

2008

S.H. No. 297999



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-

IN THE MATTER OF:

A Plan of Compromise or Arrangement of the Applicant, Canadian Sailing Expeditions Inc.

Court No. C-1985-1011
JUN 27 2008
N.S.

INITIAL ORDER

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BEFORE THE HONOURABLE

G.R.P. MOIR

IN CHAMBERS

UPON APPLICATION of **CANADIAN SAILING EXPEDITIONS INC.** (the "**Applicant**") for an Order providing a stay of proceedings under Section 11 of the *Companies' Creditors Arrangement Act* R.S.C. 1985, c. C-36 (the "**CCAA**");

UPON READING the Affidavit of Douglas Prothero sworn June 26, 2008 and the consent of Paul G. Goodman of BDO Dunwoody Goodman Rosen Inc., Trustee in Bankruptcy to act as proposed Monitor of the Applicant;

UPON IT APPEARING that the major secured creditors of the Applicant, GrowthWorks Atlantic Venture Fund Limited, Nova Scotia Business Inc., Caterpillar Financial Services Limited and Royal Bank of Canada (collectively the "**Senior Secured Creditors**") have been advised of the hearing of this application; and

UPON HEARING Robert G. MacKeigan, Q.C., counsel for the Applicant,

IT IS ORDERED THAT:

1. (a) The time for any required service or notice of the Application herein be and it is hereby abridged and validated such that the Application is properly returnable today and further that any requirement for service of the Application herein upon any interested party is hereby dispensed with.
- (b) The Applicant is a *company* to which the CCAA applies.
2. A further hearing in this Application shall be held on July 24, 2008 at 9:30 a.m. or such alternate date as this Court may fix, at which time this Order may be supplemented or otherwise varied, and the Stay Termination Date (as herein defined) extended or

terminated. The Applicant and the Monitor shall serve their materials for this further hearing on all parties who serve a notice of appearance on the Applicant and the Monitor, such materials to be served by no later than five days prior to the date scheduled for the further hearing.

Stay of Proceedings

3. Until and including July 24, 2008 or such later date as this Court may by further Order stipulate (the “**Stay Termination Date**”):
 - (a) any and all proceedings, including without limitation, suits, actions, extra-judicial proceedings, enforcement processes or other remedies (“**Proceedings**”) commenced, taken or proceeded with or that may be commenced, taken or proceeded with by any of the Applicant’s Senior Secured Creditors, creditors, secured creditors, mortgagees, ship mortgagees, customers, clients, suppliers, contractors, lenders, factors, customs brokers, purchasing agents, lessors of real or personal property of any kind or nature whatsoever, sub-lessors, tenants, sub-tenants, licensors, licensees, consignors, co-owners, co-tenants, shareholders, joint venture partners, co-venturers, partners, governments of any nation, province, state or municipality or any other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government in Canada, or elsewhere and any person, firm, corporation or other entity owned or controlled by or which is the agent of any of the foregoing, or by any charge, debit or credit card company or any other person, firm, corporation or entity wherever situate or domiciled (collectively, “**Persons**” and, individually, a “**Person**”), against or in respect of the Applicant, or its directors, officers, or employees, in such capacity, or in respect of any present or future property, assets, business and undertaking of the Applicant of any kind or nature whatsoever, whether real or personal and wherever located, including, without limitation, any ship or vessel, (the “**Property**”), whether pursuant to any security, the *Bankruptcy and Insolvency Act* (the “**BIA**”), the *Winding-up and Restructuring Act* (the “**WUA**”), any other federal, provincial, or other statute, or otherwise, are hereby stayed and suspended;
 - (b) the right of any Person to make demand or draw under any debenture, mortgage, ship mortgage, deed of covenants, note, bond, or instrument of similar effect, issued by or on behalf of the Applicant prior to the date of this Order, to take possession of, exercise rights of arrest, garnishment, foreclose upon or otherwise realize upon or deal with any of the Property or to continue any such actions or proceedings if commenced prior to the date of this Order, is hereby restrained;
 - (c) the right of any Person (including, without limitation, any authority with jurisdiction to levy realty taxes) to commence or continue enforcement, realization or collection proceedings in respect of any encumbrance, tax, lien, security interest, charge, mortgage, ship mortgage, deed of covenants, guarantee, attornment of rents, hypothecation, pledge or other security held in relation to, or any trust attaching to or deemed to attach to or comprise any of, the Property

including without limitation the right of any creditor to take any step in asserting, perfecting or registering any right or interest (including, without limitation, any right to revendication, rescission, resiliation or any right to repossession or stoppage in transit of any goods supplied or shipped to the Applicant, whether taken in the Province of Nova Scotia or elsewhere, and whether pursuant to the BIA or otherwise), is hereby restrained;

