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## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Relief granted from the registration and prospectus requirements for distributions of various securities of a new issuer to creditors of old issuer in connection with a reorganization under the U.S. Bankruptcy Code and plan of arrangement under the *Companies' Creditors Arrangement Act* - first trades deemed to be a distribution unless made through an exchange or market outside of Canada.

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61 and 76

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA,  
SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC, NEWFOUNDLAND AND LABRADOR,  
NOVA SCOTIA, PRINCE EDWARD ISLAND, NEW BRUNSWICK, THE NORTHWEST  
TERRITORIES, THE YUKON TERRITORY AND THE TERRITORY OF NUNAVUT

AND

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

AND

IN THE MATTER OF LOEWEN GROUP INTERNATIONAL, INC.

## MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker" and collectively, the "Decision Makers") in each of the provinces of British Columbia, Saskatchewan, Manitoba, Ontario, Québec, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, Northwest Territories, the Yukon Territory and the Territory of Nunavut (collectively, the "Jurisdictions") has received an application (the "Application") from Loewen Group International, Inc. (the "Applicant") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation to be registered to trade in a security, to file a preliminary prospectus and a prospectus and to receive receipts therefor (the "Registration and Prospectus Requirements") shall not apply to trades of certain securities pursuant to a plan of reorganization (the "Plan") made under the U.S. Bankruptcy Code (the "Bankruptcy Code");

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

AND WHEREAS the Applicant has represented to the Decision Makers that:

1. The Loewen Group Inc. ("Loewen") is a corporation incorporated under the laws of the Province of British Columbia. Loewen and its subsidiaries are in the business of operating funeral homes and cemeteries throughout North America and the United Kingdom.
2. Loewen's principal and executive offices are located in Toronto, Ontario.

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3. Loewen is a reporting issuer in each of the Jurisdictions where such concept exists and, to the best of the Applicant's knowledge, is not in default of any of the requirements of the Legislation.
4. The common shares of Loewen (the "Loewen Shares") were delisted from The New York Stock Exchange on April 13, 2000. The Loewen Shares (and the preferred shares of Loewen (the "Loewen Preferred Shares")) were delisted from the Toronto Stock Exchange (the "TSE") on November 21, 2001.
5. The Applicant was incorporated under the laws of the State of Delaware and is an indirect wholly-owned subsidiary of Loewen.
6. The Applicant's executive officers will be located in Toronto, Ontario as at the effective date (the "Effective Date") of the reorganization contemplated under the Plan.
7. The Applicant is not a reporting issuer in any of the Jurisdictions.
8. On June 1, 1999, Loewen and approximately 860 of its U.S. subsidiaries, including the Applicant (collectively, the "U.S. Debtors"), filed voluntary petitions for relief pursuant to Chapter 11 of the Bankruptcy Code.
9. After lengthy negotiations between Loewen and various stakeholders and their representatives whose claims will be impaired under the Plan, the Plan was created as a means to satisfy the rights of holders of claims against and certain limited equity interests in the U.S. Debtors (such holders, the "Creditors").
10. On June 1, 1999, Loewen and approximately 117 of its Canadian subsidiaries (the "CCAA Debtors") obtained a protective order of the Ontario Court of Justice (the "Ontario Court") pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA").
11. Loewen and the CCAA Debtors are not required to file a separate plan of reorganization under the CCAA.
12. The Plan (and the CCAA proceedings) provide for a reorganization of the corporate structure of Loewen and its subsidiaries, including the Applicant (collectively, the "Debtors"), and a recapitalization of the Applicant, as a result of which the Applicant will become the successor to the business of Loewen and its subsidiaries and replace Loewen as the parent company in the corporate structure.
13. The implementation of the Plan is necessary for the business of the Loewen group of companies to continue as a going concern.
14. The reorganization pursuant to the Plan constitutes a related party transaction for the purposes of Ontario Securities Commission Rule 61-501 *Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions* and Québec Securities Commission Local Policy Statement Q-27 *Requirements for Minority Security Holders Protection in Certain Transactions* but is exempt from the valuation and minority approval requirements of such rule and policy statement.
15. The Plan provides, among other things:
  - (a) transactions that will result in the ultimate parent company in the corporate structure being the Applicant;

