

**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

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

1. INTRODUCTION

1.1 By the Order of this Honourable Court made June 15, 2010 (the “Representative Counsel Order”), Douglas Turner, Q.C. was appointed as the representative counsel (the “Representative Counsel”) to represent and advise all persons holding promissory notes issued by the Applicant (the “Noteholders”). The Representative Counsel was directed to engage Richard B. Jones, Barrister as special counsel to assist him in the CCAA aspects of his mandate.

1.2 The purpose of this Report is to provide this Honourable Court with information on the steps taken by the Representative Counsel to October 31, 2010 to advance the interests of the Noteholders and to seek direction and approval of the Court as to certain subsequent proceedings to protect and advance the Noteholders' interests.

1.3 This Report also provides this Honourable Court with the circumstances that have lead to the Representative Counsel determining that there needs to be a change in the incumbent management of the Applicant and the steps that have been taken to arrange such replacement on a prompt and consensual basis. The Representative Counsel has

participated with the Monitor in negotiations with Marc Boutet that have been reduced to Heads of Agreement dated October 29, 2010 and agreed to by Mr. Boutet. These agreements, if approved by this Honourable Court, will result in the replacement of incumbent management with an Interim Operations Officer appointed by the Court and supervised by the Monitor. The Representative Counsel recommends the approval of these arrangements.

2. NOTEHOLDER ORGANIZATION

2.1. The Representative Counsel has engaged, consulted and will continue to engage and consult with Richard B. Jones, Barrister as his special counsel pursuant to the direction of this Honourable Court. The Representative Counsel and his special counsel are working in close coordination in order to avoid any duplication, minimize costs to the estate and maximize the benefit to the Noteholders of their respective skills and experience. The Representative Counsel and his special counsel have taken all necessary steps and will continue to take such steps to avoid duplication of professional services and to reduce costs, all while providing the best proper representation for the interests of the Noteholders.

2.2 The Representative Counsel has consulted and worked with the Monitor to protect and advance the interests of the Noteholders.

2.3 Representative Counsel, after negotiations with Counsel to the Applicant, on July 9, 2010 executed the Confidentiality Agreement required by paragraph 5 of the Order. Representative Counsel received on July 14, 2010 and reviewed the Applicant's lists of Noteholders and Preference Shareholders.

2.4 Representative Counsel selected from the list of Noteholders an advisory committee of four Noteholders which was in place by July 19, 2010 at which time the committee met with Representative Counsel. The committee members were advised that they had no legal status under the *Companies' Creditors Arrangement Act*, R.S.C. 1985,

c. C-36, as amended ("CCAA") or the Court Order, but were to advise and assist Representative Counsel in the CCAA process concerning the Applicant.

2.6 Representative Counsel also through the Monitor arranged for a notice of a meeting for all Noteholders to be held in Ajax, in the Region of Durham on July 21, 2010 at 11:00 a.m.

2.7 The meeting on July 21, 2010 was attended by 166 Noteholders and their authorized representatives. These represented a majority of the Noteholders and close to two thirds of the claims of Noteholders by value.

2.8 During the First half of the meeting, Representative Counsel explained the CCAA process, and the Monitor and Marc Boutet, made presentations and took questions after the presentations. The Monitor outlined the basic terms of a restructuring plan that Marc Boutet as the incumbent management of the Applicant was preparing. Since that meeting, no further specifics of such restructuring plan have been provided to the Representative Counsel and no plan of arrangement has been filed by the Applicant or provided in draft to the Representative Counsel.

2.9 During the second half of the meeting, from 12:30 to 2:30 p.m., only Noteholders were present and the Noteholders offered comments, expressed their concerns and presented questions to Counsel and to members of the Noteholders' Committee. The Noteholders by a virtually unanimous vote requested a subsequent meeting. The Representative Counsel intends to call a further meeting of the Noteholders to review re-organization plans once any such plans are available or presented.

2.12 Representative Counsel on August 5, 2010, established a web site (nelsonNoteholders.ca) and email addresses for Noteholders to communicate with Representative Counsel and the Committee.

2.13 The Representative Counsel has met with many Noteholders and received many communications from Noteholders by telephone, email and fax. The Representative Counsel has reviewed the Noteholders' claims and communicated with Noteholders.

