

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF KIDKRAFT, INC., SOLOWAVE
DESIGN HOLDINGS LIMITED, SOLOWAVE DESIGN INC.,
SOLOWAVE INTERNATIONAL INC. AND SOLOWAVE
DESIGN LP

APPLICATION OF KIDKRAFT, INC. UNDER SECTION 46 OF THE
COMPANIES CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36,
AS AMENDED

APPLICANT

FACTUM OF THE APPLICANT

May 10, 2024

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PART I - NATURE OF THE MOTION

1. This factum is filed in support of the application by KidKraft, Inc. (“**KidKraft**,” and together with its debtor and non-debtor affiliates, the “**Company**”), in its capacity as the proposed foreign representative (in such capacity, the “**Foreign Representative**”) of the Chapter 11 Debtors (defined below), for an order (the “**Interim Stay Order**”) pursuant to Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and section 106 of the *Courts of Justice Act*, R.S.O. 1990, c C.43 (the “**CJA**”), among other things, granting an interim stay of proceedings in respect of the Canadian Debtors (defined below) and KidKraft, and their respective directors and officers.¹

2. The Company—a leader in branded, sustainable, wood-based active and imaginative play products such as swing sets, dollhouses, playhouses, and more—is currently facing significant balance sheet and liquidity challenges.² On May 10, 2024 (the “**Petition Date**”), Solowave Design Holdings Limited, Solowave International Inc. and Solowave Design Inc. (collectively, the “**Canadian Corporate Debtors**”), Solowave Design LP (together with the Canadian Corporate Debtors, the “**Canadian Debtors**”), KidKraft, and six other debtors and debtors in possession (collectively, the “**Chapter 11 Debtors**”)³ filed voluntary petitions for relief (together, the “**Petitions**”) pursuant to Chapter 11 of the U.S. Bankruptcy Code with the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “**U.S. Court**”). The

¹ Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Affidavit of Geoffrey Walker sworn May 10, 2024 (the “**Interim Stay Affidavit**”). All dollar references herein are in U.S. dollars unless otherwise specified.

² Interim Stay Affidavit at paras. 16, 45.

³ The Chapter 11 Debtors are KidKraft, Inc., KidKraft Europe, LLC, KidKraft Intermediate Holdings, LLC, KidKraft International Holdings, Inc., KidKraft Partners, LLC, KidKraft International IP Holdings, LLC, Solowave Design Corp., Solowave Design Holdings Limited, Solowave Design Inc., Solowave Design LP, and Solowave International Inc.

cases commenced by the Chapter 11 Debtors in the U.S. Court are referred to herein as the “**Chapter 11 Cases.**”⁴

3. Also on May 10, 2024, the Chapter 11 Debtors filed or intend to file several first day motions and applications, including an order authorizing KidKraft to act as Foreign Representative (the “**Foreign Representative Order**”), with the U.S. Court (collectively, the “**First Day Motions**”). The U.S. Court is expected to hear certain First Day Motions on May 13.⁵

4. In its notice of application, KidKraft is also seeking the following orders, *inter alia*, which will be the subject of a future hearing following the entry of orders (the “**First Day Orders**”) by the U.S. Court in respect of certain First Day Motions:

- (a) an order (the “**Initial Recognition Order**”), among other things:
 - (i) recognizing the Chapter 11 Cases in respect of KidKraft and the Canadian Debtors as “foreign main proceedings” pursuant to Part IV of the of the CCAA; and
 - (ii) recognizing KidKraft as the “foreign representative” in respect of the Chapter 11 Cases in respect of KidKraft and the Canadian Debtors; and

- (b) an order (the “**Supplemental Order**”), among other things:
 - (i) recognizing certain other First Day Orders issued by the U.S. Court in the Chapter 11 Cases, including the Foreign Representative Order;
 - (ii) granting a stay of proceedings in respect of KidKraft and the Canadian Debtors and their respective directors and officers;

⁴ Interim Stay Affidavit at para. 3.

⁵ The First Day Motions are listed in the Interim Stay Affidavit at para. 11.

