

**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")**

FACTUM OF THE APPLICANT

May 14, 2012

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FACTUM OF THE APPLICANT

I - OVERVIEW

1. On May 14, 2012, LightSquared LP ("LSLP" or the "Applicant") and various of its affiliates (collectively, the "Chapter 11 Debtors") commenced voluntary reorganization proceedings (the "Chapter 11 Proceeding") in the United States Bankruptcy Court for the Southern District of New York (the "U.S. Court") by each filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101- 1532 (the "Bankruptcy Code"). Copies of the voluntary petitions filed on behalf of each of the Chapter 11 Debtors are annexed

to the Affidavit of Kate H. Stigler sworn May 14, 2012, in support of the Application. Copies of the voluntary petitions will be filed with the Court.

Affidavit of Marc Montagner sworn May 14, 2012 [Montagner Affidavit] at para 3.

2. The Chapter 11 Debtors have certain material assets in other jurisdictions, including Ontario, and will be seeking an order from the U.S. Court authorizing LSLP to act as the foreign representative of the Chapter 11 Debtors, pursuant to section 1505 under the Bankruptcy Code, in any judicial or other proceeding, including these proceedings (the “**Foreign Representative Order**”). Once granted, a certified copy of the Foreign Representative Order will be filed with the Court.

Montagner Affidavit at paras 7 – 9 and 19.

3. The *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) stipulates that only a “foreign representative,” as such term is defined in subsection 45(1) of the CCAA, may apply to the court for recognition of a foreign proceeding. As set out above, the motion in the Chapter 11 Proceeding to appoint LSLP as the foreign representative is pending, and accordingly, LSLP will not be in a position to formally commence an application under section 46 of the CCAA until it has been officially appointed foreign representative pursuant to the Foreign Representative Order.

***Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended [CCAA] at ss. 46(1).**

4. Although the filing of the voluntary petitions automatically stays all proceedings against the Chapter 11 Debtors in the United States of America (the “**United States**”) pursuant to the Bankruptcy Code, there is no corresponding automatic stay in Canada. Accordingly, until LSLP: (i) is appointed foreign representative by order of the U.S. Court; (ii) brings an application under section 46 of the CCAA in such capacity; and (iii) this Court grants the relief sought, there will exist a gap (the “**Interim Period**”) in the continuity of the general stay under the

Bankruptcy Code and the stay of proceedings to be granted in Canada under the CCAA.

Bankruptcy Code.

CCAA at Part IV.

5. In order to: (i) alleviate any potential harm to the Chapter 11 Debtors or their Canadian assets during the Interim Period; (ii) ensure the protection of the Chapter 11 Debtors' Canadian assets during the course of the Chapter 11 Proceeding; and (iii) ensure that this Court and the Canadian stakeholders are kept properly informed of the Chapter 11 Proceeding, LSLP has brought an Application before this Court pursuant to sections 44 through 49 of the CCAA, seeking the following three orders:
 - (a) An "Interim Initial Order" granting, *inter alia*, an interim stay of proceedings in respect of the Chapter 11 Debtors, the property and business of the Chapter 11 Debtors, and the directors and officers of the Chapter 11 Debtors, pending LSLP's appointment as foreign representative under the Chapter 11 Proceeding;
 - (b) An "Initial Recognition Order" *inter alia*: (i) declaring that LSLP is a "foreign representative" pursuant to section 45 of the CCAA; (ii) declaring that the Chapter 11 Proceeding is recognized as a "foreign main proceeding" under the CCAA; and (iii) granting a stay of proceedings against the Chapter 11 Debtors; and
 - (c) A "Supplemental Order" pursuant to section 49 of the CCAA, *inter alia*: (i) recognizing in Canada and enforcing certain orders of the U.S. Court made in the Chapter 11 Proceeding; (ii) appointing Alvarez & Marsal Canada Inc. ("A&M") as the information officer in respect of this proceeding (in such capacity, the "**Information Officer**"); (iii) staying any claims, rights, liens or proceedings against or in respect of the Chapter 11 Debtors, the business and property of the Chapter 11 Debtors' and the

directors and officers of the Chapter 11 Debtors; (iv) restraining the right of any person or entity to, among other things, discontinue or terminate any supply of products or services to Chapter 11 Debtors; (v) granting a super-priority charge up to the maximum amount of \$200,000, over the Chapter 11 Debtor's property, in favour of the Information Officer and its counsel, as security for their professional fees and disbursements incurred in respect of these proceedings (the "**Administration Charge**").

Notice of Application of LSLP dated May 14, 2012.

