

# TLC Vision Corp., Re

Ontario Superior Court of Justice [Commercial List] |  
17274

December 23, 2009 |

2009 CarswellOnt

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2009 CarswellOnt 17274  
Ontario Superior Court of Justice [Commercial List]

TLC Vision Corp., Re

2009 CarswellOnt 17274

In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

Application of TLC Vision Corporation under Section 47 of the  
Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

Cumming J.

Judgment: December 23, 2009

Docket: 09-8515-00CL

\*\*\* Start Section

...

Counsel: Counsel — not provided

Subject: Insolvency

**Cumming J.:**

THIS APPLICATION, made by TLC Vision Corporation (the "Applicant"), for an order substantially in the form included in the Application Record, was heard on this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the affidavit of Michael Gries sworn December 21, 2009 (the "Gries Affidavit"), the Interim Initial Order made December 21, 2009, the consent of Alvarez & Marsal Inc., the proposed information officer of the Applicant (the "Information Officer"), filed, the affidavit of Tim Robbins, sworn December 22, 2009 (the "Robbins Affidavit"), and upon hearing the submissions of counsel for the Applicant, counsel for the Information Officer and counsel for Cantor Fitzgerald Securities (the "DIP Agent") on behalf of the DIP Lenders (as hereinafter defined) and Wells Fargo Bank, National Association as collateral agent and administrative agent for the pre-petition lenders under the Credit Facility (as defined in the Gries Affidavit) and upon being advised that none of the other persons who might be interested in these proceedings was served with the Notice of Application:

**SERVICE**

1 THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is abridged so that the application may be heard today and that further service of the Notice of Application and the Application Record upon any interested person not served is dispensed with.

**APPLICATION**

2 THIS COURT ORDERS AND DECLARES that the Applicant is a "foreign representative" pursuant to Section 45 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCA") and is entitled to bring this application pursuant to Section 46 of the CCA.

### RECOGNITION OF THE CHAPTER 11 PROCEEDING

3 THIS COURT ORDERS AND DECLARES that the proceeding commenced by the Applicant on December 21, 2009 in the United States Bankruptcy Court for the District Court of Delaware, (the "U.S. Court"), under Chapter 11 of Title 11 of the *United States Code* (the "Chapter 11 Proceeding") is hereby recognized and given full force and effect in all provinces and territories of Canada as a "foreign main proceeding" for the purposes of Section 47 of the CCAA.

4 THIS COURT HEREBY RECOGNIZES and gives full force and effect in all provinces and territories of Canada to the following orders of the U.S. Court (each, as defined in the Robbins Affidavit), attached as Schedule "A" hereto (collectively, the "Chapter 11 Orders") pursuant to Section 49 of the CCAA:

- (a) U.S. Wages Benefits Order;
- (b) U.S. Cash Management Order;
- (c) U.S. Utilities Order;
- (d) U.S. Tax Order;
- (e) U.S. Insurance Order;
- (f) U.S. Joint Administration Order;
- (g) U.S. Critical Vendors Order; and
- (h) U.S. Foreign Representative Order.

provided, however, that in the event of any inconsistency between the terms of the Chapter 11 Orders and this Order, the terms of this Order shall govern.

### RESTRUCTURING

5 THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the business by the Applicant.

6 THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay, bonuses and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) the fees and disbursements of any employees, consultants, agents, experts, accountants, counsel and such other persons retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

7 THIS COURT ORDERS that the Applicant shall, subject to such covenants as may be contained in the DIP Facility Documents (as hereinafter defined), have the right to:

(a) permanently or temporarily cease, downsize or shut down any of its operations or locations in Canada and to make provision for any consequences thereof in a plan or plans filed in these proceedings and/or the Chapter 11 Proceeding (the "Plan");

(b) dispose of or sell any inventory or redundant or non-material assets in Canada, provided that any such transaction out of the ordinary course of business involving Property located in Canada be subject to the approval of the Court being obtained prior to completing any such transaction if such transaction involves net sale proceeds in excess of \$500,000;

(c) terminate the employment or temporarily lay off such of its employees in Canada as it may deem necessary or appropriate and, to the extent any amounts owing in respect thereof are not paid in the ordinary course as the Applicant may in its discretion determine (including without limitation, amounts on account of notice, termination or severance pay at common law), to make provision for any consequences thereof in the Plan;

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of its business and affairs.

#### **STAY OF PROCEEDINGS**

8 THIS COURT ORDERS that, subject to further order of this Court, no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), including a Proceeding taken or that might be taken against the Applicant under the *Bankruptcy and Insolvency Act* (Canada) or the *Winding-up and Restructuring Act*, shall be commenced or continued against or in respect of the Applicant or the Information Officer, or affecting the property, assets, rights and undertaking (a term which in this Order includes any and all present and future property of every nature and kind whatsoever, and wheresoever situate, whether real or personal, and including all proceeds thereof, of the Applicant and whether held by the Applicant in whole or in part, directly or indirectly, as principal or nominee, beneficially or otherwise) (the "Property"), except with the written consent of the Applicant, the DIP Agent and the Information Officer, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Property are hereby stayed and suspended pending further Order of this Court.

#### **EXERCISE OF RIGHTS OR REMEDIES**

9 THIS COURT ORDERS that, subject to further order of this Court, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicant or the

Information Officer, or affecting the Property, are hereby stayed and suspended except with the written consent of the Applicant, the DIP Agent and the Information Officer, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien, or (v) be construed as relieving the Applicant from its obligations to comply with the DIP Financing Agreement and the other DIP Facility Documents.

#### **NON-INTERFERENCE WITH RIGHTS**

10 THIS COURT ORDERS that, subject to further order of this Court, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant, the DIP Agent and the Information Officer, or leave of this Court.

#### **CONTINUATION OF SERVICES**

11 THIS COURT ORDERS that, subject to further order of this Court, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and the Applicant, the DIP Agent and the Information Officer, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

12 THIS COURT ORDERS that, notwithstanding anything else contained herein, no creditor of the Applicant shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

13 THIS COURT ORDERS that, subject to further order of this Court, and except as permitted by Section 11.51(4) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

#### **INFORMATION OFFICER**

14 THIS COURT ORDERS that Alvarez & Marsal-Inc. is appointed as information officer of the Applicant (the "Information Officer") with the powers and obligations set forth in this Order and that the

Applicant and all other Persons upon whom this Order is served shall co-operate fully with the Information Officer in the exercise of its powers and discharge of its obligations. Without limiting the generality of the foregoing, all Persons upon whom this Order is served shall provide the Information Officer with such access to the Applicant's books, records, assets and premises as the Information Officer requires in order to exercise its powers and perform its obligations under this Order.

15 THIS COURT ORDERS that the Information Officer is authorized to:

(a) deliver to this Court an affidavit or report signed by the Information Officer as frequently as the Information Officer may deem necessary or at such other times as this Court may order, summarizing any material events in the Chapter 11 Proceeding and such other information as the Information Officer believes to be material in connection with the Chapter 11 Proceeding or as may be ordered by this Court;

(b) provide to the DIP Lenders copies of any reports provided to the Applicant and provide information about the Applicant, the restructuring of the Applicant's affairs and this proceeding to the DIP Agent and the DIP Lenders (collectively, the "DIP Parties") as the DIP Agent may reasonably request from time to time;

(c) have full and complete access to the books, records and management, employees, agents, and advisors of the Applicant and to the Property to the extent required to perform its duties arising under this Order;

(d) be at liberty to engage independent legal counsel in the event that the Information Officer requires independent legal advice in respect of a specific issue or issues relating to the exercise of its powers and discharge of its obligations under this Order;

(e) report on the sale of any Property sold outside of the ordinary course of business;

(f) be at liberty to retain and utilize the services of entities affiliated with the Information Officer as may be necessary to perform its duties under this Order; and

(g) perform such other duties as are required by this Order or by this Court from time to time.

16 THIS COURT ORDERS that the Information Officer shall not employ any employees of the Applicant, shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the Applicant and shall not, by fulfilling its obligations under this Order, be deemed to have taken or maintained possession, occupation, care or control of the Applicant or Property, or any part thereof.

17 THIS COURT ORDERS that the Information Officer, counsel to the Information Officer and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is authorized to pay the accounts of the Information Officer, counsel for the Information Officer and counsel for the Applicant on a weekly basis and, in addition, the Applicant is authorized to pay the Information Officer a retainer of \$125,000, to be held by the Information Officer as security for payment of its and its counsel's fees and disbursements outstanding from time to time.

18 THIS COURT ORDERS that the fees and expenses of the Information Officer shall be subject to the passing of accounts by this Court.

19 THIS COURT ORDERS that the Information Officer shall incur no liability or obligation as a result of its appointment or the fulfilment of its duties in the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, and no action or other proceeding shall

be commenced against the Information Officer in any Court or other tribunal as a result of or relating in any way to its appointment as Information Officer, the fulfilment of its duties as Information Officer or the carrying out of this or any other orders of this Court, unless the leave of this Court is first obtained on motion on at least seven (7) days' notice to the Information Officer and the parties on the service list. The entities affiliated with the Information Officer shall also be entitled to the protections, benefits and privileges of this paragraph 19, *mutatis mutandis*.

20 THIS COURT ORDERS that the appointment of the Information Officer shall not constitute the Information Officer to be an employer or a successor employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or any other statute, regulation or rule of law or equity for any purpose whatsoever and, further, that the Information Officer shall be deemed not to be an owner or in possession, care, control, or management of the Property of the Applicant whether pursuant to any legislation enacted for the protection of the environment, the regulations thereunder or any other statute, regulation or rule of law or equity under any federal, provincial or other jurisdiction for any purpose whatsoever.

21 THIS COURT ORDERS that the Applicant is authorized to retain Torys LLP ("Torys") as its counsel and authorizes the payment to Torys of a retainer in an amount satisfactory to Torys and to the DIP Agent, to be held by Torys as security for payment of its fees and disbursements outstanding from time to time.

#### **DIP FINANCING AND DIP CHARGES**

22 THIS COURT ORDERS AND DECLARES that the interim order of the U.S. Court made December 22, 2009 (i) authorizing senior secured superpriority postpetition financing pursuant to 11 USC §§ 361, 362, 363(c), 363(e), 364(c), 364(d) and 364(e); (ii) authorizing the use of cash collateral of prepetition secured lenders; (iii) granting adequate protection to the prepetition senior secured lenders, and (iv) granting related relief (the "U.S. Interim DIP Order") is hereby recognized and given full force and effect in all provinces and territories of Canada.

23 THIS COURT ORDERS AND DECLARES that the Applicant is hereby authorized, empowered and directed to execute, obtain funding and borrow, guarantee and perform all of its other obligations under the Senior Secured Super Priority Debtor-in-Possession Credit Agreement (the "DIP Financing Agreement"), by and among, *inter alia*, the Applicant, TLC USA, TLC MSI, the DIP Agent, as collateral agent and administrative agent, and the lenders party thereto (the "DIP Lenders") and under any other DIP Facility Documents (as defined herein) and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Parties under and pursuant to the DIP Facility Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

24 THIS COURT ORDERS AND DECLARES that the Applicant is authorized, empowered and directed to execute and deliver such commitment letters, fee letters, credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents in favour of the DIP Parties and take all other steps and execute and deliver all further documents as may be contemplated or required pursuant to or in connection with the DIP Financing Agreement or otherwise reasonably required by the DIP Agent (such agreements and any further documents related thereto, whether executed before or after the date of this Order, hereinafter collectively referred to as the "DIP Facility Documents") and the U.S. Interim DIP Order.

25 THIS COURT ORDERS that the DIP Facility Documents are approved, and that all of the DIP Facility Documents and all interests and mortgages, charges, hypothecs and security granted or created

pursuant to the DIP Facility Documents and the U.S. Interim DIP Order are recognized and given full effect in all provinces and territories of Canada.

26 THIS COURT ORDERS that, in furtherance of the U.S. Interim DIP Order and the DIP Facility Documents, the DIP Parties are entitled to the benefit of and are hereby granted a fixed and specific continuing lien, charge, mortgage, hypothec, security interest, pledge and encumbrance and security of whatever nature or kind over the Property of the Applicant to secure the repayment of all amounts owing by the Applicant under the DIP Facility Documents and the performance of all obligations of the Applicants under the DIP Financing Agreement and the other DIP Facility Documents including any and all guarantees in respect thereof (the "DIP Charge"), which DIP Charge shall not secure an obligation that exists before this Order is made.

27 THIS COURT ORDERS that the DIP Charge shall attach to all existing and after-acquired Property, as the case may be, including any lease, license, occupation permit, or other contract, notwithstanding any requirement for the consent of the lessor, licensor, or other party to such lease, license, occupation permit, or other contract.

28 THIS COURT ORDERS that any of the Encumbrances (as defined in paragraph 36 of this Order) created or granted under the DIP Charge shall attach as of the effective time of this Order, to the Property.

29 THIS COURT ORDERS that there shall be no Encumbrances and the Applicant shall not grant or allow any Encumbrances over the Applicant's Property ranking *pari passu* with or in priority to the DIP Charge or the DIP Facility Documents except for amounts specified in Sections 6(3), 6(5) and 6(6) of the CCAA, and as specifically permitted under the provisions of this Order or the DIP Facility Documents, or otherwise as may be expressly agreed by the DIP Lenders, as the case may be, and any Encumbrances granted or allowed by the Applicant contrary to this Order shall be subordinate in all respects to the DIP Charge and the DIP Facility Documents.

30 THIS COURT ORDERS that, notwithstanding any other provision of this Order:

(a) upon the occurrence of an Event of Default under the DIP Financing Agreement, the other DIP Facility Documents or the DIP Charge, the DIP Agent, upon five days notice to the Applicant and the Information Officer, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the DIP Financing Agreement, the other DIP Facility Documents and the DIP Charge, including without limitation, to cease making advances to the Applicant and to set off and/or consolidate any amounts owing by the DIP Parties to the Applicant against the obligations of the Applicant to the DIP Parties under the DIP Financing Agreement, the other DIP Facility Documents or the DIP Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant, and upon the occurrence of an Event of Default under the terms of the DIP Financing Agreement or the other DIP Facility Documents, the DIP Agent shall be entitled to seize and retain proceeds from the sale of the Property and the cash flow of the Applicant to repay amounts owing to the DIP Parties in accordance with the DIP Financing Agreement, the other DIP Facility Documents and the DIP Charge; and

(b) the foregoing rights and remedies of the DIP Parties shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

31 THIS COURT ORDERS that the DIP Lenders shall be treated as unaffected creditors in these proceedings and in any plan of compromise, arrangement or reorganization filed by the Applicant, any



proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* (Canada) or in any other bankruptcy or insolvency proceeding with respect to the Applicant.

32 THIS COURT ORDERS that, except as provided for in the DIP Facility Documents, nothing herein shall oblige the DIP Lenders to make any advance to the Applicant.

33 THIS COURT ORDERS that, in addition to any rights and remedies under the DIP Facility Documents, at law or in equity, the DIP Parties shall be entitled to apply to this Court for the appointment of an interim receiver, receiver, receiver and manager, or the appointment of a trustee in bankruptcy.

34 THIS COURT ORDERS that the DIP Parties are hereby authorized but not required to take such steps as they may deem appropriate to file, register, record or perfect the DIP Charge or the DIP Parties' Encumbrances in the Property in all such jurisdictions as the DIP Parties may consider appropriate, and that the Applicant is hereby authorized and directed to co-operate and give assistance to the DIP Parties in that regard, notwithstanding any stay of proceedings provided for herein or in any foreign jurisdiction.

35 THIS COURT ORDERS that the filing, registration or perfection of the DIP Charge shall not be required, and that the DIP Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the DIP Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

36 THIS COURT ORDERS that the DIP Charge shall constitute a fixed and specific continuing lien, charge, mortgage, hypothec, security interest, pledge and encumbrance in all of the Property and such DIP Charge shall rank in priority to any and all other charges, mortgages, hypothecs, liens, security interests, encumbrances or security of whatever nature or kind (the "Encumbrances") affecting any of the Property. The Encumbrances granted by the DIP Facility Documents charging the Property shall have the same priority as the DIP Charge.

37 THIS COURT ORDERS that the DIP Charge shall not be rendered invalid or unenforceable and the rights and remedies of the DIP Parties shall not otherwise be limited or impaired in any way by (i) the pendency of these proceedings and the declarations of insolvency made in these proceedings; (ii) any applications for bankruptcy orders issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3 ("BIA"), or any bankruptcy orders made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions (contractual, statutory or otherwise) with respect to borrowings, incurring debt or the creation of Encumbrances contained in any existing agreement, license, permit, franchise, lease, sublease, offer to lease or other arrangement which binds the Applicant, and notwithstanding any provision to the contrary in any agreement:

(a) the creation of the DIP Charge shall not create or be deemed to constitute a breach by the Applicant of any agreement or to which it is a party;

(b) the DIP Parties shall not have any liability to any Person whatsoever as a result of any breach of any agreement caused by or resulting from the creation of the DIP Charge; and

(c) the payments made by the Applicant pursuant to this Order and the granting of the DIP Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

#### **DIRECTORS' INDEMNITY**

38 THIS COURT ORDERS that the Applicant shall indemnify its directors and officers from all claims, costs, charges and expenses relating to the failure of the Applicant, after the date hereof, to make payments of the nature referred to in paragraphs 5(a), 5(b), 5(c) and 6(a) of this Order which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officer of the Applicant except to the extent that, with respect to any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.

#### **SERVICE OF COURT MATERIALS AND PUBLICATIONS OF NOTICE**

39 THIS COURT ORDERS that the Applicant or the Information Officer, as the case may be, are at liberty to serve this Order, any other orders in this proceeding, all other proceedings, notices and documents by prepaid ordinary mail, courier, personal delivery or electronic transmission to any interested party at their addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding, or if sent by ordinary mail, on the second business day after mailing.

40 THIS COURT ORDERS that any party to these proceedings, including the Information Officer, may serve any court materials in these proceedings (including without limitation, application records, motion records, facta and orders) on all parties electronically by emailing a PDF or other electronic copy of such materials to parties' e-mail addresses as recorded on the service list and the Information Officer will post a copy of the materials on its website as soon as is practicable.

41 THIS COURT ORDERS that within 5 days from the date of this Order, the Information Officer shall on behalf of the Applicant as foreign representative cause a notice to be placed in one edition of the Globe and Mail (National Edition) newspaper, substantially in the form attached to this Order as Schedule "B".

#### **SEALING**

42 THIS COURT ORDERS that the confidential Exhibit to the Gries Affidavit be and it is hereby sealed and it shall be treated as confidential and shall not form part of the public record until further order of this Honourable Court.

#### **CROSS-BORDER INSOLVENCY PROTOCOL**

43 THIS COURT ORDERS that the **Cross-Border Insolvency Protocol** (the "Protocol"), including the Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases, attached as Schedule "C" to this Order is hereby approved by this Court on an interim basis and upon approval of this form of Protocol by the U.S. Court, parties to these proceedings shall be governed by them.

#### **MISCELLANEOUS**

44 THIS COURT ORDERS that in no manner shall the Information Officer be considered to be an "Insolvency Administrator" or a "foreign Insolvency Administrator", an "authorized Representative of the foreign Court" or a "Representative of the Court" with respect to this Court for the purposes of the Protocol.

45 THIS COURT ORDERS that, notwithstanding anything else contained in this Order, the Applicant may, by written consent of its counsel of record, agree to waive any of the protections provided to them in this Order.

46 THIS COURT ORDERS that the Applicant may, from time to time, apply to this Court for such further or other relief as it may advise from time to time, including for directions in respect of the proper execution of this Order.