- (d) the right of any Person to assert, enforce or exercise any right, option or remedy available to it, including, without limitation, any right of dilution, buy-out, divestiture, preemptive right of purchase, option to purchase on default, pledge agreement, forced sale, acceleration, termination, suspension, modification, cancellation or right to revoke or terminate any qualifications, registration or lending arrangements (collectively, "**Rights**"), including, without limitation, any Rights arising under or in respect of any arrangement or agreement to which the Applicant is a party or in which the Applicant has an interest (including, without limitation, any security agreement, mortgage, ship mortgage, deed of covenants, contract, partnership agreement, management agreement, lease, license agreement, agreements relating to any charge, credit or debit card arrangements, shareholders' agreement, joint venture agreement, co-ownership agreement, share pledge agreement, easement agreement, operating agreement or any agreement of purchase and sale but excluding any eligible financial contract within the meaning of the CCAA) where such Rights arise out of, relate to or are triggered by the occurrence of any default or non-performing by the Applicant thereunder, the making of this Order or filing of these proceedings, or any allegation contained in these proceedings, including, without limitation, the right to make any demand, to send any notice, to crystallize any security interest, to exercise any preemptive first right, to accelerate the repayment of any outstanding indebtedness or to terminate, accelerate rent due under, interfere with the Applicant's quiet possession in respect of, or otherwise deal with any lease of real or personal property in respect to which the Applicant is a lessee, are hereby restrained;
- (e) all Persons having arrangements or agreements, written or oral, with the Applicant for the supply of goods and/or services by or to the Applicant, including, without limitation, raw materials and packaging, or to any of the Property, including, without limitation, leases of real or personal property of any nature or kind whatsoever, display contracts, license agreements, consignment agreements, insurance contracts, product certification arrangements, warranty service contracts, distribution agreements, inventory financing agreements, conditional sales contracts, charge, credit and debit card agreements, bank and other operating accounts, management agreements, transportation contracts, freight forwarding contracts, shipping and carrier contracts, security and truck carrier contracts, computer software and support systems, supply contracts, maintenance and service contracts, access or sharing of premises or common facilities arrangements with respect to any of the Applicant's locations or premises, are hereby restrained from accelerating, terminating, suspending, modifying or cancelling any such agreements, arrangements or supply of goods or services so long as the Applicant pays the normal prices or charges (other than

security or other deposits (whether by way of cash, letter of credit or guarantee or otherwise), stand-by fees or similar items which the Applicant shall have no obligation to pay or grant) for such goods and services received after the date of this Order as the same become due and payable in accordance with present payment practices, or as may be hereafter agreed by the Applicant from time to time, without the written consent of the Applicant or leave of the Court. Without limiting the generality of the foregoing, all Persons are hereby restrained until further Order of this Court from, directly or indirectly, discontinuing, interfering with or cutting-off any utility or required services (including telephone, facsimile or other communications services at the present numbers used by the Applicant in respect of any of the Property), the furnishing of oil, gas, diesel, other petroleum products, inventory, water, heat or electricity, the supply of equipment, computer software, transportation, hardware support and electronic, internet, electronic mail and other data services, so long as the Applicant pays the normal prices or charges (other than deposits, standby fees or similar items which the Applicant shall have no obligation to pay) for such goods and services received from and after the date of the within Order as same become due in accordance with present payment practices, or as may be negotiated from time to time, and that all such Persons shall continue to perform and observe the terms and conditions contained in any agreements entered into with the Applicant or in connection with any of the Property, as the case may be, of goods and services and from pursuing any right or remedies arising thereunder;

- (f) all Persons are prohibited until further Order of this Court from terminating, cancelling, suspending, amending or withdrawing any licenses, sub-licenses, royalty arrangements, permits or approvals or rights relating to uses of product or brand names issued or granted to the Applicant or in connection with any of the Property and from pursuing any rights or remedies arising thereunder;
- (g) all Persons are restrained from exercising any extra-judicial remedy against the Applicant, including, without limitation, any right of distress, arrest, revendication, resiliation, repossession, set-off or consolidation of accounts in relation to any amount due or accruing due in respect of or arising from any indebtedness or obligation of the Applicant as of the date hereof; or from retaining any cheque and/or money owing to the Applicant or to which the Applicant is otherwise entitled; or from retaining any goods, including, without limiting the generality of the foregoing, any goods of the Applicant or of any of the Applicant's customers held by any bailee, warehouse, distributor, supplier, subcontractor, vendor, or other third party or any of their respective agents, purchasing agents, freight carriers, delivery companies or customs brokers and agents, in relation to or by reason of amounts past due to any such person, or customs duties and charges, taxes, freight, insurance, storage or other charges paid on behalf of or owed by the Applicant prior to the date hereof for which the Applicant has not reimbursed or paid such Person;
- (h) notwithstanding subparagraph 3(d) hereof, this Order shall not prohibit: (i) any party to an "eligible financial contract" (as defined in section 11.1(1) of the

