

**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
AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR
ARRANGEMENT OF H.B. WHITE CANADA CORP.**

(the "**Applicant**")

**MOTION RECORD
Returnable November 30, 2016**

November 23, 2016

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NOVEMBER 30, 2016**

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**IN THE MATTER OF THE COMPANIES' CREDITORS
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**AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR
ARRANGEMENT OF H.B. WHITE CANADA CORP.**

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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**IN THE MATTER OF THE COMPANIES' CREDITORS
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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF H.B. WHITE CANADA CORP.**

(the "**Applicant**")

NOTICE OF MOTION

(Returnable November 30, 2016)

The Applicant will make a Motion before a Judge of the Ontario Superior Court, (Commercial List), on Wednesday, November 30, 2016 at 10:00 a.m., or as soon after that time as the Motion can be heard at the court house, 330 University Avenue, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The Motion is to be heard orally.

THIS MOTION IS FOR:

- A. an order attached hereto as Schedule "A" (the "**Approval and Termination Order**"), *inter alia*,
- (i) approving the activities of Alvarez & Marsal Canada Inc. ("**A&M**") in its capacity as court-appointed monitor of the Applicant ("**Monitor**"), as set out in the fifth report of the Monitor dated October 31, 2016 (the "**Fifth Report**") and the sixth report of the Monitor (the "**Sixth Report**"), as well as the activities that the Monitor will be required to undertake through to the termination of these CCAA proceedings (the

“CCAA Proceedings”) which are detailed in the Sixth Report (the **“Remaining Activities”**);

- (ii) approving the fees and disbursements of the Monitor as set out in the affidavit of Alan J. Hutchens, attached to the Sixth Report (the **“Hutchens Affidavit”**), including the estimated fees and disbursements of the Monitor in connection with the Remaining Activities;
- (iii) approving the fees and disbursements of Goodmans LLP (**“Goodmans”**), in its capacity as counsel to the Monitor, as set out in the affidavit of L. Joseph Latham attached to the Sixth Report (the **“Latham Affidavit”**), including the estimated fees and disbursements of Goodmans in connection with the Remaining Activities;
- (iv) extending the Stay Period (as defined in paragraph 14 of the Initial Order of the Ontario Superior Court of Justice (Commercial List) dated July 7, 2016) (the **“Initial Order”**) until the filing by the Monitor of a certificate (the **“Discharge Certificate”**):
 - (a) confirming the completion of all distributions and all other matters in connection with the Amended Plan of Compromise and Arrangement of the Applicant dated October 13, 2016 (the **“Plan”**), and (b) declaring these CCAA Proceedings to be terminated;
- (v) effective immediately upon the filing of the Discharge Certificate, (a) terminating the CCAA Proceedings, (b) terminating the Administration Charge and the Directors’ Charge, as defined in the Initial Order, and (c) discharging A&M as Monitor of the Applicant and releasing A&M and Goodmans, from any and all liability that A&M or Goodmans now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of A&M or Goodmans while acting in its capacity as the Monitor herein or on its behalf, save and except for any gross

negligence or wilful misconduct on the Monitor's part or on the part of its counsel, Goodmans;

- B. an order attached hereto as Schedule "B" (the "**Action Dismissal Order**"), *inter alia*,
- (i) dismissing any actions, including claims, crossclaims and counterclaims as the case may be, against all defendants in those actions in respect of the Facilities (as defined in the Plan) including those actions (the "**Actions**") listed in Schedule "C-1" of the Order of Justice Penny, dated November 1, 2016 (the "**Sanction Order**"); and
- C. such other relief as may be requested by counsel and deemed appropriate by the Court.

THE GROUNDS FOR THIS MOTION ARE:

Background

1. The Applicant was granted protection from its creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to the Initial Order and A&M was appointed Monitor of the Applicant;
2. On September 19, 2016 this Court granted an order accepting the filing of the Plan and on October 17, 2016 the creditors of the Applicant approved the Plan by the requisite majority;
3. On November 1, 2016 the Court sanctioned the Plan and authorized and directed the Applicant and the Monitor to take all steps and actions necessary or appropriate to implement the Plan;
4. On November 22, 2016 the Monitor delivered the Monitor's Certificate (as defined in the Sanction Order) to HBW and served it on the service list certifying that Plan

implementation had occurred and that the Plan was effective in accordance with the terms of the Sanction Order. The Monitor's Certificate was filed with the Court on November 23, 2016;

CCAA Termination

5. As will be set out in the Sixth Report, the Monitor has various outstanding obligations in connection with the implementation of the Plan including without limitation to make all requisite distributions under the Plan and to otherwise complete the Remaining Activities required to terminate these CCAA Proceedings;
6. The extension of the Stay Period until the filing of the Discharge Certificate by the Monitor is required to allow the Monitor to complete the Remaining Activities;
7. The Applicant has acted, and continues to act, in good faith and with due diligence in implementing the Plan and completing the CCAA Proceedings;
8. The Applicant is not aware of any stakeholder which would suffer any material prejudice if the Stay Period is extended and the requested relief is granted;

Action Dismissal Order

9. The Sanction Order provided that the Actions be dismissed on Plan Implementation, in accordance with the terms of the Plan. The Action Dismissal Order approves the final procedural steps to dismiss the Actions in certain jurisdictions in order to fully comply with the Sanction Order;

General

10. As set out in the Sixth Report, the Monitor is supportive of the relief sought in this motion;
11. Those grounds as set out in the Affidavit of Philip J. Gund sworn November 23, 2016 and the exhibits thereto (the "**Gund Affidavit**");
12. Those further grounds set out in the Fifth Report and the Sixth Report;
13. The provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
14. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
15. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. the Gund Affidavit and the exhibits attached thereto;
2. the Fifth Report;
3. the Sixth Report, to be filed;
4. the Affidavit of Alan J. Hutchens, to be filed;
5. the Affidavit of L. Joseph Latham, to be filed; and

6. such further and other evidence as the lawyers may advise and this Honourable Court may permit.

November 23, 2016

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A

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

THE HONOURABLE) WEDNESDAY, THE 30TH
JUSTICE) DAY OF NOVEMBER, 2016

**IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE AND
ARRANGEMENT OF H.B. WHITE CANADA CORP.**

(the "**Applicant**")

ORDER

(Approval and Termination Order)

THIS MOTION made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order, *inter alia*:

- (i) approving the activities of Alvarez & Marsal Canada Inc. ("**A&M**") in its capacity as court-appointed monitor of the Applicant ("**Monitor**"), as set out in the fifth report of the Monitor dated October 31, 2016 (the "**Fifth Report**") and the sixth report of the Monitor (the "**Sixth Report**"), as well as the activities that the Monitor will be required to undertake through to the termination of these CCAA proceedings (the "**CCAA Proceedings**") which are detailed in the Sixth Report;

- (ii) approving the fees and disbursements of the Monitor as set out in the affidavit of Alan J. Hutchens, attached to the Sixth Report (the “**Hutchens Affidavit**”);
- (iii) approving the fees and disbursements of Goodmans LLP (“**Goodmans**”), in its capacity as counsel to the Monitor, as set out in the affidavit of L. Joseph Latham, attached to the Sixth Report (the “**Latham Affidavit**”),
- (iv) extending the Stay Period (as defined in paragraph 14 of the Initial Order of the Ontario Superior Court of Justice (Commercial List) dated July 7, 2016) (the “**Initial Order**”) until the filing by the Monitor of a certificate (the “**Discharge Certificate**”): (a) confirming the completion of all distributions and all other matters in connection with the Amended Plan of Compromise and Arrangement of the Applicant dated October 13, 2016 (the “**Plan**”), and (b) declaring these CCAA Proceedings to be terminated, which Discharge Certificate shall be substantially in the form attached as Schedule “A” hereto; and
- (v) effective immediately upon the filing of the Discharge Certificate, (a) terminating the CCAA Proceedings, (b) terminating the Administration Charge and the Directors’ Charge, as defined in the Initial Order, and (c) discharging A&M as Monitor of the Applicant and releasing A&M and its counsel, Goodmans LLP (“**Goodmans**”), from any and all liability that A&M or Goodmans now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of A&M or Goodmans while acting in its capacity as the Monitor herein or on its behalf, save and except for any gross negligence or wilful misconduct on the Monitor's part or on the part of its counsel, Goodmans;

ON READING the Notice of Motion of the Applicant returnable November 30, 2016, the affidavit of Philip J. Gund, sworn November 23, 2016, and the exhibits thereto, the Fifth Report, the Sixth Report, the Hutchens Affidavit, and the Latham Affidavit, and on hearing the submissions of counsel for the Applicant and the Monitor and such other interested parties as were present, no one else appearing although duly served as appears from the affidavit of service of ● sworn November ●, 2016.

DEFINED TERMS

1. **THIS COURT ORDERS** that capitalized terms not otherwise defined herein shall be as defined in the Sanction Order issued in the CCAA Proceeding by Justice Penny on November 1, 2016 or the Plan, unless otherwise stated.

SERVICE

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated such that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF ACTIVITIES

3. **THIS COURT ORDERS** that the Fifth Report and the Sixth Report and the actions, conduct and activities of the Monitor described therein be and are hereby approved.

4. **THIS COURT ORDERS** that the activities of the Monitor required to effect the implementation of the Plan, including without limitation to make all requisite distributions under the Plan, and to otherwise complete all necessary steps required to terminate these CCAA Proceedings, as described and defined in the Sixth Report as the "Remaining Activities," be and are hereby approved without the need for further reporting or action on the part of the Monitor,

provided that in the event the Monitor is required to take steps or actions not contemplated as Remaining Activities in the Sixth Report in connection with the implementation of the Plan or the termination of these CCAA Proceedings, the Monitor shall report on such activities to the Court and may return to the Court for advice and directions with respect to same.

