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**Sixteenth Report of  
Duff & Phelps Canada Restructuring Inc.  
as CCAA Monitor of  
Eddie Bauer of Canada, Inc. and  
Eddie Bauer Customer Services Inc.**

**March 17, 2014**

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**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.**

**SIXTEENTH REPORT OF  
DUFF & PHELPS CANADA RESTRUCTURING INC.**

**MARCH 17, 2014**

## **1.0 Introduction**

1. 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"), Tenere of Canada Inc. (formerly, Eddie Bauer of Canada, Inc.) ("Tenere") and Yuma Customer Services Inc. (formerly, Eddie Bauer Customer Services Inc.) ("Yuma") (jointly, the "Company") were granted protection under the *Companies' Creditors Arrangement Act* ("CCAA") and RSM Richter Inc. ("Richter") was appointed as Monitor (the "Monitor").
2. As a result of the acquisition of Richter's Toronto restructuring practice by Duff & Phelps Canada Restructuring Inc. ("D&P"), D&P replaced Richter as Monitor pursuant to a Court order dated December 12, 2011.
3. This report ("Report") is filed by D&P in its capacity as Monitor.
4. On June 17, 2009, Amargosa, Inc. (formerly, Eddie Bauer, 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 "Chapter 11 Proceedings"). The Company is not subject to the Chapter 11 Proceedings. Pursuant to the First Amended Joint Plan of Liquidation filed in the Chapter 11 Proceedings (the "Plan"), EBHI Liquidating Trust, successor-in-interest to Amargosa, Inc. ("EBHI Trust") was formed. Pursuant to the Plan, the shares of Tenere were transferred to EBHI Trust.

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## **1.1 Purposes of this Report**

1. The purposes of this Report are to:
  - a) Provide background information about the Company and these proceedings;
  - b) Provide an update on the status of tax refunds owing to Tenere;
  - c) Provide an overview of the Monitor's activities since the Monitor's Fifteenth Report to Court dated September 23, 2013 (the "Fifteenth Report"); and
  - d) Recommend that this Honourable Court make an order:
    - Granting the Company's request for an extension of its stay of proceedings from March 31, 2014 to December 31, 2014; and
    - Approving the Monitor's activities, as described in this Report.

## **2.0 Background**

1. Eddie Bauer US and the Company sold outerwear, apparel and accessories.
2. The Eddie Bauer brand is internationally recognized - at the commencement of the US and Canadian insolvency proceedings, Eddie Bauer products were available at approximately 370 retail and outlet stores in North America, including 36 retail stores and one warehouse located in Canada, as well as through catalogue and website sales. At the commencement of these proceedings, the Company employed approximately 933 individuals in Canada.

## **2.1 Sale of Assets, Claims Procedure and Distributions in these Proceedings**

1. The Monitor's Eleventh Report to Court dated June 13, 2011 (the "Eleventh Report") provides details of the Court-approved sale of substantially all of the Company's business and assets, the value allocation between the Company and Eddie Bauer US, the results of the claims procedure and distributions to creditors made over the course of these proceedings. A copy of the Eleventh Report is attached as Appendix "A", without appendices.
2. At this time, there are no remaining creditors of Tenere. Pursuant to orders of this Honourable Court made on May 12, 2010, August 12, 2010 and June 23, 2011, all creditor claims have been paid in full and approximately \$2.7 million (net of withholding taxes) has been distributed to Tenere's shareholder, EBHI Trust. Distributions made to EBHI Trust in its capacity as shareholder were made in accordance with a Court-approved Settlement Agreement dated May 10, 2011 among Tenere, Yuma and Canada Revenue Agency ("CRA").

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3. CRA is the sole remaining creditor of Yuma; however, there are no remaining funds or realizable assets in Yuma's estate.

### **3.0 Assets under Administration**

#### **3.1 Cash**

1. There is presently approximately \$103,000 in Tenere's trust account maintained by the Monitor (the "Trust Account"). A statement of receipts and disbursements for the period ended March 10, 2014 is attached as Appendix "B".

