

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., c. C-36, as amended)

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

HOMBURG INVEST INC.

- and -

HOMBURG SHARECO INC.

- and -

CHURCHILL ESTATES DEVELOPMENT
LTD.

- and -

INVERNESS ESTATES DEVELOPMENT
LTD.

- and -

CP DEVELOPMENT LTD.

- and -

NORTH CALGARY LAND LTD.

Debtors

- and -

THE ENTITIES LISTED ON ANNEX I

Mises-en-cause

- and -

SAMSON BELAIR/DELOITTE & TOUCHE
INC.

Monitor

- and -

STICHTING HOMBURG BONDS

Petitioner

REPRESENTATIONS OF STICHTING HOMBURG BONDS IN CONNECTION
WITH THE MOTION FOR EXTENSION OF THE STAY PERIOD
(Sections 11 and 11.02 of the *Companies' Creditors Arrangement Act*, R.C.S. 1985 c. C-36)

TO THE HONOURABLE LOUIS GOUIN J.S.C. OR TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE PETITIONER RESPECTFULLY SUBMITS THE FOLLOWING:

I. INTRODUCTION

1. Stichting Homburg Bonds ("**SHB**" or the "**Trustee**"), the indenture trustee representing Debtholders (the "**Debtholders**") of Homburg Invest Inc. et al. (the "**HII Group**"), holding in excess of \$593 million in claims, representing approximately 85% of the unconsolidated third party claims proven against Homburg Invest Inc. ("**HII**"), is hereby making representations to this Court in connection with the ongoing delays in the implementation of the Plans (as defined below).
2. Since September 9, 2011, the date on which this Court issued an order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangements Act* (the "**CCAA**" and the "**CCAA Proceedings**") in respect of the HII Group, the stay of proceedings, initially ordered until October 7, 2011 (the "**Stay of Proceedings**"), has been extended on numerous occasions, most recently until September 30, 2013, as appears from the Court record. The HII Group has been under CCAA protection for more than two years.
3. As stated in greater detail below, the countless delays in these CCAA proceedings have resulted in the incurrence of significant professional fees by the HII Group, which fees have continued to increase since the approval of the Plans by the Debtholders on May 30, 2013.

II. BACKGROUND

A. Plan of Arrangement and Emergence from CCAA

4. Throughout the year 2012, the Debtors indicated that they intended to complete their CCAA restructuring by the end of the year or in the first quarter of 2013. For a number of reasons, the Debtors have been unable to meet this timeline.
5. In fact, following significant delays in completing the drafting and filing of the Plans, it was only on May 30, 2013, that the Debtholders and other affected creditors were invited to vote in favour of the Second Joint Amended and Restated Plan of Compromise and Reorganization of HII and Shareco and the Restated Plan of Compromise of Homco 61 (the "**Homco 61 Plan**"), which the Debtholders did, based, *inter alia*, on the representation that the expected Plan Implementation Date of July 3, 2013, was in fact feasible.
6. Following the creditor's meeting, on June 5, 2013, HII and Shareco filed a Third Amended and Restated Plan of Compromise and Reorganization (the "**HII/Shareco Plan**" and together with the Homco 61 Plan, the "**Plans**"), which was sanctioned,

along with the HII Shareco Plan, on the same date (the "**Sanction Order**"), by this Honourable Court, as appears from the Court record.

7. Since the Sanction Order, the HII Group has requested and obtained two extensions of the Stay of Proceedings, based on the allegations that these delays were necessary so as to allow "*the HII Group, the Monitor and their respective advisors [...] to finalize all arrangements and consents required to implement the Plans and [...] negotia[te] the terms of the closing documents with the relevant parties*", as appears from paragraph 11 of the *Motion for Extension of the Stay Period and Access to Restricted Cash* dated August 26, 2013 (the "**August Extension Motion**"), filed in the Court record.
8. Despite these extensions, the Plans have yet to be implemented, and the HII Group has once again filed a motion requesting an extension of the Stay of Proceedings to December 2, 2013, which SHB respectfully submits, is hardly acceptable, particularly considering, as will be described in greater detail below, the "burn rate" of restructuring costs incurred by the HII Group in the context of these CCAA proceedings.

A. The Conditions Precedent to the Implementation of the Plans

9. While the HII Group alleges that it has been working diligently in order to implement the transactions necessary for the Plan Implementation Date (as defined in the Plans) to occur, SHB respectfully submits that these delays are unnecessary and unwarranted, and as will be demonstrated below, were entirely preventable.

