

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT

Commercial Division

(Sitting as a court designated pursuant to the
Companies Creditors' Arrangement Act, R.S.C.
1985, c. C-36)

No: 500-11-038484-107

IN THE MATTER OF THE PLAN OF
COMPROMISE OR ARRANGEMENT OF:

DAVIE YARDS INC., a legal person duly
constituted under the *Canada Business
Corporations Act*, having its head office at 22
George-D. Davie Street, Lévis, Québec, G6V 8V5

Petitioner

- and -

SAMSON BÉLAIR /DELOITTE & TOUCHE
INC.; a legal person duly constituted under *Canada
Business Corporations Act*, having its place of
business at 1, Place Ville Marie Suite 3000,
Montréal Québec, H3B 4T9

Monitor

MOTION FOR AN INITIAL ORDER PURSUANT TO
SECTION 11 AND FOLLOWING OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT ("CCAA")
(R.S.C. 1985 c. C-36)

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN
COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL,
PETITIONER RESPECTFULLY SUBMITS THE FOLLOWING:

INTRODUCTION

1. Davie Yards Inc. ("**Davie**" or the "**Petitioner**") was incorporated on September 12, 2006 under the *Canada Business Corporations Act*;
2. The Petitioner is a public company that operates in a single business segment and has a primary focus on building complex and technologically advanced vessels for the offshore oil exploration and production services sector;
3. The Petitioner's objective is to become a competitor in the development, building and delivery of complex offshore service vessels and rigs, other offshore constructions and other sophisticated vessels for commercial and government use;

4. Despite the multiple steps taken by the Petitioner in 2008 and 2009 as part of its financial restructuring plan, including steps taken to raise additional financing to secure continued operations, the Petitioner has incurred significant operating losses since its incorporation in 2006;
5. The Petitioner's continuous operating losses have placed it in a precarious financial position and Davie is expecting to face a critical liquidity crisis in the short term;
6. The Petitioner is insolvent and has outstanding debt of more than CDN\$58 million owed to both secured and unsecured creditors as of February 22, 2010;
7. Notwithstanding the foregoing, the Petitioner requires new financing in order to provide it with its working capital needs to complete its current project and build its order book;
8. The Davie Shipyard (as defined below) is well positioned to benefit from more than CDNS\$40 billion of proposed long-term shipbuilding contracts announced by the government of Canada and province of Quebec.
9. As such and as more particularly described below, the Petitioner seeks relief under the CCAA, as set out in the conclusions of the Petitioner's Motion;

BACKGROUND

Company Overview

10. The Petitioner incorporated under the name 4370422 Canada Inc. on September 12, 2006 under the *Canada Business Corporations Act*;
11. The Petitioner changed its name on October 31, 2006 to Davie Québec Inc. and subsequently changed its name on December 18, 2007 to Davie Yards Inc., the whole as it appears from a copy of the CIDREQ report filed in support of the present Motion as Exhibit **P-1**;
12. The Petitioner is a public company whose shares are traded on the Toronto Stock Exchange. Davie's head office is located at 22 George-D. Davie Street, Lévis, Québec, G6V 8V5, Canada;
13. The Petitioner builds sophisticated ships and complex offshore vessels for commercial and government customers. The Petitioner's primary product and service offerings are: (a) the construction of complex offshore vessels and rigs; (b) the construction coast guard vessels; and (c) vessel conversion, general ship repair and industrial work;
14. The Petitioner's objective is to a competitor in the offshore segment of the global shipbuilding industry by: (a) continuing to invest in modern equipment and skilled labour, (b) specializing in the construction of high-quality offshore vessels and rigs, (c) utilizing its hands-on team management and (d) maintaining close customer relationships;
15. All of the Petitioner's property, plant and equipment are located at the Davie shipyard facility, which is located in Lévis, Québec (the "**Davie Shipyard**");

16. The Davie Shipyard has always been dedicated to providing its customers with the highest level of service. Focusing on new builds, fast, efficient ship repair and general refurbishment, the predecessor business, operating under the corporate name Davie Industries Inc. ("**Davie Industries**"), developed the technical capabilities, qualified workforce and facilities to build and service a wide range of marine vessels prior to its ultimate acquisition by Davie (the "**Predecessor Business**");

Labour Relations

17. As of January 31, 2009, the Petitioner has 1765 employees, all of whom are employed at the Davie Shipyard. Of the 1765 employees, 1538 are unionized and 227 are non-unionized;
18. The unionized employees are members of four different unions, the largest one being Syndicat des travailleurs du Chantier Naval de Lauzon, which has 1410 of the Petitioner's employees as members;
19. Davie also uses the services of 11 persons who are seconded to it by its wholly owned Norwegian subsidiary Davie Yards AS ("**Davie AS**"). Apart from providing the foregoing services, Davie AS has no other activities. Davie provides Davie AS with all necessary funding to maintain its operations;
20. Davie maintains a defined contribution pension plan in respect of all of its current employees. All current service cost payments have been made as of the date hereof;

Acquisition of the Davie Shipyard by the Petitioner

21. In 1996, the Davie Shipyard was acquired by the Dominion Bridge Group. Two years later, the Dominion Bridge Group experienced financial difficulties which forced it to seek protection from its creditors which, in turn, forced Davie Industries to also seek protection from its creditors despite it being one of the profitable companies of the group;
22. In October 2001, Davie Industries was declared bankrupt and a trustee in bankruptcy was appointed and mandated by the creditors of Davie Industries to maintain the activities of the Davie Shipyard and to attempt to sell it as a going concern;
23. On October 13, 2006, the Petitioner acquired substantially all of the assets of Davie Industries from the trustee in bankruptcy (the "**Acquisition**"). There were no significant operations or activities at Davie Industries at the time of the Acquisition.
24. In the context of the Acquisition, the Petitioner undertook to remit to Investissement Quebec ("**IQ**") all tax credit refunds with respect to the construction or conversion of oil drilling platforms to a maximum amount of CDN\$1,550,000 (the "**Tax Credit Remittance Obligation**");
25. In addition, the Petitioner provided IQ with a specific guarantee with regard to future employment levels at the Davie Shipyard ("**Employment Guarantee**"). The Employment Guarantee provides that if the predetermined employment levels are not

reached, the Petitioner must pay IQ the aggregate amount of CDN\$2,500,000 (as IQ's sole remedy);

Initial Public Offering

26. On or about February 20, 2008, Davie completed an initial public offering (the "**IPO**");

CORPORATE STRUCTURE

Significant Shareholders of Davie Yards

27. The Petitioner is a public company and had 368,646,205 common shares outstanding as of December 31, 2009;
28. Davie originally issued a number of shares to Davie Holdings AS ("**Davie Norway**") as part of the Acquisition;
29. Offshore Holding AS ("**Offshore Holding**"), a Norway company, is the controlling shareholder of Davie Norway;
30. On May 5, 2009, Offshore Holding converted the outstanding amounts owed to it by Davie under the Offshore Holding Loan (which is more particularly described below) into 49,788,200 common shares of Davie as part of the Financial Restructuring Plan carried out by the Petitioner in 2008 and 2009 (which is also more particularly described below). As a result, Offshore Holding now indirectly owns 37.8% of the outstanding common shares of Davie;
31. Cecon ASA ("**Cecon**"), a Norway-based independent subsea installation contractor that provides offshore construction services, is a key customer of the Petitioner. As part of the Financial Restructuring Plan (defined below) carried out by the Petitioner in 2008 and 2009, Cecon became a shareholder of Davie;
32. Specifically, on May 5, 2009 and May 12, 2009, Davie issued 122,000,000 common shares to Cecon as part of a private placement. The issuance resulted in Cecon obtaining 33.1% of the outstanding common shares of the Petitioner;

