Court File No. **CV-22-00682153-00CL**

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 ARMSTRONG FLOORING, INC., AFI LICENSING LLC, ARMSTRONG FLOORING LATIN AMERICA, INC. AND ARMSTRONG FLOORING CANADA LTD. (THE "DEBTORS")

APPLICATION OF ARMSTRONG FLOORING CANADA LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

FACTUM FOR ARMSTRONG FLOORING, INC., AFI LICENSING LLC, ARMSTRONG FLOORING LATIN AMERICA, INC. AND ARMSTRONG FLOORING CANADA LTD.

(Returnable June 8, 2022)

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PART I - NATURE OF THE APPLICATION

1. This factum is filed in support of an application by Armstrong Flooring Canada Ltd. ("**AFI Canada**" or the "**Applicant**") pursuant to Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for certain relief, including, *inter alia*, orders recognizing certain proceedings in the United States of America (the "**US Proceedings**") commenced by the Petitions (as defined below) filed by the Applicant and the other Debtors (as defined below) under Chapter 11 of Title 11 ("**Chapter 11**") of the United States Code (the "**US Code**") in the United States Bankruptcy Court for the District of Delaware (the "**US Court**") and recognizing certain orders of the US Court made in the US Proceedings. The Applicant also seeks other ancillary relief as set out below.

2. AFI Canada brings this application as the foreign representative of Armstrong Flooring, Inc. ("**AFI**"), AFI Licensing LLC ("**AFI Licensing**") and Armstrong Flooring Latin America, Inc. ("**AFI Flooring**", and together with AFI and AFI Licensing, the "**US Debtors**", and the US Debtors together with AFI Canada, the "**Debtors**" or the "**AFI Group**").

3. In order to: (i) alleviate any potential harm to the AFI Group during the US Proceedings; (ii) ensure the protection of the AFI Group's Canadian assets, the interests of AFI Canada and the interests of its Canadian stakeholders during the course of the US Proceedings; and (iii) ensure that this Court and the Canadian stakeholders are kept properly informed of the US Proceedings, AFI Canada has brought this application to seek the following relief:

   (a) An order (the "**Initial Recognition Order**") granting certain relief, including, *inter alia*:

      (i) abridging the time for service of the materials such that this application is properly returnable on the date set for a hearing;

      (ii) declaring that AFI Canada is a "foreign representative" as defined in section 45 of the CCAA of the Debtors in respect of the jointly administered insolvency proceedings;

      (iii) declaring that the centre of main interest for the Debtors is the United States of America and recognizing and declaring the US Proceedings as a "foreign main proceeding" under Part IV of the CCAA with respect to each Debtor, including AFI Canada;

      (iv) recognizing and enforcing certain orders (as set out below) of the US Court made in the US Proceedings;

      (v) staying all proceedings that might be taken against the AFI Group under the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3, as amended, or the *Winding-Up and Restructuring Act*, R.S.C. 1985, c. W-11, as amended;

      (vi) restraining further proceedings and any action, suit or proceeding against the AFI Group; and

      (vii) prohibiting the commencement of any action, suit or proceeding against the AFI Group; and

   (b) An order (the "**Supplemental Order**") granting certain relief, including, *inter alia*:

(i) recognizing in Canada and enforcing certain of the First Day Orders (as defined below) as set out in the Affidavit of Michel S. Vermette sworn June 1, 2022 (the "**Vermette Affidavit**");

(ii) granting additional stays and protections in respect of the AFI Group and the directors and officers of the AFI Group consistent with the Model Supplemental Order in Ontario;

(iii) appointing Grant Thornton Limited ("**GTL**") as information officer (in such capacity, the "**Information Officer**") in respect of this proceeding; and

(iv) granting the Court-ordered Administration Charge (as defined in the Vermette Affidavit).

4. The centre of main interest of each of the Debtors is the United States. All executive management and senior management decision-making for the AFI Group, including AFI Canada, is made principally from the AFI Group's corporate headquarters in Lancaster, Pennsylvania. The Applicant respectfully requests that this Court recognize the US Proceedings as a foreign main proceeding under Part IV of the CCAA and that the attendant relief be granted.

PART II - OVERVIEW

5. The AFI Group is a leading global producer of resilient flooring product products for use primarily in the construction and renovation of commercial, residential, and institution buildings. On April 1, 2016, AFI became an independent, publicly-traded company when Armstrong World Industries, Inc. ("**AWI**"), a public Pennsylvania corporation, separated its Resilient Flooring and Wood Flooring businesses from its Building Products business. As a result of the spin-off, AFI and AWI each became independent, publicly-traded companies, with the AFI Group owning and operating the Resilient Flooring and Wood Flooring segments of the business and AWI continuing to own and operate a ceilings business. The AFI Group sells its products in North American commercial and residential markets as well as in commercial markets in the Pacific Rim (primarily China and

Australia). The majority of the AFI Group's sales are in North America, where the AFI Group is the largest producer of resilient flooring products.

Vermette Affidavit, ¶¶65, 66.

6. AFI is the direct parent company of each of the other Debtors, which are all incorporated in Delaware, except for AFI Canada, which is a Canadian company.

Vermette Affidavit, ¶70.

