

1 JUNE 21, 2012

2

3 THE COURT: Just one moment and I'll get set up.
4 I'm sorry we don't have a larger courtroom, but we'll have
5 to make do.

6 All right. Could I have appearances, please?

7 MR. MCELCHERAN: It's Kevin McElcheran and --

8 THE COURT: Yes, good morning.

9 MR. MCELCHERAN: And I'm, I'm with Mr. Taylor,
10 and we're for the applicant. And I'll let Mr. Taylor
11 introduce everybody just so I don't get any names missed.

12 MR. TAYLOR: Well, Mr. Jackson, I think, has
13 listed the ...

14 MR. MCELCHERAN: Oh, she has them there.

15 MR. TAYLOR: So, Dave, you go ahead. And Ms.
16 (inaudible) in the office --

17 THE COURT: Yes.

18 MR. TAYLOR: -- or in the courtroom --

19 THE COURT: Good morning.

20 MR. TAYLOR: -- (inaudible).

21 MR. JACKSON: My Lady, Jackson, of course, for
22 the monitor. With me today is Mr. Wasserman.

23 THE COURT: Yes.

24 MR. WASSERMAN: Good morning, My Lady.

25 MR. JACKSON: Also in the courtroom today, from
26 the monitor's office, is Mr. Adam Zalev.

27 MR. ZALEV: Good morning, My Lady.

28 THE COURT: Good morning.

29 MR. JACKSON: We will get to the appearances on
30 the teleconference --

31 THE COURT: All right.

32 MR. JACKSON: -- ultimately, but just to let you
33 know Mr. Morawetz is on his back and unable to be here, but
34 he is here by teleconference.

1 THE COURT: All right.

2 MR. JACKSON: Then proceeding down the line, for
3 CPPIB today we have Mr. Scott Bomhof --

4 MR. BOMHOF: Good morning, My Lady.

5 MR. JACKSON: -- from the Torys firm, together
6 with Mr. Hirsch.

7 MR. HIRSCH: Good morning, My Lady.

8 THE COURT: Good morning.

9 MR. JACKSON: We also have Ms. Catherine Howden
10 today on behalf of TD Bank. We have Ms. Liz Pillon on
11 behalf of the purchaser.

12 MS. PILLON: Good morning.

13 MR. JACKSON: Mr. Leslie is here on a watching
14 brief, and Mr. Chipman is here from TDSI.

15 UNIDENTIFIED PERSON: Good morning, My Lady.

16 MR. JACKSON: And I think that covers everybody
17 in the courtroom.

18 And then perhaps -- I do have a list so maybe I
19 can just quickly go through that, on the teleconference
20 attendees. Mr. David Preger is here on behalf of the
21 direct purchasers.

22 MR. PREGER: Good morning, My Lady.

23 THE COURT: Good morning.

24 MR. JACKSON: As I indicated, Mr. Rich Morawetz
25 is on teleconference.

26 THE COURT: Yes.

27 MR. MORAWETZ: Good morning, My Lady.

28 THE COURT: Good morning.

29 MR. JACKSON: Mike Milani, on behalf of the
30 trustees, is here.

31 MR. MILANI: Good morning, My Lady.

32 THE COURT: Good morning.

33 MR. JACKSON: Jeremy Dacks from Osler's is here
34 as well, on behalf of monitor's counsel, but via

1 teleconference.

2 MR. DACKS: Good morning, My Lady.

3 THE COURT: Good morning.

4 MR. JACKSON: Mr. Tony DeMarinis is from the
5 Torsys firm, is also here for CPPIB.

6 THE COURT: All right.

7 MR. JACKSON: Kelly Peters from McCarthy's is
8 here for the applicants, and also Anderson Fisher, who I
9 believe is a unit holder, is on the line.

10 THE COURT: Okay.

11 MR. FISHER: Good morning, My Lady.

12 THE COURT: Good morning.

13 MR. JACKSON: Is there anybody else on
14 teleconference that I haven't identified?

15 MR. AZMAN: My Lady, Darren Azman here from Ropes
16 and Gray, US counsel for the purchaser.

17 MR. JACKSON: Sorry I missed you, Darren.

18 THE COURT: I'm sorry, I --

19 MR. WEINCZOK: And (inaudible) --

20 THE COURT: -- missed your last name.

21 MR. WEINCZOK: And Mike, and Mike Weinczok from
22 Dickenson Wright, for the US direct purchasers as well.

23 THE COURT: Okay.

24 UNIDENTIFIED PERSON: Azman, A-Z-M-A-N.

25 THE COURT: Thank you very much.

26 MR. JACKSON: Sorry. We do have a couple of
27 speakers here. Should we give one to you, My Lady?

28 THE CLERK: This one, actually, there is a
29 speaker as well.

30 MR. JACKSON: Fair enough. Those deal with the
31 appearances, My Lady. And I apologize, we're a little
32 short on chairs so I'm just going to step back here.

33 THE COURT: Yes, no problem.

34 MR. JACKSON: Oh, just one more thing, My Lady, I

1 should point out. Because of some of the communications
2 that are going on between the people from Toronto and some
3 of their Toronto contacts, there will be a little
4 BlackBerry use. This is not private, this is just in
5 connection with what's going on today, so I hope you'll
6 provide us a little indulgence with that.

7 THE COURT: I will accommodate that.

8 MR. JACKSON: Thank you, My Lady.

9 THE COURT: Thank you for bringing it to my
10 attention.

11 MR. MCELCHERAN: So, My Lady, to begin, the first
12 thing I want to let -- well, first I want to see what you
13 have, to make sure you have everything --

14 THE COURT: All right.

15 MR. MCELCHERAN: -- that's been given -- we sent
16 out. The -- you should have a fourth report of the
17 monitor.

18 THE COURT: I do.

19 MR. MCELCHERAN: And you should have a -- you
20 should also have a supplement to the report which contains
21 our documents to be sealed.

22 THE COURT: The confidential appendix?

23 MR. MCELCHERAN: Yes.

24 THE COURT: Yes, I have that as well.

25 MR. MCELCHERAN: You should have a notice of
26 motion issued by the applicants.

27 THE COURT: Yes, for sale approval, that one,
28 yes.

29 MR. MCELCHERAN: Correct. You should have an
30 affidavit of Keith McMahon. You should --

31 THE COURT: Yes.

32 MR. MCELCHERAN: You should have a brief of the
33 applicant.

34 THE COURT: I do have that.

1 MR. MCELCHERAN: And I think that that's all, all
2 that you should have.

3 MR. JACKSON: Sorry, if I could just step up for
4 one minute, My Lady, just to point out that with respect to
5 the confidential appendix, what you have is a courtesy copy
6 which was forwarded to you directly. The original signed
7 version is in the envelope here which --

8 THE COURT: Okay.

9 MR. JACKSON: -- we can tender when necessary.

10 THE COURT: All right.

11 MR. MCELCHERAN: Thank you.

12 MR. JACKSON: Sorry, Kevin.

13 MR. MCELCHERAN: Okay. And what I wanted to ...
14 Okay. So in addition -- what I have for you here
15 today, I have a couple things I'm going to hand up to you.

16 THE COURT: Okay.

17 MR. MCELCHERAN: One of them is -- the first
18 thing is an affidavit. Now, my -- at the moment, somehow
19 I've managed to misplace, between Mr. Taylor's office and
20 here, the affidavit of service on the service list but I do
21 have -- which we will, we will file. It is a service list,
22 as you know.

23 What I also have, which is, I think, more, more
24 significance or interest to the -- for -- by -- what I want
25 to speak to --

26 THE COURT: Is that the assigned contract
27 service?

28 MR. MCELCHERAN: Is -- yes.

29 THE COURT: All right.

30 MR. MCELCHERAN: Which is this.

31 THE COURT: All right.

32 MR. MCELCHERAN: Now, that, that's been sent
33 around to -- and I'll take you through that when, when you
34 have --

1 THE COURT: Okay.

2 MR. MCELCHERAN: There's quite a lot to it.

3 THE COURT: All right.

4 MR. MCELCHERAN: And I, I also want to hand up to
5 you two other documents. One -- these are two black lines
6 of the order I'm going to take you through as we go.

7 Sorry, I'm walking away from the mic.

8 And, and also I have a photocopy which we'll
9 file, the original of the affidavit of service on
10 (inaudible). Okay.

11 THE COURT: All right. Well, I'm not going to --

12 MR. MCELCHERAN: No.

13 THE COURT: You'll take me through what I need
14 to --

15 MR. MCELCHERAN: I will.

16 THE COURT: -- to read.

17 MR. MCELCHERAN: Okay. I, I will take you
18 through it.

19 So what -- to begin the process of -- I think the
20 first thing I want to say to you is that a lot of service
21 has been given, so I think the best thing to do is just
22 turn up the affidavit of Kelly Peters for a moment, just to
23 go through the activities that we have -- we've gone
24 through and the sale process -- sorry, following the sale
25 process and completion of the agreement and preparing the
26 motion. We've served a great number of people with the
27 motion, and the methodology we used was -- the methodology
28 was similar to the, to the motion for Chapter 15
29 recognition order. So you'll see in her affidavit there
30 are --

31 THE COURT: Sorry.

32 MR. HIRSCH: My Lady, I apologize to, to my
33 learned friend. I'm just -- we're hearing that parties on
34 the telephone line are having difficulty hearing you.

1 THE COURT: Oh, okay.

2 MR. HIRSCH: So there may be some audio
3 difficulty coming from where you're sitting. And I
4 apologize for the interruption.

5 THE COURT: All right, thank you, Mr. Hirsch.
6 Mr. Clerk?

7 UNIDENTIFIED PERSON: Maybe, maybe --

8 THE COURT: What, what can we do about this?
9 It's me that's the issue.

10 MR. MCELCHERAN: Well, we -- counsel can share --

11 THE COURT: All right.

12 MR. MCELCHERAN: -- one of the mics, and the
13 other one can be on your desk.

14 THE COURT: Can everyone on the telephone hear me
15 now?

16 UNIDENTIFIED PERSON: Yes, thank you.

17 UNIDENTIFIED PERSON: Yes.

18 THE COURT: All right.

19 UNIDENTIFIED PERSON: Yes.

20 THE COURT: If there's a problem, feel free to
21 just let me know.

22 All right.

23 MR. MCELCHERAN: Okay. So looking through Kelly
24 Peters' affidavit -- and Kelly is, is one of our associates
25 and, and her affidavit is really relating to the efforts of
26 service. The -- when -- just to give you a little bit of
27 history, you see on the title, Service relating to motion
28 for Initial Order?

29 THE COURT: Yes.

30 MR. MCELCHERAN: That's just giving a history of
31 how we served every, every creditor -- every known creditor
32 from the records of the company with the Chapter 15
33 proceeding and, as a result, created a database using a
34 service called KCC, as defined in paragraph 6 of the

1 affidavit. They compelled a -- compiled a database of all
2 known creditors for that purpose, using the company's
3 records. So we had served everyone with the, everyone with
4 the Chapter 15 proceedings and we had this database
5 available as a consequence. This is much more notice than
6 we would normally give in a Canadian proceeding. Canadian
7 proceedings we typically would give less notice of motions
8 or of the proceedings under CCAA than that. But
9 recognizing that a large part of the business is in the
10 United States, we wanted to be complying as much as
11 possible with US practice and what they would expect.

12 So in the 15 application we did that and we
13 compiled a list. So you'll see under the title, Service
14 Efforts relating to Approval of the Sale Motion -- of Sale
15 Motion, we use the same database, using KCC again. We
16 prepared a service list -- a final service list attached as
17 Exhibit A, and you can see that there are -- it is a very
18 large list and there are three categories in the group.
19 They are the Core Service Group, Group 2, and Group 3. And
20 how they're defined and why that matters is that the core
21 service group relates to parties who are participating in a
22 Chapter 15 proceeding and have counsel or have otherwise
23 participated a way that, that is identified as being of
24 interest in the process and so we had that as a, as a
25 defined database within the database of all creditors, and
26 we used them.

27 And we added to them Group 2 for the purposes of
28 receiving the entire notice of motion and affidavit of the
29 applicants because -- and the Group 2 ones are comprised of
30 counterparties to contracts and leases, again using the
31 company's records the best we could to identify
32 counterparties as we had done in the initial process with
33 the service of the Chapter 15 because that's necessary in
34 that case, too.

1 So the -- you'll see in paragraph 12 is described
2 the core group which includes the US Department of Justice.
3 And they, they -- all of those received the notice of
4 motion and the affidavit. And you'll see on, on -- that
5 our Group 2, which includes the landlords and
6 counterparties of contracts, they received the notice of
7 motion and the affidavit. And you'll see that, that the
8 balance of them, the Group 3, which is the entire creditor
9 matrix, received a notice of motion which included the
10 draft order and a notice -- what they received included a
11 notice telling them that they should -- they could have
12 access to the data, the -- sorry, they, they could have
13 access to the monitor's website in order to find all
14 materials if they wanted to see it.

15 So we then cross-checked these and this is a
16 process that's still -- unfortunately, still ongoing
17 because the pace of things going on and the amount of work
18 that's going on. We have our mechanism for dealing with
19 that in the order which you haven't seen yet, but I'll show
20 you in a moment. But they're -- we're -- we have been
21 respond -- been trying to respond to requests by the
22 purchaser for additional additions to the list, and we're
23 cross-checking against PPSA and UCC registrations. The
24 company registered -- had registrations -- roughly there
25 are 40 relevant state registration sources for UCCs, as
26 well as all the provinces of Canada except the Maritimes.
27 So the -- so as a consequence, there's a lot of UCC and
28 PPSA registrations to (inaudible). Most of them are, are
29 basically the counterparties, delete the riders and the
30 other equipment renters and, and lessors and, and the
31 secure lenders in this case.

32 But in any event, we, we've gone through the
33 process trying to be accommodating, mostly to make sure
34 that everybody has a chance -- that everybody who is

1 affected by this order has an opportunity to come here and,
2 and make a submission to you about why they may be affected
3 in a way which is inappropriate or that they have some
4 submissions about.

5 So I wanted to give you -- take you through that
6 affidavit to give you an idea of the, the data. If you're
7 looking at -- as you can see in Exhibit A, there are
8 literally thousands of names. Now, there -- my -- as you
9 go -- and you'll see that they're ... They are -- each one
10 of them has an address. Now, this service was by, by mail.
11 The service by KCC is service by mail. The, the people on
12 the service list -- the Canadian service list received it
13 in accordance with your order by -- and that's reflected in
14 this -- in the affidavit of service I just gave up to you
15 -- received it by e-mail in accordance with your initial
16 order which permitted that, the Canadian service list.
17 And, and the US core service list received in the same way
18 as the KCC provides. There are -- and as we have been
19 asked by the, the purchaser to serve additional people
20 coming up in various places from the database, from the
21 searches, UCC searches and so on, in order to satisfy their
22 concerns that everybody who might be affected is, is
23 notified, we have been doing that the fastest way we could,
24 in most cases by delivery.

25 So that, that's -- in order to -- I think the
26 easiest thing at this point, if I just -- the main point to
27 take from all that, there's a lot of notices going out.
28 There's a press release, there's a lot of notices gone out.
29 But the -- to make sure that there is no problem that
30 hasn't so far surfaced because of lack of service, we have
31 -- or inadequacy of service or some other problem with
32 service, what we have done and agreed with the purchaser
33 is, is to put into the, the -- into the vesting order a
34 comeback clause. And I'm not sure if you've heard the term

1 "comeback clause" before.

2 THE COURT: Yes, I have.

3 MR. MCELCHERAN: Okay, so we put into the, into
4 the order a comeback clause which I can show you. That's
5 in paragraph 18.

6 THE COURT: All right, let me just get the --
7 okay. Paragraph 18?

8 MR. MCELCHERAN: Yes. And I, I, I think the one
9 for you to look at, that's most helpful to you, is I marked
10 one in black line to the motion. And you'll see in
11 paragraph 18 there's a black line section there.

12 THE COURT: I do see paragraph 18. My time, of
13 course, is not necessarily my own because it, it provides
14 that there has to be a hearing by July 10.

15 MR. MCELCHERAN: Yes. Okay. So let me -- let's
16 talk about scheduling.

17 THE COURT: All right. We can --

18 MR. MCELCHERAN: First --

19 THE COURT: -- talk about logistics.

20 MR. MCELCHERAN: Yeah.

21 THE COURT: I understand the concept --

22 MR. MCELCHERAN: Yes.

23 THE COURT: -- which you're -- we can, we can see
24 if that's an issue.

25 MR. MCELCHERAN: Right.

26 THE COURT: But --

27 MR. MCELCHERAN: And working on timetable -- and
28 from our perspective, our interest, dates are relatively
29 somewhat arbitrary, but --

30 THE COURT: Yes.

31 MR. MCELCHERAN: But --

32 THE COURT: Your point is to allow for that
33 comeback and it has to be before -- sufficient time in
34 advance of closing, et cetera.

