

**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 CERTAIN PROCEEDINGS  
TAKEN IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS EASTERN DIVISION  
WITH RESPECT TO THE COMPANIES LISTED ON  
SCHEDULE "A" HERETO (THE "DEBTORS")**

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

**MOTION RECORD  
(RETURNABLE MAY 8, 2012)**

May 3, 2012

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**Lawyers for Massachusetts Elephant &  
Castle Group, Inc.**

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# Tab 1

**ONTARIO  
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UNDER SECTION 46 OF THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED**

**NOTICE OF MOTION  
(returnable May 8, 2012)**

Heenan Blaikie LLP ("Heenan") will make a motion before a Judge at the Ontario Superior Court of Justice (Commercial List) on Tuesday, May 8, 2012, at 10 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally

**THE MOTION IS FOR AN ORDER:**

- (a) abridging the time for service of this Notice of Motion and the motion materials filed in support of this motion, and dispensing with further service thereof;
- (b) removing Heenan as lawyers of record to the Debtors; and

- (c) such further and other relief as counsel may request and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

1. On June 28, 2011, the Debtors commenced proceedings (the “Chapter 11 Proceedings”) under Chapter 11 of Title 11 of the United States Code (the “U.S. Code”) in the United States Bankruptcy Court for the District of Massachusetts Eastern Division (the “U.S. Court”);
2. On July 4, 2011, this Honourable Court granted two orders that, among other things, declared the jointly administered chapter 11 cases of the Debtors to be a “foreign main proceeding” pursuant to Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and recognized and made effective certain other “first day” orders entered by the U.S. Court;
3. On January 24, 2012, the U.S. Court granted an order (the “U.S. Sale Approval Order”) which, among other things, approved the sale of substantially all of the assets of the Debtors (the “Assets”), with the exception of Repechage Investments Limited;
4. Pursuant to the Order of the Honourable Justice Morawetz dated January 30, 2012, as amended on February 1, 2012, this Honourable Court recognized the U.S. Sale Approval Order and gave it full effect in Canada;
5. The sale of the Assets closed on February 3, 2012;
6. Eckert, Seamans, Cherin & Mellott LLC (“ESCM”) and Heenan have represented the Debtors throughout their Chapter 11 cases and before this Honourable Court as U.S. counsel and Canadian counsel, respectively;
7. Due to irreconcilable issues that have arisen in the lawyer-client relationship, ESCM and Heenan believe it is in the best interests of the Debtors that each firm withdraw as counsel;

8. ESCM and Heenan brought a motion before the U.S. Court to withdraw as counsel to the Debtors;

9. Pursuant to the Order of the U.S. Court entered May 2, 2012, the motion brought by ESCM and Heenan to withdraw as counsel to the Debtors in the Chapter 11 Proceedings was granted;

10. The United States Trustee for Region 1 (the "U.S. Trustee") brought a motion before the U.S. Court to convert the Chapter 11 cases of all of the Debtors to cases under Chapter 7 of the U.S. Code;

11. Pursuant to the Order of the U.S. Court entered May 2, 2012, the U.S. Trustee's motion was also granted;

12. Rules 2.03, 3.02, 15.04, 16 and 37 of the *Rules of Civil Procedure* (Ontario); and

13. 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 motion:

1. the Affidavit of Sara-Ann Wilson, sworn May 3, 2012;
2. the Report of the Information Officer, to be filed; and
3. such further and other evidence as counsel may advise and this Honourable Court may permit.

May 3, 2012

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**Kenneth Kraft LSUC#31919P**  
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Lawyers for Massachusetts Elephant & Castle  
Group, Inc.

