

**IN THE MATTER OF THE BANKRUPTCY OF
ERWIN HYMER GROUP NORTH AMERICA, INC.
having its principal place of business
in the City of Cambridge, in the Province of Ontario**

**TRUSTEE'S REPORT TO THE FIRST MEETING OF CREDITORS ON
PRELIMINARY ADMINISTRATION
ESTATE NO. 35-2561267**

I. BACKGROUND

On September 23, 2019 (the **"Date of Bankruptcy"**) Erwin Hymer Group North America, Inc. (**"EHGNA"** or the **"Company"**) by and through its Court appointed Receiver, Alvarez & Marsal Canada Inc. (**"A&M"**) (in such capacity and not in its personal or corporate capacity, the **"Receiver"**), filed an assignment into bankruptcy, and Alvarez & Marsal Canada Inc., was appointed as the licensed insolvency trustee of the estate of the bankrupt (in such capacity, the **"Trustee"**) by the Official Receiver. Such appointment is subject to affirmation by the creditors of the Trustee's appointment or substitution of another trustee by such creditors.

Prior to January 31, 2019, EHGNA, along with Erwin Hymer Group NA Chassis Inc. and Erwin Hymer Group Holding USA L.P., and certain other related North American entities and partnerships (collectively the **"EHG NA Entities"**), were part of the global Erwin Hymer group of companies, an international group of entities engaged in the manufacture and sale of recreational vehicles (**"RVs"**), that was headquartered in Germany and had numerous operating subsidiaries throughout Europe (the **"Erwin Hymer Global Group"**). EHGNA purchased the chassis and components required for the development and assembly of RVs from chassis dealers and other suppliers and assembled them into RVs. EHGNA would then sell these assembled RVs to a network of finished product RV dealers who, in turn, sold the RVs to retail customers.

Following a marketing and investment sales process carried out by Erwin Hymer Group SE (**"EHG SE"**), the ultimate shareholder of Erwin Hymer Global Group, EHG SE entered into a definitive share purchase agreement dated September 18, 2018 (the **"SPA"**) with Thor Industries, Inc. (**"Thor"**) whereby Thor was to acquire the Erwin Hymer Global Group, including the EHG NA Entities.

The transaction with Thor was originally intended to close in early January 2019, but was delayed due to the discovery of certain financial irregularities in the books and records of the EHG NA Entities.

Ultimately, as a result of the issues surrounding the financial irregularities, EHG SE and Thor agreed to amend the SPA to, among other things, exclude the EHG NA Entities from the transaction, and to provide for a significant reduction in the transaction purchase price of approximately \$US 194 million¹ (the **"Amended Thor Transaction"**).

¹ As per the 2/1/2019 press release issued by Thor Industries.

To facilitate the Amended Thor Transaction, EHG SE first divested its ownership interests in the EHG NA Entities, pursuant to a transaction with Corner Flag LLC (“**Corner Flag**”), whereby Corner Flag acquired all of the outstanding shares in Erwin Hymer Group Holding Management Corporation and EHGNA, and all outstanding partnership interests in Erwin Hymer Group Holding USA L.P. (the “**Carve-Out Transaction**”).

Following the closing of the Carve-Out Transaction, EHGNA continued to have a liquidity shortfall which rendered it unable to meet critical immediate and short-term obligations, including payroll, source deductions, benefits, and pension amounts due to employees or due to be remitted to other parties on behalf of employees.

To satisfy these obligations, EHGNA borrowed approximately \$5.1 million from Corner Flag on February 14, 2019 and granted Corner Flag a security interest over all of EHGNA’s present and after acquired personal property, pursuant to a general security agreement dated February 14, 2019 (the “**Corner Flag Security**”).

Corner Flag sought the appointment of A&M as receiver and manager to fill the existing governance void, take steps to preserve and maintain the property of EHGNA and to assess asset realization strategies and options. Pursuant to an order of the Ontario Superior Court of Justice (the “**Court**”) made on February 15, 2019 (the “**Receivership Date**”), A&M was appointed as Receiver of EHGNA.

