

**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

**MOTION RECORD
(Returnable August 27, 2010)**

August 23, 2010

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**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

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NOTICE OF MOTION

A. John Page & Associates Inc., in its capacity as the Court-appointed monitor of the Applicant (the “**Monitor**”) will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) on August 27, 2010 at 10:00 a.m. or as soon after that time as the motion can be heard at 330 University Avenue, in the City of Toronto.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. an Order that this motion is properly returnable today and dispensing with further service thereof;
2. an Order scheduling a motion by Douglas Turner, Q.C., in his capacity as Representative Counsel for the holders of promissory notes issued by the Applicant (the “**Representative Counsel**”), to this Honourable Court for an Order that certain claims and potential claims of the holders of preferred shares of the Applicant (the “**Preferred Shareholders**”) are equity claims within the meaning of the *Companies' Creditors Arrangement Act* (Canada) (the “**CCAA**”) and that the Preferred Shareholders are not entitled to participate in any distribution by the Applicant to its creditors pursuant to any plan of compromise or arrangement in this proceeding (the “**Preferred Shareholder Motion**”);

3. an Order approving a procedure for service of the Preferred Shareholder Motion on the Preferred Shareholders;
4. an Order for advice and directions from this Honourable Court as to the disclosure of a legal opinion obtained by the Monitor from the Monitor's independent counsel regarding the treatment of the claims and potential claims of the Preferred Shareholders in this proceeding (the "**Opinion**");
5. an Order authorizing the Monitor, *nunc pro tunc*, to redact, in its entirety, the Opinion attached as Exhibit "D" to the version of the Sixth Report served upon any party other than this Honourable Court;
6. an Order sealing, if necessary, the unredacted version of the Opinion attached as Exhibit "D" to the Sixth Report and filed with this Honourable Court until further Order of this Honourable Court;
7. an Order approving the activities and conduct of the Monitor as described in the Monitor's Sixth Report to the Court dated August 23, 2010 (the "**Sixth Report**"); and
8. such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

1. pursuant to the Order of the Honourable Madam Justice Pepall dated March 23, 2010 (the "**Initial Order**"), the Applicant obtained protection from its creditors pursuant to the CCAA and the Monitor was appointed;
2. the stay of proceedings has been extended and currently expires on October 1, 2010;

The Opinion

3. pursuant to the Order of the Honourable Madam Justice Pepall dated July 7, 2010 (the “**July 7 Order**”), Elizabeth Pillon was appointed as the Monitor’s independent counsel to provide the Monitor with the Opinion;
4. Ms Pillon provided the Opinion to the Monitor on August 11, 2010;
5. the Opinion reaches the conclusion that the claims and potential claims of the Preferred Shareholders (other than claims in respect of shareholder loans and claims pursuant to a judgment held by a Preferred Shareholder as at March 23, 2010) are equity claims within the meaning of the CCAA;

The Preferred Shareholder Motion

6. in order to achieve the certainty needed for the Applicant to propose a plan of arrangement or compromise in this proceeding, the Representative Counsel will bring the Preferred Shareholder Motion before this Honourable Court;
7. the July 7 Order also provides that the Opinion shall not constitute issue estoppel or *res judicata* with respect to any matters of fact or law referred to in the Opinion. Accordingly, it is open to any Preferred Shareholder to assert the position that its claim is not an equity claim within the meaning of the CCAA and that it is entitled to rank equally with the creditors of the Applicant in this proceeding;
8. the Monitor is of the view that the proper forum for any Preferred Shareholder to assert such position would be to oppose the Preferred Shareholder Motion. Accordingly, the Monitor is of the view that this Honourable Court should schedule the Preferred Shareholder Motion and approve a procedure for service of the Preferred Shareholder Motion on the Preferred Shareholders;
9. the Monitor recommends that it be directed to serve the Preferred Shareholders with the Preferred Shareholder Motion by sending a letter to each of the Preferred Shareholders (the “**Preferred Shareholder Letter**”), by ordinary prepaid mail to the Preferred Shareholder’s last known address based on the books and records of the Applicant, advising as follows:

