Court File No. CV-24-000715202-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF HORNBLOWER CRUISES AND EVENTS CANADA LTD., HORNBLOWER CANADA ENTERTAINMENT LIMITED, HORNBLOWER CANADA CO., HORNBLOWER CANADIAN HOLDINGS, INC. AND HORNBLOWER CRUISES AND EVENTS, INC.

APPLICATION OF HORNBLOWER GROUP, INC., UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

SECOND REPORT OF GRANT THORNTON LIMITED AS INFORMATION OFFICER

MAY 2, 2024

GrantThornton

Grant Thornton Limited
200 King Street West, 11th Floor
Toronto, Ontario, M5H 3T4

TABLE OF CONTENTS

INTRODUCTION **1**

PURPOSE OF THE SECOND REPORT **5**

TERMS OF REFERENCE AND DISCLAIMER **6**

THE SALE OF FLINDERS **7**

THE SALE PROCESS 8

IMPACT ON THE BUSINESS OF THE CANADIAN DEBTORS 9

APPROVAL OF THE US COURT 10

APPROVAL OF THE DIP LENDERS 10

RECOMMENDATIONS **11**

APPENDICES

Appendix 1	Interim Stay Order and Endorsement dated February 21, 2024
Appendix 2	Initial Recognition Order dated February 27, 2024
Appendix 3	Supplemental Order dated February 27, 2024
Appendix 4	Endorsement of Chief Justice Morawetz dated February 29, 2024
Appendix 5	Second Supplemental Order dated March 27, 2024
Appendix 6	Endorsement of Chief Justice Morawetz dated March 28, 2024
Appendix 7	Pinnacle Marine Corporation Advertisement
Appendix 8	QPS Marine Ships Listing

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INTRODUCTION

1. For purposes of this report, Hornblower Cruises and Events Canada Ltd. ("**Hornblower Cruises**"), Hornblower Canada Co. ("**Hornblower Canada**"), and Hornblower Canada Entertainment Limited ("**Hornblower Entertainment**"), are collectively referred to as the "**Canadian Debtors**", Hornblower Group, Inc. ("**Hornblower Group**") is referred to as the "**Foreign Representative**", Hornblower Canadian Holdings, Inc. and Hornblower Cruises and Events, Inc. are collectively referred to as the "**US Debtors**". Unless otherwise stated, all monetary amounts contained herein are expressed in United States dollars. Capitalized

terms used but not defined herein shall have the meanings ascribed to them in the Pre-Filing Report and the Hickman Affidavits (defined below).

2. On February 21, 2024 (the "**Petition Date**"), Hornblower Holdings LLC and certain of its affiliates (collectively, the "**Chapter 11 Debtors**") filed voluntary petitions for relief (the "**US Proceedings**") under Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. in the United States Bankruptcy Court for the Southern District of Texas (the "**US Court**").

3. Concurrently with the US Proceedings, the Foreign Representative made an application to the Ontario Superior Court of Justice (Commercial List) (the "**Ontario Court**") for an order (the "**Interim Stay Order**") pursuant to Part IV of the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended (the "**CCAA**") and Section 106 of the *Courts of Justice Act,* R.S.O. 1990, c C.43, providing for an interim stay of proceedings in respect of the Canadian Debtors, the US Debtors and Hornblower Group in Canada, and their respective directors and officers in Canada. The Interim Stay Order dated February 21, 2024 was issued on that same day and is attached hereto as **Appendix "1"**.

4. Following the February 21, 2024 hearing in respect of the first day motions filed by the Chapter 11 Debtors, the US Court granted certain orders dated February 21, 2024 and February 23, 2024 (the "**First Day Orders**") including, but not limited to: (i) the Foreign Representative Order which, among other things, authorized the Hornblower Group to act as the Foreign Representative of the Chapter 11 Debtors; and (ii) certain additional interim orders, including an Interim DIP Order (collectively with the First Day Orders, the "**Interim US Orders**").[1]

5. On February 27, 2024, the Foreign Representative commenced the Recognition

[1] Copies of the each of the US Orders and other documents related to the US Proceedings are available at the website maintained by Omni Agent Solutions, Inc.

Proceedings before the Ontario Court seeking:

a. an order (the "**Initial Recognition Order**"), among other things:

   i. declaring that Hornblower Group is a Foreign Representative as defined in section 45 of the CCAA in respect of the US Proceedings; and

   ii. recognizing the US Proceedings as a "foreign main proceeding" in respect of the Canadian Debtors; and,

b. an order (the "**Supplemental Order**"), among other things:

   i. recognizing certain of the interim and final orders entered by the US Court in the US Proceedings, including, among others, an order recognizing the Interim DIP Order;

   ii. granting a stay of proceedings in respect of the Canadian Debtors, US Debtors and Hornblower Group, and their respective directors and officers in Canada;

   iii. appointing Grant Thornton Limited ("**GTL**") as information officer in respect of these proceedings (in such capacity, the "**Information Officer**"); and

   iv. granting the Administration Charge, the Senior DIP Charge, the Junior DIP Charge and the D&O Charge (each as defined in the Supplemental Order).

6. The Initial Recognition Order and the Supplemental Order were granted by the Ontario Court on February 27, 2024. Copies of the Initial Recognition Order and Supplemental Order are attached hereto as **Appendix "2"** and **Appendix "3"**, respectively. A copy of the Endorsement of Chief Justice Morawetz dated February 29, 2024 in respect of the

aforementioned Orders is attached hereto as **Appendix "4"**.

7. On February 28, 2024, the US Court granted the Bidding Procedures Order (as defined below). Subsequently, the Chapter 11 Debtors sought the Modified Bidding Procedures Order (as defined below) in order to address comments from Pachulski Stang Zeihl & Jones LLP in their capacity as counsel for the official committee of unsecured creditors appointed by the US Court on March 5, 2024 (the "**Creditors Committee**", the "**Creditors' Committee Counsel**"). The Modified Bidding Procedures Order was entered by the US Court on March 22, 2024.

8. On March 22, 2024, the US Court entered the Final Cash Management Order (as defined below). On March 25, 2024, the US Court entered the Final DIP Order (as defined below) (the Final DIP Order and the Final Cash Management Order are collectively referred to as "**Final First Day Orders**", and together with the Bidding Procedures Order, the "**US Orders**").

9. On March 27, 2024, the Ontario Court granted an order (the "**Second Supplemental Order**") which, among other things:

    a. recognized an order: (I) authorizing the Chapter 11 Debtors to: (A) obtain senior secured post-petition financing, (B) use cash collateral, and (C) grant liens and superpriority administrative expense claims; (II) granting protection to certain prepetition secured parties; (III) modifying the automatic stay; and (IV) granting related relief (the "**Final DIP Order**");

    b. recognized an order: (I) authorizing the Chapter 11 Debtors to: (A) continue to operate their cash management system, (B) honor certain prepetition obligations relating thereto, (C) maintain existing business forms and books and records, and

(D) continue to perform intercompany transactions; and (II) granting related relief (the "**Final Cash Management Order**"); and

c. recognized an order approving: (A) bidding procedures for the sale of the AQV Debtors' Assets, (B) procedures regarding bid protections, (C) the scheduling of certain dates with respect thereto, (D) the form and manner of notice thereof, (E) contract assumption, assignment, and rejection procedures, and (F) certain procedures to otherwise dispose of the AQV Assets; and (II) authorizing the Debtors to enter into agreements for the sale of their assets free and clear of all liens, claims, and encumbrances (the "**Bidding Procedures Order**").

10. A copy of the Second Supplemental Order dated March 27, 2024 and the Endorsement of Chief Justice Morawetz dated March 28, 2024, are attached hereto as **Appendix "5"** and **Appendix "6"**, respectively.

PURPOSE OF THE SECOND REPORT

11. The purpose of this Second Report is to provide the Information Officer's recommendations in respect of an order (the "**De Minimis Asset & Vesting Order**"), requested by the Foreign Representative to be made by the Ontario Court:

   a. granting Hornblower Cruises leave to sell or otherwise dispose of the vessel described as the CAPT. MATTHEW FLINDERS (official no. 850480) (the "**Flinders**") in accordance with the Purchase and Sale Agreement between Hornblower Cruises and 1529231 Ontario Inc. (the "**Purchaser**") dated April 10, 2024 (the "**PSA**"), pursuant to section 49 of the CCAA; and

   b. vesting in the Purchaser all of Hornblower Cruises' right, title, and interest in and to the Purchaser free and clear of all claims.

TERMS OF REFERENCE AND DISCLAIMER

12. In preparing this Second Report, GTL has relied solely on information and documents provided by the Foreign Representative and other Chapter 11 Debtors, as well as their Canadian legal counsel and publicly available documents filed with the US Court (collectively the "**Information**"). Except as otherwise described in this Second Report:

    a. the Information Officer has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Information Officer has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CASs**") pursuant to the *Chartered Professional Accountants of Canada Handbook* and accordingly, the Information Officer expresses no opinion or other form of assurance contemplated under CASs in respect of the Information;

    b. some of the information referred to in this Second Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the Handbook, has not been performed; and,

    c. this Second Report may not disclose all significant matters about the Chapter 11 Debtors, particularly in respect of as information not pertaining to the Canadian Debtors or property situated in Canada.

13. Future-oriented financial information referred to in this Second Report was prepared based on estimates and assumptions made by management. Readers are cautioned that, since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, and the variations could be significant.

14. This Second Report has been prepared to provide general information to stakeholders of the Canadian Debtors and the Ontario Court relating to the US Proceedings and the Canadian Recognition Proceedings. Accordingly, the reader is cautioned that this Second Report may not be appropriate for any other purpose. The Information Officer assumes no responsibility or liability for any loss or damage occasioned by any party because of the circulation, publication, reproduction, or use of this Second Report. Any use that a party makes of this Second Report is the responsibility of such party.

15. This Second Report should be read in conjunction with the affidavit of Jonathan Hickman sworn April 30, 2024 (the "**Fourth Hickman Affidavit**" and together with the March 24 Affidavit, the February 21 Affidavit, and the February 26 Affidavit, the "**Hickman Affidavits**").

16. A copy of this Second Report, and other relevant documents with respect to these Canadian Recognition Proceedings, are available on the Information Officer's website at: www.GrantThornton.ca/Hornblower (the "**Case Website**"). Materials pertaining to the US Proceedings can be found at the following link: https://cases.omniagentsolutions.com/?clientId=3682.

THE SALE OF FLINDERS

17. As described in the Information Officer's Pre-Filing Report, and further detailed in the Hickman Affidavits, Hornblower's business requires the use of multiple seafaring vessels (each a "**Vessel**") in order to provide its boat tours and ferry services. As a component of its ordinary course business, the Chapter 11 Debtors replace or refit their vessels as a consequence of:

    a. reduced performance following ordinary wear and tear from regular use and exposure to the elements;

b. diminished visual appeal that may harm the Chapter 11 Debtor's public image and marketing efforts; and

c. technological advancements rendering vessels inefficient or obsolete.

18. Flinders is a 138-foot, 745-ton, single-engine Vessel built in Australia in 1984. Flinders was registered in Toronto on February 15, 1994. Hornblower Cruises is the owner and authorized representative of Flinders.

19. As detailed in the Fourth Hickman Affidavit, Flinders is encumbered by six mortgages held by three mortgagees (the "**Flinders Mortgages**" and the "**Flinders Mortgagees**" respectively).

20. Flinders has been utilized by Hornblower Cruises in Toronto from 1994 and was used to conduct guided tours in the Toronto Harbour, as well as hosting public and private events.

21. Flinders was retired in 2020 on the basis of mechanical and aesthetic disrepair. Since its retirement, Flinders was berthed in various locations on Lake Ontario, including Toronto, Gananoque, and Kingston, until November 2023 when it was relocated to the Davis Drydock ("**Davis**") in Wolfe Island, Ontario for storage and repairs.

<u>The Sale Process</u>

22. In 2021, Hornblower Cruises listed Flinders for sale with Pinnacle Marine Corporation, a US-based brokerage service specializing in the passenger vessel industry. A copy of the sale advertisement is attached hereto as **Appendix "7"**.

23. In 2023, Hornblower Cruises listed Flinders for sale with Sea Boats, a vessel brokerage with operations in Europe, Asia, and the US, and QPS Marine Ships, a US-based brokerage. A copy of the QPS Marine Ships listing is attached hereto as **Appendix "8"**.

24. The Information Officer understands that the market for Flinders is limited based on a number of factors, including:

    a. the age of the vessel;

    b. the single-engine propulsion of the vessel; and

    c. restrictions under the Merchant Marine Act of 1920 (the "**Jones Act**"), which the Information Officer understands from the Chapter 11 Debtor's advisors would prohibit the commercial use of Flinders for transporting goods or persons within the US, thereby limiting its marketability in the U.S. to potential recreational use only.

