TAB A

Court File No. 03-CL-5145

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

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"

Applicants

AFFIDAVIT OF E. BRUCE LEONARD
(sworn October 13, 2006)

I, E. Bruce Leonard, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a partner at Cassels Brock & Blackwell LLP ("Cassels Brock"), counsel for Ifastgroupe 2004 L.P., Ivaco Rolling Mills 2004 L.P., and Sivaco Wire Group L.P. (collectively, "Heico").

2. As one of the key people at Cassels Brock who was responsible for representing Heico with respect to the purchase of the assets of Ivaco Inc. and certain related companies (collectively, "Ivaco") and with respect to a subsequent dispute concerning a working capital adjustment, I have knowledge of the matters to which I depose herein.

3. I swear this affidavit to respond to the allegations made by the Monitor, Ernst & Young Inc. (the "Monitor"), which is attempting to assert certain claims of privilege on behalf of Ivaco.

ALLEGATIONS OF PRIVILEGE

4. As I will further depose below, I do not believe that any privilege presently attaches to documents formerly in the possession of Ivaco that were intentionally abandoned when they were turned over to Heico at closing on November 30, 2004.

5. During the course of *Companies' Creditors Arrangement Act* ("CCAA") proceedings, Heico purchased a substantial majority of Ivaco's businesses as a going concern. The transaction closed November 30, 2004.

6. Prior to and at all material times during the negotiation of the APA's and the closing of the purchase, Ivaco's head office was located in Montreal, Quebec. On November 28, 2003, by Order of Justice Farley (which order is attached as Exhibit "1"), Ivaco was permitted to retain 1379074 Ontario Limited ("137") to provide consulting services relating to the restructuring. The directing mind of 137 appears to have been Randall Benson ("Mr. Benson"), who appears to have been the person delivering the services on behalf of 137. I am not aware of any evidence indicating that Mr. Benson ever an officer, director, or employee of Ivaco.

7. During the CCAA proceedings, including the events leading up to Heico's purchase of the Ivaco business, Ivaco used Davies Ward Phillips & Vineberg LLP ("Davies Ward") as its counsel. I believe that corporate communications and correspondence with Davies were initiated from and received at Ivaco's office in Montreal.

8. During the restructuring, Ivaco supplied office facilities space in its Montreal offices to 137, which were used by Mr. Benson.

<u>Terms of Sale</u>

9. The terms of Heico's purchase of the assets of Ivaco were set out in detail in three separate asset purchase agreements (the "APAs"), the forms of which were virtually identical. Pursuant to Article 2.1(f) of the APAs, Ivaco agreed to sell and absolutely transfer to Heico all of its books and records. The term "Books and Records" was broadly defined in the APAs to cover all books, records, and data, in paper or electronic form, relating to the businesses that Heico was purchasing. The only exception to this absolute transfer was a specific right of Ivaco to retain copies—not originals—of documents "for use in the filing of any Tax Returns or as otherwise required in connection with the CCAA Proceeding".

10. During the negotiation process, Ivaco evidently considered which assets should not be sold to Heico and, therefore, would be excluded from the transaction. For example, the APAs

define a list of "Excluded Assets" covering items such as cash on hand, marketable securities, refundable taxes and government refunds.

11. Attached hereto and marked, collectively, as Exhibit "2" are excerpts from the APAs reflecting the transfer of books and records to Heico (as well as relevant definitions).

Post-Closing Events

12. On closing, Heico took over Ivaco's office premises in Montreal for the use of its Ivaco operations. Upon doing so, Heico obtained possession of all books and records of Ivaco, including historical records. Subsequently, when 137 vacated its space at Ivaco's office, it also abandoned many Ivaco-related records by leaving them at Ivaco. According to Mr. Benson, the only files that 137 removed were its own personal files. Mr. Benson acknowledged this during his interview by KPMG on April 28, 2006 as part of the working capital process. Attached hereto and marked as Exhibit "3" is a true copy of pages 77 and 78 from the transcript of Mr. Benson's interview.

13. The working capital dispute between Ivaco and Heico arose within a month of the closing. This dispute is described in more detail in the Affidavit of Stanley H. Meadows, sworn September 29, 2006 (the "Meadows Affidavit"), which was previously filed in support of the series of motions to be heard on November 7, 2006.

