

RICHTER

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DACO MANUFACTURING LTD.

**SECOND REPORT OF RICHTER ADVISORY GROUP INC.,
IN ITS CAPACITY AS RECEIVER OF
DACO MANUFACTURING LTD.**

MARCH 10, 2016

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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT,
R.S.C. 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION OF
DACO MANUFACTURING LTD. OF THE CITY OF TORONTO
IN THE PROVINCE OF ONTARIO**

**AND IN THE MATTER OF THE RECEIVERSHIP OF
DACO MANUFACTURING LTD.**

**SECOND REPORT OF RICHTER ADVISORY GROUP INC.
IN ITS CAPACITY AS COURT APPOINTED RECEIVER OF THE
PROPERTIES, ASSETS AND UNDERTAKING OF
DACO MANUFACTURING LTD.**

MARCH 10, 2016

INTRODUCTION

1. By order (the "**Appointment Order**") of the Honourable Mr. Justice Wilton-Siegel of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated July 17, 2015 (the "**Date of Appointment**"), Richter Advisory Group Inc. ("**Richter**") was appointed receiver (the "**Receiver**") of all of the property, assets and undertakings (the "**Property**") of Daco Manufacturing Ltd. ("**Daco**" or the "**Company**"), pursuant to Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended. A copy of the Appointment Order is attached hereto as **Exhibit "A"**.
2. On the same day, the Company was deemed to have made an assignment in bankruptcy pursuant to the provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("**BIA**") as a consequence of not filing a proposal with the proposal trustee within the time period granted by the Court pursuant to section 50.4(8) of the BIA. Richter was also appointed as trustee (the "**Trustee**") of Daco's bankrupt estate.

3. On September 24, 2015, the Court issued an order approving the sale transaction (the “**Sale Transaction**”) contemplated by the asset purchase agreement dated September 18, 2015 (the “**APA**”) between the Receiver and 2380775 Ontario Ltd. (the “**Purchaser**”), and vesting in the Purchaser the Purchased Assets as defined in the APA.
4. This report is the Receiver’s second report (the “**Second Report**”) to this Court. The Receiver’s first report dated September 21, 2015 (the “**First Report**”) outlined, among other things, events leading up to the appointment of the Receiver, the activities of the Receiver since the Appointment Order, the results of the marketing and sales process undertaken by the Company, the Sale Transaction, and the Receiver’s interim statement of receipts and disbursements. A copy of the First Report (without attachments) is attached hereto as **Exhibit “B”**.

PURPOSE OF THE REPORT

5. The purpose of this Second Report is to provide this Court with information pertaining to:
 - (a) the activities of the Receiver since the First Report;
 - (b) the Receivers’ statement of receipts and disbursements from the Date of Appointment to March 7, 2016 (the “**R&D**”);
 - (c) payments made by the Receiver to Meridian Credit Union Limited (“**Meridian**”) and Roynat Capital Inc. (“**Roynat**”) on account of the outstanding secured indebtedness owed by the Company to each of Meridian and Roynat;
 - (d) the deemed trust claim asserted by the Canada Revenue Agency (“**CRA**”) for pre-appointment source deductions owed by the Company (the “**Deemed Trust Claim**”);
 - (e) the Receiver’s estimate of accrued and unpaid obligations as of the date of this Second Report (the “**Accrued Obligations**”) and the Receiver’s estimate of professional fees and disbursements, including those of its counsel, required to complete the administration of these receivership proceedings (the “**Remaining Fees and Disbursements**”); and
 - (f) to seek an order of the Court;
 - (i) approving this Second Report, and the actions, activities and conduct of the Receiver set out therein;
 - (ii) approving the distributions made to date by the Receiver to Meridian and Roynat;

- (iii) approving the R&D;
- (iv) authorizing the Receiver to pay the Accrued Obligations and the Remaining Fees and Disbursements (collectively, the “**Outstanding Disbursements**”) from the available cash on hand remaining with the Receiver, and any subsequent cash receipts, without further approval of this Court;
- (v) authorizing and directing the Receiver to make a payment to the Receiver General for Canada in the amount of \$6,149.33 and take such steps as necessary to settle the Deemed Trust Claim;
- (vi) approving the accounts of the Receiver and its counsel, including the Remaining Fees and Disbursements, as set out in this Second Report;
- (vii) discharging the Receiver upon completion of the Remaining Matters (as defined herein), and authorizing the Receiver to distribute any residual amounts remaining in its possession to the Trustee after the payment of the Outstanding Disbursements, subject to the Receiver filing a certificate evidencing the same with the Court; and
- (viii) ordering and declaring that effective upon its discharge as Receiver, Richter is released and discharged from any and all liability that Richter now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Richter while acting in its capacity as Receiver, save and except for any gross negligence or wilful misconduct on the part of Richter.

