

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(Commercial List)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SKLAR-PEPLER FURNITURE CORPORATION**

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**MOTION RECORD**

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**TAB 1**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SKLAR-PEPLER FURNITURE CORPORATION**

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**NOTICE OF MOTION**

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**SKLAR-PEPLER FURNITURE CORPORATION (“SPFC”)** will make a motion to the court on September 20, 2006 at 9:30 a.m. or as soon after that time as the motion can be heard, at 393 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING** the Motion will be heard orally.

**THE MOTION IS FOR:**

1. An order extending the stay of proceedings imposed by an order (the “**Initial Order**”) made in respect of the SPFC on August 8, 2005 pursuant to the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) from September 21, 2006 to November 30, 2006.
2. Such further and other relief as this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

1. On August 8, 2006 SPFC sought and obtained the Initial Order. The Initial Order imposed a stay of proceedings in respect of SPFC which will expire on September 8, 2006 unless extended by the court. On September 5, 2006, SPFC sought and obtained an extension till September 21, 2006.
2. SPFC has acted and is acting in good faith and with due diligence, and the making of an order extending the stay of proceedings contained in the Initial Order to November 30, 2006 is appropriate in the circumstances.
3. The CCAA and in particular, subsections 11(4) and (6) of the CCAA.
4. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the application:

1. Affidavit of Robert J. Tweedy sworn September 14, 2006;
2. Such further and other evidence as this Honourable Court may permit.

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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. c-36, AS AMENDED**  
**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SKLAR-PEPPLER FURNITURE CORPORATION**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(PROCEEDING COMMENCED AT TORONTO)

**NOTICE OF MOTION**

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**TAB 2**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SKLAR-PEPPLER FURNITURE  
CORPORATION**

**AFFIDAVIT OF ROBERT J. TWEEDY  
(sworn September 14, 2006)**

**I, ROBERT J. TWEEDY, of the City of Toronto in the Province of Ontario  
MAKE OATH AND SAY:**

1. I am a director of the Sklar-Peppler Furniture Corporation (“SPFC”) and, as a result, I have personal knowledge of the matters herein deposed to save and except for where I refer to matters on the basis of information and belief in which case I identify the source of that information and verily believe it to be true.
2. I am swearing this affidavit in support of a motion being brought by the SPFC seeking an extension of the stay of proceedings (the “Stay of Proceedings”) contained in the Initial Order dated August 8, 2006 (the “Initial Order”) made under *Companies' Creditors Arrangement Act* (the “CCAA”) in respect of SPFC. The Stay of Proceedings was due to expire on September 8, 2006, but was extended to September 21, 2006 by an order made on September 5, 2006.
3. SPFC is seeking to extend the Stay of Proceedings until November 30, 2006. Since the making of the Initial Order, SPFC has acted in good faith and with due diligence.

## **I Sklar-Pepler Furniture Corporation**

4. SPFC was founded over 60 years ago and is one of Canada's leading branded suppliers of residential upholstered furniture and occasional tables. The company supplies retailers in both Canada and the United States.
5. All of the shares of SPFC are owned by 949073 Ontario Inc. ("949"). SPFC owns 100% of the shares of Sklar-Pepler of America Inc. ("SPA"). SPA is a U.S. holding company that owns 100% of the shares of Associated Furniture Manufacturers Inc. ("AFM"), which is located in Portland, Oregon and also manufactures "Sklar-Pepler" brand products. 949 Ontario, SPA and AFM are not included in the CCAA proceedings in respect of SPFC and are continuing to carry on business in the ordinary course.
6. AFM's banking is carried on through SPFC. In the ordinary course, AFM's receivables are collected by SPFC and SPFC transfers funds to AFM to allow AFM to meet its day-to-day operating expenses. AFM does not have a line of credit. This arrangement continues notwithstanding the CCAA proceedings.
7. Following the acquisition of SPFC by the current owners, SPFC was very profitable and experienced growth in both sales and profits through to 2002. Sales in 2002 year reaching \$75.1 million with pretax profits of \$4.142 million.
8. Since 2002, however, the rise in the Canadian dollar has resulted in a surge of imports particularly from the Republic of China due to the fact that the Chinese foreign exchange currency is pegged to the U.S. dollar. Over the last three years, imports of upholstered furniture (fabric and leather) have grown dramatically and are now estimated to exceed 50% of the total domestic sales – up from 20% in 2002.
9. The impact of the surge in imports into Canada has been very significant and all companies in the Canadian residential furniture industry, including suppliers, have been struggling due to reduced sales and lower profit margins. Many domestic manufacturers have either closed or are losing money.