- (iii) appointing KSV Restructuring Inc. as the information officer in this proceeding (in such capacity, the “**Information Officer**”);
- (iv) granting a Court-ordered charge on the present and future assets, property and undertakings of KidKraft located in Canada and of the Canadian Debtors (the “**Canadian Property**”) to secure:
 - (A) the professional fees and disbursements incurred in respect of this proceeding by the Information Officer, its counsel and KidKraft and the Canadian Debtors’ Canadian counsel (up to a maximum amount of CAD\$750,000);
 - (B) the indemnity granted by KidKraft and the Canadian Debtors in favour of their respective directors and officers in respect of obligations and liabilities in Canada that they may incur as directors or officers after the commencement of this proceeding (up to a maximum amount of CAD\$100,000); and
 - (C) advances under a debtor-in-possession credit facility.⁶

5. The Interim Stay Order is being sought on an expedited basis to ensure that the status quo is preserved in respect of KidKraft, the Canadian Debtors and the Canadian Property pending the granting of the First Day Orders by the U.S. Court, including the Foreign Representative Order. If granted, the Interim Stay Order will protect the Company’s Canadian business and the Canadian Property (including valuable inventory) from immediate actions of creditors and contract counterparties in Canada.⁷

⁶ Interim Stay Affidavit at para. 5.

⁷ Interim Stay Affidavit at para. 6.

6. Shortly after the U.S. Court has issued the Foreign Representative Order and the other First Day Orders, KidKraft, in its capacity as the Foreign Representative, intends to return to this Court to seek the Initial Recognition Order and the Supplemental Order.⁸

PART II - THE FACTS

A. The business

(a) Overview and organizational structure

7. KidKraft, a privately held company, was founded in Dallas in 1968. It is a leader in branded, sustainable, wood-based active and imaginative play products. Originally focused on made-from-wood children's furniture, the Company later expanded its product offerings, focusing on imaginative play including dollhouses and role-play kitchens. In 2008 and 2009, it opened offices in the Netherlands to serve the European, Middle Eastern, African, and Asian markets and in China to facilitate the production and distribution of the Company's products. The Company acquired the Solowave Design business—a leading maker of outdoor wood play sets in Canada—in 2016.⁹

8. The Company's organizational structure consists of eighteen entities, eleven of which are debtors in the Chapter 11 Cases. Other than the Canadian Debtors, each Chapter 11 Debtor is incorporated or established under the laws of the U.S.¹⁰ While each of the Canadian Corporate Debtors is incorporated under the laws of Ontario, Solowave Design LP is a limited partnership formed under the laws of the Province of Alberta.¹¹

⁸ Interim Stay Affidavit at para. 7.

⁹ Interim Stay Affidavit at para. 16.

¹⁰ Interim Stay Affidavit at para. 18.

¹¹ Interim Stay Affidavit at para. 19.

9. Solowave Design Holdings Limited is a direct wholly-owned subsidiary of KidKraft. Solowave Design Inc. is a direct wholly-owned subsidiary of Solowave Design Holdings Limited. Solowave International Inc. is 50% owned by Solowave Design Inc. and 50% owned by Solowave Design Holdings Limited. Solowave Design LP's limited partner is Solowave Design Holdings Limited and its general partner is Solowave Design Inc.¹²

10. Each of the other Chapter 11 Debtors is also a direct or indirect wholly-owned subsidiary of KidKraft, or its immediate parent, KidKraft Intermediate Holdings LLC.¹³

11. The non-debtors include the ultimate parent company, KidKraft Group Holdings LLC, which is not a guarantor or borrower on any of the Company's funded debt, as well as the Company's subsidiaries in China and the Netherlands. The China subsidiaries oversee production and distribution of the Company's products in China, and are also not guarantors or borrowers on any of the Company's funded debt. The Netherlands subsidiaries support sales and distribution of the Company's products in Europe, the Middle East, Africa, and Asia-Pacific. As noted below, KidKraft Netherlands B.V. is a borrower and the other Netherlands subsidiaries are guarantors under the Prepetition Credit Agreement (defined below), but the obligations of each of the Netherlands subsidiaries is not to exceed \$10,000,000.¹⁴

¹² Interim Stay Affidavit at para. 20.

¹³ Interim Stay Affidavit at para. 21.

¹⁴ Interim Stay Affidavit at para. 22.

