

**Court No. B-200237**  
**Estate No: 11-2644267**  
**Vancouver Registry**

**IN THE MATTER OF THE BANKRUPTCY OF  
ARMY & NAVY DEPT. STORE LIMITED PARTNERSHIP**

**TRUSTEE'S PRELIMINARY REPORT TO CREDITORS**

Army & Navy Dept. Store Limited Partnership (the "**Partnership**") was deemed to have made an Assignment in Bankruptcy on June 9, 2020 as a result of its failure to file a proposal and McEown and Associates Ltd. was appointed Trustee. This report has been prepared by McEown and Associates Ltd., in its capacity as Licensed Insolvency Trustee, based on information available as at July 21, 2020.

## **BACKGROUND**

The Partnership was formed on November 19, 2018 as part of a corporate restructuring of Army & Navy Dept. Store Limited, the company that formerly operated the chain of Army & Navy stores, and several other related companies. The Trustee understand that the restructuring was done for tax purposes.

Prior to bankruptcy the Partnership carried out business under the 'Army & Navy' brand which is an iconic Vancouver based discount department store retailer with store locations in Vancouver, New Westminster, Langley, Calgary and Edmonton ("**Army & Navy**"). In recent years Army & Navy's retail business has been significantly impacted by changes in market and industry fundamentals including a shift in consumer shopping activities to online platforms.

During the past 5 years Army & Navy incurred significant losses which were funded by advances from related companies. The Partnership's projected losses for the current year was estimated to be in excess of \$3,500,000.

Those losses, coupled with the Covid-19 global pandemic, forced Army & Navy to temporarily close its stores in March 2020.

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### **FILING OF NOTICE OF INTENTION TO MAKE A PROPOSAL**

The Partnership filed a Notice of Intention to Make a Proposal (“**NOI**”) on May 8, 2020 the effect of which was to provide a stay of proceedings against creditors and allow time for the Partnership to consider restructuring options.

When retail businesses were permitted to open up again in mid May, a decision was made to consolidate the inventory into the Calgary and New Westminster stores, close the Vancouver, Langley and Edmonton stores and commence a liquidation sale (the “**Liquidation Sale**”). The Liquidation Sale commenced on June 4<sup>th</sup> 2020.

### **DEEMED BANKRUPTCY**

By June 8, 2020, being the date upon which the Partnership was obliged to file a proposal to its creditors in accordance with the NOI, the Partnership had failed to file a proposal (or apply to Court for an extension) s. As a result, the Partnership was deemed to have made an assignment into bankruptcy in accordance with section 50.4(8) of the *Bankruptcy and Insolvency Act* on June 9, 2020.

### **APPOINTMENT OF RECEIVER**

As at the date of bankruptcy the Bank of Montreal (the “**BOM**”) was the senior secured creditor of the Partnership. The particulars of the BMO security is set out later in this report.

Following the date of bankruptcy the Trustee accepted an appointment as Receiver by the BOM, after obtaining an independent legal opinion confirming the validity and enforceability of the BOM's security. The costs incurred by the Receiver are being funded by the BOM from funds realized from the sale of inventory subject to its security.

The Liquidation Sale continued under the direction of the Receiver until late June 2020 at which time the remaining inventory (with an estimated cost value of approximately \$350,000) was sold to Fields for \$118,000. The total realization (net of liquidation costs) from the Liquidation Sale was approximately \$1,800,000.

Ongoing efforts are being made to sell the fixtures, furniture, office equipment and computer equipment, however, the estimated recovery is expected to be nominal.

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## **CONSERVATORY MEASURES**

After the date of bankruptcy McEown & Associates Ltd., in consultation with the Partnership's management and the BOM, determined that the highest recovery from the inventory would be achieved by continuing the Liquidation Sale. Army and Navy staff were hired to continue the Liquidation Sale which ended in late June 2020 as described above.

The Partnership's deposit only bank account (the "**Operating Account**") remained open to collect the Liquidation Sale proceeds and when the sale completed the funds were deposited with the Receiver. The Operating Account was then closed and the balance in the account of approximately \$40,000 was paid to the BOM and applied against the secured loan balance.

The Trustee confirmed with the insurer that adequate insurance was in place and requested that McEown and Associates Ltd. be added as an additional named insured.

