

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

**IN THE MATTER OF AN APPLICATION UNDER  
SUBSECTION 47(1) OF THE *BANKRUPTCY AND INSOLVENCY  
ACT*, R.S.C. 1985, c. B-3**

**AND IN THE MATTER OF SECTION 101 OF THE *COURTS OF  
JUSTICE ACT*, R.S.O. 1990, c. C. 43**

**B E T W E E N :**

**HSBC BANK CANADA**

Applicant

- and -

**JAGER BUILDING SYSTEMS INC. and  
JAGER BUILDING SYSTEMS (U.S.), INC.**

Respondents

**SIXTH REPORT OF PRICEWATERHOUSECOOPERS INC.,**  
in its capacity as interim receiver and receiver and manager of Jager Building  
Systems Inc. and Jager Building Systems (U.S.), Inc.  
dated January 18, 2012

**I. INTRODUCTION**

1. This report is filed by PricewaterhouseCoopers Inc. (“PwC”), in its capacity as interim receiver and receiver and manager (in such capacities, the “Receiver”) without security, of all of the assets, undertakings and properties of Jager Building Systems Inc. (“Jager”) and Jager Building Systems (U.S.), Inc. (“Jager US”) (collectively

referred to as the “Company” or “Jager”), pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

2. PwC is also the trustee in bankruptcy (in such capacity, the “Trustee”) of Jager pursuant to an assignment in bankruptcy filed by Jager on September 15, 2008. PwC has completed its administration of the bankruptcy estate and is presently in the process of obtaining its discharge as Trustee.

## **II. PURPOSE OF THIS REPORT**

3. The purpose of this report is to obtain an order:
- (a) discharging and releasing the Receiver, together with other related relief;
  - (b) approving the activities of the Receiver from and after the date of the Second Report (as hereinafter defined);
  - (c) approving the Receiver’s final statement of receipts and disbursements attached as Appendix “G”;
  - (d) approving the Receiver’s fees and disbursements, including those of its counsel, from and after November 30, 2009 as more fully particularized in Appendices “I” and “J”; and
  - (e) authorizing the Receiver to destroy and/or dispose of the books and records of Jager.

### III. OVERVIEW

4. Jager was a manufacturer and distributor of engineered wood products used primarily in residential construction. Jager owned production facilities located in Bolton, Ontario; Calgary, Alberta and Blainville, Quebec. The sale and distribution of certain of Jager's products took place through Jager's wholly-owned subsidiary, Jager US.

5. On September 15, 2008, PwC was appointed as receiver of Jager by order of this court pursuant to an application brought by HSBC Bank Canada ("HSBC"), the primary secured creditor of Jager.

6. Due to the integration of the businesses of Jager and Jager US, and in order to realize upon Jager US' assets, on application of HSBC, the original receivership order was expanded and PwC was appointed as receiver of Jager US pursuant to an order of this court dated October 8, 2008. Attached hereto as Appendix "A" is a copy of the amended receivership order.

7. The Receiver has now completed the realization upon all of the assets of Jager and Jager US and has distributed net proceeds of sale to HSBC, subject to a holdback of \$150,000 (the "Holdback") for the purposes of funding fees and disbursements associated with obtaining the Receiver's discharge and completing the administration of the receivership contemplated herein. The receivership extended over a protracted period of time due, primarily, to difficulties in selling the Calgary facilities and real property as a result of environmental challenges. The receiver has now completed its mandate and wishes to be discharged.

**IV. ACTIVITIES DURING THE PERIOD OF THE FIRST REPORT  
(SEPTEMBER 15, 2008 – MARCH 17, 2009)**

8. The Receiver filed its first report dated March 17, 2009 (the “First Report”) primarily in support of a motion permitting distribution of \$9 million to HSBC and, thereafter, to permit further distributions, without further court order, up to the amount of HSBC’s indebtedness.

