

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

**IN THE MATTER OF SECTION 47(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C. 43, AS AMENDED, AND SECTION 68 OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990, C. C. 30, AS AMENDED**

BETWEEN:

**WESTLB AG, TORONTO BRANCH**

Applicant

and

**THE ROSSEAU RESORT DEVELOPMENTS INC.**

Respondent

**MOTION RECORD  
(Discharge Motion)  
(Returnable September 30, 2011)**

**September 19, 2011**

**BLAKE, CASSELS & GRAYDON LLP**

Barristers and Solicitors  
Box 25, Commerce Court West  
199 Bay Street, Suite 2800  
Toronto, Ontario M5L 1A9

**Pamela L. J. Huff**, LSUC #27344V

Tel: 416-863-2958  
Fax: 416-863-2653

**Katherine McEachern**, LSUC#: 38345M

Tel: 416-863-2566  
Fax: 416-863-2653

Lawyers for WestLB AG, New York Branch and  
Alvarez & Marsal Canada ULC and Alvarez &  
Marsal Canada Inc. in their respective capacities as  
Court-appointed Receiver and Manager, Trustee,  
and Interim Receiver of The Rosseau Resort

Developments Inc. and Receiver of certain assets of  
The Rosseau Resort Management Services Inc.

**FRASER MILNER CASGRAIN LLP**

1 First Canadian Place  
39th Floor  
100 King Street West  
Toronto, Ontario M5X 1B2

**R. Shayne Kukulowicz, LSUC#30729S**

Tel: 416-863-4740  
Fax: 416-863-4592

**Jane Dietrich, LSUC # 49302U**

Tel: 416-863 4467  
Fax: 416-863 4592

Independent Lawyers for Alvarez & Marsal Canada  
ULC, and Alvarez & Marsal Canada Inc., in their  
respective capacities as Court-appointed Receiver  
and Manager, Trustee, and Interim Receiver of The  
Rosseau Resort Developments Inc. and Receiver of  
certain assets of The Rosseau Resort Management  
Services Inc.

**TO: THE ATTACHED SERVICE LIST**

**SERVICE LIST**

**AND TO: AIRD & BERLIS LLP**  
Brookfield Place, Suite 1800  
181 Bay Street  
Box 754  
Toronto, ON M5J 2T9

**Harry Fogul**  
Tel: (416) 863-1500  
Fax: (416) 863-1515  
Email: hfogul@airdberlis.com

**Edmund Smith**  
Tel: (416) 863-1500  
Fax: (416) 863-1515  
Email: esmith@airdberlis.com

Lawyers for the Respondent,  
The Rosseau Resort Developments Inc.

**AND TO: STIKEMAN ELLIOTT LLP**  
5300 Commerce Court West  
199 Bay Street  
Toronto, ON M5L 1B9

**Peter Howard**  
Tel: (416) 869-5613  
Email: phoward@stikeman.com

**Craig Mitchell**  
Tel: (416) 869-5509  
Email: cmitchell@stikeman.com

**Simon Romano**  
Tel: (416) 869-5596  
Email: sromano@stikeman.com

**Maria Konyukhova**  
Tel: (416) 869-5230  
Email: mkonyukhova@stikeman.com

Lawyers for The Rosseau Resort Developments Inc.,  
Ken Fowler Enterprises Limited, and The Rosseau Resort  
Management Services Inc.

