2022 01G 0709

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF an application of Grant Thornton Limited, as Court- Appointed Monitor of 92834 Newfoundland and Labrador Inc., ("**92834**" or the "**Company**"); and

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

MEMORANDUM OF FACT AND LAW OF APPLICANT

SUMMARY OF CURRENT DOCUMENT	
Court File Number(s):	2022 01G 0709
Date of Filing of Document:	June 26, 2026
Name of Party Filing or Person:	Grant Thornton Limited, in its capacity as Court-Appointed Monitor (the "**Applicant**") of the Company
Application to which Document being filed relates:	Notice of Motion filed by the Applicant to approve the fees and disbursements of the Monitor and its legal counsel pursuant to the CCAA, discharge the Monitor from the CCAA proceedings and terminate the CCAA proceedings
Statement of Purpose in filing:	Memorandum in support of the Application
Court Sub-File Number, if any	N/A

#50306802.1

FACTS:

1. As of February 21, 2022, Canada Fluorspar Inc., and Canada Fluorspar (NL) (hereinafter referred to as the "**Original Entities**") were insolvent and were unable to meet its debt obligations as they became due. As a result, PricewaterhouseCoopers Inc., in its capacity as court-appointed receiver and manager of Bridging Finance Inc., and Bridging Income Fund LP ("**PWC**") applied for an interim receivership order pursuant to s.47(1) of the *Bankruptcy and Insolvency Act*, RSC 1985 c. B-3 (the "**BIA**") over substantially all the assets and undertaking of the Original Entities, which order was issued by this Honourable Court on the 21st day of February, 2022 (the "**Interim Receivership Order**"). Pursuant to the Interim Receivership Order, Grant Thornton Limited ("**GTL**") was appointed as Interim Receiver of all the assets and undertaking of the Original Entities, with the exception of those assets and undertakings that were carved out of the receivership (defined therein as the "**Excluded Property**").

2. On the 8th day of March 2022, GTL as Interim Receiver made an application to this Honourable Court declaring that Canada Fluorspar Inc., Canada Fluorspar (NL) Inc., and Newspar (hereinafter the "**New Entities**") were a company to which the CCAA applied and requesting protection under the CCAA. As a result of that application, the Court granted an initial CCAA Order on the 11th day of March 2022 (the "**Initial CCAA Order**") and the Court subsequently granted the ARIO on the 18th day of March 2022. In both orders, GTL was appointed and confirmed as CCAA Monitor.

3. In the Initial CCAA Order, this Honourable Court authorized the Monitor, on behalf of the New Entities, to enter into a DIP Financing Agreement with the DIP Lenders referenced in the Initial CCAA Order (the "**DIP Lenders**").

4. Following the 18th day of March 2022, the Monitor conducted a Sales and Investment Solicitation Process ("**SISP**") as contemplated in the order of this Honourable Court issued on the same day as the ARIO (the "**SISP Order**"). The activities of the Monitor in executing the SISP during this period are outlined generally in the Monitor's Third, Fourth and Fifth Report.

5. On the 31st day of May 2022, the Monitor made an application to this Honourable Court seeking an extension of the stay period until the 2nd day of September 2022 and amending the SISP procedures to extend the dates of the Phase 2 Bid Deadline and each step thereafter in order to correspond with the CCAA stay period (the "**Amended SISP Order**"). The extension was requested to allow the Monitor to arrange the completion of a National Instruments 43-101 Technical Report with the expectation that it would assist in increasing the purchase price for the New Entities' assets. The court granted these amendments by Order dated the 10th day of June 2022.

6. As outlined in the Monitor's Fifth Report, the Monitor received multiple bids for the New Entities' assets through the SISP process. The Monitor made a recommendation to the DIP Lenders as to its preferred choice with respect to the bids received. The DIP Lenders supported the Monitor's recommendation, and the Monitor therefore notified the successful bidder (the "**Successful Bidder**") on August 18, 2022.

7. On the 30th day of August 2022, this Honourable Court issued the 2nd Amended ARIO extending the CCAA stay period until the 17th day of October 2022 and amended the SISP procedures in order to allow time to (i) complete the SISP; (ii) enter into a definitive agreement with the Successful Bidder; and (iii) obtain court approval.

8. As outlined in the Monitor's Fifth Report, the Monitor completed the SISP and awarded, with the consent and the agreement of the DIP Lenders, the sale of the New Entities' assets to the Successful Bidder.

9. As outlined in the Monitor's Sixth Report, the Monitor and the New Entities worked diligently to complete the definitive agreement. However, the Successful Bidder failed to top up the agreed upon deposit as required by the SISP, and therefore failed to complete a key deadline as outlined in the SISP. As a result of this material adverse change, the agreement with the Successful Bidder was then terminated and the Monitor filed with this Honourable Court a Material Adverse Change Report.

10. On the 12th day of October 2022, this court issued the 3rd Amended ARIO extending the CCAA stay period until the 26th day of February 2023 to allow the senior secured creditors

and the DIP Lenders time to determine next steps as it related to the New Entities' assets, including the possibility of another SISP or a different type of sale or liquidation process.

11. Following the 12th day of October 2022, the Monitor and the Company worked diligently to solicit bids from parties that previously submitted proposals during the SISP. As of January 26, 2023, the Monitor selected, and the DIP Lenders approved a new successful bidder (the "**Purchaser**").

12. On the 13th day of February 2023, the Monitor entered into a Letter of Intent with the Purchaser.

13. On the 21st day of February 2023, this court issued the 4th Amended ARIO extending the CCAA stay period until the 31st day of May 2023 to allow (i) the Purchaser to complete its due diligence (ii) enter into a definitive agreement; and (iii) obtain court approval.

14. On the 18th day of May, 2023, the court issued the 5th Amended ARIO extending the CCAA stay period until the 16th day of June, 2023 to allow the Purchaser (i) to complete the definitive agreement and (ii) obtain court approval and close the transaction. In addition, the court approved the addition of CFI Newspar Holdings Inc., to these proceedings (CFI Newspar Holdings Inc., the Original Entities and the New Entities are hereinafter referred to as "**CFI**").

15. On the 7th day of June 2023, the court issued the Approval and Reverse Vesting Order ("**ARVO**") (i) approving the sale to the Purchaser and (ii) issuing the 6th Amended ARIO extending the CCAA stay period until the 31st day of October, 2023.

16. Pursuant to the ARVO, all the Excluded Liabilities, Claims and Encumbrances (except for the Permitted Encumbrances) as defined in the Share Purchase Agreement between CFI and the Purchaser were vested out to ResidualCo, being 92834, and 92834 was added as an applicant in these CCAA proceedings.

17. On the 13th day of June 2023 the share transaction with the Purchaser closed and the sale proceeds were paid by the Purchaser to the Monitor.

18. On the 25th day of October, 2023, the court issued (i) the Claims Identification Order, (ii) the 7th amendment to the ARIO extending the stay of proceedings until the 31st day of March, 2024, (iii) the interim distribution of funds by the Monitor in an amount of $14,100,000.00 as set out in the Monitor's Tenth Report; and (iv) approval of the activities, fees and disbursements of the Monitor and its Legal Counsel.

19. On the 26th day of October 2023, the Monitor remitted the amount of $14,112,409.00 to Bridging, the amount included outstanding interest due and owing.

20. On the 25th day of January, 2024, this court issued an order (the "**Distribution Order**") providing for the following: (i) 8th amendment to the ARIO extending the stay of proceedings until the 30th day of June, 2024, (ii) a distribution of funds by the Monitor to the priority claimants in an amount of $272,892.76 and to Bridging in an amount of $500,878.46, and (iii) that upon final distribution of funds by the Monitor, the stay of proceedings be lifted to allow the Monitor to make an assignment in to bankruptcy with respect to 92384.

21. Pursuant to the Distribution Order, claimants were given until the 15th day of February 2024 to appeal any claim determinations or the Monitor's proposed distribution of the funds.

22. The Monitor receiver 6 notices of disputed claims, with a total claims value of $1,813,643.01.

23. On the 15th day of May, 2024, this court issued an order providing the following; (i) that the Monitor remit $1,230,700.00 into this Honourable Court, as funds representing the amount of the disputed claim of the Town of St. Lawrence, (ii) that the Monitor remit $123,078.05 into this Honourable Court, as funds representing the amount of the disputed claim of Box L. Mining and Ranching LLC, and (iii) that any determinations subject to an unresolved dispute between the Monitor and the claimants shall be submitted for adjudication to this Honourable Court.

24. The disputed claims of the Town of St. Lawrence and Box L. Mining and Ranching LLC were subsequently resolved.

25. At a Case Management Meeting held on April 17, 2024, this court scheduled September 19, 2024, as the hearing date for the appeals filed by Inaminka Marine Services Limited and Richard Spellacy (the "Appeals").

26. The Appeals were heard by this Honourable Court on the 19th day of September 2024, at which time the court reserved its decision.

27. On the 12th day of December 2024, this court rendered a decision dismissing the appeal of Inaminka Marine Services Limited and ordering the Monitor to make a redetermination of the claim of Richard Spellacy.

28. On the 13th day of December 2024, this court issued an order providing the following; (i) that the Stay of Proceedings be extended to the 30th day of June, 2025, (ii) that a deadline to appeal the Monitor's redetermination of Mr. Spellacy's claim, be fourteen (14) days from the date of the issuance of the Monitor's redetermination, and (iii) approval of the Monitor's seventeenth report.

29. On the 26th day of May 2025, the Monitor issued its redetermination of Mr. Spellacy's claim, which was appealed by Mr. Spellacy on the 6th of June, 2025;

30. At a Case Management Meeting held on the 25th day of July, 2025, this court scheduled November 18, 2025, as the hearing day for the second appeal of Mr. Spellacy, as well as setting filing deadlines for both the Monitor, its counsel and Mr. Spellacy and his counsel;

31. Prior to the hearing date of November 18, 2025, a settlement was reached on Mr. Spellacy's claim, and as a result Mr. Spellacy withdrew his claim;

32. The Monitor has determined that it is an appropriate time to have the remainder of its fees and disbursements, as well as the Monitor's legal fees and disbursements, approved by this Honourable Court.

33. Finally, the Monitor has determined that it is appropriate to be discharged as Monitor and for the CCAA proceeding to be terminated, along with the Administration Charge.

ISSUES:

34. The issues before this Honourable Court are as follows:

(a) Whether the fees and disbursements of the Monitor and the Monitor's legal counsel should be approved; and

(b) Whether this Honourable Court should terminate the CCAA proceedings and discharge the Monitor from its duties as specified in the Interim Receivership Order, the Initial CCAA Order and the ARIO, as amended;

LAW AND ARGUMENT:

Whether the fees and disbursements of the Monitor and the Monitor's legal counsel should be approved.

35. Pursuant to paragraph 27 of the ARIO (as amended), the Monitor and its legal counsel are to be paid their reasonable fees and disbursements at their standard rates and charges incurred both before and after the ARIO.

36. In *Nortel Networks Corp. Re,* the Ontario Superior Court of Justice discussed the factors to be considered on a passing of accounts of the Monitor and its legal counsel;

> 13 There are few cases dealing with the factors to consider on a passing of the accounts of a monitor. Most deal with a receiver's accounts. However I agree with Justice Topolniski in *Winalta Inc., Re* (2011), 84 C.B.R. (5th) 157 (Alta. Q.B.) that there should be no difference in dealing with a monitor's accounts and that the onus is on a monitor to make out its case. She stated:
>
>> 30 In my view, the appropriate focus on an application to approve a CCAA monitor's fees is no different than that in a receivership or bankruptcy. The question is whether the fees are fair and reasonable in all of the circumstances. The concerns are ensuring that the monitor is fairly compensated while safeguarding the efficiency and integrity of the CCAA process. As with any inquiry, the evidence proffered will be important in making those determinations.
>>
>> 32 I am not aware of any reported authority supporting the proposition that there is a presumption of regularity that applies to a monitor's fees. This application is no different than any other. The applicant, here the Monitor, bears the onus of making out its case. A bald assertion by the Monitor that the Fee is reasonable does not necessarily make it so. The Monitor must provide the court with cogent evidence on which the court can base its assessment of whether the Fee is fair and reasonable in all of the circumstances.

14 So far as the test for reviewing a receiver's fees is concerned, the New Brunswick Court of Appeal in *Belyea v. Federal Business Development Bank* (1983), 44 N.B.R. (2d) 248 (N.B. C.A.) referred to a number of factors to be considered. These factors have been accepted in Ontario as being a useful guideline but not an exhaustive list as other factors may be material in any particular case. See *Confectionately Yours Inc., Re* (2002), 36 C.B.R. (4th) 200 (Ont. C.A.) at para. 51 ("*Bakemates*") and *Bank of Nova Scotia v. Diemer*, 2014 ONSC 365 (Ont. S.C.J.) at para. 5, aff'd, (2014), 20 C.B.R. (6th) 292 (Ont. C.A.). In *Diemer*, Pepall J.A. listed the factors as follows:

33 The court endorsed the factors applicable to receiver's compensation described by the New Brunswick Court of Appeal in *Belyea: Bakemates*, at para. 51. In *Belyea*, at para. 9, Stratton J.A. listed the following factors:

- the nature, extent and value of the assets;
- the complications and difficulties encountered;
- the degree of assistance provided by the debtor;
- the time spent;
- the receiver's knowledge, experience and skill;
- the diligence and thoroughness displayed;
- the responsibilities assumed;
- the results of the receiver's efforts; and
- the cost of comparable services when performed in a prudent and economical manner.

