

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**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  
NELSON FINANCIAL GROUP LTD.**

**APPLICANT**

**ELEVENTH REPORT OF A. JOHN PAGE & ASSOCIATES INC.  
IN ITS CAPACITY AS THE MONITOR OF THE APPLICANT**

**December 8, 2010**

**INTRODUCTION**

By Order of this Honourable Court dated March 23, 2010 ("**the Initial Order**"), Nelson Financial Group Ltd. ("**Nelson**" or "**the Applicant**") obtained protection from its creditors pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**the CCAA**"). A copy of the Initial Order is attached hereto as **Exhibit "A"**.

1. Pursuant to the Initial Order, A. John Page & Associates Inc. was appointed as monitor of the Applicant ("**the Monitor**"). Pursuant to the Initial Order, all proceedings against the Applicant were stayed until April 22, 2010, or such later date as this Honourable Court may order.
2. By Order of this Honourable Court dated April 22, 2010, the stay of proceedings was extended from April 22, 2010 to and including April 30, 2010.
3. By Order of this Honourable Court dated April 30, 2010, the stay of proceedings was extended from April 30, 2010 to and including June 7, 2010. The First Report of the Monitor dated April 15, 2010 ("**the First Report**") was also approved.

4. By Order of this Honourable Court dated June 4, 2010, the stay of proceedings was extended from June 7, 2010 to and including June 15, 2010. The Second Report of the Monitor dated June 2, 2010 ("**the Second Report**") was also approved.
5. By Order of this Honourable Court dated June 15, 2010, the stay of proceedings was extended from June 15, 2010 to and including July 30, 2010. The Third Report of the Monitor dated June 11, 2010 ("**the Third Report**") was also approved.
6. By Order of this Honourable Court dated July 7, 2010, the Fourth Report of the Monitor dated July 2, 2010 ("**the Fourth Report**") was approved.
7. By Order of this Honourable Court dated July 27, 2010, the stay of proceedings was extended from July 30, 2010 to and including October 1, 2010. The Fifth Report of the Monitor dated July 21, 2010 ("**the Fifth Report**") and the Supplemental to Fifth Report dated July 23, 2010 ("**the Supplemental to Fifth Report**") were also approved.
8. By Order of this Honourable Court dated August 27, 2010, the Sixth Report of the Monitor dated August 23, 2010 (**the "Sixth Report"**) was approved.
9. The Monitor has filed the Seventh Report of the Monitor dated September 13, 2010 ("**the Seventh Report**"), the Supplemental to Seventh Report dated September 17, 2010 ("**the Supplemental to Seventh Report**") and the Second Supplemental to Seventh Report dated October 14, 2010 ("**the Second Supplemental to Seventh Report**") with this Honourable Court. These Reports were prepared in connection with the Preferred Shareholder Motion (as defined herein).
10. By Order of this Honourable Court dated October 1, 2010, the stay of proceedings was extended from October 1, 2010 to and including November 15, 2010. The Eighth Report of the Monitor dated September 28, 2010 ("**the Eighth Report**") was also approved.

11. By Order of this Honourable Court dated November 12, 2010, the stay of proceedings was extended from November 15, 2010 to and including December 3, 2010.
12. The Monitor has filed the Ninth Report of the Monitor dated November 15, 2010 (**"the Ninth Report"**), the Supplement to Ninth Report dated November 18, 2010 (**"the Supplement to Ninth Report"**) and the Tenth Report of the Monitor dated November 29, 2010 (**"the Tenth Report"**) with this Honourable Court.
13. By Order of this Honourable Court dated December 1, 2010, the stay of proceedings was extended from December 3, 2010 to and including February 28, 2011.
14. A. John Page & Associates Inc. also prepared a report dated March 22, 2010 in its capacity as proposed monitor (**"the Pre Filing Report"**).

#### **NOTICE TO READER**

15. In preparing this Report (as defined herein) and making the comments contained in the Report, the Monitor has been provided with and has relied upon unaudited financial information, information from the Applicant's books and records and financial information prepared by the Applicant and its advisors. In addition the Monitor has held discussions with management of the Applicant and has relied upon the information conveyed in those discussions. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy and completeness of any of the information obtained and, accordingly, expresses no opinion or other form of assurance in respect of the information contained in this Report. Some of the information referred to in this Report consists of forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the Canadian Institute of Chartered Accountants Handbook, has not been performed. Future oriented financial information referred to or relied upon in this Report was based on management's estimates and assumptions. Readers are cautioned that, since such information is based on assumptions about future events and conditions that are not ascertainable, the actual results will vary from the forecasts and projections and the variations may be material.

16. Unless otherwise stated, all monetary amounts referred to in this Report are expressed in Canadian dollars.
17. All capitalized terms used herein and not otherwise defined are as defined in the Tenth Report.

#### **PURPOSE OF THE REPORT**

18. This is the Eleventh Report of the Monitor in this proceeding ("**the Report**"). The purpose of the Report is to respond to the Third Report of Douglas Turner, Q.C., in his capacity as the Representative Counsel ("**the Representative Counsel**") for the holders of promissory notes issued by the Applicant ("**the Noteholders**"), dated November 29, 2010 (**the "Rep Counsel Third Report"**).

#### **BACKGROUND TO THIS CCAA PROCEEDING**

19. In a typical CCAA proceeding, an initial stay of proceedings is granted to give the debtor company breathing room so that it may disseminate information, conduct a claims process, communicate and negotiate with its stakeholders and propose a plan of arrangement or compromise.
20. This CCAA proceeding has not been typical. Upon the initial application, Staff of the Ontario Securities Commission ("**the OSC**") expressed concerns regarding the viability of Nelson. In order to address Staff's concerns, the Monitor undertook to conduct a viability study of Nelson and to report back to the stakeholders and this Honourable Court on its results. The Applicant undertook not to take any significant restructuring steps, including the implementation of a claims process, until such time as the Monitor reported back to the stakeholders and this Honourable Court with its viability study.
21. Pursuant to the First Report, the Monitor disclosed its viability study, which concluded that, subject to the assumptions and qualifications contained therein, Nelson had a

realistic prospect of being able to restructure its debt, service that debt and continue in business for the foreseeable future provided that it could obtain financing to assist in the redemption of existing debt in accordance with the debt maturity terms set down in an approved restructuring plan. Pursuant to the Third Report, the Monitor updated its viability study to reflect its findings on its review of the Applicant's loan portfolio and the Applicant's decision to reduce its lending volumes to 50% of its historical levels. The Monitor's updated viability study suggested that, even with an increased bad debt reserve, reduced lending volumes and no external financing, there was a realistic prospect that the Applicant could restructure its debt, service that debt and continue in business for the foreseeable future.

22. The next step in this CCAA proceeding was for the Monitor to conduct a liquidation analysis to assist the Applicant in preparing a restructuring plan and to assist the stakeholders and this Honourable Court in assessing any such plan. The liquidation analysis would allow all parties, including the Applicant, Staff of the OSC, the stakeholders and this Honourable Court, to better assess whether the Applicant should propose a plan or liquidate its assets and make a distribution to its stakeholders.
23. Pursuant to the Third Report, the Monitor disclosed its liquidation analysis, which provided that, subject to the assumptions and qualifications contained therein, the Noteholders and other creditors would recover approximately 38% of their investment/claim and that the holders of preferred shares issued by the Applicant ("**the Preferred Shareholders**") would not receive any recovery on account of their investment since they were only entitled to receive payment if all of the claims of the unsecured creditors were paid in full.
24. Pursuant to the Third Report, the Monitor also advised that it had been working closely with the Applicant to develop a restructuring plan and outlined the form of plan being developed. The form of plan being developed did not provide for any distributions to the Preferred Shareholders. In order to assist in the development of a plan, the Monitor had prepared sophisticated cash flow projections and had numerous meetings and discussions

with the Applicant and its legal counsel regarding the terms and conditions of a draft plan, including, without limitation, the governance structure of the restructured entity. From the outset of these discussions, the Monitor was of the view that representatives of the creditors would have control of the restructured entity.

