Court File No. 03-CL-5145

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 IVACO INC. AND THE APPLICANTS LISTED IN SCHEDULE "A"

FORTY-SIXTH REPORT OF THE MONITOR
APRIL 29, 2008

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INTRODUCTION

1. Ivaco Inc. ("Ivaco") and certain of its affiliates (collectively the "Applicants") obtained protection from their creditors pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), through an order of this Honourable Court dated September 16, 2003, as amended and restated (the "Initial Order"). Pursuant to the Initial Order, Ernst & Young Inc. was appointed monitor (the "Monitor") of the Applicants.

2. The Applicants for the Initial Order included, among others, Ivaco, Ivaco Rolling Mills Inc., Ifastgroupe Inc., IFC (Fasteners) Inc. ("IFC") and Docap (1985) Corporation ("Docap"). For purposes of this Report, Ivaco Rolling Mills Inc. and the related limited partnership Ivaco Rolling Mills Limited Partnership will be referred to as "IRM" and Ifastgroupe Inc. and the related limited partnership Ifastgroupe and Company Limited Partnership will be referred to as "Ifastgroupe". Both partnerships are protected under the Initial Order.

3. This Forty-Sixth Report of the Monitor (the "Report") is provided to this Honourable Court as a general update on the status of these proceedings. The Report is organized as follows:

- Terms of Reference
- Status of Working Capital Dispute
- Status of IMT Claims Process and Distribution
- Funds held by the Monitor
- Directors and Officers Claims Process
- Subsequent Claims Process
- Distribution to National Bank
- Plans of Compromise and Arrangement – Second Distribution
- Monitor's Analysis and Recommendation

TERMS OF REFERENCE

4. Capitalized terms not defined in this Report are defined in the Initial Order, the Plans and previous Monitor's Reports. All references to dollars are in Canadian currency unless otherwise noted. The estimates provided in this report are based on the Monitor's current assessment and incorporate assumptions as to possible future events and outcomes. The Monitor has not audited or otherwise verified the figures and estimates included herein. Actual results may vary and the differences may be material.

STATUS OF WORKING CAPITAL DISPUTE

5. Further to the information provided by the Monitor in its Thirty-Fourth, Thirty-Sixth and Forty-Second Reports, the following summarizes the significant events that have occurred since April 2007:

a) On August 7, 2007, the July 25, 2007 Order of the Honourable Mr. Justice Ground was entered (the "Working Capital Order"). The Working Capital Order directed Heico to pay approximately $53 million plus interest forthwith as a partial payment of the working capital adjustment (pending the trial of an issue described in the Thirty-Fourth Report) relating to the Heico Transaction.

b) On August 8, 2007, Heico served both a notice of appeal of the Working Capital Order and a notice of motion seeking leave to appeal the Working Capital Order to the Court of Appeal. The Monitor moved to quash the notice of appeal. The hearing of the motion to quash was made returnable on September 13, 2007.

c) Prior to the attendance, the parties agreed on a method of proceeding that would see Heico post letters of credit and, in furtherance of that arrangement, on September 13, 2007, the Court of Appeal ordered that the motion to quash Heico's appeal, Heico's motion for leave to appeal and the appeal itself be heard together by the Court of Appeal on October 26, 2007.

d) Heico delivered to the Monitor three letters of credit in an aggregate amount sufficient to satisfy any final determination of the working capital adjustment, plus accrued and estimated interest through the end of 2008. Drawings under the letters of credit were governed by agreement between Heico and the Monitor, which provided in part:

> (c) As soon as any aspect of the overall $60,009,000 (consisting of $59,572,000 and $437,000 claim amounts set out in Exhibit A to the September 12, 2007 Stikeman LLP Letter) working capital proceeding (i.e., the decision of Justice Ground relating to the $52 million or the trial of an issue relating to the remaining $7 million) has been finally determined, the Monitor may immediately draw

> upon the Original LC, Replacement LC (defined below) or Additional LC (defined below) in the amount equal to any final determination in favour of the Monitor, together with interest as calculated by the Monitor up to the date that draw request is made. For greater certainty, the delivery of the Original LC in the amount of $70,119,491 and/or the delivery of any Additional LC shall not be deemed to be an admission by Heico that any such amount is owing in the working capital proceedings.
>
> ...
>
> (e) If Heico objects to the amount drawn by the Monitor on the LCs (including without limited, on the basis that the Monitor is not entitled to compound interest, that the interest calculation has not been correctly performed, or that the principal amounts claimed do not correspond with the amounts finally determined), Heico may apply to the Court to have such dispute determined and seek an order that the Monitor re-pay to Heico any excessive amount that the Monitor has drawn.
>
> ...
>
> (j) For greater certainty, if Heico believes that excessive draws have been made on any LC for any reason, it may apply to the court to determine the issue and, if necessary, seek an order that the Monitor refund any excess draw. However, nothing in this paragraph shall allow Heico to challenge any final court order for the payment of a specific amount of money.

e) On October 26, 2007, the Court of Appeal granted the Monitor's motion to quash Heico's appeal and refused Heico's motion for leave to appeal the Working Capital Order. The Court of Appeal also said in its endorsement that it would have dismissed Heico's appeal in any event had leave been granted. As previously reported in the Forty-Second Report of the Monitor, on two occasions during the course of oral argument, counsel for Heico stated to the Court of Appeal panel and the parties present that he was instructed to advise the Court that, with respect to the Claims Heico filed in the Subsequent Claims Process on June 8, 2007, Heico did not seek any funds from the monies in the estates, but rather that its claims were limited to a reduction or set-off of the amounts that Heico is said to owe the estates in the working capital dispute. The Applicants, Monitor and creditors have proceeded in reliance upon that position in making the distributions contemplated by the Plans, including those described below at paragraphs 43 and 44. A copy of the Court of Appeal endorsement is appended as Schedule 1 to this Report.

f) On October 30, 2007, the Monitor's counsel sent a letter to Heico's counsel seeking confirmation that Heico considered the portion of the working capital adjustment dispute governed by the Working Capital Order to have been finally determined. The Monitor also sought to make arrangements to receive payment by drawing on the letters of credit or by making alternate arrangements. Heico's counsel responded by stating that it was considering its appeal options from the decision of the Court of Appeal and that, at that point, it did not consider the Working Capital Order to be final and non-appealable.

g) On December 21, 2007, Heico filed an application with the Supreme Court of Canada seeking leave to appeal from the October 26, 2007 judgment of the Court of Appeal.

h) On March 20, 2008, the Supreme Court of Canada dismissed Heico's application for leave to appeal with costs awarded to the Monitor. An excerpt of the Supreme Court Bulletin of March 20, 2008 is appended as Schedule 2 to this Report.