- a. the Monitor has obtained the Opinion and setting out the conclusions contained therein;
 - b. the Representative Counsel will make the Preferred Shareholder Motion to this Honourable Court at 10:00 a.m. on a particular date. The Monitor will enclose a copy of the Representative Counsel's Notice of Motion and advise that the Preferred Shareholder may obtain a copy of the complete motion record from the Monitor's website;
 - c. the Opinion does not constitute issue estoppel or *res judicata* with respect to any matters of fact or law referred to in the Opinion. Accordingly, if the Preferred Shareholder wishes to oppose the Preferred Shareholder Motion and assert that it is entitled to rank equally with the Applicant's creditors, it is free to do so; and
 - d. the Monitor recommends that, if the Preferred Shareholder wishes to oppose the Preferred Shareholder Motion and assert that it is entitled to rank equally with the Applicant's creditors, that the Preferred Shareholder retain legal counsel to represent it, at its own cost;
10. the Monitor would send the letter to each of the Preferred Shareholders by no later than September 3, 2010 and publish a notice to the Preferred Shareholders one (1) day in each of the Globe & Mail and the Toronto Star by no later than September 6, 2010;
 11. the Representative Counsel would serve its motion record with respect to the Preferred Shareholder Motion by no later than September 2, 2010. As it would do in the normal course, the Monitor would post a copy of the motion record on its website and make it available for unrestricted download;
 12. in connection with the Preferred Shareholder Motion, the Monitor would serve and file a Report on the conclusions contained in the Opinion;

Disclosure of the Opinion

13. pursuant to the July 7 Order, the Monitor is required to, if it is satisfied that the assumed facts of the Opinion are not unreasonable, disclose the Opinion by causing a copy of the Opinion to be posted on the Monitor's website for information purposes only and filed with this Honourable Court;
14. the Monitor is of the view that the assumed facts of the Opinion are not unreasonable and, accordingly, the Monitor is required to disclose the Opinion in accordance with the July 7 Order;
15. however, the Monitor is concerned that the language contained in the July 7 Order that the Opinion be made available "for information purposes only" does not provide the Monitor with adequate protection regarding the disclosure of the Opinion and respectfully seeks this Honourable Court's advice and directions with respect thereto;
16. the Monitor recommends that this Honourable Court consider the following two options:
 - a. the Monitor does not disclose the Opinion but reports on its conclusions in the Preferred Shareholder Letter and in a court report in connection with the Preferred Shareholder Motion but that these documents do not constitute evidence in this proceeding and the Monitor cannot be cross-examined on them; or
 - b. the Monitor discloses the Opinion by posting it on its website, enclosing a copy of it with the Preferred Shareholder Letter and reporting on its conclusions in its court report to be filed in connection with the Preferred Shareholder Motion but this Honourable Court orders that solicitor-client privilege relating to all matters contained in the Opinion is not waived and that these documents do not constitute evidence in this proceeding and the Monitor cannot be cross-examined on them;
17. a copy of the Opinion is attached as Exhibit "D" to the Sixth Report but has been redacted in its entirety. An unredacted copy of the Opinion has been filed with this Honourable

Court and the Monitor respectfully requests that, if necessary, this Honourable Court seal the Opinion pending further Order of this Honourable Court.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. the Sixth Report; and
2. such further and other material as counsel may advise and this Honourable Court may permit.

August 23, 2010

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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

Court File No.: 10-8630-00CL

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

Proceedings commenced at **Toronto**

NOTICE OF MOTION

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TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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APPLICANT

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

August 23, 2010

INTRODUCTION

1. 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 as **Exhibit "A"**. The CCAA proceedings with respect to the Applicant is referred to herein as "**these CCAA Proceedings**".
2. Pursuant to the Initial Order, A. John Page & Associates Inc. was appointed as monitor of the Applicant as part of the CCAA Proceedings ("**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.
3. 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.
4. 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.