6. Other than the Chapter 11 Proceeding and these proceedings, there are currently no other foreign proceedings in respect of the Chapter 11 Debtors.

Montagner Affidavit at para 8.

II - BACKGROUND

Business of the Applicant

7. The Chapter 11 Debtors collectively are in the process of building the only 4th Generation Long Term Evolution open wireless broadband network that incorporates satellite coverage throughout North America and offers users, wherever they may be located, the speed, value and reliability of universal connectivity. Through a unique wholesale business model, entities without their own wireless networks, or that have limited geographic coverage or spectrum, will be able to market and sell their own devices, applications and services at a competitive price using the Chapter 11 Debtors' network.

Montagner Affidavit at para 4.

8. Below is a listing of the Chapter 11 Debtors, the jurisdiction of their incorporation and the location of their head office:

<u>Chapter 11 Debtor</u>	<u>Jurisdiction of Incorporation/ Formation</u>	<u>Location of Head Office/ Headquarters</u>
LightSquared Inc.	Delaware	New York, New York
LightSquared Investors Holdings Inc.	Delaware	Reston, Virginia
One Dot Four Corp.	Delaware	Reston, Virginia
One Dot Six Corp.	Delaware	Reston, Virginia
SkyTerra Rollup LLC	Delaware	Reston, Virginia
SkyTerra Rollup Sub LLC	Delaware	Reston, Virginia
SkyTerra Investors LLC	Delaware	Reston, Virginia
TMI Communications Delaware, Limited Partnership	Delaware	Reston, Virginia
LightSquared GP Inc.	Delaware	Reston, Virginia
LightSquared LP	Delaware	New York, New York
ATC Technologies LLC	Delaware	Reston, Virginia
LightSquared Corp.	Nova Scotia	Ottawa, Ontario [Registered office is in Halifax, Nova Scotia]
LightSquared Finance Co.	Delaware	Reston, Virginia
LightSquared Network LLC	Delaware	Reston, Virginia

<u>Chapter 11 Debtor</u>	<u>Jurisdiction of Incorporation/ Formation</u>	<u>Location of Head Office/ Headquarters</u>
LightSquared Inc. Of Virginia	Virginia	Reston, Virginia
LightSquared Subsidiary LLC	Delaware	Reston, Virginia
LightSquared Bermuda Ltd.	Bermuda	Bermuda
SkyTerra Holdings (Canada) Inc.	Ontario	Ottawa, Ontario
SkyTerra (Canada) Inc.	Ontario	Ottawa, Ontario
One Dot Six TVCC Corp.	Delaware	Reston, Virginia

Montagner Affidavit at para 7.

9. Two of the Chapter 11 Debtors are incorporated pursuant to the laws of the Province of Ontario, being SkyTerra Holdings (Canada) Inc. (“**SkyTerra Holdings**”) and SkyTerra (Canada) Inc. (“**SkyTerra Canada**”). One of the Chapter 11 Debtors is incorporated pursuant to the laws of the Province of Nova Scotia, being LightSquared Corp. (“**LC**” and together with SkyTerra Holdings and SkyTerra Canada, the “**Canadian Debtors**”). Each of the Canadian Debtors is a wholly-owned subsidiary, directly or indirectly, of the Applicant. Other than the Canadian Debtors and LightSquared Bermuda Ltd., all of the Chapter 11 Debtors are incorporated pursuant to the laws of the United States.

Montagner Affidavit at para 8 and Exhibit “A”.

10. The operations of the Canadian Debtors can be summarized as follows:
- (a) SkyTerra Canada: This entity was created to hold certain regulated assets which, by law, are required to be held by Canadian corporations. SkyTerra Canada holds primarily three categories of assets: (i) the MSAT-1 satellite; (ii) certain Industry Canada licences and authorizations relating

to the MSAT-1, MSAT-2, SkyTerra-1, and SkyTerra-2 satellites. This latter satellite is intended to serve as a replacement satellite for the MSAT-1 satellite; and (iii) contracts with the Applicant's affiliates and third parties. SkyTerra Canada has no third party customers or employees at the present time and is wholly dependent on the Applicant for the funding of its operations;

- (b) SkyTerra Holdings: This entity has no employees or operational functions. Its sole function is to hold shares of SkyTerra Canada. To the extent that SkyTerra Holdings requires any funding, it is wholly dependent on the Applicant for same; and
- (c) LC: This entity was created for the purposes of providing mobile satellite services to customers located in Canada based on products and services that were developed by the Chapter 11 Debtors for the United States market but that could also be offered in Canada on a standalone or cross-border basis. LC holds certain Industry Canada licenses and authorizations relating to the MSAT-1, MSAT-2, and SkyTerra-1 satellites as well as certain ground related assets. LC employs approximately 43 non-union employees out of its offices in Ottawa, Ontario. LC is wholly dependent on the Applicant for all or substantially all of the funding of its operations.

