

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:

The Lion Electric Company, *et al.*,

Debtors in a Foreign Proceeding.

Chapter 15

Case No. []  
(Will County)

(Joint Administration Requested)

**DECLARATION OF GUY P. MARTEL IN SUPPORT OF  
VERIFIED PETITION FOR (I) RECOGNITION OF FOREIGN MAIN  
PROCEEDING, (II) RECOGNITION OF FOREIGN REPRESENTATIVE,  
(III) RECOGNITION OF INITIAL ORDER, AMENDED AND RESTATED INITIAL  
ORDER, AND SISP ORDER, AND (IV) RELATED RELIEF**

I, Guy P. Martel, state as follows:

1. I submit this declaration (this “Declaration”) in support of the *Verified Petition for (I) Recognition of Foreign Main Proceeding, (II) Recognition of Foreign Representative, (III) Recognition of Initial Order, Amended and Restated Initial Order, and SISP Order, and (IV) Related Relief* (the “Verified Petition”) filed by The Lion Electric Company, in its capacity as the authorized foreign representative (“Lion Electric” or the “Foreign Representative”) of the above-captioned debtors (collectively, the “Lion Group” or the “Debtors”), who are the subject of a proceeding under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the “CCAA”) in the Superior Court of Québec, Commercial Division (the “Canadian Proceeding” and such court, the “Canadian Court”). Concurrently herewith, the Foreign Representative has filed voluntary petitions for relief under chapter 15 of title 11 of the United States Code (the “Bankruptcy Code”) for each of the Debtors. All facts set forth in this Declaration are based on: (a) my knowledge; (b) my review of relevant documents; and/or (c) my opinion based upon my experience and knowledge of the Debtors’ operations. If I were

called upon to testify, I could and would testify competently to the facts set forth herein.

2. I am a partner in the firm of Stikeman Elliott LLP (“Stikeman”), 5300 Commerce Court West, 199 Bay Street, Toronto, Ontario M5L 1B9, where my broad-ranging practice focuses on restructuring and insolvency matters. Stikeman acts as Canadian counsel to the Debtors in the Canadian Proceeding pending before the Canadian Court. I appeared before the Canadian Court as counsel of record seeking the Initial Order (as defined below).

3. I graduated from the University of Ottawa in 1997. I was admitted to the Québec Bar in 1998.

4. I have experience acting for debtor corporations and large corporate groups, lenders, bondholders and other creditors, court appointed officers (e.g., CCAA monitors), investors, and acquirers. Over the course of my career, I have been involved in numerous proceedings under the CCAA, as well as proceedings under federal and provincial corporate and/or insolvency legislation, including appearing as counsel of record in at least 20 such proceedings in the last year.

## **I. THE CANADIAN PROCEEDING**

5. On December 18, 2024, Lion Electric filed an application (the “Application”) with the Canadian Court pursuant to sections 9, 11, 11.51, 11.52, and 23 of the CCAA. On December 18, 2024, the Canadian Court issued a first day initial order (the “Initial Order”): (a) declaring that the entities comprising the Lion Group are corporations to which the CCAA applies; (b) staying all proceedings and remedies taken or that might be taken in respect of the Lion Group, their directors and officers, and any of the Lion Group’s property, except as otherwise set forth in the Initial Order or as otherwise permitted by law, for an initial period of ten (10) days in accordance with the CCAA; (c) appointing Deloitte Restructuring Inc. as the court appointed monitor of the Lion Group in the Canadian Proceeding (the “Monitor”); (d)

declaring that Québec is the “*center of main interest*” of the Debtors and, accordingly, authorizing Lion Electric as foreign representative of the Debtors to apply, as it may consider necessary or desirable, to any other court, tribunal, regulatory, administrative or other body, wherever located, for orders to recognize and/or to assist in carrying out the terms of the Initial Order and any subsequent orders rendered by the Canadian Court in the context of the Canadian Proceeding, including, without limitation, orders under Chapter 15 of the Bankruptcy Code; and (e) granting other customary relief.