25. According to the QPS Marine Ships listing, Flinders was originally listed for $1,000,000. The Information Officer has been informed that there were ultimately only two primary bidders in the sale process, neither of whom submitted a bid close to this amount.

26. On April 10, 2024, the PSA was executed, pursuant to which the Purchaser would acquire all of Hornblower Cruises' rights, title, and interest in and to Flinders, for the purchase price of $325,000. The sale is expected to close on May 15, 2024 (the "**Closing Date**").

27. The Information Officer understands that the Flinders Mortgagees do not oppose the sale of Flinders, or the deletion of their Flinders Mortgages.

<u>Impact on the business of the Canadian Debtors</u>

28. The Foreign Representative advises that the sale will have no impact on the business as Flinders has been retired since 2020, with the exception of alleviating the ongoing costs of storing the vessel and related winterization, insurance, and other costs. The Information Officer understands that these costs are material, with the cost of winterizing the vessel

for just one season (November 2023) to present being approximately $50,000.

29. The Information Officer further understands that the formal process for discharging the Flinders Mortgages from title to the vessel could take several weeks, even though the Flinders Mortgagees do not oppose same, hence Hornblower Cruises is seeking leave of the Court to dispose of Flinders, as well as a vesting order to assist in discharging the Flinders Mortgages and facilitate the transfer of the vessel, which will help expedite the closing of the sale and eliminate ongoing dockage fees and insurance being paid by the Canadian Debtors.

Approval of the US Court

30. The Information Officer understands from the US Debtors' counsel that the approval of the sale of Flinders is not required by the US Court on the basis that:

    a. US law, nor any order of the US Court, require the Chapter 11 Debtors to seek approval of the US Court to enter into transaction in the ordinary course; and

    b. the sale of Flinders is a transaction in the ordinary course of business under US law.

Approval of the DIP Lenders

31. Pursuant to the DIP Agreements, Hornblower Cruises registered mortgages against each of its vessels other than Flinders on March 20, 2024 and granted in favour of the DIP Agents related security in respect of such vessels.

32. Given that Flinders appears to be a redundant asset, which requires the expenditure of ongoing costs to maintain a vessel that is not in active service, the Information Officer understands that (a) the Mortgagees do not oppose the disposition of Flinders, or the use of the proceeds arising from such disposition and (b) the DIP Lenders do not oppose the

disposition of Flinders, provided that, if Flinders is not sold on or before May 20, 2024, Hornblower Cruises will grant in favour of the DIP Agents (for their benefit and the benefit of the DIP Lenders) mortgages against and related security in respect of Flinders by such date.

RECOMMENDATIONS

33. Based on the foregoing and in reliance on the facts and assumptions set out or referenced herein, the Information Officer is of the view that the relief being sought by the Foreign Representative is reasonable in the circumstances and respectfully recommends that the Ontario Court grant the requested relief in the form of the De Minimis Asset & Vesting Order. In addition, the Information Officer is not aware of any public policy reason why the requested order should not be granted by this Court.

All of which is respectfully submitted this 2nd day of May, 2024.

GRANT THORNTON LIMITED,
As Information Officer of the Chapter 11 Debtors
and not in its personal or corporate capacity

Per: ______________________________
Jonathan Krieger, CPA, CA, CIRP, LIT
Senior Vice President

Appendix 1

SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE

Court File No. CV-24-00715202-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE CHIEF	)	WEDNESDAY, THE 21st
	)	
JUSTICE MORAWETZ	)	DAY OF FEBRUARY, 2024

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF HORNBLOWER CRUISES AND EVENTS CANADA LTD., HORNBLOWER CANADA ENTERTAINMENT LIMITED, HORNBLOWER CANADA CO., HORNBLOWER CANADIAN HOLDINGS, INC. AND HORNBLOWER CRUISES AND EVENTS, INC.

APPLICATION OF HORNBLOWER GROUP, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

INTERIM STAY ORDER
(FOREIGN PROCEEDING)

THIS APPLICATION, made pursuant to the *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") and section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended by Hornblower Group, Inc. ("**Hornblower Group**") in its capacity as the proposed foreign representative (in such capacity, the "**Proposed Foreign Representative**") in respect of the proceedings commenced on February 21, 2024, in the United States Bankruptcy Court for the Southern District of Texas pursuant to chapter 11 of title 11 of the United States Code (the "**Foreign Proceeding**"), for an Order substantially in the form enclosed in the Application Record, was heard this day by judicial videoconference in Toronto, Ontario.

ON READING the Notice of Application and the affidavit of Jonathan Hickman sworn February 21, 2024.

AND ON HEARING the submissions of counsel for the Proposed Foreign Representative, counsel for Grant Thornton Limited, in its capacity as the proposed information officer (the "**Proposed Information Officer**"), and counsel for such other parties as were present and wished to be heard:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

STAY OF PROCEEDINGS

2. **THIS COURT ORDERS** that until such date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal in Canada (each, a "**Proceeding**") shall be commenced or continued against or in respect of (a) Hornblower Cruises and Events Canada Ltd., Hornblower Canada Entertainment Limited and Hornblower Canada Co. (collectively, the "**Canadian Debtors**" and each a "**Canadian Debtor**") or affecting their business (the "**Canadian Debtors Business**") or their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Canadian Debtors Property**"), or (b) Hornblower Group, Hornblower Canadian Holdings, Inc. and Hornblower Cruises and Events, Inc. (together with the Canadian Debtors, the "**Debtors**") or affecting its business in Canada (the "**Hornblower Group Business**", and together with the Canadian Debtors Business, the "**Business**") or its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate in Canada, including all proceeds thereof (the "**Hornblower Group Property**", and together with the Canadian Debtors Property, the "**Property**"), except with the written consent of the applicable Debtor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Debtors, or affecting the Business or the Property, are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

3. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities or person (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Debtors, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the applicable Debtor, or with leave of this

Court, provided that nothing in this Order shall (i) prevent the assertion of or the exercise of rights and remedies in the Foreign Proceeding, (ii) empower any Debtor to carry on any business in Canada which such Debtor is not lawfully entitled to carry on, (iii) affect such investigations or Proceedings by a regulatory body as are permitted by section 11.1 of the CCAA, (iv) prevent the filing of any registration to preserve or perfect a security interest, or (v) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

4. **THIS COURT ORDERS** that, during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, licence or permit in favour of or held by any of the Debtors and affecting the Business or Property in Canada, except with the written consent of the applicable Debtor, or with leave of this Court.

ADDITIONAL PROTECTIONS

5. **THIS COURT ORDERS** that, during the Stay Period, all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services in Canada, including without limitation, all licencing arrangements, manufacturing arrangements, computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, fuel, maintenance, customs broker services or other services provided in respect of the Property or Business of the Debtors, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Debtors, and that the Debtors shall be entitled to the continued use in Canada of their current premises, bank accounts, telephone numbers, facsimile numbers, internet addresses and domain names.

6. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Debtors with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Debtors whereby the directors or officers are alleged under any law

to be liable in their capacity as directors or officers for the payment or performance of such obligations.

NO SALE OF PROPERTY

7. **THIS COURT ORDERS** that, except with the leave of this Court, each of the Canadian Debtors is prohibited from selling or otherwise disposing of:

    a. outside the ordinary course of its Business, any of its Property in Canada that relates to the Business; and

    b. any of its other Property in Canada.

SERVICE AND NOTICE

8. **THIS COURT ORDERS** that The Guide Concerning Commercial List E-Service (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at https://www.ontariocourts.ca/scj/practice/regional-practice-directionsieservice-commercial0 shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure, service of documents in accordance with the Protocol will be effective on transmission.

9. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Debtors, the Proposed Foreign Representative, the Proposed Information Officer, and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or electronic transmission to the Debtors' creditors or other interested parties at their respective addresses (including e-mail addresses) as last shown on the. records of the applicable Debtor and that any such service or distribution shall be deemed to be received (a) in the case of delivery by personal delivery, facsimile or electronic transmission, on the date of delivery or transmission, (b) in the case of delivery by prepaid ordinary mail, on the third business day after mailing,

and (c) in the case of delivery by courier, on the next business day following the date of forwarding thereof.

10. **THIS COURT ORDERS** that the Debtors, the Proposed Foreign Representative, the Proposed Information Officer, and their respective counsel are at liberty to serve or distribute this Order and any other materials and Orders as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding true copies thereof by electronic message to the Debtors' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

GENERAL

11. **THIS COURT ORDERS** that any party may, from time to time, apply to this Court for such further or other relief as it may advise, including for directions in respect of this Order.

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, or regulatory or administrative body having jurisdiction in Canada, the United States of America or any other foreign jurisdiction, to give effect to this Order and to assist the Debtors, the Proposed Foreign Representative and their counsel and agents in carrying out the terms of this Order. All courts, tribunals, and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtors and the Proposed Foreign Representative as may be necessary or desirable to give effect to this Order, or to assist the Debtors and the Proposed Foreign Representative and their agents in carrying out the terms of this Order.

13. **THIS COURT ORDERS** that this Order shall be effective as of 12:01 a.m. on the date of this Order without the need for entry or filing of this Order.

C.J.

CHIEF JUSTICE GEOFFREY B. MORAWETZ

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF HORNBLOWER CRUISES AND EVENTS CANADA LTD., HORNBLOWER CANADA ENTERTAINMENT LIMITED, HORNBLOWER CANADA CO., HORNBLOWER CANADIAN HOLDINGS, INC. AND HORNBLOWER CRUISES AND EVENTS, INC.

APPLICATION OF HORNBLOWER GROUP, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

INTERIM STAY ORDER
(FOREIGN PROCEEDING)

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CITATION: Hornblower Cruises and Events Canada Ltd., 2024 ONSC 1094
COURT FILE NO.: CV-24-00715202-00CL
DATE: 2024-02-21

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF HORNBLOWER CRUISES AND EVENTS CANADA LTD., HORNBLOWER CANADA ENTERTAINMENT LIMITED, HORNBLOWER CANADA CO., HORNBLOWER CANADIAN HOLDINGS, INC. AND HORNBLOWER CRUISES AND EVENTS, INC.

APPLICATION OF HORNBLOWER GROUP, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

BEFORE: Chief Justice Geoffrey B. Morawetz

COUNSEL: *Alex MacFarlane, Roger Jaipargas and Nick Hollard*, for the Applicant Hornblower Group Inc.

Raj Sahni, for the Proposed Information Officer (Grant Thornton Ltd.)

Linc Rogers and Caitlin McIntyre, for GLAS Trust Company LLC

Martino Calvaruso, Ben Muller and Tracy Sandler, for Deutsche Bank AG

HEARD: February 21, 2024

ENDORSEMENT

[1] This application was brought under Part IV of the *Companies' Creditors Arrangement Act* (the "CCAA") and section 106 of the *Courts of Justice Act* (the "CJA") by Hornblower Group, Inc. ("Hornblower Group") as the proposed foreign representative of Hornblower Canada Entertainment Limited ("Hornblower Entertainment"), Hornblower Cruises and Events Canada Ltd. ("Hornblower Cruises"), and Hornblower Canada Co. ("Hornblower Canada") (collectively, the "Canadian Debtors"), as well as Hornblower Canadian Holdings, Inc. and Hornblower Cruises and Events, Inc. (the "US Debtors"), for an interim stay of proceedings in connection with proceedings (the "US Proceedings") under Chapter 11 of Title 11 ("Chapter 11") of the United States Code (the "US Code") commenced by Hornblower Group and certain of its affiliates (collectively, the "Debtors"), including the Canadian Debtors, in the United States Bankruptcy Court for the Southern District of Texas (the "US Court").

[2] The factual basis for this application is set out in the Affidavit of Jonathan Hickman, Chief Restructuring Officer of Hornblower Holdings LLC and certain of its affiliates, sworn February 21, 2024 (the "Hickman Affidavit").

[3] Capitalized terms not otherwise defined have meanings set out in the Hickman Affidavit.

[4] The motion was not opposed.

[5] The Debtors, including the Canadian Debtors and US Debtors, are part of a worldwide travel and tourism group of companies ("Hornblower" or the "Company"), providing sightseeing boat tours and ferries, walking tours, rail excursions, outback adventures, and a wide array of tourist experiences.

[6] Hornblower's business consists of three divisions:

(a) The Hornblower Silo, which carries on the City Experiences business, which provides sightseeing ferries and cruises, as well as walking tours in Canada, the US, Mexico, South America, Europe, Asia, and Africa;

(b) The AQV Silo, carrying on the American Queen Voyages ("AQV") business, which primarily provides sightseeing cruises in the US; and

(c) The Journey Beyond Silo, carrying on the Journey Beyond business, which provides a variety of a sightseeing and experience-based activities in Australia.