47 THIS COURT ORDERS AND REQUESTS the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States and the states of other subdivisions of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

48 THIS COURT ORDERS AND DECLARES that this Order shall be effective as of 12:01 a.m. on the date of this Order and that any rights exercised or purported to be exercised by any Person on this date which would be contrary to the terms of this Order are of no force and effect, and are null and void.

49 THIS COURT ORDERS that, once it has become effective, this Order replaces and supersedes the Initial Interim Order, made December 21, 2009.

50 THIS COURT ORDERS that any interested Person may apply to this Court to vary or rescind this Order or to seek other relief upon seven days' notice to the Applicant, the Information Officer and to any other party likely to be affected by the order sought or upon such notice, if any, as this Court may order.

**Schedule "A"**

**Chapter 11 Orders**

*UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE*

In re:	)	Chapter 11
	)	
TLC Vision (USA) Corporation, <i>et al.</i> , <sup>1</sup>	)	Case No. 09-14473 (KG)
	)	Jointly Administered
Debtors.	)	
	)	<i>Re: Docket No. 8</i>

*ORDER AUTHORIZING TLC VISION CORPORATION TO ACT AS FOREIGN REPRESENTATIVE PURSUANT TO 11 U.S.C. § 1505*

Upon consideration of the motion (the "*Motion*")<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "*Debtors*") for entry of an order authorizing TLC Vision Corporation ("*TLC Vision*") to act as a foreign representative (the "*Foreign Representative*") on behalf of the Debtors' estates in any judicial or other proceedings in any foreign country, and upon the Gries Declaration; the Court finds that: (A) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. § 1334; (B) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (C) the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and (D) due and sufficient notice of the Motion was given; and upon the record herein and after due deliberation and cause appearing therefor:

<sup>2</sup> Each capitalized term used but not otherwise defined herein shall have the meaning given to it in the Motion.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted.

2. TLC Vision is hereby authorized to act as the Foreign Representative on behalf of the Debtors' estates in any judicial or other proceeding held in a foreign country. As Foreign Representative, TLC Vision shall be authorized and shall have the power to act in any way permitted by applicable foreign law.

3. This Court requests the aid and assistance of the Ontario Superior Court of Justice (Commercial List), the Court of Queen's Bench of New Brunswick and/or the Supreme Court of Nova Scotia (collectively, the "Canadian Courts") to recognize this case as a "foreign main proceeding" and TLC Vision as a "foreign representative" pursuant to the Companies' Creditors Arrangement Act (Canada) and to recognize and give full force and effect in all provinces and territories of Canada to this Order.

4. The Debtors are authorized to take all actions they determine necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

5. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated:  DEL 22, 2009  
Wilmington, Delaware

  
THE HONORABLE KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE

Graphic 1

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
) )  
TLC Vision (USA) Corporation, *et al.*,<sup>3</sup> ) Case No. 09-14473 (KG)  
) Jointly Administered  
Debtors. )  
) *Re: Docket No. 5*

**ORDER: (I) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO (A) PAY CERTAIN ACCRUED PREPETITION WAGES, (B) PERMIT EMPLOYEES TO USE ACCRUED PREPETITION PAID TIME OFF, (C) PAY EMPLOYEES' PREPETITION REIMBURSABLE BUSINESS EXPENSES, (D) MAKE ACCRUED PREPETITION CONTRIBUTIONS TO EMPLOYEE BENEFIT PLANS, AND (E) CONTINUE EMPLOYEE BENEFIT PLANS POSTPETITION; (II) AUTHORIZING RELATED RELIEF; AND (III) AUTHORIZING, BUT NOT DIRECTING, THE RELEASE OF WITHHELD TAXES AND EMPLOYEE CONTRIBUTIONS**

Upon consideration of the motion (the "*Motion*")<sup>4</sup> of the above-captioned debtors and debtors in possession (collectively, the "*Debtors*") for entry of an order (i) authorizing, but not directing, the Debtors to (a) pay certain accrued prepetition wages, (b) permit Employees to use accrued prepetition paid time off, (c) pay Employees' prepetition reimbursable business expenses, (d) make accrued prepetition contributions to Employee benefit plans, and (e) continue employee benefit plans postpetition; (ii) authorizing related relief; and (iii) authorizing, but not directing, the release of withheld taxes and employee contributions; and upon the Gries Declaration; the Court finds that: (A) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. § 1334; (B) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (C) the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in

interest; and (D) due and sufficient notice of the Motion was given; and upon the record herein and after due deliberation and cause appearing therefor:

4 Each capitalized term used but not otherwise defined herein shall have the meaning given to it in the Motion.

*IT IS HEREBY ORDERED THAT:*

1. The Motion is granted.
2. The Debtors are authorized, but not directed, to pay prepetition Employee Obligations and Employee Payments; *provided, however*, that payments to each Employee after the Petition Date on account of amounts accrued prior to the Petition Date shall not exceed amounts afforded priority status by any applicable provision of section 507 of the Bankruptcy Code; and, *provided further*, that in the event that after the Petition Date an Employee receives payment of an Employee Obligation or receives an Employee Payment on account of a claim arising prior to the Petition Date, and in the further event that such Employee has a claim arising after the Petition Date that for whatever reason, is not paid, then postpetition Employee...

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... Employee Deductions to appropriate parties.

10. The Debtors are authorized, but not directed, to continue and maintain in their sole discretion all of their Employee Benefit and Health Benefit plans, the 401(k) Plan, and the Workers' Compensation Program in the ordinary course, and to pay in their sole discretion any and all prepetition amounts related thereto as set forth herein.

11. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement for any checks or fund transfer requests in respect of prepetition amounts owed to the Employees that are dishonored as a consequence of these Chapter 11 Cases and to the extent such prepetition amounts are authorized to be paid pursuant to this Order.

12. Amounts authorized to be paid pursuant to this Order shall be paid in accordance with the relief requested in the Motion.

13. In accordance with this Order and any other order of this Court, each of the banks and financial institutions at which the Debtors maintain their accounts relating to the payment of the Employee Obligations and the Employee Payments, including, without limitation, Harris Bank, are authorized to receive, process, honor and pay all checks presented for payment and all funds transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in such accounts.

14. Each of the Debtors' banks is authorized, subject to the terms of this Order, to debit the Debtors' accounts in the ordinary course of business on account of the relief requested in the Motion without the need for further order of the Court for: (a) all checks drawn on the Debtors' accounts which are cashed at such bank's counters or exchanged for cashier's checks by the Employees prior to the Petition Date; (b) all checks or other items deposited in one of the Debtors' accounts with such bank prior to the Petition Date which have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtors were responsible for such items prior to the Petition Date; and (c) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any bank as service charges for the maintenance of the Debtors' cash management systems.

15. Any bank may rely on the representations of the Debtors with respect to whether any check or other payment order drawn or issued by the Debtors prior to the Petition Date should be honored pursuant

to this Order, and such bank shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

16. The relief granted herein shall not constitute or be deemed an assumption or an authorization to assume any executory contract or agreement, including, but not limited to, any benefit plans, employment agreements, or severance agreements to which the Debtors are parties or to create an administrative priority claim on account of obligations owing to Employees or, conversely, to prejudice the Employees' rights to assert claims against the Debtors or their estates that are not satisfied by the payments made pursuant to this Order.

17. The requirements set forth in Rule 6003(b) of the Bankruptcy Rules are satisfied by the contents of the Motion.

18. Nothing in the Motion or this Order, nor as a result of the Debtors' payment of claims pursuant to this Order, shall be deemed or construed as: (a) an admission as to the validity or priority of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim; or (c) an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code.

19. The Debtor is authorized to take all actions they determine necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

20. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: December 22, 2009  
Wilmington, Delaware

  
THE HONORABLE KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE

**Graphic 2**

*IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE*

<i>In re:</i>	)	
<i>TLC VISION (USA) CORPORATION, et al.</i> <sup>5</sup>	)	<i>Chapter 11</i>
	)	<i>Case No. 09-14473 (KG)</i>
	)	
<i>Debtors.</i>	)	<i>Joint Administration Requested</i>
	)	<i>Re: Docket No. 10</i>

*INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105,361,362,363,364 AND 507 (1) APPROVING SENIOR SECURED SUPERPRIORITY POSTPETITION FINANCING WITH PRIORITY OVER CERTAIN SECURED INDEBTEDNESS AND WITH ADMINISTRATIVE SUPERPRIORITY, (2) AUTHORIZING USE OF CASH COLLATERAL, (3) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (4) GRANTING ADEQUATE PROTECTION, (5) MODIFYING AUTOMATIC STAY. AND (6) SCHEDULING A FINAL HEARING*

Upon the motion (the "*DIP Motion*") of TLC Vision (USA) Corporation ("*TLC*"). TLC Vision Corporation (the "*Parent*") and TLC Management Services, Inc. ("*TLC Management*") as debtors and debtors in possession (collectively, the "*Debtors*") in the above-captioned chapter 11 cases (collectively, with any Successor Cases (as defined herein), the "*Cases*"), pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)

(2), 364(c)(3), 364(d) and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "*Bankruptcy Code*"). Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "*Bankruptcy Rules*"), and Del Bankr. L.R. 4001-2, seeking entry of an interim order (this "*Interim Order*") *inter alia*:

(i) authorizing the Debtors to obtain an aggregate amount not to exceed \$15 million of secured, superpriority postpetition financing with priority over certain secured indebtedness and with administrative priority (the "*DIP Facility*") pursuant to the terms and conditions of that certain Senior Secured Super Priority Debtor-in-Possession Credit Agreement (as it may be amended, supplemented, restated, or otherwise modified from time to time, the "*DIP Credit Agreement*") by and among the Debtors, the lenders party thereto from time to time (the "*DIP Lenders*") and Cantor Fitzgerald Securities, as collateral agent and administrative agent (in such capacity, the "*DIP Agent*"), for and on behalf of itself and the DIP Lenders, substantially in the form of...

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... of the obligations under the DIP Facility (the "*DIP Guarantees*"). including, without limitation, each of the subsidiaries listed on *Schedule I* to the DIP Credit Agreement and to perform such other acts as may be necessary or desirable in connection with the DIP Documents;

(iv) granting to the DIP Agent and the DIP Lenders allowed superpriority administrative expense claims in the Cases and any Successor Cases for the DIP Facility and all obligations owing thereunder and under the DIP Documents, including all indemnification obligations of the Debtors thereunder (collectively, and including all "Obligations" as described in the DIP Credit Agreement, the "*DIP Obligations*")<sup>6</sup>, subject to the priorities set forth in paragraph 8 below;

<sup>6</sup> For purposes of this Interim Order, "Obligations" shall include Obligations of any Loan Party under the Loan Documents.

(v) granting to the DIP Agent, for the benefit of itself and the DIP Lenders, automatically perfected, valid, priming and enforceable security interests in and liens on all of the DIP Collateral (as defined herein), including, without limitation, all property constituting "cash collateral" (as defined in section 363(a) of the Bankruptcy Code, "*Cash Collateral*"), which liens shall be subject to the priorities set forth in paragraph 7 below;

(vi) authorizing the Debtors to pay the principal, interest, fees, expenses and other amounts payable under each of the DIP Documents as they become due, including, without limitation, upfront fees, unused line fees, extension fees, exit fees...

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... agent's fees, the fees and disbursements of the DIP Agent's and DIP Lenders' attorneys, advisers, accountants, and other consultants, all to the extent provided by and in accordance with the terms of the DIP Documents;

(vii) authorizing the Debtors' use of Cash Collateral of the Prepetition Agent and Prepetition Lenders (each as defined herein);

(viii) providing adequate protection to the Prepetition Agent and the Prepetition Lenders for any diminution in value of their interests in the Prepetition Collateral (as defined herein), including the Cash Collateral;

(ix) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Documents and this Interim Order; and

(x) scheduling a final hearing (the "*Final Hearing*") to consider the relief requested in the DIP Motion and approving the form of notice with respect to the Final Hearing.

The Court having considered the DIP Motion, the Affidavit of Michael F. Gries in support of the chapter 11 petitions and first day motions, the exhibits attached thereto, the DIP Documents, and the evidence submitted or adduced and the arguments of counsel made at the interim hearing held on December 22, 2009 (the "*Interim Hearing*"): and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and 9014; and the Interim Hearing to consider the interim relief requested in the DIP Motion having been held and concluded; and all...

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... pursuant to 28 U.S.C. §§ 157(b) and 1334, over these proceedings, and over the property affected hereby. Consideration of the DIP Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the Cases and proceeding on the DIP Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

D. *Statutory Committee*. As of the date hereof, the United States Trustee (the "*U.S. Trustee*") has not yet appointed an official committee of unsecured creditors in these Cases pursuant to section 1102 of the Bankruptcy Code (a "*Statutory Committee*").

E. *Debtors' Stipulations*. Without prejudice to the rights and interests of third parties as set forth below in paragraph 30, each Debtor admits, stipulates, acknowledges, agrees and upon entry of this Interim Order shall be immediately bound by the following (collectively, paragraphs E(i) through E(viii) below are referred to herein as the "*Debtors' Stipulations*"):

(i) *Prepetition Facility*: Pursuant to that certain Amended and Restated Credit Agreement dated as of June 21, 2007 (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the "*Prepetition Credit Agreement*", and together with all other loan and security documents related to, referenced in or executed in connection with the Prepetition Credit Agreement, the "*Prepetition Credit Documents*"), by and among TLC, the Parent (as guarantor), the other additional guarantors party thereto, the lenders from time to time party thereto (the "*Prepetition Lenders*"), and Wells Fargo Bank, N.A., as...

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... any of the Prepetition Obligations and the security for these obligations, and to assert any offsets, defenses, claims, objections, challenges, causes of action and/or choses of action against the Prepetition Agent, Prepetition Lenders, and/or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors and employees; and (h) any payments made on account of the Prepetition Obligations to or for the benefit of the Prepetition Agent or the Prepetition Lenders prior to the Petition Date were payments out of the Prepetition Collateral, in accordance with the Prepetition Credit Documents, and such payments did not diminish any property otherwise available for distribution to unsecured creditors.

8 For purposes of this Interim Order, Permitted Encumbrances shall include any liens that were valid, senior, prior and perfected under applicable law as of the Petition Date. Nothing herein shall constitute a finding or ruling by this Court that any such Permitted Encumbrances are valid, senior, enforceable, prior, perfected or non-avoidable.

(v) *Cash Collateral*. All of the Debtors' cash, including the cash in their deposit accounts, wherever located, whether as original collateral or proceeds of other Prepetition Collateral, constitute the Cash Collateral of the Prepetition Agent and Prepetition Lenders.



(vi) *Intercreditor Agreement*. The respective rights, obligations and priorities of the Prepetition Lenders with respect to their respective interests in the Prepetition Collateral shall be governed by the terms of the Prepetition Facility, this Interim Order and any intercreditor agreement that may be entered into by and among the subject parties (the "*Intercreditor Agreement*").

(vii) *Waiver*. The Debtors hereby agree that until such time as all DIP Obligations and all Prepetition Obligations are indefeasibly paid in full in cash and completely satisfied, the Debtors shall not in any way prime or seek to prime or otherwise cause to be subordinate in any way, the DIP Obligations, the DIP Liens, the Prepetition Obligations or the Prepetition Liens, by offering a subsequent lender or any party-in-interest a superior or pari passu lien or claim pursuant to section 364 of the Bankruptcy Code; provided however, the Debtors are authorized to obtain the priming financing provided for herein and any replacement financing, including exit financing, that satisfies and pays the DIP Obligations in full in cash at the closing of such replacement financing and is consented to by the Required DIP Lenders.

(viii) *Default by the Debtors*. The Debtors acknowledge and stipulate that the Debtors are in default of their debts and obligations under the Prepetition Credit Documents and that notices to this effect were sent to the Debtors.

F. *Findings Regarding the Postpetition Financing*.

(i) *Need for Postpetition Financing and Use of Cash Collateral*. The DIP Facility is superior to the Debtors' other alternatives, if any, including the use of Cash Collateral alone. The Debtors' need to obtain credit pursuant to the DIP Facility and to use Cash Collateral is immediate and critical in order to enable the Debtors and the Additional Guarantors to continue operations and to administer and preserve the value of their estates. The ability of the Debtors and the Additional Guarantors to maintain business relationships with their vendors, suppliers and customers, to pay their employees, to make utility deposits and to otherwise finance their operations requires the availability of working capital from the DIP Facility and the use of Cash Collateral, the absence of either of which would immediately and irreparably harm the Debtors, their estates, their creditors and equity holders, and the possibility for a successful reorganization. Neither the Debtors nor the Additional Guarantors have sufficient available sources of working capital and financing to...

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... administrative expense. The Debtors have also been unable to obtain credit: (a) having priority over administrative expenses of the kind specified in sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; or (b) secured by a lien on property of the Debtors and their estates that is not otherwise subject to a lien. Financing on a postpetition basis is not otherwise available without granting the DIP Agent, for the benefit of itself and the DIP Lenders, (i) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets with the priorities set forth in paragraph 7 hereof, (ii) superpriority claims with the priorities set forth in paragraph 8, and (iii) the other protections set forth in this Interim Order.

(iii) *Use of Proceeds of the DIP Facility*. As a condition to the entry into the DIP Credit Agreement, the extension of credit under the DIP Facility and the agreement for the use of Cash Collateral, the DIP Agent and the DIP Lenders require, and the Debtors have agreed that, proceeds of the DIP Facility shall be used in a manner consistent with the terms and conditions of the DIP Documents and in accordance with and to the extent set forth in the budget (as the same may be modified from time to time with the consent of the Required DIP Lenders<sup>9</sup>), consistent with the terms of

the DIP Documents and subject to such variances as permitted by the DIP Credit Agreement (the "*Budget*"). solely for (a) working capital and other general corporate purposes to fund...

- 10 By way of clarification, Bingham McCutchen LLP, Pachulski Stang Ziehl & Jones LLP, and Stikeman Elliott LLP represent a substantial majority in principal amount, but not all, of the Prepetition Lenders. Pachulski Stang Ziehl & Jones LLP serves as Delaware counsel to such lenders and Stikeman Elliott LLP serves as Canadian counsel to such lenders. A rule 2019 Statement shall be filed by Bingham McCutchen LLP in accordance with law setting forth the scope of the representation.

H. *Sections 506(c) and 552(b)*. In light of (i) the DIP Agent's and DIP Lenders' agreement to subordinate their liens and superpriority claims to the Carve Out (as defined herein); and (ii) the Prepetition Agent's and Required Lenders' agreement to subordinate their liens and superpriority claims to the Carve Out, DIP Liens and DIP Superpriority Claim and to permit the use of their Cash Collateral for payments made in accordance with the Budget and this Interim Order, each of the DIP Agent, DIP Lenders, Prepetition Agent and Prepetition Lenders are entitled, upon entry of a Final Order (as defined herein), to (a) a waiver of any "equities of the case" claims under section 552(b) of the Bankruptcy Code and (b) a waiver of the provisions of section 506(c) of the Bankruptcy Code.

I. *Good Faith of the DIP Agent and the DIP Lenders.*

(i) *Willingness to Provide Financing*. The DIP Lenders each are willing to provide financing to the Debtors subject to: (a) the entry of this Interim Order and the Final Order (as defined herein); (b) the DIP Lenders' approval of the terms and conditions of the DIP Facility and the DIP Documents and satisfaction of all conditions precedent in the DIP Documents; and (c) entry of findings by this Court that such financing is essential to the Debtors' estates, that the DIP Agent and DIP Lenders are extending credit to the Debtors pursuant to the DIP Documents in good faith, and that the DIP Agent's and DIP Lenders' claims, superpriority claims, security interests, liens, rights, and other protections granted pursuant to this Interim Order and the DIP Documents will have the protections provided in section 364(e) of the Bankruptcy Code and will not be affected by any subsequent reversal, modification, vacatur, amendment, reargument or reconsideration of this Interim Order or any other order, or by the filing or pendency of any motion or appeal seeking to reverse, modify, vacate, amend, reargue, or reconsider this Interim Order or any other order.

