

**RSM! Richter**

**Tenth Report of RSM Richter Inc.  
as CCAA Monitor of  
NMC Canada, Inc., 2515080 Nova Scotia  
Company and SKD Company**

**RSM Richter Inc.**  
Toronto, June 8, 2009

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**Court File No.: 09-CL-7960**

**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**

**TENTH REPORT OF RSM RICHTER INC.  
AS CCAA MONITOR OF  
NMC CANADA, INC., 2515080 NOVA SCOTIA COMPANY  
AND SKD COMPANY**

**June 8, 2009**

**1. INTRODUCTION**

Pursuant to an order (the "Initial Order") of the Ontario Superior Court of Justice (the "Court") made on January 21, 2009, NMC Canada, Inc. ("NMC"), 2515080 Nova Scotia Company ("2515") and SKD Company ("SKD") (collectively, the "Company") commenced proceedings under the *Companies' Creditors Arrangement Act* ("CCAA") and RSM Richter Inc. ("Richter") was appointed the monitor (the "Monitor"). A copy of the Initial Order can be found at Tab "1" of the Company's compendium of orders filed with the Court in these proceedings.

The Company's stay of proceedings currently expires on June 10, 2009.

## 1.1 Purposes of this Report

The purposes of this report (“Report”) are to:

- a) Provide background information about the Company and these CCAA proceedings;
- b) Summarize the reasons the Monitor believes the Company should be placed into receivership;
- c) Summarize a proposed transaction for the sale of, *inter alia*, the Company’s remaining machinery and equipment (the “Remaining Assets”) to Maynards Industries Ltd. (“Maynards”) (the “Transaction”);
- d) Summarize issues involving the Company and Orlando Corporation and the recommended settlement of those issues;
- e) Summarize the funds received and held by Richter in its capacity as Monitor and in its capacity as escrow agent, pursuant to the Retention Escrow Agreement and the Union Escrow Agreements<sup>1</sup>; and
- f) Recommend that this Honourable Court make an order:
  - Placing the Company into receivership and appointing Richter as the receiver (the “Proposed Receiver”);
  - Approving the Transaction as set out in the asset purchase and liquidation services agreement between Maynards and the Proposed Receiver (“APA”), attached as Appendix “A”;
  - Authorizing and directing the Proposed Receiver to execute the APA and all other ancillary documents and agreements required to complete the Transaction;
  - Sealing the purchase price allocation in Schedule “A” to the APA;
  - Vesting the Remaining Assets in Maynards free and clear of any and all encumbrances, claims and the like;

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<sup>1</sup> These agreements were defined in the Monitor’s fifth and sixth reports. The Retention Escrow Agreement relates to the payment of retention amounts to certain of the Company’s salaried employees who were not offered employment by any purchaser of the Company’s businesses (the “Non-Go-Forward Employees”) and the Union Escrow Agreement relates to the payment of severance and termination amounts to former unionized employees of the Company.

- Approving the settlement of damage and repair claims by Orlando in respect of the Mississauga Premises (defined in Section 8 below), including authorizing the execution of a mutual release of Orlando and the vesting of the abandoned assets at the Mississauga Premises in Orlando Corporation (“Orlando”), the landlord of the Mississauga Premises, free and clear of any and all encumbrances, claims and the like;
- Approving funding by the Monitor of an amount equal to the shortfall in the Retention Escrow Account (defined in Section 5 below), to the Retention Escrow Account, from the proceeds of the estate; and
- Approving the Monitor’s actions and activities as described in this Report.

## **1.2 Currency**

Unless otherwise noted, all currency references in this Report are to Canadian dollars. US dollars have been converted to Canadian dollars at a rate of US\$0.91 to C\$1.00.

## **1.3 Terms of Reference**

In preparing this Report, the Monitor has relied upon unaudited financial information prepared by the Company’s management, the Company’s advisors, the Company’s books and records and discussions with its management. The Monitor has not performed an audit or other verification of such information. An examination of the Company’s financial forecasts as outlined in the *Canadian Institute of Chartered Accountants Handbook* has not been performed. Future oriented financial information relied upon in this Report is based on management’s assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Monitor expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Report, or relied upon by the Monitor in preparing this Report.

All capitalized terms not otherwise defined herein have the meaning ascribed to them in the Initial Order.

