

Action No.: 0401-19905

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

IN THE MATTER OF

**TITAN INVESTMENTS LIMITED PARTNERSHIP, TITAN GENPAR INC.,
AND EVOLUTION CAPITAL MANAGEMENT LTD., AND THE ESTATE OF
DAVID COMTE, DECEASED, AND THE COMTE FAMILY TRUST AND
PREDATOR HOLDINGS LTD.**

**IN THE MATTER OF THE JUDICATURE ACT, R.S.A. 2000, C. J-2,
AND RULES 467 AND 468 OF THE ALBERTA RULES OF COURT**

NOTICE OF MOTION

TAKE NOTICE that an application will be made by counsel to a prospective Committee of Respondents, before the Honourable Mr. Justice S.J. LoVecchio in Chambers at the Court House, 611 – 4th Street S.W., in the City of Calgary, in the Province of Alberta, on Tuesday, the 10th day of May, 2005, at the hour of 1:00 o'clock in the forenoon, or so soon thereafter as counsel may be hear, for an Order:

1. Declaring service of notice of this application to be good and sufficient, and abridging the time therefore to the time actually given, if necessary.
2. Creating a Respondents Committee of up to a maximum of seven (7) past or present investors in Titan Investments Limited Partnership, or such other number as this Honourable Court considers appropriate (the "Members").
3. Initially appointing as Members of the Respondents Committee the following individuals:
 - (a) John McAra;
 - (b) Rick Cooke; and
 - (c) David Pizzolato.

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4. Directing that the Respondents Committee be authorized to:

- (a) Represent the parties who are respondents to the application of the Receiver and Investors Committee as created and defined in the Order of this Honourable Court granted January 21, 2005 (the "Investors Committee") originally returnable March 30, 2005 (the "Respondents") in all matters and Court proceedings involving the Respondents in these proceedings, and defend those proceedings;
- (b) Engage in, and make representations regarding, such arrangements of settlement and compromise as may be appropriate;
- (c) Create a protocol to govern its affairs, including a mechanism to fill any vacancies on the Respondents Committee with interested Respondents;
- (d) Seek the advice and direction of this Honourable Court in relation to the performance of the Respondents Committee's duties; and
- (e) Appoint Fraser Milner Casgrain LLP as legal counsel to act on behalf of the Respondents Committee.

5. Providing that the Respondents Committee and any and all of its Members shall be absolved of any liability whatsoever (other than in respect of any form of gross negligence and wilful misconduct) as a result of its appointment or the appointment of its Members, or as a result of the performance of its duties, whether by the Respondents Committee or by its Members in their personal capacities or in their capacities as Members of the Respondents Committee.

6. Providing that any legal fees, disbursements and other charges which may be incurred by the Respondents Committee shall form a charge against the assets, to be paid out of the gross proceeds from the assets collected by the Receiver from time to time, subject to taxation, in priority to any charge held by or any other interest of any person in any of the assets, including, without restricting the generality of the foregoing, any secured creditor, preferred creditor, trust claimant, or statutory creditor, such charge to rank *pari passu* with the charge described in paragraph 3 of the Order granted in these proceedings on January 21, 2005, but subject to the

first charge of the Receiver for its expenses, proper fees and disbursements as approved by the Respondents Committee.

7. Adjourning sine die the hearing of the application schedule for May 11, 2005 and directing that a case management meeting occur on May 11, 2005 commencing at 10:00 a.m. for the further delineation of issues and scheduling the necessary steps to bring those issues before the Court in an efficient and organized manner.

8. Such further and other relief as this Honourable Court may deem justified.

AND FURTHER TAKE NOTICE that in support of the within application will be read the Affidavit of John McAra, to be filed herewith, and such further and other material as counsel may advise and this Honourable Court may direct.

AND FURTHER TAKE NOTICE that the grounds for the within application are that:

9. There are approximately 86 Respondents. In order to properly obtain representation for the Respondents in these proceedings, it is necessary and appropriate that a Respondents Committee be created, that the Respondents Committee be represented by legal counsel, and that the legal fees, disbursements and other charges incurred by the Respondents Committee be borne by all the investors by a charge against the assets to be paid out of the gross proceeds of the assets in priority to any other charges or interests subject to the charge of the Receiver, rather than the small group of investors appointed as Members of the Respondents Committee.

