

**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 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**

**BRIEF OF AUTHORITIES  
(Director Settlement)  
(returnable April 22, 2013)**

April 17, 2013

**GOWLING LAFLEUR HENDERSON LLP**  
Barristers and Solicitors  
One First Canadian Place  
100 King Street West, Suite 1600  
TORONTO, Ontario M5X 1G5

**Jennifer Stam (LSUC#46735J)**  
Telephone: (416) 862-5697  
Facsimile: (416) 862-7661

**Ava Kim (LSUC# 57256C)**  
Telephone: (416) 862-3560  
Facsimile: (416) 862-7661

Lawyers for the Applicant

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# TAB 1

*Case Name:*

**Massachusetts Elephant & Castle Group, Inc. (Re)**

**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  
RE: Massachusetts Elephant & Castle Group, Inc., Applicant**

[2011] O.J. No. 3280

2011 ONSC 4201

81 C.B.R. (5th) 102

2011 CarswellOnt 6610

Court File No. CV-11-9279-00CL

Ontario Superior Court of Justice

**G.B. Morawetz J.**

Heard: July 4, 2011.

Judgment: July 11, 2011.

(40 paras.)

*Bankruptcy and insolvency law -- Companies' Creditors Arrangement Act (CCAA) matters --  
Application of Act -- Debtor company -- Affiliated debtor companies -- Compromises and  
arrangements -- Applications -- Initial applications -- International insolvencies -- Proceedings --  
Practice and procedure -- General principles -- Legislation -- Interpretation -- Statutes -- Courts --  
Jurisdiction -- CCAA matters -- International insolvencies -- Orders -- Assisting foreign court --  
Application by Massachusetts Elephant & Castle Group Inc ("MECG") for certain orders pursuant  
to ss. 46 to 49 of the Companies' Creditors Arrangement Act ("CCAA") allowed -- Chapter 11*

*Debtors commenced proceedings ("Chapter 11 Proceedings") in the United States -- MECG was the lead debtor in the Chapter 11 Proceedings -- MECG satisfied the requirements of s. 47(1) of the CCAA and the Court recognized the foreign proceeding as a foreign main proceeding -- Pursuant to s. 48 of the CCAA, mandatory relief was granted -- The discretionary relief, including recognition of the Chapter 11 orders, was granted -- Companies' Creditors Arrangement Act, ss. 45, 46, 47.*

Application by Massachusetts Elephant & Castle Group Inc ("MECG") for an Initial Recognition Order declaring that: MECG was a foreign representative pursuant to s. 45 of the Companies Creditors Arrangement Act ("CCAA") and was entitled to bring its application pursuant to s. 46 of the CCAA; the Chapter 11 Proceeding in respect of the Chapter 11 Debtors was a "foreign main proceeding" for the purposes of the CCAA; and 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 were stayed. Application by MECG for a Supplemental Order that: recognized in Canada and enforced certain orders of the US Court made in the Chapter 11 Proceeding; granted a super-priority change over the Chapter 11 Debtors' property in respect of administrative fees and expenses; and appointed BDO Canada Limited as Information Officer in respect of the proceedings. The Chapter 11 Debtors, including MECG, operated and franchised authentic British-style restaurant pubs in the United States and Canada. MECG was the lead debtor in the Chapter 11 Proceeding. On June 28, 2011, the chapter 11 Debtors commenced proceedings ("Chapter 11 Proceedings") in the United States Bankruptcy Court for the District of Massachusetts Eastern Division. MECG was the lead debtor in the Chapter 11 Proceedings. On June 30, 2011, the US Court made certain orders at the first-day hearing held in the Chapter 11 Proceedings, including an order appointing MECG as foreign representative in respect of the Chapter 11 Proceeding. The purpose of the Chapter 11 Proceedings was to sell the Chapter 11 Debtors' businesses as a going concern on the most favorable terms possible and keep the Chapter 11 Debtors' business intact to the greatest extent possible. The issue before the Court was whether it 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.

HELD: Application allowed. Since MECG satisfied the requirements of s. 47(1) of the CCAA, the Court recognized the foreign proceeding. Section 47(2) of the CCAA required the Court to specify in its order whether the foreign proceeding was a foreign main proceedings or a foreign non-main proceeding. Pursuant to s. 45(1) of the CCAA, a foreign main proceeding was a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interest ("COMI"). The location of the debtors' headquarters or head office functions or nerve centre was in Boston, Massachusetts and the location of the debtors' management was in Boston. The entity making up the Chapter 11 Debtors had their COMI in the United States. The foreign proceeding was a foreign main proceeding. The mandatory relief provided for in s. 48 of the CCAA was contained in the Initial Recognition Order. Section 49 of the CCAA gave the Court discretion to provide further relief if it was satisfied that it was necessary for the protection of the debtor company's property or

the interest of a creditor or debtors. 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, was appropriate in the circumstances.

**Statutes, Regulations and Rules Cited:**

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

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

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, s. 44, s. 45(1), s. 45(1), s. 45(2), s. 46, s. 46(1), s. 46(2), s. 47, s. 47(1), s. 47(2), s. 48, s. 48(1), s. 49, s. 49(1), s. 50, s. 61, s. 61(1), s. 61(2)

United States Bankruptcy Code, 11 U.S.C. s. 1101-1174, Chapter 11

**Counsel:**

Kenneth D. Kraft, Sara-Ann Wilson, for the Applicant.

Heather Meredith, for the GE Canada Equipment Financing GP.

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**ENDORSEMENT**

**1 G.B. MORAWETZ J.:**-- 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 charge 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. s. 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.); *Re Magna Entertainment Corp.* (2009), 51 C.B.R. (5th) 82 (Ont. S.C.); *Lear Canada (Re)* (2009), 55 C.B.R. (5th) 57 (Ont. S.C.).

**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 *Re Angiotech Pharmaceuticals Limited*, [2011] B.C.J. No. 123, 2011 CarswellBC 124 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.

G.B. MORAWETZ J.

\* \* \* \* \*

**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

cp/e/qlafr/qlvxw/qlana/qlhcs

# **TAB 2**



*Case Name:*  
**Lightsquared LP (Re)**

**IN THE MATTER OF the Companies' Creditors Arrangement Act,  
R.S.C. 1985, c. C 36, as amended  
APPLICATION OF Lightsquared LP under Section 46 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 with respect to Lightsquared Inc.,  
Lightsquared Investors Holdings Inc., One Dot Four Corp., One  
Dot Six Corp. Skyterra Rollup LLC, Skyterra Rollup Sub LLC,  
Skyterra Investors Llc, TMI Communications Delaware, Limited  
Partnership, Lightsquared GP Inc., Lightsquared LP, ATC  
Technologies LLC, Lightsquared Corp., Lightsquared Finance  
Co., Lightsquared Network LLC, Lightsquared Inc. of Virginia,  
Lightsquared Subsidiary LLC, Lightsquared Bermuda Ltd.,  
Skyterra Holdings (Canada) Inc., Skyterra (Canada) Inc. and  
One Dot Six TVCC Corp. (collectively, the "Chapter 11  
Debtors"), Applicants**

[2012] O.J. No. 3184

2012 ONSC 2994

92 C.B.R. (5th) 321

2012 CarswellOnt 8614

Court File No. CV-12-9719-00CL

Ontario Superior Court of Justice  
Commercial List

**G.B. Morawetz J.**

Heard: May 18, 2012.

Judgment: July 6, 2012.

(40 paras.)

*Bankruptcy and insolvency law -- Companies' Creditors Arrangement Act (CCAA) matters -- Compromises and arrangements -- International insolvencies -- Application by Lightsquared for order declaring applicant a foreign representative and US bankruptcy proceedings a foreign main proceeding and for orders to recognize and enforce in Canada certain orders of the US Court made in Chapter 11 Proceedings, to appoint A&M as Information Officer in respect of these proceedings and to grant an Administration Charge over the Chapter 11 Debtors' property allowed -- Applicant and its affiliates commenced voluntary reorganization proceedings in US -- Affiliates had material assets in other jurisdictions, including Ontario -- Centre of main interests of Canadian debtors was in US.*

Application by Lightsquared for an order declaring the applicant a foreign representative and the US bankruptcy proceedings a foreign main proceeding and for orders to recognize and enforce in Canada certain orders of the US Court made in Chapter 11 Proceedings, to appoint A&M as Information Officer in respect of these proceedings and to grant an Administration Charge over the Chapter 11 Debtors' property. The applicant and various of its affiliates commenced voluntary reorganization proceedings in the US seeking relief under Chapter 11 of the US Bankruptcy Code. The affiliates had certain material assets in other jurisdictions, including Ontario. Other than the Canadian Debtors and Lightsquared Bermuda Ltd., all of the affiliates were incorporated pursuant to the laws of the US. The Canadian debtors had guaranteed the credit facilities which were extended to the applicant as borrower and such guarantee was allegedly secured by a priority interest on the assets of the Canadian debtors. As such, counsel argued that the majority of the creditors of the affiliates were also common. The applicant argued that the centre of the main interests of each of the Canadian debtors was in the US.

HELD: Application allowed. The Chapter 11 Proceedings were "foreign proceedings" for the purposes of the Companies' Creditors Arrangement Act and the applicant was a foreign representative. The centre of the main interests of the Canadian debtors was in the US. Therefore, the foreign proceeding was a foreign main proceeding. The court should recognize and enforce in Canada certain orders of the US Court made in the Chapter 11 Proceedings, appoint A&M as Information Officer in respect of these proceedings, and grant an Administration Charge over the Chapter 11 Debtors' property. The appointment of A&M as Information Officer would help to facilitate these proceedings and the dissemination of information concerning the Chapter 11 Proceedings and this relief was appropriate.

**Statutes, Regulations and Rules Cited:**

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C 36, s. 44, s. 45, s. 45(1), s. 45(2), s. 46(1), s. 47(2), s. 48(1), s. 49, s. 49(1), s. 50

**Counsel:**

Shayne Kukulowicz and Jane Dietrich, for Lightsquared LP.

Brian Empey, for Alvarez and Marsal Inc., Proposed Information Officer.

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### **ENDORSEMENT**

**1 G.B. MORAWETZ J.:**-- On May 14, 2012, Lightsquared LP ("LSLP" or the "Applicant") and various of its affiliates (collectively, the "Chapter 11 Debtors") commenced voluntary reorganization proceedings (the "Chapter 11 Proceedings") in the United States Bankruptcy Court for the Southern District of New York (the "U.S. Court") by each filing a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

**2** The Chapter 11 Debtors have certain material assets in other jurisdictions, including Ontario and indicated at an interim hearing held on May 15, 2012 that they would be seeking an order from the U.S. Court authorizing LSLP to act as the Foreign Representative of the Chapter 11 Debtors, in any judicial or other proceeding, including these proceedings (the "Foreign Representative Order").

**3** At the conclusion of the interim hearing of May 15, 2012, I granted the Interim Initial Order to provide for a stay of proceedings and other ancillary relief. A full hearing was scheduled for May 18, 2012.

**4** At the hearing on May 18, 2012, the record demonstrated that LSLP had been authorized to act as Foreign Representative by order of The Honorable Shelley C. Chapman dated May 15, 2012. This authority was granted on an interim basis pending a final hearing scheduled for June 11, 2012.

**5** LSLP brought this application pursuant to ss. 44-49 of the *Companies' Creditors Arrangement Act* ("CCAA"), seeking the following orders:

(a) an Initial Recognition Order, *inter alia*:

- (i) declaring that LSLP is a "foreign representative" pursuant to s. 45 of the CCAA;
- (ii) declaring that the Chapter 11 Proceeding is recognized as a "foreign main proceeding" under the CCAA; and
- (iii) granting a stay of proceedings against the Chapter 11 Debtors; and

(b) a "Supplemental Order" pursuant to s. 49 of the CCAA, *inter alia*:

- (i) recognizing in Canada and enforcing certain orders of the U.S. Court made in the Chapter 11 Proceedings;
- (ii) appointing Alvarez and Marsal Canada Inc. ("A&M") as the Information Officer in respect of this proceeding (in such capacity, the "Information Officer");
- (iii) staying any claims against or in respect of the Chapter 11 Debtors, the business and property of the Chapter 11 Debtors and the Directors and Officers of the Chapter 11 Debtors;
- (iv) restraining the right of any person or entity to, among other things, discontinue or terminate any supply of products or services to Chapter 11 Debtors;
- (v) granting a super priority charge up to the maximum amount of \$200,000, over the Chapter 11 Debtors' property, in favour of the Information Officer and its counsel, as security for their professional fees and disbursements incurred in respect of these proceedings (the "Administration Charge").

**6** Counsel to LSLP submitted that this relief was required in order to:

- (i) alleviate any potential harm to the Chapter 11 Debtors or their Canadian assets during the interim period;
- (ii) ensure the protection of the Chapter 11 Debtors' Canadian assets during the course of the Chapter 11 Proceedings; and
- (iii) ensure that this court and the Canadian stakeholders are kept properly informed of the Chapter 11 Proceedings.

**7** The Chapter 11 Debtors are in the process of building a fourth generation long-term evolution open wireless broadband network that incorporates satellite coverage throughout North America and offers users, wherever they may be located, the speed, value and reliability of universal connectivity.

**8** The Chapter 11 Debtors consist of approximately 20 entities. All but four of these entities have their head office or headquarter location in the United States.

**9** Two of the Chapter 11 Debtors are incorporated pursuant to the laws of Ontario, being SkyTerra Holdings (Canada) Inc. ("SkyTerra Holdings") and SkyTerra (Canada) Inc. ("SkyTerra Canada"). One of the Chapter 11 Debtors is incorporated pursuant to the laws of Nova Scotia, being Lightsquared Corp. "LC" and together with SkyTerra Holdings and SkyTerra Canada, the "Canadian Debtors"). Each of the Canadian Debtors is a wholly-owned subsidiary, directly or indirectly, of the Applicant.

**10** Other than the Canadian Debtors and Lightsquared Bermuda Ltd., all of the Chapter 11 Debtors are incorporated pursuant to the laws of the United States.

11 The operations of the Canadian Debtors were summarized by LSLP as follows:

- (a) SkyTerra Canada: this entity was created to hold certain regulated assets which, by law, are required to be held by Canadian corporations. SkyTerra Canada holds primarily three categories of assets: (i) the MSAT - 1 satellite; (ii) certain Industry Canada licences; (iii) contracts with the Applicant's affiliates and third parties. SkyTerra Canada has no third party customers or employees at the present time and is wholly dependent on the Applicant for the funding of its operations;
- (b) SkyTerra Holdings: this entity has no employees or operational functions. Its sole function is to hold shares of SkyTerra Canada; and
- (c) LC: this entity was created for the purposes of providing mobile satellite services to customers located in Canada based on products and services that were developed by the Chapter 11 Debtors for the United States market. LC holds certain Industry Canada licences and authorizations as well as certain ground-related assets. LC employs approximately 43 non-union employees out of its offices in Ottawa, Ontario. LC is wholly dependent on the Applicant for all or substantially all of the funding of its operations.

12 Counsel to LSLP also submitted that the Chapter 11 Debtors, including the Canadian Debtors, are managed in the United States as an integrated group from a corporate, strategic and management perspective. In particular:

- (a) corporate and other major decision-making occurs from the consolidated offices in New York, New York and Ruston, Virginia;
- (b) all of the senior executives of the Chapter 11 Debtors, including the Canadian Debtors, are residents of the United States;
- (c) the majority of the management of the Chapter 11 Debtors, including the Canadian Debtors, is shared;
- (d) the majority of employee administration, human resource functions, marketing and communication decisions are made, and related functions taken, on behalf of all of the Chapter 11 Debtors, including the Canadian Debtors, in the United States;
- (e) the Chapter 11 Debtors, including the Canadian Debtors, also share a cash-management system that is overseen by employees of the United States-based Chapter 11 Debtors and located primarily in the United States; and
- (f) other functions shared between the Chapter 11 Debtors, including the Canadian Debtors, and primarily managed from the United States include, pricing decisions, business development decisions, accounts payable, accounts receivable and treasury functions.

**13** Counsel further submits that the Canadian Debtors are wholly dependent on the Applicant and other members of the Chapter 11 Debtors located in the United States for all or substantially all of their funding requirements.

**14** Further, the Canadian Debtors have guaranteed the credit facilities which were extended to LSLP as borrower and such guarantee is allegedly secured by a priority interest on the assets of the Canadian Debtors. As such, counsel submits that the majority of the creditors of the Chapter 11 Debtors are also common.

**15** The Interim Initial Order granted on May 15, 2012, reflected an exercise of both statutory jurisdiction and the court's inherent juridical discretion. In arriving at the decision to grant interim relief, I was satisfied that it was appropriate to provide such relief in order to alleviate any potential harm to the Chapter 11 Debtors or their Canadian assets during the interim period.

**16** The issue for consideration on this motion is whether the court should recognize the Chapter 11 Proceedings as a "foreign main proceeding" pursuant to the CCAA and grant the Initial Recognition Order sought by the Applicant and, if so, whether the court should also grant the Supplemental Order under s. 49 of the CCAA to (i) recognize and enforce in Canada certain orders of the U.S. Court made in the Chapter 11 Proceedings; (ii) appoint A&M as Information Officer in respect of these proceedings; and (iii) grant an Administration Charge over the Chapter 11 Debtors' property.

