Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

(Commercial List)

BETWEEN:

III CANADA ACQUISITION COMPANY,
SIVACO WIRE GROUP 2004 L.P.,
IFASTGROUPE 2004 L.P.,
IVACO ROLLING MILLS 2004 L.P.
HEICO HOLDING, INC. and
THE HEICO COMPANIES, L.L.C.

Plaintiffs

- and -

IVACO INC., 1039028 ONTARIO INC.,
IFASTGROUPE AND COMPANY LIMITED PARTNERSHIP,
IFASTGROUPE REALTY INC., IFC (FASTENERS) INC.
IVACO ROLLING MILLS LIMITED PARTNERSHIP, and
IVACO ROLLING MILLS INC.

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

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Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and $1000 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and $400.00 for costs and have the costs assessed by the court.

Date September , 2006

Issued by ______________________
Local registrar

Address of court office
393 University Avenue
Toronto, Ontario

TO: IVACO INC

AND TO: 1039028 ONTARIO INC.

AND TO: IFASTGROUPE AND COMPANY, LIMITED PARTNERSHIP,

AND TO: IFASTGROUPE REALTY INC.

AND TO: IFC (FASTENERS) INC.

AND TO: IVACO ROLLING MILLS LIMITED PARTNERSHIP

AND TO: IVACO ROLLING MILLS INC.

CLAIM

1. THE PLAINTIFFS CLAIM:

(a) an Order lifting the stay granted under the *Companies' Creditors Arrangement Act* R.S.C. 1985 c. C 36 in Court File No. 03-CL05145, and granting the plaintiffs leave, if necessary, to commence the within action;

(b) damages in the amount of $75,000,000 for misrepresentation including negligent, reckless or alternatively deliberate misrepresentation, breach of contract, and breach of the duty to act in good faith;

(c) an order for discovery directing the defendants to produce all documents, books, records and files, in their possession and in the possession of Ernst & Young Inc. as Monitor in the CCAA proceedings commenced by the defendants, including records in electronic form, relating to the operations, business and activities of the defendants during the period from September 15, 2003 to November 30, 2004; and

(d) further or in the alternative,

(i) an order declaring that the issue of whether the Exhibit Bs to three asset purchase agreements dated August 6, 2004 ("APAs") for the purchase of the businesses formerly maintained by Ivaco Rolling Mills Limited Partnership ("IRM LP"), Ifastgroupe and Company Limited Partnership ("Ifastgroupe LP") and Ivaco Inc.

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(collectively, "Ivaco") must comply with generally accepted accounting principles ("GAAP") and must be adjusted by KPMG LLP acting as expert (the "Expert") has been determined by order of Justice Farley dated August 4, 2005, and, in particular, a declaration that the Expert shall adjust such Exhibit Bs so that they

(A) comply with GAAP,

(B) are prepared on a consistent basis relative to the Exhibit Cs to the APAs;

(ii) an order giving such other directions as are necessary to carry out the Order of Justice Farley dated August 4, 2005;

(iii) alternatively, and in the event that it is determined that the doctrine of *res judicata* does not apply, a declaration that the Exhibit Bs are required to be calculated and prepared in accordance with Canadian GAAP, and adjusted so as to reflect an identical basis for calculation as the Exhibit Cs, together with appropriate directions to the Expert for the completion of the Working Capital Adjustment Process;

(iv) in the further alternative to the relief sought in paragraphs (d)(i) (ii) and (iii),

(A) an order directing a trial of an issue—with full pleadings, documentary production, and oral discoveries—to consider the factual background and context of the APAs and to interpret the APAs, including the issue of whether the Exhibit Bs to the APAs are required to be prepared in accordance with GAAP and whether the Expert is required to adjust the Exhibit Bs so that they conform to GAAP and to Exhibit Cs to the APAs; and

(B) upon completion of the trial of an issue, an order giving directions to the Expert for the completion of the working capital adjustment process in accordance with the APAs and remitting such process back to the Expert for completion;

(e) costs of this action on a substantial indemnity basis.

(f) such further or other relief as this Honourable Court may deem just.

The Parties

2. The plaintiffs, III Canada Acquisition Company, Sivaco Wire Group 2004 L.P., Ifastegroupe 2004 L.P., Ivaco Rolling Mills 2004 L.P., Heico Holding, Inc. and The Heico Companies, L.L.C. (collectively, "Heico" or the "Purchasers") are companies or partnerships that are contracting parties to the three Asset Purchase Agreements which are at issue in this action and are further described below.