#### **3.2 Potential Tax Refunds**

1. The sole outstanding issue in these proceedings is a "Competent Authority" transfer pricing refund application being administered by Gowling Lafleur Henderson LLP ("Gowlings") on behalf of Tenere. Gowlings was engaged on a contingency fee basis in accordance with a Court order made on December 8, 2009.
2. As previously reported, the Competent Authority refund application has been filed by Gowlings ("Competent Authority Application"), which it continues to pursue. If successful, the Competent Authority Application could result in material tax refunds payable to Tenere.
3. There has been some activity in connection with the Competent Authority Application since the Fifteenth Report, a summary of which follows:
  - October 29, 2013: The Monitor received confirmation from CRA that it was reviewing the Competent Authority Application.
  - November 21, 2013: Gowlings met with CRA representatives to discuss the Competent Authority Application.
  - December 11, 2013: The Monitor received an extensive information request list from CRA in connection with CRA's ongoing review of the Competent Authority Application. Since that date, Gowlings has been compiling the necessary information with the assistance of the Monitor and Alvarez & Marsal LLC ("A&M"), Eddie Bauer US' financial advisor.
  - February 4, 2014: The Monitor received a letter from CRA regarding the status of the information request and CRA's intention to conduct interviews of former employees of Eddie Bauer US and the Company to verify certain matters. These interviews have not yet commenced. A copy of CRA's letter dated February 4, 2014 is attached as Appendix "C".

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### **3.3 Other Assets**

1. Other than the funds on deposit in the Trust Account and the potential tax refund, the Monitor is not aware of any assets remaining to be realized upon.

### **4.0 Company's Request for an Extension**

1. The Monitor supports the Company's request for an extension of the stay of proceedings for the following reasons:
  - The Company is acting in good faith and with due diligence; and
  - An extension will provide the opportunity to continue to pursue the tax refunds.
2. Given the uncertainty around the amount of time required to resolve tax matters, the Monitor believes an extension of the stay of proceedings until December 31, 2014 is appropriate.

### **4.1 Cash Flow**

1. As the Company is inactive, a cash flow projection has not been prepared for the stay extension period. The remaining costs in these proceedings (largely professional fees) are to be funded from the funds in the Trust Account, which are subject to the Administration Charge.

### **5.0 Overview of the Monitor's Activities**

1. Since the date of its last report (September 23, 2013), the Monitor's activities have included:
  - Corresponding with representatives of Gowlings regarding the Competent Authority Application, including in respect of all correspondence received from CRA in respect thereof;
  - Attending at Court on September 30, 2013 in connection with the Company's stay extension motion;
  - Corresponding with A&M regarding retrieval of certain books and records for CRA's review;
  - Responding to information requests from the Liquidating Trustee's accounting firm, including arranging to prepare the Company's financial statements for its fiscal year ended December 31, 2013;
  - Corresponding periodically with legal counsel to the Company and the Monitor in respect of these proceedings;

- 
- Corresponding with the Company's legal counsel regarding the filing of the Company's annual returns for 2012 and 2013;
  - Performing activities on behalf of the Company in accordance with a Court order made on August 20, 2009 enhancing the Monitor's powers, including making payments from the Trust Account, filing monthly HST returns and pursuing potential tax refunds; and
  - Drafting this Report and reviewing the accompanying motion materials.

## 6.0 Conclusion and Recommendation

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

\* \* \*

All of which is respectfully submitted,

*Duff & Phelps Canada Restructuring Inc.*

**DUFF & PHELPS CANADA RESTRUCTURING INC.  
IN ITS CAPACITY AS CCAA MONITOR OF  
TENERE OF CANADA, INC. AND YUMA CUSTOMER SERVICES INC.  
AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “A”**



# **RSM! Richter**

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

**RSM Richter Inc.**  
Toronto, June 13, 2011

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**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.**

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

**June 13, 2011**

**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")<sup>1</sup>, Tenere of Canada Inc. (formerly, Eddie Bauer of Canada, Inc.) ("Tenere") and Yuma Customer Services Inc. (formerly, Eddie Bauer Customer Services Inc.) ("Yuma") (jointly, the "Company") were granted protection under the *Companies' Creditors Arrangement Act* ("CCAA") and RSM Richter Inc. ("Richter") was appointed the Monitor (the "Monitor"). A copy of the Initial Order is attached as Appendix "A".

