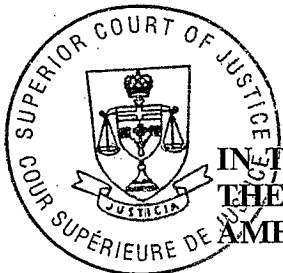


ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

THE HONOURABLE MR.) WEDNESDAY, THE 11th DAY
JUSTICE CUMMING) OF OCTOBER, 2006
)
)



**IN THE MATTER OF AN APPLICATION UNDER SECTION 47.1(1) OF
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B.3, AS
AMENDED**

**AND IN THE MATTER OF THE APPOINTMENT OF AN INTERIM
RECEIVER OF METCONNEX CANADA INC. AND METCONNEX US
CORP.**

Applicants

APPOINTMENT ORDER

THIS APPLICATION, made by Metconnex Canada Inc. and Metconnex US Corp. (collectively, the “Applicants”) for an Order pursuant to section 47.1(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) appointing the proposal trustee (the “**Proposal Trustee**”) of Metconnex Canada Inc., Doyle Salewski Inc. (“**DSI**”) as Receiver (the “**Receiver**”) without security, of all of the assets, undertakings and properties of the Applicants and for the additional relief set forth in the notice of application dated October 4, 2006 (the “**Notice of Application**”) was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the notice of application dated October 4, 2006 (the “**Notice of Application**”), the affidavit of Peter Hunter sworn October 4, 2006 and the Exhibits thereto (the “**Hunter Affidavit**”), the first report of the Proposal Trustee and the proposed Receiver, dated

October 6, 2006 (the “**First Report**”) and the consent of DSI to act as the Receiver, and on hearing the submissions of counsel for the Applicants, counsel for the proposed Receiver, counsel for JDS Uniphase Corporation (“**JDSU**”), counsel for the secured creditors (Comerica Bank and Skypoint II, G.P. Co. (US) Inc., Skypoint II G.P. Co. Inc., St. Paul Venture Capital VI, LLC, Innovacom 5 FCPR and BDC Capital Inc.) (collectively, the “**Secured Creditors**”), and upon being advised of the consent of all parties and that all persons listed on the service list were served with the application record dated October 4, 2006 (the “**Application Record**”),

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged so that this application is properly returnable today and hereby dispenses with further service thereof.

DEFINED TERMS

2. **THIS COURT ORDERS** that terms not otherwise defined in this Order shall have the meaning ascribed to them in the Order of the Honourable Mr. Justice Cumming dated October 11, 2006, which, *inter alia*, approved the asset purchase agreement among the purchaser, JDSU, the Receiver as the vendor, the Proposal Trustee and the Applicants (the “**Purchase Agreement**”).

APPOINTMENT

3. **THIS COURT ORDERS** that pursuant to section 47.1 (1) of the BIA, DSI is hereby appointed Receiver, without security, of all of the Applicants’ current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”).

RECEIVER’S POWERS

4. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) only to the extent that is necessary and for the sole purpose of giving effect to one or more sales of the Property, to take possession of and control all or a portion of the Property;
- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate and carry on the business of the Applicants, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Applicants;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Applicants or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Applicants and to exercise all remedies of the Applicants in collecting such monies, including, without limitation, to enforce any security held by the Applicants;
- (g) to settle, extend or compromise any indebtedness owing to the Applicants;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Applicants, for any purpose pursuant to this Order;

- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Applicants;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Applicants, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - i. without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - ii. with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* (the "PPSA"), or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* (the "BSA") shall not apply.
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licenses, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Applicants;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Applicants, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Applicants;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Applicants may have;
- (s) to make an assignment of all of the Property for the general benefit of the Applicants' creditors pursuant to the BIA; and
- (t) to take any steps reasonably incidental to the exercise of these powers,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Applicants, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. **THIS COURT ORDERS** that (i) the Applicants, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the

foregoing, collectively, being “Persons” and each being a “Person”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request and further provided that nothing in this paragraph 5 or in paragraph 6 shall oblige JDSU to deliver, disclose or grant access to the Records (as defined below) which contain information of a proprietary nature or confidential nature concerning or related to the Assets.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Applicants and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “Records”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor client communication or due to statutory provisions prohibiting such disclosure.

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and

providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Applicants or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Applicants or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Applicants, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Receiver or the Applicants to carry on any business which the Applicants is not lawfully entitled to carry on, (ii) exempt the Receiver or the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, (iv) prevent the registration of a claim for lien or (v) affect the obligations of the Applicants or the rights and entitlements of the Purchaser under the Purchase Agreement or under any other agreements and documents contemplated by the Purchase Agreement.

NO INTERFERENCE WITH THE RECEIVER

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Applicants are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Applicants' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. **THIS COURT ORDERS** that all employees of the Applicants shall remain the employees of the Applicants until such time as the Receiver, on the Applicants' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in

writing to pay, or such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction.

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers, investors or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser, investor or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession

of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or willful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

PAYMENT OF THE FEES OF THE RECEIVER AND COUNSEL

18. **THIS COURT ORDERS** that the Receiver, counsel to the Receiver, and counsel to the Applicants shall be paid by the Applicants their reasonable fees and disbursements (in the case of the Receiver, on the basis of a chartered accountant and its own client and, in the case of such counsel, on a solicitor and his own client basis) incurred both before and after the making of this Order including without limitation DSI's fees and disbursements incurred prior to the making of this Order in connection with its due diligence investigations, asset verification and report preparation, as part of the costs of these proceedings, and subject to any final assessment or taxation as may be ordered by this Court, the Applicants is hereby authorized to pay weekly or other periodic accounts of the Receiver, counsel for the Receiver, and counsel to the Applicants when due.

