



Court File No. CV-09-8221-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MADAM
JUSTICE HOY

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TUESDAY, THE 23rd
DAY OF JUNE, 2009

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 COPPLEY APPAREL GROUP LIMITED

ORDER

THIS MOTION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order, *inter alia*, authorized the Amended Canadian Bid Procedure (attached hereto as **Schedule "A"**) was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the affidavit of Richard Sexton sworn June 23, 2009 (the "**Sexton Affidavit**") and the exhibits thereto and on hearing the submissions of counsel for: (i) Copley Apparel Group Limited, (ii) the Monitor, (iii) Wachovia Capital Finance Corporation (Central) and Wachovia Capital Finance Corporation (Canada), and (iv) Emerisque Brands UK Limited and SKNL North America B.V.,

SERVICE

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

AMENDED CANADIAN BID PROCEDURE

2. **THIS COURT ORDERS** that the amended bidding procedures, as set forth in Schedule "A" hereto (the "**Amended Canadian Bid Procedure**") is approved and the Applicant, with the assistance of and in consultation with the Monitor, is authorized and directed to carry out and conduct the Amended Canadian Bid Procedure and to take such actions as are required to complete the Amended Canadian Bid Procedure, and is not to deviate from the Amended Canadian Bid Procedure without further Order of this Court.



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JUN 23 2009

PER / PAR:  **Joanne Nicoara**
Registrar, Superior Court of Justice

SCHEDULE "A"

COPPLEY APPAREL GROUP LIMITED AMENDED BIDDING PROCEDURES

Set forth below are the bidding procedures (the "**Bidding Procedures**") to be employed with respect to the proposed sale (the "Sale") of substantially all of the assets of Copley Apparel Group Limited (the "**Seller**" or the the "**Applicant**"), an applicant in a proceeding commenced in the Superior Court of Justice (Commercial List) at Toronto (the "**Commercial List**") pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). On June 10, 2009, the Seller executed that certain Asset Purchase Agreement (as amended from time to time in accordance with the terms thereof, the "**Agreement**") with Emerisque Brands UK Limited and SKNL North America, B.V. (collectively, the "**Purchasers**"). The transaction contemplated by the Agreement is subject to competitive bidding as set forth herein and approval by the Commercial List Court pursuant to the CCAA.

On June 10, 2009, the Applicant filed an Application Record pursuant to the CCAA for an Order, among other things, approving bidding procedures (the "**Bidding Procedures Order**"). The Bidding Procedures Order sets July 13, 2009 as the date when the Commercial List Court will conduct a hearing (the "**Sale Hearing**") for the approval of the Agreement or another transaction or series of transactions for the sale of all or substantially all of the Acquired Assets. All capitalized terms used but not otherwise defined in these Bidding Procedures have the meanings ascribed to them in the Agreement.

The Bidding Procedures set forth herein describe, among other things, the assets available for sale, the manner in which bidders and bids become Qualified Bidders and Qualified Bids (each as defined herein), respectively, the coordination of diligence efforts among bidders, the receipt and negotiation of bids received, the conduct of any subsequent Auction (as defined herein), the ultimate selection of the Successful Bidder(s) (as defined herein), and the Commercial List Court's approval thereof (collectively, the "**Bidding Process**"). The Applicant will consult with BDO Dunwoody Limited, in its capacity as Monitor (the "**Monitor**") and obtain the consent of Wachovia Capital Finance Corporation (Central) ("**Wachovia**") throughout the Bidding Process in accordance with the terms and conditions hereof. In the event that the Applicant and any party disagree as to the interpretation or application of these Bidding Procedures, the Commercial List Court will have jurisdiction to hear and resolve such dispute.

