

Vancouver

14-May-20

REGISTRY

No. S1710393
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, c. 57, AS AMENDED

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,
R.S.C. 1985, c. C-44, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF
ALL CANADIAN INVESTMENT CORPORATION

NOTICE OF APPLICATION

Name of applicant: The Petitioner

To: Service List

TAKE NOTICE that an application will be made by the Petitioner to the presiding Judge or Master at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on Tuesday May 19, 2020 at 10:00 a.m., for the Orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. The Petitioner seeks an Order, substantially in the form attached as **Schedule B**, including:
 - a. abridging the time for service of the Notice of Application dated May 14, 2020 such that the application is properly returnable on Tuesday, May 19, 2020 and service upon any interested party other than those parties on the service list maintained by the Petitioner and the Monitor in this matter is hereby dispensed with.
 - b. extending the stay of proceedings from May 22, 2020 to October 16, 2020 or such other date as this Honourable Court deems just;
 - c. approving the Monitor's claims report contained in the Monitor's Nineteenth Report to court dated January 28, 2020 and the Report Supplemental to the Monitor's Nineteenth Report to court dated February

18, 2020 (the “Monitor’s Claims Report”) subject only to the final determination of the Notice of Application dated February 19, 2020 filed by Parkland Funding Limited (the “Parkland Application”);

- d. amending the Meeting Order made November 18, 2020;
- e. amending the form of the Plan of Arrangement conditionally approved November 18, 2019 (the “Plan”) and in particular paragraphs 4.4 and 4.5;
- f. authorizing the Monitor to negotiate and enter into a settlement agreement with respect to proceedings commenced by the British Columbia Securities Commission; and
- g. such further and other orders as this Honourable Court deems just.

Part 2: FACTUAL BASIS

- 2. On February 6, 2020 the Stay of proceedings was extended to May 22, 2020 (the “Stay”).

Claims Process

- 3. On November 18, 2019 the court issued the Claims Process Order.
- 4. In the Monitor’s Nineteenth Report to Court dated January 28, 2020 the Monitor reported on its conduct of the claims process. At the request of the court, the Monitor filed a Report Supplemental to the Monitor’s Nineteenth Report to Court dated February 18, 2020 providing further information regarding claims submitted by related companies (to ACIC) in the claims process (together referred to as the “Monitor’s Claims Report”).
- 5. In those reports the Monitor accepted the proofs of claims listed in Schedule “B” to the draft Order
- 6. The terms of the Claims Process Order have been completed other than the determination of the Notice of Application dated February 19, 2020 filed by Parkland Funding Limited (the “Parkland Application”).
- 7. The Parkland Application was initially heard on April 21, 2020 at which time:
 - a. the application was adjourned to 10:00 AM Tuesday, May 19, 2020;
 - b. the Monitor was directed to deliver a revised Notice of Revision or Disallowance by 4:00 PM on April 29, 2020; and
 - c. Parkland Funding Limited was directed to file and serve any new materials by 4:00 PM May 12, 2020.

8. Those directions have been complied with and the continuation of the hearing of the Parkland Application will proceed Tuesday, May 19, 2020.
9. Once a decision has been issued on the Parkland Application the claims process will be completed and the Petitioner seeks:
 - a. approval of the Monitor's determinations under the Claims Process Order; and
 - b. an order that the creditor claims listed in Schedule "B" to the draft Order and approved by the Monitor in the Monitor's Claims Report, are "Proven Claims" for the purposes of the Meeting Order.

Meeting to approve the Plan

10. On November 18, 2019 the court issued the Meeting Order.
11. Paragraph 12 of the Meeting Order deals with the conduct of the meeting of creditors to vote on the proposed Plan of Arrangement. As presently drafted paragraph 12 implicitly contemplates an in-person meeting at a specified "location".
12. In light of the existing uncertainty brought about by the COVID 19 pandemic, the Monitor recommends that the Meeting Order be amended to expressly provide further flexibility so as to allow the meeting to proceed by audio or video conferencing if necessary.
13. The Petitioner seeks an order amending paragraph 12 of the Meeting Order to allow that to occur in the form set out in the draft Order attached as Schedule "B" to this application.

