

2023 01G 0841

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF an application
of Rambler Metals and Mining Canada
Limited and 1948565 Ontario Inc.

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

SUMMARY OF CURRENT DOCUMENT	
Court File Number:	2023 01G 0841
Date of Filing Document:	September 6, 2023
Name of Party Filing or Person:	Rambler Metals and Mining Canada Limited, Rambler Metals and Mining plc, Rambler Mines Limited, and 1948565 Ontario Inc.
Application to which Document being filed relates:	Application approving a claims identification process pursuant to the <i>Companies' Creditors Arrangement Act</i> , RSC 1985, c C-36
Statement of Purpose in Filing:	To support the application

MEMORANDUM OF FACT AND LAW OF THE APPLICANTS

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Solicitors for the Applicants, Rambler Metals and Mining plc, and Rambler Mines Limited

OVERVIEW

1. Rambler Metals and Mining Canada Limited ("**Rambler Canada**") and 1948565 Ontario Inc. ("**1948**") (collectively, the "**Rambler Group**" or the "**Applicants**") seek:
 - (a) an order abridging the notice periods pursuant to Section 11 of the CCAA and the *Rules of the Supreme Court, 1986*, Rule 3.03(1), Rule 6.04(2) and Rule 6.06;
 - (b) an order pursuant to Section 11 of the CCAA, directing that service on the service list set out in Schedule A to the Notice of Application is sufficient for the purposes of this application;
 - (c) an order (the "**Claims Identification Order**") substantially in the form of the draft order filed with this application, establishing a process (the "**Claims Identification Process**") for the identification and submission of Claims against the Rambler Group and the Directors and Officers (each as defined in the Claims Identification Process).

FACTS

2. The Rambler Group relies on:
 - (a) the Bradbury Affidavit, sworn February 22, 2023, and previously filed with the Court;
 - (b) the Monitor's Sixth Report, dated August 31, 2023.

The CCAA Proceedings

3. The Rambler Group were granted protection from creditors under the CCAA by order of this Court, dated February 27, 2023 (the "**Initial Order**"), which was most recently amended as the Further Amended and Restated Initial Order, dated May 16, 2023 (the "**FARIO**").

4. This application is brought together with an application (the **"Sale Approval Application"**) seeking the approval by the Court of a sale transaction and reverse vesting order in respect of the Rambler Group (the **"ARVO Transaction"**).
5. Capitalized terms used herein that are not otherwise defined have the meanings set out in the Sale Approval Application.
6. Upon the conclusion of the ARVO Transaction, the purchase price and other consideration will be paid by the Purchaser to NewCo, and NewCo will become the applicant in these CCAA Proceedings pursuant to a court-approved amendment to the Initial Order and FARIO.
7. At that point, the Monitor, in consultation with the Rambler Group, will have determined that it would be appropriate for the Monitor to proceed with a partial distribution of the net proceeds of the ARVO Transaction to certain priority or secured creditors of the Rambler Group, in accordance with the applicable priority scheme.
8. Prior to such distributions, the Monitor requires a process to identify all creditors of the Applicants and, if necessary or appropriate in the circumstances, assess the veracity of their claims.

The Claims Identification Process

9. The Rambler Group believe that the Claims Identification Process is the next appropriate step in these CCAA proceedings.
10. Currently, the Monitor does not expect there to be any distribution available to unsecured creditors from the net sale proceeds of the ARVO Transaction. Nonetheless, the Monitor believes it is necessary and appropriate for the Monitor to: (i) implement a process to identify all creditors of the Applicants, (ii) assess which creditors are priority creditors,

secured creditors, and unsecured creditors, and (iii) determine the appropriate distribution scheme in accordance with the priorities applicable under the CCAA and applicable provincial or federal law.

11. The Claims Identification Process is intended to provide a fair and efficient means of identifying the universe of claims that may exist against Rambler Group and their Directors and Officers. The Claims Identification Process will inform and expedite the restructuring efforts of the Rambler Group, including the distribution of the net proceeds of the ARVO Transaction.
12. The Claims Identification Process is described in more detail in the Monitor's Sixth Report. At a high level, pursuant to the Claims Identification Process, the Monitor will provide a claims package to all known creditors of the Applicants within 5 days of the granting of the Claims Identification Order. This claims package will include a form of Proof of Claim, which the Monitor will also post on the Monitor's website for this CCAA proceeding. The Monitor will also publish a notice of the Claims Identification Process in the Globe and Mail and the Telegram (NL) to ensure sufficient notice is made to all potential claimants.
13. The proposed Claims Identification Order provides for a Pre-Filing Claims Bar Date and a Restructuring Claims Bar Date (each a "**Bar Date**", and collectively, the "**Bar Dates**"). The Bar Dates are set out immediately below:
 - (a) Pre-Filing Claims Bar Date – 5:00PM (Newfoundland Time) on October 11, 2023;
and
 - (b) Restructuring Claims Bar Date – the later of the Pre-Filing Claims Bar Date and 5:00PM (Newfoundland Time) on the day which is 30 days after the Monitor sends

a Claims Package with respect to a Restructuring Claim in accordance with the Claims Identification Order.

14. Any person who wishes to assert a Pre-Filing Claim, a Restructuring Claim, a Priority Claim, or a D&O Claim (as defined), must deliver to the Monitor a completed Proof of Claim on or before the applicable Bar Date.
15. Any person who does not file a Proof of Claim in accordance with the Claims Identification Order by the applicable Bar Date will, among other things, not be entitled to participate as a Claimant or creditor in the Claims Identification Process or the CCAA Proceedings in respect of such Claim, and will be forever barred, estopped and enjoined from asserting or enforcing such claim and any such claim will be extinguished.

Issues

16. The issue in this application is:
 - (a) Should the Claims Identification Order be granted?

LAW AND ARGUMENT

The Claims Identification Order Should Be Granted

17. Claims identification or procedure orders are commonly granted in CCAA proceedings pursuant to section 11 and section 12 of the CCAA:

11. **General power of court** - ...if an application is made under the Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

...

12. **Fixing deadlines** – The court may fix deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement.

Reference: Sections 11 and 12 of the *Companies' Creditors Arrangement Act*, Memorandum of Fact and Law of the Applicants, Tab 1

18. As stated by the Ontario Superior Court of Justice in *Re Toys "R" Us (Canada) Ltd.*:

Claims procedure orders are routinely granted under the court's general powers under ss. 11 and 12 of the CCAA. Claims procedure orders are designed to create processes under which all of the creditors of an applicant and its directors and officers can submit their claims for recognition and valuation. Claims procedures usually involve establishing a method to communicate to potential creditors that there is a process by which they must prove their claims by a specific date...Claims procedure orders will usually also establish a "claims bar date" by which claims must be submitted by creditors....

Reference: *Re Toys "R" Us (Canada) Ltd*, 2018 ONSC 609, Memorandum of Fact and Law of the Applicants, Tab 2, at paras 8 and 14

19. The Claims Identification Order in this case falls within the above direction. Such orders permit insolvent debtors to establish a process "under which all of the creditors of an applicant and its directors and officers can submit their claims for recognition and valuation".
20. The Claims Identification Order is intended to provide a streamlined, fair, and efficient process for identifying claims – along with the Bar Dates to provide certainty. Such processes have been regarded by courts as an eminently practical means of facilitating the resolution of "the multitude of claims against an insolvent debtor" in a time-sensitive and cost-effective manner.

Reference: *ScoZinc Ltd., Re*, 2009 NSSC 136, Memorandum of Fact and Law of the Applicants, Tab 3, at para 31

21. In the circumstances of Rambler Group, the Claims Identification Order is reasonable and appropriate to advance these CCAA proceedings and to provide certainty for all stakeholders.
22. Among other things, the Claims Identification Process is necessary to enable the Monitor to determine, with the assistance of the Rambler Group, the claims that exist against the

Rambler Group for the purpose of making a preliminary distribution to the creditors of the Rambler Group that have valid and enforceable priority or secured claims against the Rambler Group. The Claims Identification Process was developed by the Monitor with the assistance of the Rambler Group and their counsel.

23. For the above reasons, the proposed Claims Identification Process accords with the Court's discretion under the CCAA. It is a flexible, expeditious, and procedurally fair mechanic which will provide a cost-effective means to solicit claims against the Rambler Group and their Directors and Officers.

24. Similar orders have been made in other CCAA proceedings.

Reference: *Re Toys "R" Us (Canada) Ltd*, 2018 ONSC 609, Memorandum of Fact and Law of the Applicants, Tab 2

Reference: *Cline Mining Corporation (Re)*, 2014 ONSC 6998, Memorandum of Fact and Law of the Applicants, Tab 4, at paras 58 – 66

25. In particular, other courts have granted such orders to allow the Monitor to identify priority claims with certainty even where it was expected that there would be insufficient proceeds from the sale transaction to pay the claims of unsecured creditors.

Reference: *Pharmhouse Inc., (Re)*, Order of Hainey J., Ontario Superior Court of Justice (Commercial List), dated October 29, 2020, Court File No. CV-1900647704-00CL, Memorandum of Fact and Law of the Applicants, Tab 5

26. The Monitor is of the opinion that the proposed Claims Identification Process is fair, reasonable, and appropriate in the circumstances. The Claims Identification Process will enable the Monitor to identify all potential claims, including all priority and secured claims, against the Rambler Group and the Directors and Officers.

27. The Claims Identification Process will also enable the Monitor to make future distributions from the proceeds of sale from the ARVO Transaction to the appropriate creditors who hold valid and enforceable priority and secured claims against either the Rambler Group and/or the Directors and Officers in accordance with the applicable priority scheme. Such distributions will only be made with the Court's approval pursuant to a distribution order, to be sought by the Monitor at a later juncture.

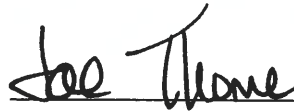
RELIEF SOUGHT

28. Rambler Group therefore request:

- (a) that the proposed Claims Identification Order be granted; and
- (b) such further and other relief as counsel may advise and this Court deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

DATED at St. John's, Newfoundland and Labrador, this 6th day of September 2023.



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**Solicitors for the Applicants, Rambler
Metals and Mining plc, and Rambler Mines
Limited**

SCHEDULE A – LIST OF AUTHORITIES

	TAB
Sections 11 and 12 of the <i>Companies' Creditors Arrangement Act</i> ,	1
<i>Re Toys "R" Us (Canada) Ltd</i> , 2018 ONSC 609	2
<i>ScoZinc Ltd., Re</i> , 2009 NSSC 136	3
<i>Cline Mining Corporation (Re)</i> , 2014 ONSC 6998	4
<i>Pharmhouse Inc., (Re)</i> , Order of Hainey J., Ontario Superior Court of Justice (Commercial List), dated October 29, 2020, Court File No. CV-1900647704-00CL	5



CANADA

CONSOLIDATION

CODIFICATION

Companies' Creditors Arrangement Act

Loi sur les arrangements avec les créanciers des compagnies

R.S.C., 1985, c. C-36

L.R.C. (1985), ch. C-36

Current to August 21, 2023

À jour au 21 août 2023

Last amended on April 27, 2023

Dernière modification le 27 avril 2023

Form of applications

10 (1) Applications under this Act shall be made by petition or by way of originating summons or notice of motion in accordance with the practice of the court in which the application is made.

Documents that must accompany initial application

(2) An initial application must be accompanied by

- (a)** a statement indicating, on a weekly basis, the projected cash flow of the debtor company;
- (b)** a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and
- (c)** copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

Publication ban

(3) The court may make an order prohibiting the release to the public of any cash-flow statement, or any part of a cash-flow statement, if it is satisfied that the release would unduly prejudice the debtor company and the making of the order would not unduly prejudice the company's creditors, but the court may, in the order, direct that the cash-flow statement or any part of it be made available to any person specified in the order on any terms or conditions that the court considers appropriate.

R.S., 1985, c. C-36, s. 10; 2005, c. 47, s. 127.

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

R.S., 1985, c. C-36, s. 11; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 1997, c. 12, s. 124; 2005, c. 47, s. 128.

Relief reasonably necessary

11.001 An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be

Forme des demandes

10 (1) Les demandes prévues par la présente loi peuvent être formulées par requête ou par voie d'assignation introductive d'instance ou d'avis de motion conformément à la pratique du tribunal auquel la demande est présentée.

Documents accompagnant la demande initiale

(2) La demande initiale doit être accompagnée :

- a)** d'un état portant, projections à l'appui, sur l'évolution hebdomadaire de l'encaisse de la compagnie débitrice;
- b)** d'un rapport contenant les observations réglementaires de la compagnie débitrice relativement à l'établissement de cet état;
- c)** d'une copie des états financiers, vérifiés ou non, établis au cours de l'année précédant la demande ou, à défaut, d'une copie des états financiers les plus récents.

Interdiction de mettre l'état à la disposition du public

(3) Le tribunal peut, par ordonnance, interdire la communication au public de tout ou partie de l'état de l'évolution de l'encaisse de la compagnie débitrice s'il est convaincu que sa communication causerait un préjudice indu à celle-ci et que sa non-communication ne causerait pas de préjudice indu à ses créanciers. Il peut toutefois préciser dans l'ordonnance que tout ou partie de cet état peut être communiqué, aux conditions qu'il estime indiquées, à la personne qu'il nomme.

L.R. (1985), ch. C-36, art. 10; 2005, ch. 47, art. 127.

Pouvoir général du tribunal

11 Malgré toute disposition de la *Loi sur la faillite et l'insolvabilité* ou de la *Loi sur les liquidations et les restructurations*, le tribunal peut, dans le cas de toute demande sous le régime de la présente loi à l'égard d'une compagnie débitrice, rendre, sur demande d'un intéressé, mais sous réserve des restrictions prévues par la présente loi et avec ou sans avis, toute ordonnance qu'il estime indiquée.

L.R. (1985), ch. C-36, art. 11; 1992, ch. 27, art. 90; 1996, ch. 6, art. 167; 1997, ch. 12, art. 124; 2005, ch. 47, art. 128.

Redressements normalement nécessaires

11.001 L'ordonnance rendue au titre de l'article 11 en même temps que l'ordonnance rendue au titre du paragraphe 11.02(1) ou pendant la période visée dans l'ordonnance rendue au titre de ce paragraphe relativement à la demande initiale n'est limitée qu'aux redressements normalement nécessaires à la continuation de l'exploitation

damage affecting real property of the company shall be a claim under this Act, whether the condition arose or the damage occurred before or after the date on which proceedings under this Act were commenced.

1997, c. 12, s. 124; 2007, c. 36, s. 67.

Disclosure of financial information

11.9 (1) A court may, on any application under this Act in respect of a debtor company, by any person interested in the matter and on notice to any interested person who is likely to be affected by an order made under this section, make an order requiring that person to disclose any aspect of their economic interest in respect of a debtor company, on any terms that the court considers appropriate.

Factors to be considered

(2) In deciding whether to make an order, the court is to consider, among other things,

- (a)** whether the monitor approved the proposed disclosure;
- (b)** whether the disclosed information would enhance the prospects of a viable compromise or arrangement being made in respect of the debtor company; and
- (c)** whether any interested person would be materially prejudiced as a result of the disclosure.

Meaning of *economic interest*

(3) In this section, *economic interest* includes

- (a)** a claim, an eligible financial contract, an option or a mortgage, hypothec, pledge, charge, lien or any other security interest;
- (b)** the consideration paid for any right or interest, including those referred to in paragraph (a); or
- (c)** any other prescribed right or interest.

2019, c. 29, s. 139.

Fixing deadlines

12 The court may fix deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement.

R.S., 1985, c. C-36, s. 12; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 2004, c. 25, s. 195; 2005, c. 47, s. 130; 2007, c. 36, s. 68.

