

2022 01G 1964
SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, (the "**CCAA**")

AND IN THE MATTER an application of Edward Collins Contracting Ltd., Classic Security Limited, FGC Holdings Limited, 51037 Newfoundland and Labrador Inc. and H&E Designs Ltd. (collectively, "**ECCL**" or the "**Company**")

AFFIDAVIT

SUMMARY OF CURRENT DOCUMENT	
Court File Number:	2022 01G 1964
Date of Filing Document:	December 9, 2022
Name of Party Filing or Person:	Royal Bank of Canada
Application to which Document being filed relates:	Application by the Company for a stay of proceedings and other relief pursuant to the CCAA
Statement of Purpose in filing:	To express Royal Bank of Canada's objections and concerns regarding extension of CCAA proceedings
Court Sub-File Number, if any:	

AFFIDAVIT

I, David Savoie, of the City of Halifax, in the Province of Nova Scotia, Business Specialist, make oath and say as follows:

1. That I am a Senior Manager, Special Loans and Advisory Services with the Royal Bank of Canada ("**RBC**" or the "**Bank**"), the applicant herein, and file this affidavit to ground the subject application.

2. I have worked in RBC's Special Loans group for 6 years. I have personal knowledge of the matters hereinafter deposed to, except where otherwise stated, and in such cases I do verily believe the truth of the matters deposed to. I am authorized by RBC to make this affidavit and have reviewed RBC's business records that relate to this matter. In addition, I have reviewed all reports filed by Grant Thornton, acting in its capacity as the Court appointed Monitor (the "**Monitor**") within these proceedings.
3. The Bank has retained the services of Ernst & Young Inc. (the "**Financial Advisor**") and Stewart McKelvey (the "**Legal Advisor**") to assist the Bank with its analysis and understanding of the Company's and the Monitor's reporting, including but not limited to the Monitor's Second Report dated November 17, 2022 (the "**Second Report**").
4. The Bank continues to have significant concerns with respect to these CCAA proceedings, including but not limited to the Company's progress with respect to securing a re-financing through Traveler's necessary for the Company to emerge from CCAA protection, the transparency of information presented to the Bank and to the Court and the focus of the Company's and their legal counsel since the stay of proceedings (the "**Stay Period**") was granted.

Traveler's Refinancing

5. The Monitor provides comments with respect to the Company's efforts to secure the Traveler's refinancing at paragraphs 54 – 56 of the Second Report, including due diligence updates (at Appendix "L") and an updated funding gap calculation now at \$335,349.00 (included at Appendix "M"). The Company's efforts with respect to advancing the Traveler's refinancing appears however to be limited to:
 - (a) finalizing the CRA trust exam;
 - (b) completing real estate appraisals on two properties;
 - (c) commissioning a real estate appraisal on a third property;
 - (d) completing a Phase 1 environmental report on one property; and
 - (e) making arrangements to secure external financial accounting support.
6. The Bank understood that one of, if not the primary reason for the Stay Period, was to provide the Company with adequate time to secure its proposed refinancing. Commentary

within the Second Report provides no direction on whether a refinancing will or will not materialize or guidance on anticipated timelines. The Bank anticipated the Company's would have used the current Stay Period to significantly advance its refinancing efforts which does not appear to have materialized.

7. The Monitor within his Reply (as defined below) suggests a decision from Travelers is unlikely to be made prior to February 28, 2023. The Monitor also provides additional comments within the Reply in relation to the funding gap which are simply heads of calculations. The Monitor and the Company have not demonstrated an ability to achieve their desired outcome and the Bank remains concerned whether the Travelers refinancing will be secured even if additional time is granted to the Company.
8. In the event, a further short extension of the Stay Period is granted by this Honourable Court, the Bank believes it is imperative that the Company produce amended correspondence from Travelers confirming the status of its position on the refinancing, its anticipated timelines and a listing of the outstanding condition precedents associated with a refinancing decision.

Information Transparency

9. The Initial Order of this Court filed October 5, 2022 (the "**Initial Order**") and the Amended and Restated Initial Order dated October 17, 2022 (the "**ARIO**") contain almost identical provisions on the following matters:
 - (a) Reporting and Responding to Information Requests – s. 20 of Initial Order and s. 21(c) and 24 of ARIO set out the method of requesting information and the Monitor's duty to respond to such requests;
 - (b) Independent Legal Counsel – s. 1g7(f) of Initial Order and s. 21(f) of ARIO permit the Monitor to retain independent legal counsel; and
 - (c) Directions – s. 29 of Initial Order and s. 33 of ARIO allow the Monitor to seek directions, if necessary.
10. The Financial Advisor on behalf of the Bank posed several questions to the Monitor in relation to the administration and the Second Report specifically. Attached as **Appendix "A"** are copies of e-mails dated November 1, 7, 27 and December 2, 2022 outlining the questions posed and follow up efforts made to obtain responses to same. The emails are

legitimate requests made by the Financial Advisor on behalf of the Bank to the Monitor which have not been fully addressed notwithstanding the ARIO. Attached as **Appendix “B” and “C”** are the partial responses (collectively, the **“Reply”**) provided by the Monitor, both received on December 7, 2022.

11. The Bank is concerned that the Monitor has elected not to engage its own independent legal counsel to assist with these complex and contested proceedings. Discussions between Monitor’s Counsel (if engaged) and the Legal Advisor may assist the parties to navigate challenging issues. The Bank is concerned that the Monitor appears to be relying upon Company counsel for legal assistance. In this specific administration, the Bank believes it is imperative the Monitor retain independent legal counsel to assist the Monitor to carry out its duties including seeking directions of the Court, if necessary.
12. As noted within Appendix A, there are a number of matters raised with the Monitor which are of concern to the Bank. The Bank sought clarification from the Monitor on what can only be described as unusual transactions facilitated by the Company and or funding arrangements agreed to but not acted upon, including but not limited to the following:

- (a) Edwards Collins Contracting Limited (**“Edwards”**) payroll appears to have been processed through Classic Security Limited (**“Classic”**) from May 1, 2022 through July 20, 2022. The Bank has requested confirmation as to the reasoning behind how and why these payrolls were processed and the implications, if any, between the different legal entities.