Assets To Be Sold

The assets proposed to be sold include substantially all of the assets of the Applicant (the "**Acquired Assets**"). Qualified Bidders may submit a bid for (i) all of the Acquired Assets or (ii) a portion of the Acquired Assets. To the extent that a Qualified Bidder desires to bid on less than all of the Acquired Assets, the Applicant suggests, but shall not require, that such bids be for one or more of the groups of assets set forth on **Appendix 1** attached hereto (each, an "**Asset Group**"). However, the Applicant may (i) provide priority diligence access to those Qualified Bidders bidding on less than all of the Acquired Assets who express interest in one or more of the identified Asset Groups as opposed to a portion thereof, and (ii) cease providing diligence access to such bidders for less than all of the Acquired Assets if, in the view of the Applicant (in

consultation with the Monitor and with the consent of Wachovia), the Applicant believes such bids for less than all of the Acquired Assets will not, when combined with other bids, result in a recovery to the Applicant's estate that is equal to or greater than the All Assets Minimum Bid Amount (as defined below). A bid for less than all of the Acquired Assets may be conditioned on the bidder(s) being the Successful Bidder(s) on all or a portion of the Asset Group(s) included in its bid. However, as set forth below, when valuing any bid for less than all of the Acquired Assets, the Applicant (in consultation with the Monitor and Wachovia) will take into account, among other things, whether the bid, when combined with other bids, equals or exceeds the All Assets Minimum Bid Amount.

"As Is, Where Is"

The sale of the Acquired Assets, or any portion thereof, will be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Applicant, its agents, or estate, except, with respect to the Purchasers, to the extent set forth in the Agreement and, with respect to a Successful Bidder, to the extent set forth in the relevant purchase agreement of such Successful Bidder approved by the Commercial List Court.

Free Of Any And All Claims And Interests

Except to the extent otherwise set forth in the relevant purchase agreement of such Successful Bidder or ordered by the Commercial List Court, all of the Applicant's right, title, and interest in and to the Acquired Assets, or any portion thereof, to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests on and/or against the Acquired Assets (collectively, the "**Claims and Interests**"), such Claims and Interests to attach to the net proceeds of the sale of such Acquired Assets subject to prior orders of the Commercial List Court.

Due Diligence

Subject to entering into a confidentiality agreement as may be required by the Applicant and the Monitor, the Applicant will allow a potential bidder (a "**Potential Bidder**") to commence due diligence with respect to the Acquired Assets as described below. The Applicant will afford each Potential Bidder due diligence access to the Acquired Assets. Due diligence access may include such management presentations as may be scheduled by the Applicant, access to data rooms, on site inspections, and such other matters which a Potential Bidder may reasonably request and as to which the Applicant, in their reasonable discretion, may agree. The Applicant will designate an employee or other representative to coordinate all reasonable requests for additional information and due diligence access from Potential Bidders. The Applicant may, in its discretion, coordinate diligence efforts such that multiple Potential Bidders, including but not limited to the Purchasers, have simultaneous access to due diligence materials and/or simultaneous attendance at management presentations or site inspections. Neither the Applicant nor any of its representatives will be obligated to furnish any information relating to Acquired Assets to any Person other than to Potential Bidders.

Bid Deadline

A Potential Bidder who desires to make a bid must deliver the Required Bid Documents (as defined herein) to: (i) Coppley Apparel Group Limited, 56 York Blvd, Hamilton; (ii) the Monitor, BDO Dunwoody Limited, 123 Front Street West, Suite 1200, Toronto; (iii) the Applicant's counsel, Gowling Lafleur Henderson LLP, 100 King Street West, Suite 1600, Toronto; (iv) counsel to Wachovia, Goodmans LLP, 2400-250 Yonge Street, Toronto; and (v) counsel to the Monitor, Fasken Martineau, 66 Wellington Street West, Suite 4200, Toronto; so as to be received not later than 5:00 p.m. (prevailing Eastern time) on July 7, 2009 (the "**Bid Deadline**"). The Applicant shall serve a copy of all Required Bid Documents received by them to the Purchasers so as to be received by Purchasers' counsel on the Bid Deadline. The Applicant may extend (but is not obligated to do so) the Bid Deadline to a date no later than July 8, 2009 or to such later date as the Purchasers consent. If the Applicant extends the Bid Deadline, it will promptly notify all Potential Bidders of such extension. As soon as reasonably practicable following receipt of each Qualified Bid, the Applicant will deliver complete copies of all items and information enumerated in the section below entitled "**Bid Requirements**" to Wachovia..

