

**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
(RECOGNITION ORDER)**

April 28, 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 motion by Eddie Bauer LLC (“**Eddie Bauer U.S.**”), in its capacity as the foreign representative of the Chapter 11 Debtors (in such capacity, the “**Foreign Representative**”), for a Third Recognition Order recognizing certain orders granted in the ongoing Chapter 11 Cases (all terms as defined below).
2. On February 9, 2026 (the “**Petition Date**”), 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, including an order authorizing Eddie Bauer U.S. to act as Foreign Representative in respect of the Chapter 11 Cases (collectively, the “**First Day Orders**”).
3. On February 18, 2026, on the application of Eddie Bauer U.S. as Foreign Representative, this Court granted an order recognizing the Chapter 11 Cases as a foreign main proceeding, along with an order (the “**Supplemental Order**”), which, among other things, recognized certain of the First Day Orders, and appointed KSV Restructuring Inc. as the information officer in respect of these proceedings (in such capacity, the “**Information Officer**”). On March 20, 2026, this Court granted an order recognizing further orders entered by the U.S. Court on March 3 and 16, 2026 (the “**Second Recognition Order**”).

4. Prior to the Petitions, the Chapter 11 Debtors obtained the support of holders of 100% of their funded indebtedness to support confirmation of a chapter 11 plan, the terms of which were memorialized in a restructuring support agreement (the “**Restructuring Support Agreement**”). On April 15, 2026, the Chapter 11 Debtors filed the Third Amended Plan (as defined below), which embodied a comprehensive, good-faith settlement among the Chapter 11 Debtors and their major stakeholders. The Plan (as defined below) was overwhelmingly approved by the Voting Classes (as defined below) and was confirmed by the U.S. Court on April 16, 2026 (the “**Plan Confirmation Order**”). The U.S. Court found that, among other things, the Plan represents a good faith compromise and settlement, achieved as a result of arm’s length negotiations, and is in the best interest of the Chapter 11 Debtors’ creditors and equity holders.

5. In order to facilitate the continued restructuring of the Chapter 11 Debtors, including the implementation of the Plan, the Foreign Representative now seeks an order (the “**Third Recognition Order**”), which will, among other things:

- (a) recognize and give effect to the Plan Confirmation Order;
- (b) recognize certain additional orders entered by the U.S. Court following the Second Recognition Order;
- (c) declare that, pursuant to ss. 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Program Act* (“**WEPPA**”), Eddie Bauer Canada meets the criteria prescribed by s. 3.2 of the *Wage Earner Protection Program Regulations* (“**WEPP Regulation**”);
and
- (d) authorize and empower the Information Officer to perform the duties and responsibilities of a “trustee” under the WEPPA.

6. The requested relief is appropriate in the circumstances. This Court has the jurisdiction to grant the Third Recognition Order under Part IV of the *Companies' Creditors Arrangement Act* (the "CCAA"), and the requested relief is both consistent with the principles of comity and cooperation that underlie Part IV and necessary to protect the Canadian Debtors and preserve the value of the Canadian business for the benefit of a broad range of stakeholders.

7. With respect to the WEPPA relief, by virtue of its participation in these recognition proceedings, Eddie Bauer Canada is subject to proceedings under the CCAA within the meaning of s. 5(1)(b)(iv) of the WEPPA. The requested relief is both appropriate and necessary to assist former employees in obtaining timely access to payments under the WEPPA ("**WEPP Payments**"), and is supported by the Information Officer.

PART II - THE FACTS

8. The facts relating to the present motion are more fully set out in the Affidavit of George Pantelis,¹ and in the Second Report of the Information Officer.² 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**").

A. Update on Chapter 11 Cases

9. At the commencement of the Chapter 11 Cases, the Chapter 11 Debtors, including the Canadian Debtors, were authorized to pursue two interlocking processes contemplated in the

¹ Affidavit of George Pantelis, sworn April 24, 2026 [Third Pantelis Affidavit]. Dollar amounts are given in U.S. dollars unless otherwise specified. Capitalized terms not otherwise defined have the same meaning as in the Third Pantelis Affidavit or the Second Report (as defined below).

² Second Report of the Information Officer dated April 28, 2026 [Second Report].

