

**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**

**MOTION RECORD**  
**(Returnable May 30, 2011)**

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# TAB 1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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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**

**NOTICE OF MOTION  
(Returnable May 30, 2011)**

RSM Richter Inc. ("**Richter**"), in its capacity as receiver (the "**Receiver**") of SKD Company ("**SKD**"), NMC Canada, Inc. ("**NMC**") and 2515080 Nova Scotia Company ("**2515**") and collectively with SKD and NMC, the "**Companies**", will make a motion before this Honourable Court on May 30, 2011 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** the Motion is to be heard orally.

**THE MOTION IS FOR AN ORDER:**

- (a) abridging time for service and filing of this Notice of Motion and the materials filed in support of this Motion, or in the alternative, dispensing with same;
- (b) authorizing the distribution by the Receiver, as escrow agent, of certain surplus funds held in an escrow account established for the purpose of making retention payments to employees of SKD;
- (c) extinguishing the claims of Mr. Wong and Mr. Costantino advanced against certain of the directors and officers of the Companies;

- (d) releasing the Directors' Charge created under the Order of this Court made in these proceedings on January 21, 2009, as amended by Order dated April 29, 2010;
- (e) approving the Receiver's Fourth Report dated May 20, 2011, and the Receiver's conduct and activities as set out therein; and
- (f) such further and other relief as this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) NMC is incorporated under the Ontario Business Corporations Act. 2515 is an unlimited limited company incorporated under the Nova Scotia *Companies Act*. NMC and 2515 are the general partners of SKD, a general partnership registered under the Ontario *Partnership Act*. The only assets and liabilities of NMC and 2515 relate to SKD. NMC and 2515 own 1% and 99% of SKD, respectively;
- (b) on January 21, 2009, this Honourable Court issued an order (the "**Initial Order**") granting the Companies protection pursuant to the *Companies' Creditors Arrangement Act* ("**CCAA**"). Pursuant to the terms of the Initial Order, Richter was appointed as the monitor of the Companies in the CCAA proceeding;
- (c) on June 11, 2009, this Honourable Court granted an order that placed the Companies into receivership and appointed Richter as receiver (the "**Receiver**");
- (d) the Receiver, as escrow agent, is holding certain funds in an escrow account (the "**Retention Escrow Account**") that was established for the purpose of making retention payments to employees of SKD in accordance with the terms of an escrow agreement dated March 19, 2009 (the "**Escrow Agreement**");
- (e) all employees who would have been entitled to a retention payment under the Escrow Agreement have been paid and there remains a surplus in the Retention Escrow Account;

- (f) on November 4, 2009, this Honourable Court granted an order approving a process for the filing and resolution of claims against the officers and directors of the Companies;
- (g) there remain two unresolved claims advanced against certain of the directors and officers of NMC (the “**D/O Claims**”). The Receiver and its counsel have reviewed the D/O Claims and are of the view that the D/O Claims ought to be disallowed in their entirety and extinguished;
- (h) should this Honourable Court grant the relief requested in respect of the D/O Claims, there remain no unresolved claims against the directors and officers of the Companies such that it is appropriate for the Directors’ Charge to be released;
- (i) the inherent and equitable jurisdiction of this Honourable Court;
- (j) Rules 2.03, 3.02 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;
- (k) section 183(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended; and
- (l) 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:

- (a) the Fourth Report of the Receiver and all appendices attached thereto; and

- (b) such further and other materials as counsel may advise and this Honourable Court permits.

May 20, 2011

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C.  
C-36, AS AMENDED

Court File No: 09-CL-7960

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NMC  
CANADA, INC. AND 2515080 NOVA SCOTIA COMPANY

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**Commercial List**

Proceeding commenced at Toronto

**NOTICE OF MOTION**  
**(returnable May 30, 2011)**

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**TAB 2**

**RSM** Richter

**Fourth Report of RSM Richter Inc.  
as Court-Appointed Receiver of  
NMC Canada, Inc., 2515080 Nova Scotia  
Company and SKD Company**

RSM Richter Inc.  
Toronto, May 20, 2011

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
NMC CANADA, INC. AND 2515080 NOVA SCOTIA COMPANY**

**FOURTH REPORT OF RSM RICHTER INC.  
AS COURT-APPOINTED RECEIVER OF  
NMC CANADA, INC., 2515080 NOVA SCOTIA COMPANY  
AND SKD COMPANY**

**May 20, 2011**

**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 Monitor. On June 11, 2009, the Court issued an order amending the Initial Order, placing the Company in receivership and appointing Richter as receiver ("Receiver") of the Company's property, assets and undertaking ("Receivership Order"). Copies of the Initial Order and the Receivership Order are provided in Appendices "A" and "B", respectively.



## 1.1 Purposes of this Report

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

- a) Seek advice and directions from this Honourable Court as to the distribution of certain funds (“Surplus Funds”) held by Richter in its capacity as escrow agent (“Escrow Agent”) pursuant to an escrow agreement entered into among the Escrow Agent, the Company, SKD Automotive Group, Limited Partnership (“SKD AG”), the Customers (as defined in Section 3 below) and General Motors Corporation (“GM”), as detailed in Section 3 below;
- b) Seek advice and directions from this Honourable Court as to the disallowance of the final two unresolved claims in the Directors’ and Officers’ claims process (“D&O Claims Process”), as detailed in Section 4 below; and
- c) Recommend that this Honourable Court make an order:
  - Authorizing and directing the Escrow Agent to distribute the Surplus Funds in the manner detailed in Section 3 below;
  - Disallowing and extinguishing the two unresolved claims in the D&O Claims Process, which are detailed in Section 4 below;
  - Releasing the Directors’ Charge (as defined in Section 4 below); and
  - Approving this Report and the Receiver’s conduct and activities as set out in this Report.

## 1.2 Currency

All references to dollar amounts are to Canadian funds unless otherwise noted.

## 1.3 Terms of Reference

In preparing this Report, the Receiver has relied upon the Company’s books and records, including information assembled by, and analyses performed by, Company employees. The Receiver 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 the Receiver’s assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The

Receiver 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 Receiver in preparing this Report.

## **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. in the US and SKD de Mexico, S. de R.L. de C.V. ("SKD Mexico") in Mexico (SKD L.P. and SKD Mexico are jointly referred to as "SKD US") (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 Richter's report dated January 21, 2009 (filed as proposed monitor), Richter's reports filed in the CCAA proceedings in its capacity as Monitor and in Richter's report filed in the receivership proceedings as Receiver. Copies of these reports can be found on Richter's website at [www.rsmrichter.com](http://www.rsmrichter.com).

## **3. RETENTION ESCROW ACCOUNT**

On March 19, 2009, the Company, Honda of America Mfg., Honda Manufacturing of Indiana, LLC and Honda Manufacturing of Alabama, LLC (collectively, "Honda"), Ford Motor Company ("Ford"), Chrysler Canada Inc. and Chrysler LLC (jointly, "Chrysler") (collectively, Honda, Ford and Chrysler are referred to as the "Customers"), GM, SKD AG and the Escrow Agent entered

into an escrow agreement with respect to retention payments for “non-go-forward employees<sup>1</sup>” (“Retention Escrow Agreement”). An order was made by this Honourable Court approving the Retention Escrow Agreement on March 31, 2009. A copy of the Retention Escrow Agreement is attached as Appendix “C”.

Pursuant to an e-mail agreement entered into between the Company and the Customers on February 27, 2009, and the second amendment to the Accommodation Agreement<sup>2</sup> entered into among the parties on March 11, 2009, the Customers agreed to fund the retention amount, being approximately US\$1.1 million (the “Retention Amount”), by way of participations<sup>3</sup>. Part of the Retention Amount (approximately US\$848,000) was funded from the Customers’ Canadian participations and the remainder (approximately US\$248,000) was funded from the Customers’ US participations<sup>4</sup>. The Retention Amount was paid to the Escrow Agent, in trust, and was to be disbursed when the Non-Go-Forward Employees were terminated.

In its tenth report to Court, dated June 8, 2009 (“Tenth Report”), the Monitor advised that, due to the appreciation of the Canadian dollar against the US dollar, the Monitor estimated that there would be a shortfall in the Retention Escrow Account of approximately \$75,000 (“Shortfall”). This was projected because the Retention Amount was funded in US dollars; however, a portion of the payments to Non-Go-Forward Employees were paid in Canadian dollars. Therefore, pursuant to a Court Order made on June 11, 2009, the Monitor was authorized and directed to transfer to the Retention Escrow Account, the funds needed, up to a maximum of \$102,000, in order to fund the anticipated Shortfall. Ultimately, only \$60,000 was

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<sup>1</sup> Salaried employees who were not offered employment by any purchaser of the Company’s businesses are defined as “Non-Go-Forward Employees”.

<sup>2</sup> The Accommodation Agreement, dated January 21, 2009, was entered into between the Company and the Customers at the outset of the Company’s CCAA proceedings.

<sup>3</sup> Funding throughout the CCAA proceedings was provided by the Customers by way of secured participations, being amounts secured under the Company’s secured loan facility with Comerica Bank (“Comerica”).

<sup>4</sup> Repayment of the US participations was satisfied by SKD US.

required to be transferred by the Monitor from the Canadian estate to the Retention Escrow Account.

As of the date of this report, all employees who were entitled to a retention payment under the Retention Escrow Agreement have been paid, and there remains a surplus in the Retention Escrow Account of approximately \$117,445, which is the Surplus Funds. The Surplus Funds remain because the Retention Amount was inadvertently over-funded – four employees listed as being entitled to participate in the Retention Escrow Agreement were terminated previously and a fifth was not offered participation in the retention program.

Section 5(c)<sup>5</sup> of the Retention Escrow Agreement requires that, absent a Court order, the Escrow Agent is to return any surplus funds to Comerica pursuant to a joint direction in writing from each of the Customers, GM, the Company and SKD AG. The terms of the Retention Escrow Agreement do not provide for the payment of the Surplus Funds by the Escrow Agent to any party other than Comerica. However, all Canadian and US participations have now been repaid in full, and Comerica is no longer involved in these proceedings – it has been repaid in full and accordingly the Surplus Funds should not be paid to it. Therefore, the Receiver requests that this Honourable Court issue an order authorizing and directing the Escrow Agent to distribute the Surplus Funds in accordance with the following approach:

- \$60,000 to be paid to the Canadian receivership estate, to refund the amount advanced by the Monitor to the Retention Escrow Account to fund the Shortfall.
- Of the five employees who were not eligible to be paid from the escrow account, three (or 60%) worked at the Company's premises located in Troy, Michigan ("Troy") and two (or 40%) worked at the Jonesville facility of SKD L.P.

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<sup>5</sup> Section 5(c) of the Retention Escrow Agreement states "Any portion of the Retention Fund determined to be surplus to the requirements of the Retention Plan as certified by joint direction in writing of the Employers and the Customers or as determined by a final decision of the Court shall be paid by the Escrow Agent to Comerica (or the assignee of the Loans) as payment under the Loan Documents (as defined in the APAA) as soon as is reasonable and practicable in accordance with such joint direction or such final decision of the Court."

Therefore, the Receiver recommends that the remaining surplus of \$57,445<sup>6</sup> (“Remaining Surplus”) be allocated 60% (\$34,467) to Troy and 40% (\$22,978) to SKD L.P.

- Troy provided services to both the Company and SKD L.P. and the participations advanced to fund the portion of the Retention Amount allocable to the Troy employees was shared equally between the Canadian and US Customer participations; therefore, it is recommended that the \$34,467 allocable to Troy be shared equally between the Company and SKD L.P. (\$17,233 to each).
- Pursuant to the terms of a settlement agreement entered into among the Receiver (on behalf of the Company), SKD L.P., SKD AG and Tang Industries, Inc. (“TII”) (“Settlement Agreement”), which was approved by this Honourable Court on June 7, 2010, any monies paid to SKD L.P. (and ultimately paid to SKD AG, its parent) are to be split with 26.3% going to the Company and 73.7% going to TII. Therefore, of the \$40,211<sup>7</sup> to be paid to SKD L.P., a further \$10,576<sup>8</sup> would be payable to the Canadian estate.
- In summary, the Receiver recommends that \$87,809<sup>9</sup> of the Surplus Funds be paid to the Canadian estate and \$29,636<sup>10</sup> be paid to TII, as funds to be received by SKD L.P.

A copy of the Company’s organization chart is attached as Appendix “D”.

#### **4. DIRECTORS’ AND OFFICERS’ CLAIMS PROCESS AND DIRECTORS’ CHARGE**

As detailed in the Receiver’s second report to Court dated April 21, 2010 (“Second Report”) and its supplement to the Second Report, the Initial Order created a \$3 million charge in favour of the Company’s Directors and Officers for claims arising under paragraphs 7(a), 9(a), 9(b) and 9(c) of the Initial Order (the “Directors’ Charge”). On November 4, 2009 an order was made by this Honourable Court approving the D&O Claims Process. After the bar date for that process and the Receiver’s review of the various claims filed, there remained a number of disputed claims and the amount of the Directors’ Charge was reduced to \$285,000 by Order dated April 29, 2010 (the “April 29 Order”) to address those claims.

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<sup>6</sup> Surplus of \$117,445, less the reimbursement of funds advanced by the Monitor to satisfy the anticipated Shortfall (\$60,000).

<sup>7</sup> \$22,978 (allocation of 40% of the Remaining Surplus), plus \$17,233 (50% of the recovery related to the Troy employees).

<sup>8</sup> \$40,211 x 26.3% = \$10,576.

<sup>9</sup> The sum of \$60,000 (reimbursement of the funds advanced by the Monitor to satisfy the anticipated Shortfall), plus \$17,233 (50% of the recovery related to the Troy employees), plus \$10,576 (26.3% of \$40,211).

<sup>10</sup> This represents 73.7% of \$40,211, the funds to be received by SKD L.P.

As of the date of this report there remain two unresolved claims in the D&O Claims Process. These claims were filed by Koskie Minsky LLP (“Koskie Minsky”) on behalf of two of the Company’s former employees, Roberto Costantino and Tony Wong. Mr. Costantino and Mr. Wong were terminated by the Company prior to the commencement of the CCAA proceedings. Mr. Costantino and Mr. Wong’s claims are for \$38,000 and \$17,000, respectively, for compensation in lieu of notice (the “Claims”). Copies of the Claims are attached as Appendix “E”. Koskie Minsky has asserted that amounts owing to employees for pay in lieu of notice constitute wages and therefore the Claims are obligations of the Directors and Officers and are properly advanced in the D&O Claims Process. The position advanced by Koskie Minsky is provided in the attached Claims.

The Claims were disallowed by the Receiver on June 8, 2010. Copies of the notices of disallowance (“Notices of Disallowance”) are attached as Appendix “F”. The reasons for disallowing the Claims were provided based on a review of the law on this issue by Goodmans LLP (“Goodmans”), the Receiver’s counsel. Based on Goodmans’ advice, compensation in lieu of notice is classified as termination pay, which is not an amount for which Directors are liable and, therefore, in the opinion of the Receiver, the Claims should be disallowed. Additional details regarding the Receiver’s position are set out in the attached Notices of Disallowance.

On June 22, 2010, Koskie Minsky submitted notices of dispute (“Notices of Dispute”) to the Receiver. Copies of the Notices of Dispute are attached as Appendix “G”.

Since receiving the Notices of Dispute, Goodmans and the Receiver have periodically corresponded with Koskie Minsky regarding the Claims. Andrew Hatnay of Koskie Minsky verbally advised the Receiver that the claimants may pursue a claim against SKD AG in respect of the Claims. On several occasions the Receiver asked Koskie Minsky for its clients’ position regarding the Claims and whether or not it was its intention to pursue the Claims in the D&O

Claims Process or to pursue a claim against SKD AG. In early April, 2011, Goodmans contacted Mr. Hatnay of Koskie Minsky to advise that the Receiver wished to wrap up the D&O Claims Process and requested that Koskie Minsky provide its position regarding the Claims. Goodmans further advised Koskie Minsky that if the Receiver did not hear from it regarding its position, the Receiver would bring a motion to request that the claims be disallowed and extinguished.

