

RSM Richter

**Supplement to the Second Report of
RSM Richter Inc. as Court Appointed
Receiver of NMC Canada, Inc., 2515080
Nova Scotia Company and SKD
Company**

RSM Richter Inc.
Toronto, April 28, 2010

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**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**

**SUPPLEMENT TO THE SECOND REPORT OF RSM RICHTER INC.
AS COURT APPOINTED RECEIVER OF
NMC CANADA, INC., 2515080 NOVA SCOTIA COMPANY
AND SKD COMPANY**

April 28, 2010

1. INTRODUCTION

This report ("Report") supplements the Receiver's report dated April 21, 2010 ("Second Report"). A copy of the Second Report (without appendices) is attached as Appendix "A".

1.1 Defined Terms

Unless otherwise noted in this Report, all capitalized terms not otherwise defined herein have the meaning provided to them in the Second Report, the Initial Order, the Receivership Order and/or the Claims Procedure Order, as amended.

1.2 Purposes of this Report

The purposes of this Report are to:

- a) Update the Court regarding the only outstanding issue with respect to the repayment of the Canadian Customer Participations, being the request made by Comerica for a paragraph in the Court Order providing that any person with a claim against any of the repaid Canadian Customer Participations would be required to claim against the Customers before making any claim against Comerica;
- b) Update the Court on the status of the D&O Claims Process;
- c) Recommend that this Honourable Court grant an order reducing the Directors' Charge to \$285,000; and
- d) Recommend that this Honourable Court issue an order automatically reducing the Directors' Charge as each of the remaining claims in the D&O Claims Process is resolved or settled.

1.3 Terms of Reference

This Report is subject to the restrictions in the Second Report.

2. REPAYMENT OF CANADIAN CUSTOMER PARTICIPATIONS

Section 8.2 of the Second Report details that there was one outstanding issue related to the repayment of the Canadian Customer Participations, being the request by Comerica for a paragraph in the Court Order providing that any person with a claim against Comerica in respect of any repaid Canadian Customer Participations be required to claim against the Customers before claiming against Comerica. The Receiver understands that the Customers were not prepared to consent to this provision as it was their view that it is already addressed in the Participation Agreement and accordingly, they believe that additional language in a court order is unnecessary.

The Receiver understands that Comerica is no longer seeking such language in the Court order.

3. DIRECTORS' AND OFFICERS' CLAIMS PROCESS

As detailed in the Second Report, the Initial Order created a \$3 million Directors' Charge. Further details related to the D&O Claims Process are provided in Section 4 of the Second Report.

3.1 Reduction of the Directors' Charge

As detailed in Section 4 of the Second Report, 83 claims totalling approximately \$2.019 million were filed in the D&O Claims Process and 80 Notices totalling \$1.883 million were issued in respect of those claims. The majority of the Notices were issued on or about April 1, 2010. The Second Report provides the deadlines by which claimants were required to file Notices of Dispute - many of the deadlines had not passed as at the date of the Second Report.

The deadline for filing a Notice of Dispute has now passed for 79 claimants (representing approximately \$1.842 million) of the 80¹ claimants and no Notices of Dispute have been filed in respect of those claims. These claims are now barred pursuant to the Claims Procedure Order, as amended. The three claims for which Notices have not been issued have a face value of \$136,000 and the one claim for which the Notice of Dispute deadline has not passed has a face value of \$41,000.

Since the date of the Second Report, two additional employee claims totalling \$55,000 have been brought to the attention of the Receiver. It appears that these claims were in fact delivered to the Receiver's office on December 11, 2009. The Receiver is reviewing these claims and will communicate with the claimants shortly.

¹ The Notice of Dispute deadline for the 80th claim is April 29, 2010.

The Receiver recommends that the Directors' Charge be reduced to \$285,000, of which \$232,000 relates to the maximum amount required to satisfy all remaining claims filed in the D&O Claims Process and \$53,000 is for costs that may be incurred to deal with the resolution of unresolved claims.

The Receiver further recommends that the Directors' Charge be automatically reduced by the face value of the claim in question as each claim is resolved or settled.

4. RECOMMENDATION

Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.2 of this Report.

