

**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

SUPPLEMENTARY MOTION RECORD

March 30, 2009

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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**SUPPLEMENTARY MOTION RECORD
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TAB DOCUMENT

1. Supplementary Second Report of Ira Smith Trustee & Receiver Inc. dated
 March 28, 2009

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

APPLICANT

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDINGS COMMENCED AT TORONTO

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MOTION RECORD

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**SUPPLEMENATARY SECOND REPORT OF
IRA SMITH TRUSTEE & RECEIVER INC.**

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

DATED MARCH 28, 2009

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**SUPPLEMENTARY SECOND REPORT OF
IRA SMITH TRUSTEE & RECEIVER INC.**

**IN ITS CAPACITY AS COURT-APPOINTED MONITOR OF
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DATED MARCH 28, 2009

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IRA SMITH TRUSTEE & RECEIVER INC.**

**IN ITS CAPACITY AS COURT-APPOINTED MONITOR OF
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DATED MARCH 28, 2009

1.0 INTRODUCTION

This Supplementary Second Report (the "**Supplementary Second 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**").

On January 2, 2009, by Endorsement of the Honourable Mr. Justice Campbell, prior to its appointment as Monitor, ISI was directed to perform certain work and prepare its First Report in its capacity as proposed court-appointed monitor as part of an adjournment on a consent basis of the within application.

On January 12, 2009, the parties attended before the Honourable Madam Justice Pepall to seek an adjournment of the hearing of Korex's motion. By endorsement of Justice Pepall, the First Report was not filed with this Honourable Court at that time. A copy of Her Honour's Endorsement was attached to the proposed Monitor's Supplementary First Report as Exhibit "A" (further discussed below).

On January 19, 2009, the parties attended before the Honourable Mr. Justice Morawetz to seek a further adjournment of the hearing of Korex's motion. By endorsement of Justice Morawetz on that same date, His Honour directed that the proposed monitor file a further report for the next attendance on January 23, 2009 providing an up to date summary of key events.

On January 23, 2009, the parties attended before the Honourable Mr. Justice Cumming and scheduled the hearing of the Korex motion for February 3, 2009. By Endorsement of Mr. Justice Cumming, the proposed monitor was directed to file a Supplementary Second Report with this Honourable Court on February 2, 2009. Justice Cumming also directed the proposed monitor to file the First Report and the Supplementary First Report with this Honourable Court which was done at the same time.

On February 6, 2009, Korex's motion was heard and an Order was made granting Korex the requested relief, including, the stay of proceedings, the appointment of ISI as Monitor and directing that a further hearing in this Application should be heard on March 9, 2009, or such alternate date as the Court may fix (the "**Initial Order**").

On March 6, 2009, the Monitor's legal counsel, Aird & Berlis LLP, filed the Monitor's First Report to Court (the "**First Report**") with this Honourable Court in connection with the Applicant's motion for an extension to the Initial Stay Order being heard on March 9, 2009

before the Honourable Madam Justice Hoy. Her Honour advised Mr. S. Mitra of Aird & Berlis LLP, who appeared on the March 9 attendance on behalf of the Monitor, that the First Report was not contained in the Court file. Accordingly, the First Report was neither considered nor approved by Her Honour.

By Order of the Honourable Madam Justice Hoy dated March 9, 2009, the Initial Stay Order and the initial stay was extended to March 31, 2009.

On March 25, 2009, the Monitor's legal counsel, Aird & Berlis LLP, filed the Monitor's Second Report to Court (the "**Second Report**") with this Honourable Court. Attached as Exhibit "A" to the Second Report was an original signed copy of the First Report. Included in the Exhibits to the First Report is a copy of all Reports filed by ISI in its capacity as proposed monitor.

Purpose of this Report

In Section 8.0 of the Second Report the Monitor advised:

"The Applicant is in active discussions with both Comerica Bank and Unilever. As of the time of the writing of this Second Report, the Monitor does not know how the Applicant intends to proceed on March 31, 2009. It is therefore premature to make any further recommendations in this Second Report and a Second Supplementary Report will be filed."

Subsequent to the finalization of the Second Report, on March 25, 2009, the Applicant served its application for an extension of a further extension of the Initial Stay and the Initial Stay Order to April 30, 2009. The purpose of this Report is to advise this Honourable Court of the Monitor's understanding of the current situation.

2.0 DISCLAIMER

The Monitor refers to the Disclaimer contained in the Second Report to Court.

3.0 ADMINISTRATION CHARGE

Paragraph 27 of the Initial Order states:

“27. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Applicant’s counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$250,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 31 hereof.”

The Monitor advises that as at March 26, 2009, the unpaid balance of the Administration Charge totals \$186,243, as follows:

| | |
|--|-------------------|
| Davis LLP, counsel to the Applicant | \$ 98,914 |
| Ira Smith Trustee & Receiver Inc., Monitor | 74,825 |
| Aird & Berlis LLP, counsel to the Monitor | <u>12,504</u> |
| | <u>\$ 186,243</u> |

On March 27, 2009, Counsel to Comerica Bank, orally advised the Monitor that Comerica Bank will be responsible for payment of the fees and disbursements of the Monitor and its counsel, subject to the maximum limit of the Administration Charge. However, at the time of writing this Second Supplementary Report, although discussions are ongoing between Comerica Bank and the Applicant: (i) Comerica Bank and the Applicant have not entered into a new Forbearance Agreement; (ii) as a result of the UL Canada Inc. accounts receivable collection problem described in the Second Report, Comerica Bank is not advancing any funding to the Applicant as at this date; and (iii) the above-noted amount covered by the Administration Charge has not been

paid, and other than for the oral assurance received from counsel to Comerica Bank, the Monitor and its counsel do not currently know from where funds will come to pay the current and future amounts to be incurred and covered by the Administration Charge.

4.0 CONCLUSION

Korex has been acting in good faith and co-operating. The Applicant is in active discussions with both Comerica Bank and Unilever. The Monitor has considered Korex's request for a further extension of the Initial Stay Order. The Monitor advises this Honourable Court that, conditional upon Comerica Bank continuing support of Korex, including advancing the funds required by Korex to continue to operate in accordance with its current budget AND to pay for both the current amount outstanding under the Administration Charge and future amounts to be accrued under it, Korex would likely be able to make a viable Plan of Arrangement and no creditor would be materially prejudiced if the extension being applied for were granted.

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All of which is respectfully submitted at Toronto, Ontario this 28th day of March, 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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APPLICANT

Court File No. 08-CL-7925

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SUPERIOR COURT OF JUSTICE
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DATED MARCH 28, 2009**

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