5. 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.
6. 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.
7. By Order of this Honourable Court dated July 7, 2010 ("**the July 7 Order**"), Ms Elizabeth Pillon was appointed as independent counsel to the Monitor ("**the Independent Counsel**"). The Fourth Report of the Monitor dated July 2, 2010 ("**the Fourth Report**") was also approved. Attached as **Exhibit "B"** is a copy of the July 7 Order.
8. 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 the Fifth Report dated July 23, 2010 ("**the Supplemental to Fifth Report**") was also approved.
9. A. John Page & Associates Inc. also prepared a report dated March 22, 2010 in its capacity as proposed monitor ("**the Pre Filing Report**").

PURPOSE OF THE REPORT

10. This is the Sixth Report of the Monitor in the CCAA Proceedings ("**the Report**"). The purpose of the Report is to:
 - a. report to this Honourable Court on the status of the Opinion (as defined herein) to the Monitor by the Monitor's Independent Counsel regarding the claims and potential claims of the Preferred Shareholders;
 - b. seek the scheduling of a motion 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**"), with respect to the treatment of the claims and potential claims of the Preferred Shareholders (as defined herein) in these CCAA Proceedings ("**the Preferred Shareholder Motion**");

- c. seek the approval of a procedure for service of the Preferred Shareholder Motion on the Preferred Shareholders; and
- d. seek the advice and direction of this Honourable Court regarding the manner in which the Opinion is to be reported upon and/or disclosed in these CCAA proceedings.

NOTICE TO READER

- 11. In preparing this Report 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.
- 12. Unless otherwise stated, all monetary amounts referred to in this Report are expressed in Canadian dollars.
- 13. All capitalized terms used in this Report and not otherwise defined are as defined in the Fifth Report.

THE STATUS OF THE OPINION

- 14. As outlined above, pursuant to the July 7 Order, Ms Pillon was appointed as Independent Counsel to the Monitor and was required to, 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 the BIA and, if so, whether such claims provable are equity claims within the meaning of Section 2 of the CCAA (**“the Opinion”**).

15. Pursuant to the Endorsement of the Honourable Justice Pepall dated July 27, 2010, the timeline for the Independent Counsel to provide the Opinion to the Monitor was extended from July 31, 2010 to August 11, 2010. Attached as **Exhibit “C”** is a copy of the Endorsement of the Honourable Justice Pepall dated July 27, 2010.
16. On August 11, 2010, the Independent Counsel provided the Opinion to the Monitor. The Opinion is with respect to the following matters:
 - a. 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”**);
 - b. 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 the BIA; and, if so,
 - c. whether such claims provable are equity claims with the meaning of Section 2 of the CCAA.
17. Pursuant to the Opinion, the Independent Counsel considered and outlined a variety of potential causes of action that could form the basis of a claim by the Preferred Shareholders against the Applicant. The Independent Counsel did not assess the viability or potential success of such claims but, instead, identified the potential spectrum of claims that could be asserted by the Preferred Shareholders against the Applicant and opined upon how such potential claims would be assessed in the context of the CCAA proceedings. These potential claims included:
 - a. outstanding dividend payments;
 - b. outstanding redemption requests;
 - c. shareholder loans;

- d. misrepresentation claims – negligent, fraudulent and failure to disclose;
 - e. oppression; and
 - f. rescission rights/voidable shares/violation of securities legislation.
18. The Opinion reaches the conclusion that the claims and potential claims of the Preferred Shareholders (other than claims in respect of shareholder loans and claims pursuant to a judgment held by a Preferred Shareholder as at March 23, 2010) are equity claims within the meaning of the CCAA.