14. As a lead lawyer at Cassels Brock on behalf of Heico, I was involved in the negotiation of the APAs, the completion of the transaction, and I remain heavily involved in the ongoing working capital dispute. The APAs were prepared by Ivaco's counsel, Davies Ward, and therefore Ivaco had the full opportunity to assert or maintain privilege and to provide in the APAs that Ivaco could remove from its premises any documents that it did not wish Heico to use after closing. However, neither Ivaco nor Davies Ward took such step.

15. Stikeman Elliott LLP ("Stikeman"), counsel for the Monitor, participated in the Ivaco CCAA proceedings throughout including the Court approval of the APAs and the closing of the transaction. Stikeman and the Monitor did not raise any possible concerns about privilege either, and, to my knowledge, took no steps to have Ivaco retain any documents.

16. Even after the APAs were executed, Ivaco provided no indication to Heico that it intended to maintain privilege over any of the books and records covered by the APAs. In fact, Ivaco to my knowledge turned over its books and records without any further comment. As such, I believe that Ivaco intentionally abandoned all of its books and records when it turned over possession of its Montreal office to Heico upon closing and, further, Ivaco had no intention of maintaining any privilege that may have existed.

17. During the working capital process, numerous individuals—including employees and counsel of Ivaco and Heico, as well as Mr. Benson—have been interviewed by KPMG LLP (the "Expert"), the expert engaged under the APAs in the connection with the working capital adjustment calculations. These interviews began in April 2006 and have continued through the summer.

18. Until August 24, 2006, Ivaco never gave any indication that it intended to assert privilege over any documents in Heico's possession. I believe that Ivaco was fully aware of the broad scope of documents that it had turned over to Heico because Ivaco made requests during the interview process that Heico produce many of such documents.

19. I have never conducted any overall review of the Ivaco documents that were given to Heico on closing and no other member of Cassels Brock has done so either. Further, up to August 23, 2006, I do not believe that anyone at Cassels Brock saw any potentially privileged document created by Ivaco before closing.

<u>Documents Come into Possession of Cassels Brock</u>

20. On August 23, 2006, the day prior to his interview by the Expert, Mr. Meadows forwarded to me a number of documents by e-mail and fax (collectively, the "Documents"), which represented less than one expandable folder. Upon receipt, I asked my assistant to print the Documents for use by Mr. Meadows at his interview the following day. Four sets of the Documents were made for Mr. Meadows' interview and one set was given to PricewaterhouseCoopers LLP ("PwC"), which is acting as Heico's financial advisor in the working capital proceedings.

21. I am advised by Robert Martin, a partner at PwC, and believe, that prior to Mr. Meadows' interview, PwC reviewed financial information relating to the working capital proceedings, possibly including some of the Documents.

22. During his interview on August 24, 2006 (which was transcribed by a court reporter), Mr. Meadows referred to a letter from Davies Ward to the Board of Directors of Ivaco which relates to the signing of the APAs. This letter is one of the Documents.

23. Mr. Meadows specifically indicated that the letter from Davies Ward and a number of other Documents had come from files that Ivaco had left behind, and therefore abandoned, at its Montreal office.

<u>Correspondence Regarding Monitor's Claim of Privilege</u>

24. Following the interview of Mr. Meadows on August 24, 2006, Peter Howard ("Mr. Howard") of Stikeman, counsel for the Monitor, sent me two e-mail messages (attached as Exhibits "4" and "5") which sought further information concerning the Documents.

25. Late in the afternoon of August 25, 2006, I sent an e-mail message to Mr. Howard (Exhibit "6") in which I asked Mr. Howard for clarification of the Monitor's position concerning the Documents, as well as other matters relating to the working capital adjustment. Although it was clear to me that the Monitor was raising some objection to the Documents, the scope of the objection was not clear and I did not know how Mr. Howard proposed to deal with it.

26. Mr. Howard responded at 3:04 p.m. on August 25, 2006, a copy of which response is attached hereto as Exhibit "7".

27. At 4:47 p.m. on August 25, 2006, I sent an e-mail message to Mr. Howard (Exhibit "8") explaining how the Documents had come into my possession and reminded Mr. Howard that he had been given a copy of the 2004 letter from Davies Ward to the Board of Directors of Ivaco. I also told Mr. Howard that I could not see how any such document could be privileged, given that it was widely circulated and, further, it had been voluntarily turned over

to Heico as part of the sale of the Ivaco business. I also indicated that it was far from clear that Ontario law would apply to the determination of privilege.