9. The First Report reported on the administrative steps taken by the Receiver including:

- (a) taking possession and control of Jager’s assets;
- (b) termination of employees and dealings with the wage earner protection program;
- (c) initial marketing and sales efforts with respect to personal and real property;
- (d) dealing with certain section 81.1 *BIA* claims and, in particular, a claim of Temlam Inc.; and
- (e) dealings with certain leased premises.

10. The First Report also dealt with the sale of the Blainville property for \$1.2 million, which sale closed on March 11, 2009.

11. Lastly, the First Report dealt with the following miscellaneous activities:

- (a) the Receiver received notice that, subsequent to the commencement of the receivership, Jager had been named as a Third Party in three actions

commenced in the Supreme Court of British Columbia.<sup>1</sup> The Third Party proceedings were each commenced by the Branch MacMaster law firm. In July 2009, the Receiver received notice from Webster and Associates, counsel for the plaintiff in the Williams action, advising that Jager had been added as a direct defendant in the lawsuit. The Receiver has been in communication with both of the aforesaid counsel. They have been advised of the receivership and provided certain information with respect to insurance. Notice of this discharge motion is being given to both counsel; and

- (b) a petition for declaratory judgment was issued in the District Court in and for Tulsa County, State of Oklahoma by Cedar Creek Wholesale, Inc. as against Jager US arising out of the loss of warranty of Jager US with respect to inventory purchased by the plaintiff. The Receiver has advised counsel for the plaintiff, William J. Doyle, III of Doyle & Salisbury of the receivership and has provided certain information with respect to insurance issues. Notice of this discharge motion will be given to said counsel.

12. On March 26, 2009, an order was made, *inter alia*, approving the requested distribution, approving the activities of the Receiver as reported in the First Report and approving the fees and disbursements of the Receiver and its counsel both to January 31,

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<sup>1</sup> Sarah Williams and Jennifer Williams by their litigation guardian, Michael Williams vs. The BC Conference of the Mennonite Brethren Churches, et al. (Action No.: S-083195); Debbie Helsloot vs. The BC Conference of the Mennonite Brethren Churches, et al. (Action No.: S-084536); Elwin Leonard Witzke and Julia Michelle Witzke by her litigation guardian, Elwin Leonard Witzke vs. The BC Conference of the Mennonite Brethren Churches, et al. (Action No.: S-086881).

2009. Attached hereto as Appendix "B" are a copy of the First Report (without appendices) and the order of March 26, 2009 (the "Distribution Order").

**V. THE PERIOD OF THE SECOND REPORT (MARCH 17, 2009 – JANUARY 4, 2010)**

13. The second report of the Receiver dated January 4, 2010 (the "Second Report") was filed, predominantly, in support of a motion approving the sale of the Bolton property and vesting the assets in the purchaser.

14. The Second Report also dealt with, *inter alia*:

- (a) the sales efforts with respect to the Calgary properties;
- (b) a sale of certain equipment to Lewis & Clark Machinery, Inc.;
- (c) a sale of certain equipment to Triple Net Equities Ltd. ("Triple Net");
- (d) a sale of certain computer software to Distribution Toiture Mauricienne Inc.; and
- (e) a settlement with a lien claimant, Integrated Distribution Systems LP, o/a Wajax Industries.

15. On January 15, 2010, two orders were made by this court. The first order approved the proposed sale of the Bolton lands and vested the assets in the purchaser. The second order approved the activities of the Receiver as set out in the Second Report and approved certain fees of the Receiver and its counsel to November 30, 2009.

Attached hereto as Appendix "C" is a copy of the Second Report (without appendices) and the aforesaid orders.

**VI PERIOD OF THE THIRD REPORT (JANUARY 4, 2010 – SEPTEMBER 20, 2010)**

16. Having disposed of the Quebec and Ontario assets, the balance of the Receiver's activities dealt with the sale of three properties located in Calgary. All of the properties had environmental issues.

