

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT
ACT, R.S.C. 1985, c. C-36, AS AMENDED***

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF
NELSON FINANCIAL GROUP LTD.**

APPLICANT

**THIRD REPORT OF DOUGLAS TURNER, Q.C.,
REPRESENTATIVE COUNSEL FOR NOTEHOLDERS**

NOVEMBER 29, 2010

1. INTRODUCTION

- 1.1 The first reports of Representative Counsel were dated November 3 and November 15 2010. Further events have happened in the short span of time since the Second Report necessitating this Third Report to the Court.
- 1.2 As outlined at paragraphs 2.4 and 2.12 of the First Report, Representative Counsel appointed a Noteholders' committee and established a web site (*NelsonNoteholders.ca*) to establish and maintain communication with the some 273 Noteholders of the Applicant.
- 1.3 Representative Counsel has determined that the communication with the Noteholders has served a useful function in advising the Noteholders of issues not always included in the Monitor's website and directly affecting the Noteholders, such as the dissatisfaction with management as described in sections 6.20-6.21 of the First Report. The communication channels that have been established by email, fax, telephone and mail have enabled Representative Counsel and Special Counsel (with the assistance of the Noteholders' committee) to learn the concerns and wishes of the Noteholders.
- 1.4 Noteholders have continuously made known their concerns on the administration of the Applicant. Representative Counsel and Special Counsel are continuing to deal with the questions of Noteholders.

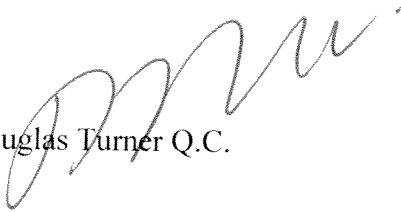
2. COSTS CONCERNS OF NOTEHOLDERS

- 2.1 After reviewing the Ninth Report of the Monitor (and its Supplement) and the Monitor's motion for approval of costs heard November 22, 2010, the Noteholders on November 29, 2010 spontaneously and without involvement of Representative Counsel or Special Counsel

independently reviewed the costs of the CCAA administration, and considered the possibility of the amount of the going-forward costs, up to the time of the end of the CCAA administration.

- 2.2 Through the offices of the Noteholders' committee, a substantial majority of the Noteholders – 71% by dollar value and 61% by numbers of Noteholders – requested Representative Counsel to forward to the Court the correspondence attached as **Exhibit 1** to this Report.
- 2.3 Representative Counsel has not attached the voluminous email responses to the original email from the Noteholders' committee and referred to in Exhibit 1, but has reviewed this correspondence (referred to on page 2 of Exhibit 1), and believes that the responses represent \$25,585,190.99 of the \$35,846, 196.23 in value of outstanding notes, and 166 of the 273 notes outstanding.

All of which is respectfully submitted



Douglas Turner Q.C.

November 29, 2010

**EXHIBIT 1 to Report of Representative Counsel to Court
November 29, 2010**

November 28, 2010

Mr. Douglas Turner, Q.C.
Barrister and Solicitor
63 Albert Street
Uxbridge, Ontario
L9P 1E5

Dear Mr. Turner,

On behalf of the Nelson Noteholders' Committee and all Noteholders, we are requesting that you, as our representative legal counsel, bring to the attention of Justice Pepall the following:

- 1) that we want to raise very serious concerns and outrage regarding the exorbitant and escalating monitor and legal costs which have not been suitably controlled, and,
- 2) that we want to restrict the role of the monitor and its counsel to only monitoring activities required under the CCAA rules in order to avoid cost duplication, and ensure more cost efficient spending.

The Nelson Noteholders are appalled and horrified, and are objecting vehemently to the costs that have been expended to date i.e. \$2.2 million and which are forecasted to reach up to \$4 million in fees. The largest proportion of these fees has been charged by the monitor. These costs are unacceptable, particularly due to the fact that they represent approximately 20% of the estimated remaining value of Nelson Financial. Nelson Financial is neither a Can-West nor an Air Canada. There are not billions of dollars to absorb such costs, and the creditors in question are private individuals, not institutional lenders. These escalating costs, coupled with sub-optimal business operating levels, are penalizing the very individuals who have suffered at the hands of incumbent management and diminish the prospect of financial recovery. We are asking you to make the judge aware of our concerns in order to have certain costs reviewed, and to contain the overall costs for the remainder of the CCAA proceedings.

Additionally, on two occasions, the first being July 22, I personally sent the monitor a communication (see attached e-mail) expressing my concern with respect to the growing costs, pleading for better cost monitoring. I had asked that he deal with the cost issue to ensure that there was no duplication of lawyers attending every court date, etc. Again, I sent another e-mail to the monitor citing these very issues again on November 12, but to no avail, as costs have continued to mount at an alarming rate.

After the Noteholders' Committee conducted a recent review of invoices, we were left with concerns as to who has been monitoring the Nelson Financial restructuring costs. Among other issues, invoices directed to the monitor from its counsel as well as from its independent counsel for the preferred shareholder opinion, were sent for payment, without fully detailed dockets of time spent, and dates with tasks performed by each lawyer (or paralegal). Further, a cap of \$50K was placed in the Order for the preferred shareholder opinion. However, the final bill, which the monitor approved, was for \$68K. We would have expected the monitor to have clearly communicated the fee cap restrictions for the scope of this work to the independent counsel.

