

09-09-2002



102215088 ONLY

To THE HONORABLE COMMISSIONER OF

TRADEMARKS: PLEASE RECORD ATTACHED ORIGINAL DOCUMENTS OR COPY THEREOF

1. NAME OF CONVEYING PARTY(IES):

Canadian Imperial Bank of Commerce

- INDIVIDUAL(S)
- GENERAL PARTNERSHIP
- CORPORATION-STATE OF
- OTHER
- ASSOCIATION
- LIMITED PARTNERSHIP

ADDITIONAL NAME(S) OF CONVEYING PARTY(IES) ATTACHED? Yes  No

3. NATURE OF CONVEYANCE:

- ASSIGNMENT
- SECURITY AGREEMENT
- OTHER APPROVAL AND VESTING ORDER
- MERGER
- CHANGE OF NAME

EXECUTION DATE: April 17, 2002

2. NAME AND ADDRESS OF RECEIVING PARTY(IES):

KPMG INC., as receiver

INTERNAL ADDRESS:

STREET ADDRESS:

Toronto, Ontario

- INDIVIDUAL(S) CITIZENSHIP
- ASSOCIATION
- GENERAL PARTNERSHIP
- LIMITED PARTNERSHIP
- CORPORATION-STATE OF
- OTHER CANADA CORPORATION

IF ASSIGNEE IS NOT DOMICILED IN THE UNITED STATES, A DOMESTIC REPRESENTATIVE DESIGNATION IS ATTACHED  Yes  No

ADDITIONAL NAME(S) AND ADDRESS(ES) ATTACHED? Yes  No

4. APPLICATION NUMBER(S) OR REGISTRATION NUMBER(S):

A. TRADEMARK APPLICATION No(s):

B. TRADEMARK REGISTRATION No(s):

2,224,979

ADDITIONAL NUMBERS ATTACHED? Yes  No

5. NAME AND ADDRESS OF PARTY TO WHOM CORRESPONDENCE CONCERNING DOCUMENT SHOULD BE MAILED:

NAME: C. Douglas McDonald

INTERNAL ADDRESS: Carlton, Fields, et al.

STREET ADDRESS: P. O. Box 3239  
Tampa, FL 33601-3239

6. TOTAL NUMBER OF APPLICATIONS AND REGISTRATIONS INVOLVED: 1

7. TOTAL FEE (37 CFR 3.41) \$ 40.00

ENCLOSED

AUTHORIZED TO BE CHARGED TO DEPOSIT ACCOUNT<sup>1</sup>  
NOTE: (ONLY IF AMOUNT ENCLOSED IS INCORRECT)

8. DEPOSIT ACCOUNT NUMBER:

03-0683

(ATTACH DUPLICATE COPY OF THIS PAGE IF PAYING BY DEPOSIT ACCOUNT)

Do NOT USE THIS SPACE

9. STATEMENT AND SIGNATURE.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

C. Douglas McDonald  
NAME OF PERSON SIGNING

SIGNATURE

DATE

TOTAL NUMBER OF PAGES COMPRISING COVER SHEET: 1

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ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR. ) WEDNESDAY, THE 17<sup>TH</sup>  
)  
JUSTICE GROUND ) DAY OF APRIL, 2002

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE  
in its capacity as Administrative Agent for a syndicate of lenders  
pursuant to an Amended and Restated Credit Agreement  
dated as of December 20, 2001 and as Security Agent  
for such lenders pursuant to a Security Agency Agreement  
dated as of March 21, 2000

Applicant

- and -

OSF INC., BENWIND INDUSTRIES, 668082 ONTARIO LIMITED, J & X  
INTERIORS LIMITED and SEVEN CONTINENTS INC., MORGANA  
WOODWORK AND CONTRACTING LTD. and EXPERTAS INC.

Respondents

IN THE MATTER OF AN APPLICATION UNDER  
Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43,  
Rule 41 of the Rules of Civil Procedure and  
Section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, C.B-3 as amended

APPROVAL AND VESTING ORDER

THIS MOTION, made by KPMG Inc. ("KPMG"), appointed Interim Receiver  
pursuant to Section 47 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as  
amended ("BIA") and Receiver pursuant to section 101 of the *Courts of Justice Act*, R.S.O.

1990, c. C-43, as amended (the "Receiver"), without security of all the property, assets and undertaking of OSF Inc., Benwind Industries, 668082 Ontario Limited, J & X Interiors Limited, Seven Continents Inc., Morgana Woodwork and Contracting Ltd. and Expertas Inc. (individually a "Company" and collectively, "OSF") by the Order of Justice Ground dated April 17, 2002 (the "Appointment Order"), was heard this day at 393 University Avenue, Toronto, Ontario.