25. In or about early June, 2010, the Applicant concluded that it would be appropriate to appoint representative counsel for the Noteholders for the sole purpose of advising the Noteholders in respect of any plan of compromise or arrangement in this CCAA proceeding (“**the Rep Counsel Mandate**”). At the hearing of the stay extension motion on June 4, 2010, the Applicant advised this Honourable Court that it would be seeking such appointment. On or about this time, Staff of the OSC, whose mandate is to protect all investors, raised concerns regarding the protection of the interests of the Preferred Shareholders and suggested that the Applicant appoint representative counsel for the Preferred Shareholders. The Applicant took Staff’s suggestion under advisement.
26. By Order of this Honourable Court dated June 15, 2010 (“**the Rep Counsel Appointment Order**”), the Representative Counsel was appointed for the sole purpose of the Rep Counsel Mandate. Pursuant to the Rep Counsel Appointment Order, the Representative Counsel was directed to retain Mr. Richard B. Jones as special insolvency counsel (“**the Special Counsel**”) and their collective fees and disbursements were subject to a cap in the aggregate amount of \$75,000 or such other arrangement as may be agreed by the Applicant and the Representative Counsel. Attached hereto as **Exhibit “B”** is a copy of the Rep Counsel Appointment Order.
27. Given that:
  - (a) the Representative Counsel, the Applicant, the Monitor and their respective legal counsel were all of the view that any claims of the Preferred Shareholders were equity claims that were subordinate to the claims of the Noteholders; and
  - (b) the Representative Counsel was of the view that the Noteholders having the economic interest in the Applicant should not bear the entire cost of appointing

representative counsel for the Preferred Shareholders to litigate this issue,

the Applicant agreed to seek the appointment of independent counsel for the sole purpose of reviewing the terms and conditions of the preferred shares issued by the Applicant and reporting to the stakeholders and this Honourable Court with its opinion as to whether the claims and potential claims of the Preferred Shareholders constituted claims provable within the meaning of the CCAA and the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-13, as amended (“**the BIA**”) and, if so, whether they constituted equity claims within the meaning of the CCAA (“**the Preferred Shareholder Opinion**”). The Applicant agreed to commission the Preferred Shareholder Opinion in order to satisfy both Staff’s concerns regarding the protection of investors and the Representative Counsel’s concerns regarding the costs of doing so and to provide information to the Preferred Shareholders so that they could make an informed decision on whether they should spend their own monies on bringing a motion for a determination of their claims and potential claims in this CCAA proceeding.

28. By Order of this Honourable Court dated July 7, 2010 (“**the Independent Counsel Appointment Order**”), this Honourable Court authorized and directed the Monitor to retain Ms Pillon as the Monitor’s independent counsel (“**the Independent Counsel**”) to provide the Monitor with the Preferred Shareholder Opinion by no later than July 31, 2010. Furthermore, this Honourable Court ordered that the Preferred Shareholder Motion did not constitute issue estoppel or *res judicata* with respect to any matters of fact or law contained therein. Pursuant to the Independent Counsel Appointment Order, the Independent Counsel was subject to a cap in the aggregate amount of \$50,000 for its fees and disbursement or such other arrangement as may be agreed by the Applicant and the Independent Counsel. Attached hereto as **Exhibit “C”** is a copy of the Independent Counsel Appointment Order. By this Honourable Court’s Endorsement dated July 27, 2010, the date by which the Independent Counsel was to provide the Preferred Shareholder Opinion to the Monitor was extended to August 11, 2010. Attached hereto as **Exhibit “D”** is a copy of this Endorsement.

29. The next step in this CCAA proceeding was to establish a claims procedure. The Applicant and the Monitor devised a claims procedure ("**the Claims Procedure**") that:
- (a) established, by way of negative confirmation, the claims of the Noteholders and any other creditors;
  - (b) established, by way of negative confirmation, the holdings of preferred shares of the Preferred Shareholders including any unpaid dividends thereon; and
  - (c) provided that the treatment of the claims and potential claims of any Preferred Shareholders was to be determined pursuant to further Order of this Honourable Court.

By Order of this Honourable Court dated July 27, 2010, the Claims Procedure was approved.

30. The Applicant and the Monitor were of the view that, given that the Preferred Shareholder Opinion was outstanding and that, in any event, any matters of fact or law contained therein would not be binding on any Preferred Shareholder, the Applicant would bring a motion for a final determination of the claims and potential claims of the Preferred Shareholders some time subsequent to the release of the Preferred Shareholder Opinion ("**the Preferred Shareholder Motion**") so that the Applicant would have certainty as to the quantum of claims against it and it could proceed to finalize a plan to propose to its creditors.
31. During this time, the Applicant was continuing to work with the Monitor on the terms of a draft restructuring plan but such plan could not be brought forward until such time as the issues pursuant to the Preferred Shareholders were resolved.
32. At the return of the hearing on July 27, 2010, the Applicant had also sought approval of a settlement relating to the secured indebtedness of Foscarini Mackie Holdings Inc. ("**Foscarini**"). Pursuant to the Fifth Report, the Monitor reported that the Applicant had



entered into a settlement with Foscarini, a secured creditor, pursuant to which the Applicant would pay the then outstanding secured indebtedness in the amount of \$695,772.49. The Monitor recommended the approval of the settlement by this Honourable Court so that the secured indebtedness could be discharged, which would have stopped the accrual of interest at a rate of 12% per annum and would have also eliminated the Applicant's costs associated with the collection and segregation of the pool of consumer loans against which Foscarini had registered a security interest and the legal costs associated with this debt. However, the Representative Counsel had raised concerns regarding whether Foscarini gave valid consideration for its promissory note and security agreement and whether the granting of the security agreement by the Applicant constituted a fraudulent preference or transaction at undervalue pursuant to Sections 95 and 96 of the BIA. Pursuant to the Supplemental to Fifth Report, the Monitor disclosed the opinion it obtained by its legal counsel on the validity and enforceability of the Foscarini security. The Monitor's legal counsel considered the concerns raised by the Representative Counsel and concluded that, subject to the assumptions and qualifications contained in its opinion, Foscarini gave valid consideration for the promissory note and that the granting of the security agreement was likely not a fraudulent preference or transaction at undervalue. Notwithstanding this opinion, the Representative Counsel obtained an adjournment of the motion to approve the settlement so that it could thoroughly canvas its concerns. The Special Counsel proceeded to conduct examinations of the Applicant and Foscarini. Subsequently, the Representative Counsel advised that it may wish to challenge the validity and enforceability of the Foscarini security and a Court-ordered timetable was established regarding the hearing of this dispute. Ultimately, the Representative Counsel agreed to a settlement with Foscarini that was approved by Order of this Honourable Court dated September 16, 2010 and resulted in a payment to Foscarini of the secured indebtedness in the amount of \$696,775.43. The final settlement amount was approximately \$1,000 more than the original settlement amount plus the Applicant bore the professional costs of the Applicant's legal counsel, the Monitor, the Monitor's legal counsel, the Representative Counsel and the Special Counsel associated with the Representative Counsel's review of this issue.

33. On or about August 11, 2010, the Independent Counsel provided the Preferred Shareholder Opinion to the Monitor. On or about this time, the Special Counsel took the position that the Representative Counsel and not the Applicant was the appropriate party to bring the Preferred Shareholder Motion.
34. By Order of this Honourable Court dated August 27, 2010 (“**the August 27 Order**”), the Representative Counsel was authorized and directed to bring the Preferred Shareholder Motion, a procedure for the disclosure of the Preferred Shareholder Opinion was approved and a procedure for service by the Monitor of the Preferred Shareholder Motion on the Preferred Shareholders was approved. This Honourable Court also expanded the Rep Counsel Mandate to include the bringing and prosecution of the Preferred Shareholder Motion, the costs of which were not subject to the prior fee cap but were subject to the approval of the Monitor.
35. On or about September 2, 2010, the Representative Counsel served its Notice of Motion in respect of the Preferred Shareholder Motion. At this time, no Preferred Shareholder with a substantial holding of preferred shares retained counsel to oppose the motion, however, several Preferred Shareholders with smaller holdings of preferred shares wrote letters to this Honourable Court and the Monitor alleging certain misrepresentations made by the Applicant to them, complaining about the determination of their claims as equity claims pursuant to the Preferred Shareholder Opinion and requesting various relief such as the appointment of representative counsel for the Preferred Shareholders and an adjournment of the Preferred Shareholder Motion to allow time for them to group together and retain counsel. Pursuant to the Endorsement of this Honourable Court dated September 16, 2010, the Monitor was directed to respond to these inquiries.
36. Pursuant to the August 27 Order, the Preferred Shareholder Motion was scheduled to be heard on September 27, 2010. On or about September 23, 2010, Mr. John McVey, one of the unrepresented Preferred Shareholders, requested an adjournment of the Preferred Shareholder Motion and the parties, including the Representative Counsel and the Special

Counsel, agreed to this adjournment request. By Order of this Honourable Court dated September 23, 2010, the Preferred Shareholder Motion was adjourned to October 18 and 19, 2010. Attached hereto as **Exhibit "E"** is a copy of the Order and Endorsement dated September 23, 2010.

