

**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
TAMERLANE VENTURES INC. and PINE POINT HOLDING CORP.

FACTUM OF THE APPLICANTS

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**FACTUM OF THE APPLICANTS
(Motion Returnable January 7, 2014)**

PART I – INTRODUCTION

1. On August 23, 2013, Tamerlane Ventures Inc. ("**Tamerlane**") and Pine Point Holding Corp. (together with Tamerlane, the "**Applicants**") sought and obtained an Order of this Honourable Court (the "**Initial Order**") granting relief pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**", with these proceedings being referred to herein as the "**CCAA Proceedings**"). The Initial Order provided, among other things, (i) a stay of proceedings in respect of the Applicants and certain of Tamerlane's subsidiaries until September 22, 2013 and (ii) approval of a sale and investment solicitation process (the "**SISP**") originally anticipated to be completed by January 7, 2014.¹
2. On September 17, 2013, the Applicants sought and obtained an Order of this Honourable Court extending the stay in proceeding in respect of the Applicants and certain of Tamerlane's subsidiaries until January 7, 2014.
3. This factum is filed in support of the Applicants' motion for:
 - i. an Order (the "**Order**"), among other things, (a) extending the Stay Period (as defined in the Initial Order) to 11:59 p.m. on January 31, 2014, and (b) making

¹ Any capitalized terms that are not defined herein shall have the meaning given to them in the affidavit of Margaret M. Kent sworn December 30, 2013 (the "**Kent Affidavit**").

certain amendments to the Initial Order in connection with the DIP Term Sheet (as defined in the Initial Order); and

- ii. an Order (the "**Approval and Vesting Order**"), among other things, approving the sale transaction (the "**Transaction**") contemplated by an offer letter (the "**Sale Agreement**") issued by Nelson Machinery & Equipment Ltd. (the "**Purchaser**") dated December 17, 2013, and vesting in the Purchaser Tamerlane's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**").
4. To the knowledge of the Applicants, no party is opposing the relief being sought. The Monitor and Global Resource Fund (the Applicants' pre-filing secured lender and DIP lender) each support the relief sought in the Order and the Approval and Vesting Order.

PART II – THE FACTS

A. THE STAY PERIOD

5. The stated purpose of the SISP is for the Applicants to complete one or more sale, investment or financing transactions. Since the commencement of the CCAA proceedings, the Monitor, the Financial Advisor (as defined in the Initial Order) and the Applicants have implemented and continue to implement the SISP.

Kent Affidavit at para 5.

Monitor's Second Report dated December 31, 2013 ("**Monitor's Second Report**") at section 4.1.

6. The Applicants and their advisors continue to act diligently and in good faith in respect of all matters relating to the CCAA proceedings, including the SISP. However, the SISP has not yet been completed and discussions regarding potential transactions are ongoing. Each of the Monitor and Global Resource Fund is actively participating in those discussions.

Kent Affidavit at para 6.

Monitor's Second Report at sections 4.2 & 5.3.

7. The existing Stay Period expires on January 7, 2014, and the Applicants require additional time beyond that date to allow the SISP to be completed.

Kent Affidavit at para 7.

Monitor's Second Report at section 4.2.

8. An extension of the Stay Period until January 31, 2014 will provide stability and create the certainty in the marketplace needed while discussions continue with potential purchasers regarding possible transactions and will assist with negotiations as it is intended to establish a hard deadline to complete negotiations for a transaction or transactions.

Kent Affidavit at para 8.

Monitor's Second Report at section 5.3.

9. Pursuant to a forbearance agreement entered into between, among others, the Applicants and Global Resource Fund on August 22, 2013, Global Resource Fund consented to an extension of the Stay Period until January 7, 2014. In addition, the Initial Order provided that the Applicants could not seek extensions of the Stay Period beyond January 7, 2014 unless certain conditions were met or with the prior written consent of the Monitor and Global Resource Fund. The conditions referenced above have not been met, but the Monitor and Global Resource Fund have provided their written consent to an extension of the Stay Period to January 31, 2014.

Kent Affidavit at para 9.

Monitor's Second Report at section 5.2.

