

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-033234-085

**S U P E R I O R C O U R T**  
(Commercial Division)  
(Sitting as a court designated pursuant to the  
*Companies' Creditors Arrangement Act*,  
R.S.C. 1985, c. C-36)

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**IN THE MATTER OF THE PLAN OF  
COMPROMISE OR ARRANGEMENT OF:**

**SHERMAG INC.**

and

**JAYMAR FURNITURE CORP.**

and

**SCIERIE MONTAUBAN INC.**

and

**MÉGABOIS (1989) INC.**

and

**SHERMAG CORPORATION**

and

**JAYMAR SALES CORPORATION**

Petitioners

and

**RSM RICHTER INC.**

Monitor

and

**INDUSTRIAL RECOVERY SERVICES, INC.**,  
a Pennsylvania corporation with offices located at  
365 West Cottage Place, P.O. Box 5085, York,  
Pennsylvania, 17405, USA

and

**M.G. MARTIN AUCTIONEERS INC.**, a Quebec  
corporation with offices located at 8600 Damley  
Road, Town of Mount-Royal, Québec, H4T 1M4

Mis en Cause

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**MOTION FOR AN ORDER APPROVING AN AGREEMENT**  
(Sections 9,10 and 11 of the *Companies' Creditors Arrangement Act*, R.S.C. (1985),  
c. C-36 (hereinafter "*CCAA*")

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**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT SITTING IN COMMERCIAL DIVISION IN AND FOR THE DISTRICT OF MONTRÉAL, THE PETITIONERS RESPECTFULLY SUBMIT:**

**1. INTRODUCTION**

1. By the present Motion for an Order Approving an Agreement, Shermag Inc. (“**Shermag**”), Jaymar Furniture Corp., Scierie Montauban Inc., Mégabois (1989) Inc., Shermag Corporation and Jaymar Sales Corporation (collectively the “**Petitioners**”) hereby request this Court to:

(i) approve an agreement amongst Shermag, Industrial Recovery Services, Inc. (“**IRS**”) and M.G. Martin Auctioneers Inc. (“**Martin**”) whereby IRS and Martin will sell through an auction process the surplus equipment belonging to Petitioners, the whole as appears from the said agreement communicated herewith as **Exhibit R-1** (the “**Agreement**”); and

(ii) render the related vesting order and other related orders.

**2. PROCEDURAL BACKGROUND**

2. On May 5, 2008, an initial order was rendered by this Court pursuant to the *CCAA* in relation to Petitioners (the “**Initial Order**”), the whole as it appears from the Court Record.

3. The Initial Order established June 4, 2008 as the Stay Termination Date of the Stay Period (both as defined in the Initial Order).

4. On June 4, 2008, this Court extended the Stay Termination Date of the Stay Period to September 8, 2008, the whole as it appears from the Court Record.

5. On September 8, 2008, this Court extended the Stay Termination Date of the Stay Period to December 10, 2008, the whole as it appears from the Court Record.

6. On the same day, this Court also rendered the following orders:

“[6] **APPROVES** the sale of the Surplus Equipment (“**Surplus Equipment**”) either directly to various end-users or by engaging an auctioneer(s) to assist in the process;

[7] **AUTHORIZES** the Petitioners to sign and execute any document which could be required or useful to give full and

complete effect to the Head Office's Sale, the Inventory Sale or the Surplus Equipment Sale;

- [8] **DECLARES** that the Head Office Sale, the Inventory Sale and the sale of the Surplus Equipment cannot be attacked or voided as a reviewable transaction or for any other reason whatsoever and that it shall be deemed valid for all intents and purposes;”

[our emphasis]