2.14 Including the notes held by Marc Boutet, and the secured notes held by the Foscarini Mackie Holdings Inc., the promissory notes outstanding total \$36.8 million. The Foscarini Mackie notes have been repaid and the security has been discharged with the approval of this Court. Under the Heads of Agreement discussed below, the notes held by Marc Boutet or his affiliated corporations and the creditor claim of, and the security claimed by, Nelson Investment Group Ltd. will be cancelled and released. Accordingly, it is likely that the total unsecured claims outstanding will be less than \$36 million.

2.15 An analysis of the notes and holders shows the following:

- (a) 18 noteholders hold notes between \$500,000 and \$1.6 million, totaling \$15.3 million;
- (b) 80 noteholders hold notes between \$100,000 and \$499,999, totaling \$15 million; and
- (c) 177 noteholders hold notes between \$10,000 and \$99,999, totaling \$6.5 million.

3. NOTEHOLDERS' ISSUES: SUMMARY

3.1 Representative Counsel, with the assistance of the Monitor and the Committee, reviewed and is continuing to review the following actions to protect the Noteholders' interests:

1. Review and establish validity of the Foscarini Mackie claims to special security for their notes, including examinations under oath of Marc Boutet and Mrs. Lisa Mackie ;
2. Continuing review of the position of the preference shareholders, particularly with respect to:

priority under the CCAA: Representative Counsel determined that the Noteholders (and not the Applicant or the Monitor) were the proper parties to ask for a judicial determination as to whether the preference shareholders' claims were "equity claims" under the CCAA. The motion is to be heard October 18th and 19th, 2010, and all preference shareholders have been notified.

Validity of consideration for issue of shares;

payment of dividends and redemptions with respect to payments during insolvency;

3. reviewing the financial operations of the Applicant, including
 - (a) debt collections, age of receivables and limitation periods;
 - (b) investment of and return on noteholders' funds held by Applicant;
 - (c) examining current and past financial statements; and
 - (d) working with Ontario Securities Commission staff.

3.2 Representative Counsel and Noteholders' committee members are preparing a draft plan of reorganization for submission to the Noteholders and the Court.

3.3 Representative Counsel with the assistance of Noteholders' committee members are also engaged in the following on behalf of the Noteholders

- (1) searching for possible investment partners for the Applicant;
- (2) assisting the Applicant by attempting to find vendors to replace the 60% of the business represented by Lendcare;
- (3) analyzing with the assistance of accountants the financial statements of the Applicant to assist in its rejuvenation and growth at the end of the CCAA mandate; and
- (4) reviewing management issues.

3.4 Representative Counsel accounts have been paid or approved up to the end of July 2010. There has been a larger volume of work than originally planned, involving

increased professional time beyond what was originally anticipated. The committee of Noteholders advising the Representative Counsel also anticipates that there may be a need to retain accounting and perhaps financial assistance in the near future. These increased needs have been caused by, *inter alia*

- (1) increased communication required by a large number (in excess of 250) Noteholders;
- (2) unexpected legal issues involving validity of security, especially
 - (a) validity of preference share issuance;
 - (b) validity of preference share dividends redemptions and sales commissions when Applicant was insolvent;
 - (c) validity of certain security to limited class of noteholders (Foscarini Mackie),
 - (d) complexity of plans of reorganization/sale instead of liquidation,
 - (e) review of management issues, and
 - (f) additional work for special counsel Richard Jones.

3.5. Representative Counsel anticipate having to retain accountants (and possibly a financial advisor) to review certain past transactions of the Applicant that may have affected the Noteholders' claims, as well as to assist in the proposed reorganization.

3.6 The Representative Counsel is also asking for an adjustment to the terms of the Representative Counsel Order to make adequate provision for the professional fees as well as disbursements that have been necessitated by the material changes that have occurred in the circumstances of the Applicant since his appointment. Substantial wider scope of work has and will continue to be needed to protect adequately the Noteholders' interests.

3.7 The Monitor has co-operated fully with Representative Counsel and Representative Counsel have nothing but praise for the Monitor's professionalism and conduct.

3.8 While the Monitor is reporting separately on the claims process and other duties, Representative Counsel found that the claim process of the Monitor functioned efficiently and fairly.

3.9 Representative Counsel believes that the few small creditor claims filed by the September 15th date will be dealt with properly by the Monitor and will not impact in any significant way on the Noteholder claims.

4. FOSCARINI MACKIE SECURED NOTES

4.1 Of some 300 Noteholders, only one group received specific security (assignment of chattel paper on specific enumerated loans). This group was made up of a husband and wife, Glen and Lisa Mackie, who were close friends of Marc Boutet, and their personal holding corporation, Foscarini Mackie Holdings Inc.