Additionally, we have concerns regarding invoices that were directed to Nelson Investment Group (a separate entity from Nelson Financial), by the applicant's counsel, but were paid for by Nelson Financial. We would ask once again, who was supposed to be monitoring these costs? As Noteholders, we were under the impression that the monitor was the watchdog. The monitor's counsel e-mailed our special counsel on November 21, 2010 stating that the "Monitor will not be taking a position on anyone's professional fees other than its own and those of its counsel". This statement puts into question why the monitor is not "taking a position" on costs when our understanding is that the review of fees to protect our assets is within his mandate.

The appointment of representative counsel has been and is still incredibly important for the protection and preservation of the Nelson Noteholders' rights and remaining investments. The Noteholders' Committee is comfortable with the fees that representative counsel and its special counsel have had to charge to date, having had to deal with unexpected issues such as the Foscarini-Mackie matter, the preferred shareholder issue, and ultimately, the initiation and negotiation of the removal of incumbent management from Nelson Financial. At times, our representative counsel's progress was impeded by the monitor as he was not forthcoming with information that was requested on numerous occasions (referred to in Doug Turner's first report to the court, paragraphs 6.4.1 and 6.4.2). The information requested included prior financial statements and needed financial information regarding the applicant's current and past business management.

We ask that the Interim Operating Officer (IOO) in consultation with representative counsel, take the primary responsibility for the design and development of both the business and restructuring plans. The IOO would consult with the monitor on an as needed basis. Additionally, we are requesting as our legal representative, that you seek to restrict the activities of the monitor and its counsel to basic monitoring only, including the preparation of the independent report on the restructuring plan as required by CCAA rules as we understand them. It is imperative at this point, after 8 months into CCAA proceedings, that we move to accelerate this process as this matter has been dragging for too long, and the monitor has been unable to get prior management to advance this process in a rapid and cost-contained manner.

Attached you will find the support and letters from Nelson Financial Noteholders representing 71% of the value (\$25.6 million) and 61% of the promissory notes outstanding (as of November 28, 2010) with respect to their opposition to the costs in this matter, and favouring the reduction of the monitor's role to basic monitoring required under the CCAA.

We thank you in advance for your assistance in this matter.

Sincerely,

Tina Young (a Nelson Financial Noteholder)

On behalf of the Nelson Financial Noteholders' Committee and all Noteholders

----- Original Message -----

From: Tina Young

To: A. John Page

Cc: doug.turner ; richard.jones@sympatico.ca ; marc@nelsoninvestment.ca ; Sherry Townsend

Sent: Thursday, July 22, 2010 4:59 PM

Subject: Nelson Excessive Restructuring Costs

John,

Further to our conversation regarding legal costs, I took a look at the cash flow projection from your 5th report out today. If you take \$766,000 (your total for restructuring costs including the monitor) for the 11 weeks you have projected, this works out to \$51,066 per week! (close enough to the \$60,000 number I quoted you). These costs are unacceptable for all stakeholders involved and must be put in check. If this needs to be brought before the court as to the excessive and possibly abusive nature of legal costs - than we must. The initial costs of \$1.2 million set aside for the restructuring, will be far exceeded, and at this rate, to the tune of more than \$3 million!

I will site once again an example of this abuse of stakeholders funds: at the noteholders meeting on Wednesday, July 21, 2010, there were 2 lawyers from Gowlings - Cliff Prophet and Frank Lamie - only one needed to be there to take notes and represent Marc, etc.; there were 2 lawyers for the monitor, Mr. Grout and Ms. Aggarwal - I would say the same applies here, that only one lawyer needed to be there.

There have also been a number of instances where there has been more lawyers than needed showing up at court hearings.

I am strongly requesting that this is dealt with immediately with all parties as the committee will be requesting more accountability and documentation with respect to these fees. Our expectation (and the court's expectation) of the monitor is to be the "watch dog" of these costs.

On a go forward basis:

we expect coordination amongst all lawyer and monitor parties with a list of who really needs to be in court or other relevant activities, ensuring there is no double counting of people and fees.

Thank you for your assistance in this very important matter.

Regards,

Tina Young

----- Original Message -----

From: Tina Young

To: A. John Page

Cc: Sherry Townsend ; doug turner

Sent: Friday, November 12, 2010 4:25 PM

Subject: Excessive Restructuring Costs

Hi John,

As a follow up to my email of July 22 - I had requested on behalf of the noteholders that there would be more careful use of the various lawyers with respect to the go forward in order to manage the continued excessive restructuring costs which are approaching \$3 million as I had previously forecasted. I understand that in recent weeks, that there has been the "doubling up" of the monitor's lawyers and Marc's lawyers (I understand that there were doubles in court today). I would like it if you would please advise the lawyers involved that we are only paying for the services of one lawyer to attend all of these activities - it continues to be unacceptable that this doubling up of professional fees continues. I have conferred with the incoming IOO and we expect full accountability of these recent activities as we will require appropriate justification for these and any go forward where doubling of lawyers may be deemed necessary.

Thank you for taking care of this important issue.

Tina

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Court File No. 10-8630-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

**THIRD REPORT OF DOUGLAS TURNER,
Q.C., REPRESENTATIVE COUNSEL FOR
NOTEHOLDERS - NOVEMBER 15, 2010**

**Douglas Turner Q.C. as Representative Counsel
for the Noteholders of Nelson Financial Group
Ltd.**

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