

**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 SPARC EB HOLDINGS LLC, EDDIE
BAUER LLC, EDDIE BAUER GIFT CARD SERVICES 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
(INTERIM STAY)**

February 9, 2026

OSLER, HOSKIN & HARCOURT LLP

100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Marc Wasserman (LSO# 44066M)

Tel: 416.862.4908

Email: mwasserman@osler.com

Shawn T. Irving (LSO# 50035U)

Tel: 416.862.4733

Email: sirving@osler.com

Martino Calvaruso (LSO# 57359Q)

Tel: 416.862.6665

Email: mcalvaruso@osler.com

Marleigh Dick (LSO# 79390S)

Tel: 416.862.4725

Email: mdick@osler.com

Lawyers for the Applicant

PART I - NATURE OF THE MOTION

1. This factum is filed in support of the application by Eddie Bauer LLC (“**Eddie Bauer U.S.**”), in its capacity as the proposed foreign representative (in such capacity, the “**Foreign Representative**”) of the Chapter 11 Debtors (defined below), for an order (the “**Interim Stay Order**”) pursuant to s. 106 of the *Courts of Justice Act*, R.S.O. 1990, c C.43 (the “**CJA**”) and Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) granting, among other things, an interim stay of proceedings in respect of the Chapter 11 Debtors and their respective directors and officers in Canada.

2. Eddie Bauer – a leading retailer in casual apparel, outdoor gear, and home goods – is currently facing significant balance sheet and liquidity challenges. 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 in 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**”). Eddie Bauer Canada is the Company’s primary operating entity in Canada, where it operates 24 retail locations spread across six provinces.

3. Concurrently with the Petitions, the Chapter 11 Debtors have filed several first day motions and applications in the Chapter 11 Cases with the U.S. Court (collectively, 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**”). The U.S. Court is expected to hear the First Day Motions on February 10, 2026.

4. Once the Foreign Representative Order has been issued by the U.S. Court, Eddie Bauer U.S., in its capacity as Foreign Representative, will return to this Court in order to seek: (i) the **“Initial Recognition Order,”** recognizing Eddie Bauer U.S. as Foreign Representative and recognizing the Chapter 11 Cases as “foreign main proceedings” in respect of the Canadian Debtors; and (ii) the **“Supplemental Order,”** among other things, recognizing certain First Day Orders issued by the U.S. Court (the **“First Day Orders”**).

5. Pending the hearing of the First Day Motions and the granting of the Foreign Representative Order, the proposed Foreign Representative seeks the Interim Stay Order in order to give effect in Canada to the automatic stay of proceedings which applies in the Chapter 11 Cases, maintain the status quo, and preserve the value of the Canadian business. The Interim Stay Order, which accords with the recent practice of this Court in Part IV proceedings under the CCAA, is designed to protect the property and operations of the Chapter 11 Debtors from the potential enforcement of any rights and remedies in Canada, including in relation to Eddie Bauer Canada’s retail leases.

PART II - THE FACTS

6. The facts are more fully set out in the Affidavit of Stephen Coulombe.¹

A. Eddie Bauer and the Canadian Debtors

(a) The Business of Eddie Bauer

7. Eddie Bauer was founded in Seattle, Washington in 1920. Initially focused on fishing, hunting, and outdoor recreation gear, Eddie Bauer subsequently became a national retailer known

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

for casual apparel, outdoor gear, and home goods, targeting consumers interested in outdoor lifestyles. Today, the Company operates brick and mortar locations in nearly every U.S. state and six Canadian provinces. The Company's operations include its retail locations, distribution centers, and corporate offices and are supported by a network of hundreds of vendors globally that supply key products and services.²

