

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.

**FOURTH REPORT OF MONITOR
BDO DUNWOODY GOODMAN ROSEN INC.
August 28, 2008**

2008

S.H. No. 297999

IN THE MATTER OF:

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MONITOR'S FOURTH COURT REPORT

TABLE OF CONTENTS

<u>Section Description</u>	<u>Page</u>
1. Fourth Report of the Monitor – General Comments	3
2. Cash Flow, Cash Flow Projections, and Debtor-in-Possession (“DIP”) Financing	5
3. Claims Process	8
4. Status of Plan of Arrangement under CCAA	10
5. Companies’ Creditors Arrangement Act (“CCAA”) Professional Fees	12
6. Recommendations	13

<u>Exhibits</u>	<u>Number</u>
Second Debtor-in-Possession (“DIP”) Financing Order – Granted August 13, 2008	1
Claims Process Order – Granted August 13, 2008	2
Weekly Cash Flow (Cash Receipts and Disbursements) Week #8	3
Claims Process Letter to Creditors	4
Proofs of Claim Register	5
Notice of Allowance (of Claim)	6
Notice to Claimants as Published in Globe & Mail	7
Notice to Claimants as Published in Halifax Herald	8
Details of CCAA Professional Fees	9

1. FOURTH REPORT OF THE MONITOR – GENERAL COMMENTS

- 1.1. Pursuant to an Order (“Initial Order”) of the Supreme Court of Nova Scotia (“the Court”) dated June 27, 2008, BDO Dunwoody Goodman Rosen Inc. was appointed as the Monitor (“the Monitor”) pursuant to an application made by Canadian Sailing Expeditions Inc. (“CSE”) to seek protection under the Companies’ Creditors Arrangement Act (“CCAA”).
- 1.2. The following is a summary of the Orders granted by the Court which form the basis of the CCAA proceeding of CSE as has occurred to date:
 - Initial Order granted on June 27, 2008 by The Honorable Justice Gerald R.P. Moir;
 - First Debtor-in-Possession (“DIP”) Financing Order granted on July 4, 2008 by The Honorable Chief Justice Joseph P. Kennedy;
 - Consent Order extending the Stay of Termination Date from July 24, 2008 to July 25, 2008 granted on July 24, 2008 by The Honorable Justice John D. Murphy;
 - Order Extending the Stay of Termination Date to September 3, 2008 granted on July 25, 2008 by The Honorable Justice John D. Murphy;
 - Second Debtor-in-Possession (“DIP”) Financing Order granted on August 13, 2008 by The Honorable Justice Arthur W.D. Pickup (attached as Exhibit 1);
 - Claims Process Order granted on August 13, 2008 by The Honorable Justice Arthur W.D. Pickup (attached as Exhibit 2).
- 1.3. To date, the Monitor has prepared and filed three detailed reports and one supplementary report with the Court as follows:
 - Monitor’s First Report dated July 2, 2008;
 - Monitor’s Second Report dated July 21, 2008;
 - Monitor’s Supplementary Report dated July 24, 2008;
 - Monitor’s Third Report dated August 8, 2008.
- 1.4. Subsequent to the date of the Monitor’s Third Report of August 8, 2008, the Monitor advises that we have undertaken or we have been involved in various activities which may generally be described as follows:
 - We have continued, on a regular basis, to be in contact and communication with Douglas Prothero, the CEO of CSE, and/or various members of the CSE staff, CSE’s legal counsel, and counsel to the Monitor.
 - We continue to field a number of communications by various medium from creditors as to the status of the CCAA proceeding of CSE and we have responded to each of these inquiries on a timely basis, including answering the questions about pre-filing obligations and post-filing supply of goods and services, and now queries with respect to the Claims Process.