7. In early 2020, the AFI Group embarked on a strategy to modernize operations and increase its profitability (the "**Transformation Plan**"), the implementation of which required the AFI Group to expend significant resources. The effects of the COVID-19 pandemic placed further stress on the AFI Group's operations and liquidity, as well as other challenging market conditions such as inflationary pressures, supply chain disruptions, tariff changes and an overall decline in sales of flooring products, all of which have hampered the AFI Group's profits. These challenges, along with lack of access to additional capital and potential defaults under existing financing arrangements, have caused the AFI Group to seek a restructuring through a court-approved process in order to preserve and maximize the value of its assets and estate for all of its stakeholders.

8. On May 8, 2022 (the "**Filing Date**"), each of the Debtors filed voluntary petitions for relief pursuant to Chapter 11 of the US Code (collectively, the "**Petitions**" and each a "**Petition**") with the US Court. The AFI Group has requested that the Petitions be jointly administered for procedural purposes only.

9. As part of the first day motions (the "**First Day Motions**") that were heard by the US Court on May 11, 2022, which hearing was continued on May 13, 2022 and May 17, 2022, the US Court made several orders (collectively, the "**First Day Orders**"), as detailed in Vermette Affidavit, including an order appointing AFI Canada as the foreign representative of the AFI Group (the "**Foreign Representative Order**") to, among other things, seek recognition of the US Proceedings in Canada. Pursuant to the Foreign Representative Order, the US Court requested the assistance of the Ontario Superior Court of Justice

(Commercial List) (the “**Canadian Court**” or the “**Court**”) in aiding and supporting the US Proceedings.

10. There are no other insolvency proceedings involving the Debtors other than the US Proceedings and these proceedings.

11. Any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Vermette Affidavit.

PART III - FACTS

12. The relevant facts in connection with this Application are more fully set out in the Vermette Affidavit.

PART IV - ISSUES

13. The issues to be determined in this Application are:

    (a) Does the Court have jurisdiction to hear this Application?

    (b) Should the Court recognize the US Proceedings as a “foreign main proceeding” pursuant to sections 46 through 48 of the CCAA and grant the Initial Recognition Order sought by the Applicant?

    (c) Should the Court grant the Supplemental Order sought by the Applicant under section 49 of the CCAA?

14. The Applicant respectfully submits that each of these issues should be answered in the affirmative.

PART V - THE LAW AND ARGUMENT

A. Jurisdiction

15. Pursuant to section 9 of the CCAA, the Court has jurisdiction to hear an application in the “province within which the head office or chief place of business of the company in Canada

is situated, or, if the company has no place of business in Canada, in any province within which any of the assets of the company are situated”.

CCAA, s. 9.

16. The head office of each member of the AFI Group is located in Lancaster, Pennsylvania. AFI Canada is a wholly-owned subsidiary of AFI. AFI Canada is incorporated under the laws of the Province of British Columbia, with a registered office located at 1200 Waterfront Centre, 200 Burrard Street, P.O. Box 48600, Vancouver, British Columbia. AFI Canada also has an office at 2233 Argentia Road, East Tower 302, Mississauga, Ontario, which is the principal place of business in Canada. Accordingly, the Court has jurisdiction to hear this Application.

Vermette Affidavit, ¶¶73, 82-84.

B. Initial Recognition Order

(i) Part IV of the CCAA

17. Part IV of the CCAA establishes a process and system for addressing the administration of cross-border and multi-national insolvencies. Section 44 of the CCAA states that the purpose of the CCAA’s cross-border regime is to promote:

(a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;

(b) greater legal certainty for trade and investment;

(c) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies;

(d) the protection and the maximization of the value of debtor company’s property; and

(e) the rescue of financially troubled businesses to protect investment and preserve employment.

CCAA, s. 44.

18. Part IV of the CCAA is consistent with the principle that a cross-border or multi-national business enterprise should "be permitted to implement a plan so as to reorganize as a global unit, especially where there is an established interdependence on a transnational basis of the enterprise". In such cases, one jurisdiction should take charge of the principal administration of the enterprise's reorganization.

> *Babcock & Wilcox Canada Ltd. (Re)*, 2000 Carswell Ont 704, ¶21 (Ont. S.C.J. [Commercial List]) [***Babcock***].

19. The underlying basis of Part IV of the CCAA is the principle of comity and cooperation between courts of various jurisdictions, whereby a Canadian court will accord respect to "the overall thrust of foreign bankruptcy and insolvency legislation in any analysis, unless in substance generally it is so different from the bankruptcy and insolvency law of Canada, or perhaps because the legal process that generates the foreign order diverges radically from the process here in Canada."

> *Babcock*, ¶21.

20. Cooperation between courts under Part IV of the CCAA promotes the "fair and efficient administration of cross-border insolvencies" and the "protection and maximization of value of the debtors' property".

> *MtGox Co., Ltd. (Re)*, 2014 ONSC 5811, ¶¶10-12.

(ii) The US Proceedings are a "Foreign Proceeding"

21. Pursuant to section 46(1) of the CCAA, a foreign representative may apply to the Court for recognition of a foreign proceeding.

> CCAA, s. 46(1).
>
> *Urbancorp (Re)*, 2016 ONSC 3288 [***Urbancorp***].