1 MR. MCELCHERAN: Yes, and --

2 THE COURT: Is that, is that your issue?

3 MR. MCELCHERAN: -- and also hopefully in advance
4 of the hearing of the recognition in the US.

5 THE COURT: Okay.

6 MR. MCELCHERAN: And so -- and I've forgotten the
7 date of that, if counsel could help me? The 17th.

8 THE COURT: Okay.

9 MR. MCELCHERAN: So that's, so that's the, that's
10 -- I think from our perspective, if we have flexibility
11 about the end time of it, we really don't expect that
12 you're going to have any motions. But, but if you do have
13 any motions, we, we need to have them heard and dealt with
14 by that time -- by -- at least by that date. And so from
15 our -- but we have some flexibility.

16 But the concept --

17 THE COURT: Okay.

18 MR. MCELCHERAN: -- is that anybody who got
19 service after last Thursday -- in other words, less, less
20 than a week -- that they would have an ability to come back
21 if they serve a motion by a specific date. And if they --
22 and it's returnable by another date. And we -- and our
23 perspective on this is that it meets the, the need to give
24 appropriate opportunity for parties who are affected to
25 express their concern to the court if they want to, with
26 the need for finality on a vesting order. And our closing
27 is July 31. On or before July 31.

28 So that's, that's -- I wanted to bring that to
29 your attention because I know the first thing is who's not
30 here who's being affected by this order.

31 THE COURT: Yes.

32 MR. MCELCHERAN: And the first thing I want to
33 tell you about it is that a ton of people already know
34 about this. The second thing I want to tell you about it

1 is that maybe not everybody who needs to know about it has
2 had enough time to digest it, but we still want to go ahead
3 today on the basis that it's -- there's -- it's a
4 transaction that needs to move forward.

5 We think that there's plenty of evidence here on,
6 on which you could make a judgment to approve it and to
7 grant the orders we're asking for, and it makes sense and
8 is good for everyone that that happen today, but except if
9 somebody has a problem they should have an opportunity to
10 come back, and that's what the comeback clause does.

11 So -- oh, I -- yes. And unfortunately, yeah,
12 one, one thing I also want to point out to you is there was
13 an exception to the comeback at the request of the, the
14 lenders. In -- you'll notice that there is an exception
15 relating to paragraph 12, you might see in the, in the
16 fifth line of paragraph 18. Paragraph 12 is the, is the
17 one that says that the lenders get paid on closing.

18 THE COURT: Yes.

19 MR. MCELCHERAN: And since -- we didn't have a
20 problem with that not being subject to the, the -- because
21 we weren't concerned about people not knowing about that
22 because it's been in the SISP, it's been, it's been around
23 forever, and it doesn't really impact on the transactions.
24 It only arises if the transaction closes and, and, really,
25 from our perspective, there's no reason for that not to be
26 final today.

27 The only reason for -- it requested -- you know,
28 we were using a broad brush, but when my friend pointed out
29 to us that, that there is -- there's what -- there's no
30 need to have that paragraph subject to the comeback, we, we
31 couldn't think of a reason why there's a need for it to be
32 a comeback because the only things we were concerned about
33 are conveyance issues and assignment issues, and which the
34 broader services -- and, and on top of that, it's a

1 requirement of the SISP that they be paid from the closing
2 which was previously approved.

3 THE COURT: Okay.

4 MR. MCELCHERAN: Okay. So with that
5 introduction, which is kind of going to the end instead of
6 starting from the beginning, I wanted to take you through
7 our brief a little bit and to really talk about -- I think
8 this is a demonstration of the wisdom of the initial order
9 in the first place, is that the whole point of starting
10 this process to go down a path of CCAA was to create an
11 organized process with a bunch of rules to allow this
12 business -- a good business with a bad capital structure --
13 to be put on the market and made available to buyers who
14 may be interested in buying the whole business and carrying
15 it on as it had been before, with the same people working
16 for it, the same, same suppliers supplying to it, and with
17 the same landlords having their premises occupied and
18 somebody's prepared to meet the obligations on the lease,
19 and with an opportunity, a possibility of creating an, an
20 outcome that might actually generate proceeds to pay all
21 creditors and to pay all -- and pay -- and potentially make
22 a distribution to the unit holders.

23 So the wisdom of that initial order -- and that
24 -- the wisdom is really always great to see in hindsight.
25 In hindsight you can look back and say, Okay, well, we did
26 the right thing back then because -- and the demonstration
27 is in -- or the proof is in the pudding. In this case, the
28 pudding tastes pretty good.

29 So what we would want to -- what we're asking
30 Your -- My Lady to, to do is to make an order which is a
31 natural, natural step following the approval of the SISP in
32 the first place, proving any implementation of the SISP
33 through the participation of all the professionals you see
34 in this room. This is a case where, where, where it was a

1 team effort that resulted in the financial advisor
2 providing a mechanism and running a process that was
3 consistent with the SISP, the lender, you know, in this
4 particular situation having given us a chance to do that by
5 providing funding for it and by agreeing to the initial
6 order which set out the terms under which we conduct the
7 sales and marketing process.

8 And it involved CPS at all stages, the monitor
9 fully engaged and there was involvement in every step of
10 it; the, the buyers participating in the process by meeting
11 the deadlines and understanding the requirements of the
12 process; by the -- and by the company doing yeoman service
13 in answering any questions that came to them from the data
14 room in part of the due diligence process; to result in the
15 nirvana of a transaction, which is an agreement which is
16 not conditional in, in any material function.

17 It provides for a cash purchase price sufficient
18 to satisfy the lenders on, on closing. It closes within
19 the right time frame and provides for the ongoing business
20 pretty much as it was, with the opportunity we've now
21 capitalized with the benefit of a strong private equity
22 buyer with the ability to expand, improve, and carry on
23 business in a way that makes sense and which the company's
24 been constrained from doing because of its constrained
25 financial position.

26 So this is -- it's a good news story because it
27 achieved all the objectives that were set out in the first
28 day in the SISP.

29 So I, I don't -- in terms of the agreement
30 itself, I, I'm not sure what -- I'm, I'm at a -- really,
31 not at a loss because there's lots to talk about in the
32 agreement, but what, what I want -- I don't think it's
33 necessarily the most efficient way of talking about it is
34 in context of responding to any questions that you may have

1 after arising -- reviewing it.

2 THE COURT: Well, I think I understand the
3 material adverse outcome, or that --

4 MR. MCELCHERAN: Yes.

5 THE COURT: -- that clause, which I under --
6 which, which I, I gather from the material came as a result
7 of all of the final bidders requesting that.

8 MR. MCELCHERAN: Yes.

9 THE COURT: And my impression from the material
10 is that it's limited in its scope.

11 MR. MCELCHERAN: Yes.

12 THE COURT: But if you could just highlight for
13 me what, what could possibly fall within that, just to give
14 me a greater appreciation, that, that would be helpful.

15 MR. MCELCHERAN: Yeah. Well, the -- yes, that,
16 that is the -- that's, that's the right place to be, to be
17 looking, I think, in terms of -- it's the only thing that
18 really wasn't in the draft we gave to them. It really --
19 now, to begin with, I -- we didn't -- we did not put a
20 material adverse change clause in the original draft we
21 sent out to the buyers to consider. We didn't do that for
22 the specific reason that it's something that really is best
23 to develop in the context of a dialogue because it's an
24 integral process.

25 So we asked the buyers to come back to us with a
26 deal that was, was not subject to a financing condition.
27 What that necessarily drives, then, is that the commitment
28 has to be, has to be a market commitment that's reasonably
29 expected that a, that a buyer would reasonably have to
30 have, subject to conditions which a lender would require to
31 have. So even if you could negotiate with your buyer an,
32 an agreement that did not have a MAC in it, then the, the
33 next problem would be if you also want to have committed
34 financing, then you're going to have to live with the

1 concerns that a lender might have.

2 So in this particular situation we were very
3 focused on, on their lender requirements as being the first
4 go at it. And so when we had their commitment letters or
5 drafts, we were able to see what the lenders were looking
6 for, and then we were then able to kind of be in a integral
7 process to work out something and make sense.

8 So what we, what we ended up with, our primary
9 criteria would be -- were that we wanted to make sure that
10 it was limited in scope in the sense that it didn't apply
11 to external events in the world, that it applied to
12 material adverse events relating to Arctic itself. And
13 that they related to the entire enterprise, not to Arctic's
14 business, is our -- rather than individual events, because
15 you can see that you have a branch some place that have --
16 which, which would have a level of impact on -- if you lose
17 a customer or something like that.

18 So that we -- so we went through the process of
19 trying to, first, make sure there was an Arctic event.
20 Secondly, it was one that happened between signing and
21 closing, and not something that happened or is anticipated
22 that might happen in the future. There's some future
23 nature to it but the idea was to combine the two at the
24 time that the transaction's at risk, between signing and
25 closing.

26 And then we wanted to -- so you see that the --
27 there has to be a material adverse effect to the business,
28 assets, assumed liabilities, results of operations of the
29 purchase of business taken as a whole. So that phrase, if
30 you're looking at the definition which is on page 7 of the
31 agreement --

32 THE COURT: Yes, I'm looking at it.

33 MR. MCELCHERAN: -- you'll see that in the fourth
34 line, the phrase, "taken as a whole," is very important, in

1 (a).

2 Okay, the next phase would be -- again, it's:

3

4 "... the ability of the Vendors
5 [(inaudible) Arctic-specific
6 event] to complete the
7 transactions contemplated by this
8 Agreement, [and that is] in each
9 case ... the circumstance,
10 development, or state of facts,
11 occurrence, change or effect
12 arising [from] or related to ...
13 the execution or announcement of
14 this Agreement or the
15 implementation of the transactions
16 ... including any loss or
17 threatened loss of, or adverse
18 change or threatened adverse
19 change in, relationship of any
20 Vendor with any of its financing
21 sources, creditors, employees,
22 customers, distributors ...
23 resulting from such announcement
24 or implementation ..."

25

26 So we're firstly focusing on the announcement of
27 the transaction and the, and the completion of the
28 transaction, whether the relationship of those things and
29 the impact on the business as a whole.

30 So, so we're dealing with -- so (a) is the
31 execution of ...

32 I'm sorry, I get lost in the language sometimes
33 and I have to go through it again. Bear with me for a
34 minute.

1 THE COURT: That's okay.

2 UNIDENTIFIED PERSON: My Lady, maybe I can
3 offer --

4 MR. MCELCHERAN: Well, just give me a minute.

5 UNIDENTIFIED PERSON: Okay.

6 MR. MCELCHERAN: Okay, well -- okay, maybe you
7 can help me. What I'm looking for is the exception, the
8 exception word.

9 UNIDENTIFIED PERSON: (Inaudible).

10 UNIDENTIFIED PERSON: (Inaudible).

11 THE COURT: Yeah, you -- I mean, you understand
12 what it means by looking at the exceptions, I assume.

13 UNIDENTIFIED PERSON: Yeah.

14 UNIDENTIFIED PERSON: (Inaudible).

15 MR. MCELCHERAN: Yeah.

16 UNIDENTIFIED PERSON: (Inaudible) all of those
17 (inaudible).

18 UNIDENTIFIED PERSON: (Inaudible).

19 UNIDENTIFIED PERSON: It's really (inaudible).

20 MR. MCELCHERAN: Yeah, these are (inaudible) --

21 UNIDENTIFIED PERSON: (Inaudible)

22 MR. MCELCHERAN: So, so --

23 UNIDENTIFIED PERSON: Yeah.

24 MR. MCELCHERAN: So we're dealing with the
25 exceptions dealing with:

26

27 ... execution or announcement of
28 the Agreement; a change in
29 economic, economic or political
30 conditions or securities, capital,
31 so on.

32

33 So those are exceptions.

34

1 ... loss of one or more customers;
2 any change in, change in currency
3 exchange rates; impact of weather;
4 any change affecting generally the
5 packaged ice business; either of
6 the bankruptcy proceedings --

7

8 which, of course, we all know about,

9

10 ... any acquisition of a
11 competitor by the Purchaser or any
12 of its Affiliates; the failure by
13 the Vendors to meet any earnings,
14 projections; any change in
15 applicable -- any change in
16 applicable generally accepted
17 accounting principles; any action
18 by any Vendor that is required
19 pursuant to this Agreement; any
20 act of terrorism or act of God;
21 any adoption or proposal of or
22 change in applicable law; provided
23 that in each case of each event,
24 circumstance, development, state
25 of facts, so on, referred to in
26 clause (ii) --

27

28 I'll give -- we can go back to the list in a moment.

29

30 ... such event or circumstance,
31 development, state of facts,
32 occurrence ... does not have a
33 materially disproportionate effect
34 -- adverse effect on the Purchased

1 Businesses, taken as a whole,
2 compared to other companies of
3 similar size ...

4
5 So the idea though -- so ...

6 THE COURT: Big picture.

7 MR. MCELCHERAN: Big picture. Big picture is
8 that there are a lot of exceptions from MAC which are
9 directed to things which are outside the control of Arctic
10 and they're all -- so change of currency, change of
11 circumstances in England or France or wherever it might be,
12 that might affect market. But -- and in most -- and
13 including -- you know, some of them are things which relate
14 to one customer, for example, or they're changes in the
15 market and there are some qualification there that relates
16 to Arctic affected more harm -- in a more harmful way than
17 others in their business of similar size.

18 So the point of it is that we try to manage it in
19 two ways, one by making sure that Arctic is the focus and
20 the, and the second is to make sure that it was -- there
21 are a number of exceptions which carve out things which are
22 outside of Arctic's control, which might have an impact and
23 make the deal more conditional, so if Greece defaults
24 again, if there's a tightening of, of the financing
25 markets.

26 And the reason why all that's important is
27 because these conditions -- this MAC was accepted by
28 lenders and put into their agreement, their commitment
29 letter, so the funding is committed on the same term as on
30 MAC. So they're -- so they are accepting it. If their,
31 their industry goes to hell in a hand basket, they still
32 are -- they're, they're not off the hook of the commitment
33 for that reason.

34 So in looking through this, we start off with --

1 and we actually were successful in the case of the
2 negotiation -- this negotiation. We were successful in
3 getting -- asking the buyer to ask its lenders to make
4 changes to their commitment letter, and they did, in order
5 to accommodate this language.

6 THE COURT: This -- okay.

7 MR. MCELCHERAN: So they were made -- this is
8 narrower from -- than from where they started, and we were
9 able to negotiate these exceptions and to put it on a
10 footing which allowed us to say to the court this
11 transaction is not unduly conditional on things outside of
12 Arctic's control.

13 So -- and the monitor's reviewed it so Mr.
14 Wasserman's keen on, on -- he would have done a much better
15 of telling you what the paragraph says, but the point of it
16 is -- and he will tell you that they are satisfied, as the
17 monitor, that this agreement is not unduly conditional as a
18 result of a MAC. And this -- and as well, they're -- and
19 for that reason they're -- they continue to recommend,
20 notwithstanding that there is an inclusion of that
21 condition which we perceive as being manageable.

22 Otherwise on conditionality, we have the ideal
23 buyer because, of course, when you're selling to a
24 competitor -- there are issues that arise from selling to a
25 competitor because they have the Hart-Scott-Rodino
26 legislation in the United States which is designed to
27 create a process similar to our competition law process to
28 ensure that competition is preserved in the United States
29 on -- and acquisitions can impact on that.

30 So we -- if we had been selling to a competitor
31 -- and as you know, the number one US ice -- package ice
32 provider, Reddy Ice, announced itself to have been in our
33 process. They, in fact, were in our process. You've seen
34 the summary of their, of their proposed transaction. It

1 was -- it contained conditionality related to Hart-Scott-
2 Rodino -- HS -- we call it HSR, Hart-Scott-Rodino
3 legislation in United States, which, which is not present
4 in this case in any material way. All cases have to go
5 through the process, but when you have a financial buyer
6 who's not in the business, as we do in this situation, it's
7 not a material concern.

