

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

**IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF
COMPROMISE OR ARRANGEMENT OF
BARZEL INDUSTRIES CANADA INC.**

Applicant

**AMENDED FOURTH REPORT OF THE MONITOR
DATED OCTOBER 30, 2009**

INTRODUCTION AND OVERVIEW OF CCAA PROCEEDINGS TO DATE

1. On September 15, 2009, Barzel Industries Canada Inc. ("**Barzel Canada**") filed for and obtained protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**"). Pursuant to the Order of this Honourable Court dated September 15, 2009 (the "**Initial Order**"), Deloitte & Touche Inc. ("**Deloitte**") was appointed as the Monitor of the Applicant (the "**Monitor**") in the CCAA proceeding. A copy of the Affidavit of Karen Narwold sworn September 15, 2009 and filed as part of the Application Record of the Applicant is attached as Exhibit "A" to this fourth report of the Monitor (the "**Fourth Report**"). A copy of the Initial Order, as entered, is attached as Exhibit "B" to this Fourth Report.
2. On the same day, Barzel Canada's parent, Barzel Industries Inc. ("**BII**") and certain affiliated U.S. entities including Barzel Holdings Inc., Barzel Finco Inc. ("**Barzel Finco**"), Barzel Industries U.S. Inc., American Steel and Aluminum Corporation, Nova Tube and Steel Inc., Novamerican Tube Holdings, Inc. and Nova Tube Indiana, LLC (collectively, the "**U.S. Debtors**") filed voluntary petitions under chapter 11 of title 11 of the *United States Code*, 11 U.S.C. §101-1532 (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**").

3. The U.S. bankruptcy proceedings were recognized by this Honourable Court as a “foreign proceeding” under s. 18.6 of the CCAA in a companion order entered on September 15, 2009.
4. Collectively, Barzel Canada and the U.S. Debtors are known as the “Barzel Group”.
5. On September 14, 2009, Barzel Canada and the U.S. Debtors entered into an asset purchase agreement (as amended on September 30, 2009, the “**APA**”) with Chriscott USA Inc. and 4513614 Canada Inc. (collectively “**Metco**”) for the sale of substantially all of the assets, property and undertaking of the Barzel Group. The APA contemplates that, subject to court approval, the terms contained therein will serve as a “stalking horse” bid in a sale process (the “**Sale Process**”) to be conducted according to certain bidding procedures (the “**Sale Procedures**”).
6. Deloitte, in its capacity as Proposed Monitor, provided this Honourable Court with a report dated September 15, 2009 (the “**Pre-Filing Report**”) that contained information on, *inter alia*, the causes of the Applicant’s insolvency, an overview of the Applicant’s financial position, an overview of Barzel Canada’s 13-week cash flow forecast, and the Proposed Monitor’s associated conclusions and recommendations. A copy of the Pre-Filing Report (without exhibits) is attached as Exhibit “C” to this Fourth Report.
7. On September 18, 2009, the Applicant filed a motion record with this Honourable Court in connection with an anticipated motion seeking an order to compel ArcelorMittal Dofasco Inc. (“**Dofasco**”) to provide product to the Barzel Group in compliance with the terms of the Initial Order and pursuant to the terms of a Replenishment Agreement between BII and Dofasco (the “**Dofasco Motion**”). In connection with the Dofasco Motion, Deloitte filed its first report in its capacity as Monitor (the “**First Report of the Monitor**”) to provide this Honourable Court with additional information about the supply of materials by Dofasco to the Barzel Group.
8. On September 18, 2009, Mr. Justice Morawetz entered an Order on consent (the “**Order on Consent**”) compelling Dofasco to immediately supply already manufactured product to the Barzel Group without prejudice to the rights of either Dofasco or the Applicant to take any

position in respect of rights or obligations under the Replenishment Agreement. Subsequently, the Barzel Group settled matters with Dofasco in connection with the Replenishment Agreement and on October 26, 2009, Mr. Justice Morawetz entered an Order on consent dismissing the Dofasco Motion without costs.

