

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

**APPLICATION OF LIGHTSQUARED LP
UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT*
ACT, R.S.C. 1985, c. C 36, AS AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE
UNITED STATES BANKRUPTCY COURT WITH RESPECT TO
LIGHTSQUARED INC., LIGHTSQUARED INVESTORS HOLDINGS INC., ONE
DOT FOUR CORP., ONE DOT SIX CORP., SKYTERRA ROLLUP LLC,
SKYTERRA ROLLUP SUB LLC, SKYTERRA INVESTORS LLC, TMI
COMMUNICATIONS DELAWARE, LIMITED PARTNERSHIP,
LIGHTSQUARED GP INC., LIGHTSQUARED LP, ATC TECHNOLOGIES LLC,
LIGHTSQUARED CORP., LIGHTSQUARED FINANCE CO., LIGHTSQUARED
NETWORK LLC, LIGHTSQUARED INC. OF VIRGINIA, LIGHTSQUARED
SUBSIDIARY LLC, LIGHTSQUARED BERMUDA LTD., SKYTERRA
HOLDINGS (CANADA) INC., SKYTERRA (CANADA) INC. AND ONE DOT SIX
TVCC CORP. (COLLECTIVELY, THE "CHAPTER 11 DEBTORS")**

BRIEF OF AUTHORITIES OF THE APPLICANT

May 14, 2012

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C

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Campeau v. Olympia & York Developments Ltd.

ROBERT CAMPEAU, ROBERT CAMPEAU INC., 75090 ONTARIO INC., and ROBERT CAMPEAU INVESTMENTS INC. v. OLYMPIA & YORK DEVELOPMENTS LIMITED, 857408 ONTARIO INC., and NATIONAL BANK OF CANADA

Ontario Court of Justice (General Division)

R.A. Blair J.

Judgment: September 21, 1992
Docket: Docs. 92-CQ-19675, B-125/92

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Counsel: *Stephen T. Goudge, Q.C.* and *Peter C. Wardle*, for the plaintiffs.

Peter F. C. Howard, for National Bank of Canada.

Yoine Goldstein, for Olympia & York Development Limited and 857408 Ontario Inc.

Subject: Corporate and Commercial; Insolvency; Civil Practice and Procedure

Practice --- Disposition without trial — Stay or dismissal of action — Grounds — Another proceeding pending — General.

Application for lifting of CCAA stay refused where proposed action being part of "controlled stream" of litigation and best dealt with under CCAA.

The plaintiffs brought an action against the defendant, O & Y, alleging that it breached an obligation to assist in the restructuring of C Corp. The plaintiffs also alleged that O & Y actually frustrated the individual plaintiff's efforts to restructure C Corp.'s Canadian real estate operation. Damages in the amount of \$1 billion for breach of contract or, alternatively, for breach of fiduciary duty, plus punitive damages of \$250 million were claimed. The plaintiffs also claimed against the defendant bank alleging breach of fiduciary duty, negligence and breach of the provisions of s. 17(1) of the *Personal Property Security Act* (Ont.). Damages in the amount of \$1 billion were claimed against the bank. This action was brought two weeks before an order was made extending the protection of the *Companies' Creditors Arrangement Act* ("CCAA") to O & Y.

The plaintiffs brought a motion to lift the stay imposed by the order under the CCAA and to allow them to pur-

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sue their action against O & Y. They argued that the claim would be better dealt with in the context of the action than in the context of the CCAA proceedings as it was uniquely complex.

The bank brought a motion opposing the plaintiffs' motion and seeking an order staying the plaintiffs' action against it pending the disposition of the CCAA proceedings. The bank argued that the factual basis of the claim against it was entirely dependent on the success of the allegations against O & Y and that the claim against O & Y would be better addressed within the context of the CCAA proceedings.

Held:

The plaintiffs' motion was dismissed and the bank's motion was allowed.

In considering whether to grant a stay, a court must look at the balance of convenience. The balance of convenience must weigh significantly in favour of granting the stay, as a party's right to have access to the courts is something with which the court must not lightly interfere. The court must be satisfied that a continuance of the proceeding would serve as an injustice to the party seeking the stay. The onus of satisfying the court is on the party seeking the stay.

The CCAA proceedings in this case involved numerous applicants, claimants and complex issues and could be considered a "controlled stream" of litigation; maintaining the integrity of the flow was an important consideration.

The stay under the CCAA was not lifted, and a stay made under the court's general jurisdiction to order stays was imposed, preventing the continuation of the action against the bank. There was no prejudice to the plaintiffs arising from these decisions, as the processing of their action was not precluded, but merely postponed. Were the CCAA stay lifted, there might be great prejudice to O & Y resulting from the diversion of its attention from the corporate restructuring process in order to defend the complex action proposed. There might not, however, be much prejudice to the bank in allowing the plaintiffs' action to proceed against it; however, such a proceeding could not proceed very far or effectively without the participation of O & Y.

Cases considered:

Arab Monetary Fund v. Hashim (June 25, 1992), Doc.34127/88, O'Connell J. (Ont. Gen. Div.), [1992] O.J. No. 1330 — referred to

Attorney General v. Arthur Anderson & Co. (1988), [1989] E.C.C. 244 (C.A.) — referred to

Canada Systems Group (EST) Ltd. v. Allendale Mutual Insurance Co. (1982), 29 C.P.C. 60, 137 D.L.R. (3d) 287 (Ont. H.C.) — applied

Empire-Universal Films Ltd. v. Rank, [1947] O.R. (H.C.) — referred to

Norcen Energy Resources Ltd. v. Oakwood Petroleums Ltd. (1988), 72 C.B.R. (N.S.) 1, 63 Alta. L.R. (2d) 361, 92 A.R. 81 (Q.B.) — referred to

Quintette Coal Ltd. v. Nippon Steel Corp. (1990), 2 C.B.R. (3d) 303, 51 B.C.L.R. (2d) 105 (C.A.) — applied

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Weight Watchers International Inc. v. Weight Watchers of Ontario Ltd. (1972), 25 D.L.R. (3d) 419, 5 C.P.R. (2d) 122 (Fed. T.D.) , appeal allowed by consent without costs (1972), 10 C.P.R. (2d) 96n, 42 D.L.R. (3d) 320n (Fed. C.A.) — *referred to*

Weight Watchers International Inc. v. Weight Watchers of Ontario Ltd. (1972), 10 C.P.R. (2d) 96n, 42 D.L.R. (3d) 320n (Fed. C.A.) — *referred to*

Statutes considered:

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

s. 11

Courts of Justice Act, R.S.O. 1990, c. C.43 —

s. 106

Personal Property Security Act, R.S.O. 1990, c. P.10 —

s. 17(1)

Rules considered:

Ontario, Rules of Civil Procedure —

r. 6.01(1)

Motion to lift stay under Companies' Creditors Arrangement Act; Motion for stay under Courts of Justice Act.

R.A. Blair J :

1 These motions raise questions regarding the court's power to stay proceedings. Two competing interests are to be weighed in the balance, namely,

a) the interests of a debtor which has been granted the protection of the *Companies' Creditors Arrangement Act* , R.S.C. 1985, c. C-36, and the "breathing space" offered by a s. 11 stay in such proceedings, on the one hand, and,

b) the interests of a unliquidated contingent claimant to pursue an action against that debtor *and* an arm's length third party, on the other hand.

2 At issue is whether the court should resort to an interplay between its specific power to grant a stay, under s. 11 of the C.C.A.A., and its general power to do so under the *Courts of Justice Act* , R.S.O. 1990, c. C.43 in order to stay the action completely; or whether it should lift the s. 11 stay to allow the action to proceed; or whether it should exercise some combination of these powers.

Background and Overview

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3 This action was commenced on April 28, 1992, and the statement of claim was served before May 14, 1992, the date on which an order was made extending the protection of the C.C.A.A. to Olympia & York Developments Limited and a group of related companies ("Olympia & York", or "O & Y" or the "Olympia & York Group").

4 The plaintiffs are Robert Campeau and three Campeau family corporations which, together with Mr. Campeau, held the control block of shares of Campeau Corporation. Mr. Campeau is the former chairman and CEO of Campeau Corporation, said to have been one of North America's largest real estate development companies, until its recent rather high profile demise. It is the fall of that empire which forms the subject matter of the lawsuit.

The Claim against the Olympia & York Defendants

5 The story begins, according to the statement of claim, in 1987, after Campeau Corporation had completed a successful leveraged buy-out of Allied Stores Corporation, a very large retailer based in the United States. Olympia & York had aided in funding the Allied takeover by purchasing half of Campeau Corporation's interest in the Scotia Plaza in Toronto and subsequently also purchasing 10 per cent of the shares of Campeau Corporation. By late 1987, it is alleged, the relationship between Mr. Campeau and Mr. Paul Reichmann (one of the principals of Olympia & York) had become very close, and an agreement had been made whereby Olympia & York was to provide significant financial support, together with the considerable expertise and the experience of its personnel, in connection with Campeau Corporation's subsequent bid for control of Federated Stores Inc. (a second major U.S. department store chain). The story ends, so it is said, in 1991 after Mr. Campeau had been removed as chairman and CEO of Campeau Corporation and that company, itself, had filed for protection under the C.C.A.A. (from which it has since emerged, bearing the new name of Camdev Corp.).

6 In the meantime, in September 1989, the Olympia & York defendants, through Mr. Paul Reichmann, had entered into a shareholders' agreement with the plaintiffs in which, it is further alleged, Olympia & York obliged itself to develop and implement expeditiously a viable restructuring plan for Campeau Corporation. The allegation that Olympia & York breached this obligation by failing to develop and implement such a plan, together with the further assertion that the O & Y defendants actually frustrated Mr. Campeau's efforts to restructure Campeau Corporation's Canadian real estate operation, lies at the heart of the Campeau action. The plaintiffs plead that as a result they have suffered very substantial damages, including the loss of the value of their shares in Campeau Corporation, the loss of the opportunity of completing a refinancing deal with the Edward DeBartolo Corporation, and the loss of the opportunity on Mr. Campeau's part to settle his personal obligations on terms which would have preserved his position as chairman and CEO and majority shareholder of Campeau Corporation.

7 Damages are claimed in the amount of \$1 billion, for breach of contract or, alternatively, for breach of fiduciary duty. Punitive damages in the amount of \$250 million are also sought.

The Claim against National Bank of Canada

8 Similar damages, in the amount of \$1 billion (but no punitive damages), are claimed against the defendant National Bank of Canada, as well. The causes of action against the bank are framed as breach of fiduciary duty, negligence, and breach of the provisions of s. 17(1) of the *Personal Property Security Act* [R.S.O. 1990, c. P.10]. They arise out of certain alleged acts of misconduct on the part of the bank's representatives on the board of directors of Campeau Corporation.

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9 In 1988 the plaintiffs had pledged some of their shares in Campeau Corporation to the bank as security for a loan advanced in connection with the Federated Stores transaction. In early 1990, one of the plaintiffs defaulted on its obligations under the loan and the bank took control of the pledged shares. Thereafter, the statement of claim alleges, the bank became more active in the management of Campeau, through its nominees on the board.

10 The bank had two such nominees. Olympia & York had three. There were 12 directors in total. What is asserted against the bank is that its directors, in co-operation with the Olympia & York directors, acted in a way to frustrate Campeau's restructuring efforts and favoured the interests of the bank as a secured lender rather than the interests of Campeau Corporation, of which they were directors. In particular, it is alleged that the bank's representatives failed to ensure that the DeBartolo refinancing was implemented and, indeed, actively supported Olympia & York's efforts to frustrate it, and in addition, that they supported Olympia & York's efforts to refuse to approve or delay the sale of real estate assets.

The Motions

11 There are two motions before me.

12 The first motion is by the Campeau plaintiffs to lift the stay imposed by the order of May 14, 1992 under the C.C.A.A. and to allow them to pursue their action against the Olympia & York defendants. They argue that a plaintiff's right to proceed with an action ought not lightly to be precluded; that this action is uniquely complex and difficult; and that the claim is better and more easily dealt with in the context of the action rather than in the context of the present C.C.A.A. proceedings. Counsel acknowledge that the factual bases of the claims against Olympia & York and the bank are closely intertwined and that the claim for damages is the same, but argue that the causes of action asserted against the two are different. Moreover, they submit, this is not the usual kind of situation where a stay is imposed to control the process and avoid inconsistent findings when the same parties are litigating the same issues in parallel proceedings.

13 The second motion is by National Bank, which of course opposes the first motion, and which seeks an order staying the Campeau action as against it as well, pending the disposition of the C.C.A.A. proceedings. Counsel submits that the factual substratum of the claim against the bank is dependent entirely on the success of the allegations against the Olympia & York defendants, and that the claim against those defendants is better addressed within the parameters of the C.C.A.A. proceedings. He points out also that if the action were to be taken against the bank alone, his client would be obliged to bring Olympia & York back into the action as third parties in any event.

The Power to Stay

14 The court has always had an inherent jurisdiction to grant a stay of proceedings whenever it is just and convenient to do so, in order to control its process or prevent an abuse of that process: see *Canada Systems Group (EST) Ltd. v. Allendale Mutual Insurance Co.* (1982), 29 C.P.C. 60, 137 D.L.R. (3d) 287 (Ont. H.C.), and cases referred to therein. In the civil context, this general power is also embodied in the very broad terms of s. 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, which provides as follows:

106. A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just.

15 Recently, Mr. Justice O'Connell has observed that this discretionary power is "highly dependent on the

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facts of each particular case": *Arab Monetary Fund v. Hashim* (unreported) [(June 25, 1992), Doc. 34127/88 (Ont. Gen. Div.)], [1992] O.J. No. 1330.

16 Apart from this inherent and general jurisdiction to stay proceedings, there are many instances where the court is specifically granted the power to stay in a particular context, by virtue of statute or under the *Rules of Civil Procedure*. The authority to prevent multiplicity of proceedings in the same court, under r. 6.01(1), is an example of the latter. The power to stay judicial and extra-judicial proceedings under s. 11 of the C.C.A.A., is an example of the former. Section 11 of the C.C.A.A. provides as follows:

11. Notwithstanding anything in the *Bankruptcy Act* or the *Winding-up Act*, whenever an application has been made under this Act in respect of any company, the court, on the application of any person interested in the matter, may, on notice to any other person or without notice as it may see fit,

(a) make an order staying, until such time as the court may prescribe or until any further order, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy Act* and the *Winding-up Act* or either of them;

(b) restrain further proceedings in any action, suit or proceeding against the company on such terms as the court sees fit; and

(c) make an order that no suit, action or other proceeding shall be proceeded with or commenced against the company except with the leave of the court and subject to such terms as the court imposes.

The Power to Stay in the Context of C.C.A.A. Proceedings

17 By its formal title the C.C.A.A. is known as "An Act to facilitate compromises and arrangements between companies and their creditors". To ensure the effective nature of such a "facilitative" process it is essential that the debtor company be afforded a respite from the litigious and other rights being exercised by creditors, while it attempts to carry on as a going concern and to negotiate an acceptable corporate restructuring arrangement with such creditors.

18 In this respect it has been observed that the C.C.A.A. is "to be used as a practical and effective way of restructuring corporate indebtedness": see the case comment following the report of *Norcen Energy Resources Ltd. v. Oakwood Petroleum Ltd.* (1988), 72 C.B.R. (N.S.) 1, 63 Alta. L.R. (2d) 361, 92 A.R. 81 (Q.B.), and the approval of that remark as "a perceptive observation about the attitude of the courts" by Gibbs J.A. in *Quintette Coal Ltd. v. Nippon Steel Corp.* (1990), 2 C.B.R. (3d) 303, 51 B.C.L.R. (2d) 105 (C.A.) at p. 113 [B.C.L.R.].

19 Gibbs J.A. continued with this comment:

To the extent that a general principle can be extracted from the few cases directly on point, and the others in which there is persuasive obiter, it would appear to be that the courts have concluded that under s. 11 there is a *discretionary power to restrain judicial or extra-judicial conduct* against the debtor company *the effect of which is, or would be, seriously to impair the ability of the debtor company to continue in business during the compromise or arrangement negotiating period*.

(emphasis added)

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20 I agree with those sentiments and would simply add that, in my view, the restraining power extends as well to conduct which could seriously impair the debtor's ability to focus and concentrate its efforts on the business purpose of negotiating the compromise or arrangement.

21 I must have regard to these foregoing factors while I consider, as well, the general principles which have historically governed the court's exercise of its power to stay proceedings. These principles were reviewed by Mr. Justice Montgomery in *Canada Systems Group (EST) Ltd. v. Allendale Mutual Insurance*, supra (a "Mississauga Derailment" case), at pp. 65-66 [C.P.C.]. The balance of convenience must weigh significantly in favour of granting the stay, as a party's right to have access to the courts must not be lightly interfered with. The court must be satisfied that a continuance of the proceeding would serve as an injustice to the party seeking the stay, in the sense that it would be oppressive or vexatious or an abuse of the process of the court in some other way. The stay must not cause an injustice to the plaintiff. On all of these issues the onus of satisfying the court is on the party seeking the stay: see also *Weight Watchers International Inc. v. Weight Watchers of Ontario Ltd.* (1972), 25 D.L.R. (3d) 419, 5 C.P.R. (2d) 122 (Fed. T.D.), appeal allowed by consent without costs (1972), 10 C.P.R. (2d) 96n, 42 D.L.R. (3d) 320n (Fed. C.A.), where Mr. Justice Heald recited the foregoing principles from *Empire-Universal Films Ltd. v. Rank*, [1947] O.R. 775 (H.C.) at p.779.

22 *Canada Systems Group (EST) Ltd. v. Allendale Mutual Insurance*, supra, is a particularly helpful authority, although the question in issue there was somewhat different than those in issue on these motions. The case was one of several hundred arising out of the Mississauga derailment in November 1979, all of which actions were being case-managed by Montgomery J. These actions were all part of what Montgomery J. called "a controlled stream" of litigation involving a large number of claims and innumerable parties. Similarly, while the Olympia & York proceedings under the C.C.A.A. do not involve a large number of separate actions, they do involve numerous applicants, an even larger number of very substantial claimants, and a diverse collection of intricate and broad-sweeping issues. In that sense the C.C.A.A. proceedings are a controlled stream of litigation. Maintaining the integrity of the flow is an important consideration.

Disposition

23 I have concluded that the proper way to approach this situation is to continue the stay imposed under the C.C.A.A. prohibiting the action against the Olympia & York defendants, and in addition, to impose a stay, utilizing the court's general jurisdiction in that regard, preventing the continuation of the action against National Bank as well. The stays will remain in effect for as long as the s. 11 stay remains operative, unless otherwise provided by order of this court.

24 In making these orders, I see no prejudice to the Campeau plaintiffs. The processing of their action is not being precluded, but merely postponed. Their claims may, indeed, be addressed more expeditiously than might have otherwise been the case, as they may be dealt with — at least for the purposes of that proceeding — in the C.C.A.A. proceeding itself. On the other hand, there might be great prejudice to Olympia & York if its attention is diverted from the corporate restructuring process and it is required to expend time and energy in defending an action of the complexity and dimension of this one. While there may not be a great deal of prejudice to National Bank in allowing the action to proceed against it, I am satisfied that there is little likelihood of the action proceeding very far or very effectively unless and until Olympia & York — whose alleged misdeeds are the real focal point of the attack on both sets of defendants — is able to participate.

25 In addition to the foregoing, I have considered the following factors in the exercise of my discretion:

1. Counsel for the plaintiffs argued that the Campeau claim must be dealt with, either in the action or in the C.C.A.A. proceedings and that it cannot simply be ignored. I agree. However, in my view, it is more appropriate, and in fact is essential, that the claim be addressed within the parameters of the C.C.A.A. proceedings rather than outside, in order to maintain the integrity of those proceedings. Were it otherwise, the numerous creditors in that mammoth proceeding would have no effective way of assessing the weight to be given to the Campeau claim in determining their approach to the acceptance or rejection of the Olympia & York plan filed under the Act.

2. In this sense, the Campeau claim — like other secured, undersecured, unsecured, and contingent claims — must be dealt with as part of a "controlled stream" of claims that are being negotiated with a view to facilitating a compromise and arrangement between Olympia & York and its creditors. In weighing "the good management" of the two sets of proceedings — i.e., the action and the C.C.A.A. proceeding — the scales tip in favour of dealing with the Campeau claim in the context of the latter: see *Attorney General v. Arthur Andersen & Co.* (1988), [1989] E.C.C. 224 (C.A.), cited in *Arab Monetary Fund v. Hashim*, supra.

I am aware, when saying this, that in the initial plan of compromise and arrangement filed by the applicants with the court on August 21, 1992, the applicants have chosen to include the Campeau plaintiffs amongst those described as "Persons not Affected by the Plan". This treatment does not change the issues, in my view, as it is up to the applicants to decide how they wish to deal with that group of "creditors" in presenting their plan, and up to the other creditors to decide whether they will accept such treatment. In either case, the matter is being dealt with, as it should be, within the context of the C.C.A.A. proceedings.

3. Pre-judgment interest will compensate the plaintiffs for any delay caused by the imposition of the stays, should the action subsequently proceed and the plaintiffs ultimately be successful.

4. While there may not be great prejudice to National Bank if the action were to continue against it alone and the causes of action asserted against the two groups of defendants are different, the complex factual situation is common to both claims and the damages are the same. The potential of two different inquiries at two different times into those same facts and damages is not something that should be encouraged. Such multiplicity of inquiries should in fact be discouraged, particularly where — as is the case here — the delay occasioned by the stay is relatively short (at least in terms of the speed with which an action like this Campeau action is likely to progress).

Conclusion

26 Accordingly, an order will go as indicated, dismissing the motion of the Campeau plaintiffs and allowing the motion of National Bank. Each stay will remain in effect until the expiration of the stay period under the C.C.A.A. unless extended or otherwise dealt with by the court prior to that time. Costs to the defendants in any event of the cause in the Campeau action. I will fix the amounts if counsel wish me to do so.

Order accordingly.

END OF DOCUMENT

TAB 2

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR

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TUESDAY, THE 13TH

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JUSTICE MORAWETZ

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DAY OF DECEMBER, 2011

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



APPLICATION OF HARTFORD COMPUTER HARDWARE, INC.
UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN
THE UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION
WITH RESPECT TO HARTFORD COMPUTER HARDWARE,
INC., NEXICORE SERVICES, LLC, HARTFORD COMPUTER
GROUP, INC. AND HARTFORD COMPUTER GOVERNMENT,
INC. (COLLECTIVELY, THE "CHAPTER 11 DEBTORS")

INTERIM INITIAL ORDER

THIS APPLICATION, made by Hartford Computer Hardware, Inc. (the "Applicant"), in its capacity as the proposed foreign representative of the Chapter 11 Debtors in the proceedings commenced on December 12, 2011, in the United States Bankruptcy Court for the Northern District of Illinois Eastern Division, under Chapter 11 of Title 11 of the United States Code (the "Chapter 11 Proceeding"), for an Order substantially in the form enclosed in the

Application Record of the Applicant was heard on this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application dated December 13, 2011, the affidavit of Brian Mittman sworn December 12, 2011, filed, the affidavit of Alana Shepherd sworn December 13, 2011, filed, the Preliminary Report of FTI Consulting Canada Inc., in its capacity as the proposed Information Officer (the “**Proposed Information Officer**”) dated December 12, 2011, filed, and upon hearing the submissions of counsel for the Applicant and counsel for Avnet International (Canada) Ltd. and Avnet, Inc. no one appearing for Delaware Street Capital Master Fund, L.P. or for the Proposed Information Officer although served as appears from the affidavit of service of Bobbie-Jo Brinkman sworn December 13, 2011, and upon being advised that no other persons were served with the Notice of Application,

SERVICE

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

STAY OF PROCEEDINGS

2. **THIS COURT ORDERS** that from the date hereof until and unless otherwise ordered by the Court (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal in Canada (each, a “**Proceeding**” and collectively, “**Proceedings**”) including, without limitation, a Proceeding taken or that might be taken against the Chapter 11 Debtors under the *Bankruptcy and Insolvency Act*, R.S.C., 1985 c. B-3, as amended, or the *Winding-up and Restructuring Act*, R.S.C. 1985, c W-11, as amended, shall be commenced or continued against or in respect of the

Chapter 11 Debtors or affecting their business in Canada (the “**Business**”) or their current and future assets, undertakings and properties of every nature and kind whatsoever, and wheresoever situate, including all proceeds thereof, of any of the Chapter 11 Debtors in Canada that relates to the Business (collectively, the “**Property**”), except with the written consent of the relevant Chapter 11 Debtor(s), or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Chapter 11 Debtors or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

EXERCISE OF RIGHTS OR REMEDIES

3. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies in Canada of any individual, firm, corporation, agency, governmental or quasi-governmental body, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) in respect of or affecting the Chapter 11 Debtors, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the relevant Chapter 11 Debtor(s) or leave of this Court, provided that nothing in this Order shall: (i) prevent the assertion of or exercise of rights and remedies in the Foreign Proceeding; (ii) empower any of the Chapter 11 Debtors to carry on any business in Canada that the Chapter 11 Debtors are not lawfully entitled to carry on; (iii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”); (iv) prevent the filing of any registration to preserve or perfect a security interest; or (v) prevent the registration of a claim for lien.

4. **THIS COURT ORDERS** that the Chapter 11 Debtors are prohibited from selling or otherwise disposing of, outside of the ordinary course of business, any of the Property that

relates to the Business and from selling or otherwise disposing of any of their other property in Canada; provided however, that nothing herein shall prevent the Chapter 11 Debtors from seeking approval in the Chapter 11 Proceeding or from this Court to sell or otherwise dispose of the Property.

NO INTERFERENCE WITH RIGHTS

5. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any of the Chapter 11 Debtors in Canada except with the written consent of the relevant Chapter 11 Debtor(s) or leave of this Court.

CONTINUATION OF SERVICES

6. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Chapter 11 Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, customs broker services, utility or other services provided in respect of the Property or Business of the Chapter 11 Debtors, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Chapter 11 Debtors, and that the Chapter 11 Debtors shall be entitled to the continued use in Canada of, among other things, their current premises, telephone numbers, facsimile numbers, internet addresses and domain names provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by

the Chapter 11 Debtors in accordance with normal payment practices of the Chapter 11 Debtors or such other practices as may be agreed upon by the supplier or service provider and the relevant Chapter 11 Debtor(s), or as may be ordered by this Court.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

7. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by Section 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Chapter 11 Debtors with respect to any claim against such directors or officers that arose before the date hereof and that relates to any obligations of any of the Chapter 11 Debtors whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations until a plan of reorganization in respect of the Chapter 11 Debtors if one is filed in the Chapter 11 Proceeding, is recognized by this Court and becomes effective in accordance with its terms, or unless otherwise ordered by this Court.

SERVICE OF COURT MATERIALS AND PUBLICATIONS OF NOTICES

8. **THIS COURT ORDERS** that the Applicant and its agents, or, if so requested by the Applicant, the Proposed Information Officer, are at liberty to serve this Order, any other orders in this proceeding, notices and documents by prepaid ordinary mail, courier, personal delivery or electronic transmission to any interested party at their addresses as last shown on the records of the Chapter 11 Debtors and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding, or if sent by ordinary mail, on the fifth calendar day after mailing.

9. **THIS COURT ORDERS** that any party to these proceedings may serve any court materials in these proceedings (including, without limitation, the Application Record, any motion records, factums and orders) on any person electronically by emailing a PDF or other electronic copy of such materials to parties' email addresses as recorded on the service list.

MISCELLANEOUS

10. **THIS COURT ORDERS** that, notwithstanding anything else contained in this Order, any of the Chapter 11 Debtors may, by written consent of their counsel of record, agree to waive any of the Chapter 11 Debtors' protections provided in this Order.

11. **THIS COURT ORDERS** that any party may, from time to time, apply to this Court for such further or other relief as it may advise from time to time, including for directions in respect of the proper execution of this Order.


12. **THIS COURT HEREBY ORDERS AND REQUESTS** the aid and recognition of any court, tribunal, regulatory, governmental or administrative body having jurisdiction in Canada, the United States or elsewhere, to give effect to this Order and to assist the Chapter 11 Debtors, the Proposed Information Officer and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory, governmental and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Chapter 11 Debtors, the Proposed Information Officer and their respective agents, as may be necessary or desirable to give effect to this Order, or to assist the Chapter 11 Debtors, the Proposed Information Officer and their respective agents in carrying out the terms of this Order.

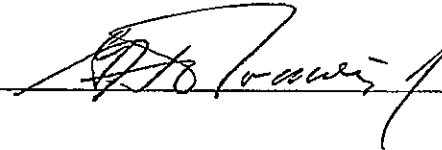
13. **THIS COURT ORDERS AND DECLARES** that this Order shall be effective as of 12:01 a.m. on the date of this Order.

14. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, any interested person may apply to this Court to vary or rescind this Order or seek other relief upon seven (7) days notice to the Chapter 11 Debtors, the Proposed Information Officer and any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

REGISTERED AT / REGISTRE À TORONTO
BOOK NO.
LE / DANS LE REGISTRE NO.:

DEC 13 2011

RECEIVED




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

APPLICATION OF HARTFORD COMPUTER HARDWARE, INC. UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION WITH RESPECT TO HARTFORD COMPUTER HARDWARE, INC., NEXICORE SERVICES, LLC, HARTFORD COMPUTER GROUP, INC. AND HARTFORD COMPUTER GOVERNMENT, INC. (COLLECTIVELY, THE "CHAPTER 11 DEBTORS")

Court File No.:

CV-11-9514-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

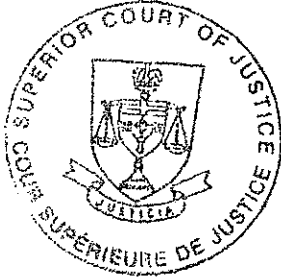
INTERIM INITIAL ORDER
(December 13, 2011)

Thornton Grout Finnigan LLP
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Suite 3200, P.O. Box 329
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Lawyers for the Chapter 11 Debtors

TAB 3



Court File No.: CV-11-9279-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE

JUSTICE MORAWETZ

)
)
)

**WEDNESDAY, THE 29TH DAY
OF JUNE, 2011**

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

**AND IN THE MATTER OF CERTAIN PROCEEDINGS
TAKEN IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS EASTERN DIVISION
WITH RESPECT TO THE COMPANIES LISTED ON
SCHEDULE "A" HERETO (THE "CHAPTER 11 DEBTORS")**

**APPLICATION OF
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC.**

**UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED**

INTERIM INITIAL ORDER

THIS APPLICATION, made by Massachusetts Elephant & Castle Group, Inc. (the "Applicant") in its capacity as the proposed foreign representative (the "Foreign Representative") of the Chapter 11 Debtors in the proceedings commenced on June 28, 2011, in the United States Bankruptcy Court for the District of Massachusetts Eastern Division (the "US Court"), under Chapter 11 of Title 11 of the United States Code (the "Chapter 11 Proceeding"), for an Order substantially in the form enclosed in the Application Record of the Applicant was heard on this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, filed, the affidavit of Keith Radford, sworn June 28, 2011, filed, the affidavit of Sara-Ann Wilson, sworn June 29, 2011, filed, the

Preliminary Report of BDO Canada Limited ("BDO"), in its capacity as proposed Information Officer (the "Proposed Information Officer"), dated June 28, 2011, filed, the consent of BDO to act as Information Officer, filed, and upon hearing the submissions of counsel for the Foreign Representative, and counsel for GE Canada Equipment Financing G.P. ("GE"), and upon being advised that none of the other persons who might be interested in these proceedings was served with the Notice of Application:

SERVICE

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

STAY OF PROCEEDINGS

2. **THIS COURT ORDERS** that from the date hereof until and unless otherwise ordered by this Court (the "Stay Period"), no proceeding or enforcement process in any court or tribunal in Canada (each, a "Proceeding" and collectively, "Proceedings") including, without limitation, a Proceeding taken or that might be taken against the Chapter 11 Debtors under the *Bankruptcy and Insolvency Act*, R.S.C., 1985 c. B-3, as amended, or the *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11, as amended, shall be commenced or continued against or in respect of the Chapter 11 Debtors or affecting their business in Canada (the "Business") or their current and future assets undertakings and properties of every nature and kind whatsoever, and wheresoever situate, including all proceeds thereof, of any of the Chapter 11 Debtors in Canada that relates to the Business (collectively, the "Property"), except with the written consent of the relevant Chapter 11 Debtor(s), or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Chapter 11 Debtors or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

EXERCISE OF RIGHTS OR REMEDIES

3. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies in Canada of any individual, firm, corporation, agency, governmental or quasi-governmental body, or other entity (all of the forgoing, collectively being "Persons" and each being a "Person") in respect of

or affecting the Chapter 11 Debtors' Business or the Property, are hereby stayed and suspended except with the written consent of the relevant Chapter 11 Debtor(s) or leave of this Court, provided that nothing in this Order shall: (i) empower any of the Chapter 11 Debtor(s) to carry on any business in Canada that the Chapter 11 Debtor(s) are not lawfully entitled to carry on; (ii) empower the Chapter 11 Debtors to sell or otherwise dispose of, outside the ordinary course of business, any Property in Canada that relates to the Business or empower the Chapter 11 Debtors to sell or otherwise dispose of any of its other property in Canada, provided however, that nothing herein shall limit the Chapter 11 Debtors' right to seek approval in the Chapter 11 Proceedings or from this Court to sell or otherwise dispose of any of their Property; (iii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the *Companies' Creditors Arrangement Act*, R.S.C. c. C-36, as amended (the "CCAA"); (iv) prevent the filing of any registration to preserve or perfect a security interest; or (v) prevent the registration of a claim for lien. Subject to any order that the US Court may make in the Chapter 11 Proceeding, nothing in this Order shall impact on the Consent, Authorization and Acknowledgement, dated June 21, 2011, and granted by the Chapter 11 Debtors in favour of GE, McCarthy Tetrault LLP, and Alvarez & Marsal Canada ULC.

NO INTERFERENCE WITH RIGHTS

4. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, license or permit in favour of or held by any of the Chapter 11 Debtors in respect of or affecting the Property or Business, except with the written consent of the relevant Chapter 11 Debtor(s) or with leave of this Court.

CONTINUATION OF SERVICES

5. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Chapter 11 Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation logistics services, customs broker services, utility or other services provided in respect of the Property or Business or the Chapter 11 Debtors, are hereby restrained until further Order of this

Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Chapter 11 Debtors, and that the Chapter 11 Debtors shall be entitled to the continued use in Canada of, among other things, their current premises, telephone numbers, facsimile numbers, internet (addresses and domain names) provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Chapter 11 Debtors in accordance with normal payment practices of the Chapter 11 Debtors or such other practices as may be agreed upon by the supplier or service provider, the Information Officer, the Foreign Representative and the relevant Chapter 11 Debtor(s), or as may be ordered by this Court.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

6. **THIS COURT ORDERS** that during the Stay Period and except as permitted by Section 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Chapter 11 Debtors with respect to any claim against such directors or officers that arose before the date hereof and that relates to any obligations of any of the Chapter 11 Debtors whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations or unless otherwise ordered by this Court.

SERVICE OF COURT MATERIALS AND PUBLICATIONS OF NOTICE

7. **THIS COURT ORDERS** that the Applicant and its agents, or, if so requested by the Applicant, the Proposed Information Officer, are at liberty to serve this Order, any other orders in this proceeding, notices and documents by prepaid ordinary mail, courier, personal delivery or electronic transmission to any interested party of the Chapter 11 Debtors at their addresses as last shown on the records of the Chapter 11 Debtors and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding, or if sent by ordinary mail, on the fifth calendar day after mailing.

8. **THIS COURT ORDERS** that any party to these proceedings may serve any court materials in these proceedings (including, without limitation, the Application Record, any motion

records, factums and orders) on any person electronically by emailing a PDF or other electronic copy of such materials to parties' email addresses as recorded on the service list.

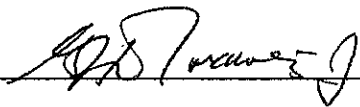
AID AND ASSISTANCE OF OTHER COURTS

9. **THIS COURT HEREBY ORDERS AND REQUESTS** that aid and recognition of any court, tribunal, regulatory, governmental or administrative body having jurisdiction in Canada the United States or elsewhere, to give effect to this Order and to assist the Chapter 11 Debtors, the Proposed Information Officer and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory, governmental and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Chapter 11 Debtors, the Proposed Information Officer and their respective agents, as may be necessary or desirable to give effect to this Order or to assist the Chapter 11 Debtors, the Proposed Information Officer and their respective agents in carrying out the terms of this Order.

MISCELLANEOUS

10. **THIS COURT ORDERS** that, notwithstanding anything else contained in this Order, any of the Chapter 11 Debtors may, by written consent of their counsel of record, agree to waive any of the Chapter 11 Debtors' protections provided in this Order.

11. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, any interested person may apply to this Court to vary or rescind this Order or seek other relief upon seven (7) days notice to Chapter 11 Debtor(s), the Proposed Information Officer and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



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

JUN 29 2011

PER/PAR:



SCHEDULE "A"

1. Massachusetts Elephant & Castle Group, Inc.
2. Repechage Investments Limited
3. Elephant & Castle Group Inc.
4. The Elephant and Castle Canada Inc.
5. Elephant & Castle, Inc. (a Texas Corporation)
6. Elephant & Castle Inc. (a Washington Corporation)
7. Elephant & Castle International, Inc.
8. Elephant & Castle of Pennsylvania, Inc.
9. E & C Pub, Inc.
10. Elephant & Castle East Huron, LLC
11. Elephant & Castle Illinois Corporation
12. E&C Eye Street, LLC
13. E & C Capital, LLC
14. Elephant & Castle (Chicago) Corporation

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT FOR
THE DISTRICT OF MASSACHUSETTS EASTERN DIVISION WITH RESPECT TO THE COMPANIES LISTED ON
SCHEDULE "A" HERETO (THE "CHAPTER 11 DEBTORS")**

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

INTERIM INITIAL ORDER

HEENAN BLAIKIE LLP

Lawyers

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Bay Adelaide Centre

Toronto, ON M5H 2T4

Kenneth D. Kraft LSUC# 31919P

John J. Salmas LSUC #42336B

Tel: 416.643.6822 / 416.360.3570

Fax: 416.360.8425

Lawyers for Massachusetts Elephant & Castle
Group, Inc.

TAB 4

CR-10-8949-00CL

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE
JUSTICE MORAWTEZ

) TUESDAY, THE 19 DAY
) OF OCTOBER 2010
)

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

**APPLICATION OF TERRESTAR NETWORKS INC.
UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED**

INTERIM INITIAL ORDER

THIS APPLICATION, made by TerreStar Networks Inc. (the "Applicant") for an interim stay of proceedings was heard on this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the affidavit of Jeffrey W. Epstein sworn October 19, 2010 (the "Epstein Affidavit"), filed, and upon hearing the submissions of counsel for the Applicant, counsel for the proposed Information Officer, Deloitte & Touche Inc. (the "Proposed Information Officer"), counsel for the DIP Lenders (as defined in the Epstein Affidavit), counsel for certain lenders under the Senior Secured Notes (as defined in the Epstein Affidavit) and upon being advised that no other persons were served with the Notice of Application:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is abridged so that the application is properly returnable today and that service of the Notice of Application and the Application Record is hereby validated and that further service is hereby dispensed with.

STAY OF PROCEEDINGS

2. **THIS COURT ORDERS** that, subject to further order of this Court, and for so long as the chapter 11 proceedings commenced by the Chapter 11 Debtors (as defined herein) is continuing (as jointly administered, the "U.S. Bankruptcy Proceeding"), no proceeding or enforcement process in any court or tribunal in Canada (each, a "Proceeding"), including a Proceeding taken or that might be taken against the Applicant, and any of Motient Holdings Inc., Motient Communications Inc., Motient License Inc., Motient Services Inc., MVH Holdings Inc., Motient Ventures Holdings Inc., TerreStar National Services, Inc., TerreStar License Inc., TerreStar New York Inc., 0887729 B.C. Ltd., TerreStar Networks Holdings (Canada) Inc. and TerreStar Networks (Canada) Inc. (together with the Applicant, the "Chapter 11 Debtors") under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA") or the *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11, shall be commenced or continued against or in respect of any of the Chapter 11 Debtors, or affecting their business in Canada (the "Business"), or the property, assets, rights and undertaking, including any and all present and future property of every nature and kind whatsoever, and wheresoever situate, whether real or personal, and including all proceeds thereof, of any of the Chapter 11 Debtors in Canada and whether held by any of the Chapter 11 Debtors, in whole or in part, directly or indirectly, as principal or nominee, beneficially or otherwise (the "Property"), except with the written consent of the relevant Chapter 11 Debtors and the Foreign Representative, or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Chapter 11 Debtors or affecting the Property are hereby stayed and suspended pending further Order of this Court.

EXERCISE OF RIGHTS OR REMEDIES

3. **THIS COURT ORDERS** that, subject to further order of this Court, and for so long as the U.S. Bankruptcy Proceeding is continuing, all rights and remedies in Canada of any individual, firm, corporation, agency, governmental or quasi-governmental body or other entity (all of the foregoing, collectively being

“Persons” and each being a “Person”) in respect of or affecting the Business or the Property of the Chapter 11 Debtors, are hereby stayed and suspended except with the written consent of the relevant Chapter 11 Debtors and the Foreign Representative or leave of this Court, provided that nothing in this Order shall (i) empower the Chapter 11 Debtors to carry on any business in Canada which the Chapter 11 Debtors are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, (the “CCAA”), (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NON-INTERFERENCE WITH RIGHTS

4. **THIS COURT ORDERS** that, subject to further order of this Court, and for so long as the U.S. Bankruptcy Proceeding is continuing, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence, permit or right of use in favour of or held by any of the Chapter 11 Debtors in respect of or affecting the Property or Business, except with the written consent of the relevant Chapter 11 Debtors and the Foreign Representative, or leave of this Court.

CONTINUATION OF SERVICES

5. **THIS COURT ORDERS** that, subject to further order of this Court, and for so long as the U.S. Bankruptcy Proceeding is continuing, all Persons having oral or written agreements with the Chapter 11 Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services provided in respect of the Property and/or Business of the Chapter 11 Debtors, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or

services as may be required by the Chapter 11 Debtors, and that the Chapter 11 Debtors shall be entitled to the continued use in Canada of, among other things, their current premises, telephone numbers, facsimile numbers, internet addresses and domain names provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Chapter 11 Debtors in accordance with normal payment practices of the Chapter 11 Debtors or such other practices as may be agreed upon by the supplier or service provider and the relevant Chapter 11 Debtors, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

6. **THIS COURT ORDERS** that, subject to further order of this Court, notwithstanding anything else contained herein, no creditor of the Chapter 11 Debtors shall be under any obligation in Canada after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Chapter 11 Debtors. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

7. **THIS COURT ORDERS** that, subject to further order of this Court, and for so long as the U.S. Bankruptcy Proceeding is continuing, and except as permitted by Section 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Chapter 11 Debtors with respect to any claim against such directors or officers that arose before the date hereof and that relates to any obligations of any of the Chapter 11 Debtors whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a plan of reorganization in respect of the Chapter 11 Debtors, if one is filed in the U.S. Bankruptcy Proceeding (as defined in the Epstein Affidavit), is recognized by this Court and becomes effective in accordance its terms or unless otherwise ordered by this Court.

SERVICE OF COURT MATERIALS AND PUBLICATIONS OF NOTICE

8. **THIS COURT ORDERS** that the Applicant is at liberty to serve this Order, any other orders in this proceeding, all other proceedings, notices and documents by prepaid ordinary mail, courier, personal delivery or electronic transmission to any interested party at their addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding, or if sent by ordinary mail, on the second business day after mailing.
9. **THIS COURT ORDERS** that any party to these proceedings, may serve any court materials in these proceedings (including without limitation, application records, motion records, factums and orders) on all parties electronically by emailing a PDF or other electronic copy of such materials to parties' e-mail addresses as recorded on the service list.

MISCELLANEOUS

10. **THIS COURT ORDERS** that, notwithstanding anything else contained in this Order, any of the Chapter 11 Debtors may, by written consent of their counsel of record and counsel of record to the Foreign Representative, agree to waive any of the protections provided in this Order.
11. **THIS COURT ORDERS** that the Applicant may, from time to time, apply to this Court for such further or other relief as it may advise from time to time, including for directions in respect of the proper execution of this Order.
12. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States and the states of other subdivisions of

the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

13. **THIS COURT ORDERS AND DECLARES** that this Order shall be effective as of the time and date of the making of this Order and that any rights exercised or purported to be exercised by any Person on this date which would be contrary to the terms of this Order are of no force and effect, and are null and void.
14. **THIS COURT ORDERS** that any interested Person may apply to this Court to vary or rescind this Order or to seek other relief upon seven (7) days' notice to the Chapter 11 Debtors and to any other party likely to be affected by the order sought or upon such notice, if any, as this Court may order.



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

OCT 20 2010

PER / PAR:



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

APPLICATION OF TERRESTAR NETWORKS INC. UNDER SECTION 46 AND FOLLOWING OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

210-8944-00CL

Court File No. <>

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

INTERIM INITIAL ORDER

FRASER MILNER CASGRAIN LLP

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39th Floor, 100 King Street W.
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Counsel to the Applicant

TAB 5

2011 CarswellOnt 6610, 2011 ONSC 4201, 81 C.B.R. (5th) 102

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Massachusetts Elephant & Castle Group 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 Certain Proceedings Taken in the United States Bankruptcy Court for the District of Massachusetts Eastern Division with Respect to the Companies Listed on Schedule "A" Hereto (The "Chapter 11 Debtors") Under Section 46 of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as Amended

MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC. (Applicant)

Ontario Superior Court of Justice

Morawetz J.

Heard: July 4, 2011

Oral reasons: July 4, 2011

Written reasons: July 11, 2011

Docket: CV-11-9279-00CL

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Counsel: Kenneth D. Kraft, Sara-Ann Wilson for Applicant

Heather Meredith for GE Canada Equipment Financing GP

Subject: Insolvency; Corporate and Commercial

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

Recognition of foreign main proceeding — Debtor companies were integrated business involving locations in U.S. and Canada — Each of debtors, including debtor companies with registered offices in Canada (Canadian Debtors), were managed centrally from U.S. — Debtors brought proceedings in U.S. pursuant to Chapter 11 of United States Bankruptcy Code — U.S. Court appointed applicant as foreign representative of Chapter 11 Debtors — Applicant applied to have U.S. Chapter 11 proceedings recognized as foreign main proceeding in Canada under Companies' Creditors Arrangements Act (Act) — Application granted — It was appropriate to recognize foreign proceeding — Foreign proceeding in present case was foreign main proceeding — "Foreign main proceeding" is defined in s. 45(1) of Act as foreign proceeding in jurisdiction where debtor company has centre of its main interest (COMI) — There was sufficient evidence to rebut presumption in s. 45(2) of Act that COMI is registered office of debtor company — For purposes of application, each entity making up Chapter 11 Debtors,

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including Canadian Debtors, had their COMI in U.S. — Location of debtors' headquarters or head office functions or nerve centre was in U.S. — Debtor's management was located in U.S. — Significant creditor did not oppose relief sought — Mandatory stay ordered under s. 48(1) of Act — Discretionary relief recognizing various orders of U.S. Court, appointing information officer, and limiting quantum of administrative charge, was appropriate and was granted.

Cases considered by Morawetz J.:

Angiotech Pharmaceuticals Inc., Re (2011), 2011 BCSC 115, 2011 CarswellBC 124, 76 C.B.R. (5th) 317 (B.C. S.C. [In Chambers]) — considered

Babcock & Wilcox Canada Ltd., Re (2000), 5 B.L.R. (3d) 75, 18 C.B.R. (4th) 157, 2000 CarswellOnt 704 (Ont. S.C.J. [Commercial List]) — referred to

Lear Canada, Re (2009), 2009 CarswellOnt 4232, 55 C.B.R. (5th) 57 (Ont. S.C.J. [Commercial List]) — referred to

Magna Entertainment Corp., Re (2009), 2009 CarswellOnt 1267, 51 C.B.R. (5th) 82 (Ont. S.C.J.) — referred to

Statutes considered:

Bankruptcy Code, 11 U.S.C.

Chapter 11 — referred to

ss. 1101-1174 — referred to

Business Corporations Act, R.S.O. 1990, c. B.16

Generally — referred to

Canada Business Corporations Act, R.S.C. 1985, c. C-44

Generally — referred to

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

Generally — referred to

Pt. IV — referred to

s. 44 — considered

s. 45 — considered

s. 45(1) — considered

s. 45(2) — considered

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- s. 46 — considered
- s. 46(1) — considered
- s. 46(2) — referred to
- ss. 46-49 — referred to
- s. 47(1) — considered
- s. 47(2) — considered
- s. 48 — considered
- s. 48(1) — considered
- s. 49 — considered
- s. 50 — considered
- s. 61 — considered
- s. 61(2) — considered

APPLICATION for order recognizing U.S. Chapter 11 Proceeding as foreign main proceeding under *Companies' Creditors Arrangement Act*, and other relief.

Morawetz, J.:

1 Massachusetts Elephant & Castle Group, Inc. ("MECG" or the "Applicant") brings this application under Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, ("CCAA"). MECG seeks orders pursuant to sections 46 — 49 of the CCAA providing for:

(a) an Initial Recognition Order declaring that:

- (i) MECG is a foreign representative pursuant to s. 45 of the CCAA and is entitled to bring its application pursuant s. 46 of the CCAA;
- (ii) the Chapter 11 Proceeding (as defined below) in respect of the Chapter 11 Debtors (as set out in Schedule "A") is a "foreign main proceeding" for the purposes of the CCAA; and
- (iii) any claims, rights, liens or proceedings against or in respect of the Chapter 11 Debtors, the directors and officers of the Chapter 11 Debtors and the Chapter 11 Debtors' property are stayed; and

(b) a Supplemental Order:

- (i) recognizing in Canada and enforcing certain orders of the U.S. Court (as defined below) made in the Chapter 11 Proceeding (as defined below);
- (ii) granting a super-priority charge over the Chapter 11 Debtors' property in respect of adminis-

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trative fees and expenses; and

(iii) appointing BDO Canada Limited ("BDO") as Information Officer in respect of these proceedings (the "Information Officer").

2 On June 28, 2011, the Chapter 11 Debtors commenced proceedings (the "Chapter 11 Proceeding") in the United States Bankruptcy Court for the District of Massachusetts Eastern Division (the "U.S. Court"), pursuant to Chapter 11 of the *United States Bankruptcy Code*, 11 U.S.C. § 1101-1174 ("*U.S. Bankruptcy Code*").

3 On June 30, 2011, the U.S. Court made certain orders at the first-day hearing held in the Chapter 11 Proceeding, including an order appointing the Applicant as foreign representative in respect of the Chapter 11 Proceeding.

4 The Chapter 11 Debtors operate and franchise authentic, full-service British-style restaurant pubs in the United States and Canada.

5 MECG is the lead debtor in the Chapter 11 Proceeding and is incorporated in Massachusetts. All of the Chapter 11 Debtors, with the exception of Repechage Investments Limited ("Repechage"), Elephant & Castle Group Inc. ("E&C Group Ltd.") and Elephant & Castle Canada Inc. ("E&C Canada") (collectively, the "Canadian Debtors") are incorporated in various jurisdictions in the United States.

6 Repechage is incorporated under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, ("*CBCA*") with its registered office in Toronto, Ontario. E&C Group Ltd. is also incorporated under the *CBCA* with a registered office located in Halifax, Nova Scotia. E&C Canada Inc. is incorporated under the *Business Corporations Act*, R.S.O. 1990, c. B. 16, and its registered office is in Toronto. The mailing office for E&C Canada Inc. is in Boston, Massachusetts at the location of the corporate head offices for all of the debtors, including Repechage and E&C Group Ltd.

7 In order to comply with s. 46(2) of the *CCAA*, MECG filed the affidavit of Ms. Wilson to which was attached certified copies of the applicable Chapter 11 orders.

8 MECG also included in its materials the declaration of Mr. David Dobbin filed in support of the first-day motions in the Chapter 11 Proceeding. Mr. Dobbin, at paragraph 19 of the declaration outlined the sale efforts being entered into by MECG. Mr. Dobbin also outlined the purpose of the Chapter 11 Proceeding, namely, to sell the Chapter 11 Debtors' businesses as a going concern on the most favourable terms possible under the circumstances and keep the Chapter 11 Debtors' business intact to the greatest extent possible during the sales process.

9 The issues for consideration are whether this court should grant the application for orders pursuant to ss. 46 — 49 of the *CCAA* and recognize the Chapter 11 Proceeding as a foreign main proceeding.

10 The purpose of Part IV of the *CCAA* is set out in s. 44:

44. The purpose of this Part is to provide mechanisms for dealing with cases of cross-border insolvencies and to promote

(a) cooperation between the courts and other competent authorities in Canada with those of foreign jur-

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isdictions in cases of cross-border insolvencies;

(b) greater legal certainty for trade and investment;

(c) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies;

(d) the protection and the maximization of the value of debtor company's property; and

(e) the rescue of financially troubled businesses to protect investment and preserve employment.

11 Section 46(1) of the CCAA provides that "a foreign representative may apply to the court for recognition of the foreign proceeding in respect of which he or she is a foreign representative."

12 Section 47(1) of the CCAA provides that there are two requirements for an order recognizing a foreign proceeding:

(a) the proceeding is a foreign proceeding, and

(b) the applicant is a foreign representative in respect of that proceeding.

13 Canadian courts have consistently recognized proceedings under Chapter 11 of the *U.S. Bankruptcy Code* to be foreign proceedings for the purposes of the CCAA. In this respect, see: *Babcock & Wilcox Canada Ltd., Re* (2000), 5 B.L.R. (3d) 75 (Ont. S.C.J. [Commercial List]); *Magna Entertainment Corp., Re* (2009), 51 C.B.R. (5th) 82 (Ont. S.C.J.); *Lear Canada, Re* (2009), 55 C.B.R. (5th) 57 (Ont. S.C.J. [Commercial List]).

14 Section 45(1) of the CCAA defines a foreign representative as:

a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding in respect of a debtor company, to

(a) monitor the debtor company's business and financial affairs for the purpose of reorganization; or

(b) act as a representative in respect of the foreign proceeding.

15 By order of the U.S. Court dated June 30, 2011, the Applicant has been appointed as a foreign representative of the Chapter 11 Debtors.

16 In my view, the Applicant has satisfied the requirements of s. 47(1) of the CCAA. Accordingly, it is appropriate that this court recognize the foreign proceeding.

17 Section 47(2) of the CCAA requires the court to specify in its order whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding.

18 A "foreign main proceeding" is defined in s. 45(1) of the CCAA as "a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interest" ("COMI").

19 Part IV of the CCAA came into force in September 2009. Therefore, the experience of Canadian courts in determining the COMI has been limited.

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20 Section 45(2) of the CCAA provides that, in the absence of proof to the contrary, the debtor company's registered office is deemed to be the COMI. As such, the determination of COMI is made on an entity basis, as opposed to a corporate group basis.

21 In this case, the registered offices of Repechage and E&C Canada Inc. are in Ontario and the registered office of E&C Group Ltd. is in Nova Scotia. The Applicant, however, submits that the COMI of the Chapter 11 Debtors, including the Canadian Debtors, is in the United States and the recognition order should be granted on that basis.

22 Therefore, the issue is whether there is sufficient evidence to rebut the s. 45(2) presumption that the COMI is the registered office of the debtor company.

23 In this case, counsel to the Applicant submits that the Chapter 11 Debtors have their COMI in the United States for the following reasons:

- (a) the location of the corporate head offices for all of the Chapter 11 Debtors, including the Canadian Debtors, is in Boston, Massachusetts;
- (b) the Chapter 11 Debtors including the Canadian Debtors function as an integrated North American business and all decisions for the corporate group, including in respect to the operations of the Canadian Debtors, is centralized at the Chapter 11 Debtors head office in Boston;
- (c) all members of the Chapter 11 Debtors' management are located in Boston;
- (d) virtually all human resources, accounting/finance, and other administrative functions associated with the Chapter 11 Debtors are located in the Boston offices;
- (e) all information technology functions of the Chapter 11 Debtors, with the exception of certain clerical functions which are outsourced, are provided out of the United States; and
- (f) Repechage is also the parent company of a group of restaurants that operate under the "Piccadilly" brand which operates only in the U.S.

24 Counsel also submits that the Chapter 11 Debtors operate a highly integrated business and each of the debtors, including the Canadian Debtors, are managed centrally from the United States. As such, counsel submits it is appropriate to recognize the Chapter 11 Proceeding as a foreign main proceeding.

25 On the other hand, Mr. Dobbin's declaration discloses that nearly one-half of the operating locations are in Canada, that approximately 43% of employees work in Canada, and that GE Canada Equipment Financing G.P. ("GE Canada") is a substantial lender to MECG. GE Canada does not oppose this application.

26 Counsel to the Applicant referenced *Angiotech Pharmaceuticals Inc., Re*, 2011 CarswellBC 124 (B.C. S.C. [In Chambers]) where the court listed a number of factors to consider in determining the COMI including:

- (a) the location where corporate decisions are made;
- (b) the location of employee administrations, including human resource functions;

- (c) the location of the debtor's marketing and communication functions;
- (d) whether the enterprise is managed on a consolidated basis;
- (e) the extent of integration of an enterprise's international operations;
- (f) the centre of an enterprise's corporate, banking, strategic and management functions;
- (g) the existence of shared management within entities and in an organization;
- (h) the location where cash management and accounting functions are overseen;
- (i) the location where pricing decisions and new business development initiatives are created; and
- (j) the seat of an enterprise's treasury management functions, including management of accounts receivable and accounts payable.

27 It seems to me that, in considering the factors listed in *Re Angiotech*, the intention is not to provide multiple criteria, but rather to provide guidance on how the single criteria, *i.e.* the centre of main interest, is to be interpreted.

28 In certain circumstances, it could be that some of the factors listed above or other factors might be considered to be more important than others, but nevertheless, none is necessarily determinative; all of them could be considered, depending on the facts of the specific case.

29 For example:

- (a) the location from which financing was organized or authorized or the location of the debtor's primary bank would only be important where the bank had a degree of control over the debtor;
- (b) the location of employees might be important, on the basis that employees could be future creditors, or less important, on the basis that protection of employees is more an issue of protecting the rights of interested parties and therefore is not relevant to the COMI analysis;
- (c) the jurisdiction whose law would apply to most disputes may not be an important factor if the jurisdiction was unrelated to the place from which the debtor was managed or conducted its business.

30 However, it seems to me, in interpreting COMI, the following factors are usually significant:

- (a) the location of the debtor's headquarters or head office functions or nerve centre;
- (b) the location of the debtor's management; and
- (c) the location which significant creditors recognize as being the centre of the company's operations.

31 While other factors may be relevant in specific cases, it could very well be that they should be considered to be of secondary importance and only to the extent they relate to or support the above three factors.

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32 In this case, the location of the debtors' headquarters or head office functions or nerve centre is in Boston, Massachusetts and the location of the debtors' management is in Boston. Further, GE Canada, a significant creditor, does not oppose the relief sought. All of this leads me to conclude that, for the purposes of this application, each entity making up the Chapter 11 Debtors, including the Canadian Debtors, have their COMI in the United States.

33 Having reached the conclusion that the foreign proceeding in this case is a foreign main proceeding, certain mandatory relief follows as set out in s. 48(1) of the CCAA:

48. (1) Subject to subsections (2) to (4), on the making of an order recognizing a foreign proceeding that is specified to be a foreign main proceeding, the court shall make an order, subject to any terms and conditions it considers appropriate,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken against the debtor company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the debtor company;

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the debtor company; and

(d) prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.

34 The relief provided for in s. 48 is contained in the Initial Recognition Order.

35 In addition to the mandatory relief provided for in s. 48, pursuant to s. 49 of the CCAA, further discretionary relief can be granted if the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors. Section 49 provides:

49. (1) If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

(a) if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);

(b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company's property, business and financial affairs, debts, liabilities and obligations; and

(c) authorizing the foreign representative to monitor the debtor company's business and financial affairs in Canada for the purpose of reorganization.

36 In this case, the Applicant applies for orders to recognize and give effect to a number of orders of the

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U.S. Court in the Chapter 11 Proceeding (collectively, the "Chapter 11 Orders") which are comprised of the following:

- (a) the Foreign Representative Order;
- (b) the U.S. Cash Collateral Order;
- (c) the U.S. Prepetition Wages Order;
- (d) the U.S. Prepetition Taxes Order;
- (e) the U.S. Utilities Order;
- (f) the U.S. Cash Management Order;
- (g) the U.S. Customer Obligations Order; and
- (h) the U.S. Joint Administration Order.

37 In addition, the requested relief also provides for the appointment of BDO as an Information Officer; the granting of an Administration Charge not to exceed an aggregate amount of \$75,000 and other ancillary relief.

38 In considering whether it is appropriate to grant such relief, portions of s. 49, s. 50 and 61 of the CCAA are relevant:

50. An order under this Part may be made on any terms and conditions that the court considers appropriate in the circumstances.

.....

61. (1) Nothing in this Part prevents the court, on the application of a foreign representative or any other interested person, from applying any legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives that are not inconsistent with the provisions of this Act.

(2) Nothing in this Part prevents the court from refusing to do something that would be contrary to public policy.

39 Counsel to the Applicant advised that he is not aware of any provision of any of the U.S. Orders for which recognition is sought that would be inconsistent with the provisions of the CCAA or which would raise the public policy exception as referenced in s. 61(2). Having reviewed the record and having heard submissions, I am satisfied that the supplementary relief, relating to, among other things, the recognition of Chapter 11 Orders, the appointment of BDO and the quantum of the Administrative charge, all as set out in the Supplemental Order, is appropriate in the circumstances and is granted.

40 The requested relief is granted. The Initial Recognition Order and the Supplemental Order have been signed in the form presented.

Schedule "A"

1. Massachusetts Elephant & Castle Group Inc.
2. Repechage Investments Limited
3. Elephant & Castle Group Inc.
4. The Elephant and Castle Canada Inc.
5. Elephant & Castle, Inc. (a Texas Corporation)
6. Elephant & Castle Inc. (a Washington Corporation)
7. Elephant & Castle International, Inc.
8. Elephant & Castle of Pennsylvania, Inc.
9. E & C Pub, Inc.
10. Elephant & Castle East Huron, LLC
11. Elephant & Castle Illinois Corporation
12. E&C Eye Street, LLC
13. E & C Capital, LLC
14. Elephant & Castle (Chicago) Corporation

Application granted.

END OF DOCUMENT

TAB 6

2009 CarswellOnt 4232, 55 C.B.R. (5th) 57

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2009 CarswellOnt 4232, 55 C.B.R. (5th) 57

Lear 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 LEAR CANADA, LEAR CANADA INVESTMENTS LTD., LEAR CORPORATION
CANADA LTD. AND THE OTHER APPLICANTS LISTED ON SCHEDULE "A"

APPLICATION UNDER SECTION 18.6 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED

Ontario Superior Court of Justice [Commercial List]

Pepall J.

Judgment: July 14, 2009
Docket: CV-09-00008269-00CL

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Counsel: K. McElcheran, R. Stabile for Applicants

E. Lamek for Proposed Information Officer

A. Cobb for J.P. Morgan Chase Bank, N. A.

Subject: Insolvency

Bankruptcy and insolvency --- Bankruptcy and insolvency jurisdiction --- Jurisdiction of courts --- Jurisdiction of Bankruptcy Court --- Territorial jurisdiction --- Foreign bankruptcies

Insolvent debtor American company had Canadian subsidiary --- Debtor was unable to meet obligations and began restructuring process in United States --- Subsidiary and company brought application for recognition of foreign order --- Application granted --- Stay of proceedings in Canada granted --- Subsidiary was entitled to apply for order as interested person under s. 18.6(4) of Companies' Creditors Arrangement Act and as debtor within s. 18.6(1) --- While Companies' Creditors Arrangement Act does not define person, Bankruptcy and Insolvency Act extends definition to partnership --- Real and substantial connection existed to American proceedings --- Canadian operations were inextricably linked with business in foreign jurisdiction --- Restructuring process required to occur internationally --- Multiplicity of proceedings should be avoided.

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Cases considered by *Pepall J.*:

Babcock & Wilcox Canada Ltd., Re (2000), 5 B.L.R. (3d) 75, 18 C.B.R. (4th) 157, 2000 CarswellOnt 704 (Ont. S.C.J. [Commercial List]) — considered

Holt Cargo Systems Inc. v. ABC Containerline N.V. (Trustees of) (2001), 2001 SCC 90, 2001 CarswellNat 2816, 2001 CarswellNat 2817, [2001] 3 S.C.R. 907, 30 C.B.R. (4th) 6, 280 N.R. 1, 207 D.L.R. (4th) 577 (S.C.C.) — referred to

Magna Entertainment Corp., Re (2009), 2009 CarswellOnt 1267, 51 C.B.R. (5th) 82 (Ont. S.C.J.) — referred to

Matlack Inc., Re (2001), [2001] O.T.C. 382, 26 C.B.R. (4th) 45, 2001 CarswellOnt 1830 (Ont. S.C.J. [Commercial List]) — considered

United Air Lines Inc., Re (2003), 43 C.B.R. (4th) 284, 2003 CarswellOnt 2786 (Ont. S.C.J. [Commercial List]) — referred to

Statutes considered:

Bankruptcy Code, 11 U.S.C.

Generally — referred to

Chapter 11 — referred to

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

Generally — referred to

s. 2 "debtor company" — referred to

s. 18.6 [en. 1997, c. 12, s. 125] — considered

s. 18.6(1) "foreign proceeding" [en. 1997, c. 12, s. 125] — considered

s. 18.6(2) [en. 1997, c. 12, s. 125] — considered

s. 18.6(3) [en. 1997, c. 12, s. 125] — referred to

s. 18.6(4) [en. 1997, c. 12, s. 125] — considered

APPLICATION by subsidiary of debtor and debtor for recognition of foreign order in bankruptcy proceedings.

***Pepall J.*:**

Relief Requested

1 Lear Canada, Lear Canada Investments Inc., Lear Corporation Canada Ltd. (the "Canadian Applicants") and other Applicants listed on Schedule "A" to the notice of motion request:

1. an order pursuant to section 18.6 of the CCAA recognizing and declaring that the Chapter 11 proceedings in the U.S. Bankruptcy Court for the Southern District of New York constitute "foreign proceedings";
2. a stay of proceedings against any of the Applicants or their property; and
3. an order appointing RSM Richter Inc. as information officer to report to this Court on the status of the U.S. proceedings.

Background Facts

2 Lear Corporation is a corporation organized under the laws of the State of Delaware with headquarters in Southfield, Michigan. Its shares are listed on the New York Stock Exchange. It conducts its operations through approximately 210 facilities in 36 countries and is the ultimate parent company of about 125 directly and indirectly wholly-owned subsidiaries (collectively, "Lear"). Lear Canada Investments Ltd. and Lear Corporation Canada are both wholly-owned indirect subsidiaries of Lear Corporation. They are incorporated pursuant to the laws of Alberta. Lear Canada is a partnership owned 99.9% by Lear Corporation Canada Ltd. and 0.1% by Lear Canada Investments Ltd. and is the only operating entity of Lear in Canada.

3 Lear is a leading global supplier of automotive seating systems, electrical distribution systems, and electronic products. It has established itself as a Tier 1 global supplier of these parts to every major original equipment manufacturer ("OEM"). Lear has world wide manufacturing and production facilities, four of which are in Canada, namely Ajax, Kitchener, St. Thomas, and Whitby, Ontario. A fifth facility in Windsor, Ontario was closed in May of this year. Lear employs approximately 7,200 employees world wide of which 1,720 are employed by the Canadian operations. 1,600 are paid on an hourly basis and 120 are paid salary. 1,600 are members of the CAW and are covered by 5 separate collective bargaining agreements. Lear maintains a qualified defined contribution component of the Canadian salaried pension plan and 8 Canadian qualified defined benefit plans.

4 Lear conducts its North American business on a fully integrated basis. All management functions are based at the corporate headquarters in Southfield, Michigan and all customer relationships are maintained on a North American basis. The U.S. headquarters' operational support for the Canadian locations includes, but is not limited to, primary customer interface and support, product design and engineering, manufacturing and engineering, prototyping, launch support, programme management, purchasing and supplier qualification, testing and validation, and quality assurance. In addition, other support is provided for human resources, finance, information technology and other administrative functions.

5 Lear's Canadian operations are also linked to its U.S. operations through the companies' supply chain. Lear's facilities in Whitby, Ajax, and St. Thomas supply complete seat systems on a just-in-time basis to automotive assembly operations of the U.S. based OEMs, General Motors and Ford in Ontario. Lear's Kitchener facility manufactures seat metal components which are supplied primarily to several Lear assembly locations in the U.S., Canada and Mexico.

6 Lear Corporation, Lear Canada and others entered into a credit agreement with a syndicate of institutions led by J.P. Morgan Chase Bank, N.A. acting as general administrative agent and the Bank of Nova Scotia acting as the Canadian administrative agent. It provides for aggregate commitments of \$2.289US billion. Although

Lear Canada is a borrower under this senior secured credit facility, it is only liable for borrowings made in Canada and no funds have been advanced in this country.

7 Additionally, Lear Corporation has outstanding approximately \$1.29US billion of senior unsecured notes. The Canadian Applicants are not issuers or guarantors of any of them.

8 Over the past several years, Lear has worked on restructuring its business. As part of this initiative, it closed or initiated the closure of 28 manufacturing facilities and 10 administrative/engineering facilities by the end of 2008. This included the Windsor facility for which statutory severance amounts owing to all employees have been paid.

9 Despite its efforts, Lear was faced with turmoil in the automotive industry. Decreased consumer confidence, limited credit availability and decreased demand for new vehicles all led to decreased production. As a result of these conditions, Lear defaulted under its senior secured credit facility in late 2008. In early 2009, Lear engaged in discussions with senior secured facility lenders and unsecured noteholders. It reached an agreement with the majority of them wherein they agreed to support a Chapter 11 plan.

10 On July 7, 2009, Lear filed voluntary petitions for relief under Chapter 11 of the US Bankruptcy Code and sought "first day" orders in those proceedings in the United States Bankruptcy Court for the Southern District of New York. The Applicants now seek recognition of those proceedings and the orders. Lear expects to emerge from the Chapter 11 proceedings and any associated proceedings in other jurisdictions as a substantially de-leveraged enterprise with competitive going forward operations, and to do so in a timely basis.

Applicable Law

11 Section 18.6 of the CCAA was introduced in 1997 to address the rising number of international insolvencies. Courts have recognized that in the context of cross-border insolvencies, comity is to be encouraged. Efforts are made to complement, coordinate, and where appropriate, accommodate insolvency proceedings commenced in foreign jurisdictions.

12 Section 18.6(1) provides that "foreign proceeding" means a judicial or administrative proceeding commenced outside Canada in respect of a debtor under a law relating to bankruptcy or insolvency and dealing with the collective interests of creditors generally. It is well recognized that proceedings under Chapter 11 of the U.S. Bankruptcy Code fall within that definition and that, while not identical, the substance and procedures of the U.S. Bankruptcy Code are similar to those found in the Canadian bankruptcy regime: *United Air Lines Inc., Re* [FN1]

13 *Babcock & Wilcox Canada Ltd., Re* [FN2] provided an early interpretation of section 18.6, and while not without some controversy [FN3], the practice in Canadian insolvency proceedings has evolved accordingly. In that case, Farley J. distinguished between section 18.6(2) of the Act, which deals with concurrent filings by a debtor company under the CCAA in Canada and corresponding bankruptcy or insolvency legislation in a foreign jurisdiction, and section 18.6(4) which may deal with ancillary proceedings such as this one. As with section 2 of the Act, section 18.6(2) is in respect of a debtor company whereas section 18.6 (4) permits any interested person to apply for recognition. As such, he held that the applicant before him was not required to meet the Act's definition of "debtor company" which required the company to be insolvent. [FN4] In addition, he noted that section 18.6(3) provides that an order of the Court under section 18.6 may be made on such terms and conditions as the Court considers appropriate in the circumstances.

14 Applying those legal principles, the Applicants are entitled to apply for an order pursuant to section 18.6 of the CCAA. They are debtors within the definition of section 18.6(1) and interested persons falling within section 18.6(4). In this regard, while the CCAA does not define the term "person", the BIA definition extends to include a partnership. In the absence of a definition in the CCAA, by analogy it is reasonable to interpret the term "person" as including a partnership.

15 I must then consider whether the order requested should be granted. In exercising discretion under section 18.6, it has been repeatedly held that in the context of an insolvency, the Court should consider whether a real and substantial connection exists between a matter and the foreign jurisdiction: *Matlack Inc.*, Re[FN5] and *Magna Entertainment Corp.*, Re[FN6] Where the operations of debtors are most closely connected to a foreign jurisdiction and the Canadian operations are inextricably linked with the business located in that foreign jurisdiction, it is appropriate for the Court in the foreign jurisdiction to exercise principal control over the insolvency process in accordance with the principles of comity and to avoid a multiplicity of proceedings: *Matlack*, Re[FN7]. As noted in that case, it is in the interests of creditors and stakeholders that a reorganization proceed in a coordinated fashion. This provides for stability and certainty. "The objective of such coordination is to ensure that creditors are treated as equitably and fairly as possible, wherever they are located." [FN8]

16 I am satisfied that an order recognizing the U.S. proceeding as a foreign proceeding within the meaning of section 18.6(1) should be granted and that a real and substantial connection has been established. The Applicants including Lear Canada are part of an integrated multi-national corporate enterprise with operations in 36 countries, one of which is Canada. Lear conducts its North American business on a fully integrated basis. As mentioned, all management functions are based at the U.S. corporate headquarters and all customer relationships are maintained on a North American basis. As such, the managerial and operational support for the Canadian locations is situated in the United States. In addition, Lear's Canadian operations are linked to the U.S. operations through the Lear's supply chain. As evidence of same, a note to Lear Canada's December 31, 2008 unaudited financial statement states that Lear Corporation provides Lear Canada with "significant operating support, including the negotiation of substantially all of its sales contracts. Such support is significant to the success of the Partnership's future operations and its ability to realize the carrying value of its assets."

