SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL
No.: 500-11

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 1985, C C-36, AS AMENDED:

LE GROUPE SMI INC./THE SMI GROUP INC., LE GROUPE S.M. INC./THE S.M. GROUP INC.; CLAULAC INC., SMi CONSTRUCTION INC., ÉNERPRO INC. AND LE GROUPE S.M. INTERNATIONAL (CONSTRUCTION) INC./S.M. INTERNATIONAL GROUP (CONSTRUCTION) INC.

Debtors

and

LE GROUPE S.M. INTERNATIONAL S.E.C./THE S.M. GROUP INTERNATIONAL LP, ÉNERPRO S.E.C./ENERPRO LP, LES SERVICES DE PERSONNEL S.M. INC., LE GROUPE S.M. (ONTARIO) INC./THE S.M. GROUP (ONTARIO) INC., AMÉNATECH INC., LABO S.M. INC., LES CONSULTANTS INDUSTRIELS S.M. INC./S.M. INDUSTRIAL CONSULTANTS INC., LES CONSULTANTS S.M. INC./S.M. CONSULTANTS INC., FACILIOP EXPERTS CORP., LE GROUPE S.M. INTERNATIONAL INC./THE S.M. GROUP INTERNATIONAL INC., CSP CONSULTANTS EN SÉCURITÉ INC./CSP SECURITY CONSULTING INC., LE GROUPE S.M. INTERNATIONAL (S.A.) INC./THE S.M. GROUP INTERNATIONAL (S.A.) INC., LE GROUPE S.M. INTERNATIONAL (CONSTRUCTION) EURL, SM SAUDI ARABIA CO LTD., THE S.M. GROUP INTERNATIONAL SARL, THE S.M. GROUP INTERNATIONAL ALGÉRIE EURL, S.M. UNITED EMIRATES GENERAL CONTRACTING LLC, COMMANDITÉ SMi-ÉNERPRO FONDS VERT INC./SMi-ENERPRO GREEN FUND GP INC. AND SMi-ÉNERPRO FONDS VERT S.E.C./SMi-ENERPRO GREEN FUND LP

Mises-en-cause

and

ALARIS ROYALTY CORP. AND INTEGRATED PRIVATE DEBT FUND V LP.

Applicants

and

DELOITTE RESTRUCTURING INC.

Proposed Monitor

and

LGBM INC.

Chief Restructuring Officer

JOINT APPLICATION FOR AN INITIAL ORDER

(Section 11 of the *Companies' Creditors Arrangement Act*)

TO ONE OF THE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION IN THE DISTRICT OF MONTREAL, THE APPLICANTS RESPECTFULLY STATE:

I. INTRODUCTION

1. In direct violation of their contractual obligations and in the absence of any urgency whatsoever, the above identified Debtors and Mise-en-Cause (collectively, the "**Debtors**" or the "**Group**") have sought to initiate proceedings under the *Companies' Creditors Arrangement Act* ("**CCAA**") without even consulting the financial advisors they selected an appointed in June 2017 (Deloitte and Paul Lafrenière) or their most important secured and unsecured creditors, the Applicants, Alaris Royalty Corp. ("**Alaris**") and Integrated Private Debt Fund V LP ("**IPDF**"). Indeed, 87.67% of the Debtors' liabilities are owed to the Applicants.

2. The 39 page *Motion for the Issuance of an Initial Order* served upon the Applicants less than 48 hours before it is returnable (the "**Debtors' Application**"), is replete with incomplete or erroneous allegations and contemplates a restructuring process that is unlikely to succeed, being implemented by a new group of professionals, and therefore highly prejudicial to the rights of the Applicants. The proposed restructuring process appears to solely serve the interests of the Group's largest shareholder and former president, Bernard Poulin ("**Poulin**"), who, according to the Debtors, has been removed (para. 189 of the Debtors' Application) has been removed from management following allegations of corruption.

3. In such circumstances, the Applicants have no choice but to file the present joint application seeking the establishment of an alternative restructuring process under the CCAA led by the Group's most important stakeholders, which will maximize the value of the Debtors assets, limit duplicative costs and delays and which represents the best possible chance for a going concern sale of the Debtors' business for the benefit of its employees and other stakeholders. Moreover, the restructuring proposed by the Applicants is superior to that advanced in the Debtors' Application.

