



No. S117081  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1984, c. C-36, as amended

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57

AND

**IN THE MATTER OF STERLING SHOES INC. and STERLING SHOES GP INC.**

**NOTICE OF APPLICATION**

**Name of applicant:** Alvarez & Marsal Canada Inc. (the "**Monitor**")

To: The Service List as set out in Schedule "A"

TAKE NOTICE that an application will be made by the Monitor to Mr. Justice Pearlman at the courthouse at 800 Smithe Street, Vancouver, British Columbia on Friday, November 28, 2014 at 9:30 a.m. for the orders set out in Part 1 below.

**Part 1 ORDERS SOUGHT**

1. An order abridging the time for service of this Notice of Application and the materials herein such that the application is properly returnable on November 28, 2014.
2. An order authorizing the Monitor to file with Canada Revenue Agency ("**CRA**") income tax returns on behalf of Sterling Shoes Inc. for the years ending December 31, 2012 and December 31, 2013;
3. An order approving the activities of the Monitor as detailed in the Monitor's Fifteenth Report to the Court dated November 21, 2014 (the "**Fifteenth Report**");
4. An order approving the fees and disbursements of the Monitor and its legal counsel, as set out in the Fifteenth Report;
5. An order authorizing the Monitor, after payment of the fees and disbursements of the Monitor as approved by this Court, to distribute all funds remaining in its hands (the

**“Residual Funds”**) to the creditors of Sterling Shoes GP Inc. and Sterling Shoes Limited Partnership holding individual claims in excess of \$4,600; and

6. An order releasing the Monitor and any director, officer or employee of the Monitor (collectively, the **“Released Parties”**) from any and all liability that the Released Parties or any of them now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of the Monitor in relation to the Monitor’s capacity as monitor in these proceedings, including but not limited to the acts of the Monitor detailed in the Fifteenth Report,

all substantially as set out in the form of order attached hereto as Schedule “B”.

## **Part 2 FACTUAL BASIS**

1. On October 21, 2011, Madam Justice Brown granted the Initial Order pursuant to the *Companies’ Creditors Arrangement Act* (**“CCAA”**).
2. On April 2, 2012, this Court made an Order (the **“Claims Process Order”**) approving, among other things, a claims process (the **“Claims Process”**) for the determination of the nature and quantum of claims against the Petitioners and Sterling Shoes Limited Partnership (the **“Partnership”**, and collectively with the Petitioners, the **“Company”**).
3. On December 12, 2012, this Court made an Order (the **“Distribution Order”**) permitting the Company to make one or more distributions to creditors of Sterling Shoes GP Inc. and the Partnership.
4. On January 23, 2013, this Court ordered that the Monitor be fully authorized and empowered to manage and carry on all aspects of the business, financial affairs and operations of the Company, including by taking any steps as, in the sole opinion of the Monitor, are necessary and appropriate to complete the Claims Process, to make distributions to creditors in accordance with the Distribution Order, and to allow the Monitor to discharge or exercise its rights, powers or duties, or to complete the administration of these proceedings.
5. On June 27, 2013, this Court extended the stay of proceedings provided for in the Initial Order (and extended by subsequent Orders) to August 30, 2013.
6. On July 31, 2013, this Court made an Order (the **“Discharge Order”**) approving the activities of the Monitor as detailed in the Monitor’s Fourteenth Report to the Court dated July 26, 2013 (the **“Fourteenth Report”**), approving the Monitor’s fees and disbursements (including those of its legal counsel), authorizing the Monitor to distribute all remaining funds to the creditors of Sterling Shoes GP Inc. and the Partnership, discharging the Monitor, and releasing the Monitor (and its directors, officers and employees) from any liability in respect of the Monitor’s acts or omissions in its capacity as monitor in these proceedings.