The Monitor’s Reply suggests that “It is my (the Monitor’s) understanding that Classic is inactive, however at points in the past operated as a flow through entity for labour”. The Monitor goes on to state that “I (the Monitor) do believe the Company is acting in good faith and with due diligence within (t)he CCAA proceeding”;

- (b) The Monitor notes at paragraph 18 of the Second Report that life insurance proceeds (subject to RBC security) of \$515,510.00 have been collected. Management had previously committed to allocating approximately 50% of the proceeds, \$250,000.00, to address the Travelers financing gap. To date, the Company has refused to comply with the Monitor’s specific request to hold the allocated proceeds in trust.

The Monitor advises within its Reply, that this issue, on its own, does not constitute a material adverse change. However, the Bank respectfully submits that the Company's disregard of the Monitor's request and disregard of its previous agreement to the Bank is a matter of concern that should be addressed by the Court.

The Company's position with respect to these proceeds appears to be contrary to the Monitor's comments in paragraph 21 of the Second Report that "the Company continues to act in good faith and with due diligence in these proceedings".

As at 8 December 2022, Edwards had \$67,501.00 within its RBC operating account after receiving the \$515,510.00 of insurance proceeds noted above. As such, despite its undertakings, the Company has eroded an additional \$448,000.00 of the Bank's security as the insurance proceeds have been cannibalized through on-going operating losses.

- (c) The internal Edwards income statement for the three (3) month period August 1, 2022 through October 31, 2022, on its face, suggests the company generated positive net income of \$338,320.00 for that period. However, the Monitor notes that balance apparently includes insurance proceeds of \$515,510.00 (presumably as revenue). Removing that item, materially reduces the reported revenues from continuing operations and indicates the company sustained an operating loss of approximately \$176,650.00 for the period. This result is consistent with prior patterns of operating losses previously noted by this Honourable Court.
- (d) The Monitor identified one piece of leased equipment which had not previously been included on the Ritchie Bros appraisal listing. The Bank sought clarification if there might be other equipment also not reported that should be considered within the global restructuring process. The Bank continues to wait for a response from the Monitor;
- (e) The Financial Advisor, on behalf of the Bank, has sought clarification from the Monitor in relation to a post filing WCB payment plan. The quantum of the outstanding indebtedness has not been disclosed nor has the repayment terms. Furthermore, given the Initial Order was issued October 5, 2022, the Bank has sought an explanation as to how WCB debts could be an issue for the Company

subsequent to the date of the Initial Order. The Bank continues to wait for a response from the Monitor; and

- (f) Restructuring fees for the eight week period ending November 11, 2022 total \$79,833.00 (approximately \$10,000.00 per week or approximately 20 - 25 chargeable hours of professional time per week). As noted above, these are complex and contested proceedings and as noted below, the Company has advanced significant litigation against various parties. The Bank has concerns that that the total professional costs of the Monitor and Company counsel have not been reflected within the cash flow statement as filed. The Bank continues to wait for a response from the Monitor.

Project Litigation

- 13. The Monitor outlines at paragraph 53 of the Second Report a summary of nine (9) separate project litigations which the Company has reportedly expended extensive effort on. An analysis of the litigation has not been produced nor has a litigation budget been prepared. The Bank is concerned that the Company is more focused on project litigation than concluding the Travelers refinancing which the Bank respectfully submits should be the Company's primary focus at the current time.

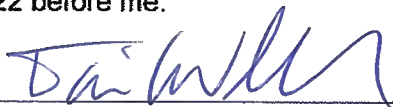
Summary and Conclusion

- 14. The Bank is disappointed with the progress made to date with respect to the refinancing and to the level of cooperation and lack of timely responses to reasonable questions of the Monitor. Accordingly, the Bank submits that in the event the Court believes it is justified to grant an extension to the Stay Period, such extension should be short in duration and definitive conditions on the Company and the Monitor should be imposed as follows:
 - (i) The Company be directed to deposit \$250,000.00 with the Monitor which shall be held in trust pending further order of this Court;
 - (ii) Prior to the next come back hearing, the Company is directed to obtain a letter from Travelers outlining the status of its refinancing proposal including terms, timeline for financing and clear conditions precedent; and

- (iii) The Court appointed Monitor should be directed to engage independent legal counsel and both the Monitor and its counsel should be directed to respond promptly to all reasonable information requests from the senior secured lenders.

15. I make this Affidavit as an aid to the Court to outline RBC's concerns with respect to the limited progress made by the Company since the ARIO was issued. In the event, this Honourable Court elects to grant the Company a further extension, RBC respectfully submits that any extension should be short in duration and that the Company and the Monitor be directed to provide timely responses to all reasonable requests from the Bank and or its professional advisors on its behalf.

SWORN TO at Halifax, in the Province of
Nova Scotia, the 9th day of December,
2022 before me:



Barrister, Notary Public or Commissioner
for Oaths
[affix seal or stamp]

R. DAVID WEDLAKE
A Barrister & Solicitor for the
Province of Nova Scotia



DAVID SAVOIE

This is Exhibit "A" referred to in the
Affidavit of David Savoie sworn or
affirmed before me this 9th day
of December, 2022.



Barrister, Notary Public or Commissioner
for Oaths
[affix seal or stamp]

R. DAVID WEDLAKE
A Barrister & Solicitor for the
Province of Nova Scotia

Neil L. Jacobs

From: Steve McLaughlin <Steven.J.McLaughlin@parthenon.ey.com>
Sent: Tuesday, November 1, 2022 12:00 PM
To: Savoie, David; Neil L. Jacobs
Subject: FW: ECC - Disclaimer of CWB Lease iin FGC

This is an external email.

David and Neil – my email to Phil is below. Thank you.



