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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N :

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 OLD PSG WIND-DOWN LTD., OLD BHR WIND-DOWN CORP., OLD BPSU WIND-DOWN CORP., OLD BPSDS WIND-DOWN CORP., OLD EBS WIND-DOWN CORP., OLD PLG WIND-DOWN CORP., OLD PSGI WIND-DOWN CORP., OLD BHR INC., OLD BH INC., OLD BPSU INC., OLD BPSCI INC., OLD SPSUSH INC., OLD EBS INC., OLD PLG INC., AND OLD PSGI INC.

Applicants

MOTION RECORD OF THE MOVING APPLICANTS

(Returnable January 20, 2023)

January 13, 2023

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TO: THE SERVICE LIST

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Applicants

NOTICE OF MOTION OF THE MOVING APPLICANTS

Motion for CCAA Termination Order
(Returnable January 20, 2023)

The Applicants will make a motion to the Honourable Justice Conway on Friday January 20, 2022, at 12:00 pm or as soon after that time as the motion can be heard, by videoconference.

- [ ] In writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;
- [ ] In writing as an opposed motion under subrule 37.12.1(4);
- [ ] In person;
- [ ] By telephone conference;
- [x] By video conference.

THE MOTION IS FOR:

(a) An Order (the "**CCAA Termination Order**") that, among other things,

(i) approves and authorizes the holding of a meeting of Old PSG Shareholders (defined below) to vote on a resolution for the dissolution of the parent debtor, Old PSG Wind-down Ltd. ("**PSG**");

(ii) permits, following approval of a resolution for the dissolution of PSG, a final distribution to the holders of equity claims in PSG ("**Holders of Parent Equity Interests**") accounting for a reserve to cover the costs associated with winding-up PSG, the American-incorporated Applicants (the "**U.S. Debtors**") and the Liquidation Trust (the "**Wind-Down Cost Reserve**");

(iii) confirms that the releases set out in the order approving the First Amended Joint Chapter 11 Plan of Liquidation of Old BPSUSH Inc. and its affiliated debtors (as it may be further amended, modified, or supplemented, the "**Joint Plan**") (the "**Plan Approval Order**") in favour of the new board of PSG (the "**PSG Board**"), the board of the Liquidation Trust created under the Joint Plan ("**Trust Advisory Board**"), the Chief Wind-Down Officer, the Litigation Representative, the Liquidation Trustee, and the Monitor became effective as of the effective date of the Joint Plan;

(iv) directs the Chief Wind-Down Officer to dispose of any residual amounts from the reserve maintained to cover the costs associated with winding-up the Canadian Debtors, the US Debtors and the Liquidation Trust (the "**Wind-Down Cost Reserve**") by depositing the funds with charities;

(v) terminates these proceedings under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended ("**CCAA**") (the "**CCAA Proceedings**"); and

(vi) approves activities of, and discharges Ernst & Young Inc. ("**EY**") in its capacity as Monitor (the "**Monitor**") upon the service of the CCAA Termination Certificate (as defined below); and

(vii) such further and other relief as this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Background

(a) The Applicants formerly designed, developed, manufactured, marketed and sold performance sports equipment, accessories, and related apparel under the brand names of BAUER, EASTON, MISSION, MAVERIK, CASCADE, INARIA and COMBAT;

(b) Beginning in 2015, the Applicants experienced ongoing liquidity crises and an eventual event of default under their secured credit facilities in 2016;

(c) The Applicants subsequently obtained protection under the CCAA pursuant to an Initial Order of this Court dated October 31, 2016 (the "**Initial Order**") and concurrently filed for creditor protection under the U.S. Bankruptcy Code;

(d) Pursuant to the Initial Order, EY was appointed Monitor in the CCAA Proceedings (together with the Chapter 11 Cases, the "**Insolvency Proceedings**"). The Applicants' restructuring included the going concern sale of substantially all of their assets (the "**Sale**");

(e) Following the Sale, the Applicants' DIP Facilities were fully repaid. It was contemplated that the residual funds would be used to (i) repay the

Holders of General Unsecured Creditors' Claims in full, upon resolution of those claims; (ii) fund the prosecution of certain Retained Causes of Action; and (iii) along with any further recoveries, make distributions to the Holders of Parent Equity Interests;

