

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 A PLAN OF COMPROMISE OR  
ARRANGEMENT OF BEN MOSS JEWELLERS WESTERN  
CANADA LTD.

APPLICANT

**NOTICE OF APPLICATION**

**TO THE RESPONDENT:**

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a Judge presiding over the Commercial List on May 18, 2016 at the Court House, 330 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: May 17, 2016

Issued by: \_\_\_\_\_

Local Registrar  
330 University Avenue  
Toronto, Ontario

TO: **SERVICE LIST**

**SERVICE LIST**

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## APPLICATION

1. The Applicant, Ben Moss Jewellers Western Canada Ltd., makes this application for an Initial Order substantially in the form attached as Schedule “A”<sup>1</sup> hereto, *inter alia*:
  - (a) abridging the time for service of this Notice of Application and dispensing with service on any person other than those being served;
  - (b) declaring that the Applicant is a party to which the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) applies;
  - (c) appointing Alvarez & Marsal Canada Inc. (“**Alvarez & Marsal**”) as monitor pursuant to s. 11.7 of the CCAA (the “**Proposed Monitor**”) to monitor the business and financial affairs of the Applicant;
  - (d) appointing FAAN Advisors Group Inc. as Chief Restructuring Officer of the Applicant (the “**CRO**”);
  - (e) staying all proceedings taken or that might be taken in respect of the Applicant, its directors and officers, the CRO or the Proposed Monitor;
  - (f) staying all proceedings taken or that might be taken in respect of the Applicant’s parent company, J.S.N. Jewellery Inc. (“**JSN Inc.**”), to the extent that these proceedings arise as a result of cross-default provisions related to agreements between the Applicant and third parties, provided that such stay applies only with respect to amounts owing that are currently not in arrears and that are contemplated in the cash flows as being paid in the ordinary course;

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<sup>1</sup> A blackline of the Draft Initial Order to the Model Initial Order is attached as Schedule “B”.

- (g) authorizing the Applicant to file with this Court a plan of compromise or arrangement between the Applicant and, *inter alia*, one or more of its classes of secured and/or unsecured creditors pursuant to the provisions of the CCAA;
- (h) approving the Applicant to obtain and borrow under a debtor-in-possession credit facility (the “**DIP Facility**”) to finance its working capital requirements and other general corporate purposes and post-filing expenses and costs;
- (i) granting the following charges over the property of the Applicant, listed in order of priorities:
  - (i) a charge (1) in favour of counsel to the Applicant, the Proposed Monitor, counsel to the Proposed Monitor, and the CRO and (2) in favour of counsel to Joseph Shilon with respect to amounts incurred to the date of the Initial Order;
  - (ii) a charge in favour of the DIP Lender (as defined below) (the “**DIP Charge**”); and
  - (iii) a charge in favour of the directors and officers of the Applicant;
- (j) ordering that the CRO shall not have any liability with respect to any losses, claims, damages, or liabilities, of any nature or kind, except to the extent that such result from the gross negligence or wilful misconduct on the part of the CRO;
- (k) approving pre-filing payments to certain “critical” suppliers;
- (l) approving a refinancing, investment and/or sale solicitation process (the “**RISP**”);  
and

(m) such further and other relief as this Honourable Court may deem just.

2. The grounds for the application are:

(a) the Applicant is insolvent;

(b) the Applicant is a company to which the CCAA applies;

(c) the claims against the Applicant exceed \$5 million;

(d) the Applicant is a jewellery retailer with 66 stores across Canada and employs approximately 549 people;

(e) over the past two years, the Applicant has experienced a significant decrease in its net sales and profitability as a result of a combination of factors, including a soft market in western Canada as a result of declining energy prices and the appreciation of the U.S. dollar relative to the Canadian dollar;

(f) the Applicant is a wholly-owned indirect subsidiary of JSN Inc. and part of the JSN group of affiliated companies (the “**JSN Group**”);

(g) the JSN Group is principally comprised of two separate operating businesses: the Applicant’s jewellery retail business and a jewellery wholesale business;