4.2 The proximity of the timing of the giving of the security to March 23, 2010 raised an additional red flag as to whether the Mackies may have received a preference under the Ontario Assignments and Preferences Act.

4.3 The Court ordered that Marc Boutet and Mrs. Lisa Mackie be examined under oath in August of 2010.

4.4 A careful examination of Marc Boutet and Mrs. Mackie revealed that:

- (a) the Applicant had previously granted similar security to other noteholders;
- (b) the Mackies had asked for the security some nine months before it was perfected under the PPSA; and
- (c) while Marc Boutet acknowledged that he knew the Applicant was insolvent as early as the summer of 2007, the Mackies did not have this knowledge nor could they have reasonably obtained it.

4.5 The advice of Special Counsel was that it would be difficult to show that the transaction would be impugned and that litigating the preference issue would add substantially to the CCAA costs and unreasonably extend the time.

4.6 Representative Counsel accepted the advice of Special Counsel and negotiated a settlement with those secured creditors by getting them to agree to a \$25,000.00 discount, and other conditions as to timing.

4.7 Although Representative Counsel incurred expenses in questioning these claims, there were unexpected fact revelations by Marc Boutet on his examination with respect to the financial affairs of the Applicant. These revelations are discussed below.

5. PREFERENCE SHAREHOLDERS

5.1 Representative Counsel proposed, and Monitor agreed, that as the representative of the Noteholders, he was the proper party to bring a motion asking the Court to determine the characterization and priority of any claims as creditors that might be made against the Applicant by any preferred shareholders. The Representative Counsel was satisfied that any creditors claims of preferred shareholders are “equity claims” under the CCAA and subordinated to the claims of unsecured creditors under section 6(8) of the CCAA.

5.2 The independent counsel opinion, Representative Counsel’s notice of motion, the Monitor's notices to the preferred shareholders and the preliminary motions all served to ensure that the preference shareholders were given every opportunity to argue their priority. These are all on the Court record.

5.3 The preferred shareholder claims characterization motion was argued by the Representative Counsel and his special counsel on October 18 and 19, 2010.

5.4 Representative Counsel has examined the share register for the Applicant and has discovered that preference shares appear to have been redeemed while the Applicant was

insolvent, contrary to section 32 of the Ontario Business Corporations Act. This issue and other similar problems, including illegal payments of dividends contrary to section 38 and questionable commissions under section 37, are dealt with later in this report.

5.5 At this time, although Representative Counsel has asked the Applicant for certain financial information - which has not been forthcoming - Representative Counsel has no evidence of inadequate consideration for payment for preference shares. If the Court finds that the preference share claims are "equity claims" under the CCAA, and the preference shares are subsequently cancelled under the CCAA, this issue may become moot.

6. RE-ORGANIZATION AND MANAGEMENT

6.1 While initially Representative Counsel was given assurances that the Applicant could emerge from CCAA with existing management, subsequent events have caused the Representative to reject that position.

6.2 The CCAA process is now over 6 months old, and there has been no re-organization plan from the incumbent management of the Applicant. The Monitor has been advised repeatedly that a re-organization plan will be prepared (see page 9 of the Initial Report March 22, 2010; First Report April 15, 2010 page 12; Third Report June 16, 2010 pages 9-10; Fifth Report July 21, 2010 page 11). As at the date of this report there is no plan - just a reference in the Eighth Report of September 28th, 2010.

6.3 There have been a number of red flags raised by the Monitor during existing management's operation of the Applicant:

1. Monitor's First Report: April 10, 2010:

1.1 In Exhibit D, the Monitor states that the Applicant "... if it is to continue in business for the longer term, Nelson will need to obtain financing ...".

There has been no indication of any progress to achieve such financing.

1.2 At Page 6: Nelson lost 65% of its lending business through withdrawal of Lendcare, its major vendor. There has been no replacement of this

volume. Representative Counsel in reviewing Applicant prospects with management in August of 2010 was advised that the Applicant was not actively seeking New Vendors.

2. Monitor's Third Report: June 11, 2010:

2.1 Page 5: the Monitor advised that business had shrunk to less than 50% of historical lending volumes.

Page 6: Nelson unable to find sources of financing, but at Page 8 the Monitor advised that new financing was necessary for the Applicant to continue.

3. Monitor's Fifth Report: July 21, 2010:

3.1 Page 10: "Nelson's rate of lending is lower than it had planned. Nelson is working to address the drop in lending at the present time by sourcing new vendors".