Leave to appeal

13 Except in Yukon, any person dissatisfied with an order or a decision made under this Act may appeal from

immeuble de la compagnie débitrice constitue une réclamation, que la date du fait ou dommage soit antérieure ou postérieure à celle où des procédures sont intentées au titre de la présente loi.

1997, ch. 12, art. 124; 2007, ch. 36, art. 67.

Divulgence de renseignements financiers

11.9 (1) Sur demande de tout intéressé sous le régime de la présente loi à l'égard d'une compagnie débitrice et sur préavis de la demande à tout intéressé qui sera vraisemblablement touché par l'ordonnance rendue au titre du présent article, le tribunal peut ordonner à cet intéressé de divulguer tout intérêt économique qu'il a dans la compagnie débitrice, aux conditions que le tribunal estime indiquées.

Facteurs à prendre en considération

(2) Pour décider s'il rend l'ordonnance, le tribunal prend en considération, notamment, les facteurs suivants :

- a)** la question de savoir si le contrôleur acquiesce à la divulgation proposée;
- b)** la question de savoir si la divulgation proposée favorisera la conclusion d'une transaction ou d'un arrangement viable à l'égard de la compagnie débitrice;
- c)** la question de savoir si la divulgation proposée causera un préjudice sérieux à tout intéressé.

Définition de *intérêt économique*

(3) Au présent article, *intérêt économique* s'entend notamment :

- a)** d'une réclamation, d'un contrat financier admissible, d'une option ou d'une hypothèque, d'un gage, d'une charge, d'un nantissement, d'un privilège ou d'un autre droit qui grève le bien;
- b)** de la contrepartie payée pour l'obtention, notamment, de tout intérêt ou droit visés à l'alinéa a);
- c)** de tout autre intérêt ou droit prévus par règlement.

2019, ch. 29, art. 139.

Échéances

12 Le tribunal peut fixer des échéances aux fins de votation et aux fins de distribution aux termes d'une transaction ou d'un arrangement.

L.R. (1985), ch. C-36, art. 12; 1992, ch. 27, art. 90; 1996, ch. 6, art. 167; 2004, ch. 25, art. 195; 2005, ch. 47, art. 130; 2007, ch. 36, art. 68.

Permission d'en appeler

13 Sauf au Yukon, toute personne mécontente d'une ordonnance ou décision rendue en application de la

CITATION: Re TOYS “R” US (CANADA) LTD., 2018 ONSC 609
COURT FILE NO.: CV-17-00582960-00CL
DATE: 20180125

**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 A PLAN OF COMPROMISE OR ARRANGEMENT OF
TOYS “R” US (CANADA) LTD. TOYS “R” US (CANADA) LTEE

BEFORE: F.L. Myers J.

COUNSEL: *Brian F. Empey and Bradley Wiffen*, counsel for the applicant
Jane Dietrich, counsel for Grant Thornton Limited, the Monitor
Linc Rogers, counsel for JPMorgan Chase Bank, NA, DIP Agent
Jesse Mighton, counsel for Crayola Canada
Linda Galessiere, counsel for various landlords
Timothy R. Dunn, counsel for CentreCorp Management Services Limited
Adam Slavens and Jonathan Silver, counsel for LEGO
Sean Zweig, counsel for the Unsecured Creditors Committee of Toys “R” Us Inc.
and other debtors in Chapter 11 proceedings before the United States Bankruptcy
Court for the Eastern District of Virginia

HEARD: January 25, 2018

ENDORSEMENT

[1] Toys “R” Us (Canada) Ltd. Toys “R” Us (Canada) Ltee asks the court to extend the time that it remains under protection of the CCAA while it attempts to restructure. It also asks the court to approve a draft claims procedure by which the outstanding claims of its creditors can be recognized and quantified.

[2] No significant stakeholder opposed the relief sought and I have granted it accordingly.

[3] I am satisfied that the applicant is acting in good faith and with due diligence in pursuit of its restructuring process to date. These are the findings required for it to be entitled to an extension of time under the statute. The applicant’s financial results through the holidays exceeded conservative forecasts. It reports that it has sufficient liquidity to operate in the normal course throughout the proposed extended period without drawing upon its extraordinary financing. The extension of time will allow the applicant to advance a going concern

restructuring process here and in coordination with its affiliates in the US. The Monitor supports the request. Accordingly the request for an extension of the proceedings is granted.

[4] The outcome of a successful restructuring process usually involves the applicant proposing a plan of compromise or arrangement to its creditors. The creditors have the opportunity to vote on whether they agree to the terms of the plan proposed. To approve a plan, the CCAA requires a vote of more than 50% of the creditors in number who hold collectively more than two-thirds of the claims measured by dollar value.

[5] In many cases, instead of a plan, the applicant proposes a value-maximizing liquidating transaction. After a liquidation, there will likely be distributions to creditors of the proceeds of liquidation in cash or other property *pari passu* by rank.

[6] In either case, whether a plan or a liquidating transaction is proposed, it is necessary to determine the precise number of creditors and the precise amount of their respective claims, so that the creditors can vote and/or receive distributions accordingly.

[7] In a bankruptcy governed by the provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c.B-3, creditors are required to prove their claims individually by delivering to the trustee in bankruptcy sworn proof of claim forms that are accompanied by supporting invoices and other relevant documentation. The CCAA, by contrast, does not set out a specific procedure for creditor claims to be proven and counted.

[8] Claims procedure orders are routinely granted under the court's general powers under ss. 11 and 12 of the CCAA. Claims procedure orders are designed to create processes under which all of the creditors of an applicant and its directors and officers can submit their claims for recognition and valuation. Claims procedures usually involve establishing a method to communicate to potential creditors that there is a process by which they must prove their claims by a specific date. The procedure usually includes an opportunity for the debtor or its representative to review and, if appropriate, contest claims made by creditors. If claims are not agreed upon and cannot be settled by negotiation, then the claims procedure orders may go on to establish an adjudication mechanism in court or, typically in Ontario, by arbitration that is then subject to an appeal to the court. Claims procedure orders will usually also establish a "claims bar date" by which claims must be submitted by creditors. Late claims may not be allowed as it can be necessary to establish a cut off to give accurate numbers for voting and distribution purposes.

[9] The claims processes in bankruptcy do not necessarily fit well in a CCAA proceeding. It is very unusual for a large corporation to go bankrupt and require proof of claims to be delivered by every single creditor under the BIA statutory claims process. Creditors of large companies can number in the thousands. It can be very time consuming and therefore very expensive for each of thousands of creditors to submit proof of claims and for the debtor or the Monitor to review, track, and deal with each claim individually. Managing claims processes for a large business can therefore be a very substantial undertaking that is often occurring behind the scenes throughout CCAA processes.

[10] Yet, experience shows that the vast majority of claims are usually dealt with consensually. At any given time, most large businesses have readily ascertainable payables outstanding that are carefully tracked electronically by the applicant's financial managers. Requiring each creditor to prove the state of its outstanding claims by submitting invoices then is often just a make work project that provides no real incremental value beyond the information available by just looking at a listing of outstanding trade payables on the debtor's financial systems.

[11] Toys "R" Us has submitted a draft form of claims procedure that addresses the unnecessary cost of requiring its thousands of trade creditors to prove their claims individually. It proposes to list creditor claims from the company's books and records and to provide each known creditor with a simple claim statement that sets out the amount of its claim that is already recognized by the company. If a creditor agrees with the amount that the company says it owes, the creditor need do nothing and the scheduled or listed claim will become the final proven claim at the claims bar date.

[12] The draft claims procedure allows creditors who disagree with the amounts set out in their claims statements to file notices of dispute with the Monitor by the claims bar date to engage an individualized review process.

[13] This negative option scheduled claim process will eliminate the need for filing proofs of claim and supporting evidence in the vast majority of cases. It also ensures that known claims are not lost in procedural uncertainty which always causes a certain percentage of creditors to fail to file their claims on a timely basis.

[14] This is certainly not the first case to use a negative option scheduled claims process like the one proposed here. Creative scheduled claims procedures, like this one, that streamline claims processes, make it easier for all known creditor claims to be recognized and counted, and save significant time and money, are encouraged. Each case must be responsive to its own facts and circumstances. What works in one case may be wholly inapt in another. But in all cases it is appropriate to make efforts to increase efficiency, affordability, and certainty as was done here. The overriding concern of the court is to ensure that any claims procedure process is both fair and reasonable. The negative option scheduled claim process proposed in this case meets both touchstones.

[15] Finally, the proposed minor amendment to the cross-border protocol has already been adopted by the US court. The change proposed is not opposed and it is reasonable to keep the terms of both orders consistent.

[16] Order signed accordingly.

F.L. Myers J.

Date: January 25, 2017

SUPREME COURT OF NOVA SCOTIA
Citation: ScoZinc Ltd. (Re), 2009 NSSC 136

Date: 20090403
Docket: Hfx No.305549
Registry: Halifax

IN THE MATTER OF: *The Companies' Creditors Arrangement Act*,
R.S.C. 1985, c.C-36, as amended

AND IN THE MATTER OF: A Plan of Compromise or Arrangement of ScoZinc
Ltd.

Applicant

Judge: The Honourable Justice Duncan R. Beveridge

Heard: April 3, 2009 in Halifax, Nova Scotia

**Written Reasons of
Oral Decision:** April 28, 2009

Counsel: John G. Stringer, Q.C., and Mr. Ben R. Durnford, for the
applicant
Robert MacKeigan, Q.C., for Grant Thornton

By the Court:

[1] On December 22, 2008 ScoZinc Ltd. was granted protection by way of a stay of proceedings of all claims against it pursuant to s.11 of the *Companies' Creditors Arrangement Act* R.S.C. 1985, c. C-36. The stay has been extended from time to time. Grant Thornton was appointed as the Monitor of the business and financial affairs of ScoZinc pursuant to s.11.7 of the CCAA.

[2] The determination of creditors' claims was set by a Claims Procedure Order. This order set dates for the submission of claims to the Monitor, and for the Monitor to assess the claims. The Monitor brought a motion seeking directions from the court on whether it has the necessary authority to allow a revision of a claim after the claim's bar date but before the date set for the Monitor to complete its assessment of claims.

[3] The motion was heard on April 3, 2009. At the conclusion of the hearing of the motion I concluded that the Monitor did have the necessary authority. I granted the requested order with reasons to follow. These are my reasons.

BACKGROUND

[4] The procedure for the identification and quantification of claims was established pursuant to my order of February 18, 2009. Any persons asserting a claim was to deliver to the Monitor a Proof of Claim by 5:00 p.m. on March 16, 2009, including a statement of account setting out the full details of the claim. Any claimant that did not deliver a Proof of Claim by the claims bar date, subject to the Monitor's agreement or as the court may otherwise order, would have its claim forever extinguished and barred from making any claim against ScoZinc.

[5] The Monitor was directed to review all Proofs of Claim filed on or before March 16, 2009 and to accept, revise or disallow the claims. Any revision or disallowance was to be communicated by Notice of Revision or Disallowance, no later than March 27, 2009. If a creditor disagreed with the assessment of the Monitor, it could dispute the assessment before a Claims Officer and ultimately to a judge of the Supreme Court.

[6] The three claims that have triggered the Monitor's motion for directions were submitted by Acadian Mining Corporation, Royal Roads Corp., and Komatsu International (Canada) Inc.

[7] ScoZinc is 100% owned by Acadian Mining Corp. These two corporations share office space, managerial staff, and have common officers and directors. Acadian Mining is a substantial shareholder in Royal Roads and also have some common officers and directors.

[8] Originally Royal Roads asserted a claim as a secured creditor on the basis of a first charge security held by it on ScoZinc's assets for a loan in the amount of approximately \$2.3 million. Acadian Mining also claimed to be a secured creditor due to a second charge on ScoZinc's assets securing approximately \$23.5 million of debt. Both Royal Roads and Acadian Mining have released their security. Each company submitted Proofs of Claim dated March 4, 2009 as unsecured creditors.

[9] Royal Roads claim was for \$579,964.62. The claim by Acadian Mining was for \$23,761,270.20. John Rawding, Financial Officer for Acadian Mining and ScoZinc, prepared the Proofs of Claim for both Royal Roads and Acadian Mining. It appears from the affidavit and materials submitted, and the Monitor's fifth report dated March 31, 2009 that there were errors in each of the Proofs of Claim.

[10] Mr. Rawding incorrectly attributed \$1,720,035.38 as debt by Acadian Mining to Royal Roads when it should have been debt owed by ScoZinc to Royal Roads. In addition, during year end audit procedures for Royal Roads, Acadian Mining and ScoZinc, other erroneous entries were discovered. The total claim that should have been advanced by Royal Roads was \$2,772,734.19.

[11] The appropriate claim that should have been submitted by Acadian Mining was \$22,041,234.82, a reduction of \$1,720,035.38. Both Royal Roads and Acadian Mining submitted revised Proofs of Claim on March 25, 2009 with supporting documentation.

[12] The third claim is by Komatsu. Its initial Proof of Claim was dated March 16, 2009 for both secured and unsecured claims of \$4,245,663.78. The initial claim did not include a secured claim for the equipment that had been returned to Komatsu, nor include a claim for equipment that was still being used by ScoZinc. A revised Proof of Claim was filed by Komatsu on March 26, 2009.

[13] The Monitor, sets out in its fifth report dated March 31, 2009, that after reviewing the relevant books and records, the errors in the Proofs of Claim by Royal Roads, Acadian Mining and Komatsu were due to inadvertence. For all of these claims it issued a Notice of Revision or Disallowance on March 27, 2009, allowing the claims as revised “if it is determined by the court that the Monitor has the power to do so”.

[14] The request for directions and the circumstances pose the following issue:

ISSUE

[15] Does the Monitor have the authority to allow the revision of a claim by increasing it based on evidence submitted by a claimant within the time period set for the monitor to carry out its assessment of claims?

ANALYSIS

[16] The jurisdiction of the Monitor stems from the jurisdiction of the court granted to it by the *CCAA*. Whenever an order is made under s.11 of the *CCAA* the court is required to appoint a monitor. Section 11.7 of the *CCAA* provides:

11.7 (1) When an order is made in respect of a company by the court under section 11, the court shall at the same time appoint a person, in this section and in section 11.8 referred to as "the monitor", to monitor the business and financial affairs of the company while the order remains in effect.

(2) Except as may be otherwise directed by the court, the auditor of the company may be appointed as the monitor.

(3) The monitor shall

(a) for the purposes of monitoring the company's business and financial affairs, have access to and examine the company's property, including the premises, books, records, data, including data in electronic form, and other financial documents of the company to the extent necessary to adequately assess the company's business and financial affairs;

(b) file a report with the court on the state of the company's business and financial affairs, containing prescribed information,

(i) forthwith after ascertaining any material adverse change in the company's projected cash-flow or financial circumstances,

(ii) at least seven days before any meeting of creditors under section 4 or 5, or

(iii) at such other times as the court may order;

(c) advise the creditors of the filing of the report referred to in paragraph (b) in any notice of a meeting of creditors referred to in section 4 or 5; and

(d) carry out such other functions in relation to the company as the court may direct.

...

[17] It appears that the purpose of the *CCAA* is to grant to an insolvent company protection from its creditors in order to permit it a reasonable opportunity to restructure its affairs in order to reach a compromise or arrangement between the company and its creditors. The court has the power to order a meeting of the creditors or class of creditors for them to consider a compromise or arrangement proposed by the debtor company (s. 4, 5). Where a majority of the creditors representing two thirds value of the creditors or class of creditors agree to a compromise or arrangement, the court may sanction it and thereafter such compromise or arrangement is binding on all creditors, or class of creditors (s. 6).

