

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No.: 500-11-040900-116

SUPERIOR COURT
(Commercial Division)
The Companies' Creditors Arrangement Act

**IN THE MATTER OF THE PLAN OF ARRANGEMENT
WITH RESPECT TO:**

KITCO METALS INC., a legal person duly incorporated under the laws of Canada, having its principal place of business at 620 Cathcart, 9th Floor, suite 900, Montreal, Quebec, H3B 1M1

Petitioner

-and-

RSM RICHTER INC., a duly incorporated legal person having its principal place of business at 2 Place Alexis-Nihon, in the city and district of Montreal, Quebec, H3Z 3C2

Monitor

**NINTH REPORT OF THE MONITOR
ON THE STATE OF PETITIONER'S FINANCIAL AFFAIRS
April 16, 2012**

INTRODUCTION

1. On June 8, 2011, Kitco Metals Inc. (the "Petitioner" or "Kitco") filed a Notice of Intention to Make a Proposal and RSM Richter Inc. ("Richter") was named Trustee. Pursuant to a motion filed by Kitco and the resulting Order issued on June 10, 2011 ("Order") by the Honourable Martin Castonguay, J.S.C., Richter was further appointed Interim Receiver to Kitco.
2. On July 5, 2011, Kitco filed with the Quebec Superior Court, a Motion for the Issuance of an Initial Order pursuant to Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36, as amended (the

“CCAA”). On July 6, 2011, the Honourable Mark Schrager, J.S.C. issued an initial order (the “Initial Order”), which *inter alia* appointed Richter as Monitor (the “Monitor”) with duties including duties similar to those that were originally provided for in the Interim Receiver Order.

3. On July 26, 2011, the Petitioner filed a motion requesting an extension to the stay of proceedings until February 29, 2012, in order to allow the Petitioner additional time to litigate and/or negotiate with Agence du Revenu du Québec (“ARQ”) regarding its dispute. The Monitor filed its First Report on July 25, 2011 in support of the motion for an extension. On July 27, 2011, the Court granted an order extending the stay of proceedings until October 18, 2011.
4. On September 1, 2011, the Monitor filed its Second Report providing an update to the Court and creditors with respect to the operations of the Petitioner and the activities of the Monitor.
5. On October 3, 2011, the Monitor filed its Third Report providing an update to the Court and creditors with respect to the operations of the Petitioner and the activities of the Monitor.
6. On October 14, 2011, the Petitioner filed a motion requesting an extension to the stay of proceedings until April 18, 2012, in order to allow the Petitioner additional time to litigate and/or negotiate with ARQ regarding its dispute. The Monitor filed its Fourth Report on October 14, 2011, in support of the motion for an extension. On October 18, 2011, the Court granted an order extending the stay of proceedings until April 18, 2012.
7. On November 16, 2011, the Monitor filed its Fifth Report providing an update to the Court and creditors with respect to the operations of the Petitioner and the activities of the Monitor.
8. On December 21, 2011, the Monitor filed its Sixth Report providing an update to the Court and creditors with respect to the operations of the Petitioner and the activities of the Monitor.
9. On January 21, 2012, the Monitor filed its Seventh Report providing an update to the Court and creditors with respect to the operations of the Petitioner and the activities of the Monitor.
10. On March 8, 2012, the Monitor filed its Eighth Report providing an update to the Court and creditors with respect to the operations of the Petitioner and the activities of the Monitor.
11. All amounts reflected in this report are stated in Canadian currency unless otherwise noted.
12. The purpose of this Ninth Report of the Monitor is to inform the Court of the following:
 - Financial Position;
 - Cash Flow Projections;

- Movement in Customer Inventory Pool;
 - Claims Process;
 - Change in Monitoring Frequency;
 - Customer Deposits;
 - Transactions Carried out by the Scrap Gold Purchasing Department;
 - Forward Contracts;
 - Procedural Developments with Respect to the Contestation by the Petitioner of the Notices of Assessment Issued by the ARQ;
 - December 2011 Notice of Assessment from Canada Revenue Agency ("CRA");
 - Activities of the Monitor;
 - Request for an Extension of the Stay of Proceedings to October 17, 2012.
13. We inform the Court that the Monitor has not conducted an audit or investigation of the information it was provided by the Petitioner and that accordingly, no opinion is expressed regarding the accuracy, reliability or completeness of the information contained within this Report. The information contained herein is based on unaudited financial information provided to the Monitor by the Petitioner's management as well as obtained through discussions with the Petitioner's management and employees.

FINANCIAL POSITION

14. In conjunction with the filing of the Motion for the Second Extension of an Initial Order on October 18, 2011, the Petitioner submitted monthly cash flow projections covering the period from October 10, 2011, to May 31, 2012, a copy of which is attached as Exhibit "2" to the Fourth Report of the Monitor on the State of the Petitioner's Financial Affairs.
15. As of March 30, 2012, the Petitioner's cash balances amounted to \$13.6 million as compared to the projected balance of \$8.0 million, on which we comment as follows:
- \$4 million positive variance relating to net results from operations:
 - Notwithstanding the overall lower levels of activity as compared to its projections which commenced in October 2011 and have continued to date (and which have been reported upon in prior reports of the Monitor), Kitco has been successful in offsetting the lower sales by increasing its gross margins due to several factors including a greater focus on higher margin product lines. In addition,

favourable timing differences with respect to accounts receivable and inventory as of the end of the reporting period have contributed to the positive variance. As we have noted in prior reports, due to the nature of its operations, Kitco does experience fluctuations in its working capital items on a weekly basis and as such, certain of these timing differences are likely to reverse in future periods.

- \$1.6 million positive variance related to cash disbursements, primarily due to continued lower general and administrative expenses, the majority of which are permanent in nature.
16. For additional details, we refer you to Exhibit "1" attached hereto entitled Comparative Cash Flow for the period October 10, 2011 to March 30, 2012.
 17. Since the filing of the CCAA, the Petitioner is paying its suppliers based on negotiated terms or upon receipt of invoices. The Petitioner advises that since the filing, it has not incurred significant liabilities which remain unpaid.

