

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 BROOKS BROTHERS GROUP,  
INC., BROOKS BROTHERS FAR EAST LIMITED, BBD  
HOLDING 1, LLC, BBD HOLDING 2, LLC, BBDI, LLC,  
BROOKS BROTHERS INTERNATIONAL, LLC, BROOKS  
BROTHERS RESTAURANT, LLC, DECONIC GROUP LLC,  
GOLDEN FLEECE MANUFACTURING GROUP, LLC, RBA  
WHOLESALE, LLC, RETAIL BRAND ALLIANCE GIFT CARD  
SERVICES, LLC, RETAIL BRAND ALLIANCE OF PUERTO  
RICO, INC., 696 WHITE PLAINS ROAD, LLC, AND BROOKS  
BROTHERS CANADA LTD.**

**APPLICATION OF BROOKS BROTHERS GROUP, INC.  
UNDER SECTION 46 OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

APPLICANT

**FACTUM OF THE APPLICANT**

**PART I - NATURE OF THE MOTION**

1. This factum is filed in support of a motion by Brooks Brothers Group, Inc. ("**BBGI**") in its capacity as the foreign representative (the "**Foreign Representative**") of 13<sup>1</sup> of its affiliated debtors in possession (collectively, the "**Chapter 11 Debtors**") and together with their non-debtor

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<sup>1</sup> In addition to BBGI and Brooks Brothers Canada, the other 12 Chapter 11 Debtors are Brooks Brothers Far East Limited; BBD Holding 1, LLC; BBD Holding 2, LLC; BBDI, LLC; Brooks Brothers International, LLC; Brooks Brothers Restaurant, LLC; Deconic Group LLC; Golden Fleece Manufacturing Group, LLC; RBA Wholesale, LLC; Retail Brand Alliance Gift Card Services, LLC; Retail Brand Alliance of Puerto Rico, Inc.; and 696 White Plains Road, LLC.

affiliates, “**BB Group**”), including Brooks Brothers Canada Ltd. (“**Brooks Brothers Canada**”), for orders (the “**Part IV Orders**”) pursuant to sections 46 through 49 of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) for, among other things:

- (a) recognition of the Chapter 11 Cases (as defined below) as foreign main proceedings pursuant to Part IV of the CCAA;
- (b) recognition of the Foreign Representative Order and the Second Joint Administration Order (both as defined below);
- (c) the appointment of Alvarez & Marsal Canada Inc. (“**A&M**”) as Information Officer (as defined below);
- (d) the granting of the Administration Charge (as defined below); and
- (e) the granting of the Directors’ Charge (as defined below).

2. The Foreign Representative seeks recognition of the Chapter 11 Cases as a foreign main proceeding to safeguard the business operations of Brooks Brothers Canada in the immediate term, and ultimately to give full effect in Canada to a sale transaction of substantially all the assets of the Chapter 11 Debtors, including vesting the assets of Brooks Brothers Canada free and clear of all encumbrances in the purchaser. The proceeds of this sale transaction, completed following a comprehensive sales process supervised by the U.S. Court (as defined below), will fund a global resolution of claims in respect of the Chapter 11 Debtors and certain creditors, enabling the efficient administration and wind-down of the Chapter 11 Debtors’ insolvency proceedings.

3. On July 8, 2020, each of the Chapter 11 Debtors other than Brooks Brothers Canada (the “**Initial Chapter 11 Debtors**”) filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the “**U.S. Court**”). Brooks Brothers Canada did not seek Chapter 11 protection at that time, as the Chapter 11 Debtors were attempting to pursue an out-of-court restructuring for Brooks Brothers Canada, potentially through the sale of the equity in Brooks Brothers Canada. Since then, the Initial

Chapter 11 Debtors have completed a successful sales process for their business (the “**Business**”) which resulted in the sale (the “**Sale Transaction**”) of substantially all of the Chapter 11 Debtors’ assets, including substantially all of the assets of Brooks Brothers Canada (the “**Canadian Assets**”), to SPARC Group LLC (the “**Buyer**”). In addition, a global resolution was reached as between the Initial Chapter 11 Debtors, the Agent (as defined below), the Prepetition ABL Lenders (as defined below) and the official committee of unsecured creditors in the Chapter 11 Cases.

4. The U.S. Court entered an order approving the Sale Transaction on August 14, 2020 (the “**Sale Order**”) and the transaction closed on August 31, 2020. The Buyer now owns the Business, subject to the Buyer’s designation rights in respect of leases (discussed below, and including Brooks Brothers Canada’s leases) and the subsequent conveyance of the Canadian Assets, including inventory owned by Brooks Brothers Canada (the “**Canadian Acquired Inventory**”).

5. After the Sale Transaction was approved but before it closed, the Chapter 11 Debtors and the Buyer determined that it would be beneficial to obtain an order of this Court recognizing the Sale Order and approving the sale of the Canadian Acquired Inventory free and clear of all claims and encumbrances. Accordingly, on September 10, 2020, Brooks Brothers Canada obtained Chapter 11 protection from the U.S. Court. On September 11, 2020, the U.S. Court authorized BBGI to act as foreign representative on behalf of the Chapter 11 Debtors before this Court. Concurrently, the Chapter 11 Debtors filed a motion for an order applying all previous orders in the Chapter 11 Cases, including the Sale Order, to Brooks Brothers Canada (the “**All Orders’ Order**”), which is scheduled to be heard by the U.S. Court on September 24, 2020.

6. Certain of Brooks Brothers Canada’s leases provide that it is an event of default if Brooks Brothers Canada obtains bankruptcy protection. Therefore, as of September 10, 2020 and subject to a potential stay of proceedings under the CCAA, Brooks Brothers Canada’s landlords could

attempt to terminate these leases. Brooks Brothers Canada requires a stay of proceedings to avoid such terminations, which could disrupt the Business and reduce enterprise value.