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

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<sup>1</sup> 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, Amargosa, Inc. (formerly, Eddie Bauer, Inc.) (“Amargosa”), 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. Pursuant to the First Amended Joint Plan of Liquidation filed in the Chapter 11 Proceedings (the “Plan”), EBHI Liquidating Trust, successor-in-interest to Amargosa (“EBHI Trust”) was formed. Pursuant to the Plan, the shares of Tenere were transferred to EBHI Trust.

## 1.1 Purposes of this Report

The purposes of this Report are to:

- a) Provide background information about the Company and these proceedings;
- b) Provide an update on the funds available for distribution, the status of the potential tax refunds owing to Tenere and an amended proof of claim filed by EBHI Trust;
- c) Summarize the terms and conditions of a settlement agreement dated May 10, 2011 between the Company and Canada Revenue Agency (“CRA”) (“Settlement Agreement”);
- d) Set out the Company’s proposed distributions totalling approximately \$5.4 million (“Proposed Distributions”);
- e) Provide an overview of the Monitor’s activities since December 7, 2010, the date of its last report; and
- f) Recommend that this Honourable Court make an order:
  - Approving the Settlement Agreement;
  - Authorizing and directing the Monitor to make the Proposed Distributions on the Company’s behalf;
  - Authorizing further distributions from Tenere to EBHI Trust, in its capacity as Tenere’s sole shareholder, without further Court order;

- Granting the Company's request for an extension of its stay of proceedings from June 30, 2011, the date that the stay expires, to December 31, 2011; and
- Approving the Monitor's activities, as described in this Report.

## **2. BACKGROUND**

Eddie Bauer US and the Company (jointly, the "Eddie Bauer Group") sold 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 located throughout Canada, one Canadian warehouse store, 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 a transaction ("Transaction") between the Eddie Bauer Group and Everest Holdings LLC, an affiliate of Golden Gate Private Equity, Inc. (the "Purchaser"). The Transaction included, among other things, the purchase and sale of all of the Company's business and assets. The purchase price was US\$286 million, of which US\$11 million (the "Canadian Proceeds") was allocated to the Company's assets. The Transaction closed on August 3, 2009 and the Canadian Proceeds were paid to the Monitor and deposited into a trust account which it controls (the "Trust Account").

The Transaction did not set out an allocation of the Canadian Proceeds between Tenere and Yuma. Pursuant to a Court order dated May 12, 2010, the Court approved an allocation of the Canadian Proceeds of approximately US\$10.923 million (99.3%) to Tenere and US\$77,000 (0.7%) to Yuma.

## 2.2 Claims Procedure

Pursuant to a Court order dated July 22, 2009, the Monitor conducted a claims procedure which solicited pre-filing claims against the Company, post-filing restructuring claims and claims against the Company's directors and officers (the "Claims Procedure"). The results of the Claims Procedure were detailed in previous reports to Court, and are summarized as follows:

- The Company has no secured creditors;
- The principal creditor of Tenere is EBHI Trust – its admitted claim totalled approximately US\$11.2 million (C\$12 million). This claim was subsequently amended to approximately US\$13 million (C\$14 million using the exchange rate specified by the Claims Procedure of US\$1 to C\$1.0777), as discussed in Section 4 of this Report;
- Tenere's other unsecured creditors were CRA, with an admitted claim of approximately \$195,000, and three creditors having claims totalling approximately \$1,200. These unsecured claims have been paid in full; and
- CRA is the sole creditor of Yuma. CRA filed claims against Yuma totalling approximately \$6.3 million, of which approximately \$250,000 is undisputed and was admitted as an unsecured claim.

The limited number of claims filed in the Claims Procedure resulted from the assumption by the Purchaser of the majority of the Company's landlord and vendor obligations. Additionally, the Initial Order authorized the Company to pay for pre-filing goods and services, which payments were made over the course of these proceedings.

