

**THOMAS CANNING (MAIDSTONE) LIMITED AND  
692194 ONTARIO LIMITED**

**December 21, 2017**

Court File No. CV-17-11773-00CL

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

BETWEEN:

**BRIDGING FINANCE INC., as agent for SPROTT BRIDGING INCOME FUND LP**

Applicant

- and -

**THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED**

Respondents

**APPLICATION UNDER subsections 47(1) and 243(1) of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, as amended, and under section 101 of the  
*Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended**

**FIFTH REPORT OF RICHTER ADVISORY GROUP INC.  
IN ITS CAPACITY AS RECEIVER OF  
THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED**

December 21, 2017

## APPENDICES

- APPENDIX "A" POSTPONEMENT AND ASSIGNMENT OF CLAIM
- APPENDIX "B" INTERIM RECEIVERSHIP ORDER DATED APRIL 20, 2017
- APPENDIX "C" ENDORSEMENT OF THE HONOURABLE MR. JUSTICE NEWBOULD DATED APRIL 20, 2017
- APPENDIX "D" FIRST REPORT OF THE INTERIM RECEIVER DATED APRIL 28, 2017 (w/o APPENDICES)
- APPENDIX "E" ACCOMMODATION AGREEMENT DATED APRIL 29, 2017
- APPENDIX "F" MONITOR ORDER DATED MAY 1, 2017
- APPENDIX "G" REPORT OF THE MONITOR DATED JUNE 15, 2017 (w/o APPENDICES)
- APPENDIX "H" NOTICE OF RETURN OF APPLICATION AND MOTION DATED JUNE 15, 2017
- APPENDIX "I" ASSET PURCHASE AGREEMENT DATED AS OF JUNE 15, 2017
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- APPENDIX "K" AFFIDAVIT OF WILLIAM THOMAS SWORN JUNE 20, 2017 (w/o EXHIBITS)
- APPENDIX "L" RECEIVERSHIP ORDER DATED JUNE 21, 2017
- APPENDIX "M" APPROVAL AND VESTING ORDER DATED JUNE 21, 2017
- APPENDIX "N" ENDORSEMENT OF THE HONOURABLE MADAM JUSTICE CONWAY DATED JUNE 21, 2017
- APPENDIX "O" ENDORSEMENT OF THE HONOURABLE MADAM JUSTICE CONWAY DATED JULY 5, 2017
- APPENDIX "P" LETTER FROM CHAITONS LLP DATED AUGUST 25, 2017
- APPENDIX "Q" E-MAIL FROM BLANEY MCMURTRY LLP DATED SEPTEMBER 1, 2017
- APPENDIX "R" ENDORSEMENT OF THE HONOURABLE MR. JUSTICE HAINEY DATED SEPTEMBER 13, 2017
- APPENDIX "S" FIRST REPORT OF THE RECEIVER DATED SEPTEMBER 18, 2017 (w/o APPENDICES)
- APPENDIX "T" QUESTIONS RECEIVED FROM BILL AND BOB THOMAS
- APPENDIX "U" LETTER FROM CHAITONS LLP DATED SEPTEMBER 27, 2017
- APPENDIX "V" E-MAIL FROM BLANEY MCMURTRY LLP DATED SEPTEMBER 28, 2017
- APPENDIX "W" ENDORSEMENT OF THE HONOURABLE MR. JUSTICE MCEWEN DATED SEPTEMBER 28, 2017

## I. PURPOSE OF REPORT

1. The purpose of this fifth report of Richter Advisory Group Inc. ("**Richter**") in its capacity as Receiver (as defined below) of the Respondents is to provide this Court with information with respect to the Receiver's motion for advice and direction returnable on January 11, 2018 with respect to the questions posed of the Monitor (as defined below) and the Receiver by Messrs. William and Robert Thomas (collectively, the "**Thomases**").

