

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

SUPERIOR COURT  
(Commercial Division)

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No.: 500-11-049142-157  
Estate No: 41-2016258

**IN THE MATTER OF THE INTENTION TO  
MAKE A PROPOSAL OF:**

**INDUSTRIES COVER INC.**, a corporation duly constituted under the laws of the Province of Quebec, having a place of business at 9300, Ray Lawson Blvd., in the city of Anjou, Quebec, H1J 1Y6;

Debtor

-and-

**DELOITTE RESTRUCTURING INC.**, a corporation duly constituted having its registered office at La Tour Deloitte, 1190, avenue des Canadiens-de-Montréal, Suite 500, in the City and District of Montréal, Province of Quebec, H3B 0M7;

Trustee

-and-

**THE REGISTRAR OF THE LAND REGISTRY OFFICE FOR THE REGISTRY DIVISION OF MONTRÉAL** having its registered office at 2050, de Bleury Street, suite #RC 10 and 1.10, Montréal, Quebec, H3A 2J5;

-and-

**THE REGISTRAR OF THE LAND REGISTRY OFFICE FOR THE REGISTRY DIVISION OF LOTBINIÈRE** having its registered office at 6375, Garneau Street, suite 101, Sainte-Croix, Quebec, G0S 2H0;

-and-

**THE REGISTRAR OF THE LAND REGISTRY OFFICE FOR THE REGISTRY DIVISION OF CHARLEVOIX II** having its registered office at 4, Place de l'Église, suite 102, Baie-Saint-Paul, Québec, G3Z 1T2

-and-

REGISTRAR OF THE PERSONAL AND  
MOVABLE REAL RIGHTS REGISTER OF  
QUÉBEC having its registered office at 1, Notre-  
Dame Est Street, suite 7.07, Montréal, Québec,  
H2Y 1B6;

Impleaded Parties

**MOTION FOR THE ISSUANCE OF AN ORDER APPROVING AN INTERIM FINANCING  
AND PRIORITY CHARGES**  
**(Sections 50.6, 64.1 and 64.2 of the *Bankruptcy and Insolvency Act*)**

**A. BACKGROUND**

1. Industries Cover Inc. (the "**Petitioner**") is a corporation initially incorporated under Part 1A of the *Quebec Companies Act*, CQLR, c. C-38, and continued under the *Quebec Business Corporations Act*, CQLR, c. S-31.1.
2. Since its constitution in 1990, the Petitioner has specialized in the manufacturing of glass products, mainly (but not exclusively) insulated glass units, which are sold to manufacturers of windows (industrial, commercial and residential).
3. The Petitioner is held by the following shareholders:
  - a) Guardian Industries Canada Corp. ("**Guardian Canada**") holds 75% of all the issued and outstanding shares of the Petitioner; and
  - b) Gestion J&N Boudreault Inc. holds 25% of all the issued and outstanding shares of the Petitioner.
4. Petitioner's head office is located in Saint-Apollinaire and it has three other manufacturing facilities located in Montréal (Anjou), Saint-Agapit and Baie-Saint-Paul.
5. Petitioner also holds a 51% participation in Thermos Rive-Nord Inc. and a 60% ownership in Vitrierie Novy Glass Ltd., respectively located in Terrebonne, Québec and Shippagan, New Brunswick.
6. Until recently, the Petitioner employed approximately 122 employees in all of its three (3) plants other than the Baie-Saint-Paul plant which has been closed since the month of October 2014;
7. On July 16, 2015 (the "**Filing Date**"), the Petitioner filed a *Notice of Intention to Make a Proposal* (the "**NOI**") pursuant to section 50.4 of the *Bankruptcy and Insolvency Act* (the "**BIA**") and Deloitte Restructuring Inc. ("**Deloitte**" or the "**trustee**") was appointed as trustee to the NOI, the whole as more fully appears from a copy of the NOI, the

*Certificate of Filing of a Notice of Intention to Make a Proposal and the List of Creditors* annexed to the NOI (the "**List of Creditors**"), filed herewith as **Exhibit P-1**, *en liasse*.