On reading the Notice of Motion and the First Report of the proposed Receiver dated April 15, 2002 (the "Receiver's First Report"), and on hearing the submissions of counsel for the Receiver, counsel for the Applicant and counsel for the Purchasers (as defined below),

#### SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein, be and it is hereby abridged to the date of actual service, and that the service, including the manner of service of the motion materials, be and is hereby approved and validated, that the motion is properly returnable today, and that all parties entitled to notice of this motion have been properly served and further service thereof is hereby dispensed with.

#### SALE AND VESTING OF THE ASSETS

2. **THIS COURT ORDERS** that the Asset Purchase Agreement between the Receiver and OSF Partnership (the "Purchaser") dated April 15, 2002 (the "Purchase Agreement"), attached as Appendix "A" to the Receiver's First Report, and the transactions contemplated therein (the "Transactions"), pursuant to which the Purchaser has agreed to purchase all of the right, title and interest, of OSF in and to the Purchased Assets, as such term is defined in the Purchase Agreement (the "Assets"), is hereby approved.

3. **THIS COURT ORDERS** that the Receiver be and it is hereby authorized, empowered and directed to, *nunc pro tunc*, execute and deliver the Purchase Agreement to the Purchaser and is further authorized, empowered and directed to implement and complete the Transactions in accordance with the terms and conditions of the Purchase Agreement, with such alterations, amendments, deletions and additions of an immaterial nature as the parties thereto may agree to and perform the obligations contained in the Purchase Agreement, all without giving notice under any personal property security legislation in effect in any jurisdiction in which any of the Assets are situate, including, without limiting the generality of the foregoing, the *Personal Property Security Act*, R.S.O. 1990, c. P.10.

4. **THIS COURT ORDERS** that in completing the Transactions, subject to the terms and conditions of the Purchase Agreement, the Receiver be and it is hereby authorized:

- i) to execute and deliver such additional, related and ancillary documents and assurances governing or giving effect to the Transactions as the Receiver, in its discretion, may deem to be reasonably necessary or advisable to conclude the Transactions, including the execution of such powers of attorney, conveyances, consents, elections, deeds and documents in the name and on behalf of OSF as may be contemplated by the Purchase Agreement, and any such powers of attorney, conveyances, consents, elections, deeds or documents so executed by the Receiver shall have the same force and effect as if executed by OSF, and all such documents are hereby ratified, approved and confirmed; and,
- ii) to take such steps as are, in the opinion of the Receiver, necessary or incidental to the performance of its obligations pursuant to the Purchase Agreement.

5. **THIS COURT ORDERS** and declares that the Purchase Price set out in the Purchase Agreement (the "Purchase Price") is fair and commercially reasonable and was arrived at in a commercially reasonable manner.

6. **THIS COURT ORDERS** that any applicable bulk sales legislation in any jurisdiction in which the Assets are situated including, without limiting the generality of the foregoing, the *Bulk Sales Act*, R.S.O. 1990 c. B.14, do not apply to the Transactions contemplated in the Purchase Agreement, and the sale of the Assets to the Purchaser is in all respects a judicial sale for the purposes of such bulk sales legislation, and such Transactions may be completed without compliance with the provisions of the *Mortgages Act*, R.S.O. 1990, c.M-40, as amended and without compliance with the provisions of Part V of the *Personal Property Security Act*, R.S.O. 1990, c.P-10, or similar statutes in other jurisdictions in which the Assets are located, governing the sale of personal property or real property, or any other notice, statutory or otherwise, which a creditor or other party may be required to issue in order to dispose of the collateral of a debtor, in respect of which notice requirements the Receiver be and is hereby relieved.

7. **THIS COURT ORDERS** that, effective immediately upon the delivery of a certificate of the Receiver to Stikeman Elliott providing that all conditions to closing have been satisfied or waived in accordance with the Purchase Agreement, all of OSF's right, title and interest, if any, in and to the Standard Metals Assets and Contracts (as defined in the Purchase Agreement), shall vest and are hereby vested in and to 4045386 Canada Inc. absolutely and forever, free and clear of and from any and all right, title, interest, security interests, mortgages, charges, hypothecs, estate, trusts or deemed trusts (whether contractual, statutory or otherwise), liens (whether contractual, statutory or otherwise), assignments, executions, options, adverse claims, levies, agreements, taxes, claims, charges, encumbrances or any other rights, rights of use, claims, disputes and debts of all persons or entities of any kind whatsoever and whether legal or equitable (collectively referred to as the "Encumbrances"), save and

except for (a) valid and perfected purchase money security interests in any equipment or vehicles assumed by the Purchaser and forming part of the Assets (b) the Receiver's Note Charge as defined and created pursuant to paragraph 12 of this Order; (c) the Senior Lender Security (defined below) as contemplated by paragraph 13 of this Order; and (d) the Receiver's GSA as defined in paragraph 12 of this Order.

