

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

ROYAL BANK OF CANADA

Plaintiff

-and-

CNS IRON FABRICATION LTD. and CLAEYS FAMILY HOLDINGS INC.

Defendants

**FIRST REPORT TO THE COURT SUBMITTED BY MNP LTD.
RECEIVER**

June 30, 2022

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1.0 Introduction

1.1 Introduction and purpose of report

- 1.1.1** CNS Iron Fabrication Ltd. (“**CNS**” or the “**Company**”) carried on business as a manufacturer of custom fabricated and pre-cast metal forms used in formwork and shoring application for highway and bridge construction, as well as industrial, commercial, and residential construction. In addition to its core fabrication business, the Company sold pre-fabricated and pre-assembled parts used in the forming and shoring industry and performed repair and recondition service work on material handling equipment and formwork panels.
- 1.1.2** The Company operated from leased premises at 38 Simpson Road, Bolton, Ontario (the “**Premises**”).
- 1.1.3** CNS was established in 1990 and was purchased in 2021 by Mr. Bob Claeys (“**Claeys**”) through Claeys Family Holdings Inc. (“**Holdco**”). Holdco and CNS collectively referred hereafter as (the “**Companies**”).
- 1.1.4** Claeys is the sole director of CNS and Holdco.
- 1.1.5** Royal Bank of Canada (the “**Bank**”) is the senior secured lender to the Companies. As of April 8, 2022, CNS and Holdco were indebted to the Royal Bank of Canada (the “**Bank**”) in the amount of \$3,202,263 and \$2,178,558 respectively, plus accruing interest and costs of enforcement. As security for this indebtedness, the Bank was granted the following:
- General Security Agreement dated April 6, 2021, between CNS and the Bank (“**CNS GSA**”);
 - Security Agreement (accounts receivable), dated October 8, 2021, between CNS and the Bank;
 - Security Agreement (inventory), dated October 8, 2021, between CNS and the Bank;
 - General Security Agreement dated February 27, 2021 between Holdco and the Bank; and
 - Guarantee and Postponement of Claim dated February 27, 2021 between CNS, Holdco and the Bank.
- 1.1.6** A search of the Personal Property Security Act Registry dated May 15, 2022, shows the following security registrations against CNS and Holdco:
- (i) Royal Bank of Canada - general security registration and specific registrations against CNS’ inventory and accounts receivable;
 - (ii) Salvatore Castelli, Jr. (“**Castelli**”) - general security registration against CNS;
 - (iii) Congetta Bove (“**Bove**”) - general security registration against CNS;
 - (iv) Canadian Dealer Lease Services Inc (“**CDLS**”) - specific registration against one of CNS’ vehicles;

- (v) TD Auto Canada Finance (Canada) Inc. (“**TD**”) - specific registration against two of CNS’ vehicles; and
- (vi) Royal Bank of Canada - general security registration against Holdco;

1.1.7 On April 8, 2022, due to various events of defaults pursuant to the terms of the Companies financing agreements, the Bank demanded payment and issued Notices of Intention to Enforce Security to the Companies and Claeys as guarantor pursuant to the Bankruptcy and Insolvency Act.

1.1.8 On May 13, 2022, at a motion brought by the Bank, the Honourable Justice Gilmore issued an Order (the “**Initial Order**”) appointing MNP Ltd. as receiver (the “**Receiver**”) of the assets, undertaking and properties of the Companies. A copy of the Initial Order is attached as **Appendix A**. The Initial Order is substantially in the form of the Model Receivership Order.

1.1.9 The Initial Order authorized but did not obligate the Receiver to, among other things:

- Take possession of and exercise control over the Companies’ assets comprised of machinery, equipment, inventory and accounts receivable;
- To manage, operate, and carry on the business of CNS;
- Market any or all the Companies assets and negotiate such terms and conditions of sale as the Receiver may deem appropriate; and,
- Sell, convey, transfer, lease or assign the assets out of the ordinary course of business without Court approval in respect of transactions not exceeding \$75,000 in aggregate.

