

Court File No. CV-23-00694493-00CL

**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

IN THE MATTER OF THE PLAN OF COMPROMISE OR  
ARRANGEMENT OF **BBB CANADA LTD.**

Applicant

**SUPPLEMENTARY MOTION RECORD OF THE APPLICANT**  
**(Motion for Stay Extension)**

November 30, 2023

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Court File No.: CV-23-00694493-00CL

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SUPERIOR COURT OF JUSTICE  
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**IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF BBB CANADA LTD.**

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[michael.goldberg@akerman.com](mailto:michael.goldberg@akerman.com)

Court File No. CV-23-00694493-00CL

**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

IN THE MATTER OF THE PLAN OF COMPROMISE OR  
ARRANGEMENT OF **BBB CANADA LTD.**

Applicant

**INDEX**

<b>Tab</b>		<b>Page No.</b>
1.	Affidavit of Kent Percy, sworn November 29, 2023	<b>23</b>
A.	Exhibit "A" – Printout from United States Internal Revenue Service regarding FBAR Reporting	<b>28</b>
B.	Exhibit "B" – Email correspondence between Kent Percy, BBB Canada's counsel, the Monitor and others dated September 26, 2023	<b>34</b>
C.	Exhibit "C" – Email correspondence between Kent Percy, Nate Fennema (Monitor) and others dated September 29, 2023	<b>37</b>
D.	Exhibit "D" – Plan Administrator Transition Report dated September 30, 2023 (Excerpt)	<b>40</b>
2.	Supplementary Affidavit of Michael Goldberg, sworn November 30, 2023	<b>45</b>
3.	Draft Stay Extension Order	<b>50</b>

# TAB 1

Court File No. CV-23-00694493-00CL

**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

IN THE MATTER OF THE PLAN OF COMPROMISE OR  
ARRANGEMENT OF BBB CANADA LTD.

Applicant

**AFFIDAVIT OF KENT PERCY**

I, Kent Percy, of the City of New Canaan, in the State of Connecticut, MAKE OATH AND  
SAY:

1. I am a Partner and Managing Director of AlixPartners, LLP ("**AlixPartners**") in New York City, New York. Holly Etlin, also of AlixPartners, served as the Chief Restructuring Officer and Chief Financial Officer to Bed Bath & Beyond Inc. ("**BBBI**") and its various U.S. and Canadian subsidiaries, including BBB Canada Ltd. (the "**Applicant**") and Bed Bath & Beyond Canada L.P. ("**BBB LP**", and together with the Applicant, "**BBB Canada**"), from 2022 until the Plan Implementation Date (as defined below). In its role, AlixPartners provided professional financial and related services to BBBI and its various U.S. and Canadian subsidiaries. I was a member of the AlixPartners senior advisory team that provided services to BBBI and its various U.S. and Canadian subsidiaries and as such, I have personal knowledge of the matters deposed to in this affidavit.

2. This Affidavit is made further to the direction of the Honourable Chief Justice Morawetz in his Endorsement dated November 17, 2023 that the parties involved in the transfer of

approximately \$6.1 million CAD from accounts held in Canada by BBB Canada to a US concentration account held by BBBI provide clarification regarding such events.

3. Capitalized terms used but not otherwise defined herein have the meanings given to such terms in the Affidavit of Michael Goldberg, sworn November 13, 2023 (the “**Goldberg Affidavit**”).

### **Transfer and Subsequent Distribution of BBB Canada Cash**

4. Since late March 2023, BBB Canada has been maintaining a minimum balance of at least \$6 million CAD in its bank accounts in Canada. Pursuant to paragraph 14 of the Amended and Restated Initial Order, granted February 21, 2023 (the “**ARIO**”), sweep rights granted to the senior lenders under the Amended Credit Agreement were permitted to continue in repayment of obligations under the Amended Credit Agreement, provided that, among other things, effective as of March 27, 2023, BBB Canada was to continue to hold cash in the amount of no less than \$6 million (the “**Minimum Balance**”) unless decreased by BBB Canada with the consent of the Monitor.