[7] Hornblower's largest presence is in the U.S. The revenue generated by the Canadian Debtors for the year ended December 31, 2023, represented approximately 7% of the Company's consolidated revenue for such period.

[8] The Debtors' total funded debt is approximately $1.2 billion (the "Prepetition Secured Debt"). The Canadian Debtors and US Debtors are guarantors of a substantial portion of the Debtors' secured debt.

[9] The Canadian Debtors and US Debtors are not co-borrowers under any of the Prepetition Secured Debt Agreements.

[10] The Canadian Debtors are guarantors of the Prepetition Secured Debt (except the Incremental Superpriority Facility in the amount of $148.5 million) and have provided general security agreements over their assets, properties, and undertaking in support of the obligations arising under such guarantees and the obligations of the loan parties under the loan documents for the Prepetition Secured Debt (including, for greater certainty, the Incremental Superpriority Facility) (and, in the case of the Superpriority Facility and the First Lien Term Facility, the obligations of Journey Beyond Holdings, LLC, a limited liability company incorporated pursuant to the laws of Delaware).

[11] The Canadian Debtors are members of the broader, integrated network of the Hornblower entities, which is centrally managed by the Company's senior leadership team principally from Hornblower Group's offices in San Francisco, California.

[12] Hornblower Cruises is a corporation incorporated under the laws of Ontario with its registered office located at 207 Queens Quay West, Suite 425, Toronto, Ontario.

[13] Hornblower Canada is a corporation incorporated under the laws of Nova Scotia with its registered office located at 5775 River Road, Unit 110, Niagara Falls, Ontario.

[14] Hornblower Entertainment is a corporation incorporated under the laws of Canada with its registered office located at 5775 River Road, Unit 110, Niagara Falls, Ontario. Hornblower Entertainment is a dormant company with no operations, employees, or assets, and is in the process of being wound down.

[15] After years of growth, Hornblower suffered significant financial hardship due to the COVID-19 pandemic and related shutdown orders throughout the world that had a substantial and negative impact on the Company's operations. After taking on substantial debt to weather the pandemic, Hornblower has faced difficulties servicing its debt due to rising interest rates and underperformance of certain of its business operations, which have not rebounded to pre-pandemic levels.

[16] In an effort to preserve value and effect an orderly restructuring of the business, the Debtors commenced the US Proceedings on February 20, 2024 (the "Petition Date") by filing voluntary petitions for relief (the "Petitions") under Chapter 11 in the US Court. A hearing before the US Court is scheduled for 5:00 p.m. (CST) February 21, 2024 (the "First Day Hearing"), at which time the Debtors will seek various first day orders pursuant to the US Code (the "First Day Orders"), including, among other things, an order appointing Hornblower Group as the foreign representative for the US Proceedings (in such capacity, the "Foreign Representative").

[17] At this time, Hornblower Group, as the proposed Foreign Representative of the US Proceedings, is requesting an order from this Court granting an interim stay of proceedings (the "Interim Stay") in respect of the Canadian Debtors, the US Debtors and Hornblower Group in Canada (the "Interim Stay Order"). If the US Court grants the requested First Day Orders, Hornblower Group anticipates returning before this Court to seek two additional orders, namely:

(a) an order (the "Initial Recognition Order"), among other things, (i) declaring the Hornblower Group as the Foreign Representative in respect of the Chapter 11 Cases; (ii) recognizing the Chapter 11 Cases as a "foreign main proceeding" in respect of the Debtors; and (iii) granting a stay of proceedings in respect of the Canadian Debtors.

(b) an order (the "Supplemental Order"), among other things, (i) recognizing certain First Day Orders, (ii) granting a stay of proceedings in respect of the U.S. Debtors and Hornblower Group, and their respective directors and officers in Canada; (iii) appointing Grant Thornton Limited as the information officer

> in respect of these proceedings (in such capacity, the "Information Officer"), (iv) granting an administration charge over the assets and property of the Canadian Debtors in Canada in favour of Canadian counsel to the Canadian Debtors, the Information Officer and counsel to the Information Officer, (v) granting a directors' charge over the assets and property of the Canadian Debtors in Canada in favour of the directors and officers of the Canadian Debtors to secure the Canadian Debtors' indemnification obligations, and (vi) granting a charge over the assets and property of the Canadian Debtors in Canada to secure the interim financing that has been negotiated by the Debtors (the "DIP Financing").

[18] The issue to be considered on this application is whether this Court should grant the Interim Stay Order providing for the Interim Stay in Canada.

[19] This Court has previously granted interim orders providing for a temporary stay of proceedings in Canada following the initiation of Chapter 11 (See: *Lightsquared LP, Re*, 2012 ONSC 2994 at para 3; *Paladin Labs Canadian Holding Inc.*, 2022 ONSC 4748 at para 20 [*Paladin Interim Stay Endorsement*] and *YRC Freight Canada Company (Re)* 2023 ONSC 4492, 2023 CarswellOnt 12928 (*Yellow*)).

[20] In *Paladin Labs Inc.*, I observed that granting the interim stay and other relief as proposed in the interim order was "in accordance with the principles of cooperation and comity" and within the Court's jurisdiction.

[21] In my view, the granting of the requested Interim Stay is within the Court's jurisdiction, consistent with this Court's practice in recent Part IV recognition proceedings, and important for the preservation of the value of the Canadian Business as part of Hornblower's orderly restructuring efforts.

[22] I am also satisfied that this Court has the jurisdiction to grant a stay with respect to non-applicant debtor companies. In the context of a recognition proceeding, the Court's jurisdiction arises from its authority under subsection 49(1) of the CCAA and pursuant to section 106 of the CJA. A stay of proceedings is also consistent with the principles of comity and cooperation embodied in section 52 of the CCAA. (See: *Tamerlane Ventures Inc, Re*, 2013 ONSC 5461 at para 21; *Pacific Exploration & Production Corp, Re*, 2016 ONSC 5429 at para 26; *Paladin Interim Stay Endorsement* at paras 24-25).

[23] Hornblower Group submits that the balance of convenience favours granting the stay of proceedings in favour of the Debtors, as such protection is critical to preserve overall stability and allow the Company to maximize value for stakeholders and implement an orderly wind-down. For the purpose of this motion, I accept this submission.

[24] I am satisfied that it is both appropriate and necessary to grant the Interim Stay Order.

[25] In the event that the U.S. Court grants the requested First Day Orders, arrangements can be made for Hornblower Group to schedule a recognition motion returnable on Tuesday, February 27, 2024 at 11:00 a.m. before me.

Chief Justice Geoffrey B. Morawetz

Date: February 21, 2024

Appendix 2

Court File No.: CV-24-00715202-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	TUESDAY, THE 27TH
	)	
CHIEF JUSTICE MORAWETZ	)	DAY OF FEBRUARY, 2024

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF HORNBLOWER CRUISES AND EVENTS CANADA LTD., HORNBLOWER CANADA ENTERTAINMENT LIMITED, HORNBLOWER CANADA CO., HORNBLOWER CANADIAN HOLDINGS, INC. AND HORNBLOWER CRUISES AND EVENTS, INC.

APPLICATION OF HORNBLOWER GROUP, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

INITIAL RECOGNITION ORDER
(FOREIGN MAIN PROCEEDING)

THIS APPLICATION, made pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") and section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, by Hornblower Group, Inc. ("**Hornblower Group**") in its capacity as the foreign representative (in such capacity, the "**Foreign Representative**"), in respect of proceedings commenced on February 21, 2024, in the United States Bankruptcy Court for the Southern District of Texas (the "**U.S. Bankruptcy Court**") pursuant to Chapter 11 of Title 11 of the United States Bankruptcy Code (the "**Foreign Proceeding**"), for an Order substantially in the form enclosed in the Supplemental Application Record of Hornblower Group, was heard this day by judicial videoconference in Toronto, Ontario.

ON READING the Notice of Application, the affidavit of Jonathan Hickman sworn February 21, 2024, the affidavit of Jonathan Hickman sworn February 27, 2024, and the preliminary report of Grant Thornton Limited, in its capacity as proposed information officer (the "**Information Officer**") dated February 26, 2024, each filed, and upon being provided with copies of the documents required by s.46 of the CCAA.

AND UPON BEING ADVISED by counsel for the Foreign Representative that in addition to this Initial Recognition Order, a Supplemental Order (Foreign Main Proceeding) (the "**Supplemental Order**") is being sought.

AND UPON HEARING the submissions of counsel for the Foreign Representative, counsel for the Information Officer and counsel for such other parties as were present and wish to be heard:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

FOREIGN REPRESENTATIVE

2. **THIS COURT ORDERS AND DECLARES** that the Foreign Representative is the "foreign representative" as defined in section 45 of the CCAA in respect of the Foreign Proceeding.

CENTRE OF MAIN INTEREST AND RECOGNITION OF FOREIGN PROCEEDING

3. **THIS COURT ORDERS** that the centre of its main interests for each of Hornblower Cruises and Events Canada Ltd., Hornblower Canada Entertainment Limited and Hornblower Canada Co. (collectively, the "**Canadian Debtors**" and each a "**Canadian Debtor**"), Hornblower Group, Hornblower Canadian Holdings, Inc. and Hornblower Cruises and Events, Inc. (together with the Canadian Debtors, the "**Debtors**") is the United States of America, and that the Foreign Proceeding is hereby recognized as a "foreign main proceeding" as defined in section 45 of the CCAA in respect of the Debtors.

STAY OF PROCEEDINGS

4. **THIS COURT ORDERS** that until otherwise ordered by this Court:

   (a) all proceedings taken or that might be taken against the Debtors, under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 or the *Winding-up and Restructuring Act* R.S.C. 1985, c. W-11, are stayed;

   (b) further proceedings in any action, suit or proceeding against any of the Debtors are restrained; and

   (c) the commencement of any action, suit or proceeding against any of the Debtors is prohibited.

NO SALE OF PROPERTY

5. **THIS COURT ORDERS** that, except with leave of this Court, the Debtors are prohibited from selling or otherwise disposing of:

   (a) outside the ordinary course of its business, any of its property in Canada that relates to the business; and

   (b) any of its other property in Canada.

GENERAL

6. **THIS COURT ORDERS** that within five (5) business days from the date of this Order, or as soon as practicable thereafter, the Information Officer shall cause to be published, once a week for two consecutive weeks, a notice substantially in the form attached to this Order as Schedule "A" in The Globe and Mail (National Edition).

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States of America or any other foreign jurisdiction, to give effect to this Order and to assist the Debtors, the Foreign Representative, the Information Officer and their respective counsel and agents in carrying out the terms of this Order.

8. **THIS COURT ORDERS AND DECLARES** that the Interim Stay Order (Foreign Proceeding) of this Court dated February 21, 2024 (the "**Interim Stay Order**") shall be of no further force and effect once this Order and the Supplemental Order become effective, and that this Order shall be effective as of 12:01 am on the date of this Order, without the need for entry or filing of this Order, provided that nothing herein shall invalidate any action taken in compliance with the Interim Stay Order prior to the effectiveness of this Order and the Supplemental Order.

9. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Debtors, the Foreign Representative, the Information Officer and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

C.J.

CHIEF JUSTICE GEOFFREY B. MORAWETZ

Schedule "A" – Notice of Recognition Orders

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF HORNBLOWER CRUISES AND EVENTS CANADA LTD., HORNBLOWER CANADA ENTERTAINMENT LIMITED, HORNBLOWER CANADA CO., HORNBLOWER CANADIAN HOLDINGS, INC. AND HORNBLOWER CRUISES AND EVENTS, INC.

APPLICATION OF HORNBLOWER GROUP, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

NOTICE OF RECOGNITION ORDERS

PLEASE BE ADVISED that this Notice is being published pursuant to an Initial Recognition Order (Foreign Main Proceeding) of the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Court**") granted on February 27, 2024 (the "**Initial Recognition Order**").

PLEASE TAKE NOTICE that on February 21, 2024, Hornblower Group, Inc. ("**Hornblower Group**") and certain of its subsidiaries and affiliates, including, Hornblower Cruises and Events Canada Ltd., Hornblower Canada Entertainment Limited and Hornblower Canada Co. (collectively, the "**Canadian Debtors**" and each a "**Canadian Debtor**") and Hornblower Canadian Holdings, Inc., Hornblower Cruises and Events, Inc. and Hornblower Group (together with the Canadian Debtors, the "**Debtors**"), commenced voluntary proceedings (the "**Chapter 11 Proceedings**") pursuant to Chapter 11 of Title 11 of the United States Code with the United States Bankruptcy Court for the Southern District of Texas (the "**U.S. Bankruptcy Court**"). In connection with the Chapter 11 Proceedings, Hornblower Group was appointed to act as a representative (in such capacity, the "**Foreign Representative**") in respect of the Chapter 11 Proceedings. The Foreign Representative's address is Pier 3, The Embarcadero, San Francisco, CA 94111.

