

Court File No. 09-8363-00CL

**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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF BARZEL INDUSTRIES CANADA INC.

Applicant

**MOTION RECORD OF THE APPLICANT
(Returnable November 12, 2009)**

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Applicant

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**ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST**

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OR ARRANGEMENT OF BARZEL INDUSTRIES
CANADA INC.

Applicant

NOTICE OF MOTION

The Applicant will make a motion to a Judge presiding over the Commercial List on November 12, 2009 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR:

1. an Order, if necessary, abridging the time for service of this Notice of Motion and the Motion Record and that the Notice of Motion is properly returnable on November 12, 2009 and that further service of the Notice of Motion on any interested party, other than those served, may be dispensed with;
2. an Order authorizing and directing that, from and after the Closing (as defined below), Deloitte & Touche Inc., in its capacity as the monitor appointed by this Honourable Court in these proceedings, (the "**Monitor**") be authorized and

directed to hold the Canadian Proceeds (as defined below) pending further order of this Honourable Court, provided that, after the Closing, and without further order of this Honourable Court, the Monitor be authorized and directed to disburse funds in its possession to pay for fees, costs, expenses and disbursements incurred by it, its counsel and the Applicant's counsel in connection with these proceedings;

3. an Order, authorizing and directing the Monitor, in addition to its rights and obligations set out in the Order of this Honourable Court made in these proceedings on September 15, 2009 (the "**Initial Order**"), from and after the Closing, to take such administrative and other steps that it deems necessary to assist the Applicant in the administration of these proceedings; and

4. such further and other Orders as counsel may request and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

Expansion of Monitor Powers

1. On October 30, 2009, after a joint hearing before this Honourable Court and the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**"), this Honourable Court entered an Order approving an asset purchase agreement between the Applicant and its U.S. affiliates, as vendors, and Chriscott USA Inc. and 4513614 Canada Inc. (collectively, "**Metco**"), as purchasers, (the "**APA**") and vesting substantially all of the assets of the Applicant in and to 4513614 Canada Inc. (the "**Sale and Vesting Order**");

2. The closing of the sale transactions contemplated in the APA (the "**Closing**") is currently scheduled for November 13, 2009;
3. Upon the Closing, the Applicant will no longer have any employees, material assets or operations;
4. Metco does not expect to determine the allocation of the sale proceeds to be paid on Closing (the "**Proceeds**") as between the Applicant's U.S. affiliates and the Applicant in advance of the Closing;
5. A certain amount of the Proceeds must be used to pay out all outstanding borrowings under the DIP Facility (as defined in the Initial Order) while the Applicant intends to direct on Closing that the remainder of the Proceeds allocated to the Applicant's assets (the "**Canadian Proceeds**") be paid to and held by the Monitor for distribution pursuant to further Order of this Honourable Court;
6. The Monitor has determined that the Canadian Proceeds must remain subject to a reserve against priority payables (including the Director's Charge and Administration Charge, as those terms are defined in the Initial Order), subject to any distribution in favour of the Secured Lenders (as defined in the Fifth Report (defined below)) on account of their pre-filing debt;
7. In order for the Monitor to be able to hold the Canadian Proceeds, the Applicant seeks to have the powers of the Monitor expanded from those set out in the Initial Order so that upon Closing the Monitor may hold the Canadian Proceeds subject to further Order of this Honourable Court;

8. As the Applicant will have no employees after the Closing, the Applicant also seeks to have the powers of the Monitor expanded so that the Monitor will have the authority to take such administrative and other steps that it deems necessary to assist the Applicant in the administration of these proceedings, including without limitation the authority to deal with post-Closing matters, as applicable, distributions of the Canadian Proceeds and resolution of any and all potential priority payables (including the Director's Charge and the Administration Charge);

Miscellaneous

9. paragraph 49 of the Initial Order;
10. Rules 3.02 and 37.02(1) of the *Rules of Civil Procedure*; and
11. such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. the Fifth Report of the Monitor, to be filed separately; and
2. such further and other materials as counsel may advise and this Honourable Court may permit.

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Date: November 10, 2009

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TO: ATTACHED SERVICE LIST

Court File No. 09-8363-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS
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AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF BARZEL INDUSTRIES CANADA INC.

Applicant

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
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ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST
Proceeding Commenced at Toronto

NOTICE OF MOTION
(Returnable November 12, 2009)

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Lawyers for the Applicant

TAB 2

ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

THE HONOURABLE ■) THURSDAY, THE 12TH DAY
JUSTICE ■) OF NOVEMBER, 2009.

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF BARZEL INDUSTRIES CANADA INC.

Applicant

ORDER
(Expansion of Monitor's Powers)

THIS MOTION, made by the Applicant for an order expanding certain of the powers afforded by this Honourable Court to Deloitte & Touche Inc. in its capacity as the court-appointed monitor in these proceedings (the "**Monitor**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fifth Report of the Monitor dated November 6, 2009 (the "**Report**") and on hearing the submissions of counsel for the Applicant, the Monitor, JP Morgan Chase Bank, NA and CIBC World Markets Corp., and Chriscott USA Inc. and 4513614 Canada Inc. no one appearing for any other person on the service list, although properly served as appears from the Affidavits of Service filed:

1. THIS COURT ORDERS that the time for service of the Notice of Motion, the Report and the Motion Record is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.

DRAFT

2. THIS COURT ORDERS that, from and after the Closing (as defined in the Report), the Monitor be and is hereby authorized and directed to hold the Canadian Proceeds (as defined in the Report) pending further order of this Honourable Court, provided that, after the Closing, and without further order of this Honourable Court, the Monitor be and is hereby authorized and directed to disburse amounts from the Canadian Proceeds in its possession to pay for fees, costs, expenses and disbursements incurred by it, its counsel and the Applicant's counsel in connection with these proceedings.

3. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims as that term is defined in the Order of this Honourable Court made on October 30, 2009 (the "**Sale Approval and Vesting Order**"), the Canadian Proceeds shall, while held by the Monitor pursuant to paragraph 2 above, remain standing in the place and stead of the Purchased Assets (as defined in the Sale Approval and Vesting Order), and that from and after the delivery of the Monitor's Certificate (as defined in the Sale Approval and Vesting Order) all Claims and Encumbrances (as defined in the Sale Approval and Vesting Order) shall attach to the Canadian Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

4. THIS COURT ORDERS that the Monitor be and is hereby authorized and directed, in addition to its rights and obligations set out in the Order of this Honourable Court made in these proceedings on September 15, 2009 (the "**Initial Order**"), from and after the Closing, to take such administrative and other steps that it deems necessary to assist the Applicant in the administration of these proceedings.

5. THIS COURT ORDERS AND DECLARES that nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of the Applicant within the meaning of any relevant legislation and that any distribution ultimately made to any creditor of the Applicant by the Monitor will be deemed to have been made by the Applicant itself.

DRAFT

6. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

7. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

DRAFT

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Proceeding commenced at Toronto

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