Since the Receivership Date, the Receiver has taken control of the property, assets and undertaking of EHGNA. It has preserved the books and records, managed the remaining business, and realized on the property of EHGNA, through collection of accounts receivable, sale of inventory, and completion of the Transactions (defined below).

The Receiver conducted a broad Court-approved sale process for the business of EHGNA. Ultimately, it obtained Court approval of and closed the following three major transactions (the “**Transactions**”):

- (a) the sale of that part of EHGNA’s business relating to the manufacturing, distribution and sale of “Roadtrek” style and branded motorhome models in Canada and the United States, including assignment of the lease at 20 Tyler Street, to RT Acquisition Corp. (the “**Roadtrek Transaction**”);
- (b) the sale to La Mesa R.V. Center, Inc. of 113 RV units using the “Hymer” or “Corado” brand (the “**La Mesa Transaction**”); and
- (c) the sale to Infinity Asset Solutions Inc. of certain remaining assets excluded from the Roadtrek Transaction and the La Mesa Transaction.

The Transactions were executed and completed during July and August of 2019, and the Receiver vacated all former EHGNA locations by August 31, 2019.

Pursuant to an order of the Court made on June 25, 2019, the Receiver was authorized to file an assignment into bankruptcy under the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”) on behalf of EHGNA at any time following the delivery of a Receiver’s Certificate related to the completion of the Roadtrek Transaction.



As of the Date of the Bankruptcy, all operations of EHGNA have ceased, all employees have been terminated, the realizable property of EHGNA has been sold, and the majority of outstanding accounts receivable have been collected.

For a detailed description of the receivership proceedings and an overview of the Transactions effected therein, creditors should refer to the reports of the Receiver filed in the receivership proceedings, which can be found on the Receiver's website at: <https://www.alvarezandmarsal.com/ehgna>.

II. CAUSES OF BANKRUPTCY & FINANCIAL POSITION

As described above, virtually all of the assets of EHGNA were sold prior to the Date of Bankruptcy, and as of the Date of Bankruptcy, as outlined in the Statement of Affairs, the Primary Secured Creditors have claims in excess of the realized and realizable assets of the Company.

The Statement of Affairs reflects a shortfall of assets to liabilities of \$315.6 million as at the Date of Bankruptcy.

III. ASSETS

As noted in the Statement of Affairs, the only remaining assets of the Date of Bankruptcy are cash held in the Receiver's trust account (with Royal Bank of Canada) of approximately \$12.1 million, after deducting the Receiver's anticipated completion costs, collectable accounts receivable of approximately \$465,000 and certain contingent receivables (together, the "**Remaining Assets**").

The Remaining Assets are subject to the security of the Primary Secured Creditors, and it is not anticipated that any proceeds will be available for distribution to unsecured creditors.

Trust Account

As noted above, the Receiver maintains a trust account with the Royal Bank of Canada. The Trustee has confirmed that the account balance, after deducting estimated Receiver completion costs, is approximately \$12.1 million.

Accounts Receivable

As outlined in List "E" of the Statement of Affairs, approximately \$465,000 of remaining accounts receivable are estimated to be collectible, as follows:

1. Approximately \$392,000 is owing from the Canada Revenue Agency in respect of outstanding harmonized sales tax ("**HST**") refunds, for HST paid by the Receiver in conjunction with the Receiver's activities following the Receivership Date. The Receiver expects that this amount is fully collectible.
2. Approximately \$72,000 is owing from Camping World RV for the sale of an RV unit. The Receiver expects to recover this amount in full.



In addition to the collectible accounts receivable outlined above, the Receiver has taken steps to realize on certain other contingent assets, as further described below. At this time, the Receiver is uncertain if any recoveries will be realized thereon, but will continue to update creditors on the Trustee's website as additional information becomes available.

