

**ONTARIO  
SUPERIOR COURT OF JUSTICE- COMMERCIAL LIST**

**BETWEEN:**

**JAMES RYAN**

**Applicant**

- and -

**EXCAPSA SOFTWARE INC.**

**Respondent**

APPLICATION UNDER Section 211(8) of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended and Rule 14.05(2) of the *Rules of Civil Procedure*

**APPLICATION RECORD**

November 27, 2006

**Cassels Brock & Blackwell LLP**

2100 Scotia Plaza  
40 King Street West  
Toronto, Ontario M5H 3C2

William J. Burden LSUC#: 15550F  
Tel: 416 869-5963  
Fax: 416 640-3019

John N. Birch LSUC#: 38968U  
Tel: 416 860-5225  
Fax: 416 640-3057

Solicitors for the Applicant

## TABLE OF CONTENTS

| Tab | Document  | Page No. |
|-----|---|----------|
| 1.  | Notice of Application issued November 22, 2006  | 1-8      |
| 2.  | Affidavit of Daniel Friedberg sworn November 27, 2006   | 9-22     |
|     | <i>Exhibits to Affidavit of Friedberg</i>   |          |
| A.  | Excapsa's consolidated fiscal 2005 financial statements   | 23-46    |
| B.  | Excapsa Group's consolidated unaudited internal financial statements for the six months ended June 30, 2006 | 47-68    |
| C.  | Stock Purchase Agreement between Excapsa and Blast Off Limited  | 69-73    |
| D.  | Promissory Note dated October 12, 2006  | 74-75    |
| E.  | Excapsa's press release dated October 12, 2006  | 76-77    |
| F.  | Notice of Meeting of Special Shareholders   | 78-81    |
| G.  | Management Information Circular in respect of the November 24, 2006 Special Meeting of Shareholders         | 82-101   |
| H.  | Plan of Liquidation and Distribution  | 102-106  |
| I.  | Letter to Shareholders dated October 30, 2006   | 107      |
| J.  | <i>Pro forma</i> balance sheet for Excapsa as at June 30, 2006  | 108-110  |
| K.  | Form of Proxy   | 111-112  |
| L.  | Section 190 of the CBCA   | 113-116  |
| M.  | Statement of Intent to Dissolve dated November 22, 2006   | 117      |
| N.  | Certificate of Intent to Dissolve dated November 24, 2006   | 118      |
| O.  | Final Scrutineers' Report dated November 24, 2006   | 119-120  |
| 3.  | Consent   | 121-122  |
| 4.  | Order   | 123-150  |

**TAB 1**

**ONTARIO  
SUPERIOR COURT OF JUSTICE- COMMERCIAL LIST**

BETWEEN:

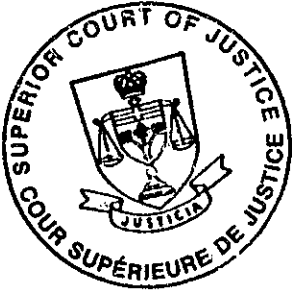
JAMES RYAN

Applicant

- and -

EXCAPSA SOFTWARE INC.

Respondent



APPLICATION UNDER Section 211(8) of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended and Rule 14.05(2) of the *Rules of Civil Procedure*

**NOTICE OF APPLICATION**

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a Judge of the Commercial List on November, 30<sup>th</sup>, 2006, at 10:00 a.m., at 330 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of

service, in the court office where the application is to be heard as soon as possible, but not later than 2 days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date November 22, 2006

Issued by Jana Stead  
Local registrar

Address of 393 University Avenue  
court office Toronto, ON M5G 1E6

TO: The Director (appointed pursuant to section 260 of the *Canada Business Corporations Act*)  
9<sup>th</sup> Floor, Jean Edmonds Towers South  
365 Laurier Ave. W.  
Ottawa, ON K1A 0C8

