

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 PRODUCT EXCELLENCE INC.

NOTICE OF APPLICATION

**TO THE RESPONDENTS:**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicant. The claim made against you is set out in the following pages.

THIS APPLICATION will come on for a hearing on August 4, 2009 at 330 University Avenue, Toronto, Ontario.

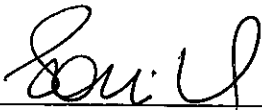
IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38C prescribed by the Rules of Civil Procedure, serve it on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: 4 Aug 2009

Issued by:

  
Local Registrar

Address of Court Office:  
330 University Avenue  
7<sup>th</sup> Floor  
Toronto, Ontario  
M5G 1R7

**TO: SERVICE LIST ATTACHED**

**APPLICATION**

1. The Applicant, Product Excellence Inc. ("PEI"), makes application for an Order:
  - a) substantially in the form of the draft Order attached hereto as Schedule "A"; and,
  - b) such further and other relief as to this Honourable Court may seem just.
  
2. The grounds for this application are:
  - a) PEI is a corporation incorporated pursuant to the laws of Ontario, with its head office in Concord, Ontario;
  - b) PEI has liabilities in excess of \$5,000,000.00;
  - c) PEI is insolvent as it does not have sufficient assets to pay PEI's liabilities to PEI's secured creditors and continue operations;
  - d) PEI's first ranking secured creditor, the Royal Bank of Canada ("RBC"), has advised that it will not renew the credit facilities extended to PEI and RBC has advised PEI that RBC will demand repayment of the secured indebtedness owed to RBC in the next short while;
  - e) PEI's second-ranking secured creditors, a group of three corporations (the "Shareholder Group"), have advised PEI that they will not provide further funding to PEI to replace the credit facilities from RBC. The Shareholder Group has further advised PEI that they will no longer fund PEI's ongoing operations, and

have further advised PEI that the Shareholder Group will demand repayment of the secured indebtedness owed to them by PEI ;

- f) PEI has suffered serious financial losses over the past number of years, and requires a new lender to replace RBC and the Shareholder Group to fund PEI's operations going forward;
- g) PEI has been unable to find a replacement lender to fund its operations going forward;
- h) PEI is a Defendant in at least one outstanding legal action brought by its supplier for collection of an outstanding debt;
- i) PEI therefore requires the protection of an Initial Order and a stay of proceedings in respect of its creditors to provide an orderly and effective process to address the various claims of PEI's creditors, to proceed to sell PEI's assets in an orderly fashion, and to assess PEI's options going forward, including determining the feasibility of a plan of compromise and/or arrangement to PEI's creditors;
- j) PEI has entered into an agreement of purchase and sale with a potential purchaser for the sale of the bulk of PEI's assets (the "Transaction"), subject to court approval;
- k) PEI cannot comply with the *Bulk Sales Act* as PEI does not have sufficient assets to pay the claims of its creditors in full;

- l) The Transaction therefore cannot be completed outside the context of an insolvency process;
- m) should this Honourable Court grant the Initial Order, PEI intends to bring a motion for the approval of the Transaction in short order;
- n) If the Transaction is approved, PEI will continue to operate during a transition period, currently estimated to be 60 days. During that period, PEI will also attempt to sell its remaining assets that are not part of the Transaction in an effort to maximize recovery for its stakeholders;
- o) PEI seeks the authorization of this Honourable Court to pay pre-filing amounts owed to certain critical suppliers so that PEI may continue operations during the CCAA process, and, in the event the Transaction is approved by this Honourable Court, assist with a smooth transition of certain product lines to the proposed purchaser;
- p) PEI has acted, and continues to act in good faith and with due diligence;
- q) Sections 3 and 11 of the CCAA;
- r) Rules 3.02 and 14.05 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194; and,
- s) Such additional grounds as counsel may advise and this Honourable Court permit.

