

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
COURT. No.: 500-11-041305-117

SUPERIOR COURT
Commercial Division

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

HOMBURG INVEST INC.

– and –

HOMBURG SHARECO INC.

– and –

CHURCHILL ESTATES DEVELOPMENT LTD.

– and –

CP DEVELOPMENT LTD.

– and –

NORTH CALGARY LAND LTD.

– and –

HOMBURG MANAGEMENT (CANADA) INC.

Debtors/Petitioners

– and –

THE ENTITIES LISTED IN APPENDIX A

Mises-en-cause

– and –

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Monitor

**THIRTIETH REPORT TO THE COURT
SUBMITTED BY SAMSON BÉLAIR/DELOITTE & TOUCHE INC.
IN ITS CAPACITY AS MONITOR**
(Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended)

INTRODUCTION

1. On September 9, 2011, Homburg Invest Inc. (“**HII**”), Homburg Shareco Inc. (“**Shareco**”), Churchill Estates Development Ltd. (“**Churchill**”), Inverness Estates Development Ltd. (“**Inverness**”) and CP Development Ltd. (“**CP**”) (and, later, North Calgary Land Ltd. (“**NCLL**”) and Homburg Management (Canada) Inc. (“**HMCI**”), following amendments to the Initial Order (collectively, the “**Debtors**”) filed and obtained protection from their respective creditors under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) pursuant to an Order rendered by the Superior Court of Quebec (as amended and extended from time to time, the “**Initial Order**”). On September 30, 2013, the Court discontinued the Stay in respect of Inverness, which has since filed an assignment in bankruptcy.
2. Pursuant to the Initial Order, the Stay extends to the following limited partnerships which form an integral part of the business of the Debtors: Homco Realty Fund (52) Limited Partnership (“**Homco 52**”), Homco Realty Fund (61) Limited Partnership (“**Homco 61**”), Homco Realty Fund (83) Limited Partnership (“**Homco 83**”) (following an amendment to the Initial Order on April 26, 2013), Homco Realty Fund (88) Limited Partnership (“**Homco 88**”), Homco Realty Fund (89) Limited Partnership (“**Homco 89**”), Homco Realty Fund (92) Limited Partnership (“**Homco 92**”), Homco Realty Fund (94) Limited Partnership (“**Homco 94**”) (following an amendment to the Initial Order on October 7, 2011), Homco Realty Fund (96) Limited Partnership (“**Homco 96**”) (following an amendment to the Initial Order on May 31, 2012), Homco Realty Fund (105) Limited Partnership (“**Homco 105**”), Homco Realty Fund (121) Limited Partnership (“**Homco 121**”), Homco Realty Fund (122) Limited Partnership (“**Homco 122**”), Homco Realty Fund (142) Limited Partnership (“**Homco 142**”), Homco Realty Fund (190) Limited Partnership (“**Homco 190**”) and Homco Realty Fund (191) Limited Partnership (“**Homco 191**”) (following an amendment to the Initial Order on December 14, 2012 in the case of both Homco 190 and Homco 191), Homco Realty Fund (199) Limited Partnership (“**Homco 199**”) and Castello Development Ltd. (“**Castello**”) (following an amendment to the Initial Order on February 6, 2013 in the case of both Homco 61 and Castello) (collectively, the “**Applicant Partnerships**”) and, together with the Debtors, excluding Homco 122 and Inverness, the “**HII Parties**”). On July 11, 2013 the Court discontinued the Stay in respect of Homco 122, which has since been dissolved.
3. Samson Bélair/Deloitte & Touche Inc. was appointed as monitor (the “**Monitor**”) under the CCAA.
4. Pursuant to the Initial Order, an initial stay of proceedings (the “**Stay**”) was granted until October 7, 2011 in favor of the HII Parties, which Stay has been extended from time to time by order of the Court. On December 2, 2013, the Court last extended the Stay up until January 17, 2014 (the “**Stay Period**”).
5. Since the Initial Order, the Monitor has filed reports with the Court and served same to the Service List from time to time. The Monitor filed twenty-nine such Monitor’s reports (as well as some supplemental reports) prior to this thirtieth Monitor’s report (the “**Thirtieth Report**”). Copies of all of the Monitor’s reports are available on the Monitor’s website at www.deloitte.com/ca/homburg-invest. The Monitor has also established a toll free number that is referenced on the Monitor’s website so that parties may contact the Monitor if they have questions with respect to the HII Parties’ restructuring under the CCAA.

