

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MR.

)

FRIDAY, THE 3rd

)

JUSTICE MCEWEN

)

DAY OF JUNE, 2022

B E T W E E N:

CORNER FLAG LLC

Applicant

– and –

ERWIN HYMER GROUP NORTH AMERICA, INC.

Respondent

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, as amended, and under section 101 of the *Courts of Justice Act*,
R.S.O. 1990, c. C.43**

ORDER

(Settlement Approval, Distribution, Receiver Discharge and Related Relief)

THIS MOTION made by Alvarez & Marsal Canada Inc., in its capacity as the court-appointed receiver and manager (the “**Receiver**”) without security of all of the assets, undertakings and properties of Erwin Hymer Group North America, Inc. (the “**Receivership Proceedings**”), for an Order (i) approving the Minutes of Settlement (the “**Insurance Settlement**”) between the Receiver and Chubb Insurance Company of Canada as described in the Fourth Report of the Receiver dated May 26, 2022 (the “**Fourth Report**”); (ii) authorizing the Receiver to make a further distribution or distributions to EHG SE in its capacity as a secured

creditor of EGH NA; (iii) approving the fees and disbursements of the Receiver for the period December 1, 2019 to April 23, 2022 and those of its counsel, Osler, for the period December 1, 2019 to May 19, 2022; (iv) approving the Fourth Report and the activities of the Receiver described herein; and (v) approving the discharge of the Receiver upon the filing of a Discharge Certificate with this Court certifying that the Insurance Settlement has been concluded, the distribution(s) to EHG SE have been made and any other ancillary tasks to conclude the Receivership Proceedings have been completed by the Receiver, was heard this day by Judicial video conference via Zoom at Toronto, Ontario.

ON READING the Fourth Report, the Affidavit of Alan J. Hutchens sworn May 26, 2022 (the “**Hutchens Affidavit**”), the Affidavit of Tracy C. Sandler sworn May 26, 2022 (the “**Sandler Affidavit**”) and on hearing the submissions of counsel for the Receiver and no one else appearing although duly served as appears from the Affidavit of Service of Pina Macri sworn May 27, 2022, filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the timing and method of service of the Notice of Motion and Motion Record be and are hereby abridged and validated, and this motion is properly returnable today.
2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Fourth Report.

SETTLEMENT APPROVAL

3. **THIS COURT ORDERS** that the Minutes of Settlement between the Receiver and Chubb Insurance Company of Canada as described in the Fourth Report and attached as Appendix “H” thereto are hereby approved.

DISTRIBUTION TO EHG SE

4. **THIS COURT ORDERS** that the Receiver be and is hereby authorized, in its discretion and without further Order of the Court, to distribute to EHG SE, in one or more distributions, up to the full amount of the indebtedness owing by Erwin Hymer Group North America to EHG SE under the TD Loan Agreement and the EHG SE Payroll Advance from the Net Proceeds or other amounts held by the Receiver, provided that, in the event that any amounts are received by the Receiver in respect of the MBFS US Financed Collateral subject to MBFS US’ proven claim, such amounts shall first be distributed to MBFS US.

5. **THIS COURT ORDERS** that notwithstanding the pendency of these proceedings, the payments and distributions contemplated in this Order, are made free and clear of any claims and encumbrances of whatsoever nature, are binding on the trustee in bankruptcy appointed in respect of the Debtor, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any applicable federal or provincial legislation, as against EHG SE, and shall not constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

RECEIVER'S ACTIVITIES AND REPORT

6. **THIS COURT ORDERS** that the Fourth Report, and the activities and conduct of the Receiver described therein, be and are hereby approved.

FEES

7. **THIS COURT ORDERS** that the fees and disbursements of the Receiver in the amount of \$217,996.68 (for the period from December 1, 2019 to April 23, 2022 inclusive, and including Harmonized Sales Tax), as set out in the Hutchens Affidavit and the Fourth Report, are hereby approved.

8. **THIS COURT ORDERS** that the fees and disbursements of Osler, Hoskin & Harcourt LLP, in its capacity as counsel to the Receiver, in the amount of \$438,184.84 (for the period from December 1, 2019 to May 19, 2022 inclusive, and including Harmonized Sales Tax), as set out in the Sandler Affidavit and the Fourth Report, are hereby approved.

RECEIVER DISCHARGE

9. **THIS COURT ORDERS** that the discharge of the Receiver upon the filing of a Discharge Certificate with this Court certifying that the settlement contemplated in the Insurance Settlement has been concluded, the distribution(s) to EHG SE have been made and any other ancillary tasks necessary to conclude the Receivership Proceedings have been completed by the Receiver is hereby approved.

GENERAL

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to

give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



CORNER FLAG LLC
Applicant

and

ERWIN HYMER GROUP NORTH AMERICA, INC.
Respondent

Court File No. CV-19-614593-00CL

3 June 22

Order to go as per the draft filed and signed.

The motion is unopposed.

The settlement, distribution, fees and the discharge provisions are all fair and reasonable, as is the related relief.

The activities of the Receiver are approved.



**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**ORDER
(Settlement Approval, Distribution,
Receiver Discharge and Related Relief)**

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