6. As a result of the Supreme Court of Canada's decision, the Working Capital Order became final and binding. On March 24, 2008, the letters of credit were drawn upon and, on March 25, 2008, the estates received a total of $60,112,159 allocated as follows (the "LC Payments"):

Estate	**Exhibit B**	**Exhibit A**	**Interest**	**Total**
IRM	$20,247,000	$682,000	$2,664,267	**$23,593,267**
Ifastgroupe (Note 1)	$24,513,000	$29,000	$3,124,203	**$27,666,203**
Ivaco	$ 8,127,000	$(274,000)	$999,689	**$8,852,689**
Total	**$52,887,000**	**$437,000**	**$6,788,159**	**$60,112,159**

Note 1 - The funds held for Ifastgroupe of approximately $27.7 million are held for the benefit of both Ifastgroupe and IFC.

7. As previously reported by the Monitor, the Expert prepared the Final KPMG Report on two alternate approaches in accordance with the December 15, 2006 decision of the Honourable Mr. Justice Ground (leave to appeal denied), being the Applicants' approach and the Heico approach. In its Final KPMG Report, the Expert calculated the adjustments owing by Heico under the Asset Purchase Agreements as $52,887,000 under the Heico approach and $59,572,000 under the Applicants' approach (each before interest).

8. The LC Payments covered the amounts owing under the Heico approach plus interest as per the Working Capital Order (and the Exhibit A amounts shown above). The difference between the Heico approach and the Applicants' approach is to be the subject of a trial of an issue in accordance with the December 15, 2006 decision of the Honourable Mr. Justice Ground. The Monitor will follow up with Heico with respect to the balance of $6,685,000 (being the quantum of the difference between the two approaches) plus

interest. In the event discussions with Heico are unsuccessful, previous orders provide for the trial of this issue to be heard by this Honourable Court

9. Heico has taken the position in correspondence that it does not consider the Working Capital Order to be "final and binding", and it intends to review the calculation of the interest portion of the LC Payments, as contemplated by the September 13, 2007 letter. The Monitor believes that the interest portion of the LC Payments was calculated in accordance with the Asset Purchase Agreements.

10. As described below at paragraphs 34 and 44, an order will be sought to include the LC Payments in the next distribution to NBC and the Monitor will recommend to the Plan Sponsors that the LC Payments be included in the next distribution relating to IRM, Ifastgroupe and IFC. However, the Monitor intends at present to reserve all or a portion of the approximately $6.8 million received as interest.

STATUS OF THE IMT CLAIMS PROCESS AND DISTRIBUTION

11. As described in the Forty-Fifth Report of the Monitor, the Monitor caused notices of the IMT Claim Process to be published in the Globe and Mail on December 14 and 21 and in LaPresse on December 12, 2007 to determine if there were any unresolved claims at IMT.

12. Pursuant to the Order of this Honourable Court dated December 7, 2007, no written notice of any unresolved claims has been received and the Monitor filed a certificate with the Court to that effect. On March 31, 2008, the Monitor, acting pursuant to the powers provided in previous orders, caused the Applicant, Ivaco, to have IMT make a distribution of $2.6 million from its remaining assets to it. Final tax returns of IMT are being prepared which will

complete the administration of the IMT affairs and which may give rise to additional refunds that would be returned to Ivaco.

FUNDS HELD BY THE MONITOR

13. As at March 31, 2008, the following funds were held cumulatively in various accounts:

Applicant	March 31, 2008
IVACO	$19,769,000
IFASTGROUPE (including both the Ifastgroupe and IFC portions of the LC Payment)	$53,621,000
IFC	$3,947,000
IRM	$56,740,000
TOTAL	**$134,077,000**

Note: These funds include all funds held by the Monitor on behalf of the Applicants and are comprised of cash in the Applicants' bank accounts on December 1, 2004, proceeds from the Heico Transaction, the LC Payments and from various other realizations and recoveries and reflects balances before any reserves for holdbacks.

14. The Ivaco balance includes an amount of $2.05 million that had previously been reserved pending the resolution of the Heico working capital adjustment, as described in the Twenty-Third Report of the Monitor. As that matter is resolved, it is intended to seek an order to have the $2.05 million holdback released.

15. The funds held for Ifastgroupe include the Ifastgroupe LC Payment of approximately $27.7 million, which is held for the benefit of both Ifastgroupe and IFC.

16. Both Ifastgroupe and IFC were Sellers under the Asset Purchase Agreements. The Asset Purchase Agreements did not provide an allocation of sale proceeds between the two entities. Ifastgroupe and IFC were, and are, separate entities. Each has a distinct creditor group within the CCAA proceedings.

17. As previously described in the Thirty-Fourth Report of the Monitor and as previously approved by this Honourable Court in the April 20, 2007 Order of the Honourable Mr. Justice Ground, it is proposed that there be an order that the Ifastgroupe LC Payment, including interest, again be allocated between Ifastgroupe and IFC on an 80%/20% split based on the book value of the current assets held by each Applicant as at the date of the closing of the Heico Transaction, which would result in a proposed allocation of funds between the two Applicants as follows:

Applicant	**March 25, 2008**
IFASTGROUPE	$22,132,962.40
IFC	$5,533,240.60
TOTAL	$27,666,203.00

DIRECTORS AND OFFICERS CLAIMS PROCESS

18. On April 19, 2005, this Honourable Court approved the D&O Claims Process to solicit and determine claims against the directors and officers of the Applicants and any related indemnity claims of the directors and officers against the Applicants. The D&O Claims Bar Date was June 3, 2005. The Indemnity Claims Bar Date was August 10, 2005.

