

**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 EDDIE BAUER LLC, EDDIE BAUER GIFT CARD SERVICES LLC, SPARC EB HOLDINGS LLC, 13051269 CANADA INC. AND EDDIE BAUER OF CANADA CORPORATION

APPLICATION OF EDDIE BAUER LLC UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AMENDED

APPLICANT

**FACTUM OF THE APPLICANT
(INITIAL RECOGNITION ORDER AND SUPPLEMENTAL ORDER)**

February 16, 2026

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PART I - NATURE OF THE APPLICATION

1. This factum is filed in support of the application by Eddie Bauer LLC (“**Eddie Bauer U.S.**”), in its capacity as the foreign representative (in such capacity, the “**Foreign Representative**”) of the Chapter 11 Debtors for an Initial Recognition Order and Supplemental Order among other things, recognizing their Chapter 11 Cases and certain of the First Day Orders granted therein (each as defined below).
2. 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**”).
3. 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.

4. 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**”).

5. 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.

PART II -THE FACTS

6. The facts are more fully set out in the Affidavit and Supplemental Affidavit of Stephen Coulombe.¹ In addition, the Foreign Representative reiterates the facts and submissions made in its factum submitted February 9, 2026, in support of the Interim Stay Order (the “**Interim Stay Factum**”).

PART III - THE ISSUES

7. The issues to be determined on this application are:

- (a) whether the Initial Recognition Order, recognizing the Chapter 11 Cases as a foreign main proceeding and Eddie Bauer U.S. as the Foreign Representative, should be granted; and
- (b) whether the Supplemental Order should be granted, including with respect to: (i) the recognition of the First Day Orders; (ii) the granting of the Canadian Stay; (iii) the appointment of KSV as Information Officer; and (iv) the granting of the Administration Charge, the D&O Charge, and the Intercompany Charge.

¹ Affidavit of Stephen Coulombe, sworn February 9, 2026 [Coulombe Affidavit]; Affidavit of Stephen Coulombe, sworn February 12, 2026 [Supplemental Coulombe Affidavit]. Capitalized terms not otherwise defined have the same meaning as in the Coulombe Affidavit or Supplemental Coulombe Affidavit. Dollar amounts are given in U.S. dollars unless otherwise specified.

PART IV - THE LAW

A. The Initial Recognition Order Should be Granted

(a) The Statutory Requirements are Fulfilled

8. The purpose of Part IV of the CCAA is to “provide mechanisms for dealing with cases of cross-border insolvencies” and to promote cooperation between Canadian and foreign courts.² 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.³

9. 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,⁴ 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.⁵

10. 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:

² CCAA, s. 44.

³ CCAA, s. 46(1).

⁴ Certified copies of the Petitions are attached to the Supplemental Coulombe Affidavit as Exhibits “A”, “B”, “C”, “D” and “E”. A certified copy of the Foreign Representative Order is attached to the Supplemental Coulombe Affidavit as Exhibit “I”.

⁵ Coulombe Affidavit at para. 4.

(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.”⁶ Canadian courts have consistently held that proceedings under Chapter 11 of the U.S. Bankruptcy Code are “foreign proceedings” for the purposes of the CCAA.⁷

(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.⁸ 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

11. As a result, the statutory prerequisites for recognition of the Chapter 11 Cases are fulfilled.

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

12. 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.”¹⁰ A “foreign main

⁶ CCAA, s. 45(1).

⁷ See, for instance, *Hollander Sleep Products, LLC et al., Re*, [2019 ONSC 3238](#) at para. 27 [*Hollander*]; *CURO Canada Corp. et al. (Re)*, [2024 ONSC 1989](#) at para. 19 [*CURO*]; *Hornblower Cruises and Events Canada Ltd., 2024 ONSC 1209* [*Hornblower Cruises*] at para. 21.

⁸ CCAA, s. 45(1).

⁹ Supplemental Coulombe Affidavit at para. 22.

¹⁰ CCAA, s. 47(2).

proceeding” is defined as a “foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests” (“**COMI**”).¹¹

13. The CCAA does not provide a formal definition of the COMI, which is determined on an “entity-by-entity basis.”¹² 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.”¹³

14. 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.¹⁴

15. 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.¹⁵

¹¹ CCAA, s. 45(1).