1.2 Purpose of Receiver’s First Report

1.2.1 This constitutes the Receiver’s First Report to the Court (the “**First Report**”) in this matter and is filed to:

- (i) Report on the Receiver’s activities since its appointment and seek the Court’s approval of same;
- (ii) Report on the transaction to sell the machinery, equipment, inventory and vehicles, the Receiver, as vendor, has entered into with 1000221800 Ontario Inc. o/a SP Steel Manufacturing and Engineering (“**SP Steel**”), as the purchaser;
- (iii) Obtain an Order,
 - (a) approving the First Report and the confidential supplement thereto, along with the activities of the Receiver detailed therein;
 - (b) approving the Asset Purchase Agreement (“**Agreement**”) made between the Receiver and SP Steel (as defined further in this report) dated June 20, 2022 and authorizing the Receiver to complete the transaction contemplated therein (the “**Transaction**”);
 - (c) vesting in SP Steel CNS’ right, title, and interest in and to the assets which are the subject of the Transaction;

- (d) sealing the Confidential Supplement to the First Report until completion of the Transaction or further Order of the Court;
- (e) approving the Receiver's Statement of Receipts and Disbursements as at June 30, 2022;
- (f) approving the fees and disbursements of the Receiver and its legal counsel; and
- (g) authorizing and directing the Receiver to distribute the net proceeds of the estate as outlined in the First Report.

2.0 Initial Receiver's Activities

2.1 Possession

- 2.1.1** Upon its appointment the Receiver attended the Premises. Sam Castelli (“**Castelli**”) and Paolo Bove (“**Bove**”), CNS’ sales and production managers, met the Receiver to provide access and a walk through of the Premises.
- 2.1.2** The Receiver changed the locks, photographed the Premises, equipment, and inventory to document the condition of same at the time of the Receiver’s appointment. Inventory is comprised of thousands of prefabricated metal components which are stored outdoors in bulk shipping crates. Crates are stacked on top of one another therefore limiting access to conduct physical counts. Given its form, the Receiver consulted CNS’ management to confirm inventory volumes and quantities.

2.2 Operations

- 2.2.1** In consultation with the Bank, active CNS management including Castelli, Bove and CNS’ former financial controller, Ms. Maria Pattara (“**Pattara**”), the Receiver reviewed sales orders, work in progress and working capital requirements to assess the short-term viability of the Company.
- 2.2.2** The Receiver determined that an injection in excess of \$600,000 would be required to carry on normal operations and purchase the inventory required to start new projects as originally planned by CNS. Due to a lack of available funds or financing this was not feasible. Instead, the Receiver focused production on finishing projects that were nearing completion and required minimal, if any, additional raw materials and consumables (“**Priority WIP**”). The Receiver was able to convert and sell the Priority WIP using cash generated from existing receivable collections and carry-on operations for a three week period that ended June 10, 2022.
- 2.2.3** The Receiver generated sales from operations of \$356,425 and disbursements of \$235,212. Sales are subject to standard credit terms which can take upwards of 90 days to collect so all operating and administrative costs to date have been funded by pre-appointment account receivable collections.
- 2.2.4** The Transaction is subject to compliance of an Operating Agreement which delegates SP Steel as the Receiver’s exclusive operator to manage and operate CNS’ business from June 20, 2022 until the earlier of i) the Transaction closing or ii) termination of the Agreement (“**Operating Agreement**”). Under the terms of the Operating Agreement, SP Steel is permitted to occupy the Premises and use of CNS’ machinery and equipment. Net proceeds generated during the life of the Operating Agreement will be retained by SP Steel in their entirety and do not constitute property available to the Companies’ creditors. Further details of the Operating Agreement are discussed later in this report.

2.3 Books, Records and Accounting controls

- 2.3.1** The Receiver took possession of limited books and records of the Companies located at the Premises. The Receiver engaged CNS’ IT consultant, Media Worx, to image and create a back up of the Companies’ server including all electronic customer files, employee records, email and accounting software. Additionally, the Receiver terminated certain login credentials to limit unfettered remote online access to the Companies electronic records.
- 2.3.2** The Receiver utilized former management and implemented weekly reporting protocols to manage operating receipts and disbursements.

