

**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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **EXPRESS FASHION APPAREL CANADA INC.**
and **EXPRESS CANADA GC GP, INC.**

**FIFTH REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.**

JUNE 21, 2018

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1.0 INTRODUCTION

- 1.1 On May 4, 2017 (the “**Filing Date**”), Express Fashion Apparel Canada Inc. (“**Express Canada**”) and Express Canada GC GP, Inc. (collectively, the “**Applicants**”) applied for and were granted protection by this Court under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). Pursuant to an Order of this Court dated May 4, 2017 (the “**Initial Order**”), these CCAA proceedings (the “**CCAA Proceedings**”) were commenced and Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed as monitor of the Applicants in the CCAA Proceedings (in such capacity and not in its personal or corporate capacity, the “**Monitor**”).
- 1.2 In connection with the CCAA Proceedings, the Monitor has provided to this Court its First Report of the Monitor dated May 8, 2017 (the “**First Report**”), its Second Report of the Monitor dated May 25, 2017 (the “**Second Report**”), its Third Report of the Monitor dated September 20, 2017 (the “**Third Report**”) and its Fourth Report of the Monitor dated November 30, 2017 (the “**Fourth Report**” and collectively with the Third Report, Second Report and First Report, the “**Monitor’s Reports**”). A&M has also, in its capacity as the proposed monitor of the Applicants, provided to this Court the Pre-Filing Report of the Proposed Monitor dated May 3, 2017 (the “**Pre-Filing Report**”, and together with the Monitor’s Reports, the “**Prior Reports**”). The Prior Reports, Initial Order, and the other Orders granted in these CCAA Proceedings and other Court-filed documents and notices in these CCAA Proceedings, are available on the Monitor’s website at www.alvarezandmarsal.com/ExpressCanada (the “**Monitor’s Website**”).
- 1.3 Capitalized terms used but not defined in this Fifth Report of the Monitor (the “**Fifth Report**”) have the meaning ascribed to them in the Joint Plan of Compromise and

Arrangement dated September 27, 2017 (as amended, and as may be further amended, varied or supplemented from time to time in accordance with the terms thereof, and together with all schedules thereto, the “**Plan**”).

- 1.4 Pursuant to the Initial Order, the stay of proceedings and other benefits of the Initial Order were extended to Express Canada GC, LP (“**Express Canada LP**” and together with the Applicants, the “**Express Canada Entities**”). Express Canada LP is wholly owned by the Applicants and as described in the Pre-Filing Report performed functions integral to the Applicants’ business.
- 1.5 On May 10, 2017, this Court issued an Order (the “**Sale Approval Order**”) which, among other things: (i) approved the Consulting Agreement, the Sale Guidelines and the transactions contemplated thereunder (as each term is defined in the First Report); and (ii) authorized Express Canada, with the assistance of the Consultant (as defined in the Second Report), to conduct a liquidation sale of all of Express Canada’s Merchandise and FF&E (as defined in the First Report) in accordance with the Sale Approval Order, the Consulting Agreement and the Sale Guidelines.
- 1.6 On May 29, 2017, this Court issued an Order (the “**Claims Procedure Order**”) which, among other things: (i) approved a procedure for the identification and quantification of claims against the Express Canada Entities and their directors and officers; and (ii) authorized, empowered and directed the Monitor to implement the Claims Procedure Order in consultation with the Express Canada Entities.
- 1.7 In consultation with the Monitor, the Express Canada Entities, Express, LLC (“**Express US**”) and each of the Landlords negotiated the Plan, which provides that each Unsecured

Creditor's Unsecured Creditor Claim will be paid in full, each Landlord will receive its *pro rata* share of the Landlord Cash Pool based on the amount of its Landlord Claim, and Express US will permit its claim to be an Unaffected Claim which will not be paid under the Plan. The Plan had the unanimous support of the Landlords.

