THIS IS EXHIBIT "7" REFERRED TO IN THE AFFIDAVIT OF STANLEY H. MEADOWS, SWORN BEFORE ME THIS 29TH DAY OF SEPTEMBER, 2006.

Jessica M Frederick

A NOTARY PUBLIC

"OFFICIAL SEAL"
JESSICA M. FREDERICK
Notary Public, State of Illinois
My Commission Expires Aug. 18, 2009

Court File No. 05-CL-5916

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

III CANADA ACQUISITION COMPANY,
SIVACO WIRE GROUP 2004 L.P.,
HEICO HOLDING, INC. and
THE HEICO COMPANIES, L.L.C. and the other Applicants listed in Schedule "A"

Applicants

- and -

IVACO INC.
and the other Respondents listed in Schedule "B"

Respondents

APPLICANTS' FACTUM

(In respect of the portion of Heico's May 25, 2005 notice of application that is still outstanding)

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PART I – OVERVIEW

1. This application concerns the interpretation of the purchase price adjustment and dispute resolution provisions of three asset purchase agreements (the "APAs") entered into in August 2004 by the applicants ("Heico" or "Purchasers") for the purchase of the businesses formerly maintained by Ivaco Rolling Mills Limited Partnership, Ifastegroupe and Company Limited Partnership and Ivaco Inc ("Ivaco" or "Sellers").

2. The Purchasers respectfully request a declaration that the Expert (all capitalized terms as defined in the APAs) may review such materials as he considers appropriate for the purposes of resolving the disputes that have arisen between the parties with respect to the calculation of certain "Adjustments". Once the Adjustments are determined, the purchase price will be known.

3. Ivaco, in a companion application bearing Court File No. 05-CL-5876, seeks a declaration limiting the Expert to the task of "providing a report to Heico and Ivaco with respect to Adjustments to Exhibit C and that the Expert is "neither authorized nor directed to make adjustments or Adjustments to Exhibit B".

PART II – FACTS

A. The Purchase Price Adjustment Mechanism and Report of Expert

4. The APAs are structured to provide a mechanism for calculating the final purchase price. This mechanism involves an analysis of the level of Working

Capital of the Ivaco Business at the closing of the transaction ("Closing Date"), which is then compared to a "baseline" Working Capital calculation.

Reference: Affidavit of Daniel Yadron sworn June 20, 2005, para. 4

5. Although the APAs were signed on August 6, 2004, the baseline for the working capital adjustment process was agreed to be September 30, 2004.

Reference: Affidavit of Daniel Yadron sworn June 20, 2005, para. 6

6. Working Capital is defined in the APAs as follows:

> "**Working Capital**" means the aggregate of the book values of Accounts Receivable, Inventory and Prepaid Expenses minus the Accrued Liabilities of the Seller **determined in accordance with Canadian GAAP, and, to the extent consistent with Canadian GAAP, applied on a basis consistent with past practice and consistent with the calculation of the Estimated Working Capital on Exhibit B**, and for greater certainty when calculating the value of Inventory for the purposes of Exhibit C, the same categories and types of Inventory included and valuation methodology used for the preparation of Exhibit B shall, to the extent consistent with Canadian GAAP, applied on a basis consistent with past practice, be used for the preparation of Exhibit C. (emphasis added)

Reference: Affidavit of Daniel Yadron sworn June 20, 2005, para. 5

7. The definition of "Working Capital" contained in the APAs requires that Working Capital be calculated in accordance with Canadian GAAP. The Handbook of the Canadian Institute of Chartered Accounts ("CICA Handbook"), at paragraph 4250.11, provides guidance for the preparation of future oriented financial information, which includes forecasts:

> A forecast is based on reasonable and supportable assumptions that management believes reflect the most probable set of economic conditions and planned courses

of action. To be reasonable, these assumptions need to be consistent with the plans of the entity. Assumptions are consistent with the plans of the entity if they reflect the expected economic effects of anticipated strategies, programs, and actions, including those being planned in response to expected future economic conditions. To be supportable, assumptions need to be based on the past performance of the entity itself, the performance of other entities engaged in similar activities, feasibility studies, marketing studies or any other sources that provide objective corroboration of the assumptions used. The extent of detailed information supporting each assumption, and an assessment as to the reasonableness of each assumption, will vary according to circumstances, and will be influenced by factors such as the significance of the assumption and the availability and quality of the supporting information.

