

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-041305-117

SUPERIOR COURT
(Commercial Division)
(sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, R.S.C.
1985, c. C-36, as amended)

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

Homburg Invest Inc.
Homburg Shareco Inc.
Churchill Estates Development Ltd.
Inverness Estates Development Ltd.
CP Development Ltd.
North Calgary Land Ltd.

Debtors / Petitioners

-and-

Homburg Management (Canada) Inc., a corporation duly constituted under the *Canada Business Corporations Act*, having its registered office at Suite 1010, 1 Place Alexis Nihon, 3400 de Maisonneuve Boulevard West, Montréal, Québec, H3Z 3B8 and having a chief place of business at Suite 1060, 1 Place Alexis Nihon, 3400 de Maisonneuve Boulevard West, Montréal, Québec, H3Z 3B8

Petitioner

-and-

Homco Realty Fund (190) Limited Partnership
Homco Realty Fund (191) Limited Partnership
Homco Realty Fund (199) Limited Partnership

Petitioners

-and-

Homco Realty Fund (52) Limited Partnership
Homco Realty Fund (61) Limited Partnership
Homco Realty Fund (88) Limited Partnership
Homco Realty Fund (89) Limited Partnership
Homco Realty Fund (92) Limited Partnership
Homco Realty Fund (94) Limited Partnership
Homco Realty Fund (96) Limited Partnership
Homco Realty Fund (105) Limited Partnership
Homco Realty Fund (121) Limited Partnership
Homco Realty Fund (122) Limited Partnership
Homco Realty Fund (142) Limited Partnership
Castello Development Ltd.

Mises-en-cause

-and-

Samson Bélair/Deloitte & Touche Inc.

Monitor

**MOTION FOR AMENDMENTS TO THE INITIAL ORDER (HMCI) AND
AUTHORIZATION TO FILE ADDITIONAL INTERCOMPANY CLAIMS
(Sections 11 and 11.02 of the *Companies' Creditors Arrangement Act*,
R.S.C., 1985, c. C-36)**

**TO THE HONOURABLE JUSTICE LOUIS J. GOUIN OR TO ONE OF THE
HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL
DIVISION IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE
PETITIONERS RESPECTFULLY SUBMIT AS FOLLOWS:**

I. INTRODUCTION

1. On September 9, 2011, the Honourable Louis J. Guoin, J.S.C. issued an order (the “**Initial Order**”) pursuant to the *Companies Creditors' Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”) in respect of Homburg Invest Inc. (“**HII**”), Homburg Shareco Inc., Churchill Estates Development Ltd., Inverness Estates Development Ltd. and CP Development Ltd. (collectively the “**Initial Debtors**”) as appears from the Court record;
2. Pursuant to the Initial Order, Samson Bélair/Deloitte & Touche Inc. (the “**Monitor**”) was appointed as Monitor of the Initial Debtors and a stay of proceedings (the “**Stay of Proceedings**”) was issued from the date of the Initial Order until October 7, 2011;
3. On October 7, 2011, this Court issued an order (the “**First Extension Order**”) extending the Stay of Proceedings. Since then, this Court has further extended the Stay of Proceedings, most recently until February 28, 2013 (the “**Stay Period**”), as appears from the Court record;
4. As appears from the Initial Order and the First Extension Order, the Stay of Proceedings was initially extended in favour of the following limited partnerships: Homco Realty Fund (52) Limited Partnership, Homco Realty Fund (88) Limited Partnership, Homco Realty Fund (89) Limited Partnership, Homco Realty Fund (92) Limited Partnership, Homco Realty Fund (94) Limited Partnership, Homco Realty Fund (105) Limited Partnership, Homco Realty Fund (121) Limited Partnership, Homco Realty Fund (122) Limited Partnership, Homco Realty Fund (142) Limited Partnership and Homco Realty Fund (199) Limited Partnership (“**Homco 199**”) (collectively the “**Initial Mises-en-cause**”);
5. On May 31, 2012, this Court issued an order amending the Initial Order to add North Calgary Land Ltd. (“**NCLL**”) as a Petitioner and Homco Realty Fund (96) Limited Partnership (“**Homco 96**”) as a Mise-en-cause thereunder. On December 14, 2012, this Court issued a further order amending the Initial Order to add Homco Realty Fund (190)