Restructuring Support Agreement – namely, the Store Closing Sales (as defined below) and the going-concern sale process, including a value-maximizing wind-down of any assets not sold.

10. Between January 26, 2026 and February 7, 2026, the Chapter 11 Debtors initiated store closing sales (the “**Store Closing Sales**”), which concluded at all but six of the Chapter 11 Debtors’ stores in Canada on or before March 31, 2026, and will conclude at the Chapter 11 Debtors’ remaining store locations (including the remaining six stores in Canada) by no later than April 30, 2026. The Store Closing Sales have, in aggregate, met or exceeded forecasted recoveries, with the Canadian Store Closing Sales contributing approximately \$9.5 million in net sales. In accordance with the Rejection Procedures Order (as recognized by this Court in the Second Recognition Order), the majority of the Chapter 11 Debtors’ Canadian leases were rejected effective March 31, 2026, with the remainder rejected effective April 30, 2026.³

11. With respect to the going-concern sale process,⁴ no actionable Qualified Bid was received by the Chapter 11 Debtors by the deadline set out in the Bidding Procedures Order (as recognized by this Court in the Supplemental Order). As a result, the Auction and the Sale Hearing contemplated in the Bidding Procedures Order were cancelled. Although the Chapter 11 Debtors subsequently made clear that they would nonetheless consider any value-maximizing proposal, including a proposal to purchase some or all of the Chapter 11 Debtors’ assets as a going concern, the Chapter 11 Debtors have not received any actionable proposals.⁵

³ Third Pantelis Affidavit at para. 11.

⁴ See Interim Stay Factum at para. 32 for a summary of the going concern sale process.

⁵ Third Pantelis Affidavit at para. 12

B. The Third Amended Plan

(a) Background to the Third Amended Plan

12. Prior to the Petition Date, the Chapter 11 Debtors obtained the support of holders of 100% of their funded indebtedness to support confirmation of a chapter 11 plan, the terms of which were memorialized in the Restructuring Support Agreement. Under the Restructuring Support Agreement, the Chapter 11 Debtors agreed to, among other things, earmark a portion of the proceeds generated during the Chapter 11 Cases for distribution to general unsecured creditors, including unsecured creditors of the Canadian Debtors.⁶

13. On March 16, 2026, the Chapter 11 Debtors filed a solicitation version of the First Amended Plan (as may be amended, modified, or supplemented from time to time, together with all exhibits and supplements thereto, the “**Plan**”), along with the Disclosure Statement. On the same date, the U.S. Court entered the Disclosure Statement Order (as recognized by this Court in the Second Recognition Order), which, among other things, set a Combined Hearing Date of April 16, 2026, for the U.S. Court to consider confirmation of the Plan and final approval of the Disclosure Statement. Certain stakeholder objections were resolved in advance of the entry of the Disclosure Statement Order by the U.S. Court, but the official committee of unsecured creditors in the Chapter 11 Cases (the “**Committee**”) reserved its rights to raise additional objections at the Combined Hearing.⁷

⁶ Third Pantelis Affidavit at para. 13.

⁷ Third Pantelis Affidavit at para. 14.

14. Following collaborative efforts, the Chapter 11 Debtors, the Consenting Lenders,⁸ and the Committee reached a comprehensive settlement (the “**Committee Settlement**”), which: (i) provides for up to \$3 million in cash recoveries to holders of General Unsecured Claims (as defined in the Plan); (ii) resolves the Committee’s objections filed on March 11, 2026; and (iii) resulted in the Committee’s agreement to support final approval of the Disclosure Statement and confirmation of the Plan. On March 26, 2026, the Chapter 11 Debtors filed the Second Amended Plan,⁹ which reflected, among other things, the Committee Settlement, including the establishment of the GUC Trust to fund all distributions to Holders of General Unsecured Claims.¹⁰

15. On April 2, 2026, the Chapter 11 Debtors filed the Disclosure Statement Supplement, which describes, among other things, the developments above. The Disclosure Statement Supplement also provides that the Chapter 11 Debtors, the Consenting Lenders, and the Committee believe that the Plan is the best and only value-maximizing path forward for all stakeholders.¹¹

⁸ The “**Consenting Lenders**” refers to the lenders under the ABL Credit Agreement, the Term Loan Credit Agreement, and the Subordinated Loan Credit Agreement that became parties to the Restructuring Support Agreement.