Bid Requirements

All bids, other than a Concord Bid (hereinafter defined), must include the following documents (the "**Required Bid Documents**"):

- (a) a letter stating that the bidder's offer is irrevocable until the earlier of (i) two Business Days after the closing of the Sale of the applicable Acquired Assets and (ii) 45 days after the Sale Hearing;
- (b) an executed agreement in the form of the Agreement, including schedules (a "**Marked Agreement**") to show those amendments and modifications to such Agreement and schedules that the Potential Bidder proposes, including the purchase price;
- (c) in the alternative to (b) above, an executed agreement, including any schedules thereto (an "**Alternative Agreement**"), showing whether the bid is for: (i) all the Acquired Assets; or (ii) certain of the Acquired Assets having regard to appendix 1; and the purchase price in respect of same;
- (d) a good faith deposit (the "**Good Faith Deposit**") in the form of a certified bank check from a Canadian bank or by wire transfer (or other form acceptable to the Applicant in its sole discretion) payable to Coppley Apparel Group Limited (or such other party as the Applicant may determine) in an amount equal to 5% of the proposed purchase price, which Good Faith Deposit the Applicant shall hold in a segregated escrow account; and
- (e) written evidence of a commitment for financing, or other evidence of ability to consummate the proposed transaction, that is satisfactory to the Applicant and the Monitor.

Qualified Bids

A bid will be considered only:

- (a) if the bid is not conditioned on obtaining financing or on the outcome of unperformed due diligence by the bidder;
- (b) if the bid proposes a transaction on terms and conditions (other than the amount of the consideration and the particular liabilities being assumed) that the Applicant determines, in its sole discretion in consultation with the Monitor and Wachovia, is not materially more burdensome or conditional than the terms of the Agreement;
- (c) with respect to a bid:
 - (i) for all, or substantially all, of the Acquired Assets, if the bid proposes a transaction that the Applicant determines in its sole discretion in consultation with the Monitor and after obtaining the agreement of Wachovia, has a value greater than or equal to the sum of the Purchase Price plus \$250,000 (collectively, the "**All Assets Minimum Bid Amount**"). For purposes of valuing the Purchase Price set forth in the Agreement, the Applicant estimates the value of the Assumed Liabilities to be not less than \$865,000; or
 - (ii) for less than substantially all of the Acquired Assets, if the bid proposes a transaction that, when valued in conjunction with the value that the Applicant determines it can obtain (whether through a combination of Qualified Bids or otherwise) for the Acquired Assets not included in such bid, the Applicant determines, in its sole discretion in consultation with the Monitor and after obtaining the agreement of Wachovia, has a value greater than or equal to the All Assets Minimum Bid Amount;
- (d) if the bid is not conditioned upon any bid protections, in the nature of a break-up fee, termination fee, expense reimbursement, or similar type of payment;
- (e) if the bid includes an acknowledgement and representation that the bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Acquired Assets prior to making its offer, (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Acquired Assets in making its bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the Acquired Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Marked Agreement or the Alternative Agreement;
- (f) if the bid includes a commitment to consummate the purchase of the applicable Acquired Assets (including the receipt of any required Governmental

Approvals) within not more than fifteen days after entry of an order by the Commercial List Court approving such purchase; and

(g) if the bid is received by the Bid Deadline;

unless the bid is for one or more of the Asset Groups identified as 6, 7 and 8 on **Appendix 1** (a "**Concord Bid**").