THE PREFERRED SHAREHOLDER MOTION

19. In order to achieve the certainty needed for the Applicant to propose a plan of arrangement or compromise in these CCAA Proceedings, the Representative Counsel will bring the Preferred Shareholder Motion before this Honourable Court. In particular, the Representative Counsel will be seeking an Order that provides that the claims and potential claims of the Preferred Shareholders are equity claims within the meaning of the CCAA and that the Preferred Shareholders are not entitled to participate in any distribution by the Applicant to its creditors pursuant to any plan of compromise or arrangement in these CCAA proceedings.
20. The Monitor agrees with the conclusions of the Independent Counsel set out in the Opinion and intends to file a report in support of the Preferred Shareholder Motion.
21. However, the July 7 Order provides that the Opinion shall not constitute issue estoppels or *res judicata* with respect to any matters of fact or law referred to in the Opinion. Accordingly, it is open to any Preferred Shareholder to, contrary to the Opinion, assert the position that its claim is not an equity claim within the meaning of the CCAA and that it is entitled to rank equally with the creditors of the Applicant in these CCAA proceedings.
22. The Monitor is of the view that the proper forum for any Preferred Shareholder to assert such position would be to oppose the Preferred Shareholder Motion. Accordingly, the Monitor is of the view that this Honourable Court should schedule the Preferred Shareholder Motion and approve a procedure for service thereof on the Preferred Shareholders.

23. The Monitor recommends that it should serve the Preferred Shareholders with the Preferred Shareholder Motion by sending a letter to each of the Preferred Shareholders, by ordinary prepaid mail to the Preferred Shareholder's last known address based on the books and records of the Applicant, advising them as follows:
- a. the Monitor has obtained the Opinion and setting out the conclusions contained therein;
 - b. the Representative Counsel will make the Preferred Shareholder Motion to this Honourable Court at 10:00 a.m. on a particular date. The Monitor will enclose a copy of the Representative Counsel's Notice of Motion and advise that the Preferred Shareholder may obtain a copy of the complete motion record from the Monitor's website;
 - c. the Monitor agrees with the conclusions of the Independent Counsel set out in the Opinion and will file a report in support of the Preferred Shareholder Motion;
 - d. however, pursuant to the July 7 Order, the Opinion does not constitute issue estoppel or *res judicata* with respect to any matters of fact or law referred to in the Opinion. Accordingly, if the Preferred Shareholder wishes to oppose the Preferred Shareholder Motion and assert that it is entitled to rank equally with the Applicant's creditors, it is free to do so; and
 - e. the Monitor recommends that, if the Preferred Shareholder wishes to oppose the Preferred Shareholder Motion and assert that it is entitled to rank equally with the Applicant's creditors, that the Preferred Shareholder retain legal counsel to represent it, at its own cost.
24. The Monitor would send the letter to each of the Preferred Shareholders by no later than September 3, 2010 and publish a notice to the Preferred Shareholders one (1) day in each of the Globe & Mail and the Toronto Star by no later than September 6, 2010.
25. The Representative Counsel would serve its motion record with respect to the Preferred Shareholder Motion by no later than September 2, 2010. As it would do in the normal course, the Monitor would post a copy of the motion record on its website and make it available for unrestricted download.

26. As outlined above, in support of the Preferred Shareholder Motion, the Monitor would serve and file a report on the conclusions contained in the Opinion.

PROTECTIONS FOR THE DISCLOSURE OF THE OPINION

27. Pursuant to the July 7 Order, this Honourable Court ordered 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.

28. The Monitor is of the view that the assumed facts of the Opinion are not unreasonable and therefore, in accordance with the terms of the July 7 Order, the Monitor is required to cause a copy of the Opinion to be made available on the Monitor's website.

29. However, the Monitor is concerned that the language contained in the July 7 Order that the Opinion be made available "for information purposes only" does not provide the Monitor with adequate protection regarding the disclosure of the Opinion and respectfully seeks this Honourable Court's advice and directions with respect thereto.