CASH FLOW PROJECTIONS

18. The Petitioner presents to this Court its Statement of Projected Cash Flow ("Projections") for the period April 1, 2012 to October 31, 2012 ("Period") (Exhibit "2").
19. The Projections for the Period are based on information and assumptions provided by management based on financial and other information available as of April 1, 2012. The cash flow projections have been prepared using probable assumptions supported and consistent with the plans of the Company for the Period, considering the economic conditions that are considered the most probable by management. Since the projections are based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material.
20. The basic assumptions underlying the Projections are that the Company will continue to operate in the normal course of business which involves the processing of customer transactions including the sale and purchase of pool account participations, the acceptance or return of customer deposits and storage or delivery of metals.
21. The Projections take into account Management's expectations that the general market conditions and Kitco's own recent sales trending will continue during the Period, which as noted above and in prior reports are significantly below the sales levels reflected in the previous Statement of Projected Cash Flow filed in October 2011. However, the Company is forecasting higher gross margins during the period due to a greater emphasis on product lines which provide increased margins.

22. While gross margin trending has been favorable in recent months, the Monitor cautions that it is difficult to predict whether the Company can achieve the projected results.
23. In recognition of the current and projected activity levels, the Company is taking steps to align its cost structure. Most significantly, the Company has recently initiated a significant head count reduction (approximately 50 employees), the impact of which will be evident during the Period.
24. Kitco has also hired an experienced executive vice president to oversee daily operations and assist in new business initiatives.
25. The projected cash flow reflects the following:
- \$9.5 million of net results from operations representing the projected margin resulting from customer trades and other product lines during the Period;
 - \$10.9 million of cash disbursements consisting of salaries and benefits (\$5.4 million), general and administrative costs (\$4.4 million) and restructuring costs (\$1.1 million);
 - Included in salaries and benefits is a provision for the payment of employee termination and severance relating to the reduction in force noted above;
 - No significant capital expenditures are anticipated in the Period.
 - As noted in prior reports, the Company has various commitments to purchase office and condo space in a real estate project in Montreal known as Altitude. To date, the Company has paid a 25% deposit in respect of its commitments, with the 75% balance of \$3.9 million (residential condominiums) and \$8.5 million (office space) due upon completion of the project. Based on discussions with Management, the targeted completion date for this project is December 2012 (residential condominiums) and February 2014 (office space). Further, Management has notified the project developer of its willingness to sell its interest in two of the condo units;
 - \$1.4 million net negative cash flow from operations over the Period;
 - Net profit from operations during the Period is projected to be at approximately a break-even level after taking into account the non-reimbursed sales taxes and restructuring costs.

MOVEMENT IN CUSTOMER INVENTORY POOL

26. The position of the customer inventory pool is summarized below:

Kitco Metals Inc. Customer Inventory Pool Variation						
	June 8, 2011		March 30, 2012		Change June 8, 2011 - March 30, 2012	
	Ounces	Value	Ounces	Value	Ounces	Value
	(in thousands)	(in \$ millions)	(in thousands)	(in \$ millions)	(in thousands)	(in \$ millions)
Gold	96	\$ 145.9	93	\$ 156.8	(3)	\$ 10.9
Silver	4,848	176.8	4,797	156.6	(51)	(20.2)
Platinum	6	11.7	6	10.1	-	(1.6)
Palladium	23	18.7	16	10.3	(7)	(8.4)
Rhodium	6	13.5	7	10.7	1	(2.8)
	4,979	\$ 366.6	4,919	\$ 344.5	(60)	\$ (22.1)
					-1.2%	-6.0%

27. In terms of precious metals, overall balances of gold and silver (in terms of ounces) have increased slightly from the reported February 24, 2012 balances, and are only 1.2% below the levels at the commencement of this restructuring.
28. Exhibit "3" attached hereto is a summary of the movement in the gold and silver customer pool on a weekly basis.

CLAIMS PROCESS

29. The Company has filed a motion seeking to establish a claims process and set a claims bar date of June 22, 2012, which the Monitor will implement following Court approval.

CHANGE IN MONITORING FREQUENCY

30. Currently, pursuant to the terms of the Order, the Monitor is required to monitor the cash flow of the Company on a weekly basis which places significant reporting requirements upon the Company and increases the restructuring costs required to monitor and report upon these results.
31. In light of the likelihood that it will be some time before the underlying tax matters may be resolved, the Company has requested that the Monitor focus its efforts on a review of its reported monthly financial results and cash flow and report to the Court and creditors on a quarterly basis.

32. The Monitor is in agreement with the suggested change in its duties and does not believe that creditors will be prejudiced as a result of this change. The Monitor will continue to receive certain daily and weekly financial information such that it can follow the Company's financial progress in between the monthly review of its operating results and cash flow. If granted, the Monitor's next report will be for the quarter ended June 30, 2012.

CUSTOMER DEPOSITS

33. Customer deposits, which represent cash balances held by Kitco in segregated bank accounts on behalf of its customers, amount to \$49 million as of March 30, 2012. As per the attached chart (Exhibit "4"), since the commencement of the restructuring proceedings, customer deposits have ranged from \$49 million to \$78 million with an average balance of \$58 million. Management believes that the current customer deposit balance is correlated with general market conditions and the overall activity levels of the Company.

TRANSACTIONS CARRIED OUT BY THE SCRAP GOLD PURCHASING DEPARTMENT

34. We refer to Exhibit "5" attached hereto for a summary of the operations of the Petitioner's scrap metals department since it filed for protection on June 8, 2011. We note that the value of scrap metals as of March 30, 2012 (as reflected in Exhibit "5") is based on spot pricing at that date. Kitco does not value its scrap metal position on a daily basis, but rather tracks the unit movement in ounces of scrap metals daily.
35. In respect of the more material scrap metal positions, we comment as follows:
- a) Gold:
- From October 10, 2011 to March 30, 2012, Kitco purchased approximately 5,300 ounces of scrap gold and shipped approximately 5,100 ounces of scrap gold to the Royal Canadian Mint ("RCM") for processing, resulting in a balance of scrap gold of approximately 3,000 ounces on March 30, 2012;
 - Since the commencement of the restructuring, scrap gold purchases consist of approximately 3,300 transactions with an average of approximately 3 ounces per transaction. As explained in our prior Reports, this volume is significantly below its normal level of scrap gold purchases and is due to Kitco's inability to recover its input tax credits which are being withheld by ARQ.

b) Silver:

- From October 10, 2011 to March 30, 2012, Kitco purchased approximately 35,000 ounces of scrap silver and shipped approximately 29,500 ounces of silver for refining, resulting in a March 30, 2012 balance of scrap silver of approximately 82,800 ounces;
- Since the commencement of the restructuring, scrap silver purchases consist of approximately 1,900 transactions with an average of 47 ounces per transaction. As explained in our prior Reports, this volume is significantly below its normal level of scrap gold purchases, and is due to Kitco's inability to recover its input tax credits which are being withheld by ARQ.