AND TAKE NOTICE that the Initial Recognition Order and a Supplemental Order (Foreign Main Proceeding) (collectively with the Initial Recognition Order, the "**Recognition Orders**") have been issued by the Canadian Court in proceedings (the "**Canadian Recognition Proceedings**") under Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), among other things: (i) declaring that the Chapter 11 Proceedings are recognized as a "foreign main proceeding", as defined in section 45 of the CCAA, in respect of the Debtors; (ii) granting a stay of proceedings against the Debtors, in Canada; (iii) prohibiting the commencement of any proceedings against the Debtors, or their respective directors and officers in Canada, absent further order of the Canadian Court; (iv) recognizing certain orders granted by the U.S. Bankruptcy Court in the Chapter 11 Proceedings; and (v) appointing Grant Thornton Limited as the information officer with respect to the Canadian Recognition Proceedings (the "**Information Officer**").

AND TAKE NOTICE that motions, orders and notices filed with the U.S. Bankruptcy Court in the Chapter 11 Proceedings are available at: https://cases.omniagentsolutions.com/?clientId=3682, and that the Recognition Orders, and any other orders that may be granted by the Canadian Court in the Canadian Recognition Proceedings, are available at: http://www.grantthornton.ca/Hornblower.

AND TAKE NOTICE that counsel for the Foreign Representative is:

BORDEN LADNER GERVAIS LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West, Suite 3400
Toronto Ontario, M5H 4E3

Attention: Roger Jaipargas
Phone: 416-367-6266
Email: rjaipargas@blg.com

PLEASE FINALLY TAKE NOTICE that if you wish to receive copies of the Recognition Orders or obtain further information in respect of the matters set forth in this Notice, you may contact the Information Officer at:

GRANT THORNTON LIMITED
200 King Street West, 11th Floor
Toronto, Ontario, M5H 3T4

Attention: Jonathan Krieger
Phone: (416) 360-5055
Email: Jonathan.krieger@ca.gt.com

DATED AT TORONTO, ONTARIO this ___ day of ________, 2024.

Court File No.: CV-24-00715202-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF HORNBLOWER CRUISES AND EVENTS CANADA LTD., HORNBLOWER CANADA ENTERTAINMENT LIMITED, HORNBLOWER CANADA CO., HORNBLOWER CANADIAN HOLDINGS, INC. AND HORNBLOWER CRUISES AND EVENTS, INC.

APPLICATION OF HORNBLOWER GROUP, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S 1985, c. C-36, AS AMENDED

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

INITIAL RECOGNITION ORDER
(FOREIGN MAIN PROCEEDING)

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Lawyers for the Applicant

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Appendix 3

Electronically issued / Délivré par voie électronique : 28-Feb-2024
Toronto Superior Court of Justice / Cour supérieure de justice

Court File No./N° du dossier du greffe : CV-24-00715202-00CL

Court File No.: CV-24-00715202-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	TUESDAY, THE 27TH
	)	
CHIEF JUSTICE MORAWETZ	)	DAY OF FEBRUARY, 2024

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF HORNBLOWER CRUISES AND EVENTS CANADA LTD., HORNBLOWER CANADA ENTERTAINMENT LIMITED, HORNBLOWER CANADA CO., HORNBLOWER CANADIAN HOLDINGS, INC. AND HORNBLOWER CRUISES AND EVENTS, INC.

APPLICATION OF HORNBLOWER GROUP, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

SUPPLEMENTAL ORDER
(FOREIGN MAIN PROCEEDING)

THIS APPLICATION, made pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") and section 106 of the *Courts of Justice Act,* R.S.O. 1990, c. C.43, as amended, by Hornblower Group, Inc. (**"Hornblower Group"**) in its capacity as the foreign representative (in such capacity, the **"Foreign Representative"**) in respect of the proceedings commenced on February 21, 2024, in the United States Bankruptcy Court for the Southern District of Texas (the **"U.S. Bankruptcy Court"**) pursuant to Chapter 11 of Title 11 of the United States Bankruptcy Code (the **"Foreign Proceeding"**), for an Order substantially in the form enclosed in the Supplemental Application Record of Hornblower Group, was heard this day by judicial videoconference in Toronto, Ontario.

ON READING the Notice of Application, the affidavit of Jonathan Hickman sworn February 21, 2024, the affidavit of Jonathan Hickman sworn February 27, 2024, and the preliminary report of Grant Thornton Limited, ("**Grant Thornton**") in its capacity as proposed information officer dated February 26, 2024, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Foreign Representative, and counsel for Grant Thornton in its capacity as Information Officer and counsel for such other parties as were present and wish to be heard, and on reading the consent of Grant Thornton to act as the Information Officer (as defined below):

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

INITIAL RECOGNITION ORDER

2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Initial Recognition Order (Foreign Main Proceeding) of this Court dated February 27, 2024 (the "**Initial Recognition Order**").

3. **THIS COURT ORDERS** that the provisions of this Supplemental Order shall be interpreted in a manner complementary and supplementary to the provisions of the Initial Recognition Order, provided that in the event of a conflict between the provisions of this Supplemental Order and the provisions of the Initial Recognition Order, the provisions of the Initial Recognition Order shall govern.

RECOGNITION OF FOREIGN ORDERS

4. **THIS COURT ORDERS** that the following orders (collectively, the "**Foreign Orders**") of the U.S. Bankruptcy Court made in the Foreign Proceeding, copies of which are attached hereto as Schedules "A" to "K", are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA:

   (a) *Order (I) Directing Joint Administration of Related Chapter 11 Cases and (II) Granting Related Relief;*

(b) *Order Authorizing the Employment and Retention of Omni Agent Solutions, Inc. as Claims, Noticing, and Solicitation Agent;*

(c) *Order (I) Authorizing the Debtors to Maintain and Administer Their Existing Customer Programs and Honor Certain Prepetition Obligations Related thereto and (II) Granting Related Relief;*

(d) *Interim Order (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms and Books and Records, and (D) Continue to Perform Intercompany Transactions and (II) Granting Related Relief;*

(e) *Order (I) Authorizing the Debtors to Pay Certain Prepetition Claims of (A) Critical Vendors, (B) Lien Claimants, (C) Certain Critical Foreign Claimants, and (D) 503(B)(9) Claimants, (II) Confirming Administrative Expense Priority Of Outstanding Orders, and (III) Granting Related Relief;*

(f) *Order (I) Authorizing Hornblower Group, Inc. to Act as Foreign Representative, and (II) Granting Related Relief;*

(g) *Order (I) Authorizing the Payment of Certain Taxes and Fees and (II) Granting Related Relief;*

(h) *Interim Order (I) Authorizing the Debtors to (A) Obtain Senior Secured Postpetition Financing, (B) Use Cash Collateral, and (C) Grant Liens and Superpriority Administrative Expense Claims, (II) Granting Adequate Protection to Certain Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief;*

(i) *Order (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Services, (III) Approving The Debtors' Proposed*

Procedures for Resolving Additional Assurance Requests, and (IV) Granting Related Relief;

(j) *Order (I) Authorizing the Debtors to (A) Continue Prepetition Insurance Coverage and Satisfy Prepetition Obligations Related Thereto, (B) Renew, Amend, Supplement, Extend, or Purchase Insurance Policies, (C) Continue to Pay Brokerage Fees, and (D) Maintain Their Surety Bond Program, and (II) Granting Related Relief;* and

(k) *Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief.*

provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property (as defined below) in Canada.

APPOINTMENT OF INFORMATION OFFICER

5. **THIS COURT ORDERS** that Grant Thornton (the "**Information Officer**") is hereby appointed as an officer of this Court, with the powers and duties set out herein and in any other Order made in these proceedings.

STAY OF PROCEEDINGS

6. **THIS COURT ORDERS** that until such date as this Court may order (the "**Stay Period**") no proceeding or enforcement process in any court or tribunal in Canada (each, a "**Proceeding**") shall be commenced or continued against or in respect of (a) Hornblower Cruises and Events Canada Ltd., Hornblower Canada Entertainment Limited and Hornblower Canada Co. (collectively, the "**Canadian Debtors**" and each a "**Canadian Debtor**") or affecting their business (the "**Canadian Debtors Business**") or their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Canadian Debtors Property**"), or (b) Hornblower Group, Hornblower Canadian Holdings, Inc. and Hornblower Cruises and Events, Inc. (together with the Canadian Debtors, the "**Debtors**") or affecting their business in Canada

(together with the Canadian Debtors Business, collectively the **"Hornblower Business"**) or their current and future assets, undertakings and property of every nature and kind whatsoever, and wherever situate in Canada including all proceeds thereof (together with the Canadian Debtors Property, collectively, the **"Hornblower Property"**), except with the written consent of the applicable Debtor and the Information Officer, or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Debtors or affecting the Hornblower Business or the Hornblower Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

7. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being **"Persons"** and each being a **"Person"**) against or in respect of the Debtors, or affecting the Hornblower Business or the Hornblower Property, are hereby stayed and suspended except with the written consent of the applicable debtor and the Information Officer, or with leave of this Court, provided that nothing in this Order shall (i) prevent the assertion of or the exercise of rights and remedies outside of Canada, (ii) empower any of the Debtors to carry on any business in Canada which that Debtor is not lawfully entitled to carry on, (iii) affect such investigations or Proceedings by a regulatory body as are permitted by section 11.1 of the CCAA, (iv) prevent the filing of any registration to preserve or perfect a security interest, or (v) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

8. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any of the Debtors and affecting the Hornblower Business or Hornblower Property in Canada, except with the written consent of the applicable debtor and the Information Officer, or with leave of this Court.

ADDITIONAL PROTECTIONS

9. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services in Canada, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services provided in respect of the Hornblower Property or the Hornblower Business of the Debtors, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Debtors, and that the Debtors shall be entitled to the continued use in Canada of their current premises, bank accounts, telephone numbers, facsimile numbers, internet addresses and domain names.

10. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Debtors with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Debtors whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

11. **THIS COURT ORDERS** that no Proceeding shall be commenced or continued against or in respect of the Information Officer, except with leave of this Court. In addition to the rights and protections afforded the Information Officer herein, or as an officer of this Court, the Information Officer shall have the benefit of all of the rights and protections afforded to a Monitor under the CCAA, and shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

OTHER PROVISIONS RELATING TO INFORMATION OFFICER

12. **THIS COURT ORDERS** that the Information Officer:

(a) is hereby authorized to provide such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;

(b) shall report to this Court at such times and intervals that the Information Officer considers appropriate with respect to the status of these proceedings and the status of the Foreign Proceedings, which reports may include information relating to the Hornblower Property, the Hornblower Business, or such other matters as may be relevant to the proceedings herein;

(c) shall have full and complete access to the Hornblower Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Debtors, to the extent that is necessary to perform its duties arising under this Order; and

(d) shall be at liberty to engage independent legal counsel or such other persons as the Information Officer deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

13. **THIS COURT ORDERS** that the Debtors and the Foreign Representative shall (i) advise the Information Officer of all material steps taken by the Debtors or the Foreign Representative in these proceedings or in the Foreign Proceedings, (ii) co-operate fully with the Information Officer in the exercise of its powers and discharge of its obligations, and (iii) provide the Information Officer with the assistance that is necessary to enable the Information Officer to adequately carry out its functions.

14. **THIS COURT ORDERS** that the Information Officer shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Hornblower Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Hornblower Business or Hornblower Property, or any part thereof.

15. **THIS COURT ORDERS** that the Information Officer (i) shall post on its website all Orders of this Court made in these proceedings, all reports of the Information Officer filed

herein, and such other materials as this Court may order from time to time, and (ii) may post on its website any other materials that the Information Officer deems appropriate.

16. **THIS COURT ORDERS** that the Information Officer may provide any creditor of a Debtor with information provided by the Debtors in response to reasonable requests for information made in writing by such creditor addressed to the Information Officer. The Information Officer shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Information Officer has been advised by the Debtors is privileged or confidential, the Information Officer shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Information Officer, the Foreign Representative and the applicable Debtors may agree.

17. **THIS COURT ORDERS** that Borden Ladner Gervais LLP, as Canadian counsel to the Canadian Debtors, ("**Canadian Counsel**"), the Information Officer and counsel to the Information Officer shall be paid by the Canadian Debtors their reasonable fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts. The Canadian Debtors are hereby authorized and directed to pay the accounts of Canadian counsel, the Information Officer and counsel for the Information Officer on a bi-weekly basis or on such terms as such parties may agree.