**TO: THIS HONOURABLE COURT**

**AND TO: THE ATTACHED SERVICE LIST**



**SCHEDULE "A"**

1. Massachusetts Elephant & Castle Group, Inc.
2. Repechage Investments Limited
3. Elephant & Castle Group Inc.
4. The Elephant and Castle Canada Inc.
5. Elephant & Castle, Inc. (a Texas Corporation)
6. Elephant & Castle Inc. (a Washington Corporation)
7. Elephant & Castle International, Inc.
8. Elephant & Castle of Pennsylvania, Inc.
9. E & C Pub, Inc.
10. Elephant & Castle East Huron, LLC
11. Elephant & Castle Illinois Corporation
12. E&C Eye Street, LLC
13. E & C Capital, LLC
14. Elephant & Castle (Chicago) Corporation

**SERVICE LIST**  
as at May 3, 2012

6

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT  
OF MASSACHUSETTS EASTERN DIVISION WITH RESPECT TO THE COMPANIES LISTED ON SCHEDULE "A" HERETO (THE  
"DEBTORS")

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE -**  
**COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION**  
**(RETURNABLE MAY 8, 2012)**

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Tel: 416.360.3570/416.777.4171  
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**Lawyers for Massachusetts Elephant & Castle  
Group, Inc.**

# Tab 2

**ONTARIO  
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COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS  
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**APPLICATION OF  
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UNDER SECTION 46 OF THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED**

**AFFIDAVIT OF SARA-ANN WILSON  
(sworn May 3, 2012)**

I, Sara-Ann Wilson of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am an associate with Heenan Blaikie LLP ("Heenan"), Canadian lawyers for the Debtors. I swear this affidavit in support of Heenan's motion for an order removing Heenan as lawyers of record for the Debtors and for no other or improper purpose.

**Background**

2. On June 28, 2011, the Debtors commenced proceedings (the "Chapter 11 Proceedings") under Chapter 11 of Title 11 of the United States Code (the "U.S. Code") in the United States Bankruptcy Court for the District of Massachusetts Eastern Division (the "U.S. Court").

3. On July 4, 2011, this Honourable Court granted two orders that, among other things, declared the jointly administered chapter 11 cases of the Debtors to be a "foreign

main proceeding” pursuant to Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and recognized and made effective certain other “first day” orders entered by the U.S. Court.

4. On January 24, 2012, the U.S. Court granted an order (the “U.S. Sale Approval Order”) which, among other things, approved the asset purchase agreement between the Debtors and Original Joe’s Acquisition Corp. (the “Purchaser”) and authorized the sale of substantially all of the assets of the Debtors (the “Assets”), with the exception of Repechage Investments Limited, free and clear of all liens, claims and interests.

5. Pursuant to the Order of the Honourable Justice Morawetz dated January 30, 2012, as amended on February 1, 2012, this Honourable Court recognized the U.S. Sale Approval Order and gave it full effect in Canada.

6. The sale of the Assets to the Purchaser closed on February 3, 2012.

#### **Removal as Lawyers of Record**

7. Eckert, Seamans, Cherin & Mellott, LLC (“ESCM”) and Heenan have represented the Debtors throughout their Chapter 11 cases and before the Ontario Superior Court of Justice as U.S. counsel and Canadian counsel, respectively.

8. The U.S. Court, in accordance with the requirements of Chapter 11 of the U.S. Code, entered an order on August 23, 2011 authorizing the Debtors to retain and employ Heenan as Canadian counsel to the Debtors retroactive to June 28, 2011. A copy of the Order of the U.S. Court dated August 23, 2011 is attached hereto as Exhibit “A”.

9. ESCM and Heenan brought a motion before the U.S. Court to withdraw as counsel to the Debtors. Attached hereto as Exhibit “B” is a copy of the joint motion of ESCM and Heenan to withdraw as counsel to the Debtors.

10. Due to irreconcilable issues that have arisen in the lawyer-client relationship, ESCM and Heenan believe it is in the best interests of the Debtors that each firm withdraw as counsel.


11. Pursuant to the Order of the U.S. Court entered May 2, 2012, the motion brought by ESCM and Heenan to withdraw as counsel to the Debtors in the Chapter 11 Proceedings was granted. Attached hereto as Exhibit "C" is a copy of the Order of the U.S. Court granting the motion brought by ESCM and Heenan.