- 1.8 On September 27, 2017, this Court issued an Order (the “**Sanction and Vesting Order**”) which, among other things: (i) authorized the Express Canada Entities to call the Unsecured Creditors' Meeting and the Landlord Creditors' Meeting, each of which were deemed to have occurred on September 27, 2017; (ii) deemed every Unsecured Creditor to have voted in favour of a resolution to approve the Plan at the Unsecured Creditors' Meeting; (iii) deemed the Monitor to have voted each Landlord Proxy (as defined in the Third Report) at the Landlord Creditors' Meeting, in favour of a resolution to approve the Plan; (iv) declared that the Plan was approved unanimously by the Affected Creditors at the Unsecured Creditors' Meeting and the Landlord Creditors' Meeting; (v) sanctioned and approved the Plan; and (vi) approved certain of the Prior Reports and the actions, conduct and activities of A&M and the Monitor as described in those reports.
- 1.9 On October 19, 2017, the Plan was implemented.
- 1.10 On December 8, 2017, this Court issued an Order (the “**Discharge and Termination Order**”) which among other things: (i) extended the Stay Period until June 29, 2018; (ii) provides for the discharge of A&M as Monitor in these CCAA Proceedings on delivery of the Monitor's Plan Completion Certificate; (iii) provides for the termination of these CCAA Proceedings upon the delivery of the Monitor's Plan Completion Certificate; (iv)

granted certain releases; (v) approved the actions, conduct and activities of the Monitor; and (vi) approved the fees and disbursements of the Monitor and the Monitor's counsel.

1.11 The purpose of this Fifth Report is to provide this Court with:

- (i) information regarding the following:
 - (a) the status of the CCAA Proceedings and limited activities remaining in the CCAA Proceedings;
 - (b) the status of the Administrative Reserve and Landlord Cash Pool and payments and distributions made to date;
 - (c) the Monitor's activities since the granting of the Discharge and Termination Order; and
 - (d) the Applicants' motion for an Order (the "**Stay Extension Order**") which extends the Stay Period (as defined in the Initial Order) until the earlier of November 30, 2018 or the termination of the CCAA Proceedings; and
- (ii) the Monitor's conclusions and recommendations in connection with Applicant's Motion for the Stay Extension Order.

2.0 TERMS OF REFERENCE AND DISCLAIMER

2.1 In preparing this Fifth Report, the Monitor has been provided with and has relied upon unaudited financial information and the books and records prepared by the Express Canada Entities and Express US (collectively, the "**Express Entities**") and has held

discussions with the Express Entities' management (the "**Management**") and legal counsel for the Express Canada Entities (collectively, the "**Information**").

2.2 Except as otherwise described in this Fifth Report:

- (i) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CASs**") pursuant to the *Chartered Professional Accountants Canada Handbook* (the "**CPA Handbook**") and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and
- (ii) some of the information referred to in this Fifth Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the CPA Handbook, has not been performed.

2.3 Future oriented financial information referred to in this Fifth Report was prepared based on the Express Entities' estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

2.4 Unless otherwise stated, all monetary amounts contained in this Fifth Report are expressed in Canadian dollars.

3.0 STATUS OF THE CCAA PROCEEDINGS

3.1 As set out below and described in greater detail in the Fourth Report, the Plan has been implemented and all Unsecured Creditor Claims have been satisfied in full.

3.2 At this time, the only outstanding claims that are entitled to receive a distribution under the Plan are claims by Landlords. To date, two distributions have been made to Landlords and one tax refund in respect of the Initial Distribution has been received by Express Canada.

3.3 It is expected that two more sizeable tax refunds will be received by Express Canada and two more distributions will be made by Express Canada to Landlords prior to the termination of the CCAA Proceedings.

4.0 STATUS OF THE ADMINISTRATIVE RESERVE AND CASH POOLS

4.1 As set out above and described in greater detail in the Fourth Report, the Plan Implementation Date occurred on October 19, 2017 and the Initial Distribution Date occurred on October 23, 2017.

