

2002 01T

0352

*AmH*

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR**

**IN THE MATTER OF** the *Companies' Creditors Arrangement Act*, Chapter C-36 of the Revised Statutes of Canada, 1985, as amended

**AND IN THE MATTER OF** the plan of compromise or arrangement of Hickman Equipment (1985) Limited

**ORDER**

**BEFORE THE HONOURABLE**

*Mr* **JUSTICE** *Quinn*

:

**UPON APPLICATION** made by Hickman Equipment (1985) Limited (the "Applicant") for an order pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") in respect to a compromise and arrangement;

**AND UPON HEARING** Robert P. Stack of counsel for the Applicant, *Jeffrey Spencer* ~~R. Wayne Myles~~ of counsel for Canadian Imperial Bank of Commerce, Thomas R. Kendell, Q.C. of counsel for General Motors Acceptance Corporation, Limited and Neil L. Jacobs of counsel for John Deere Limited and John Deere Credit Inc.;

**AND UPON READING** the Affidavit of Albert E. Hickman and the consent of Deloitte & Touche Inc., the proposed monitor of the Applicant, filed herein:

**SERVICE**

1. **THIS COURT ORDERS** that the time for any required service or notice of the Application herein be and it is hereby abridged and validated such that the Application is properly returnable today and further that any requirement for service of the Application herein upon any interested party is hereby dispensed with.

Filed Feb 8, 02 *Jf*



## APPLICATION OF ACT

2. AND IT IS FURTHER ORDERED AND DECLARED that the Applicant is a company to which the CCAA applies.

## PLAN OF COMPROMISE OR ARRANGEMENT

3. AND IT IS FURTHER ORDERED that the Applicant be authorized and permitted to file with this Court, subject to further order of this Court, on or before the Stay Date (as defined in paragraph 4 hereof) a formal plan of compromise or arrangement (the "Plan") between the Applicant and one or more classes of its secured and/or unsecured creditors as the Applicant deems appropriate, which Plan shall provide, *inter alia*, for the holding of meetings ("Meetings") of such creditors to consider and approve the Plan.

## STAY OF PROCEEDINGS

4. AND IT IS FURTHER ORDERED that except as otherwise provided herein, until and including 30 days from the date hereof or such other date established by further order of this Court (the "Stay Date"), or until further order of this Court:
  - (a) any and all proceedings, including without limitation, suits, actions, any extra-judicial proceedings, enforcement processes or other remedies ("Proceedings") commenced, taken or proceeded with or that may be commenced, taken, or proceeded with against or in respect of the Applicant or its directors or officers or any present or future property, assets and undertaking of the Applicant wherever located, including any property held in whole or in part, directly or indirectly, by the Applicant as principal, agent or nominee, beneficially or otherwise (collectively, the "Property"), as the case may be, whether pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA"), the *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11 (the "WURA"), or otherwise or against any entity in which the Applicant has an interest are hereby stayed and suspended;

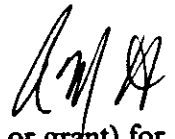


- (b) the right of any person, firm, corporation, governmental, municipal or regulatory authority, or other entity (collectively, "Persons" and, individually, "Person") to make or demand or draw down under any bonds, notes or instruments of similar effect, issued by or on behalf of the Applicant before the date of this Order, or to take possession of, exercise rights of garnishment, foreclose upon or otherwise realize upon or deal with any Property, wheresoever located, or to continue such actions or proceedings if commenced before the effective time of this Order, is hereby stayed and suspended;
- (c) the right of any Person (including, without limitation, any authority with jurisdiction to levy realty taxes) to commence or continue enforcement, realization or collection proceedings in respect of any encumbrance, tax, lien, security interest, charge, mortgage, guarantee, attornment of rents, hypothecation, pledge, or other security held in relation to, or any trust attaching to any of the Property, including, without limitation, the right of any Person to take any step in asserting, perfecting or registering any right or interest including any right to revendication or any right to repossession or stoppage in transit of any goods supplied or shipped to or for the benefit of the Applicant, is hereby restrained, stayed and suspended;
- (d) the right of any Person to assert, enforce or exercise any right including, without limitation, any right of dilution, buy-out, divestiture, pre-emptive right of purchase, option to purchase on default, forced sale, acceleration, termination, repudiation, suspension, modification, cancellation or right to revoke or terminate any qualification, registration, license or lending arrangements (collectively, "Rights"), including any such Rights arising under or in respect of any agreement (including, without limitation, any security agreement, mortgage, license, partnership agreement, management agreement, lease, franchise agreement, shareholders' agreement, co-ownership agreement, or any agreement of purchase and sale) to which the Applicant or any corporation in which the Applicant has an interest is a party, arising out of, or where such Rights arise out of, relate to, or are triggered by, the occurrence of any default or non-performance by the Applicant thereunder, the making of this Order or filing of these proceedings, or any allegation contained in these proceedings including, without limiting the generality of the foregoing, the making of any demand, the sending of any notice, the right to crystallize any security interest, the right to accelerate the repayment