## APPLICATION

1. The applicant makes application for:
  - (a) An order abridging the time for service of this application and validating or dispensing with service if necessary;
  - (b) An order pursuant to section 211(8) of the *Canada Business Corporations Act* to continue the voluntary liquidation and dissolution of the respondent, Excapsa Software Inc. ("Excapsa"), under the supervision of the court;
  - (c) An order approving and ratifying the appointment of Mintz & Partners LLP as liquidator of Excapsa (the "Liquidator");
  - (d) An order authorizing and empowering the Liquidator to carry out and complete the voluntary liquidation and dissolution of Excapsa substantially in accordance with a Plan of Liquidation and Distribution adopted by the board of directors of Excapsa on October 26, 2006 and subsequently approved by the shareholders of Excapsa by special resolution on November 24, 2006 (the "Plan"), including, without limiting the generality of the foregoing,
    - (i) An order permitting the Liquidator to gather up, take possession of, and realize upon the assets of Excapsa;
    - (ii) An order staying all claims against Excapsa and implementing a claims-barring process; and
    - (iii) An order permitting an interim distribution of funds to shareholders of Excapsa and periodic distributions thereafter; and
  - (e) an order substantially in the form of the draft Order contained in the Application Record;
  - (f) Such other relief as this Honourable Court deems just.

2. The grounds for the application are:

- (a) Excapsa is a corporation incorporated in 2004 and continued under the *Canada Business Corporations Act* ("CBCA"), with its registered office located in the City of Toronto;
- (b) At relevant times, through its subsidiaries, Excapsa carried on business as a developer and licensor of online gaming software applications;
- (c) Excapsa did not itself act as an operator of any online gaming websites;
- (d) Since February 2006, shares of Excapsa publicly traded on the AIM Market of the London Stock Exchange in the United Kingdom;
- (e) In September 2006, legislation was introduced in the United States Congress that would prohibit online gaming by American subjects, and in early October 2006 the information available to Excapsa indicated that this legislation would be signed into law on or about October 13, 2006;
- (f) Excapsa recognized that the U.S. legislation, once passed, was likely to have a significant negative impact on its business;
- (g) Effective October 12, 2006, Excapsa sold, subject to subsequent shareholder approval, substantially all of the assets of Excapsa, consisting of the shares of both of its subsidiaries, Excapsa Services Inc. and Game Theory Holdings Ltd. (including its subsidiary, Game Theory Ltd.), to Blast Off Ltd., a privately owned company based in Malta, which was also a current licensee of Excapsa's software;
- (h) On October 13, 2006, the U.S. legislation was signed into law by President Bush;
- (i) Under the agreement with Blast Off Ltd., Excapsa will receive a total of US\$130 million, within an initial payment of U.S. \$5 million in cash,

together with a promissory note providing for the payment of the remaining US\$125 million over the course of the next five and a half years;

- (j) To date, Excapsa has received a total of US\$10 million from Blast Off Ltd.;
- (k) Following the sale of its subsidiaries, Excapsa had no active business;
- (l) On October 26, 2006, the board of directors of Excapsa resolved to convene a special meeting of shareholders on November 24, 2006 in order to seek shareholder approval of:
  - (i) the sale of Excapsa's businesses that were completed on October 12, 2006, subject to shareholder approval;
  - (ii) the cancellation of the listing of Excapsa's shares on the AIM market in London;
  - (iii) a Plan of Liquidation and Distribution (the "Plan") whereby Excapsa would be voluntarily liquidated pursuant to section 211 of the CBCA, with such liquidation being supervised by the court; and
  - (iv) certain matters related to or in furtherance of the foregoing items;
- (m) On November 24, 2006, the above-noted special resolutions were approved by the requisite percentage of shareholders of Excapsa;
- (n) Excapsa subsequently filed a Statement of Intent to Dissolve with the Director appointed under the CBCA, pursuant to section 211(4) of the CBCA, and the Director issued a Certificate of Intent to Dissolve in accordance with section 262 of the CBCA (the "Certificate");
- (o) pursuant to the Plan, Mintz & Partners LLP has been appointed as Liquidator;

- (p) since it is no longer has any business, Excapsa has terminated its employees and its officers and directors will resign when this application is granted;
- (q) the Liquidator is the only party that is able to carry out the steps necessary to wind up the affairs of Excapsa, arrange for its liabilities to be paid, and distribute surplus proceeds to shareholders;
- (r) the applicant, who is the Chief Executive Officer and a director of Excapsa, seeks an order pursuant to section 211(8) of the CBCA to have the liquidation and dissolution of Excapsa continued under the supervision of the court and for certain other relief;
- (s) the respondent, Excapsa, consents to the relief sought;
- (t) it is in the best interests of Excapsa, its shareholders, and other stakeholders, that the liquidation and dissolution be continued and completed under court supervision, including by the approval and ratification of the appointment of the Liquidator;
- (u) Section 211, 215, 217, 221, 222, 223, 224, and 225 of the *Canada Business Corporations Act*.