⁹ See Third Pantelis Affidavit at para. 16 for a summary of the Second Amended Plan.

¹⁰ Third Pantelis Affidavit at paras. 15-16. On April 1 and April 14, 2026, the Chapter 11 Debtors filed the Plan Supplement and the First Amended Plan Supplement, respectively: Third Pantelis Affidavit at para. 17.

¹¹ Third Pantelis Affidavit at para. 18.

(b) Summary of the Third Amended Plan

16. On April 15, 2026, the Chapter 11 Debtors filed the Third Amended Plan, which provided minor clarifications to the Plan.¹² Principally, the Plan contemplates (collectively, the “**Wind-Down Transactions**”):¹³

- (a) distributions from the Chapter 11 Debtors’ cash on hand, the proceeds from the Chapter 11 Debtors’ ordinary course operations, and the Store Closing Sales;
- (b) the compromise and settlement of all Claims and Interests subject to the Plan, including the Committee Settlement;
- (c) certain releases by third parties and by the Chapter 11 Debtors, which were arrived at following an extensive independent investigation by the Chapter 11 Debtors’ Disinterested Managers; and
- (d) the wind-down of the Chapter 11 Debtors pursuant to the transactions set out in Article IV.G of the Plan.

¹² Among other things, the Third Amended Plan includes minor revisions to incorporate the Final Cash Collateral Order, and to clarify: (i) that counterparties to an Unexpired Lease to which one or more of the Chapter 11 Debtors was a party as of the Petition Date shall not be required to file requests for payment of Administrative Claims with the U.S. Court; instead, Holders of such Claims may submit their Claims directly to the Claims and Noticing Agent by mail, by hand delivery, or through the Claims and Noticing Agent’s website; and (ii) the deemed rejection dates for Unexpired Leases.

¹³ Third Pantelis Affidavit at paras. 21-22; Second Report at para. 4.1.1. See Third Pantelis Affidavit at para. 21 and Second Report at para. 4.1.3 for a detailed summary of the Wind-Down Transactions.

17. The Plan provides for an approximately \$15 million payment to the ABL Lenders, and further contemplates the distributions of up to \$3 million in value to Holders of General Unsecured Claims as part of the Committee Settlement.¹⁴

(c) Voting Results and Confirmation of the Plan

18. The Plan classifies Holders of Claims and Interests into 10 different classes for purposes of voting on and receiving distributions under the Plan, of which two classes – namely, ABL Claims and General Unsecured Claims – were entitled to vote on the Plan (the “**Voting Classes**”). Pursuant to the Disclosure Statement Order, the deadline for votes was April 14, 2026, at 4:00 p.m. (prevailing Eastern Time), following which the Claims and Noticing Agent reviewed and tabulated the ballots received.¹⁵

19. Ultimately, 100% of ABL Claims that voted did so in favour of the Plan, while Unsecured Claims representing 81.07% of the amount of the General Unsecured Claims that voted, and 94.84% of the number of General Unsecured Claims that voted, voted in favour of the Plan. These votes were more than sufficient to provide for acceptance of the Plan by creditors under the U.S. Bankruptcy Code.¹⁶

20. The U.S. Court held its Combined Hearing for confirmation of the Plan on April 16, 2026. Following the Combined Hearing (and the overruling of the sole remaining objection to the Plan, brought by the U.S. Trustee), the U.S. Court entered the Plan Confirmation Order, which, among

¹⁴ Third Pantelis Affidavit at paras. 20, 23.

¹⁵ Third Pantelis Affidavit at paras. 24-25.

