12.2 Conditions to the Effective Date.

(a) Unless the Bankruptcy Court orders otherwise, the Confirmation Order, in form and substance satisfactory to the Debtors and the Required Backstop Parties, shall have been entered on or before June 18, 2010 and shall be a Final Order.

(b) The Reorganized Debtors shall have entered into the Exit Financing Agreement, in form and substance satisfactory to the Required Backstop Parties, and such agreement shall be consummated.

(c) The Company shall have arranged and paid for Tail Coverage as set forth in Article 7.7 of the Plan and the Tail Coverage shall be in full force and effect.

(d) The Debtors shall have received all authorizations, consents, regulatory approvals, rulings, letters, no-action letters, opinions or documents that are necessary to implement the Plan and required by law, regulation, or order.

(e) All actions, documents, certificates, and agreement necessary to implement this Plan shall have been effected and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws.

(f) The Debtors shall have conducted the Rights Offering consistent with this Plan and the Rights Offering Procedures.

(g) All fees and expenses relating to the Commitment Letter (expressly including the fees and expenses of the Prepetition Agents) shall have been paid as required by the Approval Order, this Plan and the Commitment Letter.

(h) The Sanction Order, in form and substance satisfactory to the Required Backstop Parties, shall have been entered on or before June 18, 2010 and not be subject to any stay.

(i) The Canadian Plan, in form and substance satisfactory to the Required Backstop Parties, shall have become effective in accordance with its terms, the Sanction Order and the CCAA, which shall include the repayment of the Second Lien Credit Agreement Obligations in full in cash on the Effective Date.

(j) The Effective Date shall occur on or before July 2, 2010, unless otherwise agreed in writing by each of the Backstop Parties.

12.3 Effect of Failure of Conditions to Effective Date.

If the conditions precedent specified in Article 12.2 have not been satisfied or waived (i) the Confirmation Order shall be vacated, (ii) no distributions under the Plan shall be made, (iii) the Debtors and all holders of Claims and Equity Interests shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date never occurred, and (iv) all the Debtors' obligations with respect to the Claims and the Interests shall remain unchanged and nothing contained herein shall be deemed to constitute a waiver or release of any claims by or against the Debtors or any other entity or to prejudice in any manner the rights of the Debtors or any other entity in any further proceedings involving the Debtors or otherwise.

12.4 Waiver of Conditions to Confirmation or Consummation.

Unless otherwise specified in the Plan, the conditions set forth in Articles 12.1 and 12.2 of the Plan may be waived, in whole or in part, by the Debtors and the Required Backstop Parties, without any notice to any other parties-in-interest or the Bankruptcy Court and without a hearing. The failure of the Debtors to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right, which may be asserted at any time.

12.5 Effective Date.

The Effective Date shall be a Business Day, specified by the Debtors, that is no more than five (5) days after the day on which all of the conditions specified in Articles 12.1 and 12.2 have been satisfied or waived; provided, however, that the Effective Date shall be no later than July 2, 2010.

ARTICLE XIII

RETENTION OF JURISDICTION

Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, subject to the terms of the Cross-Border Protocol, the Bankruptcy Court shall have exclusive jurisdiction of all matters arising out of, and related to, the Chapter 11 Cases and the Plan, including, among others, the following matters:

(a) to hear and determine motions for (i) the assumption or rejection or (ii) the assumption and assignment of executory contracts or unexpired leases to which any of the Debtors are a party or with respect to which any of the Debtors may be liable, and to hear and determine the allowance of Claims resulting therefrom including the amount of cure, if any, required to be paid;

(b) to adjudicate any and all adversary proceedings, applications, and contested matters that may be commenced or maintained pursuant to the Chapter 11 Cases, the Plan, or that were the subject of proceedings before the Bankruptcy Court prior to the Effective Date, proceedings to adjudicate the allowance of Disputed Claims and Disputed Interests, and all controversies and issues arising from or relating to any of the foregoing;

(c) to adjudicate any and all disputes arising from or relating to the distribution or retention pursuant to the Plan of the New Equity or other consideration under the Plan;

(d) to ensure that distributions to holders of Allowed Claims and Allowed Interests are accomplished as provided herein;

(e) to hear and determine any and all objections to the allowance or estimation of Claims or Interests filed, both before and after the Confirmation Date, including any objections to the classification of any Claim or Interest, and to allow or disallow any Claim or Interest, in whole or in part;

(f) to enter and implement such orders as may be appropriate if the Confirmation Order is for any reason stayed, revoked, modified, and/or vacated;

(g) to issue orders in aid of execution, implementation, or consummation of the Plan;

(h) to consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(i) to hear and determine all applications for allowance of compensation and reimbursement of Professional Claims under the Plan or under sections 328, 330(a), 331, or 503 of the Bankruptcy Code;

(j) to determine requests for the payment of Claims entitled to priority under section 507(a)(2) of the Bankruptcy Code, including compensation and reimbursement of expenses of parties entitled thereto;

(k) to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;

(l) to hear and determine all suits or adversary proceedings to recover assets of any of the Debtors and property of their Estates, wherever located;

(m) to hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

(n) to resolve any matters relating to the pre- and post-confirmation sales of the Debtors' assets;

(o) to hear any other matter not inconsistent with the Bankruptcy Code;

(p) to hear and determine all disputes involving the existence, nature or scope of the Debtors' discharge, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date;

(q) to enter a final decree closing the Chapter 11 Cases; and

(r) to enforce all orders previously entered by the Bankruptcy Court;

provided, however, that the foregoing is not intended to (1) expand the Bankruptcy Court's jurisdiction beyond that allowed by applicable law, (2) impair the rights of (i) any governmental unit to invoke the jurisdiction of a court, commission or tribunal with respect to matters relating to such governmental unit's police and regulatory powers and (ii) any Person to contest the invocation of any such jurisdiction. Nothing herein shall impair the rights of any Person to (i) seek the withdrawal of the reference in accordance with 28 U.S.C. § 157(d) and (ii) contest any request for the withdrawal of reference in accordance with 28 U.S.C. § 157(d).

ARTICLE XIV

MISCELLANEOUS PROVISIONS

14.1 Binding Effect.

Upon the Effective Date, the Plan shall be binding upon and inure to the benefit of the Debtors, the Reorganized Debtors, all current and former holders of Claims, all current and former holders of Interests, and all other parties-in-interest and their respective heirs, successors, and assigns.

14.2 Payment of Statutory Fees.

All fees payable pursuant to section 1930 of title 28 of the United States Code, as of the entry of the Confirmation Order as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on the Effective Date. The Reorganized Debtors shall continue to pay fees pursuant to section 1930 of title 28 of the United States Code until the earlier of the entry of an order dismissing, converting or closing the Chapter 11 Cases.

14.3 Payment of Fees and Expenses of Prepetition Agents, Backstop Parties and Backstop Party Professionals.

Any and all outstanding reasonable and documented fees and expenses of the Prepetition Agents, the Backstop Parties and the Backstop Party Professionals shall be paid in full in Cash by the Debtors on the Effective Date; provided, however, to the extent not otherwise reimbursed for reasonable fees and expenses incurred in connection with distributions made under the Plan, on the Effective Date or as soon as reasonably practicable thereafter (and, thereafter, upon request by a Prepetition Agent with respect to fees and expenses of such Prepetition Agent relating to post-Effective Date service under this Plan), the Reorganized Debtors shall pay in full in Cash all outstanding reasonable and documented fees and expenses of the Prepetition Agents and their respective counsel and other advisors, the Backstop Parties and the Backstop Party Professionals that are incurred in connection with making such distributions under the Plan.

14.4 Post-Confirmation Reporting.

The Reorganized Debtors shall file reports of their respective activities and financial affairs with the Bankruptcy Court on a quarterly basis, within thirty (30) days after the conclusion of each such period, or within such other period as they may agree mutually with the Office of the United States Trustee until the close of the Chapter 11 Cases. In consultation with the Office of the United States Trustee, the Reorganized Debtors shall prepare such reports substantially consistent with (both in terms of content and format) the applicable Bankruptcy Court and United States Trustee guidelines.

14.5 Modification and Amendments.

The Debtors, with the consent of the Required Backstop Parties, may alter, amend, or modify the Plan under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Hearing. The Debtors, with the consent of the Required Backstop Parties, may alter, amend, or modify any Exhibits to the Plan and Plan Supplement documents under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date. After the Confirmation Date and prior to substantial consummation of the Plan with respect to any Debtor as defined in section 1101(2) of the Bankruptcy Code, any Debtor may, under section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the

Disclosure Statement, or the Confirmation Order, and such matters as may be necessary to carry out the purposes and effects of the Plan, subject to the consent of the Required Backstop Parties.

14.6 Substantial Consummation.

On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1001 and 1127(b) of the Bankruptcy Code.

14.7 Request for Expedited Determination of Taxes.

The Reorganized Debtors shall have the right to request an expedited determination under section 505(b) of the Bankruptcy Code with respect to tax returns (other than federal income tax returns) filed by it, or to be filed by it, for any and all taxable periods ending after the Petition Date through the Effective Date. The Reorganized Debtors or the Disbursing Agent shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements.

14.8 Withholding and Reporting Requirements.

In connection with the Plan and all instruments issued in connection therewith and distributions thereunder, the Debtors shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions hereunder shall be subject to any such withholding and reporting requirements.

14.9 Revocation, Withdrawal, or Non-Consummation.

(a) Right to Revoke or Withdraw. Each of the Debtors reserves the right to revoke or withdraw the Plan with respect to such Debtor at any time prior to the Effective Date.

(b) Effect of Withdrawal, Revocation, or Non-Consummation. If any of the Debtors revokes or withdraws the Plan as to such Debtor prior to the Effective Date, or if the Confirmation Date or the Effective Date does not occur, then the Plan, any settlement or compromise embodied in the Plan with respect to such Debtor or Debtors (including the fixing or limiting to an amount certain any Claim or Class of Claims with respect to such Debtor or Debtors, or the allocation of the distributions to be made hereunder), the assumption or rejection of executory contracts or leases effected by the Plan with respect to such Debtor or Debtors, and any document or agreement executed pursuant to the Plan with respect to such Debtor or Debtors shall be null and void as to such Debtor or Debtors. In such event, nothing contained herein or in the Disclosure Statement, and no acts taken in preparation for consummation of the Plan, shall be deemed to constitute a waiver or release of any Claims by or against such Debtor or Debtors or any other Person, to prejudice in any manner the rights of any such Debtor or Debtors, the holder of a Claim or Interest, or any other Person in any further proceedings involving such Debtor or Debtors or to constitute an admission of any sort by the Debtors or any other Person. Notwithstanding anything to the contrary, in the event that any one or more of the Debtors shall revoke or withdraw the Plan as to itself prior to the Effective Date, the Effective Date shall otherwise occur.

14.10 Notices.

Any notice required or permitted to be provided to the Debtors or the Backstop Parties shall be in writing and served by (a) certified mail, return receipt requested, (b) hand delivery, or (c) overnight delivery service, to be addressed as follows:

If to the Debtors:

Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, New York 10036
Attention: Ira S. Dizengoff, Esq.

Akin Gump Strauss Hauer & Feld LLP
1333 New Hampshire Ave., NW
Washington, DC 20036
Attention: Scott L. Alberino, Esq.

If to the Backstop Parties:

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166
Attention: David M. Feldman, Esq. and Matthew Williams, Esq.

Ropes & Gray, LLP
1211 Avenue of the Americas
New York, NY 10036
Attention: Mark R. Somerstein, Esq.

If to the Canadian Petitioners:

Fraser Milner Casgrain LLP
1 First Canadian Place, 39th Floor
100 King Street West
Toronto, Ontario, Canada M5X 1B2
Attention: Shayne Kukulowicz

(Counsel to the Canadian Petitioners)

FTI Consulting, Canada ULC, in its capacity as Monitor of Trident Exploration Corp., Fort Energy Corp., Fenergy Corp., 981384 Alberta Ltd., 981405 Alberta Ltd., 981422 Alberta Ltd., Trident Resources Corp., Trident CBM Corp., Aurora Energy LLC, Nexgen Energy Canada, Inc. and Trident USA Corp.
TD Waterhouse Tower, Suite 2010
79 Wellington Street
Toronto, ON, M5K 1G8
Attention: Nigel D. Meakin

(Monitor in the Canadian Proceedings)

McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto Dominion Centre
Toronto, Ontario M5K 1E6
Attention: Sean Collins

(Counsel to the Monitor in the Canadian Proceedings)

14.11 Term of Injunctions or Stays.

Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code or otherwise, and extant on the Confirmation Date, shall remain in full force and effect until the Effective Date.

14.12 Severability.

If, prior to the entry of the Confirmation Order, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors (with the consent of the Required Backstop Parties), shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, with the consent of the Required Backstop Parties, the remainder of the terms and provisions of the Plan will be deemed to remain in full force and effect and will be in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan or Reorganization, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

14.13 Governing Law.

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of Delaware shall govern the construction and implementation of the Plan, any agreements, documents, and instruments executed in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreements shall control). Corporate governance matters shall be governed by the laws of the state of incorporation of the applicable Debtor.

14.14 Entire Agreement.

Except as otherwise indicated, the Plan and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

14.15 Waiver or Estoppel.

Upon the Effective Date, each holder of a Claim or Interest shall be deemed to have waived any right to assert that its Claim or Interest should be Allowed in a certain amount, in a certain priority, be secured, or not be subordinated by virtue of an agreement made with the Debtors and/or their counsel, or any other party, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers filed with the Bankruptcy Court.

14.16 Conflicts.

In the event that the provisions of the Disclosure Statement and the provisions of the Plan conflict, the terms of the Plan shall govern.

Dated: May 5, 2010

Respectfully submitted,

By: /s/ Todd A. Dillabough
Name: Todd A. Dillabough
Title: President, CEO, COO and Director

Action No. 0901-13483

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TRIDENT EXPLORATION CORP.,

FORT ENERGY CORP., FENERGY CORP., 981384 ALBERTA LTD. 981405 ALBERTA LTD.

AND 981422 ALBERTA LTD. ET AL.

PLAN OF ARRANGEMENT AND COMPROMISE

FRASER MILNER CASGRAIN LLP
Barristers and Solicitors

15th Floor Bankers Court
820 2 Street SW
Calgary, Alberta
T2P 0R8
Solicitors: David W. Mann / Derek M. Pontin
Telephone: (403) 268-7097 / (403)268-6301
Facsimile: (403) 268-3100
M5X 1B2

---

1 First Canadian Place
100 King Street West
Toronto, ON
M5X 1B2
Solicitors: R. Shayne Kukulowicz / Michael J. Wunder
Dilrect Line: (416) 863-4740 / (416) 863-4715
Fax: 416-863-4592

File: 539728-1

SCHEDULE "B" TO MEETING ORDER

NOTICE OF THE CREDITORS' MEETING OF TRIDENT EXPLORATION CORP., FORT ENERGY CORP., FENERGY CORP., 981384 ALBERTA LTD., 981405 ALBERTA LTD. AND 981422 ALBERTA LTD., (collectively, hereinafter referred to as "Trident")

Capitalized terms used and not otherwise defined in this Notice are as defined in the Creditors' Meeting Order, dated June 3, 2010.

NOTICE IS HEREBY GIVEN that the Plan of Compromise and Arrangement of Trident dated May 31, 2010 (as may be amended from time to time, the "**Plan**") was filed pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") with the Alberta Court of Queen's Bench (the "**CCAA Court**") on June 1, 2010. The Plan contemplates the compromise of the rights and claims of Trident's Affected Creditors (as defined in the Plan).

Important documents which you should review (the "**Information Package**"), including the Plan, the Meeting Order, and the Monitor's Thirteenth Report, are available from the website of the Court-appointed monitor, FTI Consulting Canada ULC (the "**Monitor**") (http://cfcanada.fticonsulting.com/trident). If you are unable to access this website, you may obtain a copy of the Information Package by contacting the Monitor by e-mail at trident@fticonsulting.com or by telephone at (403) 770-1691. Details of the Plan and the distributions to be made thereunder to creditors are more fully described in the Monitor's Thirteenth Report enclosed in the Information Package.

NOTICE IS ALSO HEREBY GIVEN that Trident may vary, modify, amend, or supplement the Plan:

1. By way of supplementary or amended and restated plan or plans of compromise or arrangement or both filed with the CCAA Court (an "**Amended Plan**") at any time or from time to time prior to the commencement of the Creditors' Meeting (as defined hereafter), provided that Trident obtains the prior consent of FTI Consulting Canada ULC, in its capacity as the Court-appointed monitor of Trident (the "**Monitor**"), and the Required Backstop Parties (as defined in the Plan), or an order of the CCAA Court on no less than two business days notice to the Required Backstop Parties, to any such variation, modification, amendment or supplement. Any such Amended Plan will, for all purposes, be deemed to be part of and incorporated into this Plan. Any such variation, modification, amendment or supplement shall be posted on the Monitor's website http://cfcanada.fticonsulting.com/trident (the "**Monitor's Website**") on the day on which it is filed with the CCAA Court and notice will be provided to the CCAA Proceedings service list. Creditors are advised to check the Monitor's Website regularly. Creditors who wish to receive written notice of any variation, modification, amendment or supplement to the Plan should contact the Monitor by email at trident@fticonsulting.com, by telephone at (403) 770-1691, or at the address of the Monitor listed in the Plan.

2. By proposing any such variation, modification of, or amendment or supplement to the Plan during the Creditors' Meeting, provided that (a) Trident obtains the prior consent of the Monitor and the Required Backstop Parties to any such variation, modification, amendment or supplement, and (b) oral notice of such variation, modification, amendment or supplement is given to all Creditors entitled to vote present in person or by proxy at the Creditors' Meeting prior to the vote being taken, in which case any such variation, modification, amendment or supplement shall, for all purposes, be deemed to be part of the Plan. Any variation, amendment, modification or supplement at the Creditors' Meeting will be promptly posted on the Monitor's Website and filed with the CCAA Court as soon as practicable following the Creditors' Meeting.

3. After the Creditors' Meeting, and both prior to and subsequent to the obtaining of an Order sanctioning the Plan (the "**Sanction Order**"), Trident may at any time and from time to time vary, amend, modify or supplement the Plan without the need for obtaining an Order of the CCAA Court or providing notice to the Creditors, if Trident, the Required Backstop Parties and the Monitor, acting reasonably and in good faith, determine that such variation, amendment, modification or supplement is of an administrative nature that is not adverse to the financial or economic interests of any of the Affected Creditors under the Plan and is necessary in order to give effect to the substance of the Plan or the Sanction Order. The Monitor shall post a notice of such variance, amendment, modification or supplement to the Plan on the Monitor's Website, together with the varied, amended, modified or supplemented language.

NOTICE IS ALSO HEREBY GIVEN that the order of the CCAA Court dated June 3, 2010 (the "**Meeting Order**") established the procedures for Trident to call, hold and conduct a meeting of its Creditors (the "**Creditors' Meeting**") to consider and vote on the Plan. For the purpose of considering and voting on the Plan, and receiving distributions thereunder, the Affected Claims of the Affected Creditors shall be grouped into a single class under the Plan.

NOTICE IS ALSO HEREBY GIVEN that the Creditors' Meeting will be held at the following date, time and location:

Date:	June 16, 2010
Time:	10:00 a.m. (Mountain time)
Location:	Crystal Ballroom, Fairmont Palliser Hotel
	133 9th Avenue SW
	Calgary, Alberta

Only those Affected Creditors with a Proven Claim or a Disputed Claim (each such creditor, an "**Eligible Voting Creditor**") (or their respective proxyholders) will be eligible to attend the Creditors' Meeting and vote on the Plan. The votes of Affected Creditors holding Disputed Claims will be separately tabulated by the Monitor, and Disputed Claims will be resolved in accordance with the Claims Order and the Meeting Order prior to any distribution on account of

such Disputed Claims. Holders of an Unaffected Claim (as defined in the Plan) will not be entitled to attend and vote at the Creditors' Meeting.

Any Eligible Voting Creditor who is unable to attend the applicable Creditors' Meeting may vote by proxy. Further, any Eligible Voting Creditor who is not an individual may only attend and vote at the Creditors' Meeting if a proxyholder has been appointed to act on its behalf at such Creditors' Meeting.

Proxies, once duly completed, dated and signed, must be sent by email to the Monitor, or if cannot be sent by email, delivered to the Monitor at the address of the Monitor as set out on the Proxy form. Proxies must be received by the Monitor by no later than 12:00 noon. (Mountain time) on the last Business Day preceding the date set for the Creditors' Meeting or any adjournment thereof. Proxies may also be delivered by hand to the Chair prior to the commencement of the Creditors' Meeting. After commencement of the Creditors' Meeting, no Proxies can be accepted by the Monitor.

NOTICE IS ALSO HEREBY GIVEN that if the Plan is approved by the Required Majorities (as defined below) at the Creditors' Meeting, Trident shall seek approval of the Plan by the CCAA Court at a motion for the Sanction Order, which motion shall be returnable before the CCAA Court at 10:00 a.m. (Calgary time) on June 18, 2010, or as soon after that date as the matter can be heard (the "**Sanction Hearing**"). Any person wishing to oppose the motion for the Sanction Order must serve upon the lawyers for both Trident and the Monitor as well as those parties listed on the Service List as posted on the Monitor's Website, by not later than 5:00 p.m. (Calgary time) on June 17, 2010, a copy of the materials to be used to oppose the motion for approval of the Plan, setting out the basis for such opposition.

NOTICE IS ALSO HEREBY GIVEN that in order for the Plan to become effective:

1. the Plan must be approved at the Creditors' Meeting by the affirmative vote of a majority in number, representing not less than two-thirds in value of the voting claims, of Eligible Voting Creditors, in person or by proxy (the "**Required Majorities**");

2. the Plan must be sanctioned by the CCAA Court; and

3. the conditions to the implementation of the Plan as set out in the Plan must be satisfied or waived.

The Information Package, including the Plan, and the Monitor's Thirteenth Report may be obtained from the Monitor's Website (http://cfcanada.fticonsulting.com/trident), or by requesting one from the Monitor by email at trident@fticonsulting.com or by telephone at (403) 770-1691. **You should review the Information Package carefully.**

SCHEDULE "C" TO MEETING ORDER

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TRIDENT EXPLORATION CORP., FORT ENERGY CORP., FENERGY CORP., 981384 ALBERTA LTD., 981405 ALBERTA LTD., AND 981422 ALBERTA LTD.

PROXY AND ELECTION TO RECEIVE $5,000

PROXY

Before completing this Proxy, please read carefully the accompanying instructions for the proper completion and return of the form.

Capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the Plan of Compromise and Arrangement of the Applicant dated May 31, 2010 (as may be amended from time to time, the "**Plan**") filed pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") with the Alberta Court of Queen's Bench (the "**CCAA Court**") on June 1, 2010.

In accordance with the Plan and the Order of the Court made on June 3, 2010 (the "**Meeting Order**"), Proxies may only be filed by Creditors having a Proven Claim or a Disputed Claim ("**Eligible Voting Creditors**").

PROXIES, ONCE DULY COMPLETED, DATED AND SIGNED, MUST BE SENT BY EMAIL TO THE MONITOR, OR IF IT CANNOT BE SENT BY EMAIL, DELIVERED TO THE MONITOR BY REGISTERED MAIL, FACSIMILE TRANSMISSION OR COURIER, AND RECEIVED BY THE MONITOR BY NO LATER THAN 12:00 NOON (CALGARY TIME) ON THE LAST BUSINESS DAY PRECEDING THE DATE SET FOR THE CREDITORS' MEETING OR ANY ADJOURNMENT THEREOF, OR DELIVERED BY HAND TO THE CHAIR PRIOR TO THE COMMENCEMENT OF THE CREDITORS' MEETING. AFTER COMMENCEMENT OF THE CREDITORS' MEETING (OR ANY ADJOURNMENT THEREOF), NO PROXIES CAN BE ACCEPTED BY THE MONITOR.

THE UNDERSIGNED ELIGIBLE VOTING CREDITOR hereby revokes all Proxies previously given, if any, and nominates, constitutes, and appoints **Mr. Nigel Meakin** of FTI Consulting Canada ULC, in its capacity as Monitor, or such Person as he, in his sole discretion, may designate or, instead of the foregoing, appoints:

_____

Print Name of Proxyholder if wishing to appoint someone other than Mr. Nigel Meakin

to attend on behalf of and act for the Eligible Voting Creditor at the Creditors' Meeting to be held in connection with the Plan and at any and all adjournments, postponements or other rescheduling of the Creditors' Meeting, and to vote the amount of the Eligible Voting Creditor's Affected Claim(s) for voting purposes as determined by and accepted for voting purposes in accordance with the Creditors' Meeting Order and as set out in the Plan as follows:

A. (mark one only):

☐ Vote **FOR** approval of the resolution to accept the Plan; or

☐ Vote **AGAINST** approval of the resolution to accept the Plan.

If a box is not marked as a vote for or against approval of the Plan, this Proxy shall be voted for approval of the Plan.

- and -

B. Vote at the nominee's discretion and otherwise act for and on behalf of the undersigned Eligible Voting Creditor with respect to any amendments or variations to the matters identified in the notice of the Creditors' Meeting and in this Plan, and with respect to other matters that may properly come before the Creditors' Meeting.

ELECTION TO REDUCE CLAIMS TO $5,000 AND RECEIVE $5,000

☐ CHECK THIS BOX if you wish for your Affected Claims to be REDUCED TO $5,000 and for your DISTRIBUTION under the Plan to be $5,000, subject to the terms of the Plan.

BY CHECKING THIS BOX you, the undersigned Affected Creditor, hereby:

(a) represent that the undersigned holds Affected Claims in an aggregate amount in excess of $5,000; and

(b) by providing this Election to Receive $5,000 to the Monitor before the Election Deadline, reduce the aggregate amount of the undersigned Affected Claims to $5,000.