17 I am also of the view that it is both necessary and desirable that the restructuring of this international enterprise be coordinated and that a multiplicity of proceedings in two different jurisdictions should be avoided. Granting relief will enable the Applicants to continue to operate in the ordinary course and preserve value and customer relationships. Coordination will also provide stability. The U.S. Court will be the primary court overseeing the restructuring proceedings of Lear. I also note that in its report filed with the Court, the proposed Information Officer, RSM Richter Inc., expressed its support for the relief requested by the Applicants.

18 That said, increasingly with the downturn in the global economy, this Court is entertaining requests for concurrent or ancillary orders relating to multi-group enterprises typically with a significant cross-border element. Frequently, relative to the whole enterprise, the Canadian component is small. From the viewpoint of efficiency and speed, both of which are important features of a restructuring, an applicant may be of the view that the Canadian operations do not merit a CCAA filing other than a section 18.6 request. In addressing whether to grant relief pursuant to section 18.6, the Court should, amongst other things, consider the interests of stakeholders in this country and the impact, if any, that may result from the relief requested. This would include benefits and prejudice such as any juridical advantage that may be compromised.[FN9] These issues should be addressed by an applicant in its materials. Assuming there are benefits, the existence of prejudice does not necessarily mean that the order will be refused but it is important that these facts at least be considered, and if appropriate,

certain protections should be incorporated into the order granted.

19 By way of example, in this case, the Court raised certain issues with the Applicants and they readily and appropriately in my view, filed additional affidavit evidence and included other provisions in the proposed order. The Court was concerned with the treatment that might be afforded Canadian unsecured creditors and particularly employees and trade creditors. Lear Canada had total current assets of approximately \$60US million as at May 31, 2009 which included approximately \$20US million in cash. Its total assets amounted to approximately \$115US million. Total current liabilities as at the same time period amounted to about \$75US million. In addition, pension and other post-retirement benefit obligations were stated to amount to about \$170US million. There were also intercompany accounts of approximately \$190US million in favour of Lear Canada for total liabilities of about \$55US million. Counsel for the Applicants advised that significant pre-petition payments had been made to suppliers and that the intention is for Lear Canada to continue to carry on business.

20 In the additional evidence filed, the Applicants indicated that they had not yet sought approval of DIP financing arrangements but that under the proposed arrangement, the Canadian Applicants would not be borrowers or guarantors. In addition, the term sheet agreed to between the Applicants and the senior credit facility lenders provided that the Canadian Applicants had agreed to pay all general unsecured claims in full as they become due. Additionally, the Applicants had obtained an order in the U.S. proceedings authorizing them to pay and honour certain pre-petition claims for wages, salaries, bonuses and other compensation and it is the intention of the Applicants to continue to pay all wages and compensation due and to be due to Canadian employees. The Applicants are up to date on all current and special payments associated with the Canadian pension plans and will continue to make these payments going forward. Provisions reflecting this evidence were incorporated into the Court order.

21 The Canadian Applicants were not to make any advances or transfers of funds except to pay for goods and services in the ordinary course of business and in accordance with existing practices and similarly were not to grant security over or encumber or release their property. They also were to pay current service and special payments with respect to the Canadian pensions. The order further provided that in the event of inconsistencies between it and the terms of the Chapter 11 orders, the provisions of my order were to govern.

22 The order includes a stay of proceedings against the Applicants and their property, a recognition of various orders and an administration charge and a directors' charge. The order also includes the usual come back provision in which any person affected may move to rescind or vary the order on at least 7 days' notice.

23 Where one jurisdiction has an ancillary role, the Court in the ancillary jurisdiction should be provided with information on an on going basis and be kept apprised of developments in respect of the debtors' reorganization efforts in the foreign jurisdiction. In addition, stakeholders in the ancillary jurisdiction should be afforded appropriate access to the proceedings in the principal jurisdiction.[FN10] In this case, RSM Richter Inc. as Information Officer intends to be a watchdog and monitor developments in the U.S. proceedings and keep this Court informed. This Court supports its request to be added to the service list in the Chapter 11 proceeding and any request for standing before the U.S. Bankruptcy Court for the Southern District of New York that the Information Officer may make. In this regard, this Court seeks the aid and assistance of that Court.

Application granted.

FN1 (2003), 43 C.B.R. (4th) 284 (Ont. S.C.J. [Commercial List]), at 285.

2009 CarswellOnt 4232, 55 C.B.R. (5th) 57

FN2 (2000), 18 C.B.R. (4th) 157 (Ont. S.C.J. [Commercial List]).

FN3 See for example, Professor J.S. Ziegel's article "Corporate Groups and Canada-U.S. Cross-Border Insolvencies: Contrasting Judicial Visions", (2001) 35 C.B.L.J. 459.

FN4 It should be noted that a voluntary filing under Chapter 11 does not require an applicant to be insolvent and a partnership is eligible to apply for relief as well.

FN5 (2001), 26 C.B.R. (4th) 45 (Ont. S.C.J. [Commercial List]).

FN6 (2009), 51 C.B.R. (5th) 82 (Ont. S.C.J.).

FN7 Supra, note 5 at para. 8.

FN8 Ibid, at para. 3.

FN9 See *Holt Cargo Systems Inc. v. ABC Containerline N.V. (Trustees of)*, [2001] 3 S.C.R. 907 (S.C.C.).

FN10 See *Babcock & Wilcox Canada Ltd., Re*, supra, note 2 at para. 21.

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TAB 7

2011 CarswellBC 124, 2011 BCSC 115, [2011] B.C.W.L.D. 2461, 76 C.B.R. (5th) 317

C

2011 CarswellBC 124, 2011 BCSC 115, [2011] B.C.W.L.D. 2461, 76 C.B.R. (5th) 317

Angiotech Pharmaceuticals 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 Angiotech Pharmaceuticals, Inc. and the other
Petitioners Listed on Schedule "A" (Petitioners)

British Columbia Supreme Court [In Chambers]

P. Walker J.

Heard: January 28, 2011

Oral reasons: January 28, 2011

Docket: Vancouver S110587

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Counsel: J. Dacks, M. Wasserman, R. Morse for Angiotech Pharmaceuticals

J. Grieve for Alvarez & Marsal Canada Inc.

R. Chadwick, L. Willis for Consenting Noteholders

B. Kaplan, P. Rubin for Wells Fargo

Subject: Insolvency

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

Centre of interest — Parties were involved in proceedings under Companies' Creditors Arrangement Act, with proceedings to begin in Delaware as well — Petitioners brought application for initial order — Application granted — Order would give petitioners reasonable time to organize affairs and operate as going concern — Centre of main interest in proceedings was British Columbia — Petitioners had assets in Canada — Operations of petitioners directed from head office in Canada — Chief executive officer to whom senior management reported to was based in Vancouver — Company reporting directed from Vancouver — Research and development done in Vancouver — Plant management meetings were held in Vancouver — Monitor to be representative in any main proceedings, rather than petitioners.

Cases considered by *P. Walker J.*:

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2011 CarswellBC 124, 2011 BCSC 115, [2011] B.C.W.L.D. 2461, 76 C.B.R. (5th) 317

Fraser Papers Inc., Re (2009), 2009 CarswellOnt 3658, 56 C.B.R. (5th) 194 (Ont. S.C.J. [Commercial List]) — referred to

Nortel Networks Corp., Re (2009), 50 C.B.R. (5th) 77, 2009 CarswellOnt 146 (Ont. S.C.J. [Commercial List]) — referred to

Statutes considered:

Bankruptcy Code, 11 U.S.C. 1982

Chapter 15 — referred to

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

Generally — referred to

PETITION for initial order in proceedings under *Companies' Creditors Arrangement Act*.

P. Walker J.:

1 I am satisfied that the initial CCAA order should be granted. I am also satisfied that the order will permit the petitioners a reasonable time to reorganize their affairs in order to allow them to operate as going concerns.

2 The plan contemplated by the petitioners is aggressive in terms of time frame. The petitioners are to be complimented on their efforts to seek the Court's assistance in a very timely way, for taking an expedited approach in the face of failed efforts to avoid invoking protection under the CCAA regime.

3 The proposed timetable appears to reflect the petitioners' efforts to provide protection to their creditors, to maintain their employment contracts with their employees, and to continue to provide their valuable medical and pharmaceutical products to the global public.

4 I am satisfied that I have the jurisdiction to make the order, and I will grant the initial CCAA order.

5 I have been asked by counsel to speak to the issue of the "centre of main interest" because I am told that an application is to be made to the U.S. District Court, in Delaware, which will be filed this Sunday, January 30, 2011, and brought on Monday, January 31, 2011.

6 The petitioners' intention in that regard is reflected in the evidence. It is well described at para. 65 of their written submissions:

Although the Petitioners intend that this Court be the main forum for overseeing their financial and operational restructuring, the Petitioners also intend to file petitions under Chapter 15 of the *United States Bankruptcy Code* seeking recognition of this proceeding as a "Foreign Main Proceeding". The Petitioners would file such petitions on the basis that British Columbia is their "centre of main interest" ("COMI"). The Petitioners intend that A&M, as proposed Monitor, would be the foreign representative in the Chapter 15 proceedings[.]

7 The factors considered by the courts in Canada that are relevant to the centre of main interest issue are:

2011 CarswellBC 124, 2011 BCSC 115, [2011] B.C.W.L.D. 2461, 76 C.B.R. (5th) 317

- (a) the location where corporate decisions are made;
- (b) the location of employee administrations, including human resource functions;
- (c) the location of the company's marketing and communication functions;
- (d) whether the enterprise is managed on a consolidated basis;
- (e) the extent of integration of an enterprise's international operations;
- (f) the centre of an enterprise's corporate, banking, strategic and management functions;
- (g) the existence of shared management within entities and in an organization;
- (h) the location where cash management and accounting functions are overseen;
- (i) the location where pricing decisions and new business development initiatives are created; and
- (j) the seat of an enterprise's treasury management functions, including management of accounts receivable and accounts payable.

See *Nortel Networks Corp., Re* (2009), 50 C.B.R. (5th) 77, [2009] O.J. No. 154 (Ont. S.C.J. [Commercial List]); and *Fraser Papers Inc., Re* (2009), 56 C.B.R. (5th) 194, [2009] O.J. No. 2648 (Ont. S.C.J. [Commercial List]).

8 The petitioners submit that the centre of main interest is British Columbia for a number of reasons. These are set out in their written submissions and in the affidavit of Mr. Bailey, the chief financial officer, sworn today.

9 At para. 66 of their written submissions, the petitioners state:

The Petitioners are part of a highly integrated international enterprise that is directed from Angiotech's head office in Vancouver, British Columbia. British Columbia is therefore the Petitioners' COMI [centre of main interest].

10 Mr. Bailey's affidavit deposes to the following at para. 234:

As noted previously, the Petitioners are part of an integrated business enterprise with primary operations in Canada and the United States. The Petitioners' COMI is British Columbia notwithstanding their substantial operations in the United States:

- (a) all of the Petitioners have assets in Canada and each of the companies comprising Angiotech U.S. has a bank account at the Royal Bank of Canada in Vancouver containing \$1,000 on deposit;
- (b) the operations of the Petitioners are directed from Angiotech's head office in Canada;
- (c) all of the Petitioners report to Angiotech;
- (d) corporate governance for the Petitioners is directed from Canada;

2011 CarswellBC 124, 2011 BCSC 115, [2011] B.C.W.L.D. 2461, 76 C.B.R. (5th) 317

- (e) strategic and key operating decisions and key policy decisions for the Petitioners are made by Angiotech staff located in Vancouver;
- (f) the Petitioners' tax, treasury and cash management functions are managed from Vancouver and local plant finance staff report to senior finance management in Vancouver;
- (g) the Petitioners' human resources functions are administered from Vancouver and all local human resources staff report into Vancouver;
- (h) primary research and development functions including new product conceptions and development, regulatory and clinical development, medical affairs and quality control are directed from and carried out in Vancouver;
- (i) the Petitioners' information technology and systems are directed from Vancouver;
- (j) plant management and senior staff of the Petitioners regularly attend meetings in Vancouver;
- (k) all public company reporting and investor relations are directed from Vancouver; and
- (l) Angiotech's chief executive officer (the "CEO") is based in Vancouver and in addition to the Senior Management referred above, all sales, manufacturing, operations and legal staff report to the CEO.

11 I have had an opportunity to read through the evidence contained in Mr. Bailey's affidavit filed in support of the application. I am satisfied on the evidence before me that the centre of main interest is British Columbia. I accept the petitioners' submissions.

12 Now I wish to address the point raised by Mr. Grieve concerning the monitor.

13 The monitor is an officer of the Court. The monitor owes its duties to the Court and does not represent the interests of the petitioners, any creditor, or any other interested party. I wish the monitor to be appointed as representative of any foreign main proceedings, instead of the petitioners (or anyone acting on their behalf) or any other party, in order to ensure that the U.S. creditors are as fairly treated as any of the other creditors in this case. I wish my request in that regard be put before the U.S. District Court in Delaware when the application concerning the foreign main proceeding is heard.

Application granted.

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TAB 8

2000 CarswellOnt 704, 5 B.L.R. (3d) 75, 18 C.B.R. (4th) 157

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2000 CarswellOnt 704, 5 B.L.R. (3d) 75, 18 C.B.R. (4th) 157

Babcock & Wilcox Canada Ltd., Re

In the Matter of Section 18.6 of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

In the Matter of Babcock & Wilcox Canada Ltd.

Ontario Superior Court of Justice [Commercial List]

Farley J.

Heard: February 25, 2000

Judgment: February 25, 2000

Docket: 00-CL-3667

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Counsel: *Derrick Tay*, for Babcock & Wilcox Canada Ltd.

Paul Macdonald, for Citibank North America Inc., Lenders under the Post-Petition Credit Agreement.

Subject: Corporate and Commercial; Insolvency

Corporations --- Arrangements and compromises — Under Companies' Creditors Arrangement Act — Arrangements — Effect of arrangement — Stay of proceedings

Solvent corporation applied for interim order under s. 18.6 of Companies' Creditors Arrangement Act for stay of actions and enforcements against corporation in respect of asbestos tort claims — Application granted — Application was to be reviewed in light of doctrine of comity, inherent jurisdiction, and aspect of liberal interpretation of Act generally — Proceedings commenced by corporation's parent corporation in United States and other United States related corporations for protection under c. 11 of United States Bankruptcy Code in connection with mass asbestos tort claims constituted foreign proceeding for purposes of s. 18.6 of Act — Insolvency of debtor in foreign proceeding was not condition precedent for proceeding to be foreign proceeding under definition of s. 18.6 of Act — Corporation was entitled to avail itself of provisions of s. 18.6 of Act — Relief requested was not of nature contrary to provisions of Act — Recourse may be had to s. 18.6 of Act in case of solvent debtor — Chapter 11 proceedings in United States were intended to resolve mass asbestos-related tort claims that seriously threatened long-term viability of corporation's parent — Corporation was significant participant in overall international operation and interdependence existed between corporation and its parent as to facilities and services — Bankruptcy Code, 11 U.S.C. 1982, c. 11 — Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, s. 18.6.

Cases considered by *Farley J.*:

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2000 CarswellOnt 704, 5 B.L.R. (3d) 75, 18 C.B.R. (4th) 157

Arrowmaster Inc. v. Unique Forming Ltd. (1993), 17 O.R. (3d) 407, 29 C.P.C. (3d) 65 (Ont. Gen. Div.) — applied

ATL Industries Inc. v. Han Eol Ind. Co. (1995), 36 C.P.C. (3d) 288 (Ont. Gen. Div. [Commercial List]) — applied

Hongkong Bank of Canada v. Chef Ready Foods Ltd. (1990), 51 B.C.L.R. (2d) 84, 4 C.B.R. (3d) 311, (sub nom. *Chef Ready Foods Ltd. v. Hongkong Bank of Canada*) [1991] 2 W.W.R. 136 (B.C. C.A.) — referred to

Hunt v. T & N plc (1993), [1994] 1 W.W.R. 129, 21 C.P.C. (3d) 269, (sub nom. *Hunt v. Lac d'Amiante du Québec Ltée*) 37 B.C.A.C. 161, (sub nom. *Hunt v. Lac d'Amiante du Québec Ltée*) 60 W.A.C. 161, (sub nom. *Hunt v. T&N plc*) [1993] 4 S.C.R. 289, (sub nom. *Hunt v. T&N plc*) 109 D.L.R. (4th) 16, 85 B.C.L.R. (2d) 1, (sub nom. *Hunt v. Lac d'Amiante du Québec Ltée*) 161 N.R. 81 (S.C.C.) — referred to

Lehndorff General Partner Ltd., Re (1993), 17 C.B.R. (3d) 24, 9 B.L.R. (2d) 275 (Ont. Gen. Div. [Commercial List]) — referred to

Loewen Group Inc. v. Continental Insurance Co. of Canada (1997), 48 C.C.L.I. (2d) 119, 44 B.C.L.R. (3d) 387 (B.C. S.C.) — considered

Microbiz Corp. v. Classic Software Systems Inc. (1996), 45 C.B.R. (3d) 40 (Ont. Gen. Div.) — referred to

Morguard Investments Ltd. v. De Savoye (1990), 46 C.P.C. (2d) 1, 15 R.P.R. (2d) 1, 76 D.L.R. (4th) 256, 122 N.R. 81, [1991] 2 W.W.R. 217, 52 B.C.L.R. (2d) 160, [1990] 3 S.C.R. 1077 (S.C.C.) — applied

Olympia & York Developments Ltd. v. Royal Trust Co. (1993), 20 C.B.R. (3d) 165 (Ont. Gen. Div.) — considered

Pacific National Lease Holding Corp. v. Sun Life Trust Co., 34 C.B.R. (3d) 4, 10 B.C.L.R. (3d) 62, [1995] 10 W.W.R. 714, (sub nom. *Pacific National Lease Holding Corp., Re*) 62 B.C.A.C. 151, (sub nom. *Pacific National Lease Holding Corp., Re*) 103 W.A.C. 151 (B.C. C.A.) — referred to

Roberts v. Picture Butte Municipal Hospital (1998), 64 Alta. L.R. (3d) 218, 23 C.P.C. (4th) 300, 227 A.R. 308, [1999] 4 W.W.R. 443 (Alta. Q.B.) — considered

Taylor v. Dow Corning Australia Pty. Ltd. (December 19, 1997), Doc. 8438/95 (Australia Vic. Sup. Ct.) — referred to

Tradewell Inc. v. American Sensors & Electronics Inc. (U.S. S.D. N.Y. 1997)

Westar Mining Ltd., Re, 70 B.C.L.R. (2d) 6, 14 C.B.R. (3d) 88, [1992] 6 W.W.R. 331 (B.C. S.C.) — referred to

Statutes considered:

Bankruptcy Amendment Code, (U.S.), 1994

Generally — considered

Bankruptcy Code, 11 U.S.C. 1982

Chapter 11 — considered

s. 524(g) — considered

2000 CarswellOnt 704, 5 B.L.R. (3d) 75, 18 C.B.R. (4th) 157

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Pt XIII [en. 1997, c. 12, s. 118] — referred to

s. 267 "debtor" [en. 1997, c. 12, s. 118] — considered

ss. 267-275 [en. 1997, c. 12, s. 118] — referred to

Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act and the Income Tax Act, Act to amend the, S.C. 1997, c. 12

Generally — referred to

Business Corporations Act, R.S.O. 1990, c. B.16

Generally — referred to

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

s. 2 "debtor company" — considered

s. 3 — considered

s. 4 — considered

s. 5 — considered

s. 17 — referred to

s. 18.6 [en. 1997, c. 12, s. 125] — considered

s. 18.6(1) "foreign proceeding" [en. 1997, c. 12, s. 125] — considered

s. 18.6(2) [en. 1997, c. 12, s. 125] — considered

s. 18.6(3) [en. 1997, c. 12, s. 125] — considered

s. 18.6(4) [en. 1997, c. 12, s. 125] — considered

s. 18.6(8) [en. 1997, c. 12, s. 125] — considered

APPLICATION by solvent corporation for interim order under s. 18.6 of *Companies' Creditors Arrangement Act*.

Farley J.:

I have had the opportunity to reflect on this matter which involves an aspect of the recent amendments to the insolvency legislation of Canada, which amendments have not yet been otherwise dealt with as to their substance. The applicant, Babcock & Wilcox Canada Ltd. ("BW Canada"), a solvent company, has applied for an interim order under s. 18.6 of the *Companies' Creditors Arrangement Act* ("CCAA"):

- (a) that the proceedings commenced by BW Canada's parent U.S. corporation and certain other U.S. related corporations (collectively "BWUS") for protection under Chapter 11 of the U.S. Bankruptcy Code in connection with mass asbestos claims before the U.S. Bankruptcy Court be recognized as a "foreign proceeding" for the purposes of s. 18.6;
- (b) that BW Canada be declared a company which is entitled to avail itself of the provisions of s. 18.6;
- (c) that there be a stay against suits and enforcements until May 1, 2000 (or such later date as the Court may order) as to asbestos related proceedings against BW Canada, its property and its directors;
- (d) that BW Canada be authorized to guarantee the obligations of its parent to the DIP Lender (debtor in possession lender) and grant security therefor in favour of the DIP Lender; and
- (e) and for other ancillary relief.

2 In Chapter 11 proceedings under the U.S. Bankruptcy Code, the U.S. Bankruptcy Court in New Orleans issued a temporary restraining order on February 22, 2000 wherein it was noted that BW Canada may be subject to actions in Canada similar to the U.S. asbestos claims. U.S. Bankruptcy Court Judge Brown's temporary restraining order was directed against certain named U.S. resident plaintiffs in the asbestos litigation:

... and towards all plaintiffs and potential plaintiffs in Other Derivative Actions, that they are hereby restrained further prosecuting Pending Actions or further prosecuting or commencing Other Derivative Actions against Non-Debtor Affiliates, until the Court decides whether to grant the Debtors' request for a preliminary injunction.

Judge Brown further requested the aid and assistance of the Canadian courts in carrying out the U.S. Bankruptcy Court's orders. The "Non-Debtor Affiliates" would include BW Canada.

3 Under the 1994 amendments to the U.S. Bankruptcy Code, the concept of the establishment of a trust sufficient to meet the court determined liability for a mass torts situations was introduced. I am advised that after many years of successfully resolving the overwhelming majority of claims against it on an individual basis by settlement on terms BWUS considered reasonable, BWUS has determined, as a result of a spike in claims with escalating demands when it was expecting a decrease in claims, that it is appropriate to resort to the mass tort trust concept. Hence its application earlier this week to Judge Brown with a view to eventually working out a global process, including incorporating any Canadian claims. This would be done in conjunction with its joint pool of insurance which covers both BWUS and BW Canada. Chapter 11 proceedings do not require an applicant thereunder to be insolvent; thus BWUS was able to make an application with a view towards the 1994 amendments (including s. 524(g)). This subsection would permit the U.S. Bankruptcy Court on confirmation of a plan of reorganization under Chapter 11 with a view towards rehabilitation in the sense of avoiding insolvency in a mass torts situation to:

... enjoin entities from taking legal action for the purpose of directly or indirectly collecting, recovering, or receiving payment or recovery with respect to any claims or demand that, under a plan of reorganization, is to be paid in whole or in part by a trust.

4 In 1997, ss. 267-275 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("BIA") and s. 18.6 of the CCAA were enacted to address the rising number of international insolvencies ("1997 Amendments"). The 1997 Amendments were introduced after a lengthy consultation process with the insolvency profession and others. Previous to

2000 CarswellOnt 704, 5 B.L.R. (3d) 75, 18 C.B.R. (4th) 157

the 1997 Amendments, Canadian courts essentially would rely on the evolving common law principles of comity which permitted the Canadian court to recognize and enforce in Canada the judicial acts of other jurisdictions.

5 *La Forest J in Morguard Investments Ltd. v. De Savoye* (1990), 76 D.L.R. (4th) 256 (S.C.C.), at p. 269 described the principle of comity as:

"Comity" in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and goodwill, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protections of its laws . . .

6 In *ATL Industries Inc. v. Han Eol Ind. Co.* (1995), 36 C.P.C. (3d) 288 (Ont. Gen. Div. [Commercial List]), at pp. 302-3 I noted the following:

Allow me to start off by stating that I agree with the analysis of MacPherson J. in *Arrowmaster Inc. v. Unique Forming Ltd.* (1993), 17 O.R. (3d) 407 (Gen. Div.) when in discussing *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077, 76 D.L.R. (4th) 256, 52 B.C.L.R. (2d) 160, 122 N.R. 81, [1991] 2 W.W.R. 217, 46 C.P.C. (2d) 1, 15 R.P.R. (2d) 1, he states at p.411:

The leading case dealing with the enforcement of "foreign" judgments is the decision of the Supreme Court of Canada in *Morguard Investments, supra*. The question in that case was whether, and the circumstances in which, the judgment of an Alberta court could be enforced in British Columbia. A unanimous court, speaking through La Forest J., held in favour of enforceability and, in so doing, discussed in some detail the doctrinal principles governing inter-jurisdictional enforcement of orders. I think it fair to say that the overarching theme of La Forest J.'s reasons is the necessity and desirability, in a mobile global society, for governments and courts to respect the orders made by courts in foreign jurisdictions with comparable legal systems, including substantive laws and rules of procedure. He expressed this theme in these words, at p. 1095:

Modern states, however, cannot live in splendid isolation and do give effect to judgments given in other countries in certain circumstances. Thus a judgment *in rem*, such as a decree of divorce granted by the courts of one state to persons domiciled there, will be recognized by the courts of other states. In certain circumstances, as well, our courts will enforce personal judgments given in other states. Thus, we saw, our courts will enforce an action for breach of contract given by the courts of another country if the defendant was present there at the time of the action or has agreed to the foreign court's exercise of jurisdiction. *This, it was thought, was in conformity with the requirements of comity, the informing principle of private international law, which has been stated to be the deference and respect due by other states to the actions of a state legitimately taken within its territory. Since the state where the judgment was given has power over the litigants, the judgments of its courts should be respected.* (emphasis added in original)

Morguard Investments was, as stated earlier, a case dealing with the enforcement of a court order across provincial boundaries. However, the historical analysis in La Forest J.'s judgment, of both the United Kingdom and Canadian jurisprudence, and the doctrinal principles enunciated by the court are equally applicable, in my view, in a situation where the judgment has been rendered by a court in a foreign jurisdiction. This should not be an absolute rule - there will be some foreign court orders that should not be enforced in Ontario, perhaps because the substantive law in the foreign country is so different from Ontario's or perhaps because the legal process that generates the foreign order diverges radically from Ontario's process. (my emphasis added)

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Certainly the substantive and procedural aspects of the U.S. Bankruptcy Code including its 1994 amendments are not so different and do not radically diverge from our system.

7 After reviewing La Forest J.'s definition of comity, I went on to observe at p. 316:

As was discussed by J.G. Castel, *Canadian Conflicts of Laws*, 3rd ed. (Toronto: Butterworths, 1994) at p. 270, there is a presumption of validity attaching to a foreign judgment unless and until it is established to be invalid. It would seem that the same type of evidence would be required to impeach a foreign judgment as a domestic one: fraud practiced on the court or tribunal: see *Sun Alliance Insurance Co. v. Thompson* (1981), 56 N.S.R. (2d) 619, 117 A.P.R. 619 (T.D.), Sopinka, supra, at p. 992.

La Forest J. went on to observe in *Morguard* at pp. 269-70:

In a word, the rules of private international law are grounded in the need in modern times to facilitate the flow of wealth, skills and people across state lines in a fair and orderly manner.

.....

Accommodating the flow of wealth, skills and people across state lines has now become imperative. Under these circumstances, our approach to the recognition and enforcement of foreign judgments would appear ripe for reappraisal.

See also *Hunt v. T & N plc* (1993), 109 D.L.R. (4th) 16 (S.C.C.), at p. 39.

8 While *Morguard* was an interprovincial case, there is no doubt that the principles in that case are equally applicable to international matters in the view of MacPherson J. and myself in *Arrowmaster* (1993), 17 O.R. (3d) 407 (Ont. Gen. Div.), and *ATL* respectively. Indeed the analysis by La Forest J. was on an international plane. As a country whose well-being is so heavily founded on international trade and investment, Canada of necessity is very conscious of the desirability of invoking comity in appropriate cases.

9 In the context of cross-border insolvencies, Canadian and U.S. Courts have made efforts to complement, coordinate and where appropriate accommodate the proceedings of the other. Examples of this would include *Olympia & York Developments Ltd., Ever fresh Beverages Inc. and Loewen Group Inc. v. Continental Insurance Co. of Canada* (1997), 48 C.C.L.I. (2d) 119 (B.C. S.C.). Other examples involve the situation where a multi-jurisdictional proceeding is specifically connected to one jurisdiction with that jurisdiction's court being allowed to exercise principal control over the insolvency process: see (1998), 23 C.P.C. (4th) 300 (Alta. Q.B.), at pp. 5-7 [[1998] A.J. No. 817]; *Microbiz Corp. v. Classic Software Systems Inc.* (1996), 45 C.B.R. (3d) 40 (Ont. Gen. Div.), at p. 4; *Tradewell Inc. v. American Sensors Electronics, Inc.*, 1997 WL 423075 (S.D.N.Y. 1997).

10 In *Roberts*, Forsythe J. at pp. 5-7 noted that steps within the proceedings themselves are also subject to the dictates of comity in recognizing and enforcing a U.S. Bankruptcy Court stay in the *Dow Corning* litigation [*Taylor v. Dow Corning Australia Pty. Ltd.* (December 19, 1997), Doc. 8438/95 (Australia Vic. Sup. Ct.)] as to a debtor in Canada so as to promote greater efficiency, certainty and consistency in connection with the debtor's restructuring efforts. Foreign claimants were provided for in the U.S. corporation's plan. Forsyth J. stated:

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Comity and cooperation are increasingly important in the bankruptcy context. *As internationalization increases, more parties have assets and carry on activities in several jurisdictions. Without some coordination there would be multiple proceedings, inconsistent judgments and general uncertainty.*

... I find that common sense dictates that these matters would be best dealt with by one court, and in the interest of promoting international comity it seems the forum for this case is in the U.S. Bankruptcy Court. Thus, in either case, whether there has been an attornment or not, I conclude it is appropriate for me to exercise my discretion and apply the principles of comity and grant the Defendant's stay application. I reach this conclusion based on all the circumstances, including the clear wording of the U.S. Bankruptcy Code provision, the similar philosophies and procedures in Canada and the U.S., the Plaintiff's attornment to the jurisdiction of the U.S. Bankruptcy Court, and the incredible number of claims outstanding ... (emphasis added)

11 The CCAA as remedial legislation should be given a liberal interpretation to facilitate its objectives. See *Hongkong Bank of Canada v. Chef Ready Foods Ltd.* (1990), 4 C.B.R. (3d) 311 (B.C. C.A.), at p. 320; *Lehndorff General Partner Ltd., Re* (1993), 17 C.B.R. (3d) 24 (Ont. Gen. Div. [Commercial List]).

12 David Tobin, the Director General, Corporate Governance Branch, Department of Industry in testifying before the Standing Committee on Industry regarding Bill C-5, An Act to amend the BIA, the CCAA and the Income Tax Act, stated at 1600:

Provisions in Bill C-5 attempt to actually codify, which has always been the practice in Canada. They include the Court recognition of foreign representatives; Court authority to make orders to facilitate and coordinate international insolvencies; provisions that would make it clear that foreign representatives are allowed to commence proceedings in Canada, as per Canadian rules - however, they clarify that foreign stays of proceedings are not applicable but a foreign representative can apply to a court for a stay in Canada; and Canadian creditors and assets are protected by the bankruptcy and insolvency rules.

The philosophy of the practice in international matters relating to the CCAA is set forth in *Olympia & York Developments Ltd. v. Royal Trust Co.* (1993), 20 C.B.R. (3d) 165 (Ont. Gen. Div.), at p. 167 where Blair J. stated:

The Olympia & York re-organization involves proceedings in three different jurisdictions: Canada, the United States and the United Kingdom. Insolvency disputes with international overtones and involving property and assets in a multiplicity of jurisdictions are becoming increasingly frequent. Often there are differences in legal concepts - sometimes substantive, sometimes procedural - between the jurisdictions. The Courts of the various jurisdictions should seek to cooperate amongst themselves, in my view, in facilitating the trans-border resolution of such disputes as a whole, where that can be done in a fashion consistent with their own fundamental principles of jurisprudence. The interests of international cooperation and comity, and the interests of developing at least some degree of certitude in international business and commerce, call for nothing less.

Blair J. then proceeded to invoke inherent jurisdiction to implement the Protocol between the U.S. Bankruptcy Court and the Ontario Court. See also my endorsement of December 20, 1995, in *Everfresh Beverages Inc.* where I observed: "I would think that this Protocol demonstrates the 'essence of comity' between the Courts of Canada and the United States of America." *Everfresh* was an example of the effective and efficient use of the Cross-Border Insolvency Concordat, adopted by the Council of the International Bar Association on May 31, 1996 (after being adopted by its Section on Business Law Council on September 17, 1995), which Concordat deals with, inter alia, principal administration of a debtor's

reorganization and ancillary jurisdiction. See also the UNCITRAL Model Law on Cross-Border Insolvency.

13 Thus it seems to me that this application by BW Canada should be reviewed in light of (i) the doctrine of comity as analyzed in *Morguard*, *Arrowmaster* and *ATL*, *supra*, in regard to its international aspects; (ii) inherent jurisdiction; (iii) the aspect of the liberal interpretation of the CCAA generally; and (iv) the assistance and codification of the 1997 Amendments.

"Foreign proceeding" is defined in s. 18.6(1) as:

In this section,

"foreign proceeding" means a judicial or administrative proceeding commenced outside Canada in respect of a debtor under a law relating to bankruptcy or insolvency and dealing with the collective interests of creditors generally; . . .

Certainly a U.S. Chapter 11 proceeding would fit this definition subject to the question of "debtor". It is important to note that the definition of "foreign proceeding" in s. 18.6 of the CCAA contains no specific requirement that the debtor be insolvent. In contrast, the BIA defines a "debtor" in the context of a foreign proceeding (Part XIII of the BIA) as follows:

s. 267 In this Part,

"debtor" means an *insolvent person* who has property in Canada, a *bankrupt* who has property in Canada or a *person who has the status of a bankrupt* under foreign law in a foreign proceeding and has property in Canada; . . . (emphasis added)

I think it a fair observation that the BIA is a rather defined code which goes into extensive detail. This should be contrasted with the CCAA which is a very short general statute which has been utilized to give flexibility to meet what might be described as the peculiar and unusual situation circumstances. A general categorization (which of course is never completely accurate) is that the BIA may be seen as being used for more run of the mill cases whereas the CCAA may be seen as facilitating the more unique or complicated cases. Certainly the CCAA provides the flexibility to deal with the thornier questions. Thus I do not think it unusual that the drafters of the 1997 Amendments would have it in their minds that the provisions of the CCAA dealing with foreign proceedings should continue to reflect this broader and more flexible approach in keeping with the general provisions of the CCAA, in contrast with the corresponding provisions under the BIA. In particular, it would appear to me to be a reasonably plain reading interpretation of s. 18.6 that recourse may be had to s. 18.6 of the CCAA in the case of a solvent debtor. Thus I would conclude that the aspect of insolvency is not a condition precedent vis-a-vis the "debtor" in the foreign proceedings (here the Chapter 11 proceedings) for the proceedings in Louisiana to be a foreign proceeding under the definition of s. 18.6. I therefore declare that those proceedings are to be recognized as a "foreign proceeding" for the purposes of s. 18.6 of the CCAA.

14 It appears to me that my conclusion above is reinforced by an analysis of s. 18.6(2) which deals with concurrent filings by a debtor under the CCAA in Canada and corresponding bankruptcy or insolvency legislation in a foreign jurisdiction. This is not the situation here, but it would be applicable in the *Loewen* case. That subsection deals with the coordination of proceedings as to a "debtor company" initiated pursuant to the CCAA and the foreign legislation.

s. 18.6(2). The court may, in respect of a *debtor company*, make such orders and grant such relief as it considers appropriate to facilitate, approve or implement arrangements that will result in a coordination of proceedings under the Act with any foreign proceeding. (emphasis added)

15 The definition of "debtor company" is found in the general definition section of the CCAA, namely s. 2 and that definition incorporates the concept of insolvency. Section 18.6(2) refers to a "debtor company" since only a "debtor company" can file under the CCAA to propose a compromise with its unsecured or secured creditors: ss. 3, 4 and 5 CCAA. See also s. 18.6(8) which deals with currency concessions "[w]here a compromise or arrangement is proposed in respect of a debtor company . . .". I note that "debtor company" is not otherwise referred to in s. 18.6; however "debtor" is referred to in both definitions under s. 18.6(1).

