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 STANLEY H. MEADOWS
(sworn September 29, 2006)

I, Stanley H. Meadows, of the City of Highland Park, in the State of Illinois, in the United States of America, MAKE OATH AND SAY AS FOLLOWS:

1. I am an attorney at McDermott Will & Emery ("MWE"), U.S. 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 MWE 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. With respect to matters in this affidavit concerning the ongoing events in Ivaco's restructuring proceedings, I have been advised by E. Bruce Leonard, a partner at Cassels Brock & Blackwell LLP and believe such information to be true. For further clarity, nothing in this Affidavit is intended to waive any privilege held by Heico or to affect any information that may be privileged to Heico.

3. I swear this affidavit to respond to the affidavit of Brian Denega dated September 11, 2006 (the "Denega Affidavit") and to provide evidence for other aspects of a motion scheduled for November 7, 2006, including a motion by Heico for leave to commence an action against Ivaco.

4. At relevant times, Ivaco was a steel producer in Canada, which had three operating divisions, two in Quebec and one in the Ottawa area. Ivaco's head office and executive functions were located in Montreal, Quebec. Ivaco also had several subsidiaries located in the United States. In September 2003, Ivaco was granted protection under the *Companies' Creditors Arrangement Act* ("CCAA"). Ernst & Young Inc. was appointed as Monitor of Ivaco (the "Monitor"). Davies Ward Phillips & Vineberg LLP ("Davies Ward") was counsel for Ivaco prior to and during the CCAA proceedings. The Monitor was represented by entirely separate counsel, namely Stikeman Elliot LLP ("Stikeman").

5. In the course of Ivaco's efforts to sell its business, Heico was invited to participate as a potential purchaser and ultimately became one of the two final candidates to purchase Ivaco's business. In early July 2004, Heico was selected as the winning bidder to purchase the Ivaco business. Beginning around July 7, 2004, Heico and Ivaco negotiated the final form of the asset purchase agreements for the three Ivaco companies whose business Heico was purchasing (collectively, the "APAs"). The APAs were prepared by Davies Ward in its capacity as counsel to Ivaco.

6. The APAs were ultimately executed on August 6, 2004.

<u>Overview of working capital Adjustment</u>

7. The APAs included a provision for adjusting the final purchase price to take into account changes in Ivaco's working capital between an initial reference date and the closing. The parties agreed on an initial reference date for the working capital in the Ivaco business that would later be compared to the working capital position on the closing.

8. When the APAs were signed on August 6, 2004, the reference date for the initial working calculations was fixed at September 30, 2004, approximately seven weeks after the signing. Since the initial working capital position was to be determined as of September 30, 2004, but the APAs were concluded and executed before that date, the initial working capital calculation was required to be a forecast. Heico had substantial difficulties in accessing current financial information on the Ivaco business and it was not able to assess the validity or propriety of the forecasts prepared by Ivaco's divisions for September 30, 2004. Heico was

allowed no contact with Ivaco's divisions during the period prior to the signing of the APAs. Because of the very limited access that Heico had to Ivaco's financial information and its divisional management, Heico had to rely on a forecast for the initial Working Capital position of the Ivaco Business.

9. The APAs provided that working capital would be adjusted to reflect the difference between the actual working capital on closing and the forecast amount as of September 30, 2004. If Heico disputed Ivaco's calculation and the dispute could not be resolved between the parties, the parties agreed that KPMG LLP acting as expert (the "Expert"), would be empowered to conduct interviews of knowledgeable persons, pose written questions, obtain documents, and receive submissions from Heico and Ivaco, following which the Expert would issue a final decision concerning the working capital adjustment.

10. The relevant provisions concerning working capital are found in Sections 2.11 and 2.12 of the APA. Attached hereto and marked as Exhibit "1" is an excerpt from the APAs which sets out the text of Sections 2.10 through 2.14 thereof.

11. Ivaco consequently prepared a forecast for its working capital position as of September 30, 2004 and this forecast was attached as Exhibit B to the APAs. Ivaco forecast the overall working capital of the relevant Ivaco companies to be $292,974,000 as of September 30, 2004.