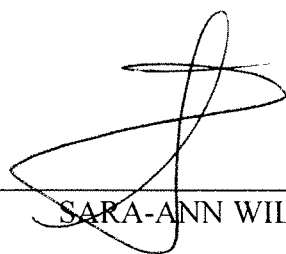
**Conversion of the Chapter 11 Proceedings to Chapter 7 Cases**

12. Following the filing of the joint ESCM and Heenan motion, William K. Harrington, the United States Trustee for Region 1 (the "U.S. Trustee") brought a motion before the U.S. Court to convert the Chapter 11 cases of all of the Debtors to cases under Chapter 7 of the U.S. Code. Attached hereto is as Exhibit "D" is a copy of the U.S. Trustee's motion to convert the Debtor's Chapter 11 cases to Chapter 7 cases.

13. The U.S. Trustee's motion was granted by the U.S. Court on May 2, 2012. Attached hereto as Exhibit "E" is a copy of the Order of the U.S. Court granting the U.S. Trustee's motion and the relief sought therein.

SWORN BEFORE ME at the City of Toronto, on May 3, 2012.

  
Commissioner for Taking Affidavits

  
SARA-ANN WILSON

**SCHEDULE "A"**

1. Massachusetts Elephant & Castle Group, Inc.
2. Repechage Investments Limited
3. Elephant & Castle Group Inc.
4. The Elephant and Castle Canada Inc.
5. Elephant & Castle, Inc. (a Texas Corporation)
6. Elephant & Castle Inc. (a Washington Corporation)
7. Elephant & Castle International, Inc.
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9. E & C Pub, Inc.
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SCHEDULE "A" HERETO (THE "DEBTORS")**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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Proceeding commenced at Toronto

**AFFIDAVIT OF SARA-ANN WILSON**  
(sworn May 3, 2012)

**HEENAN BLAIKIE LLP**  
Lawyers  
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Toronto, ON M5H 2T4

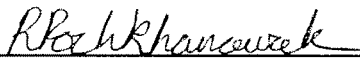
**Kenneth D. Kraft LSUC# 31919P**  
**John J. Salmas LSUC #42336B**  
**Sara-Ann Wilson LSUC #56016C**  
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Lawyers for Massachusetts Elephant & Castle  
Group, Inc.

# **Exhibit A**



**This is Exhibit "A" to the affidavit  
of Sara-Ann Wilson sworn this  
3<sup>rd</sup> day of May, 2012**

---

**A Commissioner for taking affidavits, etc.**

IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

In re:	:	Chapter 11
	:	
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC.,	:	Case No. 11-16155
	:	
Debtors.	:	Jointly Administered
	:	

**ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF  
HEENAN BLAIKIE LLP AS CANADIAN COUNSEL TO THE DEBTORS  
NUNC PRO TUNC TO THE COMMENCEMENT DATE PURSUANT TO  
SECTIONS 327(e) AND 328(a) OF THE BANKRUPTCY CODE**

Upon the application (the "Application")<sup>1</sup> of Massachusetts Elephant & Castle Group, Inc., on behalf of itself and affiliated debtors and debtors in possession (collectively, the "Debtors"), for the entry of an order (this "Order") authorizing the Debtors to retain and employ Heenan Blaikie LLP ("Heenan Blaikie") as their Canadian counsel *nunc pro tunc* to the Petition Date; and the Court having reviewed the Application; and the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (c) notice of this Application was sufficient under the circumstances; and the Court having considered the affidavit of Kenneth D. Kraft (the "Kraft Affidavit") in support of the Application; and the Court having determined that the legal and factual bases set forth in the Application and the Kraft Affidavit establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Application is GRANTED *nunc pro tunc* to the Petition Date.

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<sup>1</sup> Capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed thereto in the Application.