3. The following documentary evidence will be used at the hearing of the application:

- (a) The affidavit of James Ryan, sworn November 24, 2006.

November 22, 2006

**Cassels Brock & Blackwell LLP**

2100 Scotia Plaza  
40 King Street West  
Toronto, Ontario M5H 3C2

William J. Burden LSUC#: 15550F

Tel: 416 869-5963

Fax: 416 640-3019

John N. Birch LSUC#: 38968U

Tel: 416 860-5225

Fax: 416 640-3057

Solicitors for the Applicant

8.

**JAMES RYAN**  
Applicant and **EXCAPSA SOFTWARE INC.**  
Respondent

Court File No: 06-CL-  
*06CL-6750*

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

Proceeding commenced at TORONTO

**NOTICE OF APPLICATION**

**Cassels Brock & Blackwell LLP**  
2100 Scotia Plaza  
40 King Street West  
Toronto, Ontario M5H 3C2

William J. Burden LSUC#: 15550F  
Tel: 416 869-5963  
Fax: 416 640-3019

John N. Birch LSUC#: 38968U  
Tel: 416 860-5225  
Fax: 416 640-3057

Solicitors for the Applicant

Served on Fax: «Other party's fax, if I

**TAB 2**

**ONTARIO  
SUPERIOR COURT OF JUSTICE- COMMERCIAL LIST**

**BETWEEN:**

JAMES RYAN

Applicant

- and -

EXCAPSA SOFTWARE INC.

Respondent

**AFFIDAVIT OF DANIEL FRIEDBERG  
(sworn November 27, 2006)**

I, DANIEL FRIEDBERG, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

**Background**

1. Up to November 24, 2006, I was the Secretary of Excapsa Software Inc. ("Excapsa"). This application has been brought by James Ryan ("Ryan"), who was, at relevant times, the Chief Executive Officer and a director of Excapsa. Shortly after a special meeting of shareholders on November 24, 2006, Ryan had to fly to Europe on business and was therefore unable to swear this affidavit today. However, as an of Excapsa who was directly involved in the corporate transactions that form the subject matter of this application, I have knowledge of the matters to which I depose herein.

2. Excapsa is a corporation incorporated in April 2004 and later continued under the *Canada Business Corporations Act* ("CBCA").

3. Since February 9, 2006, Excapsa has only been a holding company. Its business operations were, at relevant times, carried on by the following direct and indirect subsidiaries (the "Subsidiaries"):

- (a) Excapsa Services Inc., an Ontario corporation;

- (b) Game Theory Ltd., a Malta corporation;
- (c) Game Theory Holdings Ltd., a Malta corporation; and
- (d) Game Theory Services Ltd., a Malta corporation.

4. Since its incorporation, Excapsa and the Subsidiaries (collectively, the "Excapsa Group") developed, maintained, and marketed online gaming software applications. The main products of the Excapsa Group were multi-player real time Internet-enabled poker software, its back office e-cash and reporting software, and the poker network. The Excapsa Group licensed this software to a variety of third parties that operate both real money and "play money" online gaming ventures. Most of the revenue of the Excapsa Group came from licensing fees for its software and the domain names owned by it.

5. On February 13, 2006, Excapsa issued a Placement Memorandum for a private placement of approximately 23 million shares at a price of 110 U.K. pence per share. Concurrent with the private placement, Excapsa applied for and obtained admission of its shares to trading on the Alternative Investments Market of the London Stock Exchange ("AIM"). Excapsa shares began trading on AIM on February 16, 2006. Excapsa is structured as a mutual fund corporation for Canadian legal purposes.

6. In the fiscal year ended December 31, 2005, the Excapsa Group generated net income of US\$9,075,000 on revenue of US\$49,505,000. Attached hereto and marked as Exhibit "A" is a true copy of Excapsa's consolidated fiscal 2005 financial statements, which include comparative figures for the period from April 28 to December 31, 2004.

7. For the six months ended June 30, 2006, the Excapsa Group had revenue of US\$54,195,000 and net income of US\$15,112,000. Attached hereto and marked as Exhibit "B" is a true copy of the Excapsa Group's consolidated unaudited internal financial statements for the six months ended June 30, 2006.