8. The Company has undergone multiple ownership changes and financial restructurings over the past several years. In 2003, the Company was spun into a standalone enterprise at the conclusion of Chapter 11 bankruptcy proceedings. The Company subsequently filed for Chapter 11 bankruptcy protection in 2009, during which proceedings Golden Gate Capital acquired the Company's assets and operations. In 2021, the Company's intellectual property portfolio and operating business were acquired by an affiliate of Authentic Brands Group, LLC ("**ABG**"), and SPARC Group Holdings LLC ("**SPARC**"), respectively. In January 2025, SPARC was acquired by the parent company of another retail franchise, JCPenney. The parent company of the combined entities currently owns and operates the Company along with several other major American retail brands under the trade name Catalyst Brands ("**Catalyst**").³

9. The Company primarily derives its revenue from merchandise sold at its 175 retail stores, including 24 (approximately 14%) in Canada spread across six provinces and 151 (approximately 86%) in the United States. The Chapter 11 Debtors sell products under the Eddie Bauer name in brick-and-mortar retail stores in three primary categories: (a) sportswear; (b) outerwear; and (c) gifts, gear, accessories, and footwear, with men's sportswear accounting for approximately 40% of all sales. Historically, the Company maintained three primary sales channels: e-commerce,

² Coulombe Affidavit at paras. 10-11.

³ Coulombe Affidavit at para. 12.

wholesale and brick-and-mortar retail; however, as described below, the Company terminated its rights to operate the e-commerce and wholesale channels effective January 31, 2026.⁴

(b) The Chapter 11 Debtors and Non-Debtor Affiliates

10. The Chapter 11 Debtors consist of five related entities which operate on an integrated basis. Three of these entities are incorporated in the United States, while the two Canadian Debtors - 13051269 Canada Inc. and Eddie Bauer Canada - are incorporated in Canada.⁵

11. 13051269 Canada Inc. is a holding corporation incorporated under the laws of Canada and maintains a registered office in Toronto, Ontario. Eddie Bauer Canada is a wholly owned subsidiary of 13051269 Canada Inc., which is incorporated under the laws of Canada and maintains a registered office in Toronto, Ontario.⁶

12. The Company's principal operating entities are Eddie Bauer U.S. in the U.S. and Eddie Bauer Canada in Canada, with Eddie Bauer Canada operating all Canadian retail stores. While Eddie Bauer Canada employs all of the personnel who work in the retail and outlet locations throughout Canada, it does not employ any executive or corporate level personnel.⁷

(c) Financial Position

13. As at January 3, 2026, the Company generated approximately \$541.7 million in net revenue on a consolidated basis, of which Canadian sales accounted for approximately 11% (and 20.5% of

⁴ Coulombe Affidavit at para. 13.

⁵ Coulombe Affidavit at para. 14.

⁶ Coulombe Affidavit at paras. 15-16.

⁷ Coulombe Affidavit at para. 17.

retail sales). Through the first 11 months of FY2025, the Company recorded a net loss of approximately \$67.1 million on a consolidated basis, and the book value of the Company's assets and liabilities was approximately \$262.2 million and \$351.5 million, respectively.⁸

14. There are no stand-alone audited financial statements for the Canadian Debtors, as their unaudited financial statements have historically been consolidated with the Company's financial statements and audited on a consolidated basis only.⁹ Based on Eddie Bauer Canada's unaudited balance sheet, as of January 3, 2026, Eddie Bauer Canada had total assets of approximately \$35.2 million, total liabilities of \$44.6 million, and total shareholders equity of approximately -\$7.6 million.¹⁰

(d) Retail Locations and Leases

15. As of the Petition Date, Eddie Bauer Canada conducted business through 24 retail locations, spread across six provinces. Of these retail locations, 19 are full price, and five are outlet stores.¹¹

16. All of Eddie Bauer Canada's retail operations are conducted in facilities leased from third-party landlords (the "**Canadian Leases**"). As is typical of retail store leases in Canada, each of the Canadian Leases contain provisions that impact its store operations, including restrictions that relate to going-out-of-business sales. The Canadian Leases further provide that it is an event of default if Eddie Bauer Canada obtains bankruptcy protection (which includes the commencement

⁸ Coulombe Affidavit at paras. 19-20.

