

**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 BBB CANADA LTD.**

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

**JUNE 20, 2023**

## TABLE OF CONTENTS

---

<b>1.0</b>	<b>INTRODUCTION.....</b>	<b>1</b>
<b>2.0</b>	<b>TERMS OF REFERENCE AND DISCLAIMER .....</b>	<b>6</b>
<b>3.0</b>	<b>UPDATE REGARDING THE LIQUIDATION SALE.....</b>	<b>7</b>
<b>4.0</b>	<b>UPDATE REGARDING THE LEASE SALE PROCESS.....</b>	<b>9</b>
<b>5.0</b>	<b>CASH FLOW RESULTS RELATIVE TO FORECAST AND UPDATED CASH FLOW FORECAST.....</b>	<b>10</b>
<b>6.0</b>	<b>EXTENSION OF THE STAY OF PROCEEDINGS .....</b>	<b>13</b>
<b>7.0</b>	<b>ACTIVITIES OF THE MONITOR SINCE THE DATE OF THE FOURTH REPORT .....</b>	<b>14</b>
<b>8.0</b>	<b>CONCLUSIONS AND RECOMMENDATIONS.....</b>	<b>15</b>

## 1.0 INTRODUCTION

- 1.1 On February 10, 2023, BBB Canada Ltd. (the “**Applicant**”) was granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to an initial order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). Pursuant to the Initial Order, Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed as monitor (in such capacity, the “**Monitor**”) in these CCAA proceedings (the “**CCAA Proceedings**”).
- 1.2 The Initial Order also extended a stay of proceedings and other benefits, restrictions and protections of the CCAA to Bed Bath & Beyond Canada L.P. (“**BBB LP**”, and together with the Applicant, “**BBB Canada**”), a limited partnership formed under the laws of the Province of Ontario. The Applicant is the general partner of BBB LP, which, as described in the Pre-Filing Report (as defined below), is integral to the Applicant’s business. The Applicant is a wholly owned subsidiary of Bed Bath & Beyond Inc. (“**BBBI**”).<sup>1</sup>
- 1.3 On February 21, 2023, the Court granted the following orders:
- (a) an amended and restated Initial Order (the “**ARIO**”), which, among other things:
    - (i) extended the Stay Period (as defined in the ARIO) and the Landlord Stay to and including May 1, 2023;
    - (ii) approved BBB Canada’s key employee retention plan (the “**KERP**”) and granted a charge over the Property (as defined in the ARIO) in the maximum

---

<sup>1</sup> BBBI and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code on April 23, 2023.

amount of \$161,000 in favour of the employees entitled to participate in the KERP as security for the payments to be made in accordance with the KERP;

(iii) increased the amounts of the Administration Charge and the Directors' Charge (each as defined in the ARIO) to \$1.25 million and \$8.25 million, respectively; and

(iv) declared that, pursuant to subsections 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1, as amended (the "**WEPP Act**"), BBB Canada meets the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 and that BBB Canada's former employees are eligible to receive payments under and in accordance with the WEPP Act following the termination of their employment; and

(b) an order (the "**Sale Approval Order**"), which approved the Consulting Agreement between the Consultant and BBB LP and the Sale Guidelines (each as defined in the Sale Approval Order), and authorized BBB LP, with the assistance of the Consultant, to undertake the Liquidation Sale.

1.4 On April 11, 2023, the Court granted an assignment, approval and vesting order (the "**AAVO**"), which, among other things:

(a) approved the Omnibus Assignment and Assumption of Leases, FF&E and Trade Fixtures Agreement dated March 28, 2023 (the "**DKB Capital Agreement**"),

between BBB LP, BBBI and 11607987 Canada Inc., dba DKB Capital (“**DKB Capital**”), and the transactions contemplated therein;

- (b) assigned certain of the DKB Assumed Leases (as defined in the DKB Capital Agreement) to DKB Capital pursuant to section 11.3 of the CCAA on an unopposed basis, and vested BBB LP’s right, title and interest in and to the DKB Assumed Leases and the other purchased assets described in the DKB Capital Agreement in DKB Capital free and clear of all Encumbrances (as defined in the AAVO) other than permitted encumbrances identified in the DKB Capital Agreement; and
- (c) directed that the unredacted copy of the DKB Capital Agreement be sealed until the earlier of the conditions enumerated under the AAVO or further order of the Court.

