

**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**

**MOVING PARTY'S BRIEF OF AUTHORITIES  
(RECOGNITION OF US SALE APPROVALS)  
(Motion Returnable October 10, 2013)**

October 8, 2013

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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.

**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 change over the Chapter 11 Debtors' property in respect of administrative fees and expenses; and
  - (iii) appointing BDO Canada Limited ("BDO") as Information Officer in respect of these proceedings (the "Information Officer").

**2** On June 28, 2011, the Chapter 11 Debtors commenced proceedings (the "Chapter 11 Proceeding") in the United States Bankruptcy Court for the District of Massachusetts Eastern Division

(the "U.S. Court"), pursuant to Chapter 11 of the *United States Bankruptcy Code*, 11 U.S.C. 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,

# **TAB 2**

Court File No.: 12- CV- 9757-0066

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

THE HONOURABLE ) TUESDAY, THE 12<sup>TH</sup> DAY  
 )  
MR. JUSTICE MORAWETZ ) OF JUNE, 2012

**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**



**INITIAL RECOGNITION ORDER  
(FOREIGN MAIN PROCEEDING)**

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

ON READING the Notice of Application, the affidavit of Scott Macaulay sworn June 11, 2012 (the "Macaulay Affidavit"), the report dated June 11, 2012 (the "Report") of Duff &

Phelps Canada Restructuring Inc., in its capacity as proposed information officer (the “**Proposed Information Officer**”), and the first supplemental affidavit of Christopher Eustace sworn June 11, 2012, the second supplemental affidavit of Christopher Eustace sworn June 12, 2012, and the third supplemental affidavit of Christopher Eustace sworn June 12, 2012 (collectively, the “**Eustace Affidavits**”) each filed, and upon being provided with copies of the documents required by section 46 of the CCAA,

AND UPON BEING ADVISED by counsel for the Foreign Representative that in addition to this Initial Recognition Order, a Supplemental Order is being sought,

AND UPON HEARING the submissions of counsel for the Foreign Representative, counsel for the Proposed Information Officer, counsel for Yucaipa American Alliance Fund I, L.P.; Yucaipa American Alliance Fund II, L.P.; Yucaipa American Alliance (Parallel) Fund I, L.P.; Yucaipa American Alliance (Parallel) Fund II, L.P., counsel for Black Diamond CLO 2005-1 Ltd., BDCM Opportunity Fund II, LP and Spectrum Investment Partners LP, and those other parties present, no one else appearing, and upon reading the affidavit of service of Jason McMurtrie sworn June 11, 2012:

**SERVICE**

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

**FOREIGN REPRESENTATIVE**

2. THIS COURT ORDERS AND DECLARES that the Foreign Representative is the "foreign representative" as defined in section 45 of the CCAA of the Chapter 11 Debtors in respect of the cases commenced in the United States Bankruptcy Court for the District of Delaware by the Chapter 11 Debtors pursuant to Chapter 11 of the United States Bankruptcy Code (the “**Foreign Proceeding**”).

**CENTRE OF MAIN INTEREST AND RECOGNITION OF FOREIGN PROCEEDING**

3. THIS COURT DECLARES that the centre of its main interests for each of the Chapter 11 Debtors is the United States of America and that the Foreign Proceeding is hereby recognized as a "foreign main proceeding" as defined in section 45 of the CCAA.

#### **STAY OF PROCEEDINGS**

4. THIS COURT ORDERS that until otherwise ordered by this Court:
- (a) all proceedings taken or that might be taken against the Chapter 11 Debtors under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* are stayed;
  - (b) further proceedings in any action, suit or proceeding against the Chapter 11 Debtors are restrained; and
  - (c) the commencement of any action, suit or proceeding against the Chapter 11 Debtors is prohibited.

#### **NO SALE OF PROPERTY**

5. THIS COURT ORDERS that, except with leave of this Court, each of the Chapter 11 Debtors is prohibited from selling or otherwise disposing of:
- (a) outside the ordinary course of its business, any of its property in Canada that relates to the business; and
  - (b) any of its other property in Canada.

#### **GENERAL**

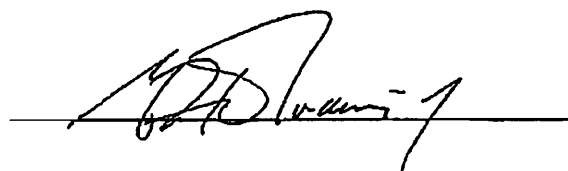
6. THIS COURT ORDERS that within five (5) business days from the date of this Order, or as soon as practicable thereafter, the Foreign Representative shall cause to be published a notice substantially in the form attached to this Order as Schedule B, once a week for two consecutive weeks, in the *Globe and Mail* (National Edition).
7. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, to give effect to this Order and

to assist the Chapter 11 Debtors and the Foreign Representative and their respective counsel and agents in carrying out the terms of this Order.

8. THIS COURT ORDERS AND DECLARES that this Order shall be effective as of 12:31 p.m. Eastern Standard Time on the date of this Order.

9. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Chapter 11 Debtors and the Foreign Representative and their respective counsel, and 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.

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



JUN 12 2012

**SCHEDULE A – CHAPTER 11 DEBTORS**

Allied Systems Holdings, Inc.

Allied Automotive Group, Inc.

Allied Freight Broker LLC

Allied Systems (Canada) Company

Allied Systems, Ltd. (L.P.)

Axis Areta, LLC

Axis Canada Company

Axis Group, Inc.

Commercial Carriers, Inc.

CT Services, Inc.

Cordin Transport LLC

F.J. Boutell Driveway LLC

GACS Incorporated

Logistic Systems, LLC

Logistic Technology, LLC

QAT, Inc.

RMX LLC

Transport Support LLC

Terminal Services LLC



**SCHEDULE B - NOTICE OF RECOGNITION ORDERS**

Court File No.: 12-

**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  
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**APPLICATION OF ALLIED SYSTEMS HOLDINGS, 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 June 12, 2012.

**PLEASE TAKE NOTICE** that, on June 12, 2012, Allied Systems Holdings, Inc. ("**Allied Systems**"), Allied Automotive Group, Inc.; Allied Freight Broker LLC; Allied Systems (Canada) Company ("**Allied Canada**"); Axis Areta, LLC; Axis Canada Company ("**Axis Canada**"); Axis Group, Inc.; Commercial Carriers, Inc.; CT Services, Inc.; Cordin Transport LLC; F.J. Boutell Driveway LLC; GACS Incorporated; Logistic Systems, LLC; Logistic Technology, LLC; QAT, Inc.; RMX LLC; Transport Support LLC; and, Terminal Services LLC (together with Allied Systems US, the "**Chapter 11 Debtors**") commenced proceedings pursuant to Chapter 11 of the United States Code (the "**Bankruptcy Code**") with the United States Bankruptcy Court for the District of Delaware (the "**US Court**"). In connection with the Chapter 11 Proceedings, the Chapter 11 Debtors have appointed Allied Systems as their foreign representative (the "**Foreign Representative**"). The Foreign Representative's address is 2302 Parklake Drive, Suite 600, Atlanta, Georgia 30345-2918. The Chapter 11 Debtors carry on business in Canada through Allied Canada and Axis Canada.

**PLEASE TAKE FURTHER NOTICE** that an Initial Recognition Order and a Supplemental Order (together, the "**Recognition Orders**") have been issued by the Canadian Court pursuant to 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 "foreign main proceeding"; (ii) recognize Allied Systems as the Foreign Representative of the Chapter 11 Debtors; and (iii) appoint Duff & Phelps Canada Restructuring Inc. as the Information Officer with respect to the Chapter 11 Proceedings.

**PLEASE TAKE FURTHER NOTICE** that counsel to the Foreign Representative is.:

**GOWLING LAFLEUR HENDERSON LLP**

100 King Street West, Suite 1600

Toronto, Ontario M5X 1G5

Attention: Jennifer Stam

Tel: 416.862.5697

Fax: 416.862.7661

[Jennifer.Stam@gowlings.com](mailto:Jennifer.Stam@gowlings.com)

**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 following address:

**DUFF & PHELPS CANADA RESTRUCTURING INC.**

200 King Street West, Suite 1002

Toronto, Ontario M5H 3T4

Attention: Mitch Vininsky

Tel: 416.932.6013

Fax: 647.4979477

[mitch.vininsky@duffandphelps.com](mailto:mitch.vininsky@duffandphelps.com)

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

**DATED AT TORONTO, ONTARIO** this ● day of June, 2012.

**DUFF & PHELPS CANADA RESTRUCTURING INC.**

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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**Proceeding commenced at Toronto, Ontario, Canada**

**INITIAL RECOGNITION ORDER  
(FOREIGN MAIN PROCEEDING)**

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

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**Lawyers for the Applicant**

# **TAB 3**

**In re EPHEDRA PRODUCTS LIABILITY LITIGATION; In re MUSCLETECH RESEARCH AND DEVELOPMENT INC., et al.; Foreign Applicants in Foreign Proceedings. In re RSM RICHTER INC., AS FOREIGN REPRESENTATIVE OF MUSCLETECH RESEARCH AND DEVELOPMENT INC. AND ITS SUBSIDIARIES, Plaintiff, -v- SHARON AGUILAR, an individual; et al., Defendants.**

**04 MD 1598 (JSR), 06 Civ. 538 (JSR), 06 Civ. 539 (JSR)**

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK**

**349 B.R. 333; 2006 U.S. Dist. LEXIS 57595; 56 Collier Bankr. Cas. 2d (MB) 734**

**August 11, 2006, Decided  
August 15, 2006, Filed**

**SUBSEQUENT HISTORY:** Motion to strike granted by, in part, Motion to strike denied by, in part Matheny v. Body Dynamics, Inc. (In re Ephedra Prods. Liab. Litig.), 2006 U.S. Dist. LEXIS 72707 (S.D.N.Y., Oct. 3, 2006)  
Related proceeding at Toth v. Bodyonics, Ltd., 2007 U.S. Dist. LEXIS 18278 (E.D. Pa., Mar. 15, 2007)

**PRIOR HISTORY:** In re Ephedra Prods. Liab. Litig., 2006 U.S. Dist. LEXIS 18691 (S.D.N.Y., Apr. 9, 2006)

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** In consolidated products-liability litigation in which numerous U.S. consumers sued a Canadian company that marketed a certain diet product in the U.S., petitioner, the monitor in a Canadian insolvency proceeding, moved for an order recognizing and enforcing an order of the Canadian insolvency tribunal that approved a claims resolution procedure for all creditor claims. Respondents, four U.S. claimants, objected to the order.

**OVERVIEW:** The claims resolution procedure provided for mandatory mediation, and if the mediation resulted in a plan approved by specified majorities of creditors, for the estimation and liquidation of the remaining claims by an appointed claims officer. The claimants contended that

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this procedure was manifestly contrary to U.S. public policy under 11 U.S.C.S. 1506 in that it deprived them of due process and a jury trial. The court rejected these contentions. Although initially there were aspects of the procedure that arguably permitted the claims officer to refuse to receive evidence and to liquidate claims without giving interested parties an opportunity to be heard, the procedures were amended to cure these problems. As to the alleged denial of the right to a jury trial, the court found that § 1506 did not prevent a U.S. court from recognizing and enforcing a foreign insolvency procedure for liquidating claims solely on the basis that the procedure did not include a right to a jury. Foreign procedures were not "manifestly contrary to the public policy of the U.S." if they were plainly fair, even if they did not include some common incidents of American practice, such as a jury trial.

**OUTCOME:** The court granted the monitor's motion and recognized and enforced the claims resolution procedure as promulgated, amended, and adopted by the Canadian tribunal.

**CORE TERMS:** jury trial, objectors', public policy, manifestly, foreign judgments, insolvency, ephedra, Model Law, fair and impartial, transferred, claimants, plainly, notice, personal injuries, wrongful deaths, federal cases, insolvency proceeding, foreign forums, interested parties, oral argument, bargaining position, liquidation, unfairness, appointed, approving, mediation, relevance, civilized, conveniens, accorded

#### LexisNexis(R) Headnotes

*Bankruptcy Law > Case Administration > Court Powers*

*Bankruptcy Law > Practice & Proceedings > General Overview*

*Bankruptcy Law > Practice & Proceedings > Adversary Proceedings > Judgments & Remedies*

[HN1] Section 1521(a) of the Bankruptcy Code permits a court, upon the recognition of a foreign proceeding, to grant, at a foreign representative's request, any appropriate relief necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors. 11 U.S.C.S. § 1521(a).

*Bankruptcy Law > Case Administration > Court Powers*

*Bankruptcy Law > Practice & Proceedings > General Overview*

*Bankruptcy Law > Practice & Proceedings > Adversary Proceedings > Judgments & Remedies*

[HN2] Section 105(a) of the Bankruptcy Code provides that a court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. 11 U.S.C.S. § 105(a).

*Bankruptcy Law > Case Administration > Court Powers*

*Bankruptcy Law > Practice & Proceedings > General Overview*

*Bankruptcy Law > Practice & Proceedings > Adversary Proceedings > Judgments & Remedies*

[HN3] Section 1506 of the Bankruptcy Code provides, that nothing in this chapter prevents a court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

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**COUNSEL:** [\*\*1] For Muscletech Research and Development, Inc., Debtor (1:06-cv-00538-JSR): Daniel Joseph Guyder, Allen & Overy, LLP, New York, NY.

For Annabelle Jaramillo, Celestino Jaramillo, Movants (1:06-cv-00538-JSR): Joe L. McClaugherty, McClaugherty & Silver, P.C, Santa Fe, NM.

For HVL Incorporated, Interested Party (1:06-cv-00538-JSR, 1:06-cv-00539-JSR): Meagan E. Costello, Goodwin Procter, LLP, New York, NY.

For Ad Hoc Committee of Tort Claimants, Ad Hoc Committee of Tort Claimants, Interested Party (1:06-cv-00538-JSR, 1:06-cv-00539-JSR): William R. Baldiga, Brown Rudnick Berlack Israels LLP, Boston, MA.

For Timothy A. McLaughlin, Interested Party (1:06-cv-00538-JSR, 1:06-cv-00539-JSR): Bernard Roman Nevoral, Bernard R. Nevoral and Associates Ltd, Chicago, IL; Thomas Edward Engel, Engel & McCarney, New York, NY.

For Candace Ishman, Interested Party (1:06-cv-00538-JSR, 1:06-cv-00539-JSR): Genevieve Nichols, Coffey and Associates, St. Louis, MO.

For RSM Richter Inc., as Foreign Representative of MuscleTech Research and Development Inc. and its subsidiaries, Plaintiff (1:06-cv-00539-JSR): Ken Coleman, Daniel Joseph Guyder, Allen & Overy, LLP, New York, NY.

For [\*\*2] Angie Witwer, Scott Witwer, Plaintiffs (1:06-cv-00539-JSR): Barry Edward Newman, Spohrer Wilner, Maxwell, and Matthews, Jacksonville, FL.

For Thomas Hannon, Defendant (1:06-cv-00539-JSR): John D. Goldsmith, Tampa, FL.

For Amazon.Com, Inc., a Delaware corporation, Defendant (1:06-cv-00539-JSR): Angela L Milch, Smith Mazure, New York City, NY.

For James Niss, Special Master (1:04-md-01598-JSR): Attorney Maintenance List 01 - For MDL 1598; Attorney Maintenance List 02 - For MDL 1598; Attorney Maintenance List 03 - For MDL 1598; Attorney Maintenance List 04 - For MDL 1598; Attorney Maintenance List 05 - For MDL 1598; James Niss, New York, NY.

For Joanne Marlow, John Marlow, Plaintiffs (1:04-md-01598-JSR): Anne Andrews, Andrews Kurth LLP, Dallas, TX; Catherine Theodora Heacox, Michael E. Pederson, Weitz and Luxenburg, P.C., New York, NY; Ellen Relkin, Weitz & Luxenberg, New York, NY; Kenneth H. Stone, Law Offices of Kenneth H. Stone, San Diego, CA; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love,



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Portland, OR; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar [\*\*3] Shin & Byrne PLLC, New York, NY.

For David Alcantara, Plaintiff (1:04-md-01598-JSR): Kenneth T. Fibich, II, Fibich, Hampton, Leebron & Garth, L.L.P., Houston, TX; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Vernon L. Baines, Plaintiff (1:04-md-01598-JSR): Edward Frances Blizzard, Blizzard McCarthy & Nabers, Houston, TX; Kenneth T. Fibich, II, Fibich, Hampton, Leebron & Garth, L.L.P., Houston, TX; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Robert M. Schwartz, Williams & Bailey Law Firm, Houston, TX; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY; W. Michael Leebron, II, Fibich, Hampton, Leebron & Grath, L.L.P., Houston, TX.

For Jahn Bernard Smith, Plaintiff (1:04-md-01598-JSR): [\*\*4] Anne Andrews, Andrews Kurth LLP, Dallas, TX; Edward Frances Blizzard, Blizzard McCarthy & Nabers, Houston, TX; John M. Calimafde, Philip Charles Canelli, Morgan, Lewis & Bockius, LLP, New York, NY; Kenneth T. Fibich, II, Fibich, Hampton, Leebron & Garth, L.L.P., Houston, TX; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Robert A. Schwartz, William Bailey Law Firm, L.L.P., Houston, TX; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Irma Garza, Plaintiff (1:04-md-01598-JSR): Kenneth T. Fibich, II, Fibich, Hampton, Leebron & Garth, L.L.P., Houston, TX; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Jason Vickery, Plaintiff (1:04-md-01598-JSR): Edward Frances Blizzard, Blizzard [\*\*5] McCarthy & Nabers, Houston, TX; Kenneth T. Fibich, II, Fibich, Hampton, Leebron & Garth, L.L.P., Houston, TX; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Sallie Cooper, Individually and as Administratrix of the Estate of Diane Cooper, Plaintiff (1:04-md-01598-JSR): Katherine M. Lordi, Katherine M. Lordi, Bloomfield, NJ; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Donald Acuff, Plaintiff (1:04-md-01598-JSR): David Howard Berg, Berg & Androphy, New York, NY; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Michael Hodson, Hodson, Woods & Snively, Fayetteville, AR; Russell Scott Briggs, Fibich, Hampton [\*\*6] & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Tamera Lee Venzke, Venzke Law Firm, Houston, TX; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Shannon Pierce, Lugene Parsley, Joanne Doss, Patrick Galway, George Segrest, deceased, by and through his widow, Cheryl Segrest, Eiko Winters, individually as surviving heir and executrix of the Estate of Christopher Winters, deceased, Goldshield Group, plc, Goldshield Acquisition, Inc., Plaintiffs (1:04-md-01598-JSR): Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Daniel Hoak, Plaintiff (1:04-md-01598-JSR): Ethan James Early, Early & Strauss, LLC, New York, NY; J. Nixon Daniel, John F. Windham, Thomas F. Gonzalez, Beggs & Lane, Pensacola, FL; Leslie W. O'Leary Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, [\*\*7] Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Sarah Scheingold, Plaintiff (1:04-md-01598-JSR): Charles W. Sickels, Donna Miller Rostant, Hall, Sickels, Rostant, Frei and Kattenburg, Reston, VA; John C. Evans, Specter Specter Evans & Manogue, P.C., Pittsburgh, PA; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Timothy Sallis, Plaintiff (1:04-md-01598-JSR): Hal Jon Kleinman, Schiffrin & Barroway, LLP, Radnor, PA; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY; Anne [\*\*8] Andrews, Andrews

**Kurth LLP, Dallas, TX.**

**For Sayonara Bhattacharya, Plaintiff (1:04-md-01598-JSR): Joseph Paul Thomas, Ulmer & Berne, Cincinnati, OH; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.**

**For Norbert Rawert, Individually and as the personal representative of the Estate of Matthew Rawert, Nikeisha Joyner-Wiggins, Plaintiffs (1:04-md-01598-JSR): Anne Andrews, Andrews Kurth LLP, Dallas, TX; John M. Calimafde, Philip Charles Canelli, Morgan, Lewis & Bockius, LLP, New York, NY; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.**

**For Ina Rawert, individually and as the personal representative of the Estate of Matthew Rawert, Ronnie Rodriguez, [\*\*9] Plaintiffs (1:04-md-01598-JSR): John M. Calimafde, Philip Charles Canelli, Morgan, Lewis & Bockius, LLP, New York, NY; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.**

**For Angela Kirk, Plaintiff (1:04-md-01598-JSR): Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Paul D. Rheingold, Rheingold, Valet, Rheingold, Shkolnik & McCartney, LLP, McCartney, LLP, New York, NY; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.**

**For Harvey L. Levine, Plaintiff (1:04-md-01598-JSR): Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Philip Charles Canelli, Morgan, Lewis & Bockius, LLP, New York, NY; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, [\*\*10] Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.**

**For Layne Yranian, Paul Thompson, Robin Thompson, Plaintiffs (1:04-md-01598-JSR): James Stewart White, Law Offices of White, Meany & Wetherall, LLP, Reno, NV; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B.**

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Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

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For Brenett Forbes, Plaintiff (1:04-md-01598-JSR): Christopher Adam Seeger, Seeger Weiss LLP, New York, [\*\*11] NY; David R. Heffernan, Miami, FL; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Edward V. Bonner, Plaintiff (1:04-md-01598-JSR): David C. Zimmaro, Walters, Levine, Klingensmith & Thomison, P.A, Tampa, FL; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For James Riley, Plaintiff (1:04-md-01598-JSR): Anne Andrews, Andrews Kurth LLP, Dallas, TX; David B. Rheingold, Rheingold, Valet, Rheingold, Shkolnik & McCartney, L.L.P., New York, NY; John M. Calimafde, Philip Charles Canelli, Morgan, Lewis & Bockius, LLP, New York, NY; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton [\*\*12] & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Emanuel Gupilan, Plaintiff (1:04-md-01598-JSR): Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Robert A Wiener, Brennan, Wiener & Simons, La Crescenta, CA; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Alvaro Greve, Plaintiff (1:04-md-01598-JSR): Henry H. Wallace, Wallace Chapas and Associates, Pittsburgh, PA; Jonathan R. Rosenn, Stanley M. Rosenblatt, P.A., Miami, FL; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Stanley M. Rosenblatt, Miami, FL; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL;

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Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Tiffany Smith, [\*\*13] Plaintiff (1:04-md-01598-JSR): Amy Rosenberg, Rheingold, Valet, Rheingold & Shkolnik, P.C., New York, NY; Anne Andrews, Andrews Kurth LLP, Dallas, TX; David B. Rheingold, Rheingold, Valet & Rheingold, P.C., New York, NY; John M. Calimafde, Philip Charles Canelli, Morgan, Lewis & Bockius, LLP, New York, NY; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Alexander Korizis, Plaintiff (1:04-md-01598-JSR): Catherine Ann Ryan, James N. Esdaile, Jr., Sarah E. O'Leary, Esdaile, Barrett & Esdaile, Boston, MA; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Melvin C. Hartman, The Jacob D. Fuchsberg Law Firm, LLP, New York, NY; Robert Michael Hirsh, Duane Morris, LLP, New York, NY; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar [\*\*14] Shin & Byrne PLLC, New York, NY.

For Debra Clark, as Personal Representative of the Estate of Kris Lawrence Wilson, deceased, Plaintiff (1:04-md-01598-JSR): Anne Andrews, Andrews Kurth LLP, Dallas, TX; J. Nixon Daniel, John F. Windham, Beggs & Lane, Pensacola, FL; John M. Calimafde, Philip Charles Canelli, Morgan, Lewis & Bockius, LLP, New York, NY; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Timothy Bertsch, Plaintiff (1:04-md-01598-JSR): David B. Rheingold, Rheingold, Valet, Rheingold, Shkolnik & McCartney, L.L.P., New York, NY; John J. Evans, Specter, Specter, Evans & Manogue, P.C., Pittsburgh, PA; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, [\*\*15] New York, NY.

For Carlos Liera, Individually and as Personal Representative and Successor in Interest of the Estate of Andrea Murray Liera, Plaintiff (1:04-md-01598-JSR): Ian F. Dillon, Oakland, CA; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

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For Teddy Kambouris, Plaintiff (1:04-md-01598-JSR): David S. Ratner, Morelli Ratner PC, New York, NY; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Phillip Houghton, individually and as Administrator and on behalf of the Estate of Phillip Brent Houghton, Jr. and as next friend of Ashley Hunt, Plaintiff (1:04-md-01598-JSR): Jamal K. Alsaffar, Lance D. Sharp, Laura Bellegie Sharp, Austin, [\*\*16] TX; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Robert Allen Valadez, Shelton & Valadez, P.C., San Antonio, TX; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Janessa Lynn Kaleialoha Dicus, an incapacitated person gal Karen Richardson, Plaintiff (1:04-md-01598-JSR): Emily Kawashima Waters, Ian L. Mattoch, Mark Francis Gallagher, Stuart Michael Kodish, Law Offices of Ian L. Mattoch, Honolulu, HI; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY; David A Mazie, Nagel Rice & Mazie, LLP, Livingston, NJ.

For Karen Richardson, individually, Bryn Kalikolehua Dicus, a minor, nfr Gregory Dicus, Brylyn Laakeahoakalani Silva, a minor, nfr Keith Silva, Plaintiffs (1:04-md-01598-JSR): Emily Kawashima Waters, Ian L. Mattoch, Mark Francis Gallagher, Stuart [\*\*17] Michael Kodish, Law Offices of Ian L. Mattoch, Honolulu, HI; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Joseph Stanely Michalowski, Plaintiff (1:04-md-01598-JSR): Anne Andrews, Andrews Kurth LLP, Dallas, TX; James Andrew Talbert, Jennifer A. Sullivan, Bozeman, Jenkins & Matthews, Pensacola, FL; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Philip Charles Canelli, Morgan, Lewis & Bockius, LLP, New York, NY; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Pauline Filardi, individually and as personal representative of the Estate of Louis E. Filardi and as the Guardian Ad Litem for Louis M. Filardi and Laurin Filardi, Helen Alexander, Howard Alexander, Plaintiffs (1:04-md-01598-JSR): [\*\*18] Anne Andrews, Andrews Kurth LLP, Dallas,

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TX; James J. McHugh, Jr., The Beasley Firm, Philadelphia, PA; John M. Calimafde, Philip Charles Canelli, Morgan, Lewis & Bockius, LLP, New York, NY; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Diana Harrod, James Harrod, Plaintiffs (1:04-md-01598-JSR): Alex Alvarez, Alex Alvarez PA, Coral Gables, FL; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Joseph D. Welch, et al., Plaintiff (1:04-md-01598-JSR): Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Ronald David Rosengarten, Rosenfeld & Kaplan, LLP, New York, NY; Russell Scott Briggs, Fibich, Hampton & Leebron, [\*\*19] Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Airika J. Ashment, Eric A. Ashment, Estate of, Tammy J. Larsen, Plaintiffs (1:04-md-01598-JSR): Eckley M. Keach, Robert E. Murdock, Las Vegas, NV; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Danny L. Hawkinson, Plaintiff (1:04-md-01598-JSR): Anne Andrews, Andrews Kurth LLP, Dallas, TX; John M. Calimafde, Philip Charles Canelli, Morgan, Lewis & Bockius, LLP, New York, NY; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Sharon Elmaleh-Schoenman, Oshman & Mirisola, LLP, New York, NY; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman [\*\*20] Sclar Shin & Byrne PLLC, New York, NY.

For Miranda Sledge, Plaintiff (1:04-md-01598-JSR): Christopher Einar Grell, Richard F. Rescho, Law Offices of Christopher E. Grell, Oakland, CA; Ian P. Dillion, Oakland, CA; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Robert K. Shelquist, Lockridge, Grindal, Nauen, P.L.L.P., Minneapolis, MN; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY; Anne Andrews, Andrews Kurth LLP, Dallas, TX.

For David Miller, Plaintiff (1:04-md-01598-JSR): J. Chandler Loupe, Loupe Law Firm, Baton Rouge, LA; Lee L. Coleman, Hughes & Coleman, Bowling Green, KY; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Ramie Alfonzo Rodriguez, Plaintiff (1:04-md-01598-JSR): John M. Calimafde, Philip Charles Canelli, Morgan, Lewis & Bockius, [\*\*21] LLP, New York, NY; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Patrick Dean McMurtray, Thomas R. Frazer, II, Frazer Davidson, p.a., Jackson, MS; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Mark I. Parks, Plaintiff (1:04-md-01598-JSR): Anne Cisar Rudd, Kelly, Herlihy & Klein LLP, San Francisco, CA; Arlene N. Farolan, Kalinoski & Chaplinsky, Des Moines, IA; Keith D. Jacobson, Pamela Gale Sotoodeh, Ronald Vincent Fiesta, Victoria Dizik Teremenko, Sarah Crevier Bullard, Kenneth B. Moll & Associates, Ltd., Chicago, IL; Kenneth Brian Moll, Kenneth B. Moll & Associates, Chicago, IL; Kurt D. Hyzy, Tiffany K. Donnelly, Tracy A. Jurgus, Kenneth B. Moll & Associates, Ltd., Chicago, IL US; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Thomas F. Ochs, Cedar Rapids, IA; Trent B. Miracle, SimmonsCooper, LLC, East [\*\*22] Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Elizabeth M. Parks, Plaintiff (1:04-md-01598-JSR): Arlene N. Farolan, Kalinoski & Chaplinsky, Des Moines, IA; Keith D. Jacobson, Ronald Vincent Fiesta, Sarah Crevier Bullard, Kenneth B. Moll & Associates, Ltd., Chicago, IL; Kenneth Brian Moll, Kenneth B. Moll & Associates, Chicago, IL; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Thomas F. Ochs, Cedar Rapids, IA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Mark Pizziferri, Plaintiff (1:04-md-01598-JSR): Darin M Colucci, Dino M. Colucci, Colucci, Colucci & Marcus, P.C., Milton, MA; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.



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For Michael [\*\*23] Reinmuth, Plaintiff (1:04-md-01598-JSR): Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY; Paul J. Hanly, Jr, Hanly Conroy Bierstein & Sheridan LLP, New York, NY.

For Irma Rodriguez, individually, Plaintiff (1:04-md-01598-JSR): Anne Andrews, Andrews Kurth LLP, Dallas, TX; John Carleton Thornton, III, Andrews & Thornton, Santa Ana, CA; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Beverly Ann Greenberg, Eliana Millan, Plaintiffs (1:04-md-01598-JSR): John Hasan Ruiz, John H. Ruiz, P.A., Miami, FL; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent [\*\*24] B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For John Doe, Plaintiff (1:04-md-01598-JSR): Stanely Vernon Buky.

For Wachovia Bank, N.A., Plaintiff (1:04-md-01598-JSR): Bruce David Rasmussen, Michie, Hamlett, Lowry, Rasmussen & Tweel, P.C., Charlottesville, VA; David Bagley Rheingold, Rheingold, Valet, Rheingold, Shkolnik & McCartney, LLP, New York, NY; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Paul D. Rheingold, Rheingold, Valet, Rheingold, Shkolnik & McCartney, LLP, McCartney, LLP, New York, NY; Paul R. Thomson, III, Michie, Hamlett, Lowry, Rasmussen & Tweel, P.C., Charlottesville, VA; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY; William Harrison Cleaveland, Roanoke, VA.

For Changes International, Inc., Plaintiff (1:04-md-01598-JSR): Bruce R. Laxalt, Reno, NV; Denise Michelle Smith, Jeffrey F. Peck, Ulmer & Berne, Cincinnati, OH; Gregory V. Cortese, Holly Stoberski, Las [\*\*25] Vegas, NV; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Changes International of Ft. Walton Beach, Inc., Plaintiff (1:04-md-01598-JSR): Christopher A. Glaser, Wright, Robinson, Osthimer & Tatum, Washington, DC; Jennifer J. Bouchard, Ulmer & Berne, L.L.P., Cincinnati, OH; Joseph Paul Thomas, Ulmer & Berne, Cincinnati, OH; Leslie W.

O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Michael Suffren, Ulmer & Berne, L.L.P., Cincinnati, OH; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY; William Henry Robinson, Jr., Wright, Robinson, McCammon, Osthimer & Tatum, Richmond, VA.

For Esther Carrero, Enrico Cruz, husband of Esther Carrero, Plaintiffs (1:04-md-01598-JSR): Leslie W. O'Leary, Williams, Dailey, [\*\*26] O'leary, Craine & Love, Portland, OR; Manuel A. Reboso, Peter S. Baumberger, Rossman Baumberger REboso & Spier, P.A., Miami, FL; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Lt. Col. Richard McMillan, Plaintiff (1:04-md-01598-JSR): Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Joshua Alvaro Greve, Vivian Greve, Luis J. Hernandez, Jennifer Luis, Plaintiffs (1:04-md-01598-JSR): Jonathan R. Rosenn, Stanley M. Rosenblatt, P.A., Miami, FL; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Brylyn Laakeahoakalani Silva, Plaintiff (1:04-md-01598-JSR): Ian [\*\*27] L. Mattoch, Mark Francis Gallagher, Stuart Michael Kodish, Law Offices of Ian L. Mattoch, Honolulu, HI; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Jerry Garvin, Plaintiff (1:04-md-01598-JSR): Gregory S. Love, Fort Worth, TX; Kenneth T. Fibich, II, Fibich, Hampton, Leebron & Garth, L.L.P., Houston, TX; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For James Petrovich, Jessica Petrovich, Plaintiffs (1:04-md-01598-JSR): Lenore Kramer, Kramer & Dunleavy, New York, NY; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin [\*\*28] & Byrne

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PLLC, New York, NY.