QUALIFICATIONS

6. In preparing this Second Report, the Receiver has relied upon unaudited financial information prepared by the Company, the Company's books and records, and discussions with the Company's representatives. The Receiver has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of such information.
7. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars. Capitalized terms not otherwise defined herein are as defined in the Appointment Order.

ACTIVITIES OF THE RECEIVER

8. Since the date of the First Report, the Receiver's activities have included:
- (a) closing the Sale Transaction with the Purchaser;
 - (b) working with the Purchaser to remove the Purchased Assets from the Company's offices located at 401 Vaughan Valley Blvd. in Woodbridge, Ontario (the "**Premises**");
 - (c) arranging for payment of continuing services, including utilities, contractors, etc. for the Premises;
 - (d) determining the amounts owed to former Daco employees pursuant to the *Wage Earner Protection Program Act* ("**WEPPA**") and liaising with Service Canada in connection with the administration thereof;
 - (e) corresponding with former employees of the Company regarding the status of claims and payments under WEPPA;
 - (f) corresponding with requests from the Ontario Ministry of Labour regarding the status of these proceedings and potential amounts to former Daco employees;
 - (g) corresponding with CRA in connection with its audit on the Company's payroll remittance account, and in respect of the Company's sales tax account;
 - (h) communicating with Daco Canada Real Estate Holdings Ltd. ("**Daco Real Estate**"), and its advisors, in connection with the sale of the Premises;
 - (i) terminating Daco's insurance policies in respect of the Property and the Premises;
 - (j) responding to calls and enquiries from the Company's creditors, including former employees, suppliers and other stakeholders regarding the receivership proceedings; and
 - (k) communicating with each of Meridian, Roynat and Daco USA Inc. ("**Daco USA**"), and their respective advisors, in connection with various aspects of the receivership.
9. To the best of its knowledge and belief, the Receiver has complied with all of its statutory duties and obligations pursuant to the BIA as at the date of this Second Report. Prior to filing its Certificate of Discharge (as defined herein), the Receiver will complete its statutory duties, including preparing and filing its final report pursuant to section 246(3) of the BIA.

COMPLETION OF THE SALE TRANSACTION

10. On September 18, 2015, the Receiver and the Purchaser executed the APA in respect of the Purchased Assets. On September 24, 2015, the Court approved the Sale Transaction.
11. Pursuant to the terms of the APA, the Sale Transaction was to close within seven business days following the satisfaction and/or waiver of all conditions to the APA. The Sale Transaction closed on October 2, 2015 and the Receiver's certificate attesting to the waiver or satisfaction of the conditions precedent was issued to the Purchaser's counsel and filed with the Court.
12. The total cash proceeds from the Sale Transaction was \$825,003 (excluding sales taxes), including the \$50,000 deposit paid to the Receiver by the Purchaser on September 8, 2015.
13. Since October 2, 2015, the Receiver and/or its representative worked with the Purchaser to allow access to the Premises to enable the removal of the Purchased Assets. On November 4, 2015, the Purchaser completed this process and the Receiver vacated the Premises on the same day.

