

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
COMMERCIAL DIVISION
(In bankruptcy and insolvency)

No.: 500-11-026779-054

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 FOR AN ORDER TO APPROVE A CLAIMS PROCESS
(Section 12 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. On November 3, 2005, this Court rendered an Initial Order (the «**Initial Order**») under the *Companies’ Creditors Arrangement Act* («**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**;
2. 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**;
3. On December 2, 2005, this Court rendered an order extending the Stay Termination Date to January 31, 2005 (the «**Stay Extension Order**»), the whole as appears from a copy of the Stay Extension Order as well as the undertakings made by the Petitioners at the time of the issuance of the Stay Extension Order produced, *en liasse*, as **Exhibit MS-3**;
4. As appears from the undertakings of the Petitioners forming part of Exhibit MS-3, the Petitioners undertook to make a motion setting forth a claims process and proposing a bar

date for claims and to present such motion to this Honourable Court by December 21, 2005;

5. The property of the Petitioners consists of a Building under construction located at the corners of St. Lawrence Blvd. and Ontario Street (the «**Project**») and, numerous sub-contractors and suppliers have asserted or may assert that their claims are secured by legal hypothecs within the meaning of Article 2724 and following of the *Civil Code of Quebec*;
6. In addition, it is necessary to establish in such cases the increase in value added to the Project by the work, materials or services supplied or prepared for the work by such creditors asserting legal hypothecs;
7. In view of the fact that the Petitioners intend to complete the construction of the Project and to commence selling condominium units therein as soon as possible, it is essential that the identity and quantum of the claims of creditors holding legal hypothecs be established before the completion of the Project;
8. Furthermore, the claims of the unsecured creditors must be established as soon as possible in order to enable the Petitioners to determine its classes of creditors and to submit a plan of arrangement to such classes of creditors for vote;
9. In view of the foregoing, the Petitioners propose a claims process that shall provide for:
 - (a) a claims bar date; and
 - (b) a process to determine and adjudicate disputed claims;
10. At the hearing on December 2, 2005, at which time the Stay Extension Order was granted, all of the trade creditors present insisted that the Petitioners establish an early claims bar date for their claims and a procedure to quickly and efficiently determine claims and adjudicate claim disputes;
11. In view of the foregoing and the fact that Petitioners intend to submit a preliminary outline of their consolidated plan of arrangement to creditors by January 31, 2006, the Petitioners propose a claims bar date of January 20, 2006 (the «**Claims Bar Date**»);
12. The Petitioners request the relief more fully set forth in the conclusions hereof;
13. 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 the claims procedure as set out in Schedule “A” hereto (the «**Claims Procedure**») be and is hereby approved. Capitalized terms used but not defined in this Order shall have the meanings ascribed thereto in the Claims Procedure;
- [4] ORDER that the Monitor be and is hereby authorized and directed to administer the Claims Procedure for and on behalf of the Petitioners in accordance with its terms;
- [5] ORDER that all Claims shall be determined in the manner described in the Claims Procedure for all purposes including, without limiting the generality of the foregoing, for the purposes of voting, or receiving any distribution under any Plan or from the proceeds of the sale of any property of the Petitioners;

- [6] ORDER that the Claims Bar Date shall be 5:00 p.m. on January 20, 2006, and all Claims, other than those claims for which a Proof of Claim has been filed in accordance with the Claims Procedure, shall be extinguished, prescribed and forever barred against the Petitioners and their Property such that the Monitor, the Interim Receiver and the Petitioners shall have no liability whatsoever in respect thereof and the holder of any such Claim shall not be entitled to vote on any Plan nor receive any distribution from any Plan or from the proceeds of the sale of any property of the Petitioners;
- [7] ORDER the Monitor to publish in English in the Montreal Gazette and in French in La Presse a notice of the Claims Bar Date;
- [8] DECLARE the orders to be rendered pursuant hereto executory notwithstanding any appeal;
- [9] THE WHOLE without costs save and except in case of contestation.