5. On April 23, 2023, BBBI and 73 affiliated debtors (the “**Chapter 11 Debtors**”) each filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of New Jersey (the “**US Court**”). On July 20 and 21, 2023, the Chapter 11 Debtors filed their Joint Plan of Reorganization (as subsequently amended, the “**Chapter 11 Plan**”). The Chapter 11 Plan was approved by the US Court on September 12, 2023, and became effective on September 29, 2023 (the “**Plan Implementation Date**”). On the Plan Implementation Date, Mr. Goldberg was appointed as the Plan Administrator (as defined in the Chapter 11 Plan) of the Chapter 11 Debtors to wind-down the Chapter 11 Debtors’ estates. All



remaining employees of BBBI and the other Chapter 11 Debtors were terminated or deemed terminated as of the Plan Implementation Date, including those employees who had been administering BBBI's integrated cash management system (which included the Canadian bank accounts of BBB Canada).

6. The appointment of the Plan Administrator and the deemed termination of all of the Chapter 11 Debtors' remaining employees on the Plan Implementation Date created an administrative challenge for BBBI and AlixPartners with respect to what could be done with BBB Canada's Canadian bank accounts. Upon information and belief, the Treasurer and then current management informed me that they were aware of certain potential civil and criminal penalties for foreign bank account signatories based on the Report of Foreign Bank and Financial Accounts (FBAR) on Financial Crimes Enforcement Network (FinCEN) Form 114 (the "**FBAR Report**" and the reporting therein, "**FBAR Reporting**"). Attached as **Exhibit "A"** is a printout from the United States Internal Revenue Service website discussing FBAR Reporting.

7. At all material times prior to the Plan Implementation Date, BBBI's Treasurer was the account signatory on all of BBB Canada's Canadian bank accounts. However, in light of the potential for ongoing personal liability with respect to FBAR Reporting, BBBI's Treasurer insisted that her name be removed as the authorized signatory on all foreign accounts prior to her deemed termination on the Plan Implementation Date. As none of the Canadian accounts could remain open without a replacement authorized signatory being named, this created an issue for BBBI since: (a) all employees of BBBI would be terminated or deemed terminated on the Plan Implementation Date and, as a result, no employees remained to serve in such capacity; (b) all employees of BBB Canada (including all Canadian employees) had previously been terminated in connection with the wind-down of BBB Canada; and (c) Mr. Goldberg's appointment as Plan

Administration would only become effective as of the Plan Implementation Date and so could not be added as a signatory to the BBBI accounts with sufficient lead time for bank processing.

8. In my experience, it typically takes several weeks or months to open a new account in the United States as a result of regulatory, reporting, and administrative delays. By the time the issue of the Treasurer's unwillingness to continue to serve as an account signatory on the foreign accounts came to AlixPartners' attention, there was not enough time to coordinate a new account opening in advance of the Plan Implementation Date.

9. In light of the foregoing, the only practical option was to close BBB Canada's Canadian accounts and to transfer the BBB Canada Cash to BBBI's concentration account in the United States. Accordingly, I sent an email to BBB Canada's counsel and the Monitor on September 26, 2023 to advise of BBBI's intention to close the Canadian accounts and move the BBB Canada Cash. A copy of my September 26, 2023 email is attached hereto as **Exhibit "B"**.

10. The Monitor responded to me later that day seeking confirmation that the U.S. concentration account would remain under the control of the Plan Administrator (following the Plan Implementation Date) and that the BBB Canada Cash would be subject to the Minimum Balance. On September 29, 2023, my colleague, Hart Ku, informed the Monitor that the funds were not transferred to a segregated account. In response, the Monitor inquired whether AlixPartners had included instructions with the funds transfer explaining that the BBB Canada Cash was not to be released to any of the Chapter 11 Debtors or secured creditors unless the Monitor provided its consent. A copy of the referenced email exchange dated September 29, 2023, is attached as **Exhibit "C"** to this Affidavit.

11. At various points in September and October 2023, AlixPartners provided the Plan Administrator and certain consultants engaged by the Plan Administrator with a transition report which included a note that the “CCAA has defined the Minimum Cash Balance of CAN\$6M”. A copy of the relevant page of the transition report (Page 7) is attached as **Exhibit “D”** to this Affidavit. I do not recall having any further discussions with Mr. Goldberg about the Minimum Balance or the requirement to maintain same. I did not in any way intend to contravene the terms of the ARIO or the direction of the Monitor.

12. I understand from reading the Goldberg Affidavit that substantially all of the cash commingled in the US concentration account (which included the BBB Canada Cash) was subsequently distributed to the Lenders. I further understand that BBB Canada, the Monitor and the Plan Administrator have attempted to address the situation by means of the Reimbursement Agreement. The Reimbursement Agreement is discussed further in the Goldberg Affidavit and is exhibited to the Affidavit of Joshua Foster, sworn November 16, 2023.

