

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 NMC CANADA, INC. AND
2515080 NOVA SCOTIA COMPANY**

Applicants

MOTION RECORD

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2	Affidavit of John Chen sworn February 26, 2009

TAB 1

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 NMC CANADA, INC. AND
2515080 NOVA SCOTIA COMPANY**

Applicants

NOTICE OF MOTION

The applicants named in this application (collectively, the “**Applicants**” and, any one, an “**Applicant**”) will make a motion to a judge presiding on the Commercial List on Friday, February 27, 2009 at 9:30 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THIS MOTION IS FOR:

1. an order:
 - (a) abridging the time for service of the notice of motion and motion record and dispensing with further service;
 - (b) extending the Stay Period (the “**Stay Period**”), as defined in paragraph 17 of the Order of the Honourable Mr. Justice Campbell made in these proceedings on January 21, 2009, (the “**Initial Order**”), as extended by Order of this Court made February 18, 2009, until and including March 6, 2009 (the “**Extended Stay Period**”), and for such further and other orders as may be requested in relation to the extension of the Stay Period, including, without limitation, in relation to the Forbearance Agreement and the Accommodation Agreement (each as defined in the Initial Order); and

- (c) approving the report filed by RSM Richter Inc., the monitor of the Applicants (the “**Monitor**”), in relation to this motion (the “**Third Report**”) and the actions and activities of the Monitor as reported therein; and

2. such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) The Applicant, NMC Canada, Inc. (“**NMC**”), is incorporated under the Ontario *Business Corporations Act*. The Applicant, 2515080 Nova Scotia Company (“**2515080**”), is an unlimited liability company incorporated under the Nova Scotia *Companies Act*. NMC and 2515080 are each general partners of SKD Company, a general partnership registered under the Ontario *Partnership Act*. NMC is the managing partner of SKD Company;
- (b) SKD Company is a Tier I automotive parts supplier that designs and manufactures metal components and weldments for automakers in the North American automotive industry, including Chrysler Canada Inc. and Chrysler LLC (collectively, “**Chrysler**”), Ford Motor Company (“**Ford**”) and Honda of America Mfg., Inc., Honda Canada Mfg., a division of Honda Canada, Inc., Honda Manufacturing of Indiana, LLC and Honda Manufacturing of Alabama, LLC (collectively, “**Honda**”, and together with Chrysler and Ford, the “**Customers**”) from facilities located in Mississauga, Milton and Brampton, Ontario;
- (c) on January 21, 2009 the Applicants commenced an application under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) and on that date obtained the Initial Order of this Honourable Court;
- (d) by Order of the Honourable Mr. Justice Campbell dated February 18, 2009, the Stay Period as defined in the Initial Order was extended until and including February 27, 2009;

- (e) at the hearing of the motion on February 18, 2009, the Applicants advised this Honourable Court of their intentions to seek a further extension of the Stay Period until the end of March, 2009. While the Applicants had hoped by this time to have reached agreement with the Customers and Comerica on the terms of a proposed extension of this proceeding and completed the necessary amendments to the various agreements between them, these agreements are not yet in place, resulting in this request for a further short-term extension of the Stay Period;
- (f) the Applicants are seeking a further extension of the Stay Period to March 6, 2009, to permit them to honour their obligations under agreements with the Customers and to preserve their business and property in the interim;
- (g) the Applicants have been acting in good faith and with due diligence in fulfilling their obligations under the Initial Order and the subsequent Orders made by this Honourable Court;
- (h) it is believed to be in the best interests of the creditors and other stakeholders of the CCAA Parties for the requested extension of the stay of proceedings to be granted by this Honourable Court;
- (i) pursuant to paragraph 27 of the Initial Order, RSM Richter Inc. was appointed as Monitor. The rights and obligations of the Monitor are detailed in paragraph 28 of the Initial Order. Further to its rights and obligations, the Monitor has prepared and filed three reports with this Honourable Court which detail the actions and activities of the Monitor in these proceedings;
- (j) paragraph 53 of the Initial Order permits the Applicants to serve any motion materials in these proceedings by means of, among other methods, facsimile or electronic transmission;

