

Court File No:

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

CORNER FLAG LLC

Applicant

- and -

ERWIN HYMER GROUP NORTH AMERICA, INC.

Respondent

**APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O.
1990, C. C.43, AS AMENDED, AND SECTION 243 OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, C. B-3 AS AMENDED**

**APPLICATION RECORD
(Re: Appointment of Receiver)
Returnable February 15, 2019**

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TO:

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<p>ERWIN HYMER GROUP SE C/O THOR INDUSTRIES, INC. 601 East Beardsley Ave Elkhart, Indiana 46514</p> <p>Trevor Gasper tgasper@thorindustries.com</p> <p>Todd Woelfer twoelfer@thorindustries.com</p>	

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APPLICATION RECORD

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NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following pages.

THIS APPLICATION will come on for a hearing before a judge of the Commercial List on Friday, February 15, 2019 at 12:00 p.m., at 330 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant **does** not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: February 15, 2019

Issued by _____

Local registrar

Address of the Court Office:
Commercial List Office
330 University Avenue
Toronto, Ontario
M5G 1R7

TO:

<p>ERWIN HYMER GROUP NORTH AMERICA, INC. 25 Reuter Drive Cambridge, Ontario N3E 1A9</p> <p>Jeffrey Merk, Director jmerk@airdberlis.com</p>	<p>AIRD & BERLIS LLP 181 Bay Street, Suite 1800 Toronto, Canada M5J 2T9</p> <p>Steve Graff sgraff@airdberlis.com</p> <p>Kathryn Esaw kesaw@airdberlis.com</p> <p><i>Lawyers for the Director, Jeff Merk</i></p>
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<p>46514</p> <p>Trevor Gasper tgasper@thorindustries.com</p> <p>Todd Woelfer twoelfer@thorindustries.com</p>	
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Application

1. The Applicant, Corner Flag LLC (“**Corner Flag**”) makes an application for an order, substantially in the form to be filed (the “**Appointment Order**”), *inter alia*:
 - (a) abridging the time for service of the Notice of Application and the Application Record, and dispensing with further service thereof;
 - (b) appointing Alvarez & Marsal Canada Inc. (“**A&M**” or the “**Proposed Receiver**”) as receiver and manager (in such capacity, the “**Receiver**”), without security, of all assets, undertakings and properties (the “**Property**”) of Erwin Hymer Group North America, Inc. (“**ENA**”) pursuant to section 243 of the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, C. B-3 as amended (the “**BIA**”) and pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended (the “**CJA**”);
 - (c) waiving the requisite notice period referenced in section 243(1.1) of the BIA pursuant to section 243(1.1)(b) of the BIA;
 - (d) granting a stay of proceedings in respect of ENA or the Property or any assets located on premises belonging to or leased by ENA;
 - (e) granting a charges over the Property on the terms set out in the proposed Appointment Order (i) in favour of the Receiver and counsel to the Receiver to secure their fees and disbursements in respect of these proceedings (the “**Receiver’s Charge**”) and (ii) for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by the Appointment Order, including interim expenditures (the “**Receiver’s Borrowing Charge**”); and

- (f) such further and other relief as counsel may request and this Honourable Court may permit.

THE GROUNDS FOR THE APPLICATION ARE:

Background

- (f) ENA was, until recently, a wholly-owned Canadian subsidiary of the international Erwin Hymer group of companies (the “**Erwin Hymer Global Group**”). ENA was the key entity in the Erwin Hymer Global Group’s North American operations.
- (g) Pursuant to a share purchase agreement (the “**SPA**”) entered into on September 18, 2018, Thor Industries Inc. (“**Thor**”) was to acquire the Erwin Hymer Global Group through an acquisition of all outstanding shares of the Erwin Hymer Global Group’s parent company, EHG SE (the “**Thor Transaction**”).
- (h) Subsequent to the execution of the SPA, EHG SE and Thor became aware of certain financial irregularities within the books and records of the EHG NA Entities which appear to be long standing and which were not known to either EHG SE or Thor at the time the SPA was executed.
- (i) Ultimately, the parties to the Thor Transaction agreed to amend the SPA to exclude the EHG NA Entities from the scope of the Thor Transaction. To facilitate this, EHG SE divested its ownership interests in the EHG NA Entities pursuant to a transaction with Corner Flag, whereby Corner Flag acquired all outstanding shares in ENA and certain other EHG NA Entities (the “**Carve-Out Transaction**”).

- (j) EHG is now a wholly owned subsidiary of Corner Flag.
- (k) ENA has been suffering from an operational, liquidity and governance crisis and it is imperative that the Proposed Receiver be appointed as soon as possible so as to bring much needed stability and governance to the ENA business, preserve optionality and facilitate an orderly process to evaluate, conduct and implement realization strategies and options in respect of ENA's business and assets, for the benefit of all stakeholders.

Overview of ENA's Business

- (l) Prior to the closing of the Carve-Out Transaction and the Thor Transaction, ENA's core activity covered the development, assembly and marketing of recreational vehicles. ENA purchased the components required for the development and assembly of motorhomes from suppliers and assembled the motorhomes. Once ENA has manufactured recreational vehicles, it sells them to a network of dealers who, in turn, sells the recreational vehicles to end customers.
- (m) ENA employs approximately 850 employees, the majority of which are full time. The weekly payroll obligations of ENA are in excess of CAD \$1 million. ENA did not have sufficient liquidity to fund payroll obligations and will not have sufficient funds to continue funding payroll obligations. As such, the proposed Appointment Order provides that all employees of ENA will be deemed to be terminated by ENA immediately prior to the issuance of the requested Appointment Order.

- (n) In the absence of the appointment of a receiver to conduct a sale process on an expedited basis, ENA will face a permanent and abrupt cessation of operations and a liquidation of assets on a piecemeal basis with no ability to preserve the optionality of identifying a turn-key purchaser.
- (o) The Proposed Receiver intends to cause ENA to retain sufficient former employees to assist with the receivership proceedings while it evaluates realization strategies and options in respect of ENA's business and assets.

Current State of ENA's Business

- (p) Since January 2019 and the discovery of the financial irregularities in ENA's reporting, ENA has been experiencing significant operational, liquidity and governance challenges which have rendered it unable to continue to operate in the normal course. The financial irregularities appear to be long standing and pervasive and have eroded confidence in the senior management of the ENA.
- (q) A number of key management and employees of ENA have been suspended pending the outcome of an investigation into the financial irregularities and all but one of the directors of ENA have resigned or been removed. ENA has very limited funds available at this time and is not expected to be able to continue to meet its payroll or other short-term obligations without additional funding.
- (r) ENA has in excess of CAD \$300 million in liabilities, has not been able to meet its obligations as they become due, and does not have sufficient funding to support its workforce.

- (s) As a result of market perception and/or non-payment of obligations, ENA has also received a number of notices from supply creditors demanding payment of amounts owing to them and/or indicating that they will not be providing any further trade credit to ENA;
- (t) ENA is in urgent need of court supervision with the assistance of a court officer. Given the current status of ENA's business, it is critical that A&M be appointed as Receiver as expeditiously as possible so that it can take steps to preserve and maintain the property of ENA and assess realization strategies and options. This urgency is heightened given the lack of senior management at ENA and the existence of a corporate governance void.

Secured Indebtedness and Indebtedness to Corner Flag

- (u) Following closing of the Thor Transaction, ENA continued to have a liquidity shortfall which rendered it unable to meet certain critical immediate and short-term obligations including employee payroll obligations. To satisfy these immediate obligations, ENA borrowed approximately CAD \$5.09 million from Corner Flag on February 14, 2019, which loan was evidenced by a promissory note issued by ENA to Corner Flag (the "**ENA Promissory Note**").
- (v) To secure its obligations under the ENA Promissory Note, ENA granted a security interest to Corner Flag over all of its present and after acquired property pursuant to a general security agreement dated February 14, 2019.

- (w) On February 14, 2019, Corner Flag delivered to ENA a demand for repayment of the amounts owing to it pursuant to the ENA Promissory Note and a notice under section 244 (the “**Section 244 Notice**”) of the BIA to ENA.
- (x) The amounts owing to Corner Flag have not been repaid. Corner Flag has requested that the sole remaining director of ENA waive the 10-day notice period provided for under the Section 244 Notice. Such waiver has not yet been provided.

Funding of Receivership

- (y) Corner Flag has funded all wages owing to employees up to and including the date of termination, which funding was provided to ENA on a secured basis and evidenced by a demand promissory note (as set out in greater detail below). Corner Flag has also agreed to fund vacation pay accrued to the date of termination (once such quantum is determined by the Receiver), and all the other costs of the receivership process, all in accordance with the agreed upon Receiver Term Sheet (as defined below), an agreed upon budget and the terms of the proposed Appointment Order.
- (z) Therefore, if appointed, the Receiver will be empowered pursuant to the terms of the proposed Appointment Order to borrow funds from Corner Flag in accordance with a budget set out in a term sheet (the “**Receiver Term Sheet**”) for the purposes of, among other things, funding accrued but unpaid vacation pay for terminated employees, financing the professional costs and disbursements of the

receivership and the costs associated with an expedited sale process, including paying its fees and disbursements and those of its independent counsel.