17. The third report of the Receiver dated September 20, 2010 (the "Third Report") dealt with recognition of the Ontario proceedings by the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "Alberta Court") and the approval and vesting of "Lot 6B" to Premises Properties Inc. The Third Report also dealt with an aborted sale of that property to Shelter Canadian Properties Limited.

18. On September 30, 2010, the Alberta Court made the requested order recognizing the Ontario proceedings, approving the sale of Lot 6B and vesting the assets in the purchaser. Attached hereto as Appendix "D" is a copy of the Third Report (without appendices) and the aforesaid order.

19. The Alberta Court was not requested to approve the conduct of the Receiver or to approve the fees and disbursements of the Receiver and its counsel as it was thought more appropriate to have the appointing court deal with those issues.

20. The sale transaction with respect to Lot 6B closed in due course and, in accordance with the Distribution Order, the net proceeds of sale were distributed to HSBC.

**VII THE PERIOD OF THE FOURTH AND FIFTH REPORTS  
(SEPTEMBER 20, 2010 – NOVEMBER 25, 2011)**

21. The fourth report of the Receiver dated February 11, 2011 (the “Fourth Report”) deals predominantly with the sale of “Lots 6A and 6F” to 1572194 Alberta Inc., a corporation connected to Triple Net.

22. By order dated February 15, 2011, the Alberta Court approved the proposed transaction and vested the assets in the purchaser. Attached hereto as Appendix “E” is a copy of the Fourth Report (without appendices) and the aforesaid order.

23. The fifth report of the Receiver dated November 25, 2011 (the “Fifth Report”) deals with the sale of the last property owned by Jager, “Lots 6C and 6E” to 1572194 Alberta Inc. By order dated December 5, 2011, the Alberta Court approved the transaction and vested the assets in the purchaser. Attached hereto as Appendix “F” is a copy of the Fifth Report (without appendices) and the aforesaid order.

24. The above-described transactions closed in due course and, in accordance with the Distribution Order, the net proceeds of sale of both transactions were distributed to HSBC.

**VIII. OTHER MATTERS**

25. By letter dated January 12, 2009, the Receiver received notice of a claim as against Jager US from a landlord, Theodore H. Schenk. On February 13, 2009, the Receiver responded to counsel to the landlord, Russ Robinson, III of Robinson & Robinson. The Receiver advised the landlord’s counsel that the landlord’s claim was an

unsecured claim and that it was likely that HSBC would suffer a shortfall in the receivership.

#### **IX. MATTERS TO BE COMPLETED**

26. To complete its administration, the Receiver must issue payment in respect of the final professional fees and disbursements (including fees and disbursements billed but unpaid). Thereafter, the Receiver shall file final tax returns on behalf of Jager. It is anticipated that upon filing such returns, Canada Revenue Agency will release certain GST refunds due to the Company (estimated to be \$150,000). Upon receipt of the same, the Receiver will distribute available monies to HSBC.

#### **X. REGISTERED SECURED CREDITORS**

27. The First Report (paragraphs 47 - 49) contain a summary of creditors with security registered against Jager and Jager US under the *Ontario Personal Property Security Act*, the *Personal Property Security Act of Alberta*, the *Quebec Registry of Personal and Moveable Real Rights* and under Real Property Registers in Alberta, Ontario and Quebec – all as of January 2009. The parties with registrations, other than HSBC, are:

- (a) Tembec Industries Inc. and SGF Rexfor Inc., as assignees of Jager Industries Inc.;
- (b) Cisco Systems Capital Canada Co. (its collateral was returned); and
- (c) Integrated Distribution Systems LP o/a Wajax Industries.

28. Notice of this discharge motion will be provided to counsel for the above parties.

**X. RECEIPTS AND DISBURSEMENTS**

29. The Receiver has prepared a final statement of receipts and disbursements dealing with the period of the Receivership, i.e. September 15, 2008 to January 13, 2012. Attached hereto as Appendix "G" is a copy of the final statement of receipts and disbursements.

