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**Sixth Report of  
Duff & Phelps Canada Restructuring Inc.  
as Court-Appointed Receiver of  
NMC Canada Inc., 2515080 Nova Scotia  
Company and SKD Company**

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May 23, 2014

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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

SIXTH REPORT OF  
DUFF & PHELPS CANADA RESTRUCTURING INC.  
AS COURT-APPOINTED RECEIVER OF  
NMC CANADA, INC., 2515080 NOVA SCOTIA COMPANY  
AND SKD COMPANY

May 23, 2014

## 1.0 Introduction

1. Pursuant to an order ("Initial Order") of the Ontario Superior Court of Justice (Commercial List) ("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 ("Monitor"). A copy of the Initial Order is attached as Appendix "A".
2. 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"). A copy of the Receivership Order is attached as Appendix "B".
3. On April 29, 2010, an order of the Court was made authorizing the Receiver to place NMC, 2515 and SKD into bankruptcy. On January 11, 2011, SKD was placed in bankruptcy and Richter was appointed as trustee in bankruptcy ("Trustee").

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4. On May 26, 2011, NMC and 2515 were each placed in bankruptcy and Richter was appointed as trustee in bankruptcy (“Trustee”) of each of NMC and 2515. Pursuant to a Court order made on September 11, 2013, the estates of SKD, NMC and 2515 were procedurally and substantively consolidated.
  5. Pursuant to a Court order made on December 12, 2011 (“Substitution Order”), Duff & Phelps Canada Restructuring Inc. (“D&P”) was substituted in place of Richter as Receiver<sup>1</sup> as a result of D&P’s acquisition of the Toronto restructuring practice of Richter.

## 1.1 Purposes of this Report

1. The purposes of this report (“Report”) are to:
  - a) Provide background information about the Company and these proceedings;
  - b) Discuss a fee reserve in the amount of \$60,000 (“Fee Reserve”) recommended by the Receiver for fees potentially to be incurred by the Receiver and Goodmans LLP (“Goodmans”), the Receiver’s counsel, from May 1, 2014 through to the completion of these proceedings;
  - c) Recommend that this Honourable Court issue an Order:
    - i. discharging the Receiver and the Receiver’s Charge, as defined in the Receivership Order, upon the filing of the Discharge Certificate;
    - ii. terminating the CCAA proceedings and discharging the Monitor and the Administration Charge, as defined in the Initial Order, upon the filing of the Discharge Certificate;
    - iii. approving the fees and disbursements of the Receiver and its legal counsel, Goodmans, from April 1, 2010 to April 30, 2014;
    - iv. approving the Fee Reserve;
    - v. approving the Receiver’s reports and activities described in prior reports; and
    - vi. approving this Report and the Receiver’s conduct and activities, as described in this Report.

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<sup>1</sup> On December 9, 2011 the assets used by Richter in its Toronto restructuring practice were acquired by D&P. Pursuant to the Substitution Order, D&P was substituted in place of Richter in certain ongoing mandates, including acting as Receiver in these proceedings. The licensed trustees/restructuring professionals overseeing this mandate prior to December 9, 2011 remain unchanged.

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## 1.2 Currency

1. All currency references in this Report are to Canadian dollars, unless otherwise noted.

## 2.0 Background Information

### 2.1 Corporate Overview

1. NMC and 2515 are the general partners of SKD. The only assets and liabilities of NMC and 2515 relate to SKD.
2. NMC and 2515 own 1% and 99% of SKD, respectively.
3. 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. in Mexico. Collectively, SKD and its related entities are referred to as the "SKD Group".
4. The SKD Group was primarily a tier-one supplier of stamping and welded assemblies to the North American automotive industry.
5. Additional information concerning the Company and these proceedings is available in the various reports to Court and the motion materials filed by the Monitor, the Receiver and the Trustee in the CCAA, receivership and bankruptcy proceedings, respectively. Copies of these materials can be found on D&P's website at [www.duffandphelps.ca](http://www.duffandphelps.ca).

## 3.0 Status of these Proceedings

1. The following is an overview of the principal matters that have been addressed, or are being addressed, by the Receiver in these proceedings.

### 3.1 Customer Participations

1. During the CCAA proceedings, the Company's operations were partially funded by the Customers, being General Motors Corporation ("GM"), Ford Motor Company ("Ford"), Chrysler Group LLC ("Chrysler") and 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 ("Honda") (collectively, the "Customers").
2. At the commencement of the CCAA proceedings, the Customers agreed to purchase from Comerica Bank ("Comerica"), SKD Group's primary secured creditor, for cash, undivided subordinated interests ("Customer Participations") in Comerica loans to the Company pursuant to an Amended and Restated Subordinated Participation Agreement dated January 21, 2009, as amended.

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3. Pursuant to an order of the Court made on June 7, 2010, the Receiver was authorized and directed to distribute the Canadian dollar equivalent of approximately US\$12 million (“Distribution”) to the Company’s secured creditors to repay in full the Customer Participations. The Distribution was made on June 10, 2010.
  4. The direct advances made by Comerica to the Company were repaid prior to the commencement of the receivership proceedings.

### **3.2 Sale of Assets (Excluding Real Property)**

1. A large percentage of the assets of the Company were sold during the CCAA proceedings.
2. During the CCAA proceedings, the Monitor solicited offers from liquidators for assets located at the Company’s Milton and Brampton premises which remained at the conclusion of the CCAA period, excluding Real Property (“Remaining Assets”).
3. Pursuant to an approval and vesting order made by the Court on June 11, 2009, the Receiver entered into an Asset Purchase and Liquidation Services Agreement (“APA”) with Maynards Industries Inc. (“Maynards”) for the Remaining Assets.
4. In accordance with the terms of the APA, the Receiver received a net minimum guarantee from Maynards of \$3.1 million in exchange for substantially all of the Remaining Assets. The auctions for the sale of the Remaining Assets were held on October 14 and 15, 2009. The proceeds from the auctions did not result in realizations to the estate in excess of the net minimum guarantee, with the exception of assets sold on a commission basis, which generated net proceeds of approximately \$100,000.

### **3.3 Sale of Real Property**

1. The Company operated from two leased facilities in Mississauga, Ontario and an owned facility in each of Milton and Brampton, Ontario. The Brampton property was located at 40 Holtby Avenue (“Brampton Property”) and the Milton property was located at 375 Wheelabrator Way (“Milton Property”).
2. On August 19, 2010 the Court approved the sale of the Milton Property to Mayflower Properties Inc. for \$3.45 million. The transaction closed on September 24, 2010.
3. On April 29, 2010 the Court approved the sale of the Brampton Property for \$2.54 million to Boutin Holdings Limited (“Boutin”). Boutin subsequently assigned the agreement to 2240523 Ontario Inc. This transaction closed on April 30, 2010.

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### **3.4 Directors' and Officers' Claims Process**

1. 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. Pursuant to a Court order made on November 4, 2009, the Receiver was authorized and directed to commence a claims process to determine what claims, if any, may exist that would be subject to the Directors' Charge ("D&O Claims Process").
2. The claims bar date was December 11, 2009. All claims submitted in the D&O Claims Process were disallowed by the Receiver. Pursuant to a Court order made on May 30, 2011, the Directors' Charge was terminated, discharged and released.

### **3.5 Chrysler Group LLC**

1. As discussed in the Receiver's fifth report to court ("Fifth Report") and the supplement to the fifth report ("Supplemental Report"), a trust account was established in the CCAA proceedings to hold funds deposited by Chrysler pending the resolution of certain unresolved matters between SKD and Chrysler (the "Chrysler Trust Account") (the "Chrysler Dispute"). Further information regarding the Chrysler Dispute can be found in the Fifth Report and the Supplemental Report, which are attached as Appendices "C" and "D", respectively, without attachments. The largest point in dispute related to the amount of professional fee setoffs claimed by Chrysler.
2. Effective as of November 28, 2013, the Receiver and Chrysler reached a settlement resolving all matters between Chrysler and the Receiver. Mutual releases have been executed.

### **3.6 Honda of America Mfg., Inc.**

1. Similar to one of the main issues in the Chrysler Dispute, the Receiver was of the view that Honda incorrectly took certain setoffs that were precluded under section 2.6 of the accommodation agreement entered into among Chrysler, Honda, Ford and the Company, dated January 21, 2009, as amended from time to time (the "Accommodation Agreement") ("Honda Dispute"). Based on the Receiver's interpretation, Honda took approximately \$205,000 more in professional fee setoffs than the Accommodation Agreement would allow.
2. The Receiver and Honda have settled this issue, together with certain issues that the Trustee had with Honda's claim in the bankruptcy. All matters between Honda and the Receiver are therefore at an end.

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## 4.0 Remaining Receivership Assets

1. On or about January 27, 2011, the Receiver transferred approximately \$10 million to the Trustee in Bankruptcy of SKD, leaving approximately \$500,000 in the receivership estate account at that date.
2. There are no remaining assets of the Company to be realized upon; the only remaining asset in the receivership accounts is cash. As at May 1, 2014, there was approximately \$166,000 in the Receiver's bank accounts and all escrows or other accounts set up in the CCAA or Receivership proceedings have been resolved and liquidated.
3. The Receiver intends to use the remaining cash to pay any remaining post-filing costs, following which it will transfer the remaining funds, if any, to the Trustee for distribution to the Company's unsecured creditors in the bankruptcy proceedings.

## 5.0 Discharge of the Receiver

1. The Receiver believes it is appropriate for it to be discharged subject to filing the Discharge Certificate as all of its duties and responsibilities under the Receivership Order have been completed.

## 6.0 Termination of the CCAA Proceedings

1. Paragraphs 22 and 23 of the Receivership Order amended and/or deleted certain provisions of the Initial Order which became irrelevant upon the making of the Receivership Order; however, the Administration Charge and the Directors' Charge established under the Initial Order continued.
2. Pursuant to the Court order dated May 30, 2011, the Directors' Charge was terminated, discharged and released.
3. The Monitor is not aware of any outstanding issues in the CCAA proceedings. The proposed order contemplates the termination of the CCAA proceedings, including the discharge and release of the Monitor and the discharge of the Administration Charge.
4. The Company has not carried on active business operations since the commencement of the receivership proceedings. The CCAA process has been inactive since the date the receivership commenced. The Monitor and its counsel, have not docketed any time or incurred any expenses since July 30, 2009.
5. Based on the foregoing, the Monitor believes it is appropriate for the CCAA proceedings to be terminated, and the Monitor and the Administration Charge to be discharged.



