

RSM Richter

**Fifth Report of RSM Richter Inc.
in its Capacity as Proposal Trustee
Re: Retrocom Growth Fund Inc.**

RSM Richter Inc.
Toronto, April 5, 2007

RSM Richter is an independent member firm of RSM International,
an affiliation of independent accounting and consulting firms.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE PROPOSAL OF
RETROCOM GROWTH FUND INC. PURSUANT
TO THE *BANKRUPTCY AND INSOLVENCY ACT* (CANADA)

**FIFTH REPORT OF RSM RICHTER INC.
AS PROPOSAL TRUSTEE AND INTERIM RECEIVER**

April 5, 2007

1. INTRODUCTION

This report is filed by RSM Richter Inc. ("Richter") in its capacity as Proposal Trustee and Interim Receiver of Retrocom Growth Fund Inc. (the "Company" or "Retrocom"). The Company filed a Notice of Intention to Make a Proposal ("NOI") under Part III of the *Bankruptcy & Insolvency Act* ("BIA") on August 1, 2006. On January 31, 2007, Retrocom filed its proposal ("Proposal") to creditors.

The purpose of this report ("Report") is to provide the Superior Court of Justice (Commercial List) (the "Court") with background information to support Richter's motion returnable April 11, 2007, which seeks an order, *inter alia*, requiring various parties to provide Richter and Retrocom with the records of the Company (the "Records"), as directed by a previous Order of this Court made on October 13, 2007 (the "October Order").

Retrocom was registered as a labour-sponsored investment fund corporation under the *Community Small Business Funds Act* (Ontario) and as a labour-sponsored venture capital corporation under the *Income Tax Act* (Canada). Retrocom's investments were primarily, but not exclusively, in the real estate sector.

2. BACKGROUND

2.1 Management Agreement with Retrocom Investment

Retrocom had its own Board of Directors; Retrocom, however, did not engage employees to oversee its operations. The Company outsourced its management and administrative functions to third parties. In May of 2001, Retrocom entered into a management agreement (the “Management Agreement”) with Retrocom Investment Management Inc. (“RIMI”). Under the Management Agreement, RIMI was appointed to manage and administer the affairs of Retrocom. RIMI’s compensation was based on percentage of the asset values. A copy of the Management Agreement of Retrocom with amendments is attached as Appendix “A”.

In addition to providing personnel to manage and administer the affairs of Retrocom, RIMI also maintained essentially all the books and records of Retrocom. The paper or hard copies of the Company’s records were maintained at RIMI’s premises. In addition, Retrocom’s electronic data records were maintained by RIMI on RIMI’s servers (the “Servers”). The Servers also maintained RIMI’s electronic data records.

RIMI maintained the management and administrative functions of Retrocom until approximately May, 2006. At that time, RIMI and Retrocom attempted to negotiate an arrangement whereby RIMI would provide the services of two RIMI employees and one RIMI contractor to assist Retrocom with their administrative needs. The terms of this arrangement were never finalized and the agreement was never executed.

In October of 2006, RIMI advised Retrocom that RIMI intended to terminate the employment and contract of the persons who were providing the administrative services to Retrocom. As Retrocom did not have any employees and the services being provided were needed by Retrocom, Richter, on behalf of Retrocom, engaged these individuals as independent contractors. The engagement by Richter of these independent contractors was set out in Richter’s Second Report to Court dated October 10, 2006 and approved by the October Order.

Among other matters, the independent contractors were required in order to update records and prepare tax returns that were past due.

All known creditors of Retrocom, including Aylesworth LLP, were given notice of the October 13, 2007 motion.

2.2 Occupation Agreement

In conjunction with Richter's engagement of the independent contractors as noted in Section 2.1 of this Report, Richter entered into an occupation agreement ("Occupation Agreement") with RIMI. The Occupation Agreement was intended to permit the independent contractors to utilize RIMI premises and furniture and equipment in order to fulfil the administrative functions required by Retrocom. In exchange for RIMI permitting the independent contractors to occupy the RIMI premises and utilize the furniture and equipment, RIMI would be receive monetary compensation.

