

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

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

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

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

Applicant

**FACTUM OF THE APPLICANT
(returnable April 9, 2015)**

April 8, 2015

DENTONS CANADA LLP
Barristers & Solicitors
TD Centre, North Tower
77 King Street West, Suite 400
Toronto, ON M5K 0A1

John Salmas LSUC#: 42336B
john.salmas@dentons.com

Sara-Ann Van Allen LSUC#: 56016C
sara.vanallen@dentons.com

Tel: 416.863.4737/ 4402
Fax: 416.863.4592

Lawyers for Foreign Representative and
Canadian counsel to the Chapter 11 Debtors

TO: THE SERVICE LIST

SERVICE LIST

TO: DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto ON M5K 0A1

John Salmas
LSUC No. 42336B
Telephone: 416.863.4467
Facsimile: 416.863.4592
E-Mail: john.salmas@dentons.com

Sara-Ann Van Allen
LSUC No. 56016C
Telephone: 416.863.4402
Facsimile: 416.863.4592
E-Mail: sara.vanallen@dentons.com

Solicitors for the Foreign Representative and Canadian counsel to the Chapter 11 Debtors

AND TO: ALVAREZ & MARSAL CANADA ULC
Royal Bank Plaza, South Tower
200 Bay Street, Suite 2900
Toronto, Ontario
M5J 2J1

John J. Walker
Telephone: 416.847.5152
Facsimile: 416.847.5201
E-Mail: jwalker@alvarezandmarsal.com

Andrea Yandreski
Telephone: 416.847.5153
Facsimile: 416.847.5201
E-Mail: ayandreski@alvarezandmarsal.com

Information Officer

AND TO: GOODMANS LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario
M5H 2S7

Jay A. Carfagnini
Telephone: 416.597.4107
Fax: 416.979.1234
E-Mail: jcarfagnini@goodmans.ca

Brian F. Empey
Telephone: 416.597.4194
Fax: 416.979.1234
E-Mail: bempey@goodmans.ca

Lawyers for the Information Officer

AND TO: WINSTON & STRAWN LLP
200 Park Avenue
New York, New York 10166
U.S.A.
Telephone: 212.294.6700
Fax: 212.294.4700

Bart Pisella
Email: bpisella@winston.com

Timothy P. Kober
Email: tkober@winston.com

Carrie V. Hardman
Email: chardman@winston.com

Counsel to Wilmington Trust, National Association

AND TO: INDUSTRY CANADA
Space Services Directorate
Engineering, Planning and Standards Branch
Industry Canada
300 Slater Street, 15th Floor
Ottawa, Ontario
K1A 0C8

Shari Scott, Manager, Satellite Authorization Policy
Telephone: 613.986.0017
Fax: 613.991.3514
E-Mail: shari.scott@ic.gc.ca

AND TO: MORGUARD INVESTMENTS LIMITED
350 Sparks Street, Suite 402
Ottawa, Ontario
K1R 7S8

Beth Whitehead, Manager, Commercial Lease Administration
Facsimile: 613.237.0007
E-Mail: bwhitehead@morguard.com

Agent for Pensionfund Realty Limited

AND TO: NORTON ROSE CANADA LLP / S.E.N.C.R.L.,S.R.L.
45 O'Connor Street
Suite 1500
Ottawa, Ontario
K1P 1A4

Ken Jennings
Telephone : 613.780.1558
Facsimile: 613.230.5459
E-Mail: Ken.Jennings@nortonrose.com

Counsel to Morguard Investments Limited

**AND TO: OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS
CANADA**

Head Office
255 Albert Street
Ottawa, Ontario
K1A 0H2

Attention: Legal Services Division
Phone: 613.990.7788
E-Mail: Information@osfi-bsif.gc.ca

