



**Court file 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**

**AND**

**IN THE MATTER OF ALL CANADIAN INVESTMENT CORPORATION**

**(the "Petitioner")**

**MONITOR'S 21<sup>st</sup> REPORT TO COURT**

**MAY 15, 2020**

**McEown and Associates Ltd.**

Monitor appointed in the  
Companies' Creditors Arrangement Act proceedings of  
All Canadian Investment Corporation

**Suite 1140 – 800 West Pender Street  
Vancouver, B.C. V6C 2V6**

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- A. Notice of Hearing issued by the Executive Director of the British Columbia Securities Commission under section 161 of the Securities Act, RSBC 1996, c 418 on January 20, 2020.**

## A. INTRODUCTION

1. This report (the “**Twenty-First Report**”) is filed by McEown and Associates Ltd. (“**McEown**”) in its capacity as monitor (the “**Monitor**”) appointed in a proceeding commenced on November 8, 2017 by All Canadian Investment Corporation (the “**Petitioner**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c.-36, as amended (the “**CCAA Proceedings**”).
2. The purpose of the Twenty-First Report is to provide the Court with:
  - a) an update on the Cost Application;
  - b) an update on the Claims Process pursuant to the Claims Order;
  - c) details of proposed amendments to the Meeting Order and the Plan of Arrangement;
  - d) an update on realizations from the assets of the Petitioner;
  - e) an update on AFDI/Don Bergman action;
  - f) information relating to proceedings commenced by the British Columbia Securities Commission;
  - g) the Monitor’s comments on the Petitioner’s request for an extension of the Stay of Proceedings until October 16, 2020; and
  - h) the Monitor’s conclusions and recommendations;

## **B. DISCLAIMER AND TERMS OF REFERENCE**

3. Except as specified, in preparing this report the Monitor has obtained and relied upon unaudited, draft and/or internal information which Management advises has been compiled from the Petitioner's books and records. Where available, the Monitor has reviewed external records and documentation including post-filing banking records, corporate searches and financial statements.
4. Except as otherwise described in this report:
  - a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information which has been provided in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountant Canada Handbook; and
  - b) the Monitor has not conducted an examination or review of any financial forecast and projections in a manner that would comply with the procedures described in the Chartered Professional Accountant Canada Handbook.
5. This Report have been prepared solely for the purpose described and readers are cautioned that it may not be appropriate for other purposes.

### **C. COST APPLICATION**

6. On February 25, 2020, a Notice of Application was filed by J. Hancock and 103163 Alberta Ltd. for an order directing the Petitioner to pay their legal costs incurred in regards to the Notice of Application of the Petitioner dated January 24, 2019. This Application was heard on March 3, 2020 and the Court granted an Order requiring the Petitioner to pay the legal costs incurred by J. Hancock & 103163 Alberta Ltd. Copies of the Order granted and of the application materials are available on the Monitor's website.

#### **D. MONITOR'S UPDATE AND COMMENTS ON CLAIMS PROCESS ORDER**

7. On January 31, 2020 the Monitor delivered Notices of Disallowance to Parkland Funding Ltd. ("**Parkland**") and Joe Garson. Pursuant to the Claims Process Order a creditor who disputes the disallowance of its Claim as set forth in a Notice of Disallowance shall, within twenty-one (21) days after the date of delivery of the Claims Report, seek a determination by the Court of the validity and/or value of its Claim by filing with the Court, and serving upon the Monitor, a Notice of Application, together with all other documents upon which the Creditor intends to rely on.
8. On February 19, 2020 Parkland filed a Notice of Application seeking a determination by the Court of the validity and/or value of its claim.
9. The application was initially heard by Mr. Justice Walker on April 21, 2020 and was adjourned until May 19, 2020 to allow the parties time to make further submissions.
10. Once the claim of Parkland has been determined the Petitioner and Monitor will be able to proceed with calling of a meeting of creditors to approve the Plan of Arrangement pursuant to the Meeting Order.