8. Beginning in September 2006, the landscape for Internet gaming changed radically. On September 30, 2006, the United States Congress passed the SAFE Port

Act (the "SPA"). Subsequently, on October 13, 2006, the SPA was signed into law by President Bush. Title VIII of the SPA, entitled Unlawful Internet Gambling Enforcement, prohibited online gaming service providers from accepting credit card or other payments originating in the United States. It also prevented United States financial institutions from facilitating Internet gaming anywhere in the world. Although the Excapsa Group was not directly engaged in Internet gambling activities—in fact, its licensees were the ones that carried on the business—Excapsa recognized that the SPA would certainly have a material negative effect on the business of the Excapsa Group.

9. After extensive review, including consultation with its professional advisors, the board of directors of Excapsa ultimately determined that the best way to maximize shareholder value would be to sell Excapsa's operating assets as a going concern. I understand that several other public corporations facing similar circumstances elected to discontinue their operations. Accordingly, on October 12, 2006, Excapsa entered into a sale transaction with Blast Off Limited (the "Buyer"), a limited liability company in Malta. The sale was structured as a share transaction. Excapsa sold all of the outstanding common shares of its operating Subsidiaries, Excapsa Services Inc. ("ESI") and Game Theory Holdings Ltd. ("GTHL"), for an aggregate purchase price of US\$130,000,000 (the "Purchase Price").

10. The sale transaction was effective on October 12, 2006, subject only to the approval and ratification by Excapsa's shareholders. Game Theory Ltd. and Game Theory Services Ltd. are wholly-owned subsidiaries of GTHL, so both of these companies were indirectly included in the sale. Attached hereto and marked as Exhibit "C" is a true copy of the Stock Purchase Agreement between Excapsa and the Buyer (the "Agreement"), restated to reflect a number of amendments.

11. The Buyer paid Excapsa an initial US\$5 million on account of the Purchase Price and has issued a promissory note (the "Note") for the balance of US\$125,000,000. Attached hereto and marked as Exhibit "D" is a true copy of the Note restated to reflect a number of amendments.

12. The Note is payable as follows:

- (a) one instalment of US\$5,000,000 was due on or before October 17, 2006—this amount has been paid;
- (b) one instalment of U.S. \$500,000 is due on or before November 22, 2006—this amount has been paid;
- (c) 12 instalments of U.S. \$1,000,000 must be paid on the last date of each calendar month commencing on December 31, 2006 and ending on November 30, 2007; and
- (d) US\$2,000,000 per month must be paid commencing on December 31, 2007 and continuing on the last day of each calendar month until the Note is paid in full. As such, the Note will be fully repaid by May 31, 2012, five-and-one-half years from now.

13. The Note also provides that interest accrues on the outstanding amount, from and after December 31, 2006, at the rate of 1 percent per month, but no interest accrues in any month when the Buyer elects to pay additional outstanding principal equal to at least one-half of the then required monthly instalment payment. The Note is secured directly and indirectly by the common shares of ESI and GTHL and certain other security.

14. Under the Agreement, ESI and GTHL also paid over to Excapsa all of their cash and accounts receivable as of October 12, 2006 as well as a portion of prepaid expenses.

#### **Approval of Sale and Other Matters**

15. As I have deposed above, the sale of the shares of ESI and GTHL was completed and effective on October 12, 2006, subject only to the approval and ratification by Excapsa's shareholders. Attached hereto and marked as Exhibit "E" is a true copy of Excapsa's press release dated October 12, 2006, which summarizes the transaction.

16. As a result of the sale of the shares of Excapsa's subsidiaries to the Buyer, Excapsa had no other operating business. It only had cash in the bank, accounts payable, and the right to receive payments under the Note. The board of directors of Excapsa determined that, since there was no other business venture that the company could reasonably undertake to maximize shareholder value, Excapsa should be voluntarily dissolved, its debts satisfied, and any remaining proceeds distributed to shareholders.

17. Further, under the AIM exchange rules, a company's shares must be delisted when the company ceases to carry on an active business. Since such situation has occurred here, Excapsa was required to make application to cancel the admission of its shares to trading on AIM.