CICA Handbook paragraph 4250.18 further states:

Future-oriented financial information should be prepared in accordance with the accounting policies expected to be used in presenting historical financial statements for the future period, except when otherwise agreed to for special purpose future-oriented financial information.

Annexed as Exhibit "A" are the referenced excepts from the CICA Handbook.

9. The APAs provide that, following the Closing Date, an independent Expert shall resolve disputes, in a final and binding way, through the preparation and delivery of "a report setting forth any required calculations, including the Adjustments":

2.11 Delivery of Exhibit C

(a) As promptly as practicable **following the Closing Date,** and in any event within 23 days from the Closing Date, **the Seller will cause to be prepared and delivered to the Purchaser (i) Exhibit C reflecting** the Assumed Liabilities. **Working Capital** and Capex Expenditures and other line items on the form of Exhibit C annexed hereto as at the Effective Time of Closing, **prepared in accordance with**

Canadian GAAP and, to the extent consistent with Canadian GAAP, applied on a basis consistent with the past practice of the Seller and each other Selling Party and prepared, to the extent Section 2.10 applies, in accordance with Section 2.10 and, in the case of Inventory, based on a physical count of Inventory performed on the Closing Date jointly by the Seller and the Purchaser in accordance with the Selling Parties' past practices **and a calculation of the Adjustments based thereon** and (ii) a copy of the valuation prepared in support thereof. **The amount (each an "Adjustment" and collectively the "Adjustments")** by which:

(i) **the Working Capital as shown on Exhibit C exceeds the Estimated Working Capital shown on Exhibit B will be a positive Adjustment (and any shortfall a negative Adjustment); and**

(ii) the Cash Amount as shown on Exhibit C exceeds the Estimated Cash Amount reflected on Exhibit A will be a positive Adjustment (and any shortfall a negative Adjustment.

If as a result of the process specified in this Section 2.11 or in Section 2.12, the basis for calculation and preparation of Exhibit C differs from the basis on which Exhibits A and B were calculated and prepared, then Exhibits A and B shall be deemed to be amended so as to reflect an identical basis for calculation as Exhibit C. Notwithstanding any change to Exhibit A made in accordance with the foregoing sentence, the Purchaser shall receive credit for all amounts actually paid as the Estimated Cash Amount as shown on the original version of Exhibit A prepared and delivered hereunder, which amounts will be taken into consideration when calculating an amount to be paid to or by the Purchaser in connection with Section 2.14.

(b) In order to permit the Seller to prepare such statements and to perform such Inventory count, the Purchaser shall provide the Seller and its accountants, representatives and advisors access to the Business and the Purchased Assets, including all working papers, computer records, systems and other information technology, and access to the Purchaser's employees, agents, external accountant and auditors, during normal business hours as reasonably requested and, in the case of the Inventory count, at such other times outside of normal business hours as requested by the Seller and in order to minimize disruption to the Purchaser's operation of the Business. The Purchaser shall instruct its employees, agents, external accountant and auditors to provide all assistance requested by the Seller to allow the Seller to prepare such statements and to perform such Inventory count.

