

# **Livent Inc. | Order Approving Cross-Border Insolvency Protocol made June 11, 1999 by Ground J.**

Canadian Insolvency Court Filings | Court File No. 98-CL-3162 | I.I.C. Ct. Filing 57263076001

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Canadian Insolvency Court Filings  
 Livent Inc. — Court File No. 98-CL-3162

1. — Order Approving Cross-Border Insolvency Protocol made June 11, 1999 by Ground J.

Re Livent Inc., Court File No. 98-CL-3162 (Superior Court of Justice, Commercial List, Toronto)

I. — Order Approving Cross-Border Insolvency Protocol

In the Matter of the Application of Livent Inc. under section 4,5,6,7,11,17 and 18.6(2) of the Companies Creditors Arrangement Act, R.S.C. 1985, c. C-36, and as amended under the Business Corporations Act, R.S.O. 1990, c. B-16;

SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

THE HONOURABLE MR. ) FRIDAY, THE 11TH DAY  
 )  
 JUSTICE GROUND ) OF JUNE, 1999

THIS MOTION made by Livent Inc. for an order approving a Cross-Border Insolvency Protocol (the "Insolvency Protocol") concerning the cross-border insolvency proceedings of Livent Inc. pending in this court and in the United States Bankruptcy Court for the Southern District of New York, and further approving and authorizing Livent Inc. and Ernst & Young Inc., as Monitor appointed pursuant to the Order of the Honourable Mr. Justice Ground made on November 19, 1998, to proceed with the implementation of the Insolvency Protocol, was heard at the Commercial Court, 393 University Avenue, 10th Floor, Courtroom 707, Toronto, Ontario.

UPON READING the Notice of Motion of Livent Inc. dated May 14, 1999, the Affidavit of Robert B. Webster sworn May 13, 1999, and the Insolvency Protocol, and on hearing the submissions of counsel for Livent Inc. and various creditors of Livent Inc., and upon hearing that the Insolvency Protocol has been approved by the Order of the Honourable Arthur Gonzalez of the United States Bankruptcy Court for the Southern District of New York this day;

1. THIS COURT ORDERS that the Cross-Border Insolvency Protocol, a copy of which is annexed to this Order as Schedule "1" be and the same is hereby approved in its entirety.

II. — Schedule "1" to the Order of Superior Court of Justice Dated June 11, 1999 in the Matter of the Application of Livent in

In the Matter of the Application of Livent Inc. under section 4,5,6,7,11,17 and 18.6(2) of the Companies Creditors Arrangement Act, R.S.C. 1985, c. C-36, and as amended under the Business Corporations Act, R.S.O. 1990, c. B.16;

UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK

In re ) Chapter 11  
 ) Case No. 98 B 46312 (AJG)  
 LIVENT (U.S.) INC., et al., )  
 ) (Jointly Administered)  
 Debtors. )  
 )

ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

THE HONORABLE MR. )  
 )

JUSTICE GROUND )

**Cross-Border Insolvency Protocol**

WHEREAS, on November 18, 1998 (the "Petition Date"), each of Livent Inc., Livent (U.S.) Inc., Livent Realty (New York) Inc. and Livent Realty (Chicago) Inc. (collectively, the "Debtors") filed, in the United States Bankruptcy Court for the Southern District of New York (together with any other Court having jurisdiction over these bankruptcy cases, the "Bankruptcy Court"), a voluntary petition for relief under chapter 11 of title 11 of the *United States Code* (the "*Bankruptcy Code*"); and

WHEREAS, the Debtors continue in the possession of their respective properties and the management of their respective businesses as debtors in possession pursuant to sections 1107 and 1108 of the *Bankruptcy Code*. These chapter 11 cases (the "Chapter 11 Cases") have been consolidated for procedural purposes only and are being jointly administered pursuant to an order of the Bankruptcy Court; and

WHEREAS, the estate of Livent Inc. ("Livent"), one of the Debtors, is being substantially administered in the United States under the jurisdiction of the Bankruptcy Court; and

WHEREAS, on November 19, 1998, to protect the estate of Livent against the actions of creditors beyond the personal jurisdiction of the Bankruptcy Court, Livent sought and received protection from its creditors in the Superior Court of Justice (the "Canadian Court"), pursuant to the *Companies Creditors Arrangement Act* (the "CCAA"). In connection with that proceeding (the "Canadian Proceeding"), the accounting firm of Ernst & Young Inc. ("E&Y") has been appointed Monitor by the Canadian Court to review and oversee Livent's financial performance and to assist it in the development of its Proposal; and