8 THE COURT: And just on the issue of conditions,
9 it's contemplated that any syndication potentially by -- in
10 terms of the financing, that has to be -- that won't affect
11 the, the financing, the availability, and it's going to
12 take --

13 MR. MCELCHERAN: Absolutely.

14 THE COURT: It's going to end prior to the -- or
15 I think a --

16 MR. MCELCHERAN: Well, I --

17 THE COURT: -- few days before the anticipated
18 closing, is my understanding.

19 MR. MCELCHERAN: Yes, and I mean, there's,
20 there's a point and a nuance there -- I want to make sure
21 -- it is important, I want to make --

22 THE COURT: Okay.

23 MR. MCELCHERAN: -- sure I understand --

24 THE COURT: All right.

25 MR. MCELCHERAN: -- which is that the commitment
26 is a commitment. It does -- it's not subject to a
27 condition about syndication. It is a permit -- or they are
28 permitted an opportunity to syndicate, but they're still
29 committed -- it's sort of like if you're looking at the
30 stock market, it'd be like a bought deal. They're already
31 -- they, they are taking a risk that they're going to be
32 able to syndicate it and, and they're -- you know, that
33 process -- just so you know, that process is unfolding as
34 expected and we expect that they will be all through that

1 process in plenty of time to close. But the, the main
2 point is it's not conditionality here. It's not, it's not
3 dependent. Their, their obligation to lend is not based on
4 that.

5 THE COURT: Okay.

6 MR. MCELCHERAN: So, so the transaction is one
7 which is as clean as you could possibly expect for a
8 business this size. The conditionality relates to it --
9 and, you know, one other feature to it, of course, is that
10 -- and this is why your order is so important ...

11 I don't want to disturb you if you've got
12 something (inaudible) --

13 THE COURT: No, no, no. I was going to ask you
14 something. I'm on --

15 MR. MCELCHERAN: Yes.

16 THE COURT: -- to another point that I was just
17 reading, but continue with your point.

18 MR. MCELCHERAN: Okay. So my -- the point I want
19 to make is that what -- this business is one where there's
20 two things going on in this order that you need to focus
21 on, that are relevant. One of them is the sale of the
22 business and the approval of that process, and as you,
23 you're already aware from having read the brief and looking
24 at the order, also the assignment of contracts under 11.3
25 of the CCAA.

26 Now, the significance of those two elements of it
27 has implications for service, which is what I -- why I
28 spent some time with you this morning telling you about
29 what efforts we've made to notify as many people as we can
30 and why we're ongoing or continuing that process, which I
31 expect we'll be finished by the end of the day today or
32 possibly tomorrow, to make a final list of all possible
33 people who will get the order.

34 The point of this is that, is that the, the

1 transaction has a degree of complexity of conveyance. Not
2 only do we have a Canadian order, but also a US order. We
3 also have a lot of properties which are owned -- because
4 the ice business being what it is, it's essentially a
5 conglomerate of local ice businesses in the sense that each
6 -- there are premises all over the States, both leased and
7 owned, where their landlords, of course, are having their
8 lease transferred to a new, new company to carry on the
9 same business and owned properties are being transferred at
10 title, and there's just a lot of logistics associated with
11 the closing of the transaction which are all needed to get
12 underway.

13 It's why we need to be here today in order to get
14 the US order underway, in order to get all the mechanics of
15 closing going, and I think -- although I don't think it's
16 controversial, we are going out to all the landlords and
17 asking for their consent, and have made some progress,
18 progress in sending out a request to everyone, but not in
19 getting them all back yet. That's an ongoing process. And
20 we can -- we will at some point file an affidavit with the
21 results of that, of that process as -- at -- later on, not
22 today, because it's, it's not -- we are expecting to
23 continue that throughout the process and hopefully by
24 closing we'll have consents from everybody in a formal way,
25 just -- only because that -- from their -- it's a preferred
26 way of dealing with their landlords.

27 So your point.

28 THE COURT: I was going to deal with the excluded
29 liabilities, but just are you -- do you want me to deal
30 with the issue of assigned contracts now, or are you going
31 to talk about that later? I don't want to have you jump
32 around.

33 MR. MCELCHERAN: No, I, I don't mind doing -- I
34 think I, I want to address what you're interested in first,

1 so if you're interested in excluded liabilities, let's go
2 to that.

3 THE COURT: Well, I was just -- I just want to
4 make, make sure I, I clearly understand the excluded
5 liability. So liabilities assumed and excluded.

6 So I understand it's, it's all the liabilities
7 relating to litigation -- and I, I say this recognizing
8 that, of course, it's anticipated, fortunately, that
9 there'll be sufficient funds to deal with all known
10 unsecured creditors but I just want to understand what,
11 what the agreement contemplates.

12 Brandywine Ice Company defined benefit pension
13 plan.

14 MR. MCELCHERAN: They -- why, why a particular
15 one, why it's excluded?

16 THE COURT: Yeah, I don't understand. Just do I
17 need to be concerned about that?

18 MR. MCELCHERAN: No, it's a -- that specific one
19 is just -- there will be -- - as I understand it, and maybe
20 I'll let Ms. Pillon maybe speak to it at (inaudible).

21 THE COURT: All right.

22 UNIDENTIFIED PERSON: Do you know about that one?
23 Brandywine.

24 MS. PILLON: Not specifically. I think any of
25 the pension plans, My Lady, they're, they're -- I think
26 that may be the only pension plan that's involved.

27 THE COURT: Okay.

28 MS. PILLON: The other -- there are certain other
29 employee liabilities which have been addressed and assumed
30 as part of the process, but the specific pension plan has
31 not been.

32 MR. MCELCHERAN: Okay. Now I do remember the
33 facts about that one. That is -- that pension plan --
34 again go back a little bit in history. This, this company

1 acquire -- grew to the size of it by acquisition. So there
2 -- and there are a number of companies which are within the
3 group. There is a -- there was a -- we said there are no
4 pension -- we told you this at beginning --

5 THE COURT: Yes.

6 MR. MCELCHERAN: -- and it's true and continues
7 to be true today. There are no existing pension plans.
8 But when you do the due diligence, you'll find that
9 historically there was a pension plan for that particular
10 entity which was acquired, but it has been wound up. So
11 the -- and so the -- it was, it was already wound up before
12 it was acquired by Arctic, but it, it's still in the
13 history of that company and that's why it's in there, just
14 to be expressed that it's excluded.

15 THE COURT: My question was intended to, to just
16 make sure that there was no, no pension plan not being
17 assumed that it's excluded, that would affect someone's
18 rights that I'm not aware of.

19 MR. MCELCHERAN: No, absolutely correct --

20 THE COURT: But you, you --

21 MR. MCELCHERAN: -- and that's exact -- and that
22 was a red flag and I should have been more prepared --

23 THE COURT: That's fine.

24 MR. MCELCHERAN: -- for that question. But, yes,
25 the --

26 THE COURT: All right.

27 MR. MCELCHERAN: The bottom line of it is that's
28 not -- there's no -- nothing there.

29 THE COURT: Okay.

30 MR. MCELCHERAN: The -- what I want to -- but I
31 do want to tell you a little bit about the topic of
32 excluded liabilities and included liabilities. So the
33 liabilities that are being assumed are the liabilities
34 related to the contracts which are being assigned, of

1 course, and they're all the current liabilities of the
2 company. So -- and we -- this is a little bit unusual in
3 the way this transaction is structured and it partly
4 derives from both the information that was available to, to
5 the bidders in the data room and also to the fact that in
6 this particular case, unlike most CCAA cases, we continue
7 to pay the pre-filing payables and continue to pay the
8 current liabilities in the ordinary course. So in most
9 cases you cut them off on the filing date --

10 THE COURT: Right.

11 MR. MCELCHERAN: -- and you start picking them up
12 after. In this case, we treated the -- we just let them
13 flow through and continued to pay in the ordinary course,
14 and so as a consequence of that, we end up with an ongoing
15 flow to payables that are in course of being paid.

16 And so if you were take a snapshot at any given
17 time, we would have current liabilities and we would have
18 current assets. And a company who's used to taking that
19 snapshot as part of the normal way of doing its accounting
20 -- and, in fact, we had -- as we did audits every year, we
21 would have had audits which showed the -- you know, the net
22 working capital. There would have been calculations of the
23 working capital, the payables, and also the assets and, and
24 there was a -- we had done a calculation of the net working
25 capital for the purposes of data room.

26 So in order to preserve that structure and, and
27 to make for an appropriate adjustment on closing because
28 this company has a high degree of -- a big increase in its
29 net working capital closing -- around July 31 would be a
30 peak if you were looking at a graph of the, of the payables
31 and net working capital of this company. July 31 is, is
32 probably very close to the very highest peak of the amount
33 of receivables which are part of the working capital in our
34 -- in the system.

1 And so what we did in this particular case is we,
2 we used the concept of net working capital for the purpose
3 of the adjustment. So we measure the working capital as a,
4 as a standard working capital which is sort of an average
5 of the year, and then there is an amount included in the
6 purchase price which is intended to capture the difference
7 between what would be a normalized working capital net on
8 that basis to the anticipated closing working capital
9 balance -- net working capital balance. And so we have
10 this elaborate process for, for dealing with that.

11 But in a deal, what it means is that the assumed
12 liabilities have to include an assumption of the
13 obligations which would have otherwise been included in
14 this net calculation; in other words, the payables which
15 were treated as current payables for the purpose of
16 calculating net working capital.

17 So in this company's -- this situation, when we
18 close there will be payables which will not be paid from
19 the closing proceeds, but instead will be paid by the
20 purchaser in the ordinary course by just continuing to
21 carry on the business as they have. And they've agreed
22 that they will assume those.

23 Okay. Now, when you have this idea of assuming
24 payables, which is a little different from most CCAA cases,
25 then the focus then gets on, well, what am I not taking on
26 then, the, the need to, to define "excluded."

27 And so the excluded liabilities are set out in a
28 definition in 2.04 and the idea about excluded, given where
29 we are in terms of price, is that they're -- although
30 they're excluded from the purchase, purchase in the sense
31 that they are not assumed by the buyer and paid by the
32 buyer, they are --

33 THE COURT: It's anticipated they'll be addressed
34 by --

1 MR. MCELCHERAN: They'll be addressed in the
2 estate.

3 THE COURT: -- the balance of the proceeds, yeah.

4 MR. MCELCHERAN: And -- absolutely. So, so the
5 idea, then, is that what we're really doing is separating
6 the source of recovery of the creditors. Either they're
7 current and they get covered by the purchaser, or they're
8 not included in that definition of current, or they're
9 included in the definition of excluded and then they become
10 claims against the estate.

11 And so going forward, thinking forward what's
12 going to happen next is when we close we're going to have
13 our basic tray of payables dealt with by the buyer and then
14 we're going to have a lump of money, which after payment of
15 the, of the lenders, which will be available to pay the
16 creditor claims, we'll have to -- but we'll have a do a
17 claims process in order to assess that.

18 Now, if you remember the background in this case,
19 there's some outstanding class action litigation.

20 THE COURT: Yes.

21 MR. MCELCHERAN: And there's outstanding -- there
22 are settlements. There are -- is a DOJ settlement --

23 THE COURT: Yes.

24 MR. MCELCHERAN: -- and there's a settlement with
25 direct purchasers we're representing in these proceedings.
26 So there is -- there also is a Canadian outstanding class
27 action, was settled in theory, but not completed because
28 the filing.

29 So we have a number of different outstanding
30 litigation claims that need to be dealt with. We have
31 existing known claims that be dealt with, which are in
32 excluded category and will be dealt with by a claims
33 process. And what will happen will be that there will be
34 an order sought from you at, at a later stage which will

1 put in place a process which will permit all of those
2 parties to come forward and file their claim so that they
3 can be adjudicated or dealt with in this proceeding for
4 purpose of distribution.

5 And that's -- so -- and when that happens, we'll
6 then get all the hundred percent of the claims in, and then
7 we'll be in a position to assess what's available, that,
8 plus other issues arising from the closing.

9 I should mention to you that we're doing an asset
10 sale and what all -- we don't have the, the -- we haven't
11 done the tax returns yet. There will be tax implications
12 from this asset sale because every, every entity within
13 this organization is going to transfer its assets to a
14 buyer, either a Canadian buyer or a US buyer. Result of
15 that will be -- from an accounting perspective, there'll be
16 a disposition that'll give rise to probably recapture of
17 capital gains -- recapture of, of, of depreciation that's
18 been made over the, over the years, and, and maybe capital
19 gain in some cases of some of the assets. So that
20 calculation will have to be done and that'll have to be
21 paid out, too.

22 So we've got price, we've got assumption of
23 liabilities, we've got liabilities arising from the
24 transaction itself -- primarily tax liabilities, income tax
25 obligations -- and then we have claims of creditors which
26 will have to be discovered and adjudicated, and then we'll
27 have distribution of those to those creditors. So those
28 who are excluded are not being left out of -- are, are --
29 it's not that they're not going to be paid because of that.
30 It's just that they have different source of repayment.

31 And I guess, to some degree, some degree of
32 contingency associated with that because they have to share
33 pro rata, whereas the assumed liabilities will be paid in
34 full. And when I say shared pro rata, we believe that

1 there's plenty of money to cover them all so they get a
2 hundred cents on the dollar. We think that's true but, of
3 course, until we do the claims process, we don't know that
4 that's true. And so I, I should mention to you that
5 although it's highly likely -- and the affidavit says all
6 known claims will be covered, it's true -- there -- we
7 haven't done a claims process, and if there is some unknown
8 giant claim that comes up, there's a potential for pro rata
9 sharing among the creditors whose claims are not assumed.
10 But we don't see that as being a risk.

11 Okay. So that's just -- that's that concept.

12 As you'll see typical from these transactions
13 that there's -- well, just for your information, just to go
14 back over the things which are kind of obvious -- as the
15 SISP required, there is a deposit of ten million dollars
16 which is being held by the monitor. It will be applied on
17 the purchase price on closing.

18 The reps and warranties of the transaction are,
19 are very light, as -- you know, as compared to commercial
20 transactions typically, and it's -- which is in the order
21 -- basically, what we would -- you would expect to see from
22 -- in a court-ordered sale is that, basically, we have a
23 right to sell, is really the commitment. We're organized
24 to fund and all -- we've entered into this agreement in
25 accordance with the corporate niceties required. There's
26 been -- and, and then we're bringing this application for
27 authorization of, of the transaction by the court.

28 We, we have given a representation on page, page
29 23 of the agreement that there are no trade unions. Those
30 are simply the facts.

31 And you'll see in (b) at the top -- 5(b), the top
32 of 24, that's the Brandywine one I mentioned to you a
33 moment ago that you were asking about, and, and it's, it's
34 talking about that one. And so we're saying that there are

1 no sponsored or participated in pension plans, page -- top
2 of page 24 of the agreement. And this is really addressing
3 the point that you were making earlier, is there are no
4 other pension plans other than this Brandywine one which
5 is, which is an applicant. Again, because of its
6 acquisition, it acquired a company which had one in its
7 history; that's why it's there.

8 And you'll see that (a)(6), dealing with
9 Investment Canada Act, that representation is simply --
10 this is page 24 still -- is that -- and this is really a
11 question of allocation of the price that the Canadian -- an
12 Investment Canada Act threshold of 330 million is not
13 affected by. Well, it's a question of what's the value
14 Canadian business, and it's less than the threshold so they
15 don't have a condition (inaudible).

16 So the purchaser also acknowledges, on page 26
17 ... You'll see this is in, in caps. Agrees -- purchaser
18 acknowledges and agrees that except as expressed as revised
19 in 3.10 -- 3.01, all assets purchased and liabilities
20 assumed by the purchaser pursuant to this agreement will be
21 acquiring the same on an as-is, where-is basis with all
22 known and unknown faults.

23 So just to give you an -- and the reason why
24 they're able to say that and reason why they were
25 participating in the process with an attractive transaction
26 like this one is because of the due diligence that's been
27 made available to them and that they've actually taken
28 advantage of.

29 So looking just briefly, the covenants as well on
30 page 27, you'll see that in paragraph 1 of 4.01:

31

32 "The Vendors will promptly serve
33 on the service list in the CCAA
34 proceedings, as supplemented with

1 such additional parties as the
2 Purchaser may reasonably request,
3 and file with the Canadian Court
4 one or more motion records seeking
5 an order approving the sale and
6 purchase of the Assets pursuant to
7 this Agreement and providing for
8 the vesting ..."

9

10 So this is -- and the format has to be acceptable
11 to the buyer, and Ms. Pillon has been working with us on
12 making sure that the agreement is acceptable to them.
13 We've attached this document and any changes are being
14 acceptable to them. You'll see that their US recondition
15 orders all -- were also required.

16 So just going back to the first lines of the
17 Canadian approval vesting order, you'll see that we say we
18 would serve the CCAA list. We did that. And, and as
19 supplemented by such additional parties as purchaser may
20 reasonably request, we viewed that as being whatever they
21 want, we'll do. Any request is reasonable. So we done
22 done that.

23 And we're doing that, and we'll continue to do
24 that until we gone through the list and I, and I -- so that
25 we have something that we have -- everyone who has
26 potential at least has an opportunity to come back if
27 they're don't have -- didn't have a reasonable opportunity
28 to be here today.