19. The Monitor received a total of 377 D&O Claims. At present, all of the resolved D&O Claims were disallowed, and 367 of those disallowances were either not contested by the claimant or were upheld by the D&O Claims Officer on the basis that they did not disclose a D&O Claim. There remain 10 unresolved D&O Claims, summarized as follows:

	IVACO	IRM	IFASTGROUPE	DOCAP	TOTAL
Unresolved Claims number (including the BNS Claim)	4	3	2	1	10
Amount ($000's)	39,243	37,647	2,726	14	79,630
Amount without Bank of Nova Scotia claim ($000's)	2,754	1,158	2,726	14	6,652

20. On April 20th, 2007, this Honourable Court granted an Order which provided that any Indemnity Claim filed by the directors and officers in connection with The Bank of Nova Scotia's D&O Claims against the directors and officers of Ivaco and IRM for $36.5 million are not covered by the Directors' Charge and do not constitute a CCAA Charge Indemnity Claim. Consequently, in the table above, the unresolved D&O Claims are presented with and without The Bank of Nova Scotia's D&O Claims to illustrate both the total amount of unresolved claims and the total amount of claims that could be subject to the Directors' Charge.

21. The Monitor and its counsel were working with the D&O Claims Officer towards resolution of the remaining unresolved D&O Claims. Certain of the D&O Claims had been held by the D&O Claims Officer pending determination of similar issues in the Subsequent Claims Process described below. The D&O Claims Officer (who was also the Subsequent Claims Officer) recently passed away. Accordingly, the Monitor has appointed Mr. J.L. McDougall as a replacement D&O Claims Officer. The Monitor is bringing a motion before this Honourable Court to approve its appointment of

Mr. McDougall as D&O Claims Officer and to amend the Claims Process Order to appoint Mr. McDougall as a replacement Claims Officer and Subsequent Claims Officer.

SUBSEQUENT CLAIMS PROCESS

22. On April 20, 2007, this Honourable Court approved the Subsequent Claims Process. The Subsequent Claims Process relates to claims arising on or after June 18, 2004 as a result of the restructuring, repudiation or termination of any contract, lease, employment agreement, collective agreement or any other agreement.

23. A chronology of the more significant events relating to the Subsequent Claims Process is as follows:

    a) On or about April 25, 2007, the Monitor sent Subsequent Claim Packages to all retired and active employees pursuant to the April 20, 2007 Subsequent Claims Procedure Order and thereafter to any person requesting a package.

    b) The Subsequent Claims Bar Date was June 8, 2007. As of the Subsequent Claims Bar Date, the Monitor had received 1,103 Subsequent Claims. The vast majority of Subsequent Claims received relate either to claims of retired employees of the Applicants ("Retired Employees") or employees who, on December 1, 2004, ceased employment with the Applicants and immediately commenced employment with Heico ("Heico Employees"). These claims are for, amongst other things, statutory severance and/or common law or contractual termination amounts, lost SERP or RAP, lost life and medical insurance and pension plan deficiency or bridge benefits.

c) On or about July 10th, 2007, the Monitor issued 773 Notices of Determination of Claim for those claims filed by the Heico Employees.

d) No Notices of Determination have yet been issued for Subsequent Claims filed by the Retired Employees. However, in consultation with the IAC, the Monitor retained the services of AON Consulting Inc. to assist with the valuation of the quantum of certain complex Retired Employees' claims that were not before the Subsequent Claims Officer.

e) Between July 20th and August 24th, 2007, the Monitor received 656 Notices of Dispute relating to the Notices of Determination issued to the Heico Employees. 537 of these claims were submitted by Heico Employees are represented by six different legal counsel ("Claimants' Counsel").

f) On August 2, 2007, the Monitor provided the Subsequent Claims Officer with a complete listing of the Notices of Dispute received and made available all the materials relating to those claims.

g) Given the number of Notices of Dispute received, on September 13th, 2007, the Subsequent Claims Officer issued a Procedural Order and timeline to deal with the Notices of Dispute as a whole by soliciting submissions on threshold common questions of law.

h) The Monitor was advised by the Claimants' Counsel that they consulted with the Subsequent Claims Officer as they believed that the proposed timeline could not be followed. Furthermore, certain of the Claimants' Counsel expressed the view that the Procedural Order did not represent the most efficient means of proceeding because the interests of the claimants and the nature of their Subsequent Claims are not sufficiently uniform.

24. Due to the volume of disputed Subsequent Claims, the Monitor and its counsel continued to work to organize the Subsequent Claims such that they could be dealt with efficiently by the Subsequent Claims Officer based on comments received from Claimants' Counsel, and reported back to the Subsequent Claims Officer.

25. At present, there are 1,103 total filed Subsequent Claims, of which 987 are unresolved, summarized as follows:

	IVACO	IRM	IFASTGROUPE	IFC	OTHERS	TOTAL
TOTAL FILED	343	273	422	28	37	1,103
Notice of Disallowance issued	197	202	329	21	24	773
Notice of Dispute received	193	195	229	20	20	657
Under review by Monitor	146	71	93	7	13	330
TOTAL UNRESOLVED	339	266	322	27	33	987

26. As contemplated in the Plans, the Monitor held back a pari-passu reserve for the full value of the disputed Subsequent Claims as part of the initial distribution. As the Subsequent Claims are resolved, the Monitor in conjunction with the Plan Sponsors intends to either release the amount to the

creditor in the case that their claim is approved, or make the funds available for a distribution to the Proven Affected Creditors.

27. In response to the feedback from the Claimants' Counsel and the relative progress made to date in dealing with the claims, the Monitor intends to propose to the newly appointed Subsequent Claims Officer that the Subsequent Claims of the Heico Employees be dealt with before those of the Retired Employees (where Notices of Determination have yet to be issued) and that they be dealt with in groups, based upon the interests of the claimants and the nature of their claims, rather than as a whole. While the Monitor is authorized by the Subsequent Claims Order to resolve disputed claims consensually, the Monitor does not believe consensual resolution is possible on all issues asserted by the Heico Employees. The Monitor will forward unresolved claims to the newly appointed Subsequent Claims Officer by group, and will continue to recommend to the Subsequent Claims Officer that, to the extent possible, the claimants within a group will be dealt with in the aggregate based upon the determination of common questions of law (as proposed in the Procedural Order described above) or common unresolved issues. In many cases, claimants who are represented by the same counsel share such common issues, which the Monitor believes will expedite the process.