- (k) the provisions of the CCAA, and in particular s.11 thereof, and the inherent and equitable jurisdiction of this Honourable Court;
- (l) Rules 2.03, 3.02, 37 and 60.11 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and section 106 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c.C.43, as amended; and
- (m) such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- 1. the affidavit of John Chen sworn February 26, 2009;
- 2. the Report of RSM Richter Inc. as the proposed Monitor, and the First Report, the Second Report and the Third Report of RSM Richter Inc., as Monitor; and
- 3. such further and other evidence as counsel may advise and this Honourable Court may permit.

Dated: February 26, 2009

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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 NMC CANADA, INC. AND
2515080 NOVA SCOTIA COMPANY

Applicants

Court File No. 09-CL-7960

ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

NOTICE OF MOTION

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TAB 2

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

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Applicants

AFFIDAVIT OF JOHN CHEN

I, **John Chen**, of the City of Birmingham, in the State of Michigan, U.S.A.

MAKE OATH AND SAY:

INTRODUCTION

1. I am the President of the Applicant, NMC Canada Inc. ("**NMC**"), and as such have knowledge of the matters to which I hereinafter depose, except where otherwise stated to be on the information and belief of others, in which case I verily believe them to be true.

2. NMC is incorporated under the Ontario *Business Corporations Act*. The Applicant, 2515080 Nova Scotia Company ("**2515080**"), is an unlimited liability company incorporated under the Nova Scotia *Companies Act*. NMC and 2515080 (collectively, the "**Applicants**") are each general partners of SKD Company, a general partnership registered under the Ontario *Partnerships Act* ("**SKD Company**"). The Applicants are holding companies whose only assets and liabilities relate to SKD Company and who carry on business through SKD Company.

3. SKD Company, NMC, and 2515080 (collectively, the "**CCAA Parties**") are part of a group of affiliated corporations and partnerships carrying on business in Canada, the United States and Mexico (collectively, the "**SKD Group**").

4. SKD Company is a Tier I supplier of metal stampings and welded assemblies to automotive manufacturers in the North American automotive industry, including Chrysler Canada Inc. and Chrysler LLC (collectively, "**Chrysler**"), Ford Motor Company ("**Ford**") and Honda of America Mfg., Inc., Honda Canada Mfg., a division of Honda Canada, Inc., Honda Manufacturing of Indiana, LLC and Honda Manufacturing of Alabama, LLC (collectively, "**Honda**"), and together with Chrysler and Ford, the "**Customers**"). The manufacturing operations of SKD Group are conducted by SKD Company in Canada, SKD L.P. in the United States and SKD de Mexico, S. de R.L. de C.V. in Mexico.

5. On January 21, 2009, this Honourable Court made an order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") in relation to the Applicants, which Order also extended the stay of proceedings to and granted relief in relation to SKD Company, as if it were an Applicant.

6. The Initial Order, among other things, approved of the Forbearance Agreement, Accommodation Agreement and Access Agreement (each as defined in the Initial Order and attached as exhibits to my affidavit sworn January 21, 2009), and empowered and directed the CCAA Parties to enter into these agreements.

7. The Initial Order imposed a stay of proceedings extending to and including February 19, 2009 (the "**Stay Period**"). By Order of this Honourable Court dated February 18, 2009, the Stay Period was extended to February 27, 2009.

8. This affidavit is being sworn in support of a motion to further extend the Stay Period to March 6, 2009.

9. The background to this matter is further described in my previous Affidavits sworn in this proceeding on January 21, 2009 and February 13, 2009, respectively (the "**Prior Chen Affidavits**").