Goodmans has advised the Receiver that, as of the date of this report, they have had no further contact from Koskie Minsky in respect of the Claims. Accordingly, and particularly given Goodmans' advice on this point, the Receiver recommends that the Claims be disallowed in their entirety.

With respect to the Directors' Charge, the April 29 Order also provides for the automatic further reduction in the Directors' Charge by the face amount of each outstanding claim against the directors and officers of the Company as each such claim is finally resolved. Given that the Claims are the only remaining unresolved claims against the directors and officers of the Company, and should this Court grant the relief recommended by the Receiver in respect of the Claims, it would be appropriate for the Directors' Charge to be fully and formally released.

## **5. OVERVIEW OF THE RECEIVER'S ACTIVITIES**

In addition to the activities detailed above and related to the above, since the Receiver's third report to Court, dated August 13, 2010, the Receiver's activities have included:

- Dealing with closing matters related to the completion of the sale transaction for the Company's property located at 375 Wheelabrator Way, Milton, Ontario ("Milton Premises");
- Arranging for removal and storage of the Company's books and records, previously maintained at the Milton Premises;
- Drafting and finalizing the third interim report of the Receiver prepared pursuant to subsection 246(2) of the *Bankruptcy and Insolvency Act*;

- Dealing with employee claims pursuant to the Wage Earner Protection Program Act;
- Corresponding with the Workplace Safety and Insurance Board (“WSIB”) regarding the WSIB account reconciliations;
- Corresponding with RBC Dexia Investor Services and Buck Consultants, LLC regarding outstanding issues related to the Company’s Defined Profit Sharing Plan;
- Corresponding with Canada Revenue Agency (“CRA”) regarding certain notices and letters received from CRA and compiling and reviewing documentation with respect to same;
- Preparing bankruptcy assignment documentation for NMC and 2515;
- Corresponding with Goodmans regarding a settlement with O’Brien Installations Ltd. (“O’Brien”) related to the construction lien filed by O’Brien;
- Reconciling the estate bank accounts;
- Paying receivership expenses;
- Responding to creditors and former employees regarding these proceedings;
- Placing SKD into bankruptcy on January 11, 2011;
- Corresponding with Goodmans regarding various matters in respect of this mandate;
- Placing on its website copies of materials filed in these proceedings;
- Drafting this Report; and
- Other matters pertaining to the administration of this mandate.

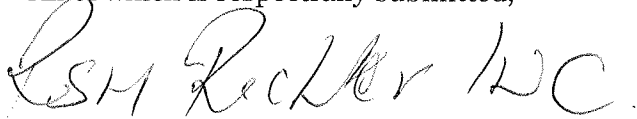


## 6. RECOMMENDATION

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

\* \* \*

All of which is respectfully submitted,

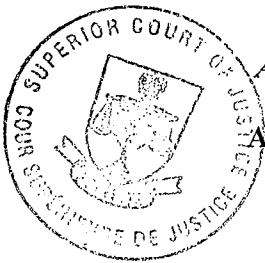
A handwritten signature in black ink that reads "RSM Richter Inc." in a cursive, slightly slanted script.

**RSM RICHTER INC.  
IN ITS CAPACITY AS COURT-APPOINTED  
RECEIVER OF NMC CANADA, INC.,  
2515080 NOVA SCOTIA COMPANY AND SKD COMPANY  
AND NOT IN ITS PERSONAL CAPACITY**

# Appendix “A”

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) WEDNESDAY, THE 21ST DAY  
OF JANUARY, 2009  
)  
JUSTICE CAMPBELL )



**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

**INITIAL ORDER**

THIS APPLICATION, made by NMC Canada, Inc. ("NMC") and 2515080 Nova Scotia Company ("2515080") (collectively, the "Applicants" and any one, an "Applicant"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of John Chen sworn January 21, 2009 (the "**Chen Affidavit**") and the Exhibits thereto and the report of RSM Richter Inc. ("**Richter**") as the proposed monitor in these proceedings (the "**Monitor**"), and on hearing the submissions of counsel for the Applicants, and counsel for Richter, Comerica Bank ("**Comerica**"), the Customers (as defined below), General Motors Corporation ("**GM**"), the National Automobile, Aerospace, Transportation and General Workers of Canada and its Local 1285 (the "**CAW**"), the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Union (the "**USW**") and the Teamsters Local Union No. 419 (the "**Teamsters**" and, together with the CAW and USW, the "**Unions**" and, any one, a "**Union**"), no one else on the Service List appearing and on reading the consent of Richter to act as the Monitor,

## **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof.

## **APPLICATION**

2. THIS COURT ORDERS AND DECLARES that the Applicants are debtor companies to which the CCAA applies. Although not an Applicant, this Court further orders and declares that SKD Company, as the general partnership through which the Applicants carry on business (“**SKD Company**”, and together with the Applicants, the “**CCAA Parties**”, and any one, a “**CCAA Party**”), shall enjoy the benefits of the protections provided by this Order and shall be treated as if an applicant under this Order.

## **PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court one or more plans of compromise or arrangement (hereinafter referred to as the “**Plan**”) between, *inter alia*, the CCAA Parties or any of them and one or more classes of their secured and/or unsecured creditors, as they deem appropriate.

## **POSSESSION OF PROPERTY AND OPERATIONS**

4. THIS COURT ORDERS that the CCAA Parties shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the CCAA Parties shall continue to carry on business in a manner consistent with the preservation of their businesses (the business of the CCAA Parties, collectively, the “**Business**”) and Property. The CCAA Parties shall be authorized and empowered to continue to retain and employ the employees, consultants, financial advisors, agents, experts, accountants, counsel, appraisers and such other persons (collectively, “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably

necessary or desirable in the ordinary course of business, for the carrying out of the terms of this Order or to assist the CCAA Parties with their restructuring activities as contemplated by this Order.

5. THIS COURT ORDERS that the CCAA Parties shall be entitled to continue to utilize their existing bank accounts and any other bank accounts permitted under the Forbearance Agreement (as defined below) (the "**Bank Accounts**") and that all banks in which the CCAA Parties maintain any Bank Account are authorized and directed to continue to maintain, service and administer the Bank Accounts in accordance with the documents governing the Bank Accounts.

6. THIS COURT ORDERS that the CCAA Parties are authorized and empowered to continue to manage their cash and cash equivalents and transfer funds among their respective Bank Accounts pursuant to the cash management system currently in place, as described in the Chen Affidavit, or replace it with another substantially similar central cash management system satisfactory to Comerica (the "**Cash Management System**"), and that any present or future bank providing or participating in the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the CCAA Parties of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as defined below) other than the CCAA Parties and Comerica pursuant to the terms of the documentation applicable to the Bank Accounts and the Cash Management System, and shall be, in their capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Bank Accounts and the Cash Management System and that the CCAA Parties may use the funds standing to their credit from time to time in their bank accounts within the Cash Management System.

7. THIS COURT ORDERS that the CCAA Parties shall be entitled but not required to pay the following expenses, whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay, contributions to registered retirement pension plans, bonuses, expenses and retention plan payments pursuant to plans and programs currently in place payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with or pursuant to existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the CCAA Parties in respect of these proceedings, at their standard rates and charges.

8. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the CCAA Parties shall be entitled but not required to pay all reasonable expenses incurred by the CCAA Parties to carry on and preserve the Business in the ordinary course from and after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of and operation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the CCAA Parties following the date of this Order.

9. THIS COURT ORDERS that the CCAA Parties, as applicable, shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

- (b) all goods and services or other applicable sales taxes (collectively, “**Sales Taxes**”) required to be remitted by the CCAA Parties in connection with the sale of goods and services by the CCAA Parties; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the CCAA Parties.

10. THIS COURT ORDERS that the CCAA Parties may pay to SKD Automotive Group, Limited Partnership (“**SKD AG**”) and to SKD, L.P., the amounts described in the Chen Affidavit in respect of the head office management, accounting, record-keeping, budgeting, financial reporting, cash management, payroll, human resources, information technology, purchasing, sales, engineering, research and development and other administrative functions provided by SKD AG and SKD L.P. to the CCAA Parties, unless objected to by the Monitor.

11. THIS COURT ORDERS that until such time as a CCAA Party repudiates a real property lease in accordance with paragraph 13(c) of this Order, such CCAA Party shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated by such CCAA Party from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, or the next business day thereafter, in advance (but not in arrears).

12. THIS COURT ORDERS that, except as specifically permitted under this Order, the CCAA Parties are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the CCAA Parties to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## RESTRUCTURING

13. THIS COURT ORDERS that the CCAA Parties shall have the right to:
- (a) permanently or temporarily cease, downsize or shut down any of their business or operations and, subject to the prior consent of Comerica, to dispose of redundant or non-material assets, which are currently not used in the production of component parts for any of the Customers: (i) not exceeding \$100,000 in any one transaction; or (ii) with the consent of the Monitor, not exceeding \$500,000 in any one transaction or \$1,000,000 in the aggregate, subject to paragraph 13(c), if applicable; and for further certainty the proceeds of sale of these assets shall remain subject to the terms of any valid and existing liens and security interests affecting the Property and its proceeds;
  - (b) subject to any applicable seniority provisions of any applicable collective bargaining agreement, or as may be agreed between SKD Company and the applicable collective bargaining unit, terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate on such terms as may be agreed upon between the CCAA Parties and such employee or, failing such agreement, to deal with the consequences thereof in the Plan;
  - (c) in accordance with paragraphs 14 and 15, vacate, abandon or quit any leased premises and/or repudiate any real property lease and any ancillary agreements relating to any leased premises, on not less than seven (7) days' notice in writing to the relevant landlord or on such terms as may be agreed upon between an applicable CCAA Party and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan;
  - (d) repudiate such of their arrangements or agreements of any nature whatsoever, whether oral or written, as the CCAA Parties deem appropriate on such terms as may be agreed upon between the applicable CCAA Party and such counterparties, or failing such agreement, to deal with the consequences thereof in the



Plan, and to negotiate any new or replacement arrangements or agreements as the applicable CCAA Party deems appropriate (provided that the Monitor does not object to such new or replacement arrangements or agreements); provided that, notwithstanding this paragraph, SKD Company shall not repudiate any collective bargaining agreement with any Union; and

- (e) pursue avenues of refinancing and restructuring and the sale of material parts of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing or any sale (except as permitted by paragraph 13(a), above);

all of the foregoing to permit the CCAA Parties to proceed with an orderly restructuring, sale or wind down of the Business (the “**Restructuring**”).

14. THIS COURT ORDERS that the applicable CCAA Party shall provide each of the relevant landlords with notice of their intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes a CCAA Party’s entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the applicable CCAA Party, or by further Order of this Court upon application by the CCAA Parties on at least two (2) days’ notice to such landlord and any such secured creditors. If a CCAA Party repudiates the lease governing such leased premises in accordance with paragraph 13(c) of this Order, it shall not be required to pay Rent under such lease pending resolution of any such dispute, and the repudiation of the lease shall be without prejudice to the CCAA Party’s claim to the fixtures in dispute.

15. THIS COURT ORDERS that if a lease is repudiated by a CCAA Party in accordance with paragraph 13(c) of this Order, then (a) during the notice period prior to the effective time of the repudiation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the applicable CCAA Party and the Monitor 24 hours’ prior written notice, and (b) at the effective time of the repudiation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any

claims or rights such landlord may have against the applicable CCAA Party in respect of such lease or leased premises and such landlord shall be entitled to notify the applicable CCAA Party of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of their obligation to mitigate any damages claimed in connection therewith.

16. THIS COURT ORDERS that, subject to the other provisions of this Order (including the payment of Rent as herein provided) and any further Order of this Court, the CCAA Parties shall be permitted to dispose of any or all of the Property located (or formerly located) at such leased premises without any interference of any kind from landlords (notwithstanding the terms of any leases) and, for greater certainty, the CCAA Parties shall have the right to realize upon the Property and other assets in such manner and at such locations, including leased premises, as it deems suitable or desirable for the purpose of maximizing the proceeds and recovery therefrom.

#### **NO PROCEEDINGS AGAINST THE CCAA PARTIES OR THE PROPERTY**

17. THIS COURT ORDERS that until and including February 19, 2009 or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the CCAA Parties or the Monitor, or affecting any of the Business or the Property, except with the written consent of the CCAA Parties and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the CCAA Parties or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court. Notwithstanding the foregoing, nothing in this Order shall stay the exercise by Comerica of any of its rights or remedies under the Credit Agreement or the Loan Documents (as defined below), provided however that Comerica shall provide notice to the CCAA Parties, the Customers and the Monitor in accordance with paragraph 38(b).

18. THIS COURT ORDERS that no proceeding, enforcement process or any other remedy available to the judgment creditors Roberto Costantino and Tony Wong (the "**Judgment Creditors**") pursuant to the Judgment issued in Action 06 CV 308 185 PD1 commenced at Toronto (the "**Judgment**") shall be commenced or continued as against the CCAA Parties or the

Property, including with respect to any amounts payable to the CCAA Parties by the Customers (as defined below) and GM, including, without limitation, that:

- (a) the effect of any notices of garnishment issued by the Judgment Creditors and served on any Person, including the Customers (as defined below) and GM, under the Judgment (the “**Notices of Garnishment**”) is hereby stayed;
- (b) the expiry of any time periods under the Notices of Garnishment for the filing of garnishees’ statements is hereby stayed and any Persons having been served with the Notices of Garnishment, including the Customers (as defined below) and GM (collectively, the “**Garnishees**”), are hereby relieved of any requirement to file with the Court garnishee’s statements with respect to the Notices of Garnishment;
- (c) five (5) days after this order has been served on the Sheriff for the Regional Municipality of Halton (the “**Sheriff**”) and the Judgment Creditors in accordance with sub-paragraph (d) below, the Garnishees are authorized and empowered to continue to make all payments of any amounts owing to any of the CCAA Parties directly to the CCAA Parties, rather than to the Sheriff, without regard to the Notices of Garnishment, shall incur no liability to the Judgment Creditors by doing so, shall be relieved of any obligations the Garnishees may have had under the Notices of Garnishment, and upon payment of amounts by the Garnishees to the CCAA Parties, the liabilities of the Garnishees to the Judgment Creditors, or to the CCAA Parties in respect of the amounts paid to the CCAA Parties, is extinguished; and
- (d) the CCAA Parties are hereby directed to deliver a copy of this Order to the Sheriff, as well as to counsel for the Judgment Creditors, with a cover letter advising that all proceedings, enforcement processes or any other remedy available in relation to the Judgment, including the enforcement of the Notices of Garnishment against any Person, including the Garnishees, have been stayed pursuant to this Order.

### **NO EXERCISE OF RIGHTS OR REMEDIES**

19. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, partnership, governmental body or agency, or any other persons or entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the CCAA Parties or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the CCAA Parties and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the CCAA Parties to carry on any business which the CCAA Parties are not lawfully entitled to carry on, (ii) exempt the CCAA Parties from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, (iv) prevent the filing of any grievance pursuant to the *Labour Relations Act, 1995* or any collective agreements, provided that, subject to further order of the Court, no further steps of any kind shall be taken pursuant to or in connection with any such grievance by any party (for greater certainty, neither the CCAA Parties nor any other party shall be obligated to file any form of response or reply to any such grievance, or (v) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH RIGHTS**

20. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the CCAA Parties, except with the written consent of the CCAA Parties and the Monitor, or leave of this Court.

