

COURT FILE NO CV-13-10009-00CL

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 THE JOHN  
FORSYTH SHIRT COMPANY LTD., FORSYTH HOLDINGS, INC.  
AND FORSYTH OF CANADA, INC.

SECOND REPORT OF  
BDO CANADA LIMITED  
IN ITS CAPACITY AS MONITOR OF  
THE APPLICANTS UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*

DATED MAY 17, 2013

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## INTRODUCTION AND BACKGROUND

### Introduction

1. By Order of this Honourable Court dated February 22, 2013 (the “**Initial Order**”), The John Forsyth Shirt Company Ltd. (“**Forsyth Canada**”), Forsyth Holdings, Inc. (“**Forsyth Holdings**”) and Forsyth of Canada, Inc. (“**Forsyth USA**”) (together referred to as either “**Forsyth**”, the “**Companies**” or the “**Applicants**”) obtained protection from their creditors under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). A copy of the Initial Order is attached as **Appendix A**, hereto.
2. The Initial Order, among other things, granted a stay of proceedings until and including March 22, 2013, or such later date as this Court may order, and appointed BDO Canada Limited (“**BDO**”) as monitor (the “**Monitor**”) of the Applicants in these CCAA proceedings (the “**CCAA Proceedings**”).
3. On March 21, 2013 this Honourable Court granted an Order (the “**First Extension Order**”), that among other things, extended the stay of proceedings until May 29, 2013. A copy of the First Extension Order is attached hereto as **Appendix B** hereto.
4. Ancillary to these CCAA Proceedings, the Monitor in its capacity as foreign representative of the Applicants, commenced Chapter 15 cases under the U.S. Bankruptcy Code from the United States Bankruptcy Court (Southern District of New York) seeking recognition of the CCAA Proceedings as a “foreign main proceeding” or, in the alternative, a “foreign non-main proceeding” and certain other relief (the “**Chapter 15 Proceedings**”).
5. On February 27, 2013, following the granting of the Initial Order, the Monitor obtained a Provisional Order in the Chapter 15 Proceedings, granting the following relief:
  - (a) procedural consolidation and joint administration of the Chapter 15 cases of the Applicants;

(b) scheduling a hearing on March 18, 2013 (the “Recognition Hearing”) and specifying the form and manner of service of the Chapter 15 Petitions to the Applicants’ creditors; and

(c) imposing an interim stay of all proceedings in the United States against the Monitor or the Applicants, and the Applicants’ business property or assets located in the United States, and recognizing the Initial Order on an interim basis pending the outcome of the Recognition Hearing and approval of a final order extending the stay granted in the provisional order on a permanent basis (collectively referred to hereinafter as the “Chapter 15 Orders”).

6. On March 18, 2013, following the granting of the Provisional Order in the Chapter 15 Proceedings, the Monitor obtained an Order recognizing the Initial Order and extending the stay granted in the Provisional Order on a permanent basis (the “Final US Order”) attached as **Appendix C** hereto.

7. The Applicants have now prepared a consolidated Plan of Compromise and Arrangement dated May 16, 2013 (the “Plan”) and scheduled a motion returnable on May 27, 2013 seeking an Order of the Court authorizing and directing the Applicants to file the Plan and to hold a Meeting of the Applicants’ unsecured creditors to consider and vote on the Plan.

## **Background**

8. Forsyth is in the business of manufacturing, distributing and selling apparel in both Canada and the United States of America. Forsyth has been manufacturing shirts in Canada since 1903, and has developed its product line to include five brands, and a variety of products including knits, wovens, tees, ties, uniforms, and outerwear. Product lines include private label apparel as well as such recognized brands as Bill Blass.

9. Forsyth’s principal objectives of these CCAA Proceedings are to: (i) sustain ongoing operations to preserve entity value and avoid possible liquidation through receivership and/or bankruptcy proceedings; (ii) eliminate the unprofitable Canadian manufacturing operation while also downsizing and relocating certain US operations to further reduce

operating costs; and (iii) ensure Forsyth has the ability and necessary working capital to effect its proposed restructuring plans to maximize recoveries for the benefit of Forsyth's stakeholders.