**17** Section 46 (1) of the CCAA provides that 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".

**18** Court proceedings under Chapter 11 of the Bankruptcy Code have consistently been found to be "foreign proceedings" for the purposes of the CCAA. In this respect, see *Re Massachusetts Elephant & Castle Group Inc.* (2011), 81 C.B.R. (5th) 102 and *Re Lear Canada* (2009), 55 C.B.R. (5th) 57.

**19** I accept that the Chapter 11 Proceedings are "foreign proceedings" for the purposes of the CCAA and that LSLP is a "foreign representative".

**20** However, it is noted that the status of LSLP as a foreign representative is subject to further consideration by the U.S. Court on June 11, 2012. If, for whatever reason, the status of LSLP is altered by the U.S. Court, it follows that this issue will have to be reviewed by this court.

**21** LSLP submits that the Chapter 11 Proceedings should be declared a "foreign main proceeding". Under s. 47 (1) of the CCAA, it is necessary under s. 47 (2) to determine 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".

**23** Section 45 (2) of the CCAA provides that for the purposes of Part IV of the CCAA, in the absence of proof to the contrary, a debtor company's registered office is deemed to be the centre of its main interests ("COMI").

**24** In this case, the registered offices of the Canadian Debtors are in Canada. Counsel to the Applicant submits, however, that the COMI of the Canadian Debtors is not in the location of the registered offices.

**25** In circumstances where it is necessary to go beyond the s. 45 (2) registered office presumption, in my view, the following principal factors, considered as a whole, will tend to indicate whether the location in which the proceeding has been filed is the debtor's centre of main interests. The factors are:

- (i) the location is readily ascertainable by creditors;
- (ii) the location is one in which the debtor's principal assets or operations are found;  
and
- (iii) the location is where the management of the debtor takes place.

**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.

**27** When the court determines that there is proof contrary to the presumption in s. 45 (2), the court should, in my view, consider these factors in determining the location of the debtor's centre of main interests.

**28** The above analysis is consistent with preliminary commentary in the Report of UNCITRAL Working Group V (Insolvency Law) of its 41st Session (New York, 30 April - 4 May, 2012) (Working Paper AICN.9/742, paragraph 52. In my view, this approach provides an appropriate framework for the COMI analysis and is intended to be a refinement of the views I previously expressed in *Re Massachusetts Elephant & Castle Group Inc.*, *supra*.

**29** Part IV of the CCAA does not specifically take into account corporate groups. It is therefore necessary to consider the COMI issue on an entity-by-entity basis.

**30** In this case, the foreign proceeding was filed in the United States and based on the facts summarized at [11] - [14], LSLP submits that the COMI of each of the Canadian Debtors is in the United States.

31 After considering these facts and the factors set out in [25] and [26], I am persuaded that the COMI of the Canadian Debtors is in the United States. It follows, therefore, that in this case, the "foreign proceeding" is a "foreign main proceeding".

32 Having recognized the "foreign proceeding" as a "foreign main proceeding", subsection 48 (1) of the CCAA requires the court to grant certain enumerated relief subject to any terms and conditions it considers appropriate. This relief is set out in the Initial Recognition Order, which relief is granted in the form submitted.

33 Additionally, s. 50 of the CCAA provides the court with the jurisdiction to make any order under Part IV of the CCAA on the terms and conditions it considers appropriate in the circumstances.

34 The final issue to consider is whether the court should grant the Supplemental Order sought by the Applicant under s. 49 of the CCAA and (i) recognize and enforce in Canada certain orders of the U.S. Court made in the Chapter 11 Proceedings; (ii) appoint A&M as Information Officer in respect of these proceedings; and (iii) grant an Administration Charge over the Chapter 11 Debtors' property.

35 If an order recognizing the "foreign proceedings" has been made (foreign main or foreign non-main), subsection 49 (1) of the CCAA provides the authority for the court, if it is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors, to make any order that it considers appropriate.

36 In this case, the Applicant is requesting recognition of the first day orders granted in the U.S. Court. Based on the record, I am satisfied that it is appropriate to recognize these orders.

37 Additionally, I am satisfied that the appointment of A&M as Information Officer will help to facilitate these proceedings and the dissemination of information concerning the Chapter 11 Proceedings and this relief is appropriate on the terms set forth in the draft order. The proposed order also provides that the Information Officer be entitled to the benefit of an Administration Charge, which charge shall not exceed an aggregate amount of \$200,000, as security for their professional fees and disbursements. I am satisfied that the inclusion of this Administration Charge in the draft order is appropriate.

38 The ancillary relief requested in the draft order is also appropriate in the circumstances.

39 Accordingly, the Supplemental Order is granted in the form presented. The Supplemental Order contains copies of the first day orders granted in the U.S. Court.

40 Finally, on an ongoing basis, it would be appreciated if counsel would, in addition to filing the required paper record, also file an electronic copy by way of a USB key directly with the Commercial List Office.



G.B. MORAWETZ J.

cp/e/qlaim/qlpmg/qlgpr

# TAB 3

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

THE HONOURABLE MADAM ) THURSDAY, THE 9<sup>TH</sup> DAY  
JUSTICE PEPALL )  
)  
) OF JULY, 2009



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

**AND IN THE MATTER OF LEAR CANADA, LEAR CANADA  
INVESTMENTS LTD., LEAR CORPORATION CANADA  
LTD. AND THE OTHER APPLICANTS LISTED IN  
SCHEDULE "A"**

**APPLICANTS**

**APPLICATION UNDER SECTION 18.6 OF THE COMPANIES'  
CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36 AS  
AMENDED**

**RECOGNITION ORDER**

**THIS APPLICATION** for an Order substantially in the form included in the Application Record, was heard this day at Toronto, Ontario.

**ON READING** (i) the Notice of Application, (ii) the Affidavit of Shari Burgess sworn July 8, 2009 and the Exhibits thereto (the "Burgess Affidavit"); (iii) the consent of RSM Richter Inc. to act as an information officer (the "Information Officer") as contemplated hereunder and (iv) the Affidavit of Samuel M. Gross sworn July 9, 2009 and the Exhibit thereto (the "Gross Affidavit") and on hearing the submissions of counsel for the Applicants, counsel for the, and on being advised that no other person was served with the Notice of Application herein,

*Proposed Information officer + counsel for T. P. Morgan Chase*

*STP*

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and any further service of the Notice of Application and the Application Record is hereby dispensed with.

2. **THIS COURT ORDERS** that terms not otherwise defined have the meaning ascribed in the Burgess Affidavit.

**Recognition**

3. **THIS COURT ORDERS AND DECLARES** that the proceedings (the "US Proceedings") commenced by Lear Canada, Lear Canada Investments Ltd., Lear Canada Corporation Ltd. (the "Canadian Applicants") and the non-Canadian applicants listed in Schedule "A" (collectively with the Canadian Applicants, the "Applicants"), under Chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York (the "US Bankruptcy Court") be and are hereby recognized as a "foreign proceeding" as defined by subsection 18.6(1) of the CCAA.

4. **THIS COURT HEREBY RECOGNIZES** the following orders of the U.S. Bankruptcy Court, attached as Exhibit "A" to the Gross Affidavit (collectively, the "Chapter 11 Orders"):

- (a) Interim Order Establishing Certain Notice, Case Management and Administrative Procedures;
- (b) Interim Order (I) Authorizing the Use of Lenders' Cash Collateral and (II) Granting Adequate Protection;
- (c) Cash Management Interim Order;

- (d) Interim Order Authorizing Payments of Claims of Certain Critical Vendors;
- (e) Interim Order Authorizing the Debtors to Maintain Customer Programs;
- (f) Interim Order Establishing Notification and Hearing Procedures for Transfer of Common Stock;
- (g) Interim Order Authorizing the Debtors to Continue Their Existing Intercompany Practices;
- (h) Interim Order Authorizing Payment of Foreign Vendors;
- (i) Order Authorizing Joint Administration Order;
- (j) Order Authorizing Retention of Kurtzman Carson Consultants;
- (k) Creditor Matrix Order;
- (l) Order Granting Extension of Time to File SOFAs and Schedules;
- (m) Interim Order Authorizing Payments of Shippers and Other Lien Claimants;
- (n) Interim Taxes Order; and
- (o) Interim Wages Order;

Provided, however, that in the event of inconsistencies between the terms of the Chapter 11 Orders and this Order, the provisions of this Order shall govern.

#### **Application**

5. **THIS COURT ORDERS AND DECLARES** that the Canadian Applicants, other than Lear Canada, are affiliated debtor companies within the meaning of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") and that the Applicants are entitled to relief under Section 18.6 of the CCAA.

### **No Proceedings Against the Applicants or the Property**

6. **THIS COURT ORDERS** that until and including August 7, 2009, or such other date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal in Canada (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants, or affecting: (i) the current and future assets, undertakings and properties of the Canadian Applicants, of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"); or (ii) Applicants' business (the "Business"), except with the written consent of the Applicants or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

### **Exercise of Rights or Remedies**

7. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicants or the Information Officer, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment except if such regulatory body or agency is seeking to enforce any of its rights as secured creditor or unsecured creditor of the Applicants, or (iii) prevent the registration of a claim for a construction lien.

### **No Interference With Rights**

8. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants, or leave of this Court.

### **Continuation of Services**

9. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants, or as may be ordered by this Court.


### **Non-Derogation of Rights**

10. **THIS COURT ORDERS** that, notwithstanding anything else contained herein, the lending institutions led by J.P. Morgan Chase Bank N.A., acting as general administrative agent under the Credit Agreement (as defined in the Burgess Affidavit), shall not be under any obligation

after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants under the Credit Agreement. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

**Special Provisions**

**10A THIS COURT ORDERS** that notwithstanding any provision of this Order, unless permitted by further order of this Court, the Canadian Applicants:

-  (a) Shall not make <sup>any</sup> ~~an~~ advances or transfers of funds to any of the Applicants or any of their affiliates by way of loan or otherwise except that the Canadian Applicants may pay for goods or services in the ordinary course of business and in accordance with existing practices;
- (b) Shall not grant security or otherwise encumber <sup>or release</sup> the Property, including by way of incurring indebtedness to other Applicants as permitted by the Cash Management Order, except in respect of the purchase of goods or services in the ordinary course of business and in accordance with existing practices;
- (c) Shall pay current service and special payments as required under the *Pension Benefits Act* in respect of its facilities at Ajax, St. Thomas, Kitchener and Whitby and its former facilities at Maple.



**Proceedings Against Directors and Officers**

**11. THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Canadian Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Canadian Applicants whereby the directors or officers are alleged under any law to be liable in



their capacity as directors or officers for the payment or performance of such obligations, until the later of the termination of this proceeding or the U.S. Proceedings, or until further order of this Court. .

**Directors' and Officers' Indemnification and Charge**

12. **THIS COURT ORDERS** that the Canadian Applicants shall indemnify their directors and officers from all claims, costs, charges and expenses in respect of any liabilities and obligations that arise or are incurred, after the date hereof, by reason of or in relation to their respective capacities as directors and/or officers of the Canadian Applicants except to the extent that, with respect to any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.

13. **THIS COURT ORDERS** that the directors and officers of the Canadian Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of \$9 million, as security for the indemnity provided in paragraph 12 of this Order. The Directors' Charge shall have the priority set out in paragraphs 28 and 30 herein.

14. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Canadian Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 12 of this Order.

15. **THIS COURT ORDERS** that the Canadian Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay, bonuses and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any employees, consultants, agents, experts, accountants, counsel and such other persons retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

16. **THIS COURT ORDERS** that the Canadian Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Canadian Applicants in connection with the sale of goods and services by the Canadian Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of

municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Canadian Applicants.

**Information Officer**

17. **THIS COURT ORDERS** that RSM Richter Inc. is hereby appointed as an Information Officer with the powers and obligations set out herein.

18. **THIS COURT ORDERS** that the Information Officer shall report to this Court at such times and intervals as the Information Officer deems appropriate and, in any event, shall deliver a report to the Court at least once every three months outlining the status of the U.S. Proceedings, and such other information as the Information Officer believes to be material.

19. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Information Officer as an officer of this Court, the Information Officer shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, and no action or other proceeding shall be commenced against the Information Officer in any Court or other tribunal as a result of or relating in any way to its appointment as Information Officer, the fulfillment of its duties as Information Officer or the carrying out of this or any other orders of this Court, unless the leave of this Court is first obtained on motion on at least seven (7) days' notice to the Information Officer and the parties on the service list.

20. **THIS COURT ORDERS** that the Information Officer shall provide any creditor of the Applicants, including, for greater certainty, J.P. Morgan Chase Bank N.A., with information

provided by the Canadian Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Information Officer. The Information Officer shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Information Officer has been advised by the Applicants is confidential, the Information Officer shall not provide such information to creditors unless as otherwise directed by this Court or on such terms as the Information Officer and the Applicants may agree upon.

21.           **THIS COURT ORDERS** that the Information Officer shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof. For greater certainty, the Information Officer shall not employ any employee of the Applicants.

22.           **THIS COURT ORDERS** that nothing herein contained shall require the Information Officer to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including; without limitation, the Canadian Environmental Protection Act, the Ontario Environmental Protection Act, the Ontario Water Resources Act, or the Ontario Occupational Health and Safety Act and regulations under such legislation (the "Environmental Legislation"), provided however that nothing herein shall exempt the Information Officer from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Information Officer shall not, as a result of this Order or anything

done in pursuance of the Information Officer's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

23. **THIS COURT ORDERS** that the Information Officer, counsel to the Information Officer and Canadian counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Information Officer, counsel for the Information Officer and Canadian counsel for the Applicants on a monthly basis.

24. **THIS COURT ORDERS** that the fees and expenses of the Information Officer and its counsel shall be subject to the passing of accounts by this Court.

25. **THIS COURT ORDERS** that the Information Officer, counsel to the Information Officer and the Applicants' Canadian counsel shall be entitled to the benefits of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$750,000 as security for their professional fees and disbursements incurred at the normal rates and charges of the Information Officer and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 28 and 30 hereof.

26. **THIS COURT ORDERS** that the Applicants are authorized to retain McCarthy Tétrault LLP ("McCarthy") as their counsel.

27. **THIS COURT ORDERS** that nothing in this Order shall prevent the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, monitor under the CCAA or a trustee in bankruptcy of the Applicants, the Business or the Property.

**Validity and Priority of Charges Created by this Order**

28. **THIS COURT ORDERS** that the priorities of the Directors' Charge and the Administration Charge, as among them, shall be as follows:

First - Administration Charge (to the maximum amount of \$750,000); and

Second - Directors' Charge (to the maximum amount of \$9,000,000).

29. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge or the Administration Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

30. **THIS COURT ORDERS** that each of the Directors' Charge and the Administration Charge (all as constituted and defined herein) shall constitute a charge on the Property and except as otherwise provided herein, such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

31. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Canadian Applicants shall not grant any Encumbrances over any Property that rank in priority to, or pari passu with, any of the Directors' Charge or the Administration Charge, unless the Applicants also obtain the prior written consent of the Information

Officer, and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

32. **THIS COURT ORDERS** that the Directors' Charge and the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering the creation of the Charges; and
- (c) the payments made by the Applicants pursuant to this Order and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

**Notice**

33. **THIS COURT ORDERS** that within fifteen (15) days of the date hereof, the Information Officer shall publish a notice substantially in the form set out in Schedule "B" hereto in the National Edition of The Globe and Mail.

**Miscellaneous**

34. **THIS COURT ORDERS** that the Applicants and the Information Officer be at liberty to serve this Order, any other materials and orders in these proceedings or the US Proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants 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.

35. **THIS COURT ORDERS** that the Information Officer shall cause a copy of any court materials served in these proceedings to be posted to their website at [www.rsmrichter.com](http://www.rsmrichter.com) as soon as is practicable.

36. **THIS COURT ORDERS** that the Applicants, the Information Officer, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings or the US Proceedings, by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable.



37. **THIS COURT ORDERS** that the Applicants may move for advice and directions from this Court as to any matter referred to herein.

38. **THIS COURTS ORDERS** that the US Bankruptcy Court and this Court may communicate from time to time for the purpose of consultation and coordination without notice to or the attendance of counsel.

39. **THIS COURT ORDERS** that any person affected by this Order may bring a motion before this Court on at least seven (7) days notice to the Applicants and the Information Officer to rescind or vary this Order forthwith after this Order comes to his or her attention.

40. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on July 9, 2009, nunc pro tunc.

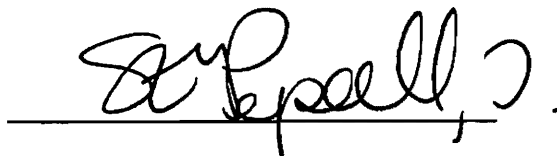
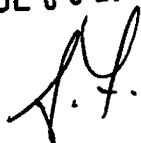
**Aid & Recognition**

41. **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 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.