1.5 On April 28, 2023, the Applicant sought and obtained the following additional orders:

- (a) an assignment, approval and vesting order (the “**Second AAVO**”), which, among other things:
  - (i) approved the Omnibus Assignment and Assumption of Leases dated April 21, 2023 (the “**Canadian Tire Agreement**”), among BBB LP, BBBI and Canadian Tire Corporation Canada, Limited (“**Canadian Tire**”) and the transactions contemplated therein; and
  - (ii) vested BBB LP’s right, title and interest in and to certain Leases and the other purchased assets described in the Canadian Tire Agreement in Canadian Tire free and clear of all Encumbrances (as defined in the Second

AAVO) other than permitted encumbrances identified in, or pursuant to, the Canadian Tire Agreement; and

- (b) an assignment, approval and vesting order (the “**Third AAVO**”), which, among other things:
  - (i) approved the Omnibus Assignment and Assumption of Leases, FF&E and Trade Fixtures dated April 17, 2023 (the “**Second DKB Capital Agreement**”), between BBB LP, BBBI and DKB Capital, and the transactions contemplated therein;
  - (ii) approved the Assignment and Assumption of Lease dated April 21, 2023 (the “**Winners Collingwood Agreement**”), among BBB LP, BBBI and Winners Merchants International L.P. (“**Winners**”), and the transactions contemplated therein;
  - (iii) assigned all of the rights and obligations of BBB LP under the Leases described in the Second DKB Capital Agreement and the Winners Collingwood Agreement to DKB Capital and Winners, respectively, pursuant to section 11.3 of the CCAA on an unopposed basis;
  - (iv) vested BBB LP’s right, title and interest in and to certain Leases and the other purchased assets described in the Second DKB Capital Agreement and the Winners Collingwood Agreement in DKB Capital and Winners, respectively, free and clear of all Encumbrances (as defined in the Third AAVO) other than permitted encumbrances identified in, or pursuant to, the

Second DKB Capital Agreement and the Winners Collingwood Agreement, as applicable; and

- (v) extended the Stay Period to and including June 27, 2023 (the Applicant did not seek to extend the Landlord Stay as part of its motion, and as such the Landlord Stay terminated on May 1, 2023).

1.6 On May 15, 2023, the Applicant sought and obtained an order (the “**Fourth AAVO**”), which, among other things:

- (a) approved the transaction contemplated by the Assignment and Assumption of Lease Agreement dated May 5, 2023, between BBB LP and Winners, and vested BBB LP’s right, title and interest in and to the Ottawa Trainyards Lease free and clear of all Encumbrances (as defined in the Fourth AAVO);
- (b) assigned all of the rights and obligations of BBB LP under the Ottawa Trainyards Lease to Winners pursuant to section 11.3 of the CCAA; and
- (c) approved the transaction contemplated by the Assignment and Assumption of Lease Agreement dated May 1, 2023, among BBB LP, BBBI and Giant Tiger Stores Limited, and vested BBB LP’s right, title and interest in and to the Colossus Lease free and clear of all Encumbrances (as defined in the Fourth AAVO).

1.7 The purpose of this Fifth Report is to provide the Court with information and, where applicable, the Monitor’s views on:

- (a) the Applicant's motion for an Order (the "**Stay Extension Order**") in the form attached to the Applicant's Motion Record filed on June 16, 2023 extending the stay of proceedings (the "**Stay Period**") in favour of BBB Canada up to and including August 22, 2023;
- (b) an update on the Liquidation Sale;
- (c) an update on the Lease Sale Process;
- (d) BBB Canada's cash flow results for the eight (8)-week period ended June 10, 2023;
- (e) the activities of the Monitor since May 11, 2023, being the date of the Fourth Report (as defined below); and
- (f) the Monitor's conclusions and recommendations in connection with the foregoing.

## **2.0 TERMS OF REFERENCE AND DISCLAIMER**

- 2.1 In preparing this Fifth Report, A&M, in its capacity as Monitor, has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by BBB Canada and has held discussions with management of BBB Canada and BBBI, as well as their legal counsel and financial advisors.
- 2.2 Future oriented financial information referred to in this Fifth Report was prepared based on BBB Canada's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.