Limited Partnership (“**Homco 190**”) and Homco Realty Fund (191) Limited Partnership (“**Homco 191**”) as Mises-en-cause thereunder. On February 6, 2013, this Court issued a further order amending the Initial Order to add Homco Realty Fund (61) Limited Partnership (“**Homco 61**”) and Castello Development Ltd. (“**Castello**”) as Mises-en-cause thereunder (NCLL, Homco 96, Homco 190, Homco 191, Homco 61, Castello the Initial Debtors and the Initial Mises-en-cause are collectively referred to as the “**HII Group**”);

6. The HII Group respectfully requests that this Honourable Court render the orders sought herein to amend the Initial Order to include Homburg Management Canada Inc. (“**HMCI**”) as set forth in the conclusions herein and to authorize HMCI and the HII Group to file New Additional Intercompany Claims (as defined below);

II. HOMBURG MANAGEMENT CANADA INC.

7. HMCI is a corporation governed by the *Canada Business Corporations Act*. It is a wholly-owned subsidiary of the mise-en-cause Homco 190, an indirect subsidiary of HII;
8. HMCI (formerly known as Alexis Nihon Management (Canada) Inc.) was initially acquired by HII in the context of HII’s acquisition of the Alexis Nihon Real Estate Investment Trust (“**Alexis Nihon**”) in 2007;
9. As appears from the Court record, in May 2010 HII’s Canadian income-producing assets were sold to Homburg Canada Real Estate Investment Trust (later known as Canmarc Real Estate Investment Trust, which was acquired by Cominar Real Estate Investment Trust (“**Cominar**”). In the context of this transaction, the shares of HMCI were transferred to Homco 190;
10. As of May 2010, the sole operations of HMCI consisted of the leasing of short-term rental apartments located in the Alexis Nihon complex in Montréal (known as the Executive Suites), owned by a Cominar entity, pursuant to a Master Lease dated December 20, 2002, the term of which expired at the end of December 2012. As of the date hereof, HMCI has no operations;
11. In the context of the review and analysis of the books and record of the HII Group in connection, in particular with the intercompany receivables and payables, it was determined that that HMCI has a net receivable owing to it by HII in the amount of \$10,025,152 (the “**HMCI Intercompany Claim**”) and is indebted to Homco 190 in the amount of \$12,079,618, the whole as more fully appears from HMCI’s most recent available financial statements, filed in support hereof as **Exhibit P-1**;
12. In addition to the foregoing, HMCI has certain other creditors, including a contingent claim in respect of a judgment rendered in favour of Paul J. Massicotte (“**Massicotte**”), a former Alexis Nihon executive, against HMCI and other solidary co-defendants, which judgment is the object of an appeal, the hearing of which is scheduled for March 12, 2013 (the “**Appeal**”);

13. In order to ensure the fair and equitable treatment of HMCI's creditors, the HII Group respectfully requests permission to file the HMCI Intercompany Claim notwithstanding the Claims Bar Date (as defined in the Claims Process Order, in the Court record);
14. In addition, it is in the best interests of HMCI and the HII Group that all outstanding claims in respect of HMCI be addressed within the current CCAA proceedings in order for the HII Group to determine the best course of action for this entity, in the context of the Plan of compromise and reorganization filed by HII and Shareco (the "**Plan**");
15. HMCI has no cashflow and cannot meet its obligations as and when they become due;
16. In order to solicit, quantify and resolve all outstanding claims with respect to HMCI, the HII Group respectfully requests that this Honourable Court amend the Initial Order and the Claims Process Order, in each case, to extend their coverage to HMCI, as set forth in the conclusions herein;
17. With regards to the stay of proceedings which would extend to HMCI under the Initial Order, as requested in the conclusions hereof, HMCI respectfully requests that the stay be partially lifted for the sole purpose of allowing the hearing on the Appeal to proceed as scheduled with a view to obtaining a judgment on the Appeal which will confirm the existence and quantum of Massicotte's claim in a practical and timely fashion;

