Court File No. CV-18-597987-00CL

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 ROCKPORT BLOCKER, LLC, THE ROCKPORT GROUP HOLDINGS, LLC, TRG 1-P HOLDINGS, LLC, TRG INTERMEDIATE HOLDINGS, LLC, TRG CLASS D, LLC, THE ROCKPORT GROUP, LLC, THE ROCKPORT COMPANY, LLC, DRYDOCK FOOTWEAR, LLC, DD MANAGEMENT SERVICES LLC AND ROCKPORT CANADA ULC (THE "DEBTORS")

APPLICATION OF ROCKPORT BLOCKER, LLC, UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

BRIEF OF AUTHORITIES OF THE APPLICANT, ROCKPORT BLOCKER, LLC

(Re: Motion Returnable July 20, 2018)

July 19, 2018

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APPLICATION OF ROCKPORT BLOCKER, LLC, UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

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Tab 1

2016 ONSC 958
Ontario Superior Court of Justice [Commercial List]

Horsehead Holding Corp., Re

2016 CarswellOnt 1748, 2016 ONSC 958, 263 A.C.W.S. (3d) 21, 33 C.B.R. (6th) 276

In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as Amended

In the Matter of Certain Proceedings Taken in the United States Bankruptcy Court with Respect to Horsehead Holding Corp., Horsehead Corporation, Horsehead Metal Products, LLC, the International Metals Reclamation Company, LLC and Zochem Inc. (collectively, the "Debtors")

Newbould J.

Heard: February 5, 2016
Judgment: February 8, 2016
Docket: CV-16-11271-00CL

Counsel: Sam Babe, Martin E. Kovnats, Jeffrey Merk, J. Nemers, for Applicant
Ryan Jacobs, Jane Dietrich, Natalie Levine, for DIP lenders
Christopher G. Armstrong, Sydney Young, Caroline Descours, for Richter Advisory Group as proposed Information Officer
Linc A. Rogers, Christopher Burr, for PNC Bank, National Association
Denis Ellickson, for UNIFOR Local 591G

Subject: Insolvency
Related Abridgment Classifications
Bankruptcy and insolvency
XIX Companies' Creditors Arrangement Act
XIX.5 Miscellaneous
Headnote
Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Miscellaneous
Debtors operated in zinc and nickel-bearing waste industries — They held market-leading position in zinc production in United States, zinc oxide production in North America, EAF dust recycling in North America, and were leading environmental service provider to U.S. steel industry — Debtor Z Inc. was Canadian corporation and was foreign representative of debtors — Other debtors were U.S. corporations — Z Inc. and U.S. debtors maintained highly integrated business — Debtors reached agreement for senior secured super-priority debtor-in-possession (DIP) credit facility in amount of US $90 million to allow Z Inc. to pay off obligations to U.S. bank and to finance debtors' operations and chapter 11 proceedings — Condition of advance under DIP facility was granting of super-priority charge over assets of debtors in Canada in favour of DIP lender — Debtors brought application for orders recognizing First Day Orders made by U.S. Bankruptcy Court in chapter 11 proceedings brought by debtors under U.S. Bankruptcy Code — Application granted — Purpose of Part IV of Corporations' Creditors Arrangement Act was to effect cross-border insolvencies and create system under which foreign insolvency proceedings could be recognized in Canada — There was no question but that chapter 11 proceeding was foreign proceeding and that Z Inc. was foreign representative — Debtors established that foreign proceeding was foreign main proceeding — Order was granted recognizing U.S. interim financing order, and granting security requested for DIP.
Table of Authorities
Cases considered by *Newbould J.*:

Crystallex International Corp., Re (2012), 2012 ONSC 2125, 2012 CarswellOnt 4577, 91 C.B.R. (5th) 169 (Ont. S.C.J. [Commercial List]) — followed

Crystallex International Corp., Re (2012), 2012 ONCA 404, 2012 CarswellOnt 7329, 91 C.B.R. (5th) 207, 293 O.A.C. 102, 4 B.L.R. (5th) 1 (Ont. C.A.) — referred to

Indalex Ltd., Re (2009), 2009 CarswellOnt 1998, 52 C.B.R. (5th) 61 (Ont. S.C.J. [Commercial List]) — followed

Lightsquared LP, Re (2012), 2012 ONSC 2994, 2012 CarswellOnt 8614, 92 C.B.R. (5th) 321 (Ont. S.C.J. [Commercial List]) — considered

MtGox Co., Re (2014), 2014 ONSC 5811, 2014 CarswellOnt 13871, 122 O.R. (3d) 465, 20 C.B.R. (6th) 307 (Ont. S.C.J. [Commercial List]) — considered

820099 Ontario Inc. v. Harold E. Ballard Ltd. (1991), 3 B.L.R. (2d) 113, 1991 CarswellOnt 141 (Ont. Div. Ct.) — followed

Statutes considered:

Bankruptcy Code, 11 U.S.C.

Chapter 11 — referred to

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Generally — referred to

s. 224 — considered

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Pt. IV — referred to

s. 45(1) "foreign main proceeding" — considered

s. 45(1) "foreign proceeding" — considered

s. 45(1) "foreign representative" — considered

s. 45(2) — considered

ss. 46-49 — referred to

s. 46(1) — considered

s. 47 — considered

s. 47(2) — considered

APPLICATION for orders recognizing First Day Orders made by U.S. Bankruptcy Court in chapter 11 proceedings brought by debtors under U.S. *Bankruptcy Code*.

***Newbould J.*:**

1 On February 5, 2016 an application was brought by Zochem Inc. ("Zochem"), in its capacity as foreign representative of itself as well as Horsehead Holding Corp., Horsehead Corporation, Horsehead Metal Products, LLC ("Horsehead Metals"), and The International Metals Reclamation Company, LLC ("INMETCO") for orders pursuant to sections 46 through 49 of the *CCAA* recognizing First Day Orders made by Judge Mary Walrath of the U.S. Bankruptcy Court for the District of Delaware in chapter 11 proceedings brought by the debtors under the U.S. Bankruptcy Code.

2 At the conclusion of the hearing I made the orders sought with reasons to follow. These are my reasons for making the orders.

3 The debtors operate in the zinc and nickel-bearing waste industries through three business units: Horsehead Corporation and its subsidiaries (collectively, "Horsehead"), Zochem, and INMETCO. Horsehead is a prominent

recycler of electric arc furnace ("EAF") dust, a zinc-containing waste generated by North American steel "mini-mills", and in turn uses the recycled EAF dust to produce specialty zinc and zinc-based products. Zochem is a producer of zinc oxide. INMETCO is a recycler of nickel-bearing wastes and nickel-cadmium batteries, and a producer of nickel-chromium-molybdenum-iron remelt alloy for the stainless steel and specialty steel industries. Collectively, the debtors hold a market-leading position in zinc production in the United States, zinc oxide production in North America, EAF dust recycling in North America, and are a leading environmental service provider to the U.S. steel industry.

4 Zochem is a Canada Business Corporations Act corporation with its head office in Pittsburgh, Pennsylvania and its operations located in owned premises at 1 Tilbury Court, Brampton, Ontario. Zochem's registered office address is the Ontario premises.

5 Zochem is one of the largest single-site producers of zinc oxide in North America. Zinc oxide is used as an additive in various materials and products, including plastics, ceramics, glass, rubbers, cement, lubricants, pigments, sealants, ointments, fire retardants, and batteries. The debtors sell zinc oxide to over 250 producers of tire and rubber products, chemicals, paints, plastics, and pharmaceuticals, and have supplied zinc oxide to the majority of their largest customers for over ten years.

6 As of December 31, 2015, Zochem had 19 salaried personnel and 25 hourly personnel. Approximately 25 of these employees are organized under Unifor and its Local 591-G-850, whose collective labour agreement is set to expire on June 30, 2016.

7 Zochem maintains separate pension plans for its salaried and hourly personnel, which have been closed to new members since July 1, 2012. Newer employees have joined Zochem's group RRSP. According to a report prepared by Corporate Benefit Analysis, Inc., the pensions were, collectively, overfunded as at December 31, 2015, though the salaried plan had a small unfunded projected benefit obligation in the amount of $181,499, which is to be paid next week. Neither plan has been wound up.

8 On April 29, 2014, Zochem, as borrower, and Horsehead Holding, as guarantor, entered into a U.S. $20 million secured revolving credit facility (the "Zochem Facility") with PNC Bank, National Association ("PNC"), as agent and lender. The Zochem Facility is secured by a first priority lien (subject to certain permitted liens) on substantially all of Zochem's tangible and intangible personal property, and a charge on the Brampton, Ontario premises of Zochem. Zochem's obligations to PNC are guaranteed by its parent, Horsehead Holding. On January 27, 2016, PNC assigned its position as lender under the Zochem Facility to an arm's length party. PNC remains the agent under Zochem Facility.

9 Three out of four of Zochem's officers and three out of four of its directors are residents of Pennsylvania. Most of Zochem's officers are also officers of each of the other debtors. Zochem's statutorily required one Canadian director (representing 25% of the board) is a partner at the law firm Aird & Berlis LLP, the debtors' Canadian counsel. The only Zochem officer resident in Canada is the plant's general manager, who formerly was resident in Pennsylvania and employed by the U.S. debtors. Otherwise, all local functions associated with managing and operating the Zochem facility are performed from the debtors' Pittsburgh, Pennsylvania headquarters in the United States.

10 Zochem and the U.S. debtors maintain a highly integrated business. Zochem's communications decisions, pricing decisions, and business development decisions are made in Pittsburgh. Zochem's accounts receivable, accounts payable and treasury departments are also located in Pittsburgh.

11 Zochem operates a cash management system whereby:

a. all receipts flow into a collection account at PNC in the United States, in part via a lockbox maintained at PNC;

b. funds from the PNC collection account are transferred daily into an operating account at PNC in the United States; and

c. funds are then transferred, as the debtors' treasury department (in Pittsburgh) determines is required, to a U.S. dollar operating account and a Canadian dollar operating account at Scotiabank in Canada to pay vendors and payroll, as applicable.

12 The debtors in the United States have had limited access to liquidity since January 5, 2016 when their lender, Macquarie Bank Limited ("Macquarie"), issued a notice of default and froze certain of their bank accounts, including their main operating account. On January 6, 2016, Zochem's lender, PNC, also asserted an event of default. On January 13, 2016, PNC froze certain of the debtors' bank accounts associated with their Zochem operations, and demanded immediate payment of all outstanding obligations. PNC's demand was accompanied by a notice of intention to enforce security under section 244 of the *BIA*. Although the debtors entered into forbearance agreements with Macquarie and PNC, the term of those agreements expired on February 1, 2016.

13 With the assistance of Lazard Middle Market LLC, the debtors reached agreement for a senior secured super priority debtor-in-possession credit facility in the amount of U.S. $90 million from a group of Horsehead Holding secured noteholders. The DIP facility is intended to pay off the Zochem's obligations to PNC and to finance the debtors' operations and the chapter 11 proceedings. A condition of advance under the DIP facility is the granting of a super-priority charge over the assets of the debtors in Canada in favour of the DIP lender.

14 On February 3, 2016 Judge Walrath of the U.S. Bankruptcy Court granted the following First Day Orders:

(a) Joint Administration Order;

(b) Foreign Representative Order;

(c) Interim Cash Management Order;

(d) Interim Wages and Benefits Order;

(e) Interim Shippers and Lien Claimants Order;

(f) Interim Utilities Order;

(g) Interim Insurance Order;

(h) Interim Prepetition Taxes Order;

(i) Interim Critical Vendors Order; and

(j) Interim Financing Order.

Analysis

15 The purpose of Part IV of the *CCAA* is to effect cross-border insolvencies and create a system under which foreign insolvency proceedings can be recognized in Canada. See my comments on the *BIA* version of the same provisions in *MtGox Co., Re* (2014), 20 C.B.R. (6th) 307 (Ont. S.C.J. [Commercial List]).

16 Pursuant to section 46(1) of the *CCAA*, a foreign representative may apply to the court for recognition of a foreign proceeding in respect of which he or she is a foreign representative.

17 Pursuant to section 47 of the *CCAA*, two requirements must be met for an order recognizing a foreign proceeding:

a. the proceeding is a "foreign proceeding"; and

b. the applicant is a "foreign representative" in respect of that foreign proceeding.

18 Section 45(1) of the *CCAA* defines a "foreign proceeding" as any judicial proceeding, including interim proceedings, in a jurisdiction outside of Canada dealing with creditors' collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company's business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization.

19 Section 45(1) of the *CCAA* defines a "foreign representative" to include one who is authorized in a foreign proceeding in respect of a debtor company to act as a representative in respect of the foreign proceeding. In the chapter 11 proceeding, the debtors applied to have Horsehead Holding Corp. named as the foreign representative. Judge Walrath for reasons I will discuss had concerns regarding the position of Zochem and directed that Zochem be named as the foreign representative.

20 There is no question but that the chapter 11 proceeding is a foreign proceeding and that Zochem is a foreign representative. Thus it has been established that the chapter 11 proceeding should be recognized in this Court as a foreign proceeding.

21 Once it has determined that a proceeding is a foreign proceeding, a court is required, pursuant to section 47(2) of the *CCAA*, to specify in its order whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding.

22 Section 45(1) of the *CCAA* defines a foreign main proceeding as a "foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests" ("COMI"). Section 45(2) of the *CCAA* provides that, in the absence of proof to the contrary, a debtor company's registered office is deemed to be its COMI. In circumstances where it is necessary to go beyond the s. 45 (2) registered office presumption, the following principal factors, considered as a whole, will indicate whether the location in which the proceeding has been filed is the debtor's centre of main interests:

(1) the location is readily ascertainable by creditors,

(2) the location is one in which the debtor's principal assets or operations are found; and

(3) the location is where the management of the debtor takes place.

23 See *Lightsquared LP, Re* (2012), 92 C.B.R. (5th) 321 (Ont. S.C.J. [Commercial List]). In *Lightsquared*, Justice Morawetz further stated:

> 26. In most cases, these factors will all point to a single jurisdiction as the centre of main interests. In some cases, there may be conflicts among the factors, requiring a more careful review of the facts. The court may need to give greater or less weight to a given factor, depending on the circumstances of the particular case. In all cases, however, the review is designed to determine that the location of the proceeding, in fact, corresponds to where the debtor's true seat or principal place of business actually is, consistent with the expectations of those who dealt with the enterprise prior to commencement of the proceedings.

24 In this case, all of the factors do not point to a single jurisdiction as the COMI as Zochem's operations are located in Brampton, Ontario.

25 In the present case, the applicants, supported by the proposed Information Officer, contend that Zochem's COMI is in the United States because:

(i) all the debtors other than Zochem, comprising Zochem's corporate family, are incorporated, and have their registered head office, in the United States;

(ii) all the debtors, including, Zochem are managed from Pittsburgh, Pennsylvania;

(iii) all three of Zochem's "inside" directors (comprising 75% of the board) are residents of Pennsylvania;

(iv) all of Zochem's officers are Pennsylvania residents, with the one exception of its general manager who is a former Pennsylvania resident and employee of the other debtors;

(v) most of Zochem's officers are also officers of each of the other debtors;

(vi) Zochem is operational in its focus and all local functions associated with managing and operating the Zochem facility are performed from the debtors' Pittsburgh headquarters;

(vii) Zochem's communications decisions, pricing decisions, and business development decisions are made in Pittsburgh;

(viii) Zochem's accounts receivable, accounts payable and treasury departments are located in Pittsburgh;

(ix) Zochem's cash management system is centred in the United States;

(x) Zochem's existing credit facilities are with a bank in Pittsburgh; and

(xi) the debtors are all managed in the United States as an integrated group from a corporate, strategic, financial and management perspective.

26 In this case it is perhaps an academic exercise to decide if the foreign proceeding is a main or non-main proceeding because it is appropriate for a stay to be ordered in either event. However, I am satisfied that for our purposes the applicants have established that the foreign proceeding is a foreign main proceeding.

27 The only matter that is somewhat contentious is the recognition of the interim financing order (interim DIP order) made by Judge Walrath and the request for an order providing for a charge for the benefit of the DIP lender.

28 Counsel for the Union went on the record as opposing the granting of a charge because although there will be no underfunding of the pension plans upon the granting of the DIP facility, it is possible in the future that there may be underfunding. The pension plans are not being wound up and there is no evidence at the moment that there is a risk of future underfunding or in what amount. In the circumstances I do not see the position of the Union as an impediment to the granting of the relief requested.

29 When recognizing a financing order granted by a foreign court, consideration should be given as to whether there would be any material adverse interest to any Canadian interests. See *Re Xinergy Ltd.*, 2015 ONSC 2692 (Ont. S.C.J. [Commercial List]), at para 20.

30 It was such a concern that led Judge Walrath to require changes to the interim DIP order that was applied for.

31 The debtors sought interim approval from the U.S. Court of a senior secured super priority DIP credit facility in the amount of $90 million offered by the DIP lenders. The Proposed DIP Facility contemplated that the liens granted in connection with the DIP Facility would be first-priority liens over a portion of the debtors' assets (including all of the assets of Zochem and the assets of the debtors subject to a first-priority lien in respect of the Senior Secured Notes), and second-priority liens with respect to the assets of the U.S. debtors that are presently subject to a first-priority lien in favour of Macquarie.

32 Under the Proposed DIP Facility, the maximum amount permitted to be advanced on an interim basis was $40 million, and it was contemplated that all of the debtors would be jointly and severally liable for all advances made. The contemplated uses of the initial $40 million DIP advance were approximately $18.5 million to pay out the Zochem Facility (including a $1 million forbearance fee), with the balance of the advances being used to fund the operations and

restructuring activities of the Debtors during the interim period until a final order approving the Proposed DIP Facility is sought from the U.S. Court in late February.

33 At the hearing on February 3, 2016, Judge Walrath raised concerns about the position of Zochem, including her concern that no independent counsel for Zochem considered whether the DIP facility was in the best interest of Zochem as there was a conflict of interest in the three U.S. directors of Zochem approving Zochem to be jointly and severally liable for the entire DIP loan. Judge Walrath stated that she would consider a DIP facility that obligates Zochem only to the extent there is a direct benefit to Zochem, i.e. payment of its debt or a loan which they use in their operations for working capital.

34 After an adjournment, the debtors and the DIP lenders agreed to certain interim amendments to the Proposed DIP Facility including a provision that the maximum liability of Zochem pursuant to the Proposed DIP Facility in the interim period would be capped at $25 million (reduced from the prior contemplated maximum amount of $40 million). Counsel for the debtors advised Judge Walrath that the $25 million would reflect both the payoff of the PNC loan and reflect the fact that Zochem continues to have a funding need. The debtors also proffered testimony that

1. Zochem is approximately break-even on a cash flow basis, and was projected to be approximately $1 million dollars cash flow positive over the following four week period, not accounting for any disruption in its business, including, for example, a notice that the debtors received from one of the largest vendors saying that they will reprice their business with the debtors, and that they will demand that the debtors pay one month in advance.

2. The break-even cash position did not take into account any bankruptcy related costs, all of which are allocated to Horsehead.

3. The debtors, in their business judgement, determined that it would not be prudent to operate the business on a break-even basis given business pressures, and liquidity from the Proposed DIP Facility would be available to Zochem to provide a liquidity cushion for the first four weeks of the case.

35 What essentially Judge Walrath was told in answer to her concerns was that the difference between the approximately $18.5 million needed to pay Zochem's loan facility with PNC and the $25 million limit of Zochem's liability was to be used as a cushion for Zochem's cash flow needs. In the circumstances, and taken the proffered testimony that Zochem required a cushion, I suggested to the parties that a term of my order recognizing the U.S. interim financing order should be that the difference between the $18.5 million and the $25 million was in the interim to be used only for Zochem working capital requirements.

36 After a break to permit the parties to discuss this situation, counsel for the DIP lenders said they were not prepared to lend on that basis and that they wished to adjourn the matter until the following Monday. The problem with this request was two-fold. The first was that it was a requirement of the DIP that an order be made by this Court by the date of the hearing on February 5, 2016, and without an order the debtors had no right to the DIP facility. The second was that the interim advance under the DIP was required to meet the payroll that day.

37 The proposed Information Officer pointed out that it is estimated by the debtors that up to $38.5 million will be drawn under the Proposed DIP Facility in the interim period to be used as follows:

(a) approximately $18.5 million will be used to repay the Zochem Facility (including the $1 million forbearance fee payable to PNC);

(b) approximately $4 million will be used to pay fees associated with the Proposed DIP Facility; and

(c) approximately $15.6 million will be used to finance the debtors' operations and restructuring activities pursuant to an agreed upon budget, including payment of professional fees, utility deposits and certain critical materials and freight vendors.

38 In the circumstances I made the order recognizing the U.S. interim financing order, and granting the security requested for the DIP, which in my view met the tests as enunciated in the authorities, including the factors set out in *Indalex Ltd., Re* (2009), 52 C.B.R. (5th) 61 (Ont. S.C.J. [Commercial List]) for the guarantee of a Canadian debtor of its U.S. parent's obligations under the DIP facility, and as set out in *Crystallex International Corp., Re* (2012), 91 C.B.R. (5th) 169 (Ont. S.C.J. [Commercial List]); aff'd (2012), 4 B.L.R. (5th) 1 (Ont. C.A.).

39 However I stated at the hearing, and reiterate, that if in the interim period a request is made for further funding for working capital requirements of Zochem because not enough available cash was kept for that purpose, I would be extremely loathe to grant any such further relief.

40 The directors of Zochem have fiduciary duties to Zochem. In *820099 Ontario Inc. v. Harold E. Ballard Ltd.* (1991), 3 B.L.R. (2d) 113 (Ont. Div. Ct.), at 123; aff'd (1991), 3 B.L.R. (2d) 113 (Ont. Div. Ct.), at 122 Justice Farley stated clearly that the directors' duties are to the corporation of which they are directors and they cannot just be yes men for the controlling shareholders:

> It may well be that the corporate life of a nominee director who votes against the interest of his "appointing" shareholder will be neither happy nor long. However, the role that any director must play (whether or not a nominee director) is that he must act in the best interests of the corporation. If the interests of the corporation (and indirectly the interests of the shareholders as a whole) require that the director vote in a certain way, it must be the way that he conscientiously believes after a reasonable review is the best for the corporation. The nominee director's obligation to his "appointing" shareholder would seem to me to include the duty to tell the appointer that his requested course of action is wrong if the director in fact feels this way. Such advice, although likely initially unwelcome, may well be valuable to the appointer in the long run. The nominee director cannot be a "Yes man"; he must be an analytical person who can say "Yes" or "No" as the occasion requires (or to put it another way, as the corporation requires).

41 I trust the directors of Zochem will keep these principles in mind. I direct that they be given a copy of these reasons for judgment.

42 I also recognized all of the other First Day Orders made by Judge Walrath. They were appropriate and no opposition to their recognition was voiced.

Application granted.

End of Document

Tab 2

2011 ONSC 4201
Ontario Superior Court of Justice

Massachusetts Elephant & Castle Group Inc., Re

2011 CarswellOnt 6610, 2011 ONSC 4201, 205 A.C.W.S. (3d) 25, 81 C.B.R. (5th) 102

In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as Amended

And In the Matter of Certain Proceedings Taken in the United States Bankruptcy Court for the District of Massachusetts Eastern Division with Respect to the Companies Listed on Schedule "A" Hereto (The "Chapter 11 Debtors") Under Section 46 of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as Amended

MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC. (Applicant)

Morawetz J.

Heard: July 4, 2011
Oral reasons: July 4, 2011
Written reasons: July 11, 2011
Docket: CV-11-9279-00CL

Counsel: Kenneth D. Kraft, Sara-Ann Wilson for Applicant
Heather Meredith for GE Canada Equipment Financing GP

Subject: Insolvency; Corporate and Commercial

Related Abridgment Classifications

Bankruptcy and insolvency
XIX Companies' Creditors Arrangement Act
XIX.5 Miscellaneous

Headnote

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Miscellaneous

Recognition of foreign main proceeding — Debtor companies were integrated business involving locations in U.S. and Canada — Each of debtors, including debtor companies with registered offices in Canada (Canadian Debtors), were managed centrally from U.S. — Debtors brought proceedings in U.S. pursuant to Chapter 11 of United States Bankruptcy Code — U.S Court appointed applicant as foreign representative of Chapter 11 Debtors — Applicant applied to have U.S. Chapter 11 proceedings recognized as foreign main proceeding in Canada under Companies' Creditors Arrangements Act (Act) — Application granted — It was appropriate to recognize foreign proceeding — Foreign proceeding in present case was foreign main proceeding — "Foreign main proceeding" is defined in s. 45(1) of Act as foreign proceeding in jurisdiction where debtor company has centre of its main interest (COMI) — There was sufficient evidence to rebut presumption in s. 45(2) of Act that COMI is registered office of debtor company — For purposes of application, each entity making up Chapter 11 Debtors, including Canadian Debtors, had their COMI in U.S. — Location of debtors' headquarters or head office functions or nerve centre was in U.S. — Debtor's management was located in U.S. — Significant creditor did not oppose relief sought — Mandatory stay ordered under s. 48(1) of Act — Discretionary relief recognizing various orders of U.S. Court, appointing information officer, and limiting quantum of administrative charge, was appropriate and was granted.

Table of Authorities

Cases considered by *Morawetz J.*:

Angiotech Pharmaceuticals Inc., Re (2011), 2011 BCSC 115, 2011 CarswellBC 124, 76 C.B.R. (5th) 317 (B.C. S.C. [In Chambers]) — considered

Babcock & Wilcox Canada Ltd., Re (2000), 5 B.L.R. (3d) 75, 18 C.B.R. (4th) 157, 2000 CarswellOnt 704 (Ont. S.C.J. [Commercial List]) — referred to

Lear Canada, Re (2009), 2009 CarswellOnt 4232, 55 C.B.R. (5th) 57 (Ont. S.C.J. [Commercial List]) — referred to

Magna Entertainment Corp., Re (2009), 2009 CarswellOnt 1267, 51 C.B.R. (5th) 82 (Ont. S.C.J.) — referred to

Statutes considered:

Bankruptcy Code, 11 U.S.C.

Chapter 11 — referred to

ss. 1101-1174 — referred to

Business Corporations Act, R.S.O. 1990, c. B.16

Generally — referred to

Canada Business Corporations Act, R.S.C. 1985, c. C-44

Generally — referred to

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Generally — referred to

Pt. IV — referred to

s. 44 — considered

s. 45 — considered

s. 45(1) — considered

s. 45(2) — considered

s. 46 — considered

s. 46(1) — considered

s. 46(2) — referred to

ss. 46-49 — referred to

s. 47(1) — considered

s. 47(2) — considered

s. 48 — considered

s. 48(1) — considered

s. 49 — considered

s. 50 — considered

s. 61 — considered

s. 61(2) — considered

APPLICATION for order recognizing U.S. Chapter 11 Proceeding as foreign main proceeding under *Companies' Creditors Arrangement Act*, and other relief.

Morawetz J.:

1 Massachusetts Elephant & Castle Group, Inc. ("MECG" or the "Applicant") brings this application under Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, ("*CCAA*"). MECG seeks orders pursuant to sections 46 — 49 of the *CCAA* providing for:

(a) an Initial Recognition Order declaring that:

(i) MECG is a foreign representative pursuant to s. 45 of the *CCAA* and is entitled to bring its application pursuant s. 46 of the *CCAA*;

(ii) the Chapter 11 Proceeding (as defined below) in respect of the Chapter 11 Debtors (as set out in Schedule "A") is a "foreign main proceeding" for the purposes of the *CCAA*; and

(iii) any claims, rights, liens or proceedings against or in respect of the Chapter 11 Debtors, the directors and officers of the Chapter 11 Debtors and the Chapter 11 Debtors' property are stayed; and

(b) a Supplemental Order:

(i) recognizing in Canada and enforcing certain orders of the U.S. Court (as defined below) made in the Chapter 11 Proceeding (as defined below);

(ii) granting a super-priority change over the Chapter 11 Debtors' property in respect of administrative fees and expenses; and

(iii) appointing BDO Canada Limited ("BDO") as Information Officer in respect of these proceedings (the "Information Officer").

2 On June 28, 2011, the Chapter 11 Debtors commenced proceedings (the "Chapter 11 Proceeding") in the United States Bankruptcy Court for the District of Massachusetts Eastern Division (the "U.S. Court"), pursuant to Chapter 11 of the *United States Bankruptcy Code*, 11 U.S.C. § 1101-1174 ("*U.S. Bankruptcy Code*").

3 On June 30, 2011, the U.S. Court made certain orders at the first-day hearing held in the Chapter 11 Proceeding, including an order appointing the Applicant as foreign representative in respect of the Chapter 11 Proceeding.

4 The Chapter 11 Debtors operate and franchise authentic, full-service British-style restaurant pubs in the United States and Canada.

5 MECG is the lead debtor in the Chapter 11 Proceeding and is incorporated in Massachusetts. All of the Chapter 11 Debtors, with the exception of Repechage Investments Limited ("Repechage"), Elephant & Castle Group Inc. ("E&C Group Ltd.") and Elephant & Castle Canada Inc. ("E&C Canada") (collectively, the "Canadian Debtors") are incorporated in various jurisdictions in the United States.

6 Repechage is incorporated under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, ("*CBCA*") with its registered office in Toronto, Ontario. E&C Group Ltd. is also incorporated under the *CBCA* with a registered office located in Halifax, Nova Scotia. E&C Canada Inc. is incorporated under the *Business Corporations Act*, R.S.O. 1990, c. B. 16, and its registered office is in Toronto. The mailing office for E&C Canada Inc. is in Boston, Massachusetts at the location of the corporate head offices for all of the debtors, including Repechage and E&C Group Ltd.

7 In order to comply with s. 46(2) of the *CCAA*, MECG filed the affidavit of Ms. Wilson to which was attached certified copies of the applicable Chapter 11 orders.

8 MECG also included in its materials the declaration of Mr. David Dobbin filed in support of the first-day motions in the Chapter 11 Proceeding. Mr. Dobbin, at paragraph 19 of the declaration outlined the sale efforts being entered into by MECG. Mr. Dobbin also outlined the purpose of the Chapter 11 Proceeding, namely, to sell the Chapter 11 Debtors' businesses as a going concern on the most favourable terms possible under the circumstances and keep the Chapter 11 Debtors' business intact to the greatest extent possible during the sales process.

9 The issues for consideration are whether this court should grant the application for orders pursuant to ss. 46 — 49 of the *CCAA* and recognize the Chapter 11 Proceeding as a foreign main proceeding.

10 The purpose of Part IV of the *CCAA* is set out in s. 44:

> 44. The purpose of this Part is to provide mechanisms for dealing with cases of cross-border insolvencies and to promote
>
> (a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;
>
> (b) greater legal certainty for trade and investment;
>
> (c) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies;
>
> (d) the protection and the maximization of the value of debtor company's property; and
>
> (e) the rescue of financially troubled businesses to protect investment and preserve employment.

11 Section 46(1) of the *CCAA* provides that "a foreign representative may apply to the court for recognition of the foreign proceeding in respect of which he or she is a foreign representative."

12 Section 47(1) of the *CCAA* provides that there are two requirements for an order recognizing a foreign proceeding:

> (a) the proceeding is a foreign proceeding, and
>
> (b) the applicant is a foreign representative in respect of that proceeding.

13 Canadian courts have consistently recognized proceedings under Chapter 11 of the *U.S. Bankruptcy Code* to be foreign proceedings for the purposes of the *CCAA*. In this respect, see: *Babcock & Wilcox Canada Ltd., Re* (2000), 5 B.L.R. (3d) 75 (Ont. S.C.J. [Commercial List]); *Magna Entertainment Corp., Re* (2009), 51 C.B.R. (5th) 82 (Ont. S.C.J.); *Lear Canada, Re* (2009), 55 C.B.R. (5th) 57 (Ont. S.C.J. [Commercial List]).

14 Section 45(1) of the *CCAA* defines a foreign representative as:

> a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding in respect of a debtor company, to
>
> (a) monitor the debtor company's business and financial affairs for the purpose of reorganization; or
>
> (b) act as a representative in respect of the foreign proceeding.

15 By order of the U.S. Court dated June 30, 2011, the Applicant has been appointed as a foreign representative of the Chapter 11 Debtors.

16 In my view, the Applicant has satisfied the requirements of s. 47(1) of the CCAA. Accordingly, it is appropriate that this court recognize the foreign proceeding.

17 Section 47(2) of the *CCAA* requires the court to specify in its order whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding.

18 A "foreign main proceeding" is defined in s. 45(1) of the *CCAA* as "a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interest" ("COMI").

19 Part IV of the *CCAA* came into force in September 2009. Therefore, the experience of Canadian courts in determining the COMI has been limited.

20 Section 45(2) of the *CCAA* provides that, in the absence of proof to the contrary, the debtor company's registered office is deemed to be the COMI. As such, the determination of COMI is made on an entity basis, as opposed to a corporate group basis.

21 In this case, the registered offices of Repechage and E&C Canada Inc. are in Ontario and the registered office of E&C Group Ltd. is in Nova Scotia. The Applicant, however, submits that the COMI of the Chapter 11 Debtors, including the Canadian Debtors, is in the United States and the recognition order should be granted on that basis.

22 Therefore, the issue is whether there is sufficient evidence to rebut the s. 45(2) presumption that the COMI is the registered office of the debtor company.

23 In this case, counsel to the Applicant submits that the Chapter 11 Debtors have their COMI in the United States for the following reasons:

> (a) the location of the corporate head offices for all of the Chapter 11 Debtors, including the Canadian Debtors, is in Boston, Massachusetts;
>
> (b) the Chapter 11 Debtors including the Canadian Debtors function as an integrated North American business and all decisions for the corporate group, including in respect to the operations of the Canadian Debtors, is centralized at the Chapter 11 Debtors head office in Boston;
>
> (c) all members of the Chapter 11 Debtors' management are located in Boston;
>
> (d) virtually all human resources, accounting/finance, and other administrative functions associated with the Chapter 11 Debtors are located in the Boston offices;
>
> (e) all information technology functions of the Chapter 11 Debtors, with the exception of certain clerical functions which are outsourced, are provided out of the United States; and
>
> (f) Repechage is also the parent company of a group of restaurants that operate under the "Piccadilly" brand which operates only in the U.S.

24 Counsel also submits that the Chapter 11 Debtors operate a highly integrated business and each of the debtors, including the Canadian Debtors, are managed centrally from the United States. As such, counsel submits it is appropriate to recognize the Chapter 11 Proceeding as a foreign main proceeding.

25 On the other hand, Mr. Dobbin's declaration discloses that nearly one-half of the operating locations are in Canada, that approximately 43% of employees work in Canada, and that GE Canada Equipment Financing G.P. ("GE Canada") is a substantial lender to MECG. GE Canada does not oppose this application.

26 Counsel to the Applicant referenced *Angiotech Pharmaceuticals Inc., Re*, 2011 CarswellBC 124 (B.C. S.C. [In Chambers]) where the court listed a number of factors to consider in determining the COMI including:

> (a) the location where corporate decisions are made;

(b) the location of employee administrations, including human resource functions;

(c) the location of the debtor's marketing and communication functions;

(d) whether the enterprise is managed on a consolidated basis;

(e) the extent of integration of an enterprise's international operations;

(f) the centre of an enterprise's corporate, banking, strategic and management functions;

(g) the existence of shared management within entities and in an organization;

(h) the location where cash management and accounting functions are overseen;

(i) the location where pricing decisions and new business development initiatives are created; and

(j) the seat of an enterprise's treasury management functions, including management of accounts receivable and accounts payable.

27 It seems to me that, in considering the factors listed in *Re Angiotech*, the intention is not to provide multiple criteria, but rather to provide guidance on how the single criteria, *i.e.* the centre of main interest, is to be interpreted.

28 In certain circumstances, it could be that some of the factors listed above or other factors might be considered to be more important than others, but nevertheless, none is necessarily determinative; all of them could be considered, depending on the facts of the specific case.

29 For example:

(a) the location from which financing was organized or authorized or the location of the debtor's primary bank would only be important where the bank had a degree of control over the debtor;

(b) the location of employees might be important, on the basis that employees could be future creditors, or less important, on the basis that protection of employees is more an issue of protecting the rights of interested parties and therefore is not relevant to the COMI analysis;

(c) the jurisdiction whose law would apply to most disputes may not be an important factor if the jurisdiction was unrelated to the place from which the debtor was managed or conducted its business.

30 However, it seems to me, in interpreting COMI, the following factors are usually significant:

(a) the location of the debtor's headquarters or head office functions or nerve centre;

(b) the location of the debtor's management; and

(c) the location which significant creditors recognize as being the centre of the company's operations.

31 While other factors may be relevant in specific cases, it could very well be that they should be considered to be of secondary importance and only to the extent they relate to or support the above three factors.

32 In this case, the location of the debtors' headquarters or head office functions or nerve centre is in Boston, Massachusetts and the location of the debtors' management is in Boston. Further, GE Canada, a significant creditor, does not oppose the relief sought. All of this leads me to conclude that, for the purposes of this application, each entity making up the Chapter 11 Debtors, including the Canadian Debtors, have their COMI in the United States.

33 Having reached the conclusion that the foreign proceeding in this case is a foreign main proceeding, certain mandatory relief follows as set out in s. 48(1) of the *CCAA*:

> 48. (1) Subject to subsections (2) to (4), on the making of an order recognizing a foreign proceeding that is specified to be a foreign main proceeding, the court shall make an order, subject to any terms and conditions it considers appropriate,
>
> (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken against the debtor company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
>
> (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the debtor company;
>
> (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the debtor company; and
>
> (d) prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.

34 The relief provided for in s. 48 is contained in the Initial Recognition Order.

35 In addition to the mandatory relief provided for in s. 48, pursuant to s. 49 of the *CCAA*, further discretionary relief can be granted if the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors. Section 49 provides:

> 49. (1) If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order
>
> (a) if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);
>
> (b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company's property, business and financial affairs, debts, liabilities and obligations; and
>
> (c) authorizing the foreign representative to monitor the debtor company's business and financial affairs in Canada for the purpose of reorganization.

36 In this case, the Applicant applies for orders to recognize and give effect to a number of orders of the U.S. Court in the Chapter 11 Proceeding (collectively, the "Chapter 11 Orders") which are comprised of the following:

(a) the Foreign Representative Order;

(b) the U.S. Cash Collateral Order;

(c) the U.S. Prepetition Wages Order;

(d) the U.S. Prepetition Taxes Order;

(e) the U.S. Utilities Order;

(f) the U.S. Cash Management Order;

(g) the U.S. Customer Obligations Order; and

(h) the U.S. Joint Administration Order.

37 In addition, the requested relief also provides for the appointment of BDO as an Information Officer; the granting of an Administration Charge not to exceed an aggregate amount of $75,000 and other ancillary relief.

38 In considering whether it is appropriate to grant such relief, portions of s. 49, s. 50 and 61 of the *CCAA* are relevant:

> 50. An order under this Part may be made on any terms and conditions that the court considers appropriate in the circumstances.
>
> . . . . .
>
> 61. (1) Nothing in this Part prevents the court, on the application of a foreign representative or any other interested person, from applying any legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives that are not inconsistent with the provisions of this Act.
>
> (2) Nothing in this Part prevents the court from refusing to do something that would be contrary to public policy.

39 Counsel to the Applicant advised that he is not aware of any provision of any of the U.S. Orders for which recognition is sought that would be inconsistent with the provisions of the CCAA or which would raise the public policy exception as referenced in s. 61(2). Having reviewed the record and having heard submissions, I am satisfied that the supplementary relief, relating to, among other things, the recognition of Chapter 11 Orders, the appointment of BDO and the quantum of the Administrative charge, all as set out in the Supplemental Order, is appropriate in the circumstances and is granted.

40 The requested relief is granted. The Initial Recognition Order and the Supplemental Order have been signed in the form presented.

Schedule "A"

1. Massachusetts Elephant & Castle Group Inc.
2. Repechage Investments Limited
3. Elephant & Castle Group Inc.
4. The Elephant and Castle Canada Inc.
5. Elephant & Castle, Inc. (a Texas Corporation)
6. Elephant & Castle Inc. (a Washington Corporation)
7. Elephant & Castle International, Inc.
8. Elephant & Castle of Pennsylvania, Inc.
9. E & C Pub, Inc.
10. Elephant & Castle East Huron, LLC

11. Elephant & Castle Illinois Corporation

12. E&C Eye Street, LLC

13. E & C Capital, LLC

14. Elephant & Castle (Chicago) Corporation

Application granted.

End of Document

Tab 3

Court File No. CV17-582329-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE REGIONAL SENIOR JUSTICE MORAWETZ	)))	MONDAY, THE 23rd DAY OF OCTOBER, 2017

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

AND IN THE MATTER OF WYNIT DISTRIBUTION, LLC, WD NAVARRE DISTRIBUTION, LLC, WD ENCORE SOFTWARE, LLC, WD NAVARRE HOLDINGS, LLC, WD HOLDINGS, LLC, WD NAVARRE DIGITAL SERVICES, LLC, WYNIT HOLDINGS, INC. AND WD NAVARRE CANADA, ULC. (the "Debtors")

APPLICATION OF WYNIT DISTRIBUTION, LLC, UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*

ORDER
(Bid Procedures/Sale Order)

THIS MOTION, made by WYNIT Distribution, LLC in its capacity as the foreign representative (the "**Foreign Representative**") of the Debtors pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form enclosed in the Motion Record, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the affidavit of Peter Richichi sworn October 13, 2017 (the "**Richichi Affdiavit**"), the affidavit of Gregory Charleston sworn October 13, 2017, the affidavit of Mario Forte sworn October 13, 2017, the supplemental affidavit of Mario Forte sworn October 19, 2017 (the "**Supplemental Forte Affidavit**"), the affidavit of Jordan Barris sworn October 23, 2017 (the "**Barris Affidavit**"), the second report of KSV Kofman Inc., in its capacity as information officer dated

October 17, 2017 (the "**Second Report**") and the supplement to the Second Report dated October 19, 2017 (the "**Supplemental Report**"), each filed,

AND UPON HEARING submissions from counsel to the Debtors and the Foreign Representative, Wells Fargo Bank, N.A., as agent (the "**Agent**") and those other parties present,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion, the Motion Record, the Supplemental Forte Affidavit, the Barris Affidavit, the Second Report and the Supplemental Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Supplemental Order of this Court dated September 21, 2017 (as the same has been and may be further amended and/or restated from time to time, the "**Supplemental Order**").