## **2.3 Distributions of the Canadian Proceeds and Certain Tax Refunds**

Pursuant to orders of this Honourable Court made on May 12, 2010 and August 12, 2010, the Monitor has distributed:

- Approximately US\$11.2 million<sup>2</sup> to EBHI Trust to be applied against its unsecured claim against Tenere;
- Approximately \$1,200 to the holders of three admitted unsecured claims against Tenere. CRA has released refunds owing to Tenere, net of CRA's admitted claim against Tenere (\$195,000); and
- US\$70,000 to CRA to be applied against its admitted claim against Yuma.

These distributions leave EBHI Trust as the sole remaining creditor of Tenere. CRA is the sole remaining creditor of Yuma; however, there are no remaining funds or realizable assets in Yuma's estate.

## **3. ASSETS UNDER ADMINISTRATION**

### **3.1 Cash**

There is presently approximately \$5.7 million in the Monitor's Trust Account. All of the Canadian Proceeds have been distributed to the Company's creditors. The balance of the funds represent the proceeds of provincial and federal tax refunds collected on behalf of Tenere. A statement of receipts and disbursements for the period ending June 8, 2011 is attached as Appendix "B".

### **3.2 Potential Tax Refunds**

The Monitor has corresponded routinely with Deloitte & Touche Inc. ("Deloitte"), the Company's tax advisor, in respect of potential tax refunds that may be owing to Tenere. The

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<sup>2</sup> Comprised of US\$9.98 million and C\$1.22 million.

Monitor has received approximately \$7.4 million of such refunds to date and is expecting additional federal and provincial tax refunds of approximately \$200,000.

In addition to the tax refunds being pursued by Deloitte, there is an ongoing Competent Authority transfer pricing refund request being administered by Gowling Lafleur Henderson LLP (“Gowlings”). Gowlings was engaged on a contingency fee basis in accordance with a Court order made on December 8, 2009. The Monitor understands that this refund could be significant; however, the timing and quantum of the refund is uncertain. As at the date of this Report, the Competent Authority transfer request has been filed by Gowlings and it continues to pursue the refund with CRA. The Monitor understands that the timeline for refunds of this nature is protracted given that, *inter alia*, they include cross-border communications and administration between CRA and the US Internal Revenue Service.

Other than the funds on deposit in the Trust Account and these potential tax refunds, the Monitor is not aware of any significant assets remaining to be realized upon.

#### **4. AMENDED CLAIM OF EBHI TRUST**

As discussed in the Monitor’s tenth report to Court dated December 7, 2010, the Monitor, Deloitte, Alvarez & Marsal (“Alvarez”), Eddie Bauer US’ financial advisor, and the Company’s former accounting personnel have been engaged in the process of reconciling certain accounting and tax accounts between the books and records of the Company and EBHI Trust. The initial claim filed by Amargosa did not consider certain foreign exchange gains/losses between Eddie Bauer US and Tenere which came to light when the Company’s 2009 and other pre-filing tax returns were being prepared and reconciled with those of Eddie Bauer US. The reconciliation process is now complete and resulted in EBHI Trust filing an amended proof of claim on June 1, 2011 for approximately US\$13 million (the



“Amended Claim”). The Amended Claim represents an increased claim of approximately US\$1.8 million<sup>3</sup>. The Company and the Monitor were involved in the reconciliation process and have reviewed the Amended Claim, including the supporting documentation and analyses. The Amended Claim has been admitted in the Claims Procedure.

## 5. CRA SETTLEMENT AGREEMENT

At the stay extension motion before this Honourable Court on December 14, 2010 (the “December 14<sup>th</sup> Motion”), CRA expressed its intention to object to any distribution being made to EBHI Trust as shareholder while CRA’s claims against Yuma remain unpaid. CRA advised that it intended to use a “substantive consolidation” argument in relation to the Tenere and Yuma estates as the basis for its position.

