

N°: 500-11-057985-208

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IN THE MATTER OF THE COMPROMISE AND  
ARRANGEMENT OF:

STOKES INC.

Debtor

- and -

RICHTER ADVISORY GROUP INC.

Monitor

- and -

BODUM USA INC.

- and -

PI-DESIGN AG

Applicants

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**MOTION TO LIFT THE STAY OF PROCEEDINGS**

(section 11 of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36)

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TO THE HONOURABLE JUSTICE MICHEL A. PINSONNAULT OR TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT SITTING IN COMMERCIAL DIVISION, IN THE JUDICIAL DISTRICT OF MONTRÉAL, THE APPLICANT RESPECTFULLY SUBMITS AS FOLLOWS:

**I. INTRODUCTION**

1. On February 18, 2020, Stokes Inc. ("**Stokes**" or the "**Debtor**") filed a Notice of Intention to Make a Proposal (the "**NOI**"), pursuant to the *Bankruptcy and Insolvency Act* (the "**BIA**") and Richter Advisory Group Inc. ("**Richter**") was appointed to act as Proposal Trustee.
2. On July 21, 2020, given that the six months stay extension period under the NOI was set to expire on August 18, 2020, the Debtor filed an Application to Continue Proceedings Commenced Under Part III of the Bankruptcy and Insolvency Act and for a Transition Order under the Companies' Creditors Arrangement Act (the "**CCAA Continuance Application**"), as a result of which on July 27, 2020, the Court granted the CCAA Continuance Application (the "**Transition Order**") and ordered, inter alia:

- (a) The appointment of Richter to act as Monitor in the CCAA Proceedings (the “**Monitor**”); and
  - (b) A stay of proceedings in respect of the Debtor and its directors and officers until September 28, 2020 (the “**Stay of Proceedings**”).
3. On September 25, 2020, the Court granted an order extending the Stay Proceedings until, and including, December 18, 2020. In addition, at the same date, the Court granted an order establishing a claims process conducted by the Monitor (the “**Claims Process**”).
  4. On November 20, 2020, the Debtor filed an *Application for an Extension of the Stay of Proceedings and the Issuance of a Plan Filing and Meeting Order* (the “**Plan and Meeting Application**”).
  5. On November 25, 2020, the orders rendered pursuant to the Plan and Meeting Application, approved the filing of the Plan of Arrangement and Compromise of Stokes and extended the Stay of Proceedings until February 12, 2021.
  6. By the present Motion, the Applicants Bodum USA Inc. (“**Bodum**”) and Pi-Design AG (“**Pi-Design**”) seek an order of this honourable Court lifting the Stay of Proceedings against the Debtor for the sole purpose of obtaining a consent order in the context of an intellectual property infringement action before the Federal Court, File No. T-1979-18 (the “**IP Action**”).
  7. Accordingly, a copy of the draft order seeking to partially lift the Stay of Proceedings is communicated herewith as **EXHIBIT R-1**.

## **II. THE APPLICANTS**

8. Bodum is a corporation organized and existing pursuant to the laws of United States with a place of business in New York, New York, USA. The principal business of Bodum is the importation, sale and distribution of premium kitchenware products including, *inter alia*, non-electric coffee makers.
9. Pi-Design is a corporation organized and existing pursuant to the laws of Switzerland with a place of business located in Luzern, Switzerland. The principal business of Pi-Design is the ownership and licensing of intellectual property relating to premium kitchenware products including, *inter alia*, non-electric coffee makers.

## **III. THE IP ACTION**

10. Prior to the filing of the NOI, the Applicants had instituted the IP Action against the Debtor in which the Applicants sought damages and injunctive remedies in connection with the sale of coffee makers and drinking glasses, on the basis that they infringed the intellectual property rights of the Applicants.
11. Prior to the Claims Bar Date, Bodum and Pi-Design each also filed separate proofs of claim in the Claims Process in which they claimed certain monetary damages.

12. On November 20, 2020, the Applicants and Stokes reached a confidential settlement agreement (the “**Settlement Agreement**”) which fully and finally settled the IP Action. A copy of the Settlement Agreement is filed under seal as **EXHIBIT R-2**.
13. As confirmed in the seventh report of the Monitor dated November 23, 2020, the Monitor was provided with an opportunity to review the Settlement Agreement, and has approved its terms.
14. While the exact terms of the Settlement Agreement must remain confidential and cannot be publicly disclosed, the Monitor has confirmed that the settlement is advantageous for Stokes and its stakeholders, given that there is no monetary component involved and that it will avoid litigation, as well as the uncertainty and costs associated with it.
15. Furthermore, the Applicants have agreed to withdraw their proofs of claim, which was done on November 23, 2020.
16. In order to fully implement the terms of the Settlement Agreement, Stokes has undertaken to consent to the Federal Court issuing permanent injunctive relief in the IP Action.
17. However, in order for the Applicants to seek the aforementioned consent order, the Stay of Proceedings must be lifted so as to allow the Federal Court to issue the consent order in accordance with and as contemplated in the Settlement Agreement.

