



**Twenty-Second Report of
KSV Kofman Inc.
as CCAA Monitor of
Eddie Bauer of Canada, Inc. and
Eddie Bauer Customer Services Inc.**

December 12, 2017

Contents	Page
----------	------

1.0	Introduction	1
1.1	Purposes of this Report.....	2
1.2	Currency.....	2
1.3	Restrictions.....	2
2.0	Background	3
2.1	Sale of Assets, Claims Procedure and Distributions	3
3.0	Assets under Administration	3
3.1	Cash	3
3.2	Potential Tax Refunds	4
4.0	Company’s Request for an Extension	4
4.1	Cash Flow	5
5.0	Overview of the Monitor’s Activities	5
6.0	Conclusion and Recommendation	6

Appendices

Appendix	Tab
Monitor’s 11 th Report to Court dated June 13, 2011 (without appendices)	A
Interim Statement of Receipts and Disbursements.....	B

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.

TWENTY-SECOND REPORT OF
KSV KOFMAN INC.

December 12, 2017

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") on December 9, 2011, D&P replaced Richter as Monitor pursuant to a Court order dated December 12, 2011. On June 30, 2015, D&P was acquired by KSV Kofman Inc. ("KSV"). Pursuant to a Court order made on July 10, 2015, D&P's ongoing mandates were transferred to KSV, including acting as Monitor in these proceedings. The licensed trustees/restructuring professionals overseeing this mandate have remained unchanged since its outset.
3. This report ("Report") is filed by KSV in its capacity as Monitor.

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 its Twenty-First Report to Court dated June 15, 2017 (the "Twenty-First 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 December 31, 2017 to March 31, 2018; and
 - approving the Monitor's activities, as described in this Report.

1.2 Currency

1. Unless otherwise noted, all currency references in this Report are in Canadian dollars.

1.3 Restrictions

1. In preparing this Report, KSV has relied upon the Company's unaudited financial information, including its books and records and discussions with the Company's counsel and tax advisors. KSV has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
2. An examination of the Company's future oriented financial information as outlined in the Chartered Professional Accountant Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based upon assumptions and discussions with the Company's tax advisors regarding future events; actual results achieved may vary from this information and these variations may be material. KSV expresses no opinion or other form of assurance on whether the future oriented financial information presented in this Report will be achieved.

2.0 Background

1. 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. The Company employed 933 individuals in Canada. The workforce was not unionized and the Company did not maintain a registered pension plan.
3. 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 "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.

2.1 Sale of Assets, Claims Procedure and Distributions

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 \$3.3 million has been distributed to Tenere's shareholder, EBHI Trust, net of withholding taxes. 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").
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 \$554,000 in Tenere's trust account maintained by the Monitor ("Trust Account"). An interim statement of receipts and disbursements for the period ended December 12, 2017 is attached as Appendix "B".

3.2 Potential Tax Refunds

1. The sole outstanding issue in these proceedings remains a “Competent Authority” transfer pricing refund application (“Competent Authority Application”) being handled by Gowling WLG (Canada) LLP, formerly Gowling Lafleur Henderson LLP (“Gowlings”). There are no other assets to be realized upon.
2. Gowlings was engaged by the Monitor, on behalf of Tenere, on a contingency fee basis in accordance with a Court order made on December 8, 2009. In accordance with the retainer arrangements approved by this Honourable Court, Gowlings is entitled to a contingency fee calculated as 33% of the tax savings (plus interest) resulting from the Competent Authority Application.
3. The Competent Authority Application was filed in 2010. To date, the Competent Authority Application has resulted in Federal and Provincial tax refunds totalling approximately \$2.9 million - these refunds excluded a reassessment of royalty payments which had been claimed as part of the Competent Authority Application. The royalty payment reassessment is the largest component of the Competent Authority Application and could result in a material tax refund, if successful. As a result, a Notice of Objection was filed in December, 2015.
4. Based on discussions between Gowlings and CRA representatives in October, 2017, the Notice of Objection process is expected to be concluded in the next few months. CRA has advised Gowlings that it is processing Notices of Reassessment for the 2004, 2005 and 2006 taxation years that will result in tax refunds of approximately \$5 million payable to Tenere. According to Gowlings, the refund is expected to be received shortly following the issuance of the Notices of Reassessment, which is expected to be in early 2018.