CCAA) with the Applicant, which contract was entered into before the date of this Order, from terminating such eligible financial contract and setting off the obligations between the Applicant and such other party in accordance with its provisions provided that if the “net termination value” (as defined in section 11.1(1) of the CCAA) determined in accordance with the eligible financial contract is owed by the Applicant to another party to the eligible financial contract, the other party shall be deemed to be a creditor of the Applicant with a claim in respect of that net termination value or (ii) the Governor in Council, Attorney General of Canada, Minister of Finance, Superintendent of Financial Institutions or Canadian Deposit Insurance Corporation of any power, duty or function assigned to any of them under the statutes enumerated in section 11.11 of the CCAA;

- (i) any deposit made by the Applicant with any creditor from and after the making of this Order, whether in an operating account or otherwise and whether for its own account or for the account of any other entity, shall not be applied by such creditor in reduction or repayment of any amount owing as of the date of this Order or which may become due on or before the Stay Termination Date or in satisfaction of any interest, fees, charges or other amounts accruing in respect thereof, and shall be remitted to the Applicant;
- (j) no Person may commence or continue any Proceedings against any present or former directors of the Applicant on any claim against such present or former directors that arose before the commencement of these proceedings and that related to obligations of the Applicant where directors are under any law liable in their capacity as directors for payment of such obligations;
- (k) the right of all creditors and shareholders of the Applicant to make demand for payment upon the Applicant are hereby restrained;
- (l) no Person shall cancel, or shall seek cancellation of, any policy of insurance which has been issued at the request of or for the benefit of the Applicant and other designated insured parties under any such policy of insurance; directly or indirectly, and in the event of any process having been taken for the cancellation of any such policy of insurance, such process is hereby restrained and stayed, and all policies of insurance shall continue in full force and effect;
- (m) without limiting the generality of any of the foregoing, no Person whose claim is joint, several or joint and several between the Applicant (the “**Joint Liability**”) and any other Person (the “**Joint Debtor**”) shall be permitted to commence, take or proceed with any Proceedings in respect of the Joint Liability against the Joint Debtor, whether or not the Joint Debtor is situated or domiciled in Canada; and
- (n) all Persons shall continue to perform and observe the terms, conditions and provisions contained in any agreements with the Applicant on their part to be performed and observed.

4. Notwithstanding anything else contained herein no creditor of the Applicant shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant except as provided in paragraph 5 of this Order.
5. Notwithstanding paragraph 3 of this Order, any Person which provided letters of credit or standby letters of credit (the "Issuing Party") at the request of the Applicant shall be required to continue honouring any and all such letters of credit and/or standby letters of credit, issued on or before the date of this Order until paid therefor. For greater certainty, the issuing Party shall be prohibited from terminating, suspending, modifying, determining, refusing to honour or cancelling any such letters of credit or standby letters of credit, and the beneficiaries of such letters of credit or standby letters of credit for the supply and delivery of goods shall be entitled to draw on such letters of credit or standby letters of credit, as the case may be, in accordance with their respective terms and conditions, without the prior written consent of the Applicant and without the leave of this Court.
6. Without limiting anything contained in this Order, from 12:01 a.m. (Halifax time) on the date of this Order to the time of the granting of this Order, any act or action taken or notice given by any of the Applicant's creditors or other Persons in furtherance of their rights to commence or continue realization or to take or enforce any other step or remedy, whether in any Proceeding or otherwise, will be deemed not to have been taken or given, as the case may be, subject to the right of any such Person to further apply to this Court on proper notice to the Applicant and the Monitor hereinafter appointed in respect of such step, act, action or notice given.
7. To the extent that any rights or obligations, or time or limitation periods relating to the Applicant or the Property may expire or terminate with the passage of time, the term of such rights, obligations or periods shall hereby be deemed to be extended by this Order and any further Order of this Court and, for greater certainty, in the event that the Applicant becomes bankrupt or a receiver is appointed in respect of the Applicant within the meaning of section 243(2) of the BIA, the period between the date of this Order and the day on which such stay of proceedings is ended shall not be counted in determining the 30-day period referred to in Section 81.1 of the BIA or the 15 day period referred to in Section 81.2 of the BIA, provided that this paragraph shall not be construed to extend the term of any lease expires during the pendency of such stay of proceedings.
8. All Persons having any other arrangements or agreements whether written or oral, with the Applicant, are hereby restrained from accelerating, terminating, suspending, modifying, determining or cancelling any such arrangements or agreements, notwithstanding any provisions therein contained to the contrary, without the prior written consent of the Applicant and concurrence of the Monitor or leave of this Court on proper notice to the Applicant and the Monitor. All such Persons shall continue to perform and observe the terms, conditions and provisions contained in such agreements on their part to be performed or observed. Without limiting the generality of the foregoing, all Persons be and they are restrained until further Order of this Court from terminating, resiliating, rescinding, repudiating, suspending, modifying, cancelling,