9. On October 6, 2009, Mr. Justice Morawetz made an Order (the “**Sale Procedures Order**”): (i) approving the Sale Procedures; (ii) approving the APA as the “stalking horse” bid for the purpose of conducting the Sale Process; and (iii) approving the Termination Fee and Expense Reimbursement (as defined in the APA). A copy of the Sale Procedures Order is attached as Exhibit “D” to this Fourth Report. The U.S. Debtors also received final approval of the DIP Credit Agreement from the U.S. Court at that time. The Sale Procedures specified a bid deadline of October 26, 2009, an auction date of October 28, 2009 (if qualified bids were received) and a joint hearing of the sale approval motion on October 30, 2009. A copy of the Affidavit of Karen Narwold sworn September 17, 2009, without exhibits, that was filed by the Applicant in connection with the motion returnable October 6, 2009 is attached as Exhibit “E” to this Fourth Report.
10. The Monitor filed its second report in its capacity as Monitor (the “**Second Report of the Monitor**”) in connection with a joint hearing held before this Honourable Court and the U.S. Court on October 6, 2009. A copy of the Second Report of the Monitor, without exhibits, is attached as Exhibit “F” to this Fourth Report.
11. On October 15, 2009, the Applicant brought a motion before this Court seeking, among other things, approval of a sale of its interest in a joint venture that owns a manufacturing facility at LaSalle, Quebec (the “**Delta Tubes Motion**”). The motion also sought an extension of the initial 30-day stay of proceedings (the “**Stay Period**”), approval of a retention incentive program (the “**RIP**”) and amendment of the Initial Order, *nunc pro tunc*, to refer to the DIP Credit Agreement, as amended. The Monitor filed its third report dated October 14, 2009 (the “**Third Report of the Monitor**”) in connection with the Delta Tubes Motion. By Order dated October 15, 2009 (the “**Delta Tubes Vesting Order**”), this Court granted the relief requested by the Applicant in the Delta Tubes Motion. On October 22, 2009, the sale of the interest in the joint venture closed and the Monitor’s Certificate

confirming the sale was delivered. A copy of the Monitor's Certificate is available on the website of the Monitor at: www.deloitte.com/ca/barzel

12. Since October 6, 2009, Houlihan Lokey Howard and Zukin Capital Inc. ("**Houlihan**"), as financial advisor to the Barzel Group, has solicited offers for substantially all of Barzel Canada's assets pursuant to the terms of the Sale Procedures. In advance of the Bid Deadline (as defined in the Second Report of the Monitor) on October 26, 2009 the Barzel Group received four bids that, collectively, constituted an offer for substantially all of the assets of the Barzel Group (collectively, the "**Consortium Bid**"). On October 28, 2009, the Barzel Group conducted an auction (the "**Auction**") at the offices of Kelley Drye & Warren LLP, counsel for the U.S. Debtors, in New York, New York. A bid by Metco in the amount of \$74.5 million plus a payment of \$500,000 to the Unsecured Creditors' Committee ("**UCC**") was determined by the Barzel Group, with the consent of the DIP Lenders (as defined in the Second Report of the Monitor) and upon consultation with the Monitor and the UCC, to be the highest and best bid.
13. As noted above, a joint hearing was scheduled for October 30, 2009 for the purposes of approving a sale to the highest and best bidder to emerge in the Sale Process. Accordingly, the Applicant will bring a motion (the "**Sale and Vesting Motion**") before this court on October 30, 2009 seeking an Order approving the sale to and vesting of substantially all of its assets in Metco. This Fourth Report is filed in connection with the motion returnable October 30, 2009.

PURPOSE

14. The purpose of this Fourth Report is to:
 - Provide information to the Court on the conduct of the Sale Process;
 - Provide information to the Court on the conduct of the Auction on October 28, 2009;
 - Provide updated information on the activities of the Monitor;

- Recommend that this Honourable Court make an order:
 - Approving the sale to and vesting of the assets of Barzel Canada that are the subject of the Metco Revised Bid (as defined herein) in and to Metco;
 - Approving the activities of the Monitor as set out and described in the Third Report.

TERMS OF REFERENCE

15. In preparing this Fourth Report, the Monitor has relied upon unaudited financial information, Barzel Canada's books and records, financial information prepared by Barzel Canada and its advisors, and discussions with management of Barzel Canada and management of the Barzel Group including Mr. Wayne Day, Chief Restructuring Officer of the Barzel Group. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information and, accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in this report.
16. Unless otherwise stated, all monetary amounts contained herein are expressed in US dollars.
17. Capitalized terms not defined in this Fourth Report are as defined in the Second Report.

ASSET PURCHASE AGREEMENT AND SALE PROCEDURES

18. As described in greater detail in the Second Report of the Monitor, in the months prior to September 15, 2009, Houlihan, as financial advisor to the Barzel Group, conducted an extensive marketing and sale process in an effort to identify investors in and/or acquirers of the Barzel Group and its assets. Out of a group of 252 potential strategic and financial investors and/or buyers, 72 parties executed confidentiality agreements and thirteen parties submitted offers to pursue transactions. Eight offers were received in a final round of bidding ending August 12, 2009, and Houlihan worked with four of those prospective

purchasers and/or investors to secure financing and develop transaction documents. The Board of Directors of BII identified the Metco bid as the highest and best offer based on a number of considerations, including price.

