

C A N A D A

PROVINCE OF QUEBEC

District of Montreal

S U P E R I O R C O U R T

(Commercial Division)

No:

IN THE MATTER OF THE  
RECEIVERSHIP OF:

STEEL COMPONENTS PRODUITS  
MÉTALLIQUES INC. / STEEL  
COMPONENTS METAL PRODUCTS  
INC., a legal person duly constituted having its  
head office at 8050 Marco Polo, Montreal,  
Quebec, H1E 5Y7

Debtor

- and -

**BANK OF MONTREAL**, a chartered bank  
having its head office at 129 St-Jacques Street,  
Montreal, Province of Quebec, H2Y 1L6.

Petitioner

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**MOTION FOR THE APPOINTMENT OF AN INTERIM RECEIVER**  
(Arts 47(1) and 47(2) of the *Bankruptcy and Insolvency Act (Canada)* (the  
"BIA"), R. 6(4) of the *Bankruptcy and Insolvency General Rules*)

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**TO THE REGISTRAR SITTING IN THE COMMERCIAL DIVISION FOR THE  
DISTRICT OF MONTREAL, THE PETITIONER SETS OUT THE  
FOREGOING:**

**I. Petitioner's Loans**

1. The Petitioner has made loans and advances to the Debtor in the amount of \$466,131.31, subject to interest, adjustments and costs, pursuant to credit facilities made available in accordance with the following agreements:
  - (a) An Operating Loan Agreement with Availment in Canadian or US Dollars dated as of December 20, 2006, as amended, pursuant to which a line of

credit having a loan limit of \$500,000, subject to margin calculations (the “**Line of Credit**”), was made available to the Company, subject to the interest as provided for under the agreement. As at March 6, 2013, the advances owed under the line of credit amount to \$399,633.50, subject to interest, adjustments and costs;

- (b) A small business loan in the original amount of \$229,500, plus interest at an annual rate equal to the Bank’s prime rate plus 2.5% per annum (the “**SB Loan**”) was advanced to the Company pursuant to a Loan Application and Agreement – Canada Small Business Financing Act, dated as of April 27, 2005. As at March 6, 2013, the amount owed under the SB Loan is \$9,562.48, subject to interest, adjustments and costs; and
- (c) A loan made pursuant to a “*Convention de Prêt – Programme Investissement Québec*” dated as of May 17, 2010, under which the Bank advanced an amount of \$152,450 to the Company, at an interest rate equal to the Bank’s prime rate plus 3.75% per annum (the “**IQ Loan**”). As at March 6, 2013, the amount outstanding under the IQ Loan is \$56,892.83, subject to interest, adjustments and costs.

copies of which submitted herewith, en liasse, **Exhibit R-1**;

- 2. These facilities were confirmed by a commitment letter dated December 17, 2012, which required the reimbursement by no later than February 28, 2013, as more fully appears from a copy of the commitment letter, **Exhibit R-2**;
- 3. In order to secure reimbursement of the amounts owing to the Petitioner by the Debtor pursuant to those agreements, as well as all present and future obligations of the Debtor towards the Petitioner, the Debtor granted the following security to the Petitioner:
  - (a) A Deed of Movable Hypothec, dated as of April 27, 2005, made by the Insolvent Person in favour of the Bank, and duly registered at the Register of personal and movable real rights on April 28, 2005 under number 05-0239672-0001, for an amount of \$300,000, bearing interest at an annual rate of 25%, **Exhibit R-3**;
  - (b) A Deed of Movable Hypothec, dated as of December 20, 2006, made by the Insolvent Person in favour of the Bank, and duly registered at the Register of personal and movable real rights on December 29, 2006 under number 06-0740327-0001, as rectified by the registration 07-0037917-0001 for an amount of \$ 480,000, bearing interest at an annual rate of 25%, **Exhibit R-4**;
  - (c) A Deed of Movable Hypothec, dated as of February 18, 2008, made by the Insolvent Person in favour of the Bank, and duly registered at the Register of personal and movable real rights on February 21, 2008 under number

08-0093019-0001 for an amount of \$ 120,000, bearing interest at an annual rate of 25%, **Exhibit R-5**;

