In the Matter of Coe Newnes McGehee Inc.

I. INTRODUCTION

The purpose of this paper is to share some of the more interesting experiences, as well as legal and practical issues, arising out of the little known *Companies' Creditors Arrangement Act* (*CCAA*)[1] filing in 2008 relating to a large B.C. based forest industry equipment manufacturer. The writers of this paper are Colin Brousson and John McLean partners in Gowling Lafleur Henderson the firm that acted as legal counsel to the company throughout the proceedings, and David Bowra, who acted as Interim CEO and whose firm The Bowra Group Inc. acted as the Trustee under the Notice of Intention filed under the *Bankruptcy and Insolvency Act* (*BIA*),[2] and subsequently as Trustee in Bankruptcy.

The filing involved a U.S. lender initiated *CCAA* proceeding that accomplished a going concern sale of a unionized business at a time when the entire senior management team had resigned. The company was managed during the *CCAA* filing period by an Interim CEO.

From a legal perspective it's not very often that you have a client volunteer to become the CEO of an insolvent company with a large number of unionised employees, negative cash flow, no DIP funding commitment from the lender, and the knowledge that a large part of the labour force needed to be terminated. That coupled with the fact that the entire senior management team had just resigned as a result of an extremely strained and dysfunctional relationship with the secured creditor made for an interesting time. Through good counsel, the Interim CEO was able to steer the company through the process without attracting any personal liability.

The U.S. lenders' lack of confidence in management drove the lenders' efforts to manage what was effectively a liquidating process under the *CCAA*. While not a large insolvency proceeding or necessarily an overly complicated

1 Companies' Creditors Arrangement Act, R.S.C. 1985. c. C-36.
2 Bankruptcy and Insolvency Act, R.S.C. 1985 c. B-3.

and difficult one, the Court approved a success fee to the Monitor which was based on the ultimate selling price of the business.

While in most reorganizations director and officer ("D&O") liability is often driven by the behaviour of various parties, including management and the lenders, the ultimate D&O claims that were paid totalled less than $20,000. This was due in large part to the inclusion of a provision in the sale agreement that all claims that arose post-filing but prior to the sale date were to be paid out of the sale proceeds.

The Monitor who was originally proposed in the *CCAA* filing instead became the Interim CEO, and subsequently assigned the company into bankruptcy. His firm then became the Trustee in Bankruptcy.

The paper starts with a background on the company, the initial filing considerations including the directors and officers liability, and the terms of the initial order. It then deals with the role of the interim CEO and some of the lessons learned, the sales process and monitors success fee, and the challenges involved in keeping the company operating while going through the sales process. Finally it covers the company's DIP loan application, the sales agreement and vesting order.

II. COMPANY BACKGROUND

Coe Newnes McGehee Inc. ("CNMI") was a manufacturer of machinery and equipment for the forest industry, located in Salmon Arm in the BC interior. It was part of a group of three companies based in North America that serviced the industry. The U.S. operations were located in Ohio, Washington and South Carolina. CNMI's lenders also held the U.S. companies' assets as collateral security, although the direct debt was with CNMI.

CNMI had been in business in various forms since 1851 and represented the major employer in Salmon Arm with over 300 employees. In its heyday the company had over 800 employees.

It supplied a variety of systems and components to support primary or secondary forest industry manufacturing. Its products included green veneer stackers, clippers, plywood press systems, gluing systems, panel board systems, dry kilns and planers. It had developed a worldwide reputation and expertise in scanning and optimization technology for solid wood products, and had clients from as far afield as Uruguay, Germany, Australia, Ireland and the UK, as well BC and Quebec and throughout the United States.

When the company filed for *CCAA* protection it created a lot of concern among many of North America's larger forestry companies. There are very few world class suppliers of the sort of equipment and technology that CNMI provided, and the majors were extremely concerned about who was going to service their forestry equipment needs in the future. In addition, these customers had more pressing needs which included (1) how to and who was going to service their existing equipment and systems that CNMI had installed if the company did not continue and (2) who would complete their existing orders, which were in varying stages of manufacture and installation, either on the shop floor in Salmon Arm or at the customers' facilities in various parts of the world.

