



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

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DATE: Wednesday, February 18, 2026

NO. ON LIST: 1

TITLE OF PROCEEDING: EDDIE BAUER LLC et al

BEFORE: JUSTICE CAVANAGH

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## **ENDORSEMENT OF JUSTICE CAVANAGH:**

[1] On February 9, 2026, Eddie Bauer U.S. and four other debtors in possession (collectively, the "Chapter 11 Debtors" or the "Company") filed voluntary petitions for relief with the United States Bankruptcy Court for the District of New Jersey (the "U.S. Court"), pursuant to Chapter 11 of the U.S. Bankruptcy Code (the "Petitions," and the cases commenced thereby, the "Chapter 11 Cases"). The Chapter 11 Debtors include two Canadian entities, 13051269 Canada Inc. and Eddie Bauer of Canada Corporation ("Eddie Bauer Canada" and collectively, the "Canadian Debtors"). On the same day, the Chapter 11 Debtors filed several first day motions in the Chapter 11 Cases with the U.S. Court (the "First Day Motions"), including an order authorizing Eddie Bauer U.S. to act as Foreign Representative in respect of the Chapter 11 Cases (the "Foreign Representative Order").

[2] On February 9, 2026, on the application of Eddie Bauer U.S. as proposed Foreign Representative, this Court issued an order (the "Interim Stay Order"), which, among other things, granted an interim stay of proceedings in respect of the Chapter 11 Debtors and their respective directors and officers in Canada. The Interim Stay Order was granted to ensure that the Chapter 11 Debtors were protected by a stay of proceedings in Canada pending the granting of the Foreign Representative Order, at which point the Foreign Representative would return to this Court and seek, among other things, recognition of the Chapter 11 Cases.

[3] On February 10, 2026, the U.S. Court heard the First Day Motions and entered the "First Day Orders," including the Foreign Representative Order. The Foreign Representative now seeks the following orders:

- a. An order (the "Initial Recognition Order"), among other things:
  - i. Recognizing Eddie Bauer U.S. as a "foreign representative" in respect of the Chapter 11 Cases; and
  - ii. Recognizing the Chapter 11 Cases as a "foreign main proceeding" in respect of the Chapter 11 Debtors; and
- b. An Order (the "Supplemental Order"), among other things:
  - i. recognizing certain of the First Day Orders;
  - ii. granting a stay of proceedings in respect of the Chapter 11 Debtors and their directors and officers in Canada (the "Canadian Stay");
  - iii. appointing KSV Restructuring Inc. ("KSV") as information officer in respect of these proceedings (in such capacity, the "Information Officer");
  - iv. granting a Court-ordered charge over the assets and property in Canada of the Canadian Debtors in favour of Canadian counsel to the Chapter 11 Debtors, the Information Officer and counsel to the Information Officer (the "Administration Charge"), which charge shall not exceed an aggregate amount of CAD \$1 million;

- v. granting a Court-ordered charge over the assets and property in Canada of the Canadian Debtors to secure the indemnity obligations of the Canadian Debtors to their directors and officers in respect of obligations and liabilities that such directors and officers may incur during these proceedings in their capacities as directors and officers (the "D&O Charge"), which charge shall not exceed an aggregate amount of CAD \$1.927 million; and
- vi. granting a Court-ordered charge over the assets and property in Canada of the Canadian Debtors to secure claims by any Chapter 11 Debtor that provides services or lends money to, or bears costs of, the Canadian Debtors from and after the date of the Supplemental Order (the "Intercompany Charge").

[4] This Court has the jurisdiction to grant the proposed Initial Recognition Order and the Supplemental Order under Part IV of the *Companies' Creditors Arrangement Act* (the "CCAA"). The requested relief is consistent with the principles of comity and cooperation that underlie Part IV of the CCAA, and is necessary to protect and preserve the operations and value of the Company's business in Canada, while the Chapter 11 Debtors, including the Canadian Debtors, continue to advance steps relating to the two interlocking processes contemplated in the First Day Motions and Restructuring Support Agreement - the store closing sales and the going-concern sale process.