[18] Section 12 of the *Act* defines a claim to mean "any indebtedness, liability or obligation of any kind that, if unsecured, would be a debt provable in bankruptcy within the meaning of the *Bankruptcy and Insolvency Act*." However, as noted by McElcheran in *Commercial Insolvency in Canada* (LexisNexis Canada Inc., Markham, Ontario, 2005 at p. 279-80) the *CCAA* does not set out a process for identification or determination of claims; instead, the Court creates a claims process by court order.

[19] The only guidance provided by the CCAA is that in the event of a disagreement the amount of a claim shall be determined by the court on summary application by the company or by the creditor. Section 12(2) of the Act provides:

Determination of amount of claim

(2) For the purposes of this Act, the amount represented by a claim of any secured or unsecured creditor shall be determined as follows:

(a) the amount of an unsecured claim shall be the amount

(i) in the case of a company in the course of being wound up under the Winding-up and Restructuring Act, proof of which has been made in accordance with that Act,

(ii) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, proof of which has been made in accordance with that Act, or

(iii) in the case of any other company, proof of which might be made under the Bankruptcy and Insolvency Act, but if the amount so provable is not admitted by the company, the amount shall be determined by the court on summary application by the company or by the creditor; and

(b) the amount of a secured claim shall be the amount, proof of which might be made in respect thereof under the Bankruptcy and Insolvency Act if the claim were unsecured, but the amount if not admitted by the company shall, in the case of a company subject to pending proceedings under the Winding-up and Restructuring Act or the Bankruptcy and Insolvency Act, be established by proof in the same manner as an unsecured claim under the Winding-up and Restructuring Act or the Bankruptcy and Insolvency Act, as the case may be, and in the case of any other company the amount shall be determined by the court on summary application by the company or the creditor.

[20] The only parties who appeared on this motion were the Monitor, ScoZinc and Komatsu. No specific submissions were requested nor made by the parties with respect to the nature of the court's jurisdiction to determine the mechanism and time lines to classify and quantify claims against the debtor company.

[21] Under the *Bankruptcy and Insolvency Act* the Trustee is the designated gatekeeper who first determines whether a Proof of Claim submitted by a creditor is valid. The trustee may admit the claim or disallow it in whole or in part (s.135(2) *BIA*). A creditor who is dissatisfied with a decision by the trustee may appeal to a judge of the Bankruptcy Court.

[22] In contrast, the *CCAA* does not set out the procedure beyond the language in s.12. The language only accomplishes two things. The first is that the debtor company can agree on the amount of a secured or unsecured claim; and secondly, if there is a disagreement, then on application of either the company or the creditor, the amount shall be determined by the court on “summary application”.

[23] The practice has arisen for the court to create by order a claims process that is both flexible and expeditious. The Monitor identifies, by review of the debtor’s records, all potential claimants and sends to them a claim package. To ensure that all creditors come forward and participate on a timely basis, there is a provision in the claims process order requiring creditors to file their claims by a fixed date. If they do not, subject to further relief provided by the claims process order, or by the court, the creditor’s claim is barred.

[24] If the Monitor disagrees with the claim, and the disagreement cannot be resolved, then a claimant can present its case to a claims officer who is usually given the power to adjudicate disputed claims, with the right of appeal to a judge of the court overseeing the *CCAA* proceedings.

[25] The establishment of a claims process utilizing the monitor and or a claims officer by court order appears to be a well accepted practice (See for example *Federal Gypsum Co., (Re)* 2007 NSSC 384; *Olympia & York Developments Ltd. (Re)* (1993), 17 C.B.R. (3d) 1 (Ont. S.C.J.); *Air Canada, (Re)* (2004) 2 C.B.R. (5th) 23 (Ont.S.C.J.); *Triton Tubular Components v. Steelcase Inc.*, [2005] O.J. No. 3926 (Ont.S.C.J.); *Muscletech Research & Development Inc.,(Re)*, [2006] O.J. No. 4087 (Ont.S.C.J.); *Pine Valley Mining Corp., (Re)* 2008 BCSC 356; *Blue Range Resource Corp., Re* 2000 ABCA 285; *Carlen Transport Inc. v. Juniper Lumber Co. (Monitor of)* (2001), 21 C.B.R. (4th) 222 (N.B.Q.B.).)

[26] I could find no reported case that doubt the authority of the court to create a claims process. Kenneth Kraft in his article “The *CCAA* and the Claims Bar Process”, (2000), 13 Commercial Insolvency Reporter 6, endorsed the utilization

of a claims process on the basis of reliance on the court's inherent jurisdiction, provided the process adhered to the specific mandates of the CCAA. In unrelated contexts, caution has been expressed with respect to reliance on the inherent jurisdiction of the superior court as the basis for dealing with the myriad issues that can arise under the CCAA (See: *Clear Creek Contracting v. Skeena Cellulose Inc.*, (2003), 43 C.B.R. (4th) 187 (B.C.C.A.) and *Stelco Inc.(Re)*, [2005] O.J. No. 1171 (CA.)).

[27] Sir J.H. Jacob, Q.C. in his seminal article "The Inherent Jurisdiction of the Court", (1970) Current Legal Problems 23, concluded that it has been clear law from the earliest times that superior courts of justice, as part of their inherent jurisdiction, have the power to control their own proceedings and process. He wrote:

Under its inherent jurisdiction, the court has power to control and regulate its process and proceedings, and it exercises this power in a great variety of circumstances and by many different methods. Some of the instances of the exercise of this power have been of far-reaching importance, others have dealt with matters of detail or have been of transient value. Some have involved the exercise of administrative powers, others of judicial powers. Some have been turned into rules of law, others by long usage or custom may have acquired the force of law, and still others remain mere rules of practice. The exercise of this power has been pervasive throughout the whole legal machinery and has been extended to all stages of proceedings, pre-trial, trial and post-trial. Indeed, it is difficult to set the limits upon the powers of the court in the exercise of its inherent jurisdiction to control and regulate its process, for these limits are coincident with the needs of the court to fulfil its judicial functions in the administration of justice.

p. 32-33

[28] The CCAA gives no specific guidance to the court on how to determine the existence, nature, validity or extent of a claim against a debtor company. As noted earlier, the only reference is in s. 12 of the Act that if there is a dispute as to the amount of a claim, then the amount shall be determined by the court "on summary application". In *Re Freeman Estate*, [1922] N.S.J. No. 15, [1923] 1 D.L.R. 378 (en banc) the court considered the words "on summary application" as they appeared in the *Probate Act* R.S.N.S. 1900 c.158. Harris C.J. wrote:

[17] The words "summary application" do not mean without notice, but simply imply that the proceedings before the Court are not to be conducted in the ordinary way, but in a concise way.

[18] The Oxford Dictionary p. 140 gives as one of the meanings of "summary" dispensing with needless details or formalities-- done with despatch.

[19] In the case of the Western &c R. Co. v. Atlanta (1901), 113 Ga. 537, the meaning of the words "summary proceeding" is discussed at some length and the Court held at pp. 543-544:--

"In a summary manner does not at all mean that they may be abated without notice or hearing, but simply that it may be done without a trial in the ordinary forms prescribed by law for a regular judicial procedure."

[20] I cite this not because it is a binding authority, but because its reasoning commends itself to my judgment and I adopt it.

[29] In my opinion, whatever process may be appropriate and necessary to adjudicate disputed claims that ultimately end up before a judge of the superior court, the determination by the court that claims must initially be identified and assessed by the Monitor, and heard first by a Claims Officer, is a valid exercise of the court's inherent jurisdiction.

[30] The CCAA gives to the court the express and implied jurisdiction to do a variety of things. They need not all be enumerated. The court is required to appoint a monitor (s.11.7). Once appointed, the monitor is required to monitor the company's business and financial affairs. The *Act* mandates that the monitor have access to and examine the company's property including all records. The monitor must file a report with the court on the state of the company's business and financial affairs and contain prescribed information. In addition, the monitor shall carry out such other functions in relation to the company as the court may direct (s.11.7(3)(d)).

[31] In these circumstances, it is not only logical, but eminently practical that the monitor, as an officer of the court, be directed by court order to fulfil the analogous role to that of the trustee under the *BIA*. The Claims Procedure Order of February 18, 2009 accomplishes this.

POWER OF THE MONITOR

[32] The Monitor was required by the Order to publish a notice to claimants in the newspaper regarding the claims procedure. It was also required to send a claims package to known potential claimants identified by the Monitor through its review of the books and records of ScoZinc. The claims bar date was set as March 16, 2009, or such later date as may be ordered by the court.

[33] The duties of the Monitor, once a claim was received by it, were set out in paragraphs 9 and 10 of the Claims Procedure Order. They provide as follows:

9. Upon receipt of a Proof of Claim:

- a. The Monitor is hereby authorized and directed to use reasonable discretion as to the adequacy of compliance as to the manner in which Proofs of Claim are completed and executed and may, where it is satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this Order as to the completion and the execution of a Proof of Claim. A Claim which is accepted by the Monitor shall constitute a Proven Claim;
- b. the Monitor and ScoZinc may attempt to consensually resolve the classification and amount of any Claim with the claimant prior to accepting, revising or disallowing such Claim; and

...

- 10. The Monitor shall review all Proofs of Claim filed on or before the Claims Bar Date. The Monitor shall accept, revise or disallow such Proofs of Claim as contemplated herein. The Monitor shall send a Notice of Revision or Disallowance and the form of Notice of Dispute to the Claimant as soon as the Claim has been revised or disallowed but in any event no later than 11:59 p.m. (Halifax time) on March 27, 2009 or such later date as the Court may order. Where the Monitor does not send a Notice of Revision or Disallowance by the aforementioned date to a Claimant who has submitted a Proof of Claim, the Monitor shall be deemed to have accepted such Claim.

[34] Any person who wished to dispute a Notice of Revision or Disallowance was required to file a notice to the monitor and to the Claims Officer no later than April 6, 2009. The Claims Officer was designated to be Richard Cregan, Q.C., serving in his personal capacity and not as Registrar in Bankruptcy. Subject to the direction of the court, the Claims Officer was given the power to determine how evidence would be brought before him and any other procedural matters that may arise with respect to the claim. A claimant or the Monitor may appeal the Claims Officer's decision to the court.

[35] The Monitor suggests that the power given to it under paragraph 9(a) and 10 is sufficient to permit it to accept the revised Proofs of Claim filed after the claim's bar date of March 16, 2009, but before its assessment date of March 27, 2009.

[36] Reliance is also placed on the decision of the Alberta Court of Appeal in *Blue Range Resource Corp.* 2000 ABCA 285. As noted by the Monitor, the decision in *Blue Range* did not directly deal with the issue on which the Monitor here seeks directions. In *Blue Range*, the claims procedure established by the court set the claims bar date of June 15, 1999. Claims of creditors not proven in accordance with the procedures set out were deemed to be forever barred. Some creditors filed their Notice of Claim after the claims bar date. The monitor disallowed their claims. There were a second group of creditors who filed their Notice of Claim prior to the applicable claims bar date, but then sought to amend their claims after the claims bar date had passed. The monitor also disallowed these claims as late. What is not clear from the reported decisions is whether this second group of creditors requested amendments of their claims during the time period granted to the Monitor to carry out its assessment.

[37] The chambers judge allowed the late and amended claims to be filed. Enron Capital Corp. and the creditor's committee sought leave to appeal that decision. Leave to appeal was granted on January 14, 2000 with respect to the following question:

What criteria in the circumstances of these cases should the Court use to exercise its discretion in deciding whether to allow late claimants to file claims which, if proven, may be recognized, notwithstanding a previous claims bar order containing a claims bar date which would otherwise bar the claim of the late claimants, and applying the criteria to each case, what is the result?

Re Blue Range Resources Corp., 2000 ABCA 16

[38] Wittmann J.A. delivered the judgment of the court. He noted that all counsel conceded that the court had the authority to allow the late filing of claims and that the appeal was really a matter of what criteria the court should use in exercising that power. Accordingly, a Claims Procedure Order that contains a claims bar date should not purport to forever bar a claim without a saving provision. Wittmann J.A. set out the test for determining when a late claim may be included to be as follows:

[26] Therefore, the appropriate criteria to apply to the late claimants is as follows:

1. Was the delay caused by inadvertence and if so, did the claimant act in good faith?
2. What is the effect of permitting the claim in terms of the existence and impact of any relevant prejudice caused by the delay?
3. If relevant prejudice is found can it be alleviated by attaching appropriate conditions to an order permitting late filing?
4. If relevant prejudice is found which cannot be alleviated, are there any other considerations which may nonetheless warrant an order permitting late filing?

[27] In the context of the criteria, "inadvertent" includes carelessness, negligence, accident, and is unintentional. I will deal with the conduct of each of the respondents in turn below and then turn to a discussion of potential prejudice suffered by the appellants.

2000 ABCA 285

[39] The appellants claimed that they would be prejudiced if the late claims were allowed because if they had known the late claims would be allowed they would have voted differently. This assertion was rejected by the chambers judge. With respect to what is meant by prejudiced, Wittmann J.A. wrote:

40 In a CCAA context, as in a BIA context, the fact that Enron and the other Creditors will receive less money if late and late amended claims are allowed is

not prejudice relevant to this criterion. Re-organization under the CCAA involves compromise. Allowing all legitimate creditors to share in the available proceeds is an integral part of the process. A reduction in that share can not be characterized as prejudice: *Re Cohen* (1956), 36 C.B.R. 21 (Alta. C.A.) at 30-31. Further, I am in agreement with the test for prejudice used by the British Columbia Court of Appeal in 312630 British Columbia Ltd. It is: did the creditor(s) by reason of the late filings lose a realistic opportunity to do anything that they otherwise might have done? Enron and the other creditors were fully informed about the potential for late claims being permitted, and were specifically aware of the existence of the late claimants as creditors. I find, therefore, that Enron and the Creditors will not suffer any relevant prejudice should the late claims be permitted.

[40] In considering how the Monitor should carry out its duties and responsibilities under the Claims Procedure Order it is important to note that the Monitor is an officer of the court and is obliged to ensure that the interests of the stakeholders are considered including all creditors, the company and its shareholders (See *Laidlaw Inc Re* (2002), 34 C.B.R. (4th) 72 (Ont. S.C.J.).

[41] In a different context Turnbull J.A. in *Siscoe & Savoie v. Royal Bank* (1994), 29 C.B.R. (3rd) 1 commented that the monitor is an agent of the court and as a result is responsible and accountable to the court, owing a fiduciary duty to all of the parties (para. 28).

[42] In my opinion, para. 9(a) is not of assistance in determining the authority of the Monitor to revise upward a claim filed after the claim's bar date but before the assessment date. Paragraph 9(a) authorizes the Monitor to use reasonable discretion as to the adequacy of compliance as to **the manner** to which Proofs of Claim are completed and executed. If it satisfied that the claim has been adequately proven it may waive strict compliance with the requirements of the order as to **completion** and the **execution** of a Proof of Claim.

[43] Paragraph 10 of the Claims Procedure Order mandates the Monitor shall review all Proofs of Claim filed on or before the claims bar date. It shall "accept, revise or disallow such Proofs of Claim as contemplated herein". While normally a monitor's revision would be to reduce a Proof of Claim, there is in fact nothing in the Claims Procedure Order that so restricts the Monitor's authority. It is obviously contemplated by para. 10 that the monitor is to carry out some assessment of the claims that are submitted.

[44] In my view, the Proofs of Claim that are filed act both as a form of pleading and an opportunity for the claimant to provide supporting documents to evidence its claim. In the case before me, the creditors discovered that the claims they had submitted were inaccurate and further evidence was tendered to the Monitor to demonstrate. The Monitor, after reviewing the evidence, accepted the validity of the claims.

