



**First Report of  
KSV Kofman Inc. as  
Information Officer of  
Hollander Sleep Products, LLC,  
Hollander Sleep Products Canada Limited,  
Dream II Holdings, LLC,  
Hollander Home Fashions Holdings, LLC,  
Pacific Coast Feather, LLC,  
Hollander Sleep Products Kentucky, LLC  
and Pacific Coast Feather Cushion, LLC**

July 3, 2019

## Contents

	Page
1.0 Introduction.....	1
1.1 Purposes of this Report.....	2
1.2 Currency .....	3
1.3 Restrictions .....	3
2.0 Background .....	3
3.0 Proposed US Court Orders to be Recognized by the Canadian Court .....	4
4.0 Proposed Recognition of US Court Orders .....	6
4.1 The Final DIP ABL Order and Second Interim DIP Term Order .....	6
4.2 The Bid Procedures Order .....	9
4.3 The Final Cash Management Order .....	11
4.4 The Bar Date Order.....	12
5.0 Conclusion and Recommendation .....	13

## Appendices

Appendix	Tab
Initial Recognition Order dated May 23, 2019 .....	A
Supplemental Order dated May 23, 2019 (without schedules) .....	B
Report of the Proposed Information Officer, May 23, 2019 (without appendices) .....	C
Endorsement of Justice Hainey dated May 30, 2019 .....	D
Stalking Horse Bidder Fee Summary .....	E
Globe and Mail notice dated June 27, 2019 .....	F



COURT FILE NO.: CV19-620484-00CL

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 HOLLANDER SLEEP PRODUCTS, LLC,  
HOLLANDER SLEEP PRODUCTS CANADA LIMITED, DREAM II HOLDINGS, LLC,  
HOLLANDER HOME FASHIONS HOLDINGS, LLC, PACIFIC COAST FEATHER, LLC,  
HOLLANDER SLEEP PRODUCTS KENTUCKY, LLC AND  
PACIFIC COAST FEATHER CUSHION, LLC

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

FIRST REPORT OF KSV KOFMAN INC.  
AS INFORMATION OFFICER

JULY 3, 2019

## 1.0 Introduction

1. On May 19, 2019, Hollander Sleep Products, LLC (the "Foreign Representative"), Dream II Holdings, LLC, Hollander Home Fashions Holdings, LLC, Pacific Coast Feather, LLC, Hollander Sleep Products Kentucky, LLC, Pacific Coast Feather Cushion, LLC (collectively, the "US Debtors") and Hollander Sleep Products Canada Limited (the "Canadian Debtor" and together with the US Debtors, the "Chapter 11 Debtors") commenced proceedings by filing voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York (the "US Court") (the "Chapter 11 Proceedings").
2. On May 21, 2019, the US Court heard the Chapter 11 Debtors' first day motions and granted certain orders on May 22, 2019 and May 23, 2019 (collectively, the "First Day Orders").
3. On May 23, 2019, the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court") issued the following orders pursuant to Part IV of the *Companies' Creditors Arrangement Act* ("CCAA"):
  - a) the Initial Recognition Order (Foreign Main Proceeding), a copy of which is attached as Appendix "A", which, *inter alia*, recognizes the Chapter 11 Proceedings as a "foreign main proceeding" and recognizes the Foreign Representative as the "foreign representative", as defined in section 45 of the CCAA, and stays all proceedings against the Chapter 11 Debtors; and

- b) the Supplemental Order (Foreign Main Proceeding) (the “Supplemental Order”), a copy of which is attached as Appendix “B” (without schedules), which, *inter alia*, appoints KSV Kofman Inc. (“KSV”) as Information Officer (in such capacity, the “Information Officer”) with respect to the Chapter 11 Debtors, grants certain stays as set out therein, grants the Administration Charge and the DIP ABL Charge (each as defined in the Supplemental Order) and recognizes certain of the First Day Orders, being the (i) Foreign Representative Order; (ii) Joint Administration Order; (iii) Interim Employee Wages Order; (iv) Interim Cash Management Order; (v) Interim DIP Order; (vi) Interim Critical Vendors and Shippers Order; and (vii) Interim Customer Programs Order (each as defined in the Supplemental Order).
- 4. On June 19, 2019, the Chapter 11 Debtors filed a disclosure statement (the “Disclosure Statement”) with the US Court. The Disclosure Statement provides, *inter alia*, information regarding the affairs and the contemplated restructuring of the Chapter 11 Debtors to enable stakeholders to make an informed decision about the Chapter 11 Debtors’ Joint Plan of Reorganization (the “Plan”).
  - 5. On June 21, 2019, the US Court granted an order which establishes deadlines for filing proofs of claim, approving procedures for submitting proofs of claim, approving notice thereof and granting related relief (the “Bar Date Order”).
  - 6. On July 1, 2019, the US Court heard certain second day motions that had been filed by the Chapter 11 Debtors and, on July 2 and 3, 2019, the US Court entered orders in respect of such motions.
  - 7. This report (“Report”) has been filed with the Canadian Court in KSV’s capacity as Information Officer.

## 1.1 Purposes of this Report

- 1. The purposes of this Report are to:
  - a) provide an update on the Chapter 11 Proceedings and a summary of the US Court Orders for which recognition is being sought from this Court;
  - b) provide the Information Officer’s commentary on the reasonableness of the Foreign Representative’s request that this Court recognize:
    - i. the order granted by the US Court on July 3, 2019, pursuant to which, *inter alia*, the maximum amount available under the \$90 million debtor-in-possession asset based lending credit facility among the Chapter 11 Debtors and Wells Fargo Bank, National Association (the “DIP ABL Agent”), as agent for and on behalf of itself and other lenders (collectively, the “DIP ABL Lenders”) (the “DIP ABL Facility”) was approved on a final basis (the “Final DIP ABL Order”);

- ii. the order granted by the US Court on July 3, 2019, pursuant to which, *inter alia*, the bidding procedures, the dates and deadlines in connection with such bidding procedures and the approval of the sale, and the manner of notice of the auction were authorized and approved (the “Bid Procedures Order”);
  - iii. the Bar Date Order; and
  - iv. the order granted by the US Court on July 2, 2019, pursuant to which, *inter alia*, the Chapter 11 Debtors are authorized to continue using the existing cash management system and honour any prepetition obligations related to its use (the “Final Cash Management Order”); and
- c) recommend that this Court grant the relief being sought by the Foreign Representative.

## 1.2 Currency

1. All currency references in this Report are to US dollars.

## 1.3 Restrictions

1. In preparing this Report, the Information Officer has relied upon unaudited financial information prepared by the Chapter 11 Debtors’ representatives, the Chapter 11 Debtors’ books and records and discussions with the Chapter 11 Debtors’ Canadian counsel and financial advisor.
2. The Information Officer has not performed an audit or other verification of such information. An examination of the Chapter 11 Debtors’ financial forecasts as outlined in the *Chartered Professional Accountants of Canada Handbook* has not been performed. Future oriented financial information relied upon in this Report is based on the Chapter 11 Debtors’ assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Information Officer expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Report or relied upon by the Information Officer in its preparation of this Report.

## 2.0 Background

1. The Chapter 11 Debtors operate in the bedding products market, manufacturing pillows, comforters, mattress pads and other bedding products. The Chapter 11 Debtors produce bedding items for certain well-known brands, including Ralph Lauren®, Simmons®, Beautyrest®, Nautica® and Waverly®.
2. The Canadian Debtor is the Chapter 11 Debtors’ only operating entity in Canada and operates from leased manufacturing facilities in Toronto and Montreal. There are approximately 240 employees of the Canadian Debtor – its workforce is not unionized and it does not maintain any registered pension plans.

3. The Chapter 11 Debtors initiated restructuring efforts in February 2019. In May 2019, Houlihan Lokey Capital, Inc. (“Houlihan”) was retained to develop a sale process (the “Sale Process”). The purpose of the Sale Process is to canvass the market in an effort to identify a sale transaction that is superior, if any, to the restructuring transaction with the Chapter 11 Debtors’ term lenders contemplated by the restructuring support agreement dated as of May 19, 2019 (the “RSA”) and the Plan.
4. On May 30, 2019, the US Trustee appointed an official committee of unsecured creditors in the Chapter 11 Proceedings (the “UCC”). The five members of the UCC are Roind Hometex Co. Ltd (“Roind”), Hangzhou Chuangyuan Feather Co Ltd. (“CY Feather”), Hollander NC IA LLC, Nap Industries, Inc. (“Nap”) and Packaging Corporation of America. The Information Officer understands that three of the five members of the UCC, being Roind, CY Feather and Nap, are creditors and vendors of the Canadian Debtor. The UCC and its counsel are now actively engaged in the Chapter 11 Proceedings.
5. Further information concerning the Chapter 11 Debtors’ background, their corporate structure, the events leading up to the Chapter 11 Proceedings, the RSA and the Plan is provided in the report of the proposed Information Officer dated May 23, 2019 (the “Pre-filing Report”), a copy of which (without appendices) is attached as Appendix “C”, the Affidavit of Marc Pfefferle sworn May 23, 2019, and the Affidavit of Marc Pfefferle sworn July 3, 2019 in support of the Foreign Representative’s motion to the Canadian Court (the “Second Pfefferle Affidavit”). Accordingly, that information is not repeated in this Report. All materials filed with the Canadian Court are available on the Information Officer’s website at <https://www.ksvadvisory.com/insolvency-cases/case/hollander-sleep-products-canada-limited>.

### **3.0 Proposed US Court Orders to be Recognized by the Canadian Court<sup>1</sup>**

1. The Foreign Representative is seeking recognition from this Court of the following US Court Orders:
  - a) the Insurance Order, which authorizes the Chapter 11 Debtors to continue prepetition insurance coverage;
  - b) the Surety Bond Order, which authorizes the Chapter 11 Debtors to maintain their existing surety bond program, consistent with historical practices;
  - c) the Final Critical Vendors Order, which permits the payment of certain prepetition amounts to critical third-party vendors and lien claimants;
  - d) the Final Wages Order, which authorizes the continuation of the Chapter 11 Debtors’ prepetition employee obligations in the ordinary course of business, and permits them to pay and honour certain prepetition claims;

---

<sup>1</sup> Capitalized terms not otherwise defined in this section of the Report have the meanings provided to them in the Second Pfefferle Affidavit.

- e) the Carl Marks Order, which authorizes the Chapter 11 Debtors to employ certain representatives of Carl Marks, a US financial services firm, as Chief Executive Officer and Chief Financial Officer;
- f) the Final Cash Management Order, as summarized in section 4.3 of this Report;
- g) the Final Customer Programs Order, which authorizes the Chapter 11 Debtors to continue to maintain and administer various customer programs for the purposes of maintaining customer loyalty;
- h) the Final DIP ABL Order, which authorizes the advances under the DIP ABL Facility to be used to finance the administration of the Chapter 11 Proceedings, as summarized in section 4.1 of this Report;
- i) the Bid Procedures Order, which authorizes, *inter alia*, the bidding procedures (the “Bidding Procedures”), the dates and deadlines in connection with the Bidding Procedures and approves the manner of notice of the auction (the “Auction”), as summarized in section 4.2 of this Report;
- j) the Final Tax Order, which authorizes the Chapter 11 Debtors to remit prepetition and post-petition taxes in the ordinary course of business;
- k) the Utilities Order, which prohibits utility providers from altering, refusing or discontinuing services to the Chapter 11 Debtors;
- l) the Professionals Order, which authorizes the Chapter 11 Debtors to retain and compensate certain professionals in the ordinary course of business;
- m) the OMNI Order, which authorizes, *nunc pro tunc*, the Chapter 11 Debtors to retain OMNI Management Group (“OMNI”) as administrative advisor with retroactive effect to the petition date. (All US Court materials are available on OMNI’s website – the Information Officer’s website includes a link to OMNI’s case management site so that stakeholders are able to easily locate the relevant case information.);
- n) the Case Management Order, which approves and implements certain notice, case management and administrative procedures;
- o) the Second Interim DIP Term Order, which provides the Chapter 11 Debtors with access to up to \$5 million of incremental financing under the DIP Term Loan Facility, in the discretion of the DIP Term Loan Agent at the direction of the required DIP Term Loan Lenders, during the interim period until a final order regarding the DIP Term Loan Facility is approved and entered by the US Court, which is required to occur on or before July 19, 2019; and
- p) the Bar Date Order, as summarized in section 4.4 of this Report.

2. The Second Pfefferle Affidavit provides further background in support of each US Court Order for which Canadian Court recognition is being sought. The Information Officer has reviewed these orders and discussed the rationale for them, particularly as it relates to the Canadian Debtor, with Canadian counsel to the Foreign Representative. The US Court Orders are consistent with the integrated nature of the Chapter 11 Debtors' operations in the US and Canada and the Information Officer notes that Canadian creditors are proposed to receive the same treatment as US creditors in each of these US Court Orders.

## **4.0 Proposed Recognition of US Court Orders<sup>2</sup>**

1. The Information Officer's summary of the substantive US Court Orders for which Canadian Court approval is being sought is provided in the following sections of this Report. The other US Court Orders are more procedural and/or administrative and, accordingly, are not detailed in this Report.

### **4.1 The Final DIP ABL Order and Second Interim DIP Term Order**

1. The attributes of the \$90 million DIP ABL Facility, the Information Officer's assessment of its reasonableness and the basis on which the Information Officer recommended that this Court recognize the Interim DIP Order were set out in the Pre-filing Report and, accordingly, are not repeated in detail herein.
2. On July 3, 2019, the US Court entered the Final DIP ABL Order. The Final DIP ABL Order contains several amendments to address comments received from the UCC and other parties, all of which were resolved consensually. None of the changes from the Interim DIP Order, as summarized in the Second Pfefferle Affidavit, have a material impact on the Canadian Debtor and its stakeholders.
3. The Information Officer understands that:
  - a) the US Debtors and the Canadian Debtor owe approximately \$39.5 million and \$3.5 million, respectively, under the DIP ABL Facility;
  - b) the prepetition ABL obligations of the US Debtors and the Canadian Debtor were fully rolled-up to the DIP ABL Facility as of July 1, 2019; and
  - c) the Chapter 11 Debtors are in compliance with the terms and conditions of the DIP ABL Facility according to the bi-weekly reports submitted by the Chapter 11 Debtors to the DIP ABL Lenders.

---

<sup>2</sup> Capitalized terms not otherwise defined in this section of the Report have the meanings provided to them in the applicable US Court Order.



