

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° 500-11-041305-117

S U P E R I O R C O U R T

(Commercial Division)

(sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, R.S.C.
1985, c. C-36, as amended)

IN THE MATTER OF THE PLAN OF COMPROMISE
OR ARRANGEMENT OF HOMBURG INVEST INC.
et al.

Lafarge Canada Inc.

and

Kai Construction Group

and

Centron Construction Corporation

Petitioners

v.

Samson Bélair/Deloitte & Touche Inc.

Monitor

Homburg Invest Inc.

Homburg Shareco Inc.

Churchill Estates Development Ltd.

CP Development Ltd.

North Calgary Land Ltd.

Homburg Management (Canada) Inc.

Debtors

-and-

Homco Realty Fund (52) Limited Partnership

Homco Realty Fund (61) Limited Partnership

Homco Realty Fund (83) 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.

Mises-en-cause

MOTION TO COMPEL THE MONITOR TO DETERMINE THE STATUS OF CLAIMS
(*Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36)

TO THE HONOURABLE JUSTICE LOUIS J. GOUIN OR TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION IN AND FOR THE JUDICIAL DISTRICT OF MONTREAL, THE PETITIONERS RESPECTFULLY SUBMIT AS FOLLOWS:

I. INTRODUCTION

1. On September 9, 2011, the Honourable Louis J. Gouin, J.S.C. issued an order (the "Initial Order") pursuant to the *Companies Creditors' Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA") in respect of Homburg Invest Inc. ("HII"), Homburg Shareco Inc. ("Shareco"), Churchill Estates Development Ltd., Inverness Estates Development Ltd. ("Inverness") and CP Development Ltd. (collectively the "Initial Debtors") as appears from the Court record; Pursuant to the Initial Order, Samson Bélair/Deloitte & Touche Inc. (the "Monitor") was appointed as Monitor of the Initial Debtors and a stay of proceedings (the "Stay of Proceedings") was issued from the date of the Initial Order until October 7, 2011;
2. On October 7, 2011, this Court issued an order (the "First Extension Order") extending the Stay of Proceedings. Since then, this Court has further extended the Stay of Proceedings, most recently until December 2, 2013 (the "Stay Period"), as appears from the Court record;
3. As appears from the Initial Order and the First Extension Order, the Stay of Proceedings was initially extended in favour of the following limited partnerships: Homco Realty Fund (52) Limited Partnership, Homco Realty Fund (88) Limited Partnership ("Homco 88"), Homco Realty Fund (89) Limited Partnership, Homco Realty Fund (92) Limited Partnership, Homco Realty Fund (94) Limited Partnership, Homco Realty Fund (105) Limited Partnership, Homco Realty Fund (121) Limited Partnership, Homco Realty Fund (122) Limited Partnership, Homco Realty Fund (142) Limited Partnership, Homco Realty Fund (199) Limited Partnership (collectively the "Initial Mises-en-cause");
4. On May 31, 2012, this Court issued an order amending the Initial Order to add North Calgary Land Ltd. ("NCLL") as a Petitioner and Homco Realty Fund (96) Limited Partnership ("Homco 96") as an Applicant Partnership thereunder. On December 14, 2012, this Court issued a further order amending the Initial Order to add Homco Realty Fund (190) Limited Partnership ("Homco 190") and Homco Realty Fund (191) Limited Partnership ("Homco 191") as Applicant Partnerships;

5. By order of the Court made on February 6, 2013, the Initial Order was further amended to add Homco Realty Fund (62) Limited Partnership (“Homco 61”) as an additional Applicant Partnership and Castello Development Ltd. (“Castello”) as a mise-en-cause. On March 14, 2013, the Initial Order was further amended to add Homburg Management (Canada) Inc. (“HMCI”) as an additional Petitioner. On April 26, 2013, this Court issued a further order amending the Initial Order to add Homco Realty Fund (83) Limited Partnership (“Homco 83”) as Applicant Partnership. Finally, on July 11, 2013, this Court discontinued the stay of proceedings in respect of Homco 122 (NCLL’ Homco 96, Homco 190, Homco 191, Homco 61, Castello, HMCI, Homco 83, the Initial Debtors and the Initial Mises-en-cause (excluding Inverness and Homco 122) are collectively referred to as the “HII Group”);