For Margo A. Durrance, Sandra G. Singal, Mario Ochoa, Bobbie J. Barnett, Robert Donald Terrell, Gary Townsend, Teresa Villareal, Douglas Risley, Plaintiffs (1:04-md-01598-JSR): Edward Frances Blizzard, Joseph Scott Nabers, Rebecca Ann Briggs, Blizzard McCarthy & Nabers, Houston, TX; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Stephanie Turner, Plaintiff (1:04-md-01598-JSR): Keyser, Beverly Hayes Pace, Calvin S. Tregre, Janet Gilligan Abaray, Lopez, Hodes, Restaino, Milman & Skikos, Cincinnati, OH; David B. Massey, Davis, Polk et ano., New York, NY; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For George Winsor, Plaintiff (1:04-md-01598-JSR): Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Neal [\*\*29] Lewis Moskow, Ury & Moskow LLC, Fairfield, CT; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY; Anne Andrews, Andrews Kurth LLP, Dallas, TX.

For John Schlafhauser, Shelli Schlafhauser, Plaintiffs (1:04-md-01598-JSR): J. Nixon Daniel, John F. Windham, Thomas F. Gonzalez, Beggs & Lane, Pensacola, FL; John C. Evans, Specter Specter Evans & Manogue, P.C., Pittsburgh, PA; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Ruth J. English, Plaintiff (1:04-md-01598-JSR): Edward Frances Blizzard, Joseph Scott Nabers, Rebecca Ann Briggs, Blizzard McCarthy & Nabers, Houston, TX; Kenneth T. Fibich, II, Fibich, Hampton, Leebron & Garth, L.L.P., Houston, TX; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Mark Reese Pharr, III, Galloway, Johnson, Tompkins, Burr & Smith, P.L.C., Lafayette, LA; Steven J. Skikos, Lopez, Hodes [\*\*30] Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Sandra Lee Parker, Plaintiff (1:04-md-01598-JSR): Edward Frances Blizzard, Joseph Scott Nabers, Rebecca Ann Briggs, Blizzard McCarthy & Nabers, Houston, TX; Jay Hodges Henderson, Cruse Scott, Houston, TX; Kenneth T. Fibich, II, Fibich, Hampton, Leebron & Garth, L.L.P., Houston, TX; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Mark

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Reese Pharr, III, Galloway, Johnson, Tompkins, Burr & Smith, P.L.C., Lafayette, LA; Robert A. Schwartz, William Bailey Law Firm, L.L.P., Houston, TX; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Angie Gupilan, Plaintiff (1:04-md-01598-JSR): Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Robert A Wiener, Brennan, Wiener & Simons, La Crescenta, CA; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin [\*\*31] & Byrne PLLC, New York, NY.

For Josephine Cioppa, Plaintiff (1:04-md-01598-JSR): Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY; Christopher Adam Seeger, Seeger Weiss LLP, New York, NY.

For Attorney David Bruce Vermont, Plaintiff (1:04-md-01598-JSR): Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY; David Bruce Vermont, Ashcraft & Gerel, LLP, Alexandria, VA.

For Charlene Gaston, Plaintiff (1:04-md-01598-JSR): Jeffrey W. Rickard, Ryan M. Hagan, William M. Audet, Alexander, Hawes & Audet, L.L.P., San Jose, CA; Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, [\*\*32] NY.

For Susan Griffin, Lawrence Griffin, Plaintiffs (1:04-md-01598-JSR): Robert G. Rikard, James C. Anders, P.A. & Associates, Columbia, SC; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA.

For Jerry Farmer, Plaintiff (1:04-md-01598-JSR): Jodi K. McKelvin, Robert B. Roden, Shelby Roden LLC, Birmingham, AL; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA.

For Billy Sapp, Jeannette Sapp, Plaintiffs (1:04-md-01598-JSR): J. Nixon Daniel, John F. Windham, Thomas F. Gonzalez, Beggs & Lane, Pensacola, FL; Steven J. Skikos, Lopez, Hodes Law Firm, San Francisco, CA.

For Jerry Wood, Richard Geist, Flossie M. Thibodaux, Travis Wingfield, Karin Connolly, Plaintiffs

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(1:04-md-01598-JSR): J Mark Kell, Lampin, Kell, Fagras, Linson & Custer, St. Peters, MO; Michael Leslie Hodges, Paul J. Hanly, Jr, Hanly Conroy Bierstein & Sheridan LLP, New York, NY; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Antoinette V. Troupe, Plaintiff (1:04-md-01598-JSR): Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Duane J. Rowe, Plaintiff (1:04-md-01598-JSR): Daniel N. Gallucci, Rode & Qualey., New York, NY; Dianne [\*\*33] M. Nast, Roda & Nast, P.C., Lancaster, PA.

For Willard C. Westfall, Plaintiff (1:04-md-01598-JSR): Daniel N. Gallucci, Rode & Qualey., New York, NY; Dianne M. Nast, Roda & Nast, P.C., Lancaster, PA; Arnold Levin, Levin, Fishbein, Sedran & Berma, Philadelphia, PA.

For Debra Kline, Dennis Kline, Plaintiffs (1:04-md-01598-JSR): Arnold Levin, Levin, Fishbein, Sedran & Berma, Philadelphia, PA; Daniel N. Gallucci, Rode & Qualey., New York, NY; Dianne M. Nast, Roda & Nast, P.C., Lancaster, PA; Leonard V. Fodera, Silverman & Fodera, P.C., Philadelphia, PA.

For Sean Bigley, Plaintiff (1:04-md-01598-JSR): Debora A O'Neill; Jack A Meyerson.

For Kenneth Loewen, Plaintiff (1:04-md-01598-JSR): Dennis P. Brescoll, Birmingham, MI; Jack A Meyerson; Debora A O'Neill.

For Larry W. Langston, Jr., Plaintiff (1:04-md-01598-JSR): Annesley Hodges DeGaris, Cory, Watson, Crowder & Degaris, P.C., Birmingham, AL; Edward E. Angwin, Jason A. Stuckey, Gulas & Stuckey, P.C., Birmingham, AL.

For Sherry King Hitt, Plaintiff (1:04-md-01598-JSR): A. David Fawal, Archie Cleveland Lamb, Chris W. Cantrell, Law Offices of Archie Lamb, LLC, Birmingham, AL.

For Paul Wagner, Plaintiff (1: [\*\*34] 04-md-01598-JSR): Edward Stirling Deacon, Wilcoxon, Callahan, Montgomery & Deacon, SACRAMENTO, CA.

For Sonia Haberer, Debbie Ramey, Jennifer Burton, Mark Schmidt, Cynthia Weeks, Plaintiffs (1:04-md-01598-JSR): Gayle M. Blatt, Herman, Mathis, Casey, Kitchens & Gerel, San Diego, CA.

For Denise Cadet, Plaintiff (1:04-md-01598-JSR): Darryn L. Silverstein, Silverstein, Silverstein & Silverstein, P.C., Aventura, FL; Patrice Ann Talisman, Hersch & Talisman, P.A., Miami, FL.

For Michael T. Carter, Plaintiff (1:04-md-01598-JSR): Anne Cisar Rudd, Kelly, Herlihy & Klein

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LLP, San Francisco, CA; Keith D. Jacobson, Paige E. Barr, Pamela Gale Sotoodeh, Ronald Vincent Fiesta, Victoria Dizik Teremenko, Kenneth B. Moll & Associates, Ltd., Chicago, IL; Kurt D. Hyzy, Tiffany K. Donnelly, Tracy A. Jurgus, Kenneth B. Moll & Associates, Ltd., Chicago, IL US.

For Robert W. Deitz, Plaintiff (1:04-md-01598-JSR): Anne Cisar Rudd, Kelly, Herlihy & Klein LLP, San Francisco, CA; Keith D. Jacobson, Victoria Dizik Teremenko, Kenneth B. Moll & Associates, Ltd., Chicago, IL; Tiffany K. Donnelly, Tracy A. Jurgus, Kenneth B. Moll & Associates, Ltd., Chicago, IL US.

For Horace J. Ferrell, Jaclyn [\*\*35] Morgan, Plaintiffs (1:04-md-01598-JSR): Anne Cisar Rudd, Kelly, Herlihy & Klein LLP, San Francisco, CA; Keith D. Jacobson, Paige E. Barr, Ronald Vincent Fiesta, Sarah Crevier. Bullard, Kenneth B. Moll & Associates, Ltd., Chicago, IL.

For Kimberly A. Fletcher, Plaintiff (1:04-md-01598-JSR): Anne Cisar Rudd, Kelly, Herlihy & Klein LLP, San Francisco, CA; Keith D. Jacobson, Ronald Vincent Fiesta, Kenneth B. Moll & Associates, Ltd., Chicago, IL.

For Robert Kundrat, Plaintiff (1:04-md-01598-JSR): Anne Cisar Rudd, Kelly, Herlihy & Klein LLP, San Francisco, CA; Kurt David Hyzy, Keith D. Jacobson, Paige E. Barr, Ronald Vincent Fiesta, Sarah Crevier. Bullard, Kenneth B. Moll & Associates, Ltd., Chicago, IL.

For Nida Moss, Plaintiff (1:04-md-01598-JSR): Anne Cisar Rudd, Kelly, Herlihy & Klein LLP, San Francisco, CA; Keith D. Jacobson, Ronald Vincent Fiesta, Sarah Crevier. Bullard, Kenneth B. Moll & Associates, Ltd., Chicago, IL.

For Gerald Portillo, Genevieve Romancik, Plaintiffs (1:04-md-01598-JSR): Anne Cisar Rudd, Kelly, Herlihy & Klein LLP, San Francisco, CA; Keith D. Jacobson, Paige E. Barr, Pamela Gale Sotoodeh, Ronald Vincent Fiesta, Victoria Dizik Teremenko, Kenneth [\*\*36] B. Moll & Associates, Ltd., Chicago, IL; Kurt D. Hyzy, Tiffany K. Donnelly, Tracy A. Jurgus, Kenneth B. Moll & Associates, Ltd., Chicago, IL US.

For Colby W. Stambaugh, Plaintiff (1:04-md-01598-JSR): Anne Cisar Rudd, Kelly, Herlihy & Klein LLP, San Francisco, CA; Keith D. Jacobson, Kenneth B. Moll & Associates, Ltd., Chicago, IL.

For Roberta Stear, Plaintiff (1:04-md-01598-JSR): Anne Cisar Rudd, Kelly, Herlihy & Klein LLP, San Francisco, CA; Keith D. Jacobson, Pamela Gale Sotoodeh, Ronald Vincent Fiesta, Victoria Dizik Teremenko, Kenneth B. Moll & Associates, Ltd., Chicago, IL; Kurt D. Hyzy, Tiffany K. Donnelly, Tracy A. Jurgus, Kenneth B. Moll & Associates, Ltd., Chicago, IL US.

For Kevin Riggins, Plaintiff (1:04-md-01598-JSR): Anne Andrews, Andrews Kurth LLP, Dallas,

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TX.

For Pamela Pappas, Plaintiff (1:04-md-01598-JSR): Cyril V. Weiner, Elizabeth C. Thomson, Weiner & Cox, PLC, Southfield, MI.

For Dawn Smith, Plaintiff (1:04-md-01598-JSR): Harry J Levant.

For Damon S. Violette, Theone Violette, Plaintiffs (1:04-md-01598-JSR): Leslie W. O'Leary, Williams, Dailey, O'leary, Craine & Love, Portland, OR; Michael L. Williams, Williams, Dailey, O'Leary, Craine [\*\*37] & Lo, Portland, OR.

For Gerald Parnell, Plaintiff (1:04-md-01598-JSR): Frank Steven Pollock, Brownstein Vitale & Weiss, Philadelphia, PA.

For Marion Lester Singleton, Richard P. Kasko, Karen LeBlanc, Bobby Jack Edwards, Rebecca Schrader, Sheila Jackson, Dorothy Eileen Crisp, Plaintiffs (1:04-md-01598-JSR): Hubert Oxford, IV, Benckenstein & Oxford, L.L.P., Jefferson, TX; J. Robert Black, Lance Henry Lubel, Heard Robins Cloud Lubel & Greenwood, LLP, Houston, TX.

For Carrol Dodson, Plaintiff (1:04-md-01598-JSR): Hubert Oxford, IV, Benckenstein & Oxford, L.L.P., Jefferson, TX; J. Robert Black, Lance Henry Lubel, Heard Robins Cloud Lubel & Greenwood, LLP, Houston, TX; Kurt D. Hyzy, Tiffany K. Donnelly, Tracy A. Jurgus, Kenneth B. Moll & Associates, Ltd., Chicago, IL US; Pamela Gale Sotoodeh, Victoria Dizik Teremenko, Kenneth B. Moll & Associates, Ltd., Chicago, IL.

For Louis Bartus, Plaintiff (1:04-md-01598-JSR): John H. Kim, Gallagher, Lewis, Downey & Kim, Houston, TX.

For Anna Marie Bonner, Plaintiff (1:04-md-01598-JSR): David C. Zimmaro, Walters, Levine, Klingensmith & Thomison, P.A, Tampa, FL.

For Steve Summy, Plaintiff (1:04-md-01598-JSR): Richard D. Marrs, [\*\*38] Richardson, Stoops, Richardson & Ward, PC, Tulsa, OK.

For John William Burns, Plaintiff (1:04-md-01598-JSR): Lewis O. Unglesby, Unglesby & Marionneaux, Baton Rouge, LA.

For Joy Christine Padgett, Plaintiff (1:04-md-01598-JSR): Richard Elder Crum, Steadman Stapleton Shealy, Jr., Cobb, Shealy, Crum & Derrick, PA, Dothan, AL.

For Margaret Chalmers, Kerry Chalmers, Kelvin Chalmers, Plaintiffs (1:04-md-01598-JSR):

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Claudio Molteni, The Popham Law Firm, Kansas City, MO; Jeffrey M. Kuntz, Kansas City, MO;  
Thomas Philip Cartmell, Wagstaff & Cartmell, LLP, Kansas City, MO.

For Sandra M. Waters, Plaintiff (1:04-md-01598-JSR): Thomas Philip Cartmell, Wagstaff &  
Cartmell, LLP, Kansas City, MO.

For Rhea L. Mazola, Plaintiff (1:04-md-01598-JSR): Ronald Sidney Goldser, Zimmerman Reed,  
P.L.L.P., Minneapolis, MN.

For Tina S. Bush, Leo Waltman, Willie Marie Waltman, Plaintiffs (1:04-md-01598-JSR): Robert B.  
Roden, Shelby Roden LLC, Birmingham, AL.

For Bille Gene Goble, Jennifer Goble, Margret S. Guyton, Plaintiffs (1:04-md-01598-JSR): David  
E. Cherry, Campell, Cherry, Harrison, Davis & Dove P.C., Waco, TX.

For Michael Scott Gregory, Plaintiff (1:04-md-01598-JSR): [\*\*39] Christopher A. Roach, Berg &  
Androphy, Houston, TX.

For Deborah Smoot, Plaintiff (1:04-md-01598-JSR): Michelle A. Parfitt, Ashcraft & Gerel, L.L.P.,  
Washington, DC; Susan Carole Minkin, Ashcraft & Gerel, LLP, Alexandria, VA.

For Dominica Ciocca, Plaintiff (1:04-md-01598-JSR): Debora A O'Neill.

For Heather Barrett, Plaintiff (1:04-md-01598-JSR): Charles A. Sturm, Cory Steven Fein, Michael  
A. Caddell, Caddell & Chapman, Houston, TX.

For Plaintiffs' Coordinating Counsel, Plaintiff (1:04-md-01598-JSR): Jonathan Paul Kieffer,  
Wagstaff & Cartmell, LLP, Kansas City, MO; Christopher Adam Seeger, Seeger Weiss LLP, New  
York, NY; Paul D. Rheingold, Rheingold, Valet, Rheingold, Shkolnik & McCartney, LLP, New  
York, NY.

For Mark L. Downing, Albert Stokes, Jr., Patricia Loewen, Plaintiffs (1:04-md-01598-JSR): Jena  
Borden, Simmons Firm, LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne  
PLLC, New York, NY; Debora A O'Neill; Dennis P. Brescoll, Birmingham, MI; Jack A Meyerson.

For Michael Underwood, Jeannie Brewer, Vidal Brewer Knight, Kevin Holleman, Plaintiffs  
(1:04-md-01598-JSR): Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX.

For [\*\*40] Debra Salazar, Ricky Green, Anthony Hale McCall, Sr., Aaron Hinkle, Plaintiffs  
(1:04-md-01598-JSR): Christopher Adam Seeger, Seeger Weiss LLP, New York, NY.



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For Sara Poling, Plaintiff (1:04-md-01598-JSR): Kent Mercier, Mercier Law Offices, Lafayette, LA.

For Jelena Malenica, Patrick Mattson, Ricky Sutherland, James Welsher, Kenneth Bell, Kenneth Bellew, James Broome, Vincent Coleman, Plaintiffs (1:04-md-01598-JSR): Anne Andrews, Andrews Kurth LLP, Dallas, TX.

For James Smith, Plaintiff (1:04-md-01598-JSR): Anne Andrews, Andrews Kurth LLP, Dallas, TX; Harry J Levant.

For Anthony Fenner, David J. Hall, Plaintiffs (1:04-md-01598-JSR): John Carleton Thornton, III, Andrews & Thornton, Santa Ana, CA.

For Jacquelyn Castillo, Albert Bale, Marcos Dias, Plaintiffs (1:04-md-01598-JSR): Keith D. Jacobson, Ronald Vincent Fiesta, Sarah Crevier. Bullard, Kenneth B. Moll & Associates, Ltd., Chicago, IL.

For Julius Lohner, Plaintiff (1:04-md-01598-JSR): Keith D. Jacobson, Pamela Gale Sotoodeh, Ronald Vincent Fiesta, Victoria Dizik Teremenko, Sarah Crevier. Bullard, Kenneth B. Moll & Associates, Ltd., Chicago, IL; Kurt D. Hyzy, Tiffany K. Donnelly, Tracy A. Jurgus, Kenneth [\*\*41] B. Moll & Associates, Ltd., Chicago, IL US.

For Andrea Woldemar, Plaintiff (1:04-md-01598-JSR): Keith D. Jacobson, Kenneth B. Moll & Associates, Ltd., Chicago, IL.

For Walter Perrine, Plaintiff (1:04-md-01598-JSR): Anne Cisar Rudd, Kelly, Herlihy & Klein LLP, San Francisco, CA; Keith D. Jacobson, Ronald Vincent Fiesta, Sarah Crevier. Bullard, Kenneth B. Moll & Associates, Ltd., Chicago, IL.

For Derrick Wells, Tiffany Wells, Plaintiffs (1:04-md-01598-JSR): Anne Cisar Rudd, Kelly, Herlihy & Klein LLP, San Francisco, CA; Keith D. Jacobson, Pamela Gale Sotoodeh, Ronald Vincent Fiesta, Victoria Dizik Teremenko, Sarah Crevier. Bullard, Kenneth B. Moll & Associates, Ltd., Chicago, IL; Kurt D. Hyzy, Tiffany K. Donnelly, Tracy A. Jurgus, Kenneth B. Moll & Associates, Ltd., Chicago, IL US.

For Irene Talavera, Plaintiff (1:04-md-01598-JSR): J Mark Kell, Lampin, Kell, Fagras, Linson & Custer, St. Peters, MO; Jena Borden, Simmons Firm, LLC, East Alton, IL; Michael Leslie Hodges; Tor A. Hoerman, SimmonsCooper, Inc, East Alton, IL; Paul J. Hanly, Jr, Hanly Conroy Bierstein & Sheridan LLP, New York, NY; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

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For [\*\*42] James Klawitter, Plaintiff (1:04-md-01598-JSR): J Mark Kell, Lampin, Kell, Fagras, Linson & Custer, St. Peters, MO; Jena Borden, Simmons Firm, LLC, East Alton, IL; Michael Leslie Hodges; Thomas W. Beven, Bevan & Associates, Northfield, OH; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL; Paul J. Hanly, Jr, Hanly Conroy Bierstein & Sheridan LLP, New York, NY; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Tracy R. Smoot, Rosalie Marks, Plaintiffs (1:04-md-01598-JSR): Susan Carole Minkin, Ashcraft & Gerel, LLP, Alexandria, VA.

For Barbara Dunham, Plaintiff (1:04-md-01598-JSR): Theodore M. Green, Wright, Green & Baughman, LLC, Lee's Summis, MO.

For Louis George Delk, Plaintiff (1:04-md-01598-JSR): Barry Lane Bobbitt, Bobbitt Law Firm, Dallas, TX; Frederick Leighton Durham, Kirk Pittard, Thurman & Andres, Dallas, TX.

For ms susie hardy, Plaintiff (1:04-md-01598-JSR): Jason Louis Solotaroff, Giskan & Solotaroff, New York, NY.

For James R. Tiskevich, Plaintiff (1:04-md-01598-JSR): Dennis Jim Kellogg, Shea Stokes & Carter, Ithaca, NY.

For Donica Aetna Parker, Plaintiff (1:04-md-01598-JSR): Keith D. Jacobson, Victoria Dizik Teremenko, [\*\*43] Kenneth B. Moll & Associates, Ltd., Chicago, IL.

For David J. Russell, Plaintiff (1:04-md-01598-JSR): Keith D. Jacobson, Pamela Gale Sotoodeh, Victoria Dizik Teremenko, Sarah Crevier. Bullard, Kenneth B. Moll & Associates, Ltd., Chicago, IL; Kurt D. Hyzy, Tiffany K. Donnelly, Tracy A. Jurgus, Kenneth B. Moll & Associates, Ltd., Chicago, IL US.

For Richard James, Plaintiff (1:04-md-01598-JSR): Thomas K. Herren, Herren & Adams, Lexington, KY.

William T. Burton, Plaintiff (1:04-md-01598-JSR), Pro se.

Kathleen Tutka, Plaintiff (1:04-md-01598-JSR), Pro se.

Roy Douglas Murray, Plaintiff (1:04-md-01598-JSR), Pro se.

For Joyce Ann Schneider, Plaintiff (1:04-md-01598-JSR): David Howard Berg, Gabriel Adam Berg, Berg & Androphy, New York, NY; Fernando De Leon, Berg & Androphy, Houston, TX US; John Paul Venzke, Tamera Lee Venzke, Venzke Law Firm, Houston, TX; Mark A. Evetts,

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Fernando Deleon, Berg & Androphy, Houston, TX; Martha Marie Eastman, Eastman Law Office, Louisville, KY.

For Tammy Iungerich, Plaintiff (1:04-md-01598-JSR): Douglas A. Merrow, Law Office of Douglas A. Morrow, Portage, MI; Paige E. Barr, Paige E. Barr, Kenneth B. Moll & Associates, Ltd. [\*\*44], Chicago, IL.

For Douglas Yarwood, Plaintiff (1:04-md-01598-JSR): Thomas Joseph Preuss, Wagstaff & Cartmell, LLP, Kansas City, MO.

For Matthew Hollimon, Plaintiff (1:04-md-01598-JSR): Charles Brenton Kugler, Daniel Sheehan & Associates, Dallas, TX; John D. Smallwood, Larry O. Norris, PA, Hattiesburg, MS US.

For Vicky Jarreau, May Briggs, Plaintiffs (1:04-md-01598-JSR): Benjamin A. White, Herrington & White, PLLc, Ridgeland, MS; Brian Kelly Herrington, Freese & Herrington, Jackson, MS.

For Karen Lott, Plaintiff (1:04-md-01598-JSR): Gayle M. Blatt, Herman, Mathis, Casey, Kitchens & Gerel, San Diego, CA.

For Lisa Marie Heilman, Plaintiff (1:04-md-01598-JSR): Frank Steven Pollock, Brownstein Vitale & Weiss, Philadelphia, PA.

For Ellen Matthews, Michael Matthews, Plaintiffs (1:04-md-01598-JSR): Anthony Scott Pinnie, Kenneth R. Schuster Associates, Media, PA.

For De'a Marie Olock, Demitri Olock, Dominick Olock, Pamela Olock, Plaintiffs (1:04-md-01598-JSR): Lawrence R. Cohan, Anapol Schwartz Weiss Cohan Feldman & Smalley, Philadelphia, PA.

For Keith E. Reid, Plaintiff (1:04-md-01598-JSR): Tamera Lee Venzke, Venzke Law Firm, Houston, TX.

Sharon [\*\*45] Burton, Plaintiff (1:04-md-01598-JSR), Pro se.

Mary Murray, Plaintiff (1:04-md-01598-JSR), Pro se.

Thomas Michael Pettis, Plaintiff (1:04-md-01598-JSR), Pro se.

Chasity Pettis, Plaintiff (1:04-md-01598-JSR), Pro se.

For Paula Bloch, Plaintiff (1:04-md-01598-JSR): Ronald Vincent Fiesta, Sarah Crevier. Bullard,

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Kenneth B. Moll & Associates, Ltd., Chicago, IL.

For Robert Dietz, Plaintiff (1:04-md-01598-JSR): Kurt D. Hyzy, Kenneth B. Moll & Associates, Ltd., Chicago, IL US; Pamela Gale Sotoodeh, Ronald Vincent Fiest, Victoria Dizik Teremenko, Kenneth B. Moll & Associates, Ltd., Chicago, IL.

For Mary Beth Thuernau, Plaintiff (1:04-md-01598-JSR): J Mark Kell, Lampin, Kell, Fagras, Linson & Custer, St. Peters, MO; Michael Leslie Hodges; Paul J. Hanly, Jr, Hanly Conroy Bierstein & Sheridan LLP, New York, NY.

For Mark Thuernau, Donald Riordan, Alison Troutman, Plaintiffs (1:04-md-01598-JSR): J Mark Kell, Lampin, Kell, Fagras, Linson & Custer, St. Peters, MO; Michael Leslie Hodges; Jena Borden, Simmons Firm, LLC, East Alton, IL; Paul J. Hanly, Jr, Hanly Conroy Bierstein & Sheridan LLP, New York, NY.

For Lynn Ann Matheny, Plaintiff (1:04-md-01598-JSR): [\*\*46] John C. Evans, Megan L. Faust, Specter Specter Evans & Manogue, P.C., Pittsburgh, PA; Kathleen J. Fantazzi, Gold, Khonrey & Turak, Moundsville, WV.

For Paul Cross, Sherri Cross, Plaintiffs (1:04-md-01598-JSR): Deborah L. McHenry, Samuel A. Hrko, Scott S. Segal, Victor S. Woods, The Segal Law Firm, Charleston, WV.

James W. Jones, Plaintiff (1:04-md-01598-JSR), Pro se, Memphis, TN.

For David Davenport, Cindy Davenport, James L. Thomas, Plaintiffs (1:04-md-01598-JSR): Thomas Philip Cartmell, Wagstaff & Cartmell, LLP, Kansas City, MO.

For Margaret Parks, Plaintiff (1:04-md-01598-JSR): James Newton Edmonds, Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, Tulsa, OK; Mark W. Maguire, Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, Tulsa, OK US.

For Terry Shupe, Plaintiff (1:04-md-01598-JSR): Kenneth T. Fibich, II, Fibich, Hampton, Leebron & Garth, L.L.P., Houston, TX.

For Richard L. Garza, Plaintiff (1:04-md-01598-JSR): Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX.

For Sandra McGoldrick, Virginia Vaughn, Yvonne C. Kelly, Plaintiffs (1:04-md-01598-JSR): Kurt D. Hyzy, Tiffany K. Donnelly, Tracy A. Jurgus, Kenneth B. Moll & [\*\*47] Associates, Ltd., Chicago, IL US; Pamela Gale Sotoodeh, Ronald Vincent Fiest, Sarah Crevier. Bullard, Victoria Dizik Teremenko, Kenneth B. Moll & Associates, Ltd., Chicago, IL.

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Paul V. Wright, Plaintiff (1:04-md-01598-JSR), Pro se.

For Shannon Busby, Plaintiff (1:04-md-01598-JSR): Elizabeth Marie Pipkin, R.G. Taylor II, P.C. & Assoc., Houston, TX.

For Dalip Tung, Samar Tung, Plaintiffs (1:04-md-01598-JSR): Natalie Dawn Collins, Harold Christian Bode, Bode & Collins, P.L.C., Scottsdale, AZ US.

For Nancy Rhome, Plaintiff (1:04-md-01598-JSR): Dara Lovitz, Thomas R. Anapol, Anapol, Schwartz, Weiss, Cohan, Feldman & Smalley, P.C., Philadelphia, PA.

For Huy Thai, Plaintiff (1:04-md-01598-JSR): James Newton Edmonds, Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, Tulsa, OK.

For Tommie M. Houck, Plaintiff (1:04-md-01598-JSR): Keith D. Jacobson, Pamela Gale Sotoodeh, Sarah Crevier. Bullard, Ronald Vincent Fiesta, Victoria Dizik Teremenko, , Kenneth B. Moll & Associates, Ltd., Chicago, IL; Kurt D. Hyzy, Tiffany K. Donnelly, Tracy A. Jurgus, Anne Cisar Rudd, Kelly, Herlihy & Klein LLP, San Francisco, CA.

[\*\*48] For Ronald Houck, Plaintiff (1:04-md-01598-JSR): David E. Carey, Brown Brown and Brown, PA, Bel Air, MD; Keith D. Jacobson, Pamela Gale Sotoodeh, Ronald Vincent Fiesta, Victoria Dizik Teremenko, Kenneth B. Moll & Associates, Ltd., Chicago, IL; Kurt D. Hyzy, Tiffany K. Donnelly, Tracy A. Jurgus, Kenneth B. Moll & Associates, Ltd., Chicago, IL US.

For Vincent Davis, Plaintiff (1:04-md-01598-JSR): Gerald S. Sack, Sack Spector & Karsten, West Hartford, CT.

For Ellen Mayfield-Fleming, Conrad Pawlowski, Donna Rather, Derek Roaf, June Thomas, Gregory Van Buren, Sharon Williams, Plaintiffs (1:04-md-01598-JSR): Kurt D. Hyzy, Tiffany K. Donnelly, Tracy A. Jurgus, Kenneth B. Moll & Associates, Ltd., Chicago, IL US; Paige E. Barr, Pamela Gale Sotoodeh, Victoria Dizik Teremenko, Kenneth B. Moll & Associates, Ltd., Chicago, IL.

For Fred T. Rather, Michael C. Ball, Plaintiffs (1:04-md-01598-JSR): Paige E. Barr, Kenneth B. Moll & Associates, Ltd., Chicago, IL.

For James Nagel, Plaintiff (1:04-md-01598-JSR): Sharon J. Arkin, Robinson, Calcagnie & Robinson, Newport Beach, CA.

For Cheryl McClure, Thomas Chapman, Plaintiffs (1:04-md-01598-JSR): Rachel Dawn Parrilli,

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Atkinson, [\*\*49] Haskins, Nellis, Brittingham, Gladd & Carwile, Tulsa, OK.

For Jennifer Reyes, Plaintiff (1:04-md-01598-JSR): Richard Warren Hunnicutt, III.

For Coy Van Parchman, Plaintiff (1:04-md-01598-JSR): Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX.

For Robbin Severin, Plaintiff (1:04-md-01598-JSR): Kurt D. Hyzy, Tiffany K. Donnelly, Tracy A. Jurgus, Kenneth B. Moll & Associates, Ltd., Chicago, IL US; Pamela Gale Sotoodeh, Victoria Dizik Teremenko, Kenneth B. Moll & Associates, Ltd., Chicago, IL US.

For Gregory L. Crosby, Vicky Crosby, Plaintiffs (1:04-md-01598-JSR): Randall E. Smith, Smith Elliott Smith & Garmey, P.A., Saco, ME.

For Xuihui Deng, Plaintiff (1:04-md-01598-JSR): Peter M. Brown, Dawsonbrown PS, Seattle, WA.

For Pamela A. Victor, Plaintiff (1:04-md-01598-JSR): Judy Lynn Feinberg, Judy L. Feinberg, P.C., Bethesda, MD.

For Jerry W. Keeley, Plaintiff (1:04-md-01598-JSR): Ronald Vincent Fiesta, Sarah Crevier. Bullard, Kenneth B. Moll & Associates, Ltd., Chicago, IL.

For Sheila Keeley, Plaintiff (1:04-md-01598-JSR): Ronald Vincent Fiesta, Kenneth B. Moll & Associates, Ltd., Chicago, IL.

For Emmitt Thrower, Plaintiff (1:04-md-01598-JSR): [\*\*50] Kurt D. Hyzy, Tiffany K. Donnelly, Tracy A. Jurgus, Kenneth B. Moll & Associates, Ltd., Chicago, IL US; Pamela Gale Sotoodeh, Victoria Dizik Teremenko, Sarah Crevier. Bullard, Kenneth B. Moll & Associates, Ltd., Chicago, IL.

For James A. Bogart, Plaintiff (1:04-md-01598-JSR): William Anthony Fiasco, Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, Tulsa, OK.

For John Giordano, Plaintiff (1:04-md-01598-JSR): Larry I. Badash, Sahder, Sander, Block, Mineola, NY.

For Francine Lewicki, Plaintiff (1:04-md-01598-JSR): Christi Marie Carrano, Carrano & Carrano, L.L., North Haven, CT.

For Teresa Ball, Plaintiff (1:04-md-01598-JSR): Sarah Crevier. Bullard, Paige E. Barr, Kenneth B. Moll & Associates, Ltd., Chicago, IL.

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For Robert A Smith, Suzanne Smith, Plaintiffs (1:04-md-01598-JSR): Russell Haskew Rein, Aylstock, Witkin & Sasser, PLC, Pensacola, FL.

For Ms. Jacqueline Kutz, Plaintiff (1:04-md-01598-JSR): Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL.

For Chasity Cooper, Rose Cooper, William Cooper, Jr., Plaintiffs (1:04-md-01598-JSR): Elizabeth Marie Pipkin, James Collin Ferrell, R.G. Taylor II, P.C. & Assoc., Houston, TX.