The Joint Plan and Claims Procedure

(f) The Applicants, the Monitor, and various stakeholders negotiated an agreement to wind-up the Insolvency Proceedings, which resulted in the Joint Plan. It provided for the successful completion of the Applicants' liquidation and distribution of approximately $50 million in remaining sale proceeds. At a joint hearing on December 20, 2017, the Courts approved the Joint Plan and the Canadian Court granted the Plan Approval Order;

(g) As part of the Joint Plan, the Applicants' current directors and officers resigned and the new PSG Board was appointed;

(h) The Applicants and Monitor subsequently took the following actions to ensure that the Applicants were liquidated, and distributions were made to creditors of the estates, in accordance with the Joint Plan:

(i) **Distributions to Creditors –** all creditor claims against the Applicants were resolved and distributions in respect of those claims were made;

Distributions to Equity - certain Holders of Parent Equity Interests elected to exchange their equity interests in the Parent Debtor for Beneficial Trust Interests (the "**Beneficial Trust Holders**"), while others elected to retain their shareholding in the Parent Debtor (the "**Old PSG Shareholders**"). These elections resulted in a countervailing transfer of the assets of the Parent Debtor to the Liquidation Trust in an amount equal to such electing equity holder's *pro rata* interest in such assets. The

Applicants and Monitor authorized and effected interim distributions (the "**Interim Distributions**") to the Old PSG Shareholders and Beneficial Interest Holders;

(ii) **Retained Causes of Action –** the Board pursued litigation against certain former officers and directors of the Debtors, which was ultimately dismissed;

(iii) **Class Settlement –** the Plan Approval Order required $1.15 million (less certain expenses) to be paid to the representative plaintiff of a putative class of purchasers of common shares of PSG;

(iv) **Tax Refunds –** the Applicants received Canadian tax refunds approximating $5.3 million;

(i) The Applicants and Monitor are now in a position to distribute the residual cash on hand to the Holders of Parent Equity Interests and subsequently take steps to terminate these CCAA Proceedings;

(j) Accordingly, the Applicants, with the support of the Monitor, are now seeking an order (the "**CCAA Termination Order**") enabling the Applicants to complete remaining wind-down matters in an efficient and cost-effective manner;

(k) The CCAA Termination Order provides for:

(i) Authorization for PSG to conduct a special meeting of the Old PSG Shareholders to vote on dissolution of PSG, which is in the best interests of PSG and the Old PSG Shareholders;

(ii) Following approval of dissolution, and receipt of a final clearance certificate from the CRA, a final distribution of the remaining assets of PSG to the Holders of Parent Equity Interests, less the Wind-Down Cost Reserve;

(iii) Disposal of the residual Wind-Down Cost Reserve;

(iv) Termination of the CCAA Proceedings;

(v) Confirmation of releases set out in the Joint Plan in favour of the Chief Wind-Down Officer, the Litigation Representative, the Liquidation Trustee, the PSG Board, the Liquidation Trust Advisory Board and the Monitor;

(vi) Approval of the fees and activities and discharge of the Monitor;

(l) It is anticipated that the Applicants will be in a positon to complete wind-down matters and terminate the CCAA proceedings in 2023 after a further clearance certificate from the CRA is obtained;

(m) The relief requested in the CCAA Termination Order is supported by the Monitor;

(n) Section 11 of the CCAA and this Court's equitable and statutory jurisdiction thereunder;

(o) Rules 1.04, 1.05, 2.03, 3.02, 16, and 37 of the *Rules of Civil Procedure,* R.R.O. 1990, Reg. 194, as amended.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

(a) Affidavit of Mark Palmer sworn January 13, 2023; and

(b) Such further and other evidence as counsel may advise and this Honourable Court permit.

January 13, 2023

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Lawyers for the Applicants

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Applicants

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

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST
Proceeding commenced at Toronto

NOTICE OF MOTION OF THE MOVING APPLICANTS
Motion for CCAA Termination Order
(Returnable January 20, 2023)

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Applicants

AFFIDAVIT OF MARK PALMER
(Sworn January 13, 2023)

I, **MARK PALMER**, of Asheville, North Carolina, in the United States of America, **MAKE OATH AND SAY**:

1. I am the Managing Director of Theseus Strategy Group LLC ("**Theseus**") and the Court-appointed Chief Wind-Down Officer of Old PSG Wind-down Ltd. ("**PSG**" or the "**Parent Debtor**") and the other Applicants.[1]

2. As described in detail below, I was appointed Chief Wind-Down Officer by Order of Justice Hainey dated December 20, 2017 ("**Plan Approval Order**"). The Plan Approval Order approved the First Amended Joint Chapter 11 Plan of Liquidation of Old BPSUSH Inc. and its affiliated debtors, as further amended, modified or supplemented

[1] In connection with the administration of the Applicants' estates following approval of the Joint Plan, PSG's Canadian subsidiaries (each an Applicant at the time of the Initial Order) were amalgamated with Old PSG on August 27, 2020.

