SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-11-049838-150

DATE : JUNE 20, 2018

BY THE HONOURABLE DAVID R. COLLIER, J.S.C.

In the matter of the *Companies' Creditors Arrangement Act*

9323-7055 QUEBEC INC.
(formerly Aquadis International Inc.)
Debtor

and

RAYMOND CHABOT Inc, (Mr Jean Gagnon, CPA, CA, CIRP)
Applicant / Monitor

JUDGMENT

I. OVERVIEW

[1] In June 2015, the debtor 9323-7055 Québec Inc., (hereinafter "Aquadis"), a vendor of bathroom products, issued a Notice of intention to file a proposal to creditors under the *Bankruptcy and Insolvency Act*.[1] Aquadis' difficulties arose from its sale in Quebec and

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1 R.S.C., 1985, c. B-3, s. 50.4(6).

Ontario of defective faucets that had been manufactured in Taiwan[2] by Jing Yudh Industrial Co., Ltd. ("JYIC") and sold to Aquadis by a Taiwanese distributor, Gearex Corporation ("Gearex").

[2] Aquadis sold the defective faucets to a number of Canadian retailers, including Home Depot of Canada Inc., Groupe BMR Inc., Patrick Morin Inc. and RONA Inc. (the "Retailers"). Between 2006 and 2010 hundreds of these installed faucets failed, causing significant damage to property owners and resulting in a multitude of subrogated claims by their insurers against Aquadis and its insurers.

[3] In December 2015, Aquadis' restructuring proposal was continued under the *Companies' Creditors Arrangement Act*,[3] when this Court issued an Initial Order mandating the present Monitor and a committee of Aquadis' creditors to submit a plan of arrangement. Shortly after the Initial Order, the Court approved a procedure for the filing with the Monitor of all claims relating to the defective faucets.

[4] To give effect to the arrangement, the Court suspended approximately 300 lawsuits pending against Aquadis.

[5] Since December 2015 the Court has extended the delay to file a plan of arrangement while the Monitor attempts to negotiate a comprehensive settlement of all outstanding claims. At present, the Monitor estimates that the over 800 claims amount to almost $22 million.[4]

[6] In November 2016, the Court granted the Monitor's request for the power to institute legal proceedings, on behalf of Aquadis' creditors, against all persons involved in the manufacture, distribution or sale of the defective faucets.

[7] Accordingly, in December 2016, the Monitor instituted legal action before the Superior Court of Québec against JYIC, Gearex, their insurers, and a number of other parties, for the payment of $22.4 million in damages and insurance proceeds.[5] This proceeding has been served on JYIC, Gearex and their insurers in Taiwan.

[8] To date, there is no comprehensive settlement and the Monitor has not filed a plan of arrangement. Nevertheless, he has received offers of settlement from Fubon Insurance Co., Ltd. ("Fubon"), the insurer of Gearex, as well as from three insurers of

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2 Formally known as the Republic of China.
3 R.S.C., 1985, c. C-36.
4 On a depreciated value basis, and including approximately $1.9 million in late claims filed after March 24, 2017.
5 As amended on November 7, 2017.

JYIC, Gearex or Aquadis.[6] The Fubon offer is for US$5 million, while the other insurers' offers total $480,000. Taken together, the four offers amount to $7.2 million.

[9] The Monitor is seeking the Court's authorization to accept these offers, which are contingent upon the granting by the Monitor of releases in favour of Fubon, Gearex, the three insurers and their insureds. The Monitor's request is opposed by JYIC, the Retailers and Lloyd's, an insurer of Aquadis who is a non-settling party (the "Opposing Parties").

[10] With the exception of JYIC, the main concern expressed by the Opposing Parties is that their right of subrogation against the settling parties will be extinguished if they are released from liability under the proposed agreements.[7]

[11] Article 1730 of the *Québec Civil Code,* dealing with the contract of sale, provides that the manufacturer and distributor are bound with the seller to warrant the quality of the goods sold. Accordingly, if a retailer is sued by the purchaser of a defective faucet, or his subrogated insurer, the retailer has the right to demand contribution and indemnity from the parties (and their insurers) located higher up the chain of distribution, and against the manufacturer. All the parties are solidarily liable to the purchaser for the latent defect.

