

Court File No.: 20-00647824-00CL

**HEMATITE GROUP**

**SECOND REPORT OF KPMG INC.,  
IN ITS CAPACITY AS MONITOR**

**October 9, 2020**

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**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  
HEMATITE HOLDINGS INC., HEMATITE MANUFACTURING INC.,  
HEMATITE INDUSTRIAL PRODUCTS INC., CANADIAN PAVACO INC.,  
PAVACO HOLDINGS U.S. INC., HEMATITE, INC. AND  
HEMATITE AUTOMOTIVE PRODUCTS INC.  
(collectively "Hematite Group")**

Applicants

**SECOND REPORT OF KPMG INC.  
In its capacity as Monitor of the Applicants**

**October 9, 2020**

## I. INTRODUCTION

1. On September 18, 2020, Hematite Holdings Inc. (“**Hematite Holdings**”) and the other Applicants (together, the “**Hematite Group**”, the “**Company**” or the “**Applicants**”) were granted relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) by Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The relief granted under the Initial Order included a stay of proceedings in favour of the Applicants and a limited stay of proceedings in favour of their affiliate Hematite R.E. 1, Inc. for cross-defaults, from September 18, 2020 until September 28, 2020 (the “**Stay Period**”); the appointment of KPMG Inc. as Monitor (“**KPMG**” or the “**Monitor**”); and other related relief. The Applicants’ CCAA proceedings are referred to herein as the “**CCAA Proceedings**”.
2. On September 28, 2020, the Hematite Group was granted additional relief under the CCAA by Order (the “**Amended and Restated Initial Order**”) of the Court. The relief granted under the Amended and Restated Initial Order included, among other items; an extension of the Stay Period to November 27, 2020; an increase in the maximum borrowings permitted under the DIP Loan Agreement and secured under the DIP Lender’s Charge to \$6.0 million; an increase of the maximum amount of the Director’s Charge to \$500,000; and an increase of the maximum amount of the Administrative Charge to \$500,000. Capitalized terms used but not defined in this report are as defined in the Amended and Restated Initial Order.

## II. PURPOSE OF REPORT

3. The purpose of this report (the “**Second Report**”) is to provide information to this Honourable Court pertaining to:
  - (a) the Applicants’ request for an order (the “**Claims Procedure Order**”) approving the Claims Procedure (as defined herein), including the establishment of a claims bar date for creditors to file proofs of claim;

- (b) the Applicants' proceedings under Chapter 15 of Title 11 of the United States Code (the "**Chapter 15 Proceedings**" and the "**Bankruptcy Code**", respectively); and
- (c) the Monitor's conclusions and recommendations.

### **III. TERMS OF REFERENCE**

- 4. In preparing this Second Report, the Monitor has relied solely on information and documents provided by the Applicants and their advisors, including unaudited financial information, books and records and financial information prepared by the Applicants and discussions with management ("**Management**") (collectively, the "**Information**"). In accordance with industry practice, except as otherwise described in this Second Report, KPMG has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the *Chartered Professional Accountants of Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
- 5. Future orientated financial information contained in any Cash Flow Forecast or other statement is based on the Applicants' estimates and assumptions regarding future events. Actual results will vary from the information presented even if the hypothetical assumptions occur, and variations may be material. Accordingly, the Monitor expresses no assurance as to whether any Cash Flow Forecast or other projection will be achieved
- 6. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.
- 7. Words and phrases not otherwise defined in this Second Report shall have the meaning ascribed to them in the draft Claims Procedure Order included in the Applicant's Motion Record.

8. Copies of the Monitor's Reports, including a copy of this Second Report, and all motion records and Orders in the CCAA Proceedings will be available on the Monitor's website at [www.home.kpmg/ca/en/home/services/advisory/deal-advisory/creditorlinks/hematite-group.html](http://www.home.kpmg/ca/en/home/services/advisory/deal-advisory/creditorlinks/hematite-group.html). The Monitor has also established a toll-free phone number that is referenced on the Monitor's website so that parties may contact the Monitor if they have questions with respect to the CCAA Proceedings.