Working Capital Dispute

12. Ivaco eventually ceased to have any remaining directors or management. As such, the Monitor effectively took over issues dealing with the APAs, including the working capital process. Pursuant to Paragraph 3 of an Interim Additional Powers Order granted by Justice Farley on December 17, 2004, the Monitor was specifically authorized to complete the transactions provided for in the APAs and to cause Ivaco to meet or enforce all post-closing obligations. (As such, the terms "Ivaco" and the "Monitor" will be used interchangeably throughout the balance of this affidavit except where the context requires otherwise.)

13. Attached hereto and marked as Exhibit "2" is a true copy of the Interim Additional Powers Order dated December 17, 2004.

14. On December 23, 2004, after the closing of the transaction, Ivaco issued a calculation of working capital as of November 30, 2004 in the form contemplated as Exhibit C to the APAs. The calculation totalled $359,714,000, which would have required Heico to pay a working capital adjustment of approximately $63,000,000 based on the Exhibit Bs that Ivaco had prepared (exclusive of adjustments carried out by Ivaco to the Exhibit Bs). (The Ivaco calculation is found on page 3 of Exhibit 1 to the Denega Affidavit.)

15. Heico disagreed with the calculation and therefore delivered its Purchasers' Dispute Notice on January 11, 2005 (a copy of which is attached as Exhibit 2 to the Denega Affidavit). Subsequent discussions between Heico and Ivaco proved unsuccessful.

16. On February 4, 2005, Ivaco delivered its Response to the Purchasers' Dispute Notice. On March 25, 2005, Heico delivered a reply to Ivaco's Response, to which Ivaco provided a written response on April 8, 2005.

17. Heico acted diligently to have the working capital adjustment determined in accordance with the provisions of the APAs. In that regard, on April 14, 2005, Heico delivered the necessary paperwork to the Expert so that it could commence the working capital review process.

18. Just four days later, Ivaco instructed the Expert to stop all work on the working capital adjustment process. This step was entirely unauthorized by the terms of the APAs.

19. On April 19, 2005, the Expert confirmed to Ivaco and Heico that it had stopped work.

Delay by Ivaco

20. Ivaco refused to allow the Expert to review the working capital forecast as of September 30, 2004 and instead took the position that the September 30, 2004 forecast was a fixed number that had been agreed to by the parties and could not be adjusted. Ivaco also contended that the Expert could not under any circumstances adjust Exhibit B.

21. This position was at odds with the agreement that Ivaco and Heico had reached and which was embodied in the APAs. At the time that the APAs were concluded, all sides agreed that Exhibit C had to be based on GAAP and that Exhibit B had to be consistent with

Exhibit C. This was to ensure that the working capital figures were both objective and consistent. Heico certainly would not have agreed to a working capital adjustment that could be manipulated by Ivaco.

22. Ivaco had the full opportunity to have the court resolve any dispute concerning the working capital provisions. In that regard, on April 28, 2005, Ivaco brought an application for

(a) "interpretation of Article 2.12 of the Asset Purchase Agreement dated August 6, 2004…"; and

(b) "A declaration that pursuant to Article 2.12 of the APA the Expert (all terms defined in the APA) is charged with providing a report to Heico and Ivaco with respect to Adjustments to Exhibit C and is neither authorized nor directed to make adjustments or Adjustments to Exhibit B".

23. Attached hereto and marked as Exhibit "3" is a true copy of the Notice of Application of Ivaco, issued on April 28, 2005.

24. Heico served a counter-application for a declaration that, among other things, the Expert should review all such materials as it felt were appropriate for purposes of resolving the working capital dispute.

25. Attached hereto and marked as Exhibit "4" is a true copy of Heico's Notice of Application, which was issued on May 25, 2005.

26. The two applications were heard on June 2 and August 4, 2005.

27. In respect of these applications, Ivaco filed and relied on two factums. Copies of Ivaco's factums are attached, respectively, as Exhibits "5" and "6".

28. Heico also filed two factums. Copies of Heico's factums are attached, respectively, as Exhibits "7" and "8".

29. The applications that Justice Farley heard were clearly broad in scope. Ivaco emphasized in Paragraph 1 of its Supplementary Factum dated July 29, 2005 that the matter

before the court was "a straightforward interpretation of Article 2.12 of the APAs". In Paragraph 4 of that factum, Ivaco also submitted that it "is clearly not within the purview of the Expert under the APAs" to make determinations about Exhibit B.