## II. FACTUAL BACKGROUND

### Background

2. The Respondents are companies incorporated under the laws of the Province of Ontario. The Receiver understands that the Respondent, Thomas Canning (Maidstone) Limited ("**TCL**"), is a wholly owned subsidiary of the other Respondent, 692194 Ontario Limited ("**692**"), and that 692 is wholly owned by members of the Thomas family and related entities.
3. The Applicant provided certain credit facilities to TCL, as borrower, pursuant to a letter credit agreement dated July 3, 2015, as amended. 692 provided an unlimited guarantee of TCL's indebtedness to the Applicant. The Thomases, along with their cousin John Thomas, each provided a limited guarantee of TCL's indebtedness to the Applicant.
4. On April 5, 2017, the Applicant issued a demand for repayment to the Borrower.
5. The Thomases claim that they are secured creditors of TCL. On April 18, 2017, each of the Thomases, along with their mother, Julie Thomas, and John Thomas, registered financing statements against all of TCL's personal property under the *Personal Property Security Act* (Ontario).
6. The Receiver has received no documentation in support of the Thomases alleged secured claims against TCL.
7. In connection with the financing provided by the Applicant to TCL and the guarantees granted in favour of the Applicant, the Thomases, along with John Thomas, granted a postponement and assignment of claim in favour of the Applicant, which was acknowledged and signed by TCL (the "**Postponement Agreement**"), a copy of which is attached hereto and marked as **Appendix "A"**.
8. Pursuant to the Postponement Agreement, all debts and liabilities, both present and future, of TCL to the Thomases and John Thomas, were deferred and postponed to the debts, liabilities and advances, both

present and future, of TCL to the Applicant. The Thomases and John Thomas agreed that, until all obligations of TCL to the Applicant had been paid in full:

- (a) no payment would be made or received on account of any liabilities of TCL to them;
- (b) the Applicant was permitted to claim and prove any or all liabilities of TCL to them in any bankruptcy or insolvency proceeding of TCL; and
- (c) all the liabilities of TCL to them were assigned and transferred to the Applicant.

### **Appointment of Interim Receiver**

- 9. On April 20, 2017, the Applicant brought an *ex parte* application for the appointment of Richter as interim receiver of the Respondents under section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA") and requested a return date for the hearing of its application for the appointment of Richter as receiver under section 243(1) of the BIA and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the "CJA").
- 10. On April 20, 2017, Richter was appointed as interim receiver (the "Interim Receiver") pursuant to an order of The Honourable Mr. Justice Newbould, a copy of which is attached hereto and marked as **Appendix "B"**.
- 11. The Applicant's application for the appointment of Richter as receiver was made returnable on April 28, 2017, as noted in the endorsement of Justice Newbould dated April 20, 2017, a copy of which is attached hereto and marked as **Appendix "C"**.
- 12. In connection with the return of the Applicant's receivership application, the Interim Receiver filed its report to the Court dated April 28, 2017, a copy of which, without appendices, is attached hereto and marked as **Appendix "D"**.

### **Accommodation Agreement**

- 13. Following negotiations between the parties, an accommodation agreement dated April 29, 2017 was entered into by the Applicant, the Respondents, the Thomases and John Thomas (the "**Accommodation Agreement**"), a copy of which is attached hereto and marked as **Appendix "E"**.
- 14. Pursuant to the Accommodation Agreement, the parties agreed that Richter would be appointed by the Court as monitor to market the Respondents' business and property in accordance with the terms of a refinancing, investment and/or sale process (the "**RISP**").

15. Pursuant to section 7.1 of the Accommodation Agreement, the Respondents, the Thomases and John Thomas released, among others, the Interim Receiver and Richter in its personal capacity, of any and all claims in any way directly or indirectly arising out of or in any way connected to the Accommodation Agreement and the Monitor Order (as defined below), other than as a result of the Interim Receiver and the Monitor's gross negligence or willful misconduct.

