Neutral Citation Number: [2020] EWHC 1499 (Ch)

Case No: CR-2020-002651

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

Royal Courts of Justice
The Rolls Building
7 Rolls Buildings
London, EC4A 1NL

Date: Friday, 5th June 2020

Before:

MR. JUSTICE MILES

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IN THE MATTER OF SWISSPORT FUELLING LTD
AND IN THE MATTER OF THE COMPANIES ACT 2006

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MR. DANIEL BAYFIELD QC and **MR. RYAN PERKINS** (instructed by **White & Case LLP**) appeared on behalf of the **Company.**

MS. FELICITY TOUBE QC (instructed by **Latham & Watkins LLP**) appeared on behalf of the **Ad Hoc Group.**

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Approved Judgment

Transcript of the Stenograph Notes of Marten Walsh Cherer Ltd.,
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MR. JUSTICE MILES:

1. The applicant, Swissport Fuelling Limited ("the Company"), applies for an order pursuant to section 896 of the Companies Act 2006, convening a meeting of its scheme creditors to consider a scheme of arrangement. The claim form was issued on 2 June 2020.

2. I should say something about the background, which I take largely from the skeleton argument of counsel for the Company (which faithfully summarises the witness statements and exhibits).

3. The Company is part of the Swissport Group of companies ("the Group"), which is the world's largest provider of ground and cargo handling services to the aviation industry. The Group employs about 65,000 people. Due to the Covid-19 pandemic, the Group has witnessed a rapid and drastic reduction in revenues, as a result of falling passenger numbers, and reduced airline activity. The Group is now facing a severe liquidity crisis, with its available cash resources expected to drop to a critical level by the final week of July 2020. To address this liquidity crunch the Group wishes to be able borrow up to €380 million of new money under a new loan facility ("the New Money Facility"). This will provide the Group with the liquidity it needs to carry on business for the next six to nine months. During that period the Group also intends to seek to implement a broader restructuring of its financial liabilities, with a view to carrying on operating as a going concern over the longer term.

4. The Group's existing financial liabilities arise under a number of different debt instruments and credit facilities. These include a Credit Agreement dated 14 August 2009 by which the Group has borrowed something over €1 billion under three different facilities. .. There is also an Intercreditor Agreement of the same date, which governs the ranking of liabilities under the Credit Agreement and certain other liabilities of the Group.

5. The scheme creditors and the lenders under the Credit Agreement. Any New Money Facility is bound to have to be given a ranking ahead of the existing senior liabilities of the Group. Any lenders of new money would require that super senior ranking. To enable this to happen, the consent of the lenders under the Credit Agreement and the Intercreditor Agreement is required, and the principal purpose of the proposed scheme is to effect that consent.

6. There is also a secondary purpose to the scheme, which is to make further changes to the Group's financing documents to give it greater flexibility to bring about a broader restructuring of its debt capital over time. If the New Money Facility can be obtained on satisfactory terms the Group believes that it will have a better chance of surviving its current liquidity crisis.

7. At the end of 2019, before the current pandemic largely grounded the aviation industry, the Group provided handling and cargo services at some 300 airports. The ultimate parent company of the Group is Swissport Group S.à r.l. All of the obligors under the Group's financing arrangements are its subsidiaries.

8. The Credit Agreement is the largest source of financial debt of the Group. It is governed by New York law. It comprises three loan facilities: first, a Term Loan B

facility, with a principal amount of €900 million, which matures on 14 August 2024; second, a Delayed Draw Facility, which has a principal amount of €50 million, and matures on 14 August 2024; and, third, a revolving credit facility, which has a principal amount of up to €75 million, and matures on 14 February 2024. The borrower under the Term Loan B Facility, and the Delayed Draw Facility, is a Luxembourg company called Swissport Financing S.à r.l.; and the borrower under the Revolving Credit Facility is Swissport International AG, a Swiss company (together "the Borrowers"). The liabilities of the Borrowers under the Credit Agreement are guaranteed by numerous members of the Group ("the Guarantors"). The Company is one of the Guarantors and is incorporated in England and Wales.

