the Applicants also obtain the prior written consent of the Monitor, the DIP Lender if there is a DIP Lender's Charge, and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

44. THIS COURT ORDERS that the Directors' Charge, the Administration Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's Charge, if any shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which either or both Applicants is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

(c) the payments made by the Applicants pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

45. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

46. THIS COURT ORDERS that each Applicant shall, within ten (10) business days of the date of entry of this Order, send a copy of this Order to its known creditors, other than employees and creditors to which each Applicant owes less than $1,000, at their addresses as they appear on each Applicant's records, and shall promptly send a copy of this Order (a) to all parties filing a Notice of Appearance in respect of this Application, and (b) to any other interested Person requesting a copy of this Order, and the Monitor is relieved of its obligation under Section 11(5) of the CCAA to provide similar notice, other than to supervise this process.

47. THIS COURT ORDERS that each Applicant and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to each Applicant's creditors or other interested parties at their respective addresses as last shown on the records of each Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

48. THIS COURT ORDERS that each Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on its website at www.bdo.ca.

GENERAL

49. THIS COURT ORDERS that either Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

50. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

51. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

52. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

53. THIS COURT ORDERS that any interested party (including each Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days

notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

54. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAY 19 2009

PER / PAR:

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

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO W.C. WOOD CORPORATION, LTD. AND W.C. WOOD CORPORATION INC.

Court File No. CV-09-8194-00

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

INITIAL ORDER

McCarthy Tétrault LLP
Suite 4700, Box 48
Toronto Dominion Bank Tower
Toronto-Dominion Centre
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Kevin McElcheran LSUC# 22119H
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Tel: (416) 601-7856
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Solicitors for the Applicants

404793

Court File No. CV-09-8194-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT OF W.C. WOOD CORPORATION, LTD. AND W.C. WOOD CORPORATION INC. (together the "Applicants" or "W.C. Wood")

Endorsement of Justice Pepall
(Unofficial Transcription)

The applicants, W.C. Wood Corporation, Ltd. and W.C. Wood Corporation, Inc., apply for an initial order under the CCAA. They are manufacturers and distributors of freezers and dehumidifiers. They supply product to major retail chains, distributors and independent dealers throughout the United States, Mexico and Canada. The applicants have encountered financial difficulties in part due to the depressed market for durable consumer goods that characterizes this recession. Despite their strong market position and quality product the applicants have suffered reduced sales volumes.

The applicants are insolvent and have defaulted under their credit agreement with their secured lenders CIT Business Credit Canada Inc., the CIT Group/Business Credit, Inc., Bank of Montreal and the Harris Bank. The aggregate amount presently outstanding under the credit agreement is approximately US$8.1 million owed by W.C. Wood Corporation Inc. and $6.9 million by W.C. Wood Corporation Ltd. They owe approximately $24 million to trade creditors of which a significant portion is owed to their 5 largest material suppliers. On May 13, 2009, ITN Transborder Services Inc. obtained an order from the Ontario Court of Appeal lifting a stay of execution with respect to $975,000 of a $1,400,000 judgment. As such, ITN is in a position to enforce that part of its judgment, thereby contributing in part to the urgency of this application.

The applicant W.C. Wood Corporation Ltd. is incorporated under the laws of Canada and W.C. Wood Corporation, Inc. is incorporated under the laws of Delaware. The business was established in Ontario in 1930. The applicants' manufacturing facilities are located in Guelph, Ontario and Ottawa, Ohio. A subsidiary of W.C. Wood Corporation Inc. is located in Mexico and manufactures product primarily for sale to the applicants. The businesses of the two applicants are fully integrated and they operate as one business including being joint debtors under the credit agreement and having many common major suppliers. Both applicants are managed from the head office located in Guelph, Ontario. 242 employees work in Guelph, Ontario and the corporate human resources department for the applicants is located there. All but 2 of the 12 annual board of directors meetings take place in Ontario. The finance operations are performed from Ontario, the R&D department of the applicants is located in Ontario, cost accounting is centralized in Ontario; all major contracts for the applicants are approved and/or negotiated by the VP Sales who is located in Ontario and the corporate records and other assets are also located at the head office in Guelph, Ontario. The agent bank for the lenders is located in Toronto, Ontario and the credit agreement is governed by Ontario law.

In order to protect and preserve the business and facilitate an operational and balance sheet restructuring, the applicants seek the assistance of this court under the CCAA. The relief requested is designed to permit the applicants to develop a plan and implement necessary operating restructuring initiatives. The evidence before me suggests that a liquidation of the business would have negative consequences for all stakeholders.

The secured lenders have expressed a willingness to provide DIP financing but the terms have not yet been finalized. It is also proposed that the sale process already underway for the sale of the Mexican business be approved. Any proposed agreement of purchase and sale would have to be approved by this court.

It is clear from the foregoing that both applicants are debtor companies within the meaning of the CCAA. W.C. Wood Corporation Inc. is the parent company and the applicants are affiliated; they are insolvent and creditors' claims exceed $5 million. A preliminary cash flow statement has been filed as have financial statements (audited annual as of December 31, 2009 and unaudited interim for the month ended April 30, 2009).

I am satisfied that Ontario is the appropriate forum for these proceedings and the centre of main interest for the reasons outlined above. The ultimate restructuring of the applicants' integrated business must be achieved in a fully coordinated basis and the evidence suggests that the business cannot sustain the additional costs of both a CCAA and Chapter 11 filing.

Granting the relief requested will provide a stay of proceedings and permit the applicants to develop a plan for the benefit of stakeholders. It is anticipated that operations will continue thereafter during the upcoming high season and, assuming a plan is successful, thereafter.

BDO Dunwoody Limited has consented to act as Monitor and is so appointed. The DIP financing arrangements have not been finalized and counsel are to reattend before me at 9:30 a.m. on May 22, 2009 in that regard. I granted the order requested amended by me yesterday and these are my reasons for having done so.

May 20, 2009

Pepall, J.

