

Court File No.

**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 May 16, 2018)**

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

PART I - OVERVIEW

1. The Applicant, Rockport Blocker, LLC ("**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 orders recognizing certain proceedings commenced in the United States 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 United

States Bankruptcy Court for the District of Delaware (the “**US Court**”). The Rockport Group has requested that the Petitions be jointly administered for procedural purposes only.

4. As detailed in the Kosturos Affidavit, the Rockport Group intends to enter into an asset purchase agreement to sell substantially all of the Rockport Group’s assets to CB Marathon Opco, LLC (“**Marathon**”), an affiliate of Charlesbank Equity Fund IX, limited Partnership (“**Charlesbank**”), or another higher or otherwise better bidder, pursuant to Section 363 of the US Code. The Rockport Group has determined that value for creditors will be maximized by commencing the US Proceedings and continuing an orderly sale process.
5. In order to: (i) alleviate any potential harm to the Rockport Group during the US Proceedings; (ii) ensure the protection of the Rockport Group’s Canadian assets during the course of the US Proceedings; and (iii) ensure that the Court and the Canadian stakeholders are kept properly informed of the US Proceedings, Rockport Blocker has brought this application to seek the following relief:
 - (a) An order (the “**Initial Recognition Order**”) that, *inter alia*:
 - (i) declares that Blocker is a “foreign representative” as defined in section 45 of the CCAA in respect of the jointly administered insolvency proceedings;
 - (ii) recognizes the US Proceedings under Chapter 11 of the US Code and declares the US Proceedings as a foreign main proceeding with respect to each member of the Rockport Group, including Rockport Canada;
 - (iii) stays all proceedings that might be taken against the Rockport Group under the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3, as amended, or the *Winding-Up and Restructuring Act*, R.S.C. 1985, c. W-11, as amended;
 - (iv) restrains further proceedings and any action, suit or proceeding against the Rockport Group; and
 - (v) prohibits the commencement of any action, suit or proceeding against the Rockport Group; and

- (b) An order (the “**Supplemental Order**”) that, *inter alia*:
- (i) recognizes in Canada and enforces certain of the First Day Orders as set out in the Kosturos Affidavit;
 - (ii) appoints Richter Advisory Group Inc. (“**Richter**”) as information officer (in such capacity, the “**Information Officer**”) in respect of this proceeding; and
 - (iii) grants the Court-ordered charges, namely the Administration Charge and the DIP Lenders’ Charge (as each is defined in the Supplemental Order).
6. There are no other insolvency proceedings involving the Debtors other than the US Proceedings and these proceedings.
7. Any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Affidavit of Paul Kosturos sworn May 15, 2018 (the “**Kosturos Affidavit**”).

PART II - FACTS

8. The relevant facts in connection with this Application are more fully set out in the Kosturos Affidavit.

PART III - ISSUES

9. The issues on this Application are:
- (a) Does the Court have jurisdiction to hear this Application?
 - (b) Should the Court recognize the US Proceeding as a foreign main proceeding pursuant to sections 46 through 48 of the CCAA and grant the Initial Recognition Order sought by the Applicant?
 - (c) Should the Court grant the Supplemental Order sought by the Applicant under section 49 of the CCAA?

PART IV - ARGUMENT

A. Jurisdiction

10. Pursuant to section 9 of the CCAA, the Court has jurisdiction to hear an application in the “province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any of the assets of the company are situated”.

CCAA, s. 9.

11. The head office of each member of the Rockport Group is located in West Newton, Massachusetts. Rockport Canada is registered in British Columbia, but the majority of its stores (and employees) are located in Ontario. Rockport Canada also stores inventory at a warehouse and distribution facility in Brampton, Ontario. Accordingly, the Court has jurisdiction to hear this Application.

Kosturos Affidavit, ¶¶73, 78, 82, 90.

B. Initial Recognition Order

(i) The US Proceeding is a “Foreign Proceeding”

12. Part IV of the CCAA establishes a process and system for addressing cross-border and multi-national insolvencies. Section 44 of the CCAA states that the purpose of the CCAA’s cross-border regime is 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.