- Each week, we continue, pursuant to the regime we have established with CSE, to receive the Cash Flow Report and various materials related thereto from CSE and we perform a limited review of the information provided, seek explanations for various questions or variances, recommend changes where appropriate, and provide an email report and the Cash Flow Report to those creditors and parties who have requested same.
- We have reviewed certain confidential materials and reports provided to us by Mr. Prothero with respect to progress made toward the determination of a CCAA Plan of Arrangement and we have met with Mr. Prothero to fully explore the status of progress of a Plan of Arrangement.
- We have had a number of communications and discussions with CSE, its counsel, and Monitor's counsel regarding various aspects of the CCAA process, including DIP financing, extension of the Stay of Termination Date, Cash Flow, Claims Process, and the elements and positions that may be considered for a Plan of Arrangement.
- The Monitor attended the Court hearing held on August 13, 2008 with respect to the increase in DIP financing and the establishment of a claims process.
- The Monitor has set up the Claims Process and published the advertisements and undertaken the mailing as required by the Claims Process Order.
- The Monitor attended a conference call with officials of Caterpillar Financial Services Inc. ("CAT") along with Doug Prothero.
- The Monitor has attended to and reviewed a number of other matters and documentation which may not otherwise be referred to herein.

2. CASH FLOW, CASH FLOW PROJECTIONS, AND DEBTOR-IN-POSSESSION (“DIP”) FINANCING

- 2.1. The previous Monitor’s Reports to the Court included the weekly Cash Flow Reports (Cash Receipts and Disbursements) for the most recent week with accumulation for the full CCAA period to the end of that weekly reporting period. As well, certain of the Monitor’s Reports also contained the monthly Cash Flow Projection (Monthly Cash Receipts and Disbursements). The Monitor commented on each of these documents as they had been presented at the time.
- 2.2. We previously advised the Court that the Monitor has established a regime and timing related to the provision of and a limited review of the Weekly Cash Flow information as provided by CSE to the Monitor. The Monitor has provided full particulars of the regime in its previous reports. The Monitor does not audit the data provided by CSE, nor do we express any opinion as to the accuracy or completeness of the data.
- 2.3. With respect to the most recent Weekly Cash Flow Report, attached as Exhibit 3 is the Weekly Cash Flow Report (Weekly Cash Receipts and Disbursements) for Week #8, being the week from August 17, 2008 to August 24, 2008 inclusive, and including the cumulative position for the first eight weeks of the CCAA proceeding through to August 24, 2008.
- 2.4. The Monitor’s comments in summary with respect to Exhibit 3 are:
 - Actual revenue achieved does not vary materially from the revenue as planned, but charter fees are \$12,000 higher than planned for the eight weeks.
 - The trust funds deposit for fares paid in advance list totals \$125,093 and is fully funded with cash and GICs.
 - To the end of Week #8, DIP funds advanced are \$135,000 more than plan at \$350,000, but cash in trust at the end of Week #8 is approximately \$100,000 more than plan, as a result.
 - It is important to understand that timing is critical and that accounts payable at the end of Week #8 amount to \$69,478 of which \$19,275 is related to payroll deductions, \$37,993 is relative to the CCAA professional fees and DIP legal fees, and \$12,210 is trade suppliers.
 - Had all of the accounts payable been paid by the end of Week #8, there would be approximately \$43,000 of cash still remaining on hand.
 - Two of the larger expense variances that are negative, but not related to operations, are the professional fees related to the CCAA which are \$28,285 over plan and refinancing costs which include DIP legal fees which are \$37,851 over plan.
 - Actual expenses paid in Week #8 are \$1,453 more than plan, and for the eight weeks ended August 24, 2008 are \$61,425 less than plan, suggesting that CSE is doing a good job of monitoring its operating expenses.

- Accounts receivable at the end of Week #8 is the same \$3,414 damage claim which has yet to be paid to CSE.
- 2.5. In our Third Report to the Court, the Monitor concluded that the Monthly Cash Flow Projection indicated that CSE may use \$800,000 of the DIP financing, as has now been approved by the Court, by the end of September, 2008. There may be some room for DIP funds of up to \$850,000 to be made available as indicated in Paragraph 2.7. Assuming that reality is consistent with the CSE projection, CSE will require access to and Court approval of more DIP financing by early to mid October, 2008. CSE will have to provide updated Cash Flow information to the Monitor for review to support such an application.
- 2.6. At the Court hearing held on August 13, 2008, there was some confusion as to the amount of DIP financing that was available from Growthworks under the first Commitment Letter and Court Order. This issue has now been clarified and the Monitor advises that total DIP funds now available and approved by the Court are calculated as follows:

Funds available in first DIP (June 27, 2008) Commitment Letter:	
Base amount	\$ 350,000
Plus unused RBC credit line of \$1,500,000 available, less used and paid by Growthworks to RBC \$1,386,855	<u>113,145</u>
First DIP Available	463,145
Funds Proposed from Second DIP Financing	<u>350,000</u>
Total DIP to be Available	<u>\$ 813,145</u>

- 2.7 The Monitor is of the view that the total DIP financing facility of \$813,145 as calculated above is consistent with the DIP financing required if one makes a comparison to Exhibit 4 in the Monitor's Third Court Report which shows a DIP requirement to the end of September of \$800,000. Notwithstanding the Growthworks Commitment Letter which caps the available DIP at \$813,145 as calculated, it appears that where the Court has approved the additional DIP of \$350,000, and subject to the further agreement of Growthworks and the approval of the Monitor, actual DIP advances could be made of up to \$850,000.
- 2.8 In the Monthly Cash Flow Projection, which was attached as Exhibit 4 to the Monitor's Third Report, it appears that CSE has sufficient DIP financing presently available and approved to carry it through to early October, 2008, but CSE will require an additional \$332,000 of DIP financing for the month of October, through to November 2, 2008.

That being the apparent case, CSE will have to both arrange for additional DIP funds and obtain Court approval of same by early to mid October, 2008.

- 2.9 It is the Monitor's understanding that it is CSE's intention to lay up *The Caledonia* for annual refit and certification in the month of October, so no revenue is projected for that month. After lay up, and the passing of hurricane season, it planned that *The Caledonia* would sail to the Caribbean for its winter cruising schedule. There is some advance fare revenue that CSE already has in trust for the winter season.

3. CLAIMS PROCESS

- 3.1. We advise that since the Monitor's Third Report, we have expended time in working with CSE and its legal counsel in the establishment and development of a Claims Process, which process was approved by This Honorable Court at the hearing held on August 13, 2008. The complete Claims Process is as set out in the Order granted on August 13, 2008 by Mr. Justice Pickup. The Claims Process Order, along with the related schedules to the Order, is attached hereto as Exhibit 2.
- 3.2. Pursuant to the Claims Process Order as granted on August 13, 2008, the Monitor advises that it has complied with Paragraph 5(a) of the Claims Process Order in that we have, on August 20, 2008, sent the Claims Process Package by ordinary mail to each known potential claimant identified by the Monitor through its review of the books and records maintained in connection with the monitorship of CSE. Attached as Exhibit 4 is the letter that the Monitor has sent to CSE's creditors with the Claims Process Package.
- 3.3. The Monitor has sent the Claims Process Letter (Exhibit 4) to 72 creditors or potential creditors of CSE which have been identified. Attached as Exhibit 5 is the Proofs of Claim Register which the Monitor is using as part of the management of the Claims Process which identifies the creditors to whom the Claims Process Package was sent. This schedule is a "work in progress" as it changes daily as claims are received and accepted or rejected.
- 3.4. The Monitor has appointed a member of his staff to manage the Claims Process and this person will receive the claims filed under the Claims Process and identify to the Monitor those claims which should be accepted and those which should be rejected or revised.
- 3.5. The Monitor has placed the Claims Process Package on its special CSE website, situs of which is www.bdo.ca/canadiansailing.
- 3.6. While the Claims Process Order did not require the Monitor to acknowledge receipt of Proofs of Claim from creditors, which the Monitor accepts as filed without dispute, the Monitor believes that it is appropriate to acknowledge that acceptance to creditors so that these creditors will know that their claims have been received and accepted by the Monitor before the Claims Bar Date which has been established as 5:00 p.m., ADT, on September 11, 2008. As a matter of record, attached as Exhibit 6 is the form of Notice of Allowance (of Claim) that the Monitor is sending to creditors who have proved their claims for the Claims Bar Date.
- 3.7. The Monitor reports that the advertisement of the Notice to Claimants as set out in Paragraph 5(c) of the Claims Process Order has been published in the Toronto Globe & Mail (national edition) and all editions of the Halifax Chronicle Herald. This Notice to Claimants as required by the Claims Process Order was published on August 22, 2008

and attached hereto as Exhibits 7 and 8 are the notices as were published in the identified newspapers.

