

Court No. 25-1124515
Estate No. 25-1124515
Affidavit of Rick Souther
Sworn December 3, 2008

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF AN APPLICATION UNDER SECTION 47.1 OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED**

**IN THE MATTER OF THE PROPOSAL OF
THE DIAMOND BULLET CORPORATION, PREMIERE MANUFACTURING LTD.,
HAT BIT SUPPLY LTD., DBC INTERNATIONAL INC., DUNN TRUCKING LTD. AND
R ENVIRONMENTAL LABS LTD.**

OF THE TOWN OF TABER, IN THE PROVINCE OF ALBERTA

AFFIDAVIT IN REPLY

I, Rick Souther, of the Town of Taber, Businessman, MAKE OATH AND SAY:

1. I am the President and sole director of The Diamond Bullet Corporation ("**Diamond**"), Premiere Manufacturing Ltd. ("**Premiere**"), Hat Bit Supply Ltd. ("**Hat Bit**"), Dunn Trucking Ltd. ("**Dunn**"), DBC International Inc. ("**DBC**"), R Environmental Labs Ltd. ("**Labs**") (collectively referred to as the "**Debtor Companies**" and individually as a "**Debtor Company**") and as such have personal knowledge of the matters to which I depose in this Affidavit, except where such matters are stated to be based on information and belief, in which case I verily believe such information to be true.
2. This Affidavit is made in reply to the affidavit and cross-application of Three Cloud Properties Inc. and Lorna Moores (collectively referred to as the "**Shareholder Creditor**") to appoint an interim receiver over all of the Debtor Companies.
3. I have read the Affidavit of Lorna Moores sworn December 3, 2008, unfiled, (the "**Moores Affidavit**") and understand that the Shareholder Creditor seeks to have an

interim receiver appointed for all of the Debtor Companies instead of solely Premiere, the application brought by the Debtor Companies, based on the following allegations:

- (a) belief that there is an actual and immediate danger of dissipation of the Debtor Companies' assets;
- (b) ownership of the drill bits is uncertain; and
- (c) related party transactions between the Debtor Companies should be investigated for legitimacy.

A. Dissipation of the Debtor Companies' Assets and Related Proceeding

- 4. On October 27, 2008, Notices of Intention to Make a Proposal were filed by all the Debtor Companies under the *Bankruptcy and Insolvency Act* (the "**BIA**") in response to the demand for repayment issued by the HSBC Bank Canada (the "**Bank**"). A review of the unaudited financial statements attached to my Affidavit filed November 21, 2008 shows that the Debtor Companies:
 - (a) did not have the cash to pay the \$3,050,000 owing to the Bank (the "**Bank Indebtedness**"); and
 - (b) had assets valued at in excess of the Bank Indebtedness but said assets could only be realized through an orderly disposition, the purpose of the Debtor Companies' application to have an interim receiver appointed.
- 5. The appointment of Meyers Norris Penny Limited as trustee of each of the Debtor Companies under the BIA (in such capacity, the "**Trustee**") provides all of the stakeholders, including the secured and unsecured creditors and the shareholders that assets of the Debtor Companies are not being dissipated or misappropriated. The Trustee has been monitoring the affairs of the Debtor Company and as set out in its reports to the Court dated November 24, 2008, the Trustee stated that it did not note any material adverse change in the Debtor Companies projected cash flow that would impair their ability to carry on operations and further stated that nothing has been brought to the

attention of the Trustee that would indicate the existence of any fraudulent transactions as defined under subsections 91 to 101 of the BIA.

6. Furthermore, the proposed appointment of an interim receiver of Premiere, the debtor company owing the majority of the assets, will ensure an orderly disposition of the assets for the benefit of the Estates of the Debtor Companies.
7. The Moores' Affidavit provides no evidence supporting the Shareholder Creditor's concerns of the immediate danger of dissipation of the Debtor Companies' assets and instead relies on allegations pleaded in a Statement of Claim against the Debtor Companies to which a Statement of Defence was filed.

B. Ownership of Drill Bits

8. The most valuable assets of the Debtor Companies are the drill bits owned by Premiere. In my Affidavits filed November 21, 2008 and filed November 28, 2008, I have consistently sworn that the drill bits are owned by Premiere.
9. The appraisal conducted by Century Services Inc. ("Century") on June 2, 2008 refers to certain fixed assets and inventory of "Diamond Bullet" and "Diamond Bullet Corporation." Century did not review or confirm ownership of the drill bits. Had Century done so, they would have determined that the drill bits were owned by Premiere.
10. The Debtor Companies are ordinarily known by the parties to which they do business as "Diamond Bullet" or the "Diamond Bullet Group of Companies." I believe that Century's reference to "Diamond Bullet" in its appraisal was simply indicative of how the Debtor Companies are ordinarily known.
11. The Debtor Companies incorporated DBC because the name "Diamond Bullet" created a misapprehension among the Debtor Companies' international clients that the drill bits were manufactured using "blood diamonds", sourced from various war torn regions in the world, rather than the synthetic diamonds actually used in the drill bits.
12. I am confident that the drill bits appraised by Century are owned by Premiere for the following reasons:

- (a) the raw materials and inventory required to manufacture the drill bits are purchased by Premiere from third party suppliers;
 - (b) cutters manufactured by Labs for use on Premiere drill bits are purchased by Premiere;
 - (c) the drill bits are manufactured by Premiere; and
 - (d) the manufactured drill bits are then either sold or rented by Premiere to Canadian customers or sold to its international distributor, DBC, for sale to international customers.
13. I am advised by Gowling Lafleur Henderson LLP (“Gowlings”), solicitors to the Debtor Companies, and do verily believe that:
- (a) Meyers Norris Penny Limited, in its role as interim receiver of Premiere, would carry out sufficient due diligence to satisfy itself that the drill bits it was selling were owned by Premiere; and
 - (b) If in the process of carrying out such due diligence, it turns out that another Debtor Company owns a material portion of the drill bits, the Debtor Companies will return to Court in further applications to address their disposition, including if necessary an application to appoint Meyers Norris Penny Limited as the interim receiver of that Debtor Company.
14. The disposition of the drill bits in an orderly manner under an interim receivership is critical in my view to all of the Debtor Companies and their stakeholders in order to provide the funds necessary in order to repay the secured and unsecured creditors of the Debtor Companies.

C. Related Party Transactions

15. As set out at paragraph 12 of the within Affidavit, there are related party transactions with respect to the purchase of raw materials and inventory, manufacture and sale of Premiere’s drill bits. For greater clarification, Premiere purchases cutters from Labs at or

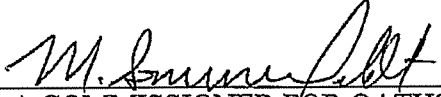
near cost. If a drill bit manufactured by Premiere was worth \$1,000 to Premiere, it would be sold to DBC for \$1,300, representing a 30% mark-up in price. Subsequently, DBC, would sell the same drill bit to its international customers with an additional mark-up at a price that the market could bear. In this example, DBC would sell the drill bit to third party purchasers for \$1,600 U.S. Dollars.

16. The Moores' Affidavit provides no evidence supporting the Shareholder Creditor's concerns about the related party transactions and instead relies on allegations pleaded in a Statement of Claim against the Debtor Companies to which a Statement of Defence was filed.
17. The Shareholder Creditor's request for an interim receiver to be appointed over all of the Debtor Companies for the purposes of an investigation into the legitimacy of the related party transactions is unnecessary given that, as stated in paragraph 5 above, there is no evidence of wrongdoing on my part and in fact there has been no wrong doing on my part. The Shareholder Creditor has commenced an action against the Debtor Companies and I alleging numerous wrong doings and the Debtor Companies and I have answered those allegations in our statement of defence, which was filed notwithstanding that no further steps could be taken against the Debtor Companies as a result of the commencement of their BIA proposal proceedings. The Shareholder Creditor's request for an investigation, if granted, will have the effect of:
 - (a) giving the Shareholder Creditor a form of "discovery" during the BIA proceedings, which is relief that it is otherwise stayed from obtaining without applying to the Court to have the stay lifted; and
 - (b) imposing the cost of this investigation to further its action against the Debtor Companies on the Estates of the Debtor Companies as opposed to having to incur it itself during to course of its own litigation and the cost incurred by the Estate would be significant.
18. The Shareholder Creditor's request for an investigation of the Debtor Companies would unduly preoccupy myself as management of the Debtor Companies and the interim

receiver from the goal of maximizing recovery for the benefit of the Debtor Companies' creditors that was intended by the Debtor Companies' application to have an interim receiver appointed over Premiere for the efficient and economic realization of Premiere's assets.


- 19. I swear this Affidavit in opposition to the Shareholder Creditor's application that an interim receiver be appointed over all of the Debtor Companies and ask that this Honourable Court dismiss the Shareholder Creditor's application and award costs payable to the Estate, forthwith.

SWORN BEFORE ME at the City of)
 Calgary, in the Province of Alberta,)
 this 3rd day of December 2008.)
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 A COMMISSIONER FOR OATHS
 In and for the Province of Alberta

MATTHEW D. SOMMERFELDT
 Barrister and Solicitor



 RICK SOUTHER

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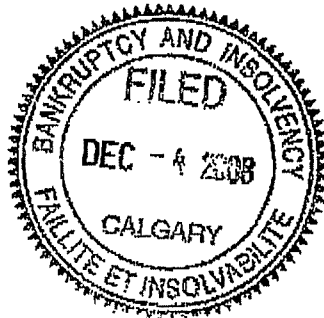
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J.A.
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