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## 7.0 Professional Fees

1. The fees and disbursements of the Receiver and Goodmans from the commencement of the receivership proceedings through March 31, 2010 were approved pursuant to a Court order made on April 29, 2010.
2. The fees and disbursements (excluding HST) of the Receiver and Goodmans for the period April 1, 2010 to April 30, 2014 total approximately \$614,000 and \$533,000, respectively. Detailed invoices in respect of the fees and disbursements of the Receiver and Goodmans for this period are provided in appendices to the fee affidavits filed by representatives of D&P and Goodmans in the accompanying motion materials.
3. The average hourly rate for the Receiver and Goodmans for the referenced billing period was \$428.63 and \$643.20, respectively.
4. The Receiver is of the view that the hourly rates charged by Goodmans are consistent with the rates charged by major law firms practicing in the area of insolvency in the Toronto market, and that the fees charged are reasonable and appropriate in the circumstances.
5. The Receiver and Goodmans have incurred and will incur further fees in connection with the completion of the receivership. The Fee Reserve should be sufficient to fund these costs. Any surplus remaining in the Fee Reserve will be transferred by the Receiver to the bankruptcy estate on completion of the receivership.

## 8.0 Approval of Receiver's Reports and Activities Described in Prior Reports

1. The Receiver has previously obtained approval from this Honourable Court for its activities described in the Receiver's Second Report dated April 21, 2010 and in its Fourth Report dated May 20, 2011.
2. The Receiver is seeking approval of its activities as set out in its First Report dated October 23, 2009 ("First Report") and in the Third Report dated August 13, 2010 ("Third Report"). Since these reports have been filed, no issues pertaining to the Receiver's activities and conduct have been brought to the Receiver's attention. The First Report and Third Report, without appendices, are attached as Appendices "E" and "F", respectively. The Receiver is seeking approval of its activities and its conduct as set out in the First Report and Third Report.
3. The Receiver is also seeking approval of its Fifth Report and the Supplemental Report, which were filed in connection with a motion concerning the Chrysler Dispute that was not heard because the matter was settled.

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## 9.0 Overview of the Receiver's Activities

1. A summary is provided below of the Receiver's activities since the Receiver's fourth report to Court dated May 20, 2011:
  - Carrying out the Receiver's duties and responsibilities in accordance with the Receivership Order;
  - Filing the Receiver's interim reports pursuant to section 246(2) of the *Bankruptcy and Insolvency Act* ("Interim Reports");
  - Preparing statements of receipts and disbursements to be filed with the Interim Reports;
  - Reviewing the draft motion materials in respect of the Receiver's motion returnable May 30, 2011 ("May 30<sup>th</sup> Motion");
  - Attending the May 30<sup>th</sup> Motion via conference call on May 30, 2011;
  - Corresponding with Koskie Minsky, counsel to certain of the Company's former employees, regarding the disallowance of their clients' claims in the D&O Claims Process;
  - Reviewing and executing an "acknowledgement and redirection" in the Receiver's capacity as "US Disbursing Agent", in respect of the release of a holdback held by the Receiver in its capacity as US Disbursing Agent;
  - Drafting a letter dated August 29, 2011 to National Materials L.P. ("NMLP"), in respect of the holdback and issuing a cheque to NMLP regarding same;
  - Corresponding with RBC Dexia Investor Services and Buck Consultants, LLC regarding outstanding issues related to the Company's defined profit sharing plan;
  - Corresponding extensively with Goodmans regarding the Chrysler Dispute, including attending numerous meetings and phone calls;
  - Preparing for and attending a meeting on October 31, 2011 with Goodmans regarding the Chrysler Dispute and an approach to resolve the outstanding issues;
  - Corresponding with certain of the Company's former employees regarding the Chrysler Dispute;
  - Corresponding with BBK, Chrysler's financial consultant, regarding the Chrysler Dispute;

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- Preparing a letter to Chrysler regarding the Receiver's proposed settlement of the Chrysler Dispute (the "Chrysler Letter") which included a detailed summary of the Chrysler Trust Account and support for the proposed settlement;
  - Discussing and revising the Chrysler Letter based on Goodmans' comments;
  - Corresponding with Borden Ladner Gervais LLP ("BLG") regarding Chrysler's response to the Chrysler Letter, including attending a call on December 18, 2012;
  - Drafting the Fifth Report dated July 5, 2013;
  - Discussing the Fifth Report extensively with Goodmans and internally;
  - Revising the Fifth Report based on Goodmans' comments;
  - Preparing, reviewing and finalizing the appendices to the Fifth Report, including analyses and schedules in support of the Receiver's position in respect of the Chrysler Dispute;
  - Preparing for and attending in Court on July 12, 2013 in respect of the Chrysler Dispute;
  - Reviewing materials filed by BLG, in response to the Fifth Report ("Chrysler Materials");
  - Attending calls on July 23, 24, 25, 26 and 30, 2013, August 14 and 26, 2013 and September 9, 13, 15, 16, 2013 with Goodmans regarding the Chrysler Materials, the proposed next steps in dealing with the Chrysler Materials and the Receiver's response to same;
  - Corresponding extensively with Goodmans and BLG regarding the Chrysler Materials and the Receiver's proposed response to same;
  - Corresponding with Goodmans regarding Goodmans' attendance in Court on August 8, 2013 in respect of the Chrysler Dispute and the September 16, 2013 deadline for the Receiver to serve motion materials to BLG regarding same;
  - Corresponding extensively with Conway MacKenzie Inc. ("Conway"), the Company's financial advisor during the CCAA proceedings, regarding the response to the Chrysler Materials;
  - Attending calls on August 8 and 26, 2013 with Goodmans and Conway regarding Conway's findings in respect of the Chrysler Dispute and the Chrysler Materials;

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- Corresponding with Conway and Goodmans regarding the compilation of evidence by Conway and the Receiver to support the Receiver's position in respect of the Chrysler Dispute;
  - Attending a call on September 9, 2013 with Goodmans regarding the Honda Dispute and the Receiver's proposed response to same;
  - Corresponding with Goodmans and Conway regarding the affidavit of Timothy Zeeb, a Director at Conway, sworn September 16, 2013 ("Zeeb Affidavit"), including attending a call on September 12, 2013;
  - Reviewing and commenting on drafts of the Zeeb Affidavit;
  - Corresponding with Goodmans regarding the Zeeb Affidavit;
  - Corresponding with Goodmans and BLG regarding support for the professional fees claimed by Chrysler and reviewing the applicable invoices and account summaries;
  - Corresponding extensively with Goodmans and internally regarding the materials to be included in the Receiver's Supplemental Report;
  - Drafting and finalizing the Supplemental Report dated September 16, 2013;
  - Preparing, reviewing and finalizing the appendices to the Supplemental Report;
  - Corresponding with Goodmans regarding Chrysler's response to the Supplemental Report, including attending calls on October 4 and 24, 2013;
  - Reviewing a settlement offer received from Chrysler on November 4, 2013 and discussing same internally and with Goodmans;
  - Corresponding with Goodmans regarding the Receiver's counter proposal to Chrysler's November 4<sup>th</sup> settlement offer;
  - Reviewing questions sent by Chrysler on November 8, 2013 for response by the Receiver ("Chrysler Questions") and corresponding extensively with Goodmans regarding the Receiver's proposed responses to same;
  - Attending a meeting with Goodmans on November 19, 2013 to review the Receiver's draft responses to the Chrysler Questions;
  - Reviewing and commenting on various drafts of the Receiver's responses to the Chrysler Questions;

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- Attending a call on November 25, 2013 with Goodmans regarding the Chrysler Questions;
  - Corresponding extensively with Goodmans and BLG regarding settlement offers and counter offers between the Receiver and Chrysler, including attending a call on November 26, 2013;
  - Corresponding with Goodmans regarding draft minutes of settlement between the Receiver and Chrysler (“Minutes of Settlement”) including attending calls on December 3 and 9, 2013;
  - Reviewing and commenting on the Minutes of Settlement and executing same;
  - Corresponding with Goodmans regarding Chrysler’s execution of the Minutes of Settlement;
  - Corresponding internally and with Goodmans regarding the Honda Dispute, including reviewing emails in respect of the professional fee setoffs taken by Honda and attending a call on February 27, 2014 regarding same;
  - Corresponding with Goodmans regarding materials to be provided to Blake Cassels & Graydon, LLP, Honda’s legal counsel, in support of the Receiver’s position on the Honda Dispute;
  - Reviewing the agreed upon settlement terms between the Receiver and Honda in connection with the Honda Dispute;
  - Distributing US\$612,500 to Chrysler from the funds held in the Chrysler Trust Account;
  - Corresponding with Canada Revenue Agency regarding the Company’s Harmonized Sales Tax (“HST”) accounts;
  - Filing the Company’s HST returns;
  - Responding to stakeholder inquiries, including trade suppliers and employees;
  - Maintaining the receivership estate bank account;
  - Attending a call on February 27, 2014 with Goodmans regarding the matters to be included in this Report;
  - Drafting this Report; and
  - Dealing with all other matters in the receivership proceedings not specifically addressed above.

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## 10.0 Conclusion and Recommendation

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

\* \* \*

All of which is respectfully submitted,

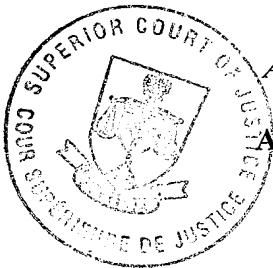
*Duff & Phelps Canada Restructuring Inc.*

**DUFF & PHELPS CANADA RESTRUCTURING INC.  
IN ITS CAPACITY AS RECEIVER OF  
SKD COMPANY, A PARTNERSHIP OF NMC CANADA, INC.  
AND 2515080 NOVA SCOTIA 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 counter-parties, 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.

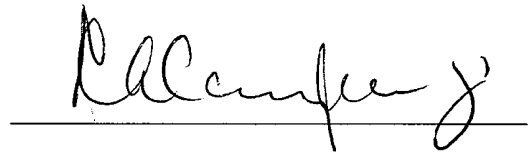
59. THIS COURT ORDERS that each of the CCAA Parties and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

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.



A handwritten signature in cursive script, appearing to read "R. Campbell", is written above a horizontal line.