(b) Financial position of the Canadian Debtors

12. There are no stand-alone audited financial statements for the Canadian Debtors, as their financial results have historically been consolidated with the Company's financial statements and audited on a consolidated basis only.¹⁵

13. Based on the trial balance for Solowave Design LP, which partnership carries on the business of the Canadian Debtors, as at March 31, 2024, the Canadian Debtors had:

- (a) total assets of approximately CAD\$5,643,477, including accounts receivable of approximately CAD\$3,259,732 and inventory of approximately CAD \$564,753;
- (b) liabilities of approximately CAD\$1,893,682, before considering their potentially substantial obligations under their guarantees of Chapter 11 Debtors' indebtedness under the Prepetition Credit Agreement (as defined below),¹⁶ and
- (c) gross sales of approximately CAD \$10,970,094 during the fiscal year ended March 31, 2024.¹⁷

(c) Operations

14. KidKraft distributes its products through several large stores, online retailers, and direct to consumer sales from the Company's website. In recent years, the Company has scaled its global drop-shipping infrastructure to support continued growth in its online direct to consumer sales and complement its existing warehouse and distribution capabilities. In addition, the Company has

¹⁵ Interim Stay Affidavit at para. 23.

¹⁶ Those contingent obligations would in all likelihood erode the book value of any equity that may be reflected on the Canadian Debtors' unaudited financial statements.

¹⁷ Interim Stay Affidavit at paras. 24-26.

strong business relationships across global retailers with more than 3,000 points of distribution in over 90 countries, as well as within the global logistics community.¹⁸

15. The Company's U.S. headquarters is in Dallas, Texas. The business of the Chapter 11 Debtors, including the Canadian Debtors, is run out of the U.S. headquarters. The Company has no Canadian headquarters or office locations.¹⁹

16. The Company's business in Canada is principally as a distributor. Both KidKraft and Solowave Design LP sell products to Canadian customers. The Company has no retail locations in Canada. Rather, the Company's key customers in Canada are retailers, including Costco, Toys "R" Us, Canadian Tire, Home Depot and Walmart. The Company also sells its products through Wayfair on a consignment basis. Canadian consumers can also place orders directly through the Company's website, which is operated by KidKraft.²⁰

17. In Canada, the Company supplies its products to its customers via a third-party logistics provider, Mainfreight Inc. ("**Mainfreight**"), pursuant to a logistics services agreement between KidKraft and Mainfreight dated July 28, 2023. As of April 30, 2024, Mainfreight was in possession of inventory valued at approximately CAD\$323,000, all of which inventory is owned by KidKraft or Solowave Design LP and is maintained at Mainfreight's facility in Mississauga (or is in transit thereto or therefrom).²¹

¹⁸ Interim Stay Affidavit at para. 27.

¹⁹ Interim Stay Affidavit at para. 28.

²⁰ Interim Stay Affidavit at para. 29.

²¹ Interim Stay Affidavit at para. 30.

18. On a consolidated basis, during the fiscal year ended March 31, 2024, the Company's gross sales to Canadian customers exceeded \$12.8 million.²²

19. KidKraft and Solowave Design LP have also entered into Receivables Sales Agreements dated August 4, 2021 and April 21, 2022, respectively, with Coface Finanz GmbH ("**Coface**"), pursuant to which Coface purchases accounts receivable from KidKraft and Solowave Design LP.²³

(d) Employees

20. As of the Petition Date, the Chapter 11 Debtors employ over 60 individuals on a full-time or part-time basis in the U.S. and Canada (the "**Employees**").²⁴ The Company's management team is supported by mid-level executives who are vital to the Company's operations, these Chapter 11 Cases, and the ability to successfully consummate the Sale Transaction (as defined below). Their skills, knowledge, and understanding of the Debtors' operations are essential to preserving operational stability, safety, and efficiency. KidKraft employs one full-time Employee in Canada. The Canadian Debtors do not employ any Employees, in Canada or otherwise.²⁵

21. None of the Employees are represented by a union or are subject to a collective bargaining agreement. There is no registered pension plan in Canada.²⁶

²² Interim Stay Affidavit at para. 31.

²³ Interim Stay Affidavit at para. 32.

²⁴ The Company's non-debtor affiliates in the Netherlands and China employ an additional 170 individuals.

²⁵ Interim Stay Affidavit at para. 33.

²⁶ Interim Stay Affidavit at para. 34.