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- (b) some combination of cash, secured and unsecured debt instruments, warrants, common stock and interests in a trust being given in satisfaction of certain indebtedness;
- (c) the assumption and assignment or rejection of executory contracts and unexpired leases to which any Debtor is a party;
- (d) the selection of the board of directors of the Applicant and the reorganized Loewen subsidiary debtors;
- (e) the corporate restructuring of the Loewen subsidiary debtors to simplify the Debtors' corporate structure and a similar restructuring of certain of the Canadian subsidiaries of Loewen; and
- (f) certain other transactions resulting in the transfer of substantially all of Loewen's assets to the Applicant or a wholly owned subsidiary of the Applicant.

16. As at the Effective Date of the reorganization contemplated under the Plan, the authorized capital of the Applicant will consist of 100,000,000 shares of common stock ("New Common Stock") and 10,000,000 shares of preferred stock.

17. It is intended that the New Common Stock will be traded on the Nasdaq National Market system ("NASDAQ") or a United States national securities exchange on the Effective Date.

18. The Applicant will not be, and does not intend to become, a reporting issuer in any of the Jurisdictions following the Effective Date, other than in the Province of Saskatchewan where it will be deemed to be a reporting issuer pursuant to the Legislation of such Jurisdiction as a result of the reorganization contemplated under the Plan but in respect of which exemptive relief has been requested from the Decision Maker in Saskatchewan.

19. Pursuant to the Bankruptcy Code, the Plan is subject to the approval (the "Creditor Approval") of the Creditors.

20. In connection with the Creditor Approval, a disclosure statement for the Plan (the "Disclosure Statement") was prepared in accordance with the requirements of the Bankruptcy Code and approved by the U.S. Court.

21. The Disclosure Statement provides a detailed description of the terms of the Plan, the background and events leading to the filing of the Plan and prospectus-level disclosure of the business of the Applicant, including pro forma financial statements.

22. The Disclosure Statement also indicates that the issuance and transfer of the Reorganization Securities (as defined in paragraph 28 below) may be made subject to relief granted by the applicable Decision Makers and that such relief may be subject to restrictions or conditions, including restrictions on the transferability of such securities.

23. The Disclosure Statement was distributed to the Creditors and shareholders of Loewen on or about September 14, 2001.

24. In addition to the Creditor Approval, the Plan was also confirmed by the U.S. Court at a confirmation hearing completed on December 4, 2001. Recognition of the confirmation by the Ontario Court was received at a hearing on December 7, 2001.