Steven J McLaughlin, CPA, CA, CIRP, LIT, CBV
Partner & Senior Vice President | Strategy and Transactions

Ernst & Young Inc.
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Benjamin Place, 11 Englehart Street, Suite 200, Dieppe, E1A 7Y7, Canada
Office: 506 388 7762 | Cell: 506 232 0164 | Steven.J.McLaughlin@parthenon.ey.com
Website: www.ey.com
Johna Thompson | Phone: 709-570-8217 | Johna.thompson@ca.ey.com

From: Steve McLaughlin
Sent: Tuesday, November 1, 2022 11:30 AM
To: 'Clarke, Phil' <Phil.Clarke@ca.gt.com>
Subject: RE: ECC - Disclaimer of CWB Lease iin FGC

Phil,

Thanks for this. I have a few questions for you:

1. Lease agreement signature – It would appear this lease was only signed on 22 September 2022? Perhaps I am misunderstanding the documents, however that is the only signature that I see that is dated? Was there another document where the lease was entered into and the 22 September 2022 reflects acceptance of delivery? Was CWB advised of the Stay of Proceeding when they delivered the equipment?
2. Lease payments – Were any lease payments made on this equipment?
3. FMV of the equipment – Based on the lease, it would appear that FMV of the equipment (subject to time value of money / finance costs) is in the realm of \$340,000 (72 months * \$4,732.98) given the bargain purchase option with an insurance value of \$273,138 based on page 5 of the lease. As a result, there is a material discrepancy between the FMV and insurance value and Castle Appraisals FMV which I don't understand.
4. Richie Bros Appraisal – It was understood by RBC that the ECCL Group was appraising ALL equipment without exclusion – we are surprised to hear of this additional equipment irrelevant of whether there is equity or not. Is there other equipment that the ECCL Group has not appraised or advised the Court of?

A few other questions:

1. HASCAP Loan – Has there been any progress here?
2. CRA Reporting – I recall there being a reporting requirement to Court within 7 days of receipt of the CRA audit results – the purpose of the 7 days was for the Company and Monitor to reconcile any differences between CRA's audit results and Company's records – what is timing of that report to Court?

Please let me know if you would like to discuss. It may be appropriate to connect for a call later this week on overall update if you had 30 minutes or so – Thursday morning would work if convenient for you.

Thank you.



Steven J McLaughlin, CPA, CA, CIRP, LIT, CBV

Partner & Senior Vice President | Strategy and Transactions

Ernst & Young Inc.

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Website: www.ey.com

Johna Thompson | Phone: 709-570-8217 | Johna.thompson@ca.ey.com

From: Clarke, Phil <Phil.Clarke@ca.gt.com>

Sent: Monday, October 31, 2022 1:17 PM

To: Dupré, Sophie <Sophie.Dupre@justice.gc.ca>; Neil Jacobs (<njacobs@stewartmckelvey.com>
<njacobs@stewartmckelvey.com>); Steve McLaughlin <Steven.J.McLaughlin@parthenon.ey.com>

Cc: maeve.baird@justice.gc.ca; darren@okeefeandcompany.com

Subject: ECC - Disclaimer of CWB Lease in FGC

All:

FGC intends to disclaim a lease with CWB. The lease is attached.

CWB has advised the payout is \$343,378. Castle Appraisal has estimated the item is in the range of \$70k to \$90k (email desktop). In the RB appraisal there is a 2012 350G on the appraisal for \$75,000 OLV. There's a couple 2016 290G excavators for around \$150k.

None of their excavators were appraised anywhere near \$200 k or more.

This item was not on the RB list of assets. The company has advised it always intended to return the equipment on this lease, hence it was never included on the Ritchie's appraisal.

The Company does not require the machine and does not intend to pay the lease, therefore is requesting the lease be disclaimed. The Monitor is supportive of the disclaimer.

If you have any questions or concerns, please do not hesitate to contact me.

A copy of the lease, the proposed disclaimer and the email estimate of value is attached.

Cheers,

Phil Clarke | Partner

Grant Thornton LLP

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Neil L. Jacobs

From: Steve McLaughlin <Steven.J.McLaughlin@parthenon.ey.com>
Sent: Monday, November 7, 2022 12:39 PM
To: Savoie, David; Neil L. Jacobs
Subject: FW: ECC - Disclaimer of CWB Lease iin FGC

This is an external email.

David and Neil,

I have not got a response to my email, so followed up below.

Thanks.



Steven J McLaughlin, CPA, CA, CIRP, LIT, CBV
Partner & Senior Vice President | Strategy and Transactions

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Website: www.ey.com
Johna Thompson | Phone: 709-570-8217 | Johna.thompson@ca.ey.com

From: Steve McLaughlin
Sent: Monday, November 7, 2022 12:09 PM
To: 'Clarke, Phil' <Phil.Clarke@ca.gt.com>
Subject: RE: ECC - Disclaimer of CWB Lease iin FGC

Phil,

Just touching base on this.

Thank you.



Steven J McLaughlin, CPA, CA, CIRP, LIT, CBV
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Website: www.ey.com

Johna Thompson | Phone: 709-570-8217 | Johna.thompson@ca.ey.com

From: Clarke, Phil <Phil.Clarke@ca.gt.com>

Sent: Monday, October 31, 2022 1:17 PM

To: Dupré, Sophie <Sophie.Dupre@justice.gc.ca>; Neil Jacobs (njacobs@stewartmckelvey.com)
<njacobs@stewartmckelvey.com>; Steve McLaughlin <Steven.J.McLaughlin@parthenon.ey.com>

Cc: maeve.baird@justice.gc.ca; darren@okeefeandcompany.com

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If you have any questions or concerns, please do not hesitate to contact me.

A copy of the lease, the proposed disclaimer and the email estimate of value is attached.