Plan of Arrangement

14. On November 18, 2019 an Order was made approving the proposed form of the Plan of Arrangement (the "Plan") and authorizing the Petitioner to present the Plan to its creditors in accordance with the terms of the Meeting Order.
15. That Order was expressly subject to the review and amendment, with the approval of the Monitor, of paragraphs 4.4 and 4.5 of the Plan.

**[see Schedule "A" to the Notice of Application dated November 14, 2019,
Volume 11, Tab 109]**

16. Those paragraphs specifically dealt with:
 - a. the granting of releases, effective as of the Plan Implementation Date (as defined in the Plan) in favour of:

- (i) the Petitioner and its legal counsel in these proceedings;
 - (ii) the Monitor and its legal counsel in these proceedings; and
 - (iii) any person claimed to be liable derivatively through any and all of the foregoing persons.
- b. an injunction, effective as of the Plan Implementation Date, prohibiting the commencement or continuation of legal proceedings and other related enforcement steps, against the Petitioner in connection with any indebtedness, liability or obligation of any kind (including all contingent liabilities), whether secured or unsecured, at the date of the Initial Order, that would be a claim provable in bankruptcy within the meaning of the BIA.
17. The Plan defines the "Plan Implementation Date" as the date on which the Final Distribution Certificate is filed with the Court by the Monitor.
18. The concern that exists with respect to the form of paragraphs 4.4 and 4.5 of the Plan is that they have the potential to affect claims, presently advanced by Monitor's counsel in the name of the Petitioner, against Mr. Bergman.
19. Counsel for the Petitioner has discussed this issue with the Monitor (and its counsel) and is of the view that more restrictive releases, in favour of the Petitioner's legal counsel, the Monitor and its legal counsel may be appropriate for the following reasons:
- a. although the CCAA does not contain express provisions either permitting or prohibiting the granting of releases there is authority to the effect that the court may approve releases in a plan of arrangement;
 - b. the exercise of that jurisdiction typically occurs where the releases are reasonably related to the proposed restructuring;
 - c. in this case the Plan represents a liquidating plan of arrangement at the end of which it is expected that all of the Petitioner's assets will have been liquidated and it will no longer operate. In those circumstances there may be no need for a release in favour of the Petitioner;
 - d. in contrast, the Monitor and legal counsel are essential to the Plan in that the:
 - (i) Monitor is operating under enhanced powers granted in November 2018 and is effectively operating the Petitioner;
 - (ii) Plan contemplates the Monitor directing the realization of the Petitioner's assets, for distribution in accordance with the terms of the Plan;

- (iii) counsel for the Petitioner and the Monitor are operating under those instructions including instituting court proceedings and negotiating settlements for court approval;
 - (iv) the claims which are proposed to the released are rationally related to the Plan, namely the realization of the Petitioner's assets and distribution to creditors and equity claimants;
 - (v) the Monitor and legal counsel are directly contributing to the Plan through the realization process; and
 - (vi) the Plan is entirely focused on the interest of the creditors and other stakeholders and there is little, if any, tangible benefit to the Petitioner in that it is a liquidating plan of arrangement.
20. For the same reasons, and in particular the fact that the Petitioner will have no assets as at the Plan Implementation Date, the injunction provision found at paragraph 4.5 of the Plan may not be necessary.
21. The Petitioner proposes an amendment to the paragraphs 4.4 and 4.5 of the Plan as particularized and Schedule "C" of the draft Order.

Enhanced Power to Monitor to negotiate with the BCSC

22. In January 2020 the British Columbia Securities Commission ("BCSC") issued a Notice of Hearing against the Petitioner and Mr. Bergman. A copy of the Notice of Hearing is attached as Appendix B to the Monitor's 21st Report.