For Michelle [\*\*51] Lynne Burns, Lori Jenkins, Bethany Anne Jenkins, minor, Lori Jenkins, as Personal Representative of the Estate of Ronald M. Jenkins, Jr., deceased, Timothy Noah Jenkins, Plaintiffs (1:04-md-01598-JSR): Thomas F. Gonzalez, Beggs & Lane, Pensacola, FL.

For Julie Walker, Plaintiff (1:04-md-01598-JSR): David E. Cherry, Campell, Cherry, Harrison, Davis & Dove P.C., Waco, TX; Craig D Cherry, Campell Cherry Harrison Davis & Dove, Waco, TX; Gregory W. Turman, Snapka & Turman, Corpus Christi, TX; Kathryn Snapka, Snapka & Turman, LLP, Corpus Christi, TX.

For Jami K. Bryant, Plaintiff (1:04-md-01598-JSR): David E. Cherry, Campell, Cherry, Harrison, Davis & Dove P.C., Waco, TX; Craig D Cherry, Campell Cherry Harrison Davis & Dove, Waco, TX; Gregory W. Turman, Snapka & Turman, Corpus Christi, TX; Kathryn Snapka, Richard Brian Waterhouse, Jr, Snapka Turman & Waterhouse, Corpus Christi, TX.

For Earl Bryant, Plaintiff (1:04-md-01598-JSR): David E. Cherry, Campell, Cherry, Harrison, Davis & Dove P.C., Waco, TX; Craig D Cherry, Campell Cherry Harrison Davis & Dove, Waco, TX; Gregory W. Turman, Snapka & Turman, Corpus Christi, TX; Kathryn Snapka, Richard Brian Waterhouse, Jr, Snapka Turman & Waterhouse, Corpus Christi, TX.

For Rhealene Robertson, [\*\*52] Sharon Maddox, Brenda Graves, Plaintiffs (1:04-md-01598-JSR): Kurt D. Hyzy, Tiffany K. Donnelly, Tracy A. Jurgus, Kenneth B. Moll & Associates, Ltd., Chicago, IL US; Pamela Gale Sotoodeh, Victoria Dizik Teremenko, Kenneth B. Moll & Associates, Ltd., Chicago, IL.

For Melissa Cornett, Plaintiff (1:04-md-01598-JSR): Angela Pergrem Owens, Masten Childers, II, Michael Eugene Liska, Gary C. Johnson, P.S.C., Louisville, KY.

For Christine Felts, Clarence Lackowski, Plaintiffs (1:04-md-01598-JSR): Mark S. Baumkel, Provizer & Phillips, P.C, Bingham Farms, MI.

For David Brummel, Plaintiff (1:04-md-01598-JSR): George Phillip Lindner, Lindner, Speers &

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Reuland, P.C., Aurora, IL.

For Lauren Floro, Plaintiff (1:04-md-01598-JSR): Diane Angela Dileo Noel, Paul Rocco Mastrocola, Robert J. O'Regan, Burns & Levinson, LLP, Boston, MA.

For Jennifer Shaffer, Plaintiff (1:04-md-01598-JSR): Holly Baer Kammerer, Burg Simpson Eldredge Hersh & Jardine, P.C, Englewood, CO.

For Bertwin Martin, Plaintiff (1:04-md-01598-JSR): Pamela Gale Sotoodeh, Victoria Dizik Teremenko, Kenneth B. Moll & Associates, Ltd., Chicago, IL; Tiffany K. Donnelly, Tracy A. Jurgus, Kenneth B. Moll & Associates, [\*\*53] Ltd., Chicago, IL US.

For Delsie Stevens, Louis Stevens, Plaintiffs (1:04-md-01598-JSR): J. Chandler Loupe, Loupe Law Firm, Baton Rouge, LA.

For Joshua Theis, Plaintiff (1:04-md-01598-JSR): Michael T. Mullen, Sr, Paul B. Episcopo, LLC, Chicago, IL.

For Steven E. Nash, Plaintiff (1:04-md-01598-JSR): Daniel A. Raniere, Aubuchon, Raniere & Panzeri, St. Louis, MO.

For Sherida L. Miller, Daniel Byrne, Deborah Byrne, James Ressel, Margaret Randle, Cynthia Reynolds, Marol Scheffert, Linda Thompson, Debbie Jo Starks, Pamela Patterson, Richard McAfee, King Markowski, Michelle Martin, Steven Harris, Marguerite Johnson, Plaintiffs (1:04-md-01598-JSR): Michael Leslie Hodges, Paul J. Hanly, Jr, Hanly Conroy Bierstein & Sheridan LLP, New York, NY; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL.

For Michael Ward, Plaintiff (1:04-md-01598-JSR): Paul J. Hanly, Jr, Hanly Conroy Bierstein & Sheridan LLP, New York, NY; Trent B. Miracle, SimmonsCooper, LLC, East Alton, IL.

For Donald Wallen, Falayan Mitchell, Plaintiffs (1:04-md-01598-JSR): Michael Leslie Hodges, Paul J. Hanly, Jr, Hanly Conroy Bierstein & Sheridan LLP, New York, NY; Trent B. Miracle, SimmonsCooper, [\*\*54] LLC, East Alton, IL; Virginia L. Borden, Silverman Sclar Shin & Byrne PLLC, New York, NY.

For Karen Polys, Plaintiff (1:04-md-01598-JSR): Michael Leslie Hodges, Paul J. Hanly, Jr, Hanly Conroy Bierstein & Sheridan LLP, New York, NY.

Sally Louise Turner, Plaintiff (1:04-md-01598-JSR), Pro se, San Diego, CA.

David Nassar, Plaintiff (1:04-md-01598-JSR), Pro se.



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For Gupreet Gyani, Raminder S. Oberoi, Plaintiffs (1:04-md-01598-JSR): Paul L. LaClair, The Gucciardo Law Firm, New York, NY.

Joey R. Carter, Plaintiff (1:04-md-01598-JSR), Pro se.

For Hope E. Cagle, Erika Foussadier, Deborah Freeman, Carolyn C. Jones, Leonard R. Lebrun, Darla K. Morrissey, Edward C. Watkins, Plaintiffs (1:04-md-01598-JSR): Paige E. Barr, Kenneth B. Moll & Associates, Ltd., Chicago, IL US.

For Edward Ammar, Plaintiff (1:04-md-01598-JSR): Joshua Asher Levy, Jay Halpern and Associates, P.A., Coral Gables, FL US.

For Scott Witwer, Angie Witwer, Plaintiffs (1:04-md-01598-JSR): Barry Edward Newman, Spohrer Wilner, Maxwell, and Matthews, Jacksonville, FL.

Cindy Plum, CINDY PLUM, Plaintiff (1:04-md-01598-JSR), Pro se, Pensacola, FL.

For Joaquina Brooks, Joaquina Brooks, [\*\*55] Myrtle Hill, Plaintiffs (1:04-md-01598-JSR): Todd S. Hageman, Simon Passanante P.C, St. Louis, MO.

For Thomas Schneider, Sr., Individually and as Personal Representative of the Estate of Joyce Ann Schneider, Deceased, Plaintiff (1:04-md-01598-JSR): David Howard Berg, Gabriel Adam Berg, Beggs & Lane, Pensacola, FL.

For Ken Lilly, Consolidated Plaintiff (1:04-md-01598-JSR): Prince Thomas, Fox Rothschild, Attorneys at Law, New York, NY.

For Metabolife International, Inc., Defendant (1:04-md-01598-JSR): Anthony Lee Osborn, McCormick Barstow Sheppard Wayte and Carruth, Fresno, CA; Baxter Ward Banowsky, Scott Douglas Levine, Banowsky, Betz & Levine, P.C, Dallas, TX; Brian Douglas Equi, Jason Paul Herman, Larry Dean Smith, Cabaniss Smith Toole & Wiggins, P.L., Maitland, FL; Christina J. Marshall, Edward H. Blakemore, Sutter, O'Connell Mannion & Farchione, Cleveland, OH; David Michael Dahlmeier, Foley & Mansfield, PLLP, Minneapolis, MN; Edward G. Bowron, Bowron, Latta & Wasden, P.C., Mobile, AL; Eric J Ward, Ward, Norris, Heller & Reidy, LLP, Rochester, NY; Eric A. Weiss, Marshall, Gerstein & Borun, Chicago, IL; Esther Rae DeCambra, Leah M. Gerbitz, Miller & Martin PLLC, Chattanooga, [\*\*56] TN; Gregory Brian Smith Jackson, Miller & Martin PLLC, Nashville, TN; James W. Ozog, James Michael Rozak, James Robert Schachner, Wiedner & McAuliffe, Ltd., Chicago, IL; Jeffrey A. Johnson, Cosgrave, Vergeer, Kester, L.L.P., Portland, OR; John P. Kavanagh, Jr., Bowron, Latta & Wasden, P.C., Mobile, AL; John G. Mitchell, Securities & Exchange Commission, New York, NY; John Otho Payne, Huckabay,

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Munson, Rowlett & Moore, P.A., Little Rock, AR; Joseph Paul Thomas, Ulmer & Berne, Cincinnati, OH; Lawrence C Maxwell, Baker, Donelson, Bearman, Caldwell & Berkowitz, Nashville, TN; Mark Clarence Hegarty, Shook Hardy & Bacon, LLP, Kansas City, MO; Michael Wilder Newport, Foley & Mansfield P.L.L.P, St Louis, MO; Michael L. Young, Theodore J MacDonald, Burroughs, Hepler, Broom, MacDonald, Hebrank & T, St. Louis, MO; Richard F. Scruggs, Scruggs, Millette, Lawson, Bozeman & Dent, P.A., Pascagoula, MS; Sidney A. Backstrom, Scruggs Law Firm, Oxford, MS; Thomas Paul Mannion, Mannion & Gray, Co. L.P.A., Cleveland, OH; Wayne C. Kreuzscher, Barnes & Thornburg, Indianapolis, IN; Frederick Natale Salvo, III, Michael Scott Minyard, Baker Donelson Bearman Caldwell & Berkowitz, PC, Jackson, MS; Robert Gaylord [\*\*57] Smith, Lewis Bribois Bisgaard & Smith, San Diego, CA.

For TL Administration Inc., Defendant (1:04-md-01598-JSR): Denise Michelle Smith, Joseph Paul Thomas, Ulmer & Berne, Cincinnati, OH; Rex Allen Littrell, Tiffany Reece Clark, Ulmer and Berne, Columbus, OH.

For TL Administration Corp., Defendant (1:04-md-01598-JSR): Michael Peter Kessler, Weil, Gotshal & Manges LLP, New York, NY; Denise Michelle Smith, Ulmer & Berne, Cincinnati, OH; Rex Allen Littrell, Ulmer and Berne, Columbus, OH.

For Twin Laboratories, Incorporated, Defendant (1:04-md-01598-JSR): Andrew S. Bolin, Macfarlane Ferguson & McMullen, Tampa, FL; Barry McDonough, McDonough, Hacking & Neumeier, Boston, MA; Bruce R. Laxalt, Reno, NV; Christopher A. Glaser, Wright, Robinson, Osthimer & Tatum, Washington, DC; Denise Michelle Smith, Jeffrey F. Peck, Joseph Paul Thomas, Michael Suffren, Ulmer & Berne, Cincinnati, OH; G. Byron Sims, Jeromy D. Hughes, Browns Sims, P.C., Houston, TX; Gayle L. Ballew, Dallas, TX; Gregory V. Cortese, Holly Stoberski, Las Vegas, NV; James M. Williams, Jennifer J. Bouchard, Joseph C. Klein, Ulmer Berne, LLP, Cincinnati, OH; Janet Goldberg McEnery, Macfarlane Ferguson & McMullen, Tampa, [\*\*58] FL; John M. Bickel, Shuttleworth & Ingersoll, Cedar Rapids, IA; John H. Price, Honolulu, HI; Joseph John Saltarelli, Hunton & Williams, LLP, New York, NY U.S.A; Lewis A. Bartell, L'Abbate, Balkan, Colavita & Contini, L.L.P., Garden City, NY; Mark E. McLaughlin, Tampa, FL; Mary Lynn Tate, The Tate Law Firm, Abingdon, VA; Nancy A. Serventi, McDonough, Hacking, Neumeier & Lavoie, Boston, MA; Rex Allen Littrell, Ulmer and Berne, Columbus, OH; Rickey L. Faulkner, Longview, TX; Robert B. Beck, III, Leck & Associates, Santa Monica, CA; Stephen C. Merriam, Ulmer & Berne L.L.P., Cleveland, OH; Steven Jeffrey Rothman, Jones, Foster, Johnston & Stubbs, West Palm Beach, FL; Susan Y.M. Chock, Law Offices of John H. Price, Honolulu, HI; William Henry Robinson, Jr., Wright, Robinson, McCammon, Osthimer & Tatum, Richmond, VA.

For Kmart of Texas, LP, Defendant (1:04-md-01598-JSR): Richard C. Obiol, Civardi, Clair & Obiol, LLP, Rockville Centre, NY.

For Vera Kunisch, Defendant (1:04-md-01598-JSR): Joseph Paul Thomas, Ulmer & Berne,

Cincinnati, OH; Leonard M. Cascone, Cascone & Kluepfel, LLP, Uniondale, NY.

For Bob O'Leary Health Food Distributor Co., Inc., Defendant (1:04-md-01598-JSR): **[\*\*59]** Paul Goodovitch, Jacobson & Schwartz, Rockville Centre, NY; Brian Nelson Casey, Taylor & Walker, P.C, Norfolk, VA.

For Navarro Discount Pharmacies, Defendant (1:04-md-01598-JSR): John Joseph Burke, Jr, Joseph John Ortego, Nixon Peabody, LLP, Garden City, NY.

For General Nutrition Companies, Inc., Defendant (1:04-md-01598-JSR): Joseph Paul Thomas, Ulmer & Berne, Cincinnati, OH; Rex Allen Littrell, Ulmer and Berne, Columbus, OH.

For Rexall Sundown, Inc., Defendant (1:04-md-01598-JSR): Jeffrey F. Peck, Ulmer & Berne, Cincinnati, OH.

For General Nutrition Center, GNC 1895, Defendant (1:04-md-01598-JSR): John H. Price, Honolulu, HI; Susan Y.M. Chock, Law Offices of John H. Price, Honolulu, HI.

For John Does, 1-10, Defendant (1:04-md-01598-JSR): Russell Scott Briggs, Fibich, Hampton & Leebron, Houston, TX.

For United States, Defendant (1:04-md-01598-JSR): JD Roy Atchison, US Attorney, Pensacola, FL.

For Cytodyne Technologies, Inc., Defendant (1:04-md-01598-JSR): Charles A. Johnson, Hill, Rivkins & Hayden, L.L.P., Jersey City, NJ; Stephen R. Stern, Hoffinger Stern & Ross LLP, New York, NY.

For Interhealth Nutraceuticals, Inc., Defendant (1:04-md-01598-JSR): **[\*\*60]** Joseph John Saltarelli, Hunton & Williams, LLP, New York, NY U.S.A; Kimberly Letcher, Norma V. Garcia, Robert S. Beale, Sheppard Mullin Richter & Hampton LLP, Costa Mesa, CA.

For N.V.E., Inc., Defendant (1:04-md-01598-JSR): Ellen W. Smith, Samuel J. Samaro, Pashman Stein, P.C., Hackensack, NJ; Steven J. Kirsch, Murnane, Conlin, White & Brandt, St. Paul, MN.

For Rella Bourne, Defendant (1:04-md-01598-JSR): Jennifer J. Bouchard, Joseph Paul Thomas, Ulmer & Berne, Cincinnati, OH; William Henry Robinson, Jr., Wright, Robinson, McCammon, Osthimer & Tatum, Richmond, VA.

For The Chemins Company Inc., Defendant (1:04-md-01598-JSR): Baxter Ward Banowsky, Scott Douglas Levine, Banowsky, Betz & Levine, P.C, Dallas, TX; Christian J. Ziegler, Ferdie F. Franklin, Lisa R. Ackley, Walsworth, Franklin, Bevins & McCall, Orange, CA; Daniel Ross

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Mawhinney, Thompson & Bowie, LLP, Portland, ME; Edward Joseph Stolarski, Jr, Wilbraham, Lawler & Buba, Philadelphia, PA; John G. Mitchell, Securities & Exchange Commission, New York, NY; John Payne, Huckabay, Munson, Rowlett & Moore, Little Rock, AR; John Otho Payne, Huckabay, Munson, Rowlett & Moore, P.A., Little Rock, AR; Karen Margaret Sullivan, [\*\*61] Walsworth, Franklin, Bevins & McCall LLP, Orange, CA; Mark Reese Pharr, III, Galloway, Johnson, Tompkins, Burr & Smith, P.L.C., Lafayette, LA; Theodore J MacDonald, Michael L. Young, Burroughs, Hepler, Broom, MacDonald, Hebrank & T, St. Louis, MO; Thomas Bernard Farrey, III, Burns & Farrey, Worcester, MA; James W. Ozog, Wiedner & McAuliffe, Ltd., Chicago, IL; Robert Gaylord Smith, Lewis Bribois Bisgaard & Smith, San Diego, CA.

For Vita Quest International, Inc., Defendant (1:04-md-01598-JSR): David Michael Macdonald, Dallas, TX; Steven A. Stadtmauer, Harris Beach, LLP, New York, NY.

For Wal-Mart Stores Texas, L.P., Defendant (1:04-md-01598-JSR): Baxter Ward Banowsky, Scott Douglas Levine, Banowsky, Betz & Levine, P.C, Dallas, TX; Darrell L. Barger, Hartline, Dacus, Barger, Dreyer & Kern, L.L.P., Corpus Christi, TX; David Lesley Jones, Michael G. Terry, Hartline Dacus, Corpus Christi, TX; Ramona Martinez, Cowles and Thompson, P.C., Dallas, TX; Robert Gaylord Smith, Lewis Bribois Bisgaard & Smith, San Diego, CA.

For Phoenix Laboratories, Inc., Defendant (1:04-md-01598-JSR): Bruce Daniel Ainbinder, Wilson, Elser, Moskowitz, Edelman & Dicker LLP, New York, NY; Eric Peter [\*\*62] Blaha, Hoffinger Stern & Ross LLP, New York, NY.

For General Nutrition Corporation, Defendant (1:04-md-01598-JSR): Andrew S. Bolin, Macfarlane Ferguson & McMullen, Tampa, FL; Dennis L Kennedy, Lionel Sawyer & Collins, Las Vegas, NV; Gayle L. Ballew, Dallas, TX; Janet Goldberg McEnery, Macfarlane Ferguson & McMullen, Tampa, FL; Jeffrey F. Peck, Joseph Paul Thomas, Denise Michelle Smith, Ulmer & Berne, Cincinnati, OH; Jezabel Llorente, Tew Cardenas, LLP, Miami, FL; John H. Price, Honolulu, HI; Leah A Ayala, Lionel Sawyer & Collins, Las Vegas, NV; Lewis A. Bartell, L'Abbate, Balkan, Colavita & Contini, L.L.P., Garden City, NY; Mark E. McLaughlin, Tampa, FL; Mary Lynn Tate, The Tate Law Firm, Abingdon, VA; Michael Joseph Suffern, Ulmer and Berne, Columbus, OH; Rex A. Litrell, Ulmer & Berne, L.L.P., Columbus, OH; Rickey L. Faulkner, Longview, TX; Stephen C. Merriam, Ulmer & Berne L.L.P., Cleveland, OH; Steven Jeffrey Rothman, Jones, Foster, Johnston & Stubbs, West Palm Beach, FL; Susan Y.M. Chock, Law Offices of John H. Price, Honolulu, HI; Tiffany Reece Clark, Ulmer and Berne, Columbus, OH.

For Wal-Mart Stores East, LP, Defendant (1:04-md-01598-JSR): Thomas M. O'Connor, Brody, [\*\*63] O'Connor & O'Connor, Esqs., Northport, NY.

For Changes International, Inc., Defendant (1:04-md-01598-JSR): Bruce R. Laxalt, Banowsky, Betz & Levine, P.C, Dallas, TX; Christopher A. Glaser, Wright, Robinson, Ostheimer & Tatum,

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Washington, DC; Gregory V. Cortese, Holly Stoberski, Las Vegas, NV; Jeffrey F. Peck, Denise Michelle Smith, Joseph Paul Thomas, Ulmer & Berne, Cincinnati, OH; Jennifer J. Bouchard, Ulmer Berne, LLP, Cincinnati, OH; Michael Joseph Suffern, Ulmer and Berne, Columbus, OH; William Henry Robinson, Jr., Wright, Robinson, McCammon, Osthimer & Tatum, Richmond, VA.

For GNC Franchising, Inc., NBTY, Inc., Defendants (1:04-md-01598-JSR): Michael Joseph Suffern, Ulmer and Berne, Columbus, OH; Tiffany Reece Clark, Ulmer and Berne, Columbus, OH.

For RL Oldco, Inc., Defendant (1:04-md-01598-JSR): Jeffrey F. Peck, Joseph Paul Thomas, Ulmer & Berne, Cincinnati, OH; Michael Joseph Suffern, Ulmer and Berne, Columbus, OH; Tiffany Reece Clark, Ulmer and Berne, Columbus, OH.

For R.S. Oldco, Inc., Defendant (1:04-md-01598-JSR): Michael Joseph Suffern, Ulmer and Berne, Columbus, OH; Patrick Lysaught, Baker, Sterchi, Cowden & Rice, L.L.C., Kansas City, MO; Tiffany Reece [\*\*64] Clark, Ulmer and Berne, Columbus, OH; Joseph Paul Thomas, Ulmer & Berne, Cincinnati, OH.

For Nature's Bounty, Inc., Defendant (1:04-md-01598-JSR): Michael Joseph Suffern, Ulmer and Berne, Columbus, OH; Patrick Lysaught, Baker, Sterchi, Cowden & Rice, L.L.C., Kansas City, MO; Shannon Cook, Ulmer & Berne, LLP, Cincinnati, OH; Stephen C. Merriam, Ulmer & Berne L.L.P., Cleveland, OH; Tiffany Reece Clark, Ulmer and Berne, Columbus, OH.

For Muscletech Research and Development, Inc., Muscletech Research and Development, Inc., Defendant (1:04-md-01598-JSR): Howard Klein, Conrad O'Brien Gellman & Rohn PC, Philadelphia, PA; Jacquelyn J. Ager, Conrad O'Brien Gellman Y Rohn PC, Philadelphia, PA; Eric A. Weiss, Marshall, Gerstein & Borun, Chicago, IL; Robert Michael Hirsh, Duane Morris, LLP, New York, NY.

For Meijer, Inc., Defendant (1:04-md-01598-JSR): Denise Michelle Smith, Ulmer & Berne, Cincinnati, OH.

For Wal-Mart Stores, Inc., Defendant (1:04-md-01598-JSR): Bradley S. Russell, Overland Park, KS; D. Patrick Kasson, Reminger & Reminger Co., L.P.A., Columbus, OH US; Don Doyle, Daw & Ray, Houston, TX; Eric J Ward, Ward, Norris, Heller & Reidy, LLP, Rochester, NY; Eva Marie [\*\*65] Mannoia Weiler, Shook, Hardy & Bacon L.L.P., Irvine, CA; Frank C. LaScala, Frank C. Rothrock, Paul B. La Scala, Shook, Hardy & Bacon, L.L.P., Irvine, CA; J. David Wall, Bassett Law Firm, Fayetteville, AR; Jennifer Kincaid Adams, Woodward, Hobson & Fulton, LLP, Louisville, KY US; John Otho Payne, Huckabay, Munson, Rowlett & Moore, P.A., Little Rock, AR; Mark Clarence Hegarty, Shook Hardy & Bacon, LLP, Kansas City, MO; Michael L. Young, Burroughs, Hepler, Broom, MacDonald, Hebrank & T, St. Louis, MO; Peri H. Alkas, Daw & Ray, Houston, TX; Rebecca L. Didat, Richard H.C. Clay, Woodward, Hobson & Fulton, LLP, Louisville, KY US;

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Theodore J MacDonald, Burroughs, Hepler, Broom, MacDonald, Hebrank & T, St. Louis, MO; Thomas M. O'Connor, Brody, O'Connor & O'Connor, Esqs., Northport, NY; Wayne C. Kreuzscher, Barnes & Thornburg, Indianapolis, IN; Willie Ben Daw, III, Daw & Ray, P.C., Houston, TX; Joseph Paul Thomas, Ulmer & Berne, Cincinnati, OH; Tiffany Reece Clark, Ulmer and Berne, Columbus, OH.

For FM, Inc., Fred Meyer Stores, Inc., Defendants (1:04-md-01598-JSR): Richard E. Morton, Borton, Petrini & Conron, San Francisco, CA.

For Herbalife International of America, Inc., Defendant [\*\*66] (1:04-md-01598-JSR): Adam Benjamin Michaels, Goodwin Procter, LLP, New York, NY.

For R.S. Oldco, Inc., Defendant (1:04-md-01598-JSR): Patrick Lysaught, Baker, Sterchi, Cowden & Rice, L.L.C., Kansas City, MO; Tiffany Reece Clark, Ulmer and Berne, Columbus, OH.

For RL Oldco, Inc., Franchising Oldco, Inc. f/k/a GN Franchising, Inc., General Nutrition Distribution Company, Toby Williams, Defendants (1:04-md-01598-JSR): Tiffany Reece Clark, Ulmer and Berne, Columbus, OH.

For Traditional Medicinals, Inc., Defendant (1:04-md-01598-JSR): Thomas Francis Lucas, McKenna, Storer, Chicago, IL.

For Albertson's Inc., Defendant (1:04-md-01598-JSR): Baxter Ward Banowsky, Banowsky, Betz & Levine, P.C, Dallas, TX; Scott Douglas Levine, Banowsky, Betz & Levine, P.C, Dallas, TX; Stephen F. Dryden, Robinson Grayson & Dryden, P.A., Wilmington, DE.

For Advantage Marketing Systems, Inc., Defendant (1:04-md-01598-JSR): Beth Anne Fredericksen, M. Richard Mullins, Reid E. Robison, McAfee & Taft, A Professional Corporation, Oklahoma City, OK.

For Puritan's Pride, Inc., Defendant (1:04-md-01598-JSR): Michael Joseph Suffern, Ulmer and Berne, Columbus, OH.

For Natural Balance, [\*\*67] Inc., Defendant (1:04-md-01598-JSR): Arthur Anton Povelones, Jr, John Samuel Favate, Hardin, Kundla, McKeon, Poletto & Polifroni, P.A., Springfield, NJ; Michael J Rust, Gray, Rust, St. Amand, Moffett & Brieske, L.L.P., Atlanta, GA; Daniel Joseph Morse, Hardin, Kundla, McKeon, Poletto, PA, New York, NY.

For A.G. Waterhouse, Defendant (1:04-md-01598-JSR): Robert Richard Brooks-Rigolosi, Segal McCambridge Singer & Mahoney, Ltd., New York, NY.

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For Bally Total Fitness, Inc., Defendant (1:04-md-01598-JSR): Christine Coers-Mitchell, Derek J. Ashton, Cosgrave, Vergeer, Kester, L.L.P., Portland, OR; Jeffrey A. Johnson, Cosgrave, Vergeer, Kester, L.L.P., Portland, OR.

For Evergood Products Corporation, Defendant (1:04-md-01598-JSR): Eric Peter Blaha, Hoffinger Stern & Ross LLP, New York, NY.

For Stryka Botanics Co. Inc., Defendant (1:04-md-01598-JSR): Jeanne Anne Cygan, Ferro & Cuccia, New York, NY.

For General Nutrition Centers, GNC Corporation, Defendants (1:04-md-01598-JSR): Rex Allen Littrell, Ulmer and Berne, Columbus, OH.

For 21st Century Laboratories, Defendant (1:04-md-01598-JSR): Donna Hope Bakalor, Quirk and Bakalor, NY, NY.

For General Nutrition [\*\*68] Corporation, Defendant (1:04-md-01598-JSR): Denise Michelle Smith, Ulmer & Berne, Cincinnati, OH; Rex Allen Littrell, Ulmer and Berne, Columbus, OH; Tiffany Reece Clark, Ulmer and Berne, Columbus, OH.

For Twinlab Corporation, Defendant (1:04-md-01598-JSR): Andrew S. Bolin, Macfarlane Ferguson & McMullen, Tampa, FL; Bruce R. Lexalt, Reno, NV; Christopher A. Glaser, Wright, Robinson, Osthimer & Tatum, Washington, DC; Gregory V. Cortese, Holly Stoberski, Las Vegas, NV; Janet Goldberg McEnergy, Macfarlane Ferguson & McMullen, Tampa, FL; Jeffrey F. Peck, Joseph Paul Thomas, Ulmer & Berne, Cincinnati, OH; Jennifer J. Bouchard, Joseph C. Klein, Ulmer Berne, LLP, Cincinnati, OH; Lewis A. Bartell, L'Abbate, Balkan, Colavita & Contini, L.L.P., Garden City, NY; Mark E. McLaughlin, Tampa, FL; Mary Lynn Tate, The Tate Law Firm, Abingdon, VA; Michael Suffren, Ulmer and Berne, Columbus, OH; Robert B. Leck, III, Leck & Associates, Santa Monica, CA; William Henry Robinson, Jr., Ulmer & Berne, L.L.P., Cincinnati, OH.

For Twinlab Direct Inc., Defendant (1:04-md-01598-JSR): Christopher A. Glaser, Wright, Robinson, Osthimer & Tatum, Washington, DC; Jennifer J. Bouchard, Ulmer Berne, LLP, Cincinnati, [\*\*69] OH; Michael Suffren, Ulmer and Berne, Columbus, OH; William Henry Robinson, Jr., Wright, Robinson, McCammon, Osthimer & Tatum, Richmond, VA; Denise Michelle Smith, Ulmer & Berne, Cincinnati, OH.

For Trim International, Inc., Defendant (1:04-md-01598-JSR): Steven A. Stadtmauer, Harris Beach, LLP, New York, NY.

For HEB Grocery Company, L.P., Defendant (1:04-md-01598-JSR): Robert Allen Valadez, Shelton & Valadez, P.C., San Antonio, TX.

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For Nitro 2 Go, Nitro 2 Go, Inc, Defendant (1:04-md-01598-JSR): Patrick Denis Geraghty, Wilson, Elser, Moskowitz, Edelman & Dicker LLP, New York, NY.

For General Nutrition Distribution, L.P., Defendant (1:04-md-01598-JSR): Denise Michelle Smith, Ulmer & Berne, Cincinnati, OH; Tiffany Reece Clark, Ulmer and Berne, Columbus, OH.

For NFC, Inc. d/b/a Nature Food Centers, Inc., Defendant (1:04-md-01598-JSR): Denise Michelle Smith, Ulmer & Berne, Cincinnati, OH.

For Kabco Pharmaceuticals, Inc., Defendant (1:04-md-01598-JSR): Eric B. Hershberger, Columbus, OH; Bruce Daniel Ainbinder, Wilson, Elser, Moskowitz, Edelman & Dicker LLP, New York, NY.

For Vitalabs, Inc., Defendant (1:04-md-01598-JSR): Joseph Kenneth Poe, Rivkin, Radler, [\*\*70] LLP, Uniondale, NY.

For Rite Aid Corporation, Defendant (1:04-md-01598-JSR): Jonathan Allan Klein, Kelly, Herlihy & Klein LLP, San Francisco, CA.

For California Creative Enterprises Inc., Sitrick and Company, Eckerd Drugs of Texas, Inc., Defendants (1:04-md-01598-JSR): Robert Gaylord Smith, Lewis Bribois Bisgaard & Smith, San Diego, CA.

For Walgreen Co., Defendant (1:04-md-01598-JSR): Baxter Ward Banowsky, Scott Douglas Levine, Banowsky, Betz & Levine, P.C, Dallas, TX; Sheila E. Carson, Lowenstein Sandler PC, Roseland, NJ; Elizabeth Rose Mandarano, Lester, Schwab, Katz and Dwyer LLP, New York, NY.

For BDI Pharmaceuticals, Defendant (1:04-md-01598-JSR): Erich Gleber, Segal McCambridge Singer & Mahoney, New York, NY.

For Nutramera Corporation, Defendant (1:04-md-01598-JSR): Anne Marie Seibel, Brian Alexander Wahl, Bradley Arant Rose & White LLP, Birmingham, AL; Daniel W. McGrath, Philip R. Kujawa, Hinshaw & Culbertson LLP, Chicago, IL; John Richard Supple, Jr, Schuyler Blake Kraus, Hinshaw & Culbertson LLP, New York, NY.

For TrimSpa, Goen Technologies Corporation, Defendants (1:04-md-01598-JSR): Anne Marie Seibel, Bradley Arant Rose & White LLP, Birmingham, [\*\*71] AL; Brian Alexander Wahl, Bradley Arant Rose & White LLP, Birmingham, AL; Eric A. Weiss, Marshall, Gerstein & Borun, Chicago, IL; Thomas Joseph Burke, Jr., Hall Prangle & Schoonveld, LLP, Chicago, IL; Denise Michelle Smith, Ulmer & Berne, Cincinnati, OH; Michael Joseph Suffern, Ulmer and Berne,



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Columbus, OH; Tiffany Reece Clark, Ulmer and Berne, Columbus, OH.

For Advanced Nutrient Science, LLC, Defendant (1:04-md-01598-JSR): Schuyler Blake Kraus, Hinshaw & Culbertson LLP, New York, NY.

For Prolab Nutrition, Defendant (1:04-md-01598-JSR): Dean Thomas Wellman, Piper, Wellman & Bowers, LEXINGTON, KY.

For Advocare, Inc., Defendant (1:04-md-01598-JSR): Charles Brenton Kugler, Daniel Joseph Sheehan, Michael L. Atchley, II, Michael McShan, Daniel Sheehan & Associates, Dallas, TX.