30. The Monitor is concerned that, in the event that a Preferred Shareholder opposes the Preferred Shareholder Motion, then the Opinion may be used as evidence to support the position of one group of stakeholders over another. This poses a number of concerns for the Monitor as follows:

- a. the disclosure of the Opinion, although "for information purposes only", may constitute a waiver of solicitor-client privilege with respect to all matters pertaining to the Opinion;
- b. the facts underlying the Opinion, although, in the Monitor's view, not unreasonable, were not provided to the Independent Counsel as sworn evidence;
- c. the Opinion is that, an opinion by Independent Counsel on the law regarding equity claims and claims provable, and it is not binding on the Applicant's stakeholders and this Honourable Court; and
- d. the use of the Opinion as evidence in any dispute between stakeholders may jeopardize the Monitor's impartiality and neutrality as a court officer in these CCAA proceedings as

it may appear that the Monitor is an adversarial party supporting the position of one stakeholder over another in a contentious matter.

31. One manner in which these concerns may be addressed is for this Honourable Court to order that:
 - a. the Opinion shall not be disclosed by the Monitor and that, instead, the Monitor is to report to this Honourable Court on the conclusions of the Opinion in connection with the Preferred Shareholder Motion; and
 - b. the report and the letter to be sent by the Monitor to the Preferred Shareholders described above will not constitute evidence in these CCAA proceedings, or any subsequent proceeding, and the Monitor cannot be cross-examined on these documents.
32. However, the Monitor does recognize that there may be some merit in providing the Preferred Shareholders with a copy of the Opinion itself rather than a report on the conclusions set out therein. It may be that the Preferred Shareholders will be able to obtain more fulsome and informed advice on whether to oppose the Preferred Shareholder Motion if they have the Opinion to share with their legal advisors. In this regard, the Monitor believes that there may be merit in posting a copy of the Opinion on the Monitor's website and advising the Preferred Shareholders of this in the Monitor's letter to the Preferred Shareholders described above.
33. If this Honourable Court determines that the merit in disclosing the Opinion to the Preferred Shareholders and other stakeholders of the Applicant outweighs the concerns of the Monitor with respect to such disclosure, the Monitor respectfully requests that this Honourable Court make an Order granting the Monitor the following additional protections with respect to disclosure of the Opinion:
 - a. that the disclosure of the Opinion does not constitute any waiver by the Monitor of solicitor-client privilege with respect to all matters pertaining to the Opinion; and
 - b. that this Report, the Opinion, the Monitor's letters to the Preferred Shareholders, any future reports of the Monitor served and filed in connection with the Preferred Shareholder Motion and the exhibits thereto, including the Opinion, do not constitute evidence in these CCAA proceedings, or in any subsequent proceeding, and the Monitor

cannot be cross-examined on these documents.

34. A copy of the Opinion is attached as **Exhibit “D”** to this Report but has been redacted in its entirety. An unredacted copy of the Opinion has been filed with this Honourable Court and the Monitor respectfully requests that, if necessary, this Honourable Court seal the Opinion pending further Order of this Honourable Court.

RECOMMENDATION

35. Based on the foregoing, the Monitor respectfully requests that this Honourable Court:
- a) schedule the Preferred Shareholder Motion;
 - b) approve the procedure for service of the Preferred Shareholder Motion on the Preferred Shareholders;
 - c) provide the Monitor with advice and directions on the disclosure of the Opinion;
 - d) authorize the Monitor to redact, *nunc pro tunc*, the Opinion attached as Exhibit “D” hereto;
 - e) seal the Opinion, if necessary; and
 - f) approve this Report and the Monitor's conduct and activities as described herein.

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All of which is respectfully submitted this 23rd day of August, 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
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NELSON FINANCIAL GROUP LTD.**

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

August 23, 2010

Initial Order of the Ontario Superior Court of Justice (Commercial List) dated March 23, 2010	A
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Endorsement of the Honourable Justice Pepall dated July 27, 2010	C
Legal Opinion dated August 11, 2010 from the Independent Counsel to the Monitor (REDACTED)	D

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
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NELSON FINANCIAL GROUP LTD.