**E. PROPOSED AMENDMENTS TO THE MEETING ORDER AND THE PLAN OF ARRANGEMENT**

11. The Monitor is hopeful that this process can be completed in the next 3 months but recognizes that it may take longer due to the COVID-19 pandemic. In order to provide further flexibility for the purposes of the meeting of creditors the Monitor recommends an amendment to the Meeting Order to allow it to proceed by audio or video conference, at the discretion of the Monitor, may be of assistance.
12. 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. 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 t.
13. 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.

14. The Plan defines the “Plan Implementation Date” as the date on which the Final Distribution Certificate is filed with the Court by the Monitor.
15. The Monitor understands that the Court raised the potential concern that paragraphs 4.4 and 4.5 had the potential to affect claims, presently advanced by Monitor’s counsel in the name of the Petitioner, against Mr. Bergman.
16. The Monitor has discussed this issue with counsel for the Petitioner (and its own 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; necessity for
  - 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;
  - e) 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;
  - f) the Monitor and legal counsel are directly contributing to the Plan through the realization process; and
  - g) 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.
17. 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.

## **F. UPDATE ON REALIZATIONS / SALE OF PROPERTIES**

18. The Petitioner is continuing its efforts to sell real properties owned by the Petitioner and recover on the outstanding loan portfolio. A brief update follows:

### **Carleton Project**

19. As previously reported, Peter Censorio has not been able to arrange financing to complete the Carleton Project and as a result the People's Trust commenced foreclosure proceedings and applied to Court for the appointment of a Receiver to complete the construction of the Carleton Project and thereafter sell the commercial and residential strata lots.
20. This Monitor has just received the Receiver's report on the completion and sale of the Carleton Project and based on this report does not expect any recovery to the Petitioner.

### **Agnes Property**

21. The Petitioner previously secured an order for conduct of sale in foreclosure proceedings. Unfortunately, significant issues were encountered in securing offers for the properties subject to the order for conduct of sale.
22. One unit remains. As previously reported an offer had been accepted in the amount of \$764,000 plus GST for only remaining Agnes property, unit 1801-188 Agnes Street, New Westminster. The subjects were not removed by the buyer by the February 9, 2020 subject removal date and the sale collapsed.
23. Since February there have been several more accepted offers that have also collapsed.

24. Recently an offer was accepted by the Petitioner in the amount of \$760,000 plus GST for unit 1801-188 Agnes Street, New Westminster and the buyer has removed all subjects. With GST, the effective price of the offer is \$798,000.
25. The Petitioner has made an application to Court to have the sale approved which the Monitor supports. Mr. Justice Walker (who is seized of the foreclosure proceedings) will hear this application on May 19, 2020.
26. Assuming this sale completes there will be approximately \$2,100,000 held in Court from the sale of the Agnes properties pending a resolution of Canada Revenue Agency's GST claim to these funds.
27. A hearing will likely be required to determine priority issues between the Petitioner and the Canada Revenue Agency's deemed trust claim to the sale proceeds.

#### **Pender Harbour Properties**

28. Lot 4 and Lot 6 continue to be listed for sale on the MLS service which recently has resulted in an offer on Lot 6 that is currently in negotiation.

#### **Sperling Loan**

29. As previously reported, Cushman & Wakefield recommended that the listing of the Sperling property be deferred until the City of Burnaby Lochdale Plan is finalized or at least until the policy framework is known which could be in the next few months.
30. The impact of the COVID-19 pandemic will undoubtedly delay the finalization of the Lochdale Plan and potentially affect the value of the property.

31. Based on the recommendations previously provided by Cushman & Wakefield the Monitor was of the view that the listing of the property should be deferred until there is more certainty regarding the potential rezoning of the property given the significantly higher value that could be realized if the property is rezoned.
32. The Monitor is currently in discussion with Cushman & Wakefield regarding the expected timeline for the finalizing of the Lochdale Plan and whether or not it still makes sense to defer the listing of the property.
33. Counsel for the Petitioner is also seeking an accounting of the rents received from the property from Mr. Censorio. Unfortunately, to date this information has not been forthcoming and unless satisfactory arrangements can be made the Petitioner may need to take steps to exercise on its security.

#### **Other Loans**

34. The Petitioner is continuing its efforts to recover on the Loan Portfolio and has initiated a number of proceedings. In light of the reduction in court services due to the COVID 19 pandemic delays in advancing that litigation are expected.