B. Prepetition capital structure and indebtedness

22. As of the Petition Date, the Chapter 11 Debtors’ funded debt liabilities total approximately \$151.9 million, including approximately (i) \$149.9 million in outstanding principal and (ii) \$2.0 million in accrued and unpaid interest. The Chapter 11 Debtors’ funded debt obligations include:²⁷

Facility	Maturity	Total Approx. Principal Amount Outstanding
Prepetition First Lien Revolving Facility ²⁸	June 2024	\$63.2 million
Prepetition First Lien Term Facility ²⁸	June 2024	\$81.7 million
<i>Total Funded Secured Debt</i>		\$144.9 million
Subordinated Unsecured Note ²⁹	January 2025	\$5.0 million
<i>Total Funded Debt</i>		\$149.9 million

(a) Prepetition credit agreement

23. The Chapter 11 Debtors’ primary long-term debt arises under an Amended and Restated First Lien Credit Agreement dated as of April 3, 2020, among KidKraft and KidKraft Netherlands B.V., a private company with limited liability (besloten vennootschap met beperkte aansprakelijkheid) incorporated under the laws of The Netherlands, as borrowers, KidKraft Intermediate Holdings, LLC and its subsidiaries that are guarantors thereto, the lender party thereto, and the administrative agent (the “**Prepetition Credit Agreement**”). The lender has provided commitments under the Prepetition Credit Agreement consisting of revolving credit commitments (such commitments, collectively, the “**Prepetition First Lien Revolving Facility**”) and term loan commitments (such commitments, collectively, the “**Prepetition First Lien Term**

²⁷ Interim Stay Affidavit at para. 35.

²⁸ As described below, the Canadian Debtors are guarantors of the Prepetition First Lien Revolving Facility and the Prepetition First Lien Term Facility.

²⁹ The Canadian Debtors are neither obligors, nor guarantors, of the subordinated unsecured note.

Facility”), each of which is secured by a first priority lien on substantially all of the Chapter 11 Debtors’ assets, as well as liens on the Company’s Dutch subsidiaries’ assets.³⁰

24. The Forbearance, Amendment No. 5 and Joinder to Amended and Restated First Lien Credit Agreement, dated as of January 31, 2024 (the “**Fifth Amendment**”) was entered in connection with the Debt Sale (defined below) and joined KidKraft’s Dutch and Canadian affiliates (i.e., the Canadian Debtors) as guarantors under the Prepetition Credit Agreement, joined KidKraft Netherlands B.V. as a co-borrower, increased the priority revolving commitments under the Prepetition Credit Agreement to \$26,780,000, and extended the maturity of the term loans under the Prepetition Credit Agreement from June 30, 2023 to June 30, 2024, giving the Company crucial liquidity and runway to pursue restructuring alternatives. Several agreements were entered into as security for the guarantee.³¹

25. Prior to the Petition Date, Amendment No. 6 to the Amended and Restated First Lien Credit Agreement, dated as of May 9, 2024 was entered into to document the amendments to the Prepetition First Lien Term Facility pursuant to the RSA (as hereinafter defined) and account for the \$4,766,198 in additional priority revolving commitments that had been advanced since entry into the Fifth Amendment.³²

26. As of the Petition Date, the Chapter 11 Debtors’ aggregate principal outstanding funded debt obligations under the Prepetition Credit Agreement total approximately \$144,900,000, comprised of: (i) \$81,700,000 under the Prepetition First Lien Term Facility; and (ii) \$63,200,000

³⁰ See the Interim Stay Affidavit at para. 36 for an overview of amendments to the Prepetition Credit Agreement.

³¹ Interim Stay Affidavit at para. 37.

³² Interim Stay Affidavit at para. 38.

under the Prepetition First Lien Revolving Facility. In addition, the Chapter 11 Debtors owe accrued and unpaid interest under both the Prepetition First Lien Term Facility and the Prepetition First Lien Revolving Facility.³³

(b) Trade vendors and other unsecured liabilities

27. In connection with the First Amendment, MidOcean Partners IV, L.P. (“**MidOcean**”), the Company’s equity sponsor, agreed to provide an unsecured subordinated loan to KidKraft in the amount of \$5,000,000 (the “**Subordinated Note**”). The loan is documented in that certain Note Purchase Agreement, dated as of January 13, 2023 among KidKraft and MidOcean, and subordinated to the Prepetition Credit Agreement via a Subordination Agreement, dated as of January 13, 2023 among KidKraft, MidOcean, KidKraft Intermediate Holdings, LLC and the administrative agent under the Prepetition Credit Agreement. As of the Petition Date, the Subordinated Note is outstanding; however, MidOcean has agreed under the RSA (as defined below) to a waiver of the Subordinated Note obligations on the effective date of the Plan (as defined below).³⁴

28. The Chapter 11 Debtors rely on numerous trade vendors to operate their businesses in the ordinary course. These trade vendors include producers of the Chapter 11 Debtors’ products, marketing and advertising services, and shipping and logistics services that deliver the finished products to the Chapter 11 Debtors and to various customers. As a result of the Chapter 11 Debtors’ business with these trade vendors, the Chapter 11 Debtors (which for greater certainty include the

³³ Interim Stay Affidavit at para. 39.