#### **IV. CONCLUSIONS**

18. For the reasons explained above, it is both appropriate and necessary that the relief being sought be granted.
19. The Applicants respectfully submit that the Motion should be granted in accordance with its conclusions.
20. The Monitor and Stokes consent to this Motion being granted, in order for the Settlement Agreement to be fully implemented.
21. The present Motion is well founded in fact and law.

#### **FOR THESE REASONS, MAY IT PLEASE THIS COURT TO:**

**GRANT** the present *Motion to Lift the Stay of Proceedings* (the “**Motion**”);

**ORDER** that any prior delay for the presentation of the Motion is hereby abridged and validated so that the Motion is properly returnable and hereby dispenses with further service thereof;

**ORDER** that Exhibit R-2 filed in support of the Motion shall be kept under seal until further order from this Court.

**ISSUE** an order substantially in the form of the one communicated in support hereof as Exhibit R-1;

**ORDER** the provisional execution of the Order to be rendered herein, notwithstanding any appeal;

**THE WHOLE**, without costs, except in case of contestation.

Montreal, December 9, 2020

*Norton Rose Fulbright  
Canada LLP*

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**NORTON ROSE FULBRIGHT CANADA LLP**

(Mtres. Guillaume Michaud and Arad Mojtahedi)

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Our reference: 1000385308

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**AFFIDAVIT**

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I the undersigned, Jorgen Bodum, domiciled for the purpose hereof at Meggen, 6045-CH , solemnly declare the following:

1. I am the representative of the Applicants, Bodum USA Inc. and Pi-Design AG.
2. I have taken cognizance of the attached *Motion to Lift the Stay of Proceedings* (the "Motion").
3. All of the facts alleged in the Motion of which I have personal knowledge are true.
4. Where I have obtained facts alleged in the Motion from others, I believe them to be true.

AND I HAVE SIGNED:

  
\_\_\_\_\_  
JORGEN BODUM

SOLEMNLY DECLARED BEFORE ME  
BY TECHNOLOGICAL MEANS IN  
MONTRÉAL, QUÉBEC, ON December  
9, 2020.

  
\_\_\_\_\_  
Commissioner for Oaths for the Province  
of Québec and Outside of Québec  
#210807

**Pi-Design AG**  
Kantonsstrasse 100  
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CH-6234 Triengen  
Tel. 041-935 45 00  
Fax 041-935 45 80

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**NOTICE OF PRESENTATION  
COMMERCIAL DIVISION**

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**TO: THE SERVICE LIST** (See attached)

**TAKE NOTICE** that the present *Motion to Lift the Stay of Proceedings* will be presented for hearing and allowance in the Superior Court (Commercial Division), virtually on **December 17, 2020 at 9:30 AM**. Coordinates for the virtual hearing will be communicated to the Service List once provided by the Court.

Any party wishing to contest the *Motion to Lift the Stay of Proceedings* must so inform the undersigned attorneys no later than December 15, 2020, at 5:00 PM and, by that date and time, provide the undersigned attorneys a written summary of the grounds of contestation.

Montreal, December 9, 2020

*Norton Rose Fulbright  
Canada LLP*

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**NORTON ROSE FULBRIGHT CANADA LLP**  
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Our reference: 1000385308

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**LIST OF EXHIBITS**

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**Exhibit R-1:** Proposed Order to Lift the Stay of Proceedings;

**Exhibit R-2:** Settlement Agreement filed under seal.

Montreal, December 9, 2020

*Norton Rose Fulbright  
Canada LLP*

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**NORTON ROSE FULBRIGHT CANADA LLP**  
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**NO: 500-11-057985-208**

**SUPERIOR COURT  
DISTRICT OF MONTRÉAL**

**IN THE MATTER OF THE COMPROMISE AND  
ARRANGEMENT OF:**

**STOKES INC.** Debtor

- and -

**RICHTER ADVISORY GROUP INC.** Monitor

- and -

**BODUM USA INC.**

- and -

**PI-DESIGN AG** Applicants

**MOTION TO LIFT THE STAY OF PROCEEDINGS,  
AFFIDAVIT, NOTICE OF PRESENTATION, LIST OF  
EXHIBITS AND EXHIBITS R-1 TO R-2**

**ORIGINAL**

BO-0042

# 1000385308

Mtres. Guillaume Michaud and Arad Mojtahedi

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