

Court File No. CV12-9731-ooCL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

**SUPPLEMENT TO FOURTH REPORT OF PRICEWATERHOUSECOOPERS INC.  
AS RECEIVER**

**November 4, 2012**



1. This is a supplementary report to the Receiver's fourth Report to the Court dated October 9, 2012 (the "**Fourth Report**"). Capitalized terms used but not defined herein have the meaning ascribed thereto in the Fourth Report.
2. The Fourth Report was filed in connection with a motion for the Receiver's discharge, which was adjourned from October 16, 2012 to November 5, 2012 at the request of Equistar.
3. Subsequent to the adjournment, Equistar posed 114 questions to the Receiver (the "**Questions**") on a very broad range of topics.
4. The purpose of this supplementary report is to provide the Receiver's views with respect to the Questions and copies of the correspondence between the Receiver and Equistar, including a copy of the Questions.
5. The Receiver reviewed and considered the Questions and determined that, in the Receiver's view, the Questions were inappropriate, irrelevant to Equistar's s. 81.1 Claim, had been dealt with in material already filed in this proceeding, had been dealt with in prior communications with Equistar, and/or related to activities already approved by the Court.
6. In any event, the Receiver has limited financing provided to it pursuant to the funding term sheet between the Applicant and the Receiver dated June 8, 2012 (the "**Term Sheet**"), the form of which was attached as Appendix B to the Receiver's Second Report and the executed version of which is attached hereto as **Appendix "A"**. The Term Sheet does not provide funding for the investigation that Equistar is requesting the Receiver undertake.
7. Attached hereto as the following appendices is the Receiver's prior correspondence with Equistar, via counsel:
  - **Appendix "B"** – Letter dated July 31, 2012 from Equistar to the Receiver
  - **Appendix "C"** – Letter dated August 7, 2012 from the Receiver to Equistar
  - **Appendix "D"** – Letter dated October 10, 2012 from Equistar to the Receiver
  - **Appendix "E"** – Letter dated October 24, 2012 from Equistar to the Receiver enclosing the Questions

- **Appendix “F”** – Letter dated October 31, 2012 from the Receiver to Equistar
- **Appendix “G”** – Letter dated November 2, 2012 from Equistar to the Receiver
- **Appendix “H”** – Email dated November 3, 2012 from the Receiver to Equistar

All of which is respectfully submitted on this 4<sup>th</sup> day of November, 2012.

**PricewaterhouseCoopers Inc.**

In its capacity as Receiver of  
743122 Ontario Inc., 3851168 Canada Inc.,  
798862 Ontario Limited (formerly Kraus Inc., Kraus Canada Inc.,  
and Strudex Fibres Limited, respectively), and 538626 B.C. Ltd.,  
and not in its personal capacity.



Michelle Pickett  
Senior Vice President

## **Appendix “A”**

## TERM SHEET

**Dated as of JUNE 8, 2012**

WHEREAS Pinnacle Capital Resources Limited in its capacity as general partner of Red Ash Capital Partners II Limited Partnership (the “**Lender**”) has sought the appointment of PricewaterhouseCoopers Inc. (“**PwC**”) as receiver (the “**Receiver**”) of the assets, undertakings and properties (the “**Assets**”) of Strudex Fibres Limited, Kraus Inc., Kraus Canada Inc. and 538626 B.C. Ltd. (collectively, the “**Debtors**”) pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;

AND WHEREAS the Receiver is to be appointed by Order of the Ontario Superior Court of Justice pursuant to a hearing scheduled on June 11, 2012 (the “**Receivership Order**”) as of the Effective Time (as defined in the Receivership Order) to either complete a sale of substantially all Assets to Kraus Brands LP (the “**Purchaser**”) or to liquidate the Assets;

AND WHEREAS, in either case, the Receiver will incur certain costs and obligations in relation to its appointment as Receiver of the Debtors;

AND WHEREAS the Lender has agreed to fund such costs and obligations of the Receiver in accordance with the terms set out herein, without any requirement for repayment (such funding facility, the “**Facility**”);

NOW THEREFORE, in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

PURPOSE OF FACILITY:	To fund the costs of the exercise of the powers and duties conferred upon the Receiver by the Receivership Order and as contemplated by the asset purchase agreement dated June 11, 2012 by and among the Receiver and the Purchaser, in accordance with the budget attached hereto as “ <b>Schedule A</b> ”, which budget may be revised and updated by the Receiver from time to time with the consent of the Lender (as may be revised from time to time, the “ <b>Budget</b> ”), including without limitation the fees and disbursements of the Receiver and its legal counsel.
AVAILABILITY:	The Lender (or its designee) will make an initial advance of the Facility to PwC in its capacity as proposed Receiver in the amount of \$527,140 (the “ <b>Initial Advance</b> ”). The Initial Advance will be held in escrow by PwC pending its appointment as Receiver and the satisfaction of the other conditions precedent set out herein. In the event the Receivership Order is not granted, the Receiver will return any excess portion of the Initial Advance not required to fund liabilities incurred by PwC as the proposed Receiver.

Upon the granting of the Receivership Order, the Initial Advance shall be released from escrow for use by the Receiver in accordance with the Budget. Thereafter, the Facility may be drawn down by the Receiver in weekly advances (each, an “**Advance**”) to cover anticipated costs and expenses of the Receivership, as more particularly set out in the Budget. The Receiver shall submit a weekly written request (an “**Advance Request**”) for an Advance in accordance with the Budget.

Upon receipt of an Advance Request, the Lender (or its designee) will provide the requested Advance to the Receiver by wire transfer to an account stipulated by the Receiver by the end of the business day following the day on which the Advance Request is received by the Lender. For greater certainty, the Advance is to be made prior to the time that liability for the anticipated costs and expenses are to be incurred by the Receiver and the Receiver will not incur any obligation to any party unless and until the Receiver is in receipt of sufficient funds to satisfy such obligation in full.

**TERM:**

The Facility will remain available to the Receiver throughout the course of its appointment under the Receivership Order, unless terminated by the Lender following the occurrence of an Event of Default (as defined below).

**NO LIABILITY:**

PwC in its capacity as Receiver and in its personal capacity will not have any liability to repay the Advances.

**CONDITIONS  
PRECEDENT:**

The Lender will not be obliged to make any Advance (other than the Initial Advance) under the Facility unless the following conditions precedent have been satisfied or waived:

1. The Receivership Order has been issued.
2. The Receiver has executed and returned a copy of this Term Sheet.
3. The Receiver has delivered an Advance Request to the Lender by no later than 5:00 pm Toronto time on the day prior to which an Advance is to be made.
4. No Event of Default has occurred.

EVENTS OF DEFAULT: The occurrence of any one or more of the following constitutes an "Event of Default" under this Term Sheet:

1. Any termination of the stay of proceedings contained in the Receivership Order.
2. Any termination of the appointment of the Receiver.
3. A final order is entered whereby the Receivership Order is reversed, stayed, modified or amended without the express written consent of the Lender.

REMEDIES:

Upon the occurrence of an Event of Default, and at any time thereafter while an Event of Default is continuing, the Lender may declare, after giving notice to the Receiver, that the Facility is terminated and cancelled. For greater certainty, the Receiver shall be entitled to pay any obligations incurred by the Receiver from the Advances, notwithstanding any Event of Default.

REIMBURSEMENT:

At the conclusion of the Term, the Receiver shall, after paying all obligations incurred, reimburse to the Lender any excess or residual funds.