37. Between the adjournment of the Preferred Shareholder Motion on September 23, 2010 and the hearing of the Preferred Shareholder Motion on October 18 and 19, 2010, the unrepresented litigants submitted affidavit evidence to the Monitor in opposition to the Preferred Shareholder Motion.
38. It was only on or about October 13, 2010, five days prior to the hearing of the Preferred Shareholder Motion, that Clifford Styles, Jackie Styles and Playle Investments Ltd., Preferred Shareholders with substantial holdings of preferred shares, retained the law firm of Templeman Menninga LLP to oppose the Preferred Shareholder Motion.
39. In response to the Preferred Shareholder Motion, allegations that misrepresentations were made by the Applicant to Noteholders to convert their holdings of promissory notes to preferred shares were revealed by way of letters from Preferred Shareholders to this Honourable Court and to the Monitor, affidavit evidence filed with this Honourable Court and submissions made by individual Preferred Shareholders at the hearing of the Preferred Shareholder Motion.
40. Since the Preferred Shareholder Opinion was rendered by the Independent Counsel to the Monitor on or about mid-August, 2010 to the hearing of the Preferred Shareholder Motion on or about mid-October, 2010, the parties spent a considerable amount of time that was not anticipated dealing with this issue.
41. During the height of the preparations for the Preferred Shareholder Motion, the Representative Counsel raised concerns with the Monitor regarding incumbent management. As set out in the Rep Counsel First Report, between October 5, 2010 and October 14, 2010, the Representative Counsel, with the assistance of the Noteholder

Committee, canvassed the Noteholders by email and solicited responses that the Noteholders would not support a plan of arrangement on the terms outlined by the Monitor on July 21, 2010 where the business and assets of the Applicant remained under the control of incumbent management, particularly Mr. Boutet. Pursuant to the Fifth Report, which is dated July 21, 2010, the Monitor outlined the possible distributions that would be made to creditors under the draft plan being developed by the Applicant but did not address the governance structure of the restructured entity. As outlined above, the Monitor was always of the view that the governance of the restructured entity would be an issue and that representatives of the creditors would have control of the restructured entity. However, the Monitor was not of the view that the restructured entity would not include a role for Mr. Boutet given that, since the outset of this CCAA proceeding, the Monitor had received feedback from various Noteholders indicating that they wanted Mr. Boutet to lead this restructuring. Attached hereto as **Exhibit "F"** is a copy of an email dated June 6, 2010 to the Monitor, the Monitor's legal counsel, the Applicant and the Applicant's legal counsel from a Noteholder that is now a member of the Noteholder Committee pursuant to which this Noteholder advised that the removal of Mr. Boutet would not serve to protect the investors but only harm them and that the only person in a position to carry out a successful CCAA restructuring was Mr. Boutet. A copy of this email was attached as Exhibit "K" to the Third Report. Furthermore, at the information meeting held on July 21, 2010 by the Representative Counsel for the Noteholders, Mr. Boutet addressed the approximately 156 Noteholders that attended the information meeting and received applause from them for his promised efforts to restructure the Applicant.

42. During the months of October and November, 2010, the Applicant, the Applicant's legal counsel, the Representative Counsel, Special Counsel and Staff of the OSC engaged in lengthy negotiations regarding the removal of Mr. Boutet as a director and officer of the Applicant. This resulted in the delivery of the First Report of the Representative Counsel dated November 3, 2010 ("**the Rep Counsel First Report**"), the Second Report of the Representative Counsel dated November 15, 2010 ("**the Rep Counsel Second Report**") and the associated Notices of Motion of the Representative Counsel seeking the removal

of Mr. Boutet.

43. The Monitor and its legal counsel assisted in the negotiations that culminated in the Heads of Agreement, which was approved by this Honourable Court on November 22, 2010, and the appointment of Ms Sherry Townsend as the Applicant's Interim Operating Officer ("**the IOO**"). During the negotiations, the Monitor also ensured that the operations of the Applicant remained stable. In particular, the Monitor was concerned that a public battle to remove Mr. Boutet could have a serious, negative impact on Nelson's staff, perhaps resulting in resignations, and Nelson's viability. By having the parties agree to the Heads of Agreement, and therefore a consensual removal of Mr. Boutet, the Monitor was able to manage this risk.
  
44. Based on the foregoing, the Monitor is of the view that this has been an atypical CCAA proceeding that has resulted in increased professional costs for the following reasons:
  - (a) Staff of the OSC, in order to discharge its duties to all investors, had to be convinced at the outset that the Applicant was viable and that a restructuring plan would yield a better result for the Applicant's stakeholders than a liquidation;
  
  - (b) the Preferred Shareholder Opinion was commissioned to satisfy the concerns of Staff of the OSC regarding investor protection and to provide information to the Preferred Shareholders so that they could make an informed decision as to whether they wanted to spend monies on bringing a motion for the determination of their claims and potential claims in this CCAA proceeding;
  
  - (c) the Rep Counsel Mandate was expanded to include the bringing and prosecution of the Preferred Shareholder Motion so that there would be certainty as to the quantum of the claims against the Applicant and the Applicant could proceed to finalize a plan to propose to its creditors;
  
  - (d) notwithstanding the views set out in the Preferred Shareholder Opinion, the

Preferred Shareholder Motion was opposed and such opposition was from numerous unrepresented litigants;

- (e) the Representative Counsel exceeded the Rep Counsel Mandate by, among other things, reviewing the Foscarini matter as it was of the view that it needed to do so in order to discharge its duties to the Noteholders; and
- (f) the governance of the Applicant was resolved pursuant to the Heads of Agreement rather than through a restructuring plan as was initially contemplated.

### THE REP COUNSEL THIRD REPORT

45. Pursuant to a letter dated November 28, 2010 addressed to the Representative Counsel from Ms Tina Young, on behalf of the Noteholder Committee, which is attached as Exhibit "1" to the Rep Counsel Third Report ("**the Committee Letter**"), Ms Young raises a number of concerns regarding the professional costs of the Monitor and its legal counsel in this CCAA proceeding and advises that "[t]he Noteholders' Committee is comfortable with the fees that representative counsel and its special counsel have had to charge to date, having to deal with unexpected issues such as the Foscarini-Mackie matter, the preferred shareholder issue, and ultimately, the initiation and negotiation of the removal of incumbent management from Nelson Financial." Ms Young also seeks a restriction of the role of the Monitor and its legal counsel to only monitoring activities required under the CCAA.
46. Pursuant to the Committee Letter, the Noteholder Committee recognizes that there have been a number of unexpected issues in this CCAA proceeding that have driven up the professional costs of the Representative Counsel and the Special Counsel. These unexpected issues are the same issues outlined above, which in the Monitor's view, make this CCAA proceeding atypical. The Representative Counsel, the Special Counsel, the Monitor and the Monitor's legal counsel have been involved in each of these unexpected or atypical issues and such involvement has not been a duplication of efforts. The Representative Counsel has a duty to only the Noteholders whereas the Monitor has a

duty to all stakeholders, including the Noteholders, other creditors, the Preferred Shareholders and the Applicant. Given these differing duties, it was necessary for the Monitor and its legal counsel to be involved in each of these issues, even where the Representative Counsel and the Special Counsel were involved, to ensure that all of the stakeholders were being treated fairly in this restructuring. While the Noteholders are the stakeholder group with the economic interest in the Applicant, this does not mean that the interests of the other stakeholder groups are disregarded. An example of this is the payment by the Applicant of approximately \$68,000 (approximately \$61,000 plus GST/HST) to the Independent Counsel in respect of the Preferred Shareholder Opinion. While the Independent Counsel incurred fees and disbursements in excess of the \$50,000 fee cap, pursuant to the Ninth Report, the Monitor advised that it had recommended to the Applicant that the Applicant approve this account as the Independent Counsel, in fulfilling its Mandate (as defined in the Independent Counsel Appointment Order), was required to respond to numerous inquiries from Preferred Shareholders that were not anticipated at the time that the \$50,000 fee cap was imposed. Many of the Preferred Shareholders were of the view that the Independent Counsel had been appointed as their representative counsel and the Independent Counsel, while advising them otherwise, responded sensitively to this issue as was appropriate in the circumstances. The Monitor did not note in the Ninth Report, but it should be noted now, that the Independent Counsel has already applied a discount to its above account in the amount of \$55,749.76.

47. In addition to the unexpected or atypical issues discussed above, the Monitor has had extensive dealings with the Representative Counsel, the Special Counsel and with certain members of the Noteholder Committee throughout this restructuring. In particular, the Monitor has had extensive dealings with Ms Young. Ms Young has been very actively engaged in the restructuring of the Applicant since immediately after its CCAA filing on March 23, 2010. The Monitor understands that Ms Young has held a number of meetings with Mr. Boutet and has called him on many occasions. The Monitor also understands that, early in this CCAA proceeding, Mr. Boutet allowed Ms Young and Ms Townsend to meet with Nelson staff to better understand the Applicant's operations and procedures.

48. Ms Young has contacted the Monitor on a very regular basis, sometimes numerous times a day. The Monitor has engaged in lengthy telephone calls with her and has reviewed her numerous and lengthy emails and has responded to them where appropriate. For example, during the month of July alone, Ms Young called the Monitor 28 times and sent the Monitor at least 9 emails. The Monitor has also met with Ms Young on a number of occasions. In particular, the Monitor met with Ms Young and her husband, Mr. Benjamin Kranc, on or about June 16, 2010 for approximately 3 ½ hours to discuss in detail the excel spreadsheet cash flow projections supporting the plan that the Applicant was developing (“**the Excel Model**”) and to get feedback from Ms Young and Mr. Kranc on the general direction of the Applicant’s plan.
49. The Monitor met with Ms Young and Ms Townsend on or about July 28, 2010 at which time the Monitor spent approximately 2 hours reviewing in detail the latest version of the Excel Model. An electronic copy of that Excel Model was then forwarded to Ms Young and Ms Townsend to enable them to review it in detail and to test the outcome of different go-forward assumptions. The Monitor has had numerous discussions with Ms Young regarding the Excel Model and the basis for the underlying assumptions contained therein.
50. However, Ms Young’s demands on the Monitor’s time reached a point where the Monitor had to request Representative Counsel to intervene and have Ms Young funnel enquiries to the Monitor through Representative Counsel so that they could be better prioritized and focused. After that time, direct communications from Ms Young were reduced significantly.
51. The Monitor met with Ms Young and Ms Townsend on or about October 13, 2010 and spent approximately 2 ½ hours reviewing in detail the latest version of the Excel Model. The Monitor supplied Ms Young and Ms Townsend with an electronic copy of that Excel Model later that month.
52. Upon the appointment of the IOO on November 22, 2010, the Monitor sent to Ms



Townsend a copy of the draft restructuring plan that has been prepared by the Applicant's legal counsel.