3. The following documentary evidence will be used at the hearing of the application:

- a) The affidavit of Norman Paul sworn July 30, 2009, and the exhibits attached thereto;
- b) The report of Deloitte & Touche Inc. ("Deloitte") as proposed Monitor herein, including the Consent of Deloitte to act as Monitor; and,
- c) Such other evidence as this Honourable Court may permit.

Date: ~~July~~ <sup>4 Aug</sup>, 2009

**KRONIS, ROTSZTAIN,  
MARGLES, CAPPEL**  
25 Sheppard Avenue West  
Suite 700  
Toronto, Ontario  
M2N 6S6

Mervyn D. Abramowitz  
LSUC Registration #28325R

L. Viet Nguyen  
LSUC Registration #46694K

Tel: (416) 225-8750  
Fax: (416) 225-3910

Lawyers for the Applicant



**SERVICE**

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

**APPLICATION**

2. THIS COURT ORDERS AND DECLARES that PEI is a company to which the CCAA applies.

**PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that PEI shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan") between, *inter alia*, PEI and one or more classes of its secured and/or unsecured creditors as it deems appropriate.

**POSSESSION OF PROPERTY AND OPERATIONS**

4. THIS COURT ORDERS that PEI shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, PEI shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. PEI shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that PEI 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 Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

6. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, PEI shall be entitled but not required to pay all reasonable expenses incurred by PEI in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to PEI following the date of this Order.

7. THIS COURT ORDERS that PEI 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 PEI in connection with the sale of goods and services by PEI, 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 PEI.

8. THIS COURT ORDERS that until such time as PEI delivers a notice in writing to repudiate a real property lease in accordance with paragraph 11(c) of this Order (a "Notice of Repudiation"), PEI shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between PEI and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, monthly in equal payments on the first day of each month, in advance (but not in arrears). On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid. Upon delivery of a Notice of Repudiation, PEI shall pay all Rent due for the notice period stipulated in paragraph 11(c) of this Order, to the extent that Rent for such period has not already been paid.

9. THIS COURT ORDERS that, except as specifically permitted herein, PEI is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by PEI to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

### **CRITICAL SUPPLIERS**

10. THIS COURT ORDERS that notwithstanding paragraph 9 above, PEI shall be permitted to pay any amounts currently owing to the following critical suppliers:

ABGI Corporation  
Accurate Rolal Co. Limited  
American International Industries

Blossom Packaging Inc.  
Body Care Manufacturing  
Chicago Aerosol  
Dicon Display Inc.  
Interpak Systems Inc.  
Marketing Impact Limited  
M.E.F. Inc.  
The New Milani Group Inc.  
Quantum Management Services Ltd.  
Tri-Quality Packaging Inc.  
VDI Healthcare Logistics  
Experchem Laboratories Inc.  
Sales representatives for PEI

## **RESTRUCTURING**

11. THIS COURT ORDERS that PEI shall have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations and to dispose of redundant or non-material assets not exceeding \$500,000.00 in any one transaction or \$1,000,000.00 in the aggregate, subject to paragraph 11(c), if applicable;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate on such terms as may be agreed upon between PEI and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
- (c) in accordance with paragraphs 12 and 13, vacate, abandon or quit the whole but not part of any leased premises and/or repudiate any real property lease and any ancillary agreements relating to any leased premises, on not less than [seven (7) days notice in writing to the relevant landlord on such terms as may be agreed upon between PEI and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan;

- (d) repudiate such of its arrangements or agreements of any nature whatsoever, whether oral or written, as PEI deems appropriate on such terms as may be agreed upon between PEI and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan; and
- (e) pursue all avenues of refinancing and offers for material parts of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing or any sale (except as permitted by subparagraph (a), above),

all of the foregoing to permit PEI to proceed with an orderly restructuring of the Business (the "Restructuring").