10. The Applicants anticipate that they will have access to the funding they are projected to require during the proposed extension of the Stay Period, subject to the amendments sought in connection with the DIP Facility.

Kent Affidavit at para 10.

Monitor's First Report at section 5.3.

B. APPROVAL OF SALE TRANSACTION

11. Tamerlane owns certain flotation equipment, which was intended to form part of the processing and production facility at the Applicants' R-190 Deposit at the Pine Point property.

Kent Affidavit at para 12.

Monitor's Second Report at section 6.1.

12. However, in connection with the Applicants' financial difficulties and defaults under its credit agreement with Global Resource Fund, pursuant to a forbearance agreement entered into between, among others, the Applicants and Global Resource Fund on December 31, 2012, Tamerlane agreed to (i) use its best efforts to sell its flotation equipment, and (ii) engage a broker to use commercially reasonable efforts to sell the flotation equipment.

Kent Affidavit at para 13.

Monitor's Second Report at section 6.2.

13. In or around February 2013, Tamerlane engaged a broker (the "**Broker**") to sell the flotation equipment. The Broker has been actively marketing the Purchased Assets (as well as the Applicants' other flotation cells – the Purchased Assets comprise some but not all of the flotation cells) since February 2013. Among other things, the Broker (i) advertised the cells on leading industry websites, (ii) did a direct mail campaign to more than 4,000 mining companies three separate times, and (iii) had direct discussions with more than twelve potential purchasers.

Kent Affidavit at paras 14 & 15.

Monitor's Second Report at sections 6.3 & 6.4.

14. The Purchased Assets comprise a total of 28 flotation cells, as well as various related pieces of equipment (e.g., feed boxes, connection boxes, discharge boxes, belt guards, etc.). The purchase price is \$400,000, and the only condition remaining to be satisfied in connection with the Transaction is the approval of this Honourable Court and an order vesting the Purchased Assets in the Purchaser.

Kent Affidavit at para 17.

Monitor's Second Report at section 6.1.2.

15. The Purchaser is not related to the Applicants or the Broker, and the negotiation of the purchase price was conducted at arm's length. It is the best and highest offer that has been received during an almost year-long sale process for those assets.

Kent Affidavit at para 18.

Monitor's Second Report at section 6.2.1.

16. Global Resource Fund, the Applicants' only secured creditor, was consulted in the development of the sale process and in the decision to pursue the Transaction. It continues to support the Transaction and the relief sought in the Approval and Vesting Order. The net proceeds from the Transaction will be used to partially repay Global Resource Fund in its capacity as DIP Lender.

Kent Affidavit at para 20.

Monitor's Second Report at section 6.2.1.

17. The Monitor approves of the process for the sale of the flotation equipment and supports the proposed sale to the Purchaser.

Kent Affidavit at para 21.

Monitor's Second Report at section 6.2.1.

18. The purchase price to be received by the Applicants for the Purchased Assets is reasonable and fair in the circumstances, and no creditor of the Applicants will be disadvantaged as a result of the Transaction.

Kent Affidavit at para 22.

Monitor's Second Report at section 6.2.1.

C. FURTHER FACTUAL BACKGROUND

19. Additional facts relating to the Applicants are more fully set out in the affidavit of Margaret M. Kent sworn August 22, 2013 and the affidavit of Margaret M. Kent sworn September 9, 2013.

PART III – ISSUES AND THE LAW

A. EXTENSION OF THE STAY PERIOD

20. Section 11.02(2) of the CCAA states:

A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

CCAA, Section 11.02(2).

21. In order to make an order pursuant to Section 11.02(2), the Court must be satisfied that: (i) circumstances exist that make the order appropriate; and (ii) that the applicant has acted, and is acting, in good faith and with due diligence.

CCAA, Section 11.02(3).