These factors constitute a useful guideline but are not exhaustive: *Bakemates*, at para. 51.

Reference: *Nortel Networks Corp (Re)*, 2017 ONSC 673 at paragraphs 13,14 and 33 [TAB 1]

37. In the case at hand, the following factors support the granting of the approval of the accounts of the Monitor and the Monitor's legal counsel:

(a) The assets (including the shares of Canada Fluorspar Inc.) pursuant to the CCAA proceedings were significant in nature, extent and value. The sale price for the shares was $25,000,000.00.

(b) The CCAA Proceedings were complex with competing interests. The directors and officers of CFI all resigned, requiring the Monitor to take on a greater role and request an expansion to the Monitor's powers, which this Court granted pursuant to the ARIO. In addition, the Monitor successfully entered into a letter of intent and prepared all necessary documentation for an Approval and Reverse Vesting Order only for the Successful Bidder to fail to pay the top up deposit, requiring the Monitor to go back to the interested parties in the SISP and enter into a new letter of intent with the Purchaser. The Monitor also responded to a claim in Federal Court related to CFI's barge. The Monitor subsequently set up a claims process and dealt with a number of claims and appeals arising from the claims process;

(c) As the Directors and Officers of CFI had resigned prior to the Initial CCAA Order, CFI had minimal involvement in the CCAA proceedings. As a result, the Monitor was granted enhanced powers in March 2022 and the Monitor terminated most employees in February, March and April of 2022. Substantially all of the activities undertaken by or on behalf of CFI were undertaken by the Monitor's professionals with the assistance of the Monitor's legal counsel. The expanded role resulted in the Monitor and its legal counsel undertaking a significantly greater scope of work than in a typical CCAA proceeding;

(d) The Monitor had extensive involvement in all aspects of the CCAA proceedings, as noted above. The Monitor spent approximately 673 hours from August 29, 2023 to April 14, 2026 on the CCAA proceedings. The Monitor's legal counsel spent approximately 517.40 hours from September 1, 2023 to May 19, 2026 dealing with matters in these proceedings. The Monitor regularly disclosed in its cashflows the fees for both the Monitor and its legal counsel. As such, there has been full disclosure throughout these CCAA proceedings with respect to the activities of the Monitor and its legal counsel.

(e) The Monitor had to implement a Claims Process where Eighty-Four (84) claims were received, reviewed and determined;

(f) The Monitor had to deal with four (4) appeals as part of the Claims Process, two of which were assigned, with approval of this Honourable Court to Bridging

Finance. Two (2) appeals were adjudicated and a redetermination of the Monitors' decision on one (1) appeal was required.

(g) The Monitor's professionals and the Monitor's legal counsel have extensive experience in CCAA proceedings;

(h) The Monitor acted diligently throughout the entire process including its worldwide marketing efforts up to the successful completion of the sale of the shares of Canada Fluorspar Inc., and dealing with the Eighty-Four (84) claims pursuant to the Claims Process. The Monitor filed Eighteen (18) reports, three (3) confidential reports and a material adverse change report, all of which outlined the tasks completed by the Monitor throughout the CCAA proceedings;

(i) The efforts of the Monitor and its legal counsel resulted in a successful sale of the shares of Canada Fluorspar Inc., with a purchase price that allowed for the repayment of the Interim Receiver's Borrowing Charge, the DIP Loan and a significant payment to the first priority senior secured creditor of CFI.

(j) As outlined in the affidavit of the Monitor, the Monitor is of the opinion that its fees and disbursements are comparable to the rates charged by other professional firms in Atlantic Canada for the provision of similar services regarding complex commercial restructuring matters.

(k) As outlined in the Affidavit of Meghan M. King, given the complexity of this matter and the various legal issues arising, the legal fees incurred by the Monitor are reasonable and comparable for insolvency files of this nature.

38. For the reasons outlined above, the Monitor is requesting approval of the activities, fees and disbursements of the Monitor and the Monitor's legal counsel.

Whether this Honourable Court should terminate the CCAA proceedings and discharge the Monitor from its duties as specified in the Interim Receivership Order, the Initial CCAA Order and the ARIO, as amended

39. The only known remaining activities that will be required to be undertaken in the CCAA proceedings are (i) seeking approval from this Honourable Court for the fees and disbursements of the Monitor and its legal counsel, (ii) the completion of the necessary statutory and administrative steps for the termination of the CCAA proceedings and discharge of the Monitor, (iii) the distribution of residual funds to Bridging, if any, and (iv) the filing of Form 3 with the Office of the Superintendent of Bankruptcy. Accordingly, the Monitor believes that it is appropriate at this time to seek authorization pursuant to the proposed termination order to terminate these CCAA proceedings.

40. The proposed termination order also provides that Grant Thornton Limited shall be discharged as Monitor upon service by the Monitor of a certificate upon the service list in these CCAA proceedings certifying that, to the knowledge of the Monitor, all matters to be attended to in connection with these CCAA proceedings have been completed, provided that, notwithstanding such discharge, Grant Thornton Limited shall have the authority to address any matters in its role as Monitor that are ancillary or incidental to these CCAA proceedings.

41. It is well established that a court may grant an order terminating proceedings under the CCAA and discharging the Monitor appointed in the proceedings on terms similar to those in the proposed CCAA termination order.

Reference: *9366016 Canada Inc.,* Distribution and CCAA Termination Order granted October 28, 2016, Court File No. CV-15-1086900CL (Ont. Sup. CT. J [Commercial List]) [TAB 2]

Reference: *GolfTown Canada Holdings Inc., et al.,* CCAA Termination Order granted March 20, 2018, Court File No. CV-16-11527-00COL (Ont. Sup. CT. J [Commercial List]) [TAB 3]

42. The Monitor submits that it is appropriate for this Honourable Court to order that the CCAA proceedings shall be terminated and that Grant Thornton Limited be discharged as Monitor for the following reasons:

(a) Pursuant to the ARVO, upon closing of the transaction for the sale of the shares of CFI, CFI ceased to be a party to these proceedings;

(b) The Company has been assigned into bankruptcy and only wind-down or administrative matters will remain to be completed;

(c) Grant Thornton has duly complied with its obligations and carried out its responsibilities in these CCAA proceedings;

(d) There are no amounts owing by CFI or the Company of the types described in subsections 6(4) through 6(6) of the CCAA;

(e) The proposed CCAA termination order is the most effective and appropriate process for the termination of these CCAA proceedings that will avoid the costs and time of a further motion to seek termination of these CCAA proceedings once the Company's bankruptcy is completed and the remaining administrative matters have been concluded.

CONCLUSION

43. The Applicant respectfully requests that this Honourable Court grant the Termination Order attached to the within Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at the City of St. John's, in the Province of Newfoundland and Labrador, this 26 day of June 2026.

Geoffrey Spencer, KC
McInnes Cooper
Solicitors for the Applicant
Whose address for service is:
5th Floor, Baine Johnston Centre
10 Fort William Place
St. John's, NL A1C 5X4

TO: Supreme Court of Newfoundland & Labrador
General Division (In Bankruptcy)
P.O. Box 937
313 Duckworth Street
St. John's, NL A1C 5M3

AND TO: **The Service List attached as Schedule "A" to the Application**

List of Authorities:

1. *Nortel Networks Corp (Re), 2017 ONSC 673*

2. *9366016 Canada Inc., Distribution and CCAA Termination Order granted October 28, 2016, Court File No. CV-15-1086900CL*

3. *GolfTown Canada Holdings Inc., et al., CCAA Termination Order granted March 20, 2018, Court File No. CV-16-11527-00COL (Ont. Sup. CT. J*

TAB 1

2017 ONSC 673
Ontario Superior Court of Justice [Commercial List]

Nortel Networks Corp., Re

2017 CarswellOnt 1122, 2017 ONSC 673, 275 A.C.W.S. (3d) 696, 44 C.B.R. (6th) 289

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

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED, NORTEL NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS INTERNATIONAL CORPORATION and NORTEL NETWORKS TECHNOLOGY CORPORATION

Newbould J.

Heard: January 12, 2017
Judgment: January 27, 2017
Docket: 09-CL-7950

Counsel: Jessica A. Kimmel for Monitor
Susan Philpott for Former Nortel employees
Lily Harmer for Superintendent of Financial Services as Administrator of the Pension Benefits Guarantee Fund
Byron Shaw for Administrator of the Nortel Networks Managerial and NonNegotiated Pension Plan and Nortel Networks Negotiated Pension Plan
Thomas McRae for Nortel Canadian continuing employees
Michael E. Barrack, D.J Miller for Nortel Networks UK Pension Trust Limited and Board of the Pension Protection Fund
Adam Slavens for Nortel Networks Inc.
Michael Wunder for Unsecured Creditors Committee
Gavin H. Finlayson, Amanda C. McLachlan for Ad Hoc Group of Bondholders
Matthew-Milne Smith for EMEA Debtors
John Salmas for Indenture Trustee, Wilmington Trust, N.A.

Headnote

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Initial application — Monitor
Passing accounts — Telecommunications company N, which had over 140 corporate entities in 60 jurisdictions, became insolvent — Canadian N debtors filed for Companies' Creditors Arrangement Act (CCAA) protection in 2009 — Monitor was twice granted extraordinary expanded powers, resulting in Monitor and its counsel undertaking significantly greater scope of work than in typical CCAA case — In 2017, Monitor of Canadian debtors brought motion for order passing its accounts in amount of CA$122,972,821.96, accounts of its Canadian legal counsel in amount of CA$99,994,744.85, and accounts of its U.S. legal counsel in amount of $31,352,136.73, incurred between 2009 to 2016 — Motion granted — Accounts approved — Monitor's duties were far more complex than normal due to matrix way in which N's business was operated — Extensive joint discovery process to resolve claims played large role in costs getting out of hand, and was not fault of Monitor — Monitor and counsel tried to be as efficient as possible in difficult circumstances and overall achieved very favourable outcomes for Canadian creditors — Proceedings were unprecedented in terms of size, complexity, international aspects and vast number of competing interests — Nature, extent and value of assets realized for creditors was significant — Billings over relevant period comprised combined total of 384,652.6 professional hours — Monitor and counsel's professional rates and disbursements were reasonable.

Table of Authorities

Cases considered by *Newbould J.*:

Bank of Nova Scotia v. Diemer (2014), 2014 ONSC 365, 2014 CarswellOnt 666 (Ont. S.C.J.) — followed

Bank of Nova Scotia v. Diemer (2014), 2014 ONCA 851, 2014 CarswellOnt 16721, 20 C.B.R. (6th) 292, 327 O.A.C. 376 (Ont. C.A.) — followed

Belyea v. Federal Business Development Bank (1983), 46 C.B.R. (N.S.) 244, 44 N.B.R. (2d) 248, 116 A.P.R. 248, 1983 CarswellNB 27 (N.B. C.A.) — followed

Confectionately Yours Inc., Re (2002), 2002 CarswellOnt 3002, 36 C.B.R. (4th) 200, 164 O.A.C. 84, 25 C.P.C. (5th) 207, 219 D.L.R. (4th) 72 (Ont. C.A.) — referred to

Nortel Networks Corp., Re (2014), 2014 ONSC 6973, 2014 CarswellOnt 17291, 20 C.B.R. (6th) 171, 17 C.C.P.B. (2nd) 10 (Ont. S.C.J. [Commercial List]) — referred to

Nortel Networks Corp., Re (2015), 2015 ONSC 2987, 2015 CarswellOnt 7072, 27 C.B.R. (6th) 175 (Ont. S.C.J. [Commercial List]) — referred to

Tepper Holdings Inc., Re (2011), 2011 NBQB 311, 2011 CarswellNB 592, 82 C.B.R. (5th) 293, 984 A.P.R. 1, 381 N.B.R. (2d) 1, 2011 CarswellNB 849, 2011 NBBR 311 (N.B. T.D.) — referred to

Triton Tubular Components Corp., Re (2006), 2006 CarswellOnt 2120, 20 C.B.R. (5th) 278 (Ont. S.C.J. [Commercial List]) — referred to

Winalta Inc., Re (2011), 2011 ABQB 399, 2011 CarswellAlta 2237, 84 C.B.R. (5th) 157, 521 A.R. 1 (Alta. Q.B.) — followed

Statutes considered:

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3
Generally — referred to

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36
Generally — referred to

Pensions Act, 1995, c. 26
s. 75 — considered

Pensions Act 2004, 2004, c. 35
Generally — referred to

***Newbould J.*:**

Introduction

1 Ernst & Young Inc. in its capacity as Monitor of Nortel Networks Corporation ("NNC"), Nortel Networks Limited ("NNL"), Nortel Networks Technology Corporation, Nortel Networks International Corporation, Nortel Networks Global Corporation, Nortel Communications Inc., Architel Systems Corporation and Northern Telecom Canada Limited (collectively, the "Canadian Debtors"), moves for an order passing the accounts of the Monitor and of its counsel incurred during the period January 14, 2009, the date these CCAA proceedings were commenced, through to and including May 31, 2016.