4. Pursuant to the CCAA Initial Order sought, a draft of which is filed herewith as **Exhibit A-1** (the "**Applicants**' **Proposed Initial Order**"), the Applicants request that this Court:

   (a) stay all proceedings against Debtors, as well as against any of its business (the "**Business**") or property (the "**Property**");

   (b) appoint Deloitte Restructuring Inc. ("**Deloitte**"), which was selected by the Debtors and has been working as financial advisor to the Group since July of 2017, as Monitor of the Debtors;

   (c) appoint Paul Lafreniere, also retained as Chief Restructuring Officer since July 2018, to continue in that role as a court appointed officer, with all of the powers necessary to effect the contemplated restructuring in collaboration with the Applicants' Proposed Monitor;

(d) approve interim financing for the Debtors to be provided by Integrated Asset Management Corp. (the "**Interim Lender**") and to be secured by a priority charge on the Property;

(e) approve the establishment of a Key Employee Retention Plan developed by the Applicants, Deloitte and the CRO to secure the continuing services of the Debtors essential employees.

(f) approve a priority charge on the Property to secure the reasonable professional fees of the Applicants' attorneys, the CRO as well as of the Monitor and its attorneys.

Redline documents comparing the Applicants' Proposed Initial Order to the model Commercial Division CCAA Initial Order and to the Initial Order sought pursuant to the Debtors' Application are filed herewith respectively as **Exhibit A-2** and **Exhibit A-3**.

5. It is respectfully submitted that the Debtors are not acting in good faith. There does not appear to be any specific event which has precipitated the filing of the Debtors' Application or any reasonable basis for the Applicants and the CRO not to have been consulted. As such, the Applicants' Application, which affords the best possible opportunity for a true turnaround while maximizing creditor recovery, should be granted in place of the Debtors' Application.

II. BACKGROUND

A. The Applicants and their rights and obligations

6. Alaris is a secured creditor of Le Groupe S.M. International s.e.c. / The S.M. Group International LP ("**SM LP**"), which, along with Le Group S.M. Inc. / The S.M. Group Inc. ("**SM Group**"), manages the cash and receipts for substantially all of the Debtors. In addition to being a secured creditor for over 10 million dollars, Alaris is owed almost 85 million dollars under unsecured obligations, representing nearly 90% of the Debtors liquidated unsecured debt.

7. Alaris also holds 4,050,000 Preferred Units in SM LP as provided for under the limited partnership's governing agreement, the *Second Amended and Restated Limited Partnership Agreement* dated December 19, 2014 (Exhibit R-11 to the Debtors' Application, the "**SM LP Agreement**").

8. This significant investment was made in consideration of Alaris' rights under the SM LP Agreement to, *inter alia*, request that its Preferred Units be repurchased within 120 days, failing which it has the right to remove SM Group as general partner, replace the general partner, appoint new management and effectively take control of the Group's operations.

9. Given these significant rights in respect of the conduct of the Debtors' affairs, it follows that Alaris has been regularly consulted and kept informed of the Debtors'

operational and financial situation over the years. More recently and up until the surprise filing of the Debtors' Application, Alaris was also an active participant in the process aimed at addressing the Debtors' current financial difficulties with the aid of various qualified professionals, from which is received regular reports.

10. In addition to the contractual "Step in Rights" referred to above, the SM LP Agreement also expressly prohibits the filing of any insolvency proceeding by SM LP without the express written consent of Alaris.

11. IPDF is a secured creditor and is owed over $25,000,000 by SM LP, representing 61.28% of the secured liabilities of the Debtors, pursuant to a secured term loan facility that is guaranteed by certain other of the Debtors (the "**IPDF Loan Agreement**").