The Proposed Receiver

- (aa) A&M is a licensed trustee, as defined in the BIA, with experience in Canadian and cross-border insolvency engagements, including receiverships; and
- (bb) The appointment of A&M as Receiver is just and convenient in the circumstances.

Additional Grounds

- (cc) The grounds as more particularly set out in the Affidavit of Mark Gottlieb sworn February 15, 2019 (the “**Gottlieb Affidavit**”);
- (dd) Section 243 of the BIA;
- (ee) Section 243(1.1)(b) of the BIA;
- (ff) Section 101 of the CJA;
- (gg) Rules 1.04, 2.03, 3.02, 16, 38 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194, as amended; and
- (hh) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the Gottlieb Affidavit, and the exhibits thereto; and
- (b) such further and other materials as counsel may advise and this Honourable Court may permit.

February 15, 2019

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Applicant

- and -

ERWIN HYMER GROUP NORTH AMERICA, INC.
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding Commenced at Toronto

NOTICE OF APPLICATION
(Re: Appointment Order)
(Returnable February 15, 2019)

BLAKE, CASSELS & GRAYDON LLP
199 Bay Street
Suite 4000, Commerce Court West
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Lawyers for the Applicant

TAB 2

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AFFIDAVIT OF MARK GOTTLIEB
(Sworn February 15, 2019)

I MARK GOTTLIEB of the state of New York, United States of America, **MAKE OATH AND SAY AS FOLLOWS:**

I. I am a senior advisor on strategy, mergers and acquisitions and corporate finance and the President of the Applicant, Corner Flag LLC ("**Corner Flag**") as a secured creditor and corporate parent of the Respondent, Erwin Hymer Group North America, Inc. ("**ENA**"). I have not had historical involvement with ENA or the other EHG NA Entities (as defined below) and do not have any involvement in the operations or management of the EHG NA Entities, or their day-to-day activities. Accordingly, my knowledge of the matters deposed to in this affidavit is based upon the advisement of and information provided by (i) existing employees of ENA and EHG SE (as defined below), and (ii) Alvarez & Marsal Canada Inc., the financial advisor engaged by, and

proposed receiver of, ENA (“A&M” or the “**Proposed Receiver**”) and other professional advisors. I understand that these professional advisors have: (i) reviewed books and records, legal documentation, contractual arrangements and other documents and information relating to ENA, (ii) attended certain premises of ENA, and (iii) met with and communicated with certain employees of ENA and EHG SE and reviewed information and documents provided by such employees. As such, where I depose to matters herein based on information from such parties, I believe that both the information and the resulting statement are true.

2. As set out in greater detail below, certain financial irregularities have been recently discovered in the books and records of the EHG NA Entities, which appear to be long standing and pervasive and have eroded confidence in the senior management of the EHG NA Entities, many of whom have now departed, leaving a corporate governance void. ENA has been and is suffering from an operational, liquidity and governance crisis.

3. Corner Flag has only recently become (i) the parent company of ENA so as to facilitate the exclusion of the EHG NA Entities from the closing of a transaction involving the acquisition of EHG SE by Thor Industries, Inc. (“**Thor**”), and (ii) a secured lender to ENA by advancing funding to ENA to provide it with liquidity to meet certain critical short-term and overdue obligations, including employee wages, source deduction remittances, pension contributions, payments in respect of employee benefits, payment of professional fees and certain other critical payments required to preserve the value of ENA’s business.

4. As set out in greater detail below, (i) ENA has in excess of CAD \$300 million in liabilities, (ii) has not been able to meet its obligations as they become due, and (iii) does not have sufficient funding to support its workforce.

5. Accordingly, I swear this Affidavit in support of an application for an Order (the “**Appointment Order**”) appointing A&M as receiver and manager (in such capacity, and not in its personal or corporate capacity, the “**Receiver**”) without security, of all assets, undertakings and properties of the Respondent, ENA, pursuant to section 243 of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and section 101 of the *Courts of Justice Act* (Ontario).

6. Given the liquidity crisis, the proposed Appointment Order provides that all employees of ENA will be deemed to have been terminated by ENA immediately prior to the issuance of the requested Appointment Order. If appointed, however, the Proposed Receiver intends to cause ENA to retain sufficient employees to safeguard, preserve and protect the assets subject to the receivership. The Receiver will then evaluate realization strategies and options in respect of ENA’s business and assets, which is intended to include an expedited process to solicit offers from potential purchasers that may be willing to restart certain aspects of ENA’s manufacturing operations and potentially re-hire certain former employees of ENA, whose services may be required.

7. Based on consultation with professional advisors, Corner Flag is of the view that in the absence of the appointment of a receiver to conduct a sale process on an expedited basis, ENA will face a permanent and abrupt cessation of operations and a liquidation of assets on a piecemeal basis with no ability to preserve the optionality of identifying a turn-key purchaser.

8. It is imperative that the Proposed Receiver be appointed as soon as possible so as to bring much needed stability and governance to the ENA business, preserve optionality and facilitate an orderly process to evaluate, conduct and implement realization strategies and options in respect of ENA’s business and assets.

9. In short, Corner Flag desires to ensure that an independent court-officer has an opportunity to assess whether a solution can be identified for ENA whereby operations are restarted and to pursue such solution to the extent economically feasible. As at the date hereof, Corner Flag has funded all wages owing to employees up to and including the date of termination, which funding was provided to ENA on a secured basis and evidenced by a demand promissory note (as set out in greater detail below). Corner Flag has also agreed to fund vacation pay accrued to the date of termination (once such quantum is determined by the Receiver), and the other costs of the receivership process, all in accordance with the agreed upon Receiver Term Sheet (as defined below), an agreed upon budget and the terms of the proposed Appointment Order.

A. OVERVIEW

i. Background

10. The global Erwin Hymer Group (the “**Erwin Hymer Global Group**”) is an international group of entities engaged in the manufacture and sale of recreational vehicles. The Erwin Hymer Global Group is headquartered in Germany and has numerous operating subsidiaries throughout Europe, with limited operations in China.

11. Until January 31, 2019, the Erwin Hymer Global Group also had operating subsidiaries in North America which were comprised of the following entities¹:

¹ Best Time RV, LP, Best Time RV GP, Inc. and Best Time RV Canada Inc. (collectively, the “**Best Time RV JV**”) were not wholly owned subsidiaries of the Erwin Hymer Global Group. The Erwin Hymer Global Group only held (indirectly) 51% of the ownership interests in the Best Time RV JV, with the balance being owned by a third-party joint-venture partner.

- (a) ENA, a corporation incorporated pursuant to the laws of Ontario;
 - (b) Erwin Hymer Group NA Chassis, Inc., a corporation incorporated pursuant to the laws of New York (“**EHG Chassis**”);
 - (c) Erwin Hymer Group Holding USA L.P., a Delaware limited partnership (“**EHG Holding LP**”);
 - (d) Erwin Hymer Group USA L.P., a Delaware limited partnership (“**EHG USA LP**”);
 - (e) Erwin Hymer Group Holding Management Corporation, a corporation incorporated pursuant to the laws of Delaware (“**EHG Holding GP**”);
 - (f) Erwin Hymer Group USA Management Corporation, a corporation incorporated pursuant to the laws of Delaware;
 - (g) Best Time RV, LP, a Delaware limited partnership;
 - (h) Best Time RV GP, Inc., a corporation incorporated pursuant to the laws of Delaware; and
 - (i) Best Time RV Canada Inc. a corporation incorporated pursuant to the laws of Ontario,
- (collectively, the “**EHG NA Entities**”).

12. The predecessor entity to ENA was acquired by the Erwin Hymer Global Group in February 2016 to facilitate an expansion by the group into the North American market. The EHG NA Entities have operations in both Canada and the United States, with the bulk of operations and

back office support and key administrative functions being conducted by ENA from ENA's facilities in Cambridge and Kitchener, Ontario.

ii. The Thor Transaction, Financial Irregularities & Carve-Out Transaction

Thor Transaction

13. On September 18, 2018, following a marketing and investment solicitation process carried out by the ultimate shareholders of the Erwin Hymer Global Group, Erwin Hymer Group SE (the parent company of the Erwin Hymer Global Group, headquartered in Bad Waldsee, Germany) ("**EHG SE**") and Thor entered into a definitive share purchase agreement (the "**SPA**").

14. Pursuant to the SPA, Thor was to acquire the Erwin Hymer Global Group through an acquisition of all outstanding shares of EHG SE (the "**Thor Transaction**"). A copy of the organizational chart of the EHG NA Entities at the time of the execution of the SPA is attached hereto as **Exhibit "A"**.

15. Thor is a manufacturer of recreational vehicles, headquartered in Elkhart, Indiana and publicly traded on the New York Stock Exchange.

16. The Thor Transaction was originally intended to close in early January 2019 but was delayed as a result of the discovery of certain financial irregularities in the books and records of the EHG NA Entities.