ENTERED AT / INSCRIT A TORONTO  
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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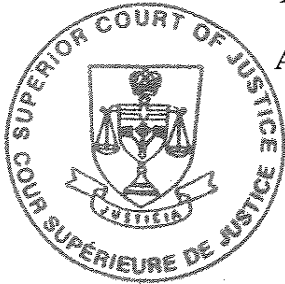
## **Appendix “B”**

**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**

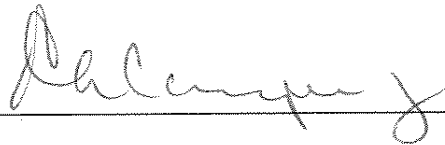
24. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

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.



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

MAY 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**

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Lawyers for Chrysler LLC, Chrysler Motors  
LLC and Chrysler Canada Inc.

## **Appendix “C”**

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**Fifth Report of  
Duff & Phelps Canada  
Restructuring Inc.  
as Court-Appointed Receiver of  
NMC Canada, Inc., 2515080 Nova  
Scotia Company and SKD  
Company**

July 5, 2013

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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

FIFTH REPORT OF  
DUFF & PHELPS CANADA RESTRUCTURING INC.  
AS COURT-APPOINTED RECEIVER OF  
NMC CANADA, INC., 2515080 NOVA SCOTIA COMPANY  
AND SKD COMPANY

July 5, 2013

## 1.0 Introduction

1. Pursuant to an order ("Initial Order") of the Ontario Superior Court of Justice (Commercial List) ("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 as Monitor. A copy of the Initial Order is attached as Appendix "A".
2. 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"). A copy of the Receivership Order is attached as Appendix "B".
3. On April 29, 2010, an order of the Court was made authorizing the Receiver to place NMC, 2515 and SKD into bankruptcy. On January 11, 2011, SKD was placed into bankruptcy and Richter was appointed as trustee in bankruptcy ("Trustee").
4. On May 26, 2011, NMC and 2515 were each placed into bankruptcy and Richter was appointed as trustee in bankruptcy of each of NMC and 2515.

- 
5. Pursuant to a Court order made on December 12, 2011 (“Substitution Order”), Duff & Phelps Canada Restructuring Inc. (“D&P”) was substituted in place of Richter as Receiver<sup>1</sup> as a result of D&P’s acquisition of the Toronto restructuring practice of Richter.

## **1.1 Purposes of this Report**

1. The purposes of this report (“Report”) are to:
  - a) Provide background information about the Company and these proceedings;
  - b) Advise the Court of an unresolved dispute between the Receiver and Chrysler Group LLC (“Chrysler”) regarding approximately US\$828,000 being held in a trust account (“Chrysler Trust Account”) by the Receiver, pending resolution of certain issues that arose between the Company and Chrysler during the CCAA proceedings (“Chrysler Dispute”);
  - c) Seek directions from the Court regarding a proposed resolution of the Chrysler Dispute; and
  - d) Recommend that the Court issue an order:
    - Directing the Receiver to distribute from the Chrysler Trust Account US\$318,703 to Chrysler and US\$511,669 to SKD’s estate; and
    - Approving the Receiver’s activities as set out in this Report.

## **1.2 Currency**

1. Unless otherwise noted, all currency references in this Report are to Canadian dollars.

## **1.3 Qualifications**

1. In preparing this Report, the Receiver has relied on the Company’s books and records, including information assembled by, and analyses performed by, Company employees and advisors. The Receiver has not performed an audit or other verification of such information.

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<sup>1</sup> On December 9, 2011, the assets used by Richter in its Toronto restructuring practice were acquired by D&P. Pursuant to the Substitution Order, D&P was substituted in place of Richter in certain ongoing mandates, including acting as Receiver in these proceedings. The licensed trustees/restructuring professionals overseeing this mandate prior to December 9, 2011 remain unchanged.

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## 2.0 Background

1. NMC and 2515 are the general partners of SKD. The only assets and liabilities of NMC and 2515 relate to SKD.
2. NMC and 2515 own 1% and 99% of SKD, respectively.
3. 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".)
4. The SKD Group was primarily a tier-one supplier of stampings and welded assemblies to the North American automotive industry.
5. Additional information concerning the Company and these proceedings is available in the various reports to Court and the motion materials filed by the Monitor, the Receiver and the trustee in bankruptcy in the CCAA, receivership and bankruptcy proceedings, respectively. Copies of these materials can be found on D&P's website at [www.duffandphelps.ca](http://www.duffandphelps.ca).

## 3.0 Chrysler Dispute

1. The Chrysler Trust Account was established in the CCAA proceedings to hold funds deposited by Chrysler pending resolution of certain unresolved issues between SKD and Chrysler arising from a settlement reached in May, 2009, between SKD and Chrysler. The settlement enabled Chrysler to remove its inventory and tooling that was in the possession of SKD at that time. The Chrysler Trust Account was initially under the control of Richter as Monitor. The Chrysler Trust Account is now under the control of the Receiver.
2. The events leading to the establishment of the Chrysler Trust Account are summarized as follows:
  - In early 2009, the Company's operations were being discontinued and Chrysler was in the process of resourcing the services provided to it by SKD. SKD was in possession of certain inventory and tooling in which Chrysler had an interest. Chrysler was indebted to SKD at that time.

- 
- On May 15, 2009, to effect its resourcing without disruption, Chrysler paid US\$3.174 million to the Chrysler Trust Account. Of that amount, US\$77,000 related to May, 2009 operating costs funded by Chrysler, with the balance relating to various other obligations, or potential obligations of Chrysler, as detailed in the chart included in section 3.1 below.
  - On May 19, 2009, Chrysler agreed to, and authorized the release to the Monitor of, US\$2.269 million from the Chrysler Trust Account to pay various amounts owing to SKD ("Settlement Amounts"). The Settlement Amounts related primarily to accounts receivable due to SKD and additional inventory purchases. It was not contemplated that any of these monies would be refundable to Chrysler.
  - After payment to the Monitor of the Settlement Amounts, US\$827,794 remained in the Chrysler Trust Account. The Settlement Amounts were transferred by the Monitor to SKD.
  - As at April 21, 2013, there was approximately US\$830,372 in the Chrysler Trust Account, inclusive of interest.
3. Over the last few years, the Receiver has on a number of occasions contacted Chrysler through its counsel in an effort to resolve the outstanding issues so that the funds could be released from the Chrysler Trust Account. The Receiver has recommended on a without prejudice basis to Chrysler how these monies should be allocated between Chrysler and the Receiver.
  4. The majority of the funds in dispute (approximately \$468,000) relate to the interpretation of the language in section 2.6 of an accommodation agreement, entered into among Chrysler, Ford Motor Company ("Ford") and Honda Mfg., a division of Honda Canada Inc. ("Honda") ("Chrysler, Ford and Honda are collectively referred to as the "Customers") and the Company, dated January 21, 2009, as amended from time to time (the "Accommodation Agreement"). Section 2.6 of the Accommodation Agreement limits Customer set-off rights. Additional details regarding this set-off dispute are included in section 3.1 below. A copy of the Accommodation Agreement is attached as Appendix "C".
  5. On November 29, 2012, the Receiver sent a letter to Chrysler's counsel outlining the Receiver's proposed offer to settle the outstanding issues. No response was received from Chrysler.
  6. On June 19, 2013, the Receiver provided Chrysler's counsel with draft materials in respect of this motion, in an effort to resolve this matter without the need for a motion. The Receiver has delayed filing these materials on several occasions. The Receiver has yet to hear from Chrysler with respect to this motion.



7. Given the length of time that these issues have remained unresolved, and the Receiver's desire to complete the receivership proceedings, the Receiver is seeking this Honourable Court's direction regarding the distribution of the funds from the Chrysler Trust Account. If the relief requested is granted, the Receiver proposes to transfer the estate funds from the Chrysler Trust Account to SKD's bankruptcy estate for distribution by the Trustee to SKD's unsecured creditors; SKD's secured creditors have been paid in full.

### 3.1 Proposed Allocation of Funds

1. The balance in the Chrysler Trust Account is comprised of the amounts set out in column C in the chart below, plus approximately US\$2,577 of interest. The allocations provided in columns A, B and C are based on schedules provided to the Monitor on May 19 and 26, 2009, by BBK Ltd., Chrysler's financial advisor. Copies of those schedules are attached as Appendix "D".

	Total (A)	Payment (B)	Balance (C)	Proposed Reimbursement to Chrysler (D)	Proposed Payment to Receiver (E)	Notes
Undisputed Amounts						
Undisputed payables	901,440	913,530	(12,090)	(12,090)	-	a
Undisputed steel contras	(143,353)	(145,276)	1,923	1,923	-	a
Net undisputed payables	758,087	768,254	(10,167)	(10,167)	-	
Disputed Amounts						
Pricing differences	680	-	680	340	340	b
Missing parts bank invoices	61,704	59,405	2,299	1,150	1,150	b
Missing invoices – recent	1,304,557	1,255,951	48,606	24,303	24,303	b
Setoff limitation	467,493	-	467,493	-	467,493	c
Credit/debit memos	(39,842)	(38,357)	(1,484)	(742)	(742)	b
Steel contras	(212,992)	(205,056)	(7,936)	(3,968)	(3,968)	b
Net disputed payables	1,581,600	1,071,943	509,658	21,082	488,576	
Inventory to be purchased						
MOPAR inventory	315,298	-	315,298	293,793	21,505	d
Brampton finished goods inventory	373,604	359,684	13,920	13,920	-	e
Brampton prototype parts	68,189	69,103	(915)	(915)	-	a
Total inventory	757,091	428,787	328,304	306,799	21,505	
Subtotal	3,096,778	2,268,984	827,794	317,714	510,081	
May funding	77,000	77,000	-	-	-	
Interest	-	-	-	989	1,588	
Total	3,173,778	2,345,984	827,794	318,703	511,669	

- 
2. The Receiver's recommended treatment for each unresolved item in the table above is as follows:
- a. Chrysler funded the payment in US dollars. As a result of foreign exchange fluctuations, Chrysler underpaid SKD by US\$12,090; this amount should be paid to the estate.
  - b. These amounts, which relate to pricing differences, missing parts bank invoices and other missing invoices have not been reconciled but are immaterial. The cost to reconcile each item would likely outweigh the benefit to either Chrysler or the Receiver; accordingly, the Receiver recommends that these amounts be shared equally by Chrysler and SKD's estate.
  - c. Based on the Receiver's interpretation of section 2.6 of the Accommodation Agreement, the Customers are entitled to set off up to 5% of the paid amount of any invoice issued to them by SKD in respect of Allowed Setoffs<sup>2</sup> and Professional Fee Setoffs<sup>3</sup>. It is the Receiver's interpretation that the "paid amount" means the amount invoiced for goods purchased, less credits and *steel contras* [emphasis added]. Chrysler applied the 5% setoff against the invoiced amount, net of credits, but prior to the application of the steel contras. The effect of this is that the aggregate amounts which Chrysler applied on account of Allowed Setoffs and Professional Fee Setoffs exceeded by US\$468,000 the amount to which the Receiver believes Chrysler is entitled. It is the Receiver's position that Chrysler's interpretation is incorrect, and that this amount should be paid to the estate pursuant to the terms of the Accommodation Agreement. Throughout the CCAA proceedings until the cessation of SKD's operations, Ford and General Motors<sup>4</sup> interpreted this provision in a manner consistent with the Receiver's interpretation. Honda originally applied the 5% setoff in accordance with the Receiver's interpretation of "paid amount"; however, on learning of Chrysler's interpretation of this provision it amended its calculation.