7. The Foreign Representative now brings this Application to obtain a stay of proceedings, recognition of the Chapter 11 Cases as a foreign main proceeding under the CCAA, and recognition of the Foreign Representative Order and the Second Joint Administration Order (as defined below) in Canada. If these orders are granted, the Foreign Representative intends to return to this Court to seek recognition of the ‘All Orders’ Order after it is entered by the U.S. Court and for such other relief from this Court as may be deemed necessary. This would enable the Chapter 11 Debtors to give full effect to the Sale Transaction.

8. Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Affidavit of Stephen Marotta, sworn September 13, 2019 (the “**Marotta Affidavit**”). All dollar references herein are in U.S. dollars unless otherwise specified.

## **PART II - THE FACTS**

9. Brooks Brothers is the oldest apparel business in the United States and a world-renowned fashion brand.<sup>2</sup> Over time, BB Group has grown into one of the world’s leading clothing retailers, with over 1,400 locations in over 45 countries and a leading e-commerce platform.<sup>3</sup> Brooks Brothers Canada operates BB Group’s Canadian operations, which consists of 12 retail stores.<sup>4</sup>

### **A. The Business of the Chapter 11 Debtors**

10. All of the Chapter 11 Debtors (including Brooks Brothers Canada) operate on an integrated basis and are incorporated or established under the laws of the United States, with the exception

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<sup>2</sup> Marotta Affidavit at para 22.

<sup>3</sup> Marotta Affidavit at para 22.

<sup>4</sup> Marotta Affidavit at para 7.

of Brooks Brothers Canada and Brooks Brothers Far East Limited (“**BB Far East**”), which is incorporated in Hong Kong.<sup>5</sup>

11. BBGI directly or indirectly owns all of the shares of the other Chapter 11 Debtors (including Brooks Brothers Canada), with the exception of BB Far East, in which BBGI holds a 99.8% interest.<sup>6</sup> For the fiscal year ending 2019, BB Group’s revenues totaled over \$991 million, of which less than 3% was attributable to Brooks Brothers Canada.<sup>7</sup>

12. Prior to the Sale Transaction, the Chapter 11 Debtors’ operations were formerly directed out of their leased corporate headquarters in Manhattan, where the flagship Brooks Brothers store is located.<sup>8</sup> The Chapter 11 Debtors provided corporate and administrative functions to all the Chapter 11 Debtors, including Brooks Brothers Canada, from an office located in Connecticut.<sup>9</sup>

13. Prior to the Sale Transaction, BB Group managed all merchandise sourcing for the entire Business, including Brooks Brothers Canada, through BB Far East, which acted as a local intermediary between Brooks Brothers and its foreign sourcing base.<sup>10</sup>

14. Following the Sale Transaction (described further below), BB Group no longer owns the Business or the Acquired Assets (other than the Canadian Assets). However,

- (a) BB Group continues to hold leases (including all of Brooks Brothers Canada’s leases) that the Buyer has yet to designate for assumption and assignment or rejection pursuant to its designation rights agreed to in the Asset Purchase Agreement; and
- (b) in addition to its lease, Brooks Brothers Canada continues to own the Canadian Assets until an order is obtained from this Court approving the conveyance of the

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<sup>5</sup> Marotta Affidavit at para 24.

<sup>6</sup> Marotta Affidavit at para 25.

<sup>7</sup> Marotta Affidavit at para 23.

<sup>8</sup> Marotta Affidavit at para 26.

<sup>9</sup> Marotta Affidavit at para 26.

<sup>10</sup> Marotta Affidavit at para 28.

Canadian Acquired Inventory free and clear (and such conveyance subsequently occurs together with the remaining Canadian Assets).

15. Further, pursuant to the terms and conditions of the Asset Purchase Agreement and certain other agreements, BB Group is continuing to operate the stores on the premises of undesignated leases, with BB Group's employees, until such time as those leases are assigned or rejected. However, as detailed further below, all such stores in Canada are currently closed.<sup>11</sup>

## **B. Brooks Brothers Canada**

16. Brooks Brothers Canada is a fully-integrated subsidiary of BBGI, incorporated in Ontario with its registered office in Toronto, Ontario.<sup>12</sup>

17. As at July 4, 2020, the assets of Brooks Brothers Canada had a book value of approximately \$11.8 million and liabilities of approximately \$10 million.<sup>13</sup> For the 11-month period ending July 4, 2020, Brooks Brothers Canada had a loss of approximately \$3.68 million.<sup>14</sup>

18. Brooks Brothers Canada does not own any real property, but conducts business through 12 retail locations leased from third-party landlords.<sup>15</sup> Brooks Brothers Canada has not paid rent for the months of April 2020 through September 2020 on account of store closures due to COVID-19.<sup>16</sup>

19. Certain of Brooks Brothers Canada's leases provide that it is an event of default if Brooks Brothers Canada obtains bankruptcy protection or fails to pay rent.<sup>17</sup> Subject to the automatic stay granted by the U.S. Court and the proposed stay of proceedings requested from this Court, Brooks

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<sup>11</sup> Marotta Affidavit at para 31.

<sup>12</sup> Marotta Affidavit at para 32.

<sup>13</sup> Marotta Affidavit at para 61.

<sup>14</sup> Marotta Affidavit at para 64.

<sup>15</sup> Marotta Affidavit at paras 33-34.

<sup>16</sup> Marotta Affidavit at para 34.

<sup>17</sup> Marotta Affidavit at para 36.

Brothers Canada's landlords may now have the ability to terminate certain leases due to (i) Brooks Brothers Canada's closure of stores and non-payment of rent as a result of COVID-19, and (ii) recent commencement of Chapter 11 proceedings in the United States.<sup>18</sup>

20. As of March 2020, Brooks Brothers Canada employed approximately 63 full-time and 87 part-time employees.<sup>19</sup> Brooks Brothers Canada's employees have been laid off following the onset of the COVID-19 pandemic. All but two of Brooks Brothers Canada's employees are store-level employees.<sup>20</sup> Since the Initial Petition Date, Brooks Brothers Canada's stores have remained closed on account of the COVID-19 pandemic.<sup>21</sup>

21. Due to the COVID-19 pandemic, Brooks Brothers Canada laid off groups of employees as follows:

- (a) hourly employees were laid off on March 17, 2020;
- (b) all but one salaried employee (a human resources manager) were laid off on March 22, 2020; and
- (c) the human resources manager was laid off on April 5, 2020.