19. On September 14, 2009, in anticipation of its imminent filing for protection from its creditors (and consistent with the terms of the DIP Credit Agreement) BII and certain other named subsidiaries (including Barzel Canada) and Metco entered into the APA. The APA sets forth the terms of an offer (the “**Stalking Horse Offer**”) for the purchase and sale of substantially all of the Barzel Group’s assets, including the assets of Barzel Canada. Metco was unwilling to enter into a sale transaction unless the Barzel Group was under bankruptcy protection, and the parties to the APA agreed that Metco would serve as the stalking horse purchaser. The Monitor is advised that the DIP Lenders support the Metco offer as contained in the APA. The APA, without exhibits, is attached at Tab E to the Motion Record of the Applicant filed September 17, 2009.
20. On September 30, 2009, the parties to the APA entered into a non-material amendment (“**Amendment #1**”) to the APA. Among other things, Amendment #1 has the effect of transferring to Metco (or the successful bidder in the Auction) as Purchased Assets post-filing purchase orders issued by any of the Barzel Group entities to Dofasco, North Star BlueScope Steel LLC or Severstal North America, Inc. (Sparrows Point) for the purchase of steel and other metals not yet delivered to any Barzel Group entity as of the Closing Date (as defined in the APA). A copy of Amendment #1 is attached as Exhibit “F” to the Motion Record of the Applicant filed in connection with the motion returnable October 15, 2009.

CONDUCT OF SALE PROCESS

21. The Monitor is advised by Houlihan that, immediately after entry of the Sale Procedures Order, Houlihan initiated the Sale Process, which was intended to attract a higher and better offer than the one contained in the APA. In connection with the Sale Process, Houlihan prepared a list of prospective purchasers or investors (the “**Marketing List**”) to be approached that included: i) the 72 parties that had signed confidentiality agreements as part of the pre-filing sale process; ii) approximately one dozen entities that had contacted Houlihan about the Barzel assets in the period between the filing date and the entry of the

Sale Procedures Order; and iii) approximately twenty additional entities that had expressed interest in acquiring parts of the Barzel business during the pre-filing sale process. Each of the parties on the Marketing List received an email containing a summary of the stalking horse bid, a sale timeline and an updated summary of the Barzel Group business. Houlihan followed up with multiple phone calls to each of those prospective bidders.

22. Pursuant to the terms of the Sale Procedures, upon execution of a confidentiality agreement and proof of financial wherewithal, prospective bidders were to be provided with designated information and financial data with respect to the Purchased Assets. The Monitor is advised by Houlihan that altogether, 88 parties (72 parties that signed confidentiality agreements in the pre-filing sale process and 16 additional parties that signed confidential agreements during the Sale Process) were granted access to a data room where they were able to review certain financial and operational information about the Barzel Group and its business. Of those 88 prospective bidders, approximately six participated in facility tours and five conducted discussions with management. In addition, Houlihan engaged in multiple discussions with many of the interested bidders regarding background on the business and potential terms of acquisition. The Monitor is advised by Houlihan that although there was strong interest in components of the Barzel Group business, Houlihan did not identify any individual bidder in the Sale Process that was interested in acquiring substantially all of the assets of the Barzel Group as a whole, other than Metco.
23. The Monitor is advised by Houlihan that before the Bid Deadline at noon on October 26, 2009, the Barzel Group received a total of four bids by entities seeking to purchase certain separate components of the Barzel Group business. The Barzel Group aggregated the four bids (as the Consortium Bid) to compete against the Metco bid. The Consortium Bid included the following four component bids:
 - 1) an offer by Tyco International Management Company, on behalf of itself and its affiliate, Allied Tube & Conduit (collectively, “Tyco” and the “Tyco Bid”) for: i) assets related to Barzel Group’s operations in Morrisville, Pennsylvania; and ii)

equipment located at the Barzel Group's facilities in Mississauga, ON, Baie D'Urfe, QC and Jeffersonville, Indiana for a total purchase price of \$34.1 million;

- 2) an offer by Samuel Manu-Tech Inc. ("**Samuel**" and the "**Samuel Bid**") to acquire Barzel Canada's processing business assets located at Stoney Creek, ON for a total purchase price of \$9.75 million;
- 3) an offer by Lakeside Steel Inc. ("**Lakeside**" and the "**Lakeside Bid**") to acquire certain components and assets of the Barzel Group's business in Jeffersonville, Indiana; Portland, Maine; Harrisburg, Pennsylvania; Auburn, Massachusetts; Ashland, Virginia; Syracuse, New York; Mississauga, ON; Baie D'Urfe, QC; St. Hubert, QC; and Shawinigan, QC for a total purchase price of \$19.45 million; and
- 4) an offer by North American Steel Equipment Company Ltd. ("**North American Steel**" and the "**North American Steel Bid**") to acquire inventory, equipment, building and land located at i) 553 Leon Harmel Rollforming Division and ii) 424 Saint Vallier Racking Division in Granby, QC for a total purchase price of \$4.9 million.