2.4 Employees, Third-Party Contractors, and Wage Earner Protection Act

- 2.4.1** The Receiver met with employees and third-party contractors on May 16, 2022 and confirmed its intention to continue operations until further notice. Staff and contractors were retained on the same terms as existed prior to the Receiver's appointment. Staff members received and executed term and task letters acknowledging the terms of their ongoing employment during the receivership.
- 2.4.2** All wages and vacation pay were current at the time of the Receiver's appointment.
- 2.4.3** As discussed earlier in this report, the Receiver operated the business and retained employees until they were terminated on June 10, 2022. In lieu of statutory termination notice, employees were entitled but did not receive termination pay. Employee claims for unpaid wages, vacation and termination qualify for payment under the Wage Earner Protection Program ("WEPP"). Accordingly, the Receiver worked with Pattara to calculate employee entitlements, initiated a claims process and has notified former employees of their eligibility to claim amounts in accordance with WEPP legislation.
- 2.4.4** The Receiver has prepared and delivered Records of Employment to all employees and will work with CRA to issue T4's before the February 28, 2023 filing deadline.

2.5 Equipment and Inventory

- 2.5.1** An inventory and appraisal of the Company's equipment was conducted on behalf of RBC by Platinum Asset Appraisals on April 27, 2022 (prior to the Receiver's appointment).
- 2.5.2** The Receiver arranged for three liquidators/auctioneers to provide offers and/or proposals for the sale of machinery, equipment, inventory, vehicles and furniture. Liquidator offers are discussed later in this report.

2.6 Accounts Receivable

- 2.6.1** The Receiver understands accounting records were not current at the time of its appointment and the most recent aged receivable listing available at the time of the Receiver's appointment was a May 6, 2022 detail showing total receivables of \$1,285,905. Sales generated during the Receiver's operations produced additional net receivables of approximately \$356,425. The Receiver has collected \$853,797 in accounts receivable to date.
- 2.6.2** Pursuant to the terms of the Agreement, SP Steel has been authorized to act as the Receiver's exclusive agent to collect outstanding receivables at June 20, 2022 of \$1,231,434 (the "**Collection Agreement**"). Terms of the Collection Agreement were negotiated extensively, and the Receiver is satisfied Castelli's business knowledge and customer relationship will aid in optimizing receivable collections. Details of the Collection Agreement, including SP Steel's commission structure are discussed later in this report.

2.7 Premises Rent

- 2.7.1** The landlord of the Premises is 1946 Castelli Holdings Inc. ("**1946**"). 1946 and SP Steel are owned and operated by Castelli.
- 2.7.2** Total rent for the Premises was approximately \$35,000 per month. At the time of the Receiver's appointment CNS's rent was paid up to May 31, 2022. As discussed later in this report, 1946 agreed to waive a portion of June 2022 rent subject to SP Steel executing an operating agreement to occupy

the Premises effective June 10. Accordingly, the Receiver paid per-diem rent for the period of June 1 through 10, 2022.

2.8 Insurance

2.8.1 MNP notified the existing insurer, Navacord Inc., of its appointment as Receiver and requested to be added to the policy as named insured, which the insurance provider has done. The Receiver confirmed 2022 premiums have been paid and the Companies property and liability coverages in effect until October 5, 2022.

2.8.2 Pursuant to the terms of the Operating Agreement, SP Steel is required to maintain insurance over the assets and Premises and has added the Receiver as loss payee to its policy.

2.9 Government Accounts

2.9.1 The Receiver notified the Canada Revenue Agency of the receivership and requested a Harmonized Sales Tax (“HST”) account to report HST collected and paid through the receivership process.

2.9.2 The Receiver has arranged for CRA to perform audits of CNS’ payroll and HST accounts to verify its claim, if any, for unremitted source deductions and HST. Pattara has been retained on a contract basis to assist the Receiver with CRA’s examinations and information requests.

2.9.3 Audits are ongoing, however, CRA has confirmed unremitted source deductions and HST arrears at May 13, 2022 were \$2,707 and \$3,567, respectively.