[5] The facts are more fully set out in the Affidavit and Supplemental Affidavit of Stephen Coulombe sworn February 9, 2026 and February 12, 2026, respectively. Capitalized terms not otherwise defined have the same meaning as in the Coulombe Affidavit or Supplemental Coulombe Affidavit.

#### ***A. Should the Initial Recognition Order be granted?***

##### ***(a) The Statutory Requirements are Fulfilled***

[6] Pursuant to section 46(1) of the CCAA, a foreign representative may apply for recognition of the foreign proceeding in respect of which that person is a foreign representative.

[7] Section 46(2) provides that a recognition application must be accompanied by certified copies of the instruments that commenced the foreign proceeding and authorized the foreign representative to act in such capacity, as well as a statement identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative. This requirement is fulfilled - certified copies of the Petitions and the Foreign Representative Order have been provided to this Court, and the Foreign Representative has confirmed that, other than the Chapter 11 Cases, no other foreign proceeding in respect of the Chapter 11 Debtors has been commenced.

[8] Section 47(1) further provides that the Court must recognize a foreign proceeding if two requirements are met: (i) the proceeding is a "foreign proceeding;" and (ii) the applicant is a "foreign representative" of the foreign proceeding. Both of these requirements are clearly satisfied:

- a. The CCAA defines a "foreign proceeding" as a judicial 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." Proceedings under Chapter 11 of the U.S. Bankruptcy Code are "foreign proceedings" for the purposes of the CCAA.
- b. A "foreign representative" is defined as a person authorized, in a foreign proceeding in respect of a debtor company, to: (i) monitor the debtor company's business and financial affairs for the purpose of reorganization; or (ii) act as a representative in respect of the foreign proceeding. The Foreign Representative Order authorizes Eddie Bauer U.S. to act as the Foreign Representative on behalf of the Chapter 11 Debtors, including the Canadian Debtors.

[9] The statutory prerequisites for recognition of the Chapter 11 Cases are fulfilled.

(b) The Chapter 11 cases are a Foreign Main Proceeding

[10] In its order recognizing the foreign proceeding, the Court must specify whether the proceeding is a "foreign main proceeding" or a "foreign non-main proceeding": CCAA, s. 45(1). A "foreign main proceeding" is defined as a "foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests" ("COMI").

[11] The CCAA does not provide a formal definition of the COMI, which is determined on an entity-by-entity basis. Section 45(2) provides that, in the absence of proof to the contrary, the location of a debtor company's registered office is deemed to be its COMI; however, this statutory presumption may be rebutted by evidence of the debtor's "operational realities." See *Hollander Sleep Products, LLC et al., Re*, 2019 ONSC 3238, at para. 30.

[12] I am satisfied that the COMI of each of the Chapter 11 Debtors is the U.S. With respect to the non-Canadian Chapter 11 Debtors, each of these entities has their registered offices in the U.S., thereby engaging the presumption found in section 45(2). This presumption is consistent with the reality of these entities' operations, which are overwhelmingly concentrated in the U.S.

[13] With respect to the two Canadian Debtors, while their registered offices are located in Canada, almost all of their critical business functions are performed by Eddie Bauer U.S. and SPARC, both of which are incorporated in and primarily operate in the U.S. The services provided by SPARC (and, in certain cases, Eddie Bauer U.S.) are closely interrelated and are essential to Eddie Bauer Canada's retail operations, which could not continue without these services.

[14] The following principal factors tend to indicate whether the location in which the proceeding has been filed is the debtor's COMI, including in respect of Canadian debtors that are part of larger, cross-border corporate groups:

- a. the location is readily ascertainable by creditors;
- b. the location is one in which the debtor's principal assets or operations are found; and
- c. the location is where the management of the debtor takes place. See *Lightsquared LP (Re)*, 2012 ONSC 2994, at para. 25

[15] When I consider the relevant factors in a COMI analysis including consideration of the "operational realities" of the Canadian Debtors, I am satisfied that their COMI is located in the U.S.:

- a. **Corporate Structure:** Eddie Bauer Canada is a wholly owned subsidiary of 113051269 Canada Inc., which is a holding company that is, in turn, a wholly owned subsidiary of SPARC U.S., a U.S. incorporated entity.
- b. **Inventory Sourcing:** In the ordinary course of business, all inventory for Eddie Bauer Canada is sourced by and purchased from the U.S. by a sale and merchandising team that sits at SPARC. The Canadian Debtors are entirely dependent on the purchasing power and supplier relationships of the Chapter 11 Debtors and SPARC in the U.S. to source merchandise for the Canadian stores.
- c. **Key Strategic and Support Functions:** The Chapter 11 Debtors are managed on a consolidated basis, and the Canadian Debtors are wholly reliant on the Chapter 11 Debtors for corporate, administrative and back-office support. Eddie Bauer U.S. and SPARC provide strategic decision-making functions and corporate support functions to Eddie Bauer Canada such as legal, finance, information technology, human resources. The Chapter 11 Debtors' Treasury, Accounting,

Accounts Payable and Accounts Receivable teams are located in the U.S., while the only corporate function of Eddie Bauer Canada that is performed in Canada is payroll.

- d. **Management and Employees:** Of the three directors of each of the Canadian Debtors, two are cross-appointed to certain of the U.S. Chapter 11 Debtors and reside in the U.S. The Company's key management personnel are located in the U.S., as are approximately 70 corporate employees.
- e. **Cash Management:** The Chapter 11 Debtors operate an integrated, centralized cash management system (the "Cash Management System") to collect, transfer and disburse funds generated by their operations. The Chapter 11 Debtors' treasury department located in the U.S. maintains daily oversight of the Cash Management System, with the small Canadian cash management function being managed by a U.S. employee. The only funds kept in Canadian bank accounts are those that are required to meet weekly operating expenses that must be paid in CAD, with any funds in excess of these requirements being moved to the main U.S. operating account on a weekly basis.
- f. **Intercompany Transfers:** Eddie Bauer U.S. pays certain of Eddie Bauer Canada's ordinary course expenses that must be made in USD, and further provides Intercompany Transfers to ensure that Eddie Bayer Canada has sufficient funds to satisfy payments to third parties that are regularly made in CAD.

***B. Should the Supplemental Order be granted?***

[16] As the Foreign Representative has met the criteria established under section 47(1) of the CCAA, the Foreign Representative is entitled to the recognition of the Chapter 11 Cases as a "foreign main proceeding," as contemplated by the Initial Recognition Order. Further, this Court is authorized to grant the remaining relief requested in the Supplemental Order.

[17] The authority of this Court to grant further relief is grounded in section 49 of the CCAA, which authorizes the Court to "make any order that it considers appropriate" on the application of a foreign representative, provided that it is "necessary for the protection of the debtor company's property or the interests of a creditor or creditors." I accept that the additional relief requested in the Supplemental Order should be granted, as the requested relief is both appropriate in the circumstances and necessary for the protection of the Chapter 11 Debtors.

(a) Is recognition of the First Day Orders Appropriate?

[18] The Foreign Representative requests recognition of the following First Day Orders in the Chapter 11 Cases:

- a. the Foreign Representative Order;
- b. the Automatic Stay Order, which restates and enforces the worldwide automatic stay, anti-discrimination provisions, and ipso facto protections of the U.S. Bankruptcy Code;
- c. the Interim Cash Management Order, which authorizes the Chapter 11 Debtors to operate the Cash Management System;
- d. the Interim Critical Vendors Order, which authorizes the Chapter 11 Debtors to pay certain prepetition amounts owing;
- e. the Interim Customer Programs Order, which authorizes the Chapter 11 Debtors to maintain their customer programs;
- f. the Interim Insurance Order, which authorizes the Chapter 11 Debtors to maintain and renew insurance policies, surety bonds, and letters of credit;