Holdings of Davie Yards

33. Davie AS, a limited company organized under the laws of Norway, was created as a shelf company on March 3, 2008 and became a wholly-owned subsidiary of the Petitioner on March 8, 2008;
34. The Petitioner also owns 12.53% of the shares in Ocean Hotels Plc. ("**Ocean Hotels**"), a public limited company incorporated under the laws of Cyprus and a current customer of the Petitioner. In addition, Offshore Holding also owns a 11.7% stake in Ocean Hotels;

OVERVIEW OF SHIPBUILDING INDUSTRY

35. The shipbuilding and industrial marine industry is diversified in its product and market focus. It includes firms with specialized capabilities in manufacturing and repairing

ships, building oil and gas rigs, and supplying related equipment, technologies and services;

36. The Petitioner operates the largest shipyard in Canada capable of constructing complex vessels and rigs;

Competition

37. The market for the building of complex offshore vessels is global, but the main competition derives from Europe. The competitors for projects will vary greatly depending on the type of vessel in question and available capacity at the shipyards for the requested delivery dates;
38. For the specialized offshore vessels market, competition is normally based on price, on-time delivery, reputation, quality of workmanship and customer relations;
39. For the offshore rigs, competitors are generally located in Asia, with most yards being located in the Gulf of Arabia, Singapore and China. Jack-ups are more standardised products, where price and track record are more important;
40. The 2001 Canadian Shipbuilding Policy Framework, which requires the Government of Canada to procure, repair and refit government owned vessels in Canada, puts the Petitioner in an excellent position to benefit from its capabilities and the experience gained through the construction of vessels for the Canadian Government. For several of the upcoming government projects, the Petitioner believes that its superior facilities and production capabilities combined with its experience gives it a competitive advantage over its Canadian competitors;

Suppliers

41. For the type of vessels presently under construction at the Davie Shipyard, approximately 65% of the contract price is dedicated to or allocated to the purchase of service and equipment, such as design and engineering services, main engines, propellers, thrusters, cranes and electric and electronic installation. The market for such equipment is mainly in Europe;
42. The market for steel plates for ships is global. Other materials, such as piping, electrical cables and fittings, are typically purchased in Canada or the U.S., although suppliers in Asia or Europe may also be used;

Regulatory Environment

43. The design and construction of vessels are surveyed by internationally recognized bodies called Classification Societies. The classification process carried out by Classification Societies consists of: (a) a technical review of the design plans and related documents to verify compliance with applicable rules, and (b) attendance at the construction of the vessel in the shipyard by a classification society surveyor(s) and at the relevant production facilities that provide key components such as steel, engine, generators and castings to verify that the vessel is constructed in accordance with the classification rules.

Upon satisfactory completion of the above, classification certificates will be issued by the Classification Society certifying that the vessel meets the requirements of its assigned class;

44. In addition to the classification rules, vessels must also fulfil a number of rules and regulations set out by the selected Flag-state and the International Maritime Organization (“IMO”), which is a United Nations organization. The responsibility for verifying compliance with the rules under the IMO, including the International Convention for the Safety of Life at Sea (“SOLAS”) and the International Convention on the Prevention of Pollution from Ships (“MARPOL”) is given to the Classification Societies. For most countries, compliance with the Flag state rules are also verified by the Classification Societies. Canada is a signatory to both MARPOL and SOLAS;

Economic Impact

45. Commercial shipbuilding markets continue to be affected by the ongoing financial crisis, but the long-term outlook for complex offshore construction vessels remains promising. The expectations for increased contracting activity for large and complex offshore construction vessels continues but there is uncertainty as to when clients will resume contracting for the construction of such vessels;
46. With respect to short and medium term outlooks, there is increased activity in the Canadian domestic markets for a variety of government projects to meet sea transportation, arctic operations, and maritime defence needs;

OVERVIEW OF OPERATIONS

Product and Service Offerings

47. The Petitioner is focussed on building a range of offshore vessels that service exploration and production facilities and support offshore construction and maintenance activities. These offshore vessels include accommodation vessels, offshore construction vessels, anchor handling tugs/supply vessels and platform supply vessels and jack-up rigs;
48. The Davie Shipyard is one of few Canadian shipbuilders with the capabilities required to the largest most complex vessels for the Canadian Navy and the Canadian Coast Guard. The Government of Canada has launched a CDNS\$[40] billion program for the new construction and refurbishment at Canadian shipyards of joint support vessels, Coast Guard vessels, Arctic patrol vessels as well as frigates and destroyers. The Petitioner intends to submit bids for the construction or refurbishment of Canadian naval and Coast Guard vessels as and when appropriate;
49. The Predecessor Business also conducted numerous vessel conversions, which consisted primarily of modifying vessels to permit their use for a different type of activity or to increase their capacity or functionality. However, ship conversion, repair and industrial work are not primary components of the Petitioner’s business.

Current Customer Contracts

50. Since the Acquisition, the Petitioner has been targeting a wide variety of customers, including operators of offshore support vessels, operators of offshore oil and gas exploration rigs, the Canadian military and Coast Guard as well as various other shipping companies with respect to ship construction and industrial work;
51. As more particularly described below, the Petitioner currently has five (5) contracts for the construction of three (3) offshore construction vessels for affiliates of Cecon and two (2) multi-purpose accommodation vessels for affiliates of Ocean Hotels;

(a) Construction Contracts with Cecon

52. On February 4, 2007, the Petitioner entered into two (2) construction contracts with Cecon for the construction of two (2) offshore construction vessels (these vessels are respectively referred to as "**Hull no. 717**" and "**Hull no. 718**"). The current delivery dates for Hull no. 717 and Hull no. 718 are scheduled for the second quarter of 2010;
53. The Petitioner and Cecon also entered into a construction contract that came into effect on July 4, 2007 for Hull no. 719, which is identical to Hull nos. 717 and 718 with the exception of certain increased crane capacities ("**Hull no. 719**" and, collectively with Hull no. 717 and Hull no. 718, the "**Cecon Vessels**"). The current delivery date for Hull no. 719 is scheduled for the third quarter of 2010;

(b) Construction Contracts with Ocean Hotels

54. On May 31, 2007, the Petitioner entered into two (2) construction contracts with Ocean Hotels for the construction of two (2) multi-purpose accommodation vessels, which are referred to as "**Hull no. 721**" and "**Hull no. 722**" (collectively, the "**Ocean Hotels Vessels**" and together with the Cecon Vessels, the "**Vessels**"). The current delivery dates for Hull no. 721 and Hull no. 722 are scheduled for the second quarter of 2011;

Capital Improvements

55. Since the Acquisition, Davie has spent more than CDN\$21 million in capital expenditures as the facilities required verification, repair and upgrading. In addition to the normal commissioning and re-certification of the equipment, certain areas of the Davie Shipyard had to be adapted to meet the specific requirements of the Petitioner's current shipbuilding contracts;

RESTRUCTURING EFFORTS

56. In September 2008, the Petitioner announced that it had begun a financial restructuring following a thorough review of its processes and projects which had identified weaknesses in its operations. To address the operational weaknesses that were identified, the Petitioner put forward a comprehensive operational improvement plan (the "**Financial Restructuring Plan**");
57. As the Petitioner was experiencing a cash shortfall in September 2008, the Petitioner entered into a loan agreement with Offshore Holding on September 19, 2008 for an

amount of NOK17.8 million (CDN\$3,323,426) (the “**Offshore Holding Loan**”). Offshore Holding further agreed, on October 28, 2008, to increase the principal amount of the loan by NOK5.9 million (CDN\$1,116,667), for an aggregate principal amount of NOK23.7 million (CDN\$4,440,093);

