

**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 A PLAN OF COMPROMISE OR ARRANGEMENT
OF PERFORMANCE SPORTS GROUP LTD., BAUER HOCKEY CORP., BAUER HOCKEY
RETAIL CORP., BAUER PERFORMANCE SPORTS UNIFORMS CORP., BPS CANADA
INTERMEDIATE CORP., BPS DIAMOND SPORTS CORP., EASTON
BASEBALL/SOFTBALL CORP., KBAU HOLDINGS CANADA, INC., PERFORMANCE
LACROSSE GROUP CORP., PSG INNOVATION CORP., BAUER HOCKEY RETAIL INC.,
BAUER HOCKEY, INC., BAUER PERFORMANCE SPORTS UNIFORMS INC., BPS
DIAMOND SPORTS INC., BPS US HOLDINGS INC., EASTON BASEBALL/SOFTBALL
INC., PERFORMANCE LACROSSE GROUP INC., PSG INNOVATION INC.

(Applicants)

**FACTUM OF THE APPLICANTS
(Returnable December 19, 2016)**

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TO: THE SERVICE LIST

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PART I - OVERVIEW

1. On October 31, 2016, Performance Sports Group Ltd. ("PSG") and the other applicants listed above (collectively, the "**Applicants**" or the "**PSG Entities**") were granted creditor protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to an order (the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Court**"). Ernst & Young Inc. was appointed as monitor of the Applicants (the "**Monitor**") in the CCAA proceedings (the "**CCAA Proceedings**"). On the same date, the Applicants also filed a voluntary petition in the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**") under Chapter 11 of Title 11 of the U.S. Code (the "**Chapter 11 Proceedings**" and together with the CCAA Proceedings, the "**Restructuring Proceedings**").

2. This motion is brought by the Applicants seeking:

- (a) an order approving the payment of additional severance amounts owing to certain former employees, none of whom are "insiders" under Chapter 11 of

Title 11 of the U.S. Code (the “**U.S. Bankruptcy Code**”) (collectively, the “**Severance Payment Employees**”); and

- (b) an order approving a process (the “**Claims Procedure**”) to solicit Claims and Restructuring Claims (as each term is defined in the Claims Procedure Order) against the Applicants and the establishment of claims bar dates for filing Proofs of Claim (the “**Claims Procedure Order**”).

PART II - FACTS

A. Severance Obligations

3. As at October 31, 2016, the PSG Entities’ total gross severance obligation was approximately \$4.1 million¹ (including estimates for U.S. payroll taxes). Of this \$4.1 million, \$1.6 million is owed to Severance Payment Employees.

Affidavit of Brian J. Fox sworn December 8, 2016 (the “**Fox Affidavit**”) at para. 8; Applicants’ Motion Record, Tab 2.

4. Nine Severance Payment Employees are former Canadian employees. As of the date of filing, the severance obligations owing to the Canadian Severance Payment Employees was approximately \$900,000. Monthly payments to Severance Payment Employees existing as of December 8, 2016 total approximately \$220,000, of which \$110,000 relates to Canadian Severance Payment Employees.

Fox Affidavit at para. 11; Applicants’ Motion Record, Tab 2.

5. On November 30, 2016, the Applicants received authorization from the Canadian Court to pay up to \$12,850 to the Severance Payment Employees on account of termination and severance obligations. One of the Canadian Severance Payment Employees will have had their severance obligations satisfied during the week of December 12, 2016. All of the other Canadian Severance Payment Employees will have reached the \$12,850 cap on or

¹ All figures USD.

before December 31, 2016, including two will have reached the cap by the return of this motion.

Fox Affidavit at paras. 9 and 11; Applicants' Motion Record, Tab 2.

B. The Claims Procedure²

6. Based on the purchase price contemplated under the stalking horse agreement, it appears likely that there will be proceeds to distribute to unsecured creditors. The proposed Claims Procedure will facilitate the identification of the universe of claims against the Applicants, which is necessary in order to make distributions to those unsecured creditors.

Fox Affidavit at para. 15; Applicants' Motion Record, Tab 2.

7. Pursuant to the Claims Procedure Order, the Applicants will call for a broad scope of Claims arising prior to October 31, 2016, including liquidated, unliquidated, contingent, disputed, legal or equitable claims against any one or more of the Applicants. The Applicants will also call for any Restructuring Claims arising after October 31, 2016 in connection with the restructuring, disclaimer, resiliation, termination or breach of any contract, lease, other agreement or obligation during the Restructuring Proceedings.