AND TO: BENNETT JONES LLP

3400 One First Canadian Place
P.O. Box 130
Toronto, Ontario
M5X 1A4

Kevin J. Zych

Telephone: 416.777.5738
Facsimile: 416.863.1716
E-Mail: zychk@bennettjones.com

Raj. S. Sahni

Telephone : 416.777.4804
Facsimile: 416.863.1716
E-Mail: sahnir@bennettjones.com

Sean Zweig

Telephone: 416.777.6254
Facsimile: 416.863.1716
E-Mail: zweigs@bennettjones.com

Canadian Counsel to the Ad Hoc Secured Group of LightSquared LP Lenders

AND TO: OSLER, HOSKIN & HARCOURT LLP

Box 50, 1 First Canadian Place
Toronto, Ontario
M5X 1B8

Patrick Riesterer

Telephone: 416.862.5947
Facsimile: 416.862.6666
E-Mail: priesterer@osler.com

Marc Wasserman

Telephone: 416.862.4908
Facsimile: 416.862.6666
E-Mail: mwasserman@osler.com

Counsel for L-Band Acquisition, LLC

AND TO: STORCH AMINI & MUNVES PC

2 Grand Central Tower
140 East 45th Street
New York, New York 10017

Bijan Amini

Telephone: 212.497.8217
E-Mail: bamini@samlegal.com

Avery Samet

Telephone: 212.497.8239
E-Mail: asamet@samlegal.com

Jaime Leggett

Telephone: 212.497.8220
E-Mail: jleggett@samlegal.com

Counsel for Sanjiv Ahuja

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PART I. – OVERVIEW

1. The Foreign Representative respectfully submits this factum in support of its motion returnable April 9, 2015, seeking, among other things, the recognition in Canada of the following orders of the United States Bankruptcy Court for the Southern District of New York (the “**U.S. Bankruptcy Court**”) entered or sought in the cases commenced by the Chapter 11 Debtors in the U.S. Bankruptcy Court under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Chapter 11 Cases**”) (collectively, the “**Foreign Orders**”):

- (a) *Order Confirming Modified Second Amended Joint Plan Pursuant To Chapter 11 Of Bankruptcy Code* [U.S. Bankruptcy Court Docket No. 2276] (the “**Confirmation Order**”);
- (b) *Order, Pursuant to 11 U.S.C. §§ 105(A) and 363, Authorizing LightSquared to (A) Enter into and Perform Under Letters Related to \$1,515,000,000 Second Lien Exit Financing Arrangements, (B) Pay Fees and Expenses in Connection Therewith, and (C) Provide Related Indemnities* [U.S. Bankruptcy Court Docket No. 2273] (the “**Jefferies Exit Financing Order**”);
- (c) *Order Authorizing Payment of Alternative Transaction Fee in Connection with Proposed Plan of Reorganization* [U.S. Bankruptcy Court Docket No. 2275] (the “**Alternative Transaction Fee Order**”);
- (d) *Order (A) Authorizing Use of Cash Collateral, if any, Through Plan Effective Date, (B) Establishing that Prepetition Secured Parties are Adequately Protected and (C) Modifying Automatic Stay* [to be entered by the U.S. Bankruptcy Court]; and
- (e) *Order Amending Final Order (A) Authorizing DIP Obligors To Obtain Eighth Replacement Superpriority Senior Secured Priming Postpetition Financing, (B) Granting Superpriority Liens and Providing Superpriority Administrative Expense Status, (C) Granting Adequate Protection, and (D) Modifying Automatic*

Stay [U.S. Bankruptcy Court Docket No. 2300] (the “**Amended Eighth Replacement DIP Order**”).

2. All capitalized terms used herein but not otherwise defined have the meanings ascribed to such terms in the Modified Second Amended Plan (as defined herein).

PART II. – FACTS

(A) Background

3. On December 18, 2014, the Chapter 11 Debtors filed initial versions of the (i) *Joint Plan Pursuant to Chapter 11 of Bankruptcy Code* (as amended, modified or supplemented, the “**Joint Plan**”), and (ii) *Specific Disclosure Statement for Joint Plan Pursuant to Chapter 11 of Bankruptcy Code* (the “**Specific Disclosure Statement**”).

Affidavit of Elizabeth Creary, sworn April 2, 2015, para 16 [Creary Affidavit].

4. The Specific Disclosure Statement and Joint Plan were subsequently amended.

Creary Affidavit, para 17.

5. By order dated January 20, 2015 (the “**Specific Disclosure Statement Approval Order**”), the U.S. Bankruptcy Court approved the *Second Amended Specific Disclosure Statement for Second Amended Joint Plan Pursuant to Chapter 11 of Bankruptcy Code*, dated January 20, 2015 (the “**Second Amended Specific Disclosure Statement**”), which included as an exhibit a further amended version of the Joint Plan.

Creary Affidavit, para 18.

6. On February 2, 2015, the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”), recognized and gave full force and effect in Canada to the Specific Disclosure Statement Approval Order.