III. ADDITIONAL INTERCOMPANY CLAIMS

18. On February 4, 2013, the HII Group and certain other petitioners served the *Motion for an extension of the stay period, amendments to the Initial Order (Homco 61 & Castello), authorizations of sale (Homco 92 and Holman Grand Hotel), a vesting order (Centron Park) and for authorization to file additional intercompany claims* (the "**February 4 Motion**"), in the Court record. The order rendered thereon by this Honourable Court authorized the filing of Additional Intercompany Claims (as defined in the February 4 Motion) notwithstanding the Claims Bar Date;
19. As indicated in the letter of the HII Group to the Monitor which was previously disclosed as Exhibit P-4 of the February 4 Motion, as at that date, the review of the books and records of, *inter alia*, Homco 190, Homco 191 and Homco 199 was still ongoing. That review has now been completed with regards to Homco 190, Homco 191 and Homco 199 and the HII Group has determined that the following claims are outstanding:

Claimant	Debtor	Amount
Homco 190	Homco 199	\$95,530,165
Homco 191	Homco 199	\$118,585,019
Homco 199	HII	\$160,635,724
HII	Homco 191	\$2,629,229
HII	Homco 190	\$5,454,433

20. As of the date hereof, Homco 190, Homco 191 and Homco 199 have no third party creditors. The claims listed above will be dealt with in the context of the Plan and will not have any impact on the recoveries by the creditors. Accordingly, the HII Group respectfully requests permission to file these claims (collectively with the HMCI Intercompany Claim, the “**New Additional Intercompany Claims**”) notwithstanding the Claims Bar Date;

IV. CONCLUSION

21. HII respectfully submits that the relief requested herein is appropriate in the present circumstances. Accordingly, HII respectfully requests that this Honourable Court render the orders contained in the conclusions herein;
22. The Monitor supports the present Motion;
23. The HII Group has acted, and continues to act, in good faith and with the utmost diligence;
24. The present motion is well founded in fact and law.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

1. **GRANT** the present *Motion for amendments to the Initial Order (HMCI) and authorization to file additional intercompany claims* (the “**Motion**”);
2. **DECLARE** that all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion;
3. **DECLARE** that as of the date of the order to be rendered by the Court, Homburg Management Canada Inc. (“**HMCI**”) shall be deemed to be a Petitioner under the Initial Order rendered in the present file on September 9, 2011, as amended (the “**Initial Order**”);
4. **DECLARE** that the following sentence shall be added at the end of paragraph 12 of the Initial Order:

Notwithstanding the foregoing, **ORDERS** that Proceedings against Homburg Management Canada Inc. (“**HMCI**”) in Superior Court file 500-17-034977-077 (and any appeal therefrom) may continue for the sole purpose of determining of the quantum of any claim against HMCI (the “**Final Judgment**”), but that no enforcement or execution measure in respect of the Final Judgment shall be commenced or continued without leave of this Court.

5. **DECLARE** that the Claims Process Order rendered in the present file on April 30, 2012 (the “**Claims Process Order**”) applies *mutatis mutandis* to HMCI provided that, as regards HMCI only:
 - (a) All references in the Claims Process Order to “HII Group” or “HII Group Entity”, shall be deleted and replaced with “HMCI” as the circumstances require;

- (b) The definition of “**Claims Bar Date**” in paragraph [6.11] of the Claims Process Order shall be amended as follows:

[6.11] “**Claims Bar Date**” means 5:00 p.m. (Eastern Prevailing Time) on March 28, 2013 or, for Creditors with Subsequent Restructuring Claims, the later of March 28, 2013 at 5:00 p.m. (Eastern Prevailing Time) or (ii) fifteen (15) Calendar Days after the date of receipt by the Creditor of a notice of disclaimer, rescission, repudiation, termination or restructuring by of any contract, lease or other agreement, including any employment agreement, provided that March 28 shall not be later than thirty (30) Calendar Days prior to the meeting of creditors to be held in respect of the Plan; or such other date as may be ordered by the Court;

- (c) The following definition shall be added to the Claims Process Order, immediately after paragraph [6.26.A]:

[6.26.B] “**HMCI**” means Homburg Management Canada Inc.;