WHEREAS, on December 1, 1998, the United States Trustee appointed an official committee of unsecured creditors (the "Creditors' Committee"). On December 4, 1998, the Canadian Court, and on December 30, 1998, the Bankruptcy Court, approved on a final basis a \$25 million debtor in possession financing facility (the "DIP Facility") with Angelo Gordon & Co. (the "DIP Lender"). On February 22, 1999, the Debtors consummated the debtor in possession financing facility with the DIP Lender. No trustee or examiner has been appointed in the Chapter 11 Cases; and

WHEREAS, Canadian Imperial Bank of Commerce ("CIBC") believes it holds security over all of the assets of the Debtors; and

WHEREAS, the Debtors are a leading, vertically integrated producer of live theatrical entertainment, as well as an operator of theaters in important North American markets. Among other things, the Debtors are engaged in the business of acquiring American, Canadian, and international theatrical stage rights and ancillary rights (including foreign licensing rights, merchandising rights, sponsorships rights and cast album rights) and developing, producing, managing, marketing and licensing theatrical and other forms of live entertainment throughout the United States, Canada and elsewhere throughout the world, as well as owning and managing theaters, and

WHEREAS, a frame work of general principles should be agreed upon to address, among other things, issues that are likely to arise in connection with the cross-border insolvency proceedings of Livent, including, without limitation, (a) the sale of assets; (b) the distribution and disposition of the proceeds of sale of the assets; (c) the determination of claims asserted against Livent, and the allowability and priority status of such claims; (d) the filing and implementation of a plan of reorganization under the *Bankruptcy Code* and a scheme or proposal under the CCAA (the "Proposal"); and (e) general administrative matters, and that an agreement upon such matters is essential to the orderly and efficient administration of these cross-border cases; and

WHEREAS, the purpose of this protocol (the "Protocol") is to protect the interests of all parties in interest wherever located and to protect the integrity of the process by which the Chapter 11 Cases and the Canadian Proceeding is administered.

NOW THEREFORE, it is adjudged, ordered and decreed as follows:

- i. The Debtors, the Creditors' Committee and the Monitor will (i) have regard for the proceedings initiated by Livent under chapter 11 of the *Bankruptcy Code* in the Bankruptcy Court and under the CCAA in the Canadian Court; (ii) cooperate with actions taken in either the Bankruptcy Court or the Canadian Court or both; and (iii) take steps to coordinate their respective administrations under the *Bankruptcy Code* and the CCAA in the Bankruptcy Court and the Canadian Court. Either Court shall honor and enforce any orders of

the other Court, directed to persons within the jurisdiction of the other Court or who appeared on the motion for such order, related to investigations of any of the Debtors' assets and liabilities.

ii. The Debtors, the Creditors' Committee and the Monitor, and any other official representative that may be appointed by the Bankruptcy Court or the Canadian Court, and CIBC and the DIP Lender shall receive notice of all proceedings in accordance with the practices of the respective Courts, and have the right to appear in all proceedings in any forum, whether in the Bankruptcy Court or the Canadian Court. Livent and the Monitor shall be subject to jurisdiction in both fora for any matter related to the insolvency proceedings, but appearing in a forum shall not subject it to jurisdiction for any other purpose in the forum state, except to the extent otherwise set forth herein to the contrary.

iii. All creditors, equity interest holders and other parties in interest of Livent shall have the right to appear in any forum to the same extent as creditors of the forum state, regardless of whether they have filed claims in that particular forum. All creditors of Livent shall have the opportunity to file a notice of appearance with the Clerk of the Bankruptcy Court, the Alexander Hamilton U.S. Custom House, One Bowling Green, 5th Floor New York, New York 10004 or to participate in the proceedings in the Canadian Court; *provided, however*, that such filing or participation shall subject such creditor, equity interest holder or party in interest to the personal jurisdiction in the Court in which the notice or appearance is filed or made only for the purposes of such proceeding; *provided, further*, that appearance by the Creditors' Committee in the Canadian Proceeding shall not form a basis for personal jurisdiction in Canada over the members of the Creditors' Committee.