53. In addition to the Monitor's dealings with the Representative Counsel and the Special Counsel as set out above and in the Monitor's previous reports, the Monitor has also provided logistical assistance to the Representative Counsel. For example, the Monitor organized all aspects of the Representative Counsel's information meeting for Noteholders that was held on July 21, 2010. In addition, the Monitor handled service of all motion materials in respect of the Preferred Shareholder Motion on the Preferred Shareholders; responded to all enquiries from the Preferred Shareholders; and assisted in having their letters and affidavits properly served and filed with this Honourable Court.
54. Throughout this CCAA proceeding, the Monitor has had numerous meetings, telephone conversations and email exchanges with the Representative Counsel and the Special Counsel and has cooperated and assisted them with their activities. Ms Young's statement that "[a]t times, our representative counsel's progress was impeded by the monitor..." is unfair and conflicts with the comments made by Representative Counsel about the Monitor in the Rep Counsel First Report. Pursuant to paragraph 3.7 of the Rep Counsel First Report, the Representative Counsel advised this Honourable Court that "[t]he Monitor has co-operated fully with Representative Counsel and Representative Counsel had nothing but praise for the Monitor's professionalism and conduct."
55. Pursuant to the Committee Letter, Ms Young complains that the Monitor allowed the Applicant to pay legal accounts relating to the OSC proceeding directed to Nelson Investment Group Ltd. ("**Nelson Investment**").
56. Pursuant to the Third Report, which was dated June 11, 2010, the Monitor advised that:
  - (a) Staff of the OSC had issued a Statement of Allegations against, among others, the Applicant, Nelson Investment, Marc Boutet and Stephanie Lockman Sobol ("**the OSC Respondents**");

- (b) the OSC Respondents had retained counsel to defend them against allegations advanced by the OSC;
- (c) the Applicant was funding these defense costs; and
- (d) pursuant to Section 6.2 of the Applicant's Bylaws, Nelson was required to indemnify a director or officer and its legal representatives against all such costs.

The Monitor attached a copy of the Applicant's Bylaws as an Exhibit to its Third Report.

57. Staff of the OSC has been investigating the business and affairs of the Applicant since before this CCAA proceeding was commenced. Early on in this proceeding, the Monitor reported to the stakeholders and to this Honourable Court that Staff of the OSC had advanced allegations against the Applicant and other parties and that the Applicant was funding their defence costs. Accordingly, it should be of no surprise to the parties, including the Noteholders' Committee, that the Applicant was paying legal accounts in respect of the OSC proceeding regardless of the OSC Respondent to whom the legal accounts were rendered.
58. In addition, the Monitor is of the view that, while it has authority to review the receipts and disbursements of the Applicant, it is not in possession and control of the Applicant's assets and has no authority to prohibit the Applicant from making any payments. The Monitor's role is to:
- (a) review the Applicant's receipts and disbursements;
  - (b) compare them to the cash flow projections; and
  - (c) where the Monitor is of the view that any disbursement is not appropriate, object to such payment by the Applicant and flag the issue for the stakeholders and this

Honourable Court.

In this instance, the Monitor has made full disclosure to the stakeholders and this Honourable Court regarding the payment of the OSC defence costs.

59. While the Monitor understands the frustrations of the Noteholder Committee as to the professional costs of any formal restructuring, the Monitor is of the view that the professional costs incurred by the Monitor and its legal counsel have been appropriate given the issues that have arisen in this CCAA proceeding to date.
60. Furthermore, the Monitor and its legal counsel have been very conscious of keeping professional costs low in this matter. To the extent possible, the Monitor's legal counsel has had junior lawyers with lower billing rates performing the majority of the work. For example, Ms Young's assertion that the Monitor had two lawyers attend in Court on November 12, 2010 is simply incorrect. Ms Aggarwal was the only lawyer that attended on behalf of the Monitor at the Chambers appointment on November 12, 2010. Attached hereto as **Exhibit "G"** is a copy of the entire email chain dated July 22, 2010 between the Monitor and Ms Young. Pursuant to the Rep Counsel Third Report, only the initial email from Ms Young to the Monitor is attached as part of Exhibit "1" thereto. While the Monitor is of the view that the staffing of this matter has been reasonable throughout, it nevertheless responded to Ms Young's email by raising the issue with its legal counsel and establishing a protocol whereby it would discuss with its legal counsel, in advance of any Court attendance, which counsel would attend.
61. Prior to the service of the Rep Counsel Third Report, the Monitor and its legal counsel had already agreed with the Representative Counsel and the Special Counsel that, on a go-forward basis, the Monitor would restrict its activities to the performance of its statutory duties, only. By Order of this Honourable Court dated December 1, 2010, the Monitor's activities were so restricted and the Monitor did not oppose this relief.
62. However, the Monitor notes that the exact manner in which the Monitor's activities are

restricted will need to be resolved. For example, on December 8, 2010, each of the Monitor and the Monitor's legal counsel received a telephone call from Mr. John McVey, a Noteholder and a Preferred Shareholder, expressing concern that, with the restricted role of the Monitor, his and Mr. Larry Debono's claims, which this Honourable Court directed the Monitor to review pursuant to the Reasons for Decision dated November 16, 2010 in respect of the Preferred Shareholder Motion, would be reviewed by the Representative Counsel and the Special Counsel and not by the Monitor whom Mr. McVey and Mr. Debono viewed as being the only impartial party in this restructuring. Attached hereto as **Exhibit "H"** is a copy of a letter dated December 8, 2010 to the Monitor from Mr. McVey with respect to this issue.

63. Furthermore, the Monitor has concerns with the manner in which the Noteholder Committee solicited the support of 61% of the Noteholders holding promissory notes representing 71% of the value of the total promissory notes outstanding. Attached hereto as **Exhibit "I"** is a copy of the email dated November 24, 2010 sent by the Noteholder Committee to the Noteholders soliciting support for their complaint about the Monitor's professional costs ("**the Committee Email**"). A copy of this email was forwarded to the Monitor by more than one Noteholder.
64. This support was not generated as a result of a clear, considered report of the Representative Counsel to the Noteholders outlining the various issues that were dealt with. Instead, pursuant to the Committee Email, there is no mention of any of the unexpected issues that is referred to in the Committee Letter and which forms the basis of the Noteholder Committee's approval of the Representative Counsel and the Special Counsel costs. Furthermore, there is no mention of the substantial amount of the Monitor's time that was solicited by Ms Young, Ms Townsend, other members of the Noteholder Committee, the Representative Counsel and the Special Counsel to, among other things, meet with them to discuss the financial situation of the Applicant, to review the Excel Model and to provide other information regarding the Applicant, all as discussed above, and to begin transitioning the business from Mr. Boutet to Ms Townsend even before the Heads of Agreement was settled.

## **RECOMMENDATIONS**

65. Based on the foregoing, the Monitor recommends that this Honourable Court:
- (a) approve the fees and disbursements of the Monitor and the Monitor's legal counsel as set out in their respective fee affidavits; and
  - (b) approve the Seventh Report, the Supplemental to Seventh Report, the Second Supplemental to Seventh Report, the Ninth Report, the Supplement to Ninth Report, the Tenth Report and the Monitor's conduct and activities as described therein.

All of which is respectfully submitted this 8<sup>th</sup> day of December, 2010.

**A. JOHN PAGE & ASSOCIATES INC. IN ITS  
CAPACITY AS THE MONITOR OF NELSON  
FINANCIAL GROUP LTD.**

Per: \_\_\_\_\_

Name: A. JOHN PAGE, CA • CIRP

Title: PRESIDENT

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**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  
NELSON FINANCIAL GROUP LTD.**

**APPLICANT**

**EXHIBITS TO THE ELEVENTH REPORT OF A. JOHN PAGE & ASSOCIATES INC.  
IN ITS CAPACITY AS THE MONITOR OF THE APPLICANT**

**December 8, 2010**

|   |   |
|---|---|
| Initial Order of the Honourable Madam Justice Pepall dated March 23, 2010   | A |
| Rep Counsel Appointment Order   | B |
| Independent Counsel Appointment Order   | C |
| Endorsement of this Honourable Court dated July 27, 2010  | D |
| Order and Endorsement of this Honourable Court dated September 23, 2010   | E |
| Email dated June 6, 2010 from a Noteholder to the Monitor, the Monitor's legal counsel, the Applicant and the Applicant's legal counsel | F |
| Email chain dated July 22, 2010 between the Monitor and Ms Tina Young   | G |
| Letter dated December 8, 2010 to the Monitor from Mr. John McVey  | H |
| Email dated November 24, 2010 to the Noteholders from the Noteholder Committee  | I |



Exhibit "A"

**Eleventh Report of  
A. John Page & Associates Inc.  
In its Capacity as the Monitor of  
Nelson Financial Group Ltd.  
dated December 8, 2010**





## **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

## **APPLICATION**

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

## **PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

## **POSSESSION OF PROPERTY AND OPERATIONS**

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. The Applicant shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

6. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order.

7. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any

nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

8. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

9. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

#### **RESTRUCTURING**

10. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$50,000 in any one transaction or \$100,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and

- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing.

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "Restructuring").

11. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

12. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

### **NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

13. THIS COURT ORDERS that until and including April 22, 2010, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

### **NO EXERCISE OF RIGHTS OR REMEDIES**

14. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH RIGHTS**

15. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

### **CONTINUATION OF SERVICES**

16. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data

services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

17. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

18. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

19. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant

after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

20. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of \$200,000, as security for the indemnity provided in paragraph 19 of this Order. The Directors' Charge shall have the priority set out in paragraphs 31 and 33 herein.

21. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 19 of this Order.

#### **APPOINTMENT OF MONITOR**

22. THIS COURT ORDERS that A. John Page & Associates Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

23. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;



- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (d) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (g) perform such other duties as are required by this Order or by this Court from time to time.

24. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

25. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations

thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

26. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

27. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

28. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a bi-weekly basis.

29. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

30. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of

\$1,000,000.00, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraph 31 hereof.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

31. THIS COURT ORDERS that the priorities of the Directors' Charge and the Administration Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$1,000,000.00); and

Second – Directors' Charge (to the maximum amount of \$200,000.00).

32. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge and the Administration Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

33. THIS COURT ORDERS that each of the Directors' Charge and the Administration Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, save and except the Encumbrances in favour of Glen Mackie and Lisa Mackie and Foscarini Mackie Holdings Inc., to the extent they are determined to be valid and enforceable and properly perfected by counsel to the Monitor.

34. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge or the DIP Lender's Charge, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

35. THIS COURT ORDERS that the Directors' Charge and the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Applicant pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

36. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

#### **SERVICE AND NOTICE**

37. THIS COURT ORDERS that, subject to paragraph 38 of this Order, the Monitor shall (i) without delay, publish in the Globe and Mail newspaper a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the

estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

38. THIS COURT ORDERS that notwithstanding the provisions of paragraph 23(1)(a)(ii) of the CCAA, the Monitor shall not be obliged to publish and/or make publicly available the name or address of (i) any current and former Nelson Financial employees on account of employment-related liabilities, and (ii) any person holding securities issued by the Applicant which includes, but is not limited to, any person holding Notes and Pref Shares as defined in the Affidavit of Marc Boutet sworn March 22, 2010.

39. THIS COURT ORDERS that the Applicant and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

40. THIS COURT ORDERS that the Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on its website at [www.ajohnpage.com](http://www.ajohnpage.com).

#### **GENERAL**

41. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

42. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

43. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

44. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

45. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

46. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Daylight Time on the date of this Order.

DePepall, J.

LE 1104 . . . . .

MAR 23 2010

PER / PAR *IV*

Court File No. 10-8630-00CL

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 NELSON FINANCIAL GROUP LTD.

Applicant

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(PROCEEDING COMMENCED AT TORONTO)

**INITIAL ORDER**

**GOWLING LAFLEUR HENDERSON LLP**

Barristers and Solicitors  
1 First Canadian Place  
100 King Street West, Suite 1600  
TORONTO, Ontario  
M5X 1G5

Clifton P. Prophet / Frank Lamie  
LSUC No.: 34345K / 54035S

Telephone: (416) 862-3509 / (416) 862-3609  
Facsimile: (416) 862-7661

**SOLICITORS FOR THE APPLICANT**



Exhibit "B"

Eleventh Report of  
A. John Page & Associates Inc.  
In its Capacity as the Monitor of  
Nelson Financial Group Ltd.  
dated December 8, 2010



ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

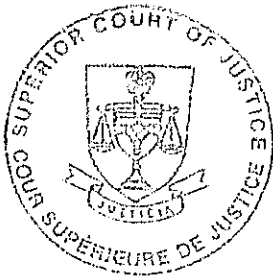
THE HONOURABLE MADAM )  
JUSTICE PEPALL )

TUESDAY, THE 15<sup>th</sup>  
DAY OF JUNE, 2010

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 NELSON FINANCIAL GROUP LTD. (the "Applicant")

Applicant



ORDER  
(Appointing Representative Counsel)

THIS MOTION, made by Nelson Financial Group Ltd. (the "Applicant") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicant, the Affidavit of Marc Boutet sworn June 11, 2010 and the Third Report (the "Third Report") of A. John Page & Associates Inc. in its capacity as Court-appointed monitor of the Applicant (the "Monitor") and on hearing from counsel for the Applicant, the Monitor, ~~and such other counsel as were present, no one else~~ <sup>the Ontario Securities Commission, Foscarini Mackie Holdings Inc.</sup> ~~and such other counsel as were present, no one else~~ <sup>Noel and Lorna D'Elves and Lendcare Financial Services Inc., no one else</sup> appearing although duly served as appears from the affidavit of service, filed.

lws G+  
Lmachie

svf

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Third Report is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.

- subject to 3(e) -

2. **THIS COURT ORDERS** that Douglas Turner, Q.C. be and is hereby appointed as representative counsel (the "Representative Counsel") to represent the interests of all persons who, as at March 23, 2010, held promissory notes issued by the Applicant (the "Noteholders") for the sole purpose of advising the Noteholders in respect of any plan of compromise or arrangement in this CCAA proceeding (the "Mandate").

3. **THIS COURT ORDERS** that, in fulfilling the Mandate, the Representative Counsel:

- (a) may consult with individual Noteholders but shall not be obligated to follow the instructions of nor provide opinions to individual Noteholders;
- (b) may consult with and provide his views to the Monitor and/or the Applicant;
- (c) shall act in the best interests of the Noteholders as a whole and take such necessary and appropriate actions and steps as the Representative Counsel deems fit from time to time; and,
- (d) shall incur no liability or obligation as a result of his appointment or the carrying out of the provisions of this Order save and except for any gross negligence or

✓ wilful misconduct on his part; and,

(e) is directed to engage Richard B. Jones as special counsel on an as needed basis to provide the Representative Counsel with advice in respect of the Mandate and the provisions and operation of the CCAA.

4. **THIS COURT ORDERS** that the activities of the Representative Counsel shall be restricted to fulfilling the Mandate.

SNP

5. **THIS COURT ORDERS** that the Applicant shall, subject to the Representative Counsel executing a confidentiality agreement, provide to Representative Counsel, without charge, the names, last known addresses, last known telephone numbers, and last known e-mail addresses (if any) of all the Noteholders, to be used only for the purposes of the performance by the Representative Counsel of the Mandate.

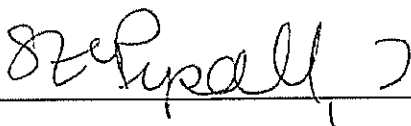
6. **THIS COURT ORDERS** that, subject to such fee arrangements as have been agreed to by the Applicant and Representative Counsel, all reasonable legal fees and other incidental fees and disbursements incurred by Representative Counsel, up to an aggregate amount of \$75,000, shall be paid by the Applicant on a monthly basis, forthwith upon the rendering of accounts to the Applicant. In the event of any disagreement regarding such fees, such matters may be remitted to this Court for determination.

7. **THIS COURT ORDERS** that the Representative Counsel is authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court or any regulatory body, other governmental ministry, department or agency (each a “**Governmental Authority**”), and to take all such steps as are necessary or incidental thereto, provided adequate notice is given to the Applicant and the Monitor before any formal proceedings before a Court or Governmental Authority are commenced.

8. **THIS COURT ORDERS** that a copy of this Order and a letter from the Representative Counsel explaining the effect of this Order be posted on the Monitor’s website.

9. **THIS COURT ORDERS** that no action or other proceedings shall be commenced against the Representative Counsel relating to their acting as such, except with prior leave of this Court, on at least 7 days’ notice to the Representative Counsel.

10. **THIS COURT ORDERS** that Representative Counsel may from time to time apply to this Court for advice and directions in respect of its appointment or the fulfillment of its duties in carrying out the provisions of this Order, upon notice to the Applicant and the Monitor and to other interested parties, unless otherwise ordered by the Court.

  
\_\_\_\_\_

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JUN 15 2010

PER / PAR:



Court File No. 10-8630-00CL

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 NELSON FINANCIAL GROUP LTD.

Applicant

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(PROCEEDING COMMENCED AT TORONTO)

**ORDER**  
(Appointing Representative Counsel)

**GOWLING LAFLEUR HENDERSON LLP**  
Barristers and Solicitors  
1 First Canadian Place  
100 King Street West, Suite 1600  
TORONTO, Ontario  
M5X 1G5

**Clifton P. Prophet / Frank Lamie**  
LSUC No.: 34345K / 54035S

Telephone: (416) 862-3509 / (416) 862-3609  
Facsimile: (416) 862-7661

**SOLICITORS FOR THE APPLICANT**



Exhibit "C"

**Eleventh Report of  
A. John Page & Associates Inc.  
In its Capacity as the Monitor of  
Nelson Financial Group Ltd.  
dated December 8, 2010**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MADAM     )           WEDNESDAY, THE 7<sup>th</sup>  
  )             
JUSTICE PEPALL             )           DAY OF JULY, 2010  
  )



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 NELSON FINANCIAL GROUP LTD.