CCAA, s. 44.

- 13. Part IV of the CCAA is consistent with the principle that a cross-border or multi-national business enterprise should “be permitted to implement a plan so as to reorganize as a global unit, especially where there is an established interdependence on a transnational basis of the enterprise”. In such cases, one jurisdiction should take charge of the principal administration of the enterprise’s reorganization.

Babcock & Wilcox Canada Ltd. (Re), 2000 Carswell Ont 704, ¶21 (Ont. S.C.J. [Commercial List]) [*Babcock*], Brief of Authorities (“BOA”), Tab 1.

- 14. The underlying basis of Part IV of the CCAA is the principle of comity and cooperation between courts of various jurisdictions, whereby a Canadian court will accord respect to “the overall thrust of foreign bankruptcy and insolvency legislation in any analysis, unless in substance generally it is so different from the bankruptcy and insolvency law of Canada or perhaps because the legal process that generates the foreign order diverges radically from the process here in Canada.”

Babcock, ¶21, BOA, Tab 1.

- 15. Section 47 of the CCAA provides that if the Court is satisfied that:

- (a) an application for the recognition of a foreign proceeding relates to a “foreign proceeding” within the meaning of the CCAA; and
- (b) the applicant is a “foreign representative” within the meaning of the CCAA in respect of that foreign proceeding,

then it *shall* make an order recognizing the foreign proceeding.

CCAA, s. 47.

- 16. Canadian courts have consistently recognized proceedings commenced under Chapter 11 of the US Code to be “foreign proceedings” for the purposes of the CCAA.

Digital Domain Media Group Inc. (Re), 2012 BCSC 1565 [*Digital Domain*], ¶15, BOA, Tab 2.

17. This Application is supported by: (i) certified copies of the Rockport Group's Petitions that commenced the US Proceedings; and (ii) a certified copy of the Foreign Representative Order authorizing the Applicant to act as the Rockport Group's foreign representative in these proceedings, as required by Section 46(2) of the CCAA.

CCAA, s. 46(2); Kosturos Affidavit, Exhibits "A" and "F".

18. It is accordingly submitted that the US Proceedings ought to be recognized by the Court as a "foreign proceeding" as defined in s. 45(1) of the CCAA.

CCAA, s. 45(1).

(ii) *Rockport Blocker, LLC is a "Foreign Representative"*

19. The term "foreign representative" is defined under s. 45(1) of the CCAA as a person or body who is authorized in a foreign proceeding in respect of a debtor company to act as a representative in respect of the foreign proceeding.

CCAA, s. 45(1).

20. Rockport Blocker has been duly authorized by the US Court to make this application and to act as a foreign representative of the Rockport Group in these CCAA proceedings. It is accordingly submitted that Rockport Blocker ought to be recognized by the Court as a "foreign representative" as defined in s. 45(1) of the CCAA.

Kosturos Affidavit, Exhibit "F".

(iii) *The US Proceedings are a "Foreign Main Proceeding"*

21. If the Court grants an order under subsection 47(1) of the CCAA, subsection 47(2) of the CCAA requires that the Court specify whether the foreign proceeding is a "foreign main proceeding" or a "foreign non-main proceeding." If a foreign proceeding is recognized as a "foreign main proceeding" then there is an automatic stay against any proceedings concerning the debtors' property, debts, liabilities and obligations in Canada by operation of s. 48(1) of the CCAA.

CCAA, ss. 47(1), 47(2) and 48(1).

22. Subsection 45(1) of the CCAA provides that a “foreign main proceeding” is a foreign proceeding in a jurisdiction where the debtor company has the “centre of its main interests” (“COMI”).

CCAA, s. 45(1).

23. While the CCAA does not define what constitutes a debtor company’s COMI, pursuant to subsection 45(2), a debtor company’s COMI is presumed to be the location of its registered office, in the absence of proof to the contrary.

CCAA, s. 45(2).

24. However, a debtor’s COMI is a substantive, not technical, determination and the statutory presumption may be rebutted by evidence of the operational realities of a debtor. A determination of a debtor’s COMI will necessarily depend upon the particular facts and circumstances of each case.