## **G. AFDI/DON BERGMAN ACTION**

35. The Notice of Civil Claim (the “**NOCC**”) against AFDI and Don Bergman was filed in the BC Supreme Court on November 18, 2019 under Action Number VLC-S-S-1913068.
36. After trying to accommodate Mr. Bergman in retaining counsel and having that counsel accept service it became clear that was not going to happen and so the NOCC was served on AFDI and Bergman directly.
37. Given the nature of the claim and COVID-19 default judgment has not been applied for at this point.

## **H. BRITISH COLUMBIA SECURITIES COMMISSION**

38. 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 A to this Report.
39. Mr. Bergman is separately represented before the BCSC on this matter.
40. Based on advice provided by counsel the Monitor is of the view that the filing of the Notice of Hearing is not contrary to the stay of proceedings issued by this Court.
41. 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*.
42. The Notice of Hearing has been scheduled for a hearing November 12-19, 2020.
43. The Monitor has provided instructions to counsel for the Petitioner to initiate discussions regarding a potential resolution of the allegations against the Petitioner given the concerns that financial resources could be expended in the proceedings which would be contrary to the interests of stakeholders.

44. 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.

# **I. ACTUAL CASH FLOW FROM NOVEMBER 27, 2017 TO APRIL 30, 2020**

45. The Actual Cash Flow from November 27, 2017 to April 30, 2020 can be summarized as follows:

## **Actual Cash Inflows**

Mortgage Interest Payments	\$ 200,053
Mortgage Paydowns	1,298,400
Sale of Real Properties	2,385,683
Repayment of Stonewater Motel Loan	1,315,797
DIP Financing Proceeds	<u>1,500,000</u>
	\$6,699,933

## **Actual Cash Outflows**

### *Operations*

Management Fees	\$ 431,167
Bank Charges	2,216
Auditor Fees	30,017
Monitor's Fees/Disbursements	481,687
Legal Fees/Disbursements (Monitor's counsel)	199,076
Legal Fees/Disbursements (Petitioner's counsel)	724,203
Appraisal Fees	11,186
DIP Loan Fees & Expenses	211,200
DIP Loan Interest	137,370
Property Taxes & Utilities	23,462
GST	19,750
Other Miscellaneous Expense	<u>6,750</u>
	\$2,278,084



*Secured Debt Repayments*

DIP Loan	\$1,613,304
Van Maren Financial	554,512
Fisgard Capital	<u>1,386,575</u>
	\$3,554,391

Net Cash Inflows (outflows)	\$ 867,458
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Opening Cash Position	<u>69,134</u>
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Closing Cash Position	<u>\$ 936,592</u>
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**J. PETITIONER'S APPLICATION / REQUEST FOR EXTENSION OF THE STAY OF PROCEEDINGS**

46. The Petitioner is requesting an extension of the Stay of Proceedings until October 16, 2020 to present the Plan to its creditors for approval and assuming that it is approved, continue the liquidating CCAA as provided for in the Plan.
47. The Monitor is satisfied that the Petitioner is continuing to make progress towards approval of the Plan that is expected to be voted on within the next three months.
48. The Monitor is also satisfied that the Petitioner is continuing to make progress in realizing on the assets of the Petitioner.
49. The Monitor will continue to have responsibility for the management and decision-making authority over the Petitioner's sale of real properties and recovery on its loan portfolio.
50. The Monitor confirms that the Petitioner is continuing to act in good faith and with due diligence and supports the requested extension of the stay of proceedings until October 16, 2020.

## K. CONCLUSIONS AND RECOMMENDATIONS

51. The Petitioner continues to make progress in liquidating the assets of the Petitioner under the management and direction of the Monitor.
52. The Monitor expects the Parkland claim will be resolved shortly so the Petitioner and the Monitor can proceed with the meeting of creditors to approve the Plan pursuant to the Meeting Order.
53. The Petitioner has requested an extension of the stay of proceeding until October 16, 2020 and it is anticipated that by this extension date the Parkland application will have been determined the Plan of Arrangement will have been voted on.
54. The Monitor is of the view that the Petitioner is continuing to act in good faith and that the stakeholders will not be prejudiced by the extension being sought by the Petitioner.