disturbing or otherwise interfering in any way with the present or future occupation by the Applicant of any premises leased, subleased or occupied by the Applicant are hereby specifically restrained from taking any steps to terminate, resiliate or otherwise bring to an end any lease, sublease, occupancy or other agreement to which the Applicant is a party, whether by notice or otherwise, or to terminate any ancillary agreements or arrangements, including, without limitation, leasehold improvement arrangements with the Applicant, without the prior written consent of the Applicant and concurrence of the Monitor or leave of this Court on proper notice to the Applicant and the Monitor, subject to the obligation of the Applicant to pay occupation rent (calculated in accordance with the terms of the particular lease, or as may otherwise be agreed in writing between the Applicant and the relevant landlord and concurred in by the Monitor) for the period commencing with the date of this Order for leased premises actually occupied by the Applicant, but not arrears arising prior to the date of this Order or rents in dispute, once every two weeks in arrears, commencing on the date that the next rental payment is due following the date of this Order, at the rental rate calculated on the per diem basis presently payable by it, applied proportionately to the period of actual occupation, or as otherwise may be agreed in writing by the Applicant and the relevant landlord and concurred in by the Monitor from time to time. If any such occupation rent for any such leased premises remains outstanding for more than fifteen days after written notice of non-payment has been given by the relevant landlord to the Applicant and to the Monitor, the stay of proceedings with respect to such premises shall thenceforth cease to have effect.

9. Until and including the Stay Termination Date, Her Majesty in Right of Canada may not exercise rights under subsection 224(1.2) of the *Income Tax Act* (Canada) in respect of the Applicant, where the Applicant is a tax debtor under that subsection and Her Majesty in Right of a Province may not exercise rights under provincial legislation substantially similar to that subsection in respect of the Applicant where the Applicant is a tax debtor under the provincial legislation.
10. The provisions of paragraphs 3 to 9 of this Order apply in accordance with their terms to stay any and all Proceedings or to restrain any matter provided therein that may be commenced or taken against any person who is or may be directly or indirectly obligated to any obligations of the Applicant otherwise than under any letter of credit or any guarantee in respect of any such obligations.
11. This Order and the proceedings in this Application leading to the granting of this Order, including the content of any affidavit filed in these proceedings, shall not constitute or be relied upon in evidence or otherwise as constituting a default or breach by the Applicant, its directors, shareholders, employees, advisors and agents, under or pursuant to any agreement, statute, regulation, license, permit, contract, permission, covenant, undertaking, policy of insurance or other instrument or requirement.

Operations

12. The Applicant shall be entitled to exercise any rights of set-off and claim any allowances or benefits which it is entitled to claim against amounts payable by the Applicant to any

Person, including, without limitation, amounts payable to any supplier of goods or services or any landlord of premises leased or occupied by the Applicant and including rights arising in connection with any agreements or arrangements with any supplier with respect to advertising, marketing, installation of fixtures, product research and development, volume rebates and allowances and any other similar arrangements or product allowances.

13. The Applicant shall honour to the extent possible of all of its obligations to its customers both before and after the date of this Order, in accordance with its existing practices including without limitation, all obligations with respect to refunds for goods purchased, warranty claims and deposits made by customers.
14. All funds, monies, cheques, instruments, charge, debit or credit card vouchers and other forms of payment received or collected by the Applicant from and after the making of this Order from any source whatsoever, including without limitation the sale of any inventory, the collection of any account receivable or the sale of, realization upon or income from any other Property, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited in one or more new accounts opened by the Applicant (the "**Post-Filing Accounts**"), and the monies standing to the credit of such account or accounts from time to time shall be used by the Applicant solely for the payment of those obligations of the Applicant specifically authorized to be paid by the terms of this Order or any further Order of this Court. For greater certainty and without limiting the generality of subparagraph 3(g) hereof, the Applicant's bankers are hereby restrained from exercising or purporting to take the benefit of any right of set-off or combination of accounts or banker's lien in respect of any indebtedness or liability of the Applicant owed to the Applicant's bankers at the time of the making of this Order against the credit balance at any time or from time to time standing to the credit of any of the Post-Filing Accounts, provided that, notwithstanding paragraph 3(i) and any other provisions of this Order, the Applicant's bankers shall be entitled to exercise the foregoing remedies or any of the remedies in subparagraph 3(g) in relation to any amount due or accruing due after the date of this Order arising from any indebtedness or obligation of the Applicant incurred after the date hereof. The Applicant shall keep accounts with respect to the source of all such receipts received by the Applicant from and after the date hereof.
15. The Applicant shall remit, in accordance with legal requirements:
 - (a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any Province thereof which from and after the date hereof are required to be deducted from employee wages, including, without limitation, amounts in respect of unemployment insurance, Canada Pension Plan and income taxes;
 - (b) amounts accruing and payable by the Applicant, in respect of wages paid from and after the date thereof, in respect of unemployment insurance, Canada Pension Plan, workers' compensation and employer health taxes with respect to employees; and

