

**SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF SKYGREECE AIRLINES S.A., AN INSOLVENT
PERSON, PURSUANT TO SECTION 50.4(1) THE
BANKRUPTCY AND INSOLVENCY ACT ("BIA")**

NOTICE OF MOTION

THE DEBTOR, SkyGreece Airlines S.A. ("SkyGreece"), will make a motion to a judge of the Commercial List, on Friday, October 2, 2015, at 10:00 a.m., or as soon after that time as the motion can heard, at the court house at 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The Motion will be heard orally.

THE MOTION IS FOR:

1. An Order substantially in the form attached hereto as Schedule "A" (the "Draft Order"):
 - (a) abridging the time for service of the Notice of Motion, Motion Record and factum and validating service thereof;
 - (b) extending to November 17, 2015 the stays of proceedings imposed by s. 69(1) of the *Bankruptcy and Insolvency Act* and by the order of this court dated September 8, 2015;

- (c) approving interim financing on the terms described in the term sheet between the SkyGreece and Ken Stathakis (the "DIP Lender"), dated September 28, 2015 (the "DIP Loan") and declaring that the property, assets and undertakings of SkyGreece (the "Property") are subject to a charge in the amount owing in respect of the DIP Loan (the "DIP Charge"), including, without limitation, any amounts owing in respect of advances made to pay any debts due to employees of SkyGreece.
- (d) declaring that the Property is subject to a charge in the amount of \$100,000, in respect of the fees and expenses of the trustee under proposal (the "Trustee"), including the fees and expenses of any financial, legal or other experts engaged by the Trustee in the performance of the Trustee's duties (the "Trustee Charge");
- (e) declaring that the Property is subject to a charge in the amount of \$150,000, in respect of the fees and expenses of any financial, legal or other experts engaged by SkyGreece for the purpose of these proceedings, including, without limitation, lawyers for SkyGreece in Canada, Greece and the United States, SkyGreece's Chief Restructuring Officer, aviation consultants and communications experts (the "Advisor Charge");
- (f) declaring that the Property is subject to a charge in the amount of \$80,000 in favour of the directors and officers SkyGreece (including, without limitation, Brooks Pickering), to indemnify them against obligations and

liabilities that they may incur as directors or officers after the filing of the notice of intention to make a proposal, including, without limitation, any liability that they may incur in respect of amounts due to employees pursuant to the laws of Greece, but specifically excluding any obligation or liability that is determined to be incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault. (the "D&O Charge").

- (g) declaring that the DIP Charge, the Trustee Charge, the Advisor Charge, and the D&O Charge shall rank in priority to the interests of unsecured creditors, and that, as between them, they shall rank in the following order of priority:
 - (i) First: the Trustee Charge and Advisor Charge, on a *pari passu* basis;
 - (ii) Second: the D&O Charge; and,
 - (iii) Third: the DIP Charge.
- 2. An Order approving the activities of the Proposal Trustee as disclosed in its First Report to the Court.
- 3. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS OF THE MOTION ARE:

1. SkyGreece is an international airline, based out of Greece, which offers air travel between Athens, Toronto, Montreal, Budapest, Zagreb, and New York. SkyGreece was founded in 2013.
2. On September 3, 2015, SkyGreece filed a Notice of Intention to make a Proposal under section 50.4(1) of the *BIA*.
3. On September 8, 2015, this court made an order, among other things, staying regulatory proceedings by or before the Canadian Transportation Agency until September 28, 2015.
 - A. *Basic Stay Extension (BIA s. 50.4(9))***
 4. SkyGreece has acted, and is acting, in good faith and with due diligence.
 5. Subject to the extension of the regulatory stay of proceedings, receipt of the DIP Loan, and the granting of the relief sought herein, SkyGreece will likely be able to make a viable proposal.
 6. No creditor will be materially prejudiced if the relief being applied for is granted.
- B. *Regulatory Stay Extension (BIA s.69.6(3))***
 7. A viable proposal will not be possible if regulatory proceedings before the CTA are allowed to continue, and it is not contrary to the public interest that the CTA be affected by the section 69(1) stay of the *BIA*.

C. *Interim Financing and Charge (BIA s. 50.6)*

8. The DIP Loan is required by SkyGreece, having regard to its cash flow statement, for the purpose of financing its restructuring effort, and justified by the following considerations:

- (a) The proceedings are expected to run at least until the first quarter of 2016, and SkyGreece does not have access to funds from operations or other sources apart from the DIP Loan during this period;
- (b) SkyGreece's business and financial affairs are being closely managed by a team of restructuring and aviation experts, under the supervision of and in consultation with the Proposal Trustee and its counsel;
- (c) SkyGreece's management has the confidence of its major creditors;
- (d) The DIP Loan will enhance, and, indeed, is essential to the prospects of a viable proposal being made;
- (e) SkyGreece's assets consist of:
 - (i) various license and other rights, which have no liquidation value;
 - (ii) accounts receivable from its intermediary payments processor and others which are subject to as yet undetermined set off rights; and,
 - (iii) a Boeing 767 airplane, which is subject to a security interest in favour of Bank of America, having an estimated net value to SkyGreece of approximately \$2.5 million;

- (f) creditors will not be materially prejudiced as a result of the granting of the Administrative Charge and DIP Charge.
- (g) the Trustee Under Proposal supports SkyGreece's motion for approval of interim financing.