⁹ Coulombe Affidavit at para. 18.

¹⁰ Coulombe Affidavit at paras. 21-24. See Coulombe Affidavit at paras. 22 and 23 for a detailed breakdown of Eddie Bauer Canada's assets and liabilities, respectively.

¹¹ See Coulombe Affidavit at para. 25 for a breakdown of retail locations by province.

of the Chapter 11 Cases), which, absent a stay of proceedings, would permit the landlord to exercise certain remedies, including re-entering the premises, re-letting the premises, and terminating the lease.¹²

17. There are no outstanding rent arrears in respect of the Canadian Leases.¹³

(e) Employees

18. As of the Petition Date, the Chapter 11 Debtors employ approximately 2,200 employees, almost all of whom are located in the United States and Canada. Approximately 500 of the Chapter 11 Debtors' employees are full-time, and approximately 1,400 are part-time. As of the Petition Date, Eddie Bauer Canada employed approximately 379 of the Company's employees, of whom approximately 29 are salaried, 42 are full-time hourly, 199 are part-time hourly and 109 are temporary hourly employees. None of the Company's employees are unionized or benefit from any pension plan.¹⁴

19. Eddie Bauer Canada maintains certain insured group benefits for full-time Canadian employees, including medical/health insurance, dental insurance, life insurance, AD&D benefits, short-term disability, and long-term disability. Eddie Bauer Canada additionally offers eligible Canadian employees the opportunity to participate in a structured retirement savings plan and a deferred profit-sharing agreement.¹⁵

¹² Coulombe Affidavit at paras. 26-28.

¹³ Coulombe Affidavit at para. 29.

¹⁴ Coulombe Affidavit at paras. 30-31. See Coulombe Affidavit at para. 32 for a breakdown in the distribution of Eddie Bauer Canada employees between provinces.

¹⁵ Coulombe Affidavit at paras. 33-34.

B. Indebtedness

(a) The Pre-Petition Loan Facilities

20. As of the Petition Date, the Company's primary debt obligations are in respect of three secured facilities (collectively, the "**Prepetition Loan Facilities**," and the lead lenders collectively the "**Prepetition Lenders**"): ¹⁶

Facility	Lead Lender	Maturity	Amount Outstanding (as of February 5, 2026)
ABL Facility	Wells Fargo	September 19, 2030	Letters of Credit: \$728,477,563 Loans: \$196,811,453
Term Loan Facility	WhiteHawk	September 19, 2030	\$600,000,000
Subordinated Loan Facility	Cooper Retail JV LLS	February 19, 2031	\$216,281,687
Total Amount Outstanding			\$1,741,570,703

21. The borrowers under the Prepetition Loan Facilities are not Chapter 11 Debtors; rather, the borrowers are non-debtors that generally allocate proceeds of the Prepetition Loan Facilities to the Chapter 11 Debtors and other Catalyst franchises according to ordinary course agreements. In the case of the Chapter 11 Debtors, operational shortfalls are funded by periodic draws on the ABL Facility. As of February 8, 2026, the parties to the credit agreements governing the Prepetition Loan Facilities (the "**Credit Agreements**") and the Canadian Debtors entered into amendments to

¹⁶ See Coulombe Affidavit at para. 58 for a detailed summary of the Prepetition Loan Facilities.

the Credit Agreements, pursuant to which the Canadian Debtors were added as “Joining Loan Parties” under the Credit Agreements.¹⁷