#### IV. CLAIMS PROCEDURE

##### Overview

9. The Applicants are seeking this Court's approval of the Claims Procedure Order.
10. The Claims Procedure Order sets out the proposed claims procedure (the "**Claims Procedure**") allowing the creditors of the Applicants to formally file certain Claims (as defined in the Claims Procedure Order), including:
  - (a) any right of claim of any Person that may be asserted or made in whole or in part against any of the Applicants, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (international or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive, or otherwise), and whether or not such indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any right or ability of any Person to advance a claim for contribution or indemnity or otherwise against any of the Applicants with respect to any matter, action, cause or chose in action, whether

existing at present or commenced in the future, which indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof that (A) is based in whole or in part on facts existing prior to the Filing Date, (B) relates to a time period prior to the Filing Date, or (C) is a right or claim of any kind that would be a claim provable in bankruptcy within the meaning of the BIA had the Applicant become bankrupt on the Filing Date, including for greater certainty any claim against any of the Applicants for indemnification by any Directors or Officers in respect of a D&O Claim other than a D&O Restructuring Claim (but excluding any such claim for indemnification that (i) is covered by the Directors' Charge, or (ii) is in respect of an Excluded Claim) ("**Pre-Filing Claims**").

- (b) any right of claim of any Person against any of the Applicants in connection with any indebtedness, liability or obligation of any kind whatsoever owed by any such Applicant to such Person arising out of the restructuring, disclaimer, repudiation or termination by such Applicant on or after the Filing Date of any contract, lease, employment agreement or arrangement or other agreement or obligation whether written or oral ("**Restructuring Claims**");
- (c) claims against any Director or Officer, in his or her capacity as such, any D&O Restructuring Claim and any and all demands, claims (including claims for contribution or indemnity), actions, causes of action, counterclaims, suits, debts, sums of money, liabilities, accounts, covenants, damages, judgments, orders (including orders for injunctive relief or specific performance and compliance orders), expenses, executions, encumbrances and recoveries on account of any liability, obligation, demand or cause of action of whatever nature that any creditor or other Person has or may be entitled to assert (including for, in respect of or arising out of environmental matters, pensions or post-employment benefits or alleged wrongful or oppressive conduct, misrepresentation, fraud or breach of fiduciary duty), whether known or unknown, matured or unmatured, contingent or actual, direct, indirect or derivative, at common law, in equity or under statute, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act, omission, transaction, duty, responsibility, indebtedness, liability,

obligation, dealing, matter or occurrence that in any way relate to or arise out of or in connection with (i) any Pre-Filing Claim; (ii) the assets, obligations, business or affairs of the Applicants; or (iii) the CCAA Proceedings or any matter or transaction occurring in or in connection with the CCAA Proceedings except Claims covered by subsection 5.1(2) of the CCAA. (“**D&O Claims**”);

- (d) any right or claim of any Person against any Director or Officer, in his or her capacity as such, in connection with any indebtedness, liability or obligation of any kind whatsoever by any such Director or Officer to such Person arising out of the restructuring, disclaimer, repudiation or termination by an Applicant on or after the Filing Date of any contract, lease, employment agreement or arrangement or other agreement or obligation whether written or oral (“**D&O Restructuring Claims**”).
11. The Claims Procedure Order sets 5:00 p.m. (Toronto Time) on November 9, 2020 as the claims bar date (the “**Pre-Filing Claims Bar Date**”) with respect to the filing of any Pre-Filing Claims and D&O Claims (other than D&O Restructuring Claims).
  12. The Claims Procedure Order also provides for a claims bar date in respect of Restructuring Claims (the “**Restructuring Claims Bar Date**”). The Restructuring Claims Bar Date is set as the later of:
    - (a) 5:00 p.m. (Toronto Time) on November 9, 2020; and
    - (b) the date that is 21 days after the date on the Monitor sends a Claims Package with respect to a Restructuring Claim.
  13. The Monitor understands that the Applicants intend to make decisions about contract disclaimers in sufficient time to provide counterparties with an opportunity to file Proofs of Claim with respect to any related Restructuring Claims before any meeting of creditors is convened to consider a Plan.
  14. Certain Claims are not required to be proven at this stage of the CCAA Proceedings pursuant to the Claims Procedure (the “**Excluded Claims**”). The Excluded Claims include:



- (a) any claim pursuant to, or related to, the master lease agreements, as amended, supplemented or otherwise modified from time to time, between Hematite Manufacturing Inc. and TD Equipment Finance Canada, a division of The Toronto-Dominion Bank;
  - (b) any claim by Woodbridge Foam Corporation (“**Woodbridge**”) or its affiliates, including, without limitation, pursuant to, or related to:
    - (i) the Assignment and Assumption Agreement dated September 21, 2020 between The Toronto-Dominion Bank, Woodbridge and certain of the Applicants, among others;
    - (ii) the Plan Sponsor Agreement dated September 17, 2020 between Woodbridge and the Applicants, among others; or
    - (iii) the Revolving DIP Loan Agreement dated September 17, 2020 between Woodbridge and the Applicants;
  - (c) any claim pursuant to, or related to, the Letter of Offer of Financing no. 076542-03 dated December 21, 2017, as amended, supplemented and otherwise modified from time to time, between BDC Capital Inc. and Hematite Manufacturing Inc., among others;
  - (d) claims secured by any of the Charges (as defined in the Amended and Restated Initial Order);
  - (e) any claim by any of the Applicants against one or more of the other Applicants; and
  - (f) any investigation, action, suit, order or proceeding in respect of the Applicants or any of them by or before a regulatory body (as defined in the CCAA), unless such investigation, action, suit, order or proceeding constitutes a “claim” within the meaning of the CCAA.
15. The Plan Sponsor Agreement between Woodbridge and Hematite requires that the Applicants seek an Order calling a meeting of creditors and authorizing the filing of a Plan

by November 18, 2020. These timelines require that claims be determined in sufficient time to formulate a Plan and the Applicants have therefore proposed November 9, 2020 as the Pre-Filing Claims Bar Date.

16. In the circumstances, the Monitor believes the Pre-Filing Claims Bar Date and the Restructuring Claims Bar Date are reasonable in that they provide sufficient time during which potential claimants may evaluate and submit any Claim they may have against the Applicants and their Directors or Officers while adhering to the milestones in the Plan Sponsor Agreement.

#### Notice to Claimants

17. The Monitor shall send a Proof of Claim form, Notice to Claimants, the Instruction Letter, and any other documentation the Applicants, in consultation with the Monitor, deem appropriate (together the “**Claims Package**”), substantially in the forms attached as schedules to the Claims Procedure Order, by email to the last known email address of the Known Claimant set out in the books and records of the Applicants, or by ordinary mail, courier or facsimile to the last known mailing address or facsimile address of the Known Claimant if an email address for such Known Claimant is not known by no later than October 15, 2020 following the issuance of the Claims Procedure Order.
18. To the extent possible, documents delivered under the Claims Procedure will be sent electronically in order to expedite their receipt by Creditors.
19. The Monitor shall cause the Notice to Claimants to be placed in *The Globe and Mail* (National Edition) and USA Today (National Edition) for at least one business day no later than October 20, 2020 following the issuance of the Claims Procedure Order.
20. The Monitor will also cause the Notice to Claimants to be published, as soon as practicable, in any local newspapers, trade journals or similar publications, if any, as the Applicants, in consultation with the Monitor and Woodbridge, deem appropriate.
21. The Monitor shall cause the Claims Package, including the Notice to Claimants, and the Claims Procedure Order to be posted on the Monitor’s Website as soon as reasonably

possible after the Claims Procedure Order has been approved by this Court, should it see fit to do so. Upon request by a Claimant for a Claims Package or information relating to the Claims Procedure prior to the Pre-Filing Claims Bar Date or Restructuring Claims Bar Date, as applicable, the Monitor shall forthwith send a copy of the Claims Package, direct such person to the documents posted on the Monitor's website or otherwise respond to such request as the Monitor considers appropriate in the circumstances.