[12] In the proposed agreements the Monitor has attempted to address the Opposing Parties' concern that their rights will be prejudiced by the proposed releases. The Monitor proposes two protective measures. The first provides that in any defective product claim brought against a non-settling party its liability will be reduced by a proportionate amount of the settlement proceeds allocated to that loss. Secondly, the proposed agreements provide that the liability of the non-settling party will be further reduced by any amount that that party could have obtained against a released party by subrogation, but for the release.

[13] The Opposing Parties raise a number of objections to the Monitor's application. First, they argue that the proposed agreements are not necessary or incidental to a restructuring of Aquadis and should therefore not be approved. They argue that the CCAA is being used for an improper purpose, by purporting to settle claims arising not just between Aquadis' creditors, but claims that also involve third parties, such as the Retailers. They contend that the process is flawed because the Monitor has not been transparent, and has only recently notified a number of newly-discovered retailers of the present proceedings. They add that the Court cannot measure the reasonableness of the settlement offers, or conclude that they are in the interest of all parties, because the Court has little information respecting Gearex's capacity to contribute to a settlement, or

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6 More particularly, AIG Taiwan Insurance Co., Ltd. ("AIG"), Insurance Company of North America ("INA") and Sovereign General Insurance Company ("Sovereign").

7 The Fubon transaction provides for a full release for it and Gearex of all claims, whereas the AIG, INA and Sovereign transactions provide for the release of all claims during the applicable policy periods.

the extent of each Retailer's liability. Finally, the Opposing Parties submit that the protections offered to them under the proposed agreements are inadequate.

[14] Accordingly, the Monitor's application raises two questions. The first, broader question is whether the Court should approve the agreements in the circumstances of this case. The second question is whether the agreements provide sufficient protection to the parties in the event some of them are released from liability.

[15] For the reasons that follow the Court concludes that the agreements should be approved.

II. ANALYSIS

A) SHOULD THE COURT APPROVE THE AGREEMENTS IN THE PRESENT CIRCUMSTANCES?

i. Is the CCAA being properly applied?

[16] It is true that the proposed agreements are unlikely to lead to a restructuring of Aquadis or to a new start of its operations. The debtor company is for all intents and purposes a thing of the past. Rather, the proposed agreements are presented to the Court as part of plan to carry out an orderly collection and distribution of Aquadis' assets, which are made up of litigious claims, and to wind up its affairs.

[17] This objective falls within the scope of the CCAA. In *Hollinger*, the Ontario court was asked to approve pre-plan settlements involving some of Hollinger's debtors. Campbell J. described the utility of the CCAA to wind-up a debtor company whose principal assets consist of litigious claims:[8]

> [42] Recent jurisprudence has confirmed the application of judicial discretion and flexibility of the CCAA to achieve a variety of corporate purposes including but not limited to the restructuring of the company. These have been reaffirmed in the decision of the Supreme Court of Canada in *Century Services v. A.G. Canada* and include, in appropriate cases, the ability to effect a sale of assets and winding up or liquidation of a debtor company and its assets. Also see *Anil Range Mining Corp*.
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> [43] What has been a feature of restructuring since the financial crisis of 2008 has been a variety of processes under the CCAA.
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> [44] The conclusion that I reach is that the court does have jurisdiction consistent with the principles of the CCAA to maximize the assets available to creditors as long as the process is not being used to further a collateral objective that, in the end, is not inconsistent with the ultimate goal of these CCAA proceedings. See *Houlden, Morawetz Sara*.

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8 *Hollinger Inc. (Re)*, 2012 ONSC 5107 (CanLII), 96 CBR (5th) 1.

> [45] What is unusual in this instance is that the assets are the product of litigation. The court does need to be satisfied on an ongoing basis that the progress of the litigation is both timely and cost-effective in terms of its progress and will result in benefit to creditors.
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> [...]
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> [50] The court has the obligation to ensure the integrity of the process which in the first instance is to protect the interests of creditors. A second important consideration is to ensure that the process is consistent with commercial efficacy and integrity and fairness. See *Royal Bank v Soundair.*
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> [references omitted]

[18] The present CCAA proceeding seeks to maximize the assets available to Aquadis' creditors. It has the advantage of centralizing all claims and rights of action in the hands of the Monitor, thereby putting an end to a multitude of judicial proceedings between numerous parties. The process allows the manufacturer, distributors, vendors, purchasers and insurers to advance their competing interests in a comprehensive and expeditious fashion, the whole in keeping with the objectives of the CCAA.