For NVE, Inc., Defendant (1:04-md-01598-JSR): Steven J. Kirsch, Murnane, Conlin, White & Brandt, St. Paul, MN.

For CVS Corporation, Defendant (1:04-md-01598-JSR): William J. Ricci, Lavin Coleman Finarelli & Gray, New York, NY.

For Whole Health Nutricenter, Inc., Iovate Health Sciences Group, Inc., Defendants (1:04-md-01598-JSR): Robert Michael Hirsh, Duane Morris, LLP, New York, NY.

[\*\*72] For GNCO OLDCO, Inc. f/k/a General Nutrition Companies, Inc., APOLLO MANAGEMENT, L.P., Defendants (1:04-md-01598-JSR): Denise Michelle Smith, Ulmer & Berne, Cincinnati, OH.

For Best of Health, formerly known as For Health's Sake, Defendant (1:04-md-01598-JSR): Joseph Leray McNamara, Copeland Cook Taylor & Bush, Ridgeland, MS.

For Nittany Pharmaceuticals, Defendant (1:04-md-01598-JSR): Daniel J. Dugan, David B. Picker, Spector Gadon & Rosen, Philadelphia, PA; Kerrie Lynnewagoner Boyle, Philip Gregory Haddad, MacCorkle, Lavender, Casey & Sweeney, PLLC, Morgantown, WV.

For Gold Line Nutritional, Inc., Defendant (1:04-md-01598-JSR): Kerrie Lynnewagoner Boyle, Philip Gregory Haddad, MacCorkle, Lavender, Casey & Sweeney, PLLC, Morgantown, WV.

For Alpine Health Products LLC, Defendant (1:04-md-01598-JSR): Baxter Ward Banowsky, Scott Douglas Levine, Banowsky, Betz & Levine, P.C, Dallas, TX; John Otho Payne, Huckabay, Munson, Rowlett & Moore, P.A., Little Rock, AR; Philip Harry Cohen, Greenberg Traurig, LLP, New York, NY.

For Salons Only, Inc., Defendant (1:04-md-01598-JSR): Michael L. Klein, Ramapo Town Hall, Suffern, NY.

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For Body Dynamics, Inc., Defendant [\*\*73] (1:04-md-01598-JSR): Erich Gleber, Segal McCambridge Singer & Mahoney, New York, NY.

For HVL, Incorporated, Defendant (1:04-md-01598-JSR): Jezabel Llorente, Tew Cardenas, LLP, Miami, FL; Lawrence A. Kellogg, Stuart Isaac Grossman, Tew Cardenas, LLP, Miami, FL; Christopher Michael Jacobs, Robert Jaeger Behling, Dapper, Baldasare, Benson & Kane, P.C., Pittsburgh, PA; Eric A. Weiss, Marshall, Gerstein & Borun, Chicago, IL; Robert Michael Hirsh, Duane Morris, LLP, New York, NY.

For Chattem, Inc., Defendant (1:04-md-01598-JSR): James A. Beakes, III, Miller & Miller, Pllc, Nashville, TN.

For Schnuck Markets Inc., Defendant (1:04-md-01598-JSR): Michael L. Young, Theodore J MacDonald, Burroughs, Hepler, Broom, MacDonald, Hebrank & T, St. Louis, MO; Robert L. Duckels, Greensfelder, Hemker, & Gale, P.C., St. Louis, MO.

For Fitness First, U.S.A. doing business as Extreme Forces/FitnessFirstUSA.com, Defendant (1:04-md-01598-JSR): Dabney Jefferson Carr, IV, Troutman Sanders LLP, Richmond, VA.

For Market America, Inc., Defendant (1:04-md-01598-JSR): Daniel James Mitchell, Sarah B. Tracy, Bernstein Shur Sawyer & Nelson, Portland, ME; Neil Louis Coscio, Fiedelman & McGraw, [\*\*74] Jericho, NY.

For RS OLDSCO, Inc. f/k/a Rexall Sundown, Inc., Defendant (1:04-md-01598-JSR): Patrick. Lysaught, Baker, Sterchi, Cowden & Rice, L.L.C., Kansas City, MO.

For Entrenet Nutritionals, Inc., Defendant (1:04-md-01598-JSR): Jeannine Louise Lee, Robert William Vaccaro, Flynn, Gaskins & Bennett, LLP, Minneapolis, MN.

For Fran's Health Natural Foods, Defendant (1:04-md-01598-JSR): Jennifer Snyder Heis, Ulmer & Berne, Cincinnati, OH; Stephen C. Merriam, Ulmer & Berne L.L.P., Cleveland, OH.

For Novartis Consumer Health, Inc., Defendant (1:04-md-01598-JSR): Lori Blake Leskin, Kaye Scholer, LLP, New York, NY.

For Metabolife Int'l. Inc., Alpine Health Products LLC, Defendants (1:04-md-01598-JSR): Baxter W. Banowsky, Dallas, TX; Scott D. Levine, Banowsky, Betz & Levine, Dallas, TX.

For Chemins Company Inc, The, Defendant (1:04-md-01598-JSR): Baxter W. Banowsky, Banowsky, Betz & Levine, P.C, Dallas, TX; John Payne, Honolulu, HI; Scott D. Levine,

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Banowsky, Betz & Levine, Dallas, TX.

For Metabolife International Inc., Chemins Company Inc., Alpine Health Products, LLC,  
Defendants (1:04-md-01598-JSR): Michael G. Terry, David Lesley Jones, Hartline Dacus, [\*\*75]  
Corpus Christi, TX; Darrell Lee Barger, Hartline Dacus Barger Dreyer & Kern, Corpus Christi, TX.

For Europa Sports Products, Inc., Defendant (1:04-md-01598-JSR): James G. Munisteri, Gardere  
Wynne Sewell LLP, Houston, Tx.

For Experimental Applied Sciences, Inc., Defendant (1:04-md-01598-JSR): Lawrence Henry  
Cooke, II, Venable LLP, New York, NY.

For Supervalu, Inc., Defendant (1:04-md-01598-JSR): Louise A. Behrendt, Stich, Angell, Kreidler  
and Dodge P.A., Minneapolis, MN.

For Premier Marketing, Defendant (1:04-md-01598-JSR): Drew Brown, Jonathan A.  
Berkelhammer, Smith Moore LLP, Greensboro, NC.

For Vitamin Planet, Inc., Defendant (1:04-md-01598-JSR): Andrew Stewart Ashworth, Gabriel and  
Ashworth PLLC, Scottsdale, AZ.

For Murphy Oil USA, Inc., Defendant (1:04-md-01598-JSR): Mark Clarence Hegarty, Shook Hardy  
& Bacon, LLP, Kansas City, MO.

For Alimentation Couche-Tard, Inc., Defendant (1:04-md-01598-JSR): April L. Watson, Jack M.  
Allmont, Sessions, Fishman, & Nathan, LLP, New Orleans, LA; Michael D. Meyer, Michael D.  
Meyer, Attorney At Law, New Orleans, LA.

For Kmart of Michigan, Inc., Defendant (1:04-md-01598-JSR): Joseph E. Kilpatrick, Jr., Kilpatrick,  
[\*\*76] Williams & Meeks, L.L.P., Little Rock, AR.

For Wal-Mart Corporation, Defendant (1:04-md-01598-JSR): J. David Wall, Bassett Law Firm,  
Fayetteville, AR; Dennis L Kennedy, Lionel Sawyer & Collins, Las Vegas, NV; Leah A Ayala,  
Lionel Sawyer & Collins, Las Vegas, NV.

For Nutraceutical Corporation, Nutraceutical Corporation, Defendant (1:04-md-01598-JSR): Daniel  
J. Gerber, David A. Osso, Rumberger, Kirk & Caldwell, Orlando, FL.

For Timothy A. McLaughlin, Defendant (1:04-md-01598-JSR): Bernard R. Nevoral, Bernard R.  
Nevoral and Associates, Ltd., Bernard Roman Nevoral, David F. Szczecin, Bernard R. Nevoral and  
Associates Ltd, Chicago, IL; Thomas Edward Engel, Engel & McCarney, New York, NY.

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For EAS, Inc., Abbott Laboratories, Defendants (1:04-md-01598-JSR): Brien M. Penn, Venable, L.L.P., Baltimore, MD US; Michael B. MacWilliams, Paul F. Strain, Venable LLP, Baltimore, MD.

For Sentry Supplement Company, Defendant (1:04-md-01598-JSR): Julianne Farnsworth, Farnsworth Law Firm LLC, Charleston, SC.

For Aim for Health, Inc., Defendant (1:04-md-01598-JSR): John Otho Payne, Huckabay, Munson, Rowlett & Moore, P.A., Little Rock, AR.

For Nu Lifestyles, LLC, Defendant [\*\*77] (1:04-md-01598-JSR): Kevin R. Connors, Vorys Sater Seymour & Pease, Columbus, OH US.

For Lori Cohen, Great Neck Medical Group, Defendants (1:04-md-01598-JSR): Marcy Dorothy Sheinwold, Lewis Johs Avallone Aviles, LLP, Melville, NY.

For The Burgess Group Inc., Defendant (1:04-md-01598-JSR): Keith D. Silverstein, Silverstein, Hurwitz & Stern, LLP, New York, NY.

For Vitamin World, Inc., Defendant (1:04-md-01598-JSR): Mark A. Kinzie, Ryan G. Vacca, Stinson & Morrison, St. Louis, MO; Michael Joseph Suffern, Ulmer and Berne, Columbus, OH; Tiffany Reece Clark, Ulmer and Berne, Columbus, OH.

For Sam's East, Inc., Defendant (1:04-md-01598-JSR): Jeffrey F. Peck, Ulmer & Berne, Cincinnati, OH; Tiffany Reece Clark, Ulmer and Berne, Columbus, OH.

For Mike Walker, Defendant (1:04-md-01598-JSR): Jeffrey F. Peck, Ulmer & Berne, Cincinnati, OH.

For Raymond Finnie, Defendant (1:04-md-01598-JSR): Marc S. Wallis, Newman Bronson & Wallis, St. Louis, MO US; Mark I. Bronson, Newman Bronson & Wallis, St. Louis, MO.

For Sitrick and Company, Movant (1:04-md-01598-JSR): Robert Gaylord Smith, Lewis Bribois Bisgaard & Smith, San Diego, CA.

For Jennifer Shaffer Maxwell, Movant [\*\*78] (1:04-md-01598-JSR): Scott J. Eldredge, Burg Simpson Eldredge Hersh & Jardine, P.C, Englewood, CO.

For TL Administration Corp., Changes International, Inc., ThirdParty Plaintiffs (1:04-md-01598-JSR): Joseph Paul Thomas, Ulmer & Berne, Cincinnati, OH.

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For The Burgess Group Simply Weight Loss, ThirdParty Plaintiff (1:04-md-01598-JSR): Keith D. Silverstein, Silverstein, Hurwitz & Stern, LLP, New York, NY.

For Sportika Export, Inc., ThirdParty Defendant (1:04-md-01598-JSR): Robert F. Redmond, Jr., Williams Mullen, Richmond, VA.

For Bio-Mark International, Inc., ThirdParty Defendant (1:04-md-01598-JSR): Robert Gerald Chambers, Jr., Turner, Padget, Graham and Laney, Charleston, SC US.

For Mellissa Barr, Claimant (1:04-md-01598-JSR): Lisa J. Frisella, The Mogin Law Firm, P.C., San Diego, CA.

For Official Committee of Ephedra Claimants of TL Administration Corporation and TL Administration Inc., f/k/a Twinlab Corporation and Twin Laboratories Inc., Claimant (1:04-md-01598-JSR): David J. Molton, Brown Rudnick Berlack Israels, LLP, New York, NY.

For Ozan Cirak, Claimant (1:04-md-01598-JSR): John Daniel Goldsmith, Trennan, Kemker, etal., Tampa, FL.

For [\*\*79] Wal-Mart Stores Inc., Cross Claimant (1:04-md-01598-JSR): Willie Ben Daw, III, Daw & Ray, P.C., Houston, TX.

For Kmart of Michigan, Inc., Cross Claimant (1:04-md-01598-JSR): Joseph E. Kilpatrick, Jr., Kilpatrick, Williams & Meeks, L.L.P., Little Rock, AR.

For Randall L. Heilman, ADR Provider (1:04-md-01598-JSR): Frank Steven Pollock, Brownstein Vitale & Weiss, Philadelphia, PA.

For Esquire Arnold Levin, ADR Provider (1:04-md-01598-JSR): Arnold Levin, Levin, Fishbein, Sedran & Berma, Philadelphia, PA.

For Basic Research LLC, ADR Provider (1:04-md-01598-JSR): Brian Eldridge, Kathleen Mary McDonough, Segal McCambrige Singer & Mahoney (III), Chicago, Il; Katherine Sleeker, Segal, McCambridge, Singer, Mahoney, Chicago, IL; Robert Richard Brooks-Rigolosi, Segal McCambridge Singer & Mahoney, Ltd., New York, NY.

For RSM Richter Inc., as Plaintiff and Foreign Representative of the Foreign Applicants, Bankruptcy Movant (1:04-md-01598-JSR): Daniel Joseph Guyder, Allen & Overy, LLP, New York, NY.

For Official Committee of Unsecured Creditors of Metabolife International, Inc., Interested Party

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(1:04-md-01598-JSR): David J. Molton, Brown Rudnick Berlack Israels, LLP, [\*\*80] New York, NY.

For Ad Hoc Committee of Tort Claimants, Interested Party (1:04-md-01598-JSR): William R. Baldiga, Brown Rudnick Berlack Israels LLP, Boston, MA.

For Annabelle & Celestin Jaramillo, Interested Party (1:04-md-01598-JSR): Joe L. McClaugherty, McClaugherty & Silver, P.C, Santa Fe, NM.

For Candace Ishman, Interested Party (1:04-md-01598-JSR): Genevieve Nichols, Coffey and Associates, St. Louis, MO.

For PCC, All Plaintiffs (1:04-md-01598-JSR): Robert G. Rikard, James C. Anders, P.A. & Associates, Columbia, SC; Thomas Philip Cartmell, Wagstaff & Cartmell, LLP, Kansas City, MO; Janet Gilligan Abaray, Lopez, Hodes, Restaino, Milman & Skikos, Cincinnati, OH.

For TL Administration Corp., ThirdParty Plaintiff (1:04-md-01598-JSR): Rex Allen Littrell, Ulmer and Berne, Columbus, OH.

For Changes International, Inc., TL Administration Inc., TL Administration Corp., ThirdParty Plaintiffs (1:04-md-01598-JSR): Tiffany Reece Clark, Ulmer and Berne, Columbus, OH.

For Vitalabs, Inc., Cross Claimant (1:04-md-01598-JSR): Frank James Raia, Rivkin, Radler, LLP, Uniondale, NY; Joseph Kenneth Poe, Rivkin, Radler, LLP, Uniondale, NY.

For Trim International, [\*\*81] Inc., Vita Quest International, Inc., Cross Defendants (1:04-md-01598-JSR): Steven A. Stadtmauer, Harris Beach, LLP, New York, NY.

For Twinlab Direct, Inc. (d/b/a Changes International, Inc.), TL Administration Inc., ThirdParty Plaintiffs (1:04-md-01598-JSR): Denise Michelle Smith, Ulmer & Berne, Cincinnati, OH.

For Vitaquest International Inc., ThirdParty Defendant (1:04-md-01598-JSR): Steven A. Stadtmauer, Harris Beach, LLP, New York, NY.

For Kabco Pharmaceuticals, Inc., Cross Claimant (1:04-md-01598-JSR): James Patrick Donovan, Wilson ElserMoskowitz Edelman & Dicker LLP, White Plains, NY.

For Vitalabs, Inc., Cross Defendant (1:04-md-01598-JSR): Joseph Kenneth Poe, Rivkin, Radler, LLP, Uniondale, NY.

For GN Oldco Corp. f/k/a General Nutrition Corporation, Cross Claimant (1:04-md-01598-JSR):

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Michael Joseph Suffern, Ulmer and Berne, Columbus, OH.

For Gold Line Nutritional, Inc., Cross Defendant (1:04-md-01598-JSR): Philip Gregory Haddad, MacCorkle, Lavender, Casey & Sweeney, Pllc, Morgantown, WV.

For Salons Only, Inc., Cross Claimant (1:04-md-01598-JSR): Michael L. Klein, Greenman, Lacy, Klein, O'harra & Heffron, Oceanside, CA.

For GMP Laboratories [\*\*82] of America, Inc., a California Corporation, Cross Defendant (1:04-md-01598-JSR): Thomas Fitch Goodman, Gregory Brian Smith Jackson, Miller & Martin PLLC, Nashville, TN; James A. Beakes, III, Miller & Miller, Pllc, Nashville, TN.

For GMP Laboratories of America, Inc., a California Corporation, Counter Claimant (1:04-md-01598-JSR): Thomas Fitch Goodman.

**JUDGES:** JED S. RAKOFF, U.S.D.J.

**OPINION BY:** JED S. RAKOFF

## **OPINION**

### **[\*334] OPINION AND ORDER**

JED S. RAKOFF, U.S.D.J.

Before the substance known as ephedra was banned by the U.S. Food and Drug Administration in 2004, a Canadian-based company named Muscletech Research and Development, Inc. (here referred to, along with its subsidiaries, as "Muscletech") marketed products containing ephedra in the United States. Some of the consumers suffered severe injuries, such as heart attacks and strokes, and eventually more than thirty civil actions for personal injuries and wrongful deaths allegedly caused by ephedra were filed against Muscletech in state and federal courts in the United States. As part of the *In re Ephedra Products Liability Litigation*, the federal cases were subsequently transferred to this Court.

Early in 2006, Muscletech commenced [\*\*83] an insolvency proceeding in Ontario Superior Court pursuant to Canada's Companies' Creditors Arrangement Act. The Ontario Court appointed RSM Richter, Inc. as Monitor, and the Monitor, in turn, appeared in this Court as the designated foreign representative of the Ontario Court. Acting pursuant to the recently enacted Chapter 15 of the Bankruptcy Code, 11 U.S.C. §§ 1501 *et seq.*,<sup>1</sup> this Court eventually granted, following several hearings, the Monitor's motion for an order recognizing the Canadian proceeding as a "foreign main proceeding," *i.e.*, "a foreign proceeding pending in the country where the debtor has the center of its main interests." 11 U.S.C. § 1502; *see* Order, Mar. 2, 2006. Thereafter, the state cases against Muscletech were transferred to this Court pursuant to 28 U.S.C. § 157(b)(5) and consolidated with

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the previously transferred federal cases. *See* Case Management Order No. 25 P 4, May 22, 2006.

1 Chapter 15, which took effect in October 2005, was derived from the Model Law on Cross-Border Insolvency drafted by the United Nations Commission on International Trade Law ("UNCITRAL").

[\*\*84] Meanwhile, in Canada, the Monitor and other interested parties negotiated a Claims Resolution Procedure (the "Procedure") designed to speedily assess and value all creditor claims, including the claims of the plaintiffs in the Muscletech actions in the United States, who by this time had filed claims and otherwise appeared in the Ontario insolvency proceeding. The Procedure was approved by the Ontario Court, with the consent of the vast majority of claimants, on June 8, 2006 (the "June 8 Order"). On June 16, 2006, the Monitor moved pursuant to 11 U.S.C. §§ 105(a) and 1521 for an order recognizing and enforcing the June 8 Order within the United States. Four claimants filed papers in opposition. On July 12, 2006, after briefing and oral argument, the Court granted the Monitor's motion, contingent on the Ontario Court's approving certain amendments to the Procedure designed to assure greater clarity and procedural fairness. The Ontario Court approved these amendments on August 1, 2006 (the "August 1 Order"). Accordingly, this Court now grants the Monitor's motion to recognize and enforce in the United States the August 1 Order approving the amended Procedure. The [\*\*85] reasons for this ruling are as follows:

[HN1] Section 1521(a) of the Bankruptcy Code permits this Court, "[u]pon the recognition [\*\*335] of a foreign proceeding," to grant, at the foreign representative's request, "any appropriate relief" "necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors." 11 U.S.C. § 1521(a). [HN2] Section 105(a) of the Bankruptcy Code similarly provides, in relevant part, that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." *Id.* § 105(a). In the instant application, the Monitor asks the Court to recognize and enforce a foreign procedure that implements a claims resolution process that easily falls within the purview of §§ 105(a) and 1521(a).

[HN3] Section 1506 of the Bankruptcy Code provides, however, that "[n]othing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States." The June 8 Order and the August 1 Order embodying the amended Procedure provide for mandatory mediation [\*\*86] and, if the mediation results in a plan approved by specified majorities of creditors, for the estimation and liquidation of the remaining claims by a Claims Officer appointed by the Ontario Court. *See* Notice of Motion, Jun. 16, 2006, Exh. B (the June 8 Order); Notice of Entry, Aug. 1, 2006, Exh. A (the August 1 Order). Primarily on the basis of § 1506, the four objectors ask this Court to refuse to recognize and enforce the Procedure, arguing that it is manifestly contrary to the public policy of



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the United States in that it deprives the objectors of due process and trial by jury.

As to due process, while most of the objectors' objections are frivolous, there were various paragraphs of the June 8 Order that conceivably could have been read as permitting the Claims Officer to refuse to receive evidence and to liquidate claims without granting interested parties an opportunity to be heard. At this Court's initiative, the Monitor proposed amendments to the June 8 Order that entirely cured these problems. The Ontario Court promptly adopted these amendments in its August 1 Order, and it is only as a result that this Court now gives its approval to recognition and enforcement of the [\*\*87] Procedure.

As for the objection that enforcement of the Procedure effectively denies the objecting plaintiffs the right to jury trial that they would have retained if their cases went to trial in the United States, it may well be the case, as the Monitor argues, that the objectors waived this objection when they filed their claims in the Ontario Court and appeared there to argue the same objections they here make.<sup>2</sup> See Reply Mem. of Law of RSM Richter Inc. 7; Tr. 7/6/2006, at 54, 57-58. But the Court does not reach the waiver issue because it finds that, in any event, neither § 1506 nor any other law<sup>3</sup> prevents a United States [\*336] court from giving recognition and enforcement to a foreign insolvency procedure for liquidating claims simply because the procedure alone does not include a right to jury.

2 Although it might also be argued that the objection to the denial of a jury trial is premature because, at this stage, the Claims Officer has not begun the liquidation process, the Court agrees with the objectors that denial of a jury trial impacts their bargaining position at every stage of the implementation of the Procedure.

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3 The objectors also purport to rely on 11 U.S.C. § 1507, which, however, adds nothing to the arguments made under § 1506. Although none of the objectors relied on, or even cited, 28 U.S.C. § 1411 -- which provides that, except in the case of involuntary bankruptcies, "this chapter and *title 11* do not affect any right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim," 28 U.S.C. § 1411(a) (emphasis added) -- nevertheless, the Court, *sua sponte*, raised § 1411 at the time of oral argument and gave the objectors ample opportunity to address its relevance. See Tr., 7/6/2006, at 9-75.

In adopting Chapter 15, Congress instructed the courts that the exception provided therein for refusing to take actions "manifestly contrary to the public policy of the United States" should be "narrowly interpreted," as "[t]he word 'manifestly' in international usage restricts the public policy exception to the most fundamental policies of the [\*\*89] United States." H.R. Rep. No. 109-31(I),

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at 109, *as reprinted* in 2005 U.S.C.C.A.N. 88, 172. This is the standard meaning accorded the word "manifestly" in international law when it refers to a nation's public policy. Indeed, the official Guide to the Enactment of the Model Law on Cross-Border Insolvency (from which Chapter 15 derives) expressly states that

[t]he purpose of the expression "manifestly," used also in many other international legal texts as a qualifier of the expression "public policy," is to emphasize that public policy exceptions should be interpreted restrictively and that article 6<sup>4</sup> is only intended to be invoked under exceptional circumstances concerning matters of fundamental importance for the enacting State.

United Nations General Assembly, Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency, P 89, U.N. Doc A/CN.9/442 (1997). This takes on even added relevance when one recognizes that the House Judiciary Committee, in enacting Chapter 15, specifically indicated that the Guide "should be consulted for guidance as to the meaning and purpose of [Chapter 15's] provisions." H.R. Rep. No. 109-31(I), at 106 n.101, *as reprinted* [\*\*90] in 2005 U.S.C.C.A.N. 169 n.101.

4 "Article 6" refers to Article 6 of the Model Law, from which section 1506 is taken virtually verbatim.

Determining what foreign procedures are "manifestly contrary to the public policy of the United States" is, moreover, familiar territory to federal courts, who have long had to confront similar issues when determining whether or not to enforce foreign judgments rendered on the basis of foreign proceedings that were plainly fair but that did not include some commonplace of American practice. As early as 1895, in the leading case of *Hilton v. Guyot*, 159 U.S. 113, 16 S. Ct. 139, 40 L. Ed. 95 (1895), the Supreme Court determined that a foreign judgment should generally be accorded comity if "its proceedings are according to the course of a civilized jurisprudence," *i.e.*, fair and impartial. *Hilton*, 159 U.S. at 205-06. More recently, in *Ackermann v. Levine*, 788 F.2d 830 (2d Cir. 1986), the Second Circuit expressly reaffirmed "[t]he narrowness of the [\*\*91] public policy exception to enforcement [of foreign judgments]," adding that, "[a]s Judge Cardozo so lucidly observed: 'We are not so provincial as to say that every solution of a problem is wrong because we deal with it otherwise at home.'" *Ackermann*, 788 F.2d at 842 (quoting *Loucks v. Standard Oil Co.*, 224 N.Y. 99, 110-11, 120 N.E. 198 (1918) (Cardozo, J.)).

Accordingly, federal courts have enforced against U.S. citizens foreign judgments rendered by foreign courts for whom the very idea of a jury trial is foreign. Only last year, for example, the district court for the Northern District of Ohio granted summary judgment to a plaintiff seeking to enforce against a U.S. company a foreign judgment given by the Supreme Court of the Republic of Korea. [\*\*337] *See Samyang Food Co. v. Pneumatic Scale Corp.*, 2005 U.S. Dist. LEXIS 25374, No. 05 Civ. 636, 2005 WL 2711526 (N.D. Ohio Oct. 21, 2005). Against defendant's argument that the Korean judgment should not be recognized because South Korea did not afford defendant a jury

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trial, the district court held that all that was required was a fair and impartial hearing and that, despite the absence of jury trial, the Korean procedure was eminently [\*\*92] fair. *Samyang Food*, 2005 U.S. Dist. LEXIS 25374, 2005 WL 2711526 at \*6-\*7. As the district court noted, "[t]he Korean judicial system provides substantially the same substantive and procedural due process protections as those afforded by Ohio," viz., "notice, the right to . . . legal counsel, the right to present evidence and witnesses and to examine evidence offered against them, and a right to appeal to a higher court." *Samyang Food*, 2005 U.S. Dist. LEXIS 25374, 2005 WL 2711526 at \*6. All these protections are likewise present in the Ontario Court.

Similarly, federal courts, in the Second Circuit and elsewhere, have regularly dismissed U.S. cases in favor of foreign forums despite the objection that the foreign forum provides no trial by jury. *See, e.g., Lockman Found. v. Evangelical Alliance Mission*, 930 F.2d 764, 768 (9th Cir. 1991) (finding, in affirming forum non conveniens dismissal, that fact that Japan would not conduct jury trial to resolve dispute "does not render Japanese courts an inadequate forum"); *In re Union Carbide Corp. Gas Plant Disaster at Bhopal*, 809 F.2d 195, 199, 202 (2d Cir. 1987) (affirming district court's forum non conveniens dismissal [\*\*93] based on finding that Indian courts were adequate forum despite, *inter alia*, absence of juries).

Obviously, the constitutional right to a jury trial is an important component of our legal system, and § 1411 stresses its importance in the context of personal injury cases. But the notion that a fair and impartial verdict cannot be rendered in the absence of a jury trial defies the experience of most of the civilized world. Indeed, England, where the jury concept originated, has long since limited jury trials in civil proceedings to only those cases involving allegations of libel, slander, malicious prosecutions, fraud, and false imprisonment. *See* Richard L. Marcus, *Putting American Procedural Exceptionalism Into a Globalized Context*, 53 Am. J. Comp. L. 709, 712-13 (2005) (internal quotation omitted). The historic function of the jury to stand as a bulwark against government abuse plainly has limited application in the civil arena, and it is difficult to detect what unfairness a plaintiff suffers from having a civil case decided by a judge rather than a jury. Here, the objectors' primary claim of "prejudice" from the absence of a right to jury trial is simply [\*\*94] that it will give them less of a bargaining position in negotiating a settlement of their claims than they would have if a jury -- which, unlike the Claims Officer, would have no knowledge of competing claims -- were asked to value their claims. *See* Tr., 7/6/2006, at 37, 40. Deprivation of such bargaining advantage hardly rises to the level of imposing on plaintiffs some fundamental unfairness.

In any event, the Procedure here in issue, as amended, plainly affords claimants a fair and impartial proceeding. Nothing more is required by § 1506 or any other law.

Accordingly, for the foregoing reasons, the Court hereby recognizes and enforces the Claims Resolution Procedure initially promulgated by the Ontario Superior Court on June 8, 2006 and amended and adopted by the Ontario Superior Court on August 1, 2006.

JED S. RAKOFF, U.S.D.J.

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Dated: New York, New York

August 11, 2006

# TAB 4

CITATION: Hartford Computer Hardware, Inc. (Re), 2012 ONSC 964  
COURT FILE NO.: CV-11-9514-00CL  
DATE: 20120215

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

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

**APPLICATION OF HARTFORD COMPUTER HARDWARE, INC.  
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 FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION WITH RESPECT TO**

**RE: HARTFORD COMPUTER HARDWARE, INC., NEXICORE SERVICES,  
LLC, HARTFORD COMPUTER GROUP, INC. AND HARTFORD  
COMPUTER GOVERNMENT, INC., (COLLECTIVELY, THE  
"CHAPTER 11 DEBTORS"), Applicants**

**BEFORE: MORAWETZ J.**

**COUNSEL: Kyla Mahar and John Porter, for the Chapter 11 Debtors**

**Adrienne Glen, for FTI Consulting Canada, Inc., Information Officer**

**Jane Dietrich, for Avnet Inc.**

**HEARD &  
ENDORSED: February 1, 2012**

**REASONS  
RELEASED: February 15, 2012**

**ENDORSEMENT**

2012 ONSC 964 (CanLII)

[1] Hartford Computer Hardware, Inc. ("Hartford"), on its own behalf and in its capacity as foreign representative of Chapter 11 Debtors (the "Foreign Representative") brought a motion under s. 49 of the *Companies' Creditors Arrangement Act* (the "CCAA") for recognition and implementing in Canada the following Orders of the United States Bankruptcy Court for the Northern District of Illinois Eastern Division (the "U.S. Court") made in the proceedings commenced by the Chapter 11 Debtors:

- (i) the Final Utilities Order;
- (ii) the Bidding Procedures Order;
- (iii) the Final DIP Facility Order.

(collectively, the U.S. Orders")

[2] On December 12, 2011, the Chapter 11 Debtors commenced the Chapter 11 proceeding. The following day, I made an order granting certain interim relief to the Chapter 11 Debtors, including a stay of proceedings. On December 15, 2011, the U.S. Court made an order authorizing Hartford to act as the Foreign Representative of the Chapter 11 Debtors. On December 21, 2011, I made two orders, an Initial Recognition Order and a Supplemental Order that, among other things:

- (i) declared the Chapter 11 proceedings to be a "foreign main proceeding" pursuant to Part IV of the *CCAA*;
- (ii) recognized Hartford as the Foreign Representative of the Chapter 11 Debtors;
- (iii) appointed FTI as Information Officer in these proceedings;
- (iv) granted a stay of proceedings;
- (v) recognized and made effective in Canada certain "First Day Orders" of the U.S. Court including an Interim Utilities Order and Interim DIP Facility Order.

[3] On January 26, 2012, the U.S. Court made the U.S. Orders.

[4] The Foreign Representative is of the view that recognition of the U.S. Orders is necessary for the protection of the Chapter 11 Debtors' property and the interest of their creditors.

[5] The affidavit of Mr. Mittman and First Report of the Information Officer provide details with respect to the hearings in the U.S. Court on January 26, 2012 which resulted in the U. S. Court granting the U.S. Orders. The Utilities Order and the Bidding Procedures Order are relatively routine in nature and it is, in my view, appropriate to recognize and give effect to these orders.

[6] With respect to the Final DIP Facility Order, it is noted that paragraph 6 of this Order contains a partial “roll up” provision wherein all Cash Collateral in the possession or control of Chapter 11 Debtors on December 12, 2011 (the “Petition Date”) or coming into their possession after the Petition Date is deemed to have been remitted to the Pre-petition Secured Lender for application to and repayment of the Pre-petition revolving debt facility with a corresponding borrowing under the DIP Facility.

[7] In making the Final DIP Facility Order, the Information Officer reports that the U.S. Court found that good cause had been shown for entry of the Final DIP Facility Order, as the Chapter 11 Debtors’ ability to continue to use Cash Collateral was necessary to avoid immediate and irreparable harm to the Chapter 11 Debtors and their estates.

[8] The granting of the Final DIP Facility Order was supported by the Unsecured Creditors’ Committee. Certain objections were filed but the Order was granted after the U.S. Court heard the objections.

[9] The Information Officer reports that Canadian unsecured creditors will be treated no less favourably than U.S. unsecured creditors. Further, since a number of Canadian unsecured creditors are employees of the Chapter 11 Debtors, these creditors benefit from certain priority claims which they would not be entitled to under Canadian insolvency proceedings.