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<sup>2</sup> "Allowed Setoffs" means setoffs, recoupments or deductions for nonconforming products, quality problems, unordered or unreleased parts returned to the Company, short shipments, misshipments, premium freight charges (not caused by the Customer), incorrect invoices, mispricing, duplicate payments or billing errors, but excluding any special, incidental or consequential damages.

<sup>3</sup> "Professional Fee Setoffs" means the actual and documented professional fees incurred by the Customers relating to the Company.

<sup>4</sup> General Motors was not a party to the Accommodation Agreement; however, it was a party to the accommodation agreement entered into between SKD L.P. and certain customers of the US operations, which had similar terms to the Accommodation Agreement. At the commencement of the CCAA proceedings General Motors purchased inventory from the Company and applied the setoffs referred to in section 2.6 of the Accommodation Agreement in accordance with the Receiver's interpretation of that section.

- 
- d. MOPAR refers to service part inventory that SKD maintained for Chrysler. At the time the Chrysler Trust Account was established, approximately US\$315,000 was funded by Chrysler in respect of the Chrysler MOPAR inventory reflected on the Company's books and records. Chrysler ultimately purchased MOPAR inventory with a total value of US\$21,505, which remains unpaid. Accordingly, the SKD estate should receive the amount of US\$21,505 in respect of the purchased MOPAR inventory and the balance, US\$293,793, should be paid to Chrysler.
  - e. At the time the Chrysler Trust Account was established, approximately US\$374,000 was funded by Chrysler for Chrysler finished goods inventory reflected on the Company's books and records. Actual finished goods purchased by Chrysler (approximately US\$360,000) were less than the estimated finished goods available for purchase (approximately \$374,000); accordingly, the balance of funds allocable to this inventory, being US\$13,920, should be paid to Chrysler.
2. Based on the analysis set out above, the Receiver is of the view that US\$318,703 should be paid to Chrysler from the Chrysler Trust Account and the balance in the account, being US\$511,669, should be paid to SKD's estate.

#### 4.0 Recommendation

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

\* \* \*

All of which is respectfully submitted,

*Duff & Phelps Canada Restructuring Inc.*

**DUFF & PHELPS CANADA RESTRUCTURING INC.  
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF  
SKD COMPANY, NMC CANADA INC. AND 2515080 NOVA SCOTIA COMPANY  
AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “D”**

**Supplement to the Fifth Report of  
Duff & Phelps Canada Restructuring Inc.  
as Court-Appointed Receiver of  
NMC Canada, Inc., 2515080 Nova Scotia  
Company and SKD Company**

September 16, 2013

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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 FIFTH REPORT OF  
DUFF & PHELPS CANADA RESTRUCTURING INC.  
AS COURT-APPOINTED RECEIVER OF  
NMC CANADA, INC., 2515080 NOVA SCOTIA COMPANY  
AND SKD COMPANY

September 16, 2013

## 1.0 INTRODUCTION

1. This report ("Supplemental Report") supplements the Receiver's report dated July 5, 2013 ("Fifth Report"). A copy of the Fifth Report is attached as Appendix "A" (without appendices).

### 1.1 Defined Terms

1. Unless otherwise noted in this Supplemental Report, all capitalized terms not otherwise defined herein have the meaning provided to them in the Fifth Report.

### 1.2 Purpose of this Report

1. The purpose of this Supplemental Report is to provide additional information to assist the Court in resolving the dispute regarding the funds in the Chrysler Trust Account, in light of information provided in the affidavit sworn on July 19, 2013 by Mary Ann Kirsch of Chrysler, Senior Manager, Head of Services and Marketing, Indirect Purchasing (the "Kirsch Affidavit") in response to the Fifth Report.

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### 1.3 Currency

1. Unless otherwise noted, all currency references in this Report are to Canadian dollars.

### 1.4 Qualifications

1. This Supplemental Report is subject to the qualifications set out in the Fifth Report.

## 2.0 CHRYSLER DISPUTE

1. The Chrysler Trust Account was established in the CCAA proceedings to hold funds deposited by Chrysler pending resolution of an agreed and itemized list of unresolved issues between SKD and Chrysler arising from a settlement reached in May, 2009 between SKD and Chrysler. The settlement schedule is provided in Appendix "B" ("Original Trust Account Schedule") and reflects that approximately US\$3.174 million was placed in the Chrysler Trust Account<sup>1</sup>.
2. On May 19, 2009, the Monitor was directed by Chrysler to release US\$2.269 million to SKD pursuant to an email from BBK Ltd ("BBK"), financial advisor to Chrysler and Honda during the CCAA proceedings, which appended a schedule detailing the amounts to be released from the Chrysler Trust Account (the "Payments Upon Exit Schedule"). The May 19<sup>th</sup> email and the Payments Upon Exit Schedule are provided in Appendix "C".
3. The balance in the Chrysler Trust Account is approximately US\$828,000, plus interest which has accrued since 2009.
4. The settlement enabled Chrysler to remove its inventory and tooling that was in the possession of SKD at that time, and to re-source on an orderly basis to a new parts vendor or vendors.
5. The Chrysler Trust Account was initially under the control of Richter as Monitor. The Chrysler Trust Account is now under the control of D&P as Receiver.
6. The events leading to the establishment of the Chrysler Trust Account are provided in the Fifth Report.

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<sup>1</sup> A further US\$116,326 was placed in the Chrysler Trust Account on May 19, 2009.



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7. As detailed in the Fifth Report, the Receiver has recommended that US\$511,669 of the funds remaining in the Chrysler Trust Account be paid to the SKD estate and the remainder of the funds, being US\$318,703, be returned to Chrysler.
  8. Chrysler is seeking a return of all funds in the Chrysler Trust Account, plus an additional \$607,706, representing additional claims advanced against SKD since the establishment of the Chrysler Trust Account, which the Receiver understood to be a final resolution of all issues between Chrysler and SKD related to SKD's production of parts.
  9. Information responding to the Kirsch Affidavit is provided below.

**a. 5% Setoff Issue**

- Chrysler first started making payments for goods delivered under the Accommodation Agreement in March, 2009. It had not prior to that date paid for goods delivered by SKD during the CCAA proceedings because it setoff various pre-filing steel contras against those sales. When it did begin to pay SKD in March, 2009, Chrysler calculated the Professional Fee Setoffs at 5% of the gross payables<sup>2</sup>.
- Pursuant to section 2.6 of the Accommodation Agreement, SKD has always taken the position that the Professional Fee Setoff was capped at 5% of the net payables, being the amount paid by Chrysler to SKD. The Receiver agrees with this interpretation, as is discussed below.
- The issue as to whether the Professional Fee Setoff should be calculated at 5% of the gross payables (Chrysler position) or net payables (SKD's position) remained unresolved at the time Chrysler decided it wished to implement its resourcing to a new parts vendor. By calculating the Professional Fee Setoff against the gross payables, Chrysler is entitled to a larger setoff deduction in respect of its professional fees than it would be if it calculated the Professional Fee Setoff against the net payables.
- Chrysler is claiming US\$467,493<sup>3</sup> more than the Receiver and the Company believe it is entitled to claim in respect of Professional Fee Setoffs.

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<sup>2</sup> Gross payables – total payables, less credits.

<sup>3</sup> \$549,992 Canadian dollars based on the relevant exchange rate.

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- SKD and Chrysler ultimately agreed to a mechanism, being the placing of funds equivalent to the disputed amounts in the Chrysler Trust Account, to allow for an orderly resourcing by Chrysler, until these issues could be resolved. These issues remain outstanding and are the subject of this report.

**b. *Request for Documentation***

- After various efforts to try to advance the settlement of the unresolved issues, Chrysler's counsel, Borden Ladner Gervais LLP ("BLG"), sent an email to the Receiver's counsel, Goodmans LLP ("Goodmans") on September 28, 2010 setting out Chrysler's positions on the various disputed items.
- The Receiver reviewed SKD's files and worked with SKD's financial advisor (Conway Mackenzie, Inc. ("Conway")) and BBK to pull together various materials in response to BLG's September 28 email. The Receiver and Goodmans met with BLG on November 25, 2010 to discuss the Chrysler Trust Account issues.
- At that meeting, among other things, the Receiver advised Chrysler's counsel of its position on the disputed items, and also advised that it would require support for the professional fees claimed by Chrysler under the Accommodation Agreement.
- While the Receiver was preparing materials to respond to the Kirsch Affidavit, Goodmans requested that BLG provide support for the amount of professional fees incurred by Chrysler.
- As the Accommodation Agreement provides that only "actual and documented fees" can be claimed for setoff by Chrysler, Goodmans advised BLG that the Receiver was of the view that it is required to perform diligence confirming the professional fees claimed by Chrysler. In the most recent response from Chrysler's counsel, and notwithstanding the tenor of the response in other aspects, Chrysler appears to have undertaken to provide the information after this Supplemental Report is provided to them. The Receiver elected not to engage in a response to these emails other than to have its counsel confirm their understanding that the requested materials would be provided.
- A copy of the exchange of emails between counsel for the Receiver and counsel for Chrysler is attached as Appendix "D".

