

FORCE FILED

No. S-237897
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

*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 TEBO MILL
INSTALLATIONS INC., TEBO MILL CONSTRUCTION INC., ALGON HOLDINGS INC.,
FRASERVIEW FABRICATION AND MACHINING INC., and PTOLEMYTECH
CONSULTANTS INC.

PETITIONERS

NOTICE OF APPLICATION

Names of Applicants: Tebo Mill Installations Inc., Tebo Mill Construction Inc., Algon Holdings Inc., Frasersview Fabrication and Machining Inc., and Ptolemytech Consultants Inc. (“Applicants”)

To: Service List

TAKE NOTICE that an application will be made by the Applicants to Justice Stephens in the courthouse at 800 Smithe Street Vancouver BC V6Z 1E1 on April 15, 2024 at 10:00 am for the orders set out in Part 1 below.

The Applicants estimate that the application will take 30 mins.

This matter is not within the jurisdiction of an associate judge.

Part 1: ORDER(S) SOUGHT

1. An Amended and Restated Initial Order substantially in the form attached as **Schedule “A”** hereto, including, among other things, the following relief:

- (a) abridging the time for service of this notice of application;
- (b) extending the stay of proceedings to and including May 6, 2024;

- (c) clarifying that the Petitioners may make payment to the Royal Bank of Canada (“RBC”) of interest on account of pre-filing indebtedness; and
 - (d) clarifying that the Petitioners may make payments in respect of financing leases which create security interests with the consent of the Monitor.
2. Such further and other relief as counsel for the Applicants may advise.

Part 2: FACTUAL BASIS

Background

1. The Petitioners, TEBO Mill Installation Inc., TEBO Mill Construction Inc., Fraserview Fabrication and Machining Inc, and Algon Holdings Ltd., collectively do business as the “TEBO Group of Industries” (all together, the “**TEBO Group**” or “**TEBO**”).
2. TEBO is a leading industrial component developer, with four decades of experience on all seven continents. It has completed various industrial and commercial construction projects both as an EPC (engineering-procurement-construction) contractor and as a prime contractor.
3. On April 5, 2024, the TEBO Group obtained an order in these proceedings (the "**Initial Order**") granting them various relief pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").

Activities since the date of the Initial Order

4. Among other things, the Initial Order established a stay of proceedings effective until April 15, 2024 and appointed Crowe MacKay & Company Ltd. as monitor (the "**Monitor**") in these proceedings with enhanced powers to obtain information related to the business or affairs of the Petitioners.
5. Since the date of the Initial Order, TEBO Group has, in consultation with the Monitor, as more fully set out in the First Report of the Monitor and the Affidavit #4 of Alankar Khara, sworn April 11, 2024:

- (a) requested the Monitor's assistance in obtaining information from Deutsche Bank regarding the Dalocorp PTE Ltd. funds on deposit referred to in paragraph 5 of the Alankar Khara Affidavit #3 dated April 5, 2024 ("**Khara Affidavit #3**"), the transmission of an MT199 SWIFT message referred to in paragraph 6 of the Khara Affidavit #3, and the steps required for Deutsche Bank to transfer the funds to RBC;
- (b) begun the process opening accounts with the Toronto-Dominion Bank ("**TD**") and the Bank of Nova Scotia ("**Scotiabank**");
- (c) worked to provide the Monitor with information so that the Monitor can opine on the reasonableness of the cashflow attached as Exhibit "B" to Khara Affidavit #3 ("**Cash Flow Forecast**");
- (d) effected service of the initiating pleadings in these proceedings on the provincial and federal governments and other stakeholders;
- (e) prepared a list of the known creditors of the Applicants showing the names and amounts owing; and
- (f) responded to information requests from the Monitor to assist the Monitor in being able to report to the Court and other interested stakeholders.

6. The Applicants have acted, and continue to act, in good faith and with due diligence to maximize the value to their stakeholders.

Stay Extension

7. The TEBO Group seeks an extension of the Stay of Proceedings to and including May 6, 2024 (the "**Stay Extension**"). The Stay Extension is necessary and in the best interests of the TEBO Group and its stakeholders, to among other things enable the TEBO Group to:

- (a) focus on stabilizing its business and normalizing operations in the aftermath of the issuance of the Initial Order;

- (b) provide the time necessary for the Monitor to further its inquiries of Deutsche Bank to be able to report to the Court and interested stakeholders; and
- (c) allow time for alternate banking facilities to be opened with TD or Scotiabank in hopes that transfer of funds from Deutsche Bank could be facilitated thereby.

8. As demonstrated in the Cash Flow Forecast, the TEBO Group is forecast to have sufficient liquidity to meet its obligations and the administrative costs of these proceedings through the end of the Stay Extension.