RECOGNITION OF U.S. ORDERS

3. THIS COURT ORDERS that the following orders (collectively, the "**U.S. Orders**") of the United States Bankruptcy Court for the District of Minnesota made in the Foreign Proceeding are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA,

(a) *Order granting an expedited hearing, approving bid protections and procedures for the solicitation of offers for the sale of the Debtors' assets free and clear of liens, claims, encumbrances, and interests, and granting related relief;* and

(b) *Order (I) Authorizing Entry into Agency and Sale Agreement, (II) Authorizing Sale of Assets, and (III) Granting Related Relief* (the "**U.S. Sale Order**"),

provided, however, that in the event of any conflict between the terms of the U.S. Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property in Canada. Copies of the U.S. Orders are attached hereto as Schedules "**A**" and "**B**".

VESTING

4. THIS COURT ORDERS AND DECLARES that upon Closing as defined in the agency agreement dated as of October 16, 2017 (the "**Sale Agreement**") between the Debtors and GBH Wynit, LLC (the "Agent"), any assets located in Canada sold by the Agent pursuant to the Sale Agreement **(the "Canadian Assets**") shall be sold free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Supplemental Order (as the same may be amended and/or restated from time to time); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) any other claims or interests which are released pursuant to the U.S. Sale Order (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Canadian Assets are hereby expunged and discharged as against the Canadian Assets.

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Canadian Assets shall stand in the place and stead of the Canadian Assets, and that from and after Closing all Claims and Encumbrances shall attach to the net proceeds from the sale of the Canadian Assets paid to the Debtors with the same priority as they had with respect to the Canadian Assets immediately prior to the sale, as if the Canadian Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

AGENT'S CHARGE

6. THIS COURT ORDERS that upon payment of the Guaranteed Amount (as defined in the Sale Agreement) and subject to the Agent's obligations to pay the shared proceeds pursuant to the terms of the Sale Agreement, the Agent be and is hereby granted a charge (the "**the Agent's Charge**") on all of the Non-AR Assets that are Canadian Assets and any proceeds to which the Agent is entitled (the

"**Agent's Charged Property**") in accordance with the terms of the Sale Agreement which charge shall be on terms consistent with the lien created by the U.S. Sale Order.

7. THIS COURT ORDERS that the Agent's Charge (all as constituted and defined herein) shall constitute a charge on the Agent's Charged Property and the Agent's Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, including, for greater certainty, the DIP Lender's Charge.

8. THIS COURT ORDERS that the filing, registration or perfection of the Agent's Charge shall not be required, and that the Agent's Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Agent's Charge coming into existence, notwithstanding any such failure to file, register, record or perfect the Agent's Charge.

GENERAL

9. THIS COURT ORDERS that, notwithstanding:

(a) the pendency of these proceedings;

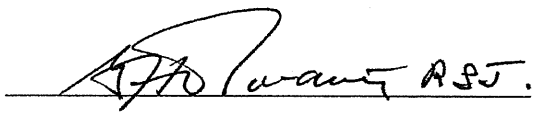
(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Debtors and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of any of the Debtors;

the transactions provided for herein including the vesting of the Canadian Assets and the creation of the Agent's Charge pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Debtors and shall not be void or voidable by creditors of any of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

11. THIS COURT ORDERS that each of the Debtors, the Foreign Representative and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.



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OCT 23 2017

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SCHEDULE A – BID PROCEDURES ORDER

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA

In re:	JOINTLY ADMINISTERED UNDER BKY 17-42726
WYNIT Distribution, LLC,	BKY 17-42726
WD Navarre Distribution, LLC,	BKY 17-42728
WD Encore Software, LLC,	BKY 17-42729
WD Navarre Holdings, LLC,	BKY 17-32864
WD Navarre Digital Services, LLC,	BKY 17-32865
WYNIT Holdings, Inc.,	BKY 17-32866
WD Navarre Canada, ULC,	BKY 17-32867
Debtors.	

ORDER GRANTING AN EXPEDITED HEARING, APPROVING BID PROTECTIONS AND PROCEDURES FOR THE SOLICITATION OF OFFERS FOR SALE OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS, AND GRANTING RELATED RELIEF

At a hearing on October 12, 2017 (the "**Bid Procedures Hearing**"), this Court considered the bid procedures portion of the *Motion for an Order (I) Granting an Expedited Hearing and (II) Approving the Sale of Assets Free and Clear of All Liens, Interests, Claims and Encumbrances, and Related Procedures and Bid Protection, Pursuant to 11 U.S.C. § 363, and (III) Granting Other Related Relief* [Doc. No.138] (the "**Motion**") filed by Debtors. Based on the arguments and proffer of evidence presented at the Bid Procedures Hearing, the Court hereby finds and determines that:

1. The Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, the consideration of the Motion and the relief requested therein is a core proceeding pursuant to 28 U.S.C. § 157(b), and venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. As reflected in the *Certificate of Service* [Doc. 147] filed with respect to the Bid Procedures Hearing, notice of the Motion and notice of the Bid Procedures Hearing have been served on the parties identified on the service list maintained in these cases (who do not receive electronic notice) at the addresses set forth therein (the "**Notice**").

3. The Notice is reasonable and sufficient in light of the circumstances and nature of the relief requested in the Motion, and no other or further notice of the Motion or the Bid Procedures Hearing is necessary. A reasonable and fair opportunity to object to the Motion and the relief granted in this Order (the "**Bid Procedures Order**") has been afforded under the circumstances.

4. The Debtors have articulated good and sufficient reasons for this Court to grant the bidding procedures relief requested in the Motion. Such good and sufficient reasons were set forth in the Motion and on the record at the Bid Procedures Hearing and are incorporated by reference herein and, among other things, form the basis for the findings of fact and conclusions of law set forth herein, subject to cross examination and objections of parties at the Sale Hearing (as defined herein).

5. The Bid Procedures, as set forth below, are fair, reasonable, and appropriate and are designed to maximize the value of the Debtors' estates. The Credit Bid Rights (as defined below) are permissible under § 363(k) of the Bankruptcy Code and are fair and reasonable in light of the nature of these Bankruptcy Cases.

6. The Debtor has proposed the following procedures (the "**Bid Procedures**") :

I. The Bidding Process

A. Subject to the conditions set forth therein, at any time on or before **October 16, 2017**, at 12:00 p.m. (prevailing Central Time) (the "**Bid Deadline**"), Conway MacKenzie, the sale agent for the Debtors (the "**Sale Agent**") will (i) engage in discussions and negotiations regarding a sale transaction with any entity (a "**Potential Bidder**") that has made inquiry with the Debtors or their counsel regarding potential asset sales and/or agency agreements related to

sales that the Sale Agent reasonably believes could lead to a bona fide written offer relating to a sale offer that would meet the requirements of these Bid Procedures (the "**Proposal**"), (ii) furnish to such Potential Bidder and its Representatives,[1] and to any other party that has made a request therefor in connection with its consideration of making an offer or proposal relating to a sale (each a "**Bid**"), public and non-public information relating to the Debtors and their assets and businesses pursuant to a confidentiality agreement between the Debtors and such Potential Bidder (the "**Confidentiality Agreement**"), and (iii) afford to any such Potential Bidder who has signed a Confidentiality Agreement reasonable access to any data site, properties, assets, books or records of the Debtors. Each Confidentiality Agreement entered into after the date of the entry of the Bid Procedures Order shall recognize that the Debtors are obligated to comply with the terms of these Bid Procedures. Each confidentiality agreement previously entered into between the Debtors and a Potential Bidder in effect on the date of the entry of this the Bid Procedures Order shall be deemed to be a Confidentiality Agreement subject to this Bid Procedures Order. By participating in the Bidding Process (as defined below), each Potential Bidder shall be deemed to have agreed to any and all modifications to any previously executed confidentiality agreement as necessary to permit the Debtors and their Representatives to comply with the terms of these Bid Procedures.

B. The Sale Agent shall provide these Bid Procedures, together with a copy of the Agency and Sale Agreement (the "**Purchase Agreement**") to be entered into by and between the Debtors and the stalking horse bidder, GBH WYNIT, LLC (the "**Stalking Horse Bidder**"), to each Potential Bidder.

C. Any Potential Bidder wishing to conduct due diligence concerning a prospective sale transaction shall be granted access, subject to execution of a Confidentiality Agreement, to all relevant business, financial and other information of the Debtors as may be reasonably necessary (to be determined at the Sale Agent's discretion) to enable such Potential Bidder to evaluate the assets of the Debtors and the prospective sale transaction. The Debtors shall make such access available during normal business hours as soon as reasonably practicable. Potential Bidders interested in conducting due diligence should contact Michael Cavanaugh or Greg Charleston of the Sale Agent at mcavanaugh@conwaymackenzie.com or gcharleston@conwaymackenzie.com or by phone at (216) 278-0740. Notwithstanding the foregoing, the Sale Agent is not required to provide confidential or proprietary information to any person if the Sale Agent determines, after consultation with Wells Fargo Bank, National Association, as administrative agent for itself and other participating senior secured lenders in the postpetition debtor-in-possession facility (the "**Postpetition Agent**"), and the Official Committee of Unsecured Creditors (the "**Committee,**" collectively, with the Postpetition Agent, the "**Consultation Parties**") that such disclosure could be detrimental to the interests of the Debtors' estates.

D. Prior to the selection of a Bid as the highest or best offer for any individual asset, portion of the Debtors' assets, or all of the Debtors' assets (the "**Successful Bid(s)**"), the Sale Agent may: (a) receive Bids from Potential Bidders, (b) request information from Potential

[1] "Representatives" means, with respect to any person or entity, the officers, directors, employees, members, managers, partners, investment bankers, attorneys, accountants, consultants or other advisors, agents or representatives of such person, when acting in such capacity on behalf of such person or entity.

Bidders and engage in discussions with Potential Bidders and take such other actions to determine whether any Bid constitutes or could lead to a superior Proposal, (c) evaluate any Bid made by a Potential Bidder, (d) engage in discussions and negotiations with any Potential Bidder with respect to any Bid submitted by a Potential Bidder, and (e) take any other actions contemplated under these Bid Procedures (collectively, the "**Bidding Process**").

II. Deliveries by Potential Bidders

A. In order to participate in the Bidding Process, each Potential Bidder must deliver the following to the Sale Agent prior to the Bid Deadline (unless previously delivered in a form acceptable to the Debtors or waived by the Sale Agent after consultation with the Consultation Parties):

(a) An executed Confidentiality Agreement acceptable to the Sale Agent; and

(b) Financial statements of, or other information relating to, the Potential Bidder or, if the Potential Bidder is an entity formed for the purpose of the sale transaction, financial statements of or other information relating to the equity holder(s) of the Potential Bidder, or such other form of financial disclosure or evidence of financial capability and performance and legal authority acceptable to the Sale Agent (and, if requested by the Sale Agent, certified to by a duly authorized representative of the Potential Bidder (or equity holders thereof, as applicable)), demonstrating such Potential Bidder's financial capability and legal authority to close the proposed sale transaction in a timely manner.

B. A Potential Bidder that delivers the documents described in subparagraphs (a) and (b) above, and that the Sale Agent determines, in its business judgment, after consultation with the Consultation Parties, is financially capable of consummating the sale transaction in a timely manner shall be permitted to further participate in the Bidding Process. The Sale Agent may require an update of such information and an affirmation of any Potential Bidder's financial capability to bid and consummate any sale transaction contemplated hereunder.

III. Due Diligence for Potential Bidders

A. To obtain due diligence access or additional information from the Debtors, a Potential Bidder must first advise the Sale Agent of the nature and extent of additional due diligence such Potential Bidder may wish to conduct. The Sale Agent shall coordinate all requests for additional information and due diligence access by such Potential Bidders with the Debtors. No conditions relating to the completion of due diligence will be permitted to exist after the Bid Deadline, except as otherwise agreed to by the Sale Agent in writing after consultation with the Consultation Parties.

IV. Submission by Bid Deadline

A. A Potential Bidder who desires to make a Bid must deliver a written copy of its written purchase or agency agreement marked to show the specific changes to the Purchase Agreement that the Potential Bidder requires (which marked copy may be an electronic

comparison of the written agreement submitted and the Purchase Agreement) on or before October 16, 2017 at 12:00 p.m. (prevailing Central Time) to the Sale Agent. The Sale Agent may, after consultation with the Consultation Parties, extend the Bid Deadline, but shall promptly notify all Potential Bidders of and the Stalking Horse Bidder any such extension.

V. Determination of "Qualified Bid" Status

A. A Bid received from a Potential Bidder by the Bid Deadline will constitute a "**Qualified Bid**" only if it includes all of the following documents (the compliance of which shall be determined by the Sale Agent after consultation with the Consultation Parties) (collectively, the "**Required Bid Documents**") and a Good Faith Deposit (as defined below):

(a) A written asset purchase agreement or agency agreement duly executed by the Potential Bidder in substantially the same form as the Purchase Agreement with changes only regarding the applicable assets being purchased and any other changes acceptable to the Sale Agent, after consultation with the Consultation Parties, together with a copy of such agreement marked to show the specific changes to the Purchase Agreement that the Potential Bidder requires (which marked copy may be an electronic comparison of the written asset purchase agreement submitted and the Purchase Agreement). The asset purchase agreement submitted by a Potential Bidder shall:

i. specifically delineate which individual asset, portion of the Debtors' assets, or all of the Debtors' assets a Potential Bidder proposes to purchase, which shall be based upon a schedule prepared by the Sale Agent, after consultation with the Consultation Parties, posted in the Debtors' data room;

ii. include a complete set of all schedules and exhibits thereto which, to the extent practicable, will be marked to show the specific changes to the schedules and exhibits to the Purchase Agreement, if applicable;

iii. not contain any financing or due diligence contingencies to closing on the proposed sale transaction;

iv. not contain any condition to closing of the sale transaction based on the receipt of any third party approvals (excluding required Bankruptcy Court approval and any required governmental and/or regulatory approvals, if any); and

v. provide that the offer of the Potential Bidder is irrevocable through thirty (30) days after the entry of the Bid Procedures Order, subject to the backup bidder provisions herein.

vi. Notwithstanding the foregoing, if a Potential Bidder seeks to make a Bid (a) for its own inventory, or (b) for specific identifiable inventory, furniture, fixtures or equipment ("FF&E"), or intellectual property ("IP"), such Potential Bidder shall not be required to submit a mark-up of the Purchase Agreement, but instead shall only have to submit a binding agreement/offer to purchase such inventory, furniture, FF&E, or IP.

(b) A good faith deposit (the **"Good Faith Deposit"**) in the form of a wire transfer to the Debtors or a certified or bank check payable to the order of the Debtors (or other form acceptable to the Debtors with approval by the Postpetition Agent) in the amount of at least 10% of the purchase price or guaranteed amount for the Assets proposed to be purchased.

B. Each Potential Bidder that makes a Qualified Bid shall be referred to as a "Qualified Bidder." Each of the Postpetition Agent, the Prepetition Agent and the Stalking Horse Bidder are a Qualified Bidder.

VI. Bid Requirements

A. All Bids must also satisfy all of the following requirements, all as determined solely by the Sale Agent after consultation with the Consultation Parties:

(a) The Bid must provide for consideration under the Purchase Agreement for the Assets proposed to be purchased.

(b) The Bid must be in cash unless otherwise consented to by the Sale Agent, after consultation with the Consultation Parties.

(c) The Bid (other than the initial bid by the Stalking Horse Bidder) must be accompanied by satisfactory evidence of committed financing or other financial ability to consummate the sale transaction in a timely manner.

(d) The Bid (other than the initial bid by the Stalking Horse Bidder and any otherwise Qualified Bidder) must exceed the initial bid of the Stalking Horse Bidder by at least $750,000, (which is the **"Break-up Fee"** of $500,000 plus an initial $250,000 overbid) (the **"Overbid Requirement"**). Thereafter, each Bid must exceed the high bid by no less than $175,000.

(e) The Bid (other than the initial bid by the Stalking Horse Bidder) cannot be conditioned upon the Bankruptcy Court's approval of any bid protections, such as a break-up fee, termination fee, expense reimbursement, work fee or similar type of payment.

(f) The Bid must expressly acknowledge and represent that the Potential Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the assets and businesses of the Debtors and the sale transaction prior to making its Bid, (ii) has relied solely upon its own independent

review, investigation and/or inspection of any documents and the assets and businesses of the Debtors in making its Bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the business or assets of the Debtors or the sale transaction, or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the Purchase Agreement ultimately accepted and executed by the Debtors, and (iv) has authority to make the Bid, execute any necessary documents to close on the sale transaction, and proceed to closing on the sale transaction.

(g) The Bid (other than the initial bid by the Stalking Horse Bidder) must be received by the Bid Deadline.

B. The bid submitted by the Stalking Horse Bidder through the Stalking Horse Agreement is deemed a Qualified Bid.

VII. Auction

A. Prior to the Auction (as defined below), the Sale Agent (in consultation with the Consultation Parties) shall evaluate the Qualified Bids and select the Qualified Bid or combination of Qualified Bids that the Sale Agent determines in its business judgment to be the highest or best Qualified Bid(s) (the "**Initial Highest Bid**") for a sale of the assets of the Debtors' estates. In making this determination, the Sale Agent may consider, among other things, the amount of cash to be paid or delivered, and the other terms and conditions of the Qualified Bid(s). The Sale Agent shall provide copies of all Bids to the Consultation Parties promptly after the Bid Deadline, but in no event later than 2:00 P.M. prevailing Central time on **October 16, 2017**.

B. If more than one Qualified Bid has been submitted for the particular assets of the Debtors' estates in accordance with these Bid Procedures, the Sale Agent will conduct an auction (the "**Auction**") with respect to such Qualified Bids in order to determine, in the business judgment of the Sale Agent, after consultation with the Consultation Parties, the Successful Bid(s).

C. The Auction, if required, will commence at 11:00 a.m. (prevailing Central Time) on **October 17, 2017** at the offices of Stinson Leonard Street LLP, 50 South Sixth Street, Suite 2600, Minneapolis, Minnesota 55402, or at such later time or other place as agreed by the Sale Agent after consultation with the Consultation Parties, or approved by Order of the Bankruptcy Court, and of which the Sale Agent will notify all Qualified Bidders, including the Stalking Horse Bidder, who have submitted Qualified Bids (collectively, the "**Auction Participants**").

D. The Sale Agent shall give each of the Auction Participants notice of the Initial Highest Bid and a copy of such Bid prior to the scheduled start of the Auction.

E. Only the Debtors, the Sale Agent, the Auction Participants, potential financing sources of the Auction Participants, the Postpetition Agent, the Prepetition Agent, the Committee

(including its members) and their respective Representatives will be entitled to attend, participate and be heard at the Auction.

F. At the commencement of the Auction, the Sale Agent shall formally announce the Initial Highest Bid(s) and the assets to which they relate. All Qualified Bids at the Auction will be based on and increased therefrom, and thereafter made in minimum increments higher than the previous Qualified Bid in the amount of $175,000 or such other amount to be established by the Sale Agent after consultation with the Consultation Parties.[2]

G. The Sale Agent after consultation with the Consultation Parties shall have the right to adopt such other rules for the Auction which the Sale Agent believes in its business judgment will promote the goals of the Auction, including, without limitation, that the Sale Agent can continue to take and negotiate bids in lot or in bulk until the Successful Bid(s) have been selected; provided, however, if the Auction is not held by October 19, 2017, the Stalking Horse Bidder may withdraw its bid and, if it indeed withdraws its bid, the Debtors shall return the deposit made by the Stalking Horse Bidder within twenty-four (24) hours thereof.

H. Each Auction Participant, except for the Stalking Horse Bidder, shall be deemed to have agreed to keep its final Qualified Bid made at or prior to the Auction open through thirty (30) days after the entry of the Bid Procedures Order, subject to the backup bidder provisions herein. The Stalking Horse Bidder's Bid shall expire on he terms set forth in the Purchase Agreement, unless otherwise agreed to by the Stalking Horse Bidder in writing. Bidding at the Auction will continue until such time as the highest or otherwise best Qualified Bid(s) are determined in the business judgment of the Sale Agent after consultation with the Consultation Parties. To facilitate a deliberate and orderly consideration of competing Qualified Bids submitted at the Auction, the Sale Agent after consultation with the Consultation Parties may adjourn the Auction at any time and from time-to-time and may conduct multiple rounds of bidding. Prior to conclusion of the Auction, the Sale Agent after consultation with the Consultation Parties may permit one or more Auction Participants who have submitted bids for less than all Assets of the Debtors to join together as a single Qualified Bidder for the purpose of submitting a joint Qualified Bid to acquire substantially all Assets of the estates, provided that such Auction Participants so join without improper collusion under the Bankruptcy Code or other applicable law. Upon conclusion of the Auction, the Sale Agent, in consultation with the Consultation Parties, will (a) review each Qualified Bid on the basis of financial and contractual terms and other factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the sale and (b) after consultation with the Consultation Parties, identify the Successful Bid(s). In making this determination, the Sale Agent, after consultation with the Consultation Parties, may consider, among other things, the amount of cash to be paid or delivered and the other terms or conditions of the Qualified Bid(s), and the determination by the Sale Agent, after consultation with the Consultation Parties, shall be final for the purposes of these Bid Procedures.

[2] Minimum bid increments, other than a credit bid pursuant to a Credit Bid Right, must consist solely of cash consideration unless otherwise authorized by the Sale Agent after consultation with the Consultation Parties.

VIII. Credit Bid Rights

A. The right to credit bid under section 363(k) of the Bankruptcy Code is specifically preserved. The Postpetition Agent, on behalf of the Postpetition Lenders,[3] and the Prepetition Agent, on behalf of the Prepetition Lenders,[4] shall each be deemed a Qualified Bidder in all respects, and shall not be required to submit a Good Faith Deposit, purchase agreement, or any other deliverable or documentation to the Sale Agent, the Debtors, or their representatives or agents and may credit bid, in their respective discretion, at the Auction. Further, each of the Postpetition Agent and the Prepetition Agent may submit a credit bid, in such party's respective sole and absolute discretion, at any time prior to announcement of the Successful Bid(s), regardless of whether such party participated in prior rounds of the Auction, on any individual asset, portion of the assets, or all assets constituting its respective collateral. ***Credit bidding by all junior lien holders will be prohibited***, but all rights, claims and objections will be reserved and can be asserted against the sale(s) proceeds, if any.

IX. Sale Hearing

A. An evidentiary hearing to consider the Motion and approval of the Successful Bid(s), will be held on **October 20, 2017 at 9:30 a.m. prevailing Central time** (the "**Sale Hearing**"), in the courtroom of the Honorable Kathleen H. Sanberg, United States Bankruptcy Judge, at the United States Bankruptcy Court, District of Minnesota, 300 South Fourth Street, Courtroom 8 West, Minneapolis, Minnesota 55415. The Sale Hearing may be adjourned or rescheduled as ordered by the Bankruptcy Court without further notice to creditors and parties in interest other than by announcement by the Debtors of the adjourned date at the Sale Hearing, provided, however, if the Sale Hearing is not held on or before October 20, 2017, the Stalking Horse Bidder may withdraw its bid and, if it indeed withdraws its bid, the Debtors shall return the deposit made by the Stalking Horse Bidder within twenty-four (24) hours thereof.

B. The Debtors' presentation to the Bankruptcy Court for approval of the Successful Bid(s) does not constitute the Debtors' acceptance of the Bid(s). The Debtors will be deemed to have accepted a Bid only when the Bid has been approved by order of the Bankruptcy Court.

C. The Debtors shall file with the Bankruptcy Court its proposed draft form of sale order on or before 9:00 a.m. on October 17, 2017.

X. Objections

A. Subject to paragraph (viii) herein, objections , if any, to the portion of the Motion approving the sale shall be filed on the docket of the Bankruptcy Court and served such that each objection is actually received by the following parties **by 9:00 a.m. on October 19, 2017 (the "Objection Deadline")**: (a) counsel for the Debtors at Stinson Leonard Street LLP, Attn: Robert

[3] Under the DIP Financing Motion the Debtors sought Court approval for a senior secured postpetition revolving loan facility of up to $15,000,000 with certain of their prepetition first-lien lenders (collectively, the "**Postpetition Lenders**").

[4] Each of the Debtors, other than WYNIT Holdings, Inc., is a borrower under a Credit Agreement, dated November 29, 2016, with Wells Fargo Capital Finance, as administrative agent for itself and other participating lenders (collectively, the "**Prepetition Lenders**").

Kugler, 50 South Sixth Street, Suite 2600, Minneapolis, Minnesota 55402 robert.kugler@stinson.com, (b) counsel to Wells Fargo Bank, N.A. at Greenberg Traurig, LLP, Attn: David Kurzweil, 3333 Piedmont Road NE, Ste. 2500, Atlanta, Georgia 30305 kurzweild@gtlaw.com, (c) the United States Trustee's Office, attn. Michael R. Fadlovich, 300 South Fourth Street, Suite 1015, Minneapolis, MN 55402 Michael.Fadlovich@usdoj.gov. and (d) counsel to the Official Committee of Unsecured Creditors, Lowenstein Sandler, Attn. Jeff Cohen and Eric Chafetz, 1251 Avenue of the Americas, New York, NY 10020 JCohen@lowenstein.com; echafetz@lowstein.com. Provided, however, that if the Auction is not concluded on or before October 18, 2017, then the Objection Deadline is 7:30 a.m. on October 20, 2017.

B. If any Auction Participant whose Qualified Bid is a Successful Bid (a "**Successful Bidder**") fails to consummate the Transaction because of a breach or failure to perform on the part of such Successful Bidder, or for any reason other than the failure of the Bankruptcy Court to approve the terms of the sale transaction, the Auction Participant that had submitted the next highest or otherwise best Qualified Bid for the same asset or assets of the estates at the Auction or prior to the Auction (the "**Back-Up Bidder**") will be deemed to be the Successful Bidder, and the Debtors will be authorized to consummate the sale transaction with such Auction Participant without further order of the Bankruptcy Court, and such Qualified Bid shall thereupon be deemed the Successful Bid; provided that upon being notified that its Qualified Bid has become the Successful Bid, the Auction Participant submitting such Qualified Bid shall within three (3) business days after such notification provide a Good Faith Deposit (unless such Auction Participant previously shall have provided a Good Faith Deposit that shall not have been returned as described below). Upon providing such Good Faith Deposit, such Auction Participant shall be deemed the Successful Bidder. If any Auction Participant fails to consummate the sale transaction because of a breach or failure to perform on the part of such Auction Participant (including, without limitation, the failure to timely deposit the Good Faith Deposit), the process described above may continue with other Auction Participants in decreasing order of the Qualified Bids as determined by the Sale Agent after consultation with the Consultation Parties until an Auction Participant shall consummate the sale transaction.

XI. Disposition of Good Faith Deposit

A. The Good Faith Deposit of the Successful Bidder(s), or a Back-Up Bidder that consummates a transaction in place of a Successful Bidder as provided for herein, shall be retained by the Debtors and applied toward the payment of the Successful Bid(s) at the closing of the sale transaction. If any Successful or Back-Up Bidder does not close a sale transaction, its Good Faith Deposit shall be returned by the Debtors, unless such failure to close was due to a breach of the Purchase Agreement by the Successful or Back-Up Bidder. The Good Faith Deposit of all Qualified Bidders (other than the Successful Bidder(s), a Back-Up Bidder that consummates a sale transaction in place of a Successful Bidder as provided for herein, or a Successful Bidder or a Back-Up Bidder that forfeits its deposit as liquidated damages as provided for herein) will be returned, without interest, to each such Qualified Bidder within ten business days after the closing of all proposed sale transactions approved by the Bankruptcy Court at the Sale Hearing.

XII. Modifications

A. The Sale Agent, after consultation with the Consultation Parties, may (a) determine which Qualified Bid, if any, is the highest or otherwise best offer(s); and (b) reject at any time before entry of an Order of the Bankruptcy Court approving the Successful Bid(s), any bid that, in the discretion of the Sale Agent, after consultation with the Consultation Parties is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code or the Bid Procedures, or (iii) contrary to the best interests of the Debtors' estates and their creditors. At or before the conclusion of the Auction, the Sale Agent, after consultation with the Consultation Parties, may impose such other terms and conditions upon Qualified Bidders as the Sale Agent determines to be in the best interests of the Debtors' estates in these cases.

[End of Bid Procedures]

7. The service of the notice of the Bid Procedures, the Sale Hearing, the Objection Deadline, and the respective dates, times and places for an Auction, as required under the Bid Procedures, is adequate and reasonably calculated to provide due, proper, and timely notice to all interested parties of, among other things, the entry of this Bid Procedures Order, the Bid Procedures, the Auction (if required under the Bid Procedures), the Sale Hearing, the Motion, including the sale of the Debtors' estates' right, title and interest in, to and under the Debtors' assets free and clear of any and all liens, claims, encumbrances, and interests, and the procedure for objecting thereto. Except as otherwise set forth herein, no other or further notice is necessary.

8. The findings of fact and conclusions of law herein constitute the Court's findings of fact and conclusions of law for the purposes of Bankruptcy Rule 7052, made applicable pursuant to Bankruptcy Rule 9014. To the extent any findings of facts are conclusions of law, they are adopted as such. To the extent any conclusions of law are findings of fact, they are adopted as such.

11. The Debtors (through Conway MacKenzie) have received an initial offer for a sale transaction from the Stalking Horse Bidder. A copy of the Purchase Agreement proposed by the Stalking Horse Bidder was filed with the Court on October 4, 2017. [Doc. No. 174].

12. The Motion includes a "**Breakup Fee**" of $500,000.00, and an "Overbid Requirement," requiring the first (if any) overbid to exceed the Stalking Horse Bidder offer by at least $750,000 (the Breakup Fee plus $250,000.00) and that bid increments shall thereafter be at least $175,000 higher than the prior existing qualified bid (together the Breakup Fee and the Overbid Requirement are the "**Bid Protections**"). The Bid Protections are reasonable and customary in an offer of this size and complexity given that the Stalking Horse Bidder has and will continue to accrue fees and costs in due diligence to support its offer.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

The Motion is **GRANTED** as set forth herein.

i. All objections to the Bid Procedures portion of this Motion that have not been withdrawn, waived or settled as announced in Court at the Bid Procedures Hearing are denied and overruled on their entirely on the merits, subject to the reservation of rights of objecting parties for the purposes of the Sale Hearing. All reservation of rights as to proffered evidence presented at the hearing to approve the Bid Procedures shall be reserved and subject to examination and cross examination at the Sale Hearing. The Debtors shall provide a list of witnesses for the Sale Hearing to any objecting party at least 24 hours before the scheduled hearing time. If a party in interest requests other representatives of the Debtors be available for the Sale Hearing, the Debtors shall reasonably cooperate with requests.

ii. The Debtors may proceed with a sale and auction process in accordance with the Bid Procedures, which Bid Procedures are hereby approved.

iii. The Breakup Fee and Bid Protections are hereby approved.

iv. The approval of the sale of the Debtors' Assets remains subject to the entry of a further order approving such sale.

v. Potential bidders must comply with all terms of the Bid Procedures in order to participate in the bidding process. All bids must satisfy all of the requirements contained in the Bid Procedures. Notwithstanding the foregoing, the Postpetition Agent and the Prepetition Agent, on behalf of the Postpetition Lenders and the Prepetition Lenders, respectively, (a) shall be deemed Qualified Bidders entitled to participate in the Auction and credit bid at the Auction and (b) shall not be required to comply with the Bid Procedures.

vi. The Stalking Horse Bidder is hereby deemed a Qualified Bidder and the Purchase Agreement is a Qualified Bid. Notwithstanding anything to the contrary herein, if the Auction is not held by October 19, 2017 or the Sale Hearing is not held by October 20, 2017, the Stalking Horse Bidder may withdraw its bid and, if it indeed withdraws its bid, the Debtors shall return the deposit made by the Stalking Horse Bidder within twenty-four (24) hours thereof. If the Stalking Horse Bidder chose to withdraw its bid as provided in this Paragraph (vi), the Stalking Horse Bidder shall not be entitled to the Break-Up Fee and the Debtors, after consultation with the Consultation Parties, shall have the right to designate a new stalking horse bidder.

vii. Notwithstanding any other order entered by this Court, the Stalking Horse Bidder is hereby granted a carveout from all collateral claimed by any secured creditor of the Debtors in the amount of $500,000 (which is an amount equal to the Break-Up Fee), which Breakup Fee shall be paid directly to the Stalking Horse Bidder by wire transfer from the successful bidder solely out of the first proceeds of the alternative transaction

pursued by the Debtors in lieu of closing hereunder with the Stalking Horse Bidder and pursuant to the terms of this Bid Procedures Order and the Purchase Agreement.

viii. Except as otherwise provided herein, the Debtors and Sale Agent are authorized and directed to take any and all actions necessary or appropriate to implement the Bid Procedures. Subject to the reservation of rights of parties for the purposes of the Sale Hearing, the process for submitting Qualified Bids is fair, reasonable, and appropriate and is designed to maximize recoveries for the benefit of the Debtors' estates, their creditors and other parties in interest.

ix. As further described below, the key dates for this Bid Procedures Order and the Bid Procedures are as follows, with each of such dates being subject to extension by the Debtors with the consent of the Consultation Parties:

Event	**Date and Time (if applicable)**
Notice	Within 1 days of the entry of this Bid Procedures Order
Bid Deadline	**October 16, 2017 at 12:00 p.m. prevailing Central Time**
Sale Hearing Objection Deadline	**October 19, 2017 at 9:00 a.m. prevailing Central Time** **Or** if the Auction is not concluded on or before October 18, 2017, then the Objection Deadline is: **October 20, 2017 at 7:30 a.m.**
Draft Proposed Sale Order	**October 17, 2017 at 9:00 a.m.**
Auction	**October 17, 2017 at 11:00 a.m. prevailing Central time**
Sale Hearing	**October 20, 2017 at 9:30 a.m. prevailing Central Time**
Closing	**By no later than October 20, 2017**

x. Any person desiring to submit a bid for the Debtors' assets must comply with the Bid Procedures and shall not be permitted to participate at the Auction unless such person is an Auction Participant or is otherwise permitted to participate at the Auction under the

Bid Procedures; provided that, as set forth in Paragraph (v) of this Bid Procedures Order, the Postpetition Agent and the Prepetition Agent shall be deemed Qualified Bidders entitled to participate at the Auction, including to credit bid for some or all of the Assets, and shall not be required to comply with the Bid Procedures.

xi. If a bid, other than the bid of the Stalking Horse Bidder, has been submitted for the Debtors' assets in accordance with the Bid Procedures, the Sale Agent will conduct an auction as to the Assets (the "**Auction**") on October 17, 2017, at 11:00 a.m., prevailing Central time, at the offices of Stinson Leonard Street LLP, 50 South Sixth Street, Suite 2600, Minneapolis, Minnesota 55402. The Sale Agent will notify all Qualified Bidders, including the Stalking Horse Bidder, who have submitted Qualified Bids of such Auction.

xii. A final hearing (the "**Sale Hearing**") to consider the sale portion of the Motion (the "**Sale Motion**") shall be held at October 20, 2017 at 9:30 a.m. prevailing Central Time in the courtroom of the Honorable Kathleen Sanberg, United States Bankruptcy Judge, at the United States Bankruptcy Court, District of Minnesota, 300 South Fourth Street, Courtroom 8 West, Minneapolis, MN 55415, Minneapolis, Minnesota. The Debtors shall provide a list of all witnesses that they intend to call in support of any sale to interested parties by 9:30 a.m. on October 19, 2017. On the request of an objecting party, the Debtors shall make reasonable accommodations to provide other Debtor representatives for testimony at the Sale Hearing.

xiii. Any person failing to timely file an objection to the Sale Motion on or before October 19, 2017 at 7:00 a.m. prevailing Central Time (if the Auction is not concluded before 7:00 a.m. prevailing Central Time on October 19, 2017 then the Objection Deadline is 7:30 a.m. prevailing Central Time on October 20, 2017) shall be barred from objecting to the

Sale Motion, including the sale of the Debtors' assets in accordance with the Stalking Horse Agreement, free and clear of any and all liens, claims, encumbrances, and interests and will be deemed to consent to the sale of the Debtors' assets to the Successful Bidder(s) free and clear of any and all liens, claims, encumbrances, and other interests.

xiv. Notwithstanding the foregoing, the Debtors, after consultation with the Consultation Parties, may cancel the Auction or remove certain of the Assets from the Auction. If the Auction is cancelled and the sale to the Stalking Horse is not consummated as a consequence thereof, the deposit provided by the Stalking Horse Bidder shall be returned within twenty-four (24) hours of the date of the cancelled Auction. If assets subject to purchase under the Stalking Horse Bidder's Purchase Agreement are removed from the Auction and such removal is not accounted for in the Purchase Agreement, the Stalking Horse Bidder may, in its discretion, modify and/or withdraw its bid, and upon a withdrawal, its deposit shall be returned within twenty-four (24) hours of such date.

xv. For cause shown, notwithstanding Bankruptcy Rules 6004, or otherwise, this Bid Procedures Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. To the extent applicable, the stay described in Bankruptcy Rules 6004(h) is hereby waived.

xvi. This Bid Procedures Order shall become effective immediately upon its entry.

xvii. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Bid Procedures Order.

Dated: *October 12, 2017*

/e/ Kathleen H. Sanberg
Chief United States Bankruptcy Judge

SCHEDULE B – U.S. SALE ORDER

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA

In re:	JOINTLY ADMINISTERED UNDER BKY 17-42726
WYNIT Distribution, LLC,	BKY 17-42726
WD Navarre Distribution, LLC,	BKY 17-42728
WD Encore Software, LLC,	BKY 17-42729
WD Navarre Holdings, LLC,	BKY 17-32864
WD Navarre Digital Services, LLC,	BKY 17-32865
WYNIT Holdings, Inc.,	BKY 17-32866
WD Navarre Canada, ULC,	BKY 17-32867
Debtors.	

ORDER (I) AUTHORIZING ENTRY INTO AGENCY AND SALE AGREEMENT, (II) AUTHORIZING SALE OF ASSETS, AND (III) GRANTING RELATED RELIEF

Upon consideration of the sale portion of the *Motion for an Order (I) Granting an Expedited Hearing and (II) Approving the Sale of Assets Free and Clear of All Liens, Interests, Claims and Encumbrances, and Related Procedures and Bid Protection, Pursuant to 11 U.S.C. § 363, and (III) Granting Other Related Relief* [Docket No. 138] (the "**Sale Motion**"),[1] the debtors and debtors in possession in the above-captioned cases (collectively, the "**Debtors**") request entry of an order (this "**Order**") authorizing (a) the Debtors' entry into that certain Agency and Sale Agreement (the "**Agency and Sale Agreement**") with GBH Wynit, LLC (the "**Stalking Horse Bidder**") for the sale of certain assets and (b) other related relief, all as set forth more fully the Sale Motion; and it appearing that this Court has jurisdiction to consider the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these chapter 11 cases and the Sale Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and

[1] All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion, the Bidding Procedures Order and the Agency and Sale Agreement, as applicable.

the Transactions (defined below) represented by the Agency and Sale Agreement having been determined to be the highest and best offer for the assets; and the hearing on the Sale Motion (the "**Sale Hearing**") having been held on October 20, 2017; and appearances of all interested parties having been noted on the record of the Sale Hearing; and upon all of the proceedings had before this Court (including but not limited to the testimony and other evidence proffered or adduced at the Sale Hearing and at the hearing on the bid procedures portion of the above-referenced motion held on October 5, 2017); and consideration of all objections filed and not resolved or made on the record at the hearing on the Motion; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that the relief requested in the Sale Motion is in the best interests of the Debtors, their estates, their creditors, and other parties-in-interest; and it appearing that proper and adequate notice of the Sale Motion has been given under the circumstances and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor;

FOUND AND DETERMINED THAT:[2]

A. **Jurisdiction:** This Court has jurisdiction to consider the Sale Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1134. Approval of the Debtors entry into the Agency and Sale Agreement, and each of the transactions contemplated thereby (collectively, the "**Transactions**") is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (D), (N) and (0).

B. **Venue:** Venue of these cases in this district is proper pursuant to 28 U.S.C. § 1409(a).

[2] The findings of fact and the conclusions of law stated herein shall constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed.

C. **Statutory Predicates:** The statutory predicates for the approval of the Agency and Sale Agreement and Transactions contemplated therein are Sections 105, 363, 364 and 554 of the title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 6004-1(e) of the Local Bankruptcy Rules of this Court (the "**Local Rules**").

D. **Notice:** Proper, timely, adequate and sufficient notice of the Motion and the Sale Hearing has been provided in accordance with Sections 102(1), 105(a), and 363 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001 and 6004, Local Rules 2002-1 and 2002-4(a) and in compliance with the *Order Granting an Expedited Hearing, Approving Bid Protections and Procedures for the Solicitation of Offers for Sale of the Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, and Granting Related Relief* [Docket No. 202] entered by the Court on October 12, 2017 (the "**Bidding Procedures Order**"). No other or further notice is required.

E. **Opportunity to be Heard:** A reasonable opportunity to object or be heard regarding the relief requested in the Sale Motion and the Transactions pursuant thereto has been afforded to all interested persons and entities, including, without limitation, the following: (a) the Office of the United States Trustee for the District of Minnesota, (b) counsel to Wells Fargo Bank, National Association in its capacity as administrative agent (in such capacity, the "**Prepetition Agent**") to the lenders (collectively, the "**Prepetition Lenders**") party to that certain Credit Agreement dated as of November 29, 2016 pursuant to which the Debtors received extensions of credit before the Petition Date (the "**Prepetition Credit Agreement**"), and as administrative agent (in such capacity, the "**Postpetition Agent**") for the lenders (collectively, the "**Postpetition Lenders**") party to that certain Senior Secured, Super Priority Debtor in

Possession Credit Agreement dated as of September 13, 2017 (the "**Postpetition Credit Agreement**"), (c) the Office of the United States Attorney for the District of Minnesota, (d) counsel to the Official Committee of Unsecured Creditors (the "**Committee**"), (e) all parties who are known to assert any lien, claim, interest or encumbrance (collectively, "**Liens**") in or upon any of the Assets (defined below), (f) all applicable federal, state, and local taxing authorities (collectively, the "**Taxing Authorities**"), (g) all applicable state attorneys general and (h) all other applicable parties in interest, including all entities on the general case service list as of the date of entry of the Bidding Procedures Order (collectively, the "**Notice Parties**"). Objections, if any, to the Sale Motion have been withdrawn or resolved and, to the extent not withdrawn or resolved, are hereby overruled.

F. **Sale Process:** The Debtors and their advisors have conducted the marketing and sale process as set forth in and in accordance with the Sale Motion and the Bidding Procedures Order. Based upon the record of these proceedings, all creditors and other parties-in-interest and all prospective purchasers have been afforded a reasonable and fair opportunity to bid for the Assets.

G. **Bidding Procedures Fair:** The bidding procedures set forth in the Bid Procedures Order (collectively, the "**Bid Procedures**") were substantively and procedurally fair to all parties and all Potential Bidders and afforded notice and a full, fair and reasonable opportunity for any person to make a higher or otherwise better offer for the Assets.