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2. The Debtors shall be, and hereby is, authorized to employ and retain Heenan Blaikie as its Canadian counsel pursuant to sections 327(e) and 328(a) of the Bankruptcy Code on the terms described in the Application.


3. Heenan Blaikie shall be compensated in accordance with the procedures set forth in sections 330 and 331 of the Bankruptcy Code, applicable Bankruptcy Rules, the Local Rules and any other such procedures as may be fixed by order of this Court.

4. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

5. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

6. The Court shall retain jurisdiction over any and all issues arising from or related to the implementation and interpretation of this Order.

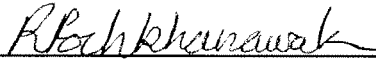
Dated: August 1, 2011

  
UNITED STATES BANKRUPTCY JUDGE  
*Henry J. Boroff*

M0941701

# Exhibit B

**This is Exhibit "B" to the affidavit  
of Sara-Ann Wilson sworn this  
3<sup>rd</sup> day of May, 2012**

---

**A Commissioner for taking affidavits, etc.**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

In re: : Chapter 11  
: :  
Massachusetts Elephant & Castle :  
Group, Inc., et al.<sup>1</sup> : Case No. 11-16155 (HJB)  
: :  
Debtors : Jointly Administered

**JOINT MOTION OF ECKERT, SEAMANS, CHERIN & MELLOTT, LLC AND  
HEENAN BLAIKIE LLP TO WITHDRAW AS COUNSEL TO THE DEBTORS**  
**(Request for Expedited Determination)**

Eckert, Seamans, Cherin & Mellott, LLC (“ESCM”) and Heenan Blaikie LLP (“Heenan Blaikie”) together file this Joint Motion (“Motion”) to Withdraw as Counsel to the Debtors. In support of this Motion, the Movants respectfully represent as follows:

1. On June 28, 2011 (the “Petition Date”), each of the Debtors filed a voluntary petition with this Court for relief under Chapter 11 of the Bankruptcy Code.
2. Since that time, the Movants have represented the Debtors throughout their Chapter 11 cases as U.S. counsel and Canadian counsel, respectively.
3. Due to irreconcilable issues that have arisen in the attorney-client relationship, the Movants believe it is in the best interest of the Debtors that each firm withdraw as counsel.
4. This relief is being sought on an expedited basis. On April 23, 2012, the Court held a hearing on the Debtors’ Motion (the “Motion to Extend Exclusivity”) Pursuant to Section 1121(d) to Further Extend the Exclusivity Period During Which Only the Debtors May File a Plan and Solicit Acceptances Thereof. At the hearing, the Court ordered that the exclusivity period for the Debtors would be extended, with the exclusivity period applicable to Debtor RIL

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<sup>1</sup> The debtors in these cases, along with the last four digits of the federal tax identification number for each of the debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN).

to expire on May 23, 2012 with respect to GE Canada Equipment Financing G.P. and Fifth Street Finance Corp. The Court has also scheduled a status conference for these cases on May 23, 2012 at 2 pm.

5. Furthermore, on April 3, 2012, the Debtors filed the First through Fourth Omnibus Objections to Claims (see D.I. ## 397 to 400). A hearing is scheduled on these claims objections on May 16, 2012, and the Debtors have received both informal and formal responses from certain creditors. These claims objections are in need of review and or a continuance of the hearing would be in order. Similarly, the Court has scheduled hearings for May 16 for certain applications for compensation.

**Notice**

6. Notice of this Application has been given to: (i) the Offices of the United States Trustee for the District of Massachusetts; (ii) counsel to the Committee; (iii) counsel for GE CEF; (iv) counsel to David Dobbin; (v) counsel to Fifth Street and (vi) anyone requesting notice pursuant to Rule 2002. In light of the nature of the relief requested, the Debtors submit that no further notice is required.