[Volume 12, Tab 147]

23. In essence, the BCSC alleges that:
- a. the Petitioner and Mr. Bergman made misrepresentations and false or misleading statements in Offering Memorandums dated January 21, 2014, February 12, 2015 and June 22, 2015 (the "OM's");
 - b. the OM's were provided to investors and filed with the BCSC; and
 - c. in doing so the Petitioner acted contrary to s. 50(1)(d) and s. 168(1) of the *Securities Act*.
24. The Notice of Hearing has been scheduled for a hearing November 12-19, 2020. Mr. Bergman is separately represented.
25. Counsel for the Petitioner (on the instructions of the Monitor) initiated discussions regarding a potential resolution of the allegations against the Petitioner (only) given the concerns that the Petitioner's financial resources could

be expended in the proceedings, or if a financial penalty/sanction was imposed, which would be contrary to the interests of stakeholders.

26. If a resolution can be reached that is restricted to permanent bans but does not involve monetary sanctions the Monitor is of the view that the Petitioner should proceed on that basis.
27. The Petitioner is seeking an order authorizing the Monitor to negotiate and, if it is possible to reach an agreement on sanctions which is restricted to permanent bans but does not involve monetary sanctions, enter into a settlement agreement on behalf of the Petitioner with the BCSC.

Extension of the Stay

28. The Stay is scheduled to expire May 22, 2020. The Petitioner respectfully requests an extension of the stay to October 16, 2020 in order to allow:
 - a. the meeting of creditors to proceed in accordance with the Meeting Process Order;
 - b. the Petitioner to apply for a sanction order in the event that the Plan is approved by the creditors at the meeting; and
 - c. the Petitioner to continue its ongoing efforts to realize its assets for the benefit of stakeholders.
29. The Petitioner is continuing to act in good faith and due diligence and with support of the Monitor, seeks an extension of the Stay to October 16, 2020, or such other date as this Honourable Court deems just.

Part 3:LEGAL BASIS

30. The Petitioner relies on the terms and provisions of the CCAA, as amended.
31. The Petitioner also relies on Rules 1-3, 4-4, 6, 8-1, 8-5, 22-1 and 22-4 of the *Supreme Court Civil Rules*.

Extension of the Stay

32. Pursuant to s. 11 of the CCAA, the Court may make any order that it considers appropriate.
33. Pursuant to ss. 11.02(2) and (3) of the CCAA, the Court may extend a stay of proceedings granted in an Initial Order when:
 - a. the applicant satisfies the court that circumstances exist that make the order appropriate; and

- b. in the case of an order under subsection (2) [extension of a stay], the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.
34. An extension of a stay should only be granted in furtherance of the CCAA's fundamental purpose of facilitating a plan of arrangement between debtor companies and their creditors.

[Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp., 2008 BCCA 327](#)

35. In addition to the fundamental purpose of the extension, other factors to be considered on an application for a stay include:
- a. the debtor's progress during the previous stay period toward a restructuring;
 - b. whether the creditors will be prejudiced if the court grants the extension; and
 - c. the comparative prejudice to the debtor, creditors and other stakeholders in not granting the extension.

[Re Worldspan Marine Inc., 2011 BCSC 1758](#)

36. The CCAA can be used for an orderly wind-down of a company.

[Re Target Canada Co., 2015 ONSC 303 \(S.C.J.\)](#)

37. The extension of the Stay sought by the Petitioner is appropriate in the circumstances as it is consistent with the purpose of the CCAA.
38. The Petitioner has acted and continues to act in good faith and with due diligence and the need for an extension arises in order to allow the Petitioner to proceed with presenting the Plan to its creditors and assuming it is approved, seeking a sanction order and then implementing the Plan.
39. There will be no prejudice to any stakeholders in the event the Stay is extended as the Petitioner is proceeding with the restructuring process.

Plan of Arrangement: Releases

40. In *[Bul River Mineral Corp. \(Re\), 2015 BCSC 113](#)* the court considered the appropriateness of granting releases in a plan of arrangement under the CCAA. The court identified the requirements to be met before the granting of releases and confirmed that they should be the exception, not the norm.

76 Finally, there is the matter of releases which are provided for in the Plan. Section 7.3 of the Plan provides for releases of certain claims: claims by the petitioners (other than Purcell) against legal counsel, financial advisors and the

Monitor and its legal counsel; claims by various persons including those having an "Affected Claim" against the petitioners, the Monitor and CuVeras; and claims by the petitioners (other than Purcell) and stakeholders who benefit under the Plan against the Estate.