D. Trustee and Advisor Charges (BIA s. 64.2)

- 9. The Trustee Charge and Advisor Charge are necessary for the continuation of these proceedings, having regard to SkyGreece's very limited cash flow.

E. D&O Charge (BIA s. 64.1)

- 10. The D&O Charge is necessary for the effective continuation of these proceedings, having regard to:
 - (a) the material exposure of SkyGreece's directors and officers to liability and sanction for operating liabilities, including, without limitation, in respect of amounts owing to Greek employees; and,
 - (b) SkyGreece's inability to obtain adequate indemnification insurance for its directors or officers at a reasonable cost.
- 11. Sections 50.4(9), 69(1), 69.6(3), 50.6, 64.2, 64.1 of the *BIA*.
- 12. Rules 3.02 and 16.08 of the *Rules of Civil Procedure*.
- 13. Such further and other grounds as counsel may advise and this Honourable Court permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED ON THE HEARING
OF THE MOTION:**

1. The affidavit of Brooks Pickering, sworn September 28, 2015, with exhibits;
2. The affidavit of Brooks Pickering, sworn September 4, 2015, with exhibits;
3. The First Report to the Court of the Proposal Trustee; and,
4. Such further and other material as counsel may advise and this Honourable Court may permit.

Date: September 28, 2015

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SCHEDULE "A"

Court File No. 31-2032828

**SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF SKYGREECE AIRLINES S.A., AN INSOLVENT
PERSON, PURSUANT TO SECTION 50.4(1) THE
BANKRUPTCY AND INSOLVENCY ACT ("BIA")**

THE HONOURABLE)	FRIDAY, THE 2nd
)	
MADAM JUSTICE CONWAY)	DAY OF OCTOBER, 2015
)	

ORDER

THIS MOTION made by SkyGreece Airlines S.A. ("SkyGreece"), for an order extending the stay of proceedings herein and for other corollary relief was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the SkyGreece's Motion Record, Factum and Book of Authorities, and the First Report of Ernst & Young Inc. as Proposal Trustee for SkyGreece ("Proposal Trustee"), and on hearing the submissions of SkyGreece, and the Proposal Trustee,

1. **THIS COURT ORDERS THAT** the time for service and filing, and the manner of service of the Applicant's Motion Record, Factum and Book of Authorities is hereby

abridged and validated so that the motion is properly returnable today. The court dispenses with further service thereof.

2. **THIS COURT ORDERS THAT** the stays of proceedings imposed by s. 69(1) of the *Bankruptcy and Insolvency Act* and by the order of this court dated September 8, 2015 are hereby extended to November 17, 2015.

3. **THIS COURT ORDERS AND DECLARES** that the interim financing described in the term sheet attached hereto as Appendix A (the "DIP Loan") is hereby approved and that the property, assets and undertakings of SkyGreece (the "Property") are subject to a charge in the amount owing in respect of the DIP Loan (the "DIP Charge"), including, without limitation, any amounts owing in respect of advances made to pay any debts due to employees of SkyGreece.

4. **THIS COURT ORDERS AND DECLARES** that the Property is subject to a charge in the amount of \$100,000, in respect of the fees and expenses of the trustee under proposal (the "Trustee"), including the fees and expenses of any financial, legal or other experts engaged by the Trustee in the performance of the Trustee's duties (the "Trustee Charge").

5. **THIS COURT ORDERS AND DECLARES** that the Property is subject to a charge in the amount of \$150,000, in respect of the fees and expenses of any financial, legal or other experts engaged by SkyGreece for the purpose of these proceedings, including, without limitation, lawyers for SkyGreece in Canada, Greece and the United

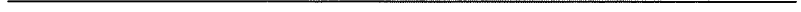
States, SkyGreece's Chief Restructuring Officer, aviation consultants and communications experts (the "Advisor Charge").

6. **THIS COURT ORDERS AND DECLARES** that the Property is subject to a charge in the amount of \$80,000 in favour of the directors and officers SkyGreece (including, without limitation, Brooks Pickering), to indemnify them against obligations and liabilities that they may incur as directors or officers after the filing of the notice of intention to make a proposal, including, without limitation, any liability that they may incur in respect of amounts due to employees pursuant to the laws of Greece, but specifically excluding any obligation or liability that is determined by this court to be incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault. (the "D&O Charge").

7. **THIS COURT ORDERS AND DECLARES** that the DIP Charge, the Trustee Charge, the Advisor Charge, and the D&O Charge shall rank in priority to the interests of unsecured creditors, and that, as between them, they shall rank in the following order of priority:

- (a) First: the Trustee Charge and Advisor Charge, on a *pari passu* basis;
- (b) Second: the D&O Charge; and,
- (c) Third: the DIP Charge.

8. **THIS COURT ORDERS AND DECLARES** that the activities of the Proposal Trustee as disclosed in its First Report to the Court are hereby approved.



IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF SKYGREECE AIRLINES S.A., AN INSOLVENT PERSON,
PURSUANT TO SECTION 50.4(1) THE *BANKRUPTCY AND INSOLVENCY ACT* (“*BIA*”)

**ONTARIO
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PROCEEDING COMMENCED AT
TORONTO

ORDER

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