

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

THE HONOURABLE MR.

)

MONDAY, THE 28<sup>th</sup>

JUSTICE MORAWETZ

)

DAY OF MAY, 2012

)



BETWEEN:

PINNACLE CAPITAL RESOURCES LIMITED in its capacity as general  
partner of RED ASH CAPITAL PARTNERS II LIMITED PARTNERSHIP

Applicant

- and -

KRAUS INC., KRAUS CANADA INC., STRUDEX FIBRES LIMITED, and  
538626 B.C. LTD.

Respondents

**APPLICATION UNDER SUBSECTION 46(1) and SECTION 243 OF THE  
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, as amended**

**INTERIM RECEIVERSHIP ORDER**

THIS Application, made by the Applicant, for an Order pursuant to subsection 46(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") appointing PricewaterhouseCoopers Inc. ("**PwC**") as interim receiver, without security, in respect of Kraus Inc., Kraus Canada Inc., and Strudex Fibres Limited (collectively, the "**Operating Companies**"), and for other relief described in the Notice

of Application, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Chris Emmott sworn May 25, 2012 (the “**Emmott Affidavit**”) and the consent of PwC to its appointment, and on hearing the submissions of counsel for the Applicant and PwC, and upon the Respondents, the United Food and Commercial Workers, Local 175, and Teamsters Local Union No. 213 not appearing, although served, as indicated by the Affidavits of Service of Patricia Hoogenband dated May 25, 2012 and of John Birch dated May 28, 2012,

## **SERVICE**

1. THIS COURT ORDERS that the relief sought in paragraphs 1(a)(i) through 1(a)(viii) of the Notice of Application is properly returnable today and service on any interested party is hereby dispensed with. The relief sought in paragraphs 1(b)(i) through 1(b)(vi) of the Notice of Application is scheduled to be heard at 9:30 a.m. on June 11, 2012 (the “**Second Hearing Date**”).

## **TRANSFER OF BANKRUPTCY APPLICATIONS**

2. THIS COURT ORDERS that pursuant to sections 43(4) and 187(7) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) the following applications for a bankruptcy order (collectively, the “**Bankruptcy Applications**”) are hereby administratively consolidated for hearing before a judge of the Commercial List at Toronto, Ontario:

- (a) bankruptcy application in respect of Kraus Inc. ("**Kraus**") brought in the Ontario Superior Court of Justice as court file no. 31-OR-207897-T (the "**Kraus Application**"); and
- (b) bankruptcy application in respect of Strudex Fibres Limited ("**Strudex**") brought in the Ontario Superior Court of Justice as court file no. 31-OR-207896-T (the "**Strudex Application**").

3. THIS COURT ORDERS that the Bankruptcy Applications shall be heard before a judge of the Commercial List on the Second Hearing Date at 330 University Avenue, 8<sup>th</sup> floor, Toronto, Ontario.

4. THIS COURT ORDERS that, subject to approval by the Manitoba Court of Queen's Bench (the "**Manitoba Court**") upon further motion to be brought before such court, the bankruptcy application in respect of Kraus Canada Inc. ("**Kraus Canada**") brought in the Manitoba Court at Winnipeg, Manitoba as court file no. BK 12-01-02706 and bearing Official Receiver file no. 21-081406 (the "**Kraus Canada Bankruptcy Application**") shall be returnable before this court at the Second Hearing Date.

#### **SCHEDULING OF RECEIVERSHIP HEARING**

5. THIS COURT ORDERS that the relief sought in paragraphs 1(b)(i) through 1(b)(vi) of this Application to, among other things,

- (a) appoint PwC as receiver (the "**Receiver**") of the Respondents pursuant to section 243 of the BIA (the "**Receivership Application**"); and
- (b) permit the Receiver to liquidate the assets and undertaking of the

Respondents (the "**Liquidation Application**") in the event that the Court does not approve the sale of the assets of the Respondents to Kraus Brands LP (the "**Purchaser**") and vest the assets in the Purchaser pursuant to the Asset Purchase Agreement as defined in the Emmott Affidavit (the "**Sale Approval Motion**"),

is hereby adjourned to the Second Hearing Date and the applications before the Court shall be heard in the following sequence:

- (i) the Bankruptcy Applications,
- (ii) the Kraus Canada Bankruptcy Application,
- (iii) the Receivership Application,
- (iv) the Sale Approval Motion and
- (v) if applicable, the Liquidation Application.