SUPERIOR COURT OF JUSTICE

Judges' Administration
Court House
361 University Avenue
TORONTO, ONTARIO M5G 1T3
Tel: 416-327-5284 Fax: 416-327-5417

FAX COVER SHEET

Date: WEDNESDAY - MAY 20 - 2009

TO: Kevin McElcheran	**FAX NO.:** 416-868-0673
O. Pasparakis	416-216-1995
H. Meredith	416-868-0673
R. English	416-863-1515

FROM: Debbie DaCosta
(On Behalf of Madam Justice Pepall)

TOTAL PAGES (INCLUDING COVER PAGE): 5

MESSAGE:

Court File Number: ______________________

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

In the matter of the CCAA +
W.C. Wood Corporation, Ltd + W.C. Wood Corporation Inc.
Plaintiff(s)

AND

____
Defendant(s)

Case Management ☑ Yes ☐ No by Judge: Pepall

Counsel	Telephone No.:	Facsimile No.:
K. McElcheran + H Meredith for Applicants		416-868-0673
O. Pasparakis for lenders		416-216-1995
R. English for BDO		416-863-1515

☑ Order ☐ Direction for Registrar **(No formal order need be taken out)**
☐ Above action transferred to the Commercial List at Toronto **(No formal order need be taken out)**

☐ Adjourned to: ______________________
☐ Time Table approved (as follows):

The applicants, W.C. Corporation, Ltd + W.C. Wood Corporation, Inc., apply for an initial order under the CCAA. They are manufacturers + distributors of freezers + dehumidifiers. They supply product to major retail chains, distributors + independent dealers throughout the United States, Mexico + Canada. The applicants have encountered financial difficulties in part due to the depressed market for durable consumer goods that characterizes this recession. Despite their strong market position + quality product, the applicants have suffered reduced sales volumes.

The applicants are insolvent and have defaulted under their credit agreement with their secured lenders CIT Business Credit Canada Inc., The CIT Group/Business Credit, Inc., Bank of Montreal + the Harris

May 20/09 Pepall, J.
Date Judge's Signature

☑ Additional Pages 3

Court File Number: ____________________

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

Bank. The aggregate amount presently outstanding under the credit agreement is approximately US $8.1 million owed by W.C. Wood Corporation Inc. + $6.9 million by W.C. Wood Corporation Ltd. They owe approximately US $24 million to trade creditors of which a significant portion is owed to their 5 largest material suppliers. On May 13, 2009, ITN Transborder Services Inc obtained an order from the Ontario Court of Appeal lifting a stay of execution with respect to $975,000 of a $1,400,000 judgment. As such, ITN is in a position to enforce that part of its judgment thereby contributing in part to the urgency of this application.

The applicant W.C. Wood Corporation Ltd is incorporated under the laws of Canada and W.C. Wood Corporation Inc is incorporated under the laws of Delaware. The business was established in Ontario in 1930. The applicants' manufacturing facilities are located in Guelph, Ontario + Ottawa, Ohio. A subsidiary of W.C. Wood Corporation Inc is located in Mexico and manufactures product primarily for sale to the applicants. The businesses of the two applicants are fully integrated + they operate as one business including being joint debtors under the credit agreement and having many common major suppliers. Both applicants are managed from the head office located in Guelph, Ontario. 242 employees work in Guelph, Ontario + the corporate human resources department for the applicants is located there. All but 2 of the 12

Page 2 of 4 Judges Initials [initials]

Court File Number: ____________________

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

annual board of directors meetings take place in Ontario. The finance operations are performed from Ontario. The R+D department of the applicants is located in Ontario; cost accounting is centralized in Ontario; all major contracts for the applicants are approved +/or negotiated by the VP of Sales who is located in Ontario + the corporate records of the applicants are also located at the head office in Guelph, Ontario. The agent bank for the lenders is located in Toronto, Ontario + the credit agreement is governed by Ontario law.

In order to protect + preserve the business + facilitate an operational + balance sheet restructuring, the applicants seek the assistance of this court under the CCAA. The relief requested is designed to permit the applicants to develop a plan + implement necessary operating restructuring initiatives. The evidence before me suggests that a liquidation of the business would have negative consequences for all stakeholders.

The secured lenders have expressed a willingness to provide DIP financing but the terms have not yet been finalized. It is also proposed that the sale process already underway for the sale of the Mexican business be approved. Any proposed agreement of purchase + sale would have to be approved by this court.

It is clear from the foregoing that both applicants are debtor companies within the meaning of the CCAA. W.C. Wood Corporation Inc is the parent company

 Judges Initials SOP

Court File Number: ____________________

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

+ the applicants are affiliated; they are insolvent + creditor claims exceed $5 million. A preliminary cash flow statement has been filed as have financial statements (audited annual as of Dec 31, 2008 + unaudited interim for the months ended Ap 30, 2009).

I am satisfied that Ontario is the appropriate forum for these proceedings + the centre of main interest for the reasons outlined above. The ultimate restructuring of the applicants' integrated business must be achieved on a fully coordinated basis + the evidence suggests that the business cannot sustain the additional costs of both a CCAA + Chapt 11 filing.

Granting the relief requested will provide a stay of proceedings + permit the applicants to develop a plan for the benefit of stakeholders. It is anticipated that operations will continue therefore during the upcoming high season + assuming a plan is successful, thereafter.

BDO Dunwoody Limited has consented to act as Monitor + it is so appointed. The DIP financing arrangements have not been finalized + counsel are to reattend before me at 9:30 on May 22 09 in that regard. I granted the order requested amended by me yesterday + these are my reasons for having done so.

S. Pepall, J.

Judges Initials SMP

Court File No. CV-09-8194-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MADAM	)	MONDAY THE 25th
	)	
JUSTICE PEPALL	)	DAY OF MAY, 2009

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

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT OF W.C. WOOD CORPORATION, LTD. AND W.C. WOOD CORPORATION INC. (together the "Applicants" or "W.C. Wood")

ORDER

THIS MOTION, made by the Applicants for approval of interim financing arrangements and amendments to the Initial Order to add a new applicant was heard this day in Toronto, Ontario.

UPON READING the affidavit of Michael Hadjinian sworn May 22, 2009 and the Exhibits thereto (the "Hadjinian Affidavit") and on hearing the submissions of counsel for the Applicants, counsel for the Applicants' Lenders, CIT Business Credit Canada Inc., The CIT Group/Business Credit, Inc., Bank of Montreal and Bank of Montreal Chicago Branch (the "Lenders"), and counsel for the Monitor, BDO Dunwoody Limited ("BDO") no one else appearing on this Motion,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPLICATION TO W.C. WOOD HOLDINGS INC.

2. THIS COURT ORDERS AND DECLARES that W.C. Wood Holdings Inc. is a company pursuant to which the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as am. (the "CCAA") applies.