[45] Courts in a general way are engaged in dispensing justice. They do so by setting up and applying procedural rules to ensure that litigants are afforded a fair hearing. The resolution of disputes through the litigation process, including the ultimate hearing, is fundamentally a truth-seeking process to determine the facts and to apply the law to those facts. Can it be any different where the process is not in the court but under its supervision pursuant to a claims process under the CCAA?

[46] To suggest that the monitor does not have the authority to receive evidence and submissions and to consider them is to say that it does not have any real authority to carry out its court appointed role to assess the claims that have been submitted. The notion that the monitor cannot look at documentary evidence on its own initiative or at the instance of a claimant, and even consider submissions, is to deny it any real power to consider and make a preliminary determination of the merits of a claim.

[47] The Claims Procedure Order contains a number of provisions that anticipate the exchange of information between the Monitor, the company and a creditor. Paragraph 9(b) authorizes the Monitor and ScoZinc to attempt to consensually resolve the classification and the amount of any claim with a claimant prior to accepting, revising or disallowing such claim. Paragraph 17 of the Claims Procedure Order directs that the Monitor shall at all times be authorized to enter into negotiations with claimants and settle any claim on such terms as the Monitor may consider appropriate.

[48] In my opinion, it does not matter that revised claims were submitted after the claims bar date. In essence, the Monitor simply acted to revise the Proofs of Claim already submitted to conform with the evidence elicited by the Monitor, or submitted to it. The Monitor had the necessary authority to revise the claims, either as to classification or amount.

[49] If a claimant seeks to revise or amend its claim after the assessment date set out in the Claims Procedure Order, different considerations may come into play. The appropriate procedure will depend on the provisions of the Claims Procedure Order. In addition, the court, as the ultimate arbiter of disputed claims under s. 12 of the *CCAA*, should always be viewed as having the jurisdiction to permit appropriate revision of claims.

Beveridge, J.

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 A PLAN OF COMPROMISE AND
ARRANGEMENT OF CLINE MINING CORPORATION, NEW ELK COAL
COMPANY LLC AND NORTH CENTRAL ENERGY COMPANY

BEFORE: Regional Senior Justice G.B. Morawetz

COUNSEL: *Robert J. Chadwick and Logan Willis*, for the Applicants

J. Swartz, for the Secured Noteholders

Marc Wasserman and Michael De Lellis, for FTI Consulting Canada Inc.,
Proposed Monitor

HEARD: December 3, 2014

ENDORSEMENT

[1] Cline Mining Corporation ("Cline"), New Elk Coal Company LLC ("New Elk"), North Central Energy Company ("North Central") and, together with Cline and New Elk (the "Applicants") are in the business of locating, exploring and developing mineral resource properties, with a focus on gold and metallurgical coal (the "Cline Business"). The Applicants, along with their wholly-owned subsidiary, Raton Basin Analytical LLC ("Raton Basin") and, together with the Applicants (the "Cline Group") have interests in resource properties in Canada, the United States and Madagascar.

[2] The Applicants apply for an initial order pursuant to the provisions of the *Companies' Creditors Arrangement Act* ("CCAA") and, if granted, the Applicants also seek an order (the "Claims Procedure Order") approving a claims process (the "Claims Procedure") for the identification and determination of claims against the Applicants and their present and former directors and officers. The Applicants also seek an order (the "Meetings Order") *inter alia*: (i) accepting the filing of a plan of compromise and arrangement in respect of the Applicants (the "Plan"); (ii) authorizing the Applicants to call, hold and conduct meetings (the "Meetings") of creditors whose claims are to be affected by the Plan for the purpose of enabling such creditors to consider and vote on a resolution to approve the Plan; and (iii) approving the procedures to be followed with respect to the calling and conduct of the Meetings.

[3] The Cline Group has experienced financial challenges that necessitate a recapitalization of the Applicants under the CCAA. As set out in the affidavit of Mr. Matthew Goldfarb, Chief Restructuring Officer and Acting Chief Executive Officer of Cline, the performance of the Cline Business has been adversely affected by the broader industry wide challenges, particularly the protracted downturn in prevailing prices for metallurgical coal. Operations at the New Elk metallurgical coal mine in Colorado (the “New Elk Mine”) were suspended in July 2012 because the mine could not operate profitably as a result of a decline in the market price of metallurgical coal. The suspension of mining activities was intended to be temporary. However, Mr. Goldfarb contends that market conditions in the coal industry have not sufficiently recovered and the suspension of full scale mining activities is still in effect.

[4] Mr. Goldfarb contends that the Cline Group’s other resource investments remain at the feasibility, exploration and/or development stages and the Cline Group’s current inability to derive profit from the New Elk Mine has rendered the Applicants unable to meet their financial obligations as they become due.

[5] Cline is in default of its 2011 series 10% Senior Secured Notes (the “2011 Notes”) as well as its 2013 series 10% Senior Secured Notes (the “2013 Notes”, and collectively with the 2011 Notes, the “Secured Notes”). As at December 1, 2014, total obligations in excess of \$110 million are owed in respect of the Secured Notes, which matured on June 15, 2014. The Secured Notes were subject to Forbearance Agreements that expired on November 28, 2014 and Mr. Goldfarb contends that the Applicants do not have the ability to repay the Secured Notes.

[6] The Secured Notes are issued by Cline and guaranteed by New Elk and North Central. The indenture trustee in respect of the Secured Notes (the “Trustee”) holds a first ranking security interest over substantially all the assets of Cline, New Elk and North Central. Mr. Goldfarb states that the amounts owing under the Secured Notes exceed the value of the Cline Business and that there would be no recovery for unsecured creditors if the Trustee were to enforce its security against the Applicants in respect of the Secured Notes.

[7] The Secured Notes are held by beneficial owners whose investments are managed by Marret Asset Management Inc. (“Marret”). Marret exercises all discretion and authority in respect of the holders of the Secured Notes (the “Secured Noteholders”). Cline has engaged in discussions with representatives of Marret regarding a consensual recapitalization of the Applicants and these discussions have resulted in a proposed recapitalization transaction that is supported by Marret, on behalf of the Secured Noteholders (the “Recapitalization”).

[8] Mr. Goldfarb states that if implemented, the Recapitalization would:

- a. maintain the Cline Group as a unified corporate enterprise;
- b. reduce the Applicants’ secured indebtedness by more than \$55 million;
- c. reduce the Applicants’ annual interest expense in the near term;
- d. preserve certain tax attributes within the restructured company; and

- e. effectuate a reduced debt structure to enable the Cline Group to better withstand prolonged weakness in the price of metallurgical coal.

[9] Mr. Goldfarb also states that the Recapitalization would also provide a limited recovery for the Applicants' unsecured creditors, who would otherwise receive no recovery in a security enforcement or asset sale scenario. It is contemplated that the Recapitalization would be implemented pursuant to a plan of compromise and arrangement under the CCAA (the "CCAA Plan") that is recognized in the United States under Chapter 15, Title 11 of the United States Bankruptcy Code ("Chapter 15").

[10] Cline and Marret have entered into a Support Agreement dated December 2, 2014 that sets forth the principal terms of the proposed Recapitalization. Based on Marret's agreement to the Recapitalization (on behalf of the Secured Noteholders), the Applicants have achieved support from their senior ranking creditors, which represent in excess of 95% of the Applicants' total indebtedness.

[11] The Applicants seek the Initial Order to stabilize their financial situation and to proceed with the Recapitalization as efficiently as possible, and to this end, the Applicants request that the Court also grant the Claims Procedure Order and the Meetings Order.

[12] Cline is a public company incorporated under the laws of British Columbia, with its registered head office located in Vancouver. Cline commenced business under the laws of Ontario in 2003 and Mr. Goldfarb states that its principal office, which serves as the head office and nerve centre of the Cline Group is located in Toronto.

[13] Cline is the direct or indirect parent company of New Elk, North Central and Raton Basin. Cline also holds minority interests in Iron Ore Corporation in Madagascar SARL, Strike Minerals Inc. and UMC Energy plc, all of which are exploration companies.

[14] Cline is the sole shareholder of New Elk, a limited liability company incorporated pursuant to the laws of Colorado. New Elk holds mining rights in the New Elk Mine and maintains a Canadian bank account with the Bank of Montreal in Toronto.

[15] New Elk is the sole shareholder of North Central and Raton Basin, both of which are incorporated pursuant to the laws of Colorado. North Central holds a fee-simple interest in certain coal parcels on which the New Elk Mine is situated and maintains a Canadian bank account with the Bank of Montreal in Toronto. Raton Basis is inactive and is not an applicant in the proceedings.

[16] Cline Group prepares its financial statements on a consolidated basis. The required financial statements are in the record. As at August 31, 2014, the Cline Group's liabilities were approximately \$99 million. The primary secured liabilities were the 2011 Notes in the principal amount in excess of \$71 million, plus accrued and unpaid interest, and the 2013 Notes in the principal amount of approximately \$12 million, plus accrued and unpaid interest. Both the 2011 Notes and the 2013 Notes matured on June 15, 2014.

[17] Pursuant to an Inter-Creditor Agreement, the 2011 Notes and the 2013 Notes have a first ranking security interest on the property and undertakings of the Applicants and rank *pari passu* as between each other.

[18] Cline and New Elk are defendants in an uncertified class action lawsuit alleging that they violated the *WARN Act* by failing to provide personnel who provided services to New Elk with at least 60 days advance written notice of the suspension of both scale production at the New Elk Mine. These allegations are disputed.

[19] The Applicants are aware of approximately \$3.5 million in other unsecured claims.

[20] On December 16, 2013, Cline was unable to make semi-annual interest payments in respect of both the 2011 and 2013 Notes. A Forbearance Agreement was entered into. During the forbearance period, the Applicants engaged Moelis & Company to conduct a comprehensive sale process in an effort to maximize value for the Applicant and its stakeholders (the "Sales Process"). No offers or expressions of interest were received in the Sale Process.

[21] The forbearance period expired on November 28, 2014 and Mr. Goldfarb has stated that Marret has confirmed that the Secured Noteholders have given instructions to the Trustee to accelerate the Secured Notes.

[22] Accordingly, Cline is immediately required to pay in excess of \$110 million in respect of the Secured Notes. Mr. Goldfarb states that the Cline Group does not have the ability to pay these amounts and consequently the Trustee is in a position to enforce its security over the assets and property of the Applicants.

[23] In light of these financial conditions, Mr. Goldfarb states that the Applicants are insolvent.

[24] Mr. Goldfarb also contends that without the benefit of CCAA protection, there could be an erosion of the value of the Cline Group and that the stay of proceedings under the CCAA is required to preserve the value of the Cline Group.

[25] The Applicants are seeking the appointment of FTI Consulting Canada Inc. ("FTI") as the proposed monitor in these proceedings (the "Monitor").

[26] The proposed Initial Order also provides for a court ordered charge (the "Administration Charge") to be granted in favour of the Monitor, its counsel, counsel to the Applicants, the Chief Restructuring Officer (the "CRO") and counsel to Marret in respect of their fees and disbursements incurred at the standard rates and charges. The proposed Administration Charge is an aggregate amount of \$350,000.

[27] The directors and officers have expressed their desire for certainty with respect to potential personal liability if they continue in their current capacities. Mr. Goldfarb states that in order to continue to carry on business during the CCAA proceedings and in order to conduct the Recapitalization most effectively, the Applicants require the active and committed involvement

of the board and, accordingly, the proposed Initial Order provides for a court ordered charge (the “Directors’ Charge”) in the amount of \$500,000 to secure the Applicants’ indemnification of its directors and officers in respect of liabilities they may incur during the CCAA proceedings. The amount of the Directors’ Charge has been calculated based on the estimated exposure of the directors and officers and has been reviewed with the prospective Monitor. The proposed Directors Charge would only apply to the extent that the directors and officers do not have coverage under the D&O insurance policy with AIG Insurance Company of Canada.

[28] The Applicants seek to complete the Recapitalization as quickly as reasonably possible and they anticipate that their existing cash resources will provide the Cline Group with sufficient liquidity during the CCAA proceedings.

[29] It is also contemplated that foreign recognition proceedings will be sought in Colorado pursuant to Chapter 15. The Applicants seek the authorization for the Monitor to act as the foreign representative of the Applicants in the CCAA proceedings and to seek recognition of these proceedings in the United States pursuant to Chapter 15.

[30] Having reviewed the record, including the affidavit of Mr. Goldfarb and the pre-filing report submitted by FTI, I am satisfied that each of the Applicants is “a debtor company” within the meaning of the defined term in s. 2 of the CCAA.

[31] Cline is a “company” within the meaning of the CCAA. It is incorporated under the laws of British Columbia with gold development assets in Ontario and does business from its head office in Toronto.

[32] New Elk and North Central are incorporated in Colorado, have assets in Canada, namely bank accounts in Toronto and are directed from Cline’s head office in Toronto. In my view, each of New Elk and North Central is a “company” within the meaning of the CCAA because it is an incorporated company having assets in Canada.

[33] I am also satisfied that the Applicants meet both the traditional test for insolvency under the *Bankruptcy and Insolvency Act* and the expanded test for insolvency based on a looming liquidity condition given that Cline has been unable to make interest payments under the Secured Notes, the Secured Notes have matured, the Forbearance Agreement has expired and the Trustee is in a position to enforce its security over the property of the Applicants. Further, I am satisfied that the Applicants are unable to obtain traditional or alternative financing to support the day-to-day operations and there is no reasonable expectation that the Applicants will be able to generate sufficient cash flow from operations to support their existing debt obligations (see: *(Re) Stelco Inc.* (2004), 48 CBR (4th) 299 (Ont. Sup. Ct. (Commercial List)); leave to appeal to CA refused (2004) O.J. No. 1903; leave to appeal to SCC refused (2004) SCC No. 336).

[34] It is also clear that the Applicants’ liabilities far exceed the \$5 million threshold amount under the CCAA.

[35] In my view, the CCAA applies to the Applicants’ as “debtor companies” in accordance with s. 3(1) of the CCAA.

[36] The Applicants have filed the required financial information, including audited financial statements and the cash-flow forecast.

[37] The Applicants in the Initial Order seek authorization (but not a requirement) to make certain pre-filing payments, including, *inter alia*:

- a. payments to employees of effective wages, benefits and related amounts;
- b. the amounts owing to respective individuals working as independent contractors;
- c. the fees and disbursements of any consultants, agents, experts, accountants, counsel or other persons currently retained by the Applicants in respect of the CCAA; and
- d. certain expenses incurred by the Applicants in carrying on the business in the ordinary course, that pertains to the period prior to the date of the Initial Order, if, in the opinion of the Applicants and with the consent of the Monitor, the applicable supplier or service provider is critical to the Cline Business and the ongoing operations of the Cline Group.

[38] The court has jurisdiction to permit payment of pre-filing obligations to persons whose services are critical to the ongoing operations of the debtor's companies (see: *(Re) Canwest Global Communications Corp.* (2009), 59 CBR (5th) 72; *(Re) Cinram International Inc.*, 2012 ONSC 3767 and *(Re) Skylink Aviation Inc.*, 2013 ONSC 1500). In granting such authorization, the courts consider a number of factors, including:

- a. whether the goods and services were integral to the business of the applicants;
- b. the applicants' need for the uninterrupted supply of the goods or services;
- c. the fact that no payments would be made without the consent of the monitor;
- d. the monitor's support and willingness to work with the applicants to ensure that payments to suppliers in respect of pre-filing liabilities were appropriate;
- e. whether the applicants had sufficient inventory of goods on hand to meet their needs; and
- f. the effect on the debtor's ongoing operations and ability to restructure if they were unable to make pre-filing payments to their critical suppliers.

[39] In this case, the Applicants are of the view that their employees and certain of their independent contractors, certain suppliers of goods and services and certain providers of permits and licences are critical to the operation of the Cline Business. Mr. Goldfarb believes that such

persons should be paid in the ordinary course, including in respect of pre-filing amounts, in order to avoid disruption to the Applicants' operations during the CCAA proceedings.