**A. Overview of the CCAA Restructuring Process**

6. The CCAA process begins when a company files an initial application—often on an *ex parte* basis—in the court in the jurisdiction where the company’s headquarters or principal place of business is situated for protection under the CCAA. The initial application must, *inter alia*, be accompanied by: (a) projected weekly cash flow statements; (b) a statement regarding the preparation of the cash-flow statements; and (c) copies of all audited or unaudited financial statements prepared during the year prior to the application. *See CCAA at 10(2).*

7. Upon the filing of the initial application, the court may enter an order staying all proceedings and actions against the company and its property as well as against its directors and officers for an initial period that does not exceed 10 days. *See CCAA at 11.02(1).* This period may subsequently, from time to time, be extended by the CCAA court for the period of time required to implement a CCAA restructuring.

8. Once the court enters an initial order approving the initial application, the court will at the same time appoint a licensed insolvency professional to serve as a “monitor” of the business and financial affairs of the company.

9. The Initial Order may also include, among other things, (a) authority to disclaim certain contracts; (b) a prohibition on the payment of pre-filing obligations, subject to certain

permitted exceptions; (c) authority to pay any outstanding wages, salaries, employee and pension benefits, as well as other entitlements and expenses; (d) an order to pay certain taxes; and (e) a prohibition on sales outside the ordinary course of business without court approval. *See* CCAA at 11.09 (2).

**B. Sales Under the CCAA**

10. Prior to 2009, there was an on-going debate over whether creditor protection under the CCAA was appropriate to allow for an orderly liquidation of a debtor company. In 2009, the CCAA was amended to include, *inter alia*, statutory rights in favor of debtor companies to sell their assets outside of the ordinary course of business and outside of a CCAA plan. Accordingly, since then, Canadian courts have come to accept that the business and assets of an insolvent company can be sold under the CCAA free and clear of any lien, security, charge or other restriction, without the need to file a CCAA plan. The CCAA now allows a debtor to dispose of all or substantially all of its assets outside of the ordinary course of business without the formal approval of its creditors, provided it obtains prior authorization from the court. In deciding whether to authorize the proposed sale of assets, the CCAA stipulates that the CCAA court is to consider, among other things:

- a. whether the process leading to the proposed sale or disposition was reasonable under the circumstances;
- b. whether the CCAA monitor has approved the process leading to the proposed sale or disposition;
- c. whether the CCAA monitor filed with the CCAA court a report stating that in its opinion, the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- d. the extent to which the creditors were consulted;
- e. the effects of the proposed sale or disposition on the creditors and other interested parties; and

- f. whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

11. These criteria are largely based on the principles which were previously enunciated by the Ontario Court of Appeal in the *Soundair* matter, in which the court listed the following non-exhaustive criteria to examine in order to determine whether a sale of assets of an insolvent debtor should be approved:

- a. whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently;
- b. the interests of all parties;
- c. the efficacy and integrity of the process by which offers have been obtained; and
- d. whether there has been unfairness in the working out of the process.

12. If the required test is met, the court will normally issue an approval and vesting order authorizing the transfer of the assets on a free and clear basis (other than assumed/permitted encumbrances). The order will also provide that creditor claims will have the same priority against the proceeds of the transaction that they had against the assets, prior to the sale.

13. It should be noted that court authorization will be granted only if the CCAA court is satisfied that the company can and will make the payments for any unpaid wages or pension plan contributions that would have been required if the court had approved a proposal or a plan of arrangement and compromise, as applicable. It should also be noted that if the sale transaction ultimately presented to the court for approval is with a related party, certain additional requirements must be met.

14. While, as mentioned, the sale of assets of a debtor company does not require the formal approval of its creditors, the CCAA requires that a notice of application to the Canadian

Court for the approval of the sale or disposition of assets be given by the debtor to all of its secured creditors who are likely to be affected by the proposed sale or disposition.

## II. THE SISP ORDER

15. On December 18, 2024, the Canadian Court entered an order (the “SISP Order”) approving the Lion Group’s sale and investment solicitation process (the “SISP”), which will be conducted by the Lion Group’s financial advisor, National Bank Financial (“NBF”) and supervised by the Canadian Court. The SISP is designed to maximize the value of the Lion Group’s assets and to ensure continuation of the Lion Group’s business operations as a going concern for the benefit of all stakeholders.

