

**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
(Recognition Order (Bar Dates Order, Second Interim DIP Order, and
Final Customer Programs Order, and Related Relief))
returnable June 19, 2024)**

June 18, 2024

OSLER, HOSKIN & HARCOURT LLP
100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Tracy C. Sandler (LSO# 32443N)
Tel: 416.862.5890
Email: tsandler@osler.com

Martino Calvaruso (LSO# 57359Q)
Tel: 416.862.6665
Email: mcalvaruso@osler.com

Mark Sheeley (LSO# 66473O)
Tel: 416.862.6791
Email: msheelley@osler.com

Lawyers for the Applicant

PART I - NATURE OF THE MOTION

1. This factum is filed in support of a motion 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**”) 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**”), and itself.

2. In spring 2024, facing a significant balance sheet and liquidity crisis, after exploring various out-of-court strategic alternatives including an unsuccessful out of court sales process, and with the assistance of 1903 Partners, LLC (the “**Prepetition and DIP Lender**”), GB Funding, LLC (the “**Prepetition and DIP Agent**”, and together with the Prepetition and DIP Lender, “**Gordon Brothers**”), the Company successfully entered into various agreements providing for, *inter alia*, the sale of the substantial majority of its assets to Backyard Products, LLC (the “**Purchaser**”). Such sale is to be effectuated in Chapter 11 of the U.S. Bankruptcy Code.

3. On May 10, 2024, KidKraft, the Canadian Debtors and six other debtors and debtors in possession (collectively, the “**Chapter 11 Debtors**”)¹ filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code (the “**Chapter 11 Cases**”) with the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “**U.S. Court**”).² The

¹ 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.

² Capitalized terms used herein and not defined have the meanings given to them in the Third Affidavit of Geoffrey Walker sworn June 17, 2024 (the “**Third Walker Affidavit**”) [Motion Record (“**MR**”), Tab 2, Caselines (CL) A12 (all Caselines references are to the current page, not the master).]

Chapter 11 Debtors sought protection in the Chapter 11 Cases because they could not complete a sale process out of court and could not sustain normal operations without an immediate infusion of interim financing from Gordon Brothers.

4. On May 17, 2024, this Court recognized the Chapter 11 Cases as “foreign main proceedings” within the meaning of Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “CCAA”), recognized the appointment of the Foreign Representative, and granted related stays of proceedings (the “**Initial Recognition Order**”).³ This Court also recognized 11 First Day Orders (as defined below) entered by the U.S. Court (the “**Supplemental Order**”).⁴

5. On this motion, the Foreign Representative seeks an order (the “**Third Recognition Order**”)⁵ pursuant to section 49 of the CCAA for relief including, *inter alia*,

(a) recognizing and enforcing the following orders of the U.S. Court:

(i) *Final Order (I) Authorizing the Debtors to (A) Maintain and Administer Their Customer Programs; (B) Renew, Replace, Implement, or Modify Their Customer Programs; and (C) Honor Their Obligations Related to the Customer Programs, and (II) Granting Related Relief* (the “**Final Customer Programs Order**”);⁶

³ Third Walker Affidavit, Ex. C [MR, Tab 2-C, CL A92].

⁴ Third Walker Affidavit, Ex. D [MR, Tab 2-D, CL A98].

⁵ Draft Order (without schedules) [MR, Tab 3, CL A401].

⁶ Third Walker Affidavit, Ex. F [MR, Tab 2-F, CL A290].

- (ii) *Order (I) Establishing Bar Dates and Procedures and (II) Approving the Form and Manner of Notice Thereof* (the “**Bar Dates Order**”);⁷ and
- (iii) *Second Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, and 507 and Fed. R. Bankr. P. 2002, 4001, and 9014 (I) Authorizing Debtors and Debtors in Possession to Obtain Postpetition Senior Secured Superpriority Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* (the “**Second Interim DIP Order**”);⁸ and

(b) amending the Supplemental Order to account for the Second Interim DIP Order.

6. The Final Customer Programs Order, the Bar Dates Order and the Second Interim DIP Order (together, the “**At-Issue Orders**”) are necessary for the protection of the Chapter 11 Debtors’ property and the efficient administration of the Chapter 11 Cases. These orders, entered by the U.S. Court without opposition, should be recognized and given full effect in Canada.