Applicant

ORDER  
(Appointing Independent Counsel)

THIS MOTION made by Nelson Financial Group Ltd. (the "Applicant") for an Order,  
*inter alia*:

(a) authorizing and directing the Monitor to retain Elizabeth Pillon as independent counsel for the sole purpose of reviewing the terms and conditions of the preferred shares issued by the Applicant and reporting to the stakeholders and this Honourable Court with her opinion as to (i) the legal relationship of the Applicant and all persons who, as at March 23, 2010, held preferred shares issued by the Applicant (the "Preferred Shareholders"); (ii) whether the Preferred Shareholders have a claim provable against the Applicant within the meaning of Section 20(1)(a) of the *Companies' Creditors Arrangement Act* (the "CCAA") and Section 121

of the *Bankruptcy and Insolvency Act* (the “BIA”); and, if so, (iii) whether such claims provable are equity claims within the meaning of Section 2 of the CCAA (the “Mandate”); and

(b) approving the Fourth Report dated July 2, 2010 (the “Fourth Report”) of A. John Page & Associates Inc. in its capacity as the Court-appointed Monitor of the Applicant (the “Monitor”) and the conduct and activities of the Monitor described therein,

was heard this day at 330 University Avenue, Toronto, Ontario.

UPON READING the Affidavit of Marc Boutet sworn July 5, 2010 and the Fourth Report and upon hearing from counsel for the Applicant, counsel for the Monitor, counsel for Staff of the Ontario Securities Commission, Richard Jones in his capacity as special counsel for the holders of promissory notes issues by the Applicant, and the proposed independent counsel, no one else appearing although duly served as appears from the Affidavit of Service, filed:

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Fourth Report is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.

#### **INDEPENDENT COUNSEL**

2. **THIS COURT ORDERS** that the Monitor be and is hereby authorized and directed to retain Elizabeth Pillon as independent counsel (the “Independent Counsel”) for the sole purpose of advising the Monitor in respect of the Mandate.



3. **THIS COURT ORDERS** that the Independent Counsel shall, by no later than July 31, 2010, provide an opinion to the Monitor as to the assessment by the Independent Counsel of the claims presently held or that may be asserted by the Preferred Shareholders as against the Applicant including whether the Preferred Shareholders have a claim provable against the Applicant within the meaning of Section 20(1)(a) of the CCAA and Section 121 of BIA and, if so, whether such claims provable are equity claims within the meaning of Section 2 of the CCAA.

4. **THIS COURT ORDERS** that the Monitor shall, if it is satisfied that the assumed facts of the opinion are not unreasonable, cause a copy of the opinion to be made available on the Monitor's website for information purposes only and filed with this Honourable Court.

5. **THIS COURT ORDERS** that the opinion of Independent Counsel shall not constitute issue estoppel or *res judicata* with respect to any matters of fact or law referred to in the opinion.

6. **THIS COURT ORDERS** that, in fulfilling the Mandate, the Independent Counsel:

- (a) may consult with individual Preferred Shareholders;
- (b) may consult with and provide her views to the Applicant;
- (c) shall take such necessary and appropriate actions and steps as the Independent Counsel deems fit from time to time; and
- (d) shall incur no liability or obligation as a result of her retainer or the carrying out of this Order save and except for any gross negligence or wilful misconduct on her part.

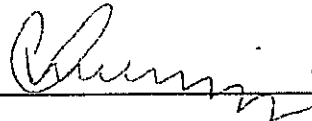
7. **THIS COURT ORDERS** that the activities of the Independent Counsel shall be restricted to fulfilling the Mandate.

8. **THIS COURT ORDERS** that, subject to such fee arrangements as have been agreed to by the Applicant and the Independent Counsel, all reasonable legal fees and other incidental fees and disbursements incurred by the Independent Counsel up to an aggregate amount of \$50,000, shall be paid by the Applicant on a monthly basis forthwith upon the rendering of accounts to the Applicant. In the event of any disagreement regarding such fees, such matters may be remitted to this Honourable Court for determination.

9. **THIS COURT ORDERS** that, in carrying out the Mandate, the Independent Counsel is authorized to communicate with any Court or any regulatory body, other governmental ministry, department or agency (each a "Governmental Authority").

**MONITOR'S ACTIVITIES**

10. **THIS COURT ORDERS** that the Fourth Report and the conduct and activities of the Monitor described therein be and are hereby approved.



Christina Irwin  
Registrar, Superior Court of Justice

ENTREED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO..

JUL 07 2010

PER / PAR:



Court File No. 10-8630-00CL

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 NELSON FINANCIAL GROUP LTD.

Applicant

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(PROCEEDING COMMENCED AT TORONTO)

**ORDER**  
(Appointing Independent Counsel)

**GOWLING LAFLEUR HENDERSON LLP**  
Barristers and Solicitors  
1 First Canadian Place  
100 King Street West, Suite 1600  
TORONTO, Ontario  
M5X 1G5

**Clifton P. Prophet / Frank Lamie**

**LSUC No.: 34345K / 54035S**

Telephone: (416) 862-3509 / (416) 862-3609  
Facsimile: (416) 862-7661

Solicitors for the Applicant



Exhibit "D"

Eleventh Report of  
A. John Page & Associates Inc.  
In its Capacity as the Monitor of  
Nelson Financial Group Ltd.  
dated December 8, 2010

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Re Nelson Financial Group Ltd.

Plaintiff(s)

AND

Defendant(s)

Case Management  Yes  No by Judge: Ripoll, J

| Counsel             | Telephone No.: | Facsimile No.: |
|---------------------|----------------|----------------|
| <u>see attached</u> |                |                |
|                     |                |                |
|                     |                |                |

- Order  Direction for Registrar (No formal order need be taken out)  
 Above action transferred to the Commercial List at Toronto (No formal order need be taken out)  
 Adjourned to: \_\_\_\_\_  
 Time Table approved (as follows): \_\_\_\_\_

The Applicants apply for various relief. No one is opposed.

1. The Stay is extended to Oct 1, 2010. Based on the cash flows, there is adequate cash to support the company during the stay period. This time will enable the company to proceed with the claims process + work on its plan. Credit Facility will be provided. The monitor is of the view that the company is active in good faith + with due diligence. In my view it is appropriate to grant the stay extension requested.

2. The claims procedure order requested as amended is a fair + cost effective approach to the determination of claims. Given the reported state of the books + records of the Applicant + the nature of the matters,

July 27, 2010

Date

Ripoll, J

Judge's Signature

Additional Pages 2

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

the negative confirmation approach for the noteholders - preferred shareholders is appropriate. \*

Mrs. Pilon was going to deliver a legal opinion by July 31, 2010 but this timeline is now extended to August 11, 2010.

The Applicant is proposing that disputed claims be brought to the court rather than to a claims officer. The Applicant + the Master will consider this issue further subject to the number of disputed claims, if any. The amended order is approved.

3. Paragraph 3(d) of the Notice of Motion is adjourned to August 24, 2010 for 1 hour before me to either set a date or to hear the motion for approval.

In the circumstances, no final copy of claim need be filed by Foscarni Machines Holdings Inc. There will be an issue ultimately relating to interest + costs to be addressed. X153 of Mr. Bennett + Foscarni Machine will take place on Aug 17 + 20.

\* The schedules contained in the proposed order may be amended to clarify that the definition of director is that found in the definition section of the Claims Procedure Order (para 3).

4. The <sup>Master's</sup> report + supplement are approved as are the fees of the Master + its counsel. I am satisfied that the latter are fair + reasonable. This should not be interpreted as approval of the legal opinion letter.

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

**FILE/DIRECTION/ORDER**

Judges Endorsement Continued

*contained in the supplement.*

*Atkinson, J*

SUPERIOR COURT OF JUSTICE

COURT FILE NO: 10-CL-8630

DATE: JULY 27/10

SHORT TITLE:

NELSON FINANCIAL GROUP LTD  
LENDACARE FINANCIAL SERVICES INC

COUNSEL SHEETS FOR MOTION (CIVIL)

MOVING COUNSEL  
NAME:

Clifton Prophet  
for Nelson Financial  
416 862-3509 (p)  
416 863-3509 (f)

TELEPHONE:  
FAX:

RESPONDING COUNSEL  
NAME:

① Pamela Fou  
Ontario Sec. Comm  
T-416 593-2323  
F-416 593-2323  
② DOUGLAS TURNER  
905-852-6196  
1574-6197  
③ Jordana Bergman-Stiteman  
(416) 869-5510 ELLIOFTLL  
④ Aggarwal for the Monitor  
T: 416-304-1616  
F: 416-304-1313  
⑤ S. MITRA for Foscarini Muckie  
Holdings Inc.  
(416) 865 3085  
(416) 863 1515 (f)

TELEPHONE:  
FAX:

APPEARING FOR

- PLAINTIFF/PETITIONER/APPLICANT
- DEFENDANT/RESPONDENT
- OTHER-SPECIFY

APPEARING FOR

- PLAINTIFF/PETITIONER/APPLICANT
- DEFENDANT/RESPONDENT
- OTHER-SPECIFY - Note holders  
- independent counsel

