

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF QUÉBEC  
DIVISION NO.: 01-MONTRÉAL  
COURT NO.: 500-11-043820-121  
ESTATE NO.:

SUPERIOR COURT  
(Commercial Division)  
*Bankruptcy and Insolvency Act*

IN THE MATTER OF THE  
RECEIVERSHIP OF:

**PROBEX BUILDING SUPPLIES  
INC./MATÉRIAUX DE CONSTRUCTION  
PROBEX INC.**, a company duly  
incorporated having its head office at  
10000 Gouin Blvd. West, Roxboro,  
Province of Quebec, H8Y 3K9

**Bankrupt**

-and-

**RICHTER ADVISORY GROUP INC.**, a  
legal person duly incorporated having a  
place of business at 1981 McGill College,  
Montréal, Province of Quebec, H3A 0G6

**Proposed Receiver**

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**REPORT OF THE PROPOSED RECEIVER SUBMITTED IN CONJUNCTION WITH MOTION TO OBTAIN  
AUTHORIZATION TO SELL MOVABLE ASSETS**

I, Philip Manel, CPA, CA, CIRP, of the City of Montréal, from the office of Richter Advisory Group Inc./Richter Groupe Conseil Inc. (formerly RSM Richter Inc.; "Richter") acting as the Proposed Receiver to the Debtor's assets hereby report to the Court as follows:

**A) INTRODUCTION**

That, on April 2, 2013, the Canadian Imperial Bank of Commerce (the "Bank" or "CIBC" or "Petitioner") filed with the Quebec Superior Court a Motion for the Appointment of a Receiver to the assets of Probex Building Supplies Inc. ("Company" or "Probex") for the Authorization of a Sale of certain of the Company's Assets and for a Vesting Order ("Motion").

1. That, in particular, the Motion is for an order to authorize and approve a transaction between the Proposed Receiver and an entity (the "Purchaser") to be designated by Mr. Lawrence Weinstock, a party related to the principal shareholder of Probex, for the sale, free and clear of any security, charge or other restriction of certain assets of Probex referred to as the "Purchased Assets" (as defined hereunder).

**B) NOTIFICATION TO CREDITORS**

2. Following its appointment (and within the delays stipulated in the Bankruptcy and Insolvency Act; "BIA"), the Receiver will mail to the Company's known creditors a Notice and Statement of the Receiver pursuant to Sections 245(1) and 246(1) and will also post the mailing documents on its website. The Receiver via attorneys Lavery have already notified the second ranking secured lender, namely Rona Inc., of the Motion to Sell the Assets. Rona Inc. will also receive a copy of the Receiver's Statement.

**C) BACKGROUND ON THE COMPANY AND ITS OPERATIONS**

3. The Company was founded in 1976 by its principal shareholder, Mr. Carl Strulovitch and his former partner and is incorporated under provincial statute.
4. Probex was a supplier of building materials to construction contractors from its lumber yard and concurrently operated a retail outlet, selling hardware and building materials to the general public. Since 2008, the Company operated under the "Rona" banner, a national franchisor of hardware stores pursuant to a commercial agreement between it and Rona.
5. The Company operated out of premises located in Roxboro, in the west end of Montréal ("Premises"), which were leased from a related party ("Building Co").
6. The Company's sales have significantly declined over the past few years, from approximately \$12.6 million in 2010 (fiscal year ending on October 31) to approximately \$7.7 million in 2012, primarily due to a pronounced downturn in the residential construction and home renovation industry. Probex has been unable to reduce its fixed cost structure to compensate for the reduction in sales, and consequently incurred operating losses of approximately \$302,000 and \$1.05 million in fiscal 2011 and 2012 respectively.
7. The Company's assets that are subject to the CIBC's first ranking security are comprised of accounts receivable, merchandise inventory, store furnishing, office and computer equipment, rolling stock and small equipment, as well as intellectual or intangible property, that is specific to the operations of a hardware store or a lumber yard.
8. As discussed further below, the Company's commercial activities have been suspended since the end of 2012 as it did not have the necessary funding and credit with which to operate.

