

C A N A D A

PROVINCE OF QUÉBEC  
DISTRICT DE MONTREAL

S U P E R I O R C O U R T  
(Commercial Division)

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No.: 500-11-044114-136  
File No.: 41-1698291

IN THE MATTER OF THE PROPOSAL OF  
NEWLAND FOODS NORTH AMERICA  
INC.

Debtor/Petitioner

and

RICHTER ADVISORY GROUP INC.

Trustee

and

**8490775 CANADA INC.**, a corporation duly  
constituted, having a place of business at 1165  
Bellevue Street, Saint-Lazare, Province of  
Quebec, J7T 2L9

Mise-en-cause

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**DEBTOR'S DE *BENE ESSE* MOTION FOR AUTHORIZATION TO DISPOSE OF  
ITS ASSETS IN FAVOUR OF A RELATED PERSON**  
(Section 65.13 of the *Bankruptcy and Insolvency Act* (Canada) ("**BIA**")

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**TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT SITTING  
IN BANKRUPTCY DIVISION, FOR THE DISTRICT OF MONTREAL, OR TO THE  
REGISTRAR, THE DEBTOR RESPECTFULLY SUBMITS THE FOLLOWING:**

1. On December 18, 2012, the Debtor filed a Notice of Intention to File a Proposal with the Trustee, as more fully appears from the Court record;
2. On January 17, 2013, the Debtor filed a proposal with the Trustee, which for various reasons was twice amended before being submitted to a vote at the first meeting of the Debtor's creditors, which had itself been postponed to April 19, 2013, the whole as more fully set out in the Trustee's motion to approve that proposal (item # 34 of the *plumitif*) which forms part of the Court record.

3. At that meeting held April 19, 2013, the Debtor submitted the aforementioned second amended proposal to its creditors, who voted in favour of the acceptance of same, as more fully appears from a copy of the Debtor's second amended proposal, **Exhibit R-1**, and its attachments being:

- a) a letter of agreement dated April 19, 2013, between the Debtor, the Trustee, Jonathan Morgan, Zhejiang Zhongda, Newland Co. Limited, UC Pharm Company Limited and Chen Wei, **Exhibit R-2** (the "**IP Agreement**");
- b) an escrow agreement dated April 19, 2013, between Jonathan Morgan, the Trustee, and Richter Advisory Group Inc., in its capacity as joint interim receiver to Newland Foods North America Inc., **Exhibit R-3** (the "**Escrow Agreement**");
- c) a memorandum of agreement dated as of April 19, 2013, between the Trustee, and PJ Impex Inc., **Exhibit R-4** (the "**PJ Impex Agreement**"); and
- d) a memorandum of understanding affected April 16, 2013, between Jonathan Morgan, on behalf of a company to be incorporated, the Trustee, Richter Advisory Group Inc., and Blumer Tull Lapointe and Associés Inc., in their capacity as joint interim receiver to the Debtor, and the Debtor, **Exhibit R-5** (the "**MOU**");

4. As more fully set out in the second amended proposal, Exhibit R-1, the dividend to be distributed amongst the creditors is to be realized from a sale transaction (the "**Proposed Sale**") pursuant to which a company ("**NewCo**"), to be designated by Jonathan Morgan, the Debtor's president, shall acquire all the assets of the Debtor, other than "Excluded IP", as such term is defined in the proposal, for a purchase price of \$2,000,000, plus applicable taxes, less the proceeds realized from the Company's assets prior to the closing of the Proposed Sale;

5. On June 26, 2013, this Honourable Court approved the second amended proposal, Exhibit R-1, as more fully appears from the Court record, and a copy of the order approving the proposal, **Exhibit R-6**;

6. While approval of the second amended proposal, Exhibit R-1, is in effect, approval of the Proposed Sale, out of an abundance of caution, the Debtor does hereby formally request this honorable Court's approval of the Proposed Sale, in accordance with Section 65.13 of the BIA;

7. As has been previously demonstrated for the Court's benefit, on the hearing of the motion for court approval of the second amended proposal:

- a) On January 17, 2013, the Debtor filed an initial proposal with the Trustee (the "**First Proposal**");