#### **Appointment of the Monitor**

16. On May 1, 2017, Richter was appointed as monitor (the "**Monitor**") of all of the assets, properties and undertakings of the Respondents under section 101 of the CJA pursuant to an order of Justice Newbould dated May 1, 2017 (the "**Monitor Order**"). A copy of the Monitor Order is attached hereto and marked as **Appendix "F"**.
17. Pursuant to the Monitor Order, the Court authorized the Monitor to market the Respondents' business and property in accordance with the RISP agreed to by the Respondents and the Applicant.
18. As detailed in the report of the Monitor dated June 15, 2017 (the "**Monitor's Report**"), two offers were received during the RISP, one from Robert Thomas on behalf of a company to be incorporated, and the other offer was from Santosh Mahal on behalf of a company to be incorporated (the "**Purchaser**"). The RISP was completed by June 2, 2017 and the Purchaser's offer to purchase substantially all of the Respondents' assets had been selected by the Monitor, subject to Court approval (the "**Purchaser's Offer**"). A copy of the Monitor's Report, without appendices, is attached hereto and marked as **Appendix "G"**.
19. On June 15, 2017, the Applicant sought to have its receivership application returnable on June 21, 2017 and brought a motion returnable that same day for approval of the transaction contemplated by the Purchaser's Offer (the "**Sale Transaction**"). A copy of the Applicant's notice of return of application and motion dated June 15, 2017 is attached hereto and marked as **Appendix "H"**. A copy of the asset purchase agreement dated June 15, 2017 (the "**APA**") is attached hereto and marked as **Appendix "I"**.
20. On June 15, 2017, the Monitor served a notice of motion returnable June 21, 2017 seeking, among other things, an order approving its conduct and activities and discharging it as Monitor upon the completion of its duties. A copy of the Monitor's notice of motion dated June 15, 2017 is attached hereto and marked as **Appendix "J"**.
21. On June 20, 2017, counsel to the Monitor received confirmation from counsel to Robert Thomas that his offer had been withdrawn. The Monitor returned Mr. Thomas' deposit to him shortly thereafter.

22. On June 20, 2017, the Respondents served the Affidavit of William Thomas sworn June 20, 2017 (the "**Thomas Affidavit**") wherein they sought, among other things, an adjournment of the Monitor's motion. A copy of the Thomas Affidavit, without exhibits, is attached hereto and marked as **Appendix "K"**.
23. On June 21, 2017, on consent of the Respondents, the Court:
- (a) appointed Richter as receiver of the Respondents pursuant to section 243 of the BIA and section 101 of the CJA (the "**Receiver**") pursuant to an order of The Honourable Madam Justice Conway dated June 21, 2017, a copy of which is attached hereto and marked as **Appendix "L"**;
  - (b) approved the Sale Transaction pursuant to an Approval and Vesting Order dated June 21, 2017 (the "**Approval and Vesting Order**"), a copy of which is attached hereto and marked as **Appendix "M"**; and
  - (c) adjourned the Monitor's motion for approval of the Monitor's Report, its activities and fees to be scheduled at a 9:30 am chambers appointment to be held on July 5, 2017, as set out in The Honourable Madam Justice Conway's endorsement dated June 21, 2017, a copy of which is attached hereto and marked as **Appendix "N"**.
24. On July 5, 2017, the parties appeared in chambers and, as a result of that attendance, the Monitor's motion was scheduled to be heard on September 11, 2017. As a result of an administrative request received from the Court, the motion was subsequently scheduled to be heard on September 27, 2017. A copy of The Honourable Madam Justice Conway's endorsement dated July 5, 2017, is attached hereto and marked as **Appendix "O"**.
25. The Sale Transaction with the purchaser closed on July 7, 2017. In accordance with the terms of the APA, the Receiver received \$20.0 million from the Purchaser (a \$2.0 million deposit and \$18.0 million on closing), and the Respondents' indebtedness to the Applicant as at the time of the completion of all insolvency proceedings to the Respondents was to be assigned to the Purchaser.
26. Between July 5, 2017 and August 25, 2017, the Thomases did not deliver any responding materials or pose any questions to the Monitor with respect to the Monitor's Report.
27. On August 25, 2017, counsel to the Monitor wrote to counsel to the Thomases and requested that the Thomases confirm whether they still intended to oppose the Monitor's motion. A copy of the letter is attached hereto and marked as **Appendix "P"**. Counsel to the Thomases provided its response to the

letter by way of email sent on September 1, 2017, a copy of which is attached hereto and marked as **Appendix "Q"**.