22. The Applicants submit that an Order extending the Stay Period to and including January 31, 2014 is appropriate in the circumstance because, among other things:

(a) The Applicants and their advisors continue to act diligently and in good faith in respect of all matters relating to the CCAA proceedings, including the SISP;

(b) The SISP has not yet been completed and discussions regarding potential transactions are ongoing. Each of the Monitor and Global Resource Fund is actively participating in those discussions;

(c) Since the commencement of the CCAA proceedings, the Monitor, the Financial Advisor and the Applicants have implemented and continue to implement the SISP;

(d) The existing Stay Period expires on January 7, 2014, and the Applicants require additional time beyond January 7, 2014 to allow the SISP to be completed;

- (e) An extension of the Stay Period until January 31, 2014 will provide stability and create the certainty in the marketplace needed while discussions continue with potential purchasers regarding possible transactions and will assist with negotiations as it is intended to establish a hard deadline to complete negotiations for a transaction or transactions;
- (f) The Applicants anticipate that they will have access to the funding they are projected to require during the proposed extension of the Stay Period from the DIP Lender;
- (g) Creditors will not suffer any material prejudice if the Stay Period is extended;
- (h) the Secured Lender and the DIP Lender support the requested extension of the Stay Period; and
- (i) the Monitor recommends that the Stay Period be extended until 11:59 p.m. on January 31, 2014.

Kent Affidavit at paras 5-10.

Monitor's Second Report at section 5.

23. Accordingly, the Applicants submit that this Honourable Court ought to extend the Stay Period to and including January 31, 2014.

B. APPROVAL OF SALE TRANSACTION

24. Section 36 of the CCAA sets out the following list of non-exhaustive factors for the Court to consider in determining whether to approve a debtor's sale of assets outside the ordinary course of business:

- (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.

CCAA, Section 36(3).

25. Section 36 of the CCAA has been considered in *Re Canwest Publishing Inc.* where Justice Pepall noted that the criteria set out in section 36(3) of the CCAA "largely overlap" with the criteria established in *Royal Bank v. Soundair Corp.*, which had been used by Courts to review the reasonableness of proposed sales in CCAA proceedings prior to the enactment of section 36 and which provide that the Courts should consider:

- (a) whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers have been obtained; and
- (d) whether there has been unfairness in the working out of the process.

Re Canwest Publishing Inc. (2010), 68 C.B.R. (5th) 233 (Ont. S.C.J.), Schedule "B" at para. 13.

Royal Bank v. Soundair Corp. (1991), 4 O.R. (3d) 1 (C.A.) [*Soundair*], Commercial List Authorities Book at para. 24.

26. The Applicants submit that the Approval and Vesting Order is appropriate in the circumstance because, among other things:

- (a) The Purchased Assets have been marketed for sale for almost a year by the Broker, which has experience marketing assets of this nature;
- (b) Global Resource Fund consented to Tamerlane engaging the Broker to sell the flotation equipment;
- (c) The Purchaser's offer represents the highest offer submitted for the Purchased Assets, and is reasonable in the circumstances;
- (d) The Purchaser is not related to the Applicants or the Broker, and the negotiation of the purchase price was conducted at arm's length;

- (e) The Broker supports the transaction, and has advised that the market for mineral processing equipment has significantly declined since the sale process for the flotation equipment commenced;
- (f) The Monitor believes that the sale process for the Purchased Assets was reasonable, and the Monitor approves of that process;
- (g) The Transaction does not affect the marketability of the Applicants and does not impact other options presently being considered by the Applicants, the Monitor and Global Resource Fund;
- (h) The only condition remaining in the Sale Agreement is the granting of the Approval and Vesting Order;
- (i) The Secured Lender and the DIP Lender support the granting of the Approval and Vesting Order; and
- (j) The Monitor recommends that the Transaction be approved by this Honourable Court.

Kent Affidavit at paras 12-22.

Monitor's Second Report at section 6.2.1.

27. In addition to the factors set out in subsection 36(3), subsection 36(7) of the CCAA sets out the following restriction on disposition of assets within CCAA proceedings:

36 (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.

CCAA, Section 36(7).

28. Given that the Applicants' primary and most valuable assets – the mining rights - are not being sold as part of the Transaction, the Transaction will not impact the Applicants' ability to make the payments that would have been required under paragraphs 6(4)(a) and 5(a) if this Honourable Court had sanctioned the compromise or arrangement.