## **D) INDEBTEDNESS OF PROBEX TOWARDS THE BANK**

9. Probex is indebted to the Bank pursuant to a loan agreement dated February 1, 2012, the terms and conditions of which were accepted on February 28, 2011 (the "Credit Agreement"). The Credit Agreement governed both an operating line of credit and a demand loan.
10. As at March 13, 2013, Probex was indebted to the Bank for a total amount of \$792,023.57 under the Credit Agreement. However, this excludes accrued interest and certain costs and expenses incurred by the Bank, as well as any amounts due under Probex's guarantee of the amounts owed by Building Co to the Bank.
11. The Bank holds a first ranking movable hypothec in the amount of \$4,025,000 over all of the Company's assets, with the exception of the Company's shares in Rona, namely on the inventory, accounts receivable, fixed assets and intellectual property/intangible assets. Legal opinions have been obtained by Richter confirming the validity and ranking of both the security of CIBC and Rona Inc.
12. As at March 13, 2013, Building Co was also indebted to the Bank for a total amount of \$1,407,498.40. The Bank's advances to Building Co are secured by a first ranking mortgage on the Premises.
13. The Bank also holds a personal guarantee from the shareholder of Probex, Mr. Carl Strulovitch, up to a maximum of \$1 million, as well as an unlimited guarantee from Building Co.
14. Given the numerous loan defaults (which are discussed further in this report), on October 15, 2012, the Bank issued a Notice of Intention to enforce the Security under Section 244 of the Bankruptcy and Insolvency Act (the "244 Notice"), both to Probex and Building Co.
15. Should this Honorable Court authorize the sale of the assets as envisaged in the Motion submitted concurrently herewith, the CIBC will nonetheless suffer a loss on its advances to Probex.

## **E) SUMMARY OF EVENTS PRECEDING THIS MOTION**

16. On or around July 19, 2012, Richter was mandated by the Bank as its consultant, in order to, *inter alia*, review the CIBC's security position in respect of its advances to Probex. Probex collaborated with Richter in the execution of its mandate.

17. Following its review, Richter reported significant issues to the CIBC in respect of its advances to Probex, particularly the failure to meet margin requirements on the operating line of credit as well as recurring operating losses incurred by the Company. Notwithstanding the defaults under the terms of the Credit Agreement, the Bank suspended Richter's mandate and delayed any enforcement procedures to allow some time for Mr. Strulovitch to seek either a buyer for the Company's assets or to raise an investment in capital.
18. On or around October 15, 2012, the Bank requested a continuance of Richter's consulting mandate, particularly due to the Company's continuing operating losses, and the inability of Mr. Strulovitch to conclude a sale or a refinancing transaction. The Bank issued its 244 Notice on October 15, 2012 for which the Company waived the requisite 10 day delay.
19. On October 16, 2012, the Bank and the Company entered into a forbearance agreement which stipulated the conditions on which the Bank would continue to support the Company on a limited basis (the "Forbearance Agreement"). In particular, the conditions of the Forbearance Agreement included a requirement that the Company undertake a process to sell its assets and/or seek a capital investment with the assistance of Richter ("Sale Process"). The Sale Process will be discussed in greater detail below.
20. On December 17, 2012, the Company filed a Notice of Intention to make a Proposal ("NOI") to avail itself of the protection afforded by the BIA while it continued to seek a purchaser and/or investor. Richter was named as Trustee under the NOI. Due to its restricted liquidity availability, the Company ceased its commercial activities shortly after the filing of the NOI as it would not have been able to meet normal operating expenditures. A few employees were retained to collect Probex's accounts receivable, the net proceeds of which were used to pay specific conservatory expenses and salaries and to reduce the Company's operating line of credit.
21. On January 14, 2013, the Company made a motion to the Court for an extension of the delay to file a Proposal. On January 16, 2013, the Court granted the Company with the requested delay to file a Proposal, namely to March 1, 2013.
22. Shortly after obtaining the extension, the Company's discussions and negotiations with potential purchasers and/or investors led it to conclude that it could not realistically enter into a transaction that would generate sufficient proceeds with which to make a Proposal to its unsecured creditors. Consequently, the Company made an assignment in bankruptcy on January 31, 2013 under s. 49 of the BIA and Richter was named as Trustee to the bankrupt estate.