- b) At the first meeting of creditors called to consider the first proposal on February 7, 2013, it was determined that the first proposal was not capable of being executed as certain security had been granted against all assets of the Debtor in favour of PJ Impex Inc. shortly prior to the filing of the First Proposal, and that the terms of the First Proposal would not be acceptable to creditors;
- c) The first meeting of creditors was postponed to February 20, 2013, then to March 21, 2013, to April 2, 2013, and finally to April 19, 2013, so as to allow the Debtor to improve the First Proposal, and to conduct negotiations with various parties in order to allow a more successful proposal to be put forward, and to appoint joint interim receivers pending the approval of an acceptable proposal;
- d) These negotiations, which involved the Debtor, the Trustee, the Interim Receivers, PJ Impex Inc., UC Pharm Company Limited, certain other parties claiming to have rights in the intellectual property used by the Debtor, and an ad hoc committee of the principal creditors of the Debtor (the “**Ad Hoc Committee**”) ultimately concluded that it was in the best interest of the mass of creditors that an “en bloc” transaction composed of (i) the Proposed Sale, as outlined in the MOU, Exhibit R-5, and the second amended proposal, Exhibit R-2, (ii) the settlement of the issues relating to the security granted in favour of PJ Impex Inc., in the manner set out in the PJ Impex Inc.’s Agreement, Exhibit R-4, and (iii) a release of all rights in the intellectual property used by the Debtor in favour of certain Chinese parties claiming to have rights therein, as more fully set out in the IP Agreement, Exhibit R-3, be concluded;
- e) Accordingly, the First Proposal was amended by an amended proposal, dated April 9, 2013, a copy of which is relied upon as **Exhibit R-7**; and
- f) In its report on the amended proposal, Exhibit R-7, the Trustee concluded that the Proposed Sale and the other terms set out in the Amended Proposal were more advantageous to the creditors than would be the bankruptcy of the Debtor, as it provided for a clear and determinable dividend to be paid to the creditors, whereas their recovery in bankruptcy, due to the uncertainty of recovering certain assets, and the costs of litigating various claims, might well reduce dividend to minimal amounts or nil, depending on the collection of the remaining accounts receivable, liquidation of residual inventory on hand, and the related realization costs thereof, as more fully appears from the report of the trustee on the financial situation of the Debtor and the amended proposal, dated April 9, 2013, **Exhibit R-8**;

8. In view of the foregoing, it seems apparent that the proposed sale meets all the criteria set out in Section 65.13 of the BIA, including without limitation:

- a) The circumstances of the case justify the Proposed Sale, as the Proposed Sale was part of an “en bloc” transaction which settled difficult issues, which issues would likely not have been settled in an arm’s length transaction;
- b) The creditors were not only consulted, but actively participated in the negotiations of the terms of the Proposed Sale, and were made aware that NewCo would be a party related to the Debtor;
- c) The Trustee approved of and formally recommended the proposed sale in consultation with legal counsel of the Trustee and an Ad Hoc Committee of Creditors, the latter representing the “major” creditors of the Debtor;
- d) The Trustee’s report, Exhibit R-8, concluded that the terms of the transaction are reasonable and more beneficial to the creditors than a sale or disposition under bankruptcy; and
- e) The creditors overwhelmingly voted in favour of the amended proposal, as further amended at the April 19, 2013 meeting of creditors (the “**Second Amended Proposal**”), Exhibit R-1, and the Proposed Sale;

9. The terms of the Proposed Sale, as set out in the memorandum of understanding, Exhibit R-5, as amended by the second amended proposal, Exhibit R-1, are as follows:

- a) A company to be designated by Jonathan Morgan shall pay an amount of \$2,000,000, plus applicable taxes, to the Debtor (the “**Sale Price**”), in consideration of all of the Debtor’s rights, title and interest to all of its property, movable and immovable, wherever located, as at the day the Sale Price is paid, except the Debtor’s rights, titles and interest to the names “Newland North America Foods”, “Aliments Newland North America Inc.”, as well as the marks, trademarks, designs, and other intellectual property relating to those names (the “**Excluded IP**”);
- b) The Sale Price shall be increased as necessary to cover the Proposal Costs, as defined in the second amended proposal, (such increased amount being the “**Gross Amount**”) such that the creditors shall receive a net dividend, prior to deduction of the Superintendent levy, pursuant to Section 147 of the BIA, of \$1,700,000; and
- c) The Sale Price shall be from the realization, through the efforts of Jonathan Morgan, of the Debtor’s property, until such time as an amount sufficient to satisfy the Gross Amount was met, or May 3, 2013, whichever are earlier;