Creary Affidavit, para 19.

7. The confirmation hearing in respect of the Joint Plan (the “**Confirmation Hearing**”) commenced at 10:00 am on March 9, 2015 before the U.S. Bankruptcy Court.

Creary Affidavit, para 30.

8. At the time of commencement of the Confirmation Hearing, numerous stakeholders had filed objections to the Joint Plan.

Creary Affidavit, para 31.

9. The Chapter 11 Debtors were successful in resolving all outstanding objections prior to the close of the eight (8) day Confirmation Hearing, with the exception of the objection filed by Sanjiv Ahuja, a common stockholder, unsecured creditor, and former CEO of the Chapter 11 Debtors (“**Ahuja**”).

Creary Affidavit, para 36.

10. The ongoing negotiations and resolution of objections resulted in various modifications to the Joint Plan and, on March 26, 2015, the Chapter 11 Debtors filed the Modified Second Amended Plan.

Creary Affidavit, para 37.

11. On March 26, 2015, Judge Chapman of the U.S. Bankruptcy Court overruled the last outstanding objection to the Modified Second Amended Plan (filed by Ahuja) and issued a bench decision which, among other things, confirmed the Modified Second Amended Plan.

Creary Affidavit, para 38.

(B) The Modified Second Amended Plan

12. The Modified Second Amended Plan is a joint plan for both the LP and Inc. estates. It provides for a reorganization of the Chapter 11 Debtors, the preservation of their valuable assets, the continuation of their business and the saving of jobs. It contemplates a series of interrelated transactions and concessions that are the result of intense mediation, negotiations and countless hours of discussions amongst the various stakeholders.

Creary Affidavit, para 39.

13. The Modified Second Amended Plan provides for, among other things:
- (a) the satisfaction in full of all allowed claims of creditors for cash or other consideration, as applicable;
 - (b) the payment in full, in cash (including postpetition interest) of all general unsecured claims; and
 - (c) a broad release pursuant to which each of the Chapter 11 Debtors and various other parties are released from any and all claims and liabilities relating to the restructuring or otherwise arising prior to the Effective Date, with the exception of wilful misconduct (including fraud) and gross negligence.

Creary Affidavit, paras 41 & 59.

14. All impaired classes of claims will receive, under the Modified Second Amended Plan, property of a value that is not less than the amount that such claimant would receive if the Chapter 11 Debtors were to be liquidated under Chapter 7 of the U.S. Bankruptcy Code.

Creary Affidavit, para 52.

15. The liquidation analysis contained in the Second Amended Specific Disclosure Statement provides that all general unsecured claims are expected to receive no recovery in the event of a liquidation of the Chapter 11 Debtors pursuant to Chapter 7 of the U.S. Bankruptcy Code.

Second Amended Specific Disclosure Statement, page 190, Attached as Exhibit “F” to the Creary Affidavit.

16. Pursuant to the Specific Disclosure Statement Approval Order, the Chapter 11 Debtors solicited votes on the Joint Plan. After the withdrawal of various objections and the filing of motions by certain parties to change their votes, greater than the requisite number of holders and claim amounts in each impaired class entitled to vote to accept or reject the Modified Second Amended Plan affirmatively voted to accept the Modified Second Amended Plan.

Creary Affidavit, para 50.

(C) Amended Eighth Replacement DIP Order

17. On January 30, 2015, the U.S. Bankruptcy Court granted the *Final Order (A) Authorizing DIP Obligors To obtain Eighth Replacement Superpriority Senior Secured Priming Postpetition Financing, (B) Granting Superpriority Liens and Providing Superpriority Administrative Expense Status, (C) Granting Adequate Protection, and (D) Modifying Automatic Stay* [U.S. Bankruptcy Court Docket No. 2053] (the “**Eighth Replacement DIP Order**”).

Supplemental Affidavit of Elizabeth Creary, sworn April 6, 2015, para 6 [Supplemental Creary Affidavit].

18. Pursuant to the Order of the Honourable Regional Senior Justice Morawetz dated February 2, 2015, the Canadian Court recognized the Eighth Replacement DIP Order.

Supplemental Creary Affidavit, para 7.