2.9.4 We understand CRA’s calculation at May 13, 2022 doesn’t include amounts for unremitted April and May 1 to 13, 2022 employee source deductions. Based on values provided by Pattara, the Receiver estimates CRA’s is owed approximately \$106,469 for unremitted source deductions.

2.9.5 On June 27, 2022 the Receiver received a notice from CRA proposing to adjust CNS’ May 1 to 13, 2022 HST returns by reducing available input tax credits (“ITC”) associated with unsecured debt at May 13, 2022. The Receiver estimates CRA’s proposed adjustment will result in additional HST arrears of approximately \$92,614 (being a flat 13% calculation of non-zero-rated unsecured creditor claims at May 13, 2022).

2.10 Receiver’s Banking

2.10.1 The Receiver has set up a receivership bank account to administer estate receipts and disbursements.

2.11 Notice

2.11.1 The Receiver prepared a notice under Section 245 of the Bankruptcy and Insolvency Act with the office of the Superintendent of Bankruptcy. A copy of the Section 245 Notice is attached hereto as **Appendix B**.

2.11.2 The Receiver has setup a website at <https://mnpdebt.ca/en/corporate/corporate-engagements/cns-iron-fabrication-ltd> to post documents relating to the receivership that should be available to public, including the Initial Order.

2.12 Independent Counsel

2.12.1 The Receiver has retained Lerner's LLP ("**Lerner**") as independent counsel. Lerner's has reviewed RBC's security documents and registrations. Details of Lerner's review of same is discussed in the Recommended Distribution section of this report

2.12.2 Lerner's reviewed CDSL's security documents and has determined CDSL may have failed to properly register its interest in a 2021 Volvo XC60 ("**Volvo**"). Details of CDSL's claim are discussed in the Recommended Distribution section of this report.

2.12.3 The Receiver is awaiting security documents from Castelli, Bove and TD. Lerner's will review same once received.

2.13 Pre-Receivership Transactions

2.13.1 The Receiver has identified multiple transactions that took place in the weeks preceding the Receiver's appointment and which remain unaccounted for. The Receiver sought Claeys' explanation for the unallocated payments and deposits and is awaiting his response to same.

The following is a summary of the transactions the Receiver is continuing to investigate:

| Description | Effective Date | Debits (\$) | Credits (\$) |
|---------------------------|----------------|-------------|--------------|
| BR to BR | May 3, 2022 | 5,000 | |
| BR to BR | May 3, 2022 | 62,417 | |
| BR to BR | May 4, 2022 | 10,026 | |
| BR to BR | May 4, 2022 | 18,808 | |
| BR to BR | May 5, 2022 | | 25,000 |
| Cash withdrawal at branch | May 6, 2022 | 19,260 | |
| | | 115,511 | 25,000 |