- (c) all goods and services or sales taxes payable by the Applicant or its customers in connection with the sale of goods and services by the Applicant to such customers from and after the date hereof.
16. From and after the date hereof, the Applicant shall pay all reasonable expenses incurred by the Applicant in carrying on its business and carrying out the provisions of this Order, which expenses, pending any further Order of this Court, may include, without limitation, payment of:
- (a) the Monitor, counsel to the Monitor, and counsel to the Applicant shall be paid their reasonable fees and disbursements (in the case of the Monitor, on the basis of a chartered accountant and its own client and, in the case of such counsel on a solicitor and his own client basis) by the Applicant and such fees shall be part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel of the Monitor, and counsel for the Applicant on a weekly basis, and in addition the Applicant is hereby authorized to pay each of the Monitor and counsel to the Applicant retainers to be held by the recipient as security for payment of their fees and disbursements outstanding from time to time;
 - (b) amounts to make such arrangements as may be necessary for payment of suppliers of goods or services actually supplied, delivered or provided to the Applicant following the date of this Order, including where the Applicant determines it necessary and economically beneficial to the Applicant, with the prior concurrence of the Monitor, payment of any amounts due prior to the date of this Order;
 - (c) all outstanding and future wages, salaries, employee benefits, vacation pay (for continuing employees in the normal course), and other like amounts (but excluding for greater certainty any severance, termination and other like amounts) due or accruing due to employees and present and future directors and the reimbursement of business expenses properly incurred by employees and present and future directors and payments to operate and fund the payroll accounts (including source deductions) in respect of such employees;
 - (d) all expenses reasonably necessary for the preservation of the Property including, without limitation, payments on account of insurance, safety and security;
 - (e) all present and future warranty claims and the acceptance of returns of merchandise for cash or credit in the ordinary course of business;
 - (f) all outstanding and future premiums on directors' and officers' liability insurance and key-man insurance;
 - (g) any amount secured by the CCAA Lenders' Security (as hereinafter defined) (if any);

- (h) any amount secured by the Administration Charge (as hereinafter defined and constituted);
- (i) any amounts payable in respect of the Post-Filing Accounts; and
- (j) any other amount specifically provided for by the terms of this Order,

Possession of Property

17. Subject to the terms of this Order, the Applicant shall remain in possession and control of the Property and shall continue to carry on business in a manner consistent (except as herein otherwise contemplated) with the preservation of the Applicant's business and Property, and shall be authorized and empowered to continue to retain and engage the agents, accountants, advisors, servants, solicitors and consultants currently engaged and paid by the Applicant, with liberty to retain, with the concurrence of the Monitor or approval of this Court, such further or other Persons as it deems reasonably necessary or desirable in the ordinary course of business or for the purpose of the Plan (as hereinafter defined) or the carrying out of the terms of this Order,

Restructuring

18. The Applicant shall have the right, with the concurrence of the Monitor, to:
- (a) cease, downsize or shut down any of its operations or locations and to make provision for any consequences thereof in the Plan;
 - (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate and, to the extent not paid in the ordinary course, to make provision for any consequences thereof in that Plan;
 - (c) vacate, abandon or quit any leased premises and/or terminate, repudiate or resiliate any lease and any ancillary agreements relating to any leased premises, on not less than seven days notice in writing to the relevant landlord on such terms as may be agreed upon between the Applicant and such landlord with the concurrence of the Monitor and, failing agreement, on terms as the Applicant deems appropriate and to make provision for any consequences thereof in the Plan provided that the Applicant may remain in occupation of any such premises despite such termination so long as the Applicant pays occupation rent in accordance with paragraph 8 of this Order;
 - (d) advertise and market for sale and, subject to obtaining the prior concurrence of the existing, relevant secured lenders, sell or other dispose of such of its Property and/or shares as the Applicant deems appropriate;
 - (e) subject to obtaining the prior concurrence of the existing relevant secured lenders, and subject to paragraph 18(f) hereof, proceed with an orderly liquidation of such of its property as the Applicant deems appropriate;

- (f) subject to obtaining the prior concurrence of the existing relevant secured lenders, sell, charter, transfer or assign, whether on credit, by private tender, public auction or otherwise, or to lease or mortgage the Property or any part or parts thereof:
 - (i) without the approval of the Court in respect of any transaction in the ordinary course of business;
 - (ii) without the approval of the Court in respect of any transaction out of the ordinary course of business and not exceeding \$50,000 provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (iii) with the approval of this Court in respect of any other transaction;
- (g) notwithstanding paragraph 18(f), to sell its current inventory of raw materials and to purchase new raw materials in an amount appropriate to the needs of the Applicant;
- (h) terminate such of its arrangements or agreements of any nature whatsoever, whether oral or written, as the Applicant deems appropriate and to make provision for any consequences thereof in the Plan;
- (i) establish and fund a management performance incentive plan for managers, officers and directors of the Applicant for the purpose of enabling the Applicant to attract, retain and motivate its managers, officers and directors;

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of its business, property and affairs (the “**Restructuring**”).