58. In support of the Financial Restructuring Plan, the Petitioner also entered into a CDN\$10,000,000 loan agreement with IQ on November 3, 2008 (the “**November IQ Loan**”). In addition, on December 15, 2008, the Petitioner and IQ entered into a new loan agreement to provide Davie with an additional loan of CDN\$2,733,750 (the “**December IQ Loan**” and, together with the November IQ Loan, the “**Original IQ Loans**”). The Original IQ Loans have been repaid as of the date of this Motion;
59. Further to discussions with Export Development Canada (“**EDC**”) for the purpose of obtaining refund guarantees to support its customer contracts which were being requested by the Petitioner’s clients to meet their financing obligations, the Canadian Government authorized EDC to make available up to CDN\$380 million in financing and guarantees for Davie to provide assistance to the Petitioner in completing the Cecon and Ocean Hotels vessel construction contracts. The support is to be provided under the Canada account;
60. On December 11, 2008, the Petitioner announced a temporary shutdown of its operations at the Davie Shipyard and consequently temporary layoffs for its 1,070 employees due to lack of materials and to preserve limited cash reserves in order to allow time and the necessary resources for the completion of the Financial Restructuring Plan. Davie’s cash position had been negatively impacted by its clients’ inability to make their instalments under their contracts without having refund guarantees in place;
61. Furthermore, the construction contracts with Cecon and Ocean Hotels were amended on February 16, 2009 and February 13, 2009, respectively, to increase prices and extend delivery times to cover the consequences of the shutdown and the relaunch of the Petitioner’s operations;
62. On February 16, 2009, the construction contracts with Cecon were amended to increase prices by an aggregate of USD\$63,000,000 for the Cecon Vessels (the “**Cecon Price Increase**”) and to develop new delivery and payment schedules. Following the Cecon Price Increase, the total contract prices for the Cecon Vessels is USD\$472,600,000, payable in progress payments as specifically agreed milestones are met;
63. On February 13, 2009, the construction contracts with Ocean Hotels were amended to increase prices by USD\$32,000,000 for the Ocean Hotels Vessels (the “**OH Price Increase**”) and to develop new delivery and payment schedules. Following the OH Price Increase, the price of each of the Ocean Hotels Vessels is USD\$128,500,000, payable in progress payments as specifically agreed upon milestones are met;
64. The foregoing elements of the Financial Restructuring Plan were conditional upon Cecon obtaining a USD\$200 million loan from EDC and Ocean Hotels obtaining a USD\$100 million loan from EDC;

65. On February 16, 2009, the Petitioner announced that it had executed a loan agreement with EDC whereby EDC provided the Petitioner with a USD\$20 million prefunding facility as part of its previously announced financing pending negotiations with EDC and Cecon, to allow the Petitioner to resume its operations (the "**Original EDC Loan**"). The advances made under the Original EDC Loan were reimbursed in total by Davie on May 7, 2009 upon first disbursement to Cecon by EDC of the Cecon loan;
66. On or about April 23, 2009, the Petitioner was informed that Cecon successfully secured its USD\$200 million financing from EDC to support the construction of the Cecon Vessels;
67. By end of May 2009, Davie had resumed its operations and recalled most of its employees;
68. Also in 2009, the Petitioner pursued negotiations with different groups of investors to raise new equity and/or long-term loans in order to secure continued operations of the Davie Shipyard;
69. These negotiations culminated in a private placement of 244,000,005 common shares of Davie on May 5, 2009 and May 12, 2009 (the "**Private Placement**"). The Private Placement consisted of the following transactions:
 - (a) On May 5, 2009, the Petitioner issued 49,788,200 common shares to Offshore Holding as a result of the conversion of the Offshore Holding Loan into common shares of the Petitioner;
 - (b) On May 5, 2009, the Petitioner issued to Cecon 41,432,420 common shares for a total consideration of USD\$3,396,000 comprised of USD\$500,000 in cash and USD\$2,896,000 in settlement of accounts payable to Cecon;
 - (c) On May 5, 2009, the Petitioner issued 72,211,805 common shares to other investors for a cash consideration of USD\$6,061,000; and
 - (d) On May 12, 2009, the Petitioner issued to Cecon 80,567,580 common shares for a total cash consideration of USD\$6,604,000;
70. In July 2009, the Petitioner obtained additional loans from EDC (which loan has since been repaid in full) and IQ (as more particularly described below), which are also an integral part of the Petitioner's Financial Restructuring Plan;
71. On October 8, 2009, the Petitioner was informed that Ocean successfully secured its USD\$100,000,000 financing from EDC to support the construction of Ocean Vessels;

OVERVIEW OF THE EXISTING FINANCING FACILITIES

72. The primary purpose of the majority of loans obtained by Davie is to assist Davie or its customers in the financing of the construction of vessels and to assist Davie in meeting its working capital needs;
73. Davie currently has outstanding secured credit facilities with IQ;

74. IQ is a corporation established in the public interest under the *Act respecting Investissement Québec and La Financière du Québec* (R.S.Q., c. I-16.1), which administers all financial assistance programs developed by the Government of Quebec with respect to investment;
- (a) **The IQ Refund Loan**
75. On July 23, 2009, the Petitioner contracted a loan with IQ of up to a maximum of CDN\$32,500,000 to help finance up to 75% of its actual and future credit tax refunds with respect to the construction or conversion of vessels to be received from the Government of the Province of Quebec for the fiscal year 2009 for a maximum amount of CDN\$16,767,000 and for fiscal year 2010 for a maximum amount of CDN\$15,733,000 (the “**IQ Refund Loan**”);
76. Advances under the IQ Refund Loan bear interest at a rate of 9% annually. Interest is payable to IQ on a monthly basis. IQ is required to advance the funds to Davie through five instalments. As at January 31, 2010, CDN\$12.7 million was drawn under this facility;
77. The IQ Refund Loan is repayable at the earlier date of either:
- (a) the tax return filing date if any outstanding income tax balances are compensated against tax credit refundable; or
 - (b) the date of the reception by the Petitioner of its tax credit refunds from Revenu Quebec; or
 - (c) June 30, 2012;
78. Upon the receipt by Petitioner of tax credits refunds, 75% of such refunds must be remitted to IQ and applied against the outstanding balance of the IQ Refund Loan, but only after the IQ Settlement Obligation (described below) is fully paid;
79. The IQ Refund Loan is secured by a second rank hypothec in favour of IQ covering all actual and future receivables and cash as well as a first rank on all tax credit refunds;
- (b) **The IQ Shipyard Loan**
80. On July 23, 2009, the Petitioner contracted a loan with IQ up to a maximum of CDN\$21,000,000 to assist Davie with financing the shipyard operations and the construction of Vessels (the “**IQ Shipyard Loan**”). As at January 31, 2010, CDN\$21 million was drawn under this facility;
81. The IQ Shipyard Loan is repayable in 21 monthly instalments of CDN\$1 million starting July 31, 2010. Upon receiving any tax credit refunds with respect to the construction or conversion of vessels, Davie must remit 25% of these tax credit refunds to IQ, which will be applied against the outstanding balance of the IQ Shipyard Loan, but only after the IQ Settlement Obligation (described below) is fully paid. Any tax credit remitted will reduce the number of loan payments;

82. The IQ Shipyard Loan is secured by a first rank hypothec in favour of IQ covering all actual and future account receivables ranking after existing hypothecs and a second rank on all tax credit refunds with respect to the construction or conversion of vessels to be received from the Government of the Province of Quebec. The IQ Shipyard Loan is also secured by a first rank hypothec in favour of IQ covering all moveable assets;

(c) The IQ Settlement Obligation

83. On July 22, 2009, the Petitioner negotiated with IQ a global settlement of its obligation to fulfill the Tax Credit Remittance Obligation to IQ and failed commitments to IQ to maintain the Employment Guarantee. IQ agreed to waive these obligations of Davie for a total consideration of CDN\$1,200,000 (the "**IQ Settlement Obligation**");
84. The IQ Settlement Obligation must be paid by Davie in three instalments of CDN\$400,000 each, and the first instalment having been made in September 2009;