Digital Domain, ¶24, BOA, Tab 2.

25. Justice Morawetz (as he then was) commented on the COMI analysis as follows in *Re Lightsquared*:

“In most cases, these factors will all point to a single jurisdiction as the centre of main interests. In some cases, there may be conflicts among the factors, requiring a more careful review of the facts. The court may need to give greater or less weight to a given factor, depending on the circumstances of the particular case. In all cases, however, the review is designed to determine that the location of the proceeding, in fact, corresponds to where the debtor’s true seat or principal place of business actually is, consistent with the expectations of those who dealt with the enterprise prior to commencement of the proceedings.”

Lightsquared LP (Re), 2012 ONSC 2994 (Ont. S.C.J. [Commercial List]) [*Re Lightsquared*], ¶26, BOA, Tab 3.

26. Canadian courts have accepted the following test in determining whether the statutory presumption of a debtor company’s COMI has been rebutted:

“In circumstances where it is necessary to go beyond the s. 45(2) registered office presumption [...] the following principal factors, considered as a whole, will tend to indicate whether the location in

which the proceeding has been filed is the debtor's centre of main interest. The factors are:

- (i) the location is readily ascertainable by creditors;
- (ii) the location is one in which the debtor's principal assets or operations are found; and
- (iii) the location is where the management of the debtor takes place."

Re Lightsquared, ¶25, BOA, Tab 3.

Digital Domain, ¶23, BOA, Tab 2.

27. In addition to the above "principal" factors, Canadian courts have made reference to the following factors in conducting the COMI analysis:

- (a) the location where corporate decisions are made;
- (b) the location of employee administrations, including human resource functions;
- (c) the location of the company's marketing and communication functions;
- (d) whether the enterprise is managed on a consolidated basis;
- (e) the extent of integration of an enterprise's international operations;
- (f) the centre of an enterprise's corporate, banking, strategic and management functions;
- (g) the existence of shared management within entities and in an organization;
- (h) the location where cash management and accounting functions are overseen;
- (i) the location where pricing decisions and new business development initiatives are created; and
- (j) the seat of an enterprise's treasury management functions, including management of accounts receivable and accounts payable.

Massachusetts Elephant & Castle Group Inc. (Re), 2011 ONSC 4201 [*Elephant & Castle*], ¶¶26-31, BOA, Tab 4.

Digital Domain, ¶21, BOA, Tab 2, citing *Angiotech Pharmaceuticals Inc., Re*, 2011 BCSC 115 (B.C. S.C. [In Chambers]) ¶7, BOA, Tab 5.

28. The Applicant submits that the COMI for each member of the Rockport Group, including Rockport Canada, is the United States.
29. With respect to the US Debtors, each has its registered office in the United States and there is no evidence to rebut the presumption (and in fact, the evidence shows that the US Debtors have no presence or connection to Canada, other than their relationship with Rockport Canada). Accordingly, it is submitted that the COMI for the US Debtors is the United States.

Kosturos Affidavit, ¶73, 75-77.

30. With respect to Rockport Canada, the Applicant submits that the presumptive COMI on the basis of Rockport Canada's registered office is rebutted. The evidence shows that Rockport Canada's operations are intertwined with the Rockport Group, and that Rockport Canada's operations are directed from the Rockport Group headquarters in West Newton, Massachusetts.

Kosturos Affidavit, ¶93.

31. In particular, the Applicant submits that the following demonstrates that Rockport Canada's COMI is the United States:

- (a) The Rockport Group, including Rockport Canada, is fully integrated and is operated on a consolidated basis, with all corporate and other major decision making occurring in West Newton, Massachusetts, which is a location easily identifiable by creditors, particularly since all accounts payable and accounts receivable are directed from the finance group located in West Newton, Massachusetts;

Kosturos Affidavit, ¶92-94.

- (b) Rockport Canada is a wholly owned subsidiary of Rockport Blocker. Rockport Blocker oversees the operations of Rockport Canada and provides significant direction to and oversight of Rockport Canada's operations and assets;

Kosturos Affidavit, ¶91.