3. The defendants, Ivaco Inc., 1039028 Ontario Inc., Ifastegroupe and Company, Limited Partnership, Ifastgroupe Realty Inc., IFC (Fasteners) Inc., Ivaco Rolling Mills Limited Partnership, and Ivaco Rolling Mills Inc. (collectively, “Vendors” or “Defendants”) are companies or partnerships that are contracting parties to the Asset Purchase Agreements at issue.

The APAs

4. Heico, as purchaser, entered into in three separate Asset Purchase Agreements on August 6, 2004 (“APAs”) for the purchase of the businesses (collectively, the “Ivaco Business”) formerly maintained by Ivaco Rolling Mills Limited Partnership (“IRM LP”), Ifastgroupe and Company Limited Partnership (“Ifastgroupe LP”) and Ivaco Inc. (“Ivaco”).

5. The APAs were subsequently assigned to Heico affiliate companies. Thereafter, the parties entered into Amended and Restated Asset Purchase Agreements as of November 30, 2004 to reflect the assignments and to amend certain other terms and conditions of the APAs.

The Working Capital Adjustment Process

6. The Ivaco Business was large and complex. During the calendar year 2003 the Ivaco Business had assets of approximately $600 million and produced revenues of approximately $775 million. The Ivaco Business employed upwards of 2,000 persons.

7. The Ivaco Business was being offered for sale as a going-concern operating business rather than as assets in a liquidation. As a going concern, the Ivaco Business could only be valued (and therefore priced) by a purchaser on the basis of the expected return on the investment necessary to purchase it. In the purchase transaction, the Ivaco business was not valued by Heico on the basis of the aggregate of the values of selected individual assets. In determining any adjustment to the Purchase Price the APAs required that Canadian generally accepted accounting principles ("GAAP") be applied to objectively determine the amount of any such adjustment.

8. As is customary in transactions involving the purchase of a business as a going concern, the parties agreed that the APAs would take into account the fact that the level of the working capital in the Ivaco Business at the Closing Date might be greater or less than its level on the date on which the APAs were actually signed. The APAs, consequently, provided the means to determine the increase or decrease in the value of the working capital in the Ivaco Business during the period leading up to the closing of the transaction. In broad terms, the mechanism involves an analysis of the level of working capital of the Ivaco Business as at the November 30, 2004 closing date of the transaction ("Closing" or "Closing Date"), which is then compared to a forecast working capital calculation.

9. Although the APAs were signed on August 6, 2004, the forecast for the Working Capital Adjustment Process was agreed to be as at September 30, 2004, a date approximately seven weeks later.

10. Because the forecast working capital position was to be determined as of September 30, 2004, and because the APAs were concluded and executed before that date, the working capital calculation was required to be a forecast. Under the APAs, the Vendors were required to prepare forecasts of the working capital of the Ivaco Business as at September 30, 2004 and these forecasts prepared by the Vendors were attached as Exhibit B to each of the APAs.

11. Prior to the signing of the APAs, Heico was only permitted limited direct contact with Ivaco's operating management and no contact at all with Ivaco's operating divisions. Ivaco required all discussions or inquiries that included Heico's counsel, McDermott Will & Emery, to proceed through Ivaco's counsel, Davies Ward Phillips & Vineberg. Business inquiries from Heico were, until relatively late in the purchase transaction, required to be directed to UBS Securities in New York, the financial advisors to Ivaco, who would invariably pass the inquiries on to Ivaco personnel, receive the answers, process them and then pass them back to Heico. In this way, Heico was faced with a non-transparent and time-consuming system of procedures when seeking to obtain information on the current operations and financial condition of the Ivaco Business.

12. The Exhibit B calculations in the Purchase Price had been agreed to be based on a forecast of the financial condition of the Ivaco Business as of September 30, 2004 but, as indicated above, 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 projections prepared by Ivaco's divisions for September 30, 2004. Heico was allowed no contact with Ivaco's divisions during the

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period prior to signing 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.

13. The only satisfactory means in which to deal with Heico's inability to get current financial information and information of the financial condition of the Ivaco Business and to ensure that the Exhibit B's were not manipulated or contrived was to establish in the APAs procedures that would require the forecasts to comply with Canadian GAAP and, to the extent consistent with Canadian GAAP, to comply with past practices in the Ivaco Business and to be consistent with the actual working capital calculations as of the closing date. This formulation was in fact included in the APAs as it was the only way in which objectively determinable standards could be obtained for calculating the Purchase Price in the transaction.