10. The Order creating the Investors Committee (as defined in the Order granted in these proceedings on January 21, 2005) is unfair to the Respondents and creates an unjustified litigation advantage in favour of the Investors Committee, to the prejudice and detriment of the Respondents.

11. Counsel to the Receiver and the Investors Committee have delayed in providing a mailing list of Respondents to Fraser Milner Casgrain LLP, which has delayed this application, which has necessitated an adjournment of the May 11, 2005 hearing date.

12. Counsel for the Receiver has indicated an intention to seek relief against the Respondents based on legal arguments not described in the application to be heard on May 11, 2005, which necessitates that a case management meeting occur on May 11, 2005 commencing at 10:00 a.m.

DATED at the City of Calgary, in the Province of Alberta, this 6 day of May, 2005.

FRASER MILNER CASGRAIN LLP

Per: 

David LeGeyt
Solicitors for the Applicants

TO: ATTACHED SERVICE LIST
AND TO: THE CLERK OF THE COURT

SCHEDULE "A"

<p>Field LLP Attention: J.P. Gaunt 1900, 350 - 7th Avenue S.W. Calgary, AB T2P 3N9</p> <p>Fax: 264-7084</p>	<p>Horne Wytrychowski Attention: Todd Wytrychowski 8, 620 - 1st Avenue N.W. Airdrie, AB T4B 2R3</p> <p>Fax: 912-3570</p>
<p>McLeod & Company Attention: Shane B. King 3rd Flr., 14505 Bannister Road S.E. Calgary, AB T2X 3J3</p> <p>Fax: 271-1769</p>	<p>Pomerance & Company Attention: Barrie F. Pomerance Barristers, Solicitors & Notaries 1430, 1122 - 4 Street S.W. Calgary, AB T2R 1M1</p> <p>Fax: 271-6929</p>
<p>Wilson Laycraft Attention: Brian K. Dell 1601, 333 - 11th Avenue S.W. Calgary, AB T2R 1L9</p> <p>Fax: 290-0828</p>	<p>Burstall Winger LLP Attention: Melinda D. Kondrat 3100 - 324 - 8th Avenue S.W. Calgary, AB T2P 2Z2</p> <p>Fax: 265-8567</p>
<p>Burchell Hayman Parish Attention: Robert L. Barnes, Q.C.</p> <p>Fax: (902) 420-9326</p>	<p>Dixon Law Firm Attention: John A. Dixon 1020, 833 - 4th Avenue S.W. Calgary, AB T2P 3T5</p> <p>Fax: 266-1487</p>
<p>Phillip G. Lister 2410, 10235 - 101 Street Edmonton, AB T5J 3G1</p> <p>Fax: (780) 421-0818</p>	<p>Robb & Evenson Attention: C. Calvin Robb 506 - 933 - 17th Avenue S.W. Calgary, AB T2T 5R6</p> <p>Fax: 541-1604</p>
<p>Scott Law Firm Attention: Thomas H. Scott 234, 10601 Southport Road S.W. Calgary, AB T2W 3M6</p> <p>Fax: 278-5082</p>	<p>Rooney Prentice Attention: Jim Rooney, Q.C. 501, 407 - 8th Avenue S.W. Calgary, AB T2P 1E5</p> <p>Fax: 266-6109</p>
<p>Bennett Jones LLP Attention: Frank R. Dearlove 4500 Bankers Hall East 855 - 2nd Street S.W. Calgary, AB T2P 4K7</p> <p>Fax: 265-7219</p>	<p>Fleming LLP Attention: Clive O. Llewellyn 1500, 736 - 6th Avenue S.W. Calgary, AB T2P 3T7</p> <p>Fax: 265-6910</p>

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NOTICE OF MOTION

**FRASER MILNER CASGRAIN LLP
Barristers and Solicitors
30th Floor, Fifth Avenue Place
237 - 4th Avenue S.W.
Calgary, Alberta
T2P 4X7**

CLERK OF THE COURT

MAY - 6 2005

CLERK OF THE COURT

**Solicitor: David W. Mann/David LeGeyt
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Facsimile: (403) 268-3100
File: 002002-4**