H. **Highest and Best Offer:** After the conclusion of the Auction held on October 17, 2017 and in accordance with the Bid Procedures, the Debtors determined in a valid and sound exercise of their business judgment that the highest and best Qualified Bid received at the Auction was from the Stalking Horse Bidder. Pursuant to the Agency and Sale Agreement,

the Stalking Horse Bidder shall (i) act as Debtors' exclusive sales agent in connection with the sale of certain assets including, without limitation, inventory, intellectual property and furniture, fixtures and equipment, all as more fully described on Exhibit A to the Agency and Sale Agreement as "**Non-AR Assets**" and (ii) purchase and assume of all of the Debtors' rights, claims and interests in all of the Debtors' accounts (as defined in the Uniform Commercial Code) and related assets more fully described on Exhibit A attached to the Agency and Sale Agreement as "**AR Assets**" (and together with the Non-AR Assets, the "**Assets**").

I. **Agency Agreement:** On October 16, 2017, the Debtors and the Stalking Horse Bidder entered into the Agency and Sale Agreement. In accordance with the Bidding Procedures Order, the Agency and Sale Agreement was deemed a Qualified Bid and the Stalking Horse Bidder was eligible to participate in the Auction.

J. **Business Judgment:** The Debtors' decisions to (i) enter into the Agency and Sale Agreement, and (ii) perform under and make payments required by the Agency and Agency Agreement, constitute reasonable exercises of the Debtors' sound business judgment consistent with their fiduciary duties and are in the best interests of the Debtors, their estates, their creditors, and all other parties in interest. Good and sufficient reasons for the approval of the Agency and Sale Agreement and the Transactions have been articulated by the Debtors. The Debtors have demonstrated compelling circumstances for the Transactions outside: (a) the ordinary course of business, pursuant to Section 363(b) of the Bankruptcy Code and (b) a plan of reorganization, in that, among other things, the immediate consummation of the Transactions is necessary and appropriate to preserve and maximize the value of the Debtors' estates. To maximize the value of the Assets, it is essential that the Transactions occur promptly.

K. **Personally Identifiable Information:** The Transactions do not include the sale or lease of personally identifiable information, as defined in Section 101(41A) of the Bankruptcy Code ("**Personally Identifiable Information**") (or assets containing personally identifiable information).

L. **Time of the Essence:** Time is of the essence in effectuating the Agency and Sale Agreement and the Transactions and proceeding with the sale contemplated therein without interruption. Based on the record of the Sale Hearing, and for the reasons stated on the record at the Sale Hearing, the Transactions under the Agency and Sale Agreement must be commenced as soon as possible following entry of this Order, and in no event later than October 23, 2017, to maximize the value that the Stalking Horse Bidder may realize from the sale, and the value that the Debtors may realize from entering into the Agency and Sale Agreement. Accordingly, cause exists to lift the stay to the extent necessary, as contemplated by Bankruptcy Rules 4001(a) and 6004(h) and permit the immediate effectiveness of this Order.

M. **Sale Free and Clear:** A sale of the Assets, other than one free and clear of Liens, defenses (including, without limitation, rights of setoff and recoupment) and interests, including, without limitation, security interests of whatever kind or nature, mortgages, conditional sales or title retention agreements, pledges, deeds of trust, hypothecations, liens, encumbrances, assignments, preferences, debts, easements, charges, suits, licenses, options, rights-of-recovery, judgments, orders and decrees of any court or foreign or domestic governmental entity, taxes (including foreign, state and local taxes), licenses, covenants, restrictions, indentures, instruments, leases, options, off-sets, claims for reimbursement, contribution, indemnity or exoneration, successor, product, environmental, tax, labor, COBRA, ERISA, CERCLA, alter ego and other liabilities, causes of action, contract rights and claims, to

the fullest extent of the law, in each case, of any kind or nature (including, without limitation, all "claims" as defined in Section 101(5) of the Bankruptcy Code), known or unknown, whether pre-petition or post-petition, secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, perfected or unperfected, liquidated or unliquidated, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, statutory or non-statutory, matured or unmatured, legal or equitable (collectively, "**Encumbrances**") and without the protections of this Order would hinder the Debtors' ability to obtain the consideration provided for in the Agency and Sale Agreement and, thus, would impact materially and adversely the value that the Debtors' estates would be able to obtain for Transactions set forth in the Agency and Sale Agreement. But for the protections afforded to the Stalking Horse Bidder under the Bankruptcy Code and this Order, the Stalking Horse Bidder would not have offered to pay the consideration contemplated in the Agency and Sale Agreement. The Prepetition Agent, on behalf of the Prepetition Lenders, and the Postpetition Agent, on behalf of the Postpetition Lenders, each of which hold valid, perfected security interest and liens against the Assets, subject to an investigation period set forth in the *Second Interim Order (I) Authorizing the Debtors to Obtain Post-Petition Secured Financing Pursuant to 11 U.S.C. § 364, (II) Authorizing the Debtors' Limited Use of Cash Collateral Pursuant to 11 U.S.C. § 363, (III) Granting Adequate Protection to Prepetition Senior Lenders and Certain Other Prepetition Secured Creditors Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364, and (IV) Scheduling Final Hearing Pursuant to Bankruptcy Rule 4001* [Docket No. 131] enter by this Court on September 27, 2017 (the "**Second Interim Financing Order**"), have consented to the sale of the Assets and the other Transactions free and clear of their respect security interests and liens; *provided that* such consent is subject to, and conditioned upon, the proceeds of the sale of the Assets and other

Transactions set forth in the Agency and Sale Agreement being immediately remitted in full to the Prepetition Agent to pay down the outstanding secured indebtedness in accordance with the Second Interim Financing Order and Prepetition Credit Agreement and related documents (collectively, the "**Prepetition Loan Documents**") subject to Paragraph 36 of this Order. Any other entity with an Encumbrance upon the Assets, (i) has consented to the Sale or is deemed to have consented to the Sale, (ii) could be compelled in a legal or equitable proceeding to accept money satisfaction of such interest, or (iii) otherwise falls within the provisions of Section 363(f) of the Bankruptcy Code, and therefore, in each case, one or more of the standards set forth in Section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Encumbrances who did not object to the Motion, who withdrew their objections to the Motion, or whose objections to the Motion were overruled, are deemed to have consented pursuant to Section 363(f)(2) of the Bankruptcy Code. Therefore, approval of the Agency and Sale Agreement and the consummation of the Transactions free and clear of Encumbrances are appropriate pursuant to Section 363(f) of the Bankruptcy Code and are in the best interests of the Debtors' estates, their creditors and other parties in interest.

N. **Arms-length Sale:** The consideration to be paid by the Agent under the Agency and Sale Agreement was negotiated at arm's-length and constitutes reasonably equivalent value and fair and adequate consideration for the Assets and other Transactions under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and the laws of the United States, any state, territory, possession thereof or the District of Columbia. The terms and conditions set forth in the Agency and Sale Agreement are fair and reasonable under these circumstances and were not entered into for the purpose of, nor

do they have the effect of, hindering, delaying or defrauding the Debtors or their creditors under any applicable laws.

O. **Good Faith:** The Debtors, their management and their board of directors, the Stalking Horse Bidder, and each of the entities comprising the Stalking Horse Bidder, and their respective members, officers, directors, employees, agents and representatives, actively participated in the bidding process and acted in good faith. The Agency and Sale Agreement between the Stalking Horse Bidder and the Debtors was negotiated and entered into based upon arm's length bargaining, without collusion or fraud, and in good faith as that term is used in Sections 363(m) and 364(e) of the Bankruptcy Code. The Stalking Horse Bidder is a good faith purchaser under Section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protection afforded thereby. The Stalking Horse Bidder shall be protected by Sections 363(m) and 364(e) of the Bankruptcy Code in the event that this Order is reversed, modified, amended or vacated on appeal or by a subsequent order of this Court and no such appeal, modification, amendment or vacatur shall affect the validity and enforceability of the sale or the liens or priority authorized or created under this Order or the Agency and Sale Agreement. The Debtors were free to deal with any other party interested in buying or selling on behalf of the Debtors' estates some or all of the Assets. Neither the Debtors, nor the Stalking Horse Bidder have engaged in any conduct that would cause or permit the Sale, the Agency and Sale Agreement, or any related action or the transactions contemplated thereby to be avoided under Section 363(n) of the Bankruptcy Code, or that would prevent the application of Sections 363(m) or 364(e) of the Bankruptcy Code. The Stalking Horse Bidder has not violated Section 363(n) of the Bankruptcy Code by any action or inaction. Specifically, the Stalking Horse Bidder has not acted in a collusive manner with any person and was not controlled by any agreement among bidders or

any lender to the Debtors or other party-in-interest in these chapter 11 cases. The Stalking Horse Bidder's prospective performance and payment of amounts owing under the Agency and Sale Agreement are in good faith and for valid business purposes and uses.

P. **Insider Status:** The Stalking Horse Bidder is not an "insider" of the Debtors as that term is defined in Section 101(31) of the Bankruptcy Code. No common identity of directors or controlling stockholders exists between the Stalking Horse Bidder and the Debtors.

Q. **Security Interests:** The liens provided for in the Agency and Sale Agreement and this Order to secure the obligations of the Debtors under the Agency and Sale Agreement to the Stalking Horse Bidder are necessary to induce the Stalking Horse Bidder to agree to terms for the Agency and Sale Agreement that maximize value for the Debtors' estates. The absence of such protections would impact materially and adversely the value available to the Debtors under the Agency and Sale Agreement. But for the protections afforded to the Stalking Horse Bidder under the Bankruptcy Code, this Order, and the Agency and Sale Agreement, the Stalking Horse Bidder would not have agreed to pay the Debtors the compensation provided for under the Agency and Sale Agreement. In addition, the Prepetition Agent, on behalf of the Prepetition Lenders, and the Postpetition Agent, on behalf of the Postpetition Lenders, which hold security interests in the property to which the Stalking Horse Bidder's security interests attach, have consented to the security interests provided for in the Agency and Sale Agreement, subject to the satisfaction of the conditions set forth in the Agency and Sale Agreement and subject to the provisions of this Order, including payment in full of all proceeds of the sale and other Transactions contemplated by the Agency and Sale Agreement to the Postpetition Agent

for application to the outstanding amounts due and owning under the Prepetition Loan Documents.

R. **Corporate Authority:** Subject to the entry of this Order, the Debtors (a) have full corporate or other power to execute, deliver and perform their obligations under the Agency and Sale Agreement and all other transactions contemplated thereby (including without limitation, reaching an agreement and resolution regarding the final reconciliation contemplated by the Agency and Sale Agreement), and entry into the Agency and Sale Agreement has been duly and validly authorized by all necessary corporate or similar action, (b) have all of the corporate or other power and authority necessary to consummate the Transactions and (c) have taken all actions necessary to authorize and approve the Agency and Sale Agreement and the Transactions. No consents or approvals, other than those expressly provided for herein or in the Agency and Sale Agreement, are required for the Debtors to consummate such transactions.

S. **No Successor Liability:** No sale, transfer or other disposition of the Assets pursuant to the Agency and Sale Agreement or entry into the Agency and Sale Agreement will subject the Stalking Horse Bidder to any liability for claims, obligations or Encumbrances asserted against the Debtors or the Debtors' interests in such Assets by reason of such transfer under any laws, including, without limitation, any bulk-transfer laws or any theory of successor or transferee liability, antitrust, environmental, product line, *de facto* merger or substantial continuity or similar theories. The Stalking Horse Bidder is not a successor to the Debtors or their respective estates.

IT IS HEREBY ORDERED THAT:

A. Motion Granted, Objections Overruled

1. The relief requested in the Motion is granted as set forth herein.

2. Any remaining objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections or on the record at the Sale Hearing are overruled in all respects and denied.

B. Agency and Sale Agreement Approved and Authorized

3. The Agency and Sale Agreement, which is incorporated herein by reference, is hereby approved in its entirety pursuant to Section 363 of the Bankruptcy Code. The Debtors are hereby authorized and empowered to enter into and perform under the Agency and Sale Agreement and each of the Transactions contemplated therein (including without limitation, reaching an agreement and resolution regarding the final reconciliation contemplated by the Agency and Sale Agreement, which agreement and resolution shall be binding on all parties (including without limitation the Debtors, the Committee, the Prepetition Lenders and the Postpetition Lenders, the creditors claiming consignment rights, any successor chapter 7 or chapter 11 trustee, and all other parties-in-interest) without further order of this Court). The failure to include specifically any particular provision of the Agency and Sale Agreement in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of this Court that the Agency and Sale Agreement and all of its provisions, payments and Transactions, be authorized and approved in their entirety. Likewise, all of the provisions of this Order are nonseverable and mutually dependent.

4. All amounts payable to the Stalking Horse Bidder under the Agency and Sale Agreement shall be payable to the Stalking Horse Bidder without the need for any application of the Stalking Horse Bidder therefor or any further order of this Court.

5. Subject to the provisions of this Order, the Debtors, and the Stalking Horse Bidder are hereby authorized, pursuant to Sections 105(a) and 363(b)(1) of the Bankruptcy Code, to conduct the Transactions in accordance with the Agency and Sale Agreement.

6. Pursuant to Section 363(b) of the Bankruptcy Code, the Debtors, the Stalking Horse Bidder and each of their respective officers, employees and agents are hereby authorized and directed to execute such documents and to do such acts as are necessary or desirable to carry out the Transactions and effectuate the Agency and Sale Agreement and each of the Transactions and related actions contemplated or set forth therein.

C. Order Binding

7. This Order shall be binding upon and shall govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Assets.

8. This Order and the terms and provisions of the Agency Agreement shall be binding on all of the Debtors' creditors (whether known or unknown), the Debtors, the Stalking Horse Bidder, and their respective affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting an interest in the Assets, notwithstanding any subsequent appointment of any trustee, party, entity or other fiduciary under any section of the Bankruptcy Code with respect to the forgoing parties, and as to such trustee, party, entity or other fiduciary, such terms and provisions likewise shall be binding. The

provisions of this Order and the terms and provisions of the Agency and Sale Agreement and any actions taken pursuant hereto or thereto shall survive the entry of any order which may be entered confirming or consummating any plan(s) of the Debtors or converting the Debtors' cases from chapter 11 to chapter 7, and the terms and provisions of the Agency and Sale Agreement, as well as the rights and interests granted pursuant to this Order and the Agency and Sale Agreement, shall continue in these or any superseding cases and shall be binding upon the Debtors, the Stalking Horse Bidder and their respective successors and permitted assigns, including any trustee or other fiduciary hereafter appointed as a legal representative of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code. Any trustee appointed in these cases shall be and hereby is authorized to operate the business of the Debtors to the fullest extent necessary to permit compliance with the terms of this Order and the Agency and Sale Agreement, and the Stalking Horse Bidder and the trustee shall be and hereby are authorized to perform under the Agency and Sale Agreement upon the appointment of the trustee without the need for further order of this Court.

D. Good Faith

9. Entry into the Agency and Sale Agreement is undertaken by the parties thereto in good faith, as that term is used in Sections 363(m) and 364(e) of the Bankruptcy Code, and the Stalking Horse Bidder shall be protected by Sections 363(m) and 364(e) of the Bankruptcy Code in the event that this Order is reversed or modified on appeal. The reversal or modification on appeal of the authorization provided herein to enter into the Agency and Sale Agreement and consummate the Transactions shall not affect the validity of such Transactions, unless such authorization is duly stayed pending such appeal. The Stalking Horse Bidder is entitled to all of the benefits and protections afforded by Sections 363(m) and 364(e) of the

Bankruptcy Code. The Transactions are not subject to avoidance pursuant to Section 363(n) of the Bankruptcy Code.

E. Conduct of the Sale

10. Pursuant to Sections 105(a) and 363(f) of the Bankruptcy Code, the Stalking Horse Bidder is authorized to: (i) sell all Non-AR Assets and directly collect the proceeds of such sale and (ii) purchase the AR Assets, and each such Transaction shall be free and clear of any and all Encumbrances, including, without limitation, all Liens, whether arising by agreement, any statute or otherwise and whether arising before, on or after the date on which these chapter 11 cases were commenced.

11. The Stalking Horse Bidder is authorized to sell the Assets, and to collect the proceeds of the Assets, free and clear of all third party sale restrictions, including, without limitation, those restrictions arising from patents, registered and unregistered trademarks and service marks, brand names, trade names, copyrights, designs, artwork (including for label designs and advertisements), distribution agreements, agreements limiting Debtors' ability to sell and/or distribute products to specific entities, and/or sale exclusivity agreements.

12. For the sake of clarity, however, nothing in Paragraphs 10 and 11 is intended to diminish the liens in favor of the Stalking Horse Bidder as reflected in the Agency and Sale Agreement and this Order, that attach to, among other things, the proceeds of the sale of the Non-AR Assets.

13. If any person or entity that has filed financing statements, mortgages, construction or mechanic's liens, lis pendens or other documents or agreement evidencing liens on or interests in the Assets shall not have delivered to the Debtors, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or

releases of any Encumbrances which the person or entity has with respect to the Assets, each such person or entity is hereby directed to deliver all such statements, instruments and releases and the Debtors and the Stalking Horse Bidder are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity asserting the same and the Stalking Horse Bidder is authorized to file a copy of this Order which, upon filing, shall be conclusive evidence of the release and termination of such interest. Each and every federal, state and local governmental unit is hereby directed to accept any and all documents and instruments necessary or appropriate to give effect to the Sale and related Transactions.

14. All entities that are presently in possession of some or all of the Assets or other property in which the Debtors hold an interest that are or may be subject to the Agency and Sale Agreement hereby are directed to surrender possession of such Assets or other property to the Stalking Horse Bidder. Additionally, each of the Debtors' creditors is authorized to execute such documents and take all other actions as may be necessary to release their interest in the assets, if any, as such interest may have been recorded or may otherwise exist.

15. In exchange for the Postpetition Agent's and Prepetition Agent's consent to the entry of this Order, any and all proceeds relating to the Agency and Sale Agreement and related Transactions shall be remitted to the Prepetition Agent to pay the outstanding obligations under the Prepetition Loan Documents, subject to the reservation of rights contained in paragraph 33 of this Order. With respect to any other persons or entities asserting an Encumbrance against the Assets, this Order (a) shall be effective as a determination that, upon the entry of this Order, all interests of any kind or nature whatsoever existing as to the Assets prior to the entry of this Order have been unconditionally released, discharged and terminated as

against the Assets, and that the conveyances described herein have been effected and (b) shall be binding upon and shall govern the acts of all entities including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets.

16. Except as expressly permitted or otherwise specifically provided by the Agency and Sale Agreement or this Order, all persons and entities, including, but not limited to, all lenders, debt security holders, equity security holders, governmental, tax, and regulatory authorities with prior notice, parties to executory contracts, customers, lenders, trade and other creditors, holding interests of any kind or nature whatsoever against or in the Debtors or Assets conveyed as of the date hereof (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated) arising under or out of, in connection with, or in any way relating to, the Debtors, the Assets, the operation of the Debtors' business prior to the entry of this Order, or the transfer of the Assets to the Stalking Horse Bidder, hereby are forever barred, estopped, and permanently enjoined from asserting against the Stalking Horse Bidder, its successors, designees or assigns, its property, or the Assets conveyed in accordance with the Agency and Sale Agreement, such persons' or entities' interests.

17. Unless otherwise ordered by this Court, all newspapers and other advertising media in which any portion of the sale may be advertised are directed to accept this Order as binding authority so as to authorize the Debtors and the Stalking Horse Bidder to

consummate the Agency and Sale Agreement and to consummate the Transactions, including, without limitation, to conduct and advertise the sale in the manner contemplated by the Agency and Sale Agreement, including, without limitation, conducting and advertising of the sale in accordance with the Agency and Sale Agreement and this Order.

18. Except as expressly provided in the Agency and Sale Agreement, the sale shall be conducted by the Debtors and the Stalking Horse Bidder notwithstanding any restrictive provision of any lease, sublease or other agreement relative to occupancy affecting or purporting to restrict the conduct of the sale, the rejection of leases, abandonment of assets or "going dark" provisions.

19. During the Sale Term and pursuant to the terms and conditions of the Agency and Sale Agreement, including payment of certain expenses, the Stalking Horse Bidder shall have the right to use the Debtors' Facilities and all related services, furniture, fixtures, equipment, security equipment and other assets of Sellers related to the Facilities as designated under the Agency and Sale Agreement for the purpose of conducting the sale of the Non-AR Assets and for the collection by Agent of all AR Assets, free of any interference from the Debtors and any other person or entity, and the Stalking Horse Bidder shall be entitled to relinquish to the Debtors, without any liability to the Debtors or others related thereto, at the Facilities or any other location, any such Assets it determines, in its sole discretion, not to sell. The Stalking Horse Bidder shall not have any liability to any person or entity in connection with the abandonment of any property in accordance with the terms and conditions of the Agency and Sale Agreement.

20. During the Sale Term, the Stalking Horse Bidder is authorized to use the Debtors' IT systems, warehouse management systems, and necessary software in use by the

Debtors to prepare and ship the Inventory, sell the Non-AR Assets, and to collect the AR Assets in accordance with the terms and conditions of the Agency and Sale Agreement.

21. During the Sale Term, the Stalking Horse Bidder shall be granted a limited license and right to use the Debtors' trade names, logos and customer, mailing and e-mail lists, catalogs, e-commerce sites (including, without limitation, websites and social media sites such as Facebook and Twitter) relating to and used in connection with the sale in accordance with the terms of the Agency and Sale Agreement.

22. The Debtors shall transfer to the Stalking Horse Bidder all bank accounts associated with the collection of proceeds from AR Assets, including, without limitation, all bank accounts that receive checks, ACH payments, and electronic payments related to the AR Assets and those listed on Exhibit J to the Agency and Sale Agreement, or, alternatively, enter into such agreements, acceptable to the Stalking Horse Bidder in its sole discretion, with respect to such accounts that provide the Stalking Horse Bidder with a right to the monies deposited into such accounts.[3]

23. No person or entity, including but not limited to any utility company landlord, licensor, creditor, or other interested party or any person acting for or on behalf of the foregoing shall take any action to directly or indirectly prevent, interfere with, impede or otherwise hinder consummation of the sale, or the advertising and promotion of such sale, and all such parties and persons of every nature and description, including landlords, licensors, creditors, utility companies and other interest parties and all those acting for or on behalf of such parties, are prohibited and enjoined from (a) interfering in any way with, or otherwise impeding, the conduct of the sale and/or (b) instituting any action or proceeding in any court or administrative

[3] Based on discussions between Wells Fargo and Hilco, these accounts cannot be transferred immediately. We will have to do a side letter/DACA to give Hilco control of the accounts initially.

body seeking an order or judgment against, among others, the Debtors, the Stalking Horse Bidder, or the landlords at the Debtors' Facilities that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the sale or other liquidation sales and/or seek to recover damages for breach(es) of covenants or provisions in any lease, sublease or license based upon any relief authorized herein.

24. Nothing in the Agency and Sale Agreement or this Order shall (a) alter or affect the Debtors' obligations to comply with Section 365(d)(3) of the Bankruptcy Code or (b) alter or modify the rights of any lessor or other counterparty to a lease with the Debtors to file an appropriate motion or otherwise seek appropriate relief if the Debtor fails to comply with Section 365(d)(3) of the Bankruptcy Code; *provided* that the conduct of the sale in accordance with the Agency and Sale Agreement shall not be a violation of Section 365(d)(3) of the Bankruptcy Code.

25. Except as expressly provided for in the Agency and Sale Agreement, nothing in this Order or the Agency and Sale Agreement, and none of the Stalking Horse Bidder's actions taken in respect of the sale shall be deemed to constitute an assumption by the Stalking Horse Bidder of any of the Debtors' obligations relating to any of the Debtors' employees. Moreover, the Stalking Horse Bidder shall not become liable under any collective bargaining or employment agreement or be deemed a joint or successor employer with respect to such employees.

26. The Stalking Horse Bidder shall not be liable for sales taxes except as expressly provided in the Agency and Sale Agreement and the payment of any and all sales taxes is the responsibility of the Debtors.

27. Subject to the terms set forth in the Agency and Sale Agreement, the

Debtors and/or the Stalking Horse Bidder (as the case may be pursuant to the Agency and Sale Agreement) are authorized and empowered to transfer the Assets among the Facilities.

F. Liens and Superpriority Claims Granted To Agent

28. Upon the payment of the Guaranteed Amount, the Stalking Horse Bidder shall have, subject to Stalking Horse Bidder's obligations to pay the shared proceeds pursuant to the terms of the Agency and Sale Agreement, a valid duly perfected first priority priming lien and security interest in the Non-AR Assets and any proceeds to which the Stalking Horse Bidder is entitled in accordance with the terms of the Agency and Sale Agreement (collectively, the "**SHB's Liened Assets**") without the need for any filing under the UCC or otherwise, which lien shall be granted the status of superpriority claims in the Debtors' chapter 11 cases pursuant to Section 364(c) of the Bankruptcy Code senior to all other superpriority claims (provided that the Stalking Horse Bidder's superpriority claim shall only be recovered from the SHB's Liened Assets), and which Lien shall be free of any potential rights of the Debtors or any Chapter 7 or Chapter 11 trustee to surcharge against the Assets and the proceeds pursuant to Section 506(c) of the Bankruptcy Code.

29. The Stalking Horse Bidder's lien against the SHB's Liened Assets shall not be junior or subordinate to or pari passu with the Liens or claims of any other person against the SHB's Liened Assets, whether under Section 364(d) of the Bankruptcy Code or otherwise, including without limitation any Lien that is avoided or preserved for the benefit of the Debtors' estates under Section 551 of the Bankruptcy Code.

30. The Stalking Horse Bidder's lien against the SHB's Liened Assets, which shall be senior to all other persons, cannot be primed without the prior written consent of the Stalking Horse Bidder, which may be granted or withheld in the sole discretion of the Stalking

Horse Bidder. No Lien or claim having a priority superior to or pari passu with those granted to the Stalking Horse Bidder against the SHB's Liened Assets shall be granted or allowed while any obligations to the Stalking Horse Bidder remain outstanding.

G. Resolution of Objections

31. The inventory of AVG Technologies USA, Inc. set forth on Schedule 1 to Exhibit A of the Agency and Sale Agreement is hereby deemed Excluded Assets and the Guaranteed Amount or any future proceeds to be paid to the Debtors shall be reduced by the Stalking Horse Bidder with respect to such Excluded Assets pursuant to the procedures set forth in Exhibit G of the Agency and Sale Agreement.

32. The inventory of Corel, Inc. set forth on Schedule 1 to Exhibit A of the Agency and Sale Agreement is hereby deemed Excluded Assets and the Guaranteed Amount or any future proceeds to be paid to the Debtors shall be reduced by the Stalking Horse Bidder with respect to such Excluded Assets pursuant to the procedures set forth in Exhibit G of the Agency and Sale Agreement.

33. The respective rights, claims, interests, and remedies as to the nature, extent, dignity, validity, and priority of the Accounts Receivable Objecting Parties[4] respective rights and interests in or to, or ownership of, the AR Assets, as existed at the time immediately prior to the sale are hereby reserved, in the amount as set forth below. Nothing herein expands or allows a claim in an amount greater than the amount below with respect to the AR Assets.

Accounts Receivable Objecting Party	**Amount**
Corel, Inc.	$322, 965

[4] The Accounts Receivable Objecting Parties are: Corel, Inc.; Quicken Inc.; Nuance Communications, Inc.; McAffe LLC; Symantec Corporation; Sage Software Inc.; Sage Software Canada, Ltd.; Webroot Software Inc.; AVG Technology USA; FixMeStick Technologies Inc.; Vidbox, Inc.; and Kaijet Technology International Limited, Inc.

Quicken, Inc.	$282,341
Nuance Communications, Inc.	$235,981
McAfee, LLC	$156,339
Symantec Corporation	$120,829
Sage Software, Inc. and Sage Software Canada, Ltd.	$109,225
Webroot Software, Inc.	$86,733
AVG Technologies USA	$65,075
FixMeStick Technologies, Inc.	$32,839
Vidbox, Inc.	$21,245
Kaijet Technologies International Limited, Inc.	$7,471

No escrow of any sale proceeds shall be required for the foregoing amounts. The lack of escrow shall be without prejudice to the Accounts Receivable Objecting Parties' rights, in connection therewith. Nothing in this paragraph shall affect the Stalking Horse Bidder's purchase of the above referenced AR Assets free and clear of all Encumbrances. Nothing in this paragraph shall require the Stalking Horse Bidder to participate in any litigation between the Accounts Receivable Objecting Parties, the Prepetition Agent, and the Debtors in any way whatsoever and the fact that the Stalking Horse Bidder is not named or is not a party will not limit or prejudice the rights of the Accounts Receivable Objecting Parties, the Prepetition Agent, and the Debtors.

34. To adequately protect the interests of Winthrop Resources Corporation and Sterling National Bank (the "**Equipment Lessors**"), and pursuant to Sections 363(e) and

365(d)(5) of the Bankruptcy Code, the Debtors' continued use of the equipment (the "**Equipment**") subject to that certain lease between Equipment Lessors and Debtors, dated April 10, 2013, and its related schedules (the "**Lease**") shall be conditioned on the following relief, which relief shall remain in effect without further order from the Court until such time as the Lease is assumed or rejected:

a. The Debtors must pay all post-petition amounts as they come due under the Lease pursuant to Section 3 of the Lease;

b. The Debtors must reimburse the Equipment Lessors for all post-petition taxes, fees, and charges set forth in Section 4 of the Lease as and when such amounts come due;

c. The Debtors must maintain the Equipment in good working order and condition, and pay all costs associated with such maintenance, as required under Section 8 of the Lease;

d. The Debtors must maintain and pay all costs associated with insuring the Equipment, as required under Section 13 of the Lease;

e. The Debtors shall advise the Equipment Lessors, through their counsel, of any Sale Termination Notice (as that term is defined in the Agency and Sale Agreement) from the Stalking Horse Bidder within one business day after the Debtors' receipt of the Sale Termination Notice;

f. At the end of the Sale Term (as defined in the Agency and Sale Agreement), the Debtors and the Equipment Lessors shall split the cost of returning the Equipment to the Equipment Lessors as required under Section 7 of the Lease, including, but not limited to, all de-installation, packing, shipping, labor, and other costs, provided, however, that the cost to the Debtors in returning the Equipment shall not exceed $40,000.00;

g. If for any reason the Equipment, or any portion thereof, is inadvertently sold or not returned to the Lessors, or is damaged, lost, stolen, destroyed or otherwise rendered irreparably unusable or damaged at any time prior to the date when the Equipment is delivered back to the Lessors, the Lessors will be entitled to an administrative expense claim in the amount of the "Casualty Loss Value" of such Equipment, as that term is defined in Section 12 of the Lease;

h. All amounts payable by the Debtors to the Lessors pursuant to this Order must be paid on the dates specified in the Lease and the Equipment Lessors may demand payment for any amounts due without further order of the Court;

i. To further adequately protect the Equipment Lessors' interest in the

Equipment, the Debtors will stipulate to relief from the automatic stay imposed under Section 362(d) of the Bankruptcy Code upon rejection of the Lease; and

j. The Court finds that because the Debtors' use of the Equipment conferred an actual and necessary benefit to the Debtors' estates, the Equipment Lessors shall be entitled to a priority administrative expense claim under Section 503(b)(1)(A) of the Bankruptcy Code for all post-petition obligations under this Order.

35. The Debtor shall remit to the objecting Tax Authorities,[5] within 5 business days of the Closing Date, no more than $5,200.00.

36. Notwithstanding anything herein to the contrary, the Debtors shall escrow $2,750,00.00 of the sale proceeds with Debtors' counsel (the "**503(b)(9) Claim Escrow**"), which proceeds shall be used to pay claims asserted under Section 503(b)(9) of the Bankruptcy Code on allowance of such claims. The Prepetition Agent's and the Postpetition Agent's liens shall attach to the 503(b)(9) Claim Escrow and to the extent any funds remain in the 503(b)(9) Claim Escrow after payment of all claims allowed under Section 503(b)(9), such funds shall be remitted to the Prepetition Agent or Postpetition Agent in accordance with the Second Interim Financing Order. The Prepetition Agent and the Postpetition Agent shall be afforded all protections under the Second Interim Financing Order as if the $2,750,000.00 had been lent post-petition under the Second Interim Financing Order, including, but not limited to, all relief and protections afforded under Bankruptcy Code Sections 364(c), 364(d) and 507(b).

H. Other Provisions

37. Notwithstanding anything to the contrary contained herein, any prepetition or presently existing liens encumbering all or any portion of the AR Assets or proceeds of Non-AR Assets being sold pursuant to this Order shall attach to the proceeds received by the Debtors on

[5] The Objecting Taxing Authorities are El Paso, Frisco, Grayson County, Cameron County, Harlingen and Harlingen CISD.

account of such AR Assets or proceeds of Non-AR Assets (including, without limitation, the Guaranteed Amount or any other proceeds or amounts paid pursuant to the terms of the Agency and Sale Agreement) with the same extent, validity and priority as such liens existed as of the Petition Date and provided that subject to Paragraph 36 of this Order, the proceeds of the sale of such Assets or any other proceeds or amounts paid pursuant to the terms of the Agency and Sale Agreement shall be remitted, on and after the Closing Date, to the Prepetition Agent to pay down the outstanding secured indebtedness due and owing under the Prepetition Loan Documents until such amounts are indefeasibly paid in full, in cash.

38. The Stalking Horse Bidder shall not be liable for any claims against the Debtors, and the Debtors shall not be liable for any claims against the Stalking Horse Bidder, in each case, other than as expressly provided for in the Agency and Sale Agreement. The Stalking Horse Bidder shall have no successor liability whatsoever with respect to any Encumbrances or claims of any nature that may exist against the Debtors, including, without limitation, the Stalking Horse Bidder shall not be, or shall not be deemed to be: (i) a successor in interest or within the meaning of any law, including any revenue, successor liability, pension, labor, COBRA, ERISA, bulk-transfer, products liability, tax or environmental law, rule or regulation, or any theory of successor or transferee liability, antitrust, environmental, product line, de facto merger or substantial continuity or similar theories; or (ii) a joint employer, co-employer or successor employer with the Debtors, and the Stalking Horse Bidder shall have no obligation to pay the Debtors' wages, bonuses, severance pay, vacation pay, WARN act claims (if any), COBRA claims, benefits or any other payments to employees of the Debtors, including pursuant to any collective bargaining agreement, employee pension plan, or otherwise, except as expressly set forth in the Agency and Sale Agreement.

39. The Stalking Horse Bidder is a party-in-interest and shall have the ability to appear and be heard on all issues related to or otherwise connected to this Order, the various procedures contemplated herein, any issues related to or otherwise connected to the sale, and the Agency and Sale Agreement.

40. Nothing contained in any plan confirmed in the Debtors' chapter 11 cases or any order of this Court confirming such plan or in any other order in these chapter 11 cases (including any order entered after any conversion of one of these cases to a case under chapter 7 of the Bankruptcy Code) shall alter, conflict with, or derogate from, the provisions of the Agency and Sale Agreement or the terms of this Order.

41. The Agency and Sale Agreement and related documents may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of this Court.

42. This Court shall retain exclusive jurisdiction with regard to all issues or disputes relating to this Order or the Agency and Sale Agreement, including, but not limited to, (a) any claim of the Debtors, the landlords and/or the Stalking Horse Bidder for protection from interference with the sale, (b) any other disputes related to the sale and (c) to protect the Debtors and/or the Stalking Horse Bidder against any assertions of Encumbrances. No such parties or person shall take any action against the Debtors, the Stalking Horse Bidder, the landlords or the sale until this Court has resolved such dispute. This Court shall hear the request of such parties or persons with respect to any such disputes on an expedited basis, as may be appropriate under the circumstances.

43. Notwithstanding Bankruptcy Rules 4001 and 6004, or any other law that would serve to stay or limit the immediate effect of this Order, this Order shall be effective and

enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any person or entity obtaining a stay pending appeal, the Debtors and the Stalking Horse Bidder are free to perform under the Agency and Sale Agreement at any time, subject to the terms thereof.

44. To the extent that anything contained in this Order explicitly conflicts with a provision in the Agency and Sale Agreement or any prior order or pleading with respect to the Motion in these chapter 11 cases, this Order shall govern and control.

45. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding any provision in the Bankruptcy Rules to the contrary, this Court expressly finds there is no reason for delay in the implementation of this Order and, accordingly: (a) the terms of this Order shall be immediately effective and enforceable upon its entry; (b) the Debtors are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order; and (c) the Debtors may, in their discretion and without further delay, take any action and perform any act authorized under this Order.

Dated: *October 23, 2017*

/e/ Kathleen H. Sanberg

Chief United States Bankruptcy Judge

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

Court File No: CV17-582329-00CL

AND IN THE MATTER OF WYNIT DISTRIBUTION, LLC, WD NAVARRE DISTRIBUTION, LLC, WD ENCORE SOFTWARE, LLC, WD NAVARRE HOLDINGS, LLC, WD HOLDINGS, LLC, WD NAVARRE DIGITAL SERVICES, LLC, WYNIT HOLDINGS, INC. WD NAVARRE CANADA, ULC. (the "Debtors")

APPLICATION OF WYNIT DISTRIBUTION, LLC UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced TORONTO

ORDER
(Bid Procedures, Sale Order)

GOLDMAN SLOAN NASH & HABER LLP
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Lawyers for the Debtors and the Foreign Representative

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

AND IN THE MATTER OF WYNIT DISTRIBUTION, LLC, WD NAVARRE DISTRIBUTION, LLC, WD ENCORE SOFTWARE, LLC, WD NAVARRE HOLDINGS, LLC, WD HOLDINGS, LLC, WD NAVARRE DIGITAL SERVICES, LLC, WYNIT HOLDINGS, INC. AND WD NAVARRE CANADA, ULC. (the "Debtors")

APPLICATION OF WYNIT DISTRIBUTION, LLC UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*

Court File No: CV17-582329-0CL

Oct 20/17

J. Stam for Applicant ad Debtors October 23, 2017
J. Latha + J. Wadden for Wells Fargo N A
DIP + Prepetition Lender
G. Benchetrit for KSV Kofman.

On October 12, 2017, Her Honor Judge Kathleen Simbeg granted a Bid Procedure Order. An auction was held on Oct. 17, 2017 ad the sale hearing was held on Oct 20, 2017 ad the US Sale Order was finalized today.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced TORONTO

NOTICE OF MOTION
(Bid Procedures/ Sale Order)
(Returnable October 20, 2017)

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto ON M5G 1V2
Fax: 416-597-3370

Mario Forte (LSUC #: 27293F)
Tel: 416-597-6477
Email: forte@gsnh.com

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Tel: 416-597-9922
Email: stam@gsnh.com

Lawyers for the Debtors and the Foreign Representativ

This is a motion to recognize the Bid Procedure Order and the Sale Order.
Counsel to the Information Officer is of the view that this recognition motion does not raise any public policy issues that this court should be concerned about and that the auction and sale hearing were ~~conducted~~ conducted in accordance with the provisions of the Bid Procedure Order.

There was no opposition in this court to the requested relief.

I am satisfied, ~~that~~ having reviewed the record and hearing submissions that, in accordance with the provisions of Part IV of the CCAA, it is appropriate to recognize the U S Orders,

and to give full force and effect to these orders.

[signature] R.S.V.

Tab 4

Court File No.: CV-10-8944-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE JUSTICE MORAWETZ	)))	MONDAY, THE 28th DAY OF MARCH, 2011

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

APPLICATION OF TERRESTAR NETWORKS INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

RECOGNITION ORDER
(March 28, 2011)

THIS MOTION, made by TerreStar Networks Inc. ("TSNI") in its capacity as the foreign representative (the "Foreign Representative") of each of TSNI, TerreStar National Services Inc., TerreStar License Inc., 0887729 B.C. Ltd. ("088 B.C."), TerreStar Networks Holdings (Canada) Inc. ("Holdings Canada") and TerreStar Networks (Canada) Inc. ("TerreStar Canada") (collectively, the "Debtors") pursuant to section 49(1) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("CCAA"), for an Order, substantially in the form attached to the Foreign Representative's notice of motion dated March 21, 2011 (the "Notice of Motion"), recognizing certain orders granted by the United States Bankruptcy Court for the Southern District of New York (the "U.S. Bankruptcy Court") in the chapter 11 cases commenced by the Debtors, lead case number 10-15446 (SHL), was heard this day at Toronto, Ontario.

ON READING the Notice of Motion, the Affidavit of Douglas Brandon and Jarvis Hetu sworn on March 21, 2011 and March 25, 2011, respectively, the Fifth Report of Deloitte and Touche Inc., in its capacity as Court-appointed Information Officer (the "Information Officer") dated March 18, 2011 (the "Fifth Report") and on hearing submissions of counsel for the Foreign Representative, counsel for the Information Officer, counsel for

EchoStar Corporation, as lender under, *inter alia*, the senior secured superpriority debtor in possession credit agreement dated October 18, 2010 (as amended), with TSNI, as borrower, and the other Debtors as guarantors, and that certain senior secured paid in kind notes due 2014 issued by TSNI on February 14, 2007 and February 7, 2008, those other parties present, and no one appearing for any other person on the service list, although served as appears from the Affidavit of Service of Lynn Mattes sworn March 22, 2011, filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and that further service of the Notice of Motion and the Motion Record upon any interested person not served is dispensed with.

RECOGNITION OF ORDERS OF THE U.S. BANKRUPTCY COURT

2. **THIS COURT ORDERS AND DECLARES** that, without in any way limiting or impairing the Initial Recognition Order and the Supplemental Order of this Court, each dated October 21, 2010, save and except as may be provided pursuant to, and in order to give effect to, the terms of the U.S. Bankruptcy Orders (as defined herein), the following orders of the U.S. Bankruptcy Court dated March 23, 2011:

(a) Order Authorizing TerreStar Networks (Canada) Inc.'s Entry Into a Purchase Agreement with Data Sales Co.;

(b) Order Granting the Debtors' Motion to Reject Certain Agreements with Elektrobit, Inc. Pursuant to Bankruptcy Code Section 365(a); and

(c) Order Authorizing the Debtors Pursuant to Section 365 of the Bankruptcy Code to Reject the Executory Contracts Pursuant to Debtors' Omnibus Motion *Nunc Pro Tunc* to February 9, 2011;

(collectively, the "U.S. Bankruptcy Orders") each as attached as Schedules "A to C" hereto, are hereby recognized and given full force and effect in all provinces and

territories of Canada pursuant to Section 49(1) of the CCAA, and shall be implemented and become effective in all provinces and territories of Canada upon the issuance of this Order in accordance with their terms.