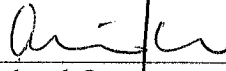
Kent Affidavit at para 23.

29. Accordingly, the Applicants submit that this Honourable Court ought to grant the Approval and Vesting Order.

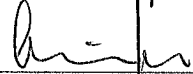
PART IV – ORDERS REQUESTED

For the reasons set out above, the Applicants request that this Honourable Court grant the requested relief in the Order and the Approval and Vesting Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

for 

S. Richard Orzy

for 

Sean H. Zweig

SCHEDULE “A”

STATUTORY REFERENCES
COMPANIES’ CREDITORS ARRANGEMENT ACT
R.S.C. 1985, c. C-36, as amended

s.11.02(1)

Stays, etc. — initial application — A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

s.11.02(2)

Stays, etc. — other than initial application — A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

s.11.02(3)

Burden of proof on application — The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

s. 36

Restriction on disposition of business assets

(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.

Notice to creditors

(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.

Factors to be considered

- (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.

Additional factors — related persons

(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.

Related persons

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).

Assets may be disposed of free and clear

(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.

Restriction — employers

(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.

SCHEDULE "B"

Re Canwest Publishing Inc. (2010), 68 C.B.R. (5th) 233 (Ont. S.C.J.)

Case Name:

Canwest Publishing 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 a plan of compromise or arrangement of
Canwest Publishing Inc./Publications Canwest Inc., Canwest
Books Inc., and Canwest (Canada) Inc., Applicants**

[2010] O.J. No. 2190

2010 ONSC 2870

68 C.B.R. (5th) 233

2010 CarswellOnt 3509

Court File No. CV-10-8533-00CL

Ontario Superior Court of Justice
Commercial List

S.E. Pepall J.

May 21, 2010.

(19 paras.)

Bankruptcy and insolvency law -- Companies' Creditors Arrangement Act (CCAA) matters -- Compromises and arrangements -- Sanction by court -- Application by limited partners for order authorizing them to enter into asset purchase agreement and related relief allowed -- Through sales and solicitation process, limited partners received offer whereby new limited partnership would acquire assets, assume certain liabilities and offer employment to substantially all employees -- Proposed disposition met statutory requirements, solicitation process was reasonable, sufficient efforts made to attract best possible bid and proposed transaction preferable to bankruptcy -- As senior lenders' CCAA plan was fair and reasonable, statutory requirements complied with, and no available commercial going concern alternatives if sales agreement unable to close, senior lenders' CCAA plan conditionally sanctioned.

Application by limited partners for an order authorizing them to enter into an asset purchase agreement based on a bid from the ad hoc committee of a percentage of senior subordinated noteholders and related relief. The court previously approved a support agreement between the limited partners and administrative agent for the senior lenders and authorized the limited partners to file a senior lenders' plan and commence a sale and investor solicitation process to test the market and obtain an offer that was superior to the terms of the support transaction. The financial advisor

commenced the sales and solicitation process and received qualified bids. The ad hoc committee bid was determined to be the superior offer and the monitor recommended that the bid be accepted. The bid contemplated that a holding company would effect a transaction through a new limited partnership which would acquire substantially all of the financial and operating assets of the limited partners, the shares of the newspaper corporation and assume certain liabilities for a purchase price of \$1.1 billion. In addition, the new limited partnership agreed to offer employment to substantially all of the employees of the limited partners and assume the pension liabilities and other benefits of the employees of the limited partners it employed and retirees. The new limited partnership planned to continue to operate all of the businesses of the limited partners in substantially the same manner they currently operated. The bid allowed for the full payout of debts owed by the limited partners to secured lenders and an additional \$150 million for the unsecured creditors.

HELD: Application allowed. The limited partners were authorized to enter into the agreement as the proposed disposition of assets met the statutory and common law requirements, the process through which the agreement was reached was reasonable, sufficient efforts were made to attract the best possible bid and the proposed transaction was preferable to bankruptcy. As the senior lenders' CCAA plan was fair and reasonable, there had been strict compliance with the statutory requirements, and there was no available commercial going concern alternatives if the sales agreement was unable to close, the senior lenders' CCAA plan was conditionally sanctioned.

