



Clerk's stamp:

COURT FILE NUMBER 24-2878531
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON

IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL UNDER SECTION 50.4(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, C B-3,
AS AMENDED

APPLICANT NILEX INC. and NILEX USA INC.

DOCUMENT **APPLICATION (approving extension of time to file a proposal)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
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NOTICE TO RESPONDENTS

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date	February 7, 2023
Time	10:00 a.m.
Where	Edmonton, Alberta (via Webex)
Before Whom	The Honourable Justice J.T. Neilson

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. The Applicants, Nilex Inc. ("**Nilex**") and Nilex USA Inc. ("**Nilex USA**" and together with Nilex, the "**Companies**"), seek an order in the form attached hereto as Schedule "**A**":
 - (a) abridging the time for service of this application and the supporting materials, if necessary, and deeming service thereof to be good and sufficient;
 - (b) extending the time by which each of the Companies may file a proposal to their creditors pursuant to section 50.4(9) of the *Bankruptcy and Insolvency Act* (Canada) ("**BIA**") for a maximum 45-day period, following the current deadline to do so;
 - (c) approving and ratifying the actions, conduct and activities of KSV Restructuring Inc., the proposal trustee appointed in these proceedings (the "**Proposal Trustee**") as set out in the fourth report of the Proposal Trustee to the Court dated January 30, 2023 (the "**Fourth Report**"); and
 - (d) approving the fees and disbursements of the Proposal Trustee and its counsel, as set out in the Fourth Report, the fee affidavit of David Sieradzki sworn January 30, 2023, the fee affidavit of Danielle Maréchal sworn January 30, 2023, and the fee affidavit of Brent Cohen sworn January 30, 2023, (collectively, the "**Fee Affidavits**") without the necessity of a formal assessment of their accounts; and
 - (e) such further and other relief as counsel may request and this Honourable Court may deem appropriate.
2. Capitalized terms used but not defined in this Application shall have the meanings ascribed to them in the affidavit of Jeff Allen sworn January 30, 2023 (the "**Fourth Allen Affidavit**").

Grounds for making this application:*Background*

3. On October 27, 2022, Nilex filed a notice of intention ("**NOI**") to make a proposal under section 50.4(1) of the BIA (the "**Nilex NOI Proceeding**") and KSV Restructuring Inc. was appointed proposal trustee (the "**Proposal Trustee**").
4. On November 8, 2022, the Honourable Justice J.S. Little of the Court of King's Bench of Alberta (the "**Court**") granted an order which, among other things, extended the time for Nilex to file a proposal to its creditors pursuant to section 50.4(9) of the BIA for a maximum 45-day period ending on January 10, 2023.
5. On November 24, 2022, Nilex USA filed an NOI under section 50.4(1) of the BIA (the "**Nilex USA NOI Proceeding**") and, together with the Nilex NOI Proceeding, the "**NOI Proceedings**") and the Proposal Trustee was appointed proposal trustee of Nilex USA. The commencement of the Nilex USA NOI Proceeding was a condition of the asset purchase agreement ("**APA**") among the Companies, as vendors, and Terrafix Geosynthetics Inc. and Hanes Companies, Inc., as purchasers (the "**Purchasers**" and together with the Companies, the "**Parties**") entered into on November 18, 2022, and authorized and approved by the Court on November 28, 2022, as discussed further below.
6. On November 28, 2022, the Honourable Justice M.H. Hollins of the Court granted orders, among other things:
 - (a) extending the time for each of the Companies to file a proposal to their creditors pursuant to section 50.4(9) of the BIA to and including February 7, 2023;
 - (b) approving (the "**Approval Order**") the purchase and sale transaction (the "**Transaction**") contemplated in the APA;
 - (c) authorizing the Companies to enter into the transition services agreement (the "**TSA**");
 - (d) procedurally consolidating the NOI Proceedings; and