19. The Eighth Replacement DIP Order approves a replacement, senior secured, priming, superpriority debtor-in-possession credit facility (the “**Eighth Replacement DIP Facility**”)

which provides for multiple stages of borrowing including the tranche B loans to the Inc. DIP Obligors (as defined in the Eighth Replacement DIP Order) in the aggregate principal amount of \$210,000,000 (the “**Tranche B Loans**”), if the Conditions to Combined Delayed Draw Funding (as defined in the Eighth Replacement DIP Order) are satisfied. The Tranche B Loans are to be used to, (i) repay in full all outstanding DIP Inc. Claims and certain Prepetition Inc. Facility claims to the extent such claims are not purchased by SIG, and (ii) permit the DIP Obligors (as defined in the Eighth Replacement DIP Order) to meet their general corporate and working capital needs through to the Effective Date.

Supplemental Creary Affidavit, para 10.

20. The Eighth Replacement DIP Order provides for a cross-collateralization between the estates of the Inc. DIP Obligors and the LP DIP Obligors (as defined in the Eighth Replacement DIP Order) in respect of their obligations to their respective DIP lenders. In the event that the Tranche B Loans are incurred, the Tranche B Lenders (as defined in the Eighth Replacement DIP Order) are provided with security over the LP DIP Collateral (as defined in the Eighth Replacement DIP Order) in priority to prepetition secured claims and, as a result, in priority to unsecured creditors of the LP Debtors.

21. On March 17, 2015, the New Investors¹ provided their written consent (the “**New Investor Consent**”) for the incurrence of the Tranche B Loans in accordance with the Eighth Replacement DIP Facility Order, subject to certain modifications to the Eighth Replacement DIP Facility Order.

Supplemental Creary Affidavit, para 12.

¹ Fortress Credit Opportunities Advisors LLC, on behalf of certain funds and/or accounts managed by it and its affiliates, Centerbridge Partners L.P., on behalf of certain of its affiliated funds, Harbinger Capital Partners LLC on behalf of itself and certain of its affiliates’ managed funds and/or accounts and SIG Holdings, Inc. and/or one or more of its designated affiliates collectively make up the “**New Investors**”.

22. The New Investor Consent is one of the Conditions to Combined Delayed Draw Funding (as defined in the Eighth Replacement DIP Order) and is, itself, conditioned on entry of the Amended Eighth Replacement DIP Order.

Supplemental Creary Affidavit, para 20.

23. On April 1, 2015, the Chapter 11 Debtors filed the Notice of Presentment dated April 1, 2015 seeking the entry of the Amended Eighth Replacement DIP Order.

Supplemental Creary Affidavit, para 3.

24. On April 7, 2015, the U.S. Bankruptcy Court entered the Amended Eighth Replacement DIP Order. It contemplates certain material amendments to the Eighth Replacement DIP Order, as follows:

- (a) an intercompany claim in favour of the Inc. Debtors or the LP Debtors, against each other's estate (an "**Intercompany Claim**"), as applicable, in the event that the guarantee provided by an estate (the "**Guaranteeing Estate**") in favour of the lenders of the other estate (the "**Beneficiary Estate**") is called upon and the assets of the Guaranteeing Estate are monetized in order to repay the obligations of the Beneficiary Estate pursuant to the Eighth Replacement DIP Facility and, as a result, the assets of the Guaranteeing Estate are insufficient to repay such estate's prepetition senior loan facility;
- (b) the Intercompany Claim is limited to the lesser of, (i) the amount of the Benefitting Estate's DIP obligations repaid via the sale of the Guaranteeing Estate's assets, and (ii) the amount of the Guaranteeing Estate's deficiency in the repayment of its own prepetition senior loan facility; and
- (c) such Intercompany Claim will constitute an administrative expense claim, senior to all administrative expenses and unsecured claims, but junior to all DIP claims, and secured by a priming lien on all of the LP Debtors' or Inc. Debtors' assets, as applicable.

Supplemental Creary Affidavit, paras 14 - 18.

Affidavit of Robert Kennedy, to be filed.

25. The amendments contained in the Amended Eighth Replacement DIP Order are intended to provide additional comfort to prepetition lenders in the event that the Inc. DIP Collateral (as defined in the Eighth Replacement DIP Order) or the LP DIP Collateral, as applicable, is insufficient to repay the appropriate prepetition loan facilities.

Supplemental Creary Affidavit, para 19.