1. All words capitalized herein have the meanings assigned to them by the Plan.

2. This is an Election to Receive $5,000 delivered as provided by subsection 3.02(a) of the Plan.

Dated this _____ day of June, 2010.

_____ Print Name of Eligible Voting Creditor

_____ Title of the authorized signing officer of the corporation, partnership or trust, if applicable

Signature of Eligible Voting Creditor or, if the Eligible Voting Creditor is a corporation, partnership or trust, signature of an authorized signing officer of the corporation, partnership or trust

Telephone number of the Eligible Voting Creditor or authorized signing officer

Mailing Address of Eligible Voting Creditor

Email address of Eligible Voting Creditor

Print Name of Witness, if Eligible Voting Creditor is an individual

Signature of Witness

RETURN THIS COMPLETED PROXY TO:

By email: trident@fticonsulting.com

By registered mail, courier, or facsimile:

FTI Consulting Canada ULC
Monitor of Trident Exploration Corp., Trident Resources Corp., et al.
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario
M5K 1G8

Facsimile: (416) 649-8101

INSTRUCTIONS FOR COMPLETION OF PROXY

3. This Proxy should be read in conjunction with the Plan of Compromise and Arrangement of the Applicant dated May 31, 2010 (as it may be amended, restated or supplemented from time to time, the "**Plan**") filed pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") with the Alberta Court of Queen's Bench (the "**CCAA Court**") on June 1, 2010 and the Meeting Order. Capitalized terms used herein not otherwise defined shall have the meanings ascribed to them in the Plan.

4. Each Eligible Voting Creditor has the right to appoint a person (who need not be a Creditor) (a "**Proxyholder**") to attend, act and vote for and on behalf of such Eligible Voting Creditor and such right may be exercised by inserting the name of the Proxyholder in the blank space provided on the Proxy.

5. If no name has been inserted in the space provided to designate the Proxyholder on the Proxy, the Eligible Voting Creditor will be deemed to have appointed Mr. Nigel Meakin of FTI Consulting Canada Inc., in its capacity as Monitor (or such other Person as he, in his sole discretion, may designate), as the Eligible Voting Creditor's Proxyholder.

6. An Eligible Voting Creditor who has given a Proxy may revoke it, unless such Eligible Voting Creditor has agreed otherwise (as to any matter on which a vote has not already been cast pursuant to its authority), by an instrument in writing executed by such Eligible Voting Creditor or by its attorney, duly authorized in writing or, if an Eligible Voting Creditor is not an individual, by an officer or attorney thereof duly authorized, and deposited with the Monitor.

7. If this Proxy is not dated in the space provided, it shall be deemed to be dated as of the date on which it is received by the Monitor.

8. A valid Proxy from the same Eligible Voting Creditor bearing or deemed to bear a later date than this Proxy will be deemed to revoke this Proxy. If more than one valid Proxy from the same Eligible Voting Creditor and bearing or deemed to bear the same date are received by the Monitor with conflicting instructions, such Proxies shall not be counted for the purposes of the vote.

9. This Proxy confers discretionary authority upon the Proxyholder with respect to amendments or variations to the matters identified in the notice of the Creditors' Meeting and in the Plan, and with respect to other matters that may properly come before the Creditors' Meeting.

10. The Proxyholder shall vote the Proven Claim or Disputed Claim of the Eligible Voting Creditor in accordance with the direction of the Eligible Voting Creditor appointing him/her on any ballot that may be called for at the Creditors' Meeting. **IF AN ELIGIBLE VOTING CREDITOR FAILS TO INDICATE ON THIS PROXY A VOTE FOR OR AGAINST APPROVAL OF THE RESOLUTION TO ACCEPT THE PLAN, THIS PROXY WILL BE VOTED FOR THE RESOLUTION TO APPROVE THE PLAN, INCLUDING ANY AMENDMENTS, VARIATIONS OR SUPPLEMENTS THERETO.**

11. This Proxy must be signed by the Eligible Voting Creditor or by a person duly authorized (by power of attorney) to sign on the Eligible Voting Creditor's behalf or, if the Eligible Voting Creditor is a corporation, partnership or trust, by a duly authorized officer or attorney of the corporation, partnership or trust. If you are voting on behalf of a corporation, partnership or trust, you may be required to provide documentation evidencing your power and authority to sign this Proxy.

12. **PROXIES, ONCE DULY COMPLETED, DATED AND SIGNED, MUST BE SENT BY EMAIL TO THE MONITOR, OR IF IT CANNOT BE SENT BY EMAIL, DELIVERED TO THE MONITOR BY REGISTERED MAIL, FACSIMILE TRANSMISSION OR COURIER, AND RECEIVED BY THE MONITOR BY NO LATER THAN 12:00 NOON (CALGARY TIME) ON THE LAST BUSINESS DAY PRECEDING THE DATE SET FOR THE CREDITORS' MEETING OR ANY ADJOURNMENT THEREOF IF ANY PERSON ON THE ELIGIBLE VOTING CREDITOR'S**

BEHALF IS TO ATTEND THE CREDITOR' MEETING AND VOTE ON THE PLAN OR IF THE ELIGIBLE VOTING CREDITOR WISHES TO APPOINT NIGEL MEAKIN TO ACT AS THE ELIGIBLE VOTING CREDITOR'S NOMINEE.

By email: trident@fticonsulting.com

By registered mail, courier or facsimile:

FTI Consulting Canada ULC
Monitor of Trident Exploration Corp., Trident Resources Corp., et al.
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario
M5K 1G8

Facsimile: (416) 649-8101

PROXIES MAY ALSO BE HAND DELIVERED TO THE CHAIR OF THE CREDITORS' MEETING PRIOR TO THE COMMENCEMENT OF THE CREDITORS' MEETING. AFTER THE COMMENCEMENT OF THE CREDITORS' MEETING, NO PROXIES CAN BE ACCEPTED BY THE MONITOR.

13. The Applicant and the Monitor are authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which any Proxy is completed and executed, and may waive strict compliance with the requirements in connection with the deadlines imposed by the Meeting Order.

14. **By completing the Election to Receive $5,000 attached, you irrevocably elect to reduce your Proven Claim (to the extent such Proven Claim exceeds $5,000) and thereby receive payment in cash in an amount equal to one hundred percent of the reduced Proven Claim in full satisfaction such Proven Claim in accordance with section 3.02 of the Plan. By not completing the Election to Receive $5,000 you will be deemed not to have made such election. Check the box ONLY if you wish for your Claim to be reduced to $5,000.**

SCHEDULE "D" TO MEETING ORDER

NOTICE OF THE CREDITORS' MEETING OF TRIDENT EXPLORATION CORP., FORT ENERGY CORP., FENERGY CORP., 981384 ALBERTA LTD., 981405 ALBERTA LTD. AND 981422 ALBERTA LTD., (collectively, hereinafter referred to as "Trident")

This notice is being published pursuant to the order of the Alberta Court of Queen's Bench (the "**CCAA Court**") dated June 3, 2010 (the "**Creditors' Meeting Order**") which established the procedures for Trident to call, hold and conduct a meeting of its unsecured creditors (the "**Creditors' Meeting**") to consider and vote on the Plan of Compromise and Arrangement of Trident dated May 31, 2010 (as may be amended from time to time, the "**Plan**") and to transact such other business as may be properly brought before the Creditors' Meeting. The Creditors' Meeting will be held at the following date, times and location:

Date:	June 16, 2010
Time:	10:00 a.m. (Mountain time)
Location:	Crystal Ballroom, Fairmont Palliser Hotel
	133 9th Avenue SW
	Calgary, Alberta

ONLY THOSE CREDITORS WITH PROVEN CLAIMS OR DISPUTED CLAIMS (AS SUCH TERMS ARE DEFINED IN THE PLAN), OR THEIR RESPECTIVE PROXY HOLDERS, SHALL BE ENTITLED TO ATTEND AND VOTE ON THE PLAN AT THE CREDITORS' MEETING.

Important documents which you should review (the "**Information Package**"), including the Plan, the Meeting Order, and the Monitor's Thirteenth Report, are available from the website of the Court-appointed monitor, FTI Consulting Canada ULC (the "**Monitor**") (http://cfcanada.fticonsulting.com/trident). If you are unable to access this website, you may obtain a copy of the Information Package by contacting the Monitor by e-mail at trident@fticonsulting.com or by telephone at (403) 770-1691.

SCHEDULE "E' TO MEETING ORDER

PLAN RESOLUTION IN RESPECT OF TRIDENT EXPLORATION CORP., FORT ENERGY CORP., FENERGY CORP. AND 981384 ALBERTA LTD., 981405 ALBERTA LTD., 981422 ALBERTA LTD., TRIDENT RESOURCES CORP., (collectively, hereinafter referred to as "Trident")

TEXT OF PLAN RESOLUTION OF TRIDENT

Plan of Compromise and Arrangement under the *Companies' Creditors Arrangement Act*

BE IT RESOLVED THAT:

1. the Plan of Compromise and Arrangement dated May 31, 2010 filed by Trident under the *Companies' Creditors Arrangement Act*, as may be amended, restated or supplemented in accordance with its terms (the "**Plan**"), presented to the Creditors' Meeting (as defined in the Plan) be and is hereby authorized and approved;

2. notwithstanding that this resolution has been passed and the Plan approved by the required majorities of Eligible Voting Creditors (as defined in the Plan), the directors of Trident be and they are hereby authorized and empowered to amend or not proceed with the Plan in accordance with the terms thereof; and

any one director or officer of Trident be, and he or she is hereby authorized, empowered and instructed, acting for, and in the name of and on behalf of each of the Applicants (but not the creditors), to execute, or cause to be executed, and to deliver or cause to be delivered for, on behalf of and in the name of each of the Applicants, all such documents, agreements and instruments and to do or cause to be done all such other acts and things as such director or officer of the Applicants determines to be necessary or desirable in order to carry out the Plan, such determination to be conclusively evidenced by the execution and delivery by such directors or officers of such documents, agreements or instruments or the doing of any such act or thing.

Action No. 0901-13483

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TRIDENT EXPLORATION CORP., FORT ENERGY CORP., FENERGY CORP., 981384 ALBERTA LTD., 981405 ALBERTA LTD., 981422 ALBERTA LTD., TRIDENT RESOURCES CORP., TRIDENT CBM CORP., AURORA ENERGY LLC., NEXGEN ENERGY CANADA, INC. AND TRIDENT USA CORP.

ORDER

FRASER MILNER CASGRAIN LLP
Barristers and Solicitors

15th Floor Bankers Court
850 2 Street SW
Calgary, Alberta
T2P 0R8
Solicitors: David W. Mann / Derek M. Pontin
Telephone: (403) 268-7097 / (403) 268-6301
Facsimile: (403) 268-3100

1 First Canadian Place
100 King Street West
Toronto, ON
M5X 1B2
Solicitors: R. Shayne Kukulowicz / Michael J. Wunder
Direct Line: (416) 863-4740 / (416) 863-4715
Fax: 416-863-4592

File: 539728-1

TAB 5

Action No. 0801-08510

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEMCANADA CRUDE COMPANY, SEMCAMS ULC, SEMCANADA ENERGY COMPANY, A.E. SHARP LTD., CEG ENERGY OPTIONS, INC. and 1380331 ALBERTA ULC

APPLICANTS

PLAN OF ARRANGEMENT AND REORGANIZATION

concerning, affecting and involving

SEMCANADA CRUDE COMPANY

July 24, 2009

PLAN OF ARRANGEMENT AND REORGANIZATION

WHEREAS SemCanada Crude Company (the "**Company**") is insolvent;

AND WHEREAS the Company obtained an Order made by the Honourable Madam Justice B.E.C. Romaine of the Court of Queen's Bench of Alberta (the "**Alberta Court**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**") dated July 22, 2008 (the "**Initial Order**") which, among other things, appointed Ernst & Young Inc. as Monitor (the "**Monitor**") of the Company and permitted the Company to present a plan of arrangement and reorganization to its creditors;

AND WHEREAS the Company obtained an Amended and Restated Initial Order made by the Honourable Madam Justice B.E.C. Romaine of the Alberta Court dated July 30, 2008 (the "**Amended and Restated Initial Order**") whereby the proceedings commenced on July 22, 2008 were consolidated with the CCAA proceedings of the other Applicants;

AND WHEREAS SemGroup, L.P. and certain of its direct and indirect subsidiaries and affiliates (collectively, the "**US Debtors**") filed voluntary petitions (the "**US Proceedings**") seeking protection under Chapter 11 of Title 11 of the United States Code, 11 U.S.C., §§101-1330 (the "**US Bankruptcy Code**") in the U.S. Bankruptcy Court for the District of Delaware (the "**US Bankruptcy Court**");

AND WHEREAS the US Debtors have filed the Second Amended Joint Plan of Affiliated Debtors dated July 21, 2009 pursuant to Chapter 11 of the US Bankruptcy Code in the US Proceedings (as the same may be amended, varied or supplemented from time to time, the "**US Plan**");

AND WHEREAS it is the intention of the Company to present a plan of arrangement and reorganization under the CCAA in conjunction with the efforts of the US Debtors to restructure or sell their businesses pursuant to the US Plan;

AND WHEREAS a plan of arrangement and reorganization under the CCAA will facilitate the continuation of the business of the Company as a going concern, provide certain recoveries to stakeholders and safeguard substantial employment;

NOW THEREFORE the Company hereby proposes and presents this plan of arrangement and reorganization to the Affected Creditors (as defined below) under and pursuant to the CCAA:

ARTICLE 1
INTERPRETATION

1.1 Definitions

In this plan of arrangement and reorganization, unless otherwise stated or unless the subject matter or context otherwise requires:

"Administration Charge" shall have the meaning ascribed thereto in the Amended and Restated Initial Order, as amended by the Plan Sanction Order;

"**Affected Claim**" means any Claim except for Unaffected Claims and Unaffected Plan Closing Claims;

"**Affected Creditor**" means any Creditor with an Affected Claim, but only with respect to and to the extent of such Affected Claim;

"**Affected Creditors' Class**" means the class of Creditors established in Section 3.1 hereto;

"**Alberta Court**" shall have the meaning ascribed thereto in the Recitals;

"**Amended and Restated Initial Order**" shall have the meaning ascribed thereto in the Recitals, as it may be amended from time to time;

"**Applicable Law**" means, with respect to any Person, property, transaction, event or other matter, any Law relating or applicable to such Person, property, transaction, event or other matter. Applicable Law also includes, where appropriate, any interpretation of the Law (or any part) by any Person, court or tribunal having jurisdiction over it, or charged with its administration or interpretation;

"**Applicants**" means, collectively, the Company, SemCAMS, SemCanada Energy, A.E. Sharp Ltd., CEG Energy Options, Inc., 1380331 Alberta ULC, and 3191278 Nova Scotia Company if the shares of 3191278 Nova Scotia Company have not been transferred prior to the Plan Implementation Date pursuant to the sale approved by the Order made by the Honourable Madam Justice B.E.C. Romaine of the Alberta Court dated April 17, 2009;

"**B of A**" means Bank of America, N.A. in its capacity as administrative agent and letter of credit issuer pursuant to the Secured Lenders Credit Agreement;

"**Beneficial Noteholder**" means the beneficial holder or entitlement holder of any Note, regardless of whether such holder is a Registered Noteholder;

"**BIA**" means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, C. B-3;

"**Business**" means the business of purchasing, marketing, blending and distributing crude oil in the Provinces of Alberta, British Columbia and Saskatchewan and in the States of North Dakota and Montana;

"**Business Day**" means a day, other than Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Calgary, Alberta and in New York, New York;

"**CA**" means the *Competition Act,* R.S.C. 1985, c. C-34;

"**Canadian Dollars**" means lawful currency of Canada;

"**CCAA**" shall have the meaning ascribed thereto in the Recitals;

"CCAA Proceedings" means the proceedings commenced by the Company in the Alberta Court under the CCAA pursuant to the Initial Order and continued under the Amended and Restated Initial Order;

"Charges" shall have the meaning ascribed thereto in the Amended and Restated Initial Order;

"Claim" means any right or claim, including any Tax Claim, of any Person that may be asserted or made in whole or in part against the Company, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including without limitation, by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including, without limitation, any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature including, without limitation, any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action whether existing at present or commenced in the future, together with any other rights or claims of any kind that, if unsecured, would be a debt provable in bankruptcy within the meaning of the BIA had the Company become bankrupt;

"Claims Bar Date" means 5:00 p.m. on December 1, 2008 or such date on which a Proof of Claim is subsequently accepted for filing by the Company and the Monitor prior to the Creditors' Meeting;

"Claims Process" means the procedures outlined in the Claims Process Order in connection with the assertion of Pre-Filing Claims or Subsequent Claims against one or more of the Applicants;

"Claims Process Order" means the Order made by the Honourable Madam Justice B.E.C. Romaine of the Alberta Court dated October 22, 2008 approving the Claims Process;

"Company" shall have the meaning ascribed thereto in the Recitals;

"Company Benefit Plans" means, in relation to the directors, officers, employees and retirees of the Company, those benefit plans, arrangements or other benefit programs of the Company set out in Schedule "A", which, for greater certainty, include the Pension Plans;

"Creditor" means any Person having a Claim and may, where the context requires, include the assignee of a Claim or a personal representative, trustee, interim receiver,

receiver, receiver and manager, liquidator or other Person acting on behalf of such Person;

"Creditors' Meeting" means the meeting of the Ordinary Creditors to be called and held pursuant to the Meeting Order for the purpose of considering and voting upon the Plan, and includes any adjournment of such meeting;

"Crude ERP Charge" shall have the meaning ascribed thereto in the Order made by the Honourable Madam Justice B.E.C. Romaine of the Alberta Court dated August 21, 2008;

"CTA" means the *Canada Transportation Act*, R.S.C. 1996, c. C-10;

"Disputed Claim" means an Affected Claim that has not been finally determined as a Proven Claim in accordance with the Claims Process;

"Disputed Claims Reserve" means the reserve, if any, to be established and maintained by the Monitor, on behalf of the Company, from the Ordinary Creditors' Pool by depositing the sum of (a) the Pro Rata Ordinary Creditors Amount that would have been distributed on the Distribution Date to Ordinary Creditors holding Disputed Claims if such Claims had been Proven Claims on the Distribution Date and (b) the estimated fees and costs to be incurred by the Company and the Monitor on a solicitor and own client full indemnity basis to resolve Disputed Claims, including Secured Claims in the event that there are insufficient funds to cover such fees and costs in the Secured Creditors' Pool, and effect distributions from and after the Plan Implementation Date;

"Distribution Date" means the date or dates from time to time set by the Monitor to effect interim and final distributions in respect of the Proven Claims of Secured Creditors and Ordinary Creditors;

"DTC" means Depository Trust Company;

"Effective Time" means the point in time on the Plan Implementation Date immediately following the distribution of the mixture of, among other things, cash, term loan interests, shares, warrants and litigation trust interests to holders of allowed claims against the US Debtors under the US Proceedings in accordance with section 7.2(c) of the US Plan;

"Excluded Claim" shall have the meaning ascribed thereto in the Claims Process Order;

"Filing Date" means, in respect of the Company, July 22, 2008;

"Financial Advisor" means BMO Nesbit Burns Inc.;

"Global Note" means the 8.75% senior global note due 2015 bearing CUSIP # 81662TAA3;

"Government Authority" means a federal, provincial, territorial, municipal or other government or government department, agency or authority (including a court of law) having jurisdiction over a Party, the Company, the Business or the Plan;

"Guaranty" means the guaranty dated March 16, 2005 granted by the Company in favour of the Secured Lenders;

"ICA" means the *Investment Canada Act*, R.S.C. 1985, c.28 (1st Supp.);

"Income Tax Act" means the *Income Tax Act*, R.S.C., 1985, c.1 (5th Supplement), the regulations thereunder and the Income Tax Application Rules R.S.C. 1985, c.2 (5th Supplement);

"Initial Order" shall have the meaning ascribed thereto in the Recitals;

"Issuers" means SemGroup and SemGroup Finance Corp.;

"Law" means any law, rule, statute, regulation, order, judgment, decree, treaty or other requirement having the force of law;

"Lenders' Secured Claim" means the portion of the Lenders' Total Claim that is equal to the Plan Cash less the aggregate of:

(a) the amount required to pay the Unaffected Plan Closing Claims or to establish adequate reserves to be held by the Monitor for any accrued amounts not yet due on the Plan Implementation Date, other than paragraph (f) in the definition of Unaffected Plan Closing Claims;

(b) the amount required to fund the Secured Creditors' Pool on the Plan Implementation Date;

(c) the amount required to fund the Ordinary Creditors' Pool on the Plan Implementation Date; and

(d) the SemCAMS Advance;

plus the aggregate of:

(e) the amount remaining in the Secured Creditors' Pool after deducting all payments, and fees and costs incurred by the Company and the Monitor on a solicitor and own client full indemnity basis in determining and resolving the amounts owed to the Secured Creditors and effecting distributions pursuant to Section 5.1(b);

(f) the amount remaining in the Ordinary Creditors' Pool after deducting all payments, and fees and costs incurred by the Company and the Monitor on a solicitor and own client full indemnity basis in determining and resolving the amounts owed to the Ordinary Creditors and effecting distributions pursuant to Section 5.1(c);

(g) any repayments in whole or in part of the SemCAMS Secured Promissory Note or the New US Inter-Company Promissory Notes, as the case may be, in respect of those repayments pursuant to Sections 5.1(b), 5.3(a), 5.3(b), 5.3(c) and 5.9 of the SemCAMS Plan;

(h) the outstanding amounts of all cash deposits or prepayments made by the Company prior to the Plan Implementation Date, which are to be remitted to B of A, on behalf of the Secured Lenders, in accordance with Section 5.1(g); and

(i) the proceeds of realization, if any, resulting from the collection of the outstanding accounts receivable from customers that are owed to the Company prior to the Filing Date and continue to remain outstanding on the Plan Implementation Date after deducting the fees and costs incurred by the Company on a solicitor and own client full indemnity basis to resolve any disputes in respect of, and to collect, such accounts receivable;

which is to be treated as a Proven Claim for the purposes of the Plan as secured indebtedness owing by the Company, as guarantor, to the Secured Lenders pursuant to the Secured Lenders Credit Agreement;

"Lenders' Total Claim" means, in respect of the Claims of the Secured Lenders, all indebtedness owing to the Secured Lenders pursuant to the Secured Lenders Credit Agreement, including indebtedness owing by the Company, as guarantor, to the Secured Lenders pursuant to the Secured Lenders Credit Agreement that is recognized as a proven claim of the Secured Lenders against the US Debtors for the purposes of the US Plan in accordance with the process to determine the Secured Lenders' voting claims in the US Proceedings;

"Lenders' Unsecured Claim" means the amount equal to Lenders' Total Claim less the Lenders' Secured Claim, which is to be treated as a Proven Claim for the purposes of the Plan as unsecured indebtedness owing by the Company, as guarantor, to the Secured Lenders pursuant to the Secured Lenders Credit Agreement;

"Liabilities" means all liabilities and obligations (whether under common law, in equity, under Applicable Law or otherwise; whether tortious, contractual, vicarious, statutory or otherwise; whether absolute or contingent; and whether based on fault, strict liability or otherwise) which such Person incurs as a result of such matter or in connection therewith;

"Liens" means the Secured Lenders' Security and any security interests, deemed trusts, statutory and other liens (including builders' liens), charges, mortgages, hypothecs, pledges, security deposits, letters of credit, assignments by way of security, conditional sales, title retention arrangements or other encumbrances whether held by Secured Creditors in respect of an Affected Claim or by other Persons, other than liens, easements or other similar property rights or otherwise incurred in the ordinary course of business for which payment is not due prior to the Plan Implementation Date;

"**Meeting Order**" means the Order under the CCAA that, among other things, accepts the filing of the Plan and calls and sets the date for the Creditors' Meeting;

"Monitor" shall have the meaning ascribed thereto in the Recitals;

"New Company Guarantee" means the secured guarantee, if any, to be given by the Company pursuant to the New Lenders Credit Agreement;

"**New Company Security Agreements**" means the security agreements to be entered into by the Company on the Plan Implementation Date to secure advances made to the Company under the New Lenders Credit Agreement;

"**New Holdco**" means the parent company of the US Debtors and the Company, on and after the US Effective Date, established under the laws of Delaware;

"**New Lenders Credit Agreement**" means the credit facility agreement to be entered into by New Holdco and all or certain of the US Debtors, as borrowers or guarantors or both, and certain other Canadian subsidiaries of New Holdco, including the Company, as a co-borrower or guarantor or both, and the lender parties thereto, to become effective upon the implementation of, and in accordance with, the US Plan;

"**New US Inter-Company Promissory Notes**" shall have the meaning ascribed thereto in Section 7.1(a) of the SemCAMS Plan;

"**Note**" means a note or debenture issued pursuant to the Note Indenture and any notes issued in substitution or replacement thereof, including the Global Note;

"**Noteholder**" means any Registered Noteholder or Beneficial Noteholder;

"**Noteholder Creditors**" means, collectively, the Noteholder Trustee, any Noteholder and any Participant Holder;

"**Noteholder Trustee**" means HSBC Bank USA, National Association as the successor trustee appointed to act in such capacity under the Note Indenture;

"**Note Indenture**" means an indenture dated as of November 18, 2005 among SemGroup and SemGroup Finance Corp., as Issuers, the guarantors listed therein (including the Company), and the predecessor to the Noteholder Trustee, as supplemented and amended, providing for the issuance of 8.75% senior unsecured notes due 2015;

"**Notice of Repudiation or Disclaimer**" means a written notice in any form issued on or after the Filing Date by the Company advising a Person of the disclaimer or repudiation of any contract, lease, employment agreement, or other arrangement or agreements of any nature whatsoever, whether oral or written, and any amending agreement(s) related thereto;