[19] Furthermore, the proposed releases do not exceed the scope of the CCAA by interfering with the rights of unrelated third parties. The Retailers are wrong to describe themselves as third parties who are not concerned by the settlement of claims amongst Aquadis' creditors. Aquadis, the Retailers and the parties to the proposed agreements are solidarily liable for the product claims asserted by Aquadis' creditors. Each of these solidary debtors is directly interested in the settlement of the claims, and there is a close connection between the proposed releases and the plan to be filed under the CCAA.

[20] In *Metcalfe*,[9] the Ontario Court of Appeal held that there must be a "reasonable connection" between the releases being granted and the restructuring plan.

> [69] In keeping with this scheme and purpose, I do not suggest that any and all releases between creditors of the debtor company seeking to restructure and third parties may be made the subject of a compromise or arrangement between the debtor and its creditors. Nor do I think the fact that the releases may be "necessary" in the sense that the third parties or the debtor may refuse to proceed without them, of itself, advances the argument in favour of finding jurisdiction (although it may well be relevant in terms of the fairness and reasonableness analysis).
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> [70] The release of the claim in question must be justified as part of the compromise or arrangement between the debtor and its creditors. In short, there must be a reasonable connection between the third-party claim being compromised in the plan and the restructuring achieved by the plan to warrant inclusion of the third-party release in the plan. This nexus exists here, in my view.

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9 *Metcalfe & Mansfield Alternative Investments II Corp.,* (Re), 2008 ONCA 587 (CanLII), 92 OR (3rd) 513.

[21] In the present case, the orderly realization of Aquadis' assets is a legitimate objective under the CCAA, and the Court may approve the proposed agreements, if appropriate, given their close connection to this objective.

ii. Has the integrity of the restructuring process been respected?

[22] Lloyd's questions the integrity of the restructuring process, arguing that it was unreasonably excluded from the proposed settlement agreements when the Monitor could not identify with certainty what defective faucets were sold during the period of Lloyd's coverage. For their part, the Retailers, particularly Home Depot, complain that they have been prevented from participating in a settlement because the Monitor cannot establish their liability on the basis of verifiable sales figures.

[23] The opposing parties' complaints are irrelevant to the question of whether the proposed agreements result from an honest, transparent and fair negotiation process. It is the discussions between the Monitor, Fubon, Gearex and the three insurers (AIG, INA and Sovereign) which is of interest here, not the reasons why the opposing parties are not included in the agreements.

[24] Moreover, the Monitor's inability to agree with Lloyd's on the terms of its release, or to present convincing sale figures to the Retailers, does not in any way suggest that his negotiations with these parties lacked integrity or transparency. It has not been easy for any of the parties to identify with certainty which faucets were defective and who sold them. However, nothing prevents the parties from continuing to clarify the facts in order to reach an eventual agreement.

[25] No party has questioned the *bona fides* of the Monitor's negotiations with AIG, INA and Sovereign. The Opposing Parties' complaint concerns only his negotiations with Fubon and Gearex, and in particular their refusal to allow the Monitor to see Gearex's financial statements. The Opposing Parties say that since Gearex has withheld this information it should not be entitled to a release from all claims.

[26] Evidence of Gearex's financial situation would be relevant information when considering its request for a release. However, it is a private company and the Monitor cannot force the disclosure of its financial statements. Moreover, the Monitor's inability to see the financial statements does not lead to the conclusion that his negotiations with Fubon and Gearex were flawed. In September 2016, the Taiwanese companies offered to settle for US$4 million; when this offer was refused by the Monitor, they increased their offer to US$5 million. The Monitor has been able to appreciate the reasonableness of this offer in light of the amount of outstanding claims, the limits of Fubon's insurance coverage, and the risks and expense of executing a judgment in Taiwan.

[27] A second reproach levelled at the Monitor is that he has only recently discovered the existence of other retailers who may also have sold the defective faucets in Canada

and the US. These retailers were only identified a month ago, when the Monitor forced the former owners of Aquadis to turn over company sales registers to him. The Monitor served his application on ten retailers, each of whom sold more than a hundred faucets during the relevant period, between May 25 and June 1. The newly-identified retailers may account for up to 16% of all relevant faucet sales.