Montagner Affidavit at para 9.

- 11. The Chapter 11 Debtors, including the Canadian Debtors, are managed in the United States as an integrated group from a corporate, strategic and management perspective. In particular:
 - (a) Corporate and other major decision-making occurs from the consolidated offices in New York, New York and Reston, Virginia;
 - (b) All of the senior executives of the Chapter 11 Debtors including the Canadian Debtors, are residents of the United States;

- (c) The majority of the management of the Chapter 11 Debtors, including the Canadian Debtors, is shared;
- (d) The majority of employee administration, human resource functions, marketing and communications decisions are made, and related functions taken, on behalf of all of the Chapter 11 Debtors, including the Canadian Debtors, in the United States;
- (e) The Chapter 11 Debtors, including the Canadian Debtors, also share a cash management system that is overseen by employees of the United States-based Chapter 11 Debtors and located primarily in the United States; and
- (f) Other functions shared between the Chapter 11 Debtors, including the Canadian Debtors, and primarily managed from the United States include, pricing decisions, business development decisions, accounts payable, accounts receivable and treasury functions.

Montagner Affidavit at paras 10, 12, 13, 14 and 16.

- 12. The Canadian Debtors are wholly dependent on the Applicant and other members of the Chapter 11 Debtors located in the United States for all or substantially all of their funding requirements.

Montagner Affidavit at para 15.

- 13. The Canadian Debtors have guaranteed the credit facilities which were extended to LSLP as borrower and such guarantee is allegedly secured by a priority interest on the assets of the Canadian Debtors. As a result, the majority of the creditors of the Chapter 11 Debtors are also common.

Montagner Affidavit at para 11.

- 14. Lien searches were conducted over April 23, 2012 and April 24, 2012 against each of the Chapter 11 Debtors under the *Personal Property Security Act* in each

of Ontario, Alberta, Saskatchewan, Nova Scotia and Newfoundland (the “PPSA Searches”). The PPSA Searches revealed registrations in favour of Wilmington Trust FSB against LC in each of Ontario, Alberta, Saskatchewan and Nova Scotia and against SkyTerra Holdings and SkyTerra Canada in Ontario. In addition, the PPSA Searches revealed registrations in favour of: (i) BNY Trust Company of Canada against LC in Saskatchewan; and (ii) The Bank of New York against the Applicant and LightSquared GP Inc. in Ontario. Each of The Bank of New York and BNY Trust Company of Canada is a party to a release letter dated as of October 1, 2010, in which they each acknowledged the release and discharge of the liens in respect of which the registrations in their favour were made.

Montagner Affidavit at paras 17 and 18.

Financial Troubles

15. The details surrounding the financial troubles that led to the Chapter 11 Proceeding are set out in the declaration attached as Exhibit “B” to the Montagner Affidavit.

Montagner Affidavit at Exhibit “B”.

III - THE ISSUES

16. Should this Honourable Court:
 - (a) Grant an interim stay of proceedings under the CCAA as against the Chapter 11 Debtors and their property pending the appointment of LSLP as the foreign representative in the Chapter 11 Proceeding?
 - (b) Recognize the Chapter 11 Proceeding as a foreign main proceeding pursuant to sections 46 through 48 of the CCAA and grant the Initial Recognition Order sought by the Applicant?
 - (c) Grant the Supplemental Order sought by the Applicant under section 49 of the CCAA?

IV - THE LAW

Issue 1: The Court should grant an interim stay of proceedings under the CCAA as against the Chapter 11 Debtors and their property pending the appointment of LSLP as the foreign representative in the Chapter 11 Proceeding

17. Pursuant to section 9 of the CCAA, the Court has the jurisdiction to hear an application in the “province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any of the assets of the company are situated”.

CCAA at s. 9.

18. The head offices of the Chapter 11 Debtors are located in the United States, aside from the Canadian Debtors who have offices in Ottawa and a Bermuda entity which has its head office in Bermuda. The operating assets of the Canadian Debtors are located at their offices in Ottawa, where 43 people are employed. Accordingly, this Court has jurisdiction to hear this Application.

Montagner Affidavit at paras 7 - 9.

19. In the context of Part IV of the CCAA, the Court is granted the authority to apply any legal or equitable rules necessary, provided that they are not inconsistent with the provisions of the CCAA.

CCAA at ss. 61(1).