14. The APAs consequently required the Vendors to prepare and deliver to the Purchasers a statement of the Working Capital of the Ivaco Business as at the Closing Date. This statement was required to be in the form of Exhibit C to the APAs. This statement was required to be prepared in accordance with Canadian Generally Accepted Accounting Principles ("Canadian GAAP") and, to the extent consistent with Canadian GAAP, applied on a basis consistent with the past practices of the Vendors. After the Closing, the Purchase Price under the APAs was to be increased (or decreased) by the amount by which the Working Capital as of the Closing Date as reflected on Exhibit C exceeded (or was less) than the September 30 forecast of Working Capital reflected on Exhibit B (the "Working Capital Adjustment(s)").

15. The APAs require Working Capital to be determined in accordance with Canadian GAAP and, to the extent consistent with Canadian GAAP, on a basis consistent with Ivaco's past practices. In short, Ivaco agreed that the application of Canadian GAAP, and the policies and practices used to calculate Working Capital, would be applied on a consistent basis throughout the Working Capital Adjustment Process. The intention of Exhibit C to the APAs was to provide an objective independent basis of measurement of the Working Capital in the Ivaco Business as at the closing date. Exhibit C was to provide an objective standard against which the forecast in Exhibit B could be contrasted and conformed. As indicated by Mr. Justice Farley (as set out below), the comparison between Exhibit B and Exhibit C was to be "apples to apples".

16. This approach to calculating Working Capital was a critical element of the purchase transaction. Because Exhibit B was a forecast of Ivaco's financial position at a later date, the terms of the APAs requiring that Exhibit B and Exhibit C be prepared on a consistent basis and in accordance with Canadian GAAP were designed to provided assurances that:

(a) Ivaco would not arbitrarily make adjustments to Exhibit B or Exhibit C; and

(b) consistent methods for determining asset and liability valuations would be used when preparing Exhibit B and Exhibit C.

17. The purpose of the Working Capital Adjustment Process was to provide a mechanism to account for actual differences between the Exhibit B forecast and the

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actual Working Capital as of the Closing Date. Inasmuch as the transaction was priced with reference to cash flow and earnings from ongoing operations, not the aggregate value of hard assets, if the Purchase Price were to increase due to a higher level of Working Capital, the higher level of Working Capital was to be reflective of a greater volume of business and increased earnings, not a difference in the basis of measurement. The agreed upon approach to Working Capital was critical to Heico's willingness to purchase the Ivaco Business.

18. Exhibit B was to be a forecast that reflected the best knowledge and information of Ivaco's management as to the Working Capital in the Ivaco Business as at September 30, 2004. The Working Capital Adjustment Process was clearly intended to reflect changes in facts and circumstances resulting from the operation of the Ivaco Business and not to increase the Purchase Price as a result of changes that did not reflect changes in fact or circumstances of the Ivaco Business.

19. Due to the structure of the APAs, and the Working Capital Adjustment Process, the preparation of the Exhibit B Working Capital Forecast had a direct impact on the Purchase Price to be paid by Heico. To the extent that the Exhibit B Working Capital Forecast could be artificially lowered, the Purchase Price payable by Heico would increase, dollar for dollar.

20. The entire purpose of the inclusion in the APAs of a Working Capital Adjustment Process, and the preparation and inclusion in the APAs of an Exhibit B Working Capital Forecast, was to reach an objectively determinable Working Capital component of the Purchase Price. The Exhibit B Working Capital Forecast was prepared solely by the Defendants and was completely within their control. By

promulgating a misleading Working Capital Forecast it was possible for the Defendants to improperly inflate the Purchase Price and defeat the contractual objectives of the APAs that they entered into.

21. In these circumstances, Heico pleads that the Defendants were under a duty in tort and in contract, and were at all times under a duty of good faith to ensure that, among other things, the Exhibit B Working Capital Forecast was prepared in an accurate and responsible manner and, more particularly;

(a) without recklessness or negligence;

(b) without wilful misrepresentations;

(c) using accounting estimates and methodologies that were in accordance with Canadian GAAP and, to the extent consistent with Canadian GAAP, consistent with past practice in the Ivaco Business; and

(d) using reasonable and supportable assumptions based on the past performance of the entity, or other sources that could provide objective corroboration of the assumptions used;

(e) free of improper and subjective changes, interference, manipulations or unsupported adjustments.