3. THIS COURT ORDERS that the initial order in this proceeding dated May 19, 2009 by the Honourable Madame Justice Pepall (the "Initial Order") is hereby amended in the form attached hereto ~~to the Motion Record at Tab 3.~~

SP

DIP FINANCING

4. THIS COURT ORDERS that paragraphs 34 to 39, inclusive, of the Initial Order are hereby of full force and effect, as modified in the Amended Initial Order.

5. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

S.E. Pepall, J.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAY 25 2009

PER / PAR: CL

Court File No. CV-09-8194-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT OF W.C. WOOD CORPORATION, LTD. AND W.C. WOOD CORPORATION INC. (together the "Applicants" or "W.C. Wood")

Endorsement of Justice Pepall
(Unofficial Transcription)

May 25, 2009

There are 2 issues before me today.

1) Firstly, the Applicants request that W.C. Holdings Inc. be added as a party applicant and as a company pursuant to which the CCAA applies. This company is the parent of W.C. Wood Corporation Inc. and has assets in Ontario in the form of $40,000 deposited with BDO. It is part of the integrated business and carries on business through the Applicants which have their main centre of interest in Ontario. It is a guarantor of W.C. Wood Corporation Ltd. pursuant to the Credit Agreement. These obligations are due and payable and amount to $9 million. I am satisfied that it qualifies as a debtor company within the CCAA and should be added as an applicant. I also note that it is integral to the DIP facility.

2) Secondly the Applicants request that the DIP financing be approved. In considering whether the request should be granted, it is helpful to examine certain of the factors set forth in the pending amendments to the CCAA.

Although subject to amendment, the DIP facility contemplates a Plan as early as July 1. The applicants are expected to be subject to proceedings under the Act at least until Sept 1/09. In the meantime, the business will be assessed and some major asset dispositions are contemplated.

Clearly management has the confidence of the senior creditors in that they are providing the DIP financing. The financing is provided on the basis that it would enhance the prospects of a viable compromise or arrangement being made.

No other alternative is available and in its report, the Monitor notes that even if financing from a 3rd party were available, it would be more expensive in terms of fees and interest rates. BDO describes these as consisting of a forbearance fee of $100,000; a monitoring fee of $3000/

month; a letter of credit increased fee of 2.25% to 4.5%. The Interest rates are increased to prime + 5% from the current prime + 3%.

There is no evidence of any creditor being materially prejudiced as a result of the proposed security or charge.

In all of these circumstances, I am of the view that the DIP financing should be approved and the order requested granted.

Pepall, J.

There are 2 issues before me today.

1) Firstly the Applicants request that W.C Holdings Inc be added as a party applicant + as a company pursuant to which the CCAA applies. This company is the parent of W.C Wood Corporation Inc + has assets in Ontario in the form of $40,000 deposited with BDO. It is part of the integrated business + carries on business through the applicants which have their main centre of interest in Ontario. It is a guarantor of W.C. Wood Corporation Ltd pursuant to the credit agreement. These obligations are due + payable + amount to $9 million. I am satisfied that it qualifies as a debtor company within the CCAA + should be added as an applicant. I also note that it is integral to the DIP facility.

2) Secondly the Applicants request that the DIP financing be approved. In considering whether the request should be granted, it is helpful to examine certain of the factors set forth in the pending amendments to the CCAA.

Although subject to amendment, the DIP facility contemplates a plan as early as July + the applicants are expected to be

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

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO W.C. WOOD CORPORATION, LTD. AND W.C. WOOD CORPORATION INC.

Court File No. CV-09-8194-00CL

25 MAY 2009

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding Commenced at Toronto

MOTION RECORD

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Solicitors for the Applicants/Moving Parties

[illegible] the stay at least until Sept. 10 '09! In the meantime, the business will be assessed + some major asset dispositions are contemplated.

Clearly management has the confidence of the senior creditors in that they are providing the DIP financing. The financing is provided on the basis that it would enhance the prospects of a viable compromise or arrangement being made.

No other alternative is available + in its report, the Monitor notes that even if financing from a 3rd party were available, it would be more expensive in terms of fees + interest rates. BDO describes these as consisting of a forbearance fee of $100,000; a monitoring fee of $3000/month, a letter of credit increased fee of 2.25% to 4.5%. The interest rates are increased to prime + 5% from the current prime + 3%.

There is no evidence of any creditor being materially prejudiced as a result of the proposed security or charge.

In all of these circumstances, I am of the view that the DIP financing should be approved + the order requested granted.

Pepall, J.

COURT FILE NO.: CV-09-8241-OOCL
DATE: 20091013

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,

R.S.C. 1985, C-36. AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT OF CANWEST GLOBAL COMMUNICATIONS CORP. AND THE OTHER APPLICANTS LISTED ON SCHEDULE "A"

BEFORE: PEPALL J.

COUNSEL: *Lyndon Barnes, Edward Sellers and Jeremy Dacks* for the Applicants
Alan Merskey for the Special Committee of the Board of Directors
David Byers and Maria Konyukhova for the Proposed Monitor, FTI Consulting Canada Inc.
Benjamin Zarnett and Robert Chadwick for Ad Hoc Committee of Noteholders
Edmond Lamek for the Asper Family
Peter H. Griffin and Peter J. Osborne for the Management Directors and Royal Bank of Canada
Hilary Clarke for Bank of Nova Scotia,
Steve Weisz for CIT Business Credit Canada Inc.

REASONS FOR DECISION

Relief Requested

[1] Canwest Global Communications Corp. ("Canwest Global"), its principal operating subsidiary, Canwest Media Inc. ("CMI"), and the other applicants listed on Schedule "A" of the Notice of Application apply for relief pursuant to the *Companies' Creditors Arrangement Act.*[1] The applicants also seek to have the stay of proceedings and other provisions extend to the following partnerships: Canwest Television Limited Partnership ("CTLP"), Fox Sports World Canada Partnership and The National Post Company/La Publication National Post ("The National Post Company"). The businesses operated by

[1] R.S.C. 1985, c. C. 36, as amended

the applicants and the aforementioned partnerships include (i) Canwest's free-to-air television broadcast business (ie. the Global Television Network stations); (ii) certain subscription-based specialty television channels that are wholly owned and operated by CTLP; and (iii) the National Post.