29 Okay. So I have -- unless you have some
30 questions, I think I, I have no more submissions about --
31 you've seen the comparisons. I don't want to go through
32 them. You see this was -- this is a transaction from a
33 point of view of price is the highest price independent of
34 conditionality, and it is also a clean offer in terms of

1 the (inaudible) what we, what we are looking for and meets
2 the requirements of SISP.

3 So on the agreement, I have no other submissions,
4 unless you have questions.

5 THE COURT: I just have a question about the
6 assigned contracts.

7 MR. MCELCHERAN: Yes.

8 THE COURT: So this affidavit, then, would have,
9 would have served the counter -- I'm going to call them
10 counterparties.

11 MR. MCELCHERAN: Well, okay, let's --

12 THE COURT: This affidavit would indicate that
13 there's --

14 MR. MCELCHERAN: Yes.

15 THE COURT: -- been service --

16 MR. MCELCHERAN: What that indicates --

17 THE COURT: -- on the counterpart --

18 MR. MCELCHERAN: What that indicates is the
19 efforts that we've gone to to give notice to assigned
20 parties. We made a category of them. We used the
21 company's records for that.

22 The, the point that -- the point of this need for
23 the comeback clause is because we were looking -- my
24 friends looking our database have come up with other names
25 that like us to serve so, yes, that is a list of all the
26 people we have served where the objective was to give
27 counterparties and contracts notice, but when -- but the
28 additional names my friends have put forward and asked for
29 are of that category, too.

30 So there would be -- there are people who are
31 still being served, even today, that we've mostly, mostly
32 done, you know, between -- on Friday, Monday, Tuesday, we
33 were still sending out more notices to more people as
34 requested and some of them will be in that category. An

1 example would be -- possible one, but, you know, we, we
2 served Microsoft because it asked us to serve Microsoft.
3 We would never have done that in a Canadian case. But it
4 -- you know, we all use Word, it's on our system, and so we
5 have licences related to software and, and technically it's
6 and under 11.3. We don't really expect to have any problem
7 with them, but they are not on that list, but they are on
8 the supplemental list we've been adding.

9 So we're relying on the comeback to deal with
10 those additional ones, but we have served all the people
11 that are on that list as in category two (inaudible).

12 THE COURT: In other words -- I'm just trying to
13 just -- if I cross-reference this with --

14 MR. MCELCHERAN: Yes.

15 THE COURT: -- Mr. McMahon's affidavit --

16 MR. MCELCHERAN: Yes.

17 THE COURT: -- the -- I forget which schedule it
18 was, but those, those have been -- I think it's D, Appendix
19 D.

20 MR. MCELCHERAN: Appendix C to the affidavit, to
21 the ...

22 THE COURT: D, I believe, is what he -- so those
23 have been ... I guess my -- here's, here's where I'm
24 coming from.

25 MR. MCELCHERAN: Yes.

26 THE COURT: I'm looking at the provision in
27 section 11.3 --

28 MR. MCELCHERAN: Yes.

29 THE COURT: -- the preamble, which says, the
30 beginning of the section:

31

32 "On application by a debtor
33 company and on notice to every
34 party ..."

1 MR. MCELCHERAN: Yes.

2 THE COURT: And that gives the court the
3 jurisdiction. So I'm just looking to counsel to assure me
4 that I'm -- that you're satisfied --

5 MR. MCELCHERAN: Yes.

6 THE COURT: -- that I have the jurisdiction to
7 grant the order --

8 MR. MCELCHERAN: Yes.

9 THE COURT: -- either because all known -- you
10 know, all known counterparties have been served or to the
11 extent that they have been -- have not and others -- or to
12 the extent that others, you know, become identified, that
13 they will be served and have the right under the comeback
14 clause.

15 MR. MCELCHERAN: Yes.

16 THE COURT: So that's what I'm looking for, that
17 that --

18 MR. MCELCHERAN: Yes.

19 THE COURT: -- doesn't affect my ability under
20 the, under the --

21 MR. MCELCHERAN: Yes, absolutely.

22 THE COURT: -- act to -- okay.

23 MR. MCELCHERAN: Absolutely. And so -- and that,
24 and that is true.

25 THE COURT: All right.

26 MR. MCELCHERAN: I'm just telling you that when
27 you asked me about the affidavit --

28 THE COURT: Yes.

29 MR. MCELCHERAN: -- today's affidavit is telling
30 you an historical story.

31 THE COURT: Yes.

32 MR. MCELCHERAN: And so I'm saying --

33 THE COURT: But just so you know where I'm
34 coming, this is --

1 MR. MCELCHERAN: Yes.

2 THE COURT: It's 11.3 that I'm just concerned
3 about, that there's no issue --

4 MR. MCELCHERAN: Yes.

5 THE COURT: -- from -- you know, and the monitor
6 can -- counsel for the monitor can confirm this in terms of
7 my jurisdiction to, to be able to do --

8 MR. MCELCHERAN: Yes.

9 THE COURT: -- what you're asking me to do under
10 section --

11 MR. MCELCHERAN: Yes.

12 THE COURT: -- 11.3.

13 MR. MCELCHERAN: And, and the only nuance is that
14 we are using the comeback clause to, to, to supplement
15 your --

16 THE COURT: All right.

17 MR. MCELCHERAN: So you can, so you can say to
18 yourself and be comfortable that everybody who is a
19 counterparty to a contract has been served, or will be
20 served with your order, with an opportunity and knowledge
21 that they can come back if they have a concern about the
22 effect of the order. But the order -- and, and my -- the
23 nuance for you is that the comeback clause is, is a proxy
24 for the requirement of 11.3 of notice. That's, that's --
25 and that's why we presented it for you, so --

26 THE COURT: Okay.

27 MR. MCELCHERAN: -- that -- because -- and the
28 reason for it is -- and this isn't -- just take it back a
29 little bit. This, this 11.3 is new for us. This --
30 there's -- and we've done -- I've done -- as you may
31 imagine, all of us sitting in the room have been involved
32 in many transactions. I've never seen a concern about the
33 buyer being able to continue to use the Microsoft licence
34 to use the computers that are in --

1 THE COURT: Um-hum.

2 MR. MCELCHERAN: -- in, in -- you know, to use
3 Windows -- continue to use Windows. I mean, I -- yes,
4 technically, they're affected by the order in the sense
5 that now the person who's paying their bills is going to be
6 somebody different than it was before from a point of view
7 because of transactions and asset transaction, but we, we
8 are -- this is a new thing for us to see 11.3 being
9 (inaudible) okay, well, we're going to have to use -- we're
10 going to have to, you know -- if you're going to use the
11 section, we're going to have take into account that every
12 possible contractual relationship within the whole
13 organization, across all, all of North America, has to be
14 notified.

15 So we, we took that seriously by notifying
16 everybody -- 5,000 people, all people who have -- in the
17 sense that they are on our payable list of people who are
18 known to be creditors and we deal with them, on the theory
19 that maybe they're contract and maybe they're being
20 assigned. In reality, what's going on is that the same
21 business is being carried on, the same people who are --
22 who sold the product Arctic Glacier continue to be -- you'd
23 received -- you know, get the benefit of having sold a
24 product to Arctic Glacier and will continue to get the
25 benefit of the contract that they had entered into because
26 the other elements of 11.3 are being met.

27 So if you look at 11.3, the other things that are
28 in there are (inaudible) service, yeah. Service is out
29 there and, and tons of service, and on top of that, except
30 if there's any gaps or anything missed, well, then we're
31 going to use comeback and that's going to -- we, we -- in
32 my mind, it's even more effective than the notice that
33 would have gone with this order because it -- they have an
34 opportunity to be very specific and they, and they can --

1 if they have a problem, they -- you'll hear about it.

2 But we were -- but, but if you look at the other
3 elements of 11.3, all of them are met here. And that's --
4 if you look at our brief, we talked about that in our
5 brief, is that you, you have all of the obligations being
6 assumed, all the arrears are being paid in this case either
7 contractually by -- under our contract by assuming the
8 current obligations or otherwise by payment. But again,
9 we're talking about the lease. The rent is current
10 obligations incurred including -- and, and assumed
11 obligations. But they're all being assumed by the buyer
12 and they've agreed that they would assume them going
13 forward on the same terms.

14 You'll see that we have -- as well, we have --
15 you have a capitalized buyer here that is capable of
16 performing his obligations. You see the information
17 relating -- it's capitalized but, you know, committed debt
18 package. There's a significant amount of equity being
19 injected into this company where -- in a high degree of --
20 in order to complete the transaction. It's only part
21 financed by firm debt to, to the degree you've seen in, in
22 the material that's provided to you on a confidential
23 basis.

24 So it's highly -- it's a lot of equity in this
25 business as it's purchased. And you see as well that it's
26 appropriate -- now, the term appropriateness, which is a C
27 category, what does appropriate mean in this context? I
28 think that it -- and we don't have a lot of case law on
29 11.3. There's been a couple shots at trying to litigate; I
30 had one last -- couple weeks ago. I was going to litigate
31 11.3 and (c), which is the one about appropriateness.

32 In this case, this was highly appropriate to make
33 this assignment because it's necessary for the contuence --
34 continuance of the business, that looking at one core

1 group, the lessors, that it's, it's necessary that we deal
2 with the leasehold, the, the -- all of the prep -- pair of
3 glasses fell down.

4 It's, it's necessary that the leases be
5 transferred because that's where -- this is a business all
6 about locations. You make the ice, you package the ice,
7 you transport it to the customers within a locality of, of
8 the premises. Premise is either leased or it's owned. The
9 lease -- the location of that control or service of that
10 particular market, which is very geographically local,
11 depends on the premises being transferred. So it's
12 critical to the business and those underlying -- the
13 underlying philosophy behind the transaction.

14 Secondly, using transportation. Another key
15 element to this business is you have to move the product
16 from one place to another and you need a lot of trucks to
17 do that, and how are they financed? They're financed by
18 leases. There's assumption of leases here, but the
19 transportation transactions, those are critical.

20 Bags, the bag supplier. Not specifically
21 notified of this proceeding, but we need to have bags that
22 say Arctic Glacier on them or else we can't make our
23 product. It's a packaged ice business.

24 So what we're dealing with -- the point of this
25 is that all of these, these elements, these contractual
26 elements are all necessary for the continuation of the
27 business and are the essence of the transaction itself. If
28 they can't be delivered, then there is no transaction.

29 So, so I say in terms of appropriateness,
30 capability, and the monitor's recommendation which he's
31 already given -- you've seen in the report --

32 THE COURT: And, and in terms of the restriction
33 in 11.3(4), because the court has to be satisfied that all
34 monetary defaults in relation to the agreement, that,

1 that's actually a term in -- as I recall, that was in the
2 APA.

3 MR. MCELCHERAN: Yes.

4 THE COURT: So that's, that's covered. That's
5 the court's assurance that that, that will be dealt with.

6 MR. MCELCHERAN: Right.

7 THE COURT: All right.

8 MR. MCELCHERAN: Hence --

9 THE COURT: And that's going to be when? On, on
10 close? Like, what, what --

11 MR. MCELCHERAN: Well, there -- we're paying --
12 it got to be, by assumption in the agreement --

13 THE COURT: By assumption of the liabilities, but
14 to --

15 MR. MCELCHERAN: Yes.

16 THE COURT: -- the extent -- would that include
17 -- when they refer to monetary defaults other than those
18 arising as a result of --

19 MR. MCELCHERAN: Yes.

20 THE COURT: -- this proceeding or insolvency,
21 that's, that's -- any amounts owing under those contracts
22 will be assumed.

23 MR. MCELCHERAN: Yes. So the way that the
24 statute works, if you look at the exceptions --

25 THE COURT: Yes.

26 MR. MCELCHERAN: -- you have the -- when you're
27 looking at that section, (4), is -- when you're looking at
28 that section it's talking about -- it has provisions in it
29 saying it excludes out the non-monetary default proceedings
30 in insolvency.

31 THE COURT: Yes.

32 MR. MCELCHERAN: So the, the conclusion that the
33 courts have, have made and we've included in our order, the
34 order we presented to you, provision which tells the

1 landlords and the other parties that they can't terminate
2 the agreement because of our insolvency, because of Arctic
3 Glacier's ceasing (inaudible) proceedings and because of
4 non-monetary defaults that existed.

5 But in other words, your order, one way it does
6 affect the other parties is that they won't be able to
7 terminate the, the, the lease, for example, in the hands of
8 the purchaser because, in history, Arctic Glacier went
9 bankrupt and Arctic Glacier went into a CCAA proceeding,
10 and it was, it was insolvent and went through this process
11 and you assigned the contract.

12 So the way that the, the, the statute excepts out
13 those provisions, you can, you can be in default of those
14 things and that's still okay, the court will still make the
15 assignment. And you'll see in the order what it says is
16 those things, those three, there's a prohibition on the
17 assignee from terminating based on -- or to other remedies
18 based on those three things.

19 But the monetary defaults have to be paid, will
20 be paid. They're, they're -- except if there, if there
21 were -- was such a thing as an assumed contract or an
22 assigned contract where there was -- where it wasn't
23 included in a working capital calculation, it'll still be
24 paid. Be paid in, in -- on closing.

25 But we're not -- we, we -- again, because you
26 made the initial order you made was -- that we would
27 continue to pay in the ordinary course even if --

28 THE COURT: Um-hum.

29 MR. MCELCHERAN: -- there's a pre-filing debt,
30 there are no arrears.

31 THE COURT: Um-hum. Um-hum.

32 MR. MCELCHERAN: And the cash companies -- you've
33 seen the reports on cash flow over the period of the case,
34 that we've under-utilized our DIP.

1 THE COURT: Yes.

2 MR. MCELCHERAN: I'll tell you, our biggest issue
3 at the moment is trying to avoid cash weep because we have
4 too much cash. So not too much -- not way too much cash,
5 but a little bit too much cash.

6 UNIDENTIFIED PERSON: (Inaudible).

7 MR. MCELCHERAN: We all have to --

8 THE COURT: The point is --

9 MR. MCELCHERAN: -- get our bills in.

10 THE COURT: The point is I don't have to be
11 concerned about 11.3(4).

12 MR. MCELCHERAN: Exactly right.

13 THE COURT: That's, that's, that's what you're
14 telling me.

15 MR. MCELCHERAN: Yeah, so, so in terms of hitting
16 off the various points, you got service, which is a very
17 broad concept of service. To the extent there are any
18 gaps, they're all being fine-tooth gathered through, and we
19 will, and we will send anybody who hasn't got -- if we find
20 somebody who hasn't got notice yet, we'll give them copy of
21 the order. We believe that everybody has been served, but
22 we're still subject to -- we're, we're -- and we will
23 continue for at least -- you know, all we think we're going
24 to need to do is settle with the purchaser the final list,
25 which -- and -- which we think that we're going to be able
26 to do in the next day or -- either today or tomorrow.

27 But we will get the final list and, and, and we
28 served -- everybody we served after last Friday is going to
29 end up with a copy of, of the order -- your order, which
30 will contain the comeback provision, and they will know
31 that they're -- we will also make it clear in the package
32 they get that they, that they're -- they -- their attention
33 will be drawn to the comeback provision.

34 Now, I didn't discuss that with anybody, but I'm

1 telling you that's what we will do.

2 So, the -- in order for them just, just to make
3 sure that you're, you're comfortable that you have the
4 service part of it knocked off, and then on the transaction
5 itself -- I don't want to say it's self-evident, but in
6 detail we've been very careful in the APA to make sure that
7 we're meeting 11.3 and giving you what you need. And, and
8 the characteristics of this buyer are such that you should
9 be satisfied both about the appropriateness and the ability
10 to complete or perform.

11 THE COURT: Okay.

12 MR. MCELCHERAN: Okay. So now again I'm going to
13 say I think I've -- oh, let -- I, I should talk about
14 sealing.

15 THE COURT: Okay.

16 MR. MCELCHERAN: Unless you --

17 THE COURT: And, and I --

18 MR. MCELCHERAN: Yeah.

19 THE COURT: And I want to talk about the
20 extension post-closing issues and the extension of the stay
21 and to what period of time.

22 MR. MCELCHERAN: Okay. So -- and also we should
23 at the end think about your timetable --

24 THE COURT: Yes.

25 MR. MCELCHERAN: -- for the hearing of any
26 comeback motions.

27 THE COURT: Yes.

28 MR. MCELCHERAN: Okay. So let's, let's go
29 through the, the topic of sealing, if, if you mind taking
30 my order first. So you had the -- I had the stay extension
31 first in my factum.

32 But to deal with the sealing, it is -- it's not
33 unusual in CCAA proceedings to provide a lease a temporary
34 sealing order for the reason -- so you'll see that at page

1 18 ...