Cheers,

Phil Clarke | Partner

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Neil L. Jacobs

From: Steve McLaughlin <Steven.J.McLaughlin@parthenon.ey.com>
Sent: Sunday, November 27, 2022 4:23 PM
To: Savoie, David; Neil L. Jacobs
Subject: FW: ECCL et al - Second Report
Attachments: RE: ECC - Disclaimer of CWB Lease iin FGC

This is an external email.

David and Neil,

Please see below – I believe this captures the primary matters in enough detail.

I will advise if/when I receive a response.

Thank you.



Steven J McLaughlin, CPA, CA, CIRP, LIT, CBV
Partner & Senior Vice President | Strategy and Transactions

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Website: www.ey.com
Johna Thompson | Phone: 709-570-8217 | Johna.thompson@ca.ey.com

From: Steve McLaughlin
Sent: Sunday, November 27, 2022 3:52 PM
To: 'Clarke, Phil' <Phil.Clarke@ca.gt.com>
Subject: ECCL et al - Second Report

Phil,

The Bank and its advisors have reviewed the Second Monitor's Report – the primary issues are as follows:

1. There is no clarity on when the Company intends to be in a position to close the Travellers financing -- not even a suggestion of a date in the Report. Furthermore, there is no list of outstanding items with expected completion dates for what is remaining or process overview. Has Travellers financing been approved by Travellers credit committee at this stage?
2. There is still no plan on how the Company intends to "close the financing gap". There has been a known financing gap for at least 3 months. Does the Company have a plan to address the gap at this stage? Any resolution or steps to resolve HASCAP loan? Have you or the Company requested professional fees of RBC or any other secured lender? Have you or the Company requested amounts due by secured creditor as at the CCAA filing?
3. It is not clear what assets are proposed to be sold, what asset are included in the Traveller's financing, what assets are disclaimed – please provide current summary of each category of assets, anticipated realizations and funding gap regards to Travellers financing.

4. The Company indicated that the insurance proceeds would be used 50% for operating cash flow, if required, and 50% would be held for use solely to close the financing gap. This was indicated in the Pre-Filing Monitor's Report. The Company is not holding \$250,000 (50% of the life insurance proceeds) in trust – why? Is this a material adverse change?

Please see below some questions regards to the Monitor's Second Report:

- Para 14 – What are the incremental costs of the accounting services? Are these \$27,975 in total as reflected in Appendix A of the Cash Flow described as "Professional fees" (as referred to in Note 6)?
- Para 15 – Has the Company determined its future operating model? If not, it will be difficult to do a projection as required for Travellers.
- Para 15a – Travellers required a financial projection for Fiscal 2023 since the initial discussion paper dated 8 June 2022. Based on the Second Monitor's report it appears that this is not complete. Does the Company intend to complete this? If so, when? What is the cause for delay to this point? It has been more than 5 months.
- Para 18 - As noted above, the Company indicated that the insurance proceeds would be used 50% for operating cash flow, if required, and 50% would be held for use solely to close the financing gap. This was indicated in the Pre-Filing Monitor's Supplemental Report in para 20b. What are the Monitor's steps to remedy this? Does the Monitor view this as a material adverse change – this is a \$250,000 issue?
- Para 38 – What are the Monitor's procedures regards to monitoring cash flow? How was a \$123K payment not identified – particularly, given it is regards to a payment to CRA?
- Para 39/40 – It has been represented on numerous occasions that Classic is not operating and has not been operating for some time – many months prior to May 1, 2022. Are these employees of ECCL who are being paid through Classic? If so, why was ECCL payroll processed through Classic? Is this appropriate reporting to CRA? If not, is the Company operating in good faith and with due diligence?
- Para 38 – 40 – Please let me know when you can discuss – these paragraphs are not clear.
- Para 49 – How much is due to WCB NL and what are the specifics of the payment plan? Isn't WCB NL stayed pursuant to the CCAA? Why would the Company be making post-filing payments regards to pre-filing debts? Is this consistent with the ARIO?
- Para 50 - Please let me know when you can discuss the cash flow variances – not clear to me whether timing or permanent. It appears as the Company continues to struggle when you normalize for opening AR receipts not anticipated for collection – appears to be consistent with the \$100K monthly net losses the Company was experiencing pre-filing.
- Para 51 – Please confirm all professional fees are being paid by Company's subject to the CCAA proceeding. If not, please advise who or what entity is funding the professional fees. Please confirm no professional fees regards to these CCAA proceedings are being funded by Universal which, as you know, is a guarantor of RBC debts in ECCL.
- Para 53 – What steps has the Monitor taken regards to the cost benefit of the nine (9) ongoing legal matters? Are all legal fees paid up to date? Are their legal arrears that must be caught up?

Other matters:

- Please see attached email. This was sent to you on 1 November 2022 without response – please advise. Is there other equipment that was not disclosed by the Company and appraised by Ritchie's?

Please advise when you are available to discuss the few items highlighted for discussion. Please provide a response by Wednesday (November 30) regards to the other inquiries.

Thank you.



Steven J McLaughlin, CPA, CA, CIRP, LIT, CBV

Partner & Senior Vice President | Strategy and Transactions

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Neil L. Jacobs

From: Steve McLaughlin <Steven.J.McLaughlin@parthenon.ey.com>
Sent: Friday, December 2, 2022 10:30 AM
To: Savoie, David; Neil L. Jacobs
Subject: FW: ECCL et al - Second Report

This is an external email.



Steven J McLaughlin, CPA, CA, CIRP, LIT, CBV
Partner & Senior Vice President | Strategy and Transactions

Ernst & Young Inc.
Ernst & Young Orenda Corporate Finance Inc.
Benjamin Place, 11 Englehart Street, Suite 200, Dieppe, E1A 7Y7, Canada
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Website: www.ey.com
Johna Thompson | Phone: 709-570-8217 | Johna.thompson@ca.ey.com

From: Steve McLaughlin
Sent: Friday, December 2, 2022 9:42 AM
To: Clarke, Phil <Phil.Clarke@ca.gt.com>
Subject: RE: ECCL et al - Second Report

Phil,

I am touching base on this. We are trying to understand the situation and it is not clear from our review of the Second Report. As you know the reporting deadlines are approaching quickly based on the ARIQ and a response to these queries is important as we determine what, if any, submissions that RBC will be making.

