COURT FILE NUMBER	**2301 – 08305**
COURT	**COURT OF KING'S BENCH OF ALBERTA**
JUDICIAL CENTRE	**CALGARY**
APPLICANTS	**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* RSC 1985, c. C-36, as amended** **AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF WALLACE & CAREY INC., LOUDON BROS LIMITED and CAREY MANAGEMENT INC.**
DOCUMENT	**FIRST REPORT OF THE MONITOR** **JUNE 28, 2023**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**<u>MONITOR</u>** KSV Restructuring Inc. 220 Bay Street, Suite 1300, Box 20 Toronto, Ontario M5J 2W4 Attention: Bobby Kofman / David Sieradzki / Jason Knight Telephone: 416.932.6228 / 416.932.6030 / 587.287.2605 Facsimile: 416.932.6266 Email: bkofman@ksvadvisory.com / dsieradzki@ksvadvisory.com / jknight@ksvadvisory.com **<u>MONITOR'S COUNSEL</u>** Cassels Brock & Blackwell LLP Bankers Hall West Suite 3810, 3rd Street SW Calgary, Alberta T2P 5C5 Attention: Jeffrey Oliver / Jane Dietrich Telephone: 403.351.2921 / 416.860.5223 Facsimile: 403.648.1151 Email: joliver@cassels.com / jdietrich@cassels.com

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1.0 Introduction

1. Pursuant to an order (the "**Initial Order**") issued by the Court of King's Bench of Alberta (the "**Court**") on June 22, 2023 (the "**Filing Date**"), Wallace & Carey Inc. ("**Wallace & Carey**"), Loudon Bros Limited ("**Loudon Bros**", and together with Wallace & Carey, the "**Logistics Companies**") and Carey Management Inc. ("**CMI**", and together with the Logistics Companies, the "**Applicants**") were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), and KSV Restructuring Inc. ("**KSV**") was appointed monitor of the Applicants (in such capacity, the "**Monitor**").

2. The comeback application (the "**Comeback Application**") is scheduled to be heard on June 30, 2023.

3. The principal purposes of these CCAA proceedings are to create a stabilized environment to enable the Applicants to continue to operate in the normal course while completing and implementing certain strategic restructuring initiatives with the objective of putting forward a plan of arrangement ("**Plan**") to their creditors.

4. Pursuant to the terms of the Initial Order, *inter alia*, the Court:

   a) granted a stay of proceedings in favour of the Applicants and their directors and officers (the "**Stay of Proceedings**") to and including July 1, 2023 (the "**Stay Period**");

   b) approved the Applicants' continued use of the Cash Management System (defined herein);

   c) granted charges on all of the Applicants' current and future assets, property and undertaking (collectively, the "**Property**") in the following amounts and priority:

      i. first, a charge in the amount of $250,000 in favour of the Applicants' legal counsel (Miller Thomson LLP), the Monitor, and the Monitor's legal counsel (Cassels Brock & Blackwell LLP ("**Cassels**")) to secure the fees and disbursements of those persons (the "**Administration Charge**");

ii. second, a charge in the amount of $55 million plus interest, fees and expenses for all post-filing advances (the "**Lender Priority Charge**") made by Canadian Imperial Bank of Commerce ("**CIBC**") under the existing CIBC Credit Agreement (as defined in the Initial Order), as amended pursuant to the terms of a Forbearance Agreement dated June 22, 2023 (the "**Forbearance Agreement**");

iii. third, a charge in the amount of $3.33 million in favour of the directors and officers of the Applicants (the "**D&O Charge**"); and

iv. fourth, a charge in the amount of $18 million in favour of provincial and territorial authorities in respect of the amounts required to be remitted by the Logistics Companies under the *Tobacco Tax Act*, RSA 2000, c. T-4 or under any other applicable provincial legislation or laws (the "**Tobacco Tax Charge**", and collectively with the Lender Priority Charge, the Administration Charge and the D&O Charge, the "**Initial Order Charges**"); and

d) permitted the Logistics Companies to pay certain pre-filing tobacco tax obligations pursuant to the Tobacco Tax Payment Plans (as defined in the Initial Order), subject to first obtaining the Monitor's consent.