4. Monitor's Supplemental to Fifth Report: July 23, 2010:

4.1 Monitor's report on cash flow forecast: "... we express no assurance as to whether the Cash Flow Forecast will be achieved."

5. The Monitor's original restructure plan reinvestment was \$8 million annually but by the end of June it had already dropped by 25% to \$6 million.

6. Monitor's Eighth Report: Sept. 28, 2010:

6.1 Page 14: "The Monitor understands that the Applicant's legal counsel is close to finalizing a first draft ...". No plan was received by Representative Counsel as of September 29, 2010.

6.2 Page 18: "... between July 10 and September 10, 2010, the Applicant's cash collections ... are \$762,939 lower than forecast."

6.4 Management has been less than forthcoming in requests on behalf of the Noteholders for information:

6.4.1 On August 12, 2010 the Noteholders were concerned over the operations of the business and requested through the Monitor the following information from the Applicant:

1. **Receivables:**
 - 1.1 summary of receivables by amount
 - 1.2 summary of receivables by aging: 30 days, 90 days, 120 days and 180 days
 - 1.3 summary of non-performing loans, including aging
 - 1.4 summary of loans that are 90 days from being statute barred by the Limitations Act
 - 1.5 summary of accounts in collection
 - 1.6 using collection agency, including details of agency and costs, and
 - 1.7 using in house staff
2. **Investment of corporate funds:**
 - 2.1 total of investment funds
 - 2.2 summary of investments, including
 - a. financial institution
 - b. type of investment
 - c. interest rates
3. **Vendors**
 - 3.1 list of vendors as at March 23, 2010
 - 3.2 list of vendors as at August 1, 2010
 - 3.3 contact list of new vendors

The response from the Applicant through the Monitor (September 6) was inadequate:

1. **Receivables**

... Nelson's consumer loans are its "receivables". They are tracked using software called LMS. It does not produce receivables information directly in the manner of your request. I want to talk further with Stephanie Sobol to see what information might be readily available. I will get back to you after I have had that discussion.
2. **Investment of corporate funds**

Nelson keeps funds that are surplus to immediate requirements in a money market bank account at TD.

At August 27, 2010 they had \$356,520 in their regular account and \$4,179,860 in the Money Market Account. Given very low interest rates available for any form of money market investment we have not enquired as to what rate they are receiving.
3. **Vendors**

We have discussed this request with Nelson and their legal counsel. Nelson have indicated that they regard information on vendors as confidential and do not wish us to disclose that information to you at this time. Please let me or Cliff Prophet know if that is a problem for you.

6.4.2 A further request was made for additional information on September 1, 2010 after a review of Nelson's financial statements by the Noteholders' accountant. The Applicant advised (through the Monitor) that the Applicant was "reluctant to devote

resources to giving you a formal response ... unless they are convinced it is essential".

The requests for information remain outstanding, and include the following:

- (a) reason for decreasing profit margins;
- (b) office overhead expenses, and
- (c) detail of \$531,762 in marketing costs

All of this information would be relevant to analyze any restructure plan. This lack of information reflects in a negative way on management of the Applicant.

6.5 As requested, Counsel for the Applicant provided a copy of the Shareholders' Register up to February 10, 2010, and his undertaking to provide any amendments up to March 22, 2010. Representative Counsel has reviewed the register. Based on the existing register, and the admissions under oath by Marc Boutet, it appears that there were redemptions of shares while the Applicant was insolvent, contrary to section 32(2) of the Ontario Business Corporations Act.

6.6 Based on corporate information provided by the Applicant, it appears at this time that Marc Boutet has been the controlling shareholder, probably the sole beneficial owner of all the voting shares and the sole director and officer since at least June 26, 2007.

6.7 It also appears at this time that the Applicant made both redemptions of shares and payments of dividends while the Applicant was insolvent, contrary to sections 32 (redemptions) and 38 (dividends) of the Ontario *Business Corporations Act*. Without the final share register, it is not possible to be precise as to the amounts paid, but the estimate at this time is:

Unlawful Redemptions:	\$ 2.3 million
Unlawful Dividends:	\$ 2.24 million

6.8 In addition, based on OSC information, and again without final numbers due to the non-disclosure by the Applicant, Marc Boutet directly or indirectly through his corporate alter ego, Nelson Investment Group Ltd., appears to have paid himself commissions in excess of \$2 million.

6.9 Representative Counsel is concerned about these payments and the possibility that they are payments prohibited by section 130(2)(b) [S.30 - redemptions of shares], 130(2)(c) [S.37 - payments of commissions] or 130(2)(d) [S.38 - payments of dividends].