8. As appears from the List of Creditors (Exhibit P-1), as at the Filing Date, the Petitioner's total indebtedness amounted to approximately \$3,071,000, including:
  - a) unsecured claims amounting to \$1,134,000;
  - b) the secured claim of Gestion J&N Boudreault Inc. in the amount of \$1,000,000 plus interest (secured by a first ranking charge on the Anjou property); and the secured claim of Guardian Industries Canada Corp. in the amount of \$495,000, plus interest (secured by a first ranking charge on all movable and immovable assets, and a 2<sup>nd</sup> ranking charge on the Anjou property and the Saint-Apollinaire property);
  - c) the claim of Revenue Québec of approximately \$441,766 for unpaid sale taxes and/or deductions at source (including a claim of \$109,843 secured by a first ranking charge on the Saint-Apollinaire property);
  - d) warranty claims and contingent claims for an undetermined amount.

## **B. THE NEED FOR INTERIM FINANCING**

9. As of April 2015, Petitioner was already insolvent, facing a liquidity crisis and unable to meet its obligations as they became due.
10. Petitioner's insolvency can be explained by multiple factors including, without limitation, the difficult and increased competitive glass industry market, Petitioner's steady declining financial performance, the pending multi-million dollar product liability lawsuits, an on-going shareholders' dispute and a material increase of its returns and allowances caused by the defective production of its insulated glass units resulting in net replacement costs in excess of \$3,500,000 since 2012.
11. Since the beginning of 2015, the sales of Petitioner declined by 30% to 40% and it became apparent throughout 2015 that, with the higher levels of warranty costs expected to increase, the decrease in sales would likely result in net losses over a certain period of time before sales and profitability could reach back historical levels.
12. On April 17, 2015, as a result of its liquidity crisis, the Petitioner was forced to lay off its remaining employees, either on a permanent or temporary basis, and all operations were shut down.
13. During the month of June 2015, Petitioner, with the assistance of Deloitte's M&A professionals, developed a structured divestiture process of its business and/or assets with the following timeline:
  - Transmittal of teasers to potential purchasers June 26

- Signing of NDA and distribution of confidential information memorandum June 29 – July 8
- Due diligence, including management presentations, data room and sites visits Starting July 9
- Submittal of binding offer July 31
- Court approval August 14

(the "**Sale Process**").

14. The Petitioner still believes that given its insolvency, the Sale Process constitutes the best course of action in order to maximize the value of its assets and to provide potential for returning employees back to work.
15. It is expected that a managed Sale Process in the context of the present proceedings will yield better results than in any bankruptcy filing.
16. On July 10, 2015, Revenue Québec seized Petitioner's bank account for unpaid GST/QST, leaving Petitioner with no choice but to file an NOI to preserve the value of the Petitioner's business and assets.
17. The NOI was also filed with the view to completing the Sale Process while minimizing any disruption.
18. From June 9, 2015 up to the filing of the NOI, Petitioner had access to an emergency line of credit from Guardian Canada to allow it to run its Sale Process and proceed to its restructuring. Because of the recent seizure by Revenue Québec and the subsequent filing of the NOI, Guardian Canada has terminated the credit facility. Petitioner is left without any liquidity and does not have access to any conventional financing.
19. The Petitioner's objective is to proceed with a Court approved transaction within the next six (6) weeks and thereafter to present a proposal to its creditors.
20. Without adequate financing and the customary protection for the professionals to be involved with the Sale Process, the Sale Process cannot be completed.
21. Given the circumstances, Guardian Canada has accepted to provide Petitioner with a fully secured interim financing facility, as detailed hereinafter.

## C. RELIEF SOUGHT

### (i) THE INTERIM FACILITY

22. On July 17, 2015, Guardian Canada (the "**Interim Lender**") submitted to Petitioner an interim financing Term Sheet (the "**Term Sheet**") pursuant to which the Interim Lender agreed, subject to Court approval, to provide Petitioner with an interim financing of up

to \$700,000, including interest at the rate of 6% per annum (the "**Interim Facility**") in order to, *inter alia*, fund the Sale Process. A copy of the Term Sheet is communicated herewith as **Exhibit P-2**.