As a result of the downturn in the U.S. housing market and the appreciation of the Canadian dollar the company's sales declined significantly. In early 2008 the company's lenders, who were owed approximately U.S.$25 million, attempted to take steps to conduct a viability assessment. Ultimately this led them to initiate recovery proceedings.

The company had been through a variety of different owners in the past several years, as well as numerous changes in senior management. The current owners were a New York-based investment company who had acquired the company from CAE Wood Products G.P. and CAE (U.S.) Inc. ("CAE"). CAE had in turn acquired the company from three of its original founders, Messrs. Coe, Newnes and McGehee, who had all done well financially and had retired or moved on to other ventures. The company's 300 employees, 100 of whom were unionized, operated from a 30 acre site. Its CEO was a former U.S. test pilot.

III. INITIAL ROLE AND DIRECTORS' LIABILITY ISSUES

Gowlings acted as legal counsel for the company and The Bowra Group Inc. were approached to act as the Monitor under a *CCAA* filing. Early on the US lenders expressed a lack confidence in the existing management team and moved to have their consultant, Alvarez & Marsal, hired by the company to conduct a financial review and assessment of the company's current financial position and future viability.

As events unfolded the existing management team became increasingly concerned about the lenders' objectives, and the potential claims that they faced for severance, unpaid wages and outstanding holiday pay. The "look see" was never completed. While both the lender group and company management realized there needed to be a restructuring, they could not agree on a mutually acceptable level of protection for the senior management team. Severance pay claims alone could have exceeded $5 million.

Management sought several opinions on their potential liability as directors and officers for various wage-related claims and concluded that they needed at least a $5 million indemnity or equivalent directors' and officers' charge under a *CCAA* filing. The lenders did not feel that the risk was that high, especially if the company filed for creditor protection.

Concerned about their potential liability for employee related claims and that the lenders might take action to recover their loans, the company filed a Notice of Intention to file a proposal under the *BIA*. This action was taken in part to manage the potential exposure of employee-related claims, and to ensure that the company embarked on some form of creditor protection process that would protect directors from such claims.

Due to a lack of agreement with the lenders on the amount of the indemnity protection the entire senior management team ultimately resigned as both officers and directors of the company.

The lenders were not keen to proceed under the *BIA*, and preferred to proceed under the *CCAA* process under which they felt they would have more influence and control over a sale process.

In negotiations with the lenders and the owners it was agreed that the company would abandon the filing of the Notice of Intention under the BIA and that the lenders would bring an application to Court to have the company file under the CCAA. Alvarez & Marsal were named as Monitor. The Initial Order gave the Monitor the power to develop and proceed with a sales process and offer the company's assets for sale.

As part of an overall compromise with the lenders, and shortly before the CEO resigned, he arranged for the shareholders to pass a resolution appointing David Bowra as Interim CEO.

IV. INITIAL CCAA ORDER

The application under the CCAA to obtain the Initial Order, which was granted on April 30, 2008, was brought by the two U.S.-based lenders, not by the company. The lenders had a GSA over all of the company's Canadian assets, as well as a charge on the U.S. company's assets. Given the fact that the company was unionized, and since the successorship liability would be huge, the lenders did not consider receivership as a realisation option.

CCAA was the only process that would not create a successor employer and allow the business to run a going concern sale. In light of the recent decision of the B.C. Court of Appeal in *Cliffs Over Maple Bay*,[3] it remains to be seen whether or not this option will still be available since this was a liquidating *CCAA* process in which a plan would never be filed.