[40] I am satisfied that it is appropriate in the present circumstances to grant the Applicants the authority to pay certain pre and post-filing obligations, subject to the terms and conditions in the proposed Initial Order.

[41] Turning now to the request for the Administration Charge, s. 11.52 of the CCAA expressly provides the court with the jurisdiction to grant the Administration Charge. In *(Re) Canwest Publishing Inc.*, 2010 ONSC 222, the court noted that s. 11.52 does not contain any specific criteria for a court to consider in granting an administration charge and provide a list of non-exhaustive factors to consider in making such an assessment. The list of factors to consider include:

- a. the size and complexity of the business being restructured;
- b. the proposed role of the beneficiaries of the charge;
- c. whether there is unwarranted duplication of roles;
- d. whether the quantum of the proposed charge appears to be fair and reasonable;
- e. the position of the secured creditors likely to be affected by the charge; and
- f. the position of the monitor.

[42] The Applicants submit that the Administration Charge is warranted and necessary for the reasons set forth in Mr. Goldfarb's affidavit at paragraphs 133 – 140.

[43] I am satisfied that in these circumstances, the granting of the Administration Charge is warranted and necessary and that it is appropriate for the court to exercise its jurisdiction to grant the Administration Charge in the amount of \$350,000.

[44] The Applicants also seek a Directors' Charge in the amount of \$500,000.

[45] Section 11.51 of the CCAA affords the court the jurisdiction to grant a charge relating to directors' and officers' indemnification on a priority basis. The court has granted director and officer charges in a number of cases including *Canwest Global, supra*, *Canwest Publishing, supra*, *Cinram, supra* and *Skylink, supra*.

[46] The Applicants submit that the Directors' Charge is warranted and necessary and that it is appropriate in the present circumstances for the court to exercise its jurisdiction and grant the charge in the amount of \$500,000.

[47] For the reasons set out in Mr. Goldfarb's affidavit at paragraphs 134 - 138, I accept these submissions.

[48] The Applicants have also indicated that, with the assistance of the Monitor as foreign representative, they intend to commence Chapter 15 proceedings in the United States Bankruptcy Court for the District of Colorado. Pursuant to s. 56 of the CCAA, the court has the authority to appoint a foreign representative of the Applicants for the purpose of having these proceedings recognized in a jurisdiction outside of Canada.

[49] The Applicants seek authorization for each of the Applicants and the Monitor to apply to any court for recognition of the Initial Order and authorization for the Monitor to act as representative in respect of these CCAA proceedings for the purpose of having the CCAA proceedings recognized outside of Canada.

[50] I am satisfied that it is appropriate to appoint the Monitor as foreign representative of the Applicants with respect to these proceedings.

[51] The Applicants, in their factum, also address the issue of the Applicants' "center of main interest" as being in Ontario. These submissions are set out at paragraphs 77 – 84 of the Applicants' Factum.

[52] Although the submissions are of interest, the determination of the Applicants' "center of main interest" ("COMI") is an issue to be considered by the United States Bankruptcy Court for the District of Colorado, rather than this court.

[53] The Applicants also seek a postponement of the Annual Shareholders Meeting. The previous Annual Meeting of Cline was held on August 15, 2013 and therefore Cline was required by statute to hold an annual general meeting by November 15, 2014.

[54] Mr. Goldfarb states that it would serve no purpose for Cline to call and hold its annual meeting of Shareholders given that the Shareholders of Cline no longer have an economic interest in Cline as a result of the insolvency. The Applicants submit that it is appropriate for the court to exercise its jurisdiction to relieve Cline from its obligation to call and hold its annual meeting of Shareholders until after the termination of the CCAA proceedings or further order of the court. In support of this request, the Applicants reference *Canwest Global, supra* and *Skylink, supra*.

[55] In my view, the request to postpone the annual Shareholders meeting is appropriate in the circumstances and is granted.

[56] In the result, I am satisfied that the Applicants meet all of the qualifications required to obtain the requested relief under the CCAA and the Initial Order is granted in the form presented.

[57] The Applicants also request two additional orders that they believe are necessary to advance the Recapitalization:

- a. an order establishing a process for the identification and determination of claims against the Applicants and their present and former directors and officers (the Claims Procedure Order); and
- b. an order authorizing the Applicants to file the Plan and to convene meetings of their affected creditors to consider and vote on the Plan (the Meetings Order).

[58] The Applicants seek the Claims Procedure Order and the Meetings Order at this stage because they wish to effectuate the recapitalization as efficiently as possible. Further, the Applicants submit that the “comeback clauses” included in the draft Claims Procedure Order and Meetings Order ensure that no party is prejudiced by the granting of such order at this time.

[59] The Applicants have submitted a factum in support of the Claims Procedure Order and Meetings Order. In the factual background to the Recapitalization and proposed Plan, the Claims Procedure and the meeting of creditors is set out at paragraphs 8 – 29 of the factum. For informational purposes, these paragraphs are set out in Appendix “A” to this Endorsement.

[60] The issues to be considered on this motion are whether:

- (a) it is appropriate to proceed with the Claims Procedure;
- (b) it is appropriate to permit the Applicants to file the Plan and call the meetings;
- (c) the proposed classification of creditors is appropriate; and
- (d) a consolidated plan is appropriate in the circumstances.

[61] In *(Re) Skylink, supra* at paragraph 35, I noted that while it is not the usual practice for applicants to request claims procedure and meetings order concurrently with an initial CCAA application, the court has granted such relief in appropriate circumstances. The support for a restructuring proposal from the only creditors with an economic interest, and the existence of a comeback hearing at which any issues in respect of the orders can be addressed, are two factors that militate in favour of granting the Claims Procedure and Meetings Order concurrently with the initial application.

[62] In my view, the foregoing comment is applicable in these proceedings.

[63] I also note that both the Claims Procedure Order and the Meetings Order provide that any interested party that wishes to amend the Claims Procedure Order or the Meetings Order, as applicable, can bring a motion on a comeback date to be set by the court.

[64] I also accept that most of the Applicants’ known creditors are familiar with the Applicants and the Cline Business and the determination of most of the claims against the Applicants would be carried out by the Applicants using the Notice of Claim Procedure. As

such, the Applicants submit that a claims bar date of January 13, 2015 will provide sufficient time for creditors to assert their claims and will not result in any prejudice to said creditors.

[65] Based on the submissions of the Applicants, I accept this submission.

[66] Accordingly, I am satisfied that the court should exercise its discretion and grant the requested Claims Procedure Order at this time.

[67] Turning now to the issue as to whether it is appropriate to permit the Applicants to file the Plan and call the meetings, the court is not required to address the fairness and reasonableness of the Plan at this stage.

[68] In these circumstances, I am satisfied that it is appropriate to grant the Meetings Order at this time in order to allow the Meetings Procedure to proceed concurrently with the Claims Procedure, with a view to completing the Recapitalization as efficiently as possible.

[69] Commencing at paragraph 42 of the factum, the Applicants make submissions with respect to the proposed classification of creditors for voting purposes.

[70] The Applicants submit that the holders of the 2011 Notes and the 2013 Notes have a commonality of interest in respect of their *pro rata* share of the Secured Noteholders Allowed Secured Claim and should be placed in the same class for voting purposes.

[71] For the purposes of the motion today, I am prepared to accept that it is appropriate for the Secured Noteholders to vote in the same class in respect of their Secured Noteholders Allowed Secured Claim.

[72] The Affected Unsecured Creditors' Class includes creditors with unsecured claims against the Applicants, including the Secured Noteholders in respect of their Secured Noteholders Allowed Unsecured Claim and, if applicable, Marret in respect of the Marret Unsecured Claim. The Applicants submit that the affected Unsecured Creditors have a commonality of interest and should be placed in the same class for voting purposes.

[73] It is noted that the determination of the Secured Noteholders Allowed Unsecured Claim has been determined by the Applicants and Marret and, for purposes of voting at the Secured Noteholders Meeting, is set at \$17.5 million.

[74] For the purposes of the motion today, I am prepared to accept the submissions of the Applicants including their determination of the affected Unsecured Creditors class.

[75] The *WARN Act* plaintiffs class consists of potential members of an uncertified class action proceeding. The Applicants submit that the *WARN Act* claims have been asserted by only two *WARN Act* plaintiffs on behalf of other potential members of the class and these claims have not been proven and are contested by the Applicants.

[76] Due to the unique nature and status of these claims, the Applicants have offered the *WARN Act* plaintiffs consideration that is different than the consideration offered to the Affected Unsecured Creditors.

[77] I accept, for the purposes of this motion, that the *WARN Act* plaintiffs should be placed in a separate class for voting purposes.

[78] With respect to holders of “Equity Claims”, the Meetings Order provides that any person with a claim that meets the definition of “equity claim” under s. 2(1) of the CCAA will have no right to, and will not, vote at meetings; and the Plan provides that equity claimants will not receive a distribution under the Plan or otherwise recover anything in respect of their equity claims or equity interest.

[79] For the purposes of this motion, I accept the submission of the Applicants that it is appropriate for equity claimants to be prohibited from voting on the Plan.

[80] The Plan as proposed by the Applicants is a consolidated plan of arrangement that is intended to address the combined claims against all the Applicants. Courts will authorize a consolidated plan of arrangement to be filed for two or more related companies in appropriate circumstances (see, for example: *(Re) Northland Properties Ltd.* (1988), 69 CBR (NS) 226 (BCSC); *(Re) Lehndorff General Partners Ltd.* (1993), 17 CBR (3d) 24).

[81] In this case, the Applicants submit that a consolidated plan is appropriate because:

- a. New Elk is a wholly-owned subsidiary of Cline and North Central is a wholly-owned subsidiary of New Elk;
- b. the Applicants are integrated members of the Cline Group, and there is significant sharing of business functions within the Cline Group;
- c. the Applicants have prepared consolidated financial statements;
- d. all three of the Applicants are obligors in respect of the Secured Notes;
- e. the Secured Noteholders are the only creditors with an economic interest in any of the three Applicants and have a first ranking security interest over all or substantially all of the assets, property and undertakings of each of the Applicants;
- f. the *WARN Act* claims are asserted against both Cline and New Elk under a “single employer” theory of liability;
- g. North Central has no known liabilities other than its obligations in respect of the Secured Notes;

- h. Unsecured Creditors of the Applicants would receive no recovery outside of the Plan; and
- i. the filing of a consolidated plan does not prejudice any affected Unsecured Creditor or *WARN Act* plaintiff, since a consolidated plan will not eliminate any veto position with respect to approval of the plan that such creditors would have if separate plans of arrangement were filed in respect of each of the Applicants.

[82] For the purposes of the motion today, I accept these submissions and consider it appropriate to authorize the filing of a consolidated plan.

[83] In the result, I am satisfied that it is appropriate to grant both the Claims Procedure Order and the Meetings Order at this time.

[84] It is specifically noted that the “comeback clause” that is included in both the Claims Procedure and the Meetings Orders will allow parties to come back before this court to amend or vary the Claims Procedure Order or the Meetings Order. The comeback hearing has been scheduled for Monday, December 22, 2014.

Regional Senior Justice G.B. Morawetz

Date: December 3, 2014

APPENDIX “A”

A. RECAPITALIZATION AND PROPOSED PLAN

(1) Overview of the Recapitalization

8. The Applicants have been actively engaged in discussions with Marret, on behalf of the Secured Noteholders, regarding a possible recapitalization of the Applicants. The Applicants believe that the Recapitalization, in the circumstances, is in the best interests of the Applicants and their stakeholders. The Recapitalization provides for, *inter alia*, the following:
- (a) the Secured Noteholders Allowed Secured Claim will be compromised, released and discharged as against the Applicants upon implementation of the Plan (the “**Plan Implementation Date**”) for new Cline common shares representing 100% of the equity in Cline (the “**New Cline Common Shares**”), and new indebtedness in favour of the Secured Noteholders in the principal amount of \$55 million (the “**New Secured Debt**”);
 - (b) Cline will be the borrower and New Elk and North Central will be the guarantors of the New Secured Debt, which will be evidenced by a credit agreement with a term of seven (7) years, bearing interest at a rate of 0.01% per annum plus an additional variable interest payable only once the Applicants have achieved certain operating revenue targets;
 - (c) the claims of Affected Unsecured Creditors, which exclude the WARN Act Plaintiffs but include the Secured Noteholders in respect of the Secured Noteholders Allowed Unsecured Claim, will be compromised, released and discharged as against the Applicants on the Plan Implementation Date in exchange for an unsecured, subordinated, non-interest bearing entitlement to receive \$225,000 from Cline on the date that is eight (8) years from the Plan Implementation Date (the “**Unsecured Plan Entitlement**”);
 - (d) notwithstanding the Secured Noteholders Allowed Unsecured Claim, the Secured Noteholders will waive their entitlement to the proceeds of the Unsecured Plan Entitlement, and all such proceeds will be available for distribution to the other Affected Unsecured Creditors with valid claims who are entitled to the Unsecured Plan Entitlement, allocated on a *pro rata* basis;
 - (e) all Affected Unsecured Creditors with Affected Unsecured Claims of up to \$10,000 will, instead of receiving their *pro rata* share of the Unsecured Plan Entitlement, be paid in cash for the full value of their claim and will be deemed to vote in favour of the Plan unless they indicate otherwise, provided that this cash payment will not apply to any Secured Noteholder with respect to its Secured Noteholders Allowed Unsecured Claim;

- (f) all WARN Act Claims will be compromised, released and discharged as against the Applicants on the Plan Implementation Date in exchange for an unsecured, subordinated, non-interest bearing entitlement to receive \$100,000 from Cline on the date this is eight (8) years from the Plan Implementation Date (the “**WARN Act Plan Entitlement**”);
- (g) certain claims against the Applicants, including claims covered by insurance, certain prior-ranking secured claims of equipment providers and the secured claim of Bank of Montreal in respect of corporate credit card payables, will remain unaffected by the Plan;
- (h) existing equity interests in Cline will be cancelled for no consideration; and
- (i) the shares of New Elk and North Central will not be affected by the Recapitalization and will remain owned by Cline and New Elk, respectively.

Goldfarb Affidavit at para. 124; Application Record, Tab 4.

9. Any Affected Creditor with a Disputed Distribution Claim will not be entitled to receive any distribution under the Plan with respect to such Disputed Distribution Claim unless and until such Claim becomes an Allowed Affected Claim. A Disputed Distribution Claim will be resolved in the manner set out in the Claims Procedure Order.

Plan, Section 3.6.

10. Unaffected Creditors will not be affected by the Plan and will not receive any consideration or distributions under the Plan in respect of their Unaffected Claims (except to the extent their Unaffected Claims are paid in full on the Plan Implementation Date in accordance with the express terms of the Plan).

Plan, Sections 1.1, 2.3 and 3.5.

11. If implemented, the Recapitalization would result in a reduction of over \$55 million in interest-bearing debt.

Goldfarb Affidavit at para. 126; Application Record, Tab 4.

12. The proposed Recapitalization is supported by Marret, which has the ability to exercise all discretion and authority of the Secured Noteholders. Consequently, the proposed Recapitalization is supported by 100% of the Secured Noteholders, both as secured creditors of the Applicants and as unsecured creditors of the Applicants in respect of the portion of their claims that is unsecured.

Goldfarb Affidavit at paras. 63, 67 and 145; Application Record, Tab 4.

(2) Classification for Purposes of Voting on the Plan

13. The only classes of creditors for the purposes of considering and voting on the Plan will be (i) the Secured Noteholders Class, (ii) the Affected Unsecured Creditors Class, and (iii) the WARN Act Plaintiffs Class.

Plan, Section 3.2.

Goldfarb Affidavit at para. 153; Application Record, Tab 4.