[2] The Canwest Global enterprise as a whole includes the applicants, the partnerships and Canwest Global's other subsidiaries that are not applicants. The term Canwest will be used to refer to the entire enterprise. The term CMI Entities will be used to refer to the applicants and the three aforementioned partnerships. The following entities are not applicants nor is a stay sought in respect of any of them: the entities in Canwest's newspaper publishing and digital media business in Canada (other than the National Post Company) namely the Canwest Limited Partnership, Canwest Publishing Inc./Publications Canwest Inc., Canwest Books Inc., and Canwest (Canada) Inc.; the Canadian subscription based specialty television channels acquired from Alliance Atlantis Communications Inc. in August, 2007 which are held jointly with Goldman Sachs Capital Partners and operated by CW Investments Co. and its subsidiaries; and subscription-based specialty television channels which are not wholly owned by CTLP.

[3] No one appearing opposed the relief requested.

Backround Facts

[4] Canwest is a leading Canadian media company with interests in twelve free-to-air television stations comprising the Global Television Network, subscription-based specialty television channels and newspaper publishing and digital media operations.

[5] As of October 1, 2009, Canwest employed the full time equivalent of approximately 7,400 employees around the world. Of that number, the full time equivalent of approximately 1,700 are employed by the CMI Entities, the vast majority of whom work in Canada and 850 of whom work in Ontario.

[6] Canwest Global owns 100% of CMI. CMI has direct or indirect ownership interests in all of the other CMI Entities. Ontario is the chief place of business of the CMI Entities.

[7] Canwest Global is a public company continued under the *Canada Business Corporations Act*[2]. It has authorized capital consisting of an unlimited number of preference shares, multiple voting shares, subordinate voting shares, and non-voting shares. It is a "constrained-share company" which means that at least 66 2/3% of its voting shares must be beneficially owned by Canadians. The Asper family built the Canwest enterprise and family members hold various classes of shares. In April and May, 2009, corporate decision making was consolidated and streamlined.

[8] The CMI Entities generate the majority of their revenue from the sale of advertising (approximately 77% on a consolidated basis). Fuelled by a deteriorating economic environment in Canada and elsewhere, in 2008 and 2009, they experienced a decline in their advertising revenues. This caused problems with cash flow and circumstances were exacerbated by their high fixed operating costs. In response to these conditions, the CMI Entities took steps to improve cash flow and to strengthen their balance sheets. They commenced workforce reductions and cost saving measures, sold certain interests and assets, and engaged in discussions with the CRTC and the Federal government on issues of concern.

[9] Economic conditions did not improve nor did the financial circumstances of the CMI Entities. They experienced significant tightening of credit from critical suppliers and trade creditors, a further reduction of advertising commitments, demands for reduced credit terms by newsprint and printing suppliers, and restrictions on or cancellation of credit cards for certain employees.

[10] In February, 2009, CMI breached certain of the financial covenants in its secured credit facility. It subsequently received waivers of the borrowing conditions on six

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[2] R.S.C. 1985, c.C.44.

occasions. On March 15, 2009, it failed to make an interest payment of US$30.4 million due on 8% senior subordinated notes. CMI entered into negotiations with an ad hoc committee of the 8% senior subordinated noteholders holding approximately 72% of the notes (the "Ad Hoc Committee"). An agreement was reached wherein CMI and its subsidiary CTLP agreed to issue US$105 million in 12% secured notes to members of the Ad Hoc Committee. At the same time, CMI entered into an agreement with CIT Business Credit Canada Inc. ("CIT") in which CIT agreed to provide a senior secured revolving asset based loan facility of up to $75 million. CMI used the funds generated for operations and to repay amounts owing on the senior credit facility with a syndicate of lenders of which the Bank of Nova Scotia was the administrative agent. These funds were also used to settle related swap obligations.

[11] Canwest Global reports its financial results on a consolidated basis. As at May 31, 2009, it had total consolidated assets with a net book value of $4.855 billion and total consolidated liabilities of $5.846 billion. The subsidiaries of Canwest Global that are not applicants or partnerships in this proceeding had short and long term debt totalling $2.742 billion as at May 31, 2009 and the CMI Entities had indebtedness of approximately $954 million. For the 9 months ended May 31, 2009, Canwest Global's consolidated revenues decreased by $272 million or 11% compared to the same period in 2008. In addition, operating income before amortization decreased by $253 million or 47%. It reported a consolidated net loss of $1.578 billion compared to $22 million for the same period in 2008. CMI reported that revenues for the Canadian television operations decreased by $8 million or 4% in the third quarter of 2009 and operating profit was $21 million compared to $39 million in the same period in 2008.

[12] The board of directors of Canwest Global struck a special committee of the board ("the Special Committee") with a mandate to explore and consider strategic alternatives in order to maximize value. That committee appointed Thomas Strike, who is the President, Corporate Development and Strategy Implementation of Canwest Global, as Recapitalization Officer and retained Hap Stephen, who is the Chairman and CEO of Stonecrest Capital Inc., as a Restructuring Advisor ("CRA").

[13] On September 15, 2009, CMI failed to pay US$30.4 million in interest payments due on the 8% senior subordinated notes.

[14] On September 22, 2009, the board of directors of Canwest Global authorized the sale of all of the shares of Ten Network Holdings Limited (Australia) ("Ten Holdings") held by its subsidiary, Canwest Mediaworks Ireland Holdings ("CMIH"). Prior to the sale, the CMI Entities had consolidated indebtedness totalling US$939.9 million pursuant to three facilities. CMI had issued 8% unsecured notes in an aggregate principal amount of US$761,054,211. They were guaranteed by all of the CMI Entities except Canwest Global, and 30109, LLC. CMI had also issued 12% secured notes in an aggregate principal amount of US$94 million. They were guaranteed by the CMI Entities. Amongst others, Canwest's subsidiary, CMIH, was a guarantor of both of these facilities. The 12% notes were secured by first ranking charges against all of the property of CMI, CTLP and the guarantors. In addition, pursuant to a credit agreement dated May 22, 2009 and subsequently amended, CMI has a senior secured revolving asset-based loan facility in the maximum amount of $75 million with CIT Business Credit Canada Inc. ("CIT"). Prior to the sale, the debt amounted to $23.4 million not including certain letters of credit. The facility is guaranteed by CTLP, CMIH and others and secured by first ranking charges against all of the property of CMI, CTLP, CMIH and other guarantors. Significant terms of the credit agreement are described in paragraph 37 of the proposed Monitor's report. Upon a CCAA filing by CMI and commencement of proceedings under Chapter 15 of the Bankruptcy Code, the CIT facility converts into a DIP financing arrangement and increases to a maximum of $100 million.