#### **APPOINTMENT OF INTERIM RECEIVER**

6. THIS COURT ORDERS that pursuant to section 46(1) of the BIA, PwC is hereby appointed interim receiver (the "**Interim Receiver**"), in respect of the Operating Companies. The Interim Receiver has no power or authority to take possession of, manage, or control the assets, undertakings and properties of the Operating Companies, acquired for, or used in relation to the businesses carried on by the Operating Companies, including any proceeds thereof (the "**Property**") or to manage or control the operations and businesses of the Operating Companies.

## INTERIM RECEIVER'S POWERS

7. THIS COURT ORDERS that the Interim Receiver is hereby empowered and authorized, to do any of the following where the Interim Receiver considers it necessary or desirable:

- (a) to monitor the Operating Companies' receipts and disbursements, including, without limitation, the right to access all information relating to the Operating Companies' accounts or finance activities at any financial institution, with any trade creditor or with any other party;
- (b) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Interim Receiver's powers and duties, including, without limitation, those conferred by this Order;
- (c) as Interim Receiver, and proposed Receiver pursuant to the Receivership Application, to bring the Sale Approval Motion returnable on the Second Hearing Date;
- (d) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on all matters relating to the Sale Approval Motion and the interim receivership, and to share information with such affected Persons, subject to such terms as to confidentiality as the Interim Receiver deems advisable,

(e) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property; and

(f) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Interim Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Operating Companies, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER**

8. THIS COURT ORDERS that (i) the Operating Companies, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (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.

9. THIS COURT ORDERS, in order for the Interim Receiver to monitor the Operating Companies' receipts and disbursements, 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 Operating Companies, any transfer of Property outside of the ordinary course of business or obligation incurred



by the Operating Companies outside of the ordinary course of business, 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 in this paragraph 9 or in paragraph 10 of this Order 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.

10. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with

instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE INTERIM RECEIVER**

11. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

12. THIS COURT ORDERS that all rights and remedies against the Operating Companies, the Interim Receiver, or affecting the Property are hereby stayed and suspended except with the written consent of the Interim Receiver or leave of this Court, provided, however, that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Operating Companies to carry on any business which the Operating Companies are not lawfully entitled to carry on, (ii) exempt the Operating Companies from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest or hypothec, or (iv) prevent the registration of a claim for lien.

13. THIS COURT ORDERS that, notwithstanding the other terms of this order,

- (a) the rights and obligations provided for under the Senior Credit Agreement



(as defined in the Emmott Affidavit) shall continue in full force and effect; and

(b) the stay of proceedings provided for herein shall not apply to the rights which the Applicant, or any party entitled to claim through the Applicant, has against the Respondents pursuant to the Senior Credit Agreement, Junior Credit Agreement or Nelson Promissory Note (all as defined in the Emmott Affidavit).

#### **NO INTERFERENCE WITH THE INTERIM RECEIVER**

14. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Operating Companies, without leave of this Court.

#### **CONTINUATION OF SERVICES**

15. THIS COURT ORDERS that all Persons having oral or written agreements with the Operating Companies or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Operating Companies are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services. The Operating Companies shall be entitled to the continued use of the Operating Companies' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Operating Companies in accordance with normal payment

practices of the Operating Companies or such other practices as may be agreed upon by the supplier or service provider and the Operating Companies, or as may be ordered by this Court.

