

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-11-026779-054

**SUPERIOR COURT
COMMERCIAL DIVISION
(In bankruptcy and insolvency)**

**IN THE MATTER OF THE PLAN OF
COMPROMISE OR ARRANGEMENT OF:**

**MINCO-DIVISION CONSTRUCTION INC.,
– and –
SLEB 1 INC.;**

Petitioners

– and –

LITWIN BOYADJIAN INC., in its capacity as
Monitor of Petitioners under the *Companies’
Creditors Arrangement Act*;

Monitor

– and –

RSM RICHTER INC., in its capacity as Interim
Receiver of the Petitioners;

Interim Receiver

**MOTION TO AMEND THE CLAIMS PROCEDURE
(Section 11 of the *Companies’ Creditors Arrangement Act*,
R.S.C. 1985, c. C-36)**

**TO ONE OF THE HONORABLE JUDGES OF THE SUPERIOR COURT, SITTING IN
COMMERCIAL DIVISION (FOR BANKRUPTCY AND INSOLVENCY MATTERS),
IN AND FOR THE DISTRICT OF MONTRÉAL, PETITIONERS RESPECTFULLY
SUBMIT THAT:**

1. As appears from the Court record, Petitioners commenced proceedings on October 27, 2005, under Part III of the *Bankruptcy and Insolvency Act* (R.S.C. 1985, c. B-3) (the “**BIA**”), and filed a Notice of Intention;
2. By Petition dated October 29, 2005, Petitioners sought to take up and continue the BIA proceedings under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”);
3. On November 3, 2005, this Court rendered an Initial Order (the “**Initial Order**”) under the CCAA declaring, *inter alia*, that the Petitioners were companies to which the CCAA applies, granting a stay of proceedings in respect of the Petitioners, up to and including December 2, 2005, and appointing Litwin Boyadjian Inc. (the “**Monitor**”) as Monitor, the whole as more fully appears from a copy of such Initial Order produced as **Exhibit MS-1**;
4. On November 3, 2005, this Court rendered an Interim Receiver Order (the “**I.R. Order**”) appointing RSM Richter Inc. (the “**Interim Receiver**”) as interim receiver in respect of the Petitioners, the whole as more fully appears from a copy of the I.R. Order produced as **Exhibit MS-2**;

5. On December 2, 2005, this Court extended the Stay Termination Date (as defined in paragraph 8 of the Initial Order) to January 31, 2006 (the “**Extension Order**”), the whole as more fully appears from a copy of such Extension Order produced as **Exhibit MS-3**;
6. On December 15, 2005, this Court rendered an order (the “**Claims Procedure Order**”) setting forth a claims process and procedure for all claims, with the exception of holders of conventional hypothecs, in order to accelerate the reception and quantification of such claims and to resolve any disputes in respect thereof in a timely fashion, the whole as appears from the Claims Procedure Order produced as **Exhibit MS-4**;
7. On January 27, 2006, this Court extended the Stay Termination Date (as defined in paragraph 8 of the Initial Order), to March 10, 2006, the whole as more fully appears from a copy of such Extension Order produced as **Exhibit MS-5**;
8. Pursuant to the Claims Procedure Order, **Exhibit MS-4**, the Claims Bar Date was 5:00 p.m. on January 20, 2006;
9. As at the present date, more than 110 proofs of claim have been filed with the Monitor;
10. Pursuant to the Claims Procedure Order, **Exhibit MS-4**, the Monitor and the Interim Receiver had until February 15, 2006 to request additional information from any Claimant;
11. On February 13 and 15, 2006, the Monitor sent out requests for additional information to 49 Claimants;
12. Pursuant to the Claims Procedure Order, **Exhibit MS-4**, the Claimants who received a request for additional information had 10 days from receipt of such request to provide the information requested by the Monitor, which delay will expire on or about February 25, 2006;
13. As of noon on February 22, 2006, 23 Claimants, with proofs of claims for approximately \$3,400,000, have responded to the requests for additional information while 26 Claimants had not responded. Some of the responses are not complete and further information is being requested of the Claimants;
14. The Petitioners are simultaneously negotiating with Canadian Imperial Bank of Commerce (the “**DIP Lender**”) for an increased DIP Facility to fully fund the completion of the construction of Phase 1 of the Project;
15. The DIP Lender has advised the Petitioners that as a condition to providing additional DIP Financing, it wishes to explore the possibility of engaging a third party project manager and/or general contractor to assume overall supervision of the work necessary to complete Phase 1 of the Project;
16. Prior to the DIP Lender making a final determination as to the amount and terms of any comprehensive DIP Financing that it may wish to make available to the Petitioners, the DIP Lender requires that a general contractor and/or project manager perform a full analysis of the costs to complete in order to ascertain, with as much certainty as possible, the total required funding to complete Phase 1 of the Project;
17. The Petitioners remain optimistic that on or before March 10, 2006, a final term sheet for sufficient DIP Financing to complete Phase 1 of the Project shall be concluded between the Petitioners and the DIP Lender;
18. It is essential that the Petitioners be permitted to complete the construction of Phase 1 of the Project and to maximize realization from the sale of the condominium units, parking spaces and commercial space;