(ii) *Business Judgment and Good Faith Pursuant to Section 364(e)*. The terms and conditions of the DIP Facility and the DIP Documents, and the fees paid and to be paid thereunder, are fair, reasonable, and the best available to the Debtors under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration. The DIP Facility and the use of Cash Collateral were negotiated in good faith and at arms' length among the Debtors, the DIP Agent, the DIP Lenders and the Lender Group. Use of Cash Collateral and credit to be extended under the DIP Facility shall be deemed to have been so allowed, advanced, made, used or extended in good faith, and for valid business purposes and uses, within the meaning of section 364(e) of the Bankruptcy Code, and the DIP Agent and the DIP Lenders are therefore entitled to the protection and benefits of section 364(e) of the Bankruptcy Code and this Interim Order.

J. *Agreement of Prepetition Lenders*. Pursuant to that certain Amendment No. 6 to Credit Agreement dated as of December 18, 2009 among the Prepetition Lenders, the Debtors, the Additional Guarantors and the Prepetition Agent, the Prepetition Lenders have agreed to the priming of the Prepetition Obligations and the Prepetition Liens as provided herein, and have agreed to the superpriority claims, security interests and liens, granted to the Prepetition Lenders pursuant to this Interim Order and the Final Order.

K. *Final Hearing.* At the Final Hearing, the Debtors will seek final approval of the proposed postpetition financing arrangements and use of Cash Collateral arrangements pursuant to a proposed final order (the "*Final Order*"), which shall be in form and substance satisfactory to the Required DIP Lenders, the DIP Agent and the Required Lenders, approving such postpetition financing arrangements and use of Cash Collateral arrangements and consistent with the DIP Agreement, notice of which Final Hearing and Final Order will be provided in accordance with this Interim Order.

L. *Notice.* Notice of the Interim Hearing and the emergency relief requested in the DIP Motion has been provided by the Debtors, whether by facsimile, email, overnight courier or hand delivery, to certain parties in interest, including: (i) the U.S. Trustee; (ii) each of the Debtors' thirty (30) largest unsecured creditors; (iii) counsel to the Prepetition Agent for itself and for the Prepetition Lenders; (iv) Lender Group Advisors; (v) counsel to other holders of record of liens on or security interests in the Debtors' assets, (vi) required governmental agencies, and (vii) counsel to the DIP Agent for itself and for the DIP Lenders. The foregoing notice complies with Bankruptcy Rule 4001(c), and no other or further notice is necessary for purposes of this Interim Order.

Based upon the foregoing findings and conclusions, the DIP Motion and the record before the Court with respect to the DIP Motion, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. *Interim Financing Approved.* The DIP Motion is granted, the Interim Financing (as defined herein) is authorized and approved, and the use of Cash Collateral on an interim basis is authorized, subject to the terms and conditions set forth in this Interim Order.
2. *Objections Overruled.* All objections to the Interim Financing and to the entry of the Interim Order, if any, to the extent not withdrawn or resolved are hereby overruled.

#### ***DIP Facility Authorization***

3. *Authorization of the DIP Financing and DIP Documents.* The DIP Documents are hereby approved. The Debtors are expressly and immediately authorized and empowered to execute and deliver the DIP Documents (including authorizing and causing the execution of appropriate documents by the DIP Guarantors) and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the DIP Documents, and to deliver all instruments and documents which may be required or necessary for the performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens (as defined herein) described in and provided for by this Interim Order and the DIP Documents. The Debtors are hereby authorized to pay the principal, interest, fees, expenses and other amounts described in the DIP Documents and all other documents comprising the DIP Facility as such become due and without need to obtain further Court approval, including, without limitation, closing fees, backstop fees, extension fees, exit fees, administrative and collateral agent's fees, the fees and disbursements of the DIP Agent and the DIP Lenders (including the reasonable fees and expenses of the DIP Agent's and the DIP Lenders' attorneys, advisers, accountants, and other consultants, collateral examination, monitoring and appraisal fees, financial advisory fees, indemnification obligations, and any other reimbursement of fees and expenses, all of which fees and expenses shall constitute DIP Obligations; provided, however, that such fees and expenses shall only be paid ten (10) business days after reasonably detailed invoices for such fees shall have been submitted to the Debtors, and the Debtors shall promptly provide copies of such invoices to any Statutory Committee and the Office of the United States Trustee), all to the extent provided in the DIP Documents. All collections and proceeds, whether from ordinary course collections, asset sales, debt or equity issuances, insurance recoveries, condemnations or otherwise,

will be deposited and applied as required by this Interim Order and the DIP Documents. Upon execution and delivery, the DIP Documents shall represent valid and binding obligations of the Debtors, enforceable against the Debtors and their estates in accordance with the terms of the DIP Documents.

4. *Authorization to Borrow.* Subject to the terms and conditions set forth in the DIP Documents, DIP Facility, and this Interim Order, and in order to prevent immediate and irreparable harm to the Debtors' estate, the Debtors are hereby authorized to make up to two (2) draws in the form of terms loans in an aggregate amount not to exceed the aggregate principal amount of \$15,000,000 as follows (which loans may be prepaid or repaid, but shall not be reborrowed or readvanced):

(a) an initial draw in the amount of \$7,500,000 upon or after the entry of this Interim Order (the "*Interim Financing*"); and

(b) a second draw in an amount not greater than \$15,000,000 minus the amount of the Interim Financing upon or after the entry of the Final Order (the "*Final Order Financing*").

5. *DIP Obligations.* The DIP Documents and this Interim Order shall constitute and evidence the validity and binding effect of the Debtors' DIP Obligations, which DIP Obligations shall be enforceable against the Debtors, their estates and any successors thereto, including without limitation, any trustee or other estate representative appointed or elected in the Case, or any case under chapter 7 of the Bankruptcy Code upon the conversion of the Case, or in any other proceedings or Cases superseding or related to any of the foregoing (each a "*Successor Case*"). Upon entry of this Interim Order, the DIP Obligations will include all loans and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by the Debtors to the DIP Agent or the DIP Lenders under the DIP Documents or this Interim Order, including, without limitation, all principal, accrued interest, costs, fees, expenses and other amounts owed pursuant to the DIP Documents. The DIP Obligations shall be due and payable, without notice or demand on the earlier to occur of (a) (i) (45) days after the date of the entry of the Interim Order, if a Final Order has not been entered by such date, or (ii) 150 days after the Petition Date (the "*Commitment Termination Date*"), (b) the effective date of a confirmed plan of reorganization of the Debtors, (c) the date a sale or sales of all or substantially all of the Debtors' assets is consummated under section 363 of the Bankruptcy Code, (d) the date of conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code, (e) except as expressly contemplated by the Joint Plan of Reorganization filed or to be filed by the Debtors in form and substance acceptable to the Debtors and the Prepetition Lenders (the "*Plan*"), a proposal or liquidation of any or all of substantially all of the assets of the Parent or any of the Guarantors under the Bankruptcy Insolvency Act (Canada), (f) the dismissal of any of the Cases, and (g) approval by the Court of any other debtor-in-possession financing unless (A) in the event that the liens securing such indebtedness are senior to or pari passu with liens securing the obligations under the Prepetition Credit Agreement but junior to the liens securing the DIP Facility, entry into such financing is consented to by the Required Lenders and (B) in the event that the liens securing such indebtedness are senior to or pari passu with the liens securing the DIP Facility, entry into such financing is consented to by both the Required DIP Lenders and the Required Lenders and (h) the Termination Declaration Date (as defined herein).

6. *DIP Liens and DIP Collateral.* Effective immediately upon the execution of this Interim Order, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code: (a) the DIP Agent is hereby granted, for the benefit of itself and the DIP Lenders, continuing, valid, binding, enforceable, non-avoidable and automatically and properly perfected postpetition security interests in and liens on (the "*DIP Liens*") all existing and after acquired real and personal property, and other assets of the Debtors, tangible and intangible, whether now owned by or owing to, or arising in favor of the Debtors, whether owned or consigned by or to, or leased from or to the Debtors (to the full extent of the Debtors' interest therein), and regardless of where located, including, without limitation, the following (collectively, the "*DIP*

*Collateral*"<sup>11</sup> (A) all Collateral (as defined in the DIP Documents) and the proceeds thereof,<sup>12</sup> (B) all avoidance power claims and actions under Section 549 of the Bankruptcy Code relating to any postpetition transfer of DIP Collateral and any proceeds thereof, (C) subject to entry of a Final Order, all avoidance claims or actions under chapter 5 of the Bankruptcy Code and any proceeds thereof, (D) any unencumbered assets of any Debtor, and (E) proceeds and products, whether tangible or intangible, of any of the foregoing, including proceeds of insurance covering any or all of the foregoing, and any and all tangible or intangible property resulting from the sale, exchange, collection or other disposition of any of the foregoing, or any portion thereof or interest therein.

11 All defined terms in the description of DIP Collateral shall have the meanings ascribed thereto in the DIP Documents. All terms not specifically defined in the DIP Documents shall have the meanings ascribed to such terms in Article 8 or 9 of the Uniform Commercial Code.

12 DIP Collateral shall include Collateral provided by non-debtors and the proceeds thereof; provided, that nothing herein shall be construed to expand the Court's jurisdiction over non-debtor Collateral.

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..., collateral interests, liens or claims on or to any of the DIP Collateral including, but not limited to, the Prepetition Liens. Other than as specifically set forth herein, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Case or any Successor Case. The DIP Liens shall be valid and enforceable against any trustee or other estate representative appointed in the Case or any Successor Case, upon the conversion of any of the Case to a case under chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of the Case or Successor Case. The DIP Liens shall not be subject to sections 510, 549, 550 or 551 of the Bankruptcy Code or, upon entry of the Final Order, section 506(c) of the Bankruptcy Code.

8. *DIP Superpriority Claim.* Upon entry of this Interim Order, the DIP Agent and the DIP Lenders are hereby granted, pursuant to section 364(c)(1) and 507(b) of the Bankruptcy Code, an allowed superpriority administrative expense claim in the Case and any Successor Case (collectively, the "*DIP Superpriority Claim*") for all DIP Obligations. The DIP Superpriority Claim shall be subordinate only to the Carve Out, and shall otherwise have priority over any and all administrative expenses and unsecured claims against the Debtors or their estates in the Case and any Successor Case, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726 (to the extent permitted by law), 1113 and 1114, and any other provision of the Bankruptcy Code (including, subject to entry of the Final Order, section 506(c)), and at all times be senior to the rights of the Debtors and their estates, and any successor trustee or other estate representative to the extent permitted by law.

9. *No Obligation to Extend Credit.* None of the DIP Agent or DIP Lenders shall have any obligation to make any loan under the DIP Documents, unless all of the conditions precedent to the making of such loan under the applicable DIP Documents and this Interim Order have been satisfied in full or waived in writing by the Required DIP Lenders.

10. *Use of DIP Facility Proceeds.* From and after the Petition Date, the Debtors shall use loans under the DIP Facility only for the purposes specifically set forth in this Interim Order, the DIP Documents and in compliance with the Budget, a copy of which is attached as *Exhibit A* hereto, which sets forth on a line-item basis the Debtors' anticipated cumulative cash receipts and expenditures on a weekly basis and all necessary and required cumulative expenses which the Debtors expect to incur during each week of the

Budget; provided, however, that for any week in the Budget, the amounts for each line item may vary so long as the Debtors are in compliance with the cash variance tests set forth in Section 5.04 of the DIP Credit Agreement (collectively the "*Cash Variance Tests*").

***Authorization to Use Cash Collateral and for Adequate Protection***

11. *Authorization to Use Cash Collateral.* Subject to the terms and conditions of this Interim Order and the DIP Documents (including, without limitation, paragraph 10 of this Interim Order), the Debtors are authorized to use Cash Collateral in accordance with the Budget (subject to the Cash Variance Tests) until the earlier to occur of the Termination Declaration Date (as defined below) and the Commitment Termination Date; *provided, however*, that during the Remedies Notice Period (as defined in paragraph 24 hereof) the Debtors may use Cash Collateral in accordance with the terms and provisions of the Budget solely to meet payroll obligations and to pay expenses critical to the preservation of the Debtors and their estates as agreed to by the Required DIP Lenders in their sole discretion. Nothing in this Interim Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business, or the Debtors' use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in this Interim Order, the DIP Facility, the DIP Documents, and in accordance with the Budget.

12. *Adequate Protection Liens.*

(a) *Adequate Protection Liens.* Pursuant to section 361, 363(e), and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition Agent and the Prepetition Lenders in the Prepetition Collateral against any Diminution in Value of such interests, the Debtors hereby grant to the Prepetition Agent, for the benefit of itself and the Prepetition Lenders, continuing valid, binding, enforceable, non-avoidable and automatically perfected postpetition security interests in and liens on the DIP Collateral (the "*Adequate Protection Liens*").

(b) *Priority of Adequate Protection Liens.* The Adequate Protection Liens shall be junior only to: (i) the Carve Out, (ii) the DIP Liens, and (iii) Permitted Encumbrances. The Adequate Protection Liens shall otherwise be senior to all other security interests, mortgages, collateral interests, liens or claims on or to any of the DIP Collateral. Except as provided herein, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest by any court order heretofore or hereafter entered in the Case or any Successor Case, and shall be valid and enforceable against any trustee appointed in the Case or any Successor Case, or upon the dismissal of the Case or any Successor Case. The Adequate Protection Liens shall not be subject to sections 510, 549, or 550 of the Bankruptcy Code or, subject to entry of the Final Order, section 506(c) of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be made *pari passu* with or senior to the Adequate Protection Liens.

13. *Adequate Protection Superpriority Claims.*

(a) *Adequate Protection Superpriority Claims.* As further adequate protection of the interests of the Prepetition Agent and the Prepetition Lenders in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral, the Prepetition Agent and the Prepetition Lenders are each hereby granted as and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code an allowed superpriority administrative expense claim in the Case and any Successor Case (the "*Adequate Protection Superpriority Claims*").

(b) *Priority of Adequate Protection Superpriority Claims.* The Adequate Protection Superpriority Claims shall be junior only to the (i) Carve Out and (ii) DIP Superpriority Claim. Except as set forth herein, the Adequate Protection Superpriority Claims shall have priority over all administrative

expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726 (to the extent permitted by law), 1113 and 1114 of the Bankruptcy Code or, subject to entry of the Final Order, section 506(c) of the Bankruptcy Code.

14. *Adequate Protection Payments and Protections.* As further adequate protection, the Debtors are authorized to and shall provide adequate protection to the Prepetition Agent and the Prepetition Lenders, in the form of: (a) adequate protection payments in amounts equal to all amounts accruing (or that would be accruing but for the filing of the Cases) from and after the Petition Date in accordance with the Prepetition Credit Documents, including but not limited to interest accruing at the default rate and fees and other amounts accruing thereunder; and (b) ongoing payment of the fees, costs and expenses, including, without limitation, reasonable legal and other professionals' fees and expenses (subject to the review period set forth in Paragraph 3 of this Order), of the Prepetition Agent and the Lender Group, including the fees, costs and expenses of the Lender Group Advisors (whether incurred or accrued before or after the Petition Date). Adequate protection payments made pursuant to clause (a) of this paragraph 14 in amounts equal to interest, fees and other amounts accruing from and after the Petition Date shall be applied to such amounts accruing after the Petition Date. All adequate protection payments payable pursuant to this paragraph 14 shall be payable monthly in arrears on the last day of each month (or the next Business Day, if such day is not a Business Day) and shall also be payable on the effective date of a plan of reorganization in any or all of the Cases, the date of dismissal of any or all of the Cases, or the date on which any or all of the Cases is converted to a liquidation proceeding or a trustee or examiner is appointed for cause, in each case for all amounts accrued through such date.

15. *Section 507(b) Reservation.* Nothing herein shall impair, limit or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Agent and/or the Prepetition Lenders pursuant to this Interim Order is insufficient to compensate for any Diminution in Value of their interests in the Prepetition Collateral during the Case or any Successor Case.

#### ***Provisions Common to DIP Financing and Use of Cash Collateral Authorizations***

16. *Amendment of the DIP Documents.* The DIP Documents may from time to time be amended, modified or supplemented by the parties thereto in accordance with the provisions thereof without notice or a hearing if: (a) the amendment, modification, or supplement is (i) in accordance with the DIP Documents, (ii) beneficial to the Debtors, and (iii) not prejudicial in any material respect to the rights of third parties; (b) a copy (which may be provided through electronic mail or facsimile) of the amendment, modification or supplement is provided to...

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... the U.S. Trustee, and approval of the Court is not necessary to effectuate any such amendment, modification or supplement. Any other amendments, modifications or supplements to the DIP Documents may be made on three (3) business days' notice, or such shorter notice as agreed to by the Debtors and the Required DIP Lenders, and are subject to approval by the Court.

17. *Budget Maintenance.* The Budget and any modification to, or amendment or update of, the Budget shall be in form and substance acceptable to and approved by the Required DIP Lenders in their reasonable discretion.

18. *Modification of Automatic Stay.* The automatic stay imposed under Bankruptcy Code section 362(a) is hereby modified as necessary to effectuate all of the terms and provisions of this Interim Order, including, without limitation, to: (a) permit the Debtors to grant the DIP Liens, Adequate Protection Liens, DIP

Superpriority Claim, and Adequate Protection Superpriority Claims; (b) permit the Debtors to perform such acts as the DIP Agent or the Prepetition Agent each may request in its reasonable discretion to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the DIP Agent, DIP Lenders, Prepetition Agent, and Prepetition Lenders under the DIP Documents, the DIP Facility and this Interim Order; and (d) authorize the Debtors to pay, and the DIP Agent, DIP Lenders, Prepetition Agent, and Prepetition Lenders to retain and apply, payments made in accordance with the terms of this Interim Order.

19. *Perfection of DIP Liens and Adequate Protection Liens.* This Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens and the Adequate Protection Liens without the necessity of filing or recording any financing statement, mortgage, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and the Adequate Protection Liens, or to entitle the DIP Agent, the DIP Lenders, the Prepetition Agent, and the Prepetition Lenders to the priorities granted herein. Notwithstanding the foregoing, each of the DIP Agent and the Prepetition Agent is authorized to file and deliver, as it deems necessary or advisable, and the Pre-Petition Agent must upon written request of the DIP Agent or Requisite Lender, such financing statements, mortgages, securities notices and other instrument or documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the applicable DIP Liens and/or Adequate Protection Liens, and all such financing statements, mortgages, notices and other documents shall be deemed to have been filed or recorded as of the Petition Date; *provided, however*, that no such filing or recordation shall be necessary or required in order to create, evidence or perfect the DIP Liens and/or the Adequate Protection Liens. The Debtors are authorized to and shall execute and deliver promptly upon demand to the DIP Agent and the Prepetition Agent all such financing statements, mortgages, title insurance policies, notices, instruments, and other documents as the DIP Agent or the Prepetition Agent may reasonably request. The DIP Agent and the Prepetition Agent may file a photocopy of this Interim Order as a financing statement or notice with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, mortgages, notices of lien, instrument, or similar document.

20. *Maintenance of DIP Collateral and Cash Management System.* Until the indefeasible payment in full in cash of all DIP Obligations, and the termination of the DIP Lenders' obligation to extend credit under the DIP Facility, the Debtors are authorized and directed to: (a) insure the DIP Collateral as required under the DIP Documents; and (b) maintain the cash management system in effect as of the Petition Date, as modified by any order that may be entered by the Court which has first been agreed to by the Required DIP Lenders, or as otherwise agreed to by the Required DIP Lenders, in their reasonable discretion, or as otherwise required by the DIP Documents.