(h) the Applicant and certain other members of the JSN Group are financed primarily through a revolving credit facility and three term loan credit facilities under a Credit Agreement dated as of July 18, 2013, as amended pursuant to the First Amending Agreement dated September 25, 2014, and as will be amended by an Accommodation Agreement (the “**Salus Credit Agreement**”), between, *inter*

*alia*, the Applicant and certain other members of the JSN Group, as co-borrowers, and Salus Capital Partners, LLC (“**Salus Capital**”), as administrative agent, collateral agent and lender and Salus CLO 2012-1 Ltd. (“**Salus CLO**”), and collectively with Salus Capital the “**Senior Secured Lenders**”);

- (i) the outstanding indebtedness under the Salus Credit Agreement is in the amount of approximately CAD\$68.1 million;
- (j) as a result of the various financial challenges noted above, an overadvance of approximately USD\$855,000 was requested on March 30, 2016, which Salus Capital subsequently granted on April 4, 2016;
- (k) the overadvance has not been repaid, which constituted an Event of Default under the Salus Credit Agreement;
- (l) the collateral coverage ratio covenant in the Salus Credit Agreement has also been breached, which constituted an Event of Default;
- (m) Salus Capital has issued demands for repayment and Notices of Intention to Enforce Security pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act*;
- (n) the Applicant is unable to meet its liabilities as they become due and is therefore insolvent;
- (o) over the past several months, the Applicant has engaged in significant efforts to pursue a restructuring without a formal insolvency proceeding;



- (p) the Applicant has determined that, in its business judgment and following consultations with its professional advisors, it is in the best interests of its stakeholders to restructure its business through a court-supervised process under the protection of the CCAA;
- (q) the Applicant believes that making this application for relief under the CCAA is the best way to maximize the possibility of an outcome which will preserve as many jobs and as much value for stakeholders as possible;
- (r) Alvarez & Marsal has consented to act as the monitor;
- (s) Salus CLO (the “**DIP Lender**”) has agreed to provide interim debtor-in-possession financing through the availability of drawdowns under the Super Priority DIP Credit Agreement (the “**DIP Facility**”) of \$8 million;
- (t) without the DIP Facility and the DIP Charge, the Applicant is unable to: (a) operate in the ordinary course as a going concern; (b) satisfy its ongoing obligations to its employees, landlords, suppliers and other stakeholders; and (c) have access to operating credit;
- (u) the Applicant is seeking the Court’s approval for the RISP, to be conducted with the assistance and under the supervision of the Proposed Monitor, for the purpose of soliciting and assessing available opportunities for the refinancing of the facilities under the Salus Credit Agreement, an equity investment in the Applicant or JSN Inc., and/or the sale of all or part of the Applicant’s business and property;
- (v) in order to ensure the continuity of the Applicant’s supply chain and the ability to operate during its restructuring, the Applicant is seeking approval to continue to

pay amounts owing to certain critical suppliers in the ordinary course, both before and after the date of filing;

- (w) the Applicant requires a stay of proceedings and the other relief sought in order to continue operating as it restructures and reorganizes its business;
- (x) the operations of the Applicant and JSN Inc. are intertwined and the extension of the stay to JSN Inc. (in relation to any claims brought as a result of cross-default provisions in respect of amounts owing by the Applicant to third parties) is necessary to maintain stability and value in the CCAA process;
- (y) it is necessary and in the best interests of the Applicant and its stakeholders that the Applicant be afforded the “breathing space” provided by the CCAA as it attempts to engage in an orderly restructuring of its business;
- (z) the provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
- (aa) Rules 2.03 and 14.05(2) of the *Ontario Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and section 106 of the *Ontario Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended; and
- (bb) such further and other grounds as counsel may advise and this Court may permit.

3. The following documentary evidence will be used at the hearing of the application:

- (a) the Affidavit of Naveed Z. Manzoor sworn May 16, 2016 and the exhibits attached thereto;

- (b) the consent of Alvarez & Marsal;
- (c) the Pre-Filing Report of Alvarez & Marsal dated May 17, 2016;
- (d) and such further and other evidence as counsel may advise and this Honourable Court permits.

May 17, 2016

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**SCHEDULE A – DRAFT INITIAL ORDER**

**SCHEDULE B – BLACKLINE OF DRAFT INITIAL ORDER TO  
THE MODEL INITIAL ORDER**