10. Additional background information regarding the Applicants and the CCAA Proceedings is provided in the sworn affidavit of Harris R. Hester dated February 20, 2013 (the "First Hester Affidavit"), BDO's Pre-Filing report dated February 20, 2013, and BDO's First Report as Monitor dated March 18, 2013 (the "Monitor's First Report").

#### **Disclaimer**

11. BDO has reviewed the sworn affidavit of Harris R. Hester dated May 20, 2013 (the "Third Hester Affidavit") and relied on discussions with management in support of the Applicants' motion.

12. BDO has relied upon the financial records and statements of Forsyth, as well as other information supplied by management, accountants, auditors and financial advisors to Forsyth. Our procedures and enquiries did not constitute an audit or review engagement. BDO assumes no responsibility or liability for loss or damage occasioned by any party as a result of the circulation, publication, re-production or use of the Monitor's Second Report (defined below). Any use which any party, other than the Court, makes of the Monitor's Second Report or any reliance on or a decision made based upon it is the responsibility of such party.

13. Some of the information referred to in this report consists of forecast and projections. An examination or review of the financial forecast and projections, as outlined in the Canadian Institute of Chartered Accountants Handbook, has not been performed. Future-oriented financial information referred to in this report was prepared by the Applicants based on management's estimates and assumptions. Readers are cautioned that, since these projections are based upon assumptions about future events and conditions, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

14. Capitalized items used herein and not otherwise defined are as defined in the Initial Order, the Monitor's First Report, the proposed Claims Process and Bar Order, the First, Second, or Third Hester Affidavit, or the Plan, as applicable.

15. This report should be read in conjunction with the Third Hester Affidavit as certain information contained in the Third Hester Affidavit has not been included herein in order to avoid unnecessary duplication.

16. Unless otherwise stated, all monetary amounts contained in this report are expressed in Canadian dollars.

#### **Purpose**

17. The purpose of this Second Report of the Monitor dated May 17, 2013 (the "Monitor's Second Report") is to provide this Honourable Court with information in respect of:

- (a) the consolidated receipts and disbursements of the Applicants from the date of the granting of the Initial Order through to May 3, 2013;
- (b) the Applicants' Revised Consolidated Cash Flow Forecast which covers the period from May 11, 2013 to the end of the proposed extension of the stay of proceedings being requested;
- (c) the Applicants' progress towards implementing their planned operational changes as set out in their Operational Restructuring Plan;
- (d) the activities of the Monitor since the filing of the First Report of the Monitor dated March 18, 2013;
- (e) the debtor in possession ("DIP") financing arrangement;
- (f) the proposed plan of compromise;

and to support the request to this Honourable Court for approval of:

- (a) the proposed Creditors' Meeting Order and the Claims Process and Bar Order;

- (b) an extension of the Stay Period up to and including July 12, 2013;
- (c) the Monitor's fees for the period from August 3, 2012 to May 3, 2013; and
- (d) the Monitor's Canadian counsel's fees for the period from February 12, 2013 to March 25, 2013.

## RECEIPTS AND DISBURSEMENTS TO MAY 3, 2013

18. The table below compares the actual receipts and disbursements against the Revised Cash Flow Projection appended to the Monitor's First Report for the 10 week period ended May 3, 2013.

	<b>PERIOD TO DATE</b>			
	<b>10 Weeks Ended May 3, 2013</b>			
	<b>Budget</b>	<b>Actual</b>	<b>Var \$</b>	<b>Var %</b>
<b>Cash Flow</b>				
Cash Inflows	5,431,675	5,739,874	308,199	5.7%
		-		
<i>Accounts payable payments</i>	3,927,338	4,735,471	808,133	20.6%
<i>Wages</i>	634,128	751,845	117,718	18.6%
<i>Debt repayment</i>	40,000	21,966	(18,034)	(45.1%)
<i>Interest / Bank Charges</i>	243,313	266,893	23,580	9.7%
<i>Capital assets</i>	-	-	-	-
<i>LC Payments</i>	197,200	-	(197,200)	(100.0%)
<i>HST Payments</i>	132,391	152,247	19,856	15.0%
<i>Prepays</i>	22,000	10,000	(12,000)	(54.5%)
Cash Outflows	5,196,369	5,938,422	742,053	14.3%
Net Cash Inflows/(Outflows)	235,305	(198,548)	(433,854)	(184.4%)

19. Actual cash receipts were \$308,199 higher than forecast. This positive variance represents a timing variance reflecting quicker than anticipated accounts receivable collections that will be offset by lower cash collections in later periods.