**AND TO: PURSER DOOLEY COCKBURN SMITH LLP**  
151 Ferris Lane, Suite 300  
Barrie, ON L4M 6C1

**Eric O. Gionet**  
Tel: (705)792-6910  
Fax: (705)792-6911  
Email: [egionet@pdcslaw.com](mailto:egionet@pdcslaw.com)

Lawyers for Parry Sound Glass

**AND TO: MILLER THOMSON LLP**  
Scotia Plaza  
40 King Street West, Suite 5800  
Toronto, ON M5H 3S1

**Jeffrey Carhart**  
Tel: (416) 595-8615  
Fax: (416) 595-8695  
Email: [jcarhart@millerthomson.com](mailto:jcarhart@millerthomson.com)

**Margaret Sims**  
Tel: (416) 595-8577  
Fax: (416) 595-8695  
Email: [msims@millerthomson.com](mailto:msims@millerthomson.com)

**Arthi Sambasivan**  
Tel: (416) 595-8636  
Fax: (416) 595-8695  
Email: [asambasivan@millerthomson.com](mailto:asambasivan@millerthomson.com)

Lawyers as Representative Counsel for Unit Owners and  
Ad Hoc Committee

---

**AND TO: HER MAJESTY THE QUEEN IN RIGHT OF THE  
PROVINCE OF ONTARIO AS REPRESENTED BY  
THE MINISTER OF FINANCE (Income Tax, PST)**

PO Box 620  
33 King Street West, 6<sup>th</sup> Floor  
Oshawa, ON L1H 8E9

**Kevin J. O'Hara**

Email: kevin.ohara@ontario.ca

**AND TO: BORDEN LADNER GERVAIS LLP**

Scotia Plaza  
40 King Street West  
Toronto, On M5H 3Y4

**Michael J. MacNaughton**

Tel: (416) 367-6646  
Fax: (416) 682-2837  
Email: mmacnaughton@blgcanada.com

**Roger Jaipargas**

Tel: (416) 367-6266  
Fax: (416) 682-2837  
Email: rjaipargas@blgcanada.com

**James MacLellan**

Tel: (416) 367-6592  
Fax: (416) 682-2837  
Email: jmaclellan@blgcanada.com

**Sam P. Rappos**

Tel: (416) 367-6033  
Fax: (416) 361-7306  
Email: srappos@blgcanada.com

Lawyers for Travelers Guarantee Company of Canada

---

**AND TO: MILLER THOMSON LLP**  
One London Place  
255 Queens Avenue, Suite 2010  
London, ON N6A 5R8

**Alissa K. Mitchell**  
Tel: (519) 931-3510  
Fax: (519) 858-8511  
Email: amitchell@millerthomson.com

Lawyers for Sparling's Propane Co. Limited

**AND TO: CAREY & OTTEWELL**  
Barristers & Solicitors  
50 North Street  
Goderich, ON, N7A 2T4

**Richard Ottewell**  
Tel: (519) 524-2634  
Fax: (519) 524-5538  
Email: r.ottewell@hurontel.on.ca

Lawyers for Sparling's Propane Co. Limited

**AND TO: THE LAW OFFICES OF GORDON L. JACOBS**  
73 Mutual Street  
Toronto, ON M5B 2A9

**Gordon L. Jacobs**  
Tel: 416 981 0901  
Email: gljacobs@sprynet.com

Ad Hoc Committee Representative

**AND TO: ACROBAT RESEARCH LTD.**  
170 Robert Speck Pkwy, Ste 201,  
Mississauga ON L4Z 3G1

**Roland Klassen, President**  
Tel: 416 503 4343 ext. 4343  
Email: roland@acrobat-research.com

Ad Hoc Committee Representative

**AND TO: WYJAD FLEMING**  
P.O. Box 177, 39 Dominion Street  
Bracebridge, ON P1L 1T6

**Daniel J. Wyjad**  
Tel: 705-645-8787  
Fax: 705-645-3390  
Email: bracebridge@wylaw.ca

Lawyers for 1569243 Ontario Inc. c.o.b. Rock Solid Granite Tops

**AND TO: THORNTONGROUTFINNIGAN LLP**  
Barristers and Solicitors  
Suite 3200 Canadian Pacific Tower  
100 Wellington Street West  
Toronto, ON M5K 1K7