DISTRIBUTIONS

14. As noted in the First Report, Gowling Lafleur Henderson LLP ("**Gowlings**") previously provided an independent legal opinion to Richter, in its capacity as trustee in respect of Daco's NOI proceedings, with respect to the validity and enforceability of the security granted by Daco in favour of each of Meridian and Roynat. Subject to the customary qualifications and limitations included therein, it was Gowlings' opinion that the security granted by Daco in favour of each of Meridian and Roynat was valid and enforceable against all of the Property. Pursuant to various inter-creditor agreements between Daco USA, Meridian and Roynat, Meridian had first-ranking security and Roynat had second-ranking security over the Property. Based on the order of registrations under the *Personal Property Security Act* (Ontario), Daco USA had third ranking security over the Property.
15. Subsequent to the closing of the Sale Transaction and in accordance with the authority granted in paragraph 6 of the Appointment Order, on October 7, 2015, the Receiver made a distribution in the amount of \$698,623.47 to Meridian as repayment, in full, of the outstanding secured indebtedness owed to Meridian by Daco, including interest and costs.
16. On or about October 20, 2015, Roynat provided the Receiver with a copy of its payout statement in connection with the outstanding secured indebtedness owed to Roynat by the Company. As set out in its payout statement, Roynat was owed approximately \$1.63 million (net of accrued interest, costs and other expenses) as at the statement date.

17. After taking into account the estimated costs needed to complete its administration, on November 4, 2015, the Receiver distributed \$150,000 from cash on hand to Roynat, which distribution reduced the outstanding indebtedness owing to Roynat by Daco to approximately \$1.5 million.

SALE OF THE PREMISES

18. The Receiver understands that Daco had granted charges against title to the Premises in favour of both Roynat (first ranking) and Meridian (second ranking) as additional security for the Company's obligations to each of Roynat and Meridian. Although Daco held bare legal title to the Premises, beneficial ownership of the Premises was held by Daco Real Estate. Consequently, any surplus from the sale of the Premises (after satisfaction of any residual amounts owed to Meridian and Roynat from the sale of the Property) would be for the benefit of Daco Real Estate and not available to the Company or its other creditors.
19. As noted in the First Report, Daco Real Estate had received a conditional offer on the Premises, which had been listed for sale with CBRE Limited. In connection with the foregoing, the Receiver understands that all conditions in respect of the offer were satisfied and/or waived on or about October 16, 2015, and that the sale of the Premises closed on November 4, 2015.
20. The Receiver understands a portion of the proceeds from the sale of the Premises were used by Daco Real Estate to repay the outstanding balance owed to Roynat by the Company. As such, the Receiver understands that no further amounts are or will be owed by Daco to Roynat.

RECEIVER'S STATEMENT OF RECEIPTS AND DISBURSEMENTS

21. The Receiver's statement of receipts and disbursements for the period from the Date of Appointment to March 7, 2016 is summarized as follows:

Daco Manufacturing Ltd.		
Statement of receipts and disbursements		
For the period July 17, 2015 to March 7, 2016		
Receipts		Notes
Receiver's borrowings	\$ 50,000	
Proceeds from the Sale Transaction	825,003	
Asset realizations	370,068	1
Refunds re prepaids	38,792	
Accounts receivable collection	278	
HST collected	133,656	
Pre-filing HST refunds	28,529	
Post-filing HST refunds	10,288	
Other receipts	1,144	
Total Receipts	\$ 1,457,758	
Disbursements		
Repayment of Receiver's borrowings	50,411	
Professional fees (NOI proceedings)	70,149	2
Professional fees (Receivership proceedings)	165,233	3
Pre-filing wages and vacation pay	4,020	4
Contract services	37,492	5
Operating expenses	25,124	
Property taxes	39,580	
HST remittances	111,830	
GST/QST/HST paid on disbursements	34,289	
Bank charges / other fees	601	
Total disbursements	\$ 538,729	
Excess Receipts over Disbursements	\$ 919,029	
Repayments to Meridian	698,623	
Repayments to Roynat	150,000	
Cash on hand	\$ 70,405	
Notes:		
1	Proceeds collected by the Receiver in connection with the sale of certain inventory and equipment.	
2.	Outstanding fees of the Proposal Trustee (\$54k), its counsel (\$6k) and counsel to the Company (\$10k) paid by the Receiver pursuant to paragraph 26 of the Appointment Order.	
3.	Fees of the Receiver (\$145k) and its counsel (\$20k) incurred during these proceedings.	
4.	Payment of outstanding wages and vacation pay owed to former Daco employees for pay period ending July 17, 2015.	
5.	The Receiver engaged certain former Daco employees as independent contractors to assist with the Receivership.	

