

IN THE MATTER OF THE RECEIVERSHIPS OF:

2964-3277 QUÉBEC INC.

Debtor

and

RICHTER ADVISORY GROUP INC

Receiver

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FIRST REPORT OF THE RECEIVER-MANAGER  
July 21, 2021

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**INTRODUCTION**

1. On May 28, 2019, Richter Advisory Group Inc. ("**Richter**") was named the Receiver (the "**Receiver**") of 2964-3277 Québec Inc., operating under the name Carpet Art Deco Inc. (hereafter the "**Debtor**" or "**CADI**"), the whole pursuant to an order issued by this Court titled "Order Appointing a Receiver" (the "**Appointment Order**").
2. As noted below, on May 29, 2019, Richter was also named Trustee to the bankruptcy of CADI following the failure of CADI to file a proposal within the prescribed time limits under the relevant provisions of the *Bankruptcy and Insolvency Act* (the "**BIA**").
3. This report (the "**First Report**") is filed with the Court to provide an update on the Receiver's activities and recommend that the Court issues an order discharging Richter as Receiver and grant other relief as set out in the Receiver's *Application for an Order (i) Terminating the Receivership, (ii) Discharging the Receiver, (iii) Terminating, Releasing and Discharging Super-Priority Charges, (iv) Granting Third Party Releases, (v) Authorizing the Remittance of Certain Funds and (vi) Approving Related Relief* (the "**Discharge Application**") filed concurrently with the First Report.
4. This First Report provides this Court with information pertaining to the activities of the Receiver since its appointment.
5. Unless otherwise noted, all monetary amounts contained in this First Report herein are expressed in Canadian dollars.

## GENERAL BACKGROUND INFORMATION

### A. The NOI Proceedings and the Debtor's Deemed Assignment in Bankruptcy

6. CADI engaged in the manufacturing and distribution of carpets and rugs which it sold to customers in both Canada and the United States.
7. On November 29, 2018, CADI filed a Notice of Intention to Make a Proposal (the "**NOI**") in accordance with the relevant provisions of the BIA and Richter was appointed as Proposal Trustee thereunder.
8. The circumstances surrounding the Debtor's business, its financial difficulties and the filing of the NOI are described in the Proposal Trustee's *First Report of the Trustee on the State of Petitioner's Business and Financial Affairs* dated December 12, 2018, which can be found on the Trustee's website at: <https://www.richter.ca/insolvencycase/2964-3277-quebec-inc/>.
9. Following the filing of the NOI, the Debtor, with the assistance of the Proposal Trustee, initiated a sale and investment solicitation process (the "**SISP**") with a view to disposing of all or part of the Debtor's business or property for the benefit of its stakeholders (the "**Liquidation Process**"). The SISP was initiated with the support of the i) Canadian Imperial Bank of Commerce ("**CIBC**"), the Debtor's operating lender and first ranking secured creditor on the inventory, accounts receivable and intellectual property and a second ranking security on the fixed assets, and ii) the Business Development Bank of Canada (the "**BDC**"), the first ranking secured creditor on the fixed assets and second ranking secured creditor on the inventory, accounts receivable and intellectual property of the Debtor.
10. However, the SISP failed to generate any going concern offers for the Debtor. All of the offers received contemplated a liquidation of CADI's assets, which consisted principally of inventory, accounts receivable and various machinery, equipment and warehouse racking.
11. In the months that followed the filing of the NOI, a series of agreements were concluded by the Debtor as part of the Liquidation Process, including agreements between the Debtor and:
  - (a) Gordon Brothers Canada ULC ("**GB**"), which agreement (the "**GB Agreement**") provided that GB would act as a liquidation consultant to the Debtor to assist in the sale of all inventory, collection of receivables, and the sale of intellectual property. The GB Agreement was approved by the Court on January 14, 2019;
  - (b) Ohio Racks Inc. ("**Ohio Racks**"), which agreement (the "**Ohio Agreement**") provided for the sale of warehouse racking (the "**Racking**") belonging to the Debtor. The BDC and the CIBC both claimed entitlement to the proceeds from the sale of the Racking. The Ohio Agreement was approved by the Court on March 13, 2019, with the proceeds being held in trust by Richter pending either an agreement between the BDC and the CIBC or an order of the Court adjudicating the Racking Dispute; and
  - (c) CCF Arts & Crafts Trade Co. ("**CCF**"), which agreement (the "**CCF Agreement**") provided for the sale of the majority of the machinery, equipment and warehouse racking (not otherwise sold pursuant to the Ohio Agreement) of the Debtor. The CCF Agreement was approved by the Court on April 2, 2019.
12. The various proceedings filed by the Debtor and the orders of this Court, which established the framework for the Liquidation Process, are reviewed in the *Seventh Report of the Trustee on the*

*State of Petitioner's Business and Financial Affairs* dated April 16, 2019 which can also be found on the Trustee's website.