Statutes, Regulations and Rules Cited:

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, s. 6, s. 6(3), s. 6(5), s. 6(6), s. 11, s. 36

Counsel:

Lyndon Barnes, Alex Cobb and Betsy Putnam, for the Applicant LP Entities.

Mario Forte, for the Special Committee of the Board of Directors.

David Byers and Maria Konyukhova, for the Monitor, FTI Consulting Canada Inc.

Andrew Kent and Hilary Clarke, for the Administrative Agent of the Senior Secured Lenders Syndicate.

M.P. Gottlieb and J.A. Swartz, for the Ad Hoc Committee of 9.25% Senior Subordinated Noteholders Robert Chadwick and Logan Willis for 7535538 Canada Inc.

Deborah McPhail, for the Superintendent of Financial Services (FSCO).

Thomas McRae, for Certain Canwest Employees.

Endorsement

S.E. PEPALL J.:--

Relief Requested

1 The LP Entities seek an order: (1) authorizing them to enter into an Asset Purchase Agreement based on a bid from the Ad Hoc Committee of 9.25% Senior Subordinated Noteholders ("the AHC Bid"); (2) approving an amended claims procedure; (3) authorizing the LP Entities to resume the claims process; and (4) amending the SISP procedures so that the LP Entities can advance the Ad Hoc Committee transaction (the AHC Transaction") and the Support Transaction

concurrently. They also seek an order authorizing them to call a meeting of unsecured creditors to vote on the Ad Hoc Committee Plan on June 10, 2010. Lastly, they seek an order conditionally sanctioning the Senior Lenders' CCAA Plan.

AHC Bid

2 Dealing firstly with approval of the AHC Bid, in my Initial Order of January 8, 2010, I approved the Support Agreement between the LP Entities and the Administrative Agent for the Senior Lenders and authorized the LP Entities to file a Senior Lenders' Plan and to commence a sale and investor solicitation process (the SISP). The objective of the SISP was to test the market and obtain an offer that was superior to the terms of the Support Transaction.

3 On January 11, 2010, the Financial Advisor, RBC Capital Markets, commenced the SISP. Qualified Bids (as that term was defined in the SISP) were received and the Monitor, in consultation with the Financial Advisor and the LP CRA, determined that the AHC Bid was a Superior Cash Offer and that none of the other bids was a Superior Offer as those terms were defined in the SISP.

4 The Monitor recommended that the LP Entities pursue the AHC Transaction and the Special Committee of the Board of Directors accepted that recommendation.

5 The AHC Transaction contemplates that 7535538 Canada Inc. ("Holdco") will effect a transaction through a new limited partnership (Opco LP) in which it will acquire substantially all of the financial and operating assets of the LP Entities and the shares of National Post Inc. and assume certain liabilities including substantially all of the operating liabilities for a purchase price of \$1.1 billion. At closing, Opco LP will offer employment to substantially all of the employees of the LP Entities and will assume all of the pension liabilities and other benefits for employees of the LP Entities who will be employed by Opco LP, as well as for retirees currently covered by registered pension plans or other benefit plans. The materials submitted with the AHC Bid indicated that Opco LP will continue to operate all of the businesses of the LP Entities in substantially the same manner as they are currently operated, with no immediate plans to discontinue operations, sell material assets or make significant changes to current management. The AHC Bid will also allow for a full payout of the debt owed by the LP Entities to the LP Secured Lenders under the LP credit agreement and the Hedging Creditors and provides an additional \$150 million in value which will be available for the unsecured creditors of the LP Entities.

6 The purchase price will consist of an amount in cash that is equal to the sum of the Senior Secured Claims Amount (as defined in the AHC Asset Purchase Agreement), a promissory note of \$150 million (to be exchanged for up to 45% of the common shares of Holdco) and the assumption of certain liabilities of the LP Entities.

7 The Ad Hoc Committee has indicated that Holdco has received commitments for \$950 million of funded debt and equity financing to finance the AHC Bid. This includes \$700 million of new senior funded debt to be raised by Opco LP and \$250 million of mezzanine debt and equity to be raised including from the current members of the Ad Hoc Committee.