18. **THIS COURT ORDERS** that the Information Officer and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Information Officer and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice, and the accounts of the Information Officer and its counsel shall not be subject to approval in the Foreign Proceeding.

19. **THIS COURT ORDERS** that Canadian Counsel, the Information Officer and counsel to the Information Officer, shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**"), on the Canadian Debtors Property, which charge shall not exceed an aggregate amount of CDN$700,000, as security for their professional fees and disbursements incurred in respect of these proceedings, both before and after the making

of this Order. The Administration Charge shall have the priority set out in paragraphs 26 and 28 hereof.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. **THIS COURT ORDERS** that the Canadian Debtors shall indemnify their directors and officers against obligations and liabilities that they may incur as directors and officers of the Canadian Debtors after the commencement of the within proceedings (including, for greater certainty, any obligations and liabilities for wages, vacation pay or termination or severance pay due to employees of the Canadian Debtors, whether or not any such employee was terminated prior to or after the commencement of these proceedings), except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence of wilful misconduct.

21. **THIS COURT ORDERS** that the directors and officers of the Canadian Debtors shall be entitled to the benefit of and are hereby granted a charge (the "**D&O Charge**") on the Canadian Debtors Property, which charge shall not exceed an aggregate amount of CDN$4,300,000, as security for the indemnity provided in paragraph 20 of this order. The D&O Charge shall have the priorities set out in paragraphs 26 and 28 hereof.

22. **THIS COURT ORDERS** that, the directors and officers of the Canadian Debtors shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

SENIOR DIP CHARGE AND JUNIOR DIP CHARGE

23. **THIS COURT ORDERS** that any defined term used in this section which is not otherwise defined herein shall have the meaning ascribed to such term in the Interim DIP Order, a copy of which is attached hereto as Schedule "H".

24. **THIS COURT ORDERS** that the Senior DIP Agent (for its benefit and the benefit of the Senior DIP Lenders) is hereby granted a charge (the "**Senior DIP Charge**") on the Hornblower Property, which Senior DIP Charge shall be consistent with the liens and charges

created by or set forth in the Interim DIP Order, and provided that, with respect to the Hornblower Property, the Senior DIP Charge shall have the priority set out in paragraphs 26 and 28 of this order, and further provided that, the Senior DIP Charge shall not be enforced except with leave of this Court.

25.. **THIS COURT ORDERS** that the Junior DIP Agent (for its benefit and the benefit of the Junior DIP Lenders) is hereby granted a charge (the "**Junior DIP Charge**") on the Hornblower Property, which Junior DIP Charge shall be consistent with the liens and charges created by or set forth in the Interim DIP Order, and provided that, with respect to the Hornblower Property, the Junior DIP Charge shall have the priority set out in paragraphs 26 and 28 of this order, and further provided that, the Junior DIP Charge shall not be enforced except with leave of this Court.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

26. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Senior DIP Charge, the Junior DIP and the D&O Charge (collectively, the "**Charges**"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of CDN$700,000);

Second – Senior DIP Charge;

Third – Junior DIP Charge; and

Fourth - D&O Charge (to the maximum amount of CDN$4,300,000).

27. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect the Charges.

28. **THIS COURT ORDERS** that each of the Charges (as constituted and defined herein) shall constitute a charge on the Canadian Debtors Property, in respect of the Administration Charge and the D&O Charge, and Hornblower Property, in respect of the

Senior DIP Charge and Junior DIP Charge, and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

29. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Debtors shall not grant any Encumbrances over the Hornblower Property that rank in priority to, or *pari passu* with, the Charges, unless the Debtors also obtain the prior written consent of the beneficiaries of the Charges (collectively, the "**Chargees**").

30. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order or receivership order(s) issued pursuant to *Bankruptcy and Insolvency Act,* R.S.C. 1985, c. B-3, as amended (the "**BIA**") or otherwise, or any orders made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds any Canadian Debtor, and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the Charges shall not create or be deemed to constitute a breach by any Canadian Debtor of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and

(c) the payments made by the Canadian Debtors to the Chargees pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

31. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Canadian Debtor's interest in such real property leases.

SERVICE AND NOTICE

32. **THIS COURT ORDERS** that The Guide Concerning Commercial List E-Service Protocol (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL 'http://www.grantthornton.ca/Hornblower'.

33. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Debtors, the Foreign Representative and the Information Officer are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the applicable Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

34. **THIS COURT ORDERS** that the Debtors, the Foreign Representative, the Information Officer, and their respective counsel are at liberty to serve or distribute this Order, the Initial Recognition Order, and any other materials and Orders as may be

reasonably required in these proceedings, including any notices or other correspondence, by forwarding true copies thereof by electronic message to the Debtors' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations,* Reg. 8100-2-175 (SOR/DORS).

GENERAL

35. **THIS COURT ORDERS** that the Information Officer may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

36. **THIS COURT ORDERS** that nothing in this Order shall prevent the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, a monitor, a proposal trustee, or a trustee in bankruptcy of any Debtor, the Hornblower Business or the Hornblower Property.

37. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States of America or any other foreign jurisdiction, to give effect to this Order and to assist the Debtors, the Foreign Representative, the Information Officer, and their respective counsel and agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtors, the Foreign Representative, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Debtors, the Foreign Representative, and the Information Officer and their respective agents in carrying out the terms of this Order.

38. **THIS COURT ORDERS** that each of the Debtors, the Foreign Representative and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

39. **THIS COURT ORDERS** that the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matter issued by the Juridical Insolvency Network and adopted by this Court and the U.S. Bankruptcy Court and attached as Schedule "L" hereto are hereby adopted by this Court for the purposes of these recognition proceedings.

40. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Debtors, the Foreign Representative, the Information Officer and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

41. **THIS COURT ORDERS** that this Order shall be effective as of 12:01 a.m. on the date of this Order with the need for entry or filing of this Order.

C.J.

CHIEF JUSTICE GEOFFREY B. MORAWETZ

Appendix 4

CITATION: Hornblower Cruises and Events Canada Ltd., 2024 ONSC 1209
COURT FILE NO.: CV-24-00715202-00CL
DATE: 2024-02-29

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF HORNBLOWER CRUISES AND EVENTS CANADA LTD., HORNBLOWER CANADA ENTERTAINMENT LIMITED, HORNBLOWER CANADA CO., HORNBLOWER CANADIAN HOLDINGS, INC. AND HORNBLOWER CRUISES AND EVENTS, INC.

APPLICATION OF HORNBLOWER GROUP, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

Applicant

BEFORE: Chief Justice Geoffrey B. Morawetz

COUNSEL: *Alex MacFarlane, Roger Jaipargas and Nick Hollard*, for the Applicant Hornblower Group Inc.

Raj Sahni and Aiden Nelms, for the Proposed Information Officer (Grant Thornton Ltd.)

Caitlin McIntyre, for GLAS Trust Company LLC

Martino Calvaruso, for Deutsche Bank AG

HEARD and DETERMINED: February 27, 2024

REASONS: February 29, 2024

ENDORSEMENT

[1] At the conclusion of the hearing, the requested relief was granted with reasons to follow. These are the reasons.

[2] This application is brought by Hornblower Group, Inc. ("Hornblower Group" or the "Applicant") pursuant to Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") and section 106 of the *Courts of Justice Act* ("CJA"), as amended, for certain relief, including, *inter alia*, orders recognizing certain proceedings in the United States of America (the "US Proceedings") commenced on February 21, 2024 (the "Petition Date") by the Applicant and certain of its affiliates (the "Chapter 11 Debtors") under Chapter 11 of Title 11

("Chapter 11") of the United States Code (the "US Code") in the United States Bankruptcy Court for the Southern District of Texas (the "US Court"), and recognizing certain orders of the US Court made in the US Proceedings (the "First Day Orders"). The Applicant also seeks other ancillary relief.

[3] On February 21, 2024, Hornblower Group, in its capacity as the proposed foreign representative, sought and obtained from this Court the Interim Stay Order, among other things, granting a stay of proceedings in respect of the Hornblower Cruises and Events Canada Ltd. ("Hornblower Cruises"), Hornblower Canada Entertainment Limited ("Hornblower Entertainment"), Hornblower Canada Co. ("Hornblower Canada") (collectively, the "Canadian Debtors" and each a "Canadian Debtor"), Hornblower Canadian Holdings, Inc. and Hornblower Cruises and Events, Inc. (collectively, the "US Debtors", and together with the Canadian Debtors, the "Debtors"), and Hornblower Group, as well as their respective directors and officers, in Canada.

[4] Hornblower Group now seeks the following relief:

(a) an order (the "Initial Recognition Order") granting certain relief, including, *inter alia*:

  (i) declaring that Hornblower Group is a "foreign representative" as defined in section 45 of the CCAA in respect of the US Proceedings;

  (ii) declaring that the centre of main interest for each of the Debtors is the United States of America and recognizing and declaring the US Proceedings as a "foreign main proceeding" under Part IV of the CCAA with respect to each of the Debtors

  (iii) recognizing the US Proceeding as a "foreign main proceeding" in respect of the Debtors;

  (iv) staying all proceedings that might be taken against the Debtors or Hornblower Group under the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3, as amended, or the *Winding-Up and Restructuring Act*, R.S.C. 1985, c. W-11, as amended;

  (v) restraining further proceedings and any action, suit or proceeding against the Debtors or Hornblower Group; and

  (vi) prohibiting the commencement of any action, suit or proceeding against the Debtors or Hornblower Group; and

(b) an order (the "Supplemental Order") granting certain relief, including, *inter alia*:

  (i) recognizing in Canada and enforcing certain of the First Day Orders (as defined below) as set out in the Affidavit of Jonathan Hickman sworn February 26, 2024 (the "Supplemental Affidavit");

(ii) appointing Grant Thornton Limited ("GTL") as information officer (in such capacity, the "Information Officer") in respect of this proceeding;

(iii) granting stays and protections in respect of the Debtors and Hornblower Group, and their respective directors and officers; and

(iv) granting the Administration Charge, D&O Charge, Senior DIP Charge, and Junior DIP Charge (each as defined in the Supplemental Affidavit).

[5] Capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Affidavit of Jonathan Hickman, sworn February 21, 2024 (the "Hickman Affidavit") and the Supplemental Affidavit.

[6] The evidentiary basis for the requested relief is set out in the Hickman Affidavit and the Supplemental Affidavit.

[7] There was no opposition to the requested relief and the Information Officer supported the position of Hornblower Group, as set out in its Pre-Filing Report.

[8] The Debtors, including the Canadian Debtors, are part of a worldwide travel and tourism group of companies ("Hornblower" or the "Company"), providing sightseeing boat tours and ferries, walking tours, rail excursions, outback adventures, and a wide array of tourist experiences.

[9] The Canadian Debtors carry on operations in Niagara Falls, Toronto, and Gananoque (the "Canadian Business"). Since 2014, pursuant to its contract with the Niagara Parks Commission (the "Operating Agreement"), Hornblower Canada has been the exclusive provider of boat tours in Niagara Falls on the Canadian side of the border.

[10] Over the past few decades, Hornblower has grown significantly. However, the COVID-19 pandemic had a profoundly adverse effect upon the travel and tourism industry.

[11] Between 2020 and 2023, the Chapter 11 Debtors' aggregate debt load increased from $630 million in 2019 to $1.2 billion in 2023, and its annual cash interest expense grew from $38 million to $115 million over the same time period. This increase in leverage and debt service has proven difficult for the Company to shoulder.

[12] On February 20, 2024, the Chapter 11 Debtors and an ad hoc group of lenders under the Chapter 11 Debtors' secured debt facilities (the "Ad Hoc Group") entered into a restructuring support agreement (the "Restructuring Support Agreement") which contemplates a restructuring of the Chapter 11 Debtors through a prearranged Chapter 11 plan, as well as sale and/or winding-down of the Company's American Queen Voyages ("AQV") business.

[13] On February 21, 2024, each of the Chapter 11 Debtors filed voluntary petitions for relief pursuant to Chapter 11 of the US Code (collectively, the "Petitions" and each a "Petition") with the US Court.

[14] As part of the first day motions (the "First Day Motions") that were heard by the US Court on February 21, 2024, the US Court made certain First Day Orders, including an order appointing

Hornblower Group as the foreign representative of the Debtors (the "Foreign Representative Order") to, among other things, seek recognition of the US Proceedings in Canada. Pursuant to the Foreign Representative Order, the US Court requested the assistance of the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court" or the "Court") in aiding and supporting the US Proceedings.

