

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF **MONTREAL**

No: 500-11- *024361-046*

DATE: November 8, 2004

UNDER THE PRESIDENCY OF HONORABLE JUSTICE DANIEL H. TINGLEY, J.C.S.

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C-36, AS AMENDED, SECTION 18.6**

**AND IN THE MATTER OF THE APPLICATION BY FLINTKOTE MINES LIMITED
ANCILLARY TO PROCEEDINGS UNDER *CHAPTER 11 OF THE UNITED STATES
BANKRUPTCY CODE*:**

FLINTKOTE MINES LIMITED

Applicant

INITIAL ORDER

[1] **THE COURT** is seized with an *ex parte Motion to Obtain Initial Order to Recognize Proceedings Commenced by the Applicant under Chapter 11 of the United States Bankruptcy Code*;

[2] **UPON READING** the Motion and the Affidavit of Mr. David J. Gordon and the exhibits in support hereof;

[3] **AFTER HAVING HEARD** the submissions of the attorneys for the Applicant;

[4] **THE COURT RENDERS THE FOLLOWING JUDGMENT:**

[5] **GRANTS** the present *Motion to Obtain Initial Order to Recognize Proceedings Commenced by the Applicant under Chapter 11 of the United States Bankruptcy Code*;

RECOGNITION OF US PROCEEDINGS

[6] **ORDERS AND DECLARES** that the proceedings commenced by the Applicant in the United States Bankruptcy Court for the District of Delaware (the "**US Bankruptcy Court**") bearing Case No. 04-12440 (JFK) for relief under Chapter 11 of the United States Bankruptcy Code (the "**U.S. Proceedings**"), be and are hereby recognized as "foreign proceedings" for the purposes of Section 18.6 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**CCAA**");

[7] **ORDERS AND DECLARES** that the Applicant is a company which is entitled to relief pursuant to s. 18.6 of the CCAA;

[8] **RECOGNIZES** the following orders, made in the U.S. Proceedings:

- (i) *Order Approving Litigation Claimant Notices Procedures* rendered by Judge Walrath of the US Bankruptcy Court on May 4, 2004;
- (ii) *Order under 28 U.S.C 156(C) Appointing Garden City Group, Inc. as Notice, Claims and Balloting Agent for the Court* rendered by Judge Walrath of the US Bankruptcy Court on May 4, 2004;
- (iii) *Order appointing James J. McMonagle as Futures Representative* rendered by Judge Fitzgerald of the US Bankruptcy Court on August 25, 2004;
- (iv) *Order pursuant to Federal Rule of Bankruptcy Procedures 1015(b) and 105(a) (i) Directing Joint Administration; and (ii) Directing that certain orders in the Chapter 11 Case of the Flintkote Company be made applicable to Flintkote Mines Limited*; rendered by Judge Fitzgerald of the US Bankruptcy Court on September 8, 2004;

and **DECLARES** that such orders shall have full force and effect in Canada in the same manner and in all respects as if they had been made by this Court;

STAY OF PROCEEDINGS

[9] **ORDERS** that until and including June 30, 2005, or such later date as this Court may order (the "**Stay Period**"), no suit, action, proceeding, enforcement process, right or remedy (judicial or extra judicial) taken or exercised or that may be taken or exercised in Canada (collectively, the "**Proceedings**") by any person, firm, corporation, insurance company, government, administrative body or other entity including, without limitation, any of the existing

or future shareholders, creditors, customers, suppliers, contracting parties, lessors, licensors, co-venturers and partners of the Applicant (collectively, "**Claimants**" and individually a "**Claimant**");

- (i) against or in respect of the Applicant or against any present or former officers or directors of the Applicant or any of its property, assets, undertaking, estate and effects of any nature wheresoever located and whether held directly or indirectly, as principal or nominee, beneficially or otherwise (collectively, the "**Property**"); or
- (ii) arising out of, relating to or triggered by the occurrence of any default or non-performance by the Applicant, the making or filing of these proceedings or the U.S. Proceedings or any allegation contained in these proceedings or the U.S. Proceedings;

shall be commenced, proceeded with or continued and all such Proceedings are hereby stayed and suspended, except with prior leave of this Court obtained on application brought on at least seven (7) clear days' notice to the Applicant;