DISTRIBUTION TO NATIONAL BANK

28. Pursuant to the Order of this Honourable Court dated May 11, 2004, Ivaco was authorized to distribute to NBC existing and future proceeds of sale of the Applicants' non-core assets, subject to any prior ranking liens or encumbrances on such non-core assets and/or closing adjustments in respect of the relevant sale transactions.

29. A Distribution Order was granted by this Honourable Court on December 17, 2004. The Distribution Order was obtained pursuant to an agreement reached between NBC, Ivaco, 1039028 Ontario Inc. and the Monitor, incorporating claw-back provisions in certain circumstances. The agreement essentially provided that the Monitor was authorized to release a maximum of $16 million to NBC as a repayment of its loan, provided, however, that if in certain circumstances a bona fide claim is proven against the directors and officers of Ivaco pursuant to the D&O Claims Process, then NBC is required to return up to $10 million of the proceeds to the Monitor.

30. This claw-back provision is consistent with the Initial Order whereunder the directors and officers obtained a charge against the property of the Applicants which ranks ahead of NBC's security to a maximum of $10 million. The Distribution Order also provided that NBC was required to repay the funds it received if it was determined that a valid and enforceable trust, lien or charge exists by virtue of the *Pension Benefits Act* or the Quebec *Supplemental Pension Plan Act* and such trust, lien or charge is determined to have priority to the secured position of NBC and there are not sufficient funds of Ivaco to pay the trust, lien or charge.

31. On December 20, 2004, the Monitor distributed $12 million to NBC pursuant to the agreement and Distribution Order referred to above.

32. On October 31, 2007, the Monitor caused Ivaco to make an additional distribution of $8,000,000 to NBC pursuant to another distribution agreement and the October 23, 2007 Order of this Honourable Court.

33. On March 31, 2008, Ivaco's secured indebtedness to NBC, after deducting interim distributions, as discussed above, and including interest and fees, was approximately $17.1 million.

34. Given the Supreme Court of Canada's March 20, 2008 dismissal of Heico's application for leave to appeal, together with the receipt of the IMT dividend and (in the event the requested Order is granted) the release of the $2.05 million holdback amount referenced at paragraph 14, above, an order will be sought authorizing and directing the Monitor on behalf of Ivaco to make an interim distribution to NBC on account of its secured claim. Based on the funds presently in the Monitor's possession and after reserving for various items (including future administration costs) and accounting for possible limitations imposed by the Quebec tax authorities on the Monitor's present ability to make a distribution, the Monitor intends to distribute a minimum of $9.1 million to NBC. In the event that the possible limitations on distribution are resolved, the Monitor intends to distribute to NBC amounts up to, or equal to, the full amount of its secured indebtedness, including interest and fees. The source of that distribution will be the approximately $19.8 million in cash held by the Monitor described above at paragraph 13, which includes the $8.1 million obtained pursuant to the letters of credit (not including interest), the $2.6 million obtained through the IMT distribution and the $2.05 million holdback described above.

35. There is a benefit to the estate in proceeding in this fashion in that it reduces the continuing accrual of interest and there is protection to the estate in the form of the claw-back.

PLANS OF COMPROMISE AND ARRANGEMENT – SECOND DISTRIBUTION

36. As reported in the Forty-Third Report of the Monitor, a majority in number representing in excess of 66 2/3% in value of the Affected Creditors holding Proven Affected Claims and voting in person or by proxy at each of the Meetings of IRM, Ifastgroupe and IFC voted in favour of the resolution to

approve each Plan and hence the requisite majorities required by section 6 of the CCAA were obtained.

37. On November 19, 2007, this Honourable Court granted orders sanctioning and approving the IRM Plan, Ifast Plan and IFC Plan (collectively the "Sanction Orders").

38. Heico attended the Sanction Order hearing and opposed the proposed Sanction Orders. After hearing submissions from Heico, the Monitor and others, the Honourable Mr. Justice Cumming granted the Sanction Orders in the form requested. A copy of the Endorsement of Justice Cumming is appended as Schedule 3 to this Report.

39. At the conclusion of the Sanction Order hearing, counsel to Heico indicated that Heico might seek leave to appeal the Sanction Orders. On November 20, 2007, counsel to the Monitor sent a letter to counsel to Heico (which was attached as Appendix A to the Forty-Fourth Report of the Monitor) confirming that, pursuant to the Plans, certain steps to implement the Plans were to be taken on or before November 30, 2007 and that, in the absence of an order staying the effect of the Sanction Orders, the Monitor was obliged and intended to implement the Plans as approved and that should the Plans be implemented, a motion by Heico for leave to appeal would be rendered moot.

40. As of November 30, 2007, Heico had not taken any step to seek leave to appeal the Sanction Orders or to stay the implementation of the Plans. On November 30, 2007, the Monitor filed the certificates contemplated by Sections 8.1 of each of the Plans and, pursuant to Sections 8.1 of each Plan, the Plans became effective.

41. On December 7, 2007, Heico served a notice of motion for leave to appeal the Sanction Orders. As motions for leave are heard in writing, the Monitor

successfully sought an Order from the Court of Appeal to require compliance with the leave procedures. A copy of the endorsement of the Honourable Mr. Justice Blair is appended as Schedule 4 to this Report.

42. On April 17, 2008, the Court of Appeal refused Heico's request for leave to appeal. A copy of the Court of Appeal's endorsement is appended as Schedule 5 to this Report.

43. After deducting for various reserves, including the pension settlement amounts, future administration costs, Plan Sponsor costs and unresolved D&O Claims, and the estimated value of Subsequent Claims as per the above table (including a reserve for the full value of the disputed Subsequent Claims and the claims of the Retired Employees), Affected Creditors with Proven Claims received an initial distribution of 44.25% for IRM, 32.5% for Ifastgroupe and 10.05% for IFC of the amount of such Creditor's Proven Affected Claim.