[15] The US Court has granted an order approving certain debtor-in-possession financing facilities (collectively, the "DIP Facilities", the loans thereunder, the "DIP Loans".

[16] The Hornblower Group submits that immediate access to additional liquidity through the DIP Facilities is required to allow the Chapter 11 Debtors to efficiently effectuate a restructuring through the US Proceedings, while continuing their operations in the normal course. The DIP Facilities will provide the Chapter 11 Debtors with access to up to $134 million of net liquidity. The terms of the DIP Facilities are described in further detail in the Supplemental Affidavit.

[17] The DIP Facilities will provide the Chapter 11 Debtors with access to up to $134 million of net liquidity. The terms of the DIP Facilities are described in further detail in the Supplemental Affidavit.

[18] The Debtors have pledged collateral under the Senior DIP Collateral Agreement and Junior DIP Collateral Agreement securing obligations under the Senior DIP Facility and Junior DIP Facility, respectively.

[19] The Superpriority Facility and Incremental Superpriority Facility are prepetition debt facilities of the Chapter 11 Debtors. Pursuant to the Canadian Collateral Agreement, the Debtors also pledged collateral securing obligations under the Superpriority Facility and Incremental Superpriority Facility.

[20] The issues to be determined in this Application are:

(v) Should the Court recognize the US Proceedings as a "foreign main proceeding" pursuant to sections 46 through 48 of the CCAA and grant the Initial Recognition Order sought by the Applicant?

(vi) Should the Court grant the Supplemental Order sought by the Applicant under section 49 of the CCAA?

[21] Canadian courts have consistently recognized proceedings commenced under Chapter 11 of the US Code as "foreign proceeding[s]" in accordance with the definition of such term in section 45(1) of the CCAA (See: *Payless Holdings LLC (Re)*, 2017 ONSC 2242 BOA, Tab 94 at para. 22 [*Payless*]; *Paladin Labs Canadian Holding Inc.*, 2022 ONSC 4931 BOA, Tab 6 at paras 13-14 [*Paladin*]).

[22] I am satisfied that, all of the requirements for recognition of the US Proceedings as a "foreign proceeding" and Hornblower Group as "foreign representative" in respect of the US Proceedings have been satisfied.

[23] Upon recognizing a foreign main proceeding, section 47(2) of the CCAA requires that the Court specify whether the foreign proceeding is a "foreign main proceeding" or a "foreign non-main proceeding".

[24] A "foreign main proceeding" is a foreign proceeding in a jurisdiction where the debtor company has the "centre of its main interests" ("COMI").

[25] Pursuant to section 45(2) of the CCAA, a debtor company's COMI is presumed to be the location of its registered office, in the absence of proof to the contrary. The statutory presumption may be rebutted by evidence of the operational realities of a debtor.

[26] The following principal factors were set out in *Lightsquared LP, (Re)*, 2012 ONSC 2994, at para. 25, considered as a whole, are relevant to a determination of whether the jurisdiction in which the foreign proceeding has been filed is the debtor company's COMI:

(a) the location is readily ascertainable by creditors;

(b) the location is one in which the debtor's principal assets or operations are found; and

(c) the location is where the management of the debtor takes place.

[27] Canadian courts have also made reference to the following factors in conducting the COMI analysis:

(a) the location where corporate decisions are made;

(b) the location of employee administrations, including human resource functions;

(c) the extent of integration of an enterprise's international operations;

(d) the centre of an enterprise's corporate, banking, strategic and management functions;

(e) the location where cash management and accounting functions are overseen; and

(f) the location where pricing decisions and new business development initiatives are created;

(See: *YRC Freight Canada Company (Re)*, 2023 ONSC 4834, at para. 24)

[28] The US Debtors are Delaware corporations with their registered agents and head offices located in the US. Therefore, the US Debtors' presumed COMI is in the US.

[29] The Canadian Debtors' respective registered offices are located in Canada. However, the Applicant submits that the presumption that the Canadian Debtors' COMI follows the location of their registered offices is rebutted. The evidence demonstrates that the Canadian Debtors'

operations are inextricably intertwined with Hornblower's global operation, which is managed in the US.

[30] The Applicant submits that the following factors demonstrate that the Canadian Debtors' COMI is the US:

(a) The Canadian Debtors are indirect, wholly owned subsidiaries of Hornblower Group, which is a California corporation;

(b) Hornblower's senior leadership are located in the US, and they exercise primary strategic management and control across the entire the Company, including the Canadian Debtors. Hornblower's senior leadership makes all material decisions regarding the Canadian Debtors, oversees and manages the Canadian Debtors' operations, and provides significant direction to and oversight of the Canadian Debtors' operations and assets;

(c) All of the Chapter 11 Debtors' approximately $1.2 billion principal amount of funded indebtedness has been advanced by US-based lenders, and the loan documentation is governed by US law;

(d) The Canadian Debtors' unsecured creditors are limited to accounts payable in the aggregate amount of approximately $335,396;

(e) For the financial year ended December 31, 2023, the Canadian Debtors' revenue accounted for approximately 7% of the Company's consolidated worldwide revenue;

(f) The Canadian Debtors currently have 111 employees, representing approximately 2.5% of the Company's total workforce;

(g) The Canadian Debtors' employees perform operations, customer service, finance, and payroll functions related to the Canadian Business, and do not perform leadership or strategic management functions;

(h) the Chapter 11 Debtors' overall financial position is managed on a consolidated basis, principally from Hornblower Group's office in San Francisco, California, and reported through HBAQ Holdings LP;

[31] Limited managerial functions are performed by the Canadian Debtors without the direct participation of Hornblower, all of which are either (i) impossible to deliver from the US or (ii) ancillary to the Canadian Debtors' core business.

[32] In summary, Hornblower Group submits that the Company is a highly integrated corporate group centrally managed out of the US. The Canadian Debtors rely upon strategic management from Hornblower's senior leadership based out of its head office in San Francisco, California.

[33] Based on the foregoing, I am satisfied that the COMI of the Canadian Debtors is the US, and that the US Proceedings should be recognized by this Court as a "foreign main proceeding".

[34] The proposed Supplemental Order provides for a broad stay of proceedings in respect of the Debtors and Hornblower Group, and their respective directors and officers, in Canada.

[35] The Applicant submits that the requested stay of proceedings is appropriate to give effect in Canada to the stay of proceedings granted by the US Court pursuant to the US Proceedings and to preserve and protect the value of the Canadian Business.

[36] I am satisfied that the requested stay of proceedings is appropriate in the circumstances.

<u>Recognition of certain First Day Orders</u>

[37] Hornblower Group seeks to have the Court recognize the following First Day Orders.

a. *Order (I) Directing Joint Administration of Related Chapter 11 Cases and (II) Granting Related Relief;*

b. *Order Authorizing the Employment and Retention of Omni Agent Solutions, Inc. as Claims, Noticing, and Solicitation Agent;*

c. *Order (I) Authorizing the Debtors to Maintain and Administer Their Existing Customer Programs and Honor Certain Prepetition Obligations Related thereto and (II) Granting Related Relief;*

d. *Interim Order (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms and Books and Records, and (D) Continue to Perform Intercompany Transactions and (II) Granting Related Relief;*

e. *Order (I) Authorizing the Debtors to Pay Certain Prepetition Claims of (A) Critical Vendors, (B) Lien Claimants, (C) Certain Critical Foreign Claimants, and (D) 503(B)(9) Claimants, (II) Confirming Administrative Expense Priority Of Outstanding Orders, and (III) Granting Related Relief;*

f. *Order (I) Authorizing Hornblower Group, Inc. to Act as Foreign Representative, and (II) Granting Related Relief;*

g. *Order (I) Authorizing the Payment of Certain Taxes and Fees and (II) Granting Related Relief;*

h. *Interim Order (I) Authorizing the Debtors to (A) Obtain Senior Secured Postpetition Financing, (B) Use Cash Collateral, and (C) Grant Liens and Superpriority Administrative Expense Claims, (II) Granting Adequate Protection to Certain Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief;*

i. *Order (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Services, (III) Approving The Debtors' Proposed Procedures for Resolving Additional Assurance Requests, and (IV) Granting Related Relief;*

j. *Order (I) Authorizing the Debtors to (A) Continue Prepetition Insurance Coverage and Satisfy Prepetition Obligations Related Thereto, (B) Renew, Amend, Supplement, Extend, or Purchase Insurance Policies, (C) Continue to Pay Brokerage Fees, and (D) Maintain Their Surety Bond Program, and (II) Granting Related Relief;* and

k. *Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief.*

[38] The US Court has granted the First Day Orders to, among other things, preserve the value of the Chapter 11 Debtors' business for the benefit of their creditors and other stakeholders while the Chapter 11 Debtors undertake restructuring efforts in the US Proceedings. As the Debtors have business and assets in Canada, the Applicant seeks recognition of certain First Day Orders to similarly maintain the Debtors' *status quo* and protect their assets while permitting them to continue operating their business as usual in Canada.

[39] The Applicant submits that the granting of an order recognizing and giving effect to the First Day Orders is appropriate for the following reasons:

(a) The US Court has appropriately taken jurisdiction over the US Proceedings and comity will be furthered by this Court's recognition of and support for the US Proceedings already under way in the US;

(b) Coordination of proceedings in the two jurisdictions will ensure equal and fair treatment of all stakeholders irrespective of where they are located;

(c) Given the close connection between the US and the Chapter 11 Debtors' business, including the Debtors' business as a subset thereof, it is reasonable and sensible for the US Court to have principal control over the insolvency process; and

(d) The First Day Orders were obtained by the Chapter 11 Debtors to minimize the adverse effects of the US Proceedings on their business in order to preserve value of the Chapter 11 Debtors' assets for the benefit of the claimants.

[40] I accept these submissions.

[41] Having reviewed the record and hearing submissions, I am satisfied that the First Day Orders should be recognized by this Court.

[42] In light of the complex corporate and financial structure of the Company, the stakeholders located in Canada and the amount of debt owed by the Debtors, the Applicant submits that the appointment of GTL as Information Officer will help facilitate these proceedings and the dissemination of information concerning developments in the US Proceedings to the Court and affected creditors and other stakeholders, including those located in Canada.

[43] I am satisfied that it is appropriate to appoint GTL as Information Officer.

[44] The proposed Supplemental Order provides that BLG, as Canadian counsel to the Debtors, the Information Officer, and counsel to the Information Officer will be granted a charge in the maximum amount of CAD$700,000 (the "Administration Charge") over the assets and property of the Canadian Debtors, wherever located, in Canada (the "Canadian Debtors' Collateral") to secure the fees and disbursements of such professionals incurred in respect of these recognition proceedings. The Applicant states that the proposed Administration Charge does not extend to the assets or property of the US Debtors and covers only the Canadian Debtors' property in Canada. The Administration Charge is proposed to rank in priority to all other encumbrances in respect of the Canadian Debtors.

[45] Hornblower Group submits that the amount of the Administration Charge is reasonable in the circumstances, having regard to the size and complexity of these proceedings and the roles that will be required of Canadian counsel to the Debtors and the Information Officer and its counsel.

[46] I am satisfied that the Administration Charge should be granted.

[47] Each DIP Agreement contemplates a superpriority charge, in accordance with the terms therein and as provided for in the Interim DIP Order to secure the obligations outstanding from time to time under the DIP Facilities (respectively, the "Senior DIP Charge" and "Junior DIP Charge"). Accordingly, Hornblower Group, as the Foreign Representative, is seeking the granting of the Senior DIP Charge and Junior DIP Charge pursuant to the Supplemental Order.

[48] The DIP Charge would be subordinate to the proposed Administration Charge, and rank in priority to all other encumbrances.

[49] I am satisfied that it is appropriate to grant the DIP Charge.

[50] The proposed Supplemental Order also provides for a charge on the Canadian Debtors' Collateral in favour of the Canadian Debtors' directors and officers in the maximum amount of CAD$4,300,000 (the "D&O Charge").

[51] Hornblower Group submits that, in light of the potential liabilities, the potential insufficiency of available insurance, and the need for the continued service of the director and officers of the Debtors in these proceedings, the D&O Charge is reasonable and appropriate.

[52] The D&O Charge would be subordinate to the proposed Administration Charge and DIP Charge but rank in priority to all other encumbrances.

[53] I am satisfied that this request is reasonable in the circumstances and is granted.

DISPOSITION

[54] The Initial Recognition Order and the Supplemental Order are granted substantially in the form included at Tabs 3 and 4 of the Application Record.

Morawetz C.J.