12. According to the figures set out at paragraph 119 (page 23) of the Debtors' Application, an extract of which identifying the debts owed to Alaris and IPDF being reproduced below, the liabilities of the Debtors consist of the following:

Secured Liabilities	**Amount Owed**
Secured loan from Alaris (the "**Alaris Secured Loan**")	$10,227,398
Credit facility from Integrated Private Debt Fund V LP to SM LP (the "**IPDF Facility**")	$25,780,463
Loans from Investissement Québec (the "**IQ Loans**")	$353,750
Deductions at source	$5,688,805
Leasing Agreements with the Royal Bank of Canada (the "**RBC Equipment Financing**")	$16,478
Indemnity and security agreement with Intact Compagnie d'Assurance (the "**Intact Secured Indemnity**") [*contingent liability*]	$15,000,000 (maximum)
Unsecured Liabilities	**Amount Owed**
Credit Facility from Alaris ("**Alaris Unsecured Facility**")	$21,402,429
Unpaid Preferred Distributions to Alaris pursuant to the SM LP Agreement	$21,554,813
Accrued salaries and vacation pay	$2,950,571
Trade payables	$7,720,883
Loan for lease improvements	$77,011
Litigation & Settlement *(contingent liability)*	$47,894,979
Alaris Preferred Capital Contributions	$40,500,000

Representing $120M of the $136M admitted non contingent liability

13. Based on the above figures, the following liquidated liabilities of the Debtors are owed to the Applicants:

Nature of liability	Total liabilities ($) (excluding contingent)	Owed to Alaris ($)	Owed to IPDF($)	Total Applicants ($)	Percent of total (%)
Secured	42,066,894	10,227,398	25,780,463	36,007,861	85.60
Unsecured	94,205,707	83,457,242	0	83,457,242	88.59
Total	**136,272,601**	**93,684,640**	**25,780,463**	**119,465,103**	**87.67**

14. As will be explained more fully below, notwithstanding that they are the holders of nearly 90% of the Debtors' debts, the Applicants, acting in good faith, have not called their loans or exercised their enforcement rights against any of the Debtors. To the contrary the Applicants have collaborated and allowed the Debtors to expend significant resources in an effort to find a solution to their recent financial difficulties on the basis that the Debtors would also act transparently and in good faith.

B. The Debtors' Recent Restructuring Efforts

15. On July 27, 2017, with the approval of the Applicants, Deloitte was selected by the Debtors and engaged as financial advisor to monitor and report on the Group's financial position with a view to effecting an operational restructuring of the Business (the "**Deloitte Mandate**"). The Deloitte Mandate was thereafter expanded in January 2018 to include assistance relating to a potential capital raise, refinancing or divestiture of Property, the whole as appears from a series of mandate letters communicated herewith *under seal* as **Exhibit A-4**.

16. Deloitte is currently preparing a report, in its capacity as the Applicants' Proposed Monitor, which will be filed at the hearing (the "**Deloitte Report**"), which, *inter alia*, summarizes its certain aspects of the Deloitte Mandate and its extended experience with the affairs of the Debtors.

17. In 2018, Deloitte ran a robust solicitation and sale process with a view to obtaining new investment in the Business or disposing of Group as a going concern (the "**Deloitte Sale Process**"). In that regard, Deloitte expended considerable time and energy analysing the Group's affaires, assessing the market and preparing extensive materials, as appears from the Deloitte Report.

18. As will be confirmed in the Deloitte Report, various prospective purchasers and investors were identified pursuant to the Deloitte Sale Process, some of which submitted Letters of Intent in accordance therewith (each an "**LOI**"). Nevertheless, none of transactions contemplated in the various LOIs received were ever completed.

19. Alternative Capital Group Inc. ("**ACG**") was retained by the Debtors on April 30, 2018 to provide additional consultation services, as appears from a copy of the ACG's mandate letter communicated herewith *under seal* as **Exhibit A-5**.

20. It is noteworthy that ACG's representatives, Messrs. Nicolas Beauchamp and Claude Delage, consistently represented to the Applicants that nobody had expressed an interest in purchasing any of the Property or divisions of the Business.

21. On July 3, 2018, the CRO was engaged to assist in the restructuring of the Debtors' business, as appears from his mandate letter communicated herewith as **Exhibit A-6.**

22. The CRO sought to implement rationalisation measures in order to reduce the Group's expenses but encountered considerable resistance due the continued involvement in the Group's affairs of Poulin. Indeed and contrary to the misleading statements contained in the Debtors' Application, Poulin continues to assert de facto control over the Group and to act in his own interest to the detriment of Debtors' other stakeholders.