5. On June 27, 2023, the Applicants filed materials to amend and restate certain terms and provisions of the Initial Order at the Comeback Application, including:

a) an extension of the Stay of Proceedings to September 20, 2023 (the "**Stay Extension**");

b) an increase in the maximum amount of the following Initial Order Charges:

i. Administration Charge to $750,000;

ii. D&O Charge to $4 million; and

iii. Tobacco Tax Charge to $26 million.

The increased Initial Order Charges, including the unchanged Lender Priority Charge, are collectively referred to as the "**CCAA Charges**".

6. KSV is filing this first report (the "**First Report**") as the Monitor.

1.1 Purposes of this First Report

1. The purposes of this First Report are to:

   a) provide the Court with an update on the Applicants' and the Monitor's activities since the issuance of the Initial Order; and

   b) discuss and provide the Monitor's recommendations regarding the:

      i. Stay Extension to September 20, 2023; and

      ii. increases in the maximum amount of the Administration Charge, D&O Charge, and Tobacco Tax Charge.

1.2 Scope and Terms of Reference

1. In preparing this First Report, the Monitor has relied upon the Applicants' unaudited financial information, books and records, and discussions with the Applicants' management and legal counsel.

2. The Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the financial information relied on to prepare this First Report in a manner that complies with Canadian Auditing Standards ("**CAS**") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.

3. An examination of the Cash Flow Forecast (as defined herein), as outlined in the Chartered Professional Accountants of Canada Handbook has not been performed. Future oriented financial information relied upon in this First Report is based upon the Applicants' assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Monitor expresses no opinion or other form of assurance on whether the Cash Flow Forecast will be achieved.

1.3 Currency

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

2.0 Background

1. CMI is an Alberta corporation and the sole shareholder of Wallace & Carey, which is the sole shareholder of Loudon Bros. In addition to the Logistics Companies, CMI has ownership interests in nine other entities, none of which are subject to these proceedings (collectively with the Applicants, the "**Carey Group**").

2. Wallace & Carey is an Alberta corporation that is extra-provincially registered to conduct business in most provinces and territories in Canada. Wallace & Carey operates from nine leased warehouses.

3. Loudon Bros, located in Thunder Bay, Ontario, is an Ontario corporation that is wholly owned by Wallace & Carey. Loudon Bros is managed by Wallace & Carey and operates as its Northwestern Ontario branch. The business, assets and financial results of Loudon Bros are consolidated as part of Wallace & Carey for the purposes of the Logistics Companies' annual audited financial statements.

4. Together, the Logistics Companies operate as a distribution and logistics business that supplies and distributes more than 7,500 different products to approximately 7,000 customer locations across the country.

5. The Logistics Companies employ more than 600 full-time and 50 part-time employees. CMI has three employees, including Patrick Carey and Daniel Elrod, the Chief Executive Officer of CMI.

6. CIBC provides CMI with a revolving asset-based loan facility (the "**CIBC Facility**"), which is guaranteed by the Logistics Companies and various other entities within the CMI Group. CMI uses a centralized cash management system (the "**Cash Management System**"), wherein the Applicants draw funds from the CIBC Facility based on a weekly calculation of their eligible accounts receivable and inventory, net of certain reserves.

7. Affidavit No. 1 of Brian Birnie, Senior Vice President of Finance & Corporate Development of the Applicants, and Chief Financial Officer of Wallace & Carey, sworn June 21, 2023 in support of the CCAA application (the "**First Birnie Affidavit**"), provides, *inter alia*, background information concerning the Applicants, their respective businesses, as well as the reasons for the commencement of these proceedings.

8. Mr. Birnie has sworn Affidavit No. 2 of Brian Birnie (the “**Second Birnie Affidavit**”), which provides support for the relief being sought by the Applicants at the Comeback Application.

9. KSV’s pre-filing report dated June 22, 2023 (the “**Pre-Filing Report**”) provides additional background information about these proceedings. Among other things, the Pre-Filing Report includes the Applicants’ cash flow projection (the “**Cash Flow Forecast**”) for the period June 18 to September 30, 2023 (the “**Initial Forecast Period**”). The Court materials filed in these proceedings, including the First Report and Pre-Filing Report, are available on the Monitor’s case website at www.ksvadvisory.com/experience/case/wallace-and-carey.