2 The background to this sorry saga has been described in a number of decisions.[1]

3 At the time of the filing under the CCAA, Nortel consisted of more than 140 separate corporate entities located in 60 separate sovereign jurisdictions including Canada, the United States and the EMEA[2] region, as well as the Caribbean and Latin America and Asia. NNC, the Nortel Group's ultimate parent holding company, was publicly listed and traded on both the Toronto Stock Exchange and the New York Stock Exchange.

4 On January 14, 2009 NNC, NNL, the wholly owned subsidiary of NNC which was its operating subsidiary and a number of other Canadian corporations filed for protection under the CCAA. On the same date, Nortel Network Inc. ("NNI"), the principal US subsidiary of NNL, and a number of other US corporations filed for protection under chapter 11 of the US Bankruptcy Code and Nortel Networks UK Limited ("NNUK"), the principal UK subsidiary of NNL, and certain of their subsidiaries (the "EMEA Debtors") save the French subsidiary Nortel Networks S.A. ("NNSA") were granted administration orders under the UK Insolvency Act, 1986. On the following day, a liquidator of NNSA was appointed in France pursuant to Article 27 of the European Union's Council Regulation (EC) No 1346/2000 on Insolvency Proceedings in the Republic of France.

5 The Monitor was appointed in the Initial Order of January 14, 2009 which directed that "the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice." It is normal in CCAA proceedings for the Monitor to pass its accounts periodically. This was no normal CCAA proceeding and the Monitor chose not to pass its accounts periodically but rather wait until the end of the proceedings. One advantage in having all of the accounts passed at this stage is that up to date information as to the level of success achieved by the Monitor, one of the key factors to be considered, is now available as a result of the settlement recently achieved in the allocation dispute.

6 Normally a Monitor performs a neutral role as a court officer in a CCAA proceeding. However in this case there were two orders giving the Monitor extraordinary powers. On August 10, 2009, Nortel announced the departure of its then CEO, Mike Zafirovski, and on the same day five members of NNC's and NNL's boards of directors resigned. As a result of this change in circumstances, on August 14, 2009, this Court granted an Order that expanded the Monitor's role and powers to include, *inter alia*, the ability:

(a) to conduct, supervise and direct the sales processes for the Canadian Debtors' property or business and any procedure regarding the allocation and/or distribution of proceeds of any sales;

(b) to cause the Canadian Debtors to exercise the various restructuring powers authorized under paragraph 11 of the Initial Order and to cause the Canadian Debtors to perform such other functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the Canadian Debtors in dealing with their property, operations, restructuring, wind-down, liquidation or other activities; and

(c) to administer the claims process established pursuant to the Claims Procedure Order dated July 30, 2009 and any other claims bar and/or claims resolution process or protocol approved by the Court.

7 Following the resignation of the Canadian Debtors' remaining directors and officers in October 2012, the Monitor's role and powers were further expanded by order dated October 3, 2012, to authorize and empower the Monitor to, amongst other things, exercise any powers which might be properly exercised by a board of directors of any of the Canadian Debtors.

8 The changing circumstances of the CCAA proceedings and the resulting expansion of the Monitor's powers have resulted in the Monitor and its counsel undertaking a scope of work that is beyond the typical role of a monitor in a CCAA proceeding. Indeed, since October 2012 substantially all activities undertaken by or on behalf of the Canadian Estate, including the massive litigation, have been undertaken by the Monitor's professionals with the assistance of the Monitor's counsel. It has been the Monitor that has been the effective defendant in the claims made against the Canadian Debtors and the effective plaintiff in the allocation trial seeking a portion of the $7.3 billion of the escrowed sale proceeds.

9 The provision in the Initial Order that the Monitor pass its accounts from time to time was not changed with these orders enhancing the Monitor's powers and so what is included in the accounts to be passed is far more and different than what would ordinarily be included in a Monitor's accounts to be passed.

10 Most of the core parties in the insolvency proceedings do not object to the accounts as proposed by the Monitor being passed. This is due to the final settlement reached by them. The Canadian allocation decision became final after the Court of Appeal refused leave to appeal the decision of this Court. However appeals were brought in the U.S. from the allocation decision of Judge Gross. These appeals and the allocation of the $7.3 billion sale escrow proceeds were finally settled after mediation by a Settlement Agreement on October 12, 2016. It was a term of the Settlement Agreement that no party to it could contest the fees and disbursements of any other party to it.

11 The UKPC at one point in a pre-hearing conference took the position that the Monitor's motion to approve its fees and disbursements should be adjourned until after January 24, 2017, the date on which motions seeking an order sanctioning the Plan of Compromise and Arrangement proposed by the Canadian Debtors and seeking confirmation of the First Amended Joint Chapter 11 Plan of Arrangement proposed by the US Debtors would be heard in a joint hearing by this Court and by Judge Gross of the US Bankruptcy Court. The UKPC said that if the Plans were sanctioned and the Settlement Agreement became effective, it would take no position on the Monitor's fee approval motion. I declined to adjourn the Monitor's motion. At the hearing of the motion, counsel for the UKPC said that no adjournment request was now being made. Thus there is no opposition to the Monitor's motion by the UKPC.

12 The only opposition to the passing of the accounts of the Monitor was by The Bank of New York Mellon, as Indenture Trustee to some of the bonds issued by Nortel.[3] It took the position that it is not possible based on the material filed by the Monitor to do an analysis required on a passing of accounts and offered a suggestion that a practical solution is to refer the matter to a Master, to an Assessment Officer or to an outside expert. Such person could do due diligence on staffing, hours and rates, and provide the Court with a Report organized around the major activity blocks and identifying any potential issues or matters for consideration by the Court. Counsel for the Indenture Trustee later advised that it was not taking a position on the substance of the motion and did not appear at the hearing of the motion. For reasons that will follow, I do not think such a reference is necessary, nor would it be a practical solution.

Considerations on a passing of a Monitor's accounts

13 There are few cases dealing with the factors to consider on a passing of the accounts of a monitor. Most deal with a receiver's accounts. However I agree with Justice Topolniski in *Winalta Inc., Re* (2011), 84 C.B.R. (5th) 157 (Alta. Q.B.) that there should be no difference in dealing with a monitor's accounts and that the onus is on a monitor to make out its case. She stated:

> 30 In my view, the appropriate focus on an application to approve a CCAA monitor's fees is no different than that in a receivership or bankruptcy. The question is whether the fees are fair and reasonable in all of the circumstances. The concerns are ensuring that the monitor is fairly compensated while safeguarding the efficiency and integrity of the CCAA process. As with any inquiry, the evidence proffered will be important in making those determinations.
>
> 32 I am not aware of any reported authority supporting the proposition that there is a presumption of regularity that applies to a monitor's fees. This application is no different than any other. The applicant, here the Monitor, bears the onus of making out its case. A bald assertion by the Monitor that the Fee is reasonable does not necessarily make it so. The Monitor must provide the court with cogent evidence on which the court can base its assessment of whether the Fee is fair and reasonable in all of the circumstances.

14 So far as the test for reviewing a receiver's fees is concerned, the New Brunswick Court of Appeal in *Belyea v. Federal Business Development Bank* (1983), 44 N.B.R. (2d) 248 (N.B. C.A.) referred to a number of factors to be considered. These factors have been accepted in Ontario as being a useful guideline but not an exhaustive list as other factors may be material in any particular case. See *Confectionately Yours Inc., Re* (2002), 36 C.B.R. (4th) 200 (Ont. C.A.) at para. 51 ("*Bakemates*") and *Bank of Nova Scotia v. Diemer*, 2014 ONSC 365 (Ont. S.C.J.) at para. 5, aff'd, (2014), 20 C.B.R. (6th) 292 (Ont. C.A.). In *Diemer*, Pepall J.A. listed the factors as follows:

> 33 The court endorsed the factors applicable to receiver's compensation described by the New Brunswick Court of Appeal in *Belyea: Bakemates*, at para. 51. In *Belyea*, at para. 9, Stratton J.A. listed the following factors:

- the nature, extent and value of the assets;
- the complications and difficulties encountered;
- the degree of assistance provided by the debtor;
- the time spent;
- the receiver's knowledge, experience and skill;
- the diligence and thoroughness displayed;
- the responsibilities assumed;
- the results of the receiver's efforts; and
- the cost of comparable services when performed in a prudent and economical manner.

These factors constitute a useful guideline but are not exhaustive: *Bakemates*, at para. 51.

15 Justice Pepall further stated:

> 45 ... That said, in proceedings supervised by the court and particularly where the court is asked to give its imprimatur to the legal fees requested for counsel by its court officer, the court must ensure that the compensation sought is indeed fair and reasonable. In making this assessment, all the *Belyea* factors, including time spent, should be considered. However, value provided should pre-dominate over the mathematical calculation reflected in the hours times hourly rate equation. Ideally, the two should be synonymous, but that should not be the starting assumption. Thus, the factors identified in *Belyea* require a consideration of the overall value contributed by the receiver's counsel. The focus of the fair and reasonable assessment should be on what was accomplished, not on how much time it took. Of course, the measurement of accomplishment may include consideration of complications and difficulties encountered in the receivership.

16 As stated, The Bank of New York Mellon, as Indenture Trustee took the position that it is not possible based on the material filed by the Monitor to do an analysis required on a passing of accounts. It offered a suggestion that a practical solution is to refer the matter to a Master, an Assessment Officer or an outside expert. I do not agree with this suggestion. In my view there is sufficient evidence to undertake a proper consideration of the accounts of the Monitor taking into account the factors to be considered in arriving at a fair and reasonable result.

17 The time and expense of referring the accounts to someone else would be very time consuming, create further expense and delay completion of this matter that has gone on far too long. The Initial Order directed the accounts to be passed by this Court. That makes sense, particularly as no other person has the familiarity of what has gone on in the Nortel insolvency as the Court has. These considerations have led other courts to decline to send the accounts out for review by others. See *Tepper Holdings Inc., Re* (2011), 381 N.B.R. (2d) 1 (N.B. T.D.) at para. 3; *Triton Tubular Components Corp., Re* (2006), 20 C.B.R. (5th) 278 (Ont. S.C.J. [Commercial List]) at para. 83.

18 The Superintendent of Financial Services as administrator of the Pension Benefits Guarantee Fund has been involved in these proceedings from the outset in January, 2009 and has been a member of the Canadian Only Creditors Committee (the "CCC"). The Superintendent supports the motion for an order passing the accounts of the Monitor and opposes the appointment of a special fee examiner to review the Monitor's accounts. It takes the position that his would create unnecessary and unwarranted additional expense and potential delay by virtue of the need to educate the examiner with respect to these hugely complex proceedings, particularly if the examiner was independent of the court with additional professional costs. The Superintendent further states that it is satisfied with a high level assessment of the Monitor's accounts in this case by this Court, given this Court's familiarity with many of the complexities of the proceedings, and by reference to the significantly higher costs incurred by the other Estates.

19 Morneau Shepell Ltd., was appointed the Administrator of the Nortel Networks Managerial and Non-Negotiated Pension Plan and the Nortel Networks Negotiated Pension Plan in October 2010 and has been actively involved in the CCAA restructuring process. It is one of the largest creditors of the Canadian Debtors. It takes the same position as the Superintendent regarding any attempt to have the accounts of the Monitor examined by some other party. It states that more litigation or court process in relation to the Monitor's accounts should be strongly discouraged and avoided. Far too much time and too much of the Canadian estate's resources have been consumed with seemingly endless litigation. More court process only delays, and may diminish, the distribution of assets available to creditors.

20 Michel E. Campbell is a former engineer employed by Nortel. Since the January 2009 CCAA filing, he has been heavily involved in the proceedings as a court-appointed representative of approximately 21,000 Nortel former employees, as an active member of the Nortel Retirees and Former Employees Protection Canada ("NRPC"), and as a claimant against the Nortel estate for the loss of severance and termination pay. He estimates that he has spent over 4,000 hours on issues in the proceedings relating to employee issues. As one of the former employees and as a court-appointed Representative, he has a financial stake in these proceedings. He too supports the passing of the Monitor's accounts and does not think a referral of the accounts to some third party is desirable. He states in his affidavit:

> 44. Moreover, given the volume and nature of the information provided in the Monitor's materials filed for this motion, and the fact that the fees as disclosed are subject to this Court's approval, I see no reason for another third party review or assessment. In any event, such a third party review would create more expense and delay in these proceedings, and would likely further postpone approval of the Plan of Arrangement and distributions on claims, which is far from desirable. The Former Employees have been waiting now for almost eight years to receive some payment for their losses. Further, it would be difficult for a third party who lacks background knowledge of this case to conduct a reliable, meaningful or accurate assessment of the Monitor's fees without the expenditure of considerable additional time and resources of the Monitor to provide information to the third party reviewer. This Court is by far the more appropriate arbiter of the Monitor's fees.