C. Poulin's continued involvement to the detriment of the Debtors and their stakeholders

23. The Debtors alleges as follows at paragraphs 189 and 190 of the Debtors' Application:

> The CCAA Parties reorganized their own management and decision-making structure at the request of the AMF, in order to obtain AMF accreditation to enter into public contracts for three years**. Among other things, Bernard Poulin, founder of the Group, was removed from management, and as a director and signing officer of the Group.**
>
> **Because Mr. Poulin's distance from the Group since the foregoing management reorganization**, charges brought against Mr. Poulin in September 2017 were not significant contributors to the CCAA Parties' financial difficulties.

24. It is evident however that Poulin remains involved in the Debtors' affairs and has even impeded the successful implementation of the restructuring initiatives described above, the whole at considerable cost to the Debtors.

25. Over the course of 2017 and 2018, Poulin attended and represented the Debtors at meetings with representatives of the Applicants relating to the Debtors' defaults of their contractual obligations towards such creditors and the contemplated restructuring.

26. Poulin's continued involvement is further exemplified by the fact that he signed ACG's mandate letter on behalf of the Debtors on April 30, 2018 (R-6).

27. Furthermore, the CRO, who was appointed as recently as July 3 learned in the course of performing his mandate, through meetings with the Debtors' employees, that any important decisions to be made with respect to the Group's operations were informally being presented to Poulin by Management for his approval.

28. As noted above, in the course of performing his mandate, the CRO was prevented from implemented operational restructuring measures despite his opinion that such measures were essential in order to market the Business to prospective investors or purchasers.

29. For example, Poulin opposed shutting certain of the Debtors' international divisions operating in the United States or in Saudi Arabia, contrary to the recommendations of the CRO.

30. More importantly, there is clear evidence that Poulin received payments from the Debtors amounting to nearly $900,000 over the last six months at a time when the Group is in serious financial difficulties, is seeking to restructure its affairs and owes nearly 120 million dollars to the Applicants, as appears from a copy of a May 31, 2018 letter from Alaris to certain of the Debtors and the attachments thereto communicated herewith *en liasse* as **Exhibit A-7** (filed as Exhibit R-34 to the Debtors' Application)**.**

31. As further appears from said default notice (A-7), these "Poulin Payment" were paid to Poulin in excess of his salary and relate to purposed unpaid expenses from 2017 and 2018, including the rental of a condo in Miami. Astoundingly, these expenses were approved by Mr. Guy Charbonneau ("**Charbonneau**"), the Debtors' Chief Financial Officer, a member of its board of directors and the signatory to the affidavit filed in support of the Debtors' Application.

32. It is very likely that the filing of the Debtors' Application, without any indication to the Applicants, was a manoeuvre orchestrated by Poulin in an effort to reassert control of the company that he founded without regard to the Group's best interest or those of its stakeholders. Indeed, the fact that the Debtors' Application does not include any request for interim financing to or a KERP suggests that the protection of stakeholder interests was not a priority.

33. Furthermore, neither Deloitte nor the CRO was ever informed that the Debtors' current counsel, Blake, Cassels & Graydon LLP or the Debtors' Proposed Monitor, PricewaterhouseCoopers inc. had been retained in connection with this matter. To the contrary, discussions surrounding formal restructuring proceedings had taken place up until the beginning of this week involving the Debtors' previous long-time attorneys Robinson Sheppard Shapiro LLP.

34. This action was entirely unnecessary in circumstances where the Applicants had consistently demonstrated that they were prepared to collaborate with the Debtors', their management ("**Management**") and the various restructuring professionals that had been retained, notwithstanding their respective contractual rights under the SM LP Agreement and the IPDF Loan Agreement.

D. The Debtors have not Acted in Good Faith

35. The Debtors' Application reveals no action or event, taken by the Applicants or otherwise that justifies the institution of CCAA proceedings in the manner adopted by the Debtors.

36. While Alaris transmitted certain notices of default to the Debtors over the course of 2018, as recognized in the Debtors' Application (paras. 132 and 199) neither IDPF or Alaris has formally demanded repayment of the advances granted to the Debtors or sought to enforce their security against the Property, notwithstanding their contractual rights to do so.

37. To the contrary, the Applicants have been collaborative with the Debtors and agreed to forbear from the exercise of their rights and recourses while the Debtors restructured their affairs.