20. Pursuant to section 106 of the *Courts of Justice Act* (Ontario), the Court on its own initiative or on a motion by any person, whether or not a party to the proceeding, may stay any proceeding in the Court on such terms as are considered just.

***Courts of Justice Act*, R.S.O. 1990, c. C.43 at s. 106.**

21. The Court also has the inherent jurisdiction to grant a stay of proceedings whenever it is just and reasonable to do so in order to control its process or prevent an abuse of process.

Campeau v. Olympia & York Developments Ltd. (1992), 14 C.B.R. (3d) 303, 1992 CarswellOnt 185 [accessed: April 27, 2012] (Ont. Gen. Div) at para 14.

22. Exercising both its statutory jurisdiction and its inherent juridical discretion, this Court has previously determined it appropriate to provide interim relief to applicants, including the granting of a general stay of proceedings, in recognition proceedings where the appointment of the foreign representative by the foreign court and the granting of the initial recognition order by this Court are pending.

Interim Initial Order in the Application of Hartford Computer Hardware, Inc., dated December 13, 2011 (Ont. Sup. Ct. (Commercial List)).

Interim Initial Order in the Application of Massachusetts Elephant & Castle Group, Inc., dated June 29, 2011 (Ont. Sup. Ct. (Commercial List)).

Interim Initial Order in the Application of Terrestar Networks Inc., dated October 19, 2010 (Ont. Sup. Ct. (Commercial List)).

23. Unless the Interim Initial Order sought by the Applicant is granted, there will be a gap between the continuity of the general stay protecting the Chapter 11 Debtors under the Bankruptcy Code and the stay of proceedings to be granted in Canada under the CCAA, until LSLP has been formally appointed as “foreign representative” by the U.S. Court and obtains a recognition order in Canada recognizing the Chapter 11 Proceeding as a “foreign main proceeding.” In order to alleviate any potential harm to the Chapter 11 Debtors or their Canadian assets during the Interim Period, it is necessary and appropriate for this Court to exercise its statutory authority and inherent discretion to grant an interim stay of proceedings in favour of all of the Chapter 11 Debtors until LSLP is in a position to formally seek a recognition order of the Chapter 11 Proceeding in Canada.

Issue 2: The Court should recognize the Chapter 11 Proceeding as a foreign main proceeding pursuant to sections 46 through 48 of the CCAA and grant the Initial Recognition Order sought by the Applicant

The Chapter 11 Proceedings should be recognized as a Foreign Proceeding

24. The purpose of Part IV of the CCAA and the provisions dealing with cross-border insolvencies are set out in section 44 of the CCAA, which provides as follows:

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 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.

CCAA at s. 44.

25. Subsection 46(1) of the CCAA provides that a foreign representative may apply to the Court for recognition of a foreign proceeding in respect of which he or she is a foreign representative.

CCAA at ss. 46(1).

26. A "foreign representative" for the purpose of subsection 46(1) of the CCAA is defined by subsection 45(1) of the CCAA, which provides:

"Foreign Representative" means a person or body, including one appointed on an interim basis, who is

authorized, in a foreign proceeding 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.

CCAA at ss. 45(1).

27. In the Chapter 11 Proceedings, the Chapter 11 Debtors are seeking the appointment of LSLP as the foreign representative of the Chapter 11 Debtors, within the meaning of subsection 45(1) of the CCAA.

Montagner Affidavit at para 19.

28. In response to an application brought by a foreign representative under subsection 46(1) of the CCAA, subsection 47(1) of the CCAA provides that the Court shall grant an order recognizing the foreign proceeding if the proceeding is a foreign proceeding and the applicant is a foreign representative in respect of that proceeding.

CCAA at ss. 47(1).

29. What is considered to be a "foreign proceeding" for the purpose of subsection 47(1) of the CCAA is governed by subsection 45(1) of the CCAA, which provides the following definition for "foreign proceeding":

"Foreign Proceeding" means a judicial or an administrative proceeding, including an interim proceeding, in a jurisdiction outside Canada dealing with creditors' collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company's business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization.

CCAA at ss. 45(1).

30. Court proceedings under Chapter 11 of the Bankruptcy Code have consistently been found by the courts to be “foreign proceedings” for the purposes of the CCAA.

Re Massachusetts Elephant & Castle Group Inc. (2011), 81 C.B.R. (5th) 102, 2011 ONSC 4201, 2011 CarswellOnt 6610 [accessed: April 27, 2012] (S.C.J.) at para 13 [Elephant].

Re Lear Canada (2009), 55 C.B.R. (5th) 57, 2009 CarswellOnt 4232 [accessed: April 27, 2012] (S.C.J. [Commercial List]) at para 12 [Lear Canada].