22. The U.S. Chapter 11 Debtors have provided guarantees pursuant to Credit Agreements. The Canadian Debtors also recently guaranteed a portion of the obligations under the Credit Agreement for the ABL Facility, limited to \$6,384,000 of obligations, which reflects the value contributed from Eddie Bauer’s U.S. business to Eddie Bauer’s Canadian business on account of shared services (not including Eddie Bauer Canada’s proportionate share of corporate payroll) after taking into account inventory received and cash transferred from Eddie Bauer Canada to Eddie Bauer U.S (the “**Limited Guarantee**”). All of the Chapter 11 Debtors have pledged substantially all of their assets in support of their respective obligations under the Prepetition Loan Facilities, and the Canadian Debtors have granted security over substantially all of their assets in respect of the ABL Facility.¹⁸

23. The Prepetition Lenders are also party to two intercreditor agreements delineating collateral and payment rights among the Prepetition Lenders.¹⁹

(b) Intercompany Payable to SPARC

24. SPARC has historically paid certain of the Chapter 11 Debtors’ expenses, either directly or by way of weekly transferred funds (the “**Covered Expenses**”), and has provided the Chapter 11 Debtors with certain management and administrative services (the “**SPARC Management**”).

¹⁷ Coulombe Affidavit at para. 59.

¹⁸ Coulombe Affidavit at para. 60.

¹⁹ Coulombe Affidavit at para. 61.

Services”), a portion of which may be allocated to the Canadian Debtors based on their retail sales (which, as set out above, are approximately 20.5% of the Company’s retail sales).²⁰

25. The Chapter 11 Debtors, after paying certain expenses directly to vendors and other third parties, have historically transferred any excess funds generated by their operations to SPARC on a weekly basis via an intercompany transfer (the “**SPARC Transfers**”), and have received an invoice allocation from SPARC for a monthly management fee (the “**Management Fee**”).²¹

26. Since the SPARC acquisition, the SPARC Transfers have consistently been lower than the total amount of Covered Expenses. As a result, the Chapter 11 Debtors have accrued an intercompany payable to SPARC, representing the difference between the obligations accrued on account of the Covered Expenses and the Management Fee and the aggregate funds that the Chapter 11 Debtors have transferred to SPARC. As of the Petition Date, this intercompany payable totaled approximately \$215 million. Of this intercompany payable, approximately \$123 million relates to corporate services, royalties and vendor payments, of which approximately \$25.2 million is attributable to Eddie Bauer Canada (not including Eddie Bauer Canada’s proportionate share of corporate payroll). After taking into account inventory received and cash transferred from Eddie Bauer Canada to Eddie Bauer U.S., approximately \$6.4 million is attributable to Eddie Bauer Canada.²²

²⁰ Coulombe Affidavit at para. 62.

²¹ Coulombe Affidavit at para. 63.

²² Coulombe Affidavit at para. 64.

C. Events leading to the Chapter 11 Cases

(a) Financial Challenges

27. Following the SPARC acquisition in 2021, the Company was able to capitalize on early COVID-19 era changes in consumer preferences as demand for outdoor apparel and gear increased and consumer discretionary spending spiked. However, since that time, multiple headwinds have resulted in sustained negative earnings at Eddie Bauer, including: (i) shifting consumer preferences; (ii) a historic rise in inflation leading to an increase in the Chapter 11 Debtors' cost of doing business; and (iii) the long-standing (though recently suspended) "de minimis" tariff exemption in the U.S. that allowed non-U.S. retailers to import goods in the U.S. without paying duties and elevated tariffs; and (iv) recent reciprocal tariffs which significantly raised the costs of imports from nearly all countries. As a result of these headwinds, the Chapter 11 Debtors recorded negative earnings of approximately \$2 million in 2022, \$10 million in 2023, \$82 million in 2024, and \$80 million in 2025.²³

28. The Chapter 11 Debtors' financial challenges continued to mount through the fourth quarter of 2025, including due to the accrual of fixed intellectual property licensing fees payable under the existing license agreement for the use of the Eddie Bauer IP in North American retail and e-commerce distribution channels (the "**License Agreement**"). In total, the Chapter 11 Debtors faced approximately \$220 million in future fees over the remaining six years of the License Agreement, which the Chapter 11 Debtors could no longer support owing to declines in sales.²⁴

²³ Coulombe Affidavit at para. 67.

