

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 GREAT SLAVE HELICOPTERS LTD.

APPLICANT

AFFIDAVIT OF ALGIS VAITONIS  
(Sworn 3 September 2018)

I, **ALGIS VAITONIS**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am an Officer of ECN Aviation Inc. (“**ECN**”) and have personal knowledge of the matters herein deposed save and except where I rely on information provided to me by others or from my review of documentation, in which cases I provide the source of that information and believe it to be true.
2. I am swearing this Affidavit in connection with proceedings being commenced by Great Slave Helicopters Ltd. (“**GSH**”) pursuant to the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) and to provide information with respect to ECN’s position as a secured creditor of GSH.
3. Now shown to me is a booked of documents entitled “ECN Brief of Documents”. The following documents are in the ECN Brief of Documents:
  - (a) Amended and Restated Aircraft Loan Agreement dated 30 November 2017 (the “**Aircraft Loan Agreement**”);
  - (b) Guarantee dated 31 March 2014 (the “**Guarantee**”);
  - (c) General Security Agreement dated 28 March 2014 (the “**GSA**”);
  - (d) Aircraft Security Agreement dated 28 March 2014;

- (e) Acknowledgement and Confirmation of Guarantees and Security dated 30 November 2017; and
- (f) Fourth Amended and Restated Intercreditor Agreement dated 26 May 2015 (the “**Intercreditor Agreement**”).

4. GSH was, until on or about 18 August 2018, a wholly-owned subsidiary of Discovery Air Inc. (“**DA**”). DA also owned all of the shares of Air Tindi Ltd. (“**Air Tindi**”), Discovery Mining Services Ltd. (“**DMS**” and, together with GHS, DA and Air Tindi, the “**Discovery Air Group**”), and had a minority interest in Top Aces Inc. (“**Top Aces**”).

5. The overwhelming majority of DA’s shares are owned by Clairvest Group Inc. (“**Clairvest**”). Clairvest is also the indirect owner of the majority of the shares of Top Aces and a secured creditor of each of the members of the Discovery Air Group.

6. The Discovery Air Group provided specialty aviation and logistics support to customers operating across Canada and internationally. GSH is based in Yellowknife, Northwest Territories and conducts helicopter operations in Western and Northern Canada, and internationally.

7. On or about 21 March 2018, DA commenced reorganization proceedings under the CCAA (the “**DA CCAA Proceedings**”). KSV Kofman Inc. (the “**Monitor**”) was appointed as Monitor.

8. In general terms, the purposes of the DA CCAA Proceedings were to implement a sales procedure that ultimately resulted in Clairvest becoming the indirect owner of all of the shares of, *inter alia*, GSH. Pursuant to an Approval and Vesting Order dated 2 June 2018, the Court approved a transaction (the “**GSH Transaction**”) pursuant to which shares of GSH were purchased by 10671541 Canada Inc. (“**1067 Canada**”), which I understand to be a company owned or controlled by Clairvest. Based on a Certificate posted on the Monitor’s website, I understand that the GSH Transaction closed on or about 14 August 2018. There were similar transaction entered into with respect to the shares of Air Tindi and DMS.

9. Details with respect to the DA CCAA Proceedings and the GSH Transaction are in the materials filed by DA and the Monitor in the DA CCAA Proceedings.

10. The stay of proceedings ordered by the Court in the DA CCAA Proceedings included a stay that prevented ECN from exercising its remedies as a secured creditor of GSH and the other members of the Discovery Air Group. In accordance with an Order made on 24 July 2018, the DA CCAA Proceedings

and the stay of proceedings in respect of GSH and the other members of the Discovery Air Group expired on 31 August 2018.

11. ECN provided aircraft financing to the Discovery Air Group. ECN is currently party to a loan agreement—the Aircraft Loan Agreement—with DA under which ECN financed the acquisition of aircraft for use by the Discovery Air Group. Each of the members of the Discovery Air Group guaranteed the obligations owing to ECN under that agreement and provided security over their assets, property and undertaking to secure the obligations owing to ECN. ECN has first-ranking security over the following 8 helicopters and related engines and components owned by GSH (the “ECN/GSH Helicopters”):

Aircraft #	Year	Model	Call Sign	Serial No.
1	2000	Bell 412 EP	C-GMVN	36253
2	1979	Bell 205B	C-FNTR	30297
3	1997	Bell 407	C-FARE	53112
4	1996	Bell 407	C-FNAS	53058
5	1997	Bell 407	C-FGHT	53103
6	1997	AS350B2	C-GDMN	2980
7	1990	AS350B2	C-FAHS	2358
8	1992	AS350B2	C-FAHE	2651

12. The ECH/GSH Helicopters are more fully described in the attached **Schedule “A”**.

13. ECN’s security over the ECN/GSH Helicopters has been registered on, *inter alia*, the International Registry established pursuant to the Cape Town Convention and the Aircraft Protocol. ECN holds document that permit it to procure the de-registration of the ECN/GSH Helicopters as contemplated by Article IX of the Aircraft Protocol.