DESCRIPTION OF PETITIONER'S FINANCIAL SITUATION

85. Attached hereto as Exhibit **P-2** is the Petitioner's audited consolidated financial statements for the financial years ended December 31, 2008 and 2007 (the "**2008/2007 Audited Financials**"). In addition, attached hereto as Exhibit **P-3** are the Petitioner's unaudited interim consolidated financial statements as at December 31, 2009 (the "**2009 Unaudited Financials**");
86. As appears from the 2009 Unaudited Financials, Exhibit P-3, as at December 31, 2009, the Petitioner owned assets with a book value of approximately USD\$127,283,000;
87. As appears from the 2009 Unaudited Financials, Exhibit P-3, as at December 31, 2009, the most significant categories of assets were:
- (a) Cash and cash equivalents – USD\$56,839,000;
 - (b) Accounts receivable – USD\$25,114,000;
 - (c) Inventories – USD\$2,495,000;
 - (d) Investment in Ocean Hotels Plc. – USD\$6,113,000;
 - (e) Loan to Ocean Hotels Plc. – USD\$350,000; and
 - (f) Property, plant and equipment – USD\$35,878,000;
88. As appears from the 2009 Unaudited Financials, Exhibit P-3, as at December 31, 2009, the Petitioner's total liabilities on a consolidated basis were approximately USD\$164,327,000;
89. As appears from the 2009 Unaudited Financials, Exhibit P-3, as at December 31, 2009, the principal liabilities on a consolidated basis were:
- (a) Accounts payable and accrued liabilities – USD\$35,241,000;

- (b) Progress billings in excess of related costs and profits – USD\$109,407,000;
 - (c) Current portion of long-term debt – USD\$19,601,000; and
 - (d) Long-term debt – USD\$78,000;
90. As appears from the 2009 Unaudited Financials, Exhibit P-3, as at December 31, 2009, the long-term debt, including the current portion thereof, is comprised of the following series of loans to IQ:
- (a) IQ Refund Loan – USD\$8,750,000;
 - (b) IQ Shipyard Loan – USD\$10,272,000; and
 - (c) IQ Settlement Obligation – USD\$657,000;
91. As appears from the 2009 Unaudited Financials, Exhibit P-3, as at December 31, 2009, there is a substantial shareholder deficit of approximately USD\$110,209,000;
92. The Petitioner has been incurring continuous and significant operating losses, notably, USD\$62,649,000 in the year ended December 31, 2009, the whole as appears from the 2009 Unaudited Financials, Exhibit P-3, as well as USD\$24,139,000 and USD\$15,174,000 for the years ended December 31, 2008 and 2007, respectively, the whole as appears from the 2008/2007 Audited Financials, Exhibit P-2;
93. Generally, these losses are mainly due to:
- (a) temporary shutdown of the Petitioner's shipyard operations, which commenced in December, 2008 and continued until operations resumed on February 22, 2009;
 - (b) lower productivity than previously estimated due to a more challenging and costly ramp-up following the temporary shutdown of the Davie Shipyard operations;
 - (c) initial inability of clients to make their instalment payments under their contracts without having a competitive scheme for refund guarantees in place and the delays and costs resulting therefrom;
 - (d) fixed selling price on vessel construction contracts;
 - (e) changes in supplies and raw material pricing;
 - (f) significant increase in labour costs and other cost overruns in attempting to meet the delivery deadlines with respect to the construction of the Vessels; and
 - (g) significant learning curve relating to the complexity of outfitting the Cecon Vessels;
94. In late 2009, a significant number of employees were hired in order to expedite the construction of the Cecon Vessels. This resulted in a substantial increase in labour costs, cost overruns and inefficiencies;

95. Notwithstanding the steps taken by the Petitioner to date to restructure its operations and finances, the Petitioner's continuous operating losses have placed the Petitioner in a precarious financial situation;
96. As at today's date, the Petitioner's financial position continues to deteriorate such that the Petitioner's projected cash requirements indicate that Petitioner shall face a critical liquidity crisis in the very short term;

RECENT DEVELOPMENTS

97. As described herein, the Petitioner has expended considerable resources with a view to restructuring its operations;
98. The Petitioner is continuing to explore and implement restructuring initiatives;
99. The Petitioner believes that the significant investment that the Petitioner has made to date in upgrading its facilities as well as the numerous steps already taken as part of its Financial Restructuring Plan and which will be taken in the short term will result in improved operational results in the future;
100. The Petitioner and its management strongly believe that the Petitioner is well positioned to become competitive in the offshore segment of the global shipbuilding industry as a result of its various competitive advantages, including:
 - (a) its state of the art construction facilities as a fully integrated shipyard;
 - (b) its specialized equipment. Over the last 20 years, approximately \$100 million was invested in the facilities of the Predecessor Business, primarily to modernize equipment;
 - (c) its skilled and experienced management and workforce and its training of the workforce through the building of the existing contract portfolio and its competitive labour costs (as compared to principal European competitors);
 - (d) its access to both domestic and global markets through its Local and Norwegian management. The shipping and offshore segment of the shipbuilding industry cluster in Norway will allow the Petitioner to access both the Norwegian and global markets for the construction of complex offshore rigs and vessels; and
 - (e) its location. Situated close to the mouth of the St-Lawrence River just outside of Quebec City, the Davie Shipyard is easily accessible from the Atlantic Ocean and is therefore strategically located to service the domestic and global shipping and offshore markets;
101. However, Davie requires additional working capital and further restructuring changes must be made in order to attain profitability;
102. In an effort to reduce its costs and preserve its limited cash reserves, concurrently with the present filing, the Petitioner will be proceeding with a significant reduction of its workforce and will focus all of its efforts in:

- (a) Advancing and completing the work in respect of Hull no. 717 which, as of the date hereof, is approximately 69% completed, with a view to delivering same in the briefest of delays; and
 - (b) Securing new financing for the Davie Shipyard in order to provide Davie with its working capital requirements for delivery of all five (5) vessels.
103. As a result of its limited cash resources and in order to proceed in the manner set forth above, Davie will concurrently with the present filing, temporarily suspend all work on all vessels other than Hull 717 until such time as new financing has been obtained.
104. The senior management of Davie together with its financial advisors and consultants will focus all efforts in advancing work in respect of Hull no. 717 and will be meeting with Davie's principal stakeholders including EDC, IQ, Cecon and Ocean to explore all strategic opportunities available to Davie, including any financing, recapitalization or asset disposition opportunities;
105. It is recognized that in the absence of these proceedings and the protections sought herein, it will be extremely difficult to maintain value for all stakeholders given the Petitioner's current liquidity problems;
106. At this stage, a restructuring within a court supervised process is necessary to allow the Company to simultaneously: (a) continue to operate in the manner set forth above, (b) continue to review its restructuring alternatives, including steps to raise new equity and/or long-term loans to secure its continued operations in conjunction with steps to reduce its significant cost overruns; and (c) ultimately, focus on completing its existing customer contracts with Cecon and Ocean Hotels;

REASONS FOR SEEKING CCAA PROTECTION

107. In light of the foregoing, the Petitioner seeks relief under the CCAA, as set out in the conclusions of the Petitioner's Motion, for the following reasons:
- (a) The Petitioner is insolvent;
 - (b) The Petitioner requires immediate additional funding to carry on its operations and complete the five (5) vessels currently in production;
 - (c) The protection and flexibility afforded by the CCAA will allow the Petitioner to preserve its business as a going concern and thereby safeguard the massive investment in time, energy and capital that has been dedicated to the Davie Shipyard and the Vessels under construction, as well as to preserve the significant investment that has been made to date in the financial restructuring of the Petitioner;
 - (d) The Petitioner requires additional time in order to continue the implementation of the Financial Restructuring Plan it has initiated, while developing a plan of arrangement with its creditors, the whole in a manner designed to maximize value for its various stakeholders, including its employees;

