

**IN THE MATTER OF THE BANKRUPTCY OF
11041045 Canada Inc. (dba Bowring & Co. Inc.)
of the City of Toronto
in the Province of Ontario**

**TRUSTEE'S REPORT TO THE FIRST MEETING OF CREDITORS
ON PRELIMINARY ADMINISTRATION**

BACKGROUND

11041045 Canada Inc. (dba Bowring & Co. Inc., “**1045**” or “**Bowring**”) was a privately held corporation, which was originally incorporated under the laws of the province of Ontario. On October 12, 2018, Bowring filed Articles of Continuance under the *Canada Business Corporations Act*, through which the company became subject to federal jurisdiction. At the same time, the company changed its name from Bowring & Co. Inc. to 1045.

As of October 2018, Bowring operated 53 retail stores across Canada that offered giftware, fashion tableware and decorative home accessories.

As the result of underperforming stores and a liquidity shortfall, on October 25, 2018 (the “**NOI Filing Date**”), 1045 and two related entities 11041037 Canada Inc. (dba Bombay & Co. Inc, “**1037**” or “**Bombay**”) and Fluid Brands Inc. (“**Fluid**” and together with 1045 and 1037, the “**Fluid Entities**” or the “**Companies**”) each filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”). Richter Advisory Group Inc. (“**Richter**”) was appointed as proposal trustee (the “**Proposal Trustee**”) under each of the Companies’ NOIs.

Although 1045, 1037 and Fluid are distinct legal entities, owned separate assets and recorded separate liabilities, the Fluid Entities shared common head office space (98 Orfus Road, Toronto, ON M6A 1L9) and administrative support, utilized a shared distribution centre and were jointly liable for amounts owing under its credit facilities with its primary secured lender, Canadian Imperial Bank of Commerce (“**CIBC**”).

Due to the Fluid Entities’ sustained operating losses, the Companies determined that it was in the best interests of all stakeholders for the Fluid Entities to commence an orderly liquidation of their inventory and other assets while considering the merits of a process (the “**Sale Process**”) to identify one or more parties interested in acquiring all or a portion of the Fluid Entities’ business or assets.

Accordingly, on November 2, 2018, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an order (the “**Administration Order**”) that, among other things:

- consolidated the administration of the NOI proceedings for each of the Fluid Entities and authorized the Proposal Trustee to administer the Companies’ NOI proceedings as if they were a single proceeding for filing materials and reporting to the Court;
- authorized the Fluid Entities to obtain and borrow interim financing and approved the terms of the debtor-in-possession facility (the “**DIP Financing**”);
- approved certain charges sought by the Fluid Entities; and
- extended the time within which the Fluid Entities were required to file proposals to December 20, 2018.

On the same date, the Court also granted an order (the “**Liquidation Process Order**”) approving the liquidation of the Companies’ owned inventory and furniture, fixtures and equipment (the “**Liquidation Sale**”) and a consulting agreement (the “**Consulting Agreement**”) between the Fluid Entities and Merchant Retail Solutions, ULC and Gordon Brothers Canada, ULC (collectively, the “**Consultant**”) authorizing the Consultant to assist the Companies with the Liquidation Sale. The Liquidation Sale was to be completed by December 31, 2018.

As part of the Liquidation Sale, the Companies, in consultation with other interested parties, made the decision that, in the circumstances, gift cards (or other store credit) for both Bombay and Bowring would only be accepted until December 8, 2018 (the “**Gift Card Deadline**”).

On or about December 13, 2018, 2668602 Ontario Inc. (“**266**”), an entity incorporated by, and at all relevant times represented by, the sole officer and director of the Fluid Entities, Mr. F. Benitah, acquired and took assignment of all indebtedness owing to CIBC by the Fluid Entities together with any credit agreements and all security related thereto (the “**CIBC Debt and Security**”). Given 266’s acquisition of the CIBC Debt and Security, the DIP Financing to complete the Liquidation Sale was no longer available.

On December 18, 2018, the Court granted an order extending the period within which the Fluid Entities must present proposals to their creditors to January 8, 2019 to accommodate the completion of the Liquidation Sale (the “**December 18 Extension**”). As the DIP Financing was no longer available to fund the completion of the Liquidation Sale and the Companies’ cash flow forecast prepared in support of the December 18 Extension indicated that the net proceeds from the Liquidation Sale may be insufficient to both repay, in full, the CIBC debt assigned to 266 and fund other necessary operating costs (including the costs of the NOI proceedings) to January 8, 2019, the December 18 Extension was requested by the Fluid Entities, supported by the Proposal Trustee and granted by the Court on the basis that all proceeds realized by the Fluid Entities from the Liquidation Sale would be made available, by 266, to the Fluid Entities to fund the necessary operating and other costs associated with the Fluid Entities’ NOI proceedings.