STAY EXTENSION

10. At the hearing of the motion on February 18, 2009 for an order extending the Stay Period, the Applicants advised this Honourable Court of the progress that had been made in respect of the Sales Process, and of the Applicants' intentions to seek a further extension of the Stay Period until approximately the end of March 2009.

11. The Applicants had hoped that it would have been possible to conclude the necessary agreements with the Customers and Comerica to permit the Applicants to seek such an extension on or before February 27, 2009. Although the negotiations are continuing, it has not yet been possible to complete these agreements as of this date.

12. As a result, the Applicants have brought this motion for a further short-term extension, to permit the parties additional time to finalize the necessary agreements.

INTERIM FUNDING AND CASH FLOW PROJECTIONS

13. SKD Company and the Customers are negotiating terms of interim funding for the period to and including March 6, 2009, that will permit SKD Company to continue its operations through the week of March 6, 2009.

14. SKD Company prepared cash flow projection (the "**Original Cashflow Projections**") for the period ending February 27, 2009, a copy of which was attached to each of the Prior Chen Affidavits.

15. As a result of the present request for the extension of the Stay Period to March 6, 2009, SKD Company is preparing revised cash flow projections (the "**Interim Cashflow Projections**") for the period ending March 6, 2009, a true copy of which will be filed with this Honourable Court at the hearing of this motion. As with the Original Cashflow Projections, the Extended Cashflow Projections have been prepared based on certain assumptions, including that Comerica will continue to forbear in requiring repayment in full of the Comerica Indebtedness through to March 6, 2009, that SKD Company will be able to secure additional advances under the Comerica Credit Agreement, inclusive of the Customer Operations Funding, and that Customers will continue to comply with the expedited payments as provided for under the Accommodation Agreement.

EXTENSION OF THE STAY PERIOD

16. SKD Company understands that the Monitor has received offers for certain of the business and assets of SKD Company, which it is in the course of evaluating.

17. The Applicants are seeking an extension of the Stay Period to March 6, 2009. Depending on the results of the discussions that are continuing between the Customers and the

Applicants, and providing that the CCAA Parties have sufficient operating funding beyond March 6, 2009, the Applicants hope to be in a position to apply for a further extension of the Stay Period on or prior to March 6, 2009.

18. The CCAA Parties are continuing to work diligently with the Customers and Comerica on the terms of a proposed extension of this proceeding and the necessary amendments to the various agreements between them, in order that the Applicants may seek a further extension of the Stay Period until or about March 31, 2009.

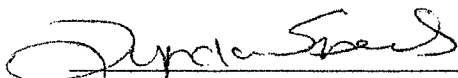
19. I believe that the extension of the Stay Period is required to permit the CCAA Parties an opportunity to conclude the agreements necessary to permit them to continue their operations during the month of March and to honour their obligations under the Accommodation Agreement and Access Agreement that have been approved of by this Honourable Court.

20. The extension of the Stay Period to March 6, 2009 will preserve the *status quo* and preserve and protect the business and assets of SKD Company in the interim period. I believe that the ability of SKD Company to continue to operate for this additional period of time provides continued employment during the interim period and increases the opportunity for a better outcome for its creditors and other stakeholders and is in their best interests.

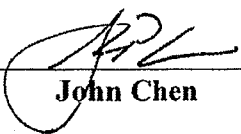
21. The Applicants have been acting in good faith and with due diligence in fulfilling their obligations under the Initial Order and subsequent Orders of this Court.

22. This affidavit is sworn in support of the motion of the Applicants for an order extending the Stay Period under the Initial Order and for no other or improper purpose.

SWORN BEFORE ME at the)
City of Troy)
in the State of Michigan,)
this 2 day of February, 2009)
)
)



Notary Public



John Chen

LYNDA SANDS
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF MACOMB
My Commission Expires Oct. 24, 2012
Acting in the County of Macomb

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
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Proceeding commenced at Toronto

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