PURPOSE OF THE THIRTIETH REPORT

6. This Thirtieth Report is filed in the context of the Debtor’s Motion for Access to Restricted Cash dated December 16, 2013 (the “**Motion for Access to Restricted Cash**”) and is intended to provide an update on the HHUS cash situation and HII’s request for access to additional Restricted Cash.

7. This Thirtieth Report is structured as follows:
 - I- Update on the HHUS cash situation since the Twenty-Ninth Report;
 - II- Request for access to Restricted Cash; and
 - III- Conclusions and Recommendations.

TERMS OF REFERENCE

8. In preparing this Thirtieth Report, the Monitor has relied upon unaudited financial information, the HII Parties' records, the amended motion for an Initial Order dated September 9, 2011, and all subsequent motions filed with the Court, including the Motion for Access to Restricted Cash (collectively, the "**Debtors' Motions**") and exhibits in support of same, its discussions with management of the HII Parties ("**Management**") and the HII Parties' and the Monitor's legal advisors. While the Monitor has analyzed the information, some in draft form, submitted in the limited time available, the Monitor has not performed an audit or otherwise verified such information. Forward looking financial information included in this Thirtieth Report is based on assumptions of Management regarding future events, and actual results achieved will vary from this information and such variations may be material.
9. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars. Capitalized terms not otherwise defined in this Thirtieth Report are as defined in the previous reports of the Monitor and the Debtors' Motions.

I. UPDATE ON THE HHUS CASH SITUATION SINCE THE TWENTY-NINTH REPORT

10. On December 2, 2013, the Court extended the Stay Period until January 17, 2014 (the "**Sixteenth Extension**"). As appears from the Twenty-Ninth Report of the Monitor (the "**Twenty-Ninth Report**") filed in support of the Sixteenth Extension, in the Court record, the HII Group had expected that it would finance its cash flow needs for the extension period through, *inter alia*, the transfer of available funds from Homburg Holdings (U.S.) Inc. ("**HHUS**"), an indirect non-filing subsidiary of HII, which, as reported in previous Monitor's Reports, holds non-core properties that are being diverted for the ultimate benefit of HII's creditors.
11. Indeed, as appears from the Twenty-Ninth Report, HII expected a significant cash inflow from HHUS, namely \$4.1M, during the week of December 10th, 2013.
12. However, as further detailed in the Motion for Access to Restricted Cash, the HII Group, following the issuance of the Sixteenth Extension, discovered that a significant portion of the cash expected to be received from HHUS, namely approximately US\$2.6M (the "**Diverted Funds**"), was not available as it had been diverted by the property manager for HHUS, namely Homburg Realty Services (U.S.) Inc. ("**HRS**"), concurrently to the period of the filing of the Twenty-Ninth Report and the granting of the Sixteenth Extension.
13. HRS is a wholly owned subsidiary of Homburg International Limited ("**HIL**"), an entity ultimately controlled, directly or indirectly, by Richard Homburg, and related to Homburg Canada Inc. (now known as Citadel Holdings Inc.) ("**HCI**").
14. According to HRS, the Diverted Funds are allegedly owing to it by HHUS for commissions on the disposition by HHUS of nine (9) shopping centre properties held in a joint venture with Cedar Shopping Centres, Inc. (the "**Cedar Properties**"), which, as previously reported in past Monitor's Report, were divested by HHUS in the course of the HII Group's restructuring. The allegation that

any commission be owed to HRS in connection with the sale of the Cedar Properties is considered without any merits by HII, namely for the following reasons:

- i. Both prior to and following the acquisition by HHUS of its interest, in December 2007, in the joint venture holding the Cedar Properties, the Cedar Properties were managed exclusively by HHUS' joint venture partner, Cedar Shopping Centers, Inc. The Cedar Properties are excluded from the Amended and Restated Master Property and Asset Management Agreement dated May 28, 2009 (the "MPAMA") entered into between HII and its affiliates (including HHUS) and HCI and its affiliated (including HRS);
 - ii. At no time did HRS provide any property or asset management services or receive any compensation for services rendered in respect of the Cedar Properties nor was involved in the process or negotiations that led to the sale thereof;
 - iii. Any and all claims in connection with the termination of the MPAMA were settled and released pursuant to the Purchase Agreement entered into on November 17, 2011 between HII, HCI and their respective affiliates, including HHUS and HRS which was approved by the Court on January 12, 2012 (the "**Purchase Agreement**"); and
 - iv. HRS only first claimed the payment of a commission relating to the sale of the Cedar Properties on or about November 19, 2013, namely more than two years after the sale process was completed and more than a year after the transaction was completed.
15. It is the HII Group's position that the Diverted Funds were taken without authorization and without colour of right, HRS seeking to do justice unto itself. In its analysis of the transactions to the HHUS accounts, the HII Group further discovered that other sums, in the range of approximated US\$300K, had been paid to HRS by HHUS without the authorization of HII or HHUS.
 16. Immediately upon discovering the transfer of the Diverted Funds, HHUS and HII demanded that same be immediately returned and removed any and all authority or control from Mr. Neil Chapman, HRS' principal, over any HHUS assets. Counsel was retained, first in Colorado and in Nova Scotia and then in Barbados, in order to take all appropriate and urgent legal proceedings in order to recover the Diverted Funds, as further detailed in the Motion for Access to Restricted Cash.
 17. The Monitor consented to these actions which were taken in an urgent manner by HII and HHUS with a view to protect the assets of the HII Group and seek for the recovery of amounts which were planned to be used to fund HII's restructuring expenses during the Sixteenth Extension. The recovery of these amounts would ultimately be for the benefit of HII's creditors.
 18. The Monitor also supports the HII Group in its intention to bring proceedings before the CCAA Court in regard of the situation described above as well as in connection with the failure of, *inter alia*, the HCI Group entities to respect their undertakings contained in the Purchase Agreement.

II. REQUEST FOR ACCESS TO RESTRICTED CASH

Restricted Cash

19. As described in the section above it is highly unlikely that the previously budgeted cash inflow from HHUS be fully transferred to HII in the near future. Due to this lack of funds, HII is now requesting \$2,585K to be released from Restricted Cash in order for it to meet its financial obligations during the Sixteenth Extension Period.

20. For reference purposes, the table presented below provides a breakdown of the Restricted Cash requests since the start of the proceedings. The restricted cash balance as at December 9, 2013 has increased from the time of the Twenty-Ninth Report as a result of the interest on the account balance.

Summary of Restricted Cash Requests (C\$000)			
Monitor's Report		Date	Amount Requested
Sixth Monitor's Report	Proceeds from Cominar sale	31-Jan-12	145,439
Transfer to Osler Trust Account	Funds sent to Osler's trust account (note 1)	1-Feb-12	(21,450)
RBC Securities	Commission	9-Feb-12	(915)
Net funds available from Cominar sale proceeds			A
			123,074
Monitor's Seventh Report	Request from Restricted Cash	17-Feb-12	(10,000)
Monitor's Ninth Report	Request from Restricted Cash	10-Apr-12	(6,000)
Monitor's Tenth Report	Request from Restricted Cash	29-May-12	(11,000)
Monitor's Thirteenth Report	Request from Restricted Cash	17-Jul-12	(5,200)
Monitor's Fifteenth Report	Request from Restricted Cash	11-Sep-12	(3,000)
Monitor's Sixteenth Report	Request from Restricted Cash	4-Oct-12	(8,100)
Monitor's Twenty-Sixth Report	Request from Restricted Cash	26-Aug-13	(4,950)
Monitor's Twenty-Seventh Report	Request from Restricted Cash	30-Sep-13	(6,800)
Total requests from Restricted Cash			B
			(55,050)
Interest on Restricted Cash	Cumulative interest received		C
			1,723
Ending balance of Restricted Cash as at December 9, 2013			=A+B+C
			69,747

Note 1: The majority of these funds have been released in accordance with the Cominar Global Settlement. An amount of approximately \$2.5M remains held in trust with Osler and, as provided by the HII/Shareco Plan, the "Cominar Claim" is an "Unaffected Claim" that will be paid out of said trust funds if it materializes.

Analysis of HII's cash funding requirements and results

21. As indicated in paragraph 75 of the Twenty-Ninth Report, for the period ending January 17, 2014, it was forecasted that HII would have a cash surplus of approximately \$198K. Please refer to Appendix B for HII's forecasted cash inflows and outflows previously presented in the Twenty-Ninth Report.
22. Out of the \$4,085K cash inflow previously budgeted to be received from HHUS during the week of December 10, 2013, HII is now expecting to receive only \$1,500K. As such, the HII Parties are faced with a shortfall in cash of \$2,585K. In order to cover this shortfall, the HII Parties are requesting this Court to grant access to an amount of Restricted Cash equal to the shortfall.