²⁴ Coulombe Affidavit at para. 68. See Coulombe Affidavit at para. 55 for a detailed summary of the License Agreement.

29. In order to address the Chapter 11 Debtors' financial challenges, the License Agreement was amended in late 2025 to limit its license to brick and mortar retail only, and the Company transferred the wholesale and e-commerce business, including related inventory, to O5 Group ("O5"), an affiliate of ABG. The Company retained the exclusive right to operate Eddie Bauer brick-and-mortar retail locations. On November 17, 2025, the Company's management approved the "**Business Transition**," which set out the process by which the wholesale and e-commerce business would be transferred to O5, the definitive documentation in respect of which was executed on or around December 9, 2025. While the amendment of the License Agreement relieved a substantial liability for the Company, financial projections continued to indicate that the Chapter 11 Debtors would continue to generate negative cash flow.²⁵

(b) Restructuring and Sale Efforts

30. In January 2026, SPARC, which had been funding the Company's cash shortfalls through intercompany loans, expressed an intention to imminently cease funding the Company's future losses. The anticipated withdrawal of SPARC funding has resulted in the Company facing significant near-term liquidity pressure, in light of which the Company has been considering all potential strategic options, including a going concern sale of a subset of its remaining brick-and-mortar retail business (including certain of the Canadian Leases) and going out of business sales for its remaining retail stores.²⁶

31. In an effort to maximize value for stakeholders, the Chapter 11 Debtors: (i) engaged in a variety of cost-cutting measures; (ii) made changes to their leadership team; (iii) evaluated and

²⁵ Coulombe Affidavit at paras. 68-70. See Coulombe Affidavit at paras. 56-57 for a detailed summary of the amendment of the License Agreement.

²⁶ Coulombe Affidavit at paras. 71-72.

modified their merchandising strategy; (iv) exited 49 store locations; and (v) began to explore an going concern sale of all or substantially all of their brick-and-mortar retail business.²⁷

32. On November 24, 2025, the Company retained SOLIC Capital Advisors, LLC (“**SOLIC**”) as investment banker to begin the process for a potential going-concern sale of the Company’s remaining brick-and-mortar retail business. As part of the sale process, SOLIC has reached out to 126 potential acquirors, including 68 financial and 58 strategic counterparties, and invited interested parties to execute non-disclosure agreements, access a virtual data room, and commence preliminary diligence. Thirty-four parties ultimately executed NDAs and accessed the virtual data room, and on January 30, 2026 (the IOI deadline), the Company received two IOIs. While these IOIs have not yet resulted in a binding proposal for a going-concern sale, the Company, along with SOLIC and its other advisors, intends to work with these parties post-petition in order to solidify a going-concern transaction for some or all of its ongoing operations.²⁸

33. Concurrently with the going-concern sale process, the Chapter 11 Debtors initiated store-closing sales in all their remaining stores between January 26, 2026 and February 7, 2026, which are anticipated to continue for approximately thirteen more weeks.²⁹

34. The Chapter 11 Debtors also commenced negotiations with the Prepetition Lenders, which recently culminated in the execution of the following agreements:

- (a) The “**Amendment and Forbearance Agreement**,” pursuant to which the Prepetition Lenders: (i) consented to the Chapter 11 Debtors’ entry into the

²⁷ Coulombe Affidavit at para. 73.

²⁸ Coulombe Affidavit at para.74.

²⁹ Coulombe Affidavit at para. 75.