of any outstanding indebtedness, and the right to terminate such Rights, is hereby restrained and suspended;

- (e) all Persons are restrained and prohibited from exercising any extra-judicial remedy against the Applicant, including the registration or re-registration of any securities owned by the Applicant into the name of such Persons or their nominees, the exercise of any voting rights attaching to securities owned by the Applicant, any right of distress, repossession, set off or consolidation of accounts in relation to amounts due or accruing due in respect of or arising from any indebtedness or obligation of the Applicant as at the date hereof;
- (f) all Persons having agreements with the Applicant, whether written or oral, and whether the Applicant is acting as principal, agent or nominee, for the supply or purchase of goods and/or services by or to the Applicant or to any of the Property, wheresoever located, as the case may be, including, without limitation, dealer agreements, co-location agreements, equipment leases, commercial leases, license agreements, consignment agreements, insurance contracts, concession agreements, distribution agreements, inventory financing agreements, conditional sales agreements, royalty arrangements, bank and other operating accounts (excluding credit and overdraft facilities), management agreements, transportation contracts, freight forwarding contracts, computer software and support systems, supply contracts, and service contracts, are hereby restrained and prohibited from accelerating, terminating, suspending, modifying or cancelling such agreements, arrangements or supply of goods and services without the Applicant's prior written consent or with the leave of this Court. Without limiting the generality of the foregoing, all Persons are hereby restrained and prohibited until further order of this Court from discontinuing, interfering with or cutting off any utility (including telephone, facsimile or other communication services at the present numbers used by the Applicant or used in respect of any of the Property, and whether such telephone, facsimile or other communication services are listed in the name of the Applicant or in the name of some other Person), the furnishing of oil, gas, water, heat or electricity, the supply of equipment, computer software, hardware support, internet, electronic mail and other data services, so long as the Applicant pays the normal prices or charges (other than security or other deposits (whether by way of cash, letter of credit or guarantee or otherwise), stand by fees



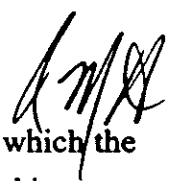
or similar items which the Applicant shall have no obligation to pay or grant) for such goods and services received after the date of this Order as the same become due in accordance with present payment practices or terms or as may be hereafter negotiated by the Applicant from time to time. All such Persons shall continue to perform their respective obligations and observe the terms and conditions contained in any agreements entered into with the Applicant or in connection with any of the Property, as the case may be, with respect to the supply of goods and services; and

- (g) all Persons, including providers of payroll services, and issuers of credit or charge cards, are restrained and prohibited from exercising any right of distress, repossession, set-off, compensation or consolidation of accounts in relation to amounts due or accruing due in respect of or arising from any indebtedness or obligation of the Applicant as of the date hereof, or from retaining deposits, cheques and/or monies owing to the Applicant or to which the Applicant is entitled, or from retaining goods, including, without limitation, goods of the Applicant or the Applicant's customers held by any bailees, warehousemen, distributors, concessionaires or their agents, purchasing agents, freight carriers, delivery companies or customs brokers and agents, in relation to or by reason of amounts past due to such Persons, or customs duties and charges, taxes, freight insurance, storage or other charges paid on the Applicant's behalf before the date of this Order for which the Applicant has not reimbursed such Person.