22. Section 47(1) of the CCAA provides that the Court *shall* make an order recognizing the foreign insolvency proceeding if it is satisfied that:

    (a) an application for the recognition of a foreign proceeding relates to a "foreign proceeding" within the meaning of the CCAA; and

(b) the applicant is a “foreign representative” within the meaning of the CCAA in respect of that foreign proceeding,

CCAA, s. 47.

23. Both criteria are met in this case. First, a foreign proceeding is broadly defined in section 45(1) of the CCAA as a judicial or an administrative proceeding in a jurisdiction outside Canada dealing with creditors’ collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company’s business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization.

CCAA, s. 45(1).

24. Canadian courts have consistently recognized proceedings commenced under Chapter 11 of the US Code to be “foreign proceedings” for the purposes of the CCAA.

Digital Domain Media Group Inc. (Re), 2012 BCSC 1565 [***Digital Domain***], ¶15.

Hollander Sleep Products, LLC et al., Re, 2019 ONSC 3238 [***Hollander***], ¶27.

Payless Holdings LLC (Re), 2017 ONSC 2242, ¶22.

Zochem Inc. (Re), 2016 ONSC 958 [***Zochem***], ¶20.

25. This Application is supported by: (i) certified copies of the AFI Group’s Petitions that commenced the US Proceedings; and (ii) a certified copy of the Foreign Representative Order authorizing the Applicant to act as the AFI Group’s foreign representative in these proceedings, as required by section 46(2) of the CCAA.

CCAA, s. 46(2).

Vermette Affidavit, Exhibits “A” and “C”.

26. It is accordingly submitted that the US Proceedings ought to be recognized by the Court as a “foreign proceeding” as defined in section 45(1) of the CCAA.

CCAA, s. 45(1).

(iii) AFI Canada is a "Foreign Representative"

27. The second criterion under section 47(1) of the CCAA is also satisfied. The term "foreign representative" is defined under section 45(1) of the CCAA as a person or body who is authorized in a foreign proceeding in respect of a debtor company to act as a representative in respect of the foreign proceeding.

CCAA, s. 45(1).

28. Canadian courts have recognized entities authorized to act as a foreign representative pursuant to an order made in proceedings under Chapter 11 of the US Code as a foreign representative for the purposes of the CCAA, including Canadian entities acting as a foreign representative on behalf of US entities.

Digital Domain, ¶¶16-17.

Zochem, ¶¶19-20.

29. Pursuant to the Foreign Representative Order, AFI Canada has been duly authorized by the US Court to make this application and to act as a foreign representative of the AFI Group in these CCAA proceedings.

Vermette Affidavit, Exhibit "C".

30. It is accordingly submitted that AFI Canada ought to be recognized by the Court as a "foreign representative" as defined in s. 45(1) of the CCAA.

(iv) The US Proceedings are a "Foreign Main Proceeding"

31. If the Court grants an order under section 47(1) of the CCAA recognizing the foreign proceeding, section 47(2) of the CCAA requires that the Court specify whether the foreign proceeding is a "foreign main proceeding" or a "foreign non-main proceeding." If a foreign proceeding is recognized as a "foreign main proceeding" then there is an automatic stay against any proceedings concerning the debtors' property, debts, liabilities and obligations in Canada by operation of section 48(1) of the CCAA.

CCAA, ss. 47(1), 47(2) and 48(1).

Urbancorp, ¶23.

32. Section 45(1) of the CCAA provides that a "foreign main proceeding" is a foreign proceeding in a jurisdiction where the debtor company has the "centre of its main interests" ("**COMI**").

CCAA, s. 45(1).

33. While the CCAA does not define what constitutes a debtor company's COMI, pursuant to section 45(2), a debtor company's COMI is presumed to be the location of its registered office, in the absence of proof to the contrary.

CCAA, s. 45(2).

34. However, a debtor's COMI is a substantive, not technical, determination and the statutory presumption may be rebutted by evidence of the operational realities of a debtor. A determination of a debtor's COMI will necessarily depend upon the particular facts and circumstances of each case.

CHC Group Ltd. (Re), 2016 BCSC 2623 [***CHC***], ¶9.

Digital Domain, ¶24.

35. Justice Morawetz (as he then was) commented on the COMI analysis as follows in *Re Lightsquared*:

> "In most cases, these factors will all point to a single jurisdiction as the centre of main interests. In some cases, there may be conflicts among the factors, requiring a more careful review of the facts. The court may need to give greater or less weight to a given factor, depending on the circumstances of the particular case. In all cases, however, the review is designed to determine that the location of the proceeding, in fact, corresponds to where the debtor's true seat or principal place of business actually is, consistent with the expectations of those who dealt with the enterprise prior to commencement of the proceedings."

Lightsquared LP (Re), 2012 ONSC 2994 (Ont. S.C.J. [Commercial List]) [***Re Lightsquared***], ¶26.

36. Canadian courts have accepted the following test in determining whether the statutory presumption of a debtor company's COMI has been rebutted:

> "In circumstances where it is necessary to go beyond the s. 45(2) registered office presumption [...] the following principal factors, considered as a whole, will tend to indicate whether the location in which the proceeding has been filed is the debtor's centre of main interest. The factors are:
>
> (i) the location is readily ascertainable by creditors;
>
> (ii) the location is one in which the debtor's principal assets or operations are found; and
>
> (iii) the location is where the management of the debtor takes place."
>
> *Re Lightsquared*, ¶25.
>
> *Digital Domain*, ¶23.
>
> *Zochem*, ¶22.