* * *

All of which is respectfully submitted,



**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**

RSM Richter

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

RSM Richter Inc.
Toronto, April 21, 2010

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Court File No.: 09-CL-7960

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

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

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

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

April 21, 2010

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 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) Provide background information about the Company, the CCAA proceedings and the receivership proceedings;
- b) Advise the Court of an offer submitted by Boutin Holdings Limited and subsequently assigned to 2240523 Ontario Inc. (the “Purchaser”) to purchase the Company’s property at 40 Holtby Avenue, Brampton (the “Brampton Property”), including the terms of the offer and the events leading to an agreement of purchase and sale between the Purchaser and the Receiver (the “Transaction”), which is subject to Court approval;
- c) Advise the Court of the status of the directors’ and officers’ claims process (“D&O Claims Process”) conducted by the Receiver pursuant to an order of the Court made on November 4, 2009, as amended;
- d) Summarize the funds held by the Receiver in connection with these proceedings;
- e) Summarize the rationale for bankrupting the Company but continuing the receivership proceedings; and
- f) Recommend that this Honourable Court make an order:
 - Approving the Transaction and authorizing the Receiver to execute such documents and take such additional steps as are necessary to complete Transaction;
 - Vesting in the Purchaser, as of closing, title to the Brampton Property, free and clear of all liens, charges, security interests and other encumbrances;
 - Authorizing the Receiver to enter into certain Canadian and US disbursement agreements to be entered into among the Company, SKD Automotive Group, Limited Partnership (“SKD AG”), the Customers¹, General Motors LLC (“GM”), the Receiver and Richter in its capacity as disbursing agent, and authorizing Richter to act as disbursing agent in accordance with such agreements;

¹ References to “Customers” include Ford Motor Company (“Ford”), Chrysler Canada Inc. and Chrysler Group LLC (jointly, “Chrysler”) and Honda of America Mfg. Inc., Honda Manufacturing of Indiana, LLC and Honda Manufacturing of Alabama, LLC (collectively, “Honda”).

- Directing the Receiver to make the following distributions:
 - i. The Canadian dollar equivalent of approximately US\$11.315 million, plus interest thereon of approximately US\$629,000, to repay the “participations” funded by the Customers on a subordinated secured basis under the Comerica Bank (“Comerica”) facilities to fund the Company’s operations (the “Canadian Customer Participations”);
 - ii. The Canadian dollar equivalent of US\$90,373 to SKD US (as defined in Section 2 below) for amounts that it paid to Comerica on the Company’s behalf;
 - iii. \$25,773 in satisfaction of a claim by Ready Machinery & Equipment (Canada) Inc. (“Ready Machinery”) secured by a lien pursuant to the Repairs and Storage Liens Act (“RSLA”) against the Company’s 1000 Ton Verson 108-72 Press (s/n 25917) (the “RSLA Claim”); and
 - iv. \$45,500 in satisfaction of a secured claim by Paccar Leasing (“Paccar”);
- Authorizing the Receiver to assign each of SKD’s partners and SKD into bankruptcy with Richter acting as the trustee in bankruptcy in each case;
- Approving the fees and disbursements of the Receiver and its counsel, Goodmans LLP (“Goodmans”), as detailed in the affidavits of Robert Kofman, sworn April 21, 2010 (“Kofman Affidavit”), and Joseph Latham, sworn April 19, 2010 (“Latham Affidavit”), respectively; and
- Approving the Receiver’s actions and activities as described in this Report.

1.2 Currency

Unless otherwise noted, all currency references in this Report are to Canadian dollars. US dollars have been converted to Canadian dollars at par.

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.

Unless otherwise noted in this Report, all capitalized terms not defined herein have the meaning ascribed to them in the Initial Order and/or the Receivership Order.

2. BACKGROUND

NMC and 2515 are the general partners of SKD. The only assets and liabilities of NMC and 2515 relate to SKD. NMC and 2515 own 1% and 99% of SKD, respectively. In addition to SKD's Canadian manufacturing operations, automotive parts manufacturing was carried on by SKD L.P. 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 prior reports filed in the CCAA proceedings in its capacity as Monitor and in the receivership proceedings as Receiver. Copies of these reports can be found on Richter's website at www.rsmrichter.com.

3. REAL ESTATE

At the end of June, 2009 the Receiver engaged Colliers MaCaulay Nicolls (Ontario) Inc. ("Colliers") to market for sale the Brampton Property and the Company's real estate at 375 Wheelabrator Way, Milton, Ontario (the "Milton Property"). At the expiration of the listing term with Colliers at the end of January, 2010, the Receiver terminated Colliers and engaged CB Richard Ellis Limited ("CBRE") to continue to market the Brampton and Milton Properties. Throughout the marketing process there has been greater activity with respect to the Milton Property due to some of its unique features and its more desirable location. Although offers have been received for the Milton Property, the Receiver has not yet been able to complete a transaction for this property.