18. On October 26, 2006, the board of directors of Excapsa met. At that meeting, the board decided to call a special meeting of shareholders for November 24, 2006 for the following purposes:

- (a) Obtain an affirmative vote of not less than sixty-six-and-two-thirds percent of the votes cast at such special meeting to ratify and approve a resolution authorizing the completion of the sale transaction with the Buyer in accordance with the Agreement.
- (b) Obtain an affirmative vote of not less than 75 percent (as required by AIM rules) of the votes cast at such special meeting to ratify and approve the cancellation of the admission of its shares to trading on AIM, thereby resulting in Excapsa ceasing to be a publicly-traded company.
- (c) Approve a plan of liquidation and distribution (the "Plan"), which is to become effective on the date that the sale transaction between Excapsa and the Buyer is approved by shareholders. The Plan provides for a voluntary liquidation and dissolution under section 211 of the CBCA (the "Liquidation"), which includes the following steps:

- (i) on November 30, 2006, Mintz & Partners Limited would be appointed as liquidator under the CBCA (the "Liquidator"), with such appointment being subsequently confirmed by the Ontario Superior Court (the "Court") later that day;
- (ii) An application will be brought to the Court to have the Liquidation continued under court supervision;
- (iii) All employees and independent contractors of Excapsa would be terminated, other than those individuals that the Liquidator required to retain to assist with the Liquidation;
- (iv) The Liquidator would be empowered to, amongst other matters:
  - (A) gather up and realize upon the assets of Excapsa, including ongoing payments made under the Note;
  - (B) maintain such reserves as are reasonably necessary to cover contingent liabilities of Excapsa,
  - (C) pay debts of Excapsa (including taxes), and
  - (D) distribute any remaining amounts to shareholders, whether by interim or final distributions; and
- (v) Appoint inspectors to supervise and assist the Liquidator with the implementation of the Plan.

19. The Management Information Circular of Excapsa issued in connection with the meeting also proposed that resolutions be approved:

- (a) changing the name of the corporation to 6356095 Canada Inc.;
- (b) authorizing Excapsa to reduce stated capital of the corporation and distribute the amount of any such reduction to shareholders;

- (c) dispensing with the appointment of an auditor and the compliance with the audit requirements of the CBCA if permitted thereunder; and
- (d) approving the acts of the directors and officers to date.

20. Attached hereto and marked as Exhibit "F" is a true copy of the Notice of Meeting. Attached hereto and marked as Exhibit "G" is a true copy of the Management Information Circular in respect of the November 24, 2006 Special Meeting of Shareholders (the "Special Meeting"). Attached hereto and marked as Exhibit "H" is a true copy of the Plan (in the form that it was amended and approved at the November 24, 2006 meeting). Attached hereto and marked as Exhibit "I" is a true copy of the letter to shareholders that accompanied the materials for the November 24, 2006 special meeting.

21. The package of materials sent to shareholders in connection with the meeting included Exhibits A, B, C, D, F, G, H, and I, as well as the following items:

- (a) a *pro forma* balance sheet for Excapsa as at June 30, 2006, which shows the effect that the sale to the Buyer would have had if the transaction had occurred at that date (a copy of which is attached as Exhibit "J");
- (b) a form of proxy (a copy of which is attached as Exhibit "K");
- (c) a copy of section 190 of the CBCA, which sets out the right of a shareholder to dissent in respect of the sale transaction (a copy of which is attached as Exhibit "L").

### **Approval of Resolutions**

22. The Special Meeting was held on November 24, 2006 at the offices of Cassels Brock & Blackwell LLP. Shareholders holding 121,738,497 shares of Excapsa, being 63 percent of the total issued and outstanding shares of the company, were present at the meeting either in person or by proxy. Each of the above-noted resolutions was voted upon at the meeting and each and every resolution was passed without any negative votes. In short, all of the resolutions passed unanimously.

23. Attached hereto and marked as Exhibit "O" is a true copy of the Final Scrutineers' Report issued by Computershare Investor Services Inc. with respect to the November 24, 2006, special meeting of shareholders.

24. Following the Special Meeting, Excapsa took steps to begin the Liquidation under section 211 of the CBCA. First, Excapsa filed a Statement of Intent to Dissolve with the Director appointed under the CBCA pursuant to Section 211(4) of the CBCA. This statement was filed effective November 24, 2006 (and a copy thereof is attached hereto and marked as Exhibit "M").

25. As authorized by the resolution at the Special Meeting, Excapsa will formally change its name to 6356095 Canada Inc. within the next few days and, in any event, prior to the hearing of this application. Such name change will require an amendment to the title of proceedings.

