



No. S209201  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF MOUNTAIN EQUIPMENT CO-OPERATIVE AND 1314625 ONTARIO  
LIMITED

PETITIONERS

**ORDER MADE AFTER APPLICATION**

**(Claims Process Order)**

BEFORE THE HONOURABLE MADAM 27/Nov/2020  
JUSTICE FITZPATRICK

ON THE APPLICATION OF the petitioners, Mountain Equipment Co-operative and 1314625 Ontario Limited (together, the "**Petitioners**") coming on for hearing by MS Teams videoconference at Vancouver, British Columbia on 27/Nov/2020 AND ON HEARING Howard A. Gorman, Q.C. and Scott M. Boucher, counsel for the Petitioners, and those other counsel listed in **Schedule "A"** attached hereto; AND UPON READING the material filed, including the Second Affidavit of Robert Wallis made 23/Nov/2020 (the "**Second Wallis Affidavit**"), and the Fourth Report of the Monitor dated 23/Nov/2020; AND PURSUANT TO the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the British Columbia *Supreme Court Civil Rules* and the inherent jurisdiction of this Honourable Court;

**THIS COURT ORDERS AND DECLARES THAT:**

**DEFINITIONS AND INTERPRETATION**

1. For the purposes of this Order the following terms shall have the following meanings:
  - (a) "**Advisors**" means, collectively, any actuarial, financial, legal and other advisors and assistants;
  - (b) "**Assessments**" means Claims of Her Majesty the Queen in Right of Canada or of any Province or Territory or Municipality or any other taxation authority in any Canadian or foreign jurisdiction, including, without limitation, amounts which may arise or have arisen under any notice of assessment, notice of objection, notice

of reassessment, notice of appeal, audit, investigation, demand or similar request from any taxation authority;

- (c) **“Business Day”** means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Vancouver, British Columbia;
- (d) **“CCAA Proceedings”** means the CCAA proceedings commenced by the Petitioners under British Columbia Supreme Court Vancouver Registry No. S209201;
- (e) **“Claim”** means:
  - (i) any right or claim of any Person against either of the Petitioners, whether or not asserted, in connection with any indebtedness, liability or obligation of any kind whatsoever of each of the Petitioners in existence on the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any Assessments, or by contract, or by reason of any equity interest, right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and any right or ability of any Person to advance a claim for contribution or indemnity or otherwise against either of the Petitioners with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation is based in whole or in part on facts that existed prior to the Filing Date, including for greater certainty any claim against either of the Petitioners for indemnification by any Director or Officer in respect of a D&O Claim (but excluding any such claim for indemnification that is covered by the D&O Charge (as defined in the Initial Order)) (each, a **“Pre-filing Claim”**, and collectively, the **“Pre-filing Claims”**);
  - (ii) any right or claim of any Person against either of the Petitioners in connection with any indebtedness, liability or obligation of any kind whatsoever owed by either such Petitioner to such Person arising out of the restructuring, disclaimer, resiliation, termination or breach by such Petitioner on or after the Filing Date of any contract, lease or other agreement whether written or oral (each, a **“Restructuring Period Claim”**, and collectively, the **“Restructuring Period Claims”**);
  - (iii) any right or claim of any Person against one or more of the Directors and/or Officers howsoever arising, whether or not such right or claim is

reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any Assessments and any right or ability of any Person to advance a claim for contribution, indemnity or otherwise against any of the Directors and/or Officers with respect to any matter, action, cause or chose in action, whether existing at present arising or commenced in the future, for which any Director or Officer is alleged to be, by statute or otherwise by law or equity, liable to pay in his or her capacity as a Director or Officer (each a **"D&O Claim"**, and collectively, the **"D&O Claims"**); and

(iv) any Employee Claim,

provided however that in any case "Claim" shall not include an Excluded Claim, but for greater certainty, shall include any Claim arising through subrogation against either Petitioner or Director or Officer;