Chief Justice Geoffrey B. Morawetz

Date: February 29, 2024

Appendix 5

Court File No. CV-24-00715202-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	WEDNESDAY, THE 27TH
	)	
CHIEF JUSTICE MORAWETZ	)	DAY OF MARCH, 2024

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF HORNBLOWER CRUISES AND EVENTS CANADA LTD., HORNBLOWER CANADA ENTERTAINMENT LIMITED, HORNBLOWER CANADA CO., HORNBLOWER CANADIAN HOLDINGS, INC. AND HORNBLOWER CRUISES AND EVENTS, INC.

APPLICATION OF HORNBLOWER GROUP, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

SECOND SUPPLEMENTAL ORDER

THIS MOTION, made pursuant to the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended (the "**CCAA**") by Hornblower Group, Inc. ("**Hornblower Group**") in its capacity as the foreign representative (the "**Foreign Representative**") in respect of the proceedings commenced by Hornblower Group and certain of its affiliates on February 21, 2024 in the United States Bankruptcy Court for the Southern District of Texas (the "**US Court**") pursuant to Chapter 11 of Title 11 of the United States Code (the "**US Proceedings**"), for an Order, among other things, recognizing certain orders made in the US Proceedings, was heard this day by judicial videoconference in Toronto, Ontario.

ON READING the Notice of Motion, the affidavit of Jonathan Hickman sworn March 24, 2024, and the first report of Grant Thornton Limited, in its capacity as information officer (the "**Information Officer**") dated March 26, 2024, each filed,

AND UPON HEARING the submissions of counsel for the Foreign Representative, counsel for the Information Officer, and counsel for such other parties as were present and wished to be heard, no one else appearing, although duly served as appears from the affidavits of service of Mariela Adriana Gasparini sworn March 25, 2024 and March 26, 2024.

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Supplemental Order (Foreign Main Proceeding) of this Court dated February 27, 2024 (the "**Supplemental Order**").

RECOGNITION OF FOREIGN ORDERS

3. **THIS COURT ORDERS** that the following orders (collectively, the "**Foreign Orders**") of the US Court made in the US Proceedings are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA:

(a) *Final Order (I) Authorizing the Chapter 11 Debtors to (A) Obtain Senior Secured Postpetition Financing, (B) Use Cash Collateral, and (C) Grant Liens and Superpriority Administrative Expense Claims, (II) Granting Adequate Protection to Certain Prepetition Secured Parties, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* (the "**Final DIP Order**"), a copy of which is attached as Schedule A hereto;

(b) *Final Order (I) Authorizing the Chapter 11 Debtors to (A) Continue to Operate Their Cash Management System, (B) Honor Certain Prepetition Obligations Relating Thereto, (C) Maintain Existing Business Forms and Books and Records, and (D) Continue to Perform Intercompany Transactions and (II) Granting Related Relief* (the "**Final Cash Management Order**"), a copy of which is attached as Schedule B hereto; and

(c) *Modified Order (A) Approving (I) Bidding Procedures for the Sale of the AQV Debtors' Assets, (II) Procedures Regarding Bid Protections, (III) the Scheduling of*

Certain Dates With Respect Thereto, (IV) the Form and Manner of Notice Thereof, (V) Contract Assumption, Assignment, and Rejection Procedures, and (VI) Certain Procedures to Otherwise Dispose of the AQV Assets, and (B) Authorizing the Debtors to Enter Into Agreements for the Sale of Their Assets Free and Clear of All Liens, Claims, and Encumbrances (the "**Bidding Procedures Order**"), a copy of which is attached as Schedule C hereto;

provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property in Canada.

AMENDMENTS TO SUPPLEMENTAL ORDER

4. **THIS COURT ORDERS** that paragraph 24 of the Supplemental Order is hereby amended from and after the date of this Order as follows:

> 24. **THIS COURT ORDERS** that the Senior DIP Agent (for its benefit and the benefit of the Senior DIP Lenders) is hereby granted a charge (the "**Senior DIP Charge**") on the Hornblower Property, which Senior DIP Charge shall be consistent with the liens and charges created by or set forth in the Interim DIP Order **<u>and the Final DIP Order (as defined in the Second Supplemental Order made in the within proceedings dated March 27, 2024)</u>**, and provided that, with respect to the Hornblower Property, the Senior DIP Charge shall have the priority set out in paragraphs 26 and 28 of this order, and further provided that, the Senior DIP Charge shall not be enforced except with leave of this Court.

5. **THIS COURT ORDERS** that paragraph 25 of the Supplemental Order is hereby amended from and after the date of this Order as follows:

> 25. **THIS COURT ORDERS** that the Junior DIP Agent (for its benefit and the benefit of the Junior DIP Lenders) is hereby granted a charge (the "**Junior DIP Charge**") on the Hornblower Property, which Junior DIP Charge shall be consistent with the liens and charges created by or set forth in the Interim DIP Order **<u>and the Final DIP Order</u>**, and provided that, with respect to the Hornblower Property, the Junior DIP Charge shall have the priority set out in paragraphs 26 and 28 of this order, and further provided that, the Junior DIP Charge shall not be enforced except with leave of this Court.

GENERAL

6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, or regulatory or administrative body having jurisdiction in Canada, the United States of America or any other foreign jurisdiction, to give effect to this Order and to assist Hornblower Cruises and Events Canada Ltd., Hornblower Canada Entertainment Limited, Hornblower Canada Co., Hornblower Canadian Holdings, Inc. Hornblower Cruises And Events, Inc. (together, the "**Debtors**"), the Foreign Representative, the Information Officer, and their respective counsel and agents in carrying out the terms of this Order. All courts, tribunals, and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtors, the Foreign Representative and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Debtors, the Foreign Representative, the Information Officer, and their respective counsel and agents in carrying out the terms of this Order.

7. **THIS COURT ORDERS** that each of the Debtors, the Foreign Representative, and the Information Officer shall be at liberty and is hereby authorized and empowered to apply to any court, tribunal, or regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

8. **THIS COURT ORDERS** that this Order shall be effective as of 12:01 a.m. (Toronto time) on the date of this Order without the need for entry or filing of this Order.

C.J.

Chief Justice G. B. Morawetz

Appendix 6

CITATION: Hornblower Cruises and Events Canada Ltd., 2024 ONSC 1808
COURT FILE NO.: CV-24-00715202-00CL
DATE: 2024-03-28

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF HORNBLOWER CRUISES AND EVENTS CANADA LTD., HORNBLOWER CANADA ENTERTAINMENT LIMITED, HORNBLOWER CANADA CO., HORNBLOWER CANADIAN HOLDINGS, INC. AND HORNBLOWER CRUISES AND EVENTS, INC.

APPLICATION OF HORNBLOWER GROUP, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

BEFORE: Chief Justice Geoffrey B. Morawetz

COUNSEL: *Roger Jaipargas and Nick Hollard*, for the Applicant Hornblower Group Inc.

Ben Muller, for Deutsche Bank AG

Raj Sahni, for the Information Officer (Grant Thornton Ltd.)

Steven Golden, U.S. Counsel for Official Committee of Unsecured Creditors

HEARD and DETERMINED: March 27, 2024

REASONS: March 28, 2024

ENDORSEMENT

[1] At the conclusion of the hearing, I granted the motion with reasons to follow. These are the reasons.

[2] Hornblower Group, Inc. ("Hornblower Group") brings this motion in its capacity as the foreign representative ("Foreign Representative") in respect of the proceedings (the "Chapter 11 Cases) commenced by Hornblower Group and certain of their affiliates including Hornblower Cruises and Events Canada Ltd. ("Hornblower Cruises"), Hornblower Canada Entertainment Limited ("Hornblower Entertainment"), Hornblower Canada Co. ("Hornblower Canada") (collectively, the Canadian Debtors" and each a "Canadian Debtor"), as well as Hornblower Canadian Holdings, Inc. and Hornblower Cruises and Events, Inc. (collectively, the "U.S.

Debtors", and together with the Canadian Debtors, the "Debtors"), under Chapter 11 of Title 11 ("Chapter 11") of the United States Code (the "U.S. Code").

[3] Hornblower Group seeks an Order (the "Second Supplemental Order"), recognizing and enforcing, pursuant to s. 49 of the *Companies' Creditors Arrangement Act* ("CCAA"), certain U.S. Orders (as defined below), granted by the United States Bankruptcy Court for the Southern District of Texas (the "U.S. Bankruptcy Court").

[4] There was no opposition to the motion.

[5] The Foreign Representative submits that recognition of certain U.S. orders (as defined below) are essential to facilitate the Chapter 11 Debtors' restructuring efforts in the Chapter 11 Cases and will allow the Canadian Business to continue operations, thus maximizing value for all stakeholders, including those of the Canadian Debtors.

[6] Certain background facts are set out in previous endorsements, 2024 ONSC 1094 (the "Hornblower February 21 Endorsement") and 2024 ONSC 1209 ("Hornblower February 29 Endorsement") and are not replicated here.

[7] On February 28, 2024, the U.S. Bankruptcy Court entered the Bidding Procedures Order, which sets out the procedures pursuant to which the Chapter 11 Debtors will seek bids for the sale of or sales of assets belonging to their American Queen Voyages business (the "AQV Business").

[8] On March 22, 2024, the Final Cash Management Order was entered. On March 25, 2024, a further hearing was held before His Honor Judge Isgur at which the Chapter 11 Debtors sought the Final DIP Order (the Final Cash Management Order and the Final DIP Order shall hereinafter be referred to as the "Final First Day Orders").

[9] The Foreign Representative now seeks the Second Supplemental Order recognizing and enforcing in Canada the Final First Day Orders and the Bidding Procedures Order (together with the Final First Day Orders, the "U.S. Orders").

[10] The Foreign Representative submits that the Final DIP Order is substantially similar to the Interim DIP Order recognized by this Court pursuant to the Supplemental Order.

[11] The Foreign Representative submits that recognition of the Final DIP Order in Canada will provide the Chapter 11 Debtors with access up to $585 million of liquidity that will refinance certain prepetition credit facilities and fund the Chapter 11 cases, these recognition proceedings and the Chapter 11 Debtors' efforts to effect a sale of and/or wind-down of the AQV Business. Accordingly, this Court's recognition of the Final DIP Order is required to facilitate the Chapter 11 Debtors' restructuring efforts.

[12] The Final Cash Management Order includes the same material terms as the Interim Cash Management Order recognized by this Court pursuant to the Supplemental Order.

[13] The Bidding Procedures Order:

(a) authorizes and approves the bidding procedures attached as Exhibit 1 to the Bidding Procedures Order (the "Bidding Procedures"), which set forth the process by which the Chapter 11 Debtors are authorized to conduct a marketing and sale process for the sale or sales (each, a "Sale") of all or substantially all of the assets belonging to the AQV Business (the "AQV Assets") and enter into agreement in respect of such sale (each a "Sale Transaction");

(b) authorizes the Chapter 11 Debtors to select one or more Qualified Bidders to act as stalking horse bides in connection with any sale transaction (each, a "Stalking Horse Bidder") and enter into a purchase agreement with such Stalking Horse Bidder (each such agreement, a "Stalking Horse Agreement");

(c) in connection with any Stalking Horse Agreement, authorizes the Chapter 11 Debtors to agree to the Bid Protections;

(d) authorizes the Chapter 11 Debtors to solicit bids and conduct an Auction, if necessary, on the terms set forth in the Bidding Procedures;

(e) authorizes the Assumption and Assignment Procedures by which Chapter 11 Debtors will notify any counterparties to any agreements with the AQV Debtors of proposed Cure Amounts in the event that the Contract is determined to be in default, and to assume and assign such Contracts in connection with any Sale Transaction; and

(f) authorizes the AQV Asset Wind-Down Procedures by which the Chapter 11 Debtors may dispose of any remaining AQV Assets.

[14] The issue for determination is whether the Court should grant the Second Supplemental Order recognizing the U.S. Orders described above in Canada pursuant to s. 49 of the CCAA and providing for certain other related relief.

[15] Hornblower submits that it is necessary and appropriate for this Court to grant the relief sought to facilitate the Chapter 11 Debtors' restructuring efforts in the Chapter 11 Cases, as this will permit the Canadian Business to continue operations, thus maximizing value for all stakeholders.

[16] For the reasons set out in the Hornblower February 29, 2024 Endorsement, the Court has jurisdiction to grant the Second Supplemental Order.

[17] In considering whether to recognize a foreign order, including an order made in a Chapter 11 proceeding, the Court should consider, among other things:

(a) the principles of comity and the need to encourage cooperation between courts of various jurisdictions;

(b) the need to respect foreign bankruptcy and insolvency legislation;

(c) the equitable treatment of stakeholders regardless of the jurisdiction in which they reside; and

(d) that the appropriate level of court involvement depends to a significant degree upon the court's nexus to the enterprise.

