

**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

SIXTH REPORT OF IRA SMITH TRUSTEE & RECEIVER INC.

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

DATED MAY 27, 2009

1.0 INTRODUCTION

This Sixth Report (the "**Sixth 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**").

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 SIXTH REPORT

The purpose of this Sixth Report is to provide the Court with certain information of events that have transpired since the date of the Monitor's Fifth Report to Court, May 11, 2009 (the "**Fifth Report**") and with the attendance in Court by the parties on May 15, 2009, and with specific concerns of the Monitor in Korex's application for an extension of the Order of this Honourable Court dated February 6, 2009 (the "**Initial Stay Order**") and the Initial Stay Period, as further extended by subsequent Orders of the Court to June 1, 2009.

3.0 MONITORING

In the Fifth Report, the Monitor advised that on May 5, 2009, Comerica Bank appointed S. Funtig & Associates Inc. as Receiver (the "**Receiver**") of the assets, property and undertaking of Korex subject to Comerica Bank's security. The Monitor has been advised that this is a receivership primarily over the accounts receivable, inventory, choses in action and other miscellaneous assets of Korex, but not its fixed assets.

As a result of the appointment of the Receiver, the Monitor has been advised that Korex ceased operations and laid off most of its employees. The Monitor has been advised that other than their continuing attempts to seek an investor and negotiate with specific stakeholder groups, Korex senior management, being Messrs. Pensler and Bojkovski, are focussing their efforts on other businesses of the other companies in the group that Korex is a member of. The Monitor understands that the Receiver and Mr. Pensler had been negotiating for the sale of the inventory which would be utilized for the purpose of continuing the sulphination business.

On May 26, 2009, the Monitor was served with motion material where Comerica Bank makes application to this Honourable Court for the appointment of the Receiver as a Court-appointed

Receiver, with powers as contained in Comerica Bank's motion material. Although the Monitor has no confirmation directly from either Comerica Bank or the Company, such application suggests that Mr. Pensler's negotiations with the Receiver are not moving forward on a mutually satisfactory basis.

4.0 FUNDING OF THE MONITOR AND ITS LEGAL COUNSEL

By Order of the Court dated May 15, 2009, the fees and disbursements of the Monitor and its legal counsel, Aird & Berlis LLP, in the respective amounts of \$93,015.88 and \$32,661.46 (GST included). On the same day the Company's legal counsel, Davis LLP, received Court approval of its fees and disbursements in the sum of \$117,618.50. Based upon previous approval orders, the total professional fees and disbursements in connection with the restructuring to April 30, 2009 exceed the current Administration Charge (as defined in the Initial Stay Order, as increased by subsequent Order of the Court) by approximately \$155,000.

Comerica Bank had received the majority of the funds in the Company's bank accounts on the grant of the Initial Order. The Monitor understands that the sum of \$1,855,028 was transferred to Comerica Bank by the Company on February 6, 2009¹. Further, through the period of forbearance, the proceeds from the Company's accounts receivable were swept by Comerica Bank leaving the Company with limited operating funding and an inability to fund the professional fees from its own resources. The Monitor recognized this issue some time ago and there have been ongoing communications involving Comerica Bank, the Company and the Monitor about funding of the professional fees. As of the time of the writing of this report no agreement has been reached as to what portion of the professional fees should be borne by

¹ As reported by the Monitor in the monitoring memo dated February 16, 2009 provided to both Comerica Bank and Korex, and contained in Exhibit "E" in the Monitor's First Report to Court dated March 6, 2009.

Comerica Bank which benefited directly from the work completed by these professionals. Absent an agreement there will have to be a motion for a determination in this regard as disclosed to the Court on the last attendance on May 15, 2009.

While the Company remains primarily responsible for payment of the professional fees associated with the restructuring, as a practical matter, it does not presently have adequate funding to meet past or ongoing obligations for the costs of this restructuring. Given the funding problems of the Company, the Monitor has requested from Mr. Pensler a cash retainer as security to be applied towards the obligations of the Company in these proceedings. As of the time of the writing of this Report, the Monitor has not received either any tangible assurance or any cash security for the funding of the Monitor's and Aird & Berlis' fees and disbursements. Accordingly, without arrangements in place to address the foregoing the Monitor cannot support any further extension. Similarly, adequate funding arrangements should be in place to fund counsel to the Company in these proceedings.


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All of which is respectfully submitted at Toronto, Ontario this 27th day of May, 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