16. The SISP contemplates the following milestones:

PHASE 1	
<b><u>Solicitation Letter</u></b> Financial Advisor to distribute Solicitation letter to potentially interested parties	By no later than January 7, 2025
<b><u>CIM and VDR</u></b> Debtors to prepare and have available for parties having executed the NDA (Potential Bidders) the CIM and VDR	By no later than January 7, 2025
<b><u>Phase 1 Qualified Bidders &amp; Bid Deadline</u></b> Phase 1 Bid Deadline (for delivery of non-binding LOIs by Phase 1 Qualified Bidders in accordance with the requirement of paragraph 10 of the SISP Procedures)	By no later than February 5, 2025, at 5:00 p.m. (prevailing Eastern Time)
<b><u>Phase 1 Satisfactory Bid</u></b> Financial Advisor to notify each Phase 1 Qualified Bidder in writing as to whether its bid constituted a Phase 1 Satisfactory Bid.	By no later than February 7, 2025, at 5:00 p.m. (prevailing Eastern Time)
PHASE 2	
<b><u>Phase 2 Bid Deadline &amp; Qualified Bidders</u></b>	By no later than March 7, 2025, at 5:00 p.m. (prevailing Eastern Time)

Phase 2 Bid Deadline (for delivery of definitive offers by Phase 2 Qualified Bidders in accordance with the requirement of paragraph 24 of the SISP Procedures)	Time)
<b><u>Auction(s)</u></b> Auction(s) (if needed)	Week of March 10, 2025
<b><u>Selection of final Successful Bid(s)</u></b> Deadline for selection of final Successful Bid(s)	By no later than March 19, 2025, at 5:00 p.m. (prevailing Eastern Time)
<b><u>Definitive Documentation</u></b> Completion of definitive documentation in respect of Successful Bid(s)	Week of March 24, 2025
<b><u>Approval Application – Successful Bid(s)</u></b> Filing of Approval Application in respect of Successful Bid(s)	Week of March 31, 2025
<b><u>Closing – Successful Bid(s)</u></b> Anticipated deadline for closing of Successful Bid(s)	Week of April 7, 2025, or such earlier date as is achievable
<b><u>Outside Date – Closing</u></b> Outside Date by which the Successful bid must close	April 23, 2025

17. The Lion Group believes that the conduct of the SISP in accordance with the SISP Procedures will provide for a fair, efficient and transparent process that incentivizes the proper canvassing of the market, which, in turn, will allow the maximization of the Lion Group's value.

18. Given the nature of the assets, the current global context and the limited liquidity of the Lion Group, the Debtors sought approval of the proposed SISP by the Canadian Court. Notably, the relief granted by the Canadian Court in the SISP Order is routinely granted in proceedings under the CCAA.

### III. THE CANADIAN PROCEEDING IS A FOREIGN MAIN PROCEEDING

19. To ensure the effective and economic administration of the Debtors' restructuring efforts, I believe that the Debtors require the protection afforded to foreign debtors pursuant to

chapter 15 of the Bankruptcy Code in order to prevent disruption of business and recognize the legal effect of the Canadian Proceeding in the United States.

20. To the best of my information and belief, the Canadian Proceeding is a collective judicial proceeding under Canadian law relating to the adjustment of debt of the Debtors in which the purpose is a corporate restructuring.

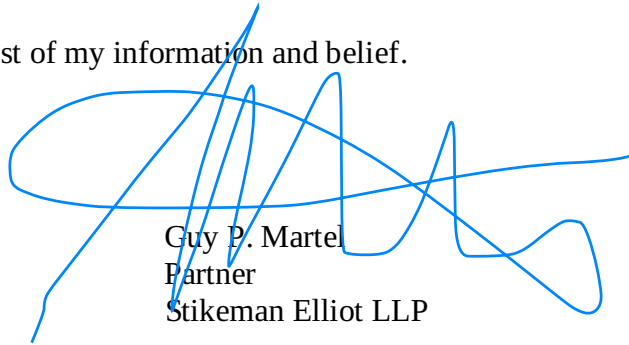
21. I believe, to the best of my information and belief, and as identified in the declaration of Richard Coulombe, filed contemporaneously herewith, other than these chapter 15 cases, the Canadian Proceeding is the only proceeding related to the adjustment of debts pending for the Debtors and, therefore, is the only “foreign proceeding” with respect to the Debtors within the meaning of section 101(23) of the Bankruptcy Code.

22. Additionally, I understand that a statement identifying all foreign proceedings with respect to the Debtors has been filed with this Court.



Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my information and belief.

Dated: December 18, 2024  
Québec, Canada



Guy P. Martel  
Partner  
Stikeman Elliot LLP