The initial application was also attended by counsel for the union representing some 100 members of the local Structural and Reinforcing Iron Workers Union and by counsel for a prospective (and eventual) purchaser of the business, USNR Kockums Cancar Company ("USNR"). There was no opposition to the initial application. While the lenders did not seek an active role in

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3 *Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp.*, 2008 BCCA 327 (B.C. C.A.).

the management of the company, it was clear that they wanted it to embark on a sales process that would generate the maximum recoveries while at the same time ensuring that their position didn't deteriorate and that they weren't required to provide any further funding unless absolutely essential. They exerted this control largely through the Monitor.

In addition to the administration charge in the standard Initial Order, the following charges were granted: a directors' and officers' charge in the amount of $2 million, a customer deposit charge securing the payment of post-filing customer deposits, a key employee retention program ("KERP") in an amount to be determined by the Interim CEO and subject to the approval of the Monitor, and a unionized employee retention charge in the amount of $200,000 as security for payment of wages due up to and after the date of filing.

The priority of the various charges was as follows: the administration charge of $500,000, the D&O charge of $2 million, the KERP and the unionized employee retention charge of $200,000 on a *pari passu* basis, and the customer deposit charge.

In addition to the standard powers and duties, the Monitor was directed and empowered to administer and manage (in consultation with the company as Petitioner and with such assistance of the Petitioner as may be requested by the Monitor) any proposed sale process involving all or substantially all of the company's property and business, including establishing a sale process to be approved by the Court.

Another provision in the order was that the company take such corporate action as was necessary and advisable to cause David Bowra to be appointed as Interim CEO, on such terms and conditions as agreed to between the Monitor and the Interim CEO.

V. INTERIM CEO ROLE

The reader will notice that Mr. Bowra's firm, originally named to act as Monitor under *CCAA*, had gone from proposed Monitor, to Trustee under the Notice of Intention under the *BIA* to Interim CEO all in the space of about three weeks. John McLean a partner with Gowlings, who did the majority of the legal work for the company, likened this to going from the doghouse to the penthouse overnight. As events would show, the penthouse proved to be very lonely and exposed place.

It was clear that the lenders wanted their own representative overseeing the company's affairs; however, what had not been anticipated was the decision of the senior management team to resign en bloc. A frantic search preceded the *CCAA* filing to identify an individual willing to act as an Interim CEO on extremely short notice. The sticking point proved to be the potential exposure of the CEO to employee-related claims and the amount of coverage that those claims would require.

When the Initial Order was granted the Monitor insisted that the Order make it clear that the Monitor was not a successor for the purposes of the union agreement. The Order was silent on the issue of whether or not the Interim CEO was considered to be a successor. Given the potential exposure involved and recent case law determining that a receiver could be considered a successor, out of an abundance of caution legal counsel for the company brought a subsequent application to amend the Initial Order to confirm that the Interim CEO was not a successor. In addition counsel also sought and obtained a specific agreement from the union confirming that the Interim CEO was not a successor employer and that the union would not commence any action against the Interim CEO by it accepting such an appointment.

There was also a concern that if the lenders decided not to continue to support the company and instead to enforce their security, there might not be enough cash to fund the payroll. Even though the unpaid payroll would have been covered by the D&O charge, the Interim CEO wanted to ensure that the payroll would be paid in the ordinary course of operations, and not by having to wait until funds had been realized to pay out claims under the D&O charge.

Ultimately David Bowra did agree to act as Interim CEO, subject to getting certain protection ($2 million D&O charge) under the Initial Order and getting a written undertaking from the lenders to honour payment of the company's ongoing payroll obligations. The Interim CEO also arranged to have the holiday pay that accrued after his appointment paid on an ongoing basis. Payment of the outstanding holiday pay at the time of the filing of approximately $1.2 million was not permitted without further order of the Court and it became clear that the lenders were not prepared to commit to pay outstanding the holiday pay.

Critical to the Interim CEO's acceptance of the appointment was confirmation that there was and continued to be adequate D&O insurance. The parent company had D&O coverage that also covered the Canadian subsidiary as well as the two U.S. companies. While the Interim CEO was covered under the existing policy, any change in control at the ultimate parent entity level would result in an automatic cancellation of D&O run off coverage.

