

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT
ACT
R.S.C. 1985 c.C - 36, as amended**

- and -

**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF
KOREX DON VALLEY ULC**

APPLICANT

SEVENTH REPORT OF IRA SMITH TRUSTEE & RECEIVER INC.

**IN ITS CAPACITY AS COURT-APPOINTED MONITOR OF
KOREX DON VALLEY ULC**

DATED JUNE 12, 2009

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INDEX

REPORT	<u>Page</u>
1.0 Introduction	1
2.0 Purpose of Seventh Report	2
3.0 Monitor's assessment of the proposed Plan of Arrangement	2
4.0 Additional analysis being performed by the Monitor	5
4.1 <i>Machinery, plant and equipment</i>	5
4.2 <i>Factory Lands Lease</i>	6
5.0 Recommendation	7

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1.0 INTRODUCTION

This Seventh Report (the "**Seventh Report**") is filed by Ira Smith Trustee & Receiver Inc. ("**ISI**") in its capacity as court-appointed monitor (the "**Monitor**") of all of the assets, undertakings and properties of Korex Don Valley ULC ("**Korex**" or the "**Company**").

All background information regarding this administration and prior Court attendances and Orders was contained in the Monitor's prior Reports to Court.

2.0 PURPOSE OF SEVENTH REPORT

The Monitor's Sixth Report to Court was dated May 27, 2009 (the "**Sixth Report**") and was filed with this Honourable Court for the attendance of the parties on May 29, 2009. On that date, the Order of this Honourable Court dated February 6, 2009 (the "**Initial Stay Order**") and the Initial Stay Period (as defined in the Initial Stay Order), was further extended to June 30, 2009 by endorsement of the Honourable Mr. Justice Wilton-Siegel (the "**Endorsement**").

On June 11, 2009, the Company filed its Motion Material, including its proposed Plan of Arrangement. The Monitor had earlier been provided with a draft copy for the Monitor's review and comments. The purpose of this Seventh Report is to advise this Honourable Court on the current findings and status of the Monitor's analysis of the proposed Plan of Arrangement and the reason why that analysis cannot be completed for another ten (10) days.

3.0 MONITOR'S ASSESSMENT OF THE PROPOSED PLAN OF ARRANGEMENT

The Monitor has reviewed the proposed Plan of Arrangement (the "**Plan**") attached as Exhibit "C" to the Affidavit of Sanford Pensler affirmed June 11, 2009, included in Korex's Motion Record also dated June 11, 2009. The Plan's offer for the compromise of all Claims (as defined in the Plan) is summarized as follows:

1. The Distribution Pool (as defined in the Plan) is in the gross amount of \$1.5 million before deductions.
2. Allowable items, as noted below and as all defined in the Plan, from the Distribution Pool to determine the amount distributable to the Creditors (as defined in the Plan) are:

- a) all Claims of the Crown falling within Section 18.2 of the CCAA, in respect of such Claims as are filed by the Crown by the Claims Bar Date, if any;
- b) all Claims of the Crown falling within Sections 18.3(2) and 18.4(2) and (3) of the CCAA due and payable prior to the Filing Date in respect of such Claims as are filed by the Crown by the Claims Bar Date, if any;
- c) all Claims that are prohibited by law from being compromised by the Plan in respect of obligations due and payable prior to the Filing Date, if any; and
- d) each remaining Claimant holding a Proven Claim shall receive a distribution equal to its *pro rata* share of the remaining Distribution Pool up to the full amount of its Proven Claim provided that KDV and the Monitor may defer making a distribution to a Creditor continuing to hold an Unresolved Claim until such Creditor's entire Claim is proven in accordance with this Plan.

The definition of the Distribution Pool in the Plan states that the loan secured by the DIP Charge on the Implementation Date (as these terms are defined in the Plan) is also a deduction. Under the Plan, the costs under the Administrative Charge (as defined in the Initial Stay Order) remains attached to the Korex assets, properties and undertaking and accordingly, the amount charged by the Administrative Charge must also be deducted from the gross amount of the Distribution Pool.

The information available to the Monitor indicates that there is a minimal amount outstanding in connection with any government claims. The Monitor has identified the amount of \$15,736.06 owing to the Workplace Safety & Insurance Board.

The maximum amounts covered by the DIP Charge and the Administrative Charge are \$500,000 and \$350,000, respectively. Korex has advised the Monitor that it believes that on the Implementation Date, the amount outstanding under the DIP Charge should be in the range of \$250,000 to \$300,000. Therefore, the Monitor estimates that the net amount of funds available

in the Distribution Pool for distribution to the Claimants will be in the range of \$634,264 (\$1,500,000-\$15,736-\$350,000¹-\$500,000²) to \$984,264 (\$1,500,000-\$15,736-\$250,000³-\$250,000⁴).