PART III. – LAW AND ARGUMENT

(A) Recognition of the Foreign Orders under the CCAA

26. The purpose of Part IV of the *Companies' Creditors Arrangement Act* ("CCAA") is set out in s. 44:

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

(a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;

(b) greater legal certainty for trade and investment;

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

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

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

CCAA, R.S.C. 1985, c. C-36, as amended, s. 44.

27. Section 49(1) of the CCAA provides that, if an order recognizing a foreign proceeding is made, the court may, if it is satisfied that it is necessary for the protection of the debtor company's property or the interests of the creditor or creditors, make any order that it considers appropriate.

CCAA, s. 49(1).

28. Section 50 of the CCAA provides that an order under Part IV may be made on any terms and conditions that the court considers appropriate in the circumstances.

CCAA, s. 50.

(B) The Confirmation Order should be recognized

29. The long and costly road to confirmation of the Modified Second Amended Plan has been plagued by frequent objections and protracted litigation. The Chapter 11 Cases were described by the Honourable Judge Chapman in her bench decision confirming the Modified Second Amended Plan as a "bankruptcy battle [of] biblical proportions."

Creary Affidavit, para 28.

Transcript of Judge Chapman's bench decision issued March 26, 2015, page 98, Attached as Exhibit "R" to the Creary Affidavit.

30. The Chapter 11 Debtors have announced and negotiated several plans over the course of these Chapter 11 proceedings. In the spring of 2014, the Chapter 11 Debtors sought confirmation of a previous joint plan that, notwithstanding widespread support by significant stakeholders, was ultimately denied confirmation by the U.S. Bankruptcy Court on May 8, 2014.

Creary Affidavit, paras 21 & 22.

31. The Modified Second Amended Plan is a product of more than seven (7) months of mediation amongst the stakeholders. It will allow the Chapter 11 Debtors to finally emerge from

the Chapter 11 proceedings after more than three (3) years since the commencement of the Chapter 11 Cases.

Creary Affidavit, para 24.

32. The Modified Second Amended Plan is critical to the restructuring of the Chapter 11 Debtors as a global corporate enterprise. It responds to the paradigm shift in the market's valuation of spectrum assets of the type held by the Chapter 11 Debtors and brings final resolution to the litany of issues that have been heavily contested throughout the Chapter 11 Cases.

***Re Xerium Technologies Inc.*, 2010 ONSC 3974, para 27 [Xerium],
Book of Authorities of the Applicant, Tab 1.**

Creary Affidavit, para 27.

33. The recognition of the Confirmation Order is consistent with the purpose of the CCAA and Part IV in particular. It promotes the fair and efficient administration of the Chapter 11 Debtors' cross-border proceedings.

CCAA, s. 44.

34. The Modified Second Amended Plan is a joint plan for both the LP and Inc. estates. It avoids the necessity for multiple plans across the Chapter 11 Debtors' various estates and enables the Chapter 11 Debtors to unlock significant value by combining the assets of both of the Inc. and LP estates.

Creary Affidavit, para 39.

Supplemental Creary Affidavit, para 23.

35. The Modified Second Amended Plan contemplates a series of interrelated transactions and concessions that provide for the protection and maximization of the value of the Chapter 11 Debtors' property. It contemplates more than \$2 billion in debt and equity investments from the New Investors and certain other parties, and through the provision of the \$1.25 billion Working

Capital Facility will provide the reorganized Chapter 11 Debtors with sufficient working capital to pursue their corporate strategy for the foreseeable future.

Creary Affidavit, paras 40 & 41.

36. The Modified Second Amended Plan, and the recognition of the Confirmation Order, is in the interests of all of the Chapter 11 Debtors' creditors, including the creditors of the Canadian estates. It provides the highest possible recoveries to the Chapter 11 Debtors' stakeholders in the circumstances.

Confirmation Order, page 25, attached as Exhibit "A" to the Creary Affidavit.

37. In particular, the Modified Second Amended Plan provides for the payment in full, including postpetition interest, of all general unsecured creditors, including Canadian unsecured creditors. In the absence of the Modified Second Amended Plan, it is expected that there would be no distributions to such creditors.

Creary Affidavit, para 41.

Supplemental Creary Affidavit, para 22.

38. The unsecured creditors are expected to receive no recoveries in the event of the liquidation of the Chapter 11 Debtors pursuant to Chapter 7 of the U.S. Bankruptcy Code. As such, but for the contributions contemplated by the Modified Second Amended Plan, those creditors senior to the unsecured creditors would not be paid anywhere near in full and there would be no value flowing to any of the unsecured creditors, including the Canadian unsecured creditors.