19. In order to facilitate the Restructuring, the Applicant shall be permitted to carry on its business in the manner and to the extent determined by it, to dispose of any or all of its inventory and other assets wherever situate without any interference of any kind and, for greater certainty, the Applicant shall have the right to realize upon its inventory and other assets in such manner as the Applicant deems suitable or desirable for the purpose of maximizing the proceeds and recovery therefrom.
20. The Applicant shall and does hereby indemnify each member of its board of directors and the Monitor of and from all claims, liabilities and obligations of any nature whatsoever, including without limitation, professional fees and disbursements on the basis of a chartered accountant and its client and legal fees and disbursements on a solicitor and client basis, which may arise out of their involvement with the Applicant, the Restructuring or the Plan, from and after the date hereof in the above-mentioned capacities, save and except as may arise from wilful misconduct or negligence on the part of any of them.
21. No person shall commence or continue with any proceeding against any directors, legal counsel to the Applicant, financial advisor to the Applicant, the Monitor or the legal

counsel to the Monitor for or in respect of the Restructuring or the Plan or any other matter in connection with this proceeding, without first obtaining the leave of this Court, upon seven days' (or such other period as the Court may order) written notice to the Applicant, the Monitor and all potential defendants referred to in this paragraph.

Payment of Creditors

22. Subject to paragraphs 14, 15, 16, 17, 18 and 30 hereof and except as otherwise provided in this Order, the Applicant is hereby directed, until further Order of this Court:
- (a) to make no payments, whether of principal, interest thereon or otherwise, on account of amounts owing by the Applicant to any of its creditors as of this date;
 - (b) to grant no mortgages, charges or other security upon or in respect of any of its present or future Property other than as otherwise authorized by further Order of this Court; and
 - (c) except with the concurrence of the Monitor, not to enter into, incur, make or pay any monies or other consideration in respect of, any commitment, obligation, arrangement or agreement:
 - (i) out of the ordinary course of its business and which involves the incurrence of obligations or payment of monies exceeding \$50,000 in the aggregate except as is otherwise expressly provided for in this Order; and
 - (ii) in the ordinary course of its business for or in respect of the purchase of goods not intended for sale by the Applicant until the Stay Termination Date, and

which involves the incurrence of obligations or payment of monies exceeding \$200,000 in the aggregate.

Plan of Arrangement

23. The Applicant is hereby authorized and permitted to file with this court a plan of compromise or arrangement regarding the Applicant under the CCAA (the "**Plan**") on or before the Stay Termination Date or such other date as may be ordered by this Court.
24. The Applicant shall, subject to the direction of this Court, summon and convene meetings between the Applicant and its secured and unsecured creditors under the Plan to consider and approve the Plan (collectively, the "**Meetings**").

Monitor

25. Until further Order of this Court, BDO Dunwoody Goodman Rosen Inc. (the "**Monitor**") shall be and it is hereby appointed as an officer of this Court to monitor the business and affairs of the Applicant with the powers and obligations hereafter set forth and that the Applicant and its shareholders, officers, directors, employees, servants, agents and

representatives shall cooperate fully with the Monitor in the exercise of its powers and discharge of its obligations. Without limiting the generality of the foregoing, the foregoing persons shall provide the Monitor with such access to the Applicant's books, records, assets and premises as the Monitor requires to exercise its power and perform its obligations under this Order.

26. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to :
- (a) assist the Applicant, as applicable, in the development of the Plan and any amendments to and the implementation of the Plan;
 - (b) monitor the Applicant's receipts and disbursements;
 - (c) assist the Applicant with the marketing of its Property and/or shares;
 - (d) assist the Applicant in its review and assessment of areas for cost reduction and revenue enhancement in the Applicant's businesses;
 - (e) assist the Applicant, as applicable with the holding and administering of any Meetings for voting on the Plan and shall act as chair at any such Meeting;
 - (f) assist the Applicant in securing its required supply of goods and services by the issue of letters of comfort supported by cash on deposit;
 - (g) inquire into and report to creditors, at or prior to any Meetings to consider the Plan, upon the financial condition and prospects of the Applicant;
 - (h) be at liberty to engage legal counsel and engage such other agents as the Monitor deems necessary respecting the exercise of its powers and performance of its obligations under this Order;
 - (i) report to this Court as the Monitor deems appropriate or as this Court directs, in respect of the marketing of the Property and/or shares, the Applicant's receipts and disbursements, the Plan, the Restructuring or the business of the Applicant or in respect of such other matters as may be relevant to the proceedings herein;
 - (j) perform such other duties as are required by this Order or further Order of this Court;
 - (k) provide such information to all secured creditors regarding the Applicant as are reasonably requested by any secured creditor and to consult with all secured creditors concerning the development of the Plan, the implementation of the Plan and the marketing of the Applicant's property and/or shares; and
 - (l) generally to consult with the secured creditors with respect to the authority given to the Monitor pursuant to this paragraph.