3. **APPROVAL OF THE AGREEMENT**

7. Pursuant to the order rendered by this Court on September 8, 2008, Petitioner undertook to find an auctioneer to assist them in the sale of their surplus equipment and to maximize the return on the sale of said surplus equipment.
8. Petitioners entered into negotiations with IRS and Martin to see if they would be interested in being the auctioneers who would assist them in the sale of the surplus equipment.
9. IRS, a Pennsylvania corporation with an office located at 365 West Cottage Place, York, Pennsylvania, is a specialized auctioneer.
10. Martin, a Canadian corporation with an office located at 8600 Chemin Darnley, Mount Royal, Québec, is as well a specialized auctioneer.
11. Shermag, IRS and Martin agreed on the terms and conditions of the Agreement communicated as Exhibit R-1.
12. Some of the material terms set out in the Agreement are as follows:
- (i) IRS and Martin agree to conduct on behalf of Petitioners an auction or auctions through their web sites for the purpose of selling the surplus equipment owned by Shermag and listed at Schedule “A” (the “**Auctioned Surplus Equipment**”) of the Agreement (Exhibit R-1). Given the very confidential nature of the information contained in said Schedule “A”, a copy of said Schedule “A” will be filed under seal at the hearing of the present Motion as **Exhibit R-2**;
  - (ii) As a fee for services rendered to Petitioners, Martin and IRS shall retain 10% of the selling price for all Auctioned Surplus Equipment sold at the auction(s);
  - (iii) Martin and IRS will also retain a flat fee of \$40,000.00 USD to cover their share of the cost to perform, *inter alia*, the on-site preparation, the marketing and the

posting and closing, the whole as more fully described in the Agreement (Exhibit R-1);

- (iv) IRS and Martin agree that no Auctioned Surplus Equipment will be sold at a selling price less than the applicable "Reserve Price" listed on Schedule "A" of the Agreement without the prior written consent of Shermag; and
  - (v) Martin and IRS undertake to pay the proceeds due to Petitioners directly to Geosam Investment Limited ("**Geosam**").
13. Geosam is the sole creditor who has security over the Auctioned Surplus Equipment.
  14. The Auctioned Surplus Equipment is non-core to the Petitioners' business.
  15. The sale of the Auctioned Surplus Equipment pursuant to the Agreement provides the best opportunity to maximize the value of the Auctioned Surplus Equipment.
  16. The Monitor, Petitioners and Geosam, the sole creditor who have security on the Auctioned Surplus Equipment, support the granting of this motion, the approval of the Agreement and the rendering of the other Orders sought herein.
  17. Martin and IRS have requested that the Agreement be approved by this Court and that related Orders be rendered, including a Vesting Order.

**4. GENERAL**

18. It is in the best interest of Petitioners that the present Motion be granted in accordance with its conclusions.
19. Petitioners respectfully submit that the notices given of the presentation of this Motion are proper and sufficient.
20. The Motion is well founded both in fact and in law.

**WHEREFORE, MAY IT PLEASE THIS COURT TO:**

- [1] **GRANT** the present Motion;
- [2] **DECLARE** that all capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Initial Order issued on May 5, 2008 as subsequently amended or extended;

- [3] **DECLARE** sufficient the service of the present petition and prior notice of its presentation;
- [4] **AUTHORIZE** Shermag Inc. ("**Shermag**") to enter into the Agreement with Industrial Recovery Services, Inc. ("**IRS**") and M.G. Martin Auctioneers Inc. ("**Martin**") communicated as Exhibit R-1 and **DECLARE** that same is valid and enforceable;
- [5] **ORDER** the sealing of Schedule "A" of the Agreement (Exhibit R-2);
- [6] **AUTHORIZE** Shermag, IRS and Martin to modify, by mutual consent, the content of Schedule "A". Said modification(s) or change(s) to Schedule "A" shall be in writing;
- [7] **AUTHORIZE** Shermag to sign and execute any agreement, contract, deed or any other document ancillary or related to the Agreement, which could be required or useful to give full and complete effect thereto;
- [8] **ORDER AND DECLARE** that upon completion of the sales contemplated by the Agreement, the surplus equipment more fully described in the Agreement at Schedule "A" (the "**Auctioned Surplus Equipment**"), shall be vested to the purchaser of said equipment, free and clear of and from any and all encumbrances, rights, claims, security interests, hypothecs, trusts or deemed trusts, liens, charges, mortgages, priorities, whether or not they have been rendered opposable against third persons or have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including, without limiting the generality of the foregoing, the CCAA Charges (as defined in the Initial Order) and any charges, hypothecs or other security interests Geosam Investment Limited ("**Geosam**") has on said Auctioned Surplus Equipment but in that latter case, upon remittance to it of the purchase price related to said Auctioned Surplus Equipment, less the Flat Fee, Buyer's Premium and the Consignee Fee (as said terms are defined in the Agreement);
- [9] **DECLARE** that the Agreement and any sale concluded pursuant thereto cannot be attacked or voided as a reviewable transaction or for any other reason whatsoever and that it shall be deemed valid for all intents and purposes;
- [10] **DECLARE** that the vesting of the Auctioned Surplus Equipment pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Petitioner and shall not be void or voidable nor shall it be deemed to