4.2 On the Plan Implementation Date, pursuant to the Plan, Express Canada established: (i) the Administrative Reserve Account to hold the Administrative Reserve; (ii) the Unsecured Creditor Cash Pool Account to hold the Unsecured Creditor Cash Pool; and (iii) the Landlord Cash Pool Account to hold the Landlord Cash Pool.

4.3 Each of these accounts are described in greater detail in the Fourth Report and the following provides an update in respect of each:

Administrative Reserve

4.4 On the Plan Implementation Date, Express Canada established the Administrative Reserve Account in the amount of \$1,465,000 to be used by Express Canada to pay all costs, professional fees and disbursements together with payment of any other amounts incurred and payable in connection with implementation of the Plan, winding-down the CCAA Proceedings and the anticipated bankruptcy of any one or more of the Express Canada Entities.

4.5 A summary of the cash flow activity in the Administrative Reserve Account since the Fourth Report is provided in the table below:

Summary of Administrative Reserve Account	
Balance as at November 17, 2017	\$505,512
Add: Cash receipts	290,598
Less: Professional fees & disbursements	(\$189,272)
Balance as at June 15, 2018	\$606,838

- (i) cash receipts include: (a) the return of professional fee retainers from the Monitor, the Monitor's counsel and the Applicants' counsel in the aggregate amount of \$250,000; and (b) tax refunds and other cash receipts in the aggregate amount of approximately \$40,000; and
- (ii) professional fees and disbursements in the amount of \$189,272 for the period of October 21, 2017 to April 30, 2018, comprised of fees and disbursements for the

Monitor, the Monitor's counsel and the Applicants' counsel.

Unsecured Creditor Cash Pool

- 4.6 On the Plan Implementation Date, Express Canada established the Unsecured Creditor Cash Pool Account in the amount of \$857,505.05 to be used by Express Canada to make distributions (the “**Unsecured Creditor Distribution**”) to satisfy all Unsecured Creditor Claims in full.
- 4.7 As described in the Fourth Report, on October 24 and 25, 2017, Express Canada under the supervision of the Monitor, paid all Unsecured Creditor Claims in full.
- 4.8 There is no remaining balance in the Unsecured Creditor Cash Pool.

Landlord Cash Pool

- 4.9 On the Plan Implementation Date, Express Canada established the Landlord Cash Pool Account in the amount of \$16,643,000 to pay the holder of each Landlord Claim its *pro rata* share of the Landlord Cash Pool based on the amount of such holder's Landlord Claim.
- 4.10 On October 24, 2017, initial distributions were made to Landlords by Express Canada under the supervision of the Monitor in the aggregate amount of \$16,643,000 (together with the Unsecured Creditor Distribution, the “**Initial Distribution**”).
- 4.11 As described in the Fourth Report, it was anticipated that the Landlord Cash Pool would increase as a result of the receipt of tax refunds related to the payments and distributions made under the Plan and other amounts expected to be received by Express Canada.

- 4.12 Following the Initial Distribution, Express Canada received tax refunds in the aggregate amount of \$1,677,792.35, which was distributed to Landlords by Express Canada under the supervision of the Monitor on January 10, 2018 (the “**Second Distribution**”).
- 4.13 As a result of the Second Distribution, Express Canada anticipates receiving further tax refunds in the aggregate amount of approximately \$180,000. Following receipt of this tax refund, Express Canada under the supervision of the Monitor, will distribute additional funds to the Landlords (the “**Third Distribution**”).
- 4.14 In order to maximize Landlord distributions and reduce the number of tax claims that need to be sought by Express Canada, it is anticipated that the Third Distribution will also include a portion of the current balance in the Administrative Reserve Account.
- 4.15 Following the Third Landlord Distribution, Express Canada intends to seek a final tax refund from the Canada Revenue Agency. Following receipt of this final tax refund and on the Final Distribution Date, Express Canada will pay: (i) the Bankruptcy Trustee Retainer (\$50,000) to the Monitor to be remitted to A&M, in its capacity as proposed bankruptcy trustee, to be held as retainer pending the bankruptcy of the Express Canada Entities; (ii) any final Administrative Reserve Costs (with any excess amounts in the Administrative Reserve to be transferred to the Landlord Cash Pool Account); and (iii) to each holder of a Landlord Claim, an amount equal to its *pro rata* share of the balance of the Landlord Cash Pool (the “**Final Distribution**”).