Defendants' Wrongful Conduct

A. Updated Forecasts Not Disclosed

22. The underlying financial information for the Exhibit Bs attached to the APAs were forecasts prepared by Ivaco's divisional management. At material times during July and early August, 2004, such forecasts were prepared and updated by divisional management and submitted to Ivaco's Head Office.

23. In the Ivaco Business, the price of scrap metal is an important determinate of the price of finished product. Price increases in scrap metal drive key components of working capital forecasts, including trade accounts payable, and the value of inventories and accounts receivable. The scrap metal market was very active at all material times during the negotiation and completion of the purchase transaction.

24. In preparing working capital forecasts, divisional management at Ivaco projected volumes and used the most current pricing available at the time of any given forecast. Divisional management did not make allowances in forecasts for future price increases or decreases, which were unknown.

25. Divisional management prepared and submitted September 30, 2004 Working Capital Forecasts to Ivaco's Head Office beginning at least as early as July 7, 2004. Changes to market prices throughout July and early August 2004 affected these forecasts and, recognizing this, updated divisional forecasts were provided to Ivaco's Head Office. The updated forecasts were much more reliable than the

forecasts in Exhibit B because they had the benefit of the more current July and August pricing information.

26. In breach of Ivaco's duties to Heico, the updated working capital forecasts were not used to update or correct the Exhibit Bs to the APAs. The updated forecasts were not even disclosed to Heico.

27. During the period between the preparation of the original Working Capital Forecast calculations in early July 2004 and the signing of the APAs on August 6, 2004, several versions of the forecasts were reviewed by Ernst & Young in its capacity as Monitor in Ivaco's CCAA proceedings. Ernst & Young expressed concerns (the particulars of which are not currently within the knowledge of the Plaintiffs) with the purchaser's ability to verify the numbers that were included in the Exhibit Bs, and the accuracy of the forecast contained in the Exhibit Bs. Based on information available at the present time to the Plaintiffs, these concerns seem to have been dismissed or ignored by Ivaco as no changes to address the issues that were of concern to the Monitor appear to have been made to the Exhibit Bs.

28. Heico pleads that Ivaco's senior management intentionally established the Exhibit B Working Capital Forecast in an amount that was significantly understated from its correct amount. The Working Capital Forecast created by Ivaco for Exhibit B was approximately $293 million but this amount was based on knowingly incorrect and outdated financial information which, to Ivaco's knowledge, was current only to or about July 7, 2004.

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29. Heico states that at the time the APAs were signed, on August 6, 2004, Ivaco had current, internally-prepared, financial information that indicated that the aggregate amount of the Exhibit B Working Capital Forecast for September 30, 2004 would be at least $38 million more than the amount it had incorporated into the Exhibit B's. This updated Exhibit B data, prepared by and available to Ivaco prior to the signing of the APAs, was never disclosed to Heico.

30. Schedule "A" to this Statement of Claim demonstrates the $38 million discrepancy between Ivaco's internally generated $331 million Working Capital Forecast (which was concealed from Heico) and the $293 million Working Capital Forecast attached as Exhibit B to the APAs.

31. The effect of the inclusion of a substantially outdated Working Capital Forecast in the APAs was to significantly increase the Purchase Price claimed by Ivaco under the APAs without Heico's knowledge or consent.

32. The Closing of the purchase transaction took place as of November 30, 2004. Subsequent to the Closing, Heico discovered that the aggregate APA working capital as of September 30, 2004 was actually about $339 million, i.e., approximately $46 million higher than the Working Capital Forecast that Ivaco attached as Exhibit B to the APAs on August 6, 2004, less than two months before. The actual September 30, 2004 Working Capital was only $8 million higher than the amount shown by the $331 million forecasts that Ivaco had produced internally prior to the signing of the APAs.

33. Notwithstanding the fact that the Defendants were aware prior to the execution of the APAs that the calculations of the baseline working capital in Exhibit B to the APAs were incorrect, flawed and misleading, and despite extensive negotiations between the signing of the APAs and the Closing of the transaction on a number of important operating considerations, Ivaco never disclosed the financial information it had prepared that showed that the Working Capital Forecast on Exhibit B was in error. The Defendants' inclusion in the APAs of knowingly incorrect Exhibit B's amounts to a breach of the duty of good faith and a deliberate misrepresentation of facts upon which Heico relied in entering into the APAs.