2 THE COURT: We -- page 18 of?

3 MR. MCELCHERAN: My -- I'm sorry, I'm going to my
4 brief.

5 THE COURT: Okay.

6 MR. MCELCHERAN: Okay. So in the brief you'll
7 see on page 18 we talk about -- I, I'm giving the reasons
8 there why we think a sealing order should be made at this
9 time. I'm not asking for a permanent sealing order. It
10 should be subject to a further order of court, but -- as
11 always would be.

12 But what I -- the, the first, the first reason
13 relates to this process itself, and that is that we, we're
14 not -- you know, touch wood -- things can happen between
15 now and closing that may result in either the MAC or some
16 other reason the, the transaction just doesn't close. And
17 if we were in a situation where we have to remarket the
18 asset again, it would be very detrimental to that process
19 to have full disclosure of, of the information relating to
20 the bids in this process.

21 So the confidential report that you've got is all
22 about protecting information in relation to a subsequent --
23 our, our process itself, to protect it from closing, and
24 that's a very common reason for courts in CCAA cases to
25 seal the bids.

26 The second reason is one related to the special
27 nature of the fund as a public entity. And I know you've
28 read it so I'll -- my first point here. But the point that
29 I want to make for, for you is that there's a concern --
30 our concern is to -- is not to give misleading information
31 to the marketplace by not including both the positive and
32 the negatives.

33 I mentioned to you earlier that we have -- like,
34 there's going to be a tax bill and there's going to be

1 claims of creditors which we don't know how much they are
2 until we do the claims process. And so at this point we
3 want to seal the information in relation to the bids so
4 that, so that the public information does not include
5 information related to price at this stage until we can
6 give a better story which is more complete and therefore
7 more a basis for trading in a market.

8 We've been -- and this is not in evidence but
9 I'll say it anyway because it's part of -- some degree of
10 judicial notice can be taken from it. Trading in the
11 market has been -- has not been -- there hasn't been a
12 dramatic change in the market, both the price and in
13 volumes, because the information we've given isn't enough
14 for people to make a judgment about what they should do.

15 So our concern about making is that we don't want
16 to have trading based on speculation where there's a
17 incomplete story being told. And so our position is, in
18 this case because of the public nature of our entity and
19 the, and the uncertainties, we want to keep the information
20 sealed at this stage.

21 So that's -- that was, that was our reason for
22 stealing it -- sealing in. If you look at the test -- I, I
23 -- in my submission, those -- if you look back page -- the
24 page before, page 17, there's, there's a description of
25 the, of the tests that are applying. And I, I'd say in
26 applying those factors to these, to these facts -- so, so
27 the substantial risk has to be substantial and real. I've
28 given you what we think is real in terms of commercial
29 interests in question, which are the interests of our
30 stakeholders.

31 It's in the -- and I, I say as well, the (b)
32 test, which is a public interest concern, is met in this
33 situation both because -- for both reasons. One, to
34 protect to the public interest in CCAA processes working

1 effectively by not having disclosure of information which
2 is harmful to our CCAA process, but also the public
3 interest in having fair disclosure, disclosure that's,
4 that's meaningful to the public in the marketplace to
5 affect marketing.

6 And in the context of reasonable alternatives,
7 that's a concern about restrictions, I think, in this
8 particular situation. We don't have any alternative but --
9 for now, but we accept that we're not asking for a
10 permanent order. We're asking for an order that covers the
11 situation until we're able to respond to the two points
12 I've raised in my, in my factum as being relevant.

13 Okay. You, you had a question about the stay of
14 proceedings extension.

15 THE COURT: Yeah. As, as I read the material, I
16 think it was contemplated that with input from the
17 purchaser a process is going to be agreed upon for -- to
18 deal with post-closing matters. Is that -- did I read that
19 right?

20 MR. MCELCHERAN: Yes, and that, and that motion
21 has not happened yet. We're -- well, okay, well, there's
22 an agreement that needs to be made which will be called a
23 services agreement or administration agreement, something
24 like that, which would be -- which would have been
25 discussed at -- and the monitor will probably be -- Mr.
26 Wasserman will tell you more about it. But the capsule of
27 it is that we're going to do a claims process, we're going
28 to need access to people who would then be hired who would
29 have been already by that time, post-closing, be employees
30 of the purchaser, so we need to work out a practical way of
31 getting access to them in order to deal with the claims
32 process as may be needed.

33 THE COURT: Here's the --

34 MR. MCELCHERAN: And there's some economics

1 around that, too.

2 THE COURT: All right. I, I'm -- I, I want you
3 to be mindful of when you can get before me and, and adapt
4 your timelines to that.

5 MR. MCELCHERAN: Sure.

6 THE COURT: That's my concern. So I can tell you
7 that I'm here the first couple of weeks of July.

8 MR. MCELCHERAN: Okay.

9 THE COURT: I know they have me booked in things,
10 but we can, we can, you know -- if need be, we can schedule
11 a time period then. Then I'm not available till the first
12 week of September.

13 MR. MCELCHERAN: Okay.

14 THE COURT: So I know that it was contemplated a
15 motion -- there -- it may have been contemplated that, that
16 the post -- some of the post-closing matters would occur in
17 August when, frankly, I'm out of town. So, so if you want
18 to adjust the extension date till when we can get a date,
19 that, that's what I'm raising for you.

20 MR. MCELCHERAN: Yeah, absolutely. And so
21 there's two things -- two, two responses to that. Firstly,
22 we need to get the comeback done before -- the comeback
23 date to be in the first two weeks of July.

24 THE COURT: Yes, that's fine.

25 MR. MCELCHERAN: Okay, and that seems to work.

26 THE COURT: Well, I'm going to, I'm going to, I'm
27 going to have to speak to the people who control my life,
28 but I think we can make that happen.

29 MR. MCELCHERAN: Yes, okay. And the second part
30 about, about the timing of the claims process --

31 THE COURT: Yes.

32 MR. MCELCHERAN: -- I, I have -- I'll have to
33 speak to my friends about how we're going to manage that,
34 but it would be in the interests of everyone if we could

1 get the claims process rolling in August when -- if you're
2 not available until September, that's going to be a bit of
3 an issue, I think. I, I -- we're not sure if it's going to
4 be an issue or not. We'll -- that's, that's new
5 information which we'll have to deal with.

6 So as far as extension goes, we will extend into
7 September in order to have the extension date at a time
8 when you're back because I don't think -- because nothing
9 turns on that.

10 THE COURT: I mean, I'm -- I think I'm available
11 the very first week of September -- I can check that -- so
12 we're only talking a matter of days --

13 MR. MCELCHERAN: Yeah, that -- okay.

14 THE COURT: -- to ...

15 MR. MCELCHERAN: Fair enough.

16 THE COURT: In terms of dealing with ...

17 MR. MCELCHERAN: Yeah, the extension part of it,
18 that's, that's fine. We, we anticipate we would be -- we
19 might be bringing a motion in relation -- well, either we
20 or the monitor would be bringing a motion, depending on
21 when the closing occurs, that we would be able to hit the
22 ground running pretty quickly after that with a claims
23 process.

24 Okay, so I, I think that the problem that may be
25 solved -- it could be that we could try to work to an
26 earlier date in July to come back but -- or it could mean
27 that we may have to delay it till September when you come
28 back. I, I have to discuss that with --

29 THE COURT: Well, sorry, but the, but the post-
30 closing issues can't be dealt with in July. It's going
31 to --

32 MR. MCELCHERAN: No, no.

33 THE COURT: -- have to deal with post-closing,
34 so --

1 MR. MCELCHERAN: I agree.

2 THE COURT: Yeah.

3 MR. MCELCHERAN: I agree. The -- I agree. The,
4 the point I was making was that the, the, the issue of
5 whether or not we have an agreement, for example --

6 THE COURT: On the process.

7 MR. MCELCHERAN: -- on, on, on what will happen
8 after closing for --

9 THE COURT: Yes.

10 MR. MCELCHERAN: -- for (inaudible) --

11 THE COURT: That can be -- yes.

12 MR. MCELCHERAN: That could be done before, and
13 it's possible it could be done as well before -- we could
14 have a form of claims bar ordered that wouldn't actually be
15 implemented until after. In other words, the order could
16 be -- if we could -- I'm only throwing it out because I
17 haven't spoke to my friends about it, but it --
18 theoretically, the, the order calling for claims and, and
19 approving the process by which claims will be called for --

20 THE COURT: I see.

21 MR. MCELCHERAN: -- could be made at any time.
22 It's just a matter of getting it ready and getting it in
23 place, and there are some -- there is complexity to it. So
24 -- but that leave -- I think that's something you're going
25 to have to leave with us to see whether -- about how we
26 could fit with your schedule --

27 THE COURT: Okay.

28 MR. MCELCHERAN: -- and get what we need done in,
29 in a timely way so that it gets to the creditors and, and
30 works out effectively. I, I suspect I know what's going to
31 happen, if we have a claims bar order before it can really
32 start, it's going to have to be recognized in the US
33 proceeding, for example.

34 THE COURT: Yes.

1 MR. MCELCHERAN: And so there's a, there's a gap
2 of time that's associated with that, too. So we haven't
3 really thought through the --

4 THE COURT: And appropriate notice and all of
5 that, so --

6 MR. MCELCHERAN: Yeah, so we haven't thought
7 through the logistics of that order, but what we -- but I'm
8 very pleased to know your schedule because then we will
9 work around that schedule about getting things when you're
10 here, on appropriate notice for what it is, and in the case
11 of the -- for example, the administrative services
12 agreement, I don't think that that's going to be of any
13 great interest. It -- you know, it's, it's -- a small
14 group's going to be interested in that: purchaser, the
15 monitor, and us, and --

16 THE COURT: Sorry, what's that? What's that
17 you're --

18 MR. MCELCHERAN: Oh, this is the agreement that
19 provides access to the people for the -- to, to administer
20 the claims process, for example.

21 THE COURT: Oh, okay.

22 MR. MCELCHERAN: We need that before closing. We
23 would like to have that before close, before closing. So
24 that would be one appearance we'll have -- we'll roll into
25 the July -- the first two weeks of July when you're
26 available -- time that you're available, and I don't
27 anticipate that one will be -- you'll be too concerned
28 about how much notice that's given to the rest of the
29 world. Just the service list probably be sufficient.

30 And probably we -- you know, it may be -- if
31 there are any, any comeback motions, we would coordinate
32 that so we would deal with it on the same day. Again, I'm
33 not anticipating any comeback motions.

34 THE COURT: Yes.

1 MR. MCELCHERAN: But if we -- you know, that's
2 using that time frame, if you have a date reserved for
3 that, for any comeback motions, then we may be able to
4 access that date for other things that may be
5 administrative, that we would be able to get in place in
6 time for that --

7 THE COURT: Okay.

8 MR. MCELCHERAN: -- with appropriate notice. But
9 we're, we're a little bit ahead of ourselves because
10 today's the most important day --

11 THE COURT: Yes, I appreciate that. But I --

12 MR. MCELCHERAN: -- and --

13 THE COURT: -- know that there were certain time
14 periods contemplated in the material and I wanted you to
15 make sure that you were aware of my own availability --

16 MR. MCELCHERAN: Yes, My Lady, and, and that's --

17 THE COURT: -- so that you could -- you can
18 adapt.

19 MR. MCELCHERAN: And we will.

20 THE COURT: Okay.

21 MR. MCELCHERAN: Okay. So the -- and I'm just
22 trying to give a preview about we -- what we'll try to do
23 so -- because I think we might do some things before you
24 go, and some things can wait till after.

25 THE COURT: All right.

26 MR. MCELCHERAN: And the extension can obviously
27 wait till -- can go into September, no problem.

28 THE COURT: So what date do you want it till? Or
29 do you want -- I, I mean, we can -- I'll have to find out
30 my availability anyways.

31 MR. MCELCHERAN: Yes.

32 THE COURT: So in that break you can, you can
33 discuss it.

34 MR. MCELCHERAN: Yes. Okay. So I think I've

1 been on my -- unless, again, if you have any more
2 questions.

3 THE COURT: No, I think I've, I've, I've asked
4 you what I, what I wanted to ask you. I'm not promising I
5 won't have anything more to, to say --

6 MR. MCELCHERAN: Absolutely.

7 THE COURT: -- but --

8 MR. MCELCHERAN: I'm not going anywhere.

9 THE COURT: But that's fine, you've satisfied the
10 issues that I've, I've raised.

11 MR. MCELCHERAN: Thank you.

12 THE COURT: Counsel, are you all okay to
13 continue? I am, but are you --

14 I should ask Mr. Clerk. Are you okay to press
15 on?

16 Mr. Wasserman?

17 UNIDENTIFIED PERSON: (Inaudible).

18 THE COURT: Everybody okay to continue?

19 UNIDENTIFIED PERSON: Yes.

20 THE COURT: All right.

21 MR. WASSERMAN: That's fine. My Lady, just in
22 terms of a couple of procedure matters --

23 THE COURT: Sure.

24 MR. WASSERMAN: I don't know whether you'd like
25 to hear from me first or whether you want to hear from the
26 other counsel in the courtroom, and I'm happy to speak
27 after they speak. But before I do that, I just -- what I'd
28 like to do is I'd like to hand you up the envelope with the
29 confidential appendix.

30 THE COURT: All right. Yes.

31 MR. WASSERMAN: And perhaps I could take back the
32 one that was delivered --

33 THE COURT: Yes.

34 MR. WASSERMAN: -- the courtesy copy.

1 THE COURT: I'm removing my stickies.

2 MR. WASSERMAN: And then I'm, I'm, I'm in your
3 hands as to --

4 THE COURT: Well, it might make sense for you to
5 wait until I've heard from everybody so you can, you can do
6 the wrap-up for me.

7 MR. WASSERMAN: Thank you, My Lady.

8 THE COURT: If any issues are addressed or raised
9 by any, any of the speakers, I'm going to want your input
10 on it.

11 Who else would like to say anything to me?

12 MR. BOMHOF: Good morning, My Lady.

13 THE COURT: Good morning.

14 MR. BOMHOF: I'll move here just to --

15 THE COURT: Sure. Yes.

16 MR. BOMHOF: -- speak clearly.

17 THE COURT: Yes.

18 MR. BOMHOF: Yes, My Lady. I'm Scott Bomhof,
19 here for the lending group.

20 THE COURT: Yes.

21 MR. BOMHOF: The lenders here are Canada Pension
22 Plan Investment Board as agent lender and West Face Capital
23 and they are -- their debt structure is summarized in the
24 monitor's report at page 23 at paragraphs 5.18 and 5.19.

25 Throughout the process, Your Honour, the -- My
26 Lady, sorry.

27 THE COURT: That's okay. I know in Ontario they,
28 they call me something different.

29 MR. BOMHOF: Throughout the process, My Lady,
30 they, the lenders have been the largest financial
31 stakeholder in the Arctic Glacier group of companies.
32 Currently, according to the monitor's projections, they'll
33 be out about \$300 million under the three facilities that
34 are currently in place, the first lien credit facility, the

1 second lien credit facility and the DIP facility approved
2 by this court.

3 Throughout the SISP in accordance with the
4 process, lenders have been outside and completely in the
5 dark as to where things were going so it was only a week
6 or --

7 THE COURT: They were consulted or they were,
8 they were -- there was some communication with respect to
9 the final bids, as I understand it.

10 MR. BOMHOF: Yes, in accordance with the
11 settlement --

12 THE COURT: It was consent or -- yeah, yeah,
13 yeah.

14 MR. BOMHOF: -- order that was taken out in
15 April, I believe.

16 THE COURT: Yes. Yeah.

17 MR. BOMHOF: We were consulted after the end of
18 phase 2 but just before the bids were selected or that this
19 bid was selected. And the lenders are very -- are here to
20 day to support the transaction, Your Honour.

21 Throughout, throughout the process of the DIP,
22 when this started there was a real concern that the, that
23 the secured credit, the secured credit facilities would not
24 be repaid in full. And even in the pre-filing monitor's
25 report there was an indication that unless the DIP was
26 approved by this court, there was a risk of immediate
27 liquidation to the company. So the lenders are very happy
28 to see a transaction that both repays the secured creditors
29 in full, Your Honour, as well as continues the business,
30 provides payment for all the other, I'll call them
31 subordinate creditors, and there's one potentially prior
32 creditor that's here today, TD, under their 150 or \$125,000
33 letter of credit facility, and potentially provides a
34 recovery to unit holders.

1 Without presupposing what's going to happen
2 today, Your Honour, also the lenders would like to thank
3 the court for the numerous last-minute applications, making
4 time to hear these motions, also making it available for
5 people to call in. Most of our appearances, other than Mr.
6 DeMarinis on day one and myself today, have been
7 accommodated by teleconference. And also just to pass on
8 our thankfulness to the monitor for running the process,
9 the monitor, the counsel and the CPS, for running a process
10 that brought forward the, this transaction today that
11 provides a recovery to everyone.

12 And subject to any questions you have, Your
13 Honour, I'm just here to provide our consent and our
14 support for the transaction.