23. On March 7, 2013, the Bank mandated Richter as its agent to assist it in the realization of the Company's assets that comprise its security.

**F) SEARCH FOR A PURCHASER OR INVESTOR AND THE PROPOSED TRANSACTION WITH THE PURCHASER**

24. As noted above, between the months of July and October 2012, the Company, without any assistance, sought a purchaser for its assets and/or a capital investment, all to no avail. Following the Company's failure to complete a sale or refinancing transaction, the Bank requested that Richter assist it in the Sale Process, the details of which are addressed below.
25. On November 1, 2012, Richter sent a solicitation document ("Teaser") to approximately 175 going concern potential purchasers comprised of hardware retailers, lumber yard operators, as well as several franchisor groups (including Rona and several of its members), requesting offers for the Company's operating assets on or before November 30, 2012. Potential purchasers were asked to return a signed confidentiality agreement following which they would be granted access to a virtual data room which contained financial and operational information on the Company.
26. Ten (10) going concern potential purchasers returned signed confidentiality agreements and were given access to the virtual data room. In addition, most of those parties visited the Premises and met the Company's management to evaluate the investment opportunity. None of the going concern potential purchasers made an offer prior to the deadline or have indicated any serious interest since. Rona, which is the Company's franchisor, did not demonstrate any interest in acquiring the business/assets despite being solicited on several occasions by Richter to do so. Given the disappointing results following the solicitation of offers from the going concern potential purchasers, on November 1, 2012, Richter expanded the Sale Process by soliciting "liquidation" offers from 13 local auctioneers for the Company's operating assets to be tendered on or before December 4, 2012. Signed confidentiality agreements were received from ten (10) auctioneers who subsequently performed their due diligence procedures.
27. Three (3) auctioneers made offers for the Company's assets. Of the offers received, the highest one (as was the case for the other two offers) was subject to adjustments related to inventory quantities as well as certain occupancy conditions (the "Liquidation Offer"). Given that the Company's inventory had not been recently counted, in all likelihood, a count by the auctioneer would have resulted in significant negative adjustments to the Liquidation Offer. None of the offers received from the auctioneers were accepted and, consequently, they were allowed to elapse.

28. In early December 2012, the Company's principal, Mr. Strulovitch, began negotiations with a newly identified party for the purchase of the Company's assets with a view of resuming normal operations in the new year. The negotiations between Mr. Strulovitch and this prospective purchaser went on for over one and a half months (in part due to the 2012 holiday season); however, in late January 2013, this prospective buyer indicated that it would not make an offer.
29. Following the backing out of the aforementioned prospective party, discussions were held between Richter and the auctioneer that had made the initial Liquidation Offer, to determine whether it would still be interested in acquiring the Company's assets on the same terms. The auctioneer advised Richter that, due to the lengthy interruption in Probex's operations and resulting loss in customer traffic and goodwill, any revised offer would be lower than the Liquidation Offer.
30. In mid February 2013, Mr. Strulovitch identified another prospective party that would be interested in the Company's operating assets with a view of resuming operations in the spring of 2013. Following lengthy negotiations, no offer was made for the purchase of the Company's assets. On March 2012, an offer (the "Offer") was submitted by still another party, Mr. Lawrence Weinstock, a party related to the principal shareholder of Probex, which is acceptable to CIBC. Richter (in its capacity as Proposed Receiver) accepted the Offer subject to its nomination as Receiver and of the authorization of this Court.
31. In summary, the Offer contemplates a transaction pursuant to, *inter alia*, the following principal terms:
  - (i) The Purchaser is acquiring the Purchased Assets through the Receiver;
  - (ii) The Purchased Assets includes the Company's:
    - a) Equipment, machinery and tools;
    - b) Furniture, fixtures, office and computer equipment (including any software);
    - c) Merchandise inventory (retail and construction materials); and
    - d) Client lists, goodwill and any rights in the telephone numbers identified with Probex;
  - (iii) However, the Purchased Assets specifically exclude:
    - a) The Premises;
    - b) The Company's accounts receivable and other claims;
    - c) Any merchandise inventory identified in the name of "Rona";