44. Based on cash now available for distribution, including the LC Payments, and after deducting for various reserves (including reserves relating to future administration costs, Plan Sponsor costs, unresolved D&O Claims, unresolved Subsequent Claims and the interest portion of the LC Payments) the Monitor intends to recommend to the applicable Plan Sponsors that a second distribution be made of 6.5% for IRM, 13% for Ifastgroupe and 3% for IFC of the amount of such Creditor's Proven Affected Claim. The Monitor, in consultation with the Plan Sponsors will make a distribution as soon as practicable hereafter in accordance with the terms of the Plans.

MONITOR'S ANALYSIS AND RECOMMENDATION

45. For the reasons outlined above, the Monitor recommends that this Honourable Court approve: (i) the allocation of the LC Payments between Ifastgroupe and IFC (Fasteners) Inc; (ii) the release of the $2.05 million Holdback at Ivaco; (iii) the appointment of Mr. McDougall as Claims Officer, D&O Claims Officer and Subsequent Claims Officer; and (iv) the distribution to NBC.

46. All of which is respectfully submitted this 29th day of April, 2008.

ERNST & YOUNG INC.

In its capacity as Court-Appointed Monitor of
Ivaco Inc. and certain of its affiliates

Per

Brian M. Denega
Senior Vice-President

SCHEDULE "A"

Ivaco Rolling Mills Inc.
Ifastgroupe Inc.
IFC (Fasteners) Inc.
Ifastgroupe Realty Inc.
Docap (1985) Corporation
Florida Sub One Holdings, Inc.
3632610 Canada Inc.

SCHEDULE 1

[1] Given the following, we would not grant leave to appeal:

- there appears to be no dispute as to the applicable law;
- the issues are complicated, idiosyncratic and essentially factual; and
- the advantaged position of Ground J., who had addressed these issues on an ongoing basis over many months.

[2] We did, however, have the benefit of full oral argument by counsel on both sides and in deference to that argument, we will address the merits briefly.

[3] By the end of argument, it was clear to us that there was no real dispute about the underlying legal principles. If the expert (KMPG) went beyond the mandate given to it in the agreements, the report prepared by the expert cannot stand. Equally, if the expert stayed within its mandate, its report is final and binding and not subject to judicial review: *Jones v. Sherwood Computer Services,* [1992] 1 W.L.R. 277 (C.A.); *Glaister v. Amalgamated Dairies Ltd.,* [2002] NZLR LEXIS 84 (Auk. H.C.); *Shinkaruk Enterprises Ltd. v. Commonwealth Insurance Co.* (1990), 71 D.L.R. (4th) 681 (Sask. C.A.).

[4] On our review of the agreements, the written submissions provided to the expert by the parties pursuant to the protocol developed by the court, and the relevant orders made by the court, the expert performed the task assigned to it and contemplated by the parties. In preparing its review of Exhibits "B" and "C" based on the position advanced to the expert by the appellant, Heico, the expert applied what it deemed to be the

appropriate GAAP principles. The expert determined upon its understanding of those principles that CICA 4250 was not applicable to Exhibit "B". That decision was squarely a matter within the accounting expertise of the expert and did not engage any question of law.

[5] The expert's determination was directly responsive to the position advanced by Heico in its submissions to the expert and the position taken by Heico before Ground J., namely, that Exhibit "B" was a forecast to which CICA 4250 applied. The expert rejected that claim as unsound from an accounting perspective. In our view, that is precisely the expertise that he was obligated to bring to bear on that question.

[6] Leave to appeal will be refused.

[7] Costs to Monitor in the amount of $35,000, all inclusive.

Doherty J.A.

[illegible] J.A.

R.A. Blair J.A.

SCHEDULE 2

SUPREME COURT OF CANADA

COUR SUPRÊME DU CANADA

BULLETIN OF PROCEEDINGS

BULLETIN DES PROCÉDURES

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Le Bulletin rassemble les procédures devant la Cour dans la langue du dossier. Quand un arrêt est rendu, on peut se procurer les motifs de jugement en adressant sa demande à la registraire, accompagnée de 15 $ par exemplaire. Le paiement doit être fait à l'ordre du Receveur général du Canada.

March 20, 2008 | 442 - 474 | Le 20 mars 2008

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NOTICE

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AVIS

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19 décembre 2006 Cour fédérale (juge Hughes) Référence neutre : 2006 FC 1531	Demande de contrôle judiciaire rejetée
22 octobre 2007 Cour d'appel fédérale (juges Linden, Nadon et Pelletier) Référence neutre : 2007 FCA 332	Appel rejeté
20 décembre 2007 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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32403 **III Canada Acquisition Company, Sivaco Wire Group 2004 L.P., Ifastgroupe 2004 L.P., Ivaco Rolling Mills 2004 L.P., Heico Holdings Inc. and Heico Companies L.L.C. v. Ernst & Young Inc., Monitor of Ivaco Inc., Superintendent of Financial Services, Bank of Nova Scotia, Informal Committee of Noteholders, National Bank of Canada, Pension Committee, Oit-Fer et Titane Inc. and KPMG Inc.** (Ont.) (Civil) (By Leave)

Coram : Bastarache, Abella and Charron JJ.

The application for leave to appeal from the judgments of the Court of Appeal for Ontario, Numbers M35415 and M35582/C47542, 2007 ONCA 746, dated October 26, 2007, is dismissed with costs to the respondent Ernst & Young Inc.

La demande d'autorisation d'appel des arrêts de la Cour d'appel de l'Ontario, numéros M35415 et M35582/C47542, 2007 ONCA 746, daté du 26 octobre 2007, est rejetée avec dépens en faveur de l'intimée Ernst & Young Inc.

CASE SUMMARY

Contracts - Commercial contracts - Purchase and sale of business - Valuation - Parties disagreeing as to method of calculating working capital adjustments - Whether accounting firm appointed to calculate adjustments advocated by purchaser and vendor exceeded its jurisdiction.