4. As detailed in the Pre-filing Report, the DIP ABL Facility and the Interim DIP Order, which was recognized by the Canadian Court on May 23, 2019, include the following protections which mitigate any potential implications to the Canadian Debtor and its stakeholders from the fact that all of the Borrowers (including the Canadian Debtor) would be jointly and severally liable under the DIP ABL Facility:
  - a) a “quasi-marshalling” concept, whereby the DIP ABL Agent is obligated to: (i) first recover on the ABL Priority Collateral of the US Debtors to satisfy the outstanding obligations of the US Debtors; (ii) similarly, first look to proceeds from the Canadian assets to satisfy the outstanding obligations of the Canadian Debtor; and (iii) with respect to the proceeds of the assets of the Canadian Debtor, only apply such proceeds to reduce the obligations of the US Debtors if the ABL Priority Collateral of the US Debtors has been exhausted; and
  - b) the Canadian Intercompany Superpriority Administrative Claim, which ascribes priority in the form of a Court ordered administrative expense claim to any advances the Canadian Debtor makes to the US Debtors during the Chapter 11 Proceedings from proceeds drawn by the Canadian Debtor under the DIP ABL Facility<sup>3</sup>.
5. The endorsement of Mr. Justice Hailey dated May 30, 2019 (the “Canadian Court Endorsement”) made specific note of these protective provisions, which remain unchanged and in effect under the Final DIP ABL Order. A copy of the Canadian Court Endorsement is attached as Appendix “D”.
6. At this time, the Foreign Representative is seeking recognition by the Canadian Court of the Final DIP ABL Order. The Information Officer believes that recognition of the Final DIP ABL Order is reasonable and appropriate for the following reasons:
  - a) the Final DIP ABL Order preserves the protections negotiated by the parties for the specific purpose of considering the potential impact on the Canadian Debtor and its stakeholders as all of the Borrowers (including the Canadian Debtor) are jointly and severally liable under the DIP ABL Facility;
  - b) the Final DIP ABL Order includes a budget for the period ending September 13, 2019, which reflects that funding is required under the DIP ABL Facility for, among other things, normal course operating costs during the Chapter 11 Proceedings, including payroll and occupancy costs for the Canadian Debtor and the fees and costs of the US and Canadian professionals involved in the proceedings;
  - c) based on the Chapter 11 Debtors’ agreed-upon budget, the Final DIP ABL Order allows the Chapter 11 Debtors, including the Canadian Debtor, to preserve the value of their assets for all stakeholders while Houlihan carries out the Sale Process;

---

<sup>3</sup> Pursuant to the Final DIP ABL Order, the Canadian Intercompany Superpriority Administrative Claim is subject to the Carve Out and ranks junior to the DIP ABL Lenders and the Prepetition ABL Lenders but senior to the DIP Term Loan Lenders and the Term Loan Lenders on the ABL Priority Collateral and junior to the DIP Term Loan Lenders, the Term Loan Lenders, the DIP ABL Lenders and the Prepetition ABL Lenders on the Term Priority Collateral (as each such term is defined in the Final DIP ABL Order).

- d) as further detailed in the Pre-filing Report, the Information Officer made the following assessments in determining the reasonability of the DIP ABL Facility, all of which remain applicable to the Final DIP ABL Order:
- i. the results of the Information Officer's liquidation analysis<sup>4</sup> reflect that there would be nominal recoveries, if any, available for creditors of the Canadian Debtor ranking subordinate to the Prepetition ABL Lenders in a liquidation scenario;
  - ii. the Canadian Debtor would not be able to continue to operate in the normal course absent draws being available to it under the DIP ABL Facility;
  - iii. the economic terms of the DIP ABL Facility are consistent with other recent DIP financings approved by Canadian courts (as summarized in the Pre-filing Report);
  - iv. there are no other funding sources available to the Canadian Debtor except from the DIP ABL Lenders;
  - v. the DIP ABL Lenders are not willing to provide financing except under the terms and conditions of the DIP ABL Facility; and
  - vi. funding from the DIP ABL Facility is required to maintain existing operations, pay employees and fund these proceedings while the Chapter 11 Debtors implement their restructuring plan; and
- e) there were no outstanding objections remaining at the US hearing held on July 1, 2019, including from the UCC, which includes three members who are creditors and ongoing suppliers of the Canadian Debtor.
7. Based on the foregoing, the Information Officer does not believe that any creditor of the Canadian Debtor will be materially prejudiced by the recognition of the Final DIP ABL Order or the DIP ABL Charge securing the draws set out therein.
8. The Final DIP ABL Order is not a final order regarding the \$28 million DIP Term Loan Facility. As set out in the Second Pfefferle Affidavit, on July 1, 2019, the Chapter 11 Debtors requested that the US Court enter the Second Interim DIP Term Order, which provides the Chapter 11 Debtors with access to up to \$5 million of incremental financing under the DIP Term Loan Facility, in the discretion of the DIP Term Loan Agent at the direction of the required DIP Term Loan Lenders, during the interim period until a final Order regarding the DIP Term Loan Facility is approved and entered by the US Court, which is required to occur on or before July 19, 2019. As described in the Pre-filing Report, the Canadian Debtor is not a borrower or guarantor under the DIP Term Loan Facility and the DIP Term Loan Facility is secured by a super-priority charge on the assets of the US Debtors only. However, the Information Officer understands that the Foreign Representative is seeking recognition of the Second Interim DIP Term Order as a matter of completeness.

---

<sup>4</sup> The Information Officer's liquidation analysis was filed with the Canadian Court on a confidential basis and remains sealed pursuant to the Supplemental Order.

## 4.2 The Bid Procedures Order

1. As described in the Pre-filing Report, the RSA and the Plan contemplate a parallel process by which the Chapter 11 Debtors may emerge from Chapter 11 proceedings either through a debt-to-equity transaction with certain Term Loan Lenders, as detailed in the RSA and the Plan, or from a transaction that may result from the Sale Process.
2. The Sale Process is being carried out by Houlihan to determine whether a sale transaction may result in a superior outcome than the restructuring transaction contemplated in the RSA. The Sale Process does not preclude a purchaser from submitting a bid for the Canadian Debtor's business and assets on a standalone basis.
3. The Chapter 11 Debtors developed the Bidding Procedures in an effort to maximize the value of the estates through a competitive Auction process, including the opportunity to select one or more potential purchasers to act as a stalking horse bidder (the "Stalking Horse Bidder").
4. On July 3, 2019, the US Court entered the Bid Procedures Order, which, *inter alia* (i) approved the Bid Procedures and related dates and deadlines, (ii) scheduled hearing and deadlines in connection with approval of the sale, and (iii) granted related relief. The Bid Procedures Order provides that:
  - a) the deadline for any interested party to submit preliminary bid documents is 4:00 pm Eastern Time on July 15, 2019;
  - b) the deadline (the "Bid Deadline") for a qualified bid (a "Qualified Bid") to be received in writing is no later than 4:00 pm Eastern Time on August 8, 2019;
  - c) a Qualified Bid must meet certain criteria specified in the Bidding Procedures, including that it must demonstrate that the bidder has the financial resources and ability to execute the proposed transaction;
  - d) the Chapter 11 Debtors are authorized, but not obligated, with the unanimous consent of the Consultation Parties (as defined in the Bidding Procedures), not to be unreasonably withheld, conditioned, or delayed, to select one or more acceptable bidders to act as a Stalking Horse Bidder in connection with the Auction and are authorized to provide a fee not exceeding 3% of the proposed purchase price to the Stalking Horse Bidder in respect of a breakup fee, expense reimbursement and work fee (collectively, the "Bid Protections");
  - e) if no Qualified Bids are received by the Bid Deadline, then the Auction will not occur, and the Term Loan Lenders will be deemed the winning bidder and the Chapter 11 Debtors will pursue entry of an order by the US Court confirming the Plan at the Sale Hearing (as defined below), which will also require recognition by the Canadian Court;

- f) if Qualified Bids are received, the Chapter 11 Debtors, in consultation with their advisors and the Consultation Parties<sup>5</sup>, will determine which bidders will be qualified to bid (the “Qualified Bidders”) at the Auction and will also identify the best Qualified Bid(s) that will serve as the initial minimum overbid (the “Initial Minimum Overbid”);
  - g) the Auction will commence on August 12, 2019 at 10:00 am Eastern Time at the offices of Kirkland & Ellis LLP, Lexington Avenue, New York, New York 10022 (or such later time or other place as the Chapter 11 Debtors will notify the Stalking Horse Bidders and all other Qualified Bidders, in consultation with the Consultation Parties) and only the Qualified Bidders and Stalking Horse Bidder will be entitled to participate;
  - h) subsequent bids must be made in minimum increments of \$1 million of additional value above the Initial Minimum Overbid; and
  - i) the Chapter 11 Debtors will seek the approval of the best bid from the US Court on September 4, 2019 at 11:00 am Eastern Time (the “Sale Hearing”). Any transaction involving the Canadian Debtor will also require recognition by the Canadian Court.
5. At this time, the Foreign Representative is seeking recognition by the Canadian Court of the Bid Procedures Order. The Information Officer considered the following in assessing the reasonableness of the Bid Procedures Order:
- a) in the Information Officer’s view, the Sale Process and Bidding Procedures are commercially reasonable and intended to maximize value through a competitive Auction process while also mitigating against downside risk for the Chapter 11 Debtors’ stakeholders by providing the certainty of a going-concern transaction to be completed pursuant to the RSA and the Plan should the Sale Process not produce a superior result;
  - b) the Bid Deadline provides sufficient time to ensure potential bidders are able to perform diligence and prepare and submit Qualified Bids;
  - c) the Information Officer compared the Bid Protections (3% of the proposed purchase price) to other stalking horse break fees approved by Canadian courts in insolvency proceedings in recent years. Based on the Information Officer’s analysis, a copy of which is attached as Appendix “E”, the Bid Protections are consistent with other recently approved fees of this nature and should not discourage prospective purchasers from participating in the Sale Process;
  - d) the Bidding Procedures provide the opportunity to identify a bidder for the Canadian Debtor’s operations on a standalone basis;

---

<sup>5</sup> The Consultation Parties are legal counsel to the DIP ABL Agent, the ABL Agent, DIP Term Loan Agent, the Term Loan Agent, the Sponsor and the UCC.

- e) the Information Officer does not believe the creditors of the Canadian Debtor would be materially prejudiced by the Bid Procedures and Sale Process; and
  - f) Houlihan has been updating and will continue to update the Information Officer on Sale Process developments.
6. Based on the foregoing, the Information Officer believes that the Bid Procedures Order is fair and reasonable and recommends that the Canadian Court grant an order recognizing the Bid Procedures Order.

### **4.3 The Final Cash Management Order**

1. The Final Cash Management Order (which was entered by the US Court on July 2, 2019), among other things, authorizes the continued use of the Chapter 11 Debtors' cash management system, which was approved by the US Court pursuant to the Interim Cash Management Order and recognized by the Canadian Court pursuant to the Supplemental Order.
2. Following negotiations among the Chapter 11 Debtors, the UCC and other stakeholders, the substantive changes between the Interim and Final Cash Management Orders are:
  - a) with respect to the Chapter 11 Debtors' bank accounts held at the Royal Bank of Canada ("RBC"), the Final Cash Management Order provides that the Chapter 11 Debtors shall not maintain funds in excess of \$100,000 in the aggregate with respect to all such bank accounts, and amounts in excess of \$100,000 at the end of the business day shall be deposited or transferred to any of the Chapter 11 Debtors' bank accounts that are held at Wells Fargo; and
  - b) with respect to intercompany transactions, the Final Cash Management Order requires the Chapter 11 Debtors to provide the UCC with weekly reporting on intercompany transactions between the Canadian Debtor and the US Debtors, as well as other reporting.
3. The Information Officer believes the Final Cash Management Order should be recognized by the Canadian Court as:
  - a) the daily transfer/sweep mechanism of excess funds in the RBC bank accounts is consistent with the Chapter 11 Debtors' prepetition cash management system and ordinary course past practice;
  - b) to the extent any transfers are made from the Canadian Debtor to the US Debtors using proceeds drawn by the Canadian Debtor from the DIP ABL Facility, the Final DIP ABL Order ascribes priority to such advances in favour of the Canadian Debtor; and
  - c) with respect to intercompany transaction reporting requirements, the Final Cash Management Order provides that the Chapter 11 Debtors will also provide the Information Officer with the reports and information to be provided to the UCC thereunder.

#### 4.4 The Bar Date Order

1. On June 21, 2019, the US Court issued the Bar Date Order. The Bar Date Order, *inter alia*, sets deadlines and procedures for submitting proofs of claim (the “Proofs of Claim”), approves the form of notice by OMNI (the “Notice”) and grants related relief. The deadlines to submit Proofs of Claim under the Bar Date Order are as follows:
  - a) for all persons and entities with prepetition claims, including any prepetition claims against the Canadian Debtor, July 29, 2019 at 5:00 pm Eastern Time (the “General Claims Bar Date”);
  - b) for all governmental units (including Canada Revenue Agency and provincial agencies), November 15, 2019 at 5:00 pm Eastern Time (the “Governmental Claims Bar Date” and together with the General Claims Bar Date, the “Bar Dates”);
  - c) for those with claims arising from the rejection of an executory contract or unexpired lease, the later of (a) the General Claims Bar Date, and (b) any date the US Court may fix in the applicable order authorizing such rejection and, if no such date is provided, the date that is 35 days after the entry of the order; and
  - d) if subsequent to the mailing of the Notice, the Chapter 11 Debtors amend or supplement the June 21, 2019 schedules and statements of financial affairs (the “Schedules”), any affected claimant that disputes such changes must file a Proof of Claim on or by the later of (i) the applicable General Claims Bar Date or the Governmental Claims Bar Date, as applicable, and (ii) 35 days after the date that notice of applicable amendment to the Schedules is served on the claimant.
2. In order to provide creditors as much time as possible to file Proofs of Claims, the Notice was published in Canada in *The Globe and Mail* (national edition) (the “Publication”) on June 27, 2019. A copy of the Publication is attached as Appendix “F”. Should any changes to the Notice be imposed by the Canadian Court, the Information Officer has advised the Chapter 11 Debtors that an amended Notice would need to be published.
3. At this time, the Foreign Representative is seeking recognition by the Canadian Court of the Bar Date Order. The Information Officer considered the following in assessing the reasonableness of the Bar Date Order:
  - a) the claims against the Canadian Debtor are to be addressed on the same basis as those against the US Debtors;
  - b) the Bar Dates will occur at least 35 days after service of the Notice to all known holders of potential claims against the Chapter 11 Debtors. As many of the potential claimants are likely to be overseas suppliers, this provides an appropriate amount of time to make inquiries and submit Proofs of Claim;
  - c) the Bar Dates would occur at least 28 days after the Publication, providing all unknown creditors with an appropriate amount of time to make inquiries and submit Proofs of Claim;

- d) the Bar Dates and procedures are consistent with typical claims process orders issued by the Canadian Court in the context of cross-border insolvency proceedings;
  - e) the Bar Date Order contemplates one comprehensive claims process for all creditors of the Chapter 11 Debtors, wherever they may be located;
  - f) known Canadian creditors of the Chapter 11 Debtors have or will receive a claims package from the Chapter 11 Debtors' noticing agent, OMNI; and
  - g) the Bar Date Order required the Notice to be published in two US publications (*New York Times* and *USA Today*) and *The Globe and Mail* (national edition).
4. Based on the foregoing, the Information Officer believes that the Bar Date Order is fair and reasonable and recommends that the Canadian Court grant an order recognizing the Bar Date Order.

## 5.0 Conclusion and Recommendation

1. Based on the foregoing, the Information Officer recommends that this Court grant the relief being sought by the Foreign Representative.

