

IN THE MATTER OF THE
SECURITIES LEGISLATION OF
ALBERTA, BRITISH COLUMBIA, MANITOBA,
NEWFOUNDLAND AND LABRADOR, NOVA SCOTIA,
ONTARIO, QUEBEC, AND SASKATCHEWAN

AND

IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF
CONSOLIDATED HCI HOLDINGS CORPORATION

AND

3932290 CANADA INC. AND 3946061 CANADA INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of Alberta, British Columbia, Manitoba, Newfoundland, Nova Scotia, Ontario, Quebec and Saskatchewan (collectively, the "Jurisdictions") has received an application (the "Application") from 3932290 Canada Inc. (the "Offeror"), and its parent corporation 3946061 Canada Inc. ("Acquisitionco" and, together with the Offeror, the "Applicants"), in connection with a proposed cash offer (the "Offer") to purchase, by way of a formal take-over bid by the Offeror, all of the Class A non-voting shares (the "Class A Shares") and Class B voting shares (the "Class B Shares" and, together with Class A Shares, the "Shares") of Consolidated HCI Holdings Corporation ("Consolidated") not owned by the Offeror or on its behalf at the commencement of the Offer:

1. for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the Applicants be exempt from the following requirements and prohibitions contained in the Legislation:

(i) the requirement that, where a take-over bid is made, all holders of the same class of securities shall be offered identical consideration (the "Identical Consideration Requirement");

(ii) the prohibition that, where an offeror intends to make a take-over bid, neither the offeror nor any person acting jointly or in concert with the offeror shall enter into any collateral agreement, commitment or understanding with any securityholder of the offeree issuer that has the effect of providing to that

securityholder a consideration of greater value than that offered to other holders of the same class of securities (the "Prohibition on Collateral Agreements");

(iii) the prohibition that an offeror shall not offer to acquire, or make or enter into, an agreement, commitment or understanding to acquire shares that are subject to a take-over bid otherwise than pursuant to the take-over bid on and from the date that the offeror announces its intention to make the take-over bid until its expiry (the "Prohibition on Purchases During a Bid");

(iv) the requirement that if, within the period of 90 days preceding the bid, an offeror making a formal bid acquires beneficial ownership of target securities pursuant to a transaction not generally available on identical terms to other holders of target securities, the offeror must offer:

(a) consideration for securities deposited under the bid at least equal to the highest consideration paid on a per security basis under the prior transaction or the offeror must offer at least the cash equivalent thereof;

(b) consideration for the securities deposited under the bid in the same form as under the prior transactions; and

(c) acquire under the bid that percentage of target securities that is at least equal to the highest percentage so acquired from the seller under the prior transaction;

(the "Pre-Bid Integration Requirements")

(v) the prohibition that an offeror shall not acquire beneficial ownership of securities of the class subject to the bid by way of a transaction not generally available on identical terms to holders of that class during the period beginning with the expiry of the bid and ending at the end of the twentieth business day thereafter (the "Prohibition on Post-Bid Purchases");

(vi) the prohibition that an offeror (including its joint actors) may not, except pursuant to the bid, sell or make or enter into any agreement, commitment or understanding to sell any target securities from the date of the announcement of the offeror's intention to make the bid until its expiry (the "Prohibition on Sales During a Bid");

2. for an order of the Ontario Securities Commission (the "OSC") pursuant to subsection 104(2)(c) of the *Securities Act* (Ontario) (the "Act") that the acquisition of the Offeror Shares (as hereinafter defined) by Acquisitionco and subsequently by the Offeror be exempt from the take-over bid requirements contained in sections 95, 96, 97, 98 and 100 of the Act (the "Take-Over Bid Requirements"); and

3. for a ruling of the OSC pursuant to subsection 59(1) of schedule 1 (the "Fee Schedule") of the regulation under that Acquisitionco and the Offeror be exempt from the requirement to pay the fee (the "Fee Requirement") calculated pursuant to subsection 32(1)(b) of the Fee Schedule in connection with the Offeror Roll-Over Transactions (as defined below), provided that the minimum fee of \$800.00 is paid.

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the OSC is the principal regulator for the Application;

AND WHEREAS the Applicants have represented to the Decision Makers as follows:

1. Consolidated is incorporated under the *Canada Business Corporations Act* (the "CBCA") and is a reporting issuer in each of the provinces of Ontario, Quebec, British Columbia and Alberta and is not in default of any requirement of the Legislation.