SWORN BEFORE ME over video  
teleconference this 29<sup>th</sup> day of November,  
2023 pursuant to O. Reg 431/20,  
Administering Oath or Declaration Remotely.  
The affiant was located in the City of New  
Canaan, in the State of Connecticut while the  
Commissioner was located in the City of  
Toronto, in the Province of Ontario.



Commissioner for Taking Affidavits  
Emilie Dillon (LSO No. 85199L)



Kent Percy

THIS IS **EXHIBIT “A”** REFERRED TO IN THE AFFIDAVIT OF KENT PERCY SWORN BEFORE ME over video teleconference this 29th day of November, 2023 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of New Canaan, in the State of Connecticut while the Commissioner was located in the City of Toronto, in the Province of Ontario.



---

Commissioner for Taking Affidavits  
Emilie Dillon (LSO No. 85199L)



# Report of Foreign Bank and Financial Accounts (FBAR)

Per the Bank Secrecy Act, every year you must report certain foreign financial accounts, such as bank accounts, brokerage accounts and mutual funds, to the Treasury Department and keep certain records of those accounts. You report the accounts by filing a Report of Foreign Bank and Financial Accounts (FBAR) on Financial Crimes Enforcement Network (FinCEN) Form 114.

## Who Must File

A U.S. person, including a citizen, resident, corporation, partnership, limited liability company, trust and estate, must file an FBAR to report:

1. a financial interest in or signature or other authority over at least one financial account located outside the United States if
2. the aggregate value of those foreign financial accounts exceeded \$10,000 at any time during the calendar year reported.

Generally, an account at a financial institution located outside the United States is a foreign financial account. Whether the account produced taxable income has no effect on whether the account is a foreign financial account for FBAR purposes.

But, you don't need to report foreign financial accounts that are:

- Correspondent/Nostro accounts,
- Owned by a governmental entity,
- Owned by an international financial institution,
- Maintained on a U.S. military banking facility,
- Held in an individual retirement account (IRA) of which you're an owner or beneficiary,
- Held in a retirement plan of which you're a participant or beneficiary, or

## Related Topics

- Bank Secrecy Act
- [Report Foreign Bank and Financial Accounts](#)
- [Treasury Dept. Current and Historical Exchange Rates](#)
- Comparison of Form 8938 and FBAR Requirements
- [Form 8938](#)
- Foreign Account Tax Compliance Act (FATCA)

- Part of a trust of which you're a beneficiary, if a U.S. person (trust, trustee of the trust or agent of the trust) files an FBAR reporting these accounts.


You don't need to file an FBAR for the calendar year if:


- All your foreign financial accounts are reported on a consolidated FBAR, or
- You jointly own all your foreign financial accounts with your spouse and:
  - You completed and signed FinCEN Form 114a authorizing your spouse to file on your behalf, and your spouse reports the jointly owned accounts on a timely-filed signed FBAR.


**Note:** Income tax filing status, such as married-filing-jointly and married-filing-separately, has no effect on your qualification for this exception.

The FBAR resources below provide more detailed information.


## When to File

The FBAR is an annual report, due April 15 following the calendar year reported. You're allowed an automatic extension to October 15 if you fail to meet the FBAR annual due date of April 15. You don't need to request an extension to file the FBAR. See [FinCEN's website](#)  [PDF](#) for further information.



If you're affected by a natural disaster, the government may further extend your FBAR due date. It's important that you review relevant [FBAR relief notices](#)  for complete information.

The government continues to extend the FBAR due date for certain employees or officers with signature or other authority over, but no financial interest in certain foreign financial accounts. Review important details about this extension in the [most recent notice for certain financial professionals](#) .

## How to File

You must file the FBAR electronically through FinCEN's [BSA E-Filing System](#) . You don't file the FBAR with your federal tax return.

If you want to paper-file your FBAR, you must call FinCEN's Resource Center to request an exemption from e-filing. See Contact Us below to reach this resource center. If FinCEN approves your request, FinCEN will send you the paper FBAR form to complete and mail to the IRS at the address in the form's instructions. IRS will not accept paper filings on TD F 90-22.1 (obsolete) or a printed FinCEN Form 114 (for e-filing only).

