

**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 SKYPOWER CORP.**

Applicant

MOTION RECORD
(returnable September 3, 2009)

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Notice of Motion

1

Draft Stay Extension Order

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TAB 1

**ONTARIO
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**NOTICE OF MOTION
(Returnable September 3, 2009)**

SkyPower Corp. (the "**Applicant**") will make a motion to a judge presiding over the Commercial List on Thursday, September 3, 2009, at 10:00 a.m. or as soon after that time as the motion can be heard at the Courthouse, 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: This Motion is to be heard orally.

THE MOTION IS FOR:

1. An Order, *inter alia*:
 - (a) abridging the time for service of the Notice of Motion and the materials filed in support of the Motion;

- (b) extending to and including November 30, 2009, the Stay Period granted pursuant to the initial CCAA Order issued by this Honourable Court on August 12, 2009 (the “**Initial CCAA Order**”);
- (c) subject to recognition of the Initial CCAA Order by the United States Bankruptcy Court for the District of Delaware, authorizing the Applicant to make such additional draws under the Commitment Letter (as defined in the Initial CCAA Order) for disbursements set out in the cash flow statements filed with this Court on August 12, 2009, as revised from time to time, in consultation with the Monitor;
- (d) approving the First Report dated August 24, 2009 and the Second Report dated September 1, 2009 of KPMG Inc., in its capacity as monitor of the Applicant (the “**Monitor**”) and the activities of the Monitor detailed therein; and
- (e) such further and other relief as the Applicant may request and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION are as follows:

2. The Applicant is one of the leading independent, renewable energy developers in Canada. It is an industry leader with extensive expertise in developing large-scale wind, solar and other renewable energy power projects;
3. Pursuant to the Initial CCAA Order, the Applicant was granted protection pursuant to the *Companies' Creditors Arrangement Act* (the “**CCAA**”) and a stay of proceedings to and

including September 11, 2009 in respect of the Applicant and certain other parties, is currently in effect;

4. Pursuant to an Order of this Honourable Court dated August 25, 2009, the Applicant was authorized to run a sale process in respect of its assets, property and undertaking. The Applicant is working closely with its financial advisor, Marathon Capital, LLC to run the court-approved sale process with the oversight and supervision, but not control, of the Monitor;
5. The stay extension sought by the Applicant would see the Applicant through to the anticipated completion date of the transactions contemplated by the sale process;
6. Paragraph 53 of the Initial CCAA Order provides that any draws under the DIP Facility above \$6 million may only be made with approval of this Court. The Applicant will require access to the entire availability under the DIP Facility to fund its business and operations during the Stay Period, if extended;
7. The Applicant has continued to act diligently and in good faith in respect of all matters relating to the CCAA proceedings;
8. the provisions of the CCAA;
9. Rules 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure* (Ontario); and
10. such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. the Motion Record in connection with the within motion, filed;
2. the Second Report of the Monitor, filed; and
3. such further and other evidence as counsel may submit and this Honourable Court may admit.

Date: September 1, 2009

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SKYPOWER CORP.

**ONTARIO
SUPERIOR COURT OF JUSTICE
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Proceeding commenced at Toronto

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TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
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THE HONOURABLE MADAM) THURSDAY, THE 3rd
)
JUSTICE SWINTON) DAY OF SEPTEMBER, 2009

**IN THE MATTER OF THE *COMPANIES' CREDITORS*
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ORDER

THIS MOTION, made by SkyPower Corp. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report of KPMG Inc. as monitor (the "**Monitor**"), and on hearing the submissions of counsel for the Applicant, the Monitor, HSH Nordbank AG, New York Branch, as administrative agent and collateral agent on behalf of itself, Bayerische Landesbank, New York Branch and Union Bank of California, Canada Branch (n/k/a Union Bank, Canada Branch), Lehman Brothers Holdings Inc., CIM Group, West LB AG, Toronto Branch ("**West LB**"), and Norddeutsche Landesbank Girozentrale, New York Branch ("**Nord**"), and such other parties as may be present,

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and Motion Record in respect hereof be and it is hereby abridged so that the Motion is returnable today and that further service on any interested party is hereby dispensed with.

STAY EXTENSION

2. **THIS COURT ORDERS** that the Stay Period, as defined in paragraph 13 of the Initial Order of this Court dated August 12, 2009 (the “**Initial CCAA Order**”), be and is hereby extended to and including November 30, 2009.

DIP FINANCING

3. **THIS COURT ORDERS** that, upon recognition by the United States Bankruptcy Court for the District of Delaware of the Initial CCAA Order of this Court dated August 12, 2009, and further to paragraph 53 of the Initial CCAA Order, the Applicant be and is hereby authorized to make such additional draws under the Commitment Letter (as defined in the Initial CCAA Order) for disbursements set out in the cash flow statements filed with this Court on August 12, 2009, as revised from time to time, in consultation with the Monitor.

MONITOR'S REPORTS

4. **THIS COURT ORDERS** that the First Report of the Monitor dated August 24, 2009, the Second Report of the Monitor dated September 1, 2009, and the activities of the Monitor reported therein be and are hereby approved.

GENERAL

5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, including, without limitation, the United States Bankruptcy Court for the District of Delaware, to give effect to this Order and assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to

the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

6. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, including, without limitation, the United States Bankruptcy Court for the District of Delaware, for the recognition of this Order and for assistance in carrying out the terms of this Order.

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Court File No.: 09-8321-00CL

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