31. Pursuant to the foregoing, once LSLP is declared a foreign representative in the Chapter 11 Proceeding by the U.S. Court, it is the Applicant’s position that this Court should recognize the Chapter 11 Proceeding as a foreign proceeding pursuant to subsection 47(1) of the CCAA.

The Chapter 11 Proceeding should be declared a Foreign Main Proceeding

32. If the Court is required to grant an order under subsection 47(1) of the CCAA, the requirements having been met, subsection 47(2) of the CCAA requires the court to specify in the order whether the foreign proceeding is a “foreign main proceeding” or a “foreign non-main proceeding.”

CCAA at ss. 47(2).

33. Subsection 45(1) of the CCAA provides that a “foreign main proceeding” is a “foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests.”

CCAA at ss. 45(1).

34. For the purposes of Part IV of the CCAA, in the absence of proof to the contrary, a debtor company’s registered office is deemed to be the centre of its main interests (“COMI”).

CCAA at ss. 45(2).

35. In circumstances where it is necessary to go beyond the analysis set out in subsection 45(2) of the CCAA, courts have looked to additional factors to aid their determination of the COMI of a debtor company, 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;
 - (j) the seat of an enterprise's treasury management functions, including management of accounts receivable and accounts payable; and
 - (k) the location which significant creditors recognize as being the centre of the company's operations.

Re Angiotech Pharmaceuticals Inc. (2011), 76 C.B.R. (5th) 317, 2011 BCSC 115, 2011 CarswellBC 124 [accessed: April 27, 2012] (S.C.) at para 7.

Elephant at paras 26 and 30.

36. While all of the factors listed above may be relevant, the courts have determined the following three factors to generally be of significance:
- (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.

Elephant at paras 26 - 31.

37. Sixteen of the twenty Chapter 11 Debtors have their registered office in the United States. Additionally:
- (a) All of the Chapter 11 Debtors, including the Canadian Debtors, operate on an integrated basis, with the corporate and other major decision making occurring in the United States;
 - (b) All of the senior executives, including the Canadian Debtors, are residents of the United States;
 - (c) The majority of employee administration, human resource functions, marketing and communications decisions are made, and related functions taken, on behalf of all of the Chapter 11 Debtors, including the Canadian debtors, in the United States;
 - (d) The Chapter 11 Debtors, including the Canadian Debtors, share a cash management system that is overseen by employees of the United States-based Chapter 11 Debtors and located primarily in the United States;
 - (e) Other functions shared between the Chapter 11 Debtors, including the Canadian Debtors, and primarily managed from the United States include,

pricing decisions, business development decisions, accounts payable, accounts receivable and treasury functions;

- (f) The Canadian Debtors are wholly dependent on the Applicant and other Chapter 11 Debtors located in the United States for all or substantially all of their funding requirements; and
- (g) The Canadian Debtors have guaranteed the credit facilities which were extended to LSLP as borrower and such guarantee is allegedly secured by a priority interest on the assets of the Canadian Debtors. As a result, the majority of the creditors of the Chapter 11 Debtors are also common.

Montagner Affidavit at paras 7 and 10-16.

- 38. Pursuant to the foregoing, it is the Applicant's position that the Chapter 11 Debtors' COMI is the United States and that the Chapter 11 Proceeding should be recognized by this Court as a foreign main proceeding.

The Additional Relief Sought Under the Initial Recognition Order Should Be Granted

- 39. Where the Court recognizes a foreign proceeding under subsection 47(1) of the CCAA and specifies same to be a "foreign main proceeding" pursuant to subsection 47(2) of the CCAA, subsection 48(1) of the CCAA requires the court to grant certain enumerated relief subject to any terms and conditions it considers appropriate. Section 48 provides as follows:

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.

CCAA at ss. 48(1).

40. Additionally, section 50 of the CCAA provides the court with the jurisdiction to make any order under Part IV of the CCAA on the terms and conditions it considers appropriate in the circumstances.

CCAA at s. 50.

41. The Applicant takes the position that the additional relief sought in the Initial Recognition Order is required pursuant to subsection 48(1) of the CCAA or is otherwise appropriate in the circumstances and should be granted.

ISSUE 3: The Court should grant the Supplemental Order sought by the Applicant under section 49 of the CCAA and (i) recognize and enforce in Canada certain orders of the U.S. Court made in the Chapter 11 Proceeding; (ii) appoint A&M as Information Officer in respect of these proceedings; and (iii) grant an Administration Charge over the Chapter 11 Debtors' property

The Court Has the Authority To Grant the Supplemental Order

42. Once an order recognizing a foreign proceeding has been made (main or not-main), subsection 49(1) of the CCAA provides the court with the authority to make any order that it considers appropriate, if it is satisfied that the relief sought is necessary for the protection of the debtor company's property or the interest of

a creditor or creditors. The court may make any such order on the terms and conditions it considers appropriate.