[10] **ORDERS** that, without limiting the generality of paragraph 4 hereof, during the Stay Period, all Claimants having agreements or other arrangements with the Applicant in connection with any of the Property, whether written or oral (including, without limitation, leases, licenses and contracts for the supply of goods or services to or by the Applicant and equipment leases):

- (a) are hereby restrained from accelerating, terminating, suspending, modifying or canceling such agreements or other arrangements or the rights of the Applicant thereunder or exercising any other remedy provided for under such agreements or arrangements;
- (b) are hereby restrained from terminating, canceling, withdrawing or otherwise interfering with any licenses, permits, approvals or consents in respect of the Applicant in connection with any of the Property;
- (c) are hereby restrained from discontinuing or interfering with the supply of any goods or services by or to such Claimant (including, without limitation, telecommunications services and utilities); and
- (d) shall continue to perform and observe the terms and conditions contained in any agreements or arrangements entered into with the Applicant or in connection with any of the Property prior to or after the date of this Order (including, without limitation, the payment of all amounts to be paid in respect of services performed or to be performed by the Applicant);

except with prior leave of this Court obtained on application brought on at least seven (7) clear days' notice to the Applicant;

RECOGNITION OF THE US BAR DATE ORDER

[11] **ORDERS** that the order made in the US Bankruptcy Court on October 13, 2004 and its Exhibits (hereinafter the "**US Bar Date Order**") (a) establishing January 31, 2005 at 4:00 p.m., prevailing Eastern time (the "**General Bar Date**"), as the deadline for filing General Claims as defined in the US Bar Date Order ("**General Claim**") against the Applicant; (b) establishing *inter alia* a process to prove a General Claim; and (c) approving bar date notices, mailing and publication procedures, the whole except as herein modified with respect to Canadian creditors holding a General Claim ("**Canadian Creditors**"), is hereby recognized and approved and **DECLARES** that the US Bar Date Order shall have full force and effect in Canada in the same manner and in all respects as if they had been made by this Court;

[12] **APPROVES** a proof of claim form and its instructions, including a French translation, for use by Canadian Creditors, as defined in the US Bar Date Order (the "**Canadian Proof of Claim Form**") in substantially the forms attached hereto as Schedule "**A**";

[13] **APPROVES** a notice of the General Bar Date, including a French translation, for the purposes of the Canadian Creditors (the "**Canadian General Bar Date Notice**") in substantially the forms attached hereto as Schedule "**B**";

[14] **ORDERS** that the Applicant publish the Canadian General Bar Date Notice in substantially the form attached hereto as Schedule "**C**" in the national edition of *The Globe and Mail* and in *La Presse* (collectively, the "**Publication Notice**") on or before November 13, 2004;

[15] **ORDERS** that notification of the Canadian General Bar Date Notice by the publication of the Publication Notice, as provided herein, is fair and reasonable and will provide good, sufficient and proper notice to all Canadian Creditors of their rights and obligations in connection with any General Claim they may have against the Applicant in these proceedings or the US Proceedings;

[16] **ORDERS** that, except as otherwise provided herein, Canadian Creditors shall file an original written proof of such claim in the US Proceedings, substantially in the form attached hereto as Schedule "**A**", so as to be received on or before 4:00 p.m. eastern time on January 31, 2005, being the General Bar Date, by exclusively delivering the original proof of claim in person, by courier service, hand-delivery, or by mail to Flintkote Mines Limited, Claims Agent, c/o Garden City Group, Inc. (the "**Claims Processing Centre**") at the address stipulated in the Canadian Proof of Claim Form (Schedule A);

[17] **ORDERS** that a proof of claim shall be deemed timely filed only if mailed or delivered by hand, courier or overnight service so as to be actually received by the Claims Processing

Centre on or before the General Bar Date; and that the Claims Processing Centre shall not accept proofs of claim sent by e-mail or facsimile;