2.12 Determination of Working Capital and Adjustments

The Purchaser may dispute the calculation of the Adjustments, as reflected on Exhibit C by notice (the "Objection Notice") in writing given to the Seller within 10 Business Days following the delivery of such exhibit to the Purchaser. **Such Objection Notice shall specify, in detail, the basis for the dispute of the Adjustments** to Exhibit C. If the Purchaser does not deliver the Objection Notice within the aforementioned 10 Business Day period, then the calculations of the Seller set out in Exhibit C shall be deemed to be conclusive and binding on the parties. **If the dispute is not resolved promptly by agreement, and in any event within 20 days of the delivery of the Objection Notice, either party may request KPMG LLP or its successor firm (the "Expert")** to designate a senior partner in its Hamilton office, with unrestricted access to KPMG LLP's professional practice department located in its Toronto office, **to promptly review this Agreement and the disputed items or amounts for the purpose of calculating the Adjustments,** acting as an expert and not as an arbitrator. In accepting such appointment, **the Expert shall be deemed to have been instructed to deliver to the Seller and the Purchaser, as promptly as practicable and in any event within 15 Business Days of being appointed, a report setting forth any required calculations, including the Adjustments as determined by the Expert**. Such **report shall be final and binding upon the Seller and the Purchaser**. Upon agreement with respect to the matters in dispute, such amendments shall promptly be made to Exhibit C as may be necessary to reflect such agreement or such decision, as the case may be. In such event references in this Agreement to Exhibit C shall mean Exhibit C, as so agreed or decided, as the case may be and **the Adjustments as decided by the Expert or as agreed by the parties shall be deemed to be the final Adjustments for the purposes of this Agreement.**" (Emphasis added)

10. The term “Adjustments” is defined in the “Interpretation” provisions of the APAs (Article 1.1) as having the “meaning set out in Section 2.11 (a)”. The bolded portion of Section 2.11(a), extracted above, requires a calculation involving a comparison of Working Capital amounts as shown on Exhibit C and Exhibit B and a netting out of an excess or shortfall to arrive at an overall determination of required Adjustments to the Purchase Price.

> **Reference: APA, Affidavit of Jocelyn Hannah sworn June 20, 2005, Exhibit “A”, page 21**

11. Section 2.11 of the APA also provides that Exhibit B be amended to reflect an identical basis for calculation to that in Exhibit C. It provides for an adjustment of the basis for calculation and preparation of Exhibit B to Exhibit C, with the result being that the Exhibits B and C “reflect an identical basis for calculation” :

> If as a result of the process specified in this Section 2.11 or in Section 2.12, the basis for calculation and preparation of Exhibit C differs from the basis on which Exhibits A and B were calculated and prepared, then <u>Exhibits A and B shall be deemed to be amended so as to reflect an identical basis for calculation as Exhibit C</u>.(emphasis added)

> **Reference: Affidavit of Daniel Yadron sworn June 20, 2005, para. 16**

B. The Working Capital Adjustment Dispute

12. Ivaco prepared forecasts of the Working Capital of the Ivaco Business as at September 30, 2004. The forecasts prepared by Ivaco were attached as Exhibit B to each of the APAs.

Reference: Affidavit of Daniel Yadron sworn June 20, 2005, para. 7

13. Following the Closing Date Ivaco prepared and delivered to Heico a calculation of Working Capital as at the Closing Date in the form of Exhibit C.

Reference: Affidavit of Jocelyn Hannah, Exhibit "B"

14. On receipt and consideration of Ivaco's Exhibit C, and on the advice of PricewaterhouseCoopers LLP, Heico determined that there were instances in which consistent accounting methodologies had not been applied and that certain estimates used in preparing the Exhibit B Working Capital Forecasts were not reasonable or supportable from an accounting perspective as required by Canadian GAAP. There were also instances in which some assets had not been reflected in the Exhibit Bs at all. All of this had the effect of substantially increasing the Purchase Price payable by Heico.

Reference: Affidavit of Daniel Yadron sworn June 20, 2005, para. 10

15. In view of the above, and as contemplated by section 2.12 of the APAs, Heico served Objection Notices that put in issue the accounting items and amounts that are central to a proper determination of the Adjustments in respect of which the Expert is charged with preparing his report. In this regard, Heico has asserted that

the Exhibit Bs are inaccurate and not GAAP compliant and lead to an incorrect calculation of the Purchase Price for a number of reasons, including the following:

(a) Exhibit "B" for IRM LP did not include $10.448 million in inventory that had previously been held on consignment from QIT.