B. QIT Inventory

34. Ivaco's concealment of the internally prepared and updated working capital forecasts also constituted a breach of duty and misrepresentation in relation to an important and long standing consignment arrangement. In this regard, and as further described below, the undisclosed working capital forecasts prepared by Ivaco prior to the signing of the APA's accounted for the termination of the consignment arrangement whereas the Exhibit Bs to the APA's did not.

35. QIT-Fer et Titane Inc. ("QIT"), an important supplier to Ivaco, had supplied billet inventory to Ivaco on a consignment basis for many years. On July 22, 2004, 15 days prior to the execution of the APAs, QIT notified the Defendants in writing that it was terminating the consignment agreement effective August 7, 2004, after which time Ivaco would be required to purchase inventory from QIT on a cash-on-delivery basis. Upon receipt of the notice of termination from QIT, and

unbeknownst to Heico, Ivaco proceeded to purchase the QIT inventory on hand on or about July 29, 2004 for $10.48 million.

36. The Defendants concealed the fact that the long-standing QIT consignment arrangements had been terminated and did not disclose their purchase of over $10.0 million in inventory prior to the signing of the APAs. The updated Working Capital Forecasts that were internally available prior to the signing of the APA's accounted for the QIT inventory purchase, but the Defendants chose not to adjust the relevant Exhibit B to reflect the QIT inventory that Ivaco would hold as at September 30, 2004.

37. Although Ivaco failed to adjust its Exhibit B forecast to reflect the termination of the consignment arrangement with QIT and the purchase of the QIT inventory, the change was documented in the Exhibit C that Ivaco prepared at Closing. Exhibit C included inventory purchased from QIT.

38. The QIT consignment arrangement was a highly attractive and material financing arrangement. The termination of the agreement with QIT increased the level of Ivaco's inventory. The failure to reflect the QIT inventory in Exhibit B coupled with its subsequent inclusion in Exhibit C had the effect of increasing the Purchase Price by $10.0 million. This prejudiced Heico by reducing the return on its investment.

39. Heico has always been willing to pay for valid increases in Working Capital. Valid increases in Working Capital will be reflected in a higher volume of business and increased earnings and cash flow. However, as a result of the change in the agreement with QIT, the ongoing cash flow generated from operations was

unchanged, but the purchase price required to be paid by Heico to generate the same level of cash flow would have increased by the cost of the QIT inventory so that Heico's projected return on its investment was reduced.

40. The termination of the QIT consignment arrangement ought to have been disclosed to Heico as soon as it occurred and prior to the signing of the APA's. Ivaco's failure to do so, combined with the inclusion in the APAs of knowingly incorrect Exhibit B's, constitutes a deliberate misrepresentation and breach of the Defendants' duty to act in good faith.

C. Unsupported and Undisclosed Adjustments to Ivaco's Financial Position

41. Ivaco represented and agreed, and the APAs require, that the basis for calculation and preparation of the Exhibit B and Exhibit C would not differ. Both were to be prepared in accordance with Canadian GAAP and, to the extent consistent with Canadian GAAP, applied on a basis consistent with the past practices of Ivaco. Heico was induced to enter into the APAs on the basis that Canadian GAAP was to be the objective independent measure for the exhibits, and that the policies and practices used to calculate Working Capital would be applied consistently throughout the Working Capital Adjustment Process.

42. As indicated above, the basis for the Exhibit Bs were Working Capital Forecasts that had been prepared by divisional management at Ivaco and submitted to Ivaco's Head Office beginning on or before July 6, 2004.

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43. In breach of their representations and agreement, Heico pleads that the Defendants made deliberate and unsupported changes to their asset and liability valuations for purposes of the Exhibit Bs attached to the APAs. This occurred through a series of unsupported and undocumented adjustments that were made to the accounts receivable, inventory and accounts payable components of Ivaco's Working Capital.

44. The adjustment were intended to, and had the effect of, reducing the amount of Working Capital shown on Exhibit B and therefore increasing the Purchase Price potentially payable by Heico. All of the adjustments were in large, arbitrary amounts.

45. In the case of Ifastgroupe LP, prior to execution of the APAs, its financial personnel had prepared a forecast of September 30, 2004 Working Capital. For purposes of Exhibit B, however, Ivaco's head office arbitrarily altered the divisional level forecast by reducing the forecast level of inventory by $3.0 million, and increasing the forecast level of trade payables by $5.0 million, i.e., reducing the value of the Working Capital by $8.0 million. There was no support for these changes as required by Canadian GAAP and none has ever been demonstrated.