Claims Procedure Order at para. 1, definitions of "Claims" and "Restructuring Claims"; Applicants' Motion Record, Tab 4.

8. The Applicants are coordinating the claims processes in the CCAA Proceedings and Chapter 11 Proceedings. The procedure for reviewing and determining claims will be established by future orders of the Canadian Court and the U.S. Court.

Fox Affidavit at paras. 16, 26, 29; Applicants' Motion Record, Tab 2.

9. The contemplated Claims Procedure is a 'reverse' claims procedure whereby if the recipient agrees with the information contained in the notice (the "**Claims Notice**") delivered

² Capitalized terms used in this section but not otherwise defined shall have the meaning attributed to them in the Claims Procedure Order.

by Prime Clerk LLC ("**Prime Clerk**"), no action is required. If the recipient disagrees with the information provided in the Claims Notice, the recipient must complete and submit a proof of claim (the "**Proof of Claim**") to Prime Clerk by the applicable claims bar date. If no Proof of Claim is submitted, the claim will be, subject to further order of this Court and the U.S. Court, conclusively deemed to be as shown in the Claims Notice.

Fox Affidavit at para. 21; Applicants' Motion Record, Tab 2.

PART III - ISSUES

10. The two issues this motion are: (i) should additional severance payments to Severance Payment Employees be authorized; and (ii) should be the Claims Procedure Order be granted.

PART IV - THE LAW

A. The additional severance payments to Severance Payment Employees should be authorized

11. The current severance amounts authorized by the Courts, while providing some relief to the Severance Payment Employees, were insufficient to meet the severance obligations for the majority of the Severance Payment Employees. Further, all but one of the Canadian Severance Payment Employees will have reached the \$12,850 cap on or before December 31, 2016. The PSG Entities are seeking authorization to make additional payments on account of severance or termination obligations to the Severance Payment Employees during the Restructuring Proceedings.

Fox Affidavit at para. 9, Applicants' Motion Record, Tab 2.

12. Section 11 of the CCAA provides this Court with the jurisdiction to authorize the Applicants to pay the Severance Payment Employees, provided that such an order is otherwise appropriate in the circumstances of the CCAA Proceedings.

CCAA, s. 11.

13. In the circumstances, the PSG Entities should be authorized to pay further severance obligations in the ordinary course. Making these payments will sustain the morale of current employees, which is critical to ensuring normal course operations of the PSG Entities during the pendency of the Restructuring Proceedings. Disruptions to operations caused by low employee morale could be detrimental to the success of the Restructuring Proceedings and the Applicants' stakeholders.

Fox Affidavit at para. 13; Applicants' Motion Record, Tab 2.

B. The Claims Procedure Order should be granted

14. Section 11 of the CCAA affords the Court the jurisdiction to make any order it considers appropriate in the circumstances, which includes the "well-accepted" ability to approve a process to solicit claims against the debtor company.

CCAA, s. 11.

ScoZinc Ltd. (Re) (2009), 53 CBR (5th) 96 (NS SC) at para. 25

[*ScoZinc*]; Applicants' Book of Authorities, Tab 1.

15. Claims procedure orders assist debtors in determining the universe of claims against them and potential distributions to creditors, providing greater certainty for the debtors and their stakeholders in making informed choices about restructuring options. These orders should be both flexible and expeditious.

Timminco Limited (Re), 2014 ONSC 3393 at para. 43; Applicants' Book of Authorities, Tab 2.

ScoZinc at para. 23; Applicants' Book of Authorities, Tab 1.

16. In this case, the proposed Claims Procedure accords with the Court's discretion under the CCAA and typical practice in CCAA proceedings. It is flexible, expeditious and procedurally fair, ensuring an efficient solicitation of claims against the Applicants. The proposed Claims Procedure is the first step in a comprehensive claims process and therefore, meets the purpose of claims processes generally, which is "to streamline the resolution of the multitude of claims against an insolvent debtor in the most time sensitive and cost efficient manner".

Canwest Global Communications Corp. (Re), 2011 ONSC 2215 (SCJ), at para. 40, Applicants' Book of Authorities, Tab 3.

17. The Claims Procedure contemplated by Claims Procedure Order is also procedurally fair and efficient, as discussed below.

18. Reverse claims procedures have been approved by the Courts on a number of occasions.

RS Technologies Inc., Court File No. 1301-02432 (ABQB), Order re: Reverse Claims Procedure (April 11, 2013); Applicants' Book of Authorities, Tab 4.