I wonder whether you could let me know who Monitor's counsel is – perhaps Neil and your counsel could connect to discuss. I know Darren is on for the Company

Please let me know.

Thank you.



Steven J McLaughlin, CPA, CA, CIRP, LIT, CBV
Partner & Senior Vice President | Strategy and Transactions

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Website: www.ey.com
Johna Thompson | Phone: 709-570-8217 | Johna.thompson@ca.ey.com

From: Steve McLaughlin
Sent: Sunday, November 27, 2022 3:52 PM

To: Clarke, Phil <Phil.Clarke@ca.gt.com>

Subject: ECCL et al - Second Report

Phil,

The Bank and its advisors have reviewed the Second Monitor's Report – the primary issues are as follows:

1. There is no clarity on when the Company intends to be in a position to close the Travellers financing – not even a suggestion of a date in the Report. Furthermore, there is no list of outstanding items with expected completion dates for what is remaining or process overview. Has Travellers financing been approved by Travellers credit committee at this stage?
2. There is still no plan on how the Company intends to "close the financing gap". There has been a known financing gap for at least 3 months. Does the Company have a plan to address the gap at this stage? Any resolution or steps to resolve HASCAP loan? Have you or the Company requested professional fees of RBC or any other secured lender? Have you or the Company requested amounts due by secured creditor as at the CCAA filing?
3. It is not clear what assets are proposed to be sold, what assets are included in the Traveller's financing, what assets are disclaimed – please provide current summary of each category of assets, anticipated realizations and funding gap regards to Travellers financing.
4. The Company indicated that the insurance proceeds would be used 50% for operating cash flow, if required, and 50% would be held for use solely to close the financing gap. This was indicated in the Pre-Filing Monitor's Report. The Company is not holding \$250,000 (50% of the life insurance proceeds) in trust – why? Is this a material adverse change?

Please see below some questions regards to the Monitor's Second Report:

- Para 14 – What are the incremental costs of the accounting services? Are these \$27,975 in total as reflected in Appendix A of the Cash Flow described as "Professional fees" (as referred to in Note 6)?
- Para 15 – Has the Company determined its future operating model? If not, it will be difficult to do a projection as required for Travellers.
- Para 15a – Travellers required a financial projection for Fiscal 2023 since the initial discussion paper dated 8 June 2022. Based on the Second Monitor's report it appears that this is not complete. Does the Company intend to complete this? If so, when? What is the cause for delay to this point? It has been more than 5 months.
- Para 18 - As noted above, the Company indicated that the insurance proceeds would be used 50% for operating cash flow, if required, and 50% would be held for use solely to close the financing gap. This was indicated in the Pre-Filing Monitor's Supplemental Report in para 20b. What are the Monitor's steps to remedy this? Does the Monitor view this as a material adverse change – this is a \$250,000 issue?
- Para 38 – What are the Monitor's procedures regards to monitoring cash flow? How was a \$123K payment not identified – particularly, given it is regards to a payment to CRA?
- Para 39/40 – It has been represented on numerous occasions that Classic is not operating and has not been operating for some time – many months prior to May 1, 2022. Are these employees of ECCL who are being paid through Classic? If so, why was ECCL payroll processed through Classic? Is this appropriate reporting to CRA? If not, is the Company operating in good faith and with due diligence?
- Para 38 – 40 – Please let me know when you can discuss – these paragraphs are not clear.
- Para 49 – How much is due to WCB NL and what are the specifics of the payment plan? Isn't WCB NL stayed pursuant to the CCAA? Why would the Company be making post-filing payments regards to pre-filing debts? Is this consistent with the ARIO?

- Para 50 - Please let me know when you can discuss the cash flow variances – not clear to me whether timing or permanent. It appears as the Company continues to struggle when you normalize for opening AR receipts not anticipated for collection – appears to be consistent with the \$100K monthly net losses the Company was experiencing pre-filing.
- Para 51 – Please confirm all professional fees are being paid by Company's subject to the CCAA proceeding. If not, please advise who or what entity is funding the professional fees. Please confirm no professional fees regards to these CCAA proceedings are being funded by Universal which, as you know, is a guarantor of RBC debts in ECCL.
- Para 53 – What steps has the Monitor taken regards to the cost benefit of the nine (9) ongoing legal matters? Are all legal fees paid up to date? Are their legal arrears that must be caught up?

Other matters:

- Please see attached email. This was sent to you on 1 November 2022 without response – please advise. Is there other equipment that was not disclosed by the Company and appraised by Ritchie's?

Please advise when you are available to discuss the few items highlighted for discussion. Please provide a response by Wednesday (November 30) regards to the other inquiries.

Thank you.



Steven J McLaughlin, CPA, CA, CIRP, LIT, CBV

Partner & Senior Vice President | Strategy and Transactions

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This is Exhibit "B" referred to in the
Affidavit of David Savoie sworn or
affirmed before me this 9th day
of December, 2022.



Barrister, Notary Public or Commissioner
for Oaths
[affix seal or stamp]

R. DAVID WEDLAKE
A Barrister & Solicitor for the
Province of Nova Scotia

Neil L. Jacobs

From: Clarke, Phil <Phil.Clarke@ca.gt.com>
Sent: Wednesday, December 7, 2022 8:14 AM
To: Steve McLaughlin; Neil L. Jacobs; maeve.baird@justice.gc.ca; Dupré, Sophie
Cc: darren@okeefeandcompany.com; Josh Collins - Edward Collins Contracting Ltd. (josh_4@hotmail.com); MacDonald, Allan
Subject: ECC - Appraisal on 104 Charter Avenue

~~This is an external email.~~

All:

We have the 104 Charter Avenue appraisal as requested by Traveler's pursuant to the term sheet. The appraisal is too large to email. Please contact Allan MacDonald (copied here) to request a copy and he will send it via secure file transfer.