25. All distributions of securities to Creditors will be made pursuant to the Plan.

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26. Substantially all Creditors are at arms length to the Applicant.
27. Holders of Loewen Shares and Loewen Preferred Shares will not receive any distributions under either of the Plans.
28. On the Effective Date, the Applicant will issue the following securities to Creditors (depending upon their claims) under the Plan (such issuances, collectively, the "Reorganization Trades"):
- (a) approximately 40,000,000 shares of New Common Stock;
  - (b) warrants (the "Warrants") to acquire up to approximately 3,000,000 shares of New Common Stock;
  - (c) an aggregate principal amount of US\$250 million of five-year secured notes (the "Five-Year Secured Notes"), unless the Applicant and its subsidiaries obtain a US\$250 million term loan to be funded on the Effective Date;
  - (d) up to an aggregate principal amount of US\$165 million (less the proceeds from the distribution of certain assets) two-year unsecured notes (the "Two-Year Unsecured Notes");
  - (e) up to an aggregate principal amount of between US\$325 million and US\$330 million seven-year unsecured notes (the "Seven-Year Unsecured Notes"); and
  - (f) an aggregate principal amount of US\$24,679,000 subordinated convertible notes (the "Unsecured Subordinated Convertible Notes" and, together with the New Common Stock, the Warrants, the Five-Year Secured Notes, the Two-Year Unsecured Notes and the Seven-Year Unsecured Notes, the "Reorganization Securities") convertible initially into an aggregate of 1,437,332 shares of New Common Stock.
29. Also on the Effective Date and pursuant to the Plan, a trust (the "Liquidating Trust") will be established pursuant to the laws of the State of New York for the benefit of certain Creditors (the "Beneficiaries"), whereby the Applicant will transfer or cause to be transferred to the Liquidating Trust (i) warrants (the "Prime Warrants") previously issued by Prime Succession Holdings Inc. ("Prime") to Loewen and the Applicant which are exercisable for 500,000 shares of common stock of Prime, and (ii) an interest in proceeds, if any, in respect of a claim under NAFTA.
30. Prime is a Delaware corporation, the issued and outstanding capital of which consists of 5,000,000 shares of common stock. Prime is not a reporting issuer in any of the Jurisdictions. The common stock of Prime does not trade on any market or exchange.
31. A trustee (the "Liquidating Trustee") will hold legal title to the assets of the Liquidating Trust and will cause to be issued (such issuance, also a "Reorganization Trade") by the Liquidating Trust to the Beneficiaries certificates (the "Liquidating Trust Certificates" and such certificates, also "Reorganization Securities") evidencing their beneficial interests in the assets of the Liquidating Trust.
32. The Prime Warrants (also "Reorganization Securities") may be (i) distributed to the Beneficiaries (such trade, also a "Reorganization Trade"), (ii) sold, with the proceeds distributed to the Beneficiaries, or (iii) exercised by the Liquidating Trustee who will then sell the common stock acquired pursuant thereto and distribute the proceeds to the Beneficiaries.
33. The Applicant believes that, pursuant to the provisions of the Bankruptcy Code, the offer and distribution of the Reorganization Securities and the Liquidating Trust Certificates under the Plan

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are exempt from registration under U.S. federal and state securities laws. Furthermore, the resale of such securities will also generally be exempt from registration under such laws.

34. Pursuant to the terms of the agreement which will establish the Liquidating Trust, the Liquidating Trustee and the Beneficiaries, among others, will be prohibited from taking any steps to facilitate the development of a secondary market in the Liquidating Trust Certificates. Furthermore, the Liquidating Trustee will only permit the transfer of Liquidating Trust Certificates in certain limited circumstances (e.g. upon death and between family members), as described in the Disclosure Statement.

35. Residents of Canada do not represent more than 10% of the total number of Creditors.

36. Immediately following the implementation of the Plan, residents of Canada will not hold, directly or indirectly, more than 10% of any class of the Reorganization Securities.

37. As at the Effective Date, residents of Canada would not hold, directly or indirectly, more than 10% of the New Common Stock if all of the Warrants and Unsecured Subordinated Convertible Notes were exercised or converted on the Effective Date. As at the Effective Date, residents of Canada also would not hold, directly or indirectly, more than 10% of Prime common stock if all of the Prime Warrants were exercised on the Effective Date.

38. The Applicant will be subject to the reporting requirements of section 13 of the Securities Exchange Act of 1934 pursuant to the registration of equity securities under section 12(g) of such Act.

39. Disclosure documents sent to holders of Reorganization Securities resident in the U.S. will also be provided to holders of Reorganization Securities resident in the Jurisdictions.

AND WHEREAS under 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 the Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers pursuant to the Legislation is that the Registration and Prospectus Requirements shall not apply to the Reorganization Trades, provided that:

A. all approvals required by orders of the U.S. Court and the Ontario Court to implement the Plan have been obtained, and all conditions of such Plan have been satisfied or waived in accordance with such Plan; and

B. the first trade in a Jurisdiction of the Reorganization Securities shall be deemed to be a distribution or primary distribution to the public under the Legislation of such Jurisdiction unless such trade is made through an exchange or a market outside of Canada or to a person or company outside of Canada.

Dated this 21<sup>st</sup> day of December, 2001.

Paul Moore

Lorne Morphy