Authorization of Payments on Account of Pre-filing Obligations

9. The Monitor has advised TEBO that in its view the language in the Initial Order may be interpreted to prohibit payments of interest to RBC and on account of equipment leases notwithstanding that the Cash Flow Forecast contemplated them being paid during the stay period.

10. TEBO advised the court at the Initial Order hearing of its intention to make payment of interest to RBC during the stay period. This is intended to ensure that RBC is not further prejudiced by being stayed from enforcing its rights and remedies as a secured creditor while these proceedings are ongoing.

11. The payment on account of equipment leases is consistent with TEBO's intention to refinance and then exit these proceedings. By keeping its secured obligations under financing leases current, TEBO will avoid having to seek any compromise with its other secured creditors to resolve defaults under the agreements with them in order to obtain an exit from CCAA.

Part 3: LEGAL BASIS

1. The Applicants rely on the CCAA, the Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court.

Extension of stay of proceedings

2. Pursuant to s. 11.02(3) of the CCAA, the Court may extend the stay of proceedings for any period that the Court considers necessary provided that:

- (a) the extension sought is appropriate in the circumstances; and
 - (b) the Applicants have acted and are acting in good faith and with due diligence.
3. Since the Initial Order was pronounced on April 5, 2024, the Applicants have acted and continue to act and operate in good faith and with due diligence.
 4. The extension of the stay of proceedings is needed and appropriate in the circumstances in order to allow the Applicants to continue their restructuring efforts.

Authorization of Payments on Account of Pre-filing Obligations

5. The Court has broad jurisdiction under s. 11 of the CCAA to authorize payment on account of pre-filing indebtedness where doing so is appropriate in furtherance of the objectives of the CCAA.

The Futura Loyalty Group Inc. (Re), 2012 ONSC 6403 at paras. 10-15

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit No. 4 of Alankar Khara, filed on April 11, 2024;
2. First Report of the Monitor, to be filed; and
3. Such further materials as counsel may advise the Court permits.


TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and

(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

- (i) a copy of the filed application response;
- (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: 11/APR/2024


Signature of David E. Gruber/Mia Laity
 Applicant Lawyer for Applicants

THIS NOTICE OF APPLICATION is prepared and delivered by David E. Gruber/Mia Laity of the firm Bennett Jones LLP, Barristers & Solicitors, counsel for the Petitioners, File No.096275.1, whose place of business and address for delivery is 2500 – 666 Burrard Street, Vancouver, British Columbia, V6C 2X8. Telephone: (604) 891-7500. Facsimile: (604) 891-5100. [gruberd@bennettjones.com/laitym@bennettjones.com]

To be completed by the court only:

Order made

- in the terms requested in paragraphs _____ of Part 1 of this notice of application
- with the following variations and additional terms:

Dated: _____

Signature of Judge Associate Judge

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

[Check the box(es) below for the application type(s) included in this application.]

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

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PETITIONERS

ORDER MADE AFTER APPLICATION

(Amended and Restated Initial Order)

BEFORE THE HONOURABLE)
) 15/APRIL/2024
JUSTICE STEPHENS)

THE APPLICATION of the Petitioners, TEBO Mill Installations Inc., TEBO Mill Construction Inc., Algon Holdings Inc., Frasersview Fabrication and Machining Inc., Ptolemytech Consultants Inc. (together, the "**Petitioners**") coming on for hearing at Vancouver, British Columbia, on the 5th day of April, 2024 (the "**Order Date**"); AND ON HEARING Mia Laity, counsel for the Petitioners and those other counsel listed on Schedule "A" hereto; AND UPON READING the material filed, including Affidavit No. 4 of Alankar Khara affirmed April *, 2024, and the First Report of the Monitor dated April *, 2024; AND UPON BEING ADVISED that the secured creditors who are likely to be affected by the charges created herein were given notice; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

JURISDICTION

1. The Petitioners are companies to which the CCAA applies. For greater certainty, the Petitioners shall enjoy the benefits of the protections provided herein, and shall be subject to the same restrictions hereunder.

PLAN OF ARRANGEMENT

2. The Petitioners shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

3. Subject to this Order and any further Order of this Court, the Petitioners shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), and continue to carry on its business (the "**Business**") in the ordinary course and in a manner consistent with the preservation of the Business and the Property. The Petitioners shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

CASH MANAGEMENT SYSTEM

4. THIS COURT ORDERS that the Petitioners shall be entitled to continue to utilize the cash management system currently in place as described in the First Affidavit of Alankar Khara or replace it with another substantially similar cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be

under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Petitioners of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Petitioners, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. The Petitioners shall be entitled, but not required, to pay the following expenses which may have been incurred prior to the Order Date:

- (a) all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the Order Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively “Wages”); and
- (b) the fees and disbursements of any Assistants retained or employed by the Petitioners which are related to the Petitioners' restructuring, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by the Petitioners, whenever and wherever incurred, in respect of:
 - (i) these proceedings or any other similar proceedings in other jurisdictions in which the Petitioners or any subsidiaries or affiliated companies of the Petitioners are domiciled;
 - (ii) any litigation in which the Petitioners are named as a party or is otherwise involved, whether commenced before or after the Order Date; and
 - (iii) any related corporate matters.