19. The negotiation and execution of such term sheet is an essential condition to the completion of the Project and the presentation of a plan of arrangement. The Petitioners, the Monitor and the Interim Receiver need to devote their attention to the negotiation of the required financing rather than hurriedly complete the review of the proof of claims which have been filed;
20. The Petitioners would accordingly wish to amend the Claims Procedure Order by extending to 5:00 p.m. on March 31, 2006, the ultimate date for the Monitor to provide notices of disallowance;
21. The Claimants will not suffer any prejudice from the extension of the period to file notices of disallowance.
22. In a bankruptcy or foreclosure scenario, it is virtually certain that the realization for the benefit of all creditors would be far less than in the case of a successful restructuring;
23. The Monitor and the Interim Receiver agree to the extension of the period to file notices of disallowance;

CONCLUSIONS SOUGHT

24. As appears from the foregoing, additional time is required in order to permit the Monitor to complete the review of the proofs of claims before it files notices of disallowance;
25. The Petitioners respectfully request that Article 11 of the Claims Procedure forming part of the Claims Procedure Order, **Exhibit MS-4**, be replaced by the following:

“In all cases, if a Claim is disputed or otherwise disallowed, in whole or in part, by the Monitor, the Monitor shall provide to such Claimant a Notice of Disallowance on or before 5:00 p.m., Montreal time, on March 31, 2006.”;
26. The present Motion is well founded in fact and in law.

WHEREFORE, MAY IT PLEASE THIS HONORABLE COURT TO:

- [1] GRANT the present Motion;
- [2] DECLARE that the delay for service of the present Motion is hereby abridged such that the present Motion is properly presentable and that any requirement for additional notice or service of the present Motion is hereby dispensed with;
- [3] ORDER that Section 11 of the Claims Procedure, forming part of the Claims Procedure Order dated December 15, 2005, is hereby replaced by the following:

“In all cases, if a Claim is disputed or otherwise disallowed, in whole or in part, by the Monitor, the Monitor shall provide to such Claimant a Notice of Disallowance on or before 5:00 p.m., Montreal time, on March 31, 2006.”;
- [4] DECLARE the Orders to be rendered pursuant hereto executory notwithstanding any appeal;

[5] THE WHOLE without costs, save and except in case of contestation;
MONTRÉAL, February 23, 2006

(sgd) Goldstein, Flanz & Fishman L.L.P.

GOLDSTEIN, FLANZ & FISHMAN L.L.P.

Attorneys for the Petitioners

Minco-Division Construction Inc. and Sleb 1 Inc.

AFFIDAVIT

I, Noubar Boyadjian, of the firm Litwin Boyadjian Inc., carrying on my profession at 1 Place Ville-Marie, Suite 2720, Montreal, Quebec H3B 4G4, attest and depose that:

1. I am the Monitor in the CCAA Proceedings involving Minco-Division Construction Inc. and Sleb 1 Inc.;
2. All of the facts alleged in the present Motion to Amend the Claims Procedure are true.

AND I HAVE SIGNED in Montréal, Province of Québec, on February 23, 2006,

(sgd) Noubar Boyadjian

NOUBAR BOYADJIAN

SOLEMNLY affirmed before me,
in Montreal, Province of Québec,
on February 23, 2006

(sgd) Hélène Bouthillette 102,561

Commission of Oaths
for all Districts of the Province of Québec

NOTICE OF PRESENTATION

TO: **LITWIN BOYADJIAN INC.,**
IN ITS CAPACITY AS MONITOR
1 Place Ville-Marie
Suite 2720
Montréal, Quebec H3B 4G4

RSM RICHTER INC.,
IN ITS CAPACITY AS INTERIM RECEIVER
2 Place Alexis Nihon
3500 de Maisonneuve Boulevard West
22nd Floor
Montreal, Quebec H3Z 3C2

SERVICE LIST (see attached list)

SIRS:

TAKE NOTICE of the foregoing Motion to Amend the Claims Procedure and that same will be presented before the Honourable Justice Daniel H. Tingley, J.S.C., in Room 16.12 of the Court House of Montreal, 10 St. Antoine Street East, on the 27th day of February, 2006, at 9:15 a.m. or so soon thereafter as Counsel may be heard.

AND DO GOVERN YOURSELVES ACCORDINGLY.

MONTRÉAL, February 23, 2006

(sgd) Goldstein, Flanz & Fishman L.L.P.

GOLDSTEIN, FLANZ & FISHMAN L.L.P.

Attorneys for Petitioners

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LIST OF EXHIBITS

Exhibit MS-1	Copy of Initial Order under the CCAA.
Exhibit MS-2	Copy of the Interim Receiver Order.
Exhibit MS-3	Copy of the First Extension Order.
Exhibit MS-4	Copy of the Claims Procedure Order.
Exhibit MS-5	Copy of the Second Extension Order
Exhibit MS-6	Claims Register of the Monitor.

MONTRÉAL, February 23, 2006

(sgd) Goldstein, Flanz & Fishman L.L.P.
GOLDSTEIN, FLANZ & FISHMAN L.L.P.
Attorneys for the Petitioners
Minco-Division Construction Inc. and Sleb 1 Inc.