## **ASSETS**

### ***Cash in Bank***

As mentioned above, the Partnership's bank accounts have been closed and the balance of funds have been paid to the Receiver. The Receiver has advanced \$1,500,000 to the BOM to reduce the Partnership's secured indebtedness and will remit the balance of funds to the BOM once on the Receiver's liquidation costs have been paid.

### ***Inventory***

The Partnership valued the inventory at \$1,500,000 in the Statement of Affairs. The Trustee understands that value was based on the amount estimated by management to be realizable in a liquidation sale, net of liquidation costs.

The net amount which was realized from the Liquidation Sale, after liquidation costs, is estimated to be approximately \$1,800,000.

### ***Related Companies: Payables and Receivables***

The Trustee has reviewed the financial statements of the Partnership for the purposes of identifying other assets potentially capable of realization for the benefit of creditors and has

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identified the following related party receivables and payables balances (the "**Related Party Balances**"):

Related Party Receivables	8,465,551
Related Party Payables	<u>(18,820,410)</u>
<b>Net Amount Due to Related Parties</b>	<b><u>(10,354,859)</u></b>

As the Trustee understands it, the Partnership's position is that the amounts noted above represent legacy transactions that built up over a period of several decades most of which related to corporate planning and in recent years, the related party advances which funded the operating losses of the retail operations. The Trustee has been advised that the Partnership never sought to collect or pay Related Party Balances and management disagrees that any amount is properly due and payable as Related Party Receivables.

The Trustee is not, without further investigation, in a position to confirm or verify the advice received from the Partnership's financial advisors. However, if the financial statements properly record the Related Party Receivables the Trustee's preliminary view is that the:

1. Related Party Receivables constitute an asset of the estate for which recovery can be pursued; and
2. Related Party Payables represent an unsecured creditor claim in the bankruptcy.

If that is determined to be the case then after payment of secured debts, the Related Party Receivables would be available to the Estate for distribution to unsecured creditors which would include the parties to whom the Related Party Payables are due and owing who would be entitled to their proportionate share of the recovery.

If the Related Party Receivables due to the Partnership are determined to be due, owing and collectible the amounts owing to related parties would likely remain in the amount of \$18,820,410 and those related parties would share in the distribution of any amounts recovered on a pro-rate distribution, after payment of the Secured Creditor claims.

After accounting for the net proceeds from the Liquidation Sale, the Trustee estimates the shortfall to the secured creditors will likely be approximately \$1,400,000. Assuming that the Trustee determines that the Related Party Receivables are properly due, owing and

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collectible the net amount available to the unsecured creditors would be approximately \$7,100,000.

Based on the information from the financial statements and the information located to date, the Trustee's preliminary calculations of the potential resulting pro-rata distributions to unsecured creditors are as follows:

<u>Claimant</u>	<u>Claim</u>	<u>% of Total</u>	<u>Amount</u>
Unsecured Creditors	3,360,721	14%	994,000
Employee Claims	1,074,372	5%	355,000
Related Parties	18,820,410	81%	5,751,000
	<b><u>23,255,503</u></b>	<b>100%</b>	<b><u>7,100,000</u></b>

The Trustee will complete its review of the Related Party Receivables and then report further on the recoverability of those debts together with the costs and benefits of the Trustee, or creditors, pursuing recovery.

***Trade Fixtures***

The Partnership valued the trade fixtures at \$10,000 on the Statement of Affairs. The value is based on the amount estimated by management to be realized in a liquidation auction sale of these assets.

Efforts are being made by the Receiver to sell the trade fixtures, however, to date there have been no offers.

It is the Trustee's opinion, that the costs associated with moving and selling these assets will be higher than can be realized in a liquidation sale.

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***Furniture, Office Equipment and Computer Equipment***

The Partnership did not attribute any value to the furniture, office equipment and computer equipment on the Statement of Affairs.

It is the Trustee's opinion, that the costs associated with moving and selling these assets will be higher than can be realized in a liquidation sale.

