

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

THE HONOURABLE MR.
JUSTICE MCEWEN

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TUESDAY, THE 25th
DAY OF JUNE, 2019

BETWEEN:



CORNER FLAG LLC

Applicant

– and –

ERWIN HYMER GROUP NORTH AMERICA, INC.

Respondent

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

**ORDER
(Bankruptcy Application and Interim Distribution)**

THIS MOTION made by Alvarez & Marsal Canada Inc., in its capacity as the court-appointed receiver and manager (the “**Receiver**”) without security of all of the assets, undertakings and properties of Erwin Hymer Group North America, Inc. (“**EHGNA**” or the “**Debtor**”), for an Order authorizing the Receiver to file an assignment into bankruptcy on behalf of the Debtor, authorizing the Receiver to make certain distributions to Corner Flag LLC (“**Corner Flag**”) and certain payments to Mercedes-Benz Financial Services USA LLC (“**MBFS US**”), and

granting related relief was heard this day at the Court House, 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Receiver dated March 20, 2019 and the Second Report of the Receiver dated June 10, 2019 (the “**Second Report**”) and on hearing the submissions of counsel for the Receiver, Corner Flag and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Waleed Malik affirmed June 11, 2019 and the Affidavit of Service of Ana Chalupa sworn June 11, 2019, both filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the timing and method of service of the Notice of Motion and Motion Record be and are hereby abridged and validated, and this motion is properly returnable today.

2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Second Report.

BANKRUPTCY APPLICATION

3. **THIS COURT ORDERS** that the Receiver be and is hereby authorized, but not obligated, to file an assignment into bankruptcy under the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) on behalf of the Debtor at any time following the delivery of the Receiver’s Certificate (as defined in the Order (Roadtrek Approval and Vesting) dated June 17, 2019 (the “**AVO**”)) and that Alvarez & Marsal Canada Inc. is authorized, but not obligated, to act as trustee in bankruptcy of the Debtor in respect of any such bankruptcy proceedings.

DISTRIBUTIONS

4. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to distribute to Corner Flag, in one or more distributions, from the net proceeds realized from the Transactions (as defined in Second Report) (collectively, the “**Net Proceeds**”) (excluding the Construction Lien Reserve (as defined in the AVO)), the full amount of the indebtedness owing by the Receiver to Corner Flag under the Receiver Term Sheet as soon as reasonably practical following receipt of such Net Proceeds.

5. **THIS COURT ORDERS** that, after payment of the amount set out in paragraph 4, the Receiver be and is hereby authorized to distribute to Corner Flag, in its discretion without further order of the Court, the balance of the Net Proceeds and any other amounts being held by the Receiver from time to time, towards the reduction of the indebtedness owing by the Debtor to Corner Flag under the Corner Flag Promissory Note and Corner Flag Security (together with the Corner Flag Promissory Note, the “**Corner Flag Loan Documents**”) up to a maximum amount of the indebtedness owing by the Debtor to Corner Flag under the Corner Flag Loan Documents, provided, however, that no amounts shall be distributed to Corner Flag from the Construction Lien Reserve until each of the Construction Liens (as defined in the AVO) is settled and discharged in accordance with the terms of the Ancillary Administration Order of this Court dated June 17, 2019.

PAYMENTS TO MBFS US

6. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to, following payment in full of amounts owing to Corner Flag, in the Receiver’s sole discretion and without further order of this Court, make one or more payments to MBFS US in respect of amounts owing by EHG Chassis (as guaranteed by EHGNA) for MBFS US Financed Collateral sold to

third parties where proceeds were received by EHGNA pre-receivership, as such payments are described at Sections 15 and 16.1 of the Second Report.

7. **THIS COURT ORDERS** that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any assignment in bankruptcy or any petition for a bankruptcy order now or hereafter issued pursuant to the BIA and any order issued pursuant to any such petition; or
- (c) any assignment in bankruptcy made in respect of the Debtor;

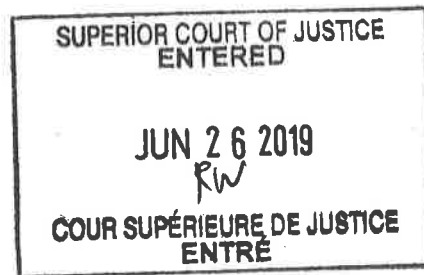
the payments and distributions contemplated in this Order, are made free and clear of any Claims and Encumbrances (each as defined in the AVO), are binding on any trustee in bankruptcy that may be appointed in respect of the Debtor, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any applicable federal or provincial legislation, as against Corner Flag or MBFS US, and shall not constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

GENERAL

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as

may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

9. **THIS COURT ORDERS** that any of the Construction Lien Claimants, Corner Flag, MBFS US and the Receiver may seek directions from this Court in respect of any matter contemplated herein.

A handwritten signature in black ink, appearing to be 'McIntosh', written over a horizontal line.

CORNER FLAG LLC
Applicant

and

ERWIN HYMER GROUP NORTH AMERICA, INC.
Respondent

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

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

Proceeding commenced at Toronto

**ORDER
(Bankruptcy Application and Interim
Distribution)**

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