20. Cash disbursements were \$742,053 higher than forecast.

- (a) Accounts payable payments exceeded forecast due to inventory purchases:
  - (i) exceeding budget by \$661,030 in part as a result of inventory not being paid for by letter of credit ("LC"). This resulted in a favourable LC payments variance of \$197,200; and
  - (ii) being made earlier than budgeted resulting in a reduction in planned purchases in the coming four weeks.
- (b) Labour costs were higher than anticipated due to the Cambridge manufacturing facility closure not happening as quickly as expected. Related employee terminations were delayed and additional labour costs were incurred as a result.

21. Overall, net cash flow was negative \$198,548 or \$433,854 lower than projected. This negative net cash flow variance is largely the result of the timing of inventory purchases. Despite this unfavourable cash flow variance, Forsyth has maintained sufficient margin availability under the DIP facility in accordance with the DIP Credit Agreement (defined below) during the same period.

22. The DIP Credit Agreement provided for receipt and disbursement variances of no more than 10% on a four week rolling basis commencing the four weeks ended March 22, 2013. On three occasions the Companies did not meet these "Permitted Thresholds" and Wells Fargo Capital Finance Corporation and Wells Fargo Capital Finance LLC (collectively "Wells Fargo" or the "DIP Lender") served notices of default. The notices of default provided for the DIP Lender to reserve their rights but would agree to continue to fund.

23. The Applicants curtailed cash disbursements and as of May 10, 2013 are now operating within the 10% variance allowance on a rolling four week period in accordance with the DIP Credit Agreement.



## REVISED CONSOLIDATED CASH FLOW FORECAST

24. The Vice-President of Finance, Mr. Victor Tugwell, together with the Monitor's assistance, has prepared the Revised Consolidated Cash Flow Forecast.

25. The Monitor has reviewed the Revised Consolidated Cash Flow Forecast, accompanying notes, and assumptions. A copy of the Revised Consolidated Cash Flow Forecast, notes and assumptions, report containing the prescribed representations of the Applicants regarding the preparation of the Revised Consolidated Cash Flow Forecast together with the Monitor's Report on the Revised Consolidated Cash Flow Forecast are all attached hereto as **Appendix D**.

26. As shown in the Revised Consolidated Cash Flow Forecast, Forsyth had a beginning loan balance as at May 10, 2013 of \$8,260,641. Forsyth estimates that it will have total receipts of \$6,036,735, and incur disbursements and restructuring costs requiring DIP financing of \$4,645,312, resulting in a forecasted total ending secured loan balance of \$6,869,218 for the 9 week period ending July 12, 2013.

## PROGRESS ON THE OPERATIONAL RESTRUCTURING PLAN

27. The Applicants have dedicated a significant amount of resources and time to implement the operational changes set out in the Operational Restructuring Plan.

28. To date, Forsyth has managed to significantly reduce its staff and labour costs by closing and vacating its Canadian manufacturing facility located in Cambridge, ON.

29. Forsyth has reduced its annual rent expense by consolidating its administrative personnel in a fraction of its former administrative facility. In addition, Forsyth is negotiating a lease for less costly New York City office space. While administrative personnel were not relocated to the Canadian distribution centre as initially planned, the additional cost of the reduced administrative space is offset by relocation expense savings.

30. Forsyth has listed its warehouse located in Cordele, Georgia for sale and is currently soliciting offers in hopes of concluding a transaction by June 30, 2013. However, the Applicants acknowledge this target date may not be achievable.

31. Aside from the pending sale of the Cordele, Georgia warehouse, the Applicants have successfully implemented most of their Operational Restructuring Plan.

