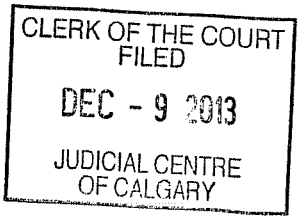
COURT FILE NUMBER	1301-14151
COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY

Clerk's stamp:



IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 1985, c C-36, AS AMENDED

AND IN THE MATTER OF THE BUSINESS CORPORATIONS ACT, RSA 2000, c B-9, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ALSTON ENERGY INC.

DOCUMENT	**BENCH BRIEF**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**DENTONS CANADA LLP** Bankers Court 15th Floor, 850 - 2nd Street S.W. Calgary, Alberta T2P 0R8 **Attention: David LeGeyt / Derek Pontin** Ph. (403) 268-3075/6301 Fax. (403) 268-3100 File No.: 549521-6

BENCH BRIEF OF THE APPLICANT, ALSTON ENERGY INC.

In support of an Application before the Honourable Justice Romaine, on December 9, 2013 at 10:00 a.m.

Prepared by:
DENTONS CANADA LLP
David LeGeyt / Derek Pontin

Solicitors for the Applicant

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I. INTRODUCTION

1. This Bench Brief is filed in support of the Application of Alston Energy Inc. ("**Alston**") for an Initial Order under the *Companies' Creditors Arrangement Act* ("**CCAA**"). The facts relevant to this application are provided in the Affidavit of Don Umbach (the "**Umbach Affidavit**").

II. ISSUES

2. The bulk of the relief being sought is commonly ordered under the Alberta Template form of CCAA Order (the "**Template**"). There is no doubt that the Court has the legislated and inherent jurisdiction to grant the powers and remedies sought under the Template.

3. Limited additions and deviations have been made from the Template as appropriate to address the particular business needs of Alston. This Brief addresses the statutory requirements under the CCAA and the material additions and deviations from the Template.

III. LAW AND ARGUMENT

1. Service

4. As Alston is seeking certain priming charges as commonly granted in the Template, Alston has served notice on all secured creditors who may be affected by those charges.

2. Statutory Requirements

5. Alston is the single Applicant in this application and is a debtor company within the meaning of the CCAA. Alston is insolvent, is unable to meet its obligations generally as they come due, and has an aggregate of more than $5 million in debt. In short, Alston is a company to which the CCAA applies.

- Umbach Affidavit, at paras 26, 42, 50, 62.

6. Alston has its head office in Calgary and carries on business solely in the Province of Alberta. All of Alston's oil and gas interests are located in Alberta.

- Umbach Affidavit, at para 8.

7. Alston proposes that Alvarez and Marsal Canada ULC ("**Alvarez**") be appointed as Monitor. Alvarez has consented and is competent to act as Monitor in the proposed CCAA proceedings.

- Umbach Affidavit, at para 66.

8. Alston has provided its financial statements, attached at Exhibits "J" and "K" to the Umbach Affidavit, and projected cash flows for the 13 week period ending March 7, 2014, attached as Exhibit "L".

9. Based on the foregoing it is respectfully submitted that Alston is a debtor company to which the CCAA applies and Alston has satisfied the statutory requirements of the CCAA to obtain the relief requested.

3. Critical Suppliers

10. Alston has identified a number of goods and services suppliers that are critical to its ongoing operations. Alston is concerned that, should these suppliers withdraw from providing services to Alston, this will have immediate and severe negative consequences on Alston's ability to continue in business. These suppliers include:

(a) Alston's joint venture partners, including operators of projects in which Alston has working interests;

(b) various of Alston's contractors and suppliers of materials; and

(c) Alston's processing, shipment and transportation service providers in respect of its oil and gas products.

- Umbach Affidavit, at para 66.

11. Alston believes it will be unable to duplicate many of its existing supplier arrangements as a result of the geographic location of its operations. The anticipated cost and burden of securing an alternate supplier in these circumstances would be prohibitive to the success of the proposed restructuring.

- Umbach Affidavit, at para 68.

12. If Alston is not permitted to pay pre-filing debt owing to suppliers identified as critical suppliers, it is anticipated these suppliers will cease to provide additional goods and services to Alston. This will have a serious detrimental effect on Alston's ability to continue to produce and market its oil and gas. Alston intends to pay pre-filing indebtedness to its critical suppliers and to continue to pay critical suppliers in the normal course, with reference to Alston's projected cash flows.

- Umbach Affidavit, at para 67.

13. This Honourable Court's jurisdiction to order payment of pre-filing indebtedness is inherent and is not ousted by s. 11.4 of the CCAA. Morawetz J. stated in *Re Cinram International Inc.*:

> There is ample authority supporting the Court's general jurisdiction to permit payment of pre-filing obligations to persons whose services are critical to the ongoing operations of the debtor companies. This jurisdiction of the Court is not ousted by Section 11.4 of the CCAA, which became effective as part of the 2009 amendments to the CCAA and codified the Court's practice of declaring a person to be a critical supplier and granting a charge on the debtor's property in favour of such critical supplier. As noted by Pepall J. in *Canwest Global Communications Corp., Re*, the recent amendments, including Section 11.4, do not detract from the inherently flexible nature of the CCAA or the Court's broad and inherent jurisdiction to make such orders that will facilitate the debtor's restructuring of its business as a going concern.

- *Re Cinram International Inc.*, 2012 ONSC 3767, 91 CBR (5th) 46 ("***Cinram***"), at para 67 – [**TAB 1**].

14. It is respectfully submitted that the priority charge of up to $200,000 is necessary, reasonable and appropriate in the circumstances to ensure that Alston's suppliers continue to work with Alston on a go-forward basis.

4. Sayer Engagement and Sealing Order

15. As described in more detail in the Umbach Affidavit, Alston has been working with Sayer Energy Advisors ("**Sayer**") further to a confidential engagement letter, dated July 24, 2013 (the "**Sayer Engagement Letter**"). Alston is seeking to have Sayer authorized to continue as Alston's financial advisor in these proceedings and to seal the Sayer Engagement Letter on the Court file.

- Umbach Affidavit, at para 58.

16. CCAA Courts have regularly authorized debtors to engage financial advisors as part of the restructuring, as occurred in the CCAA proceedings of Nortel, Trident, Calpine, and recently by this court in Lone Pine.

- Fifth Amended and Restated Initial Order, dated January 14, 2009 (*Nortel*), at para 4 – [**TAB 2**]
- CCAA Initial Order, dated September 8, 2009 (*Trident*), at para 4(c) – [**TAB 3**]
- Initial Order, dated December 20, 2005 (*Calpine*), at paras 16, 18(e) – [**TAB 4**]
- CCAA Initial Order, dated September 25, 2013 (*Lone Pine*), at paras 6, 33, 42 – [**TAB 5**]

17. In this case, Alston is expecting to implement a sales, investment and solicitation process and will require the continued assistance of Sayer in order to effectively do so. Sayer has been successful already in sourcing potential counterparties for a strategic alternative of Alston. These counterparties are prepared to continue discussions with Alston in the context of a CCAA proceeding.

- Umbach Affidavit, at para 59.

18. Sayer is already intimately familiar with the business and assets of Alston and will be compensated by a success fee. This will allow Sayer to provide continued benefit to Alston without impact on Alston's cash flows.

19. As the Sayer Engagement Letter contains confidential, competitive pricing information, it is respectfully requested that this document be sealed on the Court record. It is not uncommon for materials to be sealed in CCAA proceedings, to prevent the disclosure of commercially sensitive information.

- *Re Nortel Networks Corp.* (2009), 56 CBR (5^{th}) 74, at para 28. [**TAB 6**]

- *Re Nortel Networks Corp.* (2009), 56 CBR (5th) 224, at para 39. [**TAB 7**]
- *Re Intertan Canada Ltd.*, 2009 CarswellOnt 1489, at para 12. [**TAB 8**]
- *Re A&M Cookie Co. Canada* (2008), 49 CBR (5th) 188, at para 15. [**TAB 9**]

20. The test for sealing orders was outlined by the Supreme Court of Canada.

- *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at para 53. [**TAB 10**]

21. To summarize that test, a sealing order should only be granted when necessary to prevent a serious risk to an important commercial interest without reasonable alternative measures, and the salutary effects of the sealing order outweigh its deleterious effects.

22. It is submitted that the competitive pricing information of Sayer is an important commercial interest and, if released, could seriously prejudice Sayer's present and future business prospects. There is no reasonable alternative measure to a sealing order.

23. There is no material prejudice to Alston's stakeholders should the sealing order be granted. As Farley J. stated in *Re Stelco Inc.* there is only "a minimal effect negative to the concept of an open court", should the sealing order be granted in respect of the Sayer Engagement Letter.

- *Re Stelco Inc.* (2006), 17 CBR (5th) 76, at paras 1-5. [**TAB 11**]

24. It is respectfully submitted that the balance of factors is in support of sealing the confidential and sensitive pricing information contained in the Sayer Engagement Letter.

5. Rationale for the Relief Sought

25. As described in the Umbach Affidavit, Alston is seeking relief under the CCAA in order to maximize its ability to effectively restructure. Alston is currently insolvent, facing a liquidity shortage, and is in breach of certain of its financial obligations. It faces an immediate risk of a disruption of its operations by creditor enforcement.

26. Alston has attempted to restructure without the aid of a formal process and continues to work with parties identified through that process. Alston continues to work with Sayer and is confident that a viable restructuring can be accomplished under the proposed CCAA proceeding.

IV. CONCLUSION

27. It is respectfully submitted that it is appropriate in the circumstances that the proposed Initial Order be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, THIS 9th DAY OF DECEMBER, 2013.

Dentons Canada LLP

Per: David LeGeyt

TAB 1

2012 CarswellOnt 8413, 2012 ONSC 3767, 91 C.B.R. (5th) 46, 217 A.C.W.S. (3d) 11

C

2012 CarswellOnt 8413, 2012 ONSC 3767, 91 C.B.R. (5th) 46, 217 A.C.W.S. (3d) 11

Cinram International Inc., Re

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 Cinram International Inc., Cinram International Income Fund, CII Trust and The Companies Listed in Schedule "A" (Applicants)

Ontario Superior Court of Justice [Commercial List]

Morawetz J.

Heard: June 25, 2012
Judgment: June 26, 2012
Docket: CV-12-9767-00CL

Counsel: Robert J. Chadwick, Melaney Wagner, Caroline Descours for Applicants

Steven Golick for Warner Electra-Atlantic Corp.

Steven Weisz for Pre-Petition First Lien Agent, Pre-Petition Second Lien Agent and DIP Agent

Tracy Sandler for Twentieth Century Fox Film Corporation

David Byers for Proposed Monitor, FTI Consulting Inc.

Subject: Insolvency

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Initial application — Miscellaneous

C group of companies was replicator and distributor of CDs and DVDs with operational footprint across North America and Europe — C group experienced significant declines in revenue and EBITDA, and had insufficient funds to meet their immediate cash requirements as result of liquidity challenges — C group sought protection of Companies' Creditors Arrangement Act — C group brought application seeking initial order under Act, and relief including stay of proceedings against third party non-applicant; authorization to make pre-filing payments; and approval of

certain Court-ordered charges over their assets relating to their DIP Financing, administrative costs, indemnification of their trustees, directors and officers, Key Employee Retention Plan, and consent consideration — Application granted — Applicants met all qualifications established for relief under Act — Charges referenced in initial order were approved — Relief requested in initial order was extensive and went beyond what court usually considers on initial hearing; however, in circumstances, requested relief was appropriate — Applicants spent considerable time reviewing their alternatives and did so in consultative manner with their senior secured lenders — Senior secured lenders supported application, notwithstanding that it was clear that they would suffer significant shortfall on their positions.