## **2. BACKGROUND**

NMC and 2515 are the general partners of SKD. The only assets and liabilities of NMC and 2515 relate to SKD. NMC and 2515 own 1% and 99% of SKD, respectively. In addition to SKD's Canadian manufacturing operations, automotive parts manufacturing was carried on by SKD L.P. ("SKD US") in the US and SKD de Mexico, S. de R.L. de C.V. in Mexico (collectively, SKD and its related entities are referred to as the "SKD Group").

The SKD Group was primarily a tier-one supplier of stampings and welded assemblies to the North American automotive industry.

Additional information concerning the Company and these proceedings is provided in the proposed monitor's report dated January 21, 2009 and the Monitor's prior reports filed in these proceedings. Copies of these reports can be found on the Monitor's website at [www.rsmrichter.com](http://www.rsmrichter.com).

## **3. THE TRANSACTION**

As described in the Monitor's seventh report to Court dated April 29, 2009 (the "Seventh Report"), the Monitor, on behalf of the Company, solicited offers from liquidators for the sale of the Remaining Assets. The Monitor distributed packages to eight liquidators. On April 17, 2009, the due date for submission of offers, the Monitor received three offers. The offer from Maynards provided for the greatest recovery on the Remaining Assets.

A summary of the terms of the Transaction is as follows:

- a) The Remaining Assets are comprised primarily of machinery and equipment located at the Company's Milton and Brampton facilities. The Remaining Assets are detailed in Schedule "A" of the APA;
- b) The purchase price for the Remaining Assets is \$3.1 million provided by way of a net minimum guarantee (the "Purchase Price");

- c) Sale proceeds in excess of \$3.35 million, if any, are to be shared 85%/15% between the Proposed Receiver and Maynards, in favour of the Proposed Receiver;
- d) A non-refundable deposit in the amount of \$465,000 is to be paid by Maynards to the Proposed Receiver on the day immediately following the approval of the Transaction by this Honourable Court. The balance of Purchase Price is to be paid to the Proposed Receiver two days in advance of the respective auction dates for the Remaining Assets at each of the Company's Milton and Brampton facilities;
- e) Maynards has the ability to sell certain of the Remaining Assets in advance of and outside of a public auction provided that Maynards makes payment of the sale proceeds for such assets into a joint account with the Proposed Receiver;
- f) In the event that assets that are not currently listed in Schedule "A" are added to the sale, Maynards may sell those assets and will receive a 10% commission on the net sale proceeds for doing so;
- g) Maynards has advised that it anticipates that it will require approximately six months to complete the liquidation of the assets. Accordingly, the APA provides that Maynards is entitled to occupy the Company's Milton and Brampton facilities on a rent free basis during that period. Occupancy costs after that date are to the account of Maynards;
- h) The Remaining Assets are being purchased on an "as is, where is" basis;
- i) The representations and warranties in the APA are consistent with insolvency sale transactions; and
- j) The Transaction is conditional upon the approval of this Honourable Court.

### **3.1 Need for Confidentiality**

Schedule "A" to the APA, which includes the listing of the Remaining Assets and an allocation of the Purchase Price as among those assets, has been included in Appendix "A". However, Schedule "A" has been redacted to exclude the Purchase Price allocation prepared by Maynards. A copy of Schedule "A" reflecting the Purchase Price allocation among the Remaining Assets is filed as Confidential Appendix "1". Maynards has requested that the Purchase Price allocation among the Remaining Assets be sealed as the details regarding the allocation may impact the outcome of its auction and realization process. The Proposed



Receiver concurs with that view and believes that no stakeholder will be prejudiced if the information is sealed.

#### 4. BENEFITS OF THE TRANSACTION

The Monitor respectfully recommends that this Honourable Court approve the Transaction for the following reasons:

- The Maynards offer was superior to the other offers received. Further time spent marketing the Remaining Assets is unlikely to result in a better offer; and
- The Transaction is supported by the Customers<sup>2</sup>, being the secured lenders with an economic interest in the Transaction.