9. In addition to the Credit Agreement, the Group has a number of other main sources of financial indebtedness. These comprise, first, a series of senior secured notes ("the SSNs"), with aggregate principal amount of €410 million, and which mature in 2024. The second is a series of senior unsecured notes ("the SUNs"), which have an aggregate principal amount of €250 million and mature in 2025. Third, there is a payment in kind (or PIK) loan, which has a principal amount of €190 million, in which interest is periodically capitalised. That is structurally subordinated to the other forms of debt which I have just referred to and nothing more need be said about it at this stage.

10. The lenders under the Credit Agreement and the holders of the SSNs have the benefit of a security package over numerous assets of the Group. That security is vested in a Collateral Agent, on trust for those creditors. The SUNs are unsecured.

11. The contractual terms of the SSNs and the SUNs are set out in two indentures, which are governed by New York law.

12. The ranking of the Credit Agreement, the SSNs, and the SUNs, is the subject of the Intercreditor Agreement which is also governed by New York law. Under that agreement, the creditors under the Credit Agreement, and the SSNs, enjoy a senior ranking status with the security and rank on an equal basis. The SUNs are contractually subordinated to the senior secured debts of the Group.

13. As I have already said, the cash position of the Group will fall to a critical level by the end of July 2020, and the Group will, indeed, run out of cash in August 2020.

14. If the Group is unable to obtain significant new liquidity in short order, and if no alternative restructuring plan is implemented, it is likely that the Company, and other members of the Group, will be forced into insolvency or bankruptcy proceedings in a number of jurisdictions. It is likely that this would lead to a much poorer outcome for the Group's creditors.

15. The Group has taken advice from restructuring advisers, AlixPartners, who have carried out a preliminary analysis of the returns that creditors would be likely to receive in insolvency or bankruptcy proceedings. They have estimated that in an insolvency involving multiple proceedings around the world, a liquidation of the Group's assets would be likely to occur, and the scheme creditors would be likely to recover less than 35% of the face value of their claims. This is to be compared with the current trading value of the debt on the secondary market at around 77% of face value.

16. Since April 2020, the Group has been engaged in negotiations with an ad hoc group of creditors, with a view to obtaining a new money facility. Those negotiations are continuing, and terms have not yet been agreed, although a term sheet has been circulated. Raising the new money will require various amendments which need to be made to the Credit Agreement and the Intercreditor Agreement. These will allow the Group to seek to raise new money on a super senior basis.

17. The Company has explained in its evidence, supported by an expert report by Mr. Daniel Glosband, an experienced US bankruptcy lawyer, that it is unnecessary to seek the consent of the holders of the SUNs in order to implement the necessary amendments. He says in summary that the new borrowing would fall under the definition of Permitted Debt under the SUN indenture, and that the consent of the holders of the SUNs would not be required for the relevant amendments. He also says that borrowing up to the amount which is proposed by the Group would not breach covenants under the SUNs. I do not need to determine the point conclusively, but on the evidence I have seen there appear to be good grounds for the conclusions reached by Mr. Glosband.

18. The evidence also shows that it is unnecessary for the scheme to embrace the SSNs as the necessary consent threshold for them is lower and they have consented to the proposed amendments to the finance documents.

19. The scheme is therefore restricted to the lenders under the Credit Agreement. The scheme will operate to bind the scheme creditors to the terms of two amendments agreements; one to amend the Intercreditor Agreement, and the other to amend the Credit Agreement. In mechanical terms, this will take place by the Company being appointed as attorney of the creditors to provide written consent on their behalf to the terms of the Scheme Amendment Agreements.

20. This hearing is what is known as a convening hearing, the purpose of which is to obtain an order from the court to convene a meeting of one or more classes of scheme creditors. It is made under section 896 of the Companies Act 2006, which provides:

> "The court may, on an application under this section, order a meeting of the creditors or class of creditors, or of the members of the company or class of members (as the case may be), to be summoned in such manner as the court directs."

21. The Practice Statement (Companies: Scheme of Arrangement) [2002] WLR 1345 provides, first, the applicant should draw to the attention of the court, as soon as possible, any issues that may arise as to the constitution of meetings of creditors, or which would otherwise affect the conduct of those meetings. Second, for this purpose, "unless there are good reasons for not doing so", the applicant should take all reasonable steps to notify any person affected by the scheme that it is being promoted, the purpose which the scheme is designed to achieve, the meetings of creditors which the applicant considers will be appropriate and their composition. Third, in deciding whether or not to order meetings of creditors, the court will consider whether more than one meeting of creditors is required, and, if so, the appropriate composition of those meetings. Creditors are entitled to appear at the convening hearing and raise objections to the proposed class composition.