[15] Consents from a majority of the 8% senior subordinated noteholders were necessary to allow the sale of the Ten Holdings shares. A Use of Cash Collateral and Consent Agreement was entered into by CMI, CMIH, certain consenting noteholders and others wherein CMIH was allowed to lend the proceeds of sale to CMI.

[16] The sale of CMIH's interest in Ten Holdings was settled on October 1, 2009. Gross proceeds of approximately $634 million were realized. The proceeds were applied to

fund general liquidity and operating costs of CMI, pay all amounts owing under the 12% secured notes and all amounts outstanding under the CIT facility except for certain letters of credit in an aggregate face amount of $10.7 million. In addition, a portion of the proceeds was used to reduce the amount outstanding with respect to the 8% senior subordinated notes leaving an outstanding indebtedness thereunder of US$393.25 million.

[17] In consideration for the loan provided by CMIH to CMI, CMI issued a secured intercompany note in favour of CMIH in the principal amount of $187.3 million and an unsecured promissory note in the principal amount of $430.6 million. The secured note is subordinated to the CIT facility and is secured by a first ranking charge on the property of CMI and the guarantors. The payment of all amounts owing under the unsecured promissory note are subordinated and postponed in favour of amounts owing under the CIT facility. Canwest Global, CTLP and others have guaranteed the notes. It is contemplated that the debt that is the subject matter of the unsecured note will be compromised.

[18] Without the funds advanced under the intercompany notes, the CMI Entities would be unable to meet their liabilities as they come due. The consent of the noteholders to the use of the Ten Holdings proceeds was predicated on the CMI Entities making this application for an Initial Order under the CCAA. Failure to do so and to take certain other steps constitute an event of default under the Use of Cash Collateral and Consent Agreement, the CIT facility and other agreements. The CMI Entities have insufficient funds to satisfy their obligations including those under the intercompany notes and the 8% senior subordinated notes.

[19] The stay of proceedings under the CCAA is sought so as to allow the CMI Entities to proceed to develop a plan of arrangement or compromise to implement a consensual "pre-packaged" recapitalization transaction. The CMI Entities and the Ad Hoc Committee of noteholders have agreed on the terms of a going concern recapitalization transaction which is intended to form the basis of the plan. The terms are reflected in a

support agreement and term sheet. The recapitalization transaction contemplates amongst other things, a significant reduction of debt and a debt for equity restructuring. The applicants anticipate that a substantial number of the businesses operated by the CMI Entities will continue as going concerns thereby preserving enterprise value for stakeholders and maintaining employment for as many as possible. As mentioned, certain steps designed to implement the recapitalization transaction have already been taken prior to the commencement of these proceedings.

[20] CMI has agreed to maintain not more than $2.5 million as cash collateral in a deposit account with the Bank of Nova Scotia to secure cash management obligations owed to BNS. BNS holds first ranking security against those funds and no court ordered charge attaches to the funds in the account.

[21] The CMI Entities maintain eleven defined benefit pension plans and four defined contribution pension plans. There is an aggregate solvency deficiency of $13.3 million as at the last valuation date and a wind up deficiency of $32.8 million. There are twelve television collective agreements eleven of which are negotiated with the Communications, Energy and Paperworkers Union of Canada. The Canadian Union of Public Employees negotiated the twelfth television collective agreement. It expires on December 31, 2010. The other collective agreements are in expired status. None of the approximately 250 employees of the National Post Company are unionized. The CMI Entities propose to honour their payroll obligations to their employees, including all pre-filing wages and employee benefits outstanding as at the date of the commencement of the CCAA proceedings and payments in connection with their pension obligations.

Proposed Monitor

[22] The applicants propose that FTI Consulting Canada Inc. serve as the Monitor in these proceedings. It is clearly qualified to act and has provided the Court with its consent to act. Neither FTI nor any of its representatives have served in any of the capacities prohibited by section of the amendments to the CCAA.

Proposed Order

[23] I have reviewed in some detail the history that preceded this application. It culminated in the presentation of the within application and proposed order. Having

reviewed the materials and heard submissions, I was satisfied that the relief requested should be granted.

[24] This case involves a consideration of the amendments to the CCAA that were proclaimed in force on September 18, 2009. While these were long awaited, in many instances they reflect practices and principles that have been adopted by insolvency practitioners and developed in the jurisprudence and academic writings on the subject of the CCAA. In no way do the amendments change or detract from the underlying purpose of the CCAA, namely to provide debtor companies with the opportunity to extract themselves from financial difficulties notwithstanding insolvency and to reorganize their affairs for the benefit of stakeholders. In my view, the amendments should be interpreted and applied with that objective in mind.

(a) Threshhold Issues

[25] Firstly, the applicants qualify as debtor companies under the CCAA. Their chief place of business is in Ontario. The applicants are affiliated debtor companies with total claims against them exceeding $5 million. The CMI Entities are in default of their obligations. CMI does not have the necessary liquidity to make an interest payment in the amount of US$30.4 million that was due on September 15, 2009 and none of the other CMI Entities who are all guarantors are able to make such a payment either. The assets of the CMI Entities are insufficient to discharge all of the liabilities. The CMI Entities are unable to satisfy their debts as they come due and they are insolvent. They are insolvent both under the *Bankruptcy and Insolvency Act*[3] definition and under the more expansive definition of insolvency used in *Re Stelco*[4]. Absent these CCAA proceedings, the applicants would lack liquidity and would be unable to continue as going concerns. The CMI Entities have acknowledged their insolvency in the affidavit filed in support of the application.

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[3] R.S.C. 1985, c. B-3, as amended.

[4] (2004), 48 C.B.R. (4th) 299; leave to appeal refused 2004 CarswellOnt 2936 (C.A.).

[26] Secondly, the required statement of projected cash-flow and other financial documents required under section 11(2) of the CCAA have been filed.

(b) Stay of Proceedings

[27] Under section 11 of the CCAA, the Court has broad jurisdiction to grant a stay of proceedings and to give a debtor company a chance to develop a plan of compromise or arrangement. In my view, given the facts outlined, a stay is necessary to create stability and to allow the CMI Entities to pursue their restructuring.