10. As the Gross Amount had not been raised on May 3, 2013, Jonathan Morgan, on behalf of NewCo, asked for an obtain an extension of that delay;

11. The Mise-en-cause has been designated by Jonathan Morgan as “NewCo”;

12. On June 3, 2013, an amount of \$2,513,982.09 had been realized, which all parties agreed was sufficient to satisfy the Gross Amount;

13. After further discussions between the parties, it was agreed that an amount of \$2,443,982.89 would be sufficient to satisfy the Sale Price, and the excess amount of \$70,000 should be remitted to the Purchaser;

14. Accordingly, the parties have prepared a draft bill of sale which sets out the terms described above;

15. The bill of sale, **Exhibit R-9**, conforms to the terms set out in the MOU, Exhibit R-5, and the second amended proposal, Exhibit R-1, and should therefore be approved by this honourable Court;

16. Since the second amended proposal, Exhibit R-1, has been ratified by the Court, section 65.13(8) BIA has been satisfied;

17. Since PJ Impex renounced its security interest, agreeing to rank as an unsecured creditor as part of the overall resolution of the Second Amended Proposal, the Debtor has no known secured creditors, and the Proposed Sale may be ordered as conveying the property to be sold to the Mise-en-cause free and clear of any and all security, charges and other restrictions;

18. The present Motion is well founded in fact and law;

**WHEREFORE THE DEBTOR SOLEMNLY PRAYS THE COURT TO RENDER JUDGMENT AS FOLLOWS:**

**GRANT** the present Motion;

**ABRIDGE** the delay of service for filing of the present Motion;

**DECLARE** that the terms of the sale set out in the bill of sale, Exhibit R-9, are reasonable, and that the price offered by the Mise-en-cause is reasonable and fair considering the peculiar circumstances of the present matter;

**AUTHORIZE** the Debtor to sell all of its property, movable and immovable (the "**Sold Assets**"), other than the Excluded IP, as such term is defined in the bill of sale, Exhibit R-9, to the Mise-en-cause, the whole in accordance with the terms and conditions of that bill of sale;

**DECLARE** that such sale to the Mise-en-cause shall vest property of the Sold Assets in the Mise-en-cause, free and clear of any and all security, charge or other restrictions so long as the proceeds of the sale are distributed in accordance with the terms of the second amended proposal, Exhibit R-1;

**ORDER** the provisional execution of the judgment to be rendered on this Motion, notwithstanding appeal;

**THE WHOLE** without costs, save in case of contestation.

MONTREAL, November 19, 2013

*(S) Heenan Blaikie LLP*

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**HEENAN BLAIKIE LLP**  
Attorneys for the Debtor

**TRUE COPY**

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**HEENAN BLAIKIE** LLP

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**AFFIDAVIT**

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I, the undersigned, **Jonathan Morgan**, President, residing and domiciled for the purposes of these presents at 2596 Croissant de Bamsby, Saint-Lazare, Quebec, J7T 2A1, solemnly declare as follows:

1. I am a duly authorized representative of Newland Foods North America Inc.;
2. I have read the attached Debtor's de *bene esse* Motion for Authorization to Dispose of its Assets in favour of a Related Person, and the facts contained therein and in this affidavit are true.

And I have signed

(S) Jonathan Morgan

**JONATHAN MORGAN**

Solemnly affirmed to before me, in the city of Montreal, this 19<sup>th</sup> day of November 2013

*(S) France Savard #89 067*

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Commissioner for oaths for Québec

**TRUE COPY**

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**HEENAN BLAIKIE LLP**

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**NOTICE OF PRESENTATION**

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TO: **8490775 Canada Inc.**  
1165 rue Bellevue  
Saint-Lazare (Quebec) J7T 2L9

AND TO **STEIN & STEIN INC. Lawyers**  
4101 Sherbrooke St. West  
Montreal (Quebec) H3Z 1A7  
Attention: Neil H. Stein

Attorneys for the Trustee

**TAKE NOTICE** that Debtor's *de bene esse Motion for Authorization to Dispose of its Assets in favour of a Related Person* will be presented for adjudication before the Superior Court, on **November 22, 2013 at 9:00 a.m.** in room **16.10** of the Montreal Court house, 1 Notre-Dame Street West, Montreal, Quebec, or as soon thereafter as counsel may be heard.