Following the December 14<sup>th</sup> Motion, the Company, CRA, the Monitor and their respective legal counsel exchanged correspondence on this issue. As a result of these discussions and negotiations, CRA and the Company have entered into the Settlement Agreement, pursuant to which, *inter alia*:

- CRA has agreed that it will not object to any distributions from Tenere to EBHI Trust or other stakeholders of Tenere;
- CRA has acknowledged that all remaining funds held by the Monitor on behalf of Tenere are assets of Tenere and that CRA has no claim in respect thereof;
- \$75,000 is to be paid by Tenere to CRA; and
- The approval of this Honourable Court is the sole condition precedent to the Settlement Agreement, following which the Monitor is to remit \$75,000 from the Trust Account to CRA.

A copy of the Settlement Agreement is attached as Appendix “C”.

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<sup>3</sup> Translates to approximately C\$1.93 million using the foreign exchange rate specified in the Claims Procedure (1.0777).

## 5.1 Recommendation re: Settlement Agreement

The Monitor recommends that this Honourable Court approve the Settlement Agreement on the basis that EBHI Trust, being the sole creditor of Tenere, has consented to the Settlement Agreement. In addition, the Settlement Agreement avoids litigation costs that Tenere would incur, which would likely exceed the amount payable to CRA under the Settlement Agreement.

## 6. PROPOSED DISTRIBUTIONS

The Company is seeking approval to fund distributions totalling approximately \$5.4 million, comprised of the following:

Description	(C\$)			
	EBHI Trust	CRA (withholding taxes)	CRA (other)	Total
Distribution to EBHI Trust as creditor	1,888,613	91,023	-	1,979,636
Distribution to EBHI Trust as shareholder	2,531,250	843,750	-	3,375,000
Payment to CRA re Settlement Agreement	-	-	75,000	75,000
Total – Proposed Distributions	4,419,863	934,773	75,000	5,429,636

The basis for each distribution included in the above table is provided in the following sections of this Report.

### 6.1 EBHI Trust

#### 6.1.1 Distribution as Creditor

The Proposed Distribution to EBHI Trust of approximately \$1.9 million<sup>4</sup> (translated to Canadian dollars using the exchange rate specified under the Claims Procedure) represents the unpaid portion of the Amended Claim. The Amended Claim includes unpaid interest and royalties totalling approximately \$364,000, on which a 25% withholding tax is payable

<sup>4</sup> Net of withholding taxes on accrued interest and royalties.

to CRA. As noted above, the Amended Claim has been admitted under the Claims Procedure.

### **6.1.2 Distribution as Shareholder**

Subject to the payment of the remaining portion of the Amended Claim, all claims against Tenere have been paid in full. After payment of the CRA settlement amount and the distribution to EBHI Trust on its Amended Claim (together with the related withholding taxes), there would be approximately \$3.65 million in the Trust Account. Accordingly, the Company is seeking approval for a \$3.375 million distribution to EBHI Trust in its capacity as Tenere's sole shareholder. Of the \$3.375 million proposed distribution, \$843,750 (25%) is payable to CRA for withholding taxes.

The Company is also seeking this Honourable Court's approval to make further distributions to its shareholder, EBHI Trust, without further order of this Honourable Court, should additional monies become available through the potential tax refunds discussed in Section 3.2, or otherwise. Any further distributions to EBHI Trust as shareholder would also be subject to a 25% withholding tax payable to CRA.

## **6.2 CRA**

### **6.2.1 Withholding Taxes**

A 25% withholding tax is payable to CRA on the portion of the Amended Claim related to accrued interest and royalty expenses (approximately \$364,000). The amount of the withholding tax owing to CRA in respect of these obligations totals \$91,023.