- 3.8. Monitor's counsel, Carl Holm, QC, initially confirmed with Richard Cregan, the Registrar in Bankruptcy, that Mr. Cregan would act as Claims Officer under the Claims Process. The Monitor subsequently wrote to Mr. Cregan to confirm this agreement as well as the fee for service arrangement.
- 3.9. As it is now very early in the Claims Process, there are not many claims filed with the Monitor as at the date of this present Report, but to the extent claims have been filed, all have been dealt with.

4. STATUS OF PLAN OF ARRANGEMENT UNDER CCAA

- 4.1. As indicated in previous reports, under Section 11(6) of the CCAA, the Monitor needs to be confident that the burden of proof to satisfy the Court on granting an application is on CSE so as to satisfy the Court that:
- (a) circumstances exist that make an Order appropriate; and
 - (b) CSE has acted in good faith and are continuing to act in good faith and with due diligence.
- 4.2. In the discussions that the Monitor has had with officials of CSE and its counsel, the prospects for a Plan of Arrangement continue to be achievable. Any CCAA Plan of Arrangement is likely to include any of the following actions or combinations where possible:
- the sale of the vessel *The Caledonia* by way of an aggressive marketing plan; or
 - the long-term charter of the vessel *The Caledonia*; or
 - an injection of new capital funds or a conversion of debt to equity and/or write-downs and participation from certain secured creditor interests.
- 4.3. Due to the nature of the business and the assets of CSE, the Monitor continues to believe that whatever form of Plan of Arrangement as may be established, it will continue to take some weeks to determine what the major elements of the Plan of Arrangement might take and it will likely take some further time thereafter to achieve the desired conclusion.
- 4.4. Douglas Prothero, CEO of CSE, has met with the Monitor on a number of occasions and has provided the Monitor with written updates as to actions he has undertaken which will lead to the key elements in establishing a Plan of Arrangement. These confidential reports as provided to the Monitor are dated July 10, 2008, July 23, 2008, August 2, 2008, August 19, 2008, and August 25, 2008.
- 4.5. The Monitor believes that the details of the actions as initiated by CSE to date must be kept confidential. The Monitor has made certain suggestions to CSE as to the persons to contact, and Mr. Prothero has expeditiously followed up with these contacts.
- 4.6. Reports from Mr. Prothero to the Monitor reflect that at least six (6) brokers have listed *The Caledonia* for sale at \$8.5 million Euros (approximately \$13,500,000 Canadian). Certain of the brokers have already identified possible purchasers who, we understand, are making arrangements to inspect the ship in the coming weeks.
- 4.7. A number of brokers have been approached for charters in the national resource sectors. In this instance, *The Caledonia* could be used for a standby vessel, inshore

accommodation vessel, or a chase vessel. The proposed rate is £7000 GBP per day calculated on a market base rate plus marine crew. Variable costs such as fuel, catering, and other logistics are extras.