[10] The Information Officer and Chapter 11 Debtors recognize that in *CCAA* proceedings, a partial “roll up” provision would not be permissible as a result of s. 11.2 of the *CCAA*, which expressly provides that a DIP charge may not secure an obligation that exists before the Initial Order is made.

[11] Section 49 of the *CCAA* provides that, in recognizing an order of a foreign court, the court may make any order that it considers appropriate, provided the court is satisfied that it is necessary for the protection of the debtor company’s property or the interests of the creditor or creditors.

[12] It is necessary, in my view, to emphasize that this is a motion to recognize an order made in the “foreign main proceeding”. The Final DIP Facility Order was granted after a hearing in the U.S. Court. Further, it appears from the affidavit of Mr. Mittman that, as of the end of December 2011, the Chapter 11 Debtors had borrowed \$1 million under the Interim DIP Facility. The Cash Collateral on hand as of the Petition Date was effectively spent in the Chapter 11 Debtors’ operations and replaced with advances under the Interim DIP Facility in December 2011 such that all cash in the Chapter 11 Debtors’ accounts as of the date of the Final DIP Facility Order were proceeds from the Interim DIP Facility.

[13] The Information Officer has reported that, in the circumstances, there will be no material prejudice to Canadian creditors if this court recognizes the Final DIP Facility, and that nothing is being done that is contrary to the applicable provisions of the *CCAA*. The Information Officer is of the view that recognition of the Final DIP Facility Order is appropriate in the circumstances.



[14] A significant factor to take into account is that the Final DIP Facility Order was granted by the U.S. Court. In these circumstances, I see no basis for this court to second guess the decision of the U.S. Court.

[15] Based on the foregoing, I have concluded that recognition of the Final DIP Facility Order is necessary for the protection of the debtor company's property and for the interests of the creditors.

[16] In making this determination, I have also taken into account the provisions of s. 61(2) of the CCAA which is the public policy exception. This section reads: "Nothing in this Part prevents the court from refusing to do something that would be contrary to public policy".

[17] The public policy exception has its origins in the UNCITRAL Model Law on Cross-Border Insolvency. Article 6 of the Model Law provides: "Nothing in this Law prevents the court from refusing to take an action governed by this Law if the action would be manifestly contrary to the public policy of this State". It is also important to note that the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency (paragraphs 86-89) makes specific reference to the fact that the public policy exceptions should be interpreted restrictively.

[18] I am in agreement with the commentary in the Guide to Enactment to the effect that s. 61(2) should be interpreted restrictively. The Final DIP Facility Order does not, in my view, raise any public policies issues.

[19] I am satisfied that it is appropriate to grant the requested relief. The motion is granted and an order has been signed in the form requested to give effect to the foregoing.

2012 ONSC 964 (CanLI)

\_\_\_\_\_  
MORAWETZ J.

Date: February 15, 2012

# **TAB 5**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE MR. ) FRIDAY, THE 9<sup>th</sup>  
 )  
JUSTICE MORAWETZ ) DAY OF MARCH, 2012

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



APPLICATION OF HARTFORD COMPUTER HARDWARE, INC.  
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 FOR THE  
NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION WITH  
RESPECT TO HARTFORD COMPUTER HARDWARE, INC.,  
NEXICORE SERVICES, LLC, HARTFORD COMPUTER GROUP,  
INC. AND HARTFORD COMPUTER GOVERNMENT, INC.  
(COLLECTIVELY, THE "CHAPTER 11 DEBTORS")

RECOGNITION, APPROVAL AND VESTING ORDER

**THIS MOTION**, made by Hartford Computer Hardware, Inc. (the "Applicant"), in its capacity as the foreign representative (the "Foreign Representative") of the Chapter 11 Debtors in the proceedings commenced on December 12, 2011 in the United States Bankruptcy Court for the Northern District of Illinois Eastern Division (the "U.S. Court") under Chapter 11 of Title 11 of the United States Code (the "Chapter 11 Proceeding"), pursuant to section 49 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C.-36, as amended (the "CAA") for an Order, substantially in the form enclosed in the Applicant's Motion Record, recognizing the

Sale Order (as defined herein) granted by the U.S. Court was heard this day at 330 University Avenue, Toronto, Ontario;

ON READING the notice of motion dated March 2, 2012 (the "Notice of Motion"), the affidavit of Brian Mittman sworn on February 28, 2012, the affidavit of Alana Shepherd sworn on March 2, 2012 and the second report of FTI Consulting Canada Inc., in its capacity as Information Officer dated March 2, 2012 (the "Information Officer's Second Report"), each filed;

AND UPON HEARING the submissions of counsel for the Foreign Representative, counsel for the Information Officer, and counsel for Avnet, Inc. and Avnet International (Canada) Ltd. (the "Canadian Purchaser" and collectively with Avnet, Inc., the "Purchaser"), no one appearing for Delaware Street Capital Master Fund, L.P. (the "DIP Lender") or for any other person on the Service List although duly served as appears from the affidavit of service of Bobbie-Jo Brinkman sworn on March 5, 2012,

**SERVICE**

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

**RECOGNITION OF FOREIGN SALE ORDER**

2. THIS COURT ORDERS AND DECLARES that the Order authorizing the sale of property of the estates under U.S. Bankruptcy Code § 363 pursuant to the sale transaction (the "Transaction") contemplated by an asset purchase agreement between the Chapter 11 Debtors,

Hartford Computer Group, Inc. and Nexicore Services, LLC, and the Purchaser dated December 12, 2011 (the "Agreement") and the assumption and assignment of executory contracts and leases under U.S. Bankruptcy Code § 365 (the "Sale Order") of the U.S. Court made in the Chapter 11 Proceeding attached to this Order as Schedule "A" is hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA and shall be implemented and become effective in all provinces and territories of Canada upon the issuance of this Order in accordance with its terms.

**ADDITIONAL PROVISIONS REGARDING APPROVAL AND VESTING**

3. **THIS COURT ORDERS AND DECLARES** that The Chapter 11 Debtors are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and, in particular, for the conveyance of the Canadian Assets (as defined in the Agreement) to the Canadian Purchaser.

4. **THIS COURT ORDERS AND DECLARES** that upon Closing (as defined in the Agreement), all of the Chapter 11 Debtors' right, title and interest in and to the Canadian Assets described in the Agreement shall vest absolutely in the Canadian Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Supplemental Order of the Honourable Justice Morawetz dated December 21, 2011; and (ii) all charges, security interests or claims evidenced

by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Canadian Assets are hereby expunged and discharged as against the Canadian Assets.

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

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada), the relevant Chapter 11 Debtors are authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Chapter 11 Debtor’s records pertaining to the Chapter 11 Debtor’s past and current Canadian employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Chapter 11 Debtors.

7. **THIS COURT ORDERS** that, notwithstanding:  
(a) the pendency of these proceedings;

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

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

8. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario), Section 6 of the *Retail Sales Tax Act* (Ontario) and any equivalent or similar legislation under any province or territory in Canada and that such legislation does not apply to the Transaction.

9. **THIS COURT ORDERS AND DECLARES** that each of the Chapter 11 Debtors and the Purchaser have leave to reapply for a further Order or Orders that may be necessary to carry out the terms of the Transaction.

**INFORMATION OFFICER'S REPORT**

10. **THIS COURT ORDERS** that the Information Officer's Second Report and the activities of the Information Officer as described therein be and are hereby approved.

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



MAR 12 2012

A handwritten signature, possibly reading "A. Brown", written over a horizontal line.



**SCHEDULE "A"**

**Sale Order**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re: ) Chapter 11  
)  
HARTFORD COMPUTER HARDWARE, )  
INC., et al.,<sup>1</sup> ) Case No. 11-49744 (PSH)  
) (Joint Administration Pending)  
)  
Debtors. ) Hon. Pamela S. Hollis

**ORDER AUTHORIZING THE SALE OF PROPERTY OF THE ESTATES UNDER  
BANKRUPTCY CODE § 363 AND THE ASSUMPTION AND ASSIGNMENT OF  
EXECUTORY CONTRACTS AND LEASES UNDER BANKRUPTCY CODE § 365**

This matter comes before the Court for entry of a final order on the *Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a), 363, 365 and Fed. R. Bankr. P. 2002, 6004, 6006 for (I) Entry of an Order (A) Approving Bidding Procedures; (B) Granting Certain Bid Protections; (C) Approving Form and Manner of Sale Notices; (D) Setting Sale Hearing Date in Connection With Sale of Substantially All of Debtors' Assets; and (II) Entry of an Order (A) Approving the Sale of Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; (B) Authorizing the Assumption And Assignment of Certain Executory Contracts and Unexpired Leases; (C) the Assumption of Certain Liabilities; and (D) Granting Certain Related Relief (the "Motion")<sup>2</sup>*; the Court having reviewed the Motion, the *Declaration of Brian Mittman in Support of the Sale Motion*, and the *Declaration of Michael Levy in Support of the Sale Motion*; the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) venue is proper in this district pursuant to 28 U.S.C. § 1408 and 1409, (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (d) notice of the Motion is sufficient under the

<sup>1</sup> The Debtors are Hartford Computer Hardware, Inc. (FEIN 27-4297525), Nexicore Services, LLC (FEIN 03-0489686), Hartford Computer Group, Inc. (FEIN 36-2973523), and Hartford Computer Government, Inc (FEIN 20-0845960).

<sup>2</sup> Capitalized terms not defined herein shall have the meaning given to them in the Motion.

circumstances; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted in this order;

THE COURT FINDS AND CONCLUDES that:

1. In accordance with this Court's Order (i) Approving Bidding Procedures, (ii) Granting Bid Protections, (iii) Approving Form and Manner of Sale Notices, and (iv) Setting Sale Hearing Date in Connection With Sale of Substantially All of the Debtors' Assets (Docket No. 128) (the "Sale Procedures Order"), the Debtors served notice of, among other things, the Motion, the proposed sale of the Acquired Assets, the proposed assumption and assignment of the Contracts and Leases, the proposed Cure Amounts, the opportunity to submit Competing Bids, the deadline to object to the Court's entry of an order granting the Motion, and the date and time of the final hearing on the Motion on all parties required to receive such notice under the Sale Procedures Order, including, without limitation, all creditors and all counterparties to the Contracts and Leases. (See Affidavit of Service filed on February 9, 2012, Docket No. 158; Affidavit of Service filed on February 13, 2012, Docket No. 168.) In addition, pursuant to the Sale Procedures Order, the Debtors caused to be published a notice of the sale, the deadline to object to the Court's entry of an order granting the Motion, and the date and time of the final hearing on the Motion in the national edition of The Wall Street Journal. (See Affidavit of Publication of Notice of Sale in The Wall Street Journal filed on February 9, 2012, Docket No. 160.) Such notice was adequate under Bankruptcy Rules 2002, 6004, and 6006 and the circumstances of these cases; no additional notice is necessary.

2. The Debtors received one Qualified Bid, which was made by the stalking-horse bidders Avnet, Inc. and Avnet International (Canada) Ltd. (collectively, the "Purchaser") pursuant to the Asset Purchase Agreement dated December 12, 2011 (the "Agreement").

3. Having received no Qualified Bids from any Qualified Bidders by the deadlines set forth in the Sale Procedures Order, other than the Purchaser's Qualified Bid, the Debtors cancelled the Auction.

4. The Court considered the Motion and conducted a hearing (the "Sale Hearing") on February 28, 2012, at which statements of counsel for the Debtors, any objectors, the Official Committee of Unsecured Creditors (the "Committee"), Delaware Street Capital Master Fund, L.P. ("Delaware Street"), and the Purchaser were heard.

5. The Debtor has identified, and the Court recognizes, the Purchaser as the prevailing bidder for the Acquired Assets in accordance with the Sale Procedures Order. The Purchaser's bid is the highest and best bid for the Acquired Assets, and the Purchase Price represents the highest value for the Acquired Assets under the circumstances. With the entry of this Order, the Purchaser's bid has no material unsatisfied conditions, is not subject to significant execution risk, and therefore should be able to close pursuant to the terms of the Agreement.

6. The transactions contemplated in the Agreement and this Order (the "Transaction"), including an immediate sale of the Acquired Assets to the Purchaser and the Debtors' assumption and assignment to the Purchaser of the Assumed Contracts, are in the best interests of the estates and creditors.

7. The Debtors have demonstrated sufficient and sound business justifications and compelling circumstances for the sale of the Acquired Assets other than in the ordinary course of the Debtors' business under Bankruptcy Code § 363(b) before, and outside of, a plan of reorganization because, among other things, the immediate consummation of the Transaction with the Purchaser is necessary and appropriate to maximize the value of the estates. Entry of an

order in the form and substance of this Order is a necessary condition precedent to the Purchaser's consummation of the Transaction.

8. The Purchaser and the Debtors negotiated the sale of the Acquired Assets without collusion, in good faith, and at arm's length. The Purchaser is, therefore, entitled to the protections afforded under Bankruptcy Code § 363(m). There was no agreement among the Purchaser, any of the Qualified Bidders, and any other potential bidder for the Acquired Assets, to control the price to be paid for the Acquired Assets under the Motion. Accordingly, nothing would cause the sale authorized by this Order to be avoided under Bankruptcy Code § 363(n).

9. The Debtors are the sole, lawful owners of the Acquired Assets. The transfer of the Acquired Assets to the Purchaser under the Agreement will be a legal, valid, and effective transfer of the Acquired Assets, vesting the Purchaser with all title to the Acquired Assets free and clear of all liens, claims (as defined in Bankruptcy Code § 101(5)), encumbrances, obligations, liabilities, contractual commitments, or interests of any kind (collectively, the "Interests"), including without limitation (i) any Interest that purports to give a party a right to forfeit, modify, or terminate the Debtors' interests in the Acquired Assets, or any similar right, and (ii) any Interest relating to taxes arising under or out of, in connection with, or in any way relating to the operation of the Debtors' business before the closing of the sale authorized in this Order. All Interests shall attach to the proceeds, including, without limitation, all elements of the "Purchase Price" as defined in Section 3.2(a) of the Agreement, attributable to the property against or in which such Interests are asserted, subject to the terms of such Interests, with the same validity and in the same priority that such Interests now have against the Acquired Assets or their proceeds, subject to any rights, claims, and defenses the Debtors or their estates may possess with respect to such Interests, including any ultimately successful "Challenge" (as that

term is defined in the *Final Order (I) Authorizing the Debtors to Obtain Post-Petition Financing Pursuant to 11 U.S.C. § 364, (II) Authorizing the Use of Cash Collateral Pursuant to 11 U.S.C. § 363, (III) Granting Adequate Protection to the Prepetition Secured Lender Pursuant to 11 U.S.C. §§ 361 and 363, and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001*, hereinafter the "Final DIP Financing Order") [Dkt. No. 137] asserted by any party ultimately determined to have the requisite standing.

10. The Debtors may sell the Acquired Assets free and clear of all Interests because, with respect to each Interest, one or more of the standards set forth in Bankruptcy Code § 363(f)(1)-(5) is satisfied. Each entity asserting an Interest in the Acquired Assets: (i) has, subject to the terms and conditions of this Order, consented or is deemed to have consented to the sale of the Acquired Assets; (ii) has an Interest that is subject to bona fide dispute; (iii) could be compelled in a legal or equitable proceeding to accept money satisfaction of its Interest; or (iv) otherwise falls within the provisions of Bankruptcy Code § 363(f). Those holders of Interests who did not timely object to the Motion are deemed, subject to the terms of this Order, to have consented under Bankruptcy Code § 363(f)(2). All holders of Interests are adequately protected by having their Interests attach to the proceeds ultimately attributable to the property against or in which such Interests are asserted.

11. The Debtors' assumption and assignment to the Purchaser of the Assumed Contracts is integral to the Agreement and is in the best interests of the Debtors and their estates, creditors, and all other parties in interest, and represents the reasonable exercise of the Debtors' business judgment. The Debtors or the Purchaser have, to the extent necessary, cured or provided adequate assurance of cure of any default existing before the date of this Order with respect to the Assumed Contracts within the meaning of Bankruptcy Code § 365(b)(1)(A) and (f)(2)(A).

The Purchaser's promise to perform the obligations under the Assumed Contracts after closing constitutes adequate assurance of future performance within the meaning of Bankruptcy Code § 365(b)(1)(C), (b)(3) (to the extent applicable), and (f)(2)(B).

12. The Transaction may include the transfer of Personally Identifiable Information, as defined in Bankruptcy Code § 101(41A). No Consumer Privacy Ombudsman need be appointed because the Purchaser has agreed to adhere to any privacy policies applying to the Debtors.

13. The objections filed by any objectors have been resolved or withdrawn based on the provisions of this Order to which all objectors, the Purchaser, and the Debtors stipulate as indicated by their respective signatures of counsel below.

14. Good cause appears for granting the relief requested in the Motion.

IT IS HEREBY ORDERED as follows:

A. The Motion is GRANTED as provided in this Order.

B. All objections to the Motion or the relief requested in the Motion that have not been made, withdrawn, waived, or settled, and all reservations of rights included any such objection, are overruled on the merits.

C. The Agreement and the Transaction are APPROVED as provided in this Order. The Debtors are authorized and directed to: (a) execute the Agreement, along with any additional documents that may be reasonably necessary or appropriate to implement the Agreement but do not materially change the its terms; (b) consummate the Transaction; and (c) take any action reasonably necessary to implement the Transaction in a manner not inconsistent with this Order. The Agreement and any related agreements and documents may be modified by the parties to it, in writing and in accordance with its terms, without further order of this Court if the modification

does not materially and adversely affect the estates, and upon three (3) business days' prior written notice to the Committee and Delaware Street.

D. The stays of this Order under Bankruptcy Rules 6004(h) and 6006(d) are waived. This Order is effective and enforceable immediately on entry.

E. Except as expressly provided in the Agreement or this Order, the sale of the Acquired Assets to the Purchaser is free and clear of all Interests under Bankruptcy Code § 363(f). All Interests are released, terminated, and discharged as to the Acquired Assets and the Purchaser (and its successors and assigns). Any Interest, if valid, legal, and enforceable, shall attach to, and be satisfied, if at all, from the proceeds of the sale, including, without limitation, all elements of the "Purchase Price" as set forth in Section 3.2(a) of the Agreement, in the same order and priority as the Interest had in the Acquired Assets before the sale.

F. The Transaction, the Agreement, and all of its related documents constitute a duly authorized, legally valid, and binding transfer, specifically performable and enforceable against, and not subject to rejection or avoidance by, the Debtors or any representative of the Debtors' estates under any chapter of the Bankruptcy Code. Every federal, state, and local governmental agency or department is directed to accept any document or instrument necessary and appropriate to consummate the transactions contemplated by this Order. The Transaction may not be avoided under Bankruptcy Code § 363(n).

G. The purchase of the Acquired Assets is undertaken by the Purchaser in good faith, as that term is used in Bankruptcy Code §363(m). Accordingly, the reversal or modification on appeal of the authorization provided in this Order to consummate the Transaction will not affect the validity of the sale of the Acquired Assets to the Purchaser, unless this Order is duly stayed



pending such an appeal. The Purchaser, as a purchaser in good faith of the Acquired Assets, is entitled to all protections afforded under Bankruptcy Code § 363(m).

H. Under no circumstance may the Purchaser or any of its affiliates be deemed a successor of any one of the Debtors for any Interest in the Acquired Assets. Any person holding an Interest in any component of the Acquired Assets is permanently enjoined from asserting, prosecuting, or otherwise pursuing its Interest against the Purchaser, its property, its affiliates, its successors, its assignees, its employees, its agents, or against the Acquired Assets with respect to that Interest. The provisions of this paragraph and all other provisions of this Order are intended to have effect in all federal, state, and local jurisdictions in the United States and, in accordance with the Recognition Orders, in all federal, provincial, and local jurisdictions in Canada.

I. On and after the closing of the Transaction, no holder of an Interest or any claim against any Debtor or its estate may interfere with Purchaser's title to, or use and enjoyment of, the Acquired Assets. All entities, including without limitation the Debtors, their present and former employees, administrative agencies, governmental tax and regulatory authorities, secretaries of state, federal, state, and local officials, lenders, contract parties, bidders, lessors, warehousemen, customs brokers, freight forwarders, carriers, and other parties in possession of any Acquired Assets at any time, all creditors, and all other persons holding Interests of any kind arising under or out of, in connection with, or in any way relating to, the Debtors, the Acquired Assets, the operation of the Debtors' business before the closing of the Transaction, or with respect to any Interests arising out of or related to the Transaction, are forever barred and permanently enjoined from commencing, prosecuting, or continuing in any manner any action or other proceeding of any kind against the Purchaser, its property, its successors and assigns, its employees and agents, its affiliates, or the Acquired Assets. Following the Closing Date, no

holder of an Interest in the Debtors may interfere in any way with the Purchaser's title to or use and enjoyment of the Acquired Assets based on or related to such Interest, or any actions that the Debtors may take in these cases.

J. Any entity in possession of or control over any component of the Acquired Assets must surrender such possession or control either to the Debtors before the Transaction's closing or the Purchaser no later than the Transaction's closing.

K. The Debtors are authorized to assume and assign to the Purchaser the Assumed Contracts effective as of the entry of this Order. Each counterparty to an Assumed Contract is forever barred and enjoined from asserting against the Debtors or the Purchaser, or their respective property, any assignment fee, default, breach, claim, pecuniary loss, liability, or obligation arising under or related to the Assumed Contracts existing as of the closing of the Transaction. With respect to the Transaction and the assignment of the Assumed Contracts to the Purchaser as authorized in this Order, any provision in any Assumed Contract that prohibits or conditions the assignment of such Assumed Contract or allows a party to such Assumed Contract to terminate, recapture, impose any penalty, or modify any term on the assignment of such Assumed Contract constitutes an unenforceable anti-assignment provision and is void.

L. If any license or permit necessary for the operation of the acquired business is determined not to be an executory contract assumable and assignable under Bankruptcy Code § 365, the Purchaser must apply for and obtain any necessary license or permit promptly after the Transaction's closing. The Debtors' licenses or permits must remain in place for the Purchaser's benefit until the Purchaser obtains all its necessary licenses and permits.

M. Except as provided in paragraph N below, in accordance with the Agreement, the Purchaser must pay to any counter-party to an Assumed Contract any Cure Amount identified on

Exhibit 1 to the Assumption and Cure Notice for that Assumed Contract to cure all monetary defaults and breaches under that Assumed Contract required under Bankruptcy Code § 365(b). The payment of any applicable Cure Amount (a) effects a cure of all defaults existing under the applicable Assumed Contract as of the Transaction's closing, (b) compensates any counter-party to such Assumed Contract for any actual pecuniary loss resulting from such default, and (c) together with the assignment of Assumed Contract to the Purchaser, constitutes adequate assurance of future performance of the Assumed Contract. Any counterparty to an Assumed Contract shall have no remaining claim against the Debtors on account of any alleged breaches under the Assumed Contract.

N. In the event the disputes regarding the proposed cure amounts on Assumed Contracts to which Sony Electronics Inc. and Sony Service Company (collectively, "Sony") is a counterparty (the "Sony Assumed Contracts") are unresolved prior to the closing of the Transaction, the Sony Assumed Contracts shall be assumed and assigned to the Purchaser (unless the Purchaser provides written notice to the Debtors that it does not seek an assumption and assignment of the Sony Assumed Contracts) effective as of the closing of the Transaction, provided (i) the Purchaser will pay into escrow at the closing the disputed portion of the cure amounts with respect to each Sony Assumed Contract (the "Escrowed Funds") as set forth in the Stipulation and Order Regarding Procedures to Resolve Proposed Cure Amounts by and among the Debtors and Sony, which the parties are in the process of finalizing (the "Sony Stipulation"), (ii) will pay the undisputed portion of the cure amounts in the amount of not less than \$34,456.26 with respect to the Sony Assumed Contracts to Sony within two (2) business days after the closing, and (iii) will pay the disputed portion of the cure amounts with respect to each Sony

Assumed Contract from the Escrowed Funds within two (2) business days after a determination by agreement or Court order regarding the correct cure amount.

O. Upon the closing of the transactions contemplated by this Order and the Agreement, the Debtors are directed to pay a portion of the proceeds to Delaware Street to pay and indefeasibly satisfy the DIP Obligations, as that term is defined in the Final DIP Financing Order (including, without limitation, the DIP Obligations incurred under paragraph 6 thereof), upon three (3) business days' written notice to the Committee of the amount to be so paid; provided, that the Committee shall have no right to object to such repayment absent mathematical error. All remaining proceeds shall be retained by the Debtor pending further order of this Court.

P. Nothing in any chapter 11 plan confirmed in the Debtors' cases, any order confirming any such plan, or any other order in these cases (including any order entered after any conversion of these cases into cases under chapter 7) may alter, conflict with, or derogate from the provisions of the Agreement or this Order.

Q. This Court retains jurisdiction to enforce and implement the terms and provisions of this Order and any agreements or instruments executed in connection with this Order, including without limitation jurisdiction to resolve any disputes arising under or related to this Order and to interpret, implement, and enforce this Order's provisions.

R. The Purchaser, the Debtors, all holders of Interests, and any objectors are authorized and directed to enter into any agreement or take any action reasonably necessary or appropriate to consummate the Transaction, transfer title in the Acquired Assets to the Purchaser, and otherwise effect and implement the Agreement and the provisions of this Order.

Dated: FEB 28 2012, 2012

*Pamela*  
UNITED STATES BANKRUPTCY JUDGE

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

APPLICATION OF HARTFORD COMPUTER HARDWARE, INC. 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 FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION WITH RESPECT TO HARTFORD COMPUTER HARDWARE, INC., NEXICORE SERVICES, LLC, HARTFORD COMPUTER GROUP, INC. AND HARTFORD COMPUTER GOVERNMENT, INC. (COLLECTIVELY, THE "CHAPTER 11 DEBTORS")

Court File No.: CV-11-9514-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

RECOGNITION, APPROVAL AND VESTING ORDER  
(MARCH 9, 2012)

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Lawyers for the Chapter 11 Debtors

# TAB 6

White Birch Paper Holding Company (Arrangement relatif à)

2010 QCCS 4915

**SUPERIOR COURT**  
**(Commercial division)**  
*The Companies' Creditors Arrangement Act*

CANADA  
 PROVINCE OF QUEBEC  
 DISTRICT OF MONTREAL

No: 500-11-038474-108

DATE: 15 October 2010

2010 QCCS 4915 (CanLI)

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**UNDER THE PRESIDENCY OF: THE HONOURABLE ROBERT MONGEON, J.S.C.**

---

IN THE MATTER OF THE PLAN OF ARRANGEMENT AND COMPROMISE OF:

**WHITE BIRCH PAPER HOLDING COMPANY**

**-and-**

**WHITE BIRCH PAPER COMPANY**

**-and-**

**STADACONA GENERAL PARTNER INC.**

**-and-**

**BLACK SPRUCE PAPER INC.**

**-and-**

**F.F. SOUCY GENERAL PARTNER INC.**

**-and-**

**3120772 NOVA SCOTIA COMPANY**

**-and-**

**ARRIMAGE DE GROS CACOUNA INC.**

**-and-**

**PAPIER MASSON LTÉE**

Petitioners

**-and-**

**ERNST & YOUNG INC.**

Monitor

**-and-**

**STADACONA LIMITED PARTNERSHIP**

**-and-**

**F.F. SOUCY LIMITED PARTNERSHIP**

JM1838



500-11-038474-108

PAGE: 2

**-and-**  
**F.F. SOUCY INC. & PARTNERS, LIMITED PARTNERSHIP**  
 Mises-en-cause

**-and-**  
**SERVICE D'IMPARTITION INDUSTRIEL INC.**

**-and-**  
**KSH SOLUTIONS INC.**

**-and-**  
**BD WHITE BIRCH INVESTMENT LLC**  
 Intervenant

**-and-**  
**SIXTH AVENUE INVESTMENT CO. LLC**  
**DUNE CAPITAL LLC**  
**DUNE CAPITAL INTERNATIONAL LTD**  
 Opposing parties

2010 QCCS 4915 (CanLI)

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**REASONS FOR JUDGMENT GIVEN ORALLY ON  
 SEPTEMBER 24, 2010**

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**BACKGROUND**

[1] On 24 February 2010, I issued an Initial Order under the CCAA protecting the assets of the Debtors and Mis-en-cause (the WB Group). Ernst & Young was appointed Monitor.

[2] On the same date, Bear Island Paper Company LLC (Bear Island) filed for protection of Chapter 11 of the US Bankruptcy code before the US Bankruptcy Court for the Eastern District of Virginia.

[3] On April 28, 2010, the US Bankruptcy Court issued an order approving a Sale and Investor Solicitation Process ("SISP") for the sale of substantially all of the WB Group's assets. I issued a similar order on April 29, 2010. No one objected to the issuance of the April 29, 2010 order. No appeal was lodged in either jurisdiction.

[4] The SISP caused several third parties to show some interest in the assets of the WG Group and led to the execution of an Asset Sale Agreement (ASA) between the WB Group and BD White Birch Investment LLC ("BDWB"). The ASA is dated August 10, 2010. Under the ASA, BDWB would acquire all of the assets of the Group and would:

- a) assume from the Sellers and become obligated to pay the Assumed Liabilities (as defined in the ASA);
- b) pay US\$90 million in cash;

- c) pay the Reserve Payment Amount (as defined);
- d) pay all fees and disbursements necessary or incidental for the closing of the transaction; and
- e) deliver the Wind Down Amount (as defined).

the whole for a consideration estimated between \$150 and \$178 million dollars.

[5] BDWB was to acquire the Assets through a Stalking Horse Bid process. Accordingly, Motions were brought before the US Bankruptcy Court and before this Court for orders approving:

- a) the ASA
- b) BDWB as the stalking horse bidder
- c) The Bidding Procedures

[6] On September 1, 2010, the US Bankruptcy Court issued an order approving the foregoing without modifications.

[7] On September 10, 2010, I issued an order approving the foregoing with some modifications (mainly reducing the Break-Up Fee and Expense Reimbursement clauses from an aggregate total sought of US\$5 million, down to an aggregate total not to exceed US\$3 million).

[8] My order also modified the various key dates of implementation of the above. The date of September 17 was set as the limit to submit a qualified bid under stalking horse bidding procedures, approved by both Courts and the date of September 21<sup>st</sup> was set as the auction date. Finally, the approval of the outcome of the process was set for September 24, 2010<sup>1</sup>.

[9] No appeal was lodged with respect to my decision of September 10, 2010.

[10] On September 17, 2010, Sixth Avenue Investment Co. LLC ("Sixth Avenue") submitted a qualified bid.

[11] On September 21, 2010, the WB Group and the Monitor commenced the auction for the sale of the assets of the group. The winning bid was the bid of BDWB at US\$236,052,825.00.

[12] BDWB's bid consists of:

- i) US\$90 million in cash allocated to the current assets of the WB Group;

<sup>1</sup> See my Order of September 10, 2010.

- ii) \$4.5 million of cash allocated to the fixed assets;
- iii) \$78 million in the form of a credit bid under the First Lien Credit Agreement allocated to the WB Group's Canadian fixed assets which are collateral to the First Lien Debt affecting the WB Group;
- iv) miscellaneous additional charges to be assumed by the purchaser.

[13] Sixth Avenue's bid was equivalent to the BDWB winning bid less US\$500,000.00, that is to say US\$235,552,825.00. The major difference between the two bids being that BDWB used credit bidding to the extent of \$78 million whilst Sixth Avenue offered an additional \$78 million in cash. For a full description of the components of each bid, see the Monitor's Report of September 23, 2010.

[14] The Sixth Avenue bidder and the BDWB bidder are both former lenders of the WB Group regrouped in new entities.

[15] On April 8, 2005, the WB Group entered into a First Lien Credit Agreement with Credit Suisse AG Cayman Islands and Credit Suisse AG Toronto acting as agents for a number of lenders.

[16] As of February 24, 2010, the WB Group was indebted towards the First Lien Lenders under the First Lien Credit Agreement in the approximate amount of \$438 million (including interest). This amount was secured by all of the Sellers' fixed assets. The contemplated sale following the auction includes the WB Group's fixed assets and unencumbered assets.

[17] BDWB is comprised of a group of lenders under the First Lien Credit Agreement and hold, in aggregate approximately 65% of the First Lien Debt. They are also "Majority Lenders" under the First Lien Credit Agreement and, as such, are entitled to make certain decisions with respect to the First Lien Debt including the right to use the security under the First Lien Credit Agreement as tool for credit bidding.

[18] Sixth Avenue is comprised of a group of First Lien Lenders holding a minority position in the First Lien Debt (approximately 10%). They are not "Majority Lenders" and accordingly, they do not benefit from the same advantages as the BDWB group of First Lien Lenders, with respect to the use of the security on the fixed assets of the WB Group, in a credit bidding process<sup>2</sup>.

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<sup>2</sup> For a more comprehensive analysis of the relationship of BDWB members and Sixth Avenue members as lenders under the original First Lien Credit Agreement of April 8, 2005, see paragraphs 15 to 19 of BDWB's Intervention.

2010 QCCS 4915 (CanLI)

[19] The bidding process took place in New York on September 21, 2010. Only two bidders were involved: the winning bidder (BDWB) and the losing bidder<sup>3</sup> (Sixth Avenue).

[20] In its Intervention, BDWB has analysed all of the rather complex mechanics allowing it to use the system of credit bidding as well as developing reasons why Sixth Avenue could not benefit from the same privilege. In addition to certain arguments developed in the reasons which follow, I also accept as my own BDWB's submissions developed in section (e), paragraphs [40] to [53] of its Intervention as well as the arguments brought forward in paragraphs [54] to [60] validating BDWB's specific right to credit bid in the present circumstances.

