

**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
(Re: Amendment to Style of Cause and Employee Claims Procedure)**

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TO: THE SERVICE LIST

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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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)

PART I - INTRODUCTION

1. Performance Sports Group Ltd. ("**PSG**"), 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., and PSG Innovation Inc. (collectively, the "**Applicants**" or the "**PSG Entities**") were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to an Order (as amended and restated, the "**Initial Order**") of this Court (the "**Canadian Court**") dated October 31, 2016.

2. On the same date, the Applicants also filed for creditor protection (the "**Chapter 11 Proceedings**") in the United States Bankruptcy Court for the District of Delaware (the "**U.S.**

Court” and together with the Canadian Court, the “**Courts**”) under Chapter 11 of Title 11 of the U.S. Code (the “**U.S. Bankruptcy Code**”).

3. Ernst & Young Inc. was appointed as monitor (the “**Monitor**”) of the Applicants in the CCAA proceedings (the “**CCAA Proceedings**” and together with the Chapter 11 Proceedings, the “**Restructuring Proceedings**”).

4. This motion is brought by the Applicants for:

- (a) an Order amending the style of cause in these CCAA Proceedings to reflect certain of the Applicants changing their corporate names and certain of the Applicants’ amalgamation, as described below; and
- (b) an Order establishing a claims bar date of May 17, 2017 at 5:00 p.m. EDT for filing proofs of claim in respect of claims or restructuring claims of any employee, independent contractor, or temporary worker, whom the Applicants employed as of October 31, 2016 or thereafter (“**Employees**” and each, an “**Employee**”).

PART II - THE FACTS

A. Background

5. The facts with respect to this motion are more fully set out in the Affidavit of Brian J. Fox sworn March 30, 2017 (the “**Fox Affidavit**”).

6. The PSG Entities formerly designed, developed, manufactured, marketed and sold performance sports equipment and accessories for ice hockey, roller hockey, lacrosse, baseball and softball, as well as related apparel.

Fox Affidavit at para. 4, Applicants’ Motion Record, Tab 2.

7. In response to a confluence of significant negative events affecting the Applicants' business and leading to a liquidity crisis, the Applicants sought and obtained creditor protection under the CCAA and U.S. Bankruptcy Code.

Fox Affidavit at para. 5, Applicants' Motion Record, Tab 2.

8. On November 30, 2016, the Courts approved a sales process (the "**Sales Process**") for the Applicants' assets and a stalking horse asset purchase agreement dated October 31, 2016 (the "**Asset Purchase Agreement**") between the Applicants and 9938982 Canada Inc. (with its designees, the "**Purchaser**").

Fox Affidavit at para. 7, Applicants' Motion Record, Tab 2.

9. On February 6, 2017, the Courts issued and entered orders declaring the Purchaser the successful bidder in the Sales Process and approving the sale transaction contemplated by the Asset Purchase Agreement. Closing of the transaction was announced on February 28, 2017 (the "**Closing**").

Fox Affidavit at para. 8, Applicants' Motion Record, Tab 2.

B. Corporate Name Change and Amalgamation

10. Section 5.16 of the Asset Purchase Agreement required the Applicants to change their corporate and company names as soon as reasonably practicable and in any event within one hundred eighty (180) days after the Closing.

Fox Affidavit at para. 10, Applicants' Motion Record, Tab 2.

11. Pursuant to a corporate reorganization prior to Closing, Bauer Hockey Corp., BPS Canada Intermediate Corp. and KBAU Holdings Canada, Inc. were continued from the *Canada*

Business Corporations Act into the British Columbian *Business Corporations Act* and amalgamated with Performance Sports Group Ltd.

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

12. On or about March 20, 2017 the Applicants filed corporate filings in Canada and the U.S. changing the names of the Applicants to the following:

Corporate Name as of October 31, 2016	New Corporate Name
Performance Sports Group Ltd.	Old PSG Wind-down Ltd.
Bauer Hockey Corp.	n/a (amalgamated into Old PSG Wind-down Ltd.)
Bauer Hockey Retail Corp.	Old BHR Wind-down Corp.
Bauer Performance Sports Uniforms Corp.	Old BPSU Wind-down Corp.
BPS Canada Intermediate Corp.	n/a (amalgamated into Old PSG Wind-down Ltd.)
BPS Diamond Sports Corp.	Old BPSDS Wind-down Corp.
Easton Baseball/Softball Corp.	Old EBS Wind-down Corp.
KBAU Holdings Canada, Inc.	n/a (amalgamated into Old PSG Wind-down Ltd.)
Performance Lacrosse Group Corp.	Old PLG Wind-down Corp.
PSG Innovation Corp.	Old PSGI Wind-down Corp.
Bauer Hockey Retail Inc.	Old BHR Inc.
Bauer Hockey, Inc.	Old BH Inc.
Bauer Performance Sports Uniforms Inc.	Old BPSU Inc.
BPS Diamond Sports Inc.	Old BPSCI Inc.
BPS US Holdings Inc.	Old BPSUSH Inc.
Easton Baseball/Softball Inc.	Old EBS Inc.
Performance Lacrosse Group Inc.	Old PLG Inc.
PSG Innovation Inc.	Old PSGI Inc.