- 4.8. To date, approaches have been made to a number of joint venture or equity partners and these communications are ongoing. Mr. Prothero had the opportunity to meet with certain parties on a joint venture or equity partner basis and more than one of these contacts appears to be interested in participating with CSE in a go forward plan. One of these parties has already visited *The Caledonia*.
- 4.9. The Monitor is advised by CSE that some preliminary discussions have been held with Growthworks Atlantic Venture Ltd. ("Growthworks") about the conversion of some or all of their debt position to equity, but we caution that no decision or final commitment has been made by Growthworks in this conversion. Any such conversion, when and if agreed to, would then become an important element in the Plan of Arrangement.
- 4.10. CSE has agreed to provide the Monitor, on a confidential basis, with a draft business plan which CSE will use to encourage potential investors or joint ventures to assist it in a financial restructuring. Based on discussions the Monitor has had with Mr. Prothero, the Monitor believes that the draft business plan will be appropriate in terms of facilitating the desired financial results which CSE needs to achieve to successfully conclude the CCAA proceeding. To be clear, as at this present date, the Monitor has not viewed the draft written business plan.
- 4.11. CSE has done some research on the potential for realization of the vessel *Hawk*. While the value of the *Hawk* in relation to the value of *The Caledonia* is less significant, its potential realization may be extracted from ship breaking, or conversion, or cut down to barge status. Contacts with potential interested parties for any of these purposes are ongoing and at least a couple of parties have expressed some interest in the *Hawk*, while others have advised they will take a "pass".
- 4.12. Whereas in Section 2 of this present Report the Monitor has noted that more DIP will be required by early to mid October, it is the Monitor's view that CSE should file its Plan of Arrangement at a time consistent with the next DIP financing application and perhaps tie in this same timing to the next Stay of Termination Date which should not extend beyond mid October if all of these matters are to be considered at the same time.
- 4.13. Because of the above activities and the materials provided to the Monitor by CSE and the due diligence previously performed by the Monitor to the extent possible on these materials, the Monitor is satisfied that CSE's management has acted and has continued to act in good faith and with due diligence in bring forth elements that will be required if a workable Plan of Arrangement is to be developed for consideration by the creditors.

5. COMPANIES' CREDITORS ARRANGEMENT ACT ("CCAA") PROFESSIONAL FEES

- 5.1. As set out in previous reports of the Monitor, Paragraph 30 of the Initial Order provides for the payment of 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 counsel to CSE.
- 5.2. Paragraph 31 of the Initial Order provides that the Monitor, counsel to the Monitor, and Federal's counsel, as security for their reasonable professional fees and disbursements incurred both before and after the making of the Initial Order in respect to the CCAA proceedings, were granted a charge against all present and future property of CSE in the form of an Administration Charge, such charge not to exceed \$300,000 without further Order of the Court. The Monitor continues to believe that there is no reason to seek an increase in the Administration Charge.
- 5.3. Attached as Exhibit 9 is a schedule of the details of the CCAA professional fees including those which are subject to the Administration Charge where they are unpaid. Exhibit 9 reflects total fees (including disbursements and HST) as billed (\$118,987.24) and indicates which ones are paid (\$110,586.08) or are unpaid (\$8,401.17), as the case may be as of August 25, 2008, although the Monitor notes that due to timing differences in the receipt of payment for fees in relation to the preparation of this report, certain fees reflected as unpaid may indeed be paid.
- 5.4. Pursuant to Paragraph 19 of the DIP Order of July 4, 2008, and hence the Second DIP Order of August 13, 2008, the priority of the Administration Charge referred to in Paragraph 3.3 therein is limited, firstly, to \$75,000 and is then, secondly, intersected by the DIP Charge ("DIP Loan"), and then, thirdly, the remaining Administration Charge has next priority. As at the date of this present report, the \$8,401.17 would be the amount subject to the Administration Charge.

6. RECOMMENDATIONS

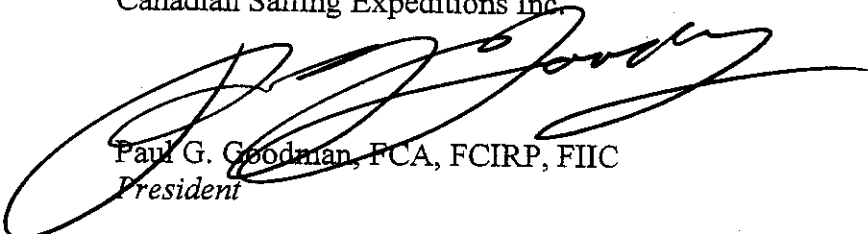
- 6.1. The Monitor recommends to This Honorable Court that the Stay of Termination Date pursuant to this present CCAA proceeding be continued to on or before October 16, 2008.
- 6.2. The Monitor recommends to This Honorable Court that CSE file its Plan of Arrangement (as may be subject to further amendment) on or before October 16, 2008.
- 6.3. The Monitor recommends to This Honorable Court that where CSE wishes to continue the CCAA proceeding and whereas more DIP funds appear to be required, it make a third application for DIP financing on or before October 16, 2008.