- (e) The Petitioner believes that if it is granted CCAA protection, it will have the working capital it requires to continue its operations on the basis outlined herein during the period set out in the Cash Flow Projections as set out therein on the basis outlined in the Cash Flow Projections, Exhibit **P-4**; and
- (f) The Petitioner is confident that the compromise or arrangement which the Petitioner is hoping to propose to its creditors, if accepted by same, will grant far greater benefits for its stakeholders than any other available alternative, including, in particular, a bankruptcy;

FUNDING OF THE PETITIONER

- 108. The Petitioner has conducted a projected cash flow analysis to determine the amounts required to finance its operations for the next 14 weeks, on a weekly basis, the whole as appears from said cash flow projections. Attached in support of the present Motion as Exhibit P-4 is a statement reflecting this analysis (the “**Cash Flow Projections**”);
- 109. As set out in the Cash Flow Projections, the Petitioner’s principal uses of cash during these proceedings will consist of expenditures necessary to maintain ongoing operations and pay professional fees and disbursements;

BOARD OF DIRECTORS AND EMPLOYEES

Board of Directors

- 110. Even though the Petitioner intends to comply with all applicable laws and regulations, including the timely remittance of deductions at source and federal and provincial sales tax, the Petitioner’s directors are nevertheless concerned about the potential for their personal liability in the context of the present restructuring;
- 111. A successful restructuring of the Petitioner will only be possible with the continued participation of the Petitioner’s board of directors, management and employees. These personnel are essential to the ongoing viability of the Petitioner’s business, and the successful restructuring thereof;
- 112. The Petitioner maintains directors’ and officers’ liability insurance (the “**D&O Insurance**”) for the directors and officers of Davie. The current D&O Insurance policy provides \$15,000,000 in coverage. The D&O Insurance expires on January 30, 2011. The current amount of coverage provided by the D&O Insurance may not be sufficient to protect the directors of the Petitioner from all of the potential directors’ liabilities;
- 113. The Petitioner is not currently in a position to secure adequate additional directors and officers liability insurance, notably in light of its financial situation;
- 114. There are also contractual indemnities which have been given to the directors by the Petitioner. Davie does not have sufficient funds to satisfy those indemnities should the directors of the Petitioner be found responsible for the full amount of the potential directors’ liabilities;

115. Petitioner and Petitioner's board believe that the indemnification insurance presently in place is insufficient and inadequate in view of the additional risks resulting from the present proceedings;
116. Absent the protections sought in the conclusions of the present Motion, the Petitioner is concerned that one or more of their directors and key employees will be forced to resign their posts, which would jeopardize the continuation of the Petitioner's business operations, and its successful restructuring;
117. Accordingly, the Petitioner requests that the initial order to be granted include the director protections sought in the conclusions of the present Motion, namely, the orders related to the indemnification and charge of the conclusions sought;
118. The amount of such charge was established by the Petitioner and reviewed by the Monitor, taking into account hourly and salaried payrolls, commissions, vacations, sales taxes and pension contributions;

Employees

119. The retention of key employees has been and continues to be of vital importance to the Petitioner during its restructuring efforts;
120. The Petitioner has identified 11 existing employees who are seconded to it by Davie AS (the "**Eligible Davie AS Employees**") and 10 existing employees (the "**Eligible Davie Employees**") and together with the Eligible Davie AS Employees, the "**Eligible Employees**") that are critical to the preservation of the Petitioner's enterprise value;
121. Petitioner believes that the continued employment of the Eligible Employees is crucial to its successful restructuring, in view of their experience, expertise and the critical role they have played and will continue to play for Petitioner, including in relation to its restructuring;
122. Petitioner also believes that absent the establishment of an incentive plan in favor of the Eligible Employees, they are likely to seek other employment opportunities. The departure of any of the Eligible Employees would undermine the Petitioner's restructuring efforts;
123. Should any of the Eligible Employees elect to terminate their employment with Petitioner or with Davie AS, it is unlikely that a replacement could be found in a timely manner;
124. The Petitioner has agreed to an employee retention plan for the Eligible Davie AS Employees (the "**Davie AS KERP**") and to a separate employee retention plan for the Eligible Davie Employees (the "**Davie KERP**" and together with the Davie AS KERP, the "**KERPs**"), for the purpose of providing an incentive for the Eligible Employees to remain with the Petitioner (or seconded to the Petitioner) during its restructuring efforts;
125. Petitioner's Directors, using its business judgment, have approved the KERPs;

126. Under the KERPs, each of the Eligible Employees is eligible to receive a prescribed amount (the “**Incentive Payments**”) provided that the Eligible Employee remains actively employed by Davie or Davie AS, as the case may be;
127. Resignation by an Eligible Employee or termination by the Petitioner or Davie AS, as applicable, for a “serious reason”, within the meaning of Article 2094 of the Civil Code of Quebec (“**Serious Reason**”), will result in the loss of any future payment of the Incentive Payments. However each Eligible Employee will still be entitled to payments of the Incentive Payments if their employment is terminated for any reason other than resignation or for a Serious Reason;
128. The KERPs were prepared by the Petitioner and reviewed by the Monitor.
129. The Petitioner and the Monitor believe that the KERPs provide appropriate and reasonable incentive for the retention of the Eligible Employees, and Petitioner seeks this Honourable Court’s approval of the KERPs, in order to assist the Petitioner in its efforts to complete their restructuring under the CCAA;
130. As appears from the KERPs:
 - (a) amounts sufficient to provide for the payments to be made to the Eligible Davie Employees thereunder, in accordance with the terms thereof, will be remitted by Petitioner to the Monitor, to be held in escrow by the Monitor, for the benefit of the Eligible Davie Employees; and
 - (b) amounts sufficient to provide for the payments to be made to or for the benefit of the Eligible Davie AS Employees thereunder, in accordance with the terms thereof, will be remitted by Petitioner to Davie AS for the benefit of the Eligible Davie AS Employees;
131. A copy of the KERPs will be filed under seal at the hearing of the present Motion as Exhibit **P-5**. In view of the sensitive and confidential nature of the KERPs and the fact that disclosure of its specific terms may negatively affect and be detrimental to the Petitioner’s CCAA proceedings, and thereby cause prejudice to Petitioner and to its stakeholders, the Petitioner hereby requests an order that Exhibit **P-5** remain under seal;

APPOINTMENT OF MONITOR

132. The Petitioner requests that this Honourable Court appoint Samson & Belair/Deloitte & Touche Inc., to be the Monitor, in accordance with the provisions of the CCAA and the Order to be rendered by the Court;
133. Samson & Belair/Deloitte & Touche Inc. is the holder of a license to act as trustee within the meaning of subsection 2(1) of the BIA, and thus is qualified to act as monitor in the proceedings herein, and has agreed to act in that capacity, on terms consistent with the orders sought herein;

134. In addition to any powers or obligations provided for by the CCAA, the Petitioner hereby requests that this Honourable Court grant the Monitor the powers, rights and obligations detailed in the conclusion of this Motion;
135. As appears from the First Report of the Monitor filed in support of this Petition as Exhibit **P-6**, the Monitor supports the terms and use of the KERPs and the indemnification and charge on the property of Davie granted in favour of the directors and officers of the Petitioner;
136. It is contemplated in the Order that the Monitor and its counsel, counsel to the Petitioner, and financial advisors to the Petitioner, will be granted the right to receive a first priority Court-ordered charge on the property of Davie for services rendered to the Petitioner (the "**Administration Charge**") up to a maximum amount of \$1,000,000 in respect of their respective fees and disbursements;

CONCLUSIONS SOUGHT

137. The Board of Directors of the Petitioner has authorized the filing of the present Petition;
138. The Petitioner requires the interim relief requested in this Motion in order to pursue its restructuring initiatives;
139. Given that the Petitioner has acted and is acting in good faith and with due diligence, the Petitioner respectfully submits that this Motion should be granted in accordance with its conclusions;
140. The present Motion is well founded in fact and law;

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

1. **GRANT** the Petition.
2. **ISSUE** an order pursuant to the CCAA (the "**Order**"), divided under the following headings:
 - Service
 - Application of the CCAA
 - Effective Time
 - Plan of Arrangement
 - Stay of Proceedings against the Petitioner and the Property
 - Stay of Proceedings against the Directors and Officers
 - Possession of Property and Operations
 - No Exercise of Rights or Remedies

- No Interference with Rights
- Continuation of Services
- Non-Derogation of Rights
- Directors' and Officers' Indemnification and Charge
- Restructuring
- Powers of the Monitor
- Priorities and General Provisions Relating to CCAA Charges
- General

Service

3. **ORDER** that the time for service of the Petition is hereby abridged and hereby dispense the Petitioner with further service thereof.
4. **DECLARE** that sufficient prior notice of the presentation of this Petition has been given by the Petitioner to the secured creditors who are likely to be affected by the changes created herein.