GOVERNING LAW:

Ontario.

SECURITY:

None.

NOTICE:

Any notice or request required or permitted to be given in connection with this Term Sheet shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by email or facsimile):

- (a) in the case of the Receiver at:

PricewaterhouseCoopers Inc.  
PwC Tower, Suite 2600  
18 York Street  
Toronto, Ontario, Canada  
M5H 0B2

Attention: John P. McKenna  
Fax No.: (416) 941-8378  
Email: john.p.mckenna@ca.pwc.com

(b) in the case of the Lender at:

Red Ash Capital Partners II Limited Partnership  
80 New Bond Street  
London, UK  
W1S 1SB

Attention: Howard Gunn  
Fax No.: 0207 317 2051  
Email: [howard.gunn@hilcouk.com](mailto:howard.gunn@hilcouk.com)

[Signature Page Follows]

If the above terms and conditions contained herein are acceptable to the Receiver, please execute and return a copy of this Term Sheet.

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

Per:   
Name: Chris Emmett  
Title: Director

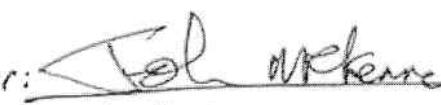
We acknowledge and accept the within terms and conditions as of the 8th day of June, 2012.

**PRICEWATERHOUSECOOPERS INC.**, solely in its capacity as proposed court-appointed receiver of the assets, undertakings and properties of  
**STRUDEX FIBRES LIMITED, KRAUS INC., KRAUS CANADA INC. AND 538626 B.C. LTD.**

Per:   
Name: John McKenna  
Title: Senior Vice President

We acknowledge and accept the within terms and conditions as of the 11<sup>th</sup> day of June, 2012

**PRICEWATERHOUSECOOPERS INC.**, solely in its capacity as ~~the~~ court-appointed receiver of the assets, undertakings and properties of  
**STRUDEX FIBRES LIMITED, KRAUS INC., KRAUS CANADA INC. AND 538626 B.C. LTD.**

Per:   
Name: John McKenna  
Title: Senior Vice President

**SCHEDULE "A"**

**THE BUDGET**

See attached.

11

**Notes:**  
1. This budget assumes funding from Red Ash is provided on a weekly basis. In the week prior to when disbursements are required to be made, this budget is based on historical payment cycles and assumes payments are made by the 11th of each month.  
2. The timing of budgeted payments are paid in advance on a weekly basis, starting on or about June 11, 2012.  
3. This budget assumes that protracted ten payments are paid in advance on a weekly basis, starting on or about June 11, 2012.  
4. This contingency is in respect to payments that the Receiver is required to pay during the forecast period that were not included in the budget.  
5. The numbered Professional Fees include, but are not limited to, the costs of the preparation of PPS's appointment as interim Receiver, Court Appointed Receiver and Trustee in Bankruptcy in these proceedings.

## **Appendix “B”**

# SHANNON, MARTIN, FINKELSTEIN & ALVARADO

A Professional Corporation

ATTORNEYS AT LAW

[www.smfalaw.com](http://www.smfalaw.com)

1001 McKinney Street

Suite 1100

HOUSTON, TEXAS 77002

Telephone: (713) 646-5500 / Facsimile: (713) 752-0337

**Sender's Direct Line**

(713) 646-5503

**E-Mail:**

[mfinkelstein@smfalaw.com](mailto:mfinkelstein@smfalaw.com)

July 31, 2012

Ms. Michelle Pickett  
PricewaterhouseCoopers LLP  
18 York Street  
Suite 2600  
Toronto, Ontario  
M5J 0B2

*Via E-mail:* [michelle.pickett@ca.pwc.com](mailto:michelle.pickett@ca.pwc.com)  
*and First Class Mail*

Re: Strudex Fibres Limited (“**Strudex**”) and Demand for Repossession of Goods  
dated June 8, 2012 of Equistar Chemicals, LP (“**S. 81.1 Claim**”)

Dear Ms. Pickett:

I write on behalf of my client, Equistar Chemicals, LP (“**Equistar**”) in response to your letter dated June 19, 2012 to Equistar.

At this time, Equistar is not prepared to accept the Receiver’s determination of the value of Equistar’s S. 81.1 claim as contained in your letter. Equistar believes that the value of the goods supplied to Strudex Fibres Limited that should be considered qualified for its S. 81.1 claim should include all goods Equistar delivered within 30 days prior to May 28, 2012, and should not be limited to just those goods delivered within 30 days prior to June 11, 2012. This is consistent with what you have previously been advised and as recognized in the Endorsement of Justice Morawetz dated June 11, 2012. It is evident that substantial quantities of the goods delivered by Equistar within 30 days of May 28th remained unconsumed/unprocessed and therefore identifiable at Strudex’s facility on May 28, 2012.

While this matter is under discussion, Equistar is prepared to agree that its S. 81.1 claim is in an amount not less than \$35,425.25, and to conditionally accept payment in the amount of \$35,425.25 without waiving or prejudicing its ability to continue to assert and recover a larger S. 81.1 claim amount. Please forward this payment to Equistar.

With respect to the Receiver’s Third Report to Court dated June 14, 2012 (the “**Report**”), Equistar does not accept that the Receiver has conducted a complete analysis of the goods as they existed on May 28, 2012. The Receiver’s Report states at section C that the Receiver is facing certain “challenges” in completing its mandate to review the status of the goods as at May 28, 2012. Based on these challenges, the Receiver has unilaterally decided that it will not make any further investigations at this time. Respectfully, the Sale Approval and Vesting Order dated June 11, 2012 does not relieve the Receiver of the task of completing the analysis of the

Ms. Michelle Pickett  
July 31, 2012  
Page 2

status of the goods as of May 28, 2012. Moreover, the Receiver reported, as of May 29, 2012, that it possessed “extensive knowledge of [the Kraus Group] as it was previously retained to act as the . . . financial advisor [for the Kraus Group] in addressing liquidity concerns, providing strategic advice, and negotiating with . . . lenders . . . .” In this role, PwC was well positioned to anticipate and be fully aware of the potential for S. 81.1 claims such as Equistar’s.

From our understanding, the Receiver, without undue effort, can reconstruct with reasonable precision the amount of product supplied by Equistar that remained unconsumed/unprocessed in Strudex’s facility on May 28, 2012. We submit this analysis must be completed.

This request is of material importance to Equistar’s proper treatment with respect to its S. 81.1 rights. It remains Equistar’s position that the Receiver had a duty from the date of its appointment on May 28, 2012 to protect the assets of Strudex from unfair usage or conversion by Strudex pending the appointment of the trustee. As it has now become apparent to Equistar that Strudex and its officers, directors and advisors instituted a strategy to take advantage of Strudex’s suppliers, including Equistar, in the course of orchestrating Strudex’s insolvency, it is particularly important to ascertain what became of the goods supplied by Equistar’s in the period of time between May 28, 2012 and June 11, 2012, and I respectfully submit that the Receiver should proceed to do so immediately, and provide a full report of the requested analysis indicating the Equistar-supplied product on hand during each day of that time period.