[28] The Monitor's application was initially set to be heard on May 28 and 29, but was postponed at his request to June 11 to allow the newly-served parties to contact him prior to the hearing. So far, none has. While it would have been preferable to postpone longer, Fubon has advised that its offer of settlement expires after June 28 and the Monitor has been forced to proceed.

[29] The Opposing Parties argue that Fubon's deadline is artificial. The Court cannot judge whether it is. But since Fubon's offer was first made over 18 months ago, in late 2016, it is not surprising that Fubon has set a deadline for acceptance.

[30] To the extent that the new-served retailers sold defective faucets, they would be in the same position as the four Retailers who participated in the hearing. Their right of subrogation against the settling parties is the same. It is reasonable to assume that had the new parties participated in the hearing they would have raised the same concerns as the Retailers.

[31] On the balance of the evidence the Court is of the opinion that the proposed offers of settlement did not result from a flawed or unfair negotiating process. And given the circumstances, they must be examined now.

iii. Are the settlement offers in the interest of the parties?

[32] The Court agrees with the test applied in *Hollinger*[10] and *Nortel*[11] to determine whether a proposed settlement agreement should be approved by the supervising court. In those cases it was held that the court:

1) should consider whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently;

2) should consider the interests of all parties;

3) should consider the efficacy and integrity of the process by which offers have been obtained; and

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10 *Hollinger*, *supra*, note 8.

11 *Nortel Networks Corp, Re,* 2010 ONSC 1708.

4) should consider whether there has been unfairness in the working out of the process.

[33] The Court has already concluded that the negotiation process leading to the proposed agreements was reasonable and fair.

[34] As regards the Fubon offer, the Court is satisfied that the Monitor has made a reasonable effort to obtain the best possible offer, for the reasons given above. The same is true for the AIG, INA and Sovereign offers.

[35] The reasonableness of these last three offers is apparent. AIG and INA, who were respectively the insurers of Gearex and JYIC, have offered $150,000 each to settle the claims arising during their policy periods in 2010 and 2011. According to the Monitor, the total claims during their policy periods amount to $363,000. As a result, it would appear that AIG and INA are offering to settle approximately 83% of the value of the claims against them and their insureds. Since their policies expired more than three years ago, any further claims arising during their policy periods would be prescribed.

[36] Sovereign, an insurer of Aquadis in 2010 and 2011, asserts that its offer of $180,000 exceeds its liability, since Sovereign has a right of subrogation against Gearex, JYIC and their insurers. Even without a right of subrogation, the claims arising during Sovereign's policy period amount to $246,000, some of which are also covered by Fubon. In this case, Sovereign's offer is equal to 73% of the value of claims against it and its insureds.

[37] Do Aquadis' creditors have an interest in accepting these offers? Their value of $7.2 million amounts to one third of the outstanding claims. In accepting the offers, Aquadis' creditors retain their rights against JYIC and its insurer, Cathay Century Insurance. From a financial perspective, it appears clearly in the best interest of creditors to accept the offers.

[38] It is worth noting that the creditors committee is composed of a group of insurers who represent 73% of the outstanding claims in value and 83% of the number of creditors.[12] The committee is represented by legal counsel with a great deal of experience in insurance matters. The creditors committee has resolved to accept the three offers, subject to Court approval. The Court cannot ignore the representative character of the creditors committee, and its expertise in insurance matters, when considering whether the offers are in the interest of Aquadis' creditors.

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[12] The members of the creditors committee are: Desjardins Assurances Générales inc., Intact Compagnie d'Assurances, Aviva, Compagnie d'Assurances du Canada, La Capitale, Assurances Générales Inc., Groupe Pro-Mutuel et Royale & Sun-Alliance du Canada, Société d'Assurances.

[39] The Alberta Court of Appeal expressed a similar opinion in *Alternative Fuel Systems*[13] when it stated:

> [55] What the CCAA requires is that the end result, the plan of arrangement, be fair and reasonable. Only when those conditions are met, will a plan of arrangement be approved by a court. What constitutes fairness is largely determined by the circumstances of each case. An important measure of fairness is the degree to which creditors approve it. Creditor support can create an inference that assenting creditors see the plan as viable and commercially reasonable given other available alternatives. The courts generally accept the view that the creditors are in a better position to determine whether the plan is in their own best interests.