22. Where a company has complied with the Practice Statement, a creditor who fails to raise a class issue at the convening hearing will ordinarily be unable to do so at the sanction hearing unless there is a good reason why the argument was not raised earlier.

23. The function of the court at the convening hearing is "emphatically not" to consider the merits or fairness of the proposed scheme, which will arise for consideration at the sanction hearing if the scheme is approved by the statutory majority of creditors. However, the court is entitled to, and should, consider whether there is any jurisdictional roadblock which would unquestionably lead the court to refuse to sanction the scheme: see *Re Noble Group Ltd* [2019] BCC 349 at [76].

24. In the present case, the scheme creditors have been given just over a week's notice of the convening hearing. There is no minimum requirement under the Practice Statement, and what amounts to adequate notice will depend on all the circumstances. The notice given here is shorter than the usual since it is customary to provide 14-21 days' notice of the convening hearing in cases of this type.

25. I am satisfied that on the facts of this case the notice that has been given has been sufficient to enable the court properly to make an order to convene meetings, rather than, for example, adjourning this hearing. The Group is facing a severe liquidity crisis and needs to be able to get on with its attempts to raise the new money as quickly as possible. The scheme creditors are sophisticated institutions and can be expected to act quickly.

26. The main question for scheme creditors is whether to approve the changes to the financing documentation which will facilitate the raising of the new money. There has been a consent solicitation process, under which the proposed changes were circulated to the scheme creditors, and the information about that was provided to them on 20 May 2020, so they have had some time already to consider the position.

27. Having said that, it is possible that scheme creditors may choose to make opposing submissions at the sanctions hearing, and this is good reason for not seeking to decide any jurisdictional points at this stage. The Company has, indeed, accepted that it will not seek to contend that any scheme creditor is precluded from raising any argument about jurisdiction or class composition at the sanction hearing. It follows that no scheme creditor will be prejudiced by the relatively short period of time between the circulation of the Practice Statement letter and this convening hearing.

28. I turn, then, to the question of class composition. The principles are well-known and I shall not set them out in this judgment. The scheme creditors here are all the lenders under the Credit Agreement. The Company proposes that they should meet and vote as a single class.

29. The Company is supported in its submissions by an ad hoc group of creditors. They currently hold about 29% of the facilities under the Credit Agreement, and some 58% of the SSNs.

30. I am informed that when trades which have already occurred settle they will hold in the order of 58% of the claims under the Credit Agreement. They intend to vote in favour of the scheme. They say the alternative to the New Money Facility is

insolvency, and they submit that the Company is correct to say that the scheme creditors should form a single class.

31. I agree with the Company's proposal to convene a meeting of the scheme creditors, forming a single class for the following reasons. First, their existing rights are substantially the same: they benefit from the same security package, and they rank equally. Secondly, their rights under the scheme will be treated in the same way, that is to say they will all be affected to the same extent by the changes made to facilitate the new super senior borrowing. Thirdly, the relevant comparator here is an insolvency under which they would be in materially the same position as one another, and rank in the same way, and therefore can be regarded as having a unity of interest in conferring together.

32. Looking at things in the round, and before I turn to the possible differences between them, there appears to me to be no reason why they should not be able to consult together in their common interest.

33. The Company has properly raised four points that might potentially lead to a different result.

34. First, there are different interest rates for the three facilities under the Credit Agreement. The differences are not great. There have been numerous cases of schemes of arrangement where the court has held that a difference in interest rates under different debts ought not to lead to the need for separate classes, at least where the comparator is a formal insolvency process: see, e.g., *Re Lecta Paper UK Ltd* [2019] EWHC 3615 (Ch) at [14] per Zacaroli J. Here, the comparator is a formal insolvency process. Moreover, the scheme itself does not affect the interest rates under any of the existing facilities. The differences in interest rate do not, to my mind, lead to a fracture of the class.