### **CONTINUATION OF SERVICES**

21. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with any of the CCAA Parties or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all raw materials, metals, components, subcomponents, tools and tooling, dies, tests and assembly fixtures, gauges, jigs, computer software, communication and other data services, centralized and other banking services, payroll services, customs, customs brokerage (or similar) services, insurance, transportation, shipping services, utilities, gas, electricity and other services to the Business, or any of the CCAA Parties, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services, utilities, gas and electricity as may be required by any of the CCAA Parties, and that the CCAA Parties shall be entitled to the continued use of their current premises, utilities, telephone numbers, facsimile numbers, internet

addresses and domain names, provided in each case that the normal prices or charges for all such goods, services, utilities, gas and electricity received after the date of this Order are paid by the CCAA Parties in accordance with normal payment practices of the CCAA Parties or such other practices as may be agreed upon by the supplier, utility provider or service provider and each of the CCAA Parties and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

22. THIS COURT ORDERS that, notwithstanding anything else contained herein, no creditor of any of the CCAA Parties shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to any CCAA Party. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA, provided however that, except as provided in the Accommodation Agreement, any Person that seeks to advance a claim of, or analogous to set-off or equitable set-off to justify the non-payment of any existing or accruing debt to any of the CCAA Parties shall advise the CCAA Parties and the Monitor in writing prior to so doing so as to enable the CCAA Parties to have the validity of the set-off adjudicated upon by this Honourable Court on an urgent basis if so advised.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

23. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of any of the CCAA Parties whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

24. THIS COURT ORDERS that the Applicants shall indemnify their directors and officers from all claims, costs, charges and expenses (i) relating to the failure of any CCAA Party, after

the date hereof, to make payments of the nature referred to in subparagraphs 7(a), 9(a), 9(b) and 9(c) of this Order which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants, and (ii) which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants from and after the date of this Order (each, and any of (i) and (ii) , a “**D&O Claim**”), including without limitation, by reason of the Restructuring or in relation to any Plan, except to the extent that, with respect to any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.

25. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Property of the Applicants, which charge shall not exceed an aggregate amount of \$3,000,000, as security for the indemnity provided in paragraph 24 of this Order. The Directors’ Charge shall have the priority set out in paragraphs 45 and 47 herein. The Applicants’ directors and officers shall only be entitled to the benefit of the Directors’ Charge to the extent that they do not have coverage under any directors’ and officers’ insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 24 of this Order.

26. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, no insurer shall be entitled to be subrogated to or claim the benefit of the Directors’ Charge.

#### **APPOINTMENT OF MONITOR**

27. THIS COURT ORDERS that Richter is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property and the conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, SKD Company and the Assistants shall advise the Monitor of all material steps taken by the CCAA Parties pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

28. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the Restructuring, the Sales Process (as defined below) and such other matters as may be relevant to the proceedings herein;
- (b) monitor and review the CCAA Parties' receipts and disbursements;
- (c) monitor and review any transactions and obligations between the CCAA Parties and any affiliated entities or partnerships;
- (d) assist the CCAA Parties in preparing the cash flow projections, budgets and any other reporting or information they may require in relation to the Business and the Property, and to report to Comerica and the Customers (as defined below) as required in relation to the Forbearance Agreement and the Accommodation Agreement (each as defined below), which information shall be reviewed with the Monitor;
- (e) assist the CCAA Parties in their dissemination to Comerica and its counsel of financial and other information requested by Comerica and as otherwise required by the CCAA Parties, which may be used by the CCAA Parties in these proceedings;
- (f) assist the CCAA Parties, to the extent required by the CCAA Parties, in dealing with their respective creditors, customers, vendors and other interested Persons;
- (g) with the assistance of the CCAA Parties, conduct the Sales Process as provided for in this Order and report to this Court in relation to the status of the Sales Process from time to time as it considers appropriate;
- (h) advise the Applicants in their development of the Plan and any amendments to the Plan and, to the extent required by the CCAA Parties in their negotiations with creditors, customers, vendors and other interested Persons;

- (i) assist the CCAA Parties with their financing and restructuring activities to the extent required by the CCAA Parties;
- (j) carry out the responsibilities of the Monitor under the Accommodation Agreement and, to the extent requested by the CCAA Parties, to otherwise assist the CCAA Parties in the performance of their obligations under the Accommodation Agreement and the Access Agreement (each as defined below and together, the “**Customer Agreements**”);
- (k) give any consent or approval as is contemplated by this Order and any other orders made in this proceeding;
- (l) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors’ or shareholders’ meetings for voting on the Plan;
- (m) have full and complete access to the books, records and management, employees and advisors of the CCAA Parties and to the Business and the Property to the extent required to perform its duties arising under this Order;
- (n) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (o) be at liberty to serve as a “foreign representative” of any of the CCAA Parties in any proceeding outside of Canada, including if deemed advisable by the CCAA Parties and the Monitor, to file Chapter 15 proceedings as a foreign representative of the CCAA Parties;
- (p) consider, and if deemed advisable by the Monitor, prepare a report and assessment on the Plan; and
- (q) perform such other duties as are required by this Order or by this Court from time to time.



29. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

30. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law or guideline respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

31. THIS COURT ORDERS that the Monitor shall provide any creditor of the CCAA Parties with information provided by the CCAA Parties in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the CCAA Parties is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the CCAA Parties may agree.

32. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or

obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

#### **PAYMENT OF FEES AND ADMINISTRATION CHARGE**

33. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the CCAA Parties shall be paid their reasonable fees and disbursements incurred both before and after the making of this Order, in each case at their standard rates and charges, by the CCAA Parties as part of the costs of these proceedings. The CCAA Parties are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a weekly basis.

34. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicants shall undertake a final assessment of their accounts, if requested by the Applicants, or as directed by this Court pursuant to a request made by a creditor of the CCAA Parties, and for this purpose such accounts are referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

35. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the CCAA Parties and the financial advisor to the CCAA Parties, Conway MacKenzie, Inc. (collectively, the “**Professionals**”) shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$1,000,000, as security for their unpaid professional fees and disbursements incurred at the standard rates and charges of such Professionals, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 45 and 47 hereof.

#### **COMERICA FACILITY**

36. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) SKD Company is authorized and empowered to continue to borrow under the revolving credit agreement among Comerica and SKD Company (as Canadian

borrower), SKD AG (as US Borrower) and SKD, L.P., EASSA Mexico, S de R.I. de C.V., SKD de Mexico, S de R.I. de C.V. and the Applicants (as additional loan parties) made December 14, 2004, as subsequently amended, modified and supplemented, most recently pursuant to the Forbearance Agreement (defined below), including, without limitation, in relation to the subordinated participations in the Comerica loan facility purchased or to be purchased by the Customers in relation to the Customer Operations Funding (as described in the Chen Affidavit) in accordance with the Amended and Restated Subordinated Participation Agreement (as described in the Chen Affidavit) (the "**Credit Agreement**");

- (b) the CCAA Parties are authorized and directed to perform all obligations to Comerica under the Credit Agreement and any security or other documents contemplated thereby, including those relating to the Customer Operations Funding (as defined below), whether arising before or after the making of this Order as and when the same become due and are to be performed, but subject to the priority set out in paragraph 45 hereof (the "**Loan Documents**"); and
- (c) the CCAA Parties are authorized, empowered and directed to enter into and perform their obligations under a certain forbearance agreement, substantially in the form of the agreement attached as Exhibit "H" to the Chen Affidavit (the "**Forbearance Agreement**") to which the CCAA Parties are party, and are directed and shall comply with the Loan Documents and the Forbearance Agreement and shall make all payments to Comerica provided for under the Forbearance Agreement and Loan Documents, including without limitation, in relation to the Customer Operations Funding (as defined below).

37. THIS COURT ORDERS that Comerica shall be entitled to the benefits of and is hereby granted a charge (the "**Comerica Charge**") as security for the existing and future obligations of the CCAA Parties to Comerica under the Credit Agreement and Loan Documents, which charge shall not exceed the aggregate amount owed to Comerica under the Credit Agreement and Loan Documents. The Comerica Charge shall have the priority set out in paragraphs 45 and 47 hereof.

38. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) Comerica may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Comerica Charge;
- (b) subject to the terms of the Customer Agreements, the Forbearance Agreement and the Credit Agreement, Comerica may (i) without notice to the CCAA Parties or any other Person cease making advances to SKD Company and set off and/or consolidate any amounts owing by Comerica to the CCAA Parties, other than in relation to amounts deposited to the Trust Accounts (as defined in the Forbearance Agreement) in accordance with the Forbearance Agreement, against the obligations of the CCAA Parties to Comerica under the Credit Agreement, the Loan Documents or the Comerica Charge, and (ii) upon the occurrence of a default (other than an Existing Default as defined in the Forbearance Agreement) under the Credit Agreement and the Loan Documents, and upon two (2) business days notice to the CCAA Parties, the Customers and the Monitor, exercise any and all of its rights and remedies against the CCAA Parties or the Property under or pursuant to the Forbearance Agreement, the Credit Agreement, the Loan Documents and the Comerica Charge, including without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the CCAA Parties or for the appointment of a trustee in bankruptcy of the CCAA Parties, but subject to the priorities as set out in paragraphs 45 and 47 of this Order; and
- (c) the foregoing rights and remedies of Comerica shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the CCAA Parties or the Property.

39. THIS COURT ORDERS AND DECLARES that Comerica shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by any of the CCAA Parties under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Credit Agreement or the Loan Documents.

## CUSTOMER ACCOMMODATION AND ACCESS AGREEMENTS

40. THIS COURT ORDERS that notwithstanding any other provision of this Order, the CCAA Parties be and they are hereby authorized, empowered and directed to enter into and perform their obligations under a certain accommodation agreement, substantially in the form of the agreement attached as Exhibit “J” to the Chen Affidavit (the “**Accommodation Agreement**”) among SKD Company, Ford Motor Company, Chrysler Canada Inc., Chrysler LLC, on behalf of itself and Chrysler Motors LLC, Honda of America Mfg., Inc., for itself and on behalf of Honda Canada Mfg., a division of Honda Canada, Inc., Honda Manufacturing of Indiana, LLC and Honda Manufacturing of Alabama, LLC (collectively, the “**Customers**”) and Comerica.

41. THIS COURT ORDERS that the Accommodation Agreement and the exhibits thereto, including, without limitation (i) an access agreement, substantially in the form of the agreement among SKD Company and the Customers attached as Exhibit B to the Accommodation Agreement (the “**Access Agreement**”), (ii) the Customer Operations Funding (as defined in and to be provided under the Accommodation Agreement), and (iii) the transactions contemplated by the Accommodation Agreement (the “**Accommodation Agreement Transactions**”), be and they are hereby approved.

42. THIS COURT ORDERS that in completing the Accommodation Agreement Transactions, the CCAA Parties, and the Monitor, subject to the terms and conditions of the Accommodation Agreement, are hereby authorized to execute and deliver such additional, related and ancillary documents and assurances governing or giving effect to the Accommodation Agreement Transactions as the CCAA Parties, in their discretion, may deem to be reasonably necessary or advisable to complete the Accommodation Agreement Transactions and to take such steps as are necessary or incidental for the completion thereof.

43. THIS COURT ORDERS that the CCAA Parties be and they are hereby authorized, empowered and directed to enter into and perform their obligations under the Access Agreement and enter into and complete the transactions contemplated by the Access Agreement (the “**Access Agreement Transactions**”) and to grant the security interests provided for under the Access Agreement (the “**Customers’ Security**”) in accordance with the Access Agreement and

with such amendments, deletions and additions as the parties thereto may agree to, and to perform the obligations contained in the Access Agreement.

44. THIS COURT ORDERS that in completing the Access Agreement Transactions, the CCAA Parties, subject to the terms and conditions of the Access Agreement, are hereby authorized and directed to execute and deliver such additional, related and ancillary documents and assurances governing or giving effect to the Access Agreement Transactions as each of the CCAA Parties, in their discretion, may deem to be reasonably necessary or advisable to complete the Access Agreement Transactions and to take such steps as are necessary or incidental for the completion thereof.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

45. THIS COURT ORDERS that the priorities of the Administration Charge, the Directors' Charge, and the Comerica Charge shall be as follows:

- (i) First – the Administration Charge;
- (ii) Second – the Directors' Charge to the maximum amount of \$700,000 in relation to any vacation pay obligations;
- (iii) Third – the Comerica Charge, but excluding that portion of the Comerica Indebtedness (as defined in the Accommodation Agreement) relating to the Customer Operations Funding (as defined in the Accommodation Agreement);
- (iv) Fourth - the Directors' Charge for any amount greater than \$700,000 up to the maximum amount of \$2,300,000; and
- (v) Fifth - the Comerica Charge in relation to that portion of the Comerica Indebtedness (as defined in the Accommodation Agreement) relating to the Customer Operations Funding (as defined in the Accommodation Agreement);

46. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge, Directors' Charge and Comerica Charge (collectively, the "**Charges**"), as well as the Customers' Security, shall not be required, and that the Charges and the Customers' Security shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges and the Customers' Security coming into existence, notwithstanding any such failure to file, register, record or perfect.

47. THIS COURT ORDERS that each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

48. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the CCAA Parties shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, or which impair a Customer's "Right of Access" under the Access Agreement, unless the CCAA Parties also obtain the prior written consent of the Monitor, the beneficiaries of the Charges, and the Customers, or a further Order of this Court made on notice to the beneficiaries of the Charges and the Customers.

49. THIS COURT ORDERS that the exercise of the rights and remedies of the beneficiaries of the Charges shall be subject to the applicable terms of the Access Agreement, including a Customer's Right of Access if exercised in accordance with the Access Agreement; provided however that the Customers' Security shall be fully released and discharged and be of no further force and effect upon the later of (i) the expiration of the Term of the Access Agreement, and (ii) in relation to any Operating Assets and Real Estate in respect of which a Right of Access has been exercised by a Customer in accordance with the Access Agreement prior to expiration of the Term of the Access Agreement, at the end of the Occupancy Period arising from the exercise of such Right of Access (with capitalized terms in this paragraph being as defined under the Access Agreement).

50. THIS COURT ORDERS that the Charges, the Forbearance Agreement, the Customer Agreements and the Customers' Security, and any payments made by the CCAA Parties pursuant

to the Charges or the Credit Agreement or pursuant to paragraph 25 of this Order (collectively, the “**Payments**”), shall not be rendered invalid or unenforceable, and the rights and remedies of any Persons receiving the Payments and the chargees entitled to the benefit of the Charges (the “**Chargees**”) shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds any of the CCAA Parties, and notwithstanding any provision to the contrary in any Agreement:

- (a) Neither the creation of the Charges, nor the execution, delivery, perfection registration or performance of the Forbearance Agreement, the Customer Agreements or the Customers’ Security, shall create or be deemed to constitute a breach by an applicable CCAA Party of any Agreement to which it is a party;
- (b) none of the Chargees, or the holders of the Customers’ Security shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges or the execution, delivery or performance by the CCAA Parties of the Forbearance Agreement, the Customer Agreements or the Customers’ Security; and
- (c) any payments made by any of the CCAA Parties pursuant to this Order or the Forbearance Agreement and the granting the Charges, the Forbearance Agreement, the Customer Agreements and the Customers’ Security do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.



## MARKETING AND SALES PROCESS

51. THIS COURT ORDERS that the Monitor, with the assistance of CCAA Parties, will forthwith conduct a marketing and sales process (the “**Sales Process**”) with the assistance of such other professionals as it considers desirable to assist it in undertaking the Sales Process, to explore a sale of the business of SKD Company and/or the Property, as follows:

- (a) immediately following the date of this Order, the Monitor, with the assistance of the CCAA Parties, will canvass the market for interested parties and send to potentially interested parties a letter detailing this acquisition opportunity;
- (b) if considered desirable, will arrange for the placement of an advertisement in one or more newspapers providing notice of this acquisition opportunity as soon as reasonably practicable;
- (c) on or before January 22, 2009, will prepare a summarized confidential information memorandum (“**CIM**”) to be provided to interested purchasers who execute a confidentiality agreement in a form acceptable to the CCAA Parties and the Monitor (the “**Prospective Purchasers**”);
- (d) on or before January 22, 2009, will arrange for a data room, either electronic, physical or both (the “**Data Room**”);
- (e) on or before January 30, 2009, the CCAA Parties and the Monitor will prepare and make available to Prospective Purchasers, and in the electronic Data Room, a standardized form of asset purchase agreement that the Monitor will request all Prospective Purchasers to use to structure and submit their offers;
- (f) Prospective Purchasers will be required to conduct due diligence and to submit a purchase agreement to the Monitor by 4:00 p.m. (eastern time) on February 18, 2009;
- (g) the CCAA Parties, with the assistance of the Monitor, may thereafter select and settle a form of purchase agreement with one or more Prospective Purchasers;

- (h) on or about February 25, 2009, the Applicants will move to this Court for approval of any sales transaction that they wish to complete (each, a “**Transaction**”) and for any related relief, including an order vesting title (“the **Sales Approval Order**”); and
- (i) the closing of any Transaction in respect of which a Sales Approval Order is made shall be completed within two (2) business days following the making of such Order.