Financial Irregularities

17. Subsequent to execution of the SPA, EHG SE and Thor became aware of certain financial irregularities within the books and records of the EHG NA Entities which were not known to either

EHG SE or Thor at the time the SPA was executed. These financial irregularities have received significant media attention and copies of news articles publicizing them are attached hereto as **Exhibit “B”**.

18. In response to the discovery of the financial irregularities, (i) various professional advisory firms were engaged, including forensic accountants, to investigate the scope and nature of the financial irregularities, and (ii) existing senior management of the EHG NA Entities were suspended, pending the outcome of such investigation.

19. At this time, the investigation into the financial irregularities is not complete and their full extent is not yet known. However, it appears that these financial irregularities materially impacted the viability of the business of ENA and preliminary indications are that (i) the profitability of certain of the EHG NA Entities was materially exaggerated or otherwise mischaracterized, and (ii) such financial irregularities were pervasive throughout ENA and may have pre-existed Erwin Hymer Global Group’s acquisition of ENA.

Carve-Out Transaction

20. Ultimately, the parties to the Thor Transaction agreed to amend the SPA to exclude the EHG NA Entities from the scope of the Thor Transaction. To facilitate this, EHG SE divested its ownership interests in the EHG NA Entities pursuant to a transaction with Corner Flag, whereby Corner Flag acquired all outstanding shares in EHG Holding GP and ENA, and all outstanding partnership interests in EHG Holding LP (the “**Carve-Out Transaction**”).

21. The Carve-Out Transaction closed on January 31, 2019. A copy of an organizational chart showing the ownership structure of the EHG NA Entities following the closing of the Carve-Out Transaction is attached hereto as **Exhibit “C”**.

22. The Thor Transaction closed on February 1, 2019. A copy of the press release announcing the closing of the Thor Transaction is attached hereto as **Exhibit “D”**.

i. Corner Flag

23. Corner Flag is a special purpose Delaware limited liability company based in the United States. It was formed to acquire the ownership interests in the EHG NA Entities pursuant to the Carve-Out Transaction.

ii. ENA & EHG Chassis

24. ENA was duly incorporated under the laws of Ontario on February 4, 2016 as an acquisition vehicle, so as to facilitate the Erwin Hymer Global Group’s expansion into North America through a transaction (the **“Roadtrek Transaction”**) to acquire Roadtrek Motorhomes Inc. (**“Roadtrek”**).

25. The Roadtrek Transaction closed on February 24, 2016 and ENA and Roadtrek amalgamated on February 25, 2016 and continued as ENA. A copy of the corporate profile report for ENA is attached hereto as **Exhibit “E”**.

26. ENA’s registered head office is located at 25 Reuter Drive, Cambridge, Ontario (the **“Cambridge Facility”**). The Cambridge Facility is ENA’s principal place of business.

27. ENA has one wholly owned subsidiary, EHG Chassis, a company incorporated pursuant to the laws of New York.

28. EHG Chassis' primary function is to purchase chassis (the structural frame of vehicles), to be used by the EHG NA Entities to manufacture recreational vehicles. EHG Chassis was formerly a subsidiary of Roadtrek and was acquired as part of the Roadtrek Transaction.

29. Other than EHG Chassis, ENA does not have any other subsidiaries. The other EHG NA Entities are related companies.

30. The general commercial operations of the EHG NA Entities and detailed commercial operations of ENA are discussed below.

B. BUSINESS OPERATIONS

i. Overview

31. The EHG NA Entities operated largely independently of the Erwin Hymer Global Group. ENA is the main operating entity in the EHG NA Entities carrying out most of the manufacturing and providing management, treasury, accounting and human resources functions to the other EHG NA Entities (other than the Best Time RV JV, which is managed by a third-party joint venture partner).

32. The EHG NA Entities engaged in the following three business segments (prior to the closing of the Carve-Out Transaction and Thor Transaction):

SEGMENT	LOCATION	DESCRIPTION
Development, manufacturing, marketing and sale of recreational vehicles	Ontario, Canada	ENA manufactured four primary brands of motorhomes, being: (1) Roadtrek, (2) Hymer, (3) Carado, and (4) Sunlight and sells them directly to dealers across North America.

SEGMENT	LOCATION	DESCRIPTION
Manufacturing and sale of modified jeep vehicles	California, United States	EHG USA LP modifies jeep vehicles under two primary brands, being: (1) American Fastbacks, and (2) Cliffride and sells them directly to dealers across North America.
Recreational vehicle rentals	Nevada, California, Arizona and Washington, USA British Columbia, Alberta and Ontario, Canada	The Best Time RV JV rents recreational vehicles to consumers in Canada and the United States.

33. I am advised by Mark Harron, Director of Finance at ENA, that ENA maintains bank accounts at TD Bank, Commerzbank NY, Deutsche Bank RV, Landesbank Baden-Wurtemberg and Bank of Montreal Harris Bank.

ii. Facilities

34. ENA does not have any owned real property and leases two primary locations across the Waterloo region: the Cambridge Facility, as well as a facility located at 100 Shirley Avenue, Kitchener, Ontario (the "**Kitchener Facility**").

35. The Cambridge Facility serves as ENA's head office and is used for manufacturing, raw material storage and research and development. The Kitchener Facility is principally used for manufacturing. In addition to these facilities, ENA also (i) leases three smaller facilities located at 20 Tyler Drive (the "**Tyler Drive Facility**"), Cambridge, Ontario; 400 Southgate Drive, Guelph, Ontario; and 2300 Shirley Drive, Kitchener, Ontario, and (ii) stores inventory and parts at certain third-party storage facilities and yards.

iii. ENA Brands & Intellectual Property

36. Prior to the Carve-Out Transaction, ENA licensed the intellectual property necessary to manufacture and sell recreational vehicles under the Hymer, Carado and Sunlight brands from other entities in the Erwin Hymer Global Group (the “**IP Licenses**”). Pursuant to the Thor Transaction and Carve-Out Transaction, the IP Licenses are to be terminated. However, the Carve-Out Transaction contemplates that where IP Licenses are terminated, ENA is to be provided with a “run-off” license for a reasonable period of time, not exceeding 12 months, on terms similar to those provided under the prior IP Licenses, so as to permit ENA to, among other things, sell off existing inventory and/or satisfy existing obligations towards customers or other third parties.

37. ENA itself is the registered owner of several trademarks, including the Roadtrek brand.

iv. Key Suppliers & Customers

38. ENA purchases the components required for the development and assembly of recreational vehicles from various suppliers of parts and inventory in North America and Europe.

39. Once ENA has manufactured recreational vehicles, it sells them to a network of approximately 290 dealers throughout North America who, in turn, sell the recreational vehicles to end customers.

40. I am advised by Canadian counsel to Corner Flag, Blake, Cassels & Graydon LLP (“**Blakes**”), that to facilitate the acquisition of vehicles from ENA, Wells Fargo Commercial Distribution Finance, LLC (“**Wells Fargo**”) provides floorplan financing to certain dealers pursuant to a Vendor Agreement dated February 24, 2016 (as it may have been amended or restated

from time to time, the “**Floorplan Financing Agreement**”) among ENA, EHG USA LP and Wells Fargo. Under the Floorplan Financing Agreement, ENA has certain obligations to Wells Fargo, including an obligation to (i) pay certain administrative fees, and (ii) purchase back any recreational vehicles repossessed by Wells Fargo from any dealers pursuant to the terms of direct financing arrangements among Wells Fargo and such dealers.

41. As part of its arrangements with certain dealers, ENA provides a limited warranty (the “**ENA Limited Motorhome Warranty**”) on the recreational vehicles it sells to such dealers. As part of the ENA Limited Motorhome Warranty, ENA authorizes certain dealers to perform work on recreational vehicles sold to end customers. Where these dealers perform such warranty work, they seek reimbursement from ENA of the associated parts and labour costs.

v. **Workforce**

42. As at the date hereof, ENA employs approximately 850 employees, the majority of which are full time.

43. The ENA workforce is not unionized.

44. Employees of ENA participate in a defined contribution pension plan (the “**DC Pension Plan**”). The DC Pension Plan was previously provided by Roadtrek and assumed as part of the Roadtrek acquisition. According to the most recent pension plan financial statement for the year ended December 31, 2017, the net assets available under the DC Pension Plan as at that date were approximately CAD \$7.7 million.

45. In addition to the DC Pension Plan, ENA has in place certain other non-pension extended health benefit plans.

46. The weekly payroll obligations of ENA are in excess of CAD \$1 million. I have been advised by the Proposed Receiver that ENA: (i) did not have sufficient liquidity to fund payroll obligations (other than those funds advanced to it by Corner Flag in connection with the ENA Promissory Note (as defined below)), and (ii) will not have sufficient funds to continue funding payroll obligations. As such, the proposed Appointment Order provides that all employees of ENA will be deemed to be terminated by ENA immediately prior to the issuance of the requested Appointment Order. As noted above, the Proposed Receiver does however intend to cause ENA to retain sufficient former employees to assist with the receivership proceedings, while it evaluates realization strategies and options in respect of ENA's business and assets. As discussed above, the Receiver might be able to identify a turn-key purchaser willing to purchase and restart certain aspects of ENA's operations.