Dated at Halifax, Nova Scotia this 28th day of August, 2008.

Respectfully submitted

BDO DUNWOODY GOODMAN ROSEN INC.

Court-Appointed Monitor in the CCAA Proceeding of
Canadian Sailing Expeditions Inc.



Paul G. Goodman, FCA, FCIRP, FIIC
President

2008

S.H. No. 297999



IN THE SUPREME COURT OF NOVA SCOTIA

Court Administration

IN THE MATTER OF:

The Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 as amended.

AUG 13 2008
Halifax, N.S.

-and-

IN THE MATTER OF:

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

ORDER

NDP, J.

BEFORE THE HONOURABLE JUSTICE ARTHUR W. D. PICKUP IN CHAMBERS

UPON READING the Affidavit of Douglas Prothero sworn August 8, 2008;

AND UPON HEARING Robert G. MacKeigan Q.C., counsel for the Company;

IT IS HEREBY ORDERED THAT:

1. The Company not be required to serve notice of this application on any of its creditors except for GrowthWorks Atlantic Venture Fund Limited, Nova Scotia Business Inc., Caterpillar Financial Services Limited and National Marine and Fire Services Inc.
2. The Company is hereby authorized and empowered to enter into a second non-revolving credit facility (the "Second DIP Facility") with GrowthWorks Atlantic Venture Fund Limited (the "DIP Lender") for a maximum total principal amount of \$350,000 on the terms and conditions set forth in the August 1, 2008 commitment letter from the DIP Lender accepted by the Company (the "DIP Commitment Letter") to fund the ongoing, ordinary course of activities of the Company and to permit the Company to pay such amounts as may be permitted by the terms of this Order, the Order of Justice Moir issued June 27, 2008 (the "Initial Order") and the DIP Commitment Letter.
3. The Company shall be authorized to borrow and shall otherwise obtain credit from the DIP Lender in accordance with the DIP Commitment Letter provided that the total outstanding principal amount thereunder does not at any time exceed \$350,000 and the Company is hereby authorized and directed to perform all of its obligations under the DIP Commitment Letter and the DIP Credit Documentation (as defined below), and the Company shall pay when due all principal and interest under the Second DIP Facility, provided that nothing in this Order shall oblige the DIP Lender to make any advance to the Company.

4. The DIP Lender is hereby granted a first priority charge, mortgage and security interest in all present and after-acquired real and personal property of the Company ("Property"), including (without limitation) a marine mortgage on the vessel "Caledonia" (ON 370565) (the "DIP Marine Mortgage") (collectively the foregoing are collectively referred to in this Order as the "Second DIP Charge"), as security for repayment of all amounts advanced or owing pursuant to the DIP Commitment Letter, the DIP Credit Documentation and this Order (or any of them) together with all interest, fees, expenses, charges and other amounts payable in respect thereof (collectively, the "DIP Liabilities").
5. The Company is hereby authorized and empowered to execute and deliver to the DIP Lender such mortgages, charges, hypothecs, security agreements, debentures (collectively, the "DIP Security") and such other agreements and documents (together with the DIP Security, the "DIP Credit Documentation") as are contemplated by the DIP Commitment Letter or the Second DIP Charge or as may be reasonably required by the DIP Lender from time to time in respect of borrowings under the Second DIP Facility.
6. Notwithstanding that the Company has granted a marine mortgage over the vessel *Caledonia* in favour of Caterpillar Financial Services Limited dated November 16, 2007 (the "Caterpillar Marine Mortgage") and that the Company has granted a marine mortgage over the vessel *Caledonia* in favour of Nova Scotia Business Inc. dated November 16, 2007 (The "NSBI Marine Mortgage") or that the Caterpillar Marine Mortgage and NSBI Marine Mortgage have been registered on the Ship Registry maintained by Transport Canada under the *Canada Shipping Act* (the "Ship Registry"), the DIP Marine Mortgage, when executed, delivered and registered on the Ship Registry, shall rank in priority to the Caterpillar Marine Mortgage and the NSBI Marine Mortgage and have the same priority as the charge in favour of the DIP Lender pursuant to the order of this Court issued July 4, 2008 in this proceeding (the "First DIP Charge").
7. The DIP Security and the Second DIP Charge shall be deemed to have attached, as of 12:01 a.m. (Halifax time) on the date of the Initial Order, to all Property of the Company with respect to all advances made and to be made under the Second DIP Facility.
8. The Company shall pay to the DIP Lender when due all amounts owing, and shall perform all other obligations of the Company to the DIP Lender pursuant to the DIP Commitment Letter, the DIP Credit Documentation and this Order (or any one of them).
9. Subject to the following, nothing in this Order or the Initial Order shall apply to prevent, enjoin, restrain or stay:
 - (a) Any right of the DIP Lender to terminate the making of or refuse to make advances to the Company under the DIP Commitment Letter and to make demands thereunder, or from issuing any notices of intention to enforce security, notices of power of sale, notices of disposition or other such notices, and from exercising any acceleration rights or rights of set-off or combination of accounts, or any rights and remedies under the DIP Credit Documentation, the Second DIP Charge or the DIP Security;
 - (b) Without limiting paragraph (a) above, prevent the DIP Lender from applying to this Court for the appointment of an interim receiver, receiver and manager and/or