14. ECN is owed over \$7.8 million, plus costs. There is no dispute that the Discovery Air Group has defaulted and that ECN is now in a position to exercise its rights as a secured creditor, including its rights

in relation to the ECN/GSH Helicopters arising under the applicable agreement and the Cape Town Convention and the Aircraft Protocol.

15. Aside from ECN, GSH owes money to Clairvest, Canadian Imperial Bank of Commerce (“**CIBC**”), Roynat Inc. (“**Roynat**”) and Textron Financial Corporation (“**Textron**”). CIBC provided the Discovery Air Group with a revolving credit facility while each of Roynat and Textron provided aircraft financing. ECN entered into the Intercreditor Agreement with, *inter alia*, GAH, Clairvest, CIBC, Roynat and Textron. Pursuant to the Intercreditor Agreement, ECN has first-ranking security over the ECN/GSH Helicopters.

16. On 31 August 2018 at about 6:00 pm, ECN was provided formal notice that GSH would commence proceedings under the CCAA and would seek an Initial Order under the CCAA at 9:30 am on 4 September 2018. GSH is seeking an Order:

- (a) that permits, but does not require, that GSH pay interest to ECN and Roynat, but requires that it pay interest to CIBC;
- (b) stays ECN from exercising its remedies as a secured creditor against GSH, Air Tindi and DMS until at least 21 September 2018; and
- (c) grants: (i) a \$750,000 charge in favour of KSV Kofman Inc. in its capacity as Monitor of GSH, and its counsel; (ii) an **unlimited charge** in favour of 1067 Canada to secure amounts advanced by 1067 Canada to GSH; and (iii) a \$850,000 charge in favour of GSH’s directors, which charges rank, according to the draft Initial Order, in priority to all security interest in GSH’s property, except purchase money security interests<sup>1</sup>.

17. During the course of the DA CCAA Proceeding, ECN attempted to come to business terms with Clairvest with respect to, *inter alia*, GSH being able to retain the ECN/GSH Helicopters, but the parties were unable to come to a business resolution.

18. Based on information contained in the Affidavit of Alasdair Martin sworn 31 August 2018, I understand that it is GSH’s intent in commencing proceedings under the CCAA is to engage a process to locate a purchaser or purchasers for its property and business, including the ECN/GSH Helicopters,

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<sup>1</sup> The Monitor’s Pre-filing Report and the Affidavit filed in support of the Application are somewhat inconsistent as to the relative priority of the Court-ordered charges

or investor(s) that will permit GSH to continue to carry on business. I further understand that it is GSH's intent to operate the ECN/GSH Helicopters while it attempts to locate a purchaser or investor.

19. Shortly after receiving GSH's material, ECN, through counsel, sought confirmation from GSH that the charges being granted by the Initial Order would **not rank in priority** to ECN's security over the ECN/GSH Helicopters—the concept of a “purchase money security interest” is not part of the Cape Town Convention security/priorities regime—and requested that the Initial Order be amended to reference the fact that the charges in the Initial Order would rank subordinate to ECN's “registered interests” in the ECN/GSH Helicopters. I am advised by Patrick Shea, a partner at Gowling WLG (Canada) LLP that he was advised by counsel to GSH that in fact the intent was that all of the charges in the Initial Order **would rank in priority** to ECN's security interest in the ECN/GSH Helicopters unless ECN's security interest was a purchase money security interest within the meaning of the Provincial personal property security legislation. I am further advised that Mr. Shea requested that GSH defer the request that ECN's charges be “primed” by the Court-ordered charges to the first hearing after the granting of the Initial Order. GSH has not responded to ECN's request in this regard.

20. Aside from the priority of the Court-ordered charges, ECN also objects to the Court staying ECN's enforcement rights as against the ECN/GSH Helicopters because ECN's rights already being stayed for over 60 days in the DA CCAA Proceedings. If ECN is to be again stayed, that stay should, in accordance with the Aircraft Protocol, be restricted to a maximum of 60 days, and while ECN is prevented from taking possession of the ECN/GSH Helicopters, GSH should be required to maintain the ECN/GSH Helicopters and their value as required by the Aircraft Protocol.

21. In terms of GSH maintaining the ECN/GSH Helicopters and their value, ECN has particular concerns with respect to: (a) maintenance of the ECH/GSH Helicopters; and (b) the swapping out of engines and major components of the ECH/GSH Helicopters, while ECN is stayed from exercising its remedies.