- (c) Rockport Canada does not have any management personnel, all of its executive management decisions are directed from the Rockport Group head office in West Newton, Massachusetts;

Kosturos Affidavit, ¶95.

- (d) All of Rockport Canada's officers and directors are residents of the United States;

Kosturos Affidavit, ¶¶79-80.

- (e) All material decisions with respect to administration, human resources, strategic planning, management, communication and accounting are directed from the Rockport Group head office in West Newton, Massachusetts;

Kosturos Affidavit, ¶77.

- (f) All human resources ("HR") decisions for Rockport Canada are made from the Rockport Group head office in West Newton, Massachusetts, including decisions to hire new employees or terminate existing employees;

Kosturos Affidavit, ¶96.

- (g) All members of the Rockport Group, including Rockport Canada, share a cash management system that is overseen by the Rockport Group's finance department based in West Newton, Massachusetts;

Kosturos Affidavit, ¶104.

- (h) All information technology ("IT") services for Rockport Canada are provided from the Rockport Group's head office in West Newton, Massachusetts. Rockport

Canada has no IT personnel or employees outside the IT team employed by the Rockport Group head office in West Newton, Massachusetts;

Kosturos Affidavit, ¶98.

- (i) The Rockport Group head office in West Newton, Massachusetts oversees Rockport Canada's inventory and makes determinations on ordering;

Kosturos Affidavit, ¶97.

- (j) The marketing of the Rockport Group, including Rockport Canada, is directed by the marketing team based in the Rockport Group's head office in West Newton, Massachusetts, which is responsible for promoting the Rockport Group brand, and promoting sales efforts; and

Kosturos Affidavit, ¶99.

- (k) The Prepetition Revolving Credit Agreement is administered by the Rockport Group finance department based in West Newton, Massachusetts.

Kosturos Affidavit, ¶102.

- 32. Rockport Canada has employees and assets within Canada, but the evidence demonstrates that the management of the Canadian employees and assets is fully integrated with the larger Rockport Group, and that all fundamental decision-making functions are based in the United States. In particular, there are no management personnel employed by Rockport Canada or located within Canada, and all of its accounts payable and accounts receivable are directed from the Rockport Group head office in West Newton, Massachusetts.

Kosturos Affidavit, ¶92, 95.

- 33. In summary, the Rockport Group is a highly-integrated corporate group which is centrally managed out of the United States. The evidence indicates that the seat of the Rockport Group's business, including the businesses operated by Rockport Canada, is in West Newton, Massachusetts such that Rockport Canada is simply not a stand-alone company. Rockport Canada requires the management guidance and support from the Rockport Group

head office in West Newton, Massachusetts. Accordingly, the Applicant submits that the above factual elements support the finding that the COMI of Rockport Canada is the United States.

34. Accordingly, the Applicant submits that the COMI of all of the Rockport Group, including Rockport Canada, is the United States and that the US Proceedings should be recognized by the Court as a “foreign main proceeding”.

(iv) The Additional Relief Sought in the Initial Recognition Order Should be Granted

35. Section 48(1) of the CCAA provides that on the making of an order recognizing a foreign proceeding that is specified by the Court 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.

CCAA, s. 48(1).

36. The Initial Recognition Order sought by the Applicant is based on the Court’s Model CCAA Initial Recognition Order (Foreign Main Proceeding) and provides for all of the relief required by section 48 of the CCAA.

CCAA, s. 48.

37. The Initial Recognition Order is not inconsistent with any order that may be made under the CCAA.

CCAA, s. 48(2).

C. The Supplemental Order

(i) Recognition of the First Day Orders

38. In addition to the automatic relief provided in section 48, section 49 of the CCAA 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 the interests of a creditor or creditors. Section 50 of the CCAA further provides that an order made under Part IV of the CCAA, including pursuant to section 49, may be made on any terms and conditions that the Court considers appropriate.

CCAA, ss. 48, 49 and 50.