INFORMATION OFFICER'S REPORT

3. **THIS COURT ORDERS** that the Fifth Report and the activities of the Information Officer as described therein be and are hereby approved.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAR 2 8 2011

NB

SCHEDULE "A"

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
TERRESTAR NETWORKS INC., *et al.*,[1]	)	Case No. 10-15446 (SHL)
Debtors.	)	Jointly Administered

ORDER AUTHORIZING TERRESTAR NETWORKS (CANADA) INC.'S ENTRY INTO A PURCHASE AGREEMENT WITH DATA SALES CO. INC.

Upon the motion (the "***Motion***")[2] of the above-captioned debtors (collectively, the "***Debtors***") for entry of an order authorizing TSN Canada's entry into a purchase agreement (the "***Purchase Agreement***") with Data Sales Co. ("***Data Sales***") pursuant to section 363(b) of title 11 of the United States Code and Rule 6004 of the Federal Rules of Bankruptcy Procedure; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors and other parties in interest; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion appearing to be adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefor, IT IS HEREBY ORDERED that:

1. The Motion is granted to the extent set forth herein.

---

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer identification number, are: TerreStar Networks Inc. (3931); TerreStar License Inc. (6537); TerreStar National Services Inc. (6319); TerreStar Networks Holdings (Canada) Inc. (1337); TerreStar Networks (Canada) Inc. (8766) and 0887729 B.C. Ltd. (1345).

[2] Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

2. Pursuant to Bankruptcy Code section 363(b), TSN Canada is authorized to enter into and perform all obligations under the Purchase Agreement with Data Sales.

3. TSN Canada's entry into the Purchase Agreement is an exercise of its sound business judgment and is in the best interest of its estate and creditors.

4. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

5. Nothing in this order shall constitute or be construed as approval of assumption or rejection of the Lease.

6. This Court shall retain jurisdiction with respect to all matters arising from or relating to the implementation of this Order.

7. Notwithstanding the possible applicability of Rule 6004(h) of the Federal Rules of Bankruptcy Procedure, the terms and conditions of this order shall be immediately effective and enforceable upon its entry.

New York, New York
Date: **March 23, 2011**

/s/ Sean H. Lane
Honorable Sean H. Lane
United States Bankruptcy Judge

SCHEDULE "B"

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
TERRESTAR NETWORKS INC, *et al.*,[1]	)	Case No. 10-15446 (SHL)
Debtors.	)	Jointly Administered
In re:	)	Chapter 11
TERRESTAR CORPORATION, *et al.*,[2]	)	Case No. 11-10612 (SHL)
Debtors.	)	Jointly Administered

ORDER GRANTING DEBTORS' MOTION TO REJECT CERTAIN AGREEMENTS WITH ELEKTROBIT, INC. PURSUANT TO BANKRUPTCY CODE SECTION 365(a)

Upon the motion (the "***Motion***")[3] of the Debtors for entry of an order authorizing the Debtors to reject the Agreements by and among the Debtors and Elektrobit; and it appearing that the relief requested in the Motion is in the best interests of the Debtors' estates, their stakeholders and all other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper

[1] The debtors in the *TerreStar Networks Inc., et al.* chapter 11 cases, along with the last four digits of each debtor's federal taxpayer-identification number, are: TerreStar Networks Inc. [3931] ("***TSN***"); TerreStar License Inc. [6537]; TerreStar National Services Inc. [6319]; TerreStar Networks Holdings (Canada) Inc. [1337]; TerreStar Networks (Canada) Inc. [8766]; and 0887729 B.C. Ltd. [1345] (collectively, the "***TSN Debtors***").

[2] The debtors in the *TerreStar Corporation, et al.* chapter 11 cases, along with the last four digits of each debtor's federal taxpayer-identification number, are: (a) TerreStar Corporation [6127] ("***TSC***") and TerreStar Holdings Inc. [0778] (collectively, the "***February Debtors***"); and (b) TerreStar New York Inc. [6394]; Motient Communications Inc. [3833]; Motient Holdings Inc. [6634]; Motient License Inc. [2431]; Motient Services Inc. [5106]; Motient Ventures Holding Inc. [6191]; and MVH Holdings Inc. [9756] (collectively, the "***Other TSC Debtors***" and, collectively with the February Debtors, the "***TSC Debtors***").

[3] All capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and upon the arguments presented at the hearing before the Court, and any objections to the Motion having been withdrawn or resolved; and after due deliberation and sufficient cause appearing therefore; it is **ORDERED** that:

1. The Motion is granted to the extent set forth herein.

2. The Debtors' rejection of the Agreements set forth on Exhibit 1 attached hereto (including, for the avoidance of doubt, all associated purchase orders), is hereby approved.[4]

3. The Debtors' rejection of the Agreements pursuant to Bankruptcy Code section 365(a) is an exercise of the Debtors' sound business judgment and is in the best interest of their estates and stakeholders.[5]

4. Elektrobit will have until the later of (a) the applicable Bar Date set in each of the Debtors' respective chapter 11 cases or (b) 30 days after service of this Order to file a proof of claim for any rejection damages resulting from the rejection of the Agreements.

5. Upon service of this Order on Elektrobit, the Agreements shall be deemed rejected as of the date of entry of this Order.

6. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

7. Nothing contained in the Motion or this Order shall be deemed or construed as directing or otherwise effecting a substantive consolidation of the Debtors' chapter 11 cases.

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[4] Although certain of the Debtors are not party to certain of the Agreements, to the extent that any of the Debtors are or could be construed as parties to the Agreements, such Agreements are hereby rejected.

[5] For the avoidance of doubt, nothing contained herein shall modify the executory or non-executory nature of any of the Agreements.

8. The relief granted herein shall be binding upon any chapter 11 trustee appointed in these chapter 11 cases and upon any chapter 7 trustee appointed in the event of a subsequent conversion of these chapter 11 cases to cases under chapter 7.

9. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

New York, New York
Dated: **March 23, 2011**

/s/ Sean H. Lane
The Honorable Sean H. Lane
United States Bankruptcy Judge

EXHIBIT A

Contract Counterparty	Contract Counterparty Address	Contract Descrption	Effective Date	Debtor Counterparty
Elektrobit, Inc.	22745 29th Drive SE Suite 200 Bothell, WA 98021 USA	Sublicense under which TerreStar provides sublicense for Elektrobit to use the DVSI codec software under the TerreStar-DVSI Vocoder Technology and Software License Agreement.	8/5/2008	TerreStar Networks Inc.
Elektrobit, Inc.	22745 29th Drive SE Suite 200 Bothell, WA 98021 USA	Letter Agreement between TerreStar Networks Inc. and Elektrobit regarding license and support agreement between Infineon Technologies AG and Elektrobit	1/8/2008	TerreStar Networks Inc.
Elektrobit, Inc.	22745 29th Drive SE Suite 200 Bothell, WA 98021 USA	Letter Agreement regarding certain understandings between TerreStar and Elektrobit with regard to Elektrobit's Software License Agreement with Feescale Semiconductor Inc.	12/8/2008	TerreStar Networks Inc.
Elektrobit, Inc.	22745 29th Drive SE Suite 200 Bothell, WA 98021 USA	Product Loan and Test Use Agreement: Contract to allow TerreStar to use Elektrobit products for testing and evaluation purposes.	6/18/2008	TerreStar Networks Inc.
Elektrobit, Inc.	22745 29th Drive SE Suite 200 Bothell, WA 98021 USA	Letter Agreement between TerreStar Networks Inc. and Elektrobit regarding Software Development License Agreement for WinMobile OS between STMicroelectronics NV and Elektrobit Inc.	5/5/2008	TerreStar Networks Inc.
Elektrobit, Inc.	22745 29th Drive SE Suite 200 Bothell, WA 98021 USA	Development and Licensing Agreement under which Elekrobit designed and developed the GENUS handset for use on the TerreStar satellite network.	8/10/2007	TerreStar Networks Inc.
Elektrobit, Inc.	22745 29th Drive SE Suite 200 Bothell, WA 98021 USA	Master Supply Agreement: Agreement under which TerreStar purchases GENUS handsets from Elektrobit	12/1/2009	TerreStar Corporation [FN1]
Elektrobit, Inc.	22745 29th Drive SE Suite 200 Bothell, WA 98021 USA	Letter Agreement between TerreStar Networks Inc. and Elektrobit supplementing Master Development and License Agreement dated 8/10/2007 and Statement of Work dated 9/19/2007	7/31/2008	TerreStar Networks Inc.

SCHEDULE "C"

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
TERRESTAR NETWORKS INC., *et al.*,[1]	)	Case No. 10-15446 (SHL)
Debtors.	)	Jointly Administered

ORDER AUTHORIZING THE DEBTORS PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE TO REJECT THE EXECUTORY CONTRACTS PURSUANT TO DEBTORS' OMNIBUS MOTION *NUNC PRO TUNC* TO FEBRUARY 9, 2011

Upon the motion (the "***Motion***")[2] of the above-captioned debtors (collectively, the "***Debtors***") for entry of an order authorizing the Debtors to reject the Rejected Agreements identified more fully in Exhibit A attached hereto *nunc pro tunc* to February 9, 2011; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors and other parties in interest; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion appearing to be adequate and appropriate under the circumstances; and any objections to the requested relief having been withdrawn or resolved; and after due deliberation and sufficient cause appearing therefor, IT IS HEREBY ORDERED that:

1. The Motion is granted to the extent set forth herein.

---

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: TerreStar Networks Inc. (3931), TerreStar License Inc. (6537), TerreStar National Services Inc. (6319), TerreStar Networks Holdings (Canada) Inc. (1337), TerreStar Networks (Canada) Inc. (8766); and 0887729 B.C. Ltd. (1345).

[2] Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

2. The Debtors' rejection of the Rejected Agreements *nunc pro tunc* to February 9, 2011, and more fully identified in Exhibit A, is hereby approved pursuant to section 365(a) of the Bankruptcy Code.

3. The Debtors' rejection of the Rejected Agreements pursuant to section 365(a) of the Bankruptcy Code is an exercise of the Debtors' sound business judgment and is in the best interest of the Debtors' estates and creditors.

4. The non-Debtor counterparties to the Rejected Agreements will have 30 days after service of this Order to file a proof of claim for any rejection damages resulting from the rejection of the Rejected Agreements.

5. The non-Debtor counterparties to the Rejected Agreements are prohibited from setting off any amount owed to the Debtors by any of the contract counterparties under the Rejected Agreements, or other agreements between the same parties, against any amounts owed by the Debtors to such counterparties, without further order of this Court.

6. Upon service of this Order on the counterparties to the Rejected Agreements, the Rejected Agreements shall be deemed rejected *nunc pro tunc* to February 9, 2011, the Original Notice Date.

7. For the avoidance of doubt, neither the rejection by TerreStar Networks Inc. ("***TSN***") of the Letter Agreement re: Receipt Lease Prepayment and Acknowledgement of Prepayment Terms, dated January 26, 2010, amongst One Dot Four Corp.; Harbinger Capital Partners Master Fund I, Ltd.; Harbinger Capital Partners Special Situations Fund, L.P.; HGW Holding Company, L.P.; TerreStar 1.4 Holdings LLC; TerreStar Corporation; and TSN (the "***Prepayment Letter***") nor any provision of this Order shall (i) effect a rejection of the Prepayment Letter by any other Debtor, TerreStar Corporation and/or TerreStar 1.4 Holdings

LLC, or (ii) reduce, modify, limit, amend or otherwise affect in any way any obligations of TerreStar Corporation and/or TerreStar 1.4 Holdings LLC under either the Prepayment Letter or that certain Spectrum Manager Lease Agreement, dated September 17, 2009 (as amended), by and among TerreStar 1.4 Holdings LLC, TerreStar Corporation, and One Dot Four Corp.

8. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

9. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

New York, New York
Date: **March 23, 2011**

/s/ Sean H. Lane
The Honorable Sean H. Lane
United States Bankruptcy Judge

IN RE TERRESTAR NETWORKS INC.
Case No. 10-15446

LIST OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Contract Counterparty	Contract Counterparty Address	Contract Descrption	Effective Date	Debtor Counterparty
3390853 Canada Inc.	Attn: Michel Paquette, 697 6E Rang St-Felix-De-Kingsey, Quebec J0B 2T0	Consulting Agreement	12/28/2009	TerreStar Networks (Canada) Inc.
9157-9268 Quebec Inc.	Attn: Guy Vallieres 3601 Rue Sainte-Famille, Ste 1207 Montreal, Quebec H2X 2L6	Consulting Agreement - Accounting services	8/11/2009	TerreStar Networks (Canada) Inc.
Access Intelligence	4 Choke Cherry Road, Second Floor Rockville, MD 20850	Lease of exhibition space at SATELLITE 2011 show at the Washington Convention Center March 15-17, 2011	3/17/2010	TerreStar Networks Inc.
ADGraphics	2393 South Dove St Alexandria, VA 22314-0000	Purchase Agreement	3/8/2010	TerreStar Networks Inc.
Alcatel Lucent USA Inc. and SkyTerra Communications Inc.	3400 M/S Ss01 West Plano Parkway Plano, TX 75082	Development Agreement: Satellite base station development agreement	3/31/2009	TerreStar Networks Inc.
Alexandra Field	12010 Sunset Hills Road 6th Fl Reston, Va 20190	Employment Agreement	1/15/2008	TerreStar Networks Inc.
Allied Telecom Group LLC	1120 20th Street, NW Suite 500 South Washington, DC 20036 USA	Service Agreement: Internet Dedicated Ethernet Services	5/18/2010	TerreStar Networks Inc.
Archer Technologies	13200 Metcalf Ave., Suite 300 Overland Park, Kansas 66213	Master License Agreement	2/18/2010	TerreStar Networks Inc.
Broadsoft Inc.	9737 Washingtonian Blvd Suite 350 Gaithersburg, MD 20878	License Agreement for Broadsoft software	12/8/2006	TerreStar Networks Inc.
Broadsoft Inc.	9737 Washingtonian Blvd Suite 350 Gaithersburg, MD 20878	Software and maintenance agreement for Broadsoft software	12/8/2006	TerreStar Networks Inc.
CSC Consulting Inc.	266 Second Ave Waltham, MA 02451-0000	Purchase order for SAP Production Support ABAP Offshore	11/25/2009	TerreStar Networks Inc.
Dennis Matheson	12010 Sunset Hills Road 6th Fl Reston, Va 20190	Employment Agreement	1/15/2008	TerreStar Networks Inc.
Douglas Brandon	12010 Sunset Hills Road 6th Fl Reston, Va 20190	Employment Agreement	4/9/2009	TerreStar Networks Inc.
Downlink Technologies II, Inc.	1411 LeMay Drive, Suite 207 Carrollton, TX 75007	Purchase Agreement -Install/equipment DirecTV Service	6/8/2007	TerreStar Networks Inc.
Flextronics Sales & Marketing (A-P) Ltd.	Alexander House, Level 3 35 Cybercity Ebene Mauritius	Sublicense under which TerreStar provides sublicense for Flextronics to use the DVSI codec software under the TerreStar-DVSI Vocoder Technology and Software License Agreement.	12/23/2008	TerreStar Networks Inc.

IN RE TERRESTAR NETWORKS INC.
Case No. 10-15446

LIST OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Contract Counterparty	Contract Counterparty Address	Contract Descrption	Effective Date	Debtor Counterparty
Foster Electric Co. (Hong Kong) Ltd.	41 Man Yue Street, Kaiser Estate Block D, 12th Floor Kowloon Hong Kong	Trademark License Letter Agreement: Letter agreement authorizing Foster Electric to use the TERRESTAR trademark and logo so long as the agreement between Elektrobit Wireless Communications Oy and Foster Electric Co. Ltd permission to use agreement remains in place	11/13/2009	TerreStar Networks Inc.
Genesys Associates, LLC dba the Genesys Gr	Attn: Mark Embry, Partner 2600 Network Blvd, Suite 330 Frisco, TX 75034	Agreement for provision of contract engineering staffing support	10/24/2007	TerreStar Networks Inc.
Going Consulting	Attn: Tony Going Suite 2604, 38 Metropole Private Ottawa, Ontario K1Z 1E9	Consulting Agreement -media relations services	2/1/2010	TerreStar Networks (Canada) Inc.
HGW Holding Company LP	Attn: General Counsel 450 Park Avenue, 30th Floor New York, NY 10022	Lease Prepayment Letter Agreement	1/26/2010	TerreStar Networks Inc.
Hughes Networks Systems LLC	11717 Exploration Lane Germantown, MD 20876	Development Agreement: Contract for Design and Development of GMR1-3G Software components.	3/31/2009	TerreStar Networks Inc.
Infineon Technologies AG and LightSquared LP (formerly SkyTerra LP)	Am Campeon 1-12, 85579 Neubiberg 11717 Germany	Agreement to suspend certain work under the SDR development contract and for Infineon to enter into an evaluation phase under this Interim Agreement	7/14/2010	TerreStar Networks Inc.
InfoVista Corporation	12950 Worldgate Drive Suite 250 Herndon VA 20170 USA	License Agreement for Software and Services: Performance management software that enables the TerreStar NOC to monitor performance of the TerreStar IP network.	8/15/2007	TerreStar Networks Inc.
Intelsat Corporation	3400 International Drive, NW Washington DC 20008 USA	Master Consulting Services Agreement: Consulting agreement for monitoring of TS-1 and TS-2 construction.	3/17/2008	TerreStar Networks Inc.
Intrado, Inc.	1601 Day Creed Drive Longmont, CO 80503 USA	Intrado Agreement for Services: 911 services for the TerreStar satellite network.	11/27/2006	TerreStar Networks Inc.
Jeffrey Epstein	12010 Sunset Hills Road 6th Fl Reston Va 20190	Employment Agreement	1/15/2008	TerreStar Networks Inc.
Larson & Toubro Infotech Ltd	Shil - Mahape Road Plot No. EL-200, TTC Electric Zone, Block IINavi Mumbai 400701 India	Sublicense Agreement under TerreStar's license with Digital Voice Systems Inc (DVSI) to use DVSI's voice codec software in conjunction with Larson and Toubro's development work as a subcontractor to Elektrobit.	8/26/2008	TerreStar Networks Inc.

IN RE TERRESTAR NETWORKS INC.
Case No. 10-15446

LIST OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Contract Counterparty	Contract Counterparty Address	Contract Descrption	Effective Date	Debtor Counterparty
Moventis Conseils Inc.	Attn: Sophie Pelletier 281, Rue Des Laurier Bromont, Quebec J2L 0H5	Consulting Agreement	4/1/2010	TerreStar Networks (Canada) Inc.
NextG - Com Limited	Knyvett House, The Causeway Staines TW18 3BA UK	Sublicense Agreement	11/5/2009	TerreStar Networks Inc.
Nisga'a Data Systems LLC	12020 Sunrise Valley Drive Reston VA 20190 United States; and 21434 Falling Rock Ter Ashburn, VA 20148 United States	Consulting Agreement: Tier III Support for Corporate and NOCC infrastructure and systems	1/4/2010	TerreStar Networks Inc.
Nokia Siemens Networks US LLC	1040 Crown Pointe Parkway Suite 900 Crispin Vicars Atlanta, GA 30338	Network Equipment and Services Agreement Purchase of network equipment, software and services in connection to the build out of terrestrial based portion of the TerreStar Network	8/22/2007	TerreStar Networks Inc.
Patni Computer Systems Ltd	Akruti Softech Park, MDIC Cross Road, No. 21 Andheri East Mumbai Maharashtra India 400093 Inida	Sublicense Agreement	5/6/2009	TerreStar Networks Inc.
Qualcomm Incorporated	5775 Morehouse Drive San Diego CA 92121 United States	3GPP2 Standards Initiative Agreement	11/5/2009	TerreStar Networks Inc.
RSA Security, LLC	174 Middlesex Turnpike Bedford, MA 01730	Purchase Order: Standard Support Package	6/17/2010	TerreStar Networks Inc.
Ruder Finn	301 East 57th Street New York, NY 10022	Public Relations Contract	1/1/2010	TerreStar Networks Inc.
Sarantel Limited	Unit 2 Wendel Pointe, Ryle Drive, Park Earm South Welling bourough United Kingdom NN8 6BA United Kingdom	Consulting Agreement: Satellite Antenna Feasibilty	11/25/2009	TerreStar Networks Inc.
Sequoia Communications Corporation	15050 Avenue of Science Suite 100 San Diego, CA 92128-0000	Consulting Services Agreement	9/14/2007	TerreStar Networks Inc.
SIC Consulting, LLC	11718 Bowman Green Drive Suite 220 Reston, VA20190	Consulting Agreement: Project Management Support to COE	1/7/2008	TerreStar Networks Inc.
Spirent Communications	26750 Aguora Road Casablanca, CA 91302 United States	Professional Services Agreement: Benchmark the performance of multiple vendors' products that would make up the next generation mobile network to ensure the performance is as expected	9/27/2008	TerreStar Networks Inc.
Thomson Financial Corporate Services (Thomson Reuters)	3 Times Square 15th Floor New York, NY 10036	Client Agreement: Maintains/hosts investor relations web page	2/12/2010	TerreStar Networks Inc.

IN RE TERRESTAR NETWORKS INC.
Case No. 10-15446

LIST OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Contract Counterparty	Contract Counterparty Address	Contract Descrption	Effective Date	Debtor Counterparty
THOMSON REUTERS	195 Broadway New York, NY 10007	Purchase Order: WSSU - RIA MULTI-STATE SALES & USE TAXES	6/22/2010	TerreStar Networks Inc.
Vincent Loiacono	12010 Sunset Hills Road 6th Fl Reston, Va 20190	Employment Agreement	9/15/2009	TerreStar Networks Inc.

MAR 28 11

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding Commenced At Toronto

MOTION RECORD

(returnable March 28, 2011)

FRASER MILNER CASGRAIN LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, Ontario M5K 0A1

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Counsel to the Foreign Representative

A. MacFarlane for the Foreign Rep.
B. O'Neill for DIP lender.
L. Cassey for Informata Officer.

The motions for recognition were not opposed. Counsel advises that, the application of a limited objection, the proceedings in the U.S. Court may not be opposed. I am satisfied, having reviewed the record that it is appropriate to give recognition to the US Orders pursuant to s 49 of the CCAA.

88_1

An ~~[illegible]~~ order shall issue —
the form prescribed.

[illegible] J.

Tab 5

Court File No. 12-CV-9757-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

THE HONOURABLE	)	THURSDAY, THE 10TH DAY
	)	
JUSTICE MORAWETZ	)	OF OCTOBER, 2013

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

AND IN THE MATTER OF ALLIED SYSTEMS HOLDINGS, INC., ALLIED SYSTEMS (CANADA) COMPANY, AXIS CANADA COMPANY AND THOSE OTHER COMPANIES LISTED ON SCHEDULE "A" HERETO

APPLICATION OF ALLIED SYSTEMS HOLDINGS, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, c. C-36, AS AMENDED

SALE APPROVAL RECOGNITION AND VESTING ORDER
(Jack Cooper Holdings Corp., or its designee)

THIS MOTION, made by Allied Systems Holdings, Inc. ("**Allied US**") in its capacity as the foreign representative (the "**Foreign Representative**") of Allied US, Allied Systems (Canada) Company, Axis Canada Company and those other companies listed on Schedule "A" hereto (the "**Chapter 11 Debtors**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an Order substantially in the form enclosed at Tab 4 of the Motion Record, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the affidavit of Scott Macaulay sworn October 3, 2013 (the "**Macaulay Affidavit**"), the affidavit of Ava Kim sworn October 3, 2013 (the **"Kim Affidavit"**), the Eighth Report of Duff & Phelps Canada Restructuring Inc. (the "**Information**

Officer") dated October 8, 2013 (the "**Eighth Report**"), and on hearing the submissions of counsel for the Foreign Representative, counsel for the Information Officer, counsel for Unifor (as successor to the CAW-Canada), and those other parties present, no one else appearing although duly served as appears from the affidavit of service of Ava Kim sworn October 4, 2013:

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion, the Motion Record, the Macaulay Affidavit, the Kim Affidavit and the Eighth Report is hereby abridged and validated so that this Motion is properly returnable today, and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that capitalized terms used herein and not other otherwise defined have the meaning given to them in the Asset Purchase Agreement, dated as of September 12, 2013, by and among Jack Cooper Holdings Corp., as purchaser, Allied US and the subsidiaries of Allied US set forth on the signature pages thereto, as sellers (the "Sale Agreement"). For greater certainty, references to the "Purchased Assets" and the "Assigned Contracts" herein do not include the "Purchased Assets" and the "Assigned Contracts" as those terms are defined in the Asset Purchase Agreement dated as of October 9, 2013 by and among SBDRE LLC, Allied US and the subsidiaries of Allied US signatory thereto, an unsigned copy of which is attached as Exhibit E to the Kim Affidavit.

RECOGNITION OF US SALE ORDER

3. THIS COURT ORDERS that the Order entered by the United States Bankruptcy Court for the District of Delaware on September 17, 2013 in the Foreign Proceeding authorizing and approving, *inter alia*, (i) a sale of assets free and clear of liens, claims, encumbrances and other interests and (ii) the assumption and assignment of certain executory contracts and unexpired leases to the Jack Cooper Purchaser (as defined below), a copy of which is attached hereto as Schedule "B" (the "**US Sale Order**"), is hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA.

VESTING OF CANADIAN PURCHASED ASSETS

4. THIS COURT ORDERS AND DECLARES that the sale of the Purchased Assets that are situated in Canada including for greater certainty Assigned Contracts to which the Canadian Sellers are parties, (the " **Jack Cooper Canadian Purchased Assets**") to Jack Cooper Holdings Corp. or any Designated Purchaser designated by Jack Cooper Holdings Corp. pursuant to Section 12.8(b) of the Sale Agreement (collectively, the **"Jack Cooper Purchaser"**) pursuant to the Sale Agreement is hereby approved. The Chapter 11 Debtors are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the sale of the Jack Cooper Canadian Purchased Assets to the Jack Cooper Purchaser and for the conveyance of the Jack Cooper Canadian Purchased Assets to the Jack Cooper Purchaser.

5. THIS COURT ORDERS AND DECLARES that upon the delivery of a certificate of the Information Officer to the Jack Cooper Purchaser substantially in the form attached as Schedule "C" hereto (the "**Information Officer's Certificate**"), all of the Chapter 11 Debtors' right, title and interest in and to the Jack Cooper Canadian Purchased Assets including, without limitation the Assigned Contracts, shall vest absolutely, without further instrument of transfer or assignment, in the Jack Cooper Purchaser, free and clear of and from any and all Liens (as that term is defined in the US Sale Order) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by any Order of this Honourable Court in these proceedings or any Order of the US Bankruptcy Court made in the Foreign Proceedings; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system including without limitation, those listed on Schedule "G"; and (iii) those Liens listed on Schedule "D" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "E") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Jack Cooper Canadian Purchased Assets are hereby released, expunged, extinguished and discharged as against the Jack Cooper Canadian Purchased Assets.

6. THIS COURT ORDERS that, without in any way limiting the provisions of the US Sale Order, the assignment of the rights and obligations of the Chapter 11 Debtors under the Assigned Contracts to the Jack Cooper Purchaser, in accordance with the U.S. Sale Order, is hereby authorized and is valid and binding on all of the counterparties to the Assigned Contracts forming part of the Jack Cooper Canadian Purchased Assets, without further documentation, as if the Jack Cooper Purchaser was a party to the Assigned Contracts, notwithstanding any restriction, condition or prohibition contained in any such Assigned Contracts relating to the assignment thereof, including any provision requiring the consent of any parties to such assignment.

7. THIS COURT ORDERS that nothing in paragraph 6 of this Order shall derogate from the obligations of the Jack Cooper Purchaser (or such other Persons as the Jack Cooper Purchaser may direct) to perform its obligations under the Assigned Contracts, as provided in the US Sale Order.

8. THIS COURT ORDERS that upon the registration in the Property Registry of Manitoba, Winnipeg Land Titles Office of a certified copy of this Order, the District Registrar is hereby directed to and shall enter the Jack Cooper Purchaser as the registered owner on title of the real property identified in Schedule "F" hereto as being located in Winnipeg, Manitoba (the "**Winnipeg Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Winnipeg Real Property the all of the Encumbrances listed in Schedule "D" hereto that are applicable to the Winnipeg Real Property.

9. THIS COURT ORDERS that the proceeds from the sale of the Jack Cooper Canadian Purchased Assets shall be dealt with in accordance with paragraphs 12, 13 and 14 of the US Sale Order and that the Sale Proceeds (as defined in the US Sale Order) shall be remitted, paid, used and applied in the same manner and subject to the same terms and conditions as provided for under the US Sale Order; provided that any claims against the Jack Cooper Canadian Purchased Assets that had priority over the security held by any recipient of Sale Proceeds immediately prior to the sale, will be provided for and paid in full pursuant to the wind-down budget referred to in paragraph 12(a) of the US Sale Order.

10. THIS COURT ORDERS AND DIRECTS the Information Officer to deliver an executed copy of the Information Officer's Certificate to the Jack Cooper Purchaser forthwith after the Information Officer receives confirmation from Allied US (or its counsel) and the Jack Cooper Purchaser (or its counsel) that: (a) the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Sellers (as defined in the Sale Agreement) and the Jack Cooper Purchaser, as applicable; and (b) subject only to the delivery of the Information Officer's Certificate, the transactions contemplated by the Sale Agreement have been completed to the satisfaction of the Sellers and the Jack Cooper Purchaser. The Information Officer is hereby directed to file a copy of the Information Officer's Certificate with the Court forthwith after delivery thereof to the Jack Cooper Purchaser.

11. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* (Canada), the Chapter 11 Debtors are authorized and permitted to disclose and transfer to the Jack Cooper Purchaser all human resources and payroll information in the Chapter 11 Debtors' records pertaining to the Chapter 11 Debtors' past and current employees, including personal information of those employees listed on Schedule "4.15(a)" to the Seller Disclosure Schedule in the Sale Agreement. The Jack Cooper Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Chapter 11 Debtors.

12. THIS COURT ORDERS that, notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Chapter 11 Debtors and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Chapter 11 Debtors,

the vesting of the Jack Cooper Canadian Purchased Assets in the Jack Cooper Purchaser (including the assignment of the Assigned Contracts) pursuant to this Order shall be binding on

any trustee in bankruptcy that may be appointed in respect of the Chapter 11 Debtors and shall not be void or voidable by creditors of the Chapter 11 Debtors, nor shall it constitute nor be deemed to be a ~~settlement~~ fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

13. THIS COURT ORDERS AND DECLARES that neither the Bulk Sales Act (Ontario), Sections 6(1) and (2) of the Retail Sales Tax (Ontario) nor any equivalent or similar legislation under any province or territory applies to the Transaction.

GENERAL

14. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or in any other foreign jurisdiction, to give effect to this Order or to assist the Chapter 11 Debtors, the Foreign Representative, the Information Officer and their respective 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 Chapter 11 Debtors, the Foreign Representative, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Chapter 11 Debtors, the Foreign Representative or the Information Officer and their respective agents in carrying out the terms of this Order.

15. THIS COURT ORDERS that each of the Chapter 11 Debtors, the Foreign Representative and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

OCT 1 3 2013

SCHEDULE A – CHAPTER 11 DEBTORS

Allied Systems Holdings, Inc.

Allied Automotive Group, Inc.

Allied Freight Broker LLC

Allied Systems (Canada) Company

Allied Systems, Ltd. (L.P.)

Axis Areta, LLC

Axis Canada Company

Axis Group, Inc.

Commercial Carriers, Inc.

CT Services, Inc.

Cordin Transport LLC

F.J. Boutell Driveway LLC

GACS Incorporated

Logistic Systems, LLC

Logistic Technology, LLC

QAT, Inc.

RMX LLC

Transport Support LLC

Terminal Services LLC

SCHEDULE B – US SALE ORDER

ORIGINAL

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
ALLIED SYSTEMS HOLDINGS, INC., *et al.*,[1]	)	Case No. 12-11564 (CSS)
	)	
	)	
Debtors.	)	Jointly Administered
	)	
	)	Hearing Date: September 17, 2013
	)	at 11 a.m.
	)	Re: Docket Nos. 1175, 1320

ORDER (A) APPROVING ASSET PURCHASE AGREEMENT AND AUTHORIZING THE SALE OF ASSETS OF THE DEBTORS OUTSIDE THE ORDINARY COURSE OF BUSINESS, (B) AUTHORIZING THE SALE OF ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS, (C) AUTHORIZING THE ASSUMPTION AND SALE AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (D) GRANTING RELATED RELIEF

Upon the Motion (docket no. 1175) (the "Sale Motion") of the above captioned debtors and debtors-in-possession (collectively, the "Debtors" or "Sellers") for, among other things, the entry of an order pursuant to §§ 105, 363, and 365 of title 11 of the United States Code (the "Bankruptcy Code"), and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") (a) authorizing the Debtors to: (i) enter into an asset purchase agreement with the party submitting the highest or best bid for the Debtors' assets in

[1] The Debtors in this Chapter 11 Case, along with the federal tax identification number (or Canadian business number where applicable) for each of the Debtors, are: Allied Systems Holdings, Inc. (58-0360550); Allied Automotive Group, Inc. (58-2201081); Allied Freight Broker LLC (59-2876864); Allied Systems (Canada) Company (90-0169283); Allied Systems, Ltd. (L.P.) (58-1710028); Axis Areta, LLC (45-5215545); Axis Canada Company (87568828); Axis Group, Inc. (58-2204628); Commercial Carriers, Inc. (38-0436930); CT Services, Inc. (38-2918187); Cordin Transport LLC (38-1985795); F.J. Boutell Driveway LLC (38-0365100); GACS Incorporated (58-1944786); Logistic Systems, LLC (45-4241751); Logistic Technology, LLC (45-4242057); QAT, Inc. (59-2876863); RMX LLC (31-0961359); Transport Support LLC (38-2349563); and Terminal Services LLC (91-0847582). The location of the Debtors' corporate headquarters and the Debtors' address for service of process is 2302 Parklake Drive, Bldg. 15, Ste. 600, Atlanta, Georgia 30345.

connection with the Debtors' sale and bidding process; (ii) sell the Purchased Assets,[2] which include substantially all of the Debtors' assets, free and clear of all Liens (as used in this Order, the term "Liens" shall have the meaning ascribed to it below) with such sale to be in accordance with the terms and conditions of the Agreement; (iii) assume and sell and assign certain executory contracts and unexpired leases; and (b) granting related relief; and this Court having entered an order on June 21, 2013 (docket no. 1320) (the "Bid Procedures Order") authorizing the Debtors to conduct, and approving the terms and conditions of, an auction (the "Auction") as set forth in the Bid Procedures Order to consider offers for the Purchased Assets, establishing a date for the Auction, and approving, among other things: (i) certain bid procedures (the "Bidding Procedures" approved pursuant to the Bid Procedures Order) to be used in connection with the Auction; (ii) the form and manner of notice of the Auction and Bidding Procedures; and (iii) procedures relating to certain unexpired leases and executory contracts, including notice of proposed cure amounts; and the Court having established the date of the hearing on the Sale Motion (the "Sale Hearing"); and the Auction having been held on August 14 and 15, 2013; and at the conclusion of the Auction, the Debtors having determined that New Allied Acquisition Co. LLC ("New Allied"), a Delaware entity established by the Prepetition First Lien Agents (as defined in the Bid Procedures) submitted the highest and/or best bid for the Purchased Assets; and the Sale Hearing having been postponed on August 20, 2013 to September 10, 2013; and on September 3 and 4, 2013, certain objections or joinders thereto were filed by, among others: (i) Jack Cooper Holdings Corp. (together with its successors and assigns, the "Purchaser")[3], (ii)

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement, dated September 12, 2013, between the Purchaser and the Debtors (the "Agreement").

[3] Any reference herein to the Purchaser shall also be deemed a reference to the appropriate Designated Purchaser, if any.

National Automobile, Aerospace, Transportation and General Workers CAW-Canada of Canada, (iii) the Teamsters National Automobile Transporters Industry Negotiating Committee, (iv) Central States, Southeast and Southwest Areas Pension Fund and Central States, Southeast and Southwest Areas Health and Welfare Fund, (v) the official committee of unsecured creditors appointed in the Chapter 11 Case (the "Committee"), and (vi) Yucaipa American Alliance Fund I, L.P., Yucaipa American Alliance (Parallel) Fund I, L.P., Yucaipa American Alliance Fund II, L.P, and Yucaipa American Alliance (Parallel) Fund II, L.P. (collectively, the "Objecting Parties") to the sale of the Debtors' assets to New Allied (including any such informal objections raised, collectively, the "Sale Objections") (docket nos. 1723, 1724, 1730, 1731, 1734, 1735, 1736, and 1754); and the Purchaser having submitted a revised bid on September 6, 2013 to the independent Special Committee of the Debtors' Board of Directors; and the Committee having filed its Motion to Reopen the Auction to the Sale of Substantially all of the Debtors' Assets Free and Clear of all Liens, Claims, Encumbrances and Interests (the "Motion to Reopen") (docket no. 1769) on September 6, 2013; and the Sellers having filed their response and joinder to the Motion to Reopen on September 8, 2013 (docket no. 1772); and this Court having held a conference with counsel for certain of the Objecting Parties, Debtors, and the Prepetition First Lien Agents on September 9, 2013, at the conclusion of which the Court ordered that the Auction be re-opened on September 11, 2013 at 2 p.m.; and the re-opened Auction having taken place on September 11 and 12, 2013, at the conclusion of which, the Debtors declared (i) the Purchaser's final bid the "highest or best" bid for the Purchased Assets, and (ii) New Allied's bid the "highest or best" bid for certain assets excluded from the Purchaser's final bid; and the Sale Hearing having taken place on September 17, 2013; and the Court having jurisdiction to consider the Sale Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157(b)(2) and

1334; and in consideration of the Sale Motion, the relief requested therein, and the responses thereto being a core proceeding in accordance with 28 U.S.C. § 157(b); and the appearance of all interested parties and all responses and objections to the Sale Motion having been duly noted in the record of the Sale Hearing; and upon the record of the Sale Hearing and all other pleadings and proceedings in this Chapter 11 Case, including (without limitation) the Sale Motion, the certificate of service regarding the Sale Motion (docket no. 1399), and the Sale Objections; and it appearing that the relief requested in the Sale Motion is in the best interests of the Debtors, their estates, their creditors, their other stakeholders and all other parties in interest; and after due deliberation and sufficient cause appearing therefore;

IT IS HEREBY FOUND, DETERMINED AND CONCLUDED THAT:[4]

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

B. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. The Court has jurisdiction over this matter and over the property of the Debtors' estates, including the Purchased Assets to be sold, transferred, or conveyed pursuant to the Agreement, and the disposition of the Sale Proceeds (as defined herein) pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a "core proceeding" pursuant to 28 U.S.C. § 157(b)(2). Venue of this Chapter 11 Case and the Sale Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

[4] All findings of fact and conclusions of law announced by the Court at the Sale Hearing in relation to the Sale Motion are incorporated herein to the extent not inconsistent herewith.

D. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth herein.

E. The statutory bases for the relief requested in the Sale Motion and for the approvals and authorizations herein are (i) Bankruptcy Code §§ 102, 105, 362, 363 and 365, and (ii) Bankruptcy Rules 2002, 4001, 6004, 6006, and 9014.

F. On May 17, 2012 (the "Petition Date"), the Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have continued in possession and management of their businesses and properties as debtors-in-possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

G. As evidenced by the certificates of service filed with the Court, proper, timely, adequate, and sufficient notice of the Sale Motion, the Auction, the Sale Hearing, the Agreement, the sale of the Purchased Assets free and clear of all Liens, and the transactions contemplated by the Agreement (the "Transactions") has been provided in accordance with Bankruptcy Code §§ 102(1) and 363(b), Bankruptcy Rules 2002, 6004, 6006, 9006, 9007, 9008, and 9014, the local rules of the Court, the procedural due process requirements of the United States Constitution, and in compliance with the Bid Procedures Order. The Debtors also gave due and proper notice of the assumption, sale, and assignment of each contract or lease listed on the Notice of Debtors' Intent to Assume and Assign Certain Leases and Executory Contracts and Fixing of Cure Amounts filed on July 15, 2013 (as amended, the "Contract Notice") (docket no. 1431) to each

non-debtor party under each such contract or lease.5 Such notice was good and sufficient and appropriate under the particular circumstances. No other or further notice of the Sale Motion, the Auction, the Sale Hearing, the Agreement, the sale of the Purchased Assets free and clear of all Liens, the Transactions, the assumption and assignment of the Assigned Contracts, or of the entry of this Order is necessary or shall be required.

H. Notice and a reasonable opportunity to object and/or be heard regarding the Sale Motion, the Auction, the Sale Hearing, the Agreement, the sale of the Purchased Assets free and clear of all Liens, the Transactions, the assumption and assignment of the Assigned Contracts, and the entry of this Order have been provided to all interested Persons, including, without limitation, (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Committee; (c) all taxing authorities having jurisdiction over any of the Purchased Assets, including the Internal Revenue Service; (d) the United States Environmental Protection Agency and all state and local environmental agencies in the jurisdictions where the Debtors own or lease real property; (e) all parties that have requested special notice pursuant to Bankruptcy Rule 2002 as of the date prior to the date of the filing of the Sale Motion; (f) all persons or entities known to the Debtors that have or have asserted a lien on, or security interest in, all or any portion of the Purchased Assets; (g) all Attorneys General for the states in which the Debtors conduct business; (h) all potential bidders previously identified or otherwise known to the Debtors; and (i) all parties listed on the Main Service List, the Supplemental Service List (Pensions) and the Supplemental Service List (Government Tax / Environmental Agencies) in the Canadian recognition proceeding.

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5 The Contracts listed in the Contract Notice that are included in the Purchased Assets are referred to in this Order as the "Assigned Contracts".

I. The Purchased Assets are property of the Debtors' estates and title thereto is vested in the Debtors' estates.

J. The Debtors have demonstrated a sufficient basis and the existence of reasonable and appropriate circumstances requiring them to enter into the Agreement, sell the Purchased Assets, and assume and assign the Assigned Contracts under Bankruptcy Code §§ 363 and 365, and such actions are appropriate exercises of the Debtors' business judgment and in the best interests of the Debtors, their estates, their creditors and their other stakeholders.

K. The Bidding Procedures were non-collusive, substantively and procedurally fair to all parties, and were the result of arm's-length negotiations between the Debtors, the Petitioning Creditors (as such term is defined in the Bid Procedures Order) and the Committee.

L. The Debtors and their professionals complied in all material respects with the Bid Procedures Order and the Bidding Procedures.

M. At the re-opened Auction held on September 11 and 12, 2013, two (2) Qualified Bidders (as such term is defined in the Bid Procedures Order) participated. At the conclusion of the re-opened Auction, the Debtors determined that Purchaser was the Successful Bidder (as such term is defined in the Bid Procedures Order) for the Purchased Assets.