iv. Information publicly available in any forum state shall be publicly available in both fora. To the extent permitted, non-public information shall be made available to official representatives of the Debtors, including the Creditors' Committee and any other official committee appointed in Livent's chapter 11 case and shall be shared with other official representatives, CIBC and the DIP Lender, subject to appropriate confidentiality arrangements.

v. Any transactions outside the ordinary course of business concerning the sale or lease or use of Livent's assets located solely in Canada shall be subject to the sole approval of the Canadian Court. Any transactions outside the ordinary course of business concerning the sale or lease or use of Livent's assets located solely in the United States shall be subject to the sole approval of the Bankruptcy Court. Any transactions outside the ordinary course of business concerning the sale or lease or use of Livent's assets located both in Canada and the United States, including but not limited to a sale of all or substantially all of the assets of the collective Debtors, shall be subject to the joint jurisdiction and approval of the Bankruptcy Court and the Canadian Court, unless otherwise ordered by both the Bankruptcy Court and the Canadian Court upon request of the Debtors or any other parties in interest.

vi. The Bankruptcy and Canadian Courts may conduct joint hearings with respect to any matter related to the conduct, administration, determination or disposition of any aspect of the Chapter 11 Cases and the Canadian Proceedings where considered by both Courts to be necessary or advisable and in particular, without limiting the generality of the foregoing, to facilitate or coordinate the proper and efficient conduct of the Chapter 11 Cases and Canadian Proceedings. With respect to any such hearings, unless otherwise ordered, the following directions are made:

a.) A telephone and/or video link shall be established such that both Courts shall be able to simultaneously hear the proceedings in the other Court. The Judge of the Bankruptcy Court and the Justice of the Canadian Court may appear and sit jointly in either Court as agreed between the Judge and Justice, subject to subsection (f) of this paragraph, provided, that, in such instance, creditors, equity interest holders and parties in interest may appear and be heard in person or at the courtroom of the Judge or Justice who has traveled to appear in the other courtroom.

b.) Any party intending to rely upon any written evidentiary material in support of a submission to the Canadian Court or the Bankruptcy Court in connection with any joint application shall file in each Court materials, which shall be identical insofar as possible and shall be consistent with the procedural and evidentiary rules and requirements of each Court, in advance of such application. If a party has not previously appeared in or attorned or does not wish to attorn to the jurisdiction of either Court it

shall be entitled to file such material without, by the act of filing, being deemed to have attorned to the jurisdiction of the Court in which such material is filed, so long as it does not request in its materials or submissions any affirmative relief from the Court to which it does not wish to attorn.

c.) Submissions or applications by any party shall be made only to the Court in which it is appearing unless specifically given leave by the other Court to make submissions or applications to it.

d.) The Judge of the Bankruptcy Court and the Justice of the Canadian Court who will hear any such application shall be entitled to communicate with one another in advance of the said applications, with or without counsel being present, to establish guidelines for the orderly making of submissions and rendering of decisions by the Bankruptcy and the Canadian Courts, and to deal with any other procedural, administrative or preliminary matters.

e.) The Judge of the Bankruptcy Court and the Justice of the Canadian Court, having heard any such application, shall be entitled to communicate with one another after any such application, with or without counsel present, for the purpose of determining whether substantively consistent rulings can be made by both Courts having regard to the applicable jurisprudence in each jurisdiction and to coordinate and resolve procedural or non-substantive matters relating to such applications.

f.) In the event of a sale of all or substantially all of the assets of the collective Debtors in accordance with section 363 of the *Bankruptcy Code* and any related authority under the CCAA before the Courts, all parties wishing to launch a competing bid for the assets shall appear before the Bankruptcy Court pursuant to bidding procedures (including bidding protections) established by the Bankruptcy Court and consented to by the Monitor for conducting such sale. The Justice of the Canadian Court will join with the Bankruptcy Court and appear and sit for the purpose of jointly conducting the sale.

7. All creditors of Livent (U.S.) Inc., Livent Realty (New York) Inc. and Livent Realty (Chicago) Inc. (collectively, the "U.S. Debtors") must file their proofs of claim against the U.S. Debtors with the Clerk of the Bankruptcy Court, the Alexander Hamilton U.S. Custom House, One Bowling Green, 5th Floor, New York, New York 10004.