for the appointment of a trustee in bankruptcy in connection with the enforcement of the Second DIP Charge and the DIP Security or the payment of the DIP Liabilities or for other relief;

- (c) The DIP Lender from exercising its rights and remedies as and against the Company in respect of the Second DIP Charge or the DIP Credit Documentation; and
- (d) The Company from paying amounts from time to time on account of the DIP Liabilities to the extent permitted by this Order in accordance with DIP Commitment Letter and the DIP Credit Documentation.

Notwithstanding any other provision of this Order, the DIP Lender shall not enforce any security (or exercise any right of set-off or combination of accounts) against the Company or its Property without the prior leave of this Court, provided that the DIP Lender may deliver to the Company demands and notices and exercise acceleration rights without the leave of the Court.

- 10. The DIP Lender, in such capacity, shall, unless it otherwise agrees, be treated in all respects as an unaffected creditor in these proceedings, in the reorganization plan by the Company or in any other plan filed by the Company (the "Plan") with respect to the DIP Liabilities and, unless otherwise agreed by the DIP Lender, all indebtedness and liability owing by the Company to the DIP Lender with respect to the Second DIP Facility shall be paid to the DIP Lender in full no later than the date of implementation of the Plan.
- 11. The DIP Lender and its advisors shall be given clear and unfettered access to the books and records of the Company and such other information as the DIP Lender and its advisors deem necessary or appropriate.
- 12. No order shall be made varying, rescinding or otherwise affecting the provisions of this Order with respect to the Second DIP Facility, the DIP Credit Documentation, the Second DIP Charge or the DIP Security unless either:
 - (a) Notice of application for such order is served on the DIP Lender by the moving party within ten (10) days after such moving party is served with a copy of this Order; or
 - (b) The DIP Lender applies for or consents to such order.
- 13. The Company shall execute all documents and take such other actions necessary or appropriate to give effect to the Second DIP Charge.
- 14. The Second DIP Charge shall attach to all present and future Property of the Company, including any lease, sublease, offer to lease or other contract, except that the Second DIP Charge shall not attach to the last day of the term of any lease of real property or to any such lease, sublease, offer to lease, or other contract to the extent that such attachment would constitute a breach of its terms or permit a party to terminate such agreement. If the Second DIP Charge does not attach to any Property in accordance with this paragraph, the Company shall hold its interests in such lease, sublease, offer to lease or

other contract or any proceeds therefrom in trust for the DIP Lender and shall assign such interests to the DIP Lender or its assignees upon obtaining the required consent or upon order of the Court.