CCAA at ss. 49(1) and s. 50.

43. The Court also has the authority to apply any legal or equitable rules necessary, provided that they are not inconsistent with the provisions of the CCAA.

CCAA at ss. 61(1).

44. Further, subsection 52(1) of the CCAA provides that if an order recognizing a foreign proceeding is made, the Court shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court.

CCAA at ss. 52(1).

The Court Should Exercise Its Authority and Grant the Relief Sought in the Supplemental Order

45. In the context of cross-border insolvencies, Canadian courts have consistently encouraged comity and cooperation between courts in various jurisdictions in order to enable enterprises to restructure on a cross-border basis.

Lear Canada at paras 11 and 17.

Re Babcock & Wilcox Canada Ltd. (2000), 18 C.B.R. (4th) 157, 2000 CarswellOnt 704 [accessed: April 27, 2012] (S.C.J. [Commercial List]) at para 9 [Babcock].

46. In *Babcock*, the court set out a list of certain factors that should be considered, among others, by the court when recognizing a foreign order. The factors listed were:

- (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; and
 - (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; and
 - (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.

***Babcock* at para 21.**

- 47. The Court has more recently held that the factors set out in *Babcock*, should be considered when recognizing further orders of United States courts once a Chapter 11 proceeding has been recognized as a foreign proceeding.

***Re Xerium Technologies Inc.* (2010), 71 C.B.R. (5th) 300, 2010 ONSC 3974, 2010 CarswellOnt 7712 [accessed: April 27, 2012] (S.C.J. [Commercial List]) at paras 26 and 27.**

- 48. Where one jurisdiction has an ancillary role to another jurisdiction, the court in the ancillary jurisdiction should be kept apprised of the status of the foreign proceedings.

***Lear Canada* at para 23.**

- 49. The Applicant is of the position that the appointment of A&M as Information Officer will help facilitate these proceedings and the dissemination of information concerning the Chapter 11 Proceeding. The Information Officer will: (i) act as a

resource to the foreign representative in the performance of its duties; (ii) act as an officer to the court, reporting to the court on the proceedings, as required by the court; and (iii) provide stakeholders of the Chapter 11 Debtors with material information on the Chapter 11 Proceeding.

Draft Supplemental Order attached to the Notice of Application.

50. The proposed role of A&M as Information Officer is consistent with the terms of appointment of information officers in other recognition proceedings under the CCAA.

Supplemental Order in the Application of Hartford Computer Hardware, Inc., dated December 21, 2011 (Ont. Sup. Ct. [Commercial List]) (without schedules).

Supplemental Order in the Application of Massachusetts Elephant & Castle Group, Inc., dated July 4, 2011 (Ont. Sup. Ct. [Commercial List]).

Supplemental Order in the Application of Terrestar Networks Inc., dated October 21, 2010 (Ont. Sup. Ct. [Commercial List]).

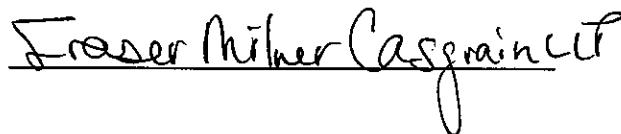
51. The Applicant submits that relief sought under the Supplemental Order is appropriate in the circumstances and will enable the Chapter 11 Debtors to continue to operate in the ordinary course during the Chapter 11 Proceedings by protecting the Chapter 11 Debtors' property located in Canada, thereby helping to maximize realizations for the stakeholders of the Chapter 11 Debtors.
52. Additionally, all secured creditors of the Chapter 11 Debtors that could be impacted by the Administration Charge have been served.

V - RELIEF REQUESTED

53. The Applicant requests that this Honourable Court grant the Interim Initial Order, the Initial Recognition Order and the Supplemental Order, each substantially in the form of the draft orders contained in the Application Record.
54. The proposed Information Officer, A&M, supports the relief sought by the Applicant.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of May, 2012.

May 14, 2012

A handwritten signature in black ink that reads "Fraser Milner Casgrain LLP". The signature is written in a cursive, flowing style.