10. In reaction to the drop in sales, beginning in 2004 SPFC: (a) instituted significant cost reduction programs; (b) began sourcing, to the extent possible, product and materials offshore; and (c) undertook a number of sales initiatives to capitalize on its well-known brand.

11. Despite these efforts in 2005, SPFC's sales declined to \$46.9 million and the company recorded a pretax loss of \$2.790 million. The loss reflected charges of \$916,000 related to: (a) severance costs of \$244,000; and (b) a bad debt write off of \$672,000.

## **II. CCAA Proceedings**

12. For the reasons set forth in my affidavit sworn August 2, 2006 (the "**August 2, 2006 Tweedy Affidavit**") filed in support of SPFC's initial application under the CCAA, SPFC sought to initiate reorganization proceeding under the CCAA.

13. On August 8, 2006 the Initial Order was made. A true copy of the Initial Order is attached hereto and marked as **Exhibit "A"**. On September 5, 2006 the Stay of Proceedings in the Initial Order was extended to September 21, 2006.

14. BDO Dunwoody Limited (the "**Monitor**") is acting as monitor of SPFC.

## **III. Financing**

15. SPFC has sufficient financing to fund its day-to-day business operations while it attempts to develop a plan of compromise and arrangement under the CCAA.

16. National Bank is SPFC's operating lender and Natexport Receivable Financing and Management, a division of National Bank, provides an account receivable factoring facility to SPFC.

17. Natexport has agreed to continue to provide the factoring facility to SPFC during the CCAA proceedings (although the arrangement is subject to termination by Natexport at any time).
18. On August 8, 2006, SPFC and National Bank executed an agreement (the "**Accommodation Agreement**") that sets out the terms under which National Bank is prepared to support SPFC's attempt to restructure under the CCAA. The Accommodation Agreement is attached as an exhibit to my affidavit sworn August 8, 2006.
19. According to the Accommodation Agreement, SPFC has made arrangements with 2072223 Ontario Ltd. ("**207**") – a company related to SPFC's current landlord -- to provide up to \$750,000 in subordinated secured debt financing to support SPFC. 207 and National Bank have entered into an inter-creditor agreement.
20. \$125,000 of the \$750,000 funded by 207 has been used to provide retainers to the Monitor and SPFC's counsel, Gowling Lafleur Henderson LLP ("**Gowlings**"). The remainder of the funds have been placed into an account with National Bank (the "**Account**") and is to be used, along with Facility B, to cover any funding deficits under SPFC's revolving line of credit with National Bank.
21. To ease SPFC's cash flow, 207 has, in addition, also agreed to directly fund the fees and disbursements of the Monitor and Gowlings beyond the retainers already provided.
22. In general terms, the Accommodation Agreement contemplates that National Bank will provide financing to SPFC during its CCAA proceeding and that National Bank will be granted a fully perfected first priority security interest in and first continuing charge on all assets of SPFC as security for all past, present and future obligations and indebtedness of SPFC to National Bank. Subject to there being no default under the terms of the Accommodation Agreement, National Bank has agreed to give SPFC until February 8, 2007 to develop a solution to its financial problems. Again, assuming that there is no default under the terms of the Accommodation Agreement, if SPFC delivers a

refinancing plan that acceptable to National Bank prior to February 8, 2007, National Bank has agreed to give SPFC until August 8, 2007 to implement that refinancing plan.

23. Pursuant to the terms of the Accommodation Agreement, the maximum amount available to SPFC on its line of credit with National Bank has been reduced from \$5,000,000 to \$4,000,000 (subject to margin availability). National Bank has, however, extended a non-revolving demand facility in the amount of \$750,000 (“**Facility B**”). This facility is to be used together with the funds advanced by 207 (described above) to cover any Funding Deficit (as defined in the Accommodation Agreement) in accordance with the terms of the Accommodation Agreement.