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

JUL 09 2009

PER / PAR:



**SCHEDULE "A"**

**(non-Canadian Applicants)**

Lear Corporation

Lear #50 Holdings, LLC

Lear Argentine Holdings Corporation #2

Lear Automotive Dearborn, Inc.

Lear Automotive Manufacturing, LLC

Lear Corporation (Germany) Ltd.

Lear Corporation EEDS and Interiors

Lear Corporation Global Development, Inc.

Lear EEDS Holdings, LLC

Lear European Operations Corporation

Lear Holdings, LLC

Lear Investments Company, LLC

Lear Mexican Holdings Corporation

Lear Mexican Holdings, LLC

Lear Mexican Seating Corporation

Lear Operations Corporation

Lear Seating Holdings Corp. #50

Lear South Africa Limited

Lear South American Holdings Corporation

Lear Trim L.P.

Renosol Seating, LLC

## SCHEDULE "B" - Notice

***PLEASE TAKE NOTICE*** that this notice is being published pursuant to an Order of the Ontario Superior Court of Justice made ●, 2009, Lear Corporation and certain other affiliated entities in the United States and Canada, including Lear Canada, have filed for protection in the United States under Chapter 11 of the Bankruptcy Code. Lear Corporation and its affiliates have sought and obtained an interim order under Section 18.6 of the CCAA affording them a stay against claims in Canada.

Persons who wish to appear in the Canadian proceedings or to obtain a copy of the Ontario Court orders should contact the Information Officer:

●

[Address]

DATED this            day of            , 2009 at Toronto, Canada

*CourtFile No.* ●

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, AS AMENDED R.S.C. 1985, c. C-36  
AND IN THE MATTER OF LEAR CANADA AND THOSE OTHER APPLICANTS LISTED ON SCHEDULE "A"  
APPLICATION UNDER SECTION 18.6 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Court File No. *CV-09-00008269-00CL*

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding Commenced at TORONTO

**RECOGNITION ORDER**

**MCCARTHY TÉTRAULT LLP**  
Suite 5300, Box 48  
Toronto Dominion Bank Tower  
Toronto-Dominion Centre  
Toronto, ON M5K 1E6

**Kevin McElcheran** LSUC# 22119H  
Tel: 416-601-7730

**Junior Sirivar** LSUC# 47939H  
Tel: 416-601-7750

**Ryan Stabile** LSUC# 55387H  
Tel: 416-601-8335

Lawyers for the Applicants

# TAB 4



Court File No: CV-11-9279-00CL

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

**THE HONOURABLE MR. )  
JUSTICE MORAWETZ )**      **MONDAY, THE 4<sup>TH</sup> DAY  
OF JULY, 2011**

**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")**

**APPLICATION OF  
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC.**

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

**SUPPLEMENTAL ORDER**

**THIS APPLICATION**, made by Massachusetts Elephant & Castle Group, Inc. (the "**Applicant**") in its capacity as the foreign representative (the "**Foreign Representative**") of the Chapter 11 Debtors in the proceedings commenced on June 28, 2011, in the United States Bankruptcy Court District of Massachusetts Eastern Division (the "**U.S. Court**"), under Chapter 11 of Title 11 of the United States Code (the "**Chapter 11 Proceeding**") for an Order substantially in the form enclosed in the Application Record of the Applicant was heard on this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Application, filed, the Affidavit of Keith Radford sworn June 28, 2011 (the "**Radford Affidavit**"), filed, the Preliminary Report of BDO Canada Limited ("**BDO**"), in its capacity as proposed information officer (the "**Information Officer**"), dated June 28, 2011, filed, the consent of BDO to act as Information Officer, filed, the Affidavit of Sara-Ann Wilson sworn June 30, 2011 (the "**Wilson Affidavit**"), and upon being provided with copies of the documents required by Section 46 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), and the related orders of the U.S. Court dated June 30, 2011 in respect of the Chapter 11 Proceeding for each of the Foreign Representative and the other Chapter 11 Debtors, including the order of the U.S. Court authorizing the Applicant to act in the capacity of a Foreign Representative on behalf of the Chapter 11 Debtors (the "**Foreign Representative Order**"), and upon hearing the submissions of counsel for the Foreign Representative, ~~counsel for the proposed Information Officer~~, and counsel for GE Canada Equipment Financing G.P., no one appearing for any other person on the service list, although properly served as appears from the Affidavits of Ingrid Rowe, sworn June 29, 2011 and June 30, 2011, filed, and upon being advised that no other persons were served with the Notice of Application:

## **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined herein shall have the meaning given to such terms in the Initial Recognition Order dated July 4, 2011, made by this Honourable Court in these proceedings (the "**IRO**").
3. **THIS COURT ORDERS AND DECLARES** that the terms of this Supplemental Order shall not amend the IRO or in any way limit the force and effect of the IRO.   
 *subject to paragraph 4 of IRO*

## RECOGNITION OF THE CHAPTER 11 ORDERS

4. **THIS COURT ORDERS AND DECLARES** that the following orders of the U.S. Court in the Chapter 11 Proceeding, attached as Schedules "B" to "I" hereto (collectively, the "**Chapter 11 Orders**"), be and are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA:

- (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 List of Creditors Order;

(each, as defined in the Wilson Affidavit),

provided, however, that in the event of any inconsistency between the terms of the Chapter 11 Orders and the IRO and this Order, the terms of the IRO and this Order shall govern with respect to the Property.)

### INFORMATION OFFICER

5. **THIS COURT ORDERS** that:

- (a) BDO be and is hereby appointed as Information Officer (in such capacity, the "**Information Officer**"), as an officer of this Court;
- (b) The Information Officer be and is hereby authorized and empowered, but not obligated, to provide such assistance to the Foreign

*(B) except the provisions of the U.S. Cash Collateral Order which shall prevail over the terms of the IRO and this Order*



Representative in the performance of its duties as the Foreign Representative may request;

- (e) The Information Officer shall be granted unrestricted access to the books and records of the Chapter 11 Debtors, as may be required by the Information Officer, in order to carry out its mandate as required by the terms of this Order and the Chapter 11 Debtors shall cooperate with the Information Officer in order to provide all such information and documentation as may be requested by the Information Officer; and
- (d) The Information Officer shall deliver to the Court a report at least once every three (3) months outlining the status of these proceedings, the Chapter 11 Proceeding and such other information as the Information Officer believes to be material.

6. **THIS COURT ORDERS** that the Information Officer be and is hereby authorized and empowered to provide any stakeholder of the Chapter 11 Debtors with information obtained from the Chapter 11 Debtors in response to reasonable requests for information in respect of the Business or Property, made in writing by such stakeholder addressed to the Information Officer. The Information Officer shall not have any responsibility or liability with respect to information disseminated by it pursuant to this paragraph. In the case of information that the Information Officer has been advised by the Chapter 11 Debtors is confidential, the Information Officer shall not provide such information to any stakeholder unless otherwise directed by this Court or on such terms and conditions as the Information Officer, the Foreign Representative and the relevant Chapter 11 Debtor(s) may agree.

7. **THIS COURT ORDERS** that the Information Officer shall not employ any employees of the Chapter 11 Debtors, shall not take possession or control of the Property or the Business, and shall take no part whatsoever in the management or supervision of the Chapter 11 Debtors and shall not, by fulfilling its obligations under this Order, be deemed to have taken or maintained possession, occupation, care or control of the Chapter 11 Debtors, or the Business or Property, or any part thereof, including, but not limited to, any Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or

contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation, or rehabilitation of the environment or relating to the disposal of waste or other contamination, including, but not limited to, the *Canadian Environmental Protection Act* or similar other federal or provincial legislation (collectively, the "Environmental Legislation"); provided, however, that nothing herein shall exempt the Information Officer from any duty to report or make disclosure imposed by applicable Environmental Legislation.

8. **THIS COURT ORDERS** that the appointment of the Information Officer shall not constitute the Information Officer to be an employer or a successor employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or any other statute, regulation or rule of law or equity for any purpose whatsoever and, further, that the Information Officer shall be deemed not to be an owner or in possession, care, control, or management of the Property or Business whether pursuant to Environmental Legislation, or any other statute, regulation or rule of law or equity under any federal, provincial or other jurisdiction for any purpose whatsoever.

9. **THIS COURT ORDERS** that the Information Officer and counsel to the Information Officer shall each be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Foreign Representative as part of the costs of these proceedings. The Foreign Representative is authorized to pay the accounts of the Information Officer and counsel for the Information Officer on a bi-weekly basis or such other period as the Foreign Representative and the Information Officer and its counsel may agree, and the fees and expenses of the Information Officer and its counsel shall be subject to the passing of accounts by this Court, and the Information Officer and its counsel shall not be required to pass their accounts in the Chapter 11 Proceeding, or in any other foreign proceeding. Any payments made to the Information Officer and its counsel in respect of their accounts shall not be subject to approval in the Chapter 11 Proceeding, or in any other foreign proceeding. In addition, the Foreign Representative is authorized to pay the Information Officer a retainer of \$50,000 to be held by the Information Officer as security for payment of its fees and disbursements outstanding from time to time and to pay to the Information Officer's counsel a retainer of \$25,000, to be held by the Information Officer's counsel as security for payment of their respective fees and

disbursements outstanding from time to time.

10. **THIS COURT ORDERS** that the Information Officer and its counsel, as security for the professional fees and disbursements incurred in respect of the within proceedings both before and after the granting of this Order, shall be entitled to the benefit of and are hereby granted a first-ranking charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$75,000.

11. **THIS COURT ORDERS** that the Information Officer shall have the benefit of all of the rights and protections afforded to a Monitor under the CCAA, or as an officer of this Court, and the Information Officer shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or willful misconduct on its part as determined by final order of this Court.

12. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against the Foreign Representative, the other Chapter 11 Debtors, or the Information Officer in any court or other tribunal as a result of or relating in any way to the appointment of the Information Officer, the fulfillment of the duties of the Information Officer or the carrying out of this or any other orders of this Court, unless the leave of this Court is first obtained on motion on at least seven (7) days' prior notice to the Information Officer, the Foreign Representative, the Chapter 11 Debtors, and the parties on the service list.

#### **VALIDITY AND PRIORITY OF CHARGES**

13. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge in Canada shall not be required, and that the Administration Charge is and shall be valid and enforceable against the Property for all purposes in Canada and shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, including, but without limitation, any and all deemed trusts whether existing as of the date hereof or arising in the future and any and all claims in respect of breaches of fiduciary duties (collectively, "**Encumbrances**").

14. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be ordered by this Court, the Chapter 11 Debtors shall not grant any Encumbrances

over any Property that rank in priority to, or *pari passu* with the Administration Charge, unless the Chapter 11 Debtors also obtain the prior written consent of the chargees entitled to the benefit of the Administration Charge (collectively, the "**Chargees**") or further Order of this Court.

15. **THIS COURT ORDERS** that the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not be limited or impaired in any way by: (a) the pendency of these proceedings and any declarations of insolvency made in these proceedings; (b) any application(s) for bankruptcy order(s) issued pursuant to the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), or any bankruptcy orders made pursuant to such application(s); (c) any proceeding taken or that might be taken against the Chapter 11 Debtors under the BIA or the *Winding-Up and Restructuring Act*, R.S.C. 1985, c. W-11, as amended; (d) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (e) the provisions of any federal or provincial statutes; or (f) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of any Encumbrances contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Chapter 11 Debtors.

16. **THIS COURT ORDERS** that notwithstanding any provision to the contrary in any such Agreement or otherwise:

(i) the creation of the Administration Charge shall not create or be deemed to constitute a breach by the Chapter 11 Debtors of any Agreement to which they are party;

(ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Administration Charge; and

(iii) the payments made by the Chapter 11 Debtors pursuant to this Order and the granting of the Administration Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive

conduct, or other challengeable or voidable transactions under any applicable law.

17. **THIS COURT ORDERS** that the Administration Charge shall attach to the Property (including, without limitation, any lease, sub-lease, offer to lease, license, permit or other contract), notwithstanding any requirement for the consent of the lessor or other party to any such lease, license, permit or contract or any other person or the failure to comply with any other condition precedent.

18. **THIS COURT ORDERS** that the Administration Charge created by this Order over leases of real property in Canada shall only attach to the Chapter 11 Debtors' interest in such real property leases

#### **AID AND ASSISTANCE OF OTHER COURTS**

19. **THIS COURT HEREBY ORDERS AND REQUESTS** the aid and recognition of any court, tribunal, regulatory, governmental or administrative body having jurisdiction in Canada, the United States or elsewhere, to give effect to this Order and to assist the Foreign Representatives, the Chapter 11 Debtors, the Information Officer and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory, governmental and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Chapter 11 Debtors, the Foreign Representative, the Information Officer and their respective agents, as may be necessary or desirable 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.

#### **NOTICE OF PROCEEDINGS**

20. **THIS COURT ORDERS** that within 3 business days from the date of this Order, or as soon as practicable thereafter, the Information Officer shall publish a notice as required by subsection 53(b) of the CCAA substantially in the form attached to this Order as Schedule "J" in The Globe and Mail (National Edition) or the National Post for one (1) day in two (2) consecutive weeks without delay following the issuance of this Order.

## GENERAL PROVISIONS

21. **THIS COURT ORDERS** that the Information Officer or the Foreign Representative may, from time to time, apply to this Court for advice, directions, or for such further or other relief as they may advise in connection with the proper execution of this Order or the IRO, the discharge or variation of their respective powers and duties under this Order, and the recognition in Canada of subsequent orders of the U.S. Court made in the Chapter 11 Proceeding.

22. **THIS COURT ORDERS** that nothing in this Order shall prevent the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Chapter 11 Debtors, or in respect of the Business or the Property, upon further order of the Court.

23. **THIS COURT ORDERS** that each of the Foreign Representative, the Chapter 11 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 or the IRO.

24. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, and except with respect to paragraph 4 of this Order, any interested person may apply to this Court to vary or rescind this Order or seek other relief upon seven (7) days notice to the Foreign Representative, the Chapter 11 Debtors and their counsel, the Information Officer and its counsel 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.



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

JUL 04 2011

PER/PAR: 

## **SCHEDULE A**

### **CHAPTER 11 DEBTORS**

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

# SCHEDULE B

## IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF MASSACHUSETTS EASTERN DIVISION

In re: : Chapter 11  
: :  
Massachusetts Elephant & Castle : :  
Group, Inc., et al.<sup>1</sup> :: Case No.  
: :  
Debtors : Jointly Administered

### ORDER AUTHORIZING DEBTOR MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC. TO ACT AS FOREIGN REPRESENTATIVE OF THE DEBTORS

Upon the motion (the "Motion") of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), pursuant to section 1505 of title 11 of the United States Code (the "Bankruptcy Code"), for authorization for Debtor, Massachusetts Elephant & Castle Group, Inc.<sup>2</sup> to act as the foreign representative of the Debtors in Canada in order to seek recognition of the Chapter 11 Cases on behalf of the Debtors, and to request that the Ontario Superior Court of Justice (Commercial List) (the "Ontario Court") lend assistance to this Court in protecting the Debtors' property, and to seek any other appropriate relief from the Ontario Court that the Ontario Court deems just and proper, all as more fully described in the Motion, and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. Sections 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. Section 157(b); and venue being

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<sup>1</sup> The debtors in these cases, along with the last four digits of the federal tax identification number for each of the debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.



proper before this Court pursuant to 28 U.S.C. Sections 1408 and 1409; and due and proper notice of the Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:


1. The Motion is granted as set forth herein.

2. The Debtor, Massachusetts Elephant & Castle Group, Inc. is hereby authorized (a) to act as the "foreign representative" of the Debtors in Canada, as such term is defined in the CCAA, (b) to seek recognition by the Ontario Court of the Chapter 11 Cases and of certain orders made by the Court in the Chapter 11 Cases from time to time, (c) to request that the Ontario Court lend assistance to this Court, and (d) to seek any other appropriate relief from the Ontario Court that the Debtors deem just and proper.

3. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

4. This Court shall retain jurisdiction to interpret and enforce this Order.

Dated: June 30, 2011

  
UNITED STATES BANKRUPTCY JUDGE  
*Henry J. Boroff*



Certified to be a true and correct copy of the original James M. Lynch, Clerk U.S. Bankruptcy Court District of Massachusetts

By: *Alberto Lanza*  
Deputy Clerk

Date: 6/30/11

# SCHEDULE C

## IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF MASSACHUSETTS EASTERN DIVISION

In re: : Chapter 11  
: :  
Massachusetts Elephant & Castle :  
Group, Inc., et al.<sup>1</sup> : Case No. 11-16155  
: :  
Debtors : Jointly Administered

### **INTERIM ORDER (A) AUTHORIZING USE OF CASH COLLATERAL; (B) GRANTING ADEQUATE PROTECTION; (C) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001; AND (D) GRANTING RELATED RELIEF**

This matter having come before the Court on the Motion of the Debtors for an Order Pursuant to Sections 105, 362, 362, and 363 of Bankruptcy Code (A) Authorizing Use of Collateral; (B) Granting Adequate Protection; (C) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001; and (D) Granting Related Relief (the "Motion") filed by Massachusetts Elephant & Castle Group, Inc. on behalf of itself and affiliated debtors and debtors in possession (collectively the "Debtors"); and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and notice of the Motion and the hearing being and sufficient notice under the circumstances; and it appearing from the record before the Court that sufficient cause exists for the entry of this order; the Court **FINDS AS FOLLOWS:**<sup>2</sup>

A. On June 28, 2011 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the

<sup>1</sup> The debtors in these cases, along with the last four digits of the federal tax identification number for each of the debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

United States Bankruptcy Court for the District of Massachusetts (the "Court"). A Motion for Joint Administration was simultaneously filed therewith.