21 This case requires an overall assessment of the work done and a consideration of the results achieved. A line by line particularization of each particular job and each particular invoice would involve no doubt hundreds of thousands of dollars, taken the amount of activity and time involved in various matters. As well, in this case it is by no means the case that each task was discrete and could easily be separated out. As was stated by Justice Pepall, the value provided should pre-dominate the consideration of what a fair and reasonable amount is appropriate. A detailed assessment in this case would not be practical or serve that purpose.

Consideration of the Monitor's accounts

22 The Monitor engaged Goodmans LLP ("Goodmans") as its Canadian legal counsel, Allen & Overy LLP ("A&O") as its U.S. legal counsel and Buchanan Ingersoll & Rooney PC ("BIR") as its Delaware local legal counsel. A large number of professionals from the Monitor's firm E & Y, from Goodmans and from A&O were involved throughout these proceedings. The accounts from each of those firms are included in the passing of accounts with affidavits supporting the accounts.

23 The Monitor seeks approval of its accounts in the amount of CA$122,972,821.96, inclusive of applicable taxes. This amount includes billings for 200,065.4 professional hours at an average hourly rate of CA$540.

24 The Monitor also seeks to pass the accounts of Goodmans in the amount of CA$99,994,744.85, inclusive of applicable taxes. This amount includes billings for 134,562.4 professional hours at an average hourly rate of CA$643.

25 The Monitor also seeks to pass the accounts of A&O in the amount of $31,352,136.73, inclusive of applicable taxes. This amount includes billings for 46,448.4 professional hours at an average hourly rate of $639.

26 These amounts are enormous by any measure, even taking into account that they cover eight years of work. However, when one understands the enormity of the work that had to be done by the Monitor and its counsel to regularize the insolvency proceedings, to gather in the assets and to protect the interests of the Canadian creditors against the relentless attacks made by the other estates, these amounts become more understandable. It is unquestionable that the work of the

Monitor added value to the assets.

27 In this case, the Monitor has delivered its 132nd Report in which the services performed over the last 8 years have been extensively discussed in some 113 pages plus a number of attachments. Throughout the entire matter what has taken place has been described in the Monitor's previous 131 Reports.

28 I do not intend to discuss at length what all the Monitor has done. Suffice it to say, the job the Monitor has performed has been massive in a case that knows no equal.

29 The normal things required of a Monitor in any CCAA case, such as cash flow forecasting, were far more complex than normal in light of the matrix way in which the business was operated by Nortel. Prior to the CCAA filing, Nortel had no cash flow forecasting model or cash flow reporting process that allowed for weekly cash flow forecasting and reporting on an entity level. One of the earliest activities (and focuses) of the Monitor was assisting the Canadian Debtors in preparing both a consolidated and unconsolidated global weekly cash flow forecasting and reporting process for Nortel's global operations so Nortel could understand its entity-level cash position in "real time". These and subsequent cash flow forecasting efforts by the Monitor have included: creating cash flow templates for approximately 60 Nortel entities (including joint venture entities) in North America, APAC, CALA and EMEA; creating a global process to retrieve cash flow data on a weekly basis, reviewing and analyzing variances, discussion with management from all regions, preparing consolidated, regional and entity cash flows, and reporting on cash flows and related analysis to stakeholders on a weekly basis from January 14, 2009, until Estate separation in 2011; after the Estate separations until the end of 2012, preparing and reporting on the Canadian Debtors and APAC entities cash flows to stakeholders, initially on a weekly basis and subsequently on a bi-weekly basis; continuing to prepare cash flow forecasts for the Canadian Debtors on a bi-weekly basis and reporting thereon to stakeholders; and preparing and filing cash flow forecasts and reconciliations in connection with stay extension motions in the CCAA proceedings.

30 One issue that was central to the CCAA proceedings in the first six months was a means of addressing the significant cash burn being experienced by NNL as a result of it continuing to incur significant corporate overhead and R&D costs to preserve the enterprise value of the LOBs and coordinate global restructuring efforts notwithstanding the post-filing cessation of ordinary course payments to NNL under Nortel's transfer pricing system. The Monitor recognized these issues, in particular NNL's funding crisis and the risk it posed to both stabilizing Nortel's business and achieving either a successful restructuring or a coordinated going-concern sale of the Nortel LOBs. Accordingly, the Monitor engaged with representatives of the other Estates and key stakeholders in an attempt to address these matters.

31 On June 9, 2009, NNL, NNI, NNUK and the Joint Administrators (among other parties) entered into an Interim Funding and Settlement Agreement (the "IFSA") that assisted in addressing these issues. First, pursuant to the IFSA, NNI agreed to pay $157 million to the Canadian Debtors which, together with a $30 million payment made in January 2009, was in satisfaction of any claims of NNL for corporate overhead and research and development costs incurred by NNL for the benefit of the U.S. Debtors for the period from the Filing Date to September 30, 2009. Second, NNL agreed to pay NNUK $20 million on a deferred basis (secured by a Court-ordered charge) and the EMEA Debtors, on the one hand, and the Canadian Debtors and U.S. Debtors, on the other, agreed to the settlement of any transfer pricing obligations between them for the period from the Filing Date to December 31, 2009. Third, pursuant to the IFSA, the Estates reached certain agreements that facilitated the LOB transactions that would be entered into in the coming months, including an agreement that the execution of sale documentation or closing of a transaction of material assets would not be conditioned upon reaching agreement on either allocation of the sale proceeds of such sale or a binding procedure for the allocation of such sale proceeds and that all sale proceeds would be deposited in escrow pending resolution of their allocation.

32 On December 23, 2009, the Canadian Debtors, the Monitor and the U.S. Debtors entered into a Final Canadian Funding and Settlement Agreement (the "CFSA") pursuant to which NNI agreed to make a payment of approximately $190 million to NNL in full satisfaction of its reimbursement obligations in respect of corporate overhead, R&D, and other costs incurred by any of the Canadian Debtors for the benefit of the U.S. Debtors for the period October 1, 2009, through the end of the CCAA proceedings. In addition, pursuant to the CFSA NNL agreed to admit a $2.0627 billion claim by NNI (the "NNI Claim") in settlement of, among other things, any transfer pricing overpayments made by NNI to NNL for the period 2001 through 2005 and an outstanding revolving loan.

33 Over the period March 2009 through March 2011, Nortel entered into and closed nine Lines of Business transactions

involving businesses carried out by Nortel entities around the world. They were as follows:

LOB	*Sale Process Approval Date*	*Initial (Stalking Horse) Sale Price*	*Final Sale Price*	*% Increase in Sale Price*	*Closing Date*
Layer 4-7	2/27/2009	$17,650,000	$17,650,000	-	3/31/2009
CDMA/LTE	6/29/2009	$650,000,000	$1,130,000,000	74%	11/13/2009
NGPC	9/29/2009	n/a	$10.000.000	n/a	12/8/2009
Enterprise	8/4/2009	$475,000,000	$900.000.000	89%	12/19/2009
MEN	10/15/2009	$390,000,000	$769,000,000	97%	3/19/2010
GSM/GSM-R	10/15/2009	n/a	$103.000.000	n/a	3/31/2010
CVAS	1/6/2010	$282,000,000	$282,000,000	-	5/28/2010
GSM Retained Contracts	n/a	n/a	$2,000,000	n/a	6/4/2010
MSS	9/1/2010	$39.000.000	$65,000,000	67%	3/11/2011
TOTAL			*$3,278,650,000*		

34 To be noted, the final sale price for these LOB sales was far in excess of the initial stalking horse sale prices.

35 During that period the Monitor also oversaw the sale of significant Canadian assets, including various businesses and real estate assets.

36 Once the LOB sales had been completed a process in conjunction with the other Estates was undertaken to sell the Residual IP used by various Nortel entities around the world. This was preceded by a consideration of the potential ways to monetize NNL's portfolio of approximately 7,000 patents and patent applications that remained following the conclusion of the LOB sales including considering both a potential sale of the Residual IP and the possibility of establishing an "IP Co." Eventually it was decided after much work to sell the Residual IP.

37 The sale of the Residual IP was by way of an auction after a stalking-horse bid from Google of $900 million was approved. The auction brought in $4.5 billion. During the auction the Monitor and its counsel vigorously negotiated with representatives of the other Estates and their stakeholders to ensure the auction continued when certain Estate representatives indicated they were satisfied with the bid price achieved at that point and wanted to terminate the auction. The continuation of the auction resulted in numerous additional rounds of bidding and a further $1.3 billion being paid for the Residual IP.

38 The claims process in this case was enormous. A total of 1,146 claims have been filed in the CCAA Claims Process totalling approximately CA$39.9 billion. Of the 1,146 claims filed in the CCAA Claims Process, 1,012 claims with a claim value of approximately CA$2.9 billion (original filed claim amount of approximately CA$12.5 billion) were classified by the Monitor as "Accepted or Reviewed and unadjusted" as at May 31, 2016. Accordingly, with respect to claims resolved through the Period, the Monitor reduced the value of those claims by approximately CA$9.6 billion, or approximately 77%.

39 The development of the compensation claims process was complicated by a number of factors:

(a) Nortel's employment records were incomplete, out of date and resided in various physical locations. This required that the Monitor spend considerable time and resources to consolidate the information, validate the data and organize it a manner that would allow for the automation of the compensation claims process. In addition, given the uncertainty over the accuracy of the data, the process had to provide employees with the opportunity to review the information and allow for the correction of data that may have been inaccurate.

(b) The process identified approximately 20 different claim types that could be held by any particular employee. The potential combinations of such claims complicated the creation of a single claim form and necessitated extensive consultations between the representatives and the Monitor.

(c) Each of the approximately 20 different types of claims included a number of variables and formulas that were negotiated between the Monitor and the representatives. These variables and formulas had to be explained to the claimants in a manner that could be understood. The Monitor worked closely with the representatives to develop a user guide and glossary of terms that simplified this process.

40 Two significant claims were made against the Canadian Debtors by the EMEA estates and by the UKPC. They were eventually litigated at enormous expense. At the outset, both EMEA and UKPC took the position that their claims should be arbitrated because of the terms of the IFSA. This issue was litigated in both this Court and in the Delaware Bankruptcy Court. Both Courts held that there was no binding agreement to arbitrate and that EMEA and UKPC had attorned to the jurisdiction of the courts. Appeals by EMEA and UKPC to the Ontario Court of Appeal and to the U.S. Third Circuit Court of Appeals were dismissed. There followed very expensive litigation of these claims.

41 With respect to the claims made against the Canadian Debtors by the EMEA estates, although they were not capable of precise quantification, the total amount of quantified claims against NNL alone exceeded CA$9.8 billion. In addition to unsecured claims, EMEA also asserted trust and/or proprietary claims against the Canadian Debtors' assets that could have resulted in effective priority treatment for such claims. Certain of the EMEA claims were also asserted against the Nortel directors and officers. Following completion of a lengthy and costly discovery process and several months of negotiation between the Monitor and the Joint Administrators, the EMEA Claims were settled on the eve of the commencement of the EMEA and UKPC Claims trial for a maximum admitted general unsecured claim against NNL of $125 million. This represented very little to EMEA because Nortel's books and records indicated that the consolidated intercompany book debt payable from the Canadian Debtors to the EMEA debtors as at January 14, 2009, was approximately $203 million. When netted against pre-filing intercompany amounts shown in Nortel's books and records to be payable by the EMEA debtors to the Canadian Debtors, there was a net $101 million payable to the EMEA Debtors. Accordingly, the EMEA claims were settled for an amount only slightly in excess of the net consolidated pre-filing debt shown as being payable by the Canadian Debtors to the EMEA debtors in Nortel's books and records.

42 With respect to the claim against the Canadian Debtors made by the Board of Trustees of NNUK's U.K. Pension Plan and the Pension Protection Fund (the "UKPC"), although a total liquidated claim amount was not specified, the UKPC Proofs of Claim filed by the Trustee against NNL included: (i) £495.25 million in respect of amounts alleged owing pursuant to a guarantee made by NNL in favour of the Trustee dated November 21, 2006; (ii) $150 million in respect of amounts alleged owing pursuant to a guarantee made by NNL in favour of the Trustee; and (iii) an unspecified claim in respect of liability owing pursuant to the FSD regime under the *U.K. Pensions Act 2004*. Although no liquidated claim amount was specified with respect to the alleged FSD liability, the claim noted that the section 75 debt of NNUK had been estimated to be £2.1 billion as at January 13, 2009, and that the Joint Administrators had stated that an informal estimate of the section 75 debt of NNUK was $3,055 billion. Accordingly, the FSD claim raised the possibility of a claim in excess of $3 billion against NNL. The same FSD liability was claimed against each of the other Canadian Debtors. Accordingly, the UKPC claims contemplated aggregate claims against the Canadian Debtors of nearly $20 billion. The FSD claims before the U.K. regulatory body were contrary to the stay imposed in the Initial Order and appropriate orders were made in this Court and upheld by the Ontario Court of Appeal. An amended UKPC claim in this CCAA proceeding asserted an FSD related claim of up to £2.1 billion against each of NNC and NNL.