DATED at the City of Vancouver, British Columbia, this 15<sup>th</sup> day of May, 2020.

**McEown and Associates Ltd.**  
Monitor Appointed in the Companies'  
Creditors Arrangement Act Proceedings of  
All Canadian Investment Corporation



Per: John D. McEown, CPA, CA, CIRP



British Columbia  
Securities Commission

Citation: 2020 BCSECCOM 22

**Notice of Hearing**

**All Canadian Investment Corporation and Donald Bergman  
(collectively, the Respondents)**

**Section 161 of the *Securities Act*, RSBC 1996, c. 418**

¶ 1 The British Columbia Securities Commission (Commission) will hold a hearing (Hearing) at which the Executive Director will tender evidence, make submissions, and subject to such orders as may be issued in proceedings styled *In the Matter of All Canadian Investment Corporation*, Supreme Court of British Columbia, Vancouver Registry No. S1710393, apply for orders against the Respondents under sections 161, 162 and 174 of the *Securities Act*, RSBC 1996, c. 418 (the Act), based on the following facts:

¶ 2 **Background**

1. All Canadian Investment Corporation (ACIC) is a non-reporting mortgage investment corporation that was controlled and managed by Donald Bergman (Bergman) during the relevant time.
2. Bergman is a resident of Salmon Arm, British Columbia. He incorporated ACIC in British Columbia and was its sole director at the relevant time.
3. ACIC's business was to provide loans (Mortgage Loans) to owners and developers of single and multi-family residential, commercial, office, and industrial real estate, which were secured by mortgages on those properties.

**Misconduct**

***Misrepresentations and False or Misleading Statements***

4. Between February 2014 and December 2015, ACIC raised \$1.602 million from over 50 investors using three offering memorandums dated January 21, 2014, February 12, 2015 and June 22, 2015 (OMs).
5. ACIC provided investors with the OMs and filed the OMs with the Commission.



6. In the OMs, ACIC stated that:
  - (a) ACIC's Mortgage Loans would be secured by a mortgage and the mortgage "will be registered in the appropriate land title office as a charge against the real property subject to the Mortgage" (the Registration Representations); and
  - (b) ACIC's Mortgage Loans were secured by mortgages ranking first or second in priority (the Priority Representations).
7. ACIC's Registration Representations and Priority Representations were false or misleading because:
  - (a) some of ACIC's Mortgage Loans were not secured by a mortgage registered in the Land Title and Survey Authority as a charge against the real property subject to the mortgage, because ACIC cancelled some mortgage registrations, both before and after the date of the OMs; and
  - (b) some of ACIC's Mortgage Loans were secured by mortgages that ranked lower in priority than the priority stated in the OMs.
8. By engaging in the conduct described in this Notice of Hearing, ACIC made misrepresentations contrary to section 50(1)(d) of the Act, and false or misleading statements in documents required to be filed under the Act, contrary to section 168.1(1)(b) of the Act.
9. As an officer and director of ACIC, Bergman authorized, permitted or acquiesced in ACIC's contraventions, and therefore contravened the same provisions under section 168.2(1) of the Act.

#### **Hearing Process**

- ¶ 3 The Respondents or their counsel are required to attend at the 12th Floor Hearing Room, 701 West Georgia Street, Vancouver, British Columbia, on **March 11, 2020, at 9:00 a.m.** if they wish to be heard before the Commission sets a date for the Hearing. Relevant information gathered by Commission Staff in the investigation of this matter will be disclosed to the Respondent upon request to the Executive Director.
- ¶ 4 At the Hearing, the Respondents may be represented by counsel, make submissions and tender evidence. The Respondents are requested to advise the Commission of their intention to attend the Hearing by informing the Hearing Office at PO Box 10142, Pacific Centre, 701 West Georgia Street, Vancouver, BC V7Y 1L2 phone: (604) 899-6500; email: [commsec@bcsc.bc.ca](mailto:commsec@bcsc.bc.ca).

## APPENDIX A



¶ 5 If the Respondents or their counsel do not appear at the Hearing, the Executive Director may apply to have questions of liability and sanction heard at the same time. Determinations adverse to the Respondents may be made in their absence.

¶ 6 Peter J. Brady  
Executive Director