

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 ROCKPORT BLOCKER, LLC, THE ROCKPORT GROUP HOLDINGS, LLC, TRG 1-P HOLDINGS, LLC, TRG INTERMEDIATE HOLDINGS, LLC, TRG CLASS D, LLC, THE ROCKPORT GROUP, LLC, THE ROCKPORT COMPANY, LLC, DRYDOCK FOOTWEAR, LLC, DD MANAGEMENT SERVICES LLC AND ROCKPORT CANADA ULC (THE "DEBTORS")

APPLICATION OF ROCKPORT BLOCKER, LLC, UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

FACTUM OF THE APPLICANT, ROCKPORT BLOCKER, LLC
(Returnable August 1, 2018)

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PART I - OVERVIEW

1. The Applicant, Rockport Blocker, LLC ("**Rockport Blocker**" or the "**Applicant**"), brings this application under Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), seeking an order recognizing a certain order granted by the United States Bankruptcy Court for the District of Delaware (the "**US Court**") in respect of the Applicant and several related companies. The Applicant also seeks other ancillary relief.
2. The Rockport Group Holdings, LLC, TRG 1-P Holdings, LLC, TRG Intermediate Holdings, LLC, TRG Class D, LLC, The Rockport Group, LLC, The Rockport Company, LLC, Drydock Footwear, LLC, DD Management Services LLC (with Rockport Blocker, collectively, the "**US Debtors**") and Rockport Canada ULC ("**Rockport Canada**" and, together with the US Debtors, the "**Rockport Group**") are a leading global designer, distributor and retailer of comfort footwear in more than fifty markets worldwide.
3. On May 14, 2018 (the "**Filing Date**"), each entity in the Rockport Group filed voluntary petitions for relief pursuant to Chapter 11 of Title 11 ("**Chapter 11**") of the United States Code (the "**US Code**") (collectively, the "**Petitions**" and each a "**Petition**") with the US Court. The

Rockport Group has requested that the Petitions be jointly administered for procedural purposes only.

4. On May 15, 2018, the Honourable Judge Silverstein granted various orders (the “**First Day Orders**”), which were recognized by the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”) on May 16, 2018.

5. On June 5, 2018, June 12, 2018, and June 13, 2018, the Honourable Judge Silverstein granted, or entered, various orders in the US Proceedings, the details of which are reviewed in the Affidavit of Paul Kosturos sworn June 13, 2018, and which were recognized by the Canadian Court on June 14, 2018.

6. On June 29, July 5, and July 18, 2018, the Honourable Judge Silverstein entered various orders in the US Proceedings, the details of which are reviewed in the Affidavit of Paul Kosturos sworn July 19, 2018 and which were recognized by the Canadian Court on July 20, 2018.

7. On July 24, 2018, the Honourable Judge Silverstein granted or entered various orders in the US Proceedings, as applicable, the details of which are reviewed in the Affidavit of Paul Kosturos sworn July 26, 2018, and which were recognized by the Canadian Court on July 30, 2018.

8. On July 30, 2018, the Honourable Judge Silverstein granted the Adidas Settlement Order (as defined below) in the US Proceedings, the details of which are reviewed in the Affidavit of Jonathan Levi sworn July 30, 2018 (the “**First Levi Affidavit**”), a summary of which is set out below.

9. Rockport Blocker has brought this motion to seek an Order substantially in the form of the draft Order attached at Tab 3 of the Motion Record for, among other things:

- (a) if necessary, abridging the time for service of the Notice of Motion and the Motion Record and directing that any further service of the Notice of Motion and Motion Record be dispensed with such that this motion is properly returnable on August 1, 2018;

- (b) recognizing and enforcing an order, *inter alia*, authorizing and approving the Settlement Agreement (the “**Settlement Agreement**”) by and between the Debtors and certain of their non-Debtor affiliates (the “**Rockport Parties**”), and adidas AG, Reebok International Ltd. and certain of their affiliated entities (the “**Adidas Parties**”), and the noteholders, the DIP note purchasers and existing or former equity holders, as applicable (the “**Noteholder Parties**”) and collectively with the Rockport Parties and the Adidas Parties, the “**Parties**”) (the “**Adidas Settlement Order**”); and
- (c) such further and other relief as counsel may request and the Court deems just.