- 2.3 This Fifth Report should be read in conjunction with the Affidavit of Wade Haddad, the Senior Vice President, Real Estate and Store Development, of BBBI, and an officer of the Applicant, sworn on June 16, 2023 (the “**Fifth Haddad Affidavit**”), filed in support of the Applicant’s motion for the proposed Stay Extension Order.
- 2.4 The Pre-Filing Report of the Proposed Monitor dated February 10, 2023 (the “**Pre-Filing Report**”), the First Report of the Monitor dated February 17, 2023 (the “**First Report**”), the Second Report of the Monitor dated April 7, 2023 (the “**Second Report**”), the Third Report of the Monitor dated April 24, 2023 (the “**Third Report**”), the Fourth Report of the Monitor dated May 11, 2023 (the “**Fourth Report**”, and collectively with the Pre-Filing Report, First Report, Second Report and Third Report, the “**Prior Reports**”), and other Court-filed materials in the CCAA Proceedings are available on the Monitor’s case website at [www.alvarezandmarsal.com/BBBCanada](http://www.alvarezandmarsal.com/BBBCanada) (the “**Case Website**”).
- 2.5 Capitalized terms used and not defined in this Fifth Report have the meanings given to them in the Prior Reports or the Fifth Haddad Affidavit, as applicable.
- 2.6 Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

### **3.0 UPDATE REGARDING THE LIQUIDATION SALE**

- 3.1 The Liquidation Sale commenced at each of BBB Canada’s 65 Stores on February 22, 2023, being the day immediately following the granting of the Sale Approval Order.
- 3.2 The Liquidation Sale concluded on April 23, 2023, approximately nine (9) weeks from the commencement date, at which time the stores were closed to the public. Thereafter there

was a one-week period to facilitate FF&E retrieval and removal, where required, and to generally prepare the stores for turnover to the applicable landlords or lease assignees on or about April 30, 2023.

- 3.3 The vast majority of BBB Canada's employees were issued notices on February 22, 2023, providing working notice of termination effective April 30, 2023. Three employees that were included in the KERP continue to be retained to assist primarily with payroll/employment separation tasks and other wind-down matters.
- 3.4 Overall, the Liquidation Sale performed below BBB Canada and the Consultant's initial expectations. Sale proceeds from Liquidation Sale were approximately \$53.0 million, approximately \$10.4 million lower than forecast, due primarily to slower than anticipated sales during the early weeks of the Liquidation Sale (as reported in the Third Report), resulting in greater sales at higher discounts in the latter weeks, and lower inventory (approximately \$2 million at cost) selling through than reflected in BBB Canada's records. Sales of FF&E, excluding items sold through the Lease Sale Process, were approximately \$1.2 million, which was in line with forecast. Sales of Additional Consultant Goods were approximately \$8.5 million, which generated \$648,000 (7.5%) of commission proceeds for BBB Canada, which were not included in the forecast. Further, the Lease Sale Process (summarized below) generated net proceeds of approximately \$5.9 million, which exceeded initial expectations (no proceeds from lease transactions were included in the Cash Flow Forecast appended to the First Report, as there was significant uncertainty at that time as to what the Lease Sale Process might generate).

#### 4.0 UPDATE REGARDING THE LEASE SALE PROCESS

4.1 The Lease Sale Process is described extensively in the Prior Reports.

4.2 Following the May 15, 2023 Court hearing, BBB Canada subsequently closed the remaining outstanding lease assignment transactions. A summary of the outcomes of the Lease Sale Process is provided in the table below:

Counterparty	No. of Locations	Transaction	Consideration
<b>Lease Transactions</b>			
DKB Capital	27	Assignment and Assumption	\$ 990,000
Landlords	3	Surrender	\$ 750,000
Canadian Tire	11	Assignment and Assumption	\$ 1,760,000
Winners	2	Assignment and Assumption	\$ 1,322,142
DKB Capital (2)	2	Assignment and Assumption	\$ 180,000
Giant Tiger	1	Assignment and Assumption	\$ 250,000
Disclaimed Leases - Store Locations	19	Disclaimer	N/A
<b>Total</b>	<b>65</b>		<b>\$ 5,252,142</b>
Disclaimed Leases - Office and DC	2	Disclaimer	N/A
<b>Total</b>	<b>67</b>		<b>\$ 5,252,142</b>
<b>FF&amp;E &amp; Trade Fixtures</b>			
DKB Capital	N/A	N/A	\$ 672,737
<b>Total</b>	<b>67</b>		<b>\$ 5,924,879</b>

## 5.0 CASH FLOW RESULTS RELATIVE TO FORECAST AND UPDATED CASH FLOW FORECAST

5.1 Cash receipts and disbursements for the eight (8)-week period April 16 to June 10, 2023 (the “**Reporting Period**”), as compared to the cash flow forecast attached as Appendix “B” to the Third Report, are summarized in the table below:

<b>Cash Flow Variance Reporting</b>		<b>For the period April 16, 2023 to June 10, 2023</b>		
<i>(CAD \$000s, Unaudited)</i>		<u>Forecast</u>	<u>Actual</u>	<u>Variance</u>
<b>Total Receipts</b>	\$	12,075	\$ 25,534	\$ 13,459
<b>Disbursements</b>				
Payroll		3,076	4,471	(1,395)
Occupancy Costs		2,006	82	1,924
Liquidation Expenses		1,215	3,021	(1,806)
Sales Tax Remittances		3,891	5,734	(1,843)
Liquidation Fees		240	1,612	(1,372)
Professional Fees		1,569	1,632	(63)
<b>Total Disbursements</b>		11,997	16,553	(4,556)
<b>Net cash flow</b>		78	8,981	8,903
Opening Cash Balance / Deficit		6,218	6,548	330
Net cash flow		78	8,981	8,903
<b>Preliminary Closing Cash Balance</b>		6,296	15,529	9,233
Senior Debt Payments		(3,272)	(2,944)	328
<b>Closing Cash Balance</b>	\$	<u>3,024</u>	\$ <u>12,584</u>	\$ <u>9,560</u>

5.2 During the Reporting Period, BBB Canada’s total receipts were approximately \$13.5 million greater than projected in the Cash Flow Forecast. The net positive variance is due to a combination of:

- (a) receipts (and BBB Canada's commission from the sale of Additional Consultant Goods) were \$10.9 million higher than forecast in the final weeks of the Liquidation Sale due to the timing of credit card receipts from sales that occurred in prior weeks and stronger than forecast sales; and
- (b) the receipt of \$3.2 million from a payments services provider that retained certain funds pending a final reconciliation and payment of their outstanding accounts.

5.3 During the Reporting Period, BBB Canada's total disbursements were approximately \$4.6 million higher than projected in the Cash Flow Forecast. The net negative variance is primarily attributable to:

- (a) payroll amounts \$1.4 million higher than forecast due to greater than forecast benefit payments and continued assistance required from a subset of employees beyond initial expectations;
- (b) occupancy costs \$1.9 million lower than forecast due to the successful closing of certain of the lease transactions; and
- (c) liquidation expenses \$1.8 million greater than forecast and liquidation fees \$1.4 million greater than forecast, primarily due to timing differences (overall liquidation expenses and fees were below budget).

5.4 The closing cash balance as of June 10, 2023 was approximately \$12.6 million, as compared to the forecast cash balance of \$3.0 million. In accordance with the ARIO, since February 21, 2023, approximately \$27.8 million has been swept to the Lenders in partial repayment of the secured balance owing under the Credit Facilities. The minimum cash

on hand (Minimum Balance (as defined in the ARIO)) was reduced to \$6.0 million beginning March 27, 2023.

#### Updated Cash Flow Forecast

5.5 The Liquidation Sale and Lease Sale Process have been completed. All of BBB Canada's retail stores have been closed and all employees except for three that are, as noted above, continuing to assist with payroll and other wind-down matters have been terminated. As such, BBB Canada is forecast to have minimal cash receipts and disbursements through the proposed extension of the Stay Period (August 22, 2023) as summarized in the table below (the "Updated Forecast").<sup>2</sup>

<b>Cash Flow Forecast through August 22, 2023</b> <i>(CAD \$000s, Unaudited)</i>	
<b>Receipts</b>	\$ 82
<b>Disbursements</b>	
Payroll & Benefits	140
Occupancy Costs	23
Liquidation Expenses	-
Sales Tax Remittances	82
Liquidation Fees	-
Professional Fees <sup>(2)</sup>	-
<b>Total Disbursements</b>	245
<b>Net Cash Flow</b>	(163)
Opening Cash Balance	12,584
Net Cash Flow	(163)
Senior Debt Payments	(6,421)
<b>Closing Cash Balance</b>	\$ 6,000

<sup>2</sup> It is anticipated that the Professional Fees to be incurred in connection with a limited directors and officers claims procedure (as discussed below) and the termination of the CCAA Proceedings will be funded from the professionals' respective existing retainers. To the extent that the professionals' respective existing retainers are insufficient, additional Professional Fees will be funded from BBB Canada's remaining cash.