The Applicants (collectively, "Heico") entered into three separate Asset Purchase Agreements ("APAs") to purchase the businesses formerly owned by the Respondent, Ivaco Inc. ("Ivaco"), a company that was under the court-supervised protection of the *Creditors' Arrangement Act*, R.S.C. 1985, c. C-36. The Respondent, Ernst & Young, is the Monitor of Ivaco. The APAs provided that the purchase price to be paid by Heico was subject to working capital adjustments and that unresolved disputes regarding these adjustments to the purchase price were to be decided by an expert accountant. On a motion by the Monitor, KPMG was directed to calculate the adjustments according to the approaches advocated by Heico and by Ivaco, in accordance with Canadian generally accepted accounting principles. The order further provided that Heico would be required to pay the lower amount to the Monitor and that there would be a trial to determine which approach was correct. KPMG issued its final report on April 24, 2007. Under the Heico approach, Heico would owe Ivaco $53 million and under the Ivaco approach, it would owe $60 million. Ivaco brought a motion for an order requiring Heico to pay the sum of $53 million to the Monitor. Heico brought a cross-motion for an order that KPMG had exceeded its mandate and that the report was of no force and effect.

July 25, 2007 Ontario Superior Court of Justice (Ground J.)	Order directing the Applicants to pay approximately $52,887,000 to the Monitor, pursuant to three asset purchase agreements

October 26, 2007 Court of Appeal for Ontario (Doherty, Sharpe and Blair JJ.A.)	Appeal quashed; application for leave denied
December 21, 2007 Supreme Court of Canada	Application for leave to appeal filed

RÉSUMÉ DE L'AFFAIRE

Contrats - Contrats commerciaux - Achat et vente d'entreprise - Évaluation - Désaccord des parties sur la méthode de calcul des ajustements du fonds de roulement - Le cabinet comptable nommé pour calculer les ajustements prônés par l'acheteur et le vendeur a-t-il outrepassé sa compétence?

Les demandeurs (collectivement, « Heico ») ont conclu trois contrats d'achat d'actifs (« CAA ») relativement à l'achat d'entreprises qui avaient déjà appartenu à l'intimée, Ivaco Inc. (« Ivaco »), une compagnie qui était sous la protection supervisée par les tribunaux de la *Loi sur les arrangements avec les créanciers des compagnies*, L.R.C. 1985, ch. C-36. L'intimée, Ernst & Young, est le contrôleur d'Ivaco. Les CAA prévoyaient que le prix d'achat payable par Heico pouvait faire l'objet d'ajustements du fonds de roulement et que les différends non réglés au sujet de ces ajustements au prix d'achat devaient être tranchés par un expert-comptable. Sur motion du contrôleur, KPMG a été chargée de calculer les ajustements selon les approches prônées par Heico et par Ivaco, conformément aux principes comptables généralement reconnus au Canada. L'ordonnance prévoyait en outre que Heico serait tenue de payer le montant inférieur au contrôleur et qu'il y aurait un procès pour déterminer la bonne approche. KPMG a délivré son rapport final le 24 avril 2007. Selon l'approche de Heico, Heico devrait 53 millions de dollars à Ivaco et selon l'approche d'Ivaco elle devrait 60 millions de dollars. Ivaco a présenté une motion pour une ordonnance obligeant Heico à payer la somme de 53 millions de dollars au contrôleur. Heico a présenté une motion incidente pour une ordonnance statuant que KPMG avait outrepassé son mandat et que le rapport était nul et sans effet.

25 juillet 2007 Cour supérieure de justice de l'Ontario (juge Ground)	Ordonnance sommant les demandeurs de payer environ 52 887 000 $ au contrôleur en vertu de trois contrats d'achat d'actifs
26 octobre 2007 Cour d'appel de l'Ontario (juges Doherty, Sharpe et Blair)	Appel annulé; demande d'autorisation rejetée
21 décembre 2007 Cour suprême du Canada	Demande d'autorisation d'appel déposée

SCHEDULE 3

COURT FILE NO.: 03-CL-5145
DATE: 20071120

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 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 Ivaco Inc. and the Applicants Listed in Schedule "A"

BEFORE: Justice Cumming

COUNSEL: ***Peter Howard*** and ***Ashley Taylor***, for the Monitor Ernst & Young Inc. and for the Applicants

Derek J. Bell and ***Raj Sahni***, for the Informal Committee of Noteholders

Carole* Hunter** and ***Graham Phoenix, for National Bank of Canada

Dan MacDonald, for Bank of Nova Scotia

D. Ward, for Heico Companies

Geoff R. Hall, for QIT -Fer et Titane Inc.

DATE HEARD: November 19, 2007

ENDORSEMENT

The Motion

[1] In its capacity as the Court-appointed Monitor pursuant to the *Companies' Creditors Arrangement Act* ("*CCAA*"), Ernst & Young Inc., in respect of the Applicants (Ivaco Rolling Mills Inc., Ifastgroupe Inc., IFC (Fasteners) Inc., Ifastgroupe Realty Inc., Decap (1985) Corporation, Florida Sub One Holdings, Inc., and 3632610- collectively referred to as "Ivaco"), moves for orders sanctioning and approving (collectively, the "Sanction Order") the so-called IRM Plan, Ifast Plan and IFC Plan, being plans of compromise or arrangement (collectively, the "Plan") to the "Affected Creditors" of the Applicants filed with this Court October 23, 2007.

[2] Major unsecured creditors of Ivaco include III Canada Acquisitions Company, Sivaco Wire Group 2004 L.P., Ifastgroupe 2004 L.P., Ivaco Rolling Mills 2004 P., Heico Holding Inc. and the Heico Companies, L.C. (collectively "Heico").

[3] Heico entered into asset purchase agreements ("APA"s) with Ivaco dated August, 2004, with Court approval being given August 18, 2004 and the closing of the asset purchases taking place December 1, 2004. On the closing of the acquisition of the Ivaco businesses Heico paid some $275 million to the Monitor.

[4] Heico raises a novel issue in objecting to the proposed Sanction Order, challenging the statutory authority for jurisdiction under the *CCAA*.

[5] In my view, and I so find, the Plan meets the requirements of fairness and reasonableness and is to be approved. The Motion is granted. My reasons follow.

Background

[6] There have been a considerable number of Orders made in these proceedings: Reasons of Farley, J. heard August 4, 2005, Reasons of Ground , J. dated December 15, 2006, Orders of Ground, J. dated November 7, 2006 and April 20, 2007, and Reasons of Ground, J. released July 25, 2007 with two Orders by Ground, J. dated July 25, 2007.

[7] The Applicants were granted protection from their creditors under the *CCAA* September 16, 2003. This matter was case-managed by Mr. Justice Ground until his recent retirement.