³⁴ Interim Stay Affidavit at para. 40.

Canadian Debtors) have accrued approximately \$30,000,000 in unsecured trade claims as of the Petition Date.³⁵

C. Events leading to the Chapter 11 Cases

29. The Company is currently facing significant balance sheet and liquidity challenges, caused by a range of factors that ultimately resulted in the Company's operating margins being squeezed. In addition, the Company was unable to refinance or replace its funded debt that originally matured in June 2023 (now June 2024). The Company proactively worked to address their balance sheet and liquidity challenges, including through a balance sheet restructuring in 2023 and by running multiple robust out-of-court sale processes prior to the Petition Date.³⁶

30. As a result of these efforts, an agreement was ultimately reached pursuant to which 1903 Partners, LLC ("**Gordon Brothers**") purchased the existing debt under the Prepetition Credit Agreement (the "**Debt Sale**"). In connection therewith, Gordon Brothers provided additional financing in the form of revolving priority loans to the Company to maintain its operations and prevent further degradation of its business while the Company and Gordon Brothers worked collaboratively to explore value-maximizing strategic alternatives.³⁷

31. Backyard Products, LLC (the "**Purchaser**") emerged from a second sale process with a bid to purchase a substantial majority of the Company's assets with such sale to be effectuated in Chapter 11 (the "**Sale Transaction**"). On April 25, 2024, the Chapter 11 Debtors, Gordon Brothers, MidOcean and the Purchaser entered into a restructuring support agreement (the

³⁵ Interim Stay Affidavit at para. 41.

³⁶ Interim Stay Affidavit at para. 45.

³⁷ Interim Stay Affidavit at para. 46.

“**RSA**”).³⁸ Among other things, the RSA contemplates Gordon Brothers’ voting in favour of a joint prepacked Chapter 11 plan (the “**Plan**”) and providing debtor-in-possession financing, along with the sale of certain of the Chapter 11 Debtors’ assets to the Purchaser through the Chapter 11 Cases.³⁹

D. Urgent need for relief in Canada

32. Given the filing of the Petitions with the U.S. Court and the commencement of the Chapter 11 Cases, and the nature of the operations in Canada, KidKraft and the Canadian Debtors are in urgent need of an interim stay of proceedings in Canada pending the entry of the First Day Orders and a further hearing in Canada seeking their recognition and commencing proceedings under the CCAA.⁴⁰

33. Maintaining the status quo will prevent unnecessary disruptions within the Chapter 11 Debtors’ Canadian supply chain and Canadian business. In particular, an interim stay is necessary to protect the Company’s valuable inventory, which is currently stored in or in transit within Canada by third parties. Preservation of such inventory is essential to the success of the Chapter 11 Cases, as it is proposed to secure the Company’s proposed debtor-in-possession facility and form part of the Sale Transaction.⁴¹

34. Without the automatic stay that arises upon the filing of the Petitions with the U.S. Court and the proposed Canadian interim stay requested from this Court,

³⁸ Interim Stay Affidavit at para. 47.

³⁹ Interim Stay Affidavit at para. 48.

⁴⁰ Interim Stay Affidavit at para. 49.

⁴¹ Interim Stay Affidavit at para. 50.

- (a) counterparties to agreements with KidKraft relating to its Canadian business and with the Canadian Debtors could seek to terminate such agreements due to the recent commencement of Chapter 11 Cases; and
- (b) creditors of KidKraft and the Canadian Debtors could seek to pursue self-help remedies against the Canadian Property in Canada.⁴²

PART III - THE ISSUES

35. The issue to be determined on this motion is:

- (a) whether Ontario is a proper jurisdiction for these recognition proceedings; and
- (b) whether the Interim Stay Order should be granted in favour of the Canadian Debtors, KidKraft, and their respective directors and officers pending the determination of KidKraft's application for the Initial Recognition Order and the Supplemental Order.

PART IV - THE LAW

A. Ontario is a proper jurisdiction

36. Ontario is a proper jurisdiction for these recognition proceedings in Canada. Part IV of the CCAA does not contain any provisions with respect to the jurisdiction of a particular Canadian court to hear a recognition application. It is appropriate for this Court to take jurisdiction with respect to this recognition application given the Canadian Debtors' substantial connection to Ontario, including the following:

⁴² Interim Stay Affidavit at para. 51.