Collectively, Tyco, Lakeside, Samuel and North American Steel are referred to as the "**Consortium Bidders**".

24. Taken together, the Consortium Bid made up an offer for the Purchased Assets (as defined in the APA). The collective purchase price offered in the Consortium Bid was \$68.2 million.
25. Upon receipt of the Consortium Bid, the Barzel Group and its counsel, in consultation with the Monitor, the DIP Lenders and the UCC, reviewed the terms of the Consortium Bid, including the terms of each of the individual bids comprising the Consortium Bid, to determine whether the Consortium Bid was a qualified bid (a "**Qualified Bid**") for the purposes of participating in the Auction. In order to be a Qualified Bid, the Consortium Bid had to collectively include the following:

- 1) an offer to acquire the Purchased Assets (as defined the APA) accompanied by an agreement marked to show any proposed amendments and modifications to the APA;
 - 2) agreement that the potential bidder's offer is binding and irrevocable until 48 hours after the earlier of: i) the closing of the sale of the Purchased Assets; ii) the withdrawal of the Purchased Assets for sale; or iii) 30 days after the sale hearing;
 - 3) a purchase price exceeding the Purchase Price under the APA by at least \$500,000 plus the Termination Fee and Expense Reimbursement (or a total of \$3.2 million);
 - 4) a board resolution or similar document demonstrating authority to make such bid;
 - 5) disclosure of the identity of each entity participating in the bid;
 - 6) a certified cheque or wire transfer in an amount equal to 10% of the aggregate purchase price (the "**Good Faith Deposit**"); and
 - 7) written evidence of financial ability to consummate the sale transaction.
26. The Barzel Group noted that the North American Steel Bid was received after the Bid Deadline and did not contain a firm financing commitment. The Monitor discussed these issues with the Barzel Group and its counsel and Houlihan.
27. The Monitor is advised by Houlihan that in the days leading up to the Bid Deadline, Houlihan engaged in discussions with Tyco, Lakeside, Samuel and North American Steel and their respective counsel. The Barzel Group was aware of an impending offer (in substance if not in form) in advance of the Bid Deadline, including knowledge of terms of: i) purchase price; and ii) assets to be acquired for each of the four bids. The Tyco Bid, the Lakeside Bid and the Samuel Bid were all received in advance of the Bid Deadline. Although the Barzel Group was aware that North American Steel intended to submit a bid for the assets relating to Barzel Canada's business at Granby, Quebec and that the North American Steel Bid would be a part of the Consortium Bid, the North American Steel Bid was not received until several hours after the Bid Deadline. Counsel to the U.S. Debtors

advised the Monitor that this delay was caused in part by confusion on the part of North American Steel and its counsel as well as technical difficulties.

28. With respect to the financing uncertainties relating to the North American Steel Bid, the Monitor was advised by Barzel's U.S. Counsel that Houlihan had determined in its judgment that the Consortium Bidders would be able to finance the acquisitions on the terms contained in the Consortium Bid, including North American Steel. When the Consortium Bid was received, the Barzel Group, in consultation with the Monitor, the DIP Lenders and the UCC considered whether: i) the Consortium Bid could be considered a Qualified Bid because of technical non-compliance with the terms of the Sale Procedures; and ii) it would be prudent to proceed with an Auction where financing for one of the parties was uncertain.
29. After considering each of the Consortium Bids and the issues noted above, the Barzel Group concluded that each of the four bids that made up the Consortium Bid fulfilled in substance the criteria for Qualified Bids set forth in the Sale Procedures because: i) each bid included an offer to acquire certain of the Purchased Assets (and, collectively, the Consortium Bid was an offer for all of the Purchased Assets); ii) each bid was accompanied by a modified version of the APA; iii) the aggregate purchase price of the Consortium Bid exceeded the Purchase Price under the APA by at least \$500,000 plus the Termination Fee and Expense Reimbursement; iv) each bid was accompanied by a board resolution or similar document; v) each bid disclosed the identity of each participating entity; vi) each bid was accompanied by a Good Faith Deposit in the required amounts; and vii) each bid included some evidence of financial ability to consummate the sale transaction, and Houlihan was confident that financing could be obtained for all four Consortium Bidders.
30. The Monitor advised the Barzel Group and the DIP Lenders that the Canadian Court would require evidence of procedural fairness with respect to the Sale Procedures and that compliance therewith was important. U.S. Counsel for the Barzel Group advised the Barzel Group and the Monitor that based on: i) the due diligence performed by Houlihan and Houlihan's judgment regarding the North American Steel financing and its ability to close; and ii) other than as noted above, North American Steel's timely compliance with the

conditions set out in Sales Procedure Order, including the submission of a term sheet and payment of its good faith deposit, the Barzel Group could accept the Consortium Bid as a Qualified Bid and commence the Auction in accordance with the Sales Procedures Order. On this basis and on the advice obtained from U.S. Counsel to the Barzel Group, the Monitor determined that there was procedural fairness and that the Barzel Group's determination that the Consortium Bids, including the North American Steel Bid, were Qualified Bids for the purposes of the Auction was appropriate.