7. During the period from July 26, 2013 (the date of the Fourteenth Report) to November 20, 2014, the Monitor has:
- (a) finalized various documents and matters relating to the second distribution to creditors, representing approximately 20% of their Allowed Claims (the “**Second Distribution**”), paid in September 2013 (aggregate cash distribution of \$4.8 million);
  - (b) dealt with various enquiries from shareholders, debenture holders and creditors;
  - (c) had discussions with Town Shoes Limited (“**Town Shoes**”) in relation to various outstanding issues, including Town Shoes’ potential claim against the directors of Sterling Shoes Inc.;
  - (d) dealt with CRA in relation to its claim, the filing of corporate income tax returns on behalf of Sterling Shoes Inc., and various other matters;
  - (e) dealt with funds held in trust accounts by various lawyers;
  - (f) dealt with banking matters, including outstanding cheques, bank reconciliations, and reissuance of lost and stale-dated cheques, and followed up with creditors in relation to outstanding cheques;
  - (g) collected remaining amounts due to the Company and arranging for payment of outstanding amounts owed by the Company;
  - (h) prepared regular GST returns;
  - (i) had discussions with the Company’s payroll services provider with respect to the issuance of 2013 T4s to employees and directors of the Company; and
  - (j) prepared for a final distribution the creditors and concluding the administration of this matter.

Further particulars of the activities of the Monitor are set out in the Fifteenth Report.

8. The last complete income tax returns filed by the Petitioners and the Partnership were for the year ended December 31, 2011.
9. CRA has issued notices to Sterling Shoes Inc. of the requirement to file corporate income tax returns for the years ended December 31, 2012 and December 31, 2013 which was the final year of operations. The Monitor is in a position to prepare and file the income tax returns and holds sufficient funds to cover the associated costs.
10. CRA has confirmed to the Monitor that there is no requirement to file any additional income tax returns for Sterling GP Inc. or the Partnership.

11. At the time of the Fourteenth Report, the Monitor had anticipated that the Second Distribution would be the final distribution to creditors in these CCAA proceedings. However, since then the Monitor has collected some further amounts (including funds held by landlords and in lawyers' trust accounts on behalf of the Company).
12. As at October 31, 2014, the Monitor had cash in its possession in the amount of approximately \$162,000 (the "**Available Funds**"), of which the Monitor estimates \$50,000 will be available for a final distribution to creditors of Sterling Shoes GP Inc. and the Partnership, resulting in payments of approximately 0.22% of creditors' Allowed Claims.
13. On this basis, the Monitor estimates that creditors with claims of \$4,600 or less would receive distributions of less than \$10 each. Of a total of 608 creditors, 272 creditors hold individual claims of \$4,600 or less, and the aggregate final distribution to those creditors (if made) would be approximately \$800, or \$3 per creditor on average.
14. Given the costs of preparing and distributing cheques to creditors and following up on uncashed cheques, the Monitor proposes that the final distribution be made only to those creditors with individual claims greater than \$4,600.
15. Since the commencement of these proceedings, the Company has had total receipts of \$96.8 million from sales of goods, liquidation proceeds and the sale of certain assets to Town Shoes. Total operating expenses were \$62.7 million, result in a net cash flow from operations of \$34.2 million. Further particulars of the Company's receipts and disbursements are set out in the Fifteenth Report.
16. In the Fourteenth Report, the Monitor estimated that it and its counsel, Fasken Martineau DuMoulin LLP ("**Fasken**"), would incur fees and disbursements of approximately \$90,000 (exclusive of applicable taxes) from and including July 1, 2013 to make the Second Distribution, deal with various queries and finalize the administration of these proceedings.
17. For the period from July 1, 2013 to the date of the Fifteenth Report, the Monitor and Fasken have billed (and been paid) professional fees of approximately \$75,000, and have incurred but not billed further fees and disbursements of \$15,000.
18. Given the Monitor's activities set out in the Fifteenth Report, and the further activities which the Monitor seeks the Court's authorization to carry out, the Monitor and Fasken now estimate that they will incur additional professional fees of \$60,000 (exclusive of applicable taxes) to the conclusion of these proceedings. These additional fees relate to the time required to deal with the following matters which were not anticipated at the time of the Fourteenth Report:
  - (a) issues relating to Town Shoes' potential claim against the Former Directors and the return of payroll remittances incorrectly remitted to Town Shoes' payroll account;