C. ASSETS & LIABILITIES

47. Attached hereto as **Exhibit "F"** is the audited, consolidated financial statement of ENA dated August 31, 2017 (the "**August 2017 Audited Financial Statement**").

48. Attached hereto as **Exhibit "G"** is the interim, monthly, unaudited IFRS financial statement of ENA for August 2018 (the "**August 2018 Unaudited Financial Statement**").

49. I understand that the August 2017 Audited Financial Statement is the most recent audited financial statement of ENA and that the April 2018 Unaudited Financial Statement is the most recent IFRS financial statement of ENA. Given the financial irregularities, (i) the accuracy of the

information in these financial statements cannot be confirmed, (ii) the actual book value of ENA's assets, revenues and profitability may be significantly lower than set out in the financial statements, and (iii) the actual book value of ENA's liabilities may be significantly higher than set out in the financial statements.

50. Further, these financial statements do not reflect loans recently advanced by EHG SE and Corner Flag to ENA to fund ongoing operating expenses (described in greater detail below).

51. I understand from the Proposed Receiver that as at the date hereof, ENA has approximately CAD \$1.89 million in immediately available funds which was loaned to it by Corner Flag on a secured basis (as described below), of which approximately CAD \$1.38 million will be used to pay accrued payroll and other employee related obligations up to the date hereof.

D. MATERIAL INDEBTEDNESS

i. Secured Indebtedness

(a) Indebtedness to EHG SE

Assignment of TD Loan to EHG SE

52. Prior to closing of the Carve-Out Transaction and Thor Transaction, ENA was indebted to The Toronto-Dominion Bank ("TD") pursuant to a loan agreement dated February 24, 2016 (as amended and restated from time to time, the "**TD Loan**").

53. ENA's obligations under the TD Loan were guaranteed by EHG Chassis and EHG SE.

54. As security for their obligations to TD, each of ENA and EHG Chassis executed and delivered security agreements to TD pursuant to which they granted a security interest in their inventory, equipment and accounts (the “**TD Security**”). TD registered financing statements pursuant to the *Personal Property Security Act* (Ontario) (the “**PPSA**”) against each of ENA and EHG Chassis over collateral classifications of inventory, accounts and equipment (ENA only), and filed a Uniform Commercial Code (“**UCC**”) registration against EHG Chassis in the State of New York in respect of accounts, inventory and equipment. EHG SE did not grant a security interest to TD in respect of its guarantee obligations.

55. As at January 25, 2019, approximately CAD \$6.5 million and approximately USD \$1.3 million remained outstanding under the TD Loan.

56. On or about January 28, 2019, as part of the Carve-Out Transaction and the Thor Transaction, EHG SE took an assignment of the TD Loan and the TD Security for a purchase price in an amount equal to the outstanding indebtedness under the TD Loan as at such date. On or about January 28, 2019, EHG SE registered a PPSA financing change statement against ENA and EHG Chassis, and a UCC amendment against EHG Chassis, reflecting the foregoing assignment. EHG SE also registered a PPSA financing change statement against EHG Chassis to amend the collateral classification to include equipment. A copy of PPSA and UCC search results against ENA and EHG Chassis are attached hereto as **Exhibit “H”**.

Additional Indebtedness to EHG SE

57. Prior to the closing of the Thor Transaction, ENA lacked the liquidity necessary to meet certain immediate operating expenses, including payroll obligations for the stub-period,

immediately prior to closing.

58. ENA borrowed approximately CAD \$1.8 million from EHG SE, on or about January 31, 2019 which was used to fund immediate net payroll obligations. To secure the obligations of ENA to EHG SE under this loan, ENA granted a security interest in all of its present and after acquired property to EHG SE (together with the TD Security, the “**EHG Security**”).

(b) Indebtedness to Corner Flag

59. Following closing of the Thor Transaction, ENA continued to have a liquidity shortfall which rendered it unable to meet certain critical immediate and short-term obligations, including payroll obligations, source deduction remittances, pension contributions, payments in respect of employee benefits, payment of professional fees and other critical payments required to preserve the value of ENA’s business.

60. To satisfy these immediate obligations, ENA borrowed approximately CAD \$5.09 million from Corner Flag on February 14, 2019, which loan was evidenced by a promissory note issued by ENA to Corner Flag (the “**ENA Promissory Note**”). To secure its obligations under the ENA Promissory Note, ENA granted a security interest to Corner Flag over all of its present and after acquired property, pursuant to a general security agreement dated February 14, 2019 (the “**ENA GSA**”). Copies of the ENA Promissory Note and the ENA GSA are attached hereto as **Exhibit “I”** and **Exhibit “J”**, respectively.

61. In anticipation of advancing the loan contemplated by the ENA Promissory Note, on February 8, 2019, Corner Flag registered a PPSA financing statement against ENA over all collateral classifications, except consumer goods.

62. On or about February 14, 2019, EHG SE (now a subsidiary of Thor) and Corner Flag entered into a subordination agreement (the “**Subordination Agreement**”) pursuant to which EHG SE agreed, among other things, to subordinate the EHG Security and postpone payment of all amounts owing to it by ENA and EHG Chassis to the obligations of ENA to Corner Flag under the ENA Promissory Note.

ii. Inventory Financing

63. ENA obtains certain inventory used to manufacture recreational vehicles from Mercedes Benz, which are financed by Mercedes Benz Financial Services, a business unit of Mercedes-Benz Financial Services Corporation (“**MBF Canada**”). MBF Canada provides such financing pursuant to various financing agreements with ENA (the “**MBF Canada Financing Agreements**”) and ENA’s obligations thereunder are secured by certain of its assets pursuant to security agreements with MBF Canada.

64. EHG Chassis also obtains certain inventory used to manufacture recreational vehicles from Mercedes-Benz, which are financed by Mercedes-Benz Financial Services USA LLC (“**MBF USA**”). MBF USA provides such financing pursuant to various financing agreements with EHG Chassis (the “**MBF USA Financing Agreements**” and together with the MBF Canada Financing Agreements, the “**MBF Financing Agreements**”) and EHG Chassis’ obligations thereunder are secured by certain of its assets pursuant to security agreements with MBF USA.

65. ENA and EHG Chassis appear to have guaranteed each other’s respective obligations to MBF Canada and MBF USA pursuant to certain guarantee agreements (collectively, the “**Cross-**

Guarantees”) and appear to have granted certain security to each of MBF Canada and MBF USA in connection therewith.

66. On February 5, 2019, MBF Canada and MBF US issued demand letters and notices pursuant to section 244 of the BIA to each of ENA and EHG Chassis in connection with their obligations under the MBF Financing Agreements and Cross Guarantees.

67. I understand that if appointed, the Receiver will conduct an independent review of the amounts owing to MBF and MBF USA and the security purportedly granted under the MBF Financing Agreements.

68. Additionally, I understand from the Proposed Receiver that certain other suppliers to the EHG NA Entities which have amounts owing to them have taken the position that title in the inventory supplied by them to the EHG NA Entities has not passed and/or that they have a security interest in such inventory. At this time, the validity of such claims has not been confirmed. Accordingly, the proposed Appointment Order contemplates that the stay of proceedings extend to all property, assets and inventory located on ENA’s premises (whether or not owned by ENA), so as to preserve the status quo and permit the Receiver with an opportunity to address claims to such assets in an orderly and structured manner.

iii. Other Secured Creditors

69. I am advised by Blakes that a review of PPSA and UCC search results as against ENA (attached as **Exhibit “H”** hereto), indicate that other than the security interests in favour of Corner Flag, EHG SE and MBF, the only other security interests registered against ENA are by Scherer Leasing Inc. (“**SLI**”), RCAP Leasing (“**RCAP**”), De Lage Landen Financial Services Canada Inc.

(“**DLL**”), the Royal Bank of Canada (“**RBC**”) and RS Finishing Systems Inc. (“**RSFSI**”). Based on the PPSA and UCC search results, (i) the SLI, RCAP, DLL and RBC registrations appear to be in respect of specific pieces of equipment financed by them, and (ii) it is unclear what obligations, if any, the RSFSI registration relates to and the collateral that is purportedly covered.

70. I am also advised by Blakes that a review of real property sub-search results as against ENA’s leased premises in Ontario indicates that there is a construction lien registered against the Tyler Drive Facility by Jay Fencing Ltd. in the amount of approximately \$65 thousand (the “**Tyler Drive Construction Lien**”).

71. Should this Court appoint the Receiver, it is expected that the Receiver will conduct an independent review of the security interests registered against ENA and, if determined necessary, the Tyler Drive Construction Lien.

iv. Other Material Liabilities

72. I am advised by the Proposed Receiver that based on the books and records of ENA, it appears that:

- (a) as at February 12, 2019, ENA owed approximately CAD \$86.3 million to trade creditors;
- (b) as at December 31, 2018, ENA was indebted Commerzbank pursuant to an Ancillary Financing Agreement in the amount of approximately USD \$52 million, on an unsecured basis. Prior to closing of the Thor Transaction, EHG SE took an

assignment of this indebtedness from Commerzbank for a purchase price equal to the outstanding amount of such indebtedness; and

- (c) as at December 31, 2018, ENA (i) had currency hedge arrangements with Commerzbank, Landesbank Baden-Württemberg and Deutsche Bank Group, and (ii) owed an aggregate total amount of USD \$43.3 million (on an unsecured basis) in respect of such currency hedges.