II. THE STATUS OF THE CLAIMS OF THE PETITIONERS

6. In May 2012, Lafarge Canada Inc. (“Lafarge”), Kai Construction Group (“Kai”) and Centron Construction Corporation (“Centron”) (collectively the “Lienholders”) filed their proofs of claims in the present matter and asserted that such claims were secured by liens (the “Claims”).
7. Notwithstanding the fact that said claims were filed 18 months ago, the Monitor has yet to determine whether it accepts the secured status of the Claims.
8. On March 18, 2013, the undersigned counsel wrote to the attorneys for the debtors - who forwarded such communication to counsel for the Monitor - to enquire as to the status of the Claims of Lafarge, Kai and Centron, the whole as appears from the e-mail chain of the date filed as Exhibit R-1.
9. As appears from Exhibit R-1, counsel for the monitor advised that the secured status of the Claims was being reviewed by the Monitor and that the Lienholders would be advised of the final position of the Monitor in due time.
10. Almost four (4) months later, having still not been provided with any update or position on the status of the Lienholders’ Claims, the undersigned counsel contacted the attorney for the Monitor on July 5, 2013.
11. At that time, the attorney for the Monitor indicated for the first time that additional information from the Lienholders would be required in order for the Monitor to take a final position on the secured status of the Claims and that such a request for additional information would be addressed to the lienholders during the next week, the whole as appears from a letter dated July 10, 2013 from the undersigned counsel confirming the conversation of July 5, 2013 filed as Exhibit R-2.
12. Counsel for the Monitor responded to that letter on July 15, 2013 (Exhibit R-3) and indicated that the Monitor was in the process of conducting the necessary reviews and confirmed that a request for information would be forthcoming “*over the course of this week or at the beginning of next week*”.
13. Finally, more than three (3) weeks after that communication and more than fourteen (14) months after the filing of the Claims, counsel for the Monitor communicated, on

August 9, 2013, its request for information, the whole as appears from a copy of said request filed as **Exhibit R-4**.

14. Kai and Centron responded to such request on September 16, 2013, the whole as appears from said response filed as **Exhibit R-5**, while Lafarge responded on September 9, 2013, the whole as appears from a copy of the cover letter of that date filed as **Exhibit R-6**.
15. Notwithstanding the above, the Monitor has still not taken a position regarding the secured status of the Claims, nor has it indicated when it intends to do so.
16. The Lienholders are entitled to obtain a determination of the status of their Claims and the unjustified failure of the Monitor to do so is causing them prejudice.
17. As such, the Lienholders are well-founded to request that this Honourable Court order the Monitor to make a determination with respect to their claims within ten (10) days of the judgment to be rendered on this Motion.
18. The present Motion is well-founded in fact and in law.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the present Motion;

ORDER the Monitor to make a determination as to the status of the secured claims asserted by the Petitioners within ten (10) days of the judgment to be rendered on the present Motion;

THE WHOLE without costs, save in case of contestation.

MONTREAL, November 14, 2013

(S) Irving Mitchell Kalichman LLP

IRVING MITCHELL KALICHMAN LLP
Attorneys for the Petitioners
Lafarge Canada Inc., Kai Construction Group
and Centron Construction Corporation

COPIE CONFORME / TRUE COPY

Irving Mitchell Kalichman
Irving Mitchell Kalichman

A F F I D A V I T

I, the undersigned, KARIM RENNO, attorney and member of the firm Irving Mitchell Kalichman LLP, maintaining our offices at 3500 De Maisonneuve Boulevard West, Suite 1400, Montreal, Quebec, H3Z 3C1, hereby make the following solemn declaration:

1. I am one of the attorneys of the Petitioners herein;
2. All the facts contained in the attached motion are true.

AND I HAVE SIGNED:

(S) Karim Renno

KARIM RENNO

Solemnly declared before me in Montreal,
this 14th day of 2013

(S) Ghita Ikhouane # 200263

Commissioner of oaths for Québec

COPIE CONFORME / TRUE COPY

Irving Mitchell Kalichman
Irving Mitchell Kalichman

NOTICE OF PRESENTATION

- TO :** **OSLER HOSKIN & HARCOURT** **Attorneys for the Debtors**
1000 De La Gauchetière West, Suite 2100
Montreal, Quebec H3B 4W5
Me Carine Bouzaglou
Me Sandra Abitan
Me Martin Desrosiers
Me Vitale Santoro
Me Julien Morissette
Me Tracy Sandler
email : cbouzaglou@osler.com
sabitan@osler.com
mdesrosiers@osler.com
vsantoro@osler.com
jmorissette@osler.com
tsandler@osler.com
- TO :** **MCCARTHY TÉTRAULT** **Attorneys for the Monitor**
1000, rue De La Gauchetière Ouest, Bureau 2500
Montréal QC H3B 0A2
Me Mason Poplaw
Me Jocelyn Perreault
Me Alain Tardif
email : mpoplaw@mccarthy.ca
jperreault@mccarthy.ca
atardif@mccarthy.ca
- TO :** **BENNETT JONES** **Attorneys for Penn West**
4500 Bankers Hall East
855 2nd Street West
Calgary, Alberta T2P 4K7
Me Kenneth T. Lenz
email : lenzk@bennettjones.com
- TO :** **BENNETT JONES** **Attorneys for Statoil Canada Limited**
4500 Bankers Hall East
855 2nd Street West
Calgary, Alberta T2P 4K7
Me Chris Simard
email : simardc@bennettjones.com
- TO :** **LANGLOIS KRONSTRÖM DESJARDINS** **Attorneys for Statoil Canada Limited**
1002 Sherbrooke Street West, 28th Floor
Montreal, Quebec, H3A 3L6
Me Gerry Apostolatos
Me Dimitri Maniatis
Me Stefan Chripounoff
email : gerry.apostolatos@lkd.ca
dimitri.maniatis@lkd.ca

stefan.chripounoff@lkd.ca

TO : **HOMBURG CANADA INC.**
600-1741 Brunswick Street
Halifax, Nova Scotia B3J 3X8

Me Michael J. O'Hara, General Counsel
email: mohara@homburg.com

TO : **ARCAN RESOURCES LTD.**
Suite 2200, 500 - 4th Avenue S.W.
Calgary, AB, T2P 2V6, Canada

Arcan Resources Ltd.
(Jamieson Place)

Mr. Graeme Ryder,
Vice-President, Finance and
Chief Financial Officer
email : gryder@arcanres.com

TO : **BORDEN LADNER GERVAIS**
1000 de la Gauchetière Ouest, Suite 900
Montreal, QC H3B 5H4

**Attorneys for BOS Solutions
Ltd., Canadian Tabular
Services Inc., Premier
Petroleum Corp, Moe Hannah
McNeill LLP**

Me Josef G. A. Krüger
Me Matti Lemmens
Me Mathieu Lévesque
email : jkruger@blg.com
mlemmens@blg.com
malevesque@blg.com

TO : **FIELD LAW**
400 - 604 1 ST SW
Calgary AB T2P 1M7

**Attorneys for Keywest
Projects Ltd., MHI Fund
Management Inc., STP Group
Canada Ltd. (formely
Neotechnology Consultants
Ltd.), Logan Completion
Systems Inc., CE Franklin Ltd.**

Me Douglas S. Nishimura
email : dnishimura@fieldlaw.com

TO : **DAVIES WARD PHILLIPS & VINEBERG S.E.N.C.R.L.,
s.r.l.**
1501, avenue McGill College, 26e étage
Montréal Canada H3A 3N9

Attorneys for HSBC

Me Denis Ferland
Me Christian Lachance
email : dferland@dwpv.com
clachance@dwpv.com

TO : **DAVIES WARD PHILLIPS & VINEBERG S.E.N.C.R.L.,** Attorneys for Cominar REIT
s.r.l.
1501, avenue McGill College, 26e étage
Montréal Canada H3A 3N9
Me Louis-Martin O'Neill
email : lmoneill@dwpv.com

TO : **DICKINSON WRIGHT LLP** Attorneys for Romspen
222 Bay St., 18th Floor, PO Box 124 Investment Corporation
Toronto, ON, M5K 1H1
Me David P. Preger joint appearance with De
email : dpreger@dickinsonwright.com Granpré

TO: **DE GRANPRÉ JOLI-COEUR** Attorneys for Romspen
2000 McGill College Avenue, Suite 1600 Investment Corporation
Montreal, Quebec, H3A 3H3
Me Anne Lefebvre joint appearance with
email: a.lefebvre@djcllegal.com Dickinson Wright

TO : **FASKEN MARTINEAU DUMOULIN LLP** Attorneys for Canmarc REIT
Tour de la Bourse (formerly Homburg Canada
800, Place Victoria, C.P. 242, Bureau 3700 REIT), Homburg Canada REIT
Montréal QC H4Z 1E9 Canada Limited Partnership and
Homburg Canada REIT GP Inc.
and, in their capacity a
trustees of Canmarc REIT
(formerly Homburg Canada
REIT), Karen A. Prentice,
Frank W. Matheson, James F.
Miles, Wayne Heuff, John
Levitt and Gérard A. Limoges

Me Luc Morin
Me Robert Paré
Me Edmond Lamek
Me Alain Riendeau
email : lmorin@fasken.com
rpare@fasken.com
elamek@fasken.com
ariendeau@fasken.com