31. By email dated October 27, 2009 at 3:47 p.m. from BII's U.S. counsel, the Barzel Group announced that each of the bids submitted by Tyco, Lakeside, Samuel and North American Steel was a Qualified Bid and that each of Tyco, Lakeside, Samuel and North American Steel were Qualified Bidders (as defined in the APA) and eligible to participate at the Auction on October 28, 2009. A copy of the email is attached as Exhibit "G" to this Fourth Report.
32. Although the Barzel Group in consultation with the DIP Lenders, the Monitor and the UCC determined that the Consortium Bid and each of the individual bids submitted by Tyco, Lakeside, Samuel and North American Steel were Qualified Bids for the purposes of the Auction, each bid contained modifications to the APA that would have to be addressed in advance of any determination that the Consortium Bid could be the highest and best bid. By email dated October 27, 2009 at 7:16 p.m., counsel to the U.S. Debtors advised counsel to each of the four bidders that made up the Consortium Bid that:
 - 1) certain issues remained outstanding with respect to each of the bids, including the certainty of the financing commitment for the North American Steel Bid;
 - 2) there was a potential *Competition Act*,¹ issue related to the Samuel acquisition of the assets at Stoney Creek, Ontario and that the Barzel Group could not accept any Qualified Bid as the Successful Bid if there were greater contingencies than those contained in the APA; and

¹ R.S., 1985, c. C-34, s. 1; R.S., 1985, c. 19 (2nd Supp.), s. 19. Samuel and Barzel currently own the only two "pickling" facilities in Ontario, and those facilities are adjacent to one another in Stoney Creek, ON. Counsel for Barzel Canada, Samuel and the Monitor were concerned that acquisition of the Stoney Creek facility by Samuel might trigger *Competition Act* problems.

- 3) any transaction involving any one of the individual transactions contemplated in the Tyco Bid, the Lakeside Bid, the Samuel Bid and the North American Steel Bid would be expressly conditioned upon a simultaneous closing of each component transaction that made up the Consortium Bid.

A copy of the email is attached as Exhibit "H" to this Fourth Report.

AUCTION

33. At 10:00 a.m. on Wednesday, October 28, 2009 the Barzel Group and all of the Qualified Bidders in addition to Houlihan, the Monitor, the UCC and the DIP Lenders convened at the offices of Kelley, Drye and Warren LLP, counsel for the U.S. Debtors, in New York, New York for the Auction.
34. Because there were outstanding issues relating to the terms of the individual bids that made up the Consortium Bid, the Barzel Group, in consultation with the Monitor and the UCC, delayed the official start of the Auction in an effort to clarify issues with each of Tyco, Samuel, Lakeside and North American Steel. More specifically, the Barzel Group advised that the Consortium Bid could not be the best and highest bid until certain issues, including the following, were addressed to the satisfaction of the Barzel Group and its counsel:
 - 1) there was no guarantee that the Consortium Bids would close at the same time, and this lack of certainty reduced the value of the Consortium Bid as compared to the Metco Bid;
 - 2) there was an overlap of assets to be purchased by some of the Consortium Bidders;
 - 3) there was disagreement over purchaser assumption of obligations relating to accrued vacation pay and, in respect of employees in the U.S., post-employment medical insurance ("COBRA") coverage for severed employees;
 - 4) the aggregate cap on cure costs was less than the amount offered in the APA;
 - 5) there was disagreement relating to acceptable working capital cost adjustments;

- 6) certain of the Consortium Bidders' asset purchase agreements contained bid protections;
 - 7) there was uncertainty regarding the timing of the designation of certain of the executory contracts to be assumed;
 - 8) there was a potential *Competition Act* issue relating to the acquisition of the Stoney Creek, ON business by Samuel; and
 - 9) the financing of at least one of the bids was unclear.
35. Throughout the course of the day on October 28, the Barzel Group, the Monitor, the DIP Lenders and their respective counsel, along with Metco, the Consortium Bidders and the UCC engaged in lengthy and numerous discussions regarding the terms and conditions of the various bids in an attempt to clarify, narrow and resolve the outstanding issues in a timely manner.
36. On October 28, 2009, as the parties were in discussions to clarify outstanding issues, counsel to the Monitor, received a letter from counsel to United Steelworkers stating that:
- 1) the United Steelworkers take the position that the purchaser of the Barzel business is a successor employer under the Quebec Labour Code and therefore steps into the shoes of the vendor and assumes all obligations under the collective agreement; and
 - 2) requesting that the position of the United Steelworkers be made known to the bidders at the Auction.