If you want someone to file your FBAR on your behalf, use [FinCEN Report 114a, Record of Authorization to Electronically File FBARs](#)  , to authorize that person to do so. You don't submit FinCEN Report 114a when filing the FBAR; just keep it for your records and make it available to FinCEN or IRS upon request.

## Keeping Records

For each account you must report on an FBAR, you must keep records with this information:

- Name on the account,
- Account number,
- Name and address of the foreign bank,
- Type of account, and
- Maximum value during the year.



The law doesn't specify the type of document to keep with this information.

Documents may include bank statements or a copy of a filed FBAR if they have the required information.

Generally, you must keep these records for five years from the due date of the FBAR.


**Exception:** An officer or employee who files an FBAR to report signature authority over an employer's foreign financial account doesn't need to personally keep records on these accounts. The employer must keep the records for these accounts.

## Penalties

You may be subject to civil monetary penalties and/or criminal penalties for FBAR reporting and/or recordkeeping violations. Assertion of penalties depends on facts and circumstances. Civil FBAR penalty maximums in Title 31 of the United States Code are [adjusted annually for inflation](#) . [Publication 5569, Report of Foreign Bank & Financial Accounts \(FBAR\) Reference Guide](#)  contains information about criminal penalties.

## Filing Delinquent FBARs

Filing an FBAR late or not at all is a violation and may subject you to penalties. If the IRS hasn't contacted you about a late FBAR and you're not under civil or criminal investigation by the IRS, you should file late FBARs as soon as possible to keep potential penalties to a minimum.

Follow these [instructions](#)  to explain your reason for filing late. If you're using a compliance option, such as the [Streamlined Filing Compliance Procedures](#), follow the instructions for the specific compliance option.

## Representation for FBAR Issues

You can file [Form 2848, Power of Attorney and Declaration of Representative](#), if the IRS begins an FBAR examination as a result of an examination under the Internal Revenue Code, such as an income tax exam. Complete Line 3, Acts Authorized, as follows:

- Under Description of Matter - Matters relating to Report of Foreign Bank and Financial Accounts or "FBAR Examination"
- Under Tax Form Number - FinCEN Form 114
- Under Year(s) or Period(s) – applicable calendar year(s)

(**Note:** Disregard previous guidance to complete Line 5a, additional acts authorized.)

Don't use Form 2848 if a **related examination under the Internal Revenue Code doesn't apply**. You may use a general power of attorney form executed under applicable state law.

## FBAR Resources



- [Publication 5569, Report of Foreign Bank & Financial Accounts \(FBAR\) Reference Guide](#) 
- [FBAR instructions](#)  
- [FBAR fact sheet](#)

**Note:** Civil penalty maximums in these materials may not be current, as the amounts are adjusted annually for inflation.

## Contact Us

Can't find the answer to your question in online information? Contact us.



Resource	Contact	Business Hours	Help Offered
IRS FBAR Hotline	<a href="tel:866-270-0733">866-270-0733</a> ; or if calling from outside the United States, <a href="tel:313-234-6146">313-234-6146</a>	Monday - Friday, 8 a.m. to 4:30 p.m. EST	General questions: <ul style="list-style-type: none"> <li>• FBAR filing requirements</li> <li>• Filing methods</li> </ul>
FinCEN's BSA E-Filing Help Desk	See <a href="#">FinCEN's website</a>  for contact information	Monday - Friday, 8 a.m. to 6 p.m. EST	Technical questions about BSA's E-Filing System
FinCEN's Resource Center	See <a href="#">FinCEN's website</a>  for contact information	Leave a message for a return call	<ul style="list-style-type: none"> <li>• E-filing exemptions to allow FBAR paper-filing</li> <li>• Questions about BSA regulations</li> </ul>

THIS IS **EXHIBIT “B”** REFERRED TO IN THE AFFIDAVIT OF KENT PERCY SWORN BEFORE ME over video teleconference this 29th day of November, 2023 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of New Canaan, in the State of Connecticut while the Commissioner was located in the City of Toronto, in the Province of Ontario.