- (b) dealing with outstanding administrative issues, such as the collection of refunds from landlords for common area maintenance charges and issuing replacements for stale-dated cheques;
- (c) dealing with CRA in relation to its claim and the requirement to file the 2012 and 2013 tax returns for Sterling Shoes Inc.; and
- (d) preparing for and implementing the additional, previously unanticipated distribution to creditors,

(collectively, the “**Additional Tasks**”).

19. Therefore, the Monitor proposes that the sum of \$75,000 be paid from the Available Funds on account of the as yet unbilled \$15,000, and the anticipated additional \$60,000, professional fees and disbursements.
20. The Monitor seeks a release from any liability that the Released Parties may have arising out of its activities relating to the Additional Tasks. The Monitor is seeking the release on the basis that:
  - (a) the Monitor’s powers were expanded by this Court (and are sought to be further expanded) to encompass the performance of activities previously undertaken by the Company’s officers and directors, all of whom resigned in or around December 2012 and January 2013; and
  - (b) the Monitor has been involved, directly and indirectly, in the determination of numerous high value creditor claims, some of which involved contentious negotiations, has completed the liquidation of the Company’s assets, and made materials distributions to unsecured creditors during the course of these proceedings.

### **Part 3 LEGAL BASIS**

1. The *Companies’ Creditors Arrangement Act*, R.S.C. 1984, c. C-36, including section 11 thereof.
2. Rule 8-1 of the *Supreme Court Civil Rules*.
3. The Monitor is in a position to prepare and file the 2012 and 2013 income tax returns for Sterling Shoes Inc., and holds sufficient funds to cover the associated costs. However, it does not have the express authority to do so. In the circumstances, and in light of the notices received by Sterling Shoes Inc. from CRA, the Monitor seeks the Court’s authority to prepare and file the relevant income tax returns.
4. In light of the additional funds it holds, which were not anticipated at the time of the Discharge Order, the Monitor submits that it is appropriate that it be authorized to make a third and final distribution to certain creditors of Sterling Shoes GP Inc. and the Partnership. Given the costs associated with issuing, mailing and tracking cheques, and

the relatively small amount of the proposed distribution (particularly in light of the significant previous distributions), the Monitor further submits that it is appropriate that distributions only be made to those creditors with Allowed Claims greater than \$4,600.

5. The Initial Order contemplated the Monitor passing its accounts summarily on application to this Court. The Monitor seeks the approval of its fees and disbursements, and those of its legal counsel, relating to the Additional Tasks on a summary basis.

**Part 4 MATERIAL TO BE RELIED ON**

1. Fifteenth Report of the Monitor dated November 21, 2014;
2. All pleadings had and taken herein; and
3. Such further and other materials as counsel may advise and the Court may permit.

The Monitor estimates that the application will take 15 minutes.

This matter is not within the jurisdiction of a master. Mr. Justice Pearlman is seized of this matter.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) service on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed Application Response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: 21-Nov-2014

*Vicki Tickle*

Signature of Vicki Tickle  
Lawyer for the Monitor, Alvarez & Marsal  
Canada Inc.

***To be completed by the court only:***

Order made

☐ in the terms requested in paragraphs ..... of Part 1 of  
this Notice of Application

☐ with the following variations and additional terms:

.....  
.....  
.....

Date:

.....