38. The only purported justification for CCAA protection, other than a vague and unsupported concern that the Applicants may elect to exercise their rights, is that the Group's liabilities exceed the value of their assets (paras. 217 and 218), such liabilities being almost entirely owed to the Applicants which, as noted above, have not demanded repayment.

39. Rather than identify a future event that could result in the Group's inability to meet its obligations, the Debtors actually assert (para. 214 and 219) that they have the capacity to continue to finance their operations in the short term without the need for interim financing.

40. It is difficult to comprehend the rationale behind serving the Debtors' Application 48 hours prior to its intended presentation without informing let alone consulting with the Applicants or with Deloitte or the CRO, which were retained by the Debtors themselves for their knowledge of restructuring matters and which were abruptly suspended from their functions on the night the Debtors' Application was served.

41. It is also apparent from even a superficial review of the Debtors' Application and the exhibits thereto that significant time was taken to prepare the proceeding. One can only conclude that the Debtors actively misled the Applicants, their stakeholders and the various professionals involved in the file for purposes that are not yet clear.

42. Most importantly and as is admitted in the Debtors' Application (para. 202 and following), the Debtors breached the express terms of the SM LP Agreement by seeking to institute proceedings under the CCAA. This callous disregard for their contractual undertakings offends the baseline requirement of good faith that must exist where relief is sought under the CCAA.

43. In such circumstances, it is respectfully submitted that this Court should not permit the Debtors, ostensibly under the control of Poulin, to take advantage of

the CCAA process in a context where the creditors which are owed 90% of the Group's debts have been misled, oppose the proposed relief and have advanced an alternative restructuring that is preferable to all of its stakeholders.

III. THE DEBTORS' PROPOSED RESTRUCTURING IS NOT VIABLE

44. The Debtors propose to carve out divisions of the Business and to sell them piecemeal. While this may ultimately be an appropriate approach, if the circumstances so warrant, there are various allegations made in the Debtors' Application that appear unlikely, given the recent experience of the Applicants.

45. For instance, the Debtors allege that strategic purchasers have been identified for the sale of seven divisions of the Group, which have confirmed their interest and entered into discussions ACG in connection with several potential transactions (para. 223 (b)).

46. However, Nicolas Beauchamp of ACG confirmed to Alaris within the last two weeks that there were no leads and that no purchasers had been identified. Furthermore, Mr. Beauchamp confirmed to Alaris that he was not certain who really was in charge of the Debtors' operations at that time.

47. It is also noteworthy that Claude Delage of ACG, who confirmed at a meeting held on June 13, 2018 that he would communicate directly with Alaris and IDPF regarding any developments in the sale process, has had no communication with either of the Applicants, except with regards to the proposal described in the following paragraph.

48. In July 2018, Claude Delage presented an offer from ACG itself to Alaris to fund a third party that would purchase all of the debt owed to Alaris by the Group for $10,000,000. It is noteworthy that this offer, which was immediately refused, contemplated the release of Poulin's personal guarantee to Alaris.

49. Generally, all of information provided to the Applicants in recent months has been unreliable and not delivered in a timely manner, as exemplified by the fact that no audited financial statements were prepared in 2015, 2016 or 2017.

50. The Debtors allegation that the proceeds to be generated by these purported potential transactions will serve to pay down secured indebtedness and generate working capital for the Debtors is also entirely unrealistic given the amount of secured debts owed to the Applicants as well as nearly the $6,000,000 of priority obligations to the fiscal authorities arising out of unremitted source deductions.

51. It is submitted that ACG cannot be relied upon as a financial advisor given that it has failed to operate with transparency in its dealings with the Applicants as well as with Deloitte and the CRO.

52. It is also noteworthy that aside from the CRO, the previous consultants retained by the Debtors, Martin & Associates, also made recommendations regarding operational restructuring of the Business that were ignored by Management.

53. In such circumstances, it is clear that the restructuring proposed by the Debtors is flawed and, for the reasons set out below, that the initiatives proposed by the Applicants benefit the Debtors key stakeholders and should be favored.

IV. THE APPLICANTS' PROPOSED RESTRUCTURING BEST SERVES STAKEHOLDER INTEREST

54. Given the filing of the Debtors' Application, the insolvency of the Group has been publicly disclosed and the Applicants agree that the Debtors require protection from this Court in order to preserve the status quo while efforts are made to sell the Business, in its entirely or in segments.