\* \* \*

All of which is respectfully submitted,



**KSV KOFMAN INC.  
IN ITS CAPACITY AS INFORMATION OFFICER OF  
HOLLANDER SLEEP PRODUCTS, LLC, HOLLANDER SLEEP PRODUCTS CANADA  
LIMITED, DREAM II HOLDINGS, LLC, HOLLANDER HOME FASHIONS HOLDINGS, LLC,  
PACIFIC COAST FEATHER, LLC, HOLLANDER SLEEP PRODUCTS KENTUCKY, LLC AND  
PACIFIC COAST FEATHER CUSHION, LLC  
AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “A”**



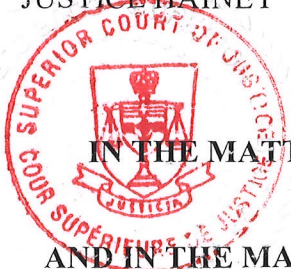
ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE MR. )

THURSDAY, THE 23<sup>RD</sup>

JUSTICE HAINES )

DAY OF MAY, 2019



IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF HOLLANDER SLEEP PRODUCTS, LLC, HOLLANDER  
SLEEP PRODUCTS CANADA LIMITED, DREAM II HOLDINGS, LLC, HOLLANDER  
HOME FASHIONS HOLDINGS, LLC, PACIFIC COAST FEATHER, LLC,  
HOLLANDER SLEEP PRODUCTS KENTUCKY, LLC AND PACIFIC COAST  
FEATHER CUSHION, LLC

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

INITIAL RECOGNITION ORDER  
(FOREIGN MAIN PROCEEDING)

**THIS APPLICATION**, made by Hollander Sleep Products, LLC (“HSP”) in its capacity as the foreign representative (the “**Foreign Representative**”) of HSP, Hollander Sleep Products Canada Limited, Dream II Holdings, LLC, Hollander Home Fashions Holdings, LLC, Pacific Coast Feather, LLC, Hollander Sleep Products Kentucky, LLC and Pacific Coast Feather Cushion, LLC (collectively, the “**Chapter 11 Debtors**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) for an Order substantially in the form enclosed in the Application Record, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Application, the affidavit of Marc Pfefferle sworn May 23, 2019 (the “**Pfefferle Affidavit**”), filed, the pre-filing report of KSV Kofman Inc., in its capacity

as proposed information officer (the “**Information Officer**”) dated May 23, 2019, and upon being provided with copies of the documents required by section 46 of the CCAA,

**AND UPON BEING ADVISED** by counsel for the Foreign Representative that in addition to this Initial Recognition Order, a Supplemental Order (Foreign Main Proceeding) (the “**Supplemental Order**”) is being sought,

**AND UPON HEARING** the submissions of counsel for the Foreign Representative, counsel for the proposed Information Officer, counsel for the ABL Agent and the DIP ABL Agent (each as defined in the Pfefferle Affidavit) and counsel for the Term Loan Agent and the DIP Term Loan Agent (each as defined in the Pfefferle Affidavit), and those other parties present, no one else appearing although duly served as appears from the affidavit of service of Evan Barz sworn May 23, 2019:

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

#### **FOREIGN REPRESENTATIVE**

2. **THIS COURT ORDERS AND DECLARES** that the Foreign Representative is the “foreign representative” as defined in section 45 of the CCAA of the Chapter 11 Debtors in respect of the cases commenced in the United States Bankruptcy Court for the Southern District of New York by the Chapter 11 Debtors pursuant to Chapter 11 of the United States Bankruptcy Code (collectively, the “**Foreign Proceeding**”).

#### **CENTRE OF MAIN INTEREST AND RECOGNITION OF FOREIGN PROCEEDING**

3. **THIS COURT DECLARES** that the centre of its main interests for each of the Chapter 11 Debtors is the United States of America and that the Foreign Proceeding is hereby recognized as a “foreign main proceeding” as defined in section 45 of the CCAA.

**STAY OF PROCEEDINGS**

4. **THIS COURT ORDERS** that until otherwise ordered by this Court:
- (a) all proceedings taken or that might be taken against the Chapter 11 Debtors under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* are stayed;
  - (b) further proceedings in any action, suit or proceeding against the Chapter 11 Debtors are restrained; and
  - (c) the commencement of any action, suit or proceeding against the Chapter 11 Debtors is prohibited.

**NO SALE OF PROPERTY**

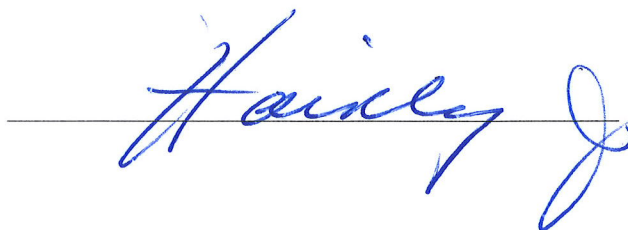
5. **THIS COURT ORDERS** that, except with leave of this Court, each of the Chapter 11 Debtors is prohibited from selling or otherwise disposing of:
- (a) outside the ordinary course of its business, any of its property in Canada that relates to the business; and
  - (b) any of its other property in Canada.

**GENERAL**

6. **THIS COURT ORDERS** that within five (5) business days from the date of this Order, or as soon as practicable thereafter, the Information Officer shall cause to be published a notice once a week for two consecutive weeks, in the *Globe and Mail* (National Edition) regarding the issuance of this Order and the Supplemental Order.
7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada and the United States of America, to give effect to this Order and to assist the Chapter 11 Debtors and the Foreign Representative and their respective counsel and agents in carrying out the terms of this Order.

8. **THIS COURT ORDERS AND DECLARES** that this Order shall be effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.

9. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Chapter 11 Debtors and the Foreign Representative and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.



ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

MAY 23 2019

PER / PAR:



IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED

Court File No: CV-19-620484-00CL

AND IN THE MATTER OF HOLLANDER SLEEP PRODUCTS, LLC, HOLLANDER SLEEP PRODUCTS CANADA LIMITED, DREAM II HOLDINGS, LLC, HOLLANDER HOME FASHIONS HOLDINGS, LLC, PACIFIC COAST FEATHER, LLC, HOLLANDER SLEEP PRODUCTS KENTUCKY, LLC AND PACIFIC COAST FEATHER CUSHION, LLC

APPLICATION OF HOLLANDER SLEEP PRODUCTS, LLC UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

Applicant

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**  
Proceeding commenced at Toronto

**INITIAL RECOGNITION ORDER  
(FOREIGN MAIN PROCEEDING)**

**OSLER, HOSKIN & HARCOURT, LLP**  
P.O. Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8

Marc Wasserman LSO# 44066M  
Tel: 416.862.4908  
mwasserman@osler.com

Shawn T. Irving LSO# 50035U  
Tel: 416.862.4733  
sirving@osler.com

Martino Calvaruso LSO# 57359Q  
Tel: 416.862.6665  
mcalvaruso@osler.com  
Fax: 416.862.6666

Lawyers for the Applicant

## **Appendix “B”**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE MR. ) THURSDAY, THE 23<sup>RD</sup>  
)  
JUSTICE HAINEY ) DAY OF MAY, 2019  
)



IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF HOLLANDER SLEEP PRODUCTS, LLC, HOLLANDER  
SLEEP PRODUCTS CANADA LIMITED, DREAM II HOLDINGS, LLC, HOLLANDER  
HOME FASHIONS HOLDINGS, LLC, PACIFIC COAST FEATHER, LLC,  
HOLLANDER SLEEP PRODUCTS KENTUCKY, LLC AND PACIFIC COAST  
FEATHER CUSHION, LLC

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

SUPPLEMENTAL ORDER  
(FOREIGN MAIN PROCEEDING)

**THIS APPLICATION**, made by Hollander Sleep Products, LLC ("**HSP**") in its capacity as the foreign representative (the "**Foreign Representative**") of HSP, Hollander Sleep Products Canada Limited ("**Hollander Canada**"), Dream II Holdings, LLC, Hollander Home Fashions Holdings, LLC, Pacific Coast Feather, LLC, Hollander Sleep Products Kentucky, LLC and Pacific Coast Feather Cushion, LLC (collectively, the "**Chapter 11 Debtors**" and each, a "**Chapter 11 Debtor**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form enclosed in the Application Record, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Application, the affidavit of Marc Pfefferle sworn May 23, 2019 (the "**Pfefferle Affidavit**"), filed, the pre-filing report of KSV Kofman Inc., in its capacity as proposed Information Officer (as defined herein) dated May 23, 2019 (the "**Pre-Filing**

**Report**”), and upon being provided with copies of the documents required by section 46 of the CCAA,

**AND UPON HEARING** the submissions of counsel for the Foreign Representative, counsel for the proposed Information Officer, counsel for the ABL Agent and the DIP ABL Agent (each as defined in the Pfefferle Affidavit) and counsel for the Term Loan Agent and the DIP Term Loan Agent (each as defined in the Pfefferle Affidavit), and those other parties present, no one else appearing although duly served as appears from the affidavit of service of Evan Barz sworn May 23, 2019:

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined have the meaning given to them in the Pfefferle Affidavit.

### **INITIAL RECOGNITION ORDER**

3. **THIS COURT ORDERS** that the provisions of this Order shall be interpreted in a manner complementary and supplementary to the provisions of the Initial Recognition Order (Foreign Main Proceeding) dated as of May 23, 2019 (the “**Recognition Order**”), provided that in the event of a conflict between the provisions of this Order and the provisions of the Recognition Order, the provisions of the Recognition Order shall govern.

### **RECOGNITION OF FOREIGN ORDERS**

4. **THIS COURT ORDERS** that the following orders (collectively, the “**Foreign Orders**”) of the United States Bankruptcy Court for the Southern District of New York (the “**U.S. Bankruptcy Court**”) made in the Foreign Proceeding (as defined in the Recognition Order) are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA:



- (a) *Order (A) Authorizing Hollander Sleep Products, LLC to Act as Foreign Representative and (B) Granting Related Relief* (the “**Foreign Representative Order**”);
- (b) *Order (A) Directing Joint Administration of Chapter 11 Cases and (B) Granting Related Relief* (the “**Joint Administration Order**”);
- (c) *Interim Order (I) Authorizing the Debtors to (A) Pay Prepetition Employee Wages, Salaries, Other Compensation, and Reimbursable Employee Expenses and (B) Continue Employee Benefits Programs and (II) Granting Related Relief* (the “**Interim Employee Wages Order**”);
- (d) *Interim Order (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Continue to Perform Intercompany Transactions, and (II) Granting Related Relief* (the “**Interim Cash Management Order**”);
- (e) *Interim Order (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Liens and Providing Superpriority Administrative Expense Status, (D) Granting Adequate Protection to the Prepetition Lenders, (E) Modifying the Automatic Stay, (F) Scheduling a Final Hearing, and (G) Granting Related Relief* (the “**Interim DIP Order**”);
- (f) *Interim Order (I) Authorizing the Debtors to Pay Prepetition Claims of (A) Lien Claimants, (B) Import Claimant, (C) 503(B)(9) Claimants, (D) Foreign Vendors, and (E) Critical Vendors, (II) Confirming Administrative Expense Priority of Outstanding Orders, and (III) Granting Related Relief* (the “**Interim Critical Vendors and Shippers Order**”); and

- (g) *Interim Order (A) Authorizing the Debtors to Maintain and Administer Their Existing Customer Programs and Honor Certain Prepetition Obligations Related Thereto and (B) Granting Related Relief* (the “**Interim Customer Programs Order**”)

(copies of each such Foreign Orders are attached as Schedules “A” to “G” hereto);

provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property (as defined below) in Canada.

#### **APPOINTMENT OF INFORMATION OFFICER**

5. **THIS COURT ORDERS** that KSV Kofman Inc. (the “**Information Officer**”) is hereby appointed as an officer of this Court, with the powers and duties set out herein.

#### **NO PROCEEDINGS AGAINST THE CHAPTER 11 DEBTORS OR THE PROPERTY**

6. **THIS COURT ORDERS** that from the date of the Recognition Order until such date as this Court may order (the “**Stay Period**”) no proceeding or enforcement process in any court or tribunal in Canada (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Chapter 11 Debtors or affecting their business (the “**Business**”) or their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”), except with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Chapter 11 Debtors or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

7. **THIS COURT ORDERS** that, without limiting the stay of proceedings provided for in the Recognition Order, during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Chapter 11 Debtors, or

affecting the Business or the Property, are hereby stayed and suspended except with leave of this Court, provided that nothing in this Order shall (a) prevent the assertion of or the exercise of rights and remedies outside of Canada, (b) empower any of the Chapter 11 Debtors to carry on any business in Canada which that Chapter 11 Debtor is not lawfully entitled to carry on, (c) affect such investigations or Proceedings by a regulatory body as are permitted by section 11.1 of the CCAA, (d) prevent the filing of any registration to preserve or perfect a security interest, or (e) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

8. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any of the Chapter 11 Debtors and affecting the Business in Canada, except with leave of this Court.

#### **ADDITIONAL PROTECTIONS**

9. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Chapter 11 Debtors or statutory or regulatory mandates for the supply of goods and/or services in Canada, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services provided in respect of the Property or Business of the Chapter 11 Debtors, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Chapter 11 Debtors, and that the Chapter 11 Debtors shall be entitled to the continued use in Canada of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names.

10. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Chapter 11 Debtors with respect to any claim against the directors or officers that arose before the date of the Recognition Order and that relates to any obligations of the Chapter 11 Debtors whereby the directors or officers are alleged

under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

11. **THIS COURT ORDERS** that no Proceeding shall be commenced or continued against or in respect of the Information Officer, except with leave of this Court. In addition to the rights and protections afforded the Information Officer herein, or as an officer of this Court, the Information Officer shall have the benefit of all of the rights and protections afforded to a Monitor under the CCAA, and shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

#### **OTHER PROVISIONS RELATING TO INFORMATION OFFICER**

12. **THIS COURT ORDERS** that the Information Officer:

- (a) is hereby authorized to provide such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;
- (b) shall report to this Court periodically with respect to the status of these proceedings and the status of the Foreign Proceeding, which reports may include information relating to the Property, the Business, or such other matters as may be relevant to the proceedings herein;
- (c) in addition to the periodic reports referred to in paragraph 12(b) above, the Information Officer may report to this Court at such other times and intervals as the Information Officer may deem appropriate with respect to any of the matters referred to in paragraph 12(b) above;
- (d) shall have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Chapter 11 Debtors, to the extent that is necessary to perform its duties arising under this Order; and

- (e) shall be at liberty to engage independent legal counsel or such other persons as the Information Officer deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

13. **THIS COURT ORDERS** that the Chapter 11 Debtors and the Foreign Representative shall (a) advise the Information Officer of all material steps taken by the Chapter 11 Debtors or the Foreign Representative in these proceedings or in the Foreign Proceeding, (b) co-operate fully with the Information Officer in the exercise of its powers and discharge of its obligations, and (c) provide the Information Officer with the assistance that is necessary to enable the Information Officer to adequately carry out its functions.

14. **THIS COURT ORDERS** that the Information Officer shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

15. **THIS COURT ORDERS** that the Information Officer (a) shall post on its website all Orders of this Court made in these proceedings, all reports of the Information Officer filed herein, and such other materials as this Court may order from time to time, and (b) may post on its website any other materials that the Information Officer deems appropriate.

16. **THIS COURT ORDERS** that the Information Officer may provide any creditor of a Chapter 11 Debtor with information provided by the Chapter 11 Debtors in response to reasonable requests for information made in writing by such creditor addressed to the Information Officer. The Information Officer shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Information Officer has been advised by the Chapter 11 Debtors is privileged or confidential, the Information Officer shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Information Officer, the Foreign Representative and the relevant Chapter 11 Debtors may agree.

17. **THIS COURT ORDERS** that the Information Officer and counsel to the Information Officer shall be paid by the Chapter 11 Debtors their reasonable fees and disbursements incurred

in respect of these proceedings, both before and after the making of this Order, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts. The Chapter 11 Debtors are hereby authorized and directed to pay the accounts of the Information Officer and counsel for the Information Officer.

18. **THIS COURT ORDERS** that the Information Officer and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Information Officer and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice, and the accounts of the Information Officer and its counsel shall not be subject to approval in the Foreign Proceeding.