On July 22, 2004, 15 days *prior to* the execution of the APAs, QIT notified the Vendors in writing that QIT was terminating the consignment agreement as of August 7, 2004, and that thereafter IRM LP would be required to purchase its inventory from QIT. As a result, Vendors' would thereafter be required to purchase such inventory, which would have the effect of significantly increasing working capital.

This very significant change was *not* disclosed to the Purchasers nor was any change made to the September 30 Working Capital Forecast. Failure to adjust the Working Capital Forecast for this significant change is not reasonable or supportable in the context of the preparation of the forecast in accordance with Canadian GAAP, nor is it consistent with the accounting treatment given to such QIT inventory in Exhibit "C". This is the type of discrepancy that is subject to review by the Expert under the Working Capital Adjustment Process

(b) Prior to execution of the Purchase Agreements, operating management of Ifastgroupe LP prepared a forecast of September 30, 2004 Working Capital and submitted that forecast to the Vendors. When preparing Exhibit "B" for Ifastgroupe LP the Vendors reduced management's forecasted level of inventory by $3.0 million and increased the forecast level of trade payables by $5.0 million.

To date, the Vendors have not provided any support for these adjustments and similar adjustments were not made by the Vendors when preparing Exhibit "C". Accordingly, Exhibit "B" was not prepared in accordance with Canadian GAAP, and Exhibits "B" and "C" were not prepared on a basis that is consistent with each other and consistent with past practice.

Similarly, prior to the execution of the Purchase Agreements, operating management for Ivaco Inc. prepared a forecast of September 20, 2004 Working Capital and submitted that forecast to the Vendors. When preparing Exhibit "B" for Ivaco Inc., the Vendors reduced management's forecast level of accounts receivable by $3.5 million, and reduced the forecast level of inventory by $3.0 million. Again, the Vendors have not provided any support for these adjustments and similar adjustments were not made by the Vendors when preparing Exhibit "C". Accordingly, Exhibit "B" was not prepared in accordance with Canadian

GAAP, and Exhibits "B" and "C" were not prepared on a basis that is consistent with each other and consistent with past practice.

In the aggregate the unsupported adjustments described above have the impact of increasing the purchase price by $14.5 million.

(c) In the Exhibit "B" for IRM LP, the allowance for doubtful accounts was $3.742 million. When the Vendors prepared Exhibit "C", the reserve was reduced to $1.288 million, without any apparent change in circumstances or facts that would support a difference in the reserve established in Exhibit "B".

Accordingly, Exhibits "B" and "C" were not prepared on a consistent basis contrary to the provisions of the APAs.

(d) When preparing Exhibit B, the Vendors included reserve levels higher than historically recorded by the companies and higher than those included in Exhibit C. For example, on December 31, 2003, IRM LP's balance sheet included a rod reserve equal to 4.3% of total rod inventory. When preparing Exhibit "B" the Selling Parties increased the rod inventory reserve to 9.3% of total rod inventory, yet when the Selling Parties subsequently prepared Exhibit C they lowered that same reserve back to its original level of 4.3%.

The temporary increase of this reserve had the effect of increasing the Purchase Price payable by Purchaser by $1.43 million.

The Vendors provided no supportable basis for this and other similar changes to the accounting estimates. The Vendors response when asked to provide support for these changes is to state that "The Purchaser's insistence that identical GAAP reserves must be applied to the forecast is not correct."

The Purchaser is not requesting that identical GAAP reserves be applied. Instead, the Purchaser only requires that in order to be reasonable and supportable and to comply with Section 2.11, that the same methodologies and bases for estimates should be used when calculating those reserves. This is a matter for the review and determination of the Expert.