73. ENA is also indebted to EHG SE on an unsecured basis with respect to a number of intercompany loans advanced by EHG SE to ENA and EHG SE has also guaranteed certain lease and trade obligations of ENA. As at December 31, 2018, ENA's total indebtedness to EHG SE pursuant to such intercompany loans was approximately €80.5 million.

74. Additionally, I understand from A&M that certain third-parties storing parts and inventory for ENA which may have amounts owing to them have taken the position that they will not permit the removal of such stored parts and inventory, unless their claims are addressed. I understand that if appointed, the Receiver will seek to determine the validity of such claims.

E. CURRENT STATE OF THE ENA BUSINESS

75. As discussed above, ENA is currently suffering from significant governance, liquidity and operational challenges which have rendered it unable to continue to operate in the normal course. At this time, ENA's business and manufacturing operations have effectively halted.

76. A number of key members of management and employees of ENA have been suspended pending the outcome of the investigation into the financial irregularities and all but one of the

directors of ENA have resigned or been removed.

77. As a result of market perception and/or non-payment of obligations, ENA has also received a number of notices from supply creditors demanding payment of amounts owing to them and/or indicating that they will not be providing any further trade credit to ENA.

78. Additionally, certain customers have cancelled existing orders and/or refrained from ordering recreational vehicles from ENA.

79. Further, as set out above, ENA has very limited funds available at this time and I have been advised by the Proposed Receiver that ENA is not expected to be able to continue to meet its payroll or other short-term obligations without additional funding.

80. ENA is in urgent need of court supervision with the assistance of a court officer. Accordingly, Corner Flag, through Blakes, has delivered a demand for repayment of the amounts owing to it pursuant to the ENA Promissory Note (the "**Demand**") and notice under section 244 of the BIA to ENA (the "**Section 244 Notice**"), with a view to commencing receivership proceedings and bringing much needed stability and governance to ENA's business. A copy of the Demand and Section 244 Notice are attached hereto as **Exhibit "K"**.

81. To date, the amounts owing to Corner Flag have not been repaid. Corner Flag, through Blakes, has requested that the sole remaining director waive the 10-day notice period provided for under the Section 244 Notice. At the time of swearing this Affidavit, such waiver has not yet been provided.

F. URGENT NEED FOR A RECEIVER

82. Given the current status of ENA's business, it is critical that A&M be appointed as Receiver as expeditiously as possible so that it can take steps to preserve and maintain the property of ENA and assess realization strategies and options, which may include the implementation of a process to identify a purchaser interested in acquiring a turn-key operation and potentially re-hiring certain former employees of ENA, whose services may be required. In the circumstances and given the immediate crisis facing ENA, I believe this is in the best interest of ENA's stakeholders generally, including its employees, suppliers, customers and secured and unsecured creditors. This urgency is heightened given the lack of senior management at ENA and the existence of a corporate governance void.

83. A&M is a licensed trustee, as defined in the BIA, with extensive experience in Canadian insolvency proceedings, including receiverships. A&M has provided a written consent to act as Receiver in this proceeding, a copy of which is attached hereto as **Exhibit "M"**.

G. FINANCING DURING THE RECEIVERSHIP

84. Given the limited cash resources of ENA, it is expected that the Receiver (if appointed) will require additional funding. In that regard, it is contemplated that, if appointed, the Receiver will be empowered pursuant to the terms of the proposed Appointment Order to borrow funds from Corner Flag in accordance with a budget set out in a term sheet (the "**Receiver Term Sheet**") for the purposes of, among other things, funding accrued but unpaid vacation pay for terminated employees, financing the professional costs and disbursements of the receivership and the costs associated with an expedited sale process, including paying its fees and disbursements and those

of its independent counsel. A copy of the Receiver Term Sheet is attached hereto as **Exhibit "N"**.

85. With respect to a proposed expedited sale process, the assets and business of ENA have recently been thoroughly exposed to the market. It is anticipated that the Receiver will be able to leverage market intelligence acquired through the prior sale process to streamline and expedite any process for the solicitation of bids for a turn-key operation. The Receiver Term Sheet contemplates that if Corner Flag and the Receiver determine that no offer satisfactory to Corner Flag and the Receiver, can be obtained by the end of a 6-week term, the Receiver and Corner Flag will agree on a process for the orderly wind-down of the receivership. If, however, a viable offer is identified prior to the end of the six-week term, the Receiver Term Sheet contemplates additional funding to consummate such transaction, on agreement of both Corner Flag and the Receiver.

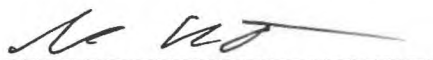
86. Accordingly, the Proposed Receiver is requesting the approval of the Receiver Term Sheet and the power to borrow from Corner Flag on security of "Receiver Certificates" and a court-ordered "Receiver's Borrowings Charge".

87. The proposed Appointment Order expressly authorizes the Receiver to retain Osler, Hoskin & Harcourt LLP, as its independent counsel to advise and represent it in these proceedings. It is proposed that the fees and expenses of the Proposed Receiver and its independent legal counsel in carrying out the Receiver's duties will be secured by a "Receiver's Borrowings Charge" over all the assets and undertakings of ENA.

This is **Exhibit "A"** referred to in the

Affidavit of Mark Gottlieb

sworn before me
this 15th day of February, 2019



A Commissioner, etc.

SARA A. WRIGHT
Notary Public, State of New York
No. 01WR6364148
Qualified in Westchester County
Commission Expires 09/05/2021

This is **Exhibit "B"** referred to in the

Affidavit of Mark Gottlieb

sworn before me
this 15th day of February, 2019


A Commissioner, etc.

SARA A. WRIGHT
Notary Public, State of New York
No. 01WR6364148
Qualified in Westchester County
Commission Expires 09/05/2021

2/13/2019

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Several managers suspended, investigation underway at Cambridge manufacturer

CTV Kitchener

Published Monday, January 21, 2019 1:13PM EST

Several managers at Erwin Hymer Group North America (EHG NA) have been suspended, according to a press release issued Monday morning.

The Cambridge-based motorhome manufacturer says an initial investigation has shown irregularities in the company's reporting and that an audit by an outside firm has been started.

The unnamed managers have been suspended pending the outcome of the investigation, according to the release.

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"As an immediate measure Erwin Hymer Group deployed management to support the ongoing operations of EHG NA and the external investigation. EHG NA's focus on its products, business partners and customers remains unchanged."

A separate letter, issued to employees Monday, states the company is "fully aware that this news generates unease and raises concerns." It goes on to say, "We expect to have a full assessment of the situation in the coming weeks."

Monday's development comes after several workers told CTV Kitchener that roughly 100 employees were laid off at three locations in Waterloo Region last week.

In another internal memo, the company told employees the layoffs were due to an economic downturn.

Several workers who spoke to CTV Kitchener say they're worried more layoffs could be coming.

Thor Industries, an American company, announced a plan to buy Erwin Hymer Group for US \$2.4 billion last year. Monday's press release says Thor Industries expects the purchase to be complete by the end of April 2019.

Now, however, Thor Industries and EHG's selling shareholders are finalizing discussions to exclude EHG's North American operations from the purchase, due to the ongoing investigation.

Erwin Hymer Group owns a number of motorhome and caravan brands including Kitchener-based Roadtrek.

PHOTOS



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<https://kitchener.ctvnews.ca/several-managers-suspended-investigation-underway-at-cambridge-manufacturer-1.4262365>

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Financial scandal swirling at Cambridge RV maker

News Jan 23, 2019 by [Brent Davis](/hamilton-author/brent-davis/B637F89B-935C-446A-BBCC-C7C875A6BFAB/) (<mailto:bdavis@therecord.com>) Waterloo Region Record and Josh Rubin Toronto Star

With a new baby at home, William Singleton can ill afford to lose his job. But he worries that's just what he and hundreds of his colleagues are facing as a financial scandal engulfs his employer.

Already, 100 employees of Cambridge, Ont.-based RV manufacturer Erwin Hymer Group North America have been laid off, several senior managers suspended and a \$3.1-billion takeover of its parent company delayed amidst an investigation into financial "irregularities." There are also reports some senior executives have been fired.

"I've got an eight-month-old baby, and I'd been looking at buying a house with my girlfriend. I can't really do that now," said Singleton, who's been working at Erwin Hymer's Cambridge plant for two years.

On Monday, U.S.-based **Thor Industries** (<https://www.thorindustries.com/>) — parent company to iconic RV names like Airstream, Dutchmen and Jayco — announced that it is finalizing discussions to exclude Erwin Hymer Group's North American operations from the anticipated purchase.

Story continues below▼

Revised terms are expected to include a reduced purchase price; the original deal was valued at approximately 2.1 billion euros, or more than \$3.1 billion (Cdn).

It's not clear what that means for the future of the North American subsidiary, based in Waterloo Region with offices and manufacturing facilities in Kitchener and Cambridge.

If the Cambridge operations are carved out of the deal, Singleton worries it wouldn't survive as a standalone company.