3.0 Sale of Assets to SP Steel

3.1 Proposed sale of assets to SP Steel

- 3.1.1** At the time of the Receiver’s appointment, CNS held approximately \$1.8 million in open work orders (“**Orders**”). Orders are subject to various terms including fixed pricing and completion deadlines. As discussed earlier in this report, the Receiver reviewed Orders and determined it was not feasible to complete the majority of non-priority Orders.
- 3.1.2** Based on early discussions with Claeys, Bove and Castelli, the Receiver determined any business interruption that stood to cause production delays, or worse, the cancelling of Orders, needed to be managed prudently; otherwise, CNS would be exposed to customer chargebacks and set-off claims that could negatively impact receivable collections.
- 3.1.3** As discussed earlier in this report, the Receiver estimated it would take approximately three weeks from the date of its appointment to convert Priority WIP. In consultation with the Bank, Castelli and Bove, the Receiver determined operations would not be viable after June 10, 2022. As such, the Receiver knew a business interruption or permanent shut down was imminent.
- 3.1.4** Understanding that an interruption to normal business was imminent, the Receiver determined the best strategy to prevent, or at least mitigate, its impact on customers (and by extension global realizations), would be a swift *en-bloc* sale of the business or its assets to a purchaser willing and able to resume operations immediately.
- 3.1.5** At the time of the Receiver’s appointment, Claeys, Castelli and Bove all expressed an interest to buy the business and/or assets from the Receiver. Although each is a non-arms stakeholder in CNS (Castelli and Bove sold the business to Claeys in 2021 and hold a vendor take back mortgage in respect of said sale), the Receiver determined these were the only parties who had adequate knowledge of CNS business to affect a quick sale and ensure customers could be serviced after operations were wound down by the Receiver.
- 3.1.6** Recognizing the timeline to solicit and effect a sale with the aim of preserving customer goodwill was narrow, on May 18, 2022 the Receiver commenced an abbreviated sales process aimed at minimizing business interruption and thus maximizing recovery on the outstanding receivables. In that regard, the Receiver contacted Claeys, Castelli and Bove to solicit proposals for the purchase of the business or assets and advised each party the deadline to submit offers was May 27, 2022. In addition, the Receiver asked Claeys if there were any other parties, he could introduce that may be interested in a quick sale. Claeys advised he knew of one party and would speak to them about the opportunity.
- 3.1.7** Uncertain if going concern offers would be received, the Receiver also solicited liquidation proposals to buy or auction the machinery, equipment, inventory, and vehicles from three auctioneers including Platinum Assets (“**Platinum**”), Infinity Assets (“**Infinity**”) and Can-Am Apprais (“**Can-Am**”).
- 3.1.8** On May 19, 2022 Claeys advised the Receiver that he would not be submitting a proposal to buy the business or assets. However, on June 22, 2022 Claeys again reached out to the Receiver to advise he had reconsidered and would now like to purchase the Assets. The Receiver advised that by that time it was too late as it had already entered into the Transaction which was subject only to Court Approval. The Receiver has not heard from the potentially interested party Claeys mentioned.

3.1.9 On May 26, 2022, Castelli and Bove, jointly on behalf of a company to be formed, submitted their proposal (the “**SP Steel Offer**”). Due to the confidential nature of the SP Steel Offer, the Receiver is presenting the details of same to the Court via supplementary report (the “**Confidential Supplement**”), which the Receiver request be kept sealed by the Court until the Assets have been liquidated.

3.1.10 Among other things, the SP Steel Offer contemplates the following terms:

- (i) Purchase of the Receiver’s right, title and interest in CNS’ machinery, equipment, inventory, vehicles, fixtures and furniture;
- (ii) Subject to an operating agreement that would allow the newly formed company to operate and service customers from the Premises upon offer acceptance until a transaction is closed; and
- (iii) Proposal and commission structure to act as the Receiver’s agent in collecting outstanding CNS accounts receivables.

3.1.11 In consultation with the Bank, the Receiver negotiated terms for the sale over the following weeks. On June 20, 2022, the Receiver entered into the Agreement with SP Steel (a corporation which Castelli is president) that, among other things, was subject to compliance under the terms of the i) Operating Agreement, and ii) Collection Agreement (the “**Transaction**”). The Transaction is subject to Court approval.

3.1.12 Redacted copies of the Agreement, and corresponding schedules including the Operating Agreement and Collection Agreement are attached as **Appendix C**. To protect disclosure of the purchase price and commission structure under the Collection Agreement, these details have been redacted pending completion of the Transaction. Unredacted copies of the Agreement and corresponding schedules are contained in the Confidential Supplement. Because of its commercially sensitive nature, the Receiver is requesting the Court keep the Confidential Supplement sealed pending the closing of the Transaction or further court order.

3.1.13 As provided for in the Agreement, SP Steel has agreed to purchase the Companies’ right, title and interest in and to the following assets of the Companies:

- (i) All owned machinery, vehicles, equipment, fixtures and furniture situate at the Premises;
- (ii) All raw, work in progress, and finished goods inventories;
- (iii) Intellectual property; and
- (iv) Assignment and assumption of all open purchase orders at June 20, 2022.

(collectively the “**Assets**”).