2. The Shares are listed on The Toronto Stock Exchange. As at October 4, 2001 there were 19,25,875 Class A Shares and 2,115,567 Class B Shares issued and outstanding.

3. Rudolph Bratty, Stanley Goldfarb, Marco Muzzo and Emilio Gambin, each of whom is a director and/or senior officer of Consolidated, and Alfredo DeGasperis (collectively, the "Principal Offeror Shareholders"), together with members of each of their families and certain related parties, directly or indirectly through corporations or partnerships beneficially owned or controlled by them (collectively, the "Offeror Shareholders") beneficially own and control 12,786,523 (representing approximately 66.4%) of the outstanding Class A Shares and 1,362,710 (representing approximately 64.4%) of the outstanding Class B Shares (representing approximately 66.2% of the outstanding Shares in the aggregate).

4. The Offeror is incorporated under the CBCA for the sole purpose of making the Offer. The head office of the Offeror is in Toronto, Ontario. The Offeror is not a reporting issuer in any jurisdiction in Canada.

5. The authorized share capital of the Offeror is comprised of an unlimited number of common shares. All of the issued and outstanding common shares of the Offeror are owned by Acquisitionco.

6. Each of the Principal Offeror Shareholders is a director and senior officer of the Offeror.

7. Acquisitionco is also incorporated under the CBCA for the sole purpose of facilitating the Offer. Acquisitionco is not a reporting issuer in any jurisdiction in Canada.

8. The authorized share capital of Acquisitionco is comprised of an unlimited number of common shares (the "Acquisitionco Shares"). All of the issued and outstanding Acquisitionco Shares are beneficially owned by each of the Offeror Shareholders in the same proportion as each Offeror Shareholder's current ownership in Consolidated.

9. Each of the Principal Offeror Shareholders is a director and senior officer of Acquisitionco.

10. The Offeror is proposing to make the Offer for all of the outstanding Shares other than those Shares which are owned by or on behalf of the Offeror on the date of the Offer (the "Non-Offeror Shares").

11. Following the announcement of the Offeror's intention to make the Offer, but prior to the making of the Offer: (i) Acquisitionco and the Offeror will enter into a share purchase agreement with each of the Offeror Shareholders (collectively, the "Share Purchase Agreements") and (ii) Acquisitionco will transfer the single Share which it holds to the Offeror in consideration for a common share of the Offeror (the "Single Share Transfer").

12. Pursuant to the Share Purchase Agreements, among other things, each of the Offeror Shareholders will irrevocably agree (i) to sell contemporaneously with the first take-up of the Shares under the Offer, all of his, her or its Shares (collectively, the "Offeror Shares") to Acquisitionco (which will in turn immediately resell such Offeror Shares to the Offeror) in exchange for common shares of Acquisitionco (on a tax-deferred basis, if the sale of such Shares would trigger a capital gain), and (ii) that pending take-up of the Shares under the Offer such Offeror Shares will be held by the Offeror Shareholders on behalf of Acquisitionco and the Offeror.

13. Structurally, the purchase price for the Offeror Shares under the Share Purchase Agreements can be considered to be equivalent to the consideration to be offered under the Offer for the Non-Offeror Shares.

14. The Share Purchase Agreements will require each of the Offeror Shareholders to exchange his, her or its proportionate holding of Offeror Shares for an equivalent proportion of Acquisitionco Shares.

15. The closing of the transactions contemplated by the Share Purchase Agreements will be conditional upon and occur as nearly as practicable contemporaneously with the Offeror first taking up and paying for Shares under the Offer.

16. Immediately following the acquisition by Acquisitionco of the Offeror Shares, Acquisitionco will transfer the Offeror Shares (on a tax-deferred basis) to the Offeror in exchange for shares in the capital of the Offeror, all of which may occur subsequent to the expiry of the Offer but prior to the expiry of the twenty business day period following such expiry (collectively, the Single Share Transfer and the transactions described in paragraph 12 and in this paragraph are referred to as the "Offeror Roll-Over Transactions").

17. Each of the Principal Offeror Shareholders has irrevocably committed to fund his proportionate share of the cash consideration payable under the Offer and the expenses of the Offer (collectively, the "Loan Commitments"). The Loan Commitment made by each of the Principal Offeror Shareholders is based upon the proportion of Offeror Shares held by such Principal Offeror Shareholder and the parties related to him.

18. Other than the Share Purchase Agreements and the Loan Commitments (the "Related Agreements"), no other arrangements, understandings or agreements have been entered into or

are contemplated between or among Consolidated, the Offeror, Acquisitionco and any or all of the Offeror Shareholders or any or all of the holders of Non-Offeror Shares.