(e) Similarly, on December 31, 2003, the IRM LP balance sheet included a spare parts inventory reserve of 9.6% of applicable inventory. The Vendors increased the reserve to 15% on Exhibit "B", yet when the Vendors subsequently prepared Exhibit "C" they lowered the same reserve back to its historical level of 9.6%.

Accordingly, Exhibits "B" and "C" were not prepared on a basis that is consistent with each other and consistent with past practice, contrary to the APAs.

> The temporary increase in the reserve had the effect of increasing the Purchase Price payable by the Purchaser by .849M.

The inconsistent application of accounting principles, approaches, and methodologies, as indicated above, constitutes a departure from GAAP and Section 2.11 of the APAs and is at the heart of the present dispute between the parties.

Reference: Affidavit of Daniel Yadron sworn June 20, 2005, paras. 11 and 18

16. Heico has initiated the section 2.12 dispute resolution process. Ivaco has directed the Expert to cease all further work pending the determination of this application.

Reference: Affidavit of Daniel Yadron sworn June 20, 2005, para. 13

17. Ivaco has itself adjusted Exhibit B in reliance on section 2.11 of the APAs. In this regard, counsel for Ivaco stated the following in correspondence to Heico dated December 23, 2004:

> In addition, we draw your attention to the provision in Section 2.11 which states that "if the basis for the calculation and preparation of Exhibit C differs from the basis on which Exhibits A and B were calculated and prepared, then Exhibits A and B shall be deemed to be amended so as to reflect an identical basis for calculation as Exhibit C. In that regard, please note that the Exhibit B prepared for Ivaco Rolling Mills included in the calculation of Trade Payables for Estimated Working Capital an amount payable to QIT in respect of its entitlement to anti-dumping duty deposit refunds. This amount was incorrectly included in the calculation of [Exhibit] B and has not been included in the calculation of [Exhibit] C. <u>[Exhibit] B has been adjusted to reflect this</u>. [Emphasis Added.]

Reference: Affidavit of Joceyln Hannah, Exhibit "B", page 2

PART III – THE ISSUES

18. The issue is as follows:

(a) Does the APA impose any restrictions on what the Expert, in the exercise of his independent professional judgment and accounting expertise, may review and consider for the purposes of preparing his report and determining the Adjustments?

PART IV – LAW

19. In interpreting the terms of a contract, the court looks to the language used by the parties and gives effect to their written agreement. In interpreting a contract, a court is to give effect to the plain and ordinary meaning of the words used.

> ***Eli Lilly & Co.* v. *Novopharm Ltd.*, [1998] 2 SCR 129 at para. 54.**
>
> ***General Refractories* v. *Venturedyne*, [2001] O.J. No. 54 (Ont. S.C.J) at para. 56.**

20. The clear and unambiguous language of Section 2.11 of the APAs provides that under certain circumstances the Exhibit Bs will be adjusted. The only question is who determines whether an adjustment is appropriate and what is the magnitude of any required adjustment.

21. The language of the APAs also directly address the mandate of the Expert. It is a broad one. The Expert is "to promptly review the [APAs] and the disputed items or amounts for the purposes of calculating the Adjustments." His task is to "deliver... a report setting forth any required calculations, including the Adjustments" (emphasis added).

22. The APAs provide if there is a dispute between the parties the Expert is to determine the Adjustments. The definition of the term "Adjustments" is set forth in Section 2.11 of the APAs. Pursuant to Section 2.11 of the APAs the Adjustments are determined by comparing Exhibit B and Exhibit C. The Expert cannot determine the Adjustments as required by Section 2.12 of the APAs unless there is a final Exhibit B and a final Exhibit C.

23. The APAs do not impose any restrictions on what the Expert, in the exercise of his accounting expertise, may choose to review and consider for the purposes of making the required calculations, including the Adjustments, and preparing his report. The Expert is permitted to review the entirety of the APAs and all of the "disputed items or amounts" put in issue by the parties.