12. THIS COURT ORDERS that PEI shall provide each of the relevant landlords with notice of PEI's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes PEI's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and PEI, or by further Order of this Court upon application by PEI on at least two (2) days notice to such landlord and any such secured creditors. If PEI repudiates the lease governing such leased premises in accordance with paragraph 11(c) of this Order, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in paragraph 11(c) of this Order), and the repudiation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a Notice of Repudiation is delivered, then (a) during the notice period prior to the effective time of the repudiation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving PEI and the Monitor 24 hours' prior written notice, and (b) at the effective time of the repudiation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against PEI in respect of such

lease or leased premises and such landlord shall be entitled to notify PEI of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

14. THIS COURT ORDERS that, subject to the other provisions of this Order (including the payment of Rent as herein provided) and any further Order of this Court, PEI shall be permitted to dispose of any and all of the Property located (or formerly located) at such leased premises without any interference of any kind from landlords, warehousemen, storers or bailees wherever situate, and, for greater certainty, PEI shall have the right to realize upon the Property and other assets in such manner and at such locations, including leased premises, as it deems suitable or desirable for the purpose of maximizing the proceeds and recovery therefrom.

15. THIS COURT ORDERS that notwithstanding anything to the contrary in any agreement providing for the liquidation of assets from any leased premises but subject to: (a) any written agreement between PEI, a liquidator and the landlord; or (b) further Order of this Court:

- (a) PEI shall at all times abide by and be subject to the terms of all real property leases (collectively the "Leases") and shall cause any liquidator to abide by the terms of the Leases, and PEI and the liquidator shall obtain the applicable landlord's approval for all signage and promotional advertising for sales to be conducted by the liquidator pursuant to the agreement with PEI in any of the leased premises to the extent otherwise not permitted by the applicable Lease; and,
- (b) neither PEI nor any liquidator shall augment the merchandise in any leased premises unless otherwise permitted by the applicable Lease or approved by the applicable Landlord.

16. THIS COURT ORDERS that notwithstanding anything herein but subject to the rights of a trustee in bankruptcy with respect to the assignment of leases: (a) except as expressly permitted by the terms of the Leases, none of the Leases shall be amended or varied, or deemed to be amended or varied, in any way without obtaining the prior written consent of the applicable Landlords; and (b) where any Leases are not, in accordance with their terms, transferrable or

assignable to a purchaser without first obtaining the consent of the applicable Landlord, none of the Leases shall, absent further Order of the Court be transferred, conveyed, assigned or vested in a purchaser, save and except to the extent that respective consents have been, or are in the future, obtained from the respective Landlords.

#### **NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

17. THIS COURT ORDERS that until and including SEPTEMBER 3, 2009, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of PEI or the Monitor, or affecting the Business or the Property, except with the written consent of PEI and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of PEI or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

18. THIS COURT ORDERS that during the Stay Period, 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 PEI or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of PEI and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower PEI to carry on any business which PEI is not lawfully entitled to carry on, (ii) exempt PEI from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

19. THIS COURT ORDERS that during the Stay Period, 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 PEI, except with the written consent of PEI and the Monitor, or leave of this Court.

**CONTINUATION OF SERVICES**

20. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with PEI 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 Business or PEI, 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 PEI, and that PEI 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 PEI in accordance with normal payment practices of PEI or such other practices as may be agreed upon by the supplier or service provider and each of PEI and the Monitor, or as may be ordered by this Court.

**NON-DEROGATION OF RIGHTS**

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

**PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

22. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of PEI with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of PEI 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 PEI, if one is filed, is sanctioned by this Court or is refused by the creditors of PEI or this Court.

**DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

23. THIS COURT ORDERS that PEI shall indemnify its directors and officers from all claims, costs, charges and expenses relating to the failure of PEI, after the date hereof, to make payments of the nature referred to in subparagraphs 5(a), 7(a), 7(b) and 7(c) of this Order which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of PEI 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.

24. THIS COURT ORDERS that the directors and officers of PEI shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of \$500,000.00, as security for the indemnity provided in paragraph 23 of this Order. The Directors' Charge shall have the priority set out in paragraphs 35 and 37 herein.

25. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) PEI's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 23 of this Order.