13. Over the course of the NOI proceedings, the Debtor sought and received five extensions to the delay to file a proposal, with the support of the Proposal Trustee, the CIBC and the BDC for the purpose of continuing the Liquidation Process.
14. Pursuant to Sections 50.4(8) and 50.4(9) of the BIA, the Debtor had to file a proposal before May 29, 2019, failing which it would be deemed to have made an assignment in bankruptcy.
15. Prior to the expiry of the statutory delay to file a proposal, it became apparent that the secured creditors could not be repaid in full from the realization of the Debtor's assets, such that the Debtor would not be in a position to present a proposal to its other creditors.
16. On May 29, 2019, in light of the fact that it had not filed a proposal within the statutory delay, the Debtor was deemed to have made an assignment in bankruptcy and Richter was appointed Trustee of the estate of the Debtor by the Official Receiver, which appointment was confirmed by the Debtor's creditors at the first meeting of creditors held on June 18, 2019.

## **B. The Receivership Proceedings**

17. On May 24, 2019, prior to the expiry of the statutory delay to file a proposal, the CIBC filed an *Application to Appoint a Receiver* pursuant to Section 243 of the BIA (the "**Receivership Application**") seeking the appointment of Richter as Receiver to the assets of the Debtor, given that, *inter alia*:
  - (a) it was estimated that the realization of the Debtor's assets pursuant to the GB Agreement would not be completed until at least August 2019;
  - (b) the sale of the Racking pursuant to the Ohio Agreement was ongoing and the CIBC and BDC had yet to resolve the Racking Dispute;
  - (c) on May 22, 2019, the BDC filed a motion for declaratory judgment in respect of the Racking Dispute, which was expected to be adjudicated by the Court before the Liquidation Process could be completed; and, therefore
  - (d) a receivership constituted the preferred means of continuing the Liquidation Process beyond May 29, 2019 (i.e. the statutory deadline for the Debtor to file a proposal);the whole as appears from the Receivership Application (Exhibit P-3 to the Discharge Application).
18. On May 28, 2019, pursuant to the Receivership Application, the Court issued the Appointment Order which provided Richter with the customary powers of a Receiver. More specifically, the Appointment Order authorizes and empowers the Receiver to take possession of the following property of the Debtor (the "**Property**"):

*"Accounts Receivable, Bank Accounts, Intellectual Property Rights and Inventory and all accessories thereto, including all proceeds, insurance indemnities, resulting rights or revenues related thereto and claims, proceeds or sums relating to the lease, sale or other disposition therefrom;"*

19. The Appointment Order also allowed the Receiver to take control of the remaining operations of the Debtor and to perform the GB Agreement and the Ohio Agreement on behalf of the Debtor. A copy of the Appointment Order is annexed to the Discharge Application as Exhibit P-4.
20. At the time of the filing of the NOI, CADI's head office and manufacturing were located at 480 avenue Lafleur, Lasalle (the "**Lafleur Premises**"), in a building owned by a related party. CADI also operated out of two leased warehouses. At the time of the Receiver's appointment, CADI was only operating out of the Lafleur Premises.
21. As a result of the bankruptcy of CADI, all of the employees were terminated. The employees were paid their full salary through the date of bankruptcy as well as post-filing vacation pay by the Debtor prior to their termination. The Receiver employed various former employees of CADI on a contract basis to complete the Liquidation Process.
22. As noted in the Discharge Application, at the commencement of the NOI proceedings, the Court issued an order in which it granted the following charges:
  - (a) Administration Charge in the amount of \$75,000 in connection with professional fees;
  - (b) D&O Charge in the amount of \$250,000 in connection with post-filing obligations of the Directors and Officers; and
  - (c) KEIP Charge in the amount of \$900,000 in respect of employees.
23. Immediately prior to the bankruptcy of the Debtor, the sum of \$325,000 was remitted to Richter in trust on account of the Administration Charge and the D&O Charge. No amount was placed in trust for the KEIP Charge as the necessary milestones had not been achieved during the Liquidation Process, such that no incentives were earned by the beneficiaries of the KEIP Charge.

## **ACTIVITIES OF THE RECEIVER**

### **A. General**

24. As noted above, prior to the appointment of the Receiver, various agreements were concluded to enable the orderly liquidation of all of the assets of CADI. Accordingly, the appointment of the Receiver enabled the orderly liquidation to continue and for the GB Agreement, the CCF Agreement and the Ohio Racking Agreements to be completed. We summarize the outcomes of the agreements in the following sections.