TYPE OF MOTION (CHECK ONE ONLY)

- INJUNCTION
- JUDGMENT
- DECLARATION
- CONTEMPT
- DISMISS ACTION
- STAY PROCEEDINGS
- ORDER TO GO
- ATTEND EXAMINATION
- APPEAL MASTER
- EXPEDITE TRIAL
- VEXATIOUS PROCEEDINGS
- OPINION/ADVISE/DIRECTIONS
- APPOINT OR REMOVE EXECUTOR
- OTHER

NATURE OF MOTION (CHECK ONE ONLY)

- CONTESTED
- UNOPPOSED
- ON CONSENT
- WITHOUT NOTICE





Exhibit "E"

Eleventh Report of  
A. John Page & Associates Inc.  
In its Capacity as the Monitor of  
Nelson Financial Group Ltd.  
dated December 8, 2010



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**THE HONOURABLE**

**THURSDAY, THE 23<sup>rd</sup>**

**MR. JUSTICE CUMMING**

**DAY OF SEPTEMBER, 2010**

**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 NELSON FINANCIAL GROUP LTD.**

**Applicant**

**ORDER**

**THE REQUEST** by John McVey for an adjournment of the motion brought by Douglas Turner, Q.C. in his capacity as the Representative Counsel for the holders of promissory notes issued by the Applicant (the "Representative Counsel") returnable on Monday, September 27, 2010 (the "Preferred Shareholder Motion") was heard this day at 330 University Avenue, in the City of Toronto, Ontario.

**UPON HEARING** the submissions of Mr. McVey, Special Counsel to the Representative Counsel, counsel for the Applicant, counsel for the Ontario Securities Commission and counsel for the Monitor:

1. **THIS COURT ORDERS** that the Preferred Shareholder Motion be and it is hereby adjourned to be heard by the Honourable Madam Justice Pepall on Monday, October 18, 2010 for 3 hours and on Tuesday, October 19, 2010 for 3 hours.

2. **THIS COURT ORDERS** that, notwithstanding paragraph 38 of the Initial Order in this proceeding dated Tuesday, March 23, 2010, the Monitor shall provide to Mr. McVey a list of the holders of preferred shares issued by the Applicant (the "Preferred Shareholders") including their names, addresses and the amount of their investments, that Mr. McVey is entitled to communicate with the Preferred Shareholders for the purpose of retaining counsel to represent the interests of the Preferred Shareholders at the return of the Preferred Shareholder Motion, that the Preferred Shareholders are entitled to know who each other is and their respective interests in this proceeding and that the Preferred Shareholders are free to communicate with one another with respect to the retention of counsel to represent their interests at the return of the Preferred Shareholder Motion.

*Sept 22, 2010*

*Peter A. Cumming J.*

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

SEP 23 2010

PER/PAR:

*MB*

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 NELSON FINANCIAL GROUP LTD.

Court File No.: 10-8630-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

Proceedings commenced at **Toronto**

**ORDER**

**ThorntonGrouthFinnigan LLP**  
Barristers and Solicitors  
Suite 3200, P.O. Box 329  
Canadian Pacific Tower  
Toronto-Dominion Centre  
Toronto, Ontario  
M5K 1K7

**James H. Grout (LSUC# 22741H 1B)**  
**Seema Aggarwal (LSUC# 50674J)**  
Tel: 416-304-1616  
Fax: 416-304-1313

Lawyers for the Monitor

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 NELSON FINANCIAL GROUP LTD. (the "Applicant")

*Sept 27/10* Court File No. 10-8630-00CL

*Sept 23/2010*

*After submissions & discussion  
in court, the preferred shareholders  
motion re the note holders' claims as creditors  
& characterization of pref. shareholders Sept 27/10  
Motion, scheduled to be  
(one day) is adjourned to Oct 18/10  
heard before Pappal 5 Oct 18/10 (3 hrs.)  
(3 hrs) & Oct 19/10 (3 hrs.)  
It is agreed the list of  
pref. sh. will be given to Mr.  
Mervey forthwith and he is free  
to communicate with them as  
to retain counsel to represent  
their interests at the return  
of the motion. To issue,  
Order signed, & issue,  
Peter A. Cumming J.*

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

MOTION RECORD  
OF REPRESENTATIVE COUNSEL  
FOR NOTEHOLDERS

(Motion returnable September 27, 2010)

Douglas Turner Q.C. as Representative Counsel  
for the Noteholders of Nelson Financial Group  
Ltd.

Barrister & Solicitor  
63 Albert Street  
Uxbridge, ON L9P 1E5

Tel: (905) 852-6196

Fax: (905) 852-6197

Email: doug@pturner.com

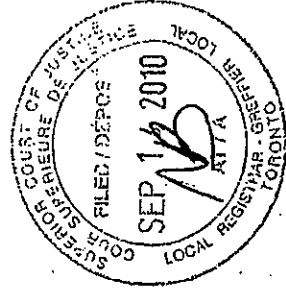




Exhibit "F"

**Eleventh Report of  
A. John Page & Associates Inc.  
In its Capacity as the Monitor of  
Nelson Financial Group Ltd.  
dated December 8, 2010**

----- Original Message -----

**From:** [REDACTED]  
**To:** [kelley.mckinnon@gowlings.com](mailto:kelley.mckinnon@gowlings.com) ; [clifton.prophet@gowlings.com](mailto:clifton.prophet@gowlings.com) ; [A. John Page](#) ; [James Grout](#)  
**Cc:** [mark@nelsoninvestment.ca](mailto:mark@nelsoninvestment.ca)  
**Sent:** Sunday, June 06, 2010 5:52 PM  
**Subject:** Nelson Financial - Investor Legal Representation (CCAA) and Marc Boutet's Future Role (OSC)

My name is [REDACTED], and as many of you are aware, my husband and I are significant investors with Nelson Financial. Our relationship with Nelson is purely as investors. I write at this time simply to provide what I hope is an important perspective that may be of benefit to all concerned.

**Re: Nelson Investor Legal Representation - CCAA**

As you are all aware, one investor (the D'Alves) has asked the court to permit the investors in this matter to have representation in the proceedings. [REDACTED] there were discussions in court about the appointment of counsel on behalf of investors (and indeed counsel on behalf of noteholders and shareholders separately), and that though there was prior resistance to this concept (by various parties), the matter is now under consideration.

I respect the initiative of the D'Alves, and certainly, I am sure all investors (including myself) are concerned about this matter, however, I am concerned that at this point in the CCAA proceedings, appointment of investor counsel may serve only to add another layer of complexity, with the inevitable consequence of further cost and delay. The cost is of course ultimately borne by the investors. I believe that at this stage, investors simply need a plan to consider their options. Appointing counsel will in no way change this. Whether counsel is required thereafter is a separate consideration - but we need to get to this point rapidly to allow us to progress for the benefit of all investors.

*I am hopeful that counsel - perhaps appropriately the Monitor's counsel, Mr. Grout - would bring this position forward to the court at the next hearing on June 15, 2010.*

**Re: OSC proceedings - Future role of Marc Boutet in Nelson Financial**

On a separate note, I am aware that one potential consequence of any negative finding at the OSC proceedings could be a request that Marc Boutet be removed as director of Nelson Financial. It would seem that if any plan as considered under the CCAA proceedings is to have a chance of success and allow investors to recoup their investments, that the best - and perhaps only - person in a position to carry that out, is Marc Boutet. Besides any other 'punishments' that the OSC may mete out, removal of Marc Boutet will not serve to protect investors - but to harm them. It is Marc Boutet who has the integral knowledge of the business necessary to steer it back into positive territory. Marc's removal could spell the loss of important vendor relationships that Nelson needs to maintain for ongoing future business viability.

*I am hopeful that counsel - presumably Ms. McKinnon - would bring this position forward to the OSC, if necessary. If this matter is not to be addressed by Ms. McKinnon, then indeed the investors may need separate counsel for the OSC proceedings only, to bring forward this one point on behalf of the investors (i.e. Marc's importance to the continuation of Nelson Financial).*

With regard to both the first and second matters above, these are purely business considerations, and I am hopeful that these matters can be addressed.

I look forward to your feedback and I anxiously await your response.

Thank you to taking these matters into consideration.

Sincerely,  
[REDACTED]



Exhibit "G"

**Eleventh Report of  
A. John Page & Associates Inc.  
In its Capacity as the Monitor of  
Nelson Financial Group Ltd.  
dated December 8, 2010**



## Shirley Laviolette

---

**From:** Seema Aggarwal  
**Sent:** December 8, 2010 2:58 PM  
**To:** Shirley Laviolette  
**Subject:** FW: Nelson Excessive Restructuring Costs

---

**From:** A. John Page [mailto:[ajpage@ajohnpage.com](mailto:ajpage@ajohnpage.com)]  
**Sent:** December 8, 2010 2:29 PM  
**To:** Seema Aggarwal  
**Subject:** Fw: Nelson Excessive Restructuring Costs

---

John Page  
President  
A. John Page & Associates Inc.  
100 Richmond St. West, Suite 447  
Toronto, Ontario, Canada M5H 3K6

Telephone: 416-364-4894  
Fax: 416-364-4869  
Email: [ajpage@ajohnpage.com](mailto:ajpage@ajohnpage.com)  
[www.ajohnpage.com](http://www.ajohnpage.com)

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Thank you

----- Original Message -----

**From:** Tina Young  
**To:** A. John Page  
**Sent:** Friday, July 23, 2010 1:05 PM  
**Subject:** Re: Nelson Excessive Restructuring Costs

John,  
Thank you for your attention to this matter.  
Tina

----- Original Message -----

**From:** A. John Page  
**To:** Tina Young  
**Cc:** [doug turner](#) ; [Sherry Townsend](#) ; [Richard Jones](#) ; [Marc Boutet](#)  
**Sent:** Friday, July 23, 2010 1:35 PM  
**Subject:** Fw: Nelson Excessive Restructuring Costs

Tina

A copy of an email I have sent to ThorntonGroutFinnigan for your information.