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Initial application — Procedure — Miscellaneous

C group of companies was replicator and distributor of CDs and DVDs with operational footprint across North America and Europe — C group experienced significant declines in revenue and EBITDA, and had insufficient funds to meet their immediate cash requirements as result of liquidity challenges — C group brought application seeking initial order under Companies' Creditors Arrangement Act and other relief, including authorization for C International to act as foreign representative in within proceedings to seek recognition order under Chapter 15 of U.S. Bankruptcy Code on basis that Ontario, Canada was Centre of Main Interest (COMI) of applicants — Application granted on other grounds — It is function of receiving court, in this case, U.S. Bankruptcy Court for District of Delaware, to make determination on location of COMI and to determine whether present proceeding is foreign main proceeding for purposes of Chapter 15.

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Initial application — Grant of stay — Miscellaneous

Stay against third party non-applicant — C group of companies was replicator and distributor of CDs and DVDs with operational footprint across North America and Europe — C group experienced significant declines in revenue and EBITDA, and had insufficient funds to meet their immediate cash requirements as result of liquidity challenges — C group sought protection of Companies' Creditors Arrangement Act — C LP was not applicant in proceedings; however, C LP formed part of C group's income trust structure with C Fund, ultimate parent of C group — C group brought application seeking initial order under Act, including stay of proceedings against C LP — Application granted — Applicants met all qualifications established for relief under Act — Charges referenced in initial order were approved — Relief requested in initial order was extensive and went beyond what court usually considers on initial hearing; however, in circumstances, requested relief was appropriate.

Cases considered by *Morawetz J.*:

Brainhunter Inc., Re (2009), 2009 CarswellOnt 7627 (Ont. S.C.J. [Commercial List]) — referred to

Cadillac Fairview Inc., Re (1995), 1995 CarswellOnt 36, 30 C.B.R. (3d) 29 (Ont. Gen. Div. [Commercial List]) — referred to

Canwest Global Communications Corp., Re (2009), 2009 CarswellOnt 6184, 59 C.B.R. (5th) 72 (Ont. S.C.J. [Commercial List]) — considered

d. against non-applicant subsidiaries relating to any guarantee, contribution or indemnity obligation, liability or claim in respect of obligations and claims against the debtor companies.

Woodward's Ltd., Re (1993), 17 C.B.R. (3d) 236 (B.C. S.C.) at para. 31; Book of Authorities, Tab 10. *Lehndorff General Partner Ltd., Re*, *supra* at para. 21; Book of Authorities, Tab 6.

Canwest Global Communications Corp., Re, *supra* at paras. 28 and 29; Book of Authorities, Tab 1.

Sino-Forest Corp., Re, 2012 ONSC 2063 (Ont. S.C.J. [Commercial List]) at paras. 5, 18, and 31; Book of Authorities, Tab 11.

Re MAAX Corp, Initial Order granted June 12, 2008, Montreal 500-11-033561-081, (Que. Sup. Ct. [Commercial Division]) at para. 7; Book of Authorities, Tab 12.

65. The Applicants submit the balance of convenience favours extending the relief in the proposed Initial Order to Cinram LP and the Subsidiary Counterparties. The business operations of the Applicants, Cinram LP and the Subsidiary Counterparties are intertwined and the stay of proceedings is necessary to maintain stability and value for the benefit of the Applicants' stakeholders, as well as allow an orderly, going-concern sale of the Cinram Business as an important component of its reorganization process.

(3) Entitlement to Make Pre-Filing Payments

66. To ensure the continued operation of the CCAA Parties' business and maximization of value in the interests of Cinram's stakeholders, the Applicants seek authorization (but not a requirement) for the CCAA Parties to make certain pre-filing payments, including: (a) payments to employees in respect of wages, benefits, and related amounts; (b) payments to suppliers and service providers critical to the ongoing operation of the business; (c) payments and the application of credits in connection with certain existing customer programs; and (d) intercompany payments among the Applicants related to intercompany loans and shared services. Payments will be made with the consent of the Monitor and, in certain circumstances, with the consent of the Agent.

67. There is ample authority supporting the Court's general jurisdiction to permit payment of pre-filing obligations to persons whose services are critical to the ongoing operations of the debtor companies. This jurisdiction of the Court is not ousted by Section 11.4 of the CCAA, which became effective as part of the 2009 amendments to the CCAA and codified the Court's practice of declaring a person to be a critical supplier and granting a charge on the debtor's property in favour of such critical supplier. As noted by Pepall J. in *Canwest Global Communications Corp., Re*, the recent amendments, including Section 11.4, do not detract from the inherently flexible nature of the CCAA or the Court's broad and inherent jurisdiction to make such orders that will facilitate the debtor's restructuring of its business as a going concern.

Canwest Global Communications Corp., Re supra, at paras. 41 and 43; Book of Authorities, Tab 1.

68. There are many cases since the 2009 amendments where the Courts have authorized the applicants to pay certain pre-filing amounts where the applicants were not seeking a charge in respect of critical suppliers. In granting this authority, the Courts considered a number of factors, including:

a. whether the goods and services were integral to the business of the applicants;

b. the applicants' dependency on the uninterrupted supply of the goods or services;

c. the fact that no payments would be made without the consent of the Monitor;

d. the Monitor's support and willingness to work with the applicants to ensure that payments to suppliers in respect of pre-filing liabilities are minimized;

e. whether the applicants had sufficient inventory of the goods on hand to meet their needs; and

f. the effect on the debtors' ongoing operations and ability to restructure if they were unable to make pre-filing payments to their critical suppliers.

Canwest Global Communications Corp., Re supra, at para. 43; Book of Authorities, Tab 1.

Brainhunter Inc., Re, [2009] O.J. No. 5207 (Ont. S.C.J. [Commercial List]) at para. 21 [*Brainhunter*]; Book of Authorities, Tab 13.

Priszm Income Fund, Re (2011), 75 C.B.R. (5th) 213 (Ont. S.C.J.) at paras. 29-34; Book of Authorities, Tab 14.

69. The CCAA Parties rely on the efficient and expedited supply of products and services from their suppliers and service providers in order to ensure that their operations continue in an efficient manner so that they can satisfy customer requirements. The CCAA Parties operate in a highly competitive environment where the timely provision of their products and services is essential in order for the company to remain a successful player in the industry and to ensure the continuance of the Cinram Business. The CCAA Parties require flexibility to ensure adequate and timely supply of required products and to attempt to obtain and negotiate credit terms with its suppliers and service providers. In order to accomplish this, the CCAA Parties require the ability to pay certain pre-filing amounts and post-filing payables to those suppliers they consider essential to the Cinram Business, as approved by the Monitor. The Monitor, in determining whether to approve pre-filing payments as critical to the ongoing business operations, will consider various factors, including the above factors derived from the caselaw.

Bell Affidavit, paras. 226, 228, 230; Application Record, Tab 2.

70. In addition, the CCAA Parties' continued compliance with their existing customer programs, as described in the Bell Affidavit, including the payment of certain pre-filing amounts owing under certain customer programs and the

TAB 2

Court File No. 09-CL-7950

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE	)	WEDNESDAY, THE 14TH
	)	
MR. JUSTICE MORAWETZ	)	DAY OF JANUARY, 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 PLAN OF COMPROMISE OR ARRANGEMENT OF NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED, NORTEL NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS INTERNATIONAL CORPORATION AND NORTEL NETWORKS TECHNOLOGY CORPORATION (the "Applicants")

APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

FIFTH AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by the Applicants, 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 John Doolittle sworn January 14, 2009 (the "Doolittle Affidavit") and the Exhibits thereto, the affidavit of John Doolittle sworn June 22, 2009 (the "June Affidavit") and the Exhibits thereto, the report dated January 14, 2009 of Ernst & Young Inc. ("E&Y"), the proposed monitor, and on hearing the submissions of counsel for the Applicants, counsel for the boards of directors of Nortel Networks Corporation and Nortel Networks Limited, counsel for E&Y, counsel for Export Development Canada ("EDC"), Flextronics

Telecom Systems Ltd., no one else appearing on this Application and on reading the consent of E&Y 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 of the Applicants is a "debtor company" to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that each of the Applicants 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*, such 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 of the Applicants 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 of the Applicants shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. Each of the Applicants shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, brokers, accountants, legal counsel, financial advisors and such other persons (collectively "Assistants") currently retained or employed by such Applicant, with liberty to retain such further Assistants as such Applicant deems reasonably necessary or desirable for the Business or to carry out the terms of this Order or for the purposes of the Plan.

TAB 3

I hereby certify this to be a true copy of the original
Dated this 8 day of Sept. 09
for Clerk of the Court

Action No. 0901- 13483

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

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 TRIDENT EXPLORATION CORP. ULC, FORT ENERGY CORP. ULC, FENERGY CORP. ULC, 981384 ALBERTA LTD., 981405 ALBERTA LTD., 981422 ALBERTA LTD., TRIDENT RESOURCES CORP., TRIDENT CBM CORP., AURORA ENERGY LLC., NEXGEN ENERGY CANADA, INC. AND TRIDENT USA CORP.

BEFORE THE HONOURABLE)
)
JUSTICE G. C. HAWCO)
)
IN CHAMBERS)
)
)

At the Calgary Court Center in the City of Calgary, in the Province of Alberta on the 8th day of September, 2009

CCAA INITIAL ORDER

UPON the application of Trident Exploration Corp. ULC, Fort Energy Corp. ULC, Fenergy Corp. ULC, 981384 Alberta Ltd., 981405 Alberta Ltd., 981422 Alberta Ltd, Trident Resources Corp., Trident CBM Corp., Aurora Energy LLC. NexGen Energy Canada, Inc. and Trident USA Corp. (collectively, the "Applicants" or "Trident"); **AND UPON** having read the Petition, and the Affidavit of Todd Dillabough (the "Dillabough Affidavit"), filed; **AND UPON** reading the consent of FTI Consulting Canada ULC to act as Monitor; AND UPON hearing counsel for the Applicants; **IT IS HEREBY ORDERED AND DECLARED THAT:**

SERVICE

1. The time for service of the notice of application for this order is hereby abridged and this application is properly returnable today.

APPLICATION

2. The Applicants are affiliated debtor companies within the meaning of the CCAA and the CCAA applies to each of the Applicants.

PLAN OF ARRANGEMENT

3. Trident 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, among others, Trident and one or more classes of its secured and/or unsecured creditors as it deems appropriate.