Brooks Brothers Canada's employees have been paid all accrued wages up to the date of their respective layoffs, but certain employees have accrued vacation pay that has not been paid out, totaling approximately CAD \$200,000.<sup>22</sup>

22. Prior to the Sale Transaction:

- (a) Brooks Brothers Canada was wholly dependent on the U.S. Chapter 11 Debtors for a wide range of corporate, administrative, and support services (the "**Support Services**").<sup>23</sup> Following the Sale Transaction, the Support Services continue to be provided by the U.S. Chapter 11 Debtors on a transitional basis to the extent

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<sup>18</sup> Marotta Affidavit at para 36.

<sup>19</sup> Marotta Affidavit at para 43.

<sup>20</sup> Marotta Affidavit at para 44.

<sup>21</sup> Marotta Affidavit at para 58.

<sup>22</sup> Marotta Affidavit at para 46.

<sup>23</sup> Marotta Affidavit at para 39.

provided for and in accordance with the terms and conditions of the Asset Purchase Agreement and certain other agreements.<sup>24</sup>

- (b) All back-office support and corporate guidance functions of Brooks Brothers Canada, including in relation to human resources, were provided by the U.S. Chapter 11 Debtors.<sup>25</sup>
- (c) Brooks Brothers Canada's payroll is administered by BBGI.
- (d) Brooks Brothers Canada received sourcing and logistics support from BB Group.<sup>26</sup>

### **C. Secured Debt of Brooks Brothers Canada**

23. Brooks Brothers Canada is a guarantor in respect of outstanding amounts under the Prepetition ABL Facility, described below. This encompasses over \$8.3 million in obligations, including in respect of fees and other financial accommodations, and which amounts are secured by general security granted over the Canadian Acquired Inventory and other current assets.<sup>27</sup>

24. As of the Initial Petition Date, certain of the Chapter 11 Debtors were party to a Credit Agreement, dated as of June 28, 2019 (as amended, the “**ABL Credit Agreement**”), by and among, among others, BBGI, RBA Wholesale, LLC, and Golden Fleece Manufacturing Group, LLC (collectively, the “**Prepetition ABL Borrowers**”), Wells Fargo as administrative agent and collateral agent (in such capacities, the “**Agent**”), and the lenders (the “**Prepetition ABL Lenders**”). Pursuant to this agreement, the Prepetition ABL Lenders agreed to provide the Prepetition ABL Borrowers with (i) a revolving credit facility in a maximum aggregate principal amount equal to \$300 million (of which up to \$30 million is available for the issuance of letters of credit) (the “**Prepetition Revolving Facility**”) and (ii) a “first-in-last-out” term loan facility in an

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<sup>24</sup> Marotta Affidavit at para 41.

<sup>25</sup> Marotta Affidavit at para 49.

<sup>26</sup> Marotta Affidavit at para 51.

<sup>27</sup> Marotta Affidavit at para 62.



aggregate principal amount equal to \$15 million outstanding thereunder (the “**Prepetition FILO Loan**” and, together with the Prepetition Revolving Facility, the “**Prepetition ABL Facility**”).<sup>28</sup>

25. The Prepetition ABL Borrowers’ obligations under the ABL Credit Agreement are guaranteed by Brooks Brothers Canada, and such guarantee is secured by Brooks Brothers Canada’s inventory, credit card receivables, and cash and accounts.<sup>29</sup> Prior to the closing of the Sale Transaction, the obligations under the Prepetition ABL Facility were secured by a first priority security interest and continuing lien (the “**Prepetition ABL Liens**”) on collateral which included, subject to certain exceptions, the Initial Chapter 11 Debtors’ cash and accounts, U.S. inventory, credit card and trade receivables, as well as Brooks Brothers Canada’s cash and accounts, inventory, and credit card receivables.<sup>30</sup> The Agent still retains the Prepetition ABL Lenders’ liens and claims against Brooks Brothers Canada, solely for the benefit of the Chapter 11 Debtors.<sup>31</sup>

#### **D. Recent Events and Restructuring Activities**

26. Like many other retailers, the Business has been negatively impacted by significant operational and manufacturing challenges as well as shifting retail industry trends in recent years.<sup>32</sup> Given these headwinds, in 2019, the Company began exploring strategic alternatives, including a potential merger or sale of the assets of the Company (the “**Prepetition Sale Process**”). BB Group was advised by PJ Solomon, L.P. (“**PJ Solomon**”). In April 2019, PJ Solomon contacted a significant number of potential domestic and international investors, including both strategic and financial investors, to solicit interest in the Business, including all non-U.S. operations.<sup>33</sup>

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<sup>28</sup> Marotta Affidavit at para 66.

<sup>29</sup> Marotta Affidavit at para 68.

<sup>30</sup> Marotta Affidavit at para 69.

<sup>31</sup> Marotta Affidavit at para 69./

<sup>32</sup> Marotta Affidavit at para 71.

<sup>33</sup> Marotta Affidavit at para 73.