30. After hearing full evidence and submissions, Justice Farley dismissed Ivaco's application and directed the Expert to consider both the September 30, 2004 forecast (i.e., Exhibit B) as well as the actual working capital position at Closing.

31. Copies of Justice Farley's June 2 and August 4, 2005, endorsements are attached as Exhibits 3 and 4 to the Denega Affidavit.

32. Justice Farley's interpretation of Section 2.12 of the APAs was consistent with the approach that Heico had taken since the inception of the working capital adjustment process. Justice Farley's August 2, 2005, endorsement stated, in relevant part, as follows:

> In my view therefore the Expert "acting as an expert and not as an arbitrator" would consider the APA as a whole. In that regard the KPMG partner would consider the financial records of the Sellers with the appropriate provisions of Canadian GAAP in a professional manner (including the views of the CICA)....
>
> The Adjustments as defined in Article 2.11 require a comparison of Exhibits C and B. To the extent that the Expert determines that Exhibit C is to be changed, then similarly Exhibit B "shall be deemed to be amended so as to reflect an identical basis for calculation as Exhibit C". Thus it appears reasonable that the Expert must deal with Exhibit B so that methodology is consistent. In that regard apples are to be compared with apples (although perhaps a better analogy would be that like colours be compared with each other—namely "green" to "green" while recognizing that "green" may be the result of a mixture of "blue" and "yellow".)
>
> In the end result as set out in Article 2.12 the Expert is to decide what the Adjustments are to be—and this determination becomes the "final Adjustments". Therefore it would not in my view be a sensible interpretation that the Expert only consider revisions to Exhibit C, leaving revisions to Exhibit B to be worked out by someone else employing the deeming provision. Certainly the Expert is in the best position to ensure consistency.
>
> Therefore the application of the Ivaco interests is dismissed....

33. This endorsement clearly recognized that the Expert

(a) has to deal with Exhibit B so that its methodology is consistent with Exhibit C; and

(b) would have to consider the appropriate provisions of Canadian GAAP.

34. Ivaco had the full opportunity to raise whatever working capital issues that it wished. Ivaco had asked Justice Farley to interpret the APAs in a specific way and Justice Farley had dismissed such application. Further, Heico was successful because the clear outcome was that Exhibits B and C had to be consistent and, further, that GAAP had to be applied.

35. Ivaco did not appeal any portion of Justice Farley's two orders and, as such, those orders are final. Further, if Ivaco believed that Justice Farley had decided any issues in Ivaco's favour or had any doubt about the August 4, 2005, endorsement, it should have gone back immediately to the Court for clarification.

Working Capital Adjustment Process Resumes

36. After these decisions were rendered, Ivaco took no steps to seek further clarification from Justice Farley, but instead moved forward with the working capital adjustment process. In that regard, Ivaco and Heico worked to develop a protocol for the process, in order to define

(a) what documents should be provided to the Expert;

(b) what submissions Ivaco and Heico could make;

(c) what interviews the Expert could conduct; and

(d) the timing for the above-noted steps.

37. The Protocol (which is found as Exhibit 5 to the Denega Affidavit) was approved on consent of Ivaco and Heico on November 16, 2005.

38. On January 16, 2005, the Monitor brought a motion for an order protecting the Expert from liability arising out of the working capital adjustment process. Heico did not oppose the order.

39. Ivaco and Heico subsequently finalized an engagement letter with the Expert on February 3, 2006. Two weeks later, on February 14, 2006, Heico and Ivaco delivered their

initial written submissions to the Expert. Copies of such submissions are found at Exhibits 6 and 7 to the Denega Affidavit.

40. Ivaco's initial submissions appeared inconsistent with Justice Farley's direction that the Expert consider GAAP, "deal with Exhibit B so that methodology is consistent", and make any necessary adjustment to Exhibit B. For example, Paragraph 22 of Ivaco's initial submissions stated, in relevant part, as follows:

> It would be wrong to apply the GAAP principles with respect to forecasts or projections to Exhibit B because, as set out above, it was not expressly a GAAP forecast or projection. Heico seeks to rewrite the contract to equate Estimated working capital with working capital and the contracts do not logically bear that construction. IF KPMG accedes to this construction at the suggestion of Heico it will have been lead [sic] into an error that takes it outside of the task mandated by the contracts.