(the "**Joint Plan**"). A copy of the Plan Approval Order, appending the Joint Plan, is attached as Exhibit "**A**."

3. The Plan Approval Order initially extended the Stay Period (as defined in the Initial Order (defined below)) until December 31, 2018. This Court extended the Stay Period several more times to facilitate the implementation of various distributions and other liquidation measures contemplated under the Joint Plan. The Stay Period expired on March 31, 2020. A copy of the Endorsement last extending the Stay Period dated December 13, 2019 is attached as Exhibit "**B**."

4. I swear this affidavit in support of the Applicants' motion for an order, among other things:

(a) approving and authorizing the holding of a meeting of Old PSG Shareholders (defined below) to vote on a resolution for the dissolution of PSG;

(b) authorizing, on approval of a dissolution resolution, a final distribution of the remaining assets of PSG to the Holders of Parent Equity Interests (defined below) less a Wind-Down Cost Reserve (as defined below);

(c) confirming that the releases and exculpation provisions set out in the Plan Approval Order and the Joint Plan in favour of the Wind-Down Officer, the Litigation Representative, the Liquidation Trustee, the PSG Board, the Liquidation Trust Advisory Board and the Monitor (each as defined herein or in the Joint Plan) became effective as of the effective date of the Joint Plan;

(d) directing the Chief Wind-Down Officer to dispose of any residual amounts from the Wind-Down Cost Reserve, after payment of the Final Distribution (as defined below) and payment in full of all applicable costs and expenses payable from the Wind-Down Cost Reserve, by contributing such residual funds to a Canadian charitable organization identified by the Chief Wind-Down Officer, in his sole discretion;

(e) terminating the CCAA Proceedings (defined below) upon the filing of a Monitor's Certificate certifying, among other things, that the Final Distribution has been made; and

(a) discharging Ernst & Young Inc. ("**EY**") in its capacity as Monitor upon the service of the CCAA Termination Certificate (as defined below).

5. As Chief Wind-Down Officer, I have knowledge of the matters to which I hereinafter depose. Where I have relied on information from others, I have identified the source of my information and believe it to be true.

6. Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Joint Plan as appended to the Plan Approval Order, attached as Exhibit "A".

7. References to currency in this affidavit are references to U.S. dollars unless otherwise stated.

A. Background and Commencement of the CCAA Proceedings

8. The Applicants formerly designed, developed, manufactured, marketed and sold performance sports equipment, accessories, and related apparel for a variety of sporting activities under the brand names of BAUER, EASTON, MISSION, MAVERIK, CASCADE, INARIA and COMBAT.

9. Background on the Applicants, including their business operations and causes of insolvency are described in more detail in the affidavit of Mark Vendetti, attached as Exhibit "**C**," sworn on October 31, 2016 in support of the Applicants' motion for the Initial Order (defined below).

10. On October 31, 2016 (the "**Filing Date**"), the Applicants were granted protection from their creditors under the *Companies' Creditors Arrangement Act* (the "**CCAA**") pursuant to an Order (as amended and restated, the "**Initial Order**") of this Court (the "**Canadian Court**"). Also on the Filing Date, the Applicants filed for creditor protection (the "**Chapter 11 Cases**") in the U.S. Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**" and together with the Canadian Court, the "**Courts**") under the U.S. Bankruptcy Code.

11. Pursuant to the Initial Order, EY was appointed as the Monitor (the "**Monitor**") in these CCAA proceedings (the "**CCAA Proceedings**" and together with the Chapter 11 Cases, the "**Insolvency Proceedings**"). The Applicants' restructuring included the going concern sale of substantially all of their assets. On November 30, 2016, the Courts issued and entered orders approving a sales process (the "**Sales Process**"), including a stalking

horse asset purchase agreement dated October 31, 2016, (as amended, the "**Purchase Agreement**") for the sale of substantially all of the Applicants' assets.