37. In addition to the above "principal" factors, Canadian courts have made reference to the following factors in conducting the COMI analysis:

(a) the location where corporate decisions are made;

(b) the location of employee administrations, including human resource functions;

(c) the location of the company's marketing and communication functions;

(d) whether the enterprise is managed on a consolidated basis;

(e) the extent of integration of an enterprise's international operations;

(f) the centre of an enterprise's corporate, banking, strategic and management functions;

(g) the existence of shared management within entities and in an organization;

(h) the location where cash management and accounting functions are overseen;

(i) the location where pricing decisions and new business development initiatives are created; and

(j) the seat of an enterprise's treasury management functions, including management of accounts receivable and accounts payable.

> _Massachusetts Elephant & Castle Group Inc. (Re)_, 2011 ONSC 4201 [***Elephant & Castle***], ¶¶26-31.
>
> _Digital Domain_, ¶21, citing _Angiotech Pharmaceuticals Inc., Re_, 2011 BCSC 115 (B.C. S.C. [In Chambers]) ¶7.

38. The Applicant submits that the COMI for each member of the AFI Group, including AFI Canada, is the United States.

39. With respect to the US Debtors, each is incorporated in, and has its registered office in, the United States. There is no evidence to rebut the presumption that the COMI for each of US Debtors is the United States based on the location of its registered office. The evidence shows that the US Debtors have no presence or direct business operations in, or connection to, Canada, other than their relationship with AFI Canada. Without limitation, the US Debtors (i) have no employees in Canada, (ii) have no establishment or owned or leased real property in Canada; (iii) have no personal or other tangible or valuable property in Canada; and (iv) do not directly carry on any business in Canada. Accordingly, it is submitted that the COMI for the US Debtors is the United States.

> Vermette Affidavit, ¶¶70, 81-83.

40. With respect to AFI Canada, the Applicant submits that the presumptive COMI on the basis of AFI Canada's registered office is rebutted. While AFI Canada's registered office is in Vancouver, British Columbia and its principal place of business is located in Mississauga, Ontario, its COMI is in the United States where its principal operations and management take place. The evidence shows that AFI Canada's operations are intertwined with the AFI Group, and that AFI Canada's operations are directed from the AFI Group headquarters in Lancaster, Pennsylvania. The centre of AFI Canada's corporate, banking, strategic and management functions is in Lancaster, Pennsylvania and the oversight of cash management and accounting functions, the seat of treasury management functions, decision-making around pricing decisions and new business development initiatives are directed from Lancaster, Pennsylvania.

Vermette Affidavit, ¶¶84, 88, 94.

41. In particular, the Applicant submits that the following demonstrates that AFI Canada's COMI is the United States:

(a) All members of the AFI Group, other than AFI Canada, are incorporated in, and have their registered head office in, the United States;

Vermette Affidavit, ¶¶70, 82.

(b) The AFI Group, including AFI Canada, is highly integrated and is operated on a consolidated basis, with all corporate and other major decision making occurring in Lancaster, Pennsylvania, which is a location easily identifiable by creditors, particularly since all accounts payable and accounts receivable are directed from the finance group located in Lancaster, Pennsylvania;

Vermette Affidavit, ¶¶86-88.

(c) AFI Canada is a wholly-owned subsidiary of AFI, and AFI makes all material decisions regarding AFI Canada, oversees and manages the operations of AFI Canada and provides significant direction to and oversight of AFI Canada's operations and assets;

Vermette Affidavit, ¶¶83, 84, 87.

(d) In the ordinary course of business, the members of the AFI Group engage in a number of intercompany transactions (the "**Intercompany Transactions**"), which are either reflected as intercompany receivables and payables in the AFI Group's books and records, or as intercompany notes or loans, and such Intercompany Transactions include the incurrence of expenses by AFI on behalf of AFI Canada in connection with sales made by AFI Canada and the payment of fees from AFI Canada to AFI for sales it helped generate for AFI Canada;

Vermette Affidavit, ¶¶51, 107.

(e) AFI Canada's principal assets are its accounts receivable and inventory.

Vermette Affidavit, ¶¶75(c), 75(d).

(f) AFI Canada does not have any management personnel, and all of its senior and executive management decisions are centralized and directed from the AFI Group head office in Lancaster, Pennsylvania;

Vermette Affidavit, ¶¶83, 84, 87, 89.

(g) AFI Canada's sole director and officer is Christopher S. Parisi, who is a resident of Downingtown, Pennsylvania;

Vermette Affidavit, ¶74.

(h) All material decisions with respect to administration, human resources, strategic planning, management, marketing, communication and accounting are directed from the AFI Group head office in Lancaster, Pennsylvania;

Vermette Affidavit, ¶¶ 83, 85-90, 92, 93.

(i) AFI Canada does not have any human resources personnel, and all human resources ("**HR**") decisions for AFI Canada are made from the AFI Group head office in Lancaster, Pennsylvania;

Vermette Affidavit, ¶90.

(j) AFI Canada has four employees, who are sales representatives;

Vermette Affidavit, ¶¶ 75(e).