- (a) Each of the Canadian Corporate Debtors is incorporated under the laws of Ontario.⁴³
- (b) While Solowave Design LP is a limited partnership formed under the laws of the Province of Alberta, its limited partner and general partner are both incorporated under the laws of Ontario.⁴⁴
- (c) The Company has no material ties to other Canadian provinces, as it has no Canadian headquarters or office locations, and only one full-time Employee in Canada.⁴⁵
- (d) Inventory owned by Solowave Design LP is maintained at Mainfreight's facility in Mississauga, Ontario (or is in transit).⁴⁶

B. The Interim Stay Order should be granted

(a) An interim stay is appropriate

37. A short interim stay of proceedings will provide the Canadian Debtors with critical protection pending the certification and filing of U.S. Court materials required to recognize these foreign proceedings.

38. Pursuant to section 46(2) of the CCAA, a foreign representative seeking recognition of a foreign proceeding must include in its application, among other things, certified copies of the instruments that commenced the foreign proceeding and authorized the foreign representative to

⁴³ Interim Stay Affidavit at para. 19.

⁴⁴ Interim Stay Affidavit at paras. 19-20.

⁴⁵ Interim Stay Affidavit at paras. 28, 33.

⁴⁶ Interim Stay Affidavit at para. 30.

act in such a capacity. However, the latter documents will not be available until the Chapter 11 Debtors appear before the U.S. Court in the coming days to seek the First Day Orders, including the Foreign Representative Order authorizing KidKraft to act as Foreign Representative.⁴⁷

39. As a result, there will be a period of time between the commencement of the Chapter 11 Cases and the time when the Foreign Representative can return to this Court to seek the Initial Recognition Order and Supplemental Order. While the Chapter 11 Debtors obtained the benefit of a stay of proceedings upon filing the Petitions with the U.S. Court,⁴⁸ the Canadian Debtors will not have the protection of a stay in Canada during this key period without the Interim Stay Order.

40. To close this gap, this Court “frequently grants interim orders to temporarily stay proceedings in Canada when a chapter 11 proceeding has been commenced in the United States.” This “temporary stay protects the assets of the debtors and enables them to coordinate the cross-border restructuring.”⁴⁹ The Court’s jurisdiction to grant an interim stay in the context of a pending recognition application is found in section 106 of the CJA, section 11.02 of the CCAA, and its inherent jurisdiction.⁵⁰

41. This Court has “granted interim stay orders providing for a temporary stay of proceedings in Canada following the initiation of [c]hapter 11 [c]ases where a delay in obtaining a formal order in the U.S. ‘could prejudice the Canadian applicants in respect of whom no stay would otherwise

⁴⁷ The certified copies of the Petitions are also not yet available, but they will be provided to this Court as soon as possible: Interim Stay Affidavit at paras. 11, 15.

⁴⁸ Interim Stay Affidavit at para. 52.

⁴⁹ *WeWork Inc. (Re)* (7 November 2023), Toronto CV-23-00709258-00CL (ONSC) ([Endorsement](#)) at para. 19 [*WeWork*].

⁵⁰ *In the matter of CURO Canada Corp. and LendDirect Corp.*, [2024 ONSC 1785](#) at para. 38 [*CURO*].

arise.”⁵¹ As Chief Justice Morawetz has recognized, granting an interim stay can accord with “the principles of cooperation and comity” and represent “necessary and appropriate” relief pending the recognition hearing.⁵² Prior decisions demonstrate this Court’s “practice in recent Part IV recognition proceedings” of granting interim stays to protect Canadian debtors during the period following the initiation of Chapter 11 proceedings.⁵³

42. The proposed Interim Stay Order provides for a stay of proceedings in favour of KidKraft and the Canadian Debtors and in respect of the Canadian Property, as well as a stay in favour of the directors and officers of KidKraft and the Canadian Debtors. The proposed Interim Stay Order will give effect in Canada to the stay of proceedings in the Chapter 11 Cases and provide stability and preserve the value of the Canadian business until KidKraft can be duly authorized to act as the Foreign Representative by the U.S. Court and return before this Court to seek the Initial Recognition Order and Supplemental Order.⁵⁴

43. Granting the interim stay is within the Court’s jurisdiction. It is also consistent with this Court’s practice in recent Part IV recognition proceedings. Finally, it is important for the preservation of the value of the business in Canada and the Chapter 11 Debtors’ overall efforts to proceed with the Chapter 11 Cases and the completion of a restructuring.⁵⁵

⁵¹ *CURO* at para. 37, citing *GNC Holdings Inc., et al.* (24 June 2020), Toronto CV-20-00642970-00CL (ONSC) ([Endorsement](#)) at para. 3.