24. The Accommodation Agreement requires that SPFC continue the engagement of PricewaterhouseCoopers Inc. as consultant to National Bank to, among other things, review, report and make recommendation on the business, assets, affairs and operations of SPFC. The Accommodation Agreement also imposes certain reporting requirements on SPFC.

#### **IV. Business Operations**

25. Since the making of the Initial Order, SPFC has carried on business in the ordinary course. SPFC has negotiated terms with its essential suppliers that should enable SPFC to continue to source raw materials going forward.

26. SPFC continues to receive orders from its customers and demand for SPFC’s product appears to be strong. SPFC has recently increased production from filing date levels by adding a second shift to fill customer orders. This resulted in SPFC calling back unionized employees who were previously terminated. SPFC’s production output is not yet, however, at levels needed to meet customer demand and delivery requirements.

#### **V. Restructuring Efforts**

27. SPFC has, until recently, been a viable and profitable company that should be able to carry on business successfully. SPFC must, however, become more cost competitive (given the currency-based competition pressures it is facing) in order to secure the financing that it will need to continue to manufacture product in Canada going forward.
28. SPFC is still in the early stages of its reorganization efforts. The company's key objective for the period from August 8, 2006 to date has been to achieve stability and that object has been largely achieved.
29. There are two stages to the reorganization of SPFC: (a) the operational restructuring of the company; and (b) the financial restructuring of the company through: (i) a re-financing of SPFC; and (ii) a plan of compromise and arrangement to deal with the claims owing to unsecured creditors.
30. In order to move forward with the financial restructuring of the company, SPFC must first address its cost structure with a view to making the company more cost competitive. SPFC has identified the following objectives as being necessary for the operational restructuring of the company: (a) reduce fixed and variable operating costs including staffing, materials, infrastructure, etc.; (b) achieve levels of production at the company's new facility in Ajax, Ontario sufficient to meet customer demands; and (c) renegotiate the hourly employee's collective agreement to reduce the cost and risk of some benefits.
31. Prior to August 8, 2006, SPFC had been working towards reducing its operating costs. These efforts are continuing and progress is being made. SPFC has also been working to increase production and a second shift was recently added.
32. A key element of a successful reorganization to make SPFC a financially viable company and maintain production in Canada over the long-term will be SPFC's ability to work with the union representing its hourly employees, the United Steelworkers (the "USW"), to negotiate amendments to the collective bargaining agreement with respect to pension and certain benefit costs to make SPFC more competitive.

33. Since the making of the Initial Order, SPFC has continued discussions with the USW representatives with respect to how SPFC and the USW can work together to address SPFC's labour costs. I am hopeful that we are making progress in those discussions and that an agreement can be reached that will allow SPFC to become more cost-competitive and provide stability of employment to SPFC's hourly employees.

## **VI. Specific Issues Addressed by SPFC since September 5, 2006**

### **A. Sklar-Peppler Retail Stores**

34. SPFC does not operate any retail locations. However, there are a number of corporations who have entered into agreements with SPFC to use the name "Sklar-Peppler" in connection with retail stores (the "**Sklar-Peppler Licensees**"). SPFC has no direct or indirect interest in any of the Sklar-Peppler Licensees. The only relationship between SPFC and the Sklar-Peppler Licensees is contractual.

35. SPFC's CCAA proceedings has caused some issues for some of the Sklar-Peppler Licensees. SPFC and Gowlings will, as requested, work with the Sklar-Peppler Licensees to clarify that the Sklar-Peppler Licensees are not related to SPFC and are not subject to the CCAA proceedings.

### **B. United Steelworkers**

36. I am advised by Mr. Patrick Shea of Gowlings, and verily believe, that on September 6, 2006, Gowlings was contacted by in-house counsel for the USW with respect to SPFC's CCAA reorganization. During a telephone conversation with the United Steelworkers raised four issues were raised: (a) the status of pension contributions outstanding as at August 8, 2006; (b) termination and severance payments due; (c) the status of union dues collected by SPFC from its employees; and (d) the status of employee health benefits under the terms of the collective agreement.