A copy of the letter is attached as Exhibit "I" to this Fourth Report.

37. In advance of the Auction, Canadian counsel to the Monitor advised each of the Qualified Bidders and their respective counsel regarding the United Steelworker position.
38. The Auction commenced at 10:18 p.m. In part as a result of the lengthy discussions regarding the above-referenced issues relating to the Consortium Bid, the Barzel Group

with the consent of the DIP Lenders and in consultation with the UCC determined pursuant to Article VIII of the Sale Procedures that the Stalking Horse Offer was the highest and best bid for the purposes of opening bidding at the Auction.

39. U.S. Counsel to the Barzel Group noted on the record that certain of the issues in respect of the Consortium Bids had been resolved over the course of the day and that specifically:

- 1) all of the sale transactions would close simultaneously on or before November 13, 2009;
- 2) there would be no overlap of assets as between the Consortium Bids;
- 3) certain of the Consortium Bidders would offer employment to specified numbers of Barzel Group employees and each of the Consortium Bidders would assume liability for accrued vacation pay and, in respect of U.S. employees, post-employment medical insurance (COBRA) payments in respect of employees associated with its respective purchased assets;
- 4) the aggregate cure cost obligation of the Barzel Group would be up to \$30,000 when taking the Consortium Bids together;
- 5) the aggregate working capital adjustment would be comparable to the one provided for in the APA;
- 6) the objectionable bid protections would be eliminated;
- 7) the designated date for assumption of transferred executory contracts would be on or before October 30, 2009;
- 8) the representations and warranties would be the same as in the APA; and
- 9) the closing would not be conditioned on any *Competition Act* compliance.

40. Metco then noted on the record that it objected to the designation of the Consortium Bid as a Qualified Bid because, among other reasons, North American Steel had not demonstrated a firm financing commitment. Metco also stated that, notwithstanding its participation in

the Auction, it reserved its right to take the position with the Court that the Consortium Bid was not a Qualified Bid. The Barzel Group; i) noted this reservation; ii) advised that it had satisfied itself that North American Steel had the financial ability to close; and iii) agreed that Metco's participation in the Auction would not constitute a waiver of its reservation.

41. At the Auction, Tyco, Lakeside and North American Steel (the "**Revised Consortium Bidders**") submitted an offer (the "**Revised Consortium Bid**") to acquire the assets that are the subjects of their respective asset purchase agreements for \$68.2 million. Notably, the Stoney Creek, ON assets that raised *Competition Act* concerns were excluded. As a result, the Revised Consortium Bid represented an additional \$9.5 million of potential gross proceeds to the Barzel Group (as this was the expected purchase price of the Stoney Creek assets proposed by Samuel). The Revised Consortium Bid provided that the condition relating to *Competition Act* approvals would be removed if the Barzel Group gave a representation that: i) the aggregate book value of the Canadian assets acquired did not exceed CDN\$70 million; and ii) the aggregate revenue associated with or derived from the assets did not exceed CDN\$70 million. The Barzel Group, after consultation with the DIP Lenders and the UCC, advised the Consortium Bidders that this condition was unacceptable. The Consortium Bidders then removed the *Competition Act* condition from the Revised Consortium Bid.
42. Thereafter, Metco submitted a revised bid (the "**Metco Revised Bid**") in the amount of \$74.5 million on the same terms and for the same Purchased Assets as the Stalking Horse Offer other than with respect to the Purchase Price and the timing of closing. The Metco Revised Bid also contained a \$500,000 recovery to the unsecured creditors in exchange for a full and global release binding on the U.S. Debtors and the UCC with respect to any and all avoidance or other causes of action that could be brought against Metco and its affiliates in respect of any prior transactions or for any other reason other than arising out of the APA. Metco also requested a similar release from the DIP Lenders.
43. As a condition of its bid, however, Metco stated that the Metco Revised Bid could not be used as the Next Best Bid (as described in Article IX of the Sale Procedures) in the event that it was not ultimately the Successful Bid.