The Monitor shall have the ability, with the approval of the CCAA Parties, Comerica and the Customers, to modify the Sales Process, including the foregoing timetable, and to apply to this Court for any advice and directions that it may require in relation to the Sales Process.

#### **SERVICE AND NOTICE**

52. THIS COURT ORDERS that the Monitor on behalf of the Applicants shall, within ten (10) business days of the date of entry of this Order, send a letter to the known creditors of the CCAA Parties, other than employees and creditors to which the CCAA Parties owe less than \$1,000, at their addresses as they appear on the CCAA Parties’ records, advising of this Order, specifying that a copy of the Order and other materials are available on the Monitor’s website and disclosing such website, and that the Monitor, on behalf of the Applicants, shall promptly send a copy of this Order (a) to all parties filing a Notice of Appearance in respect of this Application, and (b) to any other interested Person requesting a copy of this Order; and the Monitor is relieved of its obligation under Section 11(5) of the CCAA to provide similar notice, other than to supervise this process.

53. THIS COURT ORDERS that the Applicants and the Monitor be at liberty to serve this Order, any other materials, motions and orders in these proceedings, and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or electronic transmission to the CCAA Parties’ creditors or other interested parties at their respective addresses as last shown on the records of the CCAA Parties, as applicable, and that (i) any such service by courier, personal delivery, facsimile or electronic transmission shall be deemed to be received (i) if delivered by or forwarded by facsimile or

electronic submission before 4 p.m. on a business day (being a day that the principal Canadian banks are open for business in Toronto), on that same day, (ii) if delivered or forwarded by facsimile or electronic submission following 4 p.m. on any day, on the next business day following the date of delivery or forwarding thereof, or (iii) if sent by ordinary mail, on the third business day after mailing, and (ii) any such service shall be deemed to be good and sufficient service.

54. THIS COURT ORDERS that the Applicants, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials upon counsel and any other Persons appearing on the Service List to the email addresses of counsel and such Persons as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on the Monitor's website.

#### **GENERAL**

55. DECLARES that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, any of the CCAA Parties are permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in their possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to their advisers (individually, a "**Third Party**"), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of the Plan or a transaction for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with a CCAA Party binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the applicable CCAA Party, or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring, or the preparation and implementation of the Plan or a transaction in furtherance

thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the applicable CCAA Party.

56. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

57. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of any of the Applicants, SKD Company, the Business or the Property.

58. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the CCAA Parties, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor as a representative of the CCAA Parties in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

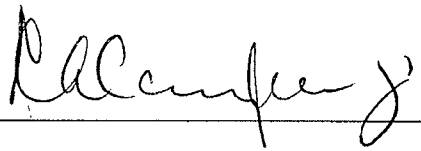
59. THIS COURT ORDERS that each of the CCAA Parties and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

60. THIS COURT ORDERS that any interested party (including the CCAA Parties and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

61. THIS COURT ORDERS that notwithstanding paragraph 60, no order shall be made varying, rescinding or otherwise affecting the provisions of this Order with respect to the Charges unless notice of a motion for such order is served on the Applicants, the Monitor,

Comerica, the Chargees and the Customers, returnable no later than 7 days following the making of this Order.

62. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.

  
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ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JAN 21 2009

PER / PAR: TV

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

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
Proceeding commenced at TORONTO

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**INITIAL ORDER**

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Lawyers for the Applicants

# Appendix “B”

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) THURSDAY, THE 11<sup>TH</sup>  
 )  
JUSTICE COLIN CAMPBELL ) DAY OF JUNE, 2009

**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



**ORDER**

THIS MOTION, made by Chrysler LLC, Chrysler Motors LLC and Chrysler Canada Inc. (collectively, "Chrysler") for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended (the "CJA") appointing RSM Richter Inc. as receiver (the "Receiver") without security, of all of the assets, undertakings and properties of SKD Company, including its general partners, 2515080 Nova Scotia Company and NMC Canada Inc. (collectively, the "Debtor") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the tenth report (the "Tenth Report") of RSM Richter Inc., as monitor of the Debtor (the "Monitor") appointed pursuant to the Order of this Court made in this proceeding on January 21, 2009, as amended (the "Initial Order"), and on hearing submissions from counsel for Chrysler, as well as counsel for SKD Company, the Receiver, Comerica Bank ("Comerica"), Orlando Corporation, Honda of America Mfg., Inc., for itself and on behalf of Honda Canada Mfg., a division of Honda Canada, Inc., Honda Manufacturing of Indiana, LLC and Honda Manufacturing of Alabama, LLC and Ford Motor Company, no else on the service list appearing, and on reading the consent of RSM Richter Inc. to act as Receiver.



### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **APPOINTMENT**

2. THIS COURT ORDERS that, pursuant to section 101 of the CJA, RSM Richter Inc. is hereby appointed Receiver, without security, of all of the Debtor's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property").

### **RECEIVER'S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession and control of the Property (which shall, for greater certainty, include the proceeds of sale of assets of the Debtor held by the Monitor as at the date hereof), and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever

basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;

- (d) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (e) to settle, extend or compromise any indebtedness owing to the Debtor;
- (f) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (g) to undertake environmental assessments of the Property;
- (h) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (i) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (j) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and

- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (k) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (l) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (m) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (n) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (o) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (p) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;
- (q) to make an assignment into bankruptcy on behalf of SKD Company, NMC Canada Inc. and 2515080 Nova Scotia Company (collectively, the "CCAA Parties");

- (r) to take actions on behalf of the Debtor in furtherance of the winding-up and administration of registered defined benefit pension plans administered by the Debtor;
- (s) to propose a process for the identification of any claims against officers and directors of the Debtor that may give rise to a claim for indemnity pursuant to paragraph 24 of the Initial Order (the "D&O Claims Process") and to administer the D&O Process as ordered by this Court on motion made on notice to all affected persons;
- (t) to arrange with counsel to the Debtor, or such other counsel as is consented to by the Receiver or ordered by this Court, for its retainer to act as counsel for the directors and officers of the Debtor in relation to the Claims Process, and to pay the reasonable fees, disbursements and expenses of such counsel, as approved by the Receiver or ordered by this Court;
- (u) to pay, on behalf of the CCAA Parties, the reasonable fees and disbursements of the Monitor, counsel for the Monitor and counsel for the CCAA Parties in relation to accounts rendered pursuant to paragraph 33 of the Initial Order; and
- (v) to take any steps reasonably incidental to the exercise of these powers,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person. For greater certainty, the Receiver shall not, without specific authorization from this Court (i) undertake any of the operations of the Debtor, or (ii) employ any former employee of the Debtor to assist in the Receiver's mandate, save and except for term and task engagements pursuant to written agreements entered into with the Receiver.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons

acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and

providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

**NO PROCEEDINGS AGAINST THE RECEIVER**

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

**NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

9. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

13. THIS COURT ORDERS that all funds currently held by the Monitor in respect of its mandate as monitor, save and except for any amounts held by the Monitor in its capacity as escrow agent pursuant to the Employee Escrow Agreements (as defined in paragraph 22 of this Order), shall be transferred to the Post Receivership Accounts, provided that all such funds, and all other Property of the Debtor transferred to the Receiver, shall remain subject to the CCAA Charges, as such charges are defined in the Initial Order.

## **EMPLOYEES**

14. THIS COURT ORDERS that the Receiver shall not employ any employees of the Debtor, save and except for term and task engagements pursuant to written agreements entered into with the Receiver. The Receiver shall not be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction.

15. THIS COURT ORDERS that, the Receiver shall not disclose personal information of identifiable individuals to any party without the knowledge or consent of the individuals in question.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.



### **LIMITATION ON THE RECEIVER'S LIABILITY**

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

18. THIS COURT ORDERS that any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Receiver and its counsel, shall be allowed to it in passing its accounts and, subject to this Order, shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "Receiver's Charge").

19. THIS COURT ORDERS the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **CCAA ORDER**

21. THIS COURT ORDERS AND DECLARES that, except as otherwise amended hereby, the Initial Order, as amended, and all other Orders of this Court granted in these proceedings remain in full force and effect, and that the Administration Charge and the Directors' Charge created under the Initial Order shall rank prior to the Receiver's Charge created by this Order.

22. THIS COURT ORDERS AND DECLARES that the Initial Order be and the same is hereby amended to delete, effective as of the date hereof, paragraphs 3, 4, 5, 7, 10, 13, 14, 15, 16, 21, 28(d), 28(g), 28(h), 28(i), 28(l), 28(p), 36(a), 43, 44, 49, 51 and 55 , and to delete, effective as of the date hereof, the second sentence of paragraph 33; provided that nothing in this Order or the amendment of the Initial Order as provided for herein, shall (a) preclude the Monitor from the performance of its duties and responsibilities as the escrow agent under the Employee Retention Plan Escrow Agreement, as defined in the Order of this Court made on March 31, 2009, and the Escrow Agreements, as defined in the Order of this Court made on April 3, 2009, as amended by Order made on April 30, 2009 (the Escrow Agreements and the Employee Retention Plan Escrow Agreement, collectively referenced hereinafter as the "Employee Escrow Agreements"); or (b) preclude the Monitor from the disbursement of any funds provided for under the Employee Escrow Agreements.

23. THIS COURT ORDERS AND DECLARES that the Initial Order be and the same is hereby amended, effective as of the date hereof, as follows:

- (i) paragraph 6 of the Initial Order is amended to delete the existing paragraph in its entirety and insert in its place "THIS COURT ORDERS AND DECLARES that Comerica and any bank providing or participating in the Cash Management System (as defined in the Initial Order dated January 21, 2009) shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the CCAA Parties of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, and that Comerica and any such bank shall at all times have provided the Cash Management System without any liability in respect thereof to any Person (as defined below) other than the CCAA Parties and Comerica.";
- (ii) the fourth line of paragraph 8 of the Initial Order is amended to insert "and prior to June 11, 2009" after "date of this Order";
- (iii) the first line of paragraph 23 of the Initial Order is amended by deleting the words "during the Stay Period" from the first line, and replacing them with "unless otherwise ordered by this Court";
- (iv) the seventh line of paragraph 24 (ii) of the Initial Order is amended by inserting, "and prior to June 11, 2009" after "from and after the date of this Order"; and
- (v) the second line of paragraph 36(b) is amended to insert "(as defined in the Initial Order dated January 21, 2009)" after "Credit Agreement".

**GENERAL**

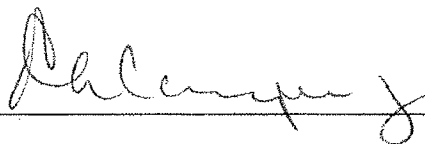
24. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

25. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

26. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

27. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

28. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



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ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JUN 11 2009

PER / PAR: 

**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  
515080 NOVA SCOTIA COMPANY.**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
PROCEEDINGS COMMENCED AT  
TORONTO**

**ORDER**

**BORDEN LADNER GERVAIS LLP**  
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LLC and Chrysler Canada Inc.

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# Appendix “C”

## ESCROW AGREEMENT

This Escrow Agreement (the "**Escrow Agreement**") among the parties referred to below is dated as of March 19, 2009

### RECITALS:

#### WHEREAS

- A. General Motors Corporation ("**GM**"), Ford Motor Company ("**Ford**"), Chrysler LLC ("**Chrysler**"), Honda of America Mfg., Inc., for itself and on behalf of Honda Canada Mfg., a Division of Honda Canada, Inc., Honda Manufacturing of Indiana, LLC and Honda Manufacturing of Alabama, LLC (collectively, "**Honda**") (Honda, collectively with GM, Ford and Chrysler, the "**Participants**", or the "**Customers**" and each individually a "**Participant**" or a "**Customer**") have entered into the Additional Participations and Allocations Agreement dated January 21, 2009, as amended ("**APAA**") contemplated by the Amended and Restated Subordinated Participation Agreement dated January 21, 2009 (the "**Participation Agreement**"), as amended, among Comerica Bank ("**Comerica**"), the Participants and SKD Company and others;
- B. For the purposes of this Escrow Agreement, SKD Company together with SKD Automotive Group, Limited Partnership are each an "**Employer**" and are collectively referred to as "**Employers**";
- C. Each Participant has agreed to purchase additional Participations in accordance with the terms and conditions of the Participation Agreement from Comerica for cash, at par, in exchange for undivided subordinated interest (each a "**Participation**") in the Loans (as defined in the Participation Agreement) as more fully set forth in the Participation Agreement;
- D. The Participants have agreed to allow the Employers to use certain of the proceeds from the Participations pursuant to the terms of the APAA to fund payments under the existing employee retention plan for the Non-Go Forward Employees (as defined in the APAA) in accordance with the per employee allocation under the existing employee retention plan as set forth on Exhibit 1 attached to the APAA (the "**Retention Plan**");
- E. Each Participant has agreed to purchase its Respective Percentage (as defined in the Participation Agreement) of the Participations to fund the loans to the Employers for payments to the Non-Go Forward Employees (the "**Non-Go Forward Employee Participations**") in an aggregate amount not to exceed \$1,475,831.00;
- F. RSM Richter Inc., in its capacity as the court-appointed monitor (the "**Monitor**") in the proceeding (the "**CCAA Proceeding**") commenced in the Ontario Superior Court of Justice (the "**Court**") under the *Companies' Creditors Arrangement Act* by NMC Canada Inc. and 2515080 Nova Scotia Company, the general partners of SKD Company, is appointed as escrow agent (the "**Escrow Agent**") pursuant hereto and the Escrow Agent has agreed to act in such capacity;

- G. The Participants have agreed to fund the Non-Go Forward Employee Participations pursuant to the terms of the APAA and SKD Company has agreed pursuant to an e-mail agreement dated February 27, 2009 between SKD Company, Honda, Ford and Chrysler to direct Comerica to wire the proceeds of the Non-Go Forward Employee Participations to the Escrow Agent to be held in escrow in accordance with the terms hereof (such funds hereinafter referred to as the "**Retention Fund**").

**THE PARTIES HERETO AGREE AS FOLLOWS:**

1. The amount of U.S.\$1,095,542.00, is being established as the Retention Fund. The Customers will purchase an additional Participation from Comerica in such amount which Comerica will advance to SKD Company for payment to the Escrow Agent as described in the recitals above and shall be held in trust in an interest-bearing account for the benefit of Comerica and the Employers jointly in accordance with their respective rights and interests under this Escrow Agreement and shall be dealt with and disbursed by the Escrow Agent pursuant to the terms hereof.
2. The parties acknowledge that the Retention Fund is being made available to the Employers through the accommodations of the Customers, upon and subject to the terms of this Escrow Agreement and the APAA, for the sole and specific purpose of enabling the Employers to fund payments under the Retention Plan. The Employers and the Customers understand, confirm and agree, as evidenced by their execution of this Escrow Agreement that the Customers, in providing the Retention Fund, and the Monitor, in disbursing any of the Retention Fund to facilitate the payment of any of the payments under the Retention Plan, shall have and be under no liability to the Employers or the Non-Go Forward Employees, on any basis whatsoever. The Employers and the Customers further acknowledge that any order of the Court to be made approving this Escrow Agreement shall also contain a provision to this effect.
3. The Employers acknowledge and agree, on behalf of itself and the Non-Go Forward Employees, that the indirect funding of the Retention Fund by the Customers to permit the Employers to pay obligations under the Retention Plan does not make any of the Customers and/or Employers, in any combination or all together, a related employer and/or successor employer as contemplated by the *Labour Relations Act, 1995*, S.O. 1995 c.1, as amended (the "**LRA**") or the *Employment Standards Act, 2000*, S.O. 2000, c.41, as amended (the "**ESA**"). Each of the Employers, on behalf of itself and the Non-Go Forward Employees hereby waives and releases any claims in this regard that it could have made, or could make in the future, against any of the Customers under the LRA and the ESA.
4. The Escrow Agent agrees to act as Escrow Agent pursuant to the terms hereof. The parties acknowledge that the Escrow Agent is acting solely for the convenience of the parties for the purposes outlined in this Escrow Agreement, and that the Escrow Agent shall not be nor be deemed on any basis to be the agent of any of the parties or an employer, related of successor employer to any employee of the Employers or the Customers.