21. *Disposition of DIP Collateral: Rights of DIP Agent and DIP Lenders.* The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral outside the ordinary course of business without the prior written consent of the Required DIP Lenders and the proceeds of any such sale, transfer, lease, encumbrance or other disposition shall be turned over to the DIP Agent to satisfy any outstanding DIP Obligations in accordance with the terms of the DIP Credit Agreement.

22. *Postpetition Financing Termination.* On the earlier to occur of Commitment Termination Date and the Termination Declaration Date, (a) all DP Obligations shall be immediately due and payable, (b) all commitments to extend credit under the DIP Facility will terminate, and (c) all authority to use Cash Collateral shall cease, *provided, however*, that during the Remedies Notice Period (as defined herein), the Debtors may use Cash Collateral solely as set forth in paragraph 11 herein.



23. *Events of Default.* The occurrence of an "Event of Default" under the DIP Credit Agreement, as set forth therein, including, but not limited to, the failure to comply with any of the terms of this Interim Order, shall constitute an event of default under this Interim Order, unless waived in writing by the Required DIP Lenders (the "*Events of Default*").

24. *Rights and Remedies Upon Event of Default.* Immediately upon the occurrence and during the continuation of an Event of Default, (a) the DIP Agent, with the consent of the Required DIP Lenders, may, or upon the request of the Required DIP Lenders, shall be entitled to declare (i) all DIP Obligations owing under the DIP Documents to be immediately due and payable, (ii) the termination or restriction of any further commitment to extend credit to the Debtors to the extent any such commitment remains, and/or (iii) the termination of the DIP Credit Agreement and any other DIP Document as to any future liability or obligation of the DIP Agent and the DIP Lenders, but without affecting...

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... prevailing eastern time shall be referred to herein as the "*Termination Declaration Date*"). The DIP Obligations shall be due and payable, without notice or demand, and the ability of the Debtors to use Cash Collateral shall automatically terminate or be reduced or restricted on the Termination Declaration Date, as provided in the applicable Termination Declaration except as provided in paragraph 11 during the Remedies Notice Period. For the period that is four (4) business days after the Termination Declaration Date (the "*Remedies Notice Period*"), the Debtors and any Statutory Committee shall be entitled to seek an emergency hearing with the Court. Unless the Court determines during the Remedies Notice Period that an Event of Default has not occurred or enters an order precluding the exercise of remedies, the automatic stay shall automatically be terminated at the end of the Remedies Notice Period without further notice or order and the DIP Agent, DIP Lenders, Prepetition Agent, and Prepetition Lenders shall be permitted to exercise all remedies set forth in the DIP Credit Agreement, the DIP Documents, the Prepetition Credit Agreement and the Prepetition Credit Documents, as applicable, and as otherwise available at law or in equity against the DIP Collateral and/or Prepetition Collateral, as the case may be, without further order of or application or motion to the Court, and without restriction or restraint by any stay under sections 362 or 105 of the Bankruptcy Code, or otherwise, against the enforcement of the liens and security interests in the DIP Collateral and Prepetition Collateral or any other rights and remedies granted to the DIP Agent and the DIP Lenders with respect thereto pursuant to the DIP Credit Agreement, DIP Documents, this Interim Order or applicable law. Upon expiration of the Remedies Notice Period, the DIP Agent and the DIP Lenders may, subject to the terms and conditions of the Intercreditor Agreement or the DIP Credit Agreement, (a) (i) sweep any or all of the cash in the DIP Proceeds Controlled Account (as defined in the DIP Credit Agreement) and any other account subject to a Control Account Agreement (as defined in the DIP Credit Agreement) to prepay the DIP Facility and/or (ii) sweep any or all of the cash in the DIP Controlled Accounts (as defined in the DIP Credit Agreement) to prepay the DIP Facility, and (b) foreclose on all or any portion of the DIP Collateral, collect accounts receivable and apply the proceeds thereof to the obligations, occupy the Debtors' premises, execute going out of business sales or otherwise exercise remedies against the DIP Collateral permitted by applicable nonbankruptcy law. Upon the occurrence and during the continuance of an Event of Default, in addition to all rights and remedies available to the DIP Lenders at law and in equity and all rights and remedies granted to the DIP Lenders pursuant to the terms of this Interim Order and the DIP Facility Documents, upon a direction from the DIP Agent, the Debtors shall pursue an immediate sale of the DIP Collateral pursuant to the provisions of Section 363 of the Bankruptcy Code in a manner satisfactory to the Required DIP Lenders and the proceeds of such sale shall be used to pay the obligations owing to the DIP Lenders in accordance with the DIP Facility.

25. *Good Faith Under Section 364(e) of the Bankruptcy Code: No Modification or Stay of this Interim Order.* The Prepetition Agent, each member of the Lender Group, DIP Agent and DIP Lenders each have acted

in good faith in connection with this Interim Order and their reliance on this Interim Order is in good faith. Based on the findings set forth in this Interim Order and the record made during the Interim Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Interim Order are hereafter modified, amended or vacated by a subsequent order of this Court or any other court, the DIP Agent and the DIP Lenders are each entitled to the protections provided in section 364(e) of the Bankruptcy Code. Any such modification, amendment or vacatur shall not affect the extent, validity, perfection, priority, allowability, enforceability or non-avoidability of any advances previously made or made hereunder, or lien, claim or priority granted, perfected, authorized or created hereby. Any liens or claims granted to the DIP Agent or DIP Lenders hereunder arising prior to the effective date of any such modification, amendment or vacatur of this Interim Order shall be governed in all respects by the original provisions of this Interim Order, including entitlement to all rights, remedies, privileges and benefits granted herein.

26. *Proofs of Claim.* The DIP Agent, DIP Lenders, Prepetition Agent and Prepetition Lenders (with respect to the Prepetition Obligations) will not be required to file proofs of claim or requests for administrative expenses in any of the Cases or any Successor Cases, and the Debtors' Stipulations in paragraph E of this Interim Order, and the other provisions of this Interim Order relating to the claims granted herein, shall be deemed to constitute a timely filed proof of claim or request for administrative expense as applicable. Any order entered by the Court in connection with the establishment of a bar date for any claim (including without limitation administrative claims) in the Cases or any Successor Cases shall not apply to the DIP Agent, the DIP Lenders, Prepetition Agent, or the Prepetition Lenders with respect to claims arising out of or relating to the Prepetition Obligations.

27. *Rights of Access and Information.* Without limiting the rights of access and information afforded the DIP Agent and the DIP Lenders under the DIP Documents or the Prepetition Agents and Prepetition Lenders under the Prepetition Credit Documents, the Debtors are authorized to afford representatives, agents and/or employees of the Prepetition Agent, the Prepetition Lenders, DIP Agent and DIP Lenders reasonable access to the Debtors' premises and their books and records in accordance with the Prepetition Credit Documents and DIP Documents, as the case may be, and are authorized to reasonably cooperate, consult with, and provide to such persons all such information as may be reasonably requested.

28. *Carve Out.*

(a) *Carve Out.* As used in this Interim Order, the "*Carve Out*" means the following expenses: (i) statutory fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6); (ii) all fees and disbursements payable to the information officer in connection with Canadian Case as determined by order of the Canadian Court (as such terms are defined in the DIP Agreement); and (iii) subject to the terms and conditions of this Interim Order, all professional fees and disbursements incurred by (x) legal counsel for the Parent in the Canadian Case, and (y) the Debtors and any Statutory Committee for any attorneys and a single financial advisor, for the Debtors and any Statutory Committee, respectively, retained by final order of the Court (which order has not been reversed, vacated, or stayed, unless such stay has been vacated) pursuant to sections 327 or 1103(a) of the Bankruptcy Code (the "*Case Professionals*") to the extent allowed or later allowed by order of the Court (which order has not been reversed, vacated, or stayed, unless such stay has been vacated) under sections 328, 330 and/or 331 of the Bankruptcy Code and any interim compensation procedures order (the "*Allowed Professional Fees*"), but solely to the extent such Allowed Professional Fees are within the corresponding amounts set forth in the Budget and were reflected as estimated fees and expenses of Case Professionals in the most recent Budget delivered by the Debtors to the DIP Agent prior to the date that the fees were incurred; provided, however, that, following a notice of an Event of Default under the DIP Facility delivered by the DIP Agent to the Debtors, the amount of the Carve Out shall not exceed \$250,000, plus

the amount of any compensation or reimbursement of budgeted expenses and fees incurred, awarded or paid prior to the occurrence of an Event of Default in respect of which the Carve Out is invoked.

(b) *No Direct Obligation to Pay Professional Fees; No Waiver of Right to Object to Fees.* The DIP Agent, DIP Lenders, Prepetition Agent, and Prepetition Lenders shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any Case Professionals incurred in connection with the Cases or any Successor Cases under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed (i) to obligate the DIP Agent, DIP Lenders, Prepetition Agent or Prepetition Lenders, in any way to pay compensation to or to reimburse expenses of any Case Professional, or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement; (ii) to increase the Carve Out if actual Allowed Professional Fees are higher in fact than reflected in the Budget or estimated fees and disbursements of Case Professional reflected in the Budget; or (iii) as consent to the allowance of any professional fees or expenses of any Case Professionals. Any funding of the Carve Out shall be added to and made a part of the DIP Obligations and secured by the DIP Collateral and otherwise entitled to the protections granted under this Interim Order, the DIP Documents, the Bankruptcy Code and applicable law. The DIP Agent's, the DIP Lenders', the Prepetition Agents and Prepetition Lenders' liens and claims granted pursuant to this Interim Order shall, however, be subject and subordinate to the Carve Out as set forth in this Interim Order.

29. *Limitations on the DIP Facility, the DIP Collateral, the Cash Collateral and Carve Out* The DIP Facility, the DIP Collateral, the Cash Collateral, and the Carve Out may not be used in connection with: (a) preventing, hindering, or delaying any of the DIP Agent's, the DIP Lenders', the Prepetition Agent's, or the Prepetition Lenders' enforcement or realization upon any of the DIP Collateral once an Event of Default has occurred except to contest that an Event of Default has occurred; (b) using or seeking to use Cash Collateral or selling or otherwise disposing of DIP Collateral without the consent of the DIP Agent; (c) using or seeking to use any insurance proceeds constituting DIP Collateral without the consent of the DIP Agent; (d) incurring Indebtedness...

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... granted standing, must commence, as appropriate, a contested matter or adversary proceeding raising such claim, objection, defense, or other challenge, including, without limitation, any claim against the Prepetition Agents or any Prepetition Lender in the nature of a setoff, counterclaim or defense to the applicable Prepetition Obligations or the Prepetition Liens (each, a "*Challenge*") within the earlier of: (i) with respect to any Statutory Committee, sixty (60) calendar days from the formation of the Statutory Committee by the U.S. Trustee, and (ii) with respect to other parties in interest (other than a Statutory Committee and the Debtors and their successors) with requisite standing, seventy-five (75) calendar days following the date of entry of the Interim Order (together, the "*Challenge Period*"). The applicable Challenge Period may only be extended with the written consent of the Required Lenders. Upon the expiration of the Challenge Period (the "*Challenge Period Termination Date*"), without the filing of a Challenge (or if any such Challenge is filed and overruled): (A) any and all such Challenges by any party (including, without limitation, any Statutory Committee, any chapter 11 trustee, and/or any examiner or other estate representative appointed or elected in these Cases, and any chapter 7 trustee and/or examiner or other estate representative appointed or elected in any Successor Cases), shall be deemed to be forever waived and barred, and (B) all of the Debtors' Stipulations, waivers, releases, affirmations...

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... shall be of full force and effect and forever binding upon all the Debtors' estate and all creditors, interest holders, and other parties in interest in these Cases and any Successor Cases. To the extent that a Challenge is timely filed but does not expressly challenge all of the Debtors' Stipulations, or to the extent any creditor,

interest holder and other party interest does not file any timely Challenge, all such unchallenged Debtors' Stipulations shall be of full force and effect and forever binding upon all the Debtors' estate and all creditors, interest holders, and other parties in interest in these Cases and any Successor Cases, notwithstanding any timely-filed Challenge.

31. *No Third Party Rights.* Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

32. *Section 506(c) Claims.* Upon entry of the Final Order, no costs or expenses of administration which have been or may be incurred in the Cases at any time shall be charged against the DIP Agent, DIP Lenders, Prepetition Agent or Prepetition Lenders or any of their respective claims, the DIP Collateral or the Prepetition Collateral pursuant to section 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior express written consent of the affected DIP Agent, DIP Lender, Prepetition Agent or Prepetition Lender, and no such consent shall be implied, directly or indirectly, from any action, inaction, or acquiescence by any such agents or lenders.

33. *No Marshaling/Applications of Proceeds.* The DIP Agent, DIP Lenders, the Prepetition Agents, and Prepetition Lenders shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral.

34. *Section 552(b).* The DIP Agent, DIP Lenders, Prepetition Agents, and Prepetition Lenders shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Agents or any Prepetition Lender with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral.

35. *Discharge Waiver.* The Debtors expressly stipulate, and the Court finds and adjudicates that, the DIP Obligations shall not be discharged by the entry of an order confirming any plan of reorganization, notwithstanding the provisions of sections 524 and/or 1141(d) of the Bankruptcy Code, unless the DIP Obligations have been paid in full in cash on or before the effective date of a confirmed plan of reorganization. The Debtors shall not propose or support any plan of reorganization or sale of all or substantially all of the Debtors' assets or entry of any confirmation order or sale order that is not conditioned upon the payment in full in cash, on the effective date of such plan of reorganization or such sale, of all DIP Obligations.

36. *Rights Preserved.*

(a) Notwithstanding anything herein to the contrary, in the case of an Event of Default under the DIP Credit Agreement, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the DIP Agent's, any DIP Lender's, the Prepetition Agents' or the Prepetition Lenders' right under the Bankruptcy Code or under non-bankruptcy law including, but not limited to, the right (i) to seek any other or supplemental relief in respect of any Debtors, including the right to seek additional adequate protection for the Prepetition Obligations (without prejudice to any other person's right to object to or otherwise oppose such additional adequate protection); (ii) to request modification of the automatic stay of section 362 of the Bankruptcy Code; (ii) to request dismissal of any of the Cases or any Successor Cases, conversion of any of the Cases to a case under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers; or (iii) to propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans.

(b) Other than as expressly set forth in this Interim Order, any other rights, claims or privileges (whether legal, equitable or otherwise) of the DIP Agent, DIP Lenders, Prepetition Agents, and Prepetition Lenders are preserved.

37. *No Waiver by Failure to Seek Relief.* The failure of the DIP Agent, any DIP Lender, any Prepetition Agent or Prepetition Lender to seek relief or otherwise exercise their respective rights and remedies under this Interim Order, the DIP Documents, the Prepetition Credit Documents or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the applicable DIP Agent, DIP Lender, Prepetition Agent or any Prepetition Lender.

38. *Binding Effect of Interim Order.* Immediately upon entry by this Court (notwithstanding any applicable law or rule to the contrary), the terms and provisions of this Interim Order shall become valid and binding upon and inure to the benefit of the Debtors, the DIP Agent, the DIP Lenders, the Prepetition Agents, the Prepetition Lenders, all other creditors of the Debtors, any Statutory Committee or any other court appointed committee appointed in the Cases, and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Cases, any Successor Cases, or upon dismissal of any of the Cases or any Successor Cases.

39. *No Modification of Interim Order.* Until and unless the DIP Obligations and Prepetition Obligations have been indefeasibly paid in full in cash (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms) (with full cash collateral provided for any contingent obligation that have not yet matured) and all commitments to extend credit under the DIP Facility have been terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (a) without the prior written consent of the Required DIP Lenders and Consenting Lenders (i) any modification, stay, vacatur or amendment to this Interim Order (and no such consent shall be implied by any other action, inaction or acquiescence of Required DIP Lenders or Consenting Lenders); or (ii) a priority claim for any administrative expense or unsecured claim against the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation any administrative expense of the kind specified in sections 503(b), 507(a) or 507(b) of the Bankruptcy Code) in the Cases or any Successor Cases equal or superior to the DIP Superpriority Claim or Adequate Protection Superpriority Claims, other than the Carve Out; (b) without the prior written consent of the Required DIP Lenders and the Required Lenders, any order allowing use of Cash Collateral (other than this Interim Order or the Final Order); and (c) without the prior written consent of the Required DIP Lenders and the Required Lenders, any lien on any of the DIP Collateral or Prepetition Collateral with priority equal or superior to the DIP Liens, Prepetition First Liens, or Adequate Protection Liens, except as specifically provided in the DIP Documents. Notwithstanding anything contained in this paragraph 39 to the contrary, the Debtors may incur further financing (written notice of which shall be delivered to those certain Lenders or Hedge Bank (as those terms are defined in the Prepetition Credit Documents) that are signatories to the plan support agreement ("*Consenting Lenders*") dated as of December 15, 2009, among the Debtors, the Prepetition Agent, and the Consenting Lenders, by email or...

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... any financing or requirement of due diligence contingency; and (D) provide that any default thereunder shall result in the vacating of the automatic stay so as to permit the exercise of rights and remedies of the Lender Parties, Hedge Bank (as those terms are defined in the Prepetition Credit Documents) and the Prepetition Agent without any requirement of further notice, court approval (including Bankruptcy Court approval) or marshaling.

13 Without limitation, such intercreditor agreement shall prohibit the replacement lender from exercising any rights or remedies with respect to the Collateral granted pursuant to the new financing unless and until the Prepetition Lenders are indefeasibly paid in full in cash pursuant to the Prepetition Credit Documents.

40. *Interim Order Controls.* In the event of any inconsistency between the terms and conditions of the DIP Documents and this Interim Order, the provisions of this Interim Order shall govern and control.

41. *Survival.* The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Cases; (b) converting any of the Cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any of the Cases or any Successor Cases; (d) discharging the Debtors; or (e) pursuant to which this Court abstains from hearing any of the Cases or any Successor Cases. The terms and provisions of this Interim Order, including the claims, liens, security interests and other protections granted to the DIP Agent, DIP Lenders, Prepetition Agents and Prepetition Lenders pursuant to this Interim Order and/or the DIP Documents, notwithstanding the entry of any such order, shall continue in any of the Cases, in any Successor Cases, or following dismissal of any of the Cases or any Successor Cases, and shall maintain their priority as provided by this Interim Order until all DIP Obligations and Prepetition Obligations have been indefeasibly paid in full in cash, and all commitments to extend credit under the DIP Facility are terminated. The terms and provisions of the DIP Credit Agreement concerning the indemnification of the DIP Agent and DIP Lenders shall continue in any of the Cases, in any Successor Cases, following dismissal of any of the Cases or any Successor Cases, and following termination of the DIP Documents and/or the repayment of the DIP Obligations.