26. As of November 24, 2006, the Director appointed under the CBCA issued a Certificate of Intent to Dissolve (a copy of which is attached as Exhibit "N") in accordance with section 262 of the CBCA (the "Certificate"). A Certificate has been issued and therefore the dissolution and liquidation process has begun.

### **Future Steps**

27. As I have deposed above, it will not be possible to completely wind-up the affairs of Excapsa until the Buyer fully pays all amounts owing under the Note. Since the Note provides for payments up to and including May 31, 2012, the affairs of Excapsa will not be finalized for more than five and one-half years (assuming that the Buyer does not make pre-payments under the Note).

28. Given that there is no active business of Excapsa and the fact that its shares will no longer trade on the AIM market after approximately December 4, 2006, the officers do not wish to maintain their current positions. The officers will resign effective upon the Court granting an order for supervision of the Liquidation. Although Ryan and two other individuals will at least initially act as directors in order to assist the Liquidator, the directors may also resign during the course of the Liquidation. As such, the order being

sought contemplates that the powers that the directors and shareholders otherwise would have held will be vested in the Liquidator upon the granting of this order, subject to the right of the Liquidator to temporarily or permanently delegate back in writing some or all of the powers that the directors and shareholders formerly had.

29. The directors have resolved to ensure that Excapsa's Liquidation will proceed on a fair, orderly, and transparent basis.

30. In that regard, the Plan envisions court supervision of the Liquidation, with all material steps taken by a court-confirmed liquidator who is assisted by inspectors. Under the Plan, which was approved by the shareholders on November 24, 2006, Gail Gleed, who was the Chief Financial Officer of Excapsa up to that date, John K. Fitzgerald, an independent lawyer, and Ryan were appointed as inspectors of the Liquidation (collectively, the "Inspectors"). The role of the Inspectors will be to supervise and assist the Liquidator with the Liquidation. In the event that an Inspector resigns, the Plan authorizes the Liquidator (or failing that, any shareholder can apply to the court) to appoint a replacement Inspector. The Inspectors also have the right to apply to the court to appoint a replacement Liquidator if they believe that circumstances require it. The Inspectors also will have the authority to apply to the court for directions.

### **Current Financial Status of Excapsa**

31. Taking into account the US\$10,500,000 million paid to date under the Agreement as well as the ongoing expenses that Excapsa has paid (such as rent, utilities, and salaries), Excapsa now has cash on hand of approximately US\$60,000,000.

### **Liabilities of Excapsa**

32. Although it is in the interests of Excapsa shareholders to receive the proceeds of the transaction as soon as Excapsa receives such proceeds, Excapsa wishes to make sure that it properly provides for and pays all of its liabilities, as is required by the CBCA.

33. The structure of Excapsa and of the Agreement, as well as the nature of its business up to October 12, 2006, all minimize the likelihood of claims being made against Excapsa. First, all operations were undertaken by the Subsidiaries and, therefore, it was those Subsidiaries which incurred most of the liabilities of the business. Since Excapsa sold the shares of those Subsidiaries to the Buyer, the ongoing and future liabilities of the business remain with the Subsidiaries.

34. Excapsa has paid all of its known accounts payable which existed up to November 24, 2006. Excapsa has also prepaid its rent on its business premises up to December 31, 2006, the date on which it will vacate such premises. Thereafter, the Liquidation will operate from the premises of the Liquidator, which will not require any ongoing rent to be paid.

35. Employee wages are paid up to date and all employees have been offered a compensation package in relation to their entitlement upon termination. All employees have accepted such packages, received the required payment, and signed a comprehensive release in favour of Excapsa.

36. Excapsa will have to pay its own current and future income tax liability as well as tax liability (up to October 12, 2006) of certain of its operating subsidiaries.

37. Excapsa does not have any other ongoing liabilities.

### **Claims Barring Process**

38. Although there are unlikely to be many claims against Excapsa, the board of directors recognized that any party that is owed money by Excapsa or who has an actual or potential claim against Excapsa or its officers or directors should have the opportunity, and be required, to bring such claim forward as soon as possible for adjudication.

39. To allow claims to be asserted and adjudicated, Excapsa seeks a claims-barring process under the supervision of the court. Since section 221(b)(iii) of the CBCA contemplates that creditors should be required to assert their claims against a company

in liquidation within two months of publication of a notice of dissolution, Excapsa seeks an order requiring all claimants to assert their claims on or before February 15, 2007. Excapsa intends to publish a notice concerning the liquidation and the appointment of the Liquidator in the national edition of the *Globe and Mail*, the *Wall Street Journal*, the *Times of London*, as well as in a newspaper of general circulation in Malta.