### **B. GB Agreement**

25. The GB Agreement was for an initial term of 120 days with an option for GB to extend the GB Agreement by eight (8) months, which GB exercised. Upon their appointment, GB communicated with CADI's primary customers consisting of well-known major retailers in both Canada and the United States ("**Tier 1 Customers**") to review open orders, to consider opportunities to purchase inventory on hand and to collect the outstanding receivables.
26. While GB (working with CADI) was able to ship the various open orders, the majority of inventory on hand was not for current customer programs and could not be sold to CADI's Tier 1 Customers. As a result, GB searched for bulk purchasers of the finished goods inventory in both Canada and the United States and ultimately concluded an agreement with a US retailer known as Ollies Bargain Outlet ("**Ollies**"), whereby Ollies would purchase the majority of remaining inventory. The

delivery of inventory to Ollies occurred from March 2019 to August 2019. As of the date of the appointment of the Receiver, the estimated value of the remaining inventory according to the books and records of CADI was approximately \$5.9 million of which \$5.5 million (approximately 90%) was sold to Ollies.

27. The remaining inventory that was not sold to Ollies, including the showroom/sample inventory, was sold principally to two other purchasers on the condition that the inventory be removed from the Lafleur Premises by a specified date such that the CCF Agreement was respected. These two purchasers were Marimac Group Inc. and C-Styles, a company owned by one of the CADI shareholders. The selling price per unit was determined by GB.
28. In total, the gross inventory realization since the Receiver was appointed was \$5.8M. The full details of the realization can be found at **Exhibit 1** annexed hereto.
29. Receivables collected under the GB Agreement since the appointment of the Receiver amounted to \$1.2 million, excluding collection of the liquidation sales to Ollies and other purchasers. Final collection of the trade receivables and the amounts due from Ollies were completed in October 2019.
30. GB ultimately determined that there was no value in the intellectual property.

#### **C. Ohio Agreement**

31. As noted above, the Ohio Agreement was approved by the Court on March 13, 2019, with the proceeds being held in trust by Richter pending either an agreement between the BDC and the CIBC or an order of the Court adjudicating the Racking Dispute. The Ohio Agreement allowed for the sale of surplus racking to be sold back to the manufacturer of the racking. At issue was whether this type of racking was property classified as inventory or as fixed assets.
32. On July 8, 2019, following a hearing on the matter, the Court ruled that the proceeds from the sale of the racking subject to the Ohio Agreement was to be remitted to the BDC.
33. Accordingly, in July and August 2019, Richter remitted \$175,970 that it was holding in trust to the BDC relating to the sale of racking under the Ohio Agreement.

#### **D. Developments with Respect to the CCF Agreement**

34. Given that the SISP did not yield any offers for the machinery, equipment and fixtures of the Debtor that were acceptable to the BDC (who holds the first ranking security on these assets), the Debtor

negotiated a transaction with CCF for the purchase of the majority of the Debtor's machinery, equipment and fixtures, which transaction was approved by the Court on April 2, 2019.

35. In May 2019, CCF remitted the purchase price directly to the BDC.
36. In order to complete the Liquidation Process in an orderly manner, the Receiver negotiated an agreement with CCF to enable the Receiver to use the required machinery, equipment and fixtures until September 2019.
37. Ultimately, with the final sale of the inventory to C-Styles in August 2019, the Receiver discontinued its usage of the machinery, equipment and fixtures. The Receiver understands that CCF completed the removal of same in 2019.

## RESULTS OF OPERATIONS

38. Included at Exhibit 1 is a statement reflecting the inflows and outflows of the Receivership from May 29, 2019 to June 30, 2021. At the present time, the Receiver has \$436,866 of cash on hand (the "**Funds**") which consists of:
  - (a) \$111,866 consisting of net proceeds from the realization of assets taking into account remittances already made to the CIBC, but prior to the payment of final professional fees; and
  - (b) \$325,000 consisting of amounts held in connection with the Administration Charge (\$75,000) and the D&O Charge (\$250,000) as more fully set out in the Discharge Application. No amounts are held in trust in respect of the KEIP Charge.