## **EMPLOYEES**

16. THIS COURT ORDERS that all employees of the Operating Companies shall remain the employees of the Operating Companies until such time as the Operating Companies may terminate the employment of such employees or such employment may be terminated by the bankruptcy of the Operating Companies. The Interim Receiver has no powers or authority with respect to the management and operations of the Operating Companies, or with respect to the employees, and shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA.

## **LIMITATION ON THE INTERIM RECEIVER'S LIABILITY**

17. THIS COURT ORDERS that the Interim Receiver shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or willful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

## **LIMITATION ON INTERIM RECEIVER'S POWERS**

18. THIS COURT ORDERS that, notwithstanding any other term of this Order, the Interim Receiver shall not and is expressly directed not to

- (a) take possession of the Property; or
- (b) manage or operate the Operating Companies' businesses or Property.

#### **NOTICE TO PENSION PLAN MEMBERS**

19. THIS COURT ORDERS that the Interim Receiver shall give notice in writing of (i) its appointment and (ii) the Sale Approval Motion on the Second Hearing Date to beneficiaries of the Pension Plans (as defined in the Emmott Affidavit) ("**Pensioners**") as soon as practicable after the granting of this order by sending to Pensioners by ordinary mail to their last known mailing address according to the books and records of the Operating Companies a notice substantially in the form attached hereto as Schedule "A" and by posting a copy of the Interim Receiver's Motion Record for the Sale Approval Motion on its website at the following address: <http://www.pwc.com/car-krauscarpets>.

20. THIS COURT ORDERS that the Operating Companies shall furnish forthwith to the Interim Receiver a list of Pensioners, including their last known mailing addresses.

#### **INTERIM RECEIVER'S ACCOUNTS**

21. THIS COURT ORDERS that the Interim Receiver and its legal counsel shall only be required to pass their accounts from time to time if the Applicant makes a written request to the Interim Receiver for such passing of accounts, in which case the accounts of the Interim Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

#### **GENERAL**

22. THIS COURT ORDERS that the Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

23. THIS COURT ORDERS that nothing in this Order shall prevent the Interim Receiver from acting as a trustee in bankruptcy of the Operating Companies, as contemplated by the Bankruptcy Applications and the Kraus Canada Bankruptcy Application.

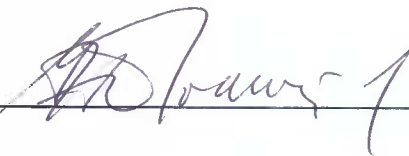
24. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Interim Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

25. THIS COURT ORDERS that the Interim Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Interim Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

26. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the

Operating Companies' security or, if not so provided by the Operating Companies' security, then on a substantial indemnity basis to be paid by the Operating Companies with such priority and at such time as this Court may determine.

27. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Applicant and Interim Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



---

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:



MAY 28 2012



**SCHEDULE "A"—Form of Notice to Pensioners**

**NOTICE TO PENSION PLAN BENEFICIARIES OF HEARING DATE**

TO: BENEFICIARIES OF THE CANADIAN COMMERCIAL WORKERS  
INDUSTRY PENSION PLAN FOR KRAUS INC. AND STRUDEX FIBRES  
LIMITED

AND TO: BENEFICIARIES OF KRAUS CANADA INC.'S REGISTERED PENSION  
PLAN

AND TO: BENEFICIARIES OF THE PENSION PLAN FOR EMPLOYEES OF  
KRAUS INC. AND STRUDEX FIBRES LIMITED

AND TO: BENEFICIARIES OF THE PENSION PLAN FOR EXECUTIVE  
EMPLOYEES OF KRAUS INC.

AND TO: BENEFICIARIES OF THE PENSION PLAN FOR UNION EMPLOYEES  
OF KRAUS INC.