The appraisal – \$700,000 for 6-9 months market exposure. We believe that it meets Traveler's requirements – it is based on comparatives and direct capitalization method, is for financing, shows fair market value, and has 6-9 month exposure. It doesn't have a 12 month value but on the executive summary the appraiser contemplates that value growth is likely should development of the mega projects in the region commence.

The value of \$700k is more than the ECC estimate of \$500k previously provided. The difference is \$200k which will decrease the financing gap by \$100k.

As always, let me know of any questions or concerns.

Cheers,

Phil Clarke | Partner
Grant Thornton LLP
Nova Centre, North Tower | Suite 1000 - 1675 Grafton Street | Halifax | NS | B3J 0E9
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Partner & Senior Vice President | Strategy and Transactions

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Website: www.ey.com
Johna Thompson | Phone: 709-570-8217 | Johna.thompson@ca.ey.com

From: Clarke, Phil <Phil.Clarke@ca.gt.com>
Sent: Wednesday, December 7, 2022 7:53 AM
To: Steve McLaughlin <Steven.J.McLaughlin@parthenon.ey.com>
Subject: RE: ECCL et al - Second Report Part 1

Steve:

Part 1 of responses to your questions. Responses in RED below. I am available for a call this week – perhaps just suggest a time.

If you could get me updated RBC debt figures that would be appreciated. If you could break out the accrued interest and costs from the demand amount. We can update the RBC balances by debt spreadsheet.

Cheers,

Phil Clarke | Partner
Grant Thornton LLP
Nova Centre, North Tower | Suite 1000 - 1675 Grafton Street | Halifax | NS | B3J 0E9
T +1 902 420 7191 | F +1 902 420 1068
E Phil.Clarke@ca.gt.com | W <http://www.grantthornton.ca/>



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From: Steve McLaughlin <Steven.J.McLaughlin@parthenon.ey.com>
Sent: November 27, 2022 3:52 PM
To: Clarke, Phil <Phil.Clarke@ca.gt.com>
Subject: ECCL et al - Second Report

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*****NEW*** DO NOT ENTER YOUR GT PASSWORD ON ANY EXTERNAL EMAIL REQUEST**

Phil,

The Bank and its advisors have reviewed the Second Monitor's Report – the primary issues are as follows:

1. There is no clarity on when the Company intends to be in a position to close the Travellers financing – not even a suggestion of a date in the Report. Furthermore, there is no list of outstanding items with expected completion dates for what is remaining or process overview. Has Travellers financing been approved by Travellers credit committee at this stage?

Appendix L of the report provides a list of due diligence items required by Traveler's for the refinancing. The financing has not been approved by the credit committee. Traveler's has advised that they required 3-4 weeks to review and get it through credit committee for a decision from the time they get all the information. Given the outstanding items, January 31, 2023 completion of items requested by Traveler's as part of their due diligence is probably more realistic, then assuming 4 weeks for review and decision you are looking at a credit decision around February 28, 2023, with transacting in March 2023.

I do not think significant progress over the Christmas holidays is realistic. This would be my point of view at this time.

2. There is still no plan on how the Company intends to "close the financing gap". There has been a known financing gap for at least 3 months. Does the Company have a plan to address the gap at this stage? Any resolution or steps to resolve HASCAP loan? Have you or the Company requested professional fees of RBC or any other secured lender? Have you or the Company requested amounts due by secured creditor as at the CCAA filing?

The Company's current plan to close the gap was outlined in the first report with an update in Appendix M. There is a funding gap and at this point I have not seen evidence it is closed. The closing of the funding gap is a requirement of the Traveler's financing proposal so it critical. At a high level the Company is attempting to close the gap as follows:

- Sell 30 Reid Lane instead of financing it. Traveler's will only finance at 50% at an estimated value of \$500,000 – for a \$250,000 contribution to their financing. Company has determined it is surplus and any net sales amount above \$250,000 will go to close the gap. ECC has an agreement to sell at \$465,000. The net effect is approximately \$200,000 towards the funding gap. Any transaction is subject to court approval.
- Life Insurance proceeds – The Company had advised that it intended to use \$250,000 of the life insurance proceeds for operations, and use \$250,000 of the life insurance proceeds towards the gap. The had requested the \$250,000 be paid to the Monitor to be held in trust. The Company did not at the time of the first report so we removed the \$250,000 from gap analysis (it was in the first report).
- Sale of Assets – As you know ECC retained Ritchie Brothers to sell the equipment, subject to the conditions in the ARIO. Traveler's proposed to finance it at 90% of FSV. For the surplus equipment, if they can sell the assets and realize OLV and not FSV that will provide contribution of proceeds to close the gap.
- Release/disclaim some equipment that is underwater (nominal impact)
- Collection of AR - \$250,000
- Collection of Holdbacks - \$250,000

Tracking negatives:

- We have included the Haskap loan in the uses of cash as RBC requires it to be paid out. The figure we used was from the demands.
- CRA Payroll exam – The deemed trust claim will increase anywhere from \$11,634 - \$112,678. Just waiting for CRA to assist with finalizing that amount. To the extent it is greater than what is meant to be refinanced that's an increase in the gap.
- Finally – any increase costs incurred by secured creditors to the extent they can be added to the indebtedness will increase the gap.

To completely close the gap the Company is going to have to 1) exceed expectations on asset sales; 2) sell more equipment; or 3) contribute additional funds from other holdings to cover the gap. They have not been tracking ahead of plan on the CF forecast to date so unless operations improve that likely won't be a source of funds to close the gap.

I think this answers the first 3 questions.

On the question - Have you or the Company requested professional fees of RBC or any other secured lender? Have you or the Company requested amounts due by secured creditor as at the CCAA filing? I had asked Neil Jacobs for updated figures some time ago and he advised to use the amounts in the demands. I would like to get updated figures if possible. Traveler's has recently requested updated amounts. The Company had called around to get current balances (amounts included in the inventory list and are being used to estimate equity). These will also have to be updated. That is a valid point.

