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 OF ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC., GRANT FOREST PRODUCTS SALES INC. and GRANT U.S. HOLDINGS GP

SUMMARY OF POSITION OF WEST FACE CAPITAL INC.

(on behalf of West Face Long Term Opportunities Limited Partnership, West Face Long Term Opportunities (USA) Limited Partnership, West Face Long Term Opportunities Master Fund L.P. and West Face Long Term Opportunities Global Master L.P.)

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PART I – OVERVIEW

1. The following paragraphs contain a summary of the position of West Face Capital Inc., on behalf of the West Face Funds (hereinafter referred to as the "**Second Lien Lenders**"), which is set out in greater detail in the Second Lien Lenders' Factum filed in support of its initial motion to lift the stay and have a Bankruptcy Order issued, and the Submissions of the Second Lien Lenders filed in connection with the remaining issues in this matter.

2. It is now appropriate for the Court to make the requested Bankruptcy Order. This is exactly what the Supreme Court of Canada has indicated will foster the harmonious transition between reorganization, liquidation and distribution and it is an approach that would follow the binding authority of the Court of Appeal for Ontario in *Re Ivaco Inc.* The Bankruptcy Order should be made without any "strings" attached.

3. The various parties advocating for pension interests (the "**Pension Advocates**") have made the same arguments that have been attempted on numerous occasions to attempt to improve the position of pension beneficiaries in insolvency proceedings through various means – deemed trust claims, lien

claims, requests for special payments during insolvency proceedings and "equitable" re-ordering of priorities. These arguments have consistently been rejected by the Court. The only sustainable result is to follow what federal legislature, the Ontario Court of Appeal and the Supreme Court of Canada have clearly and consistently articulated - if there is to be a priority given to amounts related to a pension deficiency, that priority is going to have to come from federal legislation – it cannot come from provincial legislation. More importantly it should not form the basis of a discretionary order that would effectively re-order priorities in a manner that is clearly <u>not</u> contemplated by insolvency legislation.

4. There is no basis to refuse the issuance of the Bankruptcy Order. The case law is clear that this Court must exercise its discretion judicially – in this case that means issuing the Bankruptcy Order. The Pension Advocates are, understandably, urging the Court to refuse to issue the Bankruptcy Order requested by the Second Lien Lenders – because they concede, as they must, that a Bankruptcy Order eliminates the deemed trust claim.

5. In any event, the Court has already addressed the priorities issue in the various Approval and Vesting Orders, each of which provides for the determination of the priority of claims to the sales proceeds at a given point and time – "immediately prior to the sale" of the assets. The Pension Advocates need the Court to ignore (or distort) the terms of the Orders that have been made in the CCAA proceedings or to pretend that a deemed trust was created at a time before the wind ups were contemplated.

6. The Court should be mindful of one over-riding concern. The impact of any decision of the Court issuing the relief sought by the Pension Advocates will be visited upon every lender, borrower, employee and pension beneficiary connected with an employer that has a DB plan that may have to resort to insolvency proceedings in the future. If the election to liquidate under the CCAA means that there can be no transition to a BIA proceeding and that pension deficiency claims will have a priority status, the option to pursue going concern sales under the CCAA will be substantially weakened, if not devastated.

7. The Second Lien Lenders are asking for nothing more than the Court to follow well established precedent and issue the Bankruptcy Order. The BIA will provide for priorities to be determined as the federal legislature intended.

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PROCEEDINGS COMMENCED AT TORONTO

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