19. None of the Offeror Shareholders will receive any payments, including change of control payments, in connection with the Offer.

20. The Offeror Roll-Over Transactions and the Related Agreements will be fully described in the take-over bid circular (the "Circular") accompanying the Offer.

21. The Offer will be conditional upon, among other things, sufficient Non-Offering Shares being tendered to the Offer to assure successful authorization of a going-private transaction following the Offer if the statutory right of compulsory acquisition pursuant to section 206 of the CBCA is unavailable. The intent to effect such a going-private transaction will be disclosed in the Circular.

22. The Offer will constitute an insider bid as defined in the Legislation, including pursuant to Rule 61-501 of the OSC and Policy Q-27 of the Quebec Securities Commission, and will be made in compliance with Legislation and the CBCA (and regulations thereunder).

23. The purpose of the Offeror Roll-Over Transactions and the Related Agreements is to facilitate the organization of Acquisitionco and the Offeror and the structuring and making of the Offer by the Offeror (effectively on behalf of the Offeror Shareholders, who are the "beneficial offerors"), accommodate the tax planning objectives of the Offeror Shareholders and reduce the amount of cash required by the Offeror to complete the Offer. As a result, for the purposes of making the Offer, the Offeror Shareholders can be considered to be acting jointly or in concert with the Offeror.

24. The Related Agreements are necessary for business purposes relating to the structuring and the making of the Offer and are not being implemented or entered into for the purpose of providing any of the Offeror Shareholders with greater consideration for the Offeror Shares than that paid for the Non-Offeror Shares.

25. As the consideration to be received by the Offeror Shareholders for their Offeror Shares is not identical to the consideration to be paid for the Non-Offeror Shares to be purchased under the Offer and as the Related Agreements are to be entered into following the initial public announcement of the Offeror's intention to make the Offer, the Offeror Roll-Over Transactions and the Related Agreements would, in the absence of the Decision, result in the Applicants violating the Identical Consideration Requirement, the Prohibition on Collateral Agreements, the Pre-Bid Integration Requirement, the Prohibition on Post-Bid Purchases, the Prohibition on Purchases During a Bid and the Prohibition on Sales During a Bid.

AND WHEREAS pursuant to the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides each Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers pursuant to the Legislation is that (i) the Related Agreements are made for purposes other than to increase the value of the consideration paid to the Offeror Shareholders, and may be entered into notwithstanding the Prohibition on Collateral Agreements and (ii) the Applicants are exempt from the Identical Consideration Requirement, the Pre-Bid Integration Requirement, the Prohibition on Post-Bid Purchases, the Prohibition on Purchases During a Bid and the Prohibition on Sales During a Bid with respect to the Offeror Roll-Over Transactions.

AND WHEREAS the OSC is satisfied that to do so would not be prejudicial to the public interest:

IT IS RULED, pursuant to subsection 104(2)(c) of the Act, that the acquisition of the Offeror Shares by Acquisitionco and subsequently by the Offeror pursuant to the Offeror Roll-Over Transaction be exempt from the Take-Over Bid Requirements;

AND IT IS RULED, pursuant to subsection 59(1) of the Fee Schedule, that the Applicants be exempt from the Fee Requirement in connection with the Offeror Roll-Over Transactions, provided that the minimum fee of \$800.00 is paid.

DATED December 21, 2001

"Paul Moore" "Lorne Morphy"

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – insiders of target issuer acting jointly and in concert with offeror and offeror's parent in connection with cash take-over bid for all of the outstanding shares of target issuer – offeror to indirectly acquire target shares from insiders in exchange for shares of offeror's parent – share purchase agreements and loan commitments to be entered into between offeror's parent and the insiders for purposes related to the structuring and making of the offer – agreements not being entered into for the purposes of providing insiders with consideration of great value than that to be paid to other target shareholders – exemptions granted from identical consideration requirement, prohibition on purchases during a bid, pre-bid integration requirements, prohibitions on post-bid purchases and prohibition on sales during a bid, relief granted from take-over bid requirements in connection with the purchase of target shares by the offeror's parent and their subsequent transfer to the offeror – fee relief granted as there was no change in beneficial ownership of target securities under reorganization.

Applicable Ontario Statutory Provisions

Securities Act, S.A., 1990, c.S.5, as am., sections 94(2), 94(5), 94(8), 95, 96, 97, 98, 100, 104(2)(a) and (c)