- (f) **"Claimant"** means a Person asserting a Pre-filing Claim or a Restructuring Period Claim against the Petitioners, or either of them, and a Person asserting a D&O Claim against any of the Directors or Officers of either of the Petitioners;
- (g) **"Claims Bar Date"** means 5:00 p.m. on February 10, 2021;
- (h) **"Claims Officer"** means the individual(s) designated by the Court pursuant to paragraph 33 of this Order;
- (i) **"Claims Package"** means the document package which shall be disseminated by the Monitor to any potential Claimant in accordance with the terms of this Order and shall consist of a copy of this Order (without schedules) and such other materials as the Monitor, in consultation with the Petitioners, may consider appropriate;
- (j) **"Claims Process"** means the procedures outlined in this Order in connection with the assertion of Pre-filing Claims, Restructuring Period Claims and D&O Claims against the Petitioners and/or the Directors and Officers;
- (k) **"Court"** means the British Columbia Supreme Court;
- (l) **"D&O Claim Instruction Letter"** means the letter containing instructions for completing the D&O Proof of Claim form, substantially in the form attached as **Schedule "B"** hereto;
- (m) **"D&O Proof of Claim"** means the proof of claim referred to herein to be filed by Claimants in connection with any D&O Claim, substantially in the form attached

hereto as **Schedule “C”** hereto, which shall include all supporting documentation in respect of such D&O Claim;

- (n) **“Director”** means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or de facto director of either of the Petitioners, in such capacity;
- (o) **“Employees”** means (i) all employees of the Petitioners as at the Filing Date, including an employee of either of the Petitioners who received notice of termination of employment dated on or after the Filing Date; and (ii) former employees of either of the Petitioners who were terminated at any time or who received notice of cessation of severance payments dated on or after the Filing Date, and **“Employee”** means any one of them, in such capacity;
- (p) **“Employee Claim”** means a Claim to be asserted by or on behalf of an Employee in the Employees Claim Process;
- (q) **“Employee Claimant”** means a Person asserting an Employee Claim;
- (r) **“Employee Claims Package”** means the document package consisting of a copy of this Order (without schedules), Employee Letter, Proof of Claim, and Proof of Claim Instruction Letter, and such other materials as the Monitor, in consultation with the Petitioners, may consider appropriate or desirable;
- (s) **“Employee Claims Process”** means the procedures outlined in this Order in connection with the assertion of Employee Claims;
- (t) **“Employee Letter”** means the letter to be disseminated by the Monitor, in consultation with the Petitioners, to all Employee Claimants which includes an assessment of the amount and nature of the Employee Claim, which letter shall be substantially in the form attached hereto as **Schedule “D”**;
- (u) **“Excluded Claim”** means any Claim asserted by any beneficiary of the Administration Charge, the KERP Charge, or the D&O Charge and any other charges granted by the Court in the CCAA proceedings, with respect to such charges;
- (v) **“Filing Date”** means September 14, 2020;
- (w) **“Meetings”** and each a **“Meeting”** means a meeting of the creditors of the Petitioners called for the purpose of considering and voting in respect of a Plan;
- (x) **“Monitor’s Website”** means [www.alvarezandmarsal.com/MEC](http://www.alvarezandmarsal.com/MEC);

