

Estate No.51-1793121  
Court No. 19522

**IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK**  
**IN BANKRUPTCY AND INSOLVENCY**  
**JUDICIAL DISTRICT OF MONCTON**

**IN THE MATTER OF** the Proposal of  
**JEANIE MARSHAL FOODS CANADA INC.**,  
under the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3

**JEANIE MARSHAL FOODS CANADA INC.**

Applicant

**BRIEF OF THE TRUSTEE**

**MOTION TO APPROVE THE AMENDED PROPOSAL  
OF JEANIE MARSHAL FOODS CANADA INC.**

**(Sections 58 and 59 of the *Bankruptcy and Insolvency Act*, C. B-3, as amended)**

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Solicitors for the Applicant, Deloitte Restructuring Inc., as  
Proposal Trustee of Jeanie Marshal Foods Canada Inc

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## **INTRODUCTION**

1. We are the solicitors for the Applicant, Deloitte Restructuring Inc. ("Deloitte"), the Trustee under the Amended Proposal (the "Amended Proposal") of Jeanie Marshal Foods Canada Inc. ("JMFCI").
2. Deloitte applies to this Honourable Court in its capacity as Trustee under JMFCI's Amended Proposal, however because Deloitte served as Chairman of the meeting of JMFCI's creditors to consider the Amended Proposal, Deloitte shall hereinafter be referred to from time to time as the "Trustee" and from time to time as the "Chairman", depending on the context, though both designations refer to the Applicant, Deloitte.
3. On Wednesday February 19, 2014 at 9:30 a.m., the Trustee shall make an Application by way of paper review pursuant to Sections 58 through 60 of the *Bankruptcy and Insolvency Act* ("BIA"). The Trustee is seeking an Order approving the Amended Proposal of JMFCI, and granting such further or other relief as counsel may advise or this Honourable Court deems fit to grant.
4. The Affidavit of James Foran, CA, CIRP, sworn on January 29, 2014, together with the Trustee's Report which is to be filed in advance of the hearing date as addressed below, shall be relied upon in support of the Trustee's Application for approval of the Amended Proposal.
5. Please accept the following as the written submissions of the Trustee.

## **FACTS**

6. The Affidavit of Mr. Foran filed in support of this Motion, together with the Trustee's Report provides the following background information in respect of this matter:

### **The Amended Proposal**

7. On September 26, 2013, JMFCI filed a Notice of Intention to Make a Proposal ("Notice") pursuant to Section 50.4(1) of the BIA with the Official Receiver. Deloitte consented to act as Trustee under the Notice.
8. On December 10, 2013, JMFCI filed a Proposal with the Trustee, which was also filed with the Official Receiver and presented to the creditors of JMFCI on that same date.
9. In conjunction with the presentation of the Proposal on December 10, 2013, the Trustee provided notice to all creditors of JMFCI that a meeting was to be held at the Moncton office of Ellsworth Johnson Phillips, on January 24, 2014 at 10:00 a.m. to enable creditors to consider the terms of and vote on the Proposal of JMFCI. The materials sent by the Trustee to JMFCI's creditors included: Form 92 Notice of Meeting of Creditors; Trustee's Report; Condensed Statement of JMFCI's Assets and Liabilities; List of Creditors; Voting Letters; Proof of Claim/Proxy Form; and a copy of JMFCI's Proposal.
10. In advance of the meeting, and as a result of input from JMFCI and its creditors, the Trustee assisted JMFCI in effecting amendments to various provisions of the Proposal on January 13, 2014, and the aforementioned Amended Proposal was provided to JMFCI's creditors by way of an email sent on even date. The Trustee determined that the amendments effected were beneficial to the creditors of JMFCI, and stated this in its emailed correspondence to creditors, as well as within a Report to creditors issued in respect of the Amended Proposal.

### **The Meeting of Creditors**

11. On January 24, 2014 at 10:00 a.m., a duly constituted meeting of JMFCI's creditors was called to order to consider the Amended Proposal (the "Meeting of Creditors"). The Trustee had previously been designated by the Official Receiver as the latter's nominee pursuant to Sections 51(3)/105(1) of the BIA and given authority to act as Chairman of the Meeting of Creditors.

12. After the Meeting of Creditors was opened and called to order, the Chairman outlined the nature of amendments made to the Amended Proposal in the days leading up to the Meeting of Creditors, provided an overview of the affairs of JMFCI and the causes of its insolvency, tabled the required documentation, and explained in general terms the intended operation and effects of the Amended Proposal from the perspective of JMFCI's creditors.
13. Following a brief question period during which no questions were posed to the representatives of JMFCI in attendance, the Amended Proposal was put to a vote.
14. The Chairman then tabulated and read the result of the vote on the Amended Proposal of JMFCI. The Amended Proposal was unanimously approved, and thus met all statutory approval requirements as set forth within Section 54(2)(d).
15. Counsel to the Trustee then advised the creditors that the Trustee would be making an Application for Court approval of the Amended Proposal, and subsequently the Meeting of Creditors was adjourned.
16. Promptly following the conclusion of the Meeting of Creditors, the Trustee took steps to apply for an appointed hearing date for purposes of obtaining an Order approving the Amended proposal in accordance with Section 58(a) of the BIA, which hearing date was set for February 19, 2014 by this Honourable Court.
17. In accordance with Sections 58(c) and (d), the Trustee shall, in advance of the hearing of this matter, cause to be filed with the Official Receiver and this Honourable Court a further Report in relation to the Amended Proposal of JMFCI.
18. As set forth in the Affidavit of Mr. Foran submitted herewith, the Trustee is of the opinion that the Amended Proposal, as voted upon and approved by the creditors of JMFCI, has a reasonable possibility of success and to be completed in accordance with its terms.