12. On February 6, 2017, the Courts issued and entered orders approving, among other things, the Purchase Agreement and vesting the purchased assets in the purchaser on closing free and clear of all claims and encumbrances (the "**Sale Orders**"). The sale transaction (the "**Sale**") closed on February 28, 2017. Following the Sale, the Applicants' court-approved DIP Facilities were fully repaid.

13. It was anticipated that residual funds in the estate (the "**Sale Proceeds**") would (i) repay the Holders of General Unsecured Claims (in Canada and the U.S.) in full, upon resolution of those claims in accordance with the claims procedures described below; (ii) fund the prosecution of certain Retained Causes of Action held by Old PSG and the Liquidation Trust (as defined below); and (iii) along with any further recoveries, be used to make a distribution to the holders of equity claims in the Parent Debtor ("**Holders of Parent Equity Interests**").

B. Joint Plan and Approval

14. After the Sale closed, the Applicants, the Monitor, and various stakeholders negotiated an agreement to wind-up the Insolvency Proceedings. These stakeholders included the statutory committee of equity holders (the "**Equity Committee**") and the statutory committee of unsecured creditors (the "**Creditors' Committee**") each appointed in the Chapter 11 Cases. The Joint Plan was the result of these negotiations.

15. The Joint Plan represented a global settlement reached amongst the parties that resolved the Insolvency Proceedings in an equitable and efficient manner. The Joint Plan

provided for the successful completion of the Applicants' liquidation and distribution of approximately $50 million in remaining Sale Proceeds.

16. At the meetings of creditors eligible to vote on the Joint Plan, each class of creditor voted at least 88.24% in number and 99% in claim value to accept the Joint Plan. At a joint hearing on December 20, 2017, the Courts approved the Joint Plan and the Canadian Court granted the Plan Approval Order.

a) Overview of the Substantive Details of the Joint Plan

17. The Joint Plan incorporated two settlements that resolved certain obstacles to winding up the Insolvency Proceedings:

(a) A global settlement (the "**Global Settlement**") reached between the parties in order to resolve the Insolvency Proceedings. The Global Settlement involved: (a) payment in full of all Allowed General Unsecured Claims; (b) resolution of all disputes regarding the treatment of Intercompany Claims and Equity Interests; (c) the resolution of all disputes regarding allocation of value among the Applicants and the allocation of the Sale Proceeds; and (d) the resolution of all disputes regarding substantive consolidation of the Applicants; and

(b) A class settlement (the "**Class Settlement**") between the Applicants and a representative plaintiff (the "**Lead Plaintiff**"), acting for itself and on behalf of the putative class of purchasers of common shares of PSG (the "**Putative Class**"). Under the Class Settlement:

(A) the Lead Plaintiff received (on behalf of itself and each member of the Putative Class) a distribution of $1.15 million of Cash from the Sale Proceeds (net of reimbursable administrative costs associated with certain document productions made by PSG to the Putative Class) prior to Cash distributions of Sale Proceeds made to Holders of Parent Equity Interests;

(B) the Lead Plaintiff was granted (on behalf of itself and each member of the Putative Class) a forty percent (40%) participation in any net proceeds from Retained Causes of Action (after the payment of fees, costs, and expenses incurred by PSG in connection with the prosecution of such Retained Causes of Action), up to an aggregate maximum amount of $2.5 million; and

(C) the Liquidation Trust agreed to provide a one-time delivery of documentary discovery to the Lead Plaintiff subject to certain limitations described in previous affidavits I have sworn in these CCAA Proceedings.

b) Corporate Governance

18. The Equity Committee recommended my appointment to act as Chief Wind-Down Officer to wind-up and dissolve each of the Applicants other than PSG. The Plan Approval

Order provided for my appointment. My duties included assisting the Applicants in completing the necessary intercompany transactions to implement the Global Settlement.

19. As part of the Joint Plan and Plan Approval Order, the Applicants' current directors and officers resigned or were deemed to have resigned. Thereafter, the Joint Plan recommended a new board of the Parent Debtor from the effective date of the Joint Plant (the "**Effective Date**") (the "**Reorganized Parent Debtor**"), and this board (the "**PSG Board**") was appointed under the Plan Approval Order.