16 However, s. 18.6(4) provides a basis pursuant to which a company such as BW Canada, a solvent corporation, may seek judicial assistance and protection in connection with a foreign proceeding. Unlike s. 18.6(2), s. 18.6(4) does not contemplate a full filing under the CCAA. Rather s. 18.6(4) may be utilized to deal with situations where, notwithstanding that a full filing is not being made under the CCAA, ancillary relief is required in connection with a foreign proceeding.

s. 18.6(4) Nothing in this section prevents the court, on the application of a foreign representative or *any other interested persons*, from applying such legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives as are not inconsistent with the provisions of this Act. (emphasis added)

BW Canada would fit within "any interested person" to bring the subject application to apply the principles of comity and cooperation. It would not appear to me that the relief requested is of a nature contrary to the provisions of the CCAA.

17 Additionally there is s. 18.6(3) whereby once it has been established that there is a foreign proceeding within the meaning of s. 18.6(1) (as I have concluded there is), then this court is given broad powers and wide latitude, all of which is consistent with the general judicial analysis of the CCAA overall, to make any order it thinks appropriate in the circumstances.

s. 18.6(3) An order of the court under this Section may be made on such terms and conditions as the court considers appropriate in the circumstances.

This subsection reinforces the view expressed previously that the 1997 Amendments contemplated that it would be inappropriate to pigeonhole or otherwise constrain the interpretation of s. 18.6 since it would be not only impracticable but also impossible to contemplate the myriad of circumstances arising under a wide variety of foreign legislation which deal generally and essentially with bankruptcy and insolvency but not exclusively so. Thus, the Court was entrusted to exercise its discretion, but of course in a judicial manner.

18 Even aside from that, I note that the Courts of this country have utilized inherent jurisdiction to fill in any gaps in the legislation and to promote the objectives of the CCAA. Where there is a gap which requires bridging, then the question to be considered is what will be the most practical common sense approach to establishing the connection between the parts of the legislation so as to reach a just and reasonable solution. See *Westar Mining Ltd., Re* (1992), 14 C.B.R. (3d) 88 (B.C. S.C.), at pp. 93-4; *Pacific National Lease Holding Corp. v. Sun Life Trust Co.* (1995), 34 C.B.R. (3d) 4 (B.C. C.A.), at p. 2; *Lehndorff General Partner Ltd.* at p. 30.

19 The Chapter 11 proceedings are intended to resolve the mass asbestos related tort claims which seriously threaten the long term viability of BWUS and its subsidiaries including BW Canada. BW Canada is a significant participant in the overall Babcock & Wilcox international organization. From the record before me it appears reasonably clear that there is an interdependence between BWUS and BW Canada as to facilities and services. In addition there is the fundamental

element of financial and business stability. This interdependence has been increased by the financial assistance given by the BW Canada guarantee of BWUS' obligations.

20 To date the overwhelming thrust of the asbestos related litigation has been focussed in the U.S. In contradistinction BW Canada has not in essence been involved in asbestos litigation to date. The 1994 amendments to the U.S. Bankruptcy Code have provided a specific regime which is designed to deal with the mass tort claims (which number in the hundreds of thousands of claims in the U.S.) which appear to be endemic in the U.S. litigation arena involving asbestos related claims as well as other types of mass torts. This Court's assistance however is being sought to stay asbestos related claims against BW Canada with a view to this stay facilitating an environment in which a global solution may be worked out within the context of the Chapter 11 proceedings trust.

21 In my view, s. 18.6(3) and (4) permit BW Canada to apply to this Court for such a stay and other appropriate relief. Relying upon the existing law on the recognition of foreign insolvency orders and proceedings, the principles and practicalities discussed and illustrated in the Cross-Border Insolvency Concordat and the UNCITRAL Model Law on Cross-Border Insolvencies and inherent jurisdiction, all as discussed above, I would think that the following may be of assistance in advancing guidelines as to how s. 18.6 should be applied. I do not intend the factors listed below to be exclusive or exhaustive but merely an initial attempt to provide guidance:

- (a) The recognition of comity and cooperation between the courts of various jurisdictions are to be encouraged.
- (b) Respect should be accorded to the overall thrust of foreign bankruptcy and insolvency legislation in any analysis, unless in substance generally it is so different from the bankruptcy and insolvency law of Canada or perhaps because the legal process that generates the foreign order diverges radically from the process here in Canada.
- (c) All stakeholders are to be treated equitably, and to the extent reasonably possible, common or like stakeholders are to be treated equally, regardless of the jurisdiction in which they reside.
- (d) The enterprise is to be permitted to implement a plan so as to reorganize as a global unit, especially where there is an established interdependence on a transnational basis of the enterprise and to the extent reasonably practicable, one jurisdiction should take charge of the principal administration of the enterprise's reorganization, where such principal type approach will facilitate a potential reorganization and which respects the claims of the stakeholders and does not inappropriately detract from the net benefits which may be available from alternative approaches.
- (e) The role of the court and the extent of the jurisdiction it exercises will vary on a case by case basis and depend to a significant degree upon the court's nexus to that enterprise; in considering the appropriate level of its involvement, the court would consider:
 - (i) the location of the debtor's principal operations, undertaking and assets;
 - (ii) the location of the debtor's stakeholders;
 - (iii) the development of the law in each jurisdiction to address the specific problems of the debtor and the enterprise;
 - (iv) the substantive and procedural law which may be applied so that the aspect of undue prejudice may be analyzed;

- (v) such other factors as may be appropriate in the instant circumstances.
- (f) Where one jurisdiction has an ancillary role,
 - (i) the court in the ancillary jurisdiction should be provided with information on an ongoing basis and be kept apprised of developments in respect of that debtor's reorganizational efforts in the foreign jurisdiction;
 - (ii) stakeholders in the ancillary jurisdiction should be afforded appropriate access to the proceedings in the principal jurisdiction.
- (g) As effective notice as is reasonably practicable in the circumstances should be given to all affected stakeholders, with an opportunity for such stakeholders to come back into the court to review the granted order with a view, if thought desirable, to rescind or vary the granted order or to obtain any other appropriate relief in the circumstances.

22 Taking these factors into consideration, and with the determination that the Chapter 11 proceedings are a "foreign proceeding" within the meaning of s. 18.6 of the CCAA and that it is appropriate to declare that BW Canada is entitled to avail itself of the provisions of s. 18.6, I would also grant the following relief. There is to be a stay against suits and enforcement as requested; the initial time period would appear reasonable in the circumstances to allow BWUS to return to the U.S. Bankruptcy Court. Assuming the injunctive relief is continued there, this will provide some additional time to more fully prepare an initial draft approach with respect to ongoing matters. It should also be recognized that if such future relief is not granted in the U.S. Bankruptcy Court, any interested person could avail themselves of the "comeback" clause in the draft order presented to me and which I find reasonable in the circumstances. It appears appropriate, in the circumstances that BW Canada guarantee BWUS' obligations as aforesaid and to grant security in respect thereof, recognizing that same is permitted pursuant to the general corporate legislation affecting BW Canada, namely the *Business Corporations Act* (Ontario). I note that there is also a provision for an "Information Officer" who will give quarterly reports to this Court. Notices are to be published in the *Globe & Mail* (National Edition) and the *National Post*. In accordance with my suggestion at the hearing, the draft order notice has been revised to note that persons are alerted to the fact that they may become a participant in these Canadian proceedings and further that, if so, they may make representations as to pursuing their remedies regarding asbestos related claims in Canada as opposed to the U.S. As discussed above the draft order also includes an appropriate "comeback" clause. This Court (and I specifically) look forward to working in a cooperative judicial way with the U.S. Bankruptcy Court (and Judge Brown specifically).

23 I am satisfied that it is appropriate in these circumstances to grant an order in the form of the revised draft (a copy of which is attached to these reasons for the easy reference of others who may be interested in this area of s. 18.6 of the CCAA).

24 Order to issue accordingly.

Application granted.

Appendix

Court File No. 00-CL-3667

SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE
MR. JUSTICE FARLEY

FRIDAY, THE 25TH DAY OF
FEBRUARY, 2000

IN THE MATTER OF S. 18.6 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF BABCOCK & WILCOX CANADA LTD.

INITIAL ORDER

THIS MOTION made by the Applicant Babcock & Wilcox Canada Ltd. for an Order substantially in the form attached to the Application Record herein was heard this day, at 393 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the Affidavit of Victor J. Manica sworn February 23, 2000 (the "Manica Affidavit"), and on notice to the counsel appearing, and upon being advised that no other person who might be interested in these proceedings was served with the Notice of Application herein.

SERVICE

1. *THIS COURT ORDERS* that the time for service of the Notice of Application and the Affidavit in support of this Application be and it is hereby abridged such that the Application is properly returnable today, and, further, that any requirement for service of the Notice of Application and of the Application Record upon any interested party, other than the parties herein mentioned, is hereby dispensed with.

RECOGNITION OF THE U.S. PROCEEDINGS

2. *THIS COURT ORDERS AND DECLARES* that the proceedings commenced by the Applicant's United States corporate parent and certain other related corporations in the United States for protection under Chapter 11 of the U.S. Bankruptcy Code in connection with asbestos claims before the U.S. Bankruptcy Court (the "U.S. Proceedings") be and hereby is recognized as a "foreign proceeding" for purposes of Section 18.6 of the Companies' Creditors Arrangement Act, R.S.C. 1985, c.C-36, as amended, (the "CCAA").

APPLICATION

3. *THIS COURT ORDERS AND DECLARES* that the Applicant is a company which is entitled to relief pursuant to s. 18.6 of the CCAA.

PROTECTION FROM ASBESTOS PROCEEDINGS

4. *THIS COURT ORDERS* that until and including May 1, 2000, or such later date as the Court may order (the "Stay Period"), no suit, action, enforcement process, extra-judicial proceeding or other proceeding relating to, arising out of or in any way connected to damages or loss suffered, directly or indirectly, from asbestos, asbestos contamination or asbestos-related diseases ("Asbestos Proceedings") against or in respect of the Applicant, its directors or any property of the

Applicant, wheresoever located, and whether held by the Applicant in whole or in part, directly or indirectly, as principal or nominee, beneficially or otherwise shall be commenced, and any Asbestos Proceedings against or in respect of the Applicant, its directors or the Applicant's Property already commenced be and are hereby stayed and suspended.

5. *THIS COURT ORDERS* that during the Stay Period, the right of any person, firm, corporation, governmental authority or other entity to assert, enforce or exercise any right, option or remedy arising by law, by virtue of any agreement or by any other means, as a result of the making or filing of these proceedings, the U.S. Proceedings or any allegation made in these proceedings or the U.S. Proceedings be and is hereby restrained.

DIP FINANCING

6. *THIS COURT ORDERS* that the Applicant is hereby authorized and empowered to guarantee the obligations of its parent, The Babcock & Wilcox Company, to Citibank, N.A., as Administrative Agent, the Lenders, the Swing Loan Lender, and Issuing Banks (as those terms are defined in the Post-Petition Credit Agreement (the "Credit Agreement")) dated as of February 22, 2000 (collectively, the "DIP Lender"), and to grant security (the "DIP Lender's Security") for such guarantee substantially on the terms and conditions set forth in the Credit Agreement.

7. *THIS COURT ORDERS* that the obligations of the Applicant pursuant to the Credit Agreement, the DIP Lender's Security and all the documents delivered pursuant thereto constitute legal, valid and binding obligations of the Applicant enforceable against it in accordance with the terms thereof, and the payments made and security granted by the Applicant pursuant to such documents do not constitute fraudulent preferences, or other challengeable or reviewable transactions under any applicable law.

8. *THIS COURT ORDERS* that the DIP Lender's Security shall be deemed to be valid and effective notwithstanding any negative covenants, prohibitions or other similar provisions with respect to incurring debt or the creation of liens or security contained in any existing agreement between the Applicant and any lender and that, notwithstanding any provision to the contrary in such agreements,

(a) the execution, delivery, perfection or registration of the DIP Lender's Security shall not create or be deemed to constitute a breach by the Applicant of any agreement to which it is a party, and

(b) the DIP Lender shall have no liability to any person whatsoever as a result of any breach of any agreement caused by or resulting from the Applicant entering into the Credit Agreement, the DIP Lender's Security or other document delivered pursuant thereto.

REPORT AND EXTENSION OF STAY

9. As part of any application by the Applicant for an extension of the Stay Period:

(a) the Applicant shall appoint Victor J. Manica, or such other senior officer as it deems appropriate from time to time, as an information officer (the "Information Officer");

(b) the Information Officer shall deliver to the Court a report at least once every three months outlining the status of the U.S. Proceeding, the development of any process for dealing with asbestos claims and such other information as the Information Officer believes to be material (the "Information Reports"); and

(c) the Applicant and the Information Officer shall incur no liability or obligation as a result of the appointment of the Information Officer or the fulfilment of the duties of the Information Officer in carrying out the provi-

sions of this Order and no action or other proceedings shall be commenced against the Applicant or Information Officer as a result of or relating in any way to the appointment of the Information Officer or the fulfilment of the duties of the Information Officer, except with prior leave of this Court and upon further order securing the solicitor and his own client costs of the Information Officer and the Applicant in connection with any such action or proceeding.

SERVICE AND NOTICE

10. *THIS COURT ORDERS* that the Applicant shall, within fifteen (15) business days of the date of entry of this Order, publish a notice of this Order in substantially the form attached as Schedule "A" hereto on two separate days in the *Globe & Mail* (National Edition) and the National Post.

11. *THIS COURT ORDERS* that the Applicant be at liberty to serve this Order, any other orders in these proceedings, all other proceedings, notices and documents by prepaid ordinary mail, courier, personal delivery or electronic transmission to any interested party at their addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

MISCELLANEOUS

12. *THIS COURT ORDERS* that notwithstanding anything else contained herein, the Applicant may, by written consent of its counsel of record herein, agree to waive any of the protections provided to it herein.

13. *THIS COURT ORDERS* that the Applicant may, from time to time, apply to this Court for directions in the discharge of its powers and duties hereunder or in respect of the proper execution of this Order.

14. *THIS COURT ORDERS* that, notwithstanding any other provision of this Order, any interested person may apply to this Court to vary or rescind this order or seek other relief upon 10 days' notice to the Applicant and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

15. *THIS COURT ORDERS AND REQUESTS* the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada (including the assistance of any court in Canada pursuant to Section 17 of the CCAA) and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States and the states or other subdivisions of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

Schedule "A"

NOTICE

RE: IN THE MATTER OF S. 18.6 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED (the "CCAA")

AND IN THE MATTER OF BABCOCK & WILCOX CANADA LTD.

PLEASE TAKE NOTICE that this notice is being published pursuant to an Order of the Superior Court of Justice of

2000 CarswellOnt 704, 5 B.L.R. (3d) 75, 18 C.B.R. (4th) 157

Ontario made February 25, 2000. The corporate parent of Babcock & Wilcox Canada Ltd. and certain other affiliated corporations in the United States have filed for protection in the United States under Chapter 11 of the Bankruptcy Code to seek, as the result of recent, sharp increases in the cost of settling asbestos claims which have seriously threatened the Babcock & Wilcox Enterprise's long term health, protection from mass asbestos claims to which they are or may become subject. Babcock & Wilcox Canada Ltd. itself has not filed under Chapter 11 but has sought and obtained an interim order under Section 18.6 of the CCAA affording it a stay against asbestos claims in Canada. Further application may be made to the Court by Babcock & Wilcox Canada Ltd. to ensure fair and equal access for Canadians with asbestos claims against Babcock & Wilcox Canada Ltd. to the process established in the United States. Representations may also be made by parties who would prefer to pursue their remedies in Canada.

Persons who wish to be a party to the Canadian proceedings or to receive a copy of the order or any further information should contact counsel for Babcock & Wilcox Canada Ltd., Derrick C. Tay at Meighen Demers (Telephone (416) 340-6032 and Fax (416) 977-5239).

DATED this day of, 2000 at Toronto, Canada

Tabular or graphic material set at this point is not displayable.

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TAB 9

2010 CarswellOnt 7712, 2010 ONSC 3974, 71 C.B.R. (5th) 300

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2010 CarswellOnt 7712, 2010 ONSC 3974, 71 C.B.R. (5th) 300

Xerium Technologies Inc., Re

IN THE MATTER OF the Companies' Creditors Arrangement ACT, R.S.C. 1985, c. C-36, AS AMENDED

XERIUM TECHNOLOGIES, INC., IN ITS CAPACITY AS THE FOREIGN REPRESENTATIVE OF XERIUM TECHNOLOGIES, INC., HUYCK LICENSCO INC., STOWE WOODWARD LICENSCO LLC, STOWE WOODWARD LLC, WANGNER ITELPA I LLC, WANGNER ITELPA II LLC, WEAVEXX, LLC, XERIUM ASIA, LLC, XERIUM III (US) LIMITED, XERIUM IV (US) LIMITED, XERIUM V (US) LIMITED, XTI LLC, XERIUM CANADA INC., HUYCK WANGNER AUSTRIA GMBH, XERIUM GERMANY HOLDING GMBH, AND XERIUM ITALIA S.P.A. (collectively, the "Chapter 11 Debtors") (Applicants)

Ontario Superior Court of Justice [Commercial List]

C. Campbell J.

Heard: May 14, 2010

Judgment: September 28, 2010

Docket: 10-8652-00CL

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Counsel: Derrick Tay, Randy Sutton for Applicants

Subject: Insolvency

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

Foreign Proceedings — Debtors commenced proceedings in U.S. under Chapter 11 of U.S. Bankruptcy Code ("U.S. Code") — Recognition order was granted in Canada recognizing Chapter 11 Proceedings as foreign main proceeding in respect of Debtors, pursuant to Pt. IV of Companies' Creditors Arrangements Act ("CCAA") — U.S. Bankruptcy Court made various orders in respect of Debtors' ongoing business operations ("Orders") and confirmed Debtors' Joint Plan of Reorganization ("Plan") under U.S. Code ("Confirmation Order") — Applicant company, Foreign Representative of Debtors, brought motion to have Orders, Confirmation Order and Plan recognized and given effect in Canada — Motion granted — Provisions of Plan were consistent with purposes set out in s. 61(1) of CCAA — Plan was critical to restructuring of Debtors as global corporate unit — Recognition of Confirmation Order was necessary to ensure fair and efficient administration of cross-border insolvency — U.S. Bankruptcy Court concluded Plan complied with U.S. Bankruptcy principles, and that Plan was made in good faith; did not breach any applicable law; was in interests of Debtors' creditors and equity holders; and would not likely be followed by need for liquidation or further financial reorganization of Debtors — Such prin-

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ciples also underlay CCAA, and thus dictated in favour of Plan's recognition and implementation in Canada.

Cases considered by *C. Campbell J.*:

Babcock & Wilcox Canada Ltd., Re (2000), 5 B.L.R. (3d) 75, 18 C.B.R. (4th) 157, 2000 CarswellOnt 704 (Ont. S.C.J. [Commercial List]) — followed

Statutes considered:

Bankruptcy Code, 11 U.S.C. 1982

Generally — referred to

Chapter 11 — referred to

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

Generally — referred to

Pt. IV — referred to

s. 44 — considered

s. 53(b) — referred to

s. 61(1) — considered

MOTION by applicant for orders recognizing and giving effect to certain orders of U.S. Bankruptcy Court in Canada.

***C. Campbell J.*:**

1 The Recognition Orders sought in this matter exhibit the innovative and efficient employment of the provisions of Part IV of the *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C.36, as amended (the "CCAA") to cross border insolvencies.

2 Each of the "Chapter 11 Debtors" commenced proceedings on March 30, 2010 in the United States under Chapter 11 of Title 11 of the United States Bankruptcy Code (the "U.S. Bankruptcy Code") in the U.S. Bankruptcy Court for the District of Delaware (the "Chapter 11 Proceedings.")

3 On April 1, 2010, this Court granted the Recognition Order sought by, *inter alia*, the Applicant, Xerium Technologies Inc. ("Xerium") as the "Foreign Representative" of the Chapter 11 Debtors and recognizing the Chapter 11 Proceedings as a "foreign main proceeding" in respect of the Chapter 11 Debtors, pursuant to Part IV of the CCAA.

4 On various dates in April 2010, Judge Kevin J. Carey of the U.S. Bankruptcy Court made certain orders in respect of the Chapter 11 Debtors' ongoing business operations.

5 On May 12, 2010, Judge Carey confirmed the Chapter 11 Debtors' amended Joint Prepackaged Plan of Reorganization dated March 30, 2010 as supplemented (the "Plan") [FN1] pursuant to the U.S. Bankruptcy Code

(the "U.S. Confirmation Order.")

6 Xerium sought in this motion to have certain orders made by the U.S. Bankruptcy Court in April 2010, the U.S Confirmation Order and the Plan recognized and given effect to in Canada.

7 The Applicant together with its direct and indirect subsidiaries (collectively, the "Company") are a leading global manufacturer and supplier of products used in the production of paper products.

8 Both Xerium, a Delaware limited liability company, Xerium Canada Inc. ("Xerium Canada"), a Canadian company, together with other entities forming part of the Chapter 11 Debtors are parties to an Amended and Restated Credit and Guarantee Agreement dated as of May 30, 2008 as borrowers, with various financial institutions and other persons as lenders. The Credit Facility is governed by the laws of the State of New York.

9 Due to a drop in global demand for paper products and in light of financial difficulties encountered by the Company due to the drop in demand in its products and its difficulty raising funds, the Company anticipated that it would not be in compliance with certain financial covenants under the Credit Facility for the period ended September 30, 2009. The Chapter 11 Debtors, their lenders under the Credit Facility, the Administrative Agent and the Secured Lender Ad Hoc Working Group entered into discussions exploring possible restructuring scenarios. The negotiations progressed smoothly and the parties worked toward various consensual restructuring scenarios.

10 The Plan was developed between the Applicant, its direct and indirect subsidiaries together with the Administrative Agent and the Secured Lender Ad Hoc Working Group.

11 Pursuant to the Plan, on March 2, 2010, the Chapter 11 Debtors commenced the solicitation of votes on the Plan and delivered copies of the Plan, the Disclosure Statement and the appropriate ballots to all holders of claims as of February 23, 2010 in the classes entitled to vote on the Plan.

12 The Disclosure Statement established 4:00 p.m. (prevailing Eastern time) on March 22, 2010 as the deadline for the receipt of ballots to accept or reject the Plan, subject to the Chapter 11 Debtors' right to extend the solicitation period. The Chapter 11 Debtors exercised their right to extend the solicitation period to 6:00 p.m. (prevailing Eastern time) on March 26, 2010. The Plan was overwhelmingly accepted by the two classes of creditors entitled to vote on the Plan.

13 On March 31, 2010, the U.S. Bankruptcy Court entered the Order (I) Scheduling a Combined Hearing to Consider (a) Approval of the Disclosure Statement, (b) Approval of Solicitation Procedures and Forms of Ballots, and (c) Confirmation of the Plan; (II) Establishing a Deadline to Object to the Disclosure Statement and the Plan; and (III) Approving the Form and Manner of Notice Thereof (the "Scheduling Order.")

14 Various orders were made by the U.S. Bankruptcy Court in April 2010, which orders were recognized by this Court.

15 On May 12, 2010, at the Combined Hearing, the U.S. Bankruptcy Court confirmed the Plan, and made a number of findings, *inter alia*, regarding the content of the Plan and the procedures underlying its consideration and approval by interested parties. These included the appropriateness of notice, the content of the Disclosure Statement, the voting process, all of which were found to meet the requirements of the U.S. Bankruptcy Code and fairly considered the interests of those affected.

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16 The Plan provides for a comprehensive financial restructuring of the Chapter 11 Debtors' institutional indebtedness and capital structure. According to its terms, only Secured Swap Termination Claims, claims on account of the Credit Facility, Unsecured Swap Termination Claims, and Equity Interests in Xerium are "impaired" under the Plan. Holders of all other claims are unimpaired.

17 Under the Plan, the notional value of the Chapter 11 Debtors' outstanding indebtedness will be reduced from approximately U.S.\$640 million to a notional value of approximately U.S.\$480 million, and the Chapter 11 Debtors will have improved liquidity as a result of the extension of maturity dates under the Credit Facility and access to an U.S. \$80 million Exit Facility.

18 The Plan provides substantial recoveries in the form of cash, new debt and equity to its secured lenders and swap counterparties and provides existing equity holders with more than \$41.5 million in value.

19 Xerium has been unable to restructure its secured debt in any other manner than by its secured lenders voluntarily accepting equity and the package of additional consideration proposed to be provided to the secured lenders under the Plan.

20 The Plan benefits all of the Chapter 11 Debtors' stakeholders. It reflects a global settlement of the competing claims and interests of these parties, the implementation of which will serve to maximize the value of the Debtors' estates for the benefit of all parties in interest.

21 I conclude that the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Chapter 11 Debtors.

22 On April 1, 2010, the Recognition Order granted by this Court provided, among other things:

- (a) Recognition of the Chapter 11 Proceedings as a "foreign main proceeding" pursuant to Subsection 47(2) of the CCAA;
- (b) Recognition of the Applicant as the "foreign representative" in respect of the Chapter 11 Proceedings;
- (c) Recognition of and giving effect in Canada to the automatic stay imposed under Section 362 of the U.S. Bankruptcy Code in respect of the Chapter 11 Debtors;
- (d) Recognition of and giving effect in Canada to the U.S. First Day Orders in respect of the Chapter 11 Debtors;
- (e) A stay of all proceedings taken or that might be taken against the Chapter 11 Debtors under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
- (f) Restraint on further proceedings in any action, suit or proceeding against the Chapter 11 Debtors;
- (g) Prohibition of the commencement of any action, suit or proceeding against the Chapter 11 Debtors; and
- (h) Prohibition of the Chapter 11 Debtors from selling or otherwise disposing of, outside the ordinary course of its business, any of the Chapter 11 Debtors' property in Canada that relates to their business

and prohibiting the Chapter 11 Debtors from selling or otherwise disposing of any of their other property in Canada, unless authorized to do so by the U.S. Bankruptcy Court.

23 I am satisfied that this Court does have the authority and indeed obligation to grant the recognition sought under Part IV of the CCAA. The recognition sought is precisely the kind of comity in international insolvency contemplated by Part IV of the CCAA.

24 Section 44 identifies the purpose of Part IV of the CCAA. It states

The purpose of this Part is to provide mechanisms for dealing with cases of cross-border insolvencies and to promote

- (a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;
- (b) greater legal certainty for trade and investment;
- (c) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies;
- (d) the protection and the maximization of the value of debtor company's property; and
- (e) the rescue of financially troubled businesses to protect investment and preserve employment.

25 I am satisfied that the provisions of the Plan are consistent with the purposes set out in s. 61(1) of the CCAA, which states:

Nothing in this Part prevents the court, on the application of a foreign representative or any other interested person, from applying any legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives that are not inconsistent with the provisions of this Act.

26 In *Babcock & Wilcox Canada Ltd., Re* (2000), 18 C.B.R. (4th) 157 (Ont. S.C.J. [Commercial List]) at para. 21, this Court held that U.S. Chapter 11 proceedings are "foreign proceedings" for the purposes of the CCAA's cross-border insolvency provisions. The Court also set out a non exclusive or exhaustive list of factors that the Court should consider in applying those provisions.

27 The applicable factors from *Babcock & Wilcox Canada Ltd., Re* that dictate in favour of recognition of the U.S. Confirmation Order are set out in paragraph 45 of the Applicant's factum:

- (a) The Plan is critical to the restructuring of the Chapter 11 Debtors as a global corporate unit;
- (b) The Company is a highly integrated business and is managed centrally from the United States. The Credit Facility which is being restructured is governed by the laws of the State of New York. Each of the Chapter 11 Debtors is a borrower or guarantor, or both, under the Credit Facility;
- (c) Confirmation of the Plan in the U.S. Court occurred in accordance with standard and well established procedures and practices, including Court approval of the Disclosure Statement and the process

for the solicitation and tabulation of votes on the Plan;

(d) By granting the Initial Order in which the Chapter 11 Proceedings were recognized as Foreign Main Proceedings, this Honourable Court already acknowledged Canada as an ancillary jurisdiction in the reorganization of the Chapter 11 Debtors;

(e) The Applicant carries on business in Canada through a Canadian subsidiary, Xerium Canada, which is one of Chapter 11 Debtors and has had the same access and participation in the Chapter 11 Proceedings as the other Chapter 11 Debtors;

(f) Recognition of the U.S. Confirmation Order is necessary for ensuring the fair and efficient administration of this cross-border insolvency, whereby all stakeholders who hold an interest in the Chapter 11 Debtors are treated equitably.

28 Additionally, the Plan is consistent with the purpose of the CCAA. By confirming the Plan, the U.S. Bankruptcy Court has concluded that the Plan complies with applicable U.S. Bankruptcy principles and that, *inter alia*:

(a) it is made in good faith;

(b) it does not breach any applicable law;

(c) it is in the interests of the Chapter 11 Debtors' creditors and equity holders; and

(d) it will not likely be followed by the need for liquidation or further financial reorganization of the Chapter 11 Debtors.

These are principles which also underlie the CCAA, and thus dictate in favour of the Plan's recognition and implementation in Canada.

29 In granting the recognition order sought, I am satisfied that the implementation of the Plan in Canada not only helps to ensure the orderly completion to the Chapter 11 Debtors' restructuring process, but avoids what otherwise might have been a time-consuming and costly process were the Canadian part of the Applicant itself to make a separate restructuring application under the CCAA in Canada.

30 The Order proposed relieved the Applicant from the publication provisions of s. 53(b) of the CCAA. Based on the positive impact for creditors in Canada of the Plan as set out in paragraph 27 above, I was satisfied that given the cost involved in publication, the cost was neither necessary nor warranted.

31 The requested Order is to issue in the form signed.

Motion granted.

FN1 Capitalized terms used herein not otherwise defined shall have the meanings ascribed to them in the Plan. Unless otherwise stated, all monetary amounts contained herein are expressed in U.S. Dollars.

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END OF DOCUMENT

TAB 10

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)



THE HONOURABLE MR.

JUSTICE MORAWETZ

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WEDNESDAY, THE 21ST

DAY OF DECEMBER, 2011

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

APPLICATION OF HARTFORD COMPUTER HARDWARE, INC.
UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN
THE UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION WITH
RESPECT TO HARTFORD COMPUTER HARDWARE, INC.,
NEXICORE SERVICES, LLC, HARTFORD COMPUTER GROUP,
INC. AND HARTFORD COMPUTER GOVERNMENT, INC.
(COLLECTIVELY, THE "CHAPTER 11 CHAPTER 11 DEBTORS")

SUPPLEMENTAL ORDER
(FOREIGN MAIN PROCEEDING)

THIS APPLICATION, made by Hartford Computer Hardware, Inc. (the "Applicant"), in its capacity as the foreign representative (the "Foreign Representative") of the Chapter 11 Debtors in the proceedings commenced on December 12, 2011, in the United States Bankruptcy Court for the Northern District of Illinois Eastern Division (the "U.S. Court") under Chapter 11 of Title 11 of the United States Code (the "Chapter 11 Proceeding"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C.-36, as amended (the "CCAA") for

an Order substantially in the form enclosed in the Application Record of the Applicant was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application dated December 13, 2011, the affidavit of Brian Mittman sworn December 12, 2011, the affidavits of Alana Shepherd sworn December 13, 16 and 19, 2011 (collectively, the “**Shepherd Affidavits**”), the preliminary report of FTI Consulting Canada Inc. (“**FTI**”), in its capacity as proposed Information Officer (the “**Proposed Information Officer**”) dated December 12, 2011, and the Consent of FTI to act as the Information Officer, each filed;

AND ON BEING ADVISED that the secured creditors who are likely to be affected by the charges created herein were given notice;

AND UPON HEARING the submissions of counsel for the Foreign Representative, counsel for the Proposed Information Officer, and counsel for Avnet International (Canada) Ltd. and Avnet, Inc., no one appearing for Delaware Street Capital Master Fund, L.P. (the “**DIP Lender**”) or for any other person on the Service List although duly served as appears from the affidavits of service of Bobbie-Jo Brinkman sworn December 13 and 19, 2011,

SERVICE

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

INITIAL RECOGNITION ORDER

2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Initial Recognition Order dated December 21, 2011 (the “**Recognition Order**”).

3. **THIS COURT ORDERS** that the provisions of this Supplemental Order shall be interpreted in a manner complementary to the provisions of the Recognition Order, and that in the event of a conflict between the provisions of this Supplemental Order and the provisions of the Recognition Order, the provisions of the Recognition Order shall govern.

RECOGNITION OF FOREIGN ORDERS

4. **THIS COURT ORDERS** that the following orders (collectively, the “**Foreign Orders**”) of the U.S. Court made in the Foreign Proceeding attached to this Order as Schedules “A” through “K” are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA:

- (a) the Foreign Representative Order;
- (b) the Joint Administration Order;
- (c) the Prepetition Wages Order;
- (d) the Customer Obligations Order;
- (e) the Prepetition Shipping Order;
- (f) the Insurance Order;
- (g) the Prepetition Taxes Order;
- (h) the Utilities Order;

- (i) the Cash Management Order;
- (j) the Claims Agent Order; and
- (k) the Interim DIP Facility Order,

(each as defined in the Shepherd Affidavits),

provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to the Property in Canada.

APPOINTMENT OF INFORMATION OFFICER

5. **THIS COURT ORDERS** that FTI (the “**Information Officer**”) is hereby appointed as an officer of this Court, with the powers and duties set out herein.

ADDITIONAL PROTECTIONS FOR CHAPTER 11 DEBTORS ETC.

6. **THIS COURT ORDERS** that, in addition to the stay of proceedings and the other protections afforded the Chapter 11 Debtors, the Property and the Business in the Recognition Order, the following protections and stay of proceedings shall continue until further Order of this Court:

- (a) during the Stay Period, all Persons having oral or written agreements with the Chapter 11 Debtors or statutory or regulatory mandates for the supply of goods and/or services in Canada, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services provided in respect of the Property or Business of the Chapter 11 Debtors, are hereby

restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Chapter 11 Debtors, and that the Chapter 11 Debtors shall be entitled to the continued use in Canada of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Chapter 11 Debtors in accordance with normal payment practices of the Chapter 11 Debtors or such other practices as may be (i) agreed upon by the supplier or service provider and the relevant Chapter 11 Debtor(s), on notice to the Information Officer and the Foreign Representative, or (ii) ordered by this Court; and

- (b) except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Chapter 11 Debtors with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Chapter 11 Debtors whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

7. **THIS COURT ORDERS** that no Proceeding shall be commenced or continued against or in respect of the Information Officer, except with leave of this Court. In addition to the rights and protections afforded the Information Officer herein, or as an officer of this Court, the Information Officer shall have the benefit of all of the rights and protections afforded to a Monitor under the CCAA, and shall incur no liability or obligation as a result of its appointment

or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

OTHER PROVISIONS RELATING TO THE INFORMATION OFFICER

8. **THIS COURT ORDERS** that the Information Officer:

- (a) is hereby authorized to provide such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;
- (b) shall report to this Court at least once every three months with respect to the status of these proceedings and the status of the Foreign Proceedings, which reports may include information relating to the Property, the Business, or such other matters as may be relevant to the proceedings herein;
- (c) in addition to the periodic reports referred to in paragraph 8(b) above, the Information Officer may report to this Court at such other times and intervals as the Information Officer may deem appropriate with respect to any of the matters referred to in paragraph 8(b) above;
- (d) shall have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Chapter 11 Debtors, to the extent that is necessary to perform its duties arising under this Order; and
- (e) shall be at liberty to engage independent legal counsel or such other persons as the Information Officer deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

9. **THIS COURT ORDERS** that the Chapter 11 Debtors and the Foreign Representative shall (i) advise the Information Officer of all material steps taken by the Chapter 11 Debtors or the Foreign Representative in these proceedings or in the Foreign Proceedings, (ii) co-operate fully with the Information Officer in the exercise of its powers and discharge of its obligations, and (iii) provide the Information Officer with the assistance that is necessary to enable the Information Officer to adequately carry out its functions.

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

11. **THIS COURT ORDERS** that the Information Officer may provide any creditor of a Chapter 11 Debtor with information provided by the Chapter 11 Debtors in response to reasonable requests for information made in writing by such creditor addressed to the Information Officer. The Information Officer shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Information Officer has been advised by the Chapter 11 Debtors is privileged or confidential, the Information Officer shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Information Officer, the Foreign Representative and the relevant Chapter 11 Debtor(s) may agree.

12. **THIS COURT ORDERS** that the Information Officer and counsel to the Information Officer shall be paid by the Chapter 11 Debtors their reasonable fees and disbursements incurred in respect of these proceedings both before and after the making of this Order subject to the

Budget (as defined in the Interim DIP Facility Order), in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts. The Chapter 11 Debtors are hereby authorized and directed to pay the accounts of the Information Officer and counsel for the Information Officer on a weekly basis and, in addition, the Chapter 11 Debtors are hereby authorized to pay to the Information Officer and counsel to the Information Officer, collectively, a retainer in the amount of U.S.\$40,000, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

13. **THIS COURT ORDERS** that the Information Officer and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Information Officer and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice, and the accounts of the Information Officer and its counsel shall not be subject to approval in the Foreign Proceeding.