27. Unfortunately, as PJ Solomon progressed in its discussions with potential investors, the impact of COVID-19 began to materialize. Beginning in late February 2020, BB Group began to face unprecedented challenges associated with the spread of COVID-19.<sup>34</sup> As the pandemic spread, BB Group's international operations suffered, and the Chapter 11 Debtors' foreign vendors found themselves unable to operate. This eroded the borrowing base under the Prepetition ABL Facility, reducing the Chapter 11 Debtors' liquidity.<sup>35</sup>

28. In March 2020, BB Group was forced to shut-down nearly all of its retail and outlet stores worldwide.<sup>36</sup> This severely jeopardized BB Group's ability to consummate any previously contemplated transaction in the Prepetition Sale Process.<sup>37</sup> The pandemic forced BB Group and its advisors to re-assess the appropriate strategic transaction and refocus their efforts on a restructuring through a chapter 11 filing.<sup>38</sup>

#### **E. Overview of the Chapter 11 Cases and the Sale Transaction**

29. On July 8, 2020, each of the Initial Chapter 11 Debtors filed voluntary petitions for relief (the "**Initial Petitions**") pursuant to Chapter 11 of the U.S. Bankruptcy Code with the U.S. Court.<sup>39</sup> On that day, the Initial Chapter 11 Debtors filed several first day motions with the U.S. Court, for which the U.S. Court entered interim or final orders on July 10, 2020. BBGI is not seeking recognition of any orders other than the Foreign Representative Order and the Second Joint Administration Order, until such time as the 'All Orders' Order is entered by the U.S. Court, which is anticipated after the hearing on September 24, 2020.

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<sup>34</sup> Marotta Affidavit at para 75.

<sup>35</sup> Marotta Affidavit at para 75.

<sup>36</sup> Marotta Affidavit at para 74.

<sup>37</sup> Marotta Affidavit at para 74.

<sup>38</sup> Marotta Affidavit at para 76.

<sup>39</sup> Marotta Affidavit at para 8.

30. Brooks Brothers Canada did not seek relief under Chapter 11 with the U.S. Court.<sup>40</sup> This was because BB Group was attempting to pursue an out-of-court restructuring for Brooks Brothers Canada, potentially through the sale of the equity in Brooks Brothers Canada, and wished to defer the costs of a CCAA proceeding until such Canadian relief became necessary.<sup>41</sup>

31. BB Group entered into a sales and marketing process for its assets, supervised by the U.S. Court, which culminated in the Sale Transaction. On July 23, 2020, 10 of the Initial Chapter 11 Debtors and Brooks Brothers Canada (the “**Sellers**”) entered into a stalking horse asset purchase agreement (the “**Stalking Horse Agreement**”) with the Buyer, under which the Buyer would acquire substantially all of BB Group’s assets on a going-concern basis for \$305 million.<sup>42</sup> The Stalking Horse Agreement excluded inventory located in Canada that could not be transferred to the Buyer free and clear of all encumbrances.<sup>43</sup>

32. Concurrently, the Initial Chapter 11 Debtors negotiated with the Creditors’ Committee, the Agent, and the Prepetition ABL Lenders and achieved a global resolution of claims. This resolution provides for, among other things, the compromise and satisfaction of the Prepetition ABL Lenders’ claims for approximately \$205.8 million, and for the remainder of the sale proceeds to be delivered to the Initial Chapter 11 Debtors’ estates.<sup>44</sup>

33. On August 3, 2020, the U.S. Court entered an order approving auction and bidding procedures (the “**Bidding Procedures**”) for the Chapter 11 Debtors’ assets.<sup>45</sup> After the Agent submitted a credit bid, the Buyer improved its bid by, among other things, increasing the purchase

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<sup>40</sup> Marotta Affidavit at para 9.

<sup>41</sup> Marotta Affidavit at para 9.

<sup>42</sup> Marotta Affidavit at para 81.

<sup>43</sup> Marotta Affidavit at para 91.

<sup>44</sup> Marotta Affidavit at para 87.

<sup>45</sup> Marotta Affidavit at para 83.

price to \$325 million. This offer was accepted and reflected in an amendment to the Stalking Horse Agreement (as amended, the “**Asset Purchase Agreement**”).<sup>46</sup> The Buyer was declared the successful bidder and the Asset Purchase Agreement was selected as the successful bid.

34. Material terms of the Asset Purchase Agreement include:

- (a) The purchase price for all of the Acquired Assets is \$325 million, subject to certain adjustments;
- (b) The Acquired Assets are all of Sellers’ right, title and interest, in and to all of the properties, rights, interests and other tangible and intangible assets of Sellers used in, held for use in, or relating to the Business (as defined in the Asset Purchase Agreement), subject to certain exceptions;
- (c) Inventory located in Canada that the Sellers cannot transfer to Buyer free and clear is excluded from the Acquired Assets;
- (d) The Buyer acquired certain liabilities (the “**Acquired Liabilities**”), including:
  - (i) all liabilities under assumed leases and transferred contracts arising from and after the closing date,
  - (ii) Buyer Cure Costs (as defined in the Asset Purchase Agreement) in respect of assumed leases,
  - (iii) liabilities relating to or arising out of the ownership, possession, operation or use of any Acquired Assets from and after the closing date, and
  - (iv) liabilities in respect of transferred employees after closing.
- (e) The Buyer has the right to designate each of the Sellers’ leases (other than those expressly assumed in the Asset Purchase Agreement) (the “**Designated Leases**”) for (i) assumption and assignment or (ii) rejection until the later of either December 31, 2020 or the date on which the U.S. Court enters an order confirming a reorganization and liquidation plan concerning the Sellers in the Chapter 11 Cases (the “**Designation Rights Period**”). Any Designated Lease not designated by such date will be deemed rejected;

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<sup>46</sup> Marotta Affidavit at para 86.

- (f) The Buyer is required to designate for assumption and assignment no fewer than 125 leases.<sup>47</sup>

35. To date, none of Brooks Brothers Canada's leases have been designated for either assumption and assignment or rejection.<sup>48</sup>

36. On August 14, 2020, the U.S. Court issued the Sale Order approving the Sale Transaction of the Acquired Assets to the Buyer. After the Asset Purchase Agreement was approved, but before the Sale Transaction closed, the parties to the Asset Purchase Agreement determined that it would be beneficial for Brooks Brothers Canada to obtain the protections of the U.S. Bankruptcy Code and the prior orders of the U.S. Court. Doing so would aid in the implementation of the Sale Transaction and, in particular, the free and clear sale of the Canadian Acquired Inventory to the Buyer for the benefit of the Chapter 11 Debtors' estates.<sup>49</sup>

37. Accordingly, on August 31, 2020, the Sellers and the Buyer agreed to amend the Asset Purchase Agreement to, among other things, specifically address the process for the acquisition of the Canadian Assets, including the Canadian Acquired Inventory.<sup>50</sup> Pursuant to this amendment, Brooks Brothers Canada agreed to seek out and obtain an order from this Court authorizing a sale of the Canadian Acquired Inventory free and clear of all liens and charges to the Buyer.<sup>51</sup>

38. On September 10, 2020, Brooks Brothers Canada filed a voluntary petition for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code with the U.S. Court. That day, the Chapter 11 Debtors filed a motion to apply all previous orders in the Chapter 11 Cases to Brooks Brothers

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<sup>47</sup> Marotta Affidavit at para 88.