TO : **FISHMAN FLANZ MELAND PAQUIN, s.e.n.c.r.l./LLP** Attorneys for Cadillac
1250, Boul. René-Lévesque O., Suite 4100 Fairview Corporation Limited
Montréal, Québec H3B 4W8
Me Mark E. Meland

email : mmeland@ffmp.ca

TO : **FISHMAN FLANZ MELAND PAQUIN, s.e.n.c.r.l./LLP** **Attorneys for Stichting**
1250, Boul. René-Lévesque O., Suite 4100 **Homburg Capital Securities**
Montréal, Québec H3B 4W8
Me Ronald M. Auclair
email : rauclair@ffmp.ca

TO : **STIKEMAN ELLIOTT** **Attorneys for Stichting**
1155 René-Lévesque Blvd. West **Homburg Bonds**
Montreal, Quebec, H3B 3V2

Me Guy P. Martel
Me Joseph Reynaud
Me Warren Katz
Me Charles Nadeau
Me Claire Zibovsky
Me Danny Duy Vu
Me Nathalie Nouvet
email : gmartel@stikeman.com
jreynaud@stikeman.com
wkatz@stikeman.com
cnadeau@stikeman.com
czikovsky@stikeman.com
ddvu@stikeman.com
nnouvet@stikeman.com

TO : **DENTONS CANADA LLP** **Attorneys for Tucker Wireline**
1 Place Ville Marie, Suite 3900 **Services Canada Inc.**
Montreal, Quebec H3B 4M7
Me Louis Dumont
Me Martin Poulin
email : louis.dumont@dentons.com
martin.poulin@dentons.com

TO : **HEENAN BLAIKIE** **Attorneys for Surge Energy**
1900, 215, - 9th Avenue SW **Inc.**
Calgary, Alberta T2P 1K3
Me Caireen E. Hanert
Me Nicholas Plourde
email : chanert@heenan.ca
nplourde@heenan.ca

- TO :** **HEENAN BLAIKIE** **Attorneys for Surge Energy Inc.**
1250 René-Lévesque Boulevard West, Suite 2500
Montréal QC H3B 4Y1
Me Michael Hanlon
email : mhanlon@heenan.ca
- TO :** **NORTON ROSE CANADA LLP** **Attorneys for bcIMC Realty Corporation**
3700 Canterra Tower, 400 3rd Ave SW
Calgary AB T2P 4H2
Me Judson Virtue
email : jud.virtue@nortonrose.com
- TO :** **CATALYST CAPITAL GROUP INC.** **Catalyst Capital Group Inc.**
Royal Trust Tower
77 King Street West, Suite 4320
P.O. Box 212
Toronto, ON M5K 1J3

Gabriel de Alba
Zach Michaud
email: gdealba@catcapital.com
zmichaud@catcapital.com
- TO :** **McMILLAN LLP** **Attorneys for Catalist Capital Group**
Brookfield Place
181 Bay Street, Suite 4400
Toronto, Ontario M5J 2T3

Me Andrew J.F. Kent
email : andrew.kent@mcmillan.ca
- TO :** **McMILLAN LLP** **Attorneys for Catalist Capital Group**
1000 Sherbrooke St. West, Suite 2700
Montreal, Quebec H3A 3G4

Me Nicholas Scheib
Me Marc-André Morin
Me Charles Chevette
email : nicholas.scheib@mcmillan.ca
marc-andre.morin@mcmillan.ca
charles.chevette@mcmillan.ca

- TO :** **McMILLAN LLP**
1000 Sherbrooke St. West, Suite 2700
Montreal, Quebec H3A 3G4
- Attorneys for DEGI Homburg
Harris Limited Partnership**
- Me Éric Vallières**
Me J.R. Beaudrie
email : eric.vallieres@mcmillan.ca
gerald.beaudrie@mcmillan.ca
- TO :** **Norton Rose OR S.E.N.C.R.L., s.r.l. / LLP**
1 Place Ville Marie, Suite 2500
Montréal, Québec, Canada H3B 1R1
- Attorneys for Taberna Europe
CDO I PLC, Taberna Europe
CDO II PLC, Taberna Preferred
Funding VIII, Ltd and Taberna
Preferred Funding VI, Ltd.**
- Me Sylvain Rigaud**
Me Arnold Cohen
Me Philippe Giraldeau
email : sylvain.rigaud@nortonrose.com
arnold.cohen@nortonrose.com
philippe.giraldeau@nortonrose.com
- TO :** **WALSH WILKINS CREIGHTON LLP**
2800 - 801 6th Avenue S.W.
Calgary, Alberta T2P 4A3
- Attorneys for Lafarge Canada
Inc.**
- Me Gary Befus**
email : gbefus@walshlaw.ca
- TO :** **IRVING MITCHELL KALICHMAN LLP**
Place Alexis Nihon / Tour 2
3500 De Maisonneuve Blvd. West, Suite 1400
Montreal, Quebec H3Z 3C1
- Attorneys for Lafarge Canada
Inc. and Kai Construction
Corp.**
- Me Peter Kalichman**
Me Karim Renno
email : pkalichman@imk.ca
krenno@imk.ca
- TO :** **STONES CARBERT WAITE WELLS LLP**
2000 Encor Place | 645 - 7th Ave S.W.
Calgary, AB T2P 4G8
- Attorneys for NORR Architects
Planners**
- Me Kelly Patrick Colborne**
email : colborne@scwlawyers.com