6.10 Representative Counsel is of the opinion that Marc Boutet did not to meet the standard of care in S.134(1) and (2) of the Ontario *Business Corporations Act*.

6.11 The share register also discloses another series of transactions that cause concern for the Noteholders and involves redemption of common shares.

6.12 This transaction involved a restructuring of share ownership culminating in the purchase for cancellation of all the common shares previously owned by David Baker and Sharon Louise Baker (presumably his wife) over several months ending on June 26, 2007. The Applicant would not provide information for transactions in 2007, but the concerns raised are:

- (a) the insolvency of the Applicant at the time of the transaction; and
- (b) that these transactions represented a buy-out of Marc Boutet's former partner using the Applicant funds for the benefit of Marc Boutet.

It appears from the financial statements of the Applicant that it was insolvent as of its fiscal year ended July 31, 2007.

6.13 Because of the lack of complete accounting at this time, Representative Counsel is unable to do more than estimate that the payments to the Bakers exceed \$3 million, and likely more.

6.14 While it is acknowledged that the May 12, 2010 Statements of Allegations issued by the Ontario Securities Commission are not yet proven in the regulatory process, Representative Counsel has reviewed the allegations with counsel to the OSC and is concerned that regardless of the outcome of the hearing (set for February 2011) the

charges will make it difficult for Marc Boutet to attract new business and to raise additional capital. From communications received by the Representative Counsel from Noteholders and from the uncontradicted evidence of preferred shareholders in the motion heard on October 18 and 19, 2010, it appears to the Representative Counsel that these allegations of breaches of the *Securities Act* and of the making of fraudulent misrepresentations are well founded.

6.15 These outstanding OSC allegations also name the Applicant, and until they are resolved, they will have a serious negative impact on the ability of the Applicant to raise additional capital. Based on meetings and discussions with OSC Counsel, Representative Counsel believes (and has the consent of OSC Counsel to so advise the Court) that a change in management of the Applicant would permit a prompt and beneficial resolution of the allegations and proceedings as against the Applicant.

6.16 Representative Counsel has received two proposals for an effective recapitalization and rejuvenation of the Applicant. At this time those proponents have each asked that the proposals be kept confidential.

6.17 Representative Counsel is actively pursuing both proposals. Neither proposal would continue the incumbent management of Mr. Boutet.

6.18 Both proposals require due diligence by detailed examination of the Applicant's records. Based on the opaqueness of the Applicant's responses to date to Representative Counsel enquiries, it is extremely doubtful that due diligence could be conducted under existing management. However, Representative Counsel is confident of receiving full co-operation from the Monitor without existing management.

6.19 For the above reasons concerning the present and future problems of existing management, as well as the decline of the business of the Applicant, inability to formulate a plan of restructuring, as well as the future heavy financial claims to be made against Marc Boutet, for the protection of the Noteholders, Representative Counsel

recommends to the Court that existing management be terminated, and the Monitor's role be expanded as set out in the motion material to be served and filed by Representative Counsel.

6.20 In support of the removal of existing management and with the assistance of members of the noteholders' committee, Representative Counsel over the period of October 5, 2010 to October 14 2010 canvassed noteholders to ascertain the numbers that would not support the retention of existing management. The noteholders were advised by noteholder committee members of the management problems and asked for their views on management. Those who had lost confidence were asked to confirm this in writing :

To: Douglas Turner, Q.C. in his capacity as Representative Counsel for the Noteholders of Nelson Financial Group Ltd.

This will advise you that the undersigned is the holder of promissory notes issued by Nelson Financial Group Ltd. in the amount of \$. The undersigned has considered the outline of the plan of arrangement presented on behalf of Marc Boutet as incumbent management of Nelson Financial Group Ltd. by the Monitor on July 21, 2010.

Please be advised that will not support such a plan of arrangement where the business and assets of Nelson Financial Group Ltd. remain under the control of incumbent management, particularly Mr. Boutet. Please take any steps that you determine to be necessary to protect the assets and business of Nelson Financial Group Ltd. and to maximize the Noteholders' recoveries.

Dated at , this day of October, 2010

 Noteholder Signature

6.21 As of October 29 2010, this initial request for noteholder support for removal of existing management has produced responses from Noteholders holding over \$22 million by dollar volume of notes who would not support existing management. Written responses by fax or email are now over \$20 million. Representative Counsel is continuing to receive confirmations for removal. Based on conversations with other noteholders, Representative Counsel anticipates that over two thirds by value of the noteholders wish Marc Boutet removed from management.