---

Commissioner for Taking Affidavits  
Emilie Dillon (LSO No. 85199L)

**From:** Fennema, Nate <[nfennema@alvarezandmarsal.com](mailto:nfennema@alvarezandmarsal.com)>  
**Sent:** Tuesday, September 26, 2023 12:49 PM  
**To:** Percy, Kent <[KPercy@alixpartners.com](mailto:KPercy@alixpartners.com)>; Wasserman, Marc <[MWasserman@osler.com](mailto:MWasserman@osler.com)>; Rosenblat, Dave <[drosenblat@osler.com](mailto:drosenblat@osler.com)>; Gruneir, Ryan <[rgruneir@alvarezandmarsal.com](mailto:rgruneir@alvarezandmarsal.com)>  
**Cc:** Yenumula, Rahul <[ryenumula@alixpartners.com](mailto:ryenumula@alixpartners.com)>; Jang, Jimmy <[cjang@alixpartners.com](mailto:cjang@alixpartners.com)>; Ku, Hart <[haku@alixpartners.com](mailto:haku@alixpartners.com)>  
**Subject:** RE: Bed Bath & Beyond Canadian Bank Accounts

Thank you for the update Kent.

With respect to the US concentration account, can you confirm this account will remain under the control of the Plan Administrator and subject to the Minimum Cash Balance as defined in the CCAA proceedings?

Can you / your team also please provide a summary of receipts / disbursements prior to your hand-off on October 1<sup>st</sup>, for our records.

We will be in touch with Akerman law firm as noted.

Thanks,  
 Nate

---

**From:** Percy, Kent <[KPercy@alixpartners.com](mailto:KPercy@alixpartners.com)>  
**Sent:** Tuesday, September 26, 2023 12:26 PM  
**To:** Wasserman, Marc <[MWasserman@osler.com](mailto:MWasserman@osler.com)>; Rosenblat, Dave <[drosenblat@osler.com](mailto:drosenblat@osler.com)>; Gruneir, Ryan <[rgruneir@alvarezandmarsal.com](mailto:rgruneir@alvarezandmarsal.com)>; Fennema, Nate <[nfennema@alvarezandmarsal.com](mailto:nfennema@alvarezandmarsal.com)>  
**Cc:** Yenumula, Rahul <[ryenumula@alixpartners.com](mailto:ryenumula@alixpartners.com)>; Jang, Jimmy <[cjang@alixpartners.com](mailto:cjang@alixpartners.com)>; Ku, Hart <[haku@alixpartners.com](mailto:haku@alixpartners.com)>  
**Subject:** Bed Bath & Beyond Canadian Bank Accounts

 [EXTERNAL EMAIL]: Use Caution

The Bed Bath & Beyond bankruptcy plan will be effective on September 30<sup>th</sup>. At this point all employees will be terminated, AlixPartners and Kirkland & Ellis will no longer be employed by the company. A Plan Administrator has been appointed and he will take over on October 1<sup>st</sup>. His name is Michael Goldberg and he is with the Akerman law firm.

[michael.goldberg@akerman.com](mailto:michael.goldberg@akerman.com)

The estate will have new emails later this week and will be in touch with you regarding any outstanding Canadian issues.

I know we had previously discussed keeping the Canadian bank accounts funded until the tax audits were complete. However, the wind down estate does not currently have any accounts set up and the existing Bed Bath employees are not comfortable with continuing to be a named party or signer on a foreign bank account. Therefore, later this week we will be closing all Canadian accounts and moving the

currency to the US concentration account. The wind down estate will continue to collect revenue and is anticipating paying all tax obligations as stipulated in the bankruptcy plan of reorganization.

Please let me know if you have any questions.

**Kent Percy**

Partner & Managing Director

**AlixPartners**

909 Third Avenue 30th Floor, New York NY 10022

**M** +1 (917) 482-8684

[kpercy@alixpartners.com](mailto:kpercy@alixpartners.com)

[alixpartners.com](http://alixpartners.com) | [LinkedIn](#) | [twitter](#) | [facebook](#)

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THIS IS **EXHIBIT “C”** REFERRED TO IN THE AFFIDAVIT OF KENT PERCY SWORN BEFORE ME over video teleconference this 29th day of November, 2023 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of New Canaan, in the State of Connecticut while the Commissioner was located in the City of Toronto, in the Province of Ontario.