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**c. *Gross Payables Versus Net Payables***

- Section 2.6 of the Accommodation Agreement provides that the Customers are entitled to set off up to 5% of the “paid amount” of any invoice issued to them by SKD, in respect of Allowed Setoffs and Professional Fee Setoffs.
- The Receiver and SKD share the same interpretation of the term “paid amount”.
- During the negotiation of the Accommodation Agreement (the Receiver (then the proposed Monitor) was present during the negotiations), the parties settled on the wording of Article 2.6 and used the words “paid amount” to try to remove ambiguity over the meaning of “gross” and “net”, which was extensively discussed at the time (together with most other aspects of the Accommodation Agreement). Accordingly, the Professional Fee Setoff was to be capped at 5% of the amount actually paid by the Customer to SKD during the CCAA proceedings. The “paid amount” was intended to reflect the actual amount invoiced for goods purchased, less credits (claimed by the Customers) and steel contras (for steel paid by the Customers) - the remaining amount being the net payable.
- During the limited period that GM continued to be a customer of SKD during the CCAA proceedings (it re-sourced early in those proceedings), GM applied the Professional Fee Setoffs consistent with SKD’s and the Receiver’s interpretation of the Accommodation Agreement.
- Ford made an initial payment applying the 5% setoff against the gross payables, but after discussions with Conway, it thereafter applied the setoff amount against net payables in accordance with the Accommodation Agreement.
- In March of 2009, when Chrysler started to remit payments for goods delivered to it under the Accommodation Agreement, Chrysler asserted that it was entitled to charge 5% for Professional Fee Setoffs based on the gross invoices rendered by SKD. In its March 20, 2009 payment, Chrysler charged the 5% setoff amount against the gross payables included in the March 20, 2009 payment schedule (which included all invoices from the commencement of the CCAA proceedings).

- 
- Honda originally calculated its Professional Fee Setoffs in accordance with the Accommodation Agreement. However, in April, 2009, upon learning of Chrysler's position, Honda was advised by BBK to apply the 5% setoff against the gross payables and Honda therefore made a retroactive adjustment and deducted the 5% setoff on the gross payables and reduced its final payment to SKD.

**d. Cash Flow Projections**

- The cash flow projections referenced in the Kirsch Affidavit were prepared by SKD and its financial advisor Conway.
- Information regarding the preparation of the cash flow projections and the treatment of the Professional Fee Setoff in the cash flow projections is provided in an affidavit sworn by Timothy Zeeb on September 16, 2013 (the "Zeeb Affidavit").
- Paragraph 11 of the Kirsch Affidavit makes the following reference to support Chrysler's reliance on the cash flow projections to support its position on the manner to calculate the professional fee setoff:

*As noted in the First Report, RSM Richter Inc. stated that the cash flow projection "reflects...the terms of the Accommodation Agreement".*

- The above statement captures only a portion of the paragraph included in the proposed Monitor's report. The entire paragraph reads as follows:

*"The Company's cash flow projection for the period ending February 28, 2009 is appended to the Chen Affidavit as Exhibit "1". The projected cash flow reflects the Customers' production requirements throughout the period, as well as the terms of the Accommodation Agreement, including the Customer funding and accelerated payments terms. The Proposed Monitor has reviewed the projected cash flow and believes it to be reasonable."*

- 
- The purpose of the proposed Monitor's statement was to indicate that the cash flow projection was generally prepared on a basis consistent with the Accommodation Agreement. The Monitor was not attesting to a particular interpretation of a particular clause of the Accommodation Agreement. Further, the Monitor was always cognizant that if there was a cash flow deficiency, it would need to be funded by the Customers, otherwise the Company's operations would be discontinued. This is because the Company had no other source of funding for its operations during the CCAA period.

e. ***Response to Paragraph 26 of Kirsch Affidavit***

- In paragraph 26 of the Kirsch Affidavit, Chrysler claims that *"no further elaboration or reasons have ever been provided by the Receiver with respect to why it disagrees with Chrysler's position – other than its interpretation of section 2.6 of the Accommodation Agreement"*. This is not correct.
- After various discussions between Chrysler and the Receiver, on September 28, 2010, BLG sent a detailed email to Goodmans setting out Chrysler's position on several outstanding issues between SKD and Chrysler relating to payments made upon the exit from Brampton<sup>4</sup> (and during the CCAA proceedings), which email is attached as Exhibit "M" to the Kirsch Affidavit. Thereafter, the Receiver spent a significant period of time working with Conway and BBK to assemble various documents to resolve outstanding matters.
- On November 25, 2010, the Receiver and Goodmans met with BLG to provide Chrysler with an update on the Receiver's views on all issues, including specifically its view of Chrysler's proposed interpretation of section 2.6 of the Accommodation Agreement. In that regard, the Receiver advised Chrysler that, in its view, section 2.6 of the Accommodation Agreement was intended and understood by all parties to mean that the Professional Fee Setoffs were limited to 5 % of the net payables. At the conclusion of that meeting, the parties agreed that Chrysler would bring a motion to have the various issues resolved. No motion materials were ever filed by Chrysler, despite periodic attempts by the Receiver and Goodmans to spur action.

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<sup>4</sup> This is a reference to one of SKD's facilities.

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f. **MOPAR Inventory**

- Based on SKD's records, approximately \$24,300<sup>5</sup> of MOPAR inventory was shipped to Chrysler upon Chrysler's exit from the SKD premises.
- Pursuant to paragraph 24 of the Kirsch Affidavit, Chrysler claims that it received \$18,200 of the MOPAR inventory, and therefore the balance, \$6,100<sup>6</sup>, is not owed by Chrysler.
- Attached as Appendix "E" is a schedule summarizing the final MOPAR shipments to Chrysler, together with the related invoices and shipping documents. The summary reflects MOPAR shipments/sales totalling \$24,300. Copies of the supporting documentation were provided to BBK on September 28, 2010.
- Based on the above, it is the Receiver's position that \$24,300 is due to the estate in respect of this issue and that the balance of the MOPAR funds (US\$293,793) should be paid to Chrysler.

g. **Unreconciled Amount**

- Chrysler originally funded US\$1.305 million into the Chrysler Trust Account in respect of "*Missing Invoices – Recent*". This represented what SKD claimed was owing by Chrysler but for which Chrysler indicated that it did not have sufficient (or any) documentation to support SKD's claim. Of this amount, Chrysler agreed that US\$1.256 million could be released to SKD. The remainder, approximately US\$48,000, is referred to as the "Unreconciled Amount".
- Paragraph 28 of the Kirsch Affidavit states that "*the Receiver is not entitled to keep any of the Unreconciled Amount*" and "*neither SKD Canada nor the Receiver had been able to provide any documents to confirm that any parts were delivered to Chrysler for these amounts and cannot even locate invoices for the parts*".

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<sup>5</sup> The schedule prepared by SKD totalled \$25,300. It should have been \$24,300.

<sup>6</sup> An amount of \$7,100 was stated in the Kirsch Affidavit; however, the amount should be \$6,100 as a result of the error noted in the prior footnote.

- 
- Chrysler has asserted that the Receiver, on behalf of the estate, is not entitled to keep any of the Unreconciled Amount because neither SKD nor the Receiver has provided any documents to confirm that any parts were delivered to Chrysler for these amounts.
  - Neither SKD nor the Receiver was able to respond to Chrysler regarding this issue because, until June 4, 2010, Chrysler did not, or could not, advise of the invoices for which it required further supporting documentation.
  - On June 4, 2010, BBK provided a schedule (the “June 4 Schedule”) to the Receiver, which set out, among other things, the Unreconciled Amount. A copy of the June 4 Schedule is attached as Appendix “F”. This schedule reflected approximately \$179,000 - where Chrysler had previously claimed US\$48,000. Effectively, after the settlement, Chrysler increased its claim for “*Missing Invoices – Recent*” by \$102,000 (taking into account exchange rate fluctuations).
  - The June 4 Schedule included a list of invoices to support Chrysler’s claims of \$179,000. The Receiver searched through the Company’s electronic records and worked with Conway to locate documentation to attempt to locate support for the amounts now claimed by Chrysler. The Receiver was able to identify support for approximately \$88,000 of this amount. Because Chrysler never provided a list to support the original amount claimed in respect of the Unreconciled Amount (US\$48,000), the Receiver is unable to determine the extent to which the documentation it identified related to the US\$48,000 originally claimed by Chrysler.
  - At the time the Chrysler Trust Account was established, Chrysler authorized the release of all “*Missing Invoices – Recent*” funds except US\$48,000. Accordingly, it is the Receiver’s view that Chrysler should not be entitled to increase the amount of its claim subsequent to the establishment of the Chrysler Trust Account.
  - Copies of invoices and other supporting documentation related to the Unreconciled Amount totalling approximately \$88,000 were provided to BBK on September 28, 2010 and October 12, 2010 in response to discussions between the Receiver and BBK regarding the June 4 Schedule. Attached as Appendix “G” are copies of emails attaching the invoices and other supporting documentation.

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- The reconciliation of the Unreconciled Amounts was a significant and costly exercise. Significant time and cost would be required for both parties to continue this reconciliation – and it is unclear whether it would be fruitful for either party. Accordingly, the Receiver felt that the additional time and cost that would have been incurred trying to reconcile and resolve this issue may exceed the benefit to the estate and therefore suggested that this item be split evenly between the estate and Chrysler.

**h. Additional Amounts Claimed by Chrysler**

- Paragraph 30 of the Affidavit sets out that *in addition* to the reimbursement to Chrysler of the entire balance of the Chrysler Trust Account, Chrysler believes that it is entitled to be paid a further \$607,706 (“Additional Claim”).
- The Additional Claim is over and above the amount agreed by SKD and Chrysler to be placed in the Chrysler Trust Account to allow Chrysler to re-source on an orderly basis.
- On May 15, 2009, Chrysler funded US\$3.174 million (as set out on the Original Trust Account Schedule) into the Chrysler Trust Account pending resolution of a specific number of agreed and identified issues. After negotiations, Chrysler agreed that approximately US\$2.269 million was properly due to SKD and could be released from trust. This amount was paid to SKD. That release of funds, in the view of the Receiver, is no longer available for revision or negotiation, nor was it intended to be. The agreed upon release from trust left US\$827,794 in the Chrysler Trust Account pending the resolution of the remaining items in an agreed list of specific issues. As detailed in the table below, the agreed upon list of specific issues, and the amount allocated to each item, was shown in the Original Trust Account Schedule.