5. AND IT IS FURTHER ORDERED that no creditor of the Applicant shall be under any obligation to advance or re-advance any monies after the date of this Order to the Applicant or otherwise extend any credit to the Applicant except as otherwise provided in this Order; provided, however, that cash placed on deposit by the Applicant with any creditor from and after this date, whether in an operating account or otherwise and whether for its own account or for the account of another entity, shall not be applied by such creditor, other than in accordance with the terms of this Order, in reduction or repayment of amounts owing as of the date of this Order or which may become due on or before the Stay Date or in satisfaction of any interest, fees, charges or other amounts accruing in respect thereof and shall be remitted to the Applicant.
6. AND IT IS FURTHER ORDERED that, notwithstanding paragraphs 4 and 5 of this Order:



- (a) any Person providing letters of credit, standby letters of credit, or shipping guarantees (the "Issuing Party") at the Applicant's request, shall be required to continue honouring letters of credit, standby letters of credit, and/or shipping guarantees, issued on or before the date of this Order, subject to the Issuing Party's being entitled to retain bills of lading and/or shipping documents relating thereto until paid therefor. For greater certainty, the Issuing Party shall be prohibited from terminating, suspending, modifying, determining, refusing to honour or cancelling any such agreement, notwithstanding any provisions contained therein to the contrary, and the beneficiaries of such letters of credit, standby letters of credit or shipping guarantees, as the case may be, shall be permitted to draw on such letters of credit, standby letters of credit or shipping guarantees, in accordance with their respective terms and conditions, unmodified, without the relevant Issuing Party's consent or without leave of this Court;
  - (b) nothing in this Order shall be construed to restrict or diminish the rights of any person set out in sections 11.2, 11.3, or 11.4 of the CCAA; and
  - (c) no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Applicant after the making of this Order.
7. AND IT IS FURTHER ORDERED that from 9:00 a.m. (Newfoundland Standard Time) on the date of this Order to the time of the granting of this Order, any act or action taken or notice given by any of the Applicant's creditors or other Persons in furtherance of their rights to commence or continue realization or take or enforce any other step or remedy, will be deemed not to have been taken or given, as the case may be, subject to the right of such Persons to further apply to this Court in respect of such step, act, action or notice given.
8. AND IT IS FURTHER ORDERED that, to the extent that any rights or obligations, or time or limitation periods relating to the Applicant or the Property may expire or terminate with the passage of time, the term of such rights, obligations, or periods shall hereby be deemed to be extended by a period of time equal to the duration of the stay of proceedings effected by this Order and, in the event that the Applicant becomes bankrupt or a receiver is appointed in respect of the Applicant, within the meaning of section



243(2) of the BIA, the period between the date of this Order and the day on which the stay of proceedings in paragraph 3 of this Order is ended shall not be counted in determining the 30-day period referred to in section 81.1 of the BIA with respect to the Applicant.

9. **AND IT IS FURTHER ORDERED** that all Persons having other arrangements or agreements, whether written or oral, with the Applicant are hereby restrained and prohibited from accelerating, terminating, suspending, modifying, determining, or cancelling such arrangements or agreements, notwithstanding any provisions therein to the contrary, without the Applicant's prior written consent or leave of this Court. All such Persons shall continue to observe and perform the terms, conditions, and provisions contained in such arrangements or agreements on their part to be performed and observed, unmodified. Without limiting the generality of the foregoing, all Persons be and they are restrained and prohibited until further Order of this Court from terminating, suspending, modifying, cancelling, disturbing, or otherwise interfering in any way with the Applicant's present or future occupation of any premises leased, sub-leased or occupied by the Applicant and the landlords of such premises are hereby specifically restrained and prohibited from taking any steps to terminate any lease, sub-lease, occupancy or other agreement to which the Applicant is a party, whether by notice of termination or otherwise, or to terminate any ancillary agreements or arrangements including, without limitation, leasehold improvement arrangements with the Applicant, or to distrain against any of the Applicant's Property situated in or on such leased premises, without the Applicant's prior written consent or leave of this Court, subject to the Applicant's obligation to pay occupation rent for the period commencing with the date of this Order for leased premises actually occupied by the Applicant, but not arrears nor any interest or costs accrued thereon, in accordance with the terms of the particular lease for such premises, weekly in advance (including taxes and common area maintenance charges), or as otherwise may be negotiated by the Applicant from time to time.
10. **AND IT IS FURTHER ORDERED** that the provisions of paragraphs 4 to 9 of this Order apply in accordance with their terms to stay any Proceedings or to restrain any matter provided therein that may be taken against any Person who is, directly or indirectly, obligated for the Applicant's obligations; including, without limiting the generality of the foregoing, against any directors of the Applicant that arose before the commencement of these proceedings and that relate to the obligations of the Applicant where directors are under any law liable in their capacity as directors for the payment of such obligations,