⁵² *Paladin Labs Canadian Holding Inc.*, [2022 ONSC 4748](#) at para. 20 [*Paladin*].

⁵³ *YRC Freight Canada Company (Re)*, [2023 ONSC 4492](#) at para. 11 [*YRC Freight*]. See, for example, *CURO* at para. 39; *Paladin* at para. 20; *Hornblower Cruises and Events Canada Ltd.*, [2024 ONSC 1094](#) at para. 21 [*Hornblower Cruises*]; *WeWork* at paras. 19-20.

⁵⁴ Interim Stay Affidavit at para. 53.

⁵⁵ Interim Stay Affidavit at para. 54.

44. It is appropriate to grant stay protection to the Canadian Corporate Debtors. As discussed below, the same stay protection should also be extended to Solowave Design LP and KidKraft.

(b) The interim stay should be extended to Solowave Design LP

45. It is appropriate to extend the stay of proceedings to Solowave Design LP. The CCAA expressly applies by its terms to debtor companies, but not partnerships.⁵⁶ Where “the operations of partnerships are integral and closely related to the operations of the applicants, it is well-established that the CCAA Court has the jurisdiction to extend the protection of the stay of proceedings to those partnerships in order to ensure that the purposes of the CCAA can be achieved.”⁵⁷ Such relief has been granted on multiple occasions.⁵⁸

46. It is just and appropriate to extend the proposed Interim Stay Order to Solowave Design LP because:

- (a) Like the other Canadian Debtors, Solowave Design LP is a Chapter 11 Debtor.⁵⁹
- (b) Its limited partner and general partner are both Canadian Corporate Debtors.⁶⁰
- (c) Solowave Design LP carries on the business of the Canadian Debtors and sells products to Canadian customers.⁶¹

⁵⁶ CCAA, s. 2, “debtor company.”

⁵⁷ *Nordstrom Canada Retail, Inc.*, [2023 ONSC 1422](#) at para. 30 [*Nordstrom*].

⁵⁸ *WeWork* at paras. 22-25. Outside the Part IV context, see, for example, *Target Canada Co. (Re)*, [2015 ONSC 303](#) at paras. 42-43; *4519922 Canada Inc. (Re)*, [2015 ONSC 124](#) at para. 37; *Bed Bath & Beyond Canada Limited (Re)*, [2023 ONSC 1014](#) at paras. 28-30; *Nordstrom* at para. 32.

⁵⁹ Interim Stay Affidavit at paras. 2-3.

⁶⁰ Interim Stay Affidavit at para. 20.

⁶¹ Interim Stay Affidavit at paras. 24, 29.

47. Extending the stay to Solowave Design LP will provide stability to the Canadian Debtors and enable them to pursue a global restructuring in an orderly manner.

(c) The interim stay should be extended to KidKraft

48. This Court has the jurisdiction to grant a stay with respect to KidKraft, as the parent of the Canadian Debtors. In the context of a recognition proceeding, the Court's jurisdiction arises from its authority under subsection 49(1) of the CCAA and pursuant to section 106 of the CJA. A stay of proceedings is also consistent with the principles of comity and cooperation embodied in section 52 of the CCAA. The Court has previously granted similar relief in reliance on its jurisdiction to extend a stay to non-applicant parties, both in the context of Part IV proceedings and in plenary CCAA proceedings, "where it is important to the reorganization and restructuring process, and where it is just and reasonable to do so."⁶²

49. When determining whether to extend a stay of proceedings to the parents of Canadian debtors, the Court has considered whether the balance of convenience favours granting the stay of proceedings in favour of the parent, particularly with regard to whether the stay's protection is critical to preserve stability and maximize value.⁶³

50. KidKraft is the applicant in these proceedings and will seek to have its Chapter 11 Case recognized because it owns inventory in Canada, it has material contracts with Mainfreight and Coface, and it sells products to some of the Company's Canadian customers.⁶⁴ In any event, the factors set out above demonstrate that the balance of convenience favours extending the stay to

⁶² *YRC Freight* at para. 14; *Paladin* at para. 25.

⁶³ *YRC Freight* at paras. 15-16; *Hornblower Cruises* at paras. 23-24.

⁶⁴ Interim Stay Affidavit at paras. 6, 29-30, 32.