PART II - FACTS

A. Update on Chapter 11 Cases

7. On May 13 and 14, 2024, the U.S. Court entered 11 interim and final orders in respect of motions filed on May 10 (the “**First Day Orders**”), including the following:

⁷ Third Walker Affidavit, Ex. G [MR, Tab 2-G, CL A296].

⁸ Third Walker Affidavit, Ex. H [MR, Tab 2-H, CL A306].

- (a) an order appointing Stretto, Inc. (“**Stretto**”) as claims, noticing, and solicitation agent (the “**Claims Agent Retention Order**”);
- (b) an interim order authorizing the continued maintenance of the Chapter 11 Debtors’ customer programs (the “**Interim Customer Programs Order**”); and
- (c) an interim order authorizing the Chapter 11 Debtors to obtain post-petition DIP loans (the “**First Interim DIP Order**”).⁹

8. On May 17, this Court recognized 11 First Day Orders of the U.S. Court, including the Claims Agent Retention Order, the Interim Customer Programs Order and the First Interim DIP Order. In addition, the Supplemental Order appointed KSV Restructuring Inc. as the information officer in these CCAA Part IV proceedings (in such capacity, the “**Information Officer**”), granted an Administration Charge in the amount of CAD \$750,000.00 in favour of Canadian counsel to the Chapter 11 Debtors, the Information Officer and counsel for the Information Officer, a D&O Charge in the amount of CAD\$100,000, and a DIP Charge for advances under the DIP Facility (defined below).¹⁰

9. Since the Initial Recognition Order and Supplemental Order were granted on May 17, the Chapter 11 Debtors continue to advance their restructuring objectives and continue to operate in the ordinary course as contemplated in the Chapter 11 Cases. The Chapter 11 Debtors have engaged with their vendors, creditors, employees, customers, landlords and other stakeholders to stabilize their post-filing operations.¹¹

⁹ Third Walker Affidavit at paras 8, 10 [MR, Tab 2, CL A17-A19].

¹⁰ Third Walker Affidavit at para 10 [MR, Tab 2, CL A19].

¹¹ Third Walker Affidavit at para 12 [MR, Tab 2, CL A19].

10. On May 23, 2024, the Office of the United States Trustee for the Northern District of Texas appointed an official unsecured creditors' committee (the "**Committee**"), which includes an unsecured creditor of the Canadian Debtors.¹²

11. Following the Committee's appointment, the Chapter 11 Debtors agreed to adjourn the hearing of the motions seeking final versions of the various interim First Day Orders recognized in the Supplemental Order from June 5 to June 13 (the "**Second Day Hearing**"). In order to adjourn the Second Day Hearing and consistent with the form of budget attached to the First Interim DIP Order, the Chapter 11 Debtors required additional funding under the DIP Facility and sought and obtained the Second Interim DIP Order.¹³

12. On June 10, 2024, the U.S. Court entered the Final Customer Programs Order and Bar Dates Order, as no objections had been filed in respect thereof.¹⁴

13. On June 11, 2024, the U.S. Court entered the Second Interim DIP Order.¹⁵

14. In light of continued discussions between the Chapter 11 Debtors, the Committee, and certain other key stakeholders, on June 12, 2024, the Chapter 11 Debtors agreed to adjourn the Second Day Hearing from June 13 to June 17. Following further discussions and a potential global resolution, on June 17, 2024, the Chapter 11 Debtors further adjourned the Second Day Hearing to June 21.¹⁶

¹² Third Walker Affidavit at para 13 [MR, Tab 2, CL A19-A20].

¹³ Third Walker Affidavit at para 14 [MR, Tab 2, CL A20].

¹⁴ Third Walker Affidavit at para 16 [MR, Tab 2, CL A20].

¹⁵ Third Walker Affidavit at para 17 [MR, Tab 2, CL A20-A21].

¹⁶ Third Walker Affidavit at paras 19-20 [MR, Tab 2, CL A21].