15 THE COURT: I have no questions. Thank you very
16 much.

17 MR. BOMHOF: Thank you.

18 MS. HOWDEN: I guess it's good afternoon now, My
19 Lady.

20 THE COURT: Yes.

21 MS. HOWDEN: Catherine Howden here for --

22 THE COURT: Yes.

23 MS. HOWDEN: -- TD Bank. Just to make it clear,
24 we're not opposed to the proposed order. It's not clear
25 though, from TD's perspective. There have been some
26 discussions in terms of how they're going to be treated on
27 the closing of the transaction with respect to their letter
28 of credit. So TD just wants to reserve its rights to,
29 under the subordination agreement, to be paid in full on
30 closing if those arrangements are not otherwise made to its
31 satisfaction, so ...

32 THE COURT: All right.

33 MS. HOWDEN: Okay? So that's, that's my comment.

34 THE COURT: No issues with respect to that?

1 MS. HOWDEN: That's --

2 THE COURT: All right. That's fine.

3 MS. HOWDEN: I don't believe so.

4 THE COURT: Okay.

5 MS. HOWDEN: Okay. Thank you.

6 THE COURT: Good.

7 MS. PILLON: Good afternoon, My Lady.

8 THE COURT: Good afternoon.

9 MS. PILLON: Liz Pillon on behalf of the
10 purchaser. Just a couple of points, if I might.

11 The service issues, so people are working back at
12 the office in terms of determining if there are any other
13 parties that we believe need to be served in this process.
14 We think that process will end by the end of the day or
15 tomorrow morning, in which case we'll provide the vendor
16 with a list of additional parties who we believe are
17 necessary and that service can be effected as of tomorrow.

18 THE COURT: Okay.

19 MS. PILLON: So you'll be -- you'll have some
20 comfort that there is an end date which the service can be
21 effected. And then we think the comeback provisions that
22 are found in the vesting order do offer a positive
23 solution, so provides for the vast majority of people and
24 the vast majority of contracting parties who were served in
25 advance of Friday. This motion and this, this order,
26 should it be granted, will be applicable and no comeback
27 is, is necessary with respect to those individuals. Those
28 are the vast majority. And so you should have a lot of
29 comfort from that, My Lady. We're really only talking
30 about a small subset of people who, for various reasons,
31 weren't served on, prior to Friday.

32 And we think the comeback mechanism offers a
33 reasonable and a practical solution so we can keep the
34 timing going on this because we do have the, a tight time

1 frame in which to close and we have the issue with respect
2 to recognition proceedings that are also ongoing at the
3 same time. So we're trying to work within those time
4 frames and, and look at a practical solution and we're
5 thankful to the, to the vendor's counsel for, for providing
6 that.

7 You had --

8 THE COURT: Yes, go ahead.

9 MS. PILLON: You had some questions you asked of
10 my friend and if I can answer, provide a little bit more
11 detail. This transaction you should get a lot of comfort
12 from in terms of an ordinary CCAA purchase agreement. I
13 would say that it would have zero assumed liabilities and
14 all excluded liabilities. So if you start with that
15 premise, this is a very positive agreement for most
16 parties, perhaps not my client but what -- even for my
17 client, but for the excluded liabilities is a very small
18 subset and so you should be getting some comfort from that.
19 I appreciate you can see that there is a definition of who
20 aren't -- who are excluded asset, or excluded liabilities
21 in this process but in, in the context of what would you
22 normally see, it's a small subset.

23 You asked some questions with respect to the
24 material adverse event or material adverse change. Again,
25 it's provided because it does mirror the commitment letter.
26 But some examples, I asked my corporate counterpart who's
27 dealing with this, what would be an example -- there's a
28 lot of exceptions -- what would be an example of, of that
29 because the court may be concerned about what's the chance
30 if this arises. I think that was the nature of your
31 inquiry. That would be, for example, something like the
32 destruction of the material portion of the facility,
33 something that is, deals directly with Arctic Glacier,
34 something like that, or there was some flawed manufacturing

1 process, something like that that is discovered between now
2 and closing. Those are the types of things. There could
3 be other aspects, obviously. I'm not trying to restrict
4 what could fall within that definition, but that's the
5 nature of it. And I hope again that offers you some
6 comfort in terms of -- I know it's difficult for the, for
7 the court to determine, am I giving an order that has a
8 little conditionality or a lot? So we think there's a
9 quite --

10 THE COURT: It was the amount of words in that
11 clause. I was just thinking --

12 MS. PILLON: That's -- which are all exceptions
13 to it, that's right.

14 THE COURT: Yes, which were all exceptions to it.
15 I was wondering, you know, what it was, but that's fine.

16 MS. PILLON: The other -- there's a regulatory
17 approval aspect of it. In Canada, I just wanted to update
18 you, My Lady, in Canada, there is no Competition Act filing
19 that was required. There was some notification under the
20 Investment Canada Act that has been initiated and there was
21 a filing that was required under the HSR Act in the US.
22 That was initiated June 14th. And my understanding is
23 there's a 15-day waiting period in which the purchaser
24 awaits the response and so that, again, in terms of your
25 timing and the timing of this transaction, we're hopeful
26 that that falls well within the July 31st time frame that's
27 contemplated.

28 Vesting order, just two small comments on that.
29 The vesting order, we had tried to coordinate as much as
30 possible the vesting language so that once, if it's granted
31 here and it goes to the US, there's a fair bit of comfort
32 that the US court seeing it, it's something that, in a
33 format that it's used to seeing. So some of the black line
34 you'll see in the form that's provided to you, that's as a

1 result of Americanizing it somewhat. So that's some of the
2 changes of what you might not normally see in a Canadian
3 vesting order. That's the explanation for that. We were
4 trying to make sure once it got to the US it was recognized
5 more easily.

6 There are still some additional purely US issues
7 which may be addressed only when they get to the US but we
8 have been speaking about that amongst counsel and that will
9 be addressed when they go before Justice Gross.

10 The vesting order envisions possibility that
11 there will be not just one purchaser but there may be, and
12 we actually do envision, splitting Canadian assets in a
13 Canadian purchaser, US-based assets in a US purchaser. And
14 right now the way the vesting order reads provides for the
15 transfer to an affiliate or some other party.

16 We may be back. If we find there's a
17 registration issue problem with the vesting order, if we
18 find that it may be easier for us to specify who exactly
19 are the Canadian purchaser and what Canadian assets, and
20 the US purchaser and US assets, we may be back for a short
21 order that reflects just those distinctions. That's really
22 to address primarily a registration issue on our end or
23 being able to use this vesting order in the future. But I
24 flag that. I will update the court if we find that it is
25 necessary and we'd be back in, in making that request.
26 Right now, there is the general provision with respect to
27 the possibility that there'll be a separate purchaser.

28 You had a question with respect to the assignment
29 of contracts. You had a question with respect to cure
30 costs. And we call them cure costs, what outstanding
31 monetary amounts will be necessary to be paid, if there are
32 any at the end of the day by the time these contracts, by
33 the time the closing occurs. It's built into the
34 agreement. I think the comfort the court can get is, in

1 order for the monitor to issue its certificate that the
2 transaction is ready to close and your vesting order comes
3 to life, it has to be comfortable that those, all the
4 conditions under the agreement have been met. That would
5 be one of them. So it has to be comfortable the cure costs
6 are paid or provided for. So you have the comfort that
7 once, when and only if the monitor's certificate is issued
8 that that already incorporates that concept. So hopefully
9 that adds a bit of comfort in terms of knowing that the
10 provisions of 11(3) have been met.

11 And finally, one last issue. With respect to the
12 sealing order, there's two matters I believe in, in the
13 envelope. One I'm not allowed and the other one is the
14 commitment letter. That was from our lender. And that
15 has its own sensitivities because right now we don't have -
16 - we have concerns with respect to that going to the
17 broader group and that's why there's an additional factor
18 as to why we would like to have a sealing order with
19 respect to the commitment letter component of it. I think
20 my friend wanted to make sure that commitment letter was
21 before the court too if you had any concerns with respect
22 to the ability to close the transaction, but there are some
23 commercial sensitivities in terms of the pricing, et
24 cetera, in that document. So I just offer that as a
25 separate factor for the sealing order.

26 And I think those are my comments, subject to any
27 questions that you might have of me.

28 THE COURT: All right. So just in terms of the
29 purchaser, that's the purchaser is a -- it's, it's
30 currently H.I.G. Zamboni --

31 MS. PILLON: Yes, LLC.

32 THE COURT: -- LLC. I, I see, which was created,
33 as I understand it, for the purposes of this --

34 MS. PILLON: Yes.

1 THE COURT: -- transaction. And what you're
2 saying is there may be -- so this -- there -- it may be --
3 it may need to address the fact that there is, there are
4 Canadian as well as US --
5 MS. PILLON: That's right. There may --
6 THE COURT: -- assets being purchased. So --
7 and, and so in which case you would -- that would need to
8 be dealt with at what time? It would need to be dealt with
9 perhaps on the same time in, in that period in July?
10 MS. PILLON: I think that would be the best --
11 THE COURT: Yeah.
12 MS. PILLON: -- way to deal with it --
13 THE COURT: Okay.
14 MS. PILLON: -- before it gets to the US because
15 if there is --
16 THE COURT: Yeah.
17 MS. PILLON: -- a separate short order then they
18 can address with both --
19 THE COURT: All right.
20 MS. PILLON: -- when they get to the US.
21 THE COURT: And if we do it like let's say
22 sometime during the week of the 10th of July, that's -- as
23 long as it's by the end of that week. The 17th, I believe,
24 is that Monday. So you just need it by that week.
25 UNIDENTIFIED PERSON: Yes.
26 THE COURT: Sometime that week we need to address
27 all that.
28 MS. PILLON: Yes.
29 THE COURT: Okay.
30 MS. PILLON: And we'll come to grant if there, if
31 there -- we feel there isn't a need for that additional
32 amount, we'll just update the court but --
33 THE COURT: Okay.
34 MS. PILLON: -- just wanted to flag that in case.

1 THE COURT: All right. Thank you very much.

2 MS. PILLON: Thank you.

3 THE COURT: Is there anyone here in the courtroom
4 before I turn to the people on the phone as to whether they
5 have anything to submit or say?

6 Okay. Is there anyone on the phone who would
7 like to address anything?

8 MR. PREGER: It's David Preger on behalf of the
9 US direct purchaser class, My Lady.

10 THE COURT: Yes.

11 MR. PREGER: Simply to advise the court that our
12 client is, is content with what's being proposed. Our
13 client has proceeded on the basis that there will be
14 nothing apocalyptic that comes from the claims process and,
15 therefore, our client should be paid in full.

16 As far as dealing with the timing of a, of a
17 claims process and a claims bar date is concerned,
18 obviously our client, as I'm sure all other creditors who
19 stand to be paid their monies when a claims bar process
20 comes to an end, would like to see it happen as quickly as
21 possible. Many of the creditors, including our client,
22 have been waiting for that money for some time and it --
23 obviously, there's a certain opportunity cost to, to not
24 getting paid quickly.

25 Subject to that, our client is content with
26 everything that's occurred and are of the view that the
27 monitor and Arctic Glacier have done an excellent job to
28 date.

29 THE COURT: Thank you.

30 MR. WASSERMAN: Thank you, My Lady. Perhaps what
31 I'll do is I think Ms., Ms. Pillon addressed some of the
32 points that I was going to address with you and, and I
33 thought she did a great job in doing it. So I'm not going
34 to necessarily repeat anything unless you want to hear from

1 me on them. I was going to make the same point on the
2 material adverse effect clause but I'm content with the
3 explanation that Ms. Pillon provided.

4 In respect of the comeback clause, the new --

5 THE COURT: Yes.

6 MR. WASSERMAN: -- paragraph 18, I think it is,
7 the monitor is content with the way the applicants are
8 proposing to deal with that provision. It's providing
9 parties, who may not have received notice, with an ability
10 to come back once they do receive the notice in the event
11 that they are, they feel as though they are prejudiced by
12 the order that's being granted.

13 We're also content having a carve-out of that
14 clause in favour of the lenders in conjunction with
15 paragraph 12, I believe it is, regarding the payment of the
16 lenders' claims, for reasons which I'll address in my
17 submissions but principally the lenders -- the, the issues
18 that a, that a counterparty would have relative to a forced
19 assignment provision should not be directly affecting the
20 lenders receive the proceeds in conjunction with the
21 transaction. So we don't believe that they're prejudiced
22 or can be prejudiced by an order made today in the event
23 they didn't receive notice to the extent you wish to make
24 the order, paying the lenders out in full on their claim.

25 What I'll, what I'll do is I'll just turn to the
26 report and perhaps what I can do is walk you through parts
27 of the report. I'm just going to go through quickly the
28 first thing that I, that I want to point out. I mean, this
29 is a good news story. We've got a situation here where not
30 only the stakeholders of Arctic Glacier, which would
31 include the employees, the customers, the suppliers, the
32 landlords, are receiving some type of ongoing business that
33 they can all be involved in, we've also got a situation
34 which, you know, subject to the acumen of a claims process,

1 is going to pay all known, unsecured creditors in full.
2 And as has been reported by both the applicant and the
3 monitor, that may be sufficient to make a distribution to
4 the unit holders, which is very unique in the context of a
5 CCAA transaction.

6 So I think that, you know, the people that were
7 involved in the transaction, including the financial
8 adviser, have done a great job in coming with, forward with
9 an outcome here that is beneficial to all of the
10 stakeholders of the applicants.

11 And you can see from our report, starting at page
12 10, there was an extensive marketing of, of the assets and
13 the opportunity -- 165 parties were contacted. There were
14 42 non-disclosure agreements negotiated and executed with
15 prospective bidders. There were 19 letters of intent
16 submitted at the end of phase 1. And of those 19 letters
17 of intent, 9 parties were invited to participate in phase
18 2. And as you know, three parties put in final offers in
19 the phase, at the end of phase 2. So there has been a very
20 extensive process here. There's been a lot of interest in
21 the asset and that has resulted in the transaction that the
22 applicants are seeking approval from, from you today.

23 I don't propose to go through the report and all
24 of the details in conjunction with the SISP or the proposed
25 APA unless you have any questions. We do say, the monitor
26 does say, in paragraph 4.22 of its report, that:

27

28 "[It's] satisfied that the SISP
29 was managed in accordance with its
30 terms and in a fair and
31 transparent manner ... [and it's]
32 satisfied that the Company, the
33 Financial Adviser and the [chief
34 process supervisor] all discharged

1 their responsibilities under the
2 SISP in good faith and with due
3 diligence ... [and] that all
4 interested parties had a
5 reasonable opportunity to
6 participate in the SISP and to
7 submit a Final Bid."
8

9 So the monitor is satisfied that the way in which
10 the process, the way in which the process was run.

11 So turning to the paragraph 12 and turning to the
12 distribution to the lenders, the monitor, as Mr. Bomhof
13 noted, does say in paragraphs 5.18 through to 5.20, gives a
14 calculation of what the projected lender claim is going to
15 be at closing.

16 THE COURT: Yes.

17 MR. WASSERMAN: And that was done in conjunction
18 with Mr. Bomhof's client on a basis of making an assumption
19 on what the DIP draw is going to be on closing, assuming a
20 July 31 closing date. And you'll note, both in the chart
21 on 5.18 in note 2, as well as in 5.20, that the total
22 amounts, which is 84.6 million Canadian and 208 million US,
23 include a prepayment premium and also include accrued and
24 unpaid default interest on the second lien that -- and
25 that's relevant to the definition of lender claim. When
26 you track that back through to the SISP that was approved
27 as part of the initial order, the definition of lender
28 claim included prepayment premiums as well as accrued and
29 unpaid default interest.

30 And what we've done here is, on the next section
31 of the report in paragraphs 5.21 through to 5.24, we've
32 reminded the court and the stakeholders that the monitor
33 gave an opinion or we gave an opinion, my firm gave an
34 opinion to the monitor on the enforceability and validity

1 of the lenders' debt and security. And you'll recall in
2 the pre-filing report we raised an issue regarding section
3 8 of the Interest Act.

4 THE COURT: Yes, yes.

5 MR. WASSERMAN: We raise it again here.

6 THE COURT: Yes.

7 MR. WASSERMAN: And we, we indicated to you that
8 we'd bring it back to your attention if it became relevant.
9 So we are bringing it back to your attention. And we note
10 in the report that the cash flow forecasts that have been
11 filed through the proceeding provide for the payment of
12 default interest on the first lien. So there's been
13 default interest going out on the first lien.

14 The lenders' claim does include default interest
15 as part of the SISP and the projected amount of the
16 lenders' claim to be paid on closing includes default
17 interest, as well. We note that the lenders have
18 comprehensive security on the assets of the applicants
19 which include mortgages on real property in Canada and the
20 US.