**AND DO GOVERN YOURSELVES ACCORDINGLY**

**MONTREAL**, November 19, 2013

*(S) Heenan Blaikie LLP*

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**HEENAN BLAIKIE** LLP  
Attorneys for the Debtor  
NEWLAND FOODS NORTH AMERICA INC.

**TRUE COPY**

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**HEENAN BLAIKIE** LLP



C A N A D A

PROVINCE OF QUÉBEC  
DISTRICT DE MONTREAL

S U P E R I O R C O U R T  
(Commercial Division)

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Debtor/Petitioner

and

RICHTER ADVISORY GROUP INC.

Trustee

and

**8490775 CANADA INC.**, a corporation duly  
constituted, having a place of business at 1165  
Bellevue Street, Saint-Lazare, Province of  
Quebec, J7T 2L9

Mise-en-cause

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### INVENTORY OF EXHIBITS

(In support of Debtor's *De Bene Esse* Motion for  
Authorization to Dispose of its Assets in Favour of a  
Related Person)

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|--------------------|--|
| <b>EXHIBIT R-1</b> | Copy of the Debtor's second amended proposal;  |
| <b>EXHIBIT R-2</b> | Copy of the Letter of agreement dated April 19, 2013, between the Debtor, the Trustee, Jonathan Morgan, Zhejiang Zhongda, Newland Co. Limited, UC Pharm Company Limited and Chen Wei;                    |
| <b>EXHIBIT R-3</b> | Copy of the escrow agreement dated April 19, 2013, between Jonathan Morgan, the Trustee, and Richter Advisory Group Inc., in its capacity as joint interim receiver to Newland Foods North America Inc.; |

- EXHIBIT R-4** Copy of the memorandum of agreement dated as of April 19, 2013, between the Trustee, and PJ Impex Inc.;
- EXHIBIT R-5** Copy of the memorandum of understanding affected April 16, 2013, between Jonathan Morgan, on behalf of a company to be incorporated, the Trustee, Richter Advisory Group Inc., and Blumer Tull Lapointe and Associés Inc., in their capacity as joint interim receiver to the Debtor, and the Debtor;
- EXHIBIT R-6** Copy of the order approving the proposal dated June 26, 2013;
- EXHIBIT R-7** Copy of the amended proposal, dated April 9, 2013;
- EXHIBIT R-8** Copy of the report of the trustee on the financial situation of the Debtor and the amended proposal, dated April 9, 2013;
- EXHIBIT R-9** Copy of the bill of sale;

**MONTREAL**, November 19, 2013

*(S) Heenan Blaikie LLP*

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**HEENAN BLAIKIE** LLP  
Attorneys for the Debtor

**TRUE COPY**

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**HEENAN BLAIKIE** LLP

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N<sup>o</sup> : 500-11-044114-136

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**SUPERIOR COURT (COMMERCIAL DIVISION)  
DISTRICT OF MONTREAL**

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**IN THE MATTER OF THE PROPOSAL OF  
NEWLAND FOODS NORTH AMERICA INC.**

Debtor/Petitioner

-and-

**RICHTER ADVISORY GROUP INC.**

Trustee

-and-

**8490775 CANADA INC.**

Mise-en-cause

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**DEBTOR'S DE BENE ESSE MOTION FOR  
AUTHORIZATION TO DISPOSE OF ITS ASSETS IN  
FAVOUR OF A RELATED PERSON  
(SECTION 65.13 OF THE BANKRUPTCY AND INSOLVENCY ACT  
(CANADA) ("BIA"))  
INVENTORY OF EXHIBITS AND EXHIBITS R-1 TO R-9**

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**COPY FOR THE FILE**

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Code: BJ-0039      Our ref. : 066234.0001

**M<sup>e</sup> Jean-François Hudon**      Telephone : (514) 846-7050  
Fax : (514) 921-1312

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**Heenan Blaikie** LLP

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