41. Thereafter, commencing on April 19, 2006, the Expert interviewed numerous Ivaco employees, Heico employees, and counsel for the parties. So far, the Expert has interviewed a total of approximately 15 individuals up to and including August 24, 2006.

Heico Not Responsible for Delays

42. Throughout this process, Heico has acted diligently. I respectfully disagree with the suggestion in the Denega Affidavit that Heico has taken steps to draw out any part of the working capital adjustment process, including the interviews by the Expert. It cannot be forgotten that it was Ivaco, through the Monitor, which caused the process to get off track back in April 2005, when it unilaterally instructed the Expert to cease work based on the groundless assertion that the Expert was not authorized to adjust Exhibit B to the APAs.

43. The working capital process remains off-track even now because Ivaco, is continuing to raise the same issues that it had full opportunity to raise at the August 4, 2005 hearing. Ivaco's application broadly sought an interpretation of Article 2.12 of the APAs. Justice Farley rejected Ivaco's interpretation. Now, Ivaco appears to want to relitigate the same issues again and hope for a different result.

44. If Ivaco had simply complied with Justice Farley's decision, the working capital process would, in all likelihood be complete by now or in the near future. Matters are now stalled because Ivaco wants to relitigate matters that were raised or could with reasonable

diligence have been raised on August 4, 2005. Ivaco also seeks to sidetrack the process with a series of motions to obtain more financial information about Heico and to obtain an order directing that the Expert provide two alternative reports, something that was never contemplated in the APAs.

45. In contrast, Heico is ready to move forward with the working capital process and to have the Expert complete its report in accordance with the final and binding interpretation of the APAs made by Justice Farley, including consideration by the Expert of Canadian GAAP and making any necessary amendments to ensure that Exhibits B and C are prepared on a consistent basis.

46. Apart from Ivaco's conduct, other factors have also contributed to delaying the process. Ivaco is seeking an adjustment of more than $63 million and Heico vigorously contests such amount. As such, it is not surprising that the Expert has had to consider a significant amount of evidence. For example, given the large number of witnesses, the interview process undertaken by the Expert required several months.

Other Obstacles to Completion of CCAA Proceedings

47. Although the working capital adjustment process has taken longer than either party expected, there does not appear to be any material prejudice to Ivaco or any of its creditors.

48. The major creditors of Ivaco are The Bank of Nova Scotia ("BNS"), National Bank of Canada ("National Bank"), and the United States Pension Benefit Guaranty Corporation ("PBGC") which are clearly sophisticated parties with significant resources. None of BNS, National Bank or the PBGC could be seen as suffering undue prejudice from the ongoing working capital dispute.

49. In any event, there are other unrelated ongoing issues, such as pension issues, that are delaying the completion of the insolvency proceeding and the distribution of proceeds. At the date that the CCAA proceedings were commenced, the Ivaco companies' Canadian pension plans had a solvency deficit of approximately CAD$90 million and the U.S. pension plans had a solvency deficit of US$59 million. These amounts were disclosed in the Third Report

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of the Monitor, dated October 9, 2003, a copy of which is attached (without appendices) as Exhibit "9".

50. The U.S. pension deficit was subsequently settled, which settlement was approved by Order of Justice Farley dated August 4, 2005 (a copy of which is attached as Exhibit "10"). Under the terms of the settlement between the Ivaco companies and PBGC, PGBC was entitled to take the approximately CAD$28 million deposited in a cash collateral account at Wilmington Trust Company in Wilmington, Delaware. To the extent that the CAD$104,809,349 claim of PGBC against Ivaco Inc. and related companies remained unpaid after PGBC received this cash, PGBC agreed that such remaining claim would be unsecured and, therefore, dealt with in accordance with the CCAA claims procedure order dated June 18, 2004.

51. Although the U.S. pension issue has been settled, the dispute concerning Canadian pension deficits remains and threatens to affect the amount that creditors will recover. On June 13, 14, and 15, 2005, BNS and National Bank brought motions seeking, *inter alia,* a lifting of the CCAA stay in order to seek a receiving order against certain Ivaco entities. On July 18, 2005, Justice Farley granted orders (attached as Exhibits "11" and "12") allowing BNS and National Bank to seek receiving orders. The apparent purpose of petitioning the Ivaco entities into bankruptcy was to "reverse the priorities" so that the pension claims became unsecured, thereby improving the position of BNS and National Bank as secured creditors.