**Grant B. Moffat**  
Tel: (416) 304-0599  
Fax: (416) 304-1313  
Email: gmoffat@tgf.ca

Lawyers for Marriott Hotels of Canada Limited and its affiliates

**AND TO: FOGLER, RUBINOFF LLP**  
1200-95 Wellington Street West  
Toronto, ON M5J 2Z9

**Vern W. DaRe**  
Tel: (416) 941-8842  
Fax: (416) 941-8852  
Email: vdare@foglers.com

**Michael S. Slan**  
Tel: (416) 941-8857  
Fax: (416) 941-8852  
Email: mslan@foglers.com

Lawyers for Certain Unit Purchasers and for Dirk Rigby

**AND TO: CHAITONS LLP**  
185 Sheppard Avenue West  
North York, ON M2N 1M9

**Harvey G. Chaiton**  
Tel: (416) 222-8888  
Fax: (416) 222-8402  
Email: harvey@chaitons.com

Lawyers for CIT Financial Ltd.

**AND TO: FASKEN MARTINEAU DuMOULIN LLP**  
66 Wellington Street West, Suite 4200  
Toronto-Dominion Bank Tower  
Toronto, ON M5K 1N6

**Jonathan A. Levin**  
Tel: (416) 863-4401  
Fax: (416) 364-7813  
Email: jlevin@fasken.com

**Jonathan F. Lancaster**  
Tel: (416) 865 4479  
Fax: (416) 364 7813  
Email: jlancaster@fasken.com

Lawyers for the Ad Hoc Committee, the Independent Directors of  
Muskoka Condominium Corporation No. 62, and certain Sale/Leaseback  
Owners

**AND TO: DEPARTMENT OF JUSTICE**  
The Exchange Tower  
130 King Street West, Suite 3400  
Toronto, ON M5X 1K6

**Ms. Diane Winters**  
E-mail: diane.winters@justice.gc.ca



**AND TO: MINISTRY OF THE ENVIRONMENT**  
**Operations Division, Central Region**  
5775 Yonge Street  
Toronto, ON M2M 4J1

**Norman S. Rankin**, Counsel  
Ministry of the Attorney General  
Legal Services Branch,

Tel: (416) 326-5616  
Fax: (416) 212-0863  
Email: norm.rankin@ontario.ca

**AND TO: SULLIVAN MAHONEY LLP**  
40 Queen Street, P.O. Box 1360  
St. Catharines, Ontario L2R 6Z2

**Victor F. Muratori, Q.C.**  
Tel: (905) 688-6616  
Fax: (905) 688-5814  
Email: vfmuratori@sullivan-mahoney.com

**Rocco Vacca**  
4780 Portage Rd.  
Niagara Falls, ON, L2E 6A8

Tel: (905) 357-0500  
Fax: (905) 357-0501  
Email: rvacca@sullivan-mahoney.com

**Glen W. McCann**  
4780 Portage Rd.  
Niagara Falls, ON, L2E 6A8

Tel: (905) 357-0500 Ext:320  
Fax: (905) 357-0501  
Email: gwmccann@sullivan-mahoney.com

Lawyers for Canadian Niagara Hotels Inc.

**Courier Service List**

- AND TO: KEN FOWLER (N.Y.), INC.**  
**KEN FOWLER TEXAS, INC.**  
**KEN FOWLER, COLUMBUS, INC.**  
**PETER FOWLER ENTERPRISES LTD.**  
110 Hannover Drive, Suite 203B  
St. Catharines, ON L2R 7P7
- AND TO: KEN FOWLER (N.Y.), INC.**  
c/o CT Corporation System  
111 Eighth Avenue  
New York, New York 10011  
U.S.A.
- AND TO: KEN FOWLER TEXAS, INC.**  
c/o CT Corporation System  
350 N. St. Paul Street  
Dallas, TX 75201  
U.S.A.
- AND TO: KEN FOWLER, COLUMBUS, INC.**  
c/o CT Corporation System  
1300 East 9<sup>th</sup> Street  
Cleveland, OH 44114  
U.S.A.
- AND TO: 2258454 ONTARIO INC.**  
110 Hannover Drive  
Suite 203B  
St. Catharines, ON L2W 1A4
- AND TO: MUSKOKA STANDARD CONDOMINIUM CORPORATION NO. 62**  
1050 Paignton House Road  
Minett, ON P0B 1G0
- AND TO: MR. ERIC MIRON**  
HER MAJESTY THE QUEEN IN RIGHT OF CANADA  
AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE  
555 MacKenzie Avenue, 7th Floor  
Ottawa, ON K1A 0L5