**No Prior Request**

7. No prior application for the relief requested herein has been made to this or any other court.

*[Remainder of page intentionally left blank]*

WHEREFORE, ESCM and Heenan Blaikie respectfully request that the Court approve the relief being requested herein and to grant such further relief as the Court deems just and necessary.

Dated: April 27, 2012

By: /s/ John G. Loughnane  
John G. Loughnane (BBO No. 557599)  
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Two International Place, 16<sup>th</sup> Floor  
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Phone: (617) 342-6800  
Fax: (617) 342-6899  
E-Mail: [jloughnane@eckertseamans.com](mailto:jloughnane@eckertseamans.com)


and

By: /s/ Kenneth David Kraft  
Kenneth David Kraft  
HEENAN BLAIKIE, LLP  
Bay Adelaide Centre  
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# **Exhibit C**

**This is Exhibit "C" to the affidavit  
of Sara-Ann Wilson sworn this  
3<sup>rd</sup> day of May, 2012**

---

**A Commissioner for taking affidavits, etc.**

UNITED STATES BANKRUPTCY COURT, DISTRICT OF MASSACHUSETTS

Proceeding Memorandum/Order of Court

In Re: Massachusetts Elephant & Castle Group, Inc.

Case Number: 11-16155

Ch: 11

MOVANT/APPLICANT/PARTIES:

#459 Motion of Eckert, Seamans, Cherin & Mellott, LLC and Heenan Blaikie, LLP to Withdraw as Counsels to the Debtors

OUTCOME:

Granted Denied Approved Sustained
Denied Denied without prejudice Withdrawn in open court Overruled
OSC enforced/released
Continued to: For:
Formal order/stipulation to be submitted by: Date due:
Findings and conclusions dictated at close of hearing incorporated by reference
Taken under advise ment: Brief(s) due From
Response(s) due From
Fees allowed in the amount of: \$ Expenses of: \$
No appearance/response by:

DECISION SET OUT MORE FULLY BY COURT AS FOLLOWS:

GRANTED.

IT IS SO NOTED:

IT IS SO ORDERED:

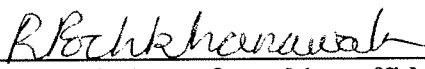
[Signature]

Dated: 05/02/2012

Courtroom Deputy

# Exhibit D

**This is Exhibit "D" to the affidavit  
of Sara-Ann Wilson sworn this  
3<sup>rd</sup> day of May, 2012**

---

A Commissioner for taking affidavits, etc.

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

In re: : Chapter 11  
: :  
Massachusetts Elephant & Castle :  
Group, Inc., et al.<sup>1</sup> : Case No. 11-16155 (HJB)  
: :  
Debtors : Jointly Administered

**UNITED STATES TRUSTEE’S MOTION TO  
CONVERT DEBTORS’ CHAPTER 11 CASES TO CHAPTER 7**

**[Request for Expedited Hearing]**

William K. Harrington, the United States Trustee for Region 1 (the “U.S. Trustee”) hereby moves this Court to convert the Chapter 11 cases of all of the debtors (identified in Footnote 1 below, the “Debtors”) to cases under Chapter 7 because:

- The Debtors, with the exception of Repechage Investments Limited (“RIL”), have sold substantially all of their assets and, upon information and belief, the Debtors are unlikely to submit any plan or plans of liquidation in a timely fashion;
- Upon information and belief, Debtors’ counsel and the Debtors have experienced a breakdown of communications resulting in the potential withdrawal of Debtors’ counsel; and
- Conversion of the Debtors’ cases is in the best interests of the Debtors’ estates and their creditors.