(k) Other than the four above-mentioned sales employees in Canada, there are no customer service personnel located within Canada or employed by AFI Canada, and the AFI Group head office in Lancaster, Pennsylvania provides all customer service for AFI Canada;

Vermette Affidavit, ¶95.

(l) The marketing of the AFI Group, including AFI Canada, is directed by the marketing team based in the AFI Group's head office in Lancaster, Pennsylvania;

Vermette Affidavit, ¶93.

(m) The AFI Group head office in Lancaster, Pennsylvania oversees and makes all decisions regarding AFI Canada's inventory, including decisions with respect to ordering and pricing, and uses forecasts to determine inventory needs and place orders on behalf of AFI Canada;

Vermette Affidavit, ¶91.

(n) AFI Canada's accounts receivable, accounts payable and treasury departments are located in the AFI Group's head office in Lancaster, Pennsylvania, and all of AFI Canada's treasury and financial decisions, including borrowing and the setting of prices, are made by the AFI Group's head office in Lancaster, Pennsylvania, which consolidates the information and uses it to make financial decisions;

Vermette Affidavit, ¶¶84, 86.

(o) AFI Canada does not independently report its financial performance, and its financial reporting is part of a consolidated reporting prepared for the AFI Group.

Vermette Affidavit, ¶110.

(p) AFI Canada's strategic decisions, including asset management, capital expenditure and planning decisions, are driven from the AFI Group's head office in Lancaster, Pennsylvania.

Vermette Affidavit, ¶94.

(q) The US Debtors and AFI Canada share a centralized cash management system that is overseen by the AFI Group's finance department based in Lancaster, Pennsylvania and operates primarily through bank accounts maintained by AFI and AFI Canada at JPMorgan Chase Bank, N.A. ("**JPMorgan**");

Vermette Affidavit, ¶¶50,98, 99.

(r) Although AFI Canada also maintains a separate cash management system consisting of five bank accounts, the system is managed out of the AFI Group's finance and accounting department based in Lancaster, Pennsylvania, and none of AFI Canada's employees has access to such accounts, other than to request deposit slips for the operating account;

Vermette Affidavit, ¶99.

(s) All information technology ("**IT**") services for AFI Canada are provided from the AFI Group's head office in Lancaster, Pennsylvania. AFI Canada has no IT personnel or employees outside the IT team employed by the AFI Group head office in Lancaster, Pennsylvania; and

Vermette Affidavit, ¶92.

(t) The ABL Credit Facility is administered by the AFI Group's finance department based in Lancaster, Pennsylvania.

Vermette Affidavit, ¶96.

42. AFI Canada has employees, operations and assets within Canada, but the evidence demonstrates that these are not significant in the context of the AFI Group's business as a whole. Further, the management of the Canadian employees, operations and assets is fully integrated with the larger AFI Group, and that all fundamental decision-making functions are based in the United States. In particular, there are no management personnel employed by AFI Canada, or located within Canada, and all of its accounts payable and accounts receivable are directed from the AFI Group head office in Lancaster, Pennsylvania.

Vermette Affidavit, ¶¶75(b)-75(e), 83, 86-89.

43. In summary, the AFI Group is a highly-integrated corporate group which is centrally managed out of the United States. The evidence indicates that the seat of the AFI Group's business, including the businesses operated by AFI Canada, is in Lancaster, Pennsylvania such that AFI Canada is simply not a stand-alone company. AFI Canada requires the management, guidance and support from the AFI Group head office in Lancaster, Pennsylvania. Accordingly, the Applicant submits that the above factual elements support the finding that the COMI of AFI Canada is the United States.

44. Accordingly, the Applicant submits that the COMI of all of the AFI Group, including AFI Canada, is the United States and that the US Proceedings should be recognized by the Court as a "foreign main proceeding".

(v) The Additional Relief Sought in the Initial Recognition Order Should be Granted

45. Section 48(1) of the CCAA provides that on the making of an order recognizing a foreign proceeding that is specified by the Court to be a "foreign main proceeding", the Court *shall* make an order (subject to any terms and conditions it considers appropriate):

(a) staying, until otherwise ordered by the Court, for any period that the Court considers necessary, all proceedings taken or that might be taken against the debtor company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act;*

(b) restraining, until otherwise ordered by the Court, further proceedings in any action, suit or proceeding against the debtor company;

(c) prohibiting, until otherwise ordered by the Court, the commencement of any action, suit or proceeding against the debtor company; and

(d) prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.

CCAA, s. 48(1).

46. Additionally, where a proceeding is specified by the Court to be a "foreign non-main proceeding", section 49(1) of the CCAA provides the Court with the discretion to make an order referred to in section 48(1) if it is satisfied that the order is necessary for the protection of the debtor company's property or the interests of creditors.

CCAA, s. 49(1).

47. Furthermore, section 52(1) of the CCAA requires that if an order recognizing a foreign proceeding is made, the Court "shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding".

CCAA, s. 52(1).

48. By operation of the US Code, the Debtors obtained the benefit of a stay of proceedings upon filing the Petitions with the US Court. A stay of proceedings in Canada is essential to protect the efforts of the Debtors to proceed with the US Proceedings and emerge from the reorganization process.