- g. the Joint Administration Order, which provides for the joint administration of the Chapter 11 Cases for procedural purposes;
- h. the Interim Taxes Order, which authorizes the Chapter 11 Debtors to negotiate, remit, and pay various Taxes and Fees;
- i. the Interim Utilities Order, which addresses the continued provision of utilities to the Chapter 11 Debtors;
- j. the Interim Wages Order, which authorizes the Chapter 11 Debtors to pay outstanding wages and similar obligations, and to continue administering their compensation and benefit programs;
- k. the Bidding Procedures Order, which approved the Bidding Procedures by which the assets of the Chapter 11 Debtors may be sold;
- l. the Interim Store Closing Order, which addresses the ongoing store closing sales and similar sales;
- m. the Interim Cash Collateral Order, which authorizes the use of Cash Collateral (as defined in the U.S. Bankruptcy Code) in accordance with the Approved Budget; and
- n. the Dates and Protocols (Scheduling) Order, which schedules certain dates and deadlines in connection with the approval of an anticipated disclosure statement and the confirmation of an anticipated chapter 11 plan of reorganization.

[19] I accept that these First Day Orders, which treat the Chapter 11 Debtors' stakeholders in Canada and the U.S. equally, are necessary to protect the Chapter 11 Debtors' property and the interests of creditors. They consist of relief required to ensure that the Chapter 11 Debtors continue to operate during the Chapter 11 proceedings in a manner which ultimately maximizes stakeholder value. I am satisfied that these First Day Orders should be recognized by this Court for the following reasons:

- a. the Canadian and U.S. operations of the Company are highly integrated;
- b. the U.S. Court has appropriately taken jurisdiction over the Chapter 11 Cases such that comity will be furthered by this Court's recognition of and support for the Chapter 11 Cases already underway in the U.S.;
- c. coordination of proceedings in the two jurisdictions will ensure fair treatment of all stakeholders, whether they are located in the U.S. or Canada;
- d. the First Day Orders were obtained to preserve and maximize the value of the Chapter 11 Debtors' estates; and
- e. given the close connection between the Canadian Debtors and the U.S., and the Canadian Debtors' reliance on management and leadership located in the U.S., it is reasonable and sensible for the U.S. Court to have principal control over the insolvency process, which will produce the most efficient restructuring for the benefit of all stakeholders.

(b) Is the Canadian Stay appropriate?

[20] Section 48(1) of the CCAA provides that, once the Court has identified a "foreign main proceeding," it must grant certain mandatory relief, including a stay of proceedings in favour of the debtor companies. The mandatory stay in Part IV proceedings is not limited in duration. Once an application for an Initial Recognition Order is granted, this Court must grant a stay under section 48(1)(a) "until otherwise ordered by the court, for any period that the court considers necessary."

[21] The Canadian Stay requested under the proposed Supplemental Order applies in favour of the Chapter 11 Debtors and their respective officers and directors, in respect of their business and property in Canada. I accept that it is appropriate to grant the requested stay, including in favour of the Chapter 11 Debtors' respective officers and directors. The Canadian Stay will ensure that the Chapter 11 Debtors are protected from any stakeholder exercising enforcement rights in Canada and is necessary to the preservation of the value of the Canadian business and to the Chapter 11 Debtors' overall efforts to implement an orderly wind-down and a potential going concern sale.

(c) Should KSV be appointed Information Officer?

[22] It has become common practice in this Court to appoint an information officer in proceedings under Part IV of the CCAA, pursuant to its discretion that flows from s. 49. The information officer's role is to help effect cooperation between the Canadian proceeding, the foreign representative and the foreign court, including to keep this Court apprised of the status of the foreign proceedings.

[23] The Foreign Representative seeks to appoint KSV as the Information Officer in this proceeding. KSV is a licensed insolvency trustee in Canada with expertise in, among other things, cross-border restructuring proceedings, including acting as information officer in Canadian recognition proceedings under the CCAA. KSV has consented to act as Information Officer.

[24] I am satisfied that KSV should be appointed as the Information Officer.

(d) Should the Administration Charge be granted?

[25] The proposed Supplemental Order provides that the Information Officer, the Information Officer's counsel, and Canadian counsel to the Chapter 11 Debtors will be protected by the Administration Charge, in the maximum amount of CAD \$1 million, which will secure their fees and disbursements incurred in respect of these proceedings. The Administration Charge will be secured against the assets and property in Canada of the Canadian Debtors and is proposed to have first priority over all other encumbrances in respect of the Canadian Debtors.