### **ACTIVITIES OF THE MONITOR**

32. To date, the Applicants have provided the Monitor with their full co-operation and unrestricted access to their premises, books and records. The Monitor has implemented procedures for the monitoring of the operations, receipts and disbursements and is assisting the Applicants in their dealings with suppliers.

33. Forsyth's senior management team, together with the Monitor, participates in a weekly telephone conference call with the DIP Lender. The purpose of this weekly call with the DIP Lender is to review Forsyth's financial performance and progress towards implementing its operational restructuring initiatives. Prior to the weekly conference call, the Monitor provides a brief report to the DIP Lender including a weekly comparison of Forsyth's actual receipts and disbursements and margin availability to forecast and explains any variances.

34. In addition, since the First Report of the Monitor, the Monitor has assisted the Applicants:

- (a) in dealing with a number of their suppliers to ensure the uninterrupted flow of goods and services to the Applicants;
- (b) in preparing the Revised Consolidated Cash Flow Forecast;
- (c) with the proposed Claims Process; and
- (d) in formulating the proposed Plan including facilitating negotiations between the Applicants, the DIP Lender, and the Applicants' largest unsecured creditor ("Manunion").

## **DIP FINANCING**

35. The Initial Order approved DIP Financing provided by Wells Fargo (in such capacity, the “DIP Lender”) to a maximum amount of \$10 million subject to the terms set out in the Forsyth DIP Commitment Letter dated February 20, 2013 (the “DIP Credit Agreement”) previously filed with the Court. The DIP Credit Agreement created a new facility for the funding of expenses during the CCAA Proceedings and operates on terms substantially similar to those of the pre-filing credit facilities between the Applicants and their pre-filing senior secured lender, Wells Fargo.
36. Collectively, the Companies have borrowed approximately \$5.9 million from the DIP Lender as at May 3, 2013 to finance operations and to meet post CCAA filing liabilities.
37. The DIP Credit Agreement contemplated that Forsyth’s post-filing receipts would be applied to reduce the DIP Lender’s pre-filing secured debt. As at May 3, 2013, approximately \$5.7 million in post-filing receipts had been applied towards Wells Fargo’s pre-filing secured debt.
38. The DIP Credit Agreement provides for repayment by June 30, 2013; however, the Companies have requested that the DIP Lender consent to their request for an extension up to and including July 12, 2013. Further negotiations concerning extensions are anticipated once the outcome of the creditor vote is known.

## **PROPOSED PLAN OF COMPROMISE AND ARRANGEMENT**

39. The Applicants have prepared and filed the Plan in accordance with the authorization provided in paragraph 3 of the Initial Order. The purpose of the Plan is to affect a compromise and arrangement of all unsecured claims against the Applicants in a manner acceptable to affected creditors without jeopardizing the Applicants’ ability to continue as a going concern so that value can be maximized in the interest of all stakeholders.

40. The Applicants have submitted their Plan to this Honourable Court, which is a consolidated Plan and provides that the assets and liabilities of the Applicants are to be combined and one class of creditors be created to consider and vote on the Plan. The filing of a consolidated plan of compromise and arrangement and the creation of a single creditor class to vote on the Plan was a condition precedent for the support of the financial sponsors of the Plan.

41. The Applicants have prepared an annual financial forecast, including distributions to unsecured creditors and Employee Claimants, up to and including the fiscal year ending December 31, 2018. The Companies expect to suffer a significant net loss in 2013 due, in part, to restructuring costs. The Applicants project profits before depreciation and taxes in the fiscal year ending December 31, 2014 in the amount of \$1.027 million as they benefit from a full year of operational cost reductions and eliminate the other restructuring costs.

42. Despite a net loss in 2013, the Applicants project borrowing capacity as at December 31, 2013 sufficient to make the initial distribution to creditors scheduled to occur on or before January 15, 2014.

43. While treated as a single class for voting purposes, the Plan provides separate distribution schemes for unsecured creditors excluding Employee Claimants and Manunion (the "Trade Creditors"), Employee Claimants, and Manunion. A summary of the proposed distribution to each group of creditors is described below.