¹⁶ Third Pantelis Affidavit at paras. 27-28.

other things, found that the Chapter 11 Debtors had demonstrated that the Plan is in the best interests of their creditors and equity holders.¹⁷

C. Other Foreign Orders

21. In addition to the Plan Confirmation Order, the Chapter 11 Debtors worked diligently and obtained the entry of additional orders (collectively with the Plan Confirmation Order, the “**Foreign Orders**”) in the Chapter 11 Cases following the Second Recognition Order.¹⁸

22. On March 27, 2026, the U.S. Court entered the following orders:¹⁹

- (a) the Final Cash Collateral Order, which authorizes the Chapter 11 Debtors, to, among other things, use “Cash Collateral” as such term is defined in the U.S. Bankruptcy Code, in order to pay certain specified expenses;
- (b) the De Minimis Asset Transactions Order, which, among other things, establishes procedures for the expedited use, sale or transfer of certain assets;
- (c) the De Minimis Claims Order, which, among other things, establishes the process for the settlement of certain claims; and
- (d) the BRG Retention Order, which, among other things, authorizes the Chapter 11 Debtors to retain Berkeley Research Group, LLC.

¹⁷ Third Pantelis Affidavit at paras. 30-32. See Third Pantelis Affidavit at para. 32 for a detailed summary of the Plan Confirmation Order.

¹⁸ See Third Pantelis Affidavit at para. 36 for a detailed summary of the orders at issue.

¹⁹ Second Report at para. 1.0.8.

23. On April 13, 2026, the U.S. Court entered the First Order Approving Rejection of Certain Contracts/Leases, which, among other things, provides for the rejection of certain executory contracts and unexpired leases, including all leases with Canadian landlords.²⁰

24. On April 16, 2026, at the Combined Hearing, the U.S. Court issued the following orders, in addition to the Plan Confirmation Order:²¹

- (a) the Final Cash Management Order, which authorizes the Chapter 11 Debtors, to, among other things, continue to operate their cash management system; and
- (b) the Omnibus Claims Objection Procedures Order, which, among other things, approves the procedure for objecting to Claims.

PART III - THE ISSUES

25. The issues to be determined on this motion are whether:

- (a) the Foreign Orders should be recognized by this Court; and
- (b) Eddie Bauer Canada meets the criteria prescribed by the WEPP Regulation such that former employees of Eddie Bauer Canada may be eligible to receive WEPP Payments.

²⁰ Second Report at para. 1.0.10.

²¹ Second Report at para. 1.0.11.

PART IV - THE LAW

A. The Foreign Orders Should be Recognized

(a) This Court Has Jurisdiction to Recognize the Foreign Orders

26. As set out above, this Court has recognized the Chapter 11 Cases as a “foreign main proceeding” pursuant to ss. 47 and 48 of the CCAA. The authority of this Court to recognize the orders granted by the U.S. Court is therefore set out in both s. 52(1), which provides that where an order recognizing a foreign proceeding is made, the Court must “cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding,” and in s. 49, 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.”

27. Further, comity – which is the “central principle governing Part IV of the CCAA” – requires that Canadian courts 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 proceedings, inconsistent judgments, and general uncertainty, while also ensuring the equal and fair treatment of creditors regardless of their location.²²

28. Canadian courts have therefore consistently encouraged comity and cooperation between courts in various jurisdictions in respect of cross-border insolvencies,²³ and in particular courts in Canada and the United States have made efforts to complement, coordinate and accommodate each

²² *Hollander Sleep Products, LLC et al. (Re)*, [2019 ONSC 3238](#) at paras. 41-42 [*Hollander*].

²³ *Caesars Entertainment Operating Co. (Re)*, [2015 ONSC 712](#) at para. 38.

other's proceedings. Without coordination by courts in cross-border restructuring proceedings, multiple proceedings having inconsistent court orders and decisions, and general uncertainty as to the direction and effect of the restructuring proceedings on creditors and stakeholders in various jurisdictions, would likely result.²⁴

(b) Recognition of the Foreign Orders is Appropriate

29. When a Canadian court considers whether to recognize a foreign order, including an order made in Chapter 11 cases, the following considerations should be taken into account:

- (a) comity and cooperation between courts of various jurisdictions;
- (b) the need to respect foreign bankruptcy and insolvency legislation;
- (c) whether stakeholders will be treated equitably regardless of their jurisdiction;
- (d) the importance of promoting global reorganizations, and the benefit of one jurisdiction taking principal "charge" of the reorganization;
- (e) that the appropriate level of court involvement depends to a significant degree upon the court's nexus to the enterprise;
- (f) that courts in the ancillary jurisdiction should be provided with information on an ongoing basis, and stakeholders in the ancillary jurisdiction should be afforded appropriate access to the proceeding in the principal jurisdiction; and
- (g) that all affected stakeholders receive effective notice as is reasonably practicable in the circumstances.²⁵

²⁴ *Babcock & Wilcox Canada Ltd. (Re)*, [2000 CanLII 22482](#) at paras. 9-10 [*Babcock*].