46. In the case of Ivaco Inc., prior to the execution of the APAs, its financial personnel had prepared a forecast of September 30, 2004 Working Capital. Ivaco's head office arbitrarily altered the divisional level forecast by reducing the forecast level of accounts receivable of $3.5 million, and reducing the forecast level of inventory of $3.0 million, i.e., reducing the value of the Working Capital by $6.5

million. There was no support for these changes as required by Canadian GAAP and none has ever been demonstrated.

47. As a consequence of the Defendants' misleading Working Capital Forecast, there were significant variances between the baseline Working Capital Forecast reflected on Exhibit B (which was attached to the APAs by the Defendants on August 6, 2004) and the actual values of Ivaco's Working Capital as at September 30, 2004. Among other things:

(a) The Exhibit B forecast of IRM LP inventory at September 30, 2004 was $69 million. In fact, the actual inventory value for September 30, 2004 was $93.1 million, i.e., $24.1 million higher or a difference of 35% between the forecasted IRM LP inventory as at August 6, 2004 and the actual amount seven weeks later at September 30, 2004;

(b) The Exhibit B forecast of Ivaco inventory was $31.7 million whereas the actual value at September 30, 2004 was $37.7 million, i.e., $6.0 million higher or a difference of 19% between the August 6, 2004 forecast and the September 30, 2004 actual value; and

(c) The Exhibit B forecast of inventory for Ifastgroupe LP was $110.55 million whereas it was actually $121.84 million as at September 30, 2004, i.e., a $11.2 million difference between the August 6, 2004 forecast and the September 30, 2004 actual value. In aggregate, the value for inventory included by Ivaco in the Working Capital Forecast supplied on the Exhibit Bs was $41.4 million below the actual Working Capital as at September 30, 2004.

48. Ivaco's unsupported and undocumented adjustments to Exhibit B accounts receivable, inventory, and accounts payable constitute a breach of its representation and agreement that the exhibits would be calculated and prepared on a consistent basis and in accordance with Canadian GAAP. The adjustments are neither reasonable nor supportable, and are not in accordance with Canadian GAAP.

Events Post-Closing

A. Retention of Expert

49. The APAs provide, at Section 2.12, that, following Closing, an independent accounting expert may be called upon to resolve disputes in connection with the Working Capital Adjustments, in a final and binding way, through the preparation and delivery of a report. The expert appointed under the APAs is the Hamilton, Ontario office of KPMG LLP (the "Expert").

50. Heico and Ivaco agreed that the Expert, acting as an expert and not an arbitrator, was empowered to conduct interviews of knowledgeable persons, pose written questions, obtain documents, and receive submissions from Heico and Ivaco, following which it would be expected to deliver a final decision concerning the appropriate Working Capital Adjustment.

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B. *Res Judicata* : Dismissal of Ivaco Application

51. Disputes in relation to the calculation of Working Capital were initially brought to the Expert's attention by Heico in April 2005. Shortly thereafter, Ivaco commenced an application in the Ontario Superior Court of Justice for a declaration that Exhibit B was a fixed number that the Expert could not adjust independently in any way ("Ivaco Application").

52. The positions on the Working Capital Adjustments put forward by Ivaco in the Ivaco Application were inconsistent with a plain reading of the APAs and represented a distinct departure from Ivaco's earlier representations and agreement, as pleaded above, that forecasted Working Capital was to be calculated and prepared on a basis consistent with the basis for calculation of Working Capital at Closing.

53. The Ivaco Application, and a counter-application for interpretation of the APAs brought by Heico, came on for a hearing before the Honourable Mr. Justice Farley on August 4, 2005. In Reasons for Decision dismissing the Ivaco Application, His Honour accepted Heico's submissions and emphasized the importance of ensuring consistency between Exhibits B and C:

> 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 and identical basis for calculation as Exhibit C". Thus it appears that the Expert must deal with Exhibit B so that methodology is consistent. In that regard, apples are to be compared to apples....

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> ...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 mechanically be someone else employing the deeming provision. Certainly, the Expert is in the best position to ensure consistency.