[8] Meetings of Affected Creditors were held November 13, 2007 in Toronto. The three plans were approved by almost all the Affected Creditors representing almost all the aggregate value of Proven Voting Claims.

[9] No Affected Creditor objects to any provision of the draft sanction orders other than the putative "Affected Creditor" Heico. Heico objects by way of oral submissions to the wording of a provision (section 28 of the Sanction Order in respect of the IRM Plan, section 25 of each of the other two plans) as proposed by the Monitor.

[10] Heico claims it is not properly an "Affected Creditor" as set forth in the plans of compromise and arrangement. I disagree.

[11] Section 1.1 (4) of the Plan defines "Affected Claims" as meaning "all Claims" other than certain "Unaffected Claims" (irrelevant to the matters at hand) as defined in s.3.1. Heico filed a Proof of Claim albeit for an unspecified amount.

[12] Section 1.1(11) defines "Claim" expansively to include, *inter alia*, a "Post-Filing Claim" and "Subsequent Claim" and any other claim that would have been provable if the Applicant had become bankrupt on the Valuation Date, being February 28, 2007.

"Post Filing Claim" is defined by s.1.1 (46) as meaning

> ...a Claim that arises from or is caused by, directly or indirectly, any action taken by [an Applicant] from and after the filing Date including the repudiation or termination by [the Applicant] after the Filing without limitation, any lease, customer contract or employment agreement);

[13] A "Subsequent Claim" is defined by s. 1.1 as meaning a "Post-Filing Claim that arises from and after June 18, 2004.

[14] Section 6 addresses the "Treatment of Affected Creditors".

[15] Sections 9 and 10 of the Sanction Order speak to the effect of Plan implementation with the result that holders of Affected Claims are left only with the right to receive distributions in accordance with the Plan.

[16] Section 28 of the IRM Sanction Order (with the identical wording in s. 25 of the Orders relating to the Ifast Plan and the IFC Plan) provides as follows:

> 28. THIS COURT ORDERS that any Claim of III Canada Acquisition Company, Sivaco Wire Group 2004 L.P., Ifastgroupe 2004 L.P., Ivaco Rolling Mills 2004 L.P., Heico Holding, Inc. and The Heico Companies, L.C.C. (collectively, "Heico") against IRM, if any, is limited to claims determined to be a valid reduction or set-off of the amounts that Heico owes IRM and any such claim for reduction or set-off is not compromised by the Plan:
>
> > (a) with respect to the Applicants' claim for approximately $53 million plus interest pending final determination of the matters in Court of Appeal for Ontario Docket No. M35582/C47542; and
> >
> > (b) with respect to the Applicants' claim for approximately $6.7 million plus interest pending a final determination of the trial of an issue ordered by Justice Ground in Court File No. 03-CL-5145

[17] In his Reasons for Decision released December 15, 2006 Ground, J. dealt *inter alia* with a motion of Heico seeking an order lifting the stay in these proceedings and granting leave for Heico to commence an action against Ivaco seeking damages for negligent and/or fraudulent misrepresentation, breach of contract and breach of duty to act in good faith and seeking certain declaratory relief.

[18] Ground, J. authoritatively dismissed Heico's motion to lift the stay, finding that Heico's Statement of Claim for its proposed action did not set forth a reasonable or even tenable cause of

action. (See paragraphs 22 to 31 of Reasons for Decision. Ground, J. reiterated these reasons in his later Reasons dated July 25, 2007.) Heico unsuccessfully sought leave from the Court of Appeal to appeal the "Dismissal Order" of Ground J. (the terms of which had been settled by him at a hearing January 5, 2007.)

[19] Farley, J. in his Reasons pursuant to a hearing August 4, 2005, in respect of the issue of interpreting Article 2.12 of the APAs, had held that the determination as to Adjustments by the Expert appointed under the APAs becomes the "final Adjustments".

[20] In his December 15, 2006 Reasons, Ground, J. also dealt with the cross-motion of the Monitor for an order directing KPMG as the Expert to calculate the Adjustments. Ground, J. directed KPMG, as a first step, to do a calculation of the working capital adjustments "to determine the extent of the differences between the calculations based upon the Ivaco approach and the Heico approach."

[21] After an exhaustive review of the issues in his July 25, 2007 Reasons, Ground, J. concluded (at paragraphs 34 and 35) that KPMG had properly prepared its Report as Expert in terms of the accounting principles and process employed, and ordered (Order dated July 25, 2007) Heico to pay the Monitor $52,887,000." being KPMG's calculation of the working capital adjustment", plus interest. On October 26, 2007, Heico unsuccessfully sought leave to appeal the July 25, 2007 Order of Ground, J. implementing his July 25, 2007 Reasons.

[22] In his Reasons dated December 15, 2006, Ground, J. left open one matter (paragraph 21 of his Reasons) to be determined by way of a trial of an issue (see s. 2 of the Order dated November 7, 2006), being the Applicants' claim for a further approximate $6.7 million plus interest with respect to the calculation of the net working capital adjustments. This outstanding matter is now reflected in s. 28 (b) of the above-referenced Sanction Order.

[23] If Heico seeks and obtains leave from the Supreme Court of Canada to appeal, and then successfully appeals, the dismissal of its appeal by the Court of Appeal of the July 25, 2007 Order of Ground J. ordering Heico to pay the Monitor $52, 887,000. plus interest, then Heico may be able to establish a reduction or set-off as against part or all of whatever monies Heico may be obliged to pay the Monitor. This possibility is the reason underlying s. 28 (a) of the above-referenced Sanction Order.

[24] In my view, Heico's oral submissions at the sanction order hearing, in disagreeing with s. 28 of the above-referenced Sanction Order, are founded in its refusal to acquiesce in the findings of Ground, J. (the Dismissal Order) that there should not be a lifting of the stay in respect of Heico's seeking to bring a claim against Ivaco and the findings of Ground, J. (July 25,2007Order) that Heico is obliged to pay the Monitor at least $52,887,000. by reason of the KPMG calculations.

[25] Heico now takes the position it is not an "Affected Creditor" within the meaning of the Plan. For the reasons given above, I find Heico is an "Affected Creditor" within the defined terms and meaning of the Plan.