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	\$US
Undisputed payables	(10,167)
Pricing differences	680
Missing parts bank invoices	2,299
Missing invoices – recent	48,606
5% setoff limitation	467,493
Credit memos	(1,484)
Disputed steel contra	(7,936)
MOPAR inventory	315,298
Finished goods inventory	13,920
Brampton prototype parts	(915)
<b>Total</b>	<b>827,794</b>

- On May 19, 2009, BBK sent an email to the Monitor authorizing the release to the Monitor of US\$2.269 million from the Chrysler Trust Account to pay various amounts owing to SKD (the “Settlement Amounts”). This was shown in the line item “*Total Payment Released by the Monitor*” in the “Payments Upon Exit Schedule” which was attached to the May 19 email (See Appendix “C”).
- The establishment of the Chrysler Trust Account was a mechanism to allow Chrysler to re-source on an orderly basis. It was not intended that Chrysler - or SKD - could or would re-open that settlement arrangement. The Receiver denies Chrysler’s attempt to do so now.
- It is therefore the Receiver’s position that Chrysler is not entitled to make claims for payment from the receivership estate of any amounts in excess of those paid to the Chrysler Trust Account. To the extent that Chrysler can show a legitimate loss outside of the items detailed in the Original Trust Account Schedule, Chrysler is entitled to an unsecured claim in SKD’s bankruptcy.
- In the alternative, if Chrysler is entitled to make any claims with respect to the Additional Claim apart from the specific disputes for which the funds were earmarked, the Receiver has reviewed, for the purposes of completeness, the further amounts claimed by Chrysler, and provides the following information to assist the Court.

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Type of Claim	\$
Unclaimed Post-Filing Amount	388,511
Pre-filing Unsecured claim	157,704
Captured in reconciliation of Chrysler Trust Account	61,491
<b>Total</b>	<b>607,706</b>

- With respect to the Unclaimed Post-Filing Amount (\$388,511), the Receiver provides the following information:
  1. Steel Contrás (\$110,759): The Receiver is of the view that Chrysler has provided documentation to evidence that, absent the settlement, Chrysler would have been entitled to these additional steel contrás.
  2. 5% Setoff (\$127,149): The Receiver is of the view that, absent the settlement (and subject to receiving documentation to support its professional fee claims), Chrysler would have been entitled to 5% of the amount of the net receivables paid into the Chrysler Trust Account (on account of Professional Fee Setoffs), being (\$106,814). It would not be entitled to a post-filing claim for the balance (\$20,335) as it is calculated on the gross payable amount.
  3. “Steel Scrap Debits” (\$39,363): The Receiver is of the view that Chrysler has provided documentation to evidence that, absent the settlement, Chrysler would have been entitled to these additional “steel scrap debits” (\$38,057). However, \$1,306 of this amount relates to post-filing “steel scrap debits” in respect of the “Windsor” plant, which does not appear to be related to SKD. Therefore, Chrysler is not entitled to this amount (\$1,306).
  4. Missing Invoices – Recent (\$102,370): The Receiver is unable to determine whether this is a valid claim given the documentation uncertainty between Chrysler and SKD. This issue is discussed above in section 9(f) above.

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5. Missing parts bank invoices (\$8,870): The amount claimed for “*Missing parts bank invoices*” on the Original Trust Account Schedule totalled \$3,630. Chrysler subsequently increased the amount claimed to \$12,500. Absent the settlement, in order to determine whether all or part of the additional claims could be allowed, significant time and cost would be required to continue this reconciliation and it is unclear whether it would be fruitful. The Receiver, again, takes the position that Chrysler cannot amend its claim subsequent to the establishment of the Chrysler Trust Account.

- Based on the foregoing, in the absence of the settlement, the Receiver is of the view that the maximum amount to which Chrysler would be entitled as a post-filing claim is \$255,630, before considering whether any of the Unreconciled Amount and/or its claim for missing parts bank invoices are bona fide deductions.
- With respect to the Pre-filing Unsecured Claim (\$157,704), Chrysler has provided documentation to support an unsecured pre-filing claim for “steel scrap debits” in the amount of \$151,523. However, Chrysler would not be entitled to an unsecured claim in respect of \$6,181 of the total amount claimed as it relates to the “Windsor” plant, which does not appear to be related to SKD.
- Lastly, Chrysler’s Additional Claim includes amounts it claimed previously and for which funds were deposited in the Chrysler Trust Account (\$61,491). This is comprised of debit memos (\$2,344), disputed steel contras (\$12,529) and Brampton finished goods (\$46,618). Because these amounts have already been included in the Chrysler Trust Account amounts, Chrysler is not entitled to claim these amounts again.

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### 3.0 CONCLUSION AND RECOMMENDATION

1. As noted above, although it was agreed on November 25, 2010 that Chrysler would bring a motion to deal with these issues, no motion materials were ever filed by Chrysler, despite periodic attempts by the Receiver and Goodmans to spur action.
2. On November 29, 2012, in an effort to resolve matters, the Receiver sent a letter to Chrysler's counsel outlining the Receiver's proposed offer to settle the outstanding issues. No response was received from Chrysler.<sup>7</sup>
3. On June 19, 2013, the Receiver provided Chrysler's counsel with draft materials in respect of the within motion, in an effort to resolve this matter without the need for a motion. The Receiver delayed filing these materials on several occasions in the hope of reaching a settlement. When Chrysler did not respond, the Receiver had to bring forward the within motion.
4. Given the length of time that these issues have remained unresolved, and the Receiver's desire to complete the receivership proceedings, the Receiver is seeking this Honourable Court's direction regarding the distribution of the funds from the Chrysler Trust Account.
5. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1 of the Fifth Report.

\* \* \*

All of which is respectfully submitted,

*Duff & Phelps Canada Restructuring Inc*

**DUFF & PHELPS CANADA RESTRUCTURING INC.  
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF  
SKD COMPANY, NMC CANADA, INC. AND 2515080 NOVA SCOTIA COMPANY  
AND NOT IN ITS PERSONAL CAPACITY**

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<sup>7</sup> The administration of the receivership estate and the bankruptcy proceedings was largely held in abeyance as a result of claims brought by the Administrator of certain of SKD's pension plans due to a decision of the Court of Appeal of Ontario in the Indalex case in 2010. Once that decision was overruled by the Supreme Court of Canada in 2012, the Receiver was able to move forward with its administration. The Receiver has no information as to why Chrysler took no steps during the intervening period to advance its issues that are not related to the SKD pension plans.

## **Appendix “E”**

# **RSM Richter**

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

**RSM Richter Inc.**  
Toronto, October 23, 2009

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

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

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

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

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

**October 23, 2009**

**1. INTRODUCTION**

Pursuant to an order (the "Initial Order") of the Ontario Superior Court of Justice (the "Court") made on January 21, 2009, NMC Canada, Inc. ("NMC"), 2515080 Nova Scotia Company ("2515") and SKD Company ("SKD") (collectively, the "Company") commenced proceedings under the *Companies' Creditors Arrangement Act* ("CCAA") and RSM Richter Inc. ("Richter") was appointed as the 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) Propose a process to identify claims against the Company’s Directors and Officers falling under paragraphs 7(a), 9(a), 9(b) and 9(c) (the “Director Protection Paragraphs”) of the Initial Order (the “Claims Procedure”);
- c) Summarize the Receiver’s estimate of the projected recoveries in these proceedings;
- d) Summarize the rationale for bankrupting the Company while continuing the receivership proceedings; and
- e) Recommend that this Honourable Court make an order:
  - Approving the Claims Procedure and authorizing the Receiver to carry out the Claims Procedure;
  - Directing the Receiver to make distributions i) in the amount of \$6 million to repay a portion of the “participations” funded by the Company’s customers<sup>1</sup> on a subordinated secured basis under the Comerica Bank (“Comerica”) facilities (the “Customer Participations”) and ii) to repay the Canadian dollar equivalent of US\$53,000 to SKD US (defined in Section 2 below) for amounts that it funded to Comerica on the Company’s behalf;
  - Permitting the Receiver to make further distributions to Comerica up to the full amount owing by the Company in respect of the Customer Participations;
  - Authorizing the Receiver to assign each of the Company’s partners into bankruptcy with Richter acting as the trustee in bankruptcy in each case; and
  - Approving the Receiver’s actions and activities as described in this Report.

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

## 1.2 Currency

Unless otherwise noted, all currency references in this Report are to Canadian dollars. US dollars have been converted to Canadian dollars at a rate of US\$1.00 to C\$1.04.

## 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 otherwise 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. ("SKD US") in the US and SKD de Mexico, S. de R.L. de C.V. in Mexico (collectively, SKD and its related entities are referred to as the "SKD Group").

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

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

### **3. 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 the Director Protection Paragraphs. The obligations under these paragraphs include, *inter alia*, amounts owing to employees for wages, vacation pay, commissions, retention amounts and pension contributions and priority obligations owing to federal and provincial governments, including sales taxes and employee withholdings. The Receivership Order preserved the priority and status of the Directors' Charge. Pursuant to the terms of the Receivership Order, the Directors' Charge ranks in priority to the Receiver's Charge in the Receivership Order<sup>2</sup>. Since the Company's operations have ceased and most of the operating assets have been sold, the Receiver believes that it is appropriate to take steps to conclude all matters related to the Directors' Charge and to proceed with distributions to creditors of the Company in accordance with legal priorities. This necessitates a D&O Claims Procedure.

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<sup>2</sup> The Receivership Order also preserved the priority of the Administration Charge established by the Initial Order.

The following is an overview of the Claims Procedure<sup>3</sup>:

- The Claims Procedure is intended to solicit and resolve claims, if any, covered by the Director Protection Paragraphs;
- The Receiver is to send by ordinary mail a copy of the Proof of Claim Document Package (which includes a copy of the Instruction Letter and Proof of Claim) to each Person set out in the Claims Procedure Order. This includes all of the employees of the Company whose employment continued after January 21, 2009, and both the Ontario and Federal governments;
- The Receiver is to post a copy of the Proof of Claim Document Package on its website from the date of the Claims Procedure Order until ten Business Days after the Claims Bar Date;
- The Receiver is to place notices in *The Globe and Mail (National Edition)* and the *Automotive News* within five (5) business days of the making of the Claims Procedure Order. The notice, the form of which is attached to the draft Claims Procedure Order, is to advise of the Claims Procedure, call for Claims and advise of the proposed Claims Bar Date, being 45 days after the date of the Claims Procedure Order being issued;
- Any and all Claims not filed by 5:00 pm (Toronto time) on the Claims Bar Date are to be extinguished and forever barred against the Directors and Officers;
- If the Claimant, Director or Officer disputes the acceptance, revision, or disallowance of any D&O Claim by the Receiver, in whole or in part, the Claimant, Director or Officer must file a Notice of Dispute with the Receiver within 10 business days of issuance of the Receiver's Notice of Revision or Disallowance or Notice of Acceptance;
- In the event that the dispute cannot be consensually resolved between a Claimant, Director or Officer and the Receiver, the Receiver shall recommend to the Court the process to be followed to quantify and/or to resolve any disputes that exist; and
- If a Claimant, Director or Officer fails to appeal the Notice of Revision or Disallowance or Notice of Acceptance by filing a Notice of Dispute within the prescribed time, the Claim is to be deemed to be as set out in the a) Notice of Acceptance or b) Notice of Revision or Disallowance, as the case may be.