- [18] **ORDERS** that the following Canadian Creditors are not required to file a proof of claim:
- (a) any person or entity that has already properly filed a proof of claim against the Applicant in the US Proceedings;
 - (b) any person or entity (i) whose General Claim is listed on the Applicant's Schedules of Assets and Liabilities filed in the US Proceedings (the "**Schedules**") attached hereto as Schedule "**D**" and is not described as "disputed", "contingent", or "unliquidated"; and (ii) that agrees with the nature, classification and amount of its General Claim as identified in the Schedules;
 - (c) any person or entity whose General Claim has been allowed by, or paid pursuant to, an order of this Court or the US Bankruptcy Court on or before the General Bar Date; and
 - (d) any person or entity having a claim under Section 503(b) of the United States Bankruptcy Code identified as an administrative expense of the Applicant in the U.S. Proceedings;
- [19] **ORDERS** that in order for each proof of claim to be properly filed pursuant to this Order, said proof of claim shall be (a) written in the English or French language; (b) denominated in lawful Canadian or U.S. currency as of August 25, 2004; and (c) conform substantially with the proof of claim form attached hereto as Schedule "**A**";
- [20] **ORDERS** that the holder of a General Claim against the Applicant who is required to, but fails to file a proof of claim for such claim in accordance with this Order on or before the General Bar Date, shall be forever barred, estopped and enjoined from asserting any claim (or filing a proof of claim with respect to such claim) against the Applicant, and such holder shall not be permitted to vote on any plan of reorganization or participate in any distribution in either these proceedings or the US Proceedings on account of any such claim, or to receive further notices regarding any such claim;
- [21] **ORDERS** that notice of the Publication Notice and the Canadian General Bar Date Notice with the Canadian Proof of Claim Form shall be deemed good, adequate and sufficient notice if it is served by being deposited in the United States mail, first class postage prepaid, on or before November 13, 2004, upon:
- (a) the Attorney General of Canada and the Attorneys General of each of the provinces and territories of Canada;
 - (b) the Canada Revenue Agency and the *Ministère du Revenu du Québec*; and

(c) all persons and entities requesting notice of these proceedings;

GENERAL TERMS

[22] **ORDERS** that the Applicant is authorized to serve this Order, any other orders in these proceedings, and all notices and other communications in connection therewith, by forwarding copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to Canadian Creditors at their addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date thereof, or if sent by prepaid ordinary mail, on the third business day after mailing;

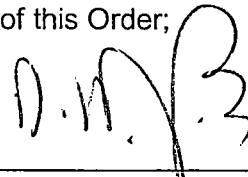
[23] **ORDERS** that notwithstanding any other provision of this Order, any interested person may apply to this Court to vary this Order or seek other relief upon seven (7) days' notice to the Applicant, and to any other party likely to be affected by the Order sought or upon such other notice, if any, as this Court may order;

[24] **ORDERS** that the Applicant may, from time to time, apply to this Court for directions in the discharge of its powers and duties hereunder or in respect of the proper execution of this Order;

[25] **ORDERS** that this Order and the proceedings in this Motion leading to the making of this Order, including the contents of any Affidavit filed in this Application, shall not, in and of themselves, constitute or be relied upon in evidence or otherwise as constituting a default or failure to comply by the Applicant or any firm, person or corporation owned by or related to the Applicant with any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other instrument or requirement;

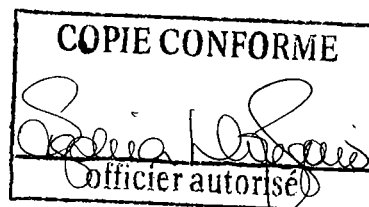
[26] **ORDERS AND REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada (including the assistance of any court in Canada pursuant to Section 17 of the CCAA) and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States and the states or other subdivisions of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order;

[27] **THE WHOLE** without costs.



HONORABLE JUSTICE DANIEL H. TINGLEY, J.C.S.

Me Bernard Boucher
Me Sébastien Guy
Blake, Cassels & Graydon LLP
Attorneys for Applicant



N^o: 500-11- 024361-046

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FLINTKOTE MINES LIMITED
Applicant

INITIAL ORDER

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