B. The Debtors continue to operate their businesses and manage their property as debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No official committee of unsecured creditors has been appointed in these cases.

C. This matter is a core proceeding pursuant to 28 U.S.C. 157(b)(2).

D. The Debtors require the use of the cash collateral in order to preserve their operations and the value of their assets. The entry of the relief contained in this Order is in the best interests of the Debtors, their estates, and their creditors.

E. GE Canada Equipment Financing G.P. ("GE CEF"), Fifth Street Finance Corp. ("Fifth Street") Sysco San Diego, Inc. ("Sysco"), Royal Bank of Canada ("Royal Bank") and Toronto Dominion Bank ("TD Bank") (collectively, GE CEF, Fifth Street, Sysco, Royal Bank and TD Bank shall be referred to as "Lenders") have asserted, or may assert, a lien against the property of certain of the Debtors and the cash proceeds thereof (the "Cash Collateral").

F. For avoidance of doubt, the provisions and protections of this Interim Order shall apply to each Lender only with respect to the Debtor(s) against whom such Lender has a prepetition secured claim (in each case, the "Applicable Debtor"), and nothing contained herein shall grant any Lender any rights or claims against any Debtor that is not an Applicable Debtor of such Lender. Similarly, unless otherwise provided, the adequate protection and other obligations of a Debtor under this Interim Order shall only apply to the Lender(s) that hold a prepetition secured claim against such Debtor (in each case, the "Applicable Lender").

G. This Court has not been asked to find and it does not find, that any security interest asserted by any Lender is valid or perfected. Nothing in this order constitutes a limitation on the applicability of Massachusetts Local Bankruptcy Rules. *and subject to the reservation of rights provisions in paragraph 11*

H. Pending a final hearing on the Motion, the replacement liens and other forms of protection set forth below will adequately protect the interests of the Lenders for the purposes of sections 361, 363(e) and 507(b) of the Bankruptcy Code.

I. Due and adequate notice of the hearing has been given, and no further notice of the hearing is required before the entry of the relief provided for in this Order.

**NOW THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The Motion is allowed, on an interim basis, as set forth herein.
2. The Debtors are authorized to use Cash Collateral in the ordinary course of their business substantially in accordance with the budget attached hereto as Exhibit A (the "Budget") for the period (the "Specified Period") from the Petition Date through the date which is the earliest to occur of: (a) an Event of Default (subject to the Debtor's right to obtain further authorization to use Cash Collateral within the Notice Period) or (b) the final hearing on the Motion.
3. The Debtors shall use Cash Collateral during the Specified Period, at the times, in the amounts and solely for the purposes identified in the Budget (as such may be amended with the consent of the Lenders or approval of the Court) provided, however, the Debtors shall be authorized to exceed the expenses in the Budget by no more than ten percent (10%) (on an aggregate basis) (the "Permitted Variance") and to apply any unused portion in one week to any subsequent weekly period.

4. For the purposes of sections 361, 363(e) and 507(b) of the Bankruptcy Code and adequate protection for the Debtors' use of Cash Collateral, the Lenders are hereby granted replacement liens (the "Replacement Liens") in and to all property of the kind presently securing the prepetition obligations of the Debtors to the Lenders, including property purchased or acquired with the Cash Collateral together with any proceeds thereof, but excluding causes of action under chapter 5 of the Bankruptcy Code and proceeds thereof. The Replacement Liens shall only attach to and be enforceable against the same types of property, to the same extent, and in the same order of priority as existed immediately prior to the Petition Date. The Replacement Liens shall be recognized only to the extent of any post-petition diminution in value of the prepetition collateral of each Applicable <sup>Lender</sup> including without limitation as a result of, arising from, or otherwise attributable to the use of of Cash Collateral during these bankruptcy cases, the deterioration, use, sale, lease or other disposition of the prepetition collateral, and the imposition of the automatic stay.

*Claims for intercompany transfers will be entitled to priority status under sections 507(a)(2) and 503(b) of the Bankruptcy Code*

5. The Replacement Liens shall not attach to any avoidance powers held by the Debtors or any trustee for the Debtors, including avoidance set forth in sections 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code, or to the proceeds of any claims under or actions commenced pursuant such powers.

6. On the third business day of each week following entry of this Order, the Debtors shall furnish to the ~~Applicable~~ Lenders and their counsel (and any official committee of unsecured creditors appointed in this bankruptcy case and its counsel): (i) a weekly cash report setting forth, in comparative form, the actual results achieved against projected for the prior week, including the actual cash receipts and disbursements and the variance of the actual results from those estimated in the Budget; and (ii) such other documents information as may be

reasonably requested. The Debtors shall also furnish copies of their monthly operating reports as filed with the Office of the United States Trustee. Upon reasonable notice by an ~~Applicable~~ Lender, the Debtors shall permit such Lender and any of its agents reasonable access to the Debtors' records and place of business during normal business hours to verify the existence, condition and location of collateral in which the ~~Applicable~~ Lender holds a security interest and to audit the Debtors' cash receipts and disbursements.

7. The Debtors' authority to use Cash Collateral as provided for in this Order shall terminate upon the occurrence of any of the following events, unless waived by the Applicable Lender in writing (collectively, the "Events of Default"):

- (a) the failure by the Debtors to perform, in any material respect, any of the terms, provisions, conditions, covenants, or obligations under this Order;
- (b) a default by the Debtors after the Petition Date in reporting the information specified in paragraph 6 above, if such default will remain uncured for three (3) days following written notice from the Applicable Lender to the Debtors; *which notice shall also be submitted to the United States Trustee and any creditors committee.*
- (c) reversal, vacatur, or modification (without the express prior written consent of the Lenders, each in its sole discretion) of this Order, other than in accordance with the final order approving the Motion; or
- (d) dismissal of the case or conversion of the case to a chapter 7 case, or appointment of a chapter 11 trustee, examiner with enlarged powers, other responsible person.

8. Upon the occurrence of an Event of Default, the Debtors' authority to use Cash Collateral shall cease if the Debtors do not within five (5) days thereof (the "Notice Period") seek an emergency hearing with the Court and obtain the further use of Cash Collateral.

9. This Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the Replacement Liens to the extent set forth in Paragraph 4 without the necessity of filing or recording any financing statement or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking

of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the Replacement Liens, or to entitle the Lenders to the priorities granted herein. The Lenders, in their sole discretion, may file a photocopy of this Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien or similar instrument.

10. Nothing herein affects the validity or enforceability of that certain Interlender Agreement, dated as of October 16, 2009, between GE CEF and Fifth Street, as amended, restated, or otherwise modified.

11. Notwithstanding anything herein to the contrary, the entry of this Order is without prejudice to, and does not constitute a waiver of (a) the Lenders' right to seek any other or supplemental relief in respect of any Applicable Debtor, including the right to seek additional adequate protection (without prejudice to any other person's right to object to or otherwise oppose such additional adequate protection) or oppose the further use of Cash Collateral; (b) any of the rights of any Lender under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of these cases or successor cases, conversion of any of these cases to cases under chapter 7, (iii) request appointment of a chapter 11 trustee or examiner with expanded powers, or (iv) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans.

12. This Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable nunc pro tunc to


the Petition Date immediately upon execution thereof. The Court has and will retain jurisdiction to enforce this Order according to its terms.

13. Nothing in this Order shall constitute a waiver by or restrict the Debtors' right to seek, or Lenders' right to oppose, the further use of Cash Collateral.

14. This Order and the Debtors' use of Cash Collateral as authorized in this Order shall become effective immediately upon entry of this Order by the Court.

15. A continued hearing on the Debtors' Motion shall be held on ~~July~~ <sup>August 1</sup> \_\_\_\_\_, 2011 at 9:30 a.m. in Wareham, Massachusetts

16. A copy of this Order, shall be served by the Debtors via first class mail on or before July 5, 2011 upon: (a) the Office of the United States Trustee; (b) the Lenders, or their counsels; (c) the creditors holding the thirty (30) largest claims against the Debtors; (d) all known taxing authorities that have claims against the Debtor; (e) any party which has filed, prior to the date of entry of this Order, a request for service of pleadings in this case; and (f) counsel for any official committee of unsecured creditors appointed in this case pursuant to section 1102 of the Bankruptcy Code. Service in accordance with this paragraph shall be deemed good and sufficient notice and service of this Order and of the final hearing on the use of Cash Collateral.

  
United States Bankruptcy Judge  
Henry J. Boroff

Dated: June 30, 2011



Certified to be a true and correct copy of the original  
James M Lynch, Clerk  
U.S. Bankruptcy Court  
District of Massachusetts

By: Alberto Barona  
Deputy Clerk

Date: 6/30/11



# SCHEDULE D

IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

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In re:	:	Chapter 11
	:	
	:	Case No. 11-16155 ( )
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC., <i>et al.</i> , <sup>1</sup>	:	
	:	Jointly Administered
	:	
Debtors.	:	

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**ORDER AUTHORIZING DEBTORS TO PAY WAGES, COMPENSATION,  
EMPLOYEE BENEFITS AND OTHER RELATED OBLIGATIONS**

Upon consideration of the Debtors' Motion for Order (I) Authorizing (A) Payment of Pre-Petition Wages, Salaries, and Employee Benefits, (B) Reimbursement of Employee Business Expenses, and (C) Payment of other Employee Related Amounts; and (II) Authorizing Applicable Banks and Other Financial Institutions To Receive, Process, Honor and Pay All Checks and Drafts Drawn on Debtors' Bank Accounts Relating to the Foregoing (the "Motion"); the Court having reviewed the Motion; the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue of these chapter 11 cases in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and (d) notice of the Motion was sufficient under the circumstances; the Court determining that the legal and factual bases set forth in the Motion establish just cause

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<sup>1</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

for the relief granted by this Order; and it appearing that the relief requested is in the best interest of the Debtors' estates, their creditors and other parties in interest;

IT IS HEREBY DETERMINED, ORDERED AND ADJOURNED THAT:

A. The Motion is GRANTED in its entirety.

B. The Debtors are authorized, in their sole discretion, but not directed, to pay pre-petition employee wages, bonuses, employee insurance benefits premiums or claims, business expenses, deductions, garnishments, withholdings and processing costs accrued but unpaid as of the Petition Date to or for the benefit of its employees.


C. The amount of payments made by the Debtors pursuant to the terms of this Order shall not exceed \$500,000 for accrued employee wages and salaries.

D. All applicable banks and financial institutions are authorized and directed, when requested by the Debtors and in the Debtors' sole discretion, to receive, process, honor and pay any and all checks drawn on the Debtors' accounts with respect to pre-petition employee wages, benefits, insurance premiums, business expenses, deductions, garnishments, withholdings and processing costs, whether such checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make such payment.

E. Nothing in the Motion shall be deemed a request for authority to assume, and nothing in this Order shall be deemed an authorization to assume, any executory contract under 11 U.S.C. § 365, nor shall any provision of the Motion or this Order be deemed to limit the Debtors' right to seek authority to modify or terminate any right or claim to compensation or benefits.

F. The Debtors shall not make any payments pursuant to the terms of this Order in excess of \$11,750.00 to any single employee.

Dated: June 30, 2011

  
Honorable United States Bankruptcy Judge  
Henry J. Boroff



**Certified to be a true and  
correct copy of the original  
James M. Lynch, Clerk  
U.S. Bankruptcy Court  
District of Massachusetts**

By: Albert Baner  
**Deputy Clerk**

Date: 6/30/11

SCHEDULE E

IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

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In re:	:	Chapter 11
	:	
	:	Case No. 11-16155 ( )
MASSACHUSETTS ELEPHANT &	:	
CASTLE GROUP, INC., <i>et al.</i> , <sup>1</sup>	:	Jointly Administered
	:	
Debtors.	:	

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**ORDER GRANTING DEBTORS' MOTION FOR AN ORDER AUTHORIZING (I) THE DEBTORS TO REMIT AND PAY CERTAIN TAXES AND FEES AND (II) FINANCIAL INSTITUTIONS TO PROCESS AND CASH RELATED CHECKS AND TRANSFERS**

Upon consideration of the Debtors' Motion for an Order Authorizing (I) the Debtors to Remit and Pay Certain Taxes and Fees and (II) Financial Institutions to Process and Cash Related Checks and Transfers (the "Motion"); the Court having reviewed the Motion; the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue of these chapter 11 cases in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and (d) notice of the Motion was sufficient under the circumstances; the Court determining that the legal and factual bases set forth in the Motion establish just cause for the relief granted by this Order; and it appearing that the relief requested is in the best interest of the Debtors' estates, their creditors and other parties in interest;

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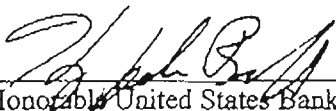
<sup>1</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

IT IS HEREBY DETERMINED, ORDERED AND ADJOURNED THAT:

- A. The Motion is GRANTED in its entirety, *but the sales and use taxes which may be paid shall not exceed those collected on or after June 1, 2011.*
- B. The Debtors are authorized, ~~but not~~ *and* directed, to pay the Taxes and Fees as set

forth in the Motion.

Dated: June 30, 2011

  
\_\_\_\_\_  
Honorable United States Bankruptcy Judge  
*Henry J. Boroff*



Certified to be a true and correct copy of the original  
James M. Lynch, Clerk  
U.S. Bankruptcy Court  
District of Massachusetts

By: *Alberto Barron*  
Deputy Clerk

Date: *6/30/11*

# SCHEDULE F

IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

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In re:	:	Chapter 11
	:	
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC., <i>et al.</i> , <sup>1</sup>	:	Case No. 11-16155 ( )
	:	
Debtors.	:	Jointly Administered
	:	

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**FINAL ORDER: (I) PROHIBITING UTILITIES FROM ALTERING, REFUSING OR DISCONTINUING SERVICES FOR PRE-PETITION INVOICES; (II) DETERMINING THAT THE UTILITIES ARE ADEQUATELY ASSURED OF POST-PETITION PAYMENT; AND (III) ESTABLISHING PROCEDURES FOR DETERMINING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE**

Upon consideration of the Debtors' Motion Pursuant to Section 366 of the Bankruptcy Code for Entry of an Order: (I) Prohibiting Utilities from Altering, Refusing or Discontinuing Services for Pre-Petition Invoices; (II) Determining that the Utilities are Adequately Assured of Post-Petition Payment; and (III) Establishing Procedures for Determining Requests (the "Motion") for a Final Order, the Court having reviewed the Motion; the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue of these chapter 11 cases in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and (d) notice of the Motion was sufficient under the circumstances; the Court determining that the legal and factual bases set forth in the Motion establish just cause for the relief granted by this Final Order; and it appearing that the relief

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<sup>1</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

requested is in the best interest of the Debtors' estates, their creditors and other parties in interest;

IT IS HEREBY DETERMINED, ORDERED AND ADJOURNED THAT:

A. The Motion is GRANTED and the Debtors' obligations to provide assurance of payment is hereby finalized as set forth in this Final Order.

B. The Debtors are authorized to pay on a timely basis, in accordance with its pre-petition practices, all undisputed invoices with respect to post-petition utility services rendered by the Utility Companies.

C. Subject to the procedures described in the Motion and repeated below, absent any further order of this Court, no Utility Company shall alter, refuse, or discontinue service to, or discriminate against the Debtors, solely on the basis of the commencement of these cases, pending the negotiation or determination of adequate assurance of payment pursuant to the Determination Procedures set forth in the Motion.

D. The following procedures shall be used by the Court to determine, if necessary, whether the requested assurance of payment by a Utility Company is adequate:

(a) The Debtors shall provide each such Utility Company which is not currently holding a security deposit with a security deposit (the "Security Deposit") in an amount equal to the average one month obligation for utility service over the past twelve months prior to the Petition Date for such Utility Company. If the Utility Company currently holds a Security Deposit, the Debtors shall not be required to post an additional deposit.

(b) If a Utility Company asserts that the treatment provided pursuant to paragraph (a) above does not constitute satisfactory assurance of payment, then such Utility Company may request additional adequate assurance (an "Additional Assurance Request") pursuant to section 366(c)(3) of the Bankruptcy Code. Any such Additional Assurance Request must be sent so as to be received within 30 days after the entry of the interim order on this Motion (the "Utility Order"), attached hereto as Exhibit "B", to Massachusetts Elephant & Castle Group, Inc., 50 Congress Street, Suite 900, Boston, MA 02109-4002 (Attn: Keith A. Radford) with a copy to Eckert Seamans Cherin & Mellott, LLC, Two International Place, 16<sup>th</sup> Floor, Boston, MA 02110-2602 (Attn: John G.