<sup>48</sup> Marotta Affidavit at para 97.

<sup>49</sup> Marotta Affidavit at para 92.

<sup>50</sup> Marotta Affidavit at para 95.

<sup>51</sup> Marotta Affidavit at para 98.

Canada (again, the “**All Orders’ Order**”). The ‘All Orders’ Order motion will be heard on September 24, 2020.

39. On September 11, 2020, the U.S. Court entered an order authorizing BBGI to act as foreign representative of the Chapter 11 Debtors in these CCAA proceedings (the “**Foreign Representative Order**”). The U.S. Court also entered an order directing the administration of Brooks Brothers Canada’s Chapter 11 Case jointly with the other Chapter 11 Cases (the “**Second Joint Administration Order**”, and together with the Foreign Representative Order, the “**Foreign Orders**”).<sup>52</sup>

#### **F. Anticipated Path Forward for Brooks Brothers Canada**

40. Since entering the Asset Purchase Agreement, the Buyer and BB Group have had discussions regarding the anticipated path forward in Canada during the Designation Rights Period, which runs until at least December 31, 2020. These discussions are ongoing, and the parties are hopeful that the discussions will lead to the continued operations of the Canadian stores and continued employment for some or all of Brooks Brothers Canada’s Canadian employees.<sup>53</sup>

#### **G. Need for Relief Under the CCAA**

41. A CCAA stay of proceedings is needed to ensure that the business and assets of Brooks Brothers Canada are safeguarded and the Sale Transaction can be implemented. As noted above, under certain of Brooks Brothers Canada’s leases it is an event of default if Brooks Brothers Canada seeks bankruptcy protection, such that its landlords may attempt to terminate such leases.<sup>54</sup>

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<sup>52</sup> Marotta Affidavit at para 105.

<sup>53</sup> Marotta Affidavit at para 100.

<sup>54</sup> Marotta Affidavit at para 106.

Therefore, pending the entering of the 'All Orders' Order, a CCAA stay is required to prevent landlords from attempting to terminate leases on any of Brooks Brothers Canada's 12 stores.

42. If protection is granted under the CCAA, the Foreign Representative anticipates returning to seek recognition of the 'All Orders' Order and for such other relief as may be deemed necessary.<sup>55</sup> At present, the Foreign Representative is not seeking a court-ordered charge over Brooks Brothers Canada's assets in favour of BBGI as security over the contemplated intercompany transfers necessary to fund these proceedings. However, as the restructuring develops, such additional relief may be sought.<sup>56</sup>

### **PART III -THE ISSUES**

43. The issues to be determined on this motion are:

- (a) Are the Chapter 11 Cases a "foreign main proceeding" pursuant to Part IV of the CCAA?
- (b) If so, are the Chapter 11 Debtors entitled to the relief sought in the Initial Recognition Order and Supplemental Order, including,
  - (i) Granting the Stay of Proceedings;
  - (ii) Recognizing the Foreign Orders;
  - (iii) Appointing A&M as Information Officer;
  - (iv) Granting the Administration Charge; and
  - (v) Granting the Directors' Charge?

### **PART IV - THE LAW**

#### **A. The Chapter 11 Cases are Foreign Main Proceedings**

##### **(a) The Chapter 11 Cases are Foreign Proceedings**

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<sup>55</sup> Marotta Affidavit at para 17.

<sup>56</sup> Marotta Affidavit at para 107.

44. The purpose of Part IV of the CCAA is to facilitate the administration of cross-border insolvencies and create a system under which foreign insolvency proceedings can be recognized in Canada. Section 44 of the CCAA provides as follows:

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.<sup>57</sup>

45. Pursuant to Section 46(1) of the CCAA, a person who is a foreign representative may apply to the court for recognition of a foreign proceeding in respect of which that person is a foreign representative.<sup>58</sup> In determining whether an applicant qualifies for recognition under Part IV of the CCAA, this Court may consider any evidence of the existence of the foreign proceeding and of the foreign representative's authority that it considers appropriate.<sup>59</sup>

46. Pursuant to Section 47 of the CCAA, two requirements must be met for an order recognizing a foreign proceeding: (a) the proceeding is a "foreign proceeding"; and (b) the applicant is a "foreign representative" in respect of that foreign proceeding.<sup>60</sup>

47. In the Chapter 11 Cases, the Chapter 11 Debtors sought the appointment of BBGI as the foreign representative of the Chapter 11 Debtors (including Brooks Brothers Canada) within the

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<sup>57</sup> CCAA s. 44.

<sup>58</sup> CCAA s. 46(1)

<sup>59</sup> CCAA s. 46(4); [\*Probe Resources Ltd \(Re\)\*, 2011 BCSC 552](#) [*Probe*] at paras 14-16.

<sup>60</sup> CCAA s. 47.



meaning of subsection 45(1) of the CCAA. The Foreign Orders, which granted such representative status, were entered by the U.S. Court on entered by the U.S. Court on September 11, 2020.