10. Any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the First Levi Affidavit.

PART II - FACTS

11. The relevant facts in connection with this Motion are more fully set out in the First Levi Affidavit.

PART III - THE ISSUE

12. The issue on this Motion is as follows:

- (a) Should the Court grant the Order sought by Rockport Blocker pursuant to section 49 of the CCAA recognizing the Adidas Settlement Order?

PART IV - THE LAW

A. Part IV of the CCAA

13. The purpose of Part IV of the CCAA is to effect cross-border insolvencies and create a system under which foreign insolvency proceedings can be recognized in Canada. Orders under this part are intended, among other things, to promote cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions. Such orders are also intended

to promote the fair and efficient administration of cross-border insolvencies, which also protects the interests of debtors, creditors and other interested persons.

Horsehead Holding Corp., Re, 2016 ONSC 958 (Ont. S.C.J. [Commercial List])
[*Horsehead*] at ¶15, Book of Authorities (“BOA”), Tab 1.

CCA at s. 44.

14. In the context of Part IV of the CCA, the Court is granted the authority to apply any legal or equitable rules necessary, provided that they are not inconsistent with the provisions of the CCA.

CCA at s. 61(1).

B. Recognition of the Adidas Settlement Order

15. Section 49 of the CCA provides that the Court may make any order that it considers appropriate if it is satisfied that it is necessary for the protection of a debtor company’s property or that the order is in the interests of a creditor or creditors. Section 50 of the CCA further provides that an order made under Part IV of the CCA, including pursuant to section 49, may be made on any terms and conditions that the court considers appropriate. Further, once an order recognizing a foreign proceeding is made, the Court is required to cooperate, to the maximum extent possible with the foreign representative and the foreign court, so long as the requested relief is not inconsistent with the CCA or which would raise concerns regarding public policy.

CCA at ss. 49, 50, 52(1) and 61(2).

16. Rockport Blocker seeks the recognition of the Adidas Settlement Order that was obtained by the Rockport Group from the US Court.

17. The Adidas Settlement Order is not inconsistent with any order that may be granted under the CCA. The Rockport Group has negotiated the Settlement Agreement with, *inter alios*, the Adidas Parties in the context of a judicial mediation before a United States Bankruptcy Judge. The resulting Settlement Agreement authorized and approved by virtue of the Adidas Settlement Order resolves significant alleged claims against the Debtors, for which the failure to resolve has the potential to compromise the restructuring efforts of the Debtors by putting the Sale in jeopardy, as addressed in greater detail in the First Levi Affidavit.

Horsehead at ¶¶14, 42, BOA, Tab 1.

Massachusetts Elephant & Castle Group Inc. (Re), 2011 ONSC 4201 (Ont. S.C.J. [Commercial List]) at ¶¶36, 40, BOA, Tab 2.

First Levi Affidavit at ¶21.

18. In cross-border insolvencies, Canadian and U.S. courts routinely seek to complement, coordinate and, where appropriate, accommodate the proceedings of the other court in order to enable cross-border enterprises to successfully restructure. Comity and cooperation are increasingly important in the restructuring context because as businesses become more internationalized those businesses will have a significant number of assets and also carry on business in several jurisdictions. 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 on creditors and stakeholders in various jurisdictions of the restructuring proceedings.

Babcock & Wilcox Canada Ltd. (Re), 2000 CarswellOnt 704 (Ont. S.C.J. [Commercial List]) [**Babcock**] at ¶¶9-10, BOA, Tab 3, citing *Taylor v Dow Corning Australia Pty. Ltd.* (December 19, 1997), Doc. 8438/95 (Australia Vic. Sup. Ct.).

Order of Newbould J. dated January 25, 2017, *In the Matter of Modular Space Intermediate Holdings Inc. et al.*, BOA, Tab 4.

19. The Adidas Settlement Order was obtained by the Rockport Group to facilitate their restructuring efforts in the US Proceedings by, among other things, minimizing the adverse effects of the US Proceedings on their business, avoiding significant delay in the Rockport Group's restructuring efforts and preserving and maximizing the potential value of the Rockport Group's assets for the benefit of their creditors and other stakeholders.