- TO :** **KUGLER KANDESTIN LLP** **Attorneys for Avison Young**
1 Place Ville Marie Suite 2101 **Real Estate Alberta Inc.**
Montréal QC H3B 2C6
- Me Gordon Levine**
email : glevine@kugler-kandestin.com
- TO :** **WELLS FARGO BANK, N.A.** **Wells Fargo Bank N.A.**
Corporate Trust Services
9062 Old Annapolis Road
MAC: N2702-011
Columbia, Maryland 21045
William Fay
Default & Restructuring Account
Manager
email : bill.fay@wellsfargo.com
- TO :** **NOVA SCOTIA SECURITIES COMMISSION** **Nova Scotia Securities**
CIBC Building **Commission**
1809 Barrington St. Suite 501
Halifax, NS, B3J 3K8
Me Stephanie Atkinson
Enforcement Counsel
email : atkinssj@gov.ns.ca
- TO :** **DEPARTMENT OF JUSTICE CANADA**
Tax Litigation Directorate
Québec Regional Office
Guy-Favreau Complex, East Tower, 9th Floor
200 René-Lévesque Boulevard W.
Montréal QC H2Z 1X4
Me Kim Sheppard
email : kim.sheppard@justice.gc.ca
- TO :** **THE LAW FIRM OF W. DONALD GOODFELLOW,** **Attorneys for Centron**
Q.C. **Construction Corp.**
999 - 8th Street S.W.
Suite 715
Calgary AB T2R 1J5
Me W. Donald Goodfellow
Me Philip R. Biggar
email : wdonald@goodfellowqc.com
pbiggar@goodfellowqc.com

TO : **LIVERY, DE BILLY, S.E.N.C.R.L**
1 Place Ville Marie, Suite 4000
Montreal (Quebec) H3B 4M4

Me Jonathan Warin
Me Jean-Yves Simard
email : jwarin@lavery.ca
jysimard@lavery.ca

TO : **DAVIS LLP**
1501 McGill College Avenue, Suite 1400
Montreal QC H3A 3M8

**Attorney for Valbonne Real
Estate B.V.**

Me Mélanie Martel
Me Jean-Yves Fortin
Me Brigitte Lenis
email : mmartel@davis.ca
jyfortin@davis.ca
blenis@davis.ca

TO : **McLENNAN ROSS LLP**
1000 First Canadian Centre
350-7th Avenue SW
Calgary Alberta T2P 3N9

**Attorney for C&T Reinforcing
Steel**

Me James P. Flanagan,
email : jflanagan@mross.com

TAKE NOTICE that the Motion to Compel the Monitor to Determine the Status of Claims will be presented for adjudication before one of the Honourable Judges of the Superior Court of Quebec, sitting in commercial division, on **November 18, 2013 at 9:00 a.m.**, or so soon thereafter as counsel may be heard, in **Room 1.27** of the Longueuil Courthouse, located at 1111 Jacques-Cartier East Boulevard, Longueuil, Quebec, J4M 2J6.

DO GOVERN YOURSELF ACCORDINGLY.

MONTREAL, November 14, 2013

(S) Irving Mitchell Kalichman LLP

IRVING MITCHELL KALICHMAN LLP

Attorneys for the Petitioners

Lafarge Canada Inc., Kai Construction Group
and Centron Construction Corporation

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Irving Mitchell Kalichman

N° 500-11-041305-117

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**MOTION TO COMPEL THE MONITOR TO
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**IRVING
MITCHELL
KALICHMAN**

BI0080

IRVING MITCHELL KALICHMAN S.E.N.C.R.L./LLP

Place Alexis Nihon | Tour 2

3500, boulevard De Maisonneuve Ouest | bureau

1400

Montréal (Québec) H3Z 3C1

M^e Karim Renno ☎ 3510-1

krenno@imk.ca

☎ 514 934-7739