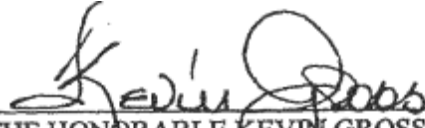
42. *Final Hearing.* The Final Hearing to consider entry of the Final Order and final approval of the DIP Facility is scheduled for January 22 2010 at [11:30] a.m. (Eastern Time) before the Honorable Kevin Gross, United States Bankruptcy Judge, Courtroom 3 on the 6th floor of the United States Bankruptcy Court for the District of Delaware. On or before December [24], 2009, the Debtors shall serve, by United States mail, first-class postage prepaid, notice of the entry of this Interim Order and of the Final Hearing (the "*Final Hearing Notice*"). together with a copy of this Interim Order and the DIP Motion, on: (a) the parties having been given notice of the Interim Hearing; (b) any party which has filed prior to such date a request for notices with this Court; and (c) counsel for the Prepetition Lenders and any Statutory Committee. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of the Court no later than on [January 15, 2010] at 4:00 p.m. (Eastern Time), which objections shall be served so as to be received on or before such date by: (i) counsel to the Debtors, attn: Paul V. Possinger, Esq., Proskauer Rose LLP, Three First National Plaza, 70 West Madison, Suite 3800, Chicago, IL 60602, and attn: [Mark D. Collins, Esq. Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, DE 19801; (ii) counsel to any Statutory Committee; (iii) counsel to the DIP Lenders and Lender Group, attn: Jonathan B. Alter, Esq., Bingham McCutchen LLP, One State Street, Hartford, CT 06103, Frederick F. Eisenbiegler, Esq., Bingham McCutchen LLP, 399 Park Avenue, New York, NY 10022, and attn: Laura Davis Jones, Pachulski, Stang, Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19889-8705; (iv) counsel to the DIP Agent, attn: Chris McDermott, and attn: Alexander T. Lin, Cadwalader, Wickersham & Taft, LLP, 227 West Trade Street, Charlotte, North Carolina 28202 and (v) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801.

43. *Effect of this Interim Order.* This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof.

44. *Retention of Jurisdiction.* The Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

Dated: December 22, 2009

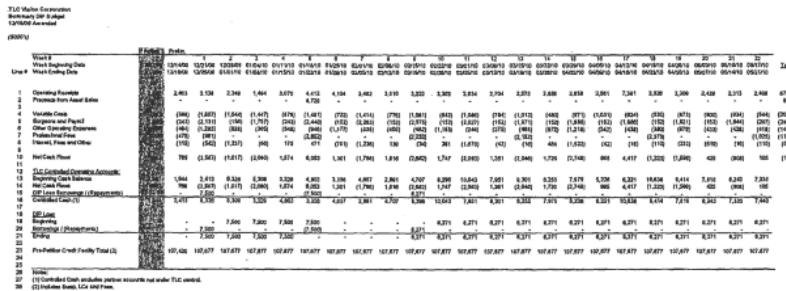
Wilmington, Delaware

  
THE HONORABLE KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE

Graphic 3

Exhibit A

Budget



The table is a detailed budget spreadsheet for TLC Vision Corporation. It includes columns for months from 2010 to 2013. The rows are categorized into various line items, including Operating Expenses, Variable Costs, Depreciation and Amortization, and Payroll. The final rows show a total for 'Pre-Paid Cash Family Total (L)' and a 'Total' row.

Graphic 4

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re: )  
) Chapter 11  
)  
)  
TLC Vision (USA) Corporation, et al.,<sup>14</sup> )  
) Case No. 09-14473 (KG)  
)  
) Jointly Administered  
Debtors. )  
)  
) *Re: Docket No. 3*

ORDER AUTHORIZING MAINTENANCE OF EXISTING BANK ACCOUNTS, CONTINUED USE OF EXISTING BUSINESS FORMS, CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, AND GRANTING OTHER RELIEF

Upon consideration of the motion (the "*Motion*")<sup>15</sup> of the above-captioned debtors and debtors in possession (collectively, the "*Debtors*") for entry of an order under sections 105, 363, 364, 1107 and 1108 of title 11 of the United States Code (11 U.S.C. §§ 101-1532, as amended, the "*Bankruptcy Code*") authorizing them to maintain existing bank accounts, to continue to use existing checks and business forms, to continue to use their existing cash management system and granting other relief; the Court having reviewed the Motion and the Gries Declaration; the Court having considered the statements of counsel and evidence adduced with respect to the Motion at a hearing before the Court (the "*Hearing*"); and the Court finding that: (1) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. § 1334; (2) this is

a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (3) the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; (4) notice of the Motion and the Hearing was proper, timely, adequate, and sufficient under the particular circumstances; and (5) upon the record herein and after due deliberation and cause appearing therefor;

15 Each capitalized term used but not otherwise defined herein shall have the meaning given to it in the Motion.

*IT IS HEREBY ORDERED THAT:*

1. The Motion is GRANTED.

2. The Debtors are authorized, but not directed, in the reasonable exercise of their business judgment: (a) to designate, maintain, and continue to use, with the same account numbers, all of the bank accounts in existence on the Petition Date, including, without limitation, those accounts identified and described on *Exhibit B* to the Motion (the "*Bank Accounts*") (a copy of which exhibit is attached hereto as *Exhibit 1*); (b) to use, in their present form, checks and other documents and forms related to the Bank Accounts and the Debtors' businesses, *provided, however*, that upon depletion of the Debtors' existing check stock, all new check stock shall include the "debtor in possession" designation; and (c) to treat the Bank Accounts for all purposes as accounts of the Debtors as debtors in possession.

3. Every Bank at which any Bank Account is maintained is hereby authorized to continue to service and administer such Bank Account as an account of the Debtors as debtors in possession without interruption and in the usual and ordinary course and to receive, process, honor and pay any and all checks and drafts drawn on each Bank Account after the Petition Date by the holders or makers thereof, as the case may be; *provided, however*, that any check drawn or issued by the Debtors before the Petition Date may be honored by any bank only if specifically authorized by order of this Court.

4. Except for those checks or debts that may be honored and paid to comply with any order(s) of this Court authorizing payment of certain prepetition claims, no checks or drafts issued on the Bank Accounts before the Petition Date, but presented for payment after the Petition Date, shall be honored or paid.

5. Nothing contained herein shall prevent the Debtors from opening any new bank accounts or closing any existing Bank Accounts as they may deem necessary and appropriate; *provided, however*, that any new account shall be with a bank that is insured with the Federal Deposit Insurance Corporation and organized under the laws of the United States or any state therein or their Canadian equivalent.

6. The Debtors are authorized to continue to use their existing business and correspondence forms and existing checks without alteration and without the...

\*\*\* Start Section

... "Debtor in Possession" imprinted upon them.

7. The Debtors are authorized to continue utilizing their cash management system to manage their cash in a manner consistent with their prepetition practices, as set forth in the Motion, including, without limitation, to transfer funds to accounts of non-debtors to fund obligations and/or to pay obligations on behalf of related entities that are non-debtors. The Debtors shall keep records of any intercompany transfers between Debtors and between Debtors and non-debtor affiliated companies.

8. All intercompany claims arising after the Petition Date shall be accorded administrative priority status of the kind specified in sections 503(b) and 507(a)(1) of the Bankruptcy Code.



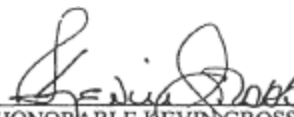
9. The Debtors shall cause a copy of this Order to be served on all of the Banks at which any Bank Account is maintained and request that internal coding of the accounts be designated as debtor in possession accounts and provide the Office of the United States Trustee with copies of such requests.

10. The terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

11. The Debtors' time within which to comply with section 345 of the Bankruptcy Code is hereby extended for a period of sixty (60) days from the Petition Date (the "*Extension Period*"): *provided, however*, that such extension is without prejudice to the Debtors' right to request a further extension of the Extension Period.

12. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: December 22 2009  
 Wilmington, Delaware

  
 THE HONORABLE KEVIN GROSS  
 UNITED STATES BANKRUPTCY JUDGE

Graphic 5

Exhibit 1 — Bank Accounts

Bank Name	Account	Entity	Ownership	Address	City	State	Account Type
Harris Bank	x0042	TLC Management Services Inc.	100%	Chesterfield, MO	Chicago, IL	Corporate	TLC Concentration Account
Harris Bank	x3074	TLC Management Services Inc.	100%	Chesterfield, MO	Chicago, IL	Corporate	USD Main A/P Disbursement
Harris Bank	x2746	TLC Management Services Inc.	100%	Chesterfield, MO	Chicago, IL	Corporate	USD Dr's Disbursements
Harris Bank	x0997	TLC Management Services Inc.	100%	Chesterfield, MO	Chicago, IL	Corporate	Patient Financing Receipts (inactive)
Bank of Montreal	x5549	TLC Vision Corporation	100%	Moncton, Halifax, London, Waterloo, Mississauga, York Mills	Toronto, ON	Center	Depository
Bank of Montreal	x7557	TLC Vision Corporation	100%	Chesterfield, MO	Toronto, ON	Corporate	CAD A/P Disbursement
Bank of Montreal	x2374	TLC Management Services Inc.	100%	Chesterfield, MO	Toronto, ON	Corporate	CAD Dr's Disbursement
Bank of Montreal	x1063	TLC Vision Corporation	100%	Chesterfield, MO	Toronto, ON	Corporate	USD A/P Disbursement for Canadian Vendors
Fifth Third Bank	x2005	TLC Vision (USA) Corporation	100%	Consolidation - Fifth Third	Rolling Meadows, IL	Center	Sweep
Fifth Third Bank	x3656	TLC Vision (USA) Corporation	100%	Little Rock, AR	Rolling Meadows, IL	Center	Depository
Fifth Third Bank	x4951	TLC Vision (USA) Corporation	100%	Columbia, SC	Rolling Meadows, IL	Center	Depository
Fifth Third Bank	x5231	TLC Vision (USA) Corporation	100%	Greater Seattle	Rolling Meadows, IL	Center	Depository
Fifth Third Bank	x0926	TLC Vision (USA) Corporation	100%	Arlington Heights	Rolling Meadows, IL	Center	Depository
Fifth Third Bank	x0934	TLC Vision (USA) Corporation	100%	Portland	Rolling Meadows, IL	Center	Depository
Fifth Third Bank	x1486	TLC Vision (USA) Corporation	100%	Kennesaw	Rolling Meadows, IL	Center	Depository
Bank of America	x7292	TLC Management Services Inc.	100%	Massachusetts	St. Louis, MO	Center	Depository
Chase	x7049	TLC Management Services Inc.	100%	Tulsa	Tulsa, OK	Center	Depository
First Interstate Bank	x1605	TLC Management Services Inc.	100%	Billings - Big Sky	Billings, MT	Center	Depository
Huntington	x7440	TLC Management Services Inc.	100%	Columbus	Columbus, OH	Center	Depository
Key Bank	x2581	TLC Management Services Inc.	100%	Cleveland	Parma, OH	Center	Depository
NexTier Bank	x0834	TLC Management Services Inc.	100%	Pittsburgh	Wexford, PA	Center	Depository
Park Bank	x1926	TLC Management Services Inc.	100%	Wisconsin-Madison	Madison, WI	Center	Depository
Peoples Community Bank	x6906	TLC Management Services Inc.	100%	Tri-Cities	Johnson City, TN	Center	Depository
Regions Bank	x3904	TLC Management Services Inc.	100%	Indiana	Indianapolis, IN	Center	Depository
Wachovia	x7764	TLC Management Services Inc.	100%	Piedmont	Greenville, SC	Center	Depository

Graphic 6

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
 )

TLC Vision (USA) Corporation, *et al.*,<sup>16</sup> ) Case No. 09-14473 (KG)  
 ) Jointly Administered  
 Debtors. )  
 ) *Re: Docket No. 4*

*INTERIM ORDER PURSUANT TO SECTION 366 OF THE BANKRUPTCY CODE: (A) PROHIBITING UTILITY COMPANIES FROM ALTERING, REFUSING OR DISCONTINUING SERVICES TO, OR DISCRIMINATING AGAINST, THE DEBTORS ON ACCOUNT OF PREPETITION AMOUNTS DUE; (B) AUTHORIZING THE DEBTORS TO ESTABLISH THE UTILITY DEPOSIT ACCOUNT AND PAY THE ADEQUATE ASSURANCE DEPOSIT; (C) ESTABLISHING PROCEDURES TO OBJECT TO THE MOTION: AND (TO SCHEDULING A FINAL HEARING*

Upon consideration of the motion (the "*Motion*"<sup>17</sup> ) of the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively the "*Debtors*"), seeking entry of interim and final orders pursuant to section 366 of the Bankruptcy Code (I) prohibiting utility companies from altering, refusing or discontinuing services to, or discriminating against, the debtors on account of prepetition amounts due; (II) determining that the utility companies are adequately assured of future payment; (III) authorizing the Debtors to establish the Utility Deposit Account and pay the Adequate Assurance Deposit; (IV) establishing procedures to object to the Motion; (V) scheduling the Final Hearing; and (VI) granting related relief; the Court having reviewed the Motion and the Gries Declaration; the Court having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing thereon; and the Court having found that: (a) the Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b), and (c) notice of the Motion and the hearing thereon was sufficient under the circumstances and that no further notice need be provided; it appearing that the relief requested in the Motion is in the best interest of the Debtors, their estates, and their creditors; and the Court having determined that the legal and factual bases set forth in the Motion and adduced at the hearing thereon establish good and sufficient cause for the relief granted herein;

<sup>17</sup> Each capitalized term used but not otherwise defined herein shall have the meaning given to it in the Motion.

*IT IS HEREBY ORDERED THAT:*

1. The Motion is granted.
2. Subject to the entry of the Final Order or an order sustaining an Objection, no Utility Company may: (a) alter, refuse, terminate or discontinue utility services to, and/or discriminate against, the Debtors on the basis on the commencement of these chapter 11 cases or on account of outstanding prepetition amounts due; or (b) require additional assurance of payment, other than the Proposed Adequate Assurance, as a condition to the Debtors receiving utility services.
3. The Debtors are authorized and directed, within seven (7) days of entry of this Order, to establish the Utility Deposit Account and pay the Adequate Assurance Deposit in the amount of \$20,000 into the Utility Deposit Account. The Debtors shall not withdraw or authorize any other party to withdraw any amounts from the Utility Deposit Account without further order of the Court after notice and a hearing.

4. Any Utility Company seeking to obtain the benefit of the Adequate Assurance Deposit on account of an alleged failure of the Debtors to pay any postpetition utility amount shall request to be paid from the Utility Deposit Account as follows:

**First**, such Utility Company shall provide written notice of the alleged failure to pay such post-petition amount in the ordinary course of business between the Debtors and the Utility Company (the "Notice of Failure to Pay") to: (a) the Office of the United States Trustee for the District of Delaware; (b) Proskauer Rose LLP, Three First National Plaza, 70 West Madison, Suite 3800, Chicago IL 60602-4342, Attn: Paul V. Possinger; and (c) Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, DE 19801, Attn.: Mark D. Collins (collectively, the "Notice Parties"). The Notice of Failure to Pay shall indentify the post-petition amount the Utility Company alleges to not have been paid by the Debtors in the ordinary course of business, and indentify the location(s) to utility services are provided, and the relevant account number(s) by which the Utility Company identifies the Debtors.

The Debtors are authorized in their sole discretion to pay, in accordance with orders granting use of cash collateral and other orders of this Court, amounts for unpaid post-petition utilities requested in any Notice of Failure to Pay.

**Second**, if the Debtors and the Utility Company fail to resolve the non-payment alleged in the Notice of Failure to Pay then, no less than ten (10) days after actual receipt by the Notice Parties of the Notice of Failure to Pay, the Utility Company shall file a motion (the "Motion to Direct Payment") with the Court requesting entry of an order directing the Debtors to satisfy such unpaid amount from the Adequate Assurance Deposit. Such Motion shall set forth in detail (a) the basis for the Utility Company's allegation that the Debtors have failed to pay the Utility Company for post-petition utility services in the ordinary course of business, (b) the date that such requesting Utility Company issued the Notice of Failure to Pay to the Notice Parties (which date shall not be less than ten (10) days prior to the filing of such motion) and (c) any deposits, prepayments or other security currently held by such Utility Company.

**Third**, after hearing and upon order of the Court, the Debtors may be directed to satisfy any unpaid post-petition amounts due to such requesting Utility Company from the Utility Deposit Account.

5. The Debtors are authorized, in their sole discretion, to amend the Utility List to add or delete any Utility Company, and this Order shall apply to any such Utility Company that subsequently is added to the Utility List. The Debtors' service of the Motion upon an entity or an entity's inclusion on the Utility List shall not constitute an admission or concession by the Debtors that such entity is a utility within the meaning of section 366 of the Bankruptcy Code, and the Debtors rights and defenses with respect thereto are fully reserved.

6. Any Utility Company not satisfied with the Proposed Adequate Assurance must file an Objection: (a) in writing; (b) setting forth the type of utility services provided to the Debtors by the Utility Company; (c) including a summary of the Debtors' payment history with respect to the utility accounts in question that, among other things, identifies any deposits or other security held by the Utility Company; and (d) setting forth why the Debtors' Adequate Assurance, including the Adequate Assurance Deposit, is not adequate assurance of the Debtors' payment of post-petition utility amounts.

7. All Objections must be filed with the Court and served on the Notice Parties no later January 15, 2010, at 4:00 p.m., Eastern Time (the "Objection Deadline"). Any Utility Company that does not file

an Objection prior to the Objection Deadline shall be deemed, in the absence of a post-petition default for non-payment, to consent to, and shall be bound by, this Interim Order and the Final Order.

8. The Debtors are authorized to resolve, in their sole discretion, any Objection by mutual agreement with the objecting Utility Company and without further order of the Court and, in connection with any such agreement, in their sole discretion, to provide a Utility Company with additional adequate assurance of payment, including but not limited to cash deposits, prepayments, and other forms of security, without further order of this Court.

9. A Final Hearing to resolve any Objections filed prior to the Objection Deadline shall be conducted on January 22, 2010 at 11:30 a.m., Eastern Time.

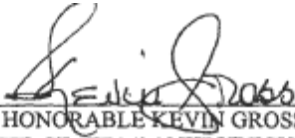
10. The Debtors shall serve a copy of this Order on each Utility Company listed on the Utility List within three (3) business days of the date this Order is entered, and shall also serve this Order on each Utility Company subsequently added to the Utility List by the Debtors or as a result of the Additional Assurance Request Procedures.