²⁵ *Babcock* at para. 21; *Xerium Technologies Inc. (Re)*, [2010 ONSC 3974](#) at paras. 26-27 [*Xerium*].

30. These factors strongly support the recognition of the Foreign Orders. As set out above, comity is furthered where courts recognize orders granted in a “foreign main proceeding,” such as the Chapter 11 Cases,²⁶ and this Court has already recognized that comity will be furthered by this Court’s recognition and support of the Chapter 11 Cases in particular. This Court further recognized that the Canadian and U.S. operations of the Company are highly integrated, that coordination of the two proceedings will ensure fair treatment of both U.S. and Canadian stakeholders, and that it is reasonable and sensible for the U.S. Court to have principal control over the restructuring.²⁷

31. Further, the recognition of the Foreign Orders is necessary to protect the Canadian Debtors and preserve the value of the Canadian business for the benefit of a broad range of stakeholders. The recognition of the Foreign Orders will assist with and facilitate the efforts of the Chapter 11 Debtors, including the Canadian Debtors, to pursue the wind-down of the Chapter 11 Debtors and to implement the Plan, with a view to maximizing stakeholder value.²⁸

32. In light of the above, the Information Officer has indicated that it supports the recognition of the Foreign Orders, which it views as being: (i) common in chapter 11 cases; (ii) the culmination of the Chapter 11 Debtors’ good faith restructuring efforts; and (iii) frequently recognized by Canadian courts in cross-border insolvency proceedings. Further, the Information Officer views

²⁶ *Hollander* at para. 43.

²⁷ *Eddie Bauer LCC et. al. (Re)*, (February 18, 2026), Ont S.C.J. [Commercial List], CV-26-00000050-00CL ([Endorsement of Justice Cavanagh](#)), at para. 19.

²⁸ Third Pantelis Affidavit at paras. 37-38.

the Foreign Orders as furthering the principles of comity, facilitating efficient coordination, and treating Canadian and U.S. stakeholders equally throughout.²⁹

(c) Plan Confirmation Order

33. With respect to the Plan Confirmation Order in particular, this Court has regularly exercised its jurisdiction under s. 49 to confirm plans in Chapter 11 proceedings.³⁰ The Plan Confirmation Order satisfies the factors that courts have considered in recognizing similar orders from U.S. courts in a Part IV proceeding, including the following:

- (a) **Purpose of the CCAA:** The U.S. Court concluded that the Plan was proposed in good faith, complied with applicable law, and was in the best interest of the Chapter 11 Debtors' creditors and equity holders.³¹ This Court has recognized that these principles "also underlie the CCAA, and thus dictate in favour of the Plan's recognition and implementation in Canada."³²
- (b) **Good Faith Compromises and Settlements:** The Plan embodies a comprehensive, good-faith settlement among the Chapter 11 Debtors and their major stakeholders, including the Committee and the Consenting Lenders.³³ The U.S. Court recognized that the compromises and settlements embodied in the Plan were the result of extensive, arm's length, good faith negotiations, represent a fair and reasonable

²⁹ Second Report at paras. 5.0.2(a)-(c).

³⁰ See, e.g., *Instant Brands Acquisition Holdings Inc., et al. (Re)*, [2024 ONSC 1204](#) at para. 18 [*Instant Brands*]; *Xerium*, at para. 27.

³¹ Third Pantelis Affidavit at para. 32(p), (s)-(t).

³² *Xerium* at para. 28.