"**Order**" means any order of the Alberta Court in the CCAA Proceedings;

"**Ordinary Creditors**" means Creditors holding Affected Claims other than: (a) the Claims of the Secured Lenders; (b) the Claims of the Noteholder Creditors; (c) the Claims of the other Applicants and (d) the Claims of the US Debtors;

"**Ordinary Creditors' Pool**" means the cash pool equal to the amount of $11,000,000 from which distributions are to be made to Ordinary Creditors with respect to their Proven Claims pursuant to and in accordance with the Plan, as more particularly described in Section 5.3, after deducting the fees and costs incurred by the Company and the Monitor on a solicitor and own client full indemnity basis to resolve any Disputed Claims (including Secured Claims in the event that there are insufficient funds to cover

such fees and costs in the Secured Creditors' Pool) and effect distributions from and after the Plan Implementation Date;

"Participant Holder" means each Person that is a participant of DTC in respect of the Global Note or any other Person identified by DTC as having security entitlements in respect of the Notes as a participant holder or acting as securities intermediary in respect thereof on behalf of the Noteholders;

"Party" means a party to any agreement, including the Plan, and any reference to a Party includes its successors and permitted assigns; and **"Parties"** means every Party;

"Pension Plans" means, collectively, the Registered Pension Plan and the Supplemental Pension Plan, or any other pension benefit plan, arrangement or agreement established by the Company in relation to the directors, officers, employees and independent contractors of the Company on or prior to the Plan Implementation Date to replace or be in addition to the Registered Pension Plan or the Supplemental Pension Plan;

"Person" is to be broadly interpreted and includes any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, Government Authority or any agency, officer or instrumentality thereof or any other entity, wherever situate or domiciled, and whether or not having legal status;

"Plan" means the Plan of Arrangement and Reorganization filed by the Company under the CCAA, as such Plan may be amended, varied or supplemented by the Company from time to time in accordance with the terms hereof;

"Plan Cash" means all cash or cash equivalents, including negotiable instruments and demand deposits, of the Company on the Plan Implementation Date other than $5,000,000;

"Plan Implementation Date" means the Business Day on which the Plan becomes effective, which shall be the Business Day on which the Monitor has delivered to the Company a certificate pursuant to Section 9.4 confirming that the Plan Implementation Date has occurred;

"Plan Sanction Date" means the date that the Plan Sanction Order is made by the Alberta Court;

"Plan Sanction Order" means an Order which, among other things, shall approve and sanction the Plan under the CCAA and shall include provisions as may be necessary or appropriate to give effect to the Plan, including provisions in substance similar to those set out in Section 9.2;

"Pre-Filing Claim" means any Claim other than (i) an Excluded Claim, and a (ii) Subsequent Claim;

"Pro Rata Ordinary Creditors Amount" means each Ordinary Creditor's *pro rata* share of the Ordinary Creditors' Pool in respect of each Proven Claim of the Ordinary Creditors;

"Proof of Claim" means the form to be completed and filed by a Creditor by the Claims Bar Date or the Subsequent Claims Bar Date, as the case may be, setting forth its Pre-Filing Claim or Subsequent Claim;

"Promissory Note Security" means the general security interest and mortgage granted by SemCAMS in favour of the Company pursuant to and in accordance with the SemCAMS Plan on all of SemCAMS' present and future Property, including the undertaking of the business of SemCAMS, to secure the SemCAMS Secured Promissory Note, which shall be subordinate to the New Company Security Agreements and any security granted in respect of the Second Lien Term Loan Facility;

"Property" shall have the meaning ascribed thereto in the Amended and Restated Initial Order, as it relates to the Company;

"Proven Claims" means (a) in respect of Affected Claims other than the Claims of the Secured Lenders and the Noteholder Creditors, the amount of such Affected Claims as finally determined in accordance with the provisions of the Claims Process Order and the Plan, (b) in respect of the Claims of the Secured Lenders, the Lenders' Unsecured Claim; and (c) in respect of the Claims of the Noteholder Creditors, the amount recognized as a proven claim of the Noteholder Creditors against the US Debtors for purposes of the US Plan in accordance with the process to determine their respective voting claims in the US Proceedings;

"Registered Noteholder" means DTC, through its nominee, Cede & Co., and any successor thereof;

"Registered Pension Plan" means, to the extent related to the Company, the Pension Plan for Employees of SemCanada Participating Affiliates, a registered pension plan, the administrator of which for purposes of applicable pension legislation is SemCAMS, containing both defined benefit and defined contribution provisions and that is registered with both the Alberta Superintendent of Pensions and the Canada Revenue Agency, and further, in which the Company is a participating employer whose employees participate only in the defined contribution provisions thereof;

"Released Party" shall have the meaning ascribed thereto in Section 8.1;

"Required Majority" means, in respect of the Affected Creditors' Class, a majority in number of the Affected Creditors who represent at least two-thirds in value of the Voting Claims of (a) the Ordinary Creditors who actually vote on the resolution approving the Plan (in person or by proxy) at the Creditors' Meeting, and (b) the Secured Lenders and the Noteholder Creditors who actually vote on the resolution approving the US Plan (by proxy) in the US Proceedings;

"Second Lien Term Loan Facility" means the secured second lien term loan facility to be entered into by certain of the US Debtors and the Secured Lenders in connection with

the consummation of the US Plan and effected on the US Effective Date, in the aggregate principal amount of US$300,000,000;

"Secured Claim" means any Claim or portion thereof, which is secured by a validly attached and existing security interest on the Property and which was duly and properly perfected at the Filing Date and has priority over the Secured Lenders' Security, up to the realizable value of such property, as finally determined in accordance with the Claims Process;

"Secured Creditors" means those Creditors with a Secured Claim. For greater certainty, lien claimants with valid liens arising under any Applicable Law that have priority over the Secured Lenders' Security are Secured Creditors but only to the extent of the value of the underlying property over which any such lien has been registered or otherwise established by the Claims Process. To the extent that any such lien claimant is not fully secured or does not have priority over the Secured Lenders' Security, then such claimant, for the balance of any such Claim, shall be treated as an Ordinary Creditor;

"Secured Creditors' Pool" means the cash pool equal to the aggregate amount of the Proofs of Claim purporting to be Secured Claims which have not been paid by the Company prior to the Plan Implementation Date, from which distributions are to be made to the Secured Creditors having Proven Claims pursuant to and in accordance with the Plan, as more particularly described in Section 5.2;

"**Secured Lenders**" means any member of the syndicate of secured lenders under the Secured Lenders Credit Agreement or in their capacity as an individual claimant for any amount claimed to be secured by the Secured Lenders Credit Agreement, regardless of whether or not any such amount is ultimately secured under the Secured Lenders Credit Agreement;

"Secured Lenders Credit Agreement" means, collectively, the Amended and Restated Credit Agreement dated October 18, 2005 among SemCrude, as the US borrower, B of A, as the administrative agent and letter of credit issuer, and the guarantors (including the Company) and the other lender parties listed therein, as amended, modified and supplemented from time to time, and any of the documents and instruments related thereto;

"Secured Lenders' Security" means the Guaranty and the security agreement dated March 16, 2005 and granted by the Company in favour of the Secured Lenders;

"SemCAMS" means SemCAMS ULC, an unlimited liability company existing under the laws of Nova Scotia;

"SemCAMS Advance" means the loan to be made on the Plan Implementation Date by the Company to SemCAMS, as evidenced by the SemCAMS Secured Promissory Note, to be used by SemCAMS in accordance with the SemCAMS Plan;

"SemCAMS Plan" means the plan of arrangement and reorganization of SemCAMS to be implemented under the CCAA;

"SemCAMS Secured Promissory Note" means the promissory note to be executed and delivered by SemCAMS in favour of the Company in respect of the SemCAMS Advance;

"SemCanada" means SemCanada L.P., a limited partnership governed by the laws of Oklahoma, US and the registered and beneficial holder of all of the issued and outstanding shares of the Company;

"SemCanada Energy" means SemCanada Energy Company, an unlimited liability company governed by the laws of Nova Scotia;

"SemCanada Energy Distribution Plan" means the consolidated plan of distribution of SemCanada Energy, A.E. Sharp Ltd. and CEG Energy Options, Inc. to be implemented under the CCAA;

"SemCanada Energy Inter-Company Debt" means the debt due and owing by the Company to SemCanada Energy, in the principal amount of $8,489,734, together with unpaid interest thereon accruing up to and including the Plan Implementation Date;

"SemCrude" means SemCrude, L.P., a limited partnership governed by the laws of Delaware, US;

"SemCrude Inter-Company Debt" means the debt due and owing by the Company to SemCrude, in the principal amount of US$53,439,176;

"SemCrude Promissory Note" means the term promissory note issued by SemCAMS to SemCrude in the principal amount of US$171,062,500 pursuant to Section 7.1 of the SemCAMS Plan;

"SemCrude Shares" means all of the issued and outstanding shares of the Company;

"SemGroup" means SemGroup, L.P., a limited partnership governed by the laws of Oklahoma, US;

"Subsequent Claim" means any Claim arising after the Filing Date as a result of the disclaimer or repudiation after the Filing Date of any contract, lease, employment agreement, or other arrangement or agreements of any nature whatsoever, whether oral or written, and any amending agreement related thereto;

"Subsequent Claims Bar Date" means the later of: (i) the Claims Bar Date; and (ii) 5:00 p.m. on the day which is 30 days after the date of the Notice of Repudiation or Disclaimer;

"Supplemental Pension Plan" means the Central Alberta Midstream Supplemental Benefit Plan, an unfunded and unregistered arrangement;

"Tax" or "Taxes" means any and all taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Taxing Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Taxing Authority in respect thereof, and including those levied

on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all licence, franchise and registration fees and all employment insurance, health insurance and Canada, Québec and other government pension plan premiums or contributions;

"Tax Claim" means any Claim against the Company for any Taxes in respect of any taxation year or period ending on or prior to the Filing Date, and in any case where a taxation year or period commences on or prior to the Filing Date but does not end until after the Filing Date, any Claims against the Company for any Taxes in respect of or attributable to the portion of the taxation period commencing prior to the Filing Date and up to and including the Filing Date. For greater certainty, a Tax Claim shall include, without limitation, any and all Claims of any Taxing Authority in respect of transfer pricing adjustments and any Canadian or non-resident Tax related thereto;

"Taxing Authorities" means anyone of Her Majesty the Queen, Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada and any political subdivision thereof and any Canadian or non-Canadian government, regulatory authority, government department, agency, commission, bureau, minister, court, tribunal or body or regulation making entity exercising taxing authority or power, and "**Taxing Authority**" means any one of the Taxing Authorities;

"Unaffected Claims" means the following Claims:

(a) Claims of the Monitor and its Canadian and US counsel for unpaid fees and costs incurred subsequent to the Plan Implementation Date;

(b) Claims of the Company's counsel, Osler, Hoskin & Harcourt LLP for unpaid fees and costs incurred subsequent to the Plan Implementation Date;

(c) Claims of the Secured Creditors, but only with respect to and solely to the extent that such Claims are finally determined to be valid Secured Claims;

(d) Claims of Creditors with respect to goods and/or services provided to the Company in the ordinary course of business on or after the Filing Date;

(e) the Lenders' Secured Claim as it relates to the amounts set out in paragraphs (e) to (i), inclusive, in the definition of Lenders' Secured Claim;

(f) Claims of employees of the Company who continue to be employed by the Company on or after the Plan Implementation Date;

(g) Claims of the Crown for (i) amounts that are required to be paid pursuant to Section 5.6; (ii) amounts in respect of those Claims referred to in Section 18.2(1) of the CCAA which have accrued during the period prior to the Plan

Implementation Date, but which become due and payable following the Plan Implementation Date; and (iii) amounts in respect of goods and services taxes, excluding penalties and interest, which have accrued during the period prior to the Plan Implementation date, but which become due and payable following the Plan Implementation Date;

(h) Claims relating to municipal real property taxes and public utilities;

(i) Claims in respect of any licenses, franchises, consents, approvals, variances, exemptions and other authorizations issued by or from any Government Authority related to the Business;

(j) Claims relating to Company Benefit Plans; and

(k) that portion of a Claim arising from a cause of action for which the Company is covered by insurance, but only to the extent of such insurance coverage;

"Unaffected Creditor" means a Creditor who has an Unaffected Claim or an Unaffected Plan Closing Claim, but only in respect of and to the extent of such Unaffected Claim or Unaffected Plan Closing Claim;

"Unaffected Plan Closing Claims" means the following Claims, which will either be reserved for or paid on the Plan Implementation Date in accordance with the Plan:

(a) the Claims of the Crown for (i) amounts in respect of those Claims referred to in Section 18.2(1) of the CCAA which become due and payable during the period following the Filing Date and prior to the Plan Implementation Date; and (ii) collected and unremitted amounts in respect of goods and services taxes, excluding penalties and interest, which become due and payable during the period following the Filing Date and prior to the Plan Implementation Date;

(b) the Claims of the Monitor and its Canadian and US counsel for unpaid fees and costs incurred up to and including the Plan Implementation Date;

(c) the Claims of the Company's counsel, Osler, Hoskin & Harcourt LLP, for unpaid fees and costs incurred up to and including the Plan Implementation Date;

(d) the Claims of the Financial Advisor for unpaid fees and costs incurred up to and including the Plan Implementation Date;

(e) the Claims of B of A's Canadian counsel and Canadian financial advisor for unpaid fees and costs incurred up to and including the Plan Implementation Date;

(f) the Lenders' Secured Claim in the amount equal to the Plan Cash less the aggregate of the amounts set out in paragraphs (a) to (d), inclusive, in the definition of Lenders' Secured Claim; and

(g) the Claims of the employees of the Company that are secured by the Crude ERP Charge and that are outstanding on the Plan Implementation Date;

"US" means the United States of America;

"US Bankruptcy Code" shall have the meaning ascribed thereto in the Recitals;

"US Bankruptcy Court" shall have the meaning ascribed thereto in the Recitals;

"US Confirmation Hearing" means the hearing in the US Proceedings before the US Bankruptcy Court to confirm the US Plan;

"US Debtors" shall have the meaning ascribed thereto in the Recitals;

"US Dollars" means lawful currency of the United States of America;

"US Effective Date" means the date upon which the US Plan becomes effective, as such effective date is set out in the US Plan;

"US Examiner's Report" means the Final Report of Louis J. Freeh, Bankruptcy Court Examiner filed on April 15, 2009 with the US Bankruptcy Court in connection with US Proceedings;

"US Plan" shall have the meaning ascribed thereto in the Recitals;

"US Proceedings" shall have the meaning ascribed thereto in the Recitals; and

"Voting Claim" means the amount of the Affected Claims of the Ordinary Creditors, the Noteholder Creditors and the Secured Lenders as determined for voting purposes in accordance with the provisions of the Claims Process Order, the Meeting Order and the Plan.

1.2 Certain Rules of Interpretation

For the purposes of the Plan:

(a) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions;

(b) any reference in the Plan to an Order or an existing document or exhibit filed or to be filed means such document or exhibit as it may have been or may be amended, modified, or supplemented;

(c) unless otherwise specified, all references to currency are to Canadian Dollars;

(d) the division of the Plan into "articles" and "sections" and the insertion of a table of contents are for convenience of reference only and do not affect the construction or interpretation of the Plan, nor are the descriptive headings of "articles" and "sections" intended as complete or accurate descriptions of the content thereof;

(e) the use of words in the singular or plural, or with a particular gender, including a definition, shall not limit the scope or exclude the application of any provision of the Plan or a Schedule hereto to such Person (or Persons) or circumstances as the context otherwise permits;

(f) the words "includes" and "including" and similar terms of inclusion shall not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather shall mean "includes but is not limited to" and "including but not limited to", so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive;

(g) unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean local time in Calgary, Alberta (Mountain Time) and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day;

(h) unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day;

(i) unless otherwise provided, any reference to the US Bankruptcy Code and to a statute or other enactment of parliament or a legislature includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation;

(j) references to a specified "article" or "section" shall, unless something in the subject matter or context is inconsistent therewith, be construed as references to that specified Article or Section of the Plan, whereas the terms "the Plan", "hereof", "herein", "hereto", "hereunder" and similar expressions shall be deemed to refer generally to the Plan and not to any particular "article", "section" or other portion of the Plan and include any documents supplemental hereto; and

(k) the word "or" is not exclusive.

1.3 Successors and Assigns

The Plan shall be binding upon and shall enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any Person or Party named or referred to in the Plan.

1.4 Governing Law

The Plan shall be governed by and construed in accordance with the laws of Alberta and the federal laws of Canada applicable therein. All questions as to the interpretation of or application of the Plan and all proceedings taken in connection with the Plan and its provisions shall be subject to the jurisdiction of the Alberta Court.

1.5 Schedule

The following is the Schedule to the Plan, which is incorporated by reference into the Plan and forms a part of it:

Schedule "A"	Company Benefit Plans

ARTICLE 2
PURPOSE AND EFFECT OF THE PLAN AND OPERATIONS

2.1 Purpose

The purpose of the Plan is:

(a) to restructure the balance sheet of the Company and certain inter-company indebtedness;

(b) to effect a compromise and settlement of all Affected Claims as finally determined in accordance with the Claims Process, the Claims Process Order, the Meeting Order and the Plan;

(c) to enable the Company to continue its Business as a going concern from and after the Plan Implementation Date; and

(d) to safeguard substantial employment;

in the expectation that all Persons with an economic interest in the Company will derive a greater benefit from the implementation of the Plan than would result from a bankruptcy of the Company. The Plan will be implemented in conjunction with the US Plan, the SemCAMS Plan and the SemCanada Energy Distribution Plan.

2.2 Persons Affected

The Plan provides for a compromise of the Affected Claims, including the Lenders' Total Claim and the Claims of the Noteholder Creditors and the Ordinary Creditors, and a restructuring of the Business of the Company. The Plan will become effective at the Effective Time on the Plan Implementation Date and shall be binding on and enure to the benefit of the Company, the Affected Creditors, all holders of the SemCrude Shares, past and present directors or officers of the Company and all other Persons named or referred to in, or subject to, the Plan.

2.3 Persons Not Affected

For greater certainty, the Plan does not affect the Unaffected Creditors with respect to and to the extent of their Unaffected Claims and Unaffected Plan Closing Claims. Subject to Section 3.12, nothing in the Plan shall affect the Company's rights and defences, both legal and equitable, with respect to any Unaffected Claims or Unaffected Plan Closing Claims, other than the Lenders' Secured Claim, including, but not limited to, all rights with respect to legal and equitable defences or entitlements to set-offs or recoupments against such Unaffected Claims and Unaffected Plan Closing Claims.

2.4 Business Operations

The Company shall continue to operate its business during the CCAA Proceedings in the ordinary course of business and in a prudent manner consistent with its business practices and policies under which it has been operating since the Filing Date.

ARTICLE 3
CLASSIFICATION OF CREDITORS, VOTING CLAIMS AND RELATED MATTERS

3.1 Claims of Affected Creditors

For the purposes of considering and voting on the Plan, the Affected Creditors shall constitute a single class, the "**Affected Creditors' Class**".

3.2 Claims of the Ordinary Creditors

Ordinary Creditors shall:

(a) prove their Claims in accordance with the Claims Process;

(b) be entitled to vote their Voting Claims at the Creditors' Meeting in respect of the Plan; and

(c) receive the rights and distributions provided for under and pursuant to the Plan.

3.3 Claims of the Secured Lenders

Secured Lenders shall:

(a) be entitled to receive payment in full of the Lenders' Secured Claim;

(b) subject to Section 5.7 hereof, be deemed to have a Voting Claim in the amount of the Lenders' Total Claim less $145,000,000;

(c) be entitled to receive distributions from the US Debtors in accordance with the US Plan without affecting their rights under the Plan;

(d) be deemed to have waived their rights to, and shall not be entitled to, receive distributions provided for under and pursuant to the Plan in respect of the Lenders' Unsecured Claim; and

(e) subject to Section 5.7 hereof, in respect of votes cast by the Secured Lenders for or against the US Plan, have such votes be deemed to be votes of the Secured Lenders in the Affected Creditors' Class in respect of the Plan.

3.4 Claims of the Noteholder Creditors

Noteholder Creditors shall:

(a) subject to Section 5.7 hereof, be deemed to have a Proven Claim as calculated based on proven claims of the Noteholder Creditors against the US Debtors

recognized for purposes of the US Plan in accordance with the process to determine the Noteholder Creditors' voting claims in the US Proceedings;

(b) be deemed to have waived their rights to, and shall not be entitled to, receive distributions provided for under and pursuant to the Plan;

(c) be entitled to receive distributions from the US Debtors in accordance with the US Plan without affecting their rights under the Plan; and

(d) subject to Section 5.7 hereof, in respect of votes cast by the Noteholder Creditors for or against the US Plan, have such votes be deemed to be votes of the Noteholder Creditors in the Affected Creditors' Class in respect of the Plan.

3.5 Claims of the Other Applicants and the US Debtors

(a) The other Applicants and the US Debtors who have Claims against the Company shall:

(i) be deemed to have waived their rights to, and shall not be entitled to, receive distributions provided for under and pursuant to the Plan; and

(ii) not be entitled to vote in respect of the Plan.

(b) SemCanada Energy shall have the obligations owing to it by the Company pursuant to the SemCanada Energy Inter-Company Debt be an Affected Claim that is compromised and released in accordance with the Plan; and

(c) The SemCrude Inter-Company Debt shall be indebtedness which shall, in the event of the insolvency or winding-up of the Company from and after the Plan Implementation Date, be subordinate in right of payment to all obligations, liabilities and indebtedness of the Company owed to any Person.

3.6 Creditors' Meeting

The Creditors' Meeting shall be held in accordance with the Plan, the Claims Process, the Meeting Order and any further Order. The only Persons entitled to attend the Creditors' Meeting are the Monitor; those Persons, including the holders of proxies, entitled to vote at the Creditors' Meeting, their legal counsel and advisors; the other Applicants; the directors, officers and legal counsel of the Company and of the other Applicants; B of A and its legal counsel and financial advisors; the Noteholder Trustee and its legal counsel and legal counsel to the unsecured creditors' committee appointed in the US Proceedings. Any other Person may be admitted on invitation of the chair of the Creditors' Meeting. Each Creditor of the Affected Creditors' Class who is entitled to vote at the Creditors' Meeting shall be entitled to one vote equal to the dollar value of its Claim determined as a Voting Claim.

3.7 Order to Establish Procedure for Valuing Voting Claims

The procedure for valuing Voting Claims and resolving disputes and entitlement to voting is set forth in the Plan and the Meeting Order. The Company and the Monitor shall have the right to seek the assistance of the Alberta Court in valuing any Voting Claim in accordance

with the Plan and the Meeting Order, if required, and to ascertain the result of any vote on the Plan.

3.8 Approval by Creditors

In order to be approved, the Plan must receive the affirmative vote in the Required Majority of the Affected Creditors' Class.

3.9 Unaffected Claims and Unaffected Plan Closing Claims

Any Creditor with an Unaffected Claim or an Unaffected Plan Closing Claim shall not be entitled to vote at the Creditors' Meeting.

3.10 Holders of SemCrude Shares

Holders of the SemCrude Shares shall continue to be the sole shareholders of the Company. Holders of the SemCrude Shares shall not be entitled to vote or receive any distributions under the Plan with respect to such SemCrude Shares.

3.11 Guarantees and Similar Covenants

No Person who has a Claim under any guarantee, surety, indemnity or similar covenant in respect of any Claim which is compromised under the Plan or who has any right to claim over in respect of or to be subrogated to the rights of any Person in respect of a Claim which is compromised under the Plan shall be entitled to any greater rights as against the Company than the Person whose Claim is compromised under the Plan.

3.12 Set-Off

(a) Subject to Section 3.12(b),the law of set-off applies to all Affected Claims.

(b) The Company shall not exercise any rights of set-off against the Secured Lenders.

ARTICLE 4
SECURED CREDITORS POOL AND ORDINARY CREDITORS' POOL

4.1 Composition of the Secured Creditors' Pool

On the Plan Implementation Date, the Company shall pay to the Monitor an amount equal to the Secured Creditors' Pool and the Monitor shall hold in escrow the Secured Creditors' Pool in a separate interest-bearing account for distribution to the holders of Secured Claims in respect of their Proven Claims pursuant to and in accordance with the Plan.

4.2 Composition of the Ordinary Creditors' Pool

On the Plan Implementation Date, the Company shall pay to the Monitor an amount equal to the Ordinary Creditors' Pool and the Monitor shall hold in escrow the Ordinary Creditors' Pool in a separate interest-bearing account for distribution to Ordinary Creditors in respect of their Proven Claims pursuant to and in accordance with the Plan.