Notwithstanding the above, prior to the expiration of the deadline within which the Fluid Entities were required to file proposals to their respective creditors, the Fluid Entities unilaterally transferred approximately \$4.5 million in realizations from the Liquidation Sale to the Companies' legal counsel, Torkin Manes LLP, who subsequently, (a) improperly applied a portion of such funds to pay its own fees, and (b) upon instructions from the Fluid Entities, paid substantially all of the remaining funds to 266.

Due to the above transfer of funds, the Fluid Entities were left without the necessary funds to pay various costs properly incurred in connection with the Companies' NOI proceedings, including various amounts due to post-filing trade creditors and significant amounts due to the Consultant, the Proposal Trustee and its counsel, which amounts are protected by the Liquidation Process Order and the Administration Order.

The Fluid Entities ultimately failed to present proposals to their respective creditors within the prescribed time period (or any extension thereof) following the filing of their NOIs and, consequently, 1045, 1037 and Fluid were each deemed to have made assignments in bankruptcy on January 9, 2019 (the "**Date of Bankruptcy**"). Richter was appointed as trustee (the "**Bankruptcy Trustee**") of each of the Companies' bankrupt estates by the Office of the Superintendent of Bankruptcy, subject to affirmation by the Companies' creditors.

CAUSES OF BANKRUPTCY

The Companies operated in the Canadian housewares market which, in recent years, has become increasingly competitive. This increased competition had a significant negative impact on the Companies' profitability and the Companies suffered significant losses. In this regard, the Fluid Entities recorded consolidated losses totalling approximately \$6.4 million for the nine-month period ended September 26, 2015 (audited), approximately \$1.7 million for the fiscal year ended September 24, 2016 (audited) and approximately \$0.5 million for the fiscal year ended September 24, 2017 (unaudited). For the ten-month period ending July 28, 2018, the Fluid Entities recorded consolidated losses totalling approximately \$5.0 million (unaudited).

By the fall of 2018, the Fluid Entities had consumed a significant amount of working capital and the Companies were no longer able to operate efficiently or pay their obligations as they came due.

In the circumstances, and as noted above, the Fluid Entities, in consultation with their key stakeholders, determined that it was in the best interests of all stakeholders for the Companies to commence proceedings under the BIA and undertake an orderly liquidation of their inventory and other assets while considering the merits of a Sale Process to identify one or more parties interested in acquiring all or a portion of the Fluid Entities' business or assets.

Ultimately, the Fluid Entities elected not to pursue a Sale Process and the proceeds generated from the Liquidation Sale were insufficient to support the presentation of proposals to the Companies' creditors, which resulted in the deemed bankruptcies of each of the Fluid Entities.

FINANCIAL POSITION/ASSETS

As at the date of this report, the Bankruptcy Trustee is uncertain as to the quantum and allocation of various funds held by certain financial institutions and/or payment processors as between each of the Companies. The Bankruptcy Trustee understands that, in aggregate, approximately \$1 million is being held by these parties, pursuant to agreements with the Fluid Entities, as cash collateral to mitigate the risk of extending credit to the Companies. The Bankruptcy Trustee is also uncertain as to the timing for the release of these funds which, as noted below, are subject to the priority claims of various of the Fluid Entities' creditors including secured creditors and/or trust claimants.

In addition to the above, as part of the Liquidation Sale, 266 acquired certain furniture, fixtures and equipment of the Fluid Entities, including certain assets located at the Companies' head office (the "**266 Sale**"). Although the assets purchased by 266 included the Fluid Entities' servers, which maintained all the Companies' financial and other information (the "**Information and Records**"), the Information and Records were not included as part of the 266 Sale.

On the eve of the Fluid Entities' deemed bankruptcies, Richter (in its then capacity as Proposal Trustee) attempted to preserve the Information and Records by taking physical possession of the servers, but the servers were removed from the Companies' head office by former employees of the Fluid Entities upon the direction of Mr. F. Benitah. In addition, notwithstanding representations made to the Court and the Proposal Trustee by counsel to 266 and representations and repeated assurances made to the Proposal Trustee and/or Bankruptcy Trustee by Mr. F. Benitah, that all data and information located on the servers would be backed up and provided to the Bankruptcy Trustee, as at the date of this report, the Bankruptcy Trustee has not been provided with such data and information.