48. Copies of the Foreign Orders are provided in the record accompanying this Application. Certified copies of the Foreign Orders are not yet available because, due to the COVID-19 pandemic, the U.S. Court is only processing requests for certified copies of orders on one day per week.<sup>61</sup> Where certified copies of relevant documents are not available, this Court is expressly empowered by section 46(4) of the CCAA to consider appropriate alternative evidence. Courts have relied on uncertified copies of relevant court documents to make foreign recognition orders in prior Part IV proceedings where certified copies were unavailable.<sup>62</sup>

49. Courts have consistently recognized proceedings under Chapter 11 of the United States Bankruptcy Code to be foreign proceedings for the purposes of the CCAA.<sup>63</sup> Pursuant to the foregoing, as BBGI has been appointed a “foreign representative” in the Chapter 11 Cases by the U.S. Court, it is submitted that this Court should recognize the Chapter 11 Cases as a “foreign proceeding” within the meaning of subsection 47(1) of the CCAA.

**(b) The Chapter 11 Cases are Foreign Main Proceedings**

50. Once it has been determined that a proceeding is a “foreign proceeding”, the Court is required, pursuant to Section 47(2) of the CCAA, to specify in its Order whether the foreign proceeding is a “foreign main proceeding” or a “foreign non-main proceeding.”<sup>64</sup> A “foreign main

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<sup>61</sup> Marotta Affidavit at para 20.

<sup>62</sup> CCAA s. 46(4); *Probe* at paras 14-16.

<sup>63</sup> [\*Caesars Entertainment Operating Company, Co. \(Re\)\*, 2015 ONSC 712](#) [*Caesars*] at para 28; [\*Lightsquared LP \(Re\)\*, 2012 ONSC 2994](#) [*Lightsquared*] at paras 18-19; [\*Babcock & Wilcox Canada Ltd., \(Re\)\*, 2000 CarswellOnt 704 \(S.C.J. \[Commercial List\]\)](#) at para 13.

<sup>64</sup> CCAA s. 47(2).

proceeding” is defined as a “foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests” (“**COMI**”).<sup>65</sup>

51. The CCAA does not provide a definition of COMI. Section 45(2) of the CCAA establishes a rebuttable presumption that, in the absence of proof to the contrary, the location of a debtor company’s registered office is deemed to be its COMI.<sup>66</sup> Sufficient evidence regarding the debtor company’s operations, as outlined below, can rebut this presumption.

52. Brooks Brothers Canada’s registered head office is located in Toronto.<sup>67</sup> However, where a Canadian entity is operating as part of a larger corporate group, several Canadian authorities have considered how COMI should be determined. In *Elephant & Castle*,<sup>68</sup> Justice Morawetz (as he then was) identified what he considered to be the most significant factors:

However, it seems to me, in interpreting COMI, the following factors are usually significant:

- (a) the location of the debtor’s headquarters or head office functions or nerve centre;
- (b) the location of the debtor’s management; and
- (c) the location which significant creditors recognize as being the centre of the company’s operations.<sup>69</sup>

53. This Court has previously determined that where a Canadian company is the only Canadian entity among multiple Chapter 11 debtors, and all of the other Chapter 11 debtors are incorporated in the United States, the COMI for the Canadian debtor is the United States.<sup>70</sup>

54. Based on the foregoing jurisprudence, the following factors support a finding that Brooks Brothers Canada’s COMI is in the United States:

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<sup>65</sup> CCAA s. 45(1).

<sup>66</sup> CCAA s. 45(2).

<sup>67</sup> Marotta Affidavit at para 32.

<sup>68</sup> [\*Massachusetts Elephant & Castle Group Inc., \(Re\)\*, 2011 ONSC 4201](#) (S.C.J. [Commercial List]) [*Elephant & Castle*].

<sup>69</sup> [\*Elephant & Castle\*](#) at para 30.

<sup>70</sup> [\*Caesars\*](#) at para 35.

- (a) Brooks Brothers Canada's business is managed on a consolidated basis and closely integrated into BB Group's business as a whole, and its registered office is listed in Canada only for corporate purposes;<sup>71</sup>
- (b) The "nerve centre" of Brooks Brothers Canada, from which its corporate and head office functions emanate, is in the United States. Brooks Brothers Canada is wholly dependent on BB Group for all corporate, administrative, and back office functions, which are provided from the Business's head office in the United States;<sup>72</sup>
- (c) Brooks Brothers Canada has only two management-level employees in Canada, and is effectively managed out of the United States;<sup>73</sup>
- (d) Creditors recognize BB Group as an American company. Other than Brooks Brothers Canada and BB Far East, all of the remaining Chapter 11 Debtors are incorporated under U.S. law, have their registered head office and corporate headquarters in the U.S., carry out their business in the U.S. and have all or substantially all of their assets located in the United States;<sup>74</sup>
- (e) Brooks Brothers Canada is entirely dependent on the purchasing and manufacturing power of BB Group for its merchandise, and on its own could not replicate the supply arrangements necessary for its continued functioning;<sup>75</sup>
- (f) Brooks Brothers Canada holds no intellectual property of its own, and all or substantially all of the trademarks and intellectual property relied on by Brooks Brothers Canada are owned by the U.S. Chapter 11 Debtors;<sup>76</sup>
- (g) In the fiscal year ending in 2019, revenues from Brooks Brothers Canada made up less than 3% of BB Group's total revenues.<sup>77</sup>

55. Since all the Chapter 11 Debtors except Brooks Brothers Canada and BB Far East have registered offices in the United States, and since a review of Brooks Brothers Canada's business indicates that its COMI is in the United States, the Foreign Representative submits that the COMI of all the Chapter 11 Debtors is in the United States and therefore the Chapter 11 Cases should be recognized as a "foreign main proceeding".

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<sup>71</sup> Marotta Affidavit at para 110.

<sup>72</sup> Marotta Affidavit at paras 39-40.

<sup>73</sup> Marotta Affidavit at para 44.

<sup>74</sup> Marotta Affidavit at para 109.

<sup>75</sup> Marotta Affidavit at para 110.

<sup>76</sup> Marotta Affidavit at para 42.

<sup>77</sup> Marotta Affidavit at para 23.

