

IN THE SUPREME COURT OF NOVA SCOTIA

IN THE MATTER OF: *The Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended

- and -

COPY

IN THE MATTER OF: A Plan of Compromise or Arrangement of the Applicant, Canadian Sailing Expeditions Inc.

**AFFIDAVIT OF PAUL G. GOODMAN, FCA, FCIRP, FIIC**  
**November 17, 2009**

I, Paul G. Goodman, FCA, FCIRP, FIIC, President of BDO Dunwoody Goodman Rosen Inc., the Court-Appointed Monitor in this present matter and proceeding before This Honorable Court, hereby make oath and say:

1. I am a Director and President of BDO Dunwoody Goodman Rosen Inc., the Court-Appointment Monitor in the *Companies' Creditors Arrangement Act* ("CCAA") proceeding with respect to Canadian Sailing Expeditions Inc. ("CSE"), a limited company incorporated under the laws of Nova Scotia, and I have personal knowledge of the matters deposed to herein unless such knowledge is otherwise stated to be by way of information and belief.
2. I state, in this affidavit, the source of any information that is not based on my own personal knowledge and I state my belief of that source.
3. This affidavit is filed to assist the Court in respect of a Motion to be made on behalf of CSE on Friday, November 20, 2009 at 9:30 a.m. for an Order Terminating the Stay of Proceedings in the CCAA matter.
4. The Monitor wishes to update the Court on the status of this CCAA filing since the Monitor's affidavit dated September 4, 2009.
5. Since our affidavit of September 4, 2009, there have been four Orders issued in this matter as follows
  - Order of September 8, 2009 extending the Stay of Termination Date to September 15, 2009;
  - Order of September 21, 2009 extending the Stay of Termination Date to September 21, 2009 and authorizing Growthworks Atlantic Venture Fund Limited ("Growthworks") to provide funding for reasonable protective disbursements and receive protection as Debtor-in-Possession security;

- Order of September 21, 2009 extending Stay of Termination Date to September 22, 2009;
  - Order of September 22, 2009 extending the Stay of Termination Date to December 4, 2009 and authorizing the Monitor to receive certain funds to be advanced from Nova Scotia Business Inc. ("NSBI") or any other party in respect of CSE and distribute such funds to CSE for the payment of ongoing costs and expenses, including the payment of outstanding accounts payable.
6. Pursuant to the Order of September 22, 2009, the Monitor has received \$37,000 from Growthworks, \$200,000 from NSBI, and \$10,343.03 from an HST refund and has advanced \$192,194.04 from the receipts, and after earning interest of \$7.07, there remain funds in the Monitor's trust account of \$55,156.06 as evidenced by the estate General Ledger Report attached hereto as Exhibit "A".
7. I note that at the time of the September hearings before Your Lordship, Growthworks had brought a motion for the appointment of a Receiver and their motion was adjourned sine die and may be reactivated at the instance of Growthworks.
8. Since the hearing held before Your Lordship on September 22, 2009, the Monitor has undertaken various activities, including:
- Received monies from NSBI, Growthworks, and Canada Revenue Agency ("CRA") and disbursed monies to CSE as reflected in Exhibit "A" attached;
  - Monitored the disbursements by CSE to third parties of the monies provided to CSE by the Monitor;
  - Reviewed the CSE disbursements and reconciliation of both operating funds and deposits made for advance fares;
  - Continued numerous communications with CSE's officers and legal counsel on the status of the financing of the sale so that the CCAA Plan of Compromise and Arrangement could be completed;
  - Met with Doug Prothero on various occasions and exchanged numerous phone calls and emails with him as to the status of the financing in other matters, including the operations/lay up of the ship *Caledonia*;
  - Communications with Growthworks and its counsel and Caterpillar Financial Inc. ("CAT") and its counsel as to the status of the financing and the options available if the financing could not be completed before the expiration of the present Stay of Termination Date on December 4, 2009;
  - Numerous communications with CRA with respect to the post-CCAA filing HST refunds and their improper offset against pre-filing payroll amounts owing and the failure to deliver up post-filing HST refunds for unexplained reasons and contrary to the requirements of the Stay of Proceedings set out in the Initial Order;
  - Communications with various creditors, Monitor's counsel, and other parties regarding the status of the CCAA Plan;