B. Final Customer Programs Order

15. The Final Customer Programs Order, which is a final version of the Interim Customer Programs Order recognized in the Supplemental Order, among other things, authorizes the Chapter 11 Debtors to: (a) maintain and administer certain of their customer programs, promotions, and practices (the “**Customer Programs**”); and (b) honour certain prepetition obligations related thereto.¹⁷

16. The Customer Programs consist of various discounts, rebates, returns, and markdowns, all of which are considered when determining the transaction price. Continuation of the Customer Programs is vital to maintaining and maximizing the value of the Chapter 11 Debtors’ estates, since the Chapter 11 Debtors’ business is highly dependent upon the loyalty of the Chapter 11 Debtors’ customers.¹⁸

C. Bar Dates Order

17. The Bar Dates Order, among other things: (a) establishes claims bar dates (the “**Bar Dates**”) and related procedures; and (ii) approves the form and manner of notice thereof. The key elements of the Bar Dates Order include the following:¹⁹

- (a) the general bar date to file proof of claims for prepetition claims (the “**General Bar Date**”), including claims arising under section 503(b)(9) of the U.S. Bankruptcy Code (*i.e.*, claims for the value of any goods received by the Chapter 11 Debtors in the ordinary course within 20 days before the petitions were filed), is **June 28, 2024 at 5:00 p.m. (prevailing Central Time)**;

¹⁷ Third Walker Affidavit at paras 21, 35, 38 [MR, Tab 2, CL A21-A22, A29].

¹⁸ Third Walker Affidavit at paras 36-37 [MR, Tab 2, CL A29].

¹⁹ Third Walker Affidavit at para 30 [MR, Tab 2, CL A25-A28].

- (b) the bar date for governmental units to file proofs of claim for prepetition claims (the “**Governmental Bar Date**”) is **November 6, 2024 at 5:00 p.m. (prevailing Central Time)**;
- (c) the bar date for claims relating to the rejection of an executory contract or unexpired lease (the “**Rejection Damages Bar Date**”) is **the later of (i) the General Bar Date or Governmental Bar Date, as applicable, and (ii) 5:00 p.m. (prevailing Central Time) on the date that is 21 days following service of an order approving the Chapter 11 Debtors’ rejection of any executory contract or unexpired lease; and**
- (d) the Chapter 11 Debtors and/or Stretto will take steps to provide sufficient notice to all known creditors and potential claimants, including as follows:
 - (i) within two business days of entry of the Bar Dates Order, serving notice of the Bar Dates and proof of claim forms (together, the “**Bar Dates Notice Package**”) to, among others, all holders of claims or potential claims against the Chapter 11 Debtors, all known creditors of the Chapter 11 Debtors, and all relevant tax authorities;
 - (ii) posting the notice and proof of claim form on Stretto’s website for the Chapter 11 Cases; and
 - (iii) publishing notice of the Bar Dates in *The New York Times* and *The Globe and Mail* in Canada.

18. On June 11, 2024, Stretto sent copies of the Bar Dates Notice Package by first-class mail to all holders of claim or potential claims against the Chapter 11 Debtors, all known creditors of the Chapter 11 Debtors, and all relevant tax authorities, and published same on its website.²⁰

19. The Information Officer has made arrangements to publish notice of the Bar Dates in the national edition of *The Globe and Mail*, and intends to post a copy of the Bar Dates Order and the proposed Third Recognition Order on its website.²¹

D. Second Interim DIP Order

20. The Chapter 11 Debtors require immediate access to debtor-in-possession financing and authority to use cash collateral to maintain sufficient liquidity to continue to operate and consummate the sale of a substantial majority of the Company's assets (the "**Sale Transaction**") to the Purchaser to maximize value for their stakeholders. Pursuant to a restructuring support agreement entered into on April 25, 2024 among the Chapter 11 Debtors, MidOcean Partners IV, L.P., the Purchaser, and Gordon Brothers, among other things, Gordon Brothers agreed to provide such debtor-in-possession financing (the "**DIP Facility**").²²

21. The First Interim DIP Order, which was recognized in the Supplemental Order, among other things, and the Second Interim DIP Order authorize KidKraft as borrower to receive senior secured super-priority priming debtor-in-possession loans from the Prepetition and DIP Lender on

²⁰ Third Walker Affidavit at para 31 [MR, Tab 2, CL A28].

²¹ Third Walker Affidavit at paras 32-33 [MR, Tab 2, CL A28].