**B. The Initial Recognition Order and Supplemental Order should be granted**

**(a) Stay of proceedings is required and appropriate**

56. Section 48(1) of the CCAA provides that once the Court has found that a foreign proceeding is a “foreign main proceeding”, it is required to grant certain mandatory relief, including a stay of proceedings:

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.<sup>78</sup>

57. Unlike an initial stay in a plenary CCAA proceeding, granted pursuant to the Court’s authority under section 11.02, a mandatory stay pursuant to section 48(1) is not limited in duration. Once an application for an Initial Recognition Order is granted, this Court must grant a stay under section 48(1)(a) “for any period that the court considers necessary”.

58. Section 48(2) is not a bar to granting a longer initial stay period, and section 11.02 does not govern proceedings under Part IV of the CCAA. Section 48(2) cautions that any order made under section 48(1) “must be consistent with any order that may be made under this Act” – ensuring that the scope of a stay authorized under Part IV of the CCAA comports with the scope

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<sup>78</sup> CCAA s. 48(1).

of stays in conventional CCAA proceedings and does not restrain stakeholders from actions they would otherwise be able to take under Canadian insolvency law. However, section 48(2) does not import holus-bolus all the requirements of Parts II and III of the CCAA into orders made under section 48(1). Parliament granted CCAA Courts broad discretion to order a stay “for any period the court considers necessary” when recognizing a foreign main proceeding. If Parliament had intended to circumscribe this broad discretion, more restrictive language would have been used.

59. Section 11.02 of the CCAA was recently amended by Parliament to provide for a maximum initial stay period of 10 days. If Parliament had intended this 10-day initial stay period to apply to proceedings under Part IV, it could have amended subsection 48(1)(a). It did not do so. The plain meaning of section 48(1)(a) must stand.

60. Multiple Canadian courts have given effect to this language. For instance, in the February 2020 Part IV proceedings respecting Pier 1 Imports, this Court granted an initial recognition order with a stay effective “until otherwise ordered by this Court”.<sup>79</sup> More recently, in the June 2020 Part IV proceedings of GNC Holdings, Inc., this Court granted an interim recognition order with a stay effective “until and unless otherwise ordered by this Court,” and subsequently granted an Initial Recognition Order with a similar open-ended stay.<sup>80</sup>

61. Section 44(d) of the CCAA provides that Part IV proceedings must promote “the protection and the maximization of the value of debtor company’s property”. In keeping with this goal, and in the interest of preserving value for creditors, the Foreign Representative and its stakeholders wish to pursue an efficient and cost-effective proceeding in Canada. Nevertheless, it is expected

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<sup>79</sup> *In the matter of a plan of compromise or arrangement of Pier 1 Imports, Inc.*, Court File No. CV-20-00636511-00CL, Toronto: ONSC [Comm List], [Order of Justice Hainey dated 18 February, 2020](#) at para 4.

<sup>80</sup> *In the matter of a plan of compromise or arrangement of GNC Holdings, Inc.*, Court File No. CV-20-00642970-00CL, Toronto: ONSC [Comm List], [Order of Justice Koehnen dated 24 June, 2020](#) (the Interim Recognition Order) and [Order of Justice Koehnen dated 29 June, 2020](#) (the Initial Recognition Order).

that the U.S. Court will enter the ‘All Orders’ Order on September 24, 2020. Accordingly, the Foreign Representative anticipates returning before this Court to seek recognition of the ‘All Orders’ Order within days after September 24.

62. In addition to the automatic relief provided for in section 48, section 49 of the CCAA grants this Court broad discretion to make any order that it considers appropriate, if it is satisfied that the order is necessary for the protection of the debtor company’s property or the interests of creditors.<sup>81</sup> The Court may make such orders on any terms and conditions appropriate in the circumstances.<sup>82</sup>

63. In light of the requirements of the CCAA, Brooks Brothers Canada and the other Chapter 11 Debtors require a stay of proceedings and recognition of the Foreign Orders as a necessary step in implementing the Sale Transaction. Brooks Brothers Canada requires the benefit of a CCAA stay of proceedings to safeguard the enterprise value of its Canadian operations while it seeks to obtain the ‘All Orders’ Order described above.<sup>83</sup>

**(b) Recognition of the Foreign Orders is Appropriate**

64. The Foreign Representative is seeking the Initial Recognition Order and the Supplemental Order, which recognize and give effect to the Foreign Representative Order and the Second Joint Administration Order.<sup>84</sup>

65. The central principle governing Part IV of the CCAA is comity, which mandates that Canadian courts should recognize and enforce the judicial acts of other jurisdictions, provided that those other jurisdictions have assumed jurisdiction on a basis consistent with principles of order,

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<sup>81</sup> CCAA s. 49 (1).

<sup>82</sup> CCAA s. 50.

<sup>83</sup> Marotta Affidavit at para 106.

<sup>84</sup> Marotta Affidavit at para 17.

predictability and fairness. In particular, courts in Canada and the United States have made efforts to complement, coordinate and accommodate each other's proceedings.<sup>85</sup>

66. Canadian courts have emphasized the importance of comity and cooperation in cross-border insolvency proceedings to avoid multiple proceedings, inconsistent judgments and general uncertainty.<sup>86</sup> In furtherance of the principle of comity, Canadian courts should allow a foreign court to exercise principal control over the insolvency process if that other jurisdiction has the closest connection to the proceeding. Where there is interdependence between operations of a company in the United States and Canada, granting relief under Part IV is particularly important.<sup>87</sup>

67. The granting of the Initial Recognition Order and the Supplemental Order is appropriate for the following reasons:

- (a) The U.S. Court has appropriately taken jurisdiction over the Chapter 11 Cases, so comity will be furthered by this Court's recognition of and support for the Chapter 11 Cases already under way in the United States;
- (b) Coordination of proceedings in the two jurisdictions will ensure equal and fair treatment of all stakeholders, whether they are located in the United States or Canada;
- (c) Given the close connection between Brooks Brothers and the United States, it is reasonable and sensible for the U.S. Court to have principal control over the insolvency process. This will produce the most efficient restructuring for the benefit of all stakeholders;
- (d) The Chapter 11 Debtors must act promptly to give effect to the Sale Transaction. In particular, the Chapter 11 Debtors must take prompt steps to safeguard Brooks Brothers Canada's business and assets to ensure they can be conveyed free and clear of all encumbrances as contemplated by the Sale Transaction.
- (e) The Canadian and U.S. operations of Brooks Brothers are highly integrated.