27. The Monitor is authorized to provide all interested parties who so request with its report or assessment on the Plan. The Monitor shall incur no liability as a result of any report or assessment that it may make pursuant to this provision.
28. In response to any reasonable request for information made in writing by any of the Applicant's creditors addressed to the Monitor, the Monitor shall provide such creditor with the information requested. In the case of information which the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to the requesting creditor unless otherwise directed by this Court.
29. The Monitor is not empowered to take possession of any of the Property or to manage any of the Applicant's business or affairs and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession, management or control of the Property, or any part thereof, and shall not occupy any premises except in such circumstances as the Monitor deems necessary.
30. The reasonable fees and disbursements of the Monitor (including the reasonable solicitor and client fees and disbursements of any counsel retained by the Monitor) and the reasonable solicitor and client fees and disbursements of the Applicant's counsel in these proceedings shall be paid by the Applicant as part of the costs of these proceedings, the Plan and the Restructuring and the Applicant is hereby authorized and directed to pay the accounts of the Monitor, and the Applicant's counsel and counsel for the Monitor on a weekly basis. In addition, the Applicant is hereby authorized to pay each of the Monitor, counsel to the Monitor; and counsel to the Applicant such retainers as may be agreed upon to be held by the Monitor and each such counsel as security for payment of their fees and disbursements outstanding from time to time including with respect to this Application, subject to any final assessment or taxation as may be ordered by this Court, in which case the remuneration of the Monitor shall be taxed on the accountant and its own client and the legal costs of the Monitor's and/or the Applicant's counsel shall be taxed on the basis of a solicitor and its own client.
31. The Monitor, counsel to the Monitor and the Applicant's counsel, as security for their reasonable professional fees and disbursements incurred both before and after the making of this Order in respect of these proceedings, the Plan and the Restructuring, shall be entitled to the benefits of and are hereby granted a charge against all present and future Property including without limitation the credit balances from time to time in the Post-Filing Accounts (the "**Administration Charge**"), such Administration Charge not to exceed \$300,000 without further order of this Court.
32. The Administration Charge shall attach to all present and future real and personal property of the Applicant, including any lease or other contract, notwithstanding any requirement for the consent of the lessor or other party to any such contract or any other Person, the necessity for the giving of any such consent is hereby dispensed with, and the absence of any such consent shall not constitute a breach of or default under any such lease or other contracts.

33. The Administration Charge shall rank prior to all existing charges, mortgages, ship mortgages, deeds of covenant, liens, securities, security interests and other encumbrances against the Property or any part thereof.
34. The Administration Charge shall be deemed to be valid and effective notwithstanding any negative covenant, prohibition or any other provision with respect to incurring debt or the creation of liens or security contained in any existing agreement between the Applicant and/or its shareholders and any other Person, including without limitation those contained in the existing credit agreements with the Applicant and those contained in any agreement between the Applicant, its shareholders and any other Person, notwithstanding any provision to the contrary in any such agreements and without limiting the generality of the foregoing the creation of the Administration Charge shall not create or be deemed to constitute a breach by the Applicant of any agreement to which it is a party.
35. It is further ordered:
 - (a) where the Monitor acts in good faith and takes reasonable care in preparing a report required by this Order, the Monitor is not liable for loss or damage to any Person resulting from that Person's reliance on the report;
 - (b) notwithstanding anything in federal or provincial law, the Monitor is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
 - (i) before the Monitor's appointment; or
 - (ii) after the Monitor's appointment unless it is established that the condition arose or the damage occurred as a result of the Monitor's gross negligence or wilful misconduct;
 - (c) notwithstanding anything in any federal or provincial law but subject to subparagraph 35(b) above, the Monitor will not be personally liable for failure to comply with any order made which has the effect of requiring the Monitor to remedy any environmental condition or environmental damage affecting any Property, and is not personally liable for any costs that are or would be incurred by any Person in carrying out the terms of the order;
 - (i) if within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Monitor, if the order is in effect when the Monitor is appointed, or during the period of stay referred to in subparagraph 35(c)(ii) below, the Monitor:
 - (A) complies with the order, or
 - (B) on notice to the Person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;

- (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in subparagraph 35(c)(i) above or within 10 days after the order is made or within 10 days after the appointment of the Monitor, if the order is in effect when the Monitor is appointed, by:
 - (A) the court or body having jurisdiction under the law pursuant to which the order was made to enable the Monitor to contest the order, or
 - (B) the court having jurisdiction under the CCAA for the purposes of assessing the economic viability of complying with the order; or
 - (iii) if the Monitor had, before the order was made, abandoned or renounced any interest in any real property affected by the condition or damage;
 - (d) the Monitor shall not be liable for any other act or omission as result of its appointment or the fulfillment of its duties in carrying out this Order, save and except for negligence or wilful misconduct on its part or for any debt incurred by the Applicant whether before or after the date of this Order; and
 - (e) no action application or other proceeding shall be taken made or continued against the Monitor without the leave of this Court first being obtained.
36. The appointment of the Monitor shall not constitute the Monitor as an employer or a successor employer under an agreement or contract between the Applicant and any of its present or former employees or within the meaning of any legislation governing employment or labour standards or in respect of pensions or benefits or any other statutes regulation or rule of law or equity for any purpose whatsoever and, further, that the Monitor shall not be deemed to be an owner or in possession, control or management of the Property or of the business and affairs of the Applicant whether pursuant to any legislation enacted for the protection of the environment, health and safety or any other statute or regulation of any federal, provincial or other jurisdiction or under any rule of law or equity for any purpose whatsoever.