11. The terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

12. The requirements set forth in Rule 6003(b) of the Bankruptcy Rules are satisfied by the contents of the Motion.

13. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: January 22 2009  
Wilmington, Delaware

  
THE HONORABLE KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE

Graphic 7

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
TLC Vision (USA) Corporation, <i>et al.</i> , <sup>18</sup>	)	Case No. 09-14473 (KG)
	)	Jointly Administered
Debtors.	)	
	)	<i>Re: Docket No. 6</i>

ORDER (A) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO PAY PREPETITION TAXES AND REGULATORY FEES AND (B) DIRECTING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS CHECKS RELATED TO PREPETITION TAXES AND REGULATORY FEES

Upon the motion (the "*Motion*")<sup>19</sup> of the above-captioned debtors and debtors in possession (collectively, the "*Debtors*") for the entry of an order (a) authorizing, but not directing, the Debtors to pay all Taxes, Regulatory Fees and Licensing Fees (whether arising in and due under the laws of the United States or Canada, collectively, the "*Taxes and Fees*"), including all Taxes and Fees subsequently determined upon audit to be owed for periods prior to the Petition Date and (b) directing the Debtors' deposit banks when

requested by the Debtors in their sole discretion to receive, process, honor and pay any and all checks related to the prepetition Taxes and Fees; the Court having reviewed the Motion and the Gries Declaration; the Court having considered the statements of counsel and evidence adduced with respect to the Motion at a hearing before the Court (the "Hearing"); the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b) (2), and (c) notice of the Motion and the Hearing was sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion and the Gries Declaration and at the Hearing establish just cause for the relief granted herein;

19 Each capitalized term used but not otherwise defined herein shall have the meaning given to it in the Motion.

*IT IS HEREBY ORDERED THAT:*

1. The Motion is granted.
2. The Debtors are authorized, but not directed, in the reasonable exercise of their business judgment and in their sole discretion, to pay all undisputed prepetition Taxes and Fees, including all those Taxes and Fees subsequently determined upon audit to be owed for periods prior to the Petition Date, to the proper Taxing Authorities in the ordinary course of their business and on their normal due dates in an amount not to exceed \$120,000.
3. All applicable Banks shall be, and hereby are, authorized, when requested by the Debtors in their sole discretion, to receive, process, honor, and pay any and all Checks and Electronic Transfers drawn on the Debtors' accounts to pay the Taxes and Fees, whether those funds were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.
4. Nothing in the Motion or this Order shall be construed as impairing the Debtors' right to contest the validity, priority or amount of any Taxes and Fees that may be due to any Taxing Authorities.
5. The requirements set forth in Rule 6003(b) of the Bankruptcy Rules are satisfied by the contents of the Motion because the relief requested therein is necessary to avoid immediate and irreparable harm.
6. Notwithstanding the possible applicability of Rules 6004, 7062, and 9014 of the Bankruptcy Rules, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
7. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated:  2009  
 Wilmington, Delaware

  
 THE HONORABLE KEVIN GROSS  
 UNITED STATES BANKRUPTCY JUDGE

Graphic 8

*UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE*

In re: ) Chapter 11  
 )  
 TLC Vision (USA) Corporation, *et al.*,<sup>20</sup> ) Case No. 09-14473 (KG)

) Jointly Administered  
Debtors. )  
) *Re: Docket No. 7*

*ORDER PURSUANT TO SECTIONS 105(A), 363, AND 364 OF THE BANKRUPTCY CODE AUTHORIZING (I) DEBTORS TO HONOR PREPETITION INSURANCE PREMIUM FINANCING AGREEMENTS AND RENEW SUCH AGREEMENTS IN THE ORDINARY COURSE OF BUSINESS AND (II) GRANTING RELATED RELIEF*

Upon the motion (the "*Motion*")<sup>21</sup> of the above-captioned debtors and debtors in possession (collectively, the "*Debtors*") for entry of an order (this "*Order*") authorizing (i) the Debtors to honor two prepetition insurance premium financing agreements (the "*Agreements*") and renew such Agreements in the ordinary course of business, without need for further authority or approval from the Court, and (ii) related relief, all as more fully set forth in the Motion; the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; the Court having reviewed the Motion and the Gries Declaration; consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; due and proper notice of the Motion having been provided, it appearing that no other or further notice need be provided; the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their creditors, and all parties in interest; the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings before the Court and after due deliberation and sufficient cause appearing therefore;

<sup>21</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

*IT IS HEREBY ORDERED THAT:*

1. The Motion is GRANTED.
2. The Debtors are authorized, but not required, to honor the terms of the Agreements and to renew the Agreements in the ordinary course of business as set forth in the Motion.
3. Nothing in this Order nor any action taken by the Debtors in furtherance of the implementation hereof shall be deemed an approval of the assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code.
4. Nothing in this Order shall impair the ability of the Debtors or appropriate party in interest to contest any claim of any creditor pursuant to applicable law or otherwise dispute, contest, setoff, or recoup any claim, or assert any rights, claims or defenses related thereto.
5. All applicable banks or financial institutions are authorized, when requested by the Debtors in the Debtors' sole discretion, to receive, process, honor and pay all checks drawn on or direct deposit and funds transfer instructions relating to the Debtors' accounts and any other transfers that are related to the Premium Financing Obligations and the costs and expenses incident thereto; *provided*, that sufficient funds are available in the accounts to make such payments; *provided further*, that any such bank or financial institution may rely on the representations of the Debtors regarding which checks that were drawn or instructions that were issued by the Debtors before the Petition Date should be honored postpetition pursuant to an Order of this Court and that any such bank or financial institution shall not have any liability to any party for relying on the representations of the Debtors as provided herein.

6. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

7. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) are hereby waived.

8. Notwithstanding any applicability of Bankruptcy Rules 6004, 7062 and 9014, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Dated: December 22 2009  
Wilmington, Delaware

enforcement of this Order.  
Kevin Gross  
THE HONORABLE KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE

Graphic 9

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
TLC Vision (USA) Corporation,	)	Case No. 09-14473 (KG)
Federal Tax I.D. No. 38-3216220	)	
	)	
	Debtor.)	
In re:	)	Chapter 11
	)	
TLC Vision Corporation,	)	Case No. 09-14475 (KG)
Federal Tax I.D. No. 98-0151150	)	
	)	
	Debtor.)	
In re:	)	Chapter 11
	)	
TLC Management Services, Inc.,	)	Case No. 09-14476 (KG)
Federal Tax I.D. No. 52-2010374	)	
	)	
	Debtor.)	

ORDER DIRECTING JOINT ADMINISTRATION OF CHAPTER 11 CASES

Upon the motion (the "Motion")<sup>22</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors") seeking an order of this Court directing joint administration of the Debtors' Chapter 11 Cases for procedural purposes only; the Court finding that (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. § 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) notice of the Motion and the hearing on the Motion was sufficient under the circumstances; (iv) the relief requested in the Motion is warranted, will ease the administrative burden for the Court and parties in interest in these cases, protects the creditors of the different estates and is in the best interests of the Debtors, their estates, and their creditors; and (v) upon the record herein; and after due deliberation thereon, good and sufficient cause exists for the granting of relief as set forth herein;

22 Each capitalized term used but not otherwise defined herein has the meaning ascribed to it in the Motion.

*IT IS HEREBY ORDERED THAT:*

1. The Motion is granted.
2. The above-captioned Chapter 11 Cases are consolidated for procedural purposes only and shall be jointly administered by the Court.
3. Nothing contained in the Motion or this Order shall be deemed or construed as directing or otherwise effecting a substantive consolidation of the Debtors' Chapter 11 Cases.
4. The caption of the jointly administered cases shall read as follows (footnote included):

**UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
TLC Vision (USA) Corporation, <i>et al.</i> , <sup>23</sup>	)	Case No. 09-14473 (KG)
	)	
Debtors.	)	Jointly Administered

5. An entry that reads as follows shall be made on the docket of each case to reflect the joint administration of these Chapter 11 Cases:

An order pursuant to Federal Rule of Bankruptcy Procedure 1015(b) has been entered in this case directing the joint administration of the chapter 11 cases of TLC Vision (USA) Corporation (Case No. 09-14473); TLC Vision Corporation (Case No. 09-14475); TLC Management Services, Inc. (Case No. 09-14476). TLC Vision (USA) Corporation has been designated the 'lead' case. Accordingly, the docket in Case No. 09-14473 should be consulted for all matters affecting the chapter 11 case of this debtor.

6. The terms and conditions of this Order are effective and enforceable immediately upon its entry.
7. The Court retains jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: December 22, 2009  
Wilmington, Delaware

  
THE HONORABLE KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE

**Graphic 10**

*UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE*

In re:	)	Chapter 11
	)	
TLC Vision (USA) Corporation, <i>et al.</i> , <sup>24</sup>	)	Case No. 09-14473 (KG)
	)	Jointly Administered
Debtors.	)	



) *Re: Docket No. 12*

*ORDER AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO ENTER INTO TRADE AGREEMENTS WITH CRITICAL VENDORS AND TO PAY PREPETITION OBLIGATIONS IN CONNECTION THEREWITH*

Upon the motion (the "*Motion*")<sup>25</sup> of the above-captioned debtors and debtors in possession (collectively, the "*Debtors*") for the entry of an order (the "*Order*") authorizing, but not directing, the Debtors to enter into Trade Agreements with certain Critical Vendors and to pay prepetition obligations in connection therewith; it appearing that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before this court pursuant to 28 U.S.C. §§ 1408 and 1409; notice of the Motion having been adequate and appropriate under the circumstances, and after due deliberation and sufficient cause appearing therefore;

<sup>25</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

*IT IS HEREBY ORDERED THAT:*

1. The Motion is granted as set forth herein.
2. The Debtors are authorized, but not directed, in their sole discretion, to pay prepetition amounts owed to Critical Vendors so long as the aggregate amount of such payments does not exceed \$2,100,000.
3. The Debtors are authorized, but not directed, in their sole discretion, without further order of this Court, to enter into Trade Agreements with Critical Vendors, in substantially the form attached hereto as *Exhibit 1* (as may be modified by the Debtors, in their sole discretion) setting forth the parameters of the ongoing and future business relationship between the parties, including the following terms:

(a) The amount of such Critical Vendor's estimated prepetition trade claims, accounting for any setoffs, other credits and discounts thereto, shall be as mutually determined in good faith by the Critical Vendor and the Debtors (but such amount shall be used only for the purposes of this Order and shall not be deemed a Claim allowed by the Court and the rights of all interested persons to object to such Claim shall be fully preserved until further Order of the Court);

(b) The Critical Vendor's agreement to be bound by the normal and customary trade terms, practices and programs (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability and other applicable terms and programs), which were most favorable to the Debtors and in effect between such Critical Vendor and the Debtors on a historical basis for the period within one-hundred twenty (120) days of the Petition Date or such other trade terms as agreed by the Debtors and such Critical Vendor or such other trade terms, practices and programs that are at least as favorable as those that were in effect prepetition in the Debtors' sole discretion (...)

\*\*\* Start Section  
... with such terms;

(d) The Critical Vendor's agreement not to file or otherwise assert against any or all of the Debtors, their estates or any other person or entity or any of their respective assets or property (real or

personal) any lien (a "*Lien*") (regardless of the statute or other legal authority upon which such lien is asserted) related in any way to any remaining prepetition amounts allegedly owed to the Critical Vendor by the Debtors arising from agreements entered into prior to the Petition Date, and that, to the extent that the Critical Vendor has previously obtained such a Lien, the Critical Vendor shall immediately take all necessary actions to remove such Lien;

(e) The Critical Vendor's acknowledgment that it has reviewed the terms and provisions of this Order and consents to be bound hereby;

(f) The Critical Vendor's agreement that it will not separately assert or otherwise seek payment for reclamation claims outside of the terms of this Order unless the Critical Vendor's participation in the trade payment program authorized by this Order is terminated; provided that such claims, if thereafter raised by the Critical Vendor as permitted by this Order, shall be treated retroactively as though raised on the date of a timely filed written demand for reclamation; and

(g) If either the trade payment program or the Critical Vendor's participation therein terminates, or a Critical Vendor who has received payment of a prepetition claim later refuses to continue to supply goods to the Debtors on Customary Trade Terms, subject to defenses, any payments received by the Critical Vendor on account of such Critical Vendor's prepetition claim will be deemed to have been in payment of then outstanding postpetition obligations owed to such Critical Vendor and that such Critical Vendor shall immediately repay to the Debtors any payments made to it on account of its prepetition claim to the extent that the aggregate amount of such payments exceed the postpetition obligations then outstanding, without the right of any setoffs, claims, provision for payment of reclamation or trust fund claims, or otherwise.

An agreement executed between the Debtors and a Critical Vendor as set forth in this paragraph is referred to herein as a "Trade Agreement." This Order is intended to authorize, but shall not require, the Debtors to enter into Trade Agreements, it being the express intention of this Court that the Debtors shall enter into Trade Agreements only when the Debtors determine, in the exercise of their reasonable business judgment, that it is appropriate to do so.

3. The Debtors' obligations under Trade Agreements shall be accorded administrative expense priority.

4. The Motion satisfies the requirements of Bankruptcy Rule 6003.

5. Notwithstanding any provision herein to the contrary, no provision of this Order shall be deemed or construed as: (a) an admission as to the validity or amount of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim on any grounds; (c) a promise to pay any claim; or (d) a request to assume any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code.

6. The Debtors also are authorized, following diligent but failed efforts to enter into a Trade Agreement with a Critical Vendor, to make payments on account of such Critical Vendor's Claims if the Debtors determine, in their business judgment, that failure to pay such Critical Vendor Claims is likely to result in irreparable harm to the Debtors' business operations.

7. In the event that a Critical Vendor (a) refuses to supply goods to the Debtors on Customary Trade Terms following receipt of payment of its Critical Vendor Claim or (b) fails to comply with any Trade Agreement, the Debtors are authorized to (i) declare that any Trade Agreement between the Debtors and such Critical Vendor is terminated (if applicable), and (ii) to declare that provisional payments made to Critical Vendors on account of Critical Vendor Claims, whether pursuant to a Trade Agreement or otherwise, be deemed to have been in payment of then-outstanding post-petition claims

of such vendors without further order of the Court or action by any person or entity. In the event the Debtors exercise either of the rights set forth in the preceding sentence, the Critical Vendor against whom such rights are exercised shall immediately return to the Debtors any payments made to it on account of its Critical Vendor Claims to the extent that any such payments exceed the post-petition claims of such vendor then outstanding without giving effect to any rights of setoff, recoupment, claims, counterclaims, provision for payment of reclamation or trust fund claims, or otherwise.

8. Any Trade Agreement terminated as a result of a Critical Vendor's refusal to comply with the terms thereof shall be reinstated if:

- a. So ordered by the Court, after notice and a hearing following a motion by the Critical Vendor, for good cause shown that the determination was materially incorrect;
- b. The underlying default under the Trade Agreement is fully cured by the Critical Vendor not later than five (5) business days following the Debtors' notification to the Critical Vendor that a default had occurred; or
- c. The Debtors, in their discretion, reach a favorable alternative agreement with the Critical Vendor.

9. The Debtors are directed to maintain a matrix of: (a) the name of each Critical Vendor paid a Critical Vendor Payment; (b) the amount of each such Critical Vendor Payment; and (c) the goods and/or services provided by each Critical Vendor, and provide a copy of such matrix to the Office of the United States Trustee and any statutory committee on a monthly basis.

10. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

11. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

12. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

13. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: December 22 2009  
Wilmington, Delaware

  
THE HONORABLE KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE

Graphic 11

Exhibit 1

FORM OF TRADE AGREEMENT

....., 20 .....

TO: [Vendor]

[Name]

[Address]

Dear Valued Supplier:

As you are no doubt aware, TLC Vision (USA) Corporation, TLC Management Services, Inc. and their Canadian parent company (collectively, the "*Company*") filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "*Bankruptcy Case*" and the "*Bankruptcy Court*," respectively) on [.....], 2009 (the "*Petition Date*"). On the Petition Date, the Company requested the Bankruptcy Court's authority to pay certain suppliers and service providers in recognition of the importance of its relationship with such vendors and its desire that the Bankruptcy Cases have as little effect on certain vendors as possible. On [.....], 2009 the Bankruptcy Court entered an order (the "*Order*") authorizing the Company, under certain conditions, to pay prepetition claims of certain trade creditors that agree to the terms set forth below and to be bound by the terms of the Order. A copy of the Order is enclosed.

In order to receive payment on pre-bankruptcy claims, each selected trade creditor must agree to continue to supply goods to the Company based on "*Customary Trade Terms*." In the Order, Customary Trade Terms are defined as the normal and customary trade terms, practices and programs (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability, and other applicable terms and programs), which were most favorable to the Company and in effect between such trade creditor and the Company on a historical basis within one-hundred twenty (120) days of the Petition Date or such other trade terms as agreed by the Company and such trade creditors or such other trade terms, practices and programs that are at least as favorable as those that were in effect prepetition.

For purposes of administration of this trade program as authorized by the...

\*\*\* Start Section

... owed to you by the Debtors arising from agreements entered into prior to the Petition Date. Furthermore, if you have taken steps to file or assert such a lien prior to entering into this letter agreement, you agree to take the necessary steps to remove such lien as soon as possible.

5. You agree that you shall not require a lump sum payment upon confirmation of a plan in these cases on account of any administrative expense priority claim that you may assert, but instead agree that such claims will be paid in the ordinary course of business after confirmation of a plan under applicable Customary Trade Terms, if the plan provides for the ongoing operations of the Company.

6. You will hereafter extend to the Company all Customary Trade Terms (as defined in the Order).

Payment of your Trade Claim in the manner set forth in the Order may only occur upon execution of this letter by a duly authorized representative of your company and the return of this letter to the Company. Your execution of this letter agreement and return of the same to the Company constitutes an agreement by you and the Company:

A. to the Customary Trade Terms and, subject to the reservations contained in the Order, to the amount of the Trade Claim set forth above;

B. that, for a period of no less than two (2) years from the Petition Date, you will continue to supply the Debtors with goods or services pursuant to the Customary Trade Terms, and that the Debtors will pay for such goods or services in accordance with Customary Trade Terms;

C. that you have reviewed the terms and provisions of the Order and that you consent to be bound by such terms;

D. that you will not separately seek payment for reclamation and similar claims outside of the terms of the Order unless your participation in the trade payment program authorized by the Order (the "*Trade Payment Program*") is terminated; and

E. that if either the Trade Payment Program or your participation therein terminates as provided in the Order, or you later refuse to continue to supply goods or provide services to the Debtors on Customary Trade Terms, any payments received by you on account of your Trade Claim will be deemed to have been in payment of then outstanding postpetition obligations owed to you and that you will immediately repay to the Company any payments made to you on account of your Trade Claim to the extent that the aggregate amount of such payments exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provision for payment of reclamation or trust fund claims, or otherwise.

The Company and you also hereby agree that any dispute with respect to this letter agreement, the Order and/or your participation in the Trade Payment Program shall be determined by the Bankruptcy Court.

If you have any questions about this Agreement or our financial restructuring, do not hesitate to call ..... at .....

Sincerely,

[APPLICABLE DEBTOR]

.....

By: .....

Title: .....

Date: ....., 20 .....

Agreed and Accepted by:

[NAME OF VENDOR]

By: .....

Title: .....

Dated: ....., 20 .....

**Schedule "B"**

Court File No.

*ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST*

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

*APPLICATION OF TLC VISION CORPORATION UNDER SECTION 47 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED*

*PLEASE TAKE NOTICE* that this Notice is being published pursuant to an order of the Ontario Superior Court of Justice (the "Canadian Court") made on •, 2009.

*PLEASE TAKE FURTHER NOTICE* that on December 21, 2009, TLC Vision Corporation (the "Applicant") filed for protection in the United States Bankruptcy Court, for the District Court of Delaware (the "U.S. Court") under Chapter 11 of Title 11 of the *United States Code* (the "U.S. Proceeding"). Two subsidiaries of the Applicant, TLC Vision (USA) Corporation and TLC Management Services Inc., also commenced such proceedings in the U.S. Court.

*PLEASE TAKE FURTHER NOTICE* that the Applicant has sought and obtained an order from the Canadian Court under Section 47 of the *Companies' Creditors Arrangement Act* (the "Recognition Order") that, among other things: (i) recognizes the U.S. Proceeding as a foreign main proceeding; (ii) stays all claims against the Applicant in Canada; and (iii) appoints • as Information Officer of the Applicant.

*PLEASE TAKE FURTHER NOTICE* that Persons who wish to receive a copy of the Recognition Order or any further information in respect thereof or in respect of the matters set out in this Notice should contact • (Attention: •, telephone: •, facsimile: • or e-mail at •).

*PLEASE TAKE FURTHER NOTICE* that Persons wishing to obtain any further information in respect of the U.S. Proceeding should contact the Information Officer, • (Attention: •, telephone: •, facsimile: • or e-mail at •), or the Applicant's legal counsel, Torys LLP (Attention: Mr. Adam Slavens, telephone: 416.865.7500, facsimile: 416.865.7380 or e-mail at [aslavens@torys.com](mailto:aslavens@torys.com))

*PLEASE TAKE FURTHER NOTICE* that critical motions and notices before or issued by the U.S. Court and regarding the U.S. Proceeding are available at •.

*PLEASE TAKE FURTHER NOTICE* that the Recognition Order and any other orders issued by the Canadian Court are available at [www.%.com](http://www.%.com).

*DATED* this • day of •, 2009 at Toronto, Canada.

•, *COURT-APPOINTED INFORMATION OFFICER OF THE APPLICANT*

**Schedule "C" — Cross-Border Insolvency Protocol**

**CROSS-BORDER INSOLVENCY PROTOCOL**

This **cross-border insolvency protocol** (the "Protocol") shall govern the conduct of all parties in interest in the Insolvency Proceedings (as such term is defined herein).