14. The Secured Noteholders Class consists of the Secured Noteholders in respect of the Secured Noteholders Allowed Secured Claim, being the portion of the Secured Noteholders Allowed Claim against the Applicants that is designated as secured. Each Secured Noteholder will be entitled to vote its *pro rata* portion of that amount in the Secured Noteholders Class.

Goldfarb Affidavit at para. 154; Application Record, Tab 4.

15. The Affected Unsecured Creditors Class consists of the unsecured creditors of the Applicants who are to be affected by the Plan, excluding the WARN Act Plaintiffs (who are addressed in a separate class). The Affected Unsecured Creditors Class includes the Secured Noteholders in respect of the Secured Noteholders Allowed Unsecured Claim, being the portion of the Secured Noteholders Allowed Claim that is designated as unsecured. Each Secured Noteholder will be entitled to vote its *pro rata* portion of the Secured Noteholders Allowed Unsecured Claim in the Affected Unsecured Creditors Class.

Goldfarb Affidavit at para. 155; Application Record, Tab 4.

16. Within the Affected Unsecured Creditors Class, unsecured creditors with Affected Unsecured Claims of up to \$10,000 will be paid in full and will be deemed to vote in favour of the Plan, unless they indicate otherwise.

Goldfarb Affidavit at para. 156; Application Record, Tab 4.

17. The WARN Act Plaintiffs Class consists of all WARN Act Plaintiffs in the WARN Act Class Action who may assert WARN Act Claims against the Applicants. Each WARN Act Plaintiff will be entitled to vote its *pro rata* portion of all WARN Act Claims.

Goldfarb Affidavit at para. 157; Application Record, Tab 4.

18. Unaffected Creditors and Equity Claimants are not entitled to vote on the Plan at the Meetings in respect of their Unaffected Claims and Equity Claims, respectively.

Plan, Sections 3.4(3) and 3.5.

19. The Plan provides that, if the Plan is not approved by the required majorities of both the Unsecured Creditors Class and the WARN Act Plaintiffs Class, or the Applicants determine that such approvals are not forthcoming, the Applicants are permitted to withdraw the Plan and file an amended and restated plan with the features described on Schedule "B" to the Plan (the "Alternate Plan"). The Alternate Plan would provide, *inter alia*, that all unsecured claims and all WARN Act Claims against the Applicants would be treated as unaffected claims, the only voting class under the Alternate Plan would be the Secured Noteholders Class, and all assets of the Applicants would be transferred to an entity designated by the Secured Noteholders in exchange for a release of the Secured Noteholders Allowed Secured Claim.

Goldfarb Affidavit at para. 125; Application Record, Tab 4.

B. CLAIMS PROCEDURE

20. The Applicants wish to commence the Claims Procedure as soon as possible to ascertain all of the Claims against the Applicants for the purpose of voting and receiving distributions under the Plan.
21. Liabilities and claims against the Applicants that the Applicants are aware of, include, *inter alia*, secured obligations in respect of the Secured Notes, secured obligations in respect of leased equipment used at the New Elk Mine, contingent claims for damages and other amounts in connection with certain pending litigation claims against the Applicants, and unsecured liabilities in respect of accounts payable relating to ordinary course trade and employee obligations.

Goldfarb Affidavit at paras. 52-57; Application Record, Tab 4.

22. The draft Claims Procedure Order provides a process for identifying and determining claims against the Applicants and their directors and officers, including, *inter alia*, the following:
 - (a) Cline, with the consent of Marret, will determine the aggregate of all amounts owing by the Applicants under the 2011 Indenture and the 2013 Indenture up to the Filing Date, such aggregate amounts being the "**Secured Noteholders Allowed Claim**";
 - (b) the Secured Noteholders Allowed Claim will be apportioned between the Secured Noteholders Allowed Secured Claim and the Secured Noteholders Allowed Unsecured Claim (being the amount of the Secured Noteholders Allowed Claim that is designated as unsecured in the Plan);

- (c) the Monitor will send a Claims Package to all Known Creditors, which Claims Package will include a Notice of Claim specifying the Known Creditor's Claim against the Applicants for voting and distribution purposes, as valued by the Applicants based on their books and records, and specifying whether the Known Creditor's Claim is secured or unsecured;
- (d) the Claims Procedure Order contains provisions allowing a Known Creditor to dispute its Claim as set out in the applicable Notice of Claim for either voting or distribution purposes or with respect to whether such Claim is secured or unsecured, and sets out a procedure for resolving such disputes;
- (e) the Monitor will publish a notice to creditors in The Globe and Mail (National Edition), the Denver Post and the Pueblo Chieftain to solicit Claims against the Applicants by Unknown Creditors who are as yet unknown to the Applicants;
- (f) the Monitor will deliver a Claims Package to any Unknown Creditor who makes a request therefor prior to the Claims Bar Date, containing a Proof of Claim to be completed by such Unknown Creditor and filed with the Monitor prior to the Claims Bar Date;
- (g) the proposed Claims Bar Date for Proofs of Claim for Unknown Creditors and for Notices of Dispute in the case of Known Creditors is January 13, 2015;
- (h) the Claims Procedure Order contains provisions allowing the Applicants to dispute a Proof of Claim as against an Unknown Creditor and provides a procedure for resolving such disputes for either voting or distribution purposes and with respect to whether such claim is secured or unsecured;
- (i) the Claims Procedure Order allows the Applicants to allow a Claim for purposes of voting on the Plan without prejudice to whether that Claim has been accepted for purposes of receiving distributions under the Plan;
- (j) where the Applicants or the Monitor send a notice of disclaimer or resiliation to any Creditor after the Filing Date, such notice will be accompanied by a Claims Package allowing such Creditor to make a claim against the Applicants in respect of a Restructuring Period Claim;
- (k) the Restructuring Period Claims Bar Date, in respect of claims arising on or after the date of the Applicants' CCAA filing, will be seven (7) days after the day such Restructuring Period Claim arises;
- (l) for purposes of the matters set out in the Claims Procedure Order in respect of any WARN Act Claims: (i) the WARN Act Plaintiffs will be treated as Unknown Creditors since the Applicants are not aware of (and have not quantified) any bona fide claims of the WARN Act Plaintiffs; and (ii) Class Action Counsel shall be entitled to file Proofs of Claim, Notices of Dispute of Revision and

Disallowance, receive service and notice of materials and to otherwise deal with the Applicants and the Monitor on behalf of the WARN Act Plaintiffs, provided that Class Action Counsel shall require an executed proxy in order to cast votes on behalf of any WARN Act Plaintiffs at the WARN Act Plaintiffs' Meeting; and

- (m) Creditors may file a Proof of Claim with respect to a Director/Officer Claim.

Goldfarb Affidavit at para. 151; Application Record, Tab 4.

23. As further discussed below, the Applicants may elect to proceed with the Meetings notwithstanding that the resolution of Claims in accordance with the Claims Procedure may not be complete. The Meetings Order provides for the separate tabulation of votes cast in respect of Disputed Voting Claims and provides that the Monitor will report to the Court on whether the outcome of any vote would be affected by votes cast in respect of Disputed Voting Claims.

Goldfarb Affidavit at paras. 161(f)-(h) and 162; Application Record, Tab 4.

24. The Claims Procedure Order includes a comeback provision providing interested parties who wish to amend or vary the Claims Procedure Order with the ability to appear before the Court or bring a motion on a date to be set by this Court.

Goldfarb Affidavit at para 149; Application Record, Tab 4.

C. MEETINGS OF CREDITORS

25. It is proposed that the Meetings to vote on the Plan will be held at Goodmans LLP, 333 Bay Street, Suite 3400, Toronto, Ontario on January 21, 2015 at 10:00 a.m. for the WARN Act Plaintiffs Class, 11:00 a.m. for the Affected Unsecured Creditors Class, and 12:00 p.m. for the Secured Noteholders Class.

Goldfarb Affidavit at para. 160; Application Record, Tab 4.

Meetings Order, Section 20.

26. The draft Meetings Order provides for, *inter alia*, the following in respect of the governance of the Meetings:

- (a) an officer of the Monitor will preside as the chair of the Meetings;
- (b) the only parties entitled to attend the Meetings are the Eligible Voting Creditors (or their proxyholders), representatives of the Monitor, the Applicants, Marret, all such parties' financial and legal advisors, the Chair, the Secretary, the Scrutineers,

and such other parties as may be admitted to a Meeting by invitation of the Applicants or the Chair;

- (c) only Creditors with Voting Claims (or their proxyholders) are entitled to vote at the Meetings; provided that, in the event a Creditor holds a Disputed Voting Claim as at the date of a Meeting, such Disputed Voting Claim may be voted at the Meeting but will be tabulated separately and will not be counted for any purpose unless such Claim is ultimately determined to be a Voting Claim;
- (d) each WARN Act Plaintiff (or its proxyholder) shall be entitled to cast an individual vote on the Plan as part of the WARN Act Plaintiffs Class, and Class Action Counsel shall be permitted to cast votes on behalf of those WARN Act Plaintiffs who have appointed Class Action Counsel as their proxy;
- (e) the quorum for each Meeting is one Creditor with a Voting Claim, provided that if there are no WARN Act Plaintiffs voting in the WARN Act Plaintiffs Class, the Applicants will have the right to combine the WARN Act Plaintiffs Class with the Affected Unsecured Creditors Class and proceed without a vote of the WARN Act Plaintiffs Class, in which case there shall be no WARN Act Plan Entitlement under the Plan;
- (f) the Monitor will keep separate tabulations of votes in respect of:
 - i. Voting Claims; and
 - ii. Disputed Voting Claims, if any;
- (g) the Scrutineers will tabulate the vote(s) taken at each Meeting and will determine whether the Plan has been accepted by the required majorities of each class; and
- (h) the results of the vote conducted at the Meetings will be binding on each creditor of the Applicants whether or not such creditor is present in person or by proxy or voting at a Meeting.

Goldfarb Affidavit at para. 161; Application Record, Tab 4.

27. The Applicants may elect to proceed with the Meetings notwithstanding that the resolution of Claims in accordance with the Claims Procedure may not be complete. The Meetings Order, if approved, authorizes and directs the Scrutineers to tabulate votes in respect of Voting Claims separately from votes in respect of Disputed Voting Claims, if any. If the approval or non-approval of the Plan may be affected by the votes cast in respect of Disputed Voting Claims, then the Monitor will report such matters to the Court and the Applicants and the Monitor may seek advice and directions at that time. This way, the Meetings can proceed concurrently with the Claims Procedure without prejudice to the Applicants' Creditors.

Goldfarb Affidavit at paras. 161(f)-(h) and 162; Application Record, Tab 4.

28. Like the Claims Procedure Order, the Meetings Order includes a comeback provision providing interested parties who wish to amend or vary the Meetings Order with the ability to appear before the Court or bring a motion on a date to be set by the Court.

Meetings Order, Section 68.

29. By seeking the Claims Procedure Order and the Meetings Order concurrently, the Applicants hope to move efficiently and expeditiously towards the implementation of the Recapitalization.

Goldfarb Affidavit at para. 148; Application Record, Tab 4.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

)

THURSDAY, THE 29th

JUSTICE HAINEY

)

DAY OF OCTOBER, 2020



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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF PHARMHOUSE INC. (the "**Applicant**")

CLAIMS IDENTIFICATION ORDER

THIS MOTION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), for an order, *inter alia*, approving the Claims Identification Process (as defined below) and certain related relief, was heard this day by Zoom videoconference as a result of the COVID-19 pandemic.

ON READING the Notice of Motion of the Applicant, the affidavit of Peter Kampian sworn October 25, 2020, the Second report of Ernst & Young Inc. (the "**Second Report**"), in its capacity as monitor of the Applicant (the "**Monitor**"), filed, and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, counsel for Canopy Rivers Corporation, counsel for 2615975 Ontario Limited, counsel for Bank of Montreal and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of Joshua Foster sworn October 26, 2020;

SERVICE

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.

DEFINITIONS

2. THIS COURT ORDERS that, for the purposes of this Claims Identification Order establishing a procedure for the submission of Claims against the Applicant and the Directors and Officers, in addition to terms defined elsewhere herein, the following terms shall have the following meanings:

- (a) **"Assessments"** means Claims of Her Majesty the Queen in Right of Canada or of any Province or Territory or Municipality or any other taxation authority in any Canadian or foreign jurisdiction, including, without limitation, amounts which may arise or have arisen under any notice of assessment, notice of objection, notice of reassessment, notice of appeal, audit, investigation, demand or similar request from any taxation authority;
- (b) **"Business Day"** means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (c) **"CCAA Proceedings"** means the within proceedings in respect of the Applicant under the CCAA;
- (d) **"Charges"** has the meaning given to that term in the Initial Order;
- (e) **"Claim"** means:
 - (i) any right of claim of any Person against the Applicant, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever in existence at the time of the Initial Order, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of

ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive, or otherwise), and whether or not such indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any right or ability of any Person to advance a claim for contribution or indemnity or otherwise against the Applicant with respect to any matter, action, cause or chose in action, but subject to any counterclaim, set-off or right of compensation in favour of the Applicant which may exist, whether existing at present or commenced in the future, which indebtedness, liability or obligation (A) is based in whole or in part on facts that existed prior to the Filing Date, (B) relates to a time period prior to the Filing Date, or (C) is a right or claim of any kind that would be a claim provable in bankruptcy within the meaning of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "BIA") had the Applicant become bankrupt on the Filing Date, including for greater certainty any claim against the Applicant for indemnification by any Directors or Officers in respect of a D&O Pre-Filing Claim (but excluding any such claim for indemnification that is covered by the Director's Charge (as defined in the Initial Order)) (each, a "Pre-Filing Claim");

- (ii) any right of claim of any Person against the Applicant in connection with any indebtedness, liability or obligation of any kind whatsoever owed by the Applicant to such Person arising out of the restructuring, disclaimer, repudiation, rescission, termination or breach by the Applicant on or after the Filing Date of any contract, lease, other agreement or obligation whether written or oral, including for greater certainty any claim against the Applicant for indemnification by any Directors or Officers in respect of a D&O Restructuring Claim (but excluding any such claim for indemnification that is covered by the Director's Charge) (each, a "Restructuring Claim"); and
- (iii) any right or claim of any Person against one or more of the Directors or Officers of the Applicant, howsoever arising whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any Assessments and any right or ability of any Person to advance a claim for contribution, indemnity or otherwise against any of the Directors and/or Officers with respect to any matter, action, cause or chose in action, however arising and whether:
 - (I) (A) based in whole or in part on facts that existed prior to the Filing Date, (B) relating to a time period prior to the Filing Date, or (C) it is a right or claim of any kind that would be a claim

provable in bankruptcy within the meaning of the BIA had the Applicant become bankrupt on the Filing Date (a **"D&O Pre-Filing Claim"**); or

- (2) based on facts that arose in connection with the restructuring disclaimer, resiliation, termination or breach by the Applicant on or after the Filing Date of any contract, lease, other agreement or obligation, whether written or oral (a **"D&O Restructuring Claim"**),

in each case for which the Directors or Officers are alleged to be, by statute or otherwise by law or equity, liable to pay in their capacity as Directors or Officers (each, a **"D&O Claim"**);

provided, however, that in any case "Claim" shall not include an Excluded Claim;