6. Except as otherwise provided herein, the Petitioners shall be entitled to pay all expenses reasonably incurred by the Petitioners in carrying on the Business in the ordinary course following the Order Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably incurred and which are necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services, provided that any capital expenditure exceeding \$50,000 shall be approved by the Monitor;
- (b) all obligations incurred by the Petitioners after the Order Date, including without limitation, with respect to goods and services actually supplied to the Petitioners following the Order Date (including those under purchase orders outstanding at the Order Date but excluding any interest on the Petitioners' obligations incurred prior to the Order Date); and
- (c) fees and disbursements of the kind referred to in paragraph 6(b) which may be incurred after the Order Date.

7. The Petitioners are authorized to remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from Wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Petitioners in connection with the sale of goods and services by the Petitioners, but only where such Sales Taxes accrue or are collected

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

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.

8. Until such time as a real property lease is disclaimed in accordance with the CCAA, the Petitioners shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated between the Petitioners and the landlord from time to time (“**Rent**”), for the period commencing from and including the Order Date, twice-monthly in equal payments on the first and fifteenth day of the month in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including Order Date shall also be paid.

9. Except as specifically permitted herein, the Petitioners are hereby directed, until further Order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Petitioners to any of its creditors as of the Order Date except as authorized by the Monitor and this Order provided that,
 - (i) for greater certainty, the Petitioners may make payments on account of work and supplies completed or delivered on or to ongoing construction, installation, or fabrication projects that the Monitor is satisfied will preserve or enhance the value of the Property or the Business for pre-filing amounts; and

- (ii) the Petitioners may make payments of interest on account of their pre-filing indebtedness to the Royal Bank of Canada;
- (b) to make no payments in respect of any financing leases which create security interests except as authorized by the Monitor;
- (c) to grant no security interests, trust, mortgages, liens, charges or encumbrances upon or in respect of any of its Property, nor become a guarantor or surety, nor otherwise become liable in any manner with respect to any other person or entity except as authorized by this Order;
- (d) to not grant credit except in the ordinary course of the Business only to its customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by the Petitioners to such customers as of the Order Date; and
- (e) to not incur liabilities except in the ordinary course of Business.

RESTRUCTURING

10. Subject to such requirements as are imposed by the CCAA, the Petitioners shall have the right to:

- (a) permanently or temporarily cease, downsize or shut down all or any part of its Business or operations and commence marketing efforts in respect of any of its redundant or non-material assets;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing for its Business or Property, in whole or part;

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

11. The Petitioners shall provide each of the relevant landlords with notice of the Petitioners' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Petitioners' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors who claim a security interest in the fixtures, such landlord and the Petitioners, or by further Order of this Court upon application by the Petitioners, the landlord or the applicable secured creditors on at least two (2) clear days' notice to the other parties. If the Petitioners disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any dispute concerning such fixtures (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Petitioners' claim to the fixtures in dispute.

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

13. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, as applicable (the "**Relevant Enactment**"), the Petitioners, in the course of these proceedings, is permitted to, and hereby shall, disclose personal information of identifiable individuals in its possession or

control to stakeholders, its advisors, prospective investors, financiers, buyers or strategic partners (collectively, “**Third Parties**”), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with the Petitioners binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to the Petitioners or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioners.

STAY OF PROCEEDINGS, RIGHTS AND REMEDIES

14. Until and including May 6, 2024, or such later date as this Court may order (the “**Stay Period**”), no action, suit or proceeding in any court or tribunal (each, a “**Proceeding**”) against or in respect of the Petitioners or the Monitor, or affecting the Business or the Property, shall be commenced or continued except with the written consent of the Petitioners and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Petitioners or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

15. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Petitioners or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Petitioners and the Monitor or leave of this Court.

16. Nothing in this Order, including paragraphs **14** and **15**, shall: (i) empower the Petitioners to carry on any business which the Petitioners are not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Petitioners.

NO INTERFERENCE WITH RIGHTS

17. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioners, except with the written consent of the Petitioners and the Monitor or leave of this Court.

CONTINUATION OF SERVICES

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

NON-DEROGATION OF RIGHTS

19. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Order Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Petitioners on or after the Order Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of the Petitioners with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Petitioners whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Petitioners, if one is filed, is sanctioned by this Court or is refused by the creditors of the Petitioners or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of the Petitioners that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.