MONTRÉAL, December 13, 2005

(s) Goldstein, Flanz & Fishman
GOLDSTEIN, FLANZ & FISHMAN LLP
Attorneys for the Petitioners

AFFIDAVIT

I, Luciano Minicucci, residing and domiciled at 334 des Prairies Boulevard, Laval-des-Rapides, in the District of Laval, Province of Quebec, H4N 2V7, being duly sworn, attest and depose that:

1. I am the President of both Minco Construction Division Inc. and Sleb 1 Inc.;
2. All of the facts alleged in the present Motion for an Order to Approve a Claims Process are true.

AND I HAVE SIGNED, in Montréal, Province of Québec, on December 13, 2005,

(s) Luciano Minicucci

LUCIANO MINICUCCI

SOLEMNLY affirmed before me,
in Montreal, Province of Québec,
on December 13, 2005

(s) 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
Montreal QC H3B 4G4

RSM RICHTER INC., in its capacity as Interim Receiver
2 Place Alexis Nihon
3500 de Maisonneuve Blvd. West
22nd Floor
Montreal, QC H3Z 3C2

SERVICE LIST (see attached list)

SIRS:

TAKE NOTICE of the foregoing Motion for an Order to Approve a Claims Process and that same will be presented before the Honourable Justice Daniel H. Tingley, J.C.S., of the Commercial Division for the District of Montreal, in a Room to be designated in the Court House of Montreal, 10 St-Antoine East, on the 15th day of December, 2005, at 9:30 a.m. or so soon thereafter as Counsel may be heard.

AND DO YOU GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, December 13, 2005

(S) Goldstein, Flanz & Fishman

GOLDSTEIN FLANZ & FISHMAN, L.L.P.
Attorneys for Petitioners

SERVICE LIST

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Me Guy Martel
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Me Mathieu Lévesque
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Me Pierre Viau
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(attorneys for Ventilation G.R.)

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(attorneys for F. Paquette & Fils Inc.)

Me Jacques Forgues
CROCHETIÈRE, PÉTRIN
5800 Louis-H. Lafontaine
2nd Floor
Anjou QC H1M 1S7
(attorneys for Gaudet & Laurin Inc.)

Me Jean-Maurice Bellaiche, Avocat
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(attorney for 2964-2253 Québec Inc., 9003-8589 Québec Inc. and M. Ben Tanfous)

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Me Robert Laframboise
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(attorneys for Dupras, Ledoux)

Me Arnaud A. Fraticelli
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Conseiller juridique
La Garantie Qualité-Habitation
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(attorneys for St-Denis Thomson, 3175120 Canada Inc. (Lu-Ard Électronique), Powermatic du Canada, Dubeau Électrique, Génératrices Drummond)

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Me Alain Léonard
Matério Laurentiens
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St-Jérôme QC J6Y 1T1

Me Serge Brunet
BRUNET & BRUNET
464 St-Jean Street
2nd Floor
Montreal QC H2Y 2S1
(attorneys for Delsan)

SCHEDULE "A"

CLAIMS PROCEDURE

1. Litwin Boyadjian Inc. in its capacity as court appointed monitor in these proceedings (the "**Monitor**") shall solicit any and all Claims pursuant to the procedure set out herein, against:

(a) Minco-Division Construction Inc.; and

(b) Sleb 1 Inc.

(collectively, the "**Petitioners**")

by sending a Proof of Claim form to all known persons whom the Monitor believes may have a Claim and to those persons requesting a Proof of Claim.

2. The Monitor shall publish a Notice of Claim in English in the Montreal Gazette and in French in La Presse on or before December 23, 2005, which states the Claims Bar Date and calls for the submission of Proofs of Claim.

3. Collectively, paragraphs 1 through 15 hereof shall be referred to as the "**Claims Procedure**".

4. The following terms shall have the meanings set out herein where used in this Claims Procedure:

(a) "**BIA**" means *Bankruptcy and Insolvency Act* (R.S.C. 1985, c. B-3);

(b) "**Business Day**" means a day, other than Saturday, Sunday or a statutory holiday, on which chartered banks are generally open for business in Montreal, in the Province of Quebec, Canada;

(c) "**CCAA**" means *Companies' Creditors Arrangement Act* (R.S.C. 1985, c. C-36);