## ISSUE

19. Should this Honourable Court approve the Amended Proposal of JMFCI together with the other relief requested within the draft Order submitted herewith?

## ARGUMENT

20. In the case of *Re W.R.T. Equipment Ltd.* (2003) CarswellSask 184 (Sask. Q.B.) it was reinforced that the Court, in considering an Application for approval of a proposal pursuant to the BIA, must carefully balance the interests of all affected creditors, the proposing entity and the public at large. Specifically, the Court must ensure that the terms of the proposal are reasonable and not prejudicial to the rights of creditors, and also that the compromise thereby effected preserves the integrity of the bankruptcy process and complies with commercial morality standards and the public interest generally (see also *Re Gardner* (1921), 1 C.B.R. 424 (Ont. S.C.) and *Re Mr. C's Ltd.* [1995] O.J. No. 1390 (Ont. Gen. Div.)).
21. At paragraphs 15 and 16 of the decision in *Re W.R.T. Equipment Ltd.*, Zarzeczny J. of the Saskatchewan Court of Queen's Bench summarized the Court's role and function in such matters as follows:

"This Court's obligation under s. 59(2) of the BIA is to consider whether the Proposal is reasonable and calculated to benefit the general body of creditors. Decisions interpreting this provision have established the proposition that determining whether or not a proposal is reasonable means that a proposal must have a reasonable possibility of being successfully completed in accordance with its terms (see *McNamara v. McNamara* (1984), 53 C.B.R. (N.S.) 240 (Ont. Bkcty.)).

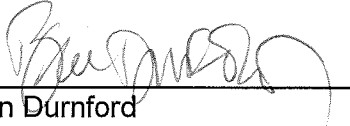
The function of the Court when called upon to approve a proposal is to take into account several interests including; (a) that of the debtor (to give him an opportunity to meet with his creditors and to find a way of producing assets or revenue which will provide them with a dividend outside of bankruptcy), (b) the general body of creditors (to protect creditors generally by ensuring that what is put up by way of a proposal is a reasonable one), and (c) the public-at-large in maintaining the integrity of bankruptcy legislation (including considering whether or not the proposal complies with standards of commercial morality). (See *Stone, Re* (1976), 22 C.B.R. (N.S.) 152 (Ont. S.C.); *Sumner Co. (1984), Re (1987), 64 C.B.R. (N.S.) 218* (N.B. Q.B.); *Irving Oil Ltd. v. Noseworthy* (1982), 42 C.B.R. (N.S.) 302 (Nfld. T.D.))."

22. In determining whether or not to approve a BIA proposal, the Courts have also deemed it prudent to factor the debtor's conduct into the analysis (see *Re Silbernagel* (2006), 20 C.B.R. (5<sup>th</sup>) 155 (Ont. S.C.J.)). Where the debtor has committed offences or otherwise contravened the BIA or the standard of good faith required, a Court may decline to approve a proposal notwithstanding approval thereof by a requisite majority of creditors.
23. As set forth in the Affidavit of Mr. Foran submitted in support of this Application, and as will be further supported by the Trustee's forthcoming Report on the Amended Proposal, it is respectfully submitted the Amended Proposal is reasonable and calculated to benefit the general body of JMFCI's creditors. The alternative of bankruptcy does not offer JMFCI's creditors a degree of recovery as favourable as that promised under the Amended Proposal. The foregoing materials produced by the Trustee shall further support the conclusion that there is a reasonable chance the Amended Proposal will succeed in accordance with its terms.
24. It is further submitted that the greater public policy considerations are met in these circumstances, and the Amended Proposal's approval and performance would not adversely affect the integrity of the bankruptcy process in general. It is submitted the Amended Proposal accords with commercial morality standards, and its full performance will effectively balance the interests of JMFCI and its creditors alongside those of the public at large.
25. The Trustee has also expressed the opinion that JMFCI has at all times acted, and continues to act in good faith in making the Amended Proposal and that the formalities of the BIA have been complied with and that the contents of the Amended Proposal meet with the requirements of the BIA in all respects.

**CONCLUSION**

26. In light of the foregoing, the Trustee respectfully requests an Order, in the form attached, approving the Amended Proposal pursuant to Section 58 *et seq* of the BIA.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 30<sup>th</sup> DAY OF JANUARY, 2014.



Ben Durnford  
McInnes Cooper

Solicitors for Deloitte Restructuring Inc.  
in its capacity as Trustee under the  
Proposal of Jeanie Marshal Foods Canada Inc.



**SCHEDULE "A"**

**LIST OF AUTHORITIES**

**LEGISLATION**

1. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, ss. 58, 59, 60

**JURISPRUDENCE**

2. *Re W.R.T. Equipment Ltd.* (2003) CarswellSask 184 (Sask. Q.B.)
3. *Re Gardner* (1921), 1 C.B.R. 424 (Ont. S.C.)
4. *Re Mr. C's Ltd.* [1995] O.J. No. 1390 (Ont. Gen. Div.)
5. *Re Silbernagel* (2006), 20 C.B.R. (5<sup>th</sup>) 155 (Ont. S.C.J.)