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<sup>3</sup> Unless otherwise defined in this Report, defined terms in this section have the meaning provided to them in the draft Claims Procedure Order appended to the motion record.

The proposed forms to be used in the Claims Procedure (including the Instruction Letter, the Proof of Claim form, the Notice of Revision or Disallowance and the Notice of Dispute) are appended as Schedules to the draft Claims Procedure Order.

After the conclusion of the Claims Process, the Receiver will report to the Court as to its results and will make a recommendation as to the payment of any claims accepted or otherwise determined to be an appropriate claim under the Directors' Charge and will recommend the discharge of the Directors' Charge after any such payments are made.

#### **4. COMERICA**

Comerica is the SKD Group's primary secured creditor. Prior to and during the CCAA proceedings, Comerica provided the SKD Group with, *inter alia*, a revolving loan facility which was used by the SKD Group (including SKD US and the Company) to fund its business and operations. Comerica and the Customers, through Customer Participations<sup>4</sup>, funded the Company's business and operations during the CCAA proceedings. Customer Participations were amounts advanced by the Customers to purchase participations in the Comerica facility, which amounts Comerica then lent to the Company. Pursuant to a subordinated participation agreement, as amended, dated January 21, 2009, a copy of which is provided in Appendix "C", although secured under the Comerica facility, the Customer Participations ranked subordinate to Comerica's own advances to the Company.

In its report as proposed Monitor dated January 21, 2009, Richter reported on, and appended thereto, the security opinion it had received from Goodmans LLP ("Goodmans")

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<sup>4</sup> The Customers also funded certain amounts to the Company on an unsecured basis, which were funded into escrow accounts that the Company used to make payments to employees. These amounts total \$10,050,156 and are referenced in Section 5 below. This unsecured funding is separate and apart from the Customer Participations.

finding the security of Comerica to be valid and enforceable. Accordingly, in the normal course of the Company's operations during the CCAA proceedings, the Company's net cash receipts generated from the collection of its accounts receivable and the sale of its assets were applied to reduce and repay all of the Company's obligations owing directly to Comerica – the Company remains indebted to Comerica for Customer Participations totalling approximately US\$11.316 million.

#### **4.1 Comerica Debt Allocation**

Due to the manner in which Comerica funded the business and operations of the SKD Group, it was necessary to determine the amount of the Comerica debt allocable to each of SKD US and the Company. Richter's ninth report, dated May 28, 2009, issued in the CCAA proceedings, advised of an analysis dated May 27, 2009 prepared by Richter and the Company's financial advisors in respect of the allocation of Comerica's debt (including Customer Participations) between SKD US and the Company. Based on further information that became available to Richter after it was appointed as Receiver, Richter amended the debt allocation analysis, as summarized in a memorandum it prepared dated August 25, 2009. The August 25<sup>th</sup> memorandum was provided to Company representatives and Customer representatives. No party has advised the Receiver of any objections to the allocation.

Based on the revised debt allocation analysis, the Receiver is of the view that the Company owes SKD US approximately US\$53,000, representing the net amount paid to Comerica by SKD US on behalf of the Company for which SKD US stands in the shoes of Comerica. The debt allocation analysis also reflects that the Company owes Comerica approximately US\$11.316 million in respect of Customer Participations.

## 5. ESTIMATED RECOVERY ANALYSIS

The Receiver has prepared an analysis of the potential recoveries on the Company's remaining assets. The analysis reflects that there could be a significant surplus available to be shared among the unsecured creditors of the Company, which includes amounts funded by the Customers (\$10,050,156) 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 this Court on April 3, 2009. The ability to achieve the results detailed in the recovery analysis is largely contingent on receipt of certain tax refunds and the sale of the Company's two owned parcels of real property.

## 6. 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) <sup>5</sup>
General Account	Receiver	12,855
Trust Account (Directors' Obligations)	Receiver	1,285
Trust Account (Chrysler)	Receiver	861
Union Escrow Account	Escrow Agent	261
Retention Escrow Account	Escrow Agent	126

A summary of these accounts is as follows:

- The monies in the General Account include proceeds transferred from the Monitor's accounts, which included, *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. The funds held in this account are net of operating costs paid during the receivership period.

<sup>5</sup> Account balances are as at October 16, 2009.



- 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 in respect of 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 in respect of severance and termination pay. Payments made to employees totalled approximately \$9.8 million. There are no known amounts owing to the employees; 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 a party to the agreement. The Receiver's counsel is following up with the USW regarding 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"<sup>6</sup>. 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.

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<sup>6</sup> Certain of the Company's salaried employees who were not offered employment by any purchaser of the Company's businesses.

## 7. DISTRIBUTIONS

As at October 31, 2009, the Receiver anticipates having the following proceeds available for distribution to creditors and/or funding ongoing operating expenses:

	Amount (\$000s)
General Account – as at October 16, 2009	12,855
Less: Estimated October operating expenses	(40)
Estimated General Account as at October 31, 2009	12,815
Trust Account (Directors' Obligations)	1,285
Projected Cash Available for Distribution, October 31, 2009	14,100

The Receiver is seeking approval of this Honourable Court to make distributions totalling: a) approximately \$6 million to Comerica in reduction of amounts owing under the Customer Participations; and b) the Canadian dollar equivalent of US\$53,000 to SKD US to satisfy it in full on account of any and all amounts that it paid or repaid on behalf of the Company. The Receiver will continue to hold approximately \$8 million to secure potential claims under the Directors' Charge and to fund the ongoing fees and expenses of the Receiver to complete the Claims Process, sell the remaining assets<sup>7</sup> and administer a bankruptcy, as detailed below.

	Amount (\$000s)
Directors' Charge	3,000
Liabilities that may rank ahead of the Customers <sup>8</sup>	2,000
Estimated occupancy costs (12 months)	1,900
Contingency	1,000
Holdback amount	7,900
Rounded	8,000

<sup>7</sup> In order to sell the real estate, the Receiver has incurred and will incur costs related to surveys, environmental studies and roof repairs. Additional reports may need to be commissioned and additional costs may need to be incurred.

<sup>8</sup> Includes employee wages, professional fees and a contingency for miscellaneous costs.

The Receiver is also requesting that it be authorized, without further order of the Court, to make further distributions to Comerica, from funds which are or become available, until the Customer Participations are fully repaid; provided that, among other reserve amounts, sufficient reserves be held to fund the payment of the Directors' Charge pending completion of the Claims Process and further order of the Court.

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

## **8. 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 \$1,000,000). 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 paid to certain professionals in advance of the CCAA proceedings.
- The Directors' Charge (up to \$3,000,000). The Receiver's understanding of the status of amounts which may be covered by the Director Protection Paragraphs is as follows:
  - There is no GST owing. The Company is typically in a GST refundable position;
  - The Company does not collect provincial sales tax; and
  - The Company funded all wages and payroll taxes in the normal course, both prior to and during the CCAA proceedings.

If any amounts are identified by the Claims Procedure that are a valid claim against the Directors' Charge, the Claim can be satisfied from the amounts being withheld.

Other than the claims that are subject to the Administration Charge, the Directors' Charge and an asserted repairs and storage lien claim in the amount of \$25,773 (the "RSLA Claim"), the Receiver is not aware of any other claims that may rank in priority to Comerica. The Receiver is working to resolve the RSLA Claim; sufficient funds remain to have it satisfied.

## **9. MAYNARDS AUCTIONS**

Pursuant to the asset purchase and liquidation services agreement ("APLSA") previously approved by this Honourable Court, the full amount of the net minimum guarantee (\$3.1 million) has been paid to the Receiver.

The auctions for the sale of the Milton and Brampton assets were held on October 14 and 15, 2009, respectively. The net proceeds from the auction sales, including pre-auction sales, (excluding the buyer's premium charged by Maynards) were approximately \$3.33 million. Pursuant to the terms of the APLSA, sale proceeds in excess of \$3.35 million were to be shared 85%/15% between the Receiver and Maynards, in favour of the Receiver. Since the total sale proceeds were less than this \$3.35 million, no further proceeds are to be paid to the Receiver. In addition to the assets sold by Maynards that were included as part of the net minimum guarantee, there were additional assets sold by Maynards on a commission basis. Total proceeds from commission sales (net of the 10% commission paid to Maynards) were approximately \$100,000.

## 10. PACCAR LEASING

Paccar Leasing (“Paccar”) has claimed ownership to and security in respect of a truck and trailer that were located at SKD’s Milton facility. While Paccar effected registrations, the Receiver believes its interests to be subordinated to Comerica’s security. Paccar disputes that position. By letter dated August 27, 2009, counsel for Paccar wrote to Goodmans and proposed to pay what they believe to be the fair market value of the truck and trailer in question, the sum of which Paccar proposed be held in trust pending a resolution of the dispute. Paccar proposed amounts for each of the truck and the trailer. By letter dated September 3, 2009, the Receiver advised that it was prepared to proceed on this basis but proposed that \$45,000 be paid into trust, representing the Receiver’s estimate of the fair market value of the truck and trailer. The Receiver did not receive a response to its letter. Accordingly, on October 2, 2009, Goodmans advised counsel for Paccar that the Receiver intended to have Maynards sell the truck and trailer in the auction to be held on October 14, 2009. By letter dated October 13, 2009 Paccar’s counsel advised Goodmans that Paccar wished to participate in the auction and requested details related to the auction.

The Paccar assets were sold by Maynards in the October 14<sup>th</sup> auction for \$45,500.

## 11. BANKRUPTCY

The Receiver believes that the Company should be placed into bankruptcy in order to utilize the provisions of the *Bankruptcy and Insolvency Act* (“BIA”) to determine the unsecured claims against the Company and to distribute monies, if any, which may be available for distribution to unsecured creditors. Bankruptcy provides an efficient mechanism for resolving the claims of, and making distributions to, unsecured creditors. Given Richter’s knowledge of the CCAA and receivership proceedings, it is of the view that it is appropriate

for Richter 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.