23. As appears from the Term Sheet, the Interim Facility is conditional upon, *inter alia*, the approval by this Court of a super-priority charge in favour of the Interim Lender in an amount of \$700,000 plus interest (the "**Interim Lender Charge**"), as security for the payment of the amounts owed thereunder.
24. In light of the Petitioner's current liquidity crisis, the Interim Facility constitutes a "*life-line*" to the Petitioner as it will attempt to salvage its business and maximize the value of its assets under the circumstances.
25. Depending on the results of the Sale Process, a purchaser could potentially restart the operations and preserve the employments of several employees.
26. The Petitioner respectfully submits that the approval and ratification of the Interim Facility is reasonable under the circumstances, it will enhance the prospects of a sale and of a viable proposal, and no creditor will be materially prejudiced as a result of the Interim Lender Charge.
27. With the assistance of Petitioner, Deloitte has prepared cash flow projections for the following 8 weeks period, filed herewith as **Exhibit P-3**;

**(ii) THE ADMINISTRATION CHARGE**

28. During these proceedings, the Petitioner will require the assistance and the active involvement of the following professionals:
  - a) The undersigned counsels have been retained to assist the Petitioner in the conduct of these proceedings, including the Sale Process; and
  - b) Deloitte has agreed to act as trustee to the Petitioner's NOI and to assist the Petitioner in the context of the Sale Process. Deloitte has valuable insights into the Petitioner's business and is in a position to perform its duties as well as to assist the Petitioner in its Sale Process without further delay.
29. In this context, the Petitioner respectfully submits that an administration charge in the amount of \$100,000 (the "**Administration Charge**") is necessary and appropriate to secure the full and complete payment of the fees and expenses of the above professionals, and therefore should be granted.

**D. CONCLUSIONS**

30. Considering the foregoing, it is in the Petitioner's interest and the interest of all of its secured and unsecured creditors that the present Motion be granted by this Court;

31. The Petitioner requests that the normal delays for service and presentation be reduced if and to the extent necessary that the service and presentation of the present motion be held valid for all purposes and that the judgment rendered hereon be executory notwithstanding appeal;
32. The present motion is well founded in facts and in law;

**THEREFORE, THE PETITIONER PRAYS BY JUDGMENT TO INTERVENE HEREIN, THIS HONOURABLE COURT TO:**

1. **GRANT** the Motion.

**Service**

2. **DECLARE** that sufficient prior notice of the presentation of this Motion has been given by the Petitioner to interested parties who are likely to be affected by the charges created herein.

**Effective time**

3. **DECLARE** that this Order and all of its provisions are effective as of 12:01 a.m. Montreal time, province of Quebec, on the date of this Order (the "**Effective Time**").

**Interim Financing (DIP)**

4. **ORDER** that Petitioner be and is hereby authorized to borrow, repay and reborrow from Guardian Industries Canada Corp. (the "**Interim Lender**") such amounts from time to time as Petitioner may consider necessary or desirable, up to a maximum principal amount of \$700,000 outstanding at any time, on the terms and conditions as set forth in the interim financing Term Sheet attached hereto as Schedule A (the "**Term Sheet**") and in the Interim Financing Documents (as defined hereinafter), to fund the ongoing expenditures of Petitioner and to pay such other amounts as are permitted by the terms of the Order and the Interim Financing Documents (as defined hereinafter) (the "**Interim Facility**");
5. **ORDER** that Petitioner, by its representative Dave Kuta, is hereby authorized to execute and deliver such credit agreements, security documents and other definitive documents (collectively the "**Interim Financing Documents**") as may be required by the Interim Lender in connection with the Interim Facility and the Term Sheet, and Petitioner is hereby authorized to perform all of its obligations under the Interim Financing Documents;
6. **ORDER** that Petitioner shall pay to the Interim Lender, when due, all amounts owing (including principal, interest, fees and expenses, including without limitation, all reasonable fees and disbursements of counsel and all other reasonably required advisers to or agents of the Interim Lender on a full indemnity basis (the "**Interim Lender Expenses**") under the Interim Financing Documents and shall perform all of its other

obligations to the Interim Lender pursuant to the Term Sheet, the Interim Financing Documents and this Order;