40. Excapsa also intends to give notice of the Liquidation to, and seek any claims from, shareholders, trade creditors, employees, and all other persons who may potentially have claims against Excapsa or its directors.

41. Through this claims-barring process, Excapsa wishes to bar all claims based on facts existing up to the date that the Liquidation is continued under court supervision that are not asserted on or before February 15, 2007 ("Pre-Filing Claims"). The Liquidator will run a separate process for any claims that may arise after the date that court supervision begins ("Post-Filing Claims").

42. Since Excapsa does not want to implement a cumbersome claims adjudication process if one is not necessary, it seeks an authorization permitting the Liquidator to review and pay or settle claims up to \$100,000 per claim, if the Liquidator in its discretion believes it can do so. To the extent that there are unresolved claims, or claims above this monetary threshold, Excapsa wishes the Liquidator to return to court upon subsequent motion for an order establishing a claims determination process. The details of that process will, of course, depend on the volume and size of the claims received by the claims bar date.

43. The order being sought also includes a term requiring Excapsa to withhold US\$5,000,000 as a general reserve to cover any claims that may be advanced against the Liquidator, Excapsa, and their officers, directors, employees and independent contractors.

### **Interim Distribution**

44. Given the significant cash that Excapsa has on hand, it seeks an order permitting an interim payment to shareholders in the aggregate amount of US\$26,000,000, to be

paid on a *pro rata* basis in an equal amount per share. This amount will be paid as a dividend to shareholders of record as of December 8, 2006 and designated as a capital gains dividend for tax purposes.

45. This payment would be made before the claims bar date and likely prior to December 31, 2006.

46. Even after making this payment, Excapsa would still have remaining cash on hand of approximately US\$34 million, which I understand from Excapsa's tax advisors will be significantly in excess of Excapsa's accrued tax liability. I now anticipate such tax liability to be significantly less than CAD\$8 million (which amount will be further reduced by applicable refunds and credits). As such, the payment of this capital gains dividend should not in any way impair Excapsa's ability to pay the tax authorities or other creditors.

#### **Further Distributions**

47. The Agreement requires monthly payments of either US\$1,000,000 or US\$2,000,000 from the Buyer. To the extent that it does not need to pay, or hold a reserve for, liabilities (including income tax liabilities and claims asserted in the claims bar process), the Liquidator is seeking the authority to make monthly distributions to shareholders as well as special distributions where warranted.

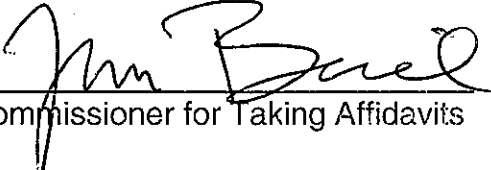
**Former Role of Mintz**

48. As I have deposed above, Excapsa wishes the appointment of Mintz & Partners Limited as Liquidator to be ratified. It should be noted that a related entity, Mintz & Partners LLP, is the auditor of Excapsa, but the board of directors of Excapsa does not believe that there would be any conflict of interest in having Mintz & Partners Limited confirmed as Liquidator. In fact, based on Mintz & Partners LLP's knowledge of Excapsa, the board of directors believes that the appointment of Mintz & Partners Limited will benefit and facilitate the liquidation process.

**Conclusion**

49. For the reasons indicated above, I believe that it is in the best interest of all stakeholders that the Liquidation of Excapsa proceed under supervision of the court and, in that regard, an order substantially in the form of the draft order contained in Excapsa's application record should issue.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, on November 27, 2006.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

  
\_\_\_\_\_  
DANIEL FRIEDBERG

JAMES RYAN and EXCAPSA SOFTWARE INC.  
Applicant and Respondent

Court File No: 06-CL-6752

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF DANIEL FRIEDBEI  
(SWORN NOVEMBER 27, 2006)**

**Cassels Brock & Blackwell LLP**  
2100 Scotia Plaza  
40 King Street West  
Toronto, Ontario M5H 3C2

John N. Birch LSUC#: 38968U  
Tel: 416 860-5225  
Fax: 416 640-3057

Solicitors for the Plaintiff

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# **EXHIBIT A**