

RSM Richter

Fifth Report of RSM Richter Inc. as CCAA Monitor of Eddie Bauer of Canada, Inc. and Eddie Bauer Customer Services Inc.

RSM Richter Inc.
Toronto, August 17, 2009

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Appendix “A”	Amended and Restated Initial Order of the <i>Ontario</i> Superior Court of Justice (Commercial List) dated June 17, 2009
Appendix “B”	Monitor’s Fourth Report dated July 21, 2009 (without appendices)

Court File No. 09-8240-CL

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
EDDIE BAUER OF CANADA, INC. AND
EDDIE BAUER CUSTOMER SERVICES INC.**

**FIFTH REPORT OF RSM RICHTER INC.
AS CCAA MONITOR OF
EDDIE BAUER OF CANADA, INC. AND
EDDIE BAUER CUSTOMER SERVICES INC.**

August 17, 2009

1. INTRODUCTION

Pursuant to an order of the Ontario Superior Court of Justice (the "Court") made on June 17, 2009, as amended and restated (the "Initial Order"), Eddie Bauer of Canada, Inc. and Eddie Bauer Customer Services Inc. (jointly, the "Company") were granted protection under the *Companies' Creditors Arrangement Act* (the "CCAA") and RSM Richter Inc. ("Richter") was appointed the Monitor (the "Monitor"). A copy of the Initial Order¹ is attached as Appendix "A".

This report ("Report") is filed by Richter in its capacity as Monitor.

¹ The Initial Order was amended and restated on consent shortly after its issuance to include provisions requested by counsel to certain landlords and by counsel to the US DIP Lender.

On June 17, 2009, Eddie Bauer Holdings, Inc., the Company's US based parent company, and certain other US affiliates (collectively, "Eddie Bauer US") commenced reorganization cases under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "US Court") (the "Chapter 11 Proceedings"). The Company is not subject to the Chapter 11 Proceedings. A cross-border protocol was approved by this Honourable Court on June 25, 2009.

(In this Report, Eddie Bauer US and the Company are collectively referred to as the "Eddie Bauer Group" and the Chapter 11 Proceedings and the CCAA proceedings are referred to as the "Restructuring Proceedings".)

1.1 Purposes of this Report

The purposes of this Report are to:

- a) Provide background information about the Company and these Restructuring Proceedings, including updating this Honourable Court regarding the closing of the Court-approved transaction ("Transaction") between the Eddie Bauer Group and Everest Holdings LLC, an affiliate of Golden Gate Private Equity, Inc. (the "Purchaser");
- b) Detail issues requiring the expansion of the Monitor's powers in these proceedings to include issuing payments on behalf of the Company and executing and filing tax returns and corporate filings on behalf of the Company;
- c) Summarize the status of the claims procedure (the "Claims Procedure") being administered by the Monitor in these proceedings (the "Claims Procedure Order");
- d) Provide an overview of the Monitor's activities since July 14, 2009, the date on which its activities were previously approved; and
- e) Recommend that this Honourable Court make an order:
 - Expanding the Monitor's powers on the basis detailed herein; and
 - Approving the Monitor's activities, as described in this Report.

2. BACKGROUND

The Eddie Bauer Group sells outerwear, apparel and accessories, as well as down products for the home, including comforters, pillows and throws.

Eddie Bauer Holdings, Inc. was a publicly traded company, the shares of which were listed on the NASDAQ Global Market under the trading symbol “EBHI”. The Eddie Bauer brand is internationally recognized and Eddie Bauer products are available at approximately 370 retail and outlet stores, including approximately 36 retail stores and one warehouse store throughout Canada, through catalogue sales and on the Eddie Bauer Group’s website. At the commencement of these proceedings, the Company employed approximately 933 individuals in Canada.

2.1 The Transaction

At a joint hearing conducted on July 22, 2009, the US Court and this Honourable Court approved the Transaction, which included all of the Company’s business and assets. The purchase price under the Transaction was US\$286 million, of which US\$11 million was allocated to the Company’s assets. Further details concerning the Transaction and the sale process were provided in the Monitor’s fourth report to Court dated July 21, 2009 (the “Fourth Report”), a copy of which is provided as Appendix “B”.

On August 3, 2009, the purchase price was paid by the Purchaser and the amount allocable to the Company’s business and assets (US\$11 million) was paid to the Monitor and deposited by it into a trust account which it controls (the “Trust Account”). On August 4, 2009, the

Monitor filed a certificate (“Certificate”) with this Honourable Court which, *inter alia*, confirmed that the closing of the Transaction occurred on August 3, 2009².

3. PROPOSED EXPANSION OF THE MONITOR’S POWERS

The Company no longer has any bank accounts or employees and all of its Directors have resigned. Accordingly, it does not have the ability to make certain payments for post-filing obligations that are coming due nor can it execute documents that are required to be filed in the normal course. These issues are discussed in the following sections.

3.1 Tax Issues

The Company’s provincial sales tax (“PST”) returns for British Columbia, Ontario, Saskatchewan and Manitoba have not been filed for the month of July, 2009. The Company’s former employees have compiled the information and prepared the returns such that they are ready to be filed. The total PST obligation for July, 2009 is approximately \$200,000. The terms of the Transaction require that clearance certificates be received from various provincial tax authorities. The Monitor understands that the tax authorities will each issue a clearance certificate if the July, 2009 returns are filed and amounts owing are paid by August 20, 2009 or shortly thereafter.

The Company’s Goods and Services Tax (“GST”) return for July must also be filed. The Company is in a GST refundable position for July.