Court File No.: 10-8630-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced at Toronto

**SIXTH REPORT OF A. JOHN PAGE &
ASSOCIATES INC. IN ITS CAPACITY AS THE
MONITOR OF THE APPLICANT
DATED AUGUST 23, 2010**

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TAB “A”

Court File No. 10-8630-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM)
)
JUSTICE PEPALL)

TUESDAY, THE 23rd
DAY OF MARCH, 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

INITIAL ORDER

THIS APPLICATION, made by the Applicant, Nelson Financial Group Ltd. ("Nelson Financial" or the "Applicant"), without notice, 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 Affidavit of Marc Boutet sworn March 22, 2010 and the Exhibits thereto, and the Report of A. John Page & Associates Inc. in its capacity as the Proposed Monitor to the Applicant dated March 22, 2010 and the Exhibits thereto, and on hearing the submissions of counsel for Nelson Financial, and counsel for A. John Page & Associates Inc., and on reading the consent of A. John Page & Associates Inc. to act as the Monitor,

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.

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.

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
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Clifton P. Prophet / Frank Lammie
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SOLICITORS FOR THE APPLICANT

TAB “B”

Court File No. 10-8630-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM) WEDNESDAY, THE 7th
)
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.

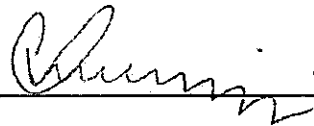
7. **THIS COURT ORDERS** that the activities of the Independent Counsel shall be restricted to fulfilling the Mandate.

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)

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Solicitors for the Applicant

TAB “C”

Superior Court of Justice
Commercial List

EXHIBIT "C"

FILE/DIRECTION/ORDER

Re Nelson Financial Group Ltd.

Plaintiff(s)

AND

Defendant(s)

Case Management Yes No by Judge: Ripall, 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. Creditability will be provided. The monitor is of the view that the company is acting 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

Ripall, 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 trial court rather than to a claims officer. The Applicant + the Minister 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 amended 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. X1E3 of Mr. Benoit + Foscarni Machines 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 ^{Minister's} ^{JPM} report + supplement are approved as are the fees of the Minister + 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
LEND CARE 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:

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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

TAB “D”

EXHIBIT "D"

CONFIDENTIAL

TAB "D"

(REDACTED)

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM) FRIDAY, THE 27TH DAY
)
JUSTICE PEPALL) OF AUGUST, 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

THIS MOTION made by A. John Page & Associates Inc., in its capacity as the Court-appointed monitor of the Applicant (the "**Monitor**"), for the relief set out in its Notice of Motion dated August 23, 2010 (the "**Notice of Motion**") was heard this day at 330 University Avenue, Toronto, Ontario.

UPON READING the Monitor's Sixth Report to the Court dated August 23, 2010 and upon hearing from counsel for the Monitor, counsel for the Applicant, counsel for Staff of the Ontario Securities Commission, Richard Jones in his capacity as special counsel to Douglas Turner Q.C. in his capacity as Representative Counsel for the holders of promissory notes issues by the Applicant (the "**Representative Counsel**"), Elizabeth Pillon in her capacity

as Independent Counsel to the Monitor (the “**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 Sixth Report is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.

THE PREFERRED SHAREHOLDER MOTION

2. **THIS COURT ORDERS** that the Representative Counsel shall make a motion to this Court at 10:00 a.m. on September _____, 2010 for an Order that certain claims and potential claims of the holders of preferred shares of the Applicant (the “**Preferred Shareholders**”) are equity claims within the meaning of the *Companies’ Creditors Arrangement Act* (Canada) and that the Preferred Shareholders are not entitled to participate in any distribution by the Applicant to its creditors pursuant to any plan of compromise or arrangement in this proceeding (the “**Preferred Shareholder Motion**”).