28. Nonetheless, I recognized that if privilege was being raised as an issue, Heico was certainly amenable to seeking guidance from the Court. In the interim, I took protective steps to ensure that further allegedly privileged documents did not come into my possession.

29. At 5:17 p.m. on August 25, Mr. Howard sent a responding e-mail message (Exhibit "9"), followed by another e-mail message to 3:43 p.m. on August 28, 2006 (Exhibit "10").

30. On August 31, 2006, I sent Mr. Howard a detailed memo (Exhibit "11") outlining Heico's position. In short, Heico firmly believed, and continues to believe, that the APAs and the Vesting Orders provided for the transfer of all assets of the specified Ivaco companies—including all books and records—to Heico free and clear of any claims, rights, limitations or restrictions whatsoever. I also reminded Mr. Howard that, based on information that we had received about Quebec law and U.S. law, I understood that privilege did not attach to the Documents, which had been contained in files located in Quebec and Illinois.

31. I subsequently received an e-mail response from Mr. Howard on September 1, 2006, a copy of which is attached as Exhibit "12". Mr. Howard advised that he would attempt to schedule a hearing before Justice Ground, for unspecified relief, during the week of September 4, 2006. Later on September 1, 2006, I sent to Mr. Howard an e-mail message (Exhibit "13") in which I again expressed my willingness to consider any suggestions that the Monitor might have for dealing with the Documents.

32. On Tuesday, September 5, 2006, Mr. Howard left a voicemail message at our firm indicating that he was scheduling a hearing before Justice Ground on Tuesday, September 12, 2006. Mr. Howard followed up by sending me an e-mail message on the afternoon of September 6, 2006 (Exhibit "14"). Two hours later, I sent Mr. Howard an e-mail message (Exhibit "15") in which I confirmed that we were available to appear before Justice Ground on September 12, 2006. I also confirmed that the Documents had been placed into boxes and sealed in order to await the Court's guidance.

33. Despite its own doubts about the Monitor's late-blooming claims of privilege, Heico recognized that proper procedures should be followed in order to allow the privilege issue to be properly brought before the court and adjudicated. Accordingly, on September 8, 2006, our firm served the Monitor with a Notice of Motion, originally returnable on September 12, 2006, before Justice Ground, which sought directions and a determination of the privilege issue. An updated version of such Notice of Motion (to reflect the outcome of the September 12 hearing) was included in the Motion Record of Heico that was served on September 29, 2006.

34. Prior to the September 12, 2006 hearing, Heico and the Monitor agreed to a series of steps to allow the privilege issue (raised in Heico's Notice of Motion) to be brought before the court. Heico agreed to provide the Monitor with a copy of all of the Documents by 5 p.m. on September 13, 2006. In turn, the Monitor agreed to review the Documents and, by no later than September 29, 2006, to advise Heico over which documents it intended to assert the privilege of Ivaco and provide particulars of such documents and the nature of the privilege claimed. In turn, Heico could respond by October 13, 2006.

35. The agreed timetable was memorialized in an order of Justice Ground made during a case conference at 2:15 p.m. on September 12, 2006. The details of the timetable are set out in Exhibit 2 to the Affidavit of Brian Denega, sworn September 29, 2006 (the "Second Denega Affidavit").

36. Heico fully complied with its agreement. In that regard, on September 13, 2006 our firm sent to Stikeman a complete set of the Documents. As indicated above, four copies of the Documents were made for use at Mr. Meadows's interview, one copy was made available to PwC, one copy was provided to Stikeman, and the remaining sets of copies are still in sealed boxes at Cassels Brock's offices.

Extent of Review of Documents

37. As I have deposed above, to my knowledge Cassels Brock never had any potentially privileged documents of Ivaco at any time prior to August 23, 2006.

38. To my knowledge, the only documents that our firm has ever had which might be subject to privilege in favour Ivaco are the Documents (i.e., the items that were received on August 23, 2006 and which were provided to Stikeman on September 13, 2006).