14. **THIS COURT ORDERS** that the Information Officer and counsel to the Information Officer, if any, shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property in Canada, which charge shall not exceed an aggregate amount of \$50,000.00, as security for their professional fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs 16 and 18 hereof.

INTERIM FINANCING

15. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property in Canada, which DIP Lender’s Charge shall be consistent with the liens and charges created by the Interim DIP

Facility Order, provided however that the DIP Lender's Charge (i) shall not secure an obligation that exists before this Order is made, and (ii) with respect to the Property in Canada, shall have the priority set out in paragraphs 16 and 18 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

First – Administration Charge (to the maximum amount of \$50,000); and

Second – DIP Lender's Charge.

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

18. **THIS COURT ORDERS** that each of the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property in Canada 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.

19. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Chapter 11 Debtors shall not grant any Encumbrances over any Property in Canada that rank in priority to, or *pari passu* with, the Administration Charge or

the DIP Lender's Charge, unless the Chapter 11 Debtors also obtains the prior written consent of the Information Officer and the DIP Lender, or further Order of this Court.

20. **THIS COURT ORDERS** that the Administration Charge and the DIP Lender's Charge 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**") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C., 1985 c. B-3, as amended (the "**BIA**"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds any Chapter 11 Debtor, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by any Chapter 11 Debtor of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Chapter 11 Debtors to the Chargees pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences,

fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

21. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Chapter 11 Debtor's interest in such real property leases.

SERVICE AND NOTICE

22. **THIS COURT ORDERS** that the Chapter 11 Debtors, the Foreign Representative and the Information Officer each be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Chapter 11 Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

23. **THIS COURT ORDERS** that the Chapter 11 Debtors, the Foreign Representative and the Information Officer, and any party who has filed a Notice of Appearance, may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time.

24. **THIS COURT ORDERS** that within seven (7) days from the date of this Order, or as soon as practicable thereafter, the Information Officer shall cause to be published a notice substantially in the form attached to this Order as Schedule "L", once a week for two consecutive weeks, in the Globe and Mail.

25. **THIS COURT ORDERS** that the Information Officer (i) shall post on its website all Orders of this Court made in these proceedings, all reports of the Information Officer filed herein, and such other materials as this Court may order from time to time, and (ii) may post on its website any other materials that the Information Officer deems appropriate.

GENERAL

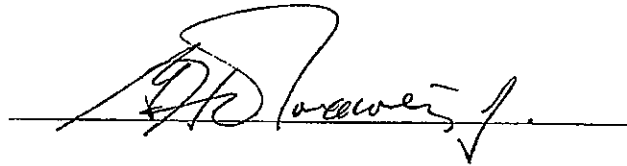
26. **THIS COURT ORDERS** that the Information Officer may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

27. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Chapter 11 Debtors, the Foreign Representative, the Information Officer, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Chapter 11 Debtors, the Foreign Representative, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Chapter 11 Debtors, the Foreign Representative, and the Information Officer and their respective agents in carrying out the terms of this Order.

28. **THIS COURT ORDERS** that each of the Chapter 11 Debtors, the Foreign Representative and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

29. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Chapter 11 Debtors, the Foreign Representative, the Information Officer and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

30. **THIS COURT ORDERS** that this Order shall be effective as of 12:01 a.m. on the date of this Order.

A handwritten signature in black ink, appearing to read "Daniel J. Frawley", is written over a horizontal line.

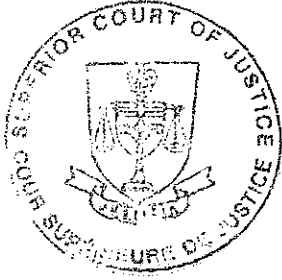
CLERK OF COURT - DISTRICT OF COLUMBIA
U.S. BANKRUPTCY COURT
JUDGE DANIEL J. FRAWLEY - THE COURT

DEC 21 2011

FILED

Handwritten initials "MB" in black ink.

TAB 11



Court File No: CV-11-9279-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**THE HONOURABLE MR.) MONDAY, THE 4TH DAY
JUSTICE MORAWETZ) OF JULY, 2011**

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

**AND IN THE MATTER OF CERTAIN PROCEEDINGS
TAKEN IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS EASTERN DIVISION
WITH RESPECT TO THE COMPANIES LISTED ON
SCHEDULE "A" HERETO (THE "CHAPTER 11 DEBTORS")**

**APPLICATION OF
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC.**

**UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED**

SUPPLEMENTAL ORDER

THIS APPLICATION, made by Massachusetts Elephant & Castle Group, Inc. (the "**Applicant**") in its capacity as the foreign representative (the "**Foreign Representative**") of the Chapter 11 Debtors in the proceedings commenced on June 28, 2011, in the United States Bankruptcy Court District of Massachusetts Eastern Division (the "**U.S. Court**"), under Chapter 11 of Title 11 of the United States Code (the "**Chapter 11 Proceeding**") for an Order substantially in the form enclosed in the Application Record of the Applicant was heard on this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, filed, the Affidavit of Keith Radford sworn June 28, 2011 (the "**Radford Affidavit**"), filed, the Preliminary Report of BDO Canada Limited ("**BDO**"), in its capacity as proposed information officer (the "**Information Officer**"), dated June 28, 2011, filed, the consent of BDO to act as Information Officer, filed, the Affidavit of Sara-Ann Wilson sworn June 30, 2011 (the "**Wilson Affidavit**"), and upon being provided with copies of the documents required by Section 46 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), and the related orders of the U.S. Court dated June 30, 2011 in respect of the Chapter 11 Proceeding for each of the Foreign Representative and the other Chapter 11 Debtors, including the order of the U.S. Court authorizing the Applicant to act in the capacity of a Foreign Representative on behalf of the Chapter 11 Debtors (the "**Foreign Representative Order**"), and upon hearing the submissions of counsel for the Foreign Representative, ~~counsel for the proposed Information Officer~~, and counsel for GE Canada Equipment Financing G.P., no one appearing for any other person on the service list, although properly served as appears from the Affidavits of Ingrid Rowe, sworn June 29, 2011 and June 30, 2011, filed, and upon being advised that no other persons were served with the Notice of Application:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined herein shall have the meaning given to such terms in the Initial Recognition Order dated July 4, 2011, made by this Honourable Court in these proceedings (the "**IRO**").
3. **THIS COURT ORDERS AND DECLARES** that ^{subject to paragraph 4 of IRO} the terms of this Supplemental Order shall not amend the IRO or in any way limit the force and effect of the IRO.

RECOGNITION OF THE CHAPTER 11 ORDERS

4. **THIS COURT ORDERS AND DECLARES** that the following orders of the U.S. Court in the Chapter 11 Proceeding, attached as Schedules "B" to "I" hereto (collectively, the "**Chapter 11 Orders**"), be and are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA:

- (a) the Foreign Representative Order;
- (b) the U.S. Cash Collateral Order;
- (c) the U.S. Prepetition Wages Order;
- (d) the U.S. Prepetition Taxes Order;
- (e) the U.S. Utilities Order;
- (f) the U.S. Cash Management Order;
- (g) the U.S. Customer Obligations Order; and
- (h) the List of Creditors Order;

(each, as defined in the Wilson Affidavit),

provided, however, that in the event of any inconsistency between the terms of the Chapter 11 Orders and the IRO and this Order, the terms of the IRO and this Order shall govern with respect to the Property, *except the provisions of the U.S.*

INFORMATION OFFICER

5. **THIS COURT ORDERS** that:

- (a) BDO be and is hereby appointed as Information Officer (in such capacity, the "**Information Officer**"), as an officer of this Court;
- (b) The Information Officer be and is hereby authorized and empowered, but not obligated, to provide such assistance to the Foreign

(B) Cash Collateral Order which shall prevail over the terms of the IRO and this Order

Representative in the performance of its duties as the Foreign Representative may request;

- (e) The Information Officer shall be granted unrestricted access to the books and records of the Chapter 11 Debtors, as may be required by the Information Officer, in order to carry out its mandate as required by the terms of this Order and the Chapter 11 Debtors shall cooperate with the Information Officer in order to provide all such information and documentation as may be requested by the Information Officer; and
- (d) The Information Officer shall deliver to the Court a report at least once every three (3) months outlining the status of these proceedings, the Chapter 11 Proceeding and such other information as the Information Officer believes to be material.

6. **THIS COURT ORDERS** that the Information Officer be and is hereby authorized and empowered to provide any stakeholder of the Chapter 11 Debtors with information obtained from the Chapter 11 Debtors in response to reasonable requests for information in respect of the Business or Property, made in writing by such stakeholder addressed to the Information Officer. The Information Officer shall not have any responsibility or liability with respect to information disseminated by it pursuant to this paragraph. In the case of information that the Information Officer has been advised by the Chapter 11 Debtors is confidential, the Information Officer shall not provide such information to any stakeholder unless otherwise directed by this Court or on such terms and conditions as the Information Officer, the Foreign Representative and the relevant Chapter 11 Debtor(s) may agree.

7. **THIS COURT ORDERS** that the Information Officer shall not employ any employees of the Chapter 11 Debtors, shall not take possession or control of the Property or the Business, and shall take no part whatsoever in the management or supervision of the Chapter 11 Debtors and shall not, by fulfilling its obligations under this Order, be deemed to have taken or maintained possession, occupation, care or control of the Chapter 11 Debtors, or the Business or Property, or any part thereof, including, but not limited to, any Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or

contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation, or rehabilitation of the environment or relating to the disposal of waste or other contamination, including, but not limited to, the *Canadian Environmental Protection Act* or similar other federal or provincial legislation (collectively, the "Environmental Legislation"); provided, however, that nothing herein shall exempt the Information Officer from any duty to report or make disclosure imposed by applicable Environmental Legislation.

8. **THIS COURT ORDERS** that the appointment of the Information Officer shall not constitute the Information Officer to be an employer or a successor employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or any other statute, regulation or rule of law or equity for any purpose whatsoever and, further, that the Information Officer shall be deemed not to be an owner or in possession, care, control, or management of the Property or Business whether pursuant to Environmental Legislation, or any other statute, regulation or rule of law or equity under any federal, provincial or other jurisdiction for any purpose whatsoever.

9. **THIS COURT ORDERS** that the Information Officer and counsel to the Information Officer shall each be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Foreign Representative as part of the costs of these proceedings. The Foreign Representative is authorized to pay the accounts of the Information Officer and counsel for the Information Officer on a bi-weekly basis or such other period as the Foreign Representative and the Information Officer and its counsel may agree, and the fees and expenses of the Information Officer and its counsel shall be subject to the passing of accounts by this Court, and the Information Officer and its counsel shall not be required to pass their accounts in the Chapter 11 Proceeding, or in any other foreign proceeding. Any payments made to the Information Officer and its counsel in respect of their accounts shall not be subject to approval in the Chapter 11 Proceeding, or in any other foreign proceeding. In addition, the Foreign Representative is authorized to pay the Information Officer a retainer of \$50,000 to be held by the Information Officer as security for payment of its fees and disbursements outstanding from time to time and to pay to the Information Officer's counsel a retainer of \$25,000, to be held by the Information Officer's counsel as security for payment of their respective fees and

disbursements outstanding from time to time.

10. **THIS COURT ORDERS** that the Information Officer and its counsel, as security for the professional fees and disbursements incurred in respect of the within proceedings both before and after the granting of this Order, shall be entitled to the benefit of and are hereby granted a first-ranking charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$75,000.

11. **THIS COURT ORDERS** that the Information Officer shall have the benefit of all of the rights and protections afforded to a Monitor under the CCAA, or as an officer of this Court, and the Information Officer shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or willful misconduct on its part as determined by final order of this Court.

12. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against the Foreign Representative, the other Chapter 11 Debtors, or the Information Officer in any court or other tribunal as a result of or relating in any way to the appointment of the Information Officer, the fulfillment of the duties of the Information Officer or the carrying out of this or any other orders of this Court, unless the leave of this Court is first obtained on motion on at least seven (7) days' prior notice to the Information Officer, the Foreign Representative, the Chapter 11 Debtors, and the parties on the service list.

VALIDITY AND PRIORITY OF CHARGES

13. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge in Canada shall not be required, and that the Administration Charge is and shall be valid and enforceable against the Property for all purposes in Canada and shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, including, but without limitation, any and all deemed trusts whether existing as of the date hereof or arising in the future and any and all claims in respect of breaches of fiduciary duties (collectively, "**Encumbrances**").

14. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be ordered by this Court, the Chapter 11 Debtors shall not grant any Encumbrances

over any Property that rank in priority to, or *pari passu* with the Administration Charge, unless the Chapter 11 Debtors also obtain the prior written consent of the chargees entitled to the benefit of the Administration Charge (collectively, the "**Chargees**") or further Order of this Court.

15. **THIS COURT ORDERS** that the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not be limited or impaired in any way by: (a) the pendency of these proceedings and any declarations of insolvency made in these proceedings; (b) any application(s) for bankruptcy order(s) issued pursuant to the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), or any bankruptcy orders made pursuant to such application(s); (c) any proceeding taken or that might be taken against the Chapter 11 Debtors under the BIA or the *Winding-Up and Restructuring Act*, R.S.C. 1985, c. W-11, as amended; (d) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (e) the provisions of any federal or provincial statutes; or (f) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of any Encumbrances contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Chapter 11 Debtors.

16. **THIS COURT ORDERS** that notwithstanding any provision to the contrary in any such Agreement or otherwise:

(i) the creation of the Administration Charge shall not create or be deemed to constitute a breach by the Chapter 11 Debtors of any Agreement to which they are party;

(ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Administration Charge; and

(iii) the payments made by the Chapter 11 Debtors pursuant to this Order and the granting of the Administration Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive

conduct, or other challengeable or voidable transactions under any applicable law.

17. **THIS COURT ORDERS** that the Administration Charge shall attach to the Property (including, without limitation, any lease, sub-lease, offer to lease, license, permit or other contract), notwithstanding any requirement for the consent of the lessor or other party to any such lease, license, permit or contract or any other person or the failure to comply with any other condition precedent.

18. **THIS COURT ORDERS** that the Administration Charge created by this Order over leases of real property in Canada shall only attach to the Chapter 11 Debtors' interest in such real property leases

AID AND ASSISTANCE OF OTHER COURTS

19. **THIS COURT HEREBY ORDERS AND REQUESTS** the aid and recognition of any court, tribunal, regulatory, governmental or administrative body having jurisdiction in Canada, the United States or elsewhere, to give effect to this Order and to assist the Foreign Representatives, the Chapter 11 Debtors, the Information Officer and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory, governmental and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Chapter 11 Debtors, the Foreign Representative, the Information Officer and their respective agents, as may be necessary or desirable to give effect to this Order or to assist the Chapter 11 Debtors, the Foreign Representative, the Information Officer and their respective agents in carrying out the terms of this Order.

NOTICE OF PROCEEDINGS

20. **THIS COURT ORDERS** that within 3 business days from the date of this Order, or as soon as practicable thereafter, the Information Officer shall publish a notice as required by subsection 53(b) of the CCAA substantially in the form attached to this Order as Schedule "J" in The Globe and Mail (National Edition) or the National Post for one (1) day in two (2) consecutive weeks without delay following the issuance of this Order.

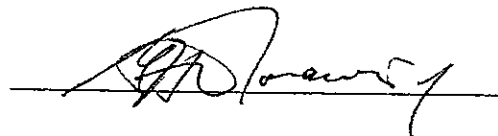
GENERAL PROVISIONS

21. **THIS COURT ORDERS** that the Information Officer or the Foreign Representative may, from time to time, apply to this Court for advice, directions, or for such further or other relief as they may advise in connection with the proper execution of this Order or the IRO, the discharge or variation of their respective powers and duties under this Order, and the recognition in Canada of subsequent orders of the U.S. Court made in the Chapter 11 Proceeding.

22. **THIS COURT ORDERS** that nothing in this Order shall prevent the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Chapter 11 Debtors, or in respect of the Business or the Property, upon further order of the Court.

23. **THIS COURT ORDERS** that each of the Foreign Representative, the Chapter 11 Debtors and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order or the IRO.

24. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, and except with respect to paragraph 4 of this Order, any interested person may apply to this Court to vary or rescind this Order or seek other relief upon seven (7) days notice to the Foreign Representative, the Chapter 11 Debtors and their counsel, the Information Officer and its counsel and to any other party likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.



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

JUL 04 2011

PER/PAR:



SCHEDULE A

CHAPTER 11 DEBTORS

1. Massachusetts Elephant & Castle Group, Inc.
2. Repechage Investments Limited
3. Elephant & Castle Group Inc.
4. The Elephant and Castle Canada Inc.
5. Elephant & Castle, Inc. (a Texas Corporation)
6. Elephant & Castle Inc. (a Washington Corporation)
7. Elephant & Castle International, Inc.
8. Elephant & Castle of Pennsylvania, Inc.
9. E & C Pub, Inc.
10. Elephant & Castle East Huron, LLC
11. Elephant & Castle Illinois Corporation
12. E&C Eye Street, LLC
13. E & C Capital, LLC
14. Elephant & Castle (Chicago) Corporation

SCHEDULE B

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF MASSACHUSETTS EASTERN DIVISION

In re:	:	Chapter 11
	:	
Massachusetts Elephant & Castle Group, Inc., et al. ¹	:	Case No.
	:	
Debtors	:	Jointly Administered

ORDER AUTHORIZING DEBTOR MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC. TO ACT AS FOREIGN REPRESENTATIVE OF THE DEBTORS

Upon the motion (the "Motion") of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), pursuant to section 1505 of title 11 of the United States Code (the "Bankruptcy Code"), for authorization for Debtor, Massachusetts Elephant & Castle Group, Inc.² to act as the foreign representative of the Debtors in Canada in order to seek recognition of the Chapter 11 Cases on behalf of the Debtors, and to request that the Ontario Superior Court of Justice (Commercial List) (the "Ontario Court") lend assistance to this Court in protecting the Debtors' property, and to seek any other appropriate relief from the Ontario Court that the Ontario Court deems just and proper, all as more fully described in the Motion, and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. Sections 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. Section 157(b); and venue being


¹ The debtors in these cases, along with the last four digits of the federal tax identification number for each of the debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

proper before this Court pursuant to 28 U.S.C. Sections 1408 and 1409; and due and proper notice of the Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Debtor, Massachusetts Elephant & Castle Group, Inc. is hereby authorized (a) to act as the "foreign representative" of the Debtors in Canada, as such term is defined in the CCAA, (b) to seek recognition by the Ontario Court of the Chapter 11 Cases and of certain orders made by the Court in the Chapter 11 Cases from time to time, (c) to request that the Ontario Court lend assistance to this Court, and (d) to seek any other appropriate relief from the Ontario Court that the Debtors deem just and proper.
3. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
4. This Court shall retain jurisdiction to interpret and enforce this Order.

Dated: June 30, 2011


UNITED STATES BANKRUPTCY JUDGE
Henry J. Boroff



Certified to be a true and correct copy of the original
James M. Lynch, Clerk
U.S. Bankruptcy Court
District of Massachusetts

By: Alberta Brown
Deputy Clerk

Date: 6/30/11

SCHEDULE C

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF MASSACHUSETTS EASTERN DIVISION

In re: : Chapter 11
: :
Massachusetts Elephant & Castle :
Group, Inc., et al.¹ : Case No. 11-16155
: :
Debtors : Jointly Administered

INTERIM ORDER (A) AUTHORIZING USE OF CASH COLLATERAL; (B) GRANTING ADEQUATE PROTECTION; (C) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001; AND (D) GRANTING RELATED RELIEF

This matter having come before the Court on the Motion of the Debtors for an Order Pursuant to Sections 105, 362, 362, and 363 of Bankruptcy Code (A) Authorizing Use of Collateral;¹ (B) Granting Adequate Protection; (C) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001; and (D) Granting Related Relief (the "Motion") filed by Massachusetts Elephant & Castle Group, Inc. on behalf of itself and affiliated debtors and debtors in possession (collectively the "Debtors"); and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and notice of the Motion and the hearing being and sufficient notice under the circumstances; and it appearing from the record before the Court that sufficient cause exists for the entry of this order; the Court **FINDS AS FOLLOWS:**²

A. On June 28, 2011 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the

¹ The debtors in these cases, along with the last four digits of the federal tax identification number for each of the debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

United States Bankruptcy Court for the District of Massachusetts (the "Court"). A Motion for Joint Administration was simultaneously filed therewith.

B. The Debtors continue to operate their businesses and manage their property as debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No official committee of unsecured creditors has been appointed in these cases.

C. This matter is a core proceeding pursuant to 28 U.S.C. 157(b)(2).

D. The Debtors require the use of the cash collateral in order to preserve their operations and the value of their assets. The entry of the relief contained in this Order is in the best interests of the Debtors, their estates, and their creditors.

E. GE Canada Equipment Financing G.P. ("GE CEF"), Fifth Street Finance Corp. ("Fifth Street") Sysco San Diego, Inc. ("Sysco"), Royal Bank of Canada ("Royal Bank") and Toronto Dominion Bank ("TD Bank") (collectively, GE CEF, Fifth Street, Sysco, Royal Bank and TD Bank shall be referred to as "Lenders") have asserted, or may assert, a lien against the property of certain of the Debtors and the cash proceeds thereof (the "Cash Collateral").

F. For avoidance of doubt, the provisions and protections of this Interim Order shall apply to each Lender only with respect to the Debtor(s) against whom such Lender has a prepetition secured claim (in each case, the "Applicable Debtor"), and nothing contained herein shall grant any Lender any rights or claims against any Debtor that is not an Applicable Debtor of such Lender. Similarly, unless otherwise provided, the adequate protection and other obligations of a Debtor under this Interim Order shall only apply to the Lender(s) that hold a prepetition secured claim against such Debtor (in each case, the "Applicable Lender").

G. This Court has not been asked to find and it does not find, that any security interest asserted by any Lender is valid or perfected. Nothing in this order constitutes a limitation on the applicability of Massachusetts Local Bankruptcy Rules.

H. Pending a final hearing on the Motion, the replacement liens and other forms of protection set forth below will adequately protect the interests of the Lenders for the purposes of sections 361, 363(e) and 507(b) of the Bankruptcy Code.

I. Due and adequate notice of the hearing has been given, and no further notice of the hearing is required before the entry of the relief provided for in this Order.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is allowed, on an interim basis, as set forth herein.
2. The Debtors are authorized to use Cash Collateral in the ordinary course of their business substantially in accordance with the budget attached hereto as Exhibit A (the "Budget") for the period (the "Specified Period") from the Petition Date through the date which is the earliest to occur of: (a) an Event of Default (subject to the Debtor's right to obtain further authorization to use Cash Collateral within the Notice Period) or (b) the final hearing on the Motion.
3. The Debtors shall use Cash Collateral during the Specified Period, at the times, in the amounts and solely for the purposes identified in the Budget (as such may be amended with the consent of the Lenders or approval of the Court) provided, however, the Debtors shall be authorized to exceed the expenses in the Budget by no more than ten percent (10%) (on an aggregate basis) (the "Permitted Variance") and to apply any unused portion in one week to any subsequent weekly period.

4. For the purposes of sections 361, 363(e) and 507(b) of the Bankruptcy Code and adequate protection for the Debtors' use of Cash Collateral, the Lenders are hereby granted replacement liens (the "Replacement Liens") in and to all property of the kind presently securing the prepetition obligations of the Debtors to the Lenders, including property purchased or acquired with the Cash Collateral together with any proceeds thereof, but excluding causes of action under chapter 5 of the Bankruptcy Code and proceeds thereof. The Replacement Liens shall only attach to and be enforceable against the same types of property, to the same extent, and in the same order of priority as existed immediately prior to the Petition Date. The Replacement Liens shall be recognized only to the extent of any post-petition diminution in value of the prepetition collateral of each Applicable ^{Lender} including without limitation as a result of arising from, or otherwise attributable to the use of of Cash Collateral during these bankruptcy cases, the deterioration, use, sale, lease or other disposition of the prepetition collateral, and the imposition of the automatic stay. *Claims for intercompany transfers will be entitled to priority status under sections 507(a)(2) and 503(b) of the Bankruptcy Code*

5. The Replacement Liens shall not attach to any avoidance powers held by the Debtors or any trustee for the Debtors, including avoidance set forth in sections 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code, or to the proceeds of any claims under or actions commenced pursuant such powers.

6. On the third business day of each week following entry of this Order, the Debtors shall furnish to the ~~Applicable~~ Lenders and their counsel (and any official committee of unsecured creditors appointed in this bankruptcy case and its counsel): (i) a weekly cash report setting forth, in comparative form, the actual results achieved against projected for the prior week, including the actual cash receipts and disbursements and the variance of the actual results from those estimated in the Budget; and (ii) such other documents information as may be

filed with the Office of the United States Trustee. Upon reasonable notice by an Applicable Lender, the Debtors shall permit such Lender and any of its agents reasonable access to the Debtors' records and place of business during normal business hours to verify the existence, condition and location of collateral in which the Applicable Lender holds a security interest and to audit the Debtors' cash receipts and disbursements.

7. The Debtors' authority to use Cash Collateral as provided for in this Order shall terminate upon the occurrence of any of the following events, unless waived by the Applicable Lender in writing (collectively, the "Events of Default"):

- (a) the failure by the Debtors to perform, in any material respect, any of the terms, provisions, conditions, covenants, or obligations under this Order;
- (b) a default by the Debtors after the Petition Date in reporting the information specified in paragraph 6 above, if such default will remain uncured for three (3) days following written notice from the Applicable Lender to the Debtors; *which notice shall also be submitted to the United States Trustee and any creditors committee.*
- (c) reversal, vacatur, or modification (without the express prior written consent of the Lenders, each in its sole discretion) of this Order, other than in accordance with the final order approving the Motion; or
- (d) dismissal of the case or conversion of the case to a chapter 7 case, or appointment of a chapter 11 trustee, examiner with enlarged powers, other responsible person.

8. Upon the occurrence of an Event of Default, the Debtors' authority to use Cash Collateral shall cease if the Debtors do not within five (5) days thereof (the "Notice Period") seek an emergency hearing with the Court and obtain the further use of Cash Collateral.

9. This Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the Replacement Liens to the extent set forth in Paragraph 4 without the necessity of filing or recording any financing statement or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking

of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the Replacement Liens, or to entitle the Lenders to the priorities granted herein. The Lenders, in their sole discretion, may file a photocopy of this Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien or similar instrument.

10. Nothing herein affects the validity or enforceability of that certain Interlender Agreement, dated as of October 16, 2009, between GE CEF and Fifth Street, as amended, restated, or otherwise modified.

11. Notwithstanding anything herein to the contrary, the entry of this Order is without prejudice to, and does not constitute a waiver of (a) the Lenders' right to seek any other or supplemental relief in respect of any Applicable Debtor, including the right to seek additional adequate protection (without prejudice to any other person's right to object to or otherwise oppose such additional adequate protection) or oppose the further use of Cash Collateral; (b) any of the rights of any Lender under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of these cases or successor cases, conversion of any of these cases to cases under chapter 7, (iii) request appointment of a chapter 11 trustee or examiner with expanded powers, or (iv) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans.

12. This Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable nunc pro tunc to


the Petition Date immediately upon execution thereof. The Court has and will retain jurisdiction to enforce this Order according to its terms.

13. Nothing in this Order shall constitute a waiver by or restrict the Debtors' right to seek, or Lenders' right to oppose, the further use of Cash Collateral.

14. This Order and the Debtors' use of Cash Collateral as authorized in this Order shall become effective immediately upon entry of this Order by the Court.

15. A continued hearing on the Debtors' Motion shall be held on ^{August 1} ~~July~~ _____, 2011 at 9:30 a.m. in Worcester, Massachusetts

16. A copy of this Order, shall be served by the Debtors via first class mail on or before July 5, 2011 upon: (a) the Office of the United States Trustee; (b) the Lenders, or their counsels; (c) the creditors holding the thirty (30) largest claims against the Debtors; (d) all known taxing authorities that have claims against the Debtor; (e) any party which has filed, prior to the date of entry of this Order, a request for service of pleadings in this case; and (f) counsel for any official committee of unsecured creditors appointed in this case pursuant to section 1102 of the Bankruptcy Code. Service in accordance with this paragraph shall be deemed good and sufficient notice and service of this Order and of the final hearing on the use of Cash Collateral.



United States Bankruptcy Judge
Henry J. Boroff

Dated: June 30, 2011



Certified to be a true and correct copy of the original
James M. Lynch, Clerk
U.S. Bankruptcy Court
District of Massachusetts

By: Alberta Barone
Deputy Clerk

Date: 6/30/11

SCHEDULE D

IN THE UNITED STATES BANKRUPTCY COURT DISTRICT OF MASSACHUSETTS EASTERN DIVISION

In re:	:	Chapter 11
	:	
MASSACHUSETTS ELEPHANT &	:	Case No. 11-16155 ()
CASTLE GROUP, INC., <i>et al.</i> , ¹	:	
	:	Jointly Administered
	:	
Debtors.	:	

ORDER AUTHORIZING DEBTORS TO PAY WAGES, COMPENSATION, EMPLOYEE BENEFITS AND OTHER RELATED OBLIGATIONS

Upon consideration of the Debtors' Motion for Order (I) Authorizing (A) Payment of Pre-Petition Wages, Salaries, and Employee Benefits, (B) Reimbursement of Employee Business Expenses, and (C) Payment of other Employee Related Amounts; and (II) Authorizing Applicable Banks and Other Financial Institutions To Receive, Process, Honor and Pay All Checks and Drafts Drawn on Debtors' Bank Accounts Relating to the Foregoing (the "Motion"); the Court having reviewed the Motion; the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue of these chapter 11 cases in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and (d) notice of the Motion was sufficient under the circumstances; the Court determining that the legal and factual bases set forth in the Motion establish just cause

¹ The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

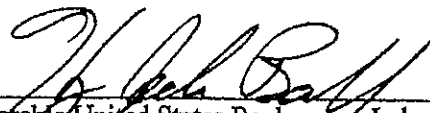
for the relief granted by this Order; and it appearing that the relief requested is in the best interest of the Debtors' estates, their creditors and other parties in interest;

IT IS HEREBY DETERMINED, ORDERED AND ADJOURNED THAT:

- A. The Motion is GRANTED in its entirety.
- B. The Debtors are authorized, in their sole discretion, but not directed, to pay pre-petition employee wages, bonuses, employee insurance benefits premiums or claims, business expenses, deductions, garnishments, withholdings and processing costs accrued but unpaid as of the Petition Date to or for the benefit of its employees.
- C. The amount of payments made by the Debtors pursuant to the terms of this Order shall not exceed \$500,000 for accrued employee wages and salaries.
- D. All applicable banks and financial institutions are authorized and directed, when requested by the Debtors and in the Debtors' sole discretion, to receive, process, honor and pay any and all checks drawn on the Debtors' accounts with respect to pre-petition employee wages, benefits, insurance premiums, business expenses, deductions, garnishments, withholdings and processing costs, whether such checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make such payment.
- E. Nothing in the Motion shall be deemed a request for authority to assume, and nothing in this Order shall be deemed an authorization to assume, any executory contract under 11 U.S.C. § 365, nor shall any provision of the Motion or this Order be deemed to limit the Debtors' right to seek authority to modify or terminate any right or claim to compensation or benefits.

F. The Debtors shall not make any payments pursuant to the terms of this Order in excess of \$11,750.00 to any single employee.

Dated: June 30, 2011


Honorable United States Bankruptcy Judge
Henry J. Boeff



Certified to be a true and
correct copy of the original
James M. Lynch, Clerk
U.S. Bankruptcy Court
District of Massachusetts

By: Alberto Pinero
Deputy Clerk

Date: 6/30/11

SCHEDULE E

IN THE UNITED STATES BANKRUPTCY COURT DISTRICT OF MASSACHUSETTS EASTERN DIVISION

In re:	:	Chapter 11
	:	
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC., <i>et al.</i> , ¹	:	Case No. 11-16155 ()
	:	
Debtors.	:	Jointly Administered
	:	

ORDER GRANTING DEBTORS' MOTION FOR AN ORDER AUTHORIZING (I) THE DEBTORS TO REMIT AND PAY CERTAIN TAXES AND FEES AND (II) FINANCIAL INSTITUTIONS TO PROCESS AND CASH RELATED CHECKS AND TRANSFERS

Upon consideration of the Debtors' Motion for an Order Authorizing (I) the Debtors to Remit and Pay Certain Taxes and Fees and (II) Financial Institutions to Process and Cash Related Checks and Transfers (the "Motion"); the Court having reviewed the Motion; the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue of these chapter 11 cases in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and (d) notice of the Motion was sufficient under the circumstances; the Court determining that the legal and factual bases set forth in the Motion establish just cause for the relief granted by this Order; and it appearing that the relief requested is in the best interest of the Debtors' estates, their creditors and other parties in interest;


¹ The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Bye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

IT IS HEREBY DETERMINED, ORDERED AND ADJOURNED THAT:

- A. The Motion is GRANTED in its entirety, *but the sales and use taxes which may be paid shall not exceed those collected on or after June 1, 2011.*
- B. The Debtors are authorized, ~~but not~~ *and* directed, to pay the Taxes and Fees as set

forth in the Motion.

Dated: June 30, 2011


Honorable United States Bankruptcy Judge
Henry J. Boroff



Certified to be a true and
correct copy of the original
James M. Lynch, Clerk
U.S. Bankruptcy Court
District of Massachusetts

By: 
Deputy Clerk

Date: 6/30/11

SCHEDULE F

IN THE UNITED STATES BANKRUPTCY COURT DISTRICT OF MASSACHUSETTS EASTERN DIVISION

	:	Chapter 11
In re:	:	
	:	Case No. 11-16155 ()
MASSACHUSETTS ELEPHANT &	:	
CASTLE GROUP, INC., <i>et al.</i> , ¹	:	Jointly Administered
	:	
Debtors.	:	
	:	

FINAL ORDER: (I) PROHIBITING UTILITIES FROM ALTERING, REFUSING OR DISCONTINUING SERVICES FOR PRE-PETITION INVOICES; (II) DETERMINING THAT THE UTILITIES ARE ADEQUATELY ASSURED OF POST-PETITION PAYMENT; AND (III) ESTABLISHING PROCEDURES FOR DETERMINING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE

Upon consideration of the Debtors' Motion Pursuant to Section 366 of the Bankruptcy Code for Entry of an Order: (I) Prohibiting Utilities from Altering, Refusing or Discontinuing Services for Pre-Petition Invoices; (II) Determining that the Utilities are Adequately Assured of Post-Petition Payment; and (III) Establishing Procedures for Determining Requests (the "Motion") for a Final Order; the Court having reviewed the Motion; the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue of these chapter 11 cases in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and (d) notice of the Motion was sufficient under the circumstances; the Court determining that the legal and factual bases set forth in the Motion establish just cause for the relief granted by this Final Order; and it appearing that the relief

¹ The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

requested is in the best interest of the Debtors' estates, their creditors and other parties in interest;

IT IS HEREBY DETERMINED, ORDERED AND ADJOURNED THAT:

A. The Motion is GRANTED and the Debtors' obligations to provide assurance of payment is hereby finalized as set forth in this Final Order.

B. The Debtors are authorized to pay on a timely basis, in accordance with its pre-petition practices, all undisputed invoices with respect to post-petition utility services rendered by the Utility Companies.

C. Subject to the procedures described in the Motion and repeated below, absent any further order of this Court, no Utility Company shall alter, refuse, or discontinue service to, or discriminate against the Debtors, solely on the basis of the commencement of these cases, pending the negotiation or determination of adequate assurance of payment pursuant to the Determination Procedures set forth in the Motion.

D. The following procedures shall be used by the Court to determine, if necessary, whether the requested assurance of payment by a Utility Company is adequate:

(a) The Debtors shall provide each such Utility Company which is not currently holding a security deposit with a security deposit (the "Security Deposit") in an amount equal to the average one month obligation for utility service over the past twelve months prior to the Petition Date for such Utility Company. If the Utility Company currently holds a Security Deposit, the Debtors shall not be required to post an additional deposit.

(b) If a Utility Company asserts that the treatment provided pursuant to paragraph (a) above does not constitute satisfactory assurance of payment, then such Utility Company may request additional adequate assurance (an "Additional Assurance Request") pursuant to section 366(c)(3) of the Bankruptcy Code. Any such Additional Assurance Request must be sent so as to be received within 30 days after the entry of the interim order on this Motion (the "Utility Order"), attached hereto as Exhibit "B", to Massachusetts Elephant & Castle Group, Inc., 50 Congress Street, Suite 900, Boston, MA 02109-4002 (Attn: Keith A. Radford) with a copy to Eckert Scamans Cherin & Mellott, LLC, Two International Place, 16th Floor, Boston, MA 02110-2602 (Attn: John G.