52. The Superintendent of Financial Institutions subsequently moved for leave to appeal the July 18, 2005 orders and obtained a stay of such orders pending appeal. Although the appeal itself was heard in February 2006, the decision is still under reserve by the Court of Appeal. In the circumstances, I believe that regardless of the decision of the Court of Appeal, the unsuccessful party will seek leave to appeal to the Supreme Court of Canada.

53. Other motions regarding pension issues are also currently pending. On or around November 28, 2006, Justice Ground will hear a motion by Ivaco's Pension Committee to lift the CCAA stay to permit the Pension Benefits Guarantee Fund to make a payment for the benefit of the salaried employees' pension plan. Attached hereto and marked as Exhibit "13"

is a true copy of a September 25, 2006 letter from Andrew Hatnay of Koskie Minsky LLP to Justice Ground, which was copied to the Service List that describes such motion.

54. The outstanding Canadian pension issues threaten to further delay completion of the CCAA process and the distribution of any proceeds realized from the sale of assets.

No Need for Two Alternate Expert Reports

55. The Monitor is seeking an order directing the Expert as expert to prepare two different working capital adjustment calculations, based on the differing legal positions of each party. The Denega Affidavit asserts that, once the two reports are delivered, the Monitor wants to obtain an interim payment from Heico equal to the lower of the two working capital adjustment calculations.

56. The relief that the Monitor is seeking is inconsistent with the terms of the APAs. Nothing in the APAs provides for or permits the Expert to provide two reports. Further, nothing requires Heico to make any interim prepayment or partial payment of the working capital adjustment amount. Section 2.14 of the APAs specifically provides for payment of any working capital adjustment owing within five days after the Expert has finalized the working capital calculation or the parties have agreed to such number. In the present case, the working capital can be finalized only after this Court interprets the APAs and provides directions to the Expert and the Expert then calculates the adjustment as directed.

57. Ivaco negotiated the APAs with the benefit of sophisticated and experienced counsel at Davies Ward. If Ivaco had wanted to have the Expert prepare alternative reports or obtain an interim payment on account of the working capital adjustment, it should have bargained for such benefits. However, Heico could well have required Ivaco to give something up in exchange.

58. In the circumstances, I believe that it would be unfair to impose on Heico terms that it did not bargain for. The resolution that would satisfy both parties is for all issues to be adjudicated as soon as possible. Heico is committed to promptly moving forward to have all outstanding issues adjudicated, so that the Court can provide the appropriate direction to the Expert to complete the working capital adjustment process as soon as possible.

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59. At the end of the day, the court is not bound to accept the interpretation of either Ivaco or Heico. As such, it is far from clear that the Court will endorse either of the two reports. If neither reported is adopted, the parties would have to incur additional expense to obtain a new calculation based on the court's decision.

60. Since I believe that the Expert can quickly complete its calculations and finalize its report once this court considers and applies Justice Farley's August 4, 2005, order and rules on Heico's action, it would be far more efficient and cost-effective to have the Expert await the decision of the Court, rather than to prepare two alternative reports that may never be relied on.

61. Paragraph 61 of the Denega Affidavit makes it clear that, if the Court authorizes two reports to be prepared, the Monitor will seek to have Heico make an interim payment equal to the lower of the two working capital adjustments. Such interim relief is not provided for in the APAs and it essentially amounts to a request for execution before judgment.

62. The Denega Affidavit contains absolutely no evidence that Heico is dissipating its assets or taking other steps to prevent a working capital adjustment from being enforced against it. Since there is absolutely no evidence that Heico has acted, is acting, or will act improperly, I do not believe that there is any justification for preparing two reports or for ordering Heico to make any interim payment.

63. Further, the APAs already address the issue of delays in the working capital process by specifically requiring Heico to pay interest (calculated from the November 30, 2004 closing date) on any working capital adjustments that it is required to make. As such, to the extent that the working capital process is delayed, Ivaco will receive the appropriate compensation from Heico which it negotiated and agreed to and there will be no monetary prejudice to Ivaco or its creditors.

Request for Financial Information about Heico

64. In its Notice of Cross-Motion, the Monitor seeks an order directing Heico to provide it, on a confidential basis, with sufficient financial information to determine Heico's present

financial position, whether any assets have been transferred since closing, and whether Heico is able to pay the amount of any working capital adjustment that may later be ordered.