3.1 Brampton Property

Based on the advice of Colliers and other information available at the time of the Colliers listing agreement, the Brampton Property was originally listed for sale at \$5.934 million - there was very little interest at that price. In consultation with CBRE, in February, 2010 the listing price was reduced to \$3.9 million and CBRE commenced marketing the Brampton Property.

The Purchaser originally submitted an offer of \$2 million for the Brampton Property in November 2009. The Receiver did not counter this offer. On February 4, 2010 the Purchaser increased its offer to \$2.4 million. On April 6, 2010, following several rounds of “sign backs”, the Receiver accepted the Purchaser’s offer in the amount of \$2.54 million. The Transaction is subject to Court approval.

The Transaction contemplates a closing date of April 30, 2010 and is consistent with standard insolvency transactions, i.e. limited representations and warranties. On April 9, 2010, the Purchaser paid a deposit of \$400,000 to CBRE, which is currently being held in trust by it pending closing.

Throughout the negotiation process the Receiver has kept the Customers apprised of its dealings with respect to the sale of the Brampton Property. Each of the Customers has advised the Receiver that it supports the Transaction.

A copy of the Purchaser’s offer is attached as Appendix “C”.

3.2 Recommendation Re: Sale of the Brampton Property

The Receiver recommends that the Court issue an order approving the Transaction and vesting title in the Purchaser for the following reasons:

- The Brampton Property was exposed to the market by professional real estate firms for approximately nine months using traditional methods to sell commercial real estate;
- CBRE, which is familiar with the local real estate market and the specific attributes of the Brampton Property, has advised the Receiver that, based on their knowledge and on feedback received from other parties which have toured the Brampton Property, it is highly unlikely that a better offer would be presented for the Brampton Property in the near term;

- The Purchaser's offer is the highest and best received and is conditional only upon Court approval;
- In CBRE's view, the purchase price represents the current market value for this property given current market conditions for similar commercial real estate – there have not been many comparable commercial real estate transactions in the Greater Toronto Area West market since January, 2008;
- Ongoing costs associated with maintaining the Brampton Property would be eliminated – these total approximately \$35,000 per month; and
- The Customers support the Transaction. The Customers are the most significant secured and unsecured² creditors of the Company.

3.2.1 O'Brien Installations Ltd.

On October 28, 2009, Eccleston LLP ("Eccleston"), counsel to O'Brien Installations Ltd. ("O'Brien"), contacted Goodmans to advise of O'Brien's lien claim of approximately \$132,000 registered against the Brampton Property (the "O'Brien Claim"). Goodmans had requested that Eccleston provide it with supporting documentation in respect of the O'Brien Claim. As of the date of this Report, Goodmans had received a statement of claim and certificate of action, but had received no other documentation to support this claim. Goodmans intends to continue to follow up with Eccleston; however, pursuant to the terms of the Vesting Order, any claim in favour of O'Brien, if any, is to be transferred to and will be enforceable against the proceeds generated from the sale of the Brampton Property. The Receiver believes that this claim, if any, will not be prejudiced by the Transaction and that the merits of the claim can be dealt with in the future.

² The Customers funded approximately \$10.1 million to the Company on an unsecured basis during the CCAA proceedings to fund various payments that were made to the Company's employees under union settlement agreements approved by the Court on April 3, 2009.

4. DIRECTOR'S AND OFFICER'S CLAIMS PROCEDURE

The Initial Order created a \$3 million charge in favour of the Company's Directors and Officers (the "Directors' Charge") for claims arising under paragraphs 7(a), 9(a), 9(b) and 9(c) of the Initial Order.