Second Amended Specific Disclosure Statement, page 190, Attached as Exhibit "F" to the Creary Affidavit.

Supplemental Creary Affidavit, para 23.

39. By confirming the Modified Second Amended Plan, the U.S. Bankruptcy Court concluded that it is consistent with the objectives of the U.S. Bankruptcy Code and complies with applicable principles set out therein. In respect of the latter, the Confirmation Order makes the following findings (among others):

- (a) the Modified Second Amended Plan is fair, reasonable and proposed in good faith;
- (b) votes to accept the Modified Second Amended Plan were solicited and tabulated fairly, in good faith, and in a manner consistent with the Specific Disclosure Statement Approval Order, the U.S. Bankruptcy Code and the rules pursuant to the U.S. Bankruptcy Code;
- (c) the Modified Second Amended Plan will not likely be followed by the need for liquidation or further financial reorganization of the Chapter 11 Debtors;
- (d) the transactions effectuating the Chapter 11 Debtors' restructuring, and the resulting terms of the agreements contemplated by the Modified Second Amended Plan, are in the best interests of the Chapter 11 Debtors' and their estates; and
- (e) the release, exculpation, and injunction provisions set forth in the Modified Second Amended Plan are valid and binding as, (i) they were proposed in good faith, are essential to the Modified Second Amended Plan, are appropriately tailored, and are intended to promote finality and prevent parties from attempting to circumvent the terms of the Modified Second Amended Plan, and (ii) are consistent with the U.S. Bankruptcy Code and applicable law.

Confirmation Order, pages 8, 25, 29, 32 & 39-40 attached as Exhibit "A" to the Creary Affidavit.

Xerium, para 28.

40. Confirmation of the Modified Second Amended Plan by the U.S. Bankruptcy Court occurred in accordance with standard and well established procedures and practices, as set out in the U.S. Bankruptcy Code.

Xerium, para 27.

41. By granting the Initial Recognition Order in these proceedings on May 18, 2012, in which the Chapter 11 Cases were recognized as a “foreign main proceeding”, this Honourable Court previously acknowledged Canada as an ancillary jurisdiction in the reorganization of the Chapter 11 Debtors.

Creary Affidavit, para 11.

Xerium, para 27.

42. The Chapter 11 Debtors carry on business in Canada through LightSquared and their other Canadian subsidiaries, each of which are Chapter 11 Debtors and have had the same access and participation in the Chapter 11 Cases as the other Chapter 11 Debtors.

Xerium, para 27.

43. The Jefferies Exit Financing Order and the Alternative Transaction Fee Order are integral components of the Modified Second Amended Plan and, accordingly, the Foreign Representative submits that such Orders should be recognized by this Honourable Court in conjunction with recognition of the Confirmation Order.

Creary Affidavit, para 77.

(C) The Amended Eighth Replacement DIP Order should be recognized

44. In the event that the Conditions to Combined Delayed Draw Funding are met, the Eighth Replacement DIP Facility will fund the operations of the Chapter 11 Debtors from the confirmation of the Modified Second Amended Plan to the Effective Date (expected to occur by

the end of December, 2015). As such, the Eighth Replacement DIP Facility is an integral part of the Modified Second Amended Plan and is necessary for the Chapter 11 Debtors to exit from the Chapter 11 proceedings.

Supplemental Creary Affidavit, para 10.

45. The cross-liability and cross-collateralization between the Inc. and LP estates in respect of their obligations to their respective DIP lenders, as set out in the Eighth Replacement DIP Order, is a Condition to Combined Delayed Draw Funding and necessary component of the Eighth Replacement DIP Facility.

46. It allows for the Tranche B Loans to flow in favour of the Inc. DIP Obligors and, in addition, allows for the Delayed Draw Tranche A Loans (as defined in the Eighth Replacement DIP Order) to flow for the benefit of the LP DIP Obligors, which funding is necessary to bridge the Chapter 11 Debtors from confirmation of the Modified Second Amended Plan to the Effective Date.

47. The Eighth Replacement DIP Facility is the best and only committed financing of the LP estates. It provides capital to LightSquared through to consummation of the Modified Second Amended Plan at a much lower cost than any other alternatives.

Supplemental Creary Affidavit, para 21.