- (d) A Deed of Movable Hypothec, dated as of May 17, 2010, made by the Insolvent Person in favour of the Bank, and duly registered at the Register of personal and movable real rights on May 21, 2010 under number 10-0327289-0001 for an amount of \$ 184,940, bearing interest at an annual rate of 25%, **Exhibit R-6**;
  - (e) A Notice of Registration under Section 427 of the Bank Act, dated as of February 10, 2010 and duly registered at the offices of the Bank of Canada, Province of Quebec, on February 15, 2010 under number 01249708; Agreement as to Loans and Advances and Security thereof, dated as of February 16, 2010; Application for Credit and Promise to Give Bills of Lading, Warehouse Receipts, or Security under Section 427 of the Bank Act, dated as of February 16, 2010; and Security under Section 427(1) of the Bank Act, dated as of February 16, 2010 (together, the "427 Security"), en liasse, **Exhibit R-7**.
4. No other creditor holds a hypothec or security over the assets of the Debtor, other than L'Unique Assurances Générales Inc., which ceded rank in favour of the Petitioner, as more fully appears from an extract of the RPMRR with respect to the Debtor's dated as of March 8, 2013, **Exhibit R-8**;
5. On March 12, 2013, the Petitioner demanded the immediate repayment of its advances, and will be serving the Debtor with a prior notice of its intention to enforce security pursuant to s. 244 BIA, as more fully appears from the Petitioner's demand letter, and prior notices, all of which are dated March 12, 2013, en liasse, **Exhibit R-9**;

## II. Reasons to Appoint Interim Receiver

6. The Debtor is required to provide to the Petitioner, among other information:
- (a) an aged list of outstanding accounts receivable, identifying accounts in dispute and the value of any prior ranking claims, including amounts owed to the tax authorities (the "**Accounts List**");
  - (b) as well as the valuation of inventory, listed by raw material, work in progress and finished goods, excluding inventory held on consignment, identifying all inventory subject to a prior charge in favour of a creditor other than the Petitioner (together with the Accounts List, the "**Aging Lists**"), in each case within 15 days of each month's end; and
  - (c) such other information as the Petitioner may require from time to time;

7. Furthermore, under the terms of the Deeds of movable hypothec, Exhibits R-3, R-4, R-5 and R-6, as well as the terms of the Bank Act Security documents, Exhibit R-7, the Debtor is required to allow the Petitioner to inspect the property and assets charged in its favour, as well as review and take copies of the Debtor's books and records;
8. The Debtor has not abided by the aforementioned covenants and its payment covenants towards the Petitioner, in that:
  - (a) it failed to deliver the Aging Lists for the month ended December 31, 2012, which were due on January 15, 2013;
  - (b) it failed to deliver the Aging Lists for the month ended January 31, 2013, which were due on February 15, 2013;
  - (c) the Company has ceased depositing its collections in the accounts it holds with the Bank, depositing them at an account held at the National Bank of Canada (the "**NBC Accounts**"), as more fully appears from the statement of operations of those accounts for the period of November 2012 to February 26, 2013, **Exhibit R-10**;
  - (d) through its attorney's letter sent February 27, 2013, the Company advised that it had closed the NBC Accounts, but refused to provide details of deposits made, and transactions carried out in the NBC Accounts, as more fully appears from a copy of that letter, **Exhibit R-11**;
  - (e) since the Company closed the NBC Accounts, it has refused to provide the Petitioner with a closing account balance of that account, and refused to provide the Petitioner with the disposition made of such account balance;
  - (f) the Company has refused to advise the Petitioner of where it is currently depositing its collections;
  - (g) the Company failed to reimburse all amounts owing to the Petitioner on February 28, 2013, as provided for in the Commitment Letter (Exhibit R-2);
  - (h) the Company failed to make its monthly payments on the SB Loan in the amount of \$2,390.62 due on February 5, 2013, and a payment of \$2,390.62, which was due on March 5, 2013; and
  - (i) since at least January 25, 2013, the Company operated its account with the Bank on an unacceptable manner, as more than 25 cheques or payment requests have been returned by the Petitioner stamped "*NSF*" since that date, as more fully appears from the statements of account of the Debtor's accounts with the Petitioner for the months of January and February 2013, en liasse, **Exhibit R-12**.