²² Third Walker Affidavit at para 22 [MR, Tab 2, CL A22].

the terms set forth in the DIP Term Sheet and in accordance with an approved budget (included as Exhibit “B” to the First Interim DIP Order).²³

22. The Second Interim DIP Order is substantially identical to the First Interim DIP Order, subject to the following important differences from the First Interim DIP Order:

- (a) increasing the interim commitment under the DIP Facility from US \$4.0 million to US \$5.5 million (the “**Interim DIP Commitment**”), available upon entry of the Second Interim DIP Order;
- (b) decreasing the incremental final commitment under the DIP Facility from US \$6.5 million to US \$5.0 million (the “**Final DIP Commitment**”), available upon entry of a final order (the “**Final DIP Order**”); and
- (c) providing a deadline for the Committee to serve and file written objections to the entry of a final order of June 11, 2024.²⁴

23. Accordingly, following the entry of the Second Interim DIP Order, the DIP Facility consists of an aggregate principal amount of:

- (a) US \$10.5 million, consisting of the Interim DIP Commitment and the Final DIP Commitment;
- (b) US \$23.3 million of Prepetition Obligations, which will be deemed to have been advanced and shall convert into DIP Loans on a dollar-for dollar cashless basis upon entry of the proposed Final DIP Order; and

²³ Third Walker Affidavit at para 23 [MR, Tab 2, CL A22-A23].

²⁴ Third Walker Affidavit at para 24 [MR, Tab 2, CL A23].

- (c) use of the Cash Collateral from the time of the entry of the First Interim DIP Order until the Carve-Out Termination Date (as such term is defined in the Second Interim DIP Order).²⁵

24. The proceeds from the proposed DIP Facility will be used for, among other things, making payments integral to the Chapter 11 Debtors' business operations, paying administrative expenses associated with the Chapter 11 Cases and these CCAA Part IV proceedings, and satisfying working capital needs in the ordinary course of business. Moreover, the liquidity to be provided under the DIP Facility, combined with access to existing Cash Collateral, will enable the Chapter 11 Debtors to: (i) fund their operations during the course of the Chapter 11 Cases and these CCAA Part IV proceedings, including the administrative costs; (ii) ensure that value is preserved during the course of the Chapter 11 Debtors' Chapter 11 Cases; and (iii) consummate the Sale Transaction and confirm the Plan to maximize value for the Chapter 11 Debtors' estates.²⁶

25. The amount available to draw under the DIP Facility upon the entry of the Second Interim DIP Order addresses the Chapter 11 Debtors' (including the Canadian Debtors') immediate liquidity needs during the case and prior to the U.S. Court entering the proposed Final DIP Order.

²⁷ The Foreign Representative intends to return to this Court to seek recognition of the proposed Final DIP Order once entered by the U.S. Court.²⁸

²⁵ Third Walker Affidavit at para 25 [MR, Tab 2, CL A23].

²⁶ Third Walker Affidavit at para 26 [MR, Tab 2, CL A24].

²⁷ Third Walker Affidavit at para 28 [MR, Tab 2, CL A24].

²⁸ Third Walker Affidavit at paras 39-40 [MR, Tab 2, CL A29-A30].

PART III -THE ISSUES

26. The sole issue on this motion is whether this Court should grant the Third Recognition Order. To determine this, the Court should consider whether:

- (a) this Court has jurisdiction to grant the Third Recognition Order; and
- (b) it is appropriate to grant the Third Recognition Order, including the proposed amendment to the Supplemental Order to account for the Second Interim DIP Order.

PART IV - THE LAW

A. This Court Has Jurisdiction to Grant the Third Recognition Order

27. As indicated above, this Court has recognized the Chapter 11 Cases as a “foreign main proceeding” pursuant to sections 47 and 48 of the CCAA.

28. Section 52(1) of the CCAA provides that if an order recognizing a foreign proceeding is made, the Court must “cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.”

29. The central principle guiding the exercise of the Court’s discretion under Part IV is comity. Comity mandates that Canadian courts should recognize and enforce the judicial acts of foreign courts, provided that those foreign courts have assumed jurisdiction on a basis consistent with the principles of order, predictability and fairness.