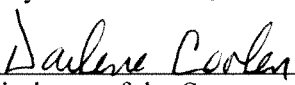
9. I have met with Doug Prothero and had numerous telephone and email communications with him with respect to the progress made on the financing necessary to complete the CCAA Plan of Compromise and Arrangement, and during certain of these meetings, Mr. Prothero has provided the Monitor with written reports which are in our files as to the efforts made to complete financing arrangements.
10. On November 10, 2009, the Monitor met with Mr. Prothero who, at that time, advised the Monitor that while it is possible there is a party who would complete the necessary financing needs to meet the equity arrangements which would allow the CCAA Plan of Compromise and Arrangement to be completed, it is unlikely that such completion would or could occur before December 4, 2009.
11. Further, on November 10, 2009, Mr. Prothero advised the Monitor that whereas the sailing season was scheduled to begin on or before December 20, 2009, and the Plan of Compromise and Arrangement would not be completed, and there are no working capital funds in order to initiate the sailing season, CSE believes it is in the best interest of the good name of the company and its customers to issue a notice to customers advising them that the sailing season will not be commencing.
12. Attached hereto as Exhibit "B" is the notification sent to CSE's customers dated November 13, 2009 advising them of the status of the company and notifying them that all advance deposits for fares on future bookings will be returned to them immediately.
13. On November 12, 2009, the Monitor met with Growthworks and its counsel, CAT (by conference call) and its counsel, CSE and its counsel, and Monitor's counsel at which time the status of the CCAA Plan of Arrangement was discussed in full and, in particular, the options available to CSE and the options available to Growthworks and CAT if the Stay of Termination Date was not extended beyond December 4, 2009.
14. As the result of the meeting of November 12, 2009 and other communications that the Monitor had with various parties, the Monitor advises This Honorable Court that he believes that the requested equity financing will not be available before December 4, 2009, being the expiration of the current Stay of Termination Date, and, therefore, the Monitor believes it appropriate that the Stay of Termination Date not be extended and that the CCAA proceedings be discontinued.
15. The Monitor advises This Honorable Court that the Monitor has in trust sufficient funds to ensure that the *Caledonia* is maintained over the period of the next couple of weeks, but after that, funding will be required from the secured creditors in order to preserve the vessel in good working order.
16. At the writing of this present affidavit, the Monitor is awaiting communication from CAT and/or Growthworks as to which option one of them may choose to take in order to deal with the assets of CSE when the Stay of Proceedings is terminated.
17. The Monitor advises that the *Caledonia* continues to be tied up in Lunenburg and is being well cared for by CSE's skeleton crew on board.

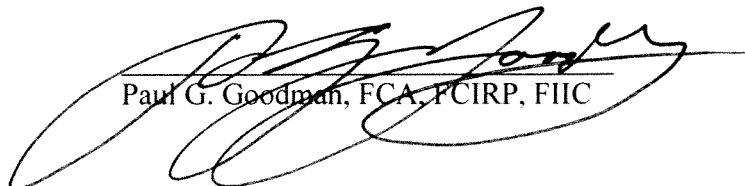
18. For the purposes of disclosure, the Monitor advises that the total CCAA professional fees as advanced and billed to date pursuant to Paragraph 30 of the Initial Order, including those professional fees which are subject to the Administration Charge pursuant to Paragraph 31 of the Initial Order, where unpaid, are summarized as follows and include time charges for fees, disbursements, and HST:

<u>Professional</u>	<u>Position</u>	<u>Billings for Total Time, Disbursements and HST</u>	<u>Amounts Unpaid and Subject to Admin Charge</u>
BDO Dunwoody Goodman Rosen Inc. (Paul G. Goodman, FCA, FCIRP, FIIC)	Court-Appointed Monitor	\$ 210,037.89	Nil
Wickwire Holm (Carl Holm, QC)	Legal Counsel to the Monitor	51,768.36	Nil
Cox & Palmer (Robert MacKeigan, QC and Gavin MacDonald)	Legal Counsel to CSE	<u>197,481.31</u>	<u>\$ 1,613.42</u>
Total Fees, Disbursements, and HST		<u>\$ 459,287.56</u>	<u>\$ 1,613.42</u>

19. The Monitor advises due to the timing difference in the receipt for the payment of fees or preparation of accounts in relation to the preparation of this present affidavit, there may be professional fees that are unbilled by the time the hearing of November 20, 2009 takes place and hence the numbers referred to Paragraph 17 above would be immaterially different.
20. Only the \$1,613.42 reflected in Paragraph 17 above is known to be subject to the Administrative Charge in the Initial Order.
21. It is the recommendation of the Monitor that the Stay of Termination Date not be extended beyond the later of the date of the hearing presently scheduled for November 20, 2009 or the date on which a motion is heard for the appointment of a Receiver or the arrest of the *Caledonia*, on the assumption that one of these two actions will occur on or before December 4, 2009.

SWORN TO BEFORE ME  
in the City of Halifax  
Province of Nova Scotia  
the 17th day of November, 2009

  
A Commissioner of the Supreme Court  
of Nova Scotia

  
Paul G. Goodman, FCA, FCIRP, FIIC

DARLENE L. COOLEN  
A Commissioner of the Supreme  
Court of Nova Scotia

# Estate General Ledger Report

Estate Name: Canadian Sailing Expedition Inc.  
 File Name: 70368  
 Administration: Corporate, Consultation  
 Account Type: Estate Account - RBC, 00003, 228 555 9;

Date Of Insolvency: 27-Jun-2008

This is Exhibit A  
 the Affidavit of Paul Goodman  
 Sworn before me this 17<sup>th</sup> day of November, A. D. 2009  
 Darlene Coolen  
 A Commissioner of the Supreme Court of Nova Scotia

Date	Cheque / Deposit #	Received from / Payee	Transaction #	Deposit Date	Disbursements (DEBITS)	Receipts (CREDITS)	Balance
<b>Account #: 32000 - Interest allocation</b>							
09-Oct-2009	IA-2009-09-30		0123540	09-Oct-2009		7.07	7.07
					Balance:	(CR)	7.07
<b>Account #: 41013 - HST collected</b>							
16-Nov-2009	00003 - G of C		0126055	16-Nov-2009		10,343.03	10,343.03
					Balance:	(CR)	10,343.03
<b>Account #: 48123 - Payment by A Third Party</b>							
22-Sep-2009	00001 - GrowthWorks		0122346	22-Sep-2009		37,000.00	37,000.00
22-Sep-2009	00002 - NSBI		0122400	22-Sep-2009		200,000.00	237,000.00
					Balance:	(CR)	237,000.00
<b>Account #: 48630 - Advance from Trustee</b>							
23-Sep-2009	1 - Canadian Sailing Expedition Inc.		0122436		56,262.43		-56,262.43
01-Oct-2009	JE0122899A - to correct posting error		0122899	01-Oct-2009		56,262.43	0.00
					Balance:		0.00
<b>Account #: 68123 - Other Disbursements</b>							
01-Oct-2009	JE0122899B - to correct posting error		0122899		56,262.43		56,262.43
01-Oct-2009	2 - Canadian Sailing Expedition Inc.		0122900		42,979.02		99,241.45
09-Oct-2009	3 - Canadian Sailing Expeditions Inc.		0123483		13,733.26		112,974.71
22-Oct-2009	4 - Canadian Sailing Expedition Inc.		0124405		5,455.62		118,430.33
29-Oct-2009	5 - Canadian Sailing Expeditions Inc.		0124893		13,341.71		131,772.04
29-Oct-2009	6 - Canadian Sailing Expeditions Inc. - Void		0124900		1,794.41		133,566.45
29-Oct-2009	6 - Canadian Sailing Expeditions Inc. - Reverse		0124901		-1,794.41		131,772.04
29-Oct-2009	7 - Canadian Sailing Expeditions Inc.		0124903		1,594.41		133,366.45
05-Nov-2009	8 - Canadian Sailing Expedition Inc.		0125238		13,941.43		147,307.88
16-Nov-2009	9 - Canadian Sailing Expedition Inc.		0126004		4,815.16		152,123.04
16-Nov-2009	10 - Canadian Sailing Expeditions Inc.		0126005		40,071.00		192,194.04
					Balance:	(DR)	192,194.04
Totals By Estate:					248,456.47	303,612.53	55,156.06