As set forth in the accompanying Motion for Expedited Hearing and Request to Limit Notice of the United States Trustee’s Motion to Convert Debtors’ Chapter 11 Cases to Chapter 7,

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<sup>1</sup> The debtors in these cases, along with the last four digits of the federal tax identification number for each of the debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN).

the U.S. Trustee seeks an expedited hearing on this motion, and also seeks to request to limit notice of this Motion and the related hearing as set forth therein. In support of this motion, the U.S. Trustee respectfully represents as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter under 28 U.S.C. 157 and 1334. This is a core proceeding under 28 U.S.C. 157(b)(2)(A). Venue is proper in this court under 28 U.S.C. 1408 and 1409. The statutory predicates for relief are 28 U.S.C. 586(a)(3) and 1930(a)(6), 11 U.S.C. 307 and 1112(b) and Fed. R. Bankr. P. 1017.

**FACTS**

2. On June 28, 2011 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

3. On July 12, 2011, the U.S. Trustee appointed an Official Committee of Unsecured Creditors in this case, consisting of three of the Debtors' largest unsecured creditors.

4. On or about February 3, 2012, the sale of substantially all assets of the Debtors other than RIL closed.

5. Following a hearing on April 25, 2012, the Debtors submitted a proposed agreed order to this Court extending exclusivity period for the Debtors to file a plan through and including June 22, 2012. The proposed order further provides that, if the Debtors (other than RIL) do not file a plan by June 22, 2012, then the bankruptcy cases of the Debtors other than RIL shall be automatically converted to cases under Chapter 7 without further notice or need for hearing.

6. In addition, the proposed agreed order provides that, if RIL does not file a plan on

or before May 23, 2012, or (ii) files a plan to which either or both of GE Canada Equipment Financing G.P. (“GE CEF”) and Fifth Street Finance Corp. (“Fifth Street”) do not consent in writing in their respective sole discretion as of the date such plan is filed, then, except to the extent GE CEF and Fifth Street have otherwise agreed in writing in their sole discretion, the exclusivity rights of RIL would be “adjusted” so as to permit either or both of GE CEF and Fifth Street to file a plan and solicit acceptances with respect to RIL at any time after May 24, 2012.

7. Upon information and belief, subsequent to the April 25, 2012 hearing, counsel for the Debtors and the Debtors have reached an impasse with regard to various matters affecting the Debtors’ estates. Upon information and belief, Debtors’ counsel intends to seek leave of this Court to withdraw due to a breakdown in relations.

8. Upon information and belief, because of this breakdown in relations, it appears unlikely that the Debtors will propose any plan or plans within a reasonable time. In addition, because any potential withdrawal will leave RIL without counsel, a conversion of RIL in addition to the remaining Debtors is appropriate at this time.

#### **ARGUMENT**

9. The above facts support a finding of “diminution of the estates and the absence of a reasonable likelihood of rehabilitation” and therefore “cause” to convert these cases pursuant to 11 U.S.C. §1112(b)(4)(A) and (B).

10. The interests of creditors and the estates would best be served by the immediate conversion of these cases for “cause” under 11 U.S.C. § 1112(b)(1). See United Sav. Ass’n of Texas v. Timbers of Inwood Forest Associates, Ltd., 808 F.2d 363, 371 (5th Cir. 1987) (en banc), aff’d 484 U.S. 365 (1988) (noting that “[i]n the case of most Chapter 11 debtors . . . a plan



of reorganization can be effectuated, if at all, within a matter of months, not years . . . The charge to the bankruptcy judge under §1112, then, is to evaluate each debtor's viability in light of the best interest of creditors and the estate . . ."). There is no longer any reorganization purpose to the Debtors' cases. *Fields Station, LLC v. Capitol Food Corp. of Fields Corner In re Capitol Food Corp. of Fields Corner*, 490 F.3d 21, 25 (1st Cir. 2007).

**PRAYER**

**WHEREFORE**, the United States Trustee respectfully requests that this Court enter an order or orders converting the Debtors' cases to Chapter 7, and granting all such other and further legal and equitable relief which may be just and proper.