6.22 On the basis of these expressions of an overwhelming proportion of the Noteholders, the Representative Counsel advised the Monitor that he was satisfied that obtaining the approval of the unsecured creditors for a restructuring plan for the Applicant could not be obtained without a change of management. Representative Counsel also advised the Monitor of his view that the continuing pendency of the OSC proceedings involved reputational and financial risks for the individuals in management that made a successful restructuring very difficult. He further noted that the resolution of these matters could delay the restructuring particularly since the hearing on the OSC allegations had been scheduled for the last half of February next year.

6.23 With the assistance of the Monitor, negotiations were undertaken with counsel for the Applicant and Marc Boutet as to the terms under which Mr. Boutet would depart on a consensual basis and with an orderly transition to new interim management to function under the supervision of the Monitor until a plan of re-organization can be developed on behalf of the creditors and filed for consideration by the unsecured creditors.

6.24 An agreement has been reached with Mr. Boutet on the terms for such a transition which the Representative Counsel is satisfied is in the best interests of the Noteholders. This requires that, conditional upon the approval of the Court, Marc Boutet will do or cause Nelson Financial Group Inc. to do the following principal things:

- i) appoint Sherry Townsend as Interim Operations Officer to act as chief executive of the Applicant under the supervision of the Monitor;
- ii) surrender all shares of the Applicant held by him or his affiliates for cancellation;
- iii) cause Nelson Investment Group Ltd. to surrender all claims and any security for any such claims that it may have as against the Applicant;
- iv) cause the Applicant to grant a release for all known matters to Stephanie Lockman Sobol and to confirm terms for her employment by the Applicant during a transition period;
- v) exchange mutual general releases between the Applicant and each of Marc Boutet and Nelson Mortgage Group Ltd.; and

vi) upon completion of the foregoing, he will resign as an officer and as a director of the Applicant.

These arrangements are set out in a document entitled Heads of Agreement dated October 29, 2010 which has been approved by Marc Boutet and approved by the Monitor and the Representative Counsel. A true copy of the Heads of Agreement is appended as Exhibit "A" to this Report.

6.25 Sherry Townsend has agreed to accept the appointment by the Court proposed to perform the chief executive functions of the Applicant. She has served as a member of the advisory committee assisting the Representative Counsel since June. She and members of her family hold promissory notes issued by the Applicant with aggregate claim values of \$892,000. She is independent and unrelated to the Applicant and to Marc Boutet and Stephanie Sobol. In the course of her work in recent months with the Representative Counsel, she has acquired substantial knowledge of the business of the Applicant and has been directly engaged in assisting the Representative Counsel in addressing the alternative restructuring possibilities for the Applicant or its business and assets. She has been particularly helpful in those efforts. . Through her offices, and with the knowledge and approval of the Monitor, Ms. Townsend has made arrangements for senior executives from consumer finance divisions of first tier financial organizations to examine the business of the Applicant and make recommendations for the maximizing of the creditors' interests in the Applicant. Representative Counsel anticipates that these recommendations will be used in the reorganization plan to be presented to the Court and the noteholders.

6.26 The Representative Counsel has confirmed the business experience, management skills and sensible judgment of Sherry Townsend. Ms. Townsend is a successful entrepreneur who established her own company in the printing and promotional packaging business. With over 18 years as its president and chief executive officer, she has made it very successful. That business now has a staff of about 60 and sales of over \$7,000,000 per year. The Representative Counsel is satisfied that she has the

management skills and sound judgment that are required to stabilize the business, employees and operations of the Applicant through the change of management. The Representative Counsel recommends that the Court should appoint her to perform those functions as Interim Operations Officer of the Applicant to act under the supervision of the Monitor and the directions of this Court.

6.27 The Representative Counsel is satisfied that Sherry Townsend in performing the functions assigned to the Interim Operations Officer should properly have the protections set out in the draft order including the benefit of an increased Directors' Charge and a full indemnity.

7. RESTRUCTURING COSTS

7.1 As noted on p.18 of the Monitor's Eighth Report, "... as noted earlier and detailed in the Report of the Monitor ... the Monitor and ... legal counsel ... have collectively had to deal with a number of issues that were not fully anticipated in June 2010 ...".

7.2 Initially Representative Counsel was advised by the Applicant, the Applicant's counsel and the Monitor that the CCAA proceedings were expected to involve a prompt assessment and proof of claim process accompanied by a re-organization plan to be presented very shortly by the Applicant that would result in a speedy exit from CCAA administration. On this basis, Representative Counsel accepted the cap on counsel fees suggested by the Counsel for the Applicant and set out in paragraph 6 of the Representative Counsel Order. Unfortunately these expectations of May have not come to pass.