- (y) **“Notice to Claimants”** means the notice for publication by the Monitor as described in paragraph 12 herein, substantially in the form attached as **Schedule “E”** hereto;
- (z) **“Notice of Dispute of Revision or Disallowance”** means the form substantially in the form attached as **Schedule “F”** hereto;
- (aa) **“Notice of Revision or Disallowance”** means the form substantially in the form attached as **Schedule “G”** hereto;
- (bb) **“Officer”** means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or de facto officer of either of the Petitioners, in such capacity;
- (cc) **“Order”** means this Claims Process Order;
- (dd) **“Person”** means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust (including a real estate investment trust), unincorporated organization, joint venture, government or any agency or instrumentality thereof or any other entity;
- (ee) **“Plan”** means, as further defined in the Initial Order, any proposed plan of compromise or arrangement that may be filed in respect of either or both of the Petitioners pursuant to the CCAA as the same may be amended, supplemented or restated from time to time in accordance the terms thereof;
- (ff) **“Proof of Claim”** means the proof of claim referred to herein to be filed by Claimants in respect of Pre-filing Claims, disputed Employee Claims and Restructuring Period Claims, substantially in the form attached hereto as **Schedule “H”** hereto, which shall include all supporting documentation in respect of such Claim;
- (gg) **“Proof of Claim Instruction Letter”** means the letter containing instructions for completing the Proof of Claim form, substantially in the form attached as **Schedule “I”** hereto; and
- (hh) **“Restructuring Period Claims Bar Date”** means, in respect of a Restructuring Period Claim, the later of (i) 45 days after the date on which the Monitor sends a Claims Package with respect to a Restructuring Period Claim and (ii) the Claims Bar Date.

2. THIS COURT ORDERS that all references as to time herein shall mean local time in Vancouver, British Columbia, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day unless otherwise indicated herein, and any reference to an event occurring on a day that is not a Business Day shall mean the next following day that is a Business Day.

3. THIS COURT ORDERS that all references to the word “including” shall mean “including without limitation”, all references to the singular herein include the plural, the plural include the singular, and any gender includes all genders.

## **GENERAL PROVISIONS**

4. THIS COURT ORDERS that any Claim denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada noon exchange rate in effect at the Filing Date.
5. THIS COURT ORDERS that notwithstanding any other provisions of this Order, the solicitation by the Monitor or the Petitioners of Proofs of Claim and D&O Proofs of Claim, the delivery of Employee Claims Packages, and the filing by any Claimant or Employee Claimant of any Proof of Claim or D&O Proof of Claim shall not, for that reason only, grant any person any standing in the CCAA Proceedings or rights under any Plan.
6. THIS COURT ORDERS that the Monitor is hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which any forms delivered hereunder are completed and executed and the time in which they are submitted, and may, where the Monitor is satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this Order, including in respect of the completion, execution and time of delivery of such forms.
7. THIS COURT ORDERS that amounts claimed in Assessments issued after the Filing Date shall be subject to this Order and there shall be no presumption of validity or deeming of the amount due in respect of the Claim set out in any Assessment where such Assessment was issued after the Filing Date.

## **MONITOR'S ROLE**

8. THIS COURT ORDERS that, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA, the Initial Order and any other orders of the Court in the CCAA Proceedings, the Monitor is hereby directed and empowered to implement the Claims Process and Employee Claims Process set out herein and to take such other actions and fulfill such other roles as are authorized by this Order or incidental thereto.
9. THIS COURT ORDERS that the Monitor (i) shall have all of the protections given to it by the CCAA, the Initial Order, any other orders of the Court in the CCAA Proceedings, and this Order, or as an officer of the Court, including the stay of proceedings in its favour; (ii) shall incur no liability or obligation as a result of the carrying out of the provisions of this Order, other than in respect of its gross negligence or wilful misconduct; (iii) shall be entitled to rely on the books and records of the Petitioners and any information provided by the Petitioners; (iv) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information; and (v) may seek such assistance as may be reasonably required to carry out its duties and obligations pursuant to this Order from the Petitioners, including, without limitation, making such

inquiries and obtaining such records and information as it deems appropriate in connection with the Claims Process but for greater certainty shall not take direction from the Petitioners or any of their subsidiary or affiliated companies, partnerships, or other corporate entities.

10. THIS COURT ORDERS that the Petitioners, Officers, Directors, employees, agents and representatives shall fully cooperate with the Monitor in the exercise of its powers and discharge of its duties and obligations under this Order.