Gerzeny's RV World

Gerzeny's RV World ("**Gerzeny**") and EHGNA were parties to certain dealer agreements, whereby the Company sold RVs to Gerzeny for resale.

The Receiver is attempting to collect outstanding balances from Gerzeny. Gerzeny is asserting counter-claims in excess of the outstanding balances against EHGNA. The parties continue to attempt to resolve this issue.

JRV Group USA Claim

On August 27, 2019, the Receiver filed an unsecured claim in the estate of the JRV Group USA L.P. ("**JRV**") for \$12.9 million, related to intercompany receivables.

JRV, formerly Erwin Hymer Group Holding USA L.P., a United States affiliate of EHGNA, filed a voluntary petition under Chapter 11 of Title 11 of the United States Bankruptcy Code, in the United States Bankruptcy Court for the District of Delaware on May 13, 2019 (the "**JRV Petition Date**"), commencing Chapter 11 proceedings (the "**JRV Bankruptcy Case**").

Prior to the Receivership Date, EHGNA provided certain shared service functions to JRV, including vehicle purchasing, sales invoicing and accounts receivable administration. As at the JRV Petition Date, the books and records of EHGNA showed an intercompany receivable due from JRV in the amount of \$12.9 million.

Recoveries, if any, on this claim in the JRV Bankruptcy Case are uncertain at this point, and will be based upon the value recovered from JRV's assets, after payment of priority claims and costs of the Chapter 11 proceeding.

The Receiver will continue to monitor developments in the JRV Bankruptcy Case on behalf of EHGNA. The Trustee will post any major developments to the Trustee's website.

BMC Group, Inc. has been appointed as the Claims and Noticing Agent for JRV (the "**Claims Agent**"). All Court-filed documents in the Chapter 11 proceeding are available on the Claims Agent's website at: www.bmcgroup.com/jrvgroup.

Insurance Policy Claim

As detailed in the Receiver's Second Report to the Court dated March 25, 2019, the Receiver filed a claim under a buyer-side "representations and warranties" insurance policy, issued by ACE INA Insurance (now Chubb Insurance Company of Canada) (the "**R&W Policy**"). The claim relates to certain representations and warranties made by Roadtrek Motorhomes Inc., pursuant to a share purchase agreement dated February 17, 2016, between Erwin Hymer Global Group and



Roadtrek Motorhomes Inc. (“**Roadtrek**”) (the “**2016 SPA**”). Closing of the 2016 SPA resulted in EHGNA and Roadtrek merging to continue as EHGNA.

The R&W Policy has a coverage limit of US\$7.5 million, subject to a retention of US\$735,000.

Upon review of the R&W Policy, in consultation with its counsel and counsel to Corner Flag, and in the context of the allegations of financial irregularities, it was determined by the Receiver that Roadtrek may have breached several representations to EHGNA, including representations that Roadtrek’s financial statements presented fairly, in all material respects, the operations and cash flows of the Company for the years ended December 31, 2013, December 31, 2014 and for the 10 month period ended October 31, 2015.

The Receiver has filed a claim under the R&W Policy, informing Chubb of a breach or possible breach of the SPA, which may constitute a Loss under the R&W Policy, and a potential realization.

To date, the Receiver has engaged a third-party forensic expert to evaluate potential recoveries under the R&W Policy and continues to consider this matter in consultation with the Secured Creditors, but potential recoveries, if any, are not known at this time.

IV. CONSERVATORY AND PROTECTIVE MEASURES

The Trustee has taken the following actions to secure the Company’s books and records:

1. Confirmed EHGNA’s books and records are secured and available for review by the Trustee and will not be disposed of without prior written permission from the Trustee.
2. Obtained a separate electronic copy of the books and records to be stored at the Trustee’s place of business.

V. SECURED CREDITORS

EHGNA has three primary secured creditors: Corner Flag, EHG SE, and Mercedes-Benz Financial Services, a business unit of Mercedes-Benz Financial Services Canada Corporation (“**MBFS**”) (collectively, the “**Primary Secured Creditors**”). As noted in the Statement of Affairs, the Primary Secured Creditors were owed approximately \$16.9 million as of the Date of Bankruptcy.