19. **THIS COURT ORDERS** that the Information Officer and counsel to the Information Officer shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property in Canada, which charge shall not exceed an aggregate amount of US\$200,000 as security for their professional fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs 21 through 26 hereof.

#### **INTERIM FINANCING**

20. **THIS COURT ORDERS** that the DIP ABL Agent, for and on behalf of itself and the DIP ABL Lenders, shall be entitled to the benefit of and is hereby granted a charge (the “**DIP ABL Charge**”) on the Property in Canada, which DIP ABL Charge shall be consistent with the liens and charges created by the Interim DIP Order with respect to the Property in Canada, shall have the priority set out in paragraphs 21 through 26 hereof, and further provided that the DIP ABL Charge shall not be enforced except with leave of this Court on notice to the Information Officer and those parties on the service list established for these proceedings.

## **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

21. **THIS COURT ORDERS** that the priorities of the Administration Charge and the DIP ABL Charge, as among them, shall be as follows:

- (a) First – Administration Charge (to the maximum amount of US\$200,000); and
- (b) Second – DIP ABL Charge.

22. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge or the DIP ABL Charge (collectively, the “**Charges**”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect the Charges.

23. **THIS COURT ORDERS** that the Charges (as constituted and defined herein) shall constitute a charge on the Property in Canada and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person.

24. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Chapter 11 Debtors shall not grant any Encumbrances over any Property in Canada that rank in priority to, or *pari passu* with, the Charges, unless the Chapter 11 Debtors also obtain the prior written consent of the Information Officer, the DIP ABL Agent and the DIP Term Loan Agent.

25. **THIS COURT ORDERS** that the Administration Charge and the DIP ABL Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative

covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds any Chapter 11 Debtor, and notwithstanding any provision to the contrary in any Agreement:

- (i) the creation of the Charges shall not create or be deemed to constitute a breach by a Chapter 11 Debtor of any Agreement to which it is a party;
- (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (iii) the payments made by the Chapter 11 Debtors to the Chargees pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

26. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Chapter 11 Debtors’ interest in such real property leases.

#### **ASSET SALES**

27. **THIS COURT ORDERS** that, notwithstanding paragraph 5 of the Recognition Order, Hollander Canada shall be permitted, with the prior consent of the Information Officer, to sell or otherwise dispose of its fixed assets located in Toronto, Ontario, solely to the extent permitted by the DIP ABL Credit Agreement in an amount not to exceed US\$250,000 in the aggregate, without seeking leave of this Court.

#### **SERVICE AND NOTICE**

28. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute



an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://www.ksvadvisory.com/insolvency-cases/case/hollander-sleep-products-canada-limited>.

29. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Chapter 11 Debtors, the Foreign Representative and the Information Officer are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Chapter 11 Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the applicable Chapter 11 Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **SEALING**

30. **THIS COURT ORDERS** that Confidential Appendix "1" to the Pre-Filing Report shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

#### **GENERAL**

31. **THIS COURT ORDERS** that the Information Officer may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

32. **THIS COURT ORDERS** that nothing in this Order shall prevent the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, a monitor, a proposal trustee, or a trustee in bankruptcy of any Chapter 11 Debtor, the Business or the Property.

33. **THIS COURT ORDERS** that within five (5) business days from the date of this Order, or as soon as practicable thereafter, the Information Officer shall cause to be published a notice once a week for two consecutive weeks, in the Globe and Mail (National Edition) regarding the issuance of this Order and the Recognition Order.

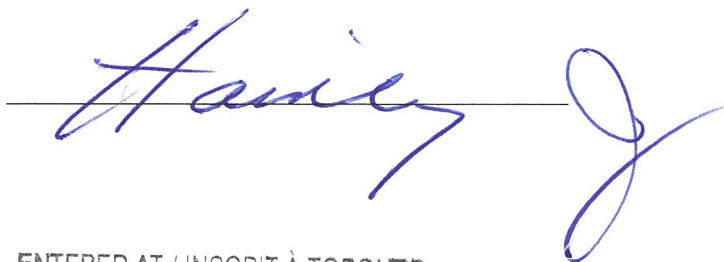
34. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Chapter 11 Debtors, the Foreign Representative, the Information Officer, and their respective counsel and agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Chapter 11 Debtors, the Foreign Representative and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Chapter 11 Debtors, the Foreign Representative, the Information Officer, and their respective counsel and agents in carrying out the terms of this Order.

35. **THIS COURT ORDERS** that each of the Chapter 11 Debtors, the Foreign Representative and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

36. **THIS COURT ORDERS** that the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters issued by the Judicial Insolvency Network and adopted by this Court and the U.S. Bankruptcy Court and attached as Schedule "H" hereto (the "**JIN Guidelines**"), are hereby adopted by this Court for the purposes of these recognition proceedings.

37. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days' notice to the Chapter 11 Debtors, the Foreign Representative, the Information Officer, the DIP ABL Agent, the DIP Term Loan Agent and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

38. **THIS COURT ORDERS** that this Order shall be effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.

A handwritten signature in blue ink, appearing to read "Hamir J", is written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

MAY 24 2019

PER / PAR: 

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED

Court File No: CV-19-620484-00CL

AND IN THE MATTER OF HOLLANDER SLEEP PRODUCTS, LLC, HOLLANDER SLEEP PRODUCTS CANADA LIMITED, DREAM II HOLDINGS, LLC, HOLLANDER HOME FASHIONS HOLDINGS, LLC, PACIFIC COAST FEATHER, LLC, HOLLANDER SLEEP PRODUCTS KENTUCKY, LLC AND PACIFIC COAST FEATHER CUSHION, LLC

APPLICATION OF HOLLANDER SLEEP PRODUCTS, LLC UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

Applicant

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**  
Proceeding commenced at Toronto

**SUPPLEMENTAL ORDER  
(FOREIGN MAIN PROCEEDING)**

**OSLER, HOSKIN & HARCOURT, LLP**  
P.O. Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8

Marc Wasserman LSO# 44066M  
Tel: 416.862.4908  
mwasserman@osler.com

Shawn T. Irving LSO# 50035U  
Tel: 416.862.4733  
sirving@osler.com

Martino Calvaruso LSO# 57359Q  
Tel: 416.862.6665  
mcalvaruso@osler.com  
Fax: 416.862.6666

Lawyers for the Applicant

## **Appendix “C”**



**Report of  
KSV Kofman Inc. as  
Proposed Information Officer of  
Hollander Sleep Products, LLC,  
Hollander Sleep Products Canada Limited,  
Dream II Holdings, LLC,  
Hollander Home Fashions Holdings, LLC,  
Pacific Coast Feather, LLC,  
Hollander Sleep Products Kentucky, LLC  
and Pacific Coast Feather Cushion, LLC**

**May 23, 2019**

## Contents

	Page
1.0 Introduction.....	1
1.1 Purposes of this Report.....	2
1.2 Currency .....	3
1.3 Restrictions .....	3
1.4 KSV's Qualifications to Act as Information Officer .....	3
2.0 Background .....	4
3.0 The Canadian Debtor .....	5
3.1 Financial Overview.....	6
3.2 Creditor Composition .....	7
3.3 Liquidation Analysis .....	8
4.0 First Day Orders .....	9
5.0 The DIP ABL Facility.....	10
5.1 Security Opinion.....	14
6.0 Court Ordered Charges .....	14
7.0 The Plan .....	14
8.0 Conclusion and Recommendation .....	16

## Appendices

Appendix	Tab
Consent to Act of KSV Kofman Inc. ....	A
DIP Summary Schedule .....	B
<b>Confidential Appendix</b>	<b>Tab</b>
Liquidation Analysis.....	1



COURT FILE NO.: CV-19-620484-00CL

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 HOLLANDER SLEEP PRODUCTS, LLC,  
HOLLANDER SLEEP PRODUCTS CANADA LIMITED, DREAM II HOLDINGS, LLC,  
HOLLANDER HOME FASHIONS HOLDINGS, LLC, PACIFIC COAST FEATHER, LLC,  
HOLLANDER SLEEP PRODUCTS KENTUCKY, LLC AND  
PACIFIC COAST FEATHER CUSHION, LLC

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

REPORT OF KSV KOFMAN INC.  
AS PROPOSED INFORMATION OFFICER

MAY 23, 2019

## 1.0 Introduction

1. On May 19, 2019, Hollander Sleep Products, LLC (the "Foreign Representative"), Dream II Holdings, LLC, Hollander Home Fashions Holdings, LLC, Pacific Coast Feather, LLC, Hollander Sleep Products Kentucky, LLC, Pacific Coast Feather Cushion, LLC (collectively, the "US Debtors") and Hollander Sleep Products Canada Limited (the "Canadian Debtor" and together with the US Debtors, the "Chapter 11 Debtors"), commenced proceedings by filing voluntary petitions for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "US Court") (the "Chapter 11 Proceedings").
2. The purpose of the Chapter 11 Proceedings and the proposed Canadian recognition proceeding is to provide a stabilized environment for the Chapter 11 Debtors to continue to operate in the normal course while they implement their restructuring plan, including a US Court supervised sale process ("Sale Process") carried out by the Chapter 11 Debtors and their investment banker, Houlihan Lokey Capital, Inc. ("Houlihan").
3. On May 21, 2019, the US Court heard the Chapter 11 Debtors' first day motions and granted numerous orders (collectively, the "First Day Orders").



4. At this time, the Foreign Representative is making an application to the Ontario Superior Court of Justice (Commercial List) (the “Ontario Court”) for recognition of the Chapter 11 Proceedings under Part IV of the *Companies’ Creditors Arrangement Act* (“CCAA”) pursuant to two proposed orders (jointly, the “Recognition Orders”):
  - a) the initial recognition order which, *inter alia*, recognizes the Chapter 11 Proceedings as a “foreign main proceeding” and recognizes the Foreign Representative as the “foreign representative”, as defined in section 45 of the CCAA, and stays all proceedings against the Chapter 11 Debtors; and
  - b) the supplemental order which, *inter alia*, appoints KSV Kofman Inc. (“KSV”) as Information Officer, recognizes the First Day Orders issued by the US Court in the Chapter 11 Proceedings, grants certain stays as set out therein and grants the Administration Charge and the DIP ABL Charge (as defined in the Recognition Orders).
5. This report (“Report”) is filed by KSV in its capacity as proposed Information Officer (the “Information Officer”) in the Canadian recognition proceedings.

## 1.1 Purposes of this Report

1. The purposes of this Report are to:
  - a) provide KSV’s qualifications to act as Information Officer;
  - b) provide background information about the Chapter 11 Debtors and the Chapter 11 Proceedings, including a summary of the First Day Orders for which Ontario Court recognition is being sought;
  - c) provide the proposed Information Officer’s commentary on the reasonableness of the \$90 million debtor-in-possession asset based lending credit facility among the Chapter 11 Debtors and Wells Fargo Bank, National Association (the “DIP ABL Agent”), as agent for and on behalf of itself and other lenders (collectively, the “DIP ABL Lenders”) (the “DIP ABL Facility”);
  - d) summarize the potential implications of the Chapter 11 Proceedings, particularly the DIP ABL Facility, on the Canadian Debtor’s stakeholders, including by considering the results of a liquidation analysis of the Canadian Debtor’s business assets (the “Liquidation Analysis”);
  - e) provide the basis on which the proposed Information Officer believes the Liquidation Analysis should be sealed pending further order of the Ontario Court;
  - f) summarize the rationale for the proposed Administration Charge and DIP ABL Charge;

- g) provide an overview of the Chapter 11 Debtors' Joint Plan of Reorganization (the "Plan"); and
- h) recommend that the Ontario Court grant the relief being sought by the Foreign Representative.

## 1.2 Currency

1. All currency references in this Report are to US dollars, unless otherwise noted.

## 1.3 Restrictions

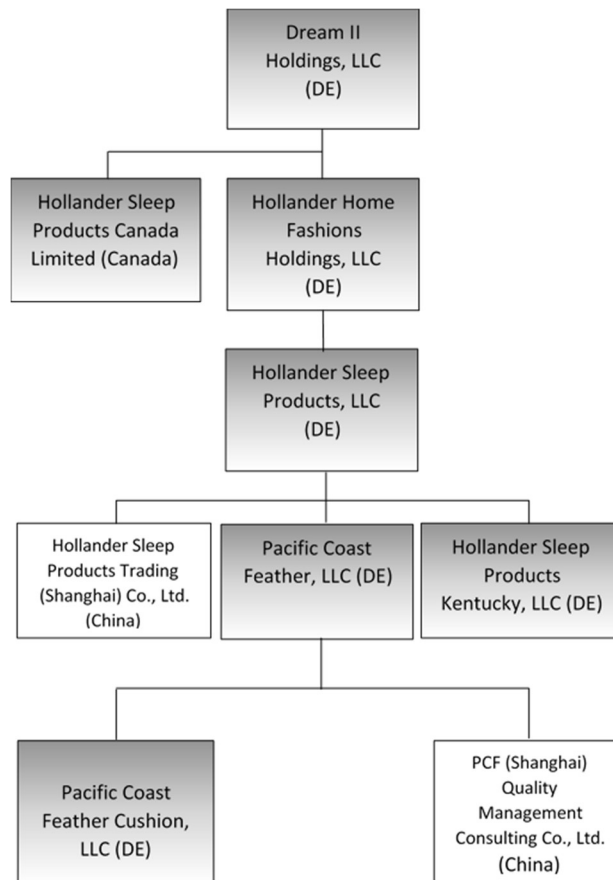
1. In preparing this Report, the proposed Information Officer has relied upon unaudited financial information prepared by the Chapter 11 Debtors' financial advisor, the Chapter 11 Debtors' books and records, including those of the Canadian Debtor, and discussions with the Chapter 11 Debtors' Canadian legal counsel and financial advisor.
2. The proposed Information Officer has not performed an audit or other verification of such information. An examination of the Chapter 11 Debtors' financial forecasts as outlined in the *Chartered Professional Accountants of Canada Handbook* has not been performed. Future oriented financial information relied upon in this Report is based on the Chapter 11 Debtors' assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The proposed Information Officer expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Report or relied upon by the proposed Information Officer in its preparation of this Report.

## 1.4 KSV's Qualifications to Act as Information Officer

1. KSV is qualified to act as Information Officer. KSV's qualifications include:
  - a) KSV is a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act* (Canada). KSV is not subject to any of the restrictions to act as set out in Section 11.7(2) of the CCAA; and
  - b) KSV has extensive experience acting as Information Officer under Part IV of the CCAA in a wide variety of industries.
2. On May 16, 2019, KSV was engaged by the Canadian Debtor to assist to prepare for these proceedings. KSV's engagement letter contemplates that "*in the event the Company files for protection and KSV is appointed as Information Officer, this engagement shall terminate immediately prior to the commencement of those proceedings. In such circumstances, KSV's duties and obligations as Information Officer will be as set out in the order commencing the proceedings, as well as by statute, and KSV would from that date forward be acting as an officer of the court.*"
3. KSV has consented to act as Information Officer in these proceedings should the Ontario Court grant the Recognition Orders. A copy of KSV's consent to act as Information Officer is attached as Appendix "A".