## TERMINATION OF THE RECEIVERSHIP

39. As noted above, the realization of the Debtor's assets by the Receiver was completed by the last quarter of 2019. Further, the Receiver vacated the Lafleur Premises effective August 30, 2019.
40. As such, in December 2019, the Receiver communicated with Borden Ladner Gervais, LLP ("**BLG**"), who are acting as counsel to Mr. Fadi Melki, the former sole director of the Debtor and the beneficiary of the D&O Charge. The purpose of the communication was to confirm the status of the Receivership and the intention to transfer the funds held in trust in connection with the D&O Charge to a Receiver controlled account for remittance to the CIBC, the whole to enable the Receiver to complete its mandate and ultimately seek its discharge.
41. BLG, on behalf of Mr. Melki, objected to the release of funds held in support of the D&O Charge on the grounds that Mr. Melki had received a claim from the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* ("**CNESST**"). BLG advised of other claims or potential claims which could be asserted against Mr. Melki which total \$144,522.92. We refer to the Discharge Application for a chronology of the claims filed and the various communications regarding these

claims. To date, Mr. Melki has not consented to the release of the funds held in trust to secure the D&O Charge.

42. Richter performed a detailed analysis of the various CNESST claims (which was provided to BLG) and in our opinion, none of the amounts claimed by the CNESST give rise to any post-filing statutory liability to Mr. Melki as the former director that would be covered by the D&O Charge.

#### **CONCLUSION AND RECOMMENDATIONS**

43. The Receiver has completed its duties and as such, it is appropriate to terminate the Receivership and discharge the Receiver of its duties relating thereto.
44. All of the charges granted in the NOI, including the Administration Charge, the D&O Charge and the KEIP Charge should be terminated. As noted above, based on the analysis performed by the Receiver in connection with the potential CNESST claims, the Receiver does not believe and is not aware of any potential post-filing statutory liability that could be attributed to Mr. Melki as the former director of CADI and that is covered by the D&O Charge, whether or not Mr. Melki is provided with a release. Further, to the Receiver's knowledge, post-filing obligations relating to salary, vacation pay and sales taxes were all paid by the Debtor prior to the deemed bankruptcy.
45. In light of the foregoing, the Receiver believes that it is appropriate to ask this Court to order a release in favour of Mr. Melki in connection with any potential post-filing statutory liability incurred by Mr. Melki in the performance of his duties to the extent these liabilities would have been otherwise indemnifiable under the D&O Charge.
46. Concurrent with the termination of the Receivership, the Receiver will be required to distribute the Funds to the CIBC (after payment of final professional fees).

Respectfully submitted at Montreal, this 21<sup>st</sup> day of July 2021.

**Richter Advisory Group Inc.**



Andrew Adessky, CPA, CA, MBA, CIRP, LIT

**EXHIBIT 1**

2964-3277 Quebec Inc. (Carpet Art Deco) Receipts and Disbursements Summary For the period May 29, 2019 to June 30, 2021 (\$000's)	\$	Notes
<b>Receipts</b>		
Collection of accounts receivable		
Tier one customers	578	1
Ollie's	588	2
Sale of inventory	5,815	3
Sales taxes	189	
Interest, deposits refunds & others	117	
Advance from Secured Creditor	900	4
	<b>8,187</b>	
<b>Operating &amp; Liquidator's Fees</b>		5
Rent & utilities	549	
Payroll	800	
Transport	510	
Duty and customs	430	
Other operating expenses	383	
Liquidator fees	258	
	<b>2,930</b>	
<b>Overhead &amp; Other</b>		
Sales taxes	193	
Professional fees	327	6
Transfer to bankruptcy account	72	7
	<b>592</b>	
<b>Distribution to Secured Creditor</b>	<b>4,554</b>	<b>8</b>
<b>Net Cash on Hand</b>	<b>\$ 112</b>	<b>9</b>

Note 1: Represents the collection of amounts due from Tier One customers remitted directly into the company's bank account, which was then swept by CIBC.

Note 2: Represents the collection of Ollie's sales realized before the appointment of the Receiver.

Note 3: Represents the sale of inventory after the appointment of the Receiver.

Note 4: Represents advances made by CIBC to cover Receiver expenses until the Receiver had sufficient funding from the collection of accounts receivables.

Note 5: Represents operating costs and liquidator fees (paid to Gordon Brothers) in connection with the realization of the assets.

Note 6: Includes fees paid to Richter, Stikeman and BLG.

Note 7: Represents the transfer of funds required to fund the bankruptcy.

Note 8: Represents distributions to the CIBC in connection with the realization of assets and refund of advances as well as the remittance of funds to the BDC in connection with the Ohio Rack Agreement.

Note 9: Does not include the \$325,000 held in trust by Richter in respect of the Administration Charge and the D&O Charge.



SUPERIOR COURT  
(Commercial Division)

N°. 500-11-055629-188

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

IN THE MATTER OF THE RECEIVERSHIPS OF:

2964-3277 QUÉBEC INC.

Debtor

-and-

RICHTER ADVISORY GROUP INC.

Receiver

BS0350

File: 033491-1032

First Report of the Receiver-Manager

July 21, 2021

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