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SCHEDULE "A"
LIST OF AUTHORITIES

1. *Campeau v. Olympia & York Developments Ltd.* (1992), 14 C.B.R. (3d) 303, 1992 CarswellOnt 185 [accessed: April 27, 2012] (Ont. Gen. Div).
2. Interim Initial Order in the Application of Hartford Computer Hardware, Inc., dated December 13, 2011 (Ont. Sup. Ct. (Commercial List)).
3. Interim Initial Order in the Application of Massachusetts Elephant & Castle Group, Inc., dated June 29, 2011 (Ont. Sup. Ct. (Commercial List)).
4. Interim Initial Order in the Application of Terrestar Networks Inc., dated October 19, 2010 (Ont. Sup. Ct. (Commercial List)).
5. *Re Massachusetts Elephant & Castle Group Inc.* (2011), 81 C.B.R. (5th) 102, 2011 ONSC 4201, 2011 CarswellOnt 6610 [accessed: April 27, 2012] (S.C.J.).
6. *Re Lear Canada* (2009), 55 C.B.R. (5th) 57, 2009 CarswellOnt 4232 [accessed: April 27, 2012] (S.C.J. [Commercial List]).
7. *Re Angiotech Pharmaceuticals Inc.* (2011), 76 C.B.R. (5th) 317, 2011 BCSC 115, 2011 CarswellBC 124 [accessed: April 27, 2012] (S.C.).
8. *Re Babcock & Wilcox Canada Ltd.* (2000), 18 C.B.R. (4th) 157, 2000 CarswellOnt 704 [accessed: April 27, 2012] (S.C.J. [Commercial List]).
9. *Re Xerium Technologies Inc.* (2010), 71 C.B.R. (5th) 300, 2010 ONSC 3974, 2010 CarswellOnt 7712 [accessed: April 27, 2012] (S.C.J. [Commercial List]).
10. Supplemental Order in the Application of Hartford Computer Hardware, Inc., dated December 21, 2011 (Ont. Sup. Ct. [Commercial List]) (without schedules).
11. Supplemental Order in the Application of Massachusetts Elephant & Castle Group, Inc., dated July 4, 2011 (Ont. Sup. Ct. [Commercial List]).
12. Supplemental Order in the Application of Terrestar Networks Inc., dated October 21, 2010 (Ont. Sup. Ct. [Commercial List]).

SCHEDULE "B"
RELEVANT STATUTES

COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43

S. 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.

COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED

S. 9: (1) Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

(2) The powers conferred by this Act on a court may, subject to appeal as provided for in this Act, be exercised by a single judge thereof, and those powers may be exercised in chambers during term or in vacation.

PART IV

S. 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 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.

S. 45: (1) The following definitions apply in this Part.

"foreign court"

« *tribunal étranger* »

“foreign court” means a judicial or other authority competent to control or supervise a foreign proceeding.

“foreign main proceeding”

« *principale* »

“foreign main proceeding” means a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests.

“foreign non-main proceeding”

« *secondaire* »

“foreign non-main proceeding” means a foreign proceeding, other than a foreign main proceeding.

“foreign proceeding”

« *instance étrangère* »

“foreign proceeding” means a judicial or an administrative proceeding, including an interim proceeding, in a jurisdiction outside Canada dealing with creditors’ collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company’s business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization.

“foreign representative”

« *représentant étranger* »

“foreign representative” means a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding 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.

(2) For the purposes of this Part, in the absence of proof to the contrary, a debtor company’s registered office is deemed to be the centre of its main interests.

S. 46: (1) 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.

(2) Subject to subsection (3), the application must be accompanied by

(a) a certified copy of the instrument, however designated, that commenced the foreign proceeding or a certificate from the foreign court affirming the existence of the foreign proceeding;

(b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate from the foreign court affirming the foreign representative's authority to act in that capacity; and

(c) a statement identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative.

(3) The court may, without further proof, accept the documents referred to in paragraphs (2)(a) and (b) as evidence that the proceeding to which they relate is a foreign proceeding and that the applicant is a foreign representative in respect of the foreign proceeding.

(4) In the absence of the documents referred to in paragraphs (2)(a) and (b), the court may accept any other evidence of the existence of the foreign proceeding and of the foreign representative's authority that it considers appropriate.

(5) The court may require a translation of any document accompanying the application.

S. 47: (1) If the court is satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceeding, the court shall make an order recognizing the foreign proceeding.

(2) The court shall specify in the order whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding.

S. 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.

(2) The order made under subsection (1) must be consistent with any order that may be made under this Act.

(3) Subsection (1) does not apply if any proceedings under this Act have been commenced in respect of the debtor company at the time the order recognizing the foreign proceeding is made.