Restructuring Support Agreement (as defined below) and the consummation of the Transactions (as defined below); (ii) agreed that the Transactions do not constitute a Default, Event of Default, or Material Adverse Effect under the Prepetition Loan Documents; and (iii) the Canadian Debtors agreed to provide the Limited Guarantee. The Limited Guarantee was granted as consideration for the Amendment and Forbearance Agreement, in light of the fact that the Canadian Debtors rely heavily on, and cannot operate without, Eddie Bauer U.S. and the other U.S. Eddie Bauer obligors for operational and business support, which support is critical for the inclusion of the Canadian business in the Transactions. The Prepetition Lenders would not agree to the Amendment and Forbearance Agreement or the Restructuring Support Agreement without the Limited Guarantee.³⁰

- (b) The “**Restructuring Support Agreement**,” which contemplates two interlocking processes (the “**Transactions**”): (i) completion of one or more sales of the Chapter 11 Debtors’ assets free and clear of all liens, claims, and other encumbrances to the highest or otherwise best bidder(s) (each, a “**Going Concern Sale Transaction**”); and (ii) an orderly winddown of the brick-and-mortar retail operations not sold as part of a Going Concern Transaction. The Restructuring Support Agreement also provides commitments from all of the Chapter 11 Debtors’ funded-debt creditors to support a plan of reorganization (the “**Plan**”) that will address all prepetition obligations and provide a recovery for unsecured creditors as long as the class of

³⁰ Coulombe Affidavit at para. 76(a). See Coulombe Affidavit at paras. 40-41 for a description of the critical business functions performed by SPARC, and in certain cases Eddie Bauer U.S., for Eddie Bauer Canada.

unsecured creditors votes to accept the Plan. Canadian unsecured creditors are expected to receive equal treatment under the Plan.³¹

35. The Petitions were filed upon the signing of the Restructuring Support Agreement.³²

D. The Urgent Need for Canadian Relief

36. By operation of the U.S. Bankruptcy Code, the Chapter 11 Debtors (including the Canadian Debtors) obtained an automatic stay of proceedings in the U.S. upon the filing of the Petitions. The granting of an interim stay in Canada is required to give effect to the U.S. stay of proceedings, maintain the status quo, and preserve the value of the Canadian business pending the hearing of the First Day Motions in the U.S., and a subsequent hearing in Canada seeking recognition of the First Day Orders and commencing Part IV proceedings under the CCAA.

37. Without an interim stay of proceedings, the Chapter 11 Debtors would be exposed to the potential enforcement of rights and remedies in Canada. In particular, the Canadian Leases provide that it is an event of default for Eddie Bauer Canada to seek bankruptcy protection; as a result, without the granting of an interim stay of proceedings, Eddie Bauer Canada's landlords may have the ability to terminate the Canadian Leases, to the great detriment of stakeholders generally. In addition, creditors could potentially take action against inventory currently located in Canada.³³

38. Further, the Canadian Debtors do not have the ability to operate independently. The Chapter 11 Debtors' cash balance as of the Petition Date is insufficient to continuing operating and paying debts as they come due. The Canadian Debtors are entirely dependent on the U.S

³¹ Coulombe Affidavit at paras. 76(b)-77.

³² Coulombe Affidavit at para. 78.

³³ Coulombe Affidavit at paras. 82-84.

Chapter 11 Debtors and SPARC for shared services, who have indicated that they are not prepared to continue providing outside of a filing. Without this ongoing operational and financial support, Eddie Bauer Canada does not have the ability to independently continue, or effect a recapitalization or restructuring of, Eddie Bauer's Canadian operations. Further, the Canadian Debtors cannot operate absent the cooperation of SPARC U.S. as Licensee under the License Agreement, and it would therefore not be feasible for the Canadian Debtors to conduct an independent sale process in a plenary Canadian proceeding where the Licensee would not be party to same.³⁴

PART III - THE ISSUES

39. The issue to be determined on this motion is:

- (a) whether Ontario is a proper jurisdiction for these recognition proceedings; and
- (b) whether the interim stay of proceedings should be granted.