POSSESSION OF PROPERTY AND OPERATIONS

4. Trident shall:

(a) 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");

(b) subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property; and

(c) be authorized and empowered to continue to retain and employ, whether in Canada or elsewhere, the employees, consultants, agents, experts, accountants, financial advisors (including, without limitation, Rothschild Inc. in accordance with the terms of the Rothschild Engagement as described in the Dillabough Affidavit (the "Financial Advisor")), 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. To the extent permitted by law, Trident shall be entitled but not required to pay the following expenses, incurred prior to or after this Order:

(a) all outstanding and future fees, wages, salaries, employee and pension benefits, vacation pay, bonuses and expenses, and similar amounts owed to independent contractors and the officers and directors of Trident, 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;

TAB 4

Action No. 0501-17864

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

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

AND IN THE MATTER OF

CALPINE CANADA ENERGY LIMITED, CALPINE CANADA POWER LTD., CALPINE CANADA ENERGY FINANCE ULC, CALPINE ENERGY SERVICES CANADA LTD., CALPINE CANADA RESOURCES COMPANY, CALPINE CANADA POWER SERVICES LTD., CALPINE CANADA ENERGY FINANCE II ULC, CALPINE NATURAL GAS SERVICES LIMITED, AND 3094479 NOVA SCOTIA COMPANY

APPLICANTS

BEFORE THE HONOURABLE	)	AT THE COURTHOUSE, IN THE CITY
MADAM JUSTICE B.E.C. ROMAINE	)	OF CALGARY, IN THE PROVINCE OF
IN CHAMBERS	)	ALBERTA, ON TUESDAY, THE 20TH
	)	DAY OF DECEMBER, 2005

I hereby certify this to be a true copy of
the original Initial Order
dated this 21 day of Dec. 2005
K. Rockett
for Clerk of the Court

INITIAL ORDER

UPON the ex-parte application of Calpine Canada Energy Limited, Calpine Canada Power Ltd., Calpine Canada Energy Finance ULC, Calpine Energy Services Canada Ltd., Calpine Canada Resources Company, Calpine Canada Power Services Ltd., Calpine Canada Energy Finance II ULC, Calpine Natural Gas Services Limited, and 3094479 Nova Scotia Company, (the "Applicants"); AND UPON having read (i) the Petition, (ii) the Affidavit of Toby Austin sworn December 20, 2005, filed, and the exhibits thereto, including the projected cash flow statement and the financial statements for the past year of the Applicants (the "Austin Affidavit"), and (iii) the consent of Ernst & Young Inc. (the "Monitor") to act as monitor as contemplated hereunder, all filed; on hearing the submissions of counsel for the Applicants and CCAA Parties, the Monitor, on being advised that none of the other persons who might be

paragraphs 4 through 8 if it occurred after the making of this Order) or the Property, will be deemed not to have been taken or given as the case may be.

Possession of Property and Carrying on Business

14. THIS COURT ORDERS that, subject to the terms of this Order, the Applicants and the CCAA Parties shall remain in possession of the Property until further order in these proceedings.

15. THIS COURT ORDERS that the Applicants and the CCAA Parties shall continue to carry on business, including the business of any person, firm, joint venture or corporation owned by an Applicant or a CCAA Party, in a manner consistent with the commercially reasonable preservation of the Property and their collective businesses, except as otherwise specifically authorized or directed by this Order or any further order in these proceedings.

16. THIS COURT ORDERS that, without limitation to paragraph 15 hereof, the Applicants and the CCAA Parties are authorized to continue to retain or employ any employees, agents, servants, solicitors, advisers and consultants who are retained or employed as of the date of this Order, with liberty to retain or employ such further employees, agents, servants, solicitors, auditors, advisers and consultants as the Applicants and the CCAA Parties, as applicable, deem necessary or desirable to carry on their respective businesses, to carry out the terms of this Order or for the purposes of the Plan.

17. THIS COURT ORDERS that the Applicants and the CCAA Parties, as applicable, shall remit, in accordance with legal requirements, or pay when due:

(a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any Province or Territory thereof or any foreign jurisdiction which are required to be deducted from employees' wages including, without limitation, amounts in respect of employment insurance, Canada Pension Plan and income taxes;

(b) amounts accruing and payable by an Applicant or a CCAA Party in respect of employment insurance, Canada Pension Plan, workers compensation, employer health taxes and similar obligations of any jurisdiction with respect to employees; and

(c) all goods and services taxes and all provincial or other applicable sales taxes payable or collectable by an Applicant or a CCAA Party in connection with the sale of goods and services by such Applicant or such CCAA Party.

18. THIS COURT ORDERS that, from and after the date of this Order, each of the Applicants and the CCAA Parties, as applicable, shall be entitled to pay all reasonable costs and expenses incurred by it in carrying on its business prior to and after the date of this Order and in carrying out the provisions of this Order, in each case when due and payable, which costs and expenses may include, without limitation:

(a) the cost of goods and services actually supplied to any of the Applicants or the CCAA Parties;

(b) all outstanding and future wages, salaries, commissions, vacation pay, bonuses, pension and other benefits, reimbursement of expenses (including, without limitation, amounts charged by employees to credit cards) and other amounts accruing due to current, former or future employees, officers or directors or individuals that provide or have provided services to an Applicant or a CCAA Party as individual contractors, and all outstanding and future severance pay, termination pay and other like amounts due to current, former or future employees if terminated in the ordinary course as the relevant Applicant or CCAA Party may in its discretion determine;

(c) all outstanding and future contributions to or payments in respect of any pension or benefit plans sponsored by any of the Applicants or the CCAA Parties;

(d) all outstanding and future fees and disbursements of the Monitor, the Monitor's and the Applicants' and the CCAA Parties' respective legal counsel;

(e) all outstanding and future fees and disbursements of any financial and other advisers retained by the Applicants or the CCAA Parties in respect of these proceedings;

(f) all outstanding and future fees and disbursements of the Applicants' or the CCAA Parties' respective directors;

TAB 5

CLERK'S STAMP

CLERK OF THE COURT
FILED
SEP 25 2013
JUDICIAL CENTRE
OF CALGARY

COURT FILE NUMBER	1301-11352.
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE ***COMPANIES' CREDITORS ARRANGEMENT ACT***, R.S.C. 1985, c. C-36, as amended IN THE MATTER OF THE ***BUSINESS CORPORATIONS ACT***, R.S.A. 2000, c. B-9, as amended AND IN THE MATTER OF LONE PINE RESOURCES CANADA LTD., LONE PINE RESOURCES (HOLDINGS) INC., LONE PINE RESOURCES INC., WISER OIL DELAWARE, LLC AND WISER DELAWARE LLC.
DOCUMENT	**CCAA INITIAL ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**BENNETT JONES LLP** Barristers and Solicitors 4500 Bankers Hall East 855 – 2nd Street SW Calgary, Alberta T2P 4K7 Attention: Chris Simard Telephone No.: (403) 298-4485 Fax No.: 403-265-7219 Client File No.: 68261-10
DATE ON WHICH ORDER WAS PRONOUNCED:	**September 25, 2013**
LOCATION WHERE ORDER WAS PRONOUNCED:	**Calgary**
NAME OF JUSTICE WHO MADE THIS ORDER:	**The Honourable Mme. Justice K.M. Eidsvik**

I hereby certify this to be a true copy of
the original Order
dated this 25th day of Sept 2013
for Clerk of the Court

filing amounts from the date of this Initial Order to the date of implementation of a CCAA Plan.

6. The Engagement Letter entered into between RBC Dominion Securities Inc, a member company of RBC Capital Markets (the "Financial Advisor") and Lone Pine Resources Canada Inc. ("LPR Canada") and Lone Pine Resources Inc. ("LPRI") dated July 3, 2013 (the "RBC Engagement Letter") is hereby approved and LPR Canada and LPRI are authorized and directed to continue the engagement of the Financial Advisor as an Assistant thereunder and to comply with all of their obligations thereunder.

7. Except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after 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;

   (b) payment for goods or services actually supplied to the Applicants following the date of this Order; and

   (c) payment for goods or services actually supplied to the Applicants by those parties deemed by the Applicants (in consultation with the Monitor) to be Critical Suppliers whether supplied prior to or following the date of this Order. The Critical Suppliers are hereby granted a charge (the "Critical Suppliers' Charge") on the Property to secure all obligations owed to them as Critical Suppliers by the Applicants relating to the provision of goods and services on and after the date of this Order, to a maximum amount of $1.5 million. The Critical Suppliers' Charge shall have the priority set out in paragraphs 42 and 44 hereof.

8. The Applicants shall remit, in accordance with legal requirements, or pay:

"Administration Charge") on the Property, which charge shall not exceed an aggregate amount of $1,000,000, as security for their professional fees and disbursements incurred at the normal 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 42 and 44 hereof.

33. The Financial Advisor and counsel to the Initial Consenting Noteholders shall be entitled to the benefits of and are hereby granted a charge (the "Subordinated Advisor Charge") on the Property, as security for their respective professional fees and disbursements incurred with respect of these proceedings (and, in the case of the Financial Advisor, in accordance with the RBC Engagement Letter). The Subordinated Advisor Charge shall have the priority set out in paragraphs 42 and 44 hereof. The Subordinated Advisor Charge shall also secure the amounts payable under the Backstop Agreement, as defined in the Granger Affidavit.

DIP FINANCING

34. The Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from J.P. Morgan Securities L.L.C. on its own behalf and on behalf of a group of lenders (collectively the "DIP Lender") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures (with any capital expenditure being in accordance with the Applicants' cash flow statements set out from time to time), provided that borrowings under such credit facility shall not exceed $10,000,000.00 unless permitted by further order of this Court.

35. Such credit facility shall be on the terms and subject to the conditions set forth in the Term Sheet agreed between the Applicants and the DIP Lender dated as of September 20, 2013 (the "DIP Term Sheet"), as attached to the Granger Affidavit.

36. The Applicants are hereby authorized and empowered 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 DIP Term Sheet 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

(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 Applicants or the Property.

39. The DIP Lender 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.

KERP AND THE KERP CHARGE

40. The Key Employee Retention Plan described in the Granger Affidavit including Exhibit "24" and the Confidential KERP Summary attached as Exhibit "25" to the Granger Affidavit (the "KERP") is hereby authorized and approved and the Applicants are authorized and directed to make the payments contemplated in the KERP.

41. The beneficiaries of the KERP are hereby granted a charge (the "KERP Charge") on the Property to secure all obligations under the KERP. The KERP Charge shall have the priority set out in paragraphs 42 and 44 hereof.

VALIDITY AND PRIORITY OF CHARGES

42. The priorities of the Directors' Charge, the Administration Charge, the DIP Lender's Charge, the KERP Charge and the Subordinated Advisor Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of $1,000,000);

Second – DIP Lender's Charge;

Third – Directors' Charge (to the maximum amount of $1,000,000); and

The following charges shall be subordinated to the security granted to the Syndicate (as defined in the Granger Affidavit):

Fourth – KERP Charge (to the maximum amount of $2,499,272);

Fifth – Subordinated Advisor Charge (to the maximum of $3,800,000 with respect to the fees and disbursements of the Financial Advisor pursuant to the RBC Engagement Letter); and

Sixth – Critical Suppliers' Charge, to a maximum of $1.5 million.

43. The filing, registration or perfection of the Directors' Charge, the Administration Charge the DIP Lender's Charge, the KERP Charge, the Subordinated Advisor Charge or the Critical Suppliers' Charge (collectively, the "Charges") shall not be required, and 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.

44. (i) Each of the Directors' Charge, the Administration Charge, the DIP Lender's Charge (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, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, and (ii) the KERP Charge, the Subordinated Advisor Charge and the Critical Suppliers' Charge shall constitute a charge on the Property and shall rank in priority to all Encumbrances in favour of any Person, other than the Administration Charge, the DIP Lenders' Charge , the Directors' Charge and the security granted to the Syndicate.

45. 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, the Charges, unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Charges, or further order of this Court.

46. The Charges 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 in this Order;

TAB 6

2009 CarswellOnt 4839, 56 C.B.R. (5th) 74

C

2009 CarswellOnt 4839, 56 C.B.R. (5th) 74

Nortel Networks Corp., Re

In the matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as Amended (Applicants)

And In the Matter of a Plan of Compromise or Arrangement of Nortel Networks Corporation, Nortel Networks Limited, Nortel Networks Global Corporation, Nortel Networks International Corporation and Nortel Networks Technology Corporation

Ontario Superior Court of Justice [Commercial List]

Morawetz J.

Heard: August 4, 2009
Judgment: August 4, 2009
Docket: 09-CL-7950

Counsel: Mr. D. Tay, Mr. M. Kotrly for Nortel Networks Corporation et al.