Signature of ☐ Judge ☐ Master

The Solicitors for the Monitor, Alvarez & Marsal Canada Inc., are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 2900 - 550 Burrard Street, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232. (Reference: Vicki Tickle/285937.00003)

## **APPENDIX**

### **THIS APPLICATION INVOLVES THE FOLLOWING:**

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts



**Schedule "A"**

**SERVICE LIST**

**IN THE MATTER OF THE CCAA, THE BUSINESS CORPORATIONS ACT  
AND STERLING SHOES INC. AND STERLING SHOES G.P. INC.**

<p><i>Counsel for the Petitioners</i>  <b>Blake, Cassels &amp; Graydon LLP</b>  Attention: Peter L. Rubin  Kim Grierson  Email: peter.rubin@blakes.com  kim.grierson@blakes.com</p>	<p><i>Counsel for the Bank of Montreal</i>  <b>Gowlings</b>  Attention: Colin D. Brousson  David Cohen  Email: colin.brousson@gowlings.com  david.cohen@gowlings.com</p>
<p><i>Monitor</i>  <b>Alvarez &amp; Marsal Canada Inc.</b>  Attention: Todd M. Martin  Callum Beveridge  Email: tmartin@alvarezandmarsal.com  cbeveridge@alvarezandmarsal.com</p>	<p><i>Counsel for the Monitor</i>  <b>Fasken Martineau</b>  Attention: Kibben Jackson  Vicki Tickle  Email: kjackson@fasken.com  vtickle@fasken.com</p>
<p><i>Counsel for BII Acquisition Inc.</i>  <b>Borden Ladner Gervais LLP</b>  Attention: Magnus C. Verbrugge  Email: mverbrugge@blg.com</p>	<p><i>BII Acquisition Inc.</i>  <b>Belcorp Group Of Companies</b>  Attention: Randy Smith  Email: rsmith@belcorp.com</p>
<p><i>Counsel for Ivanhoe Cambridge</i>  <b>McCarthy Tetrault</b>  Attention: Warren Milman  Email: wmilman@mccarthy.ca</p>	<p><i>Sports Industry Credit Association (Footwear Credit Group)</i>  Attention: William Anidjar  Email: william@sica.ca</p>
<p><i>Counsel for The Cadillac Fairview Corporation Limited</i>  <b>Torys LLP</b>  Attention: David Bish  Email: dbish@torys.com</p>	<p><i>The Clarks Companies</i>  <b>Clarks, Bostonian, Indigo, Privo</b>  Attention: Dan Logan, Credit Manager  Email: dan.logan@clarksna.com</p>
<p><i>Counsel for Morguard Investments Limited, Morguard Real Estate Investment Trust, Primaris Retail Estate Investment Trust, 20 VIC Management Inc., Oxford Properties Group Inc. and Retrocom Mid-Market REIT</i>  <b>Alexander Holburn Beaudin &amp; Lang LLP</b>  Attention: Sharon Urquhart  Email: surquhart@ahbl.ca</p>	<p><i>Western Compensation &amp; Benefits Consultants</i>  Attention: Barry Cook  Email: barry_cook@wcbc.ca</p>

<i>Counsel for MC Leaseholds Ltd.</i> <b>Borden Ladner Gervais LLP</b> Attention: Blair A. Rebane Email: brebane@blg.com	<i>Counsel for adidas AG</i> <b>Gowlings</b> Attention: Martha J. Savoy Email: martha.savoy@gowlings.com
<i>Counsel for Rocket Dog Brands LLC</i> <b>Goodmans LLP</b> Attention: Brian F. Empey Email: bempey@goodmans.ca	<i>Counsel for Canada Revenue Agency</i> <b>Department Of Justice Canada</b> Attention: Kirat K. Khalsa Email: kirat.khalsa@justice.gc.ca
<i>Counsel for Jackson Lam and Yvonne Yee Wan Lau, Landlords</i> <b>Miller Thomson</b> Attention: Gordon Plottel Email: gplottel@millerthomson.com	<i>Counsel for the Directors of Sterling Shoes Inc. and Sterling Shoes GP Inc.</i> <b>Davis LLP</b> Attention: Mary I.A. Buttery Email: mbuttery@davis.ca
<b>Shaw Cablesystems G.P.</b> Attention: Sandra Bazian Email: sandra.bazian@sjrb.ca	<i>Counsel for Town Shoes Limited</i> <b>Torys LLP</b> Attention: Lee J. Cassey Email: lcassey@torys.com
<i>Counsel for Peritas Solutions Ltd.</i> <b>Carscallen LLP</b> Attention: Brent Robinson Email: robinson@carscallen.com	<i>Counsel for Vanprop Investments Ltd.</i> <b>Bull Housser Tupper LLP</b> Attention: Decatur Howe Email: cdh@bht.com
<i>Counsel for Dave Alves</i> <b>Yeager &amp; Company</b> Attention: Robert Yeager Email: ryeager@dismissal.ca	