3.1.14 In support of the Receiver’s request that the Court approve the Agreement and authorize the Receiver to complete the Transaction, the Receiver notes the following:

- (i) The Bank commissioned an appraisal of the Assets owned by CNS prior to the receivership. Details of this appraisal are included in the Confidential Supplement;
- (ii) The Transactions stands to generate greater global realizations than that which may be available in a liquidation scenario based on proposals from Platinum, Infinity and Can-Am. Details of auctioneer proposals are included in the Confidential Supplement;

- (iii) The Operating Agreement allows SP Steel to begin servicing CNS customers immediately and provides the best chance for Orders to be completed, thereby preserving customer goodwill and eliminating, or at least mitigating the risk of potential customer chargebacks and set-off claims.
- (iv) Account receivable collections will be optimized through the Collection Agreement which leverages the long-standing industry relationships SP Steel management have with CNS customers and minimizes potential for chargebacks due to CNS ceasing operations;
- (v) The Receiver is not aware of any other viable proposal for the purchase of Assets at this time; and
- (vi) The Bank is the senior lender to the Companies. The Transaction, if approved, will result in a shortfall to the Bank, the only stakeholder which has any practical economic interest in the Assets. The Bank supports the proposed sale.

3.1.15 The Receiver’s analysis of the offers and the Transactions is included in the Confidential Supplement.

3.2 Encumbrances to be Vested Out

3.2.1 As required in the Agreement the Receiver is requesting the Court issue an Approval and Vesting Order, vesting title in and to the Purchased Assets (as defined in the Agreement) in an to SP Steel.

3.2.2 Copies of searches against CNS and Holdings under the Personal Property Security Act (“PPSA”) as of May 15, 2022 are attached as **Appendix D** and **Appendix E**, respectively. The registrations and security interests to be vested out as disclosed by the searches are as follows:

(a) Claeyes Family Holdings Inc.

| Registration No. | Date | Secured Creditor | Collateral |
|-------------------------|-------------------|--|---|
| 20210223 1936 1531 4289 | February 23, 2021 | Royal Bank of Canada 36 York Mills Road, 4 th Floor Toronto, ON M2P 0A4 | Inventory, Equipment, Accounts, Other, Motor Vehicle Included |

(b) CNS Iron Fabrication Ltd.

| Registration No. | Date | Secured Creditor | Collateral |
|-------------------------|------------------|--|---|
| 20181001 0906 1219 2841 | October 1, 2018 | TD Auto Finance (Canada) Inc. PO Box 4086, Station A Toronto, ON M5W 5K3 | 2018 Ram, Model 1500 VIN: 1C6RR7FT8JS219647 |
| 20181009 0900 1219 3335 | October 1, 2018 | TD Auto Finance (Canada) Inc. PO Box 4086, Station A Toronto, ON M5W 5K3 | 2018 Jeep Wrangler JP VIN: 1C4HJXEG6JW 143922 |
| 20190703 1941 1531 8515 | July 3, 2019 | Royal Bank of Canada 36 York Mills Road, 4 th Floor Toronto, ON M2P 0A4 | Inventory, Equipment, Accounts, Other, Motor Vehicle Included |
| 20210129 1444 1530 1562 | January 29, 2021 | Royal Bank of Canada 36 York Mills Road, 4 th Floor Toronto, ON M2P 0A4 | Inventory, Equipment, Accounts, Other, Motor Vehicle Included |

| Registration No. | Date | Secured Creditor | Collateral |
|-------------------------|-----------------|--|--|
| 20210331 1047 6083 9592 | March 31, 2021 | Salvatore Castelli, Jr. 22 Dianawood Ridge Woodbridge, ON L4L 6X9 | Inventory, Equipment, Accounts, Other, Motor Vehicle Included |
| 20210331 1048 6083 9594 | March 31, 2021 | Congetta Bove 13 Doctor Reynar Road Caledon, ON L7E 4H3 | Inventory, Equipment, Accounts, Other, Motor Vehicle Included |
| 20210823 1517 1532 8266 | August 23, 2021 | Canadian Dealer Lease Services Inc. 372 Bay Street, Suite 1800 Toronto, ON M5H 2W9 Bank of Nova Scotia – DLAC 44 King Street West Toronto, ON M5H 1H1 | 2021 Volvo, XC60 VIN: LYVBR0DK6MB817265 |
| 20211008 1226 1532 2196 | October 8, 2021 | Royal Bank of Canada 36 York Mills Road, 4 th Floor Toronto, ON M2P 0A4 | Accounts and Other |
| 20211008 1233 4085 8252 | October 8, 2021 | Royal Bank of Canada 36 York Mills Road, 4 th Floor Toronto, ON M2P 0A4 | Inventory and Other |