FORWARD CONTRACTS

36. We refer to our prior Reports which summarize Kitco's and Kitco International Limited's involvement in various forward contracts. There have been no material developments since our Eighth Report. We will provide further updates as necessary.

PROCEDURAL DEVELOPMENTS WITH RESPECT TO THE CONTESTATION BY THE PETITIONER OF THE NOTICES OF ASSESSMENT ISSUED BY THE ARQ

37. We refer to the attached memo from the Petitioner's tax counsel (Exhibit "6") which sets out the status of recent developments relating to the notices of assessment.

DECEMBER 2011 NOTICE OF ASSESSMENT FROM CANADA REVENUE AGENCY ("CRA")

38. We refer to our Eighth Report wherein we indicated that Kitco received a Notice of Assessment from CRA in the amount of \$13 million relating to the disallowance of various costs relating to the 2008 and 2009 taxation years, which was subsequently reduced to approximately \$7.9 million. Based on the information provided to the Monitor, these assessments are not related to the notices of assessment from the ARQ which precipitated Kitco's restructuring proceedings.
39. These assessments are currently stayed during the pendency of the CCAA proceedings. There have been no material developments since our Eighth Report. We will provide further updates as necessary.

ACTIVITIES OF THE MONITOR

40. The Monitor's activities have included the following:

- The Monitor has been at the premises of the Company on a regular basis to carry out its duties including the requirement to monitor: i) the Petitioner's cash flow, ii) the position of the precious metals and participations in pool accounts, iii) position of segregated accounts and storage accounts and iv) transactions carried out by the scrap gold purchasing department. As well, the Monitor has had meetings and conference calls with the Petitioner's management and legal counsel with a view to keeping all parties apprised of material developments and to seek input with respect to the restructuring process;
- The Monitor has responded to queries from the Petitioner's suppliers, customers and other unsecured creditors;
- The Monitor has communicated with Petitioner's counsel to follow the status of developments relating to the notices of assessment;
- The Monitor reviewed the Petitioner's financial affairs and results;
- The Monitor has met with Management to review and analyze its Projections;
- The Monitor has reviewed the Claims Motion including the establishment of a claims bar date and the planned communication of same to creditors;
- The Monitor has prepared and filed this Report;
- Other administrative and statutory matters relating to the Monitor's appointment.

REQUEST FOR EXTENSION

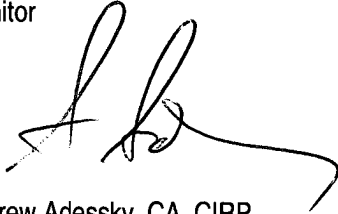
41. At the present time, it is premature for the Petitioner to devise a Plan of Arrangement and present same to its creditors. The Petitioner is seeking an extension in order to continue its negotiations / litigation with ARQ as any Plan of Arrangement will be contingent on the outcome of this disputed liability.
42. The Petitioner has been paying for all goods and services received subsequent to the date of filing the CCAA.
43. The Petitioner's management has, and continues to act in good faith, with due diligence and has been cooperating with all stakeholders involved in this process, including but not limited to the Monitor, ARQ, and Kitco's other creditors.
44. Given the present state of the tax litigation, it is not anticipated that a resolution will arise before next year.
45. The Monitor is supporting the extension of the Initial Order until October 17, 2012, for the above noted reasons.
46. The Court should grant this extension as:
 - The Petitioner has and continues to act in good faith and with diligence;

- The Petitioner needs additional time in order to negotiate / litigate with ARQ, the whole to permit it to resolve this issue and present a Plan of Arrangement to its creditors;
- The Petitioner has not prejudiced its creditors as it has paid for post-filing liabilities incurred since the date of filing and the Cash Flow Projections indicate that it will continue to do so;
- A lengthier extension will reduce the cost associated with regular Motions for extension of delays;
- RSM Richter will continue to inform the Court of the evolution of the file through the filing of its quarterly reports;
- The extension will not cause any prejudice to the various stakeholders.

Respectfully submitted at Montreal, this 16th day of April, 2012.

RSM Richter Inc.

Monitor

A handwritten signature in black ink, appearing to read 'A. Adessky', with a long horizontal flourish extending to the right.

Andrew Adessky, CA, CIRP

Kitco Metals Inc.
Comparative Cash Flow
For the Period: October 10, 2011 to March 30, 2012
(in millions \$CAD)
Unaudited

Exhibit "1"

	Reported	Projected	Variance	
<u>Net Results from Operations</u>	\$ 14.9	\$ 10.9	\$ 4.0	1
<u>Disbursements</u>				
Salary and Benefits	6.7	6.6	(0.1)	2
General and Administrative	2.0	3.3	1.3	3
Restructuring Costs	0.7	1.1	0.4	
	9.4	11.0	1.6	
Net Cash Flow	5.5	(0.1)	5.6	
Real Estate	(0.8)	(0.8)	-	4
Opening Consolidated Bank Balance per Book	8.9	8.9	-	
Closing Consolidated Bank Balance per Book	\$ 13.6	\$ 8.0	\$ 5.6	5

Note 1: Management attributes the favourable variance to higher than budgeted gross margins due to a shifting product mix to higher margin items, in addition to timing differences with respect to accounts receivable and inventory, which may reverse in future periods.

Note 2: Reported salary and benefits includes \$1.2 million in bonuses, in line with budget.

Note 3: Reported general and administrative costs continue to trend favorably during the reporting period, and the majority of this favorable variance is believed to be permanent in nature.

Note 4: Kitco paid \$0.8 million in real estate deposits in connection with the acquisition of various condominiums and office units in the Altitude project.

Note 5: Closing consolidated bank balance includes \$0.4 million of cash on hand.