The *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* (the "Guidelines") attached as Schedule "A" hereto, shall be incorporated by reference and form part of this Protocol. Where there is any discrepancy between the Protocol and the Guidelines, this Protocol shall prevail.

**A. Background**

1. TLC Vision Corporation ("*TLC Canada*") is a healthcare services public company incorporated under New Brunswick law, with its head office located in Chesterfield, Missouri, U.S.A. TLC Canada is the parent company of TLC Vision (USA) Corporation ("*TLC USA*") and TLC Management Services Inc. ("*TLC MSI*", together with TLC Canada and TLC USA, collectively, the "*Debtors*"). Both TLC USA and TLC MSI are incorporated under Delaware law and headquartered in Chesterfield, Missouri, U.S.A.

2. The Debtors have commenced reorganization proceedings under Chapter 11 of Title 11 of the *United States Code*, 11 U.S.C. § 101 *et seq.* (the "*Bankruptcy Code*") in the United States Court for the District of Delaware (the "*U.S. Court*") and such cases have...

**\*\*\* Start Section**

... proceeding, as procedurally consolidated, the "*U.S. Proceeding*"). The Debtors are continuing in possession of their respective properties and are operating and managing their businesses, as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the U.S. Proceeding. On January 6, 2009, the Office of the United States Trustee (the "*U.S. Trustee*") appointed an official committee of unsecured creditors (the "*Creditors Committee*") in the U.S. Proceeding.

3. On December 23, 2009, TLC Canada, as foreign representative, brought an application to the Ontario Superior Court of Justice (Commercial List) (the "*Canadian Court*") under the *Companies' Creditors Arrangement Act* (Canada) (the "*CCAA*") and an order pursuant to section 47 of the CCAA (as amended from time to time, the "*CCAA Order*") was granted under which, among other things: (a) the U.S. Proceeding was recognized as a "foreign proceeding" in Canada; (b) TLC Canada was determined to be entitled to relief under the CCAA; (c) Alvarez & Marsal Canada ULC was appointed as information officer (the "*Information Officer*") with respect to TLC Canada, with rights, powers, duties and limitations upon liabilities set forth in the CCAA Order; and (d) a stay of proceedings in respect of TLC Canada was granted.

4. For convenience, (a) the U.S. Proceeding and the Canadian Proceedings shall be referred to herein collectively as the "Insolvency Proceedings", and (b) the U.S. Court and the Canadian Court shall be referred to herein collectively as the "Courts" and each individually as a "Court".

**B. Purpose and Goals**

5. Given that full plenary and ancillary proceedings are pending in the United States and in Canada, respectively, for TLC Canada, and that full proceedings are pending in the United States for each of TLC USA and TLC MSI, which have been consolidated (for procedural purposes only) with TLC Canada's U.S. Proceeding, the implementation of administrative procedures and cross-border guidelines is both necessary and desirable to coordinate certain activities in the Insolvency Proceedings, protect the rights of parties thereto, ensure the maintenance of the Courts' respective independent jurisdiction and give effect to the doctrines of comity. Accordingly, this Protocol has been developed to promote the following mutually desirable goals and objectives in the Insolvency Proceedings:

- (a) harmonize and coordinate activities in the Insolvency Proceedings before the Courts;
- (b) promote the orderly and efficient administration of the Insolvency Proceedings to, among other things, maximize the efficiency of the Insolvency Proceedings, reduce the costs associated therewith and avoid duplication of effort;
- (c) honor the independence and integrity of the Courts and other courts and tribunals of the United States and Canada, respectively;
- (d) promote international cooperation and respect for comity among the Courts, the Debtors, the Creditors Committee, the U.S. Trustee, the Information Officer, the Estate Representatives (which include the Chapter 11 Representatives and the Canadian Representatives, as such terms are defined below) and other creditors and interested parties in the Insolvency Proceedings;

(e) facilitate the fair, open and efficient administration of the Insolvency Proceedings for the benefit of all of the Debtors' creditors and other interested parties, wherever located; and

(f) implement a framework of general principles to address basic administrative issues arising out of the cross-border nature of the Insolvency Proceedings.

As the Insolvency Proceedings progress, the Courts may also jointly determine that other cross-border matters that may arise in the Insolvency Proceedings should be dealt with under and in accordance with the principles of this Protocol. Subject to the provisions of this Protocol where an issue is to be addressed only to one Court, in rendering a determination in any cross-border matter, such Court may: (a) to the extent practical or advisable, consult with the other Court; and (b) in its sole discretion and bearing in mind the principles of comity, either (i) render a binding decision; (ii) defer to the determination of the other Court by transferring the matter, in whole or in part to the other Court; or (iii) seek a joint hearing of both Courts.

### ***C. Comity and Independence of the Courts***

6. The approval and implementation of this Protocol shall not divest nor diminish the U.S. Court's and the Canadian Court's respective independent jurisdiction over the subject matter of the U.S. Proceeding and the Canadian Proceedings, respectively. By approving and implementing this Protocol, neither the U.S. Court, the Canadian Court, the Debtors, the Creditors Committee, the Information Officer, the Estate Representatives nor any creditors or interested parties shall be deemed to have approved or engaged in any infringement on the sovereignty of the United States of America or Canada.

7. The U.S. Court shall have sole and exclusive jurisdiction and power over the conduct of the U.S. Proceedings and the hearing and determination of matters arising in the U.S. Proceeding. The Canadian Court shall have sole and exclusive jurisdiction and power over the conduct of the Canadian Proceedings and the hearing and determination of matters arising in the Canadian Proceedings.

8. In accordance with the principles of comity and independence recognized...

\*\*\* Start Section

... an *ex parte* or "limited notice" basis;

(b) require the U.S. Court to take any action that is inconsistent with its obligations under the laws of the United States,

(c) require the Canadian Court to take any action that is inconsistent with its obligations under the laws of Canada;

(d) require the Debtors, the Creditors Committee, the Information Officer, the Estate Representatives or the U.S. Trustee to take any action or refrain from taking any action that would result in a breach of any duty imposed on them by any applicable law;

(e) authorize any action that requires the specific approval of one or both of the Courts under the Bankruptcy Code or the CCAA after appropriate notice and a hearing (except to the extent that such action is specifically described in this Protocol); or

(f) preclude the Debtors, the Creditors Committee, the U.S. Trustee, the Information Officer, any creditor or other interested party from asserting such party's substantive rights under the applicable laws of the United States, Canada or any other relevant jurisdiction including, without limitation, the rights of parties in interest to appeal from the decisions taken by one or both of the Courts.



9. The Debtors, the Creditors Committee, the Information Officer, the Estate Representatives and their respective employees, members, agents and professionals shall respect and comply with the independent, non-delegable duties imposed upon them, if any, by the Bankruptcy Code, the CCAA, the CCAA Order and other applicable laws.

#### ***D. Cooperation***

10. To assist in the efficient administration of the Insolvency Proceedings and in recognizing that the Debtors may be creditors of the others' estates, the Debtors and their respective Estate Representatives shall, where appropriate: (a) cooperate with each other in connection with actions taken in both the U.S. Court and the Canadian Court, and (b) take any other appropriate steps to coordinate the administration of the Insolvency Proceedings for the benefit of the Debtors' respective estates.

11. To harmonize and coordinate the administration of the Insolvency Proceedings, the U.S. Court and the Canadian Court each may coordinate activities and consider whether it is appropriate to defer to the judgment of the other Court. In furtherance of the foregoing:

(a) The U.S. Court and the Canadian Court may communicate with one another, with or without counsel present, with respect to any procedural matter relating to the Insolvency Proceedings.

(b) Where the issue of the proper jurisdiction of either Court to determine an issue is raised by an interested party in either of the Insolvency Proceedings with respect to a motion or application filed in either Court, the Court before which such motion or application was initially filed may contact the other Court to determine an appropriate process by which the issue of jurisdiction will be determined; which process shall be subject to submissions by the Debtors, the Creditors Committee, the Information Officer, the U.S. Trustee, the Estate Representatives and any interested party prior to a determination on the issue of jurisdiction being made by either Court.

(c) The Courts may, but are not obligated to, coordinate activities in the Insolvency Proceedings such that the subject matter of any particular action, suit, request, application, contested matter or other proceeding is determined in a single Court

(d) The U.S. Court and the Canadian Court may conduct joint hearings (each a "*Joint Hearing*") with respect to any cross-border matter or the interpretation or implementation of this Protocol where both the U.S. Court and the Canadian Court consider such a Joint Hearing to be necessary or advisable, or as otherwise provided herein, to, among other things, facilitate or coordinate proper and efficient conduct of the Insolvency Proceedings or the resolution of any particular issue in the Insolvency Proceedings. With respect to any Joint Hearing, unless otherwise ordered, the following procedures will be followed:

(i) A telephone or video link shall be established so that both the U.S. Court and the Canadian Court shall be able to simultaneously hear and/or view the proceedings in the other Court.

(ii) Notices, motions, submissions or applications by any party that are or become the subject of a Joint Hearing (collectively, "*Pleadings*") shall be made or filed initially only with the Court in which such party is appearing and seeking relief. Promptly after the scheduling of any Joint Hearing, the party submitting such Pleadings to one Court shall file courtesy copies with the other Court. In any event, Pleadings seeking relief from both Courts shall be filed in advance of the Joint Hearing with both Courts.

(iii) Any party...

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... and evidentiary rules and requirements of each Court.

(iv) If a party has not previously appeared in or attorned or does not wish to attorn to the jurisdiction of a Court, it shall be entitled to file Pleadings or Evidentiary Materials in connection with the Joint Hearing without, by the mere act of such filings, being deemed to have appeared in or attorned to the jurisdiction of such Court in which such material is filed, so long as such party does not request any affirmative relief from such Court.

(v) The Judge of the U.S. Court and the Justice of the Canadian Court who will preside over the Joint Hearing shall be entitled to communicate with each other in advance of any Joint Hearing, with or without counsel being present, (1) to establish guidelines for the orderly submission of Pleadings, Evidentiary Materials and other papers and for the rendering of decisions by the Courts; and (2) to address any related procedural, administrative or preliminary matters.

(vi) The Judge of the U.S. Court and the Justice of the Canadian Court, shall be entitled to communicate with each other during or after any Joint Hearing, with or without counsel present, for the purposes of (1) determining whether consistent rulings can be made by both Courts; (2) coordinating the terms upon of the Courts' respective rulings; and (3) addressing any other procedural, or administrative matters.

12. Notwithstanding the terms of the paragraph 11 above, this Protocol recognizes that the U.S. Court and the Canadian Court are independent courts. Accordingly, although the Courts will seek to cooperate and coordinate with each other in good faith, each of the Courts shall be entitled at all times to exercise its independent jurisdiction and authority with respect to: (a) the conduct of the parties appearing in matters presented to such Court; and (b) matters presented to such Court, including, without limitation, the right to determine if matters are properly before such Court.

13. Where one Court has jurisdiction over a matter which requires the application of the law of the jurisdiction of the other Court, such Court may, without limitation, hear expert evidence of such law or seek the written advice and direction of the other Court which advice may in the discretion of the receiving Court, be made available to parties in interest.

#### ***E. Recognition of Stays of Proceedings***

14. The Canadian Court hereby recognizes the validity of the stay of proceedings and actions against or respecting TLC Canada and its property under section 362 of the Bankruptcy Code (the "*U.S. Stay*"). In implementing the terms of this paragraph, the Canadian Court may consult with the U.S. Court regarding: (i) the interpretation, extent, scope and applicability of the U.S. Stay and any orders of the U.S. Court modifying or granting relief from the U.S. Stay; and (ii) the enforcement of the U.S. Stay in Canada.

15. The U.S. Court hereby recognizes the validity of the stay of proceedings and actions against or respecting TLC Canada and its property under the CCAA Order (the "*Canadian Stay*"). In implementing the terms of this paragraph, the U.S. Court may consult with the Canadian Court regarding: (i) the interpretation, extent, scope and applicability of the Canadian Stay and any orders of the Canadian Court modifying or granting relief from the Canadian Stay; and (ii) the enforcement of the Canadian Stay in the United States.

16. Nothing contained herein shall affect or limit the Debtors' or other parties' rights to assert the applicability or nonapplicability of the U.S. Stay or the Canadian Stay to any particular proceeding, property, asset, activity or other matter, wherever pending or located.

#### ***F. Rights to Appear and Be Heard***

17. Each of the Debtors, their creditors, the Estate Representatives, the Creditors Committee, the U.S. Trustee, the Information Officer, any other interested parties in the Insolvency Proceedings, and the professionals and advisors for each of the foregoing, shall have the right and standing: (i) to appear and to be heard in either the U.S. Court or Canadian Court in the U.S. Proceeding or Canadian Proceedings, respectively, to the same extent as creditors and other interested parties domiciled in the forum country, subject to any local rules or regulations generally applicable to all parties appearing in the forum, and (ii) to file notices of appearance or other papers with the clerk of the U.S. Court or the Canadian Court in respect of the U.S. Proceeding or Canadian Proceedings, respectively; provided, however, that any appearance or filing may subject a creditor or interested party to the jurisdiction of the Court in which the...

**\*\*\* Start Section**

**... Representative and Professionals**

18. The Information Officer, its officers, directors, employees, counsel and agents, wherever located, (collectively the "*Information Officer Parties*") and any other estate representatives appointed in the Canadian Proceedings (collectively, the "*Canadian Representatives*") shall (subject to paragraph 17) be subject to the sole and exclusive jurisdiction of the Canadian Court with respect to all matters, including: (a) the Canadian Representatives' appointment and tenure in office; (b) the retention, compensation and reimbursement of out-of-pocket costs of the Canadian Representatives; (c) the Canadian Representatives' liability, if any, to any person or entity, including the Debtors and any third parties, in connection with the Insolvency Proceedings; and (d) the hearing and determination of any other matters relating to the Canadian Representatives arising in the Canadian Proceedings under the CCAA or other applicable Canadian law. The Canadian Representatives, their counsel and any other professionals retained therefor (and in all cases, whether Canadian or U.S.) shall not be required to seek approval of their retention in the U.S. Court. Additionally, the Canadian Representatives: (a) shall be compensated for their services to the Debtors solely in accordance with the CCAA, the CCAA Order and other applicable Canadian law or orders of the Canadian Court; and (b) shall not be required to seek approval of their compensation in the U.S. Court.

19. The Information Officer Parties shall be entitled to the same protections and immunities in the United States as those granted to them under the CCAA and the CCAA Order. In particular, except as otherwise provided in any subsequent order entered in the Canadian Proceedings, the Information Officer Parties shall incur no liability or obligations as a result of the CCAA Order, the appointment of the Information Officer, the carrying out of its duties or the provisions of the CCAA and the CCAA Order by the Information Officer Parties, except any such liability arising from actions of the Information Officer Parties constituting gross negligence or willful misconduct.

20. Any estate representative appointed in the U.S. Proceeding, including without limitation any examiners or trustees appointed in accordance with section 1104 of the Bankruptcy Code (collectively, the "*Chapter 11 Representatives*") shall (subject to paragraph 17) be subject to the sole and exclusive jurisdiction of the U.S. Court with respect to all matters, including: (a) the Chapter 11 Representatives' appointment and tenure in office; (b) the retention, compensation and reimbursement of out-of-pocket costs of the Chapter 11 Representatives; (c) the Chapter 11 Representatives' liability, if any, to any person or entity, including the Debtors and any third parties, in connection with the Insolvency Proceedings; and (d) the hearing and determination of any other matters relating to the Chapter 11 Representatives arising in the U.S. Proceeding under the Bankruptcy Code or other applicable laws of the United States. The Chapter 11 Representatives, their counsel and any other professionals retained therefor (in all cases whether Canadian or U.S.) shall not be required to seek approval of their retention in the Canadian Court and (a) shall be compensated for their services solely in accordance with the Bankruptcy Code and other applicable laws of the United States or orders of the U.S. Court; and (b) shall not be required to seek approval of their compensation in the Canadian Court.

21. Any Canadian professionals retained by any Debtors solely for activities performed in Canada or in connection with the Canadian Proceedings, including, in each case, without limitation, counsel, financial advisors, accountants, consultants and experts (collectively, the "*Canadian Professionals*"), shall be subject to the sole and exclusive jurisdiction of the Canadian Court. Such Canadian Professionals: (a) shall be subject to the procedures and standards for retention and compensation applicable in the Canadian Court under the CCAA, the CCAA Order and any other applicable Canadian law or orders of the Canadian Court; and (b) shall not be required to seek approval of their retention or compensation in the U.S. Court.

22. Any United States professionals retained by any of the Debtors solely for activities performed in the United States or in connection with the U.S. Proceeding, including, in each case, without limitation, counsel, financial advisors, accountants, consultants and experts (collectively, the "*U.S. Professionals*") shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Such U.S. Professionals: (a) shall be subject to the procedures and standards for retention and compensation applicable in the U.S. Court under the Bankruptcy Code and any other applicable laws of the United States or orders of the U.S. Court; and (b) shall not be required to seek approval of their retention or compensation in the Canadian Court.

#### ***H. Notice***

23. Notice of any motion, application or other Pleading or paper (collectively the "*Court Documents*") filed in one or both of the Insolvency Proceedings involving or relating to matters addressed by this Protocol and notice of any related hearings or other proceedings shall be given by appropriate means (including, where circumstances warrant, by courier, telecopier or other electronic forms of communication) to the following: (a) all creditors and interested parties, in accordance with the practice of the jurisdiction where the papers are filed or the proceedings are to occur; and (b) to the extent not otherwise entitled to receive notice under clause (a) of this sentence, counsel to: (i) the Debtors; (ii) the U.S. Trustee; (iii) the Information Officer; (iv) the Creditors Committee and any other statutory committees appointed in the Insolvency Proceedings; (v) the agent under any debtor-in-possession financing facility approved by the Courts; (vi) the agent for the Debtors' pre-petition credit agreement and such other parties as may be designated by either of the Courts from time to time. Notice in accordance with this paragraph shall be given by the party otherwise responsible for effecting notice in the jurisdiction where the underlying papers are filed or the proceedings are to occur. In addition to the foregoing, upon request, the Debtors or the Information Officer shall provide the U.S. Court or the Canadian Court, as the case may be, with copies of any orders, decisions, opinions or similar papers issued by the other Court in the Insolvency Proceedings.

24. When any cross-border issues or matters addressed by this Protocol are to be addressed before a Court, notices shall be provided in the manner and to the parties referred to in paragraph 23 above.

#### ***I. Effectiveness; Modification***

25. This Protocol shall become effective only upon its approval by both the U.S. Court and the Canadian Court.

26. This Protocol may not be supplemented, modified, terminated, or replaced in any manner except upon the approval of both the U. S. Court and the Canadian Court after notice and a hearing. Notice of any legal proceeding to supplement, modify, terminate or replace this Protocol shall be given in accordance with the notice provisions set out in paragraph 23.

#### ***J. Procedure for Resolving Disputes Under this Protocol***

27. Disputes relating to the terms, intent or application of this Protocol may be addressed by interested parties to the U.S. Court, the Canadian Court or both Courts upon notice in accordance with the notice

provisions outlined in paragraph 23 above. In rendering a determination in any such dispute, the Court to which the issue is addressed: (a) shall consult with the other Court; and (b) may, in its sole and exclusive discretion, either: (i) render a binding decision after such consultation; (ii) defer to the determination of the other Court by transferring the matter, in whole or in part, to such other Court; or (iii) seek a Joint Hearing of both Courts in accordance with paragraph 11 above. Notwithstanding the foregoing, in making a determination under this paragraph, each Court shall give due consideration to the independence, comity and inherent jurisdiction of the other Court established under existing law.