- 3.2.3** The PPSA database shows TD Auto Finance (Canada) Inc. as registered against a 2018 Ram 1500 and 2018 Jeep Wrangler JP. According to Castelli and Bove, these vehicles were paid off in April 2021. The Receiver has not taken possession of these vehicles, and neither are subject to the Transaction. The Receiver has asked Castelli and Bove to Provide further particulars regarding the vehicles and whether these vehicles remain CNS property.
- 3.2.4** Canadian Dealer Lease Services Inc. is registered against a 2021 Volvo XC60. CNS executed a 48-month lease agreement with Volvo Metro West on June 29, 2022 (the “**Volvo Lease**”). The Volvo Lease and ownership of the Volvo were assigned to CDSL at the time of execution. CDSL registered its security pursuant to the terms of the Volvo Lease and in accordance with PPSA on July 2, 2021 (“**July Registration**”). On August 23, 2022 CDSL registered a second charge against the Volvo (“**Second Registration**”). For reasons unknown to the Receiver, on May 3, 2022, CDSL discharged the July Registration.
- 3.2.1** In the Receiver’s experience, vehicle lessors tend to obtain Purchase Money Security Interest (“**PMSI**”) in leased or financed collateral to protect their interest against competing creditor claims. PMSI holders enjoy a priority claim that ranks ahead of all other secured claims in the same personal property of a debtor. Section 33(2) of the PPSA outlines the requirements to establish valid and enforceable PMSI. Among other things, 33(2) requires a creditor to register their security in the PPSA registry within 15 days after i) the debtor obtained possession of the collateral; or ii) a third party, at the request of the debtor, obtained possession of the collateral.
- 3.2.2** MTO records indicate the Volvo was and has remained in CNS’s possession since June 28, 2019.
- 3.2.3** Leners reviewed CDSL’s lease agreement and registrations and determined CDSL’s PMSI in the Volvo lapsed when the July Registration was discharged on May 3, 2022.
- 3.2.4** Based on the information it has received from CDSL to date, the Receiver is not satisfied CDSL’s claim creates a perfected PMSI in the Volvo and will notify CDSL of same.
- 3.2.5** Where no PMSI claim exists in respect of personal property, the date of a perfected security interest determines the priority of personal property claims. Accordingly, it’s the Receiver’s position that

CDLS does not hold a valid PMSI and as a result, its claim in the Volvo is subordinate to the Bank's prior ranking CNS GSA registration. As a result, the Receiver is of the view the Volvo is, for the purpose of the Transaction, a 'Purchased Asset' that would vest in SP Steel if the Transaction is approved.

- 3.2.6** Based on the foregoing, RBC holds the first in time registration under the PPSA against CNS and Holdings. As discussed above, there will be a shortfall to RBC under its security if the Transaction is approved and completed.

4.0 Statement of Receipts and Disbursements

- 4.1.1** **Appendix F**, attached, is a summary of the Receiver’s Statement of Receipts and Disbursements (“**R&D**”) for the period May 13 to June 30, 2022.
- 4.1.2** The Receiver generated receipts of \$853,797 from accounts receivable collections.
- 4.1.3** The Receiver has made disbursements of \$243,147 primarily for wages, employee source deductions and operational expenses.
- 4.1.4** The Receiver has net receipts remaining in the receivership estate account of \$480,400.
- 4.1.5** The R&D includes the professional fees discussed in Section 4.0 of this report.
- 4.2** **Projected Statement of Receipts and Disbursements if Transaction Completed**
- 4.2.1** The Receiver has included in the Confidential Supplement its Projected Statement of Receipts and Disbursements if the Transaction is completed.