In addition, there are withholding taxes payable to CRA on any distributions to EBHI Trust in its capacity as shareholder, to the extent that the distributions exceed Tenere's paid-up-capital, being \$1. The Company's tax advisors have advised that the withholding tax rate on

shareholder distributions can range from 5% to 25% depending on, *inter alia*, the residency status and treaty eligibility of the beneficiaries of EBHI Trust. Since the number of beneficiaries is significant, it was determined to be impractical and costly to assess these and other attributes for each beneficiary - such an exercise would not be cost effective nor would it eliminate the risk of penalties being assessed against Tenere for failing to withhold the applicable taxes. As a result, the Trustee of EBHI Trust instructed the Company to withhold 25% of the dividend, being the maximum withholding tax that may be owing. Should the beneficiaries of EBHI Trust wish to claim treaty benefits in order to have a portion of the withholding taxes refunded, the Trustee of EBHI Trust will advise these beneficiaries the mechanism by which these parties can apply for such refunds, if applicable. The total amount of withholding taxes that are to be remitted to CRA in connection with the proposed dividend paid to EBHI Trust is \$843,750.

#### **6.2.2 Payment under Settlement Agreement**

The Company is seeking approval to fund the amount payable to CRA under the Settlement Agreement (\$75,000). For the reasons set out in Section 5.1 of this Report, the Monitor is of the view that the Settlement Agreement is appropriate.

### **6.3 Holdback**

The Proposed Distributions would leave approximately \$250,000 in the Trust Account, being the amount withheld for costs to completion of these proceedings<sup>5</sup>. The Administration Charge (as defined in the Initial Order) was reduced to \$250,000 pursuant to a Court order made on August 12, 2010.

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<sup>5</sup> As at the date of this Report, the professional fees have been paid current.

#### **6.4 Recommendation re: Proposed Distributions**

The Monitor is of the view that the Proposed Distributions are appropriate given that the administration of the Claims Procedure is complete and the holdback is sufficient to cover any potential priority claims under the Administration Charge. In addition, there are no secured creditors and the other two charges created under the Initial Order, being the Intercompany Charge and the Directors' Charge, were discharged and released previously in these proceedings.

### **7. COMPANY'S REQUEST FOR AN EXTENSION**

The Monitor supports the Company's request for an extension of the stay of proceedings for the following reasons:

- The Company is acting in good faith and with due diligence; and
- An extension will provide the Company and the Monitor with the opportunity to work with Deloitte and Gowlings to pursue the tax refunds that may be owing to the Company, as described in Section 3.2 of this Report.

Given the nature of the outstanding issues, being tax matters which typically require time to resolve, the Monitor believes an extension of the stay of proceedings until December 31, 2011 would be appropriate.

#### **7.1 Cash Flow**

A cash flow projection has not been prepared for the stay extension period. The remaining costs in these proceedings (largely professional fees) are to be funded from the funds in the Trust Account which are subject to the Administration Charge.

## 8. OVERVIEW OF THE MONITOR'S ACTIVITIES

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

- Corresponding extensively with Deloitte and the Company's former inhouse tax advisors, regarding tax issues;
- Corresponding with Deloitte and Alvarez in connection with the reconciliation between the books and records of the Company and those of Eddie Bauer US;
- Corresponding with Deloitte in connection with the preparation of the Company's 2010 tax returns;
- Reviewing the Company's fiscal 2010 tax returns for the periods ending April 5, 2010 and December 31, 2010;
- Corresponding with Deloitte, Alvarez and the Company regarding the tax matters detailed in this Report;
- Reviewing correspondence between CRA and the Company's legal counsel in connection with the Settlement Agreement;
- Reviewing and commenting on a Notice of Appeal filed with the Tax Court of Canada between Yuma and Her Majesty the Queen on March 8, 2011;
- Reviewing and commenting on a schedule of Proposed Distributions and discussing with legal counsel implications of certain of the distributions;
- Corresponding with Bederson & Company LLP ("Bederson"), the US based accountants for EBHI Trust, and facilitating Bederson's information requests;
- Corresponding with representatives of Gowlings with regard to the Competent Authority refund application process;
- Facilitating payments, filing tax returns and following up on potential tax refunds on behalf of the Company in accordance with a Court order dated August 20, 2009;
- Completing the administration of the Claims Procedure in accordance with the Claims Procedure Order, particularly as it relates to the Amended Claim filed by EBHI Trust;
- Responding to creditor inquiries regarding the CCAA proceedings and the Claims Procedure;

- Placing on the Monitor's website copies of materials filed in these proceedings;
- Corresponding with counsel concerning the issues described in this Report;
- Drafting this Report; and
- Other matters pertaining to the administration of this mandate.