Kitco Metals, Inc.
Statement of Projected Cash Flow
For the period April 1, 2012 to October 31, 2012
(in thousands \$CAD) ¹

Exhibit "2"

	April	May	June	July	August	September	October	TOTAL
Receipts								
Net results from Operations	\$ 1,350	\$ 1,350	\$ 1,350	\$ 1,350	\$ 1,350	\$ 1,350	\$ 1,350	\$ 9,450
Disbursements								
Salary and benefits ²	1,592	890	593	593	593	593	593	5,447
General and administrative	621	621	621	621	621	621	621	4,347
Restructuring costs	156	156	156	156	156	156	156	1,092
Total Disbursements	2,369	1,667	1,370	1,370	1,370	1,370	1,370	10,886
Net Cash Flow	(1,019)	(317)	(20)	(20)	(20)	(20)	(20)	(1,436)
Opening consolidated bank balance per book ³	13,600	12,581	12,264	12,244	12,224	12,204	12,184	13,600
Closing consolidated bank balance per book ³	\$ 12,581	\$ 12,264	\$ 12,244	\$ 12,224	\$ 12,204	\$ 12,184	\$ 12,164	\$ 12,164

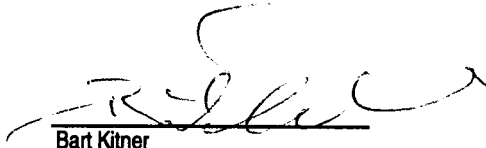
Profit and Loss Normalization (Extraordinary items):	
Net Cash Flow	(1,436)
Add Back:	
Non-reimbursed GST/QST ⁴	315
Restructuring Costs	1,092
Net Profit From Operations:	\$ (29)

Note 1: All amounts are in Canadian funds. The cash flow assumes no exchange rate fluctuation during the cash flow period.

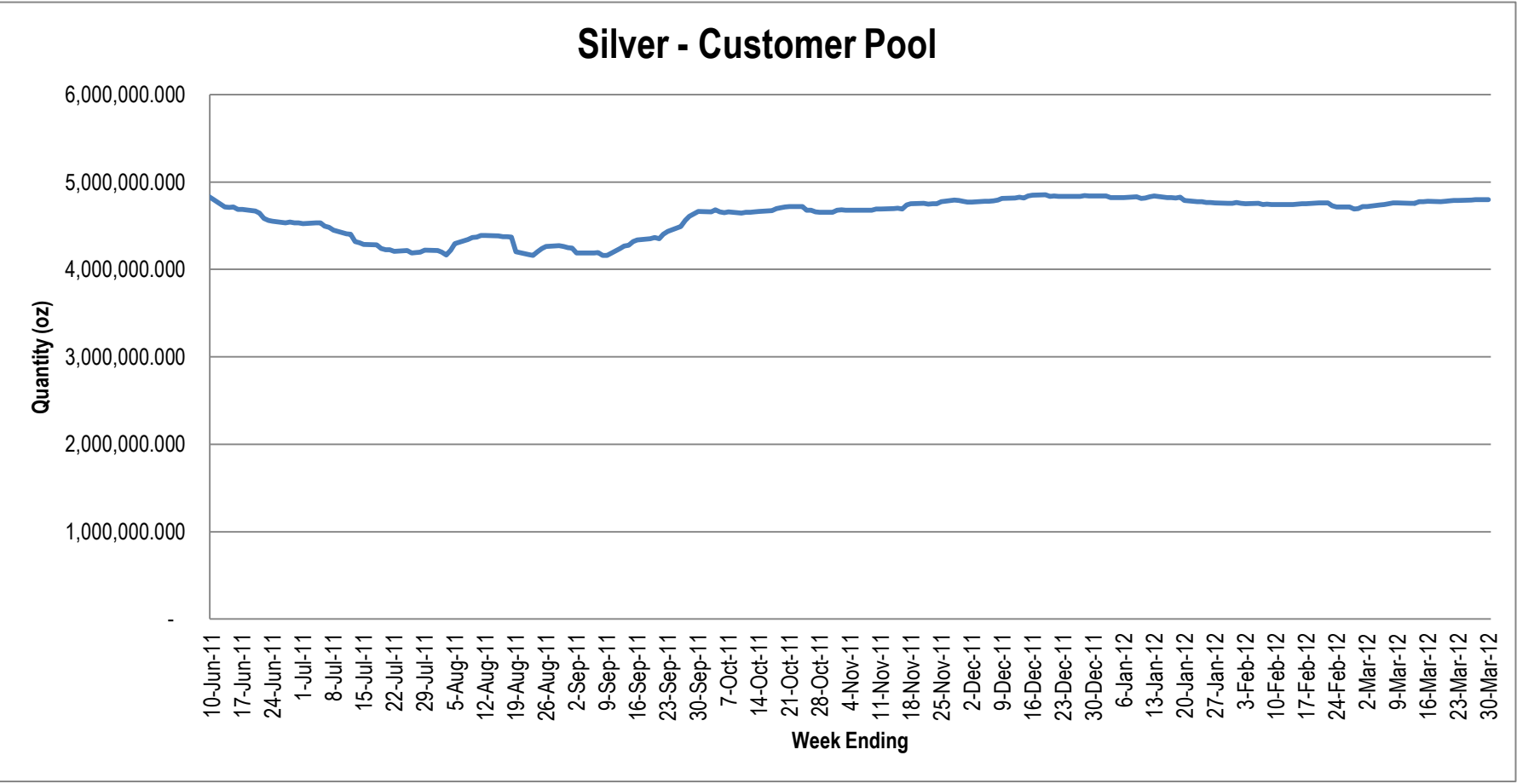
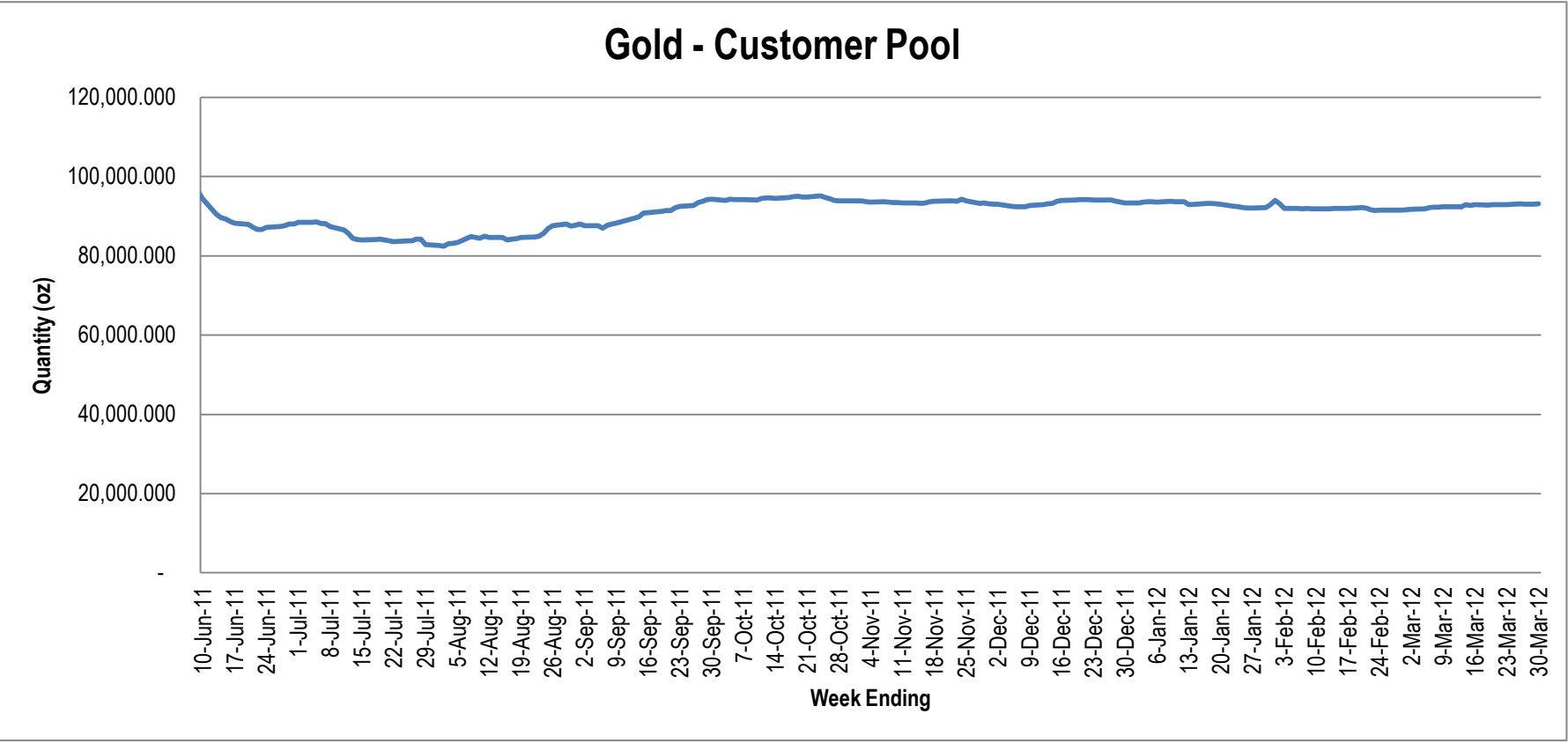
Note 2: Salary and benefits includes a provision in April 2012 for the payment of employee termination and severance due in conjunction with cost cutting initiatives.