ARTICLE 5
PROVISIONS GOVERNING DISTRIBUTIONS AND PAYMENTS

5.1 Payment to the Secured Lenders

In full satisfaction, payment, settlement, release and discharge of the Lenders' Secured Claim and the Secured Lenders' Security:

(a) on the Plan Implementation Date in accordance with the Plan, the Company shall pay to B of A, on behalf of the Secured Lenders, by way of wire transfer (in accordance with wire transfer instructions provided to the Company at least three (3) Business Days prior to the Plan Implementation Date) an amount equal to the Lenders' Secured Claim other than the amounts set out in paragraphs (e) to (i), inclusive, in the definition of Lenders' Secured Claim;

(b) following the final distribution by the Monitor to the Secured Creditors pursuant to Section 5.2, the Monitor shall pay to B of A, on behalf of the Secured Lenders, any remaining balance in the Secured Creditors' Pool (after deducting all fees and costs incurred by the Company and the Monitor on a solicitor and own client full indemnity basis in determining and resolving the amounts owed to the Secured Creditors and effecting distributions thereof);

(c) following the final distribution by the Monitor to the Ordinary Creditors pursuant to Section 5.3, the Monitor shall pay to B of A, on behalf of the Secured Lenders, any remaining balance in the Ordinary Creditors' Pool (after deducting all fees and costs incurred by the Company and the Monitor on a solicitor and own client full indemnity basis in determining and resolving the amounts owed to the Secured Creditors and effecting distributions thereof);

(d) the Company shall and shall be deemed to irrevocably direct the Monitor to remit to B of A, on behalf of the Secured Lenders, any repayments in whole or in part of the SemCAMS Secured Promissory Note or the New US Inter-Company Promissory Notes, as the case may be, in respect of the repayment received pursuant to Section 5.1(b) of the SemCAMS Plan;

(e) the Company shall remit to B of A, on behalf of the Secured Lenders, any repayments in whole or in part of the SemCAMS Secured Promissory Note or the New US Inter-Company Promissory Notes, as the case may be, in respect of those repayments received pursuant to Sections 5.3(a), 5.3(b), 5.1(c) and 5.9 of the SemCAMS Plan;

(f) following the Plan Implementation Date, if the aggregate of all unclaimed or uncashed distributions exceeds $25,000, all unclaimed or uncashed distributions shall be remitted by the Monitor to B of A, on behalf of the Secured Lenders in accordance with Section 5.9;

(g) following the Plan Implementation Date, the Company shall remit to B of A, on behalf of the Secured Lenders, the outstanding amounts of all cash deposits or

prepayments made by the Company prior to the Plan Implementation Date in respect of:

(i) power, utilities, other supplies and purchases of crude oil, condensate, butane and pipeline tariffs; and

(ii) any other cash deposits or prepayments made prior to the Plan Implementation Date in a manner that is not consistent with the ordinary course of the Company's business as conducted prior to the Filing Date;

in each case, at the time such amounts are collected or replaced by letters of credit or cash on or after the Plan Implementation Date, but in all events not later than the six-month anniversary of the Plan Implementation Date; and

(h) from time to time after the Plan Implementation Date, the Company shall remit to B of A, on behalf of the Secured Lenders, the proceeds of realization, if any, resulting from the collection of the outstanding accounts receivable from customers that are owed to the Company prior to the Filing Date and continue to remain outstanding on the Plan Implementation Date after deducting the fees and costs incurred by the Company on a solicitor and own client full indemnity basis to resolve any disputes in respect of, and to collect, such accounts receivable.

All payments required to be made to B of A, on behalf of the Secured Lenders, pursuant to this Section 5.1, unless otherwise stated herein, shall be made by the relevant Party to B of A by way of wire transfer (in accordance with wire transfer instructions provided to the relevant Party at least three (3) Business Days prior to the date of distribution). The Company and the Monitor shall have no liability or obligation to any of the Secured Lenders in respect of the payments set out in this Section 5.1 once the wire transfers to B of A have been received.

5.2 Distribution to the Secured Creditors from the Secured Creditors' Pool

The Secured Creditors' Pool shall be distributed by the Monitor, on behalf and for the account of the Company, on a Distribution Date as follows: each Secured Creditor shall receive a distribution by way of a cheque in an amount equal to the full amount of its Secured Claim, sent by prepaid ordinary mail to the last known address of such Secured Creditor or to the address for such Secured Creditor specified in the Proof of Claim filed by such Secured Creditor in full satisfaction, payment, settlement, release and discharge of its respective Secured Claim and security. For greater certainty, the aggregate distributions received by any Secured Creditor under the US Plan, this Plan, the SemCAMS Plan and the SemCanada Energy Distribution Plan cannot exceed in the aggregate the amount of such Secured Creditor's Secured Claim.

5.3 Distribution to the Ordinary Creditors

Subject to the Disputed Claims Reserve held by the Monitor in escrow, the Ordinary Creditors' Pool shall be distributed by the Monitor, on behalf and for the account of the Company, on a Distribution Date as follows: each Ordinary Creditor holding a Proven Claim shall receive a cheque from the Monitor in an amount equal to the lesser of:

(a) its Pro Rata Ordinary Creditors Amount; and

(b) an amount equal to four per cent (4%) of such Ordinary Creditor's Proven Claim;

sent by prepaid ordinary mail to the last known address for such Ordinary Creditor or to the address for such Ordinary Creditor specified in the Proof of Claim filed by such Ordinary Creditor.

5.4 Payments to Certain Unaffected Creditors

On the Plan Implementation Date, the Company shall make payments or establish adequate reserves to be held by the Monitor for any accrued amounts not yet due on behalf of those Unaffected Creditors with Unaffected Plan Closing Claims, including payment of the Lenders' Secured Claim in the amount of the Plan Cash less the aggregate of the amounts set out in paragraphs (a) to (d), inclusive, in the definition of Lenders' Secured Claim, in full satisfaction, payment settlement, release and discharge of such Unaffected Plan Closing Claims.

5.5 Claims Bar Date and Subsequent Claims Bar Date

Nothing in the Plan extends or shall be interpreted as extending or amending the Claims Bar Date or Subsequent Claims Bar Date, or gives or shall be interpreted as giving any rights to any Person in respect of Claims that have been barred or extinguished pursuant to the Claims Process.

5.6 Crown Priority Claims

Within six (6) months after the Plan Sanction Date, the Company shall pay in full to Her Majesty in Right of Canada or any province all amounts of a kind that could be subject to a demand under Section 18.2(1) of the CCAA that were outstanding on the Filing Date and which have not been paid by the Plan Implementation Date.

5.7 Currency

Unless specifically provided for in the Plan or the Plan Sanction Order, for the purposes of voting or distribution, a Claim (including Proven Claims of the Secured Lenders and the Noteholder Creditors) shall be denominated in Canadian Dollars and all payments and distributions to the Creditors on account of their Claims shall be made in Canadian Dollars. Any Claim in a currency other than Canadian Dollars must be converted to Canadian Dollars, and such amount shall be regarded as having been converted at the noon spot rate of exchange quoted by the Bank of Canada for exchanging such currency to Canadian Dollars as at the Filing Date, which rate for the conversion of US Dollars to Canadian Dollars is 1.0085.

5.8 Interest

(a) Unless otherwise specifically provided for in the Plan or the Plan Sanction Order and subject to Section 5.8(b), interest shall not accrue or be paid on Affected Claims after the Filing Date, and no holder of an Affected Claim shall be entitled to interest accruing on or after the Filing Date.

(b) Interest shall accrue on the SemCrude Inter-Company Debt up to and including the Plan Implementation Date.

5.9 Treatment of Undeliverable Distributions

If any Affected Creditor's distribution by way of cheque is returned as undeliverable or is not cashed, no further distributions to such Affected Creditor shall be made unless and until the Company and the Monitor are notified by such Affected Creditor of such Affected Creditor's current address, at which time all such distributions shall be made to such Affected Creditor without interest. All claims for undeliverable or uncashed distributions in respect of Proven Claims must be made on or before the expiration of six (6) months following the Plan Implementation Date, after which date the Proven Claims of any Affected Creditor or successor of such Affected Creditor with respect to such unclaimed or uncashed distributions shall be forever discharged and forever barred, notwithstanding any federal or provincial laws to the contrary, at which time the amount held by the Monitor in relation to the Claim shall be returned to the Company provided that if the aggregate of all such unclaimed or uncashed distributions exceeds $25,000, all unclaimed or uncashed distributions shall be remitted to B of A, on behalf of the Secured Lenders. Nothing contained in the Plan shall require the Company or the Monitor to attempt to locate any holder of a Proven Claim.

5.10 Assignment of Claims for Voting and Distribution Purposes

(a) *Assignment of Claims Prior to the Creditors' Meeting*

An Ordinary Creditor may transfer or assign the whole of its Claim prior to the Creditors' Meeting and the Company shall not be obliged to deal with any such transferee or assignee as an Ordinary Creditor in respect thereof, including allowing such transferee or assignee to vote at the Creditors' Meeting, unless and until actual notice of the transfer or assignment, together with satisfactory evidence of such transfer or assignment, has been received by the Company and the Monitor by 5:00 p.m. on the day that is at least ten (10) Business Days immediately prior to the Creditors' Meeting. Thereafter, such transferee or assignee shall, for all purposes in accordance with the Claims Process constitute an Ordinary Creditor and shall be bound by any and all notices previously given to the transferor or assignor in respect of such Claim. For greater certainty, the Company shall not recognize partial transfers or assignments of Claims.

(b) *Assignment of Claims Subsequent to the Creditors' Meeting*

An Ordinary Creditor may transfer or assign the whole of its Claim after the Creditors' Meeting (or ten (10) Business Days immediately prior thereto) and the Company shall not be obliged to make distributions to any such transferee or assignee or otherwise deal with such transferee or assignee as an Ordinary Creditor in respect thereof unless and until actual notice of the transfer or assignment, together with satisfactory evidence of such transfer or assignment, has been received by the Company and the Monitor by 5:00 p.m. on the day that is at least ten (10) Business Days immediately prior to the day on which the first distribution to Affected Creditors with Proven Claims is made. Thereafter, such transferee or assignee shall, for all purposes in accordance with the Claims Process constitute an Ordinary Creditor and shall be bound by notices given and steps in respect of such Claim. For greater certainty, the Company shall not recognize partial transfers or assignments of Claims.

5.11 Allocation of Distributions

All distributions made by the Monitor, on behalf of the Company, pursuant to the Plan shall be first in consideration for the outstanding principal amount of the Claims and secondly in consideration for accrued and unpaid interest and penalties, if any, which forms part of such Claims.

5.12 Withholding and Reporting Requirements

The Company and the Monitor shall be entitled to deduct and withhold from any distribution, payment or consideration otherwise payable to any Affected Creditor or to any Person on behalf of any Affected Creditor such amounts as the Company or the Monitor is (a) required to deduct and withhold with respect to such payment under the Income Tax Act, or any provision of federal, provincial, territorial, state, local or foreign tax law, in each case, as amended or succeeded, or (b) entitled to withhold under section 116 of the Income Tax Act or any corresponding provisions of provincial law.

To the extent that amounts are so withheld or deducted and paid over to the applicable governmental entity, such withheld or deducted amounts shall be treated for all purposes of the Plan as having been paid to such Person as the remainder of the payment in respect of which such withholding and deduction were made. Notwithstanding any other provision of the Plan: (a) each holder of a Proven Claim that is to receive a distribution, payment or other consideration pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any Tax obligations imposed by any Taxation Authority, including income, withholding and other Tax obligations, on account of such distribution, payment or other consideration and (b) no distribution, payment or other consideration shall be made to or on behalf of such holder pursuant to the Plan unless and until such holder has made arrangements satisfactory to the Monitor for the payment and satisfaction of such Tax obligations.

ARTICLE 6
PROCEDURE FOR RESOLVING DISTRIBUTIONS OF DISPUTED CLAIMS

6.1 No Distribution Pending Allowance

Notwithstanding any other provision of the Plan, no payments or distributions shall be made with respect to all or any portion of a Disputed Claim unless and to the extent it has become a Proven Claim, in whole or in part.

6.2 Disputed Claims Reserve

On the Plan Implementation Date, the Monitor shall establish and maintain the Disputed Claims Reserve from the Ordinary Creditors' Pool.

6.3 Distributions After Disputed Claims Resolved

The Monitor, on behalf of the Company, shall distribute from the Disputed Claims Reserve (after deducting all fees and costs incurred by the Company and the Monitor on a solicitor and own client full indemnity basis to resolve Disputed Claims and effect distributions) to each holder of a Disputed Claim that has subsequently become a Proven Claim, in whole or in

part, in accordance with the Claims Process and the Plan, the appropriate portion of the Pro Rata Ordinary Creditors Amount in the Disputed Claims Reserve in respect of such Claim that would have been distributed on the Distribution Date had such Claim been a Proven Claim. After all Disputed Claims have been finally determined in accordance with the Claims Process Order or a final Order has been entered in respect thereof and all fees and costs incurred by the Company and the Monitor on a solicitor and own client full indemnity basis to resolve Disputed Claims and effect distributions have been paid, any balance that remains in the Disputed Claims Reserve shall be distributed *pro rata* to the Ordinary Creditors in respect of their Proven Claims.

ARTICLE 7
COMPANY REORGANIZATION

7.1 Corporate Authorizations

The adoption, execution, delivery, implementation and consummation of all matters contemplated under the Plan involving corporate action of the Company will occur and be effective as of the Plan Implementation Date, and will be authorized and approved under the Plan and by the Alberta Court, where appropriate, as part of the Plan Sanction Order, in all respects and for all purposes without any requirement of further action by shareholders, directors or officers of the Company. All necessary approvals to take actions shall be deemed to have been obtained from the directors or the shareholders of the Company, as applicable, including the deemed passing by any class of shareholders of any resolution or special resolution and no shareholders' agreement or agreement between a shareholder and another Person limiting in any way the right to vote shares held by such shareholder or shareholders with respect to any of the steps contemplated by the Plan shall be deemed to be effective and shall have no force and effect.

7.2 Release of Guarantees by Secured Lenders and Noteholder Creditors

Subject to the obligation of the Company to pay to B of A, on behalf of the Secured Lenders, the Lenders' Secured Claim in the amount of the Plan Cash less the aggregate of the amounts set out in paragraphs (a) to (d), inclusive, in the definition of Lenders' Secured Claim, on the Plan Implementation Date, the Secured Lenders shall be deemed to have forever released and discharged the Company from its obligations as a guarantor under the Guaranty. On the Plan Implementation Date, the Noteholder Creditors shall be deemed to have forever released and discharged the Company from its obligations as a guarantor under the Note Indenture and any and all restrictions on the Company's ability to exercise and assert any rights of reimbursement, indemnity, exoneration, contribution or any other claim which it may now or hereafter have against or to any Person in connection with payments made by the Company in respect of the Guaranty and the Note Indenture under the Plan shall be forever released and discharged. For greater certainty, nothing in this Section 7.2 shall affect the Secured Lenders' entitlement to receive further distributions in accordance with and under the Plan.

7.3 Treatment of Certain Receivables

On the Plan Implementation Date and in accordance with the sequential order of steps set out in Section 7.4:

(a) the SemCrude Promissory Note shall be deemed to be assigned, in whole or in part, to the Company; and

(b) subject to the New Lenders Credit Agreement and the New Company Security Agreements, the Company shall not assign the SemCrude Promissory Note to any Person without the prior consent of B of A and unless such Person agrees to be bound by the terms of subordination set out therein.

7.4 Plan Implementation Date Transactions

The following steps and the compromises and releases to be effected in the implementation of the Plan shall occur, and be deemed to have occurred and be effected, sequentially in the following order without any further act or formality on the Plan Implementation Date beginning at the Effective Time:

(a) the SemCrude Inter-Company Debt shall be indebtedness which shall, in the event of the insolvency or winding-up of the Company from and after the Plan Implementation Date, be subordinate in right of payment to all obligations, liabilities and indebtedness of the Company owed to any Person;

(b) the Company shall:

(i) pay to the Monitor an amount equal to the Secured Creditors' Pool and the Ordinary Creditors' Pool;

(ii) establish adequate reserves to be held by the Monitor for any accrued amounts not yet due in respect of, and pay, the Unaffected Plan Closing Claims, including the Lenders' Secured Claim other than the amounts set out in paragraphs (e) to (i), inclusive, in the definition of Lenders' Secured Claim; and

(iii) make the SemCAMS Advance to SemCAMS in exchange for the receipt of the SemCAMS Secured Promissory Note and the Promissory Note Security;

pursuant to and in accordance with the Plan;

(c) the releases referred to in Section 7.2 shall become effective in accordance with the Plan;

(d) the Secured Creditors' Pool and the Ordinary Creditors' Pool shall be held by the Monitor in escrow for the benefit of the Secured Creditors (and the Secured Lenders in accordance with Section 5.1(b)) and the Ordinary Creditors, respectively, and shall be held and distributed by the Monitor in accordance with the Plan;

(e) SemCrude shall be deemed to:

(i) reduce that portion of the principal amount outstanding under the SemCrude Inter-Company Debt that is equal to the lesser of (A) the amount of the Lenders' Secured Claim and (B) the principal amount outstanding under the SemCrude Inter-Company Debt; and

(ii) assign to the Company that portion of the SemCrude Promissory Note that is equal to the balance, if any, of the Lenders' Secured Claim after the reduction under Section 7.4(e)(i) above;

in satisfaction, payment, settlement, release and discharge of, in whole or in part (as the case may be), the Company's right of indemnity against SemCrude resulting from the payment by the Company of the Lenders' Secured Claim in accordance with the Plan;

(f) each of the Charges, save and except for the Administration Charge, shall be terminated, discharged and released solely as against the Company and its present and future Property;

(g) the compromises with the Affected Creditors, including the Secured Lenders in respect of the Lenders' Total Claim and the obligations owing by the Company to SemCanada Energy pursuant to the SemCanada Energy Inter-Company Debt, and the Releases referred to in Article 8 shall become effective; and

(h) the Company shall enter into the New Lenders Credit Agreement, the New Company Guarantee and the New Company Security Agreements.

ARTICLE 8
RELEASES

8.1 Plan Releases

On the Plan Implementation Date and in accordance with the sequential order of steps set out in Section 7.4, the Company, the Monitor, B of A, the Secured Lenders, the Financial Advisor and each and every director, officer, member of any pension committee or governance council, employee and legal counsel and agents thereof in respect of the restructuring, who has acted at any time in any such capacity from and after the Filing Date (being herein referred to individually as a **"Released Party"**) 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, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, Liens and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Creditor or other Person may be entitled to assert, including any and all Claims in respect of statutory liabilities of directors, officers, members and employees of the Company and any alleged fiduciary or other duty (whether acting as a director, officer, member, employee or acting in any other capacity in connection with the administration or management of the Company's Pension Plans or otherwise), 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 the Claims, the business and affairs of the Company whenever or however conducted, the administration and/or management of the Company's Pension Plans, the Plan, the CCAA Proceedings, any Claim that has been barred or extinguished by the Claims Process Order and all Claims arising out of such actions or omissions shall be forever waived and released, all to the full extent permitted by Law; provided that nothing in the Plan shall release or discharge a Released Party from (a) any obligation created by or existing under the Plan or any related document, (b) any improper conduct identified in the US Examiner's Report for any improper conduct identified in such report, (c) any criminal, fraudulent or other wilful misconduct, (d) any claim with respect to matters set out in section 5.1(2) of the CCAA, (e) any claim to the extent it is based upon or attributable to such Released Party gaining in fact a personal profit to which such Released Party was not legally entitled, (f) any claim against a Released Party who was a director prior to the Filing Date in respect of any matter or action taken in such capacity prior to the Filing Date, (g) any action commenced by or on behalf of the Applicants subsequent to the Filing Date and prior to the Plan Implementation Date, (h) any claim resulting from any contractual obligation owed by such Person to the Applicants or (i) any claim with respect to any loan, advance or similar payment by the Company to any such Released Party. For greater certainty, nothing herein shall release a Released Party in respect of any matter or claim relating to the US Debtors or the other Applicants other than as provided for in Section 8.3 herein.

8.2 Release from the Company

On the Plan Implementation Date and in accordance with the sequential order of steps set out in Section 7.4, the Company shall forever release and discharge any rights of contribution or indemnity (other than such rights exercised by the Company in accordance with Section 7.4), or Claims in respect of such rights of contribution or indemnity, that it may have against the other Applicants and the US Debtors, including any such rights arising from any payment by the Company on account of payments made to the Secured Lenders in respect of the Lenders' Secured Claim.

8.3 Release from the Other Applicants and the US Debtors

(a) On the Plan Implementation Date and in accordance with the sequential order of steps set out in Section 7.4, the other Applicants and the US Debtors shall forever release and discharge any rights of contribution or indemnity, or Claims in respect of such rights of contribution or indemnity, that they may have against the Company, including any such rights arising from any payment by them on account of (i) payments made to the Secured Lenders in respect of the Secured Lenders Credit Agreement or guarantees in respect thereto, or (ii) payments made to any of the Noteholder Creditors in respect of the Note or guarantees in respect thereto.

(b) On the Plan Implementation Date and in accordance with the sequential order of steps set out in Section 7.4, SemCanada Energy shall be deemed to forever release and discharge the SemCanada Energy Inter-Company Debt, or Claims in respect of the SemCanada Energy Inter-Company Debt, that SemCanada Energy may have against the Company.

ARTICLE 9
COURT SANCTION, CONDITIONS PRECEDENT AND IMPLEMENTATION

9.1 Application for Plan Sanction Order

If the Required Majority of the Affected Creditors' Class approves the Plan, the Company shall apply for the Plan Sanction Order on or before the date set for the hearing for the Plan Sanction Order or such later date as the Alberta Court may set.

9.2 Plan Sanction Order

The Plan Sanction Order shall, among other things:

(a) declare that the Plan is fair and reasonable;

(b) declare that as of the Plan Implementation Date, the Plan and all associated steps, compromises, transactions, arrangements, assignments, releases and reorganizations effected thereby are approved, binding and effective as herein set out upon the Company, all Affected Creditors and all other Persons and Parties affected by the Plan;

(c) declare that the steps to be taken and the compromises and releases to be effected on the Plan Implementation Date are deemed to occur and be effected in the sequential order contemplated by Section 7.4 of the Plan on the Plan Implementation Date, beginning at the Effective Time;

(d) declare that the SemCrude Inter-Company Debt shall be indebtedness which shall, in the event of the insolvency or winding-up of the Company from and after the Plan Implementation Date, be subordinate in right of payment to all obligations, liabilities and indebtedness of the Company owed to any Person;

(e) declare that the Company is authorized to:

(i) pay to the Monitor an amount equal to the Secured Creditors' Pool and the Ordinary Creditors' Pool;

(ii) establish adequate reserves to be held by the Monitor for any accrued amounts not yet due in respect of, and pay, the Unaffected Plan Closing Claims, including the Lenders' Secured Claim other than the amounts set out in paragraphs (e) to (i), inclusive, in the definition of Lenders' Secured Claim; and

(iii) make the SemCAMS Advance to SemCAMS in exchange for the receipt of the SemCAMS Secured Promissory Note and the Promissory Note Security;

pursuant to and in accordance with the Plan;

(f) declare that the SemCAMS Advance made by the Company to SemCAMS, the issuance of the SemCAMS Secured Promissory Note by SemCAMS to the

Company and the granting of the Promissory Note Security by SemCAMS to the Company shall be transactions between the Parties who are deemed to be dealing at arm's length effected at fair market value;

(g) declare that the releases referred to in Section 7.2 shall become effective in accordance with the Plan;

(h) declare that SemCrude shall be deemed to:

(i) reduce that portion of the principal amount outstanding under the SemCrude Inter-Company Debt that is equal to the lesser of (A) the amount of the Lenders' Secured Claim and (B) the principal amount outstanding under the SemCrude Inter-Company Debt; and

(ii) assign to the Company that portion of the SemCrude Promissory Note that is equal to the balance, if any, of the Lenders' Secured Claim after the reduction under Section 9.2(h)(i) above;

in satisfaction, payment, settlement, release and discharge of, in whole or in part (as the case may be), the Company's right of indemnity against SemCrude resulting from the payment by the Company of the Lenders' Secured Claim in accordance with the Plan;

(i) declare that subject to the New Lenders Credit Agreement and the New Company Security Agreements, the Company shall not assign the SemCrude Promissory Note to any Person without the prior consent of B of A and unless such Person agrees to be bound by the terms of subordination set out therein;

(j) declare that any rights of contribution or indemnity (other than such rights exercised by the Company in accordance with Section 7.4), or Claims in respect of such rights of contribution or indemnity, that the Company may have against the other Applicants and the US Debtors, including any such rights arising from any payment by the Company on account of payments made to the Secured Lenders in respect of the Lenders' Secured Claim shall be forever released and discharged;

(k) declare that any rights of contribution or indemnity, or Claims in respect of such rights of contribution or indemnity, that the other Applicants and the US Debtors may have against the Company, including any such rights arising from any payment by them on account of (i) payments made to the Secured Lenders in respect of the Secured Lenders Credit Agreement or guarantees in respect thereto, or (ii) payments made to any of the Noteholder Creditors in respect of the Note or guarantees in respect thereto shall be forever released and discharged;

(l) terminate and discharge the Charges solely with respect to the Company and its present and future Property on the Plan Implementation Date, except for the Administration Charge;

(m) amend the Amended and Restated Initial Order to provide that from and after the Plan Implementation Date, in respect of the Company, the Administration Charge shall apply only to the Secured Creditors' Pool, the Ordinary Creditors' Pool and the Disputed Claims Reserve;

(n) compromise, discharge and release the Company from any and all Affected Claims of any nature in accordance with the Plan, including the Affected Claims of the Secured Lenders and the Noteholder Creditors, and declare that the ability of any Person to proceed against the Company in respect of or relating to any Affected Claims shall be forever discharged and restrained, and all proceedings with respect to, in connection with or relating to such Affected Claims be permanently stayed, subject only to the right of Affected Creditors to receive distributions pursuant to the Plan in respect of their Affected Claims;

(o) declare that SemCanada Energy shall be deemed to forever release and discharge the SemCanada Energy Inter-Company Debt, or Claims in respect of the SemCanada Energy Inter-Company Debt, that SemCanada Energy may have against the Company;

(p) discharge and extinguish all Liens, including all security registrations against the Company in favour of any Affected Creditor;

(q) declare that any Claims for which a Proof of Claim has not been filed by the Claims Bar Date or the Subsequent Claims Bar Date, as applicable, shall be forever barred and extinguished;

(r) declare that the stay of proceedings under the Amended and Restated Initial Order is extended in respect of the Company to, and including, the Plan Implementation Date;

(s) declare that, subject to the performance by the Company of its obligations under the Plan, all obligations, agreements or leases to which the Company is a Party shall be and remain in full force and effect, unamended, as at the Plan Implementation Date, unless repudiated or deemed to be repudiated by the Company pursuant to the Amended and Restated Initial Order, and no Party to any such obligation or agreement shall on or following the Plan Implementation Date, accelerate, terminate, refuse to renew, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise (or purport to enforce or exercise) any right or remedy under or in respect of any such obligation or agreement, by reason:

(i) of any event which occurred prior to, and not continuing after, the Plan Implementation Date or which is or continues to be suspended or waived under the Plan, which would have entitled any other party thereto to enforce those rights or remedies;

(ii) that the Company or the US Debtors have sought or obtained relief or have taken steps as part of the Plan or under the CCAA or as part of the US Plan or under the US Bankruptcy Code;

(iii) of any default or event of default arising as a result of the financial condition or insolvency of the Company;

(iv) of the effect upon the Company of the completion of any of the transactions contemplated under the Plan; or

(v) of any compromises, settlements, restructurings or reorganizations effected pursuant to the Plan;

(t) stay the commencing, taking, applying for or issuing or continuing any and all steps or proceedings, including, without limitation, administrative hearings and orders, declarations or assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against any Released Party in respect of all Claims and any other matter released pursuant to Article 8 herein;

(u) authorize the Company to execute the New Lenders Credit Agreement, the New Company Guarantee (if any) and the New Company Security Agreements and to grant the security interests contemplated by the New Company Security Agreements, which shall be subordinate to the Administration Charge;

(v) authorize the Company to execute the Second Lien Term Loan Facility, any security granted in respect of the Second Lien Term Loan Facility, and any other documents or agreements contemplated under the US Plan provided that the US Plan contemplates that the Company execute such documentation;

(w) authorize the Monitor to perform its functions and fulfil its obligations under the Plan to facilitate the implementation of the Plan;

(x) declare that all distributions and payments by the Monitor to the Secured Creditors and the Ordinary Creditors under the Plan are for the account of the Company and the fulfillment of its obligations under the Plan;

(y) declare that upon completion by the Monitor of its duties in respect of the Company pursuant to the CCAA and the Orders, including, without limitation, the Monitor's duties in respect of the Claims Process and distributions made by the Monitor in accordance with the Plan, the Monitor may file with the Court a certificate of Plan termination stating that all of its duties in respect of the Company pursuant to the CCAA and the Orders have been completed and thereupon, Ernst & Young Inc. shall be deemed to be discharged from its duties as Monitor of the Company and the Administration Charge shall be terminated and released; and

(z) declare that the Company, the Monitor and B of A may apply to the Alberta Court for advice and direction in respect of any matter arising from or under the Plan.