Loughnane, Esquire) and shall specify (i) the amount and nature of assurance of payment that would be satisfactory to the Utility Company, (ii) the type of utility services that are provided, (iii) a list of any deposits or other security currently held by such Utility Company and held by such Utility Company immediately prior to the Petition Date on account of the Debtors, (iv) a description of any payment delinquency or irregularity by the Debtors for the post-petition period, and (v) detailed reason(s) why the Security Deposit does not constitute satisfactory assurance of payment.

(c) Without further order of the Court, the Debtors may enter into agreements granting to the Utility Companies any assurance of payment that the Debtors, in their sole discretion, determine is reasonable.

(d) If a Utility Company timely makes an Additional Assurance Request that the Debtors believe is unreasonable, then, upon the written request of the Utility Company and after good faith negotiations by the parties, the Debtors will (i) file a motion seeking to modify the Additional Assurance Request to an amount that the Debtors believe is adequate (a "Determination Motion"), and (ii) schedule the Determination Motion to be heard by the Court at the next regularly-scheduled omnibus hearing in this case that is at least 20 days after the filing of the Determination Motion (a "Determination Hearing"). The Debtors will not be required to file a Determination Motion with respect to any such Utility Company earlier than 40 days after the Petition Date.

(e) The Utility Companies shall be prohibited from altering, refusing, or discontinuing services, and shall be deemed to have adequate assurance of payment, pending negotiation and receipt of assurance of payment pursuant to the Determination Procedures or an order determining adequate assurance following a Determination Hearing.

(f) Any assurance of payment provided by the Debtors to a Utility Company in accordance with the Determination Procedures shall, to the extent not used by the Utility Company to satisfy a post-petition default, be returned to the Debtors within 30 days after the effective date of a chapter 11 plan in this case without further order of the Court.

(g) Any Utility Company that does not timely make a written Additional Assurance Request in accordance with the Determination Procedures shall be deemed to have adequate assurance of payment under section 366(b) of the Bankruptcy Code, without prejudice to such Utility Company's right to seek relief under section 366(c)(3)(A).

E. Any deposits, bonds, letters of credit or other assurances of payment that were in place prior to the Petition Date shall remain in place and shall continue to be held by those Utility Companies holding the same, except upon entry of further order of this Court.


F. Any Utility Company not listed on Exhibit A attached to the Motion, but subsequently identified by the Debtors, shall be served with copies of this Motion and the Interim Order and Final Order approving this Motion (together, the "Notice Package") and be afforded thirty (30) days from the date of such service to request adequate assurance, if any, from the Debtors. Such request must otherwise comply with the requirements set forth above or shall be deemed an invalid adequate assurance request.

G. Substantially contemporaneously with such service, the Debtors shall file with the Court a supplement to Exhibit A attached to the Motion adding the name of any Utility Company(ies) so served and not included on Exhibit A attached to the Motion, and this Final Order shall be deemed to apply to such Utility Company(ies) from the date of such service, subject to a later order of the Court on a motion for determination of adequate assurance, if any.

H. The Debtors shall serve a copy of the Motion and this Final Order upon each of the Utility Companies listed on Exhibit A attached to the Motion, at the addresses listed thereon, by first-class mail, postage prepaid, within five (5) business days of the entry of this Final Order.

I. Nothing in this Final Order shall be deemed to affect any burden of proof that either the Debtors or any Utility Company may have in a Determination Hearing or to confer upon the Utility Companies listed in Exhibit A to the Motion the status of a "utility" within the meaning of section 366 of the Bankruptcy Code.

Dated: June 30, 2011


Honorable United States Bankruptcy Judge
Henry J. Boroff



Certified to be a true and correct copy of the original
James M. Lynch, Clerk
U.S. Bankruptcy Court
District of Massachusetts

By: Alberto Bonera
Deputy Clerk

Date: 6/30/11

SCHEDULE G

IN THE UNITED STATES BANKRUPTCY COURT DISTRICT OF MASSACHUSETTS EASTERN DIVISION

	:	Chapter 11
In re:	:	
	:	Case No. 11-16155 (HJB)
MASSACHUSETTS ELEPHANT &	:	
CASTLE GROUP, INC., <i>et al.</i> , ¹	:	Jointly Administered
	:	
Debtors.	:	
	:	

INTERIM ORDER GRANTING DEBTORS' MOTION FOR ENTRY OF ORDER GRANTING (i) AUTHORITY TO CONTINUE TO USE CERTAIN PRE-PETITION BANK ACCOUNTS, CHECK STOCK AND EXISTING BUSINESS FORMS, AND (ii) WAIVER OF COMPLIANCE WITH BANKRUPTCY CODE SECTION 345(b) INVESTMENT GUIDELINES

Upon consideration of the Debtors' Motion for Entry of an Order Granting (i) Authority to Continue to Use Certain Pre-Petition Bank Accounts, Check Stock and Existing Business Forms, and (ii) Waiver of Compliance with Bankruptcy Code Section 345(b) Investment Guidelines (the "Motion"); the Court having reviewed the Motion; the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue of these chapter 11 cases in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and (d) notice of the Motion was sufficient under the circumstances; the Court determining that the legal and factual bases set forth in the Motion establish just cause for the relief granted by this Interim Order; and it appearing that the relief

¹ The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

requested is in the best interest of the Debtors' estates, their creditors and other parties in interest;

IT IS HEREBY DETERMINED, ORDERED AND ADJOURNED THAT:

A. The Motion is GRANTED on an INTERIM basis.

B. A final hearing shall be held on the Motion on August 1, 2011 at 9:30 a.m. ^{in the Boston, Massachusetts} Objections to the Motion shall be due by 4:00 p.m. on July 27, 2011.

C. The Debtors are authorized to continue to (i) use the Accounts, (ii) deposit funds in and withdraw funds from such Accounts by all usual means, (iii) use their existing check stock and business forms without the necessity of opening new debtor-in-possession bank accounts and obtaining new business forms, and (iv) treat the Accounts as debtor-in-possession bank accounts for all purposes, provided only that once the existing stock is exhausted, the Debtors will imprint the legend "DIP" or "Debtor in Possession" and the case number for the Debtors' consolidated chapter 11 cases on any new stock of correspondence and business forms acquired other than for payroll.

D. The Debtors' banks are not authorized to process, honor or pay any checks drawn in payment of any pre-petition obligations unless authorized by a separate order of this Court.

E. All financial institutions and banks at which the Debtors' Accounts are maintained are prohibited from offsetting, freezing or otherwise impeding the use or transfer of, or access to, any funds deposited in such Accounts on or subsequent to the Petition Date on account of any claim such financial institution or bank may have against the Debtors that arose before the Petition Date.



Certified to be a true and correct copy of the original
James M. Lynch, Clerk
U.S. Bankruptcy Court
District of Massachusetts

By: Alberto Bassano
Deputy Clerk


Date: 6/30/11

F. The Debtors are authorized to continue to make intercompany transfers in the ordinary course of business. The Debtors will record all post-petition intercompany transfers in their books and records. ~~Claims for intercompany transfers will be entitled to priority status under sections 507(a)(2) and 503(b) of the Bankruptcy Code.~~

G. The requirements of section 345 of the Bankruptcy Code are hereby waived for a period of 60 days as to the Accounts. To the extent that the Debtors seek a further waiver of such requirements, they will file a separate motion with the Court.

H. This Interim Order is without prejudice to the Debtors' right to (i) close any of the Accounts or (ii) to open or close new accounts at any banking institution. The Debtor shall promptly notify the Office of the United States Trustee and counsel for any statutory committee if an account is closed or an account is opened.

Dated: June 30, 2011


Honorable United States Bankruptcy Judge
Henry J. Boroff

SCHEDULE H

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

In re:	:	Chapter 11
	:	
	:	Case No. 11-16155 ()
MASSACHUSETTS ELEPHANT &	:	
CASTLE GROUP, INC., <i>et al.</i> , ¹	:	Jointly Administered
	:	
Debtors.	:	
	:	

ORDER (I) AUTHORIZING THE DEBTOR TO HONOR OR PAY CERTAIN PRE-PETITION OBLIGATIONS TO ITS CUSTOMERS IN THE ORDINARY COURSE OF BUSINESS AND (II) GRANTING CERTAIN RELATED RELIEF

Upon consideration of the Debtors' Motion for Entry of an Order Authorizing the Debtors to Honor Certain Pre-Petition Obligations to Customers and to Otherwise Continue Customer Practices and Programs in the Ordinary Course of Business (the "Motion"); the Court having reviewed the Motion; the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue of these chapter 11 cases in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and (d) notice of the Motion was sufficient under the circumstances; the Court determining that the legal and factual bases set forth in the Motion establish just cause for the relief granted by this Order; and it appearing that the relief requested is in the best interest of the Debtors' estates, their creditors and other parties in interest;

¹ The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

IT IS HEREBY DETERMINED, ORDERED AND ADJOURNED THAT:

- A. The Motion is GRANTED in its entirety.
- B. The Debtors are authorized to continue, in their sole discretion, the Customer Programs in the ordinary course of business.
- C. The Debtors are authorized to continue, renew, modify, terminate or replace, in their discretion, their Customer Programs without further order of the Court.

Dated: June 30, 2011


Honorable United States Bankruptcy Judge

Henry J. Boroff



Certified to be a true and
correct copy of the original
James M. Lynch, Clerk
U.S. Bankruptcy Court
District of Massachusetts

By: Alberta B...
Deputy Clerk

Date: 6/30/11

SCHEDULE I

IN THE UNITED STATES BANKRUPTCY COURT DISTRICT OF MASSACHUSETTS EASTERN DIVISION

In re:	:	Chapter 11
	:	
	:	Case No. 11-16155 ()
MASSACHUSETTS ELEPHANT &	:	
CASTLE GROUP, INC., <i>et al.</i> , ¹	:	Jointly Administered
	:	
Debtors.	:	
	:	

ORDER (I) AUTHORIZING THE DEBTORS TO PREPARE (A) A CONSOLIDATED LIST OF CREDITORS AND (B) A CONSOLIDATED LIST OF THE DEBTORS' THIRTY LARGEST UNSECURED CREDITORS AND (II) APPROVING THE FORM AND MANNER OF THE NOTICE OF COMMENCEMENT

Upon consideration of the Debtors' Motion for an Order (I) Authorizing the Debtors to Prepare (A) a Consolidated List of Creditors and (B) a Consolidated List of the Debtors' Thirty Largest Unsecured Creditors and (II) Approving the Form and Manner of the Notice of Commencement (the "Motion"); the Court having reviewed the Motion; the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue of these chapter 11 cases in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and (d) notice of the Motion was sufficient under the circumstances; the Court determining that the legal and factual bases set forth in the Motion establish just cause for the relief granted by this Order; and it appearing that

¹ The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

the relief requested is in the best interest of the Debtors' estates, their creditors and other parties in interest;


IT IS HEREBY DETERMINED, ORDERED AND ADJOURNED THAT:

- A. The Motion is GRANTED in its entirety.
- B. The Debtors are authorized to file a single consolidated matrix in lieu of separate creditor matrices for each of the Debtors.
- C. The Debtors are authorized to file a single consolidated list of their combined 30 largest unsecured creditors in lieu of Top 20 Lists for each Debtor.
- D. The Debtors are authorized to file one declaration under Bankruptcy Rule 1008 in connection with the consolidated list of creditors and the consolidated list of the combined 30 largest unsecured creditors.
- E. The form of notice of the commencement of these chapter 11 cases and the Section 341 Meeting, substantially in the form attached hereto as Exhibit A (the "Commencement Notice"), hereby is approved.
- F. The Claims Agent is authorized and directed to serve the Commencement Notice, with such revisions as agreed to by the Clerk, within five business days after the Debtors receive written notice of the time and place of the Section 341 Meeting. The Claims Agent will serve the Commencement Notice by regular mail, postage prepaid, on those entities entitled to receive the Commencement Notice pursuant to Bankruptcy Rule 2002. Service of the Commencement Notice in accordance with this paragraph is approved in all respects and is

deemed sufficient notice of the commencement of these chapter 11 cases and Section 341

Meeting under the Bankruptcy Code, the Bankruptcy Rules, and the MLBR.

Dated: June 30, 2011


Honorable United States Bankruptcy Judge
Henry J. Boroff



Certified to be a true and
correct copy of the original
James M. Lynch, Clerk
U.S. Bankruptcy Court
District of Massachusetts

By: Alberto Barrios
Deputy Clerk

Date: 6/30/11

SCHEDULE J

Court File No. CV-11-9279-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF CERTAIN PROCEEDINGS
TAKEN IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS EASTERN DIVISION
WITH RESPECT TO THE CHAPTER 11 DEBTORS (AS DEFINED BELOW)**

**APPLICATION OF
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC.
UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED**

NOTICE OF RECOGNITION ORDERS

PLEASE BE ADVISED that this Notice is being published pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Court**"), granted on July 4, 2011.

PLEASE TAKE NOTICE that, on June 28, 2011, Massachusetts Elephant & Castle Group, Inc., (the "Applicant"), Repechage Investments Limited, Elephant & Castle Group Inc., The Elephant and Castle Canada Inc., Elephant & Castle, Inc. (a Texas Corporation), Elephant & Castle Inc. (a Washington Corporation), Elephant & Castle International, Inc., Elephant & Castle of Pennsylvania, Inc., E & C Pub, Inc., Elephant & Castle East Huron, LLC, Elephant & Castle Illinois Corporation, E&C Eye Street, LLC, E & C Capital, LLC, Elephant & Castle (Chicago) Corporation (collectively, the "**Chapter 11 Debtors**") each filed voluntary petitions under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Massachusetts Eastern Division (collectively, the "**Chapter 11 Proceedings**"). In connection with the Chapter 11 Proceedings, the Chapter 11 Debtors have appointed the Applicant as their foreign representative (the "**Foreign Representative**").

PLEASE TAKE FURTHER NOTICE that an Initial Recognition Order and a Supplemental Order (together, the "**Recognition Orders**") have been issued by the Canadian Court under Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, that, among other things: (i) recognize the Chapter 11 Proceedings as a foreign main proceeding; (ii) recognize the Applicant as the Foreign Representative of

the Chapter 11 Debtors; (iii) recognize certain orders granted by the United States Bankruptcy Court in the Chapter 11 Proceedings; (iv) stay all proceedings against the Chapter 11 Debtors and their directors and officers; and (v) appoint BDO Canada Limited as the Information Officer with respect to the Chapter 11 Proceeding.

PLEASE TAKE FURTHER NOTICE that persons who wish to receive a copy of the Recognition Orders or obtain any further information in respect thereof or in respect of the matters set forth in this Notice, should contact the Information Officer at the address below:

BDO CANADA LIMITED

123 Front Street West
Suite 1200
Toronto, Ontario
M5J 2M2
Attention: Ken Pearl

Phone: (416) 369-3063
Fax: (416) 865-0904
Email: kpearl@bdo.ca

PLEASE FINALLY NOTE that the Recognition Orders, and any other orders that may be granted by the Canadian Court, can be viewed at www.bdo.ca/elephantcastle/.

DATED AT TORONTO, ONTARIO this day of July, 2011.

BDO CANADA LIMITED

(solely in its capacity as Information Officer)

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT FOR
THE DISTRICT OF MASSACHUSETTS EASTERN DIVISION WITH RESPECT TO THE COMPANIES LISTED ON
SCHEDULE "A" HERETO (THE "CHAPTER 11 DEBTORS")**

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

SUPPLEMENTAL ORDER

HEENAN BLAIKIE LLP

Lawyers

Suite 2900, 333 Bay Street

Bay Adelaide Centre

Toronto, ON M5H 2T4

Kenneth D. Kraft LSUC# 31919P

John J. Salmas LSUC #42336B

Tel: 416.643.6822 / 416.360.3570

Fax: 416.360.8425

Lawyers for Massachusetts Elephant & Castle
Group, Inc.

TAB 12

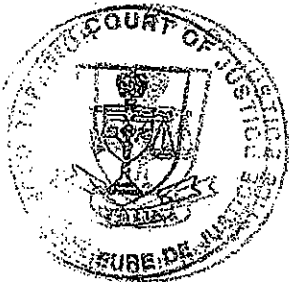
**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE
JUSTICE MORAWETZ

)
)
)

THURSDAY, THE 21 DAY
OF OCTOBER, 2010

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



**APPLICATION OF TERRESTAR NETWORKS INC.
UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED**

**SUPPLEMENTAL ORDER
(October 21, 2010)**

TO CERTIFY THAT THIS
DOCUMENT, EACH PAGE OF
WHICH IS STAMPED WITH THE
SEAL OF THE SUPERIOR COURT
OF JUSTICE AT TORONTO, IS A
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DE JUSTICE À TORONTO, EST UNE
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CONSERVÉ DANS CE BUREAU

DATED AT TORONTO THIS 21 DAY OF OCTOBER 20 10
FAIT À TORONTO LE JOUR DE

Joanne Nicora
REGISTRAR Registrar, Superior Court of Justice
GREFFIER

THIS APPLICATION, made by TerreStar Networks Inc. ("TSNI") in its capacity as the foreign representative (the "Foreign Representative") of Motient Holdings Inc., Motient Communications Inc., Motient License Inc., Motient Services Inc., MVH Holdings Inc., Motient Ventures Holdings Inc., TerreStar National Services, Inc., TerreStar License Inc., TerreStar New York Inc., 0887729 B.C. Ltd. ("088 B.C."), TerreStar Networks Holdings (Canada) Inc. ("TSN Holdings") and TerreStar Networks (Canada) Inc. ("TSN Canada") (together with TSNI, the "Chapter 11 Debtors") and itself, for an Order substantially in the form enclosed in the Application Record was heard, this day at Toronto, Ontario.

ON READING the Notice of Application, the Affidavit of Jeffrey W. Epstein sworn on October 19, 2010 (the "Epstein Affidavit"), the Affidavits of Alexandra North sworn on October 20, 2010 and October 21, 2010 (collectively, the "North Affidavits"), the Preliminary Report of Deloitte & Touche Inc., in its capacity as proposed information

officer (the "Information Officer") dated October 20, 2010, and the consent of Deloitte & Touche Inc. to act as Information Officer, each filed, and upon being provided with copies of the voluntary petition for commencement of chapter 11 proceedings of the Chapter 11 Debtors, and the related orders of, the United States Bankruptcy Court for the Southern District of New York (the "U.S. Bankruptcy Court") dated October 20, 2010, in respect of the bankruptcy proceedings (as jointly administered, the "U.S. Bankruptcy Proceeding") for each of the Foreign Representative and the other Chapter 11 Debtors, including the order of the U.S. Bankruptcy Court authorizing TSNI to act in the capacity of a Foreign Representative on behalf of the Chapter 11 Debtors, and upon hearing the submissions of counsel for the Foreign Representative, counsel for the proposed Information Officer, counsel for the DIP Lenders (as defined in the Epstein Affidavit), counsel for certain lenders under the Senior Secured Notes (as defined in the Epstein Affidavit) and upon being advised that no other persons were served with the Notice of Application:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and that further service of the Notice of Application and the Application Record upon any interested person not served is dispensed with.
2. **THIS COURT ORDERS** that any defined terms not otherwise defined herein shall have the meaning given to such terms as contained in the Initial Recognition Order dated October 21, 2010 (the "IRO").
3. **THIS COURT ORDERS AND DECLARES** that the terms of this Supplemental Order shall be subject to and in furtherance of the IRO and for greater certainty, and except as set out in paragraph 17 herein, shall not amend the IRO or in any way limit the force and effect of the IRO.

RECOGNITION OF THE U.S. BANKRUPTCY ORDERS

4. **THIS COURT ORDERS AND DECLARES** that the following orders of the U.S. Bankruptcy Court attached as Schedules "A" to "E" hereto (collectively, the "Chapter 11 Orders") be and are hereby recognized and given full force and effect and are and shall be in full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA:

- (a) an Order Authorizing TerreStar Networks Inc. to Act as Foreign Representative Pursuant to 11 U.S.C. § 1505 (the "Foreign Representative Order");
- (b) an Interim Order Under Sections 105, 361, 362, 363(c), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364 (e) and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001 and 9014: (I) Authorizing Debtors to Obtain PostPetition Financing; (ii) Authorizing Debtors to Use Cash Collateral; (III) Granting Adequate Protection to Prepetition Secured Parties; and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c) (the "U.S. Interim DIP Financing Order");
- (c) an Interim Order (a) Authorizing, but Not Directing Debtors to Continue Using their Cash Management System, Bank Accounts and Business Forms, (b) Granting Postpetition Intercompany Claims Administrative Expense Priority and (c) Authorizing Continued Intercompany Transactions (the "U.S. Cash Management Order");
- (d) an Interim Order (a) Authorizing, but Not Directing, Debtors (i) to Pay Certain Prepetition Wages and Reimbursable Employee Expenses, (ii) to Pay and Honor Employee Medical and Other Benefits and (iii) Continue Employee Benefits Programs and (b) Authorizing Financial Institutions to Honor all Related Checks and Electronic Payment Requests (the "U.S. Wages Order"); and

- (e) an Order Directing Joint Administration of related Chapter 11 Cases (the "U.S. Joint Administration Order");

provided, however, that in the event of any inconsistency between the terms of the Chapter 11 Orders and the IRO and this Order, the terms of the IRO and this Order shall govern with respect to the Property (as defined in the IRO).

INFORMATION OFFICER

5. THIS COURT ORDERS that:

- (a) Deloitte & Touche Inc. be and is hereby appointed as information officer (in such capacity, the "**Information Officer**"), as an officer of this Court;
- (b) The Information Officer be and is hereby authorized and empowered, but not obligated, to provide such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may request; and
- (c) The Information Officer shall deliver to the Court a report at least once every three (3) months outlining the status of these proceedings, the U.S. Bankruptcy Proceeding and such other information as the Information Officer believes to be material.

6. THIS COURT ORDERS that the Information Officer be and is hereby authorized and empowered to provide any stakeholder of the Chapter 11 Debtors with information obtained from the Chapter 11 Debtors in response to reasonable requests for information in respect of the Business or Property of the Chapter 11 Debtors, made in writing by such stakeholder addressed to the Information Officer. The Information Officer shall not have any responsibility or liability with respect to information disseminated by it pursuant to this paragraph. In the case of information that the Information Officer has been advised by the Chapter 11 Debtors is confidential, the Information Officer shall not provide such information to any stakeholder unless

otherwise directed by this Court or on such terms and conditions as the Information Officer, the Foreign Representative and the relevant Chapter 11 Debtors may agree.

7. **THIS COURT ORDERS** that the Information Officer shall not employ any employees of the Chapter 11 Debtors, shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the Chapter 11 Debtors and shall not, by fulfilling its obligations under this Order, be deemed to have taken or maintained possession, occupation, care or control of the Chapter 11 Debtors, or the Business or Property, or any part thereof, including, but not limited to, any Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation, or rehabilitation of the environment or relating to the disposal of waste or other contamination, including, but not limited to, the *Canadian Environmental Protection Act* or similar other federal or provincial legislation (the "Environmental Legislation"); *provided, however*, that nothing herein shall exempt the Information Officer from any duty to report or make disclosure imposed by applicable Environmental Legislation.

8. **THIS COURT ORDERS** that the appointment of the Information Officer shall not constitute the Information Officer to be an employer or a successor employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or any other statute, regulation or rule of law or equity for any purpose whatsoever and, further, that the Information Officer shall be deemed not to be an owner or in possession, care, control, or management of the Property or Business of the Chapter 11 Debtors whether pursuant to Environmental Legislation, or any other statute, regulation or rule of law or equity under any federal, provincial or other jurisdiction for any purpose whatsoever.

9. **THIS COURT ORDERS** that the Information Officer and counsel to the Information Officer shall each be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Chapter 11 Debtors as part of the costs of

these proceedings. The Chapter 11 Debtors are authorized to pay the accounts of the Information Officer and counsel for the Information Officer on a bi-weekly basis. The payments in respect of the Information Officer and its counsel shall not be subject to approval in the U.S. Bankruptcy Proceeding. In addition, the Chapter 11 Debtors are authorized to pay the Information Officer a retainer of CDN \$125,000 to be held by the Information Officer as security for payment of its and its counsel's fees and disbursements outstanding from time to time.

10. **THIS COURT ORDERS** that the Information Officer and its counsel, as security for the professional fees and disbursements incurred both before and after the granting of this Order, shall be entitled to the benefits of and are hereby granted a first ranking charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of CDN \$125,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Information Officer and such counsel, both before and after the making of this order in respect of the Chapter 11 Debtors' reorganization.

11. **THIS COURT ORDERS** that the fees and expenses of the Information Officer and its counsel shall be subject to the passing of accounts by this Court, and the Information Officer and its counsel shall not be required to pass their accounts in the U.S. Bankruptcy Proceeding, or in any other foreign proceeding.

12. **THIS COURT ORDERS** that the Foreign Representative, the other Chapter 11 Debtors, the Information Officer and the DIP Lenders shall incur no liability or obligation as a result of the appointment of the Information Officer or the fulfilment of the duties of the Information Officer in the carrying out of the provisions of this Order or any other order of this Court, and the Information Officer shall have the benefit of all of the rights and protections afforded to a Monitor under the CCAA, provided that, for greater certainty, the obligations of the Information Officer shall be limited to those expressly set forth in this Order; provided, however, that with respect to the Information Officer, the foregoing shall not apply in respect of acts of gross negligence or wilful misconduct by the Information Officer as determined by final order of this Court. Further, no action or

other proceeding shall be commenced against the Foreign Representative, the other Chapter 11 Debtors, the Information Officer or the DIP Lenders in any Court or other tribunal as a result of or relating in any way to the appointment of the Information Officer, the fulfilment of the duties of the Information Officer or the carrying out of this or any other orders of this Court, unless the leave of this Court is first obtained on motion on at least seven (7) days' notice to the Information Officer, the Foreign Representative, the DIP Lenders and the parties on the service list.

DIP FINANCING

13. **THIS COURT ORDERS AND DECLARES** that, the security interests, liens and charges to be granted in and over all of the Property (the "DIP Charge"), and the priority accorded thereto, as contemplated by the *Interim Order Under Sections 105, 361, 362, 363(c), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364 (e) and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001 and 9014: (I) Authorizing Debtors to Obtain PostPetition Financing; (ii) Authorizing Debtors to Use Cash Collateral; (III) Granting Adequate Protection to Prepetition Secured Parties; and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c)*, entered by the U.S. Bankruptcy Court on October 20, 2010, as security for performance of the Chapter 11 Debtors' obligations under the DIP Loan Agreement (as defined in the Epstein Affidavit) and related loan documentation (together with the DIP Loan Agreement, the "DIP Loan Documentation") are hereby recognized on the terms set out in the U.S. Interim DIP Financing Order, the Property is charged in favour of the DIP Agent (as defined in the Epstein Affidavit) and such security interests, liens and charges are and shall constitute a fixed and floating security interest, lien and charge in and against the Property, senior to all other security interests, liens and charges other than the Administration Charge, the Prepetition Secured Party Liens, the Permitted Prepetition Liens and the Carve-Out (as such terms are defined in the U.S. Interim DIP Financing Order) as security for the obligations of the Canadian Debtors (as that term is defined in paragraph 14 below) and the performance of all of the obligations of the Canadian Debtors, all pursuant to, in accordance with, and, as set forth in the DIP Loan Documentation and U.S. Interim DIP Financing Order.

14. **THIS COURT ORDERS AND DECLARES** that, 088 B.C., Holdings Canada and TerreStar Canada (together, the "Canadian Debtors") are authorized and empowered, to enter into, and to execute and deliver in favour of the DIP Agent and the DIP Lenders, the DIP Loan Documentation and any mortgages, charges, hypothecs, pledges, security or other documents as are contemplated or required by the terms of the DIP Loan Documentation, including without limitation in respect of the Property, and to perform their respective obligations thereunder, and for certainty, this Court orders and declares that the execution and delivery of the DIP Loan Agreement by each of the Canadian Debtors is ratified and approved.

15. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, the IRO or any other Orders granted in these proceedings:

- (a) The DIP Lenders may (but are not required to) take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP Charge or any of the DIP Loan Documentation; and
- (b) Upon the occurrence of an event of default under the DIP Loan Documentation, provided the DIP Agent and the DIP Lenders are authorized in the U.S. Bankruptcy Proceeding, the DIP Agent and the DIP Lenders may exercise all of their rights and remedies under the U.S. Interim DIP Financing Order and the DIP Loan Documentation in accordance with the terms thereof in respect of the Business and Property and without further Order or application to this Court.

VALIDITY AND PRIORITY OF CHARGES

16. **THIS COURT ORDERS** that, without limiting 13 above, the priorities of the Administration Charge and the DIP Charge, as among them, shall be as set out in the U.S. Interim DIP Financing Order and the DIP Loan Documentation, which for greater certainty, as among them, is as follows:

First – Administration Charge (to the maximum amount of \$125,000 and in respect of the Property only); and

Second – DIP Charge.

17. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge or the DIP Charge (collectively, the “Charges”) in Canada shall not be required, and that the Charges are and shall be valid and enforceable against the Property for all purposes in Canada, including, without limitation, 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 the Charges.

18. **THIS COURT ORDERS** that the Administration Charge and the DIP Charge and the DIP Loan Documentation 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 under the DIP Loan Documentation shall not be limited or impaired in any way by (a) the pendency of these proceedings and any declarations of insolvency made in these proceedings; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy orders made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of any security interests, trusts, liens, charges, encumbrances, claims of secured creditors, statutory or otherwise (collectively, “Encumbrances”) contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “Agreement”) which binds the Chapter 11 Debtors, and notwithstanding any provision to the contrary in any such Agreement or otherwise:

- (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Loan Documentation shall create or be deemed to constitute a breach by the Chapter 11 Debtors of any Agreement to which it is a party;

(ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Chapter 11 Debtors entering into the DIP Loan Documentation, the creation of the Charges, or the execution, delivery or performance of the DIP Loan Documentation; and

(iii) the payments made by the Chapter 11 Debtors pursuant to this Order, the DIP Loan Documentation, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

19. **THIS COURT ORDERS** that the DIP Charge and the Administration Charge shall attach to the Property (including, without limitation, any lease, sub-lease, offer to lease, license, permit or other contract), notwithstanding any requirement for the consent of the lessor or other party to any such lease, license, permit or contract or any other person or the failure to comply with any other condition precedent.

20. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Chapter 11 Debtors' interest in such real property leases.

AID AND ASSISTANCE OF OTHER COURTS

21. **THIS COURT REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States and the states of other subdivisions of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

GENERAL PROVISIONS

22. **THIS COURT ORDERS** that the Information Officer or the Foreign Representative may, from time to time, apply to this Court for advice, directions, or for such further or other relief as they may advise in connection with the proper execution of this Order, the IRO or the discharge or variation of their respective powers and duties under this Order.

23. **THIS COURT ORDERS** that nothing in this Order shall prevent the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Chapter 11 Debtors, or in respect of the Business or the Property, upon further order of the Court.

24. **THIS COURT ORDERS** that each of the Foreign Representative, the other Chapter 11 Debtors and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order or the IRO.

SERVICE AND NOTICE

25. **THIS COURT ORDERS** that the Foreign Representative or the Information Officer, as the case may be, are at liberty to serve this Order, the IRO, any other orders in this proceeding, all other proceedings, notices and documents by prepaid ordinary mail, courier, personal delivery or electronic transmission to any interested party that has filed a notice of appearance in these recognition proceedings, at their addresses shown on their notice of appearance and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding, or if sent by ordinary mail, on the second business day after mailing.

26. **THIS COURT ORDERS** that any party to these proceedings, including the Information Officer, may serve any court materials in these proceedings (including without limitation, application records, motion records, facts and orders) on all parties

electronically by emailing a PDF or other electronic copy of such materials to parties' e-mail addresses as recorded on the service list and the Information Officer will post a copy of the materials, including this Order and the IRO, on its website at www.deloitte.com/ca/terrestar-networks as soon as is practicable.

27. **THIS COURT ORDERS** that within 5 days from the date of this Order, or as soon as practicable thereafter, the Information Officer shall publish a notice as required by subsection 53(b) of the CCAA substantially in the form attached to this Order as Schedule "F" in The Globe and Mail (National Edition) for one (1) day in two (2) consecutive weeks without delay following the issuance of this Order.

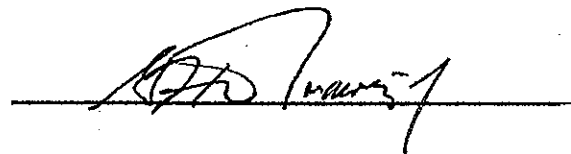
28. **THIS COURT ORDERS AND DECLARES** that this Order shall be effective as of the date and time of the making of this Order and that any rights exercised or purported to be exercised by any Person on this date which would be contrary to the terms of this Order are of no force and effect, and are null and void.

29. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, any interested person may apply to this Court to vary or rescind this Order or seek other relief upon seven (7) days notice to the Foreign Representative, the Chapter 11 Debtors and their counsel, the Information Officer and its counsel, counsel to the DIP Lenders and to any other party likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

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

OCT 21 2010

PER / PAR:




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ON / BOOK NO:
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CONSERVÉ DANS CE BUREAU

DATED AT TORONTO THIS 21 DAY OF OCTOBER 20 10
FAIT A TORONTO LE JOUR DE

Joanne Nicoara

REGISTRAR  Registrar, Superior Court of Justice
GREFFIER

SCHEDULES "A" – "F"

SCHEDULES "A" – "F"

SCHEDULE A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
)	
TERRESTAR NETWORKS INC., <i>et al.</i> , ¹	)	Case No. 10-15446 (SHL)
)	
Debtors.	)	Jointly Administered
)	

**ORDER AUTHORIZING TERRESTAR NETWORKS INC.
TO ACT AS FOREIGN REPRESENTATIVE PURSUANT TO 11 U.S.C. § 1505**

Upon the motion (the "*Motion*")² of the above-captioned debtors (collectively, the "*Debtors*") for entry of an order authorizing TerreStar Networks Inc. ("*TSN*") to act as the Foreign Representative on behalf of the Debtors' estates in any judicial or other proceedings in a foreign country, including in the Canadian Proceedings, and upon the First Day Declaration; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and this Motion in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and notice of the Motion appearing to be adequate and appropriate under the circumstances; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefore, it is hereby ORDERED that:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: TerreStar New York Inc. (6394); TerreStar Networks Inc. (3931); Motient Communications Inc. (3833); Motient Holdings Inc. (6634); Motient License Inc. (2431); Motient Services Inc. (5106); Motient Ventures Holding Inc. (6191); MVH Holdings Inc. (9756); TerreStar License Inc. (6537); TerreStar National Services Inc. (6319); TerreStar Networks Holdings (Canada) Inc. (1337); TerreStar Networks (Canada) Inc. (8766) and 0887729 B.C. Ltd. (1345).

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

1. The Motion is granted to the extent set forth herein.
2. TSN is hereby authorized to act as the Foreign Representative on behalf of the Debtors' estates in ~~any judicial or other proceeding held in a foreign country, including in the~~ Canadian Proceedings. As Foreign Representative, TSN shall be authorized and shall have the power to act in any way permitted by applicable foreign law, including, but not limited to: (i) seeking recognition of these chapter 11 cases in the Canadian Proceedings; (ii) requesting that the Canadian Court lend assistance to this Court in protecting the property of the Debtors' estates; and (iii) seeking any other appropriate relief from the Canadian Court that TSN deems just and proper in the furtherance of the protection of the Debtors' estates.
3. This Court requests the aid and assistance of the Canadian Court to recognize these cases as a "foreign main proceeding" and TSN as a "foreign representative" pursuant to the CCAA and to recognize and give full force and effect in all provinces and territories of Canada to this Order.
4. The Debtors are authorized to take all actions they determine necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.
5. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: October 20, 2010
New York, New York

/s/ Sean H. Lane
United States Bankruptcy Judge

SCHEDULE B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	) Chapter 11
TERRESTAR NETWORKS INC., <i>et al.</i> , ¹	) Case No. 10-15446 (SHL)
Debtors.	) Joint Administration Requested

**INTERIM ORDER UNDER SECTIONS 105, 361, 362, 363(c),
364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) AND 364(e) AND 507 OF THE
BANKRUPTCY CODE AND BANKRUPTCY RULES 2002, 4001
AND 9014: (I) AUTHORIZING DEBTORS TO OBTAIN POSTPETITION
FINANCING; (II) AUTHORIZING DEBTORS TO USE CASH
COLLATERAL; (III) GRANTING ADEQUATE PROTECTION
TO PREPETITION SECURED PARTIES; AND (IV) SCHEDULING A
FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(b) AND (c)**

Upon the motion, dated October 19, 2010 (the "*Motion*"), of TerreStar Networks Inc. ("*TSN*") and each of its affiliated debtors and debtors in possession (collectively, the "*Debtors*") in the above-captioned cases (the "*Cases*") commenced on October 19, 2010 (the "*Petition Date*"), for interim and final orders under sections 105, 361, 362, 363(c), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the "*Bankruptcy Code*"), and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "*Bankruptcy Rules*"), and the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the "*Local Rules*"), seeking:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: TerreStar New York Inc. (6394); TerreStar Networks Inc. (3931); Motient Communications Inc. (3833); Motient Holdings Inc. (6634); Motient License Inc. (2431); Motient Services Inc. (5106); Motient Ventures Holding Inc. (6191); MVH Holdings Inc. (9756); TerreStar License Inc. (6537); TerreStar National Services Inc. (6319); TerreStar Networks Holdings (Canada) Inc. (1337); TerreStar Networks (Canada) Inc. (8766) and 0887729 B.C. Ltd. (1345).