(d) "**Claim**" or "**Claims**" includes any indebtedness, liability or obligation of any kind calculated as owing as at October 27, 2005 that, if unsecured, would be a debt provable in bankruptcy within the meaning of the BIA and for greater certainty, the amount of an unsecured Claim shall be determined in accordance with Section 12(2)(a) of the CCAA and the amount of a secured Claim shall be determined in accordance with Section 12(2)(b) of the CCAA. Notwithstanding the foregoing, for purposes hereof, any indebtedness of the Petitioners secured by a conventional hypothec (including indebtedness owing to the Canadian Imperial Bank of Commerce, TCC (Sleb 1) Limited Partnership and Mercury Realities Inc.) or relating to or resulting from the DIP Financing shall not be considered a Claim hereunder and shall not be subject to the present Claims Procedure;

(e) "**Claimant**" means a person asserting a Claim;

(f) "**Claims Notice**" means a notice advising creditors of the Claims Bar Date for the filing of a Proof of Claim, substantially in the form attached hereto as **Form 1**;

(g) "**DIP Financing**" means the debtor-in-possession financing provided by the Canadian Imperial Bank of Commerce and authorized by the Initial Order, as such Dip Financing may hereafter be amended or increased by further Order of the Quebec Superior Court, Commercial Division;

(h) "**Initial Order**" means the Order rendered by the Quebec Superior Court, Commercial Division on November 3, 2005 granting certain relief to the Petitioners pursuant to the CCAA;

(i) "**Notice of Disallowance**" means a notice issued by the Monitor substantially in the form set forth in the BIA, as appropriately modified;

- (j) “**Proof of Claim**” means a form (in English and in French) in which the Claim of a Claimant against the Petitioners may be asserted, substantially in the form attached hereto as **Form 2**;
- (k) “**Property**” means all present or future property, assets, rights and undertakings of the Petitioners, of any nature and in any location, whether held directly or indirectly by the Petitioners, in any capacity whatsoever, or held by others for the Petitioners including, without limitation, lot number 2 913 001 and lots 3 400 839 to 3 400 978 inclusively, of the cadastral plan of the Province of Quebec, Land Registration Division of Montreal.

5. Any document to be delivered pursuant to this Claims Procedure may be personally delivered or delivered by e-mail, registered mail, overnight courier or facsimile transmission. A Claimant, the Monitor, the Petitioners’ Counsel and the Interim Receiver shall be deemed to have received any document delivered pursuant to this Claims Procedure on the earlier of one Business Day after such document is delivered by e-mail, overnight courier or facsimile transmission or four days after such document is delivered by registered mail.

6. Any Proof of Claim, notification or notice required to be provided or delivered to the Petitioners under the Claims Procedure shall be so provided or delivered to:

- a) Litwin Boyadjian Inc., court-appointed Monitor of the Petitioners
Attention: Mr. Noubar Boyadjian
1 Place Ville Marie, Suite 2720
Montreal, Quebec, H3B 4G4
facsimile (514)875-0598
email: noubar@litwinboyadjian.com

with a copy to:

- b) Goldstein, Flanz & Fishman, LLP, (“**Petitioners’ Counsel**”)
Attention: Mr. Mark Meland
1250 René-Lévesque Blvd., Suite 4100
Montreal, Quebec, H3B 4W8
facsimile (514)932-4170
email: mmeland@gff.qc.ca

and a copy to:

- c) RSM Richter Inc., court appointed Interim Receiver of the Petitioners (the “**Interim Receiver**”)
Attention: Mr. Andrew Adessky
2 Place Alexis Nihon, Suite 2200
Montreal, Quebec, H3Z 3C2
facsimile (514)934-3504
email: aadessky@rsmrichter.com

7. A Claimant must file with the Monitor, with a copy to Petitioners’ Counsel and to the Interim Receiver at the addresses set forth in Section 6 hereof, a Proof of Claim together with supporting documentation in respect of such Claim on or before 5:00 p.m. (Montreal time) on January 20, 2006 (the “**Claims Bar Date**”). All Claims, other than those Claims for which a Proof of Claim has been filed in accordance with the Claims Procedure, shall be extinguished, prescribed and forever barred against the Petitioners and the Property such that the Monitor, the Interim Receiver and the Petitioners shall have no liability whatsoever in respect thereof and the holder of any such Claim shall not be entitled to vote on any Plan nor receive any distribution from any Plan or from the proceeds of any sale of any Property of the Petitioners.