65. The Monitor is, in essence, seeking an examination in aid of execution before any judgment has been granted. However, the Denega Affidavit contains no evidence that would support such an extraordinary request. For example, the Denega Affidavit contains no evidence that Heico is unable to pay the working capital adjustment or that any assets have been improperly transferred out of Heico. There is also no evidence whatsoever that the Monitor is being, or will be, prejudiced.

66. In the circumstances, and especially given the complete lack of evidence, I do not believe there is any basis whatever in the APAs or elsewhere for its request that the Monitor should be entitled to obtain confidential information about Heico.

Other Relevant Considerations

67. To the extent that there have been delays and difficulties in the working capital process with the Expert, these problems have resulted from Ivaco's refusal to accept and implement Justice Farley's August 4, 2005 decision. By taking a legal position in the working capital adjustment process that is apparently at odds with Justice Farley's decision, the Expert has been put in an untenable position. As such, Heico asks that this Court direct the Expert to comply with the August 4, 2005, decision and, to the extent necessary, interpret such decision for the benefit of the Expert. To the extent (if any) that this Court now determines that Justice Farley's order did not interpret the APAs to such an extent to permit the Expert to prepare the working capital adjustment calculation, Heico asks that a trial of an issue be held on the meaning of the relevant portions of the APAs.

68. Because the Ivaco is continuing to delay the working capital process by relitigating the same issues of interpretation that were dealt with last year, it should not be entitled to any interim relief against Heico, whether it be production of financial information, the delivery of alternate Expert reports, or an order requiring partial interim payment by Heico.

LEAVE TO COMMENCE ACTION AGAINST IVACO

69. Heico seeks leave to lift the CCAA stay and obtain leave to commence an action against Ivaco relating to the APAs.

70. In short, Heico seeks to issue a Statement of Claim against Ivaco which seeks, *inter alia*:

(a) damages for negligent or wilful misrepresentation, breach of contract, and breach of the duty of good faith;

(b) an order interpreting and enforcing Justice Farley's August 4, 2005 decision or alternatively, if such decision is unclear, a trial of an issue concerning the meaning of the working capital adjustment provisions of APAs;

(c) an order directing the Expert to adjust Exhibit B to the APAs so that such exhibits are prepared according to generally accepted accounting principles ("GAAP"), and are consistent with the Exhibit Cs; and

(d) full production of all relevant documents.

<u>Interpretation of the APAs</u>

71. The working capital adjustment process has now been ongoing for approximately 21 months. During such time, Heico (and presumably, Ivaco) have come to realize that the meaning of the APAs is significantly contested and the disputes have not abated following the various decisions made by Justice Farley since late 2004.

72. For example, despite Justice Farley's August 4, 2005 decision that Exhibits B and C must be consistent and, therefore, the Expert must deal with Exhibit B, Ivaco refuses to acknowledge that Exhibit B must be prepared based on GAAP (which is the basis for Exhibit C). In the event that the Court is unable to interpret and give effect to such decision of Justice Farley, it will be necessary for the parties to call evidence concerning the factual matrix surrounding the relevant portions of the APAs, so that the Court can interpret such agreements and give directions to the Expert.

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Negotiation of the APAs

73. The proposed action stems directly out of the negotiations among Ivaco, the Monitor, and Heico that led to the APAs. The negotiations leading to the APAs were driven by counsel for the parties. On the Heico side, its American counsel, MWE took the lead. The key members of the MWE team were Helen Friedli, Brooks Gruemmer and myself. My colleagues and I dealt with Gillian Stacey of Davies Ward as well as several of her colleagues.

74. As well as being a partner of MWE, I also serve as officer of certain companies in the Heico Companies LLC group.

75. Because I was a lawyer as well as an officer of certain Heico companies, Ivaco's counsel would not allow me or my colleagues to deal directly with any of the main non-lawyer representatives of Ivaco, such as the Chief Restructuring Officer, Randall Benson or Ivaco's Chief Financial Officer. Instead, Ivaco's counsel forced me and my colleagues to deal through the Davies Ward firm. This requirement made the negotiation process more cumbersome and made it more difficult for Heico to obtain complete or timely information about Ivaco.