APPROVAL OF FEES

5. **THIS COURT ORDERS** that (i) the fees and disbursements of the Monitor from July 3, 2016 to November 19, 2016 totalling CAD\$794,946.76 (including HST) and (ii) the fees and disbursements of Goodmans in its capacity as legal counsel to the Monitor from June 30, 2016 to November 15, 2016 totalling CAD\$672,807.61 (including HST), be and are hereby approved.

6. **THIS COURT ORDERS** that the Monitor and Goodmans are hereby authorized to incur such additional fees and disbursements as may be required to complete the implementation of the Plan and the administration of these CCAA proceedings as are set out in the Sixth Report (the “**Additional Fees and Disbursements**”), up to a maximum amount of \$150,000 in the case of the Monitor and up to a maximum amount of \$100,000 in the case of Goodmans, and that the incurrence of such Additional Fees and Disbursements by the Monitor and Goodmans are hereby approved, provided that if the Additional Fees and Disbursements of the Monitor or Goodmans exceed the estimates approved herein, the Monitor and Goodmans shall bring a motion to this Court for approval of same. For greater certainty, if the Additional Fees and Disbursements incurred by Monitor and Goodmans are less than the estimates approved herein, no further action is required by any party to effect the approval of such Additional Fees and Disbursements.

STAY EXTENSION

7. **THIS COURT ORDERS** that the Stay Period be and is hereby extended until the date that the Discharge Certificate is filed by the Monitor with this Court.

TERMINATION OF CCAA PROCEEDINGS AND DISCHARGE OF THE MONITOR

8. **THIS COURT ORDERS** that, immediately upon the Monitor filing the Discharge Certificate with this Court:

- (a) these CCAA Proceedings shall be and are hereby terminated without the need for any further action, provided that nothing herein impacts the validity of any Orders made in these CCAA Proceedings or any actions or steps taken by any Person (as defined in the Initial Order) in reliance on such Orders;
- (b) the Administration Charge and the Directors' Charge, as defined in the Initial Order, shall be and are hereby terminated without the need for any further action; and
- (c) the DIP Lenders' Charge, as defined in the Initial Order, shall remain in full force and effect until the Applicant, with the consent of the Plan Sponsors, elects to extinguish such obligations or such obligations are otherwise satisfied.

9. **THIS COURT ORDERS** that the Monitor is hereby directed to post a copy of the Discharge Certificate, once filed, on the Website and provide a copy to the Service List by email.

10. **THIS COURT ORDERS AND DECLARES** that, immediately upon the filing of the Discharge Certificate, the Monitor shall have satisfied all of its obligations pursuant to the CCAA and these CCAA Proceedings and shall have no further obligations, liabilities, responsibilities or

duties as Monitor, and A&M shall be discharged as Monitor effective immediately upon the filing of the Discharge Certificate.

11. **THIS COURT ORDERS** that, immediately upon the filing of the Discharge Certificate, A&M (whether in its capacity as Monitor or otherwise), Goodmans and their respective affiliates and officers, directors, partners, employees and agents (collectively, the “**Released Parties**”) be and are hereby released and discharged from any and all claims that any person may have or be entitled to assert against the Released Parties, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any action or omission, transaction, dealing or other occurrence existing or taking place on or prior to the date of the filing of the Discharge Certificate in any way relating to, arising out of or in respect of these CCAA Proceedings (the “**Released Claims**”), and any such Released Claims are hereby released, stayed, extinguished and forever barred, with prejudice, and the Released Parties shall have no liability in respect thereof, provided that the Released Claims shall not include any claim arising out of gross negligence or willful misconduct on the part of the Released Parties.

12. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against the Released Parties in any way arising from or related to these CCAA Proceedings, except with (a) prior leave of this Court and on at least seven (7) days’ prior written notice to each of A&M, Goodmans and each other affected Released Party and (b) such order granting leave securing, as security for costs, the full indemnity costs of A&M, Goodmans and each other affected Released Party in connection with any proposed action or proceeding as the Court hearing the motion for leave to proceed may deem just and appropriate.

13. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, nothing contained in this Order shall affect, vary, derogate from or amend any of: (i) the rights,

approvals and protections in favour of the Monitor and the CRO (as defined in the Initial Order) pursuant to the Initial Order, any other Order of this Court in these CCAA Proceedings, the CCAA or otherwise, all of which are expressly continued and confirmed; and (ii) the compromises, arrangements, releases, discharges and injunctions contemplated in the Plan and the Sanction Order.

GENERAL

14. **THIS COURT ORDERS** that any and all administrative matters relating to these CCAA Proceedings which arise following the termination of these CCAA Proceedings, including interpretation of the Plan, may be brought before the Court on a motion for determination, advice and directions on at least seven (7) days' notice to all affected stakeholders.

15. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States of America or elsewhere to give effect to this Order and to assist the Monitor and its 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 Monitor, as an officer of this Court, as may be necessary or desirable to give effect to the Order or to assist the Monitor and its agents in carrying out the terms of this Order.

SCHEDULE "A"

Court File No. CV-16-11452-00CL

**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**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF H.B. WHITE CANADA CORP.**

(the "**Applicant**")

**MONITOR'S CERTIFICATE
(DISCHARGE OF MONITOR AND TERMINATION OF CCAA PROCEEDINGS)**

RECITALS

- A. The Applicant obtained protection from its creditors under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "CCAA") pursuant to the Initial Order ("**Initial Order**") of the Honourable Justice Newbould of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated July 7, 2016. The Initial Order also appointed Alvarez & Marsal Canada Inc. ("**A&M**") as monitor (the "**Monitor**") of the business and financial affairs the Applicant. The proceedings commenced by the Applicant under the CCAA will be referred to herein as the "**CCAA Proceedings**".
- B. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Discharge Order (as defined below).
- C. Pursuant to an Order of the Court dated November 30, 2016, (the "**Discharge Order**"), the Monitor may be discharged and the CCAA Proceedings may be terminated upon filing of this Monitor's Certificate with the Court..
- D. The CCAA Proceedings have been completed in accordance with the Orders of the Court and under the supervision of the Monitor.

THE MONITOR CERTIFIES the following:

1. the fees and disbursements of the Monitor and of the Monitor's counsel, Goodmans LLP, have been paid in full;
2. the Monitor has completed all distributions under the Plan;
3. the Monitor has completed all matters incidental to the termination of the CCAA Proceedings or any other matters necessary to complete the CCAA Proceedings, as detailed in the Sixth Report or as requested by the Applicant and agreed to by the Monitor; and
4. the CCAA Proceedings are hereby terminated.

This Certificate was executed by the Monitor at Toronto, Ontario on _____, and filed.

ALVAREZ & MARSAL CANADA INC., in its capacity as Court-appointed Monitor of H.B. White Canada Corp. and not in its personal or corporate capacity

Per:

Name:

Title:

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF H.B. WHITE CANADA CORP.

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

Proceeding commenced at Toronto

**ORDER
(Approval and Termination Order)**

Cassels Brock & Blackwell LLP
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Lawyers for H. B. White Canada Corp.

B

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

THE HONOURABLE
JUSTICE

)
)
)

WEDNESDAY, THE 30TH
DAY OF NOVEMBER, 2016

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE AND
ARRANGEMENT OF H.B. WHITE CANADA CORP.**

(the "**Applicant**")

ORDER

(Action Dismissal Order)

THIS MOTION made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order, *inter alia* dismissing the court actions listed on Schedule "C-1" to the Order of the Honourable Justice Penny dated November 1, 2016, as specifically described herein.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated such that this Motion is properly returnable today and hereby dispenses with further service thereof.

COCHRANE

2. **THIS COURT ORDERS** that the following actions, including any counterclaims, crossclaims or third party claims filed in connection therewith, commenced at Cochrane, Ontario be, and the same are, hereby dismissed without costs and that the Registrar of the Ontario Superior Court of Justice located in Cochrane, Ontario shall file a copy of this Order in the court file of each of the actions listed below:

No.	Plaintiff	Defendants	Court File No.
1.	2343398 Ontario Inc.	H.B. White Canada Corporation, Northland Power Solar Empire GP Inc., Northland Power Solar Empire Limited Partnership, Northland Power Solar Abitibi GP Inc., Northland Power Solar Abitibi Limited Partnership, Northland Power Solar Long Lake GP Inc., Northland Power Solar Long Lake Limited Partnership, Northland Power Solar Martin's Meadows GP Inc., Northland Power Solar Martin's Meadows Limited Partnership and Rick Martin	19547/15
2.	Castonguay Blasting Ltd.	H.B. White Canada Corporation	19599/15
3.	EXP Services Inc. and EXP Geomatics Inc.	H.B. White Canada Corp., Terence R. Montgomery, Herman White II, David R. Helwig, John Paul Roehm, Brenda Martin, David E. Bostwick, Jeffrey F. Rodabough and Charles S. Reagh	19783/15

TORONTO

3. **THIS COURT ORDERS** that the following actions, including any counterclaims, crossclaims or third party claims filed in connection therewith, commenced at Toronto, Ontario be, and the same are, hereby dismissed without costs and that the Registrar of the Ontario Superior Court of Justice located in Toronto, Ontario shall file a copy of this Order in the court file of each of the actions listed below:

No.	Plaintiff	Defendants	Court File No.
1.	Challenger Motor Freight Inc.	Infrastructure & Energy Alternatives, LLC, White Construction, Inc. H.B. White Canada Corp., Northland Power Solar Abitibi GP Inc., Northland Power Solar Abitibi L.P., Northland Power Solar Empire GP Inc., Northland Power Solar Empire L.P., Northland Power Solar Martin's Meadows L.P., Northland Power Solar Long Lake GP Inc. and Northland Power Solar Long Lake L.P.	CV-15-542523
2.	Deep Foundations Contractors Inc.	H.B White Canada Corp., Northland Power Inc., Northland Power Solar Abitibi GP Inc., Northland Power Solar Abitibi L.P., Northland Power Solar Empire GP Inc., Northland Power Solar Empire L.P., Northland Power Solar Martin's Meadows GP Inc., Northland Power Solar Martin's Meadows L.P., Northland Power Solar Long Lake GP Inc., Northland Power Solar Long Lake L.P.	CV-15-523492
3.	Stantec Consulting Ltd.	H.B. White Canada Corporation.	CV-15-530637
4.	Commercial Truck Equipment Corp.	H.B. White Canada Corp.	CV-15-535899
5.	Mersen Canada Toronto Inc.	H.B. White Canada Corp.	CV-15-540773
6.	Nedco, a division of Rexel Canada Electrical Inc.	H.B. White Canada Corp., Terence R. Montgomery, Herman White II, David R. Helwig, John Paul Roehm, Brenda Martin, David E. Bostwick, Jeffrey F. Rodabough and Charles S. Reagh	CV-15-526448
7.	Westburne, a division of Rexel Canada Electrical Inc.	H.B. White Canada Corp., Terence R. Montgomery, Herman White II, David R. Helwig, John Paul Roehm, Brenda Martin, David E. Bostwick, Jeffrey F. Rodabough and Charles S. Reagh	CV-15-526451

No.	Plaintiff	Defendants	Court File No.
8.	Magna Structural Systems Inc. d.b.a. Presstran Industries	H.B. White Canada Corp., Terence R. Montgomery, Herman White II, David R. Helwig, John Paul Roehm, Brenda Martin, David E. Bostwick, Jeffrey F. Rodabough and Pat Ringler	CV-15-543279
9.	HD Supply Canada Inc. c.o.b. HD Supply Power Solutions	H.B. White Canada Corp., Terence R. Montgomery, Herman White II, David R. Helwig, John Paul Roehm, Brenda Martin, David E. Bostwick, Jeffrey F. Rodabough and Pat Ringler	CV-15-524545
10.	Eaton Industries (Canada) Company	H.B. White Canada Corp.	CV-16-551597
11.	One Line Engineering Inc.	H.B. White Canada Corp.	CV-15-525899
12.	East Lake St. Clair Wind LP	H.B. White Canada Corp.	CV-16-553235

KITCHENER

4. **THIS COURT ORDERS** that the following actions, including any counterclaims, crossclaims or third party claims filed in connection therewith, commenced at Kitchener, Ontario be, and the same are, hereby dismissed without costs and that the Registrar of the Ontario Superior Court of Justice located in Kitchener, Ontario shall file a copy of this Order in the court file of each of the actions listed below:

No.	Plaintiff	Defendants	Court File No.
1.	Alltrade Industrial Contractors Inc.	H.B. White Canada Corp.	CV-16-4036-SR
2.	Alltrade Industrial Contractors Inc.	H.B. White Canada Corp.	CV-16-4035-SR

LONDON

5. **THIS COURT ORDERS** that the following action, including any counterclaim, crossclaims or third party claims filed in connection therewith, commenced at London, Ontario be, and the same is, hereby dismissed without costs and that the Registrar of the Ontario Superior Court of Justice located in London, Ontario shall file a copy of this Order in the court file of the action listed below:

No.	Plaintiff	Defendants	Court File No.
1.	Graybar Energy Limited	H.B. White Canada Corp., John Paul Roehm, David E. Bostwick, White Construction Inc., Herman White II, Andrew D. Layman, and Infrastructure & Energy Alternatives LLC	881-16

WELLAND

6. **THIS COURT ORDERS** that the following action, including any counterclaim, crossclaims, or third party claims filed in connection therewith, commenced at Welland, Ontario be, and the same is, hereby dismissed without costs and that the Registrar of the Ontario Superior Court of Justice located in Welland, Ontario shall file a copy of this Order in the court file of the action listed below:

No.	Plaintiff	Defendants	Court File No.
1.	Eco Comfort Spray Foam Insulation Specialists Ltd.	H.B. White Canada Corp. and Northland Power Inc.	10908/16

BRAMPTON

7. **THIS COURT ORDERS** that the following action, including any counterclaim, crossclaims or third party claims filed in connection therewith, commenced at Brampton, Ontario be, and the same is, hereby dismissed without costs and that the Registrar of the Ontario

Superior Court of Justice located in Brampton, Ontario shall file a copy of this Order in the court file of the action listed below:

No.	Plaintiff	Defendants	Court File No.
1.	Harris Steel ULC	H.B. White Canada Corp.	CV-15-398-00

NEWMARKET

8. **THIS COURT ORDERS** that the following action, including any counterclaim, crossclaims, or third party claims filed in connection therewith, commenced at Newmarket, Ontario be, and the same is, hereby dismissed without costs and that the Registrar of the Ontario Superior Court of Justice located in Newmarket, Ontario shall file a copy of this Order in the court file of the action listed below:

No.	Plaintiff	Defendants	Court File No.
1.	New Horizons Car & Truck Rentals Ltd. o/a Discount Car & Truck Rentals and Discount Car & Truck Rentals Ltd.	H.B. White Canada Corp.	CV-16-125438-00SR

GENERAL

9. **THIS COURT ORDERS** that any and all matters relating to this Order including interpretation thereof, which may arise may be brought before the Court for determination, advice and direction.

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States of America or elsewhere to give effect to this Order and to assist the Monitor and its 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 Monitor, as an officer of this Court, as may be necessary or desirable to give effect to the Order or to assist the Monitor and its agents in carrying out the terms of this Order.

Court File No. CV-16-11452-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF H.B. WHITE CANADA CORP.

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

Proceeding commenced at Toronto

**ORDER
(Dismissing Actions)**

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF H.B. WHITE CANADA CORP.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION
(RETURNABLE NOVEMBER 30, 2016)**

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2

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF H.B. WHITE CANADA CORP.

(the "**Applicant**")

AFFIDAVIT OF PHILIP J. GUND
SWORN NOVEMBER 23, 2016

I, Philip J. Gund, of the County of Nassau in the State of New York, MAKE OATH AND
SAY:

1. I am a senior managing director of Ankura Consulting Group, LLC ("**Ankura**"), the Court-appointed Chief Restructuring Organization in these proceedings (the "**CCAA Proceedings**"). As such, I have personal knowledge of the facts to which I depose, except where I have indicated that I have obtained facts from other sources, in which case I verily believe those facts to be true.
2. This affidavit is sworn in support of a motion brought by the Applicant for two orders, the Approval and Termination Order and the Action Dismissal Order, both defined below, pursuant to the *Companies' Creditors Arrangement Act* (Canada), as amended (the "**CCAA**"),
 - (a) approving the activities of Alvarez & Marsal Canada Inc. ("**A&M**") in its capacity as court-appointed monitor of the Applicant ("**Monitor**"), as set out in the fifth report of the Monitor dated October 31, 2016 (the "**Fifth Report**") and the sixth report of the Monitor (the "**Sixth Report**"), as well as the activities that the Monitor will be required to undertake through to the termination of these CCAA proceedings (the "**CCAA Proceedings**") which are detailed in the Sixth Report;
 - (b) approving the fees and disbursements of the Monitor as set out in the affidavit of Alan J. Hutchens, attached to the Sixth Report (the "**Hutchens Affidavit**");

- (c) approving the fees and disbursements of Goodmans LLP ("**Goodmans**"), in its capacity as legal counsel to the Monitor, as set out in the affidavit of L. Joseph Latham, attached to the Sixth Report (the "**Latham Affidavit**"),
- (d) extending the Stay Period (as defined in paragraph 14 of the Initial Order of the Ontario Superior Court of Justice (Commercial List) dated July 7, 2016) (the "**Initial Order**") until the filing by the Monitor of a certificate (the "**Discharge Certificate**"): (a) confirming the completion of all distributions and all other matters in connection with the Amended Plan of Compromise and Arrangement of the Applicant dated October 13, 2016 (the "**Plan**"), and (b) declaring these CCAA Proceedings to be terminated;
- (e) effective immediately upon the filing of the Discharge Certificate, (a) terminating the CCAA Proceedings, (b) terminating the Administration Charge and the Directors' Charge, as defined in the Initial Order, and (c) discharging A&M as Monitor of the Applicant and releasing A&M and Goodmans, from any and all liability that A&M or Goodmans now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of A&M or Goodmans while acting in its capacity as the Monitor herein or on its behalf, save and except for any gross negligence or wilful misconduct on the Monitor's part or on the part of its counsel, Goodmans;
- (f) dismissing certain actions, crossclaims and counterclaims in respect of the Facilities¹ in accordance with the Sanction Order; and
- (g) such other relief as may be requested by counsel and deemed appropriate by the Court.

BACKGROUND

3. On July 7, 2016, the Applicant sought and was granted protection from its creditors under the CCAA in order to allow the Applicant to propose a plan of compromise to its creditors.
4. On September 19, 2016 this Court granted an order accepting the filing of a Plan of Compromise and Arrangement dated September 19, 2016 pursuant to the CCAA (the

¹ Capitalized terms not defined herein shall have the meanings ascribed to such terms in the Plan.