On November 4, 2009 an order (the "Claims Procedure Order") was made by this Honourable Court approving the D&O Claims Process in order to allow the Receiver to determine whether claims existed against the Directors' Charge. An overview of the Receiver's activities related to the D&O Claims Process is as follows³:

- On November 6, 2009, the Receiver sent by ordinary mail a copy of the Proof of Claim Document Package to each person set out in the Claims Procedure Order, with the inadvertent exception of the parties on the service list. A copy of the Proof of Claim Document Package was also posted on the Receiver's website in accordance with the Claims Procedure Order, which required that the Receiver post notice of the D&O Claims Process on its website;
- As noted, the distribution of the Proof of Claim Document Package was inadvertently not sent to parties on the service list, as required by the Claims Procedure Order. Accordingly, on February 5, 2010 the Court issued an order extending the Claims Bar Date to February 26, 2010 ("Extended Claims Bar Date") for service list parties. The Proof of Claim Document Package was circulated to these parties on February 5, 2010;
- The Receiver placed notices in *The Globe and Mail (National Edition)* and *Automotive News*, which appeared on November 10, 2009 and November 16, 2009, respectively;
- The Receiver reviewed all claims received by the Claims Bar Date (and by the Extended Claims Bar Date for those parties on the service list) and provided summaries with respect to same to Lang Michener LLP ("Lang Michener"), counsel to the Directors and Officers;

³ Unless otherwise defined in this Report, defined terms in this section have the meaning provided to them in the Claims Procedure Order.

- The Receiver corresponded with Goodmans and Lang Michener regarding certain employee claims in respect of overtime equalization amounts; and
- The Receiver issued Notices of Revision or Disallowance (“Notices”) on or about April 1, 2010 and provided copies of the Notices to Lang Michener.

4.1 Results of the D&O Claims Process

Seventy-nine claims were filed with the Receiver by the Claims Bar Date. Three claims were filed after the Claims Bar Date (“Late Filed Claims”) and one additional claim was filed by the Extended Claims Bar Date. A summary of the claims filed is provided in the following table.

Type	Number of claims filed ⁴	Amount ⁵ (\$000s)
Employee claims	48	1,254
Trade creditor claims	35	765
Total	83	2,019

4.2 Employee Claims

Forty-five employee claims were received on or before the Claims Bar Date and three employee claims were received after the Claims Bar Date.

The Receiver is of the view that, with the possible exception of four employee claims discussed in the following paragraph, none of the employee claims fall within the definition of a “D&O Claim” as defined in the Claims Procedure Order. The majority of the employee claims relate to severance and/or termination pay and pension fund obligations, which are

⁴ Includes the Late Filed Claims totaling \$9,500; two of the three Late Filed Claims did not include dollar amounts.

⁵ Pursuant to paragraph 8 of the Claims Procedure Order, claims submitted in a currency other than Canadian dollars shall be converted to Canadian dollars using the Bank of Canada noon spot rate on the Claims Record Date (June 11, 2009). Accordingly, claims submitted in US dollars were converted to Canadian dollars at a rate of 1.0982. As well, there were six employee claims and one trade creditor claim for which no dollar amount was provided.

not subject to the Directors' Charge. There were also twenty-seven employee claims filed, for which no description or supporting documentation was provided.

One employee claim was filed in the amount of \$1,900 in respect of vacation pay. The Receiver agreed to a settlement of this claim for \$1,500. In addition, the Receiver is attempting to settle claims filed by three employees in respect of overtime equalization payments totalling \$136,000.

As of the date of this Report, the Receiver had issued Notices disallowing all employee claims filed as D&O Claims, other than the three employee claims filed related to overtime equalization payments.

4.3 Trade Creditor Claims

Thirty-five trade creditors filed claims for amounts owing for goods and/or services provided to the Company prior to January 21, 2009. The Receiver is of the view that these claims do not fall within the definition of a D&O Claim.

The Receiver issued Notices disallowing these claims in their entirety.

4.4 Reduction of the Directors' Charge

As of the date of this Report, no disputes⁶ have been filed in respect of any of the Notices, but the time to file a dispute has not yet expired for all Notices. Those claims in respect of which the time to file a dispute has expired are now barred pursuant to the Claims Procedure Order, as amended. The chart below summarizes the expiry dates for all disputes to be filed based upon the date of deemed receipt of the Notice under the Claims Procedure Order.

⁶ The Receiver received one notice of dispute from an employee that had filed a D&O Claim of approximately \$37,000 in respect of severance and termination amounts. The claimant has since provided the Receiver with a letter advising that he has withdrawn his notice of dispute.