Distribution of Retention Fund

5. The Escrow Agent shall distribute the Retention Fund as follows:
- (a) The Employers and the Customers shall provide the Escrow Agent with a joint direction in writing to pay, on behalf of the Employers, as soon as reasonably practicable, the applicable portion of the Retention Fund to the payroll service used by the Employers for the purpose of funding the portion of the Retention Fund due to any particular employee pursuant to the APAA upon such employee's termination of employment with the relevant Employer, which amount shall be paid by the Escrow Agent, subject to the terms of this paragraph 5, within 7 days following such employee's last day of work with the Employer, the details of which shall be set out in the joint direction;
  - (b) The Retention Fund may be released or disbursed by the Escrow Agent only in accordance with Sections 5 and 6 of the Escrow Agreement;
  - (c) Any portion of the Retention Fund determined to be surplus to the requirements of the Retention Plan as certified by joint direction in writing of the Employers and the Customers or as determined by a final decision of the Court shall be paid by the Escrow Agent to Comerica (or the assignee of the Loans) as payment under the Loan Documents (as defined in the APAA) as soon as reasonably practicable in accordance with such joint direction or such final decision of the Court;
  - (d) The portion of the Retention Fund (or such portion then remaining, including interest earned thereon) relating to a particular Non-Go Forward Employee shall be paid by the Escrow Agent to Comerica (or the assignee of the Loans) as soon as reasonably practicable upon receipt of a joint written notice from the Customers and the relevant Employer certifying, or a final decision of the Court determining, that (i) the supply of automotive component parts has been interrupted as a result, directly or indirectly, of the acts or omissions of such Non-Go Forward Employee, and/or (iii) such Non-Go Forward Employee has failed to reasonably assist the Customers in the resourcing of the supply of component parts (such resourcing shall include the removal of tooling, equipment and inventory) including to a purchaser of the relevant Employer's business or assets or any part thereof; and
  - (e) The Retention Fund (or such portion remaining, including interest earned thereon) shall be paid by the Escrow Agent to Comerica (or the assignee of the Loans) as payment under the Loan Documents (as defined in the APAA) upon the Employers certifying to the Escrow Agent that the Retention Fund obligations of the Employers referenced in the APAA have been fully satisfied and upon receipt of a joint direction in writing from the Customers and the Employers directing the Escrow Agent to make such payment.



Escrow Agent's Duties

6. In relation to the duties and responsibilities of the Escrow Agent, the parties agree as follows:
- (a) the Escrow Agent's duties and responsibilities shall be as specifically set forth herein and there shall be no implied duties or obligations other than as provided for herein and the Escrow Agent shall have no obligations, responsibilities or liability arising under any other agreements to which the Escrow Agent is not a party, even though reference to such other agreements may be made in this Agreement. The Escrow Agent shall not be liable for any action taken or omitted to be taken by it in good faith and in the exercise of its own judgment, unless such action involved gross negligence or wilful misconduct;
  - (b) disbursement by the Escrow Agent of the Retention Fund in accordance with the provisions of this Escrow Agreement shall constitute a complete discharge and satisfaction of the obligations of the Escrow Agent hereunder;
  - (c) the Escrow Agent shall have no responsibility to inquire into the genuineness or validity of any documents delivered to it and reasonably believed by it to have been signed by the proper person or persons and shall be entitled to rely thereon and shall not be liable or responsible for any action taken or omitted in accordance with the provisions thereof;
  - (d) the Escrow Agent shall not be responsible to enforce any obligation of any person, whether under the APAA or otherwise;
  - (e) the Escrow Agent shall be entitled to rely upon the advice and directions of the Court in respect of any matter relating to the discharge of its duties provided only such directions are obtained upon notice to the Customers and the Employers, such advice may include directions as to the payment of the Retention Fund (or any portion thereof);
  - (f) in the event the Employers and the Customers become involved in any dispute process involving the APAA affecting the Retention Fund, the Escrow Agent shall have standing to participate in such proceedings. The Escrow Agent shall be authorized to rely upon any decision arising from such proceedings, providing such decision shall be final and shall not have been stayed, reversed or varied;
  - (g) in the event of any controversy or dispute under this Escrow Agreement or with respect to any question regarding the construction hereof or any action to be taken or omitted to be taken by the Escrow Agent, the Escrow Agent may pay the Retention Fund (or such remaining portion thereof, including interest earned thereon) into the Court to be disbursed pursuant to further order of the Court and shall notify the Customers and the Employers of such payment into Court and the Escrow Agent shall be relieved of and discharged from any and all obligations and liabilities hereunder;

- (h) the Escrow Agent may resign at any time upon thirty days written notice to the Employers and the Customers or such shorter notice as they may accept in writing as sufficient and shall thereafter pay the Retention Fund (or any remaining portion thereof, including interest earned thereon) to such replacement escrow agent in accordance with the joint direction of the Employers and the Customers or into the Court in accordance with the preceding paragraph if the parties shall not have jointly designated a replacement escrow agent;
- (i) the Employers shall jointly and severally indemnify the Escrow Agent, its partners, agents and employees from, and hold them harmless against, any loss, liability or expense incurred or suffered by them arising out of or in connection with the administration of this Escrow Agreement and the carrying out of the Escrow Agent's duties hereunder, including the costs and expenses of legal counsel (on a solicitor and his own client basis) in defending itself against any claim made against it hereunder; provided, however, that such loss, liability or expense is not the result of the gross negligence or wilful misconduct of the Escrow Agent. The provisions of this 6(i) shall survive the termination of this Agreement and the resignation of the Escrow Agent for any reason;
- (j) the fees of the Escrow Agent for so acting shall be allowed to it as part of the fees of the Monitor in the CCAA Proceeding; and
- (k) the protections provided to the Monitor pursuant to the initial order of the Court dated January 21, 2009, in respect of the CCAA Proceeding, shall apply in all respects to the Escrow Agent, and the parties hereto shall seek an order of the Court, on terms satisfactory to the Escrow Agent, in its sole discretion, to ensure that such protections are extended to the Monitor in its capacity as Escrow Agent.

Miscellaneous Matters

7. All notices shall be given in writing (including facsimile or email) and shall be given to the addresses set forth below:

(a) If to the Employers:

**SKD Company**  
c/o SKD Automotive Group  
1450 W. Long Lake Rd., Suite 210  
Troy, MI 48098

Attention: John P. Chen  
Fax: (248) 267-9669

And to:

SKD Automotive Group  
1965 Pratt Boulevard  
Elk Grove Village, IL 60007

Attention: Vytas Ambutas  
Facsimile: (847) 806-7244  
E-Mail: vambutas@nmlp.com

With a copy to:

**Lang Michener LLP**  
Brookfield Place  
181 Bay Street, Suite 2500  
Toronto, ON M5J 2T7

Attention: Sheryl E. Seigel  
Fax: (416) 365-1719  
Email: sseigel@langmichener.ca

(b) If to the Escrow Agent:

**RSM Richter Inc.**  
200 King Street W., Suite 1100  
P.O. Box 48  
Toronto, ON M5H 3T4

Attention: Robert Kofman  
Fax: (416) 932-6200  
Email: Bkofman@RSMRichter.com

With a copy to:

**Goodmans LLP**  
250 Yonge Street, Suite 2400  
Toronto, ON M5B 2M6

Attention: Joseph Latham  
Fax: (416) 979-1234  
Email: jlatham@goodmans.ca

(c) If to the Chrysler:

**Chrysler LLC**  
800 Chrysler Drive  
CIMS 485-14-78  
Auburn Hills, MI 48326

Attention: Sigmund Huber  
Fax: (248) 512-1771  
Email: seh43@chrysler.com

With a copy to:

**Chrysler LLC**  
1000 Chrysler Drive  
CIMS 485-14-78  
Auburn Hills, MI 48326-2766

Attention: Kim R. Kolb  
Fax: (248) 512-1771  
Email: krk4@chrysler.com

And:

**Dickinson Wright PLLC**  
500 Woodward Avenue, Suite 4000  
Detroit, MI 48226

Attention: James A. Plemmons  
Fax: (313) 223-3598  
E-mail: jplemmons@dicksonwright.com

With a copy to:

**Borden Ladner Gervais LLP**  
Scotia Plaza, 40 King St. W.  
Toronto, ON M5H 3Y4

Attention: Craig J. Hill  
Fax: (416) 361-7301  
Email: chill@blgcanada.com

(d) If to Ford:

**Ford Motor Company**  
Once America Road  
World Headquarters, Suite 416  
Dearborn, MI 48126

Attention: Daniella Saltz  
Fax: (313) 322-3084  
Email: dsaltz@ford.com

With a copy to:

**Miller Canfield Paddock and Stone, PLC**  
150 West Jefferson, Suite 2500  
Detroit, MI 48226

Attention: John Leslie  
Fax: (519) 977-1565  
Email: leslie@millercanfield.com

(e) If to Honda:

**Honda of America Mfg., Inc.**  
24000 Honda Parkway  
Marysville, OH 43040-9251

Attention: Joseph F. LaFleur  
Fax: (937) 644-6583  
Email: Joe\_LaFleur@ham.honda.com

With a copy to:

**Vorys, Sater, Seymour and Pease LLP**  
52 East Gay Street  
Columbus, OH 43216-1008

Attention: Robert A. Bell, Jr.  
Fax: (614) 719-5169  
Email: rabell@vorys.com

And:

**Blake, Cassels & Graydon LLP**  
199 Bay Street, Suite 2800  
Commerce Court West  
Toronto, ON M5L 1A9

Attention: Steven J. Weisz  
Fax: (416) 863-2653  
E-mail: [steven.weisz@blakes.com](mailto:steven.weisz@blakes.com)

(f) If to GM:

**General Motors Corporation**  
Cadillac Building  
Mail Code: 480-206-136  
30009 Van Dyke  
Warren, Michigan 48090-9025

Attention: Mark W. Fischer  
Fax: (586) 575-3404  
E-mail: [mark.w.fischer@gm.com](mailto:mark.w.fischer@gm.com)

With a copy to:

**Honigman Miller Schwartz and Cohn LLP**  
2290 First National Building  
660 Woodward Avenue  
Detroit, Michigan 48226

Attention: Donald F. Baty, Jr.  
Fax: (313) 465-7549  
E-mail: [dbaty@honigman.com](mailto:dbaty@honigman.com)

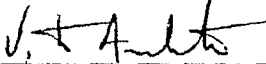
8. The term of this Escrow Agreement shall commence on the date hereof and shall continue until the Escrow Agent has released all amounts in respect of the Retention Fund, including interest earned thereon, in accordance with this Escrow Agreement.
9. This Escrow Agreement reflects the entire agreement between the parties with respect to the matters contained herein and contained in paragraph 5 of the e-mail agreement dated February 27, 2009 between the SKD Company, Honda, Ford and Chrysler.
10. Comerica Bank and any Customers that have directly or indirectly provided funds for the Retention Fund are intended to be third party beneficiaries hereto and entitled to enforce the provisions hereof.

11. This Escrow Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns provided that the Escrow Agent shall not be permitted to assign its obligations hereunder except as specifically contemplated herein.
12. If any term shall be found to be unenforceable, illegal or invalid by a court of competent jurisdiction, the remainder of this agreement shall continue in full force and effect and shall not thereby be affected, invalidated or impaired.
13. No waiver of any of the provisions of this Escrow Agreement shall be binding unless in writing delivered in accordance with the provisions hereof.
14. The parties agree to deliver to each other such further and other assurances as may be reasonably necessary or desirable to give effect to this Escrow Agreement.
15. Time shall be of the essence to this Escrow Agreement.
16. This Escrow Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable herein and the parties attorn to the jurisdiction of Ontario in the event of a dispute hereunder.
17. This Escrow Agreement may be signed in any number of counterparts each of which shall be an original with the same effect as if the signatures were each upon the same instrument. This Escrow Agreement shall be effective when each party hereto shall have received by facsimile or electronic transmission a counterpart hereof signed by each of the other parties.
18. The Recitals hereto shall be incorporated and form part of this Agreement.


[THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Escrow Agreement to be duly executed as of the date first above written.

**SKD COMPANY, by its partners NMC  
CANADA INC. and 2515080 NOVA SCOTIA  
COMPANY**

By:   
Name: *J. H. Amouras*  
Title: *Secretary*

I have the authority to bind NMC Canada,  
Inc.

By:   
Name: *J. H. Amouras*  
Title: *Secretary*

I have the authority to bind 2515080 Nova  
Scotia Company

**RSM Richter Inc., in its capacity as Court-  
appointed Monitor of NMC CANADA INC.,  
2515080 NOVA SCOTIA COMPANY and SKD  
COMPANY and not in its personal or corporate  
capacity**

By: \_\_\_\_\_  
Name:  
Title:

I have the authority to bind the company



IN WITNESS WHEREOF, the parties have caused this Escrow Agreement to be duly executed as of the date first above written.

**SKD COMPANY, by its partners NMC  
CANADA INC. and 2515080 NOVA SCOTIA  
COMPANY**

By: \_\_\_\_\_  
Name:  
Title:

I have the authority to bind NMC Canada,  
Inc.

By: \_\_\_\_\_  
Name:  
Title:

I have the authority to bind 2515080 Nova  
Scotia Company


**RSM Richter Inc., in its capacity as Court-  
appointed Monitor of NMC CANADA INC.,  
2515080 NOVA SCOTIA COMPANY and SKD  
COMPANY and not in its personal or corporate  
capacity**

By: \_\_\_\_\_  
Name: Robert Goldman  
Title: r.p.