(i) The Granting of the Tax Ruling

10. Although apparent in November 2012 that the HII Group would require one or more income tax rulings as conditions precedent to the implementation of the Plans, for reasons unbeknownst to SHB, it was not until the Spring of 2013 that the HII Group actually filed the request for the issuance by the Canada Revenue Agency of an advance income tax ruling.
11. As a result, it was only on or about September 25, 2013, that the tax ruling was actually rendered, thereby creating a delay of almost ten (10) months from the moment HII and the Monitor actually became aware of the need for a ruling by the Canadian tax authorities and the date on which they obtained this ruling.

(ii) Incorporation of Newco and license application

12. On July 11, 2013, the entity identified as Newco in the Plans was incorporated under the laws of the Netherlands as Geneba Properties N.V. ("**Geneba**").
13. Since Geneba is a property investment company, structured as a public limited liability corporation, it was essential that an application be filed with the Dutch

Autoriteit Financiële Markten (the "AFM") for the necessary licence applicable to all property investment companies.

14. Considering the already tardy date on which Geneva was incorporated, it wasn't until July 12, 2013, that HII and its Dutch counsel were able to file the required documents pursuant to the Dutch rules in place as of that date and finalize the application with the AFM (the "**Application**").
15. However, and as should have been reasonably expected, the AFM was unable to process the Application prior to the coming into force of the European Alternative Investment Fund Managers Directive (the "**AIFMD**") on July 22, 2013, thereby forcing HII to abide by the new AIFMD compliance requirements, which included the preparation of substantial additional documents and submissions, as appears from paragraph 20 of the August Extension Motion, filed in the Court record.
16. While it should have been clear that HII would be subjected to the AIFMD requirements considering the substantial delays in filing the Application with the AFM, it appears that HII was wholly unprepared for this scenario, as it was only recently, that it filed the additional documentation, resulting, once again, in unnecessary and preventable delays.
17. Moreover, and despite the fact that the AFM has thirteen (13) weeks from the day on which the Application was finalized to process the new documentation and render a decision regarding the licence, the Monitor informed this Court, as well as the Debtholders, that "*the HII Group is confident that it will receive the license by the end of October or sooner*", as appears from paragraph 26iv) of the Monitor's Twenty-sixth Report to the Court dated August 27, 2013 (the "**Twenty-Sixth Report**"). This statement was then confirmed and updated in the Monitor's Twenty-seventh Report to the Court dated September 27, 2013 (the "**Twenty-Seventh Report**"), in which the Monitor informed this Court that the "*issuance could potentially occur around the end of October 2013*" (paragraph 33iii)).
18. SHB fails to understand on what basis these statements were made, and is particularly concerned for the Debtholders, who having read the Monitor's Twenty-Sixth Report and Twenty-Seventh Report, have relied on and developed expectations based on these unfounded representations.

(iii) *NPEX and Canadian securities regulators*

19. In the second quarter of 2013, it was decided and confirmed by the HII Group that the Geneva shares to be issued pursuant to the HII/Shareco Plan would be traded on the Nederlandsche Participatie Exchange (the "**NPEX**"). Yet, to SHB's surprise and discontent, it took almost four (4) months to produce the first draft prospectus and submit it the NPEX for review.

20. Although SHB recognizes that the prospectus could not be finalized before the incorporation of Geneva, it fails to understand how HII could reasonably require close to ten (10) weeks to finalize the prospectus, particularly if it was in fact diligently working to finalize this necessary step in order to implement the Plans.
21. In fact, it was not until recently, that the prospectus was finalized.

III. THE ONGOING DELAYS AND PROFESSIONAL FEES

22. The restructuring of the HII Group began over two years ago, in September 2011. While no one disputes the fact that this is a complex restructuring, the countless delays since the Sanction Order cannot be reasonably explained and are unacceptable.
23. According to the Twenty-Sixth Report and the Twenty-Seventh Report, HII and the Monitor have no control over the additional delays with respect to the timing of the cash distributions under the HII/Shareco Plan, due to the necessity of obtaining relevant certificates of discharge from the Canadian tax authorities. While a partial certificate of discharge may be granted, it is clear that payment to Debtholders may be delayed for an unknown amount of time.
24. These delays are particularly worrisome in light of the extensive professionals fees that continue to be incurred, and which necessarily decrease the overall recovery of the Debtholders.
25. In fact, and according to the disclosure in the multiple reports submitted to this Court by the Monitor, the HII Group has incurred in excess of CDN\$89 million in professional fees.
26. Of this amount, a total of approximately \$22,360,532 has been incurred between May 19 and September 30, 2013. Moreover, it is expected that the HII Group and the Monitor will continue to incur substantial fees, likely spending approximately CAD\$750,000 weekly between now and December 2, 2013.
27. In fact, and as appears from the table below, the rate at which the professional fees are incurred in the context of these CCAA proceedings is particularly alarming:

Period	Average Fees Per Week
09-09-2011 to 05-30-2012	CAD\$651,000
05-30-2012 to 04-03-2013	CAD\$781,570
04-03-2013 to 05-29-2013	CAD\$1,733,500
05-29-2013 to 08-09-2013	CAD\$788,400

28. As such, if, as projected, the HII Group continues to spend CAD\$750,000 per week, it will have spent in excess of \$95 million in professional fees by December 2, 2013, and this, despite not even being able to provide a firm indication that it will have emerged and implemented the Plans by the end of 2013.
29. In the eyes of the Trustee and Debtholders, these amounts are astronomical, particularly considering that (i) Geneva's shares are valued at approximately €160 million and (ii) the projected cash distributions are about €80 million.
30. In fact, the amounts paid to professionals in the context of these proceedings is going to exceed the cash distribution to creditors, the whole without any form of external controls as to the appropriateness and/or reasonableness of the astronomical restructuring fees being incurred by the HII Group.
31. The Trustee is unable to fathom as to why CAD\$750,000 in professional fees per week must continue to be incurred by the HII Group, particularly in a context where the Plans were scheduled to be implemented by July 3, 2013. Indeed, between the first scheduled implementation date and December 2, 2013, the HII Group will likely incur approximately \$15 million in fees, representing more than one quarter of the €40 million cash on hand at emergence.
32. As must be expected, these delays and the ever-increasing fees have resulted in a group of Debtholders that are not only dissatisfied with the CCAA process, but whom also feel misguided. Hundreds of Debtholders have contacted the Trustee to share their concerns and frustration.
33. These Debtholders, a large number of whom are retirees residing in the Netherlands, are now facing significant financial hardships due in part to these CCAA proceedings and ongoing delays, and as a result, are showing signs of possibly instituting a class action against HII and/or the Trustee.

IV. CONCLUSIONS

34. In light of the foregoing, the Trustee respectfully submits that this Court should at least order HII, the Monitor, and its advisors to use their respective best efforts to emerge from these CCAA proceedings without any further unnecessary and preventable delays.
35. The Trustee also requests this Court to order the Monitor to provide a written report to the Court by no later than October 31st, 2013, describing the progress that has been made in finalizing the necessary preconditions to the implementation of the Plans and providing for an indication of the proposed timeline for emergence and for the first cash distributions to be made pursuant to the Plans.

36. Moreover, given the material fees and expenses incurred and to be incurred, as well as the absence of any real "checks and balances", the Trustee reserves its right to present a motion requesting that HII's counsel, the Monitor, and the Monitor's counsel each be required to submit their accounts to this Court for taxation purposes, as is customary in virtually all Canadian provinces.
37. The present representations are well founded in fact and in law.

WHEREFORE, MAY THIS COURT:

- [1] **ORDER** HII, the Monitor, and its advisors to use their respective best efforts to emerge from these CCAA proceedings without any further unnecessary and preventable delays;
- [2] **ORDER** the Monitor to provide a written report to the Court by no later than October 31st, 2013, describing the progress that has been made in finalizing the necessary preconditions to the implementation of the Plans and providing for an indication of the proposed timeline for emergence and for the first cash distributions to be made pursuant to the Plans; and
- [3] **RESERVE** the Trustee's rights to request that the Monitor and all professionals retained by the HII Group or the Monitor shall submit their accounts for services rendered in connection with these CCAA proceedings for review and approval by a judge or registrar of this Court.

THE WHOLE WITHOUT COSTS.

MONTRÉAL, September 29, 2013

Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP

Attorneys for the Petitioners

Stichting Homburg Bonds

ANNEX I

APPLICANT PARTNERSHIPS

1. HOMCO REALTY FUND (52) LIMITED PARTNERSHIP
2. HOMCO REALTY FUND (88) LIMITED PARTNERSHIP
3. HOMCO REALTY FUND (89) LIMITED PARTNERSHIP
4. HOMCO REALTY FUND (92) LIMITED PARTNERSHIP
5. HOMCO REALTY FUND (94) LIMITED PARTNERSHIP
6. HOMCO REALTY FUND (96) LIMITED PARTNERSHIP
7. HOMCO REALTY FUND (105) LIMITED PARTNERSHIP
8. HOMCO REALTY FUND (121) LIMITED PARTNERSHIP
9. HOMCO REALTY FUND (122) LIMITED PARTNERSHIP
10. HOMCO REALTY FUND (142) LIMITED PARTNERSHIP
11. HOMCO REALTY FUND (190) LIMITED PARTNERSHIP
12. HOMCO REALTY FUND (191) LIMITED PARTNERSHIP
13. HOMCO REALTY FUND (199) LIMITED PARTNERSHIP