30. Canadian courts have consistently encouraged comity and cooperation between courts in various jurisdictions in respect of cross-border insolvencies.²⁹ In particular, courts in Canada and the United States have made efforts to complement, coordinate and accommodate each other’s

²⁹ *Caesars Entertainment Operating Co, Re*, [2015 ONSC 712](#) at para 38.

proceedings.³⁰ Without coordination by the courts of cross-border restructuring proceedings, the result would be multiple proceedings with the likely consequence of inconsistent court orders and decisions, and general uncertainty as to the direction and effect of the restructuring proceedings on creditors and stakeholders in various jurisdictions.³¹

31. When a Canadian court considers whether to recognize a foreign order, including an order made in a Chapter 11 proceedings, the following considerations should be taken into account:

- (a) the principles of comity and the need to encourage cooperation between courts of various jurisdictions;
- (b) the need to respect foreign bankruptcy and insolvency legislation;
- (c) whether stakeholders will be treated equitably, and in particular whether recognition will ensure that, to the extent reasonably possible, stakeholders are treated equally, regardless of the jurisdiction in which they reside;
- (d) the importance of promoting plans that allow the enterprises to reorganize globally, especially where there is an established interdependence on a transnational basis. To the extent reasonably practical, one jurisdiction should take “charge” of the principal administration of the enterprise’s reorganization where this approach will facilitate a potential reorganization, and which will respect the claims of stakeholders in all jurisdiction and does not detract from the net benefits that may be available from alternative approaches;

³⁰ *Hartford Computer Hardware Inc, Re*, [2012 ONSC 964](#) at paras 14-15 and 17; *Massachusetts Elephant & Castle Group Inc, Re*, [2011 ONSC 4201](#) at para 39 [“Massachusetts”]; *Babcock & Wilcox Canada Ltd., Re*, [5 B.L.R. \(3d\) 75](#) at paras 9-10 [“Babcock”].

³¹ *Babcock* at paras 9-10; *In the Matter of Modular Space Intermediate Holdings Inc. et al.*, (January 25, 2017), Ont. S.C.J. [Commercial list], Court File No. CV-16-11656-00CL ([Order of Newbould J.](#)).

- (e) that the appropriate level of court involvement depends to a significant degree upon the court's nexus to the enterprise;
- (f) that where one jurisdiction is to have an ancillary role, the court in the ancillary jurisdiction should be provided with information on an ongoing basis and be kept apprised of developments regarding the reorganizational efforts in the foreign principal jurisdiction and stakeholders in the ancillary jurisdiction should be afforded appropriate access to the proceeding in the principal jurisdiction; and
- (g) that all affected stakeholders receive effective notice as is reasonably practicable in the circumstances.³²

32. As described more fully below, these considerations augur in favour of granting the Third Recognition Order.

B. This Court Should Grant the Third Recognition Order

33. When a foreign main proceeding has been recognized under Part IV of the CCAA, section 49 empowers this Court to make any order that it considers appropriate, if satisfied that such an order is necessary for the protection of the debtor's property or the interests of one or more creditors.³³ Section 50 provides that an order under Part IV "may be made on any terms and conditions that the Court considers appropriate in the circumstances."³⁴

³² *Babcock* at para 21; *Xerium Technologies Inc., Re*, [2010 ONSC 3974](#) at paras 26-27.

³³ *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 ["CCAA"], s. 49(1).

³⁴ *CCAA*, s. 50.

34. Canadian courts have regularly exercised their jurisdiction under sections 49 and 50 of the CCAA to recognize Chapter 11 bankruptcy orders with similar effect to the At-Issue Orders.³⁵

35. This Court should recognize the At-Issue Orders because:

- (a) the Canadian and U.S. operations of the Company are highly integrated;
- (b) the U.S. Court has appropriately taken jurisdiction over the Chapter 11 Cases such that comity will be furthered by this Court's recognition of and support for the Chapter 11 Cases already underway in the U.S.;
- (c) coordination of proceedings in the two jurisdictions will ensure fair treatment of all stakeholders, whether they are located in the U.S. or Canada;
- (d) the First Day Orders were obtained to preserve and maximize the value of the Chapter 11 Debtors' estates; and
- (e) given the close connection between the Canadian Debtors and the U.S., it is reasonable and sensible for the U.S. Court to have principal control over the insolvency process, which will produce the most efficient restructuring for the benefit of all stakeholders.³⁶

(a) The Bar Date Order Is Appropriate and Should Be Recognized

36. The Bar Date Order provides for notice mechanisms to creditors in both the United States and Canada via national newspapers. The Foreign Representative has made its filings in these proceedings available on the Information Officer's website. The Information Officer has

³⁵ *Zochem Inc., Re*, [2016 ONSC 958](#) at paras 14, 42; *Massachusetts* at paras 36, 40. Regarding lease rejection orders, see, for example, *Laidlaw Inc., Re (In Bankruptcy)*, [2003 CanLII 8003 \(ON SC\)](#) at para 1, 10; *In the Matter of Pier 1 Imports, Inc., et al.*, (February 21, 2020), Ont. S.C.J. [Commercial list], Court File No. CV-20-00636511-00CL ([Order of Hainey J. re Amended and Restated Supplemental Order](#)).