- (f) **"Claimant"** means any Person asserting a Claim and includes the transferee or assignee of a Claim recognized in accordance with paragraphs 28 and 29 herein or a trustee, executor, liquidator, receiver, receiver and manager, or other Person acting on behalf of or through such Person;
- (g) **"Claims Identification Process"** means the process for identifying Claims outlined in this Claims Identification Order, including the Schedules hereto;
- (h) **"Claims Package"** means the Proof of Claim form, the Notice to Claimants, the Instruction Letter, and any other documentation the Monitor, in consultation with the Applicant, may deem appropriate;
- (i) **"Court"** means the Ontario Superior Court of Justice (Commercial List);
- (j) **"D&O Indemnity Claim"** means any existing or future right of any Director or Officer against the Applicant which arose or arises as a result of any Person filing a Proof of Claim in respect of such Director or Officer for which such Director or Officer is entitled to be indemnified by the Applicant;
- (k) **"Directors"** means the directors and former directors of the Applicant or any Person who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or de facto director of any the Applicant, in such capacity, and "Director" means any one of them;

- (l) **"Excluded Claim"** means any claim secured by any of the Charges;
- (m) **"Filing Date"** means September 15, 2020;
- (n) **"Initial Order"** means the Initial Order of the Honourable Justice Hailey made September 15, 2020 in these CCAA Proceedings, as amended, restated or varied from time to time;
- (o) **"Instruction Letter"** means the instruction letter to Claimants, substantially in the form attached as Schedule "A" hereto, regarding the completion of a Proof of Claim by a Claimant and the Claims Identification Process described herein;
- (p) **"Meeting"** means a meeting of the creditors of the Applicant called for the purpose of considering and voting in respect of a Plan;
- (q) **"Monitor"** means Ernst & Young Inc., in its capacity as the Court-appointed Monitor of the Applicant;
- (r) **"Monitor's Website"** means: <https://www.ey.com/ca/pharmhouse>;
- (s) **"Notice to Claimants"** means the notice for publication by the Monitor as described in paragraph 16 hereof, in the form attached as Schedule "B";
- (t) **"Officers"** means the officers and former officers of the Applicant or any Person who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or de facto officer of the Applicant, in such capacity, and **"Officer"** means any one of them;
- (u) **"Orders"** means any and all orders issued by the Court within the CCAA Proceedings, including the Initial Order;
- (v) **"Person"** means any individual, corporation, firm, limited or unlimited liability company, general or limited partnership, association (incorporated or unincorporated), trust, unincorporated organization, joint venture, trade union, government authority or any agency, regulatory body or officer thereof or any other

entity, wherever situate or domiciled, and whether or not having legal status, and whether acting on its own or in a representative capacity;

- (w) **"Plan"** means a plan of compromise or arrangement contemplated by the Initial Order;
- (x) **"Pre-Filing Claims Bar Date"** means 5:00 p.m. (Eastern Time) on December 10, 2020;
- (y) **"Proof of Claim"** means the Proof of Claim referred to in paragraphs 21 to 23 hereof to be filed by Claimants, substantially in the form attached hereto as Schedule "C"; and
- (z) **"Restructuring Claims Bar Date"** means the later of:
 - (i) the Pre-Filing Claims Bar Date; and
 - (ii) 5:00 p.m. (Eastern Time) on the day which is thirty (30) days after the Monitor sends a Claims Package with respect to a Restructuring Claim in accordance with paragraph 19 of the Claims Identification Order.

INTERPRETATION

3. THIS COURT ORDERS that all references as to time herein shall mean local time in Toronto, Ontario, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day unless otherwise indicated herein.

4. THIS COURT ORDERS that all references to the word "including" shall mean "including without limitation".

5. THIS COURT ORDERS that all references to the singular herein include the plural, the plural include the singular, and any gender includes the other gender.

GENERAL PROVISIONS

6. THIS COURT ORDERS that the Monitor and the Applicant are hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which forms delivered hereunder are completed and executed, and may waive strict compliance with

the requirements of this Claims Identification Order as to completion, execution and submission of such forms and to request any further documentation from a Claimant that the Monitor or the Applicant may require.

7. THIS COURT ORDERS that all Claims shall be denominated in Canadian dollars. Any Claims denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada daily average exchange rate on the Filing Date, which for United States dollars is USD 1: CAD 1.3176.

8. THIS COURT ORDERS that there shall be no presumption of validity or deeming of the amount due in respect of amounts claimed in any Assessments.

9. THIS COURT ORDERS that notwithstanding any other provisions of this Order, the solicitation by the Monitor of Proofs of Claim and the filing by any Claimant of a Proof of Claim shall not, for that reason only, grant any Person any rights, including without limitation, in respect of its Claims or its standing in the CCAA Proceedings, except as specifically set out in this Order.

10. THIS COURT ORDERS that copies of all forms delivered hereunder, as applicable, shall be maintained by the Monitor. The Monitor shall promptly provide copies of all Proofs of Claim received by the Monitor in connection with the Claims Identification Process to counsel for the Applicant, Bennett Jones LLP, by email to Michael Shakra (shakram@bennettjones.com).

ROLE OF THE MONITOR

11. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA, the Initial Order and any other orders of the Court in the CCAA Proceedings, shall assist the Applicant in the administration of the Claims Identification Process provided for herein and is hereby directed and empowered to take such other actions and fulfill such other roles as are contemplated by this Claims Identification Order.

12. THIS COURT ORDERS that the Monitor shall: (i) have all protections afforded to it by the CCAA, this Claims Identification Order, the Initial Order, any other Orders of the Court in the CCAA Proceedings and other applicable law in connection with its activities in respect of this Claims Identification Order, including the stay of proceedings in its favour provided

pursuant to the Initial Order; and (ii) incur no liability or obligation as a result of carrying out the provisions of this Claims Identification Order, including in respect of its exercise of discretion as to the completion, execution or time of delivery of any documents to be delivered hereunder, other than in respect of gross negligence or wilful misconduct.

13. THIS COURT ORDERS that the Applicant, the Officers, the Directors and their respective employees, agents and representatives and any other Person given notice of this Claims Identification Order shall fully cooperate with the Monitor in the exercise of its powers and the discharge of its duties and obligations under this Claims Identification Order.

NOTICE TO CLAIMANTS

14. THIS COURT ORDERS that the Applicant shall within two (2) Business Days following the issuance of the Claims Identification Order provide to the Monitor a complete list of known potential Claimants, listed in the books and records of the Applicant (the "**Known Claimants**" and each a "**Known Claimant**") as at the date of this Order, showing for each Known Claimant, its name, electronic address, or mailing address in the absence of an electronic address, and amount owed pursuant to the Applicant's books and records.

15. THIS COURT ORDERS that the Monitor shall send a Claims Package to each Known Claimant, each party that appears on the Service List, and any other Person that has requested a Claims Package, by ordinary mail or electronic mail to the last known address of the Known Claimant or the address as listed on the Service List, as applicable, within ten (10) Business Days following the issuance of the Claims Identification Order.

16. THIS COURT ORDERS that as soon as practicable and without delay, the Monitor shall cause the Notice to Claimants to be published, for at least one (1) Business Day, in the Globe and Mail, National Edition.

17. THIS COURT ORDERS that the Monitor shall cause the Notice to Claimants, the Claims Package and the Claims Identification Order to be posted to the Monitor's Website as soon as reasonably possible and cause it to remain posted thereon until its discharge as Monitor of the Applicant.

18. THIS COURT ORDERS that upon request by a Claimant for a Claims Package or documents or information relating to the Claims Identification Process prior to the Pre-Filing Claims Bar Date or Restructuring Claims Bar Date, as applicable, the Monitor shall forthwith send a Claims Package, direct such Person to the documents posted on the Monitor's Website, or otherwise respond to the request for information or documents as the Monitor considers appropriate in the circumstances.

19. THIS COURT ORDERS that with respect to Restructuring Claims arising from the restructuring, disclaimer, resiliation, termination or breach of any lease, contracts, or other agreement or obligation, on or after the date of the Initial Order, the Monitor shall send to the counterparty(ies) to such lease, contract or other agreement or obligation a Claims Package:

- (a) within ten (10) Business Days following the issuance of the Claims Identification Order if such Restructuring Claim arose prior to the date of the Claims Identification Order; or
- (b) no later than five (5) Business Days following the time the Monitor actually becomes aware of the effective date of such Restructuring Claim if such Restructuring Claim arises following the date of the Claims Identification Order.

20. THIS COURT ORDERS that the form and substance of each of the Notice to Claimants, Proof of Claim form, Instruction Letter, substantially in the forms attached as schedules hereto, are hereby approved. Despite the foregoing, the Monitor may, from time to time, make such minor changes to such forms as the Monitor, in consultation with the Applicant, considers necessary or desirable.

PROOFS OF CLAIM

21. THIS COURT ORDERS that any Person that wishes to assert a Pre-Filing Claim must deliver to the Monitor on or before the Pre-Filing Claims Bar Date a completed Proof of Claim, including all relevant supporting documentation in respect of such Claim, in the manner set out in this Claims Identification Order.

22. THIS COURT ORDERS that any Person that wishes to assert a Restructuring Claim must deliver to the Monitor on or before the Restructuring Claims Bar Date a completed Proof of

Claim form, together with all relevant supporting documentation in respect of such Claim, in the manner set out in this Claims Identification Order.

23. THIS COURT ORDERS that any Person that wishes to assert a D&O Claim (including, for greater certainty a D&O Pre-Filing Claim or a D&O Restructuring Claim) must deliver to the Monitor on or before the Pre-Filing Claims Bar Date or the Restructuring Claims Bar Date, as applicable, a completed Proof of Claim form, together with all relevant supporting documentation in respect of such D&O Claim, in the manner set out in this Claims Identification Order. The Monitor shall deliver a list of the Proof of Claims received with respect to the D&O Claims and a copy of each such Proof of Claim to the applicable Directors and Officers.

24. THIS COURT ORDERS that any Person wishing to assert a Claim shall include any and all Claims it asserts against an Applicant or a Director or Officer in a single Proof of Claim.

25. THIS COURT ORDERS that any Person who does not file a Proof of Claim such that it is received by the Monitor in accordance with this Claims Identification Order by the Pre-Filing Claims Bar Date or Restructuring Claims Bar Date, as applicable, shall:

- (a) not be entitled to receive further notice with respect to, and shall not be entitled to participate as a Claimant or creditor in, the Claims Identification Process or the CCAA Proceedings in respect of such Claim;
- (b) with respect to a Pre-Filing Claim or a Restructuring Claim, be forever barred, estopped and enjoined from asserting or enforcing such Claim against the Applicant and the Applicant shall not have any liability whatsoever in respect of such Claim and such Claim shall be extinguished without any further act or notification by the Applicant or the Monitor;
- (c) with respect to a D&O Claim, be forever barred, estopped and enjoined from asserting or enforcing such Claim against any of the Directors and Officers and the Directors and Officers shall not have any liability whatsoever in respect of such Claim and such Claim shall be extinguished without any further act or notification by the Applicant, the Monitor or the Directors or Officers;
- (d) not be permitted to vote at any Meeting on account of such Claim; and

- (e) not be permitted to participate in any distribution under any Plan related to such Claim or under these CCAA Proceedings.

D&O INDEMNITY CLAIMS

26. THIS COURT ORDERS that to the extent that any D&O Claim is filed in accordance with this Claims Identification Process, a corresponding D&O Indemnity Claim shall be deemed to have been timely filed in respect of each D&O Claim. For the avoidance of doubt, Directors and Officers shall not be required take any action or to file Proof of Claim in respect of such D&O Indemnity Claim.

SET-OFF

27. THIS COURT ORDERS that nothing in this Claims Identification Order shall affect any right of set-off that the Applicant, a Director or an Officer may have against any Person.

TRANSFER OF CLAIMS

28. THIS COURT ORDERS that if the holder of a Claim transfers or assigns the whole of such Claim to another Person, neither the Monitor nor the Applicant shall be obligated to give notice or otherwise deal with the transferee or assignee of such Claim in respect thereof unless and until written notice of such transfer or assignment, together with evidence satisfactory to the Monitor, in its sole discretion, of such transfer or assignment, has been received by the Monitor and the Monitor has provided written confirmation acknowledging the transfer or assignment of such Claim, and thereafter such transferee or assignee shall for the purposes hereof constitute the "Claimant" in respect of such Claim. Any such transferee or assignee of a Claim shall be bound by any notices given or steps taken in respect of such Claim in accordance with this Claims Identification Order prior to receiving written confirmation by the Monitor acknowledging such assignment or transfer. After the Monitor has delivered a written confirmation acknowledging the notice of the transfer or assignment of a Claim, the Applicant and the Monitor shall thereafter be required only to deal with the transferee or assignee and not the original holder of the Claim. A transferee or assignee of a Claim takes the Claim subject to any defences and rights of set-off to which the Applicant, Director or Officer may be entitled with respect to such Claim. For

greater certainty, a transferee or assignee of a Claim is not entitled to set-off, apply, merge, consolidate or combine any Claims assigned or transferred to it against or on account or in reduction of any amounts owing by such Person to the Applicant. Reference to transfer in this Claims Identification Order includes a transfer or assignment whether absolute or intended as security.

29. THIS COURT ORDERS that if a Claimant or any subsequent holder of a Claim, who in any such case has previously been acknowledged by the Monitor as the holder of the Claim, transfers or assigns the whole of such Claim to more than one Person or part of such Claim to another Person, such transfers or assignments shall not create separate Claims and such Claims shall continue to constitute and be dealt with as a single Claim notwithstanding such transfers or assignments. The Applicant and the Monitor shall not, in each case, be required to recognize or acknowledge any such transfers or assignments and shall be entitled to give notices to and to otherwise deal with such Claim only as a whole and then only to and with the Person last holding such Claim, provided such Claimant may, by notice in writing delivered to the Monitor, direct that subsequent dealings in respect of such Claim, but only as a whole, shall be dealt with by a specified Person and in such event, such Person shall be bound by any notices given or steps taken in respect of such Claim with such Claimant or in accordance with the provisions of this Claims Identification Order.

DETERMINATION AND ADJUDICATION OF CLAIMS

30. THIS COURT ORDERS that the applicable procedures for reviewing, determining adjudicating Claims, if any, shall be established by further Order of the Court.

31. THIS COURT ORDERS that the filing of a Proof of Claim by any Person pursuant to this Claims Identification Order shall be entirely without prejudice to any argument such Person may make that such Claim cannot be compromised or arranged in a Plan.

EXCLUDED CLAIMS

32. THIS COURT ORDERS that, for greater certainty, no Person holding an Excluded Claim shall be required to file a Proof of Claim in respect of such Excluded Claim, and such Person shall be unaffected by this Order in respect of such Excluded Claim.

SERVICE AND NOTICE

33. THIS COURT ORDERS that the Monitor may, unless otherwise specified by this Claims Identification Order, serve and deliver or cause to be served and delivered the Claims Package, any letters, notices or other documents to Claimants or any other interested Person by forwarding true copies thereof by email, prepaid ordinary mail, courier, personal delivery, facsimile transmission or email to such Persons or their counsel (including counsel of record in any ongoing litigation) at the physical or electronic address, as applicable, last shown on the books and records of the Applicant or set out in such Claimant's Proof of Claim if one has been filed. Any such service and delivery shall be deemed to have been received: (i) if sent by ordinary mail, on the third Business Day after mailing within Canada, and the fifth Business Day after mailing internationally; (ii) if sent by courier or personal delivery, on the next Business Day following dispatch; and (iii) if delivered by facsimile transmission or email by 5:00 p.m. on a Business Day, on such Business Day and if delivered after 5:00 p.m. or other than on a Business Day, on the following Business Day.

34. THIS COURT ORDERS that any notice or communication required to be provided or delivered by a Claimant to the Monitor under this Claims Identification Order shall be in writing in substantially the form, if any, provided for in this Claims Identification Order and will be sufficiently given only if delivered by email, prepaid registered mail, courier, or personal delivery addressed to:

Ernst & Young Inc. - The Court Appointed Monitor of PharmHouse Inc.
100 Adelaide Street West, P.O. Box 1
Toronto, ON, M5H 0B3 Canada

Email: pharmhouse.monitor@ca.ey.com

Any such notice or communication delivered by a Claimant shall be deemed to be received upon actual receipt thereof before 5:00 p.m. on a Business Day or if delivered outside of normal business hours, the next Business Day.