28. In implementing the terms of this Protocol, the U.S. Court and the Canadian Court may, in their sole, respective discretion, provide advice or guidance to each other with respect to legal issues in accordance with the following procedures:

- (a) the U.S. Court or the Canadian Court, as applicable, may determine that such advice or guidance is appropriate under the circumstances;
- (b) the Court issuing such advice or guidance shall provide it to the non-issuing Court in writing;
- (c) copies of such written advice or guidance shall be served by the applicable Court in accordance with paragraph 23 hereof;
- (d) the Courts may jointly decide to invite the Debtors, the Creditors Committee, the Estate Representatives, the U.S. Trustee, the Information Officer and any other affected or interested party to make submissions to the appropriate Court in response to or in connection with any written advice or guidance received from the other Court; and
- (e) for clarity, the provisions of this paragraph shall not be construed to restrict the ability of either Court to confer as provided in paragraph 11 above whenever it deems it appropriate to do so.

#### ***K. Preservation of Rights***

29. Except as specifically provided herein, neither the terms of this Protocol nor any actions taken under the terms of this Protocol shall: (a) prejudice or affect the powers, rights, claims and defenses of the Debtors and their estates, the Creditors Committee, the Estate Representatives, the U.S. Trustee, the Information Officer or any of the Debtors' creditors under applicable law, including, without limitation, the Bankruptcy Code the CCAA, and the orders of the Courts; or (b) preclude or prejudice the rights of any person to assert or pursue such person's substantive rights against any other person under the applicable laws of Canada or the United States.

#### **Schedule "A"**

*Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases*

THE AMERICAN LAW INSTITUTE in association with

THE INTERNATIONAL INSOLVENCY INSTITUTE

*Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases*

*As Adopted and Promulgated in Transnational Insolvency: Principles of Cooperation Among the NAFTA Countries*

BY THE AMERICAN LAW INSTITUTE At Washington, D.C., May 16, 2000

*And as Adopted by*

THE INTERNATIONAL INSOLVENCY INSTITUTE At New York, June 10, 2001

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The *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* were developed by The American Law Institute during and as part of its Transnational Insolvency Project and the use of the *Guidelines* in cross-border cases is specifically permitted and encouraged.

The text of the *Guidelines* is available in English and several other languages including Chinese, French, German, Italian, Japanese, Korean, Portuguese, Russian, Swedish, and Spanish on the website of the International Insolvency Institute at <http://www.iiiglobal.org/internationalguidelines.html>.

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#### **Foreword by the Director of The American Law Institute**

In May of 2000 The American Law Institute gave its final approval to the work of the ALI's Transnational Insolvency Project. This consisted of the four volumes eventually published, after a period of delay required by the need to take into account a newly enacted Mexican Bankruptcy Code, in 2003 under the title of *Transnational Insolvency: Cooperation Among the NAFTA Countries*. These volumes included both the first phase of the project, separate Statements of the bankruptcy laws of Canada, Mexico, and the United States, and the project's culminating phase, a volume comprising *Principles of Cooperation Among the NAFTA Countries*. All reflected the joint input of teams of Reporters and Advisers from each of the three NAFTA countries and a fully transnational perspective. Published by Juris Publishing, Inc., they can be ordered on the ALI website ([www.ali.org](http://www.ali.org)).

A byproduct of our work on the Principles volume, these *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* appeared originally as Appendix B of that volume and were approved by the ALI in 2000 along with the rest of the volume. But the *Guidelines* have played a vital and influential role apart from the *Principles*, having been widely translated and distributed, cited and applied by courts, and independently approved by both the International Insolvency Institute and the Insolvency Institute of Canada. Although they were initially developed in the context of a project arrived at improving cooperation among bankruptcy courts within the NAFTA countries, their acceptance by the III, whose

members include leaders of the insolvency bar from more than 40 countries, suggests a pertinence and applicability that extends far beyond the ambit of NAFTA. Indeed, there appears to be no reason to restrict the *Guidelines* to insolvency cases; they should prove useful whenever sensible and coherent standards for cooperation among courts involved in overlapping litigation are called for. See, e.g., American Law Institute, International Jurisdiction and Judgments Project § 12(e) (Tentative Draft No. 2, 2004).

The American Law Institute expresses its gratitude to the International Insolvency Institute for its continuing efforts to publicize the *Guidelines* and to make them more widely known to judges and lawyers around the world; to III Chair E. Bruce Leonard of Toronto, who as Canadian Co-Reporter for the Transnational Insolvency Project was the principal drafter of the Guidelines in English and has been primarily responsible for arranging and overseeing their translation into the various other languages in which they now appear; and to the translators themselves, whose work will make the *Guidelines* much more universally accessible. We hope that this greater availability, in these new English and bilingual editions, will help to foster better communication, and thus better understanding, among the diverse courts and legal systems throughout our increasingly globalized world.

LANCE LIEBMAN

*Director*

*The American Law Institute*

January 2004

#### **Foreword by the Chair of the International Insolvency Institute**

The International Insolvency Institute, a world-wide association of leading insolvency professionals, judges, academics, and regulators, is pleased to recommend the adoption and the application in cross-border and multinational cases of The American Law Institute's *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases*. The *Guidelines* were reviewed and studied by a Committee of the III and were unanimously approved by its membership at the III's Annual General Meeting and Conference in New York in June 2001.

Since their approval by the III, the *Guidelines* have been applied in several cross-border cases with considerable success in achieving the coordination that is so necessary to preserve values for all of the creditors that are involved in international cases. The III recommends without qualification that insolvency professionals and judges adopt the *Guidelines* at the earliest possible stage of a cross-border case so that they will be in place whenever there is a need for the courts involved to communicate with each other, e.g., whenever the actions of one court could impact on issues that are before the other court.

Although the *Guidelines* were developed in an insolvency context, it has been noted by litigation professionals and judges that the *Guidelines* would be equally valuable and constructive in any international case where two or more courts are involved. In fact, in multijurisdictional litigation, the positive effect of the *Guidelines* would be even greater in cases where several courts are involved. It is important to appreciate that the *Guidelines* require that all domestic practices and procedures be complied with and that the *Guidelines* do not alter or affect the substantive rights of the parties or give any advantage to any party over any other party.

The International Insolvency Institute expresses appreciation to its members who have arranged for the translation of the *Guidelines* into French, German, Italian, Korean, Japanese, Chinese, Portuguese, Russian, and Swedish and extends its appreciation to The American Law Institute for the translation into Spanish. The III also expresses its appreciation to The American Law Institute, the American College of Bankruptcy,



and the Ontario Superior Court of Justice Commercial List Committee for their kind and generous financial support in enabling the publication and dissemination of the *Guidelines* in bilingual versions in major countries around the world.

Readers who become aware of cases in which the *Guidelines* have been applied are highly encouraged to provide the details of those cases to the III (fax: 416-360-8877; e-mail: [info@iiiglobal.org](mailto:info@iiiglobal.org)) so that everyone can benefit from the experience and positive results that flow from the adoption and application of the *Guidelines*. The continuing progress of the *Guidelines* and the cases in which the *Guidelines* have been applied will be maintained on the III's website at [www.iiiglobal.org](http://www.iiiglobal.org).

The III and all of its members are very pleased to have been a part of the development and success of the *Guidelines* and commend The American Law Institute for its vision in developing the *Guidelines* and in supporting their worldwide circulation to insolvency professionals, judges, academics, and regulators. The use of the *Guidelines* in international cases will change international insolvencies and reorganizations for the better forever, and the insolvency community owes a considerable debt to The American Law Institute for the inspiration and vision that has made this possible.

E. BRUCE LEONARD

*Chairman*

*The International Insolvency Institute*

Toronto, Ontario

March 2004

### **Judicial Preface**

We believe that the advantages of co-operation and co-ordination between Courts is clearly advantageous to all of the stakeholders who are involved in insolvency and reorganization cases that extend beyond the boundaries of one country. The benefit of communications between Courts in international proceedings has been recognized by the United Nations through the *Model Law on Cross-Border Insolvency* developed by the United Nations Commission on International Trade Law and approved by the General Assembly of the United Nations in 1997. The advantages of communications have also been recognized in the European Union Regulation on Insolvency Proceedings which became effective for the Member States of the European Union in 2002.

The *Guidelines for Court-to-Court Communications in Cross-Border Cases* were developed in the American Law Institute's Transnational Insolvency Project involving the NAFTA countries of Mexico, the United States and Canada. The *Guidelines* have been approved by the membership of the ALI and by the International Insolvency Institute whose membership covers over 40 countries from around the world. We appreciate that every country is unique and distinctive and that every country has its own proud legal traditions and concepts. The *Guidelines* are not intended to alter or change the domestic rules or procedures that are applicable in any country and are not intended to affect or curtail the substantive rights of any party in proceedings before the Courts. The *Guidelines* are intended to encourage and facilitate co-operation in international cases while observing all applicable rules and procedures of the Courts that are respectively involved.

The *Guidelines* may be modified to meet either the procedural law of the jurisdiction in question or the particular circumstances in individual cases so as to achieve the greatest level of co-operation possible between the Courts in dealing with a multinational insolvency or liquidation. The *Guidelines*, however, are

not restricted to insolvency cases and may be of assistance in dealing with non-insolvency cases that involve more than one country. Several of us have already used the *Guidelines* in cross-border cases and would encourage stakeholders and counsel in international cases to consider the advantages that could be achieved in their cases from the application and implementation of the *Guidelines*.

Mr. Justice David Baragwanath

High Court of New Zealand

Auckland, New Zealand

Hon. Sidney B. Brooks

United States Bankruptcy Court

District of Colorado

Denver

Chief Justice Donald I. Brenner

Supreme Court of British Columbia

Vancouver

Hon. Charles G. Case, II

United States Bankruptcy Court

District of Arizona

Phoenix

Mr. Justice Miodrag Dordevi[cacute]

Supreme Court of Slovenia

Ljubljana

Hon. James L. Garrity, Jr.

United States Bankruptcy Court

Southern District of New York (Ret'd)

Shearman & Sterling

New York

Mr. Justice Paul R. Heath

High Court of New Zealand

Auckland, New Zealand

Chief...

\*\*\* Start Section

... Paine II

United States Bankruptcy Court

District of Tennessee

Nashville

Mr. Justice Adolfo A.N. Rouillon

Court of Appeal

Rosario, Argentina

Mr. Justice Wisit Wisitsora - At

Business Reorganization Office

Government of Thailand

Bangkok

Mr. Justice J.M. Farley

Ontario Superior Court of Justice

Toronto

Hon. Allan L. Gropper

Southern District of New York

United States Bankruptcy Court

New York

Hon. Hyungdu Kim

Supreme Court of Korea

Seoul

Mr. Justice Gavin Lightman

Royal Courts of Justice

London

Hon. Chiyong Rim

District Court

Western District of Seoul

Seoul, Korea

Hon. Shinjiro Takagi

Supreme Court of Japan (Ret'd)

Industrial Revitalization Corporation of Japan

Tokyo

Mr. Justice R.H. Zulman

Supreme Court of Appeal of South Africa

Parklands

### **Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases**

#### ***Introduction:***

One of the most essential elements of cooperation in cross-border cases is communication among the administering authorities of the countries involved. Because of the importance of the courts in insolvency and reorganization proceedings, it is even more essential that the supervising courts be able to coordinate their activities to assure the maximum available benefit for the stakeholders of financially troubled enterprises.

These Guidelines are intended to enhance coordination and harmonization of insolvency proceedings that involve more than one country through communications among the jurisdictions involved. Communications by judges directly with judges or administrators in a foreign country, however, raise issues of credibility and proper procedures. The context alone is likely to create concern in litigants unless the process is transparent and clearly fair. Thus, communication among courts in cross-border cases is both more important and more sensitive than in domestic cases. These Guidelines encourage such communications while channeling them through transparent procedures. The Guidelines are meant to permit rapid cooperation in a developing insolvency case while ensuring due process to all concerned.

A Court intending to employ the Guidelines — in whole or part, with or without modifications — should adopt them formally before applying them. A Court may wish to make its adoption of the Guidelines contingent upon, or temporary until, their adoption by other courts concerned in the matter. The adopting Court may want to make adoption or continuance conditional upon adoption of the Guidelines by the other Court in a substantially similar form, to ensure that judges, counsel, and parties are not subject to different standards of conduct.

The Guidelines should be adopted following such notice to the parties and counsel as would be given under local procedures with regard to any important procedural decision...

#### **\*\*\* Start Section**

... needed, the local procedures, including notice requirements, that are used in urgent or emergency situations should be employed, including, if appropriate, an initial period of effectiveness, followed by further consideration of the Guidelines at a later time. Questions about the parties entitled to such notice (for example, all parties or representative parties or representative counsel) and the nature of the court's consideration of any objections (for example, with or without a hearing) are governed by the Rules of Procedure in each jurisdiction and are not addressed in the Guidelines.

The Guidelines are not meant to be static, but are meant to be adapted and modified to fit the circumstances of individual cases and to change and evolve as the international insolvency community gains experience from working with them. They are to apply only in a manner that is consistent with local procedures and local ethical requirements. They do not address the details of notice and procedure that depend upon the law and practice in each jurisdiction. However, the Guidelines represent approaches that are likely to be highly useful in achieving efficient and just resolutions of cross-border insolvency issues. Their use, with such modifications and under such circumstances as may be appropriate in a particular case, is therefore recommended.

#### **Guideline 1**

Except in circumstances of urgency, prior to a communication with another Court, the Court should be satisfied that such a communication is consistent with all applicable Rules of Procedure in its country. Where a Court intends to apply these Guidelines (in whole or in part and with or without modifications), the Guidelines to be employed should, wherever possible, be formally adopted before they are applied. Coordination of Guidelines between courts is desirable and officials of both courts may communicate in accordance with Guideline 8(d) with regard to the application and implementation of the Guidelines.

#### **Guideline 2**

A Court may communicate with another Court in connection with matters relating to proceedings before it for the purposes of coordinating and harmonizing proceedings before it with those in the other jurisdiction.

#### **Guideline 3**

A Court may communicate with an Insolvency Administrator in another jurisdiction or an authorized Representative of the Court in that jurisdiction in connection with the coordination and harmonization of the proceedings before it with the proceedings in the other jurisdiction.

#### **Guideline 4**

A Court may permit a duly authorized Insolvency Administrator to communicate with a foreign Court directly, subject to the approval of the foreign Court, or through an Insolvency Administrator in the other jurisdiction or through an authorized Representative of the foreign Court on such terms as the Court considers appropriate.

#### **Guideline 5**

A Court may receive communications from a foreign Court or from an authorized Representative of the foreign Court or from a foreign Insolvency Administrator and should respond directly if the communication is from a foreign Court (subject to Guideline 7 in the case of two-way communications) and may respond directly or through an authorized Representative of the Court or through a duly authorized Insolvency Administrator if the communication is from a foreign Insolvency Administrator, subject to local rules concerning *ex parte* communications.

#### **Guideline 6**

Communications from a Court to another Court may take place by or through the Court:

- (a) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings, or other documents directly to the other Court and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;

(b) Directing counsel or a foreign or domestic Insolvency Administrator to transmit or deliver copies of documents, pleadings, affidavits, factums, briefs, or other documents that are filed or to be filed with the Court to the other Court in such fashion as may be appropriate and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;

(c) Participating in two-way communications with the other Court by telephone or video conference call or other electronic means, in which case Guideline 7 should apply.

#### **Guideline 7**

In the event of communications between the Courts in accordance with Guidelines 2 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by either of the two Courts:

(a) Counsel for all affected parties...

\*\*\* Start Section

... as an official transcript of the communication;

(c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of either Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Courts may consider appropriate; and

(d) The time and place for communications between the Courts should be to the satisfaction of both Courts. Personnel other than Judges in each Court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by either of the Courts.

#### **Guideline 8**

In the event of communications between the Court and an authorized Representative of the foreign Court or a foreign Insolvency Administrator in accordance with Guidelines 3 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by the Court:

(a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;

(b) The communication should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of the Court, can be treated as an official transcript of the communication;

(c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of the Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to the other Court and to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Court may consider appropriate; and

(d) The time and place for the communication should be to the satisfaction of the Court. Personnel of the Court other than Judges may communicate fully with the authorized Representative of the

foreign Court or the foreign Insolvency Administrator to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by the Court.

#### **Guideline 9**

A Court may conduct a joint hearing with another Court. In connection with any such joint hearing, the following should apply, unless otherwise ordered or unless otherwise provided in any previously approved Protocol applicable to such joint hearing:

- (a) Each Court should be able to simultaneously hear the proceedings in the other Court.
- (b) Evidentiary or written materials filed or to be filed in one Court should, in accordance with the Directions of that Court, be transmitted to the other Court or made available electronically in a publicly accessible system in advance of the hearing. Transmittal of such material to the other Court or its public availability in an electronic system should not subject the party filing the material in one Court to the jurisdiction of the other Court.
- (c) Submissions or applications by the representative of any party should be made only to the Court in which the representative making the submissions is appearing unless the representative is specifically given permission by the other Court to make submissions to it.
- (d) Subject to Guideline 7(b), the Court should be entitled to communicate with the other Court in advance of a joint hearing, with or without counsel being present, to establish Guidelines for the orderly making of submissions and rendering of decisions by the Courts, and to coordinate and resolve any procedural, administrative, or preliminary matters relating to the joint hearing.
- (e) Subject to Guideline 7(b), the Court, subsequent to the joint hearing, should be entitled to communicate with the other Court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both Courts and to coordinate and resolve any procedural or nonsubstantive matters relating to the joint hearing.

#### **Guideline 10**

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, recognize and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in the other jurisdiction without the need for further proof or exemplification thereof.

#### **Guideline 11**

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, accept that Orders made in the proceedings in the other jurisdiction were duly and properly made or entered on or about their respective dates and accept that such Orders require no further proof or exemplification for purposes of the proceedings before it, subject to all such proper reservations as in the opinion of the Court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such Orders.

#### **Guideline 12**

The Court may coordinate proceedings before it with proceedings in another jurisdiction by establishing a Service List that may include parties that are entitled to receive notice of proceedings before the Court in the other jurisdiction ("Non-Resident Parties"). All notices, applications, motions, and other materials

served for purposes of the proceedings before the Court may be ordered to also be provided to or served on the Non-Resident Parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the Court in accordance with the procedures applicable in the Court.

#### **Guideline 13**

The Court may issue an Order or issue Directions permitting the foreign Insolvency Administrator or a representative of creditors in the proceedings in the other jurisdiction or an authorized Representative of the Court in the other jurisdiction to appear and be heard by the Court without thereby becoming subject to the jurisdiction of the Court.

#### **Guideline 14**

The Court may direct that any stay of proceedings affecting the parties before it shall, subject to further order of the Court, not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications or motions before the other Court on such terms and conditions as it considers appropriate. Court-to-Court communications in accordance with Guidelines 6 and 7 hereof may take place if an application or motion brought before the Court affects or might affect issues or proceedings in the Court in the other jurisdiction.

#### **Guideline 15**

A Court may communicate with a Court in another jurisdiction or with an authorized Representative of such Court in the manner prescribed by these Guidelines for purposes of coordinating and harmonizing proceedings before it with proceedings in the other...

\*\*\* Start Section

... to time and such modifications, amendments, and restatements should become effective upon being accepted by both Courts. If either Court intends to supplement, change, or abrogate Directions issued under these Guidelines in the absence of joint approval by both Courts, the Court should give the other Courts involved reasonable notice of its intention to do so.

#### **Guideline 17**

Arrangements contemplated under these Guidelines do not constitute a compromise or waiver by the Court of any powers, responsibilities, or authority and do not constitute a substantive determination of any matter in controversy before the Court or before the other Court nor a waiver by any of the parties of any of their substantive rights and claims or a diminution of the effect of any of the Orders made by the Court or the other Court.