48. The Eighth Replacement DIP Facility is a necessary and integral component of the Modified Second Amended Plan, which provides for the payment in full, including postpetition interest, of all general unsecured creditors, including Canadian unsecured creditors. In the absence of the Modified Second Amended Plan, and the corresponding amended Eighth Replacement DIP Facility, it is expected that there would be no distributions to such creditors.

Supplemental Creary Affidavit, para 22 & 24.

49. As described above, the amendments to the Eighth Replacement DIP Order, as set out in the Amended Eighth Replacement DIP Order, provide for an Intercompany Claim. Such amendments are a condition to the New Investor Consent which, in turn, is a condition precedent to the Tranche B Loans contemplated by the Eighth Replacement DIP Order.

Supplemental Creary Affidavit, paras 15 & 20.

50. There will be no material prejudice to Canadian creditors if the Amended Eighth Replacement DIP Order is recognized by this Honourable Court. The amendments to the Eighth Replacement DIP Order do not increase the amount of the DIP obligations that rank ahead of such unsecured claims.

**Hartford Computer Hardware, Inc. (Re), 2012 ONSC 964, para 13,
[Hartford], Book of Authorities of the Applicant, Tab 2.**

51. If the Amended Eighth Replacement DIP Order is not recognized in Canada, LightSquared will face an emergency liquidity crisis and the consummation of the Modified Second Amended Plan may be put at risk, potentially impairing the recoveries to, among others, the unsecured creditors of the Canadian estates.

Supplemental Creary Affidavit, para 26.

52. The Foreign Representative respectfully submits that recognition of the Amended Eighth Replacement DIP Order is necessary for the protection of the Chapter 11 Debtors' property and is in the interests of the Chapter 11 Debtors' creditors.

CCAA, s. 49(1).

(D) **The Eighth Replacement DIP Order is not contrary to public policy**

53. Section 61(2) of the CCAA provides: “Nothing in this Part prevents the Court from refusing to do something that would be contrary to public policy.”

CCAA, s. 61(2).

54. This Honourable Court has held that Section 61(2) should be interpreted in a restrictive manner.

Hartford, para 18.

55. As noted above, the cross-collateralization set out in the Eighth Replacement DIP Order is a necessary component of the Eighth Replacement DIP Facility, which facility is an integral part of the Modified Second Amended Plan and needed by the Chapter 11 Debtors to fund their operations through to the Effective Date.

56. The amendments to the Eighth Replacement DIP Order do not increase the amount of the DIP obligations that rank ahead of the unsecured claims of Canadian creditors.

57. Accordingly, the Foreign Representative submits that the Eighth Replacement DIP Order, as amended, does not raise any public policy issues.

58. In summary, for the reasons outlined above, the Foreign Representative submits that the recognition of the Foreign Orders by the Canadian Court is in the best interests of the Canadian estates of the Chapter 11 Debtors.

PART IV. – ORDER REQUESTED

59. The Chapter 11 Debtors respectfully request an Order of this Honourable Court in the form attached as Tab 3 to the Supplemental Motion Record of the Chapter 11 Debtors, dated April 6, 2015.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



Dentons Canada LLP

Lawyers for Foreign Representative and
Canadian counsel to the Chapter 11 Debtors

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Re Xerium Technologies Inc.*, 2010 ONSC 3974.
2. *Hartford Computer Hardware, Inc. (Re)*, 2012 ONSC 964.

SCHEDULE “B”
RELEVANT STATUTES

Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company’s property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

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

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

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

- (a) if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);
- (b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company’s property, business and financial affairs, debts, liabilities and obligations; and
- (c) authorizing the foreign representative to monitor the debtor company’s business and financial affairs in Canada for the purpose of reorganization.

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

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

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

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

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

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED,
APPLICATION OF LIGHTSQUARED LP UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C 36, AS AMENDED, AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED
STATES BANKRUPTCY COURT WITH RESPECT TO THE CHAPTER 11 DEBTORS

ONTARIO

SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

FACTUM OF THE APPLICANT
(returnable April 9, 2015)

DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, Ontario
M5K 0A1

John Salmas / Sara-Ann Van Allen

LSUC No.: 42336B / 56016C

Tel: 416 863-4737 / 863-4402

Fax: (416) 863-4592

Email: john.salmas@dentons.com
sara.vanallen@dentons.com

**Lawyers for the Foreign Representative
and Canadian counsel to the Chapter 11
Debtors.**