4519922 Canada Inc., CV-14-10791-00CL, Claims Procedure Order (March 10, 2015); Applicants' Book of Authorities, Tab 5.

Labrador Iron Mines Holdings Limited et al., CV-15-10926-00CL (April 18, 2016); Applicants' Book of Authorities, Tab 6.

19. The reverse claims process is appropriate in the circumstances as it will facilitate the timely administration of Claims and Restructuring Claims by reducing the volume of claims that need to be approved or adjudicated in a further process. It will also reduce the amount of work required by the PSG Entities' creditors as in most instances it is expected that the Claims Notice will contain accurate information being based off the Applicants' books and records. It also complements the process typically followed in Chapter 11 restructurings.

Fox Affidavit at para. 21; Applicants' Motion Record, Tab 2.

20. Persons will have sufficient notice of the Claims Procedure as the Claims Procedure Order provides that timely notice will be given to all persons disclosed on the Applicants' books and records, counsel to the Unsecured Creditors' Committee, and all parties listed on the Canadian service list in these proceedings. Further, newspaper publications and posting on the Monitor's website and Prime Clerk's website will serve to advise the general public of the Claims Procedure, and any party that requests a copy of the claims package will receive one.

Fox Affidavit at para. 27; Applicants' Motion Record, Tab 2.

21. The proposed claims bar dates are reasonable and provide a sufficient amount of time for claimants to assert a Proof of Claim, if necessary. The claims bar date for a Claim that

existed as of October 31, 2016 is February 6, 2017 at 5:00 p.m. (Eastern Time) (the “**Claims Bar Date**”) providing claimants approximately six weeks for reviewing their Claims Notice and determining whether to assert a Proof of Claim. The claims bar date for Restructuring Claims is the later of (i) the Claims Bar Date, and (ii) with respect to the Chapter 11 Proceedings, 30 days after the entry of a rejection order in the U.S. Court approving the termination of the agreement, and with respect to the CCAA Proceeding, 30 days after the effective date of the disclaimer notice sent by the applicable Applicant in respect of a disclaimed contract.

Fox Affidavit at paras. 18 - 19; Applicants’ Motion Record, Tab 2.

22. In the Chapter 11 Proceedings, a claim of a government entity is deemed to be filed in time if it is filed within 180 days after the filing date. In order to conform to the U.S. requirements, the Applicants have set a claims bar date of May 1, 2017 at 5:00 p.m. (Eastern Time) for governmental entities asserting Claims against the Applicants.

Fox Affidavit at para. 18; Applicants’ Motion Record, Tab 2.

23. The Claims Procedure Order provides that the applicable procedures for reviewing and determining Claims will be established by further order of this Court. Bifurcation of the steps is consistent with ordinary practice in the U.S. Court. Alignment of the deadlines in the Claims Procedure with the U.S. claims process will avoid a duplication of efforts in the preparation of materials in their Court filings and in the review and filing of claims across the U.S. and Canada.

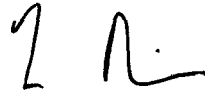
Fox Affidavit at paras. 29 - 30; Applicants’ Motion Record, Tab 2.

24. The Claims Procedure proposed by the Applicants is flexible, expeditious and provides for reasonable deadlines and procedures for submitting claims that are appropriate in the circumstances of this case. For the foregoing reasons the Claims Procedure should be approved.

PART V - ORDER SOUGHT

25. The Applicants therefore request the Court grant Orders substantially in the form of the draft Orders attached at Tabs 3 and 4 of the Applicants’ Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of December, 2016.

A handwritten signature in black ink, consisting of a stylized 'S' followed by a cursive 'E' and a horizontal line.

Stikeman Elliott LLP
Lawyers for the Applicants

SCHEDULE "A"
LIST OF AUTHORITIES

1. *ScoZinc Ltd. (Re)* (2009), 53 CBR (5th) 96 (NS SC)
2. *Timminco Limited (Re)*, 2014 ONSC 3393
3. *Canwest Global Communications Corp. (Re)*, 2011 ONSC 2215
4. *RS Technologies Inc.*, Court File No. 1301-02432 (ABQB), Order re: Reverse Claims Procedure (April 11, 2013)
5. *4519922 Canada Inc.*, CV-14-10791-00CL, Claims Procedure Order (March 10, 2015)
6. *Labrador Iron Mines Holdings Limited et al.*, CV-15-10926-00CL (April 18, 2016)

SCHEDULE "B"
RELEVANT STATUTES

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

General power of court

11. Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

[...]

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

Court File No: CV-16-11582-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
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**ONTARIO
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Proceeding commenced at Toronto

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(RETURNABLE DECEMBER 19, 2016)**

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