76. The APAs went through approximately 14 drafts before a final version was agreed to.

77. Heico's decision to purchase Ivaco and its calculation of the purchase price were both based primarily on Ivaco's earnings before interest, taxes, depreciation, and amortization ("EBITDA"). The price ascribed to the Ivaco business was not based on the value of Ivaco's assets.

78. During his interview by the Expert on April 28, 2006, the CRO, Mr. Benson also acknowledged that EBITDA was the basis on which buyers would value Ivaco. (A copy of the relevant portion of the transcript of Mr. Benson's interview (page 3) is attached and marked as Exhibit "14").

79. In my experience, working capital adjustments are very common in purchase transactions such as this. The parties had discussed having the Exhibit B working capital figures based on actual figures as at March 31, 2004 or June 30, 2004, but they could not

mutually agree that either date was representative. The parties did not agree on a fixed baseline number for Ivaco's Working Capital but instead agreed to use a September 30 forecast balance sheet. This was agreed between the parties in order to base any purchase price adjustment on the level of anticipated Working Capital as at a date that would be close to an anticipated closing date so as to minimize adjustments in the Working Capital. Since the APAs were negotiated during July, 2004 and signed in early August, actual figures could not be used.

80. It was implicit that the Exhibit B September 30, 2004 working capital forecast had to be prepared in good faith, based on proper historical data and reasonable and supportable assumptions. The September 30, 2004 working capital forecast was prepared internally by Ivaco's management based on their projections, assessments and reasonable predictions as to the state of the Ivaco business as of September 30, 2004. It was not possible for Heico to validate the forecast, given that Heico had no access to Ivaco's divisional management.

81. The parties agreed that the September 30, 2004 forecast contained in Exhibit B and the actual closing figures (Exhibit C) had to be prepared on the same basis. This is why the APAs specifically require Exhibit C to be prepared in accordance with GAAP and also require Exhibit B to be adjusted so that it is consistent with Exhibit C. Because Heico could not conduct due diligence on the Exhibit B figures, it relied on the terms of the APAs that provided for consistent preparation of Exhibits B and C and mandated that Exhibit C be prepared in accordance with Canadian GAAP and, to the extent consistent with Canadian GAAP, in accordance with past practices in the Ivaco business.

82. The process by which the working capital provisions came about was described in my interview with the Expert on August 24, 2006. Attached hereto and marked as Exhibit "15" is a true copy of the transcript of my interview, the contents of which are true.

83. After the signing of the APAs on August 6, 2004, Heico first learned about a troubling change that Ivaco had unilaterally made to its working capital without informing Heico. Heico learned that Ivaco had unilaterally decided to purchase approximately $10.48 million in raw materials from a supplier, QIT-Fer et Titane Inc. ("QIT"). This purchase occurred on July

29, 2004 but was only disclosed to Heico after the APAs were signed. Further, the purchase of QIT inventory was not reflected by Ivaco when it prepared its Exhibit B forecast.

84. After the closing of the purchase transaction on November 30, 2004, Heico learned that Randall Benson, whose numbered company was retained to provide management services to Ivaco, had unilaterally made "top side adjustments". In essence, Mr. Benson took the September 30 forecasts that had been provided by the Ivaco operating companies and made changes without any apparent basis or support, contrary to Canadian GAAP. The effect of these changes by Mr. Benson was to reduce the overall working capital amount in Exhibit B by at least $14.5 million below where it otherwise would have been and thereby to increase the purchase price by that amount.

85. Further details concerning the QIT raw materials purchase and the "top side adjustments" are found in Heico's draft statement of claim that has been filed in connection with this motion. The overall effect of the adjustments and the undisclosed QIT transaction was to understate Exhibit B by approximately $25 million and, as noted below, likely much more. Obviously, when the Exhibit C was prepared as of November 30, 2004, its working capital figures reflected the actual financial state of Ivaco, including the purchase of the QIT raw materials.

86. As such, the Exhibit C working capital figure was significantly higher than the forecast in Exhibit B, thereby causing a significant potential increase in the purchase price.

<u>Recently Discovered Information</u>

87. During the working capital process with the Expert, numerous documents were produced by the Monitor and by Ivaco's management.

88. Based on my review of these documents, I believe that Ivaco knew or ought to have known that Exhibit B was not a reasonable forecast of the working capital position as at September 30, 2004 and, in fact, that its figures were materially understated, thereby exposing Heico to an unwarranted post-closing adjustment.