I have the authority to bind the company

**SKD AUTOMOTIVE GROUP,  
LIMITED PARTNERSHIP**

By: PL International Corporation  
Its: General Partner

By:   
Vytas Ambutas  
Its: Secretary

**FORD MOTOR COMPANY**

By: \_\_\_\_\_  
Name:  
Title:

**HONDA OF AMERICA MFG., INC. for itself  
and on Behalf of HONDA CANADA MFG., a  
division of HONDA CANADA, INC., HONDA  
MANUFACTURING OF INDIANA, LLC and  
HONDA MANUFACTURING OF ALABAMA,  
LLC**

By: \_\_\_\_\_  
Name:  
Title:

**CHRYSLER LLC**

By: \_\_\_\_\_  
Name:  
Title:

**SKD AUTOMOTIVE GROUP,  
LIMITED PARTNERSHIP**

By: PL International Corporation  
Its: General Partner

By: \_\_\_\_\_  
Vytas Ambutas  
Its: Secretary

**FORD MOTOR COMPANY**

By: Yisa K. King  
Name: \_\_\_\_\_  
Title: Purchasing Director

**HONDA OF AMERICA MFG., INC. for itself  
and on Behalf of HONDA CANADA MFG., a  
division of HONDA CANADA, INC., HONDA  
MANUFACTURING OF INDIANA, LLC and  
HONDA MANUFACTURING OF ALABAMA,  
LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CHRYSLER LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SKD AUTOMOTIVE GROUP,  
LIMITED PARTNERSHIP**

By: PL International Corporation  
Its: General Partner

By: \_\_\_\_\_  
Vytas Ambutas  
Its: Secretary

**FORD MOTOR COMPANY**

By: \_\_\_\_\_  
Name:  
Title:

**HONDA OF AMERICA MFG., INC. for itself  
and on Behalf of HONDA CANADA MFG., a  
division of HONDA CANADA, INC., HONDA  
MANUFACTURING OF INDIANA, LLC and  
HONDA MANUFACTURING OF ALABAMA,  
LLC**

By: Mark Vandewalle  
Name: Mark Vandewalle  
Title: Senior Manager, NAEP

**CHRYSLER LLC**

By: \_\_\_\_\_  
Name:  
Title:

**SKD AUTOMOTIVE GROUP,  
LIMITED PARTNERSHIP**

By: PL International Corporation  
Its: General Partner

By: \_\_\_\_\_  
Vytas Ambutas  
Its: Secretary

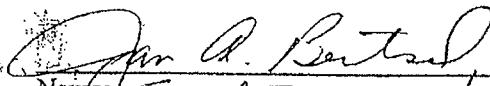
**FORD MOTOR COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**HONDA OF AMERICA MFG., INC. for itself  
and on Behalf of HONDA CANADA MFG., a  
division of HONDA CANADA, INC., HONDA  
MANUFACTURING OF INDIANA, LLC and  
HONDA MANUFACTURING OF ALABAMA,  
LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CHRYSLER LLC**

By:  \_\_\_\_\_  
Name: Jan A. Bertsch 3/24/09  
Title: SVP, Treasurer, CIO

*RRR*

*W*

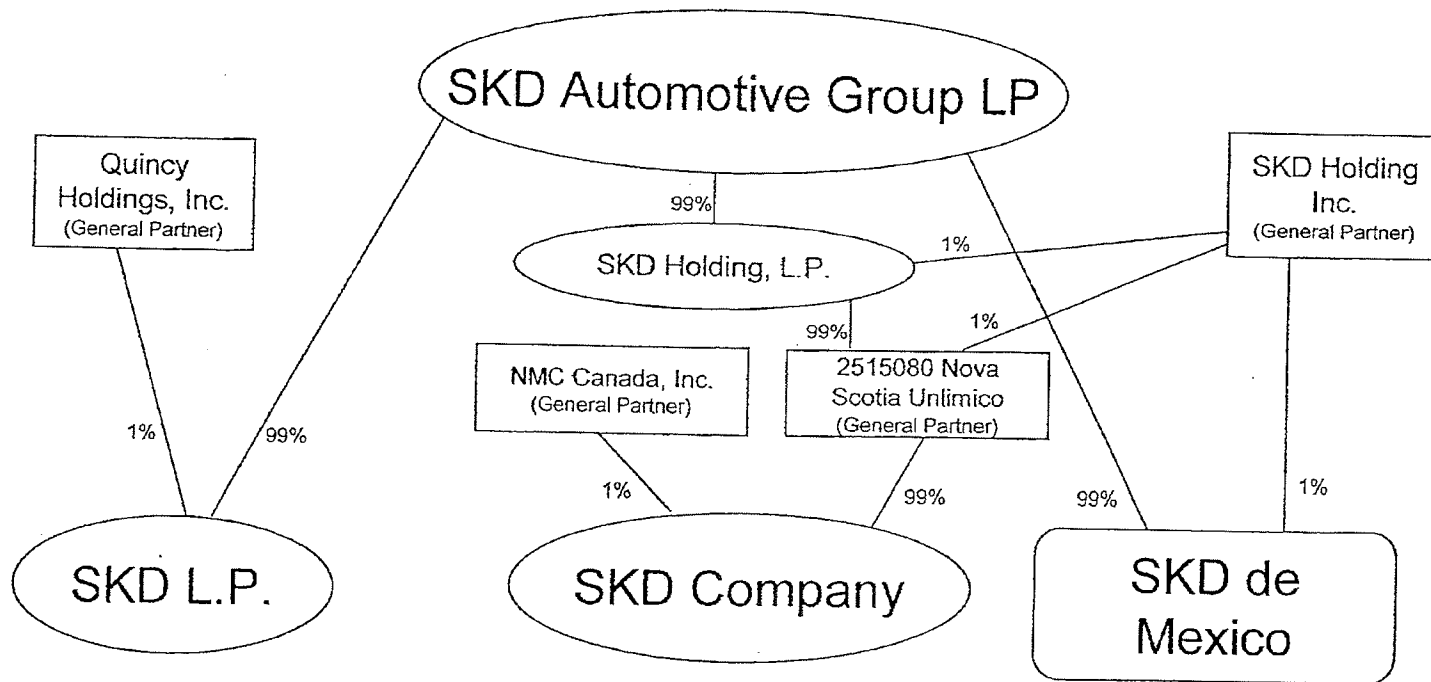
HOND

**GENERAL MOTORS COMPANY**

By: \_\_\_\_\_  
Name:  
Title:

# Appendix “D”

# SKD Automotive Group





# Appendix “E”

IN THE MATTER OF THE COMPANIES CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED

IN THE MATTER OF THE PLAN OF COMPROMISE OR  
ARRANGEMENT OF NMC CANADA, INC. AND  
2515080 NOVA SCOTIA COMPANY

Applicants

PROOF OF CLAIM

THIS PROOF OF CLAIM IS NOT TO BE USED FOR CLAIMS AGAINST ANY OF  
SKD COMPANY, NMC CANADA INC. OR 2515080 NOVA SCOTIA COMPANY OR  
ANY CLAIM AGAINST A DIRECTOR OR OFFICER THAT IS NOT A D&O CLAIM  
AS DEFINED IN THE CLAIMS PROCESS ORDER

A. PARTICULARS OF CLAIMANT:

1. Full Legal Name of Claimant: ROBERTO COSTANTINO

2. Full Mailing Address of Claimant:

[REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]

3. Telephone Number: [REDACTED]

Facsimile Number: \_\_\_\_\_

Attention (Contact Person): \_\_\_\_\_

E-mail address: [REDACTED]

**B. PROOF OF CLAIM**

I, ANDREW HATWAY ~~[name of Claimant or~~  
Representative of the Claimant of KOSKIE MINSEY LLP  
do hereby certify:

(a) that I [tick one]

(In the case of an individual which is the Claimant) I am the Claimant in respect of the claim set forth in (c) below; OR

(In the case of a corporation which is the Claimant) am  
\_\_\_\_\_  
(state position or title)

of \_\_\_\_\_  
(name of Claimant)

(b) that I have knowledge of all the circumstances connected with the Claim referred to below;

(c) that the Claimant asserts a D&O Claim against one or more of the Directors and Officers of [tick one]:

(i)  SKD Company

(ii)  NMC Canada Inc.

(iii)  2515080 Nova Scotia Company

in the amount of Cdn\$ 38,000 [insert \$ value of D&O Claim]

Name of Director(s) and/or Officer(s) in respect of whom a D&O Claim is being filed: SEE BELOW

(If you wish to assert a D&O Claim against any Director or Officer of more than one Debtor, please provide a separate Proof of Claim for each of the applicable Debtors. If D&O Claims have been converted into Canadian dollars, the conversion rate used should be the Bank of Canada nominal spot rate on the Claims Record Date. Particulars of the original currency denomination and the conversion rate used should be provided as part of this Proof of Claim.)

- VYTAŠ P. AMBUTAS
- JOHN CHEN
- KURT R. SWANSON
- JAMES J. BARRY
- JOHN C. WOLF

**C. PARTICULARS OF CLAIM:**

The particulars of the Claimant's D&O Claim are attached. *SEE APPENDIX A*

(Provide all particulars of the D&O Claim, including the name of each Director and Officer against whom the Claimant is claiming and a description and relevant dates of the transaction(s) or agreement(s) giving rise to the D&O Claim. All supporting documentation must be attached.)

**D. FILING OF CLAIM**

This Proof of Claim must be received by the Receiver by no later than 5:00 p.m. (Toronto Time) on December 11, 2009, by courier, personal delivery or facsimile transmission at the following address:

**By Mail:**

RSM Richter Inc., as Receiver of SKD Company, NMC Canada Inc. and  
2515080 Nova Scotia Company  
200 King Street West  
Suite 1100  
Toronto, Ontario M5H 3T4

Attention: Lana Bezner

**By Courier or Personal Delivery:**

RSM Richter Inc., as Receiver of SKD Company, NMC Canada Inc. and  
2515080 Nova Scotia Company  
200 King Street West  
Suite 1100  
Toronto, Ontario M5H 3T4

Attention: Lana Bezner

**By Fax:**

RSM Richter Inc., as Receiver of SKD Company, NMC Canada Inc. and  
2515080 Nova Scotia Company

Attention: Lana Bezner

Fax No.: (416) 932-6200  
Telephone: (416) 932-6009

Failure to file your Proof of Claim as directed by 5:00 p.m. on December 11, 2009 (Toronto Time) will result in your D&O Claim being barred and forever extinguished and you will be prohibited from making or enforcing such D&O Claim against the applicable Directors or Officers (subject to the terms of the Claims Process Order).

Dated at TORONTO, this 11 day of DECEMBER, 2009.

[Insert Name of Claimant: ROBERTO COSTANTINO]

Per: ANDREW HATWAY  
Name

Signature: 

## Appendix A

### Summary of Claim of Tony Wong and Rob Costantino

Robert Costantino and Tony Wong (the "Claimants") are former employees of SKD Company's Milton facility and have obtained a judgment pursuant to an order of the Ontario Superior Court of Justice dated October 1, 2008 (copy attached).

Pursuant to the terms of that order, the court ordered the following payments:

- To Robert Costantino: a) \$50,000 in general damages; b) \$38,000 for compensation in lieu of notice and c) \$1,280 in interest.
- To Tony Wong: a) \$30,000 in general damages and b) \$17,000 for compensation in lieu of notice.

The Claimants claim from the directors the sums representing compensation in lieu of notice. As noted above, for Robert Costantino the amount owing is \$30,000 and for Tony Wong the amount owing is \$17,000.

The Supreme Court of Canada has made clear that an amount owing to an employee for pay in lieu of notice constitutes the wages of the employee. In *Wallace v. United Grain Growers Limited* [1997] 3 S.C.R. 701 the Supreme Court stated:

65 As I see the matter, the underlying nature of the damages awarded in a wrongful dismissal action is clearly akin to the "wages" referred to in s. 68(1). In the absence of just cause, an employer remains free to dismiss an employee at any time provided that reasonable notice of the termination is given. In providing the employee with reasonable notice, the employer has two options: either to require the employee to continue working for the duration of that period or to give the employee pay in lieu of notice: D. Harris, *Wrongful Dismissal* (1989 (loose-leaf)), at p. 3-10. There can be no doubt that if the employer opted to require the employee to continue working during the notice period, his or her earnings during this time would constitute wages or salary under s. 68(1) of the Act. *The only difference between these earnings and pay in lieu of notice is that the employee receives a lump sum payment instead of having that sum spread out over the course of the notice period. The nature of those funds remains the same* and thus s. 68(1) will also apply in these circumstances.

66 In the event that an employee is wrongfully dismissed, the measure of damages for wrongful dismissal is the salary that the employee would have earned had the employee worked during the period of notice to which he or she was entitled: *Sylvester v. British Columbia*, [1997] 2 S.C.R. 315. *The fact that this sum is awarded as damages at trial in no way alters the fundamental character of the money.* An award of damages in a wrongful dismissal action is in reality the wages that the employer ought to have paid the employee either

over the course of the period of reasonable notice or as pay in lieu of notice. Therefore, in accordance with the exception which is carved out in s. 68(1) for "salary, wages or other remuneration", this money is not divisible among a bankrupt's creditors and does not vest in the trustee. The right of action is the means of attaining these damages and is similarly exempt. [emphasis added]

The amount owing to the Claimants in respect of compensation in lieu of notice constitutes wages which were not paid to the claimants and in respect of which the directors are personally liable under section 131 of the Ontario *Business Corporations Act*.

The Claimants reserve the right to make further submissions if and when that should become necessary.

ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR. )  
JUSTICE H.J. WILTON-SOBER ) MONDAY, THE 1ST DAY OF ~~the~~  
 ) DECEMBER, 2008

BETWEEN:

ROBERTO COSTANTINO and TONY WONG

Plaintiffs

- and -

SKD AUTOMOTIVE GROUP MILTON DIVISION

Defendant

**ORDER**

THIS MOTION, made by the plaintiffs, for an order for judgment enforcing the settlement agreement reached between the parties was heard this day at Toronto, Ontario.

ON READING the Affidavit of William Galè, and hearing the submissions of counsel for the Plaintiffs, no one appearing for the Defendant, although they were served with the Motion Record herein:

1. THIS COURT ORDERS AND ADJUDGES that the Defendant shall pay to Roberto Costantino:
  - a) the sum of \$50,000.00 in general damages;



- b) the sum of \$38,000.00 for compensation in lieu of notice; and
  - c) the sum of \$1,280.00 in interest;
2. **THIS COURT ORDERS AND ADJUDGES** that the Defendant shall pay to Tony Wong:
- a) the sum of \$30,000.00 in general damages; and
  - b) the \$17,000.00 for compensation in lieu of notice.
3. **THIS COURT ORDERS AND ADJUDGES** that the Defendant shall pay to the Plaintiff Roberto Costantino the sum of \$15,000.00 in costs.
4. **THIS COURT ORDERS AND ADJUDGES** that the Defendant shall pay to the Plaintiff Tony Wong the sum of \$15,000.00 in costs.
5. **THIS COURT ORDERS AND ADJUDGES** that the Defendant shall provide to the Plaintiff Roberto Costantino the following on its letterhead, signed by the appropriate officer of the Defendant:
- a) reference letter and reversal of the termination letter in the form and content of the draft letters in the attached Schedule.
6. **THIS COURT ORDERS AND ADJUDGES** that the Defendant shall provide to the Plaintiff Tony Wong the following on its letterhead, signed by the appropriate officer of the Defendant:
- a) reference letter and reversal of the termination letter in the form and content of the draft letters in the attached Schedule.

7. THIS COURT ORDERS AND ADJUDGES that the Defendant shall cause:

a) a memo in the form and content of the memo in the attached Schedule, to be signed by a senior officer of the Defendant and posted in its Milton and Brampton plants; and

b) a revised Record of Employment to be issued to the Plaintiffs stating that their dismissals were without cause.

8. THIS COURT ORDERS AND ADJUDGES that the Defendant shall pay to the Plaintiffs, Roberto Costantino and Tony Wong, their costs for this motion on a substantial indemnity basis, fixed at \$ 10,000. *HNS*

9. THIS JUDGMENT BEARS INTEREST <sup>*in accordance with the*</sup> ~~at the rate of~~                      per cent *HNS*  
~~per year commencing on~~ December 1, 2008. *Court of Justice Act.*

*Let the order issue in accordance with its terms*  
*"G. Don - h/T"*  
\_\_\_\_\_  
Justice

IN THE MATTER OF THE COMPANIES CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED




IN THE MATTER OF THE PLAN OF COMPROMISE OR  
ARRANGEMENT OF NMC CANADA, INC. AND  
2515080 NOVA SCOTIA COMPANY

Applicants

PROOF OF CLAIM

THIS PROOF OF CLAIM IS NOT TO BE USED FOR CLAIMS AGAINST ANY OF  
SKD COMPANY, NMC CANADA INC. OR 2515080 NOVA SCOTIA COMPANY OR  
ANY CLAIM AGAINST A DIRECTOR OR OFFICER THAT IS NOT A D&O CLAIM  
AS DEFINED IN THE CLAIMS PROCESS ORDER

A. PARTICULARS OF CLAIMANT:

1. Full Legal Name of Claimant: TONY WONG.
2. Full Mailing Address of Claimant:  

3. Telephone Number:   
Facsimile Number: \_\_\_\_\_  
Attention (Contact Person): \_\_\_\_\_  
E-mail address: 

B. PROOF OF CLAIM

I. ANDREW HATNAY ~~[name of Claimant or~~  
Representative of the Claimant], of KOSKIE MINSKY LLP

do hereby certify:

(a) that I  [tick one]

(In the case of an individual which is the Claimant) I am the Claimant in respect of the claim set forth in (c) below; OR

(In the case of a corporation which is the Claimant) am

\_\_\_\_\_ (state position or title)

of \_\_\_\_\_ (name of Claimant)

(b) that I have knowledge of all the circumstances connected with the Claim referred to below;

(c) that the Claimant asserts a D&O Claim against one or more of the Directors and Officers of :

(i) SKD Company

(ii) NMC Canada Inc.