44. Trade Creditors with Proven Distribution Claims:

- (a) of less than \$5,000 will be paid the lesser of \$1,000 and the amount of their Proven Distribution Claim on or before January 15, 2014.
- (b) in excess of \$5,000, with the exception of Manunion, will be paid an estimated 10% of their Proven Distribution Claim on or before January 15, 2014, and an additional estimated 10% of their Proven Distribution Claim on or before January 15, 2015 for a combined distribution of an estimated 20%.

45. Employee Claimants with Proven Distribution Claims:

- (a) of less than \$3,250 will receive:
  - (i) an initial distribution, not to exceed the lesser of \$1,000 and the amount of their claim, on or before January 15, 2014;
  - (ii) a second distribution, not to exceed the lesser of \$1,000 and the amount of their claim, on or before January 15, 2015; and
  - (iii) a final distribution, not to exceed the lesser of \$1,250 and the amount of their claim, on or before January 15, 2016.
- (b) between \$3,251 and \$16,250 will receive:
  - (i) an initial distribution, in the amount of the greater of 10% of their Proven Distribution Claim and \$1,000, on or before January 15, 2014;
  - (ii) a second distribution, in the amount of the greater of 10% of their Proven Distribution Claim and \$1,000, on or before January 15, 2015; and
  - (iii) a final distribution, which when combined with the initial and second distribution, will not exceed \$3,250 on or before January 15, 2016.
- (c) in excess of \$16,250 will receive:
  - (i) an initial distribution in the amount of an estimated 10% of their Proven Distribution Claim on or before January 15, 2014; and
  - (ii) a second distribution in the amount of an estimated 10% of their Proven Distribution Claim on or before January 15, 2015 for a combined distribution of an estimated 20%.
- (d) Distributions are not to exceed the value of any creditor's Proven Distribution Claim.

46. Distributions to Employee Claimants are structured in such a way that they will receive a distribution through the Plan equivalent to any distribution they would have otherwise received from Service Canada in accordance with the *Wage Earner Protection Program Act* if a liquidation ensued through receivership or bankruptcy proceedings.

47. Manunion holds a pre-filing unsecured claim of approximately \$7 million which represents an estimated 70% of the total unsecured claims. Given that Forsyth does not have the financial resources to pay 10% of the Manunion claim by year-end, the Plan provides for a payment of \$300,000 to Manunion on or before January 15, 2014 and a non-interest bearing promissory note requiring the following payments:

- (a) \$50,000 per quarter for 3 years or 12 consecutive fiscal quarters commencing April 1, 2014 for a total of \$600,000; and
- (b) 50% of the pre-tax cash profits ("EBDAT") of the Applicants, for a period of 5 years, starting with the fiscal year ending December 31, 2014 and payable 15 days after the completion of the audit for the relevant fiscal year, after deducting from EBDAT the quarterly payments described above and any other distribution to Trade Creditors or Employee Claimants.

48. Although the Plan provides that any creditor with a claim in excess of the \$3 million would receive the same treatment as Manunion under the Plan, Manunion is the only known creditor with a claim in excess of \$3 million.

49. The Monitor believes that the treatment of Manunion's claim is appropriate since without their continued support the Plan would fail and liquidation through receivership and/or bankruptcy proceedings would likely occur to the detriment of all stakeholders.

50. While Manunion has expressed its support of the business terms offered to it in the Plan, the final form of Plan may require some amendments resulting from further negotiations with Manunion.

51. The distributions described above will be in full and final satisfaction, compromise, release, and discharge of and exchange for each Proven Distribution Claim.

52. Given that the value of Proven Distribution Claims has yet to be determined, the Applicants propose that each distribution to unsecured creditors be limited as follows:

- (a) The initial distribution scheduled to occur on or before January 15, 2014 will be limited to \$650,000.

- (b) The second distribution scheduled to occur on or before January 15, 2015 will be limited to \$300,000.
- (c) The third distribution scheduled to occur on or before January 15, 2016 will be limited to \$80,000.
- (d) In the event that the quantum of Proven Distribution Claims would otherwise cause a distribution in excess of the amounts noted above, the distribution will be reduced on a pro rata basis among unsecured creditors.
- (e) Payments under the promissory note payable to Manunion are excluded from and are in addition to the limits noted in (b) and (c) above.