9.3 Conditions Precedent to the Implementation of a Plan

The implementation of the Plan shall be conditional upon the fulfillment of the following conditions on or prior to the Plan Implementation Date, as the case may be:

(a) *Plan Approval*

Prior to the Plan Implementation Date, the Plan shall be approved by the Required Majority of the Affected Creditors' Class.

(b) *Regulatory Approvals*

Prior to the Plan Implementation Date, the receipt of all applicable governmental, regulatory and judicial consents, orders and any and all filings with all governmental authorities and other regulatory authorities having jurisdiction, in each case to the effect deemed necessary or desirable by the Company for the completion of the transactions contemplated by the Plan or any aspect thereof, including, without limitation, approvals required under the CA, ICA and CTA, to the extent required.

(c) *Plan Sanction Order*

Prior to the Plan Implementation Date, the Alberta Court shall have granted the Plan Sanction Order in form and substance satisfactory to the Company, acting reasonably.

(d) *US Plan Implementation*

On the Plan Implementation Date, the US Plan becomes effective concurrently with the Plan.

(e) *Implementation of the SemCAMS Plan and the SemCanada Energy Distribution Plan*

On the Plan Implementation Date, the SemCAMS Plan and the SemCanada Energy Distribution Plan are being implemented on the same date.

9.4 Monitor's Certificate

Upon the satisfaction of the conditions set out in Section 9.3, the Company shall so advise the Monitor in writing and the Monitor shall deliver to the Company a certificate stating that the Plan Implementation Date has occurred. Following the Plan Implementation Date, the Monitor shall file such certificate with the Alberta Court.

9.5 Implementation Provisions

If the conditions contained in Section 9.3 are not satisfied within three (3) months of the Plan Sanction Date, unless the Alberta Court extends such period, the Plan and the Plan Sanction Order shall cease to have any further force or effect and will not be binding on any Person.

ARTICLE 10
POST PLAN IMPLEMENTATION DATE TRANSACTIONS

10.1 Post Plan Implementation Date Transactions

(a) Following the Plan Implementation Date, New Holdco shall from time to time, monitor the capital structure of the Company, and may and may cause each of its respective subsidiaries (whether such subsidiaries are firms, corporations, limited or unlimited liability companies, general or limited partnerships, associations, trusts, unincorporated organizations or joint ventures) to cooperate with each other in structuring, planning or implementing any reorganization of the business, operations, assets or shareholdings of the Company to capitalize any or all inter-company debts owing by the Company to an affiliate (as such term is defined in the Income Tax Act).

(b) Following the Plan Implementation Date, the Company may:

(i) convert its status from an unlimited liability company to a corporation with limited liability under the laws of Nova Scotia; or

(ii) file a US tax election in order to be treated as a corporation for US tax purposes.

ARTICLE 11
GENERAL

11.1 Binding Effect

On the Plan Implementation Date:

(a) the Plan will become effective;

(b) the treatment of Affected Claims under the Plan shall be final and binding for all purposes and enure to the benefit of the Company, all Affected Creditors, all holders of the SemCrude Shares, the past and present directors or officers of the Company, and all other Persons and Parties named or referred to in, or subject to, the Plan and their respective heirs, executors, administrators and other legal representatives, successors and assigns;

(c) all Affected Claims other than:

(i) the Claims of SemCrude with respect to the SemCrude Inter-Company Debt to the extent not reduced pursuant to Section 7.4(e); and

(ii) the obligations to make distributions in respect of such Affected Claims in the manner and to the extent provided for in the Plan;

shall be forever discharged and released;

(d) each Affected Creditor and each holder of the SemCrude Shares will be deemed to have consented and agreed to all of the provisions of the Plan, in its entirety; and

(e) each Affected Creditor shall be deemed to have executed and delivered to the Company all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety.

11.2 Waiver of Defaults

From and after the Plan Implementation Date, all Persons shall be deemed to have waived any and all defaults of the Company then existing or previously committed by the Company, or caused by the Company, any of the provisions in the Plan or steps contemplated in the Plan, or non-compliance with any covenant, warranty, representation, term, provision, condition or obligation, expressed or implied, in any contract, instrument, credit document, lease, guarantee, agreement for sale or other agreement, written or oral, and any and all amendments or supplements thereto, existing between such Person and the Company and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under any such agreement shall be deemed to have been rescinded and of no further force or effect, provided that nothing shall be deemed to excuse the Company from performing its obligations under the Plan or be a waiver of defaults by the Company under the Plan and the related documents. This section does not affect the rights of any Person to pursue any recoveries for a Claim that may be obtained from a guarantor (other than the Company) and any security granted by such guarantor. For greater certainty, the Plan does not affect or compromise any claim which an Affected Creditor may have against any of the Applicants (other than the Company) or the US Debtors.

11.3 Deeming Provisions

In the Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

11.4 Non-Consummation

The Company reserves the right to revoke or withdraw the Plan at any time prior to the approval of the US Plan at the US Confirmation Hearing (a) if the US Plan has been revoked or withdrawn, (b) if the US Plan is not approved by the requisite majority of creditors of the US Debtors pursuant to the US Bankruptcy Code in a manner that permits the US Plan to be implemented, or (c) with the prior written consent of B of A. If the Company revokes or withdraws the Plan as provided above, or if the Plan Sanction Order is not issued within the period provided for in Section 9.5 hereof, (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan including the fixing or limiting to an amount certain any Claim or Affected Creditors' Class, any document or agreement executed pursuant to the Plan shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against the Company or any other Person; (ii) prejudice in any manner the rights of the Company or any other Person in any further proceedings involving the Company; or (iii) constitute an admission of any sort by the Company or any other Person.

11.5 Modification of Plan

(a) Subject to the prior consent of B of A, acting reasonably, the Company reserves the right, at any time and from time to time, to amend, restate, modify and/or supplement the Plan, provided that any such amendment, restatement, modification or supplement must be contained in a written document which is filed with the Alberta Court and (i) if made prior to the Creditors' Meeting, communicated to the Affected Creditors in the manner required by the Alberta Court (if so required); and (ii) if made following the Creditors' Meeting, approved by the Alberta Court following notice to the Affected Creditors.

(b) Notwithstanding Section 11.5(a), any amendment, restatement, modification or supplement may be made by the Company with the prior consent of the Monitor and B of A, acting reasonably, and pursuant to an Order following the Plan Sanction Date, provided that it concerns a matter which, in the opinion of the Company, acting reasonably, is of an administrative nature required to better give effect to the implementation of the Plan and the Plan Sanction Order or to cure any errors, omissions or ambiguities and is not materially adverse to the financial or economic interests of the Affected Creditors.

(c) Any amended, restated, modified or supplementary plan or plans of arrangement and reorganization filed with the Alberta Court and, if required by this Section, approved by the Alberta Court with the prior consent of B of A, acting reasonably, shall, for all purposes, be and be deemed to be a part of and incorporated in the Plan.

11.6 Paramountcy

Except with respect to the Unaffected Claims and Unaffected Plan Closing Claims, from and after the Effective Time on the Plan Implementation Date, any conflict between the Plan and the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed or implied, of any contract, mortgage, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, bylaws of the Company, lease or other agreement, written or oral and any and all amendments or supplements thereto existing between one or more of the Affected Creditors and the Company as at the Plan Implementation Date will be deemed to be governed by the terms, conditions and provisions of the Plan and the Plan Sanction Order, which shall take precedence and priority.

11.7 Severability of Plan Provisions

If, prior to the Plan Sanction Date, any term or provision of the Plan is held by the Alberta Court to be invalid, void or unenforceable, at the request of the Company and subject to the prior consent of B of A, acting reasonably, the Alberta Court shall have the power to either (a) sever such term or provision from the balance of the Plan and provide the Company with the option to proceed with the implementation of the balance of the Plan as of and with effect from the Plan Implementation Date, or (b) alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alternation or

interpretation, and provided that the Company proceeds with the implementation of the Plan, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation.

11.8 Responsibilities of the Monitor

The Monitor is acting in its capacity as Monitor in the CCAA Proceedings and the Plan with respect to the Company and will not be responsible or liable for any obligations of the Company.

11.9 Different Capacities

Persons who are affected by the Plan may be affected in more than one capacity. Unless expressly provided herein to the contrary, a Person will be entitled to participate hereunder in each such capacity. Any action taken by a Person in one capacity will not affect such Person in any other capacity, unless expressly agreed by the Person in writing or unless its Claims overlap or are otherwise duplicative.

11.10 Notices

Any notice of other communication to be delivered hereunder must be in writing and refer to the Plan and may, subject as hereinafter provided, be made or given by personal delivery, ordinary mail or by facsimile addressed to the respective Parties as follows:

(a) If to the Company:

SemCanada Crude Company
1000, 530 – 8th Avenue SW
Calgary, AB T2P 3S8
Attention: Brent Brown
Fax: (403) 213-6236

with a copy to:

Osler, Hoskin & Harcourt LLP
2500, 450 -1st Street SW
Calgary, AB T2P 5H1
Attention: A. Robert Anderson / Rupert H. Chartrand
Fax: (403) 260-7024 / (416) 862-6666

(b) If to a Creditor:

to the last known address or facsimile number for such Creditor or to the address or facsimile number for such Creditor specified in the Proof of Claim filed by such Creditor;

(c) If to the Monitor:

Ernst & Young Inc.
Ernst & Young Tower
1000, 440-2nd Avenue S.W.
Calgary, AB T2P 5E9
Attention: Neil Narfason
Fax: (403) 290-4265

with a copy to:

Borden Ladner Gervais LLP
1000 Canterra Tower
400 Third Avenue S.W.
Calgary, AB T2P 4H2
Attention: Patrick T. McCarthy / Josef G. A. Kruger
Fax: (403) 266-1395

or to such other address as any Party may from time to time notify the others in accordance with this Section. Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or sending by other means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered, faxed or sent before 5:00 p.m. on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

11.11 Further Assurances

Each of the Persons named or referred to in, or subject to, the Plan will execute and deliver all such documents and instruments and do all such acts and things as may be necessary or desirable to carry out the full intent and meaning of the Plan and to give effect to the transactions contemplated herein.

DATED as of the 24th day of July, 2009.

SCHEDULE "A"

COMPANY BENEFIT PLANS

1. Registered Pension Plan (as defined in Plan of Arrangement and Reorganization)
2. Supplemental Pension Plan (as defined in Plan of Arrangement and Reorganization)
3. Savings Plan (Investment options with Sun Life)
4. Core Health Care Dental Program (Sun Life)
5. Core Health Care Program (Sun Life)
6. Enhanced Dental/Vision Program (Sun Life – optional employee paid)
7. Elective Account (i.e., healthcare spending account)
8. Out of Province Emergency Medical Travel Assistance (Sun Life)
9. Life Insurance - Basic and Optional coverage (Sun Life)
10. Long Term Disability (Sun Life)
11. Short Term Disability (Self-Insured)
12. Accidental Life and Dismemberment – Basic and Optional Coverage (ACE/INA)
13. Employee Business Travel Insurance (ACE/INA)
14. Employee Family Assistance (Sykes Assistance Services Corporation)
15. Tuition Reimbursement
16. Matching Gift Plan (Matching of employee charitable donations)

Action No. 0801-08510 2009

IN THE COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL DISTRICT OF CALGARY

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEMCANADA CRUDE COMPANY, SEMCAMS ULC, SEMCANADA ENERGY COMPANY, A.E. SHARP LTD., CEG ENERGY OPTIONS, INC. and 1380331 ALBERTA ULC

SEMCANADA CRUDE COMPANY PLAN OF ARRANGEMENT AND REORGANIZATION

OSLER, HOSKIN & HARCOURT LLP
Barristers and Solicitors
450 – 1st Street S.W.
Calgary, Alberta
T2P 5H1
A. Robert Anderson, Q.C. / Cynthia L. Spry
Telephone: (403) 260-7004 / 7023
Facsimile: (403) 260-7024

TAB 6

2008 CarswellOnt 4811, 2008 ONCA 587, 45 C.B.R. (5th) 163, 47 B.L.R. (4th) 123, 296 D.L.R. (4th) 135, 240 O.A.C. 245, 92 O.R. (3d) 513

H
2008 CarswellOnt 4811

ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.

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

AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT INVOLVING METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS II CORP., METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS III CORP., METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS V CORP., METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS XI CORP., METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS XII CORP., 4446372 CANADA INC. AND 6932819 CANADA INC., TRUSTEES OF THE CONDUITS LISTED IN SCHEDULE "A" HERETO

THE INVESTORS REPRESENTED ON THE PAN-CANADIAN INVESTORS COMMITTEE FOR THIRD-PARTY STRUCTURED ASSET-BACKED COMMERCIAL PAPER LISTED IN SCHEDULE "B" HERETO (Applicants / Respondents in Appeal) and METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS II CORP., METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS III CORP., METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS V CORP., METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS XI CORP., METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS XII CORP., 4446372 CANADA INC. AND 6932819 CANADA INC., TRUSTEES OF THE CONDUITS LISTED IN SCHEDULE "A" HERETO (Respondents / Respondents in Appeal) and AIR TRANSAT A.T. INC., TRANSAT TOURS CANADA INC., THE JEAN COUTU GROUP (PJC) INC., AÉROPORTS DE MONTRÉAL INC., AÉROPORTS DE MONTRÉAL CAPITAL INC., POMERLEAU ONTARIO INC., POMERLEAU INC., LABOPHARM INC., DOMTAR INC., DOMTAR PULP AND PAPER PRODUCTS INC., GIRO INC., VÊTEMENTS DE SPORTS R.G.R. INC., 131519 CANADA INC., AIR JAZZ LP, PETRIFOND FOUNDATION COMPANY LIMITED, PETRIFOND FOUNDATION MIDWEST LIMITED, SERVICES HYPOTHÉCAIRES LA PATRIMONIALE INC., TECSYS INC. SOCIÉTÉ GÉNÉRALE DE FINANCEMENT DU QUÉBEC, VIBROSYSTM INC., INTERQUISA CANADA L.P., REDCORP VENTURES LTD., JURA ENERGY CORPORATION, IVANHOE MINES LTD., WEBTECH WIRELESS INC., WYNN CAPITAL CORPORATION INC., HY BLOOM INC., CARDACIAN MORTGAGE SERVICES, INC., WEST ENERGY LTD., SABRE ENERTY LTD., PETROLIFERA PETROLEUM LTD., VAQUERO RESOURCES LTD. and STANDARD ENERGY INC. (Respondents / Appellants)

Ontario Court of Appeal

J.I. Laskin, E.A. Cronk, R.A. Blair JJ.A.

2008 CarswellOnt 4811, 2008 ONCA 587, 45 C.B.R. (5th) 163, 47 B.L.R. (4th) 123, 296 D.L.R. (4th) 135, 240 O.A.C. 245, 92 O.R. (3d) 513

Heard: June 25-26, 2008
Judgment: August 18, 2008[FN*]
Docket: CA C48969

Proceedings: affirming *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 2008 CarswellOnt 3523, 43 C.B.R. (5th) 269 (Ont. S.C.J. [Commercial List])

Counsel: Benjamin Zarnett, Frederick L. Myers for Pan-Canadian Investors Committee

Aubrey E. Kauffman, Stuart Brotman for 4446372 Canada Inc., 6932819 Canada Inc.

Peter F.C. Howard, Samaneh Hosseini for Bank of America N.A., Citibank N.A., Citibank Canada, in its capacity as Credit Derivative Swap Counterparty and not in any other capacity, Deutsche Bank AG, HSBC Bank Canada, HSBC Bank USA, National Association, Merrill Lynch International, Merill Lynch Capital Services, Inc., Swiss Re Financial Products Corporation, UBS AG

Kenneth T. Rosenberg, Lily Harmer, Max Starnino for Jura Energy Corporation, Redcorp Ventures Ltd.

Craig J. Hill, Sam P. Rappos for Monitors (ABCP Appeals)

Jeffrey C. Carhart, Joseph Marin for Ad Hoc Committee, Pricewaterhouse Coopers Inc., in its capacity as Financial Advisor

Mario J. Forte for Caisse de Dépôt et Placement du Québec

John B. Laskin for National Bank Financial Inc., National Bank of Canada

Thomas McRae, Arthur O. Jacques for Ad Hoc Retail Creditors Committee (Brian Hunter, et al)

Howard Shapray, Q.C., Stephen Fitterman for Ivanhoe Mines Ltd.

Kevin P. McElcheran, Heather L. Meredith for Canadian Banks, BMO, CIBC RBC, Bank of Nova Scotia, T.D. Bank

Jeffrey S. Leon for CIBC Mellon Trust Company, Computershare Trust Company of Canada, BNY Trust Company of Canada, as Indenture Trustees

Usman Sheikh for Coventree Capital Inc.

2008 CarswellOnt 4811, 2008 ONCA 587, 45 C.B.R. (5th) 163, 47 B.L.R. (4th) 123, 296 D.L.R. (4th) 135, 240 O.A.C. 245, 92 O.R. (3d) 513

Allan Sternberg, Sam R. Sasso for Brookfield Asset Management and Partners Ltd., Hy Bloom Inc., Cardacian Mortgage Services Inc.

Neil C. Saxe for Dominion Bond Rating Service

James A. Woods, Sebastien Richemont, Marie-Anne Paquette for Air Transat A.T. Inc., Transat Tours Canada Inc., Jean Coutu Group (PJC) Inc., Aéroports de Montréal, Aéroports de Montréal Capital Inc., Pomerleau Ontario Inc., Pomerleau Inc., Labopharm Inc., Agence Métropolitaine de Transport (AMT), Giro Inc., Vêtements de sports RGR Inc., 131519 Canada Inc., Tecsys Inc., New Gold Inc., Jazz Air LP

Scott A. Turner for Webtech Wireless Inc., Wynn Capital Corporation Inc., West Energy Ltd., Sabre Energy Ltd., Petrolifera Petroleum Ltd., Vaquero Resources Ltd., and Standard Energy Ltd.

R. Graham Phoenix for Metcalfe & Mansfield Alternative Investments II Corp., Metcalfe & Mansfield Alternative Investments III Corp., Metcalfe & Mansfield Alternative Investments V Corp., Metcalfe & Mansfield Alternative Investments XI Corp., Metcalfe & Mansfield Alternative Investments XII Corp., Quanto Financial Corporation and Metcalfe & Mansfield Capital Corp.

Subject: Insolvency; Civil Practice and Procedure

Bankruptcy and insolvency --- Proposal — Companies' Creditors Arrangement Act — Arrangements — Approval by court — Miscellaneous issues

Releases — Parties were financial institutions, dealers and noteholders in market for Asset Backed Commercial Paper ("ABCP") — Canadian ABCP market experienced liquidity crisis — Plan of Compromise and Arrangement ("Plan") was put forward under Companies' Creditors Arrangement Act ("CCAA") — Plan included releases for claims against banks and dealers in negligence, misrepresentation and fraud, with "carve out" allowing fraudulent misrepresentations claims — Noteholders voted in favour of Plan — Minority noteholders ("opponents") opposed Plan based on releases — Applicants' application for approval of Plan was granted — Opponents brought application for leave to appeal and appeal from that decision — Application granted; appeal dismissed — CCAA permits inclusion of third party releases in plan of compromise or arrangement to be sanctioned by court where those releases were reasonably connected to proposed restructuring — It is implicit in language of CCAA that court has authority to sanction plans incorporating third-party releases that are reasonably related to proposed restructuring — CCAA is supporting framework for resolution of corporate insolvencies in public interest — Parties are entitled to put anything in Plan that could lawfully be incorporated into any contract — Plan of compromise or arrangement may propose that creditors agree to compromise claims against debtor and to release third parties, just as any debtor and creditor might agree to such terms in contract between them — Once statutory mechanism regarding voter approval and court

sanctioning has been complied with, plan becomes binding on all creditors.

Bankruptcy and insolvency --- Practice and procedure in courts — Appeals — To Court of Appeal — Availability — Miscellaneous cases

Leave to appeal — Parties were financial institutions, dealers and noteholders in market for Asset Backed Commercial Paper ("ABCP") — Canadian ABCP market experienced liquidity crisis — Plan of Compromise and Arrangement ("Plan") was put forward under Companies' Creditors Arrangement Act ("CCAA") — Plan included releases for claims against banks and dealers in negligence, misrepresentation and fraud, with "carve out" allowing fraudulent misrepresentations claims — Noteholders voted in favour of Plan — Minority noteholders ("opponents") opposed Plan based on releases — Applicants' application for approval of Plan was granted — Opponents brought application for leave to appeal and appeal from that decision — Application granted; appeal dismissed — Criteria for granting leave to appeal in CCAA proceedings was met — Proposed appeal raised issues of considerable importance to restructuring proceedings under CCAA Canada-wide — These were serious and arguable grounds of appeal and appeal would not unduly delay progress of proceedings.