Very truly yours,

SHANNON, MARTIN, FINKELSTEIN & ALVARADO  
A PROFESSIONAL CORPORATION

By:   
Mark S. Finkelstein

MSF:sg

cc: Craig Hill [chill@blg.com](mailto:chill@blg.com)  
Borden Ladner Gervais LLP

Linc Rogers [linc.rogers@blakes.com](mailto:linc.rogers@blakes.com)  
Blake, Cassels & Graydon LLP

## **Appendix “C”**



Blake, Cassels & Graydon LLP  
Barristers & Solicitors  
Patent & Trade-mark Agents  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto ON M5L 1A9 Canada  
Tel: 416-863-2400 Fax: 416-863-2653

August 7, 2012

Linc Rogers

Dir: 416-863-4168

[linc.rogers@blakes.com](mailto:linc.rogers@blakes.com)

Reference: 28438/00124

VIA EMAIL

Mark S. Finkelstein  
Shannon, Martin, Finkelstein & Alvarado  
Attorneys at Law  
1001 McKinney Street  
Suite 1100  
Houston, TX 77002  
USA

Dear Mr. Finkelstein:

**Re: Equistar Chemicals, LP, s.81.1 Claim against Strudex Fibers Limited**

As you know, we are counsel to PricewaterhouseCoopers Inc. ("PwC"), in its capacity as court-appointed receiver (the "Receiver") of Kraus Inc. ("KI"), Kraus Canada Inc. ("KCI"), Strudex Fibres Limited ("Strudex") and 538626 B.C. Ltd. (collectively, the "Companies").

We make reference to your letter of July 31, 2012, to Michelle Pickett of PwC. Your letter, among other things, makes certain assertions regarding the Receiver's discharge of its mandate pursuant to paragraph 6 of the Approval and Vesting Order dated June 11, 2012 (the "Approval and Vesting Order") and the scope of the mandate of PwC in its prior capacity as interim receiver (the "Interim Receiver") of KI, KCI and Strudex. We do not agree with the assertions set out in your letter.

Paragraph 6 of the Approval and Vesting Order required the Receiver to file a report advising as to the assets ("s.81.1 Assets") in the possession of the Companies as of June 11, 2012, that were subject to claims under s.81.1 of the *Bankruptcy and Insolvency Act* (Canada) ("s.81.1 Claims") and to the extent ascertainable, the s.81.1 Assets in the possession of the Companies as at May 28, 2012. As set out in the third report of the Receiver dated June 14, 2012 (the "Third Report"), the Receiver has advised as to the s.81.1 Assets in the possession of the Companies as of June 11, 2012. By letter dated June 19, 2012, the Receiver provided your client its assessment of the validity of the s.81.1 Claim as against the Companies.

The Receiver has also sought to ascertain the s.81.1 Assets in the possession of the Companies as at May 28, 2012. For the reasons set out in the Third Report, however, the Receiver was not able to ascertain an accurate and precise determination of s.81.1 Assets as at May 28, 2012.

In that regard, the Receiver notes the following:

1. Strudex does not have inventory system that measures actual usage or consumption of polypropylene resin ("Resin") – the product that your client, amongst others, supplied.

MONTRÉAL      OTTAWA      TORONTO      CALGARY      VANCOUVER

12583446.3

NEW YORK      CHICAGO      LONDON      BAHRAIN      ABU DHABI\*      BEIJING      SHANGHAI

\*Associated Office

[blakes.com](http://blakes.com)

2. The Receiver understands that Strudex has three silos that are used to store Resin - Silo 3, Silo 4 and Silo C.
  - a. Hand-written data recorded by Strudex and provided by Kraus Brands, LP (the "Purchaser"), which the Receiver is not able to verify independently, suggests that on the morning of May 28, 2012 Silo 4 contained 1,620 kilograms of Resin (supplied by Equistar), which was consumed in production on May 28, 2012. The handwritten records indicate that Silo 4 was empty on May 29, 2012.
  - b. The handwritten log indicates that at some point on May 29, 2012, Silo 3 contained 77,240 kilograms of Resin which was supplied by Equistar; however, there is no data for Silo 3 on May 28, 2012. Accordingly there is no way for the Receiver to ascertain accurately the Resin supplied by Equistar that was in Silo 3 on May 28, 2012.
  - c. Strudex did not track usage or maintain an inventory record of Resin in Silo C. Moreover as observed in an e-mail dated June 12, 2012 on which the Receiver was copied, by Grant Campbell, a representative of your client, who toured the Strudex facility and inspected the Equistar Resin in the possession of Strudex on the morning of June 12, 2012: "Silo "C" does not have a device to measure the level in the silo. This is done visually..."

The Receiver has provided, to the extent ascertainable, the s.81 Assets (relating to Equistar's s. 81.1 Claim) in the possession of the Companies as at May 28, 2012 and/or June 11, 2012 and has therefore discharged its mandate under paragraph 6 of the Approval and Vesting Order. As noted in the Third Report, should your client wish to conduct further investigation of this matter the Receiver will attempt to facilitate such investigation with the Purchaser.

With respect to the Interim Receiver's mandate, contrary to the assertion contained in your letter, the Interim Receiver had a limited mandate to monitor receipts and disbursements of KI, KCI and Strudex and the Interim Receiver had no authority to prohibit the Companies from using the raw materials provided by your client, in the normal course of the Companies' business. The Interim Receiver can confirm that it has no knowledge of any use of raw materials by the Companies outside the ordinary course of business.

Your letter and your client's proposal to conditionally accept \$35,425.25 in respect of your client's s.81.1 Claim has been forwarded to the Purchaser. We understand the Purchaser will be contacting your client directly in hopes of resolving this matter. As the Receiver has discharged its mandate in connection with this matter and has no further obligations or responsibilities in respect thereto, we trust you will be communicating directly with the Purchaser and/or its counsel in the future.

If you have any questions regarding the above, please contact me.

Yours truly,



Linc Rogers

c: John McKenna, PwC  
Michelle Pickett, PwC  
Pamela Huff, Blakes  
Craig Hill, BLG  
Chris Emmott, Kraus Brands, LP

## **Appendix “D”**

MINDEN  
GROSS LLP

MINDEN GROSS LLP  
BARRISTERS & SOLICITORS  
145 KING STREET WEST, SUITE 2200  
TORONTO, ON, CANADA M5H 4G2  
TEL 416.362.3711 FAX 416.864.9223  
[www.mindengross.com](http://www.mindengross.com)

DIRECT DIAL (416) 369-4148  
E-MAIL [dullmann@mindengross.com](mailto:dullmann@mindengross.com)  
FILE NUMBER 111111

October 10, 2012

*VIA E-MAIL (linc.rogers@blakes.com)*

Mr. Linc Rogers  
Blake, Cassels & Graydon LLP  
199 Bay Street  
Suite 2800  
Toronto, Ontario  
MSL 1A9

Dear Sir:

Re: Equistar Chemicals, LP (the "Company") – receivership of Kraus Inc. et al. (collectively, "Kraus")

We are writing to advise you that we were yesterday retained by the Company in connection with this matter. We will be filing a Notice of Change to reflect this fact in accordance with the Rules shortly.

We were also yesterday provided with a copy of your Motion Record to discharge the Receiver in connection with the receivership of Kraus.

As you are aware, and as is set out in the Receiver's Report in your Record, there remains a significant outstanding issue between the Company and Kraus, and possibly between the Company and the Receiver, in connection with the administration of this receivership. We are in the process of commencing our review of this matter and speaking with our client to ascertain different aspects of their position.