The Receiver has engaged independent counsel, Osler, Hoskin & Harcourt LLP (“**Osler**”) in connection with the receivership proceedings and, among other things, asked Osler to review the security granted by EHGNA to the Primary Secured Creditors. Subject to usual and customary qualifications and assumptions, Osler has confirmed to the Receiver, and the Receiver has reported to the Court in the receivership proceedings, that the security held by these Primary Secured Creditors is valid and enforceable in respect of the collateral covered by their respective security².

² EHG SE has asserted secured claims of approximately \$58 million in total. As of the date of this Report, Osler has provided a security opinion confirming approximately \$10.0 million of the EHG SE claim. The remainder is subject to further review that will be undertaken should net realizations from the Receivership exceed \$16.9 million.

Accordingly, as of the date of this Trustee Report, it is expected there will be no unencumbered assets available to the Trustee, for realization and distribution to the unsecured creditors.

VI. BOOKS AND RECORDS

The Trustee understands that all of the Company's books and records, including accounting and finance, and all management functions were centralized and located at the Company's head office which was located at 25 Reuter Drive in Cambridge, Ontario.

As discussed above (and as detailed expensively in the Second Report of the Receiver), on June 17, 2019, the Court made an Order approving the Roadtrek Transaction, namely the sale of certain assets of EHGNA, including the related books and records, contemplated in an asset purchase agreement between the Receiver and RT Acquisition Corp. (the "**Roadtrek APA**"). The Roadtrek APA requires that RT Acquisition Corp. provide the Receiver and/or the Trustee with access to the books and records, and that such books records be maintained for a reasonable period of time.

As such, the Trustee has confirmed that there is reasonable access to the books and records of the Company, as required for the administration of these bankruptcy proceedings.

VII. SECURITY FOR UNPAID WAGES – SECTION 81.3 CLAIMS

The Trustee understands that as of the Date of Bankruptcy, EHGNA had no amounts owing to former employees of EHGNA under section 81.3 of the BIA. The Trustee understands that all section 81.3 claims were paid by the Receiver during the Receivership.

VIII. UNSECURED CREDITORS

As noted in the Statement of Affairs, as of the Date of Bankruptcy there were nearly 2,000 unsecured creditors, with claims totaling approximately \$315.7 million.

As of the date of this Trustee Report, it is anticipated that there will be no funds available for a distribution to the unsecured creditors of EHGNA.

IX. PROVABLE CLAIMS

As of the date of this Trustee's Report, the Trustee has received filed Proofs of Claim, as follows:

Type of Claim	Number of Claims	Value of Claims (\$ CAD)
Secured	\$Nil	\$Nil
General Unsecured	81	\$18,531,151
Employees Unsecured	775	\$11,536,357

X. PREFERENCE PAYMENTS AND TRANSFERS UNDER VALUE

The Trustee will perform a review of EHGNA's books and records with respect to potential fraudulent preferences, settlements or transfers at undervalue, as defined in the BIA.



XI. TRUSTEE'S FEES AND DISBURSEMENTS

In consideration for consenting to act in these proceedings, with the support of the Primary Secured Creditors, the Receiver provided a deposit to the Trustee, in the amount of \$30,000, to pay the Trustee's fees and disbursements related to the bankruptcy proceedings of EHGNA.

The Trustee's fees will be subject to the provisions of the BIA and taxation by the Court.

Further information relating to these bankruptcy proceedings may be obtained from Alvarez & Marsal's website at: www.alvarezandmarsal.com/ehgna.

Dated at Toronto, this 8th day of October 2019.

Alvarez & Marsal Canada Inc.
in its capacity as Trustee in bankruptcy of Erwin
Hymer Group North America, Inc.
and not in its personal capacity



Alan J. Hutchens, LIT
Senior Vice-President