[21] Essentially, BDWB establishes its right to credit bid by referring not only to the September 10 Court Order but also by referring to the debt and security documents themselves, namely the First Lien Credit Agreement, the US First Lien Credit Agreement and under the Canadian Security Agreements whereby the "Majority Lender" may direct the "Agents" to support such credit bid in favour of such "Majority Lenders". Conversely, this position is not available to the "Minority Lenders". This reasoning has not been seriously challenged before me.

[22] The Debtors and Mis-en-cause are now asking me to approve the sale of all and/or substantially all the assets of the WB Group to BDWB. The disgruntled bidder asks me to not only dismiss this application but also to declare it the winning bidder or, alternatively, to order a new auction.

[23] On September 24, 2010, I delivered oral reasons in support of the Debtors' Motion to approve the sale. Here is a transcript of these reasons.

**REASONS (delivered orally on September 24, 2010)**

[24] I am asked by the Petitioners to approve the sale of substantially all the WB Group's assets following a bid process in the form of a "Stalking Horse" bid process which was not only announced in the originating proceedings in this file, I believe back in early 2010, but more specifically as from May/June 2010 when I was asked to authorise the Sale and Investors Solicitation Process (SISP). The SISP order led to the canvassing of proposed bidders, qualified bidders and the eventual submission of a "Stalking Horse" bidder. In this context, a Motion to approve the "Stalking Horse" Bid process to approve the assets sale agreement and to approve a bidding procedure for the sale of substantially all of the assets of the WB Group was submitted and sanctioned by my decision of September 10, 2010.

[25] I note that throughout the implementation of this sale process, all of its various preliminary steps were put in place and approved without any contestation whatsoever

<sup>3</sup> Sometimes referred to as the "bitter bidder" or "disgruntled bidder" See Re: *Abitibi Bowater* [2010] QCCS 1742 (Gascon J.)

by any of the interested stakeholders except for the two construction lien holders KSH<sup>4</sup> and SIII<sup>5</sup> who, for very specific reasons, took a strong position towards the process itself (not that much with the bidding process but with the consequences of this process upon their respective claims.

[26] The various arguments of KSH and SIII against the entire Stalking Horse bid process have now become moot, considering that both BDWB and Sixth Avenue have agreed to honour the construction liens and to assume the value of same (to be later determined).

[27] Today, the Motion of the Debtors is principally contested by a group which was identified as the "Sixth Avenue" bidders and more particularly, identified in paragraph 20 of the Motion now before me. The "Stalking Horse" bidder, of course, is the Black Diamond group identified as "BD White Birch Investment LLC". The Dune Group of companies who are also secured creditors of the WB Group are joining in, supporting the position of Sixth Avenue. Their contestation rests on the argument that the best and highest bid at the auction, which took place in New York on September 21, should not have been identified as the Black Diamond bid. To the contrary, the winning bid should have been, according to the contestants, the "Sixth Avenue" bid which was for a lesser dollar amount (\$500,000.00), for a larger cash amount (approximately \$78,000,000.00 more cash) and for a different allocation of the purchase price.

[28] Notwithstanding the foregoing, the Monitor, in its report of August 23, supports the "Black Diamond" winning bid and the Monitor recommends to the Court that the sale of the assets of the WB Group be made on that basis.

[29] The main argument of "Sixth Avenue" as averred, sometimes referred to as the "bitter bidder", comes from the fact that the winning bid relied upon the tool of credit bidding to the extent of \$78,000,000.00 in arriving at its total offer of \$236,052,825.00.

[30] If I take the comments of "Sixth Avenue", the use of credit bidding was not only a surprise, but a rather bad surprise, in that they did not really expect that this would be the way the "Black Diamond" bid would be ultimately constructed. However, the possibility of reverting to credit bidding was something which was always part of the process. I quote from paragraph 7 of the Motion to Approve the Sale of the Assets, which itself quotes paragraph 24 of the SISF Order, stating that:

**"24. Notwithstanding anything herein to the contrary, including without limitation, the bidding requirements herein, the agent under the White Birch DIP Facility (the "DIP Agent") and the agent to the WB Group's first lien term loan lenders (the First Lien Term Agent"), on behalf of the lenders under White Birch DIP Facility and the WB Group's first lien term loan lenders, respectively, shall be deemed Qualified Bidders and any bid**

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<sup>4</sup> KSH Solutions Inc.

<sup>5</sup> Service d'Impartition Industriel Inc.

submitted by such agent on behalf of the respective lenders in respect of all or a portion of the Assets shall be deemed both Phase 1 Qualified Bids and Phase 2 Qualified Bids. The DIP Agent and First Lien Term Agent, on behalf of the lenders under the White Birch DIP Facility and the WB Group's first lien term loan lenders, respectively, shall be permitted in their sole discretion, to credit bid up to the full amount of any allowed secure claims under the White Birch DIP Facility and the first lien term loan agreement, respectively, to the extent permitted under Section 363(k) of the Bankruptcy Code and other applicable law."

[31] The words "and other applicable law" could, in my view, tolerate the inclusion of similar rules of procedure in the province of Quebec.<sup>6</sup>

[32] The possibility of reverting to credit bidding was also mentioned in the bidding procedure sanctioned by my decision of September 10, 2010 as follows and I now quote from paragraph 13 of the Debtors' Motion:

**13. "Notwithstanding anything herein to the contrary, the applicable agent under the DIP Credit Agreement and the application agent under the**

<sup>6</sup> The concept of credit bidding is not foreign to Quebec civil law and procedure. See for example articles 689 and 730 of the Quebec code of Civil Procedure which read as follows:

**689. The purchase price must be paid within five days, at the expiry of which time interest begins to run. Nevertheless, when the immovable is adjudged to the seizing creditor or any hypothecary creditor who has filed an opposition or whose claim is mentioned in the statement certified by the registrar, he may retain the purchase-money to the extent of the claim until the judgment of distribution is served upon him.**

**730. A purchaser who has not paid the purchase price must, within ten days after the judgment of homologation is transmitted to him, pay the sheriff the amounts necessary to satisfy the claims which have priority over his own; if he fails to do so, any interested party may demand the resale of the immovable upon him for false bidding. When the purchaser has fulfilled his obligation, the sheriff must give him a certificate that the purchase price has been paid in full.**

See also Denis Ferland and Benoit Emery, 4<sup>ème</sup> édition, volume 2 (Éditions Yvon Blais (2003)):

**"La loi prévoit donc que, lorsque l'immeuble est adjugé au saisissant ou à un créancier hypothécaire qui a fait opposition, ou dont la créance est portée à l'état certifié par l'officier de la publicité des droits, l'adjudicataire peut retenir le prix, y compris le prix minimum annoncé dans l'avis de vente (art. 670, al. 1, e), 688.1 C.p.c.), jusqu'à concurrence de sa créance et tant que ne lui a pas été signifié le jugement de distribution prévu à l'article 730 C.p.c. (art. 689, al. 2 C.p.c.). Il n'aura alors à payer, dans les cinq jours suivant la signification de ce jugement, que la différence entre le prix d'adjudication et le montant de sa créance pour satisfaire aux créances préférées à la sienne (art. 730, al. 1 C.p.c.). La Cour d'appel a déclaré, à ce sujet, que puisque le deuxième alinéa de l'article 689 C.p.c. est une exception à la règle du paiement lors de la vente par l'adjudicataire du prix minimal d'adjudication (art. 688.1, al. 1 C.p.c.) et à celle du paiement du solde du prix d'adjudication dans les cinq jours suivants (art. 689, al. 1 C.p.c.), il doit être interprété de façon restrictive. Le sens du mot «créance», contenu dans cet article, ne permet alors à l'adjudicataire de retenir que la partie de sa créance qui est colloquée ou susceptible de l'être, tout en tenant compte des priorités établies par la loi."**

See, finally, *Montreal Trust vs Jori Investment Inc.* (J.E. 80-220 (C.S.)), *Eugène Marcoux Inc. v. Côté* (1990) R.J.Q. 1221 (C.A.)

**First Lien Credit Agreement shall each be entitled to credit bid pursuant to Section 363(k) of the Bankruptcy Code and other applicable law.**

[33] I draw from these excerpts that when the "Stalking Horse" bid process was put in place, those bidders able to benefit from a credit bidding situation could very well revert to the use of this lever or tool in order to arrive at a better bid<sup>7</sup>.

[34] Furthermore, many comments were made today with respect to the dollar value of a credit bid versus the dollar value of a cash bid. I think that it is appropriate to conclude that if credit bidding is to take place, it goes without saying that the amount of the credit bid should not exceed, but should be allowed to go as, high as the face value amount of the credit instrument upon which the credit bidder is allowed to rely. The credit bid should not be limited to the fair market value of the corresponding encumbered assets. It would then be just impossible to function otherwise because it would require an evaluation of such encumbered assets, a difficult, complex and costly exercise.

[35] Our Courts have always accepted the dollar value appearing on the face of the instrument as the basis for credit bidding. Rightly or wrongly, this is the situation which prevails.

[36] Many arguments were brought forward, for and against the respective position of the two opposing bidders. At the end of the day, it is my considered opinion that the "Black Diamond" winning bid should prevail and the "Sixth Avenue" bid, the bitter bidder, should fail.

[37] I have dealt briefly with the process. I don't wish to go through every single step of the process but I reiterate that this process was put in place without any opposition whatsoever. It is not enough to appear before a Court and say: "Well, we've got nothing to say now. We may have something to say later" and then, use this argument to reopen the entire process once the result is known and the result turns out to be not as satisfactory as it may have been expected. In other words, silence sometimes may be equivalent to acquiescence. All stakeholders knew what to expect before walking into the auction room.

[38] Once the process is put in place, once the various stakeholders accept the rules, and once the accepted rules call for the possibility of credit bidding, I do not think that,

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<sup>7</sup> The SISF, the bidding procedure and corresponding orders recognize the principle of credit bidding at the auction and these orders were not the subject of any appeal procedure.

See paragraphs 24, 25 and 26 of BDWB's Intervention.

As for the right to credit bid in a sale by auction under the CCAA, see Re: *Maax Corporation* (QSC. no. 500-11-033561-081, July 10, 2008, , Buffoni J.)

See also Re: *Brainhunter* (OSC Commercial List, no.09-8482-00CL, January 22, 2010)

at the end of the day, the fact that credit bidding was used as a tool, may be raised as an argument to set aside a valid bidding and auction process.

[39] Today, the process is completed and to allow "Sixth Avenue" to come before the Court and say: "My bid is essentially better than the other bid and Court ratify my bid as the highest and best bid as opposed to the winning bid" is the equivalent to a complete eradication of all proceedings and judgments rendered to this date with respect to the Sale of Assets authorized in this file since May/June 2010 and I am not prepared to accept this as a valid argument. Sixth Avenue should have expected that BDWB would want to revert to credit bidding and should have sought a modification of the bidding procedure in due time.

[40] The parties have agreed to go through the bidding process. Once the bidding process is started, then there is no coming back. Or if there is coming back, it is because the process is vitiated by an illegality or non-compliance of proper procedures and not because a bidder has decided to credit bid in accordance with the bidding procedures previously adopted by the Court.

[41] The Court cannot take position today which would have the effect of annihilating the auction which took place last week. The Court has to take the result of this auction and then apply the necessary test to approve or not to approve that result. But this is not what the contestants before me ask me to do. They are asking me to make them win a bid which they have lost.

[42] It should be remembered that "Sixth Avenue" agreed to continue to bid even after the credit bidding tool was used in the bidding process during the auction. If that process was improper, then "Sixth Avenue" should have withdrawn or should have addressed the Court for directions but nothing of the sort was done. The process was allowed to continue and it appears evident that it is only because of the end result which is not satisfactory that we now have a contestation of the results.

[43] The arguments which were put before me with a view to setting aside the winning bid (leaving aside those under Section 36 of the CCAA to which I will come to a minute) have not convinced me to set it aside. The winning bid certainly satisfies a great number of interested parties in this file, including the winning bidders, including the Monitor and several other creditors.

[44] I have adverse representations from two specific groups of creditors who are secured creditors of the White Birch Group prior to the issue of the Initial Order which have, from the beginning, taken strong exceptions to the whole process but nevertheless, they constitute a limited group of stakeholders. I cannot say that they speak for more interests than those of their own. I do not think that these creditors speak necessarily for the mass of unsecured creditors which they allege to be speaking for. I see no benefit to the mass of creditors in accepting their submissions, other than



the fact that the Monitor will dispose of US\$500,000.00 less than it will if the winning bid is allowed to stand.

[45] I now wish to address the question of Section 36 CCAA.

[46] In order to approve the sale, the Court must take into account the provisions of Section 36 CCAA and in my respectful view, these conditions are respected.

[47] Section 36 CCAA reads as follows:

**36. (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.**

**(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.**

**(3) In deciding whether to grant the authorization, the court is to consider, among other things,**

**(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;**

**(b) whether the monitor approved the process leading to the proposed sale or disposition;**

**(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;**

**(d) the extent to which the creditors were consulted;**

**(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and**

**(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.**

**(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that**

**(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and**

**(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.**

**(5) For the purpose of subsection (4), a person who is related to the company includes**

**(a) a director or officer of the company;**

**(b) a person who has or has had, directly or indirectly, control in fact of the company; and**

**(c) a person who is related to a person described in paragraph (a) or (b).**

**(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.**

**(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(4)(a) and (5)(a) if the court had sanctioned the compromise or arrangement.**

**2005, c. 47, s. 131; 2007, c. 36, s. 78.**

**(added underlining)**

[48] The elements which can be found in Section 36 CCAA are, first of all, not limitative and secondly they need not to be all fulfilled in order to grant or not grant an order under this section.

[49] The Court has to look at the transaction as a whole and essentially decide whether or not the sale is appropriate, fair and reasonable. In other words, the Court could grant the process for reasons others than those mentioned in Section 36 CCAA or refuse to grant it for reasons which are not mentioned in Section 36 CCAA.

[50] Nevertheless, I was given two authorities as to what should guide the Court in similar circumstances, I refer firstly to the comments of Madame Justice Sarah Peppall in *Canwest* [2002], CarswellOnt 3509, and she writes at paragraph 13:

**"The proposed disposition of assets meets the Section 36 CCAA criteria and those set forth in the *Royal Bank v. Soundair Corp.* decision. Indeed, to a large degree, the criteria overlap. The process was reasonable as the Monitor was content with it (and this is the case here). Sufficient efforts were made to attract the best possible bid (this was done here through the process, I don't have to review this in detail); the SISP was widely publicized (I am given**

to understand that, in this present instance, the SISP was publicized enough to generate the interest of many interested bidders and then a smaller group of Qualified Bidders which ended up in the choice of one "Stalking Horse" bidder; ample time was given to prepare offers; and there was integrity and no unfairness in the process. The Monitor was intimately involved in supervising the SISP and also made the Superior Cash Offer recommendation. The Monitor had previously advised the Court that in its opinion, the Support Transaction was preferable to a bankruptcy (this was all done in the present case.) The logical extension of that conclusion is that the AHC Transaction is as well (and, of course, understand that the words "preferable to a bankruptcy" must be added to this last sentence). The effect of the proposed sale on other interested parties is very positive. (It doesn't mean by saying that, that it is positive upon all the creditors and that no creditor will not suffer from the process but given the representations made before me, I have to conclude that the proposed sale is the better solution for the creditors taken as a whole and not taken specifically one by one) Amongst other things, it provides for a going concern outcome and significant recoveries for both the secured and unsecured creditors.

[51] Here, we may have an argument that the sale will not provide significant recoveries for unsecured creditors but the question which needs to be asked is the following: "Is it absolutely necessary to provide interest for all classes of creditors in order to approve or to set aside a "Stalking Horse bid process"?"

[52] In my respectful view, it is not necessary. It is, of course, always better to expect that it will happen but unfortunately, in any restructuring venture, some creditors do better than others and sometimes, some creditors do very badly. That is quite unfortunate but it is also true in the bankruptcy alternative. In any event, in similar circumstances, the Court must rely upon the final recommendation of the Monitor which, in the present instance, supports the position of the winning bidder.

[53] In *Nortel Networks*, Mister Justice Morawetz, in the context of a Motion for the Approval of an Assets Sale Agreement, Vesting Order of approval of an intellectual Property Licence Agreement, etc. basically took a similar position (2009, CarswellOnt 4838, at paragraph 35):

**"The duties of the Court in reviewing a proposed sale of assets are as follows:**

- 1) It should consider whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently;**
- 2) It should consider the interests of all parties;**
- 3) It should consider the efficacy and integrity of the process by which offers have been obtained;**

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**4) and it should consider whether there has been unfairness in the working out of the process."**

[54] I agree with this statement and it is my belief that the process applied to the present case meets these criteria.

[55] I will make no comment as to the standing of the "bitter bidder". Sixth Avenue may have standing as a stakeholder while it may not have any, as a disgruntled bidder.

[56] I am, however, impressed by the comments of my colleague Clément Gascon, j.s.c. in *Abitibi Bowater*, in his decision of May 3<sup>rd</sup>, 2010 where, in no unclear terms he did not think that as such, a bitter bidder should be allowed a second strike at the proverbial can.

[57] There may be other arguments that could need to be addressed in order to give satisfaction to all the arguments provided to me by counsel. Again, this has been a long day, this has been a very important and very interesting debate but at the end of the whole process, I am satisfied that the integrity of the "Stalking Horse" bid process in this file, as it was put forth and as it was conducted, meets the criteria of the case law and the CCAA. I do not think that it would be in the interest of any of the parties before me today to conclude otherwise. If I were to conclude otherwise, I would certainly not be able to grant the suggestion of "Sixth Avenue", to qualify its bid as the winning bid; I would have to eradicate the entire process and cause a new auction to be held. I am not prepared to do that.

[58] I believe that the price which will be paid by the winning bidder is satisfactory given the whole circumstances of this file. The terms and conditions of the winning bid are also acceptable so as a result, I am prepared to grant the Motion. I do not know whether the Order which you would like me to sign is available and I know that some wording was to be reviewed by some of the parties and attorneys in this room. I don't know if this has been done. Has it been done? Are KSH and SIII satisfied or content with the wording?

**Attorney:**

I believe, Mister Justice, that KSH and SIII have.....their satisfaction with the wording. I believe also that Dow Jones, who's present, .....their satisfaction. However, AT&T has communicated that they wish to have some minor adjustments.

**The Court:**

Are you prepared to deal with this now or do you wish to deal with it during the weekend and submit an Order for signature once you will have ironed out the difficulties, unless there is a major difficulty that will require further hearing?

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**Attorney:**

I think that the second option you suggested is probably the better one. So, we'd be happy to reach an agreement and then submit it to you and we'll recirculate everyone the wording.

**The Court:**

Very well.

The Motion to Approve the Sale of substantially all of the WB Group assets (no. 87) is **granted**, in accordance with the terms of an Order which will be completed and circulated and which will be submitted to me for signature as of Monday, next at the convenience of the parties;

The Motion of Dow Jones Company Inc. (no. 79) will be continued sine die;

The Amended Contestation of the Motion to Approve the Sale (no. 84) on behalf of "Sixth Avenue" is **dismissed** without costs (I believe that the debate was worth the effort and it will serve no purpose to impose any cost upon the contestant);

Also for the position taken by Dunes, there is no formal Motion before me but Mr. Ferland's position was important to the whole debate but I don't think that costs should be imposed upon his client as well;

The Motion to Stay the Assignment of a Contract from AT&T (no. 86) will be continued sine die;

The Intervention and Memorandum of arguments of BD White Birch Investment LLC is **granted**, without costs.

---

ROBERT MONGEON, J.S.C.

Counsel and parties present: see attendance list annexed to the Procès-Verbal

Date of hearing: 24 September 2010

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2010 QCCS 4915 (CanLI)

# **TAB 7**

Court File No.: 09-CL-7951

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	TUESDAY, THE 7 <sup>th</sup>
	)	
JUSTICE MORAWETZ	)	DAY OF APRIL, 2009



**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 DELAWARE, WITH RESPECT TO THE  
COMPANIES LISTED ON SCHEDULE "A" HERETO**

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

**ORDER**

**THIS MOTION**, made Nortel Networks Inc. and the other debtors listed on Schedule "A" hereto (collectively, the "Applicants") for the relief set out in the Applicants' Notice of Motion dated April 1, 2009 was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Kirk Otis sworn April 1, 2009, the affidavit of Suzanne Wood sworn April 1, 2009 and on hearing submissions of counsel for the Applicants and those other parties present, no one appearing for any other person on the service list, although served as appears from the Affidavit of Service of Katie Legree sworn April 1, 2009, filed.

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1. **THIS COURT ORDERS** that the time for the service of the Notice of Motion and Motion Record is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.
  
2. **THIS COURT ORDERS** that the Order of the Honourable Kevin Gross of the United States Bankruptcy Court for the District of Delaware dated March 26, 2009, attached hereto as Schedule "B", authorizing and approving:
  - (a) the sale of the enterprise "Layer 4-7" application and delivery business, free and clear of all liens and claims, pursuant to an asset purchase agreement dated February 19, 2009 among Radware Ltd., as buyer and Nortel Networks Inc., Nortel Networks Limited, the Joint Administrators and the EMEA Sellers (as such term is defined in the Purchase Agreement), as vendors; and
  
  - (b) the assumption and assignment of the assumed and assigned contracts, free of all liens and claims;

is hereby recognized and shall be implemented and be effective in Canada in accordance with its terms.

3. **THIS COURT ORDERS** that the title of proceedings in these proceedings be and are hereby amended as follows:

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

**AND IN THE MATTER OF NORTEL NETWORKS INC. AND THE  
OTHER COMPANIES LISTED ON SCHEDULE "A" HERETO WITH  
RESPECT TO CERTAIN PROCEEDINGS TAKEN IN THE UNITED  
STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE**

APPLICATION UNDER Section 18.6 of the *Companies' Creditors Arrangement Act*,  
R.S.C. 1985, c. C-36, as amended"

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

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

APR 07 2009

PER / PAR: 

**SCHEDULE "A"**  
**(Applicants)**

Nortel Networks Capital Corporation

Alteon Websystems Inc.

Alteon Websystems International Inc.

XROS Inc.

Sonoma Systems

QTERA Corp.

CoreTek Inc.

Nortel Networks Applications Management Solutions Inc.

Nortel Networks Optical Components Inc.

Nortel Networks HPOCS Inc.

Architel Systems (U.S.) Corp.

Nortel Networks International Inc.

Nortel Telecom International Inc.

Nortel Networks Cable Solutions, Inc.



Assumed and Assigned Contracts (the Acquired Assets and the Assumed and Assigned Contracts, collectively, the "Assets") free of all Liens and Claims; and adequate notice of the Sale Motion having been given as set forth therein; and it appearing that no other or further notice is necessary, and the Court having jurisdiction to consider the Sale Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and whereas an objection (the "Verizon Objection") to the Motion was filed on March 18, 2009 by affiliates of Verizon Communications Inc. ("Verizon") [D.I. 484]; and the Court having determined that consideration of the Sale Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having determined that the legal and factual bases set forth in the Sale Motion establish just cause for the relief requested therein, and that such relief is in the best interests of the Debtors, their estates, their creditors and the parties in interest; and upon the record in these proceedings; and after due deliberation;

**IT IS HEREBY ORDERED THAT:**

1. That portion of the Sale Motion seeking authorization and approval of the sale of the Acquired Assets and the assumption and assignment of the Assumed and Assigned Contracts is GRANTED.

**Transfer of the Acquired Assets to the Purchaser**

2. The sale of the Assets, pursuant to this Order will vest the Successful Bidder with all right, title and interest of the Debtors to the Assets and will be a legal, valid and effective transfer of the Assets free and clear of all Liens and Claims, whether known or unknown, fixed, liquidated, contingent or otherwise, including any claims held by any of the Debtors' or their affiliates' creditors, vendors, suppliers, employees or lessors, and any other person, except as expressly permitted by the Purchase Agreement or Bidding Procedures.

3. Except as expressly provided in the Purchase Agreement, pursuant to sections 105(a), 363(f), and 365 of the Bankruptcy Code, upon the closing the Assets shall be sold, transferred or otherwise conveyed to Successful Bidder free and clear of all Liens and Claims, with all such Liens and Claims to attach to the proceeds of sale of the Assets in the order of their priority, and with the same validity, priority, force and effect which they now have as against the Assets, subject to the rights, claims, defenses, and objections, if any, of the Debtors and all parties in interest with respect to such Liens and Claims.

4. All persons or entities holding Liens and Claims in, to or against the Assets shall be, and they hereby are, forever barred from asserting such Liens and Claims against the Successful Bidder, its successors and assigns or such Assets after closing, except as expressly provided in the Purchase Agreement.

#### **Break-Up Fee and Expense Reimbursement**

5. To the extent required under section 10.2 of the Purchase Agreement, the Sellers are hereby authorized and directed to pay to Radware, as the stalking-horse bidder, the amount of \$650,000 as the Break-Up Fee and up to an additional \$400,000 of reasonable and documented out of pocket fees and expenses (including attorneys fees and expenses) incurred by Radware in connection with the Purchase Agreement and related sale and auction processes. Such amounts and, to the extent Radware is the Successful Bidder, all other amounts to be borne by the Debtors pursuant to the Purchase Agreement and each of the other Transaction Documents, shall be payable to Radware as an administrative expense under sections 503(b) and 507(a) on an irrevocable and indefeasible basis and shall not be subject to future avoidance or disgorgement for any reason.

**Procedures Governing the Assumption and Assignment of Assigned Contracts**

6. Subject to and conditioned on the closing of the transactions contemplated in the Purchase Agreement and Bidding Procedures and except as otherwise set forth therein, the Debtors are authorized pursuant to section 365(a) of the Bankruptcy Code to assume and assign the Assumed and Assigned Contracts to the Successful Bidder, transferring all of the Debtors' right, title and interest (including common law rights) to all of their intangible property included in the Assets pursuant to the Purchase Agreement.

7. Any undertakings (payment and/or performance) necessary to cure defaults under any Assumed and Assigned Contracts shall (to the extent set forth in the Purchase Agreement) be paid by Debtors to the appropriate counter-party in accordance with the Purchase Agreement. Except as set forth in the Purchase Agreement, Successful Bidder shall not be liable in any way (as assignee, successor entity or otherwise) for any claims that any third party may have against the Debtors, including under any Assumed and Assigned Contract, other than claims and liabilities specifically assumed under the Purchase Agreement.

**Miscellaneous Provisions**

8. The adequate assurance regarding Radware's future performance under the Assumed Contracts as provided in the Assignment and Assumption Notice is sufficient pursuant to section 365(f)(2) of the Bankruptcy Code,

9. The consideration to be paid by the Successful Bidder for the Assets under the Purchase Agreement and the terms and conditions thereunder constitute transfers for reasonably equivalent value and fair consideration under the U.S. Bankruptcy Code, the Laws of the States of New York and Delaware and all other applicable State Laws, including those relating to

fraudulent conveyance and fraudulent transfers and may not be avoided under section 363(n) of the Bankruptcy Code.

10. This Order (a) is and shall be effective as a determination that, upon the closing, except as expressly provided in the Purchase Agreement or Bidding Procedures, all Liens and Claims existing as to the Assets prior to the closing have been unconditionally released, discharged and terminated in each case as to the Assets and (b) shall authorize all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of fees, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities, who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments that reflect that the Successful Bidder is the assignee of the Assets free and clear of all Liens and Claims except as expressly provided in the Purchase Agreement or Bidding Procedures.

11. Nothing in this Order shall be deemed to waive, release, extinguish or estop the Debtors or their estates from asserting or otherwise impair or diminish any right (including without limitation any right of recoupment), claim, cause of action, defense, offset or counterclaim in respect of any asset that is not an Asset.

12. Except with respect to enforcing the terms of the Purchase Agreement, the Bidding Procedures, and/or this Order, absent a stay pending appeal, no person shall take any action to prevent, enjoin or otherwise interfere with consummation of the transactions contemplated in or by the Purchase Agreement, the Bidding Procedures or this Order.

13. The Purchase Agreement, Bidding Procedures and any related agreements, documents or other instruments may be modified, amended, or supplemented through a written



document signed by the parties in accordance with the terms thereof without further order of the Court; provided, however, that any such modification, amendment or supplement is neither material nor materially changes the economic substance of the transactions contemplated hereby, i.e., no more than two percent of the Purchase Price as defined in the Purchase Agreement; and provided further that no such modifications, amendments, or supplements may be made except following two (2) days written notice to, or the prior consent of, the Official Committee, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036 (Attention: Fred S. Hodara, Stephen Kuhn, and Kenneth Davis).

14. In the absence of a stay of the effectiveness of this Order, in the event that the Successful Bidder and the Debtors consummate the transactions contemplated by the Purchase Agreement at any time after entry of this Order, then with respect to the transactions approved and authorized herein, the Successful Bidder, as an arm's-length purchaser in good faith within the meaning of section 363(m) of the Bankruptcy Code, shall be entitled to all of the protections of section 363(m) of the Bankruptcy Code in the event this Order or any authorization contained herein is reversed or modified on appeal.

15. Each and every federal, state, and local governmental agency or department is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement and Bidding Procedures.

16. Until these cases are closed or dismissed, the Court shall retain exclusive jurisdiction (a) to enforce and implement the terms and provisions of the Purchase Agreement, all amendments thereto, any waivers and consents thereunder, and each of the agreements, documents and instruments executed in connection therewith; (b) to compel transfer of the Assets to the Successful Bidder; (c) to compel the Successful Bidder to perform all of its

obligations under the Purchase Agreement; (d) to resolve any disputes, controversies or claims arising out of or relating to the Purchase Agreement, including without limitation the adjudication of any cure required under the Assumed and Assigned Contracts; and (e) to interpret, implement and enforce the provisions of this Order.

17. The terms of this Order and the Purchase Agreement shall be binding on and inure to the benefit of the Debtors, the Successful Bidder and the Debtors' creditors and all other parties in interest, and any successors of the Debtors, the Successful Bidder and the Debtors' creditors, including any trustee or examiner appointed in these cases or any subsequent or converted cases of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code.

18. The failure to include any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of that provision, it being the intent of the Court and the parties that the Purchase Agreement be approved and authorized in its entirety.

19. Any conflict between the terms and provisions of this Order and the Purchase Agreement shall be resolved in favor of this Order.

20. The Debtors are hereby authorized to perform each of their covenants and undertakings as provided in the Purchase Agreement prior to closing without further order of the Court.

21. As provided by Bankruptcy Rule 7062, this Order shall be effective and enforceable immediately. The provisions of Bankruptcy Rules 6004(g) and 6006(d) staying the effectiveness of this Order for ten (10) days are hereby waived, and this Order shall be effective, and the parties may consummate the transactions contemplated by the Purchase Agreement immediately upon entry of this Order. Time is of the essence in closing the transaction and

parties to the Purchase Agreement shall be authorized to close the sale as soon as possible consistent with the terms of this Order.

22. Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to the contrary, (i) the terms of this Order shall be immediately effective and enforceable upon its entry, (ii) the Debtors are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order, and (iii) the Debtors may, in their discretion and without further delay, take any action and perform any act authorized under this Order.

23. Notwithstanding the foregoing approvals and authorizations and any other provisions of this Order, the hearing on the Motion is adjourned to April 9, 2009 solely to the extent it relates to the Verizon Objection and the assumption and assignment of the contracts identified by the following Nortel contract numbers: 253701, 257334, 257996, 223355, 131514, 265159, 223407 and 213884. In the interim, the Debtors, the Purchasers and Verizon reserve all of their rights and defenses with respect to the Verizon Objection.

24. The provisions of this Order are nonseverable and mutually dependent.

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

Dated: March 26, 2009  
Wilmington, Delaware

  
\_\_\_\_\_  
THE HONORABLE KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE

IN THE MATTER OF SECTION 18.6 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 DELAWARE, WITH RESPECT TO THE COMPANIES LISTED ON SCHEDULE "A" TO THE WITHIN NOTICE OF APPLICATION

Court File No: 09-CL-7951

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

Proceeding commenced at Toronto

**ORDER**

**OGILVY RENAULT LLP**

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200 Bay Street  
P.O. Box 84  
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Lawyers for the Applicants

# **TAB 8**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )  
JUSTICE MORAWETZ )  
MONDAY, THE 30<sup>th</sup> DAY  
OF MARCH, 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  
NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED, NORTEL  
NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS INTERNATIONAL  
CORPORATION AND NORTEL NETWORKS TECHNOLOGY CORPORATION**

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

**APPROVAL AND VESTING ORDER  
(Layer 4-7 Application Delivery)**

THIS MOTION, made by Nortel Networks Corporation, Nortel Networks Limited ("NNL"), Nortel Networks Technology Corporation, Nortel Networks International Corporation and Nortel Networks Global Corporation (collectively, the "Applicants") for an order approving the sale transaction (the "Transaction") contemplated by an asset purchase agreement dated as of February 19, 2009 (as the same may be amended, the "Sale Agreement") among Radware Ltd. (the "Purchaser"), as buyer, and NNL, Nortel Networks Inc. ("NNI"), the Joint Administrators and the EMEA Sellers (as both terms are defined in the Sale Agreement), as vendors in respect of the sale of certain assets relating to Nortel's enterprise "Layer 4-7" application delivery business and as appended to the Affidavit of George Riedel, sworn March 25, 2009 (the "Riedel Affidavit"), and vesting in the Purchaser the Applicants' right, title and interest in and to the

Acquired Assets (as defined in the Sale Agreement), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Riedel Affidavit, the Fifth Report of Ernst & Young Inc. in its capacity as monitor (the "Monitor") dated March 26, 2009 (the "Fifth Report") and on hearing the submissions of counsel for the Applicant and for the Monitor and those other parties present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Katie Legree sworn March 26, 2009 and filed:

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

2. THIS COURT ORDERS that capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Sale Agreement.

3. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, ~~and that the Sale Agreement is commercially reasonable and in the best interests of the Applicants and their stakeholders.~~ <sup>AS</sup> The execution of the Sale Agreement by NNL is hereby authorized and approved, and the Applicants and the Monitor are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Applicants' right, title and interest in and to the Acquired Assets to the Purchaser.