“Meeting Order”). On October 13, 2016, in accordance with the Plan and the Meeting Order and with the consent of the Monitor, the Applicant made certain non-material changes to the Plan.

5. The mechanics of the Plan are described in my Affidavit sworn on September 12, 2016 (the **“Meeting Order Affidavit”**). A copy of the Meeting Order Affidavit, without exhibits, is attached hereto as **Exhibit “A”**.
6. The Creditors’ Meeting to consider and vote on the Plan was held on October 17, 2016 and the Plan was approved by the requisite majority. The details of the Creditors’ Meeting approving the Plan and the proposed distributions under the Plan are detailed in my Affidavit dated October 18, 2016 (the **“Sanction Order Affidavit”**). A copy of the Sanction Order Affidavit, without exhibits, is attached hereto as **Exhibit “B”**.
7. On November 1, 2016, by order of the Honourable Justice Penny (the **“Sanction Order”**) the Plan was sanctioned and the Applicant and the Monitor were authorized and directed to take all steps and actions necessary or appropriate to implement the Plan.

PLAN IMPLEMENTATION

8. On November 22, 2016 the Monitor provided to HBW and served on the service list the Monitor’s Certificate (as defined in the Sanction Order) certifying that the Plan implementation had occurred and that the Plan was effective in accordance with the terms of the Sanction Order. The Monitor’s Certificate was filed with the Court on November 23, 2016.

REMAINING ACTIVITIES

9. I am advised by the Monitor, and as will be described in the Sixth Report, that the Monitor has various remaining activities to perform in connection with the implementation of the Plan, including without limitation making all requisite distributions under the Plan, and otherwise completing all necessary steps required to terminate these CCAA Proceedings (the **“Remaining Activities”**).
10. Upon completion of the Remaining Activities, it is the intention that the Monitor will file the Discharge Certificate, confirming the completion of all distributions and all other matters in connection with the Plan, and declaring these CCAA Proceedings to be terminated.

11. The draft order attached as **Schedule “A”** to the Notice of Motion, (the “**Approval and Termination Order**”) seeks, immediately upon the filing of the Discharge Certificate, (a) termination of the CCAA Proceedings, (b) termination of the Administration Charge and the Directors’ Charge, as defined in the Initial Order, and (c) discharge of A&M as Monitor of the Applicant and a full release of A&M and Goodmans from any and all liability that A&M or Goodmans now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of A&M or Goodmans while acting in its capacity as the Monitor herein or on its behalf, save and except for any gross negligence or wilful misconduct on the Monitor's part or on the part of its counsel, Goodmans.
12. In light of the minimal Remaining Activities to be completed, terminating the CCAA Proceedings upon completion of these activities is appropriate and reasonable and ought to be approved.

STAY EXTENSION

13. The Initial Order granted a stay of proceedings up to and including August 6, 2016 (the “**Stay Period**”) and on August 4, 2016 the Stay Period was further extended to November 30, 2016 by order of this Court.
14. In order for the Monitor to complete the Remaining Activities, the Approval and Termination Order seeks a further stay extension until the filing of the Discharge Certificate.
15. It is my belief that the Applicant and the Monitor have acted, and continue to act, in good faith and with due diligence in implementing the Plan and completing the CCAA Proceedings. I do not believe that any stakeholder will suffer any material prejudice if the Stay Period is extended as requested.
16. I am informed by the Monitor that it supports the Applicant’s request to extend the stay until the filing of the Discharge Certificate.

ACTION DISMISSAL ORDER

17. The Sanction Order provided that any actions, including claims, crossclaims and counterclaims as the case may be, against all defendants in those actions in respect of the Facilities including those actions listed in Schedule “C-1” of the Sanction Order (the

“Actions”) be dismissed on Implementation. This dismissal of the Actions was in accordance with the terms of the Plan and was not opposed.

18. I am advised that procedurally, in order to dismiss the Actions in certain jurisdictions and fully comply with the Sanction Order, a court order, in the form attached as **Schedule “B”** to the Notice of Motion (the “**Action Dismissal Order**”) is required to approve these final procedural steps.

PURPOSE OF AFFIDAVIT

19. I swear this affidavit in support of the Applicant’s motion returnable November 30, 2016.

SWORN BEFORE ME, this 23rd day of November, 2016.

Stephanie Rant

Name of Notary Public

Notary Public for the State of New York

My commission expires on 5-13-17


PHILIP J. GUND

A

This is Exhibit "A" referred to in the Affidavit of Philip J. Gund
sworn November 23, 2016

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of New York
County of Nassau

On 11-23-16 before me, ~~Philip~~ Stephanie Rant - Notary
(insert name and title of the officer)

personally appeared Philip Gund
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of York that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)

STEPHANIE M RANT
Notary Public, State of New York
No. 01RA6281358
Qualified in Nassau County
Commission Expires May 13, 2017

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF H.B. WHITE CANADA CORP.

(the "**Applicant**")

AFFIDAVIT OF PHILIP J. GUND
SWORN SEPTEMBER 12, 2016

I, Philip J. Gund, of the County of Nassau in the State of New York, MAKE OATH AND SAY:

1. I am a senior managing director of Ankura Consulting Group, LLC ("**Ankura**"), the Court-appointed Chief Restructuring Organization in these proceedings (the "**CCAA Proceedings**"). As such, I have personal knowledge of the facts to which I depose, except where I have indicated that I have obtained facts from other sources, in which case I verily believe those facts to be true.

2. This affidavit is sworn in support of a motion brought by H.B. White Canada Corp. ("**HBW**" or the "**Applicant**") for an order pursuant to the *Companies' Creditors Arrangement Act* (Canada), as amended (the "**CCAA**"), *inter alia*:

- (a) if necessary, abridging the time for service of the Notice of Motion and the Motion Record herein and validating service thereof;
- (b) accepting the filing of a Plan of Compromise and Arrangement in respect of the Applicant dated September 12, 2016 (the "**Plan**");
- (c) authorizing the Applicant to establish one class of Affected Creditors for the purpose of considering and voting on the Plan (the "**Affected Creditors Class**");
- (d) authorizing the Applicant to call, hold and conduct a meeting of the Affected Creditors (the "**Creditors' Meeting**") to consider and vote on a resolution to

approve the Plan, and approving the procedures to be followed with respect to the Creditors' Meeting; and

- (e) setting the date for the hearing of the Applicant's motion seeking sanction of the Plan, should the Plan be approved by the required majority of Affected Creditors at the Creditors' Meeting.

OVERVIEW OF THE PLAN

3. The Applicant, with the support of WCI and IEA (both as defined below), as Plan Sponsors, has developed the Plan to present to the Affected Creditors. A copy of the Plan is attached as Exhibit "A". Capitalized terms not otherwise defined in this Affidavit have the meaning given to them in the Plan. All monetary amounts expressed herein are in Canadian Dollars.

4. The HBW Parties entered into the Settlement and Support Agreements with one of their major customers, Northland Power Inc. and certain of its affiliates (collectively the "**Northland Parties**"). The Northland Parties have asserted significant litigation claims against the HBW Parties, which claims are, by far, the largest Claims in these proceedings. The Plan is consistent with and as contemplated by the Settlement and Support Agreements.

5. The Plan contemplates that a single class of Affected Creditors will consider and vote on the Plan. The Applicant proposes that the Creditors' Meeting will be held at the offices of the Monitor's counsel, Goodmans LLP, at 333 Bay Street, Suite 3400, Toronto, ON on October 17, 2016 at 2:00 p.m.

6. If approved, sanctioned and implemented, the Plan will:

- (a) implement the settlement negotiated with the Northland Parties pursuant to the Settlement and Support Agreements;
- (b) provide a structured and efficient method to effect payment of the Proven Construction Lien Claims;
- (c) affect a compromise, settlement and payment of all Proven Claims;
- (d) allow the Applicant to reorganize and continue to provide certain ongoing warranty services to its remaining customers; and

- (e) release all claims against the Plan Sponsors and certain other parties to permit WCI to continue operations, having limited its liability to HBW pursuant to the Wind-Up Claim.

7. The Plan is being put forward by the Applicant in the expectation that all Persons with an economic interest in the Applicant will derive a greater benefit from the implementation of the Plan than would result from a bankruptcy.

8. Under the Plan:

- (a) On the Initial Distribution Date, the Convenience Class Creditors will receive the lesser of: (a) 100% of their Proven Claims and (b) \$10,000;¹
- (b) On the Initial Distribution Date, the Northland Parties (or their designee) excluding MMWF, will receive \$6,000,000, consistent with the BFW/CLLSP Settlement and Support Agreement, representing less than 4% of their asserted claims against HBW as found in the Claims Process;
- (c) MMWF will waive any distribution pursuant to the Plan in respect of the MMWF Claim pursuant to the MMWF Settlement and Support Agreement;
- (d) On the Initial Distribution Date, each General Unsecured Creditor with a Proven Claim who has complied with the terms of this Plan, will receive such Creditor's Initial Pro Rata Share of the Unsecured Creditor Pool (being the amount of \$2,500,000 less distributions made to Convenience Class Creditors) in respect of its Proven Claim;
- (e) On the Initial Distribution Date, each Proven BFW Construction Lien Creditor will receive 100% of its Proven BFW Construction Lien Claims from the BFW Holdback Pool;
- (f) On the Initial Distribution Date, the Vetting Committee Fees will be paid from the CLLSP Holdback Pool;

¹ Affected Creditors with Proven Claims less than or equal to \$10,000 in the aggregate will be treated as Convenience Class Creditors and will receive a cash distribution of 100% of their Proven Claims on the Implementation Date. Affected Creditors with Proven Claims in excess of \$10,000 may elect to be treated for all purposes as Convenience Class Creditors, and, if they so elect, will each be entitled to a cash distribution of \$10,000.