5.6 The Monitor notes the following with respect to the above:

- (a) BBB Canada had a cash balance of \$12.6 million as of June 10, 2023. Net proceeds from the Lease Sale Process of approximately \$5.7 million were transferred from the Monitor's trust account to BBB Canada on June 9, 2023 and were not swept to the Lenders prior to the June 10, 2023 end date of the Reporting Period;
- (b) forecast receipts includes deposit interest earned from the Lease Sale Process and expected proceeds from the sale of remaining office supplies;
- (c) disbursements include one outstanding payroll payment due to the three employees (including KERP amounts) retained after the Liquidation Sale, property tax amounts owing to a previous landlord for taxes payable during the CCAA Proceedings, sales tax remittances on FF&E sold through the lease assignment process, and professional fees; and
- (d) senior debt payments includes a sweep of all cash above the Minimum Balance of \$6.0 million in accordance with the ARIO.

## **6.0 EXTENSION OF THE STAY OF PROCEEDINGS**

6.1 The current Stay Period extends to June 27, 2023. BBB Canada is seeking an extension of the Stay Period to and including August 22, 2023.

6.2 The Monitor supports BBB Canada's request to extend the Stay Period to August 22, 2023 for the following reasons:

- (a) the extension of the Stay Period will enable BBB Canada, with the assistance of the Monitor, to complete certain steps necessary to finalize the Orderly Wind-Down, including continuing to assist eligible terminated employees of BBB Canada with applications in accordance with the WEPP Act and to complete various post-closing real property registrations that are required in connection with certain of the lease assignments;
- (b) the Monitor understands that the Applicant intends to return to this Court in the near future to seek an order to establish a limited claims procedure with respect to the directors and officers of BBB Canada, with a view to facilitating the release of the Directors' Charge and a distribution of BBB Canada's remaining cash;
- (c) BBB Canada has acted, and continues to act, in good faith and with due diligence to advance the Orderly Wind-Down and the CCAA Proceedings;
- (d) as shown in the Updated Forecast, BBB Canada has sufficient liquidity to fund forecast disbursements through the proposed extension of the Stay Period; and
- (e) the Monitor is not aware of any party that would be materially prejudiced by the proposed extension of the Stay Period.

## **7.0 ACTIVITIES OF THE MONITOR SINCE THE DATE OF THE FOURTH REPORT**

7.1 Since the date of the Fourth Report, the Monitor has, among other things:



- (a) monitored the Applicant's cash receipts and disbursements, and assisted in preparing weekly cash flow variance reporting;
- (b) assisted with the completion of the transactions approved pursuant to the Fourth AAVO;
- (c) continued to engage in discussions with Service Canada and Bennett Jones LLP ("**Bennett Jones**"), counsel to the Monitor, on WEPP Act eligibility periods and the application of the WEPP Act in the CCAA Proceedings;
- (d) engaged in numerous discussions with the Consultant and BBB Canada regarding the final reconciliation of all funds realized in the Liquidation Sale;
- (e) responded to inquiries from BBB Canada's landlords and vendors, and their respective counsel;
- (f) coordinated the posting of Court-filed documents to the Case Website; and
- (g) with the assistance of Bennett Jones, prepared this Fifth Report.

## **8.0 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 Applicant is reasonable and appropriate in the circumstances. Accordingly, the Monitor respectfully recommends that the Court approve the proposed Stay Extension Order.

All of which is respectfully submitted to the Court this 20<sup>th</sup> day of June 2023.

**Alvarez & Marsal Canada Inc., in its capacity as  
Monitor of BBB Canada Ltd. and  
Bed Bath & Beyond Canada L.P., and not in its  
personal or corporate capacity**

Per: 

---

Alan J. Hutchens  
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-23-00694493-00CL

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

Applicant

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**  
Proceeding commenced at Toronto

**FIFTH REPORT OF THE MONITOR**

**BENNETT JONES LLP**  
3400 One First Canadian Place  
P.O. Box 130  
Toronto, Ontario, Canada M5X 1A4

**Kevin Zych** (LSO#: 33129T)  
zychk@bennettjones.com

**Mike Shakra** (LSO#: 64604K)  
shakram@bennettjones.com

**Joshua Foster** (LSO#: 79447K)  
fosterj@bennettjones.com

Tel: 416.863.1200  
Fax: 416.863.1716

Lawyers for Alvarez & Marsal Canada Inc.,  
solely in its capacity as the Court-appointed  
Monitor and not in its personal or corporate  
capacity