until a compromise or plan of arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the Applicant's creditors or this Court; provided that paragraphs 4 to 9 of this Order shall not apply in respect of an action against a Person, including a director, on a guarantee given by the Person relating to the Applicant's obligation(s) or an action seeking injunctive relief against a director in relation to the Applicant.

## **POSSESSION OF PROPERTY**

11. AND IT IS FURTHER ORDERED that, subject to the terms of this Order, the Applicant shall remain in possession and control of the Property, and shall be authorized and empowered, but not required, to continue to retain and employ the agents, accountants, advisors, servants, solicitors, and consultants currently in its employ and paid by the Applicant or any Person related to or affiliated with the Applicant, with liberty to retain such further agents, accountants, advisors, servants, solicitors, assistants, and consultants, as it deems reasonably necessary or desirable in the ordinary course of business or for the purpose of the Plan or the carrying out the terms of this Order, or otherwise subject to the Court's approval.
12. AND IT IS FURTHER ORDERED that the Applicant shall remit, in accordance with legal requirements:
  - (a) amounts which are subject to any statutory deemed trust in favour of the Crown which are required to be deducted from employees' wages including, without limitation, amounts in respect of employment insurance, Canada Pension Plan, and income taxes; and
  - (b) all goods and services taxes or other sales taxes required to be paid or collected and remitted by the Applicant in connection with sale of goods and services by the Applicant to such customers.
13. AND IT IS FURTHER ORDERED that, after the date hereof, the Applicant shall be entitled to pay all reasonable expenses of the Applicant incurred in carrying on its business after the date of this Order, which expenses, pending any further order of this Court, shall include, without limitation, payment of:





- (a) subject to paragraph 28, the fees and disbursements of the Monitor (as defined in paragraph 23 hereof) including the fees and disbursements, if any, on a solicitor and client basis of counsel retained by the Monitor;
- (b) subject to paragraph 28, the fees and disbursements, on a solicitor and client basis, of the Applicant's counsel in respect of these proceedings and the Plan;
- (c) amounts in respect of goods or services supplied, delivered, or provided to the Applicant following the date of this Order;
- (d) all outstanding and future wages, salaries, employee and pension benefits, employee retirement plans, accrued and unpaid vacation pay, and other like amounts due to employees including, without limitation, the reimbursement of business expenses legitimately incurred by employees;
- (e) municipal realty taxes;
- (f) all expenses reasonably necessary for preserving the Property including, without limitation, payments on account of service, maintenance, repairs, insurance, and security;
- (g) all outstanding and future premiums on directors' and officers' liability insurance; and
- (h) any other amounts provided for by the terms of this Order.

#### **POWER TO BORROW**

14. AND IT IS FURTHER ORDERED that, without in any way restricting the generality of paragraphs 11 to 13 hereof, the Applicant be and it is hereby authorized and empowered, subject to the existing rights of any creditors holding legal, valid and binding security over the Property of the Applicant, or further order of this Court, to:

- (a) borrow such additional sums as the Applicant deems necessary; and



- (b) grant such security as the Applicant deems necessary to any lender providing new advances subsequent to the date of this Order including, without limitation, purchase-money security interests, and the Applicant is hereby authorized and permitted to execute any and all documents necessary to grant such security and any person taking such security shall be at liberty, notwithstanding any other provision of this Order, to take all such steps as such person considers necessary or advisable in order to protect, perfect, and preserve such purchase-money security interest or similar security and its priority pursuant to any applicable legislation including, without limitation, the registration of any financing statements pursuant to the *Personal Property Security Act* (Newfoundland) or similar legislation in any other province or territory of Canada.
15. AND IT IS FURTHER ORDERED that, without restricting the general powers of the Applicant to borrow money and grant security set out above, the Applicant is hereby authorized and empowered to borrow from Group Holdings Limited or any of its agents, affiliates, or assignees (the "DIP Lender") such monies from time to time as the Applicant may consider necessary or desirable and as the DIP Lender may agree, up to an aggregate principal amount of \$900,000, to fund the ongoing operations and capital expenditures of the Applicant (the "DIP Loan") on terms to be agreed upon between the DIP Lender and the Applicant.
16. AND IT IS FURTHER ORDERED that all of the Applicant's present and future property is hereby charged in favour of the DIP Lender (the "DIP Charge") as security for the repayment of the DIP Loan, together with interest, fees, charges and other amounts payable in respect thereof AND IT IS FURTHER ORDERED that the Applicant is hereby authorized and directed to execute and deliver in favour of the DIP Lender all such security as may be contemplated or required by the DIP Lender, charging all of the existing and after-acquired property, assets and undertaking of the Applicant (such security documents collectively referred to herein as the "DIP Security"), and the DIP Lender is hereby authorized to take such steps as it deems necessary or appropriate to register, record or perfect the DIP Security.
17. AND IT IS FURTHER ORDERED that the DIP Charge and DIP Security shall have priority over all of the Property ranking in priority to all other charges, encumbrances or security other than legal, valid, and binding security interests, including, without



limitation, interests in the nature of a floating charge, over the Property of the Applicant enforceable in respect of the interests of third parties prior to the date of this Order and the charges created by paragraph 28 of this Order.

18. **AND IT IS FURTHER ORDERED** that, notwithstanding the pendency of these proceedings and the declarations of insolvency made herein, the pendency of any petitions for receiving orders hereafter issued pursuant to the BIA in respect of the Applicant and any receiving orders pursuant to any petitions, and the provisions of any federal or provincial statute:
- (a) the obligations of the Applicant pursuant to the DIP Loan, DIP Charge and DIP Security and all documents delivered pursuant thereto constitute legal, valid and binding obligations of the Applicant enforceable against it in accordance with the terms thereof; and
  - (b) the payments made by the Applicant pursuant to such documents, whether made on or after the date of this Order and the granting or assignment of the security constituted by the DIP Charge and DIP Security do not constitute fraudulent preferences or other impugnable or reviewable transactions under any applicable law.
19. **AND IT IS FURTHER ORDERED** that the DIP Loan, DIP Charge and DIP Security shall be deemed to be valid and effective notwithstanding any negative covenants, prohibitions or other similar provisions with respect to incurring debt or the creation of liens or security contained in any existing agreement between the Applicant and any lender, and that, notwithstanding any provision to the contrary in any such agreement:
- (a) neither the creation of the DIP Charge nor the execution, delivery, assignment, perfection or registration of the DIP Security shall create or be deemed to constitute a breach by the Applicant of any agreement to which it is a party; and
  - (b) the DIP Lender and the directors of the Applicant shall have no liability to any person whatsoever as a result of any breach by the Applicant of any agreement caused by or resulting from the Applicant entering into the DIP Loan, the creation of the DIP Charge or the execution, assignment and delivery of the DIP Security.


20. AND IT IS FURTHER ORDERED that the DIP Lender shall be treated as an unaffected creditor in these proceedings with regard to the DIP Loan, DIP Charge and DIP Security, but the exercise of any remedies by the DIP Lender arising under the DIP Security and the DIP Charge upon default of the Applicant under the DIP Loan or DIP Security and documents delivered pursuant thereto shall be stayed pursuant to this Order, except for:

- (a) the DIP Lender's right to terminate the making of advances to the Applicant;
- (b) the DIP Lender's right to apply to this Court for the appointment of a receiver and manager or for relief from the stay of proceedings pursuant to this Order to appoint a receiver or seek the issuance of a receiving order in bankruptcy;
- (c) the DIP Lender's right to exercise any acceleration rights with respect to the DIP Loan or any agreements related thereto; and
- (d) the DIP Lender's right to seize or receive proceeds from the sale of Property.