It is not the role of the Monitor to presuppose what the final amount of Proven Claims will be. However, to assist this Honourable Court, the Monitor advises that based on its current understanding of the books and records of the Company, and the position of Local Union 132-O of the Communications, Energy and Paperworkers Union of Canada (the “**Union**”), the Monitor currently estimates that the total amount of Proven Claims could be as high as \$14.3 million, as follows:

Unsecured trade creditors ⁵	\$ 7,820,282
Potential Employment Standards Act liability to salaried employees ⁶	797,329
Current Union claim ⁷	<u>5,725,735</u>
Total	<u>\$14,343,346</u>

Korex has reviewed the Monitor’s analysis of potential claims, and Mr. Pensler has advised the Monitor that, based on the advice of labour counsel, he believes that the claim of the Union on behalf of the unionized former employees may be no greater than the amount of \$789,551. The Monitor has not reviewed any legal opinion that Korex may have in support of this view and has

¹ Maximum allowable Administrative Charge.

² Maximum allowable DIP Charge.

³ Reduced Administrative Charge.

⁴ Korex’s estimate of the DIP Charge on the Implementation Date.

⁵ As per the Korex books and records, after US exchange per the Plan and net of the Unilever set-off amount of \$1,302,471.

⁶ As estimated by the Monitor and subject to verification.

⁷ As calculated by the Union and provided to Korex by email from the Union’s legal counsel to Korex’s legal counsel on June 9, 2009. Korex has advised the Monitor that it disputes this calculation and believes the actual liability is significantly less.

not taken any steps to determine the appropriateness of either the amount calculated by the Union or Korex. If Korex's view ultimately prevails, the estimated total Claims would reduce from the calculated amount above of \$14.3 million to the reduced amount of \$9.4 million.

4.0 ADDITIONAL ANALYSIS BEING PERFORMED BY THE MONITOR

The Monitor believes that it must perform an estimate of what the ordinary unsecured creditors may expect from the liquidation of the assets, properties and undertaking of Korex under an assumption of a bankruptcy proceeding. In order to accomplish this, the Monitor requires a liquidation valuation of the Korex machinery, plant and equipment and an assessment by a knowledgeable realtor in what value there may be in the Factory Lands Lease dated August 18, 2002 entered into between Unilever Canada, a division of UL Canada Inc. and Korex and what impact, if any, the Asset Purchase Agreement dated May 21, 2002 entered into between Unilever Canada and Korex may have.

4.1 Machinery, plant and equipment

The Monitor contacted Mr. Terrance Jacobs of TCL Asset Group Inc. ("TCL") to prepare a liquidation valuation for the Monitor on the machinery, plant and equipment of Korex. Mr. Jacobs attended at the Korex premises on June 10, 2009 and yesterday, advised the Monitor that in his view, subject to qualifications based on the limited review he performed, he believed that those assets may have substantial value, to the point where it may affect the Monitor's decision as to whether or not the Plan provides a better alternative for the Creditors than a liquidation. This oral opinion was information that surprised both the Monitor and Korex, as Korex was of the belief that a liquidation valuation would not produce any significant recovery. The Monitor requested TCL to provide that oral opinion in writing, subject to its qualifications, and it did by

letter dated today. The Monitor is not providing a copy of the letter in this Seventh Report as it is tentative and subject to further analysis (see discussion in following paragraph). However, the Monitor's counsel will have a copy of the letter in his possession when attending in Court on Korex's motion on June 15 to provide to His Honour should he wish to review it.

To satisfy itself that TCL's initial impression of value was accurate, the Monitor has requested TCL to provide the Monitor with a liquidation proposal, including a net minimum guarantee, so that the Monitor can assess that information. The TCL proposal, will then allow the Monitor to reach definitive conclusions regarding the Plan. TCL has advised the Monitor that such proposal may take up to ten (10) days to prepare and issue.

4.2 Factory Lands Lease

The Monitor also wished to obtain a "desktop" valuation of the Factory Lands Lease. The Monitor believed that Cushman Wakefield & LePage were in the best position to advise the Monitor, as they were intimately familiar with the property, having acted for Unilever Canada. The Monitor's legal counsel made a request to Unilever Canada's legal counsel, for the Monitor to retain Cushman Wakefield & LePage for this purpose. Unilever Canada's counsel advised that Unilever Canada is not prepared to provide its consent.

The Monitor has identified Mr. F. Plant, Senior Vice-President of the firm of Jones Lang LaSalle Real Estate, as being knowledgeable in the Korex facility. That firm previously provided services to Korex. Mr. Plant has advised that in his view, Jones Lang LaSalle Real Estate does not have a conflict as they are currently not providing any services to Korex. Mr. Plant has advised that he can have an assessment prepared and provided to the Monitor within the same time frame required by TCL.

5.0 RECOMMENDATION

Upon receipt of the liquidation proposal with net minimum guarantee, and the desktop lease valuation, the Monitor will be in a position to complete the liquidation value assessment and then provide this Honourable Court with its recommendations concerning the Plan and the proposed restructuring by Korex. Based on representations made by both TCL and Jones Lang LaSalle Real Estate, the Monitor believes that it can submit its next Report to this Honourable Court prior to the expiry of the Stay Period, being June 30, 2009.

The Monitor respectfully recommends to this Honourable Court that it be allowed to complete the analysis described herein, so that it may make its recommendations known on the Plan, or as it may be amended based on the Monitor's analysis.

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All of which is respectfully submitted at Toronto, Ontario this 12th day of June, 2009.

IRA SMITH TRUSTEE & RECEIVER INC.
solely in its capacity as Court-Appointed Monitor
of Korex Don Valley ULC and not in its personal Capacity



Per: _____
President

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