7.3 Representative Counsel, like the Monitor, has needed to confront and deal with a large number of additional and difficult issues:

(a) The large number of Noteholders (in excess of 300) resulted in a need for communication and the creation of an active and competent Noteholders' advisory committee and corresponding time spent in organization and communications. Representative Counsel determined that many of Noteholders were small non-accredited

investors who had been induced to purchase notes by fraudulent misrepresentations. The reliance of some of them on the interest on these notes for their support necessitated the efforts of the Representative Counsel to achieve transparency and provide explanations were necessary to maintain the integrity of the restructuring process.

(b) The bad optics created by the preferential treatment given to Foscarini Mackie and the apparent preference demanded a thorough review of the facts and the testing of the claimants veracity and probity under oath.

(c) The large size of the potential creditor claims of the preferred share investors had the potential to dilute the Noteholder's potential recoveries by as much as fifty percent. The understandably desperate cries for help of the preferred shareholders, even after the release of the independent counsel's opinion, necessitated the Representative Counsel addressing this issue and taking a lead role to have the question determined by the Court.

(d) The lack of the production of any plan by the Applicant, and the rapid shrinking of the Applicant's business, particularly after the loss of business volumes that had been originated through Lendcare, constituted a material threat to the Noteholders' possible recovery on their claims. When combined with the lack of transparency from management of the Applicant, and the taint of the OSC allegations, the Representative Counsel concluded, and his advisory committee of Noteholders agreed, that the Noteholders had to look to developing their own plan or to finding a third party who would participate in a purchase transaction to improve their recoveries. Representative Counsel undertook to pursue both of these courses and is continuing to do so. This effort, which shows possibilities of being productive, did involve further unanticipated professional time.

(e) The examinations of what first appeared to be peripheral claims, such as redemptions and dividends during insolvency, led down another avenue that had to be examined to protect the interests of the Noteholders.

(f) It appears likely that the Noteholders may have to proceed with a creditor proposed plan of re-organization and this may result in the Representative Counsel needing to retain solicitors, tax advisors and other professionals in order to document and complete the re-organization transactions.

(g) The Representative Counsel may need, in addition to the accounting advice already obtained, specialized tax advice with respect to the capital structure and the value to third party new investors of the non-capital loss carry forwards and the paid-up capital accounts of the Applicant.

(h) Finally, there has been a substantial administrative burden on Representative Counsel in dealing with individual noteholders and their counsel, although the professional support of the Monitor has considerably assisted with this burden.

7.4 Taking into consideration the changing role of the Representative Counsel, the pending change of management of the Applicant, and the conversion of the restructuring from a debtor-directed process into a process requiring the preparation of a creditor-directed plan, additional volumes of necessary work are to be expected. Material portions of such work will need to be performed by the Representative Counsel instead of the counsel for the Applicant. Representative Counsel requests that the provisions of the Representative Counsel Order dealing with its fees and disbursements be amended to make such subject to approval by the Monitor and ultimately the approval of the Court or as it may direct..

All of which is respectfully submitted

Douglas Turner Q.C.

November 3, 2010

**Exhibit A to Representative Counsel' Report
November 3, 2010-11-03**

Heads of Agreement

In connection with the insolvency of Nelson Financial Group Ltd. (“Nelson Financial”) and the efforts to restructure it or its assets and undertaking in order to maximize the recoveries of its creditors, Douglas Turner Q.C., in his capacity as Court-appointed representative counsel for the Noteholders of Nelson Financial (the “Representative Counsel”), appointed by the Court in the proceeding of Nelson Financial under the *Companies Creditors Arrangement Act* (the “CCAA”) has been advised by Noteholders holding more than half of the claims by value that they will not support the plan of arrangement proposed by incumbent management. The Representative Counsel has determined that for this and other reasons, a change of management of Nelson Financial is likely to enhance the possibility of a restructuring of Nelson Financial.