3. It is not clear what assets are proposed to be sold, what assets are included in the Traveller's financing, what assets are disclaimed – please provide current summary of each category of assets, anticipated realizations and funding gap regards to Travellers financing.

Understandable as this has been a moving figure for some time. I will pull that together for you.

4. The Company indicated that the insurance proceeds would be used 50% for operating cash flow, if required, and 50% would be held for use solely to close the financing gap. This was indicated in the Pre-Filing Monitor's Report. The Company is not holding \$250,000 (50% of the life insurance proceeds) in trust – why? Is this a material adverse change?

The update on this is in paragraph 18. You are correct on what was put out there. The Monitor requested that the Company pay the \$250k into the Monitor (similar to the approach on the net proceeds from assets sales as required by the ARIO). The Company declined at the time wanting to see where the collection of AR and operations landed, and the outcome of the Traveler's due diligence process to see what kind of gap exists. The Monitor will continue to advise the Company that it believes those funds should be segregated for the benefit of the gap/creditors. At this point I am not prepared to think this, on its own, is a material adverse change.

Please see below some questions regards to the Monitor's Second Report:

- Para 14 – What are the incremental costs of the accounting services? Are these \$27,975 in total as reflected in Appendix A of the Cash Flow described as "Professional fees" (as referred to in Note 6)?

The Company was/is in need of enhance accounting capabilities in the office. They had hired a recently retired experienced resource based in St. John's to help out. The problem was that he wasn't interested in giving the required additional time to assist with the office, helping to manage the data entry, financial reporting, questions, etc. It is unrealistic to believe that they could recruit and fill the vacant accounting position while the Company is in a CCAA proceeding. Therefore they reached out to the external accountant to provide some additional booking support (Doug Tulk, CPA, CGA) who agreed to help with some book keeping. The book keep support are the costs.

- Para 15 – Has the Company determined its future operating model? If not, it will be difficult to do a projection as required for Travellers.
- Para 15a – Travellers required a financial projection for Fiscal 2023 since the initial discussion paper dated 8 June 2022. Based on the Second Monitor's report it appears that this is not complete. Does the Company intend to complete this? If so, when? What is the cause for delay to this point? It has been more than 5 months.

I can't comment on June 8, 2022. The pacing and staging of the effort has been as following a dual track – the first track being the appraisal and Phase 1's to support asset values, a decision on the keep/sell of the equipment, and the decisions/analysis to close the gap. The second track I would describe as financial reporting/forecasting. The required financial statements had to be prepared as well. The thought process being that proforma statements would be prepared based on final FY22 ECC statements, married together with

decision on asset retention. The approach seems reasonable, and all the information needs to be pulled together in order for Traveler's to make a credit decision.

- Para 18 - As noted above, the Company indicated that the insurance proceeds would be used 50% for operating cash flow, if required, and 50% would be held for use solely to close the financing gap. This was indicated in the Pre-Filing Monitor's Supplemental Report in para 20b. What are the Monitor's steps to remedy this? Does the Monitor view this as a material adverse change – this is a \$250,000 issue?

See above.

- Para 38 – What are the Monitor's procedures regarding monitoring cash flow? How was a \$123K payment not identified – particularly, given it is regarding a payment to CRA?

Company provides the Monitor with copies of the bank statements. They are reviewed weekly by the Monitor. We are also in constant communication with the external account and the Company. To date they have been very communicative. Specific to the CRA remittances which is the \$123k. The payments had been processed using the RBC Tax Filing Service, and had set payment dates – being September 1, 2022, October 7, 2022, November 1, and November 8, 2022. The system provided a status of "To be Processed" with a confirmation number. The payments were tracked as an o/s payment until processed. They remained that way until we asked the Company to follow up with RBC support. They did and the transactions were ultimately returned by RBC. The Company didn't want to pay via cheque at the bank until there was some confirmation from RBC that the transactions were either processed, or returned. Once they were returned the Monitor recommended that they be paid by cheque at the bank branch the same as source deduction to avoid this in the future. The revised process was suggested so that time could be focused on the CCAA tasks at hand.

- Para 39/40 – It has been represented on numerous occasions that Classic is not operating and has not been operating for some time – many months prior to May 1, 2022. Are these employees of ECCL who are being paid through Classic? If so, why was ECCL payroll processed through Classic? Is this appropriate reporting to CRA? If not, is the Company operating in good faith and with due diligence?

I have attached the latest correspondence with CRA on the tax balances. I believe we are close to final figures, subject to the 3 outstanding issues – the main one being application of payments to calculate the deemed trust amount. Just seeking to know if CRA will be filing a revised claim, or should the Company try to calculate it. The rest of the issues related to pre-filing debts / unsecured debts.

To the questions on Classic. It is my understanding that Classic is inactive, however at points in the past operated as a flow through entity for labour. It is my understanding that the employees were paid on account of ECC activities, but via Classic. It was disclosed to CRA as part of the audit. We have received some conflicting information from CRA as to treatment (outlined in my email to CRA), in that possibly that the debts could be that of Classic in certain circumstances (filing of T4's, determination of employees). I think it is a substance and form issue. Just waiting to hear from CRA on how to finalize the issue.

I do believe the Company is acting in good faith and with due diligence within the CCAA proceeding.

- Para 38 – 40 – Please let me know when you can discuss – these paragraphs are not clear.

Not a problem to discuss.

- Para 49 – How much is due to WCB NL and what are the specifics of the payment plan? Isn't WCB NL stayed pursuant to the CCAA? Why would the Company be making post-filing payments regarding pre-filing debts? Is this consistent with the ARIO?