Regards

John

-----  
John Page  
President  
A. John Page & Associates Inc.  
100 Richmond St. West, Suite 447  
Toronto, Ontario, Canada M5H 3K6

Telephone: 416-364-4894  
Fax: 416-364-4869  
Email: [ajpage@ajohnpage.com](mailto:ajpage@ajohnpage.com)  
[www.ajohnpage.com](http://www.ajohnpage.com)

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Thank you

----- Original Message -----

**From:** A. John Page  
**To:** Jim Grout ; Seema Aggarwal  
**Sent:** Friday, July 23, 2010 1:33 PM  
**Subject:** Fw: Nelson Excessive Restructuring Costs

To Jim Grout and Seema Aggarwal

Jim and Seema

Attached is an email I received yesterday from Ms Tina Young. Ms Young is the chair of the noteholders committee, the wife of the lawyer, Benjamin Kranc, who has attended all of the court hearings, and a very active and involved participant in the efforts to successfully restructure Nelson.

In her letter she expresses concern about professional costs, citing as an example the fact that on many recent occasions two lawyers have been in attendance in court when, in her opinion, one should have sufficed.

I know that CCAA is an expensive process and that both TGF and Gowlings are balancing the need for senior counsel experience while ensuring that the day to day work is done by junior lawyers at substantially lower billing rates. I also know that in difficult court matters you Jim and your experience have been invaluable and it is hard to always know in advance what issues will be raised by Justice Pepall or other counsel. I am however sympathetic to the sentiment expressed by Ms Young. Not only should we be attempting to effect this restructuring as efficiently as we can, we should be seen to be doing our best in that regard. In light of her comments, can you let me know, in advance of each court hearing who you think should be in attendance. In general, where at all possible, I would prefer to see just Seema present as she had been doing a great job, is very familiar with the file and has a much lower billing rate than you, Jim. In that way we can save you Jim for the big and contentious issues only.

I would appreciate your response.

Thanks

John

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John Page

President

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Thank you

----- Original Message -----

**From:** Tina Young

**To:** A. John Page

**Cc:** [doug.turner](mailto:doug.turner@sympatico.ca) ; [richard.jones@sympatico.ca](mailto:richard.jones@sympatico.ca) ; [marc@nelsoninvestment.ca](mailto:marc@nelsoninvestment.ca) ; [Sherry Townsend](mailto:Sherry.Townsend@nelsoninvestment.ca)

**Sent:** Thursday, July 22, 2010 5:59 PM

**Subject:** Nelson Excessive Restructuring Costs

John,

Further to our conversation regarding legal costs, I took a look at the cash flow projection from your 5th report out today. If you take \$766,000 (your total for restructuring costs including the monitor) for the 11 weeks you have projected, this works out to \$51,066 per week! (close enough to the \$60,000 number I quoted you). These costs are unacceptable for all stakeholders involved and must be put in check. If this needs to be brought before the court as to the excessive and possibly abusive nature of legal costs - than we must. The initial costs of \$1.2 million set aside for the restructuring, will be far exceeded, and at this rate, to the tune of more than \$3 million!

I will site once again an example of this abuse of stakeholders funds: at the noteholders meeting on Wednesday, July 21, 2010, there were 2 lawyers from Gowlings - Cliff Prophet and Frank Lamie - only one needed to be there to take notes and represent Marc, etc.; there were 2 lawyers for the monitor, Mr. Grout and Ms. Aggarwal - I would say the same applies here, that only one lawyer needed to be there.

There have also been a number of instances where there has been more lawyers than needed showing up at court hearings.

**I am strongly requesting that this is dealt with immediately with all parties as the committee will be requesting more accountability and documentation with respect to these fees. Our expectation (and the court's expectation) of the monitor is to be the "watch dog" of these costs.**

**On a go forward basis:**

**we expect coordination amongst all lawyer and monitor parties with a list of who really needs to be in court or other relevant activities, ensuring there is no double counting of people and fees.**

Thank you for your assistance in this very important matter.

Regards,





Exhibit "H"

**Eleventh Report of  
A. John Page & Associates Inc.  
In its Capacity as the Monitor of  
Nelson Financial Group Ltd.  
dated December 8, 2010**

8 December 2010 Rio Dulce, Guatemala

To Mr. John Page via email

Dear Mr. Page

And to whom it may concern

On the 16<sup>th</sup> November 2010 Madam Justice Pepall gave her opinion on the motion brought by the Representative Counsel for the Note Holders of 'Nelson' regarding the issue of the Preferred Shareholders.

As we know the courts upheld the motion that the Shareholdings were equity claims and thus were subordinate to the claims of the note holders. Justice Pepall did make a point however that there were two potential exceptions to that ruling; my own case and that of Larry Debono.

She made it quite clear that the responsibility of investigating those claims were to rest in the hands of the Monitor and his representatives. It was a clear mandate for his offices to review those claims and report those findings back to her so that an informed and unbiased decision could be made.

It has come to my attention that there is some movement to petition the court to reduce the duties of the Monitor and transfer more responsibility to the note holders and their representatives. The reasoning for this is to hopefully reduce expenditures and while this is a noble sentiment it should not be at the cost of losing the impartiality that the Monitors' role brings to these proceedings.

If, has been mentioned, the responsibility of overseeing the claims of Larry Debono and myself is taken from the Monitor and given to the Note Holders and their representative, and while I have the utmost respect for Mr. Turner and Mr. Jones and their combined integrity, it would seem to be a clear conflict of interest. Despite the comparatively small dilution to the Note Holders purse, our claims, if successful, would never the less be negative to their position.

If the Note Holders and their Counsel were review these claims in a less than positive manner it would potentially be seen, at the very least, to be biased and subject to scrutiny.

Please feel free to bring my concerns regarding this matter to the court or any other interested party.

Yours Sincerely

John McVey



Exhibit "I"

**Eleventh Report of  
A. John Page & Associates Inc.  
In its Capacity as the Monitor of  
Nelson Financial Group Ltd.  
dated December 8, 2010**

## Shirley Laviolette

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**From:** Seema Aggarwal  
**Sent:** December 8, 2010 2:02 PM  
**To:** Shirley Laviolette  
**Subject:** FW: Nelson - text of email sent by noteholder committee recently

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**From:** A. John Page [mailto:ajpage@ajohnpage.com]  
**Sent:** November 25, 2010 2:44 PM  
**To:** Seema Aggarwal  
**Subject:** Nelson - text of email sent by noteholder committee recently

November 24, 2010

Dear Nelson Noteholder,

We are contacting you again with some urgency and are looking for your support.

While in court at our latest hearing on Monday, Judge Pepall had noted that the cost in the Nelson case had seemed particularly high, i.e. \$2 million to date (and now with the most recent forecast by the monitor of an additional \$1.8 million). She had indicated that she had not heard any objections from the creditors (the Noteholders' - all of us) who bear this cost, potentially leaving her with the impression that we are all okay with these exorbitant costs.

Judge Pepall will be reviewing the cost situation next Wednesday, December 1. We would like to bring the voice of all the Noteholders that \$4 million in costs is an outrage and that an assessment is required to potentially return of a portion of these costs back to Nelson Financial.

To show your support, if you would just click the "reply" button, type your name, and approximately value of your investment at the bottom of this email and then click send.

Thank for your assistance and support in this very important matter.  
Sincerely,  
The Noteholders' Committee

Date: November 24, 2010  
To: Nelson Noteholders' Committee

I am a Nelson Noteholder and I am opposed to the excessive costs being charged to Nelson Financial for monitoring and legal fees as well as the poor cost monitoring to date. We would like to request a review of these



costs. Additionally, we would like to see the role of the monitor reduced to the bare minimum as required by the court due to the fact that his fees alone have been approximately \$100K per month.

Name of Nelson Noteholder & Value of Investment

This message was sent by: Nelson Noteholders Committee, 63 Albert Street, Uxbridge, Ontario L9P1E5, Canada

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-----  
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Thank you

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  
NELSON FINANCIAL GROUP LTD.

Court File No.: 10-8630-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

Proceedings commenced at Toronto

**ELEVENTH REPORT OF A. JOHN PAGE &  
ASSOCIATES INC. IN ITS CAPACITY AS THE  
MONITOR OF THE APPLICANT  
DATED DECEMBER 8, 2010**

**A. John Page & Associates Inc.**  
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