49. The Initial Recognition Order sought by the Applicant is based on the Court's Model CCAA Initial Recognition Order (Foreign Main Proceeding) and provides for all of the relief required by section 48 of the CCAA.

CCAA, s. 48.

50. The Initial Recognition Order is not inconsistent with any order that may be made under the CCAA.

CCAA, s. 48(2).

51. In light of the requirements of the CCAA and the exigencies of the circumstances facing the Debtors, they require a stay of proceedings and other relief identified in the Initial Recognition Order in order to advance the US Proceedings.

C. The Supplemental Order

(i) Recognition of the First Day Orders

52. In addition to the automatic and mandatory relief provided in section 48 of the CCAA, section 49 of the CCAA provides that the Court may make any order that it considers appropriate if it is satisfied that it is necessary for the protection of a debtor company's property or the interests of a creditor or creditors. Section 50 of the CCAA further provides that an order made under Part IV of the CCAA, including pursuant to section 49, may be made on any terms and conditions that the Court considers appropriate.

CCAA, ss. 48, 49 and 50.

53. The Supplemental Order sought by the Applicant is based upon the Court's Model CCAA Supplemental Order (Foreign Main Proceeding). It includes a stay of proceedings typically granted in Part IV and other CCAA proceedings. Given the nature of the ongoing efforts of the Debtors to pursue strategic alternatives to preserve and maximize the potential value of the AFI Group's assets, granting the stay of proceedings is appropriate in order to preserve the *status quo* while the Debtors attempt to find a global resolution for the benefit of the Debtors and their stakeholders.

54. Paragraph 4 of the Supplemental Order seeks to recognize certain First Day Orders that were obtained by the AFI Group from the US Court, as set out in greater detail at paragraphs 9 to 64 of the Vermette Affidavit.

55. The First Day Orders were obtained by the AFI Group to facilitate their restructuring efforts in the US Proceedings by, among other things, minimizing the adverse effects of the US Proceedings on their business, and preserving and maximizing the potential value of the AFI Group's assets for the benefit of their creditors and other stakeholders.

56. The First Day Orders are not inconsistent with any order that may be granted under the CCAA. Canadian courts have regularly exercised their jurisdiction under sections 49 and 50 of the CCAA to recognize Chapter 11 bankruptcy orders with similar effect to the First Day Orders to maintain the status quo and protect the assets of AFI Group while permitting them to continue operating their business as usual in Canada.

See, for example, *Zochem Inc. (Re)*, 2016 ONSC 958, ¶¶<u>14</u>, <u>42</u>.

<u>Elephant & Castle</u>, ¶¶36, 40.

57. As set out above, section 49 of the CCAA provides that the Court may make any order that it considers appropriate if it is satisfied that it is necessary for the protection of a debtor company's property, or the interests of a creditor or creditors. Section 50 of the CCAA further provides that an order made under Part IV of the CCAA, including pursuant to section 49, may be made on any terms and conditions that the Court considers appropriate.

CCAA, ss. 49 and 50.

58. The central principle governing Part IV of the CCAA is comity, which mandates that Canadian courts should recognize and enforce the judicial acts of other jurisdictions, provided that those other jurisdictions have assumed jurisdiction on a basis consistent with principles of order, predictability and fairness.

Hollander, ¶41.

59. In furtherance of the principle of comity, Canadian courts should allow a foreign court to exercise principal control over the insolvency process if that other jurisdiction has the closest connection to the proceeding. As noted above, the CCAA requires the Court to cooperate to the maximum extent possible with the foreign proceeding.

CCAA, s. 52(1).

60. The granting of an order recognizing and giving effect to the First Day Orders is appropriate for the following reasons:

(a) The US Court has appropriately taken jurisdiction over the US Proceedings and comity will be furthered by this Court's recognition of and support for the US Proceedings already under way in the United States;

(b) Coordination of proceedings in the two jurisdictions will ensure equal and fair treatment of all stakeholders irrespective of where they are located;

(c) Given the close connection between the United States and the AFI Group's business, including the business of AFI Canada, it is reasonable and sensible for the US Court to have principal control over the insolvency process; and

(d) The First Day Orders were obtained by the Debtors to minimize the adverse effects of the US Proceedings on their business in order to preserve value of the Debtors' assets for the benefit of the claimants.

61. Recognition of the First Day Orders is important to ensure that the proceedings are coordinated with the Chapter 11 Cases.

62. In recognizing orders granted pursuant to foreign main proceedings, the Ontario Court has considered whether granting such an order would materially prejudice Canadian interests or creditors. The Canadian creditors will not suffer any material prejudice should the Court grant the Supplemental Order and nothing is being done that is contrary to the applicable provisions of the CCAA.

> *Xinergy Ltd. (Re)*, 2015 ONSC 2692 (Ont. S.C.J. [Commercial List]), BOA, Tab 6.
>
> *Hartford Computer Hardware Inc. (Re)*, 2012 ONSC 964 (Ont. S.C.J. [Commercial List]), ¶13.

63. The Applicant respectfully requests that the Court recognize the First Day Orders, as set out in paragraph 8 of the Vermette Affidavit.