37. I am advised by Mr. Shea, and verily believe, that he advised the United Steelworkers' in-house counsel that: (a) any pension contributions outstanding as at August 8, 2006 would be dealt with in any plan of compromise or arrangement prepared by SPFC; (b) any amounts owing to SPFC's former employees in respect of termination and severance would also be dealt with in any plan of compromise or arrangement prepared by SPFC; and (c) he would have a response on the remaining two issues by early in the week of September 11, 2006 (which he did).

38. SPFC has, through counsel, confirmed to the USW that union dues collected by SPFC from its employees from and after August 8, 2006 would be paid over to the USW.

39. With respect to health benefits, the agreement between SPFC and the insurance company that provided the employee health benefits was terminated prior to August 8, 2006. The provider will not agree to provide benefits going forward unless SPFC pays obligations relating to the period prior to August 8, 2006. SPFC is in the process of locating another provider and is committed to continuing to provide health benefits to its employees. The company's financial situation is, however, making it difficult to secure a provider. As a stop-gap measure SPFC will be paying the sum of \$150 per month to each employee to cover at least a portion of the expenses that would otherwise have been covered by the benefit plan. The USW was, through counsel, advised of the foregoing.

### **C. National Bank**

40. As set forth in my affidavit sworn August 31, 2006, SPFC encountered certain difficulty in preparing the financial reporting required by the Accommodation Agreement. The issues between National Bank and SPFC have, however, now been addressed. There will be an amendment to the Accommodation Agreement to amend certain reporting requirements and to provide that National Bank will not declare a default under the Accommodation Agreement on the basis of financial covenant defaults by SPFC.

**D. Monitor**

41. For the purpose of SPFC's September 5, 2006 motion seeking an extension of the Stay of Proceeding from September 8, 2006 to September 21, 2006, the Monitor filed a report dated as of September 1, 2006 (the "**First Report**"). In the First Report, the Monitor indicated that its powers as set forth in the Initial Order are "more limited than those usually assigned to a Monitor under such an order" and "the Monitor has less involvement with the Applicant or with respect to overseeing the business and affairs of the Applicant than is typically done by a Monitor in a CCAA proceeding."

42. The Initial Order does not actually remove any of the powers of the Monitor provided for in the CCAA or the form of Model CCAA Order approved for use on the Commercial List save and except: (a) with respect to reporting to and assisting SPFC in dealing with National Bank; and (b) the requirement to assist SPFC to develop a plan of compromise or arrangement.

43. There has been some difficulty in providing the Monitor with the financial reporting that the Monitor believes was required. However now that the financial reporting issues have been resolved between National Bank and SPFC, SPFC is hopeful that the Monitor will accept the financial reporting that is being provided to National Bank as being sufficient to enable it to identify material adverse changes in SPFC's cash flow projections and financial circumstances.

44. SPFC wishes to ensure that the Monitor is fully informed of the reorganization process and SPFC's financial situation, and that the Monitor is able to quickly identify material adverse changes.

**E. Weyerhaeuser**

45. Weyerhaeuser is one of SPFC's suppliers. Weyerhaeuser supplies SPFC with wood and SPFC has continued to do business with Weyerhaeuser subsequent to August 8, 2006.

46. Counsel for Weyerhaeuser appeared on SPFC's September 5, 2006 motion seeking the extension of the Stay of Proceedings from September 8, 2006 to September 21, 2006 and expressed concern with respect to the comments in the First Report as to the limited role being played by the Monitor. Subsequent to the appearance on September 5, 2006, business discussions took place between Weyerhaeuser and SPFC. As a result of these discussions, the issues raised by Weyerhaeuser with respect to the role of the Monitor have been addressed and Weyerhaeuser no longer has concerns with respect to the CCAA proceedings or the role the Monitor is playing.

## **VII. Requested Extension**

47. SPFC is requesting an extension of the stay contained in the Initial Order until November 30, 2006. If the requested extension is granted, SPFC will continue to carry on business in the ordinary course.

48. During the period to November 30, 2006, SPFC will continue its efforts to reduce costs, increase production and reach an agreement with the USW. SPFC is hopeful that, assuming the operational restructuring is completed, a plan of compromise or arrangement can be developed prior to November 30, 2006. SPFC is currently contemplating a reorganization that will provide unsecured creditors with a distribution out of net profits over a period of time in full and final satisfaction of their claims against SPFC.