Cases considered by *R.A. Blair J.A.*:

Air Canada, Re (2004), 2004 CarswellOnt 1842, 2 C.B.R. (5th) 4 (Ont. S.C.J. [Commercial List]) — referred to

Anvil Range Mining Corp., Re (1998), 1998 CarswellOnt 5319, 7 C.B.R. (4th) 51 (Ont. Gen. Div. [Commercial List]) — referred to

Bell ExpressVu Ltd. Partnership v. Rex (2002), 212 D.L.R. (4th) 1, 287 N.R. 248, [2002] 5 W.W.R. 1, 166 B.C.A.C. 1, 271 W.A.C. 1, 18 C.P.R. (4th) 289, 100 B.C.L.R. (3d) 1, 2002 SCC 42, 2002 CarswellBC 851, 2002 CarswellBC 852, 93 C.R.R. (2d) 189, [2002] 2 S.C.R. 559 (S.C.C.) — considered

Canadian Airlines Corp., Re (2000), [2000] 10 W.W.R. 269, 20 C.B.R. (4th) 1, 84 Alta. L.R. (3d) 9, 9 B.L.R. (3d) 41, 2000 CarswellAlta 662, 2000 ABQB 442, 265 A.R. 201 (Alta. Q.B.) — considered

Canadian Airlines Corp., Re (2000), 2000 CarswellAlta 919, [2000] 10 W.W.R. 314, 20 C.B.R. (4th) 46, 84 Alta. L.R. (3d) 52, 9 B.L.R. (3d) 86, 2000 ABCA 238, 266 A.R. 131, 228 W.A.C. 131 (Alta. C.A. [In Chambers]) — referred to

Canadian Airlines Corp., Re (2001), 2001 CarswellAlta 888, 2001 CarswellAlta 889, 275 N.R. 386 (note), 293 A.R. 351 (note), 257 W.A.C. 351 (note) (S.C.C.) — referred to

Canadian Red Cross Society / Société Canadienne de la Croix-Rouge, Re (1998), 1998

CarswellOnt 3346, 5 C.B.R. (4th) 299, 72 O.T.C. 99 (Ont. Gen. Div. [Commercial List]) — referred to

Cineplex Odeon Corp., Re (2001), 2001 CarswellOnt 1258, 24 C.B.R. (4th) 201 (Ont. C.A.) — followed

Country Style Food Services Inc., Re (2002), 158 O.A.C. 30, 2002 CarswellOnt 1038 (Ont. C.A. [In Chambers]) — followed

Dylex Ltd., Re (1995), 31 C.B.R. (3d) 106, 1995 CarswellOnt 54 (Ont. Gen. Div. [Commercial List]) — considered

Employers' Liability Assurance Corp. v. Ideal Petroleum (1959) Ltd. (1976), 1976 CarswellQue 32, [1978] 1 S.C.R. 230, 26 C.B.R. (N.S.) 84, 75 D.L.R. (3d) 63, (sub nom. *Employers' Liability Assurance Corp. v. Ideal Petroleum (1969) Ltd.)* 14 N.R. 503, 1976 CarswellQue 25 (S.C.C.) — referred to

Fotinis Restaurant Corp. v. White Spot Ltd. (1998), 1998 CarswellBC 543, 38 B.L.R. (2d) 251 (B.C. S.C. [In Chambers]) — referred to

Guardian Assurance Co., Re (1917), [1917] 1 Ch. 431 (Eng. C.A.) — referred to

Hongkong Bank of Canada v. Chef Ready Foods Ltd. (1990), 51 B.C.L.R. (2d) 84, 1990 CarswellBC 394, 4 C.B.R. (3d) 311, (sub nom. *Chef Ready Foods Ltd. v. Hongkong Bank of Canada)* [1991] 2 W.W.R. 136 (B.C. C.A.) — considered

Muscletech Research & Development Inc., Re (2006), 25 C.B.R. (5th) 231, 2006 CarswellOnt 6230 (Ont. S.C.J.) — considered

NBD Bank, Canada v. Dofasco Inc. (1999), 1999 CarswellOnt 4077, 1 B.L.R. (3d) 1, 181 D.L.R. (4th) 37, 46 O.R. (3d) 514, 47 C.C.L.T. (2d) 213, 127 O.A.C. 338, 15 C.B.R. (4th) 67 (Ont. C.A.) — distinguished

Nova Metal Products Inc. v. Comiskey (Trustee of) (1990), 1990 CarswellOnt 139, 1 C.B.R. (3d) 101, (sub nom. *Elan Corp. v. Comiskey)* 1 O.R. (3d) 289, (sub nom. *Elan Corp. v. Comiskey)* 41 O.A.C. 282 (Ont. C.A.) — considered

Olympia & York Developments Ltd. v. Royal Trust Co. (1993), 17 C.B.R. (3d) 1, (sub nom. *Olympia & York Developments Ltd., Re)* 12 O.R. (3d) 500, 1993 CarswellOnt 182 (Ont. Gen. Div.) — referred to

Pacific Coastal Airlines Ltd. v. Air Canada (2001), 2001 BCSC 1721, 2001 CarswellBC 2943, 19 B.L.R. (3d) 286 (B.C. S.C.) — distinguished

Quebec (Attorney General) v. Bélanger (Trustee of) (1928), 1928 CarswellNat 47, [1928] A.C. 187, [1928] 1 W.W.R. 534, [1928] 1 D.L.R. 945, (sub nom. *Quebec (Attorney General) v. Larue)* 8 C.B.R. 579 (Canada P.C.) — referred to

Ravelston Corp., Re (2007), 2007 CarswellOnt 2114, 2007 ONCA 268, 31 C.B.R. (5th) 233 (Ont. C.A. [In Chambers]) — referred to

Reference re Companies' Creditors Arrangement Act (Canada) (1934), [1934] 4 D.L.R. 75, 1934 CarswellNat 1, 16 C.B.R. 1, [1934] S.C.R. 659 (S.C.C.) — considered

Reference re Refund of Dues Paid under s.47 (f) of Timber Regulations in the Western Provinces (1933), [1934] 1 D.L.R. 43, 1933 CarswellNat 47, [1933] S.C.R. 616 (S.C.C.) — referred to

Reference re Refund of Dues Paid under s.47 (f) of Timber Regulations in the Western Provinces (1935), [1935] 1 W.W.R. 607, [1935] 2 D.L.R. 1, 1935 CarswellNat 2, [1935] A.C. 184 (Canada P.C.) — considered

Rizzo & Rizzo Shoes Ltd., Re (1998), 1998 CarswellOnt 1, 1998 CarswellOnt 2, 50 C.B.R. (3d) 163, [1998] 1 S.C.R. 27, 33 C.C.E.L. (2d) 173, 154 D.L.R. (4th) 193, 36 O.R. (3d) 418 (headnote only), (sub nom. *Rizzo & Rizzo Shoes Ltd. (Bankrupt), Re)* 221 N.R. 241, (sub nom. *Rizzo & Rizzo Shoes Ltd. (Bankrupt), Re)* 106 O.A.C. 1, (sub nom. *Adrien v. Ontario Ministry of Labour)* 98 C.L.L.C. 210-006 (S.C.C.) — considered

Royal Penfield Inc., Re (2003), 44 C.B.R. (4th) 302, [2003] R.J.Q. 2157, 2003 CarswellQue 1711, [2003] G.S.T.C. 195 (Que. S.C.) — referred to

Skydome Corp., Re (1998), 1998 CarswellOnt 5914, 16 C.B.R. (4th) 125 (Ont. Gen. Div. [Commercial List]) — referred to

Society of Composers, Authors & Music Publishers of Canada v. Armitage (2000), 2000 CarswellOnt 4120, 20 C.B.R. (4th) 160, 50 O.R. (3d) 688, 137 O.A.C. 74 (Ont. C.A.) — referred to

Steinberg Inc. c. Michaud (1993), [1993] R.J.Q. 1684, 55 Q.A.C. 298, 1993 CarswellQue 229, 1993 CarswellQue 2055, 42 C.B.R. (5th) 1 (Que. C.A.) — referred to

Stelco Inc., Re (2005), 2005 CarswellOnt 6483, 15 C.B.R. (5th) 297 (Ont. S.C.J. [Commercial List]) — referred to

Stelco Inc., Re (2005), 2005 CarswellOnt 6818, 204 O.A.C. 205, 78 O.R. (3d) 241, 261 D.L.R. (4th) 368, 11 B.L.R. (4th) 185, 15 C.B.R. (5th) 307 (Ont. C.A.) — considered

Stelco Inc., Re (2006), 210 O.A.C. 129, 2006 CarswellOnt 3050, 21 C.B.R. (5th) 157 (Ont. C.A.) — referred to

T&N Ltd., Re (2006), [2007] Bus. L.R. 1411, [2007] 1 All E.R. 851, [2006] Lloyd's Rep. I.R. 817, [2007] 1 B.C.L.C. 563, [2006] B.P.I.R. 1283 (Eng. Ch. Div.) — considered

Statutes considered:

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Generally — referred to

Business Corporations Act, R.S.O. 1990, c. B.16

s. 182 — referred to

Canada Business Corporations Act, R.S.C. 1985, c. C-44

s. 192 — referred to

Code civil du Québec, L.Q. 1991, c. 64

en général — referred to

Companies Act, 1985, c. 6

s. 425 — referred to

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Generally — referred to

s. 4 — considered

s. 5.1 [en. 1997, c. 12, s. 122] — considered

s. 6 — considered

Constitution Act, 1867, (U.K.), 30 & 31 Vict., c. 3, reprinted R.S.C. 1985, App. II, No. 5

s. 91 ¶ 21 — referred to

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s. 92 — referred to

s. 92 ¶ 13 — referred to

Words and phrases considered:

arrangement

"Arrangement" is broader than "compromise" and would appear to include any scheme for reorganizing the affairs of the debtor.

APPEAL by opponents of creditor-initiated plan from judgment reported at *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 2008 CarswellOnt 3523, 43 C.B.R. (5th) 269, 47 B.L.R. (4th) 74 (Ont. S.C.J. [Commercial List]), granting application for approval of plan.

***R.A. Blair J.A.*:**

A. Introduction

1 In August 2007 a liquidity crisis suddenly threatened the Canadian market in Asset Backed Commercial Paper ("ABCP"). The crisis was triggered by a loss of confidence amongst investors stemming from the news of widespread defaults on U.S. sub-prime mortgages. The loss of confidence placed the Canadian financial market at risk generally and was reflective of an economic volatility worldwide.

2 By agreement amongst the major Canadian participants, the $32 billion Canadian market in third-party ABCP was frozen on August 13, 2007 pending an attempt to resolve the crisis through a restructuring of that market. The Pan-Canadian Investors Committee, chaired by Purdy Crawford, C.C., Q.C., was formed and ultimately put forward the creditor-initiated Plan of Compromise and Arrangement that forms the subject-matter of these proceedings. The Plan was sanctioned by Colin L. Campbell J. on June 5, 2008.

3 Certain creditors who opposed the Plan seek leave to appeal and, if leave is granted, appeal from that decision. They raise an important point regarding the permissible scope of a restructuring under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended ("CCAA"): can the court sanction a Plan that calls for creditors to provide releases to third parties who are themselves solvent and not creditors of the debtor company? They also argue that, if the answer to this question is yes, the application judge erred in holding that this Plan, with its particular releases (which bar some claims even in fraud), was fair and reasonable and therefore in sanctioning it under the CCAA.

Leave to Appeal

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4 Because of the particular circumstances and urgency of these proceedings, the court agreed to collapse an oral hearing for leave to appeal with the hearing of the appeal itself. At the outset of argument we encouraged counsel to combine their submissions on both matters.

5 The proposed appeal raises issues of considerable importance to restructuring proceedings under the CCAA Canada-wide. There are serious and arguable grounds of appeal and — given the expedited time-table — the appeal will not unduly delay the progress of the proceedings. I am satisfied that the criteria for granting leave to appeal in CCAA proceedings, set out in such cases as *Cineplex Odeon Corp., Re* (2001), 24 C.B.R. (4th) 201 (Ont. C.A.), and *Country Style Food Services Inc., Re* (2002), 158 O.A.C. 30 (Ont. C.A. [In Chambers]), are met. I would grant leave to appeal.

Appeal

6 For the reasons that follow, however, I would dismiss the appeal.

B. Facts

The Parties

7 The appellants are holders of ABCP Notes who oppose the Plan. They do so principally on the basis that it requires them to grant releases to third party financial institutions against whom they say they have claims for relief arising out of their purchase of ABCP Notes. Amongst them are an airline, a tour operator, a mining company, a wireless provider, a pharmaceuticals retailer, and several holding companies and energy companies.

8 Each of the appellants has large sums invested in ABCP — in some cases, hundreds of millions of dollars. Nonetheless, the collective holdings of the appellants — slightly over $1 billion — represent only a small fraction of the more than $32 billion of ABCP involved in the restructuring.

9 The lead respondent is the Pan-Canadian Investors Committee which was responsible for the creation and negotiation of the Plan on behalf of the creditors. Other respondents include various major international financial institutions, the five largest Canadian banks, several trust companies, and some smaller holders of ABCP product. They participated in the market in a number of different ways.

The ABCP Market

10 Asset Backed Commercial Paper is a sophisticated and hitherto well-accepted financial instrument. It is primarily a form of short-term investment — usually 30 to 90 days — typically with a low interest yield only slightly better than that available through other short-term paper

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from a government or bank. It is said to be "asset backed" because the cash that is used to purchase an ABCP Note is converted into a portfolio of financial assets or other asset interests that in turn provide security for the repayment of the notes.

11 ABCP was often presented by those selling it as a safe investment, somewhat like a guaranteed investment certificate.

12 The Canadian market for ABCP is significant and administratively complex. As of August 2007, investors had placed over $116 billion in Canadian ABCP. Investors range from individual pensioners to large institutional bodies. On the selling and distribution end, numerous players are involved, including chartered banks, investment houses and other financial institutions. Some of these players participated in multiple ways. The Plan in this proceeding relates to approximately $32 billion of non-bank sponsored ABCP the restructuring of which is considered essential to the preservation of the Canadian ABCP market.

13 As I understand it, prior to August 2007 when it was frozen, the ABCP market worked as follows.

14 Various corporations (the "Sponsors") would arrange for entities they control ("Conduits") to make ABCP Notes available to be sold to investors through "Dealers" (banks and other investment dealers). Typically, ABCP was issued by series and sometimes by classes within a series.

15 The cash from the purchase of the ABCP Notes was used to purchase assets which were held by trustees of the Conduits ("Issuer Trustees") and which stood as security for repayment of the notes. Financial institutions that sold or provided the Conduits with the assets that secured the ABCP are known as "Asset Providers". To help ensure that investors would be able to redeem their notes, "Liquidity Providers" agreed to provide funds that could be drawn upon to meet the demands of maturing ABCP Notes in certain circumstances. Most Asset Providers were also Liquidity Providers. Many of these banks and financial institutions were also holders of ABCP Notes ("Noteholders"). The Asset and Liquidity Providers held first charges on the assets.

16 When the market was working well, cash from the purchase of new ABCP Notes was also used to pay off maturing ABCP Notes; alternatively, Noteholders simply rolled their maturing notes over into new ones. As I will explain, however, there was a potential underlying predicament with this scheme.

The Liquidity Crisis

17 The types of assets and asset interests acquired to "back" the ABCP Notes are varied and complex. They were generally long-term assets such as residential mortgages, credit card receivables, auto loans, cash collateralized debt obligations and derivative investments such as credit default swaps. Their particular characteristics do not matter for the purpose of this appeal, but

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they shared a common feature that proved to be the Achilles heel of the ABCP market: because of their long-term nature there was an inherent timing mismatch between the cash they generated and the cash needed to repay maturing ABCP Notes.

18 When uncertainty began to spread through the ABCP marketplace in the summer of 2007, investors stopped buying the ABCP product and existing Noteholders ceased to roll over their maturing notes. There was no cash to redeem those notes. Although calls were made on the Liquidity Providers for payment, most of the Liquidity Providers declined to fund the redemption of the notes, arguing that the conditions for liquidity funding had not been met in the circumstances. Hence the "liquidity crisis" in the ABCP market.

19 The crisis was fuelled largely by a lack of transparency in the ABCP scheme. Investors could not tell what assets were backing their notes — partly because the ABCP Notes were often sold before or at the same time as the assets backing them were acquired; partly because of the sheer complexity of certain of the underlying assets; and partly because of assertions of confidentiality by those involved with the assets. As fears arising from the spreading U.S. sub-prime mortgage crisis mushroomed, investors became increasingly concerned that their ABCP Notes may be supported by those crumbling assets. For the reasons outlined above, however, they were unable to redeem their maturing ABCP Notes.

The Montreal Protocol

20 The liquidity crisis could have triggered a wholesale liquidation of the assets, at depressed prices. But it did not. During the week of August 13, 2007, the ABCP market in Canada froze — the result of a standstill arrangement orchestrated on the heels of the crisis by numerous market participants, including Asset Providers, Liquidity Providers, Noteholders and other financial industry representatives. Under the standstill agreement — known as the Montréal Protocol — the parties committed to restructuring the ABCP market with a view, as much as possible, to preserving the value of the assets and of the notes.

21 The work of implementing the restructuring fell to the Pan-Canadian Investors Committee, an applicant in the proceeding and respondent in the appeal. The Committee is composed of 17 financial and investment institutions, including chartered banks, credit unions, a pension board, a Crown corporation, and a university board of governors. All 17 members are themselves Noteholders; three of them also participated in the ABCP market in other capacities as well. Between them, they hold about two thirds of the $32 billion of ABCP sought to be restructured in these proceedings.

22 Mr. Crawford was named the Committee's chair. He thus had a unique vantage point on the work of the Committee and the restructuring process as a whole. His lengthy affidavit strongly informed the application judge's understanding of the factual context, and our own. He was not cross-examined and his evidence is unchallenged.

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23 Beginning in September 2007, the Committee worked to craft a plan that would preserve the value of the notes and assets, satisfy the various stakeholders to the extent possible, and restore confidence in an important segment of the Canadian financial marketplace. In March 2008, it and the other applicants sought CCAA protection for the ABCP debtors and the approval of a Plan that had been pre-negotiated with some, but not all, of those affected by the misfortunes in the Canadian ABCP market.

The Plan

a) Plan Overview

24 Although the ABCP market involves many different players and kinds of assets, each with their own challenges, the committee opted for a single plan. In Mr. Crawford's words, "all of the ABCP suffers from common problems that are best addressed by a common solution." The Plan the Committee developed is highly complex and involves many parties. In its essence, the Plan would convert the Noteholders' paper — which has been frozen and therefore effectively worthless for many months — into new, long-term notes that would trade freely, but with a discounted face value. The hope is that a strong secondary market for the notes will emerge in the long run.

25 The Plan aims to improve transparency by providing investors with detailed information about the assets supporting their ABCP Notes. It also addresses the timing mismatch between the notes and the assets by adjusting the maturity provisions and interest rates on the new notes. Further, the Plan adjusts some of the underlying credit default swap contracts by increasing the thresholds for default triggering events; in this way, the likelihood of a forced liquidation flowing from the credit default swap holder's prior security is reduced and, in turn, the risk for ABCP investors is decreased.

26 Under the Plan, the vast majority of the assets underlying ABCP would be pooled into two master asset vehicles (MAV1 and MAV2). The pooling is designed to increase the collateral available and thus make the notes more secure.

27 The Plan does not apply to investors holding less than $1 million of notes. However, certain Dealers have agreed to buy the ABCP of those of their customers holding less than the $1-million threshold, and to extend financial assistance to these customers. Principal among these Dealers are National Bank and Canaccord, two of the respondent financial institutions the appellants most object to releasing. The application judge found that these developments appeared to be designed to secure votes in favour of the Plan by various Noteholders, and were apparently successful in doing so. If the Plan is approved, they also provide considerable relief to the many small investors who find themselves unwittingly caught in the ABDP collapse.

b) The Releases

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28 This appeal focuses on one specific aspect of the Plan: the comprehensive series of releases of third parties provided for in Article 10.

29 The Plan calls for the release of Canadian banks, Dealers, Noteholders, Asset Providers, Issuer Trustees, Liquidity Providers, and other market participants — in Mr. Crawford's words, "virtually all participants in the Canadian ABCP market" — from any liability associated with ABCP, with the exception of certain narrow claims relating to fraud. For instance, under the Plan as approved, creditors will have to give up their claims against the Dealers who sold them their ABCP Notes, including challenges to the way the Dealers characterized the ABCP and provided (or did not provide) information about the ABCP. The claims against the proposed defendants are mainly in tort: negligence, misrepresentation, negligent misrepresentation, failure to act prudently as a dealer/advisor, acting in conflict of interest, and in a few cases fraud or potential fraud. There are also allegations of breach of fiduciary duty and claims for other equitable relief.

30 The application judge found that, in general, the claims for damages include the face value of the Notes, plus interest and additional penalties and damages.

31 The releases, in effect, are part of a *quid pro quo*. Generally speaking, they are designed to compensate various participants in the market for the contributions they would make to the restructuring. Those contributions under the Plan include the requirements that:

> a) Asset Providers assume an increased risk in their credit default swap contracts, disclose certain proprietary information in relation to the assets, and provide below-cost financing for margin funding facilities that are designed to make the notes more secure;
>
> b) Sponsors — who in addition have cooperated with the Investors' Committee throughout the process, including by sharing certain proprietary information — give up their existing contracts;
>
> c) The Canadian banks provide below-cost financing for the margin funding facility and,
>
> d) Other parties make other contributions under the Plan.

32 According to Mr. Crawford's affidavit, the releases are part of the Plan "because certain key participants, whose participation is vital to the restructuring, have made comprehensive releases a condition for their participation."

The CCAA Proceedings to Date

33 On March 17, 2008 the applicants sought and obtained an Initial Order under the CCAA staying any proceedings relating to the ABCP crisis and providing for a meeting of the Noteholders to vote on the proposed Plan. The meeting was held on April 25th. The vote was overwhelmingly in support of the Plan — 96% of the Noteholders voted in favour. At the instance of

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certain Noteholders, and as requested by the application judge (who has supervised the proceedings from the outset), the Monitor broke down the voting results according to those Noteholders who had worked on or with the Investors' Committee to develop the Plan and those Noteholders who had not. Re-calculated on this basis the results remained firmly in favour of the proposed Plan — 99% of those connected with the development of the Plan voted positively, as did 80% of those Noteholders who had not been involved in its formulation.

34 The vote thus provided the Plan with the "double majority" approval — a majority of creditors representing two-thirds in value of the claims — required under s. 6 of the CCAA.

35 Following the successful vote, the applicants sought court approval of the Plan under s. 6. Hearings were held on May 12 and 13. On May 16, the application judge issued a brief endorsement in which he concluded that he did not have sufficient facts to decide whether all the releases proposed in the Plan were authorized by the CCAA. While the application judge was prepared to approve the releases of negligence claims, he was not prepared at that point to sanction the release of fraud claims. Noting the urgency of the situation and the serious consequences that would result from the Plan's failure, the application judge nevertheless directed the parties back to the bargaining table to try to work out a claims process for addressing legitimate claims of fraud.

36 The result of this renegotiation was a "fraud carve-out" — an amendment to the Plan excluding certain fraud claims from the Plan's releases. The carve-out did not encompass all possible claims of fraud, however. It was limited in three key respects. First, it applied only to claims against ABCP Dealers. Secondly, it applied only to cases involving an express fraudulent misrepresentation made with the intention to induce purchase and in circumstances where the person making the representation knew it to be false. Thirdly, the carve-out limited available damages to the value of the notes, minus any funds distributed as part of the Plan. The appellants argue vigorously that such a limited release respecting fraud claims is unacceptable and should not have been sanctioned by the application judge.

37 A second sanction hearing — this time involving the amended Plan (with the fraud carve-out) — was held on June 3, 2008. Two days later, Campbell J. released his reasons for decision, approving and sanctioning the Plan on the basis both that he had jurisdiction to sanction a Plan calling for third-party releases and that the Plan including the third-party releases in question here was fair and reasonable.

38 The appellants attack both of these determinations.

C. Law and Analysis

39 There are two principal questions for determination on this appeal:

1) As a matter of law, may a CCAA plan contain a release of claims against anyone other

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than the debtor company or its directors?

2) If the answer to that question is yes, did the application judge err in the exercise of his discretion to sanction the Plan as fair and reasonable given the nature of the releases called for under it?

(1) Legal Authority for the Releases

40 The standard of review on this first issue — whether, as a matter of law, a CCAA plan may contain third-party releases — is correctness.

41 The appellants submit that a court has no jurisdiction or legal authority under the CCAA to sanction a plan that imposes an obligation on creditors to give releases to third parties other than the directors of the debtor company.[FN1] The requirement that objecting creditors release claims against third parties is illegal, they contend, because:

a) on a proper interpretation, the CCAA does not permit such releases;

b) the court is not entitled to "fill in the gaps" in the CCAA or rely upon its inherent jurisdiction to create such authority because to do so would be contrary to the principle that Parliament did not intend to interfere with private property rights or rights of action in the absence of clear statutory language to that effect;

c) the releases constitute an unconstitutional confiscation of private property that is within the exclusive domain of the provinces under s. 92 of the *Constitution Act*, 1867;

d) the releases are invalid under Quebec rules of public order; and because

e) the prevailing jurisprudence supports these conclusions.

42 I would not give effect to any of these submissions.

Interpretation, "Gap Filling" and Inherent Jurisdiction

43 On a proper interpretation, in my view, the CCAA permits the inclusion of third party releases in a plan of compromise or arrangement to be sanctioned by the court where those releases are reasonably connected to the proposed restructuring. I am led to this conclusion by a combination of (a) the open-ended, flexible character of the CCAA itself, (b) the broad nature of the term "compromise or arrangement" as used in the Act, and (c) the express statutory effect of the "double-majority" vote and court sanction which render the plan binding on *all* creditors, including those unwilling to accept certain portions of it. The first of these signals a flexible approach to the application of the Act in new and evolving situations, an active judicial role in its application and interpretation, and a liberal approach to that interpretation. The second provides

the entrée to negotiations between the parties affected in the restructuring and furnishes them with the ability to apply the broad scope of their ingenuity in fashioning the proposal. The latter afford necessary protection to unwilling creditors who may be deprived of certain of their civil and property rights as a result of the process.

44 The CCAA is skeletal in nature. It does not contain a comprehensive code that lays out all that is permitted or barred. Judges must therefore play a role in fleshing out the details of the statutory scheme. The scope of the Act and the powers of the court under it are not limitless. It is beyond controversy, however, that the CCAA is remedial legislation to be liberally construed in accordance with the modern purposive approach to statutory interpretation. It is designed to be a flexible instrument and it is that very flexibility which gives the Act its efficacy: *Canadian Red Cross Society / Société Canadienne de la Croix-Rouge, Re* (1998), 5 C.B.R. (4th) 299 (Ont. Gen. Div. [Commercial List]). As Farley J. noted in *Dylex Ltd., Re* (1995), 31 C.B.R. (3d) 106 (Ont. Gen. Div. [Commercial List]), at 111, "[t]he history of CCAA law has been an evolution of judicial interpretation."

45 Much has been said, however, about the "evolution of judicial interpretation" and there is some controversy over both the source and scope of that authority. Is the source of the court's authority statutory, discerned solely through application of the principles of statutory interpretation, for example? Or does it rest in the court's ability to "fill in the gaps" in legislation? Or in the court's inherent jurisdiction?

46 These issues have recently been canvassed by the Honourable Georgina R. Jackson and Dr. Janis Sarra in their publication "Selecting the Judicial Tool to get the Job Done: An Examination of Statutory Interpretation, Discretionary Power and Inherent Jurisdiction in Insolvency Matters,"[FN2] and there was considerable argument on these issues before the application judge and before us. While I generally agree with the authors' suggestion that the courts should adopt a hierarchical approach in their resort to these interpretive tools — statutory interpretation, gap-filling, discretion and inherent jurisdiction — it is not necessary in my view to go beyond the general principles of statutory interpretation to resolve the issues on this appeal. Because I am satisfied that it is implicit in the language of the CCAA itself that the court has authority to sanction plans incorporating third-party releases that are reasonably related to the proposed restructuring, there is no "gap-filling" to be done and no need to fall back on inherent jurisdiction. In this respect, I take a somewhat different approach than the application judge did.