PART IV - THE LAW

A. Ontario is a Proper Jurisdiction

40. Ontario is a proper jurisdiction for these recognition proceedings. As Part IV of the CCAA does not contain any provisions with respect to the jurisdiction of a particular Canadian court to hear a recognition application, it is appropriate for the Ontario court to take jurisdiction given the Canadian Debtors' substantial connection to Ontario, including the following:

- (a) each of the Canadian Debtors maintains a registered office in Toronto;³⁵

³⁴ Coulombe Affidavit at paras. 80-81.

³⁵ Coulombe Affidavit at paras. 15-16.

- (b) Ontario is the location of the highest number of Eddie Bauer Canada's stores, (11 out of 24 stores, representing nearly half of the Canadian total);³⁶ and
- (c) the majority of Eddie Bauer Canada's employees are located in Ontario (182 out of 379 total employees in Canada).³⁷

41. Similar considerations have previously been held to ground jurisdiction in other recognition proceedings.³⁸

B. The Interim Stay of Proceedings Should be Granted

42. Pursuant to section 46(2) of the CCAA, a foreign representative seeking recognition of a foreign proceeding must include in its application, among other things, certified copies of the instruments that commenced the foreign proceeding and authorized the foreign representative to act in such a capacity. However, the proposed Foreign Representative Order authorizing Eddie Bauer U.S. to act as Foreign Representative will not be available until the Chapter 11 Debtors appear before the U.S. Court to seek the First Day Orders.

43. As a result, the Foreign Representative is not yet able to seek the Initial Recognition Order and Supplemental Order from this Court. While the Chapter 11 Debtors obtained the benefit of a stay of proceedings upon filing the Petitions with the U.S. Court, without the granting of the

³⁶ Coulombe Affidavit at para. 25.

³⁷ Coulombe Affidavit at para. 32.

³⁸ *KidKraft Inc. et al. (Re)* (May 10, 2024), Ont S.C.J [Commercial List], Court File No. CV-24- 00720035-00CL ([Endorsement](#)) at para. 8 [*KidKraft*]; *WeWork Inc. (Re)* (November 7, 2023), Ont S.C.J [Commercial List], Court File No. CV-23-00709258-00CL ([Endorsement](#)) at paras. 10-13 [*WeWork*].

Interim Stay Order the Chapter 11 Debtors will not have the protection of a stay in Canada during this key period.

44. This Court has consistently noted the importance of addressing this gap, and orders temporarily staying proceedings in Canada following the commencement of Chapter 11 proceedings are frequently granted,³⁹ in order to protect the assets of the debtor and facilitate ongoing cross-border restructurings,⁴⁰ and to prevent any delay in obtaining Chapter 11 relief from prejudicing Canadian debtors.⁴¹ The granting of an interim stay of proceedings in this context has therefore been described as this Court’s “practice in recent Part IV recognition proceedings.”⁴²

45. The Court’s jurisdiction to grant an interim stay in the context of a pending recognition application is grounded in s. 106 of the CJA, which authorizes Ontario courts to stay proceedings on such terms as are considered just, in s. 11.02 of the CCAA, which allows the granting of a stay on the initial application of a debtor company, and in the Court’s inherent jurisdiction.⁴³ Further, as noted by Chief Justice Morawetz, granting an interim stay in such circumstances accords with “the principles of cooperation and comity” and represents “necessary and appropriate” relief pending the full recognition hearing.⁴⁴

³⁹ *KidKraft*, at para. 11; *WeWork*, at para. 19.

⁴⁰ *WeWork*, at para. 19.

⁴¹ *CURO Canada Corp. et al. (Re)*, [2024 ONSC 1785](#) at para. 37 [*CURO*], citing *GNC Holdings Inc., et al.* (24 June 2020), Toronto CV-20-00642970-00CL (ONSC) ([Endorsement](#)) at para. 3.

⁴² *Hornblower Cruises and Events Canada Ltd.*, [2024 ONSC 1094](#) at para. 21; *YRC Freight Canada Company (Re)*, [2023 ONSC 4492](#) at para. 11 [*YRC Freight*].

