



No. S077839  
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**  
**AND IN THE MATTER OF THE RECEIVERSHIP OF**  
**POPE & TALBOT LTD. and others**

**NOTICE OF MOTION**

TO: All Parties of Record  
AND TO: Their Solicitors  
AND TO: Federal Insurance Company  
National Union Fire Insurance Company of Pittsburgh, Pa.  
ACE American Insurance Company  
XL Specialty Insurance Company

TAKE NOTICE that an application will be made by PricewaterhouseCoopers Inc. to the Chief Justice in Chambers, at the Courthouse, 800 Smithe Street, Vancouver, B.C., on Wednesday, March 11, 2009 at 10.00 a.m. for an order that:

1. declarations in the form attached as Schedule "A"; and
2. such additional or alternative declarations, directions, or other relief as to this Honourable Court may seem just.

At the hearing of the application, the applicant will rely on the following documents:

- (a) Affidavit #1 of Rick Pallen sworn February 20, 2009;
- (b) all pleadings had and taken herein; and
- (c) such further and other material as counsel may advise and this Honourable Court deems admissible.

Fasken Martineau DuMoulin LLP per:



Dated: February 23, 2009

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Solicitors for PricewaterhouseCoopers Inc.

This matter is expected to be of a contentious nature and we estimate it will take one day to complete. Chief Justice Brenner is seized of this matter.

The Solicitors for PricewaterhouseCoopers Inc. are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 2900 - 550 Burrard Street, Vancouver, B.C. V6C 0A3 Telephone: 604 631 3131 Facsimile: 604 631 3232. (Reference: Kibben Jackson /256107.00075)

**ENDORSEMENT ON ORIGINATING PROCESS  
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

PricewaterhouseCoopers Inc. claims the right to serve this Notice of Motion and supporting materials on Federal Insurance Company, National Union Fire Insurance Company of Pittsburgh, Pa., ACE American Insurance Company, and XL Specialty Insurance Company (the "D&O Insurers") outside British Columbia on the grounds that:

1. The motion concerns contractual obligations of the D&O Insurers pursuant to insurance policies issued by them (the "D&O Policies"), being obligations to provide indemnity to former directors, resident in British Columbia and insured under the D&O Policies, of Pope & Talbot Ltd., a corporation organized under the *Canada Business Corporations Act*, with respect to claims for wage related liabilities asserted against such directors by former employees of Pope & Talbot Ltd. resident in British Columbia who worked in British Columbia, pursuant to section 119 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended.
2. The motion concerns a business carried out on British Columbia, being the former business of Pope & Talbot Ltd.

## **Schedule "A"**

1. In this Order:

- (a) "ACE" means ACE American Insurance Company.
- (b) "ACE Policy" means ACE insurance policy no. G21655211005.
- (c) "Broker" means Woodruff-Sawyer & Co.
- (d) "Canadian Employee Proofs of Claim" means the Proofs of Claim submitted to PwC by or on behalf of Canadian Employees in the course of the D&O Claims Procedure, forwarded by PwC to the Broker, and delivered by the Broker to the D&O Insurers on or about July 29, 2008.
- (e) "Canadian Employees" means individuals who:
  - (i) were employees of PTL at a time prior to the CBCA Liability Calculation Date (regardless of whether they were employed on that date or continued in employment after that date), and
  - (ii) in respect of whom a claim for a Wage Amount has been asserted in a Canadian Employee Proof of Claim.
- (f) "CBCA Liability Calculation Date" means the date, on or about November 9, 2007, when or as of when the Directors have asserted they resigned and ceased to function as Directors.
- (g) "CBCA Wage Amount Liability" means that liability which may be imposed upon a Director in respect of Wage Amounts pursuant to section 119 of the *Canada Business Corporations Act*, R.S.C. 1985, c . C-44, as amended.
- (h) "D&O Claims Procedure" means the D&O Claims Procedure established and defined in the April 22, 2008 D&O Claims Procedure Order of the Court.
- (i) "D&O Policies" means the Federal Policy, the National Policy, the ACE Policy, the XL Excess Policy, and the XL Cornerstone Policy.
- (j) "Director" means an individual who was a Director of PTL prior to the CBCA Liability Calculation Date.
- (k) "Excess D&O Policies" means, in order of response after the Federal Policy, the National Policy, the ACE Policy, and the XL Excess Policy.
- (l) "Federal" means the Federal Insurance Company.

- (m) "Federal Policy" means Federal insurance policy no. No. 8119-8953.
- (n) "National" means National Union Fire Insurance Company of Pittsburgh, Pa.
- (o) "National Policy" means National insurance policy no. 664-99-90.
- (p) "PTI" means Pope & Talbot Inc.
- (q) "PTL" means Pope & Talbot Ltd.
- (r) "PwC" means PricewaterhouseCoopers Inc.
- (s) "Wage Amounts" means any unpaid vacation pay and other time off entitlement and unpaid trigger bonuses owing by PTL to Canadian Employees, net of any required deductions or adjustments, as at the CBCA Liability Calculation Date, which have been asserted in a Canadian Employee Proof of Claim.
- (t) "XL" means XL Specialty Insurance Company.
- (u) "XL Excess Policy" means XL insurance policy no. ELU099372-07.
- (v) "XL Cornerstone Policy" means XL insurance policy no. ELU099373-07.

2. This Court declares that:

- (a) the claims of Canadian Employees against the Directors for CBCA Wage Amount Liabilities are covered under the D&O Policies, in the manner set out in para. 3 of this Order, and
- (b) a Director against whom a CBCA Wage Amount Liability is established pursuant to the D&O Claims Procedure or in any other lawful fashion (an "Established Liability"), or any person lawfully asserting an Established Liability through or in relation to such a Director, will be entitled to payment of indemnity from the D&O Insurers, and the D&O Insurers will be obligated to pay such indemnity, under the D&O Policies and subject to their deductibles and policy limits, in the manner set out in para. 3 of this Order;

3. This Court further declares that the coverage of the D&O Policies in respect of claims for CBCA Wage Amount Liabilities, the rights of Directors or other persons to payment of indemnity, and the obligations of the D&O Insurers to pay indemnity, as set out in the preceding paragraph, arise as follows:

- (a) under the Federal Policy, followed by the Excess D&O Policies in order of response, followed by the XL Cornerstone Policy; but
- (b) should any of Federal, National, ACE, or XL refuse or fail to pay indemnity forthwith upon demand, when due from it under the Federal Policy, the National Policy, the ACE Policy, or the XL Excess Policy, or give notice of its intention to

do so, then XL shall be obliged to pay indemnity under the XL Cornerstone Policy in place of such refusing D&O Insurer, forthwith upon demand, without derogation from the right of the Director or other person to seek further indemnification, if not fully indemnified, from such refusing D&O Insurer.

4. This Court further declares that this Order does not restrict or prejudice the right of any person to seek relief in respect of any other matter which may be the subject of coverage under the D&O Policies in respect of any person or entity.