

COURT OF APPEAL FOR ONTARIO, *WATT & LATIMER*

Court of Appeal File No. M44213
Court File No. CV-09-7950-CL

NOV 27 2014

PEPALL J. A. LAUWERS

J. A. COURT OF APPEAL FOR ONTARIO

DISPOSITION OF MOTION

Proceeding Commenced At Toronto

Leave to appeal is granted on the issue relating to the "interest stops rule", i.e. whether Newbuild agreed in deciding that the Guaranteed Bondholders are legally entitled to claim or receive post-filing interest and other amounts owing under the relevant indentures above & beyond the outstanding principal debt and pre-petition interest.

Leave to appeal is refused with respect to the two other issues raised, namely (a) whether the Newbuild agreed (a) in expressing what is alleged to be "the unprejudiced view" that the Court has jurisdiction under the CCAA to make a final non-consensual order to distribute the proceeds of the Canadian Debt estate without a duly approved CCAA Plan, and (b) in directing the summary (work)

MOTION RECORD OF THE AD HOC GROUP OF BONDHOLDERS (Motion for Leave to Appeal)

BENNETT JONES LLP

3400 One First Canadian Place
P.O. Box 130
Toronto, Ontario M5X 1A4

Richard B. Swan (#32076A)

Email: swanr@bennettjones.com

S. Richard Orzy (#23181D)

Email: orzyr@bennettjones.com

Gavin H. Finlayson (#44126D)

Email: finlaysong@bennettjones.com

Telephone: (416) 863-1200

Facsimile: (416) 863-1716

Canadian Lawyers for the Ad Hoc Group of Bondholders

(2)

Determination of the stated questions before him at this time and in this manner.

The letter is discretionary, purely procedural and of no importance to the practice as a whole. It does not meet the test for leave.

~~The former~~ with respect to the former, Newbould) simply expressed a view and expressly stated that he was not making an order. The applicants concede this but submit that the "view" is important & erroneous. There is no right to appeal from a "view" expressed by a judge that is not incorporated into an order, however, and there is therefore no basis for granting leave to appeal.

Costs reserved to the panel hearing the appeal

RD Blair Jt
David Scott Jt.
Phane Jt