DIRECTORS AND OFFICERS INDEMNIFICATION AND CHARGE

21. The Petitioners shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Petitioners after the commencement of the within proceedings, except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

22. The directors and officers of the Petitioners shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$65,000, as security for the indemnity provided in paragraph 22 of this Order. The Directors’ Charge shall have the priority set out in paragraphs 34 and 36 herein provided that it be subordinated to any perfected pre-filing secured debt.

23. Notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors’ Charge, and (b) the Petitioners’ directors and officers shall only be entitled to the benefit of the Directors’ Charge to the extent that they do not have coverage under any directors’ and officers’ insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order.

APPOINTMENT OF MONITOR

24. Crowe MacKay & Company Ltd. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Petitioners with the powers and obligations set out in the CCAA or set forth herein, and that the Petitioners and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Petitioners pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

25. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Petitioners' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

- (c) advise the Petitioners in its development of the Plan and any amendments to the Plan;
- (d) assist the Petitioners, to the extent required by the Petitioners, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Petitioners, to the extent that is necessary to adequately assess the Petitioners' business and financial affairs or to perform its duties arising under this Order;
- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (g) perform such other duties as are required by this Order or by this Court from time to time.

26. All Persons, other than governmental authorities, shall forthwith advise the Monitor of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Petitioners, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "**Records**") in that person's possession or control. Upon request, governmental authorities shall advise the Monitor of the existence of any Records in that person's possession or control.

27. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, and nothing in this Order shall be construed as resulting

in the Monitor being an employer or a successor employer, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

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

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

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

ADMINISTRATION CHARGE

31. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Petitioners as part of the cost of these proceedings. The Petitioners are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Petitioners on a periodic basis and, in addition, the Petitioners are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Petitioners, retainers in the amount of \$200,000 to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

32. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the British Columbia Supreme Court who may determine the manner in which such accounts are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.

33. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$200,000, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Petitioners’ restructuring. The Administration Charge shall have the priority set out in paragraphs 34 and 36 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

34. The priorities of the Administration Charge and the Directors’ Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$200,000); and

Second – Directors’ Charge (to the maximum amount of \$65,000, provided that it be subordinated to any perfected pre-filing secured debt).

35. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge and the Directors' Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.

36. Each of the Charges shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**"), in favour of any Person, save and except those claims contemplated by section 11.8(8) of the CCAA and the Directors' Charge which is subordinated to any perfected pre-filing secured debt.

37. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioners shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Petitioners obtains the prior written consent of the Monitor and the beneficiaries of the Administration Charge and the Director's Charge.

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

- (a) neither the creation of the Charges shall create or be deemed to constitute a breach by the Petitioners of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Petitioners pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

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

SERVICE AND NOTICE

40. The Monitor shall (i) without delay, publish in the Vancouver Sun a notice containing the information prescribed under the CCAA, (ii) within five days after Order Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Petitioners of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

41. The Petitioners and the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Petitioners' creditors or other interested parties at their respective addresses as last shown on the records of the Petitioners and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

42. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the “**Service List**”) to be maintained by the Monitor. The Monitor shall post and maintain an up to date form of the Service List on its website at: <https://crowemackayco.ca/corporate-engagements/>

43. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on its website at: <https://crowemackayco.ca/corporate-engagements/>

44. Notwithstanding paragraphs 40 and 42 of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and this Order shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.

GENERAL

45. The Petitioners or the Monitor may from time to time apply to this Court for directions in the discharge of its powers and duties hereunder.

46. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Petitioners, the Business or the Property.

47. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners 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 Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

48. Each of the Petitioners and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the Petitioners to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.

49. The Petitioners may (subject to the provisions of the CCAA and the BIA) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if and when the Petitioners determines that such a filing is appropriate.

50. The Petitioners are hereby at liberty to apply for such further interim or interlocutory relief as it deems advisable within the time limited for Persons to file and serve Responses to the Petition.

51. Leave is hereby granted to hear any application in these proceedings on two (2) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

52. Any interested party (including the Petitioners and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List 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.

53. Endorsement of this Order by counsel appearing on this application other than counsel for the Petitioners is hereby dispensed with.

This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of David E. Gruber/Mia Laity

Party Lawyer for the Petitioners

BY THE COURT

REGISTRAR

SCHEDULE "A"**LIST OF COUNSEL**

<u>Name of Counsel</u>	<u>Party Represented</u>
Jordan Schultz, Dentons Canada LLP	Royal Bank of Canada
Glen Nesbitt, Fasken Martineau DuMoulin LLP	Crowe MacKay & Company Ltd., Proposed Monitor