## 2.0 Background

1. Since their inception in 1953, the Chapter 11 Debtors have grown into a leader in the bedding products market, manufacturing pillows, comforters, mattress pads and other bedding products. The Chapter 11 Debtors produce bedding items for well-known brands, including Ralph Lauren®, Simmons®, Beautyrest®, Nautica® and Waverly®.
2. The Chapter 11 Debtors partner with major retailers and hotel chains, including long-standing relationships with, among others, Target, Kohl's, Costco, Walmart, Hudson's Bay and Marriott. The Chapter 11 Debtors' net revenue for their fiscal year ended December 31, 2018 was approximately \$527 million, of which the Canadian Debtor comprised approximately \$51 million.
3. The Chapter 11 Debtors' ultimate shareholder is Sentinel Capital Partners, LLC ("Sentinel"), a US private equity firm which made its acquisition in October, 2014. The corporate organization chart is provided below (the shaded entities represent the Chapter 11 Debtors).



4. The Chapter 11 Debtors operate thirteen manufacturing facilities in North America, including two Canadian manufacturing facilities (in Toronto and Montreal) from which they assemble raw materials sourced primarily from China, India, Pakistan, Indonesia, South Korea, Vietnam, Malaysia and the United Arab Emirates, into finished products.

5. The Chapter 11 Debtors employ approximately 2,370 employees, of which approximately 240 are employees of the Canadian Debtor. All but four of the Canadian Debtor's employees work at its manufacturing facilities in Montreal and Toronto, while the remainder of the employees work from its sales office in Toronto. The Canadian Debtor's workforce is not unionized and the Canadian Debtor does not maintain any registered pension plans (but it does provide a group RRSP plan).
6. The Chapter 11 Proceedings and the Plan are the result of lengthy negotiations among the Chapter 11 Debtors and their principal secured lenders, being:
  - a) the prepetition ABL agent (i.e. the same party as the DIP ABL Agent), for and on behalf of the prepetition ABL lenders (i.e. the same parties as the DIP ABL Lenders) (collectively, the "Prepetition ABL Lenders"), who are owed approximately \$71 million under a \$125 million ABL facility (the "Prepetition ABL Facility");
  - b) Sentinel, which recently injected \$15 million as the "last-out" component of the Prepetition ABL Facility; and
  - c) a group of term loan lenders represented by Barings Finance LLC, as agent (collectively, the "Term Loan Lenders"), who are owed approximately \$167 million under a \$190 million term loan facility (the "Term Loan Facility").
7. Further information concerning the Chapter 11 Debtors' background, financial position, corporate structure and the reasons the Chapter 11 Debtors require creditor protection to implement their restructuring plan are provided in the Declaration of Marc Pfefferle, the Chief Executive Officer of Dream II Holdings, LLC, sworn May 19, 2019 (the "Pfefferle Declaration"), which is appended to Mr. Pfefferle's Affidavit sworn May 23, 2019 in support of the Foreign Representative's application to the Ontario Court (the "Pfefferle Affidavit").

### **3.0 The Canadian Debtor**

1. The Pfefferle Affidavit sets out the Chapter 11 Debtors' connections to Canada, the integrated nature and reliance of the Canadian Debtor on its US affiliates and the overall basis for the centre of main interest ("COMI") of the Canadian Debtor, being the US. Accordingly, the Canadian Debtor's COMI attributes are not repeated herein.

### 3.1 Financial Overview

1. A summary of the Canadian Debtor's unaudited<sup>1</sup> financial results for its fiscal year ended December 31, 2018 and four-month period ended April 30, 2019 is provided in the table below.

(unaudited; US\$000s;)	Four months ended April 30, 2019	December 31, 2018
Gross revenue	16,242	61,229
Royalties and allowances	(1,805)	(10,394)
Cost of goods sold	(13,709)	(47,874)
Gross profit	728	2,961
Operating expenses	(344)	(4,137)
Interest, taxes, foreign exchange and other	(290)	(1,423)
Net Income / (Loss)	94	(2,599)

2. The above table reflects that, *inter alia*:
  - a) the Canadian Debtor incurred a net loss in its most recent fiscal year ended December 31, 2018 of approximately \$2.6 million after allocation of selling, general and administrative expenses, including royalties and procurement fees, incurred by the US Debtors and allocated across the manufacturing facilities for which they provide these and other shared services (the "US Shared Services");
  - b) the US Debtors allocate approximately \$600,000 per month to the Canadian Debtor, representing approximately 6% of the total costs of US Shared Services incurred by the US Debtors on an annual basis; and
  - c) year-to-date results do not reflect any allocation of US Shared Services given that this allocation is typically performed at year-end. The adjusted year-to-date results would reflect a loss of approximately \$2.3 million after allocation of US Shared Services. Accordingly, the Canadian Debtor's operational losses have increased significantly in fiscal 2019. This increase is partly due to the seasonality of the business as its busy season is in the upcoming "back to school" season.

<sup>1</sup> The Canadian Debtor's standalone financial statements are not audited - they are consolidated with the US Debtors' audited financial statements.

3. The Canadian Debtor's most recent unaudited balance sheet as at April 30, 2019 is provided in the table below.

(unaudited; US\$000s)	April 30, 2019
Accounts receivable	3,642
Inventory	12,955
Prepaid expenses and other	240
Total current assets	16,837
Property and equipment	1,161
Advances to US Debtors	8,300
Total Assets	26,298
Bank indebtedness under Prepetition ABL Facility	5,945
Accounts payable and accrued liabilities	9,928
Total current liabilities	15,873
Shareholder's equity	10,425
Total Liabilities and Equity	26,298

4. The April 30, 2019 balance sheet reflects that, *inter alia*:
  - a) the Canadian Debtor does not have sufficient liquidity to normalize its trade payables, which are significantly aged. (As at May 10, 2019, approximately \$7.2 million of accounts payable is past due as detailed in Section 3.2.3 of this Report); and
  - b) if the amount owing from the US Debtors (\$8.3 million) was written down to its realizable value and the Canadian Debtor's allocation of US Shared Services was recorded for the four months ended April 30, 2019 (\$2.4 million), the Canadian Debtor's shareholder's equity would be entirely eroded.
5. If appointed, the proposed Information Officer intends to review the transaction(s) that gave rise to the intercompany balance of \$8.3 million owing from the US Debtors to the Canadian Debtor as at April 30, 2019 and the allocation methodology for the US Shared Services. The results of that review will be provided in a subsequent report to be filed with the Ontario Court. As detailed in Section 5 of this Report, any post-filing intercompany advances made by the Canadian Debtor to the US Debtors under the DIP ABL Facility will be made on a secured basis pursuant to a Court-ordered priority administrative expense claim granted in the Chapter 11 Proceedings, for which the Canadian Debtor seeks recognition in Canada.

### 3.2 Creditor Composition

1. Based on the Canadian Debtor's books and records, the indebtedness owing by the Canadian Debtor under the Prepetition ABL Facility (approximately \$6 million as at April 30, 2019) represents the only secured claim against the Canadian Debtor.
2. The Canadian Debtor is not a guarantor of the US Debtors' indebtedness under the Prepetition ABL Facility nor is it a borrower or guarantor under the US Debtors' Term Loan Facility.

- The unsecured creditors of the Canadian Debtor are largely its offshore inventory suppliers, who are presently owed approximately \$9 million. The aging of accounts payable as at May 10, 2019 is reflected in the table below.

(US\$000s; unaudited) Supplier	Current	1 – 30 Days Past Due	31 – 60 Days Past Due	Over 60 Days Past Due	Total
Cixi Jiangnan Chemical Fiber	136	482	316	306	1,240
Funing Jincheng Home Textile Co., Ltd.	174	-	882	11	1,067
Zhejiang Liuqiao Industrial Co., Ltd.	-	529	-	191	720
Donfoam Inc.	315	249	27	-	591
Wuxi Jielong Textile Co., Ltd	97	221	247	-	565
Other (148 creditors)	1,070	1,331	1,601	767	4,766
Total	1,792	2,812	3,073	1,275	8,952
% of total	20.1%	31.4%	34.3%	14.2%	100%

- All but seven of the Canadian Debtor's inventory suppliers (owed approximately \$513,000 in total) also supply to the US Debtors and, accordingly, substantially all suppliers and creditors of the Canadian Debtor are also suppliers and creditors of the US Debtors.
- The proposed Information Officer understands that the Canadian Debtor has not paid rent for May, 2019 to the landlords of its Toronto and Montreal manufacturing facilities and its sales office. Monthly rent totals approximately \$129,000. Subject to any extension, the lease for the Toronto manufacturing facility is scheduled to expire on July 21, 2019 and the lease for the Montreal manufacturing facility is scheduled to expire on May 31, 2023.

### 3.3 Liquidation Analysis

- Immediately upon its engagement, the proposed Information Officer's focus was on the potential impact of the Chapter 11 Proceedings, particularly the DIP ABL Facility and the proposed Plan, on the unsecured creditors of the Canadian Debtor.
- The proposed Information Officer prepared the Liquidation Analysis to estimate what recovery may be available to unsecured creditors of the Canadian Debtor if it did not participate in the Chapter 11 Proceedings, in which case the operations of the Canadian Debtor would immediately be discontinued given that it does not have the liquidity nor the infrastructure to operate on a standalone basis at this time.
- Subject to the assumptions underlying the Liquidation Analysis, as detailed therein, there would be a nominal recovery, if any, available for the Canadian Debtor's unsecured creditors in a liquidation or shutdown scenario. A copy of the Liquidation Analysis is attached as Confidential Appendix "1".

4. The proposed Information Officer recommends that the Liquidation Analysis be filed with the Ontario Court on a confidential basis and remain sealed pending further order of the Ontario Court as the availability of such information may negatively impact the Sale Process that will be undertaken in the context of the Chapter 11 Proceedings, including for the business and assets of the Canadian Debtor. In addition, the proposed Information Officer does not believe that any stakeholder will be prejudiced if the Liquidation Analysis is sealed. Keeping this information sealed pending further order of the Ontario Court is consistent with value maximization and in the best interest of the Canadian Debtor's stakeholders.

## 4.0 First Day Orders

1. The Foreign Representative is seeking recognition of the following First Day Orders by the Ontario Court:
  - a) Foreign Representative Order;
  - b) Joint Administration Order;
  - c) Employee Wages Order;
  - d) Cash Management Order;
  - e) Interim DIP Order;
  - f) Critical Vendors and Shippers Order; and
  - g) Customer Programs Order.
2. The Pfefferle Declaration and the Pfefferle Affidavit provide further background in support of each First Day Order. The proposed Information Officer has reviewed the First Day Orders and the related motions and discussed the rationale for them, particularly as it relates to the Canadian Debtor, with Canadian counsel to the Foreign Representative.
3. The First Day Orders are consistent with the integrated nature of the Chapter 11 Debtors' operations in the US and Canada, and in particular:
  - a) the Foreign Representative Order authorizes the Foreign Representative to act as the "foreign representative" under the CCAA in order to seek the relief sought in its application;
  - b) the Joint Administration Order authorizes the joint administration of the various Chapter 11 cases filed by the Chapter 11 Debtors and related procedural relief;
  - c) the Employee Wages Order permits the payment of pre-filing wages and employee benefits (if any) in the US and Canada, as well as remittance of payroll deductions and taxes (if any);



- d) the Cash Management Order provides for the ongoing use of an integrated network of bank accounts and cash management system in both the US and Canada and permits intercompany advances;
  - e) the Interim DIP Order authorizes the advances under the DIP ABL Facility and DIP Term Loan Facility (defined below) to be used to finance the integrated operations of the Chapter 11 Debtors for working capital, general corporate purposes and their US and Canadian restructuring proceedings and contemplates that advances under the DIP ABL Facility would be secured by a super-priority charge in both the US and Canada whereas advances under the Term Loan Facility would be secured by a super-priority charge in the US only. The attributes and reasonableness of the DIP ABL Facility (from the perspective of creditors of the Canadian Debtor) are summarized in Section 5 of this Report;
  - f) the Critical Vendors and Shippers Order permits the payment of prepetition amounts to critical third-party vendors; and
  - g) the Customer Programs Order authorizes the continuation, in the discretion of the Chapter 11 Debtors, of various customer programs, including markdown allowances, discounts, returns and cooperative marketing programs. This is required to maintain customer loyalty and goodwill throughout the Chapter 11 Proceedings.
4. The proposed Information Officer notes that the creditors of the Canadian Debtor are proposed to receive the same treatment as creditors of the US Debtors in the First Day Orders, including ascribing “administrative claim” status for post-filing goods or services provided to the Chapter 11 Debtors during the Chapter 11 Proceedings.
  5. The Chapter 11 Debtors anticipate bringing further motions before the US Court in the coming weeks for the approval of additional orders, including an order setting forth the bidding procedures in connection with the Sale Process.

## 5.0 The DIP ABL Facility<sup>2</sup>

1. As set out in the Pfefferle Declaration and the Pfefferle Affidavit, the Chapter 11 Debtors, including the Canadian Debtor, require financing during the Chapter 11 Proceedings to provide the necessary liquidity to maintain their business, preserve the value of their assets for all stakeholders and for the Chapter 11 Debtors, with the assistance of Houlihan, to conduct the Sale Process.
2. Based on the Pfefferle Declaration and Pfefferle Affidavit, there are no other viable funding options available to the Chapter 11 Debtors except for the DIP ABL Facility with the existing Prepetition ABL Lenders, and the DIP Term Loan Facility with the existing Term Loan Lenders. The Canadian Debtor is not a borrower or guarantor under the DIP Term Loan Facility and, accordingly, the Recognition Orders do not contemplate any charges or approvals in respect thereof.

---

<sup>2</sup> Capitalized terms not otherwise defined in this section of the Report are as defined in the DIP ABL Facility.

3. Included in the First Day Orders is the Interim DIP Order approving, among other things, the DIP ABL Facility. The granting of the DIP ABL Charge and recognition of the Interim DIP Order are conditions precedent to the Canadian Debtor drawing on the DIP ABL Facility.
4. A copy of the DIP ABL Facility is appended to the Foreign Representative's application materials and summarized in the Pfefferle Affidavit. A summary of the key attributes of the DIP ABL Facility is provided in the table below.

<b>US Borrowers</b>	The US Debtors other than Dream II Holdings LLC
<b>Canadian Borrower</b>	Hollander Sleep Products Canada Limited
<b>Guarantor</b>	Dream II Holdings, LLC
<b>Nature of Liability</b>	Canadian Debtor and US Debtors are to be jointly and severally liable for their respective obligations under the DIP ABL Facility
<b>Postpetition Lenders</b>	The DIP ABL Lenders, being the same parties as the Prepetition ABL Lenders
<b>Postpetition Agent</b>	Wells Fargo Bank, National Association
<b>Commitment</b>	up to \$90 million; Canadian Debtor sublimit of \$20 million
<b>Interest Rate</b>	Base Rate plus 2% for certain advances or LIBOR plus 4% on others (the DIP Budget contemplates an effective interest rate of 6.5%)
<b>Expenses and Fees</b>	Closing fee of \$1.35 million (1.5% of committed amount)
<b>Budget</b>	The Chapter 11 Debtors must operate in accordance with the DIP Budget

5. In assessing the reasonableness of the DIP ABL Facility and the proposed recognition of the Interim DIP Order, the proposed Information Officer was cognizant that the DIP ABL Facility potentially increases the liability of the Canadian Debtor relative to the Prepetition ABL Facility. While it is a borrower under the Prepetition ABL Facility, the Canadian Debtor is not a guarantor of, nor is it jointly or severally liable for, the US Debtors' obligations under the Prepetition ABL Facility (approximately \$65 million). The DIP ABL Facility, on the other hand, contemplates that the Canadian Debtor would be liable, on a joint and several basis, for the US Debtors' obligations, which, given the "roll up" nature of the DIP structure upon the issuance of the Final DIP Order, would include the US Debtors' prepetition obligations owing to the Prepetition ABL Lenders.
6. The proposed Information Officer was cognizant of concerns expressed by the Ontario Court in circumstances in which unencumbered Canadian assets are used as collateral for priming DIP obligations to benefit US operations. It is for this reason that the proposed Information Officer and the Chapter 11 Debtors carefully considered the needs of the Canadian Debtor, the alternatives available to it and the commercial terms of the DIP ABL Facility.