- (d) Paragraphs [11], [12] and [13] of the Claims Process Order shall be amended as follows:

[11] **ORDERS** that the Monitor shall cause a Claims Package to be sent to each Known Creditor by regular prepaid mail on or before March 18, 2013;

[12] **ORDERS** that on a Business Day, on or before February 20, 2013, the Monitor shall cause to be published the Notice to Creditors in La Presse (French version) and the Montreal Gazette (English version);

[13] **ORDERS** that the Monitor shall cause the Claims Package, which includes the Notice to Creditors, to be posted on the Website on or before March 18, 2013

6. **AUTHORIZE** HMCI, Homco 190, Homco 191, Homco 199 and HII to file the New Additional Intercompany Claims with the Monitor and **ORDER** that the filing thereof shall have been validly made, notwithstanding the Claims Bar Date (as defined in the Claims Process Order rendered by the Court on April 30, 2012);
7. **ORDER** the provisional execution of the Order notwithstanding any appeal therefrom and without the necessity of furnishing any security;

THE WHOLE WITHOUT COSTS, save in the event of contestation.

MONTREAL, March 12, 2013

Osler, Hoskin & Harcourt LLP

OSLER, HOSKIN & HARCOURT LLP

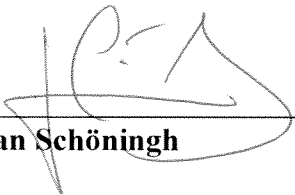
Attorneys for the Petitioners and Mises-en-cause

AFFIDAVIT

I the undersigned, Jan Schöningh, domiciled and residing at 597 Roslyn Avenue, Westmount, Québec, H3Y 2V1, solemnly declare the following:

1. I am the President and Chief Executive Officer of Homburg Invest Inc. and duly authorized representative of the Petitioners for the purpose hereof;
2. I have taken cognizance of the attached *Motion for amendments to the Initial Order (HMCI) and authorization to file additional intercompany claims*;
3. All of the facts alleged in the said *Motion* are true.

AND I HAVE SIGNED:

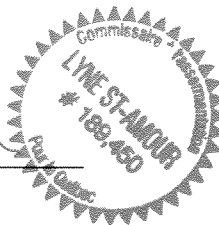


Jan Schöningh

SOLEMNLY DECLARED BEFORE ME
IN MONTRÉAL, QUÉBEC ON THE
12TH DAY OF MARCH 2013.



Commissioner for oaths for
the Province of Québec



NOTICE OF PRESENTATION

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Construction Corp.

TAKE NOTICE that the *Motion for amendments to the Initial Order (HMCI) and authorization to file additional intercompany claims* will be presented for hearing and allowance in the Superior Court, commercial division, in room 16.03 of the Montréal Courthouse, 1 Notre-Dame Street East, Montréal, on March 14, 2013, at 9:15 a.m., or so soon thereafter as counsel may be heard.

PLEASE ACT ACCORDINGLY.

MONTREAL, March 12, 2013

Osler, Hoskin & Harcourt LLP

OSLER, HOSKIN & HARCOURT LLP
Attorneys for the Petitioners and Mises-en-cause

**CANADA
PROVINCE OF QUÉBEC
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Castello Development Ltd.**

Mises-en-cause
-and-
Samson Bélair/Deloitte & Touche Inc.
Monitor

LIST OF EXHIBIT

P-1 Homburg Management (Canada) Inc. Financial Statements

MONTREAL, March 12, 2013

Osler, Hoskin & Harcourt LLP

OSLER, HOSKIN & HARCOURT LLP
Attorneys for the Petitioners and Mises-en-cause

No.: 500-11-041305-117

SUPERIOR COURT
(Commercial Division)
DISTRICT OF MONTRÉAL

IN THE MATTER OF THE PLAN OF COMPROMISE OR
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Petitioner

-and-
HOMCO REALTY FUND (190) LIMITED PARTNERSHIP ET
AL.

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SAMSON BELAIR/DELOITTE & TOUCHE INC.

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AFFIDAVIT, NOTICE OF PRESENTATION, LIST OF
EXHIBIT, EXHIBIT P-1

ORIGINAL

Mtre. Martin Desrosiers

Mtre. Sandra Abitan

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