KidKraft. Each of the Canadian Debtors and other Chapter 11 Debtors is related to KidKraft.⁶⁵ Extending the stay to KidKraft is critical to the preservation of the value of the business in Canada and the Chapter 11 Debtors' pursuit of a successful restructuring.⁶⁶

51. Further, this Court has granted interim stays in favour of Canadian debtors' U.S.-based parent companies who were also proposed foreign representatives applying for an interim stay (and ultimately recognition) in this Court. In both cases, Chief Justice Morawetz accepted the parent's arguments that its protection under the stay was "critical to preserve overall stability and allow the Company to maximize value for stakeholders and implement an orderly wind-down."⁶⁷

PART V - RELIEF REQUESTED

52. For the foregoing reasons, the Applicant requests that this Honourable Court grant the Interim Stay Order substantially in the form attached to the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of May, 2024.



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⁶⁵ Interim Stay Affidavit at paras. 20-21.

⁶⁶ Interim Stay Affidavit at para. 54.

⁶⁷ *YRC Freight* at paras. 5, 12-15; *Hornblower Cruises* at paras. 17-24.

SCHEDULE “A”

LIST OF AUTHORITIES

1. *4519922 Canada Inc. (Re)*, [2015 ONSC 124](#)
2. *Bed Bath & Beyond Canada Limited (Re)*, [2023 ONSC 1014](#)
3. *GNC Holdings Inc., et al.* (24 June 2020), Toronto CV-20-00642970-00CL (ONSC) ([Endorsement](#))
4. *Hornblower Cruises and Events Canada Ltd.*, [2024 ONSC 1094](#)
5. *In the matter of CURO Canada Corp. and LendDirect Corp.*, [2024 ONSC 1785](#)
6. *Nordstrom Canada Retail, Inc.*, [2023 ONSC 1422](#)
7. *Paladin Labs Canadian Holding Inc.*, [2022 ONSC 4748](#)
8. *Target Canada Co. (Re)*, [2015 ONSC 303](#)
9. *WeWork Inc. (Re)* (7 November 2023), Toronto CV-23-00709258-00CL (ONSC) ([Endorsement](#))
10. *YRC Freight Canada Company (Re)*, [2023 ONSC 4492](#)

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36

Definitions

2 (1) In this Act,

...

debtor company means any company that

(a) is bankrupt or insolvent,

(b) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts,

(c) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or

(d) is in the course of being wound up under the *Winding-up and Restructuring Act* because the company is insolvent; (*compagnie débitrice*)

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Application for recognition of a foreign proceeding

46 (1) A foreign representative may apply to the court for recognition of the foreign proceeding in respect of which he or she is a foreign representative.

Documents that must accompany application

(2) Subject to subsection (3), the application must be accompanied by

(a) a certified copy of the instrument, however designated, that commenced the foreign proceeding or a certificate from the foreign court affirming the existence of the foreign proceeding;

(b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate from the foreign court affirming the foreign representative's authority to act in that capacity; and

(c) a statement identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative.

...

Other orders

49 (1) If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

(a) if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);

(b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company's property, business and financial affairs, debts, liabilities and obligations; and

(c) authorizing the foreign representative to monitor the debtor company's business and financial affairs in Canada for the purpose of reorganization.

Cooperation — court

52 (1) If an order recognizing a foreign proceeding is made, the court shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

Cooperation — other authorities in Canada

(2) If any proceedings under this Act have been commenced in respect of a debtor company and an order recognizing a foreign proceeding is made in respect of the debtor company, every person who exercises powers or performs duties and functions under the proceedings under this Act shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

Forms of cooperation

(3) For the purpose of this section, cooperation may be provided by any appropriate means, including

(a) the appointment of a person to act at the direction of the court;

(b) the communication of information by any means considered appropriate by the court;

(c) the coordination of the administration and supervision of the debtor company's assets and affairs;

(d) the approval or implementation by courts of agreements concerning the coordination of proceedings; and

(e) the coordination of concurrent proceedings regarding the same debtor company.

Courts of Justice Act, R.S.O. 1990, c. C.43

Stay of proceedings

106 A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

Court File No:

AND IN THE MATTER OF KIDKRAFT, INC., SOLOWAVE DESIGN HOLDINGS LIMITED., SOLOWAVE DESIGN INC., SOLOWAVE INTERNATIONAL INC.
AND SOLOWAVE DESIGN LP

APPLICATION OF KIDKRAFT, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

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