21 THE COURT: The APA doesn't --

22 MR. WASSERMAN: The APA doesn't --

23 THE COURT: -- deal with allocate --

24 MR. WASSERMAN: -- allocate value --

25 THE COURT: Yes.

26 MR. WASSERMAN: -- to the real property and
27 that's contained as a schedule to the APA, the unredacted
28 version to the APA that you have as part of the
29 confidential appendix. So you can see the way the
30 purchaser determined to allocate value to the assets it's
31 acquiring under that agreement.

32 And the other point we make is that the real
33 property holdings of the company in Canada are immaterial
34 and a smaller portion of its overall assets. The purchase

1 price, subject to the outcome of the claims process, is
2 sufficient to pay all known creditors and may be sufficient
3 to make a distribution to unit holders.

4 And the, the, the lenders, and the monitor notes
5 this in its report, have been supportive of the company.
6 They have, as Mr. McElcheran noted, provided funding to
7 permit the company with the time to be able to implement
8 the SISP and achieve a going concern outcome where all
9 employees are going to be offered employment, the suppliers
10 have a continued customer, and the customers have a
11 continued source of supply. And that support was premised
12 on the, the lender support that it was premised on, the
13 lenders being paid in full on the lender claims which
14 included default interest.

15 I'll make a couple more points that are in the
16 report but there have been two large unit holders and one
17 smaller unit holder that have contacted the monitor
18 directly since the announcement of the transaction was made
19 by the company and the materials were served, and I
20 understand that they're not objecting.

21 We also have some unit holders on the phone who I
22 also understand are not objecting. And as we've heard from
23 Mr. Preger, whose client would be junior to the lenders,
24 they're not objecting, as well.

25 So I wanted to just raise that for you so you had
26 it in front of you. I can address any questions if you
27 have, or others can if you have questions for them.

28 The cash flow forecast, we, in, in the report, we
29 indicate that assuming ordinary course operations, there is
30 sufficient cash available to the, to the end of, to the end
31 of August. But I do note that the DIP expires on August
32 8th. However, assuming the transaction closes, there's
33 going to be sufficient proceeds.

34 THE COURT: Yeah.

1 MR. WASSERMAN: The only cost that we foresee
2 post closing are really just to deal with professional fee
3 expenses.

4 So the, the timing of the stay extension, whether
5 it's to the end of August, the beginning of September, the
6 second week of September, is really immaterial in, in the,
7 in, in the circumstances of whether the company's going to
8 have sufficient cash to be able to meet it obligations
9 until that, whatever that period is.

10 I didn't go through the terms of the APA. I
11 thought Mr. McElcheran went through them and I don't really
12 have anything to add to them unless you have any questions
13 of the monitor.

14 But I do want to point out what the monitor's
15 recommendations are regarding the APA and the sale
16 transaction, and they're laid out in the report. And we
17 believe, the monitor believes the transaction meets the
18 factors set out in 36.3 of the CCAA. It, it, as I've
19 indicated, it provides a going concern sale. Employees,
20 suppliers, customers are all, have an entity to deal with
21 post closing. There is minimal conditions. It was the
22 highest offer received in the SISP.

23 And on, on, on that basis and as, as well as a
24 result of the evaluation criteria as set out in paragraph,
25 I think it's 27 of the SISP, the monitor recommended to the
26 special committee that the APA was the most favourable bid
27 received and it should be selected. And the financial
28 advisor and the CPS concurred with the monitor's
29 recommendation and the special committee accepted the
30 monitor's recommendation, which is why we're here before
31 you today.

32 We also note in paragraph 9.4 that the purchase
33 price is, in addition to being sufficient to pay the
34 lenders claims in full, is sufficient to deal with any of

1 the payments that may be required under section 36(7) of
2 the CCAA.

3 THE COURT: Which is, which is what, if you
4 don't, if you don't mind? I'm looking at the Act and I --

5 MR. WASSERMAN: It's the employees.

6 UNIDENTIFIED PERSON: And the payroll totals.

7 MR. WASSERMAN: Yeah. It's, it's dealing with
8 the source, the source deductions and the WEPA (phonetic)
9 and the payroll withholdings.

10 THE COURT: Oh, okay.

11 MR. WASSERMAN: So the, the court in making an
12 order has to --

13 THE COURT: It refers to 6(4)(a) and (5)(a) and
14 I'm not --

15 MR. WASSERMAN: Yeah, which take you back to -- I
16 believe those are the, the deemed trust and statutory
17 withholdings sections.

18 THE COURT: I couldn't find 6(4)(a), to be
19 honest.

20 MR. TAYLOR: My Lady, I think actually the Act
21 has got a typographical mistake and --

22 THE COURT: All right. Because I, I have to tell
23 you I looked at that --

24 MR. TAYLOR: It's the next two sections, (5)(a)
25 and (6)(a), whatever comes next, the employee obligations
26 and the pension obligations (inaudible).

27 THE COURT: All right. Well, that's fine. As
28 long as I know what it's dealing with because it didn't
29 make sense to me --

30 MR. WASSERMAN: Right.

31 THE COURT: -- when I read the provisions in the
32 Act.

33 MR. WASSERMAN: The, the, the next point I'll
34 deal with is sealing. We support the order being requested

1 for sealing the confidential appendix for the reasons Mr.
2 McElcheran raised, as well as the reasons that Ms. Pillon
3 raised. The, the confidential appendix contains sensitive
4 information which, if disclosed now and for some reason the
5 transaction doesn't close, could impair the company's
6 ability to go back to market and receive additional bids
7 for the assets if that, if that were to occur.

8 One thing I'll, I'll make, I'll point out, in
9 circumstances where there is a public auction of assets and
10 you actually have an auction where the, the price is known
11 as among the bidders, typically what happens in that
12 context is the debtor will pick a backup bid. So they'll
13 pick the bid they go forward with and then they'll pick the
14 next best bid as their backup bid and they'll have their
15 backup bidder signed up to a deal in case the first bidder
16 doesn't go forward. We don't have that here, for obvious
17 reasons, which is another reason why the sealing is
18 important in this context.

19 On the post closing matters, let me just address
20 for you in a little bit greater detail, you know, what
21 we're talking about there. And, and that motion is fine to
22 be brought before you're, you're away in July. I think we
23 can come the second week of July, as you've indicated. I
24 think that'll be fine.

25 These are really just dealing with transition
26 issues and some of those issues are going to be, for
27 example, the monitor -- when the assets are sold and all
28 the employees are moved over to the purchaser, you're going
29 to have a bunch of vendors that are effectively companies
30 that have no employees, no officers. I expect the
31 directors are going to resign and there's going to need to
32 be someone to administer the estate post closing to deal
33 with the proceeds of the transaction, excluded assets and
34 other items to clean up the estate and make distributions

1 to the parties who are entitled to receive distributions
2 from those proceeds.

3 And it's, it's quite common in circumstances
4 where there is a sale of assets that the monitor's powers
5 will be expanded and the monitor will take on that role,
6 and in doing so will need to have access to employees,
7 former employees of the company who are now employees of
8 the purchaser who have information relating to historical
9 events to assist the monitor in dealing with claims that
10 may be filed dealing with the sale or disposition of
11 excluded assets, and in this case, there's a property, the
12 Huntington property I think it's called; dealing with
13 transferring funds out of bank accounts that may come in
14 post closing for which the monitor may not have signing
15 authority.

16 There's going to be matters in that agreement
17 where the monitor's going to have to run a claims process.
18 The purchaser, as part of its agreement, is buying the
19 name, Arctic Glacier, and running the claims process, in
20 order for creditors or people that are making claims to
21 know what they're claiming on, a numbered company, if, if,
22 if we're not allowed to use that name, isn't going to work.
23 So the transition agreement or the services agreement is
24 going to contemplate those kinds of things.

25 There's going to need to be help with tax
26 returns. As Mr. McElcheran indicated, it's likely there's
27 going to be some tax payable in conjunction with the
28 transaction. So there's going to need to be tax returns.
29 We need to understand what the historical tax positions of
30 the companies were, and other matters that, as we go
31 through the drafting of that agreement and negotiation with
32 the purchaser, may come up.

33 So that's really what that's intended to do.
34 We'd like to have that in place before closing for reasons

1 that I hope are obvious to everybody, and that's the reason
2 why we've got to come back at some time before the closing
3 for that.

4 With respect to the claims process and, you know,
5 when that, that process gets launched -- and I hear my
6 friend Mr. Preger's comments on that and we share that
7 desire -- we do want to have a process that is short and
8 starts quickly in order to be in a position to distribute
9 funds to creditors and potential unit holders in the
10 quickest way possible. They're very complicated orders.
11 There's a lot of things that you have to think about in the
12 context of drafting those orders. I don't know whether
13 we're going to be in a position or not to have that before
14 you before you leave for the second half of July and
15 August, and so we'll talk about it. But I mean, to the
16 extent that it gets pushed into September and we have to
17 come back in the first, first or second week of September,
18 I think that's something that the monitor would be prepared
19 to, to recommend in the, in the circumstances.

20 I recognize it's a bit of a delay but I'm -- you
21 know, a 30-day delay or a 15-day delay in the context of
22 this transaction really shouldn't be too much of a big deal
23 for the, the stakeholders.

24 So I just -- we will talk about that on the break
25 in timing.

26 THE COURT: I'm not insensitive to it. I just
27 know what the practical reality is of my own schedule
28 and --

29 MR. WASSERMAN: I understand.

30 THE COURT: -- the availability of any other
31 judge in the court --

32 MR. WASSERMAN: I -- we, we --

33 THE COURT: -- in this period of time, so ...

34 MR. WASSERMAN: -- understand. The one thing

1 that I, I would like to address, if there is a, an
2 emergency between the time that we come to see you next and
3 closing where the applicant does need a judge, how would --
4 how do you -- how would we achieve that?

5 THE COURT: Yeah. Mr. Taylor is probably
6 familiar with that. I could, I could inquire but normally
7 my understanding is it would be contacting the associate
8 chief justice or the chief justice or the, or the, or --

9 MR. WASSERMAN: That's fine. Okay. Mr.
10 Jackson's indicating that shouldn't be a problem.

11 THE COURT: Yeah. There is a procedure in the
12 event there is an emergency and someone --

13 MR. WASSERMAN: Okay.

14 THE COURT: -- needs access to a judge.

15 MR. WASSERMAN: Okay. So, My Lady, I don't have
16 anything else to, to add or, or to say. We support the
17 transaction. We support the relief. We think the parties
18 involved have done an exceptional job to get the company to
19 this stage and we think this outcome is, is a wonderful
20 outcome and we look forward to working with the applicants
21 and their counsel and the purchaser and, and, and their
22 counsel to get the transaction closed.

23 So unless you have any specific questions for me,
24 I have nothing else to add.

25 THE COURT: No. Thank you very much. What I
26 think I'd like to do is I'm going to -- I suggest we take a
27 break now. I'm going to -- just I want to look at the
28 order that you've given me, the -- you know, make sure I
29 don't have any other questions for you and then I'll come
30 back, give you a decision and we'll go from there.

31 MR. MCELCHERAN: Okay. Just, just when you're
32 looking at that --

33 THE COURT: Yes.

34 MR. MCELCHERAN: -- I want -- I handed up to you

1 two black lines.

2 THE COURT: Yes.

3 MR. MCELCHERAN: I just want to give you a little
4 bit of an idea of what they are.

5 THE COURT: Okay.

6 MR. MCELCHERAN: One of them says, To data room.

7 THE COURT: Sorry.

8 MR. MCELCHERAN: And the other one says, To
9 motion.

10 THE COURT: Where are you? Oh, yes. Okay.

11 MR. MCELCHERAN: At the top, my handwriting at
12 the top.

13 THE COURT: The handwriting, okay.

14 MR. MCELCHERAN: Okay. And the reason -- so the
15 data room one, just to give you an idea of our process,
16 what we did, as mentioned in the affidavit, we did a draft
17 APA, which we gave to everybody as a pro forma and got
18 back. We also, because the APA included a copy of schedule
19 being a draft order, we did a draft order which we also put
20 in the data room to give to the buyers to take a look at in
21 order to make in it, you know, whatever adjustments they
22 wanted to make.

23 So what I thought -- and that was just to give
24 you its origin. It was based on a standard form, Ontario
25 receivership vesting order. So the, so the one that says,
26 To data room, shows the changes from, from the draft that
27 we gave out as being sort of a pro forma standard to the
28 one that was included actually in the motion record which
29 is the one which is attached to the APA, the agreement of
30 purchase and sale.

31 And so it, it -- the idea -- the reason why I'm
32 giving it to you is you can see that there, as Ms. Pillon
33 said in her submissions, there are changes being made which
34 were sort of USIs or to make the US, the order more US

1 friendly. And the meaning for that and it's -- and, and
2 our -- we were okay with it. I'll tell you why we're okay
3 just so you can take a look at it and you can -- for the
4 changes because there are a lot of black lining but the
5 substance of it is that there is -- they're used to seeing
6 more detail. We use more general language in a typical
7 Canadian order. What they're looking for, the US
8 petitioners were looking for was more indications that what
9 we mean in a Canadian order by our broad language includes
10 the specific things they're used to seeing.

11 So if you look at a general idea of it, is it's
12 our broad language with some more words which are, which
13 are -- they're more used to seeing in a US order, which we
14 say, we, the applicant, monitor, purchaser, counsel in
15 Canada, all think are reflective of the import of the
16 general languages typically in a standard order. And so we
17 didn't have any difficulty including it or presenting it to
18 you.

19 THE COURT: Bottom line is its language; it
20 doesn't change anything.

21 MR. MCELCHERAN: It's, it's more words.

22 THE COURT: Yeah.

23 MR. MCELCHERAN: And so the -- so I wanted to
24 point that out to you. That's the reason for it and we
25 don't -- we see it as being more words conforming to the US
26 more words philosophy. It must get -- and if you know, if
27 you've ever seen a US order or US pleadings, they use
28 little tiny print so they can get more words in. So we --

29 THE COURT: All right. But -- so what is to
30 motion then? Then --

31 MR. MCELCHERAN: To motion is, is -- okay.
32 Following the hearing, following the motion being prepared
33 and served, there was an ongoing continued discussion about
34 a number of different points.

1 THE COURT: Okay.

2 MR. MCELCHERAN: And, and it resulted from a
3 different, a number of different parties, including the
4 buyer, and it result in some things being moved around.
5 But again, in every situation, there were, there were
6 changes which we're comfortable with. And if -- and I, I
7 think that they're relatively straightforward in looking at
8 them. The main -- one part of it was more of this
9 Americanizing because the US lawyers were then drafting the
10 US order and then looking back at the Canadian order and
11 say, Well, I want -- this is my US order so you should put
12 it in your Canadian order, will you, please. There's some
13 of that.

14 There, there's also some -- because there's more
15 words, we want to make sure that the, that the provisions
16 of the agreement are not being amended by the more words
17 because some of them are vesting out language and release
18 language. And so we wanted -- we put in, and you'll see
19 this in paragraph 5.6 and others, we put in a black line
20 that said that -- well, that's, that's not, sorry, that's
21 not the point I was making. In paragraph 10, you'll see
22 that we made, made it clear in paragraph 10 that nothing,
23 none of this additional words was changing the agreement.
24 You'll see that when you look at it. I don't want -- I
25 wasn't --

26 THE COURT: So which is the, the order that you
27 want me to sign, the --

28 MR. MCELCHERAN: If you were comfortable with the
29 order that was in the, in the motion record, then I would
30 look at the black line to the current order. In, in my --
31 and there's been a couple of small other additional changes
32 including the one in my -- there's been a couple more
33 additions since I've now got the schedule attached to the
34 current order and so I wanted to hand you up the, the final

1 version with the last little (inaudible) included in it
2 which are -- I'm going to hand up to you.

3 But the point of it is that we had gone back and
4 forth over making sure that the order was conforming to the
5 agreement with the additional words asked by US in it and
6 that's the substance of most of it. And so I think that
7 you should look at the black line that says, Black line to
8 the motion. If you are comfortable with the order that was
9 in the motion, surely that's what you should be looking at.

10 And, and the last thing I'm going to do is hand
11 you up the, I think, the finalist version which still has
12 some handwriting in it, which, which are -- and maybe Mr.,
13 Mr. Taylor will tell you what that is.

14 MR. TAYLOR: My Lady, I'll hand you a final
15 version. There are actually some discussions around it as
16 we walked into the courtroom this morning. So what's
17 changed in it is there's a phrase at the end of paragraph
18 10 from what you see in front of you now has been removed
19 and we've actually added the schedule "C" that contemplates
20 a list of the encumbrances to be discharged. So that's
21 what's now here in what we're proposing to be the final
22 form of order. To actually complete it, we just need to
23 clean up the preamble to the order. But that's -- this is
24 reflective of the last couple of changes.