## **VIII. Service of Materials**

49. To date, none of SPFC's stakeholders has served a Notice of Appearance. A number of stakeholders have, however, requested that they be added to the Service List. Any stakeholder requesting to be added to the Service List has been added. SPFC will serve the materials in respect of this motion on the creditors listed on the Service List.

The materials filed in connection with this motion will also be posted on  
[www.gowlings.com/restructuring](http://www.gowlings.com/restructuring).

~~SWORN~~ before me at the City of Toronto, )  
in the Province of Ontario, on )  
September 14, 2006. )  
)  
)  
)  
)  
)  
Name of Commissioner: )  
P. SHEA  
Commissioner for Taking Affidavits

  
ROBERT S. TWEEDY

THIS IS **EXHIBIT "A"** TO THE  
AFFIDAVIT OF ROBERT J. TWEEDY,  
SWORN BEFORE ME ON  
SEPTEMBER 14, 2006



\_\_\_\_\_  
Name:

Commissioner for Taking Affidavits

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(Commercial List)**

THE HONOURABLE MR. ) TUESDAY, THE 8<sup>TH</sup>  
)  
JUSTICE CAMPBELL ) DAY OF AUGUST, 2006

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SKLAR-PEPLER FURNITURE CORPORATION**



**INITIAL ORDER**

**THIS APPLICATION**, made by Sklar-Peppler Furniture Corporation (the "Applicant"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 393 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Robert J. Tweedy sworn August 2, 2006 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, the National Bank of Canada ("National Bank") and on reading the consent of BDO Dunwoody Limited ("BDO") to act as the Monitor,

*ON THE 2nd AFFIDAVIT OF ROBERT S. TWEEDY TO BE FILED HERE.*

## **SERVICE**

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

## **APPLICATION**

2. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

## **PLAN OF ARRANGEMENT**

3. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (the "**Plan**") between, *inter alia*, the Applicant and one or more classes of its secured and/or unsecured creditors as it deems appropriate.

## **POSSESSION OF PROPERTY AND OPERATIONS**

4. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or

## **RESTRUCTURING**

**10. THIS COURT ORDERS** that the Applicant shall, subject to such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations and to dispose of redundant or non-material assets not exceeding \$250,000 in any one transaction or \$500,000 in the aggregate, subject to paragraph 10(c), if applicable;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate on such terms as may be agreed upon between the Applicant and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
- (c) in accordance with paragraphs 11 and 12, vacate, abandon or quit any leased premises and/or repudiate any real property lease and any ancillary agreements relating to any leased premises, on not less than seven (7) days' notice in writing to the relevant landlord on such terms as may be agreed upon between the Applicant and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan;
- (d) repudiate, other than the Accommodation Agreement and the DIP Facilities (each as defined herein), such of its arrangements or agreements of any nature whatsoever, whether oral or written, as the Applicant deems appropriate on such terms as may be agreed upon between the Applicant and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan; and
- (e) pursue all avenues of refinancing and offers for material parts of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing or any sale (except as permitted by subparagraph (a), above),

- (f) all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "**Restructuring**").

**11. THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicant repudiates the lease governing such leased premises in accordance with paragraph 10(c) of this Order, it shall not be required to pay Rent under such lease pending resolution of any such dispute, and the repudiation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

**12. THIS COURT ORDERS** that if a lease is repudiated by the Applicant in accordance with paragraph 10(c) of this Order, then (a) during the notice period prior to the effective time of the repudiation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the repudiation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

**13. THIS COURT ORDERS** that, subject to the other provisions of this Order (including the payment of Rent as herein provided) and any further Order of this Court, the Applicant shall be permitted to dispose of any or all of the Property located (or formerly located) at such leased premises without any interference of any kind from landlords (notwithstanding the terms of any

leases) and, for greater certainty, the Applicant shall have the right to realize upon the Property and other assets in such manner and at such locations, including leased premises, as it deems suitable or desirable for the purpose of maximizing the proceeds and recovery therefrom.

