

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 INTERWIND CORP.

Court File No.: 09-8321-00CL

January 15, 2010

G. Smith }
C. Costa } per Interwind

M. P. Mangler }
J. S. Smeets } per KPI/26 Inc.

J. P. D'Amico for 1454 Woodbine

L. P. Miller for Lehman (2nd secured)

P. Griffith for CPV Canada (Unsecured)

H. Chastin for EnX Co.

15799682.1

The Applicant has the support
of 1454 Woodbine the 1st
secured creditor.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

SUPPLEMENTARY MOTION RECORD
(returnable January 19, 2010)

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The second secured creditor (Lubron) takes
no position on the standing issue, but it
supports the CPV bid.

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The position of both ~~the~~ secured creditors
remains unaltered in the face of the
"general and best offer" of Enxco as
communicated on January 8, 2010.

Counsel to the Trustee advises that the
Monitor will be filing a Report for the
Sale Approval Trust and that it intends
to recommend approval of the CPV bid
and that it will comment on the latest
Enxco bid.

As such, there is no party with an
economic interest in the proceedings
that supports the position of Enxco

On the material before me, it appears that
 Elix's E.X. Co interest is that of a disappointed
 potential purchaser. I have not been
 persuaded that it has a legal ^{right or} interest
 or a proprietary right to either participate
 in the sale process or attack that process.
 The issues raised by E.X. Co have been
 addressed ~~repeatedly~~ by the Court of
 Appeal on at least two occasions.

See Skyepharma PLC v Hjel Pharmaceutical
 Corporate [2000] O.J. No 467 (C.A.) and
 most recently in BDC Venture Capital Inc. v
 Natural Convergence Inc. 2009 ONCA 665
 In particular see paragraph 16 + 17
 of Skyepharma as referenced in BDC.

... the fundamental purpose of the sale approval order is to consider the best interests of the parties with a direct interest in the proceeds of the sale, primarily, the creditors. The unsuccessful would be purchaser has no interest in this issue ...

... The inquiry into the integrity of the process may incidentally address the fairness of the process to prospective purchasers, but that in itself does not create a right or interest in a prospective purchaser that is affected by a sale approval order.

In my view, based on the record before me, the court has not demonstrated that it has the standing to do so in this

proceeding, including in respect of the note
returnable June 19, 2010.

The note is granted in all respects.

It is, however, open to EnX Co, to file
revised materials prior to the return of
the ~~Money~~ Approved T/T in an attempt
to establish that it has proper grounds
to oppose the Approved T/T.

[subject to
edit if
typed]