[26] Heico also takes the position that it cannot be made an Affected Creditor because, Heico asserts, there is not jurisdiction under the *CCAA* to embrace a Post-Filing Creditor. Moreover, Heico claims it is unreasonable and unfair for any post-filing creditor to have its claim as a creditor subject to a plan of compromise or arrangement. I disagree.

[27] First, the *CCAA* does not limit its embrace in respect of creditors to pre-filing creditors. Section 2 of the *CCAA* provides that an "unsecured creditor" [like Heico] means any creditor who is not a secured creditor without any suggestion of a temporal limitation. Likewise, section 4 speaks to a compromise between a debtor company and its unsecured creditors or any class of them without any suggestion of temporal limitation. In providing for compromises to be sanctioned by the Court section 6 refers to approval by " a majority in number representing two-thirds in value of the creditors, or class of creditors…present and voting…" without qualification by way of a temporal limitation as to when the person became a creditor.

[28] Second, I infer from a public policy standpoint that there is not any *a priori* reason for excluding post-filing creditors from the reach of the *CCAA*.

[29] Heico submits it is unfair to include a post-filing creditor's claim as subject to a restructuring compromise. However, Heico knew full well that it was dealing with Ivaco while it was under *CCAA* protection. Heico, a sophisticated enterprise, with legal advisors, chose in its perceived self-interest to enter into a contractual arrangement to purchase assets of Ivaco. Heico could have sought to bargain for protective contractual provisions seen to be appropriate and sought Court approval for those provisions. Why would public policy restrict the forming of a commercial relationship between a debtor subject to the *CCAA* and a party seeking to contractually bargain with that debtor with knowledge that the debtor is under *CCAA* protection? The purpose of the *CCAA* is to facilitate restructuring of debtor businesses with the support of the requisite number of creditors.

[30] Heico further submits there is no precedent for including a post-filing creditor within the reach of the *CCAA* and a plan of arrangement or compromise approved by the requisite number of creditors.

[31] The situation at hand is relatively novel in terms of the case law. It is noted in *Stelco Inc. Re* (2005), 15 C.B.R. (15th) 283 (Ont. S.C.J.) a creditor brought an application for an order that the claims procedure did not bind a creditor who had entered into a contractual relationship after the debtor, Stelco, obtained protection under the *CCAA*.

[32] However, Farley, J. did not find it necessary to grant the creditor the requested order because he found on the factual record that the debtor had already in effect opted not to compromise the creditor's claim. The claim was not a "restructuring claim" under the language of the Claims Order but rather continued to be stayed and was to be dealt with in the ordinary course of litigation after Stelco's *CCAA* protection was terminated.

[33] It is also noted in the case at hand that should it be established by Heico through the appellate process Heico is entitled to a set-off, s. 28 of the above-referenced Sanction Order provides that there is not any compromise through the Plan in respect of the quantitative set-off.

[34] In my view, Heico's oral submission in the hearing at hand to approve the Sanction Order is an indirect collateral attack upon the previous decisions of Ground, J. Heico's real and continuing complaint is that it cannot bring a claim for damages against Ivaco. As noted above, this issue has been disposed of with finality by Ground J. December 15, 2006 whose decision has been upheld on appeal by the Ontario Court of Appeal. Subject to a successful further appeal to the Supreme Court of Canada, this issue has been concluded.

Disposition

[35] As stated at the outset, the Motion is granted, and the three Sanction Orders are signed and to be issued, for the reasons given.

Peter A. Cumming J.

CUMMING J.

DATE: November 20, 2007

Schedule 4

March 11, 2008

ENDORSEMENT OF JUSTICE BLAIR

The Monitor moves for an Order striking the Reply factum filed by Heico on this in-writing application for leave to appeal. While this may appear to be a tempest in a teacup, having regard to this long, drawn-out, CCAA proceeding, there is a point to be made.

The provisions of Rule 61.03.01(11) & (12) dealing with motions for leave to appeal to the Court of Appeal are quite clear. They state:

> (11) If the responding party's factum raises an issue on which the moving party has not taken a position in the moving party's factum, that party may serve a reply factum.
>
> (12) The reply factum shall contain consecutively numbered paragraphs setting out the moving party's position on the issue, followed by a concise statement of the law and authorities relating to it.

In short, the right to file a reply factum is limited to circumstances where the responding party raises an issue with respect to which the moving party has not already taken a position in its original factum, and the reply factum is to be limited to matters dealing with that issue. The reply factum is not an opportunity to reiterate and reinforce the moving party's entire case. As Mr. Howard points out, this is particularly important in an in-writing procedure.

In my view, the reply factum under attack here runs afoul of the Rule. The only new issue raised in the Respondent's factum relates to the argument that the proposed appeal is moot. Mr. Howard concedes that the portion of the reply factum responding to that issue (paras. 3 & 4) may remain. It is not necessary for me to outline in detail the specific portions of the reply factum that offend the reply Rule. They are summarized in the Table of Concordance that forms Schedule "C" to the Monitor's factum. Suffice it to say that the balance of the factum, almost in its entirety, consists of referring to a submission made in one of the responding factums & then reiterating the point made in the moving party's original factum with respect to that particular issue. Rules 61.03.01(11) & (12) do not contemplate such an exercise.

Accordingly, the Heico Reply factum is struck, except for paras. 3 & 4, with leave to Heico to serve and file a Fresh Reply factum containing those paragraphs and a concise statement of the law and authorities relating to the mootness issue. The Fresh Reply factum is to be filed within a week of this date.

The Monitor is entitled to its costs of this motion, on a partial indemnity basis, fixed at $5,765.00 all inclusive.

R.A. Blair J.A.

SCHEDULE 5

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 or Plans of Compromise or Arrangement of Ivaco Inc. and the Applicants listed in Schedule "A"

Court of Appeal File No. M35822

COURT OF APPEAL FOR ONTARIO

BEFORE ROSENBERG J.A. BORINS J.A. Epstein J.A.

DATE APR 17 2008

DISPOSITION OF MOTION

Leave to appeal refused with costs fixed at $1500 inclusive of GST and disbursements.

M. Rosenberg J.A.
S. Borins J.A.
G. Epstein J.A.

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

MOTION RECORD
(LEAVE TO APPEAL)
VOL. I OF II

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