When the ultimate purchaser was considering a purchase of the Canadian company's assets it was also contemplating the acquisition of the U.S. lenders security. This included the pledge of the shares of the Canadian company, the U.S. companies and the parent company and a holding company. Once counsel for the Canadian company realised that the parent company shares may be acquired, thereby triggering a change of control and cancellation of the D&O run off coverage, it insisted that the shares of the parent not be sold, thereby ensuring that the D&O run off coverage (which went for 3 years) was not terminated.

Ultimately we were able to confirm with legal counsel for the D&O insurer that as long as the change of control occurred below the ultimate parent entity level the D&O run off coverage would continue. We then obtained a commitment from the U.S. lender not to sell the shares it held in the parent company.

It was unclear initially what role the Interim CEO would play, other than attempting to keep the business operating while a sale process was pursued. Originally the Monitor expected a sale to be concluded sometime towards the end of July; however the company's financial difficulties and significant cash shortfall caused that process to be fast tracked.

The Interim CEO role was challenging. There were a lot of detailed day-to-day activities that required his involvement early on, and it was discovered that the three person senior management team that had run the company was very much hands-on and had shared little of the day-to-day operations and management with their subordinates. Furthermore, it soon became apparent that the previous management style was ineffective and control-oriented, with little sharing of information with subordinates.

The Interim CEO's major activities included developing a more effective and functioning management team and structure; communicating with management, employees, customers and suppliers; assessing the company's 90 day cash requirements; reviewing the order backlog and staffing requirements; identifying ways to reduce costs and preserve cash; arranging for a debtor in possession ("DIP") loan; and ongoing dealings with the Monitor and the lenders with respect to the sale process and cash requirements.

In addition the Interim CEO was in constant communication with the company's legal counsel on a variety of matters including: staffing cuts, customer contracts, D&O liability, the sale process and closing the sale.

After completion of the sale the Interim CEO and his staff continued to be involved in dealing with the payment of a variety of post-filing claims that were covered by the sale agreement.

As Interim CEO there was no longer any board to report to or to be accountable to. Discussions with the shareholder group were limited to discussions about D&O liability coverage. Apart from a few conference calls with the lenders, most of the Interim CEO's communications were with the Monitor. The Interim CEO operated very much in a vacuum. The shareholders had given up any hope of recovery, and the lenders were of the view that whatever their recovery on the Canadian company, they wouldn't recover their debt of $25M US.

The CEO role was a difficult and frustrating one. The sale process was being driven by the Monitor, and the overall direction of the company effectively controlled by the US lenders. Ultimately the going concern sale outcome was probably the best one, and given the significant cash burn, fast tracking the sale process made a lot of sense. The outcome couldn't have been accomplished through a receivership without significant employee related liabilities. So from the lenders perspective, while they didn't recover the full amount of their loans, they probably did the best they could in the situation. Almost 100 employees were rehired, and the business continues to operate, with a new well capitalized owner.

VI. SALES PROCESS ORDER AND SUCCESS FEE

Shortly after the Initial Order was granted the Monitor obtained approval for the sales process for the company's assets.

Of particular note in this process was that the Monitor sought approval for a success fee over and above the normal hourly rates. The success fee was tied to the amount for which the company's assets were sold; however the actual terms of the success fee arrangement were not disclosed in the Monitor's report. The success fee arrangement was approved by the lenders in advance and they supported the application to approve it.

The company initially opposed the success fee on the basis that the Monitor should be sure to first serve notice of its application on all the co-covenanters and guarantors of the company's debt, or alternatively confirm that the lenders would not include the amount of the success fee in any debt these co-covenanters and guarantors might ultimately owe to the lenders. In the end, these additional parties were served, and with no adverse positions taken on the issue of the Monitor obtaining a success fee, it was approved by the Court.