- (g) On the Initial Distribution Date, each Proven CLLSP Construction Lien Creditor will receive its CLLSP Initial Pro Rata Construction Lien Share of the CLLSP Holdback Pool with any excess amount of such creditor's claim after distribution of the entire CLLSP Holdback Pool, being a CLLSP Construction Lien Deficiency Claim that is treated as a General Unsecured Claim; and
 - (h) Any amounts pertaining to Disputed Distribution Claims or Disputed Construction Lien Claims will be held in separate reserve accounts, as discussed in detail below, until such Claims are resolved and, when resolved, will be paid out in accordance with the Plan.
9. On or before October 3, 2016, the Monitor will serve a separate report providing the Monitor's further analysis of the Plan on the Service List, including an illustrative estimated range of recovery analysis for Affected Creditors. The recovery analysis will necessarily be preliminary and estimated as there remain numerous Claims that have not yet been finalized for distribution purposes.
10. As described below, an essential component of the Plan is the involvement of WCI and IEA as Plan Sponsors. The Plan Sponsors will provide Cash necessary to make the distributions provided to Affected Creditors and will provide all the funding for the Unsecured Creditor Pool and the Northland Claims Pool. The Plan Sponsors (or HBW, to the extent there is available cash flow) will also provide the funding for the Administrative Reserve.
11. In consideration for the financial contributions of the Plan Sponsors, the Plan provides that the HBW Released Parties, including the Plan Sponsors and Directors and Officers of HBW and the rest of the IEA Group (collectively, the "**HBW Released Parties**"), will receive a full and final release of all matters relating to the Applicant. The Applicant believes that it is appropriate to include the release in favour of the HBW Released Parties, since their contributions under the Plan will result in materially higher and significantly accelerated recoveries for the Affected Creditors.

BACKGROUND

12. HBW is a Nova Scotia unlimited liability company and its sole member is White Construction, Inc. ("**WCI**"), an Indiana corporation. Both HBW and WCI are indirect subsidiaries of Infrastructure and Energy Alternatives, LLC ("**IEA**"), a Delaware limited liability company. IEA, through its subsidiaries (collectively with IEA, the "**IEA Group**"), owns an integrated portfolio of

companies focused on the development, construction and maintenance of energy and other infrastructure projects.

13. As described in detail in my first affidavit in the CCAA Proceedings, prior to filing the CCAA application, the Applicant, WCI and IEA (collectively, the “**HBW Parties**”), entered into Settlement and Support Agreements with the Northland Parties providing for resolution of the claims between the HBW Parties and the Northland Parties including MMWF, which claims had been the subject of extensive arbitration.

14. As contemplated by the Settlement and Support Agreements, the Applicant sought protection under the CCAA to propose a plan of compromise which would implement the settlement in the Settlement and Support Agreements, facilitate the pro rata payment of construction lien claims from “holdback” funds, compromise unsecured claims (including construction lien deficiency claims) against the Applicant and allow the Applicant to emerge from these proceedings to continue to provide warranty and repair services to certain existing customers.

15. The Applicant was granted protection from its creditors under the CCAA pursuant to the Initial Order. A copy of the Initial Order is annexed hereto as Exhibit “**B**”.

16. On July 7, 2016, the Court approved an order (the “**Claims Procedure Order**”) establishing a procedure for the identification and quantification of certain claims against the Applicant in order to determine the voting and distribution rights of affected creditors under the Plan (the “**Claims Process**”). A copy of the Claims Procedure Order is annexed hereto as Exhibit “**C**”. The Claims Bar Date (as defined in the Claims Procedure Order) was August 22, 2016. The Monitor and the Applicant have worked closely since the Claims Bar Date to review the filed proofs of claim and reconcile the information against the Applicant’s books and records.

THE PLAN

17. The Plan includes the following key elements, among others:

- (a) Three (3) business days prior to the Plan Implementation Date the Plan Sponsors will transfer sufficient Cash to establish the Northland Claims Pool and the Unsecured Creditor Pool;

- (b) Within one day of the entry of the Sanction Order, the Northland Parties will transfer certain Lien Holdback Amounts to establish the BFW Holdback Pool and the CLLSP Holdback Pool;
- (c) General Unsecured Creditors with Proven Claims of less than \$10,000 will be deemed to be "Convenience Class Creditors" and vote in favour of the Plan. General Unsecured Creditors with Proven Claims in excess of \$10,000 may elect to be treated for all purposes as Convenience Class Creditors;
- (d) Distributions will be made to Affected Creditors, as further described below;
- (e) Distributions will be made in respect of Proven Construction Lien Claims (including payment in full of all BFW Construction Lien Claims that are Proven Claims), with any remaining deficiency claim in respect of the CLLSP Facility being treated as a General Unsecured Claim, as further described below;
- (f) The Directors' Charge, DIP Lender's Charge and Administration Charge, will be discharged against all property other than the Administrative Reserve;
- (g) Members of the IEA Group, including the respective Officers and Directors of HBW and other members of the IEA Group, and others, will be released and discharged from all Claims, including any Claims based on any occurrence taking place before the Plan Filing Date, and the Monitor, and others, will be released and discharged from all Claims, including any Claims based on any occurrence taking place before the Plan Implementation Date; and
- (h) The Northland Parties and other third parties will also be released and discharged from all Claims, including Claims that are in any way relating to, among other things, the Construction Lien Claims.

Distributions under the Plan

18. On the Initial Distribution Date, payments will be made as follows:
- (a) to each Convenience Class Creditor in an amount equal to the lesser of \$10,000 or the amount of their Proven Claim;

- (b) to the Northland Parties (or their designee) excluding MMWF, an amount of \$6,000,000;
- (c) to General Unsecured Creditors with Proven Claims from the Remaining Unsecured Creditor Pool in an amount equal to their Initial Pro Rata Share;
- (d) to Proven BFW Construction Lien Creditors who have provided required domestic content documentation, from the BFW Holdback Pool in an amount equal to their Proven BFW Construction Lien Claim; and
- (e) to the Vetting Committee for the Vetting Committee Fees, from the CLLSP Holdback Pool
- (f) to Proven CLLSP Construction Lien Creditors, who have provided required domestic content documentation, from the CLLSP Holdback Pool in an amount equal to the CLLSP Initial Pro Rata Construction Lien Share and any CLLSP Construction Lien Deficiency Claims shall be treated as General Unsecured Claims.

19. On the Implementation Date, the Disputed Distribution Claims Reserve will be established until the Disputed Distribution Claims, if any, become Proven Claims in accordance with the Claims Procedure Order.

20. In addition, on the Implementation Date, the Disputed BFW Construction Lien Claims Reserve and the Disputed CLLSP Construction Lien Claims Reserve will be established for the benefit of the BFW Construction Lien Creditors and the CLLSP Construction Lien Creditors until the final determination of their Claims.

21. All distributions or payments to be made under the Plan are conditional on the receipt of documentation from a Governmental Entity authorizing the Monitor to make the distributions or payments without any liability in respect of the ITA, Excise Tax Act, and any other legislation pertaining to Taxes. In the event the Monitor does not receive such documentation by October 17, 2016, the Applicant will seek further directions from the Court to amend the Plan to provide that the distributions and other payments contemplated in the Plan could be made by a person other than the Monitor.

Resolution of Disputed Distribution Claims and Disputed Construction Lien Claims

22. From and after the Initial Distribution Date, as frequently as the Monitor may determine, distributions will be made to:

- (a) General Unsecured Claims: Each General Unsecured Creditor with a Disputed Distribution Claim that has become a Proven Claim in whole or in part, an amount of Cash from the Disputed Distribution Claims Reserve Account equal to the aggregate amount of all distributions such General Unsecured Creditor would have otherwise already received pursuant to the Plan had its Disputed Distribution Claim been a Proven Claim as of the Initial Distribution Date. Any remaining balance in the Disputed Distribution Claims Reserve Account relating to such Creditor's Disputed Claim will be deposited in the Unsecured Creditor Pool to be distributed to the remaining Affected Creditors in respect of their Proven Claims. Finally, once all Disputed Distribution Claims have been resolved, if there is any Cash remaining in the Unsecured Creditor Pool, the Monitor shall, on the Final Distribution Date make a further and final distribution to the General Unsecured Creditors with Proven Claims equal to such Creditor's Pro Rata Share;
- (b) Disputed BFW Construction Lien Claims: Each BFW Construction Lien Creditor with a Disputed BFW Construction Lien Claim that has become a Proven BFW Construction Lien Claim in whole or in part, an amount of Cash from the Disputed BFW Construction Lien Claims Reserve Account equal to the amount of such Proven BFW Construction Lien Claim. Any remaining balance in the BFW Disputed Construction Lien Reserve Account following such distributions will be deposited in the BFW Holdback Pool. Finally, once all Disputed BFW Construction Lien Claims have been resolved, if there is any Cash remaining in the BFW Holdback Pool, the Monitor shall, return such funds to NPI;
- (c) Disputed CLLSP Construction Lien Claims: Each CLLSP Construction Lien Creditor with a Disputed CLLSP Construction Lien Claim that has become a Proven CLLSP Construction Lien Claim in whole or in part, an amount of Cash from the Disputed CLLSP Construction Lien Claims Reserve Account equal to the aggregate amount of all distributions such CLLSP Construction Lien Creditor would have otherwise already received pursuant to the Plan had its Disputed

CLLSP Construction Lien Claim been a Proven CLLSP Construction Lien Claim as of the Initial Distribution Date. Any remaining balance in the CLLSP Disputed Construction Lien Reserve Account following payment of such Proven CLLSP Construction Lien Claims will be deposited in the CLLSP Holdback Pool for distribution to the remaining CLLSP Construction Lien Creditors in respect of their Proven CLLSP Construction Lien Claims. Finally, once all CLLSP Disputed Construction Lien Claims have been resolved, if there is any Cash remaining in the CLLSP Holdback Pool, the Monitor shall, on the Final Distribution Date make final distribution to the CLLSP Construction Lien Creditors with Proven CLLSP Construction Lien Claims equal to their CLLSP Pro Rata Construction Lien Share.