It does not appear from a review of your Motion Record as though there is any particular urgency to your Motion. Given that lack of urgency and giving consideration to the prejudice to the Company in the event that it is prevented from pursuing its rights and remedies in this matter by the Order which you are seeking, we are hereby requesting on the Company's behalf, that the Receiver consent to adjourning your matter to a date that can be mutually agreed upon between us. It seems likely from our cursory review of this matter that we will require certain questions to be asked of the Receiver, which we will submit to you in writing, which will presumably require time for you to respond. Our client's further direction in connection with this matter will presumably largely be based on the outcome of those

questions, plus such further analysis as we are able to glean from further discussions with our new client.

I hope that you will notice that we are bringing this request for an adjournment to your attention immediately upon being retained and being advised of your Motion. We are advised that the Company was not consulted with the proposed timing of your Motion and did not consent to same.

Please provide us with your response as soon as possible. Also, I believe my client's US solicitor, Mr. Mark Finkelstein who is copied with this letter, has previously asked that he be provided with copies of all correspondence and court documents as this matter proceeds. I am advised that this has not been done. Please ensure that, notwithstanding my firm's involvement in this matter, that it is done from here forward.

Yours truly,

MINDEN GROSS LLP

Per:



David T. Ullmann  
DTU/nh

cc: M. Finkelstein  
R. Slattery

#1950001

## **Appendix “E”**

MINDEN  
GROSS LLP

MINDEN GROSS LLP  
BARRISTERS & SOLICITORS  
145 KING STREET WEST, SUITE 2200  
TORONTO, ON, CANADA M5H 4G2  
TEL 416.362.3711 FAX 416.864.9223  
[www.mindengross.com](http://www.mindengross.com)

DIRECT DIAL (416) 369-4148  
E-MAIL [dullmann@mindengross.com](mailto:dullmann@mindengross.com)  
FILE NUMBER 4083182

October 24, 2012

*VIA E-MAIL (linc.rogers@blakes.com)*

Mr. Linc Rogers  
**Blake, Cassels & Graydon LLP**  
199 Bay Street, Suite 2800  
Toronto, Ontario M5L 1A9

Dear Sir:

**Re: Equistar Chemicals, LP (the “Company”) – receivership of Kraus Inc. et al. (collectively, “Kraus”)**

Further to our attendance before Justice Campbell on October 15, 2012, we have prepared the enclosed list of questions for response by the Receiver in connection with the Receiver’s impending motion for discharge.

We look forward to the Receiver’s response to these questions. We would ask that we receive that response, and all the requested documents reference therein, by no later than October 31, 2012.

In addition, given that the issues being explored by our client would potentially impact and or benefit all of the unsecured creditors of the Kraus entities, we are wondering whether the Trustees in Bankruptcy for the Kraus companies are also exploring these issues, in their capacity as representatives of those unsecured creditors. Has the Trustee as yet held a first meeting of Inspectors or otherwise gotten inspector direction on this issue? I am aware that concerns similar to the ones being explored by the questions attached were asked at each of the creditors meetings held in the bankruptcies of the Kraus companies.

We understand that the Trustee has a retainer in the amount of \$100,000.00 upon which it is entitled to draw in order to address issues in the bankruptcy.

We look forward to hearing from you.

Yours truly,

**MINDEN GROSS LLP**

Per:



David T. Ullmann

DTU/nh

Encl.

cc: M. Finkelstein  
R. Slattery

#1955299

## QUESTIONS TO BE ASKED TO RECEIVER

The following questions arise from our review of the Receiver's 4<sup>th</sup> Report and the Receiver's 3<sup>rd</sup> Report and the previous Reports appended thereto or incorporated therein. Any capitalized terms not expressly defined hereafter shall have the meaning given to them in the Receiver's Reports to Court in this matter:

### **Fourth Report**

#### *Relationship with Red Ash*

1. The Report does not advise as to the history of the relationship between PWC and Red Ash. Has the PWC ever been engaged by Red Ash in prior insolvency matters?
2. At page 19 paragraph 9 (b) (v), the Receiver makes reference to a Term Sheet executed between the Receiver and Red Ash. Please provide a copy of this Term Sheet.
3. Please advise as to whether or not the Term Sheet is the only engagement letter between the Receiver and Red Ash in connection with the receivership or the Transaction.
4. Please advise whether or not the Term Sheet contains an indemnity for any Receiver's fees required in order to complete its mandate?
5. Please advise whether or not the Term Sheet permits or authorizes a finite amount of available advances to the Receiver and if so, in what amount?
6. Please advise as to why Red Ash advised the Receiver that it would be in their interest to fund the cost of the receivership? In the alternative, please advise how PWC encouraged or requested Red Ash to fund the receivership?
7. Please provide copies of the Receiver's accounts including its accounts leading up to its appointment as a Receiver, which are referred to in paragraph 63 of the Report, and any accounts rendered by PWC or PWCCF.
8. At what point did PWC become aware that it was likely to act as the Receiver for Red Ash?
9. At what point was Kraus advised of this fact? By whom? Was it advised in writing? Please produce any such written notification.
10. What is the nature of the relationship between Red Ash and the purchaser of the Kraus assets?

*Disclaimer re Information Relyed on By Receiver*

11. Paragraph 10 of the Report, and similar paragraphs in the Receiver's other Reports, advises that the Receiver is limited in its knowledge of the facts. However, is it not true that the Receiver presumably relied upon information provided to it by PWCCF and PWC that was compiled in the four years prior to the appointment of the Receiver? Please confirm that the Report was compiled in reliance upon that information of which the Receiver would have personal knowledge.

*Information available to the Purchaser re 81.1 claims*

12. Pursuant to paragraph 27, the Receiver advised that it discussed its assessment in respect of 81.1 claims with the Purchaser, who concurred with the Receiver's assessments. Please advise how the Purchaser was able to independently ascertain the validity of the Receiver's analysis?
13. Please advise what information, if any, was available to the Purchaser in order to complete this analysis and whether or not that information was also reviewed by the Receiver in order to cross-check its analysis?

**First Report***Preparation of the Report*

14. When did the Receiver commence work on preparing the First Report?
15. How many drafts of the Report were prepared?
16. To which parties were drafts of the Report circulated? Did those parties make written or verbal changes to the Report?

*Engagement of PWC by Kraus*

17. Paragraph 33 of the Report advises that PWC was retained in 2008 in connection with the Kraus Group. Please provide a copy of that retainer letter.
18. Was PWC appointed to act as a Chief Restructuring Officer from the period of November 2008 up until the date of the filing of the First Report or at any time during that period?
19. Did management of the Kraus Group abdicate authority in respect of the restructuring to PWC during this period, regardless of the actual title of the engagement?

*Sales Process*

20. Paragraph 39 advises that PWCCF (not Kraus) ran an extensive sale and refinancing process in respect of the Kraus Group. Was the management of the Kraus Group involved in any of the decision making connected with the operation or structure of the sale process?
21. Paragraph 46 of the Report advises that PWC produced a letter outlining the strategic options available to Kraus on September 30, 2011. Please produce this letter.
22. Please advise whether or not the strategic options made any reference to suppliers or the use of supplier goods as part of the restructuring.
23. Other than the letter noted in 21 above, were there any other memos, letters or other correspondence with Kraus about the strategic options available to it? If so, please produce same.
24. Were there any discussions or meetings held with Kraus at which these options were discussed? If so, which options were discussed?
25. Does the Receiver have any notes of those conversations? If so, please produce them.
26. Paragraph 56 refers to a Confidential Information Memorandum. Please provide a copy of the Confidential Information Memorandum.
27. Please advise whether or not the Confidential Information Memorandum contained any information about suppliers and levels of inventory.
28. Please advise whether or not the Confidential Information Memorandum provided anticipated purchases and consumption and levels of inventory during the period leading up to or during the interim receivership.