N. The offer of the Purchaser, upon the terms and conditions set forth in the Agreement, including the form and total consideration to be realized by the Debtors pursuant to the Agreement, (i) is the highest or best offer received by the Debtors for the Purchased Assets, (ii) is fair and reasonable, (iii) is in the best interests of the Debtors' stakeholders and estates, (iv) constitutes full and fair consideration and reasonably equivalent value for the Purchased Assets, and (v) will provide a greater recovery for the Debtors' creditors, stakeholders and other interested parties than would be provided by any other practically available alternative.

O. The Purchaser is not an "insider" or "affiliate" of the Debtors as those terms are defined in the Bankruptcy Code and the decisions thereunder. The Purchaser is a purchaser in "good faith," as that term is used in the Bankruptcy Code and the decisions thereunder, and is entitled to the protections of Bankruptcy Code § 363(m) with respect to all of the Purchased Assets. The Agreement was negotiated and entered into in good faith, based upon arm's-length bargaining, and without collusion or fraud of any kind. Neither the Debtors nor the Purchaser have engaged in any conduct that would prevent the application of Bankruptcy Code § 363(m) or cause the application of, or implicate, Bankruptcy Code § 363(n) to the Agreement or to the consummation of the Transactions and transfer of the Purchased Assets and Assigned Contracts to the Purchaser. The Purchaser is purchasing the Purchased Assets (including the Assigned Contracts) in good faith, is a good faith purchaser within the meaning of Bankruptcy Code § 363(m), is an assignee in good faith of the Assigned Contracts, and is, therefore, together with the Debtors, entitled to the protection of Bankruptcy Code § 363(m). Additionally, the Purchaser has otherwise proceeded in good faith in all respects in connection with this proceeding in that: (i) the Purchaser recognized that the Debtors were free to deal with any other party interested in acquiring the Purchased Assets, (ii) the Purchaser complied with the Bidding Procedures, (iii) all consideration to be paid by the Purchaser and other agreements or arrangements entered into by the Purchaser in connection with the sale have been disclosed, (iv) the Purchaser has not violated Bankruptcy Code § 363(n) by any action or inaction, and (v) the negotiation and execution of the Agreement and any other agreements or instruments related thereto was in good faith.

P. The Debtors have full corporate, limited liability company and other power and authority to execute the Agreement (and all other documents contemplated thereby) and to consummate the Transactions, and the sale of the Purchased Assets has been duly and validly

authorized by all necessary corporate, limited liability company and other actions on the part of the Debtors. No consents or approvals, other than as may be expressly provided for in the Agreement, are required by the Debtors to consummate such Transactions.

Q. The Debtors have provided sound business reasons for seeking to enter into the Agreement and to sell and/or assume and sell and assign the Purchased Assets, as more fully set forth in the Sale Motion and as demonstrated at the Sale Hearing, and it is a reasonable exercise of the Debtors' business judgment to sell the Purchased Assets and to consummate the Transactions contemplated by the Agreement. Notwithstanding any requirement for approval or consent by any Person, the transfer of the Purchased Assets to the Purchaser and the assumption and assignment of the Assigned Contracts is a legal, valid, and effective transfer of the Purchased Assets (including the Assigned Contracts).

R. The terms and conditions of the Agreement, including the consideration to be realized by the Debtors pursuant to the Agreement, are fair and reasonable, and the Transactions contemplated by the Agreement are in the best interests of the Debtors' estates.

S. The Agreement and Transactions do not constitute a sub rosa chapter 11 plan for which approval has been sought without the protections that a disclosure statement would afford. The Agreement and the Transactions neither impermissibly restructure the rights of the Debtors' creditors nor impermissibly dictate a liquidating plan for the Debtors.

T. Upon payment of the Purchase Price, the Purchased Assets shall be sold free and clear of any and all liens, Claims (as such term is defined in the Bankruptcy Code), Liabilities, Encumbrances and interests of any kind or nature whatsoever including, without limitation, all liens, mechanics' liens, materialmens' liens, consensual liens, non-consensual liens, statutory liens, hypothecations, Encumbrances, security interests, mortgages, security deeds, deeds of

trust, debts, levies, indentures, pledges, restrictions (whether on voting, sale, transfer, disposition or otherwise), charges, instruments, preferences, priorities, security agreements, conditional sales agreements, title retention contracts, options, judgments, offsets, rights of recovery, rights of pre-emption, rights of first refusal, other third party rights, Claims for reimbursement, Claims for contribution, Claims for indemnity, Claims for exoneration, products liability Claims, alter-ego Claims, successor-in-interest Claims, successor liability Claims, successor employer Claims, substantial continuation Claims, COBRA Claims, withdrawal liability Claims (including under any Employee Benefit Plan), environmental Claims, Tax Claims (including Claims for any and all foreign, federal, state and local Taxes), decrees of any court or foreign or domestic governmental entity, orders and Claims of any Governmental Body, of any kind or nature (including (i) any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing, (ii) any assignment or deposit arrangement in the nature of a security device, and (iii) any Claim based on any theory that the Purchaser is a successor, successor-in-interest, successor employer or a substantial continuation of the Debtors or the Debtors' business), reclamation Claims, obligations, Liabilities, demands, and guaranties, whether any of the foregoing are known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, secured or unsecured, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of the Chapter 11 Case, and whether imposed by agreement, understanding, Law, equity or otherwise, including Claims otherwise arising under doctrines of successor liability, successor-in-interest liability, successor employer liability or substantial continuation liability including, without limitation, that Purchaser is in any

way a successor, successor-in-interest, successor employer or substantial continuation of the Debtors or their businesses (collectively, the "Liens"), other than the Permitted Encumbrances and Assumed Liabilities. Purchaser would not have entered into the Agreement, and would not have agreed to purchase and acquire the Purchased Assets, if the sale of the Purchased Assets was not free and clear of all Liens (other than Permitted Encumbrances and Assumed Liabilities).

U. Liens (other than the Permitted Encumbrances) shall attach to the net proceeds of the sale of the Purchased Assets actually received by the Debtors in the same priority and subject to the same defenses and avoidability, if any, as before the Closing.

V. Upon payment of the Purchase Price, the transfer of the Purchased Assets to the Purchaser will be a legal, valid, and effective transfer of the Purchased Assets and shall vest Purchaser with all right, title, and interest of the Debtors to the Purchased Assets free and clear of any and all Liens (other than the Permitted Encumbrances). Except as specifically provided in the Agreement, the Purchaser shall not assume or become liable for any Liens or Liabilities other than the Permitted Encumbrances and Assumed Liabilities.

W. The transfer of the Purchased Assets to the Purchaser free and clear of all Liens (other than the Permitted Encumbrances) will not result in any undue burden or prejudice to any holders of any Liens, because all such Liens of any kind or nature whatsoever shall attach to the net proceeds of the sale of the Purchased Assets actually received by the Debtors in the order of their priority, with the same validity, force, and effect which they now have as against the Purchased Assets and subject to any claims and defenses the Debtors or other parties may possess with respect thereto. Upon payment of the Purchase Price, all persons having Liens of any kind or nature whatsoever against or in any of the Debtors or the Purchased Assets shall be

forever barred, estopped and permanently enjoined from pursuing or asserting such Liens (other than the Assumed Liabilities and Permitted Encumbrances) against the Purchaser, any of its assets, property, successors or assigns, or the Purchased Assets.

X. The Debtors may sell the Purchased Assets free and clear of all Liens of any kind or nature whatsoever (other than the Permitted Encumbrances) because, in each case, one or more of the standards set forth in Bankruptcy Code § 363(f) has been satisfied. Those (i) holders of Liens in or with respect to the Purchased Assets and (ii) non-debtor parties to the Assigned Contracts, who did not object, or who withdrew their objections, to the sale of the Purchased Assets and the Sale Motion are deemed to have consented pursuant to Bankruptcy Code § 363(f)(2). All objections to the Sale Motion have been overruled, adjourned or resolved in accordance with the terms of this Order and as set forth on the record of the Sale Hearing. Those holders of Liens in or with respect to the Purchased Assets who did object fall within one or more of the other subsections of Bankruptcy Code § 363(f) and are adequately protected by having their Liens, if any, attach to the net proceeds of the sale of the Purchased Assets actually received by the Debtors and ultimately attributable to the property against or in which they claim or may claim any Liens.

Y. Not selling the Purchased Assets free and clear of all Liens (other than the Permitted Encumbrances and Assumed Liabilities) would adversely impact the Debtors' estates, and the sale of Purchased Assets other than one free and clear of all Liens (other than the Permitted Encumbrances and Assumed Liabilities) would be of substantially less value to the Debtors' estates.

Z. The Debtors and the Purchaser have, to the extent necessary, satisfied the requirements of Bankruptcy Code § 365, including Bankruptcy Code §§ 365(b)(1)(A), (B) and

365(f), in connection with the sale and the assumption and assignment of the Assigned Contracts. The Purchaser has demonstrated adequate assurance of future performance with respect to the Assigned Contracts pursuant to Bankruptcy Code § 365(b)(1)(C). The assumption and assignment of the Assigned Contracts pursuant to the terms of this Order are integral to the Agreement and are in the best interests of the Debtors, their estates, their stakeholders and other parties in interest, and represent the exercise of sound and prudent business judgment by the Debtors. To the extent any objections based upon adequate assurance are adjourned, the Debtors and the Purchaser will demonstrate that they satisfy the requirements of § 365 of the Bankruptcy Code as may be necessary.

AA. The Assigned Contracts are assignable notwithstanding any provisions contained therein to the contrary. Except as provided in Section 1.4(n) of the Agreement, the Purchaser shall have sole responsibility for paying all Cure Costs required to assume and assign the Assigned Contracts to the Purchaser.

BB. The Purchaser has and will be acting in good faith, pursuant to Bankruptcy Code § 363(m), at all times including in closing the Transactions and at any time on or after the entry of this Order and cause has been shown as to why this Order should not be subject to the stay provided by Bankruptcy Rules 6004(h) and 6006(d).

CC. The Transactions do not amount to or constitute a consolidation, merger, or *de facto* merger of the Purchaser and the Debtors or the Debtors' estates, there is not substantial continuity between the Purchaser and the Debtors or the Debtors' estates, there is no continuity of enterprise between the Purchaser and the Debtors or the Debtors' estates, the Purchaser is not a continuation or substantial continuation of the Debtors or their estates, and the Purchaser is not a successor, successor employer or successor-in-interest to the Debtors or their estates.

DD. The total consideration provided by the Purchaser for the Purchased Assets was the highest or best offer received by the Debtors for the Purchased Assets, and the Purchase Price constitutes (a) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, (b) fair consideration under the Uniform Fraudulent Conveyance Act, and (c) reasonably equivalent value, fair consideration, and fair value under any other applicable Laws of the United States, any state, territory or possession, or the District of Columbia, for the Purchased Assets.

EE. Time is of the essence in consummating the sale. In order to maximize the value of the Purchased Assets, it is essential that the sale of the Purchased Assets occur within the time constraints set forth in the Agreement. Accordingly, there is cause to lift the stays contemplated by Bankruptcy Rules 6004(h) and 6006(d).

FF. At and effective as of the Closing, the Purchaser shall assume sole responsibility for paying and satisfying the Assumed Liabilities as provided in the Agreement. For the avoidance of doubt, nothing in this Order (including, without limitation, any provisions in this Order regarding the sale, transfer or conveyance of the Purchased Assets free and clear of Liens upon payment of the Purchase Price) nor in the Agreement shall be construed to mean that the Purchaser is not assuming from the Debtors and thereafter becoming solely responsible for the payment, performance and discharge of the Assumed Liabilities as provided in the Agreement. After the Closing, the Debtors shall have no liability whatsoever with respect to the Assumed Liabilities. The Purchaser shall have no obligations or responsibility whatsoever with respect to any Liabilities of the Debtors other than the Assumed Liabilities.

NOW, THEREFORE, BASED UPON ALL OF THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The relief requested in the Sale Motion is granted in its entirety, and the

Agreement and the provisions thereof are approved in their entirety, subject to the terms and conditions contained herein.

2. All objections, responses, reservations of rights, and requests for continuance concerning the Sale Motion are resolved or adjourned in accordance with the terms of this Order and as set forth in the record of the Sale Hearing. To the extent any such objection, response, reservation of rights, or request for continuance was not otherwise withdrawn, waived, adjourned or settled, it is overruled and denied on the merits.

3. Notice of the Sale Motion, the Auction, the Sale Hearing, the Agreement, the sale of the Purchased Assets free and clear of all Liens, the Transactions, and the assumption and assignment of the Assigned Contracts was fair and equitable under the circumstances and complied in all respects with 11 U.S.C. § 102(1) and Bankruptcy Rules 2002, 6004, and 6006.

4. The sale of the Purchased Assets, the terms and conditions of the Agreement (including all schedules and exhibits affixed thereto), and the Transactions be, and hereby are, authorized and approved in all respects.

5. The Purchaser's Successful Bid is comprised of (a) $125,000,000 in cash (the "Cash Consideration"), (b) $10,000,000 to be paid either (i) through the issuance by the Purchaser of the Purchaser Notes, or (ii) in cash (the "Additional Cash Consideration"), and (c) the assumption of the Assumed Liabilities. Pursuant to the Bid Procedures, the Purchaser delivered to the Escrow Holder the Good Faith Deposit in the cash amount equal to $9,500,000 to be held in the Good Faith Deposit Escrow Account pending completion of a Purchase Price adjustment based on the Final Working Capital Statement as described more particularly in Section 2.2 of the Agreement. Notwithstanding anything to the contrary in the Agreement, if the Purchaser elects to issue the Purchaser Notes (instead of the Additional Cash Consideration) (the

"Note Election"), then the Purchaser Notes in the face amount of $9,500,000 shall replace the $9,500,000 of cash held in the Good Faith Deposit Escrow Account. The Escrow Holder shall hold the Purchaser Notes deposited into the Good Faith Deposit Escrow Account on the same terms and conditions as it held the Good Faith Deposit. Notwithstanding anything to the contrary in the Agreement, (A)(1) the Purchaser shall be entitled to receive all interest accruing on the Good Faith Deposit through the Closing, and (2) all interest accruing on the Good Faith Deposit Escrow Account from and after the Closing shall be allocated and paid, on a *pro rata* basis, to the party entitled to receive the cash or Purchaser Notes (as applicable) in the Good Faith Deposit Escrow Account following completion of the Purchase Price adjustment pursuant to Section 2.2 of the Agreement, (B) the Purchaser's right to purchase or have a third party purchase the Purchaser Notes after the Closing (as contemplated by Section 2.1(a) of the Agreement) shall terminate when the Purchaser Notes are released from escrow or otherwise released to the Prepetition First Lien Agents following completion of the Purchase Price adjustment pursuant to Section 2.2 of the Agreement, and (C) in the event Purchaser elects to issue the Purchaser Notes (instead of the Additional Cash Consideration), Sellers shall be deemed to have agreed that any Purchaser Notes returned or delivered to the Purchaser pursuant to Section 2.2(b)(ii) of the Agreement may be cancelled by Purchaser in Purchaser's sole discretion. The Debtors shall promptly provide to counsel to the Prepetition First Lien Agents and Yucaipa any written notices or correspondence relating to the Good Faith Deposit and Net Working Capital, including, without limitation, a copy of the Final Working Capital Statement. The Debtors shall (i) ~~confer in good faith~~ consult with the Prepetition First Lien Agents regarding ~~any such notices or correspondence relating to~~ the Good Faith Deposit and Net Working Capital Shortfall, and (ii) not agree to release from escrow the Good Faith Deposit to

pay the Working Capital Shortfall, if any, without the prior written consent of the Prepetition First Lien Agents or further order of this Court.

6. The sale of the Purchased Assets and the consideration provided by the Purchaser under the Agreement are fair and reasonable and shall be deemed for all purposes to constitute a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable Law.

7. The Purchaser is hereby granted and is entitled to all of the protections provided to a good faith purchaser under Bankruptcy Code § 363(m), including, without limitation, with respect to all of the Transactions (part of which includes the transfer of the Assigned Contracts as part of the sale of the Purchased Assets pursuant to Bankruptcy Code § 365 and this Order).

8. The Debtors shall be, and hereby are, authorized and directed to fully assume, perform under, consummate, and implement the terms of the Agreement together with any and all additional instruments and documents that may be necessary or desirable in connection with implementing and effectuating the terms of the Agreement, this Order, and/or the sale of the Purchased Assets including, without limitation, bills of sale, certificates, deeds, assignments, and other instruments of transfer, and to take all further actions as may reasonably be requested by the Purchaser for the purpose of assigning, transferring, granting, conveying, and conferring to the Purchaser, or reducing to possession, any or all of the Purchased Assets or Assumed Liabilities, as may be necessary or appropriate to the performance of the Debtors' obligations as contemplated by the Agreement, without any further corporate, limited liability company, or other action or orders of this Court.

9. The Debtors and each other person or entity having duties or responsibilities under the Agreement, any agreements or instruments related thereto or this Order, and their

[redacted]

respective directors, officers, employees, members, managers, agents, representatives, and attorneys, are authorized, directed and empowered, subject to the terms and conditions contained in the Agreement and this Order, to carry out all of the provisions of the Agreement and any related agreements or instruments; to issue, execute, deliver, file, and record, as appropriate, the documents evidencing and consummating the Agreement and any related agreements or instruments; to take any and all actions contemplated by the Agreement, any related agreements or instruments, or this Order; and to issue, execute, deliver, file, and record, as appropriate, such other contracts, instruments, releases, indentures, mortgages, quitclaim deeds, deeds, bills of sale, assignments, leases, or other agreements or documents and to perform such other acts and execute and deliver such other documents, as are consistent with, and necessary, desirable or appropriate to implement, effectuate, and consummate, the Agreement, any related agreements or instruments, this Order and the Transactions, all without further application to, or order of, the Court or further action by their respective directors, officers, employees, members, managers, agents, representatives, and attorneys, and with like effect as if such actions had been taken by unanimous action of the respective directors, officers, employees, members, agents, representatives, and attorneys of such entities. The secretary or any assistant secretary of each Debtor (or any comparable officer) shall be, and hereby is, authorized to certify or attest to any of the foregoing actions (but no such certification or attestation shall be required to make any such action valid, binding, and enforceable). The Debtors are further authorized and empowered to cause to be filed with the secretary of state of any state or other applicable officials of any applicable Governmental Body any and all certificates, agreements, or amendments necessary or appropriate to effectuate the Transactions and this Order, and all such other actions, filings, or recordings as may be required under appropriate provisions of the applicable Laws of all

applicable Governmental Bodies or as any of the officers of the Debtors may determine are necessary or appropriate. The execution of any such document or the taking of any such action shall be, and hereby is, deemed conclusive evidence of the authority of such person to so act. Without limiting the generality of the foregoing, this Order shall constitute all approvals and consents, if any, required by the corporate Laws of the State of Delaware and all other applicable business, corporation, limited liability company, trust, and other Laws of the applicable Governmental Bodies with respect to the implementation and consummation of the Agreement, any related agreements or instruments, this Order, and the Transactions.

10. Effective as of the Closing, (a) upon payment of the Purchase Price, the sale of the Purchased Assets by the Debtors to the Purchaser shall constitute a legal, valid, and effective transfer of the Purchased Assets notwithstanding any requirement for approval or consent by any Person and shall vest the Purchaser with all right, title, and interest of the Debtors in and to the Purchased Assets, free and clear of all Liens of any kind (other than the Permitted Encumbrances and Assumed Liabilities) pursuant to Bankruptcy Code § 363(f), and (b) the assumption of the Assumed Liabilities by the Purchaser shall constitute a legal, valid and effective delegation and assignment of all Assumed Liabilities to the Purchaser and shall divest the Debtors of all liability with respect to any Assumed Liabilities.

11. The sale of the Purchased Assets is not subject to avoidance pursuant to Bankruptcy Code § 363(n).

12. At the Closing, the Debtors shall be, and hereby are, authorized, empowered, and directed, pursuant to Bankruptcy Code §§ 105, 363(b), 363(f) and 365, to sell the Purchased Assets and to assume and assign the Assigned Contracts to the Purchaser. The Debtors hereby instruct, and this Court hereby authorizes and directs, the Purchaser and the Escrow Holder to

remit directly (A) to the Prepetition First Lien Agents and (B) solely as it relates to any Disputed Pro Rata Share (as defined below), to the Disputed Obligations Escrow (as defined below):

(a) on the Closing Date, (i) $115,500,000, less the Purchased Cash Deficiency and less the cash necessary to fund a wind-down budget (in a form and ~~substance~~ amount agreed to by the Debtors (following consultation with Yucaipa and the Committee) and the Prepetition First Lien Agents or approved by order of the U.S. Bankruptcy Court; the "Wind Down Budget"); and (ii) (x) any Additional Cash Consideration; or (y) in the event that the Purchaser elects to exercise the Note Election (and does not pay the Additional Cash Consideration), then $500,000 in face amount of the Purchaser Notes and the entirety of the cash in the Good Faith Deposit Escrow Account; and

(b) upon resolution of any dispute regarding the Final Working Capital Statement (pursuant to Section 2.2 of the Agreement), the portion of the Good Faith Deposit (if any) that would otherwise be required to be released to the Debtors (Sections 12(a)(i) and (ii) and 12(b) hereof, collectively, the "Sale Proceeds").

13. The Sale Proceeds shall be used (i) first, to indefeasibly pay in full in cash all obligations owing under the DIP Credit Agreement (the "DIP Payment"), and (ii) second, to provide for an indefeasible payment to the Prepetition First Lien Agents on account of the Obligations (as defined in the Prepetition First Lien Credit Agreement),[6] such payment to be distributed in accordance with the terms of the Prepetition First Lien Credit Agreement and

[6] "Prepetition First Lien Credit Agreement" means the Amended and Restated First Lien Secured Super Priority Debtor-in-Possession and Exit Credit and Guaranty Agreement, dated May 15, 2007, by and among, *inter alia*, Allied Systems Holdings, Inc. and Allied Systems Ltd. (L.P.) as borrowers (the "Borrowers"), certain subsidiaries of the Borrowers as guarantors, the lenders party thereto from time to time (the "Prepetition First Lien Lenders"), and CIT, as administrative and collateral agent (as amended, modified, supplemented or restated from time to time).

related credit documents, including the distribution of a Pro Rata Share (as defined in the Prepetition First Lien Credit Agreement) of the payment to the applicable Prepetition First Lien Lender. Notwithstanding the foregoing, the Sale Proceeds allocable to any Pro Rata Share of the Obligations (based on the amount of the Obligations set forth in the register maintained by the Prepetition First Lien Agents as of the Petition Date (as the same may be modified by agreement of Yucaipa and the Prepetition First Lien Agents or in accordance with a final order of a court of competent jurisdiction) regardless of any defects in, challenges to or reduction in such holdings that may be asserted or claimed, the "Disputed Pro Rata Share") that are subject to a pending filed objection or challenge (including, without limitation, with respect to the applicable Prepetition First Lien Lender's status as a "Lender," any dispute as to the amount of the Obligations held, or any claim for subordination) (the "Disputed First Lien Obligations"), shall be paid directly at Closing by the Purchaser into the Disputed Obligations Escrow (as defined below). For avoidance of doubt, the Obligations held by Yucaipa are [currently] Disputed First Lien Obligations, and Yucaipa's Disputed Pro Rata Share of the Obligations (and the Sale Proceeds distributable to the Prepetition First Lien Agents and other Prepetition First Lien Lenders) is equal to 55.2% thereof as of the date of this Order. Concurrently with any distribution of the Sale Proceeds to the Prepetition First Lien Agents or the Debtors (whether at the Closing or otherwise), the Purchaser shall deposit such Disputed Pro Rata Share (and any other Sale Proceeds allocable to any other Disputed First Lien Obligations) with an independent, third party escrow agent reasonably acceptable to Yucaipa and the Prepetition First Lien Agents and pursuant to an escrow agreement having terms and conditions reasonably acceptable to Yucaipa and the Prepetition First Lien Agents (the "Disputed Obligations Escrow"). The fees and expenses of the Disputed Obligations Escrow shall be paid by the Prepetition First Lien Agents

(as an expense of Prepetition First Lien Agents under the Prepetition First Lien Credit Agreement) or through the Wind-Down Budget. The Sale Proceeds (including the applicable Disputed Pro Rata Share of any and all non-cash Sale Proceeds) held in such Disputed Obligations Escrow are referred to as the "Reserved Funds." Unless otherwise agreed by all parties to such dispute, the Reserved Funds shall be distributed to the holder of applicable Disputed First Lien Obligations upon the entry of a final non-appealable order of a court of competent jurisdiction (an "Allowance Order") finding that such Disputed First Lien Obligations constitute valid and enforceable First Lien Obligations ("Allowed First Lien Obligations") to the extent provided in the Allowance Order. If any Disputed First Lien Obligation is subordinated, disallowed or otherwise determined by a final non-appealable order of a court of competent jurisdiction to not constitute Allowed First Lien Obligations, then the Reserved Funds allocable to such portion of the Disputed First Lien Obligations shall be distributed to the holders of Allowed First Lien Obligations other than the applicable holder of such Disputed First Lien Obligations pursuant to the terms of the Prepetition First Lien Credit Agreement and the remainder (if any) promptly distributed to Yucaipa. All payments made to the Prepetition First Lien Agents and Prepetition First Lien Lenders (including any Reserved Funds deposited into the Disputed Obligations Escrow) pursuant to this Order shall not be subject to disgorgement for any reason.

14. Any Sale Proceeds left in the Debtors' estates to fund the Wind-Down Budget shall: (i) constitute cash collateral of the Prepetition First Lien ~~Agents~~ Lenders, (ii) be maintained by the Debtors in a segregated account, and (iii) only be used to fund the specific items and in the amounts set forth in Wind-Down Budget. In the event that there are Sale Proceeds left in the Debtors' estates to fund the Wind-Down Budget that exceed the Debtors' good faith estimate of

the estates' wind-down expenses ("Surplus Cash"), then the Debtors shall promptly distribute Surplus Cash (a) to the Prepetition First Lien Agents for distribution under the First Lien Credit Agreement and (b) Disputed Obligations Escrow ~~subject only to the limitations set forth above~~ with respect to First Lien Lenders holding Disputed First Lien Obligations. Any Sale Proceeds left in the Debtors' estates to fund the Wind-Down Budget shall be paid to the Prepetition First Lien Agents and Disputed Obligations Escrow, as applicable, prior to the entry of any order converting these Cases to chapter 7, appointing a chapter 11 trustee or closing these Chapter 11 Case, unless the Wind Down Budget contemplates otherwise.

15. Upon payment of the Purchase Price, the sale of the Purchased Assets shall vest the Purchaser with all right, title and interest of the Debtors to the Purchased Assets free and clear of any and all Liens (other than the Permitted Encumbrances and Assumed Liabilities) with all such Liens to attach only to the net proceeds of the sale of the Purchased Assets actually received by the Debtors with the same priority, validity, force, and effect, if any, as they now have in or against the Purchased Assets, subject to all claims and defenses the Debtors may possess with respect thereto. Following the Closing Date, no holder of any Liens in the Purchased Assets (other than the Permitted Encumbrances and Assumed Liabilities) shall interfere with the Purchaser's use and enjoyment of the Purchased Assets based on or related to such Liens, or any actions that the Debtors may take in the Chapter 11 Case. Upon payment of the Purchase Price, all Persons having Liens of any kind or nature whatsoever against or in any of the Debtors or the Purchased Assets are forever barred, estopped and permanently enjoined from pursuing or asserting any such Liens (other than the Permitted Encumbrances and the Assumed Liabilities) against the Purchaser, any of Purchaser's assets, property, successors or assigns, or the Purchased Assets. No Person shall take any action to prevent, interfere with or otherwise enjoin consummation of the Transactions.

16. The provisions of this Order authorizing the sale of the Purchased Assets free and clear of Liens (other than the Permitted Encumbrances and Assumed Liabilities) shall be self-executing, and neither the Debtors nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Order. However, the Debtors and the Purchaser, and each of their respective officers, employees, and agents are hereby authorized and empowered to take all actions and to execute and deliver any and all documents and instruments that either the Debtors or the Purchaser deem necessary, desirable or appropriate to implement and effectuate the terms of the Agreement and this Order.

17. On the Closing Date, the Purchaser and the Debtors at their own expense are authorized to (a) execute such documents and take all other actions as may be necessary to release Liens (other than the Permitted Encumbrances) filed against the Purchased Assets, if any, as may have been recorded or may otherwise exist, and (b) file a copy of this Order in the appropriate real estate records, the secretary of state records and any other filing location selected by the Purchaser or the Debtors and, once filed, this Order shall constitute conclusive evidence of the release of all Liens (other than Permitted Encumbrances) from the Purchased Assets. For the avoidance of doubt, if any Person that has filed financing statements, mortgages or other documents or agreements evidencing any Liens in or against the Purchased Assets (other than the Permitted Encumbrances) shall not have delivered to the Debtors' counsel or the Escrow Holder prior to the Closing after request therefor, in proper form for filing and executed by the appropriate parties, terminations statements, instruments of satisfaction, or releases of all such Liens that the Person has with respect to the Purchased Assets, the Debtors are hereby authorized and directed to execute and file such statements, instruments, releases, and other documents on

behalf of the Person with respect to such Purchased Assets at Closing, and the Purchaser is hereby authorized to execute and file such statements, instruments, releases, and other documents on behalf of the Person with respect to such Purchased Assets after the Closing.

18. To the greatest extent available under applicable Law, (a) the Purchaser shall be authorized, as of the Closing Date, to operate under any license, Permit, approval, certificate of occupancy, authorization, operating permit, registration, plan and the like of any Governmental Body relating to the Purchased Assets (collectively, the "Permits"), (b) all such Permits are deemed to have been, and hereby are, deemed to be transferred to the Purchaser as of the Closing Date, and (c) each Governmental Body that has issued or granted a Permit and who did not object to the sale of the Purchased Assets shall be deemed to have consented to the transfer of such Permit to the Purchaser as of the Closing Date.

19. All of the Debtors' interests in the Purchased Assets to be acquired by the Purchaser under the Agreement shall be, as of the Closing Date and upon the occurrence of the Closing, transferred to and vested in the Purchaser. Upon the occurrence of the Closing, this Order shall be considered and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Purchased Assets acquired by the Purchaser under the Agreement and/or a bill of sale, deeds, or assignment transferring good and marketable, indefeasible title and interest in the Purchased Assets to the Purchaser.

20. Except as expressly provided in the Agreement, the Purchaser is not assuming nor shall it or any affiliate of the Purchaser be in any way liable or responsible, as a successor, successor-in-interest, successor employer, substantial continuation, or otherwise, for any Liabilities, debts, or obligations of the Debtors in any way whatsoever relating to or arising from the Debtors' ownership or use of the Purchased Assets prior to the consummation of the

Transactions, or any Liabilities calculable by reference to the Debtors or their operations or the Purchased Assets, or relating to continuing or other conditions existing on or prior to consummation of the Transactions, which Liabilities, debts, and obligations are hereby extinguished insofar as they may give rise to liability, successor, successor-in-interest, successor employer, substantial continuation, or otherwise, against the Purchaser or any affiliate of the Purchaser.

21. All Persons presently or on or after the Closing Date in possession of some or all of the Purchased Assets are directed to surrender possession of the Purchased Assets to the Purchaser on the Closing Date or at such time thereafter as the Purchaser may request.

22. Subject to the terms of the Agreement and the occurrence of the Closing Date, the assumption by the Debtors of the Assigned Contracts and the sale and assignment of such agreements and unexpired leases to the Purchaser, as provided for or contemplated by the Agreement, be, and hereby is, authorized and approved pursuant to Bankruptcy Code §§ 363 and 365.

23. The Assigned Contracts shall be deemed valid and binding and in full force and effect and assumed by the Debtors and sold and assigned to the Purchaser at the Closing, pursuant to Bankruptcy Code §§ 363 and 365, subject only to the payment of the Cure Costs.

24. Upon the Closing, in accordance with Bankruptcy Code §§ 363 and 365, the Purchaser shall be fully and irrevocably vested in all right, title, and interest in and to each Assigned Contract. The Debtors shall reasonably cooperate with, and take all actions reasonably requested by, the Purchaser to effectuate the foregoing.

25. Pursuant to Bankruptcy Code §§ 365(b)(1)(A) and (B), except as contemplated by Section 1.4(n) of the Agreement, the Purchaser shall promptly pay at Closing or cause to be paid

at Closing to the non-debtor parties to any Assigned Contracts the requisite Cure Costs, if any, set forth on the Contract Notice filed with the Court, except to the extent that a Cure Cost was amended on the record of the Sale Hearing, following the assumption and assignment thereof. The Cure Costs are hereby fixed at the amounts set forth on the Contract Notice, or the amounts set forth on the record of the Sale Hearing, as the case may be, and the non-debtor parties to the Assigned Contracts are forever bound by such Cure Costs.

26. All defaults or other obligations under the Assigned Contracts arising prior to the Closing (without giving effect to any acceleration clauses, assignment fees, increases, advertising rates, or any other default provisions of the kind specified in Bankruptcy Code § 365(b)(2)) shall be deemed cured by payment of the Cure Costs.

27. Any provision in any Assigned Contract that purports to declare a breach, default, or payment right as a result of an assignment or a change of control in respect of the Debtors is unenforceable, and all Assigned Contracts shall remain in full force and effect, subject only to payment of the appropriate Cure Costs, if any. No sections or provisions of any Assigned Contract that purport to provide for additional payments, penalties, charges, or other financial accommodations in favor of the non-debtor party to the Assigned Contract shall have any force and effect with respect to the Transactions and assignments authorized by this Order, and such provisions constitute unenforceable anti-assignment provisions under Bankruptcy Code § 365(f) and/or are otherwise unenforceable under Bankruptcy Code § 365(e) and no assignment of any Assigned Contract pursuant to the terms of the Agreement shall in any respect constitute a default under any Assigned Contract. The non-debtor party to each Assigned Contract shall be deemed to have consented to such assignment under Bankruptcy Code § 365(c)(1)(B), and the Purchaser shall enjoy all of the Debtors' rights and benefits under each such Assigned Contract

as of the applicable date of assumption without the necessity of obtaining such non-debtor party's written consent to the assumption or assignment thereof.

28. The Purchaser has satisfied all requirements under Bankruptcy Code §§ 365(b)(1)(C) and 365(f)(2)(b) to provide adequate assurance of future performance under the Assigned Contracts.

29. The Debtors and their estates shall be relieved of any liability for any breach of any of the Assigned Contracts occurring from and after Closing, pursuant to and in accordance with Bankruptcy Code § 365(k).

30. Pursuant to Bankruptcy Code §§ 105(a), 363, and 365, all parties to the Assigned Contracts are forever barred and enjoined from raising or asserting against the Purchaser any assignment fee, default, breach or Claim or pecuniary loss, or condition to assignment, arising under or related to the Assigned Contracts existing as of the Closing or arising by reason of the Closing, except for any amounts that are Assumed Liabilities being assumed by the Purchaser under the Agreement.

31. Each and every federal, state, and local governmental agency or department (including each Governmental Body) is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the Transactions contemplated by the Agreement and this Order. This Order and the Agreement shall govern the acts of all such federal, state, and local governmental agencies and departments, including any filing agents, filing officers, title agents, recording agencies, secretaries of state, and all other persons and entities who may be required by operation of Law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title in or to the Purchased Assets, and each such entity is

hereby directed to accept this Order for recordation as conclusive evidence of the free, clear, and unencumbered transfer of title to the Purchased Assets conveyed to Purchaser pursuant to the Agreement.

32. To the extent permitted by Bankruptcy Code § 525, no Governmental Body may revoke or suspend any Permit relating to the operation of the Purchased Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of this Chapter 11 Case or the consummation of the Transactions.

33. The Purchaser has not assumed and is not otherwise obligated for any of the Debtors' Liabilities other than the Assumed Liabilities as set forth in the Agreement, and the Purchaser has not purchased any of the Excluded Assets as set forth in the Agreement. Consequently, upon payment of the Purchase Price, all Persons, Governmental Units (as defined in Bankruptcy Code §§ 101(27) and 101(41)) and all holders of Liens (other than the Permitted Encumbrances) based upon or arising out of Liabilities retained by the Debtors are hereby enjoined from taking any action against the Purchaser or the Purchased Assets to recover any Liens or on account of any Liabilities of the Debtors other than Assumed Liabilities pursuant to the Agreement. All Persons holding or asserting any Liens in or relating to the Excluded Assets are hereby enjoined from asserting or prosecuting such Liens or any cause of action against the Purchaser or the Purchased Assets for any Liability associated with the Excluded Assets.

34. The Purchaser is not a "successor", "successor-in-interest", "successor employer" or "substantial continuation" to or of the Debtors or their estates by reason of any theory of Law or equity, and the Purchaser shall not assume, nor be deemed to assume, or in any way be responsible for any Liability or obligation of any of the Debtors and/or their estates including, but not limited to, any bulk sales Law, successor liability, successor-in-interest liability,

successor employer liability, substantial continuation liability, or similar liability except to the extent expressly included in the Assumed Liabilities or provided in the Agreement or contractual or statutory obligations the Purchaser had or has independent of the sale. Neither the purchase of the Purchased Assets by the Purchaser, nor the facts that the Purchaser is using any of the Purchased Assets previously operated by the Debtors, employs any individuals who were previously employed by the Debtors, operates the same type of business previously operated by the Debtors, or has prior notice of a claim against the Debtors, will cause the Purchaser or any of its affiliates to be deemed a successor, successor-in-interest, successor employer or substantial continuation in any respect to the Debtors' business within the meaning of any foreign, federal, state or local revenue, pension, ERISA, COBRA, Tax, labor, employment, environmental, or other Laws, rule or regulation (including, without limitation, filing requirements under any such Laws, rules or regulations), or under any products liability Law or doctrine with respect to the Debtors' liability under such Law, rule or regulation or doctrine, except to the extent expressly included in the Assumed Liabilities or provided in the Agreement or contractual or statutory obligations the Purchaser had or has independent of the sale.

35. For the avoidance of doubt and with the exception of contractual or statutory obligations the Purchaser had or has independent of the sale, upon payment of the Purchase Price, transfer of title and possession of the Purchased Assets shall be free and clear of any Liabilities and other Liens pursuant to any successor, successor-in-interest, successor employer or substantial continuation theory, including the following: (a) any employment or labor agreements, (b) all deeds of trust, security deeds, mortgages, liens, and security interests, (c) any pension or medical benefit plan of the Debtors, compensation or other employee benefit plan of the Debtors, welfare, agreements, practices and programs, (d) any other employee, workers' compensation,

occupational disease or unemployment or temporary disability related Claim, including, without limitation, Claims and other Liens that might otherwise arise under or pursuant to (i) the Employee Retirement Income Security Act of 1974, as amended, (ii) the Fair Labor Standards Act, (iii) Title VII of the Civil Rights Act of 1964, (iv) the Federal Rehabilitation Act of 1973, (v) the National Labor Relations Act, (vi) the Worker Adjustment and Retraining Act of 1988, (vii) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (viii) the Americans with Disabilities Act of 1990, (ix) the Consolidated Omnibus Budget Reconciliation Act of 1985, (x) state discrimination Laws, (xi) state unemployment compensation Laws or any other similar state Laws, or (xii) any other state or federal benefits or Claims and other Liens relating to any employment with the Debtors or any predecessors, (e) environmental or other Claims and other Liens arising from existing conditions on or prior to the Closing (including, without limitation, the presence of hazardous, toxic, polluting or contaminating substances or waste) that may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601, et seq., or other state or federal statute, (f) any bulk sales or similar Law, (g) any Tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, and (h) any and all theories of successor liability, including any theories on successor products liability grounds or otherwise.

36. Except to the extent expressly included in the Assumed Liabilities or provided in the Agreement, the Purchaser and its affiliates shall have no liability, obligation, or responsibility under the WARN Act or the Comprehensive Environmental Response, Compensation and Liability Act, or any foreign, federal, state or local labor, employment, or environmental Law by

virtue of the Purchaser's purchase of the Purchased Assets or assumption of the Assumed Liabilities.

37. Except to the extent expressly included in the Assumed Liabilities, pursuant to Bankruptcy Code §§ 105 and 363, all Persons including, but not limited to, the Debtors, the Committee, all debt holders, equity security holders, the Debtors' employees or former employees, Governmental Bodies, lenders, parties to or beneficiaries under any Seller Plan, trade and other creditors asserting or holding a Lien of any kind or nature whatsoever against, in, or with respect to any of the Debtors or the Purchased Assets (other than the Permitted Encumbrances and Assumed Liabilities), arising under or out of, in connection with, or in any way relating to the Debtors, the Purchased Assets, the operation of the Debtors' businesses prior to the Closing Date, or the transfer of the Purchased Assets to the Purchaser, shall be forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Lien, including assertion of any right of setoff or subrogation, and enforcement, attachment, or collection of any judgment, award, decree, or order, against the Purchaser or any affiliate, successor or assign thereof and each of their respective current and former members, managers, officers, directors, attorneys, employees, partners, affiliates, financial advisors, and representatives (each of the foregoing in its individual capacity), or the Purchased Assets.

38. Without limiting the generality of the foregoing, the Purchaser shall not assume or be obligated to pay, perform or otherwise discharge any workers' compensation debts, obligations, and liabilities of the Debtors arising pursuant to state Law or otherwise. This Order is intended to be all inclusive and shall encompass, but not be limited to, workers' compensation Claims or suits of any type, whether now known or unknown, whenever incurred or filed, which have occurred or which arise from work-related injuries, diseases,

death, exposures, intentional torts, acts of discrimination, or other incidents, acts, or injuries prior to the Closing Date, including, but not limited to, any and all workers' compensation Claims filed or to be filed, or reopenings of those Claims, by or on behalf of any of the Debtors' current or former employees, persons on laid-off, inactive or retired status, or their respective dependents, heirs or assigns, as well as any and all premiums, assessments, or other obligations of any nature whatsoever of the Debtors relating in any way to workers' compensation liability.

39. Subject to the terms of the Agreement, the Agreement and any related agreements and/or instruments may be waived, modified, amended, or supplemented by agreement of the Debtors and the Purchaser, without further action or order of the Court; provided, however, that any such waiver, modification, amendment, or supplement is not materially adverse to the Debtors and does not reduce in any way the Purchase Price.

40. Nothing contained herein or in the Agreement shall affect any rights LSREF2 may have in connection with the security deposit or the letter of credit proceeds currently in the possession of LSREF2 in connection with the Agreement of Lease dated October 19, 2007 for the Debtors' headquarters building in Atlanta, Georgia.