35. Secondly, there are slightly different maturities under the three facilities, as I have already mentioned. This point, too, has been considered in a number of authorities, where the comparator is a formal insolvency process. Again, I can refer to [14] of *Re Lecta Paper UK Ltd*, where Zacaroli J did not regard this as fracturing the class. I agree with his analysis in that case. Were there to be an insolvency the various debts would be accelerated and payable under the terms of the Credit Agreement. Moreover, the scheme itself does not affect the maturity dates, and each of the holders of the debt under the three facilities will be affected in the same way by the scheme. Again, I do not think that this leads to any fracture in the class.

36. The third point is that certain members of the Group have agreed to pay the fees, costs and expenses of certain professional advisers to the ad hoc group, connected with various steps already taken, or to be taken in relation to the refinancing. These companies have agreed to pay these expenses in any event, and payment is not contingent on the scheme being sanctioned. A similar arrangement occurred in the case of *Re Lecta Paper UK Ltd*. Again Zacaroli J considered that this did not lead to any fracture in the class of creditors, and I take the same view here.

37. Fourth, under the amendments made to the Credit Agreement and the SSNs, the lenders will have a right to participate *pro rata* in any New Money Facility. The terms of such facility have not yet been negotiated, but it is likely that the Group will

seek to agree underwriting arrangements with some creditors, including, potentially, some scheme creditors. In accordance with the usual practice, they will be likely to be offered an underwriting fee. This does not form any part of the scheme, and will not automatically result from the scheme, nor can anyone, at this stage, identify any group of creditors who will participate in such arrangements, so it would be impossible to hive off a separate class of scheme creditors at this stage.

38. Moreover, the evidence of Mr. Waller shows that underwriting fees will be at market rates. The arrangement will be a commercial one, with no element of bounty that could give rise to a fairness or class issue. So, again, I do not think that this leads to any fracturing of the class.

39. For these various reasons I do not think that any of the specific matters properly raised by the Company's counsel undermines my preliminary conclusion that it is appropriate for there to be a single class meeting of the scheme creditors.

40. I turn to what may broadly be called jurisdictional questions. I am satisfied, first, that the scheme constitutes an arrangement within s.895 of the Companies Act 2006. It concerns the amendment of the terms of a Credit Agreement and the Intercreditor Agreement and involves an element of give and take. Some of the amendments will have the effect of reducing consent thresholds for amendments to be made to the financing agreements in the future, including as to the identity of the Borrower under the Revolving Credit Facility and changing the governing law and jurisdiction clauses of the Credit Agreement.

41. I am satisfied that making such changes constitutes an arrangement for the purposes of s.895. The voting thresholds are part of the existing contract, and the scheme will operate to change them. I agree in this regard with the approach taken to a similar issue by Lady Wolffe in *Re Premier Oil PLC* [2020] CSOH 39.

42. The next point is that the scheme will affect the rights of scheme creditors against all the obligors under the Credit Agreement, including the Company, the Borrowers and the other Guarantors. The primary purpose of the scheme is, as I have said, to enable the Group to raise new money, which will rank in priority to scheme creditors' claims against all the obligors.

43. It is well established that a scheme is capable of affecting the rights of creditors against third parties: see e.g. *Re APCOA Parking Holdings GmbH* [2015] Bus LR 374.

44. The usual context in which this arises is where the company propounding the scheme is the borrower and there are also guarantors in the same group of companies. A scheme may operate to release or modify the obligations of guarantors, as otherwise the creditors could claim against the guarantors, which would, in turn, be able to make what is called a ricochet claim against the borrower, thereby defeating the purpose of the scheme.

45. That the scheme may be used to effect releases of guarantees, usually by the appointment of an attorney for the scheme creditors, is shown by cases such as *Re Noble Group Ltd* [2019] BCC 349 and *APCOA*.

46. The same approach has been taken in cases where two companies are jointly and severally liable as primary obligors for the same debt: see *Re Lecta Paper UK Ltd* [2020] EWHC 382 (Ch), a claim by joint obligors to a claim for contribution.

47. Here, the case is potentially different. The scheme Company is a guarantor, rather than a borrower. The reason why the Company is proposing the scheme is that, being incorporated in England and Wales, it engages the jurisdiction of the Companies Act 2006. The Borrowers are incorporated in Luxembourg and Switzerland and may be unable to establish a sufficient connection to establish the jurisdiction of the English court. Under the Credit Agreement, the Borrowers do not have a right of contribution or indemnity against the guarantors, so a claim against them would not ricochet against the Company.