- Para 50 - Please let me know when you can discuss the cash flow variances – not clear to me whether timing or permanent. It appears as the Company continues to struggle when you normalize for opening AR receipts not anticipated for collection – appears to be consistent with the \$100K monthly net losses the Company was experiencing pre-filing.
- Para 51 – Please confirm all professional fees are being paid by Company's subject to the CCAA proceeding. If not, please advise who or what entity is funding the professional fees. Please confirm no professional fees regards to these CCAA proceedings are being funded by Universal which, as you know, is a guarantor of RBC debts in ECCL.
- Para 53 – What steps has the Monitor taken regards to the cost benefit of the nine (9) ongoing legal matters? Are all legal fees paid up to date? Are their legal arrears that must be caught up?

Other matters:

- Please see attached email. This was sent to you on 1 November 2022 without response – please advise. Is there other equipment that was not disclosed by the Company and appraised by Ritchie's?

Please advise when you are available to discuss the few items highlighted for discussion. Please provide a response by Wednesday (November 30) regards to the other inquiries.

Thank you.



Steven J McLaughlin, CPA, CA, CIRP, LIT, CBV

Partner & Senior Vice President | Strategy and Transactions

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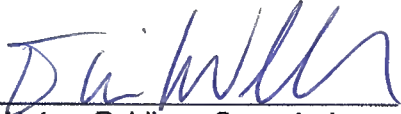
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This is Exhibit "C" referred to in the
Affidavit of David Savoie sworn or
affirmed before me this 9th day
of December, 2022.



Barrister, Notary Public or Commissioner
for Oaths
[affix seal or stamp]

R. DAVID WEDLAKE
A Barrister & Solicitor for the
Province of Nova Scotia

Neil L. Jacobs

From: Clarke, Phil <Phil.Clarke@ca.gt.com>
Sent: Wednesday, December 7, 2022 4:19 PM
To: Steve McLaughlin; Neil L. Jacobs; maeve.baird@justice.gc.ca; Dupré, Sophie
Cc: darren@okeefeandcompany.com; Josh Collins - Edward Collins Contracting Ltd. (josh_4@hotmail.com)
Subject: ECC - Update -Extension Application Date / Condo/ Ritchie's / Financial Reporting
Attachments: RE: Update on the listing; 51037 Balance sheet and income statement 2021.pdf; 51037 NL Inc financial statements Oct 31 2022.pdf; FGC Holdings Oct 31 2022.pdf; H & E Designs Limited July 31 2022.pdf; H & E Designs Limited financial statements Oct 31 2022.pdf; ECCL balance sheet July 31 2022.pdf; ECCL income statement July 31 2022.pdf; ECCL income statement Oct 31 2022.pdf; ECCL balance sheet Oct 31 2022.pdf

This is an external email.

All:

An update on various items in the ECC proceeding. Apologies for the long email.

- Extension Hearing – The debtors will be making application for an extension of the stay of proceeding. The court has set down December 14, 2022 10am. The Company will be preparing the application and will serve as appropriate. At a high level, it is the Monitor's understanding that there will be a request for an extension to March 31, 2023 broken down as follows – January 2023 complete Traveler's due diligence/finalize CRA deemed trust debt (I don't think the CRA component will take that long as that process is very near the end); February 2023 – Traveler's time required to make a credit decision; and March 2023 – close the refinancing. It is the Monitor's understanding there will be no DIP or Administration charge sought. Just an extension.
- Classic – Condo sale – The latest update is attached from the realtor. The price will be reduced by \$10,000 effective today being the first 3 weeks the condo has been listed.
- Ritchie Brothers – Ritchie Brothers has advised that the listing of the equipment for sale should be live by tomorrow. They will share a link with the Monitor which I will send along to both RBC and CRA. The target values set will be 20% higher than OLV to allow from some negotiation. Ritchie Brothers has advised that the values are not going to be visible to the buyers but are visible to our inside sales teams when negotiating offers and that all offers will be communicated for approval.
- Internal Financial Statements – Please find attached the following internal financial statements prepared by the external accountant and review by the Company:
 - o 51037 – YE December 31, 2021
 - o 51037 Interim to October 31, 2022
 - o FGC – YE October 31, 2022
 - o H&E – YE July 31, 2022
 - o H&E – Interim to October 31, 2022
 - o ECC – YE July 31, 2022
 - o ECC Interim to October 31, 2022

The external accountant being used by ECC should have compilation reports for all entities complete before December 31, 2022. ECC will require a new service provider given the accounting assistance being provided.

Some observations:

51037

- The long term investment of \$45,000 (cost) is 14% of the common shares of Placentia Mall (1.5 shares out of a total of 10.5 shares)
- It also has a lease with John Deer Excavator (Asset ID 1658849)

FGC

- PP&E is the real estate 26 Lakeview, Humber Valley
- It also has a 2015 John Deer 350G Excavator (to be disclaimed) – missed from the RB listing in error

H&E

- The inventory is the lots in the residential development

ECCL

- The FS are accrual basis include CCAA costs where appropriate
- FY 2022 to July 31, 2022 – The balance sheet does show dividends. Note these are not cash dividends, but are a result of tax rules regarding carrying AR from directors over periods. You cannot carrying a balance owing over 2 year end dates. Any balance at the end of 1 year either needs to be repaid, or recorded as revenue to the directors. In this case T5 were issued, which is historically consistent with ECC. The calculation was the August 1, 2021 balance, less payments made into the Company by the directors in 2022 (per the external accountant).
- The YTD October 2022 – shows positive income, however is includes the receipt of \$515k in life insurance proceeds.
- The GT amount was a retainer paid to GT which has since been consumed.
- The Investment line in ECC is share ownership in the Placentia Mall – ECC owns 21% of the common shares (2 ¼ shares out of 10.5)
- The Company intends to prepare normalize proforma's for 2023 as part of the Traveler's Due Diligence process stripping out one time charges and marrying it up with the equipment the Company has chosen to retain.

I have asked the debtor Company for details on the shareholders accounts, and the AR-Universal Account from ECC and will follow up with all on receipt of that information once I have it and review it. If you have any others please advise and I can follow up with the Company.

Cheers,

Phil Clarke | Partner

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