Mr. J.A. Carfagnini, Mr. C.G. Armstrong for Monitor, Ernst and Young Incorporated

Mr. J. Bunting for Nortel Networks UK Limited (In Administration)

Mr. S.R. Orzy for Noteholders

Mr. S. Kukulowiz for Canadian Lawyers, for Unsecured Creditors' Committee

Ms T. Lie for Superintendent of Financial Services of Ontario

Mr. C. Thorburn for Canadian Lawyers, for Matlin Patterson

Mr. K. McElcheran for Avaya Inc.

Ms F. Baloo for CAW Canada Legal Department

Mr. D. Yiokaris for Former Employees

Ms L. Pillon for Enterprise Network Holdings Bv

Subject: Insolvency

Bankruptcy and insolvency --- Proposal — Companies' Creditors Arrangement Act — Miscellaneous issues

Telecommunications company entered protection under Companies' Creditors Arrangement Act — Telecommunications company wished to execute sale agreement for certain assets and undertake auction regarding other assets — Telecommunications company brought motion for approval of process and sale, and to seal certain records, with parallel motion brought in United States — Motion granted — Court had jurisdiction to authorize sale agreement — Approving sale was appropriate — Fact that plan was absent did not prevent sale — Sale was subject to further court approval — Informal objections in United States had been resolved.

Cases considered by *Morawetz J.*:

Nortel Networks Corp., Re (2009), 2009 CarswellOnt 4467 (Ont. S.C.J. [Commercial List]) — referred to

Statutes considered:

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Generally — referred to

MOTION by debtor for approval of sale of business under protection of *Companies' Creditors Arrangement Act*.

***Morawetz J.*:**

1 This Hearing was conducted by way of video conference with a parallel motion being heard in the United States Bankruptcy Court with His Honor Judge Gross presiding over the Hearing in the U.S. Court.

2 This Joint Hearing was conducted in accordance with the provisions of the Cross-Border Protocol which has previously been approved by both the U.S. Court and by this court.

3 Nortel brings this motion for the approval of the Bidding Procedures relating to the Enterprise Solutions Business. It also seeks approval of the Sale Agreement among Nortel Networks Corporation ("NNC"), Nortel Networks Limited ("NNL") and Nortel Networks Inc. ("NNI") and their affiliates as "Sellers" and Avaya Inc. as "Purchaser."

4 In addition, the Applicants also request the approval of a Side Agreement among the Sellers and the court appointed administrators, which Side Agreement is attached to the Eighteenth Report filed by Ernst and Young Inc., the Monitor.

5 Finally, the Applicants seek a Sealing Order to seal the Confidential Appendix to the Eighteenth Report pending further Order of this court.

6 The Bidding Procedures and Sale Agreement are described in the affidavit of Mr. George Riedel, Chief Strategy Officer of Nortel, sworn July 30, 2009 and they are also described in the Eighteenth Report of the Monitor.

7 Nine formal and informal objections were filed in the U.S. Proceedings. These objections have been resolved and in some cases minor modifications have been made to the Bidding Procedures.

8 I am satisfied that no further comment is required in this Endorsement with respect to the objections filed in the U.S. Proceedings.

9 The transaction described in the Sale Agreement is very complex. The Monitor has made specific reference to the transaction. The Enterprise Solutions business involved addresses the communications needs of large and small businesses across various industries by providing products and services that integrate voice, E-mail, conferencing, video and instant messaging. Competitors to the business include Cisco, Avaya, Alcatel-Lucent, Siemens Enterprise Communications, NEC and others.

10 This business operates globally in approximately 121 countries. The Monitor has indicated that the business has an installed base with over 75 million voice lines and 75 million data ports. The fiscal revenues in 2008 were $2.8 billion representing approximately 27% of Nortel's 2008 revenues.

11 With respect to the Canadian aspect, the fiscal 2008 revenues in Canada were $183 million representing approximately 26% of Nortel's 2008 Canadian revenue.

12 The base purchase price as set out in the Stalking Horse Agreement is $475 million. It also provides for a Break-Up-Fee of $14.25 million and an Expense Reimbursement cap of $9.5 million.

13 The materials indicate that Bids are to be received by September 4, 2009 with the Sellers to conduct an auction on September 11, 2009 followed by a motion to approve any transaction both before this court and the U.S. Court.

14 With respect to the evidence in support of the transaction, I refer to the conclusions of Mr. Riedel at paragraphs 38 to 40 of his affidavit where he states as follows:

> 38. "I believe that the Sale Agreement is the product of a vigorous, comprehensive and fair process. The proposed Auction Sale Process for the Enterprise Solutions Business, based on the Sale Agreement as a stalking horse bid, is the best way to preserve the business as a going concern and to maximize value and preserve as many jobs as

possible for the Applicants' employees. I further believe that exploration of the sale of the other businesses as a going concern through this process will provide the greatest chances for further value and maximization and job preservation."

39. "Based on the Applicants' previous consideration of potential transactions involving the Enterprise Solutions Business and after re-canvassing the marketplace since the commencement of these proceedings, I believe that the proposed transaction with the Purchaser represents the highest and best proposal available for the Enterprise Solutions Business, subject to the receipt of a better bid through the auction process contemplated in this motion."

40. "The Sale Agreement also requires an expeditious sale process and provides the Purchaser the right to terminate the Sale Agreement if certain milestones in the sale process are not timely met. For these reasons, the expeditious sale of the Assets is critical to the maximization of the value of the Applicants' assets and, in turn, to a recovery for the Applicants' estates."

15 The Monitor has similarly provided extensive background to the transaction and reports its analysis and recommendations at paragraph 92 of the Eighteenth Report where it states as follows:

92. "The Monitor has reviewed Nortel's efforts to divest its Enterprise Solutions Business and is of the view that the Company is acting in good faith to maximize the value. The Monitor recommends approval of the Avaya Agreement as a "stalking horse" bid, approval of the Bidding Procedures as described and approval of the Side Agreement. In so doing, the Monitor considers the potential payment of the Break Fee and Expense Reimbursement to Avaya as reasonable in the circumstances."

16 The Bidding Procedures, as proposed, are not unlike the Bidding Procedures which have previously been approved in the sale of the CMDA Business and the LTE Business. The Bidding Procedures in respect of these businesses were approved by this court on June 29, 2009 with Reasons released on July 23, 2009 [2009 CarswellOnt 4467 (Ont. S.C.J. [Commercial List])].

17 Likewise, as with the previous transaction, I am satisfied that this court has the jurisdiction to authorize the Sale Agreement. (See Reasons from July 23, 2009.)

18 Turning now to a consideration of whether it is appropriate in this case to approve the sale process.

19 The factors to consider on a sales process under the CCAA, in the absence of a plan, has been previously considered in these proceedings, and again, I refer to the Nortel Reasons of July 23, 2009 at paragraph 49. Those factors are as follows:

1) Is a sales transaction warranted at this time?

2) Will the sale benefit the whole "economic community?"

3) Do any of the debtor's creditors have a bona fide reason to object to a sale of the business?

4) Is there a better viable alternative?

20 In this case the details of the transaction and the sales process, as described in Mr. Riedel's affidavit and in the Monitor's Eighteenth Report, establish, in my view, that it is appropriate to approve the Sale Agreement. The factors, as set out and previously accepted in the Reasons of July 23, are equally applicable in this transaction.

21 I also note that there were no objections with respect to the sale process.

22 I also note that the sale is subject to further court approval, and, again, the court will expect that the Applicants will make reference to the *Soundair* principles at such time.

23 As it was previously noted in the Reasons of July 23, the Applicants are part of a complicated corporate group, they carry on an active international business, and I accept that an important fact to consider in the CCAA process is whether the case can be made to continue the business as a going concern.

24 I am satisfied, having considered the factors referenced above, as well as the facts summarized in the affidavit of Mr. Riedel, and in the Eighteenth Report, that the Applicants have met the test and I am therefore satisfied that this motion should be granted.

25 Accordingly I approve the Bidding Procedures as described in Mr. Riedel's affidavit and in the Eighteenth Report which procedures have also been approved this morning by Judge Gross in the U.S. Court.

26 I am also satisfied that the Sale Agreement and Side Agreement should be approved.

27 Further, that the Sale Agreement be accepted for purposes of conducting the Stalking Horse Bid in accordance with the Bidding Procedures including, without limitation the Break Up Fee, and the Expense Reimbursement.

28 Further, I have also been satisfied that Appendix B to the Eighteenth Report contains information which is commercially sensitive, the dissemination of which could be detrimental to the stakeholders, and accordingly, I Order that this document be sealed pending further Order of the court.

29 In approving the Bidding Procedures, I have also taken into account that the auction will be conducted prior to the Sale Approval motion. This process is consistent with the practice of this court.

30 This concludes my Endorsement in respect of the Bidding Procedures and the Sale Agreement.

Motion granted.

END OF DOCUMENT

TAB 7

2009 CarswellOnt 4838, 56 C.B.R. (5th) 224

C

2009 CarswellOnt 4838, 56 C.B.R. (5th) 224

Nortel Networks Corp., Re

In the matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as Amended (Applicants)

And In the Matter of a Plan of Compromise or Arrangement of Nortel Networks Corporation, Nortel Networks Limited, Nortel Networks Global Corporation, Nortel Networks International Corporation and Nortel Networks Technology Corporation

Ontario Superior Court of Justice [Commercial List]

Morawetz J.

Heard: July 28, 2009
Judgment: July 28, 2009
Docket: Toronto 09-CL-7950

Counsel: Mr. D. Tay, Ms J. Stam for Nortel Networks Corporation et al.

Mr. J.A. Carfagnini, Mr. C.G. Armstrong for Monitor, Ernst and Young Incorporated

Mr. Arthur O. Jacques for Felske, Sylvain

S.R. Orzy for Noteholders

Ms S. Grundy, Mr. J. Galway for Telefonaktiebolaget LM Ericsson

Ms L. Williams, Ms K. Mahar for Flextronics

Mr. M. Zigler for Former Employees

Mr. L. Barnes for Board of the Directors of Nortel Networks Corporation, Nortel Networks Limited

Mr. A. MacFarlane for Official Committee of Unsecured Creditors

Ms T. Lie for Superintendent of Financial Services of Ontario

Mr. B. Wadsworth for CAW Canada

Mr. S. Bomhof for Nokia Siemens

Mr. R.B. Schwill for Nortel Networks UK Limited

Subject: Insolvency; Estates and Trusts; Civil Practice and Procedure

Bankruptcy and insolvency --- Administration of estate — Sale of assets — Sale by tender — Miscellaneous

Telecommunication company entered protection under Companies' Creditors Arrangement Act — Court order was granted approving bidding procedures for sale of certain of Code Division Multiple Access business and Long-Term Evolution Access — Three qualified bids were received by bid deadline — Highest offer was selected as starting bid — Auction was held — Bid submitted by buyer was determined to be successful bid — Company brought motion for order approving and authorizing execution of asset sale agreement — Motion granted — Sale process was conducted in accordance with bidding procedures and with principles set out in jurisprudence — Consideration provided by buyer constituted reasonably equivalent value and fair consideration for assets.

Judges and courts --- Jurisdiction — Jurisdiction of court over own process — Sealing files

Telecommunication company entered protection under Companies' Creditors Arrangement Act — Company brought motion for order approving and authorizing execution of asset sale agreement and order sealing confidential appendixes to seventh report — Motion granted — Sealing order granted — Appendixes contained sensitive commercial information release of which could have been prejudicial to stakeholders.