47 The Supreme Court of Canada has affirmed generally — and in the insolvency context particularly — that remedial statutes are to be interpreted liberally and in accordance with Professor Driedger's modern principle of statutory interpretation. Driedger advocated that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": *Rizzo & Rizzo Shoes Ltd., Re*, [1998] 1 S.C.R. 27 (S.C.C.) at para. 21, quoting E.A. Driedger, *Construction of Statutes*, 2nd ed. (Toronto: Butterworths, 1983); *Bell ExpressVu Ltd. Partnership v. Rex*, [2002] 2 S.C.R. 559 (S.C.C.) at para. 26.

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48 More broadly, I believe that the proper approach to the judicial interpretation and application of statutes — particularly those like the CCAA that are skeletal in nature — is succinctly and accurately summarized by Jackson and Sarra in their recent article, *supra*, at p. 56:

> The exercise of a statutory authority requires the statute to be construed. The plain meaning or textualist approach has given way to a search for the object and goals of the statute and the intentionalist approach. This latter approach makes use of the purposive approach and the mischief rule, including its codification under interpretation statutes that every enactment is deemed remedial, and is to be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects. This latter approach advocates reading the statute as a whole and being mindful of Driedger's "one principle", that the words of the Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. It is important that courts first interpret the statute before them and exercise their authority pursuant to the statute, before reaching for other tools in the judicial toolbox. Statutory interpretation using the principles articulated above leaves room for gap-filling in the common law provinces and a consideration of purpose in *Québec* as a manifestation of the judge's overall task of statutory interpretation. Finally, the jurisprudence in relation to statutory interpretation demonstrates the fluidity inherent in the judge's task in seeking the objects of the statute and the intention of the legislature.

49 I adopt these principles.

50 The remedial purpose of the CCAA — as its title affirms — is to facilitate compromises or arrangements between an insolvent debtor company and its creditors. In *Hongkong Bank of Canada v. Chef Ready Foods Ltd.* (1990), 4 C.B.R. (3d) 311 (B.C. C.A.) at 318, Gibbs J.A. summarized very concisely the purpose, object and scheme of the Act:

> Almost inevitably, liquidation destroyed the shareholders' investment, yielded little by way of recovery to the creditors, and exacerbated the social evil of devastating levels of unemployment. The government of the day sought, through the C.C.A.A., to create a regime whereby the principals of the company and the creditors could be brought together under the supervision of the court to attempt a reorganization or compromise or arrangement under which the company could continue in business.

51 The CCAA was enacted in 1933 and was necessary — as the then Secretary of State noted in introducing the Bill on First Reading — "because of the prevailing commercial and industrial depression" and the need to alleviate the effects of business bankruptcies in that context: see the statement of the Hon. C.H. Cahan, Secretary of State, *House of Commons Debates (Hansard)* (April 20, 1933) at 4091. One of the greatest effects of that Depression was what Gibbs J.A. described as "the social evil of devastating levels of unemployment". Since then, courts have recognized that the Act has a broader dimension than simply the direct relations between the

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debtor company and its creditors and that this broader public dimension must be weighed in the balance together with the interests of those most directly affected: see, for example, *Nova Metal Products Inc. v. Comiskey (Trustee of)* (1990), 1 O.R. (3d) 289 (Ont. C.A.), *per* Doherty J.A. in dissent; *Skydome Corp., Re* (1998), 16 C.B.R. (4th) 125 (Ont. Gen. Div. [Commercial List]); *Anvil Range Mining Corp., Re* (1998), 7 C.B.R. (4th) 51 (Ont. Gen. Div. [Commercial List]).

52 In this respect, I agree with the following statement of Doherty J.A. in *Elan*, *supra*, at pp. 306-307:

> . . . [T]he Act was designed to serve a "broad constituency of investors, creditors and employees".[FN3] Because of that "broad constituency" the court must, when considering applications brought under the Act, *have regard not only to the individuals and organizations directly affected by the application, but also to the wider public interest*. [Emphasis added.]

Application of the Principles of Interpretation

53 An interpretation of the CCAA that recognizes its broader socio-economic purposes and objects is apt in this case. As the application judge pointed out, the restructuring underpins the financial viability of the Canadian ABCP market itself.

54 The appellants argue that the application judge erred in taking this approach and in treating the Plan and the proceedings as an attempt to restructure a financial market (the ABCP market) rather than simply the affairs between the debtor corporations who caused the ABCP Notes to be issued and their creditors. The Act is designed, they say, only to effect reorganizations between a corporate debtor and its creditors and not to attempt to restructure entire marketplaces.

55 This perspective is flawed in at least two respects, however, in my opinion. First, it reflects a view of the purpose and objects of the CCAA that is too narrow. Secondly, it overlooks the reality of the ABCP marketplace and the context of the restructuring in question here. It may be true that, in their capacity as ABCP *Dealers*, the releasee financial institutions are "third-parties" to the restructuring in the sense that they are not creditors of the debtor corporations. However, in their capacities as *Asset Providers* and *Liquidity Providers*, they are not only creditors but they are prior secured creditors to the Noteholders. Furthermore — as the application judge found — in these latter capacities they are making significant contributions to the restructuring by "foregoing immediate rights to assets and ... providing real and tangible input for the preservation and enhancement of the Notes" (para. 76). In this context, therefore, the application judge's remark at para. 50 that the restructuring "involves the commitment and participation of all parties" in the ABCP market makes sense, as do his earlier comments at paras. 48-49:

> Given the nature of the ABCP market and all of its participants, it is more appropriate to consider all Noteholders as claimants and the object of the Plan to restore liquidity to the assets being the Notes themselves. The restoration of the liquidity of the market necessitates the participation (including more tangible contribution by many) of all Noteholders.

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> In these circumstances, *it is unduly technical to classify the Issuer Trustees as debtors and the claims of the Noteholders as between themselves and others as being those of third party creditors*, although I recognize that the restructuring structure of the CCAA requires the corporations as the vehicles for restructuring. [Emphasis added.]

56 The application judge did observe that "[t]he insolvency is of the ABCP market itself, the restructuring is that of the market for such paper ..." (para. 50). He did so, however, to point out the uniqueness of the Plan before him and its industry-wide significance and not to suggest that he need have no regard to the provisions of the CCAA permitting a restructuring as between debtor and creditors. His focus was on *the effect* of the restructuring, a perfectly permissible perspective, given the broad purpose and objects of the Act. This is apparent from his later references. For example, in balancing the arguments against approving releases that might include aspects of fraud, he responded that "what is at issue is a liquidity crisis that affects the ABCP market in Canada" (para. 125). In addition, in his reasoning on the fair-and-reasonable issue, he stated at para. 142: "Apart from the Plan itself, there is a need to restore confidence in the financial system in Canada and this Plan is a legitimate use of the CCAA to accomplish that goal."

57 I agree. I see no error on the part of the application judge in approaching the fairness assessment or the interpretation issue with these considerations in mind. They provide the context in which the purpose, objects and scheme of the CCAA are to be considered.

The Statutory Wording

58 Keeping in mind the interpretive principles outlined above, I turn now to a consideration of the provisions of the CCAA. Where in the words of the statute is the court clothed with authority to approve a plan incorporating a requirement for third-party releases? As summarized earlier, the answer to that question, in my view, is to be found in:

> a) the skeletal nature of the CCAA;
>
> b) Parliament's reliance upon the broad notions of "compromise" and "arrangement" to establish the framework within which the parties may work to put forward a restructuring plan; and in
>
> c) the creation of the statutory mechanism binding all creditors in classes to the compromise or arrangement once it has surpassed the high "double majority" voting threshold and obtained court sanction as "fair and reasonable".

Therein lies the expression of Parliament's intention to permit the parties to negotiate and vote on, and the court to sanction, third-party releases relating to a restructuring.

59 Sections 4 and 6 of the CCAA state:

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4. Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

6. Where a majority in number representing two-thirds in value of the creditors, or class of creditors, as the case may be, present and voting either in person or by proxy at the meeting or meetings thereof respectively held pursuant to sections 4 and 5, or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court, and if so sanctioned is binding

(a) on all the creditors or the class of creditors, as the case may be, and on any trustee for any such class of creditors, whether secured or unsecured, as the case may be, and on the company; and

(b) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act* or is in the course of being wound up under the *Winding-up and Restructuring Act*, on the trustee in bankruptcy or liquidator and contributories of the company.

Compromise or Arrangement

60 While there may be little practical distinction between "compromise" and "arrangement" in many respects, the two are not necessarily the same. "Arrangement" is broader than "compromise" and would appear to include any scheme for reorganizing the affairs of the debtor: Houlden & Morawetz, *Bankruptcy and Insolvency Law of Canada*, loose-leaf, 3rd ed., vol. 4 (Toronto: Thomson Carswell) at 10A-12.2, N§10. It has been said to be "a very wide and indefinite [word]": *Reference re Refund of Dues Paid under s.47 (f) of Timber Regulations in the Western Provinces*, [1935] A.C. 184 (Canada P.C.) at 197, affirming S.C.C. [1933] S.C.R. 616 (S.C.C.). See also, *Guardian Assurance Co., Re*, [1917] 1 Ch. 431 (Eng. C.A.) at 448, 450; *T&N Ltd., Re* (2006), [2007] 1 All E.R. 851 (Eng. Ch. Div.).

61 The CCAA is a sketch, an outline, a supporting framework for the resolution of corporate insolvencies in the public interest. Parliament wisely avoided attempting to anticipate the myriad of business deals that could evolve from the fertile and creative minds of negotiators restructuring their financial affairs. It left the shape and details of those deals to be worked out within the framework of the comprehensive and flexible concepts of a "compromise" and "arrangement." I see no reason why a release in favour of a third party, negotiated as part of a package between a debtor and creditor and reasonably relating to the proposed restructuring cannot fall within that framework.

62 A proposal under the *Bankruptcy and Insolvency Act*, R.S., 1985, c. B-3 (the "BIA") is a contract: *Employers' Liability Assurance Corp. v. Ideal Petroleum (1959) Ltd.*, [1978] 1 S.C.R. 230 (S.C.C.) at 239; *Society of Composers, Authors & Music Publishers of Canada v. Armitage* (2000), 50 O.R. (3d) 688 (Ont. C.A.) at para. 11. In my view, a compromise or arrangement under the CCAA is directly analogous to a proposal for these purposes, and therefore is to be treated as a contract between the debtor and its creditors. Consequently, parties are entitled to put anything into such a plan that could lawfully be incorporated into any contract. See *Air Canada, Re* (2004), 2 C.B.R. (5th) 4 (Ont. S.C.J. [Commercial List]) at para. 6; *Olympia & York Developments Ltd. v. Royal Trust Co.* (1993), 12 O.R. (3d) 500 (Ont. Gen. Div.) at 518.

63 There is nothing to prevent a debtor and a creditor from including in a contract between them a term providing that the creditor release a third party. The term is binding as between the debtor and creditor. In the CCAA context, therefore, a plan of compromise or arrangement may propose that creditors agree to compromise claims against the debtor and to release third parties, just as any debtor and creditor might agree to such a term in a contract between them. Once the statutory mechanism regarding voter approval and court sanctioning has been complied with, the plan — including the provision for releases — becomes binding on all creditors (including the dissenting minority).

64 *T&N Ltd., Re*, *supra*, is instructive in this regard. It is a rare example of a court focussing on and examining the meaning and breadth of the term "arrangement". T&N and its associated companies were engaged in the manufacture, distribution and sale of asbestos-containing products. They became the subject of many claims by former employees, who had been exposed to asbestos dust in the course of their employment, and their dependents. The T&N companies applied for protection under s. 425 of the U.K. *Companies Act 1985*, a provision virtually identical to the scheme of the CCAA — including the concepts of compromise or arrangement.[FN4]

65 T&N carried employers' liability insurance. However, the employers' liability insurers (the "EL insurers") denied coverage. This issue was litigated and ultimately resolved through the establishment of a multi-million pound fund against which the employees and their dependants (the "EL claimants") would assert their claims. In return, T&N's former employees and dependants (the "EL claimants") agreed to forego any further claims against the EL insurers. This settlement was incorporated into the plan of compromise and arrangement between the T&N companies and the EL claimants that was voted on and put forward for court sanction.

66 Certain creditors argued that the court could not sanction the plan because it did not constitute a "compromise or arrangement" between T&N and the EL claimants since it did not purport to affect rights as between them but only the EL claimants' rights against the EL insurers. The Court rejected this argument. Richards J. adopted previous jurisprudence — cited earlier in these reasons — to the effect that the word "arrangement" has a very broad meaning and that, while both a compromise and an arrangement involve some "give and take", an arrangement need not involve a compromise or be confined to a case of dispute or difficulty (paras. 46-51).

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He referred to what would be the equivalent of a solvent arrangement under Canadian corporate legislation as an example.[FN5] Finally, he pointed out that the compromised rights of the EL claimants against the EL insurers were not unconnected with the EL claimants' rights against the T&N companies; the scheme of arrangement involving the EL insurers was "an integral part of a single proposal affecting all the parties" (para. 52). He concluded his reasoning with these observations (para. 53):

> In my judgment it is not a necessary element of an arrangement for the purposes of s 425 of the 1985 Act that it should alter the rights existing between the company and the creditors or members with whom it is made. No doubt in most cases it will alter those rights. But, provided that the context and content of the scheme are such as properly to constitute an arrangement between the company and the members or creditors concerned, it will fall within s 425. It is ... neither necessary nor desirable to attempt a definition of arrangement. The legislature has not done so. To insist on an alteration of rights, or a termination of rights as in the case of schemes to effect takeovers or mergers, is to impose a restriction which is neither warranted by the statutory language nor justified by the courts' approach over many years to give the term its widest meaning. *Nor is an arrangement necessarily outside the section, because its effect is to alter the rights of creditors against another party or because such alteration could be achieved by a scheme of arrangement with that party.* [Emphasis added.]

67 I find Richard J.'s analysis helpful and persuasive. In effect, the claimants in *T&N* were being asked to release their claims against the EL insurers in exchange for a call on the fund. Here, the appellants are being required to release their claims against certain financial third parties in exchange for what is anticipated to be an improved position for all ABCP Noteholders, stemming from the contributions the financial third parties are making to the ABCP restructuring. The situations are quite comparable.

The Binding Mechanism

68 Parliament's reliance on the expansive terms "compromise" or "arrangement" does not stand alone, however. Effective insolvency restructurings would not be possible without a statutory mechanism to bind an unwilling minority of creditors. Unanimity is frequently impossible in such situations. But the minority must be protected too. Parliament's solution to this quandary was to permit a wide range of proposals to be negotiated and put forward (the compromise or arrangement) and to bind *all* creditors by class to the terms of the plan, but to do so only where the proposal can gain the support of the requisite "double majority" of votes[FN6] *and* obtain the sanction of the court on the basis that it is fair and reasonable. In this way, the scheme of the CCAA supports the intention of Parliament to encourage a wide variety of solutions to corporate insolvencies without unjustifiably overriding the rights of dissenting creditors.

The Required Nexus

69 In keeping with this scheme and purpose, I do not suggest that any and all releases be-

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tween creditors of the debtor company seeking to restructure and third parties may be made the subject of a compromise or arrangement between the debtor and its creditors. Nor do I think the fact that the releases may be "necessary" in the sense that the third parties or the debtor may refuse to proceed without them, of itself, advances the argument in favour of finding jurisdiction (although it may well be relevant in terms of the fairness and reasonableness analysis).

70 The release of the claim in question must be justified as part of the compromise or arrangement between the debtor and its creditors. In short, there must be a reasonable connection between the third party claim being compromised in the plan and the restructuring achieved by the plan to warrant inclusion of the third party release in the plan. This nexus exists here, in my view.

71 In the course of his reasons, the application judge made the following findings, all of which are amply supported on the record:

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 creditor Noteholders generally.

72 Here, then — as was the case in *T&N* — there is a close connection between the claims being released and the restructuring proposal. The tort claims arise out of the sale and distribution of the ABCP Notes and their collapse in value, just as do the contractual claims of the creditors against the debtor companies. The purpose of the restructuring is to stabilize and shore up the value of those notes in the long run. The third parties being released are making separate contributions to enable those results to materialize. Those contributions are identified earlier, at para. 31 of these reasons. The application judge found that the claims being released are not independent of or unrelated to the claims that the Noteholders have against the debtor companies; they are closely connected to the value of the ABCP Notes and are required for the Plan to succeed. At paras. 76-77 he said:

> [76] I do not consider that the Plan in this case involves a change in relationship among creditors "that does not directly involve the Company." Those who support the Plan and are to be released are "directly involved in the Company" in the sense that many are foregoing immediate rights to assets and are providing real and tangible input for the preservation and

> enhancement of the Notes. It would be unduly restrictive to suggest that the moving parties' claims against released parties do not involve the Company, since the claims are directly related to the value of the Notes. The value of the Notes is in this case the value of the Company.
>
> [77] This Plan, as it deals with releases, doesn't change the relationship of the creditors apart from involving the Company and its Notes.

73 I am satisfied that the wording of the CCAA — construed in light of the purpose, objects and scheme of the Act and in accordance with the modern principles of statutory interpretation — supports the court's jurisdiction and authority to sanction the Plan proposed here, including the contested third-party releases contained in it.

The Jurisprudence

74 Third party releases have become a frequent feature in Canadian restructurings since the decision of the Alberta Court of Queen's Bench in *Canadian Airlines Corp., Re* (2000), 265 A.R. 201 (Alta. Q.B.), leave to appeal refused by (2000), 266 A.R. 131 (Alta. C.A. [In Chambers]), and (2001), 293 A.R. 351 (note) (S.C.C.). In *Muscletech Research & Development Inc., Re* (2006), 25 C.B.R. (5th) 231 (Ont. S.C.J.) Justice Ground remarked (para. 8):

> [It] is not uncommon in CCAA proceedings, in the context of a plan of compromise and arrangement, to compromise claims against the Applicants and other parties against whom such claims or related claims are made.

75 We were referred to at least a dozen court-approved CCAA plans from across the country that included broad third-party releases. With the exception of *Canadian Airlines Corp., Re*, however, the releases in those restructurings — including *Muscletech Research & Development Inc., Re* — were not opposed. The appellants argue that those cases are wrongly decided, because the court simply does not have the authority to approve such releases.

76 In *Canadian Airlines Corp., Re* the releases in question were opposed, however. Paperny J. (as she then was) concluded the court had jurisdiction to approve them and her decision is said to be the well-spring of the trend towards third-party releases referred to above. Based on the foregoing analysis, I agree with her conclusion although for reasons that differ from those cited by her.

77 Justice Paperny began her analysis of the release issue with the observation at para. 87 that "[p]rior to 1997, the CCAA did not provide for compromises of claims against anyone other than the petitioning company." It will be apparent from the analysis in these reasons that I do not accept that premise, notwithstanding the decision of the Quebec Court of Appeal in *Steinberg Inc. c. Michaud*,[FN7] of which her comment may have been reflective. Paperny J.'s reference to 1997 was a reference to the amendments of that year adding s. 5.1 to the CCAA, which provides

for limited releases in favour of directors. Given the limited scope of s. 5.1, Justice Paperny was thus faced with the argument — dealt with later in these reasons — that Parliament must not have intended to extend the authority to approve third-party releases beyond the scope of this section. She chose to address this contention by concluding that, although the amendments "[did] not authorize a release of claims against third parties other than directors, [they did] not prohibit such releases either" (para. 92).

78 Respectfully, I would not adopt the interpretive principle that the CCAA permits releases because it does not expressly prohibit them. Rather, as I explain in these reasons, I believe the open-ended CCAA permits third-party releases that are reasonably related to the restructuring at issue because they are encompassed in the comprehensive terms "compromise" and "arrangement" and because of the double-voting majority and court sanctioning statutory mechanism that makes them binding on unwilling creditors.

79 The appellants rely on a number of authorities, which they submit support the proposition that the CCAA may not be used to compromise claims as between anyone other than the debtor company and its creditors. Principal amongst these are *Steinberg Inc. c. Michaud*, *supra*; *NBD Bank, Canada v. Dofasco Inc.* (1999), 46 O.R. (3d) 514 (Ont. C.A.); *Pacific Coastal Airlines Ltd. v. Air Canada* (2001), 19 B.L.R. (3d) 286 (B.C. S.C.); and *Stelco Inc., Re* (2005), 78 O.R. (3d) 241 (Ont. C.A.) ("*Stelco I*"). I do not think these cases assist the appellants, however. With the exception of *Steinberg Inc.*, they do not involve third party claims that were reasonably connected to the restructuring. As I shall explain, it is my opinion that *Steinberg Inc.* does not express a correct view of the law, and I decline to follow it.

80 In *Pacific Coastal Airlines Ltd.*, Tysoe J. made the following comment at para. 24:

> [The purpose of the CCAA proceeding] is not to deal with disputes between a creditor of a company and a third party, even if the company was also involved in the subject matter of the dispute. While issues between the debtor company and non-creditors are sometimes dealt with in CCAA proceedings, it is not a proper use of a CCAA proceeding to determine disputes between parties other than the debtor company.

81 This statement must be understood in its context, however. Pacific Coastal Airlines had been a regional carrier for Canadian Airlines prior to the CCAA reorganization of the latter in 2000. In the action in question it was seeking to assert separate tort claims against Air Canada for contractual interference and inducing breach of contract in relation to certain rights it had to the use of Canadian's flight designator code prior to the CCAA proceeding. Air Canada sought to have the action dismissed on grounds of *res judicata* or issue estoppel because of the CCAA proceeding. Tysoe J. rejected the argument.

82 The facts in *Pacific Coastal Airlines Ltd.* are not analogous to the circumstances of this case, however. There is no suggestion that a resolution of Pacific Coastal's separate tort claim against Air Canada was in any way connected to the Canadian Airlines restructuring, even

though Canadian — at a contractual level — may have had some involvement with the particular dispute. Here, however, the disputes that are the subject-matter of the impugned releases are not simply "disputes between parties other than the debtor company". They are closely connected to the disputes being resolved between the debtor companies and their creditors and to the restructuring itself.

83 Nor is the decision of this Court in the *NBD Bank, Canada* case dispositive. It arose out of the financial collapse of Algoma Steel, a wholly-owned subsidiary of Dofasco. The Bank had advanced funds to Algoma allegedly on the strength of misrepresentations by Algoma's Vice-President, James Melville. The plan of compromise and arrangement that was sanctioned by Farley J. in the Algoma CCAA restructuring contained a clause releasing Algoma from all claims creditors "may have had against Algoma or its directors, officers, employees and advisors." Mr. Melville was found liable for negligent misrepresentation in a subsequent action by the Bank. On appeal, he argued that since the Bank was barred from suing Algoma for misrepresentation by its officers, permitting it to pursue the same cause of action against him personally would subvert the CCAA process — in short, he was personally protected by the CCAA release.

84 Rosenberg J.A., writing for this Court, rejected this argument. The appellants here rely particularly upon his following observations at paras. 53-54:

> 53 In my view, the appellant has not demonstrated that allowing the respondent to pursue its claim against him would undermine or subvert the purposes of the Act. As this court noted in *Elan Corp. v. Comiskey* (1990), 1 O.R. (3d) 289 at 297, the *CCAA* is remedial legislation "intended to provide a structured environment for the negotiation of compromises between a debtor company and its creditors for the benefit of both". It is a means of avoiding a liquidation that may yield little for the creditors, especially unsecured creditors like the respondent, and the debtor company shareholders. However, the appellant has not shown that allowing a creditor to continue an action against an officer for negligent misrepresentation would erode the effectiveness of the Act.
>
> 54 In fact, to refuse on policy grounds to impose liability on an officer of the corporation for negligent misrepresentation would contradict the policy of Parliament as demonstrated in recent amendments to the *CCAA* and the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3. Those Acts now contemplate that an arrangement or proposal may include a term for compromise of certain types of claims against directors of the company except claims that "are based on allegations of misrepresentations made by directors". L.W. Houlden and C.H. Morawetz, the editors of *The 2000 Annotated Bankruptcy and Insolvency Act* (Toronto: Carswell, 1999) at p. 192 are of the view that the policy behind the provision is to encourage directors of an insolvent corporation to remain in office so that the affairs of the corporation can be reorganized. I can see no similar policy interest in barring an action against an officer of the company who, prior to the insolvency, has misrepresented the financial affairs of the corporation to its creditors. It may be necessary to permit the compromise of claims against the debtor corporation, otherwise it may not be possible to successfully reorganize the corpo-

ration. The same considerations do not apply to individual officers. Rather, it would seem to me that it would be contrary to good policy to immunize officers from the consequences of their negligent statements which might otherwise be made in anticipation of being forgiven under a subsequent corporate proposal or arrangement. [Footnote omitted.]

85 Once again, this statement must be assessed in context. Whether Justice Farley had the authority in the earlier Algoma CCAA proceedings to sanction a plan that included third party releases was not under consideration at all. What the Court was determining in *NBD Bank, Canada* was whether the release extended by its terms to protect a third party. In fact, on its face, it does not appear to do so. Justice Rosenberg concluded only that not allowing Mr. Melville to rely upon the release did not subvert the purpose of the CCAA. As the application judge here observed, "there is little factual similarity in *NBD Bank, Canada* to the facts now before the Court" (para. 71). Contrary to the facts of this case, in *NBD Bank, Canada* the creditors had not agreed to grant a release to officers; they had not voted on such a release and the court had not assessed the fairness and reasonableness of such a release as a term of a complex arrangement involving significant contributions by the beneficiaries of the release — as is the situation here. Thus, *NBD Bank, Canada* is of little assistance in determining whether the court has authority to sanction a plan that calls for third party releases.