THE PROPOSED MEETING ORDER

23. The Meeting Order authorizes the Applicant to convene the meeting of a single class of Creditors comprised of all Affected Creditors, to consider and vote on the Plan. Construction Lien Creditors, as secured creditors, are unaffected under the Plan and therefore will not vote on the Plan in respect of their Construction Lien Claims. Any CLLSP Construction Lien Creditor whose Proven Claim exceeds the CLLSP Pro Rata Construction Lien Share of the holdback will be entitled to vote as a General Unsecured Creditor for the deficiency amount. In order to receive a distribution under the Plan, the Construction Lien Creditors must provide certain domestic content information, (to the extent not already provided) and are deemed to consent to, among other things, the return to the Northland Parties of any security posted by the Northland Parties to vacate the registration of liens and to the discharge of all Construction Lien Claims.

24. The Applicant proposes that the Creditors' Meeting will be held at the offices of the Monitor's Counsel on October 17, 2016. Capitalized terms in this section that are not otherwise defined have the meaning given to them in the proposed Meeting Order.

Notification

25. The Meeting Order provides for comprehensive notification of the Creditors' Meeting to the Affected Creditors. It is proposed that the Monitor will:

- (a) send the Meeting Materials by September 26, 2016;

- (b) forthwith post a copy of the Meeting Materials to the Monitor's Website that the Monitor is maintaining for these CCAA proceedings; and
- (c) by October 3, 2016 cause the Notice of Creditors' Meeting to be published for two Business Days in each of *Globe and Mail* (National Edition) and the *Daily Commercial News* and serve a report providing the Monitor's analysis of the Plan.

Conduct of the Creditors' Meeting

26. The Meeting Order provides that a representative of the Monitor will preside as the Chair of the Creditors' Meeting and, subject to any further Order of this Court, will decide all matters relating to the conduct of the Creditors' Meeting. The Monitor may appoint scrutineers for the supervision and tabulation of the attendance at, quorum at and votes cast at the Creditors' Meeting. A Person designated by the Monitor will act as secretary at the Creditors' Meeting.

27. The only Persons entitled to attend and speak at the Creditors' Meeting are Eligible Voting Creditors, the Monitor, the Applicant, IEA, and their respective legal counsel and advisors, the Chair, Secretary, Scrutineers and all other Persons, including the holders of Proxies, entitled to vote at the Creditors' Meeting. Any other Person may be admitted to the Creditors' Meeting on invitation of the Chair.

Voting

28. The voting procedures were designed to provide a fair and equitable opportunity for Affected Creditors to register their votes for or against the Plan. The Meeting Order and the Plan provide, *inter alia*:

- (a) The Chair will direct a vote on the Plan Resolution to approve the Plan and any amendments or variations thereto as the Monitor and the Applicant may consider appropriate;
- (b) The quorum required at the Creditors' Meeting will be one Affected Creditor with a Voting Claim present at such meeting in person or by Proxy;

- (c) An Affected Creditor will be permitted to attend the Creditors' Meeting in person or may appoint another person to attend the Creditors' Meeting as its proxyholder in accordance with the process provided in the Meeting Order. The Meeting Order contains provisions outlining the requirements for voting by proxy, and sets out the procedure and deadlines for submitting a Proxy;
- (d) Each Eligible Voting Creditor will be entitled to one vote equal to the dollar value of its Affected Claim determined as a Voting Claim in accordance with the Claims Procedure Order and the Meeting Order;²
- (e) An Affected Creditor holding a Disputed Voting Claim will be entitled to attend the Creditors' Meeting and be entitled to one vote, which will have the dollar value as set out in the Notice of Revision or Disallowance that the Monitor sends to the Affected Creditor. The Monitor will keep a separate record of votes cast by Affected Creditors holding Disputed Voting Claims and will report to the Court with respect thereto at the Sanction Motion;
- (f) Each Convenience Class Creditor will be deemed to have voted in favour of the Plan;
- (g) An Affected Creditor may transfer or assign the whole of its Claim prior to the Creditors' Meeting for voting purposes, provided that neither the Applicant nor the Monitor will be obligated to give notice to or otherwise deal with the transferee or assignee unless the transferee or assignee has complied with the procedures in the Plan and Meeting Order;³
- (h) Certain Persons are not entitled to vote on the Plan, including Persons holding Excluded Claims, Equity Claims, and Intercompany Claims. Pursuant to the Plan, a Person who has a Claim under a Guarantee in respect of any Claim which is compromised under the Plan (such compromised Claim being the "Principal

² Unless otherwise provided by the Plan or the Sanction Order, for the purposes of voting, a Claim will be denominated in Canadian dollars. Any Claim in a currency other than Canadian dollars will be regarded as having been converted at the noon spot rate of exchange quoted by the Bank of Canada for exchanging such currency to Canadian dollars as at the Filing Date. For Claims denominated in US dollars, the rate is US\$1:Cdn\$1.2984. An Affected Creditor's Voting Claim or a Disputed Voting Claim will not include fractional numbers and will be rounded down to the nearest whole Canadian Dollar amount.

³ Where a Claim has been transferred or assigned in part, the transferor or assignor will retain the right to vote at the Creditors' Meeting in respect of the full amount of the Claim, and the transferee or assignee will have no voting rights at the Creditors' Meeting in respect of such Claim.

Claim”), or who has any right to or claim over in respect of or to be subrogated to the rights of any Person in respect of the Principal Claim will not be entitled to vote on the Plan to the extent that the Person holding the Principal Claim is voting on the Plan; and

- (i) Construction Lien Creditors are not entitled to vote on the Plan in respect of their Construction Lien Claims, but Construction Lien Deficiency Claims are Affected Claims and holders of Construction Lien Deficiency Claims will be entitled to vote in respect of such claims.

Amendments to the Plan

29. The Meeting Order provides that the Applicant, with the consent of the Monitor, is authorized to make and to file any Plan Modification prior to or at the Creditors’ Meeting, in which case any such Plan Modification will form part of and be incorporated into the Plan.

Approval and Court Sanction of the Plan

30. To be approved, the Plan must receive an affirmative vote by the Required Majority. Following the vote at the Creditors’ Meeting, the Monitor will tally the votes and determine whether the Plan has been approved by the Required Majority. The results of the Creditors’ Meeting will be binding on all Affected Creditors, whether or not any such Affected Creditor is present or voting at the Creditors’ Meeting.

31. The Applicant proposes that, in the event that the Plan is approved by the Required Majority, the Applicant will bring a motion on October 24, 2016 seeking an Order sanctioning the Plan under the CCAA.

32. The Monitor will provide a report to the Court as soon as practicable after the Creditors’ Meeting with respect to: (i) the results of voting at the Creditors’ Meeting; (ii) whether the Required Majority has approved the Plan; (iii) the separate tabulation of votes cast by Affected Creditors holding Disputed Voting Claims; and (iv) in its discretion, any other matter relating to the Applicant's motion seeking sanction of the Plan. A copy of the Monitor’s Report will be posted on the Monitor’s Website prior to the Sanction Motion.

PURPOSE OF AFFIDAVIT

33. I swear this affidavit in support of the Applicant's motion returnable September 19, 2016.

SWORN BEFORE ME, this 12th day of September, 2016.

Malisa K. G

Name of Notary Public

Notary Public for the State of New York

My commission expires on 8/25/20

Philip J. Gund

PHILIP J. GUND

MALISA K. GRIFFITH
Notary Public, State of New York
No. 01GR6191919
Qualified in Queens County
Commission Expires Aug. 25, 2020

Court File No. CV-16-11452-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF H.B. WHITE CANADA CORP.

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

Proceeding commenced at Toronto

**AFFIDAVIT OF PHILIP J. GUND
SWORN SEPTEMBER 12, 2016
(MEETING ORDER AFFIDAVIT)**

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Lawyers for H.B. White Canada Corp.

B

This is Exhibit "B" referred to in the Affidavit of Philip J. Gund
sworn November 23, 2016

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of New York
County of Nassau

On 11-23-16 before me, Stephanie Rant - Notary
(insert name and title of the officer)

personally appeared Philip Gund
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State New York that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)

STEPHANIE M RANT
Notary Public, State of New York
No. 01RA6281358
Qualified in Nassau County
Commission Expires May 13, 2017

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF H.B. WHITE CANADA CORP.

(the "**Applicant**")

AFFIDAVIT OF PHILIP J. GUND
SWORN OCTOBER 18 2016

(Sanction Hearing)

I, Philip J. Gund, of the County of Nassau in the State of New York, MAKE OATH AND SAY:

1. I am a senior managing director of Ankura Consulting Group, LLC ("**Ankura**"), the Court-appointed Chief Restructuring Organization in these proceedings (the "**CCAA Proceedings**"). As such, I have personal knowledge of the facts to which I depose, except where I have indicated that I have obtained facts from other sources, in which case I verily believe those facts to be true.