Fox Affidavit at para. 12, Applicants' Motion Record, Tab 2.

13. The Applicants have sought similar relief in the Chapter 11 Proceedings at a motion currently returnable on April 12, 2017.

Fox Affidavit at para. 14, Applicants' Motion Record, Tab 2.

C. Employee Claims Procedure

14. Following Closing, the Applicants no longer operated any business and therefore did not require the ongoing services of the Employees. The majority of the Applicants' Employees were transferred to the Purchaser and their remaining Employees were terminated prior to or on Closing. The Applicants only retained a limited number of individuals engaged specifically as consultants to perform wind-down functions.

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

15. Employees who were terminated prior to or on the Closing may have claims for unpaid compensation, expenses, benefits, contribution and indemnity and/or termination, severance pay and stock options and Employees who transferred to the Purchaser may also allege to have claims against the Applicants.

Fox Affidavit at para. 16, Applicants' Motion Record, Tab 2.

16. The Applicants are seeking to establish a specific process for soliciting proofs of claims from their former Employees (the "**Employee Claims Procedure**"). The Applicants have sought similar relief in the Chapter 11 Proceedings at a motion currently returnable on April 12, 2017 and are coordinating the claims process in the Restructuring Proceedings.

Fox Affidavit at paras. 16 - 17, Applicants' Motion Record, Tab 2.

PART III - ISSUES

17. The issues on this motion are:

- (a) Whether the Court should approve the change to the style of cause in these CCAA Proceedings; and

- (b) Whether the Court should approve the Employee Claims Procedure.

PART IV - LAW AND ARGUMENT

A. The Style of Cause amendment should be approved

18. Rule 5.04(2) of the *Rules of Civil Procedure* provides that the Court may by order “add, delete or substitute a party or correct the name of a party incorrectly named, on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment.” As such, the Court has jurisdiction to grant the requested relief.

Fox Affidavit at paras. 16 - 17, Applicants’ Motion Record, Tab 2.

19. Courts in other CCAA proceedings have amended the proceedings’ style of cause after the debtor company has undertaken corporate transactions that resulted in a name change, similar to the case at hand.

Rol-Land Farms Ltd. (Re), 2009 CarswellOnt 9474 at para. 3, Applicants’ Book of Authorities, Tab 1.

20. In this instance, it is appropriate to change the style of cause (a) so that the Applicants are in compliance with their under the Asset Purchase Agreement., and (b) to reflect the correct corporate names of the Applicants to ensure that third parties do not confuse the Applicants involved in the Restructuring Proceedings with the Purchaser’s business and operations and vice versa.

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

B. The Employee Claims Procedure should be approved

21. 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 2.

22. 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 3.

ScoZinc at para. 23, Applicants’ Book of Authorities, Tab 2.

23. In this case, the proposed Employee 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 from former Employees.

24. The proposed Employee Claims Procedure provides that a notice and proof of claim designed for Employees will be mailed to each former Employee of the Applicants at their last known address. All proofs of claim from Employees must be filed by May 17, 2017 at 5:00 p.m. EDT.

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

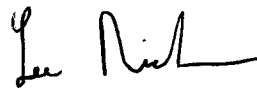
25. The proposed Employee Claims Procedure provides sufficient notice and time for Employees to file proofs of claim. The procedure will ensure Employees receive any distribution they may be entitled to and approving it will advance the Applicants' goal of distributing sale proceeds to their stakeholders in a timely and efficient manner. Further, it ensures consistency between the Chapter 11 Proceedings and the CCAA Proceedings.

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

PART V - ORDER REQUESTED

26. For all of the foregoing reasons, it is appropriate for the Court to grant the Orders changing the style of cause of these CCAA Proceedings and approving the Employee Claims Procedure, both in the form sought by the Applicants.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of April, 2017.



Stikeman Elliott LLP
Lawyers for the Applicants

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Rol-Land Farms Ltd. (Re)*, 2009 CarswellOnt 9474
2. *ScoZinc Ltd. (Re)* (2009), 53 CBR (5th) 96
3. *Timminco Limited (Re)*, 2014 ONSC 3393

SCHEDULE "B"
RELEVANT STATUTES

Companies' Creditors Arrangement Act, RSC 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.

Rules of Civil Procedure, RRO 1990, Reg 194

MISJOINDER, NON-JOINDER AND PARTIES INCORRECTLY NAMED

Proceeding not to be Defeated

5.04 (1) No proceeding shall be defeated by reason of the misjoinder or non-joinder of any party and the court may, in a proceeding, determine the issues in dispute so far as they affect the rights of the parties to the proceeding and pronounce judgment without prejudice to the rights of all persons who are not parties. R.R.O. 1990, Reg. 194, r. 5.04 (1).

Adding, Deleting or Substituting Parties

(2) At any stage of a proceeding the court may by order add, delete or substitute a party or correct the name of a party incorrectly named, on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment. R.R.O. 1990, Reg. 194, r. 5.04 (2).

Adding Plaintiff or Applicant

(3) No person shall be added as a plaintiff or applicant unless the person's consent is filed. R.R.O. 1990, Reg. 194, r. 5.04 (3).

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Proceeding commenced at Toronto

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