#### **NOTICE TO CLAIMANTS**

11. THIS COURT ORDERS that as soon as practicable, but no later than 5:00 p.m. on December 11, 2020, the Monitor shall cause:

- (a) a Claims Package to be sent to:

- (i) each party that appears on the Service List or has requested a Claims Package;
    - (ii) all known Claimants as evidenced by the books and records of the Petitioners at their respective last known addressees as recorded in the Petitioners' books and records; and

- (b) an Employee Claims Package to be sent to:

- (i) all Employees who appear on the Service List or have requested an Employee Claims Package; and
    - (ii) all Employees who may have an Employee Claim, as evidenced by the books and records of the Petitioners at their respective last known addresses as recorded in the Petitioners' books and records.

12. THIS COURT ORDERS that the Monitor shall cause the Notice to Claimants to be published, for at least two (2) Business Days, in The Globe and Mail (National Edition) and The Vancouver Sun by no later than 5:00 p.m. on December 22, 2020.

13. THIS COURT ORDERS that the Monitor shall cause the Notice to Claimants, the Claims Package and the Employee Claims Package to be posted to the Monitor's Website by no later than 5:00 p.m. on December 11, 2020.

14. THIS COURT ORDERS that to the extent any Claimant or Employee Claimant requests documents or information relating to the Claims Process or the Employee Claims Process prior to the Claims Bar Date or if the Petitioners or the Monitor become aware of any further Claims, the Monitor shall forthwith send such Claimant or Employee Claimant a Claims Package or an Employee Claims Package, as the case may be, direct such Claimant or Employee Claimant to the documents posted on the Monitor's Website or otherwise respond to the request for documents or information as the Monitor may consider appropriate in the circumstances.

15. THIS COURT ORDERS that the Claims Process and the Employee Claims Process and the forms of Notice to Claimants, Proof of Claim Instruction Letter, D&O Claim Instruction Letter, Employee Letter, Proof of Claim, D&O Proof of Claim, Notice of Revision or Disallowance and Notice of Dispute of Revision or Disallowance are hereby approved. Notwithstanding the foregoing, the Monitor may, from time to time, make minor non-substantive changes to the forms as the Monitor, in its sole discretion, may consider necessary or desirable.
16. THIS COURT ORDERS that any notices of disclaimer or resiliation delivered after the date of this Order to potential Claimants or Employee Claimants in connection with any action taken by the Petitioners to restructure, disclaim, resiliate, terminate or breach any contract, lease or other agreement, whether written or oral, pursuant to the terms of the Initial Order, shall be accompanied by a Claims Package or Employee Claims Package, as the case may be.
17. THIS COURT ORDERS that the sending of the Claims Package to the Claimants and the Employee Claims Package to the Employee Claimants and the publication of the Notice to Claimants, in accordance with this Order, and the completion of the other requirements of this Order, shall constitute good and sufficient service and delivery of notice of this Order, the Claims Bar Date and the Restructuring Period Claims Bar Date on all Persons who may be entitled to receive notice and who may wish to assert a Claim, and no other notice or service need be given or made and no other document or material need be sent to or served upon any Person in respect of this Order.

## **FILING OF PROOFS OF CLAIM**

### **(A) Pre-filing and D&O Claims**

18. THIS COURT ORDERS that any Claimant that intends to assert a Pre-filing Claim or D&O Claim shall file a Proof of Claim or D&O Proof of Claim, as applicable, with the Monitor on or before the Claims Bar Date. For the avoidance of doubt, a Proof of Claim or D&O Proof of Claim, as applicable, must be filed by every Claimant in respect of every Pre-filing Claim or D&O Claim, regardless of whether or not a legal proceeding in respect of such Pre-filing Claim or D&O Claim has been previously commenced.
19. THIS COURT ORDERS that any Claimant that does not file a Proof of Claim or D&O Proof of Claim, as applicable, so that such Proof of Claim or D&O Proof of Claim, is received by the Monitor on or before the Claims Bar Date, or such later date as the Monitor may agree in writing or the Court may otherwise direct:
  - (a) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any such Pre-filing Claim against any of the Petitioners or any D&O Claim relating to such Pre-filing Claim and all such Pre-filing Claims or D&O Claims shall be forever extinguished;