---

Commissioner for Taking Affidavits  
Emilie Dillon (LSO No. 85199L)

**From:** Fennema, Nate <[nfennema@alvarezandmarsal.com](mailto:nfennema@alvarezandmarsal.com)>

**Sent:** Friday, September 29, 2023 5:28 PM

**To:** Ku, Hart <[haku@alixpartners.com](mailto:haku@alixpartners.com)>; Rosenblat, Dave <[drosenblat@osler.com](mailto:drosenblat@osler.com)>; Percy, Kent <[KPercy@alixpartners.com](mailto:KPercy@alixpartners.com)>; Wasserman, Marc <[MWasserman@osler.com](mailto:MWasserman@osler.com)>; Gruneir, Ryan <[rgruneir@alvarezandmarsal.com](mailto:rgruneir@alvarezandmarsal.com)>

**Cc:** Yenumula, Rahul <[ryenumula@alixpartners.com](mailto:ryenumula@alixpartners.com)>; Jang, Jimmy <[cjang@alixpartners.com](mailto:cjang@alixpartners.com)>

**Subject:** RE: Bed Bath & Beyond Canadian Bank Accounts

Thank you Hart – can you please confirm the funds were transferred to an account with instructions explaining they are not to be released to the US entity / secured creditors until the Monitor provides consent?

The tax amounts payable will need to be dealt with, and the funds were not previously released for that explicit purpose.

Let me know any questions or comments.

Thanks,  
Nate

**From:** Ku, Hart <[haku@alixpartners.com](mailto:haku@alixpartners.com)>

**Sent:** Friday, September 29, 2023 5:06 PM

**To:** Fennema, Nate <[nfennema@alvarezandmarsal.com](mailto:nfennema@alvarezandmarsal.com)>; Rosenblat, Dave <[drosenblat@osler.com](mailto:drosenblat@osler.com)>; Percy, Kent <[KPercy@alixpartners.com](mailto:KPercy@alixpartners.com)>; Wasserman, Marc <[MWasserman@osler.com](mailto:MWasserman@osler.com)>; Gruneir, Ryan <[rgruneir@alvarezandmarsal.com](mailto:rgruneir@alvarezandmarsal.com)>

**Cc:** Yenumula, Rahul <[ryenumula@alixpartners.com](mailto:ryenumula@alixpartners.com)>; Jang, Jimmy <[cjang@alixpartners.com](mailto:cjang@alixpartners.com)>

**Subject:** RE: Bed Bath & Beyond Canadian Bank Accounts

 [EXTERNAL EMAIL]: Use Caution

Hi Nate, please see initial comments below in red.

We need to confirm a few pieces of information before you handover the file to the Plan Administrator:

1. The exact balance of funds transferred to the US account / if these funds are segregated;  
CA\$6,115,955.32; I don't believe it was transferred to a segregated account
2. The receipts / disbursements details through October 1<sup>st</sup> (exact amounts for each line item / R&D type); and Since August 12, the disbursements are as follows:
  - a. CA\$489,528.95 – BC tax payment
  - b. CA\$250,000.00 – Intercompany to BBY US
  - c. ~CA\$6,500 – Bank fees / exchange rate differences
3. Confirmation of how the company plans to fund tax balances owing (we understand the CRA's preliminary assessment indicates >\$1M may be owing) and any other final disbursements in the Canadian proceedings.

Hart Ku

AlixPartners [alixpartners.com](http://alixpartners.com) M +1 (917) 690-0508

**From:** Fennema, Nate <[nfennema@alvarezandmarsal.com](mailto:nfennema@alvarezandmarsal.com)>

**Sent:** Friday, September 29, 2023 3:47 PM

**To:** Rosenblat, Dave <[drosenblat@osler.com](mailto:drosenblat@osler.com)>; Percy, Kent <[KPercy@alixpartners.com](mailto:KPercy@alixpartners.com)>; Wasserman, Marc <[MWasserman@osler.com](mailto:MWasserman@osler.com)>; Gruneir, Ryan <[rgruneir@alvarezandmarsal.com](mailto:rgruneir@alvarezandmarsal.com)>

**Cc:** Yenumula, Rahul <[ryenumula@alixpartners.com](mailto:ryenumula@alixpartners.com)>; Jang, Jimmy <[cjang@alixpartners.com](mailto:cjang@alixpartners.com)>; Ku, Hart <[haku@alixpartners.com](mailto:haku@alixpartners.com)>

**Subject:** RE: Bed Bath & Beyond Canadian Bank Accounts

**This Message Is From an External Sender**

This message came from outside your organization.