8 Certain liabilities are excluded including pre-filing liabilities and restructuring period claims, certain employee related liabilities and intercompany liabilities between and among the LP Entities and the CMI Entities. Effective as of the closing date, Opco LP will offer employment to all full-time and part-time employees of the LP Entities on substantially similar terms as their then existing employment (or the terms set out in their collective agreement, as applicable), subject to the option, exercisable on or before May 30, 2010, to not offer employment to up to 10% of the non-unionized part-time or temporary employees employed by the LP Entities.

9 The AHC Bid contemplates that the transaction will be implemented pursuant to a plan of compromise or arrangement between the LP Entities and certain unsecured creditors (the "AHC Plan"). In brief, the AHC Plan would provide that Opco LP would acquire substantially all of the assets of the LP Entities. The Senior Lenders would be unaffected creditors and would be paid in full. Unsecured creditors with proven claims of \$1,000 or less would receive cash. The balance of the consideration would be satisfied by an unsecured demand note of \$150 million less the

amounts paid to the \$1,000 unsecured creditors. Ultimately, affected unsecured creditors with proven claims would receive shares in Holdco and Holdco would apply for the listing of its common shares on the Toronto Stock Exchange.

10 The Monitor recommended that the AHC Asset Purchase Agreement based on the AHC Bid be authorized. Certain factors were particularly relevant to the Monitor in making its recommendation:

- the Senior Lenders will received 100 cents on the dollar;
- the AHC Transaction will preserve substantially all of the business of the LP Entities to the benefit of the LP Entities' suppliers and the millions of people who rely on the LP Entities' publications each day;
- the AHC Transaction preserves the employment of substantially all of the current employees and largely protects the interests of former employees and retirees;
- the AHC Bid contemplates that the transaction will be implemented through a Plan under which \$150 million in cash or shares will be available for distribution to unsecured creditors;
- unlike the Support Transaction, there is no option not to assume certain pension or employee benefits obligations.

11 The Monitor, the LP CRA and the Financial Advisor considered closing risks associated with the AHC Bid and concluded that the Bid was credible, reasonably certain and financially viable. The LP Entities agreed with that assessment. All appearing either supported the AHC Transaction or were unopposed.

12 Clearly the SISP was successful and in my view, the LP Entities should be authorized to enter the Ad Hoc Committee Asset Purchase Agreement as requested.

13 The proposed disposition of assets meets the section 36 CCAA criteria and those set forth in the *Royal Bank of Canada v. Soundair Corp.*¹ decision. Indeed, to a large degree, the criteria overlap. The process was reasonable and the Monitor was content with it. Sufficient efforts were made to attract the best possible bid; the SISP was widely publicized; 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. The logical extension of that conclusion is that the AHC Transaction is as well. The LP Entities' Senior Lenders were either consulted and/or had the right to approve the various steps in the SISP. The effect of the proposed sale on other interested parties is very positive. Amongst other things, it provides for a going concern outcome and significant recoveries for both the secured and unsecured creditors. The consideration to be received is reasonable and fair. The Financial Advisor and the Monitor were both of the opinion that the SISP was a thorough canvassing of the market. The AHC Transaction was the highest offer received and delivers considerably more value than the Support Transaction which was in essence a "stalking horse" offer made by the single largest creditor constituency. The remaining subsequent provisions of section 36 of the CCAA are either inapplicable or have been complied with. In conclusion the AHC Transaction ought to be and is approved.

Claims Procedure Order and Meeting Order

14 Turning to the Claims Procedure Order, as a result of the foregoing, the scope of the claims process needs to be expanded. Claims that have been filed will move to adjudication and resolution and in addition, the scope of the process needs to be expanded so as to ensure that as many creditors as possible have an opportunity to participate in the meeting to consider the Ad Hoc Committee Plan and to participate in distributions. Dates and timing also have to be adjusted. In these circumstances the requested Claims Procedure Order should be approved. Additionally, the Meeting Order required to convene a meeting of unsecured creditors on June 10, 2010 to vote on the Ad Hoc Committee Plan is granted.