Note 3: The consolidated bank balance per book excludes customer deposits which are held in segregated accounts.

Note 4: Represents estimated net sales tax reimbursement for the cash flow period which are not expected to be reimbursed by ARQ due to the ongoing dispute.

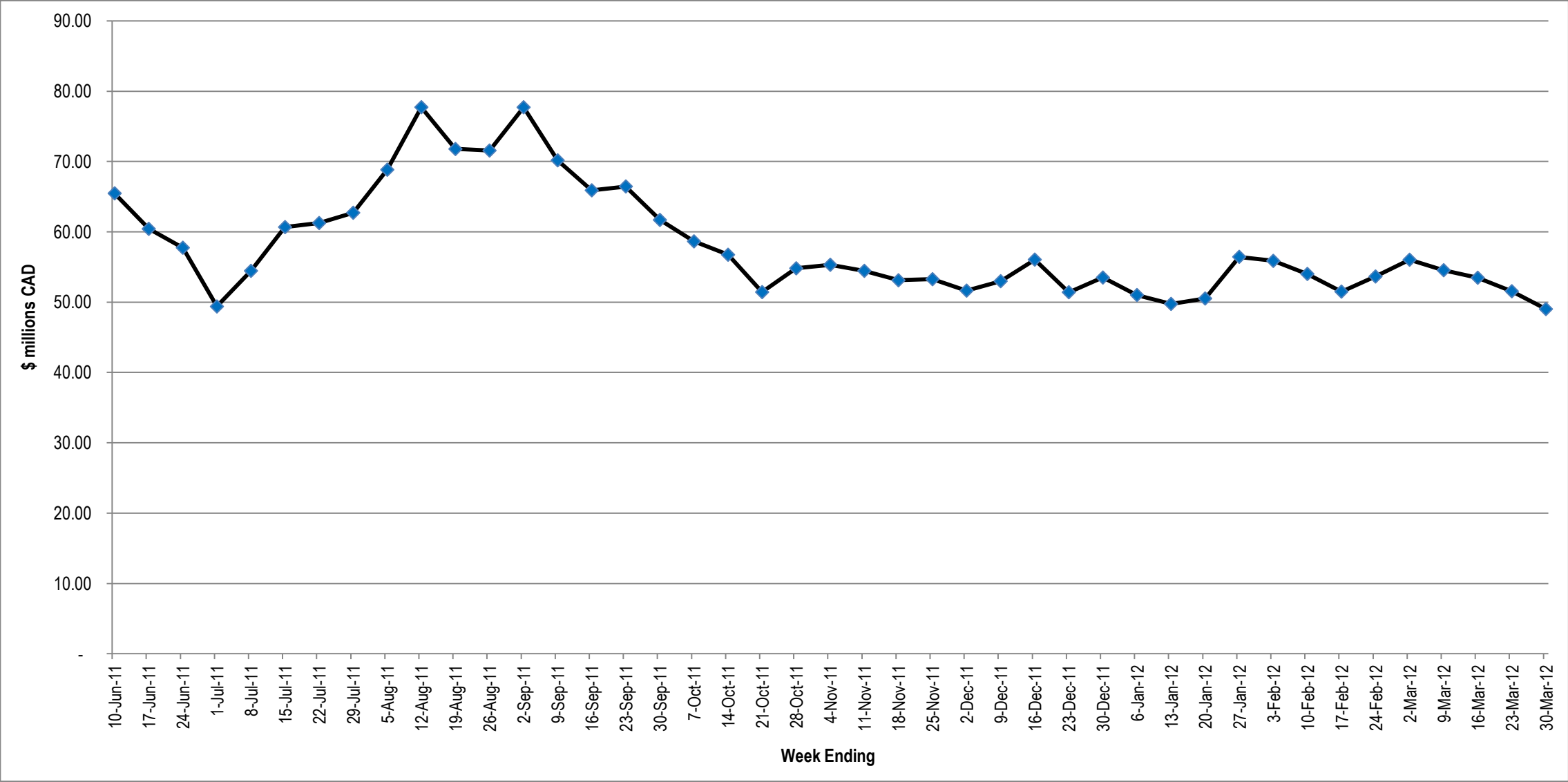

Bart Kitner
Kitco Metals Inc.