39. The Supplemental Order sought by the Applicant is based upon the Court's Model CCAA Supplemental Order (Foreign Main Proceeding).
40. Paragraph 4 of the Supplemental Order seeks to recognize certain First Day Orders (in certain circumstances granted initially on an interim basis and thereafter on a final basis) that were obtained by the Rockport Group from the US Court, set out in greater detail at paragraphs 13 to 68 of the Kosturos Affidavit.
41. The First Day Orders were 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, and preserving and maximizing the potential value of the Rockport Group's assets for the benefit of their creditors and other stakeholders.
42. The First Day Orders are not inconsistent with any order that may be granted under the CCAA. Canadian courts have regularly exercised their jurisdiction under sections 49 and 50 of the CCAA to recognize Chapter 11 bankruptcy orders with similar effect to the First

Day Orders to maintain the status quo and protect the assets of Rockport Group while permitting them to continue operating their business as usual in Canada.

See, for example, *Horseshoe Holdings Corp. (Re)*, 2016 ONSC 958, ¶¶14, 42, BOA, Tab 6; *Elephant & Castle*, ¶¶36, 40, BOA, Tab 4.

43. The Applicant requests that the Court recognize the First Day Orders set out in paragraph 12 of the Kosturos Affidavit.

(ii) The Information Officer

44. Section 53(b) of the CCAA requires the foreign representative to publish a notice of the recognition of the US Proceedings by the Court in one or more Canadian newspapers. To the extent that additional Canadian creditors of the Canadian Debtor are identified through the statutory notice process set out in the Initial Recognition Order, they will be reported on to the Court and addressed on an as needed basis.

CCAA, s. 53(b).

45. The Applicant submits that the appointment of Richter as Information Officer will help facilitate these proceedings and the dissemination of information concerning developments in the US Proceedings to affected creditors, stakeholders and the Court.

Kosturos Affidavit, ¶¶136-138.

46. The proposed role of Richter as Information Officer is consistent with the terms of appointment of information officers in other recent recognition proceedings under the CCAA in Ontario.

Supplemental Order in the Application of Hartford Computer Hardware Inc. dated December 21, 2011 (Ont. S.C.J. [Commercial List]) (without schedules), BOA, Tab 7.

Supplemental Order in the Application of Massachusetts Elephant & Castle Group Inc. dated July 4, 2011 (Ont. S.C.J. [Commercial List]) (without schedules), BOA, Tab 8.

Supplemental Order in the Application of Modular Space Corporation dated December 27, 2016 (Ont. S.C.J. [Commercial List]), BOA, Tab 9.

(iii) DIP Lender's Charge

47. Section 11.2(1) of the CCAA provides as follows:

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

CCAA, s. 11.2(1).

48. However, the Ontario Court has recognized DIP financing orders of a foreign court, particularly those made in a foreign main proceeding, pursuant to the broad powers provided to the court in section 49 of the CCAA.

Hartford Computer Hardware Inc. (Re), 2012 ONSC 964, ¶¶11, 15 (Ont. S.C.J. [Commercial List]) [*Hartford*], BOA, Tab 10.

Xinergy Ltd. (Re), 2015 ONSC 2692, ¶20 (Ont. S.C.J. [Commercial List]) [*Xinergy*], BOA, Tab 11.

49. Section 49 of the CCAA provides that the Court may make any order that it considers appropriate if the Court is satisfied that the order is necessary for the protection of the debtor company's property, or the interests of creditors. Without the Supplemental Order recognizing the Interim DIP Financing Order and the DIP Lenders' Charge, the Rockport Group will be unable to successfully restructure on a transnational basis and emerge from the US Proceedings as a going concern. Further, the DIP Lenders will not advance funds under the Interim DIP Financing without a priority charge to secure repayment of the Interim DIP Financing.

CCAA, s. 49.

Kosturos Affidavit, ¶143.

50. In recognizing orders granted pursuant to foreign main proceedings, the Ontario Court has considered whether granting such an order would materially prejudice Canadian interests

or creditors. The Canadian creditors will not suffer any material prejudice should the Court grant the Supplemental Order and nothing is being done that is contrary to the applicable provisions of the CCAA.

Xinergy, ¶21, BOA, Tab 11.

Hartford, ¶13, BOA, Tab 10.