**APPOINTMENT OF MONITOR**

26. THIS COURT ORDERS that DELOITTE & TOUCHE INC. is hereby appointed pursuant to the CCAA as the Monitor (the "Monitor"), an officer of this Court, to monitor the Property and PEI's conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that PEI and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by PEI pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

27. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor PEI's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise PEI in its development of the Plan and any amendments to the Plan;
- (d) assist PEI, to the extent required by PEI, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (e) have full and complete access to the books, records and management, employees and advisors of PEI and to the Business and the Property to the extent required to perform its duties arising under this Order;
- (f) assist PEI as necessary with a transaction of sale or transfer of PEI's assets, or any part thereof;
- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (h) consider, and if deemed advisable by the Monitor, prepare a report and assessment on the Plan; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

28. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

29. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

30. THIS COURT ORDERS that that the Monitor shall provide any creditor of PEI with information provided by PEI in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by PEI is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and PEI may agree.

31. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

32. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to PEI shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by PEI as part of the costs of these proceedings. PEI is hereby authorized and directed

to pay the accounts of the Monitor, counsel for the Monitor and counsel for PEI within seven days of the accounts being rendered, and, in addition, PEI is hereby authorized to pay to counsel to the Monitor, and counsel to PEI, retainers in the amount[s] of \$25,000.00 each to be held by them as security for payment of their respective fees and disbursements outstanding from time to time

33. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

34. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and PEI's counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$500,000.00, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 35 and 37 hereof.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

35. THIS COURT ORDERS that the priorities of the Directors' Charge and the Administration Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$500,000.00);

and

Second – Directors' Charge (to the maximum amount of \$500,000.00).

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

37. THIS COURT ORDERS that each of the Directors' Charge and the Administration Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

38. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, PEI shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Directors' Charge or the Administration Charge, unless PEI also obtains the prior written consent of the Monitor and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

39. THIS COURT ORDERS that the Directors' Charge and the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds PEI, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by PEI of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from or the creation of the Charges; and
- (c) the payments made by PEI pursuant to this Order and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive

conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

40. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in PEI's interest in such real property leases.

#### **SERVICE AND NOTICE**

41. THIS COURT ORDERS that PEI shall, within ten (10) business days of the date of entry of this Order, send a copy of this Order to its known creditors, other than employees and creditors to which PEI owes less than \$1,000.00, at their addresses as they appear on PEI's records, and shall promptly send a copy of this Order (a) to all parties filing a Notice of Appearance in respect of this Application, and (b) to any other interested Person requesting a copy of this Order, and the Monitor is relieved of its obligation under Section 11(5) of the CCAA to provide similar notice, other than to supervise this process.

42. THIS COURT ORDERS that PEI and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to PEI's creditors or other interested parties at their respective addresses as last shown on the records of PEI 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 thereof, or if sent by ordinary mail, on the third business day after mailing.

43. THIS COURT ORDERS that PEI, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on its website at [www.deloitte.com](http://www.deloitte.com).

**GENERAL**

44. THIS COURT ORDERS that PEI or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

45. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of PEI, the Business or the Property.

46. 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 PEI, 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 PEI 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 PEI and the Monitor and their respective agents in carrying out the terms of this Order.

47. THIS COURT ORDERS that each of PEI 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.

48. THIS COURT ORDERS that any interested party (including PEI and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

49. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Daylight Time on the date of this Order.

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Court File No. 09-3306-00CL

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 PRODUCT EXCELLENCE INC.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

PROCEEDINGS COMMENCED AT TORONTO

**NOTICE OF APPLICATION**

**KRONIS, ROTSZTAIN, MARGLES, CAPPEL**

Barristers and Solicitors  
700-25 Sheppard Avenue West  
Toronto, Ontario M2N 6S6

Mervyn D. Abramowitz (#28325R)  
L. Viet Nguyen (#46694K)

Tel: (416) 225-8750  
Fax: (416) 225-3910

Lawyers for the Applicant, Product Excellence Inc.