#### 5. FUNDS HELD BY RICHTER

Richter, in its capacity as Monitor and in its capacity as escrow agent, pursuant to the Retention Escrow Agreement and the Union Escrow Agreement (“Escrow Agent”), presently maintains the following accounts:

Account Type	Held By	Amount (\$000s) <sup>3</sup>
General Account	Monitor	11,135
Trust Account (Chrysler)	Monitor	910
Union Escrow Account	Escrow Agent	3,585
Retention Escrow Account	Escrow Agent	772

- The monies in the General Account include, *inter alia*, proceeds of sale (including taxes, as applicable) from the sale transactions previously approved by this Honourable Court in these proceedings and from the collection of accounts receivable primarily from the Customers.
- The monies in the Trust Account (Chrysler) were paid to the Monitor by Chrysler pending resolution of certain items in dispute between it and the Company.

<sup>2</sup> The customers are: Ford Motor Company (“Ford”), Chrysler LLC, Chrysler Motors LLC and Chrysler Canada Inc. (collectively “Chrysler”), Honda of America Mfg. Inc., Honda Manufacturing of Indiana, LLC and Honda Manufacturing of Alabama, LLC (collectively “Honda”).

<sup>3</sup> Account balances are as at June 4, 2009.

- The monies in the Union Escrow Account were paid by the Customers pursuant to the Union Escrow Agreement and are to be paid to the Company's former unionized employees, in respect of severance and termination pay, pursuant to joint directions executed by the Company and the respective unions.
- The monies in the Retention Escrow Account were paid by the Customers pursuant to the Retention Escrow Agreement and are to be distributed to the "Non-Go-Forward Employees" pursuant to joint directions executed by the Company and the Customers.

It is contemplated that the accounts currently held by the Monitor will be converted to post-receivership accounts to be held by the Proposed Receiver, with the exception of the funds presently held by Richter in its capacity as Escrow Agent which will continue to be held and distributed by Richter in that capacity pursuant to the terms of the Retention Escrow Agreement and the Union Escrow Agreements, respectively. Additionally, with respect to the Chrysler trust Funds, the Proposed Receiver will hold these funds pending resolution of the disputed items.

### **5.1 Shortfall in Employee Retention Escrow Account**

As described in the Monitor's fifth report dated March 27, 2009, pursuant to an agreement entitled the Additional Participations and Allocations Agreement entered into among the Company and the Customers at the commencement of the CCAA proceedings, as amended, the Customers agreed to fund retention amounts for the Non-Go-Forward Employees. Pursuant to an e-mail agreement entered into among the parties on February 27, 2009 and the second amendment to the Accommodation Agreement dated March 11, 2009, among the Company, the Customers and Comerica Bank ("Comerica"), the Customers agreed to fund, by way of participations through the Company's facility with Comerica, the amount of US\$1.1 million (the "Retention Amount") to satisfy the retention payments. On March 19, 2009, the Monitor, the Company and the Customers entered into the Retention Escrow

Agreement, which was approved by this Honourable Court on March 31, 2009. On April 2, 2009 (the "Retention Amount Payment Date") the Customers funded the Retention Amount to Richter, as Escrow Agent, in trust, to be disbursed pursuant to joint directions executed by the Company and the Customers at such time as the Non-Go-Forward Employees are terminated by the Company.

The Retention Amount was funded in US dollars; however, payments to the Non-Go-Forward Employees are made in both Canadian and US dollars. At the time the Retention Amount was paid to the escrow agent the Customers converted the retention amounts payable to employees in Canadian dollars to US dollars at the exchange rate on that date. Since the Retention Amount Payment Date the Canadian dollar has appreciated by approximately \$0.10 against the US dollar.

Based on a review of the funds remaining in the Retention Escrow Account, the remaining amounts to be disbursed to the Non-Go-Forward Employees and the current foreign exchange rate, the Monitor estimates that there will be a shortfall in the Retention Escrow Account of approximately \$75,000 (the "Shortfall"). This means that those employees who were terminated earlier in these proceedings would have received the full allocation of their retention amount, whereas those employees who continued to work for the Company would receive less than the full amount of their allocation, and perhaps no allocation at all. The Monitor is of the view that this is inconsistent with the intention of the parties.

The Monitor respectfully requests that this Honourable Court approve and authorize the transfer of an amount equal to the Shortfall from the funds held by the Monitor in the General Account to a Canadian dollar Retention Escrow Account. The Monitor's counsel has advised the Customers' and Comerica's legal counsel of its intention to satisfy the Shortfall from the funds held in the General Account.