41. With respect to the property in Ellis County, Texas, any valid, undisputed 2013 ad valorem taxes on the real and personal property will be paid at closing if such date is on or before January 31, 2014. If closing has not occurred by that date, the Debtors shall pay any valid, undisputed 2013 taxes as billed on or before January 31, 2014. The 2013 taxes shall be paid (if valid and undisputed) based upon the tax office records and, pursuant to 11 U.S.C. § 503(b)(1)(D) no administrative expense claim or request for payment need be filed for these taxes to be paid. Any disputed ad valorem taxes on the real and personal property will be

addressed by a court of competent jurisdiction and paid as may be required by the disposition of such dispute.

42. Notwithstanding anything to the contrary in the Agreement or in this Order approving the sale of assets of the Debtors' Michigan businesses, this Order will not enjoin, suspend, or restrain the assessment, levy or collection of unemployment taxes under Michigan state law and does not constitute a declaratory judgment with respect to any employer's liability for taxes under Michigan state law. This Order is without prejudice to any rights the Purchaser, the Debtors or any of their successors-in-interest may have to challenge the assessment, levy or collection of unemployment taxes or any unemployment experience rating assessed by the Michigan Unemployment Insurance Agency.

43. The Debtors' sale of claims against and alleged rights to receive payment from (the "Alleged Claims") any one or more of General Motors Holdings LLC, General Motors LLC, and General Motors of Canada Limited (collectively, "GM"), including, without limitation, alleged claims for "Transportation Services Charges" in the amounts of $2,755,404.35 and $1,324,682.84 listed in Debtors' Schedule B21 (the "Alleged Accounts Receivable"), is expressly subject to any and all of GM's valid defenses and rights, including, but not limited to, GM's rights of recoupment and setoff under Michigan law and GM's claims and defenses asserted in United States District Court for the Eastern District of Michigan (the "Michigan Court") Case No. 11-11162 (the "Michigan Case"). Purchaser shall not assign, sell, or otherwise transfer any right or interest in the Alleged Claims or Alleged Accounts Receivable without the prior written consent of GM and any such assignment, sale, or transfer without GM's prior written consent is void. In the event that Purchaser seeks to pursue or enforce the Alleged Claims, the Purchaser and Debtors agree and consent to exclusive jurisdiction and venue in the

Michigan Court and that any further litigation relating to the Alleged Claims, Alleged Accounts Receivable, or GM's related defenses shall be exclusively in the Michigan Case, except that if the Michigan Court cannot exercise jurisdiction and venue, Purchaser and Debtors agree and consent to exclusive venue and jurisdiction in a court of competent jurisdiction located in Oakland County, Michigan. Further, in the event that Purchaser seeks to pursue or enforce the Alleged Claims, Purchaser and Debtors consent to any request by GM to the U.S. Bankruptcy Court for relief from the automatic stay to litigate in the Michigan Court or another Michigan court any and all claims relating to the Alleged Claims, Alleged Accounts Receivable, and GM's related defenses and damages claims, including, without limitation, GM's claims for damages relating to the alleged breach by Allied Systems, Ltd. (L.P.) ("Allied Systems") of its obligations under the Service Contract for Logistics Services (the "Service Contract") between GM and Allied Systems. Nothing contained in this order or any prior order of this U.S. Bankruptcy Court shall affect or otherwise impair to the extent valid (i) any setoff or recoupment rights or other defenses of GM, or the priority of any setoff or recoupment claims, or any rights attendant thereto, including, without limitation, GM's rights under the Service Contract, and (ii) GM's defenses to the existence and alleged amount of the Alleged Claims and Alleged Accounts Receivable including, without limitation, (a) on account of GM processing a $100 million debit on May 20, 2011 to recoup and/or set off a portion of GM's damages caused by Allied Systems' alleged breach of the Service Contract and (b) on account of the Stipulation as to Amounts of Certain Damages Claims in the Michigan Case.

44. The failure specifically to include any particular provisions of the Agreement or any related agreements or instruments in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court, the Debtors, and the Purchaser that the

Agreement and any related agreements and instruments are authorized and approved in their entirety with such amendments thereto as may be made by the parties in accordance with this Order prior to Closing.

45. Nothing in this Order or the Agreement releases, nullifies, precludes, or enjoins the United States' enforcement of any liability under environmental Laws against the Purchaser or other future owner or operator as the current owner or operator of the Purchased Assets from and after the Closing Date.

46. No bulk sale Law or any similar Law of any state or other jurisdiction shall apply in any way to the sale and the Transactions contemplated by the Agreement.

47. Except as otherwise provided herein, Nothing in this Order shall alter or amend the Agreement and the obligations of the Debtors and the Purchaser thereunder.

48. This Order and the Agreement shall be binding upon and govern the acts of all Persons including, without limitation, the Debtors, the Debtors' estates, the Purchaser, and each of their respective directors, officers, employees, agents, successors, and permitted assigns, including, without limitation, any Chapter 11 trustee hereinafter appointed for the Debtors' estates, any trustee appointed in a Chapter 7 case if this Chapter 11 Case is converted from Chapter 11, any Chapter 11 plan agent or trustee, liquidating agent or trustee, or any other agent or trustee charged with administering any assets of the Debtors or their estates, all creditors of each Debtor (whether known or unknown), holders of Liens in or with respect to the Purchased Assets, filing agents, filing officers, title agents, recording agencies, secretaries of state, and all other Persons who may be required by operation of Law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title in or to the Purchased Assets.

49. Nothing in any order of this Court or contained in any plan of reorganization or liquidation confirmed in this Chapter 11 Case, or in any subsequent or converted cases of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code, shall conflict with or derogate from the provisions of the Agreement or the terms of this Order.

50. The stays imposed by Bankruptcy Rules 6004(h), 6006(d), and 7062 are hereby waived, and this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any Person obtaining a stay pending appeal, the Debtors and the Purchaser are free to close under the Agreement at any time, subject to the terms of the Agreement. In the absence of any Person obtaining a stay pending appeal, if the Debtors and the Purchaser close under the Agreement, the Purchaser shall be deemed to be acting in "good faith" and shall be entitled to the protections of Bankruptcy Code § 363(m) as to all aspects of the Transactions if this Order or any authorization contained herein is reversed or modified on appeal.

51. The automatic stay provisions of Bankruptcy Code § 362 are vacated and modified to the extent necessary to implement the terms and conditions of the Agreement and the provisions of this Order, and the stay imposed by Bankruptcy Rule 4001(a)(3) is hereby waived with respect thereto.

52. This Court shall retain jurisdiction to enforce the terms and provisions of this Order and the Agreement (including, without limitation, all documents and instruments executed in connection with the Closing) in all respects and to decide any disputes concerning this Order, the Agreement, or the rights and duties of the parties hereunder or thereunder or any issues relating to the Agreement and this Order including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and extent of the

Purchased Assets and any Assigned Contracts, and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer of the Purchased Assets free and clear of all Liens (except Permitted Encumbrances and Assumed Liabilities) and the payment of the Sale Proceeds to the Prepetition First Lien Agents.

53. As soon as practicable after the Closing, the Debtors shall file a report of sale in accordance with Bankruptcy Rule 6004(f)(1).

54. The definition of the term "Current Liabilities" contained in the Agreement is hereby amended and restated to provide as follows:

> "**Current Liabilities**" means the following Assumed Liabilities: (a) amounts owed to third parties arising in the Ordinary Course of Business after the Petition Date (and arising on or prior to the Closing Date), which are not past due more than thirty (30) days as of the Closing Date, and which are entitled to priority status under Section 503(b) of the Bankruptcy Code or under the CCAA, (b) all accrued but unpaid base salary or wages due to any Employees (excluding all other types of compensation, health, welfare and pension benefits and bonuses, severance and incentive compensation) and all accrued but unpaid vacation and paid time off due to any Employees as of the Closing Date, (c) all cargo claims arising after the Petition Date under Sellers' customer Contracts and accrued as of the Closing Date, (d) amounts owed pursuant to the Retention Incentive Agreements as of the Closing Date, and (e) all accrued but unpaid health, welfare and pension benefits and contributions owed to or in respect of Employees of Allied Canada as of the Closing Date, which health, welfare and pension benefits are not due and payable at or prior to the Closing, in an aggregate amount that does not exceed $450,000 (the "Assumed HWP Benefits"), in each case determined in accordance with GAAP.

55. Pursuant to Sections 1.3(f) and 1.3(i) of the Agreement, the Assumed Liabilities shall include the Assumed HWP Benefits.

56. Pursuant to Section 6.1 of the Agreement, the Employment Offering Purchaser Entity has agreed to assume any and all obligations and responsibilities of Allied Canada as a result of the application of Section 44 of the Canada Labour Code.

Dated: September 17, 2013
Wilmington, Delaware

THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

SCHEDULE C – FORM OF INFORMATION OFFICER'S CERTIFICATE

Court File No. 12-CV-9757-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

THE HONOURABLE	)	**●, THE ● DAY**
	)	
JUSTICE MORAWETZ	)	**OF ●, 2013**

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

AND IN THE MATTER OF ALLIED SYSTEMS HOLDINGS, INC., ALLIED SYSTEMS (CANADA) COMPANY, AXIS CANADA COMPANY AND THOSE OTHER COMPANIES LISTED ON SCHEDULE "A" HERETO

APPLICATION OF ALLIED SYSTEMS HOLDINGS, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

INFORMATION OFFICER'S CERTIFICATE
(Jack Cooper Holdings Corp., or its designee)

RECITALS

A. Pursuant to an Order of the Honourable Ontario Superior Court of Justice (Commercial List) (the "Court") dated June 13, 2012, as amended and supplemented from time to time, Duff & Phelps Canada Restructuring Inc. was appointed as the Information Officer in these proceedings (the "**Information Officer**").

B. Pursuant to an Order of the Court dated **[date]** (the "**Sale Approval Recognition and Vesting Order**"), the Court approved the Asset Purchase Agreement, dated as of September 12, 2013, by and among Jack Cooper Holdings Corp., as purchaser, Allied US and the subsidiaries of Allied US set forth on the signature pages thereto, as sellers (the "Sale Agreement"). and

provided for the vesting in the Jack Cooper Purchaser of the Chapter 11 Debtors' right, title and interest in and to, *inter alia*, the Jack Cooper Canadian Purchased Assets, effective upon the delivery by the Information Officer to the Jack Cooper Purchaser of a certificate confirming: (i) that the conditions to Closing as set out in sections 9.1 and 9.2 of the Sale Agreement have been satisfied or waived by the Chapter 11 Debtors and the Jack Cooper Purchaser; and (ii) the transactions contemplated by the Sale Agreement have been completed to the satisfaction of the Information Officer.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement or the Sale Approval Recognition and Vesting Order.

THE INFORMATION OFFICER CERTIFIES that it has been advised by Allied US (or its counsel) and the Jack Cooper Purchaser (or its counsel) that:

1. the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Sellers and the Jack Cooper Purchaser, as applicable; and

2. subject only to the delivery of this Certificate, the transactions contemplated by the Sale Agreement have been completed to the satisfaction of the Sellers and the Jack Cooper Purchaser.

This Certificate was delivered by the Information Officer at **[time]** on **[date]**.

Duff & Phelps Canada Restructuring Inc., solely in its capacity as Information Officer and not in its personal capacity

Per: _____

Name:

Title:

SCHEDULE D –CLAIMS

None.

SCHEDULE E - PERMITTED ENCUMBRANCES, EASEMENTS AND RESTRICTIVE COVENANTS

None

SCHEDULE F – REAL PROPERTY

Winnipeg Real Property

737 Pinguet Avenue, Winnipeg, Manitoba

Title Number 2576784/1
Lot 1 Plan 52374 WLTO
In Lot "F" of the Roman Catholic Mission Property.

(Land Titles Office for the Land Title District of Winnipeg)

SCHEDULE G

TRADEMARKS

TRADEMARK	SECURED PARTY
AXIS & DESIGN (TMA 475,835) OWNED BY AXIS GROUP INC.	CIT GROUP/BUSINESS CREDIT, INC.: JAN 9, 2009
A & DESIGN (TMA 245,283) OWNED BY ALLIED SYSTEMS CANADA	ABLECO FINANCE LLC: APRIL 4, 2002 CIT GROUP/BUSINESS CREDIT, INC.: DECEMBER 4, 2007

PPSA SEARCHES

ALBERTA:

ALLIED SYSTEMS (CANADA) COMPANY

COMPAGNIE SYSTEMES ALLIED (CANADA)

ALLIED SYSTEMS (CANADA) COMPANY/COMPAGNIE SYSTEMES ALLIED (CANADA)

COMPAGNIE SYSTEMES ALLIED (CANADA)/ALLIED SYSTEMS (CANADA) COMPANY

REGISTRATION #	SECURED PARTY
07032918968, AMENDED BY 08123021723	THE CIT GROUP/BUSINESS CREDIT, INC.
07050412464, AMENDED BY 08123021190	THE BANK OF NEW YORK MELLON
07050412605, AMENDED BY 08121820686	THE CIT GROUP/BUSINESS CREDIT, INC.
07050714646, AMENDED BY 08121820707	THE BANK OF NEW YORK MELLON
12062024832, AMENDED BY 12062109963, 12082432213, 12091931573,12091931855, 12092610067	YUCAIPA AMERICAN ALLIANCE FUND II, LLC
13062725385, AMENDED BY 13070824893	SPECTRUM COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT
13080935290 *(GARAGE KEEPERS' LIEN)*	KAL TIRE A CORPORATE PARTNERSHIP

13091042475 *(GARAGE KEEPERS' LIEN)*	KAL TIRE A CORPORATE PARTNERSHIP

ALBERTA: **ALLIED SYSTEMS CANADA**	
13050810411 *(GARAGE KEEPERS' LIEN)*	WESTERN STERLING TRUCKS LTD.
13071714886 *(GARAGE KEEPERS' LIEN)*	WESTERN STERLING TRUCKS LTD.
13072609847 *(GARAGE KEEPERS' LIEN)*	WESTERN STERLING TRUCKS LTD.
13073014895 *(GARAGE KEEPERS' LIEN)*	WESTERN STERLING TRUCKS LTD.
130723333326 *(GARAGE KEEPERS' LIEN)*	KAL TIRE A CORPORATE PARTNERSHIP
13072940306 *(GARAGE KEEPERS' LIEN)*	KAL TIRE A CORPORATE PARTNERSHIP
13080935290 *(GARAGE KEEPERS' LIEN)*	KAL TIRE A CORPORATE PARTNERSHIP

ALBERTA: **AXIS CANADA COMPANY**	
REGISTRATION #	**SECURED PARTY**
07032921012, AMENDED BY 08121820662	THE CIT GROUP/BUSINESS CREDIT, INC.
07050412357, AMENDED BY 08121820624	THE BANK OF NEW YORK MELLON
07050412548	THE CIT GROUP/BUSINESS CREDIT, INC.
07050714570	GOLDMAN SACHS CREDIT PARTNERS L.P.
12062024857, AMENDED BY 12062110100,12092609999	YUCAIPA AMERICAN ALLIANCE FUND II, LLC
13062734447	SPECTRUM COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT

PRINCE EDWARD ISLAND: **ALLIED SYSTEMS (CANADA) COMPANY** **COMPAGNIE SYSTEMES ALLIED (CANADA)** **ALLIED SYSTEMS (CANADA) COMPANY/COMPAGNIE SYSTEMES ALLIED (CANADA)** **COMPAGNIE SYSTEMES ALLIED (CANADA)/ALLIED SYSTEMS (CANADA) COMPANY**	
REGISTRATION #	**SECURED PARTY**
1776572	THE CIT GROUP/BUSINESS CREDIT, INC.
2169334	THE CIT GROUP/BUSINESS CREDIT, INC.
2169334	THE BANK OF NEW YORK MELLON
1776974, AMENDED BY 1815263 AND 2169389	THE CIT GROUP/BUSINESS CREDIT, INC.
1801606, AMENDED BY 1815272 AND 2169405	THE BANK OF NEW YORK MELLON
2940027, AMENDED BY 2940964 AND 2976346 AND 2993354	YUCAIPA AMERICAN ALLIANCE FUND II, LLC
3212400, AMENDED BY 3218208	SPECTRUM COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT

PRINCE EDWARD ISLAND: AXIS CANADA COMPANY	
REGISTRATION #	**SECURED PARTY**
1776581	THE CIT GROUP/BUSINESS CREDIT, INC.
1803542	GOLDMAN SACHS CREDIT PARTNERS L.P. AND GOLDMAN SACHS CREDIT PARTNERS L.P. C/O GOLDMAN, SACHS & CO
2169334	THE CIT GROUP/BUSINESS CREDIT, INC.
2169343	THE BANK OF NEW YORK MELLON
1776974, AMENDED BY 1815263 AND 2169389	THE CIT GROUP/BUSINESS CREDIT, INC.
1801606, AMENDED BY 1815272 AND 2169405	THE BANK OF NEW YORK MELLON

2940036, AMENDED BY 2940973 AND 2972518 AND 2992300	YUCAIPA AMERICAN ALLIANCE FUND II, LLC
3211606	SPECTRUM COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT

NEWFOUNDLAND AND LABRADOR:

ALLIED SYSTEMS (CANADA) COMPANY

COMPAGNIE SYSTEMES ALLIED (CANADA)

ALLIED SYSTEMS (CANADA) COMPANY/COMPAGNIE SYSTEMES ALLIED (CANADA)

COMPAGNIE SYSTEMES ALLIED (CANADA)/ALLIED SYSTEMS (CANADA) COMPANY

REGISTRATION #	**SECURED PARTY**
5585994	THE CIT GROUP/BUSINESS CREDIT, INC.
7077209	THE CIT GROUP/BUSINESS CREDIT, INC.
7077227	THE BANK OF NEW YORK MELLON
5587386, AMENDED BY 5729900 AND 7077307	THE CIT GROUP/BUSINESS CREDIT, INC.
5678910, AMENDED BY 5729964 AND 7077316	THE BANK OF NEW YORK MELLON
10090074, AMENDED BY 10093961 AND 10237816 AND 10308955	YUCAIPA AMERICAN ALLIANCE FUND II, LLC
11130614, AMENDED BY 11153798	SPECTRUM COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT

NEWFOUNDLAND AND LABRADOR: AXIS CANADA COMPANY

REGISTRATION #	**SECURED PARTY**
5586001	THE CIT GROUP/BUSINESS CREDIT, INC.
5685653	GOLDMAN SACHS CREDIT PARTNERS L.P. AND GOLDMAN SACHS CREDIT PARTNERS L.P. C/O GOLDMAN, SACHS & CO

7077209	THE CIT GROUP/BUSINESS CREDIT, INC.
7077227	THE BANK OF NEW YORK MELLON
5587386, AMENDED BY 5729900 AND 7077307	THE CIT GROUP/BUSINESS CREDIT, INC.
5678910, AMENDED BY 5729964 AND 7077316	THE BANK OF NEW YORK MELLON
10090082, AMENDED BY 10093979 AND 10219483 AND 10304228	YUCAIPA AMERICAN ALLIANCE FUND II, LLC
11125705	SPECTRUM COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT

NOVA SCOTIA:

ALLIED SYSTEMS (CANADA) COMPANY

COMPAGNIE SYSTEMES ALLIED (CANADA)

ALLIED SYSTEMS (CANADA) COMPANY/COMPAGNIE SYSTEMES ALLIED (CANADA)

COMPAGNIE SYSTEMES ALLIED (CANADA)/ALLIED SYSTEMS (CANADA) COMPANY

REGISTRATION #	**SECURED PARTY**
12228706	THE CIT GROUP/BUSINESS CREDIT, INC.
14778435	THE CIT GROUP/BUSINESS CREDIT, INC.
14778443	THE BANK OF NEW YORK MELLON
12232120, AMENDED BY 12484077 AND 14778484	THE CIT GROUP/BUSINESS CREDIT, INC.
12398145, AMENDED BY 12484184 AND 14778641	THE BANK OF NEW YORK MELLON
19718774, AMENDED BY 19723873 AND 19925080 AND 20035721	YUCAIPA AMERICAN ALLIANCE FUND II, LLC
21459417, AMENDED BY 21481387	SPECTRUM COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT

NOVA SCOTIA: AXIS CANADA COMPANY

REGISTRATION #	SECURED PARTY
12228722	THE CIT GROUP/BUSINESS CREDIT, INC.
12409041	GOLDMAN SACHS CREDIT PARTNERS L.P. AND GOLDMAN SACHS CREDIT PARTNERS L.P. C/O GOLDMAN, SACHS & CO
14778435	THE CIT GROUP/BUSINESS CREDIT, INC.
14778443	THE BANK OF NEW YORK MELLON
12232120, AMENDED BY 12484077 AND 14778484	THE CIT GROUP/BUSINESS CREDIT, INC.
12398145, AMENDED BY 12484184 AND 14778641	THE BANK OF NEW YORK MELLON
19718816, AMENDED BY 19723881 AND 19909886 AND 20030870 AND 20030938	YUCAIPA AMERICAN ALLIANCE FUND II, LLC
21459417, AMENDED BY 21481387	SPECTRUM COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT

NORTHWEST TERRITORIES:

ALLIED SYSTEMS (CANADA) COMPANY

COMPAGNIE SYSTEMES ALLIED (CANADA)

ALLIED SYSTEMS (CANADA) COMPANY/COMPAGNIE SYSTEMES ALLIED (CANADA)

COMPAGNIE SYSTEMES ALLIED (CANADA)/ALLIED SYSTEMS (CANADA) COMPANY

REGISTRATION #	SECURED PARTY
496075, AMENDED BY 665752	CIT GROUP/BUSINESS CREDIT, INC., THE
505479, AMENDED BY 665760	THE BANK OF NEW YORK MELLON
669341, AMENDED BY 671198	CIT GROUP/BUSINESS CREDIT, INC., THE
669408, AMENDED BY 671149	THE BANK OF NEW YORK MELLON
963009, AMENDED BY 963546 AND 974923 AND 974931 AND 975219 AND 975227 AND	YUCAIPA AMERICAN ALLIANCE FUND II,

975466 AND 975532 AND 975748 AND 976001 AND 986760 AND 986810	LLC
1049298, AMENDED BY 1051088	SPECTRUM COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT

NORTHWEST TERRITORIES: AXIS CANADA COMPANY	
REGISTRATION #	**SECURED PARTY**
496083, AMENDED BY 665778	CIT GROUP/BUSINESS CREDIT, INC., THE
505495, AMENDED BY 665794	THE BANK OF NEW YORK MELLON
963017, AMENDED BY 963553 AND 974857 AND 986752	YUCAIPA AMERICAN ALLIANCE FUND II, LLC
1048958	SPECTRUM COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT

QUEBEC: **ALLIED SYSTEMS (CANADA) COMPANY** **COMPAGNIE SYSTEMES ALLIED (CANADA)** **ALLIED SYSTEMS (CANADA) COMPANY/COMPAGNIE SYSTEMES ALLIED (CANADA)** **COMPAGNIE SYSTEMES ALLIED (CANADA)/ALLIED SYSTEMS (CANADA) COMPANY**	
REGISTRATION #	**SECURED PARTY**
13-0636420-0001	BLACK DIAMOND COMMERCIAL FINANCE, L.L.C. SPECTRUM COMMERCIAL FINANCE, LLC
13-0526147-0001, AMENDED BY 12-0726771-0001	YUCAIPA AMERICAN ALLIANCE FUND II, LLC
07-0269208-0002, AMENDED BY 08-0724623-0002 AND 08-0713485-0004	GOLDMAN SACHS CREDIT PARTNERS L.P.
07-0261636-0002	GOLDMAN SACHS CREDIT PARTNERS L.P.

07-0164970-0002, AMENDED BY 08-0713485-0003	THE CIT GROUP/BUSINESS CREDIT, INC.
07-0269208-0001, AMENDED BY 08-0724623-0003 AND 08-0713485-0001	GOLDMAN SACHS CREDIT PARTNERS L.P.
07-0261636-0003	GOLDMAN SACHS CREDIT PARTNERS L.P.
07-0164970-0003, AMENDED BY 08-0713485-0002	THE CIT GROUP/BUSINESS CREDIT, INC.

QUEBEC: **AXIS CANADA COMPANY**	
REGISTRATION #	**SECURED PARTY**
13-0636420-0001	BLACK DIAMOND COMMERCIAL FINANCE, L.L.C. SPECTRUM COMMERCIAL FINANCE, LLC
13-0526147-0001, AMENDED BY 12-0726771-0001	YUCAIPA AMERICAN ALLIANCE FUND II, LLC
07-0269208-0001, AMENDED BY 08-0724623-0003 AND 08-0713485-0001	GOLDMAN SACHS CREDIT PARTNERS L.P.
07-0261636-0003	GOLDMAN SACHS CREDIT PARTNERS L.P.
07-0164970-0003, AMENDED BY 08-0713485-0002	THE CIT GROUP/BUSINESS CREDIT, INC.

ONTARIO: **ALLIED SYSTEMS (CANADA) COMPANY** **COMPAGNIE SYSTEMES ALLIED (CANADA)** **ALLIED SYSTEMS (CANADA) COMPANY/COMPAGNIE SYSTEMES ALLIED (CANADA)** **COMPAGNIE SYSTEMES ALLIED (CANADA)/ALLIED SYSTEMS (CANADA) COMPANY**	
REGISTRATION #	**SECURED PARTY**
688014243	SPECTRUM COMMERCIAL FINANCE, LLC,

	AS COLLATERAL AGENT
679324626	YUCAIPA AMERICAN ALLIANCE FUND II, LLC
634984749	THE BANK OF NEW YORK MELLON
633862845	THE CIT GROUP/BUSINESS CREDIT, INC.

ONTARIO: **AXIS CANADA COMPANY**	
REGISTRATION #	**SECURED PARTY**
688014234	SPECTRUM COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT
679324608	YUCAIPA AMERICAN ALLIANCE FUND II, LLC
634984776	THE BANK OF NEW YORK MELLON
633862818	THE CIT GROUP/BUSINESS CREDIT, INC.

MANITOBA: **ALLIED SYSTEMS (CANADA) COMPANY** **COMPAGNIE SYSTEMES ALLIED (CANADA)** **ALLIED SYSTEMS (CANADA) COMPANY/COMPAGNIE SYSTEMES ALLIED (CANADA)** **COMPAGNIE SYSTEMES ALLIED (CANADA)/ALLIED SYSTEMS (CANADA) COMPANY**	
REGISTRATION #	**SECURED PARTY**
201311525706, AMENDED BY 201312201114 (NO REGISTRATION FOR COMPAGNIE SYSTÈMES ALLIED (CANADA) / ALLIED	SPECTRUM COMMERCIAL FINANCE, LLC

SYSTEMS (CANADA) COMPANY)	
201210633303, AMENDED BY 201215669519, 201215662611, 201213970912, 201213939519, 201213938717, 201213938415, 201213930511, 201213911010, 201213888418, 201213880310, 201213861412, 201213838011, 201210684315	YUCAIPA AMERICAN ALLIANCE FUND II, LLC
200708056200, AMENDED BY 200824161215, 200823864514	THE BANK OF NEW YORK MELLON
200705245206, AMENDED BY 200824144213, 200823863011	THE CIT GROUP/BUSINESS CREDIT, INC.

MANITOBA:

AXIS CANADA COMPANY

REGISTRATION #	**SECURED PARTY**
201311535302	SPECTRUM COMMERCIAL FINANCE, LLC
201210634202, AMENDED BY 201215659416, 201213827516, 201210683610	YUCAIPA AMERICAN ALLIANCE FUND II, LLC
200708054908, AMENDED BY 200823865219	THE BANK OF NEW YORK MELLON
200705240107, AMENDED BY 200823863615	THE CIT GROUP/BUSINESS CREDIT, INC.

SASKATCHEWAN:

ALLIED SYSTEMS (CANADA) COMPANY

COMPAGNIE SYSTEMES ALLIED (CANADA)

ALLIED SYSTEMS (CANADA) COMPANY/COMPAGNIE SYSTEMES ALLIED (CANADA)

COMPAGNIE SYSTEMES ALLIED (CANADA)/ALLIED SYSTEMS (CANADA) COMPANY

REGISTRATION #	SECURED PARTY
300148299, AMENDED BY TRANSACTION 2	THE CIT GROUP/BUSINESS CREDIT, INC.
300167940, AMENDED BY TRANSACTION 2	THE BANK OF NEW YORK MELLON (TRANSACTION 1: GOLDMAN SACHS CREDIT PARTNERS L.P., AMENDED BY TRANSACTION 2)

SASKATCHEWAN: **ALLIED SYSTEMS (CANADA) COMPANY / COMPAGNIE SYSTEMES ALLIED (CANADA)** **ALLIED SYSTEMS (CANADA) COMPANY** **COMPAGNIE SYSTEMES ALLIED (CANADA)**	
REGISTRATION #	**SECURED PARTY**
301046602, AMENDED BY TRANSACTION 2	SPECTRUM COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT (TRANSACTION 1: BLACK DIAMOND COMMERCIAL FINANCE, L.L.C, AMENDED BY TRANSACTION 2)

SASKATCHEWAN: ALLIED SYSTEMS (CANADA) COMPANY, COMPAGNIE SYSTEMES ALLIED (CANADA), ALLIED SYSTEMS (CANADA) COMPANY / COMPAGNIE SYSTEMES ALLIED (CANADA) AND COMPAGNIE SYSTEMES ALLIED (CANADA) / ALLIED SYSTEMS (CANADA) COMPANY	
REGISTRATION #	**SECURED PARTY**
300886184, AMENDED BY TRANSACTIONS # 2, 3, 4, 5, 6, 7, 8, 9	YUCAIPA AMERICAN ALLIANCE FUND II, LLC (TRANSACTION 1: YUCAIPA AMERICAN ALLIANCE FUND II, L.P.,

	AMENDED BY TRANSACTION 2).

SASKATCHEWAN: AXIS CANADA COMPANY	
REGISTRATION #	**SECURED PARTY**
300148298, AMENDED BY TRANSACTION 2	THE CIT GROUP/BUSINESS CREDIT, INC.
300167941, AMENDED BY TRANSACTION 2	THE BANK OF NEW YORK MELLON (TRANSACTION 1: GOLDMAN SACHS CREDIT PARTNERS L.P., AMENDED BY TRANSACTION 2)
300886187, AMENDED BY TRANSACTIONS # 2, 3, 4, 5	YUCAIPA AMERICAN ALLIANCE FUND II, LLC (TRANSACTION 1: YUCAIPA AMERICAN ALLIANCE FUND II, L.P., AMENDED BY TRANSACTION 2)
301046091	SPECTRUM COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT

NEW BRUNSWICK: COMPAGNIE SYSTEMES ALLIED (CANADA), ALLIED SYSTEMS (CANADA) COMPANY, ALLIED SYSTEMS (CANADA) COMPANY/COMPAGNIE SYSTEMES ALLIED (CANADA) AND COMPAGNIE SYSTEMES ALLIED (CANADA)/ALLIED SYSTEMS (CANADA) COMPANY	
REGISTRATION #	**SECURED PARTY**
14669956	THE CIT GROUP/BUSINESS CREDIT, INC.

NEW BRUNSWICK: COMPAGNIE SYSTEMES ALLIED (CANADA), ALLIED SYSTEMS (CANADA) COMPANY, ALLIED SYSTEMS (CANADA) COMPANY / COMPAGNIE SYSTEMES ALLIED (CANADA) AND COMPAGNIE SYSTEMES ALLIED (CANADA) /

ALLIED SYSTEMS (CANADA) COMPANY	
REGISTRATION #	**SECURED PARTY**
21639745, AMENDED BY 21644281, 21832795, 21942453	YUCAIPA AMERICAN ALLIANCE FUND II, LLC (21639745: YUCAIPA AMERICAN ALLIANCE FUND II, L.P., AMENDED BY 21644281)

NEW BRUNSWICK: COMPAGNIE SYSTEMES ALLIED (CANADA) (ATLANTA OFFICE AND HALIFAX OFFICE), ALLIED SYSTEMS (CANADA) COMPANY (ATLANTA OFFICE AND HALIFAX OFFICE), ALLIED SYSTEMS (CANADA) COMPANY / COMPAGNIE SYSTEMES ALLIED (CANADA) AND COMPAGNIE SYSTEMES ALLIED (CANADA) / ALLIED SYSTEMS (CANADA) COMPANY	
REGISTRATION #	**SECURED PARTY**
23196223, AMENDED BY 23228919	SPECTRUM COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT (23196223: BLACK DIAMOND COMMERCIAL FINANCE, L.L.C. AMENDED BY 23228919)

NEW BRUNSWICK: COMPAGNIE SYSTEMES ALLIED (CANADA), ALLIED SYSTEMS (CANADA) COMPANY, ALLIED SYSTEMS (CANADA) COMPANY/COMPAGNIE SYSTEMES ALLIED (CANADA), COMPAGNIE SYSTEMES ALLIED (CANADA)/ALLIED SYSTEMS (CANADA) COMPANY, ALLIED AUTOMOTIVE GROUP, INC., QAT, INC., AXIS GROUP, INC. AND AXIS CANADA COMPANY	
REGISTRATION #	**SECURED PARTY**
17031154	THE CIT GROUP/BUSINESS CREDIT, INC.
17031162	THE BANK OF NEW YORK MELLON

NEW BRUNSWICK: COMPAGNIE SYSTEMES ALLIED (CANADA), ALLIED SYSTEMS (CANADA) COMPANY, ALLIED SYSTEMS (CANADA) COMPANY/COMPAGNIE SYSTEMES ALLIED (CANADA), COMPAGNIE SYSTEMES ALLIED (CANADA)/ALLIED SYSTEMS (CANADA) COMPANY AND AXIS CANADA COMPANY	
REGISTRATION #	**SECURED PARTY**
14672778, AMENDED BY 14908859, 17031246	THE CIT GROUP/BUSINESS CREDIT, INC.
14827190, AMENDED BY 14909030, 17031279	THE BANK OF NEW YORK MELLON (14827190: GOLDMAN SACHS CREDIT PARTNERS L.P (JERSEY CITY OFFICE) AND GOLDMAN SACHS CREDIT PARTNERS L.P (NEW YORK OFFICE), AMENDED BY 17031279)

NEW BRUNSWICK: AXIS CANADA COMPANY	
REGISTRATION #	**SECURED PARTY**
14669964	THE CIT GROUP/BUSINESS CREDIT, INC.
14837397	GOLDMAN SACHS CREDIT PARTNERS L.P. (NEW YORK OFFICE) AND GOLDMAN SACHS CREDIT PARTNERS L.P. (JERSEY CITY OFFICE)
21639752, AMENDED BY 21644299, 21825864, 21940614	YUCAIPA AMERICAN ALLIANCE FUND II, LLC (21639752: YUCAIPA AMERICAN ALLIANCE FUND II, L.P., AMENDED BY 21644299)
23190788	SPECTRUM COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT

NUNAVUT: COMPAGNIE SYSTEMES ALLIED (CANADA), ALLIED SYSTEMS (CANADA) COMPANY, ALLIED SYSTEMS (CANADA) COMPANY/COMPAGNIE SYSTEMES ALLIED (CANADA) AND COMPAGNIE SYSTEMES ALLIED (CANADA)/ALLIED SYSTEMS (CANADA) COMPANY	
REGISTRATION #	**SECURED PARTY**
102251, AMENDED BY 131763	THE BANK OF NEW YORK MELLON (102251: GOLDMAN SACHS CREDIT PARTNERS L.P (JERSEY CITY OFFICE) AND GOLDMAN SACHS CREDIT PARTNERS L.P (NEW YORK OFFICE), AMENDED BY 131763)
100271, AMENDED BY 131755, 131813	CIT GROUP/BUSINESS CREDIT, INC., THE
132464, AMENDED BY 132944	CIT GROUP/BUSINESS CREDIT, INC., THE
132472, AMENDED BY 132936	THE BANK OF NEW YORK MELLON
215160, AMENDED BY 215376, 218818, 218834, 218867, 218933, 218941, 218982, 219006, 219022, 222430, 222471	YUCAIPA AMERICAN ALLIANCE FUND II, LLC (215160: YUCAIPA AMERICAN ALLIANCE FUND II, L.P., AMENDED BY 215376)
241265, AMENDED BY 241802	SPECTRUM COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT (241265: BLACK DIAMOND COMMERICAL FINANCE L.L.C., AMENDED BY 241802)

NUNAVUT: AXIS CANADA COMPANY	
REGISTRATION #	**SECURED PARTY**
100289, AMENDED BY 131771	CIT GROUP/BUSINESS CREDIT, INC., THE
102269, AMENDED BY 131789	THE BANK OF NEW YORK MELLON (102269: GOLDMAN SACHS CREDIT PARTNERS L.P

	(JERSEY CITY OFFICE) AND GOLDMAN SACHS CREDIT PARTNERS L.P (NEW YORK OFFICE), AMENDED BY 131789)
215178, AMENDED BY 215384, 218800, 222422	YUCAIPA AMERICAN ALLIANCE FUND II, LLC (215178: YUCAIPA AMERICAN ALLIANCE FUND II, L.P., AMENDED BY 215384)
241158	SPECTRUM COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT

YUKON: ALLIED SYSTEMS (CANADA) COMPANY, COMPAGNIE SYSTEMES ALLIED (CANADA), COMPAGNIE SYSTEMES ALLIED (CANADA) / ALLIED SYSTEM	
REGISTRATION #	**SECURED PARTY**
2007/03/30 00113, AMENDED BY 2008/10/10 31170, 2009/01/16 48350, 2009/01/30 50977, 2009/02/03 51376, 2009/02/06 51957, 2009/02/06 51957, 2009/02/10 52312, 2009/02/11 52369, 2009/02/12 52722, 2009/02/13 52860, 2009/02/16 53499, 2009/02/18 53842, 2009/02/24 54723, 2009/02/27 55335, 2009/03/02 56011, 2009/03/02 56029, 2009/03/12 57455, 2009/03/16 57894, 2009/03/18 58377, 2009/03/18 58385, 2009/03/19 58649, 2009/03/23 59177, 2009/03/23 59193, 2009/03/26 59840, 2009/03/27 60374, 2009/03/30 60543, 2009/03/31 61028, 2009/04/09 64141, 2009/04/09 64158	THE CIT GROUP / BUSINESS CREDIT, INC.
2007/05/10 09731, AMENDED BY 2009/01/16 48343, 2009/01/16 48392	GOLDMAN SACHS CREDIT PARTNERS L.P. and THE BANK OF NEW YORK MELLON

YUKON: AXIS CANADA COMPANY	
REGISTRATION #	**SECURED PARTY**
2007/05/10 09731, AMENDED BY 2009/01/16 48343, 2009/01/16 48392	GOLDMAN SACHS CREDIT PARTNERS L.P. and THE BANK OF NEW YORK MELLON
2007/03/30 00121, AMENDED BY 2009/01/16 48384	THE CIT GROUP/BUSINESS CREDIT, INC.

YUKON: ALLIED SYSTEMS (CANADA) COMPANY, ALLIED SYSTEMS (CANADA) COMPANY / COMPAGNIE SYSTEM, COMPAGNIE SYSTEMES ALLIED (CANADA) / ALLIED SYSTEM	
REGISTRATION #	**SECURED PARTY**
2012/06/20 41079, AMENDED BY 2012/06/25 42209, 2012/06/25 42217, 2012/06/25 42225, 2012/06/25 42233, 2012/08/08 52424, 2012/08/08 52432, 2012/08/08 52440, 2012/08/08 52457, 2012/08/08 52465, 2012/08/08 52473, 2012/08/08 52481 2012/08/08 52580, 2012/08/08 52598, 2012/08/08 52606, 2012/08/08 52614, 2012/08/08 52622, 2012/08/08 52630, 2012/08/08 52648, 2012/08/09 52695, 2012/08/09 53131, 2012/08/09 53149, 2012/08/13 53356, 2012/08/13 53364, 2012/08/13 53372, 2012/08/13 53380, 2012/08/13 53398, 2012/08/13 53406, 2012/09/20 63374, 2012/09/20 63382, 2012/09/20 63390, 2012/09/20 63408, 2012/09/20 63416, 2012/09/20 63424, 2012/09/20 63432, 2012/09/20 63440, 2012/09/20 63457, 2012/09/20 63473, 2012/09/20 63481, 2012/09/20 63499, 2012/09/20 63507, 2012/09/20 63515, 2012/09/20 63523, 2012/09/20 63531,	YUCAIPA AMERICAN ALLIANCE FUND II, LLC (2012/06/20 41079: YUCAIPA AMERICAN ALLIANCE FUND II L.P., AMENDED BY 2012/06/25 42209)

2012/09/20 63549, 2012/09/21 63794, 2012/09/21 63802, 2012/09/24 64333, 2012/09/24 64341, 2012/09/24 64358	
2007/03/30 00121, AMENDED BY 2009/01/16 48384	THE CIT GROUP/BUSINESS CREDIT, INC.