Loughnane, Esquire) and shall specify (i) the amount and nature of assurance of payment that would be satisfactory to the Utility Company, (ii) the type of utility services that are provided, (iii) a list of any deposits or other security currently held by such Utility Company and held by such Utility Company immediately prior to the Petition Date on account of the Debtors, (iv) a description of any payment delinquency or irregularity by the Debtors for the post-petition period, and (v) detailed reason(s) why the Security Deposit does not constitute satisfactory assurance of payment.

(c) Without further order of the Court, the Debtors may enter into agreements granting to the Utility Companies any assurance of payment that the Debtors, in their sole discretion, determine is reasonable.

(d) If a Utility Company timely makes an Additional Assurance Request that the Debtors believe is unreasonable, then, upon the written request of the Utility Company and after good faith negotiations by the parties, the Debtors will (i) file a motion seeking to modify the Additional Assurance Request to an amount that the Debtors believe is adequate (a "Determination Motion"), and (ii) schedule the Determination Motion to be heard by the Court at the next regularly-scheduled omnibus hearing in this case that is at least 20 days after the filing of the Determination Motion (a "Determination Hearing"). The Debtors will not be required to file a Determination Motion with respect to any such Utility Company earlier than 40 days after the Petition Date.

(e) The Utility Companies shall be prohibited from altering, refusing, or discontinuing services, and shall be deemed to have adequate assurance of payment, pending negotiation and receipt of assurance of payment pursuant to the Determination Procedures or an order determining adequate assurance following a Determination Hearing.

(f) Any assurance of payment provided by the Debtors to a Utility Company in accordance with the Determination Procedures shall, to the extent not used by the Utility Company to satisfy a post-petition default, be returned to the Debtors within 30 days after the effective date of a chapter 11 plan in this case without further order of the Court.

(g) Any Utility Company that does not timely make a written Additional Assurance Request in accordance with the Determination Procedures shall be deemed to have adequate assurance of payment under section 366(b) of the Bankruptcy Code, without prejudice to such Utility Company's right to seek relief under section 366(c)(3)(A).

E. Any deposits, bonds, letters of credit or other assurances of payment that were in place prior to the Petition Date shall remain in place and shall continue to be held by those Utility Companies holding the same, except upon entry of further order of this Court.




F. Any Utility Company not listed on Exhibit A attached to the Motion, but subsequently identified by the Debtors, shall be served with copies of this Motion and the Interim Order and Final Order approving this Motion (together, the "Notice Package") and be afforded thirty (30) days from the date of such service to request adequate assurance, if any, from the Debtors. Such request must otherwise comply with the requirements set forth above or shall be deemed an invalid adequate assurance request.

G. Substantially contemporaneously with such service, the Debtors shall file with the Court a supplement to Exhibit A attached to the Motion adding the name of any Utility Company(ies) so served and not included on Exhibit A attached to the Motion, and this Final Order shall be deemed to apply to such Utility Company(ies) from the date of such service, subject to a later order of the Court on a motion for determination of adequate assurance, if any.

H. The Debtors shall serve a copy of the Motion and this Final Order upon each of the Utility Companies listed on Exhibit A attached to the Motion, at the addresses listed thereon, by first-class mail, postage prepaid, within five (5) business days of the entry of this Final Order.

I. Nothing in this Final Order shall be deemed to affect any burden of proof that either the Debtors or any Utility Company may have in a Determination Hearing or to confer upon the Utility Companies listed in Exhibit A to the Motion the status of a "utility" within the meaning of section 366 of the Bankruptcy Code.

Dated: June 30, 2011

  
Honorable United States Bankruptcy Judge  
Henry J. Boroff



**Certified to be a true and correct copy of the original James M. Lynch, Clerk U.S. Bankruptcy Court District of Massachusetts**

By: Alberto Pavesi  
Deputy Clerk

Date: 6/30/11

# SCHEDULE G

IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

_____ :	Chapter 11
In re: :	
_____ :	Case No. 11-16155 (HJB)
MASSACHUSETTS ELEPHANT & :	
CASTLE GROUP, INC., <i>et al.</i> , <sup>1</sup> :	Jointly Administered
_____ :	
Debtors. :	
_____ :	

**INTERIM ORDER GRANTING DEBTORS' MOTION FOR ENTRY OF ORDER GRANTING (i) AUTHORITY TO CONTINUE TO USE CERTAIN PRE-PETITION BANK ACCOUNTS, CHECK STOCK AND EXISTING BUSINESS FORMS, AND (ii) WAIVER OF COMPLIANCE WITH BANKRUPTCY CODE SECTION 345(b) INVESTMENT GUIDELINES**

Upon consideration of the Debtors' Motion for Entry of an Order Granting (i) Authority to Continue to Use Certain Pre-Petition Bank Accounts, Check Stock and Existing Business Forms, and (ii) Waiver of Compliance with Bankruptcy Code Section 345(b) Investment Guidelines (the "Motion"); the Court having reviewed the Motion; the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue of these chapter 11 cases in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and (d) notice of the Motion was sufficient under the circumstances; the Court determining that the legal and factual bases set forth in the Motion establish just cause for the relief granted by this Interim Order; and it appearing that the relief

<sup>1</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

requested is in the best interest of the Debtors' estates, their creditors and other parties in interest;

IT IS HEREBY DETERMINED, ORDERED AND ADJOURNED THAT:

A. The Motion is GRANTED on an INTERIM basis.

B. A final hearing shall be held on the Motion on August 1, 2011 at 9:30 a.m. <sup>in Worcester, Massachusetts</sup> Objections to the Motion shall be due by 4:00 p.m. on July 27, 2011.

C. The Debtors are authorized to continue to (i) use the Accounts, (ii) deposit funds in and withdraw funds from such Accounts by all usual means, (iii) use their existing check stock and business forms without the necessity of opening new debtor-in-possession bank accounts and obtaining new business forms, and (iv) treat the Accounts as debtor-in-possession bank accounts for all purposes, provided only that once the existing stock is exhausted, the Debtors will imprint the legend "DIP" or "Debtor in Possession" and the case number for the Debtors' consolidated chapter 11 cases on any new stock of correspondence and business forms acquired other than for payroll.

D. The Debtors' banks are not authorized to process, honor or pay any checks drawn in payment of any pre-petition obligations unless authorized by a separate order of this Court.

E. All financial institutions and banks at which the Debtors' Accounts are maintained are prohibited from offsetting, freezing or otherwise impeding the use or transfer of, or access to, any funds deposited in such Accounts on or subsequent to the Petition Date on account of any claim such financial institution or bank may have against the Debtors that arose before the Petition Date.



Certified to be a true and correct copy of the original  
James M. Lynch, Clerk  
U.S. Bankruptcy Court  
District of Massachusetts

By: Alberto Barrios  
Deputy Clerk


Date: 6/30/11

F. The Debtors are authorized to continue to make intercompany transfers in the ordinary course of business. The Debtors will record all post-petition intercompany transfers in their books and records. ~~Claims for intercompany transfers will be entitled to priority status under sections 507(a)(2) and 503(b) of the Bankruptcy Code.~~

G. The requirements of section 345 of the Bankruptcy Code are hereby waived for a period of 60 days as to the Accounts. To the extent that the Debtors seek a further waiver of such requirements, they will file a separate motion with the Court.

H. This Interim Order is without prejudice to the Debtors' right to (i) close any of the Accounts or (ii) to open or close new accounts at any banking institution. The Debtor shall promptly notify the Office of the United States Trustee and counsel for any statutory committee if an account is closed or an account is opened.

Dated: June 30, 2011

  
\_\_\_\_\_  
Honorable United States Bankruptcy Judge  
Henry J. Boroff

# SCHEDULE H

IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

_____	:	Chapter 11
In re:	:	
	:	Case No. 11-16155 ( )
MASSACHUSETTS ELEPHANT &	:	
CASTLE GROUP, INC., <i>et al.</i> , <sup>1</sup>	:	Jointly Administered
	:	
Debtors.	:	
_____	:	

**ORDER (I) AUTHORIZING THE DEBTOR TO HONOR OR PAY CERTAIN PRE-PETITION OBLIGATIONS TO ITS CUSTOMERS IN THE ORDINARY COURSE OF BUSINESS AND (II) GRANTING CERTAIN RELATED RELIEF**

Upon consideration of the Debtors' Motion for Entry of an Order Authorizing the Debtors to Honor Certain Pre-Petition Obligations to Customers and to Otherwise Continue Customer Practices and Programs in the Ordinary Courts of Business (the "Motion"); the Court having reviewed the Motion; the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue of these chapter 11 cases in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and (d) notice of the Motion was sufficient under the circumstances; the Court determining that the legal and factual bases set forth in the Motion establish just cause for the relief granted by this Order; and it appearing that the relief requested is in the best interest of the Debtors' estates, their creditors and other parties in interest;

<sup>1</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

IT IS HEREBY DETERMINED, ORDERED AND ADJOURNED THAT:

A. The Motion is GRANTED in its entirety.

B. The Debtors are authorized to continue, in their sole discretion, the Customer Programs in the ordinary course of business.

C. The Debtors are authorized to continue, renew, modify, terminate or replace, in their discretion, their Customer Programs without further order of the Court.

Dated: June 30, 2011

  
Honorable United States Bankruptcy Judge

Henry J. Boroff



**Certified to be a true and  
correct copy of the original  
James M. Lynch, Clerk  
U.S. Bankruptcy Court  
District of Massachusetts**

By: Alberta Berman  
**Deputy Clerk**

Date: 6/30/11

# SCHEDULE I

IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

_____	:	Chapter 11
In re:	:	
	:	Case No. 11-16155 ( )
MASSACHUSETTS ELEPHANT &	:	
CASTLE GROUP, INC., <i>et al.</i> , <sup>1</sup>	:	Jointly Administered
	:	
Debtors.	:	
_____	:	

**ORDER (I) AUTHORIZING THE DEBTORS TO PREPARE  
(A) A CONSOLIDATED LIST OF CREDITORS AND  
(B) A CONSOLIDATED LIST OF THE DEBTORS' THIRTY  
LARGEST UNSECURED CREDITORS AND (II) APPROVING THE  
FORM AND MANNER OF THE NOTICE OF COMMENCEMENT**

Upon consideration of the Debtors' Motion for an Order (I) Authorizing the Debtors to Prepare (A) a Consolidated List of Creditors and (B) a Consolidated List of the Debtors' Thirty Largest Unsecured Creditors and (II) Approving the Form and Manner of the Notice of Commencement (the "Motion"); the Court having reviewed the Motion; the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue of these chapter 11 cases in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and (d) notice of the Motion was sufficient under the circumstances; the Court determining that the legal and factual bases set forth in the Motion establish just cause for the relief granted by this Order; and it appearing that

<sup>1</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

the relief requested is in the best interest of the Debtors' estates, their creditors and other parties in interest;

IT IS HEREBY DETERMINED, ORDERED AND ADJOURNED THAT:

A. The Motion is GRANTED in its entirety.

B. The Debtors are authorized to file a single consolidated matrix in lieu of separate creditor matrices for each of the Debtors.

C. The Debtors are authorized to file a single consolidated list of their combined 30 largest unsecured creditors in lieu of Top 20 Lists for each Debtor.

D. The Debtors are authorized to file one declaration under Bankruptcy Rule 1008 in connection with the consolidated list of creditors and the consolidated list of the combined 30 largest unsecured creditors.

E. The form of notice of the commencement of these chapter 11 cases and the Section 341 Meeting, substantially in the form attached hereto as Exhibit A (the "Commencement Notice"), hereby is approved.


F. The Claims Agent is authorized and directed to serve the Commencement Notice, with such revisions as agreed to by the Clerk, within five business days after the Debtors receive written notice of the time and place of the Section 341 Meeting. The Claims Agent will serve the Commencement Notice by regular mail, postage prepaid, on those entities entitled to receive the Commencement Notice pursuant to Bankruptcy Rule 2002. Service of the Commencement Notice in accordance with this paragraph is approved in all respects and is



deemed sufficient notice of the commencement of these chapter 11 cases and Section 341

Meeting under the Bankruptcy Code, the Bankruptcy Rules, and the MLBR.

Dated: June 30, 2011

  
\_\_\_\_\_  
Honorable United States Bankruptcy Judge  
*Harry J. Bond*



**Certified to be a true and  
correct copy of the original  
James M. Lynch, Clerk  
U.S. Bankruptcy Court  
District of Massachusetts**

By: *Albert J. Barron*  
Deputy Clerk

Date: 6/30/11

# SCHEDULE J

Court File No. CV-11-9279-00CL

**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 CERTAIN PROCEEDINGS  
TAKEN IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS EASTERN DIVISION  
WITH RESPECT TO THE CHAPTER 11 DEBTORS (AS DEFINED BELOW)**

**APPLICATION OF  
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC.  
UNDER SECTION 46 OF THE  
COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED**

## **NOTICE OF RECOGNITION ORDERS**

**PLEASE BE ADVISED** that this Notice is being published pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Court**"), granted on July 4, 2011.

**PLEASE TAKE NOTICE** that, on June 28, 2011, Massachusetts Elephant & Castle Group, Inc., (the "**Applicant**"), Repechage Investments Limited, Elephant & Castle Group Inc., The Elephant and Castle Canada Inc., Elephant & Castle, Inc. (a Texas Corporation), Elephant & Castle Inc. (a Washington Corporation), Elephant & Castle International, Inc., Elephant & Castle of Pennsylvania, Inc., E & C Pub, Inc., Elephant & Castle East Huron, LLC, Elephant & Castle Illinois Corporation, E&C Eye Street, LLC, E & C Capital, LLC, Elephant & Castle (Chicago) Corporation (collectively, the "**Chapter 11 Debtors**") each filed voluntary petitions under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Massachusetts Eastern Division (collectively, the "**Chapter 11 Proceedings**"). In connection with the Chapter 11 Proceedings, the Chapter 11 Debtors have appointed the Applicant as their foreign representative (the "**Foreign Representative**").

**PLEASE TAKE FURTHER NOTICE** that an Initial Recognition Order and a Supplemental Order (together, the "**Recognition Orders**") have been issued by the Canadian Court under Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, that, among other things: (i) recognize the Chapter 11 Proceedings as a foreign main proceeding; (ii) recognize the Applicant as the Foreign Representative of

the Chapter 11 Debtors; (iii) recognize certain orders granted by the United States Bankruptcy Court in the Chapter 11 Proceedings; (iv) stay all proceedings against the Chapter 11 Debtors and their directors and officers; and (v) appoint BDO Canada Limited as the Information Officer with respect to the Chapter 11 Proceeding.

**PLEASE TAKE FURTHER NOTICE** that persons who wish to receive a copy of the Recognition Orders or obtain any further information in respect thereof or in respect of the matters set forth in this Notice, should contact the Information Officer at the address below:

**BDO CANADA LIMITED**

123 Front Street West

Suite 1200

Toronto, Ontario

M5J 2M2

Attention: Ken Pearl

Phone: (416) 369-3063

Fax: (416) 865-0904

Email: [kpearl@bdo.ca](mailto:kpearl@bdo.ca)

**PLEASE FINALLY NOTE** that the Recognition Orders, and any other orders that may be granted by the Canadian Court, can be viewed at [www.bdo.ca/elephantcastle/](http://www.bdo.ca/elephantcastle/).

DATED AT TORONTO, ONTARIO this     day of July, 2011.

**BDO CANADA LIMITED**

(solely in its capacity as Information Officer)

**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")**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

Proceeding commenced at Toronto

**SUPPLEMENTAL ORDER**

**HEENAN BLAIKIE LLP**

Lawyers

Suite 2900, 333 Bay Street

Bay Adelaide Centre

Toronto, ON M5H 2T4

**Kenneth D. Kraft LSUC# 31919P**

**John J. Salmas LSUC #42336B**

Tel: 416.643.6822 / 416.360.3570

Fax: 416.360.8425

Lawyers for Massachusetts Elephant & Castle  
Group, Inc.

# TAB 5

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )  
 ) TUESDAY, THE 17TH DAY  
MR. JUSTICE MORAWETZ )  
 ) OF JANUARY, 2012

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
NFC ACQUISITION GP INC., NFC ACQUISITION CORP. AND  
NFC LAND HOLDINGS CORP.**

**INITIAL ORDER**

THIS APPLICATION, made by NFC Acquisition GP Inc., NFC Acquisition Corp. and NFC Land Holdings Corp. (collectively, the "Applicants"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Brian Cram sworn January 16, 2012 (the "Cram Affidavit") and the Exhibits thereto, filed, and on being advised that the Bank of Montreal ("BMO") and TD Capital Mezzanine Partners Management Ltd. were given notice of this application, and on reading the consent of FTI Consulting Canada Inc. ("FTI") to act as the Monitor (the "Monitor"), filed, and the report of FTI dated January 16, 2012 (the "Pre-Filing Report"), in its capacity as proposed Monitor, filed,

**SERVICE**

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

**APPLICATION**

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies and that the Applicants and New Food Classics and NFC Acquisition L.P. (together, the “Partnerships”, and together with the Applicants, the “NFC Entities”) shall enjoy the benefits of the protections and authorizations provided by this Order.

**PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that any of the NFC Entities shall have the authority to file and may, subject to further order of this Court, file with this Court a plan or plans of compromise or arrangement (hereinafter referred to as the “Plan”).

**POSSESSION OF PROPERTY AND OPERATIONS**

4. THIS COURT ORDERS that the NFC Entities shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, whether real, personal, immovable or movable, inchoate or intangible, including all proceeds thereof (the “Property”). Subject to further Order of this Court, the NFC Entities shall continue to carry on business in a manner consistent with the preservation of their business (the “Business”) and Property. The NFC Entities shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, the “Assistants”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the NFC Entities shall be entitled to continue to utilize the central cash management system currently in place as described in the Cram Affidavit or replace it with another substantially similar central cash management system with BMO (the “Cash

Management System”) and that BMO shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the NFC Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the NFC Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that the NFC Entities shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses, and similar amounts owed to any Assistants, payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the NFC Entities in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the NFC Entities shall be entitled but not required to pay all reasonable expenses incurred by the NFC Entities in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the NFC Entities following the date of this Order.



8. THIS COURT ORDERS that the NFC Entities shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the NFC Entities in connection with the sale of goods and services by the NFC Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the NFC Entities.

9. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the NFC Entities shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the NFC Entities and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, the NFC Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the NFC Entities to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## **RESTRUCTURING**

11. THIS COURT ORDERS that the NFC Entities shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$1,000,000 in the aggregate;
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate; and
- (c) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the NFC Entities to proceed with an orderly restructuring of the Business (the "Restructuring").

12. THIS COURT ORDERS that the NFC Entities shall provide each of the relevant landlords with notice of the NFC Entities' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the NFC Entities' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the NFC Entities, or by further Order of this Court upon application by the NFC Entities on at least two (2) days' notice to such landlord and any such secured creditors. If the NFC Entities disclaim the lease governing

such leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the NFC Entities' claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then: (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the NFC Entities and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the NFC Entities in respect of such lease or leased premises and such landlord shall be entitled to notify the NFC Entities of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE NFC ENTITIES OR THE PROPERTY**

14. THIS COURT ORDERS that until and including February 16, 2012, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the NFC Entities or the Monitor, or affecting the Business or the Property, except with the written consent of the NFC Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the NFC Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the NFC Entities or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the NFC Entities and the Monitor, or leave of this

Court, provided that nothing in this Order shall: (a) empower the NFC Entities to carry on any business which the NFC Entities are not lawfully entitled to carry on; (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (c) prevent the filing of any registration to preserve or perfect a security interest; or (d) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

16. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform or provide any right, renewal right, contract, agreement, licence or permit in favour of or held by the NFC Entities, except with the written consent of the NFC Entities and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES AND SUPPLY**

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements or arrangements, including, without limitation, by conduct, with the NFC Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, food and food processing safety monitoring, food storage services, facility cleaning services or other services to the Business or the NFC Entities, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the NFC Entities, and that the NFC Entities shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the NFC Entities in accordance with normal payment practices of the NFC Entities or such other practices as may be agreed upon by the supplier or service provider and each of the NFC Entities and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

18. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or

licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the NFC Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

19. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the NFC Entities with respect to any claim against the directors or officers that arose before, on or after the date hereof and that relates to any obligations of the NFC Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the NFC Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the NFC Entities or this Court.

### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

20. THIS COURT ORDERS that the NFC Entities shall indemnify their present directors, former directors during the sixty (60) day period prior to the date hereof and officers against obligations and liabilities that they may incur as directors or officers of the NFC Entities after the commencement of the within proceedings, including, without limitation, wages and source deductions included therein, vacation pay, PST, GST, HST and prospective liability under Saskatchewan legislation for pay in lieu of notice, if any, and without limiting the generality of the foregoing, against all claims, costs and expenses relating to the failure of the NFC Entities after the date hereof to make payments of the nature referred to in paragraphs 8(a), 8(b) and 8(c) of this Order, except to the extent that, with respect to any present director, former director during the sixty (60) day period prior to the date hereof or officer, the obligation or liability was incurred as a result of such director's or officer's gross negligence or wilful misconduct.

21. THIS COURT ORDERS that the present directors, former directors during the sixty (60) day period prior to the date hereof and officers of the NFC Entities shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of \$3,000,000, as security for the indemnity provided in

paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 38 and 40 herein.

22. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary: (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the NFC Entities' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

### **APPOINTMENT OF MONITOR**

23. THIS COURT ORDERS that FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the NFC Entities with the powers and obligations set out in the CCAA or set forth herein and that the NFC Entities and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the NFC Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the NFC Entities' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the NFC Entities, to the extent required by the NFC Entities, in their dissemination, to the DIP Lender and its counsel on a weekly basis or more frequently as may be reasonably required by the DIP Lender of financial and other information as agreed to between the NFC Entities and the DIP Lender which may be

used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

- (d) advise the NFC Entities in their preparation of the NFC Entities' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender;
- (e) advise the NFC Entities in the development of the Plan and any amendments to the Plan;
- (f) assist the NFC Entities, to the extent required by the NFC Entities, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the NFC Entities, to the extent that is necessary to adequately assess the NFC Entities' business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (i) hold and administer funds in connection with arrangements made among the NFC Entities, any Person and the Monitor, or by Order of this Court;
- (j) upon the direction of the NFC Entities, remit to the applicable insurer the premium due in respect of any director and officer insurance contemplated by the Initial CCAA Cash Flow (as such term is defined in the DIP Agreement (as defined below), which funds the Monitor shall hold in trust for the benefit of the NFC Entities' directors and officers pending its receipt of such request;
- (k) act as the sole sales agent in connection with the supervision of the Sale Process (as defined below); and

- (l) perform such other duties as are required by this Order or by this Court from time to time.

25. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. THIS COURT ORDERS that that the Monitor shall provide any creditor of the NFC Entities and the DIP Lender with information provided by the NFC Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the NFC Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the NFC Entities may agree.



28. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the NFC Entities and counsel to the directors and officers shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the NFC Entities as part of the costs of these proceedings. The NFC Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, counsel to the NFC Entities and counsel to the directors and officers on a weekly basis.

30. THIS COURT ORDERS that at the request of the NFC Entities, any party in interest, or this Court, the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

#### **ADMINISTRATION CHARGE**

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the NFC Entities shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$350,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 38 and 40 hereof.

#### **DIP FINANCING**

32. THIS COURT ORDERS that the NFC Entities are hereby authorized and empowered to obtain and borrow under a credit facility from the Bank of Montreal (the "DIP Lender") in order to finance the NFC Entities' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed the principal amount of \$10,500,000 unless permitted by further Order of this Court.

33. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the Super-Priority, Senior Secured Debtor-in-Possession Credit Facility Letter Loan Agreement among the NFC Entities and the DIP Lender dated as of January 16, 2011 (the "DIP Agreement"), filed.

34. THIS COURT ORDERS that the NFC Entities are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "Definitive Documents"), as are contemplated by the DIP Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the NFC Entities are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

35. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property, which DIP Lender's Charge shall not secure any indebtedness under existing credit facilities with the Bank of Montreal that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 38 and 40 hereof.

36. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon three (3) days' notice to the NFC Entities and the Monitor, may exercise any and all of its rights and remedies against the NFC Entities or the Property under or pursuant to the DIP Agreement, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the NFC Entities and set off and/or consolidate any amounts owing by the DIP Lender to the NFC Entities against the obligations of the NFC

Entities to the DIP Lender under the DIP Agreement, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the NFC Entities and for the appointment of a trustee in bankruptcy of the NFC Entities; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the NFC Entities or the Property.

37. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the NFC Entities under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

38. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge (collectively, the "Charges"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$350,000);

Second – Directors' Charge (to the maximum amount of \$3,000,000); and

Third – DIP Lender's Charge.

39. THIS COURT ORDERS that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest in the Property, filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect, under any statute, regulation, rule, instrument or other applicable law.

40. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank ahead in priority to the existing security interests of the Bank of Montreal and TD Capital Mezzanine Partners Management Ltd., but behind all other

security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Persons that have not been served with notice of this application. The NFC Entities and the Chargees (as defined below) shall be entitled to seek priority ahead of the Encumbrances on notice to those parties likely to be affected by such priority.

41. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the NFC Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the NFC Entities also obtain the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

42. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the NFC Entities, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the NFC Entities of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the NFC Entities entering into the DIP Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

- (c) the payments made by the NFC Entities pursuant to this Order, the DIP Agreement or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

43. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the NFC Entities' interest in such real property leases.

### **SALE PROCESS**

44. THIS COURT ORDERS that the terms and provisions of the sale process (the "Sale Process"), as described in the Pre-Filing Report, be and they are hereby approved, and the NFC Entities and the Monitor shall be authorized to conduct the Sale Process as contemplated therein.

### **SERVICE AND NOTICE**

45. THIS COURT ORDERS that the Monitor shall: (a) without delay, publish in The Globe and Mail (National Edition) once a week for two weeks a notice containing the information prescribed under the CCAA; and (b) within five days after the date of this Order: (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, together with the NFC Entities, in the prescribed manner, a notice to every known creditor who has a claim against the NFC Entities of more than \$1,000, and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

46. THIS COURT ORDERS that the NFC Entities and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the NFC Entities' creditors or other interested parties at their respective addresses as last shown on the records of the NFC Entities 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.

47. THIS COURT ORDERS that the NFC Entities, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on its website at <http://cfcanada.fticonsulting.com/nfc>.

## **GENERAL**

48. THIS COURT ORDERS that the NFC Entities or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

49. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the NFC Entities, the Business or the Property.

50. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or elsewhere, to give effect to this Order and to assist the NFC Entities, the Monitor 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 NFC Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the NFC Entities and the Monitor and their respective agents in carrying out the terms of this Order.

51. THIS COURT ORDERS that each of the NFC Entities and the Monitor 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, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

52. THIS COURT ORDERS that any interested party (including the NFC Entities and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days'

notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

53. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

A handwritten signature in black ink, appearing to read "J. A. Williams", is written over a horizontal line.

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

JAN 17 2012 

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

Court File No. CV-12-9554  
-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NFC ACQUISITION GP  
INC., NFC ACQUISITION CORP. AND NFC LAND HOLDINGS CORP.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

Proceeding commenced at Toronto

**INITIAL ORDER**

**Torys LLP**  
79 Wellington Street West  
Suite 300, TD Centre  
Toronto, Ontario M5K 1N2

Fax: 416.865.7380

**David Bish** (LSUC#: 41629A)  
Tel: 416.865.7353  
Email : [dbish@torys.com](mailto:dbish@torys.com)

**Adam M. Slavens** LSUC#: 54433J  
Tel: 416.865.7333  
Email: [aslavens@torys.com](mailto:aslavens@torys.com)

Lawyers for NFC Acquisition GP Inc.,  
NFC Acquisition Corp.,  
NFC Land Holdings Corp.,  
New Food Classics and  
NFC Acquisition L.P.



# TAB 6



Court File No. CV-09-8396-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE )  
 )  
MADAM JUSTICE PEPALL ) TUESDAY, THE 6<sup>TH</sup> DAY  
 ) OF OCTOBER, 2009

IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF CANWEST GLOBAL  
COMMUNICATIONS CORP. AND THE OTHER APPLICANTS  
LISTED ON SCHEDULE "A"

Applicants

INITIAL ORDER

THIS APPLICATION, made by Canwest Global Communications Corp. ("Canwest Global") and the other applicants listed on Schedule "A" hereto (collectively, the "Applicants"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of John Maguire sworn October 5, 2009 and the Exhibits thereto (the "Maguire Affidavit") and the Report of the Proposed Monitor, FTI Consulting Canada Inc. ("FTI Consulting") (the "Monitor's Pre-Filing Report"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants and the partnerships listed on Schedule "B" hereto (the "Partnerships" and collectively with the Applicants, the "CMI Entities"), the Special Committee of the Board of Directors of Canwest Global (the "Special Committee"), FTI Consulting, the *ad hoc* committee (the "Ad Hoc Committee") of holders of 8% senior subordinated notes issued by Canwest Media Inc.

(“CMI”), CIT Business Credit Canada Inc. (“CIT”) and the management directors of the Applicants (the “Management Directors”), and on reading the consent of FTI Consulting to act as the Monitor.

### **SERVICE**

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

### **APPLICATION**

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies. Although not Applicants, the Partnerships shall enjoy the benefits of the protections provided to the Applicants by this Order.

### **PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that one or more of the Applicants, individually or collectively, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “CMI Plan”) between, *inter alia*, one or more of the CMI Entities and one or more classes of their applicable secured and/or unsecured creditors as the Applicants deem appropriate.

### **POSSESSION OF CMI PROPERTY AND OPERATIONS**

4. THIS COURT ORDERS that the CMI Entities shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively, the “CMI Property”). Subject to further Order of this Court, the CMI Entities shall each continue to carry on business in a manner consistent with the preservation of their respective businesses (collectively, the “CMI Business”) and the CMI Property. The CMI Entities shall each be authorized and empowered to continue to retain and employ the employees, advisors,

consultants, agents, experts, appraisers, valuers, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order, subject to the provisions on the payment of Assistants set forth in paragraph 7 hereof.

5. THIS COURT ORDERS that the CMI Entities shall be entitled to continue to utilize the CMI Entities’ centralized cash management system currently in place, as described in the Maguire Affidavit, or replace it with another substantially similar centralized cash management system satisfactory to the CMI DIP Lender (as defined below) (the “**CMI Cash Management System**”). Any present or future bank providing the CMI Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken thereunder, or as to the use or application by the CMI Entities of funds transferred, paid, collected or otherwise dealt with in the CMI Cash Management System, shall be entitled to provide the CMI Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the CMI Entities, pursuant to the terms of the documentation applicable to the CMI Cash Management System, and shall be, in its capacity as provider of the CMI Cash Management System, an unaffected creditor under the CMI Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the CMI Cash Management System.

6. THIS COURT ORDERS that the CMI Entities and the LP Entities (as defined in the Maguire Affidavit) shall continue to provide and pay for the Shared Services, as defined in the Maguire Affidavit, to each other and their other affiliated and related entities, in accordance with current arrangements, payment terms and business practises, except as to payment terms which may be amended to provide for revised timing of reconciliations, with such amendments to be subject to the approval of the CMI CRA (as defined below) and the prior consent of the Monitor or further Order of the Court. Notwithstanding any other provision in this Order, neither the CMI Entities nor the LP Entities shall modify, cease providing or terminate the provision of or payment for the Shared Services except with the consent of the other party receiving such Shared Services, the approval of the CMI CRA and the prior consent of the Monitor or further Order of

this Court, except with respect to portions of the CMI Business which may be shut down or reorganized in the manner contemplated by the Term Sheet attached to the Support Agreement (as defined below) attached as part of Exhibit "O" to the Maguire Affidavit.

7. THIS COURT ORDERS that, subject to availability under the CMI DIP Facility and the CMI DIP Definitive Documents (both as hereinafter defined) and subject to the applicable cash flow forecast approved by the Consenting Noteholders (as defined below) in accordance with the Use of Collateral and Consent Agreement (as defined below) (the "**Approved Cash Flow**"), the CMI Entities shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order, to the extent that such expenses are incurred or payable by the CMI Entities:

- (a) all outstanding and future wages, salaries and employee benefits (including, but not limited to, employee medical, dental, disability, life insurance and similar benefit plans or arrangements, incentive plans, share compensation plans and employee assistance programs and employee or employer contributions in respect of pension and other benefits), current service, special and similar pension and/or retirement benefit payments, vacation pay, commissions, bonuses and other incentive payments, payments under collective bargaining agreements, and employee and director expenses and reimbursements, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) compensation to employees in respect of any payments made to employees prior to the date of this Order by way of the issuance of cheques or electronic transfers that are subsequently dishonoured due to the commencement of these proceedings;
- (c) with the prior consent of the Monitor, all outstanding and future amounts owing to or in respect of individuals working as independent contractors or freelancers in connection with the CMI Business;

- (d) the reasonable fees and disbursements of any Assistants retained or employed by the CMI Entities in respect of these proceedings, at their standard rates and charges, including any payments made to Assistants prior to the date of this Order by way of the issuance of cheques or electronic transfers that are subsequently dishonoured due to the commencement of these proceedings;
- (e) any and all sums due and owing to Amex Bank of Canada (“**American Express**”), including, without limitation, amounts due and owing by the CMI Entities to American Express in respect of the Corporate Card Program and Central Billed Accounts Program as described in the Maguire Affidavit;
- (f) amounts owing for goods and services actually supplied to the CMI Entities, or to obtain the release of goods contracted for prior to the date of this Order:
  - (i) by distributors, broadcasting and/or production studios, suppliers or other entities, for television programming and other related products, with the prior consent of the Monitor, if, in the opinion of the CMI Entities, the supplier is critical to the business and ongoing operations of any of the CMI Entities;
  - (ii) by newsprint suppliers, newspaper distributors and other logistics suppliers, with the prior consent of the Monitor, if, in the opinion of the National Post Company, the supplier is critical to the business and ongoing operations of the National Post Company; and
  - (iii) by other suppliers, with the prior consent of the Monitor, if, in the opinion of the CMI Entities, the supplier is critical to the CMI Business and ongoing operations of any of the CMI Entities.