*Trading while Insolvent*

29. At what time, if ever, did PWC, PWCCF or any other PWC proposed receiver entity provide advice to Kraus about the obligations of Directors, Officers and the company with respect to the acquisition of goods on credit relating to an insolvency or a potential insolvency?
30. Paragraph 44 of the Report advises that a conclusion was reached by the Receiver that the Kraus Group was insolvent. When was this conclusion reached?
31. Did the Receiver reach the conclusion that Strudex Fibres Limited was insolvent? If so, when was this conclusion reached?
32. When were these conclusions shared with Kraus?

33. To whom at Kraus were these conclusion communicated?
34. How were these conclusions communicated? If in writing, please provide copies of same.
35. Please advise whether or not in December 2011, PWC advised Kraus that the Kraus Group and/or Strudex Fibres Limited was insolvent.
36. Did PWC authorize the purchase of goods on credit by any Kraus entity including Strudex Fibres Limited ("Strudex") after this date? If PWC did not authorize the purchase of goods on credit by Kraus or Strudex after this date, then does the Receiver know who did? What person or persons authorized the purchases of goods on credit while any of the Kraus Group was insolvent?
37. Paragraph 65 of the Receiver's Report advises that PWCCF verbally advised BMOCC and NK that based on the EOIs received they would receive little if any of the proceeds of the sale. Did PWC determine at this time that the company was insolvent?
38. Did PWC at this time make that fact known to the Directors and Officers of the Kraus? If so, how?
39. Did PWC authorize the purchase of goods on credit by Kraus or Strudex after the date of the conversation described in paragraph 65?

*Sale of Supplier Cash by Receiver*

40. Having reviewed the definition of Purchased Assets in the Transaction, we note that cash on hand was to be transferred on closing to the Purchaser. Please advise as to the amount of cash transferred.
41. Was the cash sold at a discount?
42. Please advise whether or not the fact that cash was being transferred on closing was ever brought to the attention of the Court. If so, how?
43. Paragraph 78 of the Report contains an analysis in which the Court is advised that the consideration being paid in the proposed transaction is totalled in the amount of \$82,800,000.00. However, is it not correct that that consideration should have been reduced by the amount of cash transferred on closing?

*Impact of Liquidation on Suppliers*

44. Please produce a copy of the Liquidation Analysis referred to in paragraph 141 of the Report.

45. Please advise whether or not that Liquidation Analysis provides any advice with respect to inventory levels and realization from inventory net of the return of goods to 81.1 suppliers.
46. Paragraph 142 makes reference to third party appraisals and estimates of value in current marketing conditions. Please provide information connected with that analysis and advise whether or not any of those analyses made reference to goods being unavailable in a liquidation on the basis they had to be returned to 81.1 suppliers.
47. Paragraph 144 describes elements of the liquidation analysis. Paragraph 144 (e) states an estimated realizable value for the liquidation of the inventory. Please advise if that value included an amount deducted for 81.1 claims.
48. Section 144 (f) advises that potential priority claims or amounts may need to be paid by a Receiver. Please advise if those amounts included 81.1 claims.
49. Section 148 (d) advises that unsecured creditors are not prejudiced by the sale transaction. How can this statement be correct given the impact that the transaction had on unsecured suppliers? Please advise.

*Decision to use Interim Receiver*

50. According to paragraph 62 of the Report, by mid-December 2011 the sales process had generated seven Expressions of Interest for the purchase of the Kraus Group assets. Please advise whether or not any of these offers required the appointment of an Interim Receiver in order to facilitate the completion of the transaction.
51. Paragraph 66 advises that PWCCF and management negotiated with four participants to reach a transaction. Did any of those transactions require the appointment of an Interim Receiver and a bankruptcy?
52. Was it PWC or the company which proposed the use of a bankruptcy and interim receivership? If so, when was this proposal made?
53. On what basis was this decision made?
54. Was this decision made by PWC or the company?
55. We note that the Reports often do not distinguish between the debts and assets of the various Kraus entities. Please provide the analysis requested in the question in 52 or 53 above on a company by company basis.
56. Please advise whether or not PWC and Kraus ever discussed different treatment for the different companies in connection with the upcoming receivership or insolvency? If so, please advise as to the nature of those discussions.

57. Please produce the summary that appeared at Confidential Appendix "B".
58. Paragraph 70 advises that the Senior Syndicate was advised by Oslers in connection with the debt acquisition. Please advise whether or not any correspondence was generated or questions were raised by Oslers with respect to a) the treatment of suppliers, b) the use of cash from suppliers by Red Ash, or c) the use of the interim receiver to effect this transaction. If so, please advise.
59. Paragraph 71 advises that BMOCC was advised by Gowlings in connection with the debt acquisition. Please advise whether or not any correspondence was generated or questions were raised by Gowlings with respect to a) the treatment of suppliers, b) the use of cash from suppliers by Red Ash, or c) the use of the interim receiver to effect this transaction. If so, please advise.
60. Paragraph 72 advises that NK was advised by Faskens in connection with the debt acquisition. Please advise whether or not any correspondence was generated or questions were raised by Faskens with respect to a) the treatment of suppliers, b) the use of cash from suppliers by Red Ash, or c) the use of the interim receiver to effect this transaction. If so, please advise.
61. We understand that Red Ash was advised by Cassels in connection with the debt acquisition. Please advise whether or not any correspondence was generated or questions were raised by Cassels with respect to a) the treatment of suppliers, b) the use of cash from suppliers by Red Ash, or c) the use of the interim receiver to effect this transaction. If so, please advise.
62. Did PWC at any time consider whether or not the proposed interim receivership structure was appropriate in light of the impact of the suppliers of the decision to use this structure?
63. Was PWC aware of the potential impact on suppliers of the choice to use an interim receivership prior to receiving the first 81.1 demands after May 28, 2012?

### **Second Report**

#### *Forecasted Consumption*

64. Paragraph 21 of the Second Report advises that the receipts and disbursements during the monitoring period were "largely as forecast". Who prepared this forecast?
65. Please advise as to whether or not that forecast included the consumption of inventory and the use of 81.1 goods?
66. Please provide a copy of this forecast.
67. Paragraph 21 states that, "the Interim Receiver has attended the company's premises on several occasions to monitor the receipts and disbursements of the

company." Please advise how often the Interim Receiver visited the premises prior to the date of the Second Report and provide dates.

68. Please advise whether or not the Interim Receiver conducted any inventory analysis as part of those visits or in the course of its duties to monitor receipts and disbursements or in anticipation of those duties.

*Sale of Supplier Cash*

69. Paragraph 21 (g) advises that the companies had cash balances totalling approximately \$1,400,000.00 at the end of the monitoring period. Please confirm the amount of cash actually transferred on closing to Red Ash.

70. Please break down that cash between the three companies.

71. Paragraph 27 of the Second Report advises that the Receiver was able to estimate the valid 30 day good claims to be in the amount of \$80,694.00. How was the Receiver able to conduct this analysis given the difficulties later asserted by the Receiver in its Third Report with respect to quantifying the 81.1 claims?