8. **THIS COURT ORDERS** that, effective immediately upon the delivery of a certificate of the Receiver to Stikeman Elliott providing that all conditions to closing have been satisfied or waived in accordance with the Purchase Agreement, all of OSF's right, title and interest, if any, in and to the Seven Continents Assets and Contracts (as defined in the Purchase Agreement), shall vest and are hereby vested in and to 4046803 Canada Inc. absolutely and forever, free and clear of and from the Encumbrances, save and except for (a) valid and perfected purchase money security interests in any equipment or vehicles assumed by the Purchaser and forming part of the Assets (b) the Receiver's Note Charge as defined and created pursuant to paragraph 12 of this Order; (c) the Senior Lender Security (defined below) as contemplated by paragraph 13 of this Order; and (d) the Receiver's GSA as defined in paragraph 12 of this Order.

9. **THIS COURT ORDERS** that, effective immediately upon the delivery of a certificate of the Receiver to Stikeman Elliott providing that all conditions to closing have been satisfied or waived in accordance with the Purchase Agreement, all of OSF's right, title and interest, if any, in and to the OSF Assets and Contracts (as defined in the Purchase Agreement), shall vest and are hereby vested in and to the Purchaser absolutely and forever, free and clear of and from the Encumbrances, save and except for (a) valid and perfected purchase money security interests in any equipment or vehicles assumed by the Purchaser and forming part of the Assets (b) the Receiver's Note Charge as defined and created pursuant to paragraph 12 of this Order; (c) the Senior Lender Security (defined below) as contemplated by paragraph 13 of this Order; and (d) the Receiver's GSA as defined in paragraph 12 of this Order.

10. **THIS COURT ORDERS** that, effective immediately upon the delivery of a certificate of the Receiver to Stikeman Elliott providing that all conditions to closing have been satisfied or waived in accordance with the Purchase Agreement, all of OSF's right, title and interest, if any, in and to the U.S. Subsidiary Shares (as defined in the Purchase Agreement), shall vest and are hereby vested in and to OSFUS Holding Corporation absolutely and forever, free and clear of and from the Encumbrances, save and except for (a) valid and perfected purchase money security interests in any equipment or vehicles assumed by the Purchaser and forming part of the Assets (b) the Receiver's Note Charge as defined and created pursuant to paragraph 12 of this Order; (c) the Senior Lender Security (defined below) as contemplated by paragraph 13 of this Order; and (d) the Receiver's GSA as defined in paragraph 12 of this Order.

11. **THIS COURT ORDERS** that the proceeds of sale from the Purchase Agreement (the "Sale Proceeds") shall stand in the place and stead of the Assets and shall stand charged with all Encumbrances as existed in respect of the Assets which were released, discharged or otherwise displaced by the vesting of the Assets in the Purchaser, 4045386 Canada Inc., 4046803 Canada Inc., and OSFUS Holding Corporation (collectively, the "Purchasers"), pursuant to the provisions of paragraphs 7-10 and 13 of this Order (including without limitation the Senior Lender Security (as defined below) and such Encumbrances on the Sale Proceeds shall enjoy the same priorities as each such Encumbrance had in respect of the Assets as of the date hereof, as if the sale of the Assets had not occurred.

12. **THIS COURT ORDERS** that, notwithstanding paragraphs 7-10 herein, all obligations of the Purchasers under the Promissory Note in the principal amount of \$18,000,000 and the Additional Promissory Note in the principal amount of \$500,000 issued by the Purchasers (collectively, the "Promissory Notes") to and in favour of the Receiver in partial consideration for the Assets and any other amounts payable by the

Purchasers under the Purchase Agreement which are not paid at closing ("Purchase Agreement Obligations") shall be secured by:

- a) a fixed charge and security interest in all of the Assets in favour of the Receiver (the "Receiver's Note Charge"); and
- b) general security agreements granted by each of the Purchasers in favour of the Receiver charging all present and future assets, property and undertaking of the Purchasers (collectively, the "Receiver's GSA").

13. THIS COURT ORDERS that, notwithstanding paragraphs 7-10 herein, the charges in and to the Assets and any proceeds thereof created by the security (the "Senior Lender Security") granted by OSF in favour of Canadian Imperial Bank of Commerce in its capacity as Security Agent to the extent of the interests of the Senior Lenders (as defined in the Purchase Agreement) therein, shall not be vested out or released by paragraphs 7-10 and shall remain in full force and effect. Upon the filing by the Receiver with this Court of a certificate confirming

- a) payment in full of the Promissory Note;
- b) payment in full of the Additional Promissory Note, or delivery of \$500,000 cash collateral to secure payment of such liability under an escrow arrangement satisfactory to the Purchasers and the Receiver;
- c) receipt of evidence of payment of the source deduction remittances contemplated under Section 4.2(d) of the Purchase Agreement; and
- d) payment of amounts owing by the Purchasers pursuant to Section 4.2(a) and (b) of the Purchase Agreement incurred and invoiced prior to the payment of the Promissory Note;



the Receiver's Note Charge and the Receiver's GSA shall be discharged and the Senior Lender Security shall be vested out of the Assets provided that paragraph 11 shall continue to apply with respect to the Senior Lender Security over the Sale Proceeds.