(4) Nothing in subsection (1) precludes the debtor company from commencing or continuing proceedings under this Act, the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* in respect of the debtor company.

S. 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.

(2) If any proceedings under this Act have been commenced in respect of the debtor company at the time an order recognizing the foreign proceeding is made, an order made under subsection (1) must be consistent with any order that may be made in any proceedings under this Act.

(3) The making of an order under paragraph (1)(a) does not preclude the commencement or the continuation of proceedings under this Act, the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* in respect of the debtor company.

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

S. 51: If an order is made recognizing a foreign proceeding, the foreign representative may commence and continue proceedings under this Act in respect of a debtor company as if the foreign representative were a creditor of the debtor company, or the debtor company, as the case may be.

S. 52: (1) If an order recognizing a foreign proceeding is made, the court shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

(2) If any proceedings under this Act have been commenced in respect of a debtor company and an order recognizing a foreign proceeding is made in respect of the debtor company, every person who exercises powers or performs duties and functions under the proceedings under this Act shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

(3) For the purpose of this section, cooperation may be provided by any appropriate means, including

- (a) the appointment of a person to act at the direction of the court;
- (b) the communication of information by any means considered appropriate by the court;
- (c) the coordination of the administration and supervision of the debtor company's assets and affairs;
- (d) the approval or implementation by courts of agreements concerning the coordination of proceedings; and
- (e) the coordination of concurrent proceedings regarding the same debtor company.

S. 53: If an order recognizing a foreign proceeding is made, the foreign representative who applied for the order shall

- (a) without delay, inform the court of
 - (i) any substantial change in the status of the recognized foreign proceeding,
 - (ii) any substantial change in the status of the foreign representative's authority to act in that capacity, and
 - (iii) any other foreign proceeding in respect of the same debtor company that becomes known to the foreign representative; and
- (b) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information.

S. 54: If any proceedings under this Act in respect of a debtor company are commenced at any time after an order recognizing the foreign proceeding is made, the court shall

review any order made under section 49 and, if it determines that the order is inconsistent with any orders made in the proceedings under this Act, the court shall amend or revoke the order.

S. 55: (1) If, at any time after an order is made in respect of a foreign non-main proceeding in respect of a debtor company, an order recognizing a foreign main proceeding is made in respect of the debtor company, the court shall review any order made under section 49 in respect of the foreign non-main proceeding and, if it determines that the order is inconsistent with any orders made under that section in respect of the foreign main proceedings, the court shall amend or revoke the order.

(2) If, at any time after an order is made in respect of a foreign non-main proceeding in respect of the debtor company, an order recognizing another foreign non-main proceeding is made in respect of the debtor company, the court shall, for the purpose of facilitating the coordination of the foreign non-main proceedings, review any order made under section 49 in respect of the first recognized proceeding and amend or revoke the order if it considers it appropriate.

S. 56: The court may authorize any person or body to act as a representative in respect of any proceeding under this Act for the purpose of having them recognized in a jurisdiction outside Canada.

S. 57: An application by a foreign representative for any order under this Part does not submit the foreign representative to the jurisdiction of the court for any other purpose except with regard to the costs of the proceedings, but the court may make any order under this Part conditional on the compliance by the foreign representative with any other order of the court.

S. 58: A foreign representative is not prevented from making an application to the court under this Part by reason only that proceedings by way of appeal or review have been taken in a foreign proceeding, and the court may, on an application if such proceedings have been taken, grant relief as if the proceedings had not been taken.

S. 59: For the purposes of this Part, if an insolvency or a reorganization or a similar order has been made in respect of a debtor company in a foreign proceeding, a certified copy of the order is, in the absence of evidence to the contrary, proof that the debtor company is insolvent and proof of the appointment of the foreign representative made by the order.

S. 60: (1) In making a compromise or an arrangement of a debtor company, the following shall be taken into account in the distribution of dividends to the company's creditors in Canada as if they were a part of that distribution:

- (a) the amount that a creditor receives or is entitled to receive outside Canada by way of a dividend in a foreign proceeding in respect of the company; and
- (b) the value of any property of the company that the creditor acquires outside Canada on account of a provable claim of the creditor or that the creditor acquires

outside Canada by way of a transfer that, if it were subject to this Act, would be a preference over other creditors or a transfer at undervalue.

(2) Despite subsection (1), the creditor is not entitled to receive a dividend from the distribution in Canada until every other creditor who has a claim of equal rank in the order of priority established under this Act has received a dividend whose amount is the same percentage of that other creditor's claim as the aggregate of the amount referred to in paragraph (1)(a) and the value referred to in paragraph (1)(b) is of that creditor's claim.

S. 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.

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

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