24. A negotiated commercial document should be construed in accordance with sound commercial principles and good business sense. Where words bear two constructions, the more reasonable one which produces a fair result, must certainly be taken as the interpretation which would promote the true intent of the parties at the time of entry into the contract. Similarly an interpretation which defeats the intention of the parties and their objective in entering into the commercial transaction in the first place should be discarded in favour of an interpretation which promotes a sensible commercial result.

> ***Scanlan* v. *Castlepoint Development* (1992), 59 O.A.C. 199 at para 88**
>
> ***Consolidated Bathurst* v. *Mutual Boiler* [1980], 1 S.C.R. 888 at para. 26**

25. The measurement of (and adjustment for) changes in Working Capital based on consistent accounting policies and methodologies, and in accordance with Canadian GAAP, makes sound business sense. It does not make commercial sense to interpret the APAs in a way that restrains the Expert from applying his expertise to determine whether Exhibit B complies with the APAs or, even worse, to proceed with partial a determination of Adjustments while of the view that Exhibit B does not comply with Canadian GAAP and, consequently, with the terms and conditions of the APAs.

26. By preventing the Expert from considering Exhibit B, the Ivaco position fragments and prolongs the determination of the Adjustments. Under the Ivaco position, the Expert would determine the Adjustments to Exhibit C, but would not be permitted to review or adjust Exhibit B. Both Exhibit B and Exhibit C contain a calculation of Working Capital, and pursuant to the terms of the APAs were to be prepared on a consistent basis. The Ivaco position would have the parties engage in a prolonged process in front of the Expert to determine Working Capital on Exhibit C. Then, after this process is complete, the parties, without the assistance of the Expert or his findings, would apply the same accounting methodologies to Exhibit B. If the parties could not agree on how to deal with Exhibit B, then they would return to Court and ask this Court to resolve how those methodologies apply to Exhibit B all of which have to do with compliance with GAAP and consistency in the basis for calculation of Exhibits B and C. These are issues for the accounting Expert. It is contrary to the APAs, judicially inefficient, and it does not make business efficacy to leave the

determination of the overall Adjustments (including any required adjustments to Exhibit B) to anyone other than the Expert.

27. To the extent that it is possible to do so, a contract should be construed as a whole and effect should be given to all of its provisions. The court should strive to give meaning to the agreement and reject an interpretation that would render one of its terms ineffective.

> ***Scanlan* v. *Castlepoint Development* (1992), 59 O.A.C. 199 at para 88**

28. The determination of "Adjustments", by definition, requires a comparison of Exhibit C to Exhibit B. The Adjustments cannot be determined if Exhibits B and C do not comply with Canadian GAAP, or do not comply with the Vendors' past practice to the extent that past practice is consistent with Canadian GAAP, or have been calculated on a basis that is not consistent with each other.

29. The "deemed adjustment provision" of the APAs, as set out in paragraph 11, above, mandates adjustments to the basis for calculation of Exhibit B as a result of the process specified in either or both of sections 2.11 or 2.12. Section 2.12 is the part of the process by which the Expert determines the Adjustments, as defined broadly. Reading the APA as a whole, and giving effect to the deemed adjustment provision, it is open to the Expert, if necessary, to correct or conform either or both of Exhibits B and C in the course of preparing his report and determining the Adjustments.

PART V – RELIEF REQUESTED

30. Heico respectfully requests a declaration that the APA does impose any restrictions on what the Expert, in the exercise of his independent professional judgment and accounting expertise, may review and consider for the purposes of preparing his report and determining the Adjustments.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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SCHEDULE "A"
LIST OF AUTHORITIES

1. *Eli Lilly & Co.* v. *Novopharm Ltd.*, [1998] 2 SCR 129 at para. 54.

2. *General Refractories* v. *Venturedyne*, [2001] O.J. No. 54 (Ont. S.C.J) at para. 56.

3. *Scanlan* v. *Castlepoint Development* (1992), 59 O.A.C. 199 at para 88

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