- (b) will not be permitted to vote at any Meeting on account of such Pre-filing Claim(s) or D&O Claim(s) relating to the Pre-filing Claim(s);
- (c) will not be entitled to receive further notice with respect to the Claims Process or these proceedings unless the Monitor and/or the Petitioners become aware that such Claimant has any other Claim; and
- (d) will not be permitted to participate in any distribution under any Plan, if applicable, on account of such Pre-filing Claim(s) or D&O Claim(s).

**(B) Restructuring Period Claims**

- 20. THIS COURT ORDERS that upon becoming aware of a circumstance giving rise to a Restructuring Period Claim, the Monitor shall send a Claims Package to the Claimant in respect of such Restructuring Period Claim in the manner provided for herein.
- 21. THIS COURT ORDERS that any Claimant that intends to assert a Restructuring Period Claim or D&O Claim relating to a Restructuring Period Claim shall file a Proof of Claim or D&O Proof of Claim, as applicable, with the Monitor on or before the Restructuring Period Claims Bar Date. For the avoidance of doubt, a Proof of Claim or D&O Proof of Claim must be filed by every Claimant in respect of every Restructuring Period Claim or D&O Claim relating to a Restructuring Period Claim, regardless of whether or not a legal proceeding in respect of such Restructuring Period Claim or D&O Claim has been previously commenced.
- 22. THIS COURT ORDERS that any Claimant that does not file a Proof of Claim or D&O Proof of Claim, as applicable, so that such Proof of Claim or D&O Proof of Claim is received by the Monitor on or before the Restructuring Period Claims Bar Date, or such later date as the Monitor may agree in writing or the Court may otherwise direct:
  - (a) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any such Restructuring Period Claim against either of the Petitioners or any D&O Claim relating to such Restructuring Period Claim and all such Restructuring Period Claim or D&O Claims shall be forever extinguished;
  - (b) will not be permitted to vote at any Meeting on account of such Restructuring Period Claim(s) or D&O Claim(s);
  - (c) will not be entitled to receive further notice with respect to the Claims Process or these proceedings unless the Monitor and/or the Petitioners become aware that such Claimant has any other Restructuring Period Claim or D&O Claim relating to the Restructuring Period Claim; and
  - (d) will not be permitted to participate in any distribution under any Plan, if applicable, on account of such Restructuring Period Claim(s) or D&O Claim(s).

**(C) Employee Claims**

23. In the event an Employee Claimant receives an Employee Claims Package and such Employee Claimant agrees with the assessment of the amount and classification of its Employee Claim as set out in the Employee Letter, they need not file a Proof of Claim or take any further action and upon no further action being taken by the Claims Bar Date, the Employee Claim shall be deemed proven.
24. In the event an Employee Claimant receives an Employee Claims Package and such Employee Claimant disagrees with the assessment of either the amount or classification (or both) of their Employee Claim as set out in the Employee Letter, they must deliver a Proof of Claim setting out their Employee Claim so that it is received by the Monitor and the Petitioners by no later than the Claims Bar Date.
25. THIS COURT ORDERS that any Employee Claimant that does not file a Proof of Claim so that such Proof of Claim is received by the Monitor on or before the Claims Bar Date, or such later date as the Monitor may agree in writing or the Court may otherwise direct:
  - (a) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any Employee Claim other than the Employee Claim as set out in the respective Employee Letter against either of the Petitioners and any such further Employee Claim(s) shall be forever extinguished;
  - (b) will not be permitted to vote at any Meeting on account of such further Employee Claim(s);and
  - (c) will not be permitted to participate in any distribution under any Plan, if applicable, on account of such further Employee Claim(s).