³⁶ See *In the matter of CURO Canada Corp. and LendDirect Corp.*, [2024 ONSC 1989](#) at para 38.

confirmed that it intends to post a copy of the Bar Date Order and any Order of this Court recognizing the Bar Date Order on its website.³⁷

37. Establishing the Bar Dates and related procedures is essential to the Chapter 11 Debtors' efficient administration of their estates. It will allow the Chapter 11 Debtors to expeditiously determine and evaluate existing liabilities as they embark on a going-concern sale and will reduce uncertainty of future claims being brought by creditors.

38. Ontario courts have recognized that a claims process is an integral part of an insolvency proceeding because it is of fundamental importance to determine the quantum of liabilities to which the debtor is subject.³⁸ The Bar Date Order is similar to claims bar orders granted in Canadian restructurings.

39. Canadian courts have exercised their jurisdiction under section 49 of the CCAA to approve claims bar orders, including in cross-border restructurings under Part IV of the CCAA.³⁹

40. Recognition of the Bar Date Order is necessary for the protection of the Chapter 11 Debtors' property, including the property of the Canadian Debtors, and is in the interest of the creditors of the Chapter 11 Debtors and the Canadian Debtors for the following reasons:

- (a) the Chapter 11 Cases apply to all creditors of the Chapter 11 Debtors, wherever they may be located, and accordingly one comprehensive claims process is appropriate;

³⁷ Third Walker Affidavit at paras 32-33 [MR, Tab 2, CL A28].

³⁸ *Timminco Ltd., Re*, [2014 ONSC 3393](#) at para 41.

³⁹ See for example *In the matter of GNC Holdings, Inc.*, (July 27, 2020), Ont. S.C.J. [Commercial list], Court File No. CV-20-00642970-00CL ([Order of Gilmore J. re Recognition of Second Day Orders](#)) at para 3(1).

- (b) the Bar Date Order provides that Canadian creditors are to be treated in the same manner as creditors situated in the U.S. or otherwise;
- (c) the Bar Dates and procedures are reasonable and appropriate in the circumstances, providing claimants with notice and opportunity to prepare and file proofs of claim, as well as allowing the Chapter 11 Cases to move forward quickly with a minimum of administrative expense and delay;
- (d) recognition of the Bar Date Order will ensure that the deadline for filing proofs of claim is enforceable against all creditors of the Chapter 11 Debtors in Canada so that the Chapter 11 Debtors can have an accurate understanding of the claims against their estates; and
- (e) all known creditors and known potential claimants will receive sufficient notice of the claims process.

41. The Information Officer is supportive of the relief requested in respect of the Bar Date Order.⁴⁰

(b) The Second Interim DIP Order Is Appropriate and Should Be Recognized

42. This Court previously recognized the First Interim DIP Order entered by the U.S. Court, which authorized the Chapter 11 Debtors to access the (original) Interim DIP Commitment under the DIP Facility. The rationales that applied to recognizing the First Interim DIP Order apply to the Second Interim DIP Order.

43. The Second Interim DIP Order is necessary to authorize funding through to the entry of the Final DIP Order, as the date of the Second Day Hearing was adjourned (thereby extending the

⁴⁰ Third Walker Affidavit at para 34 [MR, Tab 2, CL A28].

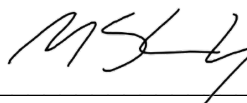
period during which the Chapter 11 Debtors would be operating using the Interim DIP Commitment). The Second Interim DIP Order provides the necessary funding by increasing the Interim DIP Commitment and making a dollar-for-dollar reduction to the Final DIP Commitment.

44. The Information Officer is supportive of the relief requested in respect of the Second Interim DIP Order.⁴¹

PART V - RELIEF REQUESTED

45. For the foregoing reasons, the Foreign Representative requests that this Honourable Court grant the Third Recognition Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of June, 2024.



OSLER, HOSKIN & HARCOURT, LLP
per Mark Sheeley

P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Lawyers for the Applicant

⁴¹ Third Walker Affidavit at para 29 [MR, Tab 2, CL A24-A25].