4. THIS COURT ORDERS AND DECLARES that the Escrow Agreement substantially in the form attached as Appendix A to the Fifth Report associated with the Transaction by and among Nortel Networks Inc., NNL, the EMEA Sellers on the signature pages thereto, Ernst & Young LLP, and JP Morgan Chase Bank, N.A. is hereby authorized and approved and NNL is directed to comply with its obligations thereunder.

5. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Monitor's Certificate"), all of the Applicants' right, title and interest in and to the Acquired Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed

trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims"), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Morawetz dated January 14, 2009 (as amended and restated); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system, excluding Permitted Liens and those expressly assumed by the Purchaser under the Sale Agreement. For greater certainty, this Court orders that all of the Claims affecting or relating to the Acquired Assets are hereby expunged and discharged as against the Acquired Assets.

6. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Applicants' right, title and interest in and to the Acquired Assets shall stand in the place and stead of the Acquired Assets, and that from and after the delivery of the Monitor's Certificate all Claims shall attach to the net proceeds from the sale of the Applicants' right, title and interest in and to the Acquired Assets with the same priority as they had with respect to the Acquired Assets immediately prior to the sale, as if the Applicants' right, title and interest in and to the Acquired Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

7. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

8. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Applicants and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicants;



the vesting of the Applicants' right, title and interest in and to the Acquired Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of the Applicants, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

10. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, the United Kingdom or elsewhere, to give effect to this Order and to assist the Applicants, 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 Applicants 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 Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

11. THIS COURT ORDERS that each of the Applicants 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.



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

MAR 30 2009

PER / PAR: 

**Schedule A – Form of Monitor’s Certificate**

Court File No. 09-CL-7950

**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 A PLAN OF COMPROMISE OR ARRANGEMENT OF NORTEL  
NETWORKS CORPORATION, NORTEL NETWORKS LIMITED, NORTEL NETWORKS  
GLOBAL CORPORATION, NORTEL NETWORKS INTERNATIONAL CORPORATION  
AND NORTEL NETWORKS TECHNOLOGY CORPORATION**

**APPLICATION UNDER THE *COMPANIES’ CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED**

**MONITOR’S CERTIFICATE  
(Layer 4-7 Application Delivery)**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Morawetz of the Ontario Superior Court of Justice (the "Court") dated January 14, 2009 (as amended and restated), Nortel Networks Limited ("NNL") and certain of its Canadian affiliates (collectively, the "Applicants") commenced proceedings pursuant to the *Companies’ Creditors Arrangement Act* (Canada) and Ernst & Young Inc. was appointed as monitor (the "Monitor") in those proceedings.

B. Pursuant to an Order of the Court dated March 30, 2009, the Court approved an asset purchase agreement dated as of February 19, 2009 (the "Sale Agreement") among Radware Ltd. (the "Purchaser"), as buyer, and NNL, Nortel Networks Inc., the Joint Administrators and the EMEA Sellers (as both terms are defined in the Sale Agreement), as vendors in respect of the sale of certain assets relating to Nortel’s enterprise "Layer 4-7" application delivery business and provided for the vesting in the Purchaser of the Applicants’ right, title and interest in and to the Acquired Assets, which vesting is to be effective with respect to the Acquired Assets upon the delivery by the Monitor to the Purchaser of

a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Acquired Assets; (ii) that the conditions to Closing as set out in Article 8 of the Sale Agreement have been satisfied or waived by the Applicants and the Purchaser; and (iii) the Applicants have advised the Monitor that the Transaction has been completed to the satisfaction of the Applicants.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE MONITOR CERTIFIES the following:

- 1. NNL has advised the Monitor that the Purchaser has paid and the Escrow Agent has received the Purchase Price for the Acquired Assets payable on the Closing Date pursuant to the Sale Agreement;
- 2. NNL has advised the Monitor that the conditions to Closing as set out in Article 8 of the Sale Agreement have been satisfied or waived by the Applicants and the Purchaser; and
- 3. NNL has advised the Monitor that the Transaction has been completed to the satisfaction of the Applicants.
- 4. This Certificate was delivered by the Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

DATED this ● day of March, 2009.

**ERNST & YOUNG INC. in its capacity as  
monitor in the Applicants' CCAA  
proceedings and not in its personal capacity**

Per: \_\_\_\_\_  
Name:  
Title:

**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NORTEL  
NETWORKS CORPORATION, NORTEL NETWORKS LIMITED, NORTEL NETWORKS  
GLOBAL CORPORATION, NORTEL NETWORKS INTERNATIONAL CORPORATION AND  
NORTEL NETWORKS TECHNOLOGY CORPORATION**

Court File No: 09-CL-7950

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

Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER  
(Layer 4-7 Application Delivery)**

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Lawyers for the Applicants

# **TAB 9**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. )  
JUSTICE MORAWETZ )  
 ) FRIDAY, THE 6<sup>th</sup>  
 ) DAY OF NOVEMBER, 2009



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

**AND IN THE MATTER OF NORTEL NETWORKS INC. AND THE  
OTHER COMPANIES LISTED ON SCHEDULE "A" HERETO WITH  
RESPECT TO CERTAIN PROCEEDINGS TAKEN IN THE UNITED  
STATES BANKRUPTCY COURT FOR THE DISTRICT OF  
DELAWARE**

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

**ORDER  
(Recognition of the U.S. Avaya Sale Order)**

**THIS MOTION**, made Nortel Networks Inc. and the other debtors listed on Schedule "A" hereto (collectively, the "Applicants") for the relief set out in the Applicants' notice of motion dated November 2<sup>nd</sup>, 2009 was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of George Riedel sworn November 2<sup>nd</sup>, 2009 and on hearing submissions of counsel for the Applicants and those other parties present, no one appearing for any other person on the service list, although served as appears from the Affidavit of Service of Katie Legree sworn November 2, 2009, filed.

1. **THIS COURT ORDERS** that the time for the service of the Notice of Motion and Motion Record is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.
  
2. **THIS COURT ORDERS** that the Order of the Honourable Kevin Gross of the United States Bankruptcy Court for the District of Delaware dated September 16, 2009, attached hereto as Schedule "B", authorizing and approving, *inter alia*:
  - (a) the sale of certain assets and equity interests in respect of the Applicants' Enterprise Solutions business to Avaya Inc. pursuant to an asset and share sale agreement dated September 14, 2009 (the "Sale Agreement"); and
  
  - (b) the assumption and assignment of certain contracts and the assumption and sublease of certain leases, as more particularly set out in the Sale Agreement;

is hereby recognized and shall be implemented and be effective in Canada in accordance with its terms.



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**SCHEDULE "A"**

(List of Applicants)

**U.S. SUBSIDIARIES FILING A VOLUNTARY PETITION PURSUANT TO  
CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE, 11 U.S.C. §§ 101-  
1330**

- 2001 - Nortel Networks Inc.
- 2110 - Nortel Networks Capital Corporation
- 2002 - Nortel Networks (CALA) Inc.
- 2107 - Nortel Altsystems, Inc. (previously "Alteon Websystems, Inc.")
- 2101 - Nortel Altsystems International, Inc. (previously "Alteon Websystems International, Inc.")
- 2102 - XROS, Inc.
- 2103 - Sonoma Systems
- 2104 - QTERA Corporation
- 2105 - CoreTek, Inc.
- 2106 - Nortel Networks Applications Management Solutions Inc.
- 2108 - Nortel Networks Optical Components Inc.
- 2113 - Nortel Networks HPOCS Inc.
- 2114 - Architel Systems (U.S.) Corporation
- 2115 - Nortel Networks International Inc.
- 2117 - Northern Telecom International Inc.
- 2121 - Nortel Networks Cable Solutions Inc.



Schedule "B"

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

-----X  
*In re* : Chapter 11  
 Nortel Networks Inc., *et al.*,<sup>1</sup> : Case No. 09-10138 (KG)  
 Debtors. : Jointly Administered  
 :  
 : RE: D.L 1131, 1278  
 -----X

**ORDER AUTHORIZING AND APPROVING (A) THE SALE OF CERTAIN ASSETS OF, AND EQUITY INTERESTS IN, DEBTORS' ENTERPRISE SOLUTIONS BUSINESS, (B) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN CONTRACTS AND LEASES AND (C) THE ASSUMPTION AND SUBLEASE OF CERTAIN LEASES**

Upon the motion, dated July 20, 2009 [D.I. 1131] (the "Motion"), of Nortel Networks Inc. ("NNI") and certain of its affiliates, as debtors and debtors in possession (collectively, the "Debtors") for orders pursuant to sections 105, 107(b)(1), 363 and 365 of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006, 9014 and 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 6004-1 and 9018-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") (i)(a) approving the Debtors' entry into that certain Asset and Share Sale Agreement dated as of July 20, 2009 among Nortel Networks Corporation ("NNC"), Nortel Networks Limited ("NNL"), NNI and certain other entities

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number, are: Nortel Networks Inc. (6332), Nortel Networks Capital Corporation (9620), Nortel Altsystems Inc. (9769), Nortel Altsystems International Inc. (5596), Xros, Inc. (4181), Sonoma Systems (2073), Qtera Corporation (0251), CoreTek, Inc. (5722), Nortel Networks Applications Management Solutions Inc. (2846), Nortel Networks Optical Components Inc. (3545), Nortel Networks HPOCS Inc. (3546), Architel Systems (U.S.) Corporation (3826), Nortel Networks International Inc. (0358), Northern Telecom International Inc. (6286) and Nortel Networks Cable Solutions Inc. (0567). Addresses for the Debtors can be found in the Debtors' petitions, which are available at <http://chapter11.epiqsystems.com/nortel>.

identified therein as sellers (the "Sellers") and Avaya Inc. as purchaser (together with its designees, the "Purchaser") for the sale of certain assets of, and equity interests in, the Debtors' Enterprise Solutions Business, attached hereto as Exhibit A (the "Agreement"),<sup>2</sup> (b) authorizing and approving the bidding procedures (as appended to the Bidding Procedures Order (as defined below), the "Bidding Procedures") for the sale of substantially all of the assets ("Assets") of Nortel's Enterprise Solutions Business, (c) authorizing and approving the terms and conditions of the Break-Up Fee and Expense Reimbursement (each as defined in the Agreement), (d) approving the form and manner of sale notices (the "Notice Procedures"), (e) approving the procedures as set forth below for the assumption and assignment of certain contracts and leases and the assumption and sublease of certain leases (the "Assignment Procedures") and (f) authorizing the Debtors to file certain documents under seal, and (g) setting the time, date and place of a hearing to consider the sale of certain assets and equity interests relating to the Debtors' Enterprise Solutions Business (the "Transaction") and the assumption and assignment or assumption and sublease, as the case may be, of certain pre-petition contracts and leases of the Debtors (the "Sale Hearing"), and (ii) authorizing and approving (a) the sale of certain assets of, and equity interests in, the Debtors' Enterprise Solutions Business, (b) the assumption and assignment of certain contracts and leases of the Debtors pursuant to section 365 of the Bankruptcy Code and (c) the assumption and sublease of certain leases of the leases pursuant to section 365 of the Bankruptcy Code; and (iii) granting them such other relief as the Court deems just and proper; and the Court having entered an order on August 4, 2009 [D.I. 1278] (the "Bidding Procedures Order") (i)(a) authorizing the Debtors' entry into the Agreement, (b)

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<sup>2</sup> Capitalized terms used herein but not defined herein shall have the meaning ascribed to such terms in the Agreement.

authorizing and approving the Bidding Procedures, (c) authorizing and approving the terms and conditions of the Break-Up Fee and Expense Reimbursement, (d) approving the Notice Procedures, (e) approving the Assignment Procedures, (f) authorizing the Debtors to file certain documents under seal and (g) setting the time, date, and place of the Sale Hearing; and the Auction having been held from September 11, 2009 to September 15, 2009 for the consideration of Qualified Bids and the selection of a Successful Bidder (each as defined in the Bidding Procedures Order); and upon the Court's consideration of the Motion and any objections to the Motion presented to the Court and the record of the bidding procedures hearing held on August 4, 2009 and the Sale Hearing held on September 16, 2009 with respect to the Motion, including the testimony and evidence admitted at the Sale Hearing; and after due deliberation thereon, and sufficient cause appearing therefor,

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS:

- A. **Jurisdiction and Venue.** This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.
- B. **Statutory Predicates.** The statutory predicates for the relief sought in the Motion are Bankruptcy Code sections 105, 107(b)(1), 363 and 365, Bankruptcy Rules 2002, 6004, 6006, 9014 and 9018 and Rules 6004-1 and 9018-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the "Local Rules"). Pursuant to Bankruptcy Rule 7052, findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact to the fullest extent of the law.
- C. **Notice.** As evidenced by the affidavits of service filed with this Court that notice was provided as required under the Bidding Procedures Order: (i) due, proper, timely, adequate

and sufficient notice of the Motion, the Sale Hearing, and the Transaction has been provided to all parties entitled thereto; (ii) it appearing that no other or further notice need be provided; (iii) such notice was and is good, sufficient and appropriate under the circumstances of the Debtors' chapter 11 cases; and (iv) no other or further notice of the Motion, the Auction, the Sale Hearing, or the Transaction is or shall be required.

D. **Opportunity to Object.** A reasonable opportunity to object and to be heard with respect to the Transaction, the Motion and the relief requested therein has been given to all interested persons and entities, including, without limitation, the following: (i) the Office of the United States Trustee for the District of Delaware, (ii) counsel for the Purchaser, (iii) counsel for the Official Committee of Unsecured Creditors appointed in these chapter 11 cases (the "Committee"), (iv) counsel for the ad hoc group of bondholders holding claims against certain of the Debtors (the "Bondholder Group"), (v) all entities known to have a claim, lien, interest or encumbrance against the Debtors' interest in the Assets, the Shares, the Assumed and Assigned Contracts and the Assumed and Subleased Real Estate Leases (the Debtors' interest in such property, the "Transferred Property"), (vi) all counterparties to the Assumed and Assigned Contracts and Assumed and Subleased Real Estate Leases, (vii) the Monitor appointed in the cases of certain of the Sellers that have commenced proceedings under the Canadian Companies' Creditors Arrangement Act, (viii) the Administrators appointed by the English High Court of Justice in the proceedings commenced by certain of the Sellers under the U.K. Insolvency Act of 1986, (ix) the Internal Revenue Service and applicable federal and state taxing authorities, (x) the Securities and Exchange Commission, (xi) the Pension Benefit Guaranty Corporation and all regulatory authorities of the Sellers' pension plans in Canada and the United Kingdom, (xii) all

persons, if any, who have filed objections to the Motion, and (xiii) all persons who have filed a notice of appearance in these cases.

E. **Auction.** The Sellers extensively marketed Nortel's Enterprise Solutions Business and the Assets related to such business. The process created by the Bidding Procedures Order provided potential bidders with a full and fair opportunity to submit bids and participate in the Auction. The Auction was conducted fairly and in good faith, without collusion and in accordance with the Bidding Procedures Order. At the Auction, Purchaser was selected as the Successful Bidder. The Debtors' determination that the Agreement constitutes the highest and best offer for the Transferred Property constitutes a valid and sound exercise of the Debtors' business judgment.

F. **Arm's-Length Sale.** The Transaction contemplated by the Agreement, the Ancillary Agreements and this Order is being undertaken by the Sellers and the Purchaser in good faith and at arm's-length, without collusion and in good faith within the meaning of section 363(m) of the Bankruptcy Code, and such parties are entitled to the protection of section 363(m) of the Bankruptcy Code. Neither the Purchaser nor any of its Affiliates or their respective representatives is an "insider" of any of the Sellers, as that term is defined in Bankruptcy Code section 101(31). None of the Sellers, the Purchaser or their respective Affiliates or representatives has engaged in any conduct that would cause or permit the Agreement or any Ancillary Agreement to be avoided under Bankruptcy Code section 363(n) or has acted in any improper or collusive manner with any person. The terms and conditions of the Agreement, the Ancillary Agreements and the Transaction, including without limitation the consideration provided in respect thereof, is fair and reasonable and shall not be avoided under Bankruptcy Code section 363(n).

G. **Good Faith Purchaser.** The Purchaser, its Affiliates and their respective representatives have all proceeded in good faith and without collusion in all respects in connection with the Transaction and this proceeding. Such persons are therefore entitled to all of the benefits and protections of Bankruptcy Code section 363(m). Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Transaction shall not affect the validity of the Transaction unless, prior to the Closing, such authorization is duly stayed pending such appeal.

H. **Corporate Authority.** The Debtors (i) have full corporate power and authority to execute the Agreement, the Ancillary Agreements and all other documents contemplated thereby, and, with respect to the Debtors, the Transaction has been duly and validly authorized by all necessary corporate action, (ii) have all of the corporate power and authority necessary to consummate their obligations with respect to the Transaction, (iii) have taken all corporate action necessary to authorize and approve their entry into and performance in respect of the Agreement, the Ancillary Agreements and the Transaction, and (iv) require no consents or approvals to consummate the Transaction, other than those expressly provided for in the Agreement and the Ancillary Agreements and the entry of this Order.

I. **Sale in Best Interests.** Good and sufficient reasons for approval of the Agreement, the Ancillary Agreements and the Transaction have been articulated, and the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties in interest.

J. **Business Justification.** The Debtors have demonstrated both (i) good, sufficient and sound business purposes and justifications and (ii) compelling circumstances for the Transaction other than in the ordinary course of business under Bankruptcy Code section 363(b)

before, and outside of, a plan of reorganization in that, among other things, the immediate approval by this Court of the Transaction is necessary and appropriate to maximize the value of the Debtors' estates. Entry of an order approving the Agreement and the Ancillary Agreements, and all the provisions thereof, is a necessary condition precedent to the Purchaser's consummation of the Transaction.

K. **Consideration.** The consideration to be provided by the Purchaser to the Sellers pursuant to the Agreement will, upon delivery, constitute reasonably equivalent value or fair consideration under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and the laws of the United States, any state, territory, possession thereof or the District of Columbia. The Agreement represents a fair and reasonable offer to effectuate the terms of the Transaction under these circumstances. Other than the Purchaser, no other person or entity or group of persons or entities has offered to purchase the Transferred Property for an amount that would provide greater value to the Sellers. The Court's approval of the Motion, the Agreement, the Ancillary Agreements and the Transaction is in the best interests of the Debtors, their estates, their creditors and all other parties in interest.

L. **Free and Clear.** The conveyance of the Transferred Property in accordance with the Agreement and Ancillary Agreements will be a legal, valid, and effective transfer of such Transferred Property, and vests or will vest the Purchaser with all right, title, and interest of the Debtors in and to the Transferred Property pursuant to section 363(f) and 365 of the Bankruptcy Code free and clear of all Liens, Claims (as defined in section 101(5) of the Bankruptcy Code), encumbrances, obligations, liabilities, demands, guarantees, options, rights, restrictions, contractual commitments, rights of first refusal, rights of setoff, or interests of any kind or nature that have been, are or could be asserted against the Debtors whether known or unknown, legal or

equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of these chapter 11 cases, whether imposed by agreement, understanding, law, equity or otherwise, (collectively, the “Interests”), including, but not limited to, (i) those that purport to give to any party a right or option to effect a setoff against or any forfeiture, modification or termination of the Debtors’ interests in the Transferred Property, or any similar rights, (ii) all Excluded Liabilities, including without limitation, any liability relating to or arising from any Seller Employee Plans of the Debtors (the “Debtor Employee Plans”), except as provided in the Agreement, or any tax liability of the Debtors arising under or out of, in connection with, or in any way relating to the cancellation of debt, (iii) those arising under all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, rights of first refusal or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership, and (iv) those arising in connection with any agreements, acts, or failures to act, of any of the Debtors or any of the Debtors’ predecessors, affiliates, or representatives including, but not limited to, Interests arising under any bulk-transfer laws, doctrines of successor liability or similar theories. For the avoidance of doubt, without limiting the effect of the foregoing, the assumption and assignment of any Assumed and Assigned Contract and the assumption and sublease of any Assumed and Subleased Real Estate Lease, whether in accordance with this Order or any other Order of this Court, are also free and clear of all Interests. Notwithstanding anything else to the contrary set forth in this paragraph L, the term “Interests” shall not include any Permitted Encumbrances, any Assumed Liabilities (as defined in the Agreement) and any Liens created by or through the Purchaser or any of its Affiliates or



any license that covers intellectual property included within the Transferred Property.

Furthermore, for the purposes of this Order, "Permitted Encumbrances" shall have the same meaning as set forth in the Agreement but excluding clauses (i), (ii) and (iv) of such definition.

M. **Free and Clear Findings Required by Purchaser.** The Purchaser represents that it would not have entered into the Agreement and would not consummate the Transaction, thus adversely affecting the Debtors, their estates and their creditors, if the Transferred Property is not being conveyed to the Purchaser free and clear of all Interests of any kind or nature as set forth in this Order, or if the Purchaser would, or in the future could, be liable for any of the Interests.

N. **Satisfaction of Section 363(f) Standards.** The Debtors may sell their interest in the Transferred Property free and clear of any Interests of any kind or nature as set forth in this Order because in each instance, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Each person or entity with any Interest in the Transferred Property: (i) has, subject to the terms and conditions of this Order, consented to the Transaction, is deemed to have consented to the Transaction, or has had its objections to the Transaction considered and overruled by this Court; (ii) could be compelled in a legal or equitable proceeding to accept money satisfaction of such Interest; or (iii) otherwise is subject to the provisions of section 363(f) of the Bankruptcy Code. Those holders of Interests who did not object to the Motion are deemed, subject to the terms of this Order, to have consented to the relief sought in the Motion pursuant to section 363(f)(2) of the Bankruptcy Code. All holders of Interests are adequately protected by having their Interests attach to the proceeds ultimately attributable to the Transferred Property against or in which such Interests are asserted, subject to the terms of such Interests, with the same validity, force and effect, and in the same order of

priority, which such Interests now have against the Transferred Property or their proceeds, subject to any rights, claims and defenses the Sellers or their estates, as applicable, may possess with respect thereto.

O. **No Liability Findings Needed by Purchaser.** Purchaser represents that it will not consummate the Transaction unless the Agreement specifically provides, and the Court specifically orders, that none of the Purchaser Releasees (as defined below) or the Transferred Property will have any liability whatsoever with respect to or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, any Interest or Excluded Liability.

P. **No Fraudulent Transfer.** The Agreement and Ancillary Agreements were not entered into for the purpose of hindering, delaying or defrauding present or future creditors of the Sellers under the Bankruptcy Code and under the laws of the United States, any state, territory, possession thereof, or the District of Columbia. Neither Sellers nor Purchaser are entering into the Transaction contemplated by the Agreement fraudulently for the purpose of such statutory and common law fraudulent conveyance and fraudulent transfer claims.

Q. **No Successor Liability.** Except as provided under the Agreement regarding the Assumed Liabilities, the Debtors' conveyance of the Transferred Property to the Purchaser under the Agreement shall not result in the Purchaser Releasees or Transferred Property being subject to any liability or responsibility of any kind (i) for any Interest or other Excluded Liability of any of the Debtors, or (ii) for any Claim against the Debtors or any insider of the Debtors, or (iii) for the satisfaction in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, of any Interest or Excluded Liability of any of the Debtors, or (iv) to third parties or the Debtors, except as is expressly set forth in the Agreement; and, without

limiting the effect or scope of the foregoing, the transfer of the Transferred Property from the Debtors to the Purchaser does not and will not subject the Purchaser Releasees or their respective properties (including the Transferred Properties) to any liability or responsibility for Interests against the Debtors or the Debtors' Interests in such Transferred Property by reason of such transfer under the laws of the United States or any state, territory, possession thereof, or the District of Columbia applicable to the Transaction, including, without limitation, any bulk-transfer laws, successor liability or similar theories.

R. **Cure/Adequate Assurance**. The assumption and assignment of the Assumed and Assigned Contracts and the assumption and the sublease of the Assumed and Subleased Real Estate Leases, all pursuant to the terms of this Order, are integral to the Agreement, do not constitute unfair discrimination, and are in the best interests of the Debtors, their estates, their creditors and all other parties in interest, and represent the reasonable exercise of sound and prudent business judgment by the Debtors. Purchaser has demonstrated adequate assurance of future performance with respect to the Assumed and Assigned Contracts and Assumed and Subleased Real Estate Leases and has satisfied the requirements of the Bankruptcy Code, including, without limitation, sections 365(b)(1) and 365(f)(2)(B), to the extent applicable. Among other things, the contractual obligation to pay the Cure Amounts (as defined below) and the Purchaser's contractual obligation to perform the obligations, after the Closing, under the Assumed and Assigned Contracts and Assumed and Subleased Real Estate Leases shall constitute adequate assurance of future performance.

NOW, THEREFORE, IT IS ORDERED THAT:

1. **Motion is Granted**. The Motion and the relief requested therein is GRANTED and APPROVED, as set forth herein.

2. **Objections Overruled.** Any objections to the entry of this Order or the relief granted herein and requested in the Motion that have not been withdrawn, waived, or settled, or not otherwise resolved pursuant to the terms hereof, if any, hereby are denied and overruled on the merits, with prejudice.

3. **Approval.** The Agreement and the Ancillary Agreements and all of the terms and conditions thereto as applicable to the Debtors are hereby approved. Debtors are hereby authorized to (i) execute and perform the Agreement, the Transition Services Agreement and the other Ancillary Agreements, along with any additional instruments or documents that may be reasonably necessary or appropriate to implement the Agreement, *provided* that such additional documents do not materially change its terms in a manner adverse to the Debtors; (ii) consummate the Transaction in accordance with the terms and conditions of the Agreement, the Ancillary Agreements, and the other agreements contemplated thereby; (iii) assume and assign the Assumed and Assigned Contracts to Purchaser, either as of the Closing Date or such later date as contemplated by the Agreement; (iv) assume and sublease the Assumed and Subleased Real Estate Leases to Purchaser, either as of the Closing Date or such later date as contemplated by the Agreement; and (v) take all other and further actions as may be reasonably necessary to implement the Transaction.

4. **Valid Transfer.** Upon consummation of the Closing, (i) the Transaction effects a legal, valid, enforceable and effective sale and transfer of the Debtors' interests in Transferred Property to Purchaser, and shall vest Purchaser with title to such Transferred Property free and clear of all Interests of any kind whatsoever, except as expressly provided in this Order and the Agreement, and (ii) the Agreement, the Ancillary Agreements, the Transaction and any

instruments contemplated thereby shall be enforceable against and binding upon, and not subject to rejection or avoidance by, the Debtors or any successor trustee appointed with respect thereto.

5. **General Assignment.** Effective as of the Closing, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Debtors' interests in the Transferred Property. Each and every federal, state, and local governmental agency or department is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the Transaction.

6. **Exculpation and Release.** None of the Purchaser or their affiliates, successors and assigns (collectively, the "Purchaser Releasees") shall have or incur any liability to, or be subject to any action by any Debtor or any of their predecessors, successors and assigns, arising out of the negotiation, investigation, preparation, execution, delivery of the Agreement and Ancillary Agreements and the entry into and consummation of the Transaction, except as expressly provided in the Agreement, the other Transaction Documents, and this Order.

7. **Injunction.** Except as expressly provided in the Agreement or by this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, vendors, suppliers, employees, trade creditors, litigation claimants and other persons, holding Interests of any kind or nature whatsoever against or in the Debtors or the Debtors' interests in the Transferred Property (whether known or unknown, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of these chapter 11 cases, whether imposed by agreement, understanding, law, equity or otherwise), including, without limitation, the nondebtor party or parties to each Assumed and Assigned Contract and to each Assumed and Subleased Real Estate

Lease, arising under or out of, in connection with, or in any way relating to, the Debtors, the Transferred Property, the operation of the Debtors' businesses before the Closing, before or after the Closing regarding the operation of the Debtors' businesses not subject to the Transaction, or the transfer of the Debtors' interests in the Transferred Property to the Purchaser, including, without limitation, any default existing as of the Closing Date and any objection to the assumption and assignment of the Assumed and Assigned Contracts or the assumption and sublease of the Assumed and Subleased Real Estate Leases, shall be and hereby are forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing Interests against the Purchaser Releasees, the Transferred Property, or the interests of the Debtors in such Transferred Property. Following the Closing, no holder of an Interest against the Debtors shall interfere with the Purchaser's title to or use and enjoyment of the Debtors' interests in the Transferred Property based on or related to such Interests, and all such Interests, if any, shall be, and hereby are transferred and attached to the proceeds from the Transaction in the order of their priority, with the same validity, force and effect which they have against such Transferred Property as of the Closing, subject to any rights, claims and defenses that the Debtors' estates and Debtors, as applicable, may possess with respect thereto.

8. **No Successor Liability.** No Purchaser Releasee shall, as a result of transfer, possession or operation of the Transferred Property: (i) be a successor to any of the Debtors or the Debtors' estates by reason of any theory of law or equity; (ii) have, de facto or otherwise, merged or consolidated with or into any of the Debtors or the Debtors' estates; or (iii) be a continuation or substantial continuation of any of the Debtors or any enterprise of the Debtors. Except as provided in the Agreement regarding the Assumed Liabilities, the conveyance of the Debtors' Interest in the Transferred Property to Purchaser under the Agreement shall not result in

(i) any Purchaser Releasee or the Transferred Property having any liability or responsibility for any Interest against any of the Debtors or against any insider of the Debtors, (ii) any Purchaser Releasee or the Transferred Property having any liability whatsoever with respect to or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, any Interest or Excluded Liability, including without limitation, any liability relating to or arising from any Debtor Employee Plans, except as is expressly set forth in the Agreement, (iii) Purchaser or the Transferred Property, having any liability or responsibility to any of the Debtors except as is expressly set forth in the Agreement or (iv) successor or vicarious liabilities of any kind or character, including, but not limited to, federal, state or other tax liabilities, U.S. or foreign pension liabilities, or liabilities based on any theory of antitrust, environmental, labor law, alter ego, veil piercing, continuity of enterprise, mere continuation, product line, de facto merger or substantial continuity, whether known or unknown, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of these chapter 11 cases, whether imposed by agreement, understanding, law, equity or otherwise with respect to any of the Debtors or any obligations of the Debtors, including, but not limited to, in the case of liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Debtors' business prior to the Closing or any taxes in connection with, or in any way relating to the cancellation of debt of the Debtors or their Affiliates.

9. **Assumption and Assignment or Assumption and Sublease.** Pursuant to Bankruptcy Code sections 105(a), 363 and 365, and subject to, conditioned on, and effective either as of the Closing Date or such later date as contemplated by the Agreement, the Debtors'

assumption and assignment to the Purchaser of the Assumed and Assigned Contracts, and the assumption and sublease to the Purchaser of the Assumed and Subleased Real Estate Leases, and the Purchaser's acceptance of such assignments and subleases on the terms set forth in the Agreement, are hereby approved. On the Closing Date or such later date as contemplated by the Agreement, the Assumed and Assigned Contracts and Assumed and Subleased Real Estate Leases, whether entered into or amended before or after the Petition Date, shall be assumed and assigned or subleased, as the case may be, to the Purchaser, free and clear of all Interests of any kind or nature whatsoever other than the Assumed Liabilities on the terms set forth in the Agreement, and shall remain in full force and effect for the benefit of the Purchaser in accordance with their respective terms, notwithstanding any provision in any such Assumed and Assigned Contracts (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, limits or conditions such assignment. Pursuant to Bankruptcy Code section 365(k), the Debtors shall be relieved from any further liability with respect to the Assumed and Assigned Contracts following assignment to the Purchaser. Debtors are hereby authorized, at Closing or such later date as contemplated by the Agreement, to execute and perform under any other agreement executed in connection with the transfer of the Transferred Property to the Purchaser, and to execute and deliver to the Purchaser such documents or other instruments as may be necessary to assign to Purchaser the Assumed and Assigned Contracts or sublease to Purchaser the Assumed and Subleased Real Estate Leases.

10. **Payment of Cure Amounts.** In accordance with the allocation of responsibility set forth in the Agreement, the Purchaser or Debtors shall be obligated to pay or cause to be paid any and all amounts accrued or otherwise owed (collectively, the "Cure Amounts") under any Assumed and Assigned Contract or Assumed and Subleased Real Estate Lease, as soon as



reasonably practicable on or after Closing in the amount as to which (i) the contracting counterparty consents in writing, (ii) the counterparty is deemed to have consented, or (iii) the Court enters an order determining the Cure Amount. The Purchaser and Debtors' respective obligations to pay the Cure Amounts and the Purchaser's promise to perform the future obligations under the Assumed and Assigned Contracts and the Assumed and Subleased Real Estate Leases after the Closing shall constitute adequate assurance of future performance within the meaning of Bankruptcy Code sections 365(b)(1)(C) and 365(f)(2)(B).