(b) Partnerships and Foreign Subsidiaries

[28] The applicants seek to extend the stay of proceedings and other relief to the aforementioned partnerships. The partnerships are intertwined with the applicants' ongoing operations. They own the National Post daily newspaper and Canadian free-to-air television assets and certain of its specialty television channels and some other television assets. These businesses constitute a significant portion of the overall enterprise value of the CMI Entities. The partnerships are also guarantors of the 8% senior subordinated notes.

[29] While the CCAA definition of a company does not include a partnership or limited partnership, courts have repeatedly exercised their inherent jurisdiction to extend the scope of CCAA proceedings to encompass them. See for example *Re Lehndorff General Partners Ltd.*[5]; *Re Smurfit-Stone Container Canada Inc.*[6]; and *Re Calpine Canada Energy Ltd.*[7]. In this case, the partnerships carry on operations that are integral and closely interrelated to the business of the applicants. The operations and obligations of the partnerships are so intertwined with those of the applicants that irreparable harm would ensue if the requested stay were not granted. In my view, it is just and convenient to grant the relief requested with respect to the partnerships.

[5] (1993), 9 B.L.R. (2d) 275.
[6] [2009] O.J. No. 349.
[7] (2006), 19 C.B.R. (5th) 187.

[30] Certain applicants are foreign subsidiaries of CMI. Each is a guarantor under the 8% senior subordinated notes, the CIT credit agreement (and therefore the DIP facility), the intercompany notes and is party to the support agreement and the Use of Cash Collateral and Consent Agreement. If the stay of proceedings was not extended to these entities, creditors could seek to enforce their guarantees. I am persuaded that the foreign subsidiary applicants as that term is defined in the affidavit filed are debtor companies within the meaning of section 2 of the CCAA and that I have jurisdiction and ought to grant the order requested as it relates to them. In this regard, I note that they are insolvent and each holds assets in Ontario in that they each maintain funds on deposit at the Bank of Nova Scotia in Toronto. See in this regard *Re Cadillac Fairview*[8] and *Re Global Light Telecommunications Ltd.*[9]

(c) DIP Financing

[31] Turning to the DIP financing, the premise underlying approval of DIP financing is that it is a benefit to all stakeholders as it allows the debtors to protect going-concern value while they attempt to devise a plan acceptable to creditors. While in the past, courts relied on inherent jurisdiction to approve the terms of a DIP financing charge, the September 18, 2009 amendments to the CCAA now expressly provide jurisdiction to grant a DIP financing charge. Section 11.2 of the Act states:

> (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.
>
> (2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

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[8] (1995), 30 C.B.R. (3d) 29.
[9] (2004), 33 B.C.L.R. (4th) 155.

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

(4) In deciding whether to make an order, the court is to consider, among other things,

> (*a*) the period during which the company is expected to be subject to proceedings under this Act;
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> (*b*) how the company's business and financial affairs are to be managed during the proceedings;
>
> (*c*) whether the company's management has the confidence of its major creditors;
>
> (*d*) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
>
> (*e*) the nature and value of the company's property;
>
> (*f*) whether any creditor would be materially prejudiced as a result of the security or charge; and
>
> (*g*) the monitor's report referred to in paragraph 23(1)(*b*), if any.

[32] In light of the language of section 11.2(1), the first issue to consider is whether notice has been given to secured creditors who are likely to be affected by the security or charge. Paragraph 57 of the proposed order affords priority to the DIP charge, the administration charge, the Directors' and Officers' charge and the KERP charge with the following exception: "any validly perfected purchase money security interest in favour of a secured creditor or any statutory encumbrance existing on the date of this order in favour of any person which is a "secured creditor" as defined in the CCAA in respect of any of source deductions from wages, employer health tax, workers compensation, GST/QST, PST payables, vacation pay and banked overtime for employees, and amounts under the Wage Earners' Protection Program that are subject to a super priority claim under the BIA". This provision coupled with the notice that was provided satisfied me that secured creditors either were served or are unaffected by the DIP charge. This approach is both consistent with the legislation and practical.

[33] Secondly, the Court must determine that the amount of the DIP is appropriate and required having regard to the debtors' cash-flow statement. The DIP charge is for up to

$100 million. Prior to entering into the CIT facility, the CMI Entities sought proposals from other third party lenders for a credit facility that would convert to a DIP facility should the CMI Entities be required to file for protection under the CCAA. The CIT facility was the best proposal submitted. In this case, it is contemplated that implementation of the plan will occur no later than April 15, 2010. The total amount of cash on hand is expected to be down to approximately $10 million by late December, 2009 based on the cash flow forecast. The applicants state that this is an insufficient cushion for an enterprise of this magnitude. The cash-flow statements project the need for the liquidity provided by the DIP facility for the recapitalization transaction to be finalized. The facility is to accommodate additional liquidity requirements during the CCAA proceedings. It will enable the CMI Entities to operate as going concerns while pursuing the implementation and completion of a viable plan and will provide creditors with assurances of same. I also note that the proposed facility is simply a conversion of the pre-existing CIT facility and as such, it is expected that there would be no material prejudice to any of the creditors of the CMI Entities that arises from the granting of the DIP charge. I am persuaded that the amount is appropriate and required.

[34] Thirdly, the DIP charge must not and does not secure an obligation that existed before the order was made. The only amount outstanding on the CIT facility is $10.7 in outstanding letters of credit. These letters of credit are secured by existing security and it is proposed that that security rank ahead of the DIP charge.

[35] Lastly, I must consider amongst others, the enumerated factors in paragraph 11.2(4) of the Act. I have already addressed some of them. The Management Directors of the applicants as that term is used in the materials filed will continue to manage the CMI Entities during the CCAA proceedings. It would appear that management has the confidence of its major creditors. The CMI Entities have appointed a CRA and a Restructuring Officer to negotiate and implement the recapitalization transaction and the aforementioned directors will continue to manage the CMI Entities during the CCAA proceedings. The DIP facility will enhance the prospects of a completed restructuring. CIT has stated that it will not convert the CIT facility into a DIP facility if the DIP charge

is not approved. In its report, the proposed Monitor observes that the ability to borrow funds from a court approved DIP facility secured by the DIP charge is crucial to retain the confidence of the CMI Entities' creditors, employees and suppliers and would enhance the prospects of a viable compromise or arrangement being made. The proposed Monitor is supportive of the DIP facility and charge.