[40] The Alberta court's assessment of what lies in the best interest of creditors should apply equally to the consideration of pre-plan settlement offers.

B) DO THE PROPOSED TRANSACTIONS PROVIDE SUFFICIENT PROTECTION TO THE PARTIES IN THE EVENT SOME OF THEM ARE RELEASED FROM LIABILITY?

[41] The Opposing Parties argue that the proposed releases will deprive them of their right of subrogation (contribution and indemnity) against the settling parties. The Monitor proposes to address this concern by including similarly-worded provisions in each of the three settlement agreements. It is worth reproducing them at length.

[42] Transaction and Release Agreement between the Monitor and Fubon:[14]

> In any action or proceeding in respect of a Product Claim against Lloyd's Under the Lloyd's Policies, Sovereign Under the Sovereign Policies or any Purchaser, the liability of Lloyd's, Sovereign or that Purchaser, as the case may be, shall be reduced by:
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> 8.1 the Settlement Allocation Amount, if any; and
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> 8.2 any amount which relates to the liability of Gearex or Aquadis Asia Discharged pursuant to this Agreement which could have been in fact recovered against those parties, had the liability not been Discharged pursuant to this Agreement, as demonstrated by Lloyd's, Sovereign or that Purchaser, as the case may be.

[43] Transaction and Release Agreement between the Monitor, AIG and INA:[15]

> In any action or proceeding in respect of a Product Claim against

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13 *In Alternative Fuel Systems Inc. v Remington Development Corp.*, 2004, ABCA 31.
14 Exhibit P-10A, s. 8.
15 Exhibit P-11C, s. 8.

any Purchaser, the liability of that Purchaser, shall be reduced by:

(a) the Settlement Allocation Amount, if any; and

(b) any amount which relates to the liability of Aquadis Asia, Gearex, Hsien (and any of their respective Vendors) and JYIC Discharged pursuant to this Agreement which could have been in fact recovered against those parties, had the liability not been Discharged pursuant to this Agreement, as demonstrated by that Purchaser.

[44] Transaction and Release Agreement between the Monitor and Sovereign:[16]

In any action or proceeding in respect of a Product Claim against any Purchaser, the liability of that Purchaser, shall be reduced by:

(a) the Settlement Allocation Amount, if any; and

(b) any amount which relates to the liability of Aquadis Group, Menard Inc., Handy Hard Wholesale Inc. and Moore Supply Discharged pursuant to this Agreement which could have been in fact recovered against those parties, had the liability not been Discharged pursuant to this Agreement, as demonstrated by that Purchaser.

[45] These clauses look similar to proportional share settlement agreements, also known as Pierringer agreements, described by Campbell J. in *Hollinger*:[17]

> [54] Pierringer agreements (so-called after *Pierringer v. Hoger*) permit some parties to withdraw from litigation, leaving the remaining defendants responsible only for the loss that they may be found to have actually caused, with no joint liability. As the remaining, Non-Settling Defendants are responsible only for their proportionate share of any loss, a Pierringer agreement can properly be characterized as a "proportionate share settlement agreement".

[46] The opposing parties argue that there can be no question of a proportionate share settlement agreement in the present case, since each party in the chain of distribution and sale, as well as the manufacturer, bears full responsibility for the defective product. Accordingly, there is no "several" liability that can be carved out of a release, as was done in *Hollinger*.

[47] Nevertheless, in the Court's view, the operation of section 8 produces a result that is not very different from that intended by a proportionate share agreement. The provision

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16 Exhibit P-16, s. 8.

17 *Hollinger*, *supra*, note 8.

first reduces the claim that can be made against a non-settling party by a proportionate share of the settlement funds obtained by the Monitor. Secondly – and this is where the comparison with the proportionate share settlement agreement is appropriate – section 8 allows the non-settling party to reduce his liability by showing that he could have received more from the settling party through the exercise of his right of subrogation than was obtained under the settlement. Put simply, if the non-settling party's complaint is that a settling party got off too lightly, it is up to the non-settling party to demonstrate that the Monitor gave up too much under the settlement agreement.