Application of the CCAA

5. **DECLARE** that the Petitioner is a debtor company to which the CCAA applies.

Effective time

6. **DECLARE** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard / Daylight Time on the date of this Order (the "**Effective Time**").

Plan of Arrangement

7. **ORDER** that the Petitioner shall have the authority to file with this Court and to submit to its creditors one or more plans of compromise or arrangement (collectively, the "**Plan**") in accordance with the CCAA.

Stay of Proceedings against the Petitioner and the Property

8. **ORDER** that, until and including March 26, 2010, or such later date as the 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 the Petitioner, or affecting the Petitioner's business operations and activities (the "**Business**") or the Property (as defined herein below), except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Petitioner or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court. In accordance with subsection 11.1 CCAA, such stay of Proceedings shall not

affect a regulatory body's investigation in respect of the Petitioner or a Proceeding taken by or before the regulatory body other than the enforcement of a payment ordered by the regulatory body or the Court.

Stay of Proceedings against the Directors and Officers

9. **ORDER** that during the Stay Period and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding may be commenced, or continued against any former, present or future director or officer of the Petitioner nor against any person deemed to be a director or an officer of the Petitioner under subsection 11.03(3) CCAA (each, a "**Director**", and collectively the "**Directors**") in respect of any claim against such Director that arose prior to the Effective Time and that relates to any obligation of the Petitioner where it is alleged that any of the Directors is under any law liable in such capacity for the payment of such obligation until further order of this Court or until the Plan, if one is filed, is sanctioned by the Court or refused by the creditors or the Court.

Possession of Property and Operations

10. **ORDER** that the Petitioner shall remain in possession and control of its present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the "**Property**"). Subject to further order of this Court, the Petitioner shall continue to carry on its operations and enterprise in a manner consistent with the preservation of the Business and Property.
11. **ORDER** that, except as otherwise provided to the contrary herein, the Petitioner shall be entitled to pay all reasonable expenses incurred by them in carrying on the Business in the ordinary course from and after the date of 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 Petitioner's Property or 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 delivered or supplied to the Petitioner following the date of this Order.
12. **ORDER** that the Petitioner shall be entitled but not compelled to pay the following expenses incurred prior to this Order, with the prior approval of the Monitor:
 - a. all wages, salaries, management fees, commissions, vacation pay (when due), current service cost pension contributions and other benefits, and reimbursement of expenses (including, without limitation, amounts charged by employees to credit cards) payable to former or current employees, managers or Directors, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

- b. all amounts owing to or in respect of individuals working as independent contractors in connection with the Petitioner's Business;
 - c. all amounts payable to third party customer brokers, agents, freight carriers, freight forwarders, shippers and creditors with the right to retain;
 - d. all outstanding and future fees and disbursements of the Monitor, the Monitor's and the Petitioners' legal counsel, and any financial and other advisers retained by the Petitioners in respect of the Plan, the Restructuring or these proceedings;
 - e. with the consent of the Monitor, expenses and capital expenditures reasonably necessary for the preservation of the Petitioner's Property or the Business.
13. **ORDER** that, except as otherwise provided to the contrary herein, the Petitioner 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) Québec Pension Plan, and (iv) income taxes, together with the employer's share of employment insurance premiums, Canada Pension Plan contributions, Quebec Pension Plan contributions or other similar wage levy;
 - b. amounts accruing and payable by the Petitioner in respect of employment insurance, Canada Pension Plan, workers compensation, employer health taxes and similar obligations of any jurisdiction with respect to employees;
 - c. all goods and services or other applicable sales tax (collectively, "**Sales Tax**") required to be remitted by the Petitioner in connection with the sale of goods and services by the Petitioner, but only where such Sales Tax are accrued or collected after the date of this Order; and
 - d. 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 Petitioner.

No Exercise of Rights or Remedies

14. **ORDER** that during the Stay Period, and subject to subsection 11.1 CCAA, all rights and remedies of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Petitioner, or affecting the Business, the Property or any part thereof, are hereby stayed and suspended except with leave of this Court.

15. **DECLARE** that, to the extent any rights, obligations, prescription or time or limitation periods, including, without limitation, to file grievances, relating to the Petitioner or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights or obligations, or time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Petitioner becomes bankrupt or a receiver within the meaning of paragraph 243(2) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) is appointed in respect of the Petitioner, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the Petitioner in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

No Interference with Rights

16. **ORDER** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, resiliate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioner, except with the written consent of the Petitioner and the Monitor, or with leave of this Court.

Continuation of Services

17. **ORDER** that during the Stay Period and subject to paragraph 18 hereof, all Persons having oral or written agreements with the Petitioner or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility or other goods or services made available to the Petitioner, 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 Petitioner, and that the Petitioner shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of the Order are paid by the Petitioner, without having to provide any security deposit or any other Security, in accordance with normal payment practices of the Petitioner or such other practices as may be agreed upon by the supplier or service provider and the Petitioner, with the consent of the Monitor, or as may be ordered by this Court.
18. **ORDER** that, notwithstanding anything else contained herein, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Petitioner on or after the date of this Order, nor shall any Person be under any obligation on or after the date of the Order to make further advances of money or otherwise extend any credit to the Petitioner.
19. **ORDER** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by the Petitioner with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person as of the date of the Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect

thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by Petitioner and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into the Petitioner's account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

Non-Derogation of Rights

20. **ORDER** that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, guarantee or bond (the "**Issuing Party**") at the request of the Petitioner shall be required to continue honouring any and all such letters, guarantees and bonds, issued on or before the date of the Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid.

Directors' and Officers' Indemnification and Charge

21. **ORDER** that the Petitioner shall indemnify its Directors from all claims, costs, charges and expenses relating to any obligations or liabilities they may incur by reason of or in relation to their respective capacities as directors or officers of the Petitioner, on or after the Effective Time, except where such obligations or liabilities were incurred as a result of such directors' or officers' gross negligence, wilful misconduct or intentional fault as further detailed in Section 11.51 CCAA.
22. **ORDER** that the Directors of the Petitioner shall be entitled to the benefit of and are hereby granted a hypothec, mortgage, lien, charge and security interest in the Property to the extent of the aggregate amount of \$5,000,000 (the "**Directors' Charge**"), as security for the indemnity provided in paragraph 21 of this Order as it relates to obligations and liabilities that the Directors may incur in such capacity on or after the Effective Time. The Directors' Charge shall have the priority set out in paragraphs 38 and 39 herein.
23. **ORDER** 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) the Directors 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 for which the Directors are entitled to be indemnified in accordance with paragraph 21 of this Order.