A bid received from a Qualified Bidder will constitute a "**Qualified Bid**" only if: (i) it includes all of the Required Bid Documents and meets all of the requirements in (a) to (g) above; or (ii) it is a Concord Bid. The Agreement will be deemed a Qualified Bid for all purposes in connection with the Bidding Process, the Auction, and the Sale. A bid will be valued based upon factors that include, but are not limited to, (i) the net value provided by such bid, (ii) whether it is a bid for all, or only a portion of, the Acquired Assets, (iii) if it is a bid for only a portion of the Acquired Assets, whether the bid, when combined with other bids, will exceed the All Assets Minimum Bid Amount, (iv) whether the bid contemplates the assumption and assignment of the Applicant's collective bargaining agreement with their labor unions or otherwise provides for the employment of members of such unions and (v) the likelihood and timing of consummating such transaction (collectively, the "**Bid Considerations**"). Each Qualified Bid other than that of the Purchasers is referred to as a "**Subsequent Bid**".

Auction

If the Applicant receives one or more Qualified Bids in respect of the assets subject to the Agreement, in addition to the Agreement, which the Applicant determines, in consultation with the Monitor and after obtaining the agreement of Wachovia, will provide greater value to the estate than the Agreement, the Applicant may conduct an auction (the "**Auction**") of the Acquired Assets, upon notice to all Qualified Bidders who have submitted Qualified Bids, at 10:00 a.m. (prevailing Eastern time) on July 9, 2009, at the offices of Gowling Lafleur Henderson LLP, Suite 1600, 100 King Street West, Toronto, Ontario or such later time or other place as the Applicant notifies all Qualified Bidders who have submitted Qualified Bids, but only with the consent of the Purchasers, in their sole discretion, in accordance with the following procedures:

- (a) Only the Applicant and its financial advisors, the Monitor, the Purchasers, any representative of Wachovia, and any Potential Bidder who has timely submitted a Qualified Bid will be entitled to attend the Auction, and only the Qualified Bidders will be entitled to make any subsequent Qualified Bids at the Auction.
- (b) By 5:00 p.m. on July 8, 2009, each Qualified Bidder must inform the Applicant whether it intends to participate in the Auction. At the Auction, the Applicant will provide copies of the Qualified Bid or combination of Qualified Bids which the Applicant believes, subject to the terms hereof, is the highest or otherwise best offer(s) to all Qualified Bidders who have informed the Applicant of their intent to participate in the Auction.
- (c) All Qualified Bidders must be present for all Subsequent Bids with the

understanding that the true identity of each bidder must be fully disclosed to all other bidders and that all material terms of each Subsequent Bid must be fully disclosed to all other bidders throughout the entire Auction. The Purchasers shall be told who the other Qualified Bidders are prior to the Auction and shall have the right to bid at the Auction.

(d) The Applicant may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make Subsequent Bids) for conducting the Auction, provided that such rules are not inconsistent with these Bidding Procedures, the CCAA, or any order of the Commercial List Court entered in connection herewith.

(e) Bidding at the Auction will begin with the highest or otherwise best Qualified Bid or combination of Qualified Bids and continue in such minimum increments or other bid improvements as determined by the Applicant in consultation with the Monitor and DIP Lender. In the event that the Purchasers' Qualified Bid as evidenced in the Agreement is the highest and otherwise best Qualified Bid produced at the Auction, Wachovia will not seek to exercise to credit bid at the Auction.

Selection Of Successful Bid

At the conclusion of the Auction, or as soon thereafter as practicable, the Applicant, in consultation with the Monitor and after obtaining the agreement of Wachovia, will: (i) review each Qualified Bid on the basis of financial and contractual terms and the factors relevant to the sale process, including, but not limited to, those factors affecting the speed and certainty of consummating the sale, as well as the Bid Considerations; and (ii) identify the highest or otherwise best offer(s) for all of the Asset Groups or otherwise, received at the Auction (the "**Successful Bid(s)**", and the bidder(s) making such bid(s), the "**Successful Bidder(s)**").

The Applicant's presentation of any particular Qualified Bid or combination of Qualified Bids to the Commercial List Court for approval, other than Purchasers' Successful Bid at the direction of Wachovia, does not constitute the Applicant's acceptance of the bid or bids. The Applicant will be deemed to have accepted a bid only when the bid has been approved by the Commercial List Court at the Sale Hearing.