15. Advances made under the Second DIP Facility shall be made to the Company as required for the operations of the Company, as determined by the Monitor and approved by the DIP Lender. The Second DIP Charge resulting from any such advance has priority over all other mortgages, marine mortgages, charges, security interests, liens and encumbrances of any kind or nature (collectively, the "Encumbrances" and individually, an "Encumbrance") in or against any and all of the Property of the Company, subject to: (i) applicable prior statutory liens, (ii) personal property secured in favour of any of the lenders identified under the heading "Leases" at Exhibit H to the affidavit of Douglas Prothero filed June 26, 2008 together with any proceeds thereof, and (iii) the First DIP Charge, which shall rank *pari passu* with the Second DIP Charge.
16. Except as otherwise expressly provided for herein, the Company shall not borrow any amounts or grant any Encumbrance on any of its Property from the date of this Order unless the Company obtains the prior written consent of the DIP Lender and approval of this Court.
17. None of the Second DIP Charge, the obligations of the Company pursuant to the Second DIP Charge, the DIP Liabilities or any of the documents delivered pursuant thereto, shall be illegal, invalid or non-binding obligations of the Company or otherwise rendered unenforceable against the Company or any of the Property, nor shall they be void or voidable by creditors or shareholders of the Company, a trustee in bankruptcy of the Company or any other person by reason of:
 - (a) The pendency of these proceedings and the declarations of insolvency made herein;
 - (b) The pendency of any petitions for any receiving order or any receiving orders issued under the *Bankruptcy and Insolvency Act* ("BIA") in respect of the Company, or any assignment under the BIA being made or deemed to have been made; or
 - (c) The provisions of any federal or provincial law.
18. The First DIP Charge, the Second DIP Charge and the Administration Charge have relative priority as follows:
 - (a) Firstly, the Administration Charge to a maximum principal amount of \$75,000;
 - (b) Secondly, the aggregate of the First DIP Charge and the Second DIP Charge; and
 - (c) Thirdly, the remaining Administration Charge (if any).
19. The beneficiaries of the Second DIP Charge may, but shall not be required to file, register, record or perfect the Second DIP Charge, notice thereof or any financing statement with respect thereto and the Second DIP Charge shall be valid and enforceable

for all purposes against all existing and after acquired property for any purpose with priority over any right, title or interest filed, registered, recorded or perfected prior or subsequent to the Second DIP Charge coming into existence despite any failure to file, register, record or perfect the Second DIP Charge, notice thereof, or any financing statement with respect thereto. Despite anything in this Order, the beneficiaries of the Second DIP Charge may take such steps as they deem necessary or appropriate to register, record or perfect the Second DIP Charge, notice thereof or any financing statement with respect thereto, if they deem it advisable to do so.

20. The creation of the Second DIP Charge and the payments made by the Company and any agreements, instruments or other documents delivered pursuant to this Order to do not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable or reviewable transactions under any applicable law.

21. None of the Second DIP Charge, the Second DIP Facility, or the DIP Credit Documentation shall be, or be deemed to be, invalid or ineffective by reason of any negative covenant, prohibition or other similar provision with respect to incurring debt or other obligations or the creation of any Encumbrance contained in any agreement to which the Company is a party and, notwithstanding any provision to the contrary in such agreements:

(a) None of the Second DIP Charge, the obtaining of the Second DIP Facility, or the creation of any of the DIP Credit Documentation and none of the execution, delivery, performance, perfection or registration of any agreement, instrument or other documents delivered pursuant thereto shall create or be deemed to constitute a breach by the Company of any agreement to which it is a party; and

(b) No person shall have any liability to any other person whatsoever as a result of any breach of any agreement caused by or resulting from the Second DIP Charge, the obtaining of the Second DIP Facility, the creation of any of the DIP Credit Documentation or the execution, delivery, performance, perfection or registration of any agreements, instruments or other documentation delivered pursuant thereto.

22. 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 and all subsequent orders made by this Court in this proceeding.

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 at Halifax, Nova Scotia this 13 day of August, 2008.
Dated the 13 day of August, 2008.
Deputy Prothonotary

GEORGE GHOSN
Deputy Prothonotary



Deputy Prothonotary