7. **DECLARE** that all of the present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof of Petitioner (collectively the "**Property**", including the moveable and immoveable property described in Schedule B) are hereby subject to a charge and security for an aggregate amount of \$700,000, plus interest (such charge and security is referred to herein as the "**Interim Lender Charge**") in favour of the Interim Lender as security for all obligations of Petitioner to the Interim Lender with respect to all amounts owing (including principal, interest and the Interim Lender Expenses) under or in connection with the Term Sheet and the Interim Financing Documents. The Interim Lender Charge shall have the priority established by paragraphs 14, 15 and 16 of this Order; and **ORDER** that, upon request of the Interim Lender as the case may be, the Registrar of the Register of Personal and Movable Real rights and the Registrars of each of the Land Registries in respect of each of the Immoveable properties described in this Order (Schedule B) shall publish and record this Order as a charge and hypothec in favour of the Interim Lender as herein described.
8. **ORDER** that the claims of the Interim Lender pursuant to the Interim Financing Documents shall not be compromised or arranged pursuant to any proposal (a "**Proposal**") filed pursuant to the BIA or any plan of arrangement (a "**Plan**") filed pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") or these proceedings and the Interim Lender, in that capacity, shall be treated as an unaffected creditor in these proceedings and in any Proposal or Plan;
9. **ORDER** that the Interim Lender may:
  - a) notwithstanding any other provision of the Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the Interim Lender Charge and the Interim Financing Documents in all jurisdictions where it deems it is appropriate; and
  - b) notwithstanding the terms of the paragraph to follow, refuse to make any advance to Petitioner if the Petitioner fails to meet the provisions of the Term Sheet and the Interim Financing Documents;
10. **ORDER** that the Interim Lender shall not take any enforcement steps under the Interim Financing Documents or the Interim Lender Charge without providing at least 5 business days written notice (the "**Notice Period**") of a default thereunder to the Petitioner, the trustee and to creditors whose rights are registered or published at the appropriate registers or requesting a copy of such notice. Upon expiry of such Notice Period, the Interim Lender shall be entitled to take any and all steps under the Interim Financing Documents and the Interim Lender Charge and otherwise permitted at law, but without having to send any demands under Section 244 of the BIA;
11. **ORDER** that, subject to further order of this Court, no order shall be made varying, rescinding, or otherwise affecting paragraphs 4 to 10 hereof unless either (a) notice of a

motion for such order is served on the Interim Lender by the moving party within seven (7) days after that party was served with the Order or (b) the Interim Lender applies for or consents to such order;

### **Administration Charge**

12. **ORDER** that Petitioner shall pay the reasonable fees and disbursements of the trustee, the trustee's legal counsel, if any, the Petitioner's legal counsel and other advisers, directly related to these proceedings, the Sale Process and the Petitioner's restructuring, whether incurred before or after the Order, and may provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.
13. **DECLARE** that the trustee, the trustee's legal counsel, if any, the Petitioner's legal counsel and the trustee and the Petitioner's respective advisers, as security for the professional fees and disbursements incurred both before and after the making of the Order and directly related to these proceedings, the Sale Process and the Petitioner's restructuring, be entitled to the benefit of and are hereby granted a charge and security in the Property to the extent of the aggregate amount of \$100,000 (the "**Administration Charge**"), having the priority established by paragraphs 14 and 15 hereof.

### **Priorities and General Provisions Relating to NOI Charges**

14. **DECLARE** that the priorities of the Administration Charge and the Interim Lender Charge (collectively, the "**NOI Charges**"), as between them with respect to any Property to which they apply, shall be as follows:
  - a) first, the Administration Charge; and
  - b) second, the Interim Lender Charge.
15. **DECLARE** that each of the NOI 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 charged by such Encumbrances.
16. **DECLARE** that notwithstanding the provisions of paragraph 15 above, the Interim Lender Charge shall rank immediately behind and after any existing Encumbrance in favour of Gestion J&N Boudreault Inc. affecting the following property:

#### *DÉSIGNATION*

*Un immeuble connu et désigné comme étant le lot numéro UN MILLION QUATRE MILLE SOIXANTE-QUATORZE (1 004 474) du Cadastre de Québec, circonscription foncière de Montréal.*

*Avec bâtisse dessus construite portant le numéro 9 300, Boulevard Ray-Lawson à Anjou (Québec) circonstances et dépendances.*

17. **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 NOI Charges unless the Petitioner obtains the prior written consent of the trustee and the prior approval of the Court.