44. The Barzel Group was not prepared to accept the Metco Revised Bid as the highest and best bid unless it could also be used as the Next Best Bid. After the Consortium Bidders confirmed on the record that the Revised Consortium Bid could serve as the Next Best Bid, the Barzel Group, with the consent of the DIP Lenders, determined that the Revised Consortium Bid was the best and highest bid at that point because: (i) the Metco Revised Bid could not be used as a Next Best Bid; and (ii) the Revised Consortium Bid excluded the Stoney Creek assets.
45. Upon further consideration, Metco reiterated its bid but resiled from its earlier position and indicated that its bid was subject to the Sale Procedures and, in particular, Article IX (which provision permitted the Barzel Group to designate the Next Best Bid), thereby removing its objection to using its bid as the Next Best Bid. At this point, the Barzel Group, in consultation with the UCC and the Monitor and at the direction of the DIP Lenders, determined that the Metco Revised Bid is the best and highest bid.
46. The Revised Consortium Bidders declined to submit an additional bid to respond to the Metco Revised Bid, and thus the Auction closed with the Metco Revised Bid as the Successful Bid and the Revised Consortium Bid as the Next Best Bid.
47. A copy of the Amended and Restated Asset Purchase Agreement that contains the terms of the Metco Revised Bid and a blackline to the APA are attached as Exhibit "J" to this Fourth Report. A copy of the transcript from the Auction is attached as Exhibit "K" to this Fourth Report.

USE OF SALE PROCEEDS

48. It is a term of the DIP Credit Agreement (as defined in the Second Report of the Monitor) that the total proceeds from the sale of the Purchased Assets (the "**Sale Proceeds**") be used to immediately pay down amounts drawn under the DIP Facility. As of the date of this report, the Canadian borrowings under the DIP Facility are approximately \$10.8 million.
49. The Monitor has advised the Purchaser, the DIP Lenders and the Applicant that it requires that a reserve of Sale Proceeds be maintained to satisfy:

- 1) any priority payables, the Directors Charge in the amount of CDN\$2.3 million and the Administration Charge in the amount of CDN\$1.0 million; and
 - 2) amounts reasonably expected to be incurred in connection with the administration of the wind down of the estate in Canada.
50. The Monitor is working with Barzel Canada to determine the amount of the Sale Proceeds that would be allocable to the Canadian assets to ensure that there are sufficient proceeds to satisfy this reserve. The Monitor has been provided with a initial allocation of the Purchase Price to the Canadian assets which appears to provide for sufficient proceeds to satisfy the reserve. However, as this allocation is based on certain assumptions relating to the value attributable to the working capital assets in Canada and the amounts outstanding under the DIP Facility, these amounts could change between the date of this report and the date of the closing of the Revised Metco Bid.
51. If the parties agree on the amount of the reserve, it is the parties' intention to attend on a motion before this Honourable Court before the closing of the Revised Metco Bid to advise of the Purchase Price allocation and the amount of the reserve. If the parties are not able to agree on an allocation and a reserve that is satisfactory to the Monitor, it is the Monitor's intention to seek the advice and direction of this Honourable Court with respect thereto before the closing of the transaction.

UPDATED CASH FLOW STATEMENT

52. In the Third Report of the Monitor filed October 14, 2009, the Monitor informed the Court that the Applicant updated its cash flow projections (the "**Updated Cash Flow Statement**") as of October 2, 2009 and projected that Barzel Canada would continue to have sufficient liquidity to continue to operate as a going concern during the Stay Period.
53. A comparison of the Applicant's actual performance against the Updated Cash Flow Statement since the Third Report of the Monitor shows:

- Collection of accounts receivable continued to have an unfavourable variance compared to forecast, resulting from lower sales throughout the CCAA proceeding and customers continuing to extend payment terms;
- Steel purchases continued to have a favourable variance compared to forecast, as Barzel Canada has significantly reduced steel purchases in its tube and pipe and processing facilities due to the Toll Processing Agreement associated with the Delta Tubes transaction;
- Operating costs, including utilities, consumables, plant projects, and IT and communications have a favourable variance compared to forecast as a result of lower processing at the plants;
- Payroll and benefits were lower than forecast due to terminations with the first three weeks of the CCAA proceeding; and
- As forecasted within the Updated Cash Flow Statement, \$4.5 million (\$4.7 million in proceeds from the sale of the interest in the Delta Tubes Joint Venture less taxes and legal fees) was used to pay down amounts outstanding under the DIP Facility, permanently reducing the commitment of the DIP Facility from \$30 million to \$25.5 million, which reduced the internal allocation of DIP proceeds available for the Canadian operations to \$20 million from \$24.5 million.