During the month of May the Monitor was busy preparing various sales documents, including a confidential information memorandum, terms and conditions of a sale, and a non-disclosure agreement. In addition, it had prepared a sophisticated online data room which provided purchasers with remote access to various company data under the watchful eye of the Monitor. The Monitor was able at any point in time to track who was accessing the site and what information they were accessing.

VII. CHALLENGES AND LESSONS OF OPERATING THE COMPANY DURING THE SALES PROCESS

Keeping the company operating was no mean feat. During the sale process the Interim CEO made two major staff cuts, reducing the employee level from 300 down to 120 in a five week period. One of the challenges during this period was to try and preserve employee morale and the customer base, while keeping suppliers supporting the company.

The Interim CEO quickly brought a small core group of senior management people into the fold and shared with them the overall objective of trying to keep the company operating for a 3 month period while proceeding with the sale process. The management team was asked to develop a downsizing strategy that was based on ensuring that (1) the core businesses that most buyers would want to acquire was maintained (2) the best employees were kept, and (3) at most, only two sets of staff reductions would have to be made due to cash constraints.

The company attempted to obtain new work and continued to work on existing orders. However, since there was uncertainty as to whether customers would pay for the work done to date, before the company did any more work it needed confirmation that the old accounts would be paid. In several instances the process was somewhat protracted since it was apparent that the company had often promised to deliver things that were not really achievable.

Customers were also raising the issue of what commitment they would have that a purchaser of the business would honour their contracts and finish them under the terms of the existing CNMI order. The clear answer was that at that time there was no such commitment, and in some cases there could never be such a commitment.

One of the biggest problems with attracting new work was the concern that many of the customer's projects had manufacturing lead times of 6 months or more. Notwithstanding the fairly creative concept that the company's legal counsel had come up with of the customer deposit charge, most customers had difficulty seeing too far down the road, and wherever possible they deferred any decision to proceed with a capital project until at the very least the dust settled. The company did enter into some new contracts where the lead time was 5 to 6 weeks, but it did not sign any agreements that would take 2 months or more to complete.

Getting paid for outstanding accounts was another matter entirely. In the case of one fairly large customer who had a major project under way that would take 3 or more months to complete, they ended up negotiating a fairly practical solution. First, the customer inspected the work in process in the company's plant. Then, they sought assurances that if a buyer was not found in the short term that the lender would continue to operate the plant long enough to ensure that their project was finished. When the company was unable to deliver on that request the customer asked for confirmation that any buyer of the business would honour their existing contract.

A compromise was reached which essentially involved the customer agreeing to pay all their outstanding accounts on this and other projects (in excess of $300,000) subject to the company agreeing to certain conditions. These conditions provided that if the buyer of the business was not prepared to honour the contract and complete it under the same terms as the existing contract, or if the business was shut down prior to the completion of the contract by the company, then the customer could take title to the existing work in process free and clear of any claims, and could complete the project with a third party. The terms of this agreement were approved by the Court, and the cash flow received from the payment of this customer's outstanding account proved to be critical in allowing the company to continue in operation.

Employee morale was also a challenge. But with the help of a strong human resources manager and a fairly open management approach, as well as regular management meetings and updates with senior staff, the employees supported the company during the process.

Most employees knew that there had to be layoffs. What they did not know was whether or not there would be a future, and if the business was bought who would be the buyer. There were real concerns that a buyer might only be interested in the technology and not in the plant or employees, and that soon the entire labour force would be unemployed.

As Interim CEO, we attempted to keep all employees as well informed as possible by advising senior management on a regular weekly basis. We were very frank and open. There was also a strong interest in a local solution, and a group of local employees backed by a former owner with significant cash resources spent a lot of time and effort trying to put an offer together.

At the end of the day the local group left it a little too late. They had assumed that time would be on their side. Unfortunately time was their enemy, and USNR the ultimate purchaser had astutely acquired the entire U.S. lender debt, which allowed them to effectively outbid any offer.