77 *The CCAA does not contain any express provisions either permitting or prohibiting the granting of releases, including third party releases, as part of a plan of compromise or arrangement. Nevertheless, there is authority to the effect that the court may approve releases found in a plan of arrangement while exercising its statutory jurisdiction under the CCAA. The leading decision is ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp., 2008 ONCA 587, leave to appeal to S.C.C. refused (2008), 390 N.R. 393 (note). At paras. 40-52 of Metcalfe, a plan containing third party releases was sanctioned. At para. 46, the court stated that such jurisdiction may be exercised where the releases are "reasonably related to the proposed restructuring".*

78 *The approach in Metcalfe was adopted in Canwest at paras. 28-30. The court in Canwest noted that third party releases should be the exception and not requested or granted as a matter of course: para. 29.*

79 *In Kitchener Frame Ltd. (Re), 2012 ONSC 234, although in the context of a proposal under the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, the court summarized the requirements that would justify third party releases:*

[80] In Metcalfe, the Court of Appeal for Ontario held that the requirements that must be satisfied to justify third-party releases are:

- a) the parties to be released are necessary and essential to the restructuring of the debtor;*
- b) the claims to be released are rationally related to the purpose of the Plan ... and necessary for it;*
- c) the Plan ... cannot succeed without the releases;*
- d) the parties who are to have claims against them released are contributing in a tangible and realistic way to the Plan...; and*
- e) the Plan ... will benefit not only the debtor companies but creditors generally.*

80 *Metcalfe has been applied in numerous decisions where third party releases have been approved: see, for example, Sino-Forest Corp. (Re), 2012 ONSC 7050 at paras. 70-77; SkyLink Aviation Inc. (Re), 2013 ONSC 2519 at paras. 30-33. In British Columbia, see Angiotech Pharmaceuticals, Inc. (Re), 2011 BCSC 450 at para. 12, where the court sanctioned a plan that included releases in favour of various persons, including the monitor, financial advisors and the interim lender.*

81 *It remains the case that any person proposing releases in a plan of arrangement, and any party seeking a court order sanctioning or even*

supplementing such releases, must ensure, from the outset, that a proper rationale exists for them.

41. Although the CCAA does not contain express provisions either permitting or prohibiting the granting of releases there is authority to the effect that the court may approve releases in a plan of arrangement where the exercise of that jurisdiction typically occurs where the releases are reasonably related to the proposed restructuring;
42. For the reasons set out in the Monitor's 21st Report the Petitioner submits that paragraphs 4.4 and 4.5 of the Plan should be amended as set out in Schedule C to the draft Order.

Enhanced Power to Monitor to negotiate with the BCSC

43. The filing of the Notice of Hearing is not contrary to the stay of proceedings issued by this court.
44. There is a real and substantial risk that the Petitioner could expend unnecessary resources in dealing with the Notice of Hearing or be subject to financial penalties/sanctions, an order for a disgorgement of profits or costs in the proceedings. If that occurs then it will be to the prejudice of stakeholders.
45. In those circumstances, the Petitioner submits that it will be in the best interests of stakeholders and consistent with the fundamental purposes of the plan, for the Monitor to enter into settlement discussions with the BCSC and enter into a settlement agreement if possible.

Part 4: MATERIAL TO BE RELIED ON

46. The pleadings and materials filed herein including:
47. Notice of Application dated November 14, 2019 (**Vol 11, Tab 109**).
48. The Claims Process Order made November 18, 2019 (**Vol 11, Tab 122**).
49. The Meeting Order made November 18, 2019 (**Vol 11, Tab 123**).
50. The Monitor's Nineteenth Report to court dated January 28, 2020 (**Vol 12, Tab 127**).
51. The Report Supplemental to the Monitor's Nineteenth Report to court dated February 18, 2020 (**Vol 12, Tab 131**).
52. The Monitor's 21st Report to Court dated May 14, 2020 (**Vol 12, Tab 147**).

53. Such further and other material as counsel may advise and this Honourable Court may allow.

The Applicants estimates that the Application will take 60 minutes.