8. Any creditor or equity security holder of Livent may file a proof of claim or interest in either the Bankruptcy Court or with the Monitor in the Canadian Proceeding; provided, however, that the resolution of such claim or interest shall be governed by the provisions of paragraph 10. If a creditor files a claim both in the Bankruptcy Court and with the Monitor in the Canadian Proceeding, the last timely filed claim shall govern. A timely filed proof of claim in either the Bankruptcy Court or the Canadian Proceeding will be deemed timely filed both in the Bankruptcy Court and with the Monitor under the Canadian Proceeding. The Debtors and the Monitor will endeavor to coordinate notice procedures and establish the same deadline for the filing of claims against the Debtors in both the Bankruptcy Court and the Canadian Proceeding, and all other matters regarding the filing, reviewing and objecting to claims.

9. The Bankruptcy Court shall have exclusive jurisdiction over all claims against the U.S. Debtors.

10. The Bankruptcy Court shall have jurisdiction over all claims asserted against Livent governed principally by the laws of the United States or any of its states unless, with respect to any particular claim, the Canadian Court is a more appropriate forum in view of all of the circumstances. The Canadian Court shall have jurisdiction over all claims asserted against Livent governed principally by the laws of Canada or any of its provinces and territories unless, with respect to any particular claim, the Bankruptcy Court is a more appropriate forum in view of all of the circumstances. Subject to the last sentence of paragraph 13, the adjudicating forum shall decide the amount, value, allowability, priority, classification and treatment of claims filed in any plan of reorganization or Proposal and a creditor's rights to collateral and set-off using a choice of law analysis based upon the choice of law principles applicable in that forum. Nothing herein shall limit the right of any party-in-interest to object to claims to the extent permitted under Section 502(a) of the *Bankruptcy Code* and the Bankruptcy Rules and any related authority under the CCAA. Nothing herein shall limit or modify the Order of the Bankruptcy Court, dated April 15, 1999, authorizing and approving the Management Retention Incentive and Severance Plan.

11. All executory contracts, other than employment contracts to which Livent is a party, and unexpired leases between or among Livent and any party (including any of the U.S. Debtors) which is a Person subject to the personal jurisdiction of the Bankruptcy Court shall be subject to and governed by the provisions of section 365 of the *Bankruptcy Code*. All executory contracts and unexpired leases between or among Livent and parties which are Persons not subject to the personal jurisdiction of the Bankruptcy Court and all employment contracts to which Livent is a party shall be subject to and governed by the provisions of the CCAA.

12. Neither this Protocol nor any actions taken pursuant hereto is intended nor shall it have any affect on the rights of creditors, the Monitor, or the estates of the Debtors with regard to the applicability of Section 508(a) of the *Bankruptcy Code* and any similar provisions under the CCAA, it being intended that such Section 508(a) be, to the extent applicable, enforced in both fora.

13. The proceeds of any transaction other than a transaction involving the sale of all or substantially all of the assets of the collective Debtors shall be used by the Debtors to fund working capital needs subject to further or existing order of the adjudicating Court, including but not limited to orders governing the use of cash collateral. The proceeds of any transaction involving the sale of all or substantially all of the assets of the collective Debtors shall be held in escrow, by an agent acceptable to the Debtors and the Monitor and approved by the adjudicating Court, pending distribution through a plan of reorganization and/or a Proposal or otherwise pursuant to an order approved by both Courts; provided, that nothing contained herein shall be construed to prohibit the Debtors from paying amounts owing to the DIP Lender from the proceeds of such sale pursuant to the terms of the DIP Facility and in accordance with the existing orders of the Courts approving the DIP Facility. The allocation among each of the Debtors' estates of the proceeds generated from a sale of all or substantially all of the assets of the collective Debtors shall be determined by: (i) the Bankruptcy Court and the Canadian Court at a joint hearing, in respect of the proportion of proceeds to be allocated to the estate of Livent Inc.; and (ii) the Bankruptcy Court, using a choice of law analysis if applicable, based upon the choice of law principles applicable in that forum, in respect of all other allocation matters.

14. The provisions of section 363(m) of the *Bankruptcy Code* shall apply in both proceedings to any transaction involving all or substantially all of the assets of the collective Debtors.