Hi AlixPartners team,

We need to confirm a few pieces of information before you handover the file to the Plan Administrator:

1. The exact balance of funds transferred to the US account / if these funds are segregated;
2. The receipts / disbursements details through October 1<sup>st</sup> (exact amounts for each line item / R&D type); and
3. Confirmation of how the company plans to fund tax balances owing (we understand the CRA's preliminary assessment indicates >\$1M may be owing) and any other final disbursements in the Canadian proceedings.

Let me know any questions or comments.

Thanks,

Nate Fennema CPA,CA, CIRP

**Alvarez & Marsal**

200 Bay Street, Suite 2900, Toronto, ON M5J 2J1

Direct: 437-777-7405

THIS IS **EXHIBIT “D”** REFERRED TO IN THE AFFIDAVIT OF KENT PERCY SWORN BEFORE ME over video teleconference this 29th day of November, 2023 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of New Canaan, in the State of Connecticut while the Commissioner was located in the City of Toronto, in the Province of Ontario.



---

Commissioner for Taking Affidavits  
Emilie Dillon (LSO No. 85199L)



**AlixPartners**

**BED BATH &  
BEYOND<sup>41</sup>**

# Plan Administrator Transition Report

30 SEPTEMBER 2023



## Canadian Cash

- Canadian Fiserv holds approximately CA\$0.7M in restricted cash (not included below), which is expected to be released net of fees;
- The claims bar date passed on August 7th; \$500K BC tax claim has been paid. However, the CCAA has been extended through November 22 due to the ongoing CRA audit of BBB Canada's 2021 & 2022 GST/HST returns; 2022 obligations are asserted at CAN\$6M, and 2021 is unknown
- The CCAA has defined the Minimum Cash Balance of CAN\$6M. The Canadian accounts were closed due to the fact that no signers were willing to remain on foreign accounts. The Canadian funds are now in the Bed Bath Inc. Concentration Account.
- Going forward, Monitor and professional fees are forecast to be drawn from retainers

### Contacts:

#### Osler

##### **Marc Wasserman**

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Osler, Hoskin & Harcourt LLP | [osler.com](https://www.osler.com)

##### **Dave Rosenblat**

Partner  
416.862.5673 | [drosenblat@osler.com](mailto:drosenblat@osler.com)  
Osler, Hoskin & Harcourt LLP | [osler.com](https://www.osler.com)

#### Alvarez & Marsal

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED Court File No: CV-23-00694493-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BBB  
CANADA LTD.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**AFFIDAVIT OF KENT PERCY**

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Lawyers for the Applicant

# TAB 2

Court File No. CV-23-00694493-00CL

**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

IN THE MATTER OF THE PLAN OF COMPROMISE OR  
ARRANGEMENT OF BBB CANADA LTD.

Applicant

**SUPPLEMENTARY AFFIDAVIT OF MICHAEL GOLDBERG**

I, Michael Goldberg, of the City of Hollywood, in the State of Florida, MAKE OATH  
AND SAY:

1. I am the Plan Administrator of BBB Inc. and 73 affiliated debtors (the “**Chapter 11 Debtors**”), each of whom filed voluntary petitions on April 23, 2023 for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of New Jersey (the “**US Court**”). My appointment as Plan Administrator became effective on September 29, 2023 (the “**Plan Implementation Date**”), the date of the implementation of the Chapter 11 Debtors’ Joint Plan of Reorganization (as subsequently amended, the “**Chapter 11 Plan**”). In my capacity as Plan Administrator, I became the sole officer of the Chapter 11 Debtors and, among other things, all rights, powers, duties and privileges of the Chapter 11 Debtors’ officers were vested in me. Since my appointment, I have retained a number of former BBB Inc. employees to assist me in the implementation of the Chapter 11 Plan and the wind-down of the Chapter 11 Debtors’ estates and to assist, where required, with the wind-down of BBB Canada

Ltd. and Bed Bath & Beyond L.P. (together, “**BBB Canada**”) and the eventual termination of these CCAA Proceedings.

2. I have personal knowledge of the matters deposed to in this Affidavit or have obtained such knowledge from BBB Canada’s counsel and/or the Chapter 11 Debtors’ professionals. Where I have relied on other sources for information, I have stated the source of my information and I believe such information to be true.

3. This Affidavit supplements the affidavit that I swore on November 12, 2023 and is delivered further to the direction of the Honourable Chief Justice Morawetz in his Endorsement dated November 17, 2023.