Number of Claims	Deemed receipt of Notice	Expiry of Objection Period	Amount (\$000s)
2	April 1, 2010	April 15, 2010	61
65	April 5, 2010	April 16, 2010	1,494
12	April 8, 2010	April 21, 2010	287
1	April 16, 2010	April 29, 2010	41
3	TBD	TBD	136
			<u>2,019</u>

It is clear that the full amount of the Directors' Charge is no longer needed, as the total of all claims filed in the D&O Claims Process was approximately \$2.019 million, meaning that \$981,000 of the Directors' Charge is clearly in excess of what would be required to satisfy all claims filed in the D&O Claims Process. Assuming no disputes are filed to the Notices by the date of hearing this matter, only approximately \$177,000 would need to be held back as of April 29, 2010 to secure the entire amount of the remaining claims made in the D&O Claims Process. The Receiver intends to submit a supplement to this Report after April 21, 2010 to update the Court on the status of the D&O Claims Process and to confirm the amount the Receiver believes should be held back to secure remaining potential D&O Claims. The Receiver recommends that the Directors' Charge be reduced on the return of this motion to the amount required to secure such claims.

5. FUNDS HELD BY RICHTER

Richter, in its capacities as Receiver and as Escrow Agent (as defined in the Monitor's tenth report to Court, dated June 8, 2009), presently maintains the following accounts:

Account Type	Held By	Amount (\$000s) ⁷
General Account	Receiver	13,986
Trust Account (Directors' Obligations)	Receiver	1,286
Trust Account (Chrysler)	Receiver	831
Union Escrow Account	Escrow Agent	261
Retention Escrow Account	Escrow Agent	122

⁷ Account balances are as at April 16, 2010.

A summary of these accounts is as follows:

- The monies in the General Account include proceeds transferred from the Monitor's accounts, which include, *inter alia*, proceeds from the sale transactions previously approved by this Honourable Court and from the collection of accounts receivable. The funds in this account also include the net minimum guarantee paid by Maynards Industries Ltd. ("Maynards") in respect of the sale of the Company's fixed assets and federal income tax refunds received from Canada Revenue Agency. The funds held in this account are net of operating costs paid during the receivership period.
- The monies in the Trust Account (Directors' Obligations) were funded by the Customers to the Company at the commencement of the CCAA proceedings to be held in trust to satisfy potential post-CCAA directors' obligations for employee obligations (including wages and vacation pay). The Receiver is not aware of any unpaid post-filing employee obligations.
- The monies in the Trust Account (Chrysler) were paid to Richter by Chrysler pending resolution of items in dispute between Chrysler and the Company. These items remain unresolved.
- The monies in the Union Escrow Account were funded by the Customers to the Company on an unsecured basis to be paid to the Company's former unionized employees for severance and termination pay. Payments made to employees totalled approximately \$9.8 million. There are no known amounts owing to the employees for these obligations; however, on or about July 30, 2009, counsel to the United Steelworkers Union ("USW") contacted Goodmans regarding three Company employees who were terminated prior to the commencement of the CCAA proceedings and were not included as part of the union settlement agreement. The USW believes that these individuals should have been beneficiaries of the union settlement agreement. The Company and the Customers dispute this. On January 21, 2010, Goodmans advised counsel to the USW that it is the Receiver's view that the referenced individuals were appropriately excluded from the union settlement agreement. The USW's counsel had previously advised Goodmans that it may seek to bring a motion on this matter. As of the date of this Report, the Receiver has not heard from the USW on this matter.
- The monies in the Retention Escrow Account were funded by way of Customer Participations in March, 2009 to be distributed to the "Non-Go-Forward Employees"⁸. Payments totalling approximately \$1.1 million were made to the Non-Go-Forward Employees. The funds remaining in this account relate to over-funding by the Customers, as they provided funding for four employees who had previously been terminated.

⁸ Defined in the Additional Participations and Allocation Agreement as certain of the Company's salaried employees who were not offered employment by any purchaser of the Company's businesses.

6. DISTRIBUTIONS

As at April 30, 2010, the Receiver anticipates having the following proceeds available for distribution to creditors and/or funding ongoing operating expenses:

	Amount (S000s)
General Account – as at April 5, 2010	13,986
Proceeds from the sale of the Brampton Property ⁹	2,451
Less: Estimated April operating expenses	(105)
Estimated General Account as at April 30, 2010	16,332
Trust Account (Directors' Obligations)	1,286
Less: Holdback for O'Brien Claim	(132)
Less: Estimated holdback for Directors' Charge	(177)
Projected cash available for operating expenses and for distributions, April 30, 2010	<u>17,309</u>

The Receiver is seeking approval of this Honourable Court to make the following distributions:

- The Canadian dollar equivalent of approximately US\$11.315 million and approximately US\$629,000 to Comerica in satisfaction of the principal and interest amounts owing under the Canadian Customer Participations;

Details related to Comerica's security are provided in Section 4 of the Receiver's first report to Court dated October 23, 2009 ("First Report"). A copy of the First Report (without appendices) is attached as Appendix "D";

- The Canadian dollar equivalent of US\$90,373 to SKD US to fully satisfy any and all amounts that it paid on behalf of the Company, including US\$53,000 in respect of the net amount paid to Comerica by SKD US on behalf of the Company and US\$37,373 in respect of professional fees owing to Comerica's Canadian legal counsel paid by SKD US;
- \$25,773 in satisfaction of Ready Machinery's RSLA Claim, which is secured by a lien against a 1000 Ton Verson 108-72 Press (s/n 25917) ("Press"). The Press was sold at auction for \$55,000. Goodmans has reviewed the RSLA Claim and has advised that the RSLA Claim is valid and enforceable; and

⁹ Net of real estate commissions.

- \$45,500 to Paccar in satisfaction of its secured claim against the Company. Paccar had claimed ownership to and security in a truck and tractor (“Paccar Assets”) that were located at the Company’s Milton Property. While Paccar has perfected its security, the Receiver believes Paccar’s interests to be subordinated to Comerica’s security. Given the Comerica loans, including the Canadian Customer Participations, will be repaid in full, it is the Receiver’s view that it is appropriate to satisfy Paccar’s secured claim at this time. The Paccar Assets were sold at auction for \$45,500.

The recommended distributions do not involve any of the monies held in the Union Escrow Account, Retention Escrow Account or the Chrysler Trust Account.

7. POTENTIAL PRIOR RANKING CLAIMS

The Receiver is not aware of any claim that ranks or may rank in priority to Comerica for which there will not be sufficient funds remaining in the bank accounts maintained by the Receiver. In this regard, the Initial Order created the following charges which rank in priority to Comerica:

- The Administration Charge (up to \$1 million). The Administration Charge provides a charge in favour of certain professionals involved in the CCAA proceedings. All such amounts have been paid or are otherwise sufficiently covered by retainers previously paid in the CCAA proceedings to various professionals.
- The Directors’ Charge. As detailed in Section 6 above, the funds remaining in the Receiver’s accounts, net of the proposed distributions, should be more than sufficient to satisfy any potential claims that may arise in the D&O Claims Process.

Other than the claims that are subject to the Administration Charge, the Directors’ Charge, the RSLA Claim and the O’Brien Claim, the Receiver is not aware of any other claims that may rank in priority to Comerica. The Receiver is presently working to resolve the O’Brien Claim and in any event the proceeds of the Brampton Property are well in excess of the amount potentially owing to O’Brien.

8. DISBURSEMENT AGREEMENTS

At the commencement of the CCAA proceedings, the Customers and GM agreed to purchase from Comerica, for cash, undivided subordinated interests (being the Canadian Customer Participations as it related to funding provided to the Company and “US Customer Participations” as it related to funding provided to SKD US) in Comerica’s loans to SKD AG and the Company pursuant to the Amended and Restated Subordinated Participation Agreement dated January 21, 2009 (“Participation Agreement”), as amended. A copy of the Participation Agreement is attached as Appendix “E”.

Paragraph 7 of the Participation Agreement contemplates that, in the event the Customers are entitled to receive any payment on account of their Canadian and/or US Customer Participations under the Participation Agreement, after payment in full of the senior obligations owing to Comerica, such payment is to be paid to a disbursing agent for disbursement by it under a separate agreement among the Customers, GM, the Company and SKD AG. As reported in the First Report, the senior obligations owing to Comerica have been repaid in full.¹⁰

For the purpose of repaying the Canadian Customer Participations from the Company’s estate (“Canadian Distributions”) and for the purpose of repaying the US Customer Participations from the estate of SKD US (“US Distributions”), Richter has indicated its willingness to act as disbursing agent (“Disbursing Agent”), subject to agreement on the terms of its mandate. Accordingly, the Customers, GM, the Company, SKD AG and Richter, in its capacity as Disbursing Agent and not in its personal or corporate capacity, are in the latter stages of negotiating disbursement agreements for Canadian and US Distributions (the

¹⁰ Subject to accrued professional fees of Comerica.