18. **DECLARE** that each of the NOI Charges shall attach, as of the Effective Time, to all present and future Property, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.
19. **DECLARE** that the NOI Charges and the rights and remedies of the beneficiaries of such Charges, 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 NOI 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 NOI 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 NOI Charges.
20. **DECLARE** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Petitioner and any receiving order allowing such petition 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 and the granting of the NOI Charges, 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.
21. **DECLARE** that the NOI Charges shall be valid and enforceable as against all Property and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioner, for all purposes.

### **General**

22. **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.

23. **DECLARE** that, unless otherwise provided herein, under the BIA, 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 trustee and has filed such notice with this Court, or appears on the service list prepared by the trustee or its attorneys, save and except when an order is sought against a person not previously involved in these proceedings;
24. **DECLARE** that the Petitioner or the trustee 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.
25. **DECLARE** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
26. **DECLARE** that the trustee, 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 trustee 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 Trustee as may be deemed necessary or appropriate for that purpose.
27. **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.
28. **ORDER** the provisional execution of the Order notwithstanding any appeal.

**WITHOUT COSTS**, save in case of contestation.

**TRUE COPY**

  
STIKEMAN ELLIOTT LLP

**MONTRÉAL**, July 17, 2015

[S] STIKEMAN ELLIOTT LLP

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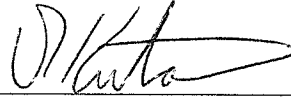
**STIKEMAN ELLIOTT LLP**  
Attorneys for the Petitioner  
INDUSTRIES COVER INC.

AFFIDAVIT

I, the undersigned, Dave Kuta, having a place of business at 9300 Ray-Lawson Blvd., in the city of Anjou, province of Québec, solemnly declare:

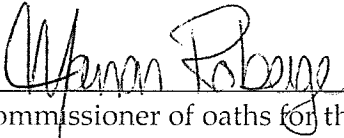
1. I am Chief Restructuring Officer of Industries Cover Inc.;
2. All the facts alleged in the *Motion for the issuance of an order approving an interim financing and priority charges* are true.

AND I HAVE SIGNED:



DAVE KUTA

SOLEMNLY DECLARED before me  
in Montreal, this 17<sup>th</sup> day of July 2015



Commissioner of oaths for the  
Province of Québec



**NOTICE OF PRESENTATION**

**TO:** the Service List

**TAKE NOTICE** that the *Motion for the Issuance of an Order Approving an Interim Financing and Priority Charges* will be presented for adjudication before one of the Honourable Judges of Superior Court, sitting in practice in and for the District of Montréal, in the Montréal Courthouse, 1 Notre-Dame Street East, on **July 20, 2015 at 2:00 pm** in **Room 16.10** of the Montreal Courthouse.

**DO GOVERN YOURSELVES ACCORDINGLY.**

**MONTREAL**, July 17, 2015

[S] *STIKEMAN ELLIOTT LLP*

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**STIKEMAN ELLIOTT LLP**  
Attorneys for the Petitioner  
INDUSTRIES COVER INC.

**TRUE COPY**

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STIKEMAN ELLIOTT LLP

SUPERIOR COURT  
(Commercial Division)

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No.: 500-11-049142-157  
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CANADA  
PROVINCE DE QUÉBEC  
DISTRICT DE QUÉBEC

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PROPOSAL OF:  
INDUSTRIES COVER INC.

Debtor

-and-

DELOITTE RESTRUCTURING INC.

Trustee

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THE REGISTRAR OF THE LAND REGISTRY OFFICE  
FOR THE REGISTRY DIVISION OF MONTRÉAL et  
als.

Impleaded Parties

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MOTION FOR THE ISSUANCE OF AN ORDER  
APPROVING AN INTERIM FINANCING AND  
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(Sections 50.6, 64.1 and 64.2 of the *Bankruptcy and  
Insolvency Act*) and  
AFFIDAVIT and NOTICE OF PRESENTATION

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COPY

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Me C. Jean Fontaine (514) 397-3337  
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