86 The appellants also rely upon the decision of this Court in *Stelco I*. There, the Court was dealing with the scope of the CCAA in connection with a dispute over what were called the "Turnover Payments". Under an inter-creditor agreement one group of creditors had subordinated their rights to another group and agreed to hold in trust and "turn over" any proceeds received from Stelco until the senior group was paid in full. On a disputed classification motion, the Subordinated Debt Holders argued that they should be in a separate class from the Senior Debt Holders. Farley J. refused to make such an order in the court below, stating:

> [Sections] 4, 5 and 6 [of the CCAA] talk of compromises or arrangements between a company and its creditors. There is no mention of this extending by statute to encompass a change of relationship among the creditors vis-à-vis the creditors themselves *and not directly involving the company*. [Citations omitted; emphasis added.]

See *Re Stelco Inc.* (2005), 15 C.B.R. (5th) 297 (Ont. S.C.J. [Commercial List]) at para. 7.

87 This Court upheld that decision. The legal relationship between each group of creditors and Stelco was the same, albeit there were inter-creditor differences, and creditors were to be classified in accordance with their legal rights. In addition, the need for timely classification and voting decisions in the CCAA process militated against enmeshing the classification process in the vagaries of inter-corporate disputes. In short, the issues before the Court were quite different from those raised on this appeal.

88 Indeed, the Stelco plan, as sanctioned, included third party releases (albeit uncontested ones). This Court subsequently dealt with the same inter-creditor agreement on an appeal where

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the Subordinated Debt Holders argued that the inter-creditor subordination provisions were beyond the reach of the CCAA and therefore that they were entitled to a separate civil action to determine their rights under the agreement: *Stelco Inc., Re* (2006), 21 C.B.R. (5th) 157 (Ont. C.A.) ("*Stelco II*"). The Court rejected that argument and held that where the creditors' rights amongst themselves were sufficiently related to the debtor and its plan, they were properly brought within the scope of the CCAA plan. The Court said (para. 11):

> In [*Stelco I*] — the classification case — the court observed that it is not a proper use of a CCAA proceeding to determine disputes between parties other than the debtor company ... [*H*]*owever, the present case is not simply an inter-creditor dispute that does not involve the debtor company; it is a dispute that is inextricably connected to the restructuring process.* [Emphasis added.]

89 The approach I would take to the disposition of this appeal is consistent with that view. As I have noted, the third party releases here are very closely connected to the ABCP restructuring process.

90 Some of the appellants — particularly those represented by Mr. Woods — rely heavily upon the decision of the Quebec Court of Appeal in *Steinberg Inc. c. Michaud*, *supra*. They say that it is determinative of the release issue. In *Steinberg*, the Court held that the CCAA, as worded at the time, did not permit the release of directors of the debtor corporation and that third-party releases were not within the purview of the Act. Deschamps J.A. (as she then was) said (paras. 42, 54 and 58 — English translation):

> [42] Even if one can understand the extreme pressure weighing on the creditors and the respondent at the time of the sanctioning, a plan of arrangement is not the appropriate forum to settle disputes other than the claims that are the subject of the arrangement. In other words, one cannot, under the pretext of an absence of formal directives in the Act, transform an arrangement into a potpourri.
>
> .....
>
> [54] The Act offers the respondent a way to arrive at a compromise with is creditors. It does not go so far as to offer an umbrella to all the persons within its orbit by permitting them to shelter themselves from any recourse.
>
> .....
>
> [58] The [CCAA] and the case law clearly do not permit extending the application of an arrangement to persons other than the respondent and its creditors and, consequently, the plan should not have been sanctioned as is [that is, including the releases of the directors].

91 Justices Vallerand and Delisle, in separate judgments, agreed. Justice Vallerand summa-

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rized his view of the consequences of extending the scope of the CCAA to third party releases in this fashion (para. 7):

> In short, the Act will have become the Companies' *and Their Officers and Employees* Creditors Arrangement Act — an awful mess — and likely not attain its purpose, which is to enable the company to survive in the face of *its* creditors and through their will, and not in the face of the creditors of its officers. This is why I feel, just like my colleague, that such a clause is contrary to the Act's mode of operation, contrary to its purposes and, for this reason, is to be banned.

92 Justice Delisle, on the other hand, appears to have rejected the releases because of their broad nature — they released directors from all claims, including those that were altogether unrelated to their corporate duties with the debtor company — rather than because of a lack of authority to sanction under the Act. Indeed, he seems to have recognized the wide range of circumstances that could be included within the term "compromise or arrangement". He is the only one who addressed that term. At para. 90 he said:

> The CCAA is drafted in general terms. It does not specify, among other things, what must be understood by "compromise or arrangement". However, it may be inferred from the purpose of this [A]ct that these terms *encompass all that should enable the person who has recourse to it to fully dispose of his debts*, both those that exist on the date when he has recourse to the statute and *those contingent on the insolvency in which he finds himself* ... [Emphasis added.]

93 The decision of the Court did not reflect a view that the terms of a compromise or arrangement should "encompass all that should enable the person who has recourse to [the Act] to dispose of his debts ... and those contingent on the insolvency in which he finds himself," however. On occasion such an outlook might embrace third parties other than the debtor and its creditors in order to make the arrangement work. Nor would it be surprising that, in such circumstances, the third parties might seek the protection of releases, or that the debtor might do so on their behalf. Thus, the perspective adopted by the majority in *Steinberg Inc.*, in my view, is too narrow, having regard to the language, purpose and objects of the CCAA and the intention of Parliament. They made no attempt to consider and explain why a compromise or arrangement could not include third-party releases. In addition, the decision appears to have been based, at least partly, on a rejection of the use of contract-law concepts in analysing the Act — an approach inconsistent with the jurisprudence referred to above.

94 Finally, the majority in *Steinberg Inc.* seems to have proceeded on the basis that the CCAA cannot interfere with civil or property rights under Quebec law. Mr. Woods advanced this argument before this Court in his factum, but did not press it in oral argument. Indeed, he conceded that if the Act encompasses the authority to sanction a plan containing third-party releases — as I have concluded it does — the provisions of the CCAA, as valid federal insolvency legislation, are paramount over provincial legislation. I shall return to the constitutional issues raised by the appellants later in these reasons.

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95 Accordingly, to the extent *Steinberg Inc.* stands for the proposition that the court does not have authority under the CCAA to sanction a plan that incorporates third-party releases, I do not believe it to be a correct statement of the law and I respectfully decline to follow it. The modern approach to interpretation of the Act in accordance with its nature and purpose militates against a narrow interpretation and towards one that facilitates and encourages compromises and arrangements. Had the majority in *Steinberg Inc.* considered the broad nature of the terms "compromise" and "arrangement" and the jurisprudence I have referred to above, they might well have come to a different conclusion.

The 1997 Amendments

96 *Steinberg Inc.* led to amendments to the CCAA, however. In 1997, s. 5.1 was added, dealing specifically with releases pertaining to directors of the debtor company. It states:

> 5.1(1) A compromise or arrangement made in respect of a debtor company may include in its terms provision for the compromise of claims against directors of the company that arose before the commencement of proceedings under this Act and that relate to the obligations of the company where the directors are by law liable in their capacity as directors for the payment of such obligations.
>
> **Exception**
>
> (2) A provision for the compromise of claims against directors may not include claims that
>
> (a) relate to contractual rights of one or more creditors; or
>
> (b) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.
>
> **Powers of court**
>
> (3) The court may declare that a claim against directors shall not be compromised if it is satisfied that the compromise would not be fair and reasonable in the circumstances.
>
> **Resignation or removal of directors**
>
> (4) Where all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the debtor company shall be deemed to be a director for the purposes of this section.
>
> 1997, c. 12, s. 122.

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97 Perhaps the appellants' strongest argument is that these amendments confirm a prior lack of authority in the court to sanction a plan including third party releases. If the power existed, why would Parliament feel it necessary to add an amendment specifically permitting such releases (subject to the exceptions indicated) in favour of directors? *Expressio unius est exclusio alterius*, is the Latin maxim sometimes relied on to articulate the principle of interpretation implied in that question: to express or include one thing implies the exclusion of the other.

98 The maxim is not helpful in these circumstances, however. The reality is that there *may* be another explanation why Parliament acted as it did. As one commentator has noted:[FN8]

> Far from being a rule, [the maxim *expressio unius*] is not even lexicographically accurate, because it is simply not true, generally, that the mere express conferral of a right or privilege in one kind of situation implies the denial of the equivalent right or privilege in other kinds. Sometimes it does and sometimes its does not, and whether it does or does not depends on the particular circumstances of context. Without contextual support, therefore there is not even a mild presumption here. Accordingly, the maxim is at best a description, after the fact, of what the court has discovered from context.

99 As I have said, the 1997 amendments to the CCAA providing for releases in favour of directors of debtor companies in limited circumstances were a response to the decision of the Quebec Court of Appeal in *Steinberg Inc.*. A similar amendment was made with respect to proposals in the BIA at the same time. The rationale behind these amendments was to encourage directors of an insolvent company to remain in office during a restructuring, rather than resign. The assumption was that by remaining in office the directors would provide some stability while the affairs of the company were being reorganized: see Houlden & Morawetz, vol.1, *supra*, at 2-144, E§11A; *Royal Penfield Inc., Re*, [2003] R.J.Q. 2157 (Que. S.C.) at paras. 44-46.

100 Parliament thus had a particular focus and a particular purpose in enacting the 1997 amendments to the CCAA and the BIA. While there is some merit in the appellants' argument on this point, at the end of the day I do not accept that Parliament intended to signal by its enactment of s. 5.1 that it was depriving the court of authority to sanction plans of compromise or arrangement in all circumstances where they incorporate third party releases in favour of anyone other than the debtor's directors. For the reasons articulated above, I am satisfied that the court does have the authority to do so. Whether it sanctions the plan is a matter for the fairness hearing.

The Deprivation of Proprietary Rights

101 Mr. Shapray very effectively led the appellants' argument that legislation must not be construed so as to interfere with or prejudice established contractual or proprietary rights — including the right to bring an action — in the absence of a clear indication of legislative intention to that effect: *Halsbury's Laws of England*, 4th ed. reissue, vol. 44 (1) (London: Butterworths,

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1995) at paras. 1438, 1464 and 1467; Driedger, 2nd ed., *supra*, at 183; Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4th ed., (Markham: Butterworths, 2002) at 399. I accept the importance of this principle. For the reasons I have explained, however, I am satisfied that Parliament's intention to clothe the court with authority to consider and sanction a plan that contains third party releases is expressed with sufficient clarity in the "compromise or arrangement" language of the CCAA coupled with the statutory voting and sanctioning mechanism making the provisions of the plan binding on all creditors. This is not a situation of impermissible "gap-filling" in the case of legislation severely affecting property rights; it is a question of finding meaning in the language of the Act itself. I would therefore not give effect to the appellants' submissions in this regard.

The Division of Powers and Paramountcy

102 Mr. Woods and Mr. Sternberg submit that extending the reach of the CCAA process to the compromise of claims as between solvent creditors of the debtor company and solvent third parties to the proceeding is constitutionally impermissible. They say that under the guise of the federal insolvency power pursuant to s. 91(21) of the *Constitution Act, 1867*, this approach would improperly affect the rights of civil claimants to assert their causes of action, a provincial matter falling within s. 92(13), and contravene the rules of public order pursuant to the *Civil Code of Quebec*.

103 I do not accept these submissions. It has long been established that the CCAA is valid federal legislation under the federal insolvency power: *Reference re Companies' Creditors Arrangement Act (Canada)*, [1934] S.C.R. 659 (S.C.C.). As the Supreme Court confirmed in that case (p. 661), citing Viscount Cave L.C. in *Quebec (Attorney General) v. Bélanger (Trustee of)*, [1928] A.C. 187 (Canada P.C.), "the exclusive legislative authority to deal with all matters within the domain of bankruptcy and insolvency is vested in Parliament." Chief Justice Duff elaborated:

> Matters normally constituting part of a bankruptcy scheme but not in their essence matters of bankruptcy and insolvency may, of course, from another point of view and in another aspect be dealt with by a provincial legislature; but, when treated as matters pertaining to bankruptcy and insolvency, they clearly fall within the legislative authority of the Dominion.

104 That is exactly the case here. The power to sanction a plan of compromise or arrangement that contains third-party releases of the type opposed by the appellants is embedded in the wording of the CCAA. The fact that this may interfere with a claimant's right to pursue a civil action — normally a matter of provincial concern — or trump Quebec rules of public order is constitutionally immaterial. The CCAA is a valid exercise of federal power. Provided the matter in question falls within the legislation directly or as necessarily incidental to the exercise of that power, the CCAA governs. To the extent that its provisions are inconsistent with provincial legislation, the federal legislation is paramount. Mr. Woods properly conceded this during argument.

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Conclusion With Respect to Legal Authority

105 For all of the foregoing reasons, then, I conclude that the application judge had the jurisdiction and legal authority to sanction the Plan as put forward.

(2) The Plan is "Fair and Reasonable"

106 The second major attack on the application judge's decision is that he erred in finding that the Plan is "fair and reasonable" and in sanctioning it on that basis. This attack is centred on the nature of the third-party releases contemplated and, in particular, on the fact that they will permit the release of some claims based in fraud.

107 Whether a plan of compromise or arrangement is fair and reasonable is a matter of mixed fact and law, and one on which the application judge exercises a large measure of discretion. The standard of review on this issue is therefore one of deference. In the absence of a demonstrable error an appellate court will not interfere: see *Ravelston Corp., Re* (2007), 31 C.B.R. (5th) 233 (Ont. C.A. [In Chambers]).

108 I would not interfere with the application judge's decision in this regard. While the notion of releases in favour of third parties — including leading Canadian financial institutions — that extend to claims of fraud is distasteful, there is no legal impediment to the inclusion of a release for claims based in fraud in a plan of compromise or arrangement. The application judge had been living with and supervising the ABCP restructuring from its outset. He was intimately attuned to its dynamics. In the end he concluded that the benefits of the Plan to the creditors as a whole, and to the debtor companies, outweighed the negative aspects of compelling the unwilling appellants to execute the releases as finally put forward.

109 The application judge was concerned about the inclusion of fraud in the contemplated releases and at the May hearing adjourned the final disposition of the sanctioning hearing in an effort to encourage the parties to negotiate a resolution. The result was the "fraud carve-out" referred to earlier in these reasons.

110 The appellants argue that the fraud carve-out is inadequate because of its narrow scope. It (i) applies only to ABCP Dealers, (ii) limits the type of damages that may be claimed (no punitive damages, for example), (iii) defines "fraud" narrowly, excluding many rights that would be protected by common law, equity and the Quebec concept of public order, and (iv) limits claims to representations made directly to Noteholders. The appellants submit it is contrary to public policy to sanction a plan containing such a limited restriction on the type of fraud claims that may be pursued against the third parties.

111 The law does not condone fraud. It is the most serious kind of civil claim. There is therefore some force to the appellants' submission. On the other hand, as noted, there is no legal

impediment to granting the release of an antecedent claim in fraud, provided the claim is in the contemplation of the parties to the release at the time it is given: *Fotinis Restaurant Corp. v. White Spot Ltd* (1998), 38 B.L.R. (2d) 251 (B.C. S.C. [In Chambers]) at paras. 9 and 18. There may be disputes about the scope or extent of what is released, but parties are entitled to settle allegations of fraud in civil proceedings — the claims here all being untested allegations of fraud — and to include releases of such claims as part of that settlement.

112 The application judge was alive to the merits of the appellants' submissions. He was satisfied in the end, however, that the need "to avoid the potential cascade of litigation that ... would result if a broader 'carve out' were to be allowed" (para. 113) outweighed the negative aspects of approving releases with the narrower carve-out provision. Implementation of the Plan, in his view, would work to the overall greater benefit of the Noteholders as a whole. I can find no error in principle in the exercise of his discretion in arriving at this decision. It was his call to make.

113 At para. 71 above I recited a number of factual findings the application judge made in concluding that approval of the Plan was within his jurisdiction under the CCAA and that it was fair and reasonable. For convenience, I reiterate them here — with two additional findings — because they provide an important foundation for his analysis concerning the fairness and reasonableness of the Plan. The application judge found that:

> 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;
>
> e) The Plan will benefit not only the debtor companies but creditor Noteholders generally;
>
> f) The voting creditors who have approved the Plan did so with knowledge of the nature and effect of the releases; and that,
>
> g) The releases are fair and reasonable and not overly broad or offensive to public policy.

114 These findings are all supported on the record. Contrary to the submission of some of the appellants, they do not constitute a new and hitherto untried "test" for the sanctioning of a plan under the CCAA. They simply represent findings of fact and inferences on the part of the application judge that underpin his conclusions on jurisdiction and fairness.

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115 The appellants all contend that the obligation to release the third parties from claims in fraud, tort, breach of fiduciary duty, etc. is confiscatory and amounts to a requirement that they — as individual creditors — make the equivalent of a greater financial contribution to the Plan. In his usual lively fashion, Mr. Sternberg asked us the same rhetorical question he posed to the application judge. As he put it, how could the court countenance the compromise of what in the future might turn out to be fraud perpetrated at the highest levels of Canadian and foreign banks? Several appellants complain that the proposed Plan is unfair to them because they will make very little additional recovery if the Plan goes forward, but will be required to forfeit a cause of action against third-party financial institutions that may yield them significant recovery. Others protest that they are being treated unequally because they are ineligible for relief programs that Liquidity Providers such as Canaccord have made available to other smaller investors.

116 All of these arguments are persuasive to varying degrees when considered in isolation. The application judge did not have that luxury, however. He was required to consider the circumstances of the restructuring as a whole, including the reality that many of the financial institutions were not only acting as Dealers or brokers of the ABCP Notes (with the impugned releases relating to the financial institutions in these capacities, for the most part) but also as Asset and Liquidity Providers (with the financial institutions making significant contributions to the restructuring in these capacities).

117 In insolvency restructuring proceedings almost everyone loses something. To the extent that creditors are required to compromise their claims, it can always be proclaimed that their rights are being unfairly confiscated and that they are being called upon to make the equivalent of a further financial contribution to the compromise or arrangement. Judges have observed on a number of occasions that CCAA proceedings involve "a balancing of prejudices," inasmuch as everyone is adversely affected in some fashion.

118 Here, the debtor corporations being restructured represent the issuers of the more than $32 billion in non-bank sponsored ABCP Notes. The proposed compromise and arrangement affects that entire segment of the ABCP market and the financial markets as a whole. In that respect, the application judge was correct in adverting to the importance of the restructuring to the resolution of the ABCP liquidity crisis and to the need to restore confidence in the financial system in Canada. He was required to consider and balance the interests of *all* Noteholders, not just the interests of the appellants, whose notes represent only about 3% of that total. That is what he did.

119 The application judge noted at para. 126 that the Plan represented "a reasonable balance between benefit to all Noteholders and enhanced recovery for those who can make out specific claims in fraud" within the fraud carve-out provisions of the releases. He also recognized at para. 134 that:

> No Plan of this size and complexity could be expected to satisfy all affected by it. The size of the majority who have approved it is testament to its overall fairness. No plan to address a

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crisis of this magnitude can work perfect equity among all stakeholders.

120 In my view we ought not to interfere with his decision that the Plan is fair and reasonable in all the circumstances.

D. Disposition

121 For the foregoing reasons, I would grant leave to appeal from the decision of Justice Campbell, but dismiss the appeal.

***J.I. Laskin J.A.*:**

I agree.

***E.A. Cronk J.A.*:**

I agree.

Schedule A — Conduits

Apollo Trust

Apsley Trust

Aria Trust

Aurora Trust

Comet Trust

Encore Trust

Gemini Trust

Ironstone Trust

MMAI-I Trust

Newshore Canadian Trust

Opus Trust

Planet Trust

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Rocket Trust

Selkirk Funding Trust

Silverstone Trust

Slate Trust

Structured Asset Trust

Structured Investment Trust III

Symphony Trust

Whitehall Trust

Schedule B — Applicants

ATB Financial

Caisse de dépôt et placement du Québec

Canaccord Capital Corporation

Canada Mortgage and Housing Corporation

Canada Post Corporation

Credit Union Central Alberta Limited

Credit Union Central of BC

Credit Union Central of Canada

Credit Union Central of Ontario

Credit Union Central of Saskatchewan

Desjardins Group

Magna International Inc.

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National Bank of Canada/National Bank Financial Inc.

NAV Canada

Northwater Capital Management Inc.

Public Sector Pension Investment Board

The Governors of the University of Alberta

Schedule A — Counsel

1) Benjamin Zarnett and Frederick L. Myers for the Pan-Canadian Investors Committee

2) Aubrey E. Kauffman and Stuart Brotman for 4446372 Canada Inc. and 6932819 Canada Inc.

3) Peter F.C. Howard and Samaneh Hosseini for Bank of America N.A.; Citibank N.A.; Citibank Canada, in its capacity as Credit Derivative Swap Counterparty and not in any other capacity; Deutsche Bank AG; HSBC Bank Canada; HSBC Bank USA, National Association; Merrill Lynch International; Merill Lynch Capital Services, Inc.; Swiss Re Financial Products Corporation; and UBS AG

4) Kenneth T. Rosenberg, Lily Harmer and Max Starnino for Jura Energy Corporation and Redcorp Ventures Ltd.

5) Craig J. Hill and Sam P. Rappos for the Monitors (ABCP Appeals)

6) Jeffrey C. Carhart and Joseph Marin for Ad Hoc Committee and Pricewaterhouse Coopers Inc., in its capacity as Financial Advisor

7) Mario J. Forte for Caisse de Dépôt et Placement du Québec

8) John B. Laskin for National Bank Financial Inc. and National Bank of Canada

9) Thomas McRae and Arthur O. Jacques for Ad Hoc Retail Creditors Committee (Brian Hunter, et al)

10) Howard Shapray, Q.C. and Stephen Fitterman for Ivanhoe Mines Ltd.

11) Kevin P. McElcheran and Heather L. Meredith for Canadian Banks, BMO, CIBC RBC, Bank of Nova Scotia and T.D. Bank

12) Jeffrey S. Leon for CIBC Mellon Trust Company, Computershare Trust Company of Canada and BNY Trust Company of Canada, as Indenture Trustees

13) Usman Sheikh for Coventree Capital Inc.

14) Allan Sternberg and Sam R. Sasso for Brookfield Asset Management and Partners Ltd. and Hy Bloom Inc. and Cardacian Mortgage Services Inc.

15) Neil C. Saxe for Dominion Bond Rating Service

16) James A. Woods, Sebastien Richemont and Marie-Anne Paquette for Air Transat A.T. Inc., Transat Tours Canada Inc., The Jean Coutu Group (PJC) Inc., Aéroports de Montréal, Aéroports de Montréal Capital Inc., Pomerleau Ontario Inc., Pomerleau Inc., Labopharm Inc., Agence Métropolitaine de Transport (AMT), Giro Inc., Vêtements de sports RGR Inc., 131519 Canada Inc., Tecsys Inc., New Gold Inc. and Jazz Air LP

17) Scott A. Turner for Webtech Wireless Inc., Wynn Capital Corporation Inc., West Energy Ltd., Sabre Energy Ltd., Petrolifera Petroleum Ltd., Vaquero Resources Ltd., and Standard Energy Ltd.

18) R. Graham Phoenix for Metcalfe & Mansfield Alternative Investments II Corp., Metcalfe & Mansfield Alternative Investments III Corp., Metcalfe & Mansfield Alternative Investments V Corp., Metcalfe & Mansfield Alternative Investments XI Corp., Metcalfe & Mansfield Alternative Investments XII Corp., Quanto Financial Corporation and Metcalfe & Mansfield Capital Corp.

Application granted; appeal dismissed.

FN* Leave to appeal refused at *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 2008 CarswellOnt 5432, 2008 CarswellOnt 5433 (S.C.C.).

FN1 Section 5.1 of the CCAA specifically authorizes the granting of releases to directors in certain circumstances.

FN2 Justice Georgina R. Jackson and Dr. Janis P. Sarra, "Selecting the Judicial Tool to get the Job Done: An Examination of Statutory Interpretation, Discretionary Power and Inherent Jurisdiction in Insolvency Matters" in Sarra, ed., *Annual Review of Insolvency Law, 2007* (Vancouver: Thomson Carswell, 2007).

FN3 Citing Gibbs J.A. in *Chef Ready Foods, supra*, at pp.319-320.

FN4 The Legislative Debates at the time the CCAA was introduced in Parliament in April 1933 make it clear that the CCAA is patterned after the predecessor provisions of s. 425 of the *Com-*

panies Act 1985 (U.K.): see *House of Commons Debates (Hansard), supra.*

FN5 See *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, s. 192; *Ontario Business Corporations Act*, R.S.O. 1990, c. B.16, s. 182.

FN6 A majority in number representing two-thirds in value of the creditors (s. 6)

FN7 *Steinberg Inc.* was originally reported in French: *Steinberg Inc. c. Michaud*, [1993] R.J.Q. 1684 (Que. C.A.). All paragraph references to *Steinberg Inc.* in this judgment are from the unofficial English translation available at 1993 CarswellQue 2055 (Que. C.A.)

FN8 Reed Dickerson, *The Interpretation and Application of Statutes* (1975) at pp.234-235, cited in Bryan A. Garner, ed., Black's Law Dictionary, 8th ed. (West Group, St. Paul, Minn., 2004) at 621.

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Action No. 0901-13483

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TRIDENT EXPLORATION CORP., FORT ENERGY CORP., FENERGY CORP., 981384 ALBERTA LTD., 981405 ALBERTA LTD., 981422 ALBERTA LTD., TRIDENT RESOURCES CORP., TRIDENT CBM CORP., AURORA ENERGY LLC., NEXGEN ENERGY CANADA, INC. AND TRIDENT USA CORP.

BRIEF OF ARGUMENT OF THE PETITIONERS

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