“Canadian Disbursement Agreement” and the “US Disbursement Agreement”, respectively). The Canadian and US Disbursement Agreements are well advanced but have not yet been finalized. Current drafts of the Canadian and US Disbursement Agreements are attached as Appendices “F” and “G”, respectively.

Capitalized terms not otherwise defined in this section of the Report have the meanings provided to them in the Canadian and US Disbursement Agreements.

8.1 Canadian Disbursement Agreement

The principal terms of the Canadian Disbursement Agreement are as follows:

- The Disbursing Agent is acting solely for the convenience of the parties to the Canadian Disbursement Agreement and shall not be deemed to be the agent of any of the parties;
- The Disbursing Agent is a separate party, distinct from Richter in its capacity as Monitor and Receiver;
- Subject to this Honourable Court’s approval, the Receiver shall transfer to Comerica the Canadian Distributions to be applied against the Comerica loans in satisfaction of the Canadian Customer Participations as detailed in Section 6 above;
- The Receiver, on behalf of the Company, SKD AG, the Customers and GM shall execute and deliver to Comerica a direction, authorizing and directing Comerica to transfer the Canadian Distributions to the Disbursing Agent immediately after receipt by Comerica of the funds from the Receiver;
- The Receiver, on behalf of the Company, SKD AG, the Customers and GM shall execute and deliver to the Disbursing Agent a direction to distribute the Canadian Distributions to the Customers in full and final repayment of the Canadian Customer Participations; and
- The Disbursing Agent may resign upon thirty days written notice to the Company, SKD AG, the Customers and GM or such shorter notice as they may accept in writing as sufficient and shall thereafter pay any funds remaining in the Disbursing Agent’s account to the replacement disbursing agent.

8.2 US Disbursement Agreement

The principal terms of the US Disbursement Agreement are as follows:

- The Disbursing Agent is acting solely for the convenience of the parties to the US Disbursement Agreement and shall not be deemed to be the agent of any of the parties;
- The Disbursing Agent is a separate party, distinct from Richter in its capacity as Monitor and Receiver;
- The Receiver, on behalf of the Company, SKD AG, the Customers and GM shall execute and deliver to Comerica a direction authorizing and directing Comerica to transfer the entirety of the US funds maintained in the SKD L.P. Comerica bank account (approximately \$10.5 million) to the Disbursing Agent;
- The Receiver, on behalf of the Company, SKD AG, the Customers and GM shall execute and deliver to the Disbursing Agent a direction directing the Disbursing Agent to distribute US Distributions to the Customers and GM in full repayment of the US Customer Participations;
- The Disbursing Agent shall hold back an amount of approximately \$1.8 million (“Holdback”) on account of Unresolved Claims among the Customers, GM and SKD US and shall hold the Holdback until directed to distribute the Holdback pursuant to directions to be executed by the Company, SKD AG, the Customers and GM once the Unresolved Claims have been settled or otherwise resolved;
- SKD AG, the Customers and GM will work to settle the Unresolved Claims within ninety days after the US Disbursement Agreement is executed. After the ninety-day period, any remaining Unresolved Claims will be submitted to a commercial arbitration panel of the American Arbitration Association located in Oakland County, Michigan;
- The Receiver, on behalf of the Company, SKD AG, the Customers and GM are to execute and deliver to the Disbursing Agent a direction directing the Disbursing Agent to distribute the remaining funds maintained in the SKD L.P. Comerica bank account after the repayment of the US Distributions, to SKD AG, or as SKD AG may direct, on account of SKD AG’s residual entitlement to proceeds generated from the sale and realization of the assets of SKD US. These funds cannot be distributed by the Disbursing Agent until SKD AG and the Receiver finalize terms on a settlement for the sharing of such amount between the Receiver and Tang Industries, Inc., which the Receiver understands are the only remaining creditors of SKD AG;

- Pursuant to the terms of the US Disbursement Agreement, the Disbursing Agent shall maintain a US dollar bank account at a US financial institution for the purpose of executing its duties under the US Disbursement Agreement;
- The US Disbursement Agreement is to be governed by the laws of the state of Michigan and subject to the jurisdiction of the court in the State of Michigan; and
- The Disbursing Agent may resign upon thirty days' written notice to the Company, SKD AG, the Customers and GM or such shorter notice as they may accept in writing as sufficient and shall thereafter pay any funds remaining in the Disbursing Agent's account to the replacement disbursing agent.