39. Inasmuch as the Documents have been sealed in boxes, I do not have a clear recollection of them. My general recollection is that there was only one document passing to or from Davies Ward which reflected Ivaco seeking or receiving legal advice. My recollection is that most of the Documents were email communications and I do recall that the communications involved Ivaco, Ernst & Young, UBS Securities, the financial advisers to Ivaco, and, occasionally, Mr. Howard. The emails also included some communications that had been copied to McDermott Will & Emery.

40. Since the Documents were sent to our firm only one day before Mr. Meadows's interview and since the Monitor raised the privilege issue shortly thereafter, I conducted no material review of the documents, but merely flipped through them briefly. Further, no other lawyer or law clerk at Cassels Brock ever saw, or had any possession of, the Documents before they were sealed into boxes when the privilege issue was raised.

41. As such, given my limited knowledge, we are completely dependent on the Monitor to review and categorize the Documents, so that we can properly address the issue of privilege at the November 7, 2006, motion.

42. Based on its agreement on September 12, 2006, we expected the Monitor to provide precise and sufficient detail concerning the Documents so that Heico could respond to the allegations of privilege. In that regard, Heico expected the Monitor to catalogue the Documents and provide something similar to a chart setting out, for each of the allegedly privileged documents,

(a) the date of the document;

(b) the type of document (e.g. letter, e-mail message, memo, etc.);

(c) the author of the document;

(d) the recipient(s) of the document;

(e) details of all persons who were copied or blind-copied on the document; and

(f) a brief description of the subject matter of the document (without disclosing privileged contents).

43. Heico also expected the Monitor to inform it about which of the Documents were clearly not privileged and to return such documents to it without making or retaining any copies.

44. On September 29, 2006, Ivaco served the Second Denega Affidavit. Unfortunately, this affidavit contained no details about any of the Documents. As such, Heico still has no idea how many Documents are in dispute, the details about the items in dispute, or the basis for the claim of privilege.

45. On October 3, 2006, my partner, William J. Burden, wrote to Peter Howard of Stikeman in order to, among other things, outline the deficiencies in the Second Denega Affidavit. Attached hereto and marked as Exhibit "16" is a true copy of Mr. Burden's October 3, 2006, letter.

46. Even after this letter was sent, the Monitor did not provide any supplementary information concerning the privilege issue. On October 13, 2006, our firm sent another letter (Exhibit "17") to counsel for the Monitor as a reminder that the privilege issue has not been properly defined.

47. Given the lack of detail in the Second Denega Affidavit, Heico is unable to respond to any claims of privilege over specific Documents and it does not even know how many Documents are claimed to be privileged. The Monitor has also not returned any undisputed documents to Heico.

48. Heico still requires the Monitor to provide details of which documents are allegedly privileged and the basis for the claim of privilege, so that it can respond. Obviously, Heico reserves the right to deliver subsequent affidavit(s) once the privilege issue is properly defined.

49. This affidavit and the other affidavits filed by Heico's deponents represent Heico best efforts to deal with the privilege issue in the face of the inadequate evidence from the Monitor.

General Position of Heico

50. Heico's general position is that none of the documents that were turned over to Ivaco on November 30, 2004 (including the Documents) could now be subject to privilege. The turn-over was certainly not a case of inadvertent disclosure, but was a clearly intentional step in accordance with Ivaco's obligations under the APAs which evidenced Ivaco's deliberate lack of intent to reserve any rights in its files after closing.

51. Nonetheless, to the extent that privilege was not lost through the voluntary delivery up and abandonment of the Documents (or any other files) by Ivaco or through the Vesting Orders made by the Court in the form submitted by Ivaco, the Court will still have to review individual documents in issue in order to determine whether privilege ever existed.

52. I believe that communications

(a) between Ivaco and the Monitor and/or its counsel, Stikeman;

(b) between Ivaco and its financial advisor, UBS;

(c) to and from Mr. Benson, whose numbered company was retained by Ivaco as an independent contractor during the CCAA proceedings;

(d) between Ivaco and Davies Ward that were copied to third parties such as the Monitor, Stikeman, or UBS, and

(e) between other parties that were only copied to Ivaco or Davies Ward are not, and were never, privileged.

53. Further, since the Monitor has only indicated that it would be asserting the solicitor-client privilege of Ivaco (to the extent that the Court grants standing to the Monitor), the Court will also have to analyze the specific content of any communications between Ivaco and Davies Ward. Obviously, if such communications do not involve the seeking or obtaining of legal advice, they are not privileged.