22. Proper maintenance is essential to maintaining the value of the ECN/GSH Helicopters. The Aircraft Loan Agreement provides as follows:

*Inspection. Lender shall, upon reasonable notice, be entitled to inspect and/or conduct independent appraisals of the Aircraft and/or the Manuals and Technical Records and Lender shall, upon reasonable notice, at Borrower's expense, be entitled to spot check inspect and/or conduct appraisals of the Aircraft and/or the Manuals and Technical Records at Owner's facilities provided that such inspections and/or appraisals do not*

*unduly disrupt the use or operation of the Aircraft by Owner, and provided that Lender may conduct such inspections and/or appraisals, at Borrower's cost and expenses, (i) once a year, or (ii) at any time upon the occurrence of a Default or an Event of Default which is continuing or (iii) when Lender has reasonable grounds to believe that the Aircraft's value may be impaired. It is being understood and agreed that Lender shall have no obligation to make any such inspection and/or appraisal and shall incur no liability for failure to do so.*

*Maintenance of the Aircraft. At its expense, at all times, service, repair, maintain and overhaul the Airframe, Engines and Major Components, and replace all defective, lost, damaged, destroyed, worn out or unusable parts thereof which may from time to time be incorporated or installed in or attached to or otherwise included as part of the Airframe, Engines and Major Components: (i) so as to keep the Airframe, Engines and Major Components in good operating condition in conformity with standards maintained by major air carriers operating aircraft of the same type as the Airframe, Engines and Major Components and in accordance with the Maintenance Programs, (ii) so as to keep the Airframe, Engines and Major Components in good operating condition in conformity with the standards maintained by Borrower in respect to the other similar aircraft and engines in its fleet, and (iii) so as to keep the Airframe, Engines and Major Components in such operating and other condition as may be necessary to enable the certificate of airworthiness to be maintained in good standing under all applicable regulations of the Aviation Authority.*

*Keep records. At its expense, at all times, maintain or cause to be maintained all records, logs and other documents (in English) required by the Aviation Authority and good industry practice to be maintained in respect of the Aircraft.*

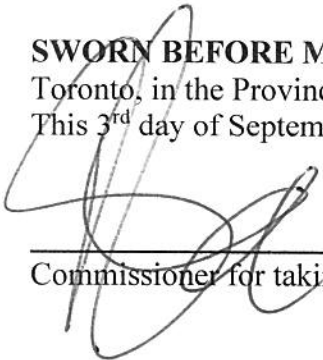
23. Pursuant to the Guarantee and the GSA, GSH is bound by the covenants contained in the Aircraft Loan Agreement.

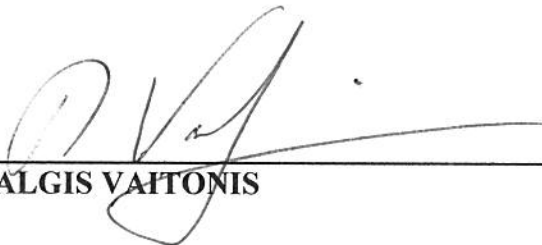
24. ECN's maintenance-related concerns are heightened by the timing of the commencement of proceedings by GSH. GSH's business is seasonal and over the winter months ECN does not require the use of the ECN/GSH Helicopters to the same extent as they are currently required. This seasonality gives rise to an issue for ECN. It is not uncommon for operators to "defer" maintenance until the end of the current operational season to maximize the revenue-generating potential of an aircraft—aircraft in a hanger receiving maintenance do not generate revenue and it is possible to defer certain maintenance without in any way prejudicing safety so long as it is subsequently performed (although the performance of certain deferred maintenance can be more costly than if it had been performed when required). ECN is concerned that, should GSH ultimately not require the ECN/GSH Helicopters going forward such that they are returned to ECN, ECN will not be left to deal with deferred maintenance issues that will reduce the value of the ECH/GSH Helicopters.

25. While GSH's cash flow projection shows that money has been allocated to "repairs and maintenance", there are no provisions in the draft Initial Order that require that GSH maintain the ECN/GSH Helicopters and their value as required by the Aircraft Protocol. I also note that the draft Initial Order permits, but does not require, that GSH make payments required to operate its business.

26. ECN's collateral includes engines and other major components of the ECN/GSH Helicopters. The engines and major components of a helicopter—the rotor blades for example—can be "swapped out". This permits a helicopter to continue to operate and generate revenue while repairs and maintenance are effected. From time-to-time an engine or a major component of a helicopter may also be removed without replacement leaving the helicopter non-operational. There may be legitimate business reasons for the foregoing. ECN is concerned, however, that during the pendency of any insolvency proceedings the ECN/GSH Helicopters remain intact, and that the engines and major components of each of the ECN/GSH Helicopters not be "swapped out" or removed without replacement such as to negatively impact the value of the ECN/GSH Helicopters.