#### **RESTRUCTURING**

21. AND IT IS FURTHER ORDERED that the Applicant shall have the right to proceed with an orderly restructuring of its business operations, including, without limitation, the right to:

- (a) subject to subparagraph (c) below, permanently or temporarily, cease, downsize, or shut down any or all of its business, operations or locations and to make provisions for any consequences thereof in the Plan;
- (b) terminate the employment of such of its employees without prior notice or temporarily lay off such of its employees as it deems appropriate and to make provisions for any consequences thereof in the Plan;
- (c) abandon or terminate the occupation of any leased location and/or terminate or repudiate any lease or agreement relating to leased premises on two days' notice to the relevant landlord and to make provisions for any consequences thereof in the Plan;

- 
- (d) proceed with the sale or liquidation of such of its Property as the Applicant deems appropriate and market such Property, including advertising part or parts of the Property for sale and soliciting offers therefor and retaining agents, auctioneers, consultants or liquidators as may be required to assist in the marketing or sale of such Property;
  - (e) enter into agreements with creditors to compromise or settle claims; and
  - (f) subject to subparagraph (c) above, terminate such of its arrangements or agreements of any nature whatsoever, whether oral or written, as the Applicant deems appropriate and to make provision for any consequence thereof in the Plan.

22. AND IT IS FURTHER ORDERED that, subject to paragraphs 11, 12, 13, 14, 15, 16, 21(e) and 28 hereof and except as otherwise provided in this Order, the Applicant be and it is hereby directed, until further order of this Court:

- (a) to make no payments, whether of principal, interest thereon or otherwise, on account of amounts owing by the Applicant to any of its creditors as of the date of this Order; and
- (b) to grant no mortgages, charges or other security upon or in respect of any of the Property;

provided that, with respect to sales and long-term leases following the date of this Order of Property specifically listed and charged in security agreements, amounts specifically secured in respect of such Property shall be held in a separate bank account under the supervision of the Monitor for the benefit of the secured creditors concerned, to be disbursed from time to time as this Court directs.

#### **THE MONITOR**

23. AND IT IS FURTHER ORDERED that Deloitte & Touche Inc. (the "Monitor") be and it is hereby appointed as an officer of this Court to monitor the business and affairs of the

Applicant with the powers and obligations hereafter set forth and that the Applicant and its shareholders, officers, directors, employees, servants and agents shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations. Without limiting the generality of the foregoing, but subject to any privilege recognized at law, the foregoing persons shall provide the Monitor with such access to the Applicant's books, records, assets and premises as the Monitor requires to exercise its powers and perform its obligations under this Order.

24. AND IT IS FURTHER ORDERED that the Monitor is hereby directed and empowered to:

- (a) assist the Applicant in developing and implementing the Plan and reporting to creditors concerning the Plan and the restructuring efforts;
- (b) assist the Applicant with holding and administering of the Meetings and a representative of the Monitor shall act as chair at any such Meetings;
- (c) have full and complete access to the books, records and management of the Applicant and any firm, corporation or other entity in which the Applicant has an interest and to the Property to the extent required to perform its duties arising under this Order;
- (d) provide the Applicant's creditors upon request with the details for any proposed sales of Property in a timely fashion to the extent information is made available to the Monitor;
- (e) inquire into and report to this Court at such intervals as this Court may require concerning the Applicant's progress in development and implementation of the Plan;
- (f) inquire into all security granted by the Applicant since November 1, 2001 and report to this Honourable Court on the circumstances related to the granting of such security, the amounts advanced and the timing of any advances;



- (g) be at liberty to engage legal counsel to represent it in respect of the exercise of its powers and discharge of its obligations under this Order; and
  - (h) perform such other duties as are required by this Order or by any further Order of this Court.
25. AND IT IS FURTHER ORDERED that the Monitor shall provide the Applicant's creditors with information in response to reasonable requests for information made in writing addressed to the Monitor. In the case of information which the Monitor has been advised by the Applicant is confidential, the Monitor may refuse to provide such information to creditors unless otherwise directed by this Court.
26. AND IT IS FURTHER ORDERED that the Monitor is not empowered to take possession of the Property of the Applicant or to manage any of its business or affairs and shall not, by fulfilling its obligations hereunder, be deemed to have taken and maintained possession or control of the Property, or any part thereof, and shall not occupy any premises except in such circumstances as the Monitor deems necessary.
27. AND IT IS FURTHER ORDERED that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements (including the reasonable solicitor and client fees and disbursements of counsel to the Monitor or of counsel to the Applicant in these proceedings) by the Applicant as part of the restructuring costs herein and the Applicant is hereby authorized and directed to make interim advances on a weekly basis in respect of same to the Monitor, counsel to the Monitor and counsel for the Applicant, subject to any final assessment or taxation by this Court.
28. AND IT IS FURTHER ORDERED that the Monitor, counsel to the Monitor and counsel to the Applicant, as security for their professional fees and disbursements incurred in respect of these proceedings both before and after the making of this Order, shall be entitled to the benefit of and are hereby granted a first ranking fixed lien and charge against the Property which charge shall rank prior to all other interests, liens, charges, security interests and claims of any kind including, without limitation, the claims of secured creditors or the DIP Lender.