14. **THIS COURT ORDERS AND DECLARES** that the Receiver's Note Charge shall rank in priority to all other Encumbrances affecting the Assets whether created by any Company, the Purchasers or any other person save and except for valid and perfected purchase money security interests in any equipment or vehicles forming part of the Assets and, for greater certainty, the Assets shall vest in the Purchasers pursuant to paragraphs 7-10 subject to the following Encumbrances in the following priority:

- (a) Receiver's Note Charge;
- (b) Receiver's GSA; and
- (c) Senior Lender Security.

15. **THIS COURT ORDERS** that neither the Receiver nor any other person on its behalf shall be required to file, register, record or perfect the Receiver's Note Charge granted pursuant to this Order or the security interests created under the Receiver's GSA until the OPSEU strike has been settled.

16. **THIS COURT ORDERS** that the Purchasers are hereby prohibited from granting any security interests or permitting any registrations against them pursuant to any personal property registration system which would have priority over the Receiver's GSA, other than Permitted Encumbrances as defined in the Receiver's GSA.

17. **THIS COURT ORDERS** that the Receiver shall hold the net Sale Proceeds in an interest-bearing bank account, under the supervision of the Receiver, which shall not be distributed to the creditors of OSF without further order of this Court.

18. **THIS COURT ORDERS** that, notwithstanding:

- a) the pendency of these proceedings;
- b) the pendency any petitions for a receiving order hereafter issued pursuant to the BIA in respect of OSF or any Respondent and any receiving order issued pursuant to any such petitions; and
- c) the provisions of any federal or provincial statute,

the Purchase Agreement and the vesting of the Assets pursuant to this Order will not be void or voidable and do not constitute nor shall they be deemed to be settlements, fraudulent preferences, assignments, fraudulent conveyances or other reviewable transactions under the BIA or any other applicable federal or provincial legislation, and they do not constitute conduct meriting an oppression remedy and shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Respondents.

19. **THIS COURT ORDERS** that the Receiver's remuneration and any fees and expenses, including any fees and disbursements of its counsel, associated with the sale of the Assets, whether incurred prior to or subsequent to the Appointment Order are included in the Receiver's Charge as created by the Appointment Order and such Receiver's Charge shall remain a first charge on the Sale Proceeds ranking in priority to all other charges or Encumbrances.

20. **THIS COURT ORDERS** that the Purchasers and their directors, officers, employees and agents and any other person having notice of this Order shall provide assistance, and access to the Assets including without limitation the books and records of OSF, to the extent the Receiver, in its discretion, deems necessary to carry out its duties.

#### **PARTIAL DISCHARGE OF THE RECEIVER**

21. **THIS COURT ORDERS** that the Receiver shall be discharged as at the closing of the Purchase Agreement of any and all duties and obligations contemplated by the

Appointment Order save and except for (and the Receiver's powers after closing shall continue but be expressly limited to) (i) matters related to the Receiver's post-closing rights and obligations under the Purchase Agreement and the agreements delivered in connection therewith, implementing this Order and any Appeal thereof; (ii) the realization of any residual Property (as defined in the Appointment Order); and (iii) the general administration of the receivership.

22. THIS COURT ORDERS that the Receiver be and it is hereby authorized to seek such further or other orders from this Court as it may deem necessary to complete the Transactions.

APPROVAL OF THE ACTIVITIES OF THE RECEIVER

23. THIS COURT ORDERS that the First Report of the proposed Receiver dated April 15, 2002 (the "Receiver's First Report") and the activities of the Receiver to date as detailed in the Receiver's First Report be and is hereby approved.

AID AND RECOGNITION

24. THIS COURT REQUESTS and seeks the aid, recognition and assistance of any court, tribunal or administrative body in any jurisdiction in Canada and/or the United States in connection with the implementation and carrying out of the terms of this Order and in connection with the authority granted hereunder to the Receiver and the Purchaser to proceed with and conclude the Transactions contemplated by the Purchase Agreement.

ENTERED ADMINISTRATIVE RECORDS  
ON 01/04/2002  
LEONIE J. BROWN  
APR 17 2002  
DEPOSED

