

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

NO.: 500-11-041305-117

SUPERIOR COURT  
(Commercial Division)

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

HOMBURG INVEST INC.  
HOMBURG SHARECO INC.  
CHURCHILL ESTATES DEVELOPMENT  
LTD.  
IVERNESS ESTATES DEVELOPMENT  
LTD.  
CP DEVELOPMENT LTD.

Debtors

And

HOMCO REALTY FUND (52) LIMITED  
PARTNERSHIP  
HOMCO REALTY FUND (88) LIMITED  
PARTNERSHIP  
HOMCO REALTY FUND (89) LIMITED  
PARTNERSHIP  
HOMCO REALTY FUND (92) LIMITED  
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PARTNERSHIP  
HOMCO REALTY FUND (142) LIMITED  
PARTNERSHIP  
HOMCO REALTY FUND (199) LIMITED  
PARTNERSHIP

Mis en cause

And

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

Monitor

And

**STICHTING HOMBURG CAPITAL  
SECURITIES**

Claimant/PETITIONER

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**MOTION IN APPEAL OF A DISALLOWANCE OF A PROOF OF CLAIM, PURSUANT  
TO THE "CLAIMS PROCESS ORDER" ISSUED ON APRIL 30, 2012**

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**TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT SITTING  
IN COMMERCIAL DIVISION IN AND FOR THE DISTRICT OF MONTREAL,  
CLAIMANT-PETITIONER STICHTING HOMBURG CAPITAL SECURITIES  
("STICHTING") RESPECTFULLY ALLEGES THE FOLLOWING:**

**I. INTRODUCTION**

1. As appears from the Court record herein, a Claims Process was authorized by the Honourable Mr. Justice Louis Gouin, J.C.S., on April 30, 2012 (the "CPO") with respect to claims to be filed in the present instance;
2. The present Motion in Appeal is filed pursuant to paragraph 29 of the CPO, whereby Stichting seeks a determination of its Proven Claim as well as a ruling on the alleged subordinate nature of its claim, as hereinafter defined;

**II. FACTS**

3. By document titled "Proof of Claim of Stichting Homburg Capital Securities against Homburg Invest Inc. (Homburg Capital Securities)" (the "**Proof of Claim**") dated July 6, 2012, Stichting filed a claim as unsecured creditor for a total of €29,535,152.92 as at June 30, 2012, detailed as follows:

- a. capital balance: €26,785,000
- b. accrued interest: €2,671,766.40
- c. expenses: €78,386.51

the whole as appears from a copy of the Proof of Claim communicated herewith as Petitioner's **Exhibit R-1**;

4. This claim was converted to Canadian Dollars at the Bank of Canada noon spot rate of exchange on September 9, 2011, and represents the sum of CDN\$40,244,599.36 (the “**Claim**”);
5. On February 4, 2013, the Monitor communicated to Stichting a “Notice of Revision or Disallowance” of the Proof of Claim, a copy of such Notice being communicated herewith as Petitioner’s **Exhibit R-2** (the “**Notice of Disallowance**”);
6. By its Notice of Disallowance, the Monitor advised Stichting that it had reviewed the Proof of Claim and had decided to disallow the Claim in part as follows:
  - a. The Monitor allowed the unsecured claim to the extent of CDN\$37,171,690.02;
  - b. The Monitor disallowed the unsecured claim to the extent of CDN\$3,072,909.34;
7. The reasons invoked by the Monitor to justify such disallowance are as follows:
  - a. The portion of the Claim relating to accrued interest is disallowed because it would include a portion of interest accrued after September 9, 2011 in the amount of CDN\$2,966,099.88 (€2,176,794.28) out of the total accrued interest claimed, of €2,671,766.40, which may not, according to the Monitor, form part of a Claim as per the CPO and the CCAA;
  - b. The portion of the Claim pertaining to Expenses in the amount of €78,386.51 (CND\$106,809.46) is disallowed altogether for the reasons set forth in the Notice of Disallowance as being contrary to the Funding Order dated February 15, 2012 in the present instance;
8. The Monitor further qualified Petitioner’s Claim as subordinate, a qualification Petitioner contests, as is hereinafter set forth;

### **III. GROUND OF APPEAL**

9. Stichting respectfully submits that the Monitor’s grounds of partial disallowance of its Claim are unfounded in fact and in law in that:
  - a. Its Claim for accrued interest was properly calculated and submitted and does not contain a portion that would not be admissible as a claim under the CPO or the CCAA or if so, the inadmissible portion is far less than what the Monitor has calculated;
  - b. The grounds set forth by the Monitor to justify its disallowance of Stichting’s Claim for Expenses are unfounded and not in accordance with the CPO and the CCAA, nor is such disallowance in accordance with the Funding Order dated February 15, 2012;