43 The UKPC claim went to trial. The issues were extremely complex and the trial lasted 15 days based on a shortened trial procedure ordered by the Court. The reasons for decision of this Court were 127 pages. All of the claims against Nortel were dismissed except for a claim for of £339.75 million, which was approximately £152 million less than the amount sought by the UKPC on account of such claim.[4]

44 The allocation dispute was a heavily contested matter involving the issue of which Nortel Estates were entitled to the $7.3 billion proceeds from the asset sales being held in escrow. A joint trial was held by this Court with Judge Gross of the U.S. Bankruptcy Court in Delaware that lasted for 24 days. It was a very complicated matter. The trial decision in this Court numbered some 115 pages. Reconsideration motions were brought in each Court, largely unsuccessful. Leave to appeal to the Ontario Court of Appeal was refused. The matter was appealed in the U.S. to the District Court. A lengthy mediation process took place with retired Judge Farnan in the U.S. and a settlement was reached in October 2016.

45 Relative to the claims asserted by the other estates, the Canadian Estates were successful. The position of the U.S. interests at the trial of the allocation dispute was that the Canadian Debtors were entitled to only approximately $770 million of the $7.3 billion, or approximately 10.6% of the total sale proceeds. The position of the EMEA debtors at trial was that the Canadian Debtors were entitled to receive either $836 million or $2.3 billion, depending on the theory the Courts adopted. Based on the settlement of the allocation dispute reflected in the settlement, the Canadian estates will receive an allocation in excess of $4.1 billion, or approximately 57.1% of the total sale proceeds.

46 One other large issue that had to be dealt with was a claim by the bondholders to post-filing interest on their bonds which had the covenants of both the Canadian Debtor NNC or NNL and the U.S. Debtor NNI. At the time the matter was litigated, this claim for interest was in excess of $1.6 billion. The Monitor successfully took the position that the bondholders were not entitled to any post-filing interest. A decision of this Court denying the bondholders any post-filing interest was upheld by the Ontario Court of Appeal and leave to the Supreme Court of Canada was denied. In the U.S. the matter was settled but in the end, no post-filing interest was obtained by the bondholders because the U.S. Estate was not solvent as a result of the allocation of the $7.3 billion.

47 Given the overlap between the $7.3 billion allocation dispute and the EMEA and UKPC claims, an Allocation Protocol proposed by the Canadian Debtors and the Monitor (and ultimately approved by the Courts) contemplated a joint discovery and litigation process to resolve the three claims. Unfortunately the discovery process got out of hand.

48 The Monitor proposed certain proportionate limitations on discovery, including that each core party be restricted to identifying 10 fact witnesses and that documentary discovery be restricted to electronic documents and indices of boxes of hard copy documents. Various core parties opposed the Monitor's proposal and advocated for a discovery plan that imposed no restrictions on the number of depositions or discovery generally. Ultimately because of the need to accommodate the U.S. parties' broader discovery rights, the litigation timetable and discovery plan proposed by the U.S. debtors that imposed no restrictions on the number of depositions or on discovery generally had to be adopted.

49 Ultimately, more than 3 million documents were produced and approximately 140 fact and expert witness depositions were conducted in, among other cities, Toronto, Montreal, Ottawa, New York, Boston, Chicago, Washington, London, Paris, Brussels and Hong Kong. In addition, the start date for the hearings contemplated by the Allocation Protocol was extended from January 6, 2014, to March 31, 2014, and subsequently to May 12, 2014, to allow for further time for the litigation and discovery process to be completed.

50 As the custodian of the largest number of documents, the Canadian Debtors (and, by extension, the Monitor and its counsel) bore a substantially higher burden than other parties in the document review and production process. The scope of the document requests and interrogatories received by the Canadian Debtors was wide ranging and related to documents going back to the 1980s, and in some cases earlier. Given the scope and overlap of the document requests and interrogatories served by the core parties, they worked together to develop an agreed set of consolidated document requests and interrogatories, itself a significant undertaking. The consolidated document requests contained 140 total document requests grouped into 26 broad categories with more than 85 sub-categories of documents identified. Similarly, the consolidated interrogatories contained 54 individual requests spanning some 25 pages.

51 Before the broad discovery that took place, there were several mediations. One was with a mediator in New York in which the parties tried to come to some agreement on a protocol for resolving disputes concerning the allocation of sale proceeds from sale transactions governed by the IFSA. The mediation took place in November 2010 and April 2011. The work involved on behalf of the Monitor was extensive, including having to review 43,000 documents posted in the mediation data room and other information exchanged by the Estates in advance of the mediation.

52 There were two unsuccessful mediations in the U.S. with a retired judge to try to settle the allocation dispute. There was later a mediation with then Chief Justice Winkler in an attempt to settle the allocation dispute. The mediation was ordered in June 2011. Mediation briefs were eventually filed and mediation took place from April, 2012 until discontinued on January, 2013. There was then the final mediation in New York with retired U.S. Judge Farnan that took several months and was eventually successful.

53 Overall, the Monitor and its Canadian counsel estimate that approximately 40% of their total fees in these proceedings relate to work done in connection with the allocation dispute, the EMEA claims and the UKPC claims, including the allocation and claims litigation and the various mediation and settlement efforts directed at resolving those disputes. The extensive discovery process, which was not the fault of the Monitor, played a large role in the costs getting out of hand.

54 In his affidavit, Mr. Campbell described his view of the efforts of the Monitor regarding the litigation. I view his evidence as being particularly relevant and helpful. Mr. Campbell is independent of the Monitor and the Monitor's counsel and has been involved throughout the process. Mr. Campbell stated:

> 40. The Canadian Estate was the main target of claims globally because Nortel's head office and parent corporation were located in Canada. From early in the CCAA proceedings, the Monitor was forced to deal with massive claims and persistent attacks on Canadian assets. Even then, the Monitor was consistently the voice of reason in what were often fractious and unnecessarily litigious cross-border proceedings. The Monitor advocated for limits on the scope of the allocation litigation process, which was rejected in favour of the more expansive American style with the hugely expensive document and deposition discovery process. The Monitor spearheaded a coordinated approach with the Canadian creditors in the mediations and Allocation Litigation which had the effect of consolidating and rationalizing resources and containing costs.

55 Morneau Shepell Ltd., the Administrator of the Nortel pension plans has also commented positively on the actions of the Monitor and its counsel. It stated in its brief:

> The Canadian estate has faced a multitude of claims asserted by the other estates and by creditors more closely aligned with the other estates. In addition, the Nortel estates and the key creditors worldwide have been engaged in a long-running allocation dispute that included a series of intense mediation efforts and a complex and hard fought cross-border trial, with subsequent appeals. On behalf of the Canadian estate, the Monitor has had to respond to and participate in all of these matters for the benefit of Canadian stakeholders. Without the extensive effort, dedication and leadership of the Monitor and its counsel, the Canadian estate would not have achieved the favourable outcomes accomplished in the claims litigation and allocation trial, nor would it have achieved the favourable resolution of the outstanding litigation by way of the settlement.
>
> Because of its active involvement in the case and firsthand dealings with the Monitor, the Administrator observed directly the efforts of the Monitor to be mindful of costs and to seek efficiency wherever possible. As one of many examples, the Monitor was instrumental in organizing and coordinating the trial effort with creditors (where coordination was feasible) to avoid duplication of effort. Even though different positions were advanced, the Monitor did not allow that to preclude coordination to achieve efficiency. In addition, in respect of the design of the very complex trial process, the Monitor took positions directed at reducing complexity throughout the trial process.

56 The Superintendent of Financial Services as administrator of the Pension Benefits Guarantee Fund spoke of the claims by the U.S. and UK/EMEA estates and bondholders to enhance their recoveries at the expense of the Canadian creditors. The Superintendent stated:

> The amount of the Monitor's time and effort required to protect the Canadian Estate and its creditors by resisting all these attacks was an enormous undertaking. Because the Monitor worked cooperatively with the CCC on these issues, duplication of many costs was avoided.
>
> The cost savings to the Canadian Estate and the Superintendent regarding the allocation trial are significant. The Superintendent's costs and that of the CCC could have been significantly (possibly as much as 50%) higher, or more, if we did not work cooperatively with the Monitor.

57 These comments by interested, knowledgeable but independent parties are strong evidence that the Monitor and its counsel tried to be as efficient as possible in very difficult circumstances and that overall they achieved very favourable outcomes for the Canadian creditors.

58 There were a number of other matters that the Monitor and its counsel had to deal with during the 8 years from the time of the CCAA filing. Some included (i) dealing with and settling a large dispute with Flextronics, Nortel's largest contract manufacturer, including a $7 billion claim; (ii) developing an employee hardship process which has provided for interim relief for employees; (iii) restructuring eleven Nortel entities in the APAC region; (iv) negotiating an employee settlement agreement covering a number of issues; (v) developing a Health & Welfare Trust allocation methodology and distribution to those entitled; (vi) estate separation and wind- down activities to enable them to become stand-alone entities; (vii) dealing with French employee claims brought by NNSA employees in the Versailles Employment Tribunal in France; (viii) selling residual IP owned by the Canadian Estate, consisting of 17 million internet protocol; (ix) dealing with environmental issues arising from several Nortel properties in Ontario and claims by the MOE; (x) settling a number of

transfer pricing issues amongst the various estates; (xi) dealing with a claim by the French liquidator of NNSA brought in the Versailles Commercial Court; (xii) financial reporting and tax issues; (xiii) dealing with claims by Frank Dunn, a former CEO of Nortel, and by 110 Calgary employees; (xiv) dealing with a class action brought in New York against a number of former officers and directors of NNC under the Securities and Exchange Act; (xv) dealing with a claim brought by SNMPRI in this Court and in the U.S. In most of these issues, court proceedings were taken, often with appeals to the Ontario Court of Appeal and to the Supreme Court of Canada.

59 SNMPRI asserted claims against the Canadian Debtors alleging unauthorized use and transfer of SNMPRI's software and claimed damages of $200 million. It unsuccessfully sought to lift the stay to permit the case to be tried in the U.S. before a jury. In April, 2016 this Court on a summary judgment motion dismissed the bulk of the claim. Leave to appeal to the Ontario Court of Appeal was dismissed.

60 The Superintendent of Financial Services as administrator of the Pension Benefits Guarantee Fund strongly supports the efforts made by the Monitor. It states:

> The Monitor's motion materials reflect an enormous amount of work over many years, all ultimately in aid of maximizing recoveries in the Canadian estate. The stakes being so high; the huge number of interested and well funded parties and the lengths to which they have been prepared to go given the amounts at issue, and the global nature of Nortel, are unprecedented.
>
> The Monitor's fee, absent context, is quite large. However, in context, from the perspective of the Superintendent, who paid its way and did not receive funding from the Estate, the fee appears fair and reasonable. The Monitor's strong, fair, balanced and practical approach to this file, from the perspective of the Superintendent, likely saved the Estate millions to tens of millions of dollars.

61 I will deal briefly with the *Belyea* factors to be taken into account.

1. Nature, extent and value of the assets being handled

62 There can be no question about the significant nature, extent and value of the assets that were realized upon so that they could be available to creditors.

2. Complications and difficulties encountered

63 These proceedings are unprecedented in terms of their size, complexity, international aspects and the vast number of competing interests. It was in part due to these unprecedented complications and difficulties that the Monitor's role and powers had to be twice expanded, first in August 2009 and again in October 2012.

64 The Monitor, with the involvement of its counsel, has delivered 132 reports, participated in more than 200 motions and hearings before this Court and 23 leave to appeal applications and appeals before the Ontario Court of Appeal or Supreme Court of Canada, and been integrally involved in the 10 cross-border sales processes and transactions for the LOBs and residual intellectual property as well as a further 18 transactions through the relevant period in respect of other assets of the Canadian Debtors. The allocation dispute and the EMEA and UKPC Claims were hotly contested and complex.

3. Degree of assistance provided by the company, its officers or its employees

65 The Monitor was granted enhanced powers in mid-2009 and authorized to exercise any powers which might be properly exercised by a board of directors of any of the Canadian Debtors since October 2012. This has resulted from the liquidating nature of this case, including the transfer or termination of most employees by early 2010 and the ultimate resignation of the few remaining officers and directors of the Canadian Debtors in October 2012. Substantially all activities undertaken by or on behalf of the Canadian Estate have been undertaken by the Monitor's professionals with the assistance of

Monitor's counsel. This expanded role has resulted in the Monitor and its counsel undertaking a significantly greater scope of work than in a typical CCAA case.

4. Time spent

66 The billings over the relevant period comprise a combined 384,652.6 professional hours by the Monitor and its counsel. Throughout, the professional fees and disbursements of the Monitor, its counsel and other professionals being funded by the Canadian Debtors have been disclosed in Monitor's reports along with forecasts of expected fees and disbursements which were part of the restructuring costs. Starting in April 2013, the Monitor provided in its relevant reports detailed breakdowns of the Canadian Debtors' restructuring costs, including total fees for advisors as well as an aggregate total of the fees and disbursements of the Monitor, Goodmans and A&O. In sum, there has been full disclosure throughout the period of the activities of the Monitor and its counsel, including the estimated and resulting fees and disbursements.

5. Knowledge, experience and skill

67 To ask the question is to answer it. The professionals in this case from the Monitor and its counsel are the cream of the crop.