89. Heico has now learned that, while the APAs were being negotiated, the Monitor was expressing ongoing concerns that Ivaco's working capital numbers were understated. For example, on July 7, 2004, Linda Scipio Del Campo, an employee of the Monitor, noted that Ivaco's accounts payable were overstated by $18 million and drew this situation to the attention of Ivaco in an e-mail message to Hugh Blakely, the Chief Financial Officer (a copy of which messages is attached and marked as Exhibit "16").

90. As of July 16, 2004, Ivaco and the Monitor knew that Ivaco's realistic September 30, 2004 working capital figures were significantly higher than what was ultimately shown in Exhibit B to the APAs. On that date, Ms. Del Campo sent an e-mail message (attached as Exhibit "17") to Mr. Benson, Mr. Blakely and others, which noted that Ivaco's September 30, 2004 working capital level was forecast to be $311 million, which is $17 million higher than the amount reflected in Exhibit B.

91. The Monitor also encouraged Ivaco to be open and forthright with Heico. For example, on July 23, 2004, Ms. Del Campo sent another e-mail message to Mr. Blakely (attached as Exhibit "18") suggesting that Ivaco provide Heico with a detailed schedule of how Exhibit B was calculated, so that Heico could trace the figures back to the monthly management statements or the general ledger. She also recognized that the inability to trace the forecast back to actual numbers "could be a debateable point later on" and emphasized that Exhibit C be "compiled on a consistent basis with Exhibit B".

92. By the time that the APAs were signed, Ivaco knew that its September 30, 2004 working capital forecast was even higher than previously anticipated. By August 6, 2004, the very day that Ivaco and Heico signed the APAs, Ivaco knew that Exhibit B was not a reasonable forecast. By that date, Ivaco had internal figures showing that working capital as of September 30, 2004 was forecast to be $330,710,000, which was $37,736,000 higher than the figure shown in Exhibit B. Attached hereto and marked as Exhibit "19" is a true copy of Ivaco's internal spreadsheet prepared on August 6, 2004, which shows the September 30, 2004 working capital estimate. Mr. Blakely printed a copy of this document off Ivaco's computer system in mid-2006 for use during the Expert's interview process.

93. As such, at the time that it signed the APAs, Ivaco knew that Heico would be subjected to a working capital adjustment—and therefore a price increase—of more than $37 million. However, Ivaco never disclosed this information to Heico.

94. It also appears that Ivaco knew well before closing that the actual September 30, 2004 working capital figures were significantly higher than those shown in Exhibit B. By October 26, 2004, Ivaco had calculated its actual September 30, 2004 working capital figure for purposes of the APAs as $338,874,000, which was almost $46 million higher than the amount shown in Exhibit B. Attached hereto and marked as Exhibit "20" is a true copy of Ivaco's actual internal working capital calculation prepared on October 26, 2004.

95. Further, Ivaco knew more than one month before closing that the Exhibit B figures were significantly understated and that Heico would be subject to a significant price adjustment after closing. Despite having this information, Ivaco did not disclose it to Heico.

96. Now that Heico has obtained these internal documents of Ivaco, it has discovered how it was misled. I believe that Heico should be granted leave to bring its action against Ivaco.

97. I do not believe that any prejudice will result as a result of the action. Ivaco's CCAA proceeding did not involve a restructuring, but simply became a liquidation. The main beneficiaries of the CCAA process will now be BNS, National Bank and PBGC, the main creditors of Ivaco. However, since there remains outstanding pension litigation and appeals, which may affect the priority of these creditors' claims and the amount of money recovered by them, the CCAA process would not promptly conclude even in the absence of Heico's prospective action.

Allegedly Privileged Documents

98. Certain portions of the Denega Affidavit raise the issue of privilege. Since Ivaco has until September 29, 2006 to define these allegations and provide a complete evidentiary record, Heico's deponent(s) will respond to such allegations comprehensively in a subsequent affidavit.

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SWORN BEFORE ME at the City of Chicago, in the State of Illinois, in the United States of America, on September 29, 2006.

Jessica M. Frederick

Notary Public

Stanley Meadows

Stanley H. Meadows

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

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 File No: 03-CL-5145

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

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