28. Following the exchange of additional correspondence, on September 8, 2017, the Monitor scheduled a chambers appearance for September 13, 2017 to impose deadlines on the parties for delivery of responding materials in connection with the Monitor's motion.
29. On September 13, 2017, the parties appeared in chambers before The Honourable Mr. Justice Hainey to discuss matters related to the motions scheduled to be heard on September 27, 2017. As set out in Justice Hainey's endorsement, a copy of which is attached hereto and marked as **Appendix "R"**, the parties agreed to re-schedule the Monitor's motion to October 17, 2017 and that, among other things:
  - (a) the Receiver was to issue a report, which the Receiver did with its report dated September 18, 2017 (the "**First Report**"), a copy of which, without appendices, is attached hereto and marked as **Appendix "S"**;
  - (b) by September 22, 2017, the Thomases would submit a list of questions for the Monitor to answer in connection with the Monitor's Report and the First Report; and
  - (c) by September 27, 2017, the Monitor would provide a response to the questions.
30. On September 22, 2017, the Thomases delivered the questions (the "**Questions**"). A copy of the Questions is attached hereto and marked as **Appendix "T"**.
31. On September 27, 2017, the Monitor's counsel wrote to counsel to the Thomases indicating that it appeared that most, if not all, of the Questions were related to the sale process completed by the Monitor leading up to the Sale Transaction, which had been approved by the Court pursuant to the Approval and Vesting Order. The Monitor's counsel stated that direction from the Court was needed with respect to the Questions, and that it would be contacting the Commercial List Office to confirm available hearing dates and would co-ordinate scheduling with counsel to the Thomases. A copy of the letter is attached hereto and marked as **Appendix "U"**.
32. In response to the letter, counsel for the Thomases sent an email at 12:58 am on September 28, 2017 and indicated that he intended to appear in chambers before the Court that same day. Counsel to the Thomases appeared before the Court *ex parte* on September 28, 2017. A copy of counsel's e-mail is attached hereto and marked as **Appendix "V"**. A copy of The Honourable Mr. Justice McEwen's endorsement dated September 28, 2017 is attached hereto and marked as **Appendix "W"**.

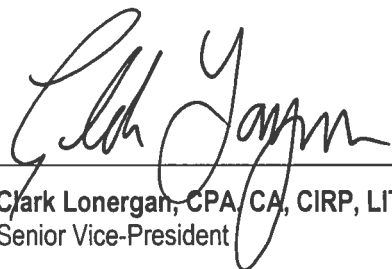


33. On September 28, 2017, the Monitor served its notice of motion for advice and directions with respect to the Questions. The motion is returnable on January 11, 2018. The Monitor's approval and discharge motion, which has been outstanding since June 21, 2017, is still to be re-scheduled.
34. The Monitor is of the view that the Questions appear to be an attempt by the Thomases to collaterally attack the Approval and Vesting Order.
35. The Monitor anticipates that it will require up to 75 hours or more of professional time to answer all of the Questions.
36. Under these circumstances, the advice and direction of the Court are needed to determine whether any of the Questions should be answered by the Monitor, and, to the extent certain of the Questions are to be answered, direction as to which party shall bear the professional costs related to answering the Questions.

All of which is respectfully submitted on the 21<sup>st</sup> day of December, 2017.

**Richter Advisory Group Inc.**

**As Receiver of Thomas Canning (Maidstone) Limited and 692194 Ontario Limited  
and not in its personal capacity**



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Clark Lonergan, CPA, CA, CIRP, LIT  
Senior Vice-President