11. **Cure Amounts for Assumed and Assigned Contracts.** As set forth in the Bidding Procedures Order, the Cure Amounts with respect to each Assumed and Assigned Contract and Assumed and Subleased Real Estate Lease shall be determined in accordance with the Assignment Procedures and, upon such determination, shall constitute findings of the Court and shall be final and binding on parties to such Assumed and Assigned Contracts or Assumed and Subleased Real Estate Leases (and their successors and designees), and shall not be subject to further dispute or audit based on performance prior to the time of assumption and assignment or sublease, irrespective of the terms and conditions of such Assumed and Assigned Contracts or Assumed and Subleased Real Estate Leases. Upon assumption and assignment of Assumed and Assigned Contract or assumption and sublease of Assumed and Subleased Real Estate Lease in accordance with the Assignment Procedures, each counterparty to an Assumed and Assigned Contract or Assumed and Subleased Real Estate Lease shall be forever barred, estopped and permanently enjoined from (i) asserting against the Debtors or the Purchaser, or the property of either of them, any default existing as of Closing; or, against the Purchaser, any counterclaim, defense, setoff or any other Interest asserted or assertable against the Debtors; and (ii) imposing or charging against the Purchaser Releasees any accelerations, assignment fees, increases or any

other fees as a result of the Debtors' assumption and assignments to Purchaser of the Assumed and Assigned Contracts or assumption and sublease to Purchaser of the Assumed and Subleased Real Estate Leases. To the extent that any counterparty failed to object to the Cure Amount with respect to an Assumed and Assigned Contract or an Assumed and Subleased Real Estate Lease in accordance with the Assignment Procedures, such counterparty shall be deemed to have consented to the applicable Cure Amount, and the assignments to Purchaser of such Assumed and Assigned Contract and the sublease to Purchaser of such Assumed and Subleased Real Estate Lease.

12. **Security Deposits.** The Debtors are hereby authorized to establish a depository account and shall deposit therein all security deposits paid by Purchaser or any Designated Purchaser to any Debtor that is a sub-landlord under any Assumed and Subleased Real Estate Lease. Such security deposits shall not constitute property of any Debtor's estate unless and until applied in accordance with the applicable Assumed and Subleased Real Estate Lease, shall be segregated from the property of each Debtor's estate, and shall not be subject to disbursement, transfer or setoff, or other use or application by any Debtor except as set forth in the relevant Assumed and Subleased Real Estate Lease or otherwise agreed to by the Purchaser or Designated Purchaser.

13. **Assignment and Transfer of Intangible Property.** The Debtors are hereby authorized to assign and transfer to the Purchaser all of the Debtors' right, title, and interest (including common law rights) to all of their intangible property included in the Transferred Property, subject to the Debtors' obtaining actual or deemed Consents (defined in the Agreement) to the extent required by applicable law.

14. **Ipsa Facto Clauses Ineffective.** Upon the Debtors' assignment to Purchaser of the Assumed and Assigned Contracts and the sublease to Purchaser of the Assumed and Subleased Real Estate Leases under the provisions of this Order, no default by a Debtor or Purchaser shall exist under any Assumed and Assigned Contract or Assumed and Subleased Real Estate Lease, and no counterparty to any Assumed and Assigned Contract or Assumed and Subleased Real Estate Lease shall be permitted to declare a default by any of the Debtors or Purchaser thereunder or otherwise take action against the Purchaser as a result of any Debtor's financial condition, bankruptcy or failure to perform any of its obligations under the relevant Assumed and Assigned Contract or Assumed and Subleased Real Estate Lease. Any provision in an Assumed and Assigned Contract that prohibits or conditions the assignment of such Assumed and Assigned Contract (including, without limitation, the granting of a lien thereon) or allows the counterparty thereto to terminate, recapture, impose any penalty, condition on renewal or extension, or modify any term or condition upon such assignment or sublease, constitutes an unenforceable anti-assignment provision that is void and of no force and effect as against the Debtors. The failure of the Debtors or the Purchaser to enforce at any time one or more terms or conditions of any Assumed and Assigned Contract or Assumed and Subleased Real Estate Lease shall not be a waiver of such terms or conditions, or of the rights of the Debtors or Purchaser to enforce every term and condition of the Assumed and Assigned Contract or Assumed and Subleased Real Estate Lease.

15. **Binding Effect of Order.** This Order shall be binding upon and shall govern the acts of all entities, including without limitation all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all

other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets. The terms and provisions of the Agreement, the Ancillary Agreements and this Order shall be binding in all respects upon the Debtors, the Debtors' estates, all creditors of (whether known or unknown) and holders of equity interests in the Debtors and the Purchaser and their respective affiliates, successors and assigns, and any third parties, notwithstanding any subsequent appointment of any trustee of any of the Debtors under any chapter of the Bankruptcy Code.

16. **Intellectual Property License Agreement and Trademark Licensing**

**Agreement.** The Intellectual Property License Agreement and Trademark Licensing Agreement shall be binding on the Debtors, any chapter 11 trustee or chapter 7 trustee appointed in any of the bankruptcy cases of the Debtors. Further, all Intellectual Property and Trademarks licensed to Purchaser under the Intellectual Property License Agreement or Trademark Licensing Agreement shall not be sold, transferred, conveyed or assigned unless such sale, transfer, conveyance and assignment is made subject to the licenses granted to Purchaser under the Intellectual Property License Agreement or Trademark Licensing Agreement and subject to all other applicable obligations set forth in the Intellectual Property License Agreement or Trademark Licensing Agreement with respect to such Intellectual Property.

17. **Release of Interests.** This Order (i) shall be effective as a determination that, on the Closing, all Interests of any kind or nature whatsoever existing as to the Transferred Property of the Debtors prior to the Closing have been unconditionally released and terminated as to the Transferred Property, except as otherwise provided in the Agreement and this Order, and that the conveyances described herein have been effected, and (ii) shall be binding upon and shall govern

the acts of all entities including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Transferred Property of the Debtors. Upon the occurrence of the Closing, the Debtors and persons holding an Interest in the Transferred Property of the Debtors immediately prior to the Closing are authorized to execute such documents and take all other actions as may be reasonably necessary to release their Interests in the Transferred Property of the Debtors, if any, as such Interests may have been recorded or may otherwise exist.

18. **Retention of Jurisdiction.** This Court retains exclusive jurisdiction to interpret, construe, implement, and enforce the terms and provisions of, and to resolve any and all disputes that may arise under or in connection with this Order, all amendments thereto and any waivers and consents thereunder, including, but not limited to, retaining jurisdiction to (i) compel delivery of the Transferred Property of the Debtors to Purchaser; (ii) interpret, implement and enforce the provisions of this Order and any related order; (iii) protect Purchaser Releasees against any Interests against the Debtors or the Transferred Property of any kind or nature whatsoever, attaching to the proceeds of the Transaction, and (iv) resolve any and all disputes that may arise under or in connection with the assumption and assignment of any Assumed and Assigned Contract or the assumption and sublease of any Assumed and Subleased Real Estate Lease or under the Agreement, the Ancillary Agreements, or the Order, in all respects, and further to hear and determine any and all disputes among the Sellers, the Sellers' Affiliates, the

Purchaser or its Affiliates, as the case may be, that may arise in connection the Excluded Liabilities of the Debtors.

19. **Retention of Rights By the Government.** Nothing in this Order or in the Agreement (i) releases, nullifies, or enjoins the enforcement of any liability to a governmental unit of the United States or any state or municipality of the United States under police and regulatory statutes or regulations that any entity would be subject to as the owner or operator of property after the date of entry of this Order; or (ii) should be construed to give Purchaser any more protection against any governmental unit of the United States or any state or municipality of the United States than Purchaser is otherwise entitled to under 11 U.S.C. § 363(f). Nothing in this paragraph should be construed to create for any governmental unit any substantive right that does not otherwise exist under law.

20. **Fees, Expenses and Other Obligations.** All obligations to be paid by the Debtors or their Affiliates to the Purchaser or to be borne by any Debtors or their Affiliates under the Agreement, the other Transaction Documents, including, but not limited to the any price adjustments under the Agreement, the Break-Up Fee and the Expense Reimbursement, shall be paid in the manner provided in the Agreement, the other Transaction Documents and the Bidding Procedures Order, and shall be immediately payable if and when any Debtor's obligation to pay or bear such amount may arise under the relevant agreement or order, without further order of this Court. Until satisfied, all such obligations shall continue to have the protections provided in the Bidding Procedures Order and this Order, and shall not be discharged, modified or otherwise affected by any reorganization plan for the Debtors, except by an express agreement with Purchaser, its successors, or assigns.

21. **Sale Proceeds.** All Interests in the Transferred Property of the Debtors shall attach to any proceeds of such Transferred Property immediately upon receipt of such proceeds by the Sellers (or any party acting on any Seller's behalf) in the order of priority, and with the same validity, force and effect which such Interests now have against such Transferred Property, subject to any rights, claims and defenses the Sellers, the Debtors' estates or any trustee for any Debtor, as applicable, may possess with respect thereto, in addition to any limitations on the use of such proceeds pursuant to any provision of this Order.

22. **No Material Modifications.** The Agreement, the Ancillary Agreements and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by such parties, and in accordance with the terms thereof, without further order of the Court; *provided* that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates and has been agreed to between the Debtors and the Purchaser; and *provided* further that no such modifications, amendments, or supplements may be made except following two (2) days written notice to, or the prior consent of (i) the Committee, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036 (Attention: Fred S. Hodara, Stephen Kuhn, and Kenneth Davis) and (ii) the Bondholder Group, Milbank, Tweed, Hadley & McCloy, One Chase Manhattan Plaza, New York, New York, 10006 (Attention: Roland Hlawaty).

23. **Subsequent Orders and Plan Provisions.** Nothing contained in any subsequent order of this Court or any court of competent jurisdiction in these or other chapter 11 cases (including without limitation, an order authorizing the sale of assets pursuant to sections 363, 365 or any other provision of the Bankruptcy Code or any order entered after any conversion of a chapter 11 case of the Debtors to a case under chapter 7 of the Bankruptcy Code) or any chapter

11 plan of reorganization confirmed in any of the Debtors' bankruptcy cases or any order confirming any such plan shall nullify, alter, conflict with or derogate from the provisions of this Order, and the provisions of this Order shall survive and remain in full force and effect.

24. **Failure to Specify Provisions.** The failure specifically to include any particular provisions of the Agreement in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Agreement be authorized and approved in its entirety.

25. **No Stay of Order.** Notwithstanding the provisions of Bankruptcy Rule 6004 and Bankruptcy Rule 6006 or any applicable provisions of the Local Rules, this Order shall not be stayed for ten (10) days after the entry hereof, but shall be effective and enforceable immediately upon entry. Time is of the essence in approving the Transaction, and the Debtors and the Purchaser intend to close the Transaction as soon as practicable. Any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay, or risk its appeal being foreclosed as moot.

26. **Inconsistencies with Prior Orders, Pleadings or Agreement.** To the extent this Order is inconsistent with any prior order or pleading with respect to the Motion in these chapter 11 cases, the terms of this Order shall govern. To the extent there is any inconsistency between the terms of this Order and the terms of the Agreement (including all ancillary documents executed in connection therewith), the terms of the Order shall govern.

27. **Reservation of Rights Regarding Certain Contracts.** Nothing in this Order authorizes or otherwise provides for the assumption, assignment or rejection, in whole or in part, of any Objecting Party Agreement. Other than the rights and obligations between the parties to the Agreement, nothing herein or in the Agreement shall affect the rights of any party regarding



an Objecting Party Agreement, all of which such rights of the Objecting Parties are hereby preserved, including without limitation the right to seek, oppose or support (a) any assumption, assignment or rejection of any Objecting Party Agreement on any legal or factual basis, (b) adequate assurance of future performance, (c) the estimation or assertion of any proposed cure amount, (d) the assumption by the Purchaser of all obligations and liabilities under any Objecting Party Agreement by virtue of the assumption and assignment of the Objecting Party Agreement under Section 365 and other applicable law, including contingent, unmatured, or unliquidated claims and whether such claims arise or arose pre- or post-closing, and (e) adequate assurance for payment of such contingent, unmatured, or unliquidated claims. For the purposes of this Order, "Objecting Party Agreement" means any written contract, agreement, license or any other document that creates binding contractual obligations between an Objecting Party and one or more Debtors; "Objecting Party" means Motorola, Inc. ("Motorola"), Macro 4, Inc., Freescale Semiconductor, Inc., Intoto LLC, Oracle USA, Inc., AT&T Corp., Anixter Inc., Telstra Corporation Limited, SNMP Research International Inc., the affiliates of Verizon Communications, Inc. ("Verizon") and DiamondWare Former Shareholders and, in the case of an Objecting Party that is not an individual, such Objecting Party's respective affiliates; and "DiamondWare Former Shareholders" means Keith Weiner, Rudy Mathieu, Wendell Allen Neff, Charles Rowe, Neal Shact, Fred Scott, Jac Goudsmit, Dwayne Roberts, William Weidner and Price Paschall. Nothing in this Order or the Agreement shall prejudice, estop, bar, impair or otherwise limit in any respect any party's rights under Section 365 of the Bankruptcy Code with respect to the Objecting Party Agreements, including, without limitation, the rights set forth above in subparts (a) through (e). The Objection of Motorola to the Debtors' Motion for Orders (I)(A) Authorizing Debtors' Entry Into the Asset and Share Sale Agreement, (B) Authorizing and

Approving the Bidding Procedures, (C) Authorizing and Approving a Break-up Fee and Expense Reimbursement, (D) Approving the Notice Procedures, (E) Approving the Assumption and Assignment Procedures, (F) Authorizing the Filing of Certain Documents Under Seal, and (G) Setting a Date for the Sale Hearing and (II) Authorizing and Approving (A) the Sale of Certain Assets of, and Equity Interest in, Debtors' Enterprise Solutions Business, (B) the Assumption and Assignment of Certain Contracts and Leases and (C) the Assumption and Sublease of Certain Leases [D.I. 1316] (the "Motorola Objection") shall be deemed to constitute a timely and properly served objection on the basis of the arguments set forth in the Motorola Objection to the service of any Initial Notice (as defined in the Bidding Procedures Order) on Motorola.

28. **Resolution of Flextronics' Objection.** The Limited Objection and Reservation of Rights filed with this Court by Flextronics Corporation and Flextronics Telecom Systems Ltd. (collectively, "Flextronics") on September 4, 2009 [D.I. 1435] has been resolved pursuant to the following representations and terms:

- (i) the Agreement and related agreements do not involve a "back to back" arrangement with the Purchaser, by which the Debtors would continue operating under the MCMSAs but stand as a mere conduit between Flextronics and the Purchaser under the Agreement with respect to the MCMSAs, where "MCMSAs" refers to the (a) the Amended and Restated Master Contract Manufacturing Services Agreement, dated as of June 29, 2004, between NNL and Flextronics Telecom Systems Ltd. and (b) the Master Contract Manufacturing Services Agreement, dated as of September 30, 2003, between NNL and Flextronics Corporation (f/k/a Solectron Corporation) and their ancillary agreements;
- (ii) the MCMSAs and any of the Debtors' contractual rights thereunder as they relate to Enterprise Solutions Business, shall not be assigned to the Purchaser in connection with the Agreement (for the avoidance of doubt, nothing in this Order shall constitute an assumption by the Debtors of the MCMSAs, to the extent they are capable of assumption, and all rights and remedies of the Debtors, the Purchaser and Flextronics are expressly reserved);

- (iii) upon closing of the Transaction, the Debtors shall cease placing forecasts or purchase orders under the MCMSAs for products or services related solely to the Enterprise Solutions Business, *provided* that the Debtors shall not be prohibited from providing administrative services to Purchaser, including placing forecasts or purchase orders on behalf of the Purchaser pursuant to one or more agreements between the Purchaser and Flextronics;
- (iv) the Debtors, the Purchaser and Flextronics shall promptly begin good faith negotiations regarding a three way inventory purchase agreement as contemplated in the term sheet attached as Exhibit E to the Agreement;
- (v) the Purchaser and Flextronics shall promptly begin good faith negotiations regarding an agreement which shall apply to any purchase orders issued to Flextronics by the Purchaser (or any of its designated affiliates) in connection with and following Purchaser's acquisition of the Enterprise Solutions Business; and
- (vi) the Debtors and Flextronics shall each use commercially reasonable efforts to provide each other and to the Purchaser, no later than October 5, 2009, a list of all equipment owned by the Debtors or the affiliates of the Debtors that is in the possession of Flextronics related to the Enterprise Solutions Business. Based on these two lists, the Debtors and Flextronics shall cooperate in good faith to compile a complete list of all equipment related to the Enterprise Solutions Business that is owned by the Debtors or the affiliates of the Debtors and is in the possession of Flextronics (the "Equipment List") by 5:00 pm (EST) on October 10, 2009, and shall provide a copy of the Equipment List to the Purchaser. Upon finalization of the Equipment List, Flextronics shall provide the Debtors and the Purchaser with a list of their interests (if any) with regard to each item of equipment set forth in the Equipment List no later than October 15, 2009, or within five (5) business days of the finalization of the Equipment List and any demands of adequate protection with regards to such interests (the "Flex Interests and Adequate Protection Submission"). To the extent that the Debtors or the Purchaser have any objections regarding the Flex Interests and Adequate Protection Submission, the Debtors and/or the Purchaser shall file such objections with this Court no later than 5:00 pm (EST) on October 30, 2009 (the "Objection"). Flextronics shall serve their responsive papers to the Objection no later than 5:00 pm (EST) on November 15, 2009, and the Objection shall be heard during the scheduled November 19, 2009 omnibus hearing. Notwithstanding any of the foregoing, a decision resolving the Objection (if any) shall be entered prior to the Closing. The Debtors, Flextronics and the Purchaser reserve their rights regarding the matters set forth in this paragraph 28. The Debtors

and Flextronics may, upon the written consent of Purchaser, agree to amend any date in this paragraph.

29. **Assets of Non-Debtors.** This Order applies only to assets owned by the Debtors, including, without limitation, all of the Debtors' equity interests in Nortel Government Solutions Incorporated and DiamondWare, Ltd. Consequently, notwithstanding any other provision of this Order or the Agreement to the contrary, the portions of this Order that approve the transfer of assets to the Purchaser free and clear of all liens and other encumbrances, or that modify, enjoin, release or otherwise limit the rights of any creditor of entities transferring assets, apply only to assets owned by the Debtors and do not apply to any assets owned by non-debtor entities, except to the extent otherwise agreed by such creditor in writing (out of abundance of caution, the Debtors agree that the Pension Benefit Guaranty Corporation has not agreed to permit the transfer of any assets of such non-debtor selling entity free and clear of any liens or encumbrances, or to modify, enjoin, release or otherwise limit its rights against any such non-debtor selling entity, including, without limitation, Nortel Government Solutions Incorporated and DiamondWare, Ltd. or any of their respective assets).

30. **Reservation of Setoff Rights.** Nothing in this Order shall be deemed to waive, release or extinguish any valid claim with respect to setoff that Verizon may have against the Debtors.

31. **Allocation.** The Purchaser shall deposit proceeds of the Transaction, subject to the price adjustments and Purchaser's rights under the Agreement and less applicable or value-added taxes incurred by the ~~Sellers~~ and the EMEA Sellers, and, to the extent agreed by the ~~Sellers~~ and the EMEA Sellers, any transaction costs, into an Escrow Account (as defined in the Interim Funding and Settlement Agreement, dated June 9, 2009 (the "IFA"). In accordance with this Court's order approving and authorizing the transactions contemplated by the IFA, the

main Sellers, the other Sellers which join the agreement

proceeds in the Escrow Account shall not be distributed in advance of either (a) agreement of all of the Main Sellers, the other Sellers which join the Agreement and the EMEA Sellers as to the distribution of such proceeds (subject to the prior consent of the Committee and the Bondholder Group acting in good faith in accordance with Section 12.g. of the IFA) or (b) in the case where the Main Sellers, the other Sellers which join the Agreement and the EMEA Sellers fail to reach agreement, determination by the relevant dispute resolver(s) in accordance with the terms of the Interim Sales Protocol (as such term is defined in the IFA and subject to the requirements of Section 12.g of the IFA), which Interim Sales Protocol shall be approved by the Court.

Dated: Wilmington, Delaware  
September 16, 2009

  
\_\_\_\_\_  
HONORABLE KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF NORTEL NETWORKS INC. AND THE OTHER  
COMPANIES LISTED ON SCHEDULE "A" HERETO WITH RESPECT TO CERTAIN  
PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT FOR  
THE DISTRICT OF DELAWARE

Court File No: 09-CL-7951

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

Proceeding commenced at Toronto

**ORDER  
(Recognition of the U.S. Avaya Sale Order)**

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Lawyers for the Applicants

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF NORTEL NETWORKS INC. AND THE OTHER COMPANIES LISTED  
ON SCHEDULE "A" HERETO WITH RESPECT TO CERTAIN PROCEEDINGS TAKEN IN THE  
UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

6 NOV 2009

Court File No: 09-CL-7951

Nov 6 / 09

The motion was not opposed.

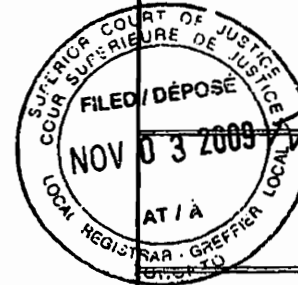
~~The order was requested~~

The relief requested under s.14.6 of the  
CCAA is to recognise 3 orders made  
in the Chapter 11 proceedings. The 3 orders  
relate to matters that were the subject  
of parallel or joint hearings in Nortel's  
CCAA proceedings in which similar relief  
was granted. In order to facilitate  
continued the coordination of proceedings  
between the US Court and the Canadian  
Court in my view it is appropriate  
to grant the requested relief.  
Three orders have been signed in the  
form requested



ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceeding commenced at Toronto



MOTION RECORD  
Recognition of various Orders  
(returnable November 6, 2009)

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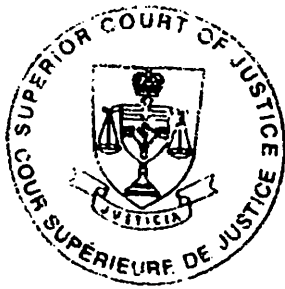
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Lawyers for the Applicants

# **TAB 10**





Court File No.: 09-CL-7950

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) WEDNESDAY, THE 16th  
 )  
JUSTICE MORAWETZ ) DAY OF SEPTEMBER, 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  
NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED,  
NORTEL NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS  
INTERNATIONAL CORPORATION AND NORTEL NETWORKS TECHNOLOGY  
CORPORATION**

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

**APPROVAL AND VESTING ORDER  
(Enterprise Solutions Business)**

THIS MOTION, made by Nortel Networks Corporation ("NNC"), Nortel Networks Limited ("NNL"), Nortel Networks Technology Corporation, Nortel Networks Global Corporation and Nortel Networks International Corporation (collectively, the "Applicants") for the relief set out in the Applicants' Notice of Motion dated September 15, 2009 including, the approval of a transaction (the "Transaction") to sell Assets and Shares (as such terms are defined in the Sale Agreement) (collectively, the "Assets") pursuant to an amended and restated asset and share sale agreement dated as of September 14, 2009 (the "Sale Agreement") among NNC, NNL, Nortel Networks Inc. (collectively the "Main Sellers") and the affiliates of the Main

Sellers identified in the Sale Agreement as Other Sellers (and together with the Main Sellers and the EMEA Sellers (as defined in the Sale Agreement), the "Sellers"), as sellers and Avaya Inc., as purchaser (the "Purchaser") was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the affidavit of George Riedel sworn September 15, 2009 and the twentieth report of Ernst & Young Inc. in its capacity as monitor (the "Monitor") dated September 15, 2009 (the "Twentieth Report") and on hearing the submissions of counsel for the Applicant, the Monitor and those other parties present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Katie Legree sworn September 15, 2009, filed:

1. THIS COURT ORDERS that the time for the service of the Notice of Motion, the Twentieth Report and the Motion Record is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof
2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved. The execution, delivery and performance of the Sale Agreement by the Applicants is hereby authorized and approved, and the Applicants are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Assets to the Purchaser.
3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Monitor's Certificate"), all of the Applicants' right, title and interest in and to their Assets shall vest absolutely in the Purchaser or the Designated Purchaser (as such term is defined in the Sale Agreement) free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Orders made in these proceedings including the Order of the Honourable Justice Morawetz dated January 14, 2009 (as amended and restated); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and

(iii) to the extent permitted by law, all Excluded Liabilities (all of which are collectively referred to as the "Encumbrances", but excluding Permitted Encumbrances (other than those specifically contemplated to be discharged by virtue of this Order) and Assumed Liabilities). For greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Assets are hereby expunged and discharged as against the Assets.

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

5. THIS COURT ORDERS that all proceeds of the Transaction, subject to the price adjustments and the Purchaser's rights under the Sale Agreement and less applicable or value added taxes incurred by the Sellers, shall be deposited into an escrow account pursuant to an escrow agreement to be negotiated and agreed to by all of the Sellers and in accordance with Section 12.g. of the Interim Funding and Settlement Agreement entered into on June 9, 2009 (the "IFA"), and such proceeds shall not be distributed in advance of either (i) agreement by all of the Sellers as to the distribution of such proceeds (in accordance with Section 12.g. of the IFA) or (ii) in the case where the Sellers fail to reach such agreement, determination by the relevant dispute resolver(s) in accordance with the terms of the Interim Sales Protocol (as such term is defined in the IFA and subject to the requirements of Section 12.g of the IFA), which Interim Sales Protocol shall be approved by this Court.

6. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

7. THIS COURT ORDERS that, notwithstanding:

(a) the pendency of these proceedings;

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

the provisions of the Transaction Documents and vesting of the Assets in the Purchaser or the Designated Purchaser, as the case may be pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and shall not be void or voidable by creditors of the Applicants, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

9. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, the United Kingdom or elsewhere, to give effect to this Order and to assist the Applicants, 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 Applicants 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 Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

10. THIS COURT ORDERS that each of the Applicants 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.

11. THIS COURT ORDERS:

- (i) the Sale Agreement and related agreements do not involve a “back to back” arrangement with the Purchaser, by which the Applicants would continue operating under the MCMSAs but stand as a mere conduit between Flextronics and the Purchaser under the Sale Agreement with respect to the MCMSAs, where “MCMSAs” refers to the (a) the Amended and Restated Master Contract Manufacturing Services Agreement, dated as of June 29, 2004, between NNL and Flextronics Telecom Systems Ltd. and (b) the Master Contract Manufacturing Services Agreement, dated as of September 30, 2003, between NNL and Flextronics Corporation (f/k/a Solectron Corporation) (“Flextronics”) and their ancillary agreements;
- (ii) the MCMSAs and any of the Applicants’ contractual rights thereunder as they relate to the Business, shall not be assigned to the Purchaser in connection with the Sale Agreement;
- (iii) upon closing of the Transaction, the Applicants shall cease placing forecasts or purchase orders under the MCMSAs for products or services related solely to the Business, *provided* that the Applicants shall not be prohibited from providing administrative services to Purchaser, including placing forecasts or purchase orders on behalf of the Purchaser pursuant to one or more agreements between the Purchaser and Flextronics;
- (iv) the Applicants, the Purchaser and Flextronics shall promptly begin good faith negotiations regarding a three way inventory purchase agreement as contemplated in the term sheet attached as Exhibit E to the Sale Agreement;
- (v) the Purchaser and Flextronics shall promptly begin good faith negotiations regarding an agreement which shall apply to any purchase orders issued to Flextronics by the Purchaser (or any of its designated affiliates) in connection with and following Purchaser’s acquisition of the Business;  
and

- (vi) the Applicants and Flextronics shall each use commercially reasonable efforts to provide each other and to the Purchaser, no later than October 5, 2009, a list of all equipment owned by the Applicants or the affiliates of the Applicants that is in the possession of Flextronics related to the Business. Based on these two lists, the Applicants and Flextronics shall cooperate in good faith to compile a complete list of all equipment related to the Business that is owned by the Applicants or the affiliates of the Applicants and is in the possession of Flextronics (the "Equipment List") by 5:00 pm (EST) on October 10, 2009, and shall provide a copy of the Equipment List to the Purchaser. Upon finalization of the Equipment List, Flextronics shall provide the Applicants and the Purchaser with a list of their interests (if any) with regard to each item of equipment set forth in the Equipment List no later than October 15, 2009, or within five (5) business days of the finalization of the Equipment List (the "Flex Interests"). Notwithstanding any of the foregoing, the Flex Interests shall be resolved with consent of the Applicants, Flextronics, the Purchaser and the Monitor, or failing which, further Order of the Court, prior to the Closing.
  
- (vii) The Applicants, Flextronics and the Purchaser reserve their rights regarding the matters set forth in this paragraph 11. The Applicants and Flextronics may, upon the written consent of Purchaser, agree to amend any date in this paragraph.

12. THIS COURT ORDERS that nothing in the foregoing paragraph shall serve as a precedent with respect to any future Orders or transactions made in these proceedings.

13. THIS COURT ORDERS that the Confidential Appendix "D" to the Twentieth Report be and is hereby sealed pending further Order of this Court.

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

SEP 17 2009

  
 \_\_\_\_\_

PER / PAR: TV

**Schedule A – Form of Monitor’s Certificate**

Court File No.: 09-CL-7950

**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 A PLAN OF COMPROMISE OR ARRANGEMENT OF  
NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED,  
NORTEL NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS  
INTERNATIONAL CORPORATION AND NORTEL NETWORKS TECHNOLOGY  
CORPORATION**

**APPLICATION UNDER THE *COMPANIES’ CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED**

**MONITOR’S CERTIFICATE  
(Enterprise Solutions Business)**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Morawetz of the Ontario Superior Court of Justice (the "Court") dated January 14, 2009 (as amended and restated), Nortel Networks Corporation (“NNC”), Nortel Networks Limited (“NNL”), Nortel Networks Global Corporation, Nortel Networks International Corporation and Nortel Networks Technology Corporation (collectively, the “Applicants”) commenced proceedings pursuant to the *Companies’ Creditors Arrangements Act* (Canada) and Ernst & Young Inc. was appointed as monitor (the “Monitor”) in these proceedings.

B. Pursuant to an Order of the Court dated September 16, 2009, the Court approved an amended and restated asset and share sale agreement dated as of September 14, 2009 (the “Sale Agreement”) among NNC, NNL, Nortel Networks Inc. (collectively the “Main Sellers”) and the affiliates of the Main Sellers identified in the Sale Agreement as Other Sellers, as sellers (the Other Sellers and the

Main Sellers together the “Sellers”) and Avaya Inc., as purchaser (the “Purchaser”) and provided for the vesting in the Purchaser of the Applicants' right, title and interest in and to the Assets, which vesting is to be effective with respect to the Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price; (ii) that the conditions to Closing as set out in Article 8 of the Sale Agreement have been satisfied or waived by the Main Sellers and the Purchaser, as applicable; and (iii) the Monitor has been advised that the Transaction has been completed to the satisfaction of the Applicants.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE MONITOR CERTIFIES the following:

1. NNC, NNL and the Purchaser have advised the Monitor that the Purchaser has paid and [●] has received the Purchase Price payable on the Closing Date pursuant to the terms of the Sale Agreement;
2. NNC, NNL and the Purchaser have advised the Monitor that the conditions to Closing as set out in Article 8 of the Sale Agreement have been satisfied or waived by the Applicants and the Purchaser, as applicable; and
3. NNC, NNL and the Purchaser have advised the Monitor that the Transaction has been completed to the satisfaction of the Applicants.

This Certificate was delivered by the Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ 200●.

**ERNST & Young Inc. in its capacity as  
monitor in the CCAA proceedings of Nortel  
Networks Corporation, et. al. and not in its  
personal capacity**

Per: \_\_\_\_\_  
Name:  
Title:



**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NORTEL  
NETWORKS CORPORATION, NORTEL NETWORKS LIMITED, NORTEL NETWORKS  
GLOBAL CORPORATION, NORTEL NETWORKS INTERNATIONAL CORPORATION AND  
NORTEL NETWORKS TECHNOLOGY CORPORATION**

Court File No: 09-CL-7950

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

Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER  
Enterprise Solutions Business**

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# **TAB 11**



**UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE  
LAW (UNCITRAL)**

***UNCITRAL Model Law on Cross-Border Insolvency with Guide to  
Enactment***

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Article 32. Rule of payment in concurrent proceedings

A/CN.9/433, paras. 46-49.

A/CN.9/435, paras. 123-124.

*Article 6. Public policy exception*

Nothing in this Law prevents the court from refusing to take an action governed by this Law if the action would be manifestly contrary to the public policy of this State.

86. As the notion of public policy is grounded in national law and may differ from State to State, no uniform definition of that notion is attempted in article 6.

87. In some States the expression "public policy" may be given a broad meaning in that it might relate in principle to any mandatory rule of national law. In many States, however, the public policy exception is construed as being restricted to fundamental principles of law, in particular constitutional guarantees; in those States, public policy would only be used to refuse the application of foreign law, or the recognition of a foreign judicial decision or arbitral award, when that would contravene those fundamental principles.

88. For the applicability of the public policy exception in the context of the Model Law it is important to note that a growing number of jurisdictions recognize a dichotomy between the notion of public policy as it applies to domestic affairs, as well as the notion of public policy as it is used in matters of international cooperation and the question of recognition of effects of foreign laws. It is especially in the latter situation that public policy is understood more restrictively than domestic public policy. This dichotomy reflects the realization that international cooperation would be unduly hampered if public policy would be understood in an extensive manner.

89. The purpose of the expression "manifestly", used also in many other international legal texts as a qualifier of the expression "public policy", is to emphasize that public policy exceptions should be interpreted restrictively and that article 6 is only intended to be invoked under exceptional circumstances concerning matters of fundamental importance for the enacting State.

*Discussion in UNCITRAL and in the Working Group*

A/52/17, paras. 170-173.

A/CN.9/419, para. 40.

A/CN.9/422, paras. 84-85.

A/CN.9/433, paras. 156-160.

A/CN.9/435, paras. 125-128.

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  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto, Ontario Canada

**MOVING PARTY'S BRIEF OF AUTHORITIES  
(RECOGNITION OF US SALE APPROVALS)  
(Motion Returnable October 10, 2013)**

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