3.0 Update on the Applicants’ Activities since the Filing Date

1. Since the Filing Date, the Applicants have, among other things:

   a) continued to operate the Logistics Companies in the ordinary course, subject to the restrictions contained in the Initial Order;

   b) engaged with the Monitor concerning all aspects of these proceedings, including their preliminary dealings with employees, customers, and suppliers;

   c) commenced implementation of a communication plan to employees, customers and suppliers, including convening town hall meetings with employees in various of the Applicants’ locations; and

   d) communicated with suppliers to secure goods and services from and after the Filing Date.

4.0 Monitor’s Activities since the Initial Order

1. Since the Filing Date, the Monitor has, among other things:

   a) corresponded and spoken regularly with the Applicants’ management team regarding all aspects of these proceedings;

   b) attended employee town-hall meetings conducted virtually and at the Applicants’ Calgary offices;

c) prepared the notice to the Applicants' creditors (the "**Creditors' Notice**"), as required pursuant to the CCAA;

d) mailed the Creditors' Notice and filed Forms 1 and 2 with the Office of Superintendent of Bankruptcy, as required under the CCAA;

e) posted the Creditors' Notice, list of creditors, and other documents on the Monitor's website;

f) arranged for the publication of the CCAA notice in *The Globe and Mail* (National Edition) and *Calgary Herald* in accordance with the Initial Order;

g) monitored the Applicants' receipts and disbursements;

h) assisted the Applicants in their discussions with suppliers, customers, and employees;

i) engaged with Cassels, Miller Thomson LLP, and Norton Rose Fulbright LLP (CIBC's legal counsel) regarding various matters relating to these proceedings;

j) reviewed and commented on the Applicants' materials to be filed in support of the relief to be sought at the Comeback Application; and

k) prepared this First Report.

5.0 Increases in Certain Court Ordered Charges

5.1 Administration Charge

1. The Initial Order granted a $250,000 Administration Charge to secure the fees and expenses of the Monitor, its counsel, and the Applicant's counsel to the Comeback Application.

2. The Applicants seek to increase the Administration Charge to $750,000.

3. The Administration Charge is a customary provision in an initial order in a CCAA proceeding; it is required to provide security to the professionals engaged to assist a debtor company and to protect them if the debtor is unable to pay professional fees and costs during the CCAA process.

4. The Applicants have worked with their legal counsel and KSV to estimate the proposed amount of the Administration Charge.

5. KSV believes that the Administration Charge in the amount of $750,000 is reasonable and appropriate in the circumstances given the complexities of the Applicants' proceedings and liquidity position. Accordingly, the professionals require the benefit of the Administration Charge to protect them for the fees incurred prior to the Comeback Application, as well as for their fees and costs that will be incurred during these proceedings. Without such protection, the professionals are unlikely to be prepared to continue to provide services in these proceedings.

5.2 D&O Charge

1. The Applicants are seeking to increase the D&O Charge in an amount not to exceed $4 million (previously, $3.33 million). The amount of the D&O Charge was estimated by the Applicants in consultation with KSV, taking into consideration the potential exposure of the directors and officers for GST/PST/HST, vacation pay, employee wages and source deductions. The amount of the D&O Charge represents the sum of:

   a) the estimated maximum balance of sales taxes payable during the Initial Forecast Period ($1.11 million);

   b) one payroll cycle (inclusive of source deductions) ($1.33 million); and

   c) the estimated amount of the Applicants' vacation pay owing to employees as at the date of the Initial Order ($1.56 million).

2. The Cash Flow Forecast contemplates that payroll and sales taxes will continue to be paid in the ordinary course. The proposed D&O Charge provides protection for the Applicants' directors and officers should the Applicants fail to pay certain obligations which may give rise to liability for directors and officers.

3. For the reasons provided in the Pre-Filing Report, the Monitor is of the view that the amount of the D&O Charge is reasonable and appropriate, including that the Applicants do not have D&O insurance. Accordingly, the D&O Charge provides directors and officers with the security they require if the liabilities above are not paid.

5.3 Tobacco Tax Charge

1. The Initial Order granted a $18 million Tobacco Tax Charge, representing the estimated tobacco taxes outstanding during the initial 10 days of the proceedings.

