



No. S-1710393  
Vancouver Registry

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,  
S.B.C. 2002, c. 57, AS AMENDED

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,  
R.S.C. 1985, c. C-44, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF  
ALL CANADIAN INVESTMENT CORPORATION

### **APPLICATION RESPONSE**

**Application response of:** Boale, Wood and Company Ltd. (the "Monitor")

THIS IS A RESPONSE TO the notice of application of Hans-Uwe Andresen filed November 8, 2019.

**Part 1: ORDER(S) CONSENTED TO**

The Monitor consents to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application on the following terms:

1. Nil.

**Part 2: ORDER(S) OPPOSED**

The Monitor opposes the granting of the orders set out in Part 1 of the notice of application.

**Part 3: ORDER(S) ON WHICH NO POSITION IS TAKEN**

N/A

#### Part 4: FACTUAL BASIS

1. Among the relief sought in the Notice of Application includes the granting of a priority to Mr. Andresen with respect to any recovery that he says he believes he will be able to obtain from these proceedings, which is both inappropriate and unfair to the remaining stakeholders in the circumstances.
2. Effectively Mr. Andresen is trying to hijack these proceedings.
3. Although counsel for Mr. Andresen makes reference in his letter of October 29, 2019 to what the preferred shareholders believed, it is suspected that, in fact, Mr. White is *not* acting for the preferred shareholders at all but, only “certain preferred shareholders” as set out in the penultimate paragraph of his October 29, 2019 letter and, based on the Notice of Application, just for Mr. Andresen.
4. In the circumstances it would be inappropriate to do anything relating only to one preferred shareholder who seeks to bootstrap himself in circumstances where it has already been determined that he is not a creditor and in terms of the material to be relied upon just refer to the Eighteenth Report of the Monitor.
5. The Monitor is in the process of making its best efforts with the assistance of the Petitioner to recover all of the loans that are set out and described in the Notice of Application.
6. As pointed out at the Court hearing on Wednesday, November 6, 2019, in relation to a letter from the Applicant’s counsel, many of the points raised by the Applicant are ill-informed and misleading. For example, references made in the letter of October 29, 2019 to the Stonewater Motel loan. That is referred to again in the Notice of Application, paragraph 13, where it refers to the Monitor advising that the Stonewater loan was repaid in full on December 7, 2018 *as described in the Monitor’s Seventeenth Report at paragraph 53*.
7. As the Court was advised, and which is reiterated here, that information was *actually* conveyed to the creditors in the *Monitor’s Tenth Report dated December 3, 2018* at paragraph 10 and confirmed in the *Monitor’s Eleventh Report dated January 21, 2019* at paragraph 58, which reads as follows:
  58. The Stonewater Motel Loan was repaid in full on December 7, 2018.
8. The facts outlined in the Notice of Application of the Applicant are consistently misleading and the Applicant’s application ought to be dismissed with costs to the Petitioner and the Monitor on a full indemnity basis, fixed and payable forthwith.

#### Part 5: LEGAL BASIS

1. The Orders sought by the Applicant are nothing more than a collateral attack on the September 4, 2019 Order of Mr. Justice Walker in these proceedings (the “**Order**”) in which it was ordered and declared that the Applicant was *not* a creditor and was in the

class of preferred shareholders, none of whom were to be treated differently within the class, regardless of whether or not they had issued redemption notices.

2. The Applicant has not appealed the Order and there has not been any application to set the Order aside.
3. As such, the Application is an abuse of process.
4. In addition, there is no evidence that the Applicant has served all or any of the actual preferred shareholders, in spite of seeking priority over all of them. See Notice of Application, Part 1, paragraph 7, which reads as follows:

7. Any benefits recovered as the result of the Actions are to be paid out as follows:

- a. First, to pay Mr. Andresen's legal fees, costs, and disbursements relating to the Actions on a solicitor's and own client basis;
- b. Next, to pay for the redemption of Mr. Andresen's preferred shares in the Petitioner, up to the value of his preferred shares in the Petitioner; and
- c. Any surplus will be paid to the Petitioner, to be distributed pursuant to the plan of distribution.

5. *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

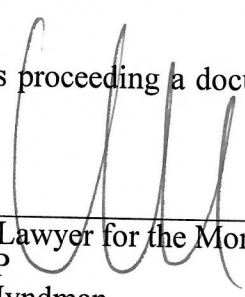
**Part 6: MATERIAL TO BE RELIED ON**

1. Monitor's Eighteenth Report dated November 15, 2019.

This matter is currently scheduled for one day before Mr. Justice Walker.

- The application respondent has filed in this proceeding a document that contains the application respondent's address for service
- The application respondent has not filed in this proceeding a document that contains an address for service.

Dated: November 15, 2019

  
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Signature of Lawyer for the Monitor  
Kornfeld LLP  
Douglas B. Hyndman

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**APPLICATION RESPONSE**

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