[26] I am satisfied that the proposed Administration Charge is reasonable in amount and that it is necessary for the success of these recognition proceedings.

(e) Should the D&O Charge be granted?

[27] Directors and officers of an insolvent corporation may become exposed to significant liabilities. In order to address these potential liabilities, the Foreign Representative seeks the D&O Charge, in the maximum amount of CAD \$1,927,000, which will secure the indemnity provided to the directors and officers in the proposed Supplemental Order in respect of the liabilities they may incur during these proceedings. The D&O Charge will be secured against the assets and property in Canada of the Canadian Debtors and is proposed to be subordinate to the Administration Charge but rank in priority to all other encumbrances.

[28] The Foreign Representative seeks the D&O Charge in light of the potential liabilities and the insufficiency of available insurance, and in light of the need for the continued service of the directors and officers of the Canadian Debtors. The D&O Charge would only be relied upon to the extent of the insufficiency of the existing insurance in covering any exposure of the Canadian Debtors' directors and officers.

[29] I am satisfied that the amount of the proposed D&O Charge is reasonable in the circumstances, as it has been estimated, in consultation with the proposed Information Officer, with reference to the Canadian Debtors' payroll, vacation pay, and federal and provincial sales tax liability exposure. The proposed Information Officer is of the view that the D&O Charge is reasonable in the circumstances.

(f) Should the Intercompany Charge be granted?

[30] In the ordinary course of business, Eddie Bauer U.S. and Eddie Bauer Canada engage in Intercompany Transfers in order to, among other things, ensure that the Chapter 11 Debtors' Canadian funding needs are adequately met and ensure the Company's Canadian operations continue uninterrupted. The Canadian Debtors are entirely dependent on the continued operational and financial support of Eddie Bauer U.S. and SPARC, without which the Canadian Debtors would be forced to immediately cease operations.

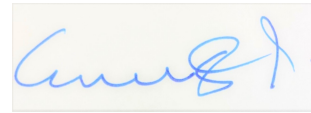
[31] Except for the stocking of Eddie Bauer Canada's inventory by Eddie Bauer U.S. (which has been halted), the Chapter 11 Debtors intend to continue to make the Intercompany Transfers during the Chapter 11 proceedings to ensure that Eddie Bauer Canada remains adequately funded. To facilitate these continued transfers, the Chapter 11 Debtors propose the Intercompany Charge, which will secure claims by any Chapter 11 Debtor (other than the Canadian Debtors) that provides services or lends money to, or bears costs of, the Canadian Debtors, from and after the date of the Supplemental Order (the "Intercompany Claims"). The Intercompany Charge will be secured against the assets and property in Canada of the Canadian Debtors and is proposed to be subordinate to the Administration Charge and the D&O Charge, but rank in priority to all other encumbrances.

[32] In addition, under the proposed Supplemental Order, any amounts transferred by the Canadian Debtors to the Chapter 11 Debtors (other than the Canadian Debtors) on or after the date of the Supplemental Order must be solely in respect of Intercompany Claims consistent with the Canadian Cash Collateral Budget (scheduled to the Approved Budget), or as otherwise approved in advance by the Information Officer.

[33] I am satisfied that the Intercompany Charge is in the best interest of the Chapter 11 Debtors, including the Canadian Debtors, and should be granted. The approval of such charges in plenary proceedings under the CCAA is authorized by section 11, which permits courts to make such orders as are considered appropriate. Sections 49(1)-(2) of the CCAA likewise, in the context of proceedings under Part IV, permit a court to make "any order that it considers appropriate", provided such order "is necessary for the protection of the debtor company's property or the interests of a creditor or creditors" and "consistent with any order that may be made in any proceedings under" the CCAA. The proposed Information Officer is of the view that the proposed Intercompany Charge is appropriate in the circumstances.

***Disposition***

[34] I grant the requested relief. Orders to issue in forms of Orders signed by me today.



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