**ADJUDICATION OF CLAIMS**

26. THIS COURT ORDERS that the Monitor shall review all Proofs of Claim received on or before the Claims Bar Date or the Restructuring Period Claims Bar Date, in consultation with the Petitioners, and shall accept, revise or reject each Claim. With respect to a D&O Claim set out in a D&O Proof of Claim, the Monitor shall, in consultation with the Petitioners and the Directors and Officers named in respect of such D&O Claim as to the merits of such Claim(s), as applicable, accept, revise or reject such D&O Claim.
27. THIS COURT ORDERS that if the Monitor intends to revise or reject a Claim, the Monitor shall notify the Claimant or Employee Claimant who has delivered such Proof of Claim or D&O Proof of Claim, as applicable, that such Claim has been revised or rejected and the reasons therefor, by sending a Notice of Revision or Disallowance by no later than March 22, 2021, unless otherwise ordered by this Court on application by the Monitor.

28. THIS COURT ORDERS that any Claimant or Employee Claimant who intends to dispute a Notice of Revision or Disallowance hereof shall:
- (a) deliver a completed Notice of Dispute of Revision or Disallowance, along with the reasons for the dispute, to the Monitor by no later than thirty (30) days after the date on which the Claimant or Employee Claimant is deemed to receive the Notice of Revision or Disallowance, or such other date as may be agreed to by the Monitor in writing; and
  - (b) in the event that a dispute raised in a Notice of Dispute of Revision or Disallowance is not settled within a time period or in a manner satisfactory to the Monitor, in consultation with the Petitioners, the Monitor shall refer the dispute raised in the Notice of Dispute of Revision or Disallowance to a Claims Officer or the Court for adjudication at its election.
29. THIS COURT ORDERS that where a Claimant or Employee Claimant that receives a Notice of Revision or Disallowance does not file a completed Notice of Dispute of Revision or Disallowance by the time set out in paragraph 28, such Claimant's or Employee Claimant's Claim or D&O Claim relating to such Claim shall be deemed to be as set out in the Notice of Revision or Disallowance and such Claimant or Employee Claimant shall have no further right to dispute same.
30. THIS COURT ORDERS that, following the issuance of a Notice of Revision or Disallowance, the Monitor may refer any Claim to a Claims Officer or the Court for adjudication at its election by sending written notice to the Claimant or Employee Claimant at any time.
31. THIS COURT ORDERS that in the event the Monitor receives sufficient proof that all or any portion of a Claim has been paid by a party other than the Petitioners, such Claim shall be reduced by the amount of such payment or, if paid in full, the Claimant holding such Claim will not be permitted to participate in any distribution under any Plan, if applicable.
32. THIS COURT ORDERS that on or before April 30, 2021, the Monitor shall serve on the Service List and file with the Court a list of all Claims.

### **CLAIMS OFFICERS**

33. THIS COURT ORDERS that Herman Van Ommen, Q.C., and such other Persons as may be appointed by the Court from time to time on application of the Monitor, be and they are hereby appointed as Claims Officers for the claims procedure described herein.
34. THIS COURT ORDERS that the decision as to whether any Claim not resolved between a Claimant, the Monitor and the Petitioner should be adjudicated by the Court or a Claims Officer shall be in the sole discretion of the Monitor.