3. **THIS COURT ORDERS** that the Representative Counsel shall serve its motion record in respect of the Preferred Shareholder Motion by no later than September 2, 2010 and that the Monitor shall post the motion record on the Monitor’s website.

4. **THIS COURT ORDERS** that the Monitor shall serve the Preferred Shareholders with notice of the Preferred Shareholder Motion by sending a letter to each of the Preferred Shareholders (the “**Preferred Shareholder Letter**”), by ordinary prepaid mail to the Preferred

Shareholder's last known address based on the books and records of the Applicant by no later than September 3, 2010, advising them as follows:

- (a) the Monitor has obtained an opinion from the Independent Counsel (the "**Opinion**") and setting out the conclusions contained therein;
- (b) the Representative Counsel will make the Preferred Shareholder Motion to this Court at 10:00 a.m. on the date set forth in paragraph 2 above. The Monitor shall enclose a copy of the Representative Counsel's Notice of Motion in respect of the Preferred Shareholder Motion and advise that a copy of the complete motion record is available on the Monitor's website;
- (c) the Monitor agrees with the conclusions of the Independent Counsel set out in the Opinion and will file a report in support of the Preferred Shareholder Motion;
- (d) however, pursuant to the Order of the Honourable Madam Justice Pepall dated July 7, 2010, the Opinion does not constitute issue estoppel or *res judicata* with respect to any matters of fact or law referred to in the Opinion. Accordingly, if the Preferred Shareholder wishes to oppose the Preferred Shareholder Motion and assert that it is entitled to rank equally with the Applicant's creditors, it is free to do so; and
- (e) the Monitor recommends that, if the Preferred Shareholder wishes to oppose the Preferred Shareholder Motion and assert that it is entitled to rank equally with the Applicant's creditors, that the Preferred Shareholder retain legal counsel to represent it, at its own cost.

5. **THIS COURT ORDERS** that Monitor shall publish a notice to the Preferred Shareholders one (1) day in each of the Globe & Mail and the Toronto Star by no later than September 6, 2010.

DISCLOSURE OF OPINION

6. **THIS COURT ORDERS** that paragraph 4 of the Order of the Honourable Madam Justice Pepall dated July 7, 2010 is hereby varied and it is ordered that the Monitor shall not disclose the Opinion.

7. **THIS COURT ORDERS** that, in connection with the Preferred Shareholder Motion, the Monitor shall report to the stakeholders and this Court on the conclusions of the Opinion.

8. **THIS COURT ORDERS** that the foregoing report, including the exhibits thereto, and the Preferred Shareholder Letter shall not constitute evidence in this proceeding, or any subsequent proceeding, and the Monitor shall not be cross-examined on these documents.

9. **THIS COURT ORDERS** that the Monitor is hereby authorized, *nunc pro tunc*, to redact, in its entirety, the Opinion attached as Exhibit "D" to the version of the Sixth Report served upon any party other than this Court.

10. **THIS COURT ORDERS** that the unredacted version of the Opinion attached as Exhibit "D" to the Sixth Report and filed with this Court shall remain sealed until further Order of this Court.

MONITORS ACTIVITIES

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

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

Court File No.:10-8630-00CL

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

Proceedings commenced at Toronto

ORDER

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Lawyers for the Monitor

TAB 4

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM) FRIDAY, THE 27TH DAY
)
JUSTICE PEPALL) OF AUGUST, 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
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APPLICANT

ORDER

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UPON READING the Monitor's Sixth Report to the Court dated August 23, 2010 and upon hearing from counsel for the Monitor, counsel for the Applicant, counsel for Staff of the Ontario Securities Commission, Richard Jones in his capacity as special counsel to Douglas Turner Q.C. in his capacity as Representative Counsel for the holders of promissory notes issues by the Applicant (the "**Representative Counsel**"), Elizabeth Pillon in her capacity

as Independent Counsel to the Monitor (the “**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 Sixth Report is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.