"I'm really worried. Thor's really big, and it's pretty clear they don't want anything to do with this," said Singleton.

In his two years with the company, Singleton says he's seen the company grow from 300 employees to roughly 1,000. Two weeks ago, however, everyone with less than three months seniority was abruptly laid off, Singleton said. Many of them — and people who are still employed at the firm — are already trying to find work at other automotive plants in the area, he added.

"There are a lot of people applying to Toyota," Singleton said.

Story continues below▼

Layoffs have not been confirmed by the company, and officials aren't offering any comment beyond an official statement acknowledging the investigation including external auditors. A spokesperson for Waterloo Regional Police Service said Tuesday afternoon they're not investigating the company.

In an emailed statement, Cambridge mayor Kathryn McGarry said she's worried for the company's workers.

"My main concern is for the workers and their families who have had their lives upended by these developments. We are monitoring the situation very closely but, until we receive a briefing from the company's management team, I don't want to speculate on the rumors around the company. ... However, anchored by companies like Toyota, I know our local economy remains strong and our region's automotive sector continues to boast hundreds of competitive companies," McGarry said.

In a letter sent to Erwin Hymer Group North America employees Monday signed by parent firm chief executive officer Martin Brandt and chief financial officer Stefan Junker, the company acknowledged the investigation and Thor Industries' move to remove the local subsidiary from the pending deal.

"We are fully aware that this news generates unease and raises concerns. It is our objective to keep uncertainty as low as possible and we expect to have a full assessment of the situation in the coming weeks," the letter states.

"Please be assured that we are doing everything we can to minimize any potential impact of this situation on our customers, business partners and employees in North America.

"As we are managing this situation, the best course of action for all of us is to remain focused on maintaining the consistently high standards of service our customers and partners have come to expect."

Formerly Roadtrek Motorhomes, the business was purchased in 2016 by **Erwin Hymer Group** (<https://www.erwinhymergroup.com/en>), one of the largest global players in the RV industry and manufacturers of the popular Hymer brand.

The local operations produce the Roadtrek series of camper vans and Hymer-branded vehicles and trailers for the North American market.

On Monday, Erwin Hymer Group announced that it has launched an investigation into the North American operations due to "irregularities in the company's reporting."

A news release from the firm stated that several managers from Erwin Hymer Group North America had been suspended pending the outcome of the investigation, which includes a detailed audit procedure involving external auditors.

2/13/2019

Financial scandal swirling at Cambridge RV maker | TheSpec.com

"As an immediate measure Erwin Hymer Group deployed management to support the ongoing operations of (Erwin Hymer Group North America) and the external investigation," the release states, adding that the local operation's "focus on its products, business partners and customers remains unchanged."

Aside from its news release, officials at Thor Industries referred further questions to the Hymer organization.

The local manufacturer's roots date to 1974 and the founding of Home & Park Vehicles. One of its first customers, Jac Hanemaayer, purchased the business a year later, and designed many of the features that came to symbolize the Roadtrek brand.

Hanemaayer's son, Jeff, ran the business until it was acquired by American capital investment firm Industrial Opportunity Partners in 2011 in the wake of a recession that hammered the company.

When Erwin Hymer Group purchased Roadtrek almost three years ago, there were 300 employees based in Kitchener. The German parent company saw the acquisition as an opportunity to break into the North American RV market, capitalizing on Roadtrek's significant share of the camper van segment and opening the door to the introduction of European styles and construction here.

The company then expanded into Cambridge, with the notable reuse of a 255,000-square-foot facility formerly occupied by BlackBerry on Reuter Drive.

Indiana-based Thor Industries, meanwhile, has announced that it has received all of the required regulatory approvals for its purchase of Erwin Hymer Group, minus the North American subsidiary. Thor expects the deal will close in the financial quarter ending April 30.

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by **Brent Davis** (/hamilton-author/Brent-Davis/b637f89b-935c-446a-bbcc-c7c875a6bfab/)

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Future unclear for Erwin Hymer employees, audit underway

Jan 21, 2019 1:30 PM by: [Ben Eppel](#)



1 / 2 Photo by Ben Eppel//Kitchener Today

The future is still uncertain for workers at Erwin Hymer plants in Waterloo Region, and a new wrench has now been thrown into the situation.

RV manufacturing giant Thor Industries is now saying that they likely won't be buying the North American operations in a deal, which includes our local facilities.

The move correlates with an audit which has now been announced.

A company letter sent to employees, and obtained by 570 NEWS, says EHG is reviewing the business of Erwin Hymer Group North America, and an initial investigation showed "irregularities in the company's reporting".

The memo goes on to say external auditors are now investigating, and several managers have been suspended pending the outcome.

Erwin Hymer also told its employees that they're "aware of concerns", but they likely won't have any answers about the impact for weeks.

That just leaves current employees to wonder about their futures with the company, which were already set in doubt after around 90 layoffs came without warning last week.

Erwin Hymer, at the time, quoted an "unexpected economic downturn" as a reason for the layoffs.

570 NEWS has reached out to both companies, and has yet to receive a comment from Erwin Hymer.

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Production halted at Cambridge RV manufacturer, employees say

CTV Kitchener

Published Tuesday, January 29, 2019 2:38PM EST

Multiple employees at Erwin Hymer have confirmed that production has stopped at the RV manufacturer in Cambridge.

CTV was told there was a meeting on Tuesday morning at the facility and that employees are no longer allowed to touch the vehicles because they have already been sold.

Employees say the status of their jobs is uncertain.

PHOTOS

The company previously said that no lay-offs were planned for the short term.



Production at Erwin Hymer Group has reportedly halted.

A statement from Erwin Hymer Group says the company is currently reviewing the business of the company's North American branch.

"An initial investigation has shown financial irregularities in the company's reporting. We have initiated a detailed audit procedure involving external auditors," the statement reads in part.

Several managers have been suspended pending the outcome of the investigation.

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Fire Marshall investigating Cambridge garage fire

DON'T MISS



Man in India is suing his parents for giving birth to him



Baby rides train solo after dad gets off to have a smoke



OPP's smashing winter reminder: Clean off your car

MORE STORIES FROM CTV KITCHENER

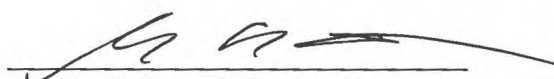
<https://kitchener.ctvnews.ca/production-halted-at-cambridge-rv-manufacturer-employees-say-1.4273977>

1/2

This is **Exhibit "C"** referred to in the

Affidavit of Mark Gottlieb

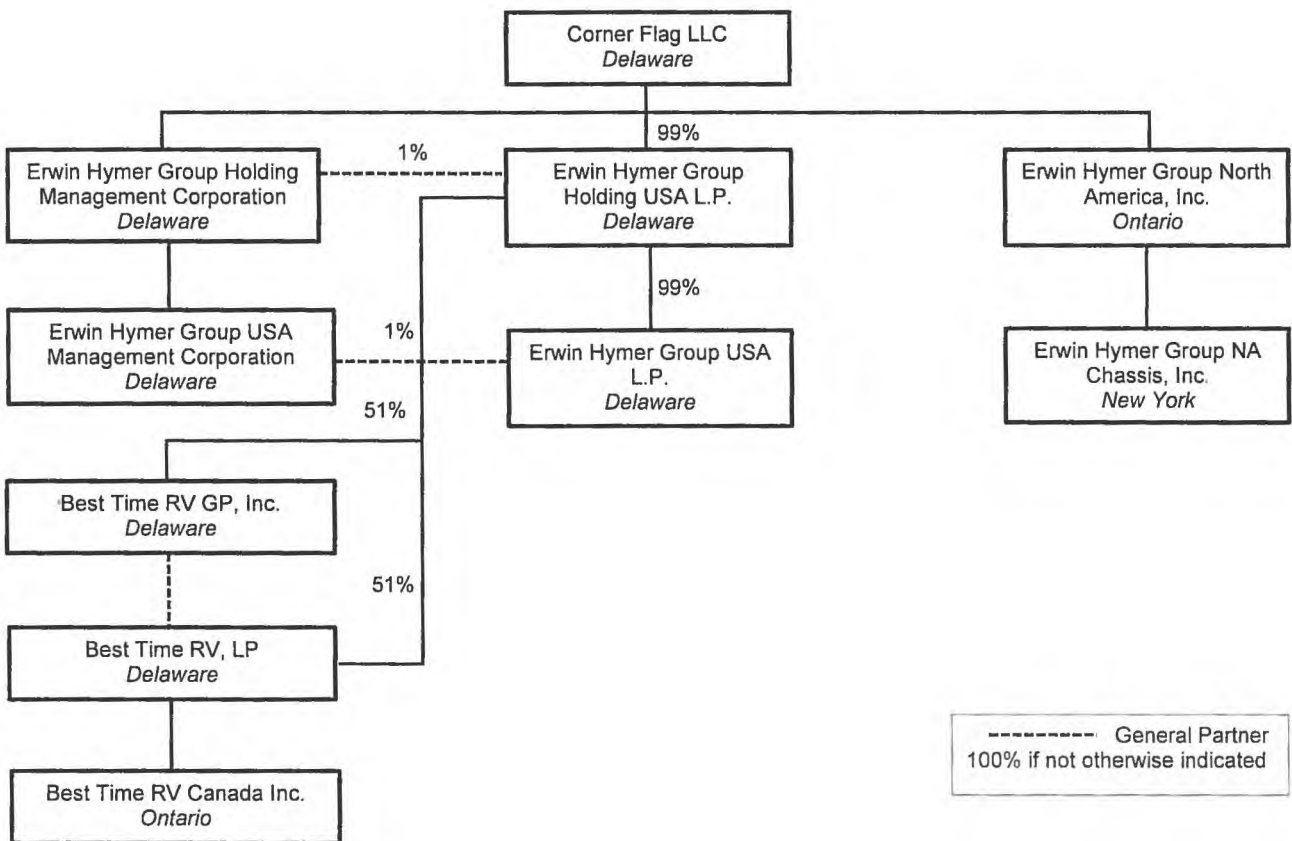
sworn before me
this 15th day of February, 2019



A Commissioner, etc.