¹² *Hollander*, at para. 30.

¹³ *Hornblower Cruises*, at para. 25.

¹⁴ Supplemental Coulombe Affidavit at para. 16.

¹⁵ Coulombe Affidavit at para. 41.

16. 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.¹⁶

17. Courts have also considered the following factors in the COMI analysis:

- a) the location where corporate decisions are made;
- b) the location of employee administrations, including human resource functions;
- c) the location of the company's marketing and communication functions;
- d) whether the enterprise is managed on a consolidated basis;
- e) the extent of integration of an enterprise's international operations;
- f) the centre of an enterprise's corporate, banking, strategic and management functions;
- g) the existence of shared management within entities and in an organization;
- h) the location where cash management and accounting functions are overseen;
- i) the location where pricing decisions and new business development initiatives are created; and

¹⁶ *Hornblower Cruises* at para. 26, citing *Lightsquared LP (Re)*, [2012 ONSC 2994](#) at para. 25. See also *CURO* at para. 24. See also *Hollander* at para. 33 for a slightly different formulation.

- j) the seat of an enterprise's treasury management functions, including management of accounts receivable and accounts payable.¹⁷

18. Based on these factors, a consideration of the “operational realities” of the Canadian Debtors makes clear 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.¹⁸
- (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.¹⁹
- (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

¹⁷ *Hollander* at para. 32, citing *Angiotech Pharmaceuticals Ltd. (Re)*, [2011 BCSC 115](#) at para. 7. See also *CURO* at para. 25; *Hornblower Cruises* at para. 27.

¹⁸ Coulombe Affidavit at paras. 15-16.

¹⁹ Coulombe Affidavit at para. 41(a).

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.²⁰

- (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.²¹
- (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.²²
- (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

²⁰ Coulombe Affidavit at para. 41(b)-(c), (f); Supplemental Coulombe Affidavit at para. 17.

²¹ Coulombe Affidavit at para. 41(d)-(e), (g); First Day Declaration at para. 5, attached to Supplemental Coulombe Affidavit as Affidavit "H".

²² Coulombe Affidavit at paras. 42-43, 49, 51.

Intercompany Transfers to ensure that Eddie Bauer Canada has sufficient funds to satisfy payments to third parties that are regularly made in CAD.²³

B. The Supplemental Order Should be Granted

19. 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.

20. 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.” The Foreign Representative submits 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) Recognition of the First Day Orders is Appropriate

21. Comity is the “central principle governing Part IV of the CCAA,” and requires that a Canadian court recognize and enforce orders granted by a foreign jurisdiction, provided that the foreign court has assumed jurisdiction on a basis consistent with order, predictability and fairness. Comity and cooperation in cross-border insolvencies allow for the avoidance of multiple

²³ Coulombe Affidavit at para. 52(a)-(b).

proceedings, inconsistent judgments, and general uncertainty, while also ensuring the equal and fair treatment of creditors regardless of their location.²⁴

22. Comity is therefore furthered where the Court recognizes first day orders granted in a “foreign main proceeding,” such as the Chapter 11 Cases.²⁵ The Foreign Representative requests recognition of the following First Day Orders in the Chapter 11 Cases: (i) the Foreign Representative Order; (ii) 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; (iii) the Interim Cash Management Order, which authorizes the Chapter 11 Debtors to operate the Cash Management System; (iv) the Interim Critical Vendors Order, which authorizes the Chapter 11 Debtors to pay certain prepetition amounts owing; (v) the Interim Customer Programs Order, which authorizes the Chapter 11 Debtors to maintain their customer programs; (vi) the Interim Insurance Order, which authorizes the Chapter 11 Debtors to maintain and renew insurance policies, surety bonds, and letters of credit; (vii) the Joint Administration Order, which provides for the joint administration of the Chapter 11 Cases for procedural purposes; (viii) the Interim Taxes Order, which authorizes the Chapter 11 Debtors to negotiate, remit, and pay various Taxes and Fees; (ix) the Interim Utilities Order, which addresses the continued provision of utilities to the Chapter 11 Debtors; (x) 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; (xi) the Bidding Procedures Order, which approved the Bidding Procedures by which the assets of the Chapter 11 Debtors may be sold; (xii) the Interim Store Closing Order, which addresses the ongoing store closing sales and similar sales; and (xiii)

²⁴ *Hollander*, at paras. 41-42.