be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *CCAA* or the Bankruptcy and Insolvency Act or any other applicable federal or provincial legislation;

- [11] **ORDER** Martin and IRS to pay by wire transfer the proceeds of the sale of the Auctioned Surplus Equipment directly to Geosam less the Flat Fee, Buyer's Premium and the Consignee Fee (as said terms are defined in the Agreement);
- [12] **DECLARE** that this Court seeks and requests the aid and recognition of any Court or administrative body in any province of Canada, and any Canadian Federal Court or administrative body, as well as any Court or administrative body in any States of the United States of America and any Federal Court or administrative body of the United States to assist Petitioners in carrying out the terms of this Order;
- [13] **ORDER** the provisional execution of the Order to be rendered notwithstanding any appeal and without the necessity of furnishing any security.
- [14] **THE WHOLE** without costs, except if contested, and then with costs against each opposing party.

**MONTREAL**, October 31, 2008



**DAVIES WARD PHILLIPS & VINEBERG LLP**

Attorneys for Petitioners Shermag Inc., Jaymar Furniture Corp., Scierie Montauban Inc., Mégabois (1989) Inc., Shermag Corporation and Jaymar Sales Corporation

CANADA

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**IN THE MATTER OF THE PLAN OF  
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**INDUSTRIAL RECOVERY SERVICES, INC.**

and

**M.G. MARTIN AUCTIONEERS INC.**

Mis en Cause

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**ATTESTATION OF AUTHENTICITY**

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I, the undersigned, Christian Lachance, attorney, practising my profession with the law firm of Davies Ward Phillips & Vineberg LLP, having its principal place of business at 1501 McGill College Avenue, 26<sup>th</sup> Floor, in the City and District of Montréal, Province of Québec, solemnly affirm that:

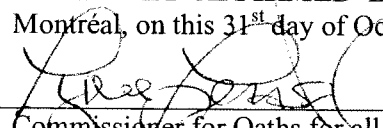
1. On October 31, 2008, at 1:16 p.m., Davies Ward Phillips & Vineberg LLP received by fax an Affidavit signed by Alex Adimari dated October 31, 2008, a copy of such Affidavit is attached to this Attestation of Authenticity.
2. All the facts alleged herein are true.

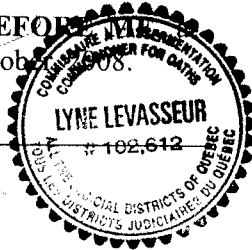
**AND I HAVE SIGNED:**



CHRISTIAN LACHANCE

**SOLEMNLY AFFIRMED BEFORE**  
Montreal, on this 31<sup>st</sup> day of October 2008.

  
Commissioner for Oaths for all  
judicial districts of Québec



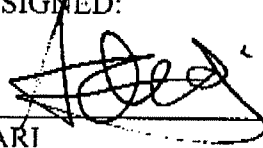


**AFFIDAVIT**

I, the undersigned, ALEX ADIMARI, Chief Operating Officer of Shermag Inc., having my place of business at 2171 King Street West, in the City of Sherbrooke, Province of Québec, solemnly declare as follows:

- 1. I am the duly authorized representative of the Petitioners;
- 2. All the facts contained in the present "Motion for an Order Approving an Agreement" are true;
- 3. All the facts contained in this Affidavit are true.