(iii) 2515080 Nova Scotia Company

in the amount of Cdn\$ 17,000 [insert \$ value of D&O Claim]

Name of Director(s) and/or Officer(s) in respect of whom a D&O Claim is being filed: SEE BELOW

(If you wish to assert a D&O Claim against any Director or Officer of more than one Debtor, please provide a separate Proof of Claim for each of the applicable Debtors. If D&O Claims have been converted into Canadian dollars, the conversion rate used should be the Bank of Canada nominal spot rate on the Claims Record Date. Particulars of the original currency denomination and the conversion rate used should be provided as part of this Proof of Claim.)

- VYTAŠ P. AMBUTAS
- JOHN CHEN
- KURT R. SWANSON
- JAMES J. BARRY
- JOHN C. WOLF

**C. PARTICULARS OF CLAIM:**

The particulars of the Claimant's D&O Claim are attached.

SEE APPENDIX A

(Provide all particulars of the D&O Claim, including the name of each Director and Officer against whom the Claimant is claiming and a description and relevant dates of the transaction(s) or agreement(s) giving rise to the D&O Claim. All supporting documentation must be attached.)

**D. FILING OF CLAIM**

This Proof of Claim must be received by the Receiver by no later than 5:00 p.m. (Toronto Time) on December 11, 2009, by courier, personal delivery or facsimile transmission at the following address:

**By Mail:**

RSM Richter Inc., as Receiver of SKD Company, NMC Canada Inc. and  
2515080 Nova Scotia Company  
200 King Street West  
Suite 1100  
Toronto, Ontario M5H 3T4

Attention: Lana Bezner

**By Courier or Personal Delivery:**

RSM Richter Inc., as Receiver of SKD Company, NMC Canada Inc. and  
2515080 Nova Scotia Company  
200 King Street West  
Suite 1100  
Toronto, Ontario M5H 3T4

Attention: Lana Bezner

**By Fax:**

RSM Richter Inc., as Receiver of SKD Company, NMC Canada Inc. and  
2515080 Nova Scotia Company

Attention: Lana Bezner

Fax No.: (416) 932-6200  
Telephone: (416) 932-6009

Failure to file your Proof of Claim as directed by 5:00 p.m. on December 11, 2009 (Toronto Time) will result in your D&O Claim being barred and forever extinguished and you will be prohibited from making or enforcing such D&O Claim against the applicable Directors or Officers (subject to the terms of the Claims Process Order).

Dated at TORONTO, this 11 day of DECEMBER, 2009.

[Insert Name of Claimant: TONY WANG]

Per: ANDREW HATNAY  
Name

Signature: 

## Appendix A

### Summary of Claim of Tony Wong and Rob Costantino

Robert Costantino and Tony Wong (the "Claimants") are former employees of SKD Company's Milton facility and have obtained a judgment pursuant to an order of the Ontario Superior Court of Justice dated October 1, 2008 (copy attached).

Pursuant to the terms of that order, the court ordered the following payments:

- To Robert Costantino: a) \$50,000 in general damages; b) \$38,000 for compensation in lieu of notice and c) \$1,280 in interest.
- To Tony Wong: a) \$30,000 in general damages and b) \$17,000 for compensation in lieu of notice.

The Claimants claim from the directors the sums representing compensation in lieu of notice. As noted above, for Robert Costantino the amount owing is \$30,000 and for Tony Wong the amount owing is \$17,000.

The Supreme Court of Canada has made clear that an amount owing to an employee for pay in lieu of notice constitutes the wages of the employee. In *Wallace v. United Grain Growers Limited* [1997] 3 S.C.R. 701 the Supreme Court stated:

65 As I see the matter, the underlying nature of the damages awarded in a wrongful dismissal action is clearly akin to the "wages" referred to in s. 68(1). In the absence of just cause, an employer remains free to dismiss an employee at any time provided that reasonable notice of the termination is given. In providing the employee with reasonable notice, the employer has two options: either to require the employee to continue working for the duration of that period or to give the employee pay in lieu of notice: D. Harris, *Wrongful Dismissal* (1989 (loose-leaf)), at p. 3-10. There can be no doubt that if the employer opted to require the employee to continue working during the notice period, his or her earnings during this time would constitute wages or salary under s. 68(1) of the Act. *The only difference between these earnings and pay in lieu of notice is that the employee receives a lump sum payment instead of having that sum spread out over the course of the notice period. The nature of those funds remains the same* and thus s. 68(1) will also apply in these circumstances.

66 In the event that an employee is wrongfully dismissed, the measure of damages for wrongful dismissal is the salary that the employee would have earned had the employee worked during the period of notice to which he or she was entitled: *Sylvester v. British Columbia*, [1997] 2 S.C.R. 315. *The fact that this sum is awarded as damages at trial in no way alters the fundamental character of the money.* An award of damages in a wrongful dismissal action is in reality the wages that the employer ought to have paid the employee either

over the course of the period of reasonable notice or as pay in lieu of notice. Therefore, in accordance with the exception which is carved out in s. 68(1) for "salary, wages or other remuneration", this money is not divisible among a bankrupt's creditors and does not vest in the trustee. The right of action is the means of attaining these damages and is similarly exempt. [emphasis added]

The amount owing to the Claimants in respect of compensation in lieu of notice constitutes wages which were not paid to the claimants and in respect of which the directors are personally liable under section 131 of the Ontario *Business Corporations Act*.

The Claimants reserve the right to make further submissions if and when that should become necessary.



ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR. )  
JUSTICE H.J. WILTON-SOBER ) MONDAY, THE 1ST DAY OF *stand*  
 ) DECEMBER, 2008

BETWEEN:

ROBERTO COSTANTINO and TONY WONG

Plaintiffs

- and -

SKD AUTOMOTIVE GROUP MILTON DIVISION

Defendant

ORDER

THIS MOTION, made by the plaintiffs, for an order for judgment enforcing the settlement agreement reached between the parties was heard this day at Toronto, Ontario.

ON READING the Affidavit of William Gale, and hearing the submissions of counsel for the Plaintiffs, no one appearing for the Defendant, although they were served with the Motion Record herein:

1. THIS COURT ORDERS AND ADJUDGES that the Defendant shall pay to Roberto Costantino:
  - a) the sum of \$50,000.00 in general damages;

- b) the sum of \$38,000.00 for compensation in lieu of notice; and
  - c) the sum of \$1,280.00 in interest;
2. **THIS COURT ORDERS AND ADJUDGES** that the Defendant shall pay to Tony Wong:
- a) the sum of \$30,000.00 in general damages; and
  - b) the \$17,000.00 for compensation in lieu of notice.
3. **THIS COURT ORDERS AND ADJUDGES** that the Defendant shall pay to the Plaintiff Roberto Costantino the sum of \$15,000.00 in costs.
4. **THIS COURT ORDERS AND ADJUDGES** that the Defendant shall pay to the Plaintiff Tony Wong the sum of \$15,000.00 in costs.
5. **THIS COURT ORDERS AND ADJUDGES** that the Defendant shall provide to the Plaintiff Roberto Costantino the following on its letterhead, signed by the appropriate officer of the Defendant:
- a) reference letter and reversal of the termination letter in the form and content of the draft letters in the attached Schedule.
6. **THIS COURT ORDERS AND ADJUDGES** that the Defendant shall provide to the Plaintiff Tony Wong the following on its letterhead, signed by the appropriate officer of the Defendant:
- a) reference letter and reversal of the termination letter in the form and content of the draft letters in the attached Schedule.

7. THIS COURT ORDERS AND ADJUDGES that the Defendant shall cause:

a) a memo in the form and content of the memo in the attached Schedule, to be signed by a senior officer of the Defendant and posted in its Milton and Brampton plants; and

b) a revised Record of Employment to be issued to the Plaintiffs stating that their dismissals were without cause.

8. THIS COURT ORDERS AND ADJUDGES that the Defendant shall pay to the Plaintiffs, Roberto Costantino and Tony Wong, their costs for this motion on a substantial indemnity basis, fixed at \$ 10,000. *HWS*

9. THIS JUDGMENT BEARS INTEREST <sup>*in accordance with the*</sup> at the rate of          per cent *HWS*  
~~per year commencing on December 1, 2008.~~ *Court of Justice Act.*

*Let the order issue in accordance with its terms*

*"As Hon - Justice"*

Justice

# Appendix “F”

**IN THE MATTER OF THE COMPANIES CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED**

**IN THE MATTER OF THE PLAN OF COMPROMISE OR  
ARRANGEMENT OF NMC CANADA, INC. AND  
2515080 NOVA SCOTIA COMPANY**

Applicants

**NOTICE OF REVISION OR DISALLOWANCE**

**Name of Claimant:** Roberto Costantino

**Reference #:** 087

Pursuant to paragraph 4 of the Order dated November 4, 2009, as amended by the Order dated February 4, 2010 (the "Claims Process Order") RSM Richter Inc., in its capacity as the court-appointed Receiver of SKD Company, NMC Canada Inc. and 2515080 Nova Scotia Company (each, a "Debtor"), hereby gives you notice that it has reviewed the Proof of Claim against the Directors and/or Officers of SKD Company filed by Roberto Costantino and has revised or rejected such D&O Claim as follows:

	<b>D&amp;O Claim as Submitted</b>	<b>D&amp;O Claim as Accepted</b>
Total Claim	\$38,000	\$0

Reasons for any revision or disallowance:

The Claims Process Order set out a process for the filing of claims against Directors or Officers of any of the Debtors, but was not a process requesting the filing of a Claim against any of the Debtors. Where not otherwise noted, capitalized terms are as defined in the Claims Process Order.

You have filed a Claim for compensation in lieu of notice (i.e. termination) against Directors and Officers. It is the Receiver's understanding that, under applicable law, Directors and Officers are not liable for payment of any termination obligations that may be owed to you by SKD Company. Your Proof of Claim sets out an alleged basis for claims against the Directors and/or Officers; however, for the reasons set out below, it is not a D&O Claim as defined in the Claims Process Order.

We have reviewed the alleged basis for your claim and we do not agree with it.

The caselaw that you refer to (the "*Wallace*" decision) dealt with, amongst other things, the issue of whether termination and severance pay should be considered "wages" generally, but did not deal with the issue of whether directors ought to be liable for such "wages" at all.

We refer to Part XX of the Ontario *Employment Standards Act* ("ESA"), with specific reference to section 81(3) of the ESA, which provides as follows: "The wages that directors are liable for under this Part are wages, not including termination pay and

severance pay as they are provided for under this Act or an employment contract and not including amounts that are deemed to be wages under the Act”.

The imposition of director’s liability for termination and severance pay when it arises as common law pay in lieu of notice has been expressly dealt with in another case (*Barrette v. Crabtree Estate*, [1993] 1 S.C.R 1027). In that case, the Supreme Court of Canada held that directors are not personally liable for such termination and severance pay. Under employment standards legislation, while termination and severance pay is often included within the definition of “wages” for many purposes within the legislation, it is typically excluded as part of the “wages” for which directors may be personally liable. Accordingly, the mere fact that a court has held that termination and severance pay may be considered “wages” does not, in itself, provide any guidance or support for the proposition that directors ought to be held liable for such wages; that is a separate issue that has been addressed in cases which you have not cited in your Proof of Claim.

As such, your D&O Claim has been disallowed in its entirety.

If you do not agree with this Notice of Revision or Disallowance and you intend to dispute it, you must, **within ten Business Days of the date of deemed receipt of this Notice of Revision or Disallowance**, deliver a Notice of Dispute to the Receiver by courier, personal delivery or facsimile transmission to the addresses or fax number indicated herein. The form of Notice of Dispute is attached to this Notice. If a Notice of Dispute is not delivered in accordance with this Notice and the Claims Process Order, the value of the within referenced D&O Claim shall be deemed to be as set out in this Notice of Revision or Disallowance.

Address for Service of Notice of Dispute:

**By Mail:**

RSM Richter Inc., as Receiver of SKD Company, NMC Canada Inc. and  
2515080 Nova Scotia Company  
200 King Street West  
Suite 1100  
Toronto, Ontario M5H 3T4

Attention: Lana Bezner

**By Courier or Personal Delivery:**

RSM Richter Inc., as Receiver of SKD Company, NMC Canada Inc. and  
2515080 Nova Scotia Company  
200 King Street West  
Suite 1100  
Toronto, Ontario M5H 3T4

Attention: Lana Bezner

**By Fax:**

RSM Richter Inc., as Receiver of SKD Company, NMC Canada Inc. and  
2515080 Nova Scotia Company

Attention: Lana Bezner

Fax No.: (416) 932-6200  
Telephone: (416) 932-6009

**IF YOU FAIL TO TAKE ACTION WITHIN THE PRESCRIBED TIME PERIOD, THIS  
NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.**

Dated at Toronto, this 8<sup>th</sup> day of June, 2010.



**RSM RICHTER INC.,**

**In its capacity as court-appointed Receiver of the Debtors, SKD COMPANY, NMC  
CANADA INC. AND 2515080 NOVA SCOTIA COMPANY**

**IN THE MATTER OF THE COMPANIES CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED**

**IN THE MATTER OF THE PLAN OF COMPROMISE OR  
ARRANGEMENT OF NMC CANADA, INC. AND  
2515080 NOVA SCOTIA COMPANY**

Applicants

**NOTICE OF REVISION OR DISALLOWANCE**

**Name of Claimant:** Tony Wong

**Reference #:** 086

Pursuant to paragraph 4 of the Order dated November 4, 2009, as amended by the Order dated February 4, 2010 (the "Claims Process Order") RSM Richter Inc., in its capacity as the court-appointed Receiver of SKD Company, NMC Canada Inc. and 2515080 Nova Scotia Company (each, a "Debtor"), hereby gives you notice that it has reviewed the Proof of Claim against the Directors and/or Officers of SKD Company filed by Tony Wong and has revised or rejected such D&O Claim as follows:

	<b>D&amp;O Claim as Submitted</b>	<b>D&amp;O Claim as Accepted</b>
Total Claim	\$17,000	\$0

Reasons for any revision or disallowance:

The Claims Process Order set out a process for the filing of claims against Directors or Officers of any of the Debtors, but was not a process requesting the filing of a Claim against any of the Debtors. Where not otherwise noted, capitalized terms are as defined in the Claims Process Order.

You have filed a Claim for compensation in lieu of notice (i.e. termination) against Directors and Officers. It is the Receiver's understanding that, under applicable law, Directors and Officers are not liable for payment of any termination obligations that may be owed to you by SKD Company. Your Proof of Claim sets out an alleged basis for claims against the Directors and/or Officers; however, for the reasons set out below, it is not a D&O Claim as defined in the Claims Process Order.

We have reviewed the alleged basis for your claim and we do not agree with it.

The case law that you refer to (the "*Wallace*" decision) dealt with, amongst other things, the issue of whether termination and severance pay should be considered "wages" generally, but did not deal with the issue of whether directors ought to be liable for such "wages" at all.

We refer to Part XX of the Ontario *Employment Standards Act* ("ESA"), with specific reference to section 81(3) of the ESA, which provides as follows: "The wages that directors are liable for under this Part are wages, not including termination pay and



severance pay as they are provided for under this Act or an employment contract and not including amounts that are deemed to be wages under the Act”.

The imposition of director’s liability for termination and severance pay when it arises as common law pay in lieu of notice has been expressly dealt with in another case (*Barrette v. Crabtree Estate*, [1993] 1 S.C.R. 1027). In that case, the Supreme Court of Canada held that directors are not personally liable for such termination and severance pay. Under employment standards legislation, while termination and severance pay is often included within the definition of “wages” for many purposes within the legislation, it is typically excluded as part of the “wages” for which directors may be personally liable. Accordingly, the mere fact that a court has held that termination and severance pay may be considered “wages” does not, in itself, provide any guidance or support for the proposition that directors ought to be held liable for such wages. That is a separate issue that has been addressed in cases which you have not cited in your Proof of Claim.