(I) authorization (a) for TSN (the "*Borrower*") to obtain up to \$75 million (plus fees, interest and other amounts to be capitalized in accordance with the terms of the DIP Documents (defined below)) in aggregate principal amount of postpetition financing (the "*DIP Financing*") on the terms and conditions set forth in this interim order (this "*Order*") and that certain Debtor-In-Possession Credit, Security & Guaranty Agreement (substantially in the form annexed to the Motion as Exhibit A, and as hereafter amended, supplemented or otherwise modified from time to time, the "*DIP Agreement*";² and, collectively with all agreements, guaranties, collateral agreements, documents and instruments delivered or executed from time to time in connection therewith, as hereafter amended, supplemented or otherwise modified from time to time, the "*DIP Documents*"), among the Borrower, the Guarantors (as defined below), EchoStar Corporation ("*EchoStar*" or the "*Initial Lender*"), and the other lenders that may become party thereto from time to time (collectively, the "*DIP Lenders*"), and The Bank of New York Mellon, as Administrative Agent and Collateral Agent (in such capacity, the "*DIP Agent*"), and (b) for each of the Debtors other than the Borrower (the "*Guarantors*"), to jointly and severally (except as provided in section 10.17 of the DIP Agreement) guaranty on a secured basis the Borrower's obligations in respect of the DIP Financing;

(II) authorization for the Debtors to execute and deliver the DIP Agreement and the other DIP Documents and to perform such other and further acts as may be necessary or appropriate in connection therewith;

² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the DIP Agreement.

(III) authorization for the Debtors to use the Cash Collateral (as defined in paragraph 3(g) below) pursuant to sections 361, 362 and 363 of the Bankruptcy Code, and all other Prepetition Collateral (as defined in paragraph 3(d) below);

(IV) to grant adequate protection to the PMCA Agent, each PMCA Lender, the 15% Notes Trustee/Agent, and the 15% Noteholders (each as defined below, and together, the "*Prepetition Secured Parties*" and, excluding the 15% Noteholders, the "*Prepetition Secured Notice Parties*") with respect to such use of Cash Collateral and any diminution in the value of the Prepetition Collateral securing the Debtors' obligations (the "*Prepetition Secured Obligations*") under or in connection with: (i) that certain Terrestar-2 Purchase Money Credit Agreement, dated as of February 5, 2008 (as amended, restated, supplemented or otherwise modified from time to time, and including any mortgage, security, pledge, control or guaranty agreements or other documentation executed in connection with the foregoing, the "*PMCA*"), among TSN, as borrower, U.S. Bank National Association, as collateral agent (in such capacity, the "*PMCA Agent*"), the guarantors party thereto from time to time, and Harbinger Capital Partners Master Fund 1, Ltd., Harbinger Capital Partners Special Situations Fund, L.P. and EchoStar, as lenders (the "*PMCA Lenders*"); and (ii) the 15.0% senior secured payment-in-kind notes due 2014 (the "*15% Notes*") issued pursuant to that certain Indenture, dated as of February 14, 2007, among TSN, as issuer, U.S. Bank National Association, as indenture trustee and collateral agent (in such capacity, the "*15% Notes Trustee/Agent*" and together with the PMCA Agent, the "*Prepetition Agent*"), and the guarantors from time to time party thereto (as amended, restated, supplemented or otherwise modified from time to time, including by that certain First Supplemental Indenture, dated as of February 7, 2008, and that certain Second Supplemental Indenture, dated as of February 7, 2008, and including any mortgage, security, pledge, control or

guaranty agreements or other documentation executed in connection with the foregoing, the "*15% Notes Indenture*" and, together with the PMCA, the "*Prepetition Loan Documents*";

(V) authorization for the DIP Agent to, subject to paragraph 8 below, upon the occurrence and continuance of an Event of Default: (a) reduce the amount of or terminate any outstanding Commitments under the DIP Agreement, (b) terminate the DIP Agreement, (c) charge the default rate of interest on the Loans, (d) declare the entirety of the Loans to be due and payable, and/or (e) subject to the Carve-Out (as defined in paragraph 6(b) below), exercise any and all remedies under applicable law (including the UCC and PPSA);

(VI) subject to entry of the Final Order, the waiver by the Debtors of any right to seek to surcharge the DIP Collateral (as defined in paragraph 7 below) pursuant to section 506(c) of the Bankruptcy Code or any other applicable law or principle of equity, which grant constitutes an "extraordinary provision" (a "*Material Provision*") under General Order M-274 of the United States Bankruptcy Court for the Southern District of New York;

(VII) at an interim hearing (the "*Interim Hearing*") on the Motion before this Court, pursuant to Bankruptcy Rule 4001, entry of this Order: (a) authorizing the Borrower, on an interim basis, to borrow under the DIP Agreement an aggregate principal amount, not to exceed \$18 million (plus fees, interest and other amounts to be capitalized in accordance with the terms of the DIP Documents) at any time outstanding prior to the entry of the Final Order, (b) authorizing the Debtors, on an interim basis, to use the Cash Collateral and the other Prepetition Collateral, and (c) granting, on an interim basis, adequate protection to the Prepetition Secured Parties; and

(VIII) scheduling, pursuant to Bankruptcy Rule 4001, a final hearing (the "*Final Hearing*") for this Court to consider entry of a final order, substantially in the form attached to the DIP Agreement as Exhibit D (the "*Final Order*"), authorizing and approving on a final basis the relief requested in the Motion, including without limitation, for the Borrower on a final basis to utilize the DIP Financing and for the Debtors to continue to use the Cash Collateral and the other Prepetition Collateral subject to the terms of the DIP Documents and the Final Order.

The Interim Hearing having been held by this Court on October 20, 2010, and upon the record made by the Debtors at the Interim Hearing, including, without limitation, the admission into evidence of (i) the First Day Declaration, (ii) the Epstein DIP Declaration, and (iii) Zelin Declaration (each as defined in the Motion), each of which was filed on the Petition Date, and the other evidence submitted or adduced and the arguments of counsel made at the Interim Hearing and after due deliberation and consideration and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. *Jurisdiction/Venue.* This Court has core jurisdiction over the Cases, this Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
2. *Notice.* Based upon the Debtors' representations, notice of the Motion and the relief requested therein, and the relief requested at the Interim Hearing was served by the Debtors by electronic mail, facsimile, or overnight mail to: (a) the Office of the United States Trustee for the Southern District of New York (the "*U.S. Trustee*"); (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) The Bank of New York Mellon as agent for the Debtors' proposed

postpetition debtor-in-possession financing; (d) Emmet, Marvin & Martin LLP as counsel to the agent for the Debtors' proposed postpetition debtor-in-possession financing; (e) U.S. Bank National Association as Collateral Agent for the Debtors' purchase money credit facility and Harbinger Capital Partners Master Fund I, Ltd., Harbinger Capital Partners Special Situations Fund, L.P. and EchoStar Corporation as Lenders thereunder; (f) Weil, Gotshal & Manges LLP as counsel to Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund, L.P. in their capacity as Lenders under the Debtors' purchase money credit facility; (g) Willkie Farr & Gallagher LLP as counsel to EchoStar Corporation in its capacity as Lender under the Debtors' purchase money credit facility and Initial Lender under the Debtors' proposed postpetition debtor-in-possession financing; (h) U.S. Bank National Association as Indenture Trustee for the Debtors' 15% Senior Secured Notes; (i) U.S. Bank National Association as Indenture Trustee for the Debtors' 6.5% Senior Exchangeable Notes; (j) Quinn Emanuel Urquhart & Sullivan, LLP as counsel to an Ad Hoc group of the Debtors' 6.5% Senior Exchangeable Notes; (k) the Internal Revenue Service; (l) the Securities and Exchange Commission; (m) the United States Attorney for the Southern District of New York; and (n) the Federal Communications Commission. Under the circumstances, the notice provided of the Motion, the relief requested therein and the Interim Hearing constitutes due and sufficient notice thereof, complies with Bankruptcy Rules 4001(c) and (d) and the Local Rules, and no further notice of the relief sought at the Interim Hearing and the relief granted herein is necessary or required.

3. *Debtors' Stipulations.* Subject to the limitations contained in paragraph 16 below, the Debtors admit, stipulate, and agree that:

(a) as of the Petition Date, certain of the Debtors were justly and lawfully indebted and liable, without defense, counterclaim or offset of any kind, to the PMCA Lenders, in the amount of not less than \$85.9 million of principal and accrued interest (such obligations, in addition to the obligations described below, the "*Prepetition PMCA Obligations*"), in respect of loans or other financial accommodations made by the PMCA Lenders pursuant to, and in accordance with the terms of, the PMCA, plus, in each case, accrued and unpaid interest thereon and costs and expenses and other obligations owing under the PMCA;

(b) as of the Petition Date, certain of the Debtors were justly and lawfully indebted and liable, without defense, counterclaim or offset of any kind, to the holders of 15% Notes (the "*15% Noteholders*"), in the amount of not less than \$943.9 million of principal and accrued interest (such obligations, in addition other obligations described below in this paragraph, the "*Prepetition 15% Notes Obligations*" and, together with the Prepetition PMCA Obligations the "*Prepetition Obligations*"), in respect of loans or other financial accommodations made by the 15% Noteholders pursuant to, and in accordance with the terms of, the 15% Notes Indenture, plus, in each case, accrued and unpaid interest thereon and costs and expenses and other obligations owing under the 15% Notes Indenture;

(c) the liens and security interests granted to the PMCA Agent to secure the Prepetition PMCA Obligations (the "*PMCA Liens*") are (i) valid, binding, perfected, enforceable, first priority (subject to permitted exceptions under the PMCA) liens on and security interests in the personal and real property constituting "Collateral" under, and as defined in, the PMCA (including Cash Collateral, the "*PMCA Collateral*"), (ii) not subject to objection, defense, counterclaim, offset, contest, attachment, avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law, and (iii) subject and

subordinate only to valid, perfected and unavoidable liens permitted under the PMCA to the extent such permitted liens are senior to the liens securing the PMCA (the "*PMCA Permitted Prepetition Liens*") and the Carve-Out (as defined in paragraph 6(b) below);

(d) the liens and security interests granted to the 15% Notes Trustee/Agent to secure the Prepetition 15% Notes Obligations (the "*15% Notes Liens*" and, together with the PMCA Liens, the "*Prepetition Secured Party Liens*") are (i) valid, binding, perfected, enforceable, first priority (subject to permitted exceptions under the 15% Notes Indenture) liens on and security interests in the personal and real property constituting "Collateral" under, and as defined in, the 15% Notes Indenture (including Cash Collateral, the "*15% Notes Collateral*" and, together with the PMCA Collateral, the "*Prepetition Collateral*"), (ii) not subject to objection, defense, counterclaim, offset, contest, attachment, avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law, and (iii) subject and subordinate only to valid, perfected and unavoidable liens permitted under the 15% Notes Indenture to the extent such permitted liens are senior to the liens securing the Prepetition 15% Notes Obligations (the "*15% Notes Permitted Prepetition Liens*" and, together with the PMCA Permitted Prepetition Liens, the "*Permitted Prepetition Liens*") and the Carve-Out;

(e) the Prepetition Obligations constitute the legal, valid and binding obligations of the Debtors, enforceable in accordance with their terms (other than in respect of the stay of enforcement arising under section 362 of the Bankruptcy Code);

(f) (i) no portion of the Prepetition Obligations shall be subject to objection, defense, counterclaim, offset, avoidance, recharacterization, recovery or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law, and (ii) the Debtors do not have, and hereby forever release, any claims (as defined in section 101(5) of the Bankruptcy Code),

counterclaims, causes of action, defenses, setoff or recoupment rights, whether arising under the Bankruptcy Code or applicable nonbankruptcy law, against the Prepetition Secured Parties and their respective affiliates, subsidiaries, agents, officers, directors, employees, attorneys and advisors, in each case, solely in their capacity as Prepetition Secured Parties; and

(g) a portion of the Debtors' cash constitutes Prepetition Collateral and, therefore, is cash collateral of the Prepetition Secured Parties within the meaning of section 363(a) of the Bankruptcy Code (the "*Cash Collateral*").

4. *Findings Regarding the DIP Financing.* The Court is satisfied based upon the Debtors' representations that:

(a) The Debtors have an immediate need to obtain the DIP Financing and to use the Prepetition Collateral, including any Cash Collateral, in order to, among other things, permit the orderly continuation of their businesses, preserve the going concern value of the Debtors, pay the costs of administration of their estates and for the other purposes set forth in the DIP Documents. The Debtors' use of the Prepetition Collateral (including the Cash Collateral) and the DIP Financing is necessary to ensure that the Debtors have sufficient working capital and liquidity to preserve and maintain the going concern value of the Debtors' estates. Good cause has, therefore, been shown for entry of this Order.

(b) The Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Lenders pursuant to, and for the purposes set forth in, the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without the Debtors granting to the DIP Agent for the benefit of itself and the DIP Lenders,

subject to the Carve-Out, (i) the DIP Liens (as defined in paragraph 7 below), including the priming DIP Liens described in paragraph 7(b) below, and (ii) the Superpriority Claims (as defined in paragraph 6(a) below), in each case on the terms and conditions set forth in this Order and the DIP Documents. Specifically, no party or parties other than the DIP Lenders would provide postpetition financing to the Debtors absent the Debtors granting such parties priming liens on the Debtors' assets pursuant to section 364(d)(1) of the Bankruptcy Code, and the Debtors were unable to satisfy the requirements of section 364(d)(1) of the Bankruptcy Code.

(c) The terms of the DIP Documents and the use of the Prepetition Collateral (including the Cash Collateral) pursuant to this Order and the DIP Agreement reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties. The Debtors will receive and have received fair and reasonable consideration in exchange for access to the DIP Financing and all other financial accommodations provided under the DIP Documents and this Order.

(d) The DIP Documents and the terms and conditions of the Debtors' use of the Prepetition Collateral (including the Cash Collateral) have been the subject of negotiations conducted in good faith and at arm's length among the Debtors, the DIP Agent, the DIP Lenders, the Prepetition Agent and the PMCA Lenders, and all of the Debtors' obligations and indebtedness arising under or in connection with the DIP Financing, including without limitation, (i) all Loans made to, and guaranties issued by, the Debtors pursuant to the DIP Agreement, (ii) the Debtors' obligation to pay all reasonable costs and expenses of (a) the Initial Lender (including all reasonable, actual and documented fees, expenses and disbursements of the Initial Lender's counsel and financial advisors, i.e., Willkie Farr & Gallagher LLP, Sullivan & Cromwell LLP, Goodmans LLP, Steptoe & Johnson LLP, and Lazard Ltd., and (b) the DIP

Agent (including all reasonable, actual and documented fees, expenses and disbursements of the DIP Agent's counsel, i.e., Emmet, Marvin & Martin, LLP) in connection with the preparation, execution and delivery of the DIP Agreement and the funding of the DIP Financing, and (iii) all other obligations (including, without limitation, indemnification and fee obligations) of the Debtors under the DIP Documents and this Order now or hereafter owing to the DIP Agent or any DIP Lender (collectively, (i), (ii) and (iii), the "*DIP Obligations*") shall be deemed to have been extended by the DIP Agent and the DIP Lenders in "good faith" as such term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections set forth therein, and shall be entitled to the full protection of section 364(e) of the Bankruptcy Code, in the event that this Order or any provision hereof is vacated, reversed or modified on appeal or otherwise.

(e) The Debtors have requested immediate entry of this Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and Local Rule 4001-2. Absent the interim relief set forth in this Order, the Debtors' estates will be immediately and irreparably harmed. Consummation of the DIP Financing and authorization of the use of the Prepetition Collateral (including the Cash Collateral) in accordance with this Order and the DIP Documents are, therefore, in the best interest of the Debtors' estates and are consistent with the Debtors' fiduciary duties.

5. *Authorization Of The DIP Financing And The DIP Documents.*

(a) The Debtors are hereby authorized, without stockholder, member or board of directors (or similar body) approval, to enter into and perform their obligations under the DIP Documents and, in the case of (i) the Borrower, to borrow thereunder up to an aggregate principal amount of \$18 million (plus fees, interest and other amounts to be capitalized in

accordance with the terms of the DIP Documents) for working capital and other general corporate purposes of the Debtors and to pay interest, fees and all other expenses provided for in the DIP Documents, pending entry of the Final Order, all in accordance with the terms of this Order, the DIP Agreement and the other DIP Documents, and (ii) the Guarantors, to jointly and severally (except as provided in section 10.17 of the DIP Agreement) guaranty such borrowing and all other DIP Obligations.

(b) The Debtors are authorized to use the proceeds of borrowings under the DIP Agreement and Cash Collateral in accordance with and to the extent permitted by the DIP Documents.

(c) On an interim basis, in furtherance of the foregoing and without further approval of this Court, each Debtor is authorized, and the automatic stay imposed by section 362 of the Bankruptcy Code is hereby lifted to the extent necessary, to perform all acts and to execute and deliver all instruments and documents that the DIP Agent or the Initial Lender determines to be reasonably required or necessary for the Debtors' performance of their obligations under the DIP Documents, including without limitation:

- (i) the execution, delivery and performance of the DIP Documents;
- (ii) the execution, delivery and performance of one or more amendments, waivers, consents or other modifications to and under the DIP Documents, in each case in such form as the Debtors, the DIP Agent and the requisite DIP Lenders may agree, and no further approval of this Court shall be required for immaterial amendments, waivers, consents or other modifications to and under the DIP Documents (and any fees paid in connection therewith) that do not (A) shorten the maturity of the Loans or (B) increase the Commitments or the rate of interest payable on the Loans under the DIP Agreement; provided, that a copy of any

amendment, waiver, consent or other modification to the DIP Documents shall be provided by the Debtors to (X) the U.S. Trustee, (Y) counsel to any statutory committee of unsecured creditors appointed in the Cases (the "*Committee*"), if any and (Z) counsel to the Prepetition Secured Notice Parties;

(iii) the non-refundable payment to the DIP Agent, its affiliates and the DIP Lenders, as the case may be, of (A) the fees set forth in the DIP Documents (including, without limitation, the fees provided for in the Fee Schedule, dated October 7, 2010, between the Borrower and the DIP Agent) and (B) such reasonable, actual, and documented costs and expenses as may be due from time to time under the DIP Documents, all as provided in the DIP Documents and all of which constitute DIP Obligations; and

(iv) the performance of all other acts required under or in connection with the DIP Documents.

(d) Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute valid and binding obligations of the Debtors, enforceable against the Debtors in accordance with the terms of this Order and the DIP Documents, without the need for approval by any equity holder, member, or board of directors (or similar body) of any Debtor. No obligation, payment, transfer or grant of security under the DIP Documents or this Order shall be stayed, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable nonbankruptcy law (including without limitation, under sections 502(d), 548 or 549 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment or counterclaim.

(e) The Debtors have provided the DIP Lenders with the 13-week cash flow projection annexed hereto as Exhibit A (the "*Initial 13-Week Projection*"). On a bi-weekly basis, the Debtors will provide the DIP Agent and DIP Lenders with an updated cash flow projection for the following 13 weeks.

6. *Superpriority Claims.*

(a) Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed senior administrative expense claims (the "*Superpriority Claims*") against the Debtors and, except to the extent expressly set forth in this Order in respect of the Carve-Out, such Superpriority Claims shall have priority over any and all administrative expenses, adequate protection claims and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and which Superpriority Claims shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof. For the avoidance of doubt, the DIP Obligations of any Non-Subsidiary Guarantor shall be limited to the extent set forth in section 10.17(a) of the DIP Agreement.

(b) For purposes hereof, the "*Carve-Out*" shall mean: (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee under

section 1930(a) of title 28 of the United States Code; (ii) fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; (iii) with respect to the information officer (the "*Information Officer*") to be appointed by the Canadian Court in connection with the proceedings commenced pursuant to the Companies' Creditors Arrangement Act (Canada) R.S.C. 1985, c. C-36 as amended in the Ontario Superior Court of Justice (Commercial List) in Toronto, Ontario, Canada (the "*Canadian Proceedings*"), all fees and expenses required to be paid to the Information Officer in connection with the Canadian Proceedings, including to the extent secured by the charge to be granted by the Canadian Court over the Debtors' assets in Canada, in the maximum amount of CDN \$125,000, to secure payment of any such fees and expenses of the Information Officer; and (iv) after the occurrence and during the continuance of an Event of Default under the DIP Documents, the payment of allowed professional fees and disbursements incurred by the Debtors or the Committee after the occurrence of the Event of Default not in excess of \$800,000 (plus all unpaid professional fees and expenses allowed by this Court that were incurred prior to the occurrence of such Event of Default); provided that (X) the Carve-Out shall not be available to pay any such professional fees and expenses incurred in connection with the initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties or liens and claims held by DIP Agent, the DIP Lenders, the Prepetition Secured Parties, (Y) so long as no Event of Default shall have occurred and be continuing, the Carve-Out shall not be reduced by the payment of fees and expenses allowed by this Court under sections 328, 330 and 331 of the Bankruptcy Code, and (Z) nothing in this Order shall impair the right of any party to object to the reasonableness of any such fees or expenses to be paid by the Debtors' estates.

7. *DIP Liens.* As security for the DIP Obligations, effective and perfected upon the date of this Order and without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by the DIP Agent of any property, the following security interests and liens are hereby granted to the DIP Agent, for its own benefit and the benefit of the DIP Lenders (all property identified in clauses (a), (b) and (c) below being collectively referred to as the “*DIP Collateral*”), subject only to the Carve-Out (all such liens and security interests granted to the DIP Agent, for its benefit and for the benefit of the DIP Lenders, pursuant to this Order and the DIP Documents, the “*DIP Liens*”):

(a) *First Lien on Unencumbered Property.* Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority lien on, and security interest in, all tangible and intangible prepetition and postpetition property in which the Debtors have an interest, whether existing on or as of the Petition Date or thereafter acquired, that is not subject to valid, perfected, non-avoidable and enforceable liens in existence on or as of the Petition Date (collectively, and excluding any property that is excluded from the definition of “Collateral” in section 10.01 of the DIP Agreement, the “*Unencumbered Property*”), including without limitation, any and all unencumbered cash, accounts receivable, other rights to payment, inventory, general intangibles, contracts, securities, chattel paper, owned real estate, real property leaseholds, fixtures, machinery, equipment, deposit accounts, patents, copyrights, trademarks, tradenames, rights under license agreements and other intellectual property, instruments, investment property, goods, satellites, spare satellites, ground stations, commercial tort claims, proceeds from the disposition of Federal Communications Commission

and/or Industry Canada licenses (and the Federal Communications Commission and/or Industry Canada licenses themselves, to the fullest extent permitted by applicable law), books and records, in each case, wherever located, and the proceeds, products, rents and profits of all of the foregoing.

(b) *Liens Junior to Certain Existing Liens.* Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected lien on, and security interest in, all tangible and intangible prepetition and postpetition property in which the Debtors have an interest, whether now existing or hereafter acquired and all proceeds thereof, that is subject to the Prepetition Secured Party Liens or the Permitted Prepetition Liens, which security interest and lien shall be junior to (i) the Prepetition Secured Party Liens and the Permitted Prepetition Liens (but only to the extent such liens secure valid and enforceable Prepetition Secured Obligations), and (ii) the Carve-Out, but senior to all other liens.

(c) *Liens Priming TSN Secured Party Liens.* Pursuant to section 364(d)(1) of the Bankruptcy Code, and based upon the consent of the TSN Secured Party (as defined below), a valid, binding, continuing, enforceable, fully-perfected, priming lien on, and security interest in, all now existing or hereafter acquired property of TerreStar Networks (Canada) Inc. that constitutes "Collateral" (as defined in the TSN Security Agreement (defined below)) (the "*TSN Collateral*") under that certain Second Amended and Restated Security Agreement, dated August 11, 2009, as amended, by and between TerreStar Networks Inc., as Secured Party (the "*TSN Secured Party*"), and TerreStar Canada Inc., as Obligor (the "*TSN Security Agreement*"). The DIP Liens on the TSN Collateral shall be senior in all respects to the security interests in, and liens on, the TSN Collateral of the TSN Secured Party (the "*TSN Security Agreement Liens*"),

but shall be junior to: (a) the 15% Notes Permitted Prepetition Liens; (b) the 15% Notes Liens; and (c) the Carve-Out.

(d) *Liens Senior to Certain Other Liens.* The DIP Liens and the Adequate Protection Liens (as defined in paragraph 12(a) below) shall not be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (B) any liens arising after the Petition Date, including without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtors or (ii) subordinated to or made *pari passu* with any other lien or security interest (other than the Permitted Prepetition Liens, the Prepetition Secured Party Liens, and the Carve-Out) under sections 363 or 364 of the Bankruptcy Code or otherwise.

8. *Remedies After Event of Default.* The automatic stay under section 362 of the Bankruptcy Code is vacated and modified to the extent necessary to permit the DIP Agent and the DIP Lenders to exercise, (i) immediately upon the occurrence and during the continuance of an Event of Default, all rights and remedies under the DIP Documents, other than those rights and remedies against the DIP Collateral as provided in clause (ii) below, and (ii) upon the occurrence and during the continuance of an Event of Default, and the giving of ten (10) days' prior written notice to the Debtors, with a copy to counsel for the Debtors, counsel to the Committee (and, if no Committee is formed, the Debtors' largest thirty (30) unsecured creditors on a consolidated basis), counsel to the Prepetition Secured Notice Parties and to the U.S. Trustee, all rights and remedies against the DIP Collateral provided for in the DIP Documents and this Order. In any hearing regarding any exercise of rights or remedies, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default

has occurred and is continuing. The DIP Agent's or any DIP Lender's delay or failure to exercise rights and remedies under the DIP Documents or this Order shall not constitute a waiver of the DIP Agent's or the DIP Lenders' rights hereunder, thereunder or otherwise, unless any such waiver is pursuant to a written instrument executed in accordance with the terms of the applicable DIP Documents.

9. *Limitation on Charging Expenses Against Collateral.* Subject to and effective upon entry of the Final Order, except to the extent of the Carve-Out with respect to the DIP Collateral and the Prepetition Collateral, no expenses of administration of the Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral or the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law or in equity, without the prior written consent of the DIP Agent and the Prepetition Agent, and no such consent shall be implied from any other action or inaction by the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties.

10. *Payments Free and Clear.* Any and all payments or proceeds remitted to the DIP Agent on behalf of the DIP Lenders or the Prepetition Agent on behalf of the Prepetition Secured Parties pursuant to the provisions of this Order or any subsequent order of this Court shall be received free and clear of any claim, charge, assessment or other liability.

11. *Use of Prepetition Collateral (including Cash Collateral).* The Debtors are hereby authorized to use the Prepetition Collateral, including the Cash Collateral, during the period from the Petition Date through and including the Termination Date under the DIP Agreement for, among other things, working capital and general corporate purposes in .

accordance with the terms and conditions of this Order and the DIP Documents; provided that the Prepetition Secured Parties are granted adequate protection as hereinafter set forth.

12. *Adequate Protection.* The Prepetition Secured Parties are entitled, pursuant to sections 105, 361, 363 and 364 of the Bankruptcy Code, to adequate protection of their interests in the Prepetition Collateral, including Cash Collateral, in an amount equal to the aggregate diminution in value of the Prepetition Secured Parties' security interests in the Prepetition Collateral, including without limitation, any such diminution resulting from the sale, lease or use by the Debtors (or other decline in value) of any Prepetition Collateral, including the Cash Collateral, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (such diminution in value, the "*Adequate Protection Obligations*"). As adequate protection, the Prepetition Secured Parties are hereby granted the following (the "*Adequate Protection*");

(a) *Adequate Protection Liens.*

(i) As security for the payment of the Adequate Protection Obligations with respect to the PMCA, the PMCA Agent (for itself and for the benefit of the PMCA Lenders) is hereby granted (effective and perfected upon the date of this Order and without the necessity of the execution by the Debtors of security agreements, pledge agreements, mortgages, financing statements or other agreements) a valid, perfected replacement security interest in and lien on the PMCA Collateral (the "*PMCA Adequate Protection Lien*"), subject and subordinate only to (A) the Permitted Prepetition Liens, (B) Prepetition Secured Party Liens, (C) the DIP Liens, and (D) the Carve-Out, and senior to all other liens (including, without limitation, the TSN Liens).

(ii) As security for the payment of the Adequate Protection Obligations with respect to the 15% Notes, the 15% Notes Trustee/Agent (for itself and for the benefit of the 15% Noteholders) is hereby granted (effective and perfected upon the date of this Order and without the necessity of the execution by the Debtors of security agreements, pledge agreements, mortgages, financing statements or other agreements): (A) a valid, perfected replacement security interest in and lien on the 15% Notes Collateral, and (B) a non-avoidable, valid, enforceable and perfected security interest in and lien on all of the DIP Collateral not included in (A) above (collectively, (A) and (B), the "*15% Notes Adequate Protection Liens*") and together with the PMCA Adequate Protection Lien, the "*Adequate Protection Liens*"), each of which shall be subject and subordinate only to (W) the Permitted Prepetition Liens, (X) Prepetition Secured Party Liens, (Y) the DIP Liens, and (Z) the Carve-Out, and senior to all other liens (including, without limitation, the TSN Liens).

(b) *Section 507(b) Claims.* The Adequate Protection Obligations shall constitute superpriority claims as provided in section 507(b) of the Bankruptcy Code (the "*507(b) Claims*"), with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including without limitation, sections 326, 328, 330, 331, 503(b), 506(c), 507(a), 726, 1113 and 1114 of the Bankruptcy Code, subject and subordinate only to (i) the Carve-Out and (ii) the Superpriority Claims granted in respect of the DIP Obligations. Except to the extent expressly set forth in this Order or the Final Order, the Prepetition Secured Parties shall not receive or retain any payments, property or other amounts in respect of the 507(b) Claims unless and until all DIP Obligations shall have indefeasibly been paid in full in cash and the Commitments have been terminated.

(c) *Fees and Expenses.* The Prepetition Agent shall receive from the Debtors reimbursement of all reasonable, actual and documented fees and expenses incurred or accrued by the Prepetition Agent under and pursuant to the Prepetition Loan Documents, including, without limitation, the reasonable, actual and documented fees and disbursements of counsel to the Prepetition Agent, whether incurred or accrued prior to or after the Petition Date. None of the fees and expenses payable pursuant to this paragraph 12(c) shall be subject to separate approval by this Court (but this Court shall resolve any dispute as to the reasonableness of any such fees and expenses), and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto. Subject to any *bona fide* dispute as to the reasonableness of such fees and expenses, the Debtors shall pay the reasonable, actual and documented fees and expenses provided for in this paragraph 12(c) promptly (but no later than ten (10) business days) after invoices for such fees and expenses shall have been submitted to the Debtors, and the Debtors shall promptly provide copies of such invoices to the Committee (if any) and the U.S. Trustee.

(d) *Information.* The Debtors shall promptly provide to the Prepetition Agent any written financial information or periodic reporting that is provided to, or required to be provided to, the DIP Agent or the DIP Lenders (or their advisors) and shall continue to provide to the Prepetition Agent and the Prepetition Secured Parties all financial and other reporting as provided prepetition in accordance with the Prepetition Loan Documents.

13. *Reservation of Rights of Prepetition Secured Parties.* Under the circumstances and given that the Adequate Protection is consistent with the Bankruptcy Code, this Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the Prepetition Secured Parties. Notwithstanding any other provision

hereof, the grant of adequate protection to the Prepetition Agent and the Prepetition Secured Parties pursuant hereto is without prejudice to the right of the Prepetition Agent to seek modification of the grant of adequate protection provided hereby so as to provide different or additional adequate protection; provided, however, that any such additional or modified adequate protection shall at all times be subordinate and junior to the claims and liens of the DIP Agent and the DIP Lenders granted under this Order and the DIP Documents. Except as expressly provided herein, nothing contained in this Order (including without limitation, the authorization to use any Cash Collateral) shall impair or modify any rights, claims or defenses available in law or equity to the Prepetition Agent or any other Prepetition Secured Party.

14. *Perfection of DIP Liens and Adequate Protection Liens.*

(a) The DIP Agent and the Prepetition Agent are hereby authorized, but not required, to file or record financing statements, intellectual property filings, mortgages, notices of lien or similar instruments in any jurisdiction, take possession of or control over, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the DIP Agent on behalf of the DIP Lenders, or the Prepetition Agent on behalf of the respective Prepetition Secured Parties shall, in their respective sole discretion, choose to file such financing statements, intellectual property filings, mortgages, notices of lien or similar instruments, take possession of or control over, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination as of the date of entry of this Order.

(b) A certified copy of this Order may, in the discretion of the DIP Agent or the Prepetition Agent, as the case may be, be filed with or recorded in filing or recording offices

in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Order for filing and recording.

(c) The Debtors shall execute and deliver to the DIP Agent and the Prepetition Agent, as the case may be, all such agreements, financing statements, instruments and other documents as the DIP Agent and the Prepetition Agent may reasonably request to evidence, confirm, validate or perfect the DIP Liens and the Adequate Protection Liens. All such documents will be deemed to have been recorded and filed as of the Petition Date.

(d) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized to do and perform all acts to make, execute and deliver all instruments and documents and to pay all fees that may be reasonably required or necessary for the Debtors' performance hereunder.

15. *Preservation of Rights Granted Under the Order.*

(a) No claim or lien having a priority senior to or *pari passu* with those granted by this Order to the DIP Agent, the DIP Lenders, the Prepetition Agent and other the Prepetition Secured Parties shall be granted or allowed while any portion of the DIP Obligations, the Commitments, the Adequate Protection Obligations or the 507(b) Claims remain outstanding, and the DIP Liens and the Adequate Protection Liens shall not be subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code or subordinated to or made *pari passu* with any other lien or security interest (other than the Permitted Prepetition Liens, the Prepetition Secured Party Liens, and the Carve-Out).

(b) The Debtors shall not seek, and it shall constitute an Event of Default under the DIP Agreement and a termination of the right to use Cash Collateral if any of the Debtors seeks, or if there is entered, (i) any modification of this Order without the prior written consent of the DIP Agent and the Prepetition Agent, and no such consent shall be implied by any other action, inaction or acquiescence by the DIP Agent or the Prepetition Agent, or (ii) an order converting or dismissing any of the Cases.

(c) Except as expressly provided in this Order or in the DIP Documents, the DIP Liens, the Superpriority Claims, the Adequate Protection Obligations, the Adequate Protection Liens, the 507(b) Claims and all other rights and remedies of the DIP Agent, the DIP Lenders, the Prepetition Agent and the Prepetition Secured Parties granted by this Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of the Cases to a case under chapter 7 of the Bankruptcy Code, dismissing any of the Cases or by any other act or omission, or (ii) the entry of an order confirming a plan of reorganization in any of the Cases. The terms and provisions of this Order and the DIP Documents shall continue in the Cases, in any successor cases if the Cases cease to be jointly administered, or in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the Adequate Protection Liens, the Adequate Protection Obligations, the DIP Obligations, the Superpriority Claims, the Section 507(b) Claims, any other administrative expense claims granted pursuant to this Order, and all other rights and remedies of the DIP Agent, the DIP Lenders, the Prepetition Agent and the Prepetition Secured Parties granted by this Order and the DIP Documents shall continue in full force and effect until all DIP Obligations and all Adequate Protection Obligations are indefeasibly paid in full in cash.