³³ Third Pantelis Affidavit at para. 20.

compromise of all Claims, Interests, and controversies, and constitute a sound exercise of the Chapter 11 Debtors' business judgment.³⁴

- (c) **Stakeholder Recoveries:** The Plan Confirmation Order is necessary to protect the interests of the Chapter 11 Debtors (including the Canadian Debtors), and to implement the Plan. The Chapter 11 Debtors believe that the Plan best maximizes stakeholder recoveries and provides the best available alternative for their estates and creditor recoveries.³⁵
- (d) **Creditor Support:** As set out above, the Plan was overwhelmingly supported by the Voting Classes, and the U.S. Court found that the Chapter 11 Debtors solicited votes for acceptance and rejection of the Plan in good faith and with proper notice, and tabulated votes fairly.³⁶
- (e) **Ancillary Jurisdiction:** By recognizing the Chapter 11 Cases as a foreign main proceeding, this Court has acknowledged Canada as an ancillary jurisdiction in the reorganization of the Chapter 11 Debtors.
- (f) **Treatment of Canadian Stakeholders:** The Canadian Debtors are party to the Chapter 11 Cases, to which they had the same access as the other Chapter 11 Debtors. Importantly, Canadian stakeholders and U.S. stakeholders are treated in the same manner by the Plan Confirmation Order.³⁷

³⁴ Third Pantelis Affidavit at para. 32(p).

³⁵ Third Pantelis Affidavit at paras. 33-34.

³⁶ Third Pantelis Affidavit at para. 32(i)-(k)

³⁷ Second Report at para. 5.0.2(c).

34. The Information Officer supports the recognition of the Plan Confirmation Order.³⁸

B. The Criteria Under the WEPP Regulation Have Been Met

35. The WEPPA enacts the Wage Earner Protection Program, pursuant to which eligible former employees may be entitled to payments in respect of outstanding eligible wages, including termination and severance pay if certain criteria are met (as defined above, the WEPP Payments).

36. Section 5(1) of the WEPPA provides that an individual is eligible to receive WEPP Payments if, among other things:

- (a) the individual's employment is ended for a reason prescribed by regulation;
- (b) the individual is owed eligible wages by a former employer;
- (c) the former employer is subject to proceedings under the CCAA; and
- (d) a court determines under s. 5(5) of the WEPPA that the criteria prescribed by regulation are met.

37. Section 3.2 of the WEPP Regulations establishes the criteria which the court must consider under s. 5(5) of the WEPPA. Pursuant to s. 3.2, the court "may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to winddown its business operations." If the court so determines, the former employees may be entitled to WEPP Payments.

³⁸ Second Report at para. 5.0.2(f).

38. In order to assist terminated employees, the Foreign Representative seeks a declaration that, pursuant to ss. 5(1)(b)(iv) and 5(5) of the WEPPA, Eddie Bauer Canada meets the criteria prescribed by s. 3.2 of the WEPP Regulation. These criteria are fulfilled, as Eddie Bauer Canada will have terminated all of its employees in Canada, other than those retained to wind down its business operations.³⁹

39. Further, by virtue of its participation in these recognition proceedings, Eddie Bauer Canada is subject to proceedings under the CCAA within the meaning of s. 5(1)(b)(iv). In at least one instance, a Canadian Court has recognized that the criteria set out by the WEPPA are satisfied in proceedings under Part IV of the CCAA,⁴⁰ a recognition which accords with the essential role played by the CCAA court in facilitating and implementing cross-border insolvencies. In these recognition proceedings under the CCAA, this Court has, among other things: (i) recognized numerous orders entered by the U.S. Court, thereby giving those orders effect and authority in Canada; (ii) imposed a stay of proceedings in respect of the Canadian Debtors and their property;⁴¹ (iii) precluded the exercise of rights and remedies against the Chapter 11 Debtors in Canada;⁴² (iv) required persons to continue to supply good and services in Canada;⁴³ and (v) required the Chapter 11 Debtors and the Foreign Representative to adequately inform, co-operate with, and assist the Information Officer.⁴⁴ The importance and nature of these orders, which govern the treatment of

³⁹ Third Pantelis Affidavit at para. 41.

⁴⁰ See *SLP Holdings LTD et al (Re)*, (June 21, 2023), B.C.S.C., No. S233209 Vancouver Registry ([Order](#)), in which Justice Fitzpatrick found that the requirements of ss. 5(1)(b)(iv) and 5(5) of the WEPPA were satisfied in the context of recognition proceedings under Part IV of the CCAA.

⁴¹ Supplemental Order at para. 6.

⁴² Supplemental Order at para. 7.

⁴³ Supplemental Order at para. 9.