20. To address certain differing tax treatment for shareholders in Canada and the U.S., a Liquidation Trust was created as part of the Joint Plan to provide Holders of Parent Equity Interests with an option to exchange their equity interests for beneficial interests in the Liquidation Trust (the "**Beneficial Trust Interests**"). The Joint Plan provided that the Applicants would automatically transfer to the Liquidation Trust assets allocable to those exchanged equity interests, along with certain Liquidation Trust expense reserves. The Equity Committee selected members for a Liquidation Trust Advisory Board (the "**Trust Advisory Board**") to review decisions made regarding the Liquidation Trust, among other things. These positions became effective through the Plan Approval Order.

21. The Plan Approval Order also appointed Theseus to the role of trustee of the Liquidation Trust ("**Liquidation Trustee**"). Theseus also acts as Litigation Representative of the Applicants and Liquidation Trust in prosecuting any Retained Causes of Action for the benefit of Holders of Parent Equity Interests (and the Lead Plaintiff and Putative Class in accordance with the Class Settlement).

C. Claims Procedure

22. On December 19, 2016, the Canadian Court issued a claims procedure order (the "**Claims Procedure Order**") to solicit claims against the Applicants. On April 10, 2017, the Canadian Court also issued a claims procedure order for the solicitation of claims from the Applicants' former employees (the "**Employee Claims Procedure Order**"). The Bankruptcy Court granted a similar orders.

23. On September 1, 2017, the Canadian Court granted an order (the "**Claims Resolution Order**") regarding the resolution of claims against the Canadian-incorporated Applicants (the "**Canadian Debtors**"). The Claims Resolution Order also set out a protocol to resolve cross-border claims filed against both the Canadian Debtors and the American-incorporated Applicants (the "**U.S. Debtors**"). On October 19, 2017, the Bankruptcy Court granted a reciprocal order.

24. Following the issuance of the Claims Resolution Order, the Applicants and the Monitor worked diligently to reconcile and resolve claims filed against the Applicants. As set out more particularly below, the efforts expended led to the resolution of all claims, and as a result, the Monitor, the PSG Board and the Trust Advisory Board approved certain distributions.

D. Performance of the Joint Plan Following the Plan Approval Order and Distributions

25. Following the issuance of the Plan Approval Order, the Parent Debtor took steps to implement the transactions contemplated therein with the advice and direction of the PSG Board and Trust Advisory Board (collectively, the "**Boards**") to ensure that the

Applicants were liquidated, and distributions were made to creditors of the estates, in accordance with the Joint Plan.

(i) Trust Beneficiary Elections

26. As described above, under the Joint Plan, certain of the Holders of Parent Equity Interests elected to exchange their equity interests in the Parent Debtor for Beneficial Trust Interests (the "**Beneficial Trust Holders**"), while others elected to retain their shareholding in the Parent Debtor (the "**Old PSG Shareholders**").

27. The election that the Beneficial Trust Holders exercised resulted in a countervailing transfer of the assets of the Parent Debtor to the Liquidation Trust in an amount equal to such electing equity holder's *pro rata* interest in such assets. In order to assess the total value of transferred assets, the Liquidation Trustee was required to undertake a good faith valuation of the Applicants' and Liquidation Trust's assets (including the potential value of the Retained Causes of Action). With the Boards' authorization, FTI Consulting Inc. ("**FTI**") was engaged to conduct the valuation and prepare a report.

28. In connection with this contemplated valuation by FTI, the Boards approved the valuation of the Liquidation Trust's assets as of two valuation dates:

(a) the effective date of the Joint Plan (being the day following the Plan Approval Order: December 21, 2017); and

(b) the effective date on which equity holders in the Parent Debtor who elected to exchange their shares for beneficial interests in the Liquidation Trust would be deemed to have so exchanged such shares for beneficial interests in the Liquidation Trust (the "**Split Date**").

29. On May 24, 2018, the PSG Board and Trust Advisory Board resolved to establish May 31, 2018 as the Split Date, and provided authorization to implement any adjustments necessary to effect this exchange in an administratively efficient manner.

(ii) Distributions to Creditors

26. Further to the Joint Plan, the Parent Debtor and the Monitor acted as Distribution Agent for all distributions to Holders of General Unsecured Claims.