Marc Boutet (“Boutet”) holds all of the voting shares of Nelson Financial and is its sole director and corporate officer. Boutet is the sole officer, director and beneficial shareholder of Nelson Mortgage Group Inc. (“Nelson Mortgage”). In each of those several capacities and in his personal capacity, he agrees with the Monitor and with the Representative Counsel to take or support, as the context may require, the following steps for the purpose of replacing the incumbent management control of Nelson Financial:

1. As the sole director of Nelson, Mr. Boutet will approve a resolution satisfactory to the Representative Counsel and to the Monitor appointing Ms. Sherry Townsend as the Interim Operating Officer of Nelson, delegating to her the authority to manage the business and assets of Nelson Financial on such other terms as she or other stakeholders (or any of them) may propose and which are then recommended by the Monitor and approved by the Court.
2. On the date upon which the Court authorizes Nelson Financial to perform these arrangements and approves the appointment of the Interim Operating Officer (the “Effective Date”), Boutet shall tender to Nelson Financial for cancellation all of the shares in its common stock held by him or entities associated with him. As its sole director, Boutet shall approve and consent to a resolution accepting such surrender and cancellation. Immediately thereafter, Boutet shall resign as a director, officer and employee of Nelson Financial.
3. Boutet and any corporation associated with him, including without limitation Nelson Investment Group Ltd. and Nelson Mortgage, will surrender and release all of their claims against Nelson Financial, including all Claims under the Claims Procedure Order, provided that the foregoing release shall not apply to or compromise in any way the rights of:
 - (a) Paladin Holdings under existing lease arrangements for the office premises of Nelson Financial; or,

- (b) Boutet in relation only to wages due to him (on existing terms) up to the Effective Date.
4. Nelson Financial shall agree to propose, or to support if proposed by a creditor or other person, a plan of compromise or arrangement in respect of Nelson Financial which includes a release of such claims by any person against Boutet in his capacity as a director of Nelson Financial as can be compromised pursuant to s. 5.1(1) and (2) of the CCAA..
 5. (a) The employment of Stephanie Lockman Sobol (“Sobol”) shall be continued by Nelson Financial following the Effective Date (defined below) (the “Temporary Employment”) for a period of 6 months (the “Temporary Employment Term”) on the basis that the Temporary Employment Term shall constitute working notice. The Temporary Employment shall be on substantially identical terms and conditions to those currently in place, except that she shall report to and be subject to the direction of the Interim Operating Officer. In the event that Sobol’s services are terminated by Nelson Financial before the expiry of the Temporary Employment Term, she shall be entitled to pay in lieu of notice equal to that which she would have earned during any remaining period of the Temporary Employment Term. If she should be required to perform for five months of the Temporary Employment Term, she shall thereupon be granted a bonus of two months salary.

(b) Nelson Financial will provide a full and final general release in favour of Sobol of any claims which the Monitor and the Representative Counsel have knowledge of and are referred to in the reports of the Monitor in the CCAA proceeding up to the date hereof.
 6. Nelson Financial will provide a full and final general release in favour of Boutet and Nelson Mortgage of any and all claims which Nelson Financial may have against either of them, including without limitation any claims that could be asserted under section 130 of the *Business Corporations Act* (Ontario) in respect of Boutet’s acts as a director to approve or consent to the payment of any dividends or the redemption of any preferred shares of Nelson Financial.
 7. Subject to the approval and direction of the Court in the CCAA proceeding of Nelson Financial, the Monitor and the Representative Counsel shall advise the Ontario Securities Commission that the steps taken by Boutet in the matters dealt with herein, in their opinion, constitute a material contribution to the unsecured creditors and the Noteholders of Nelson Financial and that they do not object to a settlement substantially on the terms outlined in the proposal presented by Boutet to them on October 18, 2010.

The foregoing heads of agreement are subject to and conditional upon the approval of the Court in the CCAA proceeding of Nelson Financial. The Representative Counsel will bring a motion seeking such approval and the approval and appointment of the Interim

Operating Officer by November 5, 2010 to be heard as soon as the Court will schedule the same. If such Court approval shall be refused or not granted for any reason by November 30, 2010, these heads of agreement shall be null and void and of no effect.

Toronto, Ontario
October 29, 2010

Marc Boutet

The Representative Counsel will make and the Monitor will support an application to the Court for the approval by the Court of Nelson Financial and Marc Boutet entering into and implementing the arrangements set out above, including the agreements and releases between Nelson Financial and each of Marc Boutet and Stephanie Lockman Sobol, and each of the Monitor and the Representative Counsel will recommend such approval by way of Reports to be filed with the Court.

Toronto, Ontario
October 29, 2010

A. John Page & Associates Inc., in its
capacity as Monitor of Nelson Financial
Group Ltd.

Per: _____
A. John Page

Douglas Turner, Q.C., in his capacity as
Representative Counsel appointed by the
Court