THE PREFERRED SHAREHOLDER MOTION

2. **THIS COURT ORDERS** that the Representative Counsel shall make a motion to this Court at 10:00 a.m. on September _____, 2010 for an Order that certain claims and potential claims of the holders of preferred shares of the Applicant (the “**Preferred Shareholders**”) are equity claims within the meaning of the *Companies’ Creditors Arrangement Act* (Canada) and that the Preferred Shareholders are not entitled to participate in any distribution by the Applicant to its creditors pursuant to any plan of compromise or arrangement in this proceeding (the “**Preferred Shareholder Motion**”).

3. **THIS COURT ORDERS** that the Representative Counsel shall serve its motion record in respect of the Preferred Shareholder Motion by no later than September 2, 2010 and that the Monitor shall post the motion record on the Monitor’s website.

4. **THIS COURT ORDERS** that the Monitor shall serve the Preferred Shareholders with notice of the Preferred Shareholder Motion by sending a letter to each of the Preferred Shareholders (the “**Preferred Shareholder Letter**”), by ordinary prepaid mail to the Preferred

Shareholder's last known address based on the books and records of the Applicant by no later than September 3, 2010, advising them as follows:

- (a) the Monitor has obtained an opinion from the Independent Counsel (the "**Opinion**") and setting out the conclusions contained therein;
- (b) the Representative Counsel will make the Preferred Shareholder Motion to this Court at 10:00 a.m. on the date set forth in paragraph 2 above. The Monitor shall enclose a copy of the Representative Counsel's Notice of Motion in respect of the Preferred Shareholder Motion and advise that a copy of the complete motion record is available on the Monitor's website;
- (c) the Monitor agrees with the conclusions of the Independent Counsel set out in the Opinion and will file a report in support of the Preferred Shareholder Motion;
- (d) however, pursuant to the Order of the Honourable Madam Justice Pepall dated July 7, 2010, the Opinion does not constitute issue estoppel or *res judicata* with respect to any matters of fact or law referred to in the Opinion. Accordingly, if the Preferred Shareholder wishes to oppose the Preferred Shareholder Motion and assert that it is entitled to rank equally with the Applicant's creditors, it is free to do so; and
- (e) the Monitor recommends that, if the Preferred Shareholder wishes to oppose the Preferred Shareholder Motion and assert that it is entitled to rank equally with the Applicant's creditors, that the Preferred Shareholder retain legal counsel to represent it, at its own cost.

5. **THIS COURT ORDERS** that Monitor shall publish a notice to the Preferred Shareholders one (1) day in each of the Globe & Mail and the Toronto Star by no later than September 6, 2010.

DISCLOSURE OF OPINION

6. **THIS COURT ORDERS** that, in connection with the Preferred Shareholder Motion, the Monitor shall post a copy of the Opinion on its website and report to the stakeholders and this Court on the conclusions of the Opinion.

7. **THIS COURT ORDERS** that the Opinion and the foregoing report, including the exhibits thereto, and the Preferred Shareholder Letter shall not constitute evidence in this proceeding, or any subsequent proceeding, and the Monitor shall not be cross-examined on these documents.

8. **THIS COURT ORDERS** that the Monitor's disclosure of the Opinion shall not constitute a waiver of solicitor-client privilege with respect to all matters pertaining to the Opinion.

9. **THIS COURT ORDERS** that the Monitor is hereby authorized, *nunc pro tunc*, to redact the Opinion attached as Exhibit "D" to the version of the Sixth Report served upon any party other than this Court.

MONITORS ACTIVITIES

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

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ACT, R.S.C. 1985, c. C-36, AS AMENDED

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Court File No.:10-8630-00CL

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

Proceedings commenced at **Toronto**

ORDER

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SUPERIOR COURT OF JUSTICE
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Proceedings commenced at Toronto

MOTION RECORD

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