#### **NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

14. **THIS COURT ORDERS** that until and including September 8, 2006, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

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

15. **THIS COURT ORDERS** that 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 Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall: (a) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (b) exempt the Applicant from compliance with statutory or regulatory provisions relating to health, safety or the environment, (c) prevent the filing of any registration to preserve or perfect a security interest, or (d) prevent the registration of a claim for lien.

## **NO INTERFERENCE WITH RIGHTS**

**16. 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 the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

## **CONTINUATION OF SERVICES**

**17. THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicant, 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 Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

## **NON-DEROGATION OF RIGHTS**

**18. THIS COURT ORDERS** that, notwithstanding anything else contained herein, no creditor of the Applicant shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

19. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant 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, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

## **APPOINTMENT OF MONITOR**

20. **THIS COURT ORDERS** that BDO is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property and the Applicant's conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

21. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

- (c) advise the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (d) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (e) consider, and if deemed advisable by the Monitor, prepare a report and assessment on the Plan; and
- (f) perform such other duties as are required by this Order or by this Court from time to time.

**22. THIS COURT ORDERS** that the Monitor 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.

**23. THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

**24. THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor 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 Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

**25. THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor 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. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

**26. THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings.

**27. THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

#### **DIP FINANCING**

**28. THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to continue to borrow, repay and reborrow under its existing operating credit facility and to borrow and repay under its new credit facility (together, the “**DIP Facilities**”) with National Bank (the “**DIP Lender**”) in accordance with the terms of the Accommodation Agreement dated August 8, 2006 between the DIP Lender, the Applicant and the guarantors thereof (the “**Accommodation Agreement**”) in order to finance the Applicant's working capital requirements and other general

corporate purposes and capital expenditures, provided that borrowings under the DIP Facilities shall not exceed \$10 million unless permitted by further Order of this Court.

**29. THIS COURT ORDERS** that the DIP Facilities shall be on the terms and subject to the conditions set forth in the Accommodation Agreement, filed and that the Applicant shall, (i) pay all amounts from time to time owing to the DIP Lender on account of principal, interest, fees, costs and expenses or other amounts pursuant to the Accommodation Agreement; and (ii) perform all of its obligations under the Accommodation Agreement.

**30. THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**Definitive Documents**”), as are contemplated by the Accommodation Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Accommodation Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

**31. THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefits of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property in favour of the DIP Lender as security for all past, present and future obligations and indebtedness of the Applicant to the DIP Lender owing under or in connection with the DIP Facilities. The DIP Lender’s Charge shall have the priority set out in paragraph 35 hereof.

**32. THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;

- (b) upon the occurrence of a Forbearance Terminating Event (as defined under the Accommodation Agreement) or an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender may immediately and without the need for any prior notice terminate the DIP Facilities, cease making advances to the Applicant, cease to honour cheques, debit items or other instruments drawn on or chargeable to any of the Applicant's accounts with the DIP Lender and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the Accommodation Agreement, the Definitive Documents or the DIP Lender's Charge, and upon 3 business days notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Accommodation Agreement, Definitive Documents and the DIP Lender's Charge, including without limitation, , to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant, and upon the occurrence of a Forbearance Terminating Event or an event of default under the terms of the Definitive Documents, the DIP Lender shall be entitled to seize and retain proceeds from the sale of the Property and the cash flow of the Applicant to repay amounts owing to the DIP Lender in accordance with the Definitive Documents and the DIP Lender's Charge, but subject to the priorities as set out in paragraph 35 of this Order;
- (c) the DIP Lender may refuse to make any further advances or provide any further credit to the Applicant or to process, honour or clear any cheque, wire or electronic transfer, draft, negotiable instrument or other form of payment without adequate cash balances in the Applicant's accounts with the DIP Lender or without sufficient credit availability under the DIP Facilities;
- (d) the DIP Lender shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the DIP Facilities or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with under the DIP Facilities
- (e) the DIP Lender shall be entitled to provide the DIP Facilities without any liability in respect thereof to any Person; and

- (f) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

**33. THIS COURT ORDERS AND DECLARES** that, notwithstanding any other provision in this order, the DIP Lender shall be treated as an unaffected creditor in these proceedings and in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), such that the claims of the DIP Lender against the Applicant shall not be affected, compromised or arranged pursuant to these or any other proceedings. The DIP Lender shall not be affected by the stay of proceeding or other adverse terms of this order and, except as provided for in subparagraph 32(b) herein, nothing in this order shall stay or otherwise affect the rights of the DIP Lender to enforce or initiate any proceedings with respect to its secured claims against the Applicant including without limitation, its rights to take steps to enforce its security over the Property.