Kitco Metals Inc.
Summary of Customer Deposits
For the Period: June 8, 2011 to March 30, 2012
Unaudited

Exhibit "4"



Kitco Metals Inc.
Summary of Scrap Transactions
For the Period: June 8, 2011 to March 30, 2012
Unaudited

Exhibit "5"

	Gold	
	Ounces	\$
	(in \$ millions)	
Beginning balance	2,623	
Purchase	10,625	
Sale	(20)	
Sent to refinery	(10,252)	
Ending balance	2,976	\$ 5.0

	Silver	
	Ounces	\$
	(in \$ millions)	
Beginning balance	101,633	
Purchase	90,426	
Sale	(2,484)	
Sent to refinery	(106,816)	
Ending balance	82,758	\$ 2.7

	Platinum	
	Ounces	\$
	(in \$ millions)	
Beginning balance	1,293	
Purchase	1,206	
Sale	(0)	
Sent to refinery	(1,029)	
Ending balance	1,469	\$ 2.4

	Palladium	
	Ounces	\$
	(in \$ millions)	
Beginning balance	266	
Purchase	112	
Sale	-	
Sent to refinery	(81)	
Ending balance	297	\$ 0.2

	Irridium	
	Ounces	\$
	(in \$ millions)	
Beginning balance	102	
Purchase	117	
Sale	-	
Sent to refinery	-	
Ending balance	220	\$ 0.2

	Rhodium	
	Ounces	\$
	(in \$ millions)	
Beginning balance	48	
Purchase	31	
Sale	-	
Sent to refinery	(17)	
Ending balance	61	\$ 0.1

Note 1: The value of scrap metal as of March 30, 2012 is based upon spot pricing as of that date.

Exhibit 6

Memo from the Petitioner's Tax Counsel

Montréal, le 16 avril 2012

PAR COURRIEL
ET PAR COURRIER

Monsieur Gilles Robillard CA
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Poste n° : 65205

**Objet : In the matter of the Companies' Creditors Arrangement Act, R.S.C. 1985,
ch. C-36
Kitco Metals Inc. and RSM Richter Inc. and l'Agence du revenu du Québec
Cour supérieure, chambre commerciale
NO. : 500-11-040900-116
Notre dossier : L121970003**

Cher Monsieur Robillard,

Suite à l'ordonnance initiale rendue par l'honorable juge Mark Schrager et à votre nomination comme contrôleur conformément à la *Loi sur les arrangements avec les créanciers des compagnies*, L.R.C. (1985), ch. C-36, nous en comprenons tant en vertu de l'alinéa vi) du sous-paragraphe c. du paragraphe [30] du « INITIAL ORDER », vous devez produire à la Cour supérieure un rapport mensuel et suite à la prolongation du « INITIAL ORDER » jusqu'au 18 avril 2012, nous désirons vous faire part des derniers développements à l'égard des dossiers de contestation des avis de cotisation émis en vertu de la *Loi sur la taxe de vente du Québec*, L.R.Q., c. T-0.1 et en vertu de la *Loi sur la taxe d'accise – Partie IX – taxe sur les produits et services*, L.R.C. (1985), ch. E-15.

Plus précisément, nous désirons vous informer de ce qui suit suite à notre dernier rapport.

1. En date des présentes, aucune décision n'a été rendue par la direction des oppositions de l'Agence du revenu du Québec suite aux avis d'opposition notifiés et présentés par la société Métaux Kitco Inc.
2. En ce qui concerne l'enquête de l'Agence du revenu du Québec initiée le 7 juin 2011 par l'exécution de trois (3) mandats de perquisition, l'enquête n'est pas encore complétée et les conclusions de l'enquête ne sont pas encore connues. L'enquête porterait sur plusieurs volets et plus de ressources gouvernementales ont été affectées à l'enquête.

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Par rapport au dernier rapport portant la date du 2 mars 2012, l'enquête n'est toujours pas complétée.

3. Tel que mentionné dans notre dernière correspondance du 14 novembre 2011, nous avons transmis à l'honorable juge en chef adjoint André Wery de la Cour supérieure une demande de gestion particulière de l'instance et, en date du 8 décembre 2011, nous avons rencontré l'honorable juge en chef adjoint André Wery à l'égard des questions relatives aux documents confidentiels, privilégiés et protégés par le secret professionnel.
4. Dans notre dernier rapport, conformément au procès-verbal d'audience portant la date du 8 décembre 2011, la société Métaux Kitco Inc. et l'Agence du revenu du Québec devaient faire décider par la Cour supérieure, chambre civile, de certaines questions et des différends les opposant concernant les documents confidentiels privilégiés et protégés par le secret professionnel et confiés à l'avocate indépendante Me Danielle Ferron suite à l'exécution des trois mandats de perquisition.
5. Ainsi, le 23 janvier 2012, la société Métaux Kitco Inc. faisait signifier une requête en vue d'obtenir des directives de la Cour supérieure et des ordonnances suite à la conférence de demande de gestion particulière du 8 décembre 2011.
6. Le 10 février 2012, l'Agence du revenu du Québec faisait également signifier une requête pour directives concernant le volet informatique, et, à la même date, l'Agence du revenu du Québec faisait signifier une requête concernant l'inventaire des documents et la suite du déroulement des procédures.
7. Le 28 février 2012, les procureurs de l'Agence du revenu du Québec, les procureurs de la société Métaux Kitco Inc. et l'avocate indépendante Me Danielle Ferron procédaient à signer la déclaration commune pour fixation d'une audience avec enquête et argumentation de plus de deux heures et, à la même date, la déclaration commune pour fixation d'une audience avec enquête et argumentation de plus de deux heures était transmise à l'honorable juge en chef adjoint André Wery.
8. En date du présent rapport, la date d'audition des requêtes dont il est question dans les paragraphes précédents n'a pas encore été déterminée et, même en faisant la plus grande diligence, sous réserve des décisions de la Cour supérieure, chambre civile, et du droit d'appel de toutes les parties impliquées, l'examen des documents contenus dans les systèmes informatiques de la société Métaux Kitco Inc. risque de prendre et d'occasionner certains délais.
9. Dans l'intervalle, la société Métaux Kitco Inc. avait procédé à l'analyse de 579 fichiers cryptés et a libéré et remis aux enquêteurs de l'Agence du revenu du Québec par l'entremise de l'avocate indépendante Me Danielle Ferron 578 fichiers cryptés. Plus précisément, seul le fichier numéro 299 intitulé « KITC – release letter.dot » et relatif au cabinet d'avocats Heenan Blaikie n'a pas été remis.