As such, your D&O Claim has been disallowed in its entirety.

If you do not agree with this Notice of Revision or Disallowance and you intend to dispute it, you must, **within ten Business Days of the date of deemed receipt of this Notice of Revision or Disallowance**, deliver a Notice of Dispute to the Receiver by courier, personal delivery or facsimile transmission to the addresses or fax number indicated herein. The form of Notice of Dispute is attached to this Notice. If a Notice of Dispute is not delivered in accordance with this Notice and the Claims Process Order, the value of the within referenced D&O Claim shall be deemed to be as set out in this Notice of Revision or Disallowance.

Address for Service of Notice of Dispute:

**By Mail:**

RSM Richter Inc., as Receiver of SKD Company, NMC Canada Inc. and  
2515080 Nova Scotia Company  
200 King Street West  
Suite 1100  
Toronto, Ontario M5H 3T4

Attention: Lana Bezner

**By Courier or Personal Delivery:**

RSM Richter Inc., as Receiver of SKD Company, NMC Canada Inc. and  
2515080 Nova Scotia Company  
200 King Street West  
Suite 1100  
Toronto, Ontario M5H 3T4

Attention: Lana Bezner

**By Fax:**

RSM Richter Inc., as Receiver of SKD Company, NMC Canada Inc. and  
2515080 Nova Scotia Company

Attention: Lana Bezner

Fax No.: (416) 932-6200  
Telephone: (416) 932-6009

**IF YOU FAIL TO TAKE ACTION WITHIN THE PRESCRIBED TIME PERIOD, THIS  
NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.**

Dated at Toronto, this 8<sup>th</sup> day of June, 2010.



**RSM RICHTER INC.,**

**In its capacity as court-appointed Receiver of the Debtors, SKD COMPANY, NMC  
CANADA INC. AND 2515080 NOVA SCOTIA COMPANY**

# Appendix "G"

**KOSKIE  
MINSKY** LLP  
BARRISTERS & SOLICITORS

June 22, 2010

**Via Facsimile**

**Andrew J. Hatnay**  
Direct Dial: 416-595-2083  
Direct Fax: 416-204-2872  
ahatnay@kmlaw.ca

RSM Richter Inc. as Receiver of SKD Company,  
NMC Canada, Inc. and 2515080 Nova Scotia Company  
200 King Street West  
11th Floor, P.O. Box 48  
Toronto, ON M5H 3T4

**Attention: Robert Kofman / Lana Bezner**

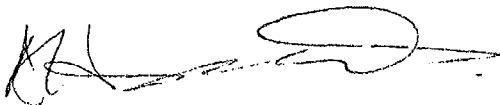
Dear Ms. Bezner:

**Re: 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  
Directors Claims Process  
Court File No. 09-CL-7960  
Our File No. 09/0575**

Enclosed please find the Notice of Dispute on behalf of Robert Constantino and Tony Wong provided to you in accordance with the Directors' Claims Process Order of the Ontario Superior Court of Justice dated November 4, 2009.

Yours truly,

**KOSKIE MINSKY**



Andrew J. Hatnay

AJH/jc  
Enclosure

cc: Clients

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 DISPUTE**

Name of Claimant: Roberto Constantino

Or

Name of Director/Officer: Vytas P. Ambutas  
John Chen  
Kurt R. Swanson  
James J. Barry  
John C. Wolf

Reference #: 087

Pursuant to paragraph 15 of the Claims Process Order dated November 4, 2009, the Claimant, Director or Officer hereby notifies the Receiver of its intention to dispute the **Notice of Revision or Disallowance dated June 8, 2010** issued by RSM Richter Inc., in its capacity as the court-appointed Receiver of SKD Company, NMC Canada Inc. and 2515080 Nova Scotia Company.

*Reasons for Dispute*

The claim of the Claimant is valid against the directors of the Applicants pursuant to section 131 of the Ontario *Business Corporations Act* which states:

131. The directors of a corporation are jointly and severally liable to the employees of the corporation **for all debts not exceeding six months' wages** that become payable while they are directors for services performed for the corporation and for the vacation pay accrued while they are directors for not more than twelve months under the Employment Standards Act, and the regulations thereunder, or under any collective agreement made by the corporation. R.S.O. 1990, c. B.16, s. 131 (1). [emphasis added]

Section 131 of the OBCA makes directors personally liable for all amounts owing to employees including unpaid wages. As set out in the previously filed Proof of Claim, an amount for compensation in lieu of notice constitutes the wages of the Claimant. Accordingly, the directors are liable to the Claimant for that amount.

The reference in the Notice of Revision or Disallowance to the Ontario *Employment Standards Act* ("ESA") and the definition of "wages" in that statute is not applicable. Although the definition of "wages" in the ESA excludes statutory termination pay and severance pay for the purpose of the director liability provisions in the ESA, as noted above, the Claimant is claiming against the directors under section 131 of the OBCA, not the ESA. The definition of "wages" under the ESA does not apply to the OBCA.

Further, the reference in the Notice of Revision or Disallowance to the *Barrette v. Crabtree Estate* case is also not applicable. *Barrette* dealt with the issue of whether damages payable to an employee for wrongful dismissal are a liability of directors under the *Canada Business Corporations Act*. The amount claimed by the Claimant are "for compensation in lieu of notice" as expressly set out in the court order of Justice Wilton-Siegel of December 1, 2008 which in turn reflects a settlement between the Claimant and the company. That court order contains a separate amount for "general damages" which is not being claimed by the Claimant against the directors. Accordingly, *Barrette* is inapplicable.

The Claimant reserves the right to make further submissions if and when that should become necessary.

Signature of Individual: Roberto Constantino to Roberto Constantino

Date: June 22, 2010

(Please print name): Roberto Constantino

Telephone Number: [REDACTED]

Facsimile Number: [REDACTED]

Full Mailing Address: [REDACTED]

E-mail Address: [REDACTED]

**THIS FORM AND SUPPORTING DOCUMENTATION MUST BE RETURNED BY COURIER, PERSONAL DELIVERY OR FACSIMILE TRANSMISSION TO THE ADDRESS INDICATED BELOW WITHIN 10 BUSINESS DAYS OF THE DATE OF DEEMED RECEIPT OF THE NOTICE OF ACCEPTANCE OR NOTICE OF REVISION OR DISALLOWANCE.**

Address for Service of Dispute Notices:

**By Mail:**

RSM Richter Inc., as Receiver of SKD Company, NMC Canada Inc. and  
2515080 Nova Scotia Company  
200 King Street West  
Suite 1100  
Toronto, Ontario M5H 3T4

Attention: Robert Kofman / Lana Bezner

**By Courier or Personal Delivery:**

RSM Richter Inc., as Receiver of SKD Company, NMC Canada Inc. and  
2515080 Nova Scotia Company  
200 King Street West  
Suite 1100  
Toronto, Ontario M5H 3T4

Attention: Robert Kofman / Lana Bezner

**By Fax:**

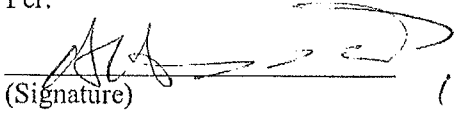
RSM Richter Inc., as Receiver of SKD Company, NMC Canada Inc. and  
2515080 Nova Scotia Company

Attention: Robert Kofman / Lana Bezner

Fax No.: (416) 932-6200  
Telephone: (416) 932-6009

Executed as of the above-written date by

Per:

  
(Signature)

ARC DREW HATWAY  
(Print Name)

*conceded to Rbed Constantine*

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 DISPUTE**

Name of Claimant: Tony Wong

Or

Name of Director/Officer: Vytas P. Ambutas  
John Chen  
Kurt R. Swanson  
James J. Barry  
John C. Wolf

Reference #: 086

Pursuant to paragraph 15 of the Claims Process Order dated November 4, 2009, the Claimant, Director or Officer hereby notifies the Receiver of its intention to dispute the **Notice of Revision or Disallowance dated June 8, 2010** issued by RSM Richter Inc., in its capacity as the court-appointed Receiver of SKD Company, NMC Canada Inc. and 2515080 Nova Scotia Company.

*Reasons for Dispute*

The claim of the Claimant is valid against the directors of the Applicants pursuant to section 131 of the Ontario *Business Corporations Act* which states:

131. The directors of a corporation are jointly and severally liable to the employees of the corporation **for all debts not exceeding six months' wages** that become payable while they are directors for services performed for the corporation and for the vacation pay accrued while they are directors for not more than twelve months under the Employment Standards Act, and the regulations thereunder, or under any collective agreement made by the corporation. R.S.O. 1990, c. B.16, s. 131 (1). [emphasis added]

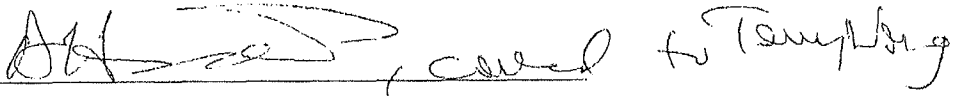
Section 131 of the OBCA makes directors personally liable for all amounts owing to employees including unpaid wages. As set out in the previously filed Proof of Claim, an amount for compensation in lieu of notice constitutes the wages of the Claimant. Accordingly, the directors are liable to the Claimant for that amount.



The reference in the Notice of Revision or Disallowance to the Ontario *Employment Standards Act* ("ESA") and the definition of "wages" in that statute is not applicable. Although the definition of "wages" in the ESA excludes statutory termination pay and severance pay for the purpose of the director liability provisions in the ESA, as noted above, the Claimant is claiming against the directors under section 131 of the OBCA, not the ESA. The definition of "wages" under the ESA does not apply to the OBCA.

Further, the reference in the Notice of Revision or Disallowance to the *Barrette v. Crabtree Estate* case is also not applicable. *Barrette* dealt with the issue of whether damages payable to an employee for wrongful dismissal are a liability of directors under the Canada *Business Corporations Act*. The amount claimed by the Claimant are "for compensation in lieu of notice" as expressly set out in the court order of Justice Wilton-Siegel of December 1, 2008 which in turn reflects a settlement between the Claimant and the company. That court order contains a separate amount for "general damages" which is not being claimed by the Claimant against the directors. Accordingly, *Barrette* is inapplicable.


The Claimant reserves the right to make further submissions if and when that should become necessary.

Signature of Individual: 

Date: June 22, 2010

(Please print name): Tony Wong

Telephone Number:  Facsimile Number: 

Full Mailing Address: 

E-mail Address: 

**THIS FORM AND SUPPORTING DOCUMENTATION MUST BE RETURNED BY COURIER, PERSONAL DELIVERY OR FACSIMILE TRANSMISSION TO THE ADDRESS INDICATED BELOW WITHIN 10 BUSINESS DAYS OF THE DATE OF DEEMED RECEIPT OF THE NOTICE OF ACCEPTANCE OR NOTICE OF REVISION OR DISALLOWANCE.**

Address for Service of Dispute Notices:

**By Mail:**  
RSM Richter Inc., as Receiver of SKD Company, NMC Canada Inc. and  
2515080 Nova Scotia Company  
200 King Street West  
Suite 1100  
Toronto, Ontario M5H 3T4

Attention: Robert Kofman / Lana Bezner

**By Courier or Personal Delivery:**

RSM Richter Inc., as Receiver of SKD Company, NMC Canada Inc. and  
2515080 Nova Scotia Company  
200 King Street West  
Suite 1100  
Toronto, Ontario M5H 3T4

Attention: Robert Kofman / Lana Bezner

**By Fax:**


RSM Richter Inc., as Receiver of SKD Company, NMC Canada Inc. and  
2515080 Nova Scotia Company

Attention: Robert Kofman / Lana Bezner

Fax No.: (416) 932-6200  
Telephone: (416) 932-6009

Executed as of the above-written date by

Per:

; counsel to Tony Wong

(Signature)

ANDREW HATWAY;

(Print Name)

**TAB 3**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

**THE HONOURABLE** ) **MONDAY, THE 30th**  
 )  
**JUSTICE CAMPBELL** ) **DAY OF MAY, 2011**

**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**

**ORDER**

**THIS MOTION** made by RSM Richter Inc. ("**Richter**"), in its capacity as the receiver (the "**Receiver**") of SKD Company ("**SKD**"), NMC Canada, Inc. ("**NMC**") and 2515 Nova Scotia Company ("**2515**" and collectively with SKD and NMC, the "**Companies**") for an Order, *inter alia*, authorizing a distribution by the Receiver, as escrow agent, of certain funds held in escrow and extinguishing certain unresolved claims against the directors and officers of SKD, was heard this day at 393 University Avenue, Toronto, Ontario;

**ON READING** the Fourth report of the Receiver dated May 20, 2011 (the "**Fourth Report**"), and on hearing the submissions of counsel for the Receiver, the Companies and their respective directors and officers, Honda of America Mfg. Inc., Honda Manufacturing of Indiana, LLC and Honda Manufacturing of Alabama, LLC ("**Honda**"), Chrysler Group LLC ("**Chrysler**") and

Ford Motor Company (“**Ford**” and collectively with Honda and Chrysler, the “**Customers**”), and counsel for Messrs Constantino and Wong, no one appearing for any other person on the Service List, although duly served as appears from the Affidavit of Service of Suasn Slaney sworn May 20, 2011, filed;

### **Service**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged such that this Motion is properly returnable today and that further service thereof is hereby dispensed with.

### **Distribution**

2. **THIS COURT AUTHORIZES AND DIRECTS** the Receiver, in its capacity as escrow agent (the “**Escrow Agent**”) pursuant to an escrow agreement dated March 19, 2009, among the Companies, SKD Automotive Group, Limited Partnership, the Customers and General Motors Corporation (the “**Escrow Agreement**”), to distribute the surplus funds held in the Retention Escrow Account (as defined in the Fourth Report) in the amount of \$117,445 as follows:

- (a) \$87,809 to the receivership estate account of the Companies; and
- (b) \$29,636 to Tang Industries, Inc.

### **Extinguishment of Director and Officer Claims**

3. **THIS COURT ORDERS** that the claim of Mr. Cosantino in the amount of \$38,000 against the directors and officers of the Companies, as set out in Mr. Cosantino’s Proof of Claim dated December 11, 2009, filed in these proceedings, be and is hereby disallowed in its entirety

and is forever extinguished and released as a claim against such directors and officers, without prejudice to Mr. Cosantino's right to assert such claim as unsecured creditor in the bankruptcy of SKD.

4. **THIS COURT ORDERS** that the claim of Mr. Wong in the amount of \$17,000 against certain of the directors and officers of the Companies, as set out in Mr. Wong's Proof of Claim dated December 11, 2009, filed in these proceedings, be and is hereby disallowed in its entirety and is forever extinguished and released, without prejudice to Mr. Wong's right to assert such claim as unsecured creditor in the bankruptcy of SKD.

**Release of Director and Officer Charge**

5. **THIS COURT ORDERS** that the Directors' Charge created under the Order of this Court made in this proceeding on January 21, 2009, as amended by Order of this Court made in this proceeding on April 29, 2010, be and is hereby fully and finally terminated, discharged and released as of the date hereof.

**Receiver's Conduct and Activities**

6. **THIS COURT ORDERS** that the activities and conduct of the Receiver, as set out in the Fourth Report, be and are hereby approved.

**General**

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully

requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C.  
C-36, AS AMENDED

Court File No: 09-CL-7960

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NMC  
CANADA, INC. AND 2515080 NOVA SCOTIA COMPANY

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**ORDER  
(Motion returnable May 30, 2011)**

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Receiver



**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, C.C-36, AS AMENDED**

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

***ONTARIO*  
SUPERIOR COURT OF JUSTICE  
Commercial List**

Proceeding commenced at Toronto

**MOTION RECORD  
(Returnable May 30, 2011)**

**GOODMANS LLP**

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