27. In December 2019, the Monitor and the Applicants finally resolved all creditor claims against the Applicants, including all General Unsecured Claims. Distributions on account of resolved claims in the aggregate amount of $11,817,000 were made.

(iii) Distributions to Equity

29. Pursuant to the Joint Plan and the Plan Approval Order, interim distributions to Holders of Parent Equity Interests (being Old PSG Shareholders and Beneficial Interest Holders) could be made after all creditor claims were paid in full and following the receipt of applicable clearance certificates from the relevant taxing authorities.

30. As described above, all creditor claims were been paid in full. The Applicants applied for and received all applicable clearance certificates from the Canada Revenue Agency for the period ending on May 31, 2019.

31. Accordingly, the Applicants (with oversight and assistance by the Monitor) authorized and effected interim distributions (the "**Interim Distributions**") to the Holders of Parent Equity Interests as follows, in accordance with the Joint Plan:

(a) PSG distributed $11,975,485.44, in the aggregate to the Old PSG Shareholders, as a return of capital under section 74 of the *Business Corporations Act* (British Columbia) ("**BCBCA**") and return of "paid-up capital" for purposes of the *Income Tax Act* (Canada); and

(b) The Liquidation Trust distributed $8,024,514.56, in the aggregate, to Beneficial Interest Holders.

32. The mechanics of the Interim Distributions are described in more detail in the Sixteenth Report of the Monitor dated April 6, 2020 and attached as Exhibit "**D**."

(iv) Retained Causes of Action

33. The Joint Plan contemplated the prosecution of certain Retained Causes of Action. The Chief Wind-Down Officer and the Liquidation Trustee, in its capacity as Litigation Representative, with the input of the Boards and their advisors, engaged in material diligence and analysis of the Retained Causes of Action. Ultimately, the Chief Wind-Down Officer and the Liquidation Trustee were instructed by the Board to pursue such litigation against, among others, certain former officers and directors of the U.S. and Canadian Debtors.

34. Before any proceeding was commenced, the former officers and directors, against whom the Chief Wind-Down Officer and the Liquidation Trustee had decided to pursue

litigation, commenced an adversary proceeding in the Chapter 11 Proceedings on October 23, 2019. A copy of the Adversary Complaint is attached as Exhibit “**E**.”

35. On November 22, 2019, Theseus, in its capacity as Litigation Representative, filed an Answer and Counterclaim in the same adversary proceeding. A copy of the Answer and Counterclaim is attached as Exhibit “**F**.”

36. On June 30, 2020, on a motion brought by the former officers and directors, the Bankruptcy Court dismissed Theseus’ Counterclaim. A copy of the Bankruptcy Court’s Order dated June 30, 2020 is attached as Exhibit “**G**.”

37. Theseus filed a motion for reconsideration, which the former directors and officers opposed. On October 13, 2020, the Bankruptcy Court denied the motion for reconsideration, dismissing Theseus’ Counterclaim, and dismissing the Adversary Complaint. A copy of the Bankruptcy Court’s Order dated October 13, 2020 (the “**Reconsideration Order**”) is attached as Exhibit “**H**.”

38. Theseus filed a notice of appeal of the Reconsideration Order. On September 29, 2021, the United States District Court for the District of Delaware (the “**Federal District Court**”) affirmed the Reconsideration Order. A copy of the Federal District Court’s Order dated September 29, 2021, and accompanying opinion, is attached as Exhibit “**I**.”

39. Theseus and the former officers and directors thereafter engaged in good faith settlement discussions that culminated in a global settlement of all claims between them. The Bankruptcy Court approved the settlement by order dated June 6, 2022.

40. The Applicants and the Liquidation Trustee will not be further prosecuting any Retained Causes of Action.

(v) Class Settlement

41. The Joint Plan and Plan Approval Order required the amount of $1.15 million (net of reimbursable administrative costs associated with certain document productions made by PSG to the Putative Class) to be paid to the Lead Plaintiff Counsel, on behalf of the Lead Plaintiff and the Putative Class, once all creditor claims had been paid and all applicable clearance certificates had been received. In full and final satisfaction of the foregoing, PSG paid to the Putative Class an aggregate amount of $938,891.50, representing the settlement amount less $166,108.50 in reimbursable administrative costs associated with certain document productions made by PSG to the Putative Class.