16. *Effect of Stipulations on Third Parties.* The stipulations and admissions contained in this Order, including without limitation, in paragraph 3 of this Order: (a) shall be binding upon the Debtors for all purposes; and (b) shall be binding upon all other parties in interest, including without limitation, the Committee (if any), unless (i) any such Committee, which shall be deemed to have requisite standing, or any other party-in-interest with requisite standing, has duly filed an adversary proceeding (subject to the limitations contained herein, including, without limitation, in paragraph 17) by no later than (A) the date that is the later of 60 days from the date of an order approving counsel for the Committee, 60 days from the entry of the Final Order, or, if no Committee is appointed, 75 days after the date of entry of the Final Order, subject to extension by the Court, after notice and a hearing, for cause shown, and (B) any such later date agreed to in writing by the Prepetition Agent in its sole and absolute discretion (X) challenging the validity, enforceability, priority or extent of the Prepetition Obligations or the liens on the Prepetition Collateral securing such Prepetition Obligations or (Y) otherwise asserting or prosecuting any claims or causes of action arising under sections 542-553 of the Bankruptcy Code or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "*Claims and Defenses*") against the Prepetition Agent or any of the other Prepetition Secured Parties or their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors in connection with any matter related to the Prepetition Obligations or the Prepetition Collateral, and (ii) an order is entered by a court of competent jurisdiction and becomes final and non-appealable in favor of the plaintiff sustaining any such challenge or claim in any such duly filed adversary proceeding; provided that, as to the Debtors, all such Claims and Defenses are hereby irrevocably waived and relinquished as of the Petition Date. If no such adversary proceeding is duly and timely filed in respect of the

Prepetition Obligations, (x) the Prepetition Obligations shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance, for all purposes in the Cases and any subsequent chapter 7 case, (y) the liens on the Prepetition Collateral securing the Prepetition Obligations, as the case may be, shall be deemed to have been, as of the Petition Date, and to be, legal, valid, binding, perfected and of the priority specified in paragraph 3, not subject to defense, counterclaim, recharacterization, subordination or avoidance and (z) the Prepetition Obligations, the Prepetition Agent and the Prepetition Secured Parties, as the case may be, and the liens on the Prepetition Collateral granted to secure the Prepetition Obligations shall not be subject to any other or further challenge by the Committee (if any) or any other party-in-interest, and such Committee or party-in-interest shall be enjoined from seeking to exercise the rights of the Debtors' estates, including without limitation, any successor thereto (including, without limitation, any estate representative or a chapter 7 or 11 trustee appointed or elected for any of the Debtors). If any such adversary proceeding is duly filed, the stipulations and admissions contained in paragraph 3 of this Order shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on the Committee (if any) and any other party-in-interest, except as to any such stipulations and admissions that were expressly and successfully challenged in such adversary proceeding as set forth in a final, non-appealable order of a court of competent jurisdiction. Nothing in this Order vests or confers on any Person (as defined in the Bankruptcy Code) (other than the Committee (if any) as provided above), standing or authority to pursue any cause of action belonging to the Debtors or their estates, including without limitation, Claims and Defenses with respect to the Prepetition Loan Documents or the Prepetition Obligations or any liens granted by any Debtor to secure any of the foregoing. Notwithstanding anything to the

contrary in this Interim Order, nothing herein shall prejudice the right or ability of Harbinger Capital LLC or any of its affiliates to challenge the validity, enforceability, priority or amount of the Prepetition Obligations or the liens on the Prepetition Collateral securing such Prepetition Obligations.

17. *Limitation on Use of DIP Financing and DIP Collateral.* The Debtors shall use the DIP Financing and the Prepetition Collateral (including the Cash Collateral) solely as provided in this Order and the DIP Documents. Notwithstanding anything herein, no Loans under the DIP Agreement, DIP Collateral, Prepetition Collateral (including the Cash Collateral) or the Carve-Out may be used to (a) object, contest or raise any defense to the validity, perfection, priority, extent or enforceability of any amount due under the DIP Documents, the Prepetition Loan Documents or the liens or claims granted under this Order, the DIP Documents or the Prepetition Loan Documents, (b) assert any Claims and Defenses or any other causes of action against the DIP Agent, the DIP Lenders, the Prepetition Agent, the other Prepetition Secured Parties or their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors, in each case, solely in their capacity as Prepetition Secured Parties, (c) prevent, hinder or otherwise delay the DIP Agent's or the Prepetition Agent's assertion, enforcement or realization on the Prepetition Collateral or the DIP Collateral in accordance with the DIP Documents, the Prepetition Loan Documents or this Order, (d) seek to modify any of the rights granted to the DIP Agent, the DIP Lenders, the Prepetition Agent or the other Prepetition Secured Parties hereunder or under the DIP Documents or the Prepetition Loan Documents, in the case of each of the foregoing clauses (a) through (d), without such applicable party's prior written consent or (e) pay any amount on account of any claims arising prior to the Petition Date unless such payments are (i) approved by an order of this Court and (ii) permitted

under the DIP Documents; provided that, notwithstanding anything to the contrary herein, no more than an aggregate of \$200,000 of the Prepetition Collateral (including the Cash Collateral), Loans under the DIP Agreement, the DIP Collateral or the Carve-Out may be used by the Committee to investigate the validity, enforceability or priority of the Prepetition Obligations or the liens on the Prepetition Collateral securing the Prepetition Obligations, or investigate any Claims and Defenses or other causes action against the Prepetition Agent or the Prepetition Secured Parties.

18. *Exculpation.* Nothing in this Order, the DIP Documents, or any other documents related to these transactions shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, any DIP Lender, or any Prepetition Secured Party any liability for any claims arising from the prepetition or postpetition activities of the Debtors in the operation of their business, or in connection with their restructuring efforts. So long as the DIP Agent, the DIP Lenders and the Prepetition Secured Parties comply with their obligations under the DIP Documents and the Prepetition Loan Documents (as applicable) and their obligations, if any, under applicable law (including the Bankruptcy Code), (a) the DIP Agent, DIP Lenders and the Prepetition Secured Parties shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person, and (b) all risk of loss, damage or destruction of the Collateral shall be borne by the Debtors.

19. *Order Governs.* In the event of any inconsistency between the provisions of this Order and the DIP Documents, the provisions of this Order shall govern.

20. *Master Proofs of Claim.*

(a) To facilitate the processing of claims, to ease the burden upon this Court and to reduce any unnecessary expense to the Debtors' estates, subject to entry of the Final Order, (i) the PMCA Agent is authorized (but not required) to file a single master proof of claim (a "*Master Proof of Claim*") on behalf of itself and the PMCA Lenders on account of their claims arising under the PMCA and hereunder against all Debtors in the Borrower's case only; and (ii) the 15% Notes Agent/Trustee is authorized (but not required) to file a Master Proof of Claim on behalf of itself and the 15% Noteholders on account of their claims arising under the 15% Notes Indenture and hereunder against all Debtors in the Borrower's case only.

(b) Upon filing of a Master Proof of Claim by the PMCA Agent and/or the 15% Notes Agent/Trustee (as applicable), the PMCA Agent and/or the 15% Notes Agent/Trustee (as applicable) and each PMCA Lender and/or 15% Noteholder (as applicable) and each of their respective successors and assigns, shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims against each of the Debtors arising under the applicable Prepetition Loan Documents and the claims (as defined in section 101 of the Bankruptcy Code) of the PMCA Agent and/or the 15% Notes Agent/Trustee (as applicable) and each PMCA Lender and/or 15% Noteholder, as applicable (and each of their respective successors and assigns) named in the Master Proof of Claim shall be allowed as if each such entity had filed a separate proof of claim in each of the Cases in the amount set forth in the Master Proof of Claim; provided that the the PMCA Agent and/or the 15% Notes Agent/Trustee (as applicable) may, but shall not be required to, amend the Master Proof of Claim from time to time to, among other things, reflect a change in the holders of the claims set forth therein or a reallocation among such holders of the claims asserted therein resulting from any transfer of any

such claims.

(c) The provisions set forth in paragraphs (a) and (b) above are intended solely for the purpose of administrative convenience and, except to the extent set forth herein or therein, neither the provisions of this paragraph nor the Master Proof of Claim shall affect the substantive rights of the Debtors, the Committee, the Prepetition Agent, the other Prepetition Secured Parties or any other party in interest or their respective successors in interest, including without limitation, the right of each Prepetition Secured Party (or its successor in interest) to vote separately on any plan of reorganization proposed in the Cases.

21. *Binding Effect; Successors and Assigns.* The DIP Documents and the provisions of this Order, including all findings herein, shall be binding upon all parties-in-interest in the Cases, including without limitation, the DIP Agent, the DIP Lenders, the Prepetition Agent, the Prepetition Secured Parties, the Committee (if any), and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Agent, the DIP Lenders, the Prepetition Secured Parties and the Debtors and their respective successors and assigns; provided that, except to the extent expressly set forth in this Order, the DIP Agent, the Prepetition Agent, the DIP Lenders and the Prepetition Secured Parties shall have no obligation to permit the use of Cash Collateral or extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors.

22. *Limitation of Liability.* Subject to entry of the Final Order, in determining to make any Loan under the DIP Agreement, permitting the use of Cash Collateral or in

exercising any rights or remedies as and when permitted pursuant to this Order or the DIP Documents, the DIP Agent, the Prepetition Agent, the DIP Lenders and the Prepetition Secured Parties shall not be deemed to be in "control" of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 et seq. as amended, or any similar federal or state statute). Furthermore, nothing in this Order or in the DIP Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, the Prepetition Agent or the Prepetition Secured Parties any liability for any claims arising from the prepetition or post-petition activities of any of the Debtors and their affiliates (as defined in section 101(2) of the Bankruptcy Code).

23. Notwithstanding anything to the contrary herein or in any DIP Document, the maximum liability of any Non-Subsidiary Guarantor under the DIP Documents shall not exceed the sum of (i)(x) the aggregate amount of funds transferred (including as dividends or loans) to any Non-Subsidiary Guarantor or any subsidiary of any Non-Subsidiary Guarantor (excluding the Borrower, the Domestic Subsidiary Guarantors and the Canadian Guarantors) after the Petition Date by the Borrower, any Domestic Subsidiary Guarantor or any Canadian Guarantor (including funds transferred pursuant to section 6.03(h) of the DIP Agreement and payments to TerreStar New York Inc. specified in section 6.05 of the DIP Agreement) minus (ii) the aggregate amount of any funds contributed, loaned or otherwise paid by any Non-Subsidiary Guarantor or any subsidiary of any Non-Subsidiary Guarantor (excluding the Borrower, the Domestic Subsidiary Guarantors and the Canadian Guarantors) to the Borrower, any Domestic Subsidiary Guarantor or any Canadian Guarantor and the aggregate amount paid to the DIP

Agent or any DIP Lender under the DIP Documents by any Non-Subsidiary Guarantor plus (y) the fees and expenses incurred by the DIP Agent or any DIP Lender incurred in connection with the enforcement of the obligations of such Non-Subsidiary Guarantor under the DIP Documents under section 10.17 of the DIP Agreement; *provided, however*, that the maximum liability of all Non-Subsidiary Guarantors, taken together, under the DIP Documents shall not exceed \$15,000 in the aggregate at any time (the "*Guarantee Cap*"). The Debtors may request that the Court increase the Guarantee Cap after notice and hearing; *provided, however*, that all parties reserve their rights to object to such increase request in all respects, including, but not limited to, whether the Non-Subsidiary Guarantors should be jointly and severally liable under any guarantee obligations to the DIP Lenders or the DIP Agent.

24. *Effectiveness.* This Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon execution hereof as of the Petition Date, and there shall be no stay of execution of effectiveness of this Order.

25. *Final Hearing.* The Final Hearing is scheduled for November 16, 2010 at 10:00 a.m. (prevailing Eastern time) before this Court.

26. *Final Hearing Notice.* The Debtors shall promptly mail copies of this Order (which shall constitute adequate notice of the Final Hearing) to the parties having been given notice of the Interim Hearing, and to any other party that has filed a request for notices with this Court and to the Committee (if any) after the same has been appointed, or Committee counsel, if the same shall have been appointed. Any party-in-interest objecting to the relief sought at the Final Hearing shall serve and file written objections; which objections shall be filed with the Clerk of the United States Bankruptcy Court for the Southern District of New York (with a courtesy copy to be sent to the Court's chambers) and be served upon (a) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Ira S. Dizengoff, Esq. and Arik Preis, Esq., attorneys for the Debtors; (b) Emmet, Marvin & Martin, LLP, 120 Broadway, New York, NY 10271, Attn: Elizabeth Clark, Esq., counsel to the DIP Agent, (c) the Prepetition Agent, (d) Willkie Farr & Gallagher, 787 Seventh Avenue, New York, NY 10019, counsel to the Initial Lender; Attn: Matthew A. Feldman, Esq. and Rachel C. Strickland, Esq., (e) counsel to the Prepetition Secured Notice Parties; and (f) the Office of the U.S. Trustee for the Southern District of New York, Attention: Susan Golden, Esq. and shall be filed with the Clerk of the United States Bankruptcy Court, Southern District of New York, in each case to allow actual receipt by the foregoing no later than November 9, 2010 at 4:00 p.m. (prevailing Eastern time).

27. For the avoidance of doubt, this Order and each of the provisions thereof are being entered on an interim basis and remain subject to entry of a final order.

Dated: *October 20, 2010*
New York, New York

/s/ Sean H. Lane
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Initial 13-Week Projection

Ch. 11 Filing

	1	2	3	4	5	6	7	8	9	10	11	12	Total
	10/01/10 E	10/08/10 E	10/15/10 E	10/22/10 E	10/29/10 E	11/05/10 E	11/12/10 E	11/19/10 E	11/26/10 E	12/03/10 E	12/10/10 E	12/17/10 E	12/24/10 E
Cash Receipts	-	-	-	-	-	-	-	-	-	-	-	-	-
Road-in	-	-	-	-	-	-	-	-	-	-	-	-	-
Handset Sales	-	-	-	-	-	-	-	-	-	-	-	-	-
Subtotal	-	-	-	-	-	-	-	-	-	-	-	-	-
Payroll	550	550	550	550	550	550	550	550	550	550	550	550	550
Health Care Benefits	131	131	131	131	131	131	131	131	131	131	131	131	131
Total Payroll & Benefits	681	681	681	681	681	681	681	681	681	681	681	681	681
Other Operating Costs:													
Operational and Technical Facility Leases	206	-	-	-	-	-	-	-	-	-	-	-	-
CES Sites	83	-	-	-	-	-	-	-	-	-	-	-	-
North Las Vegas and Allan Park Operations	153	55	-	55	55	55	55	55	55	55	55	55	55
Satellite Opt Consultants	-	-	221	-	-	221	-	-	-	-	-	-	-
Network Operations & Circuits	-	-	-	204	-	204	-	-	-	-	-	-	-
Information Technology/OSS / BSS	172	32	283	142	166	486	104	92	92	204	243	81	1,842
Business Operations	18	15	-	45	45	45	45	15	15	15	45	180	114
Sales & Marketing	26	200	20	20	200	20	20	20	20	200	616	20	1,534
Canada	150	25	-	-	100	25	30	30	25	25	80	915	450
Accounting	-	-	-	-	-	-	-	-	-	-	-	-	-
Legal / Regulatory	-	-	-	-	-	-	-	-	-	-	-	-	-
Taxes / Fees	-	-	-	-	-	-	-	-	-	-	-	-	-
Miscellaneous Costs	63	63	63	63	63	63	63	63	63	63	63	63	63
Total Other Operating Costs	872	390	867	602	602	981	547	835	217	563	632	988	7,869
Vendor Payments - Subtotal	1,553	790	1,479	1,283	1,283	1,616	1,094	1,486	114	1,126	1,264	1,288	6,638
Development	-	-	-	-	-	-	-	-	-	-	-	-	-
Next Generation Chipset	-	-	-	-	-	-	-	-	-	-	-	-	-
Hardware Development Work	-	-	550	48	48	745	745	15	745	745	745	745	2,118
Hughes	-	-	-	-	-	78	78	200	200	78	78	357	357
Common	-	-	400	-	-	-	-	-	-	-	-	-	-
DVSI	-	-	-	-	-	-	-	-	-	-	-	-	-
Subtotal	-	-	950	188	15	823	-	-	340	15	823	-	3,295
Total Operating Disbursements	1,750	410	1,412	1,302	1,350	1,015	2,292	3,337	1,480	2,125	1,105	2,030	23,668
Alimo: Cumulative DIP Drains before Prof. Fees	-	-	5,003	-	9,745	13,150	14,020	15,232	17,401	18,528	21,416	21,973	21,973
Professional Fees													
Debtor Professionals	500	500	-	-	1,000	-	-	-	-	1,000	-	-	3,000
UCC / Other Unsecured Creditors	-	-	-	-	750	-	-	-	-	750	-	-	1,500
Cash Fees	-	-	-	-	750	-	-	-	-	750	-	-	1,500
Senior Notes (Adequate Protection)	-	-	-	-	-	-	750	-	-	-	-	-	750
DIP Lenders	-	-	150	750	750	-	750	-	750	750	-	-	2,400
Subtotal	500	500	1,500	1,500	2,500	-	1,500	-	1,500	2,500	-	-	10,65

SCHEDULE C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:)	
	)	Chapter 11
TERRESTAR NETWORKS INC., <i>et al.</i> , ¹)	
	)	Case No. 10-15446 (SHL)
Debtors.)	
	)	Jointly Administered

**INTERIM ORDER (A) AUTHORIZING, BUT NOT DIRECTING DEBTORS TO
CONTINUE USING THEIR CASH MANAGEMENT SYSTEM, BANK ACCOUNTS
AND BUSINESS FORMS, (B) GRANTING POSTPETITION INTERCOMPANY
CLAIMS ADMINISTRATIVE EXPENSE PRIORITY AND (C) AUTHORIZING
CONTINUED INTERCOMPANY TRANSACTIONS**

Upon the motion (the "*Motion*")² of the above-captioned debtors (collectively, the "*Debtors*") for the entry of an order (a) authorizing the Debtors to continue using their existing Cash Management System, Bank Accounts and business forms, (b) granting postpetition Intercompany Claims administrative expense priority, and (c) authorizing the Debtors to continue Intercompany Transactions; and upon the First Day Declaration; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors and other parties in interest; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: TerreStar New York Inc. (6394); TerreStar Networks Inc. (3931); Motient Communications Inc. (3833); Motient Holdings Inc. (6634); Motient License Inc. (2431); Motient Services Inc. (5106); Motient Ventures Holding Inc. (6191); MVH Holdings Inc. (9756); TerreStar License Inc. (6537); TerreStar National Services Inc. (6319); TerreStar Networks Holdings (Canada) Inc. (1337); TerreStar Networks (Canada) Inc. (8766) and 0887729 B.C. Ltd. (1345).

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

appearing to be adequate and appropriate under the circumstances; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The Motion is granted as set forth herein on an interim basis.
2. The Debtors are authorized to continue using their integrated Cash Management System as described in the Motion.
3. The Debtors are authorized to: (a) continue to use, with the same account numbers, all of the bank accounts in existence as of the Petition Date, including, without limitation, those accounts identified on Exhibit B to the Motion (the "*Bank Accounts*"); (b) use, in their present form, all correspondence and business forms (including, but not limited to, letterhead, purchase orders and invoices), as well as checks written manually and other documents related to the Bank Accounts existing immediately before the Petition Date, without reference to their status as debtors in possession; *provided, however*, that upon depletion of the Debtors' correspondence and business forms, the Debtors will obtain new business forms reflecting their status as debtors in possession; and, *provided, further, however*, that as soon as practicable after the Petition Date, the Debtors will note their status as "debtors in possession" on checks that are electronically printed; and (c) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors in possession.
4. Except as otherwise expressly provided in this Order, all Banks are authorized and directed to continue to service and administer the Bank Accounts as accounts of the Debtors as debtors in possession, without interruption and in the ordinary course, and to receive, process, honor and pay any and all checks, drafts, wires and automated clearing house transfers issued

and drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be.

5. The Debtors are authorized to open any new bank accounts or close any existing Bank Accounts as they may deem necessary and appropriate in the ordinary course; *provided, however*, that the Debtors may only open a new bank account with a bank designated as an Authorized Depository under the U.S. Trustee Guidelines, unless first obtaining the consent of the U.S. Trustee. For purposes of this Order, any new bank account opened by the Debtors will be deemed a Bank Account and so listed on Exhibit B to the Motion.

6. All Intercompany Claims against a Debtor by another Debtor or non-Debtor affiliate arising after the Petition Date shall be accorded administrative expense priority in accordance with sections 503(b) and 507(a)(2) of the Bankruptcy Code.

7. Subject to the terms of the DIP Facility, the Debtors are authorized, but not required, to continue using their Cash Management System to manage their cash, to pay intercompany payables, if any, to extend intercompany credit, if necessary, and to continue performing under and honoring their respective obligations and commitments related to Intercompany Transactions and the resulting Intercompany Claims that reflect intercompany receivables and payments made in the ordinary course of the business between and among the Debtors and their non-Debtor affiliates.

8. The Debtors shall keep records of any postpetition intercompany transfers and services that occur during the chapter 11 cases in accordance with their ordinary course procedures for tracking such intercompany transfers, including as described further in the Motion by: (a) creating notes to evidence Intercompany Transactions; (b) maintaining the Intercompany Credit Facility; and (c) tracking Intercompany Transactions by book entry.

9. The Debtors are authorized to direct the Banks and the Banks are authorized and directed to pay obligations in accordance with this or any separate order of this Court.

10. Except as otherwise provided in this Order or in a separate order of this Court, including, without limitation, the Interim or Final Order (A) Authorizing, but not Directing, Debtors (I) to Pay Certain Prepetition Wages and Reimbursable Employee Expenses, (II) to Pay and Honor Employee Medical and Other Benefits and (III) to Continue Employee Benefits Programs and (B) Authorizing Financial Institutions to Honor all Related Checks and Electronic Payment Requests, all Banks provided with notice of this Order maintaining any of the Bank Accounts shall not honor or pay any bank payments drawn on the listed Bank Accounts or otherwise issued prior to the Petition Date.

11. As soon as practicable after the entry of this Order, the Debtors shall serve a copy of this Order on those Banks that make disbursements pursuant to the Debtors' Cash Management System except as expressly directed by the Debtors pursuant to paragraph 10, above.

12. Notwithstanding any provision herein to the contrary, the Debtors shall not be authorized to make any payments under this Order from any amounts loaned to the Debtors pursuant to the debtor-in-possession financing unless such payments or disbursements are included in the budget contained therein or otherwise authorized to be paid pursuant to the debtor-in-possession financing agreement.

13. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or otherwise deemed waived.

14. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

15. Notwithstanding the possible applicability of Rules 6004(a) and 6004(h) of the Federal Rules of Bankruptcy or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

16. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

New York, New York
Date: *October 20, 2010*

/s/ Sean H. Lane
United States Bankruptcy Judge

SCHEDULE D

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

TERRESTAR NETWORKS INC., *et al.*,¹

Debtors.

) Chapter 11

) Case No. 10-15446 (SHL)

) Jointly Administered

**INTERIM ORDER (A) AUTHORIZING, BUT NOT DIRECTING, DEBTORS
(I) TO PAY CERTAIN PREPETITION WAGES AND REIMBURSABLE
EMPLOYEE EXPENSES, (II) TO PAY AND HONOR EMPLOYEE MEDICAL
AND OTHER BENEFITS AND (III) TO CONTINUE EMPLOYEE BENEFITS
PROGRAMS AND (B) AUTHORIZING FINANCIAL INSTITUTIONS TO
HONOR ALL RELATED CHECKS AND ELECTRONIC PAYMENT REQUESTS**

Upon the motion (the "*Motion*")² of the above-captioned debtors (collectively, the "*Debtors*") for entry of an order (a) authorizing the Debtors to (i) pay certain prepetition wages, salaries and other compensation, taxes, withholdings and reimbursable expenses, (ii) pay and honor obligations relating to medical and other benefits programs and (iii) continue their employee benefits programs on a postpetition basis (collectively and as further described in the Motion, the "*Employee Obligations*"), and (b) scheduling a final hearing (the "*Final Hearing*") to consider entry of an Order granting this and other relief on a permanent basis (the "*Final Order*"), all as more fully set forth in the Motion; and upon the First Day Declaration; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and this Court having jurisdiction to consider

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: TerreStar New York Inc. (6394); TerreStar Networks Inc. (3931); Motient Communications Inc. (3833); Motient Holdings Inc. (6634); Motient License Inc. (2431); Motient Services Inc. (5106); Motient Ventures Holding Inc. (6191); MVH Holdings Inc. (9756); TerreStar License Inc. (6537); TerreStar National Services Inc. (6319); TerreStar Networks Holdings (Canada) Inc. (1337); TerreStar Networks (Canada) Inc. (8766) and 0887729 B.C. Ltd. (1345).

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that notice of the Motion was appropriate under the particular circumstances; and this Court having reviewed the Motion and the First Day Declaration, and having heard the statements in support of the relief requested therein at the hearing; and this Court having determined that the legal and factual bases set forth in the Motion and at the hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The Motion is granted on an interim basis as set forth in this Order.
2. The Debtors are authorized, but not directed, to honor and pay, in the ordinary course of business, in accordance with the Debtors' prepetition policies and practices and in the Debtors' sole discretion (subject to the terms of this Order), prepetition amounts outstanding on account of the Employee Obligations as follows: (a) Unpaid Compensation, if any, up to a maximum of \$11,725 per individual for prepetition payroll amounts outstanding; (b) Unpaid Service Fees; (c) Unremitted Deductions; (d) Unremitted Payroll Taxes; (e) Unpaid Reimbursable Expenses (in an amount not to exceed \$500 per individual Employee); (f) Unpaid Medical, Dental and Vision Plan Expenses; (g) Unpaid Insurance and Disability Benefits; (h) Unremitted Supplemental Insurance Benefits; (i) Unpaid Workers' Compensation Premiums; (j) Unused Paid Time Off; and (k) Leaves of Absence.
3. The Debtors are authorized, but not directed, to continue the following Employee Obligations during the Interim Period in the ordinary course of business on a postpetition basis,

in accordance with the Debtors' prepetition policies and practices and in the Debtors' sole discretion (subject to the terms of this Order), and to pay and honor claims related thereto: (a) Employee Payroll Obligations; (b) Service Fees; (c) the Annual Employee Incentive Program; (d) Deductions; (e) Payroll Taxes; (f) Reimbursable Expenses; (g) the Medical, Dental and Vision Plans; (h) the Insurance and Disability Benefits; (i) the Supplemental Insurance Benefits; (j) the Workers' Compensation Program; (k) Paid Time Off; (l) Leaves of Absence; (n) the 401(k) Plan (including, but not limited to, Employee 401(k) Contributions and Employer 401(k) Contributions); (o) the Employee Assistance Program; (p) the Transportation Assistance Program; and (q) the Flexible Spending Programs.

4. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order, in accordance with the Motion.

5. The Debtors are authorized, but not directed, to pay all postpetition costs and expenses incidental to payment of the Employee Obligations, including all administrative and processing costs and payments to outside professionals in the ordinary course of business.

6. The Debtors are authorized to forward any unpaid amounts on account of Deductions or Payroll Taxes to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' prepetition policies and practices.

7. Pursuant to section 362(d) of the Bankruptcy Code, Employees are authorized to proceed with their workers' compensation claims in the appropriate judicial or administrative forum under the Workers' Compensation Program, and the Debtors are authorized to take all steps necessary and appropriate with respect to the resolution of any such claims.

8. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these cases with respect to prepetition amounts owed to their Employees.

9. Notwithstanding any provision herein to the contrary, the Debtors shall not be authorized to make any payments under this Order from any amounts loaned to the Debtors pursuant to the debtor-in-possession financing unless such payments or disbursements are included in the budget contained therein or otherwise authorized to be paid pursuant to the debtor-in-possession financing agreement.

10. Nothing in the Motion or this Order, nor as a result of the Debtors' payment of claims pursuant to this Order, shall be deemed or construed as: (a) an admission as to the validity or priority of any claim against the Debtors; (b) a waiver of the Debtors' or other parties in interest's rights to dispute any claim; or (c) an approval or assumption of any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code.

11. Notwithstanding the possible applicability of Bankruptcy Rules 6004(a), 6004(h), 7062, 9014 or otherwise, this Order shall be immediately effective and enforceable upon its entry.

12. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as being approved by this Order.

13. The Final Hearing on the Motion shall be held on November 16, 2010 at 10:00 a.m. prevailing Eastern Time. Any objections or responses to entry of the Final Order must be filed with this Court and served so as to be actually received on or before **Tuesday, November 9, 2010** before the Final Hearing by the following parties: (a) TerreStar Networks Inc., 12010 Sunset Hills Road, 6th Flr., Reston, Virginia 20190, Attn: Doug Brandon, Esq.; (b) proposed counsel to the Debtors, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036, Attn: Ira S. Dizengoff, Esq. and Arik Preis, Esq.; (c) the Office of the United States Trustee for the Southern District of New York; (d) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (e) Bank of New York Mellon as agent for the Debtors' proposed postpetition debtor-in-possession financing; (f) Emmet, Marvin & Martin LLP as counsel to the agent for the Debtors' proposed postpetition debtor-in-possession financing; (g) U.S. Bank National Association as Collateral Agent for the Debtors' purchase money credit facility and Harbinger Capital Partners Master Fund I, Ltd., Harbinger Capital Partners Special Situations Fund, L.P. and EchoStar Corporation as Lender thereunder; (h) Weil, Gotshal & Manges LLP as counsel to Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund, L.P. in their capacity as Lenders under the Debtors' purchase money credit facility; (i) Willkie Farr & Gallagher LLP as counsel to EchoStar Corporation in their capacity as Lenders under the Debtors' purchase money credit facility and Initial Lender under the Debtors' proposed postpetition debtor-in-possession financing; (j) U.S. Bank National Association as Indenture Trustee for the Debtors' 15% Senior Secured Notes; (k) U.S. Bank National Association as Indenture Trustee for the Debtors' 6.5% Senior Exchangeable Notes; (l) Quinn Emanuel Urquhart & Sullivan, LLP as counsel to an Ad Hoc group of the Debtors' 6.5% Senior

Exchangeable Notes; (m) the Internal Revenue Service; (n) the Securities and Exchange Commission; (o) the United States Attorney for the Southern District of New York; (p) the Federal Communications Commission; and (q) parties in interest who have filed a notice of appearance in these cases pursuant to Bankruptcy Rule 2002.

14. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion and the First Day Declaration, or are otherwise deemed waived.

15. This Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

New York, New York
Date: *October 20, 2010*

/s/ Sean H. Lane
United States Bankruptcy Judge

SCHEDULE E

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

TERRESTAR NEW YORK INC.,

Debtor,

)
)
) Chapter 11

)
) Case No. 10-15445
)
)

In re:

TERRESTAR NETWORKS INC.,

Debtor,

)
)
) Chapter 11

)
) Case No. 10-15446
)
)

In re:

MOTIENT COMMUNICATIONS INC.,

Debtor,

)
)
) Chapter 11

)
) Case No. 10-15452
)
)

In re:

MOTIENT HOLDINGS INC.,

Debtor,

)
)
) Chapter 11

)
) Case No. 10-15453
)
)

In re:

MOTIENT LICENSE INC.,

Debtor,

)
)
) Chapter 11

)
) Case No. 10-15454
)
)

In re:	)	Chapter 11
MOTIENT SERVICES INC.,	)	Case No. 10-15455
Debtor,)	
In re:	)	Chapter 11
MOTIENT VENTURES HOLDING INC.,	)	Case No. 10-15458
Debtor,)	
In re:	)	Chapter 11
MVH HOLDINGS INC.,	)	Case No. 10-15462
Debtor,)	
In re:	)	Chapter 11
TERRESTAR LICENSE INC.,	)	Case No. 10-15463
Debtor,)	
In re:	)	Chapter 11
TERRESTAR NATIONAL SERVICES INC.,	)	Case No. 10-15464
Debtor,)	
In re:	)	Chapter 11
TERRESTAR NETWORKS (CANADA) INC.,	)	Case No. 10-15449
Debtor,)	

In re:	)	Chapter 11
TERRESTAR NETWORKS HOLDINGS)	
(CANADA) INC.,	)	Case No. 10-15447
)	
Debtor,)	
)	
In re:	)	Chapter 11
0887729 B.C. LTD.,)	
	)	Case No. 10-15450
)	
Debtor.)	
)	

ORDER DIRECTING JOINT ADMINISTRATION OF RELATED CHAPTER 11 CASES

Upon the motion (the "*Motion*")¹ of the above-captioned debtors (collectively, the "*Debtors*") for entry of an order directing joint administration of the Debtors' related chapter 11 cases; and upon the First Day Declaration; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors and other parties in interest; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue appearing proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion appearing to be adequate and appropriate under the circumstances; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The Motion is granted to the extent set forth herein.

¹ Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

2. The above-captioned chapter 11 cases are consolidated for procedural purposes only and shall be jointly administered by this Court under Case No. 10-15446, the case number for TerreStar Networks Inc.

3. The caption of the jointly administered cases shall read as follows:

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	) Chapter 11
TERRESTAR NETWORKS INC., <i>et al.</i> , ²	) Case No. 10-15446 (SHL)
Debtors.	) Jointly Administered

4. A docket entry shall be made in each of the above-captioned cases substantially as follows:

An order has been entered in accordance with Rule 1015(b) of the Federal Rules of Bankruptcy Procedure directing the procedural consolidation and joint administration of the chapter 11 cases of Motient Communications Inc.; Motient Holdings Inc.; Motient License Inc.; Motient Services Inc.; Motient Ventures Holding Inc.; MVH Holdings Inc.; TerreStar License Inc.; TerreStar National Services Inc.; TerreStar Networks Holdings (Canada) Inc.; TerreStar Networks (Canada) Inc.; TerreStar New York Inc; and 0887729 B.C. Ltd. All further pleadings and other papers shall be filed in, and all further docket entries shall be made in, Case No. 10-15446.

5. One consolidated docket, one file and one consolidated service list shall be maintained by the Debtors and/or GCG, updated and filed with the court and kept by the Clerk of the United States Bankruptcy Court for the Southern District of New York.

² The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer identification number, are: TerreStar New York Inc. (6394); TerreStar Networks Inc. (3931); Motient Communications Inc. (3833); Motient Holdings Inc. (6634); Motient License Inc. (2431); Motient Services Inc. (5106); Motient Ventures Holding Inc. (6191); MVH Holdings Inc. (9756); TerreStar License Inc. (6537); TerreStar National Services Inc. (6319); TerreStar Networks Holdings (Canada) Inc. (1337); TerreStar Networks (Canada) Inc. (8766); and 0887729 B.C. Ltd. (1345).

6. The Debtors shall file a consolidated monthly operating report, but shall track and break out disbursements on a debtor-by-debtor basis and, accordingly, shall pay any fees due to the United States Trustee for the Southern District of New York on a debtor-by-debtor basis.
7. Nothing contained in the Motion or this Order shall be deemed or construed as directing or otherwise effecting a substantive consolidation of the Debtors' chapter 11 cases.
8. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.
9. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

New York, New York
Date: *October 20, 2010*

/s/ Sean H. Lane.
United States Bankruptcy Judge

SCHEDULE F

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

**APPLICATION OF TERRESTAR NETWORKS INC.
UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED**

NOTICE OF RECOGNITION ORDER

PLEASE BE ADVISED that this Notice is being published pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Court**"), granted on October [], 2010 (the "**Recognition Order**").

PLEASE TAKE NOTICE that on October 19, 2010, TerreStar Networks Inc. ("**TSNI**"), Motient Holdings Inc., Motient Communications Inc., Motient License Inc., Motient Services Inc., MVH Holdings Inc., Motient Ventures Holdings Inc., TerreStar National Services, Inc., TerreStar License Inc., TerreStar New York Inc., 0887729 B.C. Ltd., TerreStar Networks Holdings (Canada) Inc., and TerreStar Networks (Canada) Inc. (collectively, the "**Chapter 11 Debtors**") each filed voluntary petitions under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") in United States Bankruptcy Court for the Southern District of New York (collectively, the "**Chapter 11 Cases**"). In connection with the prosecution of their Chapter 11 Cases, the Chapter 11 Debtors have appointed TSNI as their foreign representative (the "**Foreign Representative**").

PLEASE TAKE FURTHER NOTICE that the Recognition Order has been issued by the Canadian Court under Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, and, among other things: (i) recognizes the Chapter 11 Cases as foreign main proceedings; (ii) recognizes TSNI as the Foreign Representative of the Chapter 11 Debtors; (iii) recognizes certain orders granted by the United States Bankruptcy Court in the Chapter 11 Cases; (iv) stays all proceedings against the Chapter 11 Debtors and their directors and officers; and (v) appoints Deloitte & Touche Inc. ("**Deloitte**") as the Information Officer with respect to the Chapter 11 Cases.

PLEASE TAKE FURTHER NOTICE that persons who wish to receive a copy of the Recognition Order or obtain any further information in respect thereof or in respect of the matters set forth in this Notice, should contact the Information Officer at the address below:

DELOITTE & TOUCHE INC. (solely in its capacity as Information Officer)
181 Bay Street, Brookfield Place, Suite 1400, Toronto, ON M5J 2V1
Attention: Jaspreet Dehl, CA, CPA (Illinois)
Tel: 416-601-6633
Fax: 416-601-6690
E-mail: jdehl@deloitte.ca

PLEASE FINALLY NOTE that the Recognition Order, and any other orders that may be granted by the Canadian Court, can be viewed at www.deloitte.com/ca/terrestar-networks.

DATED AT TORONTO, ONTARIO, this [] day of October 2010.

DELOITTE & TOUCHE INC.
(solely in its capacity as Information Officer)

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

APPLICATION OF TERRESTAR NETWORKS INC. UNDER SECTION 46 AND FOLLOWING
OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS
AMENDED

Court File No. CV-10-8944-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

SUPPLEMENTAL ORDER

OCTOBER 21, 2010

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Counsel to the Applicant

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED, APPLICATION
OF LIGHTSQUARED LP UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS
AMENDED, AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT
WITH RESPECT TO THE CHAPTER 11 DEBTORS

ONTARIO

SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

BRIEF OF AUTHORITIES

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