48. However, the Company has recently, on 22 May 2020, entered into a deed of contribution in favour of the Borrowers, under which the Company assumes the position of a primary obligor, alongside the Borrowers, so that each of them would have a right of contribution against the other. The Company submits that even without the deed of contribution, the scheme could bring about the variation or release of scheme creditors against third parties, and they rely on a number of authorities in that regard.

49. However, I do not think it is appropriate, on this application, to say more about that argument, as the position has been superseded by the deed of contribution. The Company accepts that the deed of contribution was executed for the purpose of ensuring that the court has jurisdiction to sanction the scheme.

50. Steps of an analogous kind have been taken in previous schemes, which have been sanctioned by the court. These include: *Re AI Scheme Ltd* [2015] EWHC 1233 (Ch), *Re Codere Finance (UK) Ltd* [2015] EWHC 3778 (Ch), *Re NN2 Newco* Ltd [2019] EWHC 1917 (Ch), and *Re Lecta Paper UK Ltd* [2020] EWHC 382 (Ch) (the sanction hearing). These cases show that there is nothing abusive about steps being taken with a view to attracting the jurisdiction of the English Court for a scheme of arrangement where this is in the interests of creditors.

51. In all of these cases, a relevant deed was entered into to create a relationship between an English company and a group of creditors which had not previously dealt with the company. The creditors became creditors of the scheme company purely as a result of the deed.

52. In the current case, the Company has been a Guarantor under the Credit Agreement at all material times and has not created a new relationship with the scheme creditors. Rather, the deed of contribution simply ensures that the Borrowers have a ricochet claim against the Company.

53. Hence, this case can be regarded as *a fortiori* to the various cases I have just referred to. Based on that line of authority, it appears to me that the English court would be able to, through a scheme of arrangement, modify or release the claims of scheme creditors against the various companies in the Group, including the Borrowers. Again, however, I do not need to reach a firm conclusion on this point. At this stage, the question is whether there is a roadblock in the way of the scheme, and I do not consider there to be one under this head.

54. The next point is that the scheme includes a release of claims against professional advisers. Clauses of this kind have been considered and sanctioned in previous schemes, including *Re Noble Group Limited*, at [20]-[30]. Again, I do not think that there is any reason to think that the scheme cannot go forward properly in relation to this point.

55. The next series of issues concerns international jurisdiction. Again, the question at this stage is whether there is a roadblock.

56. The first issue is jurisdiction under Part 26 of the Companies Act 2006. There is no issue here, as the Company is incorporated in England and Wales, and is, therefore, liable to be wound up under the Insolvency Act 1986.

57. The second issue under this head is international effectiveness. The Court will need to consider, at the sanction stage, whether the scheme is likely to be effective in the key jurisdictions. This is primarily a matter to be considered at the sanction hearing. I should, however, consider whether there is any roadblock which would militate against convening a scheme meeting.

58. As I have said, the Credit Agreement and the Intercreditor Agreement are governed by New York law, which raises the question whether the scheme will be recognised and given effect in the USA. I have already mentioned that the Company has adduced evidence from Mr. Glosband. He concludes that the scheme is likely to be recognised and given full force and effect in the US, pursuant to Chapter 15 of the US Bankruptcy Code. He notes that the US bankruptcy courts have recognised previous English schemes of arrangement, which have varied or released the claims of creditors under finance documents governed by New York law, and gave several examples. He has given expert evidence in a number of cases relied on by the English courts in relation to schemes of arrangement. I have read his report and have no reason, on the materials before me, to doubt its contents or conclusions. The Company intends to adduce evidence that the scheme will be effective in Switzerland and Luxembourg, where the Borrowers are respectively incorporated, and where most of its assets are held. Again, I have no reason at this stage to conclude that the scheme will not be capable of being made effective in those states.

59. The next issue concerns jurisdiction over the scheme creditors. There is a much debated and unresolved question whether schemes under the Companies Act fall under the provisions of Regulation EU 1215/2012 ("the Recast Judgments Regulation"). This applies to "civil and commercial matters" and requires, subject to various exceptions, that persons be sued in the courts of the Member States where they are domiciled. The exceptions include Article 8, which provides materially as follows:

> "A person domiciled in a Member State may ...be sued ... (1) where he is one of a number of defendants in the courts for the place where only one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings."