6 Diligence and thoroughness displayed

68 The same applies to this question. The 132 reports of the Monitor make clear that these qualities were brought to bear.

7. Responsibilities assumed

69 In this case, particularly with the two orders granting the Monitor extraordinary powers, the responsibilities assumed were enormous.

8. Results Achieved

70 I have dealt with this at some length. The results achieved were commendable.

9. The cost of comparable services when performed in a prudent and economical manner

71 I am quite satisfied that the Monitor's professional rates and disbursements, as well as those of its counsel, are comparable to the rates charged by other professional firms in the Toronto, New York or Wilmington market for the provision of similar services regarding significant complex commercial restructuring matters.

72 Indeed, the professional fees and disbursements of the Monitor and its counsel, together with the fees and disbursements of the Canadian Debtors' main advisors, are less, and in some cases significantly less, than the fees and disbursements of the main advisors to the other Estates. The fees and disbursements of the main advisors to the Canadian Estate for the period January 14, 2009, through December 31, 2015, are approximately 76% of the fees and disbursements of the main advisors to the U.S. Estate, and approximately 51% of the fees and disbursements of the EMEA Estate advisors, as detailed in the following chart[5]:

Nortel Estate Main Advisors
Professional Fees
For the period January 14, 2009 - December 31, 2015
(in USD millions)

	Fees	*Disburse- ments*	*Total Fees & Disburse- ments*
Ernst & Young Inc.{ 1,2}	100.1	2.9	103.0

Goodmans LLP{ 1,2}	77.8	2.4	80.2
Norton Rose Fulbright Canada LLP{ 1,2}	63.3	1.6	64.9
Gowling Lafleur Henderson LLP{ 2}	9.0	0.2	9.2
Fresbfields Bruckhaus Deringer LLP{ 3}	7.3	1.7	9.0
Total	*257.5*	*8.8*	*266.3*
Allen & Overy LLP	28.5	1.6	30.1
Buchanan Insersoll & Rooney PC	1.1	0.4	1.5
Total Professional Fees	*287.1*	*10.8*	*297.9*
Fees and Expenses of Main Advisors of:			
US Debtors{ 4}			389.9
EMEA Debtors{ 5}			581.9

Notes: 1 Fees exclude undrawn retainer2 Foreign exchange rates used based on Bank of Canada Monthly Average Noon-Exchange Rates3 Foreign exchange rates used based on Federal Reserve Monthly Average Noon-Exchange Rates4 US Debtors professionals included are Cleary Gottlieb Steen & Hamilton LLP, Emst & Young LLP (US), Huron Consulting Group, John Ray, Torys LLP, Chillmark Partners, LLC and Morris, Nichols, Arsht & Tunnell LLP, based on monthly fee applications filed in the United States Bankruptcy Court for the District of Delaware5 Based on Joint Administrators' Abstract of Rcceipts and Payments from January 14, 2009 to January 13, 2016

73 The comparison is all the remarkable when one considers the extra work that the Monitor had to do because the head office of Nortel was in Canada and the fact that the Monitor had to respond to the many issues raised in the foreign proceedings as those issues had the potential to affect the recovery by the Canadian creditors.

74 I could be somewhat critical regarding the number of counsel in the courtroom during the allocation trial. At the outset, there were four or five lawyers in court for the Monitor. When a witness was giving evidence in Delaware, counsel for the Monitor doing the cross-examination attended in the Delaware courtroom with fewer lawyers in the Toronto courtroom. However, it was quite obvious that the Monitor risked being outmatched. The U.S. debtors had five lawyers in the courtroom throughout the trial, as well as many in the Delaware courtroom, the EMEA debtors had two or three each day, the UKPC had usually two lawyers each day, the UCC had two and the bondholders usually had two. All of these other parties were lined up against the Monitor. After a while, the Monitor began sending fewer lawyers to court. In a case of this size and complexity, I am not in a position to know exactly what role each of the Monitor's lawyers had played in preparation for the trial or to say that they should not have been there.

75 My general impression was that there were far too many lawyers in the courtrooms in Toronto and in Delaware, some of whom (not the Monitor's counsel) spent much time on their blackberries. The accounts of all of these other parties are not before this Court for approval.

76 It is fair to say that each of the *Belyea* factors supports the accounts of the Monitor and its counsel being passed and I approve them.

Insolvency culture

77 I cannot leave this passing of accounts without some discussion of what is becoming prevalent in insolvency cases in Toronto.

78 My comments are restricted to the trial procedures. Prior to the litigation becoming the focus of the work, the parties worked very cooperatively to achieve an asset realization that was remarkable and much more than forecasted.

79 Justice Pepall dealt recently with a receiver's costs in *Diemer*. The concerns she raised are no different than in a CCAA or BIA case. One concern is the extent of "over lawyering" a file.

80 In my early days in this Nortel matter, Judge Gross and I faced shortly before trial a large number of "pre-trial" motions, consisting largely of motions to strike various parts of expert reports as being outside the expertise of the particular expert. There were very thick briefs, responding briefs and reply briefs with lengthy facta. Motions of this kind are routinely

made during the course of a trial without all of the briefs and facta. The motions were dismissed and the parties were left free to make such arguments during the trial. Needless to say, the issues evaporated.

81 We were also faced with arguments over the length of affidavits that could be filed and the time available to the various parties during the trial. The debate seemed endless and Judge Gross and I had to settle the issues. In the end, the time allotted was more than necessary and it too never became an issue during the trial

82 These sorts of things should not have occurred. The Nortel case was unique in that there were no significant secured creditors who had an interest in controlling costs. That is, there was no typical client whose own money was at stake, such as a bank, which normally would put a brake on excess lawyering taking place.

83 There are too many occasions when a large number of lawyers will attend at court on a matter that is on consent or knowingly without opposition, usually conducted in chambers because of those circumstances. Usually there is no need for most of the lawyers to attend and no need for senior lawyers at all. Courts must be mindful when this occurs to register a concern and, if costs are in the discretion of the court, to refuse to provide costs to those who need not have attended.

84 In Nortel, during the allocation trial, there were far too many lawyers in Court in both Toronto and Delaware. Five lawyers for a party, such as was the case invariably with the U.S. debtors, were likely not needed. That situation breeds disrespect for the legal system in general and particularly so in a case in which thousands of pensioners and disability claimants have had to wait far too long for this proceeding to end. I realize that a judge does not know what all goes on in terms of preparation, and it may be that there is a need for several counsel during a particular witness, but in the Nortel case there had been extensive discovery and all of the evidence of the witnesses was known before the trial began and contained in affidavits or expert reports that were used as their evidence in chief.

85 Some have criticized the Courts in this case for letting things get out of hand. It may be that the criticism is merited, but in my view there is not so much in the point. What got out of hand was the extensive discovery process that ensued once the size of the value of the residual patents at $4.5 billion was known. The U.S. Debtors and the EMEA Debtors changed their initial position from the Canadian Debtors owning the residual patents to the U.S. Debtors taking the position that they owned all of the interests in the patents in their market and the EMEA debtors saying that the patents were jointly owned. In the allocation decision I referred to this and said:

> In this case, insolvency practitioners, academics, international bodies, and others have watched as Nortel's early success in maximizing the value of its global assets through cooperation has disintegrated into value-erosive adversarial and territorial litigation described by many as scorched earth litigation.

86 Professor Janis Serra wrote an article in the Globe & Mail shortly after the allocation decision was made. The headline was "The Nortel judgments were fair. Uncontrolled legal costs are not". In her article, Professor Serra said:

> While parties should be able to assert their claims, the disproportionate negative effects of protracted litigation on smaller creditors are tremendous.
>
> Few people dispute that professionals need to be paid for their services and that parties need lawyers and financial professionals to help guide them through complex insolvency cases. However, the Nortel case represents the extreme in the amount of fees directed away from creditors to professionals, with more than $1-billion already paid to the experts, illustrating the problem of uncontrolled costs.

87 Against the wishes of the Monitor, a broader discovery process was permitted because of the rights under U.S. law permitting wide-ranging depositions. To have ignored those rights in this innovative cross-border proceeding would likely have led to reversible error of any decision made contrary to those parties who had such rights. However, what should have happened is that the parties should have engaged in meaningful negotiations far sooner and settled the matter for the benefit of those who have lost so much in the Nortel insolvency.

88 While there are some who would like to see the Court "punish" the lawyers in this case, it should be recognized that

the only party that is subject to the Court's jurisdiction over its costs is the Monitor. For the reasons already given, it would be unjust to center out the Monitor or its counsel for the blame.

89 What Nortel teaches us is that the gatekeepers of expenses in insolvency cases must exercise as much vigilance as possible to see that costs are maintained at a proper level. Nortel was unusually complex, to be sure, but lessons learned can be useful for less complex insolvencies.

Conclusion

90 The Monitor's accounts and those of its counsel including the respective fees and disbursements incurred during the period January 14, 2009, through to and including May 31, 2016, are approved, being:

(a) for the Monitor, CA$122,972,821.96, inclusive of applicable taxes;

(b) for Goodmans, CA$99,994,744.85, inclusive of applicable taxes;

(c) for A&O, US$31,352,136.73, inclusive of applicable taxes; and

(d) for BIR, US$1,476,489.87.

Motion granted.

Footnotes

1 See the decision regarding the allocation of the $7.3 billion escrowed sales proceeds: *Nortel Networks Corp., Re* (2015), 27 C.B.R. (6th) 175 (Ont. S.C.J. [Commercial List]).

2 EMEA is an acronym for 19 Nortel subsidiaries in Europe, the Middle East and Africa

3 A majority but not all of the bondholders under the particular Indenture Trust are a party to the Settlement Agreement.

4 See *Nortel Networks Corp., Re* (2014), 20 C.B.R. (6th) 171 (Ont. S.C.J. [Commercial List]).

5 It is apparently unclear from the information available to the Monitor whether the expenses of the EMEA Debtors include disbursements for experts. If they do, a comparison would require those expert fees to be deducted. The Canadian and US Debtors' experts' fees are not included in the chart. The chart goes to the end of December, 2015, which does not include work done since then, and so should be taken as a guide rather than as amounts fixed in stone.

TAB 2

Court File No. CV-15-10869-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	**FRIDAY , THE 28TH**
	)	
JUSTICE NEWBOULD	)	**DAY OF OCTOBER, 2016**

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 9366016 CANADA INC.

Applicant

DISTRIBUTION AND CCAA TERMINATION ORDER

THIS MOTION made by 9366016 Canada Inc. (the "**Applicant**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Ninth Report of Ernst & Young Inc. ("**EYI**") as the Court-appointed Monitor of the Applicant (the "**Monitor**") dated October 26, 2016 (the "**Ninth Report**") and the affidavits sworn in support of the approval of the fees and disbursements of the Monitor and its counsel, and on hearing the submissions of counsel for each of the Applicant, the Monitor and such other counsel as were present and wished to be heard, and on reading the affidavit of service, filed:

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.

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Order of this Court granted February 10, 2015 (as amended, the "**Initial Order**"), and that the following terms shall have the following meanings for the purposes of this Order:

(a) "**CCAA Proceedings**" means these proceedings in respect of (i) the Applicant from and after the Transition Date, and (ii) the Former Applicants prior to the Transition Date;

(b) "**Charity**" means one or more registered charities with a primary focus on the provision of charitable activities in the City of Ottawa and surrounding region as determined by the Monitor in consultation with Goodmans LLP as counsel to the Applicant;

(c) "**Claim**" means any right or claim of any Person against the Applicant, whether or not asserted, in connection with any indebtedness, liability or obligations of any kind whatsoever, 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 the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, including for greater certainty any "equity claim" as defined in the CCAA, (i) in existence on the Filing Date, or (ii) arising out of the restructuring, disclaimer, resiliation, termination or breach by the Applicant on or after the Filing Date of any contract, lease or agreement of any nature whatsoever (a "**Restructuring Period Claim**");

(d) "**Claimant**" means a Person with a Distribution Claim;

(e) "**CWP**" means Canadian Water Projects Inc.;

(f) "**CWP Claim**" means the unsecured Claim of CWP against the Applicant in the amount of $21,673,250.50 as determined pursuant to the Global Settlement Agreement;

(g) "**Directors and Officers**" means, collectively (i) any current or former director or officer of the Applicant, and (ii) any director or officer of the Former Applicants that served in such capacity during the period commencing six months prior to the Filing Date and ending immediately prior to the Transition Date, and includes, for greater certainty, the Chief Restructuring Officer appointed pursuant to the Initial Order;

(h) "**Distributable Amount**" means the total amount of cash held by the Monitor in trust for the Applicant on the Distribution Date less the amount of the Reserve;

(i) "**Distribution Date**" means the date set by the Monitor to effect the Distributions pursuant to this Order;

(j) "**Distributions**" means the distributions of the Distributable Amount pursuant to this Order;

(k) "**Filing Date**" means February 10, 2015;

(l) "**Former Applicants**" means Plasco Energy Group Inc., Plasco Trail Road Inc. and Plasco Ottawa Inc.;

(m) "**Global Settlement Agreement**" means the Global Settlement Agreement dated as of August 14, 2015 between the Former Applicants, the Applicant, NSPG and CWP;