9. The Debtor is clearly unwilling to provide the Petitioner with the information to which it is entitled, preventing the Petitioner from assessing the value of its security, and taking such conservatory measures as are warranted to protect the property charged in the Petitioner's benefit, to the detriment of the Petitioner and the mass of the Debtor's other creditors;
10. In particular:
  - (a) On January 25, 2013, the Petitioner learned that the Debtor operated the NBC Account and required that it be closed, as more fully appears from the undersigned attorneys' letter and Notice of Withdrawal of Authorization to Collect Claims, en liasse, **Exhibit R-13**;
  - (b) On February 1, 2013, the Debtor obtained a safeguard order authorizing it to use the NBC Accounts until February 28, 2013, as more fully appears from a copy of that order rendered in court file 500-17-075710-130, **Exhibit R-14**;
  - (c) On February 21, 2013, the undersigned attorneys required the Debtor produce a statement of account for the NBC Account, as fully appears from their letter to Mtre. Jean-Christophe Trottier, dated February 22, 2013, **Exhibit R-15**;
  - (d) On February 26, 2013, the undersigned attorneys served a subpoena *duces tecum* on a National Bank of Canada representative, asking that such statements be brought to the hearing set for February 28, 2013, as more fully appears from the subpoena, **Exhibit R-16**;
  - (e) On February 27, 2013, Mtre. Trottier advised the undersigned attorneys that the NBC Account had been closed, such that the safeguard order had become moot and was withdrawn, hence the NBC statements were, accordingly, privileged, as more fully appears from his letter, Exhibit R-11;
  - (f) At the February 28, 2013, hearing, the Court authorized the filing of the NBC statements of account, Exhibit R-10;
  - (g) The NBC statements of account, Exhibit R-10, show that deposits were made in the NBC Accounts, from January 8, 2013 to February 25, 2013, but not their closing balance, nor to whom the closing balance was remitted;
  - (h) Though required to do so in writing by the Petitioner, the Debtor refused to confirm that account balance, what disposition was made of the account balance, or where the Debtor's collections are currently deposited, as more fully appears from the undersigned attorneys' letter dated March 6, 2013, **Exhibit R-17**;

11. Finally, on February 8, 2013, 9082-4020 Québec Inc., a company controlled by Antonino Randazzo, the Debtor's sole stockholder, registered a trade name very similar to the Debtor's, being "Steel Components Industries", as more fully appears from extracts of the *Registre des Entreprises du Québec* with respect to the Debtor and 9082-4020 Québec Inc., en liasse, **Exhibit R-18**;
12. For those reasons, the Petitioner has every reason to believe that if an interim receiver is not appointed and conservatory and other measures not taken without further delay, the value of the Debtor's property will be greatly diminished, if not completely obliterated;
13. Richter Advisory Group Inc. is a person having the requisite ability and capacity to act as interim receiver to the property of the Debtor, and consents to act in such capacity;
14. The Petitioner asks that the fees and disbursements of the interim receiver to be appointed be secured by a first-ranking charge over all of the Debtor's property, as all creditors will benefit from the appointment of the interim receiver;
15. Given the amount of the charge, and the fact that L'Unique Assurances Générales Inc. has ceded the rank of its hypothec to the Petitioner, no secured creditor will likely be materially affected by the granting of same;
16. Given the foregoing, and the urgency of this situation, the Petitioner humbly submits that this Motion be heard on an expedited basis;
17. This Motion is well founded in fact and law;

**WHEREFORE MAY IT PLEASE THE HONOURABLE COURT TO:**

- [1]. **ABRIDGE** the delay for the service and presentation of this motion;
- [2]. **GRANT** this present Motion;

**APPOINTMENT AND POWERS**

- [3]. **APPOINT** Richter Advisory Group Inc. as interim receiver to the assets of the Debtor (the "**Interim Receiver**"), and in particular, all of the present and future movable property, tangible and intangible, of the Debtor, wherever located (the "**Property**") with the following powers to be exercised by the Interim Receiver whenever he considers it necessary or desirable:
  - (a) to take possession and control of the Property, including the power to change all locks, passwords, or other security measures affecting the Property and to draw up an inventory of the Property;