22. As detailed in the table above, the Receiver had total receipts of approximately \$1.4 million between the Date of Appointment and March 7, 2016, the majority of which relate to proceeds received from the Sale Transaction with the Purchaser. Total disbursements over the same period were approximately \$0.5 million, primarily consisting of professional fees and operating costs related to these receivership proceedings.
23. As previously noted, payments to Meridian and Roynat were made on account of their outstanding secured indebtedness owed by the Company. To date, approximately \$0.7 million and \$0.15 million has been

distributed by the Receiver to Meridian and Roynat, respectively. As at March 7, 2016, cash on hand was \$70,405.

24. As at the date of this Second Report, the Receiver does not anticipate any additional material realizations, other than those detailed in the Remaining Matters.
25. After payment of the Deemed Trust Claim, the Receiver estimates there remains approximately \$5,000 in Accrued Obligations relating primarily to certain operating expenses related to the Receiver's occupation of the Premises. In addition, the Receiver estimates Remaining Fees and Disbursements in the amount of approximately \$30,000, exclusive of HST.
26. The Receiver seeks authority to pay the Outstanding Disbursements from cash on hand without further order of this Court. Accordingly, upon satisfying the Remaining Matters, the Receiver shall distribute any residual amounts remaining in its possession, or subsequently collected by the Receiver, to the Trustee without further order of this Court.

PRIORITY CLAIMS

27. The security granted by Daco in favour of each of Meridian and Roynat is subject to prior charges and security interests or claims in respect of the Property, which include:
 - (a) The Receiver's Charge;
 - (b) The Receiver's Borrowing Charge;
 - (c) The Administration Charge;
 - (d) The Deemed Trust Claim; and
 - (e) Statutory claims pursuant to the BIA (the "**BIA Claims**").

Receiver's Charge

28. As noted above, the fees and disbursements of the Receiver and its legal counsel, Gowlings, that have been paid up to March 7, 2016 total approximately \$165,000, exclusive of HST. In addition, the Receiver has estimated Remaining Fees and Disbursements in the amount of \$30,000. The Receiver is of the view that the cash on hand as at the date of this Second Report is sufficient to provide for the Remaining Fees and Disbursements, after taking into account the Accrued Obligations and the Deemed Trust Claim.

Receiver's Borrowing Charge

29. Pursuant to paragraph 27 of the Appointment Order, the Receiver was authorized to borrow up to \$75,000 from Meridian, as it considered necessary or desirable. As of the date of this Second Report, no borrowings are outstanding.

Administration Charge

30. Pursuant to paragraph 26 of the Appointment Order, the Administration Charge, as defined and provided by the order of the Court made on June 8, 2015 as part of the Company's proposal proceedings, continued to apply and encumber the Property and any proceeds thereof. As of the date of this Second Report, outstanding amounts owing pursuant to the Administration Charge have been repaid in full.

Deemed Trust Claim

31. By letter dated September 24, 2015, CRA advised the Receiver that Daco was indebted to CRA in respect of unremitted source deductions amounting to \$6,928.26, of which \$6,149.33 was held in trust and did not form part of the property, business or estate of the Company. A copy of the CRA letter is attached hereto as **Exhibit "C"**.
32. The Receiver understands that the amount claimed by CRA is consistent with the Company's books and records, and the results of the payroll field audit conducted by CRA on September 11, 2015. Accordingly, the Receiver is seeking this Court's approval to pay the Deemed Trust Claim from funds currently held by the Receiver.

BIA Claims

33. Based on the Receiver's review of the Company's books and records, there were no outstanding amounts owed to the Company's former employees in respect of wages and/or vacation pay as at the date of this Second Report. Accordingly, the Receiver is not aware of any amounts that could be owing pursuant to section 81.4 of the BIA.
34. The Receiver understands that the Company did not provide a registered pension plan for its employees. Accordingly, the Receiver is not aware of any amounts that could be owing pursuant to section 81.6 of the BIA.
35. As at the date of this Second Report, the Receiver is not aware of any claims, other than those noted above, that rank in priority to the claims of Meridian or Roynat as against the Property, or the proceeds therefrom.