25 THE COURT: So that should be the first document
26 that I read?

27 MR. TAYLOR: This would be the first document --

28 THE COURT: All right.

29 MR. TAYLOR: -- that you read and if you, if
30 you'd like to have my stickies on it, you can. They just
31 say where those changes come from --

32 THE COURT: All right.

33 MR. TAYLOR: -- and highlight where they are --

34 THE COURT: Okay.

1 MR. TAYLOR: -- from what you have, a compare
2 version of -- so I'll, I'll give you that.

3 THE COURT: Okay.

4 MR. WASSERMAN: My Lady.

5 THE COURT: Yes.

6 MR. WASSERMAN: I do want to point out there,
7 there's one, there's one provision in the order which was
8 added recently, which is --

9 THE COURT: Okay. Now which order are we talking
10 about here --

11 MR. WASSERMAN: Yeah, I'm, I'm as confused as --

12 THE COURT: -- of the -- of the six I have in
13 front of me?

14 MR. WASSERMAN: I'm as confused as you are.

15 MR. MCELCHERAN: Look at the one with the
16 stickies on it that shows you --

17 THE COURT: All right.

18 MR. MCELCHERAN: Yeah, the one Mr. Taylor --

19 THE COURT: Okay. Good.

20 MR. MCELCHERAN: That's the final thing.

21 THE COURT: Okay.

22 MR. WASSERMAN: It's, it's paragraph 17 --

23 THE COURT: Yes.

24 MR. WASSERMAN: -- which is a, a provision that
25 the purchaser's counsel in the US is negotiating with the
26 Department of Justice. This is some -- this language is
27 language that they've, that the purchaser has suggested to
28 the Department of Justice. We don't have an issue with the
29 language. They just haven't heard back from the Department
30 of Justice yet. So during the break, I intend to speak to
31 my friend, Ms. Pillon --

32 THE COURT: Okay.

33 MR. WASSERMAN: -- about how, how, how we're
34 going to deal with that --

1 THE COURT: All right.

2 MR. WASSERMAN: -- if at all. I just wanted to
3 point out to you --

4 THE COURT: Okay.

5 MR. WASSERMAN: -- that that's new language and
6 it's there as a result of a request that was made by the
7 Department of Justice, which is now being negotiated with
8 the purchaser's counsel.

9 THE COURT: Okay. Thank you. All right. Well,
10 I think we'll take a break now and I'm just wondering how
11 much time. Well, 15, 20 minutes, something of that nature
12 and that will maybe allow me to get things in order from my
13 end.

14 THE CLERK: Order. All rise. Court will take a
15 short recess.

16

17 (BRIEF RECESS)

18

19 THE CLERK: Okay. We're back on the record.

20 THE COURT: All right. So let me begin by giving
21 you my decision.

22 The applicants have brought a motion for an order
23 approving the asset purchase agreement between the Arctic
24 Glacier companies and H.I.G. Zamboni LLC vesting in the
25 purchaser the company's right, title and interest in the
26 assets free and clear of any claims and encumbrances other
27 than certain permitted encumbrances and assigning the
28 rights and obligations of the company under the assigned
29 contracts.

30 The APA is the culmination of a sale process
31 developed after considerable negotiation by the applicant,
32 the financial adviser and the lenders, and authorized by
33 my, my initial order. The objective of the SISP was to
34 conduct a fair and transparent sale of the business as a

1 going concern, viewed as the best opportunity for the
2 continuation of the business for the benefit of all
3 stakeholders.

4 Under the supervision of a monitor and in
5 accordance with the initial order and further orders of
6 this court, the SISP was implemented. Three bids were
7 received by the phase 2 deadline. The monitor, after
8 consultation with the financial adviser, the chief process
9 supervisor and the company, recommended that the bid
10 submitted by the purchaser was the most favourable and
11 should be selected.

12 The special committee accepted the monitor's
13 recommendation and in accordance with the consent order,
14 the lender and their counsel and counsel for the direct
15 purchaser's plaintiffs were also involved.

16 I am satisfied that the transaction proposed by
17 the APA meets the criteria outlined in section 36 of the
18 CCAA and the factors outlined in the, in Royal Bank of
19 Canada v. Soundair Corp. and ought to be approved as
20 requested. There was transparency, integrity and fairness
21 in the sale process which was developed after consultation
22 supported by the monitor and approved by the court. The
23 monitor participated extensively throughout and there was
24 some involvement by secured lenders and direct, the direct
25 purchasers, as well.

26 There was a wide canvassing of the market and
27 sufficient effort made to attract the best possible bid.
28 The APA contained the highest price received with the
29 fewest conditions to close. The purchaser's financing is
30 fully committed. It provides for the purchase of
31 substantially all of the business undertaking and assets
32 except for certain excluded assets as defined and the
33 assumption of significant current liabilities.

34 It allows for a going concern sale that maintains

1 operations. It provides for continued employment of the
2 company, company's employees, and a continued business for
3 the company's customers and suppliers.

4 Significantly, the purchase price is sufficient
5 to satisfy the lender claims in full, any amount owing
6 under court order charges and known unsecured creditors
7 including payments that may be required under section 36(7)
8 of the CCAA. It is anticipated that there may also be
9 sufficient funds for a distribution to unit holders after
10 creditors claims are proven through a claims process.

11 The monitor considers the purchase price fair and
12 reasonable, and the transaction more beneficial to
13 creditors and all stakeholders than a sale or disposition
14 under a bankruptcy. In short, it represents a positive
15 outcome for all.

16 The APA provides for the assignment of certain
17 assigned contracts pursuant to section 11.3 of the CCAA to
18 the extent that consents are not obtained. I note there
19 has been extensive service in this regard and a comeback
20 provision will allow any party affected to address its
21 concerns. Taking into account the factors to be
22 considered, the monitor approves the proposed assignments
23 and is of the view that the purchaser is able to perform
24 the obligations under the assigned contracts. All monetary
25 defaults in relation to the agreements as contemplated by
26 section 11.34 will be paid in accordance with the APA. The
27 assignment of contracts is necessary for the continuation
28 of the business and is appropriate given the acquisition of
29 the business and the intention to carry on the business
30 after closing. These assignments are a condition of the
31 APA and there is no evidence of any prejudice to the
32 counterparties.

33 Given all of this, I am prepared to make this
34 order as requested.

1 There will be an extension of the stay to allow
2 for the transaction and post closing matters to be
3 completed. Such an order is, is appropriate, will further
4 the purposes of the CCAA, is supported by the monitor and
5 lenders, and the applicant has acted in good faith with due
6 diligence.

7 Applying the Sierra Club factors, given the
8 commercially sensitive nature of the limited matters sought
9 to be sealed and the advice that such information could
10 have a negative impact on the sale process and market,
11 there will be a temporary sealing order of the documents
12 requested until further order of the court.

13 Finally, I would add that all parties are to be
14 commended for this successful outcome, which no doubt
15 occurred because of the hard work, cooperation and
16 diligence of everyone. And I know we're not finished yet
17 but at this time I, I do want to thank all counsel involved
18 for the valuable assistance you have provided the court
19 throughout this process.

20 So that deals with -- that then requires us to
21 deal with the specific matters to finalize the order. I
22 did check my availability for that second week in July,
23 counsel, and I am -- sorry, I don't know what that Thursday
24 is. I believe it's the 12th of July.

25 UNIDENTIFIED PERSON: Yes, it is.

26 THE COURT: I could make myself available for
27 that day. Would that be acceptable? And we can just --
28 then we'd have to have you just include that in the, in the
29 order that I ultimately sign.

30 Is that going to work?

31 MR. MCELCHERAN: That'll make it work.

32 THE COURT: All right. All right. Now in terms
33 of the date, the extension provision and when you can come
34 back before me, I have September 4th and 5th that I can

1 offer you in terms of my availability.

2 MR. MCELCHERAN: Yeah. So if we were to make
3 September 15th be the extension time --

4 THE COURT: Yeah, sure.

5 MR. MCELCHERAN: -- and the hearing time -- 14th
6 is Friday.

7 MR. WASSERMAN: And could we just do the 5th
8 because the 4th is the first day of school.

9 THE COURT: All right. I used to be able to
10 relate to that. All right. We can do the, the, the 5th.

11 MR. MCELCHERAN: Yeah. Yeah. The 3rd is the
12 labour day, yeah, so the 5th.

13 THE COURT: Is there anything else we need to
14 address today, counsel?

15 UNIDENTIFIED PERSON: We have nothing. I don't
16 know whether my friend --

17 MR. MCELCHERAN: I, we have nothing more other
18 than the -- you've seen the order and if you have any --
19 you've seen it and the many black lines and I know they're
20 confusing. We wanted it -- the only reason why we gave so
21 many black lines is we wanted to make sure that you, you
22 see what would be -- you know, what's usual in a Canadian
23 order and then see that's different in this one, I think,
24 and then, and then finally to see the last little tweaks.
25 So that was the, the purpose of it.

26 I, I hope that if you have any questions -- I,
27 we're -- it's settled among all the parties. Ms. Pillon is
28 happy with it as it stands and her happiness is most
29 important to me at this point.

30 THE COURT: Yeah. And, and frankly, counsel, I'm
31 relying heavily on you in terms of what, you know, what is,
32 is appropriate given the fact that we do have a US court
33 involved, as well. It wouldn't be something that I would
34 necessarily, you know, be -- that we would necessarily be

1 familiar with but, but I understand the intent and, and I,
2 I don't have any -- there are no concerns that --

3 MR. MCELCHERAN: Yes. And most, most of the
4 additional provisions I put them in the category where I
5 call them this, this means you provision. So when the
6 general language says, you know, every -- all -- interest
7 in all its claims are vested out and then it goes on to say
8 including, you know, and then there's a list or more words
9 to say vested out of release, to my mind those are only
10 words that are added to say to anybody seeing it that
11 there's no doubt that it means you if you're on that list.

12 And so we're, we were completely comfortable with
13 these and I think that except that we -- this -- that the
14 order speaks to the US court and says, Don't be concerned
15 that the language that you use is different intent than the
16 language we use in the Canadian order. It is not in case.
17 And then -- and we've used those words to make you more
18 comfortable and be comfortable with that concept.

19 So we, we, all of us, monitor, counsel for the
20 applicants and the, and the purchaser, are comfortable with
21 the words that are there as being within the normal scope
22 of what we usually expect to see --

23 THE COURT: Okay.

24 MR. MCELCHERAN: -- with those addition -- with,
25 with that qualification. So, so what we, what we're, what
26 we would propose then in order to get a document because
27 remember we want to send it out to the people who are at
28 post June 15th, is we're going to -- I'm going to ask Mr.
29 Taylor's firm to work with getting a document and --
30 because we're all going to hit the airplane as soon as we
31 can, those of us who are going back to Toronto -- so the --
32 so what we'll do is Mr. -- is we'll leave it to counsel
33 here. Mr. Taylor will take the charge of making the order
34 conform both in appearances and --

1 THE COURT: All right.

2 MR. MCELCHERAN: -- the other details that you've
3 seen, and then have it issued, show it to you in the final
4 form. And our target would be to have it available for
5 tomorrow when we, when we settle the list of supplementary
6 services.

7 THE COURT: All right. So we'll still have the
8 notice of motion served. So in terms of the comeback
9 provision, you're just, we'll say, by notice of motion
10 served on or before July 3rd for hearing not later than,
11 and you can put the, the 12th on that.

12 MR. MCELCHERAN: Yes.

13 THE COURT: Yes.

14 UNIDENTIFIED PERSON: That includes say if you're
15 the monitor.

16 THE COURT: Or you could say hearing on the 12th,
17 sure.

18 UNIDENTIFIED PERSON: Yes.

19 MR. MCELCHERAN: Right. And that way -- yeah.
20 So we will -- we won't have a situation where we're
21 organizing different dates for those parties --

22 THE COURT: Okay. Right.

23 MR. MCELCHERAN: -- that they will be flying into
24 the 12th when we know that you're available. Okay. And so
25 we've settled the time. And we fully -- as I said, we do
26 not expect to be using the 12th for anything other than
27 cleaning up things that we are bringing back before you as
28 we discussed.

29 THE COURT: That would be nice.

30 MR. MCELCHERAN: Yes.

31 THE COURT: All right.

32 THE CLERK: Order. All rise. This court is
33 closed.

34 THE COURT: He twigged my memory. We, we have to

1 confirm that we're, we're doing an extension date until the
2 15th then?

3 UNIDENTIFIED PERSON: The 14th.

4 THE COURT: 14th. Okay. Good. That's what I
5 wanted to clarify. That's fine.

6 UNIDENTIFIED PERSON: I apologize My Lady. I
7 didn't realize that court was still in session (inaudible).

8 THE COURT: It wasn't. It wasn't. I just heard
9 you. So I wanted to clarify that.

10 THE CLERK: Court is closed.

11

12 (PROCEEDINGS CONCLUDED)

CERTIFICATE OF TRANSCRIPT

I hereby certify the foregoing pages of printed matter, numbered 1 to 54, are a true and accurate transcript of the proceedings, transcribed by me to the best of my skill, ability, and understanding.

VELMA DOERKSEN
COURT TRANSCRIBER

CERTIFICATE OF TRANSCRIPT

I hereby certify the foregoing pages of printed matter, numbered 54 to 87, are a true and accurate transcript of the proceedings, transcribed by me to the best of my skill, ability, and understanding.

CHERYL LAVIGNE
COURT TRANSCRIBER

THE QUEEN'S BENCH
WINNIPEG CENTRE

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

AND IN THE MATTER OF PROPOSED PLAN OF COMPROMISE
OR ARRANGEMENT WITH RESPECT TO ARCTIC GLACIER INCOME FUND,
ARCTIC GLACIER INC. AND ARCTIC GLACIER INTERNATIONAL INC.
AND

THE ADDITIONAL APPLICANTS LISTED ON SCHEDULE "A" HERETO:

ARCTIC GLACIER CALIFORNIA INC., ARCTIC GLACIER GRAYLING INC.,
ARCTIC GLACIER LANSING INC., ARCTIC GLACIER MICHIGAN INC.,
ARCTIC GLACIER MINNESOTA INC., ARCTIC GLACIER NEBRASKA INC.,
ARCTIC GLACIER NEWBURGH INC., ARCTIC GLACIER NEW YORK INC.,
ARCTIC GLACIER OREGON INC., ARCTIC GLACIER PARTY TIME INC.,
ARCTIC GLACIER PENNSYLVANIA INC., ARCTIC GLACIER
ROCHESTER INC., ARCTIC GLACIER SERVICES INC.,
ARCTIC GLACIER TEXAS INC., ARCTIC GLACIER VERNON INC.,
ARCTIC GLACIER WISCONSIN INC., DIAMOND ICE CUBE
COMPANY INC., DIAMOND NEWPORT CORPORATION, GLACIER ICE
COMPANY, INC., ICE PERFECTION SYSTEMS INC., ICESURANCE INC.,
JACK FROST ICE SERVICE, INC., KNOWLTON ENTERPRISES, INC.,
MOUNTAIN WATER ICE COMPANY, R & K TRUCKING, INC.,
WINKLER LUCAS ICE AND FUEL COMPANY, WONDERLAND ICE, INC.,

Applicant.

TRANSCRIPT OF PROCEEDINGS, before The Honourable
Madam Justice Spivak, held at the Law Courts Complex, 408
York Avenue, in the City of Winnipeg, Province of Manitoba,
on the 21st day of June, 2012.

APPEARANCES:

- MR. K. MCELCHERAN, MR. G.B. TAYLOR, and MS. J.J. BURNELL,** for the Applicant.
- MS. K. PETERS,** for the Applicant (via teleconference).
- MR. M. WASSERMAN, MR. D. JACKSON, MR. A. ZALEV,** for the Monitor.
- MR. J. DACKS and MR. R. MORAWETZ** for the Monitor (via teleconference).
- MR. S. BOMHOF and MR. J. HIRSCH,** for CPPIB Credit Investments Inc. and West Face Capital Inc.
- MR. T. DEMARINIS,** for CPPIB Credit Investments Inc. and West Face Capital Inc. (via teleconference).
- MS. C. HOWDEN,** for TD Bank.
- MS. L. PILLON,** for H.I.G. Zamboni.
- MR. M. WEINCZOK, MR. D. PREGER, and MR. D. AZMAN,** for the US Direct Purchasers (via teleconference).
- M. MILANI, Q.C.,** for the Trustee of AGIF (via teleconference).
- MR. D.W. LESLIE,** for Reddy Ice Holdings Inc. (watching brief).
- MR. A. CHIPMAN,** for TD Securities.
- MR. A. FISHER,** for Talamod Master Fund

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