7. Immediately following its engagement on May 16, 2019, the proposed Information Officer and its legal counsel supported the Canadian Debtor's efforts to negotiate additional protections into the DIP ABL Facility and the Plan that would mitigate the potential implications of the DIP ABL Facility on the Canadian Debtor and its stakeholders. This was particularly important in this case given the Canadian Debtor's creditor composition, consisting largely of offshore vendors who may be unfamiliar with formal insolvency proceedings, priming charges and the like. There are no large creditor groups (such as unions, pensioners and/or landlords) who are commonly involved in these cases. Accordingly, the protective measures and provisions that were agreed to between the Chapter 11 Debtors and the DIP ABL Agent in the days leading up to the commencement of the Chapter 11 Proceedings include:
- a) a "quasi-marshalling" concept, whereby the DIP ABL Agent is obligated to: (i) first recover on the US assets to satisfy the outstanding obligations of the US Debtors; (ii) similarly, first look to proceeds from the Canadian assets to satisfy the outstanding obligations of the Canadian Debtor; and (iii) with respect to the proceeds of the assets of the Canadian Debtor, only apply such proceeds to reduce the obligations of the US Debtors if the assets of the US Debtors have been exhausted; and
  - b) the Interim DIP Order ascribes priority in the form of a Court ordered administrative expense claim to any advances the Canadian Debtor makes under the DIP ABL Facility to the US Debtors during the Chapter 11 Proceedings. This priority item is referred to in the Interim DIP Order as the "Canadian Intercompany Super-priority Administrative Claim".<sup>3</sup>
8. In addition to the foregoing, the proposed Information Officer considered the following to assess the reasonableness of the DIP ABL Facility:
- a) the results of the Liquidation Analysis, which not only reflects that there would be nominal recoveries, if any, available for creditors of the Canadian Debtor ranking subordinate to the Prepetition ABL Lenders, but would also result in:
    - i. the loss of employment for approximately 240 Canadian employees;
    - ii. the loss of a major supplier of bedding products to Canadian retailers in the midst of the upcoming "back to school" season;
    - iii. the loss of a customer for its offshore vendor base; and
    - iv. the loss of an opportunity for the Canadian Debtor to be marketed for sale by Houlihan in the Sale Process. In this regard, the proposed Information Officer ensured that the Sale Process does not preclude bids to be submitted and considered for the business and assets of the Canadian Debtor (i.e. as opposed to only soliciting interest from prospective purchasers interested in both US and Canada);

---

<sup>3</sup> Pursuant to the Interim DIP Order, the Canadian Intercompany Super-priority Administrative Claim ranks junior to the DIP ABL Lenders and the Prepetition ABL Lenders but senior to the DIP Term Loan Lenders and the Term Loan Lenders on the ABL Priority Collateral and junior to the DIP Term Loan Lenders, the Term Loan Lenders, the DIP ABL Lenders and the Prepetition ABL Lenders on the Term Priority Collateral (as each such term is defined in the Interim DIP Order).

- b) the DIP Budget was prepared on a consolidated basis and as such, does not reflect on a standalone basis the projected funding requirements of the Canadian Debtor. The proposed Information Officer extracted from the DIP Budget an estimated cash flow forecast for the Canadian Debtor to understand its projected funding requirements during the Chapter 11 Proceedings. This analysis reflects that the Canadian Debtor is projected to generate negative cash flow until at least July 1, 2019. Absent draws being available under the DIP ABL Facility, the Canadian Debtor would not be able to continue to operate in the normal course and its operations would need to be immediately discontinued;
- c) there is no assumption in the DIP Budget or otherwise that further credit would be extended to the Canadian Debtor by its vendors. In this regard, the DIP Budget was premised on cash-on-delivery or cash-in-advance supply terms;
- d) based on the Pfefferle Declaration and the Pfefferle Affidavit, there are no other funding sources available to the Canadian Debtor except from the DIP ABL Lenders pursuant to the DIP ABL Facility;
- e) the extent to which the Canadian Debtor's operations are centrally managed, controlled by and integrated with the US Debtors;
- f) funding from the DIP ABL Facility is required to, among other things, maintain existing operations, pay employees, secure and insure the Chapter 11 Debtors' assets located in the US and Canada and fund these proceedings while Houlihan conducts the Sale Process. It appears that the value of the Canadian Debtor's assets and the success of the Sale Process would be jeopardized absent the DIP ABL Facility;
- g) KSV compared the pricing of the DIP ABL Facility (interest and fees, including the closing fee of \$1.35 million (being 1.5% of the committed amount)) to other DIP facilities approved by Canadian courts in CCAA proceedings in recent years. The comparison is attached as Appendix "B". Based on KSV's analysis, the cost of the proposed DIP ABL Facility is consistent with other recent DIP financings approved by Canadian courts;
- h) the DIP ABL Facility is the result of arm's-length negotiations between the Chapter 11 Debtors, the DIP ABL Agent and the DIP ABL Lenders. The proposed Information Officer understands that the DIP ABL Agent and the DIP ABL Lenders were not willing to provide the interim financing required to fund these cross-border insolvency proceedings other than on the terms and conditions of the DIP ABL Facility; and
- i) the DIP ABL Facility contemplates that the Chapter 11 Debtors' receipts will first be applied against outstanding amounts under the Prepetition ABL Facility and, upon issuance of a final order in respect of the Interim DIP Order, any amount outstanding under the Prepetition DIP Facility will be repaid with the proceeds of the DIP ABL Facility. Given this proposed "roll-up" treatment, the proposed Information Officer determined that an independent opinion on the validity and enforceability of the security held by the Prepetition ABL Lenders was required in the context of its review of the DIP ABL Facility. The results of the security opinion are discussed in Section 5.1 of this Report.

9. Based on the foregoing, the proposed Information Officer does not believe that any creditor with an economic interest in the Canadian Debtor's assets in a liquidation scenario will be materially prejudiced by the recognition of the Interim DIP Order and/or the granting of the DIP ABL Charge.

## 5.1 Security Opinion

1. In anticipation of these proceedings, KSV retained Norton Rose Fulbright Canada LLP ("Norton Rose") to act as its legal counsel in the event that the Recognition Orders are granted and KSV is appointed as Information Officer. Norton Rose provided an opinion<sup>4</sup> dated May 22, 2019 which, subject to the standard assumptions and qualifications contained therein, concludes that the security granted by the Canadian Debtor in favour of the Prepetition ABL Agent, as registered under the PPSA and at the Register of Personal and Movable Real Rights, creates a valid and perfected security interest and hypothec in the Canadian Debtor's assets situated in British Columbia, Ontario and Quebec, respectively.

## 6.0 Court Ordered Charges

1. In addition to the DIP ABL Charge, the proposed Recognition Orders contemplate an Administration Charge.
2. The Foreign Representative is seeking an Administration Charge in an amount not to exceed \$200,000 to secure the fees and expenses of the Information Officer and its counsel.
3. The Administration Charge is a customary provision in recognition orders under Part IV of the CCAA - it is required by certain of the professionals engaged to assist a debtor company and to protect those professionals in the event it is unable to pay their fees and costs during the insolvency process.
4. KSV believes that the quantum of the Administration Charge is reasonable and appropriate in the circumstances given the complexities of the cross-border proceedings and the services to be provided by the professionals involved.

## 7.0 The Plan

1. The Chapter 11 Debtors entered into a restructuring support agreement dated as of May 19, 2019 with the Term Loan Lenders and Sentinel (the "RSA"). The RSA contemplates the Plan, which the Chapter 11 Debtors have filed in the Chapter 11 Proceedings.

---

<sup>4</sup> A copy of the security opinion will be made available to the Ontario Court should it wish to review it.

2. The details of the Plan and RSA are provided in the Pfefferle Declaration and the Pfefferle Affidavit and, accordingly, are not repeated herein. A summary of the key provisions vis-à-vis the Canadian Debtor and its stakeholders is as follows:
  - a) the Chapter 11 Debtors have secured an agreement to have the DIP Term Loan Facility converted into a \$58 million exit term loan facility upon emergence from the Chapter 11 Proceedings, which provides an additional \$30 million in incremental liquidity to fund go-forward operations;
  - b) the RSA contemplates that the Term Loan Lenders would convert their existing secured debt into equity pursuant to a credit bid. However, the Plan includes a sale “toggle” feature allowing for a potential sale to a third party which may result from the Sale Process to be carried out by the Chapter 11 Debtors and Houlihan. As noted above, Houlihan’s process will not preclude prospective purchasers from submitting bids for the Canadian Debtor’s business and assets on a standalone basis; and
  - c) given that the Canadian Debtor is not a borrower or guarantor under the Term Loan Facility, the Chapter 11 Debtors, the DIP ABL Agent and the DIP Term Loan Agent negotiated and incorporated certain protections into the Plan to consider the treatment of the Canadian Debtor’s creditors. In this regard, the Plan provides that:
    - i. if there is a sale to a third party, the Information Officer has consultation rights into the value allocation methodology that will be used to allocate the purchase price between the US Debtors and the Canadian Debtor; and
    - ii. if the winning bid is the transaction with the Term Loan Lenders contemplated by the RSA, there may be a “Canadian Acquisition Transaction”, pursuant to which the Term Loan Lenders may acquire the assets, undertakings and properties of the Canadian Debtor. In that scenario, the Canadian Acquisition Transaction shall be acceptable to the Chapter 11 Debtors, the required Term Loan Lenders and the Information Officer. In addition, any Canadian Acquisition Transaction will be subject to the approval of the Ontario Court.
3. At the conclusion of the Sale Process, the proposed Information Officer intends to file a report with the Ontario Court that will, *inter alia*:
  - a) comment on the reasonableness of the value allocation or the Canadian Acquisition Transaction, as the case may be; and
  - b) provide the Ontario Court with a recommendation thereon.

## 8.0 Conclusion and Recommendation

1. Based on the foregoing, the proposed Information Officer recommends that this Honourable Court grant the Recognition Orders sought by the Foreign Representative.

\* \* \*

All of which is respectfully submitted,

A handwritten signature in blue ink that reads "KSV Kofman Inc". The signature is written in a cursive, flowing style.

**KSV KOFMAN INC.**

**IN ITS CAPACITY AS PROPOSED INFORMATION OFFICER OF  
HOLLANDER SLEEP PRODUCTS, LLC, HOLLANDER SLEEP PRODUCTS CANADA  
LIMITED, DREAM II HOLDINGS, LLC, HOLLANDER HOME FASHIONS HOLDINGS, LLC,  
PACIFIC COAST FEATHER, LLC, HOLLANDER SLEEP PRODUCTS KENTUCKY, LLC AND  
PACIFIC COAST FEATHER CUSHION, LLC  
AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “D”**



**CITATION:** Holland Sleep Products, LLC et al., Re, 2019 ONSC 3238  
**COURT FILE NO.:** CV-19-620484-00CL  
**DATE:** 2019/05/30

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**- COMMERCIAL LIST**

**RE:** IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

**AND:**

AND IN THE MATTER OF HOLLANDER SLEEP PRODUCTS, LLC,  
HOLLANDER SLEEP PRODUCTS CANADA LIMITED, DREAM II  
HOLDINGS, LLC, HOLLANDER HOME FASHIONS HOLDINGS, LLC,  
PACIFIC COAST FEATHER, LLC, HOLLANDER SLEEP PRODUCTS  
KENTUCKY, LLC, AND PACIFIC COAST FEATHER CUSHION, LLC

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

**BEFORE:** HAINEY J.

**COUNSEL:** *Shawn Irving and Marc Wasserman*, for the Applicant

*Virginie Gauthier*, for KSV Kofman Inc.

*L. Joseph Latham*, for Wells Fargo

*Milly Chow and Kelly Bourassa*, for Barings Finance LLC

**HEARD:** May 23, 2019

**ENDORSEMENT**

**BACKGROUND**

[1] On May 23, 2019 I granted the application brought by Hollander Sleep Products, LLC (“Hollander Sleep Products”), for orders pursuant to Section 46 through 49 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (“CCAA”). I made the following orders:

- a) Recognition of the Chapter 11 Cases as foreign main proceedings pursuant to *Part IV of the CCAA*;
- b) Recognition of certain First Day Orders;

- c) Appointment of KSV Kofman Inc. (“KSV”) as Information Officer;
- d) Granting of the DIP ABL Charge; and
- e) Granting of the Administration Charge.

[2] I indicated in my endorsement that written reasons would follow. These are my written reasons.

[3] Hollander Sleep Products brings this application in its capacity as the foreign representative (the “Foreign Representative”) of itself and Hollander Sleep Products Canada Limited (“Hollander Canada”), Dream II Holdings, LLC, Hollander Home Fashions Holdings, LLC, Pacific Coast Feather, LLC, Hollander Sleep Products Kentucky, LLC, and Pacific Coast Feather Cushion, LLC (collectively, the “Chapter 11 Debtors”, and with their other non-debtor affiliates, “Hollander”).

## **FACTS**

[4] Hollander is an industry leader in the bedding products market. Hollander manufactures bedding products including pillows, comforters and mattress pads for well-known licensed brands. Hollander also owns and manufactures bedding products under several of its own proprietary brands and also partners with major retailers and hotel chains.

[5] Hollander’s corporate headquarters is in Boca Raton, Florida. Hollander has 13 manufacturing facilities located across North America – 11 in the United States and 2 in Canada - - and a primary show room in New York City. Most of Hollander’s sales come from wholesale distribution.

### *Chapter 11 Cases*

[6] On May 19, 2019 (the “Petition Date”) each of the Chapter 11 Debtors filed voluntary petitions for relief pursuant to Chapter 11 of the *U.S. Bankruptcy Code* (the “Chapter 11 Cases”) with the United States Bankruptcy Court for the Southern District of New York (the “U.S. Court”). Certain first day motions (the “First Day Motions”) were also filed on May 19, 2019. On May 21, 2019, the U.S. Court heard several of the First Day Motions, and on May 22 and 23, 2019 the court entered various interim or final orders in respect of these motions (the “First Day Orders”).

### *Chapter 11 Debtors*

[7] The Chapter 11 Debtors operate on an integrated basis and are incorporated or established under the laws of the United States except for Hollander Canada, which is incorporated under the laws of British Columbia. Each of the Chapter 11 Debtors, including Hollander Canada, is a direct or indirect wholly-owned subsidiary of Dream II Holdings, LLC.

### *Hollander Canada*

[8] Hollander Canada is a fully integrated subsidiary of Hollander. Hollander Canada operates one manufacturing facility in Toronto, one manufacturing facility in Montreal, and maintains a sales office in Toronto.

[9] Hollander Canada employs approximately 240 employees, all of whom are located in Canada. Hollander Canada's workforce is not unionized and it does not maintain any registered pension plans. Its primary stakeholders include employees, lenders, customers, landlords, creditors, and trade-suppliers.