SARA A. WRIGHT
Notary Public, State of New York
No. 01WR6364148
Qualified in Westchester County
Commission Expires 09/05/2021

Organization Chart – EHG North America
 Current to February 13, 2019



This is **Exhibit "D"** referred to in the

Affidavit of Mark Gottlieb

sworn before me
this 15th day of February, 2019



A Commissioner, etc.

SARA A. WRIGHT
Notary Public, State of New York
No. 01WR6364148
Qualified in Westchester County
Commission Expires 09/05/2021



NEWS RELEASE

Thor Announces Closing of Erwin Hymer Group Acquisition

2/1/2019

- Combination creates the global leader in the recreational vehicle market
- Acquisition consistent with Thor's long-term strategic growth plan
- Carve out of Erwin Hymer Group's North American operations from the transaction resulted in a purchase price reduction of €170 million, and a €180 million reduction in the obligations the Company would have otherwise assumed under the terms of the original stock purchase agreement

ELKHART, Ind., Feb. 1, 2019 /PRNewswire/ -- Thor Industries, Inc. (NYSE: THO) today announced it has completed its acquisition of Erwin Hymer Group (EHG), one of Europe's largest makers of recreational vehicles (RVs), effective February 1, 2019. The combination of Thor and EHG creates the world's largest RV manufacturer, with leading positions in both North America and Europe. The acquisition excludes EHG's North American businesses, and reflects a €170 million (approximately \$194 million) purchase price reduction and a €180 million (approximately \$205 million) reduction in the obligations the Company would have otherwise assumed under the terms of the original stock purchase agreement.

"This is an exciting time for Thor as we complete the acquisition of Erwin Hymer Group, and immediately gain a leading position in the dynamic European RV market," said Bob Martin, Thor President and CEO. "Europe, the second largest market for RVs globally, is the most logical place to begin the next chapter of Thor's growth. Having built relationships with the EHG management team over the course of several years, the opportunity to enter the European market with a European industry leader fits squarely within our strategic plan. EHG brings tremendous strengths in product development, technology and production efficiency that complement Thor's historic strength in the North American market, making our combined company the undisputed global leader in the RV market."

"We are committed to our strategic growth plan, and, since the acquisition of Jayco in 2016, we have evaluated

numerous opportunities, ultimately deciding the best path for long-term growth was expanding our core RV business geographically into the European market. Now that the purchase is closed, we can focus on our action plans to achieve meaningful operational synergies and sharing of best practices throughout our global operations," Martin added.

Martin Brandt, CEO of Erwin Hymer Group, commented, "The closing of the sale of EHG to Thor marks the beginning of the next phase in the growth of our business. We are excited to begin working together, learning from each other, enhancing our operations and ultimately providing a satisfying experience for our customers and their families. As we begin to leverage the combined talent of our companies and share best practices across the globe, we are more optimistic than ever about the future and the results that will be achieved by the combined company."

Christian Hymer, son of the late founder, Erwin Hymer, and member of the EHG Supervisory Board, said, "In Thor, we found the ideal, long-term strategic owner for the great company that our father built. Thor will provide the resources needed to foster the ongoing entrepreneurial spirit that is the foundation of the Erwin Hymer Group and permeates both companies' corporate cultures. As significant shareholders, our family is fully committed to the long-term success of Thor and the Erwin Hymer Group."

The acquisition consists of EHG's European operations, which represent the vast majority and core of EHG's historical operations and are the driving strategic rationale for the acquisition. The acquisition of EHG provides attractive growth opportunities for the combined company, both in the near and long term, through EHG's leading position in the growing European RV market.

As the Company announced on January 21, 2019, the acquisition excludes EHG's former North American operations. The exclusion of EHG's North American operations from the transaction resulted in the financial terms of the stock purchase agreement being amended to reduce both the purchase price by €170 million (approximately \$194 million) and the obligations the Company would have otherwise assumed by €180 million (approximately \$205 million). The purchase price adjustment resulted in a corresponding reduction in the acquisition financing debt the Company syndicated to fund the purchase. The equity consideration component of the acquisition price was fixed at 2.3 million shares with the original stock purchase agreement, and was unchanged.

Transaction Closing Details

- The purchase price was funded through a combination of available cash of approximately \$95 million debt, and the issuance of 2.3 million shares of Thor common stock.
- The debt financing consists of two credit facilities led by J.P. Morgan and Barclays:
 - \$2.1 billion Term Loan B with a 7-year maturity, consisting of a \$1.4 billion tranche and a €618 million tranche (approximately \$704 million).

- \$750 million, 5-year senior secured asset based loan facility of which approximately \$100 million was utilized as of closing.

"Our balance sheet has historically been a strength for Thor and we intend to maintain that strength and balance sheet discipline," said Colleen Zuhl, Thor Senior Vice President and CFO. "With the closing of the EHG acquisition, our focus will be on reducing leverage while continuing to invest in our long-term growth initiatives and return capital to our shareholders. We anticipate being able to significantly reduce our debt levels using internally generated cash flows over the next two to three years."

Transaction-Related Costs

Costs relating to the acquisition will be included in Thor's 2019 quarterly financial results. Specific estimates of the dollar values of these costs are not yet available for the second quarter, however these costs will be comprised of the following categories, among others:

- Loss on the foreign currency forward contract. The foreign currency forward contract was used to lock in an exchange rate at the September 2018 announcement date, and will be adjusted to market value at the end of the second quarter and will be closed out with any remaining gain or loss recognized in Thor's third-quarter results.
- Transaction-related costs for legal, professional and advisory fees related to financial due diligence, preliminary implementation costs and regulatory review costs.
- Interest expense (including ticking fee) charges.

Transaction-related costs, including professional, legal and advisory fees related to closing of the transaction as well as the integration and implementation of enhanced controls consistent with SOX requirements plus the expensing of capitalized fees related to the prior Thor debt facility, are expected to be in the range of \$40 million to \$55 million for the 9-month period subsequent to our first quarter which ended on October 31, 2018. This estimate excludes any loss on the foreign currency forward contract, purchase accounting adjustments and future interest charges.

Thor anticipates providing pro-forma financial statements for the combined company in a filing with the Securities and Exchange Commission within 75 days after closing.

"We see many opportunities to grow our combined business, and we are excited to share details regarding many of these initiatives with our investors over the coming quarters. We are already moving forward with teams that are on the ground, ready to leverage the best of Thor and the Erwin Hymer Group to create significant bottom-line enhancements through the sharing of best-in-class operating practices and by continuing to enhance the customer experience throughout the worldwide RV market. We have near-term opportunities to enhance our procurement strategies, leverage technology and engineering resources, cross-pollinate aftermarket support and dealer development methods that will be essential to our integration of EHG" added Martin.

"Since Thor's founding with the acquisition of Airstream in 1980, we have consistently worked to maximize long-term shareholder value," said Peter B. Orthwein, Thor Executive Chairman. "With the European market in an earlier stage of recovery than the North American market, this largest acquisition in our Company's history is happening at the right moment to join with a leader in the European RV market to accelerate our long-term growth. Completing this acquisition illustrates the optimism we have for our business and our markets, and the confidence we have in our team's ability to effectively manage our now global business."

About Thor Industries, Inc.

Thor is the sole owner of operating subsidiaries that, combined, represent the world's largest manufacturer of recreational vehicles. For more information on the Company and its products, please go to

www.thorindustries.com.