² The Certificate was filed with the Court on August 4, 2009 as August 3, 2009 was a statutory holiday in Canada. In order to facilitate a closing date of August 3, 2009, the Monitor arranged for the purchase price allocated to the Canadian assets to be wired by the Purchaser into a trust account maintained by the New York office of the Monitor’s legal counsel, which was subsequently sent to the Monitor.

The Company has various other outstanding tax matters which require the assistance and direction of the Monitor to complete. The Monitor intends to coordinate resolution of these issues with the Company's former tax advisors and, if appropriate, execute the requisite documents and tax returns on the Company's behalf. The Monitor understands that certain tax refunds may be available to the Company upon filing certain returns.

The Monitor is seeking authority to pay the July, 2009 PST tax obligations from the monies in the Trust Account and to execute on behalf of the Company the July, 2009 PST and GST returns. Both provincial sales taxes and GST (if any) have the benefit of statutory priorities outside of bankruptcy.

The Monitor will also take steps to advise the various taxing authorities that may have claims against the Company of the Claims Procedure but no further tax payments will be made without further order of this Honourable Court.

3.2 Employee Obligations

With the exception of five employees, all of the Company's former employees were retained by the Purchaser. On July 31, 2009, the Company terminated those five individuals. In exchange for a release to be provided from each of these former employees, the Company offered to pay an amount equivalent to two weeks' pay to these individuals, totalling approximately \$5,700. Certain of these releases have been obtained and, accordingly, the Monitor is seeking the authority to pay these obligations from the funds on deposit in the Trust Account.

3.3 Professional Fees

As at the date of this Report, there is approximately \$315,000 of unpaid professional fees, including the fees and disbursements of the Company's Canadian legal counsel (Goodmans LLP), the Monitor and its legal counsel (Davies Ward Philips & Vineberg LLP). These fees are covered by the Administration Charge (in the amount of up to \$1 million) under the Initial Order. Accordingly, the Monitor is seeking the authority to pay these fees from the funds on deposit in the Trust Account.

3.4 Corporate Name Change

Pursuant to the Transaction, the Company is to change its corporate names. The Company's legal counsel has prepared the documentation necessary to do so. The Monitor is seeking the authority to execute and file these documents on behalf of the Company as all of the Company's signatories have resigned.

3.5 Board Meeting

The Monitor understands that a meeting of the Board of Directors of Eddie Bauer US ("Board") is to be convened on August 17, 2009 for the purpose of passing a resolution to direct the Company, as sole shareholder, to consent to the terms of the Order sought pursuant to this application. This Honourable Court will be updated concerning the Board resolution at the return of this motion.

3.6 Recommendation

The Monitor respectfully recommends this Honourable Court authorize it, on behalf of the Company, to:

- Facilitate payments for the items described in this Report from the funds on deposit in the Trust Account; and

- Execute any documents on the Company's behalf through the balance of these proceedings, including tax returns.

4. CLAIMS PROCEDURE

The Claims Procedure Order solicited pre-filing claims against the Company, post-filing restructuring claims and claims against the Company's directors and officers. In accordance with the Claims Procedure Order, the Monitor:

- Sent by ordinary mail a copy of the Proof of Claim Document Package (which included a copy of an instruction letter to creditors and a proof of claim form) to each known creditor of the Company;
- Posted a copy of the Proof of Claim Document Package on its website; and
- Placed advertisements on July 29 and 30, 2009 in *The Globe and Mail* (National Edition) and *The Wall Street Journal* advising of the Claims Procedure, calling for claims and providing notice of the claims bar date, being September 21, 2009 (the "Claims Bar Date").

As at the date of this Report, the Claims Procedure is ongoing.

5. OVERVIEW OF THE MONITOR'S ACTIVITIES

In addition to the activities described in this Report, the Monitor's activities have included:

- Corresponding with legal counsel to the Company and the Monitor in connection with all matters in these proceedings, including the Transaction and the Claims Procedure;
- Drafting the Monitor's third report to Court dated July 16, 2009 filed in connection with the Claims Procedure;
- Reviewing and commenting on all Court materials filed in connection with the Claims Procedure Order;
- Reviewing the offers submitted on July 14, 2009, the bid deadline under the Court-approved sale process;

- Corresponding with the Company and legal counsel concerning the offers submitted in the sale process, the stalking horse offer and other issues in connection with the sale process;
- Attending at the auction in New York on July 16, 2009;
- Preparing a liquidation analysis of the Company's business and assets, including reviewing the results and underlying assumptions of the appraisals prepared for the Monitor of the Company's inventory and real estate lease portfolio;
- Drafting the Fourth Report filed in connection with the Transaction;
- Reviewing documents in connection with the Transaction, including the Monitor's Certificate;
- Corresponding with the Purchaser's legal counsel in connection with the allocation of the purchase price to the Company's assets;
- Carrying out the Claims Procedure;
- Responding to creditor inquiries regarding the CCAA proceedings and the Claims Procedure;
- Attending at Canadian motions in these proceedings;
- Placing on the Monitor's website copies of materials filed in these proceedings;
- Responding to creditor inquiries;
- Corresponding with the Company concerning the issues described in this Report;
- Corresponding with Canada Revenue Agency concerning certain tax issues;
- Drafting this Report; and
- Other matters pertaining to the administration of this mandate.

6. CONCLUSION AND RECOMMENDATION

Based on the foregoing, the Monitor respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1(e) of this Report.

* * *

All of which is respectfully submitted,

**RSM RICHTER INC.
IN ITS CAPACITY AS CCAA MONITOR OF
EDDIE BAUER OF CANADA, INC. AND
EDDIE BAUER CUSTOMER SERVICES INC.
AND NOT IN ITS PERSONAL CAPACITY**