⁴³ *CURO*, at para. 38; *KidKraft*, at para. 19; *WeWork*, at para. 106.

⁴⁴ *Paladin Labs Canadian Holding Inc.*, [2022 ONSC 4748](#) at para. 20.

46. The proposed Interim Stay Order achieves these purposes and should be approved. The Interim Stay Order provides for a stay of proceedings in favour of the Chapter 11 Debtors in respect of their business and property in Canada, along with a stay of proceedings in favour of the directors and officers of the Chapter 11 Debtors. This proposed interim stay will give effect in Canada to the automatic stay of proceedings in the Chapter 11 Cases and will provide stability and preserve the value of the Canadian business pending Eddie Bauer U.S.'s appointment as foreign representative. Interim stays on similar terms have frequently been approved by this Court, including orders which granted an interim stay in respect of proceedings against debtors' directors and officers in Canada.⁴⁵

PART V - RELIEF REQUESTED

47. For the foregoing reasons, the Applicant requests that this Honourable Court grant the Interim Stay Order substantially in the form attached to the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of February, 2026.



OSLER, HOSKIN & HARCOURT, LLP
per Marleigh Dick
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8
Lawyers for the Applicant

⁴⁵ See, e.g., *WeWork Inc. (Re)* (November 7, 2023), Ont S.C.J [Commercial List], Court File No. CV-23-00709258-00CL ([Interim Stay Order](#)) at para. 7.

SCHEDULE “A”: LIST OF AUTHORITIES

1. *CURO Canada Corp. et al. (Re)*, [2024 ONSC 1785](#)
2. *GNC Holdings Inc., et al.* (24 June 2020), Toronto CV-20-00642970-00CL (ONSC) ([Endorsement](#))
3. *Hornblower Cruises and Events Canada Ltd.*, [2024 ONSC 1094](#)
4. *KidKraft Inc. et al. (Re)* (May 10, 2024), Ont S.C.J [Commercial List], Court File No. CV-24- 00720035-00CL ([Endorsement](#))
5. *Paladin Labs Canadian Holding Inc.*, [2022 ONSC 4748](#)
6. *WeWork Inc. (Re)* (November 7, 2023), Ont S.C.J [Commercial List], Court File No. CV-23-00709258-00CL ([Endorsement](#))
7. *WeWork Inc. (Re)* (November 7, 2023), Ont S.C.J [Commercial List], Court File No. CV-23-00709258-00CL ([Interim Stay Order](#))
8. *YRC Freight Canada Company (Re)*, [2023 ONSC 4492](#)

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

Date February 9, 2026



Signature
Marleigh Dick

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

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

Definitions

2 (1) In this Act,

...

debtor company means any company that

(a) is bankrupt or insolvent,

(b) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts,

(c) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or

(d) is in the course of being wound up under the *Winding-up and Restructuring Act* because the company is insolvent; (*compagnie débitrice*)

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.

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.

...

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.

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.

Courts of Justice Act, R.S.O. 1990, c. C.43

Stay of proceedings

106 A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED Court File No: CL-26-00000050-0000
AND IN THE MATTER OF SPARC EB HOLDINGS LLC, EDDIE BAUER LLC, EDDIE BAUER GIFT CARD SERVICES 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, AS AMENDED

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

FACTUM OF THE APPLICANT

OSLER, HOSKIN & HARCOURT LLP
100 King Street West, 1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Marc Wasserman (LSO# 44066M)
Tel: 416.862.4908
Email: mwasserman@osler.com

Shawn T. Irving (LSO# 50035U)
Tel: 416.862.4733
Email: sirving@osler.com

Martino Calvaruso (LSO# 57359Q)
Tel: 416.862.6665
Email: mcavaruso@osler.com

Marleigh Dick (LSO# 79390S)
Tel: 416.862.4725
Email: mdick@osler.com

Lawyers for the Applicant