[48] The operation of a proportionate share settlement agreement was described by the Alberta Court of Appeal in *Amoco Canada Petroleum Co*:[18]

> [15] There is, however, an added complication that a proportionate share settlement agreement must address. As a result of third party proceedings, settling defendants are almost always subject to claims for contribution and indemnity from non-settling defendants for the amount of the plaintiff's loss alleged to be attributable to the fault of the settling defendants. Before the settling defendants can be released from the suit, some provision must be made to satisfy these claims.
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> [16] This obstacle is overcome by including an indemnity clause in which the plaintiff covenants to indemnify the settling defendants for any portion of the damages that a court may determine to be attributable to their fault and for which the non-settling defendants would otherwise be liable due to the principle of joint and several liability. Alternatively, the plaintiff may covenant not to pursue the non-settling defendants for that portion of the liability that a court may determine to be attributable to the fault of the settling defendants. It is the latter approach that prevails in the agreement at issue in this suit, but in either case the goal of the proportionate share settlement agreement is to limit the liability of the non-settling party to its several liability.

[49] In the Court's view, section 8 works much like the proportionate share agreement described by the Alberta Court of Appeal, because the Monitor is effectively agreeing to indemnify the non-settling party for any portion of the damages that a court may determine he could have effectively recovered from a settling party.

[50] Furthermore, the operation of section 8 is consistent with article 1531 CCQ, which provides that if a creditor deprives a solidary debtor of his right of subrogation, the debtor is released to the extent of the value of his lost right.

> Art. 1531 Where, through the act or omission of the creditor, a solidary debtor is deprived of a security or of a right which he could have set up by subrogation, he is released to the extent of the value of the security or right of which he is deprived.

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[18] *Amoco Canada Petroleum Co. Ltd. v Propak Systems Ltd.*, 2001 ABCA 110 (CanLII), 200 DLR (4th) 667.

[51] The Opposing Parties concede the resemblance between section 8 and article 1531 CCQ, but argue that section 8 is unacceptable because it places the onus on the non-settling party to demonstrate that a settling party could have indemnified him. The Opposing Parties argue that the Court cannot "amend" the protection of article 1531 by imposing this burden on non-settling parties.

[52] Section 8 does not modify article 1531 however. It is evident that a party who claims to have lost a right, must at least demonstrate that the right in question is not illusory, and has value.[19] This demonstration is required by article 1531 which reduces a solidary debtor's liability only to the extent of the value of the lost right.

[53] The notion that releases granted in a CCAA proceeding must be "economically neutral"[20] for non-settling parties is respected by section 8. If the non-settling party's subrogation right is without value, the release changes nothing. If the non-settling party shows that his lost right had value, his liability will be reduced accordingly.

[54] The Monitor does not contend that section 8 offers a perfect solution to the concerns of the opposing parties. Disagreements may arise between the parties over the type of evidence required for a non-settling party to satisfy the court that his lost right had value. Certain procedural protections may be required: for instance the court may have to permit third party discovery of Fubon and Gearex to allow non-settling parties to effectively prevail themselves of the section 8 mechanism.

[55] The Court must balance competing interests. Approving the proposed agreements would appear to allow the CCAA process to move ahead to the filing of a plan of arrangement. The Monitor has promised to file a plan this fall. In the meantime, interested parties may continue to negotiate a resolution of outstanding claims. An overall settlement would clearly be in the best interest of everyone. On the other hand, if the agreements are not approved there is an increased risk that no global settlement will be reached, with litigation the only remaining option. These considerations lead the Court to conclude that the proposed settlement agreements should be approved.

FOR THESE REASONS, THE COURT :

[56] **ORDERS** that the Transaction and Release Agreements produced as exhibits P-10A, P-11C and P-16 to the Monitor's modified application dated June 8, 2018 are approved and ratified;

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19 *Lacharité c Caisse populaire Notre-Dame de Bellerive*, 2005 QCCA 577, paras. 35-41.

20 *In the matter of Hollinger Inc., et al*, Court of Appeal for Ontario, January 14, 2013.

[57] **AUTHORIZES** the filing of the late claims identified in the Monitor's report dated April 30, 2018;

[58] **EXTENDS** the suspension period, as defined in the Initial Order, and the provisions of the Initial Order, until October 15, 2018;

[59] **ORDERS** the provisional execution of the present Order notwithstanding appeal, and without the requirement to provide security for costs;

[60] **THE WHOLE** with costs of justice against the Opposing Parties.

DAVID R. COLLIER, J.S.C.

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Hearing dates : June 11, 12, 13 and 18, 2018