YUKON: ALLIED SYSTEMS (CANADA) COMPANY, COMPAGNIE SYSTEMES ALLIED (CANADA), COMPAGNIE SYSTEMES ALLIED (CANADA) / ALLIED SYSTEM, ALLIED SYSTEMS (CANADA) COMPANY / COMPAGNIE SYSTEM	
REGISTRATION #	**SECURED PARTY**
2007/05/10 09723, AMENDED BY 2007/05/11 10497, 2009/01/16 48335, 2009/01/16 48368, 2009/01/16 48376, 2009/01/30 50985, 2009/02/03 51384, 2009/02/05 51645, 2009/02/06 51965, 2009/02/10 52320, 2009/02/12 52730, 2009/02/16 53507, 2009/02/18 53859, 2009/02/24 54731, 2009/02/25 55131, 2009/02/27 55343, 2009/03/02 56037, 2009/03/03 56076, 2009/03/12 57463, 2009/03/16 57902, 2009/03/18 58393, 2009/03/19 58656, 2009/03/23 59185, 2009/03/23 59201, 2009/03/25 59800, 2009/03/26 59857, 2009/03/27 60366, 2009/03/30 60550, 2009/03/31 61036, 2009/04/02 61555,	GOLDMAN SACHS CREDIT PARTNERS L.P. and THE BANK OF NEW YORK MELLON (2007/05/10 09723: GOLDMAN SACHS CREDIT PARTNERS L.P. (New York Office and Jersey City office), AMENDED BY 2009/01/16 48335, GOLDMAN SACHS CREDIT PARTNERS L.P. (Jersey City office) deleted and THE BANK OF NEW YORK MELLON added)

YUKON: COMPAGNIE SYSTEMES ALLIED (CANADA), ALLIED SYSTEMS (CANADA) COMPANY, ALLIED SYSTEMS (CANADA) COMPANY/COMPAGNIE SYSTEMES ALLIED (CANADA)	
REGISTRATION #	**SECURED PARTY**
2013/07/02 29854, amended by 2013/07/02 29862,	2013/07/02 29854: SPECTRUM COMMERCIAL

2013/07/02 29870, 2013/07/02 29888, 2013/07/02 29896, 2013/07/02 29904, 2013/07/02 29912, 2013/07/02 29920, 2013/07/02 29938, 2013/07/02 29946, 2013/07/02 29953, 2013/07/02 29961, 2013/07/02 29979, 2013/07/02 29987, 2013/07/02 29995	FINANCE LLC, AS COLLATERAL AGE

BRITISH COLUMBIA: ALLIED SYSTEMS (CANADA COMPANY)	
REGISTRATION #	**SECURED PARTY**
583385D, AMENDED BY 752884E, 752911E	THE CIT GROUP/BUSINESS CREDIT, INC.
660446D, AMENDED BY 752887E, 752889E, 752909E	THE BANK OF NEW YORK MELLON
805760G, AMENDED BY 807720G, 888463G, 933363G	YUCAIPA AMERICAN ALLIANCE FUND II, LLC
383727H	ATCO STRUCTURES & LOGISTICS LTD
425579H	SPECTRUM COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT
501748H	KAL TIRE A CORPORATE PARTNERSHIP
541922H	ACE TRUCK & EQUIPMENT REPAIRS LTD.
552680H	KAL TIRE A CORPORATE PARTNERSHIP
575492H	KAL TIRE A CORPORATE PARTNERSHIP

BRITISH COLUMBIA: COMPAGNIE SYSTEMES ALLIED (CANADA)	
REGISTRATION #	**SECURED PARTY**

583385D, AMENDED BY 752884E, 752911E	THE CIT GROUP/BUSINESS CREDIT, INC.
660446D, AMENDED BY 752887E, 752889E, 752909E	THE BANK OF NEW YORK MELLON
805760G, AMENDED BY 807720G, 888463G, 933363G	YUCAIPA AMERICAN ALLIANCE FUND II, LLC
425579H	SPECTRUM COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT

BRITISH COLUMBIA: ALLIED SYSTEMS (CANADA) COMPANY/COMPAGNIE SYSTEMES ALLIED (CANADA)	
REGISTRATION #	**SECURED PARTY**
583385D, AMENDED BY 752884E, 752911E	THE CIT GROUP/BUSINESS CREDIT, INC.
660446D, AMENDED BY 752887E, 752889E, 752909E	THE BANK OF NEW YORK MELLON
805760G, AMENDED BY 807720G, 888463G, 933363G	YUCAIPA AMERICAN ALLIANCE FUND II, LLC
425579H	SPECTRUM COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT

BRITISH COLUMBIA: COMPAGNIE SYSTEMES ALLIED (CANADA) / ALLIED SYSTEMS (CANADA) COMPANY	
REGISTRATION #	**SECURED PARTY**
583385D, AMENDED BY 752884E, 752911E	THE CIT GROUP/BUSINESS CREDIT, INC.

660446D, AMENDED BY 752887E, 752889E, 752909E	THE BANK OF NEW YORK MELLON
805760G, AMENDED BY 807720G, 888463G, 933363G	YUCAIPA AMERICAN ALLIANCE FUND II, LLC

BRITISH COLUMBIA: AXIS CANADA COMPANY	
REGISTRATION #	**SECURED PARTY**
583384D, AMENDED BY 752868E	THE CIT GROUP/BUSINESS CREDIT, INC.
660457D, AMENDED BY 660822D, 752871E, 752874E	THE BANK OF NEW YORK MELLON
805757G, AMENDED BY 807708G, 888478G, 933355G	YUCAIPA AMERICAN ALLIANCE FUND II, LLC
427204H	SPECTRUM COMMERCIAL FINANCE, LLC, AS COLLATERAL AGENT

GEORGIA (DEKALB COUNTY): COMPAGNIE SYSTEMES ALLIED (CANADA), ALLIED SYSTEMS (CANADA) COMPANY, ALLIED SYSTEMS (CANADA) COMPANY/COMPAGNIE SYSTEMES ALLIED (CANADA)	
REGISTRATION #	**SECURED PARTY**
044 2013 02234, AMENDED BY 044 2013 02498	BLACK DIAMOND COMMERCIAL FINANCE, LLC SPECTRUM COMMERCIAL FINANCE LLC AS COLLATERAL AGENT

044 2013 02234, AMENDED BY 044 2013 02498	BLACK DIAMOND COMMERCIAL FINANCE, LLC SPECTRUM COMMERCIAL FINANCE LLC AS COLLATERAL AGENT
044 2013 02234, AMENDED BY 044 2013 02498	BLACK DIAMOND COMMERCIAL FINANCE, LLC SPECTRUM COMMERCIAL FINANCE LLC AS COLLATERAL AGENT

GEORGIA (DEKALB COUNTY): AXIS CANADA COMPANY	
REGISTRATION #	**SECURED PARTY**
CLEAR	CLEAR

DISTRICT OF COLUMBIA: COMPAGNIE SYSTEMES ALLIED (CANADA), ALLIED SYSTEMS (CANADA) COMPANY, ALLIED SYSTEMS (CANADA) COMPANY/COMPAGNIE SYSTEMES ALLIED (CANADA)	
REGISTRATION #	**SECURED PARTY**
2013073194, AMENDED BY 2013081384	BLACK DIAMOND COMMERCIAL FINANCE, LLC SPECTRUM COMMERCIAL FINANCE LLC AS COLLATERAL AGENT

2013073194, AMENDED BY 2013081384	BLACK DIAMOND COMMERCIAL FINANCE, LLC SPECTRUM COMMERCIAL FINANCE LLC AS COLLATERAL AGENT
2013073194, AMENDED BY 2013081384	BLACK DIAMOND COMMERCIAL FINANCE, LLC SPECTRUM COMMERCIAL FINANCE LLC AS COLLATERAL AGENT

DISTRICT OF COLUMBIA: AXIS CANADA COMPANY	
REGISTRATION #	**SECURED PARTY**
CLEAR	CLEAR

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

Court File No: 12-CV-9757-00CL

AND IN THE MATTER OF ALLIED SYSTEMS HOLDINGS, INC., ALLIED SYSTEMS (CANADA) COMPANY, AXIS CANADA COMPANY AND THOSE OTHER COMPANIES LISTED ON SCHEDULE "A" HERETO

APPLICATION OF ALLIED SYSTEMS HOLDINGS, INC. UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto, Ontario, Canada

SALE APPROVAL RECOGNITION AND VESTING ORDER

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Lawyers for the Applicant

Tab 6

2000 CarswellOnt 704
Ontario Superior Court of Justice [Commercial List]

Babcock & Wilcox Canada Ltd., Re

2000 CarswellOnt 704, [2000] O.J. No. 786, 18 C.B.R. (4th) 157, 5 B.L.R. (3d) 75, 95 A.C.W.S. (3d) 608

In the Matter of Section 18.6 of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

In the Matter of Babcock & Wilcox Canada Ltd.

Farley J.

Heard: February 25, 2000
Judgment: February 25, 2000
Docket: 00-CL-3667

Counsel: *Derrick Tay*, for Babcock & Wilcox Canada Ltd.
Paul Macdonald, for Citibank North America Inc., Lenders under the Post-Petition Credit Agreement.

Subject: Corporate and Commercial; Insolvency
Related Abridgment Classifications
Bankruptcy and insolvency
XIX Companies' Creditors Arrangement Act
XIX.1 General principles
XIX.1.c Application of Act
XIX.1.c.iv Miscellaneous
Headnote
Corporations --- Arrangements and compromises — Under Companies' Creditors Arrangement Act — Arrangements — Effect of arrangement — Stay of proceedings
Solvent corporation applied for interim order under s. 18.6 of Companies' Creditors Arrangement Act for stay of actions and enforcements against corporation in respect of asbestos tort claims — Application granted — Application was to be reviewed in light of doctrine of comity, inherent jurisdiction, and aspect of liberal interpretation of Act generally — Proceedings commenced by corporation's parent corporation in United States and other United States related corporations for protection under c. 11 of United States Bankruptcy Code in connection with mass asbestos tort claims constituted foreign proceeding for purposes of s. 18.6 of Act — Insolvency of debtor in foreign proceeding was not condition precedent for proceeding to be foreign proceeding under definition of s. 18.6 of Act — Corporation was entitled to avail itself of provisions of s. 18.6 of Act — Relief requested was not of nature contrary to provisions of Act — Recourse may be had to s. 18.6 of Act in case of solvent debtor — Chapter 11 proceedings in United States were intended to resolve mass asbestos-related tort claims that seriously threatened long-term viability of corporation's parent — Corporation was significant participant in overall international operation and interdependence existed between corporation and its parent as to facilities and services — Bankruptcy Code, 11 U.S.C. 1982, c. 11 — Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, s. 18.6.
Table of Authorities
Cases considered by *Farley J.*:
Arrowmaster Inc. v. Unique Forming Ltd. (1993), 17 O.R. (3d) 407, 29 C.P.C. (3d) 65 (Ont. Gen. Div.) — applied
ATL Industries Inc. v. Han Eol Ind. Co. (1995), 36 C.P.C. (3d) 288 (Ont. Gen. Div. [Commercial List]) — applied
Hongkong Bank of Canada v. Chef Ready Foods Ltd. (1990), 51 B.C.L.R. (2d) 84, 4 C.B.R. (3d) 311, (sub nom. *Chef Ready Foods Ltd. v. Hongkong Bank of Canada)* [1991] 2 W.W.R. 136 (B.C. C.A.) — referred to

Hunt v. T & N plc (1993), [1994] 1 W.W.R. 129, 21 C.P.C. (3d) 269, (sub nom. *Hunt v. Lac d'Amiante du Québec Ltée)* 37 B.C.A.C. 161, (sub nom. *Hunt v. Lac d'Amiante du Québec Ltée)* 60 W.A.C. 161, (sub nom. *Hunt v. T&N plc)* [1993] 4 S.C.R. 289, (sub nom. *Hunt v. T&N plc)* 109 D.L.R. (4th) 16, 85 B.C.L.R. (2d) 1, (sub nom. *Hunt v. Lac d'Amiante du Québec Ltée)* 161 N.R. 81 (S.C.C.) — referred to

Lehndorff General Partner Ltd., Re (1993), 17 C.B.R. (3d) 24, 9 B.L.R. (2d) 275 (Ont. Gen. Div. [Commercial List]) — referred to

Loewen Group Inc. v. Continental Insurance Co. of Canada (1997), 48 C.C.L.I. (2d) 119, 44 B.C.L.R. (3d) 387 (B.C. S.C.) — considered

Microbiz Corp. v. Classic Software Systems Inc. (1996), 45 C.B.R. (3d) 40 (Ont. Gen. Div.) — referred to

Morguard Investments Ltd. v. De Savoye (1990), 46 C.P.C. (2d) 1, 15 R.P.R. (2d) 1, 76 D.L.R. (4th) 256, 122 N.R. 81, [1991] 2 W.W.R. 217, 52 B.C.L.R. (2d) 160, [1990] 3 S.C.R. 1077 (S.C.C.) — applied

Olympia & York Developments Ltd. v. Royal Trust Co. (1993), 20 C.B.R. (3d) 165 (Ont. Gen. Div.) — considered

Pacific National Lease Holding Corp. v. Sun Life Trust Co., 34 C.B.R. (3d) 4, 10 B.C.L.R. (3d) 62, [1995] 10 W.W.R. 714, (sub nom. *Pacific National Lease Holding Corp., Re)* 62 B.C.A.C. 151, (sub nom. *Pacific National Lease Holding Corp., Re)* 103 W.A.C. 151 (B.C. C.A.) — referred to

Roberts v. Picture Butte Municipal Hospital (1998), 64 Alta. L.R. (3d) 218, 23 C.P.C. (4th) 300, 227 A.R. 308, [1999] 4 W.W.R. 443 (Alta. Q.B.) — considered

Taylor v. Dow Corning Australia Pty. Ltd. (December 19, 1997), Doc. 8438/95 (Australia Vic. Sup. Ct.) — referred to

Tradewell Inc. v. American Sensors & Electronics Inc. (U.S. S.D. N.Y. 1997)

Westar Mining Ltd., Re, 70 B.C.L.R. (2d) 6, 14 C.B.R. (3d) 88, [1992] 6 W.W.R. 331 (B.C. S.C.) — referred to

Statutes considered:

Bankruptcy Amendment Code, (U.S.), 1994

Generally — considered

Bankruptcy Code, 11 U.S.C. 1982

Chapter 11 — considered

s. 524(g) — considered

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Pt XIII [en. 1997, c. 12, s. 118] — referred to

s. 267 "debtor" [en. 1997, c. 12, s. 118] — considered

ss. 267-275 [en. 1997, c. 12, s. 118] — referred to

Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act and the Income Tax Act, Act to amend the, S.C. 1997, c. 12

Generally — referred to

Business Corporations Act, R.S.O. 1990, c. B.16

Generally — referred to

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

s. 2 "debtor company" — considered

s. 3 — considered

s. 4 — considered

s. 5 — considered

s. 17 — referred to

s. 18.6 [en. 1997, c. 12, s. 125] — considered

s. 18.6(1) "foreign proceeding" [en. 1997, c. 12, s. 125] — considered

s. 18.6(2) [en. 1997, c. 12, s. 125] — considered

s. 18.6(3) [en. 1997, c. 12, s. 125] — considered

s. 18.6(4) [en. 1997, c. 12, s. 125] — considered

s. 18.6(8) [en. 1997, c. 12, s. 125] — considered

APPLICATION by solvent corporation for interim order under s. 18.6 of *Companies' Creditors Arrangement Act.*

***Farley J.*:**

1 I have had the opportunity to reflect on this matter which involves an aspect of the recent amendments to the insolvency legislation of Canada, which amendments have not yet been otherwise dealt with as to their substance. The applicant, Babcock & Wilcox Canada Ltd. ("BW Canada"), a solvent company, has applied for an interim order under s. 18.6 of the *Companies' Creditors Arrangement Act* ("CCAA"):

> (a) that the proceedings commenced by BW Canada's parent U.S. corporation and certain other U.S. related corporations (collectively "BWUS") for protection under Chapter 11 of the U.S. Bankruptcy Code in connection with mass asbestos claims before the U.S. Bankruptcy Court be recognized as a "foreign proceeding" for the purposes of s. 18.6;
>
> (b) that BW Canada be declared a company which is entitled to avail itself of the provisions of s. 18.6;
>
> (c) that there be a stay against suits and enforcements until May 1, 2000 (or such later date as the Court may order) as to asbestos related proceedings against BW Canada, its property and its directors;
>
> (d) that BW Canada be authorized to guarantee the obligations of its parent to the DIP Lender (debtor in possession lender) and grant security therefor in favour of the DIP Lender; and
>
> (e) and for other ancillary relief.

2 In Chapter 11 proceedings under the U.S. Bankruptcy Code, the U.S. Bankruptcy Court in New Orleans issued a temporary restraining order on February 22, 2000 wherein it was noted that BW Canada may be subject to actions in Canada similar to the U.S. asbestos claims. U.S. Bankruptcy Court Judge Brown's temporary restraining order was directed against certain named U.S. resident plaintiffs in the asbestos litigation:

> . . . and towards all plaintiffs and potential plaintiffs in Other Derivative Actions, that they are hereby restrained further prosecuting Pending Actions or further prosecuting or commencing Other Derivative Actions against Non-Debtor Affiliates, until the Court decides whether to grant the Debtors' request for a preliminary injunction.

Judge Brown further requested the aid and assistance of the Canadian courts in carrying out the U.S. Bankruptcy Court's orders. The "Non-Debtor Affiliates" would include BW Canada.

3 Under the 1994 amendments to the U.S. Bankruptcy Code, the concept of the establishment of a trust sufficient to meet the court determined liability for a mass torts situations was introduced. I am advised that after many years of successfully resolving the overwhelming majority of claims against it on an individual basis by settlement on terms BWUS considered reasonable, BWUS has determined, as a result of a spike in claims with escalating demands when it was expecting a decrease in claims, that it is appropriate to resort to the mass tort trust concept. Hence its application earlier this week to Judge Brown with a view to eventually working out a global process, including incorporating any Canadian claims. This would be done in conjunction with its joint pool of insurance which covers both BWUS and BW Canada. Chapter 11 proceedings do not require an applicant thereunder to be insolvent; thus BWUS was able to make an application with a view towards the 1994 amendments (including s. 524(g)). This subsection would permit the U.S.

Bankruptcy Court on confirmation of a plan of reorganization under Chapter 11 with a view towards rehabilitation in the sense of avoiding insolvency in a mass torts situation to:

> . . . enjoin entities from taking legal action for the purpose of directly or indirectly collecting, recovering, or receiving payment or recovery with respect to any claims or demand that, under a plan of reorganization, is to be paid in whole or in part by a trust.

4 In 1997, ss. 267-275 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("BIA") and s. 18.6 of the CCAA were enacted to address the rising number of international insolvencies ("1997 Amendments"). The 1997 Amendments were introduced after a lengthy consultation process with the insolvency profession and others. Previous to the 1997 Amendments, Canadian courts essentially would rely on the evolving common law principles of comity which permitted the Canadian court to recognize and enforce in Canada the judicial acts of other jurisdictions.

5 La Forest J in *Morguard Investments Ltd. v. De Savoye* (1990), 76 D.L.R. (4th) 256 (S.C.C.), at p. 269 described the principle of comity as:

> "Comity" in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and goodwill, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protections of its laws . . .

6 In *ATL Industries Inc. v. Han Eol Ind. Co.* (1995), 36 C.P.C. (3d) 288 (Ont. Gen. Div. [Commercial List]), at pp. 302-3 I noted the following:

> Allow me to start off by stating that I agree with the analysis of MacPherson J. in *Arrowmaster Inc. v. Unique Forming Ltd.* (1993), 17 O.R. (3d) 407 (Gen. Div.) when in discussing *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077, 76 D.L.R. (4th) 256, 52 B.C.L.R. (2d) 160, 122 N.R. 81, [1991] 2 W.W.R. 217, 46 C.P.C. (2d) 1, 15 R.P.R. (2d) 1, he states at p.411:
>
> > The leading case dealing with the enforcement of "foreign" judgments is the decision of the Supreme Court of Canada in *Morguard Investments, supra*. The question in that case was whether, and the circumstances in which, the judgment of an Alberta court could be enforced in British Columbia. A unanimous court, speaking through La Forest J., held in favour of enforceability and, in so doing, discussed in some detail the doctrinal principles governing inter-jurisdictional enforcement of orders. I think it fair to say that the overarching theme of La Forest J.'s reasons is the necessity and desirability, in a mobile global society, for governments and courts to respect the orders made by courts in foreign jurisdictions with comparable legal systems, including substantive laws and rules of procedure. He expressed this theme in these words, at p. 1095:
> >
> > > Modern states, however, cannot live in splendid isolation and do give effect to judgments given in other countries in certain circumstances. Thus a judgment *in rem*, such as a decree of divorce granted by the courts of one state to persons domiciled there, will be recognized by the courts of other states. In certain circumstances, as well, our courts will enforce personal judgments given in other states. Thus, we saw, our courts will enforce an action for breach of contract given by the courts of another country if the defendant was present there at the time of the action or has agreed to the foreign court's exercise of jurisdiction. *This, it was thought, was in conformity with the requirements of comity, the informing principle of private international law, which has been stated to be the deference and respect due by other states to the actions of a state legitimately taken within its territory. Since the state where the judgment was given has power over the litigants, the judgments of its courts should be respected.* (emphasis added in original)
> >
> *Morguard Investments* was, as stated earlier, a case dealing with the enforcement of a court order across provincial boundaries. However, the historical analysis in La Forest J.'s judgment, of both the United Kingdom and Canadian jurisprudence, and the doctrinal principles enunciated by the court are equally applicable, in my

> view, in a situation where the judgment has been rendered by a court in a foreign jurisdiction. This should not be an absolute rule - there will be some foreign court orders that should not be enforced in Ontario, perhaps because the substantive law in the foreign country is so different from Ontario's or perhaps because the legal process that generates the foreign order diverges radically from Ontario's process. (my emphasis added)

Certainly the substantive and procedural aspects of the U.S. Bankruptcy Code including its 1994 amendments are not so different and do not radically diverge from our system.

7 After reviewing La Forest J.'s definition of comity, I went on to observe at p. 316:

> As was discussed by J.G. Castel, *Canadian Conflicts of Laws*, 3rd ed. (Toronto: Butterworths, 1994) at p. 270, there is a presumption of validity attaching to a foreign judgment unless and until it is established to be invalid. It would seem that the same type of evidence would be required to impeach a foreign judgment as a domestic one: fraud practiced on the court or tribunal: see *Sun Alliance Insurance Co. v. Thompson* (1981), 56 N.S.R. (2d) 619, 117 A.P.R. 619 (T.D.), Sopinka, supra, at p. 992.

La Forest J. went on to observe in *Morguard* at pp. 269-70:

> In a word, the rules of private international law are grounded in the need in modern times to facilitate the flow of wealth, skills and people across state lines in a fair and orderly manner.
>
> . . . . .
>
> Accommodating the flow of wealth, skills and people across state lines has now become imperative. Under these circumstances, our approach to the recognition and enforcement of foreign judgments would appear ripe for reappraisal.

See also *Hunt v. T & N plc* (1993), 109 D.L.R. (4th) 16 (S.C.C.), at p. 39.

8 While *Morguard* was an interprovincial case, there is no doubt that the principles in that case are equally applicable to international matters in the view of MacPherson J. and myself in *Arrowmaster* (1993), 17 O.R. (3d) 407 (Ont. Gen. Div.), and *ATL* respectively. Indeed the analysis by La Forest J. was on an international plane. As a country whose well-being is so heavily founded on international trade and investment, Canada of necessity is very conscious of the desirability of invoking comity in appropriate cases.

9 In the context of cross-border insolvencies, Canadian and U.S. Courts have made efforts to complement, coordinate and where appropriate accommodate the proceedings of the other. Examples of this would include *Olympia & York Developments Ltd.*, *Ever fresh Beverages Inc.* and *Loewen Group Inc. v. Continental Insurance Co. of Canada* (1997), 48 C.C.L.I. (2d) 119 (B.C. S.C.). Other examples involve the situation where a multi-jurisdictional proceeding is specifically connected to one jurisdiction with that jurisdiction's court being allowed to exercise principal control over the insolvency process: see *Roberts v. Picture Butte Municipal Hospital* (1998), 23 C.P.C. (4th) 300 (Alta. Q.B.), at pp. 5-7 [[1998] A.J. No. 817]; *Microbiz Corp. v. Classic Software Systems Inc.* (1996), 45 C.B.R. (3d) 40 (Ont. Gen. Div.), at p. 4; *Tradewell Inc. v. American Sensors Electronics, Inc.*, 1997 WL 423075 (S.D.N.Y. 1997).

10 In *Roberts*, Forsythe J. at pp. 5-7 noted that steps within the proceedings themselves are also subject to the dictates of comity in recognizing and enforcing a U.S. Bankruptcy Court stay in the *Dow Corning* litigation [*Taylor v. Dow Corning Australia Pty. Ltd.* (December 19, 1997), Doc. 8438/95 (Australia Vic. Sup. Ct.)] as to a debtor in Canada so as to promote greater efficiency, certainty and consistency in connection with the debtor's restructuring efforts. Foreign claimants were provided for in the U.S. corporation's plan. Forsyth J. stated:

> Comity and cooperation are increasingly important in the bankruptcy context. *As internationalization increases, more parties have assets and carry on activities in several jurisdictions. Without some coordination there would be multiple proceedings, inconsistent judgments and general uncertainty.*

> *. . . I find that common sense dictates that these matters would be best dealt with by one court, and in the interest of promoting international comity it seems the forum for this case is in the U.S. Bankruptcy Court.* Thus, in either case, whether there has been an attornment or not, I conclude it is appropriate for me to exercise my discretion and apply the principles of comity and grant the Defendant's stay application. I reach this conclusion based on all the circumstances, including the clear wording of the U.S. Bankruptcy Code provision, the similar philosophies and procedures in Canada and the U.S., the Plaintiff's attornment to the jurisdiction of the U.S. Bankruptcy Court, and the incredible number of claims outstanding . . . (emphasis added)

11 The CCAA as remedial legislation should be given a liberal interpretation to facilitate its objectives. See *Hongkong Bank of Canada v. Chef Ready Foods Ltd.* (1990), 4 C.B.R. (3d) 311 (B.C. C.A.), at p. 320; *Lehndorff General Partner Ltd., Re* (1993), 17 C.B.R. (3d) 24 (Ont. Gen. Div. [Commercial List]).

12 David Tobin, the Director General, Corporate Governance Branch, Department of Industry in testifying before the Standing Committee on Industry regarding Bill C-5, An Act to amend the BIA, the CCAA and the Income Tax Act, stated at 1600:

> Provisions in Bill C-5 attempt to actually codify, which has always been the practice in Canada. They include the Court recognition of foreign representatives; Court authority to make orders to facilitate and coordinate international insolvencies; provisions that would make it clear that foreign representatives are allowed to commence proceedings in Canada, as per Canadian rules - however, they clarify that foreign stays of proceedings are not applicable but a foreign representative can apply to a court for a stay in Canada; and Canadian creditors and assets are protected by the bankruptcy and insolvency rules.

The philosophy of the practice in international matters relating to the CCAA is set forth in *Olympia & York Developments Ltd. v. Royal Trust Co.* (1993), 20 C.B.R. (3d) 165 (Ont. Gen. Div.), at p. 167 where Blair J. stated:

> The Olympia & York re-organization involves proceedings in three different jurisdictions: Canada, the United States and the United Kingdom. Insolvency disputes with international overtones and involving property and assets in a multiplicity of jurisdictions are becoming increasingly frequent. Often there are differences in legal concepts - sometimes substantive, sometimes procedural - between the jurisdictions. The Courts of the various jurisdictions should seek to cooperate amongst themselves, in my view, in facilitating the trans-border resolution of such disputes as a whole, where that can be done in a fashion consistent with their own fundamental principles of jurisprudence. The interests of international cooperation and comity, and the interests of developing at least some degree of certitude in international business and commerce, call for nothing less.

Blair J. then proceeded to invoke inherent jurisdiction to implement the Protocol between the U.S. Bankruptcy Court and the Ontario Court. See also my endorsement of December 20, 1995, in *Everfresh Beverages Inc.* where I observed: "I would think that this Protocol demonstrates the 'essence of comity' between the Courts of Canada and the United States of America." *Everfresh* was an example of the effective and efficient use of the Cross-Border Insolvency Concordat, adopted by the Council of the International Bar Association on May 31, 1996 (after being adopted by its Section on Business Law Council on September 17, 1995), which Concordat deals with, inter alia, principal administration of a debtor's reorganization and ancillary jurisdiction. See also the UNCITRAL Model Law on Cross-Border Insolvency.

13 Thus it seems to me that this application by BW Canada should be reviewed in light of (i) the doctrine of comity as analyzed in *Morguard, Arrowmaster* and *ATL, supra*, in regard to its international aspects; (ii) inherent jurisdiction; (iii) the aspect of the liberal interpretation of the CCAA generally; and (iv) the assistance and codification of the 1997 Amendments.

"Foreign proceeding" is defined in s. 18.6(1) as:

> In this section,

> "foreign proceeding" means a judicial or administrative proceeding commenced outside Canada in respect of a debtor under a law relating to bankruptcy or insolvency and dealing with the collective interests of creditors generally; . . .

Certainly a U.S. Chapter 11 proceeding would fit this definition subject to the question of "debtor". It is important to note that the definition of "foreign proceeding" in s. 18.6 of the CCAA contains no specific requirement that the debtor be insolvent. In contrast, the BIA defines a "debtor" in the context of a foreign proceeding (Part XIII of the BIA) as follows:

> s. 267 In this Part,
>
> > "debtor" means an *insolvent person* who has property in Canada, a *bankrupt* who has property in Canada or a *person who has the status of a bankrupt* under foreign law in a foreign proceeding and has property in Canada; . . . (emphasis added)

I think it a fair observation that the BIA is a rather defined code which goes into extensive detail. This should be contrasted with the CCAA which is a very short general statute which has been utilized to give flexibility to meet what might be described as the peculiar and unusual situation circumstances. A general categorization (which of course is never completely accurate) is that the BIA may be seen as being used for more run of the mill cases whereas the CCAA may be seen as facilitating the more unique or complicated cases. Certainly the CCAA provides the flexibility to deal with the thornier questions. Thus I do not think it unusual that the draftees of the 1997 Amendments would have it in their minds that the provisions of the CCAA dealing with foreign proceedings should continue to reflect this broader and more flexible approach in keeping with the general provisions of the CCAA, in contrast with the corresponding provisions under the BIA. In particular, it would appear to me to be a reasonably plain reading interpretation of s. 18.6 that recourse may be had to s. 18.6 of the CCAA in the case of a solvent debtor. Thus I would conclude that the aspect of insolvency is not a condition precedent vis-a-vis the "debtor" in the foreign proceedings (here the Chapter 11 proceedings) for the proceedings in Louisiana to be a foreign proceeding under the definition of s. 18.6. I therefore declare that those proceedings are to be recognized as a "foreign proceeding" for the purposes of s. 18.6 of the CCAA.

14 It appears to me that my conclusion above is reinforced by an analysis of s. 18.6(2) which deals with concurrent filings by a debtor under the CCAA in Canada and corresponding bankruptcy or insolvency legislation in a foreign jurisdiction. This is not the situation here, but it would be applicable in the *Loewen* case. That subsection deals with the coordination of proceedings as to a "debtor company" initiated pursuant to the CCAA and the foreign legislation.

> s. 18.6(2). The court may, in respect of a *debtor company*, make such orders and grant such relief as it considers appropriate to facilitate, approve or implement arrangements that will result in a coordination of proceedings under the Act with any foreign proceeding. (emphasis added)

15 The definition of "debtor company" is found in the general definition section of the CCAA, namely s. 2 and that definition incorporates the concept of insolvency. Section 18.6(2) refers to a "debtor company" since only a "debtor company" can file under the CCAA to propose a compromise with its unsecured or secured creditors: ss. 3, 4 and 5 CCAA. See also s. 18.6(8) which deals with currency concessions "[w]here a compromise or arrangement is proposed in respect of a debtor company . . . ". I note that "debtor company" is not otherwise referred to in s. 18.6; however "debtor" is referred to in both definitions under s. 18.6(1).

16 However, s. 18.6(4) provides a basis pursuant to which a company such as BW Canada, a solvent corporation, may seek judicial assistance and protection in connection with a foreign proceeding. Unlike s. 18.6(2), s. 18.6(4) does not contemplate a full filing under the CCAA. Rather s. 18.6(4) may be utilized to deal with situations where, notwithstanding that a full filing is not being made under the CCAA, ancillary relief is required in connection with a foreign proceeding.

> s. 18.6(4) Nothing in this section prevents the court, on the application of a foreign representative or *any other interested persons*, from applying such legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives as are not inconsistent with the provisions of this Act. (emphasis added)

BW Canada would fit within "any interested person" to bring the subject application to apply the principles of comity and cooperation. It would not appear to me that the relief requested is of a nature contrary to the provisions of the CCAA.

17 Additionally there is s. 18.6(3) whereby once it has been established that there is a foreign proceeding within the meaning of s. 18.6(1) (as I have concluded there is), then this court is given broad powers and wide latitude, all of which is consistent with the general judicial analysis of the CCAA overall, to make any order it thinks appropriate in the circumstances.

> s. 18.6(3) An order of the court under this Section may be made on such terms and conditions as the court considers appropriate in the circumstances.

This subsection reinforces the view expressed previously that the 1997 Amendments contemplated that it would be inappropriate to pigeonhole or otherwise constrain the interpretation of s. 18.6 since it would be not only impracticable but also impossible to contemplate the myriad of circumstances arising under a wide variety of foreign legislation which deal generally and essentially with bankruptcy and insolvency but not exclusively so. Thus, the Court was entrusted to exercise its discretion, but of course in a judicial manner.

18 Even aside from that, I note that the Courts of this country have utilized inherent jurisdiction to fill in any gaps in the legislation and to promote the objectives of the CCAA. Where there is a gap which requires bridging, then the question to be considered is what will be the most practical common sense approach to establishing the connection between the parts of the legislation so as to reach a just and reasonable solution. See *Westar Mining Ltd., Re* (1992), 14 C.B.R. (3d) 88 (B.C. S.C.), at pp. 93-4; *Pacific National Lease Holding Corp. v. Sun Life Trust Co.* (1995), 34 C.B.R. (3d) 4 (B.C. C.A.), at p. 2; *Lehndorff General Partner Ltd.* at p. 30.

19 The Chapter 11 proceedings are intended to resolve the mass asbestos related tort claims which seriously threaten the long term viability of BWUS and its subsidiaries including BW Canada. BW Canada is a significant participant in the overall Babcock & Wilcox international organization. From the record before me it appears reasonably clear that there is an interdependence between BWUS and BW Canada as to facilities and services. In addition there is the fundamental element of financial and business stability. This interdependence has been increased by the financial assistance given by the BW Canada guarantee of BWUS' obligations.

20 To date the overwhelming thrust of the asbestos related litigation has been focussed in the U.S. In contradistinction BW Canada has not in essence been involved in asbestos litigation to date. The 1994 amendments to the U.S. Bankruptcy Code have provided a specific regime which is designed to deal with the mass tort claims (which number in the hundreds of thousands of claims in the U.S.) which appear to be endemic in the U.S. litigation arena involving asbestos related claims as well as other types of mass torts. This Court's assistance however is being sought to stay asbestos related claims against BW Canada with a view to this stay facilitating an environment in which a global solution may be worked out within the context of the Chapter 11 proceedings trust.

21 In my view, s. 18.6(3) and (4) permit BW Canada to apply to this Court for such a stay and other appropriate relief. Relying upon the existing law on the recognition of foreign insolvency orders and proceedings, the principles and practicalities discussed and illustrated in the Cross-Border Insolvency Concordat and the UNCITRAL Model Law on Cross-Border Insolvencies and inherent jurisdiction, all as discussed above, I would think that the following may be of assistance in advancing guidelines as to how s. 18.6 should be applied. I do not intend the factors listed below to be exclusive or exhaustive but merely an initial attempt to provide guidance:

> (a) The recognition of comity and cooperation between the courts of various jurisdictions are to be encouraged.

(b) Respect should be accorded to the overall thrust of foreign bankruptcy and insolvency legislation in any analysis, unless in substance generally it is so different from the bankruptcy and insolvency law of Canada or perhaps because the legal process that generates the foreign order diverges radically from the process here in Canada.

(c) All stakeholders are to be treated equitably, and to the extent reasonably possible, common or like stakeholders are to be treated equally, regardless of the jurisdiction in which they reside.

(d) The enterprise is to be permitted to implement a plan so as to reorganize as a global unit, especially where there is an established interdependence on a transnational basis of the enterprise and to the extent reasonably practicable, one jurisdiction should take charge of the principal administration of the enterprise's reorganization, where such principal type approach will facilitate a potential reorganization and which respects the claims of the stakeholders and does not inappropriately detract from the net benefits which may be available from alternative approaches.

(e) The role of the court and the extent of the jurisdiction it exercises will vary on a case by case basis and depend to a significant degree upon the court's nexus to that enterprise; in considering the appropriate level of its involvement, the court would consider:

(i) the location of the debtor's principal operations, undertaking and assets;

(ii) the location of the debtor's stakeholders;

(iii) the development of the law in each jurisdiction to address the specific problems of the debtor and the enterprise;

(iv) the substantive and procedural law which may be applied so that the aspect of undue prejudice may be analyzed;

(v) such other factors as may be appropriate in the instant circumstances.

(f) Where one jurisdiction has an ancillary role,

(i) the court in the ancillary jurisdiction should be provided with information on an ongoing basis and be kept apprised of developments in respect of that debtor's reorganizational efforts in the foreign jurisdiction;

(ii) stakeholders in the ancillary jurisdiction should be afforded appropriate access to the proceedings in the principal jurisdiction.

(g) As effective notice as is reasonably practicable in the circumstances should be given to all affected stakeholders, with an opportunity for such stakeholders to come back into the court to review the granted order with a view, if thought desirable, to rescind or vary the granted order or to obtain any other appropriate relief in the circumstances.

22 Taking these factors into consideration, and with the determination that the Chapter 11 proceedings are a "foreign proceeding" within the meaning of s. 18.6 of the CCAA and that it is appropriate to declare that BW Canada is entitled to avail itself of the provisions of s. 18.6, I would also grant the following relief. There is to be a stay against suits and enforcement as requested; the initial time period would appear reasonable in the circumstances to allow BWUS to return to the U.S. Bankruptcy Court. Assuming the injunctive relief is continued there, this will provide some additional time to more fully prepare an initial draft approach with respect to ongoing matters. It should also be recognized that if such future relief is not granted in the U.S. Bankruptcy Court, any interested person could avail themselves of the "comeback" clause in the draft order presented to me and which I find reasonable in the circumstances. It appears

appropriate, in the circumstances that BW Canada guarantee BWUS' obligations as aforesaid and to grant security in respect thereof, recognizing that same is permitted pursuant to the general corporate legislation affecting BW Canada, namely the *Business Corporations Act* (Ontario). I note that there is also a provision for an "Information Officer" who will give quarterly reports to this Court. Notices are to be published in the Globe & Mail (National Edition) and the National Post. In accordance with my suggestion at the hearing, the draft order notice has been revised to note that persons are alerted to the fact that they may become a participant in these Canadian proceedings and further that, if so, they may make representations as to pursuing their remedies regarding asbestos related claims in Canada as opposed to the U.S. As discussed above the draft order also includes an appropriate "comeback" clause. This Court (and I specifically) look forward to working in a cooperative judicial way with the U.S. Bankruptcy Court (and Judge Brown specifically).

23 I am satisfied that it is appropriate in these circumstances to grant an order in the form of the revised draft (a copy of which is attached to these reasons for the easy reference of others who may be interested in this area of s. 18.6 of the CCAA).

24 Order to issue accordingly.

Application granted.

APPENDIX

Court File No. 00-CL-3667

SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR. JUSTICE FARLEY — FRIDAY, THE 25{TH} DAY OF FEBRUARY, 2000

IN THE MATTER OF S. 18.6 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF BABCOCK & WILCOX CANADA LTD.

INITIAL ORDER

THIS MOTION made by the Applicant Babcock & Wilcox Canada Ltd. for an Order substantially in the form attached to the Application Record herein was heard this day, at 393 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the Affidavit of Victor J. Manica sworn February 23, 2000 (the "Manica Affidavit"), and on notice to the counsel appearing, and upon being advised that no other person who might be interested in these proceedings was served with the Notice of Application herein.

SERVICE

1. *THIS COURT ORDERS* that the time for service of the Notice of Application and the Affidavit in support of this Application be and it is hereby abridged such that the Application is properly returnable today, and, further, that any requirement for service of the Notice of Application and of the Application Record upon any interested party, other than the parties herein mentioned, is hereby dispensed with.

RECOGNITION OF THE U.S. PROCEEDINGS

2. *THIS COURT ORDERS AND DECLARES* that the proceedings commenced by the Applicant's United States corporate parent and certain other related corporations in the United States for protection under Chapter 11 of the U.S. Bankruptcy Code in connection with asbestos claims before the U.S. Bankruptcy Court (the "U.S. Proceedings") be and

hereby is recognized as a "foreign proceeding" for purposes of Section 18.6 of the Companies' Creditors Arrangement Act, R.S.C. 1985, c.C-36, as amended, (the "CCAA").

APPLICATION

3. *THIS COURT ORDERS AND DECLARES* that the Applicant is a company which is entitled to relief pursuant to s. 18.6 of the CCAA.

PROTECTION FROM ASBESTOS PROCEEDINGS

4. *THIS COURT ORDERS* that until and including May 1, 2000, or such later date as the Court may order (the "Stay Period"), no suit, action, enforcement process, extra-judicial proceeding or other proceeding relating to, arising out of or in any way connected to damages or loss suffered, directly or indirectly, from asbestos, asbestos contamination or asbestos related diseases ("Asbestos Proceedings") against or in respect of the Applicant, its directors or any property of the Applicant, wheresoever located, and whether held by the Applicant in whole or in part, directly or indirectly, as principal or nominee, beneficially or otherwise shall be commenced, and any Asbestos Proceedings against or in respect of the Applicant, its directors or the Applicant's Property already commenced be and are hereby stayed and suspended.

5. *THIS COURT ORDERS* that during the Stay Period, the right of any person, firm, corporation, governmental authority or other entity to assert, enforce or exercise any right, option or remedy arising by law, by virtue of any agreement or by any other means, as a result of the making or filing of these proceedings, the U.S. Proceedings or any allegation made in these proceedings or the U.S. Proceedings be and is hereby restrained.

DIP FINANCING

6. *THIS COURT ORDERS* that the Applicant is hereby authorized and empowered to guarantee the obligations of its parent, The Babcock & Wilcox Company, to Citibank, N.A., as Administrative Agent, the Lenders, the Swing Loan Lender, and Issuing Banks (as those terms are defined in the Post-Petition Credit Agreement (the "Credit Agreement")) dated as of February 22, 2000 (collectively, the "DIP Lender"), and to grant security (the "DIP Lender's Security") for such guarantee substantially on the terms and conditions set forth in the Credit Agreement.

7. *THIS COURT ORDERS* that the obligations of the Applicant pursuant to the Credit Agreement, the DIP Lender's Security and all the documents delivered pursuant thereto constitute legal, valid and binding obligations of the Applicant enforceable against it in accordance with the terms thereof, and the payments made and security granted by the Applicant pursuant to such documents do not constitute fraudulent preferences, or other challengeable or reviewable transactions under any applicable law.

8. *THIS COURT ORDERS* that the DIP Lender's Security shall be deemed to be valid and effective notwithstanding any negative covenants, prohibitions or other similar provisions with respect to incurring debt or the creation of liens or security contained in any existing agreement between the Applicant and any lender and that, notwithstanding any provision to the contrary in such agreements,

> (a) the execution, delivery, perfection or registration of the DIP Lender's Security shall not create or be deemed to constitute a breach by the Applicant of any agreement to which it is a party, and
>
> (b) the DIP Lender shall have no liability to any person whatsoever as a result of any breach of any agreement caused by or resulting from the Applicant entering into the Credit Agreement, the DIP Lender's Security or other document delivered pursuant thereto.

REPORT AND EXTENSION OF STAY

9. As part of any application by the Applicant for an extension of the Stay Period:

(a) the Applicant shall appoint Victor J. Manica, or such other senior officer as it deems appropriate from time to time, as an information officer (the "Information Officer");

(b) the Information Officer shall deliver to the Court a report at least once every three months outlining the status of the U.S. Proceeding, the development of any process for dealing with asbestos claims and such other information as the Information Officer believes to be material (the "Information Reports"); and

(c) the Applicant and the Information Officer shall incur no liability or obligation as a result of the appointment of the Information Officer or the fulfilment of the duties of the Information Officer in carrying out the provisions of this Order and no action or other proceedings shall be commenced against the Applicant or Information Officer as an result of or relating in any way to the appointment of the Information Officer or the fulfilment of the duties of the Information Officer, except with prior leave of this Court and upon further order securing the solicitor and his own client costs of the Information Officer and the Applicant in connection with any such action or proceeding.