42. The Joint Plan additionally provided that the Lead Plaintiff would receive (on behalf of itself and the Putative Class) 40% participation in net recoveries from Retained Causes of Action (after the payment of fees, costs, and expenses incurred by PSG in connection with the prosecution of such Retained Causes of Action). As described above, the Applicant and the Liquidation Trustee have resolved the Retained Causes of Action, and prosecution has not yielded any net recoveries after the payment of fees, costs, and expenses incurred in connection therewith. Accordingly, the Lead Plaintiff will not receive any recovery in connection with the Retained Causes of Action.

(vi) Tax Refunds

43. The Applicants received Canadian tax refunds approximating $5.3 million. Further details of the Applicant's receipts and disbursements are set out in the Monitor's Sixteenth Report, attached as Exhibit "**D**."

E. Conditions to Termination of the CCAA Proceedings

44. It is now contemplated that the Applicants and the Monitor will take the following necessary steps to distribute the residual cash on hand and wind-up PSG, the US Debtors and the Liquidation Trust.

(i) Resolution Approving Dissolution of PSG

45. The Applicants are in the process of scheduling and preparing to hold a special meeting of Old PSG Shareholders (the "**Special Meeting**") to consider and vote on a resolution approving the voluntary dissolution of PSG (the "**Dissolution Resolution**") in the first quarter of 2023. I am advised by counsel to the Applicants, McMillan LLP, that based on best available information for similar transactions and having regard to PSG's circumstances, if the Dissolution Resolution is passed, it is anticipated that the dissolution of PSG will occur during the 2023 fiscal year following the receipt of a final clearance certificate from the CRA and completion of the Final Distribution (as defined below).

46. Plans for the Special Meeting are described in further detail in a Notice of Special Meeting of Shareholders and Management Information Circular (the "**Circular**") mailed January 9, 2023.

(ii) Final Distribution to Holders of Parent Equity Interests

47. On August 31, 2022, PSG received from the Canada Revenue Agency a clearance certificate for the period ending August 31, 2022. Accordingly, the Applicants expect to distribute the remaining cash on hand (less a reasonable reserve to cover the costs associated with winding-up the Canadian Debtors, the US Debtors and the Liquidation Trust (the "**Wind-Down Cost Reserve**") to the Holders of Parent Equity Interests (the "**Final Distribution**") following receipt of approval by Old PSG Shareholders of the Dissolution Resolution, the receipt of a final clearance certificate for the period following August 31, 2022 and the winding up of the US Debtors.

48. I understand that the Monitor will comment on the quantum of the Wind-Down Cost Reserve in a report to be filed.

(iii) Application for Voluntary Dissolution of PSG

49. Following the payment of the Final Distribution, PSG will file an application for dissolution pursuant to section 316 of the BCBCA. Once the application has been filed, the BC Registrar will provide confirmation of the dissolution in the form of a certificate of dissolution ("**Certificate of Dissolution**").

(iv) Filing to Cease Being a Reporting Issuer

50. An agent of PSG will file the Certificate of Dissolution with the securities regulator in each Canadian jurisdiction where PSG is a reporting issuer.

(v) Disposition of the Wind-Down Cost Reserve

51. The Applicant will dispose of any residual funds in the Wind-Down Cost Reserve, after payment of the Final Distribution and payment in full of all applicable costs and expenses payable from the Wind-Down Cost Reserve, by contributing such residual funds to a Canadian charitable organization identified by the Wind-Down Officer, in his sole discretion.

52. Once the Final Distribution is complete to the satisfaction of the Monitor, it is expected that the Monitor will terminate the CCAA Proceedings by filing a certificate with this Court ("**CCAA Termination Certificate**").

(vi) Termination of Chapter 11 Cases and Dissolution of Liquidation Trust

53. Following the Final Distribution, and in connection with the wind-up described below, PSG and the Liquidation Trustee will file an application in the Bankruptcy Court seeking entry of a final decree closing PSG's Chapter 11 Cases.

VIRTUALLY SWORN BEFORE ME in accordance with Ontario Regulation 431/20, with the deponent in Asheville, North Carolina and the Commissioner in the City of Toronto, in the Province of Ontario, on January 13, 2023	Mark Palmer MARK PALMER
A Commissioner for taking Affidavits **Jeffrey Levine, Barrister and Solicitor** **LSO # 55582H**	