Debtor in Possession Financing

37. The Applicant shall be at liberty to apply to the court on two clear days' prior written notice to the Senior Secured Creditors, to seek the Court's approval for debtor in possession ("DIP") financing from any lender (the "CCAA Lender") upon such terms and with such priority as this Court may approve.
38. Except for the use of credit cards in the ordinary course of the Applicant's business, the Applicant shall not borrow any money from or grant any mortgage, charge, security interest, hypothec, lien or other encumbrance over any of its present or future Property to any Person other than the CCAA Lender (if any) without the prior written consent of the CCAA Lender (if any) or further order of this Court on prior notice to the CCAA Lender (if any), and any obligations incurred and any mortgage charge, security interest,

hypothec, lien or other encumbrance granted by the Applicant contrary to this Order shall be subordinate in all respects to the payment of the indebtedness and liability owed to the CCAA Lender (if any).

39. Notwithstanding:

- (a) the pendency of these proceedings and the declarations of insolvency made herein;
- (b) the pendency of any proceedings heretofore or hereafter taken pursuant to the BIA in respect of the Applicant; and
- (c) the provisions of any federal or provincial statute:
 - (i) the obligation of the Applicant pursuant to any commitment provided by any CCAA Lender (the "**DIP Commitment**") (if any) and any documents delivered pursuant thereto shall constitute legal, valid and binding obligations of the Applicant enforceable against it in accordance with the terms thereof, and
 - (ii) any payments made by the Applicant pursuant to the DIP Commitment (if any) and any security given to a CCAA Lender pursuant thereto (the "**CCAA Lender's Security**") (if any) do not and shall not be construed to constitute a fraudulent preference or other challengeable or reviewable transaction under any applicable law.

40. The Administration Charge and the CCAA Lender's Security (if any) shall be deemed to be valid and effective notwithstanding any negative covenant, prohibition or any other provision with respect to incurring debt or the creation of liens or security contained in any existing agreement between the Applicant, its shareholders and any other Person, and that, notwithstanding any provision to the contrary in any such agreements:

- (a) neither the creation of the Administration Charge or the CCAA Lender's Security (if any) nor the execution, delivery, perfection or registration of the CCAA Lender's Security (if any) or notice in respect thereof shall create or be deemed to constitute a breach by the Applicant of any agreement to which it is a party; and
- (b) the CCAA Lender (if any) shall have no liability to any Person whatsoever as a result of any breach of any agreement caused by or resulting from the Applicant entering into the DIP Commitment (if any) or the execution and delivery of the CCAA Lender's Security (if any).

General Terms

41. The Applicant shall be at liberty to:

- (a) serve this Order, any other orders in these proceedings, notices of all other proceedings, the Plan, any notices of Meetings and all other notices, and to deliver

any letters to creditors, information circulars, proofs of claim, proxies and disallowances of claims, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicant's creditors (or their solicitors where known) at their respective addresses as last shown on the records of the Applicant 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 fourth business day after mailing; and

- (b) with the concurrence of the Monitor, consent to the appointment of a receiver and/or receiver and manager of any of the Property otherwise protected by this Order, at any time.
42. Notwithstanding any other provision of this Order, the Applicant may apply at any time to this Court to seek any further relief and any interested Person may apply to this Court to vary or rescind this Order or seek relief on 48 hours notice to the Applicant and the Monitor and to any other person likely to be affected by the Order sought or on such other notice, if any, as this Court may order.
43. The Applicant or the Monitor may, from time to time, apply to this Court for direction in the discharge of the Monitor's powers and duties hereunder or in respect of the proper execution of this Order.
44. This Order and any other Orders in these proceedings shall have full force and effect in all provinces and territories in Canada and abroad and as against all Persons against who it may otherwise be enforceable.
45. This Court requests the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada (including the assistance of any Court in Canada pursuant to Section 17 of the CCAA) and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States and the states or other subdivisions of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order.
46. For the purpose of seeking the aid and recognition of any court or any judicial, regulatory or administrative body outside of Canada, the Monitor shall act and be deemed to be the foreign representative of the Applicant.
47. It is acknowledged that the Applicant now holds, and may in the future hold, monies received as deposits from customers of the Applicant. Nothing in this Order is intended to limit, restrict or otherwise affect the Applicant's rights and obligations as regards such funds, nor shall this Order confer any rights or remedies on any creditor of the Applicant in respect thereof, unless and until any such funds have been properly applied by the Applicant in payment of an account then owing to the Applicant by the customer who has

deposited the funds whereupon the funds shall be regarded, for the purposes of this Order, as any other revenue from operations received by the Applicant.

DATED at Halifax, Nova Scotia this 23 day of June, 2008.

GEORGE GHOSN
Deputy Prothonotary



Deputy Prothonotary

IN THE SUPREME COURT OF NOVA SCOTIA

I hereby certify that the foregoing document, identified by the Seal of the Court, is a true copy of the original document on file herein.

Dated the 23 day of June A.D., 2008


Deputy Prothonotary