72. Pursuant to section 31 (b) the Report states that there was a specific inclusion of a provision in the transaction to deal with suppliers with respect to the use of goods that took place from the period of the appointment of the Interim Receiver to and until the date of closing. In the course of negotiating this provision, was any discussion raised by PWC or others with respect to the use or payment of the claims of suppliers for goods that had accrued prior to May 28, 2012 in respect of payment was due on May 28, 2012.

73. In paragraph 65 why did the Receiver not highlight in paragraph 65 (a) that the actual amount of consideration was \$83,000,000.00 less \$1,400,000.00 in cash being transferred on closing?

74. Is it reasonable to assume that the cash on hand is equivalent to the amounts not paid by Kraus to the suppliers of 81.1 goods? If not, why not?

**Third Report**

75. At what point did PWC or the Receiver become aware that a substantial amount of credit for goods supplied would go unpaid as a result of the appointment of the Interim Receiver?

76. Did PWC or the Receiver know or anticipate, prior to the issuance of the Third Report, that this amount would be in excess of \$2,000,000?

77. Why is the total in paragraph 8 approximately \$500,000.00 higher than the total previously provided to the Court in the Second Report?

78. Paragraph 14 advises that the Receiver met with the Chief Operating Officer to review 81.1 assets. Please advise whether not this is the first time the Receiver had a meeting of this kind with anyone from Kraus to discuss 81.1 assets and if not, when previous meetings had occurred and with whom?
79. Paragraph 16 advises that the Receiver consulted with their respective accounting and production staff of Kraus to generate inventory status reports. Please advise whether or not this was the first time the Receiver had had such a meeting and if not, when previous meetings had occurred and with whom?
80. Please advise if a similar analysis was undertaken to the analysis set out in paragraphs 13 to 20 with respect to the 81.1 assets in preparation of the Receiver's Second Report.
81. Please advise if a similar analysis was undertaken to the analysis set out in paragraphs 13 to 20 with respect to the 81.1 assets in preparation of the Receiver's First Report and if not, why not?
82. In paragraph 22 the Receiver outlines certain challenges which it encountered in reviewing the 81.1 claims. Did any other creditors other than Equistar dispute the Receiver's conclusion with respect to these challenges?
83. Having subsequently corresponded with various creditors, including Equistar, has the Receiver reconsidered any of those challenges and determined whether or not further analysis is possible?
84. Other than was described in the letter dated August 7, 2012 from the Receiver to Equistar or the chart appended to the Third Report with respect to Equistar, what knowledge does the Receiver have, or access to records reflecting in any way, what amount of resin delivered by Equistar to Strudex was in the possession of Strudex as of May 28, 2012?
85. Does the Receiver have any knowledge or recourse to records that contradict that as of May 28, 2012, the amount of resin delivered by Equistar to Strudex that was in the possession of Strudex was 326,666 pounds (approximately 148,173.21 kilograms)?
86. What knowledge or recourse to records does the Receiver have that reflects, as of April 24, 2012, what was the amount of resin delivered by Equistar to Strudex that Strudex can identify as being in its possession?
87. What knowledge or recourse to records does the Receiver have that reflects, as of April 30, 2012, what was the amount of resin delivered by Equistar to Strudex that Strudex can identify as being in its possession?
88. What were the amounts and dates of delivery of resin from Equistar to Strudex between the time period of April 25, 2012 and May 28, 2012?

89. What knowledge or recourse to records does the Receiver have that reflects, what was the daily processing amount of the resin by Strudex of the Equistar resin during the time period of April 25, 2012 and May 28, 2012?
90. If you are unable to give a daily amount in response to the prior question, what knowledge or recourse to records does the Receiver have that reflects what was the average monthly processing amount of such resin?
91. Does the Receiver have any knowledge or recourse to records that contradicts that the average monthly processing amount of the resin processed by Strudex from resin shipments from Equistar equalled 700,000 pounds (approximately 317,514.66 kilograms), during the time period of April 25, 2012 to May 28, 2012?
92. What knowledge or recourse to records does the Receiver have that reflects, as of May 28, 2012, what is the value of the resin, on a per kilogram basis, that was delivered by Equistar to Strudex and in the possession of Strudex on that date?
93. Does the Receiver have any knowledge or recourse to records that contradicts that as of May 28, 2012, the total value of the resin that was delivered by Equistar to Strudex and that was in the possession of Strudex on that date was \$258,000 (US).
94. What knowledge does the Receiver have, or recourse to records reflecting, why, in connection with Strudex processing orders during the time frame of April 25, 2012 to May 28, 2012, Strudex would not retain records reflecting at all times how much resin was in its possession and not yet processed?
95. What knowledge does the Receiver have, or recourse to records reflecting, during the time frame of April 25, 2012 to May 28, 2012, the names and positions of personnel employed by Strudex responsible for maintaining inventory levels of resin so that orders could be processed?
96. The Receiver makes reference in section 22 (d) to an end of month report dated May 31, 2012. Please produce that report.
97. Paragraph 24 advises that the Receiver is satisfied that it was able to identify the 81.1 assets in the possession of the companies as of June 11, 2012. How was the Receiver able to make that determination given the challenges that it highlighted in the Report in paragraph 22?

#### **General**

98. Did the Receiver review the initial application and Affidavit of Christopher Emmott prior its appointment?
99. Did the Receiver participate in preparing that document?
100. Did the Receiver's counsel review that document and if so, at what time?

101. Prior to providing its consent to act as Receiver, which it did on May 23, 2012, did the Receiver raise any issues or concerns with respect to the accuracy of the Emmott Affidavit or the chosen restructuring method? If so, to whom and how?
102. Please advise whether or not PWC at any time ever recommended to Kraus or Red Ash and others a bankruptcy and receivership in place of the structure ultimately adopted in this matter?
103. Please advise whether or not PWC ever discussed with Kraus or Red Ash or others a CCAA structure in place of the receivership structure ultimately selected?
104. Please explain the relationship between PWC and PWCCF. Are they separate legal entities? Do they share staff? Do they share governance? Do they share revenue or profit? Do they share information?
105. Paragraph 6 of the Affidavit of Chris Emmott advises that "Hillco and the secured lenders of the Kraus Group negotiated a number of potential investment and purchase structures over a period of approximately 10 weeks". Please advise whether or not the Receiver or any pre-receiver entities were part of these discussions?
106. Please advise whether or not those discussions at any time identified that there would be cash made available as a result of the use of 81.1 goods without having to pay for same.
107. Paragraph 7 of the Emmott Affidavit advises that on May 7<sup>th</sup> Hillco took an assignment of all of the outstanding debt and security. Please advise whether or not Kraus was advised of this fact by PWC and whether or not any further advice with respect to trading while insolvent was given at that time?
108. Please advise as to whether or not an analysis was provided as to the impact of the proposed structures on the pension plans and employees of the company?
109. Why was a greater analysis conducted with respect to these stakeholders than with respect to the suppliers?
110. Did PWC ever produce an analysis of the profitability which was anticipated to be derived by Hillco, as described in paragraph 48 of its Affidavit? If so, did that analysis make any reference to suppliers or inventory?
111. During the period between January 24<sup>th</sup>, 2012 and March 5<sup>th</sup>, 2012 when the Hillco offer was being negotiated, did PWC advise Kraus or its Directors and Officers as to their obligations with respect to trading while insolvent or otherwise consider the treatment of suppliers during this period?
112. Please produce any other correspondence between the Receiver and Kraus advising Kraus of the obligations of the company with respect to trading while insolvent not previously produced in answer to our previous questions.