22. With respect to the Restructuring Claims, the Monitor shall send a Claims Package to the counterparty(ies) to any lease, contract, other agreement or obligation no later than three (3) business days following the time the Monitor actually becomes aware of the effective date of such restructuring, disclaimer, resiliation or termination of any lease, contract or other agreement or obligation.

#### Proofs of Claim

23. Any Claimant wishing to assert a Claim must deliver to the Monitor a completed Proof of Claim, including all relevant supporting documentation, on or before the Pre-Filing Claims Bar Date or the Restructuring Claims Bar Date, as applicable.
24. Any Claimant who does not file a completed Proof of Claim in accordance with the Claims Procedure shall be forever barred from asserting or enforcing such Claims against any of the Applicants and/or their Directors and Officers and not be permitted to vote at any Meeting or participate in any distribution under any Plan relating to such Claims.

#### Adjudication of Claims

25. Any Claims denominated in a currency other than Canadian dollars shall be converted to and shall constitute obligations in Canadian dollars, such conversion to be affected using the Bank of Canada's daily average exchange rate for that currency against the Canadian Dollar on the Filing Date.
26. The Monitor, in consultation with the Applicants (and in the case of a D&O Claim, in consultation with the applicable Director or Officer) shall review all Proofs of Claim filed and shall accept, revise or disallow the amount of each Claim for voting and/or distribution

purposes. If the Monitor, determines to revise or disallow a Claim, the Monitor shall deliver to the Claimant a Notice of Revision or Disallowance, substantially in the form attached as a schedule to the Claims Procedure Order.

27. Any Claimant who intends to dispute a Notice of Revision or Disallowance shall deliver a Notice of Dispute to the Monitor in writing by 5:00 p.m. (Eastern Time) on the day that is not later than ten (10) days after such Claimant is deemed to have received the Notice of Revision or Disallowance.
28. As soon as practicable after a Notice of Dispute is received by the Monitor in accordance with this Claims Procedure Order, the Monitor, in consultation with the Applicants, may attempt to resolve and settle the Claim with the Claimant. In the event that the disputed Claim cannot be resolved, the Monitor will either submit the dispute to a Claims Officer or the Court for determination. A Claims Officer may be appointed by mutual agreement between the affected Claimant and the Applicants, in consultation with the Monitor, or the Court.
29. If a disputed Claim is referred to a Claims Officer, the Claims Officer will be empowered to determine all procedural matters which may arise in connection with his determination of the validity, amount and/or Status of the disputed Claim.

#### Appeals from Claims Officer Determination

30. Either the Applicants or the Claimant may, within 10 business days of notification of a Claims Officer's determination with respect to a disputed Claim, appeal such determination to the Court by filing a notice of motion.

#### Notice to Transferees

31. If after the Filing Date a Claim is transferred or assigned, neither the Monitor nor the Applicants shall be obligated to give notice or otherwise deal with the transferee or assignee of a Claim unless and until actual notice of the transfer or assignment, together with satisfactory evidence of the existence and validity of such transfer or assignment, shall have been received and acknowledged by the Applicants and the Monitor in writing.

Thereafter, such transferee or assignee shall, for all purposes hereof, constitute the “Claimant” in respect of such Claim. Any such transferee or assignee of a Claim shall be bound by any notices given or steps taken in respect of such Claim in accordance with this Claims Procedure Order prior to the receipt and acknowledgment by the Applicants and the Monitor of satisfactory evidence of such transfer or assignment.