[] This matter is within the jurisdiction of a master.

[X] This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application:

- (a) file an application response in Form 33;
- (b) file the original of every affidavit, and of every other document, that:
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: May 14, 2020

Signature of Jeremy D. West
Counsel for the Petitioner

To be completed by the court only:

Order made

[] in the terms requested in paragraphs _____. of Part 1 of this notice of application

[] with the following variations and additional terms:

APPENDIX**THIS APPLICATION INVOLVES THE FOLLOWING:**

- [] discovery: comply with demand for documents
- [] discovery: production of additional documents
- [] extend oral discovery
- [] other matter concerning oral discovery
- [] amend pleadings
- [] add/change parties
- [] summary judgment
- [] summary trial
- [] service
- [] mediation
- [] adjournments
- [] proceedings at trial
- [] case plan orders: amend
- [] case plan orders: other
- [] experts

Schedule “B”

No. S1710393
Vancouver Registry

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, c. 57, AS AMENDED

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,
R.S.C. 1985, C. c-44, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF
ALL CANADIAN INVESTMENT CORPORATION

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE) THE 19th DAY OF
MR. JUSTICE WALKER) MAY 2020.
)

ON THE APPLICATION of the Petitioner dated May 13, 2020 coming on for hearing at Vancouver, British Columbia, on the 19th day of May 2020, and on hearing Jeremy D. West, counsel for the Petitioner, and those other counsel listed on Schedule “A” hereto, AND UPON READING the material filed herein for the purposes of this application; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the “CCAA”), the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DIRECTS THAT:

1. Terms and expressions not defined in this Order shall have the meanings attributed to them in the Order of this Court pronounced on November 10, 2017 (as varied from time to time, the “Initial Order”).

2. The time for service of the Notice of Application dated May 13, 2020 is abridged such that the application is properly returnable on Tuesday, May 19, 2020 and service upon any interested party other than those parties on the service list maintained by the Petitioner and the Monitor in this matter is hereby dispensed with.

Stay of Proceedings

3. The stay of proceedings is hereby extended from May 22, 2020 to October 16, 2020.

Claims Process Order

4. The Monitor's Claims Report contained in the Monitor's Nineteenth Report to court dated January 28, 2020 and the Report Supplemental to the Monitor's Nineteenth Report to court dated February 18, 2020 (together referred to hereinafter as the "Monitor's Claims Report") is hereby approved subject only to the final determination of the Notice of Application dated February 19, 2020 filed by Parkland Funding Limited.
5. The creditor claims submitted in accordance with the terms of the Claims Process Order made November 18, 2019, listed in **Schedule "B"** hereto and approved by the Monitor in the Monitor's Claims Report, are "Proven Claims" for the purposes of the Meeting Order made November 18, 2019 (the "Meeting Order").

Meeting Order

6. Paragraph 12 of the Meeting Order is hereby amended as follows:

12. *The Petitioner is hereby authorized to convene, hold and conduct the Meeting at 10:00 a.m. (Vancouver time) on the Meeting Date at a location to be determined by the Monitor, or if the Monitor determines it appropriate by audio or video conferencing, for the purpose of considering and, if deemed advisable, passing the Resolution unless the Chair, as provided herein, decides to adjourn, postpone or otherwise reschedule the Meeting.*
7. Paragraphs 4.4 and 4.5 in the plan of arrangement attached as Schedule "B" to the Meeting Order is hereby amended by replacing them the amended paragraphs at **Schedule "C"** hereto.
8. The proceedings are adjourned for hearing at 10:00 a.m. [insert].
9. Approval of counsel as to form listed in **Schedule "A"** hereto, except counsel for the Petitioner, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND
CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE
AS BEING BY CONSENT:



Signature of Jeremy D. West
Counsel for the Petitioner

By the Court.