10. Moreover, the Monitor states, at page 3 of the Notice of Disallowance, that:

*“Note that given the subordinated status of this Claim, none of Stichting Homburg Capital Securities or the holders of the Homburg Capital Securities A shall be entitled to vote or attend any creditors’ meeting, nor to receive any distribution under HII’s plan of arrangement.”*

11. Essentially, the Monitor is taking the position that Petitioner’s Claim is an “equity claim” and, as such, is subordinated and thus, of no value regardless of the amount for which the Monitor has allowed the Claim;

12. There has been no final Court determination on the issue whether or not Petitioner’s Claim is an “equity claim” and, if so, whether it is subordinated in whole or in part for this reason or for any other reason;

13. Petitioner denies and contests the Monitor’s position to the effect that Petitioner’s Claim is subordinate, as it is not an “equity claim” in the circumstances of the present instance and there has been no final judgment on the issue of whether such claim is subordinate for this or any other reason;

14. To the extent that the Notice of Disallowance contains or is held to contain a decision by the Monitor as to the subordinate nature of Petitioner’s Claim, such a decision is reviewable and appealable, as being unfounded in fact and in law, by way of the present Motion in Appeal;

15. Petitioner also reserves its right to seek by separate motion and to the extent necessary, a determination from this Honourable Court as to the subordinate nature of its Claim and to appeal the Monitor’s decision to such effect;

16. Stichting files the present Motion in Appeal given the short delays stipulated in the CPO, in order to protect and preserve its rights and under reserve of all of its rights and recourses, as set forth in its Proof of Claim, to file any further Claim as described in footnote 1, page 3 of its Proof of Claim, and/or to amend the present Motion in order to more fully describe its grounds of appeal or to raise such other or further grounds of appeal as may avail;

17. The present Motion is well-founded in fact and in law;

**WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO :**

**GRANT** and **MAINTAIN** the present Motion;

**SHORTEN**, if necessary, all delays of service and presentation and **VALIDATE** the service and presentation thereof for all purposes according to law;

**TAKE ACTE** of the Monitor's allowance of Petitioner's Claim as unsecured creditor to the extent of CDN\$37,171,690.02;

**REVERSE** and **ANNUL** the Monitor's Notice of Disallowance of Petitioner's Claim as it relates to:

- a. The Claim for Accrued Interest in the amount of CDN\$2,966,099.88; and
- b. The Claim for Expenses, in the amount of CDN\$ 106,809.46;

**DECLARE** that Petitioner has a valid and Proven Claim for these amounts of CDN\$2,966,099.88 and \$106,809.46 or such parts thereof as this Honourable Court may determine;

**ORDER** the Monitor and the Debtor Company to recognize, list and admit such Claims and amounts as unsecured Claims in the name of and for the benefit of Petitioner, in addition to the amount of CDN\$37,171,690.02, already allowed, and under reserve of Petitioner's rights to file a further proof of claim, or amend its Proof of Claim, in order to claim any further amounts;

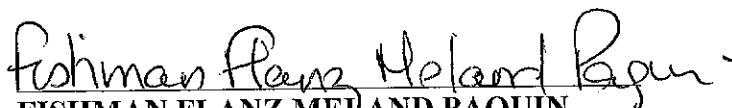
**REVERSE** the decision of the Monitor as to the subordinate nature of Petitioner's Claim and **DECLARE** such Claim to be a non-subordinate, unsecured Claim for the full amount claimed by Petitioner, with all rights and benefits inuring to Petitioner under the terms of the Debtor's Plan of arrangement and compromise, or at law, as may apply in such event;

**RESERVE** unto Petitioner its right to seek by separate motion and to the extent necessary, a determination from this Honourable Court as to the subordinate nature of its Claim and to appeal the Monitor's decision to such effect;

**RESERVE** unto Petitioner its rights to amend the present Motion in order to more fully describe its grounds of appeal and/or to amend the present Motion in order to raise such other or further grounds of appeal as may avail;

**The whole with costs.**

MONTREAL, February 11, 2013

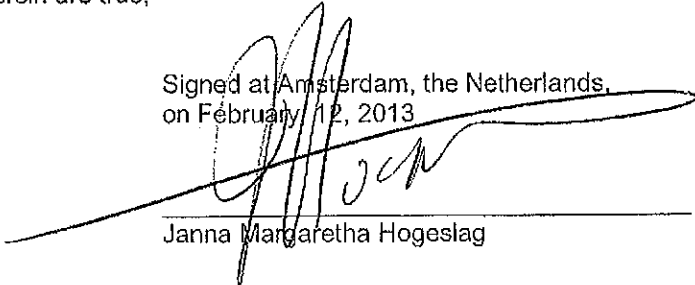
  
**FISHMAN FLANZ MELAND PAQUIN**  
s.e.n.c.r.l./llp  
Attorneys for Claimant/PETITIONER

**AFFIDAVIT**

I, the undersigned, Janna Margaretha Hogeslag, Director, residing and domiciled for the present purposes at Van Leijenberghlaan 197-C (1082 GG) Amsterdam, the Netherlands, solemnly affirm the following:

1. I am a Director of Petitioner, Stichting Homburg Capital Securities and one of the signatories of the Proof of Claim filed by it in the present instance;
2. I have read the attached **Motion in Appeal of a Disallowance of a Proof of Claim** and all the facts alleged therein are true;

Signed at Amsterdam, the Netherlands,  
on February 12, 2013

  
\_\_\_\_\_  
Janna Margaretha Hogeslag

Seen by me, Marloes Corine Koster, notary candidate, acting as substitute of Leonard Alexander Galman, civil-law notary in Amsterdam and duly on leave, for legalization of the signature written on this document of Mrs **Janna Margaretha Hogeslag**, born in Olst, The Netherlands, on March 4, 1966, holder of passport number NRK491D12, Issued in Haarlem, The Netherlands, on July 8, 2011, and sworn to before me.  
Amsterdam, February 12, 2013.





**NOTICE OF PRESENTATION**

TO:

Me Sandra Abitan  
Me Martin Desrosiers  
**OSLER, HOSKIN & HARCOURT LLP**  
1000 de la Gauchetière Street West  
Suite 2100  
Montreal, Quebec H3B 4W5  
Attorneys for HII Group

Mr. Pierre Laporte  
Mr. Benoit Clouâtre  
**SAMSON BÉLAIR/DELOITTE &  
TOUCHE INC., in its capacity as Court-  
appointed Monitor of Homburg Invest Inc.  
and related entities**  
1 Place Ville Marie, Suite 3000  
Montreal, Quebec H3B 4T9

Me Mason Poplaw  
Me Jocelyn Perreault  
**MCCARTHY TÉTRAULT LLP**  
1000 de la Gauchetière Street West  
Suite 2500  
Montreal, Quebec H3B 0A2  
Attorneys for Monitor

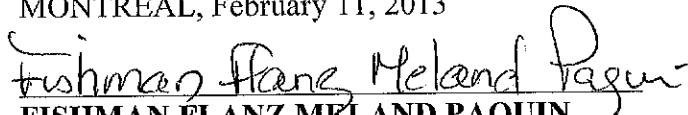
Me Guy P. Martel  
**STIKEMAN ELLIOTT S.E.N.C.R.L., s.r.l.  
/ LLP**  
1155 René-Lévesque West, 40<sup>th</sup> floor  
Montreal, Quebec H3B 3V2

**Superintendent of Bankruptcy**  
5 Place Ville Marie, 8th floor  
Montreal, Quebec H3B 2G2

**TAKE NOTICE** that the present **Motion in Appeal of a Disallowance of a Proof of Claim, Pursuant to the "Claims Process Order" Issued on April 30, 2012** shall be presented for adjudication before the Honourable Mr. Justice Louis J. Gouin, J.C.S., coordinating Judge, sitting in Commercial Division in and for the District of Montréal, at a date, time and room at the Montreal Courthouse, 1 Notre-Dame Street East, to be determined by Mr. Justice Gouin.

Do govern yourselves accordingly.

MONTREAL, February 11, 2013

  
**FISHMAN FLANZ MELAND PAQUIN**  
**s.e.n.c.r.l./llp**  
Attorneys for Claimant/PETITIONER

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

NO.: 500-11-041305-117

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IN THE MATTER OF THE PLAN OF  
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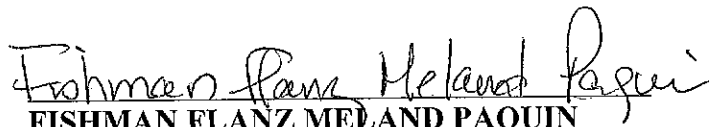
**NOTICE OF DISCLOSURE**

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**EXHIBIT R-1:** Copy of the Proof of Claim dated July 6, 2012;

**EXHIBIT R-2:** Notice of Revision or Disallowance dated February 4, 2013;

MONTREAL, February 11, 2013

  
**FISHMAN FLANZ MELAND PAQUIN**  
**s.e.n.c.r.l./llp**  
Attorneys for Claimant/PETITIONER

13 FEV. 2013

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. ET ALS.

Debtors

3-157

-and-  
HOMCO REALTY FUND (S2) LIMITED PARTNERSHIP ET  
ALS.

Mis en cause

-and-  
SAMSON BELAIR/DELOITTE & TOUCHE INC.

Monitor

-and-

STICHTING HOMBURG CAPITAL SECURITIES

Claimant/PETITIONER

CODE: BM-0309

MOTION IN APPEAL OF A DISALLOWANCE OF A  
PROOF OF CLAIM, PURSUANT TO THE "CLAIMS  
PROCESS ORDER" ISSUED ON APRIL 30, 2012

ORIGINAL

Me Ronald M. Auclair

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