(See: *Xerium Technologies Inc., Re*, 2010 ONSC 3974 at paras. 26-27)

[18] The Foreign Representative submits that consideration of these factors supports this Court's recognition of the U.S. Orders pursuant to the Second Supplemental Order.

[19] The Information Officer supports the granting of the requested relief.

[20] I accept the submissions of the Foreign Representative and for the reasons set out in the Affidavit of Jonathan Hickman, dated March 24, 2024 as summarized in the factum, the requested relief is, in my view, appropriate.

[21] The motion is granted and the Order has been signed.

C.J.

Chief Justice Geoffrey B. Morawetz

Date: March 28, 2024

Appendix 7

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CAPT MATTHEW FLINDERS

The 587 passenger CAPT MATTHEW FLINDERS is an eye-catcher. The yacht offers a mega yacht style and wonderful viewing and accommodations for passengers.

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CAPT MATTHEW FLINDERS Details:

- 42.28m LOA
- 10.67m Beam

- Year Built: 1984
- 12-cylinder four stroke turbo charged 720 HP @ 1800 RPM Caterpillar 3412E marine diesel engines.
- Well Equipped Galley & Beverage Bars on Each Deck
- View more details here

The vessel is arranged with passenger boarding on the main deck aft of amidships port. The main deck is arranged with the dance floor, stage and entertainment center forward, dining aft of the dance floor, the servery starboard aft of amidships, a buffet along centerline with a beverage bar aft and fully aft are the with a male & female heads. A stairway serving the main and 01 decks is located port and starboard of the main deck beverage bar. The 01 deck is arranged with an entertainment center, stage and dance floor forward, open dining aft of the dance floor, the servery amidships starboard with the beverage bar on port aft of amidships, a male and female head fully aft. The 01 deck offers open air passage around the vessel. The 02 or Bridge Deck offers open air seating and access to the wheelhouse with a stairway aft on port and starboard providing access between the 01 and 02 decks.

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Appendix 8

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RO/PAX Ferries
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Accommodation
Vessels SuperYachts**

SALE & CHARTER

***We also specialize in providing vessels for:
TV & Motion Picture Filming
Events & Corporate Meetings
Disaster Housing
Construction Housing***

Built 1984 - Tour/Dinner Yacht - Stock No. S2698

Year Built: **1984**
Stock No. **S2698**

Estimated Sale Price: ***US$ 1,000,000***
Price: ***Negotiable***
Available For: ***Sale***
Current Location: ***Kingston, Ontario, Canada***

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Tour/Dinner/Passenger Yacht – FOR SALE
SHIPS SPECIFICATIONS – STOCK NO.: S2698

General Specifications:
Description: 42.28m Passenger Yacht
Date Launched: 1984
Length: 42.28m (138ft 8in)
Beam: 10.67m (35ft)
Draft: 2.02m (6ft 7in)
Note: 1x Caterpillar Engine
Location: Kingston Ontario
Price US$ 1 million (negotiable)
Price Notes: She is in good operational condition. The yacht offers a mega yacht style and wonderful viewing and accommodations for passengers.
Style: Yacht
Builder: North Arm Slipway Pty, Ltd
Hull: Displacement
Transport Canada Certified: Yes
Transport Canada Dry Dock: 2017
Passenger Capacity: 587
Dining Cap: 250
Gross Tonnage: 745.73
Net Tonnage: 522.95
Maximum Speed:10 knots @ 1800 RPM
Built: 1984
LOA: 42.28 meters
Beam: 10.67 meters
Hull Depth: 4.6 meters
Freeboard: 4.03'
Draft
Water: 2.02 meters fwd. 2.41 meters aft,
Air: 11.28 meters
Route Certification: Sheltered Waters
Hull Material: Steel
Deckhouse Material: Steel

Tank Capacities:
Fuel: 14,480 liters
Waste: 10,570 liters
Potable Water: 19,900 liters

Accommodation and Layout:
The vessel is arranged with passenger boarding on the main deck aft of amidships port. The main deck is arranged with a dance floor, stage, and entertainment center forward, dining aft of the dance floor, the server starboard aft of amidships, a buffet along centerline with a beverage bar aft with a male and female heads fully aft. A stairway serving the main and 01 decks is located port and starboard of the main deck beverage bar. The 01 deck is arranged with an entertainment center, stage and dance floor forward, opening ding aft of the dance floor, a server amidships starboard with the beverage bar on port aft of amidships, a male and female head fully aft. The 01 deck offers open air passage around the vessel. The 02 or Bridge Deck offers open air seating and access to the wheelhouse with a stairway aft on port and starboard providing access between the 01 and 02 decks.

Wheelhouse:
Control station with engine instrumentation (i.e., tachometer, engine oil pressure, ammeters, hour meters, high water bilge alarm)
Pneumatic clutch and throttle controls
Sperry Vickers 75 LT power steering system
Port and starboard wing controls2 of 5
Fog bell
Tyfon model 12526 trumpet horn
M15 Francis lever controlled searchlight
Robertson A.S. Panorama rudder indicator
Windshield wiper
Helm seat
Shipmate model RS 8000 VHF/FM marine radio with antenna
ICOM model IC-M601 VHF/FM marine radio with antenna
Furuno GaAs FET radar system
DWL public address system
Nortel Norstar 3 x 8 intercom system
Tokyo Keiki PK 182-TN magnetic compass with lighted binnacle
John Lilley & Gillie Ltd magnetic compass with lighted binnacle

Galley (Below Deck):
Stainless steel prep tables
Stainless steel three partition sink

Stainless steel single partition sink
Walfdorf combination deep fryer
Salamander
Two Blodgett model Mack V convection ovens
Garland Range
Three Henny Penney heating & holding ovens
Waldorf hot plate
Garland oven hot plate
3 Blodgett Mark V warming ovens
Jackson Industrial dishwasher
Exhaust fan
Walk-in cooler
Hoshizaki model 1300 SAF ice machine
Mannesmann Demag model PK10 dumbwaiter

Salon (Main Deck):
10 tables (24" x 24')
15 tables (48" x 24')
15 tables (96" x 24')
150 interior dining chairs (stacking)
Recessed lighting
Dance floor with LED lighting
Overhead projector screen
DJ Center (Three QSC model 300V amplifiers, two Yorkville model AP4040 subwoofer amplifiers
Xantrex model HF1800 power conditioner
2 Yorkville model AP2020 speaker amplifiers
Symetrix Jupiter 8 controller
2 Compact disc players
2 Yorkville model LS608B subwoofers
4 Yorkville model E15 speakers
54 x 70 volt speakers
12 x 70 volt speakers (outdoor)

Beverage Bar (Main Deck):
Quartz top
Three partition stainless steel sink
Two stainless steel cocktail stations with two soda guns
Two coolers
Walk-in cooler (secure beverage storage)
True model TD-36-12-S cooler3 of 5
18' stainless steel speed rails
Hobart glass washer

Servery (Main Deck):
Stainless steel sink
Coffee machine
Cabinetry
Mannesmann Demag model PK10 dumbwaiter
POS system

Salon (01 Deck):
10 tables (24" x 24')
15 tables (48" x 24')
15 tables (96" x 24')
100 interior dining chairs (stacking)
Recessed lighting
Dance floor
Wait station (Bunn coffee machine, hot and cold stainless steel buffet)

Beverage Bar (01 Deck):
Quartz top with Tasmanian Myrtle hardwood
Three partition stainless steel sink
Refrigerator
18' stainless steel speed rail
Hobart glass washer

Servery (01 Deck):
Stainless steel sink
Coffee machine
Cabinetry
Mannesmann Demag model PK10 dumbwaiter

Electrical System:
Ship service 170.0 kW generator powered by a powered by a Caterpillar 3306 6-cylinder marine diesel engine with fuel liter, heat exchanger cooled - engine hours: 41,225 December 2020
Ship service 104.0 kW generator powered by a powered by a Detroit Diesel model 671 6-cylinder marine diesel

engine with fuel liter, heat exchanger cooled - engine hours: 12,600 December 2020
Ship to shore power switch
200 AMP/ 208 VAC shore power service
75 kVa 208 – 416 isolation transformer
240 VAC exterior and interior perimeter lighting
24 VDC lighting
240 VDC interior LED lighting
120 VAC/12 VDC lighting
120 VAC duplex outlets
3 12 VDC 8D enclosed heavy duty batteries
Two battery isolation switch4 of 5
Automatic 40 amp battery charger with DC meter
24 ton water cooled reverse cycle heat pump system with two stage
electric heat stations
Internationally approved navigation lights (i.e., port light, starboard light,
stern light, masthead light, anchor light)
Long & McQuade sound system

Hull, Superstructure and Decks:
3/8" steel plate hull
5/16" steel plate deckhouse
Insulated deckhouse
Seven compartments formed by six transverse bulkheads
8" fan nosed rub rail
Boarding gates: two amidships on the main deck
Eight 20" kevels, three steel Sampson posts

Deck fittings:
Electrical: Amidships port
Waste: Amidships port
Water: Amidships port/star
Fuel: Amidships port/star

Mechanical Equipment and Engine Details:
Single 12-cylinder four stroke turbo charged 720 HP @ 1800 RPM
Caterpillar 3412E marine diesel engines, fuel liters, seawater strainers with seacocks
Engine Hours: 4,400 - December 2020
Johnson keel cooling system
ZF model ZFW 2400 direct reverse transmission
4" stainless steel propeller shaft
1.57 m x 1.57 m pitch four blade bronze propeller
Marco model T-80 80 hp hydraulically driven thruster – bow
Marco model T-80 80 hp hydraulically driven thruster – stern
Engine room insulation
80 gallon 6 kW 416 VAC water heater
Ocean Breeze 20 ton air conditioning system
Moving Cool model Classic Plus 26 portable air conditioning unit
Slant & Finn model 50 XP 248,000 BTU boiler system
DEMAG fitted stores crane with hoist (500 kg.)

Heads:
The vessel is equipped with four heads (two on the main deck and two on the 01
deck) and each contains:
Female head (main deck) contains four partitioned toilets, two sinks; (01 deck contains two partitioned toilets, one
sink
Male head contains one partitioned toilet, one urinal, one stainless steel
Aussie style urinal, one sink5 of 5
All heads are equipped with electric hand dryers

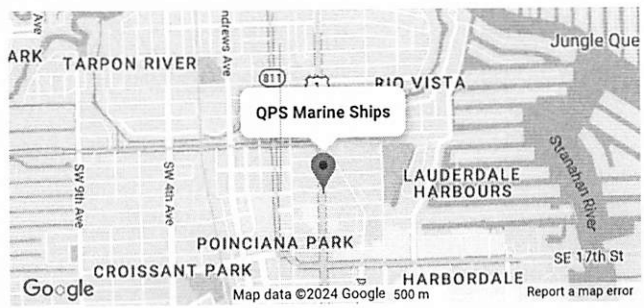
Safety Equipment:
600 adult Transport Canada approved personal otation devices
60 child Transport Canada approved personal otation devices
8 life rings
8 75 person life rafts
1 20 person life raft
ABC re extinguishers throughout the Vessel
Pyrotechnic distress signals
5 re stations including: UL approved rubber lined hoses with brass or bronze fittings, brass or bronze nozzles, brass
or bronze hose bibs.
Fire axes
Hydraulically driven windless powered by a PTO from main generator engine
Two uke style anchors with chain and line
10' Zodiac steal rescue craft outfitted with a 25 hp Evinrude outboard motor with a manually operated davit

Finish:
Exterior coating: High Gloss

Exterior decks: nonskid
Interior decks
Salon: Carpeting (wool)
Heads: Ceramic
Galley: Epoxy
Bar: Aztec
Wheelhouse: Carpet
Headliner: Vinyl
Interior Bulkheads:
Salon: Vinyl
Heads: Ceramic
Galley: Epoxy
ADDITIONAL COMMENTS:

QPS Marine Ships
1400 South Federal Highway
Fort Lauderdale, FL 33316 USA
Sales Phone: +1-954-361-6661
Main Office: +1-954-842-4108
Fax: +1-954-926-5249
Sales Email: sales@qpsships.com
Skype: +1-516-570-3498
WhatsApp: +1-516-647-5129

QPS MARINE SHIPS



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Procedure For Purchasing A Ship

Court File No.: CV-24-00715202-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF HORNBLOWER CRUISES AND EVENTS CANADA LTD., HORNBLOWER CANADA ENTERTAINMENT LIMITED, HORNBLOWER CANADA CO., HORNBLOWER CANADIAN HOLDINGS, INC. AND HORNBLOWER CRUISES AND EVENTS, INC.

APPLICATION OF HORNBLOWER GROUP, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

SECOND REPORT OF GRANT THORNTON LIMITED AS INFORMATION OFFICER

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