8. THIS COURT ORDERS that, subject to availability under the CMI DIP Facility and the CMI DIP Definitive Documents and subject to the Approved Cash Flow, and except as otherwise provided to the contrary herein, the CMI Entities shall be entitled but not required to pay all

reasonable expenses incurred by them in carrying on the CMI Business in the ordinary course from and after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the CMI Property or the CMI Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services;
- (b) payment, including the posting of letters of credit, for goods or services actually supplied or to be supplied to the CMI Entities following the date of this Order; and
- (c) payment of fees to the Canadian Radio-television and Telecommunications Commission, stock exchange listing fees and other regulatory or license fees necessary for the preservation of the CMI Property or the CMI Business,

For greater certainty, the CMI Entities shall not make any payments to or in satisfaction of any liabilities or obligations of the LP Entities, save and except for payments in respect of the Shared Services as contemplated herein.

9. THIS COURT ORDERS that the CMI Entities shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the CMI Entities' employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the CMI Entities in connection with the sale of goods and services by the CMI Entities, but only where such Sales Taxes are accrued or

collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers' compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the CMI Business by the CMI Entities.

10. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with paragraph 12(c) of this Order, the CMI Entities shall pay all amounts constituting rent or payable as rent under their respective real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the applicable CMI Entity and the relevant landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid. Upon delivery of a notice of disclaimer or resiliation, the relevant CMI Entity shall pay all Rent owing by the applicable CMI Entity to the applicable landlord in respect of such lease due for the notice period stipulated in Section 32 of the CCAA, to the extent that Rent for such period has not already been paid.

11. THIS COURT ORDERS that, except as specifically permitted herein, the CMI Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any one of the CMI Entities to any of their creditors as of this date; (b) to grant no security interests, trusts, liens, charges or encumbrances upon or in respect of any of the CMI Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the CMI Business.



**RESTRUCTURING**

12. THIS COURT ORDERS that the CMI Entities shall, subject to such requirements as are imposed by the CCAA, subject to consulting with the CMI CRA, and subject to the terms of the Use of Collateral and Consent Agreement, the Support Agreement (as defined below), the CMI DIP Facility and the CMI DIP Definitive Documents, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their respective businesses or operations, to dispose of redundant or non-material assets, and to sell assets or operations not exceeding \$1,000,000 in any one transaction or \$5,000,000 in the aggregate, subject to paragraph 12<sup>(e)</sup>, if applicable; SUP -
- (b) terminate the employment of such of their employees or lay off or temporarily or indefinitely lay off such of their employees as the relevant CMI Entity deems appropriate on such terms as may be agreed upon between the relevant CMI Entity and such employee, or failing such agreement, to deal with the consequences thereof in the CMI Plan; ✓ (e) ✓
- (c) in accordance with paragraphs 13 and 14, with the prior consent of the Monitor or further Order of the Court, vacate, abandon or quit the whole but not part of any leased premises and/or disclaim or resiliate any real property lease and any ancillary agreements relating to any leased premises, in accordance with Section 32 of the CCAA, on such terms as may be agreed upon between the relevant CMI Entity and such landlord, or failing such agreement, to deal with the consequences thereof in the CMI Plan;
- (d) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor or further Order of the Court, such of their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the CMI Entities deem appropriate, in accordance with Section 32 of the CCAA, with such disclaimers or resiliations to be on such terms as may be agreed upon between the relevant CMI Entity and such counter-parties, or failing such agreement, to deal with the

consequences thereof in the CMI Plan, provided that the CMI Entities shall not be entitled to disclaim or resiliate, in whole or in part, the Use of Collateral and Consent Agreement or the Support Agreement; and

- (e) pursue all avenues of refinancing and offers for material parts of the CMI Business or the CMI Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing or any sale (except as permitted by subparagraph (a), above),

all of the foregoing to permit the CMI Entities to proceed with an orderly restructuring of the CMI Business.

13. THIS COURT ORDERS that the CMI Entities shall provide each of the relevant landlords with notice of the relevant CMI Entity's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the CMI Entity's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant CMI Entity, or by further Order of this Court upon application by the relevant CMI Entity on at least two (2) days notice to such landlord and any such secured creditors. If a CMI Entity disclaims or resiliates the lease governing such leased premises in accordance with paragraph 12(c) of this Order, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the CMI Entity's claim to the fixtures in dispute.

14. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered by a CMI Entity, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the relevant landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant CMI Entity and the Monitor 24 hours' prior

written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the CMI Entity in respect of such lease or leased premises and such landlord shall be entitled to notify the CMI Entity of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE CMI ENTITIES OR THE CMI PROPERTY**

15. THIS COURT ORDERS that until and including November 5, 2009, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the CMI Entities, the Monitor or the CMI CRA or affecting the CMI Business or the CMI Property, except with the written consent of the applicable CMI Entity, the Monitor and the CMI CRA (in respect of Proceedings affecting the CMI Entities, the CMI Property or the CMI Business), the CMI CRA (in respect of Proceedings affecting the CMI CRA), or with leave of this Court, and any and all Proceedings currently under way against or in respect of the CMI Entities or the CMI CRA or affecting the CMI Business or the CMI Property are hereby stayed and suspended pending further Order of this Court. In the case of the CMI CRA, no Proceeding shall be commenced against the CMI CRA or its directors and officers without prior leave of this Court on seven (7) days notice to Stonecrest Capital Inc.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

16. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the CMI Entities, the Monitor and/or the CMI CRA, or affecting the CMI Business or the CMI Property, are hereby stayed and suspended except with the written consent of the applicable CMI

Entity, the Monitor and the CMI CRA (in respect of rights and remedies affecting the CMI Entities, the CMI Property or the CMI Business), the CMI CRA (in respect of rights or remedies affecting the CMI CRA), or leave of this Court, provided that nothing in this Order shall (i) empower the CMI Entities to carry on any business which the CMI Entities are not lawfully entitled to carry on, (ii) exempt the CMI Entities from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

17. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the CMI Entities, except with the written consent of the relevant CMI Entity and upon consultation with the CMI CRA and the consent of the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

18. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with a CMI Entity or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all programming supply, computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the CMI Business or a CMI Entity, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the CMI Entities, and that the CMI Entities shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the CMI Entities in accordance with normal payment practices of the CMI Entities or such other practices as may be agreed upon by the supplier or service provider and the applicable

CMI Entity (upon consultation with the CMI CRA) and the consent of the Monitor, or as may be ordered by this Court.

### **NON-DEROGATION OF RIGHTS**

19. THIS COURT ORDERS that, notwithstanding anything else contained herein, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the CMI Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

20. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers (or their estates) of the Applicants with respect to any claim against such directors or officers that arose before the date hereof and that relates to any obligations of the CMI Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the CMI Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the CMI Entities or this Court.

### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

21. THIS COURT ORDERS that the Applicants shall jointly and severally indemnify their directors and officers from all claims, costs, charges and expenses relating to the failure of any of the CMI Entities, after the date hereof, to (i) make payments in respect of the CMI Entities of the nature referred to in subparagraphs 7(a), 9(a), 9(b) and 9(c) of this Order, and (ii) make payments of amounts in respect of the CMI Entities for which the directors and officers are statutorily liable, which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants except to the extent that, with respect to any officer or

director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct. For greater certainty, the indemnity provided by this paragraph 21 shall not indemnify such directors or officers from any costs, claims, charges, expenses or liabilities properly attributable to the LP Entities.

22. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the “**CMI Directors’ Charge**”) on the CMI Property, which charge shall not exceed an aggregate amount of \$20,000,000, as security for the indemnity provided in paragraph 21 of this Order. The CMI Directors’ Charge shall have the priority set out in paragraphs 55 and 57 herein.

23. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary (a) no insurer shall be entitled to be subrogated to or claim the benefit of the CMI Directors’ Charge and (b) the Applicants’ directors and officers shall only be entitled to the benefit of the Director’s Charge to the extent they do not have coverage under a directors and officers insurance policy.

24. THIS COURT ORDERS that, notwithstanding any other provision of this Order, the terms and conditions with respect to any release and discharge of the Charges (as defined herein) shall be satisfactory to the CMI Entities, the Management Directors (with respect to the CMI Directors’ Charge), the Monitor and the Ad Hoc Committee.

#### **APPOINTMENT OF MONITOR**

25. THIS COURT ORDERS that FTI Consulting is hereby appointed pursuant to the CCAA as the Monitor of the CMI Entities, an officer of this Court, to monitor the CMI Property and the CMI Entities’ conduct of the CMI Business with the powers and obligations set out in the CCAA and as set forth herein and that the CMI Entities and their shareholders, officers, directors and Assistants shall advise the Monitor of all material steps taken by the CMI Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

26. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the CMI Entities' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the CMI Entities, the CMI Property, the CMI Business, and such other matters as may be relevant to the proceedings herein; *and with respect to any payments made pursuant to paragraph 7(f)(iii) herein;* mf
- (c) assist the CMI Entities, to the extent required by the CMI Entities, in their dissemination to the CMI DIP Lender, the Ad Hoc Committee and their respective counsel of financial and other information, as agreed to between the CMI Entities and the CMI DIP Lender or the Ad Hoc Committee, as applicable, which may be used in these proceedings, including reporting on a weekly basis to the CMI DIP Lender and the Ad Hoc Committee;
- (d) advise the CMI Entities in their preparation of the CMI Entities' cash flow statements and reporting required by the CMI DIP Lender and the Ad Hoc Committee, which information shall be reviewed with the Monitor and delivered to the CMI DIP Lender, the Ad Hoc Committee and their respective counsel in compliance with the CMI DIP Definitive Documents, or as otherwise agreed to by the CMI DIP Lender or the Ad Hoc Committee, as applicable;
- (e) assist the CMI CRA in the performance of its duties as set out in the CMI CRA Agreement (as defined below);
- (f) advise the CMI Entities in their development and implementation of the CMI Plan and any amendments to the CMI Plan;
- (g) assist the CMI Entities, to the extent required by the CMI Entities, with the holding and administering of creditors' or shareholders' meetings for voting on the CMI Plan, as applicable;

- (h) have full and complete access to the CMI Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the CMI Entities, to the extent that is necessary to adequately assess the CMI Entities' business and financial affairs or to perform its duties arising under this Order;
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (j) monitor and, if necessary, report to the Court on any matters pertaining to the provision of the Shared Services in accordance with paragraph 6 of this Order; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

27. THIS COURT ORDERS that the Monitor shall not take possession of the CMI Property and shall take no part whatsoever in the management or supervision of the management of the CMI Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the CMI Business or the CMI Property, or any part thereof.

28. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the CMI Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing



herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the CMI Property within the meaning of any Environmental Legislation, unless it is actually in possession.

29. THIS COURT ORDERS that the Monitor shall provide any creditor of a CMI Entity with information provided by the CMI Entity in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by a CMI Entity is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the applicable CMI Entity may agree.

30. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to any of the CMI Entities, counsel and the financial advisor to the Special Committee, counsel to the Management Directors, RBC Dominion Securities Inc. (the "Financial Advisor"), counsel to the Ad Hoc Committee and the financial advisor to the Ad Hoc Committee (together with counsel to the Ad Hoc Committee, the "**Committee Advisors**") shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by any of the CMI Entities, to the extent that such fees and disbursements relate to services provided to the CMI Entities or, in the case of the Committee Advisors, to the Ad Hoc Committee, as part of the costs of these proceedings. FTI Consulting, the Financial Advisor, counsel to FTI Consulting, counsel to the CMI Entities, counsel and the financial advisor to the Special Committee and counsel to the Management Directors shall keep

separate accounts for services provided in respect of the CMI Entities and any services provided in respect of entities other than the CMI Entities. The CMI Entities are hereby authorized and directed to pay the accounts of the Monitor, the Financial Advisor, counsel to the Monitor, counsel to the CMI Entities, counsel and the financial advisor to the Special Committee, counsel to the Management Directors and the Committee Advisors on a weekly basis to the extent that such accounts relate to services provided to the CMI Entities, or, in the case of the Committee Advisors, the Ad Hoc Committee. The CMI Entities shall not be liable for and shall not pay any expenses, fees, disbursements or retainers of the Monitor, counsel to the Monitor, counsel to the LP Entities, counsel and the financial advisor to the Special Committee, counsel to the Management Directors or the Financial Advisor, to the extent that such expenses, fees, disbursements or retainers are not attributable to the CMI Entities.

32. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

33. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the CMI Entities, counsel and the financial advisor to the Special Committee, counsel to the Management Directors, the CMI CRA, the Financial Advisor and the Committee Advisors shall be entitled to the benefit of and are hereby granted a charge on the CMI Property (the “**CMI Administration Charge**”), which charge shall not exceed an aggregate amount of \$15,000,000 as security for their reasonable professional fees and disbursements incurred at their respective standard rates and charges in respect of such services, both before and after the making of this Order in respect of these proceedings. The CMI Administration Charge shall have the priority set out in paragraphs 55 and 57 hereof.

#### **CHIEF RESTRUCTURING ADVISOR**

34. THIS COURT ORDERS that Hap S. Stephen be and is hereby appointed as Chief Restructuring Advisor of the CMI Entities in accordance with the terms and conditions of the agreement entered into between Canwest Global and Stonecrest Capital Inc. (“**Stonecrest**”,

collectively referred to herein with Hap S. Stephen as the “CMI CRA”) dated June 30, 2009 (as amended, the “CMI CRA Agreement”), effective as of the date of this Order.

35. THIS COURT ORDERS that the CMI CRA Agreement is hereby approved and given full force and effect and the CMI CRA is hereby authorized to retain counsel as set out in the CMI CRA Agreement.

36. THIS COURT ORDERS that the CMI Entities are authorized and directed to continue the engagement of the CMI CRA on the terms and conditions set out in the CMI CRA Agreement.

37. THIS COURT ORDERS that the CMI CRA shall not be or be deemed to be a director, officer or employee of any of the CMI Entities.

38. THIS COURT ORDERS that the CMI CRA and its directors and officers shall incur no liability or obligation as a result of Hap S. Stephen’s appointment pursuant to this Order, or the provision of services pursuant to the CMI CRA Agreement, save and except as may result from gross negligence or wilful misconduct on the part of the CMI CRA.

39. THIS COURT ORDERS that (i) the indemnification obligations of Canwest Global in favour of the CMI CRA and its officers and directors set out in the CMI CRA Agreement; and (ii) the payment obligations set out in the CMI CRA Agreement shall be entitled to the benefit of and form part of the CMI Administration Charge set out herein.

40. THIS COURT ORDERS that any claims of the CMI CRA under the CMI CRA Agreement shall be treated as unaffected in any plan of compromise or arrangement filed by the CMI Entities under the CCAA, any proposal filed by the CMI Entities under the *Bankruptcy and Insolvency Act of Canada* (the “BIA”) or any other restructuring.

#### **DIP FINANCING**

41. THIS COURT ORDERS that the Credit Agreement dated as of May 22, 2009 and amended as of June 15, 2009, June 30, 2009, July 17, 2009, July 31, 2009, August 14, 2009,

August 31, 2009, September 11, 2009 and September 23, 2009 (as so amended, the “**CIT Credit Agreement**”) between CMI, the Guarantors party thereto and CIT as agent and lender be and are hereby approved. For greater certainty, references herein to CIT shall include any permitted assignee pursuant to the CIT Credit Agreement.

42. THIS COURT ORDERS that the CMI Entities are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, pledges, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, and including the CIT Credit Agreement, the “**CMI DIP Definitive Documents**”), as are contemplated by the CIT Credit Agreement or as may be reasonably required by the CIT Credit Agreement, and all CMI DIP Definitive Documents executed and delivered prior to the date hereof be and are hereby approved. The CMI Entities are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations under and pursuant to the CMI DIP Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

43. THIS COURT ORDERS that the credit facility provided under the CIT Credit Agreement be and is hereby converted into a debtor-in-possession financing arrangement (the “**CMI DIP Facility**”) in accordance with the terms of the CIT Credit Agreement, provided that the aggregate principal amount of all borrowings under the CMI DIP Facility shall not exceed \$100,000,000. The CMI DIP Facility shall be on the terms and subject to the conditions set forth in the CIT Credit Agreement as attached to the Maguire Affidavit as Exhibit “F”, as the CIT Credit Agreement may be amended from time to time upon the written agreement of the parties thereto. CIT, in its capacity as lender under the CMI DIP Facility, shall be referred to herein as the CMI DIP Lender.