Restructuring

24. **DECLARE** that, to facilitate the orderly restructuring of its business and financial affairs (the "**Restructuring**") but subject to such requirements as are imposed by the CCAA, the Petitioner shall have the right, subject to approval of the Monitor or further order of the Court, to:

- (a) permanently or temporarily cease, downsize or shut down any of its operations or locations as it deems appropriate and make provision for the consequences thereof in the Plan;
 - (b) pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or in part, subject to further order of the Court and under reserve of subparagraph (c);
 - (c) convey, transfer, assign, lease, or in any other manner dispose of the Property, outside of the ordinary course of business, in whole or in part, provided that the price in each case does not exceed \$500,000 or \$1,000,000 in the aggregate;
 - (d) terminate the employment of such of its employees or temporarily or permanently lay off such of its employees as it deems appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the Petitioner and such employee, or failing such agreement make provision to deal with, any consequences thereof in the Plan, as the Petitioner may determine;
 - (e) subject to the provisions of section 32 CCAA, disclaim or resiliate, any of its agreements, contracts or arrangements of any nature whatsoever, with such disclaimers or resiliation to be on such terms as may be agreed between the Petitioner and the relevant party, or failing such agreement, to make provision for the consequences thereof in the Plan; and
 - (f) subject to section 11.3 CCAA, assign any rights and obligations of Petitioner.
25. **DECLARE** that, if a notice of disclaimer or resiliation is given to a landlord of the Petitioner pursuant to section 32 of the CCAA and subsection 24(e) of this Order, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours by giving the Petitioner and the Monitor 24 hours prior written notice and (b) at the effective time of the disclaimer or resiliation, the landlord shall be entitled to take possession of any such leased premises and re-lease any such leased premises to third parties on such terms as any such landlord may determine without waiver of, or prejudice to, any claims or rights of the landlord against the Petitioner, provided nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.
26. **ORDER** that the Petitioner shall provide to any relevant landlord notice of the Petitioner's intention to remove any fittings, fixtures, installations or leasehold improvements at least seven (7) days in advance. If the Petitioner has already vacated the leased premises, it shall not be considered to be in occupation of such location pending the resolution of any dispute between the Petitioner and the landlord.
27. **DECLARE** that, in order to facilitate the Restructuring, the Petitioner may, subject to approval of the Monitor, or further order of the Court:

- (a) settle claims of customers and suppliers that are in dispute; and
 - (b) establish a plan for the retention of key employees and the making of retention payments or bonuses in connection therewith.
28. **ORDER** that the terms of the Key Employee Retention Plans, Exhibit **P-5** (the “**KERPs**”) are hereby approved, and the Petitioner is hereby authorized to implement the KERPs.
29. **DECLARE** that the KERPs contain sensitive and confidential information and shall be sealed in the court file in these proceedings and segregated from, and not form part of, the public record.
30. **DECLARE** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, the Petitioner is permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in its possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to its advisers (individually, a “**Third Party**”), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of the Plan or a transaction for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Petitioner binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Petitioner or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation or implementation of the Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioner.

Powers of the Monitor

31. **ORDER** that Samson Belair / Deloitte & Touche Inc. is hereby appointed to monitor the business and financial affairs of the Petitioner as an officer of this Court (the “**Monitor**”) and that the Monitor, in addition to the prescribed powers and obligations, referred to in Section 23 of the CCAA:
- (a) shall, without delay, (i) publish once a week for two (2) consecutive weeks or as otherwise directed by the Court, in *La Presse*, *Le Soleil* and *The Globe and Mail* and (ii) within five (5) business days after the date of this Order (A) post on the Monitor’s website (the “**Website**”) a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the Petitioner of more than \$1,000, advising them that the Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the estimated amounts of their respective claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder;

- (b) may assist the Petitioner, to the extent required by the Petitioner, in dealing with its creditors and other interested Persons during the Stay Period;
- (c) may assist the Petitioner, to the extent required by the Petitioner, with the preparation of its cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;
- (d) may advise and assist the Petitioner, to the extent required by the Petitioner, to review the Petitioner's business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
- (e) may assist the Petitioner, to the extent required by the Petitioner, with the Restructuring and in its negotiations with its creditors and other interested Persons and with the holding and administering of any meetings held to consider the Plan;
- (f) may report to this Court and interested parties, including but not limited to creditors affected by the Plan, with respect to the Monitor's assessment of, and recommendations with respect to, the Plan;
- (g) may report to the Court on the state of the business and financial affairs of the Petitioner or developments in these proceedings or any related proceedings within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order;
- (h) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of the Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
- (i) may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under the Order or under the CCAA;
- (j) may act as a "foreign representative" of the Petitioner in any proceedings outside of Canada;
- (k) may give any consent or approval as may be contemplated by the Order; and
- (l) shall perform such other duties as are required by the Order or the CCAA or by this Court from time to time.

The Monitor shall not otherwise interfere with the business and financial affairs carried on by the Petitioner, and the Monitor is not empowered to take possession of the Property nor to manage any of the business and financial affairs of the Petitioner.

32. **ORDER** that the Petitioner and its Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of the Order shall forthwith provide the Monitor with unrestricted access to all of the Business and Property,

including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Petitioner in connection with the Monitor's duties and responsibilities hereunder.

33. **DECLARE** that the Monitor may provide creditors and other relevant stakeholders of the Petitioner with information in response to requests made by them in writing addressed to the Monitor and copied to the Petitioner's counsel. In the case of information that the Monitor has been advised by the Petitioner is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Petitioner unless otherwise directed by this Court.
34. **DECLARE** that if the Monitor, in its capacity as Monitor, carries on the business of the Petitioner or continues the employment of the Petitioner's employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.
35. **DECLARE** that no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as Monitor or the carrying out the provisions of any order of this Court, except with prior leave of this Court, on at least seven days notice to the Monitor and its counsel.
36. **ORDER** that Petitioner shall pay the fees and disbursements of the Monitor, the Monitor's legal counsel, the Petitioner's legal counsel and other advisers, incurred in connection with or with respect to the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.
37. **DECLARE** that the Monitor, the Monitor's legal counsel, if any, the Petitioner's legal counsel and the Monitor and the Petitioner's respective advisers, as security for the professional fees and disbursements incurred both before and after the making of the Order in respect of these proceedings, the Plan and the Restructuring, be entitled to the benefit of and are hereby granted a hypothec, mortgage, lien, charge and security interest in the Property to the extent of the aggregate amount of \$1,000,000 (the "**Administration Charge**"), having the priority established by paragraphs 38 and 39 hereof.

Priorities and General Provisions Relating to CCAA Charges

38. **DECLARE** that the priorities of the Administration Charge and Directors' Charge (collectively, the "**CCAA Charges**"), as between them with respect to any Property to which they apply, shall be as follows:
 - (a) first, the Administration Charge;
 - (b) second, the Directors' Charge.
39. **DECLARE** that subject to sections 81.3 to 81.6 of the BIA, each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Property save and except any Encumbrances resulting

from leases, financial leases, conditional sales agreements and/or instalment sales agreements or in favour of Banque Nationale du Canada.

40. **ORDER** that, except as otherwise expressly provided for herein, the Petitioner shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the CCAA Charges unless the Petitioner obtains the prior written consent of the Monitor and the prior approval of the Court.
41. **DECLARE** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Petitioner, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.
42. **DECLARE** that the CCAA Charges and the rights and remedies of the beneficiaries of such Charges and that the KERPs and payments made or to be made thereunder, as applicable, shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and the declaration of insolvency made herein; (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Petitioner or any receiving order made pursuant to any such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioner; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the Petitioner (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:
 - (a) the creation of any of the CCAA Charges shall not create or be deemed to constitute a breach by the Petitioner of any Third Party Agreement to which it is a party; and
 - (b) any of the beneficiaries of the CCAA Charges shall not have liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges.
43. **DECLARE** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any application for a bankruptcy order filed pursuant to the BIA in respect of the Petitioner and any bankruptcy order allowing such application or any assignment in bankruptcy made or deemed to be made in respect of the Petitioner, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Petitioner pursuant to the Order, the granting of the CCAA Charges and the payment of any amounts under the KERPs, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.
44. **DECLARE** that the CCAA Charges shall be valid and enforceable as against all Property of the Petitioner and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioner, for all purposes without any further publication, registration or other formality and **DECLARE** that any payments made or to be made under the KERPs shall be valid and enforceable as

against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioner, for all purposes.