[10] On a standalone basis, Hollander Canada is not profitable. Its 2018 financial statement reflects a net loss of approximately \$2.6 million after allocation of selling, general and administrative expenses, including royalties and procurement fees, incurred by the U.S. Chapter 11 Debtors and allocated across the manufacturing facilities for which it provides these and other shared services (the "U.S. Shared Services"). Losses have continued for the four-month period ended April 30, 2019. Currently, approximately \$7.2 million of Hollander Canada's \$9 million of accounts payable is past due. If the amount owing to Hollander Canada from the U.S. Chapter 11 Debtors was written down to its realizable value and Hollander Canada's allocation of U.S. Shared Services was recorded for the four months ended April 30, 2019, Hollander Canada's shareholder equity would be entirely eroded.

[11] Hollander Canada is entirely dependent on Hollander's U.S. head office for managerial, administrative, IT, strategic services and decisions, and it uses intellectual property almost wholly owned by U.S. Hollander entities. Hollander Canada is also entirely reliant on supply arrangements and relationships of the Hollander enterprise.

#### *Principal Indebtedness*

[12] The Chapter 11 Debtors' principal pre-petition indebtedness consists of the following:

- a) **Prepetition ABL Facility** – a \$125 million senior revolving asset-based credit facility (the "ABL Facility") under which all the Chapter 11 Debtors, including Hollander Canada, are obligors. Hollander Canada may borrow a maximum of \$40 million from this facility. Hollander Canada is not jointly or severally liable for the obligations of the U.S. Chapter 11 Debtors under the ABL Facility; however, the U.S. Chapter 11 Debtors are liable for Hollander Canada's borrowings under the ABL Facility. As of the Petition Date, approximately \$61 million remains outstanding against the ABL Facility, not including approximately \$5 million in letters of credit (the "Prepetition ABL Obligations"). The Prepetition ABL Obligations include approximately \$6 million of borrowings by Hollander Canada.
- b) **Prepetition Term Loan** – a \$190 million senior secured term loan facility (the "Term Loan Facility"). Each Chapter 11 Debtor except Hollander Canada is an obligor under this facility. Hollander Canada is not a borrower or a guarantor of the Term Loan Facility. As of the Petition Date, approximately \$166.5 million remains outstanding against the Term Loan Facility.

#### *Recent Events and Proposed Restructuring*

[13] Recent substantial price increases on materials have significantly reduced Hollander's already low profit margins for many products. In addition, Hollander acquired one of its major competitors in June 2017. This necessitated the expenditure of additional capital. With

approximately \$233 million of outstanding indebtedness and limited access to credit, Hollander is facing severe liquidity constraints.

[14] These circumstances necessitated comprehensive restructuring negotiations with the Chapter 11 Debtors' primary constituency groups. The Chapter 11 Debtors recently agreed with their secured lenders and their majority equity-holder, Sentinel, on a comprehensive restructuring process to ensure the viability of the business. The Chapter 11 Debtors, 100% of the Term Loan Lenders, and Sentinel entered into a restructuring support agreement dated May 19, 2019 (the "RSA"). The RSA contemplates, and the Chapter 11 Debtors have filed, a comprehensive Chapter 11 restructuring plan (the "Plan").

[15] In connection with the RSA, Hollander's asset-based secured lenders have agreed to provide a \$90 million debtor-in-possession asset-based loan facility (the "DIP ABL Facility") and certain Term Loan Lenders have agreed to provide an additional \$28 million term loan facility (the "DIP Term Loan Facility" and together with the DIP ABL Facility, the "DIP Facilities") to fund the administration of the Chapter 11 Cases.

[16] I am not, at this time, being asked to approve or grant any relief in connection with the Plan. However, the Chapter 11 Debtors have negotiated and incorporated certain protections into the Plan to mitigate against any prejudice to current creditors of Hollander Canada that might result incidentally from a global restructuring. I am satisfied that the Plan represents the Chapter 11 Debtors' best prospect of reorganizing their business operations and emerging as a healthy going-concern enterprise, maximizing recoveries for all stakeholders.

[17] If the Chapter 11 Debtors do not obtain the relief requested on this application, including post-petition financing, they will be unable to restructure pursuant to the Plan. In such a case, a liquidation of the business and assets of the Chapter 11 Debtors, including Hollander Canada, will be the likely result. In a liquidation scenario, there will be a nominal recovery, if any, available for Hollander Canada's unsecured creditors.

#### *Proposed Postpetition Financing*

[18] On May 21, 2019, the U.S. Court heard certain of the First Day Motions, including the DIP Motion. At the hearing, the U.S. Court requested certain changes to the DIP Order, which were subsequently made by the Chapter 11 Debtors in consultation with the DIP Lenders. Access to the DIP Facilities is vital to the preservation and maintenance of the going-concern value of Hollander and the Chapter 11 Debtors' successful reorganization.

[19] The \$90 million DIP ABL Facility is the critical facility from the perspective of Hollander Canada. Hollander Canada is neither a borrower nor a guarantor of the DIP Term Loan Facility. The DIP ABL Facility is a senior secured credit facility for which all the Chapter 11 Debtors, including Hollander Canada, are borrowers. The DIP ABL Facility provides for an initial "creeping (or gradual) roll-up" whereby the Chapter 11 Debtors will use receipts from the Chapter 11 Debtors' operations to pay down pre-filing obligations pending the issuance of the Final DIP Order, whereupon there will be a deemed draw on the DIP ABL Facility to satisfy the then outstanding prepetition debt, if any, under the ABL Facility. Hollander Canada is entitled to

borrow up to \$20 million under the DIP ABL Facility, less the amount of Hollander Canada's prepetition obligations under the ABL Facility that are to be rolled-up into the DIP ABL Facility.

[20] With respect to prepetition debt under the ABL Facility, Hollander Canada is not jointly or severally liable for amounts drawn down by the U.S. Chapter 11 Debtors. However, Hollander Canada will be jointly and severally liable with the other Chapter 11 Debtors in respect of borrowings under the DIP ABL Facility, including borrowings to repay amounts drawn down under the prepetition ABL Facility by the U.S. Chapter 11 Debtors. The DIP ABL Lenders have indicated they are unwilling to enter into the DIP ABL Facility unless Hollander Canada is jointly and severally liable for all obligations under the DIP ABL Facility, including those incurred by the U.S. borrowers.

[21] It is a condition of the DIP Facilities that the Chapter 11 Debtors obtain an order from this Court recognizing the DIP Order within three business days of when the DIP Order was issued by the U.S. Court. The DIP ABL Facility requires that the DIP Order be recognized by this Court before any borrowing by Hollander Canada will be permitted under the DIP ABL Facility.

[22] I have concluded that the ability of the Chapter 11 Debtors, including Hollander Canada, to maintain business relationships with their vendors, suppliers and customers, to pay their employees and otherwise finance their operations requires the availability of working capital from the DIP Facilities. The Chapter 11 Debtors, including Hollander Canada on a standalone basis, do not have sufficient available sources of working capital and financing to operate their businesses without immediate access to the DIP Facilities.

## ISSUES

[23] I must decide the following issues:

- a) Are the Chapter 11 Cases "foreign main proceedings" 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) Recognition of the First Day Orders;
  - (iii) Granting the DIP ABL Charge;
  - (iv) Appointing KSV as Information Officer; and
  - (v) Granting the Administration Charge?

## ANALYSIS

### **Are the Chapter 11 Cases Foreign Main Proceedings?**

#### *Are the Chapter 11 Cases Foreign Proceedings?*

[24] I must first determine if the Chapter 11 Cases are foreign proceedings. It is important to note that 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.

[25] Pursuant to S. 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. Pursuant to S. 47 of the CCAA, the two following 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.

[26] In the Chapter 11 Cases, an order was made appointing Hollander Sleep Products as foreign representative by the U.S. Court on May 23, 2019. (the "Foreign Representative Order").

[27] Section 45(1) of the CCAA defines a "foreign proceeding" as any judicial proceeding in a jurisdiction outside of 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. Courts have consistently recognized proceedings under Chapter 11 of the United States Bankruptcy Code to be foreign proceedings for the purposes of the CCAA.

[28] Because Hollander Sleep Products has been appointed a "foreign representative" by the U.S. Court in the Chapter 11 Cases, I am satisfied that the Chapter 11 cases should be recognized as a "foreign proceeding" pursuant to S. 47(1) of the CCAA.

*Are the Chapter 11 Cases Foreign Main Proceedings?*

[29] Once I have determined that a proceeding is a “foreign proceeding”, I am required, pursuant to Section 47(2) of the CCAA, to specify in my order whether the foreign proceeding is a “foreign main proceeding” or a “foreign non-main proceeding.” A “foreign main proceeding” is defined as a “foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests” (“COMI”).

[30] 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. Evidence regarding the debtor company’s operations can rebut this presumption. Part IV of the CCAA does not specifically consider the circumstances facing corporate groups. It is therefore necessary to conduct the COMI analysis on an entity-by-entity basis.

[31] In this case the registered offices of all of the Chapter 11 Debtors except for Hollander Canada, are situated in the United States. Therefore, the presumption in s. 45(2) of the CCAA deems the COMI of each of those entities to be in the United States.

[32] Hollander Canada’s registered head office is in Vancouver. Where a Canadian entity is operating as part of a larger corporate group, several Canadian authorities have considered how COMI should be determined. In *Angiotech*<sup>1</sup>, the Court considered the following factors:

- 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.

---

<sup>1</sup> *Angiotech Pharmaceuticals Inc. (Re)*, 2011 BCSC 115 at para 7.

[33] In *Elephant & Castle*<sup>2</sup>, Morawetz J. (as he then was) recognized the *Angiotech* factors listed above and identified what he considered to be the most significant factors as follows:

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.

[34] The jurisprudence is clear that where a Canadian debtor company is the only Canadian entity among a number of other Chapter 11 debtors that are all incorporated in the United States, the COMI for the Canadian debtor company is the United States.

[35] I have concluded for the following reasons that Hollander Canada's COMI is in the United States:

- a) Hollander Canada's business is closely integrated into Hollander's business in the U.S. and its registered office is listed in Canada only for corporate purposes;
- b) Managerial functions for Hollander Canada, including finance, buying, logistics, marketing, and strategic decisions, are provided from Hollander's U.S. head office by Hollander Sleep Products;
- c) Hollander Canada is almost wholly dependent on Hollander's U.S. office for administrative functions such as overhead services, accounting, and IT, which are provided by Hollander Sleep Products in the U.S.;
- d) Data for Hollander Canada's operations is housed within IT systems, located and operated out of the U.S.;
- e) Hollander Canada is reliant on the purchasing power and supplier relationships of the Hollander enterprise, and on its own could not replicate the supply arrangements necessary for its continued functioning;
- f) Hollander Canada's books and records are maintained at Hollander's head office in Boca Raton, Florida;
- g) All of Hollander Canada's directors reside in the United States;
- h) Canadian revenues make up only 10.7% of Hollander's revenues;

---

<sup>2</sup> *Massachusetts Elephant & Castle Group Inc., (Re)*, 2011 ONSC 4201 (S.C.J. [Commercial List]).



- i) Hollander Canada is entirely dependent on the U.S. Chapter 11 Debtors for the majority of licensing agreements, design partnerships, and company-owned brands;
- j) Substantially all of the trademarks and intellectual property relied on by Hollander Canada are owned by the U.S. Chapter 11 Debtors;
- k) The Chapter 11 Debtors, including Hollander Canada, operate an integrated, centralized cash management system; and
- l) Hollander Canada is dependent on the U.S. Chapter 11 Debtors for the establishment, maintenance, and administration of certain customer promotional programs involving Hollander Canada's key customers.

[36] Since all the Chapter 11 Debtors except Hollander Canada have registered offices in the United States, and since a review of Hollander Canada's business indicates that its COMI is in the United States, The COMI of all the Chapter 11 Debtors is in the United States and therefore the Chapter 11 Cases should be recognized as "foreign main proceedings".

### **SHOULD THE INITIAL RECOGNITION ORDER AND SUPPLEMENTAL ORDER BE GRANTED?**

#### *Is a Stay of Proceedings Required and Appropriate?*

[37] 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:

[38] In addition to the automatic relief provided for in s. 48, s.49 of the CCAA grants me the broad discretion to make any appropriate order if I am satisfied that it is necessary for the protection of the debtor company's property or the interests of creditors.

[39] Section 52(1) of the CCAA requires that 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."

[40] Because of the circumstances facing Hollander, Hollander Canada and the other Chapter 11 Debtors, I am satisfied that a stay of proceedings is necessary in order to implement the proposed restructuring.

#### *Should the First Day Orders be Recognized?*

[41] 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, predictability and fairness.

[42] Canadian courts have emphasized the importance of comity and cooperation in cross-border insolvency proceedings to avoid multiple proceedings, inconsistent judgments and general

uncertainty. Coordination of international insolvency proceedings is particularly critical in ensuring the equal and fair treatment of creditors regardless of their location.

[43] I am satisfied that the First Day Orders should be recognized 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 in the United States or Canada;
- c) Given the close connection between Hollander 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 quickly because of the expeditious timetable established under the Plan for their restructuring. It is imperative that there be a centralized and co-ordinated process for these insolvency proceedings to maximize the prospect of a successful restructuring and preserve value for stakeholders; and
- e) The Canadian and U.S. operations of Hollander are highly integrated.

*Should the DIP ABL Charge be Granted?*

[44] The Chapter 11 Debtors are facing a liquidity crisis and require DIP financing to fund their operations while they pursue a restructuring pursuant to the Plan or a sale in accordance with the marketing process to be conducted as part of the Chapter 11 proceeding. The ability of the Chapter 11 Debtors, including Hollander Canada, to maintain and finance their operations requires working capital from the DIP Facilities. If interim financing through the DIP Facilities is not obtained, neither the Chapter 11 Debtors as a whole, nor Hollander Canada on a standalone basis, have the funds to finance going-concern operations.

[45] The DIP ABL Facility includes an initial creeping roll-up provision pursuant to which the Chapter 11 Debtors will use receipts from their operations to pay down pre-filing obligations pending the issuance of the Final DIP Order. The amount borrowed under the DIP ABL Facility is proposed to be secured by, among other things, a court-ordered charge on Hollander Canada's property and the property of the other Chapter 11 Debtors in Canada (the "DIP ABL Charge").

[46] This court has concluded in previous proceedings that there is no impediment to granting approval of interim DIP financing including a full roll-up provision in foreign recognition proceedings under Part IV of the CCAA<sup>3</sup>.

---

<sup>3</sup> *Hartford Computer Hardware Inc., (Re)*, 2012 ONSC 964 at paras. 18-19.

[47] In *Hartford*, an application under Part IV of the CCAA, this court recognized a DIP facility authorized by the U.S. Court that included a full roll-up, and emphasized the importance of comity in foreign recognition proceeding as follows:

The Information Officer and Chapter 11 Debtors recognize that in CCAA proceedings, a partial "roll up" provision would not be permissible as a result of s.11.2 of the CCAA, which expressly provides that a DIP charge may not secure an obligation that exists before the Initial Order is made.

Section 49 of the CCAA provides that, in recognizing an order of a foreign court, the court may make any order that it considers appropriate, provided the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of the creditor or creditors.

It is necessary, in my view, to emphasize that this is a motion to recognize an order made in the "foreign main proceeding"....

A significant factor to take into account is that the Final DIP Facility Order was granted by the U.S. Court. In these circumstances, I see no basis for this court to second guess the decision of the U.S. Court.

[48] For the same reasons I am satisfied that the DIP Order should be approved. The U.S. Court granted the DIP Order because it is necessary for the protection of Hollander's property and for the interests of creditors in Canada and the U.S.