²⁵ *Hollander* at para. 43; *CURO* at paras. 36-39.

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 (xiv) 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.²⁶

23. 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. These First Day Orders should be recognized by this Court for the following reasons:

- (a) as set out in detail above, 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

²⁶ The First Day Orders that the proposed Supplemental Order would recognize are described in detail in the Supplemental Coulombe Affidavit at paras. 21-89.

(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.

24. These factors accord with those factors previously held by this Court to support the recognition of first day orders granted in Chapter 11 proceedings.²⁷

(b) The Canadian Stay is Appropriate

25. 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. While an initial stay under a plenary CCAA proceeding is limited to ten days pursuant to section 11.02, the mandatory stay in Part IV proceedings is not limited in duration; instead, 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." Accordingly, this Court has granted initial recognition orders extending a stay in favour of Chapter 11 Debtors "until otherwise ordered by this Court."²⁸

26. 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. While broader than the mandatory stay imposed under section 48 of the

²⁷ See *Hornblower Cruises* at para. 39; *Hollander* at para. 43; *CURO* at para. 38.

²⁸ See, e.g., *David's Bridal, LLC (Re)* (18 April 2023), Ont S.C.J. [Commercial List], CV-23-00698107-00CL ([Initial Recognition Order](#)) at para. 4; *Revlon, Inc. (Re)* (20 June 2022), Ont S.C.J. [Commercial List], CV-22-00682880-00CL ([Initial Recognition Order](#)) at para. 4.

CCAA, this relief is similar in scope to that granted in the Interim Stay Order. In requesting the Canadian Stay, the Foreign Representative relies on the submissions made in the Interim Stay Factum at paras. 45-46.

27. The Canadian Stay, if granted, will ensure that the Chapter 11 Debtors are protected from any stakeholder exercising enforcement rights in Canada. The Canadian Stay is critical 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.²⁹

(c) KSV Should be Appointed Information Officer

28. This Court has recognized that 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.”³⁰ 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.”³¹

29. 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.³²

²⁹ Supplemental Coulombe Affidavit at para. 19.

³⁰ *Instant Brands Acquisition Holdings Inc. et al.*, [2023 ONSC 3645](#) at para. 20.

³¹ *CURO* at para. 42.

³² Supplemental Coulombe Affidavit at paras. 90-91. KSV’s Consent to Act as Information Officer is attached as Tab 4 to the Application Record dated February 9, 2026.

(d) The Administration Charge Should be Granted

30. 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.³³

31. Administration charges have frequently been granted in Part IV proceedings.³⁴ The amount of the Administration Charge is reasonable in the circumstances, having regard to the size and complexity of these proceedings and the roles that will be required of Canadian counsel to the Chapter 11 Debtors and the proposed Information Officer and its counsel.³⁵ The proposed quantum also accords with the quantum of administration charges that have previously been approved by this Court in Part IV proceedings.³⁶

32. The proposed Information Officer believes that the proposed Administration Charge will ensure that the Chapter 11 Debtors have the benefit of the professional advice and expertise necessary for the success of these recognition proceedings.³⁷

³³ Supplemental Coulombe Affidavit at para. 92.

³⁴ See, for instance, *Hollander* at para. 56; *CURO* at paras. 45-50; *Hornblower Cruises* at paras. 44-46.

³⁵ Supplemental Coulombe Affidavit at para. 93. See *CURO* at paras. 45, 50; *Hornblower Cruises* at paras. 45-46.

³⁶ See, e.g., *CURO*, at paras. 45, in which an administration charge of \$1 million was approved; *David's Bridal, LLC (Re)*, (18 April 2023), Ont S.C.J. [Commercial List], CV-23-00698107-00CL ([Supplemental Order](#)) at para. 19, in which an administration charge of \$1.5 million was approved.

³⁷ Pre-Filing Report of the Proposed Information Officer dated February 16, 2026 [Pre-Filing Report] at para. 6.1.2.