Cases considered by *Morawetz J.*:

Crown Trust Co. v. Rosenberg (1986), 60 O.R. (2d) 87, 1986 CarswellOnt 235, 22 C.P.C. (2d) 131, 39 D.L.R. (4th) 526, 67 C.B.R. (N.S.) 320 (note) (Ont. H.C.) — followed

Royal Bank v. Soundair Corp. (1991), 7 C.B.R. (3d) 1, 83 D.L.R. (4th) 76, 46 O.A.C. 321, 4 O.R. (3d) 1, 1991 CarswellOnt 205 (Ont. C.A.) — followed

Sierra Club of Canada v. Canada (Minister of Finance) (2002), 287 N.R. 203, (sub nom. *Atomic Energy of Canada Ltd. v. Sierra Club of Canada)* 18 C.P.R. (4th) 1, 44 C.E.L.R. (N.S.) 161, (sub nom. *Atomic Energy of Canada Ltd. v. Sierra Club of Canada)* 211 D.L.R. (4th) 193, 223 F.T.R. 137 (note), 20 C.P.C. (5th) 1, 40 Admin. L.R. (3d) 1, 2002 SCC 41, 2002 CarswellNat 822, 2002 CarswellNat 823, (sub nom. *Atomic Energy of Canada Ltd. v. Sierra Club of Canada)* 93 C.R.R. (2d) 219, [2002] 2 S.C.R. 522 (S.C.C.) — considered

Tiger Brand Knitting Co., Re (2005), 2005 CarswellOnt 1240, 9 C.B.R. (5th) 315 (Ont. S.C.J.) — considered

Statutes considered:

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Generally — referred to

MOTION by telecommunications company for approval of asset sale agreement, vesting order, approval of intellectual property licence agreement, order declaring that ancillary agreements were binding and sealing order.

Morawetz J.:

1 Nortel Networks Corporation ("NNC), Nortel Networks Limited (NNL), Nortel Networks Technology Corporation, Nortel Networks International Corporation and Nortel Networks Global Corporation, (collectively the "Applicants"), bring this motion for an Order approving and authorizing the execution of the Asset Sale Agreement dated as of July 24, 2009, ("the Sale Agreement"), among Telefonaktiebolaget LM Ericsson (PUBL) (the "Purchaser"), as buyer, and NNL, NNC, Nortel Networks, Inc.) ("NNI) or ("Ericsson"), and certain of their affiliates as vendors, (collectively, the "Sellers"), in the form attached and as an Appendix to the Seventeenth Report of Ernst and Young Inc. in its capacity as Monitor in the CCAA proceedings.

2 The Applicants also request, among other things, a Vesting Order, an Order approving and authorizing the execution and compliance with the Intellectual Property Licence Agreement substantially in the form attached to the confidential appendix to the Seventeenth Report and the Trademark Licence Agreements substantially in the form attached to the appendix and an Order declaring that the Ancillary Agreements, (as defined in the Sale Agreement), including the IP Licences, shall be binding on the Applicants that are party thereto, and shall not be repudiated disclaimed or otherwise compromised in these proceedings, and that the intellectual property subject to the IP Licences shall not be sold, transferred, conveyed or assigned by any of the Applicants unless the buyer or assignee of such intellectual property assumes all of the obligations of NNL under the IP Licences and executes an assumption agreement in favour of the Purchaser in a form satisfactory to the Purchaser.

3 Finally, the Applicants seek an order sealing the Confidential Appendixes to the Seventeenth Report pending further order of this court.

4 This joint hearing is being conducted by way of video conference. His Honor Judge Gross is presiding over the hearing in the U.S. Court. This joint hearing is being conducted in accordance with the provisions of the Cross-Border Protocol, which has previously been approved by both the U.S. Court and this court.

5 The Applicants have filed two affidavits in support of the motion. The first is that of Mr. George Riedel, sworn July 25, 2009. Mr. Riedel is the Chief Strategy Officer of NNC and NNL. Mr. Riedel also swore an affidavit on June 23, 2009 in support of the motion to approve the Bidding Procedures. The second affidavit is that of Mr. Michael

Kotrly which relates to an issue involving Flextronics which was resolved prior to this hearing.

6 The Monitor has also filed its Seventeenth Report with respect to this motion. The Monitor recommends that the requested relief be granted.

7 The Applicants' position is also enthusiastically supported by the Unsecured Creditors' Committee in the Chapter 11 proceedings and the Noteholders.

8 No party is opposed to the requested relief.

9 On June 29, 2009 this court granted an Order approving the Bidding Procedures for a sale process for certain of Nortel's Code Division Multiple Access ("CMDA") business, and Long Term Evolution ("LTE") Access. The procedures were attached to the Order.

10 The Court also approved the Stalking Horse Agreement dated as of June 19, 2009 among Nokia Siemens Networks B.V. ("Nokia Siemens") and the Sellers (also referred to as the "Nokia Agreement") and accepted agreement for the purposes of conducting the Stalking Horse bidding process in accordance with the Bidding Procedures, including the Break-Up-Fee and Expense Reimbursement as both terms are defined in the Stalking Horse Agreement.

11 The order of this court was granted immediately after His Honor, Judge Gross, of the United States Bankruptcy Court for the District of Delaware, approved the Bidding Procedures in the Chapter 11 proceedings.

12 The Bidding Procedures contemplated a bid deadline of 4 p.m. on July 21, 2009. This gave interested parties 22 days to conduct due diligence and submit a bid.

13 By the Bid Deadline, three bids were acknowledged as "Qualified Bids" as contemplated by the Bidding Procedures. Qualified Bids were received from MPAM Wireless Inc., otherwise known as Matlin Patterson and Ericsson.

14 The Monitor also reports that on July 15, 2009 one additional party submitted a non-binding letter of intent and requested that it be deemed a Qualified Bidder. The Monitor further reports that upon receiving this request, the Applicants' provided such party with a form of Non-Disclosure Agreement substantially in the form as that previously executed by Nokia Siemens. This party declined to execute the Non Disclosure Agreement and was not deemed a Qualified Bidder. The Monitor further reports that it, the UCC and the Bondholder Group were all consulted in connection with the request of such party to be considered a Qualified Bidder.

15 The Monitor also reports that it is of the view that any party that wanted to bid for the business and complied with the Bidding Procedures was permitted to do so.

16 In the period up to July 21, 2009, the Monitor reports that it was kept apprised of all activity conducted between Nortel and the potential buyers. In addition, the Monitor participated in conference calls and meetings with the po-

tential buyers, both with Nortel and independently. The Monitor further reports that it conducted its own independent review and analysis of materials submitted by the potential buyers.

17 On July 22, 2009, in accordance with the Bidding Procedures, copies of both the MPAM bid and the Ericsson bid were provided to Nokia Siemens, MPAM and Ericsson were both notified that three Qualified Bids had been received.

18 After consultation with the Monitor and representatives of the UCC and the Bondholder Group, the Sellers determined that the highest offer amongst the three bids was submitted by Ericsson and accordingly on July 22, 2009, the three Qualified Bidders were informed that the Ericsson bid had been selected as the starting bid pursuant to the Bidding Procedures. Copies of the Ericsson bid were distributed to Nokia Siemens and MPAM.

19 The Monitor reports that the auction was held in New York on July 24, 2009.

20 Pursuant to the Bidding Procedures the auction went through several rounds of bidding. The Sellers finally determined that the Ericsson bid submitted in the sixth round should be declared the Successful Bid and that the Nokia Siemens bid submitted in the fifth round should be an Alternate Bid. The Monitor reports that these determinations were made in accordance with consultations with the Monitor and representatives of UCC and the Bondholder group held during the seventh round adjournment.

21 The Monitor reports that the terms and conditions of the Successful Bid are substantially the same as the Nokia Agreement described in the Fourteenth Report with the significant differences being as follows:

> 1) The purchase price has been increased from U.S. $650 million to U.S. $1.13 billion plus the obligation of the Purchaser to pay, perform and discharge the assumed liabilities. The Purchaser made a good faith deposit of U.S. $36.5 million.
>
> 2) The Termination Date has been extended to September 30, 2009 or in the event that closing has not occurred solely because regulatory approvals have not yet been obtained, October 31, 2009 as opposed to August 31 and September 30, respectively, for the Nokia Agreement.
>
> 3) The provisions in the Nokia Agreement with respect to the Break-Up Fee and Expense Reimbursement have been deleted.

22 Further, I note that the Nokia Agreement provided for a commitment to take at least 2,500 Nortel employees worldwide. Under the Sale Agreement, the Purchaser has also committed to make employment offers to at least 2,500 Nortel employees worldwide.

23 The Nokia Agreement provided for a payment of a Break-Up Fee of $19.5 million and the Expense Reimbursement to a maximum of $3 million, upon termination of the Nokia Agreement. The Monitor reports that if both this court and the U.S. Court approve the Successful Bid, the Applicants are of the view that the Break-Up Fee and the

Expense Reimbursement will be payable and in accordance with the order of June 29, 2009, the company intends to make such a payment. The Monitor reports that it is currently contemplated that 50% of the amount will be funded by NNL and 50% by NNI.

24 The assets to be transferred by the Applicants and the U.S. Debtors pursuant to the successful bid are to be transferred free and clear of all liens of any kind. The Monitor is of the understanding that no leased assets are being conveyed as part of this transaction.

25 The Monitor also reports that at the request of the Purchaser, the proposed Approval and Vesting Orders specifically approves Intellectual Property Licence Agreement and Trademark Licence Agreement, collectively, (the "IP Licences"), entered into between NNL and the Purchaser in connection with the Successful Bid.

26 The Monitor also reports that subject to court approval, closing is anticipated to occur in September 2009.

27 The Bidding Procedures provide that the Seller may seek approval of the next highest or otherwise best offer as the Alternate Bid. If the closing of the transaction contemplated fails to occur the Sellers would then be authorized, but not directed, to proceed to effect a Sale Pursuant to the terms of the Alternate Bid without further court approval. The Sellers, in consultation with the Monitor, the UCC and the Bondholders, determined that the bids submitted by Nokia Siemens in the fifth round with a purchase price of $1,032,500,000 is the next highest and best offer and has been deemed to be the Alternative Bid. Accordingly, the company is seeking court approval of the alternative bid pursuant to the Bidding Procedures.

28 The Monitor reports that, as noted in its Fourteenth Report, the CMDA division and the LTE business are not operated through a dedicated legal entity or stand alone division. The Applicants have an interest in intellectual property of the CMDA business and the LTE business which is subject to various inter-company licensing agreements with other Nortel legal entities around the world, in some cases on an exclusive basis and in other cases, on a non-exclusive basis. The Monitor is of the view that the task of allocating sale proceeds stemming from the Successful Bid amongst the various Nortel entities and the various jurisdictions is complex. Further, as set out in the Fifteenth Report, the Applicants, the U.S. Debtors, and certain of the Europe, Middle East, Asia entities, ("EMEA") through their U.K. Administrators entered into the Interim Funding and Settlement Agreement, the IFSA, which was approved by this court on June 29, 2009. Pursuant to the IFSA, each of the Applicants, U.S. Debtors and EMEA Debtors agreed that the execution of definitive documentation with a purchaser of any material Nortel assets was not conditional upon reaching an agreement regarding the allocation of sale proceeds or binding procedures for the allocation of the sale proceeds. The Monitor reports that the parties agreed to negotiate in good faith and attempt to reach an agreement on a protocol for resolving disputes concerning the allocation of sale proceeds but, as of the current date, no agreement has been reached regarding the allocation of any sales proceeds. Accordingly, the Selling Debtors have determined that the proceeds are to be deposited in an escrow account. The issue of allocation of sale proceeds will be addressed at a later date.

29 The Monitor expects that the Company will return to court prior to the closing of the transaction to seek approval of the escrow agreement and a protocol for resolving disputes regarding the allocation of sale proceeds.