As I have already said, the question whether schemes fall within the scope of the Recast Judgments Regulation remains unresolved. Courts have generally been able to approach things pragmatically by assuming that the regulation does apply and determining whether the court would have jurisdiction over scheme creditors on that assumption. In the case of *DTEK Finance* Plc, both at the convening hearing before Newey J, which is at [2017] BCC 165 and at the sanction hearing before Norris J, which is at [2016] EWHC 3563 (Ch), it was held that if at least one scheme creditor is domiciled in England, Article 8 confers jurisdiction on the English court to sanction a scheme affecting the rights of creditors domiciled elsewhere in the EU."

60. Snowden J, in a later case, suggested that this might be too broad a proposition, but in the recent decision in *Re Lecta Paper UK* [2020] EWHC 382 (Ch) (at the sanction hearing) at [48] Trower J preferred the approach of Newey J and Norris J in *Re DTEK*, and I agree with him..

61. In the present case at least four of the lenders of record under the Credit Agreement are domiciled in England, holding approximately 14% of the total commitments by value. Counsel for the Company explained to me that he has looked at the identity of those lenders of record and satisfied himself that the companies are incorporated in this jurisdiction.

62. For these various reasons, I am satisfied there is no obstacle or roadblock concerning territorial jurisdiction.

63. I am satisfied in all the circumstances that it is appropriate to convene the proposed meeting of scheme creditors.

64. As to the question of notice, timing and conduct of the meeting, the proposed timetable involves sending out notices as soon as reasonably practicable after this hearing. I am informed that it should be possible to do so today. The deadline for proxy forms to be submitted by scheme creditors is proposed to be 17 June 2020, with a scheme meeting to take place on 19 June 2020, and the sanction hearing to take place on about 24 June 2020. The scheme creditors will, therefore, have about 12 days before the deadline for submitting the proxy form to consider the explanatory statement.

65. I have considered whether this is adequate notice, and I take account of the following factors. Firstly, I consider that the matter is one of real urgency, given the nature and extent of the Group's liquidity crisis. Secondly, the scheme creditors are sophisticated institutions, used to making decisions of this kind quickly. Thirdly, the decision for scheme creditors is a relatively simple one: they have to decide whether they are content to subordinate their existing debt to a new money facility or, on the other hand, to take their chances in a likely liquidation or bankruptcy of the Group. Fourthly, as I have already explained, the amendments which are proposed were sent to scheme creditors on 20 May 2020, as part of a consent solicitation process, and they have, therefore, already had some weeks to consider the proposed amendments. There will be, no doubt, some further information provided in the explanatory statement; but it is not a long or complicated document. I consider that the timetable proposed is an appropriate one.

66. As to the manner of notice, this will be dealt with by uploading the explanatory statement and its appendices on to the scheme website. This is in accordance with the way that information is provided to lenders through what is called the information agent, the customary way in which communications are made. It will also be uploaded by the administrative agent to an online portal that is customarily used for sharing information and notification with lenders.

67. As to the conduct and form of the meeting, it is proposed that it should take place virtually by Webinar. The explanatory statement explains how scheme creditors can obtain dial-in details for the Webinar. This point arose in *Re Castle Trust Direct Plc* [2020] EWHC 969 (Ch), in which Trower J concluded that it was possible for a remote meeting by Webinar to satisfy the requirements of Part 26 of the Companies Act, and in particular to constitute a "coming together" with the ability to consult. He also gave guidance as to the sort of information the court will expect on the sanction hearing as to the ability of creditors to participate in the meeting, and whether there were any difficulties in relation to participation which affected the meeting or its fairness. The Company confirmed that it will provide such information to the court at the sanction hearing. I consider it is appropriate for the meeting to be conducted as proposed.

68. Finally, the court is also asked to make a declaration that Mr. Chris Mallon, who is a director of the Company, has been validly appointed as the Company's foreign representative for the purpose of seeking recognition of a scheme under Chapter 15 of the US Bankruptcy Code. Such a declaration has been granted in a number of previous occasions upon the court being provided with board minute evidence showing the appointment of the foreign representative. I have been shown such evidence in this case, and I am satisfied that it is appropriate to make such a declaration.

69. In the circumstances, I shall make an order in the form of the draft provided to me by the Company.

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