General

45. **ORDER** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, legal counsel or financial advisers of the Petitioner or of the Monitor, without first obtaining leave of this Court, upon seven days written notice to the Petitioner's counsel and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.
46. **DECLARE** that the Order and any proceeding or affidavit leading to the Order, shall not, in and of themselves, constitute a default or failure to comply by the Petitioner under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
47. **DECLARE** that, except as otherwise specified herein, the Petitioner is at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Petitioner and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail.
48. **DECLARE** that the Petitioner and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Petitioner shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.
49. **DECLARE** that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served a Notice of Appearance on the solicitors for the Petitioner and the Monitor and has filed such notice with this Court, or appears on the service list prepared by the monitor or its attorneys;
50. **DECLARE** that the Petitioner or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of the Order on notice only to each other.
51. **DECLARE** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon seven days notice to the Petitioner, the Monitor and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order:

(i) Sandra Abitan
Martin Desrosiers
OSLER, HOSKIN & HARCOURT LLP
1000 De La Gauchetière Street West, Suite 2100
Montréal QC H3B 4W5
Counsel for Petitioner
Emails: sabitan@osler.com
mdesrosiers@osler.com

(ii) Mr. Pierre Laporte
Mr. Jean-François Nadon
SAMSON BÉLAIR/DELOITTE TOUCHE INC.
1, Place Ville-Marie, Bureau 3000
Montréal QC H3B 5K1
Monitor
Emails: pilaporte@deloitte.ca
jnadon@deloitte.ca

(iii) Me Mason Poplaw
Me Miguel Bourbonnais
MCCARTHY TÉTRAULT
1000, rue De La Gauchetière Ouest, Bureau 2500
Montréal QC H3B 0A2
Counsel for the Monitor
Email: mpoplaw@mccarthy.ca
mbourbonnais@mccarthy.ca

52. **DECLARE** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
53. **DECLARE** that the Monitor, with the prior consent of the Petitioner, shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and any subsequent orders of this Court and, without limitation to the foregoing, an order under Chapter 15 of the *U.S. Bankruptcy Code*, for which the Monitor shall be the foreign representative of the Petitioner. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.
54. **REQUEST** the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order.
55. **ORDER** the provisional execution of the Order notwithstanding any appeal and without the necessity of furnishing any security..

THE WHOLE WITHOUT COSTS, save and except in the case of contestation.

MONTREAL, February 24, 2010.



OSLER, HOSKIN & HARCOURT LLP

Attorneys for the Petitioner

DAVIE YARDS INC.

TRUE COPY

OSLER HOSKIN & HARCOURT
Osler, Hoskin & Harcourt LLP

AFFIDAVIT

I, the undersigned, Marc Veilleux, domiciled and residing at 1079 Figaro, St-Jean-Chrysostome, Québec G6Z 2G9, solemnly declare the following:

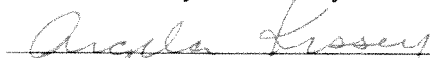
1. I am the Interim Chief Financial Officer and duly authorized representative of the Petitioner for the purpose hereof;
2. I have taken cognizance of the attached *Motion for Initial Order*;
3. All the facts alleged in the said Motion are true.

AND I HAVE SIGNED:



Marc Veilleux

SOLEMNLY DECLARED BEFORE ME
on the 24th day of February, 2010



COMMISSIONER FOR OATHS
for the District of Montreal



TRUE COPY

OSLER HOSKIN & HARCOURT
Osler, Hoskin & Harcourt LLP

NOTICE OF PRESENTATION

TO: INVESTISSEMENT QUÉBEC
393 rue Saint-Jacques, Bureau 500
Montréal, Québec H2Y 1N9

Attention: Me Pierre Lafrenière
email: pierre.lafreniere@invest-quebec.ca

TAKE NOTICE that the attached *Motion for an Initial Order Pursuant to Section 11 and following of the Companies' Creditors Arrangement Act* will be presented for hearing and allowance in room 16.12 at 9:30 a.m. at the Montréal Courthouse, 1 Notre-Dame Street East, Montréal, on February 25th, 2010, or so soon thereafter as Counsel may be heard.

PLEASE ACT ACCORDINGLY.

MONTRÉAL, February 24, 2010.



OSLER, HOSKIN & HARCOURT LLP
Attorneys for the Petitioner
DAVIE YARDS INC.

TRUE COPY


Osler, Hoskin & Harcourt LLP

No: 500-11-

SUPERIOR COURT
Commercial Division
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

**IN THE MATTER OF THE PLAN OF
COMPROMISE OR ARRANGEMENT OF:**

DAVIE YARDS INC., a legal person duly constituted under the Canada Business Corporations Act, having its head office at 22 George-D. Davie Street, Lévis, Québec, G6V 8V5,

and
Petitioner

SAMSON BÉLAIR /DELOITTE & TOUCHE INC.; a legal person duly constituted under *Canada Business Corporations Act*, having its place of business at 1, Place Ville Marie Suite 3000, Montréal Québec, H3B 4T9,

Monitor

**MOTION FOR AN INITIAL ORDER
PURSUANT TO (Section 11 of the Companies'
Creditors Arrangement Act)**

ORIGINAL

M^c Sandra Abitan
M^c Martin Desrosiers
Osler, Hoskin & Harcourt LLP
Counsel to the Petitioner
1000 de la Gauchetière Street West, Suite 2100
Montréal, Québec, Canada H3B 4W5
Tel.: (514) 904-5648 Fax: (514) 904-8101
Code : BO 0323n/d: **SA4747-1107079**

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT

Commercial Division

(Sitting as a court designated pursuant to the
Companies Creditors' Arrangement Act, R.S.C.
1985, c. C-36)

No: 500-11-

**IN THE MATTER OF THE PLAN OF
COMPROMISE OR ARRANGEMENT OF:
DAVIE YARDS INC.**

Petitioner

- and -

**SAMSON BÉLAIR /DELOITTE & TOUCHE
INC.**

Monitor

LIST OF EXHIBITS

- Exhibit P-1.** Copy of CIDREQ report;
- Exhibit P-2.** Copy of Petitioner's audited consolidated financial statements for the financial years ended December 31, 2008 and 2007;
- Exhibit P-3.** Copy of Petitioner's unaudited consolidated financial statements as at December 31, 2009;
- Exhibit P-4.** Cash Flow Projections;
- Exhibit P-5.** Copy of the Key Employee Retention Plans filed under seal.
- Exhibit P-6.** First Report of the Monitor.

MONTRÉAL, February 24, 2010.



OSLER, HOSKIN & HARCOURT LLP
Attorneys for the Petitioner
DAVIE YARDS INC.

TRUE COPY

OSLER HOSKIN & HARCOURT
Osler, Hoskin & Harcourt LLP

No: 500-11-

S U P E R I O R C O U R T
Commercial Division
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

**IN THE MATTER OF THE PLAN OF
COMPROMISE OR ARRANGEMENT OF:**

DAVIE YARDS INC., a legal person duly constituted under the Canada Business Corporations Act, having its head office at 22 George-D. Davie Street, Lévis, Québec, G6V 8V5,

Petitioner

and

SAMSON BÉLAIR /DELOITTE & TOUCHE INC.; a legal person duly constituted under *Canada Business Corporations Act*, having its place of business at 1, Place Ville Marie Suite 3000, Montréal Québec, H3B 4T9,

Monitor

LIST OF EXHIBITS

ORIGINAL

M^c Sandra Abitan
M^c Martin Desrosiers
Osler, Hoskin & Harcourt LLP
Counsel to the Petitioner

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