RE: INTERIM RECEIVERSHIP OF KRAUS CANADA INC., KRAUS INC., AND  
STRUDEX FIBRES LIMITED (COLLECTIVELY, THE "**OPERATING  
COMPANIES**")

RE: PROPOSED SALE OF ASSETS OF THE OPERATING COMPANIES

DATE: MAY **[28]**, 2012

We are writing to inform you that by Order of the Ontario Superior Court of Justice [Commercial List] dated May 28, 2012, PricewaterhouseCoopers Inc. ("PwCI") was appointed as Interim Receiver of the Operating Companies. Applications for bankruptcy orders have also been brought against the Operating Companies by the major secured creditor of the Operating Companies, Pinnacle Capital Resources Limited in its capacity as general partner of Red Ash Capital Partners II Limited Partnership (collectively, "Red Ash").

**On [June 11, 2012 at 9:30 a.m.]**, the Ontario Superior Court of Justice (Commercial List) has scheduled a hearing in Toronto to, among other things, determine (i) whether the Operating Companies should be adjudged bankrupt, (ii) whether PwCI should be appointed Receiver over the Operating Companies' assets ("Receivership"), and (iii) whether a sale of the assets of the Operating Companies as a going concern to Kraus Brands LP (a limited partnership which is related to Red Ash) should be approved ("Asset Sale"). If the Court does not approve the Asset Sale, the Operating Companies, will cease to carry on business, and are expected to be adjudged bankrupt, and Red Ash will seek an order permitting the assets of the Operating Companies to be liquidated.

These applications and motions will be heard on **[June 11]**, 2012, at **[9:30 a.m.]** or as soon after that time as the Court can accommodate, at 330 University Avenue, Toronto, Ontario. Court rooms are located on the 8<sup>th</sup> floor.

**YOU ARE HEREBY NOTIFIED THAT**, if the Asset Sale is approved, Kraus Brands LP (“**KBLP**”) will not assume any of the defined benefit pension or defined contribution plans which are or were, at relevant times, sponsored and administered by the Operating Companies, except as it may agree in its planned negotiations with the unions that represent certain employees of the Operating Companies. However, KBLP has advised PWCI of its intention to set up new defined contribution pension plans into which KBLP intends to make contributions which are substantially similar to those currently being made by the Operating Companies. In respect of those workers who are beneficiaries of the Canadian Commercial Workers Industry Pension Plan (“**CCWIPP**”), KBLP does not intend to assume the Operating Companies’ existing participation agreements but intends to negotiate new participation agreements involving substantially the same contribution amounts.

**These proceedings may affect your legal rights. Accordingly, we encourage you to obtain legal or financial advice so that you can better understand your personal circumstances. Neither the Applicant nor PwCI can provide advice to you with respect to your rights.**

In order to provide you with more information, PwCI has posted on its website copies of the court orders and other court documents which relate to this proceeding, including the Motion Record for approval of the Asset Sale. Those court materials may be accessed by navigating to the following web page: <http://www.pwc.com/car-krauscarpets>.

If you do not have access to the Internet or would otherwise like to receive a hard copy of the court materials, please contact PwCI at the following telephone numbers: 1-877-332-1688 or (416) 687-8449

PricewaterhouseCoopers Ltd.  
in its capacity as Interim receiver  
in respect of the Operating Companies appointed  
by Order of the Superior Court of Justice  
dated [May 28, 2012]

PINNACLE CAPITAL RESOURCES LIMITED in its capacity  
as general partner of RED ASH CAPITAL PARTNERS II  
LIMITED PARTNERSHIP

Applicant

and

KRAUS INC., KRAUS CANADA INC., STRUDEX  
FIBRES LIMITED and 538626 B.C. LTD.  
Respondents

Court File No. CV-12-9731-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**INTERIM RECEIVERSHIP ORDER**

**Cassels Brock & Blackwell LLP**

2100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

John N. Birch LSUC #: 38968U

Tel: 416.860.5225

Fax: 416.640.3057

[jbirch@casselsbrock.com](mailto:jbirch@casselsbrock.com)

Larry Ellis LSUC #: 49313K

Tel: 416.869.5406

Fax: 416.640.3004

[lellis@casselsbrock.com](mailto:lellis@casselsbrock.com)

Lawyers for the Applicant