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;
 - based on Gowlings’ discussions with CRA, an extension until March 31, 2018 is expected to be sufficient to conclude the outstanding tax matters and should enable the Monitor to complete its administration of these proceedings, including receiving and distributing the tax refunds and preparing a motion for its discharge; and
 - EBHI Trust, the ultimate beneficiary of any funds to be realized in these proceedings, is aware of the status of the Notice of Objection process and consents to the proposed extension.

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 being 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 (June 15, 2017), the Monitor's activities have included:
 - attending at Court on June 22, 2017 regarding the Company's most recent stay extension motion;
 - corresponding routinely with representatives of Gowlings regarding the Competent Authority Application and the Notice of Objection;
 - assisting Gowlings to retrieve and provide information required to advance the Competent Authority Application and the Notice of Objection process;
 - corresponding with Deloitte LLP, the Company's tax advisor, to prepare and file the Company's tax returns and other sundry tax matters;
 - corresponding periodically with legal counsel to the Company, EBHI Trust and the Monitor in respect of these proceedings;
 - preparing and providing financial information to EBHI Trust's accountants as required for EBHI Trust's tax and other statutory filings;
 - reviewing correspondence and statements of account received from CRA;
 - providing Gowlings with sundry information in order to respond to periodic information requests submitted by CRA;
 - 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, filing annual corporate tax returns and pursuing the 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 (1)(d) of this Report.

* * *

All of which is respectfully submitted,

A handwritten signature in blue ink that reads "KSV Kofman Inc." in a cursive, stylized font.

KSV KOFMAN 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

Table of Contents

1.	INTRODUCTION.....	1
1.1	Purposes of this Report	2
2.	BACKGROUND	3
2.1	The Transaction	3
2.2	Claims Procedure	4
2.3	Distributions of the Canadian Proceeds and Certain Tax Refunds	5
3.	ASSETS UNDER ADMINISTRATION	5
3.1	Cash	5
3.2	Potential Tax Refunds	5
4.	AMENDED CLAIM OF EBHI TRUST	6
5.	CRA SETTLEMENT AGREEMENT.....	7
5.1	Recommendation re: Settlement Agreement	8
6.	PROPOSED DISTRIBUTIONS	8
6.1	EBHI Trust	8
6.2	CRA	9
6.3	Holdback	10
6.4	Recommendation re: Proposed Distributions	11
7.	COMPANY'S REQUEST FOR AN EXTENSION	11
7.1	Cash Flow	11
8.	OVERVIEW OF THE MONITOR'S ACTIVITIES	12
9.	CONCLUSION AND RECOMMENDATION	13

Table of Appendices

Appendix “A”	Amended and Restated Initial Order of the <i>Ontario</i> Superior Court of Justice (Commercial List) dated June 17, 2009
Appendix “B”	Statement of Receipts and Disbursements for the period ending June 8, 2011
Appendix “C”	Settlement Agreement dated May 10, 2011

**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")¹, 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.

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, 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 million² 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

² 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 million³. 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 14th 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 14th 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”.

³ 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 million⁴ (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

⁴ 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 proceedings⁵. The Administration Charge (as defined in the Initial Order) was reduced to \$250,000 pursuant to a Court order made on August 12, 2010.

⁵ 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 black ink that reads "RSM Richter Inc." in a cursive, flowing 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 June 17, 2009 to December 12, 2017

	USD Account	CAD Account
Receipts		
Proceeds of sale of assets	11,000,000	-
Tax refunds	-	10,595,475
Transfers between estate accounts	(955,392)	1,069,606
Sundry collections	100	133,254
Interest income	9,684	52,487
	<u>10,054,392</u>	<u>11,850,822</u>
Disbursements		
Court approved distributions		
Amargosa, Inc.	9,983,500	1,374,020
EBHI Liquidating Trust	-	5,019,863
Canada Revenue Agency	70,000	1,259,773
Other creditors	185	1,026
Professional fees		
Monitor	-	747,037
Legal fees and disbursements - Company counsel	-	506,180
Legal fees and disbursements - Monitor counsel	281	110,773
Tax advisory and contingency fees	-	1,857,263
GST/HST on disbursements	-	154,567
PST remittances	-	229,926
Publication costs	-	20,570
Payroll obligations	-	2,771
Miscellaneous expenses	426	12,964
	<u>10,054,392</u>	<u>11,296,732</u>
Balance in Estate Accounts	<u>-</u>	<u>554,090</u>