SCHEDULE “A”

LIST OF AUTHORITIES

1. *Babcock & Wilcox Canada Ltd., Re*, [5 B.L.R. \(3d\) 75](#)
2. *Caesars Entertainment Operating Co, Re*, [2015 ONSC 712](#)
3. *Hartford Computer Hardware Inc, Re*, [2012 ONSC 964](#)
4. *Hollander Sleep Products, LLC et al., Re*, [2019 ONSC 3238](#)
5. *In the matter of CURO Canada Corp. and LendDirect Corp.*, [2024 ONSC 1989](#)
6. *In the matter of GNC Holdings, Inc*, (July 27, 2020), Ont. S.C.J. [Commercial list], Court File No. CV-20-00642970-00CL ([Order of Gilmore J. re Recognition of Second Day Orders](#))
7. *In the Matter of Modular Space Intermediate Holdings Inc. et al.*, (January 25, 2017), Ont. S.C.J. [Commercial list], Court File No. CV-16-11656-00CL ([Order of Newbould J.](#))
8. *In the Matter of Pier 1 Imports, Inc., et al.*, (February 21, 2020), Ont. S.C.J. [Commercial list], Court File No. CV-20-00636511-00CL ([Order of Hainey J. re Amended and Restated Supplemental Order](#))
9. *Laidlaw Inc., Re (In Bankruptcy)*, [2003 CanLII 8003 \(ON SC\)](#)
10. *Massachusetts Elephant & Castle Group Inc, Re*, [2011 ONSC 4201](#)
11. *Timminco Ltd., Re*, [2014 ONSC 3393](#)
12. *Xerium Technologies Inc., Re*, [2010 ONSC 3974](#)
13. *Zochem Inc. (Re)*, [2016 ONSC 958](#)

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

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

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.

Documents may be considered as proof

(3) The court may, without further proof, accept the documents referred to in paragraphs (2)(a) and (b) as evidence that the proceeding to which they relate is a foreign proceeding and that the applicant is a foreign representative in respect of the foreign proceeding.

Other evidence

(4) In the absence of the documents referred to in paragraphs (2)(a) and (b), the court may accept any other evidence of the existence of the foreign proceeding and of the foreign representative’s authority that it considers appropriate.

Translation

(5) The court may require a translation of any document accompanying the application.

Order recognizing foreign proceeding

47. (1) If the court is satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceeding, the court shall make an order recognizing the foreign proceeding.

Nature of foreign proceeding to be specified

(2) The court shall specify in the order whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding.

Order relating to recognition of a foreign main proceeding

48. (1) Subject to subsections (2) to (4), on the making of an order recognizing a foreign proceeding that is specified to be a foreign main proceeding, the court shall make an order, subject to any terms and conditions it considers appropriate,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken against the debtor 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 debtor company;

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

(d) prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.

Scope of order

(2) The order made under subsection (1) must be consistent with any order that may be made under this Act.

When subsection (1) does not apply

(3) Subsection (1) does not apply if any proceedings under this Act have been commenced in respect of the debtor company at the time the order recognizing the foreign proceeding is made.

Application of this and other Acts

(4) Nothing in subsection (1) precludes the debtor company from commencing or continuing proceedings under this Act, the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* in respect of the debtor company.

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.

Restriction

(2) If any proceedings under this Act have been commenced in respect of the debtor company at the time an order recognizing the foreign proceeding is made, an order made under subsection (1) must be consistent with any order that may be made in any proceedings under this Act.

Application of this and other Acts

(3) The making of an order under paragraph (1)(a) does not preclude the commencement or the continuation of proceedings under this Act, the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* in respect of the debtor company.

Terms and conditions of orders

50. An order under this Part may be made on any terms and conditions that the court considers appropriate in the circumstances.

[...]

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.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

FACTUM OF THE APPLICANT

**(Recognition Order (Bar Dates Order, Second Interim DIP
Order, and Final Customer Programs Order, and Related
Relief))**

OSLER, HOSKIN & HARCOURT LLP

100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Tracy C. Sandler (LSO# 32443N)
Tel: 416.862.5890
Email: tsandler@osler.com

Martino Calvaruso (LSO# 57359Q)
Tel: 416.862.6665
Email: mcalvaruso@osler.com

Mark Sheeley (LSO# 66473O)
Tel: 416.862.6791
Email: msheeley@osler.com

Lawyers for the Applicant