35. THIS COURT ORDERS that notwithstanding paragraph 34 above and paragraph 36 below, and unless otherwise agreed by the parties, Mr. Van Ommen, Q.C. will adjudicate any disputed Claim of landlords whose leases have been disclaimed in the course of this proceeding, without any requirement for such landlords to deliver a Notice of Dispute following the Monitor's issuance of a Notice of Revision or Disallowance, and the procedure for such adjudication, including without limitation, examinations of witnesses or deliver of expert reports, be determined and agreed by such landlords, the Monitor and Mr. Van Ommen, Q.C. or, failing such agreement, as determined by this Court.
36. THIS COURT ORDERS that a Claims Officer shall determine the validity and amount of disputed Claims in accordance with this Order and to the extent necessary may determine whether any Claim or part thereof constitutes an Excluded Claim and shall provide written reasons. A Claims Officer shall determine all procedural matters which may arise in respect of his or her determination of these matters, including the manner in which any evidence may be adduced.
37. THIS COURT ORDERS that the Monitor, the Claimant, Employee Claimant or the applicable Petitioner may, within ten (10) days of such party receiving notice of a Claims Officer's determination of the value of any Claim, appeal such determination to the Court by filing a notice of appeal.
38. THIS COURT ORDERS that any appeal described in paragraph 37 above shall be true appeals and not hearings *de novo*, and no party shall be entitled to file evidence with the Court that was not provided to the Monitor or a Claims Officer in the Claims Process.
39. THIS COURT ORDERS that if no party appeals the determination of value of a Claim by a Claims Officer within the time set out in paragraph 37, above, the decision of the Claims Officer in determining the value of the Claim shall be final and binding upon the relevant Petitioner, the Monitor, and the Claimant or Employee Claimant, and there shall be no further right of appeal, review or recourse to the Court from the Claims Officer's final determination of a Claim.

#### **NOTICE OF TRANSFEREES**

40. THIS COURT ORDERS that from the date of this Order until seven (7) days prior to the date fixed by the Court for any distribution in the CCAA Proceedings or any other proceeding, including a bankruptcy, to the extent required, leave is hereby granted to permit a Claimant or Employee Claimant to provide notice of assignment or transfer of a Claim to any third party to the Monitor.
41. THIS COURT ORDERS that subject to the terms of any subsequent Order of this Court, if, after the Filing Date, the holder of a Claim transfers or assigns the whole of such Claim to another Person, neither the Monitor nor the Petitioners shall be obligated to give notice to or otherwise deal with the transferee or assignee of such Claim in respect thereof unless and until actual notice of transfer or assignment, together with satisfactory

evidence of such transfer or assignment, shall have been received and acknowledged by the Monitor in writing and thereafter such transferee or assignee shall, for the purposes hereof, constitute the "Claimant" or "Employee Claimant" in respect of such Claim. Any such transferee or assignee of a Claim shall be bound by any notices given or steps taken in respect of such Claim in accordance with this Order prior to receipt and acknowledgement by the Monitor of satisfactory evidence of such transfer or assignment. A transferee or assignee of a Claim or takes the Claim subject to any rights of set-off to which the Petitioners may be entitled with respect to such Claim. For greater certainty, a transferee or assignee of a Claim is not entitled to set-off, apply, merge, consolidate or combine any Claims assigned or transferred to it against or on account or in reduction of any amounts owing by such Person to the Petitioners.

42. THIS COURT ORDERS that no transfer or assignment shall be effective for voting purposes at any Meeting unless sufficient notice and evidence of such transfer or assignment has been received by the Monitor no later than 5:00 p.m. on the date that is seven (7) days prior to the date fixed by the Court for any Meeting, failing which the original Claimant or Employee Claimant shall have all applicable rights as the "Claimant" or "Employee Claimant" with respect to such Claim as if no transfer or assignment of the Claim had occurred.

#### **SERVICE AND NOTICE**

43. THIS COURT ORDERS that the Monitor may, unless otherwise specified by this Order, serve and deliver or cause to be served and delivered the Claims Package and the Employee Claims Package, and any letters, notices or other documents, to the Claimants, Employee Claimants or any other interested Person by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or email to such Persons at the physical or electronic address, as applicable, last shown on the books and records of the Petitioners or set out in such Claimant's or Employee Claimant's Proof of Claim. Any such service and delivery shall be deemed to have been received: (i) if sent by ordinary mail, on the third Business Day after mailing within British Columbia, the fifth Business Day after mailing within Canada (other than within British Columbia), and the tenth Business Day after mailing internationally; (ii) if sent by courier or personal delivery, on the next Business Day following dispatch; and (iii) if delivered by facsimile transmission or email by 5:00 p.m. on a Business Day, on such Business Day and if delivered after 5:00 p.m. or other than on a Business Day, on the following Business Day.
44. THIS COURT ORDERS that any notice or communication required to be provided or delivered by a Claimant or Employee Claimant to the Monitor under this Order shall be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if delivered by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email addressed to:

Alvarez & Marsal Canada Inc.  
400 Burrard St #1680  
Vancouver, BC V6C 3A6

Attention: Nishant Virmani  
Email: MEC@alvarezandmarsal.com  
Fax: (604) 638-7441

45. THIS COURT ORDERS that if, during any period during which notices or other communications are being given pursuant to this Order, a postal strike or postal work stoppage of general application should occur, such notices or other communications sent by ordinary or registered mail and then not received shall not, absent further Order of this Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery, facsimile transmission or email in accordance with this Order.

#### **MISCELLANEOUS**

46. THIS COURT ORDERS that the Monitor may from time to time apply to this Court to extend the time for any action which the Monitor is required to take if reasonably required to carry out its duties and obligations pursuant to this Order and for advice and directions concerning the discharge of its powers and duties under this Order or the interpretation or application of this Order.
47. THIS COURT ORDERS that nothing in this Order shall prejudice the rights and remedies of any Directors or Officers or other Persons under the D&O Charge or any applicable insurance policy or prevent or bar any Person from seeking recourse against or payment from the Petitioners' insurance and any Director's or Officer's liability insurance policy or policies that exist to protect or indemnify the Directors or Officers or other Persons, whether such recourse or payment is sought directly by the Person asserting a Claim from the insurer or derivatively through the Director or Officer or either of the Petitioners; provided, however, that nothing in this Order shall create any rights in favour of such Person under any policies of insurance nor shall anything in this Order limit, remove, modify or alter any defence to such Claim available to the insurer pursuant to the provisions of any insurance policy or at law; and further provided that any Claim or portion thereof for which the Person receives payment directly from, or confirmation that she is covered by, the Petitioners' insurance or any Director's or Officer's liability insurance or other liability insurance policy or policies that exist to protect or indemnify the Directors or Officers or other Persons shall not be recoverable as against a Petitioner or Director or Officer as applicable.
48. This Order shall have full force and effect in all provinces and territories in Canada.
49. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Petitioners, the Monitor, and their respective agents in carrying out the terms

of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners, or the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Petitioners, and the Monitor and their respective agents in carrying out the terms of this Order.

50. The Petitioners, the Monitor, and any other party may apply to this Court for advice and direction, or to seek relief in respect of any matters arising from or under this Order, including without limitation, as necessary, the interpretation of this Order or the implementation thereof, and for any further order that may be required, on notice to any party likely to be affected by the order sought or on such notice as this Court requires.
51. Endorsement of this Order by counsel appearing on this application, other than counsel for the Petitioners, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

  
\_\_\_\_\_  
Signature of  
☐ party ☒ lawyer for the Petitioners

Scott M. Boucher



By the Court.

\_\_\_\_\_  
Registrar

No. S209201  
Vancouver Registry

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In the Supreme Court of British Columbia

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

AND

IN THE MATTER OF MOUNTAIN EQUIPMENT CO-OPERATIVE  
AND 1314625 ONTARIO LIMITED

Petitioners

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**ORDER MADE AFTER APPLICATION**

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**NORTON ROSE FULBRIGHT CANADA LLP**

Barristers & Solicitors  
1800 – 510 West Georgia Street  
Vancouver, BC V6B 0M3  
Attention: Howard A. Gorman, Q.C.  
Filing Agent: West Coast Title Search

SCB/ker

Matter# 1001118436