113. Did PWC or the Receiver or its counsel advise Red Ash in connection with paragraph 96 of the Emmott Affidavit which states “the only economic interest which are engaged by these insolvency proceedings as those of Red Ash?”
114. Why was the First Report of the Receiver, which was released one day after the Chris Emmott Affidavit, silent on the impact of the insolvency proceedings on 81.1 claimants or suppliers in general?

#1956323

## **Appendix “F”**



Blake, Cassels & Graydon LLP

Barristers & Solicitors

Patent & Trade-mark Agents

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Toronto ON M5L 1A9 Canada

Tel: 416-863-2400 Fax: 416-863-2653

October 31, 2012

Linc A. Rogers

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[linc.rogers@blakes.com](mailto:linc.rogers@blakes.com)

VIA EMAIL ([dullmann@mindengross.com](mailto:dullmann@mindengross.com))

Reference: 28438/125

Mr. David Ullmann  
Minden Gross LLP  
145 King Street West, Suite 2200  
Toronto, ON M5H 4G2

**RE: Receivership of Kraus Inc. et al., Court File No. CV-12-9731-00CL**  
**Re: Questions of Equistar Chemicals, LP ("Equistar")**

Dear Sir:

We are in receipt of your letter dated October 24, 2012 enclosing an eleven page list of 114 questions (the "Questions") asked of PricewaterhouseCoopers Inc. ("PwC"), in its capacity as court-appointed receiver (the "Receiver") of Kraus Inc. and certain related companies (collectively, the "Companies") and have reviewed same with our client.

The Receiver is of the view that the Questions are either inappropriate, irrelevant to Equistar's claim asserted pursuant to section 81.1 ("s.81.1 Claim") of the *Bankruptcy and Insolvency Act* (Canada) (the "BIA"), or have been dealt with in material already filed in this proceeding and/or in communications already had with Equistar. Accordingly, the Receiver does not intend to respond to the Questions.

As you know, PwC was appointed as interim receiver (the "Interim Receiver") pursuant to an order dated May 28, 2012 with limited authority to monitor receipts and disbursements of the Companies. The Interim Receiver was never in possession of the business or assets of the Companies. The affidavit of Christopher Emmott sworn May 25, 2012, filed in support of the application to appoint the Interim Receiver, and the First Report of the Interim Receiver and Proposed Receiver dated May 29, 2012 set out the basis for the appointment of the Interim Receiver.

The Receiver was also never in possession of the business or assets of the Companies. The Receiver was appointed for the limited purpose of conveying the assets of the Companies pursuant to a sale transaction approved by the Court and to address certain sundry post-closing matters. Equistar was in attendance at the motion for approval of such sale and, along with other suppliers, raised certain issues regarding its rights under section 81.1 of the BIA. Those issues were resolved by the addition of agreed upon language in the Sale Approval and Vesting Order dated June 11, 2012 (the "Vesting Order"). Equistar did not object to the sale. The Vesting Order approved the activities of the Receiver in the First Report and Second Report, again with no objection from Equistar.

Pursuant to the agreed upon language in the Vesting Order, in its Third Report, the Receiver reported on the assets in the possession of the Companies as of June 11, 2012 (the date of the appointment of the Receiver) that were subject to claims under s.81.1 (the “**s.81.1 Assets**”) and, to the extent ascertainable, the s.81.1 Assets in the possession of the Companies as of May 28, 2012 (the date of the appointment of the Interim Receiver).

As described in the Third Report, a representative of Equistar attended at the premises of the relevant Company, Strudex Fibres Limited (“Strudex”), on June 12, 2012 and was shown the silos where Equistar’s goods were normally delivered. The representative was given the opportunity to do a visual inspection of the goods remaining in such silos. A digital meter reading of one of the silos was also taken in the presence of Equistar’s representative. The representative was also provided with the production records for such silo.

On June 19, 2012, the Receiver advised Equistar of its assessment of Equistar’s s.81.1 Claim. As stated in the Receiver’s letter dated June 19, 2012 to Equistar, the Receiver assessed the eligible value of Equistar’s s.81.1 Claim as \$35,425.25.

Over a month later, on July 31, 2012, via counsel, Equistar sent further correspondence to the Receiver with additional inquiries. The Receiver responded to those inquiries a week later, by letter dated August 7, 2012. In such letter, further detail was provided by the Receiver as to Strudex’s inventory system, records, tracking, etc. Such letter also stated that should Equistar wish to conduct further investigation of the matter, the Receiver would attempt to facilitate such investigation with the Purchaser (as defined in the Vesting Order). Equistar did not respond to the Receiver’s letter of August 7<sup>th</sup> and, to the Receiver’s knowledge, has not investigated the matter further.

After having no communication from Equistar for over two months and without any attempt made by Equistar to further investigate the matter at its own cost, Equistar now seeks answers to a laundry list of all-embracing questions that deal with matters that have already been dealt with and other matters far beyond the limited scope of the receivership and Equistar’s s.81.1 Claim. This is inappropriate.

The receivership, including the Receiver’s impending motion for discharge, is not a forum for Equistar or any other party to re-examine activities already approved by the Court. It is also not a forum to engage in wide-ranging third party discovery.

The Vesting Order provides the mechanism for determination of Equistar’s s.81.1 Claim. The Vesting Order states that such claim can be determined by agreement amongst the Receiver, Equistar and the Purchaser or by court order. All other parties who submitted a s.81.1 claim have resolved their claim by agreement. Absent such resolution by agreement, Equistar’s recourse, pursuant to the Vesting Order, is to bring a motion to court for a determination of the s.81.1 Claim. Equistar is, of course, free to have direct discussions with the Purchaser to resolve any remaining issues in hopes of achieving a consensual resolution.

Further, as you know, the Companies are bankrupt. As there are no assets in the bankruptcies, PwC, in its capacity as trustee in bankruptcy of the Companies, has exhausted the limited funds available to it in the discharge of its statutory obligations. If Equistar believes there is a proceeding that would be for its or any other creditor's benefit, its remedy is to seek approval to take on the proceeding in its own name and at its own expense pursuant to section 38 of the BIA.

As described in its Fourth Report, the Receiver has substantially discharged its mandate, including discharging its responsibility set out in paragraph 6 of the Vesting Order. It has reported on the s.81.1 Assets in the possession of the Companies as of June 11, 2012 and to the extent ascertainable, the s.81.1 Assets in the possession of the Companies as of May 28, 2012. It has facilitated an inspection by a representative of Equistar. It has responded to Equistar's prior inquiries and offered to facilitate further investigation by Equistar.

As set out in the Receiver's Fourth Report, in accordance with the terms of the Vesting Order, the Receiver has been paid the invoiced amount of \$35,425.25 for the s.81.1 Assets of Equistar consumed by the Purchaser, which the Receiver continues to hold in trust, in place and stead of the applicable s.81.1 Assets. As further set out in the Receiver's Fourth Report, the Receiver proposes that upon its discharge, the trustee in bankruptcy of the Companies continue to hold such funds in trust under the same terms as held by the Receiver. Accordingly, the Receiver's discharge will not affect Equistar's rights to such funds, or otherwise.

The Receiver will be proceeding with its discharge motion on November 5, 2012.