The negotiations to settle the terms of the Occupation Agreement commenced in October, 2006 and were finalized on December 6, 2006, but effective as of October 1, 2006. A copy of the Occupation Agreement is attached as Appendix "B". During the negotiation period, the independent contractors were permitted to occupy the RIMI premises and utilize the furniture and equipment. One of the changes to the Occupation Agreement that occurred during the negotiating period was that the number of independent contractors that could occupy the premises was reduced from three to two. This was as a result of one of the independent contractors obtaining a permanent position elsewhere and terminating its contract with Richter.

In January, 2007, the former independent contractor became available and was re-engaged by Richter. This independent contractor commenced occupying the RIMI premises and utilizing the RIMI furniture and equipment in January and continued to do so until March 23, 2007. The Occupation Agreement was not amended during this period and Richter was not advised, either verbally or in writing, that RIMI viewed having three independent contractors at it premises as

breach to the terms of the Occupation Agreement. Up until March 23, 2007, Richter has made the payments required under the Occupation Agreement.

2.3 Pre-NOI Appointment of Richter

On February 27, 2006, Richter was engaged as financial advisor by a special committee of the Board of Directors to review the financial affairs of the Company. The engagement of Richter was due to the decline in Retrocom's reported asset values and its apparent lack of liquidity. On June 1, 2006, Richter was also engaged to review the reported asset values of Retrocom. The principal purpose of this engagement was to determine whether Retrocom had overpaid management fees to RIMI based on overstated asset values. Based on the review, Richter's preliminary findings were that RIMI may have received excess fees in the range of \$1.8 million to \$4.8 million.

The Richter engagement prior to the NOI was of an advisory nature and during this time, Richter did not exercise any management or decision-making functions. Subsequent to the NOI, Richter management functions have been limited to those set out in the October Order.

2.4 Orderly Realization of Assets

In the spring of 2006, Retrocom embarked on an orderly realization on its assets in order to maximize the recovery for its stakeholders. Various properties have been sold by either Retrocom or mortgagees.

Retrocom currently has a few assets remaining. As a result of losses incurred on many of its investments, Retrocom has incurred significant losses, which would be available to Retrocom to shelter otherwise taxable income in the future. As a result of the tax losses, Richter solicited expressions of interest from parties who would be interested in acquiring the Company in order to obtain certain of the remaining assets and potentially avail itself of the tax loss benefits.

Various expressions of interest were received. Details of the solicitation process were set out in Richter's Report to Court dated January 9, 2007.

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Retrocom's Board of Directors recently approved a conditional agreement ("Retrocom Sale Agreement") with one of the interested parties. The conditions in the Retrocom Sale Agreement include:

- The purchaser ("Purchaser") completing, to its satisfaction, a due diligence of the books and records of Retrocom; and
- Retrocom completing and filing tax returns for tax years up to and including February 28, 2007.

On January 31, 2007, Retrocom filed its Proposal. The gist of the Proposal is that Retrocom's creditors will receive the net proceeds of the realization of Retrocom's assets as well as the net proceeds under the Retrocom Sale Agreement, which are expected to exceed \$2 million, and will constitute most of the value available to Retrocom's creditors under the Proposal.

The meeting of creditors to consider the Proposal was held on February 21, 2007. The meeting was adjourned to a date to be determined in the future pending the finalization of the Retrocom Share Agreement.

2.5 Status of RIMI as a Creditor

Retrocom does not consider RIMI to be a creditor. Retrocom has expressed the view that it has significant claims against RIMI as a result of overpayment of management fees to RIMI. To date RIMI has not filed a proof of claim with Richter, although it provided notice by letter dated October 20, 2006 to Richter that RIMI has claims against Retrocom pursuant to the Management Agreement. A copy of the October 20, 2006 letter from RIMI's counsel, addressed to Richter in its capacity as Interim Receiver, is attached as Appendix "C".