Need to Determine All Privilege Issues

54. Although the Monitor has only asked to inspect the Documents—and not the overall files of Ivaco that Heico obtained on closing—I believe that all privilege issues should be dealt with in a comprehensive manner. As such, Heico is willing to allow access by an independent third party to Ivaco's records that were created from January 1 to November 30, 2004, so that any documents that might be subject to a claim of privileged can be identified, organized, and brought before the Court for determination.

55. Prior to the September 12, 2006 attendance before Justice Ground, Heico proposed that the Monitor retain an independent accounting firm to attend at Ivaco's former corporate office in Montreal to review the documents created between January 1 and November 30, 2004 in order to identify any items that might be subject to privilege, so that the Court could rule upon such items. To date, the Monitor has not taken Heico up on such offer.

56. I believe that the Court should consider implementing this kind of review procedure if the Monitor intends to assert Ivaco's privilege (if any) over any items beyond the Documents. If the Court appoints an independent accounting firm, such firm should, at the least, prepare a schedule of all such potentially privileged documents which contains basic information including:

(a) the date of the document;

(b) the type of document (e.g. letter, e-mail message, memo, etc.);

(c) the author of the document;

(d) the recipient(s) of the document;

(e) details of all persons who were copied or blind-copied on the document; and

(f) a brief description of the subject matter of the document (without disclosing privileged contents).

57. Heico did not create the situation in which it now finds itself. The terms of the APAs and the Vesting Orders were drafted by Davies Ward, Ivaco's counsel. Ivaco could have negotiated to exclude privileged documents from the Ivaco business that was sold to Heico or to remove them from its premises prior to closing. Ivaco chose to sell its business, including all its books and records, and turned over such documents to Heico.

58. The claim of privilege is now being raised by the Monitor, for the first time, in the context of heated proceedings to determine the working capital adjustment. Since it was Ivaco's and the Monitor's acts and omissions that have created the current circumstances, I believe it is only fair that Heico not be burdened with the expense of a review sought by the Monitor long after the closing of the transaction. As such, I believe it would be proper and fair for the Ivaco Estate to absorb the expense associated with reviewing and cataloguing the disputed documents which Ivaco had abandoned to Heico on closing.

59. Once the documents in dispute have been properly identified and catalogued, the parties can have the privilege issue adjudicated.

Cassels Brock Acted Properly

60. Although I do not believe that the Monitor's position has any merit, I agree that the issue of privilege has to be brought before the Court for guidance.

61. Since the issue of privilege was first raised by the Monitor on August 24, 2006, Cassels Brock responded properly. I ceased reviewing the Documents and took protective steps. In that regard, I caused all of the documents in hard copy form to be placed into banker's boxes and sealed. I also caused electronic copies of such documents (i.e., the form in which Mr. Meadows sent them to me) to be copied onto a compact disk which was placed in the sealed boxes. The originals of such electronic files have been deleted from our firm's

computer servers and such files have not been disseminated to third parties. Further, no other lawyer or law clerk at Cassels Brock has conducted any review of the Documents.

62. Shortly after I received the Documents, I initially arranged for our firm's word processing department to prepare a chart containing basic information concerning the documents that our firm had received, including date, author name, recipient name, details of any persons copied, and a length of document. When the privilege issue was raised, I arranged to have this chart (in the state that it then existed) burned onto a compact disk and placed in the sealed boxes of documents. The original electronic copy of the chart has been deleted from Cassels Brock's servers. To the best of my knowledge, no one in our firm's word processing document (which is staffed with typists) looked at the substance of the documents or would recall anything about the documents, given the superficial nature of the chart that they were asked to prepare.

63. The only exception is that, as noted above, hard copies of the Documents were sent to PwC before the issue of privilege was raised. Once that issue was raised, we immediately instructed PwC to seal the Documents and not to review them any further. Robert Martin of PwC has advised me, and I believe, that as soon as the privilege issue was raised PwC also took such protective steps and that no one else at PwC had required the Documents..

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, on October 13, 2006. Commissioner for Taking Affidavits	E. BRUCE LEONARD

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"

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Proceeding commenced at Toronto

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