[36] For all of these reasons, I was prepared to approve the DIP facility and charge.

(d) Administration Charge

[37] While an administration charge was customarily granted by courts to secure the fees and disbursements of the professional advisors who guided a debtor company through the CCAA process, as a result of the amendments to the CCAA, there is now statutory authority to grant such a charge. Section 11.52 of the CCAA states:

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

[38] I must therefore be convinced that (1) notice has been given to the secured creditors likely to be affected by the charge; (2) the amount is appropriate; and (3) the charge should extend to all of the proposed beneficiaries.

[39] As with the DIP charge, the issue relating to notice to affected secured creditors has been addressed appropriately by the applicants. The amount requested is up to $15 million. The beneficiaries of the charge are: the Monitor and its counsel; counsel to the CMI Entities; the financial advisor to the Special Committee and its counsel; counsel to the Management Directors; the CRA; the financial advisor to the Ad Hoc Committee; and RBC Capital Markets and its counsel. The proposed Monitor supports the aforementioned charge and considers it to be required and reasonable in the circumstances in order to preserve the going concern operations of the CMI Entities. The applicants submit that the above-note professionals who have played a necessary and integral role in the restructuring activities to date are necessary to implement the recapitalization transaction.

[40] Estimating quantum is an inexact exercise but I am prepared to accept the amount as being appropriate. There has obviously been extensive negotiation by stakeholders and the restructuring is of considerable magnitude and complexity. I was prepared to accept the submissions relating to the administration charge. I have not included any requirement that all of these professionals be required to have their accounts scrutinized and approved by the Court but they should not preclude this possibility.

(e) Critical Suppliers

[41] The next issue to consider is the applicants' request for authorization to pay pre-filing amounts owed to critical suppliers. In recognition that one of the purposes of the CCAA is to permit an insolvent corporation to remain in business, typically courts exercised their inherent jurisdiction to grant such authorization and a charge with respect to the provision of essential goods and services. In the recent amendments, Parliament codified the practice of permitting the payment of pre-filing amounts to critical suppliers and the provision of a charge. Specifically, section 11.4 provides:

> (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring a person to be a critical supplier to the company if the court is satisfied that

the person is a supplier of goods or services to the company and that the goods or services that are supplied are critical to the company's continued operation.

(2) If the court declares a person to be a critical supplier, the court may make an order requiring the person to supply any goods or services specified by the court to the company on any terms and conditions that are consistent with the supply relationship or that the court considers appropriate.

(3) If the court makes an order under subsection (2), the court shall, in the order, declare that all or part of the property of the company is subject to a security or charge in favour of the person declared to be a critical supplier, in an amount equal to the value of the goods or services supplied under the terms of the order.

(4) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

[42] Under these provisions, the Court must be satisfied that there has been notice to creditors likely to be affected by the charge, the person is a supplier of goods or services to the company, and that the goods or services that are supplied are critical to the company's continued operation. While one might interpret section 11.4 (3) as requiring a charge any time a person is declared to be a critical supplier, in my view, this provision only applies when a court is compelling a person to supply. The charge then provides protection to the unwilling supplier.

[43] In this case, no charge is requested and no additional notice is therefore required. Indeed, there is an issue as to whether in the absence of a request for a charge, section 11.4 is even applicable and the Court is left to rely on inherent jurisdiction. The section seems to be primarily directed to the conditions surrounding the granting of a charge to secure critical suppliers. That said, even if it is applicable, I am satisfied that the applicants have met the requirements. The CMI Entities seek authorization to make certain payments to third parties that provide goods and services integral to their business. These include television programming suppliers given the need for continuous and undisturbed flow of programming, newsprint suppliers given the dependency of the National Post on a continuous and uninterrupted supply of newsprint to enable it to publish and on newspaper distributors, and the American Express Corporate Card Program and Central Billed Accounts that are required for CMI Entity employees to perform their job functions. No payment would be made without the consent of the

Monitor. I accept that these suppliers are critical in nature. The CMI Entities also seek more general authorization allowing them to pay other suppliers if in the opinion of the CMI Entities, the supplier is critical. Again, no payment would be made without the consent of the Monitor. In addition, again no charge securing any payments is sought. This is not contrary to the language of section 11.4 (1) or to its purpose. The CMI Entities seek the ability to pay other suppliers if in their opinion the supplier is critical to their business and ongoing operations. The order requested is facilitative and practical in nature. The proposed Monitor supports the applicants' request and states that it will work to ensure that payments to suppliers in respect of pre-filing liabilities are minimized. The Monitor is of course an officer of the Court and is always able to seek direction from the Court if necessary. In addition, it will report on any such additional payments when it files its reports for Court approval. In the circumstances outlined, I am prepared to grant the relief requested in this regard.

(f) Directors' and Officers' Charge

[44] The applicants also seek a directors' and officers' ("D &O") charge in the amount of $20 million. The proposed charge would rank after the administration charge, the existing CIT security, and the DIP charge. It would rank pari passu with the KERP charge discussed subsequently in this endorsement but postponed in right of payment to the extent of the first $85 million payable under the secured intercompany note.

[45] Again, the recent amendments to the CCAA allow for such a charge. Section 11.51 provides that:

> (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company
>
> (2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.
>
> (3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

> (4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

[46] I have already addressed the issue of notice to affected secured creditors. I must also be satisfied with the amount and that the charge is for obligations and liabilities the directors and officers may incur after the commencement of proceedings. It is not to extend to coverage of wilful misconduct or gross negligence and no order should be granted if adequate insurance at a reasonable cost could be obtained.

[47] The proposed Monitor reports that the amount of $20 million was estimated taking into consideration the existing D&O insurance and the potential liabilities which may attach including certain employee related and tax related obligations. The amount was negotiated with the DIP lender and the Ad Hoc Committee. The order proposed speaks of indemnification relating to the failure of any of the CMI Entities, after the date of the order, to make certain payments. It also excludes gross negligence and wilful misconduct. The D&O insurance provides for $30 million in coverage and $10 million in excess coverage for a total of $40 million. It will expire in a matter of weeks and Canwest Global has been unable to obtain additional or replacement coverage. I am advised that it also extends to others in the Canwest enterprise and not just to the CMI Entities. The directors and senior management are described as highly experienced, fully functional and qualified. The directors have indicated that they cannot continue in the restructuring effort unless the order includes the requested directors' charge.