**PROVABLE CLAIMS**

The Trustee has performed a preliminary review of the claims filed to date which are summarized below:

	<b>As Per Statement of Affairs</b>	<b>Claims Filed to date</b>
Secured Creditors	\$ 3,088,419	\$ 931,961
Unsecured Creditors	\$14,491,242	\$ 2,257,591
Totals	\$17,579,661	\$ 3,189,552

To date, the Trustee has not identified any significant differences between the claims reported on the statement of affairs and the claims filed with the Trustee to date.

**DEEMED TRUST CLAIMS & SECURED CREDITORS**

***Canada Revenue Agency ("CRA")***

According to its records, as at the date of bankruptcy the Partnership was current in remitting payroll deductions. CRA's claim for unremitted payroll deductions would constitute a deemed trust claim that ranks in priority to all other creditors, including secured creditors.

***Employees***

The Wage Earner Protection Program ("WEPP") pays employees for wages, vacation pay and termination pay owed, for the six-month period preceding the date of bankruptcy to a

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maximum of approximately \$7,000 per employee. Upon payment to an employee WEPP is entitled to an assignment of the employees' claim in the bankruptcy.

Pursuant to the provisions of the *Bankruptcy and Insolvency Act*, employees have a secured claim over the current assets of an employer to a limit to \$2,000 for each employee for outstanding wages and vacation pay due for the 6 month period preceding the date of bankruptcy and \$1,000 for expenses. Those claims rank in priority to all other secured claims against the current assets with the exception of a claim by Canada Revenue Agency for source deductions.

The Trustee has been informed by the Partnership that employees are owed termination and vacation pay in the total amount \$1,144,752.81 as stated on the Statement of Affairs. Out of this amount, approximately \$70,000 ranks as a secured claim and \$1,074,372.31 ranks as an unsecured claim in the bankruptcy.

The Trustee has received approximately 140 out of 196 employee proofs of claim for termination and vacation pay. The Trustee has filed these claims with WEPP.

***The Bank of Montreal ("BOM")***

BOM has a General Security Agreement over all of the property of the Partnership which was registered on December 27, 2018 with the Personal Property Registry of British Columbia.

The amount owing to BMO, according to the Partnership's records at the date of bankruptcy was \$3,018,039 as stated on the Statement of Affairs.

**OTHER CREDITORS**

***Landlord Claims***

Pursuant to the provisions of the *Bankruptcy and Insolvency Act* ("BIA") landlords have a preferred claim for three months of rent arrears plus accelerated rent for three months following the bankruptcy if provided for in the lease. The preferred claim of the landlord is reduced by occupation rent paid by the Trustee following the bankruptcy and is limited to the value of the assets on the leased premises.

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The landlord's liability shown on the Statement of Affairs is \$114,825.14 for the Langley location.

First Capital (Langley Mall) Corporation has filed an unsecured claim in the amount of \$413,135.61 for the Langley location for the lease arrears and three months accelerated rent.

There are amounts owed to related companies that are landlords of the other store locations but to date these related companies have not filed claims in the bankruptcy.

***Unsecured Creditors***

The Partnership's indebtedness to unsecured creditors as shown on the Statement of Affairs is \$14,491,242.53.

**TRUSTEE'S FEE ARRANGEMENT**

The Receiver has agreed to pay the Trustee's fees and disbursements.

**PREFERENTIAL PAYMENTS & TRANSFERS AT UNDERVALUE**

As at the date of this report the Trustee has not completed its review of the books and records of the Partnership for the three-month period immediately preceding the date of bankruptcy, and where related parties are concerned, the twelve month period prior to bankruptcy to determine if there are any preferential payments and/or transfers under value.

**ESTIMATED REALIZATION**

The estimated recovery from the sale of the inventory will not be sufficient to pay in full the amounts owed to the secured creditors.

Should the Trustee or creditors successfully pursue collection of the Related Party Receivables there may be small recovery available to distribute to unsecured creditors.

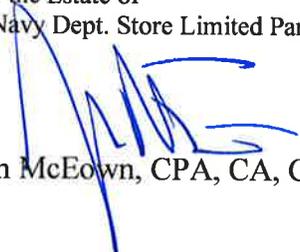
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DATED at the City of Vancouver, British Columbia this 21<sup>st</sup> day of July, 2020.

**McEown and Associates Ltd.**

Trustee of the Estate of  
Army & Navy Dept. Store Limited Partnership



Per: John McEown, CPA, CA, CIRP, LIT