15. A "Person" (as defined in section 101(41) of the *Bankruptcy Code*) shall not be subject to a forum's substantive laws, including, without limitation, avoidance rules and sections 510, 544, 545, 546, 547, 548, 549, 550 and 551 of the *Bankruptcy Code*, unless, using a choice of law analysis based upon the principles of international law applicable in the forum, such Person would be subject to the forum's substantive laws in a lawsuit on the same transaction in a non-insolvency proceeding. No avoiding actions will be taken by the Monitor in Canada without the express written consent of the Debtors or as may be directed by the Canadian Court.

16. For greater particularity, all lien claims, trust claims or actions in debt by the City of Toronto or for goods and services by lien claimants (the "Construction Lien Claimants") against Livent in respect of the Pantages Theater property and surrounding development in Toronto, Ontario be subject to the jurisdiction of the Canadian Court, notwithstanding that any one or more of the Construction Lien Claimants may have or maintain a U.S. office or affiliate.

17. To the extent permitted by the laws of the respective jurisdictions and to the extent practicable and procedurally applicable, the Monitor and Livent shall endeavor to submit a Proposal in Canada and a plan of reorganization in the United States substantially similar to each other and the Monitor and Livent shall endeavor to coordinate all procedures in connection therewith. In order to coordinate the contemporaneous filing of the Proposal and the plan of reorganization, Livent shall take the actions necessary to seek extensions from time-to-time of the date for the filing of the Proposal, and the Debtors shall take the actions necessary from time-to-time to seek extensions of the exclusive time period during which only the Debtors may file a plan of reorganization pursuant to Section 1121 of the *Bankruptcy Code* (the "Exclusive Period"). Notwithstanding the foregoing, this paragraph is without prejudice to the rights of the Creditors' Committee or any other party in interest to oppose any extension of the Exclusive Period, seek a shortening of the Exclusive Period or file a plan or reorganization after expiration of the Exclusive Period.



18. Except with respect to matters where the Monitor and other Canadian professionals appear before the Bankruptcy Court pursuant to paragraph 2 hereof, the Canadian Court shall have sole jurisdiction and power over the Monitor, including, without limitation, its tenure in office, the conduct of the liquidation proceedings under Canadian law, the retention and compensation of the Monitor and other Canadian professionals, except as otherwise provided in paragraph[s] 19 and 20, and the hearing and determination of matters arising in the proceedings under Canadian law. The Monitor and other Canadian professionals shall be compensated for their services in accordance with Canadian principles under Canadian law, such that the Monitor and other the Canadian professionals are not required to file fee applications with the Bankruptcy Court, except as otherwise provided in paragraph 20.

19. The Bankruptcy Court shall have sole jurisdiction and power over the conduct of the Chapter 11 cases, the compensation of the professionals rendering services to the Debtors in the United States, and the hearing and determination of matters arising in the Chapter 11 cases.

20. Notwithstanding anything to the contrary, the Bankruptcy Court shall have sole jurisdiction and power over any professionals hired by the Creditors' Committee, including but not limited to Canadian professionals, and such professionals shall be retained and compensated according to the rules governing retention and compensation generally in chapter 11 cases.

21. This Protocol shall be without prejudice to the rights of the Debtors to seek the substantive consolidation of their estates before the Bankruptcy Court and the Canadian Court.

22. This Protocol shall be binding on and inure to the benefit of the parties hereto and their respective successors, assigns, representatives, heirs, executors, administrators, trustees (including any trustees of the Debtors under Chapters 7 or 11 of the *Bankruptcy Code*), and receivers, receiver managers, trustees or custodians appointed under Canadian law, as the case may be.

23. Compliance with this Protocol may not be waived and the Protocol may not be amended or modified orally or in any other way or manner (including, without limitation, pursuant to a plan of reorganization of the Debtors) except with approval and authorization of the Bankruptcy Court and the Canadian Court.

24. Nothing contained herein shall alter the Debtors' obligations to pay fees due under 28 U.S.C. § 1530(a) (6) based upon all disbursements made in any jurisdiction.

25. Nothing contained herein shall be construed to limit or modify the DIP Facility, the existing orders of the Courts approving the DIP Facility, or the rights and obligations of the Debtors and the DIP Lender thereunder.

26. This Protocol shall be deemed effective upon its approval by the Bankruptcy Court and the Canadian Court.

Dated:

New York, New York  
June 11, 1999

..... UNITED STATES BANKRUPTCY JUDGE

Dated:

Toronto, Canada  
June 11, 1999

..... JUSTICE OF SUPERIOR COURT OF JUSTICE