Restricted cash request (\$)	
Expected amount from HHUS	4,085,000
Revised amount to be received from HHUS	1,500,000
	<u>1,500,000</u>
Request from Restricted Funds	<u>2,585,000</u>

23. The Monitor is of the view that the HII Parties should be allowed to use an incremental amount of \$2,585,000 from the Restricted Cash in order to accomplish the various steps that are required to advance the restructuring of the HII Parties until the expiry of the Sixteenth Extension Period.

III. CONCLUSIONS AND RECOMMENDATIONS

24. It is the Monitor's view that the HII Parties have acted in good faith and with due diligence in accordance with the Initial Order.
25. It is the Monitor's opinion that, for the reasons further elaborated in this Thirtieth Report, the use of the Restricted Cash for an incremental amount of \$2,585,000 should be granted to the HII Parties, in order to allow them to implement certain essential restructuring reorganization steps and to continue advancing towards the implementation of the Plans; and

The Monitor respectfully submits this Thirtieth Report to the Court.

DATED AT MONTREAL, this 17th day of December, 2013.



Pierre Laporte, CPA, CA, CIRP
President

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.
In its capacity as Court-Appointed Monitor

APPENDICES

APPENDIX A

THE ENTITIES Mis-en-Cause

HOMCO REALTY FUND (52) LIMITED PARTNERSHIP
HOMCO REALTY FUND (61) LIMITED PARTNERSHIP
HOMCO REALTY FUND (83) 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 (142) LIMITED PARTNERSHIP
HOMCO REALTY FUND (190) LIMITED PARTNERSHIP
HOMCO REALTY FUND (191) LIMITED PARTNERSHIP
HOMCO REALTY FUND (199) LIMITED PARTNERSHIP
CASTELLO DEVELOPMENT LTD.

APPENDIX B

III Extended 7-week cash flow forecast (\$C) presented in the Twenty-Ninth Report to the Court

Updated as of November 19, 2013

Homburg Invest Inc.

Extended cash flow statement from November 19, 2013 to January 17, 2014

	27th report AMENDED			29th report							
Number of weeks:	115	116		117	118	119	120	121	122	123	
Beginning period:	19-Nov-13	26-Nov-13	TOTAL	3-Dec-13	10-Dec-13	17-Dec-13	24-Dec-13	31-Dec-13	7-Jan-14	14-Jan-14	TOTAL
Ending period:	25-Nov-13	2-Dec-13	2-Week Period	9-Dec-13	16-Dec-13	23-Dec-13	30-Dec-13	6-Jan-14	13-Jan-14	17-Jan-14	7-Week Period
	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
Cash inflows											
GST/HST/VAT received	-	-	-	-	-	-	-	-	-	-	-
Other receipts	-	-	-	-	4,085,000	-	60,000	-	-	-	4,145,000
Total cash inflows	-	-	-	-	4,085,000	-	60,000	-	-	-	4,145,000
Cash outflows											
Payroll	85,000	-	85,000	85,000	-	85,000	-	85,000	-	85,000	340,000
Rent expense	-	25,000	25,000	-	-	-	-	25,000	-	-	25,000
Restructuring related professional fees	2,478,800	750,000	3,228,800	625,000	625,000	625,000	450,000	450,000	450,000	450,000	3,675,000
Insurance	-	-	-	-	-	-	-	-	-	-	-
Office & administrative	15,000	15,000	30,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	105,000
Director fees	-	-	-	-	-	-	-	-	-	100,000	100,000
KERP	-	-	-	-	-	-	-	-	-	-	-
Hotel insurance	-	-	-	-	-	-	-	-	-	-	-
Other expenditures	-	-	-	-	432,180	55,000	-	-	-	-	487,180
Total cash outflows	2,578,800	790,000	3,368,800	725,000	1,072,180	780,000	465,000	575,000	465,000	650,000	4,732,180
Opening balance	4,239,474	1,590,435	4,239,474	785,158	60,158	3,072,978	2,292,978	1,887,978	1,312,978	847,978	785,158
Payments in transit	(70,239)	-	(70,239)	-	-	-	-	-	-	-	-
Variation in cash balance (Petitioners)	(2,578,800)	(790,000)	(3,368,800)	(725,000)	3,012,820	(780,000)	(405,000)	(575,000)	(465,000)	(650,000)	(587,180)
Variation in cash balance (Non-Petitioners)	-	(15,277)	(15,277)	-	-	-	-	-	-	-	-
Exchange rate	-	-	-	-	-	-	-	-	-	-	-
Adjusted ending cash balance	1,590,435	785,158	785,158	60,158	3,072,978	2,292,978	1,887,978	1,312,978	847,978	197,978	197,978