55. The fact that the Debtors' Application was filed without proper notice to key creditors, customers or employees, the Applicants believe that securing interim financing and establishing a key employee retention plan will serve to reassure the Debtors important stakeholders. Moreover the presence of professionals that the Debtors' employees are familiar with, namely Deloitte and the CRO, will help facilitate a smooth transition through the restructuring process.

56. In light of the manner in which the Debtors' Application was filed, the Applicants have, however, completely lost confidence in Management and submit that a process led by the parties that have a primary interest in its outcome, namely the Debtors' creditors, is essential.

57. Moreover, in circumstances where employees that are essential to the operations of the Debtors will be caught by surprise by the institution of CCAA proceedings,

58. Moreover the restructuring initiatives contemplated in the Applicants' Proposed Initial Order (A-1) (the "**Applicants' Proposed Restructuring")** offer various concrete advantages to stakeholders to those proposed under the Debtors' Application, namely:

    (a) The Appointment of Deloitte as Monitor of the Debtors

    (b) The granting of additional powers to the CRO

    (c) The immediate provision of immediate interim financing

    (d) The establishment of a key employee retention plan

59. In assessing the Applicants' Proposed Restructuring it is essential to consider the LOI submitted on July 18, 2018 by Thornhill Investments Inc. ("**Thornhill**") pursuant to the Deloitte Sale Process (the "**Thornhill LOI**"), a copy of which is communicated herewith *under seal* as **Exhibit A-8.**

60. The offer contemplated in the Thornhill LOI, which Thornhill's attorneys have confirmed shall be maintained notwithstanding the filing of the institution of CCAA proceedings, provides for the sale of the Group's business as a going concern and is considered a viable offer by the Applicants, Deloitte and the CRO.

61. Nevertheless, the Applicants have been advised that several recent requests by Thornhill to conduct its due diligence in accordance with the Thornhill LOI were ignored by the Debtors and Management.

A. Appointment of the Proposed Monitor

62. As noted above and as reflected in the Deloitte Report, Deloitte has an intimate knowledge of the Groups' business having acted as financial advisor since July 2017 and having conducted the Deloitte Sale Process.

63. Deloitte is ideally placed to continue negotiations with Thornhill in an effort to implement the transaction contemplated in the Thornhill LOI, if possible. In the event such transaction is not completed, Deloitte has all the necessary materials and expertise to continue the Deloitte Sale Process, thus obviating the need for duplicative expenditures, which will ultimately be supported by the Debtors' creditors.

64. Deloitte has consented to act as Monitor, is qualified to do and there is no applicable restriction that present being appointed Monitor of the Debtors in the contemplated CCAA Proceedings.

B. The Granting of Additional Powers to the CRO

65. The CRO is already familiar with the Debtors' operations and financial situation, has consented to act as Chief Restructuring Officer in respect of the Debtors and is qualified to do so.

66. It is submitted that the CRO should be granted the powers set out in the Applicants' Proposed Initial Order in order to ensure, *inter alia*, that the contemplated restructuring is not impeded by the actions of Poulin, as has been the case over the course of the previous year.

67. The CRO intends to work with the Proposed Monitor to conclude the transaction contemplated in the Thornhill LOI or a similar transaction whereby the entire Business can be disposed of as a going concern.

68. However, in the event that such a transaction cannot be concluded on acceptable terms, the CRO shall have the necessary authority to develop, in consultation with Deloitte, other means of disposing of the Property, including the sale of certain branches of the Business.

C. Interim Financing

69. The Interim Lender, an entity related to IPDF, has agreed to make available to the Debtors during the pendency of the contemplated CCAA proceedings a credit facility in the maximum amount of $2,000,000 (the "**Interim Facility**"), the whole in accordance with the terms and conditions with the Term Sheet (the "**Interim Financing Term Sheet**") communicated herewith *under seal* as **Exhibit A-9**

70. In additional to ensuring the Debtors are capable of meeting their post-filing obligations and financing the Applicants' Proposed Restructuring, the Interim Facility will ensure the Debtors are capable of executing the contracts throughout the CCAA proceedings, thus maintaining the value of their business.