#### **Distribution of BBB Canada Cash**

4. I have read the affidavit of Mr. Kent Percy of AlixPartners sworn November 29, 2023. I can confirm that while I did receive a copy of the transition report which is referenced in para 11 of Mr. Percy’s affidavit, I did not have any discussions or other communication with Mr. Percy or anyone else about the BBB Canada Cash or any requirement by the CCAA Court to maintain the Minimum Balance, and since my appointment, the account balance of the Chapter 11 Debtors’ wind down estate has never gone below USD \$6 million.

5. At my direction, a USD \$10 million distribution was made to the Lenders on October 20, 2023 from the U.S. concentration account. The funds in the U.S. concentration account included the BBB Canada Cash that was transferred from BBB Canada’s Canadian accounts on September 27, 2023 (prior to my appointment as Plan Administrator). In directing the distribution, there was

(and is) no intention on the part of the Plan Administrator to contravene the ARIO or any direction of the CCAA Court.

### Reimbursement Agreement

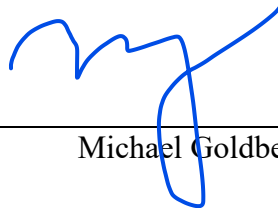
6. Attached as Exhibit "A" to the affidavit of Joshua Foster sworn November 16, 2023 is a copy of the Reimbursement Agreement entered into between the Plan Administrator and the Monitor, which reflects the collective efforts of the Plan Administrator, BBB Canada and the Monitor to address the distribution of the Minimum Balance in a manner satisfactory to BBB Canada and the Monitor. I can confirm that I have now segregated with the Lender's consent CAD \$2.9 million for the benefit of BBB Canada.

SWORN BEFORE ME over video  
teleconference this 30<sup>th</sup> day of November,  
2023 pursuant to O. Reg 431/20,  
Administering Oath or Declaration Remotely.  
The affiant was located in the City of  
Hollywood, in the State of Florida while the  
Commissioner was located in the City of  
Toronto, in the Province of Ontario.



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Commissioner for Taking Affidavits  
Emilie Dillon (LSO No. 85199L)



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Michael Goldberg

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PROCEEDING COMMENCED AT TORONTO

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Lawyers for the Applicant



# TAB 3

Court File No. CV-23-00694493-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	FRIDAY, THE 1 <sup>st</sup>
	)	
CHIEF JUSTICE MORAWETZ	)	DAY OF DECEMBER, 2023

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF BBB CANADA LTD.  
(the "**Applicant**")

**STAY EXTENSION ORDER**

**THIS MOTION**, made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order extending the Stay Period (as defined in paragraph 15 of the Amended and Restated Initial Order, granted February 21, 2023) was heard this day via videoconference.

**ON READING** the Notice of Motion of the Applicant, the Affidavit of Michael Goldberg sworn on November 13, 2023 including the exhibits thereto, the Supplementary Affidavit of Michael Goldberg sworn on November 30, 2023, the Affidavit of Kent Percy, sworn November 29, 2023, including the exhibits thereto, the Affidavit of Joshua Foster, sworn on November 16, 2023 including the exhibits thereto, and the Eighth Report of Alvarez & Marsal Canada Inc., in its capacity as Court-appointed monitor (in such capacity, the "**Monitor**"), dated November 14, 2023, filed, and on hearing the submissions of respective counsel for the Applicant and Bed Bath & Beyond Canada L.P. (together with the Applicant, the "**BBB Entities**"), the Monitor, and such other counsel as were present and listed on the Counsel Slip, no one else appearing although duly served as appears from the Affidavits of Service of Emily Paplawski, sworn November 14, 2023 and November 30, 2023, filed.

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

**STAY EXTENSION**

2. **THIS COURT ORDERS** that the Stay Period is hereby extended until and including May 22, 2024.

**GENERAL**

3. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

4. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the BBB Entities, the Monitor and their respective 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 BBB Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the BBB Entities and the Monitor and their respective agents in carrying out the terms of this Order.

5. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of the date of this Order without the need for entry or filing.

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, C. C-36, AS AMENDED

Court File No: CV-23-00694493-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BBB CANADA LTD.

Applicant

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**STAY EXTENSION ORDER**

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Lawyers for the Applicant

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED;**

Court File No. CV-23-00694493-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BBB CANADA LTD.**

**Applicant**

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

Proceeding commenced at: TORONTO

**SUPPLEMENTARY MOTION RECORD OF THE**  
**APPLICANT**  
**(Motion for Stay Extension)**

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