Registrar

Schedule “A”- List of Counsel Appearing

Jeremy D. West	Counsel for All Canadian Investment Corporation
Douglas Hyndman	Counsel for the Monitor

Schedule “B” Proven Claims

Creditor Name	Amount
Douglas Allan Richardson	154,333.33
James Murray Hancock	1,016,297.09
Clifford George Renfrew	77,166.67
Ajit Singh Gill & Simro Gill	154,333.33
Palatee Enterprises Limited (c/o Fred Bell)	154,333.33
Christopher G. Murray	154,333.33
Econ-o-Lith Printing Ltd.	154,333.33
George Bradley Cmolik & Norah Beatrice Wallbank	154,333.33
Harper Grey LLP	4,184.89
Robert William Lockhart	205,777.76
Mervyn & Margaret Olson	154,333.33
1083163 Alberta Ltd.	517,777.72
Joan Margaret Renfrew	77,166.67
Roy Bailey	154,333.33
Wenge Yu	154,333.33
Donald H. Buchanan	154,333.33
Grover, Elliott & Co. Ltd.	1,904.44
Koffman Kalef LLP	476.00
Koffman Kalef LLP	1,036.41
Clark Wilson LLP	14,592.71

ACIC CJ Properties Ltd.	24,000.00	
ACIC CJ Properties Ltd.	72,495.94	
ACIC Financial Development Inc. (“AFDI”)	205,000.00	With Conditions
BDO Canada LLP	4,971.50	With Conditions
BDO Canada LLP	<u>30,296.70</u>	With Conditions
Total	\$3,796,477.80	

Schedule "C" Amendment to paragraphs 4.4 and 4.5 of the Plan

4.4 Releases

As of the Plan Implementation Date, the following Persons (collectively, the "**Released Parties**"):

- (a) the Petitioner's ~~and its~~ legal counsel in the CCAA Proceedings;
- (b) the Monitor and its legal counsel in the CCAA Proceedings; and
- (c) any Person claimed to be liable derivatively through any and all of the foregoing Persons;

shall be released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, expenses, executions, liens and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Person may be entitled to assert including, any claims in respect of potential statutory liabilities and any alleged fiduciary or other duty, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the Plan Implementation Date in any way relating to, arising out of or in connection with Claims, the business and affairs of the Petitioner, this Plan and the CCAA Proceedings to the full extent permitted by law, and all claims arising out of such actions or omissions shall be forever waived and released (other than the right to enforce the Petitioner's obligations under the Plan or any related document) provided that nothing herein:

- i. shall affect a Person from their obligations provided in the Plan;
- ii. shall affect the rights of any Person to recover indemnity from any insurance coverage under which that Person is an insured; or
- iii. shall release or discharge present or former directors of the Petitioner with respect to matters set out in section 5.1(2) of the CCAA;

and provided further, however, that notwithstanding the foregoing releases under the Plan, any Claim asserted against the Petitioner shall remain subject to any right of set-off that otherwise would be available to the Petitioner in the absence of such releases.

4.5 Permanent Injunction

~~From and after the Plan Implementation Date, the Creditors, the Preferred Shareholders and other Persons shall be permanently and forever barred, estopped, stayed and enjoined with respect to the Claims from:~~

- (a) ~~commencing, conducting or continuing in any manner, directly or indirectly, any actions, suits, demands or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against the Petitioner and its respective representatives, predecessors, heirs, spouses, dependents, administrators, executors, subsidiaries, affiliates, related companies, franchisees, member companies, vendors, partners, distributors, brokers, retailers, shareholders, employees, attorneys, sureties, insurers, successors, indemnitees, servants, agents and assigns, as applicable;~~
- (b) ~~enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against the Petitioner and its respective representatives, predecessors, heirs, administrators, executors, subsidiaries, affiliates, related companies, franchisees, member companies, vendors, partners, distributors, brokers, retailers, shareholders, employees, attorneys, sureties, insurers, successors, indemnitees, servants, agents and assigns, or the property of such persons;~~
- (c) ~~commencing, conducting or continuing in any manner, directly or indirectly, any action, suits or demands, including without limitation, by way of contribution or indemnity or other relief, in common law, or in equity, or under the provisions of any statute or regulation, or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any Person who makes such a claim or might reasonably be expected to make such a claim, in any manner or forum, against the Petitioner;~~
- (d) ~~creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or Encumbrance of any kind; and~~
- (e) ~~taking any actions to interfere with the implementation or consummation of this Plan.~~