The lessons learned from the process of this restructuring are fairly simple. Do not sugar coat it, tell the employees the way it is, keep them informed and respect their intelligence. Be realistic and practical with customers, find solutions for them, and find ways that will let them do the deal. Do not put off making tough decisions, they do not get easier over time. When making staff cuts do them all at the same time and not over a period of time. Keep an open door policy and keep your senior management team informed at all times. Show your human side, and not the clinical faceless side of the insolvency practitioner. Get management involved in the decision making process and ask for their ideas and solutions.

VIII. COMPANY APPLICATION FOR A DIP LOAN

While the lenders had indicated that they would be prepared to provide DIP funding to the company if required, they were reluctant to do so. At one point in the proceedings, after the Interim CEO had concluded that within a matter of a week the company would not have sufficient funds to meet its ongoing obligations including payroll, it brought an application to Court to have a $2.5 million DIP loan approved. The lenders declined to provide the DIP loan and the Interim CEO arranged a DIP loan with a third party. The lenders were reluctant to agree to the company getting a DIP loan, feeling that a sale was imminent and that the company could manage in the interim.

On the application to Court for approval of the DIP loan, the Monitor persuaded the Court that while the DIP loan might be needed in the future it was not required at the present time, since a sale was imminent. However, the Monitor did recommend that the company make arrangements for a DIP facility in the near future. The Monitor was more concerned that the imposition of a DIP loan could negatively influence its ability to conclude a sales transaction with USNR. The Court decided not to approve the DIP Loan, but left it up to the company to bring a further application at a later date.

The sale of the company was delayed and did not complete as scheduled. Ultimately part of the sale proceeds were specifically allocated and used as a DIP facility to allow the company to continue operations pending the completion of the sale. This DIP facility became an important part of the sale agreement.

IX. SALES AGREEMENT AND VESTING ORDER

In its second report to the Court in the third week of May 2008, the Monitor supported the company's request for an extension of the proceedings until the end of July 2008, at which time the Monitor felt that it was likely that the company should have been successful in concluding a sale of its business. However, in the first week in June the Monitor was before the Court again, seeking approval of the sale of the company's assets to USNR for U.S. $11.5 million.

The most important reason for the abbreviated sales process was the significant cash burn that the company was incurring, which caused the lenders to conclude that while a more protracted sales process might yield a somewhat higher sale price, it would in all probability be exceeded by the costs required to keep the company in business. Another important factor for the shortened time frame was that USNR, which had always expressed interest in the company's assets, had attended every court application in the proceedings, and was obviously very familiar with the assets, was also keen to proceed with an offer immediately. USNR no doubt hoped to beat out other competitive bids that could challenge their attempt to acquire the company's assets by being ready to complete quickly.

The Monitor, together with the company, prepared two draft sales agreements. One was an asset sale agreement and the other was a creditor bid asset sale agreement. The purchaser ultimately acquired the entire U.S.$25 million debt from the U.S. lenders and used the debt that it acquired to credit bid the purchase price. As a result the purchaser was able to pre-empt any other potential offers that could in fact have exceeded the amount of its bid of U.S.$11.5 million by up to the full amount of the U.S.$25 million debt.

In its final report to the Court in the first week of June 2008, the Monitor advised the Court of a letter of intent it had received from an employee-based group (together with a former owner of the company) for a sale price in excess of the amount offered by USNR. However, the Monitor was able to persuade the Court that given all the circumstances, including the time frame required to convert a letter of intent to a final agreement, the prospect that the final agreement could be at a price less than the letter of intent amount, and the intervening cash burn during that period, that a bird in the hand was better than two in the bush.

The actual sales agreement and the order approving the sale contained some interesting

and unusual provisions. The allocation of the purchase price included a DIP loan of $1 million to fund operations up to the closing of the sale agreement. The termination of all employees by the Interim CEO was scheduled to occur after execution of the closing documents but before the closing of the sales agreement and before assigning the company into bankruptcy.