(ii) Appointment of GTL as the Information Officer

64. Section 53(b) of the CCAA requires the foreign representative to publish a notice of the recognition of the US Proceedings by the Court in one or more Canadian newspapers. To the extent that additional Canadian creditors of the Canadian Debtor are identified through the statutory notice process set out in the Initial Recognition Order, they will be reported on to the Court and addressed on an as needed basis.

> CCAA, s. 53(b).

65. In light of the complex corporate and financial structure of the AFI Group, the stakeholders located in Canada and the amount of debt owed by the AFI Group, the Applicant submits that the appointment of GTL as Information Officer will help facilitate these proceedings and the dissemination of information concerning developments in the US Proceedings to the Court and affected creditors and other stakeholders, including those located in Canada.

> Vermette Affidavit, ¶125.

66. It has become common in proceedings under Part IV of the CCAA for the Court to appoint an information officer, pursuant to the Court's broad discretion under section 49. The Model Supplemental Order includes the appointment of the information officer. An information officer helps effect cooperation between the Canadian proceeding, the foreign representative and foreign court, as required by section 52(1) of the CCAA.

Grace Canada Inc., Re, [2005] 17 C.B.R. (5th) 275 (Ont. S.C.J. [Commercial List]), BOA, Tab 1.

Pacific Exploration & Production Corp., Re, 2016 ONSC 5429.

Campeau v. Olympia & York Developments Ltd., [1992] 14 C.B.R. (3d) 303 (Ont. Ct. J.), BOA, Tab 2.

67. The Applicant seeks the appointment of GTL as the Information Officer in this proceeding on terms consistent with the Model Order and the terms on which information officers have been appointed in recent Part IV proceedings.

68. The proposed role of GTL as Information Officer is based on the Model Order and is consistent with the terms of the appointment of information officers in other recent recognition proceedings under the CCAA in Ontario.

Supplemental Order in the Application of Hartford Computer Hardware Inc. dated December 21, 2011 (Ont. S.C.J. [Commercial List]) (without schedules), BOA, Tab 3.

Supplemental Order in the Application of Massachusetts Elephant & Castle Group Inc. dated July 4, 2011 (Ont. S.C.J. [Commercial List]) (without schedules), BOA, Tab 4.

Supplemental Order in the Application of Modular Space Corporation dated December 27, 2016 (Ont. S.C.J. [Commercial List]), BOA, Tab 5.

PART VI - RELIEF REQUESTED

69. The Applicant requests that the Court grant the Initial Recognition Order and the Supplemental Order in the form included at Tabs 3 and 4 of the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of June, 2022.

Roger Jaipargas/Tyler Mondor McNaughton

Lawyers for Armstrong Flooring, Inc., AFI Licensing LLC, Armstrong Flooring Latin America, Inc. and Armstrong Flooring Canada Ltd.

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Babcock & Wilcox Canada Ltd. (Re)*, 2000 CarswellOnt 704 (Ont. S.C.J. [Commercial List])

2. *MtGox Co., Ltd. (Re)*, 2014 ONSC 5811

3. *Urbancorp (Re)*, 2016 ONSC 3288

4. *Digital Domain Media Group Inc. (Re)*, 2012 BCSC 1565 (B.C. S.C.)

5. *Hollander Sleep Products, LLC et al., Re*, 2019 ONSC 3238

6. *Payless Holdings LLC (Re)*, 2017 ONSC 2242

7. *Zochem Inc. (Re)*, 2016 ONSC 958

8. *CHC Group Ltd. (Re)*, 2016 BCSC 2623

9. *Lightsquared LP (Re)*, 2012 ONSC 2994 (Ont. S.C.J. [Commercial List])

10. *Massachusetts Elephant & Castle Group Inc. (Re)*, 2011 ONSC 4201 (Ont. S.C.J. [Commercial List])

11. *Angiotech Pharmaceuticals Inc., Re*, 2011 BCSC 115 (B.C. S.C. [In Chambers])

12. *Zochem Inc. (Re)*, 2016 ONSC 958 (Ont. S.C.J. [Commercial List])

13. *Grace Canada Inc., Re*, [2005] 17 C.B.R. (5th) 275 (Ont. S.C.J. [Commercial List])

14. *Pacific Exploration & Production Corp., Re*, 2016 ONSC 5429

15. *Campeau v. Olympia & York Developments Ltd.*, [1992] 14 C.B.R. (3d) 303 (Ont. Ct. J.)

16. Supplemental Order in the Application of Hartford Computer Hardware Inc. dated December 21, 2011 (Ont. S.C.J. [Commercial List]) (without schedules)

17. Supplemental Order in the Application of Massachusetts Elephant & Castle Group Inc. dated July 4, 2011 (Ont. S.C.J. [Commercial List]) (without schedules)

18. Supplemental Order in the Application of Modular Space Corporation dated December 27, 2016 (Ont. S.C.J. [Commercial List])

19. *Hartford Computer Hardware Inc. (Re)*, 2012 ONSC 964 (Ont. S.C.J. [Commercial List])

20. *Xinergy Ltd. (Re)*, 2015 ONSC 2692 (Ont. S.C.J. [Commercial List])

SCHEDULE "B"

STATUTES

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

Jurisdiction of courts

Jurisdiction of court to receive applications

9 (1) Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

Single judge may exercise powers, subject to appeal

(2) The powers conferred by this Act on a court may, subject to appeal as provided for in this Act, be exercised by a single judge thereof, and those powers may be exercised in chambers during term or in vacation.