It should also be noted that the Statement of Affairs for 1045 has been prepared by the Bankruptcy Trustee with limited input from the Companies. In addition, the designated representative of the Fluid Entities, Mr. F. Benitah, has not approved 1045's Statement of Affairs.

SECURED CREDITORS/TRUST CLAIMANTS

As at the date of this report, the Bankruptcy Trustee is unaware of the amount, if any, remaining owed to 266 in connection with its acquisition of the CIBC Debt and Security.

In addition to the CIBC Debt and Security, two corporations related to the Fluid Entities, Isaac Bennett Agency Inc. ("**IBSA**") and F.B.I. Inc. ("**FBI**") are secured creditors of the Companies, pursuant to various loan and security agreements. The Bankruptcy Trustee understands that IBSA is owed approximately \$14.7 million and FBI is owed approximately \$9.6 million by the Fluid Entities. Pursuant to various inter-creditor agreements between CIBC, IBSA and FBI, all amounts advanced by IBSA and FBI are subordinate to the CIBC Debt and Security.

In addition to the above secured creditors, pursuant to the Administration Order, the Court also granted certain charges (the “**Court Ordered Charges**”), the priority of which are as follows:

- (i) a charge in the maximum amount of \$500,000 as security for the professional fees and disbursements of the Proposal Trustee, the Proposal Trustee's legal counsel and the Companies' legal counsel incurred as part of the Companies' NOI proceedings (the “**Administration Charge**”);
- (ii) a charge to the maximum amount of the aggregate of all advances pursuant to the DIP Financing (the “**DIP Charge**”);
- (iii) a charge in the maximum amount of \$500,000 to indemnify the Fluid Entities' directors and officers for liabilities incurred by the Companies that result in post-filing claims against the directors and officers in their personal capacities (the “**D&O Charge**”); and
- (iv) a charge in the maximum amount of \$500,000 to secure amounts payable under the Companies' key employee incentive plan (the “**KEIP Charge**”).

Pursuant to the Administration Order, the Administration Charge ranks in priority to all Encumbrances (as defined in the Administration Order) while the D&O Charge and the KEIP Charge rank subordinate to all amounts due to CIBC prior to the NOI Filing Date.

As at the date of this report, the Bankruptcy Trustee understands that the Proposal Trustee and the Proposal Trustee's counsel are owed approximately \$350,000, in aggregate, which amounts are secured by the Administration Charge. The Bankruptcy Trustee is not aware of any other amounts that would be covered by any of the other Court Order Charges.

As noted previously in this report, significant amounts (approximately \$2 million) are owed to the Consultant under the Consulting Agreement, which amounts includes approximately \$1,600,000 of expense reimbursements. Pursuant to the Liquidation Process Order, none of the Court-ordered Charges or any claims attach to the proceeds generated from the Liquidation Sale until the amounts due and payable to the Consultant, by the Fluid Entities, under the Consulting Agreement have been paid in full.

In the days prior to the deemed assignments into bankruptcy of the Fluid Entities, various conversations and exchanges of correspondence took place between the Proposal Trustee, its counsel, the Fluid Entities, their counsel, counsel to the Consultant, and other stakeholders seeking the immediate payment of outstanding post-NOI filing obligations in accordance with the terms of the Orders of the Court. Counsel to the Bankruptcy Trustee has also sent letters to various parties requiring that they provide the Bankruptcy Trustee with information related to certain transfers of funds made prior to the deemed assignments of the Fluid Entities.

In connection with the foregoing, on January 27, 2019, the Bankruptcy Trustee served a Notice of Motion on 266, Tokin Manes LLP, Mr. F. Benitah, and certain other parties of a Motion seeking an Order of the Court requiring (i) a full accounting of all amounts received, directly or indirectly, from the Fluid Entities, including from their counsel on their behalf, during the period from December 13, 2018 to January 9, 2019, and (ii) the immediate payment to the Bankruptcy Trustee of all funds received, directly or indirectly, from the Fluid Entities, including from their counsel on their behalf, by any or all of Mr. F. Benitah, 266, or Torkin Manes LLP, or any other person, partnership or corporation who has, directly or indirectly, received improper payments or subsequent transfers thereof for the period from December 13, 2018 to the date of the hearing of such Motion. A conference call to set the date and time for such Motion was held on Tuesday, January 29, 2019 and the Motion is expected to be heard on April 5, 2019.