2. This affidavit is sworn in support of a motion brought by H.B. White Canada Corp. ("**HBW**" or the "**Applicant**") for an order pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**"), *inter alia*:

- (a) if necessary, abridging the time for service of the Notice of Motion and the Motion Record and validating service thereof;
- (b) declaring that the Creditors' Meeting¹ held on October 17, 2016 was duly convened and held, all in accordance with the Meeting Order;

¹ Capitalized terms not defined herein shall have the meanings ascribed to such terms in the Plan.

- (c) sanctioning and approving the Amended Plan of Compromise and Arrangement dated October 13, 2016 (the “**Plan**”);
- (d) authorizing and directing the Applicant and the Monitor to take all steps and actions necessary or appropriate to implement the Plan;
- (e) authorizing the cancelation of WCI’s membership interests in HBW upon the implementation of the Plan, and providing for new membership interests to be issued thereupon to White Construction Energy Services, LLC; and
- (f) approving (i) the third report of Alvarez & Marsal Canada Inc. in its capacity as court appointed monitor (the “**Monitor**”) dated October 3, 2016 (the “**Third Report**”), and its activities as set out therein and (ii) the fourth report of the Monitor, to be filed (the “**Fourth Report**”), and its activities as set out therein.

3. The Plan provides for the best available outcome for creditors of the Applicant. In particular, the Plan proposes a significantly better alternative for unsecured creditors than a bankruptcy, which in these circumstances would be the only other alternative available to the Applicant. In a bankruptcy proceeding, the proceeds of a liquidation of the Applicant’s assets and affairs would be insufficient to satisfy the claims of the secured lenders and the unsecured creditors of the Applicant would receive no recovery or distribution. Moreover, the Plan provides an efficient method for ascertaining and distributing “holdback” funds, which would otherwise be subject to continuing litigation among the Applicant, the Northland Parties and the applicable Construction Lien Creditors. In sum, the Plan is a fair and reasonable compromise of claims and resolution of litigious issues.

4. Based on updated information from the Monitor, the expected estimated recovery for Affected Creditors is approximately 7.6% to 9.0% for Affected Claims that are Proven Claims.

5. If the Plan is sanctioned and the closing conditions are satisfied, the implementation of the Plan will:

- (a) implement the settlement negotiated with the Northland Parties pursuant to the Settlement and Support Agreements and provide the releases contemplated thereby;

- (b) provide a structured and efficient method to effect payment of all or a portion of Proven Construction Lien Claims in accordance with the Settlement and Support Agreements;
- (c) affect a compromise, settlement and payment of all Proven Claims;
- (d) allow the Applicant to reorganize and continue to provide certain ongoing warranty services to its remaining customers;
- (e) release all claims against the Plan Sponsors and the Directors and Officers of HBW and the rest of the IEA Group to permit WCI to continue operations, HBW having limited its liability to WCI by avoiding a Wind-up Claim (as defined below);
- (f) release all claims against the Monitor, A&M, and the Northland Parties (collectively, the “**Third Party Released Parties**”); and
- (g) comply with the Initial Order, Claims Procedure Order and the Meeting Order.

BACKGROUND

6. The background to and mechanics of the Plan are described in my Affidavit sworn September 12, 2016 (the “**Meeting Order Affidavit**”) and the Monitor’s Third Report. A copy of the Meeting Order Affidavit, without exhibits, is attached hereto as **Exhibit “A”**.

7. On October 13, 2016, in accordance with the Plan and the Meeting Order and with the consent of the Monitor, the Applicant made certain non-material changes to the Plan. The changes to the Plan were served on the service list, posted on the Monitor’s website and filed with the Court. A copy of the Affidavit of Natalie E. Levine sworn October 13, 2016, attaching the Amended Plan of Compromise and Arrangement dated October 13, 2016, and including a blackline reflecting the amendments made to the September 18, 2016 version, is attached hereto as **Exhibit “B”**.

THE PLAN

8. The mechanics and effect of the Plan are described in detail in the Meeting Order Affidavit and will not be repeated herein, except in summary. In accordance with the Plan:

- (a) Three (3) business days prior to the Implementation Date the Plan Sponsors will transfer sufficient Cash to the Monitor to establish the Northland Claims Pool and the Unsecured Creditor Pool;
- (b) Within one day of the entry of the Sanction Order, the Northland Parties will transfer certain Lien Holdback Amounts to the Monitor to establish the BFW Holdback Pool and the CLLSP Holdback Pool;
- (c) General Unsecured Creditors with Proven Claims of less than \$10,000 will be deemed to be "Convenience Class Creditors". General Unsecured Creditors with Proven Claims in excess of \$10,000 may elect to be treated for all purposes as Convenience Class Creditors;
- (d) Distributions of 100% of the Proven BFW Construction Lien Claims will be made to each Proven BFW Construction Lien Creditor from the BFW Holdback Pool;
- (e) Subject to the payment or reserve for CLLSP Sub Sub Contractor Construction Lien Claims, and the payment of Vetting Committee Fees up to a maximum amount of \$195,000, distributions will be made to each Proven CLLSP Construction Lien Creditor in the amount of its CLLSP Initial Pro Rata Construction Lien Share of the CLLSP Holdback Pool with any excess amount of such creditor's claim after distribution of the entire CLLSP Holdback Pool, being a CLLSP Construction Lien Deficiency Claim that is treated as a General Unsecured Claim;
- (f) Distributions will be made from any amounts otherwise payable to the applicable Proven CLLSP Sub Contractor Construction Lien Claim, to each Proven CLLSP Sub Sub Contractor Construction Lien Claim of 100% of its Proven CLLSP Sub Sub Contractor Construction Lien Claim;
- (g) Equity interests in HBW shall receive no distribution and shall be cancelled under the Plan. New membership interests in HBW shall be issued to White Construction Energy Services, LLC;
- (h) The Directors' Charge and Administration Charge will be discharged against all property other than the Administrative Reserve;

- (i) Members of the IEA Group, including the respective Officers and Directors of HBW and other members of the IEA Group, and others, will be released and discharged from all claims, including any claims based on any occurrence taking place before the Implementation Date, and the Monitor, and others, will be released and discharged from all claims, including any claims based on any occurrence taking place before the Implementation Date;
- (j) Crown Priority Claims and Employee Priority Claims, including but not limited to source deductions, and wages/employees amounts shall be paid from the Administrative Reserve. The Applicant does not participate in a prescribed pension plan; and
- (k) The Northland Parties and other third parties, including the Monitor and A&M, will also be released and discharged from all claims, including without limitation claims that are in any way relating to, among other things, the Construction Lien Claims and the ongoing litigation under the Provincial Lien Legislation, will be dismissed.

9. If this Court sanctions the Plan, it is anticipated that the Implementation Date will be mid-November 2016.

10. In addition, under the Plan and consistent with the terms of the proposed Sanction Order, the Applicant, the Northland Parties and all Construction Lien Creditors shall be deemed to consent to and authorize counsel for HBW to execute a consent on their behalf to an Order for (i) the return to the Northland Parties of any collateral security posted by the Northland Parties to vacate the registration of liens registered pursuant to the CLA in respect of the Facilities; (ii) the dismissal of any actions, including the claims, crossclaims and counterclaims as the case may be, against all defendants in these actions including any of the Northland Parties and the HBW Parties in respect of the Facilities on a without costs basis; (iii) the discharge of all Construction Lien Claims; and (iv) as the Order is on consent, the dispensing with of Rule 72.03(2)(c) of the Rules of Civil Procedure.

Releases under the Plan

11. Article 9 of the Plan provides that various parties will receive releases (the “**Releases**”), as summarized below. The releases are an integral part of the Plan and are fair and equitable in the circumstances for the reasons set forth below.

(a) The Applicant and the IEA Group

12. Section 9.1(a) of the Plan provides that on the Implementation Date, the HBW Released Parties, including but not limited to members of the IEA Group, including the Plan Sponsors, IEA and WCI, and their current and former directors, officers, shareholders, partners, employees, financial advisors, legal counsel and agents, and the CRO will be released and discharged from, *inter alia*, any claims any Person may be entitled to assert that are arising out of or in connection with the Claims, the Facilities, the Plan, the Contracts, the CCAA Proceedings, or any Claim that has been barred or extinguished by the Claims Procedure Order or any Wind-up Claim (as described in further detail below).

13. The release set forth in section 9.1(a) was a key component of HBW and the IEA Group's decision to participate in and support this CCAA Proceeding. The release will not only allow HBW to continue as a going concern to provide limited warranty services to its existing customers, but it will also protect the viability of the IEA Group. More specifically, I understand from counsel to HBW that, as an unlimited liability company, upon a winding up of HBW, HBW would have an unsecured claim against WCI, as the sole member of HBW in respect of any debts HBW cannot pay (the "**Wind-up Claim**"). If such a Wind-up Claim were made against WCI, it would likely cause WCI to file for bankruptcy protection in the United States and would cause ripple effects for the IEA Group's lenders and other shared contract counterparties. As such, the IEA Group's support of the Plan is dependent upon these release provisions.