The Sale Hearing

The Sale Hearing will be held before the Commercial List Court on July 13, 2009 at 10:00 a.m. (prevailing Eastern time), but may be adjourned or rescheduled in the Applicant's sole discretion, subject to Commercial List Court approval, as necessary, without further notice, by an announcement of the adjourned date at the Sale Hearing so long as the deadlines set forth in the Agreement are not violated or with the consent of the Purchasers if the Purchasers are the Successful Bidder. At the Sale Hearing, the Applicant may seek approval of the Successful Bid and an alternate bid (the "Alternate Bid" and such bidder, the "**Alternate Bidder**"). Following approval of the sale to the Successful Bidder, if the Successful Bidder fails to consummate the sale, then the Alternate Bid will be deemed to be the Successful Bid and the Applicant will be authorized, but not directed, to effectuate a sale to the Alternate Bidder subject to the terms of the Alternate Bid without further order of the Commercial List Court. The Purchasers shall have

standing for all matters relating to and arising from the proposed Sale transaction, including standing at the Sale Hearing and enforcement of all orders entered by the Commercial List Court relating to these Bidding Procedures, the Bidding Procedures Order and the Sale Order.

Return Of Good Faith Deposits

Good Faith Deposits of all Qualified Bidders (except for the Successful Bidder) will be held in an interest-bearing escrow account and all Qualified Bids will remain open (notwithstanding Commercial List Court approval of a sale pursuant to the terms of one or more Successful Bids by one or more Qualified Bidders), until the earlier of: (i) two (2) Business Days after the closing of the Sale of the applicable Acquired Assets; and (ii) forty-five (45) days after the Sale Hearing (the "**Return Date**"). Notwithstanding the foregoing, the Good Faith Deposit, if any, submitted by the Successful Bidder, together with interest thereon, will be applied against the payment of the Purchase Price upon closing of the Sale to the Successful Bidder. If a Successful Bidder breaches its obligations under the Bidding Procedures Order or any agreement entered into with respect to its Successful Bid or fails to consummate a sale because of a breach or failure to perform on the part of such Successful Bidder, the Applicant will not have any obligation to return the Good Faith Deposit deposited by such Successful Bidder, and such Good Faith Deposit will irrevocably become property of the Applicant's estate. On the Return Date, the Applicant will return the Good Faith Deposits of all other Qualified Bidders, together with the accrued interest thereon. Notwithstanding the forgoing or anything else herein, the Purchasers' deposit obligations shall be governed by the terms of the Agreement.

Reservations Of Rights

The Applicant, after consultation with the Monitor and consistent with the requirements to obtain the consent of Wachovia set forth elsewhere in these Bidding Procedures: (i) may determine which Qualified Bid, if any, is the highest or otherwise best offer and (ii) may reject at any time any bid that is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bidding Procedures, or the terms and conditions of the Sale, or (c) contrary to the best interests of the Applicant, its estate, creditors, and other parties in interest as determined by the Applicant in its sole discretion. Notwithstanding the forgoing or anything else herein: (i) the Applicant may not impair or modify the Purchasers' rights and obligations under the Bidding Procedures Order; or (ii) in the event the Applicant elects to withdraw from the Auction the Acquired Assets, cancels the Auction, and/or rejects all Qualifying Bids, the Applicant shall nonetheless be obligated to request at the Sale Hearing that the Commercial List Court approve the Agreement with the Purchasers at the direction of Wachovia.

Appendix 1

Asset Groups

1. Brands
2. Accounts receivable
3. Hamilton inventory
4. Hamilton plant & equipment
5. Hamilton leases
6. Concord inventory
7. Concord plant & equipment
8. Concord lease

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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 A PLAN OF COMPROMISE OR ARRANGEMENT OF COPPLEY APPAREL GROUP LIMITED**

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

(PROCEEDING COMMENCED AT TORONTO)

**ORDER
(June 23, 2009)**

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