- (e) authorizing the Proposal Trustee to act as the foreign representative in respect of the Companies, or either of them, for the purpose of having the NOI Proceedings, or either of them, recognized in the United States of America pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, in the United States Bankruptcy Court for the District of Colorado (the "**US Bankruptcy Court**").
7. On December 2, 2022, the Proposal Trustee, in its capacity as foreign representative, filed with the US Bankruptcy Court, among other things, a petition for recognition of the Nilex USA NOI Proceeding.
 8. On December 9, 2022, the US Bankruptcy Court granted a preliminary injunction order in respect of Nilex USA and scheduled a hearing date for final recognition of the Nilex USA NOI Proceeding and the Approval Order, as it relates to the Transaction in respect of Nilex USA.
 9. The Transaction in respect of Nilex closed on December 19, 2022 (with an effective date of December 16, 2022), and the Proposal Trustee issued a certificate in respect of same.
 10. On January 10, 2023, the Honourable Judge M.E. Romero of the US Bankruptcy Court entered orders, among other things, recognizing the Approval Order and approving the Transaction with respect to Nilex USA.
 11. The Transaction in respect of Nilex USA closed on January 27, 2023, and the Proposal Trustee issued a certificate in respect of same.

Extension of Time to File a Proposal

12. Pursuant to section 50.4(8) of the BIA, each of the Companies is required to file a proposal with the official receiver within 30 days of commencing each of its respective NOI Proceedings (the "**Initial 30 Days**") unless it otherwise obtains an extension from the Court.
13. Pursuant to section 50.4(9) of the BIA, before the expiry of the Initial 30 Days, each of the Companies may apply to the Court for an order or orders extending the time to file a

proposal by a period not exceeding 45 days and not exceeding in the aggregate five months after the expiry of the Initial 30 Days for any individual extension.

14. The Companies have acted in good faith and with due diligence in pursuing the Transaction to maximize value for their creditors and other stakeholders.
15. Unless the Companies receive extensions of time to file a proposal or proposals, each of the Companies' deadline to file a proposal with the official receiver will expire at 11:59 pm (local Edmonton time) on February 7, 2023, at which time the Companies will be deemed to have made an assignment in bankruptcy.
16. The proposed extension of time will enhance the Companies' abilities to make viable proposals following the completion of the Transaction and will permit the Companies to fulfill the terms of the TSA.
17. No creditors will be materially prejudiced by the requested extension.

Approval of Fees

18. As set out in the Fourth Report and the Fee Affidavits: the fees and disbursements of the Proposal Trustee for the period from October 1, 2022 to December 31, 2022 total \$295,060.51, inclusive of all applicable taxes; the fees and disbursements of the Proposal Trustee's Canadian counsel for the period from October 6, 2022 to December 16, 2023, total \$170,431.26, inclusive of all applicable taxes; and the fees and disbursements of the Proposal Trustee's US counsel for the period from November 14, 2022 to December 13, 2022, total \$78,211.40, inclusive of all applicable taxes.
19. The Proposal Trustee is of the view that these amounts are appropriate and commercially reasonable in the circumstances and were validly incurred in accordance with the provisions of the BIA.

Material or evidence to be relied on:

20. The Companies intend to rely upon the following materials:
 - (a) the Fourth Allen Affidavit, to be filed;

- (b) the Fourth Report, to be filed;
- (c) the Fee Affidavits, to be delivered to the Court; and
- (d) such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable Rules:

- 21. The Companies will rely upon and refer to the *Alberta Rules of Court* during the making of the Application.

Applicable Acts and Regulations:

- 22. The Companies will rely upon and refer to the provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, during the making of the Application.
- 23. *The Bankruptcy and Insolvency General Rules*, CRC, c 368.
- 24. Such further and other Acts and Regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

- 25. None.

How the Application is proposed to be heard or considered:

- 26. Virtually, an application via WebEx before the Honourable Justice J.T. Neilson.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the Applicants what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to Applicants.

Schedule "A"
Form of Order
(see attached)