14. The HBW Released Parties have made significant contributions throughout the CCAA Proceedings including:

- (a) Funding of the CCAA Proceeding: IEA agreed to provide up to \$5 million to fund the CCAA Proceedings as the post-filing lender;
- (b) Financial Contributions Under the Plan: IEA and WCI as Plan Sponsors will contribute: (a) \$2,500,000 in order to establish the Unsecured Creditor Pool for distributions to be paid to General Unsecured Creditors; (b) \$6,000,000 in order to establish the Northland Claims Pool for distribution to the Northland Parties, excluding MMWF. Furthermore, the Plan Sponsors or HBW will contribute, to the extent the Applicant has insufficient funds, Cash to establish the Administrative Reserve for payments in respect of, but not limited to, Priority Claims and professional fees for the remainder of the CCAA Proceeding;

- (c) Subordination of Intercompany Claims: IEA and WCI have agreed to effectively subordinate to the other unsecured creditors of HBW their Intercompany Claims valued at approximately \$57 million according to the books and records of HBW, and have agreed to receive no distribution under the Plan in respect of these amounts; and
- (d) Negotiation with Secured Lenders: The IEA Group has negotiated with Wells Fargo and Oaktree such that the claims of these existing secured lenders will be Excluded Claims and the secured lenders will not receive a distribution under the Plan.

15. The Applicant believes that it is appropriate to include the release in favour of the HBW Released Parties, since their contributions will result in materially higher and significantly accelerated recoveries for Affected Creditors. Without the support and contributions of the HBW Released Parties, which would not have been provided without the expectation and condition of receiving the releases, the Applicant would have likely proceeded with a bankruptcy liquidation and the proceeds that would be available under a bankruptcy proceeding would be insufficient to satisfy the claims of the secured lenders of HBW. Accordingly, in such a scenario the unsecured creditors of the Applicant would not receive a distribution.

(b) *The Monitor, the Northland Parties and Others*

16. Section 9.1(b) of the Plan provides that on the Implementation Date, the Third Party Released Parties, including but not limited to the Monitor, A&M, the Northland Parties and their respective subsidiaries and affiliates and each of their respective shareholders, partners, officers, directors, employees, financial advisors, legal counsel and agents, will be released and discharged from, *inter alia*, any claims that any Person may be entitled to assert that are in any way relating to the Claims, the Facilities, the Plan, the Contracts, the CCAA Proceedings or any Claim that has been barred or extinguished by the Claims Procedure Order.

17. The Applicant believes that it is appropriate to include the Release in favour of the Northland Parties, because:

- (a) Compliance with the Settlement and Support Agreements: The release in favour of the Third Party Released Parties was a key element of the Settlement and Support Agreements and was negotiated at length. The release is a condition to

the Settlement and Support Agreements and essential to the Northland Parties' support of the Plan. Without the release, the Northland Parties' obligations under the Settlement and Support Agreements would be nullified and HBW and the IEA Group would likely be forced back into contentious litigation;

- (b) Contribution of BFW Holdback Pool and CLLSP Holdback Pool: The Northland Parties will contribute approximately \$8.8 million to fund the Lien Holdback Pools for distribution to the Construction Lien Creditors. By funding the BFW Holdback Pool and the CLLSP Holdback Pool and agreeing to have distributions made pursuant to the Plan, the Northland Parties are providing the means for an expeditious distribution of holdback funds without the extensive litigation that would otherwise occur under the Provincial Lien Legislation; and
- (c) Compromise of Claims: The Third Report quantifies the claims filed by the Northland Parties pursuant to the Claims Procedure Order in excess of \$174 million and those claims have been admitted against HBW. The Northland Parties hold, by far, the largest Unsecured Claims against HBW. Pursuant to the Plan, the recovery by the Northland Parties of approximately 3.4% of their asserted claims against HBW is less than half of the proportionate recovery of other unsecured creditors (estimated at approximately 7.4%).

18. The Applicant believes that the releases in favour of the Monitor and A&M contemplated under article 9.1(b) of the Plan are necessary and appropriate in the circumstances. The Monitor, a Court-appointed officer, has: (i) carried out its mandate with respect to the Claims Process; (ii) been integrally involved in the development of the Plan; and (iii) will be administering the creditor distributions contemplated under the Plan on behalf of and for the benefit of HBW.

19. Accordingly, the Applicant believes that the broad releases in favour of the Third Party Released Parties are necessary and essential to achieving a successful Plan.

THE CREDITORS' MEETING

20. The Creditors' Meeting was held on October 17, 2016 at the offices of counsel to the Monitor. In accordance with the Meeting Order, Mr. Hutchens of the Monitor acted as the Chair (as defined in the Meeting Order). Other representatives of the Monitor acted as scrutineers.

21. Each Eligible Voting Creditor was permitted to attend the Creditors' Meeting in person or appoint another person to attend as proxyholder. I am advised by the Monitor that the quorum requirement was satisfied.² The Chair declared that the meeting was properly constituted.

22. I am advised by the Monitor that the Required Majority³ voted in favour of the Plan Resolution (as defined in the Meeting Order) and therefore approved the Plan. According to the Monitor's tabulation, the following votes were recorded:

VOTING SUMMARY	Number Voting in Favour	Dollar Amount Voting in Favour	Number Voting Against	Number Voting Against
Voting Claims	50 (96.2%)	\$176,521,506 (99.8%)	2 (3.8%)	\$411,853 (0.2%)
Disputed Voting Claims	26 (81.3%)	\$15,293,504 (90.7%)	6 (18.8%)	\$1,571,521 (9.3%)
Eligible Voting Claims (i.e. Total)	76 (90.5%)	\$191,815,010 (99.0%)	8 (9.5%)	\$1,983,374 (1.0%)

23. I am advised by the Monitor that the voting at the Creditors' Meeting was carried out in accordance with the Meeting Order and before this motion is heard the Monitor will deliver a report describing the conduct and the outcome of the Creditors' Meeting.

PLAN SANCTION

24. The Applicant believes that the sanction of this Plan is fair and reasonable in the circumstances for the following reasons:

- (a) **Extensive Negotiation**: The Plan is the result of the Applicant's extensive negotiation and consultation with various stakeholders, most notably the Northland Parties. The Plan is the culmination of discussions with the Northland Parties that began at the end of 2014. In finalizing the Plan, including developing the appropriate mechanics, each of the Monitor, the Northland Parties and the Plan Sponsors provided constructive feedback and analysis;

² The Meeting Order provided that the quorum was one Affected Creditor with a Voting Claim present in person or by Proxy.

³ The Meeting Order required the Plan Resolution be approved by that number of Affected Creditors representing at least a majority in number of Voting Claims, whose Affected Claims represent at least two-thirds in value of the Voting Claims of Affected Creditors who validly vote (in person or by Proxy) on the Plan Resolution at the Creditors' Meeting or were deemed to vote on the Plan Resolution as provided for in the Meeting Order.

- (b) Greater Recovery than Bankruptcy: As illustrated in the Third Report, the recoveries under the Plan are significantly higher than under a bankruptcy scenario where unsecured creditors would receive no distribution. Furthermore, the Plan will allow for timely recoveries to Construction Lien Creditors without costly litigation and delay. The Applicant believes that all stakeholders will benefit more from the implementation of the Plan than from a bankruptcy;
- (c) Unlimited Liability Company Implications: As discussed above, if HBW is unable to reach a plan of compromise with its creditors, it will be forced to assign itself into bankruptcy. In light of HBW's corporate structure and the Wind-up Claim that would arise against WCI, upon a bankruptcy of HBW, WCI would be forced into U.S. bankruptcy proceedings where senior secured creditors would likely suffer a shortfall and none of WCI or HBW's unsecured creditors would receive any recovery;
- (d) Approval by Creditors: The Applicant has sought to achieve a fair and reasonable balance between all Affected Creditors under the Plan. 90.5% of the Eligible Voting Creditors representing 99.0% in dollar value of the Eligible Voting Claims voted in favour of the Plan at the Creditors' Meeting. This reinforces the Applicant's belief that the Plan is the most reasonable and fair resolution in these circumstances; and
- (e) Compliance with CCAA and Orders: I am advised that the Plan complies with the provisions of the CCAA and all orders made in this CCAA Proceeding.

25. Throughout the course of this CCAA proceeding, the Applicant has acted in good faith and with due diligence and for the reasons above the Applicant believes that the Plan is fair and reasonable.

PURPOSE OF AFFIDAVIT

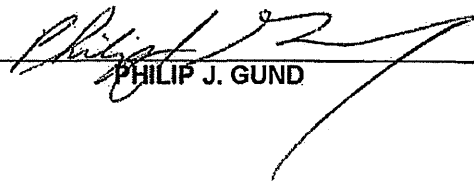
26. I swear this affidavit in support of the Applicant's Motion returnable October 24, 2016.

SWORN BEFORE ME, this 18th day of
October, 2016.

Malisa K. Griffith
Name of Notary Public

Notary Public for the State of New York

My commission expires on 8/25/20


PHILIP J. GUND

Malisa K. C

MALISA K. GRIFFITH
Notary Public, State of New York
No. 01GR6191919
Qualified in Queens County
Commission Expires Aug. 25, 2020

Court File No. CV-16-11452-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF H.B. WHITE CANADA CORP.

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

Proceeding commenced at Toronto

**AFFIDAVIT OF PHILIP J. GUND
SWORN OCTOBER 18, 2016
(SANCTION ORDER AFFIDAVIT)**

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

Proceeding commenced at Toronto

**AFFIDAVIT OF PHILIP J. GUND
SWORN NOVEMBER 23, 2016
(APPROVAL AND TERMINATION/DISMISSAL OF ACTIONS AFFIDAVIT)**

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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Proceeding commenced at Toronto

**MOTION RECORD
Returnable November 30, 2016**

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