44. THIS COURT ORDERS that CMI is hereby authorized and empowered to obtain and borrow the amounts previously or hereinafter advanced pursuant to the CMI DIP Facility in order to finance the CMI Entities’ working capital requirements and other general corporate purposes and capital expenditures as contemplated by the CMI DIP Definitive Documents,

provided that borrowings under the CMI DIP Facility shall not exceed \$100,000,000 unless approved by the CMI CRA and permitted by further Order of this Court.

45. THIS COURT ORDERS that the CMI Entities shall notify counsel to the Ad Hoc Committee and the Monitor of any requested advance under the CMI DIP Facility.

46. THIS COURT ORDERS that the CMI DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**CMI DIP Charge**") on the CMI Property, as security for any and all obligations of the CMI Entities under the CMI DIP Facility and the CMI DIP Definitive Documents (including on account of principal, interest, fees and expenses), which charge shall not exceed the aggregate amount owed to the CMI DIP Lender under the CMI DIP Definitive Documents advanced on or after the date of this Order. The CMI DIP Charge shall have the priority set out in paragraphs 55 and 57 hereof.

47. THIS COURT ORDERS that the deposit accounts containing cash collateral pledged to The Bank of Nova Scotia and referred to in Section 6.11 of the Collateral Agency Agreement (as defined below) as the "Cash Management Collateral Account" (the "**Excluded Accounts**") shall not form part of the CMI Property, shall be excluded from the CMI DIP Charge, the KERP Charge, the Directors' Charge and the Administration Charge, except as provided in paragraph 48 hereof, and shall remain subject to the existing liens in favour of The Bank of Nova Scotia in connection with the CMI Entities' obligations to The Bank of Nova Scotia in connection with overdrafts and related liabilities arising from cash consolidation, electronic funds transfer arrangements, treasury, depository and cash management services or in connection with any automated clearing house transfers of funds in an aggregate amount not to exceed \$2,500,000 (the "**BNS Cash Management Obligations**").

48. THIS COURT ORDERS AND DECLARES that notwithstanding any stay of proceedings imposed by this Order, The Bank of Nova Scotia shall be entitled to seize and dispose of any collateral on deposit in the Excluded Accounts and apply such proceeds to any and all outstanding BNS Cash Management Obligations, provided that, notwithstanding anything herein, upon payment and satisfaction of the BNS Cash Management Obligations in full and the

return of any remaining collateral in the Excluded Accounts to the CMI Entities, such collateral shall then form part of the CMI Property charged by the Directors' Charge, the Administration Charge, the KERP Charge and the DIP Lender's Charge.

49. THIS COURT ORDERS that the CMI DIP Charge is in addition to the existing security (the "**Existing Security**") in favour of CIBC Mellon Trust Company (the "**Collateral Agent**") pursuant to the Intercreditor and Collateral Agency Agreement dated as of October 13, 2005 among the CMI Entities and the Collateral Agent, as amended by the Credit Confirmation and Amendment to Intercreditor and Collateral Agency Agreement dated as of May 22, 2009, and as further amended by the Credit Confirmation and Amendment to Intercreditor and Collateral Agency Agreement dated as of October 1, 2009 (the "**Collateral Agency Agreement**"). All liabilities and obligations of the CMI Entities under the CIT Credit Agreement and the \$187,263,126 principal amount secured promissory note issued to Canwest MediaWorks Ireland Holdings ("**Irish Holdco**") by CMI (the "**Secured Note**") shall be secured by the Existing Security.

50. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the CMI DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the CMI DIP Charge or any of the CMI DIP Definitive Documents;
- (b) upon the occurrence of an event of default under the CMI DIP Definitive Documents (including, without limitation, the Existing Security solely to the extent that such Existing Security secures existing and future obligations under the CIT Credit Agreement) or the CMI DIP Charge, the CMI DIP Lender may cease making advances to the CMI Entities, and upon three (3) days notice to the CMI Entities and the Monitor, may exercise any and all of its rights and remedies against the CMI Entities or the CMI Property under or pursuant to the CMI DIP Definitive Documents and the CMI DIP Charge, including without limitation, to set off and/or consolidate any amounts owing by the CMI DIP Lender to any of

the CMI Entities against the obligations of any of the CMI Entities to the CMI DIP Lender under the CMI DIP Definitive Documents or the CMI DIP Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against any of the CMI Entities and for the appointment of a trustee in bankruptcy of any of the CMI Entities, and upon the occurrence of an event of default under the terms of the CMI DIP Definitive Documents, the CMI DIP Lender shall be entitled to seize and retain proceeds from the sale of the CMI Property and the cash flow of the CMI Entities to repay amounts owing to the CMI DIP Lender in accordance with the CMI DIP Definitive Documents and the CMI DIP Charge, but subject to the priorities as set out in paragraphs 55 and 57 of this Order; and

- (c) the foregoing rights and remedies of the CMI DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of any CMI Entity or the CMI Property.

51. THIS COURT ORDERS AND DECLARES that, in respect of the CMI DIP Facility, the CMI DIP Definitive Documents, the CIT Credit Agreement and amounts borrowed under the CIT Credit Agreement, the CMI DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the CMI Entities, or any of them, under the CCAA, or any proposal filed by the CMI Entities, or any of them, under the BIA. Further, the stays of proceedings provided for herein shall not apply to the CMI DIP Lender or its rights under or in respect of the CIT Credit Agreement, the CMI DIP Facility or the CMI DIP Definitive Documents.

52. THIS COURT ORDERS that the CMI Entities are hereby authorized and empowered to take all steps and actions in respect of, and to comply with all of their obligations pursuant to, the Secured Note, the \$430,556,189 unsecured promissory note dated October 1, 2009 granted by CMI to Irish Holdco in respect of the amounts advanced by Irish Holdco to CMI (the “Unsecured Note”), the Use of Cash Collateral and Consent Agreement between certain of the

CMI Entities and certain members of the Ad Hoc Committee (the “**Consenting Noteholders**”) dated September 23, 2009 (the “**Use of Collateral and Consent Agreement**”), the CCAA Support Agreement between certain of the CMI Entities and the Consenting Noteholders dated October 5, 2009 (the “**Support Agreement**”) and such other agreements, security documents, guarantees and other definitive documents as may be executed in connection with any such matters.

53. THIS COURT ORDERS that notwithstanding anything to the contrary herein, the CMI Entities shall be required to comply with their obligations under the Use of Collateral and Consent Agreement and the Support Agreement. Prior to exercising any and all rights and remedies they may have against the CMI Entities under or in respect of the Use of Cash Collateral Agreement and the Support Agreement, in accordance with the terms of such agreements, the Consenting Noteholders shall be required to obtain a further order of the Court, other than in respect of contractual termination rights under the Support Agreement.

54. THIS COURT ORDERS that, upon reasonable notice to the CMI Entities, the advisors to the Ad Hoc Committee, CIT and CIT’s advisors shall, subject to books and records that are privileged, have clear and unfettered access to the books and records of the CMI Entities and such other information that the Ad Hoc Committee and/or CIT reasonably requests.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

55. THIS COURT ORDERS that the priorities of the CMI Directors’ Charge, the CMI Administration Charge, the CMI KERP Charge (as defined below) and the CMI DIP Charge, as among them and the Existing Security, solely to the extent that such Existing Security secures existing and future obligations under the CIT Credit Agreement, shall be as follows:

First – CMI Administration Charge;

Second – The Existing Security, solely to the extent that such Existing Security secures existing and future obligations under the CIT Credit Agreement;

Third – CMI DIP Charge; and



Fourth – CMI Directors’ Charge and CMI KERP Charge, save and except that these Charges shall be postponed in right of payment to the extent of the first \$85,000,000 payable under the Secured Note.

56. THIS COURT ORDERS that the filing, registration or perfection of the CMI Directors’ Charge, the CMI Administration Charge, the CMI KERP Charge and the CMI DIP Charge (collectively, the “Charges”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

57. THIS COURT ORDERS that, the CMI Directors’ Charge, the CMI Administration Charge, the CMI DIP Charge and the CMI KERP Charge shall constitute a charge on the CMI Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, “Encumbrances”) in favour of any Person, notwithstanding the order of perfection or attachment, except for any validly perfected purchase money security interest in favour of a secured creditor or any statutory Encumbrance existing on the date of this Order in favour of any Person which is a “secured creditor,” <sup>if any,</sup> in respect of <sup>any of</sup> source deductions from wages, employer health tax, workers compensation, GST/QST, PST payables, vacation pay and banked overtime for employees, amounts under the Wage Earners’ Protection Program that are subject to a super priority claim under the BIA. <sup>as defined in the CCAA</sup>

58. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the CMI Entities shall not grant any Encumbrances over any CMI Property that rank in priority to, or *pari passu* with, any of the CMI Directors’ Charge, the CMI Administration Charge, the CMI KERP Charge or the CMI DIP Charge, unless the CMI Entities also obtain the prior consent of the Monitor, the CMI DIP Lender and the beneficiaries of the CMI Directors’ Charge, the CMI KERP Charge and the CMI Administration Charge, or upon further Order of this Court.

59. THIS COURT ORDERS that the CMI Directors' Charge, the CMI Administration Charge, the CMI KERP Charge, the CMI DIP Definitive Documents and the CMI DIP Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees"), the rights and remedies of the CMI DIP Lender under the CMI DIP Definitive Documents, the rights and remedies of Irish Holdco under the Secured Note and the rights and remedies of the Consenting Noteholders under the Use of Collateral and Consent Agreement and the Support Agreement shall not otherwise be limited or impaired in any way, subject to the provisions of paragraph 53 herein, by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the CMI Entities, or any of them, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the CIT Credit Agreement, the CMI DIP Definitive Documents, the Use of Collateral and Consent Agreement, the Support Agreement, the Secured Note or the Unsecured Note, shall create or be deemed to constitute a breach by any of the CMI Entities of any Agreement to which they are a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the CMI Entities entering into the CIT Credit Agreement or any other CMI DIP Definitive Documents, the creation of the Charges, or the execution, delivery or performance of the CMI DIP Definitive Documents; and

- (c) the CIT Credit Agreement, the CMI DIP Definitive Documents, the Use of Collateral and Consent Agreement, the Support Agreement, the Secured Note and the Unsecured Note, the payments made by the CMI Entities pursuant to the foregoing or pursuant to the terms of this Order, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

60. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the relevant CMI Entity's interest in such real property leases.

#### **APPROVAL OF FINANCIAL ADVISOR AGREEMENT**

61. THIS COURT ORDERS that the letter agreement dated December 10, 2008 between Canwest Global and the Financial Advisor, as amended by a letter agreement dated January 20, 2009 and a further letter agreement dated October 5, 2009, in the form attached as Exhibit "U" to the Maguire Affidavit (the "Financial Advisor Agreement"), is hereby approved and the CMI Entities are authorized and directed to make the payments contemplated thereunder in accordance with the terms and conditions of the Financial Advisor Agreement.

#### **KEY EMPLOYEE RETENTION PLANS**

62. THIS COURT ORDERS that the key employee retention plans (the "CMI KERPs"), in the forms attached to the Confidential Supplement to the Monitor's Pre-Filing Report (the "Confidential Supplement"), are hereby approved and the CMI Entities are authorized and directed to make the payments contemplated thereunder in accordance with the terms and conditions of the CMI KERPs.

63. THIS COURT ORDERS that the Confidential Supplement be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice which sets out the title

✓ and the letter agreement dated December 19, 2008 referred to in paragraph 61 herein

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of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of the Court.

64. THIS COURT ORDERS that the key employees referred to in the CMI KERPs shall be entitled to the benefit of and are hereby granted a charge (the “**CMI KERP Charge**”) on the CMI Property, which charge shall not exceed an aggregate amount of \$5,900,000, to secure amounts owing to such key employees under the CMI KERPs.

#### **POSTPONEMENT OF ANNUAL GENERAL MEETING**

65. THIS COURT ORDERS that Canwest Global be and is hereby relieved on any obligation to call and hold an annual meeting of its shareholders until further Order of the Court.

#### **FOREIGN PROCEEDINGS**

66. THIS COURT ORDERS that the Monitor is hereby authorized, as the foreign representative of the CMI Entities, to apply for recognition of these proceedings as “Foreign Main Proceedings” in the United States pursuant to Chapter 15 of the *U.S. Bankruptcy Code*.

67. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, Australia, Ireland or in any other foreign jurisdiction, to give effect to this Order and to assist the CMI Entities, the Monitor 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 CMI Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the CMI Entities and the Monitor and their respective agents in carrying out the terms of this Order.

68. THIS COURT ORDERS that each of the CMI Entities and the Monitor 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 and any other Order issued in these proceedings.

**SERVICE AND NOTICE**

69. THIS COURT ORDERS that the CMI Entities or the Monitor shall (i) without delay, publish a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against any of the CMI Entities of more than \$5,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a)(ii)(C) of the CCAA and the regulations made thereunder, provided that, for the purposes of this list, (i) with respect to the 8% senior subordinated notes issued by CMI, only the name and address of the indenture trustee of such notes and the aggregate amount owing in respect of such notes shall be listed and made publicly available and (ii) the Monitor shall not make the names and addresses of individuals who are creditors publicly available.

70. THIS COURT ORDERS that the CMI Entities and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the CMI Entities' creditors or other interested parties at their respective addresses as last shown on the records of the CMI Entities, 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.

71. THIS COURT ORDERS that the CMI Entities, the Monitor, the CMI DIP Lender, the Ad Hoc Committee and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on its website at <http://cfcanda.fticonsulting.com/cmi>.

**GENERAL**

72. THIS COURT ORDERS that the CMI Entities or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

73. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the CMI Entities, the CMI Business or the CMI Property.

74. THIS COURT ORDERS that any interested party (including the CMI Entities, the CMI DIP Lender, the Ad Hoc Committee and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order, provided however that the CMI DIP Lender shall be entitled to rely on this Order as issued for all advances made under the CIT Credit Agreement and the CMI DIP Definitive Documents up to and including the date this Order may be varied or amended.

75. THIS COURT Orders that, notwithstanding the immediately preceding paragraph, no order shall be made varying, rescinding or otherwise affecting the provisions of this Order with respect to the CIT Credit Agreement or the CMI DIP Definitive Documents, unless notice of a motion for such order is served on the Monitor and the CMI Entities, the Ad Hoc Committee and the CMI DIP Lender, returnable no later than November 5, 2009.

76. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



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

OCT 06 2009

PER / PAR: 

Joanne Nicoara  
Registrar, Superior Court of Justice

## **SCHEDULE "A"**

### **Applicants**

1. Canwest Global Communications Corp.
2. Canwest Media Inc.
3. MBS Productions Inc.
4. Yellow Card Productions Inc.
5. Canwest Global Broadcasting Inc./Radiodiffusion Canwest Global Inc.
6. Canwest Television GP Inc.
7. Fox Sports World Canada Holdco Inc.
8. Global Centre Inc.
9. Multisound Publishers Ltd.
10. Canwest International Communications Inc.
11. Canwest Irish Holdings (Barbados) Inc.
12. Western Communications Inc.
13. Canwest Finance Inc./Financiere Canwest Inc.
14. National Post Holdings Ltd.
15. Canwest International Management Inc.
16. Canwest International Distribution Limited
17. Canwest MediaWorks Turkish Holdings (Netherlands) B.V.
18. CGS International Holdings (Netherlands) B.V.

19. CGS Debenture Holding (Netherlands) B.V.
20. CGS Shareholding (Netherlands) B.V.
21. CGS NZ Radio Shareholding (Netherlands) B.V.
22. 4501063 Canada Inc.
23. 4501071 Canada Inc.
24. 30109, LLC
25. CanWest MediaWorks (US) Holdings Corp.



## **SCHEDULE "B"**

### **Partnerships**

1. Canwest Television Limited Partnership
2. Fox Sports World Canada Partnership
3. The National Post Company/La Publication National Post

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
CANWEST GLOBAL COMMUNICATIONS CORP., AND THE OTHER APPLICANTS  
LISTED ON SCHEDULE "A"

**Court File No:**

APPLICANTS

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**INITIAL ORDER**

**OSLER, HOSKIN & HARCOURT LLP**

Box 50, 1 First Canadian Place  
Toronto, Ontario, Canada M5X 1B8

Lyndon A.J. Barnes (LSUC#: 13350D)

Tel: (416) 862-6679

Edward A. Sellers (LSUC#: 30110F)

Tel: (416) 862-5959

Jeremy E. Dacks (LSUC#: 41851R)

Tel: (416) 862-4923

Fax: (416) 862-6666

Lawyers for the Applicants

F. 1114233

**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**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
Proceeding commenced at Toronto, Ontario**

**BRIEF OF AUTHORITIES  
(Directors Settlement)  
(returnable April 22, 2013)**

**GOWLINGS LAFLEUR HENDERSON LLP  
Barristers and Solicitors  
One First Canadian Place  
100 King Street West, Suite 1600  
TORONTO, Ontario  
M5X 1G5**

**Jennifer Stam (LSUC#46735J)  
Telephone: (416) 862-5697  
Facsimile: (416) 862-7661**

**Ava Kim (LSUC#57256C)  
Telephone: (416) 862-3560  
Facsimile: (416) 862-7661**

**Lawyers for the Applicant**