In addition to the above, it should be noted that Richter is currently holding approximately \$345,000, in trust, which funds were remitted to the Proposal Trustee by IBSA to delay the issuance of disclaimer notices, by the Fluid Entities, in respect of certain retail leases (the “**Leases**”) that IBSA was considering acquiring (the “**IBSA Trust Funds**”). The IBSA Trust Funds were provided to the Proposal Trustee to pay the estimated incremental lease/occupancy costs associated with the Leases for the period commencing January 1, 2019 to the effective disclaimer date of each Lease, as it was the Fluid Entities’ intention to disclaim the Leases effective December 31, 2018. The Leases were eventually disclaimed by the Fluid Entities with effective dates after the Date of Bankruptcy. No payments were made by the Fluid Entities in respect of the Leases for occupancy costs for the period starting January 1, 2019. IBSA has demanded that the IBSA Trust Funds only be used to cover incremental lease/occupancy costs associated with the Leases from January 1, 2019 up to the earlier of Date of Bankruptcy or the effective date of the Lease disclaimers. Counsel for the landlords are requiring payment of lease/occupancy costs up to the effective date of the relevant Lease disclaimers. It is the Bankruptcy Trustee’s intention to hold the IBSA Trust Funds until this matter is definitively resolved.

SECURITY FOR UNPAID WAGES – S.81.3 CLAIMS

The Bankruptcy Trustee is not aware of any potential claims pursuant to section 81.3 of the BIA.

As at the date of this report, and based on information provided by the Fluid Entities’ to the Bankruptcy Trustee, no amounts are owed to the Companies’ former employees that would qualify as claims under section 81.3 of the BIA, as the Bankruptcy Trustee has been advised that all amounts owing in respect of wages and/or vacation pay (that may qualify as claims under section 81.3 of the BIA) were paid by the Fluid Entities, prior to the Companies’ bankruptcies.

The Bankruptcy Trustee will comply with the requirements of the *Wage Earner Protection Program Act*, where applicable.

PREFERRED CREDITORS

As at the date of this report, the Bankruptcy Trustee is not aware of any preferred creditors of 1045.

It should, however, be noted that, as the Companies' bankrupt estates are currently without funds (as noted above), the Consultant was not in a position to file a property claim seeking recovery, from the Bankruptcy Trustee, of the funds due to them. As a result, the Consultant has submitted a claim as a preferred creditor solely for the purpose of attending and voting at the Companies' creditor meetings.

In addition, various landlords for the Fluid Entities' retail stores have submitted preferred claims to the Bankruptcy Trustee.

UNSECURED CREDITORS

The Bankruptcy Trustee understands that 1045 has approximately 930 unsecured creditors with claims totalling approximately \$4.2 million, excluding any amounts owed to landlords (in respect of disclaimed leases) or former employees (in respect of termination and/or severance pay).

PROVABLE CLAIMS

As at 9:00 a.m. on the date of this report, the Bankruptcy Trustee has recorded Proof of Claims filed, as follows:

	Claims Filed (#)	Amount (\$)	Proxies in Favour of Trustee (#)	Amount (\$)
Secured	Nil	Nil	Nil	Nil
Preferred	21	3,133,858.22	2	2,110,740.89
Unsecured	29	5,739,130.96	2	150,048.60
TOTAL	50	8,872,989.18	4	2,260,789.49

Given the limited, if any, assets available in 1045's bankrupt estate and the quantum of the secured claims/trust claims noted above, it does not appear that there will be any funds available to support a distribution to 1045's unsecured creditors.

PREFERENCE PAYMENTS AND TRANSFERS UNDER VALUE

The Bankruptcy Trustee has not performed a review of the Companies' books and records, with respect to potential fraudulent preferences, settlements or transfers at undervalue, as defined in the BIA. It is the intention of the Bankruptcy Trustee to discuss the scope of its review, if any, with the Inspectors to be appointed at the first meeting of creditors.

TRUSTEE'S FEES

The Bankruptcy Trustee is not in possession of any funds to guarantee payment of the Bankruptcy Trustee's fees and disbursements, including the fees and disbursements of its legal counsel. The Bankruptcy Trustee will, however, continue to comply with its statutory duties in administering the Fluid Entities' bankruptcies in accordance with the provisions of the BIA.

OTHER

Further information relating to the Fluid Entities' NOI proceedings or bankruptcies may be obtained from Richter's website at <https://www.richter.ca/insolvencycase/fluid-brands-inc/>.

Dated at Toronto, Ontario, this 30th day of January, 2019.

RICHTER ADVISORY GROUP INC.

in its capacity as Trustee of the estate of
11041045 Canada Inc. (dba Bowring & Co. Inc.)
and not in its personal capacity



Adam Sherman, MBA, CIRP, LIT