8. All Proofs of Claim filed on or before the Claims Bar Date shall be reviewed by the Monitor and the Interim Receiver and all decisions in respect thereof shall be taken jointly. Where the Monitor and the Interim Receiver cannot agree on the treatment of a Claim, such Claim shall be deemed to be disallowed either in full or for that part thereof on which there is no

agreement and the Monitor shall send to such Claimant a Notice of Disallowance in accordance with section 11 hereof.

9. The Monitor and the Interim Receiver shall have until February 15, 2006 to request any additional information that it may require from any Claimant.

10. Any Claimant who receives a request for additional information shall have 10 days, from receipt of such request, to provide the information requested to the Monitor, with a copy to the Petitioners' Counsel and to the Interim Receiver at the addresses set forth in Section 6 hereof.

11. 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 a Claimant a Notice of Disallowance on or before 5:00 p.m. (Montreal time) on February 28, 2006.

12. Claims not disallowed pursuant to Section 11 hereof, shall be deemed to be accepted.

13. The Notice of Disallowance shall be final and conclusive unless, within 10 days of receipt of the Notice of Disallowance, the Claimant files a notice of appeal with this Court with respect to the Notice of Disallowance. Where a Claimant who receives a Notice of Disallowance does not file a notice of appeal with this Court within such 10 days period, the Monitor's determination of the Claimant's Claim shall be deemed to be as set out in the Notice of Disallowance and the Claimant shall be forever barred from disputing or appealing same.

14. Any notice of appeal by a Claimant must be served on the Monitor as well as on the Petitioners' Counsel and the Interim Receiver at the addresses set forth in Section 6 hereof.

15. The Monitor and the Interim Receiver are authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which Proofs of Claim are completed, executed and filed by Claimants.

16. No action, application, petition or other proceeding other than as provided for in this Claims Procedure may be brought hereafter against the Petitioners, the Monitor or the Interim Receiver in respect of any matters relating to the Claims Procedure.

FORM 1

NOTICE TO CREDITORS AND OTHERS

CLAIMS AS AGAINST Minco-Division Construction Inc. and Sleb 1 Inc.

NOTICE OF LAST DAY (CLAIMS BAR DATE) FOR THE FILING OF PROOFS OF CLAIM

TO: Creditors and to any other person or parties

PLEASE TAKE NOTICE, that pursuant to an Order of the Superior Court of Quebec made on December 15, 2005 (the “**Claims Bar Order**”) any person with a Claim (a “**Claimant**”) as at October 27, 2005, against or relating to the operations of Minco-Division Construction Inc. and/or Sleb 1 Inc. (the “**Petitioners**”) or any directors of the Petitioners or in respect of the immovable property and condominium project known as “Le Sleb” bearing civic address 10 Ontario St. West, Montreal, Quebec, or against any of the directors of the foregoing, including, without limitation, in respect of any indebtedness, liability or obligation of any kind of the Petitioners, must file a Proof of Claim form, with the Monitor, together with supporting documentation by **no later than 5:00 p.m. (Montreal time) on January 20, 2006 failing which such Claim will be extinguished and forever barred as against the Petitioners and any directors of the Petitioners as the case may be.**

Claimants should file their Proofs of Claim with the Monitor by mail, fax, courier hand delivery or email, so that the Proof of Claim is actually received by 5:00 p.m. (Montreal time) on January 20, 2006 at the following address:

Litwin Boyadjian Inc.
**In its Capacity as Monitor of Minco-Division Construction Inc. and
Sleb 1 Inc.**
1 Place Ville Marie, Suite 2720
Montreal, Quebec, Canada
H3B 4G4
(514) 875-4000 (telephone)
(514) 875-0598 (fax)
email: noubar@litwinboyadjian.com

with copies to:

- a) **Goldstein, Flanz & Fishman, LLP**
Attention: Mr. Mark Meland
1250 René-Lévesque Blvd., Suite 4100
Montreal, Quebec, H3B 4W8
facsimile (514)932-4170
email: mmeland@gff.qc.ca

and:

- b) **RSM Richter Inc., court appointed Interim Receiver of the Petitioners**
Attention: Mr. Andrew Adessky
2 Place Alexis Nihon, Suite 2200
Montreal, Quebec, H3Z 3C2
facsimile (514)934-3504
email: aadessky@rsmrichter.com

PLEASE TAKE NOTICE that any Claimants who have not received a Proof of Claim form must contact the Monitor in order to obtain a facsimile form of Proof of Claim.