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

**34. THIS COURT ORDERS** that the filing, registration or perfection of the DIP Lender's Charge shall not be required, and that the DIP Lender's Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the DIP Lender's Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

**35. THIS COURT ORDERS** that the DIP Lender's Charge shall constitute a charge on the Property and such DIP Lender's Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

**36. THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any

Property that rank in priority to, or *pari passu* with, the DIP Lender's Charge, unless the Applicant also obtains the prior written consent of the DIP Lender, or further Order of this Court.

**37. THIS COURT ORDERS** that the Accommodation Agreement, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the DIP Lender thereunder 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 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 the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the DIP Lender's Charge nor the execution, delivery, perfection, registration or performance of the Accommodation Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) the DIP Lender shall have no liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the Accommodation Agreement, the creation of the DIP Lender's Charge, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the Accommodation Agreement or the Definitive Documents, and the granting of the DIP Lender's Charge, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

## **SERVICE AND NOTICE**

**38. THIS COURT ORDERS** that the Applicant shall, within ten (10) business days of the date of entry of this Order, send a copy of this Order to its known creditors, other than: (a) employees; and (b) creditors to which the Applicant owes less than \$500, at their addresses as they appear on the Applicant's records, and shall promptly send a copy of this Order (a) to all parties filing a Notice of Appearance in respect of this Application, and (b) to any other interested Person requesting a copy of this Order, and the Monitor is relieved of its obligation under Section 11(5) of the CCAA to provide similar notice, other than to supervise this process.

**39. THIS COURT ORDERS** that the Applicant and the Monitor be at liberty to serve 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 electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic 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.

**40. THIS COURT ORDERS** that the Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Applicant may post a copy of any or all such materials at [www.gowlings.com/restructuring](http://www.gowlings.com/restructuring).

## **GENERAL**

**41. THIS COURT ORDERS** that notwithstanding anything contained in this order, any claims of 2072223 Ontario Ltd. (“**207 Ontario**”), the Monitor, and counsel to the Monitor and the Applicant shall be unaffected and not subject to compromise or arrangement in or by the Plan and nothing in this order shall stay or otherwise affect the rights of 207 Ontario to enforce or initiate any proceedings with respect to their secured claims against the Applicant including, without limitation, its rights to take steps to enforce its security over the Property.

**42. THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

**43. THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

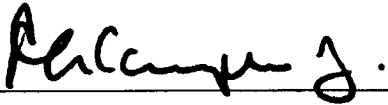
**44. THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

**45. THIS COURT ORDERS** that each of the Applicant and the Monitor 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.

**46. THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days'

notice to the Applicant, the Monitor, the DIP Lender and 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.

**47. THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.

  
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PER/PAR



**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. c-36, AS AMENDED**  
**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SKLAR-PEPPLER FURNITURE CORPORATION**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(PROCEEDING COMMENCED AT TORONTO)

**ORDER**

**GOWLING LAFLEUR HENDERSON LLP**

Barristers and Solicitors  
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**E. PATRICK SHEA (LSUC No.: 39655K)**

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Solicitors for the Applicant

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

**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SKLAR-PEPPLER FURNITURE CORPORATION**

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

(PROCEEDING COMMENCED AT TORONTO)

**AFFIDAVIT OF ROBERT J. TWEEDY**  
**(sworn September 14, 2006)**

**GOWLING LAFLEUR HENDERSON LLP**  
Barristers and Solicitors  
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Solicitors for the Applicant,  
Sklar-Peppler Furniture Corporation

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. c-36, AS AMENDED**  
**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SKLAR-PEPPLER FURNITURE CORPORATION**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(PROCEEDING COMMENCED AT TORONTO)

**MOTION RECORD**

**GOWLING LAFLEUR HENDERSON LLP**  
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