- (b) to take control of any and all proceeds, receipts and disbursements of the Debtor, including any proceeds arising from the sale, rental or other disposal of the Property;
- (c) to summarily dispose of any property that is perishable or likely to depreciate rapidly in value;
- (d) receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (e) to have access to any premises where the Property may be located, and have access to any and all contracts, agreements, books, records, and other documents relating to same whether in physical or electronic format;
- (f) to redirect the mail addressed to the Debtor so that same is received by the Interim Receiver;
- (g) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time on whatever basis (the “**Agents**”), including on a temporary basis, to assist with the exercise of the powers and duties conferred by the Judgment to be rendered on the present Motion;
- (h) and to take such further action or steps reasonably incidental to the protection and preservation of the Property, pending its disposal by the Petitioner pursuant to its hypothecary recourses or to further order of this court;

[4]. **DECLARE** that the order (the “**Order**”) and its effects shall survive the filing by the Debtor of a notice of intention to make a proposal or of a proposal pursuant to the terms of the BIA, the issuance of an initial order in regard of the Debtor pursuant to the terms of the *Companies Creditors Arrangements Act* (the “**CCAA**”) or the bankruptcy of the Debtor, unless the Court orders otherwise;

[5]. **ORDER** that the Debtor, all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or its behalf, and all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of the order to be rendered on this Motion, (all of the foregoing collectively being “**Persons**”, and each being a “**Person**”), shall forthwith advise the Interim Receiver of the existence of any property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Interim Receiver, and shall deliver all such Property to the Interim Receiver upon the Interim Receiver’s request;

[6].**ORDER** that all Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing herein of the judgment to be rendered on the present Motion shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Interim Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure;

[7].**ORDER**, without limiting the generality of the foregoing, that all Persons should provide the Interim Receiver with any information or document the Interim Receiver may require with respect to the Debtor or the Property;

[8].**ORDER** the Debtor not to dispose, alienate, encumber or otherwise transact in any manner whatsoever, with regard to the Property, other than in the ordinary course of business or with the prior written consent or authorization of the Interim Receiver;

### **LIMITATION OF LIABILITY**

[9].**ORDER** that the Interim Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of the judgment to be rendered herein, save and except for any gross negligence or wilful misconduct on its part;

[10].**DECLARE** that neither the Petitioner nor the Interim Receiver shall incur any liability or obligation as a result of any conservatory measure or other action taken prior to the making of the judgment to be rendered on this Motion which, had such judgment been rendered at that time, would have been authorized by same;

[11].**DECLARE** that subject to the powers granted to the Interim Receiver pursuant to the terms of paragraph [3] of these conclusions, nothing herein contained shall require the Interim Receiver to occupy or to take control, or to otherwise manage all or any part of the Property. The Interim Receiver shall not, as a result of this Order, be deemed to be in possession of any of the Property within the meaning of environmental legislation or a successor employer of the Debtor, the whole pursuant to the terms of the *BIA*;



## FEES

- [12].**ORDER** that the Debtor shall be responsible for the payment of the Interim Receiver's fees and disbursements, including the fees and disbursements of any Agents retained by the Interim Receiver in the course of its mandate;
- [13].**DECLARE** that as security for the professional fees and disbursements incurred in relation to these proceedings, both before and after the date of the Order, a charge and security over the Debtor's property, present and future, movable and immovable, corporeal and incorporeal, wherever located, is hereby constituted in favour of the Interim Receiver, of the Interim Receiver's attorneys and other advisors, to the extent of the aggregate amount of \$ 50,000 (the "**Administration Charge**");
- [14].**DECLARE** that the Administration Charge shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Property charged by such Encumbrances;
- [15].**DECLARE** that the Administration Charge is effective and shall charge, as of 12:01 a.m. (Montreal time) the day of the Order to be rendered on this Motion (the "**Effective Time**"), all the Debtor's Property present and future;
- [16].**DECLARE** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiver order filed pursuant to the *BIA* in respect of the Petitioner and any receiving order granting such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioner and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Interim Receiver pursuant to the Order and the granting of the Administration Charges do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting a recourse for abuse under an applicable law, and shall be valid and enforceable as against any person, including any trustee in bankruptcy, and any receiver to the Property of the Debtor;
- [17].**AUTHORIZE** the Interim Receiver to collect the payment of its fees and disbursements and those of its Agents from the Debtor, with the consent of the Petitioner, the whole subject to taxation in conformity with the *BIA*, if applicable;