[48] The purpose of such a charge is to keep the directors and officers in place during the restructuring by providing them with protection against liabilities they could incur during the restructuring: *Re General Publishing Co.*[10] Retaining the current directors and officers of the applicants would avoid destabilization and would assist in the restructuring. The proposed charge would enable the applicants to keep the experienced board of directors supported by experienced senior management. The proposed Monitor

believes that the charge is required and is reasonable in the circumstances and also observes that it will not cover all of the directors' and officers' liabilities in the worst case scenario. In all of these circumstances, I approved the request.

(g) Key Employee Retention Plans

[49] Approval of a KERP and a KERP charge are matters of discretion. In this case, the CMI Entities have developed KERPs that are designed to facilitate and encourage the continued participation of certain of the CMI Entities' senior executives and other key employees who are required to guide the CMI Entities through a successful restructuring with a view to preserving enterprise value. There are 20 KERP participants all of whom are described by the applicants as being critical to the successful restructuring of the CMI Entities. Details of the KERPs are outlined in the materials and the proposed Monitor's report. A charge of $5.9 million is requested. The three Management Directors are seasoned executives with extensive experience in the broadcasting and publishing industries. They have played critical roles in the restructuring initiatives taken to date. The applicants state that it is probable that they would consider other employment opportunities if the KERPs were not secured by a KERP charge. The other proposed participants are also described as being crucial to the restructuring and it would be extremely difficult to find replacements for them

[50] Significantly in my view, the Monitor who has scrutinized the proposed KERPs and charge is supportive. Furthermore, they have been approved by the Board, the Special Committee, the Human Resources Committee of Canwest Global and the Ad Hoc Committee. The factors enumerated in *Re Grant Forest*[11] have all been met and I am persuaded that the relief in this regard should be granted.

[51] The applicants ask that the Confidential Supplement containing unredacted copies of the KERPs that reveal individually identifiable information and compensation information be sealed. Generally speaking, judges are most reluctant to grant sealing

[10] (2003), 39 C.B.R. (4th) 216.

orders. An open court and public access are fundamental to our system of justice. Section 137(2) of the *Courts of Justice Act* provides authority to grant a sealing order and the Supreme Court of Canada's decision in *Sierra Club of Canada v. Canada (Minister of Finance)*[12]provides guidance on the appropriate legal principles to be applied. Firstly, the Court must be satisfied that the order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk. Secondly, the salutary effects of the order should outweigh its deleterious effects including the effects on the right to free expression which includes the public interest in open and accessible court proceedings.

[52] In this case, the unredacted KERPs reveal individually identifiable information including compensation information. Protection of sensitive personal and compensation information the disclosure of which could cause harm to the individuals and to the CMI Entities is an important commercial interest that should be protected. The KERP participants have a reasonable expectation that their personal information would be kept confidential. As to the second branch of the test, the aggregate amount of the KERPs has been disclosed and the individual personal information adds nothing. It seems to me that this second branch of the test has been met. The relief requested is granted.

Annual Meeting

[53] The CMI Entities seek an order postponing the annual general meeting of shareholders of Canwest Global. Pursuant to section 133 (1)(b) of the CBCA, a corporation is required to call an annual meeting by no later than February 28, 2010, being six months after the end of its preceding financial year which ended on August 31, 2009. Pursuant to section 133 (3), despite subsection (1), the corporation may apply to the court for an order extending the time for calling an annual meeting.

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[11] [2009] O.J. No. 3344. That said, given the nature of the relationship between a board of directors and senior management, it may not always be appropriate to give undue consideration to the principle of business judgment.
[12] [2002] 2 S.C.R. 522.

[54] CCAA courts have commonly granted extensions of time for the calling of an annual general meeting. In this case, the CMI Entities including Canwest Global are devoting their time to stabilizing business and implementing a plan. Time and resources would be diverted if the time was not extended as requested and the preparation for and the holding of the annual meeting would likely impede the timely and desirable restructuring of the CMI Entities. Under section 106(6) of the CBCA, if directors of a corporation are not elected, the incumbent directors continue. Financial and other information will be available on the proposed Monitor's website. An extension is properly granted.

Other

[55] The applicants request authorization to commence Chapter 15 proceedings in the U.S. Continued timely supply of U.S. network and other programming is necessary to preserve going concern value. Commencement of Chapter 15 proceedings to have the CCAA proceedings recognized as "foreign main proceedings" is a prerequisite to the conversion of the CIT facility into the DIP facility. Authorization is granted.

[56] Canwest's various corporate and other entities share certain business services. They are seeking to continue to provide and receive inter-company services in the ordinary course during the CCAA proceedings. This is supported by the proposed Monitor and FTI will monitor and report to the Court on matters pertaining to the provision of inter-company services.

[57] Section 23 of the amended CCAA now addresses certain duties and functions of the Monitor including the provision of notice of an Initial Order although the Court may order otherwise. Here the financial threshold for notice to creditors has been increased from \$1000 to \$5000 so as to reduce the burden and cost of such a process. The proceedings will be widely published in the media and the Initial Order is to be posted on the Monitor's website. Other meritorious adjustments were also made to the notice provisions.

[58] This is a "pre-packaged" restructuring and as such, stakeholders have negotiated and agreed on the terms of the requested order. That said, not every stakeholder was before me. For this reason, interested parties are reminded that the order includes the usual come back provision. The return date of any motion to vary, rescind or affect the provisions relating to the CIT credit agreement or the CMI DIP must be no later than November 5, 2009.

[59] I have obviously not addressed every provision in the order but have attempted to address some key provisions. In support of the requested relief, the applicants filed a factum and the proposed Monitor filed a report. These were most helpful. A factum is required under Rule 38.09 of the Rules of Civil Procedure. Both a factum and a proposed Monitor's report should customarily be filed with a request for an Initial Order under the CCAA.

Conclusion

[60] Weak economic conditions and a high debt load do not a happy couple make but clearly many of the stakeholders have been working hard to produce as desirable an outcome as possible in the circumstances. Hopefully the cooperation will persist.

Pepall J.

Released: October 13, 2009

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

IN THE MATTER OF THE A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC. et al.

Court File No. CV-09-8247-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

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