30. The Receiver has distributed a total of \$16,834,077.15 to HSBC. The Receiver is advised by HSBC that there remains a shortfall with respect to loans made to Jager and Jager US in the amount of approximately \$12,612,646.98. Attached as Appendix "H" is a copy of an email from HSBC to the Receiver dated January 17, 2012, updating the Receiver as to the shortfall above.

31. Included in the R&D is the Holdback of \$150,000, which shall be applied to any unpaid fees and disbursements of the Receiver (including fees and disbursements of the Receiver's legal counsel), existing as at the time of the discharge motion or incurred in connection with the completion of the administration of the receivership contemplated herein. The balance of the Holdback, if any, shall be distributed to HSBC.

32. The Receiver requests that this court approve the Receiver's statement of receipts and disbursements.

**XI. DESTRUCTION OF DOCUMENTS**

33. The Receiver, having completed the administration of the receivership, now wishes to dispose of the books and records of the Company so as to stop incurring costs for storing the same. Accordingly, the receiver requests that this court authorize and direct the Receiver to destroy and/or dispose of the books and records of Jager.

**XII. APPROVAL OF CONDUCT**

34. As stated above, this court has already approved the conduct of the Receiver as described in the First and Second Reports. The Receiver is asking this court to approve its conduct as set out in the Third, Fourth, Fifth and this Sixth Report.

**XIII. PROFESSIONAL FEES AND DISBURSEMENTS**

35. The fees and disbursements of the Receiver, including fees and disbursements of the Receiver's counsel ("Faskens"), have been approved by this court through to November 30, 2009.

36. Between November 30, 2009 and December 31, 2011, the Receiver conducted itself and took such steps as set out herein. In doing so, the Receiver expended 947.8 hours at an average hourly rate of \$408.23 for a total of \$386,920.00 in fees plus disbursements of \$22,278.61, for an aggregate of \$446,181.29 (including applicable taxes). In respect of such fees and disbursements, the affidavit of Paul Darby of the Receiver (including true copies of the Receiver's statements of accounts for such period) is attached hereto as Appendix "I".

37. Between November 30, 2009 and December 31, 2011, Faskens rendered legal services to the Receiver in respect of the Receiver's activities set out herein. In

doing so, Faskens expended 477.7 hours at an average hourly rate of \$570.36 for a total of \$272,461.50 in fees plus disbursements of \$10,171.28, for an aggregate of \$298,904.27 (including applicable taxes). In respect of such fees and disbursements, the affidavit of Aubrey Kauffman of Faskens (including true copies of the Faskens' statements of accounts for such period), is attached hereto as Appendix "J".

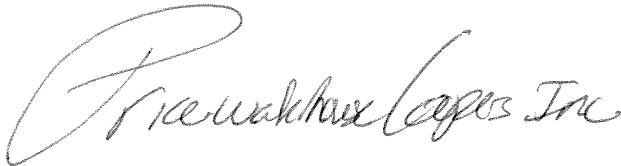
38. The Receiver has kept HSBC apprised of the above fees and disbursements and HSBC has agreed to the payment of the same, from time to time.

39. The Receiver requests that this court approve its above fees and disbursements, and those of Faskens, as well as the payment of any residual fees and disbursements incurred through the completion of the administration of the Receivership out of the Holdback.

#### **XIV. RECOMMENDATIONS**

40. Based on the foregoing, the Receiver recommends that this court make an order granting the relief set out in paragraph 3 herein, effective upon the filing of a certificate by the Receiver certifying that it has completed the administration of the receivership contemplated herein and distributed all available net proceeds to HSBC.

All of which is respectfully submitted,

A handwritten signature in cursive script, appearing to read "PricewaterhouseCoopers Inc.", is written in black ink.

**PRICEWATERHOUSECOOPERS INC.,**  
in its capacity as interim receiver and receiver  
and manager of Jager Building Systems Inc. and  
Jager Buildings Systems (U.S.) Inc. and not in  
its personal capacity