71. As appears from the Interim Financing Term Sheet (A-9), the Interim Lender requires that the Interim Facility be secured by court-ordered charge on the Property ranking in priority to any existing security interest (the "**Interim Financing Charge**").

D. KERP

72. In consultation with the Proposed Monitor and the CRO, the Applicants have developed a draft Key Employee Retention Plan (the "**KERP**"), the terms and conditions of which are set out in the summary document (the "**KERP Summary**") communicated herewith *under seal* as **Exhibit A-10**.

73. As appears from the KERP Summary, an aggregate amount of $500,000 will be deposited with the Proposed Monitor to be paid after the conclusion of the contemplated CCAA proceedings to certain of the Debtors' employees.

74. A final version of the KERP will be prepared within a few weeks of the commencement of the CCAA proceedings once the CRO has met with the heads of the Group's various divisions. In that regard, the CRO will prepare a list identifying certain key employees, which will be thereafter reviewed and modified, if necessary, by Deloitte.

75. The KERP will serve to ensure that the Debtors' employees, which are effectively the Groups' most important asset, will be retained facilitating post-filing operations and the marketing of the Business by the CRO and Deloitte.

76. Furthermore, as the funds are being deposited immediately, there is no need for the court to order a priority charge affecting the assets of the Debtor.

E. Administration Charge

77. The success of the Applicants' Proposed Restructuring will hinge, in large part, on the efforts of counsel for the Applicants (McCarthy Tétrault LLP and Miller Thompson LLP), Deloitte, its counsel (Stikeman Elliot LLP) and the CRO.

78. As noted above, appointment of Deloitte as Monitor and of the CRO, both of which are already familiar with the Debtors' operations and have already elaborated restructuring alternatives on their behalf, should significantly reduce the professional costs associated with the contemplated proceedings.

79. It is respectfully submitted that it is necessary, in order to secure the participation of such professionals, and appropriate in the circumstances to grant a priority charge on the Property ranking only behind the Interim Financing Charge in the amount of $250,000 (the "**Administration Charge**").

80. The amount of the Administration Charge reflects the amount necessary to secure payment of the fees incurred by such professionals and does not constitute an estimate of the amount of such fees.

V. CONCLUSION

81. As noted above, the CCAA is remedial legislation and requires that those seeking to benefit from its protections conduct themselves in good faith and in a manner that is fair and reasonable.

82. It is respectively submitted that the Debtors' Application, containing numerous misleading statements and filed without any urgent need and in violation of the Group's contractual undertakings offends these baseline requirements, which are central to the CCAA process.

83. In stark contrast, the Applicants have consistently conducted themselves with restraint and collaborated with the Debtors through this recent period of financial difficulty, notwithstanding that they are owed almost 120 million dollars by the Group.

84. The Applicants are understandably wary of any contemplated restructuring to be controlled by the Debtors and by Poulin or those under his control. Consequently, the Applicants have put forward a competing alternative that is ready to be implemented and superior in every practical respect to that proposed in the Debtors' Application.

85. It is therefore respectfully submitted that the Debtors' Application should be dismissed and the that this Court should render an order substantially in the form of the Applicants' Proposed Initial Order (A-1)

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Joint Application for an Initial Order Relief* of the Applicants (the "**Joint Application**");

ORDER that any prior delay for the presentation of the Joint Application is hereby abridged and validated so that the Joint Application is properly returnable on the

date of its presentation and dispenses the Applicants with any further service thereof;

RENDER an order substantially in the form of the draft Initial Order filed in support of the Joint Application as **Exhibit A-1**

DISMISS the *Motion for the Issuance of an Initial Order* of the Debtors.

Montréal, August 23, 2018

(s) Miller Thomson LLP

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Montréal, August 23, 2018

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NOTICE OF PRESENTATION

To: **Service List**

TAKE NOTICE that the present Joint Application for an Initial Order will be presented for adjudication before one of the Honourable justice of the Superior Court of Quebec, sitting in the commercial division for the district of Montreal, on August 24, 2018, at 9:00 AM, at the Montreal Courthouse, located at 1 Notre-Dame Street East, Montreal, Quebec, H2Y 1B6, in room 16.12.

Montréal, August 23, 2018

(s) Miller Thomson LLP

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Montréal, August 23, 2018

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