Note: Third Party guarantee on deposit for this estate is \$ 11,703.05

\* Deposit prior to conversion to Ascend.

Summary: Total Receipts: 247,350.10  
 Total Disbursements: 192,194.04  
 Estate Balance: 55,156.06



This is Exhibit B  
the Affidavit of Paul Goodman  
Sworn before me this 17<sup>th</sup> day of  
November, A. D. 2009  
Darlene Coolen  
A Commissioner of the Supreme  
Court of Nova Scotia

November 13, 2009

DARLENE L. COOLEN  
A Commissioner of the Supreme  
Court of Nova Scotia

Dear Friends,

In 2002 we set on a course to build a Canadian based expedition cruise company under the name of Canadian Sailing Expeditions (CSE). It was in principal to combine our many years of experience in adventure and corporate charter into a niche cruise product, with summer cruising in eastern Canada and Quebec and winter voyaging in the Caribbean.

We commenced cruises in 2004 on chartered vessels and by February 2008 had realized on our efforts to build and launch the Caledonia. Caledonia is the largest sailing vessel built in Canada and one of a handful of sailing cruise vessels worldwide that is built to meet the new SOLAS regulations that come into effect in 2010.

The construction of Caledonia was a massive feat both financially and from a regulatory perspective. The end result is a platform that has proven ideal for the delivery of the CSE adventure cruise product. The dedicated and passionate team at CSE (both ashore and afloat) have assisted us in delivering a product that has garnered very high praise from both passengers and travel media. It is a product that personally connects with passengers from the first call on the phone to the departure from the crew after a voyage.

The launch of Caledonia in December 2007 was delayed by 2.5 months. This resulted in a negative domino effect on cash reserves for the company and also limited marketing efforts in the early going. In late June 2008 CSE entered into CCAA (protection from bankruptcy) to permit the company time to restructure its construction debt. By January 2009 we had undertaken a project with other parties in a new venture to create a consolidation in the small ship sailing cruise sector. With the support of these parties and CSE's creditors and lenders, the efforts to make this concept a realization have been productive.

As of today the consolidation project has achieved much of what is required to become a reality, however reduced access to credit caused by the global crisis has required more time than would typically be required. Although the elements for the consolidation continue to progress well, regrettably, the resources to continue operating Canadian Sailing Expeditions have been consumed.

The net effect is that CSE will cease doing business as of today. CSE has always protected its customers and as a result ALL deposits on future bookings will be returned today.

We owe a great deal of appreciation and thanks to our staff (past and present), our financial partners and as importantly to the very loyal cruise clientele that we have had the privilege of serving.

We will now turn our focus entirely to the completion of the consolidation venture. We look forward to resuming delivery of the high quality coastal cruises for which we are known.

With kind regards,

Doug Prothero, Michelle Clark, David Evans