Yours very truly,

per:   
Linc A. Rogers

LCR/sti  
Enclosure

Cc:      Michelle Pickett, PwC  
          Pamela Huff, Blakes  
          Jenna Willis, Blakes

## **Appendix “G”**

November 2, 2012

*VIA E-MAIL ([linc.rogers@blakes.com](mailto:linc.rogers@blakes.com))*

Mr. Linc Rogers  
**Blake, Cassels & Graydon LLP**  
199 Bay Street, Suite 2800  
Toronto, Ontario M5L 1A9

Dear Sir:

**Re: Equistar Chemicals, LP (the “Company”) – receivership of Kraus Inc. et al. (collectively, “Kraus”)**

We are in receipt of your letter dated October 31, 2012, in response to our letter of October 24, 2012.

We are surprised that the Receiver has taken the high handed approach set out in your letter. As you are no doubt aware, it is settled law that a Receiver is obliged to provide answers to questions asked of it in respect of its Reports.

We advised in our letter to you of October 10, 2012, a copy of which is enclosed for your ease of reference, that our client required answers to questions in order to formulate its position with respect to your discharge motion. The suggestion in your letter that the questions must only be about the details of the 81.1 claim has no merit. At no time, did we indicate that the questions which we would ask would solely be related to the particulars of the 81.1 claim made by our client, nor were we obliged to so limit our enquiries by the endorsement provided by Campbell J on October 16, 2012. We note that the Receiver did not even answer those questions which were expressly about the section 81.1 claim.

The Receiver’s failure to answer these questions makes it difficult for our client to make an informed decision about how to proceed.

We are also disappointed that the Receiver waited until after the close of business on October 31, 7 days after receiving our letter, to respond in this fashion. The Receiver did not require that amount of time to provide this response. The Endorsement provided by Campbell J. advised that if there was need, the parties were to attend for advice and directions prior to November 5, 2012. Once the Receiver determined that it intended to take the position that it was not going to answer the questions, it should have notified us so that such a 9:30 could have been sought.

We expressly deny the position taken in your letter, that Orders which previously approved the content of the First and Second Reports, somehow rendered the Receiver invulnerable to any questions about its conduct during the periods to which those Reports relate or that it absolves the Receiver from any conduct which it may have engaged in (or failed to engage in) during that period. It is an especially puzzling assertion when you are aware that the majority of our questions relate to questions about information which may have been left out of the Receiver’s Reports.

**MINDEN  
GROSS LLP**

Further, as you know, the Receiver included all of the Receiver's Reports in its most recent Motion Record to assist the Court in determining whether or not to grant the release being sought by the Receiver. The Receiver is providing the entirety of the Receiver's conduct for consideration both by the Court and by the stakeholders. The Receiver cannot seek the approval of the entirety of the receivership while simultaneously taking the position that certain aspects of the receivership cannot be discussed.

In light of the Receiver's position, our client has no choice but to continue to oppose the Receiver's discharge.

We intend to ask the Court on November 5<sup>th</sup>, 2012 to provide a schedule seeking responses from your clients to our questions. We will also require the production of the various documents asked for in those questions, and the unsealing of any sealed items which relate to those questions. If the Receiver persists in resisting, we shall schedule a Motion to compel the Receiver to be cross-examined on its Reports so that we can ask in person those questions which it has failed to answer in writing.

We will be writing to the Court today to provide them with copies of the correspondence between our offices and copies of the questions for their review in advance of the November 5<sup>th</sup> chambers attendance.

Yours truly,

**MINDEN GROSS LLP**

Per:



David T. Ullmann

DTU/nh

Encl.

cc: M. Finkelstein  
R. Slattery

#1959967

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FILE NUMBER 1111111

October 10, 2012

*VIA E-MAIL (linc.rogers@blakes.com)*

Mr. Linc Rogers  
Blake, Cassels & Graydon LLP  
199 Bay Street  
Suite 2800  
Toronto, Ontario  
M5L 1A9

Dear Sir:

Re: Equistar Chemicals, LP (the "Company") – receivership of Kraus Inc. et al. (collectively, "Kraus")

We are writing to advise you that we were yesterday retained by the Company in connection with this matter. We will be filing a Notice of Change to reflect this fact in accordance with the Rules shortly.

We were also yesterday provided with a copy of your Motion Record to discharge the Receiver in connection with the receivership of Kraus.

As you are aware, and as is set out in the Receiver's Report in your Record, there remains a significant outstanding issue between the Company and Kraus, and possibly between the Company and the Receiver, in connection with the administration of this receivership. We are in the process of commencing our review of this matter and speaking with our client to ascertain different aspects of their position.

It does not appear from a review of your Motion Record as though there is any particular urgency to your Motion. Given that lack of urgency and giving consideration to the prejudice to the Company in the event that it is prevented from pursuing its rights and remedies in this matter by the Order which you are seeking, we are hereby requesting on the Company's behalf, that the Receiver consent to adjourning your matter to a date that can be mutually agreed upon between us. It seems likely from our cursory review of this matter that we will require certain questions to be asked of the Receiver, which we will submit to you in writing, which will presumably require time for you to respond. Our client's further direction in connection with this matter will presumably largely be based on the outcome of those

questions, plus such further analysis as we are able to glean from further discussions with our new client.

I hope that you will notice that we are bringing this request for an adjournment to your attention immediately upon being retained and being advised of your Motion. We are advised that the Company was not consulted with the proposed timing of your Motion and did not consent to same.

Please provide us with your response as soon as possible. Also, I believe my client's US solicitor, Mr. Mark Finkelstein who is copied with this letter, has previously asked that he be provided with copies of all correspondence and court documents as this matter proceeds. I am advised that this has not been done. Please ensure that, notwithstanding my firm's involvement in this matter, that it is done from here forward.

Yours truly,

MINDEN GROSS LLP

Per:



David T. Ullmann  
DTU/nh

cc: M. Finkelstein  
R. Slattery

#1950061

## **Appendix “H”**

## **WILLIS, JENNA**

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**From:** ROGERS, LINC  
**Sent:** Saturday, November 03, 2012 3:31 PM  
**To:** 'DULLmann@mindengross.com'  
**Cc:** 'mfinkelstein@smfalaw.com'; 'RSlattery@mindengross.com'; HUFF, PAM; WILLIS, JENNA; 'michelle.pickett@ca.pwc.com'; 'john.p.mckenna@ca.pwc.com'  
**Subject:** Re: Equistar Chemicals, LP

David,

We have your letter of Friday November 2, 2012. The Receiver disagrees with the comments made therein. The Receiver intends to serve and file a supplemental report attaching relevant correspondence. We confirm the Receiver will be seeking its discharge at the hearing scheduled for November 5, 2012 and opposes any further adjournment of this matter, for the reasons previously stated.

Linc A. Rogers  
Blake, Cassels and Graydon  
Tel: 416.863.4168  
Fax: 416.863.2653

----- Original Message -----

From: David Ullmann [mailto:[DULLmann@mindengross.com](mailto:DULLmann@mindengross.com)]  
Sent: Friday, November 02, 2012 11:35 AM  
To: ROGERS, LINC  
Cc: 'mfinkelstein@smfalaw.com' <[mfinkelstein@smfalaw.com](mailto:mfinkelstein@smfalaw.com)>; Raymond M. Slattery <[RSlattery@mindengross.com](mailto:RSlattery@mindengross.com)>  
Subject: Equistar Chemicals, LP

Please see attached letter of even date.

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Please open the attached document. It was scanned and sent to you using a Xerox WorkCentre.

Attachment File Type: PDF

WorkCentre Location: Litigation and IT 21st  
Device Name: XEROX245-2174

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