**Schedule “B”**  
**FORM OF ORDER**

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1984, c. C-36, as amended

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57

AND

**IN THE MATTER OF STERLING SHOES INC. and STERLING SHOES GP INC.**

**ORDER MADE AFTER APPLICATION**

	)		)
	)		)
BEFORE	)	THE HONOURABLE	)
	)	MR. JUSTICE PEARLMAN	)
	)		)
	)		)
	)		)

November 28, 2014

ON THE APPLICATION OF Alvarez & Marsal Canada Inc., in its capacity as Monitor (the "**Monitor**") coming on for hearing at Vancouver, British Columbia on November 28, 2014 and on hearing Vicki Tickle, counsel for the Monitor, and those counsel listed in Schedule "A" hereto, and upon reading the materials filed, including the Fifteenth Report of the Monitor dated November 21, 2014 (the "**Fifteenth Report**");

THIS COURT ORDERS that:

1. The time for service of the Notice of Application and the materials referred to therein be and is hereby abridged and the Notice of Application is properly returnable today.
2. The Monitor be and is hereby authorized to prepare and file with Canada Revenue Agency income tax returns on behalf of Sterling Shoes Inc. for the years ending December 31, 2012 and December 31, 2013.
3. The activities of the Monitor as described in the Fifteenth Report are hereby approved.

4. The fees and disbursements of the Monitor and its legal counsel, Fasken Martineau DuMoulin LLP ("**Fasken Martineau**"), of up to the combined sum of \$60,000 plus applicable taxes, are hereby approved.
5. After payment of the fees and disbursements of the Monitor and Fasken Martineau as herein approved, the Monitor is authorized, in its sole discretion, to distribute all funds remaining in its hands to the creditors of Sterling Shoes GP Inc. and Sterling Shoes Limited Partnership holding individual claims in excess of \$4,600.
6. Alvarez & Marsal Canada Inc. and any director, officer or employee of the Monitor (collectively, the "**Released Parties**") are hereby released and discharged from any and all liability that the Released Parties now have or may hereafter have by reason of, or in any way arising out of, the acts or omissions of the Released Parties in relation to Alvarez & Marsal Canada Inc.'s capacity as Monitor herein, including but not limited to the acts of the Monitor detailed in the Fifteenth Report. Without limiting the generality of the foregoing, the Released Parties are hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, within the proceedings herein.
7. Endorsement of this Order by counsel appearing on this application, except counsel for the Monitor, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

\_\_\_\_\_  
Signature of Vicki Tickle  
Lawyer for the Monitor, Alvarez & Marsal Inc.

BY THE COURT

\_\_\_\_\_  
REGISTRAR

**SCHEDULE "A"**

**List of Counsel**

Name	Party

No. S117081  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

AND

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1984, c. C-36, as amended

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS  
ACT*, S.B.C. 2002, c. 57

AND

IN THE MATTER OF STERLING SHOES INC. and  
STERLING SHOES GP INC.

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**ORDER MADE AFTER APPLICATION**

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**FASKEN MARTINEAU DUMOULIN LLP**

Barristers and Solicitors  
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+1 604 631 3131

Counsel: Vicki Tickle  
Matter No: 285937.00003