29. AND IT IS FURTHER ORDERED that the Monitor is authorized but not obligated to provide all interested parties, including but not limited to the affected creditors, with its reports and assessment on the Plan. The Monitor's assessment of the Plan shall outline matters that would be of concern to creditors, including potential risks of the Plan and such other matters as the Monitor deems appropriate.
30. AND IT IS FURTHER ORDERED that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of the Court, the Monitor shall incur no liability or obligation as a result of its appointment or the fulfilment of its duties in the carrying out of the provisions of this Order, save and except for gross negligence or wilful misconduct on its part, and no action or other proceeding shall be commenced against the Monitor as a result of or relating in any way to its appointment as Monitor, the attempted fulfilment of its duties as Monitor, or the carrying out of any of the Orders of the Court, except with prior leave of this Court and upon further order securing, as security for costs, the solicitor and his own client costs of the Monitor in connection with any such action or proceeding.
31. AND IT IS FURTHER ORDERED that the Monitor's appointment shall not constitute the Monitor to be an employer or a successor employer within the meaning of any legislation whether federal, provincial or of any other jurisdiction governing employment or labour standards or in respect of pensions or benefits or within the meaning of any other statute, regulation or rule of law or equity for any purpose whatsoever and, further, that the Monitor shall not be deemed to be an owner or in possession, control or management of the Property or of the Applicant's business and affairs, whether pursuant to any legislation enacted for the protection of the environment, health and safety or any other statute or regulation of any federal, provincial or other jurisdiction or under any rule of law or equity for any purpose whatsoever.

#### **GENERAL TERMS**

32. AND IT IS FURTHER ORDERED that this Order and the proceedings in this Application leading to the making of this Order, including the contents of any Affidavit filed in this Application, shall not, in and of themselves, constitute or be relied upon in evidence or otherwise as constituting a default or failure to comply by the Applicant or any firm, person or corporation owned by the Applicant, with any statute, regulation,





licence, permit, contract, permission, covenant, agreement, undertaking or other instrument or requirement.

33. AND IT IS FURTHER ORDERED that notwithstanding any provision of this Order, any creditor of the Applicant may file one or more petitions in bankruptcy against the Applicant under the provisions of the BIA and that any such petition shall immediately upon its filing be stayed pending further Order of this Court.
34. AND IT IS FURTHER ORDERED that the Applicant be at liberty to serve this Order, any other orders in these proceedings, all other proceedings, the Plan, any notices of Meetings and all other notices and to deliver any information circular, proofs of claim, proxies and disallowances of claims by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to every known creditor of the Applicant whose claim against the Applicant is of more than \$250, at their addresses as last shown on the Applicant's records and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date thereof, or if sent by ordinary mail, three business days after mailing.
35. AND IT IS FURTHER ORDERED that, notwithstanding any other provision of this Order, any affected person may apply to this Court to vary or rescind this Order or seek other relief upon seven days notice to the Applicant and the Monitor and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
36. AND IT IS FURTHER ORDERED that the Applicant or the Monitor may, from time to time, apply to this Court for directions in the discharge of their powers and duties hereunder or in respect of the proper execution of this Order.
37. AND IT IS FURTHER ORDERED that this Order and any other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
38. THIS COURT SEEKS AND REQUESTS the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province

or territory and any court, judicial, regulatory or administrative body of the United States of America or any other nation and the provinces, states or other subdivisions of such nations and states to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

39. AND IT IS FURTHER ORDERED that for the purpose of seeking the aid and recognition of any court or any judicial, regulatory, or administrative body outside of Canada, the Monitor shall act and be deemed to be the Applicant's foreign representative.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 7<sup>th</sup> day of February, 2002.

Janise King  
Senior Deputy Registrar