SISP Amendment

15 It is proposed that the LP Entities will work diligently to implement the AHC Transaction while concurrently pursuing such steps as are required to effect the Support Transaction. The SISP procedures must be amended. The AHC Transaction which is to be effected through the Ad Hoc Committee Plan cannot be completed within the sixty days contemplated by the SISP. On consent of the Monitor, the LP Administrative Agent, the Ad Hoc Committee and the LP Entities, the SISP is amended to extend the date for closing of the AHC Transaction and to permit the proposed dual track procedure. The proposed amendments to the SISP are clearly warranted as a practical matter and so as to procure the best available going concern outcome for the LP Entities and their stakeholders. Paragraph 102 of the Initial Order contains a comeback clause which provides that interested parties may move to amend the Initial Order on notice. This would include a motion to amend the SISP which is effectively incorporated into the Initial Order by reference. The Applicants submit that I have broad general jurisdiction under section 11 of the CCAA to make such amendments. In my view, it is unnecessary to decide that issue as the affected parties are consenting to the proposed amendments.

Dual Track and Sanction of Senior Lenders' CCAA Plan

16 In my view, it is prudent for the LP Entities to simultaneously advance the AHC Transaction and the Support Transaction. To that end, the LP Entities seek approval of a conditional sanction order. They ask for conditional authorization to enter into the Acquisition and Assumption Agreement pursuant to a Credit Acquisition Sanction, Approval and Vesting Order.

17 The Senior Lenders' meeting was held January 27, 2010 and 97.5% in number and 88.7% in value of the Senior Lenders holding Proven Principal Claims who were present and voting voted in favour of the Senior Lenders' Plan. This was well in excess of the required majorities.

18 The LP Entities are seeking the sanction of the Senior Lenders' CCAA Plan on the basis that its implementation is conditional on the delivery of a Monitor's Certificate. The certificate will not be delivered if the AHC Bid closes. Satisfactory arrangements have been made to address closing timelines as well as access to advisor and management time. Absent the closing of the AHC Transaction, the Senior Lenders' CCAA Plan is fair and reasonable as between the LP Entities and its creditors. If the AHC Transaction is unable to close, I conclude that there are no available commercial going concern alternatives to the Senior Lenders' CCAA Plan. The market was fully canvassed during the SISP; there was ample time to conduct such a canvass; it was professionally supervised; and the AHC Bid was the only Superior Offer as that term was defined in the SISP. For these reasons, I am prepared to find that the Senior Lenders' CCAA Plan is fair and reasonable and may be conditionally sanctioned. I also note that there has been strict compliance with statutory requirements and nothing has been done or purported to have been done which was not authorized by the CCAA. As such, the three part test set forth in the *Re: Canadian Airlines Corp.*² has been met. Additionally, there has been compliance with section 6 of the CCAA. The Crown, employee and pension claims described in section 6 (3),(5), and (6) have been addressed in the Senior Lenders' Plan at sections 5.2, 5.3 and 5.4.

Conclusion

19 In conclusion, it is evident to me that the parties who have been engaged in this CCAA proceeding have worked diligently and cooperatively, rigorously protecting their own interests but at the same time achieving a positive outcome for the LP Entities' stakeholders as a whole. As I indicated in Court, for this they and their professional advisors should be commended. The business of the LP Entities affects many people - creditors, employees, retirees, suppliers, community members and the millions who rely on their publications for their news. This is a good chapter in the LP Entities' CCAA story. Hopefully, it will have a happy ending.

S.E. PEPALL J.

cp/e/qlafr/qljxr/qlana

1 [1991] O.J. 1137.

2 2000 ABQB 442, leave to appeal refused 2000 ABCA 238, affirmed 2001 ABCA 9, leave to appeal to S.C.C. refused July 12, 2001,
[2001] S.C.C.A. No. 60.

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 AND ARRANGEMENT OF TAMERLANE VENTURES INC. and PINE POINT HOLDING CORP.

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SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at TORONTO

FACTUM
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