(e) The D&O Charge Should be Granted

33. Directors and officers of an insolvent corporation may become exposed to significant liabilities.³⁸ 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.³⁹

34. While the directors and officers of the Canadian Debtors are potential beneficiaries of director and officer liability insurance maintained by Cooper Retail JV LLC, the Company's ultimate parent, for itself and its subsidiaries with an aggregate coverage limit of approximately \$50 million, that coverage is not absolute, and is subject to several exclusions and limitations which may result in there being no coverage or insufficient coverage. In particular, it is unclear if the insurance provides sufficient coverage against the potential liability of the directors and officers of the Canadian Debtors. 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.⁴⁰

³⁸ Supplemental Coulombe Affidavit at para. 94.

³⁹ Supplemental Coulombe Affidavit at paras. 97-98.

⁴⁰ Supplemental Coulombe Affidavit at paras. 95-97.

35. D&O charges are frequently granted in Part IV proceedings.⁴¹ 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.⁴² The proposed Information Officer is of the view that the D&O Charge is reasonable in the circumstances.⁴³

(f) The Intercompany Charge Should be Granted

36. In the ordinary course of business, Eddie Bauer U.S. and Eddie Bauer Canda 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.⁴⁴ 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.⁴⁵

37. Except for the stocking of Eddie Buauer 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

⁴¹ See, for instance, *CURO* at paras. 51-57; *Hornblower Cruises* at paras. 50-53.

⁴² Supplemental Coulombe Affidavit at para. 99.

⁴³ Pre-Filing Report at para. 6.2.4.

⁴⁴ Supplemental Coulombe Affidavit at para. 100. For a detailed description of the Intercompany Transfers, see Coulombe Affidavit, at paras. 52-53.

⁴⁵ Supplemental Coulombe Affidavit at para. 101.

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.⁴⁶

38. 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.⁴⁷

39. The Intercompany Charge is in the best interest of the Chapter 11 Debtors, including the Canadian Debtors, and should be granted. Post-filing intercompany charges to secure ongoing intercompany transfers have frequently been approved by the court,⁴⁸ including where they preserve the pre-filing status quo among an integrated corporate group and benefit Canadian debtors,⁴⁹ and where they are limited to post-filing transfers.⁵⁰ The approval of such charges in plenary proceedings under the CCAA is authorized by section 11, which permits courts to make

⁴⁶ Supplemental Coulombe Affidavit at para. 102.

⁴⁷ Supplemental Coulombe Affidavit at para. 102. The Canadian Cash Collateral Budget is attached as Exhibit “X” to the Supplemental Coulombe Affidavit.

⁴⁸ See, i.e., *Bioamber Canada Inc. (Re)*, [2018 QCCS 3170](#) at paras. 20-22; *Performance Sports Group Ltd.*, [2016 ONSC 6800](#) at paras. 33-35 [*Performance Sports*]; *Walter Energy Canada Holdings, Inc. (Re)*, [2016 BCSC 107](#) at paras. 62-67.

⁴⁹ *DCL Corporation (Re)*, (December 29, 2022), Ont S.C.J. [Commercial List], Court File No. CV- 22-00691990-00CL ([Endorsement of Justice Conway](#)) at paras. 4-6 [*DCL Corporation*].

⁵⁰ *Accuride Canada Inc. (Re)*, (October 11, 2024), Ont S.C.J. [Commercial List], Court File No. CV- 24-00729147-00CL ([Endorsement of Justice Black](#)) at para. 35 [*Accuride*].

such orders as are considered appropriate.⁵¹ 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.⁵² The proposed Information Officer is of the view that the proposed Intercompany Charge is appropriate in the circumstances.⁵³

PART V - RELIEF REQUESTED

40. For the foregoing reasons, the Applicant requests that this Honourable Court grant the proposed Initial Recognition Order and Supplemental Order substantially in the forms attached to the Supplemental Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of February, 2026.



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⁵¹ *Accuride*, at para. 36; *DCL Corporation*, at para. 5; *Performance Sports*, at para. 34.

⁵² CCAA, ss. 49(1)-(2).

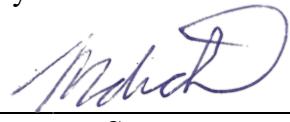
⁵³ Pre-Filing Report at para. 6.3.2.