FORM 2

LITWIN BOYADJIAN INC. Monitor 1 place Ville Marie Suite 2720 Montreal, Quebec H3B 4G4 Telephone: (514) 875-4000 Telecopier: (514) 875-0598 Email: noubar@litwinboyadjian.com		OFFICE USE ONLY <hr/> O/F _____ <hr/> C/N _____ <hr/> Date _____ <hr/>
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PROOF OF CLAIM

(Section 12 of the Companies' Creditors Arrangement Act)

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF

Minco-Division Construction Inc. and Sleb 1 Inc. (collectively, the "**Petitioners**"), of **Montreal, Quebec** (Court File No. 500-11-026779-054)

and the claim of _____, creditor.

All notices or correspondence regarding this claim to be forwarded to the following address:

(no) (street) (city) (province) (postal code)

I, _____, of _____, do hereby certify:

(name of creditor) (city and province)

1. That I am a creditor of the Petitioners *or* that I am _____ of _____ a creditor of the Petitioners.

(state position or title) (name of creditor)

2. That I have knowledge of all the circumstances connected with the claim referred to in this form.

3. That the Petitioners were, as at October 27, 2005, and still are indebted to the above-named creditor (referred to in this form as the "**creditor**") in the sum of CDN \$ _____, as shown by the statement of account (*or affidavit or solemn declaration*) attached hereto and marked **Annex "A"**, after deducting any counterclaims to which the Petitioners are entitled. (*The attached statement of account or affidavit or solemn declaration must specify the vouchers or other evidence in support of the claim*) (*Give full particulars of the claim with all necessary supporting documentation*).

4. (*Check and complete appropriate category.*)

A. UNSECURED CLAIM OF \$ _____
 That in respect of the said debt, I do not hold any assets of the debtor as security.

B. CLAIM SECURED BY LEGAL HYPOTHEC
 Please provide all details set forth on **Annex "B"** attached hereto.

C. CLAIM AGAINST DIRECTOR(S) \$ _____
 That I hereby make a claim under subsection 5.1 of the *Companies' Creditors Arrangement Act*, full particulars of which are set out in the attached **Annex "A"** (*including the calculations upon which the claim is based*).

5. That to the best of my knowledge and belief, I am (*or the above-named creditor is*) (*or am not or is not*) related to the debtor within the meaning of section 4 of the *Bankruptcy and Insolvency Act*.

Dated at _____, this _____

 Witness

 Creditor

GENERAL PROXY

In the matter of the Plan of Compromise or Arrangement of **Minco-Division Construction Inc. and Sleb 1 Inc.**

I (*or We*) _____, of _____, a creditor in the above matter,
(Name of Creditor) *(Name of city, town or village)*

hereby appoint _____, of _____ to be my (*or our*)
general proxy in the above matter except as to the receipt of dividends, with (*or without*) power to appoint another
general proxy in his or her place.

Dated at _____, this _____

Witness

Individual Creditor

Name of Corporate Creditor

Witness

Per: _____
Name and Title of Signing Officer

**ANNEX “A”
to Proof of Claim**

1. Evidence of Unsecured Claim:

2. Details of claim against director(s):

**ANNEX “B”
to Proof of Claim**

With respect to any claim secured by a legal hypothec, please provide the following information:

1. Date of the contract: _____
2. Contract entered into with: _____
3. Date of notification to the owner (*please provide a copy of such notification*):

4. Please provide documentation with respect to invoices for amounts claimed, including details of any extras and/or change orders.
5. Added value to the Property (see below) for work performed and/or materials supplied:

6. Description of property on which work was performed and/or materials supplied:

7. Provide a copy of any legal hypothecs registered as well as the date of registration.