Forward Looking Statements

This release includes certain statements that are "forward looking" statements within the meaning of the U.S. Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These forward looking statements are made based on management's current expectations and beliefs regarding future and anticipated developments and their effects upon Thor, and inherently involve uncertainties and risks. These forward looking statements are not a guarantee of future performance. We cannot assure you that actual results will not differ materially from our expectations. Factors which could cause materially different results include, among others, raw material and commodity price fluctuations; raw material, commodity or chassis supply restrictions; the impact of tariffs on material or other input costs; the level and magnitude of warranty claims incurred; legislative, regulatory and tax law and/or policy developments including their potential impact on our dealers and their retail customers or on our suppliers; the costs of compliance with governmental regulation; legal and compliance issues including those that may arise in conjunction with recently completed or announced transactions; lower consumer confidence and the level of discretionary consumer spending; interest rate fluctuations; the potential impact of interest rate fluctuations on the general economy and specifically on our dealers and consumers; restrictive lending practices; management changes; the success of new and existing products and services; consumer preferences; the ability to efficiently utilize production facilities; the pace of acquisitions and the successful closing, integration and financial impact thereof; the potential loss of existing customers of acquisitions; our ability to retain key management personnel of acquired companies; a shortage of necessary personnel for production; the loss or reduction of sales to key dealers; disruption of the delivery of units to dealers; increasing costs for freight and transportation; asset impairment charges; cost structure changes; competition; the impact of potential losses under repurchase agreements; the potential impact of the strength of the U.S. dollar on international demand for products priced in U.S. dollars; general economic, market and political conditions; and changes to investment and capital allocation

strategies or other facets of our strategic plan. Additional risks and uncertainties surrounding the acquisition of Erwin Hymer Group SE (the "Erwin Hymer Group") include risks regarding the potential benefits of the acquisition and the anticipated operating synergies, the integration of the business, changes in Euro-U.S. dollar exchange rates that could impact the mark-to-market value of outstanding derivative instruments, the impact of exchange rate fluctuations and unknown or understated liabilities related to the acquisition and Erwin Hymer Group's business. These and other risks and uncertainties are discussed more fully in Item 1A of our Annual Report on Form 10-K for the year ended July 31, 2018 and Part II, Item 1A of our quarterly report on Form 10-Q for the period ended October 31, 2018.

We disclaim any obligation or undertaking to disseminate any updates or revisions to any forward looking statements contained in this release or to reflect any change in our expectations after the date hereof or any change in events, conditions or circumstances on which any statement is based, except as required by law.

Contact

Mark Trinske

Vice President of Investor Relations

(574) 970-7912

mtrinske@thorindustries.com

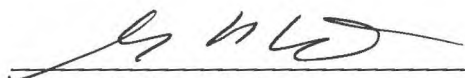
View original content:<http://www.prnewswire.com/news-releases/thor-announces-closing-of-erwin-hymer-group-acquisition-300788082.html>

SOURCE Thor Industries, Inc.

This is **Exhibit "E"** referred to in the

Affidavit of Mark Gottlieb

sworn before me
this 15th day of February, 2019



A Commissioner, etc.

SARA A. WRIGHT
Notary Public, State of New York
No. 01WR6364148
Qualified in Westchester County
Commission Expires 09/06/2021

Request ID: 022584129
 Transaction ID: 70491976
 Category ID: UNE

Province of Ontario
 Ministry of Government Services

Date Report Produced: 2019/01/14
 Time Report Produced: 14:43:49
 Page: 1

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Amalgamation Date
1951522	ERWIN HYMER GROUP NORTH AMERICA, INC.	2016/02/25
		Jurisdiction
		ONTARIO
		Former Jurisdiction
		NOT APPLICABLE
Corporation Type	Corporation Status	
ONTARIO BUSINESS CORP.	ACTIVE	
Registered Office Address	Date Amalgamated	Amalgamation Ind.
25 REUTER DRIVE	NOT APPLICABLE	A
	New Amal. Number	Notice Date
	NOT APPLICABLE	NOT APPLICABLE
		Letter Date
		NOT APPLICABLE
Mailing Address	Revival Date	Continuation Date
25 REUTER DRIVE	NOT APPLICABLE	NOT APPLICABLE
	Transferred Out Date	Cancel/Inactive Date
	NOT APPLICABLE	NOT APPLICABLE
	EP Licence Eff.Date	EP Licence Term.Date
	NOT APPLICABLE	NOT APPLICABLE
	Number of Directors Minimum Maximum	Date Commenced in Ontario
	00001 00010	NOT APPLICABLE
		Date Ceased in Ontario
		NOT APPLICABLE
Activity Classification		
NOT AVAILABLE		

Request ID: 022584129
Transaction ID: 70491976
Category ID: UN/E

Province of Ontario
Ministry of Government Services

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CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

1951522

ERWIN HYMER GROUP NORTH AMERICA, INC.

Corporate Name History

Effective Date

ERWIN HYMER GROUP NORTH AMERICA, INC.

2016/02/25

Current Business Name(s) Exist:

YES

Expired Business Name(s) Exist:

NO

Amalgamating Corporations

Corporation Name

Corporate Number

ERWIN HYMER GROUP NORTH AMERICA, INC.

2503353

ROADTREK MOTORHOMES INC.

1841869

Request ID: 022584129
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 Category ID: UNE

Province of Ontario
 Ministry of Government Services

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CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

1951522

ERWIN HYMER GROUP NORTH AMERICA, INC.

Administrator:

Name (Individual / Corporation)

Address

MARTIN

100 SHIRLEY AVENUE

BRANDT

KITCHENER
 ONTARIO
 CANADA N2B 2E1

Date Began

First Director

2016/02/25

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

DIRECTOR

N

Administrator:

Name (Individual / Corporation)

Address

JAMES

100 SHIRLEY AVENUE

HAMMILL

KITCHENER
 ONTARIO
 CANADA N2B 2E1

Date Began

First Director

2016/02/25

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

DIRECTOR

Y

Request ID: 022584129
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Province of Ontario
 Ministry of Government Services

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CORPORATION PROFILE REPORT

Ontario Corp Number

1951522

Corporation Name

ERWIN HYMER GROUP NORTH AMERICA, INC.

Administrator: Name (Individual / Corporation)

JAMES
 HAMMILL

Address

100 SHIRLEY AVENUE

 KITCHENER
 ONTARIO
 CANADA N2B 2E1

Date Began

2016/02/25

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

PRESIDENT

Resident Canadian

Y

Administrator: Name (Individual / Corporation)

STEFAN
 JUNKER

Address

AM HEUBERGER A2

 BALINGEN
 GERMANY 72336

Date Began

2018/01/18

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

N

Request ID: 022584129
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CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

1951522

ERWIN HYMER GROUP NORTH AMERICA, INC.

Administrator:

Name (Individual / Corporation)

Address

JEFFREY

181 BAY STREET

MERK

Suite # 1800
 TORONTO
 ONTARIO
 CANADA M5J 2T9

Date Began

First Director

2016/02/25

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

DIRECTOR

Y

Administrator:

Name (Individual / Corporation)

Address

JEFFREY

181 BAY STREET

MERK

Suite # 1800
 TORONTO
 ONTARIO
 CANADA M5J 2T9

Date Began

First Director

2016/02/25

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

OFFICER

SECRETARY

Y

Request ID: 022584129
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Province of Ontario
 Ministry of Government Services

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CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

1951522

ERWIN HYMER GROUP NORTH AMERICA, INC.

Administrator:

Name (Individual / Corporation)

Address

LUDWIG

100 SHIRLEY AVENUE

VETTER

KITCHENER
 ONTARIO
 CANADA N2B 2E1

Date Began

First Director

2016/02/25

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

DIRECTOR

N

Administrator:

Name (Individual / Corporation)

Address

MARK

100 SHIRLEY AVENUE

WEIGEL

KITCHENER
 ONTARIO
 CANADA N2B 2E1

Date Began

First Director

2016/02/25

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

DIRECTOR

Y

Request ID: 022584129
Transaction ID: 70491976
Category ID: UN/E

Province of Ontario
Ministry of Government Services

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CORPORATION PROFILE REPORT

Ontario Corp Number

1951522

Corporation Name

ERWIN HYMER GROUP NORTH AMERICA, INC.

**Administrator:
Name (Individual / Corporation)**

ANDREW
WELLER

Address

100 SHIRLEY AVENUE

KITCHENER
ONTARIO
CANADA N2B 2E1

Date Began

2016/02/25

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

N

Request ID: 022584129
Transaction ID: 70491976
Category ID: UN/E

Province of Ontario
Ministry of Government Services

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CORPORATION PROFILE REPORT

Ontario Corp Number

1951522

Corporation Name

ERWIN HYMER GROUP NORTH AMERICA, INC.

Last Document Recorded

Act/Code	Description	Form	Date
CIA	CHANGE NOTICE	1	2018/04/13 (ELECTRONIC FILING)

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

Request ID: 022584334
Transaction ID: 70492525
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2019/01/14
Time Report Produced: 14:59:56
Page: 1

LIST OF CURRENT BUSINESS NAMES REGISTERED BY A CORPORATION

Ontario Corporation Number

1951522

CORPORATION NAME

ERWIN HYMER GROUP NORTH AMERICA, INC.

REGISTRATION DATE	BUSINESS NAME	EXPIRY DATE	BUSINESS ID NUMBER
2018/12/04	ERWIN HYMER GROUP NORTH AMERICA	2023/12/03	281258228

THE REPORT SETS OUT ALL BUSINESS NAMES REGISTERED OR RENEWED BY THE CORPORATION IN THE PAST 5 YEARS AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. IF MORE DETAILED INFORMATION IS REQUIRED, YOU MAY REQUEST A SEARCH AGAINST INDIVIDUAL NAMES SHOWN ON THIS REPORT.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.