⁴⁴ Supplemental Order at para. 13.

the Chapter 11 Debtors and their property in Canada, clearly demonstrates that Eddie Bauer Canada is subject to proceedings under the CCAA within the meaning of s. 5(1)(b)(iv).

40. Finally, it is appropriate for this Court to order that the Information Officer, in addition to its prescribed rights, duties, responsibilities and obligations under the Supplemental Order and any other Orders of the Court, or as an officer of the Court, is authorized and empowered to perform the duties and responsibilities of a “trustee” under the WEPPA. The WEPPA does not provide for a limited definition of trustee, and s. 2(1) of the WEPPA explicitly acknowledges that this definition “includes a monitor as defined in subsection 2(1) of the CCAA.” In these recognition proceedings, this Court has granted the Information Officer the same rights as a Monitor would enjoy under the CCAA, including the right to have full and complete access to the property of the Chapter 11 Debtors.⁴⁵

41. The requested relief is appropriate in the circumstances, necessary in order to assist former employees in obtaining timely access to the WEPP Payments, and is supported by the Information Officer. The Information Officer is prepared to assist eligible individuals in applying under the Wage Earner Protection Program and perform the services of a trustee under WEPPA, with the Chapter 11 Debtors funding the costs of such a process.⁴⁶

⁴⁵ Supplemental Order at paras. 11, 12(c).

⁴⁶ Second Report at para. 6.0.3.

PART V - RELIEF REQUESTED

42. For the foregoing reasons, the Applicant requests that this Honourable Court grant the proposed Third Recognition Order substantially in the form attached to the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of April, 2026.



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

SCHEDULE “A”: LIST OF AUTHORITIES

1. *Babcock & Wilcox Canada Ltd. (Re)*, [2000 CanLII 22482](#)
2. *Caesars Entertainment Operating Co. (Re)*, [2015 ONSC 712](#)
3. *Eddie Bauer LCC et al. (Re)*, (February 18, 2026), Ont S.C.J. [Commercial List], CV-26-00000050-00CL ([Endorsement of Justice Cavanagh](#))
4. *Hollander Sleep Products, LLC et al. (Re)*, [2019 ONSC 3238](#)
5. *Instant Brands Acquisition Holdings Inc., et al. (Re)*, [2024 ONSC 1204](#)
6. *SLP Holdings LTD et al (Re)*, (June 21, 2023), B.C.S.C., No. S233209 Vancouver Registry ([Order](#))
7. *Xerium Technologies Inc. (Re)*, [2010 ONSC 3974](#)

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

Date April 28, 2026



Signature
Marleigh Dick

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

COMPANIES’ CREDITORS ARRANGEMENT ACT

R.S.C., 1985, c. C-36, as amended

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.

WAGE EARNER PROTECTION PROGRAM ACT

SC 2005, c 47, s 1, as amended

Conditions of eligibility

5 (1) An individual is eligible to receive a payment if

- (a) the individual's employment ended for a reason prescribed by regulation;

(b) one of the following applies:

(i) the former employer is bankrupt,

(ii) the former employer is subject to a receivership,

(iii) the former employer is the subject of a foreign proceeding that is recognized by a court under subsection 270(1) of the Bankruptcy and Insolvency Act and

(A) the court determines under subsection (2) that the foreign proceeding meets the criteria prescribed by regulation, and

(B) a trustee is appointed, or

(iv) the former employer is the subject of proceedings under Division I of Part III of the Bankruptcy and Insolvency Act or under the Companies' Creditors Arrangement Act and a court determines under subsection (5) that the criteria prescribed by regulation are met; and

(c) the individual is owed eligible wages by the former employer.

[...]

(5) On application by any person, a court may, in proceedings under Division I of Part III of the Bankruptcy and Insolvency Act or under the Companies' Creditors Arrangement Act, determine that the former employer meets the criteria prescribed by regulation.

WAGE EARNER PROTECTION PROGRAM REGULATIONS

SOR/2008-222, as amended

Proceedings Under Bankruptcy and Insolvency Act or Companies' Creditors Arrangement Act

3.2 For the purposes of subsection 5(5) of the Act, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations

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, 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: mcalvaruso@osler.com

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

Lawyers for the Applicant