10. Par rapport à la question des documents confidentiels, privilégiés et protégés par le secret professionnel, l'honorable juge en chef adjoint André Wery en est arrivé à la conclusion qu'il serait approprié de confier la gestion particulière du dossier à un juge à la Cour supérieure. Nous produisons à l'annexe 1 des présentes photocopie de la lettre de l'honorable juge en chef adjoint André Wery portant la date du 27 mars 2012.
11. Les dossiers dont il est question dans les paragraphes précédents étaient, jusqu'à tout récemment, sous la responsabilité de Me Éric Downs, lequel vient d'être nommé juge à la Cour du Québec, chambre criminelle et pénale.
12. En date du 12 avril 2012, le directeur principal de la direction principale des poursuites pénales de l'Agence du revenu du Québec, Me Richard Dubois, avisait l'honorable juge en chef adjoint de la Cour supérieure à l'effet que Revenu Québec avait entrepris des démarches « *visant à identifier un avocat pouvant reprendre le dossier* » de Me Éric Downs et indiquer être en mesure de donner le nom de cet avocat d'ici la fin du mois d'avril 2012. Nous produisons à l'annexe 2 des présentes photocopie de la lettre que nous avons reçue de Me Richard Dubois en date du 12 avril 2012.
13. Tel que mentionné dans notre dernier rapport, la société Métaux Kitco Inc., suite à la réception de l'inventaire définitif des documents saisis par les fonctionnaires enquêteurs de l'Agence du revenu du Québec, continuait à identifier à partir de cet inventaire définitif les documents qui pourraient être utiles et utilisés, le cas échéant, pour la contestation des avis de cotisation devant les tribunaux et dans le but d'en obtenir des photocopies auprès de l'Agence du revenu du Québec.
14. En référence au paragraphe précédent, le 21 février 2012, cinq cartables ont été préparés par la société Métaux Kitco Inc. et nous ont été remis. Ces cartables font état de toutes les procédures relatives à l'ouverture de compte quant aux fournisseurs de rebuts d'or à la société Métaux Kitco Inc. et à la visite des lieux et des installations de ces manufacturiers de bijoux effectuées par les employés de la société Métaux Kitco Inc.
15. Dans notre dernier rapport, nous avons fait état que nous avons initié auprès du directeur adjoint à la direction du contentieux de l'Agence du revenu du Québec une communication afin de savoir s'il était possible d'entreprendre des discussions, voire des négociations avec les représentants de l'Agence du revenu du Québec et nous avons été informés à l'époque que toutes les discussions ou négociations étaient prématurées à ce stade.
16. Or, en date du 28 février 2012, des discussions sont survenues avec les procureurs de l'Agence du revenu du Québec et notamment avec le cabinet Heenan Blaikie s.e.n.c.r.l., s.r.l.
17. Suite à la rencontre du 28 février 2012 avec les procureurs de l'Agence du revenu du Québec, sans pour autant reconnaître que le cabinet Heenan Blaikie s.e.n.c.r.l., s.r.l.

pouvait agir dans d'autres dossiers que le dossier mentionné en référence, nous avons reçu du cabinet Heenan Blaikie s.e.n.c.r.l., s.r.l. une réponse en date du 9 mars 2012 faisant état que « *l'offre de règlement formulée lors de ladite rencontre est refusée* ». Nous produisons à l'annexe 3 des présentes photocopie de la lettre portant la date du 9 mars 2012 du cabinet Heenan Blaikie s.e.n.c.r.l., s.r.l.

18. En raison du fardeau de preuve qui incombe à un appelant dans un litige en matière fiscale et notamment en appel d'avis de cotisation émis en vertu de la *Loi sur la taxe d'accise*, L.R.C. (1985), ch. E-15 et en vertu de la *Loi sur la taxe de vente du Québec*, L.R.Q., c. T-0.1, il appert que les fournisseurs de la société Métaux Kitco Inc. devraient témoigner alors que plusieurs de ces fournisseurs font présentement l'objet d'enquête de la part de l'Agence du revenu du Québec.
19. Or, comme ces fournisseurs font l'objet d'enquête, il est fort probable que des requêtes en suspension de leur témoignage puissent être présentées de sorte qu'il sera très difficile pour la société Métaux Kitco Inc. de rencontrer toutes les exigences quant à son fardeau de preuve.
20. Au surplus, comme l'enquête de l'Agence du revenu du Québec est toujours en cours, malgré le fait qu'elle sera contestée en temps utile, le cas échéant, nous nous interrogeons sur l'opportunité de débattre immédiatement du bien fondé des avis de cotisation tant et aussi longtemps que l'enquête de l'Agence du revenu du Québec ne sera pas terminée et, par mesure de prudence, nous avons entrepris des démarches auprès d'un autre cabinet d'avocats afin de connaître leur point de vue relativement à l'ensemble de ces questions.
21. Après avoir pris avis auprès de cet autre cabinet d'avocats, celui-ci est également d'avis que les résultats de l'enquête doivent être connus avant de débattre devant les tribunaux compétents du bien-fondé des avis de cotisation dans le but d'assurer la protection des droits constitutionnels de la société Métaux Kitco Inc. et de M. Bart Kitner.

Nous espérons ces quelques informations à votre satisfaction et nous vous prions d'agréer, cher Monsieur, l'expression de notre considération.

GOWLING LAFLEUR HENDERSON S.E.N.C.R.L., S.R.L.



Yves Ouellette

YO/ca
p.j.

ANNEXE 1



COUR SUPÉRIEURE DU QUÉBEC

*L'honorable André Wery
Juge en chef adjoint*

Le 27 mars 2012

Par courrier électronique

Me Éric Downs
Downs Lepage
edowns@downslepage.com

Me Danielle Ferron
Langlois Kronström Desjardins
danielle.ferron@lkd.ca

Me Yves Ouellette
Gowling Lafleur Henderson
yves.ouellette@gowlings.com

Objet : Métaux Kitco inc.
c. L'Agence du Revenu du Québec et al.
C.S.M. 500-17-066605-117

Maîtres,

J'ai pris connaissance de la requête pour directive concernant l'inventaire des documents et j'en arrive à la conclusion qu'il serait approprié à ce stade-ci que je confie la gestion particulière de ce dossier à un juge.