SCHEDULE “A”: LIST OF AUTHORITIES

1. *Accuride Canada Inc. (Re)*, (October 11, 2024), Ont S.C.J. [Commercial List], Court File No. CV- 24-00729147-00CL ([Endorsement of Justice Black](#))
2. *Angiotech Pharmaceuticals Ltd. (Re)*, [2011 BCSC 115](#)
3. *Bioamber Canada Inc. (Re)*, [2018 QCCS 3170](#)
4. *CURO Canada Corp. et al. (Re)*, [2024 ONSC 1989](#)
5. *David’s Bridal, LLC (Re)*, (18 April, 2023), Ont S.C.J. [Commercial List], CV-23-00698107-00CL ([Initial Recognition Order](#))
6. *David’s Bridal, LLC (Re)*, (18 April, 2023), Ont S.C.J. [Commercial List], CV-23-00698107-00CL ([Supplemental Order](#))
7. *DCL Corporation (Re)*, (December 29, 2022), Ont S.C.J. [Commercial List], Court File No. CV- 22-00691990-00CL ([Endorsement of Justice Conway](#))
8. *Instant Brands Acquisition Holdings Inc. et al.*, [2023 ONSC 3645](#)
9. *Lightsquared LP (Re)*, [2012 ONSC 2994](#)
10. *Hollander Sleep Products, LLC et al., Re*, [2019 ONSC 3238](#)
11. *Hornblower Cruises and Events Canada Ltd.*, [2024 ONSC 1209](#)
12. *Performance Sports Group Ltd.*, [2016 ONSC 6800](#)
13. *Revlon, Inc. (Re)*, (20 June 2022), Ont S.C.J. [Commercial List], CV-22-00682880-00CL ([Initial Recognition Order](#))
14. *Walter Energy Canada Holdings, Inc. (Re)*, [2016 BCSC 107](#)

I certify that I am satisfied as to the authenticity of every authority.

Date February 16, 2026


Signature
Marleigh Dick

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36

General power of court

11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

[...]

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a)** staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
- (b)** restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c)** prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a)** staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b)** restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c)** prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

[...]

Purpose

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

- (a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;
- (b) greater legal certainty for trade and investment;
- (c) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies;
- (d) the protection and the maximization of the value of debtor company's property; and
- (e) the rescue of financially troubled businesses to protect investment and preserve employment.

Definitions

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

foreign court means a judicial or other authority competent to control or supervise a foreign proceeding. (*tribunal étranger*)

foreign main proceeding means a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests. (*principale*)

foreign non-main proceeding means a foreign proceeding, other than a foreign main proceeding. (*secondaire*)

foreign proceeding means a judicial or an administrative proceeding, including an interim proceeding, in a jurisdiction outside Canada dealing with creditors' collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company's

business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization. (*instance étrangère*)

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

- (a) monitor the debtor company's business and financial affairs for the purpose of reorganization; or
- (b) act as a representative in respect of the foreign proceeding. (*représentant étranger*)

Centre of debtor company's main interests

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

Application for recognition of a foreign proceeding

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

Documents that must accompany application

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

- (a) a certified copy of the instrument, however designated, that commenced the foreign proceeding or a certificate from the foreign court affirming the existence of the foreign proceeding;
- (b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate from the foreign court affirming the foreign representative's authority to act in that capacity; and
- (c) a statement identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative.

Documents may be considered as proof

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

Other evidence

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

Translation

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

Order recognizing foreign proceeding

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

Nature of foreign proceeding to be specified

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

Order relating to recognition of a foreign main proceeding

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

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

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

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

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

[...]

Other orders

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

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

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

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

Restriction

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

[...]

Cooperation — court

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

Cooperation — other authorities in Canada

(2) If any proceedings under this Act have been commenced in respect of a debtor company and an order recognizing a foreign proceeding is made in respect of the debtor company, every person who exercises powers or performs duties and functions under the proceedings under this Act shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

Forms of cooperation

(3) For the purpose of this section, cooperation may be provided by any appropriate means, including

- (a) the appointment of a person to act at the direction of the court;
- (b) the communication of information by any means considered appropriate by the court;
- (c) the coordination of the administration and supervision of the debtor company's assets and affairs;
- (d) the approval or implementation by courts of agreements concerning the coordination of proceedings; and
- (e) the coordination of concurrent proceedings regarding the same debtor company.

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