2. The Applicants seek to increase the Tobacco Tax Charge to $26 million, representing the maximum tobacco taxes outstanding during the Initial Forecast Period.

3. Given that the proposed amended and restated initial order (the "**ARIO**") imposes a stay of proceedings against the provinces and territories, the creation of the Tobacco Tax Charge provides security to the provinces and territories for collected but unremitted tobacco taxes.

4. For the reasons provided in the Pre-Filing Report and in paragraph 5.2.3 above, the Monitor believes that the Tobacco Tax Charge is reasonable – it will facilitate the continued assistance and involvement of the Applicants' directors and officers for the benefit of this restructuring.

5. As discussed in the Pre-Filing Report, and pursuant to the Initial Order, the Tobacco Tax Charge ranks subordinate to the existing security securing the pre-filing obligations owing under the CIBC Credit Agreement. Based on the terms of the Forbearance Agreement and Cash Flow Forecast, the pre-filing amounts owing under the CIBC Facility are projected to be fully repaid by the end of the second week of these proceedings given that post-filing receipts are to be applied against the pre-filing amounts owing under the CIBC Facility.

6. The Monitor is also of the view that increase in the maximum amount of the Tobacco Tax Charge is reasonable and appropriate as it represents the projected maximum amount owing by the Logistics Companies for tobacco taxes during the Initial Forecast Period.

5.4 Priority of Charges

1. The proposed ARIO contemplates granting of the CCAA Charges in the following maximum amounts and priorities:

    a) first, the Administration Charge ($750,000);

    b) second, the Interim Lender's Charge ($55 million);

    c) third, the D&O Charge ($4 million);

d) fourth, the existing security for the pre-filing obligations owing under the CIBC Credit Agreement; and

e) fifth, the Tobacco Tax Charge ($26 million).

2. The Monitor is supportive of the granting and priority of the CCAA Charges for the reasons provided in the Pre-Filing Report.

3. Further, due to the short amount of notice of the June 22nd application, paragraph 41 of the Initial Order carves out from the priority of the Lender Priority Charge security registrations in relation to equipment leased from equipment lessors. The proposed ARIO sought by the Applicants would extend the priority of the Lender Priority Charge to such equipment. The Applicants are currently discussing that relief with CIBC and other beneficiaries of the Charges.

6.0 Stay Extension

1. The Stay Period currently expires on July 1, 2023. The Applicants are requesting an extension of the Stay Period until September 20, 2023.

2. As outlined in the Pre-Filing Report, pursuant to the Forbearance Agreement, the Applicants are required to adhere to various restructuring milestones. A copy of the Forbearance Agreement is attached to the Second Birnie Affidavit. Among other milestones, the Forbearance Agreement requires that the Applicants submit and file a Plan with the Court by no later than 90 days after the date of the Initial Order (i.e., September 20, 2023) (the "**Plan Filing Date**"). Accordingly, to save the costs of applications to extend the stay of proceedings prior to the Plan Filing Date, the Applicants are seeking an extension to correspond with same. In the event the Applicants are unable to satisfy certain other milestones preceding the Plan Filing Date, it may be necessary for the Applicants to seek other relief prior to the end of the Stay Extension.

3. The Monitor supports the Stay Extension for the following reasons, among others:

a) the Applicants are acting in good faith and with due diligence to advance its restructuring;

b) the Stay Extension will allow the Applicants to develop a Plan between one or more classes of their secured and/or unsecured creditors;

c) CIBC, the Applicants' largest secured creditor, is supportive of the Stay Extension;

d) the Monitor does not believe that any creditor will be materially prejudiced if the Stay Extension is granted;

e) as of the date of this First Report, neither the Applicants nor the Monitor is aware of any party opposed to the requested extension; and

f) pursuant to the Cash Flow Forecast, the Applicants are projected to have sufficient liquidity to continue to operate during the Initial Forecast Period.

7.0 Conclusion and Recommendation

1. Based on the foregoing, KSV respectfully recommends that this Court grant the relief sought by the Applicants at the Comeback Application.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

KSV RESTRUCTURING INC.,
in its capacity as monitor of
Wallace & Carey Inc., Loudon Bros Limited, and Carey Management Inc.
and not in its personal capacity