ACTIVITIES OF THE MONITOR SINCE THE THIRD REPORT

54. Since the Third Report of the Monitor filed October 14, 2009, the Monitor has engaged in the following activities:

- The Monitor reviewed the asset purchase agreement with respect to the sale of Barzel Canada's interest in the Delta Tubes Joint Venture and held discussions with Houlihan and Barzel Group management around the marketing efforts to sell the Delta Tubes Joint Venture. The Monitor reviewed the proposed use of the proceeds of sale to pay down the borrowing under the DIP Facility;

- The Monitor reviewed the Applicant's Updated Cash Flow Statement to assess the liquidity position over the extension of the Stay Period;
- The Monitor consulted with Houlihan, Barzel Group management and Wayne Day, the Barzel Group's CRO, concerning the conduct of the Sale Process with a view to being able to provide this Honourable Court with a summary thereof and recommendations in respect thereto;
- Consulted with Houlihan and the Barzel Group in their review of each of the Consortium Bids;
- Attended at the Auction on October 28, 2009 at the offices of Kelley, Drye and Warren LLP in New York, NY;
- Reviewed post-filing receipts and disbursements to ensure consistency between the Applicant's cash flows and the terms of the Initial Order of this Honourable Court;
- Responded to creditor queries and provided general information on the CCAA proceedings; and
- Prepared and filed the Third Report of the Monitor and this Fourth Report.

PPSA SUMMARIES AND REAL ESTATE SEARCH RESULT SUMMARIES

55. The Monitor has caused searches to be performed under the applicable statutes in all of the jurisdictions where Barzel Canada holds personal property. A summary of the results of those searches is attached as Exhibit "E" to the Third Report of the Monitor. The Applicants have informed the Monitor that only the registrations by the DIP Lenders, BNY Trust Company of Canada and Roynat Inc. relate to the Purchased Assets. The Roynat registration relates to a financing lease. None of the remaining registrations pertain to Purchased Assets. Of these, the Monitor understands that the leases either were repudiated by the Applicant (or the equipment returned or repossessed or otherwise acquired) or will be repudiated on or before Closing as Metco has advised the Applicant that it is not taking the underlying equipment.

56. The Applicant has caused sub-searches of the real property to be performed in each of the provinces where Barzel Canada owns real property. The Applicant has informed the Monitor that the registrations as reflected on Schedules "C" and "D" to the draft Approval and Vesting Order at Tab 2 of the Motion Record of the Applicant filed in connection with the motion returnable October 30, 2009 reflect all registrations on title to the relevant lands. The only claim on Schedule "C" to the Approval and Vesting Order to be expunged from title to the Real Property that is not a registration in favour of the DIP Lenders or pre-petition Secured Lenders is a lease between the City of Granby and Ogis Inc. The Applicant has informed the Monitor that this lease has expired and Ogis Inc. does not in any way occupy the relevant property in whole or in part.

MONITOR'S CONCLUSIONS AND RECOMMENDATIONS

57. The Monitor believes that the relief requested by the Applicant is reasonable in the circumstances for the following reasons:

- The Monitor has conducted discussions with the management of the Barzel Group and representatives of Houlihan and is satisfied that Houlihan carried out an extensive marketing campaign and thoroughly canvassed the market for both strategic and financial investors and acquirers;
- The Monitor has had discussions with the management of the Barzel Group and its CRO, Wayne Day, throughout the course of the Sale Process;
- The Monitor consulted with management of the Barzel Group, Houlihan and the DIP Lenders in the review of the bids received in advance of the Bid Deadline;
- The Monitor attended at the Auction and consulted with the Barzel Group, the DIP Lenders and the UCC regarding the Consortium Bid, the Revised Consortium Bid and the Metco Revised Bid;
- Based on discussions with Houlihan and U.S. counsel to the Barzel Group, the Monitor is satisfied that the Sale Process was conducted according to the terms of the Sale

Procedures and the Sale Procedures Order and that the Auction was conducted in good faith and in a commercially reasonable manner;

- Based on discussions with Houlihan and U.S. counsel to the Barzel Group, the Monitor is satisfied that there was no unfairness in the working out of the Sale Process; and
- The Monitor is advised that the DIP Lenders support the sale and vesting of substantially all of the assets of the Barzel Group, including the assets of Barzel Canada, in Metco on the terms set out in the Metco Revised Bid.

CONCLUSION

58. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court make the proposed order being requested by Barzel Canada.

All of which is respectfully submitted this 30th day of October 2009.

DELOITTE & TOUCHE INC.

In its capacity as Monitor of Barzel Industries Canada Inc.

Per:

A handwritten signature in black ink, appearing to be 'P. van Eyk', written in a cursive style.

Paul van Eyk, CA•CIRP, CA•IFA
Senior Vice President

IN THE MATTER OF the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended
AND IN THE MATTER OF a Plan of Compromise or Arrangement of Barzel Industries Canada Inc.

Court File No: 09-8363-00CL

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AMENDED FOURTH REPORT OF THE
MONITOR**

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