One outstanding issue with respect to the repayment of the Canadian Customer Participations is the request by Comerica for a paragraph in the applicable Court Order providing that, as Comerica's secured interests rank in priority to those of the Customers, any person with a claim against any of the repaid Canadian Customer Participations would have to claim first against the Customers before making any claim against Comerica.

The Receiver understands that at least some of the Customers are unwilling to consent to the inclusion of such a provision in the applicable Court Order. Those Customers take the position that the Participation Agreement, which governs the terms of the Canadian Customer Participations, already expressly addresses the extent to which the Customers are liable for distributions made in respect of the Canadian Customer Participations. Specifically, Section 5 of the Participation Agreement provides that if Comerica is required to disgorge any amounts it has received on account of the loans, the Customers are required to reimburse Comerica for such disgorged amounts up to the maximum amount of any distributions they have received on account of the loans. The Customers have also agreed to the inclusion of this language in the directions to be given to Comerica under the Canadian and US Disbursement Agreements. The Customers do not believe that Comerica should have the benefit additional Court-ordered relief in this regard that would go beyond the

protection provided to Comerica in the Participation Agreement.

The Receiver understands that the parties are continuing to discuss this issue, which they will endeavour to resolve in advance of the motions scheduled for April 29, 2010.

9. BANKRUPTCY

The Receiver believes that the Company should be placed into bankruptcy in order to utilize the claims process mechanisms of the *Bankruptcy and Insolvency Act* to determine the unsecured claims against the Company and to distribute monies to unsecured creditors. Given Richter's knowledge of these CCAA and receivership proceedings, it is of the view that it is appropriate for it to be named as the Trustee in Bankruptcy. Paragraph 3(q) of the Receivership Order authorizes the Receiver to make an assignment in bankruptcy on behalf of the Company. The Receiver is of the view that the receivership proceedings should continue in order for it to complete certain matters commenced during the receivership proceedings, including the D&O Claims Process, the sale of the owned real property and certain other administrative matters.

10. FEES AND DISBURSEMENTS OF THE RECEIVER

The Receiver's fees and disbursements, including GST, for the period June 11, 2009 to March 31, 2010 total approximately \$679,000. Goodmans' fees and disbursements, including GST, for the period July 9, 2009 to March 31, 2010 total approximately \$244,000. Detailed invoices in respect of the fees and disbursements of the Receiver and Goodmans are provided in exhibits to the Kofman Affidavit and Latham Affidavit, filed in respect of this motion.

11. OVERVIEW OF THE RECEIVER'S ACTIVITIES

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

- Attending at the Company's premises on a periodic basis in order to carry out its activities in accordance with the Receivership Order;
- Monitoring the removal of assets after the completion of the auctions held by Maynards at the Company's Milton and Brampton Properties;
- Corresponding with Maynards regarding assets sold on a commission basis by Maynards pursuant to the terms of the Asset Purchase and Liquidation Services Agreement;
- Negotiating the Transaction and the agreement of purchase and sale for the sale of the Brampton Property;
- Corresponding with Colliers and subsequently CBRE regarding various matters concerning the marketing of the Company's real estate;
- Engaging CBRE to handle the marketing and sale of the Milton and Brampton Properties;
- Engaging Golder Associates Ltd. ("Golder") to conduct phase I and II environmental audits of the Milton and Brampton Properties;
- Reviewing environmental reports prepared by Golder;
- Dealing with other matters pertaining to the maintenance of the Milton and Brampton Properties;
- Administering the D&O Claims Process;
- Drafting and finalizing the interim report of the Receiver prepared pursuant to subsection 246(2) of the *Bankruptcy and Insolvency Act*;
- Negotiating terms of the Canadian Disbursement Agreement and US Disbursement Agreement;
- Negotiating the Settlement Agreement;
- Reviewing financial statements prepared by a Company representative for the fiscal year ending December 31, 2009;

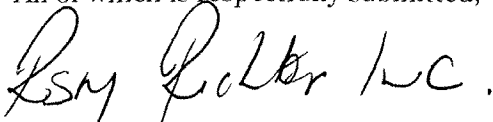
- Disbursing funds from the post-receivership bank accounts in satisfaction of obligations incurred during the receivership period;
- Dealing with employee claims under the *Wage Earner Protection Program Act*;
- Responding to creditors and former employees regarding these proceedings;
- Corresponding with the Receiver's counsel to deal with 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.

12. RECOMMENDATION

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

* * *

All of which is respectfully submitted,



**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**