30 In his affidavit, Mr. Riedel concludes that the sale process was conducted by Nortel with consultation from its financial advisor, the Monitor and several of its significant stakeholders in accordance with the Bidding Procedures and that the auction resulted in a significantly increased purchase price on terms that are the same or better than those contained in the Stalking Horse Agreement. He is of the view that the proposed transaction, as set out in the Sale Agreement, is the best offer available for the assets and that the Alternate Bid represents the second best offer available for the Assets.

31 The Monitor concludes that the company's efforts to market the CMDA Business and the LTE Business were comprehensive and conducted in accordance with the Bidding Procedures and is further of the view that the Section 363 type auction process provided a mechanism to fully determine the market value of these assets. The Monitor is satisfied that the purchased priced constitutes fair consideration for such assets and, as a result, the Monitor is of the view that the Successful Bid represents the best transaction for the sale of these assets and the Monitor therefore recommends that the court approve the Applicants' motion.

32 A number of objections have been considered by the U.S. Court and they have been either resolved or over-ruled. I am satisfied that no useful purpose would be served by adding additional comment on this issue.

33 Turning now to whether it is appropriate to approve the transaction, I refer back to my Endorsement on the Bidding Procedures motion. At that time, I indicated that counsel to the Applicants had emphasized that Nortel would aim to satisfy the elements established by the court for approval as set out in the decision of *Royal Bank v. Soundair Corp.* (1991), 7 C.B.R. (3d) 1 (Ont. C.A.), which, in turn, accepts certain standards as set out by this court in *Crown Trust Co. v. Rosenberg* (1986), 60 O.R. (2d) 87 (Ont. H.C.).

34 Although the *Soundair* and *Crown Trust* tests were established for the sale of assets by a receiver, the principles have been considered to be appropriate for sale of assets as part of a court supervised sales process in a CCAA proceeding. For authority see *Tiger Brand Knitting Co., Re* (2005), 9 C.B.R. (5th) 315 (Ont. S.C.J.) .

35 The duties of the court in reviewing a proposed sale of assets are as follows:

1) It should consider whether sufficient effort has been to obtain the best price and that the debtor has not acted improvidently;

2) It should consider the interests of all parties;

3) It should consider the efficacy and integrity of the process by which offers have been obtained; and

4) It should consider whether there has been unfairness in the working out of the process.

36 I am satisfied that the unchallenged record clearly establishes that the sale process has been conducted in accordance with the Bidding Procedures and with the principles set out in both *Soundair*, and *Crown Trust*. All parties are of the view that the purchase price represents fair consideration for the assets included in the Sale Agreement. I

accept these submissions. The consideration provided by Ericsson pursuant to the Sale Agreement, in my view, constitutes reasonably equivalent value and fair consideration for the assets.

37 In my view, it is appropriate to approve the Sale Agreement as between the Sellers and Purchaser. I am also satisfied that it is appropriate to grant the relief relating to the Vesting Order, the IP Licences, the Ancillary Agreement and the Alternate Bid, all of which are approved.

38 The Applicants also requested an order sealing the Confidential Appendixes to the Seventeenth Report pending further order. In considering this request I referred to the decision of the Supreme Court of Canada in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 (S.C.C.), which addresses the issue of a sealing order. The Supreme Court of Canada held that such orders should only be granted when:

> 1) An order is needed to prevent serious risk to an important interest because reasonable alternative measures will not prevent the risk;
>
> 2) The salutary effects of the order outweigh its deleterious effects, including the effects on the right to free expression, which includes public interest in open and accessible court proceedings.

39 I have reviewed the Confidential Appendixes to the Seventeenth Report. I am satisfied that the Appendixes contain sensitive commercial information, the release of which could be prejudicial to the stakeholders. I am satisfied that the request for a sealing order is appropriate and it is so granted.

40 Other than with respect to the payment and reimbursement of amounts in respect of the Bid Protections nothing in this endorsement or the formal order is meant to modify or vary any of the Selling Debtors' (as such term is defined in the ISFA) rights and obligations under the ISFA. It is further acknowledged that Nortel has advised that the Interim Sales Protocol shall be subject to approval by the court.

41 An order shall issue in the form presented, as amended, to give effect to the foregoing reasons.

Motion granted.

END OF DOCUMENT

TAB 8

2009 CarswellOnt 1489,

InterTAN Canada Ltd., Re

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 INTERTAN CANADA LTD. AND TOURMALET CORPORATION (APPLICANTS)

Ontario Superior Court of Justice [Commercial List]
Morawetz J.
Heard: March 9, 2009
Judgment: March 9, 2009
Docket: 08-CL-7841

Counsel: Jeremy Dacks, Gillian Scott for Applicants

Fred Myers, L. Joseph Latham for Monitor, Alvarez & Marsal Canada ULC

Ashley John Taylor for 4458729 Canada Inc., Bell Canada

Kevin McElcheran for Cadillac Fairview Corporation Limited

Natalie Renner for Star Choice Communications

Rahool Agarwal for Bank of America

Harvey Garman for Garmin International, Inc., Rogers Communications

David Foulds for Foto Source Canada Inc.

Linda Gallessiere for OMERS Realty Management Corporation, Ivanhoe Cambridge 1 Inc., Morguard Investments Limited, 20 VIC management Inc. on behalf of OPB Realty Inc., Retrocom Limited Partnership, 920076 Ontario Limited o/a The Southridge Mall

Subject: Insolvency; Contracts; Corporate and Commercial

Bankruptcy and insolvency --- Proposal — Companies' Creditors Arrangement Act — Arrangements — Approval by court — Miscellaneous issues

2009 CarswellOnt 1489,

Applicants brought motion for approval of sale transaction contemplated by asset purchase agreement with 445 Inc. and B — Monitor believed that it was likely that applicants' unsecured creditors would be paid in full following closing of sale transaction — Motion granted — Asset purchase agreement was approved — Sales process was carried out fairly and appropriately at all stages — Asset purchase agreement considered interests of all stakeholders — It represented best option available — Principles were adhered to — Sale was commercially reasonable in circumstances — Sealing order of confidential supplement was granted.

Cases considered by *Morawetz J.*:

PSINET Ltd., Re (2001), 28 C.B.R. (4th) 95, 2001 CarswellOnt 3405 (Ont. S.C.J. [Commercial List]) — referred to

Royal Bank v. Soundair Corp. (1991), 7 C.B.R. (3d) 1, 83 D.L.R. (4th) 76, 46 O.A.C. 321, 4 O.R. (3d) 1, 1991 CarswellOnt 205 (Ont. C.A.) — followed

Tiger Brand Knitting Co., Re (2005), 2005 CarswellOnt 1240, 9 C.B.R. (5th) 315 (Ont. S.C.J.) — referred to

Statutes considered:

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36
Generally — referred to

MOTION by applicants for approval of sale transaction.

***Morawetz J.*:**

1 The Applicants move for approval of the sale transaction contemplated by the Asset Purchase Agreement ("APA") with 4458729 Canada Inc. (the "Purchaser") and Bell Canada (the "Sale Transaction").

2 The Sale Transaction is a going concern sale. The Sale Transaction covers the entire footprint of The Source. If completed, it will preserve the jobs of the employees as well as the operating locations of The Source. The Monitor believes that, subject to the outcome of the Pre-Filing Claims Process and any process related to the adjudication of any restructuring claims which may arise in connection with the Sale Transaction, it appears likely at this time that the Applicants' unsecured creditors will be paid in full, following closing of the Sale Transaction.

3 The motion was not opposed.

4 The sale process has been outlined in previous court motions. I am satisfied that the process has been conducted in accordance with the Sale Process Order which was granted December 5, 2008.

5 The record details the involvement of N. M. Rothschild and Sons Canada Securities Limited who were engaged to assist the Applicants in conducting a going concern sale process.

6 The record also details that there were eleven Indicative Bids which were subsequently followed by four proposals from bidders.

7 Ultimately after discussions among the Applicants, the Monitor and Rothschild, it became apparent to these three parties that the offer of the Purchaser was superior to the other bids in price and other criteria.

8 The Affidavit of Mr. Wong, filed in support of this motion details the efforts of the Applicants and Rothschild to market the InterTAN business. The Monitor has reviewed the efforts undertaken by the Applicants and Rothschild and is of the view that the assets have had significant exposure to a substantial number of prospective purchasers, and that there has been sufficient marketing of the business to conclude that the APA represents the best value that can be reasonably realized for InterTAN's business in the circumstances.

9 I accept the views of the Monitor. I am satisfied that the sales process was carried out fairly and appropriately at all stages, with efficacy and integrity. I agree with the Monitor's assessment that the APA considers the interests of all stakeholders, including the Applicants' shareholder and that the APA represents the best option available.

10 The principles set forth by the Court of Appeal in *Royal Bank v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (Ont. C.A.) for the sale of assets in a receivership have been accepted as appropriate principles to consider in a sale of assets in a CCAA proceeding (see *PSINET Ltd., Re* (2001), 28 C.B.R. (4th) 95 (Ont. S.C.J. [Commercial List]) and *Tiger Brand Knitting Co., Re* (2005), 9 C.B.R. (5th) 315 (Ont. S.C.J.)).

11 I am satisfied that the principles have been adhered to in this case such that it is appropriate to approve the APA. The sale is in my view commercially reasonable in the circumstances. In addition, I am satisfied that the Intercompany Agreement and the Foto Source Settlement Agreements should be approved as they are, in my view, necessary and reasonable adjuncts to the APA.

12 The Monitor filed a Confidential Supplement to the Sixth Report. Having reviewed the document I have reached the conclusion that this document contains sensitive commercial information, the disclosure of which could be prejudicial to the interests of the stakeholders of InterTAN. In my view, it is appropriate to grant a sealing order in respect of this document, which relief was requested by the Applicants and the Monitor.

13 The closing of the APA is not expected to take place for a few months. The current Stay Period expires March 31, 2009. I am satisfied that the Applicants continue to work in good faith and with due diligence such that an extension of the stay to the requested date of July 3, 2009 is appropriate. An order to this effect is granted.

14 The expected result of this CCAA proceeding is most beneficial to InterTAN's stakeholders and the Court extends its appreciation to those involved who have contributed to the result today.

Motion granted.

END OF DOCUMENT

TAB 9

2008 CarswellOnt 7136, 49 C.B.R. (5th) 188

C

2008 CarswellOnt 7136, 49 C.B.R. (5th) 188

A & M Cookie Co. Canada, Re

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 A & M Cookie Company Canada

Ontario Superior Court of Justice [Commercial List]

Morawetz J.

Heard: October 14, 2008
Judgment: October 14, 2008
Docket: CV-08-7777-00CL

Counsel: Mr. F. Myers, Mr. L.J. Latham for Wachovia Canada

Mr. T. Reyes for Monitor, RSM Richter Inc.

Ms H. Clarke for A & M Cookie Company Canada

Subject: Insolvency; Civil Practice and Procedure

Bankruptcy and insolvency --- Proposal — Companies' Creditors Arrangement Act — Arrangements — Approval by court — "Fair and reasonable"

Debtor company brought application under Companies' Creditors Arrangement Act ("CCAA") seeking authorization for plan of arrangement, stay of proceedings, and approval of debtor in possession financing — Application granted — Debtor might have viable stand alone business which could be restructured and union supported restructuring effort — Debtor reached ratification agreement on interim financing with creditors and affiliated U.S. debtors subject to court approval — Debtor agreed to guarantee obligations of affiliated U.S. debtors to maximum of U.S. $5 million and this amount might not be available to current creditors if shortfall occurred on realization of U.S. assets which might be detrimental to debtor's creditors — However, if debtor's business was immediately discontinued and wound down without credit support, unsecured trade creditors would not likely receive any distribution — Combination of ratification agreement and CCAA protection had potential benefits including allowing debtor to succeed as viable business if cut loose from unsuccessful operations of affiliated U.S. debtors — Benefits also included preserving 350 manu-

facturing jobs in distressed Ontario market and preservation of business for customers and suppliers — Debtor was qualifying debtor under CCAA and its chief place of business was in Ontario so that court had jurisdiction to receive application — It was appropriate to grant initial CCAA order with stay of proceedings, and ratification agreement was also approved.