Respectfully submitted,

WILLIAM K. HARRINGTON,

United States Trustee

By: /s/ Jennifer L. Hertz  
Jennifer L. Hertz, BBO#645081  
United States Department of Justice  
John W. McCormack Post Office and Courthouse  
5 Post Office Square, Suite 1000  
Boston, MA 02109  
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FACSIMILE: (617) 565-6368  
Jennifer.L.Hertz@usdoj.gov

Dated: April 27, 2012

**CERTIFICATE OF SERVICE**

I certify that on April 27, 2012, true and correct copies of the foregoing motion were served by CM/ECF upon the individuals who filed notices of appearance in the Court's CM/ECF database, including the Debtors' counsel listed below. I further certify that true and correct copies of the motion were served in the form and manner indicated to the parties identified below.

Respectfully submitted,

WILLIAM K. HARRINGTON,

United States Trustee

By: /s/ Jennifer L. Hertz  
Jennifer L. Hertz, BBO#645081  
United States Department of Justice  
John W. McCormack Post Office and Courthouse  
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Jennifer L. Hertz@usdoj.gov

Dated: April 27, 2012

**By ECF:**

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pantoszyk@proskauer.com,  
mwolf@proskauer.com; cslattery@proskauer.com

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Joseph P. Davis on behalf of Creditor Presidential Plaza, L.P.

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Zachary Mosner on behalf of Creditor State of Washington Dept of Revenue  
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Peter Sabin Willett on behalf of Interested Party Royal Bank

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Devonshire Arch Boston LLC d/b/a Club Quarters  
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(Members of Official Committee of Unsecured Creditors)

**Via First Class Mail**

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9th Floor  
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LEI AG-Seattle, LLC / Red Lion  
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Sir Speedy  
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Boston, MA 02109

Verdolino & Lowey P.C.  
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Foley & Lardner LLP  
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Suite 600  
Washington, DC 20007

# Exhibit E

**This is Exhibit "E" to the affidavit  
of Sara-Ann Wilson sworn this  
3<sup>rd</sup> day of May, 2012**

*R. B. Khanawala*  
**A Commissioner for taking affidavits, etc.**



In Re: Massachusetts Elephant & Castle Group, Inc.

Case Number: 11-16155

Ch: 11

MOVANT/APPLICANT/PARTIES:

#460 Motion of United States Trustee to Convert case to Chapter 7

OUTCOME:

Granted  Denied  Approved  Sustained  
 Denied  Denied without prejudice  Withdrawn in open court  Overruled  
 OSC enforced/released  
 Continued to: \_\_\_\_\_ For: \_\_\_\_\_  
 Formal order/stipulation to be submitted by: \_\_\_\_\_ Date due: \_\_\_\_\_  
 Findings and conclusions dictated at close of hearing incorporated by reference  
 Taken under advise ment: Brief(s) due \_\_\_\_\_ From \_\_\_\_\_  
Response(s) due \_\_\_\_\_ From \_\_\_\_\_  
 Fees allowed in the amount of: \$ \_\_\_\_\_ Expenses of: \$ \_\_\_\_\_  
 No appearance/response by: \_\_\_\_\_

DECISION SET OUT MORE FULLY BY COURT AS FOLLOWS:

GRANTED.

IT IS SO NOTED:

IT IS SO ORDERED:

Dated: 05/02/2012

\_\_\_\_\_  
Courtroom Deputy

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT  
OF MASSACHUSETTS EASTERN DIVISION WITH RESPECT TO THE COMPANIES LISTED ON SCHEDULE "A" HERETO (THE  
"DEBTORS")

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE -**  
**COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD**  
**(RETURNABLE MAY 8, 2012)**

**Heenan Blaikie LLP**  
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P.O. Box 2900  
Toronto, Ontario M5H 2T4

**Kenneth D. Kraft LSUC #31919P**  
**John Salmas LSUC #42336B**  
**Sara-Ann Wilson LSUC #56016C**  
Tel: 416-643-6822/416-360-3570/416-777-4171  
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2095

**Lawyers for Massachusetts Elephant & Castle  
Group, Inc.**