**SWORN BEFORE ME** at the City of )  
Toronto, in the Province of Ontario, )  
This 3<sup>rd</sup> day of September 2018. )

  
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Commissioner for taking Affidavits )

  
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**ALGIS VAITONIS** )

## SCHEDULE "A"

1. One 1997 (1) Bell model 407 helicopter bearing manufacturer's serial number 53103 (described on the International Registry as a BELL model 407 helicopter with serial number 53103) and Canadian registration marks C-FGHT and one (1) Rolls Royce model 250 C47B aircraft engine bearing manufacturer's serial number CAE-847261 (described on the International Registry as a ROLLS ROYCE model 250 C47B aircraft engine with serial number CAE-847261);
2. One 2000 (1) Bell model 412EP helicopter bearing manufacturer's serial number 36253 (described on the International Registry as a BELL model 412EP helicopter with serial number 36253) and Canadian registration marks C-GMVN, and two (2) Pratt & Whitney model PT6T-3DF aircraft engines bearing manufacturer's serial numbers CPPS TX0079 and CPPS TX0015 (described on the International Registry as a PRATT & WHITNEY model PT6T-3DF aircraft engines with serial numbers CPPS TX0079 and CPPS TX0015);
3. One 1997 (1) Bell model 407 helicopter bearing manufacturer's serial number 53112 (described on the International Registry as a BELL model 407 helicopter with serial number 53112) and Canadian registration marks C-FARE, and one (1) Rolls Royce model 250 C47B aircraft engine bearing manufacturer's serial number CAE-847348 (described on the International Registry as a ROLLS ROYCE model 250 C47B aircraft engine with serial number CAE-847348);
4. One 1978 (1) Bell model 205B helicopter bearing manufacturer's serial number 30297 (described on the International Registry as a BELL model 205A-1 helicopter with serial number 30297) and Canadian registration marks C-FNTR, and one (1) Honeywell model T53-17B aircraft engine bearing manufacturer's serial number LE-07230C (described on the International Registry as a HONEYWELL model T5317 aircraft engine with serial number LE-07230C);
5. One 1996 (1) Bell model 407 helicopter bearing manufacturer's serial number 53058 (described on the International Registry as a Bell model 407 helicopter with serial number 53058) and Canadian registration marks C-FNAS, and one (1) Rolls Royce model 250 C47B aircraft engine bearing manufacturer's serial number CAE-847066 (described on the International Registry as a ROLLS ROYCE model 250 C47B aircraft engine with serial number CAE-847066);
6. One 1990 (1) Aerospatiale model AS350 B2 helicopter bearing manufacturer's serial number 2358 (described on the International Registry as a EUROCOPTER model AS350 B2 helicopter with serial number 2358) and Canadian registration marks C-FAHS, and one (1) Turbomeca model Arriel 1D1 aircraft engine bearing manufacturer's serial number 9065 (described on the International Registry as a TURBOMECA model Arriel 1D1 aircraft engine with serial number 9065);
7. One 1997 (1) Aerospatiale model AS350 B2 helicopter bearing manufacturer's serial number 2980 (described on the International Registry as a EUROCOPTER model AS350 B2 with serial number 2980) and Canadian registration marks C-GDMM, and one (1) Turbomeca model Arriel 1D1 aircraft engine bearing manufacturer's serial number 9481 (described on the International Registry as a TURBOMECA model Arriel 1D1 aircraft engine with serial number 9481);
8. One 1992 (1) Aerospatiale model AS350 B2 helicopter bearing manufacturer's serial number 2651 (described on the International Registry as a EUROCOPTER model AS350 B2 with serial number 2651) and Canadian registration marks C-FAHE, and one (1) Turbomeca model Arriel 1D1 aircraft



engine bearing manufacturer's serial number 9487 (described on the International Registry as a TURBOMECA model Arriel 1D1 aircraft engine with serial number 9487);

and all parts, accessories, appliances, appurtenances, components, furnishings, instruments, modules, navigational and communications equipment and all other goods, tangible, personal property and other equipment of whatever nature that may from time to time be incorporated or installed in or attached to the foregoing airframes, engines or propellers, as the case may be, and all records, logs, maintenance records, manuals, technical data, training aids, computer software, and other materials relating to the airframes, engines or propellers, as the case may be, and any property substituted for any of the foregoing.

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**Court File No.:**

**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 GREAT SLAVE HELICOPTERS  
LTD.**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**Proceeding commenced at TORONTO**

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