Statutes considered:

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Generally — referred to

APPLICATION by debtor seeking authorization for plan of arrangement, stay of proceedings, and approval of debtor in possession financing.

***Morawetz J.*:**

1 The following is the endorsement in the matter of the Plan of Compromise and Arrangement of A & M Cookie Company of Canada. A & M Cookie Company of Canada, ("A & M"), brings this application as debtor under the *Companies' Creditors Arrangement* Act. It seeks the authorization to prepare and file with the Court a plan of arrangement and compromise with its creditors. It also seeks a stay of proceedings and approval of debtor in possession financing. It proposes that R.S.M. Richter Inc. act as Monitor.[FN1]

2 A & M is a Nova Scotia ULC. Catterton Partners V, together with affiliated entities (collectively "Catterton"), is an indirect owner of all of the common shares of A & M through its investment in Archway and Mother's Cookie Company Co. Inc. a Delaware company, ("A & M American"). A & M American also owns all of the shares of Mother's Cake and Cookie Co., a California company, ("Mother's"), Mother's, in turn, owns all of the shares of Archway Cookies LLC, a Delaware company, ("Archway"),

3 On October 6, 2008, Mother's and Archway, (collectively, "the Chapter 11 Debtors"), commenced voluntary proceedings pursuant to Chapter 11 of the United States Bankruptcy Code, which are being administered by the United States Bankruptcy Court in the District of Delaware.

4 A & M and the Chapter 11 Debtors are distinct corporate entities and have a different business focus. The business of A & M is based upon private label products for approximately 20 major customers. The U.S. operations were more focused upon direct store sales. The major suppliers of A & M are Canadian.

5 A and M's business and operations are principally based in Kitchener Ontario. A & M owns the manufacturing facility from which it operates and it also leases warehouse facilities in Kitchener and New Dundee, Ontario.

6 A & M provides private label cookies to most of Canada's leading retailers. For the fiscal year ending December 31, 2007, A & M had total sales revenues of approximately $52 million. A & M was originally established as Colonial Cookies in 1966. It was purchased by Beatrice Foods Inc. in 1973. In 1997 Parmalat purchased Beatrice Foods and in

January 2005 A & M was acquired by Catterton. As of September 26, 2008, A & M employed approximately 352 employees comprised of 40 non-union and 312 union employees. A & M is party to a collective agreement with United Food and Commercial Workers Canada, Local 175. Although not formally represented by counsel at this hearing, Mr. Michael Duden, a representative of the Union did make some remarks.

7 The August 30, 2008, un-audited financial Statements show that A & M has $8.4 million of current assets and $4.6 million of other assets including capital assets. As of October 7, 2008, the principal liabilities of A & M were approximately $13 million. This is comprised of $8.4 million being the A & M portion of the Wachovia Credit Facility, accrued vacation pay of approximately $225,000, un-funded pension obligations of approximately $385,000, real property taxes of approximately $246,000 and unsecured trade payables of approximately $3.8 million.

8 The Chapter 11 debtors and A & M are co-borrowers under a credit agreement with Wachovia Capital Finance Corporation as lender and administrative agent and certain other lenders including Wachovia Canada, (collectively referred to as "Wachovia"). The facility is comprised of term loans and a revolving line of credit. As of October 1, 2008, the outstanding amounts due under the term loans and the revolver were approximately $15.9 million and $35.5 million respectively. The obligations of the co-borrowers under the credit facility are guaranteed by A & M American and A & M Canada Blocker Corp., the Delaware Company which is the direct owner of the shares of A & M. As security for its obligations under the credit facility, A & M granted Wachovia security over all of its property and assets. The credit facility with Wachovia is in default.

9 It does not appear that the Chapter 11 Debtors will be restructured in the traditional sense, rather it appears that there will be a sales process to sell their assets.

10 The operations of A & M have been shut down. However, Catterton believes that A & M, despite its current difficulties, may have a viable standalone business that could be restructured if it was first given an opportunity to stabilize operations under the CCAA and then attempt to formulate a plan of arrangement. There have been extensive negotiations over the past two weeks between A & M, the U.S. Debtors, Wachovia and Catterton with a view to reaching an agreement to provide interim financing to A & M and the Chapter 11 Debtors during the CCAA proceedings and the Chapter 11 proceedings to permit the U.S. Debtors to undertake their sales process and to assist with the restructuring of A and M.

11 The parties have reached an agreement on interim financing arrangements, however this agreement, which is referred to as the Ratification Agreement, is subject to the approval of both this Court and the United States Bankruptcy Court for the District of Delaware.

12 Wachovia takes the position that, in the event that the interim financing arrangements are not approved by the courts, it will have no choice but to consider enforcing its security, which would likely result in the liquidation of A & M. However, if the Ratification Agreement is approved, Wachovia is prepared to provide credit support and other assistance to A & M. The issue, arising out of the interim financing arrangement, which is of concern to this Court, is that A & M has agreed to guarantee the obligations of the Chapter 11 Debtors up to a maximum of U.S. $5 million, a guarantee that has been described as a last out guarantee, i.e., Wachovia would look to the guarantee after the assets of the U.S. Debtor have been realized.

13 A & M has not previously provided a guarantee to Wachovia in respect of the Chapter 11 Debtors or other parties to the credit facility. Prom A & M's standpoint, the key terms of the Ratification Agreement include the following:

(a) Forbearance by Wachovia during the CCAA process.

(b) Terms of financing for the liquidation of the U. S. Debtors.

(c) Terms of the existing credit facilities for A & M to continue to revolve during the CCAA process and new financial covenants for A & M during the CCAA process, and;

(d) Existing debts and security granted by A & M and the Chapter 11 Debtors are confirmed.

14 The Court must consider whether approval of the Ratification Agreement should be granted at this time recognizing that if there is a shortfall to Wachovia on the realization of U.S. assets, it is conceivable that up to U.S. $5 million of assets of A & M would not be available to the current creditors of A & M. Clearly, this would potentially be detrimental to the interest of the creditors of A & M.

15 In these circumstances, counsel to both A & M and Wachovia submitted that the issue should be considered in light of the alternatives. At the present time, A & M has been shut down. Mr. Heidecorn, a member of the Board of Directors of A & M, has stated in his affidavit, that based upon his knowledge and information concerning the forced sale value of the assets of A & M, he did not believe that the unsecured trade creditors would receive any distribution if the business was immediately discontinued and wound down by Wachovia without credit support. Although no formal liquidation analysis has been undertaken, counsel to A & M was able to file a preliminary liquidation analysis, which confirmed the statement made by Mr. Heidecorn. In view of the sensitive nature of the analysis and the uncertainty facing A & M at this time, counsel submitted that this preliminary analysis should be filed under seal for confidentiality reasons. Under the circumstances I am of the view that such a request is reasonable and a sealing order shall issue,

16 Catterton is of the view that the restructuring of the standalone entity may be viable but it will be difficult to proceed with such a restructuring without the cooperation of Wachovia and without a release of the share pledge. The release of the share pledge is the cornerstone for Catterton's participation insofar as it proposes that the restructuring would enable Catterton to maintain the equity or a portion of the equity on a going forward basis.

17 There is also the issue of 350 jobs in the Kitchener area. Mr. Duden indicated to the Court that the Union is supportive of the restructuring effort.

18 The parties who stand to be detrimentally affected are the trade creditors who total approximately $3.8 million. The trade debt is concentrated among a limited number of suppliers. Conceivably some of these suppliers will continue to deliver supplies to A & M and they may stand to benefit if A & M continues in operation.

19 Counsel to the proposed Monitor advised that the Monitor has not been in a position to comment on the liquidation analysis and was not in a position to provide any meaningful report on the potential impact of the Ratification Agreement. I note that it would have been helpful if the Monitor had been involved in this process at an earlier stags. The Court certainly would have benefited from an analysis of this situation. It is also noted that the Ratification Agreement does provide for additional liquidity as Wachovia will continue funding capital requirements of A & M during the CCAA proceedings under the revolving credit facility and that Catterton is also prepared to provide a subordinated D.I.P. facility of up to $4.7 million. The support of Catterton can be considered significant as it is based upon Catterton's view that if the business is restructured there would be a benefit to all stakeholders, including the unsecured creditors of A & M and Catterton as the owner of the business.

20 The situation has been summed up by Mr. Heidecorn at paragraph 18 of his affidavit, sworn October 13, 2008, which reads as follows: (as read)

> "The management of A & M therefore believes that the stabilizing of relations with Wachovia through the ratification agreement combined with the breathing space afforded by CCAA protection has the greatest potential to preserve value for stakeholders of A & M including of course, Catterton.

21 Among those benefits are:

> i. A & M may be able to succeed as a viable business if cut loose from the unsuccessful operations of the U.S. debtors.
>
> ii. The prospect of preserving over 350 manufacturing jobs in the distressed Southern Ontario market, and;
>
> iii. The preservation of the business for customers and suppliers."

22 I accept this statement.

23 I am satisfied that A & M is a qualifying debtor within the meaning of the CCAA. I am also satisfied that the chief place of business of A & M is in Ontario and as such this Court has the jurisdiction to receive this application. The required financial statements including the projected cash flow of A & M have been filed and in my view, it is appropriate to grant the initial CCAA order with a stay of proceedings in effect to November. 14, 2008. The Ratification Agreement is also approved. The form of draft order as presented is, subject to certain agreed upon revisions to paragraphs 41(a) and 43 is acceptable. Order to go in the form submitted, as amended.

24 *REPORTER'S NOTE:* A brief recess is taken and the Court continues with other matters.

Application granted.

FN1 *REPORTER'S NOTE:* This motion was recorded by an agency reporter, not the reporter that transcribed it.

END OF DOCUMENT

TAB 10

2002 CarswellNat 822, 2002 SCC 41, 2002 CarswellNat 823, 211 D.L.R. (4th) 193, 287 N.R. 203, 18 C.P.R. (4th) 1, 44 C.E.L.R. (N.S.) 161, 20 C.P.C. (5th) 1, 40 Admin. L.R. (3d) 1, 223 F.T.R. 137 (note), [2002] 2 S.C.R. 522, REJB 2002-30902, J.E. 2002-803, 93 C.R.R. (2d) 219

2002 CarswellNat 822, 2002 SCC 41, 2002 CarswellNat 823, 211 D.L.R. (4th) 193, 287 N.R. 203, 18 C.P.R. (4th) 1, 44 C.E.L.R. (N.S.) 161, 20 C.P.C. (5th) 1, 40 Admin. L.R. (3d) 1, 223 F.T.R. 137 (note), [2002] 2 S.C.R. 522, REJB 2002-30902, J.E. 2002-803, 93 C.R.R. (2d) 219

Sierra Club of Canada v. Canada (Minister of Finance)

Atomic Energy of Canada Limited, Appellant v. Sierra Club of Canada, Respondent and The Minister of Finance of Canada, the Minister of Foreign Affairs of Canada, the Minister of International Trade of Canada and the Attorney General of Canada, Respondents

Supreme Court of Canada

McLachlin C.J.C., Gonthier, Iacobucci, Bastarache, Binnie, Arbour, LeBel JJ.