SERVICE AND NOTICE

10. *THIS COURT ORDERS* that the Applicant shall, within fifteen (15) business days of the date of entry of this Order, publish a notice of this Order in substantially the form attached as Schedule "A" hereto on two separate days in the Globe & Mail (National Edition) and the National Post.

11. *THIS COURT ORDERS* that the Applicant be at liberty to serve this Order, any other orders in these proceedings, all other proceedings, notices and documents by prepaid ordinary mail, courier, personal delivery or electronic transmission to any interested party at their addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

MISCELLANEOUS

12. *THIS COURT ORDERS* that notwithstanding anything else contained herein, the Applicant may, by written consent of its counsel of record herein, agree to waive any of the protections provided to it herein.

13. *THIS COURT ORDERS* that the Applicant may, from time to time, apply to this Court for directions in the discharge of its powers and duties hereunder or in respect of the proper execution of this Order.

14. *THIS COURT ORDERS* that, notwithstanding any other provision of this Order, any interested person may apply to this Court to vary or rescind this order or seek other relief upon 10 days' notice to the Applicant and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

15. *THIS COURT ORDERS AND REQUESTS* the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada (including the assistance of any court in Canada pursuant to Section 17 of the CCAA) and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States and the states or other subdivisions of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

Schedule "A"

NOTICE

RE: IN THE MATTER OF S. 18.6 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED (the "CCAA")

AND IN THE MATTER OF BABCOCK & WILCOX CANADA LTD.

PLEASE TAKE NOTICE that this notice is being published pursuant to an Order of the Superior Court of Justice of Ontario made February 25, 2000. The corporate parent of Babcock & Wilcox Canada Ltd. and certain other affiliated corporations in the United States have filed for protection in the United States under Chapter 11 of the Bankruptcy Code to seek, as the result of recent, sharp increases in the cost of settling asbestos claims which have seriously threatened the Babcock & Wilcox Enterprise's long term health, protection from mass asbestos claims to which they are or may become subject. Babcock & Wilcox Canada Ltd. itself has not filed under Chapter 11 but has sought and obtained an interim order under Section 18.6 of the CCAA affording it a stay against asbestos claims in Canada. Further application may be made to the Court by Babcock & Wilcox Canada Ltd. to ensure fair and equal access for Canadians with asbestos claims against Babcock & Wilcox Canada Ltd. to the process established in the United States. Representations may also be made by parties who would prefer to pursue their remedies in Canada.

Persons who wish to be a party to the Canadian proceedings or to receive a copy of the order or any further information should contact counsel for Babcock & Wilcox Canada Ltd., Derrick C. Tay at Meighen Demers (Telephone (416) 340-6032 and Fax (416) 977-5239).

DATED this day of, 2000 at Toronto, Canada

Tab 7

Court File No. CV-16-11656-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	WEDNESDAY THE 25TH
	)	
MR. JUSTICE NEWBOULD	)	DAY OF JANUARY, 2017

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

AND IN THE MATTER OF MODULAR SPACE INTERMEDIATE HOLDINGS, INC., MODULAR SPACE CORPORATION, RESUN MODSPACE, INC., MODSPACE GOVERNMENT FINANCIAL SERVICES, INC., MODSPACE FINANCIAL SERVICES CANADA, LTD., RESUN CHIPPEWA, LLC AND MODULAR SPACE HOLDINGS, INC. (THE "DEBTORS")

APPLICATION OF MODULAR SPACE CORPORATION UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

ORDER

THIS MOTION, made by Modular Space Corporation ("**MSC**"), in its capacity as the foreign representative (the "**Foreign Representative**") of the Debtors, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form enclosed in the Motion Record was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of David Orlofsky sworn January 20, 2017 and the exhibits thereto (the "**Orlofsky Affidavit**"), the first report of Alvarez & Marsal Canada Inc. ("**A&M**") in its capacity as the Court-appointed information officer (the "**Information Officer**") dated January 20, 2017 (the "**First Report**"), and on hearing the submissions of counsel for the

Debtors, counsel for the Information Officer, counsel for Bank of America, N.A., as Administrative Agent for the lenders under the Debtors' Post-Petition Credit Agreement (collectively, the "**DIP Lender**"), counsel for the Ad Hoc Group of Noteholders and such other counsel as may be present, and upon reading the affidavit of service of Evita Ferreira sworn January 20, 2017, filed,

SERVICE

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

APPROVAL OF A&M'S ACTIVITIES AND REPORTS

2. **THIS COURT ORDERS** that the Preliminary Report dated December 24, 2016 (the "**Preliminary Report**") and the activities of A&M in its capacity as the proposed Information Officer, as described in the Preliminary Report, be and are hereby approved.

3. **THIS COURT ORDERS** that the First Report and the activities of A&M in its capacity as the Information Officer, as described in the First Report, be and are hereby approved.

RECOGNITION OF FOREIGN ORDERS

4. **THIS COURT ORDERS** that the following orders (the "**Second Day Orders**") of the United States Bankruptcy Court for the District of Delaware made in the insolvency proceedings of the Debtors under Chapter 11 of Title 11 of the United States Code are hereby recognized and

given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA:

a. a final order (i) authorizing the Debtors to obtain post-petition financing (the "**DIP Financing**"); (ii) granting liens and super-priority administrative expense claims to the DIP Lenders; (iii) authorizing use of the DIP Financing proceeds to pay certain outstanding US pre-filing obligations; (iv) providing adequate protection to certain of the Debtors' pre-filing credit parties; (v) modifying the automatic stay as necessary to give effect to the DIP Financing order (the "**Final DIP Order**");

b. an order authorizing the Debtors' assumption of and performance under the restructuring support agreement dated as of December 20, 2016 (the "**RSA Order**");

c. an order approving the Debtors' entry into and performance under a stock purchase and backstop agreement dated as of December 28, 2016 and authorizing them to pay certain fees and expenses in connection with that agreement (the "**SPBA Order**");

d. a final order authorizing the Debtors to pay pre-Petition wages, compensation and employee benefits (the "**Final Wages Order**");

e. a final order: (i) authorizing, but not directing, the Debtors to maintain their existing bank accounts; (ii) authorizing the continued use of existing cash management systems; (iii) authorizing continued use of existing business forms; (iv) authorizing the continuation of (and administrative expense priority status of) intercompany transactions; and (iv) extending the time for the Debtors'

compliance under section 345(b) of the United States Bankruptcy Code to February 28, 2017 (the "**Final Cash Management Order**");

f. a final order with respect to utility providers: (i) approving the Debtors' form of adequate assurance of payment; (ii) establishing procedures to resolve objections by utility companies; and (iii) restraining utility companies from discontinuing, alternating or refusing service (the "**Final Utilities Order**");

g. a final order establishing notification procedures and approving restrictions on certain transfers of or claims for worthlessness with respect to equity securities (the "**Final NOL Order**"); and

h. an order authorizing the Debtors to employ and pay professionals utilized in the ordinary course of business, *nunc pro tunc*, to December 21, 2016 and waiving certain information requirements (the "**OCP Order**").

provided, however, that in the event of any conflict between the terms of the Second Day Orders and the Orders of this Court made in these proceedings, the Orders of this Court shall govern with respect to the Property (as defined in the Supplemental Order (Foreign Main Proceeding) of this Court made in these proceedings on December 27, 2016) in Canada. Copies of the Second Day Orders are attached as Exhibits D to K of the Orlofsky Affidavit.

GENERAL

5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Foreign Representative, the Debtors, the Information Officer and their respective 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 Foreign Representative, the Debtors, the Information Officer, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Foreign Representative, the Debtors, the Information Officer and their respective agents in carrying out the terms of this Order.

6. **THIS COURT ORDERS** that each of the Foreign Representative, the Debtors and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JAN 25 2017

PER / PAR:

Court File No.: CV-16-11656-00CL

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

AND IN THE MATTER OF MODULAR SPACE INTERMEDIATE HOLDINGS, INC., MODULAR SPACE CORPORATION, RESUN MODSPACE, INC., MODSPACE GOVERNMENT FINANCIAL SERVICES, INC., MODSPACE FINANCIAL SERVICES CANADA, LTD., RESUN CHIPPEWA, LLC AND MODULAR SPACE HOLDINGS, INC. (THE "DEBTORS")

APPLICATION OF MODULAR SPACE CORPORATION UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

ORDER

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Tab 8

2010 ONSC 3974
Ontario Superior Court of Justice [Commercial List]

Xerium Technologies Inc., Re

2010 CarswellOnt 7712, 2010 ONSC 3974, 193 A.C.W.S. (3d) 1066, 71 C.B.R. (5th) 300

IN THE MATTER OF the Companies' Creditors Arrangement ACT, R.S.C. 1985, c. C-36, AS AMENDED

XERIUM TECHNOLOGIES, INC., IN ITS CAPACITY AS THE FOREIGN REPRESENTATIVE OF XERIUM TECHNOLOGIES, INC., HUYCK LICENSCO INC., STOWE WOODWARD LICENSCO LLC, STOWE WOODWARD LLC, WANGNER ITELPA I LLC, WANGNER ITELPA II LLC, WEAVEXX, LLC, XERIUM ASIA, LLC, XERIUM III (US) LIMITED, XERIUM IV (US) LIMITED, XERIUM V (US) LIMITED, XTI LLC, XERIUM CANADA INC., HUYCK.WANGNER AUSTRIA GMBH, XERIUM GERMANY HOLDING GMBH, AND XERIUM ITALIA S.P.A. (collectively, the "Chapter 11 Debtors") (Applicants)

C. Campbell J.

Heard: May 14, 2010
Judgment: September 28, 2010
Docket: 10-8652-00CL

Counsel: Derrick Tay, Randy Sutton for Applicants

Subject: Insolvency
Related Abridgment Classifications
Bankruptcy and insolvency
XIX Companies' Creditors Arrangement Act
XIX.5 Miscellaneous
Headnote
Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Miscellaneous
Foreign Proceedings — Debtors commenced proceedings in U.S. under Chapter 11 of U.S. Bankruptcy Code ("U.S. Code") — Recognition order was granted in Canada recognizing Chapter 11 Proceedings as foreign main proceeding in respect of Debtors, pursuant to Pt. IV of Companies' Creditors Arrangements Act ("CCAA") — U.S. Bankruptcy Court made various orders in respect of Debtors' ongoing business operations ("Orders") and confirmed Debtors' Joint Plan of Reorganization ("Plan") under U.S. Code ("Confirmation Order") — Applicant company, Foreign Representative of Debtors, brought motion to have Orders, Confirmation Order and Plan recognized and given effect in Canada — Motion granted — Provisions of Plan were consistent with purposes set out in s. 61(1) of CCAA — Plan was critical to restructuring of Debtors as global corporate unit — Recognition of Confirmation Order was necessary to ensure fair and efficient administration of cross-border insolvency — U.S. Bankruptcy Court concluded Plan complied with U.S. Bankruptcy principles, and that Plan was made in good faith; did not breach any applicable law; was in interests of Debtors' creditors and equity holders; and would not likely be followed by need for liquidation or further financial reorganization of Debtors — Such principles also underlay CCAA, and thus dictated in favour of Plan's recognition and implementation in Canada.
Table of Authorities
Cases considered by *C. Campbell J.*:
Babcock & Wilcox Canada Ltd., Re (2000), 5 B.L.R. (3d) 75, 18 C.B.R. (4th) 157, 2000 CarswellOnt 704 (Ont. S.C.J. [Commercial List]) — followed
Statutes considered:

Bankruptcy Code, 11 U.S.C. 1982
Generally — referred to

Chapter 11 — referred to
Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36
Generally — referred to

Pt. IV — referred to

s. 44 — considered

s. 53(b) — referred to

s. 61(1) — considered

MOTION by applicant for orders recognizing and giving effect to certain orders of U.S. Bankruptcy Court in Canada.

C. Campbell J.:

1 The Recognition Orders sought in this matter exhibit the innovative and efficient employment of the provisions of Part IV of the *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C.36, as amended (the "CCAA") to cross border insolvencies.

2 Each of the "Chapter 11 Debtors" commenced proceedings on March 30, 2010 in the United States under Chapter 11 of Title 11 of the United States Bankruptcy Code (the "U.S. Bankruptcy Code") in the U.S. Bankruptcy Court for the District of Delaware (the "Chapter 11 Proceedings.")

3 On April 1, 2010, this Court granted the Recognition Order sought by, *inter alia*, the Applicant, Xerium Technologies Inc. ("Xerium") as the "Foreign Representative" of the Chapter 11 Debtors and recognizing the Chapter 11 Proceedings as a "foreign main proceeding" in respect of the Chapter 11 Debtors, pursuant to Part IV of the CCAA.

4 On various dates in April 2010, Judge Kevin J. Carey of the U.S. Bankruptcy Court made certain orders in respect of the Chapter 11 Debtors' ongoing business operations.

5 On May 12, 2010, Judge Carey confirmed the Chapter 11 Debtors' amended Joint Prepackaged Plan of Reorganization dated March 30, 2010 as supplemented (the "Plan") [1] pursuant to the U.S. Bankruptcy Code (the "U.S. Confirmation Order.")

6 Xerium sought in this motion to have certain orders made by the U.S. Bankruptcy Court in April 2010, the U.S Confirmation Order and the Plan recognized and given effect to in Canada.

7 The Applicant together with its direct and indirect subsidiaries (collectively, the "Company") are a leading global manufacturer and supplier of products used in the production of paper products.

8 Both Xerium, a Delaware limited liability company, Xerium Canada Inc. ("Xerium Canada"), a Canadian company, together with other entities forming part of the Chapter 11 Debtors are parties to an Amended and Restated Credit and Guarantee Agreement dated as of May 30, 2008 as borrowers, with various financial institutions and other persons as lenders. The Credit Facility is governed by the laws of the State of New York.

9 Due to a drop in global demand for paper products and in light of financial difficulties encountered by the Company due to the drop in demand in its products and is difficulty raising funds, the Company anticipated that it would not be in compliance with certain financial covenants under the Credit Facility for the period ended September 30, 2009. The Chapter 11 Debtors, their lenders under the Credit Facility, the Administrative Agent and the Secured Lender Ad

Hoc Working Group entered into discussions exploring possible restructuring scenarios. The negotiations progressed smoothly and the parties worked toward various consensual restructuring scenarios.

10 The Plan was developed between the Applicant, its direct and indirect subsidiaries together with the Administrative Agent and the Secured Lender Ad Hoc Working Group.

11 Pursuant to the Plan, on March 2, 2010, the Chapter 11 Debtors commenced the solicitation of votes on the Plan and delivered copies of the Plan, the Disclosure Statement and the appropriate ballots to all holders of claims as of February 23, 2010 in the classes entitled to vote on the Plan.

12 The Disclosure Statement established 4:00 p.m. (prevailing Eastern time) on March 22, 2010 as the deadline for the receipt of ballots to accept or reject the Plan, subject to the Chapter 11 Debtors' right to extend the solicitation period. The Chapter 11 Debtors exercised their right to extend the solicitation period to 6:00 p.m. (prevailing Eastern time) on March 26, 2010. The Plan was overwhelmingly accepted by the two classes of creditors entitled to vote on the Plan.

13 On March 31, 2010, the U.S. Bankruptcy Court entered the Order (I) Scheduling a Combined Hearing to Consider (a) Approval of the Disclosure Statement, (b) Approval of Solicitation Procedures and Forms of Ballots, and (c) Confirmation of the Plan; (II) Establishing a Deadline to Object to the Disclosure Statement and the Plan; and (III) Approving the Form and Manner of Notice Thereof (the "Scheduling Order.")

14 Various orders were made by the U.S. Bankruptcy Court in April 2010, which orders were recognized by this Court.

15 On May 12, 2010, at the Combined Hearing, the U.S. Bankruptcy Court confirmed the Plan, and made a number of findings, *inter alia*, regarding the content of the Plan and the procedures underlying its consideration and approval by interested parties. These included the appropriateness of notice, the content of the Disclosure Statement, the voting process, all of which were found to meet the requirements of the U.S. Bankruptcy Code and fairly considered the interests of those affected.

16 The Plan provides for a comprehensive financial restructuring of the Chapter 11 Debtors' institutional indebtedness and capital structure. According to its terms, only Secured Swap Termination Claims, claims on account of the Credit Facility, Unsecured Swap Termination Claims, and Equity Interests in Xerium are "impaired" under the Plan. Holders of all other claims are unimpaired.

17 Under the Plan, the notional value of the Chapter 11 Debtors' outstanding indebtedness will be reduced from approximately U.S.$640 million to a notional value of approximately U.S.$480 million, and the Chapter 11 Debtors will have improved liquidity as a result of the extension of maturity dates under the Credit Facility and access to an U.S. $80 million Exit Facility.

18 The Plan provides substantial recoveries in the form of cash, new debt and equity to its secured lenders and swap counterparties and provides existing equity holders with more than $41.5 million in value.

19 Xerium has been unable to restructure its secured debt in any other manner than by its secured lenders voluntarily accepting equity and the package of additional consideration proposed to be provided to the secured lenders under the Plan.

20 The Plan benefits all of the Chapter 11 Debtors' stakeholders. It reflects a global settlement of the competing claims and interests of these parties, the implementation of which will serve to maximize the value of the Debtors' estates for the benefit of all parties in interest.

21 I conclude that the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Chapter 11 Debtors.

22 On April 1, 2010, the Recognition Order granted by this Court provided, among other things:

(a) Recognition of the Chapter 11 Proceedings as a "foreign main proceeding" pursuant to Subsection 47(2) of the CCAA;

(b) Recognition of the Applicant as the "foreign representative" in respect of the Chapter 11 Proceedings;

(c) Recognition of and giving effect in Canada to the automatic stay imposed under Section 362 of the U.S. Bankruptcy Code in respect of the Chapter 11 Debtors;

(d) Recognition of and giving effect in Canada to the U.S. First Day Orders in respect of the Chapter 11 Debtors;

(e) A stay of all proceedings taken or that might be taken against the Chapter 11 Debtors under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(f) Restraint on further proceedings in any action, suit or proceeding against the Chapter 11 Debtors;

(g) Prohibition of the commencement of any action, suit or proceeding against the Chapter 11 Debtors; and

(h) Prohibition of the Chapter 11 Debtors from selling or otherwise disposing of, outside the ordinary course of its business, any of the Chapter 11 Debtors' property in Canada that relates to their business and prohibiting the Chapter 11 Debtors from selling or otherwise disposing of any of their other property in Canada, unless authorized to do so by the U.S. Bankruptcy Court.

23 I am satisfied that this Court does have the authority and indeed obligation to grant the recognition sought under Part IV of the CCAA. The recognition sought is precisely the kind of comity in international insolvency contemplated by Part IV of the CCAA.

24 Section 44 identifies the purpose of Part IV of the CCAA. It states

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

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

(b) greater legal certainty for trade and investment;

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

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

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

25 I am satisfied that the provisions of the Plan are consistent with the purposes set out in s. 61(1) of the CCAA, which states:

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

26 In *Babcock & Wilcox Canada Ltd., Re* (2000), 18 C.B.R. (4th) 157 (Ont. S.C.J. [Commercial List]) at para. 21, this Court held that U.S. Chapter 11 proceedings are "foreign proceedings" for the purposes of the CCAA's cross-border

insolvency provisions. The Court also set out a non exclusive or exhaustive list of factors that the Court should consider in applying those provisions.

27 The applicable factors from *Babcock & Wilcox Canada Ltd., Re* that dictate in favour of recognition of the U.S. Confirmation Order are set out in paragraph 45 of the Applicant's factum:

> (a) The Plan is critical to the restructuring of the Chapter 11 Debtors as a global corporate unit;
>
> (b) The Company is a highly integrated business and is managed centrally from the United States. The Credit Facility which is being restructured is governed by the laws of the State of New York. Each of the Chapter 11 Debtors is a borrower or guarantor, or both, under the Credit Facility;
>
> (c) Confirmation of the Plan in the U.S. Court occurred in accordance with standard and well established procedures and practices, including Court approval of the Disclosure Statement and the process for the solicitation and tabulation of votes on the Plan;
>
> (d) By granting the Initial Order in which the Chapter 11 Proceedings were recognized as Foreign Main Proceedings, this Honourable Court already acknowledged Canada as an ancillary jurisdiction in the reorganization of the Chapter 11 Debtors;
>
> (e) The Applicant carries on business in Canada through a Canadian subsidiary, Xerium Canada, which is one of Chapter 11 Debtors and has had the same access and participation in the Chapter 11 Proceedings as the other Chapter 11 Debtors;
>
> (f) Recognition of the U.S. Confirmation Order is necessary for ensuring the fair and efficient administration of this cross-border insolvency, whereby all stakeholders who hold an interest in the Chapter 11 Debtors are treated equitably.

28 Additionally, the Plan is consistent with the purpose of the CCAA. By confirming the Plan, the U.S. Bankruptcy Court has concluded that the Plan complies with applicable U.S. Bankruptcy principles and that, *inter alia*:

> (a) it is made in good faith;
>
> (b) it does not breach any applicable law;
>
> (c) it is in the interests of the Chapter 11 Debtors' creditors and equity holders; and
>
> (d) it will not likely be followed by the need for liquidation or further financial reorganization of the Chapter 11 Debtors.

These are principles which also underlie the CCAA, and thus dictate in favour of the Plan's recognition and implementation in Canada.

29 In granting the recognition order sought, I am satisfied that the implementation of the Plan in Canada not only helps to ensure the orderly completion to the Chapter 11 Debtors' restructuring process, but avoids what otherwise might have been a time-consuming and costly process were the Canadian part of the Applicant itself to make a separate restructuring application under the CCAA in Canada.

30 The Order proposed relieved the Applicant from the publication provisions of s. 53(b) of the CCAA. Based on the positive impact for creditors in Canada of the Plan as set out in paragraph 27 above, I was satisfied that given the cost involved in publication, the cost was neither necessary nor warranted.

31 The requested Order is to issue in the form signed.

Motion granted.

Footnotes

1 Capitalized terms used herein not otherwise defined shall have the meanings ascribed to them in the Plan. Unless otherwise stated, all monetary amounts contained herein are expressed in U.S. Dollars.

End of Document

Tab 9

2017 ONSC 2321
Ontario Superior Court of Justice

Payless Holdings Inc. LLC, Re

2017 CarswellOnt 5925, 2017 ONSC 2321, 278 A.C.W.S. (3d) 466, 47 C.B.R. (6th) 117

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

IN THE MATTER OF PAYLESS HOLDINGS INC LLC, PAYLESS SHOESOURCE CANADA INC., PAYLESS SHOESOURCE CANADA GP INC. AND THOSE OTHER ENTITES LISTED ON SCHEDULE "A" HERETO

APPLICATION OF PAYLESS HOLDINGS LLC UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

G.B. Morawetz R.S.J.

Heard: April 10, 2017
Judgment: April 12, 2017
Docket: CV-17-11758-00CL

Proceedings: reasonsin full *Payless Holdings Inc. LLC, Re* (2017), 2017 ONSC 2242, 2017 CarswellOnt 5926, G.B. Morawetz R.S.J. (Ont. S.C.J.)

Counsel: John MacDonald, Patrick Riesterer, for Applicant
Clifton Prophet, Mark Crane, for Ivanhoe Cambridge Inc.
Ashley Taylor, Lee Nicholson, for Alvarez & Marsal Inc., Proposed Information Officer
David Bish, for Cadillac Fairview Corporation Ltd.
Tony Reyes, for Wells Fargo, ABL DIP Lender (Agent)
Linda Galessiere, for 20 Vic, Morguard, SmartREIT, Oxford, RioCan, Triovest, Springwood, Crombie REIT, Blackwood, Southridge Mall
David Ullmann, for Bentall Kennedy (Canada) LP, Quadreal Group and First Capital Management ULC

Subject: Civil Practice and Procedure; Insolvency
Related Abridgment Classifications
Bankruptcy and insolvency
XIX Companies' Creditors Arrangement Act
XIX.5 Miscellaneous
Headnote
Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Miscellaneous
Debtor was American shoe retailer with related entities in Canada — Debtor entered into reorganization proceedings in America — Debtor brought application for declaration that American proceedings were foreign main proceedings under Companies' Creditors Arrangement Act, stay, and related relief — Application granted — Canadian operations were integrated into American operations — Only one director and one senior executive of Canadian operations resided in Canada — Canadian operations were dependent on American operations and all relevant decisions were made in America — That some partnerships were involved in structure of business did not affect order — Stay of proceedings was necessary and appropriate — Parties made additional submissions regarding terms of debtor in possession financing — Interim debtor in possession financing agreement not approved — Agreement would require Canadian entities to secure monies loaned for debtor in possession financing, although entities would not be borrowers — Certain landlord

creditors in Canada could be detrimentally affected by required guarantee — Although debtors claimed that Canadian locations were not expected to be closed, this was not guaranteed.

Table of Authorities

Cases considered by *G.B. Morawetz R.S.J.*:

Hartford Computer Hardware Inc., Re (2012), 2012 ONSC 964, 2012 CarswellOnt 2143, 94 C.B.R. (5th) 20 (Ont. S.C.J. [Commercial List]) — considered

InterTAN Canada Ltd., Re (2008), 2008 CarswellOnt 8040, 49 C.B.R. (5th) 248 (Ont. S.C.J. [Commercial List]) — distinguished

Statutes considered:

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Generally — referred to

FULL REASONS to judgment reported at *Payless Holdings Inc. LLC, Re* (2017), 2017 ONSC 2242, 2017 CarswellOnt 5926, 47 C.B.R. (6th) 106 (Ont. S.C.J.), regarding insolvency arrangement.

***G.B. Morawetz R.S.J.*:**

1 On April 7, 2017, an Initial Recognition Order was granted in these proceedings. The reasons are reported at 2017 ONSC 2242 (Ont. S.C.J.) and should be read in conjunction with these reasons.

2 On April 12, 2017, the Record was endorsed as follows:

> "Supplemental Order granted, with exception of DIP Motion and anything related directly or indirectly to the DIP ABL Agreement, the DIP Order or DIP ABL Facilities. Reasons to follow.

3 These are the reasons.

4 The Applicant seeks an order recognizing and giving effect to certain interim or final orders ("collectively, the First Day Orders"), including the:

i. Foreign Representative Order;

ii. Joint Administration Order;

iii. Prepetition Wages and Benefits Order;

iv. Interim Insurance Order;

v. Interim Customer Partner Order;

vi. Interim Cash Management Order;

vii. Interim DIP Order;

viii. Interim Critical Vendors and Shippers Order;

ix. Prepetition Taxes and Fees Order; and

x. Surety Bond Order.

5 The Applicant also seeks orders appointing Alvarez & Marsal Canada Inc., ("A&M") as Information Officer, and granting the DIP ABL Lenders' Charge, the Canadian Unsecured Creditors' Charge, and the Administration Charge.

6 The requested relief is set out in the draft Supplemental Order.

7 Having reviewed the record, I am satisfied, based on Mr. Schwindle's affidavit, that it is appropriate to grant the relief sought in the Supplemental Order, with the exception of the aspects of the Supplemental Order that relate in any way to the DIP ABL Agreement.

8 The foregoing relief is granted in order to maintain the status quo and protect the assets of the Chapter 11 Debtors, while permitting the Payless Canada Group to continue operating its business as usual in Canada during the Chapter 11 proceedings.

9 I decline to grant recognition to the Interim DIP ABL Order. I do not do so lightly and I do so for the following reasons.

10 The Interim DIP Order authorized the Chapter 11 Debtors to borrow up to $245 million under the DIP ABL Credit Agreement pending the hearing on the Final DIP Order. The Interim DIP Order also granted the DIP ABL Lenders and DIP Term Loan Lenders security interests and liens on the collateral provided by the Chapter 11 Debtors under the DIP Agreements.

11 The U.S. court has scheduled a final hearing to consider the Final DIP Order for May 9, 2017.

12 The Applicant is of the view that the Chapter 11 Debtors need to move quickly to comply with the terms of the DIP ABL Agreement. I am aware that it is a condition of the DIP ABL Agreement that the Chapter 11 Debtors obtain recognition of the Interim DIP Order within five business days of the day that the Interim DIP Order was issued by the U.S. court. The deadline in this case was April 12, 2017 and for this reason I issued my endorsement on that date, with reasons to follow.

13 During argument, counsel for the Applicant stressed the importance of the deadline. The Applicant takes the position that it requires all of the liquidity under the DIP ABL Facility forthwith, and the assets of the Payless Canada Group will not be included in the borrowing phase under the DIP ABL Facility until this court recognizes certain of the First Day Orders.

14 The Applicant also takes the position that the Payless Canada Group stands to see a substantial benefit from the DIP ABL Facility, given that the viability of the Payless Canada Group depends on the viability of Payless as a whole.

15 The Proposed Information Officer, Alvarez & Marsal Canada Inc. ("A&M") comments on this issue in its report dated April 7, 2017.

16 The Interim DIP Order authorizes the Chapter 11 Debtors to enter into and perform their obligations under the DIP ABL Credit Agreement, DIP Term Loan Agreement and their respective related credit and loan documents subject to the terms of the Interim DIP Order.

17 In addition to seeking recognition of the Interim DIP Order, the Applicant seeks an order granting a DIP ABL Lenders' Charge on the property of Payless Canada Group that ranks in priority to all unsecured claims, but is subordinate to the Administration Charge, a charge in the amount of $1.4 million (the "Canadian Unsecured Creditors' Charge"), which will be set aside for the pre-filing unsecured creditors, aside from Kuehne & Nagel Ltd. ("K&N") (which would be paid pursuant to the Critical Vendors Order), and validly perfected secured claims.

18 The issue to consider in assessing whether the Interim DIP Order should be recognized is that the DIP ABL Credit Agreement requires Payless Canada Group Entities to be guarantors and to employ their assets as collateral for the indebtedness under the DIP ABL Facility, even though the Payless Canada Group Entities are not borrowers under the current credit facility or the DIP ABL Facility, and will not receive any advances under the DIP ABL Facility and the Payless Canada Group assets are currently unencumbered (other than certain limited security interests granted to equipment lessors and certain landlords).

19 The Applicant submits that it is reasonable and appropriate to recognize the Interim DIP Order and to grant the DIP ABL Lenders' Charge. They rely on the broad remedial purposes of and the flexibility inherent in the CCAA which allows the court to consider the interest of the broader stakeholder body in making orders under the CCAA.

20 The Applicant submits that the following facts support the granting of the DIP ABL Lenders' Charge:

(a) The order is in the interests of the entire Payless organization and its many stakeholders, particularly the Chapter 11 Debtors, suppliers and employees.

(b) Without immediate access to the DIP Facilities, the Chapter 11 Debtors will be unable to finance their operations, and their ability to preserve and maximize the value of their assets and operations would be irreparably harmed. That would have disastrous effects on the Payless Canada Group, which cannot survive as a going concern enterprise without their U.S. counterparts. Among other problems, the Payless Canada Group would lose access to:

i. the high quality, low cost merchandise from Payless's manufacturing partners that are vital to its business strategy;

ii. Payless's licencing agreements, design partnerships and company owned brands, and other trademarks and IP; and

iii. Essential head office services that are vital to its continued operation and to the continued employment of its employees.

21 The Applicant also points out that the DIP ABL Lenders' Charge would be subordinate to the proposed Canadian Unsecured Creditors' Charge and to validly perfected security interests of secured creditors.

22 Further, during its restructuring, it is anticipated that the majority of the Payless Canada Group's creditors (including employees) will be unaffected creditors and will continue to be paid in the ordinary course. Also, at this time, the Applicant is of the view that it is not anticipated that any Canadian stores will be closed.

23 The Applicant also points out that, in the alternative, so-called "roll-up provisions" are permitted in appropriate circumstances in a recognition proceeding, and roll-ups have been approved in circumstances similar to the present application. They reference *Hartford Computer Hardware Inc., Re*, 2012 ONSC 964 (Ont. S.C.J. [Commercial List]).

24 The Applicant also references *InterTAN Canada Ltd., Re*, 2008 CarswellOnt 8040 (Ont. S.C.J. [Commercial List]), where the court allowed the assets of the Canadian subsidiary to be employed as collateral for $1 billion of DIP financing made available to its U.S. parent.

25 The Proposed Information Officer states at section 9.10 of its Report that the entities in the Payless Canada Group are not borrowers under the DIP ABL Credit Agreement but are obligated to guarantee the DIP ABL Credit Facility.

26 The Proposed Information Officer also states that the Payless Canada Group was previously not liable for any obligations under the ABL Credit Facility and their assets did not comprise part of the collateral provided as security in connection with the ABL Credit Facility.

27 However, following recognition of the Interim DIP Order, the Payless Canada Group would effectively become jointly liable with the U.S. Chapter 11 Debtors for obligations incurred by the U.S. Chapter 11 Debtors under the ABL Credit Facility prior to the filing date. The Payless Canada Group would also become liable for new obligations of the U.S. Chapter 11 Debtors incurred in connection with the DIP ABL Credit Facility.

28 Based on discussions with the Chapter 11 Debtors and their Canadian counsel, the Proposed Information Officer understands that the DIP ABL Lenders would not agree to provide additional financing if the Payless Canada Group did not guarantee the DIP ABL Facility and provide collateral to secure such guarantee.

29 The Proposed Information Officer states that due to the dependence of the Payless Canada Group's operations on the U.S. Chapter 11 Debtors, the Payless Canada Group believed that providing the guarantee and required security was in the best interests of their stakeholders.

30 The Proposed Information Officer also reports that, to minimize the impact of the Guarantee and DIP ABL Lenders' Charge on existing unsecured creditors of Payless Canada Group, the proposed Supplemental Order creates a Canadian Unsecured Creditors' Charge to protect the Canadian unsecured trade creditors whose pre-Filing Date claims will not otherwise be paid through the provisions of the First Day Orders. The Canadian Unsecured Creditors' Charge creates a charge on the property of the Payless Canada Group that rank ahead of the DIP ABL Lenders' Charge up to a maximum amount of $1.4 million for claims of arms'-length unsecured trade creditors of the Payless Canada Group.

31 The Proposed Information Officer prepared a preliminary illustrative liquidation analysis in order to provide the court, the landlords, and other creditors of the Payless Canada Group with information regarding the estimated potential recovery to creditors of the Payless Canada Group in an immediate bankruptcy and liquidation scenario in Canada. Based on the assumptions included in that analysis, net realizations from a liquidation and closure of Payless Canada Group's stores over a three month liquidation closure period could be up to approximately $13 million (the "NRV Amount"). During the liquidation/closure period, it is estimated that landlords would receive three months' occupation rent of approximately $6.9 million (approximately $2.3 million per month). The NRV Amount would then be available for distribution to creditors based on filed and proven claims.

32 The Information Officer reports that taking into account:

(a) that the Payless Canada Group is wholly-dependent on other Chapter 11 Debtors for all corporate and managerial functions;

(b) that the Restructuring Support Agreement ("RSA") sets out the framework of a reorganization plan;

(c) the RSA, DIP ABL Credit Agreement and the DIP Term Loan Agreement includes a series of milestones in the Chapter 11 proceedings designed to ensure that the Chapter 11 Debtors move expeditiously towards conformation of a plan;

(d) the proposed Canadian Unsecured Creditors' Charge; and

(e) there are currently no plans to liquidate and close any Canadian stores.

the Proposed Information Officer reports that the creditors of the Payless Canada Group do not appear to be materially prejudiced by the terms in the DIP ABL Credit Agreement and the DIP ABL Lenders' Charge.

33 The Report goes on to note that unsecured trade creditors pre-filing claims will be secured by a court-ordered super priority charge and will continue to be paid in the ordinary course for future supply. In addition, employees will be paid all of their pre and post-filing wages in the ordinary course and will continue to be employed. The Report states that the Payless Canada Group's landlords will continue to be paid rent during the restructuring period and if there is a liquidation, the landlords will still be entitled to the same occupation rent they would realize during an immediate liquidation. If particular stores are closed, that landlord will have received a number of months' rent in the meantime and will be entitled to file a claim for any damages.

34 The Report concludes that though the guarantee and security provided by the Canada Payless Group is not optimal from a Canadian creditor's perspective, the DIP ABL Credit Facility appears to be the best alternative in the

circumstances to maintain the operations of Payless Canada Group as a going concern to the benefit of all Canadian stakeholders and is a necessary precondition to advance towards a successful restructuring as contemplated by the RSA and the milestones included in the DIP ABL Credit Agreement.

35 The position of the Applicant was opposed by a group of landlords having multiple locations (the "Landlord Groups"). The Landlord Groups take the position that the guarantee and security to be provided by the Payless Canada Group is detrimental to the position of the landlords and that the DIP ABL Order should not be recognized.

36 Mr. Bish, on behalf of Cadillac Fairview, took the position that prior to the filing, the Payless Canada Group was not insolvent on either a balance sheet test or a cash-flow test. However, the guarantee and security provided by the Payless Canada Group under the proposed DIP Facility would render the Payless Canada Group insolvent. He submitted that this would be unfair to the position of the landlords. He reasoned that arrangements were being made to pay K&N as a critical vendor, security would be provided to cover the obligations owed to the unsecured trade creditors, and employees would be paid on an ongoing basis. The group that will not be protected are the landlords. Although the Applicant takes the position that landlords will be paid in the ordinary course, the landlords will still be unsecured and the good intentions of the Applicant in continuing operations and making promises to pay the landlords could change depending on economic conditions.

37 It was also pointed out that the projected cash flow statement of Payless, Inc., set out in the Report of the Proposed Information Officer, does not project a cash flow crisis during the initial 13 week stay period.

38 It is important to note that K&N is being protected by the Critical Vendors' Charge. Unsecured trade creditors are being protected by the Unsecured Creditors' Charge. Employees will be paid in the ordinary course and are being protected by the Prepetition Wages and Benefits Order. The landlords have no comparable protection from the impact of the Guarantee and the DIP ABL Lenders' Charge. They have an unsecured promise from Payless.

39 It is noteworthy that not only was no charge granted in favour of the landlords but a provision was included in the DIP Agreement (para. 45) to specifically provide that the DIP Agents, DIP Lenders, Pre-Petition Revolver Parties, and Pre-Petition Term Loan Parties shall not be subject to the equitable doctrine of "marshalling" or any other similar doctrine with respect of any of the DIP collateral or the pre-petition collateral. This Charge clearly benefits the DIP Agent, DIP Lenders, Pre-Petition Revolver Parties and Pre-Petition Loan Parties to the detriment of the Canadian landlords.

40 Counsel to the Landlord Groups submitted that this provision was unfair and uncalled for. Counsel submitted that a more equitable way of approaching the issue would be to permit marshalling or repayment of the DIP Facility whereby the DIP Lender would look first to U.S. assets before looking to the Canadian assets. I accept this submission.

41 The fact remains that prior to the Chapter 11 filing, the Payless Canada Group was not a borrower. By providing the guarantee and the security, combined with the absence of a charge or other mechanism to protect the position of the landlords, the position of the landlords could be detrimentally affected.

42 It seems to me that, at the very least, if the DIP ABL Credit Facility was to be approved, there would have to be adequate protection to ensure that *all* Canadian creditor groups would not be adversely affected by the grant of the security. That is not what is currently proposed. Three of the four groups (K&N, unsecured trade creditors and employees) have received security protection. The landlords have not received protection in the form of a court order from the U.S. Court or by way of a court-authorized charge.

43 In my view, the grant of the DIP ABL Charge in exchange for benefits flowing to the parent company alters the status quo. This would only be acceptable in a CCAA proceeding if arrangements were made to ensure that all affected creditor groups of the Payless Canada Group were protected to the extent that they could be no worse off if the Recognition Order is granted.

44 The Applicants rely on *Hartford* and *InterTAN*, *supra*. However, it should be noted that orders of the type requested in this motion are discretionary in nature and are very much driven by the facts of each case.

45 In *Hartford*, the application was not opposed and the Information Officer reported that there would be no material prejudice to Canadian creditors. There was also no indication that certain Canadian creditor groups were receiving more favorable treatment than others. In this case, certain Canadian creditor groups, but not all groups, are receiving more favorable treatment.

46 In *InterTAN*, the Court commented on the liquidity crisis that engulfed the economy in the fall of 2008. *InterTAN* also had a liquidity crisis. In addition, the application was essentially brought *ex parte*. In this case, the projected cash flow statement does not project an immediate crisis, and unlike the situation in *InterTAN*, the requested relief was not opposed.

47 I recognize that the reorganization proposal contemplates the continued operation of all stores in Canada, but there can be no assurances that this proposal will come to fruition. In the event that circumstances change, it should not be the landlords who are put at risk. The landlords may be contingent unsecured creditors at this time but it is only fair and reasonable that they be provided with adequate protection to contemplate all going forward scenarios. Other unsecured creditor groups have received identifiable and quantifiable forms of protection and it is up to the Applicant to provide this type of comfort to the Landlord Group.

48 Accordingly, I have not been persuaded that it is not appropriate to recognize the Interim DIP Order. I have not been satisfied that recognition of the Interim DIP Order and the granting of the DIP ABL Lenders' Charge is necessary for the protection of the property of the Payless Canada Group or the interest of the landlords of the Payless Canada Group.

49 I am aware that the parties have been discussing the various alternatives to resolve the impasse that gave rise to this endorsement. However, it is not up to the court to fashion an alternative proposal to resolve this issue. This is a matter of contractual negotiation between the Applicant, the DIP Lenders and the Landlord Groups. The court was given the alternative of either recognizing the Interim DIP Order or not recognizing same, and to grant the ABL DIP Lenders' Charge or refuse same. It is in not the role of the court to put forth an alternative solution that has not been contemplated or negotiated by the parties.

50 In the result, the Supplemental Order is granted, with the exception of the recognition of the Interim DIP Order and the granting of the DIP ABL Lenders' Charge.

51 In the event that the parties wish to pursue an alternative resolution, they are, of course, at liberty to come back to court to have same reviewed.

Order accordingly.

End of Document

Court File No.: CV-18-597987-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF ROCKPORT BLOCKER, LLC, THE ROCKPORT GROUP HOLDINGS, LLC, TRG 1-P HOLDINGS, LLC, TRG INTERMEDIATE HOLDINGS, LLC, TRG CLASS D, LLC, THE ROCKPORT GROUP, LLC, THE ROCKPORT COMPANY, LLC, DRYDOCK FOOTWEAR, LLC, DD MANAGEMENT SERVICES LLC AND ROCKPORT CANADA ULC (THE "DEBTORS")

APPLICATION OF ROCKPORT BLOCKER, LLC, UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

BRIEF OF AUTHORITIES OF THE APPLICANT, ROCKPORT BLOCKER, LLC

(Re: Motion Returnable July 20, 2018)

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