32. If a Claim is transferred or assigned to more than one party, such transfers or assignments shall not create separate Claims and such Claims shall continue to constitute and be dealt with as a single Claim notwithstanding such transfers or assignments.
33. Overall, the Monitor is of the view that the Claims Procedure will afford a fair and reasonable opportunity for all Creditors with Claims against the Hematite Group to file and prove their Claims while adhering to the necessary milestones required by the Plan Sponsor Agreement.

#### **V. CHAPTER 15 PROCEEDINGS**

34. Following the issuance of the Amended and Restated Initial Order by this Court, on September 29, 2020, Hematite filed a motion seeking certain further provisional relief, including provisional recognition and enforcement of the Amended and Restated Initial Order in the United States pending the final recognition hearing, and a motion seeking to shorten the usual notice and objection periods for that motion.
35. On October 1, 2020, the Honourable Judge Walrath of the U.S. Court issued an Order Granting Additional Provisional Relief which (a) authorized the Debtor to obtain credit under the DIP Facility in the amount of CAD \$6,000,000 and granting to the DIP Lender and the DIP Lender Charge to authorize the Debtors to enter into, perform and borrow under the DIP Facility, (b) stayed the commencement or continuation of any actions against the Debtors and their assets, (c) imposed a stay with respect to Claims or actions against the Debtors’ Directors and Officers or their assets and (d) granted the Directors’ Charge and Administration Charge. No objections were raised with respect to the provisional relief sought by Hematite.

36. A final hearing on the petitions for recognition has been scheduled for October 19, 2020 before the U.S. Court. The Applicants are required to provide 21 days' notice of the hearing to all known creditors. On September 25, 2020, the Notice of Filing and Hearing on Verified Petition of Foreign Main Proceeding and Related Relief was sent to all known creditors of Hematite in the United States.
37. Given the timing and the notice requirements under the Bankruptcy Code, the Applicants do not intend to seek specific recognition of the Claims Procedure Order made by this Court in advance of the Pre-Filing Claims Bar Date. The Applicants intend to file a notice of the Claims Procedure Order with the U.S. Court as soon as practicable following its issuance by this Court. Based on the advice of the Applicants' U.S. counsel, the Monitor understands that the Applicants intend to seek recognition of the Claims Procedure Order at the same time as they seek recognition of any plan sanction order issued by the Court in these proceedings, assuming a Plan is accepted by the requisite creditors and approved by this Court.
38. Copies of the materials filed and orders made in the Chapter 15 Proceedings are available on the Monitor's Website.

## **VI. MONITOR'S CONCLUSION AND RECOMMENDATIONS**

39. The Applicants are seeking this Court's approval of the Claims Procedure Order setting out the Claims Procedure.
40. In the Monitor's view, the Claims Procedure balances the need to fairly ascertain and quantify the Claims against the Applicants with the need to meet the timelines prescribed in the Plan Sponsor Agreement and expeditiously determine the relevant Claims. The Monitor is of the view that the Claims Procedure, as set out herein, is fair and reasonable in the circumstances.

All of which is respectfully submitted this 9<sup>th</sup> day of October 2020.

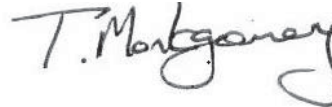
**KPMG Inc.**  
**In its capacity as Monitor of**  
**Hematite Group**  
**And not in its personal or corporate capacity**

Per:



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**Nick Brearton**  
**CPA, CA, CIRP, LIT**  
President



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**Tim Montgomery**  
**CIRP, LIT**  
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 HEMATITE HOLDINGS INC. ET AL.  
(collectively "**Hematite Group**")

Applicants

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

Proceeding commenced at Toronto

**SECOND REPORT OF KPMG INC.,  
IN ITS CAPACITY AS MONITOR OF  
THE HEMATITE GROUP**

OCTOBER 9, 2020

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