53. All cash distributions to be made under this Plan to unsecured creditors will be made by the Monitor by cheque sent via regular mail. The Monitor is entitled to delegate this responsibility to the Applicants.

54. All distributions will be made in Canadian dollars. Foreign currency denominated claims will be converted to Canadian dollars based on the CCAA filing date (February 22, 2013) exchange rate as posted on the Bank of Canada website (\$1 USD = 1.0217 CDN).

55. The Plan is approximately 6 years in length.

56. The Plan does not affect or compromise the following:

- (a) claims of Secured Creditors;
- (b) post-filing Claims;
- (c) claims secured by the CCAA DIP and Administration Charges;
- (d) certain Claims of Landlords including Claims for:
  - (i) post-filing rent payable by the Applicants as set out in the Initial Order;

- (ii) obligations of the Applicants to be performed under the Initial Order or any other Order made during the CCAA Proceedings; and
  - (iii) loss or damages in respect of renegotiated and continuing leases except for pre-filing Claims.
- (e) Special Crown Claims;
  - (f) the Claims of shareholders Harris Hester and Oliver Morante who have both waived their entitlement to a distribution under the Plan;
  - (g) claims covered by insurance, to the extent of such coverage; and
  - (h) claims of the Monitor, and all legal, real estate, accounting, tax, financial or other advisers to and consultants of the Applicants and the Monitor incurred by the Applicants and the Monitor in connection with the CCAA Proceedings.

57. All Special Crown Claims that were outstanding at the CCAA filing date shall be paid in full within six months of the Sanction Order.

58. The Applicants propose that a meeting of unsecured creditors be held on June 26, 2013 to seek approval of the Plan by the unsecured creditors. The Monitor considers this proposed meeting date reasonable in the circumstances considering the overall timetable of these CCAA Proceedings. The procedures for the Creditors' Meeting are described in the Creditors' Meeting Order and are typical and appropriate in these circumstances.

59. If the Required Majority of Creditors is obtained at the Creditors' Meeting, this Plan shall be approved and shall be deemed to have been agreed to, accepted and approved by the unsecured creditors and shall be binding upon all unsecured creditors subject to Court approval.

## **PROPOSED CLAIMS PROCESS**



60. The Applicants are seeking approval of a Claims Process and Bar Order detailing the process for the submission, evaluation and adjudication of claims against the Applicants and past and present directors and officers of the Applicants (the "Claims Process"). The Monitor, with the assistance of the Applicants, will be responsible for the administration of the Claims Process.

61. In summary, the major steps of the Claims Process are as follows:

- (a) the Applicants shall provide the Monitor with a complete list of all known creditors, showing for each known creditor their name, address, and amount owed pursuant to the Applicants' books and records;
- (b) on or before June 3, 2013, unsecured creditors will be sent an Instruction Letter, the Proof of Claim Form, Lease Terms Form, Claims Process and Bar Order, Creditors' Meeting Order, and such other materials as the Monitor may consider appropriate (the "Document Package") by the Monitor via regular mail to all known creditors for completion and submission to the Monitor;
- (c) on or before June 3, 2013, a notice to the creditors will be published in the Globe and Mail (National Edition).
- (d) on or before June 3, 2013 copies of the Document Package will be made available on the Monitor's website at [www.bdo.ca/forsyth](http://www.bdo.ca/forsyth);
- (e) unsecured creditors will be required to submit to the Monitor a Proof of Claim or Lease Terms Form by 5:00 p.m. eastern standard time on June 21, 2013, the Claims Bar Date. Any creditor who does not deliver to the Monitor a completed Proof of Claim will have its Unsecured Claim forever extinguished and shall forever be barred from making or enforcing any claim against the Applicants or the Monitor;
- (f) the Monitor, with the assistance of the Applicants, will review and evaluate Proofs of Claim and Lease Terms Forms received and, if not accepted in

whole or in part, the Monitor will issue a Notice of Revision or Disallowance and a form of Dispute Notice to the creditor;

- (g) Creditors may dispute their claim, as set out in the Notice of Revision or Disallowance, by filing a Dispute Notice with the Monitor within 10 calendar days;
- (h) any creditor who does not serve and file such Dispute Notice within the noted time frame shall be deemed to have accepted the claim as set out in the Notice of Revision or Disallowance;
- (i) dispute Notices not consensually resolved through the dispute and review process may be accepted by the Monitor and the Applicants for voting purposes only; and
- (j) dispute Notices not consensually resolved through the dispute and review process will be decided by this Court.