54. Having directly raised the issue of the Expert's alleged inability to make changes to Exhibit B, and having had the issue decided against it, Ivaco must now abide by the ruling of this Honourable Court. It is clear from the Reasons for Decision of Justice Farley that Exhibits B's and C must be prepared in accordance with the appropriate provisions of Canadian GAAP and on a basis that ensures consistency between them. Ivaco did not appeal the ruling and the matter has been finally decided. This issue is accordingly *res judicata* and cannot be re-litigated.

55. Heico pleads that the language of the APAs is clear and unambiguous and, consistent with the Reasons for Decision on the Ivaco Application, the Exhibit Bs must be adjusted so that they are compliant with GAAP and prepared on a consistent basis relative to the Exhibit Cs. In furtherance of this, Heico respectfully requests an order giving such directions as are necessary to carry out the Order of Justice Farley dated August 4, 2005.

C. Declaratory Relief

56. Alternatively, and in the event that it is determined that the doctrine of *res judicata* does not apply, Heico states that the Working Capital Adjustment Provisions of the APAs are clear and unambiguous and requests a declaration that the Exhibit Bs are required to be calculated and prepared in accordance with

Canadian GAAP, and adjusted so as to reflect an identical basis for calculation as the Exhibit Cs. Heico requests that appropriate directions be given to the Expert for the completion of the Working Capital Adjustment Process.

D. Trial of Issue Request

57. In the further alternative, and only in the event that it is determined that there is any ambiguity in the Working Capital Adjustment provisions of the APAs, Heico seeks the trial of an issue to consider the genesis and factual background of the APAs, including the issue of whether the Exhibit Bs are required to be calculated and prepared in accordance with Canadian GAAP, and adjusted so as to reflect an identical basis for calculation as the Exhibit Cs. At the conclusion of the trial of the issue, Heico requests that appropriate directions be given to the Expert for the completion of the Working Capital Adjustment Process.

E. Limited Mandate of Expert

58. The Expert is clearly not in a position to legally interpret and construe disputed provisions of the APAs or determine Heico's damages claims. The adjudication of these issues must precede the continuation of the Working Capital Adjustment Process.

59. Although the Expert may make adjustments to Exhibit B in reliance upon its accounting expertise and skill, it is clear that Expert's mandate does not extend to adjudicating disputed issues of fact or determining issues of credibility and the Expert has no authority or power to ensure full and fair production of documents that are relevant to the issues in the Working Capital Adjustments.

60. The issues that are subject of this claim relate exclusively to the Defendants' non-disclosures, reckless, negligent or wilful misrepresentations, and breaches of legal duties having to do with the preparation and inclusion of the Exhibit B Working Capital Forecast in the APAs. It is not disputed that the Expert lacks the authority to determine these matters, or even to inquire into them.

Damages

61. Heico pleads that the Defendants deliberately misrepresented their working capital assets in preparing the Exhibit B Working Capital Forecast. Further, or in the alternative, Heico pleads that the Defendants were reckless or negligent and in breach of their duty to act in good faith in the context of the APA objective of arriving at a proper Purchase Price through the application of the Working Capital Process.

62. The Defendants' wrongful conduct, as set out herein, was intended to, and had the effect of, inducing Heico to agree to pay an improperly inflated Purchase Price.

63. Heico has suffered damages as a consequence of the Defendants' misrepresentations, negligence, and breach of duty the particulars of which are the difference between the aggregate forecasted working capital attached as Exhibit B to the APAs and the proper amount of the forecast working capital calculated without Ivaco's misrepresentations and non-disclosure.

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64. Heico proposes that the trial of this action be held in Toronto, Ontario.

September 29, 2006

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Solicitors for the Plaintiffs

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Schedule A

Comparison of APA Forecasted Working Capital as at September 30, 2004 (Exhibit B) with Subsequent Forecast Prepared by Management

	Forecast for September 30, 2004		
	"Exhibit B" July 7 base numbers (Cdn $ 000s)	Exhibit "B" August 3 - 6 base numbers (Cdn $ 000s)	Differences (Cdn $ 000s)
IRM	85,007	103,809	18,802
Ifastgroupe	149,160	163,199	14,039
Sivaco			
Ontario	8,428	9,174	746
Quebec	50,379	54,529	4,150
Sivaco - Total	58,807	63,703	4,896
Totals	292,974	330,711	37,737

III CANADA ACQUISITION COMPANY et al
Plaintiffs

and

IVACO INC. et al
Defendants

Court File No:

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

STATEMENT OF CLAIM

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