Heard: November 6, 2001
Judgment: April 26, 2002
Docket: 28020

Proceedings: reversing (2000), 2000 CarswellNat 970, (sub nom. Atomic Energy of Canada Ltd. v. Sierra Club of Canada) 187 D.L.R. (4th) 231, 256 N.R. 1, 24 Admin. L.R. (3d) 1, [2000] 4 F.C. 426, 182 F.T.R. 284 (note), 2000 CarswellNat 3271, [2000] F.C.J. No. 732 (Fed. C.A.); affirming (1999), 1999 CarswellNat 2187, [2000] 2 F.C. 400, 1999 CarswellNat 3038, 179 F.T.R. 283, [1999] F.C.J. No. 1633 (Fed. T.D.)

Counsel: *J. Brett Ledger* and *Peter Chapin*, for appellant

Timothy J. Howard and *Franklin S. Gertler*, for respondent Sierra Club of Canada

Graham Garton, Q.C., and *J. Sanderson Graham*, for respondents Minister of Finance of Canada, Minister of Foreign Affairs of Canada, Minister of International Trade of Canada, and Attorney General of Canada

Subject: Intellectual Property; Property; Civil Practice and Procedure; Evidence; Environmental

2002 CarswellNat 822, 2002 SCC 41, 2002 CarswellNat 823, 211 D.L.R. (4th) 193, 287 N.R. 203, 18 C.P.R. (4th) 1, 44 C.E.L.R. (N.S.) 161, 20 C.P.C. (5th) 1, 40 Admin. L.R. (3d) 1, 223 F.T.R. 137 (note), [2002] 2 S.C.R. 522, REJB 2002-30902, J.E. 2002-803, 93 C.R.R. (2d) 219

proceeding this does not engage a *Charter* right, the right to a fair trial generally can be viewed as a fundamental principle of justice: *M. (A.) v. Ryan*, [1997] 1 S.C.R. 157 (S.C.C.), at para. 84, *per* L'Heureux-Dubé J. (dissenting, but not on that point). Although this fair trial right is directly relevant to the appellant, there is also a general public interest in protecting the right to a fair trial. Indeed, as a general proposition, all disputes in the courts should be decided under a fair trial standard. The legitimacy of the judicial process alone demands as much. Similarly, courts have an interest in having all relevant evidence before them in order to ensure that justice is done.

51 Thus, the interests which would be promoted by a confidentiality order are the preservation of commercial and contractual relations, as well as the right of civil litigants to a fair trial. Related to the latter are the public and judicial interests in seeking the truth and achieving a just result in civil proceedings.

52 In opposition to the confidentiality order lies the fundamental principle of open and accessible court proceedings. This principle is inextricably tied to freedom of expression enshrined in s. 2(b) of the *Charter*: *New Brunswick*, *supra*, at para. 23. The importance of public and media access to the courts cannot be understated, as this access is the method by which the judicial process is scrutinized and criticized. Because it is essential to the administration of justice that justice is done and is *seen* to be done, such public scrutiny is fundamental. The open court principle has been described as "the very soul of justice," guaranteeing that justice is administered in a non-arbitrary manner: *New Brunswick*, *supra*, at para. 22.

(3) Adapting the Dagenais Test to the Rights and Interests of the Parties

53 Applying the rights and interests engaged in this case to the analytical framework of *Dagenais* and subsequent cases discussed above, the test for whether a confidentiality order ought to be granted in a case such as this one should be framed as follows:

> A confidentiality order under R. 151 should only be granted when:
>
> > (a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
> >
> > (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

54 As in *Mentuck*, *supra*, I would add that three important elements are subsumed under the first branch of this test. First, the risk in question must be real and substantial, in that the risk is well-grounded in the evidence and poses a serious threat to the commercial interest in question.

55 In addition, the phrase "important commercial interest" is in need of some clarification. In order to qualify as an "important commercial interest," the interest in question cannot merely be specific to the party requesting the order;

2002 CarswellNat 822, 2002 SCC 41, 2002 CarswellNat 823, 211 D.L.R. (4th) 193, 287 N.R. 203, 18 C.P.R. (4th) 1, 44 C.E.L.R. (N.S.) 161, 20 C.P.C. (5th) 1, 40 Admin. L.R. (3d) 1, 223 F.T.R. 137 (note), [2002] 2 S.C.R. 522, REJB 2002-30902, J.E. 2002-803, 93 C.R.R. (2d) 219

the interest must be one which can be expressed in terms of a public interest in confidentiality. For example, a private company could not argue simply that the existence of a particular contract should not be made public because to do so would cause the company to lose business, thus harming its commercial interests. However, if, as in this case, exposure of information would cause a breach of a confidentiality agreement, then the commercial interest affected can be characterized more broadly as the general commercial interest of preserving confidential information. Simply put, if there is no general principle at stake, there can be no "important commercial interest" for the purposes of this test. Or, in the words of Binnie J. in *Re N. (F.)*, [2000] 1 S.C.R. 880, 2000 SCC 35 (S.C.C.), at para. 10, the open court rule only yields" where the *public* interest in confidentiality outweighs the public interest in openness" (emphasis added).

56 In addition to the above requirement, courts must be cautious in determining what constitutes an "important commercial interest." It must be remembered that a confidentiality order involves an infringement on freedom of expression. Although the balancing of the commercial interest with freedom of expression takes place under the second branch of the test, courts must be alive to the fundamental importance of the open court rule. See generally Muldoon J. in *Eli Lilly & Co. v. Novopharm Ltd.* (1994), 56 C.P.R. (3d) 437 (Fed. T.D.), at p. 439.

57 Finally, the phrase "reasonably alternative measures" requires the judge to consider not only whether reasonable alternatives to a confidentiality order are available, but also to restrict the order as much as is reasonably possible while preserving the commercial interest in question.

B. Application of the Test to this Appeal

(1) Necessity

58 At this stage, it must be determined whether disclosure of the Confidential Documents would impose a serious risk on an important commercial interest of the appellant, and whether there are reasonable alternatives, either to the order itself or to its terms.

59 The commercial interest at stake here relates to the objective of preserving contractual obligations of confidentiality. The appellant argues that it will suffer irreparable harm to its commercial interests if the confidential documents are disclosed. In my view, the preservation of confidential information constitutes a sufficiently important commercial interest to pass the first branch of the test as long as certain criteria relating to the information are met.

60 Pelletier J. noted that the order sought in this case was similar in nature to an application for a protective order which arises in the context of patent litigation. Such an order requires the applicant to demonstrate that the information in question has been treated at all relevant times as confidential and that on a balance of probabilities its proprietary, commercial and scientific interests could reasonably be harmed by the disclosure of the information: *AB Hassle v. Canada (Minister of National Health & Welfare)* (1998), 83 C.P.R. (3d) 428 (Fed. T.D.), at p. 434. To this I would add the requirement proposed by Robertson J.A. that the information in question must be of a "confidential nature" in that it has been" accumulated with a reasonable expectation of it being kept confidential" (para. 14) as opposed to "facts which a litigant would like to keep confidential by having the courtroom doors closed" (para. 14).

TAB 11

2006 CarswellOnt 394, 17 C.B.R. (5th) 76, 145 A.C.W.S. (3d) 230

C

2006 CarswellOnt 394, 17 C.B.R. (5th) 76, 145 A.C.W.S. (3d) 230

Stelco Inc., Re

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 WITH RESPECT TO STELCO INC. AND THE OTHER APPLICANTS LISTED IN SCHEDULE "A"

APPLICATION UNDER THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

Ontario Superior Court of Justice [Commercial List]

Farley J.

Heard: January 17, 2006
Judgment: January 17, 2006
Docket: 04-CL-5306

Counsel: Geoff R. Hall for Stelco Applicants

Kyla Mahar for Monitor

Peter Jacobsen for Globe & Mail

Kevin Zych for 8% and 10.4% Stelco Bondholders

Peter Jervis, Karen Kiang for Equity Holders

Sharon White for USW Local 1005

Subject: Insolvency

Bankruptcy and insolvency --- Proposal — Companies' Creditors Arrangement Act — Miscellaneous issues

2006 CarswellOnt 394, 17 C.B.R. (5th) 76, 145 A.C.W.S. (3d) 230

Permanent sealing order — Debtor corporation under protection of Companies' Creditors Arrangement Act brought motion for permanent sealing order regarding confidential information — Motion granted — Order subject to any interested party asking for review upon notice to debtor corporation — There had been minimal redaction of material related to debtor corporation's revenues, costs, selling prices and profitability — There was minimal effect negative to concept of open court — Reasonable alternative measures would not have prevented risk to debtor corporation — Salutary effects of confidentiality order as to elements redacted, including ability of participants in proceeding to deal reasonably pursuant to non-disclosure agreements with submissions related to such confidential financial information, outweighed deleterious effects.

Cases considered by *Farley J.*:

Sierra Club of Canada v. Canada (Minister of Finance) (2002), 2002 SCC 41, 2002 CarswellNat 822, 2002 CarswellNat 823, (sub nom. *Atomic Energy of Canada Ltd. v. Sierra Club of Canada)* 211 D.L.R. (4th) 193, (sub nom. *Atomic Energy of Canada Ltd. v. Sierra Club of Canada)* 18 C.P.R. (4th) 1, 44 C.E.L.R. (N.S.) 161, 287 N.R. 203, 20 C.P.C. (5th) 1, 40 Admin. L.R. (3d) 1, (sub nom. *Atomic Energy of Canada Ltd. v. Sierra Club of Canada)* 93 C.R.R. (2d) 219, 223 F.T.R. 137 (note), [2002] 2 S.C.R. 522 (S.C.C.) — followed

MOTION by debtor corporation for permanent sealing order regarding confidential information.

***Farley J.*:**

1 This Endorsement deals with two of the three issues, the third will be forthcoming.

2 I am satisfied that there has been minimal redaction of material related to Stelco's revenues, costs, selling prices and profitability (directly or implied) which would be ordinarily kept confidential as disclosure of such information to competitors, suppliers and customers would be injurious to Stelco's business activities. Reasonable alternative measures would not prevent the risk to Stelco. The salutory effects of a confidentiality order as to the elements redacted, including the ability of the participants in this CCAA proceeding to deal reasonably pursuant to Non-Disclosure Agreements with submissions related to such confidential financial information, outweigh the deleterious effects of such confidentiality order.

3 I am satisfied that there has been a minimal effect negative to the concept of an open court. The Globe was not opposed to this redaction effort.

4 It appears to me that the principles and tests involved in *Sierra Club of Canada v. Canada (Minister of Finance)* (2002), 211 D.L.R. (4th) 193 (S.C.C.) has been met. See also *Re Air Canada* (S.C.J.) released September 26, 2004.

5 There is to be a permanent sealing order subject to any interested party asking for a review of same upon notice to Stelco.

6 The second issue relates to the inadvertence as to not blanking/blacking out three lines in an affidavit of one

Fabrice Taylor. The first part of the paragraph, all on the preceding page, had been blacked out. Upon reasonable reflection, it would be obvious to a person receiving same that the part not so blacked out did not make any sense on any stand-alone basis. Unfortunately, the incompletely blacked-out affidavit was flipped over to a reporter at the Globe who was not permitted to review unredacted copy (Stelco and the Globe had worked out a very reasonable and common sense arrangement whereby unredacted copy could be reviewed by counsel for the Globe and a Globe employee who was restricted from using same or disclosing such to others). The flip-over by counsel for the Globe was "innocent" as he had not reviewed the material before doing the flip and he had not expected that there would have been a problem with the blacking out.

7 The reporter has quite responsibly agreed to treat the three lines not previously blacked-out as having been blacked out *ab initio*.

8 The remaining third issue is whether the portion of the affidavit and exhibits which were blacked out (including the subject 3 lines) and as agreed by Stelco and the equity holders' counsel were to be blacked-out qualify for such redaction. I will deal with that in a further endorsement.

Motion granted.

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