AND I HAVE SIGNED:




\_\_\_\_\_  
ALEX ADIMARI

Solemnly affirmed before me, in the  
City of Sherbrooke, Province of Québec,  
this 31st day of October, 2008

  
Commission for Oaths

JOSEE GIRARD  
COMMISSAIRE À L'ASSERMENTATION  
DISTRICTS JUDICIAIRES DE MONTRÉAL  
ET DE SAINT-FRANÇOIS  
#178186

**TRUE COPY**

  
\_\_\_\_\_  
DAVIES WARD PHILLIPS & VINEBERG LLP

FA

**NOTICE OF PRESENTATION**

TO: Me Martin Desrosiers  
**Osler, Hoskin & Harcourt LLP**  
1000 De La Gauchetière Street West, Suite 2100  
Montréal (Québec) Canada H3B 4W5  
Attorneys for Geosam Investment Limited

AND TO: Me Louis Gouin  
**Ogilvy Renault LLP**  
1981 McGill College Avenue, Suite 1100  
Montréal (Québec) Canada H3A 3C1  
Attorneys for the Monitor

AND TO: Mr. Phil Manel, CA  
**RSM Richter Inc.**  
2 Place Alexis Nihon, Suite 2200  
Montréal, (Québec) Canada H3Z 3C2  
Monitor

AND TO: Me Claude Gravel  
**Gowling Lafleur Henderson LLP**  
1, Place Ville Marie  
Montréal (Québec) Canada H3B 3P4  
Attorneys for Godbout, Plante associés enr.

AND TO : Me François Viau  
**Gowling Lafleur Henderson LLP**  
1, Place Ville Marie  
Montréal (Québec) Canada H3B 3P4  
Attorneys for Industries Wajax

AND TO : Me Annie Claude Beauchemin  
**BCF LLP**  
1100 René-Lévesque Blvd. West, 25th Floor  
Montréal (Québec) Canada H3B 5C9  
Attorneys for Hachette Filipacchi Media U.S. Inc.

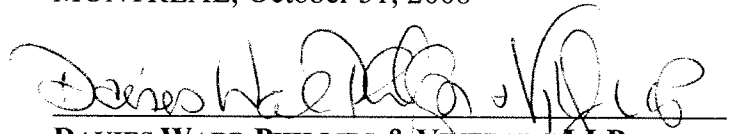
AND TO : Me Ian R. Rudnikoff, attorney  
14 chemin Baronscourt  
Hampstead QC H3X 1H1

Attorneys for Industrial Recovery Services, Inc. and M.G. Martin Auctioneers Inc.

**TAKE NOTICE** that the present “Motion for an Order Approving an Agreement” will be presented for adjudication before one of the judges of the Superior Court, sitting in the Commercial Division, in and for the judicial district of Montréal, on November 4, 2008, at 9:00 a.m., in room 16.12 of the Montréal Courthouse, located at 1 Notre-Dame Street East, in the City of Montréal, Province of Québec, or so soon thereafter as counsel may be heard.

**DO GOVERN YOURSELVES ACCORDING.**

MONTREAL, October 31, 2008



**DAVIES WARD PHILLIPS & VINEBERG LLP**  
Attorneys for Petitioners Shermag Inc., Jaymar  
Furniture Corp., Scierie Montauban Inc., Mégabois  
(1989) Inc., Shermag Corporation and Jaymar Sales  
Corporation

No. 500-11-033234-085

**S U P E R I O R C O U R T**  
Commercial Division

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**SHERMAG INC. et als**

Petitioners

- and -

**RSM RICHTER INC.**

Monitor

---

**Motion for an Order Approving an Agreement**

(Sections 9,10 and 11 of the *Companies' Creditors*

*Arrangement Act*, R.S.C. (1985),

c. C-36 (hereinafter "*CCAA*"), Affidavit, Attestation of

Authenticity, Notice of Presentation,

Exhibit R-1 and Exhibit R-2 (under seal)

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**ORIGINAL**

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~~Attorneys for Petitioner~~

Per: Me Denis Ferland and

Christian Lachance

Dir 514 841 6423

O/F 223966

**DAVIES**

DAVIES WARD PHILLIPS & VINEBERG LLP

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