5.0 MONITOR’S ACTIVITIES SINCE THE FILING OF THE FOURTH REPORT

- 5.1 In addition to those described above, the activities of the Monitor from the date of the Fourth Report (November 30, 2017) have included the following:

- (i) attending the December 8, 2017 Court hearing for the granting of the Discharge and Termination Order and posting non-confidential materials filed with the Court to the Monitor's Website;
- (ii) continuing to assist the Express Canada Entities with communications with Landlords and other parties;
- (iii) assisting Express Canada with the filing of remaining tax returns;
- (iv) assisting Express Canada in respect of communications with the Canada Revenue Agency regarding the status of tax refunds and the delivery of a clearance certificate;
- (v) supervising the Express Canada Entities in making the payments and distributions described in this Fifth Report; and
- (vi) preparing this Fifth Report.

6.0 ACTIVITIES TO COMPLETE

6.1 The expected remaining activities of the Express Canada Entities and the Monitor to be completed prior to completion of the Plan, termination of the CCAA Proceedings and discharge of the Monitor are as follows:

- (i) Express Canada filing tax claims for tax refunds in respect of the payments and distributions made under the Plan and collecting any associated tax refunds;

- (ii) Express Canada, with the assistance of the Monitor, making the distributions described herein to the Landlords, being the Third Distribution and the Final Distribution on the Final Distribution Date;
- (iii) Express Canada, with the assistance of the Monitor, taking preparation or steps necessary to assign one or more of the Express Canada Entities into bankruptcy;
- (iv) the Monitor completing statutory and administrative duties and filings; and
- (v) the Monitor filing the Monitor's Plan Completion Certificate.

7.0 EXTENSION OF THE STAY PERIOD

7.1 The Stay Period currently expires on June 29, 2018.

7.2 The Monitor supports the Applicants' motion to extend the Stay Period to the earlier of November 30, 2018 and the time at which the Monitor's Plan Completion Certificate is filed, for the following reasons:

- (i) the Monitor will not be in a position to file the Monitor's Plan Completion Certificate and terminate the CCAA Proceedings as additional time is required to allow Express Canada to file the final tax claim and collect outstanding tax refunds, which will maximize future distributions to Landlords;
- (ii) as the CCAA Proceedings will not be able to be terminated prior to the expiry of the Stay Period, the Applicants are seeking an extension of the stay until all remaining activities are completed and the CCAA Proceedings can be concluded;


- (iii) the Administrative Reserve is sufficient to fund the remaining Administrative Reserve Costs and accordingly, the Express Canada Entities are projected to have sufficient liquidity through the remainder of these CCAA Proceedings;
- (iv) the Monitor believes that remaining creditors of the Applicants would not be materially prejudiced by the proposed extension of the Stay Period; and
- (v) the Applicants continue to act in good faith and with due diligence.

8.0 MONITOR'S CONCLUSIONS AND RECOMMENDATIONS

8.1 For the reasons set out in this Fifth Report, the Monitor is of the view that the relief requested by the Applicants is reasonable and respectfully recommends that this Court grant the Stay Extension.

All of which is respectfully submitted to this Court this 21st day of June, 2018.

Alvarez & Marsal Canada Inc., solely in its capacity as Monitor of Express Fashion Apparel Canada Inc. and Express Canada GC GP, Inc., and not in its personal or corporate capacity

Per: 
Name: Alan J. Hutchens
Title: Senior Vice-President

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

Court File No.: CV-17-11785-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **EXPRESS
FASHION APPAREL CANADA INC.** and **EXPRESS CANADA GC GP, INC.**

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

Proceeding Commenced at Toronto

FIFTH REPORT OF THE MONITOR

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