

ENDORSEMENT OF THE HONOURABLE JUSTICE MORAWETZ

May 26, 2009

D. Dowdall & K. Williams for BDO Dunwoody

K. Page. Representative Counsel for the Unsecured Creditors

The motion was not opposed.

Having reviewed the record I am satisfied that it is appropriate to approve the 11th Report and the activities, save and except for the issue relating to the requested stay with respect to CRA and MOF. I am also satisfied that the fee requests of the Monitor, its counsel and representative counsel are fair and reasonable in the circumstances and they are approved.

There is an issue with regard to the status of any claim of CRA and MOF. Details of this issue are set out in the Eleventh Report.

CRA filed a claim for \$1 for a deemed trust relating to GST. CRA subsequently conducted an audit and apparently determined that it had no claim for unremitted GST. The Monitor reports that in practice CRA does not issue clearance certificates. The Monitor wishes to effect a distribution and approve its discharge. CRA is bound by the CCAA. A claims bar process has been Court approved and has been followed. It seems to me that any claim of CRA is addressed by the claims procedure.

CRA has received notice of this motion. The Report clearly sets out that the Monitor considers that all claims have been finally determined and there are no outstanding disputes. The Report also outlines that there will be, if approved, distributions to unsecured creditors and that these distributions will include funds currently held as a contingency for claims of CRA and MOF.

The claim, if any, of MOF is somewhat different but the effect of the claims bar procedure is the same. MOF brought a claim to the attention of the Monitor after the expiry of the claims bar date. MOF has not sought relief from the claims bar. MOF has received notice of this motion and has taken no action. MOF is also bound by the CCAA.

The purpose and effect of the claims bar date is clear. The purpose is to give notice to creditors to file claims. The effect of failing to file is that distributions can be effected without regard to late claims. There is a process of which late claims can apply for relief from the claim bar date – but in this case no steps have been taken by either CRA or MOF. The Monitor has established the reasons for the proposed distributions and I see no basis to hold up the distributions. In my view, the distributions can be made at this time without regard to any claim that either CRA or MOF may have. The right of CRA and MOF to share in any distribution or to claim any priority in any deemed trust has been negated by reason of the failure of CRA and MOF to establish a valid claim in the claims bar process.

The distribution is approved.

I am also satisfied that the Monitor and IR are entitled to their discharge.

Under the circumstances, I am of the view that it is not necessary to grant the present stay against either CRA or MOF. In the event that either CRA or MOF wish to revisit this issue, it will be necessary for them to first obtain leave of the Court as such proceeding would, in all likelihood, involve a review of the issues that have been considered in this endorsement.

Motion granted. Counsel to the Monitor to prepare an order for my consideration which reflects this endorsement.