## 9. 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(f) of this Report.

\* \* \*

All of which is respectfully submitted,

A handwritten signature in dark ink that reads "RSM Richter W.C." in a cursive, slightly slanted script.

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

## **Appendix “B”**



**Tenere of Canada, Inc. and Yuma Customer Services Inc.**  
**Statement of Receipts and Disbursements**  
**For the Period Ended March 10, 2014**

<b>Receipts</b>	<b>USD Account</b>	<b>CAD Account</b>
Proceeds of sale of assets	11,000,000	-
Tax refunds	-	7,687,495
Sundry collections	100	133,254
Interest income	9,684	46,398
Transfers between estate accounts	-	1,069,606
	<u>11,009,784</u>	<u>8,936,753</u>
<b>Disbursements</b>		
Court approved distributions		
Amargosa, Inc.	9,983,500	1,374,020
EBHI Liquidating Trust	-	4,419,863
Canada Revenue Agency	70,000	1,059,773
Other creditors	185	1,026
Transfers between estate accounts	955,392	-
Professional fees		
Monitor	-	558,023
Legal fees and disbursements	281	619,605
Tax advisory	-	408,894
GST/HST on disbursements	-	126,935
PST remittances (for July, 2009)	-	229,926
Publication costs	-	20,570
Payroll obligations	-	2,771
Miscellaneous expenses	426	12,242
	<u>11,009,784</u>	<u>8,833,646</u>
<b>Balance in Trust Accounts</b>	<u>-</u>	<u>103,106</u>

## **Appendix “C”**



Canada Revenue  
Agency

Agence du revenu  
du Canada

Tenere of Canada, Inc.  
C/O Duff & Phelps  
333 Bay Street  
14<sup>th</sup> Floor  
Toronto, ON  
M5H 2S7

**Attn: Mr. David Sieradzki**

Your file Votre référence

Our file Notre référence  
BN: 12264 9031 RC0001

Unit 452-1-7  
Teg Mammo  
Tel 416 973 6931  
Fax 416 954 8528 (unsecured)

February 04, 2014

Dear Sir:

**Re: Review of Request for Downward Adjustments for Tenere of Canada Inc. dated June 29, 2010 and May 14, 2012, for 2004, 2005 and 2006 taxation years**

Pursuant to our letter dated January 13, 2014, we were to be provided with all the documentation and/or information in our Query No. TNR-TP-2004-06 in one package by the end of January 2014.

However, Mr. Dale Hill, accompanied with his letter dated January 27, 2014, provided us with only the following partial documentation on January 28, 2014:

1. Documents pertaining to Items 10 and 13 of Query No. TNR-TP-2004-06. Mr. Hill has stated that complete answers have been provided to Items 10 and 13, we have not yet verified its completeness, and
2. Documents pertaining to Items 5 and 11 of Query No. TNR-TP-2004-06, which Mr. Hill has stated that partial answers have been provided for.

Mr. Dale Hill has informed us that Eddie Bauer is busy now doing year-end closing, so, it may even take until the end of March 2014 to obtain the rest of the information. Accordingly, we are granting another extension until the end of March 2014, to provide all and complete information we have requested.

.../2

Toronto Centre Tax Services Office  
1 Front Street West  
Toronto ON  
M5J 2X6

Bureau des services fiscaux de Toronto-Centre  
1, rue Front Ouest  
Toronto ON  
M5J 2X6

**Canada**

As we have stated in our previous letter, once we received and reviewed all the documentation, we will be conducting interviews of EB-US and EB-CAN personnel to verify the functions performed.

Yours truly,



Teg Mammo  
International Audit  
Toronto Centre Tax Services Office

cc: Mr. Dale Hill, Partner, Gowling Lafleur Henderson LLP  
Ms. Geri Porteous, Manager, Field Advisory Team