35. THIS COURT ORDERS that the posting of materials on the Monitor's Website pursuant to paragraph 17 herein, the publication of the Notice to Claimants and the mailing of the Claims Packages as set out in this Claims Identification Order shall constitute good and sufficient notice to Claimants of the Claims Bar Date, the Restructuring Claims Bar Date and the other deadlines

and procedures set forth herein, and that no other form of notice or service need be given or made on any Person, and no other document or material need be served on any Person in respect of the claims procedure described herein.

36. THIS COURT ORDERS that in the event that this Claims Identification Order is subsequently amended by further Order of the Court, the Applicant shall serve notice of such amendment on the Service List in these proceedings and the Monitor shall post such further Order on the Monitor's Website and such posting shall constitute adequate notice to all Persons of such amendment.

37. THIS COURT ORDERS that if during any period during which notices or other communications are being given pursuant to this Claims Identification Order, a postal strike or postal work stoppage of general application should occur, such notices, notifications or other communications sent by ordinary or registered mail and then not received shall not, absent further Order of this Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery, facsimile transmission or email in accordance with this Claims Identification Order.

38. THIS COURT ORDERS that in the event that this Claims Identification Order is later amended by further Order of the Court, the Monitor shall post such further Order on the Monitor's Website, and such posting shall constitute adequate notice to Claimant of such amended Claims Identification Process.

DIRECTIONS

39. THIS COURT ORDERS that notwithstanding the terms of this Claims Identification Order, the Monitor or the Applicant may apply to this Court from time to time for directions from this Court with respect to this Claims Identification Order, or for such further Order or Orders as any of them may consider necessary or desirable to amend, supplement or clarify the terms of this Claims Identification Order.

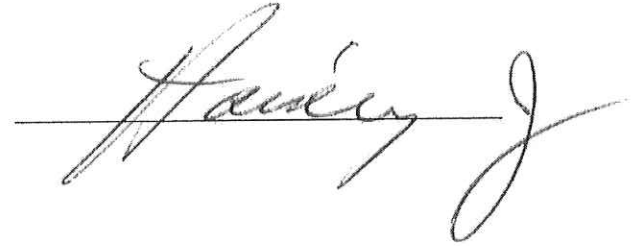
GENERAL

40. THIS COURT ORDERS that nothing in this Order shall prejudice the rights and remedies of any Directors or Officers to the Charges or any applicable insurance policy or prevent or bar any Person from seeking recourse against or payment from the Applicant's insurance or any Director's or Officer's liability insurance policy or policies that exist to protect or indemnify the Directors or Officers whether such recourse or payment is sought directly by the Person asserting a Claim from the insurer or derivatively through the Director or Officer or the Applicant; provided, however, that nothing in this Order shall create any rights in favour of such Person under any policies of insurance nor shall anything in this Order limit, remove, modify or alter any defence to such Claim available to the insurer pursuant to the provisions of any insurance policy or at law; and further provided that any Claim or portion thereof for which the Person receives payment directly from, or confirmation that he or she is covered by, the Applicant's insurance or any Director's or Officer's liability insurance or other liability insurance policy or policies that exist to protect or indemnify the Directors or Officers shall not be recoverable as against an Applicant or Director or Officer as applicable.

41. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective 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 Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

42. THIS COURT ORDERS that each of the Applicant and the Monitor 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, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

43. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. on the date of this Order.

A handwritten signature in black ink, appearing to be "Hawley", written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

OCT 29 2020

PER / PAR:

A handwritten signature in blue ink, appearing to be "PL", written next to the "PER / PAR:" label.

SCHEDULE "A"

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF PHARMHOUSE INC.

INSTRUCTION LETTER FOR THE CLAIMS IDENTIFICATION PROCESS

I. CLAIMS IDENTIFICATION PROCESS

By Order of the Ontario Superior Court of Justice (Commercial List) dated October 29, 2020 (the "**Claims Identification Order**"), Ernst & Young Inc., in its capacity as the Court-appointed monitor (in such capacity, the "**Monitor**") of PharmHouse Inc. ("**PharmHouse**"), has been authorized to assist PharmHouse in conducting a claims identification process (the "**Claims Identification Process**") with respect to claims against PharmHouse and its present or former Directors and Officers ("**Directors/Officers**"). The Claims Identification Order governs the filing and identification of all Claims against PharmHouse and the Directors/Officers.

Unless otherwise defined, all capitalized terms used herein shall have the meanings ascribed to them in the Claims Identification Order.

The Claims Identification Order, the Claims Package, a Proof of Claim form and related materials may be accessed from the Monitor's Website at www.ey.com/ca/pharmhouse.

This letter provides instructions for completing the Proof of Claim. Reference should be made to the Claims Identification Order for a complete description of the Claims Identification Process.

The Claims Identification Process is intended for any Person with any Claims, other than Excluded Claims, of any kind or nature whatsoever against PharmHouse the Directors/Officers or any of them, whether liquidated, unliquidated, contingent or otherwise. Please review the enclosed material for the complete definitions of "**Claim**", "**Pre-Filing Claim**", "**Restructuring Claim**" and "**D&O Claim**" to which the Claims Identification Process applies.

All notices and enquiries with respect to the Identification Process should be addressed to:

Ernst & Young Inc. - The Court Appointed
Monitor of PharmHouse Inc.,
100 Adelaide Street West, P.O. Box 1
Toronto, ON, M5H 0B3
Canada
Hotline: 1-888-338-1764 or 416-943-3083
Email: pharmhouse.monitor@ca.ey.com

II. FOR CLAIMANTS SUBMITTING A PROOF OF CLAIM

If you believe that you have a Claim (other than an Excluded Claim), you **MUST** file a Proof of Claim with the Monitor.

All Proofs of Claim for, (i) Pre-Filing Claims (including D&O Pre-Filing Claims), which for greater certainty are Claims against PharmHouse arising prior to the Filing Date of September 15, 2020, and (ii) D&O Pre-Filing Claims, must be received by the Monitor **before 5:00 p.m. (Eastern Standard Time) on December 10, 2020 (the "Pre-Filing Claims Bar Date")**.

All Proofs of Claim for (a) Restructuring Claims, which for greater certainty are Claims arising out of the restructuring, disclaimer, resiliation, termination or breach by PharmHouse on or after the Filing Date of September 15, 2020 of any contract, lease or other agreement or arrangement whether written or oral, and (ii) D&O Restructuring Claims, must be received by the Monitor **by the later of: (i) the Pre-Filing Claims Bar Date and (ii) 5:00 p.m. (Eastern Standard Time) on the date that is thirty (30) days after the date on which the Monitor sends a Claims Package with respect to a Restructuring Claim or a D&O Restructuring Claim to a Claimant (the "Restructuring Claims Bar Date")**.

PROOFS OF CLAIM MUST BE RECEIVED BY THE PRE-FILING CLAIMS BAR DATE OR THE RESTRUCTURING CLAIMS BAR DATE, AS APPLICABLE, OR THE APPLICABLE CLAIM WILL BE FOREVER BARRED AND EXTINGUISHED. If you are required to file a Proof of Claim pursuant to the Claims Identification Process but do not file a Proof of Claim in respect of a Claim by the Pre-Filing Claims Bar Date or Restructuring Claims Bar Date, as applicable, you shall not be entitled to vote at any Meeting regarding a Plan or participate in any distribution under a Plan or otherwise in respect of such Claims.

All Claims denominated in foreign currency shall be converted to Canadian dollars at the Bank of Canada daily average exchange rate in effect on the Filing Date of September 15, 2020 (USD 1: CAD 1.3176).

Additional Proofs of Claim forms can be obtained by contacting the Monitor at the telephone number and address indicated above and providing particulars as to your name, address and facsimile number or email mail address. Further, Proofs of Claim and related materials may be accessed from the Monitor's Website at www.ey.com/ca/pharmhouse.

DATED at Toronto, Ontario this _____ day of _____, 2020.

Ernst & Young Inc.,
solely in its capacity as Monitor of
PharmHouse Inc., and not
in its personal capacity.

SCHEDULE "B"

SCHEDULE "B"

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF PHARMHOUSE INC.**

NOTICE LETTER FOR THE CLAIMS IDENTIFICATION PROCESS

**RE: NOTICE OF CLAIMS IDENTIFICATION PROCESS, PRE-FILING CLAIMS BAR
DATE AND RESTRUCTURING CLAIMS BAR DATE**

This notice is being published pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) dated October 29, 2020 (the "**Claims Identification Order**"), in PharmHouse Inc.'s ("**PharmHouse**") proceedings under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended. Pursuant to the Initial Order dated September 15, 2020, Ernst & Young Inc. was appointed as monitor of PharmHouse (in such capacity, the "**Monitor**"), and pursuant to the Claims Identification Order is required to assist with conducting a claims identification process (the "**Claims Identification Process**") with respect to claims against PharmHouse and its present and former Directors and Officers (the "**Directors/Officers**"). Additionally, the Monitor is required to send Claims Packages to, among others, PharmHouse's Known Claimants and Claimants having Restructuring Claims. All capitalized terms not defined herein shall have the meanings ascribed to them in the Claims Identification Order.

The Claims Identification Order, the Claims Package, a Proof of Claim and related materials may be accessed from the Monitor's Website at www.ey.com/ca/pharmhouse.

All persons wishing to assert a Claim (other than an Excluded Claim) against PharmHouse or its Directors/Officers **MUST** file a Proof of Claim with the Monitor.

The claims bar date is 5:00 p.m. (Eastern Standard Time) on December 10, 2020 (the "Pre-Filing Claims Bar Date"). Proofs of Claim in respect of Pre-Filing Claims must be completed and filed with the Monitor on or before the Pre-Filing Claims Bar Date.

The restructuring claims bar date is the later of (i) the Pre-Filing Claims Bar Date and (ii) 5:00 p.m. (Eastern Standard Time) on the date that is thirty (30) days after the date on which the Monitor sends a Claims Package with respect to a Restructuring Claim (the "Restructuring Claims Bar Date"). Proofs of Claim in respect of Restructuring Claims must be completed and filed with the Monitor on or before the Restructuring Claims Bar Date.

PROOFS OF CLAIM MUST BE RECEIVED BY THE MONITOR BY THE PRE-FILING CLAIMS BAR DATE OR RESTRUCTURING CLAIMS BAR DATE, AS APPLICABLE, OR THE CLAIM WILL BE FOREVER BARRED AND EXTINGUISHED. If you are required to file a Proof of Claim pursuant to the Claims Identification Process but do not file a Proof of Claim in respect of a Claim by the Pre-Filing Claims Bar Date or the Restructuring Claims

Bar Date, as applicable, you shall not be entitled to vote at any Meeting regarding a Plan or participate in any distribution under a Plan, if any, or otherwise in respect of such Claims.

Reference should be made to the Claims Identification Order for the complete definitions of "Claim", "Pre-Filing Claim", "Restructuring Claim" and "D&O Claim" to which the Claims Identification Process applies.

The Monitor can be contacted at the following address to request a Claims Package or for any other notices or enquiries with respect to the Claims Identification Process

Ernst & Young Inc. - The Court Appointed
Monitor of PharmHouse Inc.,
100 Adelaide Street West, P.O. Box 1
Toronto, ON, M5H 0B3
Canada
Hotline: 1-888-338-1764 or 416-943-3083
Email: pharmhouse.monitor@ca.ey.com

DATED at Toronto, Ontario this _____ day of _____, 2020.

Ernst & Young Inc.,
solely in its capacity as Monitor of
PharmHouse Inc., and not
in its personal capacity.

SCHEDULE "C"

SCHEDULE "C"

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF PHARMHOUSE INC.**

PROOF OF CLAIM

Please read carefully the enclosed Instruction Letter for completing this Proof of Claim. All capitalized terms not defined herein have the meanings ascribed to them in the Claims Identification Order dated October 29, 2020.

I. PARTICULARS OF CLAIMANT:

1. Full Legal Name of Claimant: _____ (the "Claimant")

2. Full Mailing Address of the Claimant:

3. Telephone Number: _____

4. E-Mail Address: _____

5. Facsimile Number: _____

6. Attention (Contact Person): _____

7. Have you acquired this Claim by assignment?

Yes; ☐ No: ☐ (if yes, attach documents evidencing assignment)

If Yes, Full Legal Name of Original Claimant(s):

II. PROOF OF CLAIM:

1. I, _____
(name of Claimant or Representative of the Claimant), of _____

_____ do hereby certify:
(city and province)

(a) that I [check (✓) one]

☐ am the Claimant; OR

☐ am _____ (state position or title) of

(name of Claimant)

(b) that I have knowledge of all the circumstances connected with the Claim referred to below;

(c) that complete documentation in support of the Claim referred to below is attached; and

(d) that PharmHouse and/or one or more of the Directors or Officers of PharmHouse were and still are indebted to the Claimant as follows:¹

Debtor	Pre-Filing Claim Amount	Whether Claim is Secured, Priority Unsecured, or Unsecured	Value of Security Held, if any:
PharmHouse Inc.			
Directors and Officers of PharmHouse Inc.			
_____ (insert names above)			

¹ Claims in a foreign currency are to be converted to Canadian Dollars at the Bank of Canada daily average exchange rate in effect on September 15, 2020.

Debtor	Restructuring Claim Amount	Whether Claim is Secured, Priority Unsecured, or Unsecured	Value of Security Held, if any:
PharmHouse Inc.			
Directors and Officers of PharmHouse Inc.			
(insert names above)			

III. PARTICULARS OF CLAIM

The particulars of the undersigned's total Claim (including Pre-Filing Claims, Restructuring Claims and D&O Claims) are attached.

(Provide full particulars of the Claim and supporting documentation, including amount, description of transaction(s) or agreement(s) or legal breach(es) giving rise to the Claim, name of any guarantor(s) which has guaranteed the Claim, particulars and copies of any security and amount of Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed. If a Claim is made against any Directors or Officers, specify the applicable Directors or Officers and the legal basis for the Claim against each of them.)

IV. FILING OF CLAIM

For Pre-Filing Claims (including D&O Pre-Filing Claims), this Proof of Claim MUST be received by the Monitor before 5:00 p.m. (Eastern Standard Time) on December 10, 2020 (the "Pre-Filing Claims Bar Date").

For Restructuring Claims (including D&O Restructuring Claims), this Proof of Claim MUST be received by the Monitor before the later of: (i) the Pre-Filing Claims Bar Date and (ii) 5:00 p.m. (Eastern Standard Time) on the date that is thirty (30) days after the date on which the Monitor sends a Claims Package with respect to a Restructuring Claim (the "Restructuring Claims Bar Date").

In either case, completed forms must be delivered by prepaid ordinary mail, registered mail, courier, personal delivery or email addressed:

Ernst & Young Inc. - The Court Appointed
Monitor of PharmHouse Inc.,
100 Adelaide Street West, P.O. Box 1
Toronto, ON, M5H 0B3
Canada
Hotline: 1-888-338-1764 or 416-943-3083
Email: pharmhouse.monitor@ca.ey.com

Failure to file your Proof of Claim as directed by the Pre-Filing Claims Bar Date or Restructuring Claims Bar Date, as applicable, will result in your Claim being extinguished and forever barred and in you being prevented from making or enforcing a Claim against PharmHouse or any of its present or former Directors and Officers.

DATED at _____ this _____ day of _____, 2020.

Signature of Claimant

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN
THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PHARMHOUSE INC.

Court File No.: CV-20-00647704-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings Commenced in Toronto

CLAIMS IDENTIFICATION ORDER

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Lawyers for the Applicant