(n) "**Employee Claimants**" means former employees of the Applicant or the Former Applicants with Employee Claims;

(o) "**Employee Claims**" means the Claims of Employee Claimants against the Applicant, as determined by the Monitor with the assistance of the Applicant and with the assistance of Representative Counsel with respect to Represented Parties;

(p) "**NSPG**" means North Shore Power Group Inc.;

(q) "**NSPG Claim**" means the unsecured Claim of NSPG against the Applicant in the amount of $19,545,373.50 as determined pursuant to the Global Settlement Agreement;

(r) "**Other Unsecured Claims**" means, collectively, unsecured Claims against the Applicant (i) as set out in the books and records of the Applicant and Former Applicants, and (ii) any other unsecured Claim against the Applicant as accepted by the Monitor prior to the Distribution Date, provided that the CWP Claim, the NSPG Claim, the Promissory Notes Claims and the Employee Claims shall not constitute Other Unsecured Claims;

(s) "**Person**" means any individual, corporation, firm, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, government authority or agency, or any other entity, wherever situate or domiciled and whether or not having legal status;

(t) "**Promissory Notes Claims**" means the aggregate of all Claims in respect of the Promissory Notes;

(u) "**Promissory Notes**" means the unsecured convertible senior promissory notes issued by the Applicant in the principal amount of $68,000,004.00;

(v) "**Representative Counsel**" means Nelligan O'Brien Payne LLP and Shibley Righton LLP as co-counsel for the Represented Parties in the CCAA Proceedings;

(w) "**Representation Order**" means the Order of this Court dated March 3, 2015 pursuant to which, *inter alia*, Representative Counsel was appointed as counsel for the Represented Parties in the CCAA Proceedings;

(x) "**Represented Parties**" has the meaning given to it in the Representation Order;

(y) "**Reserve**" means a reserve of funds in an amount determined by the Monitor, in consultation with the Applicant, sufficient for the payment following the Distribution Date of:

(i) the professional fees and disbursements of the Monitor, counsel to the Monitor, and counsel to the Applicant in connection with these CCAA Proceedings;

(ii) any outstanding claims secured by the Administration Charge, the Directors' Charge and the KERP Charge;

(iii) any expense incurred by the Applicant that relates to the period after the Filing Date; and

(iv) any other contingent amounts appropriate in the circumstances to ensure the availability of sufficient funding to undertake and complete the orderly wind-down of the Applicant and all ancillary activities in connection therewith;

(z) "**Restructuring Period Claims Bar Date**" means November 15, 2016; and

(aa) "**Transition Date**" means September 25, 2015, being the date on which the Global Settlement Agreement became effective pursuant to its terms.

RESTRUCTURING PERIOD CLAIMS

3. **THIS COURT ORDERS** that any Person that does not deliver a proof of claim form in respect of a Restructuring Period Claim to the Monitor on or prior to the Restructuring Period Claims Bar Date shall not be entitled to a Distribution in respect of such Restructuring Period Claim and such Restructuring Period Claim shall be irrevocably barred and extinguished without any further act or notification.

4. **THIS COURT ORDERS** that, where a proof of claim form in respect of a Restructuring Period Claim is delivered to the Monitor on or prior to the Restructuring Period Claims Bar Date, the Monitor, in consultation with counsel to the Company, shall review such proof of claim and

shall either allow, partially allow or disallow such proof of claim for purposes of the Distribution. Where a proof of claim form in respect of a Restructuring Period Claim is allowed in its entirety, the Monitor need do nothing further and the Restructuring Period Claim as set out in the applicable proof of claim form shall be deemed to constitute a Restructuring Period Claim for Distribution purposes. Where a Restructuring Period Claim asserted in a proof of claim form is partially allowed or disallowed, the Person that delivered such proof of claim form shall be notified by the Monitor of the partial allowance or disallowance, as applicable, and the Monitor, with the assistance of counsel to the Applicant, shall attempt to resolve with such Person the validity and quantum of the asserted Restructuring Period Claim. Where any dispute is not resolved within a reasonable period of time as determined by the Monitor, the Monitor is authorized to bring the matter before this Court for determination.

DISTRIBUTIONS

5. **THIS COURT ORDERS** that the following Claims shall be allowed as against the Applicant for purposes of making Distributions to the Applicant's unsecured creditors (collectively, the "**Distribution Claims**"):

(a) the CWP Claim;

(b) the NSPG Claim;

(c) the Promissory Notes Claims;

(d) the Employee Claims; and

(e) the Other Unsecured Claims.

6. **THIS COURT ORDERS** that on the Distribution Date, the Distributable Amount shall be distributed by the Monitor to the Claimants in accordance with the following:

(a) each Claimant shall be entitled to a *pro rata* share of the Distributable Amount equal to the percentage that the value that such Claimant's Distribution Claim bears to the aggregate value of all Distribution Claims; and

(b) the aggregate *pro rata* share of the Distributable Amount allocable to the Promissory Notes Claims pursuant to subparagraph 6(a) of this Order (the "**Redirected Distribution**") shall, in lieu of distribution to the holders of such Promissory Notes Claims, be distributed to Employee Claimants, and each Employee Claimant shall be entitled, in addition to the Distribution to which it is entitled pursuant to subparagraph 6(a) of this Order, to a *pro rata* share of the Redirected Distribution equal to the value that such Employee Claimant's Employee Claim bears to the aggregate value of all Employee Claims.

7. **THIS COURT ORDERS** that the Monitor is authorized to rely on the books and records of the Applicant as necessary in connection with the performance of the Monitor's duties and obligations hereunder, including with respect to the determination and valuation of Distribution Claims and the addresses of Claimants for the purpose of making Distributions.

8. **THIS COURT ORDERS** that the Monitor is hereby authorized, directed and empowered to take any further steps and actions that it deems necessary or desirable to undertake and complete the Distributions.

9. **THIS COURT ORDERS** that if any Claimant's Distribution is returned as undeliverable or remains uncashed (an "**Undeliverable Distribution**"), no further Distribution to such Claimant shall be made unless and until the Monitor is notified by such Claimant of such Claimant's current address, at which time such Distribution shall be made to such Claimant. All claims for Undeliverable Distributions must be made on or before the date that is six months following the Distribution Date (the "**Distribution Deadline**"), after which date any entitlement with respect to such Undeliverable Distribution shall be forever discharged and forever barred, without any compensation therefor, notwithstanding any federal or provincial law to the contrary. The aggregate of all Undeliverable Distributions remaining following the occurrence of the Distribution Deadline shall be paid by the Monitor to Charity.

10. **THIS COURT ORDERS** that any amount received following the Distribution Date by the Applicant, or the Monitor in trust for the Applicant, in connection with the wind-up of Plasco China Limited (Hong Kong), Chengdu Plasco Energy Technology Co. Ltd. (People's Republic of China) or Beijing Plasco Technology Co. Ltd. (People's Republic of China) shall be paid to

Charity by the Monitor promptly upon the receipt of such amount by the Monitor and, for greater certainty, any amount received in respect of the wind-up of such entities prior to the Distribution Date shall form part of the Distributable Amount to be distributed to Claimants pursuant to the terms of this Order.

11. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these CCAA Proceedings;

(b) the assignment in bankruptcy or any petition for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") and any order issued pursuant to such petition; or

(c) any provisions of any federal or provincial legislation,

the Distributions shall be binding on any trustee in bankruptcy or receiver that may be appointed and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

RELEASE

12. **THIS COURT ORDERS** that the Applicant, the Directors and Officers, and the Company's present and former direct and indirect shareholders, employees and advisors, and the Monitor (collectively, the "**Released Parties**") are hereby forever irrevocably released and discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, recoveries, and obligations of whatever nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place prior to the date of this Order in

respect of the Applicant, the Former Applicants, the business, operations, assets, property and affairs of the Applicant or the Former Applicant wherever or however conducted or governed, the administration and/or management of the Applicant or the Former Applicants, and the CCAA Proceedings (collectively, the "**Released Claims**"), which Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, provided that nothing in this paragraph 12 shall waive, discharge, release, cancel or bar (i) the rights of Claimants to receive a Distribution pursuant to the terms of this Order, (ii) any claim against the Directors and Officers that is not permitted to be released pursuant to section 5.1(2) of the CCAA, or (iii) any claim against the Company that is not permitted to be released pursuant to section 19(2) of the CCAA.

MONITOR PROTECTIONS

13. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the Initial Order, the Monitor shall not be liable for any act or omission on the part of the Monitor pertaining to the discharge of its duties under this Order, save and except for any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Monitor. Nothing in this Order shall derogate from the protections afforded to the Monitor by the CCAA, any other federal or provincial applicable law or the Initial Order.

14. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order and without in any way limiting the protections for the Monitor as set forth in this Order, the Initial Order and the CCAA, (a) the Monitor shall have no obligation to make any Distribution or other payment pursuant to this Order unless the Monitor is in receipt of, or holds in trust for the Applicant, adequate funds to effect any such payment, and (b) the Monitor shall have no liability to any Person as a result of a Claim of such Person not being recognized as a Distribution Claim for purposes of this Order or as a result of such Person not receiving a Distribution pursuant to this Order, save and except for any liability arising out of any gross negligence or wilful misconduct on the part of the Monitor.

15. **THIS COURT ORDERS** that any Distributions under this Order shall not constitute a "distribution" for the purposes of section 159 of the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act* (Canada), section 107 of the *Corporations Act Tax* (Ontario), section 22 of the

Retail Sales Tax (Ontario), section 117 of the *Taxation Act, 2007* (Ontario) or any other similar federal, provincial or territorial tax legislation (collectively, the "**Tax Legislation**"), and that the Monitor in making any such Distributions is not "distributing", nor shall be considered to "distribute" nor to have "distributed", such funds for the purpose of the Tax Legislation, and the Monitor shall not incur any liability under the Tax Legislation in respect of its making any payments ordered or permitted under this Order, and is hereby forever released and discharged from any claims against it under or pursuant to the Tax Legislation or otherwise at law, arising in respect of Distributions or other payments under this Order and any claims of this nature are hereby forever barred.

APPROVAL OF MONITOR'S ACTIVITIES

16. **THIS COURT ORDERS** that the activities and conduct of the Monitor prior to or on the date hereof in relation to (a) the Applicant, (b) the Former Applicants, and (c) these CCAA Proceedings are hereby ratified and approved.

17. **THIS COURT ORDERS** that the Pre-Filing Report of the Monitor dated February 10, 2015, the First Report of the Monitor dated March 2, 2015, the Second Report of the Monitor dated April 24, 2015, the Third Report of the Monitor dated July 16, 2015, the Fourth Report of the Monitor dated September 22, 2015, the Fifth Report of the Monitor dated February 15, 2015, the Sixth Report of the Monitor dated March 29, 2016, the Seventh Report of the Monitor dated June 1, 2016, the Eighth Report of the Monitor dated September 28, 2016 and the Ninth Report and the activities and conduct of the Monitor described in each of such reports are hereby approved.

APPROVAL OF FEES AND DISBURSEMENTS OF THE MONITOR

18. **THIS COURT ORDERS** that the fees and disbursements of the Monitor in the amount of $493,910.99 (for the period from February 3, 2015 to September 23, 2016 inclusive, and including harmonized sales tax) and the Monitor's fees and disbursements, estimated not to exceed $35,000, to complete its remaining duties and the administration of these CCAA Proceedings, all as set out in the affidavit of Greg Adams and the Ninth Report, are hereby approved.

19. **THIS COURT ORDERS** that the fees and disbursements of Stikeman Elliott LLP, in its capacity as counsel to the Monitor, in the amount of $197,929.54 (for the period from February 6, 2015 to August 31, 2016 inclusive, and including harmonized sales tax) and its fees and disbursements, estimated not to exceed $30,000, in connection with the completion by counsel to the Monitor of its remaining duties and the administration of these CCAA Proceedings, all as set out in the affidavit of Ashley Taylor and the Ninth Report, are hereby approved.

TERMINATION OF CCAA PROCEEDINGS

20. **THIS COURT ORDERS** that upon the filing of a certificate of the Monitor substantially in the form attached hereto as Schedule "A" certifying that the Distributions have been made pursuant to the terms of this Order and that the Applicant has confirmed to the Monitor that all matters to be attended to in connection with the CCAA Proceedings have been completed, the CCAA Proceedings shall be terminated without any further act or formality (the "**CCAA Termination Time**").

21. **THIS COURT ORDERS** that the Administration Charge, the Directors' Charge and the KERP Charge shall be and are hereby terminated, released and discharged at the CCAA Termination Time.

DISCHARGE OF THE MONITOR

22. **THIS COURT ORDERS AND DECLARES** that effective at the CCAA Termination Time, the Monitor shall be and is hereby discharged as Monitor and shall have no further duties, obligations or responsibilities as Monitor from and after the CCAA Termination Time, save and except for any obligation to pay to Charity pursuant to the terms of this Order (a) the aggregate of all Undeliverable Distributions remaining following the Distribution Deadline, and (b) amounts received by the Monitor in connection with the wind-down of the Chinese Subsidiaries.

23. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, the termination of the CCAA Proceedings, and the discharge of the Monitor, nothing herein shall affect, vary, derogate from, limit or amend, and the Monitor shall continue to have the benefit of,

any of the rights, approvals and protections in favour of the Monitor at law or pursuant to the CCAA, the Initial Order, any other Order of this Court in the CCAA Proceedings or otherwise, all of which are expressly continued and confirmed, including, without limiting the generality of the foregoing, in connection with any payment by the Monitor to Charity following the CCAA Termination Time.

EXTENSION OF THE STAY OF PROCEEDINGS

24. **THIS COURT ORDERS** that the Stay Period (as defined in and used throughout the Initial Order) be and is hereby extended to and including the earlier of: (a) the CCAA Termination Time, and (b) March 31, 2017.

GENERAL

25. **THIS COURT ORDERS** that the Monitor may apply to the Court as necessary to seek further orders and directions to give effect to the Distributions and other matters proposed herein.

26. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

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

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

OCT 2 8 2016

PER / PAR: G

Schedule A – Form of Monitor's Certificate

Court File No. CV-15-10869-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 9366016 CANADA INC.

Applicant

MONITOR'S CERTIFICATE

RECITALS

A. Ernst & Young Inc. was appointed as the Monitor of the Applicant in the within CCAA Proceedings pursuant to an Order of the Ontario Superior Court of Justice (the "**Court**") dated February 10, 2015 (as amended, the "**Initial Order**").

C. Pursuant to the Order of this Court dated October 28, 2016 (the "**Distribution and CCAA Termination Order**"), the Monitor shall be discharged and the CCAA Proceedings shall be terminated upon the filing of this Monitor's Certificate with the Court.

D. Unless otherwise indicated herein, capitalized terms used in this Monitor's Certificate shall have the meanings given to them in the Distribution and CCAA Termination Order.

THE MONITOR CERTIFIES the following:

1. The Distributions have been made pursuant to the terms of the Distribution and CCAA Termination Order.

2. The Applicant has confirmed to the Monitor that all matters to be attended to in connection with the CCAA Proceedings have been completed.

ACCORDINGLY, the CCAA Termination Time as defined in the CCAA Termination Order has occurred.

DATED at Toronto, Ontario this ______ day of ______________, 201___.

Ernst & Young Inc., in its capacity as Monitor of the Applicant, and not in its personal capacity

Per: ______________________________

Name:

Title:

Court File No.: CV-15-10869-00CL

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 9366016 CANADA INC.

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

DISTRIBUTION AND CCAA TERMINATION ORDER

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Lawyers for the Applicant

TAB 3

Court File No. CV-16-11527-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	**THURSDAY, THE 29TH**
	)	
JUSTICE CONWAY	)	**DAY OF MARCH, 2018**

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 GOLF TOWN CANADA HOLDINGS INC., GOLF TOWN CANADA INC. AND GOLF TOWN GP II INC.

Applicants

CCAA TERMINATION ORDER

THIS MOTION made by Golf Town Canada Holdings Inc., Golf Town Canada Inc. ("**GT Canada**"), Golf Town GP II Inc., Golfsmith International Holdings LP and Golf Town Operating Limited Partnership (collectively, the "**Golf Town Entities**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Brian Cejka (the "**CRO**") sworn March 22, 2018, the Eighth Report of FTI Consulting Canada Inc. ("**FTI**") as the Court-appointed Monitor of the Golf Town Entities (the "**Monitor**") dated March 22, 2018 (the "**Eighth Report**") and the affidavits sworn in support of the approval of the fees and disbursements of the Monitor and its counsel, and on hearing the submissions of counsel for each of the Golf Town Entities, the Monitor and such other counsel as were present and wished to be heard, and on reading the affidavit of service, filed:

DEFINED TERMS

1. **THIS COURT ORDERS** that capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Initial Order of this Court dated September 14, 2016 (as amended, the "**Initial Order**").

DISTRIBUTION OF FUNDS

2. **THIS COURT ORDERS** that the Monitor is authorized and directed to hold a reserve of funds from proceeds of the Golf Town Entities (the "**Reserve**") from time to time in an amount determined by the Monitor, in consultation with counsel to the Golf Town Entities, which Reserve shall be sufficient for the payment of:

(a) any claim secured by the Charges granted by this Court pursuant to the Initial Order;

(b) any expense or obligation incurred by the Golf Town Entities that relates to the period from and after the date of the Initial Order or is otherwise payable pursuant to the Initial Order; and

(c) any other amounts appropriate in the circumstances to ensure the availability of sufficient funds to undertake and complete the orderly wind-down of the Golf Town Entities and these proceedings and all ancillary activities in connection therewith, including any assignments in bankruptcy in respect of the Golf Town Entities pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**").

3. **THIS COURT ORDERS** that, notwithstanding anything to the contrary in any other Order of this Court, the Monitor is hereby authorized and directed, subject to the prior written consent of the CRO, to distribute to BNY Trust Company of Canada, in its capacity as Canadian co-trustee (the "**Trustee**") under the Secured Notes Indenture (as defined below), in one or more distributions (each a "**Distribution**" and, collectively, the "**Distributions**"), all funds or proceeds in respect of the Golf Town Entities held by the Monitor in excess of the amount of the Reserve determined at the time of such Distribution, provided that, for greater certainty, the aggregate amount of all Distributions made to the Trustee on behalf of the Golf Town Entities shall not

exceed the aggregate obligations owing by the Golf Town Entities pursuant to the indenture dated as of July 24, 2012, as amended (the "**Secured Notes Indenture**"), pursuant to which GT Canada and Golfsmith International Holdings, Inc. (collectively with their affiliates, the "**Company**") issued the 10.50% senior second lien notes due 2018 (the "**Secured Notes**"). For greater certainty, this paragraph shall apply to all funds or proceeds in respect of the Golf Town Entities that are held by or come into the possession of the Monitor following the CCAA Termination Date (as defined below) (the "**Post-Termination Proceeds**").

4. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these proceedings;

(b) the assignment in bankruptcy or any petition for a bankruptcy order now or hereafter issued pursuant to the BIA and any order issued pursuant to such petition; or

(c) any provisions of any federal or provincial legislation,

the Distributions shall be binding on any trustee in bankruptcy or receiver that may be appointed and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

APPROVAL OF MONITOR'S ACTIVITIES

5. **THIS COURT ORDERS** that the activities and conduct of the Monitor prior to or on the date hereof in relation to the Golf Town Entities and these proceedings are hereby ratified and approved.

6. **THIS COURT ORDERS** that the reports of the Monitor filed to date in these proceedings (including the Eighth Report), and the activities and conduct of the Monitor described in each of such reports, are hereby approved.

APPROVAL OF FEES AND DISBURSEMENTS OF THE MONITOR

7. **THIS COURT ORDERS** that the fees and disbursements of the Monitor for the period from September 14, 2016 to February 28, 2018, and its fees and disbursements, estimated not to exceed $60,000, for the completion of remaining activities in connection with these proceedings, all as set out in the affidavit of Paul Bishop sworn March 21, 2018, are hereby approved.

8. **THIS COURT ORDERS** that the fees and disbursements of Osler, Hoskin & Harcourt LLP, in its capacity as counsel to the Monitor, for the period from September 1, 2016 to February 28, 2018, and its fees and disbursements, estimated not to exceed $50,000, for the completion of remaining activities in connection with these proceedings, all as set out in the affidavit of Tracy Sandler sworn March 22, 2018, are hereby approved.

TERMINATION OF CCAA PROCEEDINGS

9. **THIS COURT ORDERS** that upon the filing of a certificate of the Monitor in substantially the form attached hereto as Schedule "A" (the "**Monitor's Certificate**") confirming that all matters to be attended to in connection with the Golf Town Entities and proceedings in respect of the Company have been completed, the proceedings shall be terminated without any further act or formality (the "**CCAA Termination Date**"). For greater certainty, the Monitor's Certificate may be filed and the CCAA Termination Date may occur notwithstanding one or more Distributions are expected to occur following the CCAA Termination Date.

10. **THIS COURT ORDERS** that the Charges shall be and are hereby terminated, released and discharged as of the CCAA Termination Date. Notwithstanding the foregoing, where the Monitor continues to hold a Reserve at the CCAA Termination Date with respect to a Charge, such Charge, in an amount equal to the corresponding Reserve amount held by the Monitor, shall not be terminated, released or discharged until such time as the corresponding Reserve amount is distributed or released pursuant to the terms of this Order.

11. **THIS COURT ORDERS** that each of the Golf Town Entities shall be authorized, in its discretion or at the discretion of the Monitor, to make an assignment in bankruptcy pursuant to the BIA on or after the CCAA Termination Date, and the Monitor is hereby authorized to file any such assignment in bankruptcy for and on behalf of any Golf Town Entity and to take any

steps reasonably incidental thereto. FTI is hereby authorized to act as trustee in bankruptcy in respect of any Golf Town Entity that makes an assignment in bankruptcy pursuant to the BIA.

DISCHARGE OF THE MONITOR

12. **THIS COURT ORDERS AND DECLARES** that effective on the CCAA Termination Date, the Monitor shall be and is hereby discharged as Monitor and shall have no further duties, obligations or responsibilities as Monitor from and after the CCAA Termination Date, provided that, notwithstanding its discharge herein, the Monitor shall remain Monitor for the performance of such incidental or ancillary duties as may be required to complete the administration of the Golf Town Entities' estate or these proceedings following the CCAA Termination Date, including the duty to effect a Distribution of any Post-Termination Proceeds pursuant to the terms of this Order and the discretion to authorize an assignment in bankruptcy pursuant to paragraph 11 hereof.

13. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, the termination of these proceedings or the discharge of the Monitor, nothing herein shall affect, vary, derogate from, limit or amend, and the Monitor shall continue to have the benefit of, any of the rights, approvals and protections in favour of the Monitor at law or pursuant to the CCAA, the Initial Order, any other Order of this Court in these proceedings or otherwise, all of which are expressly continued and confirmed following the CCAA Termination Date, including in connection with any actions taken by FTI following the CCAA Termination Date with respect to the Golf Town Entities or these proceedings.

RELEASE

14. **THIS COURT ORDERS** that (i) the present and former direct and indirect shareholders, directors, officers, employees, legal counsel and advisors of the Golf Town Entities (or any of them) or Golfsmith International Holdings GP Inc., and (ii) the Monitor and its legal counsel (the persons listed in clauses (i) and (ii) being collectively, the "**Released Parties**") are hereby forever irrevocably released and discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, recoveries, and obligations of

whatever nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place prior to the CCAA Termination Date or completed pursuant to the terms of this Order in respect of the Company, the business, operations, assets, property and affairs of the Company wherever or however conducted or governed, the administration and/or management of the Company, the Secured Notes Indenture, the Secured Notes and these proceedings (collectively, the "**Released Claims**"), which Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, provided that nothing in this paragraph 14 shall waive, discharge, release, cancel or bar any claim against the Directors and Officers that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

EXTENSION OF THE STAY OF PROCEEDINGS

15. **THIS COURT ORDERS** that the Stay Period (as defined in and used throughout the Initial Order) be and is hereby extended to and including the earlier of (i) the CCAA Termination Date, and (ii) May 31, 2018.

GENERAL

16. **THIS COURT ORDERS** that the Golf Town Entities or the Monitor may apply to the Court as necessary to seek further orders and directions to give effect to this Order.

17. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

18. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or in any other foreign jurisdiction, to give effect to this Order and to assist the Golf Town Entities and 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 Golf Town Entities and the Monitor and their respective agents

as may be necessary or desirable to give effect to this Order, or to assist the Golf Town Entities and the Monitor and their respective agents in carrying out the terms of this Order.

Conway J.

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

MAR 2 9 2018

PER / PAR: MB

Schedule A – Form of Monitor's Certificate

Court File No. CV-16-11527-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GOLF TOWN CANADA HOLDINGS INC., GOLF TOWN CANADA INC. AND GOLF TOWN GP II INC.

Applicants

MONITOR'S CERTIFICATE

RECITALS

A. FTI Consulting Canada Inc. was appointed as the Monitor of the Golf Town Entities in the within proceedings pursuant to an Initial Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated September 14, 2016.

C. Pursuant to the Order of this Court dated March 29, 2018 (the "**CCAA Termination Order**"), the Monitor shall be discharged and these proceedings shall be terminated upon the filing of this Monitor's Certificate with the Court.

D. Unless otherwise indicated herein, capitalized terms used in this Monitor's Certificate shall have the meanings given to them in the CCAA Termination Order.

THE MONITOR CONFIRMS the following:

1. All matters to be attended to in connection with the Golf Town Entities and proceedings in respect of the Company have been completed.

ACCORDINGLY, the CCAA Termination Date as defined in the CCAA Termination Order has occurred on the date set forth below.

DATED at Toronto, Ontario this ______ day of ______________, 2018.

FTI Consulting Canada Inc., in its capacity as Monitor of the Golf Town Entities, and not in its personal capacity

Per: ______________________________

Name:

Title:

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

Court File No. CV-16-11527-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GOLF TOWN CANADA HOLDINGS INC., GOLF TOWN CANADA INC. AND GOLF TOWN GP II INC.

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

CCAA TERMINATION ORDER

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