## GENERAL

- [18].**DECLARE** that the Order to be rendered on this Motion, the Motion and the affidavit do not, in and of themselves, constitute a default or failure to comply by the Debtor under any statute, regulation, license, permit, contract,

permission, covenant, agreement, undertaking or any other written document or requirement;

[19]. **DECLARE** that the Interim Receiver is at liberty to serve any notice, circular or any other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to persons or other appropriate parties at their respective given address as last shown in the Records; the documents served in this manner shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if delivered by ordinary mail;

[20]. **DECLARE** that the Interim Receiver may serve any court materials in these proceedings on all represented parties, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Interim Receiver shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter;

[21]. **DECLARE** that, unless otherwise provided herein, ordered by this Court, or provided by the BIA, no document, order or other material need be served on any person in respect of these proceedings, unless such person has served a notice of appearance on the solicitors for the Petitioner, for the Debtor and for the Interim Receiver and has filed such notice with the Court;

[22]. **DECLARE** that any interested Person may apply to this Court to vary or rescind the Order to be rendered on this Motion or seek other relief upon five (5) days-notice to the Interim Receiver, the Petitioner and any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order;

[23]. **DECLARE** that the Order to be rendered on this Motion and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada;

[24]. **DECLARE** that the Interim Receiver shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order to be rendered on this Motion and any subsequent orders of this Court and, without limitation to the foregoing, an order under Chapter 15 of the *U.S. Bankruptcy Code*, for which the Interim Receiver shall be the foreign representative of the Debtor. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Interim Receiver as may be deemed necessary or appropriate for that purpose;

[25]. **REQUEST** the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order to be rendered on this Motion;

[26]. **ORDER** the provisional execution of the Order to be rendered on this Motion notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;

**THE WHOLE** without costs save and except in case of contestation.

Montreal, March 13, 2013

**(S) HEENAN BLAIKIE S.E.N.C.R.L., SRL/LLP**

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**Heenan Blaikie LLP**  
Attorneys of the Petitioner

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*Heenan Blaikie LLP*  
**HEENAN BLAIKIE S.E.N.C.R.L., SRL/LLP**

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**AFFIDAVIT**

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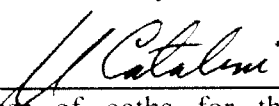
I, the undersigned, **LUC VINCENT**, account manager, residing and domiciled for the purposes of these presents at 129 St-Jacques Street, Montreal, Quebec, solemnly declare as follows:

1. I am a duly authorized representative of Bank of Montreal;
2. I have read the attached motion for the appointment of an interim receiver, and the facts contained therein and in this affidavit are true.

And I have signed

  
\_\_\_\_\_  
**LUC VINCENT**

Solemnly affirmed to before me, in the city of Montreal, this 13<sup>th</sup> day of March 2013

  
\_\_\_\_\_  
Commissioner of oaths for the judicial district of Montreal



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\_\_\_\_\_  
**HEENAN BLAIKIE S.ENC.R.L, SRL/LLP**

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**NOTICE OF PRESENTATION**

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TO : **STEEL COMPONENTS PRODUITS MÉTALLIQUES INC.**  
8050 Marco Polo  
Montreal, Quebec  
H1E 5Y7

AND TO: **L'Unique Assurances Générales Inc.**  
925 Grande-Allée ouest – Bureau 240  
Quebec, Quebec  
G1S 1C1

**TAKE NOTICE** that Petitioner's *Motion for the Appointment of an Interim Receiver* will be presented for adjudication before the Superior Court, on **March 15, 2013 at 9:00 a.m.** in room **16.10** of the Montreal Court house, 1 Notre-Dame Street West, Montreal, Quebec, or as soon thereafter as counsel may be heard.

**AND DO GOVERN YOURSELVES ACCORDINGLY**


MONTREAL, March 13, 2013

**(S) HEENAN BLAIKIE S.E.N.C.R.L., SRL/LLP**

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HEENAN BLAIKIE LLP  
Attorneys for Petitioner  
BANK OF MONTREAL

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**HEENAN BLAIKIE S.E.N.C.R.L., SRL/LLP**