[49] The DIP ABL Facility provides that Hollander Canada is jointly and severally liable for the borrowings of other Chapter 11 Debtors under the DIP ABL Facility.

[50] I have concluded that the following factors support recognizing Hollander Canada's joint and several liability under the DIP Order and the DIP ABL Charge:

- a) The DIP ABL Charge furthers the objectives of the CCAA and is commercially reasonable as it allows the Chapter 11 Debtors to continue operations and pursue a restructuring or going-concern sale as outlined in the proposed Plan;
- b) An estimated cash flow forecast extracted from the DIP budget reveals that Hollander Canada is projected to generate negative cash flow until at least July 1, 2019;
- c) The Chapter 11 Debtors, including Hollander Canada, need immediate access to the DIP ABL Facility to ensure their continued operations during these proceedings;
- d) The DIP ABL Lenders are unwilling to provide funding to the Chapter 11 Debtors without Hollander Canada's joint and several liability under the DIP ABL Facility;
- e) The proposed DIP Facilities and Plan are supported by all secured creditors with an economic interest in Hollander Canada; and

- f) If the DIP ABL Charge is not granted, the restructuring contemplated by the Plan will not be implemented, likely resulting in liquidation. In a liquidation scenario, Hollander Canada's creditors will likely obtain only nominal recoveries, if any.

[51] To protect the interests of Hollander Canada and its creditors, the Chapter 11 Debtors negotiated certain protections to mitigate any prejudice to Hollander Canada's creditors. Specifically, the DIP Order includes a quasi-marshalling construct whereby the DIP ABL Agent is obligated to first look to proceeds of the Chapter 11 Debtors' U.S. collateral to satisfy any outstanding obligations of the U.S. Chapter 11 Debtors under the DIP ABL Facility, and to the proceeds of the Chapter 11 Debtors' Canadian collateral to satisfy any outstanding obligations of Hollander Canada under the DIP ABL Facility. Only once collateral in the U.S. has been exhausted can the DIP ABL Lenders look to the Canadian assets to satisfy any outstanding U.S. obligation.

[52] The absence of prejudice to creditors of Hollander Canada, and the DIP ABL Lenders' consent to the quasi-marshalling construct, are key factors distinguishing this case from *Payless Holdings Inc. LLC, (Re)*. In *Payless*, also a proceeding under Part IV of the CCAA, this court declined to approve a DIP order and lenders' charge that would have required the solvent Canadian applicants to guarantee borrowings from the DIP facility even though they would not receive advances from it. The DIP facility was opposed by the Canadian landlords who were uniquely prejudiced by its terms. The DIP facility in that case specifically precluded marshalling.

[53] I have concluded that the Court's decision in *Payless* is distinguishable from this case for the following reasons as set out in the applicant's factum:

- a) In *Payless*, the Canadian Applicants were not insolvent, were not prepetition borrowers, had never granted security and were not borrowers under the DIP facility. In this case, Hollander Canada is insolvent, its assets are encumbered, and it is incapable of maintaining going concern operations without urgent funding support from the DIP ABL Facility. For instance, \$7.2 million of Hollander Canada's accounts payable are currently past due; without support from the DIP ABL Facility, Hollander does not have sufficient liquidity to satisfy these obligations.
- b) In *Payless*, there was evidence of material prejudice to Canadian creditors and certain Canadian creditor groups opposed the DIP order because they were disadvantaged. In this case, no such material prejudice or unequal treatment exists with respect to the creditors of Hollander Canada or the other Chapter 11 Debtors.
- c) In *Payless*, the Court intimated that if marshalling had been permitted, the inequitable treatment of Canadian creditors would have been resolved. In this case, the DIP ABL Lenders have specifically agreed to a quasi marshalling concept to ensure that Canadian assets are used first to satisfy Canadian DIP ABL indebtedness, and not applied to satisfy U.S. DIP ABL indebtedness until all U.S. assets are first exhausted.

[54] I have concluded that the DIP ABL Charge should be granted for these reasons.

**SHOULD KSV BE APPOINTED INFORMATION OFFICER?**

[55] I am satisfied that an information officer should be appointed to assist with the cooperation between the Canadian foreign recognition proceeding and the foreign representative and the U.S. Court. Further, KSV, a licensed insolvency trustee, is appropriate to act in this capacity.


**SHOULD AN ADMINISTRATIVE CHARGE BE APPROVED?**

[56] Finally, I am satisfied that an administration charge in the maximum amount of \$200,000 is reasonable and appropriate.

**CONCLUSION**

[57] For these reasons I have granted the Initial Recognition Order and the Supplemental Order.

[58] I am grateful to the applicant's counsel for their helpful submission.

  
HAINEY

**Date:** May 30, 2019

## **Appendix “E”**

**Summary of Break Fees in Canadian Restructuring Proceedings**

Company	Monitor/Trustee	Stalking Horse Price	Break Fee	Break Fee %
UBG Builders Inc.	EY/Deloitte	15,384,615	200,000	1.3%
Cygam Energy	Hardie Kelly	4,544,286	50,000	1.1%
Elementa Group Inc.	Richter	1,500,000	50,000	3.3%
Strike Minerals Inc.	Farber	4,687,500	150,000	3.2%
Manitok Energy	FTI Consulting	60,000,000	3,000,000	5.0%
Indalex Limited	FTI Consulting	151,428,571	5,300,000	3.5%
WYNIT Distribution LLC	KSV	48,076,923	500,000	1.0%
Parlay Entertainment Inc.	BDO	2,031,322	50,000	2.5%
Sembiosys Genetics	MNP	10,215,000	200,000	2.0%
Weinstein Co.	FTI Consulting	310,000,000	14,000,000	4.5%
Arxx Building Products	KSV	3,800,000	150,000	3.9%
2301132 Ontario Inc. and 2309840 Ontario Inc.	KSV	6,700,000	175,000	2.6%
Destinator Technologies	Richter	15,333,333	460,000	3.0%
			<b>Average</b>	<b>2.8%</b>

Note: The break fees noted above exclude other bid protections provided in all or substantially all of these cases, including expense reimbursement provisions and the like. The 3% Bid Protection in the Hollander case includes expense reimbursements and other such costs.

## **Appendix “F”**



Joshua A. Sussberg, P.C., Christopher J. Greco, P.C., **KIRKLAND & ELLIS LLP, KIRKLAND & ELLIS INTERNATIONAL LLP**, 601 Lexington Avenue, New York, New York 10022, Telephone: (212) 446-4800, Facsimile: (212) 446-4900 -and- Joseph M. Graham (admitted *pro hac vice*), **KIRKLAND & ELLIS LLP, KIRKLAND & ELLIS INTERNATIONAL LLP**, 300 North LaSalle, Chicago, Illinois 60654, Telephone: (312) 862-2000, Facsimile: (312) 862-2200, Proposed Counsel to the Debtors and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re: HOLLANDER SLEEP Chapter 11  
PRODUCTS, LLC, et al.,<sup>1</sup> Case No. 19-11608 (MEW)  
Debtors. (Jointly Administered)

**NOTICE OF BAR DATES FOR SUBMITTING PROOFS  
OF CLAIM AND CLAIMS UNDER SECTION 503(B)(9)  
OF THE BANKRUPTCY CODE AGAINST THE DEBTORS**

**PLEASE TAKE NOTICE** that the United States Bankruptcy Court for the Southern District of New York (the "Court") has entered an order (the "Bar Date Order") establishing **5:00 p.m., prevailing Eastern Time, on July 29, 2019** (the "General Claims Bar Date"), as the last date for each person or entity (including individuals, partnerships, corporations, joint ventures, and trusts) to submit a Proof of Claim against any of the Debtors listed below (collectively, the "Debtors"). A copy of the Bar Date Order and any exhibits thereto are available (i) at the Debtors' expense upon request to Omni Management Group (the noticing and claims agent retained in the chapter 11 cases) by calling (844) 212-9942 for callers in the United States or (818) 906-8300 for callers outside the United States, (ii) by visiting the Debtors' restructuring website at <https://www.omnimgt.com/hollander>, or (iii) for a fee via PACER by visiting <https://ecf.nysb.uscourts.gov>.

The Bar Date Order requires that all entities (the "Claimants") holding or wishing to assert a claim that arose or is deemed to have arisen prior to May 19, 2019 (the "Petition Date") against the Debtors ("Claims") to submit a Proof of Claim so as to be actually received by Omni Management Group (the "Notice and Claims Agent") on or before the applicable bar date (collectively, the "Bar Dates") as set forth below. None of the Bar Dates described herein apply to any governmental unit. Pursuant to section 502(b)(9) of the Bankruptcy Code, all governmental units shall have 180 days from the Petition Date to submit Claims against the Debtors (the "Governmental Bar Date"). **Debtor Name, Tax Identification Number, Case Number:** Hollander Sleep Products, LLC, 27-0542143, 19-11608; Dream II Holdings, LLC, 47-1927915, 19-11607; Hollander Home Fashions Holdings, LLC, 27-0542063, 19-11609; Hollander Sleep Products Kentucky, LLC, 90-1014119, 19-11610; Pacific Coast Feather, LLC, 91-0891445, 19-11611; Pacific Coast Feather Cushion, LLC, 93-1063119, 19-11612; Hollander Sleep Products Canada Limited, 13902-3477, 19-11613.

**General Claims Bar Date** (Applicable to 503(b)(9) Claims). All Claimants holding or wishing to assert a Claim must submit a Proof of Claim with respect to such Claim so as to be **actually received** by the Notice and Claims Agent by **July 29, 2019, at 5:00 p.m., prevailing Eastern Time** (the "General Claims Bar Date"), including parties asserting Claims pursuant to section 503(b)(9) of the Bankruptcy Code.

**Supplemental Bar Date.** In the event the Debtors amend or supplement their schedules of assets and liabilities (the "Schedules"), the Debtors shall give notice of any such amendment to the holders of any Claim affected thereby, and such holders shall be afforded 35 days after the date on which such notice is given to submit a Proof of Claim with respect to such amended Claim or be forever barred from doing so.

**Rejection Bar Date.** If you have a Claim arising from the rejection of an executory contract or unexpired lease, you must submit a Proof of Claim based on such rejection on or before the later of (a) the General Claims Bar Date and (b) any date this Court may fix in the applicable order authorizing such rejection and, if no such date is provided, 35 after the date of entry of such order (the "Rejection Bar Date"). The Debtors will provide notice of the Rejection Bar Date to the contract or lease counterparty whose contract or lease is being rejected at the time the Debtors reject any executory contract or unexpired lease.

**When and Where To Submit.** Each Proof of Claim, including supporting documentation, must be submitted so that the Notice and Claims Agent **actually receives** the Proof of Claim on or before the applicable Bar Date by either: (i) electronically using the inter-

face available on the Notice and Claims Agent's website at <https://www.omnimgt.com/hollander>, or (ii) first-class U.S. Mail, overnight mail, or other hand-delivery system, which Proof of Claim must include an **original** signature, at the following address: Hollander Claims Processing Center, c/o Omni Management Group, 5955 De Soto Avenue, Suite 100, Woodland Hills, California 91367.

**PROOFS OF CLAIM SUBMITTED BY FACSIMILE OR  
ELECTRONIC MAIL WILL NOT BE ACCEPTED AND WILL NOT  
BE DEEMED TIMELY SUBMITTED.**

**Contents of Proofs of Claim.** Each Proof of Claim must: (i) be written in English; (ii) be legible, (iii) include a Claim amount denominated in United States dollars; (iv) conform substantially with the Proof of Claim Form provided by the Debtors or Official Form 410; (v) be signed by the claimant or by an authorized agent or legal representative of the claimant; and (vi) include supporting documentation unless voluminous, in which case a summary must be attached or an explanation provided as to why documentation is not available. **Please note** that each Proof of Claim must state a Claim against only one Debtor. To the extent the Proof of Claim lists more than one Debtor, the applicable Claim may be treated as if submitted only against the first-listed Debtor. If a Proof of Claim does not identify a specific Debtor, the Proof of Claim will be considered as submitted only against Hollander Sleep Products, LLC.

**Section 503(b)(9) Claims.** Vendors and suppliers of goods may be entitled to request an administrative priority Claim under section 503(b)(9) of the Bankruptcy Code to the extent they delivered, and the Debtor received, goods within the twenty day period prior to the Petition Date. The Court has deemed the submission of a Proof of Claim as satisfying the procedural requirements for asserting such a Claim under section 503(b)(9) of the Bankruptcy Code. In addition to the other requirements listed above, any Proof of Claim asserting a 503(b)(9) Claim must (i) include the value of the goods delivered to and received by the Debtors in the 20 days prior to the Petition Date; (ii) attach any documentation identifying the particular invoices for which the 503(b)(9) Claim is being asserted; (iii) attach documentation of any reclamation demand made against the Debtors under section 546(c) of the Bankruptcy Code (if applicable); and (iv) set forth whether any portion of the Section 503(b)(9) Claim was satisfied by payments made by the Debtors.

**Consequences of Failing to Timely Submit Your Proof of Claim.** Any Claimant who is required, but fails, to submit a Proof of Claim in accordance with the Bar Date Order on or before the applicable Bar Date shall be forever barred, estopped, and enjoined from asserting such Claim against the Debtors (or submitting a Proof of Claim with respect thereto). In such event, the Debtors' property shall be forever discharged from any and all indebtedness or liability with respect to such Claim, and such holder shall not be permitted to vote to accept or reject any plan of reorganization filed in the chapter 11 cases or participate in any distribution on account of such Claim or receive further notices regarding such Claim.

**Reservation of Rights.** Nothing contained in this notice is intended to or should be construed as a waiver of the Debtor's right to: (a) dispute, or assert offsets or defenses against, any submitted Claim or any Claim listed or reflected in the Debtors' Schedules of Assets and Liabilities and/or Schedules of Executory Contracts and Unexpired Leases as to the nature, amount, liability, or classification thereof; (b) subsequently designate any scheduled Claim as disputed, contingent, or unliquidated; and (c) otherwise amend the Schedules.

**Additional Information.** If you have any questions regarding the claims process and/or if you wish to obtain a copy of the Bar Date Order (which contains a more detailed description of the requirements for submitting Proofs of Claim), a Proof of Claim form or related documents, you may do so by visiting the Debtors' restructuring website at <https://www.omnimgt.com/hollander> or contacting the Notice and Claims Agent by calling (844) 212-9942 for callers in the United States or by calling (818) 906-8300 for callers outside the United States. Please note that the Notice and Claims Agent cannot advise you how to submit, or whether you should submit, a Proof of Claim.

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors' service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36,  
AS AMENDED

Court File No.: CV-19-620484-00CL

AND IN THE MATTER OF HOLLANDER SLEEP PRODUCTS LLC, *ET AL.*

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**FIRST REPORT OF KSV KOFMAN INC.,  
AS INFORMATION OFFICER DATED JULY 3, 2019  
(MOTION RET. JULY 5, 2019)**

**NORTON ROSE FULBRIGHT CANADA LLP**  
Royal Bank Plaza, South Tower, Suite 3800  
200 Bay Street, P.O. Box 84  
Toronto, Ontario M5J 2Z4 CANADA

**Orestes Pasparakis** LSO #36851T  
Tel: +1 416.216.4815  
**Virginie Gauthier** LSO #41097D  
Tel: +1 416.216.4853  
Fax: +1 416.216.3930

Orestes.Pasparakis@nortonrosefulbright.com  
Virginie.Gauthier@nortonrosefulbright.com

Lawyers for KSV Kofman Inc. in its capacity as  
Information Officer