## **6. RECEIVERSHIP**

The Monitor believes that the Company should be placed into receivership as there is no prospect of a restructuring under the CCAA, the Company's operations have been discontinued, employees have been terminated and the residual assets are in the process of being realized upon. The commencement of the receivership proceedings will also assist to reduce the professional costs associated with these proceedings.

## **7. EMPLOYEES**

As of the date of this Report the Company has approximately 11<sup>4</sup> employees. It is contemplated that Company will terminate all remaining employees immediately prior to the issuance of the receivership order, if made. Employees whose services are required by the Proposed Receiver to assist with the liquidation of the Company's assets and the administration of the estate would be retained by the Proposed Receiver on a term and task basis. A draft copy of the term and task agreement to be entered into between the Proposed Receiver and the respective employee is attached as Appendix "B".

## **8. ORLANDO CORPORATION**

As described in the Monitor's ninth report to Court dated May 28, 2009 (the "Ninth Report"), the Company repudiated the lease of its premises located at 6495 Tomken Road, Mississauga, Ontario ("Mississauga Premises") on May 6, 2009. As detailed in the Seventh Report, prior to repudiating the lease the Company reviewed the costs of maintaining the Mississauga Premises versus repudiating the lease and abandoning the assets in that facility. The Company and the Monitor determined that it was more economic to repudiate the lease

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<sup>4</sup> Three of the employees are employees of SKD US. The Company reimburses SKD US for payroll costs related to these employees.

and abandon the assets than it would be to maintain the Mississauga Premises and conduct a sale of the assets.

A dispute arose among Orlando, the Company, Martinrea Jonesville LLC and Martinrea International Inc. (collectively "Martinrea") regarding the removal of assets purchased by Martinrea from the Mississauga Premises. Since that time there has been an ongoing dialogue among the parties concerning the issues raised by Orlando. A settlement has been reached with Orlando whereby Orlando has agreed to grant a full and final release of all claims it may have against the Company and the Monitor in exchange for the vesting of the abandoned assets in Orlando and authorization to apply a damage deposit that Orlando holds totalling approximately \$225,000. The deposit was funded by the Company to Orlando prior to the commencement of these proceedings. The deposit is to protect Orlando from any damages it may suffer resulting from the Company's occupation of the Mississauga Premises.

The Monitor supports the settlement reached with Orlando. The settlement will eliminate the need to litigate this matter, which would result in additional professional costs to the detriment of the estate.

On June 2, 2009, Goodmans LLP ("Goodmans"), the Monitor's counsel, circulated an e-mail to the Company's secured creditors' legal advisors outlining the terms of the settlement reached with Orlando. The Customers have advised that they support the settlement, General Motors of Canada has advised that it takes no position on the settlement and Comerica Bank has advised that it does not object to the settlement.

## 9. OVERVIEW OF THE MONITOR'S ACTIVITIES

In addition to the activities detailed above and related to the above, since the date of the Ninth Report, the Monitor's activities have included:

- Attending at the Company's premises on a periodic basis in order to carry out its activities in accordance with the Initial Order;
- Assisting the Company to deal with post-filing issues, including supplier issues;
- Monitoring receipts and disbursements in accordance with the provisions of the Initial Order;
- Responding to creditor and employee inquiries regarding these proceedings;
- Corresponding with the Company, the Company's counsel, the Company's financial advisors, the Customers' financial advisors, the Customers' counsel and Goodmans to deal with various matters in respect of this mandate;
- Advancing the sale of the Company's real estate;
- Finalizing negotiations with Maynards for the purchase of the Remaining Assets;
- Preparing for the receivership proceedings;
- Disbursing, as escrow agent, funds from the Union Escrow Account and the Retention Escrow Account;
- Placing on its website copies of materials filed in these proceedings;
- Attending at Court on May 31, 2009 in connection with a motion for, *inter alia*, extension of the stay of proceedings;
- Drafting this Report; and
- Other matters pertaining to the administration of this mandate.

## 10. RECOMMENDATION

Based on the foregoing, the Monitor respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1(f) of this Report.

\* \* \*

All of which is respectfully submitted,

A handwritten signature in black ink that reads "RSM Richter Inc." in a cursive, slightly slanted script.

**RSM RICHTER INC.  
IN ITS CAPACITY AS CCAA MONITOR OF  
NMC CANADA, INC., 2515080 NOVA SCOTIA COMPANY  
AND SKD COMPANY  
AND NOT IN ITS PERSONAL CAPACITY**