Par conséquent, je demanderais à toutes les parties de m'informer du nom des juges à qui cette gestion ne pourrait être confiée en raison de motifs de récusation possible.

Je comprends par ailleurs que vu la nomination de maître Éric Downs à la Cour du Québec qu'un nouvel avocat se joindra à l'équipe des avocats du dossier.

J'attendrai donc une communication de votre part dès que possible et procéderai alors à la nomination du juge pour la gestion particulière de ce dossier et, en particulier, pour l'audition de la requête pour directives.

Veuillez agréer, Maître, l'expression de mes salutations distinguées.

André Wery,
Juge en chef adjoint

AW/lh

ANNEXE 2



16 AVR. 2012

PAR COURRIEL

Montréal, le 12 avril 2012

Me Yves Ouellette
GOWLING LAFLEUR HENDERSON S.E.N.C.R.L., s.r.l.
1 Place Ville Marie, bureau 3700
Montréal (Québec) H3B 3P4

Objet : Métaux Kitco Inc.
c.
L'Agence du revenu du Québec et Collins Barrow Montréal s.e.n.c.r.l. et
Me Patrice Guay et le greffier de la Cour supérieure du Québec
Cour supérieure, chambre civile, district de Montréal
No : 500-17-066605-117
No : 500-36-005865-111

Cher confrère,

Vous trouverez ci-joint copie de la lettre que j'ai transmise au juge en chef adjoint
André Wery.

J'espère le tout conforme et je vous prie d'agréer, cher confrère, mes salutations
distinguées.



Me Richard Dubois, directeur principal
Ligne directe : 514 287-8482

RD/gd
p.j.



Direction principale des poursuites pénales

PAR COURRIEL

Montréal, le 12 avril 2012

Monsieur le juge André Wery, j.c.s.
Juge en chef adjoint
Cour supérieure
Palais de justice de Montréal
1, rue Notre-Dame Est
Local 1766
Montréal (Québec) H2Y 1B6

Objet : Métaux Kitco Inc.

C.

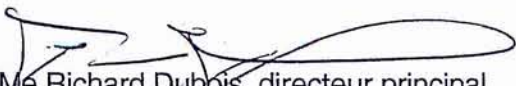
L'Agence du revenu du Québec et Collins Barrow Montréal s.e.n.c.r.l. et
Me Patrice Guay et le greffier de la Cour supérieure du Québec
Cour supérieure, chambre civile, district de Montréal
No : 500-17-066605-117
No : 500-36-005865-111

Monsieur le juge en chef adjoint,

Je suis le directeur principal de la Direction principale des poursuites pénales de l'Agence du revenu du Québec (ci-après : "Revenu Québec"). Mon collègue, Me Alain-François Meunier m'a remis la correspondance échangée entre vous et Me Yves Ouellette relativement au dossier cité en titre depuis la nomination à la magistrature de Me Éric Downs qui représentait jusqu'alors Revenu Québec dans ce dossier.

Je souhaite vous informer que depuis la nomination du juge Downs, Revenu Québec a entrepris sans délai des démarches visant à identifier un avocat pouvant reprendre ce dossier. Ces démarches sont toujours en cours et j'espère être en mesure de vous donner le nom de cet avocat d'ici la fin du mois d'avril 2012.

J'espère le tout conforme et je vous prie d'agréer, Monsieur le juge en chef adjoint, mes salutations distinguées.



Me Richard Dubois, directeur principal
Ligne directe : 514 287-8482

RD/gd

Montréal
Complexe Desjardins, secteur D221LC
Montréal (Québec) H5B 1A7
Téléphone : 514 287-8333
Sans frais : 1 888 830-8808, poste 2878333
Télécopieur : 514 873-8992

Québec
3800, rue de Marly, secteur 5-2-8
Québec (Québec) G1X 4A5
Téléphone : 418 652-6842
Sans frais : 1 888 830-7747, poste 6526842
Télécopieur : 418 528-0978

ANNEXE 3

Heenan Blaikie

**SOUS TOUTES RÉSERVE
PAR TÉLÉCOPIE**

Avocats-conseils

Le très honorable Pierre Elliott Trudeau, C.P., C.C., C.H., c.r., MSRC (1984-2000)
Le très honorable Jean Chrétien, C.P., C.C., c.r.
L'honorable Donald J. Johnston, C.P., O.C., c.r.
Pierre Marc Johnson, G.O.Q., MSRC
L'honorable Michel Bastarache
L'honorable René Dussault, MSRC
Peter M. Blaikie, c.r.
André Bureau, O.C.

Le 9 mars 2012

Me Yves Ouellette
GOWLING LAFLEUR HENDERSON, S.E.N.C.R.L.
1, Place Ville-Marie, bureau 3700
Montréal, Québec
H3B 3P4

N/R : 060562-0001

Objet : Agence du Revenu du Québec et Métaux Kitco Inc.

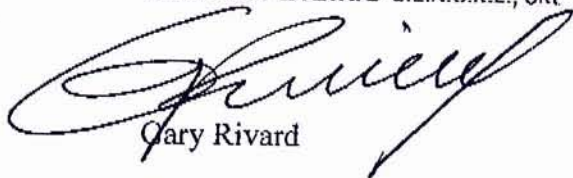
Cher Confrère,

La présente fait suite à notre rencontre du 28 février 2012 concernant l'affaire mentionnée en titre.

Nous avons été mandatés par notre client, l'Agence du Revenu du Québec, de vous informer que l'offre de règlement formulée lors de ladite rencontre est refusée.

Veuillez agréer, cher confrère, l'expression de nos sentiments les meilleurs.

Heenan Blaikie S.E.N.C.R.L., SRI



Gary Rivard

GR/ci

c.c. : Me Patrice Benoît – Gowling Lafleur Henderson
Mc Marie-Josée Hogue – Heenan Blaikie
Mc Serge Bouchard – Agence du Revenu du Québec

HBdocs - 12074589v1

Gary Rivard

T 514 846.2383
F 514 921.1383
grivard@heenan.ca

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Bureau 2500
Montréal (Québec)
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