## 12. OVERVIEW OF THE RECEIVER'S ACTIVITIES

In addition to the activities detailed above and related to the above, since the date of the Receivership Order, 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;
- Finalizing and delivering the Notice and Statement of the Receiver pursuant to subsections 245(1) and 246(1) of the BIA;
- Finalizing "term and task" letters for certain employees of the Company;
- Disbursing funds from the post-receivership bank accounts in satisfaction of obligations incurred by the Company during the CCAA period and by the Receiver during the receivership period;
- Corresponding with Maynards regarding pre-auction asset sales and the collection of funds related thereto;
- Attending at the auctions;
- Executing Receiver Certificates in respect of asset sales by Maynards;
- Dealing with employee claims under the *Wage Earner Protection Program Act*;
- Corresponding with the Financial Services Commission of Ontario ("FSCO") regarding the Company's pension plans;
- Corresponding with PricewaterhouseCoopers LLP regarding its appointment by FSCO as the administrator of the Company's pension plans;
- Responding to creditor and former employee inquiries regarding these proceedings;

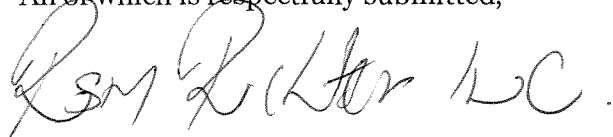
- Corresponding with the Receiver's counsel to deal with various matters in respect of this mandate;
- Advancing the sale of the Company's real estate;
- Disbursing, as Escrow Agent, funds from the Union Escrow Account and the Retention Escrow Account;
- Placing on its website copies of materials filed in these proceedings;
- Drafting this Report; and
- Other matters pertaining to the administration of this mandate.

### 13. RECOMMENDATION

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

\* \* \*

All of which is respectfully submitted,

A handwritten signature in black ink, appearing to read "RSM Richter Inc.", written over the typed name of the company.

**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 “F”**



# **RSM! Richter**

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

**RSM Richter Inc.**  
Toronto, August 13, 2010

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Appendix "A"	Initial Order
Appendix "B"	Receivership Order
Appendix "C"	Purchaser's Offer for Milton Property
Appendix "D"	List of Boxes to be Disposed

**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**

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

**August 13, 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) Advise the Court of an offer submitted by Mayflower Properties Inc. (the “Purchaser”) to purchase the Company’s property at 375 Wheelabrator Way, Milton (the “Milton 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”); the Transaction is subject to Court approval; and
- b) 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 the Transaction;
  - Vesting in the Purchaser, as of closing, title to the Milton Property, free and clear of all liens, charges, security interests and other encumbrances;
  - Authorizing the Receiver to dispose of the books and records included in Appendix “D”; and
  - Approving the Receiver’s actions and activities as described in this Report.

## 1.2 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 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. REAL ESTATE**

At the end of June, 2009 the Receiver engaged Colliers MaCaulay Nicolls (Ontario) Inc. ("Colliers") to market for sale the Milton Property and the Company's real estate at 40 Holtby Avenue, Brampton, Ontario (the "Brampton Property"). At the expiration of the listing agreement 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.

A transaction for the sale of the Brampton Property was approved by the Court on April 29, 2010 and closed on April 30, 2010.

### **3.1 Milton Property**

Based on the advice of Colliers and other information available at the time of the Colliers listing agreement, the Milton Property was originally listed for sale at \$7.448 million. In consultation with CBRE, in February, 2010 the listing price was reduced to \$6.5 million and CBRE commenced marketing the Milton Property.

The Purchaser originally submitted a letter of intent of \$2 million for the Milton Property on April 7, 2010. The Receiver did not counter this offer. On April 20, 2010, the Purchaser re-submitted a letter of intent of \$2.7 million and on May 6, 2010, the Purchaser submitted an offer in the Receiver's form of offer in the amount of \$3.5 million. On May 19, 2010, following several rounds of "sign backs", the Receiver accepted the Purchaser's offer in the amount of \$3.75 million. The offer was conditional upon the Purchaser's review of a supplementary environmental report that was in the process of being prepared. The conditional period, as amended, expired on July 15, 2010 at which time the Purchaser approached the Receiver requesting that the purchase price be amended to \$3.05 million, a reduction of \$700,000, citing the costs related to environmental clean-up and roof repairs as the primary reason for the request. The Receiver did not respond to this request. The Purchaser subsequently requested an amended purchase price of \$3.3 million, a reduction of \$450,000 from the original purchase price. The Receiver responded at the original purchase price of \$3.75 million. On July 20, 2010, the Purchaser responded with an amended purchase price of \$3.45 million. After various discussions with CBRE and the Purchaser, the Receiver accepted the amended purchase price of \$3.45 million on July 22, 2010, but all with reference to the agreement of purchase and sale dated May 19, 2010.

The Transaction is subject to Court approval, contemplates a closing date of August 25, 2010 and is consistent with standard insolvency transactions, i.e. limited representations and warranties. On May 21, 2010, the Purchaser paid a deposit of \$100,000 to CBRE, which is currently being held in trust by it pending closing.

Throughout the negotiation process, the Receiver kept the Customers<sup>1</sup> apprised of its dealings with respect to the sale of the Milton Property; however, due to the quick pace and the tight deadlines of the final negotiations, the Receiver was only able to provide the Customers with less than one day notice in advance of accepting the amended purchase price. The Receiver wrote to counsel for the Customers to advise of the developments and to recommend the Transaction. The Receiver advised counsel that if they did not have the opportunity to obtain instructions from their clients, they would be provided ample notice to raise any objection at the return of this motion. As of the date of this report, none of the Customers has advised the Receiver that it objects to the Transaction.

A copy of the Purchaser's offer is attached as Appendix "C".

### **3.2 Recommendation Re: Sale of the Milton Property**

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

- The Milton Property has been exposed to the market by professional real estate firms since June, 2009. Conventional methods for selling real estate have been utilized;

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<sup>1</sup> 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. As a group, the Customers are the largest unsecured creditors.



- CBRE, which is familiar with the local real estate market and the specific attributes of the Milton Property, has advised the Receiver that, based on their knowledge and on feedback received from other parties which have toured the Milton Property, it is unlikely that a better offer would be presented for the Milton Property in the near term or at all;
- The Purchaser's offer is the highest and best received and is now conditional only upon Court approval;
- In CBRE's view, the purchase price represents the current market value for this property given a) that it is being sold in a receivership without representations and warranties, b) there are known environmental issues with the property and c) the 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, 2010<sup>2</sup>; and
- Ongoing costs associated with maintaining the Milton Property would be eliminated – these total approximately \$35,000 per month.

#### **4. BOOKS AND RECORDS**

The majority of the Company's books and records are presently being stored at the Milton Property. There are approximately 1400 boxes at the Milton Property and a further 142 boxes being stored by PricewaterhouseCoopers Inc., the administrator of the Company's pension plans appointed by Financial Services Commission of Ontario.

The Receiver is seeking this Honourable Court's approval to dispose of 485 boxes ("Boxes"), containing the Company's books and records related to the period prior to January 1, 2004 and certain other books and records related to the period after January 1, 2004.

Pursuant to paragraph 6 of the Office of the Superintendent of Bankruptcy's Directive 17, it is recommended that a trustee<sup>3</sup> retain up to two years of books and records of a bankrupt in order to fulfill its obligation to make any return that the bankrupt was required to make to

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<sup>2</sup> Excludes the sale of the Brampton Property which closed on April 30, 2010.

<sup>3</sup> Pursuant to an order of the Court made on April 29, 2010, the Receiver is authorized to assign the Company into bankruptcy and to act as trustee in the bankruptcy proceedings.

one year prior to the commencement of the calendar year of the bankruptcy. Paragraph 7(2) of the directive goes on to say that a trustee should extend the retention period of documents where other statutes (including the *Income Tax Act* (“ITA”)) require that documents be kept for a longer time period.

Pursuant to the rules of the ITA<sup>4</sup>, a company is required to retain books and records related to the determination of taxes payable for a period that is six years from the end of the last taxation year to which the books and records relate. The last tax returns filed for the Company were for the 2008 tax year.

The books and records that the Receiver is seeking to dispose of are not required for the administration of the receivership, will not be required for the administration of the bankruptcy estates and are not required to be retained pursuant to the rules of the ITA. Accordingly, the Receiver is seeking to dispose of the Boxes to reduce the storage and destruction costs related thereto. As discussed in Section 3 above, subject to this Honourable Court’s approval, the Transaction is scheduled to close on August 25, 2010; accordingly, all of the boxes must be removed from the Milton Property prior to that date. A list of the information contained in the Boxes is provided in Appendix “D”.

On August 12, 2010, the Receiver contacted Lang Michener LLP, counsel to the Company’s former directors and advised that it did not have an interest in continuing to store the Boxes and that it would release the Boxes to former directors, at their request. As of the date of this Report the Receiver is awaiting a response from the former directors.

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<sup>4</sup> The rules of the ITA related to storage of books and records are consistent with the rules set out in the Excise Tax Act, the Employment Insurance Act and the Canada Pension Plan Act.

Since the records contained in the Boxes are not required pursuant to the rules of the ITA, nor for administering the receivership or for administering the bankruptcy estates, the Receiver is seeking authorization from this Honourable Court to dispose of the Boxes in an appropriate manner (by shredding and/or recycling) if the former directors do not take possession of them.

## 5. OVERVIEW OF THE RECEIVER'S ACTIVITIES

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

- Negotiating the Transaction and the agreement of purchase and sale for the sale of the Milton Property;
- Corresponding with CBRE regarding various matters concerning the marketing of the Company's real estate;
- Corresponding with Golder Associates Ltd. ("Golder") regarding a supplemental phase II environmental audit of the Milton Property;
- Reviewing environmental reports prepared by Golder;
- Dealing with other matters pertaining to the maintenance of the Milton and Brampton Properties;
- Dealing with closing matters related to the completion of the sale transaction for the Brampton Property;
- Drafting and finalizing the second interim report of the Receiver prepared pursuant to subsection 246(2) of the *Bankruptcy and Insolvency Act*;
- Disbursing funds to the Company's secured creditors pursuant to the terms of the Court order made on June 7, 2010;
- 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;

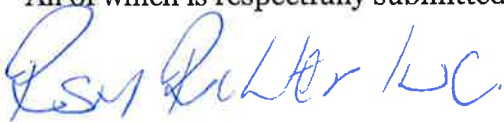
- Corresponding with the Receiver's counsel to deal with various matters in respect of this mandate;
- Placing on its website copies of materials filed in these proceedings;
- Drafting this Report; and
- Other matters pertaining to the administration of this mandate.

## 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(b) of this Report.

\* \* \*

All of which is respectfully submitted,

A handwritten signature in blue ink, appearing to read "RSM Richter Inc.", is written over the typed name.

**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**