5.0 Receiver and its Counsel's Accounts

- 5.1.1** As required in the Initial Order, the Receiver is seeking the approval of its accounts and the accounts of its legal counsel for the receivership period to date.
- 5.1.2** The Receiver has submitted one invoice of \$85,000.00, inclusive of disbursements and before HST, for the period May 13, 2022 to June 17, 2022. The invoice, together with the Receiver's affidavit of verification of fees, is attached as **Appendix G**.
- 5.1.3** Lerner's has submitted two invoices as follows:

| Invoice Date | Period | Amount |
|---------------------|-----------------------------------|---------------|
| May 19, 2022 | May 10, 2022 through May 13, 2022 | \$4,497.68 |
| June 21, 2022 | May 13 through June 10, 2022 | \$29,702.61 |

The invoices, together with Lerner's affidavit of verification of fees, are attached as **Appendix H**.

- 5.1.4** It is the Receiver's opinion that the Professional Fees are fair and reasonable and justified in the circumstances and accurately reflect the work done by the Receiver and Lerner's in connection with the receivership during the relevant periods. The Receiver recommends approval of the Professional Fees by the Court.

6.0 Recommended Distribution

6.1 Canada Revenue Agency

- 6.1.1** As discussed earlier in this report, unpaid source deductions and HST are estimated to be approximately \$200,000. HST and source arrears are considered deemed trust property claims and rank ahead of all other creditor claims in respect of the Companies personal property.
- 6.1.2** The Receiver proposes to holdback \$200,000 (the “**CRA Reserve**”) from distribution pending conclusion of the audits. In the event CRA’s deemed trust claim is less than the CRA Reserve, residual monies after payment of CRA’s claim will be considered surplus property proceeds available to secured creditors.
- 6.1.3** Should CNS become bankrupt, either by voluntary assignment or application for a Bankruptcy Order, the priority for HST debt will be reversed and become subordinate to secured creditor claims.

6.2 The Royal Bank of Canada

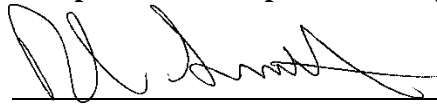
- 6.2.1** The Receiver’s proposed distribution will be comprised of net receipts from accounts receivable collections and sale proceeds from the Transaction, if approved by the Court. The Assets included in the Transaction consist of the owned machinery, equipment, vehicles and furniture and CNS and CNS’ rights, if any, in open purchase orders. The Assets do not include any personal property which the Receiver is aware may be subject to PMSI claims.
- 6.2.2** The Companies have provided the Bank with general security over all undertakings and present and after acquired personal property.
- 6.2.3** As discussed earlier in this report, Lerner’s has reviewed the Bank’s security documents and confirmed the Bank has a valid and perfected security interest in all the assets and undertakings of the Companies, subject to the customary assumptions and qualifications expressed in the security opinion. A copy of Lerner’s May 30, 2022 security opinion (“**Security Opinion**”) is attached at **Appendix I**.
- 6.2.4** With the exception of the CRA deemed trust discussed above, the Receiver is not aware of any charges in priority to RBC.
- 6.2.5** If the Transaction is approved and closes as intended, the Receiver proposes to make a current interim distribution to RBC of the proceeds remaining in the receivership estate net of the CRA Reserve and payment of all costs and expenses, including the Professional Fees discussed in Section 4.0 above. Details of the Receiver’s proposed interim distribution to RBC is included in the Confidential Supplement.
- 6.2.6** As discussed above, RBC is the only creditor with an economic interest in the personal property of CNS and Holdings. Until its claim is satisfied in whole, no other creditor stands to benefit from the proceeds of personal property realizations. Based on the foregoing, the Receiver proposes to pay future receivership estate funds, net of CRA’s deemed trust claim and holdbacks as appropriate for ongoing professional fees, costs and expenses, to RBC. These distributions will be reported to the Court at future court attendances and will remain subject to Court Approval.

7.0 Order Sought

7.1.1 We submit this First Report to the Court and respectfully request that the Court make an order as requested in paragraph 1.2.1 above.

All of which is respectfully submitted this 30th day of June, 2022.

**MNP Ltd.,
in its capacity as Court Appointed Receiver of
CNS Iron Fabrication Ltd. and Claeys Family Holdings Inc.
and without personal or corporate liability**



Per: Robert W. Smith CPA, CA, CIRP, LIT
Senior Vice President

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