The assignment of the company into bankruptcy was to occur prior to the closing but after execution of all closing documents. A critical part of the closing process was the establishment of a cash reserve account to pay for all post-filing obligations of the company incurred up until the date of closing. Payment of those obligations by the company was to be subject to the approval of the Monitor. A directors' claims process was established. The Interim CEO was authorised to assign the company into bankruptcy. The bankruptcy was scheduled to occur after executing the sales agreement and termination of the employees, but before completion of the sale agreement.

The Bowra Group Inc. was to be the Trustee in Bankruptcy and execute the assignment and other documents. This happened pursuant to a Court order, which the Court granted notwithstanding s. 13.3(1) of the *BIA* and without any conditions being imposed by the Court. Section 13.3(1) of the *BIA* states that "Where the Trustee is a director or officer of the debtor during the two preceding years, the Trustee is not qualified to act as a Trustee except with permission of the Court and on such conditions as the Court may impose".

The sale of the company to USNR completed on June 5, 2008. The writers understand that USNR has rehired over 100 employees to work for them since that time.

X. REMAINING ISSUES AFTER THE CLOSING

One concern for the Interim CEO throughout the process was the ongoing liability that he and the company had as a result of continuing to trade and incur credit post-filing. While the lenders were not prepared to provide a blanket commitment to the company that these liabilities would be taken care of, and the company made every effort to deal with parties on a COD basis, one clause in the ultimate sale agreement did in fact provide protection to those parties. The lenders insisted on a clause in the sale agreement to USNR that effectively provided that any obligation incurred by the company subsequent to the filing but before the closing of the transaction would have to be paid by the company from the sales proceeds.

As a result, since the completion of the sale approximately $250,000 in a variety of post-filing claims has been paid to various suppliers. It is expected that these payments will be completed by the end of 2008.

Subsequent to the sale of the company The Bowra Group Inc. also conducted a Court-driven D&O claims process to resolve any outstanding claims against the former directors and officers of the company. $20,000 in D&O claims were paid out and this D&O claims process is now complete.

XI. Summary and Conclusion

Through a U.S. lender driven *CCAA* process, a sale of a large sized unionized business was completed in a 5 week period. By ensuring that any post filing credit provided to the company by suppliers and any other potential D&O claims were paid from the sale proceeds, the D&O liabiliites were minimized.

In addition to agreeing to pay the Monitor a success fee for its role in the process, the Court showed significant deference to the views of the Monitor and the secured creditor. The Court relied extensively on the Monitors reports to approve the sale, as well as agreeing to allow the Monitor to address the Court in it's application to approve the sale. It appeared to place little reliance on the position of company management, and while it did consider the views of the other stakeholders, it exercised a fair degree of discretion in approving a fast tracked sale process.

Any outcome would have resulted in a loss to the secured creditors, and potentially a closure of the business. The overall outcome would probably not have been different if the sale process had been more protracted, and the views of the wider stakeholder group given more audience, except the lenders would have lost more money.

The corporate governance of the enterprise was largely abridged by the Monitors role during the filing. The use of insolvency professionals as interim management proved expedient to the process. What surprised the writer was how little impact senior management had in such a situation. Being on the management side of a *CCAA* process provides the insolvency professional with a unique and valuable perspective in how little input and impact management often has on the outcome. The feeling of helplessnesss comes to mind. That said, the end often justifies the means, and in this instance the overall process accomplished the objectives.

Whether in future you will see more insolvency professionals volunteering to act as the CEO in similar situations, where the company is insolvent, has a large number of unionised employees, negative cash flow, no DIP funding commitment from the lender, no senior management team, and the knowledge that a large part of the workforce will have to be terminated before too long, remains to be seen. In this situation, with the assistance of good counsel, the Interim CEO was able to steer the company through the process without attracting any personal liability.

In light of the recent B.C. Court of Appeal decision on *Cliffs over Maple Bay*, it will be interesting to see whether or not the Court will permit a liquidating *CCAA* process to affect such a sale where clearly there is no prospect of a plan ever being filed.