51. The Ontario Court has previously recognized the use of post-petition receipts to be used to pay pre-petition debt. In *Performance Sports*, Newbould J. held that the DIP facilities should be approved, taking into account the factors in section 11.2(4) of the CCAA. Similar to the case at bar, in *Performance Sports*, without DIP financing, the debtors would not have had sufficient cash on hand or generated sufficient receipts to continue operating their business and pursue a post-petition sales process. Pursuant to the Interim DIP Financing Order, the Rockport Group will only use post-petition receipts generated by pre-petition collateral to pay pre-petition obligations and therefore, the DIP Lenders are in no better position with respect to the priority of their pre-petition debt relative to other creditors.

Re Performance Sports Group Ltd., 2016 ONSC 6800 (Ont. S.C.J. [Commercial List]) [*Performance Sports*], ¶¶21, 22, BOA, Tab 12.

52. A significant factor that the Ontario Court has taken into consideration is whether the US Court granted the DIP financing order. This is consistent with the court's recognition of the principles of comity provided by section 44 of Part IV of the CCAA. As such, given that the Interim DIP Financing Order was granted in the U.S., the Court should recognize the order.

Xinergy, ¶¶19, 21, BOA, Tab 11.

Hartford, ¶14, BOA, Tab 10.

CCAA, s. 44.

53. The order sought with respect to the DIP Lenders' Charge is not contrary to public policy. Section 61(2) of the CCAA provides that nothing in Part IV of the CCAA prevents the Court from refusing to do something that would be contrary to public policy. The Ontario Court has in the past concluded that an order relating to a DIP charge, similar in nature to the Interim DIP Financing Order, is not contrary to public policy.

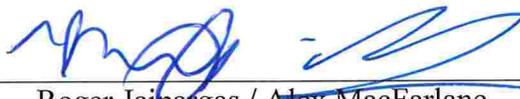
CCAA, s. 61(2).

Hartford, ¶16, BOA, Tab 10.

PART V - RELIEF REQUESTED

54. The Applicant requests that the Court grant the Initial Recognition Order and the Supplemental Order in the form included at Tabs 3 and 4 of the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of May, 2018.



Roger Jaipargas / Alex MacFarlane

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

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Babcock & Wilcox Canada Ltd. (Re)*, 2000 CarswellOnt 704 (Ont. S.C.J. [Commercial List])
2. *Digital Domain Media Group Inc. (Re)*, 2012 BCSC 1565 (B.C. S.C.)
3. *Lightsquared LP (Re)*, 2012 ONSC 2994 (Ont. S.C.J. [Commercial List])
4. *Massachusetts Elephant & Castle Group Inc. (Re)*, 2011 ONSC 4201 (Ont. S.C.J. [Commercial List])
5. *Angiotech Pharmaceuticals Inc., Re*, 2011 BCSC 115 (B.C. S.C. [In Chambers])
6. *Horseshoe Holdings Corp. (Re)*, 2016 ONSC 958 (Ont. S.C.J. [Commercial List])
7. Supplemental Order in the Application of Hartford Computer Hardware Inc. dated December 21, 2011 (Ont. S.C.J. [Commercial List]) (without schedules)
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9. Supplemental Order in the Application of Modular Space Corporation dated December 27, 2016 (Ont. S.C.J. [Commercial List])
10. *Hartford Computer Hardware Inc. (Re)*, 2012 ONSC 964 (Ont. S.C.J. [Commercial List])
11. *Xinergy Ltd. (Re)*, 2015 ONSC 2692 (Ont. S.C.J. [Commercial List])
12. *Re Performance Sports Group Ltd.*, 2016 ONSC 6800 (Ont. S.C.J. [Commercial List])

SCHEDULE "B"

STATUTES

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

Jurisdiction of courts

Jurisdiction of court to receive applications

9 (1) Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

Single judge may exercise powers, subject to appeal

(2) The powers conferred by this Act on a court may, subject to appeal as provided for in this Act, be exercised by a single judge thereof, and those powers may be exercised in chambers during term or in vacation.

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report referred to in paragraph 23(1)(b), if any.

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.

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.

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

Court File No.:

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

ONTARIO

SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

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