19. **THIS COURT ORDERS** that DSI as Receiver and independent counsel to the Receiver and counsel to the Applicants shall be entitled to the benefit of and are hereby granted a first ranking priority charge (the "**Administration Charge**") on the Property on *pari passu* basis, which charge shall not exceed an aggregate amount of \$100,000, as security for their reasonable professional fees and disbursements in respect of these proceedings in accordance with the provisions of this Order whether incurred before or after the making of this Order, and including the fees and expenses outlined in paragraph 18 above.

THE ADMINISTRATION CHARGE

20. **THIS COURT ORDERS** that the Administration Charge shall attach to all existing and after-acquired Property and the beneficiaries of the Administration Charge are entitled to the benefit of and are hereby granted a fixed and floating charge, mortgage, hypothec, lien and security interest on all of the existing and after-acquired Property, as the case may be, including any lease, licence, occupation, permit, or other contract, provided that the Administration Charges shall not apply to the Assets or the proceeds thereof (other than the Sale Proceeds) notwithstanding any requirement for the consent of the lessor, licensor or other party to any such contract, licence, occupation permit, or any other Person, that the necessity for the giving of any such consent is hereby dispensed with, and that the absence of any such consent shall not constitute a breach of or default under any such lease, licence, occupation permit or other contract.

21. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered, if requested by the beneficiaries of the Administration Charge, to execute and deliver in favour of such beneficiaries such mortgages, charges, hypothecs, security and other documents as may be reasonably required charging and creating a security interest in all of the existing and after-acquired Property and the beneficiaries of such charges, or their counsel, are hereby authorized to take such steps as it deems necessary or appropriate to register, record or perfect the Administration Charge notwithstanding the stay provisions of this Order.

22. **THIS COURT ORDERS** that none of the beneficiaries of the Administration Charge provided hereunder shall be required to file, register, record or perfect its charge and the charge shall be valid and enforceable as against all existing or after-acquired Property for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to such charges coming into existence, notwithstanding any failure to file, register, record or perfect the charge.

23. **THIS COURT ORDERS** that the obligations secured by the Administration Charge and all documents delivered pursuant thereto shall be legal, valid and binding obligations of the Applicants and shall not otherwise be rendered unenforceable against the Applicants or the Property because or by reason of the pendency of these proceedings and the declarations of

insolvency made herein, the pendency of any petitions for receiving orders hereafter issued pursuant to the BIA in respect of the Applicants, or the provisions of any federal or provincial statutes relating to oppression, fraudulent conveyances, fraudulent preferences, assignments and preferences, settlements or similar legislation.

24. **THIS COURT ORDERS** that the entering into any of the documents contemplated by paragraph 20 in connection with the Administration Charge any payments made by the Applicants pursuant thereto whether made before, on or after the date of this Order and the creation of the Administration Charge or any payments made by the Applicants on or after the date of this Order pursuant to the above documents or any agreements, instruments or other documents delivered pursuant thereto do not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable or reviewable transactions under any applicable law.

25. **THIS COURT ORDERS** that the Administration Charge shall not be invalid or ineffective by reason of any negative covenants, prohibitions or other similar provisions with respect to incurring debt or the creation of liens or security contained in any existing agreement to which the Applicants are a party.

26. **THIS COURT ORDERS** that the Administration Charge shall survive any bankruptcy of the Applicants and shall have priority over the interest of a trustee in bankruptcy of the Applicants.

RECEIVER'S ACCOUNTS

27. **THIS COURT ORDERS** the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

EFFECTIVE TIME

28. **THIS COURT ORDERS** that this Order is effective as of 12:01 a.m. (Toronto time) on the date of this Order (the "**Effective Time**"), and that from the Effective Time to the time of the granting of this Order, any act or action taken or notice given by creditors or other persons and

their agents in furtherance of their rights to commence or continue realization or take or enforce any other step or remedy against the Applicants, including the application of funds in the reduction of any debt, set-off or the consolidation of accounts, will be deemed not to have been taken or given as the case may be, subject to the right of such persons to further apply to this Court in respect of such step, act, action or notice given, provided that the foregoing shall not apply to prevent any creditor who, during such period, effected any registrations with respect to security granted prior to the date of this Order or who obtained third party consents in relation thereto.

GENERAL

29. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

30. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Applicants.

31. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

32. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

33. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and the Applicants' counsel and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

34. **THIS COURT THIS COURT ORDERS** that the Receiver and counsel to the Receiver and the Applicants, may serve any materials in these proceedings on all parties by prepaid mail, courier, personal delivery, telecopier or e-mail on any interested party at their addresses as last shown on the records of the Applicants and that any such service if sent (a) by courier, telecopier or e-mail shall be deemed to be received the day of forwarding; or (b) if sent by ordinary mail, shall be deemed to be received on the second business day following the mailing, and the Receiver may post a copy of the materials on its website (www.doylegroup.ca) as soon as practicable thereafter.

35. **THIS COURT ORDERS** that the First Report be and the same is hereby accepted and approved and the actions and the activities of the Receiver as referenced in the First Report are hereby approved.

Oct 11/06 Peter A. Cummins J.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

OCT 11 2006

PER/PAR:



IN THE MATTER OF AN APPLICATION UNDER SECTION 47.1(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B.3, AS AMENDED AND IN THE MATTER OF THE APPOINTMENT OF AN INTERIM RECEIVER OF METCONNEX CANADA INC. AND METCONNEX US CORP.

Applicants

Court File No. 06-CL-6670

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

ORDER

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