3. REMOVAL OF THE SERVERS, DENIAL OF ACCESS

Mr. Paul Black, Jr., one of the independent contractors retained by Richter and working at the RIMI premises pursuant to the Occupation Agreement, advised Richter on Monday, March 26, 2007, that the Servers had been removed from the RIMI Premises. The removal of the Servers was done without Retrocom's knowledge or consent. Mr. Black advised that the Servers were on the RIMI premises at the end of the business day on Friday, March 23, 2007.

The Servers contain Retrocom Records, together with the work product of the independent contractors retained by Richter, both of which are critical for the Retrocom Sale Agreement and the completion of the continued administration of the Proposal proceedings.

On Monday, March 26, 2007, counsel for RIMI advised that RIMI was also terminating the Occupation Agreement immediately, notwithstanding that the Occupation Agreement itself provides for ten business days' notice of termination. Attached as Appendix "D" is a copy of the letter from RIMI's counsel, Aylesworth LLP, to counsel for Richter, being Ogilvy Renault LLP ("Ogilvy").

Ogilvy responded in writing and by telephone, and attempted to regain access to the RIMI premises pursuant to the Occupation Agreement, and also to regain access to the Records pursuant to the October Order. Richter also made contact directly with RIMI to request access to both the RIMI premises and to the Records. In each case, RIMI (directly and through counsel) denied Richter access to the Records and RIMI premises. A copy of Ogilvy's letter (October Order enclosed) to Aylesworth LLP, dated March 27, 2007, is attached as Appendix "E".

Through Mr. Black, Richter learned that the Servers had been moved to the premises of Alexian Computer Services Inc.

Counsel for the Ontario Securities Commission (the "OSC") also contacted counsel for Richter, on Monday March 26, 2007 expressing concern as to the removal of Records from the RIMI premises. The OSC was made aware of this by Mr. Black. The OSC asked what was being done by Richter to access the Records, and requested an immediate meeting with counsel for Richter. At a meeting that took place on Tuesday March 27, 2007, counsel for Richter provided the OSC with copies of the Aylesworth LLP letter dated March 26, 2007 and the Ogilvy Renault LLP dated March 27, 2007.

4. THE PRESERVATION ORDER

RIMI continued to deny access to the Records. On March 28, 2007, counsel for Richter attended before Mr. Justice Spence together with counsel for RIMI. Just prior to the appointment, counsel for the OSC contacted Ogilvy Renault LLP to inquire as to what steps, if any, Richter was taking, and was advised of the appointment with Justice Spence. Counsel for the OSC also attended the hearing, without prior notice to counsel for Richter or counsel for RIMI.

Mr. Justice Spence ordered that the Records be preserved pending any further Order. A copy of Mr. Justice Spence's Order dated March 28, 2007 in this regard is attached for reference at Appendix "F".

5. THE SALE OF THE COMPANY

RIMI still continues to deny access to the Records, and counsel for RIMI has not responded to contact by counsel for each of Richter and Retrocom made on April 2, 2007 in an attempt to resolve this issue.

Retrocom's primary asset remaining for realization consists of the funds that would come from the Retrocom Sale Agreement. In order to conclude such a transaction with the Purchaser, Retrocom and Richter must provide the Purchaser with full access to the Records on an urgent

basis. In addition, Retrocom and Richter require immediate access to the work product of the independent contractors ejected by RIMI, which work product relates directly to the tax returns of Retrocom.

RIMI's refusal to allow access to the Records has halted the process with respect to the sale of the Company. The completion of the tax returns, and the completion of the due diligence activities with respect to the sale of the Company, is necessary to advance the Proposal, which is to be voted upon by the creditors no later than May 31, 2007.

All of which is respectfully submitted,

**RSM RICHTER INC.
IN ITS CAPACITY AS PROPOSAL TRUSTEE
AND INTERIM RECEIVER OF
RETROCOM GROWTH FUND INC.
AND NOT IN ITS PERSONAL CAPACITY**