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Montréal, November 4, 2011

BY-EMAIL

The Honourable Louis Gouin, J.S.C.
Superior Court of Quebec
Montreal Courthouse
1 Notre Dame East
Montreal, Quebec H2Y 1B6

**RE: In the Matter of the Plan of Compromise or Arrangement of
Homburg Invest Inc. et al.
S.C.M.: 500-11-041305-117
Our File: 5725-003**

Mr. Justice Gouin:

We are writing in connection with Homburg Invest Inc.'s (hereinafter "HII") Motion for an Order Confirming the Re-Assignment and Assignment of Certain Agreements and the Release of HII's under these Agreements (hereinafter the "Motion") which was served upon us at 4:30pm on Wednesday, November 2, 2011, and which is presentable on Monday, November 7, 2011. As you are aware, together with Bennett Jones LLP, we represent Statoil Canada Ltd. (hereinafter "Statoil"), the party whose interests are targeted by the Motion.

At the outset, we immediately note that notwithstanding your clear request made at the closing of the case-management hearing held on October 31, 2011, HII has not segregated the issue of the Subtenants¹ and the safeguard of their rights from the other complex issues of Statoil's alleged liability (and related quantification of damages issues) towards Cadillac Fairview pursuant to the Head Lease and the Assignment. Instead, HII seeks a series of interconnected conclusions affecting Statoil's rights and obligations vis-à-vis third parties that go well beyond the issue of the Subtenants that one party had identified as requiring immediate attention.

To alleviate any concern in respect of the Subtenants, we refer you to the legislative scheme set out at Sections 10 and 11 of the *Landlord's Rights on Bankruptcy Act*, R.S.A. 2000 cL-5 of Alberta (the "LRBA"). Should HII become bankrupt, these provisions specifically set out the remedy afforded to Subtenants, entitling them to remain in the subleased premises under the terms and conditions of the Head Lease while continuing to pay rent in the amount stipulated in the Subleases. We enclose a copy of the LRBA herewith for your convenience.

In light of the nature, scope and significant financial consequence on Statoil of the conclusions sought by HII in its Motion, we respectfully submit that this Motion cannot in fairness be heard within a two juridical day delay after it has been served on Statoil. Although we have not completed our analysis of the Motion, our

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion, unless the context dictates otherwise.

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preliminary view is that it raises a number of novel and serious issues of law which namely include:

- Whether HII has the legal interest and standing to advance this Motion. The Motion principally seeks conclusions to resolve a dispute that is not yet born between Statoil, Cadillac Fairview and the Subtenants, and not HII. In the normal course, Cadillac Fairview should have properly (a) requested a lift of the stay of proceedings for the limited purpose of issuing a notice of default, (b) sent a notice of default to HII, (c) failing payment by HII, sent a notice of intent to terminate the Head Lease to Statoil and (d) failing curing by Statoil, institute legal proceedings before the Court of Queen's Bench of Alberta against Statoil.
- Whether this CCAA Court has the jurisdiction to entertain the Motion and decide on (and, as requested by Petitioner, modify and re-write) the contractual rights and obligations of the non-debtor parties as between themselves under the Head Lease, the Assignment and the NDAs. Our respectful position is that it does not.
- Whether this CCAA Court may render declaratory relief on the basis of non-existent or hypothetical facts.
- Whether HII is entitled to withdraw the Head Lease Disclaimer which was approved by the Monitor, in the present circumstances; and
- If HII may withdraw the Head Lease Disclaimer in the present circumstances, whether the delay for Statoil to seek to annul the Assignment Disclaimer may be extended so as to allow HII to file its own application in this respect.

Subject and without prejudice to the foregoing, to properly adjudicate upon the Motion the court will also require the benefit of an evidentiary hearing and detailed argumentation in law so as to determine on the merits, *inter alia*:

- Whether HII may disclaim the Assignment. This requires an evidentiary hearing to determine whether (a) Statoil was induced into assigning the Head Lease to HII and moving into the Jamieson Premises, (b) the hardship to be suffered by Statoil further to the disclaiming of the Assignment, (c) the Assignment, the Jamieson Sub-Lease between HII and Statoil and the Penn West Lease between HII and Penn West should be considered as a "whole" from a financial perspective by the Court, and (d) whether the Assignment Disclaimer will enhance the viability of a restructuring where no viable restructuring can be had in respect of HII;
- Whether under Alberta Law, the Head Lease, the Assignment, and the NDAs should be interpreted and enforced as per HII's submissions so as to give way to the relief sought *via* the Motion. This requires that Alberta law be proved in respect of various issues and topics, including the rules of law applicable to the contracts at issue. This may also require an evidentiary hearing as to the intent of the parties in respect of the relevant contractual provisions and namely in respect of the contractual mechanism and requisite notices whereby the Head Lease may be re-assigned to Statoil.
- Whether the payment made by Statoil on or about September 27, 2011, was, in fact, made with a view to curing the default of HII or by error and what are

the legal consequences in connection with a finding of fact that the payment was made in error under Alberta Law.

- Whether Cadillac Fairview has to seek the lift of the stay of proceedings to properly send a default notice to HII and trigger the contractual mechanism whereby Statoil could even opt to have the Head Lease re-assigned to it.

Given the amount in dispute which is quantified by HII as \$20,221,900.17 (and may be more according to Statoil's preliminary analysis) at paragraph of 29 of its Motion, Statoil must have a meaningful opportunity to contest the Motion and advance its defence. This requires us to, among other things, proceed to the examination on discovery of a representative of HII, Cadillac Fairview and each of the Subtenants on one or more of the following issues: (a) Statoil was induced into assigning the Head Lease to HII and moving into the Jamieson Premises, (b) the Assignment, the Jamieson Sub-Lease between HII and Statoil and the Penn West Lease between HII and Penn West should be considered as a "whole" from a financial perspective by the Court, (c) the Assignment Disclaimer will enhance the viability of a restructuring, (d) whether there is any viable restructuring that can be had in respect of HII and (e) the interpretation and application of the Head Lease, the Assignment and the NDAs.

In closing, we note that there is no urgency (no allegation of urgency is set out in the Motion) to justify short service or that the Motion be heard on its merits on an urgent basis. We are fully prepared to act as expeditiously as possible to have the Motion heard within a reasonable delay, but we submit that the rules of procedural fairness require that this should not be done under undue pressure and to the detriment of our client's fundamental right to advance a full and complete defense.

We respectfully suggest the parties be granted one week to agree upon a litigation agenda which will take into consideration the foregoing and other relevant issues.

Thank you.

Very truly yours,

LANGLOIS KRONSTRÖM DESJARDINS, L.L.P.



Gerry Apostolatos

GNA/hd

Encl.

c.c. Counsel for Debtor/Petitioner, Monitor, and Mises-en-cause – By email
Mr. Chris Simard and Ms. Allison J. Gray (Bennett Jones LLP) – By email
Mtres Dimitri Maniatis and Stefan Chripounoff (LKD) – By email

N° : 500-11-041305-117

Superior Court (Commercial Division)

District of Montreal

**IN THE MATTER OF THE PLAN OF
COMPROMISE OR ARRANGEMENT OF:
HOMBURG INVEST INC.,**

Debtor / Petitioner

-and-

**THE ENTITIES LISTED IN ANNEX I AS
DEBTORS AND MISES-EN-CAUSE**

Debtors

-and-

STATOIL CANADA LTD. et als.,

Mises-en-cause

-and-

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

Monitor

EXHIBIT D-2

Letter dated November 4, 2011

ORIGINAL

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