**AND TO: TOWNSHIP OF MUSKOKA LAKES**

P.O. Box. 129  
1 Bailey Street  
Port Carling, ON P0B 1J0

Tel: (705) 765-3156

**AND TO: RED LEAVES RESORT ASSOCIATION**

1112 Juddhaven Road  
Minett, ON P0B 1G0

Attention: Karen Labine

Court File No. CV-09-8201-00CL

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

**IN THE MATTER OF SECTION 47(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C. 43, AS AMENDED, AND SECTION 68 OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990, C. C. 30, AS AMENDED**

BETWEEN:

**WESTLB AG, TORONTO BRANCH**

Applicant

and

**THE ROSSEAU RESORT DEVELOPMENTS INC.**

Respondent

**MOTION RECORD**

**I N D E X**

<b><u>TAB NO.</u></b>		<b><u>PAGE NO.</u></b>
<b>1.</b>	Notice of Motion returnable September 30, 2011	<b>1</b>
<b>2.</b>	Twenty-Third Report of Alvarez & Marsal Canada ULC dated September 16, 2011	<b>20</b>
<b>A</b>	Appendix "A": Glossary of Defined Terms	<b>61</b>
<b>B</b>	Appendix "B": Distribution Summary	<b>66</b>
<b>C</b>	Appendix "C" Report of Master Short	<b>67</b>
<b>D</b>	Appendix "D": Order dated December 21, 2009	<b>72</b>

<b><u>TAB NO.</u></b>		<b><u>PAGE NO.</u></b>
<b>E</b>	Appendix "E": Order dated September 1, 2009	88
<b>F</b>	Appendix "F": Ancillary Order dated July 21, 2011	91
<b>3.</b>	Draft Order	98

WESTLB AG, TORONTO BRANCH	V.	THE ROSSEAU RESORT DEVELOPMENTS INC.
Applicant		Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD**  
**(Discharge Motion)**  
**(Returnable September 30, 2011)**

**BLAKE, CASSELL & GRAYDON LLP**  
P.O. Box 25, Commerce Court West  
199 Bay Street, Suite 2800  
Toronto, Ontario M5L 1A9

Pamela L.J. Huff - LSUC#: 27344V  
Tel: 416-863-2958  
Fax: 416-863-2653

Katherine McEachern - LSUC#: 38345M  
Tel: 416-863-2566  
Fax: 416-863-2653

Lawyers for WestLB AG, New York Branch and Alvarez & Marsal Canada ULC and Alvarez & Marsal Canada Inc. in their respective capacities as Court-appointed Receiver and Manager, Trustee, and Interim Receiver of The Rosseau Resort Developments Inc. and Receiver of certain assets of The Rosseau Resort Management Services Inc.

**FRASER MILNER CASGRAIN LLP**  
1 First Canadian Place  
39th Floor, 100 King Street West  
Toronto, Ontario M5X 1B2

R. Shayne Kukulowicz LSUC #: 30729S  
Jane Dietrich LSUC # 49302U  
Tel: 416-863 4467  
Fax: 416-863 4592

Independent Lawyers for Alvarez & Marsal Canada ULC, and Alvarez & Marsal Canada Inc., in their respective capacities as Court-appointed Receiver and Manager, Trustee, and Interim Receiver of The Rosseau Resort Developments Inc. and Receiver of certain assets of The Rosseau Resort Management Services Inc.