20. When a Canadian Court considers whether it should recognize a foreign order, including an order made in a Chapter 11 proceeding, 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 accord respect to foreign bankruptcy and insolvency legislation unless in substance generally it is so different from the bankruptcy and insolvency laws of Canada or diverges radically from the processes in Canada;
- (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 to 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 jurisdictions and does not detract from the net benefits that may be available from alternative approaches;
- (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 proceedings in the principal jurisdiction; and
- (g) that all affected stakeholders receive effective notice as is reasonably practicable in the circumstances.

Babcock at ¶21, BOA, Tab 3.

Xerium Technologies Inc., Re, 2010 ONSC 3974 at ¶¶26-27, BOA, Tab 5.

21. Rockport Blocker submits that the Adidas Settlement Order meets the above requirements, such that it is appropriate that the Court recognize and give effect to such order. The Adidas Settlement Order was made in good faith and in the interest of the Rockport Group’s creditors and

equity holders. The Adidas Settlement Order does not breach any applicable Canadian law. Rockport Blocker submits that recognition of the Adidas Settlement Order is necessary to ensure that the purposes of the CCAA are satisfied and the Rockport Group has the best opportunity to restructure its affairs.

22. Accordingly, Rockport Blocker requests that the Court recognize the Adidas Settlement Order.

PART V - RELIEF REQUESTED

23. Rockport Blocker requests that this Court grant the Order in the form included at Tab 3 of the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 30th day of July, 2018.



Roger Jaipargas / Alex MacFarlane / Evita Ferreira

Lawyers for Rockport Blocker, LLC, The Rockport Group Holdings, LLC, TRG 1-P Holdings, LLC, TRG Intermediate Holdings, LLC, TRG Class D, LLC, The Rockport Group, LLC, The Rockport Company, LLC, Drydock Footwear, LLC, DD Management Services LLC and Rockport Canada ULC

Tab A

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Horsehead Holding Corp. (Re)*, 2016 ONSC 958 (Ont. S.C.J. [Commercial List])
2. *Massachusetts Elephant & Castle Group Inc. (Re)*, 2011 ONSC 4201 (Ont. S.C.J. [Commercial List])
3. *Babcock & Wilcox Canada Ltd. (Re)*, 2000 CarswellOnt 704 (Ont. S.C.J. [Commercial List])
4. Order of Newbould J. dated January 25, 2017, *In the Matter of Modular Space Intermediate Holdings Inc. et al.*
5. *Xerium Technologies Inc., Re*, 2010 ONSC 3974 (Ont. S.C.J. [Commercial List])

Tab B

SCHEDULE "B"

STATUTES

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

PART IV

CROSS-BORDER INSOLVENCIES

Purpose

44. The purpose of this Part is to provide mechanisms for dealing with cases of cross-border insolvencies and to promote

- (a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;
- (b) greater legal certainty for trade and investment;
- (c) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies;
- (d) the protection and the maximization of the value of debtor company's property; and
- (e) the rescue of financially troubled businesses to protect investment and preserve employment.

Interpretation

Definitions

45. (1) The following definitions apply in this Part.

"foreign court" means a judicial or other authority competent to control or supervise a foreign proceeding.

"foreign main proceeding" means a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests.

"foreign non-main proceeding" means a foreign proceeding, other than a foreign main proceeding.

"foreign proceeding" means a judicial or an administrative proceeding, including an interim proceeding, in a jurisdiction outside Canada dealing with creditors' collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company's business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization.

“foreign representative” means a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding respect of a debtor company, to

- (a) monitor the debtor company’s business and financial affairs for the purpose of reorganization; or
- (b) act as a representative in respect of the foreign proceeding.

Centre of debtor company’s main interests

(2) For the purposes of this Part, in the absence of proof to the contrary, a debtor company’s registered office is deemed to be the centre of its main interests.

Recognition of Foreign Proceeding

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.

Commencement or continuation of proceedings

51. If an order is made recognizing a foreign proceeding, the foreign representative may commence and continue proceedings under this Act in respect of a debtor company as if the foreign representative were a creditor of the debtor company, or the debtor company, as the case may be.

Obligations

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.