62. The Monitor is of the opinion that the proposed Claims Process will allow the Applicants to determine the claims against them and proceed with a creditor meeting for the purpose of voting in respect of the Plan.

63. The Monitor also believes that it is appropriate that the Applicants carry out a claims process at this time in order to enable the Applicants and the Monitor to review and process the anticipated volume of potential claims, including, without limitation, those of trade creditors, suppliers and landlords, so that the Applicants will be in a position to hold a meaningful meeting of creditors to consider and vote on the Plan in a timely manner.

64. The Monitor is of the opinion that the Claims Bar Date is reasonable in the circumstances and recommends that this Honourable Court approve the Claims Process that is being sought by the Applicants.

65. The Monitor believes that the Applicants' have proposed an achievable timetable to complete the Claims Process. Moreover, the Monitor believes that the Claims Process is

fair and reasonable and respectfully recommends that the Applicants' request for the approval of the Claims Process and Bar Order be granted.

## **REQUEST FOR AN EXTENSION OF THE STAY OF PROCEEDINGS**

66. Pursuant to the First Extension Order, the Stay Period was extended up to and including May 29, 2013.

67. Additional time will be required for the administration of the Claims Process and meeting of unsecured creditors, to vote on the Plan.

68. The Monitor is of the view that a continuation of the stay of proceedings to July 12, 2013 is necessary to provide stability to Forsyth while the Claims Process and meeting of creditors are administered.

69. It is the Monitor's view, based on Forsyth's Consolidated Revised Cash Flow Forecast, that the Applicants will have sufficient availability of funding during the requested extension period to continue to satisfy their post CCAA filing obligations.

70. Based on the information presently available, the Monitor believes that creditors will not be materially prejudiced by an extension of the Stay Period to July 12, 2013. Furthermore, the Monitor is not aware of any creditor who opposes the requested extension of the Stay Period.

71. Lastly, the Monitor is not aware of any non-compliance by the Applicants with the requirements of the CCAA or any Order issued by this Court in the CCAA Proceedings. The Monitor believes that the Applicants have acted, and continue to act, in good faith and with due diligence and that circumstances exist that make the extension of the Stay Period appropriate.

72. For the reasons outlined above, the Monitor respectfully recommends that the Stay Period be extended up to and including July 12, 2013.

## PROFESSIONAL FEES

73. The professional fees and disbursements of the Monitor total \$218,709.60 (which includes Goods and Services Tax) for the period from August 3, 2012 to May 3, 2013. An affidavit regarding the Monitor's professional fees and disbursements is included as **Appendix E**.

74. The legal fees of the Monitor's Canadian legal counsel, Davis LLP, total \$33,974.32 (which includes miscellaneous disbursements and Goods and Services Tax) for the period from February 12, 2013 to March 25, 2013. An affidavit regarding Davis LLP's professional fees and disbursements is attached as **Appendix F**. The Monitor has reviewed the time entries submitted by Davis LLP and finds the work performed and charges incurred to be appropriate and reasonable.

## SUMMARY AND RECOMMENDATIONS

75. Given the foregoing, the Monitor respectfully requests this Honourable Court:

- (a) grant an extension of the Stay Period up to and including July 12, 2013;
- (b) approve the proposed Creditors' Meeting Order and the Claims Process and Bar Order;
- (c) approve the Monitor's fees for the period from August 3, 2012 to May 3, 2013; and
- (d) approve the Monitor's Canadian counsel's fees for the period from February 12, 2013 to March 25, 2013.

All of which is respectfully submitted this 17<sup>th</sup> day of May, 2013.

BDO CANADA LIMITED

Per:

A handwritten signature in black ink, appearing to read "G. Cerrato". The signature is written in a cursive, flowing style.

Gary Cerrato, CIRP

Vice-President