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

> (a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

Purpose

44. The purpose of this Part is to provide mechanisms for dealing with cases of cross-border insolvencies and to promote

(a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;

(b) greater legal certainty for trade and investment;

(c) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies;

(d) the protection and the maximization of the value of debtor company's property; and

(e) the rescue of financially troubled businesses to protect investment and preserve employment.

Interpretation

<u>Definitions</u>

45. (1) The following definitions apply in this Part.

"foreign court" means a judicial or other authority competent to control or supervise a foreign proceeding.

"foreign main proceeding" means a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests.

"foreign non-main proceeding" means a foreign proceeding, other than a foreign main proceeding.

"foreign proceeding" means a judicial or an administrative proceeding, including an interim proceeding, in a jurisdiction outside Canada dealing with creditors' collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company's business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization.

"foreign representative" means a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding respect of a debtor company, to

(a) monitor the debtor company's business and financial affairs for the purpose of reorganization; or

(b) act as a representative in respect of the foreign proceeding.

Centre of debtor company's main interests

(2) For the purposes of this Part, in the absence of proof to the contrary, a debtor company's registered office is deemed to be the centre of its main interests.

Recognition of Foreign Proceeding

Application for recognition of a foreign proceeding

46. (1) A foreign representative may apply to the court for recognition of the foreign proceeding in respect of which he or she is a foreign representative.

Documents that must accompany application

(2) Subject to subsection (3), the application must be accompanied by

(a) a certified copy of the instrument, however designated, that commenced the foreign proceeding or a certificate from the foreign court affirming the existence of the foreign proceeding;

(b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate from the foreign court affirming the foreign representative's authority to act in that capacity; and

(c) a statement identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative.

Documents may be considered as proof

(3) The court may, without further proof, accept the documents referred to in paragraphs (2)(a) and (b) as evidence that the proceeding to which they relate is a foreign proceeding and that the applicant is a foreign representative in respect of the foreign proceeding.

Other evidence

(4) In the absence of the documents referred to in paragraphs (2)(a) and (b), the court may accept any other evidence of the existence of the foreign proceeding and of the foreign represent-ative's authority that it considers appropriate.

Translation

(5) The court may require a translation of any document accompanying the application.

Order recognizing foreign proceeding

47. (1) If the court is satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceeding, the court shall make an order recognizing the foreign proceeding.

Nature of foreign proceeding to be specified

(2) The court shall specify in the order whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding.

Order relating to recognition of a foreign main proceeding

48. (1) Subject to subsections (2) to (4), on the making of an order recognizing a foreign proceeding that is specified to be a foreign main proceeding, the court shall make an order, subject to any terms and conditions it considers appropriate,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken against the debtor company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the debtor company;

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the debtor company; and

(d) prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.

Scope of order

(2) The order made under subsection (1) must be consistent with any order that may be made under this Act.

When subsection (1) does not apply

(3) Subsection (1) does not apply if any proceedings under this Act have been commenced in respect of the debtor company at the time the order recognizing the foreign proceeding is made.

Application of this and other Acts

(4) Nothing in subsection (1) precludes the debtor company from commencing or continuing proceedings under this Act, the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act in respect of the debtor company.

Other orders

49. (1) If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

(a) if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);

(b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company's property, business and financial affairs, debts, liabilities and obligations; and

(c) authorizing the foreign representative to monitor the debtor company's business and financial affairs in Canada for the purpose of reorganization.

Restriction

(2) If any proceedings under this Act have been commenced in respect of the debtor company at the time an order recognizing the foreign proceeding is made, an order made under subsection (1) must be consistent with any order that may be made in any proceedings under this Act.

Application of this and other Acts

(3) The making of an order under paragraph (1)(a) does not preclude the commencement or the continuation of proceedings under this Act, the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act in respect of the debtor company.

Terms and conditions of orders

50. An order under this Part may be made on any terms and conditions that the court considers appropriate in the circumstances.

Cooperation – court

52. (1) If an order recognizing a foreign proceeding is made, the court shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

Obligations of foreign representative

53. If an order recognizing a foreign proceeding is made, the foreign representative who applied for the order shall

(a) without delay, inform the court of

(i) any substantial change in the status of the recognized foreign proceeding,
(ii) any substantial change in the status of the foreign representative's authority to act in that capacity, and
(iii) any other foreign proceeding in respect of the same debtor company that becomes known to the foreign representa-tive; and

(b) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information.

Court not prevented from applying certain rules

61. (1) Nothing in this Part prevents the court, on the application of a foreign represent-ative or any other interested person, from applying any legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives that are not inconsistent with the provisions of this Act.

<u>Public policy exception</u>

(2) Nothing in this Part prevents the court from refusing to do something that would be contrary to public policy

Court File No.: CV-22-00682153-00CL

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

AND IN THE MATTER OF ARMSTRONG FLOORING, INC., AFI LICENSING LLC, ARMSTRONG FLOORING LATIN AMERICA, INC. AND ARMSTRONG FLOORING CANADA LTD. (THE "DEBTORS")

APPLICATION OF ARMSTRONG FLOORING CANADA LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

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