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<sup>85</sup> [Babcock](#), at paras 4-13; [Matlack Inc. \(Re\)](#), 2001 CarswellOnt 1830 (S.C.J. [Commercial List]) [*Matlack*] at paras 3, 9; CCAA, s. 52(1).

<sup>86</sup> [Matlack](#) at para 3.

<sup>87</sup>

**(c) A&M should be appointed Information Officer**

68. It has become common for a court to appoint an information officer in proceedings under Part IV of the CCAA, pursuant to the court's broad discretion under section 49.<sup>88</sup> An information officer helps effect cooperation between the Canadian foreign recognition proceeding and the foreign representative and foreign court, as required by section 52(1) of the CCAA.<sup>89</sup> The Foreign Representative seeks to appoint A&M as the information officer (the "**Information Officer**") in this proceeding. A&M is a licensed insolvency trustee in Canada and its principals have acted as an information officer in several previous ancillary proceedings (both under Part IV of the CCAA as well as the former section 18.6 of the CCAA).<sup>90</sup>

**(d) The Administration Charge should be Granted**

69. The proposed Supplemental Order provides that the Information Officer, along with its counsel, Torys LLP, and the Chapter 11 Debtors' Canadian counsel, Osler, Hoskin and Harcourt LLP, will be granted a Court-ordered charge on the present and future assets, property and undertakings of Brooks Brothers Canada ("**Canadian Property**"), as security for their respective fees and disbursements relating to services rendered in respect of this proceeding up to a maximum of CAD \$350,000 (the "**Administration Charge**"). The Administration Charge is proposed to have first priority over all other charges.

70. The Foreign Representative submits that the amount of the charge is reasonable in the circumstances, having regard to the size and complexity of these proceedings and the roles that will be required of the proposed Information Officer and its legal counsel.

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<sup>88</sup> CCAA s. 49(1).

<sup>89</sup> *Digital Domain Media Group Inc, (Re)*, [2012 BCSC 1565](#) [*Digital Domain*] at para 31; CCAA s. 52(1).

<sup>90</sup> Marotta Affidavit at para 114.



**(e) The Directors' Charge should be Granted**

71. The proposed Supplemental Order provides for the granting of a Directors' Charge of in favour of Brooks Brothers Canada's directors and officers on the Canadian Property (the "**Directors' Charge**") to act as security for the indemnification obligations for directors' and officers' potential liabilities.<sup>91</sup> It is proposed that the Directors' Charge will be in the initial in the amount of CAD \$200,000 and would be subordinate to the proposed Administration Charge.

72. The Directors' Charge is necessary so that Brooks Brothers Canada may benefit from the directors' and officers' experience with the business as they guide the proposed liquidation. The Directors' Charge would only be relied upon to the extent of the insufficiency of the existing D&O Insurance. The amount of the Directors' Charge is appropriate. The Foreign Representative reserves the right to seek an increase to the Directors' Charge should circumstances require it.

**PART V -RELIEF REQUESTED**

73. For the foregoing reasons, the Foreign Representative requests that this Honourable Court grant the Initial Recognition Order and the Supplemental Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 14<sup>th</sup> day of September, 2020:



**OSLER, HOSKIN & HARCOURT, LLP**

P.O. Box 50, 1 First Canadian Place

Toronto, ON M5X 1B8

Lawyers for the Applicant

**TO: THE ATTACHED SERVICE LIST**

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<sup>91</sup> Marotta Affidavit at para 120.

## SCHEDULE A -LIST OF AUTHORITIES

### Case Law

1. [Angiotech Pharmaceuticals Inc, \(Re\), 2011 BCSC 115](#)
2. [Babcock & Wilcox Canada Ltd., \(Re\), 2000 CarswellOnt 704 \(S.C.J. \[Commercial List\]\)](#)
3. [Caesars Entertainment Operating Company, Co. \(Re\), 2015 ONSC 712](#)
4. [Digital Domain Media Group Inc, \(Re\), 2012 BCSC 1565](#)
5. [Lightsquared LP \(Re\), 2012 ONSC 2994](#)
6. [Massachusetts Elephant & Castle Group Inc., \(Re\), 2011 ONSC 4201 \(S.C.J. \[Commercial List\]\)](#)
7. [Matlack Inc, \(Re\), 2001 CarswellOnt 1830 \(S.C.J. \[Commercial List\]\)](#)
8. [Probe Resources Ltd,\(Re\), 2011 BCSC 552](#)

## SCHEDULE B -STATUTES

### *Companies' Creditors Arrangement Act, R.S.C., 1985, c. C-36*

#### **Stays, etc. — initial application**

**11.02 (1)** A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the 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 company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

**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.

#### **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.

### **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.

[...]

### **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.

[...]

### **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.

[...]

### **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.

[...]

### **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.

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C- 36, AS AMENDED** Court File No:

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BROOKS BROTHERS GROUP, INC., BROOKS BROTHERS FAR EAST LIMITED, BBD HOLDING 1, LLC, BBD HOLDING 2, LLC, BBDI, LLC, BROOKS BROTHERS INTERNATIONAL, LLC, BROOKS BROTHERS RESTAURANT, LLC, DECONIC GROUP LLC, GOLDEN FLEECE MANUFACTURING GROUP, LLC, RBA WHOLESALE, LLC, RETAIL BRAND ALLIANCE GIFT CARD SERVICES, LLC, RETAIL BRAND ALLIANCE OF PUERTO RICO, INC., 696 WHITE PLAINS ROAD, LLC, AND BROOKS BROTHERS CANADA LTD.**

**APPLICATION OF BROOKS BROTHERS GROUP, INC. 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**  
Proceeding commenced at Toronto

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