REMAINING MATTERS TO BE COMPLETED IN THESE PROCEEDINGS

36. If this Court grants the order requested herein, the Receiver will have completed its statutory duties, except for the following (the "**Remaining Matters**"):
- (a) Settling the Deemed Trust Claim, as outlined in this Second Report;
 - (b) Paying the Outstanding Disbursements;
 - (c) Pursuing the potential recovery of any unclaimed HST input tax credits paid during these proceedings;
 - (d) Attending to other administrative matters incidental to these proceedings such as filing the Receiver's report pursuant to section 246(3) of the BIA.
37. Upon the completion of the Remaining Matters, the Receiver will have realized on the Property and completed its statutory duties as well as those duties set out in the Appointment Order. Accordingly, the Receiver is of the view that it is appropriate to seek an order of the Court discharging the Receiver upon the filing of a certificate (the "**Certificate of Discharge**") with this Court certifying that all of the Remaining Matters have been completed.

REQUEST FOR APPROVAL OF FEES

38. The Receiver and its counsel, Gowlings, have maintained detailed records of their professional time and disbursements since the Date of Appointment.
39. In accordance with the Appointment Order, the Receiver has been authorized to periodically pay its fees and disbursements, and that of its counsel, subject to approval by the Court.
40. The Receiver's professional fees incurred for services rendered from the Date of Appointment to January 31, 2016 amount to \$144,230.25, plus disbursements in the amount of \$448.24 (all excluding HST). These amounts represent professional fees and disbursements not yet approved by the Court. The time spent by the Receiver's professionals is described in the affidavit of Pritesh Patel attached hereto as **Exhibit "D"**.
41. The fees of the Receiver's counsel, Gowlings, for services rendered from the Date of Appointment to October 21, 2015 total \$42,598.00, plus disbursements in the amount of \$1,669.01 (all excluding HST). These amounts represent professional fees and disbursements not yet approved by the Court. The time spent by the Gowlings' professionals is described in the affidavit of Clifton Prophet attached hereto as **Exhibit "E"**.

42. The Receiver has reviewed Gowlings' accounts and has determined that the services have been duly authorized and duly rendered and that the charges are reasonable given the circumstances.
43. In addition to the fees paid as of March 7, 2016, and on the assumption that there are no delays, disputes or unforeseen developments in connection with these proceedings, including the within motion, and the performance of the Remaining Matters, the Receiver has estimated Remaining Fees and Disbursements in the amount of \$30,000 (excluding HST). This estimate represents the Receiver's best estimate of the reasonable professional and legal fees required to complete the administration of these proceedings up to the effective date of discharge.

CONCLUSION AND RECOMMENDATION

44. To the best of the Receiver's knowledge and belief, all duties of the Receiver, as set out in the Appointment Order and subsequent orders of this Court, will be completed upon payment of the Deemed Trust Claim, the Outstanding Disbursements, and completion of the Remaining Matters.
45. Accordingly, the Receiver seeks an order of the Court:
- (a) approving the Second Report, and the actions, activities and conduct of the Receiver set out therein;
 - (b) approving the distributions made to date by the Receiver to Meridian and Roynat;
 - (c) approving the R&D;
 - (d) authorizing the Receiver to pay the Outstanding Disbursements, without further approval of this Court;
 - (e) authorizing and directing the Receiver to make payment in respect of the Deemed Trust Claim;
 - (f) approving the accounts of the Receiver and its counsel, including the Remaining Fees and Disbursements, as set out in this Second Report;
 - (g) discharging the Receiver upon completion of the Remaining Matters, and authorizing the Receiver to distribute any residual amounts remaining in its possession to the Trustee after the payment of the Outstanding Disbursements, subject to the Receiver filing a Certificate of Discharge with this Court; and
 - (h) ordering and declaring that effective upon its discharge as Receiver, Richter is released and discharged from any and all liability that Richter now has or may hereafter have by reason of, or in any

way arising out of, the acts or omissions of Richter while acting in its capacity as Receiver, save and except for any gross negligence or wilful misconduct on the part of Richter.

All of which is respectfully submitted this 10th day of March, 2016.

Richter Advisory Group Inc.
in its capacity as Receiver of
Daco Manufacturing Ltd.
and not in its personal capacity



Adam Sherman, MBA, CIRP
Senior Vice-President



Pritesh Patel, CIRP, CFA, MBA
Vice-President