Cooperation — other authorities in Canada

(2) If any proceedings under this Act have been commenced in respect of a debtor company and an order recognizing a foreign proceeding is made in respect of the debtor company, every person who exercises powers or performs duties and functions under the proceedings under this Act shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

Forms of cooperation

(3) For the purpose of this section, cooperation may be provided by any appropriate means, including

- (a) the appointment of a person to act at the direction of the court;
- (b) the communication of information by any means considered appropriate by the court;
- (c) the coordination of the administration and supervision of the debtor company's assets and affairs;
- (d) the approval or implementation by courts of agreements concerning the coordination of proceedings; and
- (e) the coordination of concurrent proceedings regarding the same debtor company.

Obligations of foreign representative

53. If an order recognizing a foreign proceeding is made, the foreign representative who applied for the order shall

- (a) without delay, inform the court of
 - (i) any substantial change in the status of the recognized foreign proceeding,
 - (ii) any substantial change in the status of the foreign representative's authority to act in that capacity, and
 - (iii) any other foreign proceeding in respect of the same debtor company that becomes known to the foreign representative; and
- (b) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information.

Multiple Proceedings

Concurrent proceedings

54. If any proceedings under this Act in respect of a debtor company are commenced at any time after an order recognizing the foreign proceeding is made, the court shall review any order made

under section 49 and, if it determines that the order is inconsistent with any orders made in the proceedings under this Act, the court shall amend or revoke the order.

Multiple foreign proceedings

55. (1) If, at any time after an order is made in respect of a foreign non-main proceeding in respect of a debtor company, an order recognizing a foreign main proceeding is made in respect of the debtor company, the court shall review any order made under section 49 in respect of the foreign non-main proceeding and, if it determines that the order is inconsistent with any orders made under that section in respect of the foreign main proceedings, the court shall amend or revoke the order.

Multiple foreign proceedings

(2) If, at any time after an order is made in respect of a foreign non-main proceeding in respect of the debtor company, an order recognizing another foreign non-main proceeding is made in respect of the debtor company, the court shall, for the purpose of facilitating the coordination of the foreign non-main proceedings, review any order made under section 49 in respect of the first recognized proceeding and amend or revoke the order if it considers it appropriate.

Miscellaneous Provisions

Authorization to act as representative of proceeding under this Act

56. The court may authorize any person or body to act as a representative in respect of any proceeding under this Act for the purpose of having them recognized in a jurisdiction outside Canada.

Foreign representative status

57. An application by a foreign representative for any order under this Part does not submit the foreign representative to the jurisdiction of the court for any other purpose except with regard to the costs of the proceedings, but the court may make any order under this Part conditional on the compliance by the foreign representative with any other order of the court.

Foreign proceeding appeal

58. A foreign representative is not prevented from making an application to the court under this Part by reason only that proceedings by way of appeal or review have been taken in a foreign proceeding, and the court may, on an application if such proceedings have been taken, grant relief as if the proceedings had not been taken.

Presumption of insolvency

59. For the purposes of this Part, if an insolvency or a reorganization or a similar order has been made in respect of a debtor company in a foreign proceeding, a certified copy of the order is, in the absence of evidence to the contrary, proof that the debtor company is insolvent and proof of the appointment of the foreign representative made by the order.

Credit for recovery in other jurisdictions

60. (1) In making a compromise or an arrangement of a debtor company, the following shall be taken into account in the distribution of dividends to the company's creditors in Canada as if they were a part of that distribution:

- (a) the amount that a creditor receives or is entitled to receive outside Canada by way of a dividend in a foreign proceeding in respect of the company; and
- (b) the value of any property of the company that the creditor acquires outside Canada on account of a provable claim of the creditor or that the creditor acquires outside Canada by way of a transfer that, if it were subject to this Act, would be a preference over other creditors or a transfer at undervalue.

Restriction

(2) Despite subsection (1), the creditor is not entitled to receive a dividend from the distribution in Canada until every other creditor who has a claim of equal rank in the order of priority established under this Act has received a dividend whose amount is the same percentage of that other creditor's claim as the aggregate of the amount referred to in paragraph (1)(a) and the value referred to in paragraph (1)(b) is of that creditor's claim.

Court not prevented from applying certain rules

61. (1) Nothing in this Part prevents the court, on the application of a foreign representative or any other interested person, from applying any legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives that are not inconsistent with the provisions of this Act.

Public policy exception

(2) Nothing in this Part prevents the court from refusing to do something that would be contrary to public policy

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PROCEEDINGS COMMENCED AT TORONTO

**FACTUM
(Returnable August 1, 2018)**

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