- d) A specific Peterbilt boom truck;
  - e) The Company's shares in Rona.
- (iv) The Purchased Assets are to be sold free and clear of all encumbrances, hypothecs, security, retention of title rights or other charges which may be affecting the Purchased Assets;
- (v) The contemplated transaction, subject to the approval of the Court, must close on April 5, 2013 at the latest (the "Proposed Transaction").

**G) APPOINTMENT OF A RECEIVER AND AUTHORIZATION OF THE PROPOSED TRANSACTION**

32. The appointment of the Receiver and the authorization of the Proposed Transaction will permit, *inter alia*, to complete the Proposed Transaction in the best interests of all stakeholders. More particularly, the proceeds emanating from this transaction are the highest available pursuant to the search for purchasers made over an extended period of time. Unfortunately, the CIBC will suffer a shortfall on its advances and Rona Inc.'s recovery will be limited to realization from the sale of Rona shares subject to its security.
33. It is the intention of the Purchaser, as a new business entity, to recommence the Probex's business as a going concern. The Proposed Transaction is thus in the best interests of Probex's stakeholders, including its suppliers who may benefit from ongoing sales and past customers who dealt with the former Company.
34. It is also the intention of the Purchaser to offer employment to several former employees of Probex, including its former president, Mr. Carl Strulovitch.
35. Notwithstanding that the Bank will suffer a shortfall on its secured advances, it supports the Proposed Transaction.
36. Notwithstanding that the Proposed Transaction would not result in any recovery to the Company's unsecured creditors, the Bankruptcy Trustee (also Richter) is of the view that it is the best possible alternative in the circumstances and, consequently, it supports it. The Inspectors of the Bankruptcy, comprising three individuals who are employees of CIBC, similarly support the Trustee's recommendation.

37. Should the Proposed Transaction not be consummated, the alternative would be to immediately liquidate the Company's assets, which would undoubtedly result in a greater shortfall to the Bank, and would not allow for all the benefits of the resumption of normal operations, particularly the rehiring of Probex's former employees.

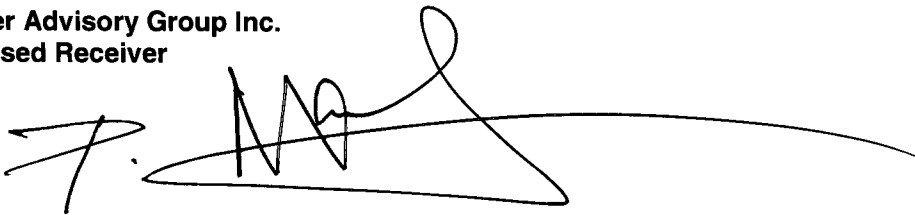
## H) CONCLUSION AND RECOMMENDATION

Richter, as the Proposed Receiver, concludes that the Proposed Transaction should be approved by the Court and completed for the following reasons:

- The Bank, which is expected to suffer a shortfall on its advances, supports the Proposed Transaction;
- The Proposed Transaction provides for a better recovery to the Bank than would an alternate liquidation of the Company's assets;
- The completion of the Proposed Transaction envisages that the Company's operations are resumed normally, thereby permitting the rehiring of several former employees, allowing the Company's suppliers to continue doing business and providing them with the opportunity to recuperate some of their losses through continuing such sales.

DATED AT MONTRÉAL, this 2<sup>nd</sup> day of April 2013

**Richter Advisory Group Inc.**  
**Proposed Receiver**

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

**Philip Manel, CPA, CA, CIRP**